



Office of Utility Regulation

Competition for 3G Mobile Telecommunications Licence

Report on the Consultation

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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

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1. Introduction

This document reports on the call for comments on the Office of Utility Regulation's ("OUR") Competition for Mobile Telecommunications Licences¹. It is one of a series of documents that the Director General of Utility Regulation in Guernsey (the "DG") is issuing as part of the process of awarding a second 3G mobile telecommunications licence in the Bailiwick of Guernsey. The DG may also make available a third 2G mobile telecommunications licence should a successful applicant for the 3G licence be able to demonstrate a need for such spectrum.

The DG invited potential applicants for the available 3G Mobile Telecommunications Licence to express their interest in applying for a licence on the specific terms and conditions proposed in the Preliminary Tender Document (PTD). This report sets out the DG's conclusions on the issues raised in the consultation following detailed consideration of the responses received.

At the same time the DG is also publishing an Information Memorandum (Document OUR 06/04) which provides background information relating to the competition. The Information Memorandum is available to all interested parties and gives details of the licensing process in the Bailiwick of Guernsey for the award of this second third-generation mobile telecommunications licence ("3G Licence") and, potentially, one second-generation mobile telecommunications licence ("2G Licence") (together known as the Mobile Telecommunications Licences). In particular the Information Memorandum provides details of how interested parties may purchase the Tender Document from the OUR.

For the avoidance of doubt, whilst the registration and purchase of the Tender Document are prerequisites for participation in the competition, there are no further obligations associated with the purchase of the document.

It is intended that the award of the 3G mobile telecommunications licence (and also the 2G mobile telecommunications licence if applicable) will be made by 1st August 2006. More details on the timing of the various stages of the comparative selection competition (also known as a "beauty contest") are set out in Section 5.

¹ Document OUR 05/27 Competition for Mobile Telecommunications Licences – Call for Expressions of Interests and Call for Comments on Preliminary Tender Document – November 2005

2. Structure and Content

The remainder of this document is organised as follows:

- Section 3** describes the statutory framework and the regulatory regime within the Bailiwick.
- Section 4** sets out the comments received in relation to the consultation document and PTD and explains the DG's position on each of the issues raised.
- Section 5** sets out the next steps in the process.

The invitation to comment on the PTD was taken up by two parties:

Colt Telecommunications (“Colt”); and
Cable & Wireless Guernsey Ltd (“C&WG”).

The DG reminds all interested parties that the submission of a formal expression of interest was not a requirement for participation in the eventual competition. Similarly the DG reminds interested parties that the submission of an expression of interest does not confer an automatic right to participate in the competition.

The DG wishes to thank those who have responded to this consultation paper for their contributions. In line with the policy set out in Document OUR 05/28 “Regulation in Guernsey: Revised Consultation Procedures – Information paper”, non-confidential responses to the consultation are available on the OUR's website (www.regutil.gg) and for inspection at the OUR's Offices during normal working hours.

3. Legal and Regulatory Background

3.1 Statutory Requirements

Section 2 (1) of the Telecommunications (Bailiwick of Guernsey) Law 2001 (“the Telecommunications Law”) describes the DG’s responsibilities regarding the granting of licences for telecommunications networks and services. With regard to the objectives set out in section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and subject to the provisions of any States’ Directions, the DG may grant a licence authorising any person to establish, operate and maintain a telecommunications network; or to provide telecommunications services of any class or description specified in the licence.

Section 3 (1) of the Telecommunications Law describes the DG’s responsibilities for publishing details of the procedures to be followed and the criteria to be applied in relation to applications for, and the grant of, a licence. The mobile telephony market in Guernsey was opened to competition from 1st April 2003. Any new network operator wishing to enter Guernsey’s mobile telecommunications market will require a mobile telecommunications licence to do so.

3.2 Regulatory Regime

In May 2002, the DG published a consultation paper (OUR 02/18), entitled "Mobile Telecommunications Licence Terms and Conditions"², which focused on the licence obligations and conditions for the new 2G and 3G licensees. This followed an earlier consultation paper “Mobile Telephony Licensing in Guernsey”³ (OUR 01/25) published in December 2001 and the subsequent “Report on the Consultation and Decision Paper”⁴ published in April 2002 (OUR 02/14). OUR 02/18 sought the views and comments of interested parties on issues and principles to be applied to the new mobile telecommunications network licences being awarded at that time. The DG’s intention was to develop a licensing regime that fosters competition between mobile operators and service providers in order to maximise the benefits to Guernsey consumers in terms of prices, innovation and quality of service.

