



Office of Utility Regulation

**Competition in the Mobile
Telecommunications Market
- Further Licence Award**

Consultation Document

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Office of Utility Regulation

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1. Introduction

The Director General of the OUR (“DG”) is issuing this consultation document to consult on a proposal to issue an additional 3G mobile licence to further increase competition in the mobile market in Guernsey. This consultation follows a review of the mobile market, the conclusions of which are published in a separate OUR document (OUR 09/05).

During that review, which focused on competition in the mobile market and related issues, the DG came to the view that consumers would benefit from greater choice of services providers in relation to 3G mobile services. The DG had proposed facilitating this enhanced competition through the relaxation of the use to which the current mobile spectrum held by existing licensees could be used. However during the consultation process, while there was general support for this move, there was also an acceptance that this initiative of itself was unlikely to deliver as wide a level of competition as desired without creating potential longer term problems in the market.

The DG believes that there is therefore merit in considering further steps to promote greater competition in the mobile market. While he is confirming his decision to relax the use to which ‘mobile’ spectrum can be used, he is proposing to issue a further 3G mobile licence to C&W Guernsey (C&WG) for the reasons set out in section 4 subject to it meeting the criteria set out in section 5 of this paper. In addition, he is proposing to grant an allocation of 900MHz spectrum to Airtel-Vodafone (Airtel) from the spectrum released by C&WG as required under the decision published in OUR 09/05. The rationale for this proposal is set out in section 6 of this paper.

The DG is inviting comments from interested parties on the proposals contained in this consultation document. He has consulted Ofcom, which manages the radio spectrum resource for the Bailiwick, and it has no objections to the proposals contained within this paper.

2. Structure of Paper and Process

2.1. Structure of Paper

The paper is structured as follows:

- Section 3 provides background information on the legal framework for issuing licences in the telecoms market in Guernsey;
- Section 4 sets out the DG's rationale for the proposal to award a 3G mobile licence to C&WG;
- Section 5 sets out the criteria which it is proposed C&WG should meet to be eligible for the award of a 3G licence;
- Section 6 sets out the DG's proposals for the re-allocation of 900MHz spectrum to Airtel; and
- Section 7 sets out the next steps in the process.

2.2. Responses to the Consultation

Responses to this document should be submitted in writing and should be received by the OUR before 5.00pm on **Friday 5th June 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 Telecommunications Market – 3G Mobile Licence Award Consultation".

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 will be made available on the OUR's website (www.regutil.gg) and for inspection at the OUR's Office 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.

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.

4. Future 3G Mobile Licensing

In April 2003, the OUR granted the first licence to provide 3G mobile services to Wave Telecom and services commenced in July 2004. In September 2006 the OUR issued a further 3G licence to Airtel and it commenced services in March 2008. Both Wave and Airtel also hold 2G mobile licences. The third operator, C&WG, holds a 2G mobile licence that was granted originally to Guernsey Telecom in October 2001 (although Guernsey Telecom had been providing mobile services prior to the launch of the current regulatory regime).

The DG has previously discussed the importance of competition in delivering enhanced value, choice and quality of services for consumers across the telecoms market. The OUR consultation on the mobile market review published in July 2008 discussed at length this issue. There are however a number of options open to the DG in considering how best to achieve further choice for consumers. These include licensing a fourth mobile operator (either through a beauty parade, auction or some alternative process), encouraging virtual network operators or facilitating greater competition between the three operators currently licensed. The DG has considered at length the various options and is currently minded to propose that the existing operators should be facilitated in competing more fully across all mobile markets (2G & 3G). The DG believes this proposal:

- (a) Maximises consumers' ability to utilise MNP more fully;
- (b) Facilitates the DG's efforts to increase the efficient use of spectrum which assists in creating an even playing field between existing operators; and
- (c) Maximises use of existing mobile mast infrastructure.

The DG's view on each of these is set out in more detail below. In addition the DG believes this approach meets his statutory duties and ensures that the approach adopted is proportionate to the Bailiwick's circumstances.

