Pan-Channel Island Consultation on Telecoms Licence Fees

Consultation Document

Channel Islands Competition and Regulatory Authorities

Document No: CICRA 13/33

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1. Introduction

Licence fees are charged to licence holders to meet the costs of regulating the telecoms industry in the Channel Islands.

This consultation paper proposes a revised mechanism for calculating and collecting licence fees, to be applied to Licensees in both the Bailiwick of Guernsey and Jersey. It outlines proposals to set fees based on a percentage of the Licensee's referable turnover[1].

Previously the Jersey Competition and Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) have implemented separate arrangements for the calculation and collection of licence fees. These arrangements were established at the inception of telecoms regulation in the Channel Islands and with the development of the markets they now warrant review. Central to these proposals is the desire to align, wherever possible, the licence fees mechanisms in the two jurisdictions.

CICRA (the Channel Islands Competition and Regulatory Authorities) comprises the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA), and all references in this consultation document to CICRA should therefore be read as references to each of JCRA and GCRA unless the context requires otherwise.

This consultation paper does not seek to address the issue of aligning telecoms licence application fees. This will be the subject of a further consultation once CICRA's forthcoming review of telecoms licencing is underway.

[1] *For the definition of Referable Turnover see page x*

2. Structure of the Consultation

The consultation document is structured as follows:

Section 3:	This section references the legal bases for CICRA's role (with the JCRA and GCRA having their own separate legal basis in each jurisdiction) and the relevant conditions contained in existing licences.
Section 4:	Sets out the current licence fee arrangements in Jersey
Section 5:	Sets out the current licence fee arrangements in Guernsey
Section 6:	The proposed pan-Channel Island licence fee arrangements are explained
Section 7	This section explains the proposed pan-Channel Island approach to dealing with excesses or shortfalls in licence fees.

Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to the following addresses:

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All comments should be clearly marked "*Telecoms Licence Fee Consultation*" and should arrive before Wednesday 21 August 2013.

In line with CICRA's consultation policy, it is intended to make responses to the consultation available on the CICRA website. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential.

3. Legislative and Licensing Background

The legislative and licensing background in Guernsey and Jersey respectively relevant to the setting and imposition of licence fees are set out below. Any decision resulting from this consultation will be based on relevant laws and duties of CICRA.

Legislative and Licensing background in Guernsey

Legislative background

The legislative bases for this consultation in Guernsey are provided by The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (the Regulation of Utilities Law) and The Telecommunications (Bailiwick of Guernsey) Law, 2001 (the Telecoms Guernsey Law).

The duties of CICRA in respect of the telecoms sector in Guernsey are defined in Section 2 of the Regulation of Utilities Law. In addition, there is scope for the States of Guernsey to give CICRA directions.

Section 4(d) of the Regulation of Utilities Law provides that a function of the Authority shall be:

'[…] to determine and to prescribe the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties in the event of default in the due payment of fees or levies.'

Section 6 of the Telecoms Guernsey Law provides:

(1) The Authority shall, […] determine, prescribe and publish fees and levies payable on an application for, and on the grant and renewal of, and over the term of, a licence and the interest and penalties payable in the event if default in the due payment of fees or levies.
(2) The fees, levies, interest and penalties determined and prescribed by the Authority under subsection (1) shall, without prejudice to any other remedy in respect of any default in payment, be recoverable as a civil debt to the Authority.

Licensing background

Licences issued by the CICRA in Guernsey include the following condition:

3 Licence fee

3.1 The Licensee shall pay the Licence Fee in the manner directed by the Director General[2].

3.2 Without prejudice to any other remedies of the Director General under the Licence or the Laws, if the Licensee fails to pay any amount due to the Director General under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published base rates of the Bank of England.

Legislative and Licensing background in Jersey

The legislative bases for this consultation in Jersey are provided by the Competition Regulatory Authority (Jersey) Law 2001 (the CRA Law) and the Telecommunications (Jersey) Law 2002 (the Telecoms Jersey Law).

The duties of CICRA in respect of the telecoms sector in Jersey are defined in Article 7 of the Telecommunications (Jersey) Law 2002. In addition, there is scope for the States of Jersey to give CICRA directions.

Article 12 of the CRA Law provides:

'The Authority may charge, retain, and apply in the performance of its functions –

(a) Fees and charges of such amounts, paid by such persons, and paid in such manner, as may be specified by or under this or any enactment.'

