



Office of Utility Regulation

Mobile Market Review

Final Decision

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1. Introduction

In July 2008, the Director General of the OUR, (“DG”) commenced a review of the mobile market to assess what further steps could be taken to promote further competition in the mobile market and to consider certain specific issues that had been highlighted by operators with the functioning of this market to-date.

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 near 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.

In November 2008, the DG published his draft decision (OUR 08/18) and invited further comments on his proposals. The consultation period finished in January 2009 and since then the DG has considered the comments received and had further discussions with the three mobile operators. This decision document reflects his further consideration of the issues raised and sets out a roadmap for increased competition in the mobile market.

Among the key issues consulted upon, and on which there was most discussion, was the issue of technology neutral licences and the reduction in the amount of 900MHz spectrum held by C&W Guernsey (“C&WG”) and re-allocation of that freed spectrum. 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. In addition, it was proposed that C&WG would be required to surrender 2 x 5MHz of 900MHz spectrum (currently reserved for 2G services).

This paper sets out the views of respondents and the DG’s consideration of those views. The DG would like to thank all respondents for their input to this review and for their continued engagement in helping finalise these matters. This document confirms the proposal to remove the restriction on what mobile services can be offered over the three mobile frequency bands of 900MHz, 1800MHz and 2100MHz. It confirms the rationalisation of 900MHz spectrum by C&WG and the potential for further rationalisation at a late date.

In a separate paper (OUR 09/06) being published in conjunction with this decision, the DG is consulting on the grant of a further 3G licence to C&WG and the criteria that would need to be met before such a licence is granted. In addition the DG is consulting on a proposal to grant the 900MHz spectrum released by C&WG to Airtel-Vodafone.

The DG will later this year consult formally on amending the terms of the licences of the three mobile operators to reflect this decision. In addition, in reflecting on the need to ensure an appropriate environment is created for on-going investment in mobile networks in the Bailiwick, the DG will also consult on removing the term limit from each of the mobile licences with a view to allowing all three operators to hold their licences in perpetuity.

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 draft decision paper from:

- Airtel-Vodafone (Airtel)
- C&W Guernsey (C&WG);

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.

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 Mobile Review Draft Decision

Two respondents commented on the issues raised in the mobile review draft decision. Responses were received from

- Airtel; and
- C&W Guernsey

4.1. MTRs

Both Airtel and C&WG supported the proposal to review MTRs separate to the wider mobile review. This work is currently progressing well and the DG acknowledges the co-operation from all three mobile operators to-date with this work.

4.2. Site Sharing/Environmental Concerns

Airtel and C&WG both noted the proposal not to pursue a wider fundamental review of mobile infrastructure at this time and that the DG intends to assess this issue further at a later date.

4.3. Site Sharing Charges

Airtel supported the need for a review of site sharing charges as in its view the current charges are excessive and anti-competitive. C&WG, while taking issue with the representation of the issue of site sharing charges, noted that discussions with the mobile operators on reducing charges was progressing at the time of the submission of its comments.

4.4. Strengthening Environmental requirements

Airtel noted its disappointment with the DG's proposal not to extend Airtel's environmental conditions to other operators. C&WG welcomed the DG's proposals and again highlighted its position as the operator designated as having a USO.

4.5. Removal of Price Notifications

Airtel agreed with the DG's proposal to retain the requirement for notification of price changes by C&WG at this time. C&WG, while noting the intention to review this matter in the context of a wider licence review, expressed its disappointment with the proposed decision to retain the requirement on it to notify. It continues to believe that such requirements lead to a lack of clarity for consumers and prevents the rapid response that markets expect.

4.6. Technology Neutral licences

The issue of the proposed change in the use of spectrum allocations held by the mobile operators and the proposed reduction in the amount of 900MHz spectrum held by C&WG raised, as in the consultation, the most comment.

Airtel believed the OUR's assessment of the pros and cons of technology neutral licencing was balanced and fair. It acknowledges that the general trend across Europe to move towards the adoption of technology neutral licences by regulatory authorities and Airtel agrees that such licences are beneficial in giving operators the flexibility and freedom to optimize their allocated spectrum using the most appropriate technologies for their specific circumstances.

While Airtel accepts that currently the demand for 3G mobile broadband products is focused within the Islands, it believes that as roaming charges decrease, the flexibility of 3G mobile broadband internet access whilst travelling will increase roaming usage outside of the Channel Islands. It acknowledges that the limitation on 900MHz 3G handset availability currently constrains the practical delivery of 3G services in the short-term. However, the clear coverage and reach advantages of the 900MHz spectrum will in its view result in this frequency being adopted as the preferred delivery spectrum for 3G in the medium-term and believes the handset issue will be addressed as demand increases. In its view, as network operators recognize and exploit the operational benefits of delivering 3G services over the 900MHz frequency, to maintain competition, it is critical that all operators have equal access to this spectrum.

