



Office of Utility Regulation

Mobile Market Review

Draft Decision

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Office of Utility Regulation

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1. Introduction

In July 2008, the Director General of the OUR, (“DG”) set out his proposals for the further liberalisation of the mobile market in a manner which reflects the economic and social demands of the Bailiwick. In that consultation paper a range of issues were raised and views solicited.

The review sought observations on a number of issues relevant to the future development of communication services in the Bailiwick. The growth in mobile telecom services since the introduction of competition in 2004 has seen penetration levels exceed 100%. Coupled with this has been some price competition, the introduction of new services and more flexible tariff packages. However, the continued demand for more services and better coverage, along with increased competition, has also seen an increase in the amount of infrastructure needed to support and meet this demand.

In balancing these competing interests, a view needs to be taken of how best to meet the obvious demand that exists from consumers for services, how to ensure future new services and service providers can be supported in meeting this demand, whilst at the same time minimising any adverse impact on the environment. In framing any assessment of this issue, the DG must be guided by States Policy insofar as it relates to the telecommunications sector and his own legal duties and functions.

Among the key issues consulted upon, and on which there was most discussion, was the issue of technology neutral licences. Essentially, the DG had proposed that the current mobile licences, which limit the provision of services based on whether the holder has a 2G or 3G licence would be amended to allow the spectrum held by an operator to be used for any mobile service, be that a 2G or 3G service. The issue of rationalisation of the infrastructure currently utilised to provide mobile services also generated some discussion. A fuller assessment of the issues debated in the consultation paper is set out later in this document.

This paper sets out the views of respondents and the DG’s consideration of those views. Where he intends to finalise his decisions on specific aspects of the mobile market arising from this consultation process, these are set out as draft decisions in this paper. The DG would like to thank all respondents for their input to this review.

This document does not constitute legal, technical or commercial advice; the DG is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the DG to regulate the market generally.

2. Structure of Paper and Process

2.1. Structure of Paper

The paper is structured as follows:

- Section 3 provides background information on the mobile market in Guernsey;
- Section 4 sets out respondents' view on the issues raised in the consultation paper;
- Section 5 sets out the DG's consideration of these comments and further views on the matters raised ; and
- Section 6 sets out the next steps in the process.

2.2. Responses to the Consultation

The DG received responses to the consultation paper from:

- Airtel-Vodafone (Airtel)
- C&W Guernsey (C&WG);
- Mr Ivan Roberts; and
- Wave Telecom (Wave)

The DG wishes to thank those who have responded to the consultation for their contributions. In accordance with the OUR's policy on consultation set out in Document OUR 05/28 – "Regulation in Guernsey; the OUR Approach and Consultation Procedures", 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. Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential. However, the DG regrets that he is not in a position to respond individually to the responses to this consultation.

2.3. Procedure and Timetable

Responses to this document should be submitted in writing and should be received by the OUR before 5.00pm on the 9th January 2009. Written comments should be submitted to:

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

All comments should be clearly marked: "Mobile Market Review: Draft Decision".

3. Background Information

3.1. Statutory Requirements

Section 2 (1) of the Telecommunications (Bailiwick of Guernsey) Law 2001 describes the DG's responsibilities regarding the granting of licences for telecommunications networks and services. Having regard to the objectives set out in section 2 of the Regulation Law, 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 1 April 2003 with the award of both a 2G and 3G licence to Wave Telecom. A further competition was carried out in 2006 resulting in the award of a further 2G and 3G licence. There are currently three 2G operators (Airtel, C&WG, and Wave) and two 3G operators (Airtel and Wave) licensed to provide mobile services in the Bailiwick of Guernsey.

3.2. Licensing Background

In May, 2002, the Director General published a consultation paper (OUR 02/18), entitled "Mobile Telecommunications Licence Terms and Conditions"¹, 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"² (OUR 01/25) published in December 2001 and the subsequent "Report on the Consultation and Decision Paper"³ published in April 2002 (OUR 02/14). The May Consultation Paper (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 Director General'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 Director General awarded Wave both a 2G and a 3G mobile licence.

¹ Document No: OUR 02/18 May 2002, Mobile Telecommunications Licence Terms and Conditions.

² Document No OUR 01/25 Mobile Telephony Licensing in Guernsey.

³ Document No OUR 02/14 Mobile Telephony Licensing in Guernsey Report on the Consultation and Decision Paper.

As there remained sufficient spectrum to accommodate a further 3G licence, in November 2005 the DG commenced a further process aimed at awarding a further licence. In November 2005 the DG published a document entitled “Competition for Mobile Telecommunications Licences; Call for Expressions of Interest and Call for Comments on Preliminary Tender Document” (05/27), inviting expressions of interest from interested parties. Following consideration of the two responses and further work by the OUR itself, the DG launched the second mobile licence competition in February 2006 with the publication of the rules of the competition in “Competition for 3G Mobile Telecommunications Licence; Information Memorandum” (OUR 06/04). He also published his consideration of the comments made by respondents to the earlier call for expressions of interest to address certain matters raised by respondents at that time in a document entitled “Competition for 3G Mobile Telecommunications Licence; Report on the Consultation” (OUR 06/03).

Two applications were received, from Airtel and C&WG. Following a detailed assessment of both applications, the DG ranked the Airtel application first and commenced negotiations on the terms of its licences. These discussions concluded successfully and in September 2006 Airtel was awarded a 2G licence and a 3G licence and launched services in March 2008.

3.3. Licence Modifications

The DG can after publishing notice of his proposal to do so, amend the licence of any operator. Under Section 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 the DG may after giving notice and after consideration of any representations made to him, amend any condition of a licence issued by him to a licensed operator. The DG is required by Law to give a minimum of seven days notice of any proposed modification. In addition each operator’s licence contains a condition which enables the DG to amend a licence subject to compliance with the Telecoms Law.

3.4. Mast Sharing

In August 2007 the DG reviewed the terms of the existing mobile operators’ licences insofar as they addressed the issue of mast sharing. Each operator’s licence contains a condition relating to access to facilities. In reviewing the powers available to the OUR to encourage and mandate greater co-operation the DG noted there were discrepancies between the condition in some licences with regard to access to facilities (which includes base stations and ancillary equipment). The DG also believed there was merit in strengthening the requirement, as part of the licence obligations on the three mobile operators, for greater co-ordination of their activities with regard to network development and roll-out. Following a statutory consultation (OUR 07/11) as required under the Telecommunications (Bailiwick of Guernsey) Law 2001, the DG finalised the changes to the existing mobile operators’ licences in September 2007 (OUR 07/14).

