



Office of Utility Regulation

# **Telecommunications Licence Terms and Conditions for New Entrants**

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Report on the Consultation Paper & Decision Notice

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**Office of Utility Regulation**

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH  
Tel: (0)1481 711120, Fax: (0)1481 711140, Web: [www.regutil.gg](http://www.regutil.gg)

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## **1. Introduction**

In December, 2001, the Director General of the Office of Utility Regulation (“the Director General”) published a consultation paper, Document OUR 01/23 on the steps she is taking to develop new licence terms and conditions in preparation for a fully liberalised telecommunications sector. That paper covered, inter alia, the nature of the terms and conditions to apply to Other Licensed Operators (OLOs) – i.e. other than Guernsey Telecoms Ltd (“GT”) - in the fixed telecommunications market.

This report sets out the Director General’s conclusions following detailed consideration of the responses received.

This report is structured along the lines of the consultation document and each section summarises the matter consulted upon, the responses received and the Director General’s consideration of the matter.

Three organisations/individuals responded to the consultation, as listed below:

- Guernsey Telecoms Limited;
- Newtel (Guernsey) Ltd; and
- Deputy John Gollop.

The Director General wishes to thank those who have responded to this consultation document for their contributions in helping to shape the regulatory regime. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR’s office.

## **2. Exemptions from Licensing**

The Director General has stated that she intends to ensure that licensing of telecommunications networks and services is only undertaken where there is a demonstrable need and the public interest is best served in doing so, and to avoid unnecessary regulation of those parts of the market that could be allowed to operate without a licensing regime.

Document OUR 01/23 set out the Director General’s position with regard to the services she believes should fall within the ambit of the licensing regime and reiterated the criteria previously set out in Document OUR 01/12, against which such decisions would in future be made.

#### **Decision 4.1 from document OUR 01/12**

The Director General will consider exempting services from within the scope for licensing under the Telecommunications Act against the following criteria:

1. Is there a public interest concern that would require the licensing of the activity or service?
2. Are there public safety issues that would require licensing?
3. Are there economic reasons for using licensing controls?
4. Is there the prospect of competitive provision of the service or activity in the near future that would be enhanced or encouraged where entry into the market was simple and inexpensive?

The Director General will carry out an assessment on a case-by-case basis using these criteria as guidelines. However, the Director General reserves the right to take other relevant matters into consideration.

In Document OUR 01/23, the Director General described a number of activities that, based on the definitions in the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecoms Law”), come within the scope of needing to be licensed, but when assessed against the criteria set out above, are appropriate to fall outside the regulatory regime. She set out in detail five specific categories of networks and services and sought the views of interested parties on her approach.

#### **Views of Respondents**

All respondents expressed views on this aspect of the consultation. One respondent was of the opinion that exemptions should be limited as much as possible and feared that too much unbridled competition could saturate a fragile local market. Another supported the Director General’s approach and welcomed the case-by-case assessment being proposed.

The third respondent, while it supported in principle the approach being proposed by the Director General, expressed certain concerns with regard to some of the proposed exemptions. It agrees in principle with the proposal that services that are not provided for commercial gain should be exempt from licensing, though it queried the example offered by the Director General (i.e. hotels) as it is of the opinion that the telecommunications services offered by hotels are for commercial gain.

It also expressed concern about Exemption 2, i.e. telecoms services that consist wholly of the reception of telecommunication messages, believing that service providers using freephone numbers to resell telecoms services are involved in the routing of messages. In general the respondent is of the opinion that the use of freephone number, whether within or from outside the Bailiwick, is equivalent to Carrier Selection, and as such does not fit into the definition of a service that ‘consist wholly of the reception of telecommunication messages’.

It agreed in principle with the proposed Exemption 3 (relating to access to public or private third party land), although it has concerns that the proposed wording may be open to abuse and that a network that would normally be licensable might, under the proposal,

be able to be run without a licence, particularly radio based networks. It also queried whether a commercial client renting property from a third party might come within the scope of the licensing requirement.