4.1. Maximises MNP benefits

Mobile Number Portability (MNP) was introduced in Guernsey on 1st December 2008. The introduction of MNP has to the DG's mind been a major facilitator since late 2008 in reducing the switching costs to different operators and improved the competitive playing field. Since then over 1,500 numbers have been ported indicating that consumers have been taking advantage of the increased ease of switching mobile operators. While the DG is pleased with the current level of activity, he is conscious that consumers will most likely look to change to an operator that can offer better services, tariffs or new innovative services. They are also less likely to switch to operators that have a more reduced range of service offerings.

Currently if a mobile consumer is interested in availing of 3G service their choice of provider is either Wave Telecom or Airtel. While C&WG customers looking to switch to a 3G mobile provider have a choice of two operators, Wave or Airtel customers currently only have a choice of one other provider. This lack of choice therefore potentially reduces the potential benefit for all mobile customers and diminishes some of the benefits intended to be gained by MNP.

The DG believes that in order to maximise the consumer benefit that can be gained from MNP, consumers should be able to avail of the full range of mobile services when they change service provider. He believes that this benefit can be achieved earlier than might otherwise occur if steps are taken to ensure all three mobile providers can, from a regulatory viewpoint, offer all mobile services.. The DG believes the proposals in this paper will advance that aim.

4.2. Efficient use of Spectrum

Radio spectrum is a valuable and scarce resource and as technology advances continue, more and more services are being offered using radio spectrum. Therefore ensuring it is used efficiently is of paramount importance. There are a number of elements to ensure spectrum is used efficiently but for the purposes of this discussion the DG's interest is in ensuring operators make maximum use of the spectrum they hold and ensuring that where spectrum might be used more efficiently by an alternative operator the opportunity to realise that use is availed of.

Currently the DG is of the view that the amount of 900MHz spectrum held by C&WG is in excess of what it requires to efficiently provide a mobile service. Mobile operators in other countries provide robust 2G mobile network coverage and services using significantly less spectrum than that available to C&WG in Guernsey. In Guernsey (and Jersey) new entrants to the 2G market have coped with significantly less spectrum than that held by C&WG. Therefore the DG believes that some rationalisation of the 900MHz spectrum held by C&WG is required.

Following discussions with the mobile operators, there is broad agreement that having all three mobile operators able to compete across all parts of the mobile market is in consumers' interest. In the normal course of events, a review of spectrum would require a detailed audit of how each operator utilises the spectrum held by it. Such a process would require, in the case of the OUR, external assistance as the OUR does not have available to it the necessary expertise to undertake such work. Such a review would take some time to complete, the result of which would be a potential delay to consumers gaining the benefits the DG believes can be achieved.

As part of the Mobile Review decision announced concurrently with this consultation, the DG has already determined that C&WG should, as a first step, surrender 2x5MHz of 900MHz spectrum. He proposes, as set out in more detail later in this paper, that this released block of 900MHz spectrum should be allocated to Airtel. These two measures

are intended to achieve some of the objectives that a spectrum audit would seek to achieve, in particular optimising the use of this scarce resource.

The DG believes this combined package of measures will, if adopted, ensure that mobile consumers will have access to three operators providing the full range of mobile services and will have maximum choice when looking to change operators through MNP. Further the increased competition should see all customers benefit as operators compete more aggressively to retain existing customers and win new ones.

4.3. Maximises use of existing Mobile Infrastructure

The issues around the need for sufficient mobile infrastructure to provide robust mobile coverage are complex. There are competing interests with regard to this issue, from the mobile companies who wish to have good mobile network coverage so that the quality of the service they provide is to a level that meets their customer needs, to those who believe such infrastructure impacts negatively on the environment. This debate is very common and in Guernsey some significant steps have been taken in recent years to minimise the need for new build infrastructure. Among these measures has been:

- a significant increase in sharing of infrastructure. Currently nearly half of mobile mast sites are shared, a very high level in international terms;
- The mobile operators have implemented a reduction in site sharing costs in excess of 40% thus making it more commercially attractive to share sites rather than build; and
- The Environment Department has adopted a more focused approach to considering planning consents which provides it with a greater overview of all operators' demands.