Following the consultation process, a competition to award the mobile licences was launched at the end of 2002 and in March 2003 the DG awarded Wave Telecom Ltd both a 2G and a 3G mobile licence. The award of the 3G licence represents the first (and to-date only) 3G mobile licence awarded in the Bailiwick and the Channel Islands.

² Document No: OUR 02/18 May 2002, Mobile Telecommunications Licence Terms and Conditions.

³ Document No OUR 01/25 Mobile Telephony Licensing in Guernsey.

⁴ Document No OUR 02/14 Mobile Telephony Licensing in Guernsey Report on the Consultation and Decision Paper.

The current process to award a second 3G licence was started in November 2005 with the publication of document OUR 05/27, which set out:

- details of the 3G licence to be awarded;
- the proposed criteria that would be used to award the licence; and
- the process the OUR intended to adopt in awarding the licence.

3.3 *Relationship with Ofcom*

In order to operate and use frequency spectrum in the Bailiwick of Guernsey for the provision of mobile telecommunications networks and services, the successful applicant must obtain a Wireless Telegraphy (“WT”) licence from Ofcom. A WT licence(s) will be furnished by Ofcom in accordance with the procedures and rules set by that authority. The Wireless Telegraphy (Spectrum Trading) Regulations 2004, through which the UK enacted the spectrum trading measures of the Communications Act 2003, were not extended to the Bailiwick of Guernsey by Order in Council.

In addition, the current spectrum trading regulations in place in the UK do not address 2G or 3G licence products. However, Ofcom plans to introduce trading, progressively to a wider range of licence products, with 2G/3G products earmarked for possible inclusion by 2007. Spectrum trading is generally regarded as primarily the responsibility of Ofcom, and any trades would obviously need to be referred to Ofcom.

4. Discussion of Comments Received

The PTD annexed to Document OUR 05/27 outlined the proposed tender process for the licensing of a second 3G mobile network operator within Guernsey. In addition to seeking expressions of interest in the second 3G Mobile Telecommunications Licence (and potentially a 2G Mobile Telecommunications Licence) from operators, the DG invited comments on a number of issues. The OUR received comments on the consultation document from two respondents and the comments received are detailed below.

Sections 4.1 and 4.2 deal with issues identified specifically by the DG, whilst additional areas covered by the respondents are covered in section 4.3 below. Section 4.4 describes changes to the evaluation criteria following the DG's further consideration of the current market conditions and the context for the competition.

4.1. Network and Service roll out

The PTD presented a set of minimum requirements for the 3G licensing process, including minimum targets for the roll-out of service. The DG requested views on the proposed milestones for network roll-out taking into account the aim of introducing competition into the 3G market and the financing implications for rolling out a network across the Bailiwick.

Both respondents stated that in their view the PTD appeared reasonable, both in terms of timing (commercial launch of service within 18 months of Licence Commencement date and service offered on all the main islands of the Bailiwick of Guernsey within 24 months) and in terms of coverage obligations (coverage of 80% of population by residence of the Bailiwick within five years of Licence Commencement date).

The DG welcomes this agreement and intends to retain the network and service roll out minimum requirements within the Tender Document.

4.2. Design of the Competition

In designing the competition, the DG drafted the PTD in order to establish a fair and level playing field for competition between incumbent operators and any new entrants to Guernsey's mobile telecommunications market. The DG invited respondents to provide their views on whether the proposed design meets this objective and specifically whether they had any suggestions for any additional measures that might contribute towards the objective of introducing sustainable competition into the Guernsey market to the benefit of Guernsey telecommunications users.

One respondent considered that since a main aim of the proposed award of the licence was to increase competition in the market it was surprising that there was only one 3G licence available in this process. The respondent noted that Ofcom (in co-operation with the Jersey Competition Regulatory Authority) was in the process of allocating

four additional 3G and 2G licenses in Jersey. The respondent strongly believed that having several operators encourages a stimulating market dynamic, maximising the consumer benefits and innovative advances. In the respondent's opinion having potentially only three operators present in the Bailiwick of Guernsey, or possibly just two operators, would not bring the same benefits into the mobile market. Given that available spectrum, geographical size, population distribution and overall profile are very similar in Jersey and Guernsey, the respondent recommended that the OUR should consider opening up mobile competition to a larger group of new market entrants by making more than one 3G Mobile Telecommunications Licence available.