It has suggested a drafting change to Exemption 4, which it believes would prevent two separate business entities from connecting their internal networks together in a manner that would allow them to communicate freely, thus by-passing the public network and consequently the requirement to hold a licence.

Finally, it agreed with the proposed Exemption 5, relating to payphones, except where the transmission and routing of calls is involved.

### **Director General's Position**

The Director General, in framing the proposed exemptions, has sought to ensure that the principles and purpose of the Telecoms Law and the objectives set out in the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("the Regulation Law") have been complied with and that the regulatory regime is applied only where appropriate and where its application will have a constructive effect on the development of the telecommunications environment in the Bailiwick. Therefore, conscious of the need to ensure that a sustainable competitive telecommunications market develops, the Director General does not believe it would be appropriate to impose regulation for regulation's sake.

Turning to the specific comments on the proposed exemptions, the Director General believes that there may be some confusion between the 'use' of a telecommunications service and the 'provision' of a telecoms service. In relation to the example used in OUR 01/23 (i.e. hotels who connect guests or pass calls on to guests' rooms), such users are merely making available to their customers the use of their own telecoms equipment – for which the hotel guest may or may not pay a premium. This however does not constitute the provision of a telecommunications service for commercial gain – it is ancillary to the hotels' main commercial purpose.

With regard to freephone services, the Director General does not generally consider the use of freephone services for the purpose of reselling to be a licensable activity as the service being purchased by the reseller is identical to the service being purchased by any other freephone user. Such service providers are taking a generally available – and retail oriented - telecoms product and allowing their customers to access certain services by means of that freephone number. The Director General does not accept that it is exactly the same as Carrier Selection as argued by one respondent. Carrier select or carrier access codes are known generally as 'network codes'. To avail of carrier selection codes an operator must have a network to which such codes can be routed. The calls routed in this way must then be transmitted, switched and/or routed by the network operator. This differs fundamentally from freephone resellers, where the freefone reseller avails of the network and services of another operator and simply resells the service of that operator.

Where a party wishes to use a freephone number within the Bailiwick to allow its customers to access services which then involve the switching, transmission or routing of calls by that party, using telecommunications network equipment it is likely that the aspect of the service involving such activities would require a licence. In that case the new entrant would be free to apply for a carrier code and avail of wholesale rates for the access element of its service, rather than simply purchasing the freefone product which is a retail product.

The Director General has noted the drafting changes proposed in respect to Exemption 4. However, following further consideration and advice, she does not believe that the proposed amendment is necessary and believes that the text, as drafted, meets with the overall aim of the proposed exemption.

With regard to Exemption 5 – concerning payphones – as the exemption clearly relates only to the establishment and maintenance of payphones and does not include circumstances where the routing and transmission of traffic takes place, the Director General does not believe there is a need to make any changes to it.

#### **Decision 2.1**

In addition to those networks and services already exempt from licensing by the Telecoms Law, the Director General hereby exempts, as provided for under Section 1(3) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the following categories of telecommunications networks and services from the requirement to be licensed by the Director General:

- Telecommunications services provided by a person or class of persons, which are not provided for commercial gain or are not provided to third parties for provision by them for commercial gain.
- Telecommunications services that consist wholly of the reception of telecommunications messages.
- The establishment of a telecommunications network, where there is no requirement to have access to either, or both of, public or private third party land.
- The establishment, operation or maintenance by a person of a telecommunications network which is connected to any other telecommunications network and in the case of which all telecommunications apparatus comprised in the network is situated either;
  - (i) on a single set of premises occupied by that person; or
  - (ii) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together, and which is not –
    - (a) operated for or provided to any third party for commercial gain;
    - or
    - (b) provided to any third party for the provision by that third party of telecommunications services for commercial gain.
- The establishment and maintenance of payphones for use by third parties

The Director General will consider exempting certain other activities on a case by case basis from the requirement to hold a licence.