The OUR now publishes a register of mobile phone mast locations. The most recent register is available in OUR document OUR 08/12. In addition regular audits of non-ionising emissions from radio communications equipment operated by licensees is undertaken with the most recent report being published in July 2008 (OUR 08/13).

4. Comments on the Proposed Mobile Review

Four respondents commented on the issues raised in the mobile review consultation. Responses were received from

- Airtel
- C&WG
- Mr. Ivan Roberts and
- Wave

Mr Roberts' comments were general in nature but expressed a strong view that no further operators should be licensed in Guernsey, that the market is not large enough to support three operators (and that two would have been sufficient) and that some consolidation is inevitable among existing players. He expressed his concerns about mobile mast emissions and that the OUR was not adopting a precautionary approach as proposed by the Stewart Report⁴.

The Stewart Report is an important contribution to the debate on the assessment of the impact of mobile technology on the health of the general public. It discussed in some detail the issues that should be taken account of in addressing the health and safety issues associated with mobile phone technology and base stations in particular. It also discussed in some detail the concept of the 'precautionary approach' insofar as it relates to and can be applied to the mobile industry. In summarising the precautionary approach the Stewart Report stated that:

*“Some people propose that new developments should only be permitted when they have been shown to be completely safe, but this is unrealistic. Science can never provide a guarantee of zero risk. It may, however, offer strong reassurance that any risks from a technology are small in comparison with many other risks that we accept in our lives.”*⁵

It went on to say that:

*“The aim, therefore, must be to follow a policy that is acceptable to most people, and which minimises the chance of adverse outcomes without unnecessarily stifling progress.”*⁶

The Report then proceeded to identify a number of steps that it believed contributed to a precautionary approach insofar as it relates to mobile masts and that should be adopted in

⁴ <http://www.iegmp.org.uk/report/text.htm>

⁵ Section 6.15 of the Stewart Report

⁶ Section 6.16 of the Stewart Report

the UK. The report's key recommendations and the OUR's observations on the degree to which these are taken account of or implemented in Guernsey is set out in the table below.

Stewart Report	OUR Comment
We recommend that, as a precautionary approach, the ICNIRP guidelines for public exposure be adopted for use in the UK rather than the NRPB guidelines.	Compliance with ICNIRP guidelines is included as a condition in every operator's licence and audits of emission levels are assessed against ICNIRP guideline levels.
We recommend that a national database be set up by Government giving details of all base stations and their emissions.	The OUR has published full detail of audits of emissions from every site operational in Guernsey as of April 2008. Further random audits are planned for 2009 and 2010. Full details of the recorded levels of emissions are published.
We recommend the establishment of clearly defined physical exclusion zones around base station antennas, which delineate areas within which exposure guidelines may be exceeded. The incorporation of exclusion zones should be part of the template of planning protocols that we advocate (paragraphs 6.54, 6.58 and 6.59).	In undertaking audits of emissions, the OUR has assessed each site for the steps taken to minimise public access and for appropriate signage.
We recommend that warning signs should be incorporated into microcell and picocell transmitters to indicate that they should not be opened when in use	All sites operated by mobile licensees are required to have appropriate signage in place.
We recommend that an independent, random, ongoing audit of all base stations be carried out to ensure that exposure guidelines are not exceeded outside the marked exclusion zone and that the base stations comply with their agreed specifications. If base station emissions are found to exceed guideline levels, or there is significant departure from the stated characteristics, then the base station should be decommissioned until compliance is demonstrated. We recommend that particular attention should be paid initially to the auditing of base stations near to schools and other sensitive sites. We recommend that for all base stations, including those with masts under 15 m, permitted development rights should be revoked, and that the siting of all new base stations should be subject to the normal planning process.	All mobile base station sites in the Bailiwick are audited regardless of location, type or power levels and the results published in full. A register of sites is now published annually by the OUR. All sites, regardless of height are subject to the planning process .
We recommend that, at national Government level, a template of protocols be developed, in	Following discussions between the mobile operators and the Environment Department a

concert with industry and consumers, which can be used to inform the planning process and which must be assiduously and openly followed before permission is given for the siting of a base station	more structured approach to mobile base station development has been agreed and is being implemented.
We recommend that a robust planning template be set in place within 12 months of the publication of this report. It should incorporate a requirement for public involvement, an input by health authorities/health boards and a clear and open system of documentation which can be readily inspected by the general public.	Each planning application for mobile base stations is subject to input from Environmental health. The publication of any relevant planning details is a matter for the Environment Department.
We recommend that in making decisions about the siting of base stations, planning authorities should have power to ensure that the RF fields to which the public will be exposed will be kept to the lowest practical levels that will be commensurate with the telecommunications system operating effectively.	In Guernsey, Mobile Operators are required to confirm that RF levels will be with ICNIRP guidelines levels once the site is operational.
We recommend, in relation to macrocell base stations sited within school grounds, that the beam of greatest RF intensity should not fall on any part of the school grounds or buildings without agreement from the school and parents. Similar considerations should apply to macrocell base stations sited near to school grounds.	While the siting of mast sites is a matter for the Environment Department, from a review of existing mast site locations it is not expected that this is an issue in Guernsey as no base station is situated on any school grounds nor close enough to a school to raise any other issues.
We recommend that operators should actively pursue a policy of mast sharing and roaming where practical, and that they should be considered by planning authorities as an alternative option when new masts are proposed.	This is now followed and almost 50% of mast sites in the Bailiwick are now shared.

In light of the OUR's assessment of the Stewart Report in relation to the precautionary approach, it is the DG's view that all reasonable steps are currently being taken by the OUR and other relevant bodies to comply with the recommendations of the Stewart Report insofar as they relate to taking a precautionary approach to the siting of mobile base stations.

4.1. General comments

Airtel's observation is that the proposed liberalisation of mobile market regulation is dramatic and has far reaching implications to consumers and operators alike. In light of

this it takes the view that the mobile review must carefully consider all aspects and drivers of competition to ensure the final outcome delivers sustainable improvement to the ability of all operators to enhance consumer choice, benefits and value. It argues that sustained improvement to mobile competition cannot be delivered by spectrum liberalization in isolation and fundamental improvements in a number of key areas were needed to re-dress the apparent competitive imbalance between the mobile operators.

In these circumstances, Airtel did not support a streamlining of the decision process given the potential impact of the decision on the market. Airtel argue the period for establishing the Airtel business has been significantly reduced by the very serious planning approval issues faced in rolling out its network and it has made significant concessions, supporting the bringing forward of the review on a further 3G licence in Guernsey and proactively progressing site sharing to roll-out its network at significant cost. While it is committed to supporting the review to ensure it positively relaxes mobile market regulation for the discernible promotion of sustainable competition, it also wishes to ensure key areas of inequality are effectively addressed.

