



MOBILE MARKET REVIEW: DRAFT DECISION

RESPONSE OF CABLE AND WIRELESS GUERNSEY LIMITED

9th January 2009



1. Introduction

Cable and Wireless Guernsey Limited (C&W) welcome the opportunity to respond to the draft decision¹ to allow all licensed operators to hold one licence only for any mobile service, be that a 2G or a 3G service, and to amend the current licences to remove current restrictions.

C&W notes the requirement from the OUR that before any further progress can be made on this matter, that the OUR receive firm proposals and commitment from C&W, which proposals are themselves to be consulted on, as to the nature and timing of the release of 2 x 5MHz 'parcels' of 900 MHz spectrum. If those proposals are themselves to be consulted on, C&W questions how there can be expected to be any "commitment" from C&W to a timetable for the release of some 900 MHz spectrum. More fundamentally, we also note that in the OUR's original Market Review document (OUR 08/14) it was stated that "*any clawback of spectrum would be considered outside the liberalisation [technology neutral] being proposed here*"². However the Draft Decision now sets release of spectrum as a pre – requisite to liberalisation.

Together with the above there are some key issues that are either not addressed in the Draft Decision or require clarification, namely:

- The Draft Decision concentrates on requiring C&W to release 900 spectrum, but does not consider the 900 spectrum currently allocated to and used by Wave;
- The Draft Decision does not address the question of the value of the 900 spectrum which is to be released;
- The Draft Decision does not consider the costs which C&W will unavoidably incur in the process of any release of spectrum;
- the expected process and timeline for future competition / auction for 1800 and 2100 spectrum.

Whilst responding in more detail below, C&W confirms, as stated in our letter of 14 October 2008, that it is prepared to consider releasing the required spectrum and indeed attaches as Confidential Appendix 1 an outline plan for release of the spectrum.

However, before actioning any such plan, and in particular before incurring the associated costs and diversion of resource, C&W will need to have further discussions with the OUR to gain better understanding and agreement on the key issues referred to above. Whilst we note that the OUR and Ofcom have reached agreement that Guernsey can progress in respect of technology neutral licences at a faster pace than the UK, which agreement reflects the proportionate approach appropriate to the Guernsey telecommunications market, it is imperative that the wish to proceed at that faster pace does not mean that C&W is treated in a disproportionate or unfair manner, nor that it is forced into an uncompetitive position.

Although there is a need for further clarification and consideration we comment below on the specific paragraphs of the Draft Decision.

¹ Document No: OUR 08/18 November 2008

² Paragraph 6.1

2. Comments in Response to Specific Paragraphs of the Draft Decision

2.1 Stewart Report

C&W agree with the OUR that all reasonable steps are being taken to comply with the recommendations of the Stewart Report as they are appropriate and applicable to the Bailiwick, and looks forward to continue to work with the OUR, the States of Guernsey and the other licensed operators on these issues and considerations.

2.2 Mobile Termination Rates (MTRs)

As noted in the draft decision, the OUR have set out a separate time scale and process for the review of MTRs and has requested initial information from C&W to be provided by 2 February 2009.

C&W supports the proposal to review MTRs as a separate matter from the amendment of the existing licences.

Whilst C&W will respond specifically as and when required for that review, it would again suggest that such review considers and takes account of what happens in the UK (and indeed the wider EU) market before reaching its conclusions.

The proposed amendment of licences and connected matters will require further investment in the mobile network to enable provision of the various services. Those costs should be factored in to the MTR, otherwise there could be under-recovery of costs. As previously stated, the need to take account of 3G costs in determining the MTR is consistent with the position taken in the UK and many other EU Member Countries.

C&W reserves its detailed comments on the appropriate level of MTRs for the forthcoming, and separate, review of MTRs. For the purposes of this review, however, it believes it is relevant to note that the charging structure criticised by Wave in its response i.e. C&W on-island transit plus C&W MTR, was designed by the OUR in 2002³ and introduced by C&W on direction from the OUR.

2.3 Site sharing / environmental concerns

Whilst we note that the DG does not propose to pursue this proposal further at this time, we also note that he intends to engage with the Environment Department on what future steps might be appropriate. It is wholly appropriate and proportionate that the licensed operators are also involved in any such discussions and deliberations at the earliest stage. As the DG is aware the operators have already been engaged with the Environment Department in respect of a Code of Practice consistent with and based upon the UK Code of Practice and that existing work and relationship must be built upon. Future progress on that Code of Practice is now dependent on the Environment Department and C&W look forward to the next steps.

³ GT Interconnect Products & Pricing Structure – OUR Guidelines for GT. 18 June 2002.

