



Office of Utility Regulation

**Guernsey Airtel 2G and 3G Mobile Licences:
Failure to Meet Launch Date**

Statutory Notification

**Direction to Guernsey Airtel under Section 27 of the
Telecommunications (Bailiwick of Guernsey) Law, 2001**

Document No: OUR 08/04

January 2008

1. Introduction

In January 2008 the Director General (DG) proposed to find Guernsey Airtel (“Airtel”) in breach of its 2G and 3G licences for failing to have launched its mobile service by 15th December 2007. Condition 15.2 of the 2G Mobile Telecommunications licence and Condition 15.2 of the 3G Mobile Telecommunications licence required Airtel to commence the provision of the licensed mobile services to the public by 15th September 2007. In addition, Condition 12.1 of each of the licences require that service be provided to the public generally and without discrimination.

In September 2007, the OUR, following a request from Airtel, granted an extension of three months to allow the company to meet its licence obligations. The company was therefore required to commence the provision of mobile services on 15th December 2007. Following an assessment of the company’s compliance, the OUR determined that Airtel has not launched its service in compliance with the terms of its 2G and 3G mobile licences.

OUR 08/01 set out the DG’s proposal to issue a Direction to Airtel under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The Direction required Airtel to commence the provision of its Licensed 2G Mobile Telecommunication Services and its 3G Mobile Telecommunication Services by 31st March 2008.

2. Findings of Breaches of Licence Conditions

The DG set out in OUR 08/01 the licence conditions that Airtel has been found to be in breach. The following licence conditions are relevant in the context of this Direction:

2G Licence

“12 Provision of Service to the Public

12.1 The Licensee shall provide the Licensed 2G Mobile Telecommunications Services to the public generally, without discrimination and in accordance with the Conditions.”

“15. DEVELOPMENT OF NETWORK AND SERVICES

15.2 The Licensee shall roll-out the Licensed 2G Mobile Telecommunications Network and shall commence provision of Licensed 2G Mobile Telecommunications Services by 15th December 2007 with Coverage of at least 55% of the population (by resident) of the Bailiwick of Guernsey. In addition Licensed 2G Mobile Telecommunications Services will be provided to Guernsey, Alderney, Sark and Herm by 15th December 2007.”

Airtel was found to be in breach of Conditions 12.1 and 15.2 of its 2G Mobile Telecommunications Licence in that it failed to commence the provision of the licensed mobile services to the public by 15th December 2007.

3G Licence

“12 Provision of Service to the Public

12.1 The Licensee shall provide the Licensed 3G Mobile Telecommunications Services to the public generally, without discrimination and in accordance with the Conditions.”

“15. DEVELOPMENT OF NETWORK AND SERVICES

15.2 The Licensee shall roll-out the Licensed 3G Mobile Telecommunications Network and shall commence provision of Licensed 3G Mobile Telecommunications Services by 15th December 2007 with Coverage of at least 55% of the population (by resident) of the Bailiwick of Guernsey. In addition Licensed 3G Mobile Telecommunications Services will be provided to Guernsey, Alderney, Sark and Herm by 15th December 2007.”

Airtel was found to be in breach of Conditions 12.1 and 15.2 of its 3G Mobile Telecommunications Licence in that it failed to commence the provision of the licensed mobiles services to the public by 15th December 2007.

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 Airtel to commence the provision of its Licensed 2G Mobile Telecommunication Services and its 3G Mobile Telecommunication Services by 31th March 2008. He initiated a consultation on the proposed direction and this Direction summarises the responses received and confirms the proposed Direction.

3. Comments Received

C&W Guernsey commented that in its view a Section 27 Direction should have been issued in September 2007 rather than the OUR having to seek further representations and waiting until a later date to consider sanctions. C&WG noted that the 15th of March 2008 was the latest possible date required in paragraph 7.2 of the Tender Document, stating that Airtel will not meet one of the minimum requirements of the 3G competition. C&WG maintain that Airtel could, and should, have avoided the delays to the date of launch by commencing the process of obtaining planning permission far earlier than it did.

The NOMM Group’s response opposed any extension and believed the OUR should now be imposing sanctions against Airtel for non-compliance. This was based on a view that Airtel had not submitted applications for masts or antennae until 25th of May 2007 to the Environment Department. The NOMM response took the view that Airtel had breached its licence condition twice and Airtel should not be given a further three-month extension. NOMM also suggest the OUR should make provision for sanctions to be levied in the event of further non-compliance.

Airtel accepted the proposed determination that it had breached its licence and acknowledged that the date of 31st March 2008, while still challenging, was fair. It set out its view again on the issues that had caused it to be in non-compliance.

Responses were also received from Mr P. Jones and Mr. K Wheeler, both objecting to the proposed extension.

Director General' position

The DG has noted the comments received. The DG acknowledged in OUR (07/12) that Airtel might indeed have commenced the planning application process sooner than it did. However he also believes that regardless of the timing of submission by Airtel of its planning applications, the planning environment in which Airtel found itself operating differed from that which prevailed at the time of granting the Licences. This change was not something which could reasonably have been foreseen by Airtel (or the OUR). It was in the context of this new development in the application of the States' policy on planning permission for masts that the DG granted an extension that modified the deadlines in Airtel's Licences to 15th of December.

Given that a breach has taken place the DG's view is that a deadline of 31st March 2008 provides a reasonable period for Airtel to remedy the breach in accordance with the requirements of due process set out in the law. The provisions of the regulatory regime in relation to the imposition of sanctions are clear, transparent, and publicly available and were fully known at the time of the competition for the 2G and 3G licences.

For the avoidance of any doubt, in the event that Airtel (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 his discretion or prejudge the final Direction that may be issued. An assessment on whether such measures need to be implemented will be taken should it be determined that there has been a breach of this Direction.

4. Direction to Guernsey Airtel Ltd

In accordance with Section 27(2) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby directs Airtel to commence the provision of its Licensed 2G Mobile Telecommunication Services and its 3G Mobile Telecommunication Services by **31st March 2008**.

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