Wave indicated it was happy for the OUR to shorten its consultation process for the purposes of this consultation and move straight to a final decision.

C&WG supported the proposal to shorten the consultation process on condition that the final decision does not include any new or amended material requirements that have not been consulted on and which could either be detrimental to C&WG or require amendment to its response.

4.2. MTRs

Airtel did not support the proposal that MTRs should be excluded from the current review. Its view is there is a risk to competition if C&WG retain the existing artificial financial barriers which fuel commercial inequality, one of which is high mobile termination rates. Airtel argues that MTRs and site share charges impede competitive access to the majority customer base and the optimization of cross network tariffs. It argues that licence amendments should be aligned to corresponding changes to key drivers that propagate the market dominance of C&WG and the commercial disparity between the operators.

In Wave's view, the undertaking by the OUR to initiate a review of MTRs at the end of 2009, means that bringing a review forward is of no real benefit at this time and will only bring uncertainty in the market. Wave's response however also raises a particular issue with C&WG's interconnect charges, arguing the current method of interconnecting with C&WG's mobile network adds unnecessary costs for OLOs. Wave would like to see this inequality addressed and the C&WG Reference Offer reviewed.

C&W recommends that the OUR should take account of what happens in the UK (and the wider EU) market before undertaking any review but argues the current OUR MTR review date for 2010 should remain. C&WG also argue that since the Airtel licence was

granted in September 2006, with a planned launch of September 2007, Airtel's business plan at that time must have taken account of the 2006 review and the February 2007 decision. C&WG believe the introduction of MNP in December 2008 will also have an impact on calling patterns and call numbers for each operator and together these changes suggest by 2010 all the operators should have more complete costs, traffic and customer information to input into any MTR calculations.

4.3. Site Sharing/Environmental Concerns

Airtel supports and endorses site sharing in Guernsey and believes it has worked closely with the Environment Department, site providers and local communities to ensure its sites have minimal adverse impact on the environment. In principle, Airtel supports the concept of a single mobile telecoms backbone network. It believes existing and future new entrants can collaborate to support the backbone principle, yet compete effectively. However, in its view moving towards a single backbone network is a long term and complex journey, with a variety of critical issues to address and overcome.

In Airtel's view, the immediate success factors and drivers to optimize site sharing are: equal access to spectrum, reasonable, simple site sharing processes/agreements, and realistic site sharing rates. It suggests progressing the Operator Code of Best Practice could be just one positive and readily identifiable output of the broader framework discussions. Airtel recommends discussions to develop a future telecoms development framework should be an open forum, involving the operators and other interested parties as well as the Environment Department and Commerce and Employment Department.

Wave sought further information on what is envisaged by a shared "single backbone network" and would like to understand the benefits that operators would gain and the costs that would be incurred. If after proper consultation and consideration, a "single backbone network" is deemed to be the best way forward for telecommunications in Guernsey, Wave would like to see consideration given to how the new entrants might be compensated for their loss of network investment.

C&WG believes that discussions on this issue with Departments and the OUR should include the operators. C&WG is anxious that its significant investment should not be wasted and the quality of its mobile service must not be compromised in any way by 'rationalisation'. It argues there is a lack of clarity as to what is meant by a single backbone network for all three operators and expressed its concern about the potential cost of any proposed review since in its view considerable cost would need to be expended to ascertain whether a single backbone network is justified. It also raises concerns as to whether the timetable proposed by the DG for the review is achievable.

4.4. Site Sharing Charges

Airtel does not believe that the site sharing review should be separate from the mobile market review. It argues that the current excessive site sharing rates in Guernsey have been an effective financial penalty on new entrants and argues the charges reflect the anti-competitive nature of the current commercial approach to site sharing. It states that

in order to roll out the Guernsey network, it has been forced to accept excessive site sharing rates and one-sided, unfair legal terms which it would have rejected in normal circumstances. Airtel states it reluctantly accepted the arrangements it currently has but is now keen to ensure this competitive barrier is finally addressed.

Airtel further argues that the site sharing arrangements it has in place with C&WG and Wave are different, complex and time consuming and the only area of consistency is the site sharing rates which use the same excessive rate card. In its view these charges should be no more than a third of their present level and it incurs an additional significant cost to its business imposed by its competitors because of these charges. It argues these are an unfair burden on competition and constrains its ability to compete and deliver additional value to the Guernsey consumer and market. It therefore strongly recommends the OUR include a review of site sharing costs within the Mobile Market Review framework and any proposal for licence modification and spectrum allocation is conditional on all operators radically lowering site sharing charges and simplifying their approach to site sharing.

Wave had no specific comments to make on this issue but is willing to discuss a standard rate card if agreed by all parties.

C&WG argues that the rates it charges are benchmarked against rates charged in the UK and are common throughout the Channel Islands. Its response states the States of Guernsey has recently imposed new conditions for site sharing on States property which resulted in additional rental being charged for site share arrangements and it has also been advised by private landowners of sites it occupies that it faces increased charges from the States which they are expecting to pass onto C&WG.

C&WG further cites amended licence condition 20.3 and 20.5 arguing that as the OUR only has the power to intervene where the parties have failed to reach a commercial agreement. In its view the OUR does not have the power to review existing commercial arrangements that are in signed legal requirements.

4.5. Strengthening Environmental requirements

Airtel state it has no intention of producing its own separate directory and agrees it is not the DG's responsibility to formally intervene in this matter. However, it does suggest the OUR mediate a solution between C&WG and Wave to avoid the unnecessary waste generated by the publication of two separate directories. Airtel suggest one solution is for the directory to be licensed to a 3rd party not linked to any operator. Alternatively, it proposes the broader telecoms industry on Guernsey could collaborate on a single directory, the profits of which could either be apportioned or more appropriately donated to good causes across the Bailiwick.

Airtel also make the point that included in its original tender submission for the Guernsey 2G and 3G licences a number of commitments were made to safeguard the impact of its operations on the Guernsey environment and to engage in open dialogue with inhabitants and interested parties on its environmental performance and key environmental aspects of

mobile telecoms technologies and operations. However, Airtel takes the view these commitments should not now be the exclusive preserve of Airtel, but is an opportunity for the industry, all the operators, the OUR and the States, to show a united front and work together to ensure the Guernsey environment is not compromised by telecommunications operations now and in the future. Airtel suggest a number of areas which could be promoted, including health and safety/emissions, safe and responsible mobile phone use, coordinated approach to handset recycling etc. Airtel therefore propose that other operators' licences should be modified as part of the mobile market review to include such environmental clauses. If not it suggest the relevant clauses should be removed from its regulated obligations.