While the DG is aware of his duty to promote competition in the 3G mobile market, and is indeed seeking to do this through the competition for the second licence, he must balance a number of competing duties imposed on him by the Regulation Law. The duties set out in section 2 of the Regulation Law include, inter alia, requirements to:

(c) ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick;

(d) introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions; and

(f) lessen, where practicable, any adverse impact of utility activities on the environment;

Thus, he intends to award only one further licence under the current process which is in accordance with his statutory duties to serve the Bailiwick's well-being, promote sustainable competition and lessen the environmental impact resulting from the provision of utility services.

Conversely, the second respondent sought clarification that the OUR intends for there to be a maximum of two licensed 3G operators for the duration of the available licence. The respondent believed that the Bailiwick's mobile market could currently only sustain two mobile operators.

Whilst the DG acknowledges that a period of stability is desirable to enable network investment to be recouped by a new mobile operator, he sees it as unnecessary to fetter his discretion as far into the future as the licence duration, given that applications or technologies may develop that could make more operators sustainable within the Bailiwick's mobile telecommunications market. For this reason, the DG intends to review the situation in the 3G mobile telephony market after the same period of time as that between the award of the first 3G licence and this process, i.e. not before 2009. Thus the DG intends to achieve a balance between sustainable competition and environmental impacts.

One of the respondents noted that the overall design set out in the PTD was the same as that used for the previous competition that was run in 2002. The respondent noted

that the time allowed for the submission of an application in the PTD is one month shorter on this occasion, but believed the proposed time period to be acceptable. However the DG has extended the deadline for submissions in order to allow applicants to consider fully responses to their questions regarding the Tender Document. The revised timetable is set out in section 5.

4.3. Additional Issues Raised by Respondents

One respondent made a number of comments on certain aspects of the terminology used in the PTD particularly in relation to the features of the mobile telecommunications market. The respondent also recommended clarification and changes to certain competition rules. The DG is grateful to the respondent for drawing these points to his attention and the relevant text has been amended and clarified where appropriate in the Tender Document.

The respondent sought clarification that any mast or site sharing between operators would be on a commercial basis between the two parties by the inclusion of wording to that effect in the final Tender Document. The DG has addressed this issue in the Tender Document, where it is stated that, while the DG would prefer site sharing to be negotiated on a commercial basis he however retains the authority (through conditions in telecommunications licences) to intervene in the event of an impasse.

The respondent noted that the PTD proposed that the final deadline for written questions on the TD was 24th February 2006, but that there was no undertaking given within the document as to how soon the questions would be addressed by the OUR. The respondent therefore proposed that the Tender Document should state that all written questions would be answered in writing, within five working days of submission by the potential applicant. The DG agrees that the practicalities of responding to all written questions from potential applicants in a fully transparent and timely manner should be set out in the Tender Document and has taken the necessary steps to address this point.

This respondent also considered that in the event that only one operator applied for the licence, then the process should be shortened to minimise costs and the requirement for a beauty parade dropped. This should then feed through into the costs of the process. The DG can confirm that in the event of only one applicant, the process to be followed will be similar to that undertaken in 2003 when only one applicant submitted a bid for the licences on offer at that time i.e. the sole Application will still be scrutinised in detail to ensure that the Application is internally consistent. Both the minimum requirements and the precise rules of the competition are contained in the Tender Document.

Allied to this point the respondent was concerned that, whilst the proposed application fee was £250,000, in the event that the actual administration costs of the competition are higher than the successful applicant would be required to pay the balance. The respondent believed the minimum application charge of £250,000 to be unreasonable in two ways:

- Firstly the cost of the competition might be less than £250,000 but the successful applicant would still be required to pay the minimum fee; and
- Secondly in the event that the cost of the competition was more than £250,000, the respondent believed that it would be unfair for the successful applicant to be required to pay for these costs. The respondent believed it to be unfair as the successful applicant has no control on the number of applications received by the OUR or the terms of reference of the consultants that the OUR engage to help with the process and hence no control of costs. It would therefore be unreasonable for the OUR to expect to recover their costs from the successful applicant under these circumstances.

