



Office of Utility Regulation

Wave Telecom Mobile Licences: Failure to Meet Launch Date

Statutory Notification

Direction to Wave Telecom Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

Document No: OUR 04/07

May 2004

1. Introduction

Following a public tender competition for the award of mobile licences, the Director General awarded Wave Telecom Ltd licences in March 2003 for the provision of 2G and 3G mobile telecommunications networks and services in the Bailiwick of Guernsey. Among the conditions included in the two licences, and accepted by Wave Telecom, are specific targets with regard to the levels of coverage and roll-out that must be achieved by specified dates. These are detailed in Condition 15 of the licences.

Condition 15.2 of the 2G Mobile Telecommunications licence and Condition 15.2 of the 3G Mobile Telecommunications licence required Wave Telecom to commence the provision of the licensed mobile services to the public by 30th April 2004. Condition 12.1 of the licences required that service be provided to the public generally and without discrimination.

Wave Telecom has confirmed to the OUR by letter dated 4th May 2004 that it has not launched the services as required under the terms of its mobile licences. The Director General published her intention to direct Wave Telecom to take certain steps to rectify the breach of its licence conditions in OUR 04/06.

This report sets out the Director General's conclusions following consideration of the responses received to the consultation.

The Director General received one response to the consultation with formal submissions from Cable & Wireless Guernsey Limited (C&WG). The Director General wishes to thank C&WG for their contributions in helping to inform the Director General's consideration of the issue.

This paper is structured as follows:

Section 2 sets out, for ease of reference, the Director General's proposal presented in Document 04/06 upon which she was seeking comments;

Section 3 presents the responses that were received from interested parties and, in light of consideration of those comments, the Director General's position on the proposed direction to Wave Telecom; and

Section 4 contains a Direction to Wave Telecom requiring the company to commence the provision of mobile telecommunications services under its 2G and 3G licences with effect from 1st July 2004.

2. Findings of Breaches of Licence Conditions

The DG set out in OUR 04/06 the licence conditions that Wave Telecom has been found to be in breach of. There are **Condition 15.2** of Wave Telecom's 2G Mobile Telecommunications Licence and **Condition 15.2** of Wave Telecom's 3G Mobile Telecommunications Licence which states:

“The Licensee shall roll-out the Licensed 2G/3G Mobile Telecommunications Network and shall commence provision of Licensed 2G/3G Mobile Telecommunication Services by 30th April 2004.”

Wave Telecom is found to be in breach of Condition 15.2 of its 2G Mobile Telecommunications Licence and Condition 15.2 of its 3G Mobile Telecommunications Licence in that it has failed to commence the provision of the licensed mobiles services to the public by 30th April 2004

The DG, in the light of the licence breaches set out above and in accordance with section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, proposed to direct Wave Telecom to commence the provision of its Licensed 2G Mobile Telecommunication Services and its 3G Mobile Telecommunication Services by **1st July 2004**.

3. Comments Received

C&W Guernsey sought clarification on the criteria against which compliance is to be considered and whether on the proposed date for compliance of 1st July 2004 whether the same criteria might be applied. It further sought clarification of the sanctions that might be applied in the event that Wave Telecom failed to comply with the proposed direction. It noted that if it had known that a failure to comply with the targets for launch of the mobile services would not incur sanctions (should that be the case) then it would have taken that into account when considering whether to apply for the 3G licence.

C&WG also expressed its concern at what it views as a continuing misrepresentation by Wave Telecom in the local media of the causes for the delay in the launch of its mobile service.

Position of the Director General

The DG has noted the comments received. In the first place, the criteria against which a consideration of any breach of the direction now being applied to Wave Telecom (should such breach arise) will be the same as those which have been considered in imposing this direction. The Licences awarded to Wave Telecom set out clearly the requirements that are to be met.

Second, the provisions of the regulatory regime in relation to the imposition of sanctions are clear, transparent, familiar to C&WG and were fully known at the time of the competition for the 3G licences.

For the avoidance of any doubt on the part of C&WG, in the event that Wave Telecom Ltd (or any licensee) does not comply with a Direction issued in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General may impose any of the sanctions available under the Law. The sanctions set out in section 27 of the Law are;

- Suspension of licence
- Revocation of licence or
- Imposition of a financial penalty

Before invoking any of these sanctions the Director General must follow the procedure set out in section 28 of the Law. The Director General reserves the right to invoke any of these sanctions but clearly cannot fetter her discretion or prejudge the final Direction that may be issued until after she has complied with the procedure set out in section 27 of the Law and considered any written representations or objections.

Finally, the public relations comments of any licensee are a matter for the licensee and the DG will not comment on media coverage arising from such public relations comments.

4. Direction to Wave Telecom Ltd

In accordance with Section 27(2) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby direct Wave Telecom Ltd to commence the provision of its Licensed 2G Mobile Telecommunication Services and its 3G Mobile Telecommunication Services by **1st July 2004**.

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