Neither C&WG or Wave made any specific comments on this aspect of the consultation.

4.6. Removal of Price Notifications

In Airtel's view the incumbent, C&WG, has maintained its market dominant position in the mobile market and continues to reap the benefit of returns from its mobile business which are excessively higher than the global market norm. Airtel argues that price notifications are designed to curb the potential excesses and anti-competitive behaviour of market dominating operators. Airtel therefore recommends that price notification obligations are not removed from any operator's licences now or in the future.

Wave supports the DG's view that C&WG's current obligation to notify any price changes should remain and intends to comment in more detail in response to the planned licence texts review.

C&WG welcomes the DG's statement that he will consider the requirement for C&WG to notify mobile price changes as part of the wider review of licence conditions planned. In C&WG's view a 21 day notice period does nothing to enhance the benefit to customers, but only allows the other mobile licensees an additional period to prepare and launch their own price plans in advance of any launch by C&WG. This can, in C&WG's view, potentially hinder competition as competitors may not initiate price reductions themselves until the dominant operator has done so. C&WG also argue the notification period creates confusion for consumers given the delay in being able to receive the new offer.

4.7. Technology Neutral licences

Airtel's view is that this is a logical and straightforward solution to align the existing 3 operators in Guernsey and create a level playing field across the 2G and 3G services in time for the launch of MNP on 1st December 2008. It notes that this step will however also allow the OUR to authorize the incumbent to deliver 3G/UMTS services by using its existing 900MHz spectrum. It concludes that such a step could allow the incumbent to:

- Rapidly enter the 3G marketplace without extensive network expansion;
- Minimise the need for additional mobile phone sites; and
- Provide further competition and choice.

However, it has concerns this change could also have serious implications for future competition within both the mobile and broader telecoms markets in Guernsey by reinforcing the imbalance between other operators and the market dominance of the incumbent C&WG. The advantages it identifies C&WG will benefit from are:

- A substantially lower 3G network investment;
- Retention of existing artificial financial barriers in mobile, namely high MTRs and premium site share rates; and
- Inequality in 3G competitive positions enabling leveraging of market dominance from the 2G market that also protects a dominant position in the fixed line broadband market.

Airtel raise two further concerns around the potential barrier to switching given 3G/UMTS delivery over the 900MHz band requires specific handsets capable of handling this frequency band. It argues customers wishing to switch network provider would need to change their handset if they wished to switch from a 3G service provider using the 900 MHz band to a provider using the 2.1 GHz band. Airtel argue that this creates a barrier to switching for these customers.

Airtel therefore believes changes to technology neutral licences should be contingent on wider changes to the mobile commercial model in Guernsey to create a level playing field between the different operators and enable the new entrants to compete and challenge the incumbent's market dominance. Airtel agree that future spectrum/licences should be adjudicated using an auction approach. However, in the case of allowing the incumbent to offer 3G/UMTS, it believes an auction process would not be appropriate. The approach it advocates in this case is that licence amendments are aligned to changes to key drivers that propagate the market dominance of C&WG and the commercial disparity between the operators.

Wave supports the DG's view that all three operators' licences are changed to enable them to have no service specific licences and agrees with the proposed definition of "Licensed Mobile Telecommunication Services".

C&WG supports the principle of the liberalization of spectrum for the use of 2G and 3G services, stating this would give the operators the flexibility to offer services in response to customer needs. C&WG does not see that it would be at a material competitive advantage given Wave rolled out its 3G network over the last four years and Airtel launched its 3G services some months ago. However, C&WG states that if the OUR concludes it is at a material advantage and requires it to surrender 2x5MHz of 900 MHz spectrum at this stage, it would not raise any objection. It does, however highlight significant issues that it says would need to be considered should such action be taken:

- Before surrendered 900MHz spectrum is awarded to another operator the OUR would continue discussions with relevant States departments to ensure that regulatory actions are compatible with and supports States strategy and policy;

- There would be further consultation and a competition of some form; and
- The OUR must also consider awarding further 2100 and 1800 MHz spectrum. C&WG expresses an interest in being awarded 2100 MHz spectrum and would expect to participate in any competition for 1800 MHz spectrum.

C&WG has concerns that even if technology neutral licences were introduced in Guernsey and it was able to utilise the 900 MHz band to provide UMTS services, customers in Jersey still could not use their 3G services on the C&WG network when they came to Guernsey and similarly visiting 2100 MHz roamers from outside the Channel islands will also not be able to use the C&WG 900 MHz service for 3G roaming. A key factor in this is that the use of 900 MHz spectrum handsets for 3G services is very new worldwide and such use would be leading edge for the UK and Europe in terms of spectrum management.

While C&WG can technically deliver 3G services on its allocated 900 MHz spectrum with its current mobile vendor, it argues that the situation remains where the UK default is currently 2100 MHz. C&WG believe there is therefore a risk that the usage and technology will not 'catch on' and handset manufacturers will not invest in the mass production of handsets that use 900 MHz for 3G services. C&WG is also of the view that developments to 4G/LTE cannot be guaranteed at 900 MHz and it needs 2100 MHz spectrum to ensure it can develop and deliver mobile services to its customers.

C&WG's view is that engagement with the industry separately to this mobile review on the issue of surrendering 900MHz should recognise the wider implications of such an engagement as any consideration of the use of spectrum has to involve all of the Channel Island operators, the licensing authorities in France as well as the OUR, JCRA and OFCOM. As such, its view is that revisions required to the MOU would be expected to be consulted and discussed with the JCRA and OFCOM. A further point made by C&WG is that the implications of C&WG surrendering spectrum would have implications for the UK and should also be considered although it did not expand on what those implications may be.

C&WG also raise the issue of compensation for releasing spectrum. It argues that the OUR must consider compensation to C&WG for releasing spectrum and requires this issue to be fully considered and addressed. It also believes a full frequency planning exercise would need to be undertaken, involving considerable time, cost and disruption including an assessment of whether there would be any degradation of the current service. C&WG argue that the cost and effort in undertaking this exercise, as well as any impact on customers and other interested parties, would also have to be taken into account.

However, C&WG argue the above issues they raise should not delay the amendment of mobile telecommunications licences to make them technology neutral and allow all licenses operators to offer 3G services to the consumer.