In addition all sites are monitored to ensure they comply with the ICNIRP guidelines on emissions from such sites and a mast register is published annually with updated details on the location and type of sites currently in use in the Bailiwick.

The DG has in a separate paper (OUR 09/05) outlined his decision to remove the current restrictions on the type of mobile service that can be provided using the various spectrum frequencies currently designated for mobile use. This will allow both 2G and 3G services to be provided utilising 900MHz, 1800MHz and 2100MHz. One of the advantages of this is that, due to the characteristics of 900MHz spectrum, a greater level of coverage can be achieved from a particular base station site than would be the case utilising the other mobile frequencies. As a result, this measure should assist in restricting the need for the current operators (subject to confirmation of an allocation of 900MHz spectrum to Airtel) in requiring any significant increase in mobile sites than that currently deployed. While it will be for operators to determine in the first instance whether any further infrastructure is required (and this remains subject to the planning process), this measure should enable

maximum co-ordination between the three operators to further lessen the impact of mobile networks on the environment.

5. Application for Mobile Licence

Under the Telecommunications (Bailiwick of Guernsey) Law 2001, the DG is required to set out the process by which a licence will be granted. Section 3(1) of the Telecoms Law states that:

“The Director General shall publish -

(a) details of the procedures to be followed and the criteria to be applied in relation to applications for, and the grant of, a licence (which procedures may, without limitation, include requirements as to the submission of information and documents with an application);

(b) any changes made by him from time to time to such procedures, criteria and requirements.”

In addition Section 3 provides for the DG to be able to require an applicant to provide such additional information and documents as he may reasonably require for the purpose of determining an application for a licence and that an application for a licence shall be accompanied by the appropriate fee or levy prescribed by the Director General under section 6 of the Telecoms Law.

In the past, applications for mobile licences have been made through a competitive tender process and there has, as a consequence, been a need to specify in some detail the format that applications should take and the criteria against which applications for licences would be assessed. This ensured all potential applicants were able to submit bids that could be assessed and compared in a fair manner.

As the DG has indicated in section 4, he is proposing that the interests of the market and of consumers is best served at this time by ensuring that competition between existing operators is maximized. Therefore, subject to C&WG meeting the criteria established by the DG, he is proposing that C&WG should be invited to apply for a 3G licence which would also involve the award of 3G (2100MHz) spectrum. In keeping with previous competitions, the DG would be willing to consider an application for an allocation of 1800MHz subject to C&WG establishing a need for such spectrum.

For the purposes of considering an application from C&WG for a 3G licence the DG proposes that an application be made in writing requesting a 3G licence which provides confirmation that C&WG agrees to comply with the criteria set by the DG for the grant of such a licence. The DG proposes that the criteria to be applied in this case shall be:

- (a) C&WG agrees to surrender 2x5MHz of 900MHz spectrum prior to the granting of a 3G licence;
- (b) C&WG agrees to pay £250,000 on the date that a 3G licence is granted to C&WG; and

- (c) C&WG agrees to actively participate in a further review of 900MHz spectrum at a date to be determined in the future with the aim of rationalizing the spectrum held by it by a further 2x5MHz.

In the event that C&WG meets these proposed criteria, the DG would propose to enter discussions with the company on agreeing the terms of the licence. The DG would anticipate that licence conditions would be broadly similar to the 3G licenses held by existing 3G operators. The DG intends, subject to the consideration of comments on this proposal, to prepare a draft licence which will form the basis for negotiations should the proposals in this paper be adopted.