These guidelines are provided to assist parties considering engaging in any of these activities and if there is any uncertainty as to whether or not a licence is required, the OUR will consider individual cases on their respective merits.

### **3. Proposed Licence Structure**

In publishing the consultation on the licence terms and conditions to be applied to OLOs, the Director General wishes to ensure that all potential entrants to the telecoms market in Guernsey have an understanding of their rights and entitlements under the licence and the obligations that they must meet.

All holders of a telecommunications licence will have a basic set of rights and these rights shall be applicable to all licensed operators regardless of whether they are service based or network based operators. However, the ability of a licensee to avail of those rights and entitlements may be conditional upon them being able to meet certain technical requirements.

Certain other conditions which will be contained in all licences will not be activated unless a specific direction or finding is made by the Director General. For example there are a range of conditions that will only apply if a licensee is found to be dominant in a relevant market. Where the Director General intends to make a finding of dominance, there is a statutory consultation process that will be followed and this will only occur after a rigorous assessment of the market has been undertaken.

Finally, the Director General proposed, through the use of a modular licensing system, to ensure that all licensees have a full range of conditions so that they can provide whatever fixed telecommunications services they wish to, as part of their business plan. This is designed to allow operators to develop their businesses into all areas of the fixed telecommunications market without the administrative burden of applying for and receiving additional permissions from the Director General.

The Director General sought the views of interested parties on her proposals in this area.

#### **Views of Respondents**

A range of comments was offered on this aspect of the consultation. One respondent was of the view that given that GT has an obligation to maintain CPE, it is only appropriate that a similar condition should be included in all OLO licences. It also believed that it is not appropriate to include in OLO licences the exclusivity dates contained in Schedule 1 to the licence terms and conditions.

Another respondent felt that while the proposed regime is consistent with similar regimes elsewhere, it made a number of comments in relation to certain proposed conditions. It felt that Condition 12 was redundant in respect to OLOs, as it believes it to be complementary to a finding of dominance. Conditions 13 & 14 would depend on such

services being offered by an OLO and that it queried whether an OLO's obligations in this area could be met by availing of the incumbents services. The condition relating to payphones should only apply where the OLO concerned is actually offering such services.

On Condition 16 (Service Levels) it felt the requirement for a development plan or monitoring plan should be proportionate on the services being offered. With respect to Condition 17 (Consumer Protection), it felt its applicability should relate to the services being offered by the OLO and cited itemised billing as an example – i.e. it believes that where the OLO offered a service to its customer without itemised billing, and this was acceptable to the customer, then imposing a regulatory obligation to offer itemised billing would not be appropriate. It also believes that consultation on OLOs service levels and the establishment by OLOs of consumer councils is not appropriate.

As a general point it felt that, while supporting in principle the idea of a standard modular licence, it questioned whether this is achievable in practice. It felt this could be achieved by the Director General determining that an OLO does not have to comply with certain conditions or allowing the OLO to determine its own compliance decisions, with the Regulator having the right to seek information to corroborate the decisions.

### **Director General's Position**

While recognising that there was general support for the modular licence approach, there appeared to be a degree of confusion with regard to how the conditions – and consequent obligations – of the licence would be applied in practice. While all licences will be standard in terms of the nature and range of conditions contained therein, the applicability of the conditions to individual operators will be dependent on two primary factors.

First, certain conditions are specific to operators that have been designated as being dominant in the telecoms market. Such conditions will only become applicable once the licensed operator has been found by the Director General to have such a dominant position and this will only occur after an assessment of the market. There is a clearly defined procedure, including consultation, that must be followed by the Director General in making such a designation.

The second factor is the range of services actively being provided by the licensed operator. Public Payphones is a case in point. Should an OLO not be providing such services then the condition in the licence is not relevant to that OLO. However, should the OLO decide it wishes to enter this segment of the market then it must comply with the conditions as set out in the licence, but it does not need to incur the administrative overhead of re-applying to the Director General for a further licence or an amendment to its existing licence.