This matter is also of relevance and importance to the question of any further licensed operator in the Bailiwick on which we comment specifically below at paragraph 2.10.

2.4 Site sharing charges

Whilst C&W would take issue with a number of the statements and representations on this issue in the Draft Decision and in particular any suggestion that C&W tried in some way to take advantage of Airtel and the licence and planning conditions they agreed to and accepted at the time of their application, as already stated to the OUR it is willing to review and renegotiate such charges.

Indeed C&W has already opened discussions with the other operators, and in particular Airtel (Wave is engaged but as at the date of this response, negotiations with Wave are less advanced, perhaps reflecting the fact that the current rates, being pan – island, are in fact acceptable to them) and is confident, provided the other operators continue to engage and discuss these charges on a sensible and commercial basis, that new agreed charges will be in effect from 1 April 2009. However, it would be inappropriate of the OUR to commence a formal review if the arbitrary date of 31 January 2009 is not met (the Draft Decision actually states 30 January, although the accompanying press release states 31 January). As said above C&W is confident that with the support of the other operators at the least real progress will be evident by 31 January. Presumably if Airtel and C&W are able to agree amended rates, with discussions ongoing with Wave, this would be acceptable to the OUR.

2.5 Strengthening environmental requirements

C&W notes and supports the comments of the OUR in respect of both the environmental commitments made by Airtel in its licence application and in respect of the telephone directories question, although again as noted the position of C&W in regard to the latter is different due to the USO requirement.

2.6 Removal of price notifications

C&W was not surprised to read that neither Wave nor Airtel supported the removal of the 21 day notification obligation, given the real and irrefutable competitive advantage the retention of such notification gives them. In addition it is still the case that the notification requirement leads to lack of clarity and confusion to the consumer, and prevents rapid response to market pressures and demands. This is why many regulators are now either minimising the length of any notification periods, or removing them entirely.⁴

C&W notes however that the OUR will be considering this issue as part of a licence text review in 2009 and is considering a sunset clause for this condition. We welcome the recognition that such an obligation is not appropriate to a liberalised and competitive market and look forward to specifically commenting on and considering that point, and its “shelf life” in due course.

⁴ In Barbados, for example, the Fair Trading Commission has recently reduced the public notification period for any price decreases of regulated services supplied by C&W to just one day.

2.7 Technology neutral licences

The Draft Decision and the debate as to whether or not C&W enjoys a competitive advantage by virtue of the GSM spectrum which has been allocated to C&W, and is currently fully utilised by C&W disregards the existing allocation to Wave of EGSM 900 spectrum⁵ and the significant competitive advantage it is in. We set out at Table 1 below a pictorial description of the current position and in Table 2 what should be the preferred outcome for the OUR, and the Guernsey consumers.

Table 1:

		C&W	Wave	Airtel
EGSM 900	880.1 - 889.9		Red	
GSM 900	890.1 - 914.9	Green		
GSM 1800			Red	Blue
3G	2100		Red	Blue

Table 2

		C&W	Wave	Airtel
EGSM 900	880.1 - 889.9		Red	Blue
GSM 900	890.1 - 914.9	Green		Blue
GSM 1800			Red	Blue
3G	2100	Green	Red	Blue

Note: In Table 2 the 900 spectrum "allocated" to Airtel could come from either C&W, or Wave, or a combination.

The view expressed by Wave that there should be a thorough spectrum review to "allow an informed view as to what bands of [900 MHz] spectrum.....would be of best use to the other mobile operators"⁶ should properly refer to the "spectrum currently used by the licensed operators" to include both the Wave EGSM spectrum and the 1800 spectrum. We note that there does not appear to be any suggestion that Wave should release any of the EGSM 900 spectrum. In the OUR's original Market Review document (OUR 08/14) there was set out at paragraph 6.1 the spectrum allocations in Guernsey (as per Table 1 above) showing the 900 spectrum allocated to Wave, yet that allocation was not referred to or considered in the Draft Decision. In order to ensure efficient use of spectrum⁷, the OUR must also consider release of EGSM spectrum by Wave. The report of the

⁵ As evidenced by information available on the Ofcom website including the table at <http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/broadband/cellular/pct/#2>.

⁶ Paragraph 4.8, page 16

⁷ Paragraph 5.7 of the OUR's Mobile Market Review document 08/14 dated July 2008 states "it is important that [spectrum] is used efficiently".

Consultants to the OUR states that consideration should be given to use of both 900 (without differentiation between PGSM and EGSM) and 1800 MHz bands for efficient provision of 3G services.

