



Office of Utility Regulation

**Proposed Decisions under
The Telecommunications (Bailiwick of
Guernsey) Law, 2001**

Consultation Paper

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1. Introduction

In preparing the regulatory framework that will apply in the telecommunications market in Guernsey from 1st October 2001, the Director General of Utility Regulation (“the Director General”) is required to publish notice of her intention to take certain steps in accordance with the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecoms Law”). This paper sets out a number of proposed decisions and invites comments on these decisions. Interested parties considering these decisions may wish to comment on the following related public consultation documents:

- Document OUR01/02: Telecommunications in Guernsey – Licensing Framework for a Competitive Market – Consultation Paper
- Document OUR01/03: Telecommunications Licence Conditions – Consultation Paper

The Decisions that the Director General is now addressing are:

- (a) A proposed decision as to whether a person has a dominant position in a relevant market ;
- (b) A proposed decision to include conditions in the licence to be granted to that person in relation to the control of that dominant position, and what those conditions are;
- (c) A proposed decision to regulate the prices, premiums, discounts that may be charged or allowed by a licensee which has a dominant position in a relevant market, and
- (d) A proposed decision to include quality of service conditions in any licence, and
- (e) A proposed decision to apply the Code, as set out in Schedule 1 of the Telecoms Law, to a Licensee.

Section 5 of the Telecoms Law requires publication of notice of proposed decisions (a) to (d) above, and Section 9 of the same Law requires publication of notice of proposed decision (e) above.

This consultative document does not constitute legal, commercial or technical advice. The Director General is not bound by it. The consultation is without prejudice to the legal position of the Director General or her rights and duties to regulate the market generally.

2. Consultation Procedure and Timetable

The consultation period will run from Monday 13th August to Friday 31st August 2001. Written comments should be submitted before 5.00pm on August 31st to:

Office of Utility Regulation
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001 - Consultation Paper”

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In line with the policy set out in Document OUR01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a response to the consultation, including published licence terms and conditions in September.

3. Proposed decision as to whether a person has a dominant position in a relevant market.

There is a considerable amount of international literature and experience in the matter of defining relevant markets in telecommunications and determining whether there is dominance or market power in those markets, but there is little precedent in Guernsey. The Director General proposes to develop further a body of analysis of markets that will assist in discharging this function in the future and will consider practice elsewhere as well as the specific conditions of the Bailiwick.

3.1. *Relevant Market*

For this present decision the Director General has considered the relevant market having regard to the geographic area of the market and the product and services market and then considered the position of the sole player in those markets – Guernsey Telecoms (“GT”).

Geographic extent of the market: In common with practice elsewhere, the Director General will define the geographic market for telecommunications with reference to the area in which relevant parties are authorised to operate and the geographic extent of the telecommunications network in question. Therefore the Director General will consider the Bailiwick of Guernsey as the geographic market in this case.

Products and Services in the market: There are various ways of identifying markets in telecommunications using tests such as demand and supply side substitutability for products and services. However, in the current climate in the Bailiwick of Guernsey, there exists a market for telecommunications products and services in which GT has an exclusive right to operate. Therefore these tests are redundant because there is a legal impediment to any supplier other than GT providing those services or products, and a similar legal barrier to any customer receiving the services from an alternative supplier.

With the introduction of new legislation in the form of the Telecommunications Law, this legal monopoly will be removed. The States of Guernsey has directed the Director General that the licensing regime shall include further exclusive rights for GT to operate in these markets for a limited period only and these exclusive rights shall be removed as quickly as possible and in any case before the end of three years¹.

Where there is an exclusive right in the licence, the situation described above is unchanged, i.e. GT has a legal monopoly in these product and services markets. This document and the related document OUR 01/03 provide for the inclusion of limited exclusive rights to operate in the following markets:

- Fixed telecommunications services
- Fixed telecommunications networks
- Leased Circuits
- Mobile telecommunications services
- Mobile telecommunications networks.

Therefore the Director General proposes to consider dominance in these markets at this time.

3.2. Dominant position

Once again, there is considerable international experience in determining if an undertaking has a dominant position in a relevant market. A generally accepted principle is that an undertaking can be considered dominant if either individually or jointly with others it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors customers and ultimately consumers.

There is a variety of matters that can be considered when making such a decision, including the market share of an undertaking, barriers to entry into the market and price rivalry. However, in the markets under consideration, GT has a legacy monopoly and therefore these matters are simple to analyse. For example there is a complete barrier to entry because no other party is allowed to enter the market, there is no price rivalry because there are no other suppliers, and the market share of GT is 100%.

In these circumstances GT is free to act independently of competitors (as there are none in this market) and of customers and consumers because the customers and consumers have no choice and cannot switch to alternative suppliers. Therefore the Director General proposes to decide that GT has a dominant position in the relevant markets.

Q 3 Respondents are invited to make any comments on this proposed decision.

¹ Billet d'Etat No VI, 2001: The States Board of Industry – States Directions on the Regulation of the Telecommunications Sector, p. 341 (www.gov.gg/billets/2001/Billet_VI_2001.pdf)

4. Proposed decision to include conditions in a licence in relation to control of a dominant positions.

Given GT's position in the market, the Director General proposes to include a number of specific conditions in the licence that it is proposed to grant to GT in order to control its' dominant position. These conditions are set out in section IV of the Draft telecommunications Licence at appendix 2 to document OUR01/03 – Telecommunications Licence Conditions – Consultation Paper. A description of the conditions is in appendix 1 of that document. While this particular consultation relates to GT, it should be noted that the Director General currently considers that similar conditions should apply to any other licensee where that licensee is dominant in a relevant market. This is without prejudice to the outcome of future consultations.

Q.4 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/03.

5. Proposed decision to regulate the prices, premiums and discounts of a dominant operator.

The Director General proposes to include conditions relating to the prices, premiums and discounts that dominant operators charge or allow. The relevant conditions are conditions 26 and 31 in the licence that it is proposed to grant to GT (see OUR01/03). Without prejudice to the outcome of future consultations, the Director General currently considers that these conditions would be appropriate to be included in the licence of all operators who are determined to be dominant in a relevant market.

Q.5 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/03.

6. Proposed decision to include quality of service conditions in any licence.

The Director General proposes to include specific conditions relating to quality of service in the licence that it is proposed to grant to GT (conditions 15 and 16, Appendix 2 of Document OUR01/03). Without prejudice to future consideration of licence conditions for other operators, the Director General currently considers that these conditions would be appropriate to all licences in the fixed telecommunications market.

Q.6 Respondents are invited to comment on these conditions in the context of their response to this document and document OUR01/03.

7. Proposed decision to Apply the Code in Schedule 1 of the Telecoms Law

Section 9 of the Telecommunications Law requires the Director General to publish notice of her intention to apply the Code, as set out in Schedule 1 of the Telecommunications Law. The code sets out certain rights, powers duties and obligations that are applicable to the licensee in relation to access to land.

The Director General may apply the code where in her opinion it is not technically or economically feasible for the telecommunications network of that licensee to be established, operated or maintained without the Code. The rights in the code are designed to allow the continuation of the provision of a telecommunications network that covers the entire Bailiwick and is capable of delivering the universal service obligation, but those rights are somewhat less than those previously enjoyed by the States Telecommunications Board. In addition, notwithstanding the application of the code, the licensee is still subject to the planning laws of the Bailiwick.

The Director General considers it reasonable to expect that GT will require the rights in the code to continue to establish, maintain and improve its network which is capable of delivering a universal service obligation and therefore she proposes to apply the code to GT.

Q.7 Respondents are invited to make any comments on this proposed decision.

ENDS/