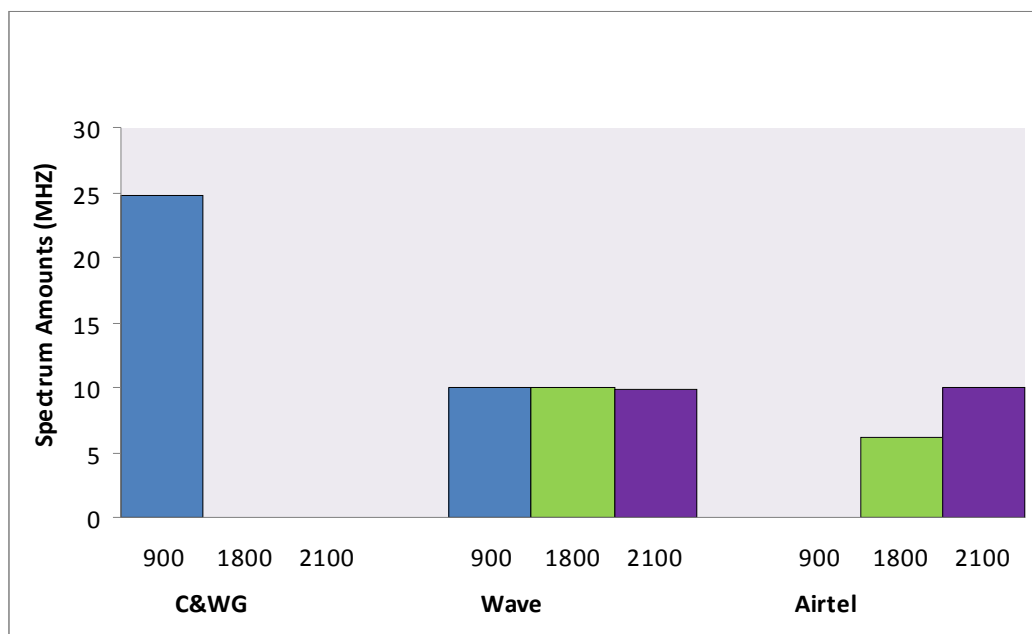
6. Re-allocation of 900MHz spectrum

Following the release by C&WG of 900MHz spectrum, the DG believes it is important that this spectrum is re-used in a timely and efficient manner. In previous mobile licensing decisions (i.e. Wave and Airtel) mobile spectrum in Guernsey has been allocated by Ofcom following the award of a mobile service licence by the OUR. Essentially Ofcom has held in reserve spectrum to be allocated to the successful applicant for a mobile licence. (C&WG obtained its spectrum following the acquisition of Guernsey Telecom and therefore this process did not apply to it).

Currently the DG must consider how best the 900MHz spectrum that will be released by C&WG should be used in Guernsey. Normally regulators would look to ensure that the value of spectrum is maximised and the favoured route currently adopted by regulators is through making spectrum available through an auction process. The rationale for this is that the successful bidder for such spectrum will want to maximise their return on their investment as quickly as possible. A fuller discussion on the merits of such an approach is set out in a previous OUR document 08/14, “Mobile Market Review: Consultation on Further Development of the Mobile Market”.

Currently the spectrum held by the three operators is as set out in Figure 1 below.

