



Clear Mobitel (Jersey) Limited
Clear Mobitel (Guernsey) Limited

Pan-Channel Island Second Consultation on
award of 800 MHz and 2.6 GHz Spectrum
(CICRA document: 13/54)

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For the avoidance of doubt, this document may be published in its entirety.

Introduction.

This current consultation is the latest in a series of consultations since 2009 regarding allocation of spectrum for LTE in the islands. Clear Mobitel ('Clear') is pleased to respond to this consultation and is happy for this response to be published in full.

Responses to Consultation.

Q1: Views are sought on whether the objectives as set out remain appropriate for informing the award process for LTE spectrum?

Clear agrees that consumer benefit is paramount in telecommunications services in the Channel Islands and is also of the opinion that this is best served through a functioning open market offering competitive services. Clear would accept that it is beneficial to coordinate spectrum between the islands but this should not be the prime concern if consumer welfare were to be in some way harmed if this goal could not be reasonably achieved. Clear would accept uncoordinated allocations if this were an option to enable earlier competitive services on either island.

Clear also agrees that early competition would be in the best interest of consumers and would point out that any delay and uncertainty in the allocation process will negatively impact on early, significant investment in infrastructure.

Q2: Views are sought on whether the proposed two-stage award approach meets CICRA's objectives as set out?

and

Q3: Views are sought on whether the amount and mix of spectrum in each lot is consistent with the purposes of making these award?

Clear welcomes the islands' States' declaration that it is unreasonable to divert assets in the form of government fund raising as has been the practice elsewhere. Clear agrees that the jurisdiction is too small for such exercises and agrees that investment is better placed in providing benefit to end users. Nevertheless, Clear acknowledges that in Guernsey there will be a States levy on any spectrum used for the provision of wireless services. Clear understands that an auction process would be prohibitively expensive in the islands because of the legal arrangements between the islands in relation to the Communications Act 2003 and the Wireless Telegraphy Act 2006, which would require Ofcom to carry out such a process.

Clear also supports the view that releasing spectrum suitable for the provision of LTE services will enable competition to be developed in the broadband sector which is currently dominated by the incumbents on both islands by virtue of their monopoly on fixed lines.

Clear notes that in the absence of an auction that CICRA proposes to run a comparative process or '*beauty parade*' in order to inform its decisions. Such a beauty parade, as detailed later in this consultation, relies on operators providing a comprehensive commercial plan to justify their claim on spectrum. Clear does not, however, see the reason for a two-stage process for this distribution. In its view a single stage process would be more equitable since it would rely on a single set of standards that would need to be met by all interested parties. The proposed methodology (set out later in the consultation and commented upon below) seems to be biased in its approach by allocating asymmetrically packages under the same process. Clear comments below on its views on the proposed bundles. Clear would prefer to see a clearly defined single stage process.

Currently there is significant imbalance of spectrum allocations across both islands and while Clear agrees that LTE can be deployed without addressing this problem first, it is of significant concern that these valuable natural assets could potentially be underutilized because of inefficient use. The current process is an ideal opportunity to address this concern. Nevertheless, without resolving this issue, there is also an opportunity to improve spectrum efficiency by coordination allocations across the islands and by defragmenting current holdings which were historically allocated at different times through different processes. Clear welcomes the removal of technology specific licences in Guernsey while noting that no such restriction exists in Jersey licenses.

Clear notes that CICRA refers to the stated spectrum bundles in the consultation as being similar to those that Ofcom made available to the market when it auctioned the 800 & 2600MHz band spectra. It is fact that Ofcom auctioned and awarded the 800MHz and 2600MHz packages separately. Moreover, in response to the previous consultation¹, the majority of respondents agreed with the Ofcom model of distribution. Despite this, CICRA has chosen to bundle the two bands together without any apparent reference to these responses or without any justification for its decision. In effect it has narrowed the market to just four operators. Further, the majority of respondents were also concerned that the former incumbents already had substantial allocations of sub-1GHz spectrum and yet CICRA has not adequately addressed this concern in the current consultation.