The Director General believes that this approach provides greater clarity for operators in terms of their regulatory obligations and the freedom to develop their businesses without recourse to the Regulator for additional permits or permissions. The Director General, under the law, is required to consult when imposing certain specific obligations on a



licensee and will do so should the need arise. This applies particularly to any proposed decision in relation to dominance, as it imposes significantly greater regulatory requirements on a licensee.

However, in the area of consumer protection the Director General is of the opinion that a certain basic level of protection should be afforded to all consumers regardless of their choice of service provider. This includes itemised billing. The Director General has stated her position that an operator may provide their customers with the choice of not receiving an itemised bill – but the default option must be that the customer receives an itemised bill.

In relation to DQ and emergency services these conditions are being retained in all operators' licenses. The obligation being imposed on operators is that they ensure that their customers have access to these services. Therefore in providing an alternative service to GT, such operators must ensure that no steps are taken that would prevent access to emergency or DQ services. Should OLOs wish to enter into arrangements with an alternative operator (such as GT) for the provision of such services, this would be an acceptable approach to meeting their licence obligations.

The requirements in respect to USO are not directly related to a finding of dominance, but rather to a specific designation on USO. The Director General has already designated Guernsey Telecoms Limited as the organisation required to deliver the USO that has been set out in States Directions to the Regulator. In the future, it may occur that an OLO is best placed – or wishes to – provide the all or part of the USO, and there are circumstances where an OLO may be in a position to do this in a more cost-efficient manner than the incumbent. It is unlikely that this will be a possibility in the short term given the extensive nature of GT's network and its position in the market, but the Director General does not believe it to be prudent to relinquish the option for such an approach to the provision of USO should it arise in the future.

The requirement for GT alone to have a specific licence obligation to maintain CPE equipment is based on its historic relationship with customers and given its dominant position in the market. The Director General does not propose to include it in the licence terms and conditions of OLOs and will keep it under review in the GT licence over time.

**Decision 3.1**

The Director General shall issue licence new entrants to the telecommunications market under terms and conditions set out in OUR Document 02/08

#### **4. Significant Terms and Conditions**

In the consultation document (OUR 01/23) the Director General described in detail some of the more complex terms and conditions that are included in the draft licence. These ranged from conditions dealing with Service Levels and Customer focused issues to public service conditions. In addition she indicated her preference to retain the option to designate an operator(s), other than GT, as a USO provider in the future.

Conditions relating to the control of a dominant operator will not be applied to new entrants. Such conditions shall only become applicable should a Licensee be found to have a dominant position following an assessment of the market by the Director General. In such an event, a further consultation shall be carried out on the Director General's proposals to designate an operator as being dominant, as required under the Telecoms Law.

#### **4.1. Service Levels and Quality of Service Conditions**

The Director General was pleased by the strong support for this proposal when it was consulted upon previously during the development of GT's licence terms and conditions. Given the importance attached to ensuring that users and consumers of telecommunications services within the Bailiwick received the best in terms of service and quality, the Director General has indicated her preference for the inclusion of similar terms and conditions in OLO licences as those currently in the GT licence. Comments were sought on the appropriateness of including such conditions and on whether the draft conditions proposed were acceptable.

##### **Service Levels (Condition 16)**

This condition seeks to ensure that the Director General receives sufficient information to meet this requirement and monitor any licensee's network and service development. While the primary focus of the condition shall be on GT, given that it can be expected that GT will be providing wholesale services to OLOs who in turn will seek to provide services to end users, ensuring that all users are benefiting from high quality services will require the provision of information by all operators.

##### **Views of Respondents**

All Respondents commented on this condition. While all three were supportive of the principle, one respondent queried how this condition would be extended to service providers, as opposed to network operators.