In response to the issue raised in the consultation that a move to technology neutral licences would allow C&WG to provide a service which Wave and Airtel paid a fee of £250,000 to provide in Guernsey, C&WG cite section 4, subsection (1) (d) of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and argue the DG is only able to set the application fee for a 3G licence at such a level as to defray the costs and expenditure incurred by the OUR in awarding such a licence. It argues that since the proposal to make licences technology neutral does not include a competition of a similar nature to that followed for the award of the two existing 3G licences, the OUR does not incur such costs. Also, C&WG argue the amendment of existing licences to be technology neutral would apply, and be of equal benefit to all licensed operators and so any costs in respect of this review should be apportioned equally between all operators.

C&WG further argue that the DG sets the C&WG annual telecommunications licence fee at a level that is sufficient to cover the costs the OUR incurs in relation to its licence over the year. In C&WG's view, those fees should be sufficient to cover the costs of this review and if it were charged a licence fee it would expect to see a corresponding reduction in its annual licence fee for 2008 or the DG would be acting outside of the powers given by the law. C&WG notes that in other jurisdictions where there was no such competition process for the 3G licences, there was no fee charged.

4.8. Review of Mobile Spectrum

Airtel state that an audit of spectrum would not be of immediate direct assistance to the Airtel business since significant resources and investments have been committed in building its network which is sufficient for its immediate requirements. Airtel's view however is that the current allocation of spectrum in Guernsey is unequal and unfair and that Airtel was not given the opportunity to deliver 2G services via the 900MHz spectrum which was allocated entirely to the incumbent, C&WG. As a consequence the 2G/GSM coverage of the incumbent is superior to the 2G coverage of both entrants on their 1800MHz spectrum despite significant investment in new networks with greater number of sites than the incumbent. In its view the difference in coverage can be explained by the difference in coverage/reach between the 900MHz and 1800MHz frequencies.

Airtel argues that if any review led to the allocation to the incumbent of spare 2100MHz spectrum in isolation of realigning existing spectrum arrangements this would be unfair and will further the existing inequality in spectrum allocation. Airtel welcomes access to the 900MHz spectrum to enable it to optimize the GSM coverage of its Guernsey network and the proposal to commission an independent audit of spectrum allocation and use. Airtel therefore object to the unilateral allocation of new 3G spectrum in the 2100MHz band unless there was a corresponding re-allocation of 900MHz spectrum and equalisation of total spectrums allocated for use by the recent entrant operators and potential new market entrants.

Wave's view is that a thorough spectrum review will allow the OUR to make its decision based on a full understanding of existing spectrum usage and will allow an informed view as to what bands of 900 MHz spectrum currently used by C&WG would be of best use to the other mobile operators.

C&WG states it will be happy to co-operate in any audit of how spectrum is used in the Bailiwick.

4.9. Number of Mobile Operators

Airtel's view is that a market becomes saturated when new entrants believe it is not commercially viable to risk entry. Airtel is of the view that while Guernsey is a relatively small market in terms of physical size, it is a buoyant market and from the current returns being generated by the dominant incumbent, a lucrative market also. Airtel believe true competition can only be delivered by 3 or more operators and sees no reason to deviate from this position, citing Bermuda as a similar sized jurisdiction which has more than three operators.

In Airtel's view the Guernsey market should not be closed to new entrants and new entrants should be free to consider entering the market based on commercial viability and not regulatory mandate, arguing that new entrants bring fresh thinking, challenges and new technology which will maintain Guernsey's position at the forefront of mobile telecommunications excellence. However, it does argue that the entry of future entrants must be carefully managed to integrate, align and enhance the existing telecommunications operations to minimise the proliferation of growth of unnecessary infrastructure.

C&WG would wish to understand the views of the States of Guernsey on the number of players being licensed into the telecommunications sector. It states that if there are more players the return earned by each of the existing operators is likely to reduce. C&WG notes that the DG has stated that no further mobile licenses will be awarded until the review is complete and there is a better understanding of the framework in which services can develop, which is expected to be early 2009. It is however concerned that the timetable in itself is optimistic and does not fully account for all the issues and considerations impacting that review. It states that in considering whether there should be further licence awards the DG should not only consider the physical network factors but also whether a fourth service would be both proportionate to and commercially viable taking account of the size of the Guernsey market.

Mr. Roberts suggests that two operators would have been sufficient to serve a market the size of Guernsey and that the States may be liable to pay compensation should health effects materialise at some point in the future.

Wave made no comment on this aspect of the consultation.

4.10. Spectrum Liberalisation in Guernsey

Airtel does not object to the principle that existing licences are modified to be technology neutral and for the incumbent to be allowed to provide 3G/UMTS services via the 900Mhz or 2100Mhz spectrums. It supports the modified licence text proposed by the OUR, but argues that such changes should be contingent on fundamental changes being

implemented to the mobile commercial model in Guernsey to create a true level playing field between the different operators and enable the new entrants to compete fairly and truly challenge the incumbent's market dominance.

Wave supports the DG's approach to spectrum liberalisation and agrees that removing the spectrum restriction on its technology use by effectively making it technology neutral is a sensible approach for the future. Wave also queried whether the released spectrum would be paired or not and sought clarification on this point and commented that the OUR had not indicated whether it planned to provide the surrendered spectrum to other mobile operators or if it intends to auction the 2x5MHz of 900 MHz spectrum.

Wave has concerns that C&WG would have benefitted from its 900 MHz spectrum allocation in its 2G network and with a technology neutral licence it would benefit from this spectrum range again in the roll out of 3G services. For Wave there were no short term benefits in the acquisition of spectrum in 900 MHz range, as its network investment is already a sunk cost. Wave sought clarification on how the DG would look to compensate new entrants for the lack of a level 3G playing field.

C&WG supports the principle of the liberalisation of spectrum for the use of 2G and 3G services, believing it would make Guernsey a leading light in the development of telecommunications services and give the operators the flexibility to offer services in response to customer needs. C&WG recommends that the new wording of the licence change should also refer to the ITU technical standards.

5. DG's consideration of issues

5.1. MTRs

The issue of MTRs was considered over 2006/07 and a decision was made by the DG to reduce those rates as from 1st April 2007. In that decision document, OUR 07/03, the DG said he would review wholesale mobile termination rates at the end of a three year period following his decision, and he would consider whether other mobile services (beyond voice) required regulatory intervention at that time. The DG also stated that he would be guided by developments in the market.

The DG notes Airtel's arguments for reviewing MTRs earlier than stated in that decision. However, any changes to MTRs in Guernsey on the basis of further benchmarking of charges in the UK and the EU is unlikely to lead to immediate material changes to the rates currently in operation. For this reason, there seems little merit in undertaking a further benchmarking exercise at this time. However the DG believes that a more detailed review of MTRs is still required. The DG is intending to undertake a review of all interconnection charges in 2009. In the course of that review, one of the areas he intends to evaluate is the reasonableness or otherwise of mobile termination rates. He intends therefore to address this issue at that time and expects to commence work in early 2009. He will be writing to operators setting out more details of the MTR review at a later point.