Article 17 of the Telecoms Jersey Law provides:

(1) Any payment, or fee, required under this Law to be paid to the Authority in respect of a licence (including any application fee) may be fixed from time to time at such amount as is necessary to enable the Authority to recover its costs of establishment, its short-term costs, and its long-term costs (whether those costs are actual or projected or direct or apportioned) so far as the costs are referable to the performance of the functions of the Authority under this Law.

(2) Such a fee may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on a basis of some other formula relating to a licensees or member of a class of licensees, or on any other basis.

[2] *In June 2012, the Director General of Utility Regulation was replaced by the GCRA. All references to the Director General should now be taken to be the GCRA.*

Licensing background

Licences issued by the CICRA in Jersey include the following clause

3 Licence Fee

3.1 The Licensee shall pay the Licence Fee in the manner directed by the JCRA.

3.2 Without prejudice to any other remedies of the JCRA under this Licence or the Laws, if the Licensee fails to pay any amount due to the JCRA under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four (4) percentage points above the published base rate of the Bank of England.

4. Current Licence Fee Arrangements in Guernsey and Jersey

The current licence fee regime in Jersey is set out in 'JCRA Response to Consultation on Telecommunication Licence Fees 2002/2003,' published 3 September 2002, which is available from CICRA's website: www.cicra.je.

The key aspects of the current arrangements in Jersey can be summarised as follows:

- Class II and Class III licence fees are set and charged on an annual basis in line with the JCRA's financial reporting year which runs January to December
- Class I licence fees are changed annually based on the date of licence issue
- Payment frequency varies and is either monthly or quarterly for Class II and Class III licences and annually for Class I licences
- The amount payable is calculated as a percentage of licensable turnover based on prior year actual figures for Class III licences and current year forecasts (reconciled once actual information is available) for Class II holders. Class I licence holders pay £1,000 per annum

The current licence fee regime in Guernsey is set out in documents OUR 02/38 and OUR 02/39R both of which are available from CICRA's website: www.cicra.gg.

The key aspects of the current arrangements in Guernsey can be summarised as follows:

- Licence fees are set and charged on an annual basis in line with the GCRA's financial reporting year which runs January to December
- Payment frequency varies and is either quarterly or annually
- The amount payable is calculated as a percentage of relevant turnover based on the Licensee's relevant turnover in the Licensee's accounts for the financial year which ends at any time during the year preceding the licence fee year. Licensees whose relevant turnover is less than £150k for the year pay a flat £500 per annum.

5. Licence Fee Proposals

This section explains the proposed pan-Channel Island licence fee arrangements.

Fundamental principles

CICRA proposes two fundamental principles that should apply to any mechanism for imposition of telecoms licence fees:

1. Licence fees will be payable by all those granted licences in accordance with Part I of the Telecoms Guernsey Law and Parts 2 and 5 of the Telecoms Jersey Law.
2. The Licence fee will be calculated with regard to CICRA's financial year which runs from 1 January to 31 December.

Question 1- Do respondents agree with these two fundamental principles? If not what amendments do they propose and why?

Mechanism for setting fees

It is essential to have some means of apportioning costs of regulating the telecoms market across difference types, categories and sizes of licensees in a fair and proportional manner, without developing a complex and potentially burdensome differentiated licence regime. In common with both Jersey and Guernsey, this issue has been addressed in many other jurisdictions by setting on-going licence fees as a percentage of the turnover of the Licensees. The reason for this is that the national regulatory authority's expenditure in regulating each Licensee has generally been shown to be broadly in line with Licensee's share of communications turnover. Thus this mechanism spreads the costs of running the Regulator's office across all licensees in proportion to their activities in the market based on a clear and objective measure – turnover.

CICRA considers that this continues to be a reasonable and objective mechanism for apportioning the costs of regulation across all players in the markets and proposes to continue with the current mechanism of setting on-going fees based on a percentage of turnover of telecoms licensees.

Question 2 - Do respondents agree that a turnover percentage is an equitable and objective means of setting fees? If not, what alternative do you suggest and why?

Referable Turnover

For some Licensees, turnover derived from telecoms services is a significant proportion of the Licensee's total turnover. In other cases telecoms services account for only a small proportion of their overall business. Setting fees based on Licensee's total turnover is therefore inappropriate.