Figure 1: Current Spectrum Holdings

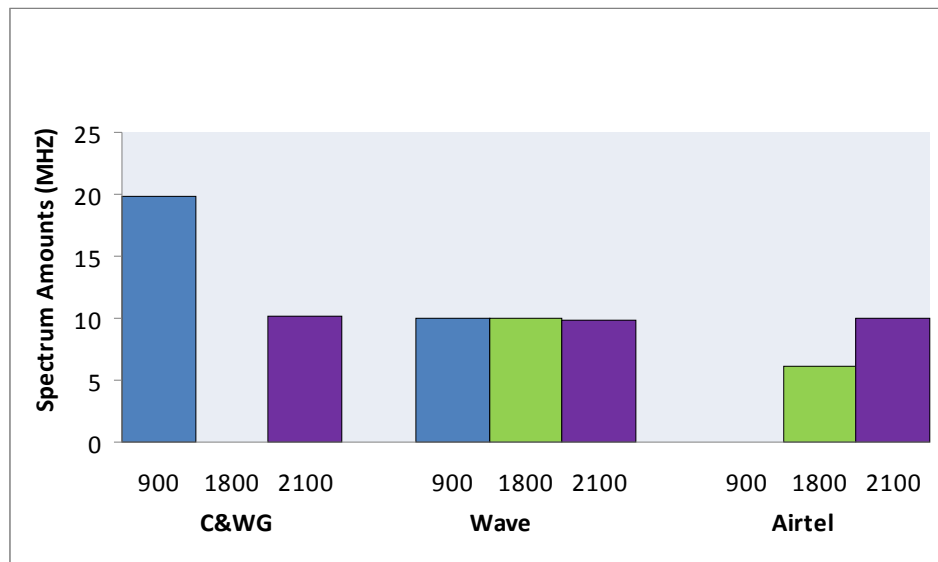


While the DG sees the merits in such an approach, he believes that given the current state of the market, and the proposal in section 5 above to set out the criteria under which

C&WG would be awarded a 3G mobile licence, there is a need to balance the spectrum held by the three existing operators in Guernsey. This process will commence with the surrender of some 900MHz spectrum by C&WG.

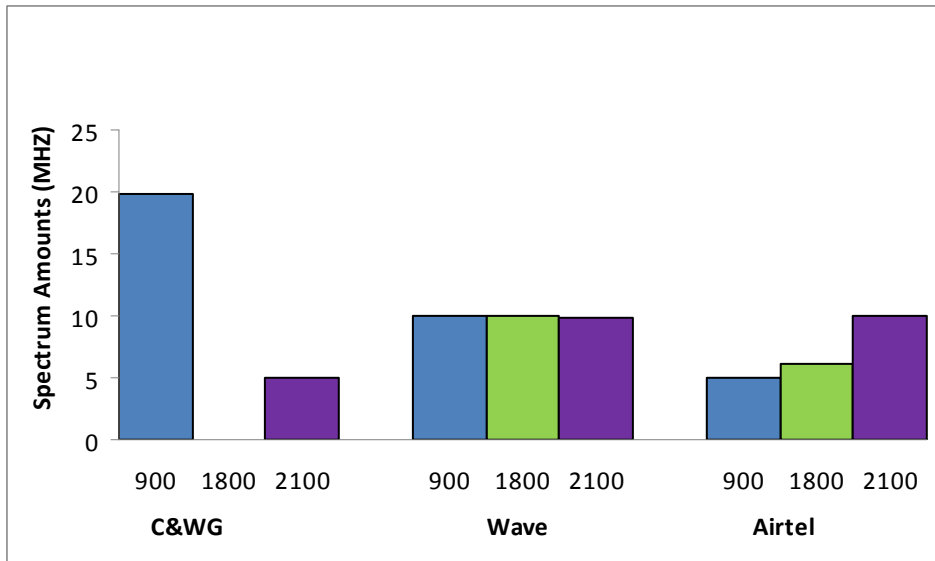
In assessing the spectrum packages held by the three operators, it is clear that there remains an imbalance, even after the rationalisation of the 900MHz spectrum held by C&WG. Figure 2 sets out the spectrum that would be held by the three operators if the DG’s proposals in section 4 are adopted (i.e. post surrender of 900MHz by C&WG and award of 3G licence/spectrum).