5.2. Site Sharing/Environmental Concerns

While the parties recognise the rationale for considering greater site sharing and rationalisation of infrastructure, there is a considerable degree of caution expressed by respondents. Uncertainty around what was entailed and who should bear these costs, as well as whether such a review would result in a need for material changes to the existing network designs and therefore whether the cost would be justified, were all raised in responses.

In considering these comments, the DG has sought advice from Environment Department as to whether it considers it might make use of any legal powers available to it to require mobile operators to site their masts in alternative locations on the basis of environmental/planning considerations. The Environment Department have indicated it does not believe the existing planning laws make provision for such a measure and consequently such an undertaking would need to be voluntary and possibly subject to compensation claims by mobile operators for any costs incurred which the States may need to meet. The Environment Department noted that is unlikely that the States would be in a position to offer compensation to operators for such an undertaking should it be considered further.

The DG notes the obvious hurdles which exist to rationalising infrastructure at this time. As a result, he does not propose to pursue this proposal further at this time. However he does intend to continue to engage with the Environment Department on what future steps

might be appropriate to minimise the impact of any future telecoms infrastructure development and to reflect that in either licensing conditions or other appropriate means.

5.3. Site Sharing Charges

The DG notes C&WG's view that the current agreements on site sharing were agreed on a commercial basis and there is no regulatory issue to be addressed. He also notes Airtel's argument that current site sharing agreements were made in the context of Airtel facing the risk of not meeting its roll-out deadline and it seeks relief from those charges. The DG welcomes Wave's willingness to discuss a standard rate charge.

In the DG's view it is relevant that the sanctions Airtel faced for missing its commitment to roll-out its network included fines and/or withdrawal of its licence. This suggests that the context in which Airtel was expected to reach agreements with C&WG and Wave were such that it cannot be reasonable to assume that Airtel agreed to site share charges in normal commercial circumstances. C&WG and Wave were fully aware of Airtel's position at the time since it was well publicised and would have been aware of their strong negotiating position with Airtel, in the circumstances. These circumstances were that Environment Department required Airtel to share existing masts before it would consider new planning applications, while Airtel faced possible sanctions if it did not meet its launch date and achieve certain coverage levels. The fact that Airtel has also already indicated to the operators its concern with the level of site charges should be an indication that it does not believe those charges to be fair.

The DG has also considered the arguments made by C&WG that the site share charges are common throughout the Channel Islands. His understanding is that this argument stems from the view that a reciprocal arrangement exists between C&WG/C&WJ and Jersey Telecom/Wave in that they charge each other the same rates in both islands. In the DG's view, a pricing arrangement where C&WG charges Wave the same as JT charges C&W's sister company in Jersey, does not appear to offer a sufficient incentive to reach what might be regarded as an efficient market price for site sharing. He is also led to believe that site share charges in Jersey reflect charges in Guernsey (i.e. Jersey charges are simply an adoption of rates applied first in Guernsey). Given this, there is a material risk that customers and new entrants bear the costs of excessive site share charges. His concerns are further underlined by a high level examination of site share charges by other parties in Guernsey.

The DG is strongly minded to intervene in this area given the cost to consumers if inefficient charges are maintained, while the ability of new entrants to compete in such an environment is made more difficult and costly. The DG notes C&WG argument that the DG has no power to intervene under the site sharing condition of mobile licences. The DG does not accept this view but in any event he does have the ability to intervene under the 'Fair Competition' condition and under his general functions under the Regulation Law. In considering the options for regulatory intervention available to him, the DG is also mindful that if the current site share charge arrangement continues, other site owners may demand increasingly higher prices for locating sites on their properties justified by

reference to prices arising from a reciprocal agreement between two players dominant in their respective markets. Such an outcome is not in the interests of consumers or the prospects for a more competitive mobile market.

The DG therefore proposes that new site share arrangements are presented to him by 30th January 2009, to take effect from 1st April 2009, and which are agreed by all three Guernsey mobile operators. While the DG notes that operators may wish to consider this a pan-channel island issue, for the avoidance of doubt the DG will concentrate his assessment to rates applicable in the Guernsey market.

In the event that no agreement can be reached the DG will commence a formal review of site share charges in February 2009.

5.4. Strengthening Environmental Requirements

The DG notes the commitment by mobile operators to environmental requirements. He has also considered Airtel's argument, that its current environmental commitments should either be placed on C&WG and Wave, or it be relieved of its commitments.

The DG does not believe that it is appropriate that Airtel's environmental commitments should be included in the licence conditions of its competitors. Airtel committed to these when it made its licence application and in part these commitments would have contributed to its success in winning the second 3G licence. The DG does however propose to include an assessment of the extent of any environmental obligations in a wider review of licence conditions. He continues to believe however that the publication of telephone directories by operators other than C&WG (which has a USO requirement) is a commercial matter for those operators and he does not propose to intervene in this issue.

5.5. Removal of Price Notifications

C&WG proposed removing the obligation on it to notify price changes 21 days in advance of their taking effect, arguing it stifled innovation and allowed other operators to be complacent in initiating price changes of their own. Neither Wave nor Airtel supported their removal.

The DG is not persuaded that removal of this price notification is appropriate at this time, He does however intend to consider this issue when he reviews licence terms later in the year and is currently minded to consider the use of a 'sunset' clause for this condition in the mobile market.

5.6. Technology Neutral licences

The issues raised by respondents suggest there are several risks as well as benefits to competition that must be balanced in any consideration of this issue. A move to technology neutral licences removes a barrier for all operators to utilisation of spectrum

for a wider range of purposes in the 900 MHz band, which would benefit consumers. Such a change also implies C&WG would be in a position to use the spectrum to provide 3G services since it holds almost 50 MHz of spectrum in the 900 MHz band. The benefit to consumers of a further 3G provider is therefore potentially significant since Guernsey consumers would in these circumstances have the option to choose between three 3G operators as opposed to only two, as at present.

The means by which C&WG could enter the 3G market does however have the potential to impact on the competitiveness of the mobile market and therefore consumers' long term interests. In particular, where it is able to enter the 3G market facing fewer entry barriers and less cost due to an incumbent advantage or where it is able to leverage its existing advantage in the 2G mobile market into the 3G market, the implications for competition of enabling this must be considered carefully.