##### **Director General's Position**

As stated in Section 3 above, the Director General believes it is necessary to put in place a licensing regime that is appropriate to the future development of the sector, not just to the current situation. Therefore, not every condition in the licence will be applicable to all operators e.g. if an OLO is not offering payphone services then the condition does not apply. Similarly the Director General will take account of market developments before imposing regulatory demands on OLOs. However, certain key standards of service will be expected of all operators and the Director General believes it is important to ensure that operators are aware of the obligations they will face before entering the market. In this way, the licence provides certainty for both operator and user.

##### **Decision 4.1.1**

The Director General will include in all OLO licences a condition relating to Service Levels

### **Consumer Protection (Condition 17)**

As already mentioned, a primary concern of the Director General is to ensure that consumers benefit from the opening of the telecoms market. It is therefore essential that all Licensees are aware of their requirements to provide high quality service to their customers. In addition, rectifying service in the event of disruption and dealing with complaints from users in a speedy and efficient manner will also be of importance. It is for this reason that a condition specifically designed to capture such benefit has been proposed for all licences.

### **Views of Respondents**

Again there was general support in principle for this proposal, although one respondent felt that a flexible approach to consumer complaints is needed rather than hard and fast rules which attempt to pigeon hole customer complaints. Another felt that not all requirements under Condition 17 are appropriate to all potential OLOs and that there should be a means to avoid triggering certain conditions if there is to be no potential impact on consumers benefit or to avoid an undue burden on operators.

### **Director General's Position**

The Director General has noted the comments. The purpose of this requirement is to help ensure that consumers are afforded a satisfactory level of service and where this is not met, an appropriate means of redress. The Director General has stated previously that information is the most powerful tool available to consumers and is of the view that availability of such information is vital. With respect to OLOs, as with some other conditions in the licence, certain aspects of the consumer protection condition will not be activated where they are not applicable to the OLO's business. However the Director General believes there is a fundamental need to enshrine such protection in the licence at this point and reserves the right to develop this condition further if there is a demonstrable need to do so.

#### **Decision 4.1.2**

The Director General will include in all OLO licences a condition relating to Consumer Protection.

### **4.2. Public Service Conditions**

The Director General proposed including conditions dealing with Public Emergency Call Services (Condition 13), Directory Information (Condition 14) and Public Pay Telephones (Condition 15) and sought the views of respondents to this proposal.

### **Views of Respondents**

Two respondents commented on this proposal and were divided in their opinion. While one favoured the inclusion, the other was of the view that unless an operator was proposing to offer fixed network facilities, then the inclusion of such conditions was not necessary. It also questioned the need for Condition 15 (public payphones) in all licences unless the operator was going to offer such services

### **Director General's Position**

The Director General has included these conditions because of their importance to all users. For example, it is essential that a service provider, who may be providing an “all calls” service to a customer, ensures that its service does not in any way prevent the customer from accessing emergency services.

On Condition 15, as mentioned earlier the condition will only have regulatory implications where an OLO is actually providing such services – otherwise it is dormant within the licence. Again the Director General is of the view that by future proofing the licence it will provide the flexibility to operators to offer those services they wish to offer without the need for the additional administrative overhead of applying to the Director General for further authorisation.

#### **Decision 4.2**

The Director General will include in all licences for OLOs conditions relating to Public Emergency Call Services, Directory Information and Public Pay Telephones.

## **5. Conclusion**

The Director General welcomes and has noted the comments of respondents in relation to the specific text of the licence document. She has considered carefully the positions of all respondents and has set out her position with respect to those comments in this document.

Certain legal and drafting comments are not reported on in this document but have all been considered in parallel with a separate legal review of the texts. In addition certain comments will be considered in the course of the day-to-day work of the Office, as they were considered not strictly relevant to the matter under consultation. The Director General is grateful for the input of respondents on this matter.

The final licence text can be found in document OUR 02/08 (fixed telecommunications licence terms and conditions for OLOs).

Also available on the OUR website are application procedures for new entrants into the market. These are contained in document OUR 02/09 where the timing for the submission of applications is also set out along with an application form and details of the fee payable on application for a licence. Details of the ongoing fees chargeable during the term of a licence will also be published shortly.

**/ENDS**