CICRA proposes that licence fees are calculated based on Referable Turnover, with Referable Turnover taken to mean the gross revenue (exclusive of GST[3]) paid to the Licensees in respect of all telecommunications services for which a telecoms licence is required. It should include revenue generated from the Licensee's operations in either Jersey or Guernsey (separate submissions must be made for each licence held). In all cases the starting point for calculating referable turnover will be the turnover figure stated in the Licensee's financial statements.

In calculating Referable Turnover for submission, CICRA proposes that licensees provide a reconciliation between total turnover as shown in their financial statements and Referable Turnover, giving descriptions of each adjustment to provide a level of detail adequate to understand the nature of the turnover being excluded. Deductions from turnover will be assessed on a case by case basis and in the event of a failure to justify the exclusion of certain elements of turnover to the satisfaction of CICRA, CICRA would reserve the right to include certain elements of turnover and use total turnover as set out in the Licensee's financial statements for calculation of the licence fee.

Examples of revenue that Licensees should deduct from total revenue could include revenue generated from non-telecommunications related business, or generated from services carried out <u>in their entirety</u> outside of the island's legal jurisdiction for purposes of the relevant regulatory laws when calculating the Referable Turnover.

Turnover generated by a licensee from the supply to other licensees of telecommunications services is Referable Turnover and is not deductible. In particular, revenue generated by Licensees for telecoms services supplied to subsidiaries or other connected businesses of the Licensee (whether or not the other party is also a licensee) is not deductible from Referable Turnover. For the avoidance of doubt inter-island sales should be included.

CICRA proposes that Licensees would be required to provide a set of financial statements together with a certified statement of referable turnover signed by two directors of the licensed entity in the format shown in Appendix <enter number>.

Question 3 - Do respondents agree with the proposal for basing licence fees on Referable Turnover? If not what alternative base should be used, and why?

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[3] *GST currently only applies in Jersey*

Question 4 - Respondents are invited to indicate which items they would anticipate deducting from total turnover to calculate referable turnover, and why?

Question 5- Do respondents agree with the proposal that Licensees should submit a certified statement of referable turnover together with a set of financial statements? If not what alternative notification process do you propose, and why?

What year end should Licensees use to calculate referable turnover?

There is a balance to be struck between having as late a cut off date as possible and the ability of Licensees to then have the information available to calculate referable turnover.

CICRA proposes to base calculations on the referable turnover of the Licensee in the financial year of the Licensee that ends at any time up to 30 June during the year preceding the licence fee year. For example, a Licensee with a 31 August year end would supply information for the year ending 31 August 2012 for use to calculate 2014 licence fees.

Question 6 - Do respondents agree with this proposal? If not what other method do you propose, and why?

What happens if a Licensee's referable turnover is not available by 31 October?

As the licence fee is based on the Licensee's referable turnover in the Licensees' accounts for the financial year which ends at any time up to 30 June during the year preceding the licence fee year it is possible that the appropriate referable turnover figure may not be available for 31 October.

In cases where referable turnover is not available by 31 October CICRA proposes to estimate the licence fee payable based on the most recent certified submission made. However the Licensee is required to remedy the situation as soon as practicable and in any event before 1 January of the licence fee year.

In cases where a Licensee pays fees based on an estimate of the amount due, a reconciliation between the estimate and actual amount due will be carried out as soon as a certified statement is supplied to CICRA.

Question 7- Do respondents agree with this proposal? If not what other method do you propose, and why?

What if a Licensee's most recent financial year is not 12 months?

In certain circumstances, particularly when the ownership of a Licensee changes, its financial year-end may also change, resulting in a financial year that is either longer or shorter than 12 months. In such cases, CICRA proposes to use a pro-rata estimate of the most recent 12 months referable turnover for calculating the licence fee due based on the most recently available information.

Question 8 - Do respondents agree with the proposal to use pro-rata estimates in cases where Licensee's accounting periods are not 12 months? If not, what other mechanism do you propose and why?

Procedures for payment of licence fees

The following procedures are proposed for collection of licence fees:

Licensees paying the minimum proposed licence fee will be invoiced in December of the year preceding the licence fee year e.g. invoices for 2014 would be issued in December 2013, for payment by 1 January 2014.