One issue concerns the licence fee cost of market entry. If C&WG is correct that the DG cannot impose an equivalent fee to that levied on the other mobile operators when they were awarded their 3G licences, a move to technology neutrality for spectrum would mean C&WG would be in a position to provide 3G services in Guernsey without incurring the licence fee cost of £250,000, which its competitors had to bear in order that they could provide 3G services. Those fees were necessary to cover the costs of setting up the competitive process for deciding which operator would be awarded a 3G licence in the last two licence awards for the relevant spectrum. The likelihood is that the cost of altering the licence condition of C&WG as well as other operators to make them technology neutral will not be of this order. Without any correction for such a discrepancy, the existing 3G operators would have incurred a significant entry cost, which C&WG would not. When these considerations are combined with the advantage C&WG is likely to enjoy in terms of ease of rollout given an existing network infrastructure and the coverage offered by having almost 50 MHz in the 900 MHz band, the entry barriers and cost of market entry appear significantly more favourable to C&WG than those faced by the existing 3G operators.

The ability of C&WG to potentially leverage its existing advantage in the 2G mobile market, into the 3G market, stems from C&WG's ability to acquire 3G customers materially easier than it would have been if it had no 2G customers. Regular mail invoicing, for example, provides an existing market channel to these customers, while customer inertia is likely to play a role in keeping existing customers and upgrading them from 2G to 3G services. While the DG acknowledges that part of this inertia may well be customer loyalty arising from a satisfaction with the existing service offered by C&WG, he is also mindful that C&WG is the only mobile operator that has been able to set up the bulk of its network without the more rigorous planning permission assessment faced by the new entrants (due to it being largely the former States Telecoms Board/Guernsey Telecom network) and as such its network coverage is an incumbent advantage from which the quality of its network is derived.

C&WG's response suggests that while it may be technically feasible to deliver 3G services using 900MHz, it is unclear given the very early stage of development of this

segment of the market whether it will be sustainable. A significant issue is the limitation of using handsets in other jurisdictions where 900 MHz band is not the default for 3G services. This, C&WG argues, places a serious constraint on its ability to compete with Wave and Airtel in the medium term, as these licensees provide services using 2100MHz spectrum, which is the default in other countries, including Jersey.

The DG has noted C&WG's comments on this issue. He has therefore considered the extent to which the utilisation of 900MHz spectrum for 3G is under consideration in other countries at this time and the possible speed of developments in this area.

The European Commission has proposed a repeal of the Council Directive 87/372/EEC to enable the use of 900MHz spectrum by systems that are capable of offering electronic communication services beyond the GSM. It will in particular make it possible to open the currently restricted frequencies to third generation services. The EC decision would facilitate a technology and service neutral approach to existing and future authorization regimes; which could ensure a better geographic and demographic coverage, with fewer base stations and better quality of service. In November 2007, the Council of the European Union reached a general approach on a draft Directive, repealing Directive 87/372/EEC. The European Parliament is awaiting the proposal on the GSM Directive.

In the UK OFCOM has produced a consultation paper 'Application of spectrum liberalization and trading to the mobile sector: Including implementation of the Radio Spectrum Committee Decision on 900 MHz and 1800MHz' published on the 20th of September 2007. OFCOM proposed to liberalise the use of this spectrum, by removing the restriction to 2G which it states will be required by the proposal on the GSM Directive.

ANACOM, the Portuguese telecoms regulator has also decided to implement technology neutrality for 900 MHz spectrum. On the 20th of August 2008, the Portuguese regulator stated that the obligation to use the spectrum 900 MHz band in accordance with GSM technology would be removed.

In February 2008, the French telecoms regulator, ARCEP, modified Orange France and SFR's authorisations in order to allow them to deploy UMTS technology in Metropolitan France in the 900 MHz band, which is currently used for GSM. ARCEP also proposed to allow a third 3G licence holder, Bouygues Telecom, to reuse the 900 MHz band for 3G. This operator has responded that it would deploy UMTS in the 900 MHz band by the end of 2009. ARCEP has stated that starting in 2008, 900 MHz frequencies will be progressively reused for 3G thanks to the future availability of equipments.

ComReg, the Irish regulator, in July 2008 launched a public consultation paper which discussed removing restrictions on the technology and services permitted in the GSM bands. The timing of the consultation paper has been influenced by the impending expiry of the existing GSM licences and the forthcoming adoption of the draft European Commission Decision on harmonization and widespread deployment of 3G services.

Also, Vodafone has been granted a licence by ComReg to trial 900 MHz spectrum for 3G services.

These developments suggest to the DG that he cannot discount the possibility that roaming with 900 MHz handsets providing 3G services may be feasible in a number of jurisdictions across Europe over the next 18-24 months and a failure to take account of this in any decision could jeopardise competition in the mobile market. Should technology neutrality of 900MHz spectrum become more widespread in other jurisdictions within such a period, there is a reasonable risk that C&WG will be in a position to leverage its dominance from the 2G market into the 3G market in Guernsey.

A further aspect informing the DG's view is that over the short to medium term, mobile broadband is likely to remain a key distinguishing feature of 3G services in Guernsey. Mobile broadband does not appear to be a service that lends itself to roaming outside of the Channel Islands or even outside of Guernsey to the same extent as voice or texting services. Airtel, have set their mobile broadband service default to prevent roaming of mobile broadband outside the Channel Islands and customers must request to have this facility switched on. A key reason for this is the risk that a customer inadvertently runs up the substantial mobile charges whilst using mobile broadband abroad. The availability of WiFi hotspots, which is becoming increasingly commonplace in many neighbouring jurisdictions, in effect reduces the need for a mobile broadband roaming service. If this is the case, limitations on C&WG's ability to compete in the 3G market using 900MHz spectrum because of roaming issues appear significantly lessened.

If mobile broadband is more jurisdiction specific than those services provided over handsets, such as voice calls or texting, the DG's view is that the concern C&WG express about the limitations on the attractiveness of a 900 MHz enabled 3G service due to roaming restrictions may have less merit when assessing the prospects for take-up of a key 3G service, namely mobile broadband.

Despite these concerns, mindful of the benefits a change to technology neutral licences can bring to the Guernsey telecoms market, rather than abandon the initiative, the DG has considered compensating mechanisms to address the serious concerns as set out above. Several of the concerns raised in responses, and the steps the DG proposes in response to those have already been discussed under previous sections.

A key element of the DGs consideration as to whether or not to adopt technology neutral licences is the release of 900 MHz spectrum by C&WG given its coverage and rollout advantages. C&WG has in its response stated it is not opposed to the surrendering of some 900 MHz spectrum but felt there was a lack of clarity as to the steps the OUR was considering as regards the allocation of the 900 MHz spectrum that would be released and also the allocation of other spectrum, particularly in respect of the 2100MHz.