Figure 2: Spectrum Holdings Post proposed 3G spectrum award to C&WG



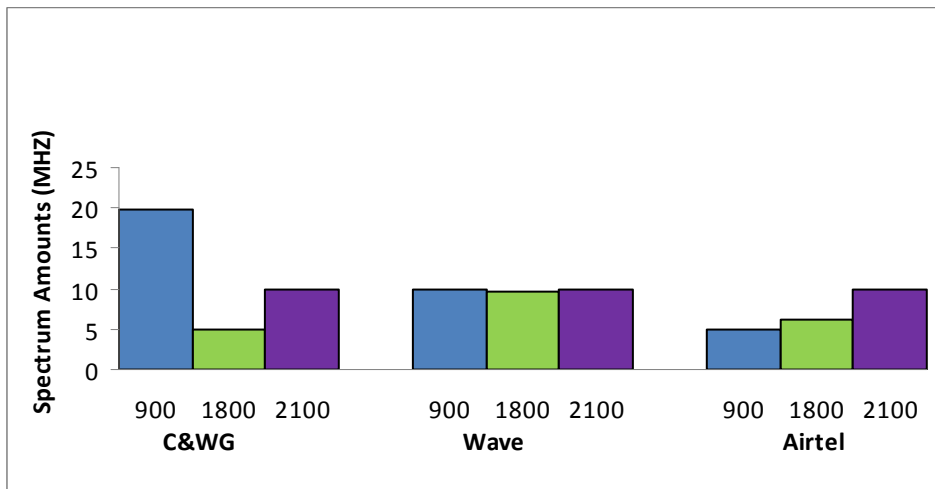
The DG believes that even following this rationalisation there will remain an imbalance between the existing operators. Both C&WG and Wave will hold 900MHz spectrum and both operators will each hold greater allocations of combined spectrum than Airtel. The DG proposes that in order to redress the current imbalance in the levels of spectrum held by the three operators, 2x5MHz of 900MHz spectrum released by C&WG should be re-allocated to Airtel. If adopted, the spectrum held by each operator will be as follows:

Figure 3: Spectrum Holdings post 3G Licensing & Re-allocation



In the event that C&WG makes a successful application for 1800MHz spectrum the final spectrum holding for all three operators at the end of this process would be as set out in Figure 4 below.

Figure 4: Spectrum Holdings post 3G Licensing, 1800MHz award & Re-allocation



While there remains an imbalance between operators, the DG believes the proposed re-allocation of 900MHz to Airtel would significantly improve the imbalance as it would allow all three operators to hold spectrum across all mobile frequency bands and assist in further increasing competition in the mobile market. The DG's rationale for proposing an allocation of spectrum to Airtel is that:

- a. Currently Airtel is the only operator holding no 900MHz spectrum which is generally considered the most advantageous 2G spectrum;
- b. 900MHz spectrum would contribute to lessening the demand for additional infrastructure given its superior coverage characteristics; and
- c. The allocation would, as can be seen from the graphs above, contribute to addressing the imbalance in the spectrum held by each of the three operators.

In the event that the DG's proposals are adopted he intends to co-ordinate, in association with Ofcom, the release of the 900Mhz spectrum and the subsequent award to Airtel. The DG has had discussions with Ofcom already on the process it would wish to see followed in the event that the proposal is adopted and he believes the process should be relatively straightforward for all parties concerned.

7. Next Steps

The DG has commenced this consultation and invites views from interested parties on the proposal for the award of a further 3G licence, with this licence being granted to C&WG subject to it meeting the criteria proposed. He further invites comments on the proposed re-balancing of the spectrum packages held by each of the mobile operators with an award of 900MHz spectrum to Airtel.

The DG is mindful that he has already had a number of discussions with operators on the issues addressed in this paper. He believes in the interests of efficiency and reducing the demands on operators that there may be merit in foregoing the draft decision phase of the consultation process. Subject to any views received on this issue, the DG would anticipate issuing a final decision in early July 2009. Any award of a licence or re-allocation of spectrum would follow this and be subject to further discussions with the operators concerned.

Once this process is complete, the DG intends to then further action the measures announced in OUR 09/05 which will see licence amendments made to all mobile operators licenses to enable mobile spectrum to be used for any mobile service. The DG anticipates that the formal licence amendment process will take place in September 2009.

The DG believes these measures are the most appropriate to take at this time in the context of the Guernsey mobile market. In the event that there is demand from an operator not currently licensed to provide mobile services in the Bailiwick, the DG will consider such interest once this process is complete. The DG is satisfied that there remains sufficient spectrum available to licence a fourth operator but he would intend to consult widely on the merits of further licensing given the various statutory duties he must take account of.

ENDS