The respondent suggested that the Application fee should be capped at £250,000 and that the OUR should be able to run a process within this budget that meets the needs of the market in a proportional manner.

In setting the application charge for the 3G Mobile Telecommunication Licence, the DG has been conscious of two principal requirements: the need for equity between 3G mobile operators and the application of the cost recovery principle. Wave Telecom was awarded the first 3G Mobile Telecommunication Licence in 2003 for which it paid an application fee of £250,000. As part of its licence award Wave Telecom received in effect a “free” 2G Mobile Telecommunications Licence – which was consistent with Guernsey Telecoms’ “free” 2G Mobile Telecommunications licence which it acquired on 1st October 2001. The DG considers that it is entirely appropriate for any new licensee to pay the same amount as Wave Telecom.

In addition the DG considers it appropriate and entirely consistent with the cost recovery principle that the Successful Applicant be required to pay for the costs for the award of the licence. While the DG does not at this time envisage the cost of running this competition exceeding the £250,000 application fee, he believes it appropriate to ensure that any Applicant is aware that they will be required to meet the costs of the competition in the event that it does exceed £250,000.

4.4. Evaluation Criteria

In 05/27, the following criteria and corresponding weightings were listed for comment.

Criteria	Weight
Coverage	15%
Network Quality	15%
Speed of Roll Out	20%
Network Sharing	15%
Promotion of Competition	15%
Performance Guarantees	20%

While no comments were offered by respondents on these criteria (or their weightings), the DG, on reflection, believes that they should be modified to reflect better the current requirements of the mobile market and the best way to ensure its

competitive and robust development. Furthermore, the DG believes that, given the development of the mobile telephony market since the last licence award his duties under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 are better served by the following criteria and weightings for the assessment of tenders for the second 3G mobile licence.

Criteria	Weight
Coverage	5%
Technical network quality	15%
Credibility of Business Planning	10%
Promotion of protection of the environment	15%
Promotion of competition (incl. preparedness to offer MVNO access)	25%
Performance guarantees	30%

For example, the DG has included within the terms of the competition minimum requirements with regard to roll-out. Given the obvious commercial incentive to compete as quickly as possible, the DG believes that speed of roll-out is best captured in the ‘Promotion of Competition’ criterion. Given also that the DG is more inclined to encourage mast-sharing through commercial negotiation, rather than mandate network sharing, assessing tenders on the willingness of a second operator to share its network is less relevant than may have been the case in the first mobile licence competition. Regarding the future development of services in the mobile industry in the Bailiwick, a further part of the ‘competition promotion’ criterion will be an applicant’s willingness to offer MVNO access at an early stage during the period of its licence in addition to the minimum requirement for MVNO access in the event that the successful applicant is the only mobile operator in the Bailiwick at sometime during the term of the licence.

By including the Credibility of the Business Plan as a specific criteria the DG intends to also change the proposed “Soundness and feasibility of the business plan” minimum requirement to simply demonstrate the financial soundness of the applicant (e.g. provision of financial accounts for the past three years).

Under the revised performance criteria, the DG’s statutory duties to encourage competition, ensure quality and innovation in utilities, and to lessen adverse impacts on the environment are better fulfilled.

Finally, an increase in the emphasis on Performance Guarantees (and therefore on the credibility of the penalties within these) has been made to ensure that realistic and genuine commitments are offered in tenders, and that the bids being assessed are therefore as close to actual potential outcomes as can be reasonably expected, and can therefore be assessed as such.

Thus, changes in the evaluation criteria have been made to reflect both the change in the mobile market itself and the different situation existing in this second licensing process.

5. Next steps

The DG invites interested parties to purchase the detailed Tender Document in accordance with the procedures set out in the Information Memorandum (OUR 06/04) and looks forward to the receipt of Applications for the available 3G Mobile Telecommunications Licence in Guernsey.

An overview of key milestones in the course of the competition process is provided below:

Date	Event
1 st Feb 2006	Launch competition
3 rd March 2006	Deadline for submission of questions relating the Tender Document
13 th April 2006	Deadline for Applications
1 st August	Planned licence commencement date

The DG reserves the right to alter the above timetable.