[Transitional arrangements would apply for Jersey Class I Licensees who currently pay on annual basis based on the date on which their licence was granted. For licence fees already paid for a period into 2014 a pro-rata credit would be issued in conjunction with the licence fee invoice for 2014. For licence fees yet to be paid, a pro-rata invoice would be issued for the period to 31 December 2013.]

All Licensees will receive notification of the licence fee payable for the licence fee year in December of the year preceding the licence fee year. For example, notifications for 2014 would be issued in December 2013. All Licensees paying on the basis of a percentage of referable turnover would be required to set up standing orders to pay the amount due in monthly instalments on the first day of each month during the licence fee year. CICRA will supply bank details directly to each Licensee.

All Licensees are responsible for ensuring that they make payments on or before the date on which they fall due.

Question 9 - Do respondents agree with the proposal for the payment of licence fees? If not, what alternative procedures do you propose and why?

Penalties

The requirement to pay licence fees is included in the licences of telecoms licensees. Therefore a failure to pay all or part of the licence fees due will constitute a breach of licence. There are various remedies available to CICRA where there is a breach of licence and without prejudice to those remedies, or any other remedies under the Licence or the Laws, if the Licensee fails to pay any amount by the due date, the Licence Conditions include a requirement that the unpaid amount will accrue interest daily from the due date to the date of payment calculated at a rate as specified in the licence.

Level of fees

Irrespective of the mechanism used to spread the cost of regulating the telecoms sector across all licensees, the total income that must be collected is directly related to CICRA's costs incurred in regulating the sector.

CICRA proposes to continue to set the licence fees for telecoms licensees as a percentage of each Licensee's referable turnover. Whilst the percentage may vary each year, depending on CICRA anticipated costs, the percentage would be applied consistently to all Licensees.

In general, it would appear reasonable that any all Licensees including new entrants to the market should also pay licence fees to fund the cost of running CICRA. However CICRA acknowledges that some Licensees may have very low turnover and a fee based on a percentage of turnover may not be appropriate.

In order to deal with these situations CICRA proposes that in situations where, having applied the percentage to a Licensee's turnover, the resultant annual licence fee would be less than £500, then the minimum licence fee of £500 per annum would be chargeable.

Question 10 - Do respondents agree that the same percentage should be applied to the turnover of all Licensees? If not, what alternative do you suggest and why?

Question 11 - Do respondents agree that a minimum annual licence fee should be payable for all telecoms Licensees? If not, what alternative do you suggest and why?

6. Rebate of excess / collection of shortfall in licence fees

Rebate of excess licence fees

In the event that CICRA collects licence fees that are greater than the amount needed to carry out the relevant functions assigned by Law, CICRA will refund the excess to Licensees in the same proportion as originally paid by Licensees in the given year.

Question 12 - Do respondents agree with this approach? If not, what alternative do you suggest and why?

Collection of shortfall licence fees

In the event of any shortfall in licence fees, CICRA proposes making up the shortfall by:

- Imposing an additional fee on Licensees within the calendar year in which the shortfall arises; and/or
- Obtaining short term funding and increasing licence fees in the following year, with Licensees bearing the cost of the short term funding in addition to the increased licence fees; and/or
- Seek loans or grants from the States of Guernsey in accordance with section 10 of the Regulation of Utilities Law or from the States of Jersey in accordance with section 13(2) of the CRA Law

Question 13- Do respondents agree with these proposals? If not, what alternative do you suggest and why?

Appendix 1 – Sample Certified Statement of Referable Turnover

Licensee Name

Certified Statement of Referable Turnover for the year ending <enter date>

Turnover per Financial Statements	£x
Deduction 1	(£x)
Deduction 2	(£x)
Deduction 3	(£x)
Referable Turnover	£x

Explanation of Deductions

Deduction 1	Nature and explanation for the deduction
Deduction 2	Nature and explanation for the deduction
Deduction 3	Nature and explanation for the deduction

Director's Declaration

This statement is to certify the Referable Turnover of <enter licensee name> for the purposes of calculating telecoms licence fees for CICRA for the year ending 31 December <enter year>

In our opinion the Referable Turnover of <enter licensee name> amounts to <enter amount>, has been properly extracted from the books and records of the licensee (including the financial statements), and complies with the guidance issued by CICRA.

We enclose a copy of the financial statements.

Signed Director 1
Name
Date

Signed Director 2
Name
Date