Airtel supports the proposal that C&WG should be required to release 900MHz spectrum within the short-term and such an unconditional release should be directly linked to the potential award of 2100MHz 3G spectrum to the incumbent, i.e. the date for releasing and reallocating the 900MHz 2G spectrum is the same as that for the potential awarding of the 2100MHz 3G spectrum. Airtel does not accept that the incumbent should be compensated for releasing 900MHz 2G spectrum, since the value of such a release is potentially comparable to the possible award of the corresponding 2100MHz 3G spectrum.

Airtel further believes that, to safeguard its competitive position, it would seek a suitable allocation of the released 900MHz spectrum. GAL believes that its minimum requirements for 900MHz spectrum will be 5MHz bandwidth (5MHz uplink and 5MHz downlink) which it would utilize within the short-term to expand and enhance its service quality and coverage.

C&WG believed the draft decision failed to take proper account of the current allocations of spectrum, in particular the EGSM spectrum held by Wave Telecom. C&WG offered its own view on how spectrum might be re-allocated across all three existing operators. C&WG also stated that it believed any review of spectrum use should also consider Wave Telecom's use of EGSM spectrum. C&WG questioned why Wave's allocation of EGSM

spectrum had not also been included within the spectrum which should be considered for release.

C&WG agreed with Airtel that the issue of handset availability is likely to be a barrier to switching for consumers, which it believes supports its argument for C&WG to be awarded an allocation of 2100MHz spectrum. If the OUR proposals are adopted, Wave Telecom, in its view, will be best positioned having spectrum across all three frequency bands.

C&WG noted the current debate in the UK relating to the release of spectrum by certain mobile operators there and the current state of progress on this issue. It also noted its understanding that the requirements of the EU in relation to the implementation of the Radio Spectrum Committee Decision on 900 and 1800 does not apply to the Bailiwick of Guernsey. It believed the Draft Decision appears to disregard the value of the 900 spectrum including but not limited to the investment made by C&W (including as Guernsey Telecom) in the development of their network and services using the 900MHz spectrum and the costs that would be incurred in releasing any spectrum.

C&WG believes a similar process to that followed when allocating Wave Telecom its E-GSM spectrum should be followed on this occasion whereby in exchange for releasing 1800MHz spectrum Wave was allocated E-GSM spectrum (without further fees being incurred). C&WG believes that this earlier approach should be followed again in relation to it gaining access to 2100MHz.

4.7. Review of Mobile Spectrum

Airtel and C&WG both noted the proposal not to commence an audit of spectrum at this time. C&WG highlighted what it believes is a need for a clearer, more structured policy with regard to spectrum issues in the Bailiwick, given the on-going and future development in the availability and use of spectrum.

4.8. Number of Mobile Operators

Airtel continues to believe that it is for the market, rather than regulatory mandate to determine the number of mobile operators that can be sustained in Guernsey. C&WG continues to question whether the market in Guernsey can sustain more than three operators and highlights again the potential environmental issues that would likely arise in the event of a further operator entering the Guernsey market. It believes that any fourth operator should be an MVNO, utilising existing infrastructure and networks on a wholesale basis. C&WG would be willing to develop a MVNO solution to accommodate such a player but believes such an operator would require access to all three frequency bands.

5. DG's consideration of issues

5.1. MTRs

As noted in the draft decision, 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. Work is currently on-going in a separate workstream to review on a more structured basis the appropriate MTRs that should be applied in Guernsey. Any proposals from this review, which is currently assessing information provided by the three mobile operators, will be consulted upon separately in the near future.

5.2. Site Sharing/Environmental Concerns

As stated in the draft decision, the DG is not intending to take any further action at this time on this issue. He notes the progress that has been made on the commercial arrangements for site sharing, as discussed further below, and he believes this should assist in promoting greater co-operation. In the event that the DG revisits this issue, he would intend that all interested parties be consulted and involved.

5.3. Site Sharing Charges

The DG welcomes the reduction on site sharing fees agreed between the three mobile operators and believes this should ensure that commercial as well as environmental factors drive greater sharing of infrastructure in future. In light of the progress made by the operators the DG does not intend to take any further action on this issue.

5.4. Strengthening Environmental Requirements

The DG believes the intention not to make amendments to licence conditions in respect to environmental matters remains appropriate. The DG would note that as it is intended to review the entirety of the licence conditions for mobile operators later this year, any such review might revisit this issue should there be a pressing need for such action.

5.5. Removal of Price Notifications

As in the draft decision, the DG remains of the view that retaining a price notification requirement remains appropriate at this time. He will consider this issue further in more detail in the wider licence reviews later in the year and will include proposals on a 'sunset' clause for this condition in the mobile market.

5.6. Technology Neutral licences

This issue raised most comment from respondents. The variety of competing issues from all mobile operators has meant that further discussions have been had with all three operators since the conclusion of the period for comments to inform the DG's position.