Following further clarification (OUR letter of 8 September 2008 and C&WG reply of 14 October 2008, see Appendix A), C&WG has indicated that if the OUR concludes that C&WG is at a material competitive advantage if it retains its full allocation of spectrum

and requires it to surrender 2x5MHz of 900 MHz spectrum at this stage, it would not raise any objection. However, C&WG also states that several issues would need to be considered should such action be taken, in particular:

- C&WG would expect to also participate in any competition for 1800 MHz and 2100 MHz spectrum;
- C&WG argues that the OUR must consider compensation to C&WG for releasing spectrum; and
- C&WG further argue that the cost and effort in undertaking full frequency planning, full drive tests, as well as assessing the impact on customers and other interested parties would have to be taken into account.

The DG is not in a position to guarantee the conditions around cost and compensation can be met. If he cannot be assured by C&WG that it will pursue clearance of 2x5 MHz of 900 MHz band spectrum unconditionally and in a reasonable timeframe, he sees an unacceptable risk to competition in modifying licence conditions to introduce technology neutral spectrum licences at this time. The DG envisages that any future spectrum packages that might be made available in the future will be considered in more detail closer to that time.

The DG's conclusion is therefore that C&WG will need to commit to the unconditional release of the required spectrum within a reasonable timeframe. Once such a condition is met and a clear timetable is submitted by C&WG, the DG would be in a position to consider in more detail future 3G licensing. Any delay in releasing 900 MHz spectrum would clearly impact on timing of future 3G competition and the finalisation of the packaging of any spectrum to be made available.

Such a process would achieve the objective that a new/existing operator would have the option of accessing appropriate spectrum, while C&WG has every incentive to free up the required 900 MHz spectrum as soon as possible.

5.7. Review of Mobile Spectrum

The possibility of an audit of spectrum use was considered by the DG separately from the proposal to reduce C&WG's 900 MHz spectrum as proposed above. Given the substantial number of issues around the issuing of further spectrum licences, while a more even playing field in terms of comparable spectrum between operators has advantages, the DG would wish to see a range of issues resolved prior to revisiting this issue. He therefore proposes not to proceed with this initiative as part of this consultation process.

5.8. Number of Mobile Operators

The DG's view is that intervening in the functioning of a rapidly moving high technology market by limiting the number of market players that can provide mobile services is not in the best interests of Guernsey consumers. The manner in which the market will develop is an unknown quantity and it is therefore not possible to predict the nature of future services or who those providers will be. In these circumstances, where a cap on

market players exists, the potential benefits of niche service providers or alternative technologies, could be made inaccessible to Guernsey consumers since existing operators cannot always access such technologies or their incentives to do so can be weak.

The DG must also be guided in the performance of his functions by States policy for the telecoms sector. This was most recently commented on by the Minister for Commerce & Employment in the States on 29th October 2008. The Minister stated that:

“In my view this House has already made clear its collective view that choice and range and quality of telecoms services is important but equally recognises that operators will be expected to take account of the protection of the Guernsey Environment when looking to develop their infrastructure.

It would be contrary to the current Strategic Objectives of the States to prevent the Office of Utility Regulation from licensing another operator if it felt that such a move would deliver economic and social benefits to the local community. Such an operator might of course deliver wireless services over one of the existing networks, a so called “virtual operator”, or it might deliver alternatives to fixed line services.”

Furthermore, the threat of losing market share and the competitive pressure on existing operators to deliver value for money to consumers is driven not just by existing market players, but is also derived from the realistic prospect that other players can enter the market and compete. This is a key element of healthy markets and a limit on the number of market players effectively removes this key dynamic. Indeed there exists currently demand from C&WG for spectrum to 2100MHz spectrum to provide 3G services whether the modification to its licence with respect to the use of 900MHz spectrum is finalised or not.

In the DG’s view, there is also no reason to believe that current mobile network structures will remain the same. Developments in technology may well lead to downscaling of network equipment, with implications for less visual impact and lower emissions per antennae.

Finally, at some future stage mobile technology may well offer a viable substitute for fixed telephony services. Placing limits on the number of mobile market operators without considering the future opportunities for operators serving both the fixed and the mobile market risks drawing a permanent artificial boundary around a market that could, from a consumer’s perspective, become indistinct from other telecom markets. As a consequence, there is good reason not to place a cap on the number of operators in selected telecom markets.

The DG believes it is helpful at this stage to indicate his willingness to consider positively a further licensing round in 2009, subject to agreement reached on the spectrum issues addressed in this paper. His view is that his duty to balance environmental issues is best met by ensuring the Environment Department has maximum visibility of the likely demand for infrastructure development. He has already noted that

the current piecemeal development of mobile competition has led to a less structured approach to mobile infrastructure development than might have occurred had all licences been granted at the same time, although he recognises that this was not feasible. The DG is therefore keen to ensure that going forward, to the extent that it is possible to foresee likely demand, that visibility of future infrastructure is co-ordinated to the maximum extent possible.

There is currently 3G spectrum available that would enable a maximum of 4 operators to provide services in the Bailiwick. Two of the spectrum packages have already been awarded. The timeframe for any future 3G spectrum award is subject to a clearer timeframe for the rationalisation of the use of 900MHz spectrum.

The DG therefore sees no merit in indicating at this stage any limit on the number of market players. His view is that where potential entrants believe there is business merit in entering the Guernsey market they should be encouraged to do so and no artificial entry barriers are placed in their way. The new arrangements in place now by the Environment Department, which was successful in limiting the amount of new infrastructure developed by Airtel and increasing significantly the level of site sharing, have clearly worked well and therefore the ability of the States to lessen the impact of telecoms infrastructure on the environment is greater now than at any time in the past.

6. Next Steps

In light of the issues raised the DG has decided not to shorten the consultation process. Prior to any final decision to amend current mobile licences to allow the spectrum held by an operator to be used for any mobile service, be that a 2G or 3G service, the DG proposes to await the results of C&WG's review of its own spectrum.

As an output from that review he would anticipate firm proposals from C&WG, which will be consulted on, as to the nature and timing of the release of 2x5MHz of C&WG's 900 MHz spectrum. His draft decision is therefore, subject to the above, that each operator will hold only one licence and that the terms of the licence shall be amended to remove such restrictions. The DG proposes to follow the formal licence amendment process provided for in the Telecoms Law once a final decision to make such a move is made.

ENDS

Appendix A – Letter from DG to C&WG, 8th September 2008

See attachment

Appendix B – Letter from C&WG to DG, 14th October 2008

See attachment