The arguments advanced by Airtel in respect of potential barriers to switching by the necessity of specific handsets capable of handling a frequency band, are of course the exact arguments put forward by C&W in support of the need for it to be allocated 2100 spectrum.

In the event that technology neutral licences are granted to all operators based on the existing spectrum allocations, the OUR will have created a marketplace in which one operator, Wave Telecom, is licensed by the OUR and Ofcom to provide 2G and 3G services over all currently available and utilised spectrum, whilst the other licensed operators are unable to do so.

The suggestion that a company enjoys a competitive advantage by virtue of it having been allocated and is now utilising the 900 spectrum is also the subject of significant consideration and review in the United Kingdom, where a similar approach to that of the OUR has been put forward by Ofcom and rigorously challenged by Vodafone⁸, although the requirements of the EC on the UK for the implementation of the Radio Spectrum Committee Decision on 900 and 1800 do not we understand apply to the Bailiwick of Guernsey.

We note the various paragraphs in the Draft Decision in relation to the question of any fee for allocation of spectrum to C&W, which position would presumably also apply in the event of either or both of Wave and Airtel applying for spectrum and specifically Airtel applying for 900 spectrum, whether released by C&W, or released by Wave. We have previously commented in some detail on our understanding of the provisions in relation to competitions which we continue to support.

As stated above 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 that spectrum, which is considerably in excess of any licence application fee;
- The costs that would be incurred in releasing any spectrum. We include in Confidential Appendix 2 an initial assessment of the potential level of such costs;
- The mechanism and arrangements under which Wave was able to be allocated 900, 1800 and 2100 spectrum and in particular the EGSM spectrum, for which we understand no application or telecommunications licence fee (above the fee already paid by Wave) was paid and indeed there was a 'swap'. It would appear to us that that arrangement in particular is a precedent established by the OUR allowing the OUR to allocate 2100 spectrum in exchange for the release of 900. We note that when Wave obtained their EGSM 900 spectrum in November 2005 by way of a swap for 1800 spectrum this was to "*ensure that there continues to be efficient use of spectrum by licensed operators*"⁹. As it would appear that that is also the purpose of requiring C&W to release 900 spectrum,

⁸ Response of Vodafone to Ofcom document "Application of spectrum liberalisation and trading to the mobile sector..

⁹ OUR document 05/25 dated November 2005

we would question why the same process and procedure does not apply.

2.8 Review of mobile spectrum

We note that the OUR will not be proceeding with this initiative at this point. However we also note that spectrum is under consideration in a number of ways, including the OUR's own information notice and request for expressions of interest in 2.6GHz spectrum, and the States of Guernsey's consideration of the potential impact of the "digital dividend". It is important that the OUR takes a lead in considering and ensuring a proportionate and Bailiwick appropriate outcome for spectrum, whilst taking account of the UK, Jersey and French implications.

There must therefore be a structured and comprehensive spectrum policy which is both consistent and transparent to all, whether as to strategy, cost or otherwise. Such policy should clearly state the responsibilities of Ofcom and the OUR, and any other relevant authorities regarding spectrum ownership and management.

2.9 Number of mobile operators

Whilst C&W continues to question whether there is in fact room in the Guernsey market for a further operator, on which it has commented in detail in a number of previous responses and documents, it accepts that this is an issue for the States of Guernsey, the OUR and any prospective applicant.

It is however clear that any further expansion of the market must take account of specific Guernsey issues including the environmental and planning matters and concerns referred to elsewhere in the Draft Decision. To that end C&W would recommend to the OUR that it stipulates that any 4th operator (which is recognised as the maximum) must be an MVNO utilising existing infrastructure and networks on a wholesale basis. This would still likely require further mast sharing and planning consents for new antennae and dishes but would significantly minimise the environmental impact. C&W is willing to develop a wholesale MVNO solution to accommodate such a fourth operator, although it is likely that an MVNO would want access to all frequency bands. To ensure that any such MVNO has real choice of partner, there will of course need to be other licenced operators with the relevant frequency allocation.

3. Summary

C&W is prepared to consider the release of the requested 900 spectrum , and indeed has already undertaken considerable detailed investigation and appraisal, as evidenced by its Confidential Appendices 1 and 2, however any further progress on this is subject to further discussion and agreement with the OUR as a minimum on:

- the value of that spectrum and how this will be recognised;
- Compensation for C&W for the costs of releasing spectrum; and
- Further clarity of the 2100 GHz spectrum allocation/auction process

4. Next Steps

The next step in our opinion is for C&W and the OUR to meet as a matter of urgency to consider and discuss these key issues to enable the questions of liberalisation and spectrum allocation to progress, to ensure real choice and competition for customers.