At the outset the DG is aware that in facilitating greater competition in the mobile market through relaxing the use to which existing 'mobile' spectrum can be used, he is anxious to ensure that this should ensure greater competition in the long term and not the reverse. The DG must balance the desire for greater competition, the opportunity to maximise the use of spectrum for both more innovative and competitive mobile services and the opportunity that exists from using 900MHz spectrum to reduce the environmental impact of mobile networks with the potential imbalance that may be created in the nature and amount of spectrum held by any individual operator.

The DG had proposed two specific measures in the draft decision. First, removing the restriction on the nature of services (i.e. 2G or 3G mobile services) that could be provided using specific frequencies. Under this proposal, mobile operators would be able to use either what are commonly referred to as 2G frequencies (900MHz and 1800MHz) or 3G frequencies (2100MHz) to provide both 2G and 3G services. The second proposal related to the rationalisation of the 900MHz spectrum held by C&WG.

With regard to the first proposal, respondents generally favoured the proposal. The concerns that did exist related to the perceived competitive advantage C&WG might gain from having access to the vast majority of the 900MHz spectrum. Because of the specific characteristics of this particular frequency band, it is generally accepted to provide wider geographical coverage with a smaller number of mast sites compared to higher frequency bands. In addition it provides greater coverage indoors. Combined these advantages help reduce the overall investment required by a network operator, thereby reducing the cost to it of providing its services. In order to help address this concern the DG proposed that C&WG would be required to surrender 2x5MHz of 900MHz spectrum prior to the formal amendment of the licences of the three mobile operators.

While the purpose of the proposed amendment was to ensure greater competition across all mobile services, the current lack of handsets to enable consumers to access services on a network utilising 900MHz for 3G services reduces in the short term the ability to secure greater competition. C&WG maintains that to ensure true competition in the mobile market all three existing operators should have access to spectrum in all three mobile frequency bands. However both Wave Telecom and Airtel secured access to 3G spectrum following competitive processes and the payment of a licence fee. While both operators welcome further competition, they have expressed a view that they would not support such competition arising in a manner that was prejudicial to an even playing field. C&WG on the other hand believes that in releasing 900MHz spectrum without compensation sufficiently addresses these concerns. Its view is that the costs of clearing this spectrum along with the value of the spectrum released more than addressed the concerns of the OLOs.

The DG believes that the competing views of the three operators can be reconciled and sets out in a separate OUR document published concurrently with this decision his proposals to address the majority of the issues identified. The proposal includes setting out the criteria under which C&WG can apply for a 3G mobile service licence (and

linked award of 2100MHz spectrum), the requirement for the surrender of 2x5MHz of 900MHz spectrum (and the commitment to release a further 2x5MHz 900MHz spectrum if required) and the fee to be paid. In addition the DG sets out his proposal for the allocation of the released 900MHz to Airtel. Further he proposes to remove the term limit in each mobile operator's licence. Once these matters have been attended to the DG will then in turn formally amend the conditions in the mobile licences which restrict the use to which spectrum can be applied. The DG believes this package of measures best achieves his statutory duties with regard to the telecoms market at this time.

In summary, on the basis that the approach outlined above proceeds, by the end of the process all three mobile operators will be licensed to offer 2G and 3G services utilising 2G and 3G spectrum. Once this licensing round is complete, all three operators licenses will be amended to remove the restrictions on the use to which their spectrum allocation in the 900MHz, 1800MHz and 2100MHz bands can be used. Therefore the DG confirms his decision to amend all three mobile operators' licences to remove the restriction on use of spectrum. He will later this year initiate the formal process for amending a licence as required under the Telecommunications (Bailiwick of Guernsey) Law 2001.

5.7. Review of Mobile Spectrum

As discussed above the DG believes there remains scope to further enhance competition in the mobile market through the more efficient use of existing spectrum. However for now, the DG proposes to proceed with the consultation on a further competition in the 3G market through greater competition between existing operators. He will however continue to monitor spectrum usage and demand for services and assess whether this matter needs to be revisited at some future point.

5.8. Number of Mobile Operators

The DG notes the divergent views on this issue. In the draft decision the DG set out more widely his thinking on the inappropriateness of constraining the number of operators at this time. However in section 5.6 above, and in more detail in OUR 09/06 (published in conjunction with this paper) he sets out what he believes are the next steps that should be taken in deepening competition in the mobile market before any further assessment of the demand (or need) for widening competition. As was noted in the Draft Decision, there currently remains sufficient 3G spectrum available that would enable further competition through a new entrant.

6. Next Steps

The DG is grateful for the constructive engagement shown by all three mobile operators in this process. He has now initiated a consultation on the criteria to be applied in the granting of a further 3G mobile licence to C&WG and the re-distribution of the 900MHz spectrum to be released by C&WG (see OUR 09/06).

Once that process has concluded the DG will commence the formal licence amendment process as provided for in the Telecoms Law. The DG would hope to have concluded both processes by Autumn 2009.

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