In jurisdictions as geographically small as the Channel Islands, there is little, if any, disadvantage to using the 900MHz band instead of 800MHz band, particularly given the usable bandwidth available to these former incumbents. Indeed, the current 800MHz allocations are limited compared to the 900MHz spectrum already licensed, and as is well known, it is also subject to more possibilities of interference from broadcast channels and other sources. Furthermore, the former incumbents already have significant network development and transponder sites in place compared to any new entrant. While the 800MHz band may be perceived to have better in-building penetration characteristics, this would imply that this would be used as an alternative to fixed line broadband. It is difficult to believe that the fixed incumbents would

¹ Pan-Channel Island Consultation on 800MHz and 2.6 GHz Spectrum Awards consultation 13/38
<http://www.cicra.gg/files/Spectrum%20Consultation%2031713.pdf>

want to cannibalize their fixed infrastructure by deploying expensive wireless alternatives to do the same thing. The lack of wholesale line rental and fixed number portability underlines this strategy since whatever happens, residential and, in particular business users will be required to maintain fixed connectivity in order to have fixed line numbers.

It is noted that some of the respondents were concerned by the lack of handsets for use with 900MHz LTE, but Clear observes that many regulators, including Ofcom, propose to release or have already released 900MHz for LTE² and it follows that handsets will quickly become available as manufacturers respond to the new reality. Indeed some operators have already started deploying 900MHz LTE services³.

Both existing former monopolies also hold substantial quantities of 1800MHz spectrum and this is already being widely deployed for LTE including the UK⁴.

Naturally some existing operators that responded to the last consultation also expressed concern that the local market was too small to support a fourth operator. This is to be expected since incumbents always seek to protect their market share. This was the position adopted by Jersey Telecom in the 3G allocation process. Yet at present there are already four operators working in the wireless and/or fixed line business. Furthermore an existing licensed entity holds wireless spectrum licences, currently designated for mobile services, which it is not actively therefore efficiently using. Should it choose to enter the market, then there could already be four mobile wireless operators. This would indicate that the existing mobile operators consider that any operator(s) currently viewed as the 'fourth' has no discernible impact on their business. Indeed, it has been voiced elsewhere that if the market were to expand to include another licensee (*Clear already holds a telecommunications licence on both islands and has no current wireless spectrum allocations*), one of the operators might withdraw. Clear would view this as pure protectionism and can see no justifiable reason why the market in general should not decide. No current market competitor should be afraid of the market if its services and prices thereof are competitive. There is little evidence to show that telecommunications operators have quit markets simply because of competition. While CICRA has stated that it is non-prescriptive on this matter, it has nevertheless structured the available packages of spectrum in such a way as to limit the possibility of new entry.

Given the foregoing and the summary on page 18 of the consultation, Clear can see no justification for the proposed spectrum bundles in this consultation. It is evident from the competitive market viewpoint that sub-1GHz caps are a desirable regulatory device to enable more competition in the market. A fairer and more consumer-orientated policy would be to make the 800MHz and 2600MHz band packages available separately and they should be allocated according the proposed beauty parade rules. It is to be expected that all the existing 2G and 3G bands will be liberalized in the near future and thus existing operators, especially the former incumbents, will be well placed to deploy LTE-based services. In small jurisdictions such

² Statement on the Requests for Variation of 900 MHz, 1800 MHz and 2100 MHz Mobile Licences <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800-2100/statement/statement.pdf>

³ World's first commercial LTE-Advanced call on 1800MHz and 900MHz <http://www.ericsson.com/news/1722258>

⁴ Decision to vary Everything Everywhere's 1800 MHz spectrum licences to allow use of LTE and WiMax technologies <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800mhz-lte-wimax/statement/statement.pdf>

as the Channel Islands, it is likely that 2G services could be quickly phased out through normal consumer churn and handset replacement, releasing spectrum for the partial or total conversion of this spectrum to LTE in the relatively short term. For this reason, Clear does not see it imperative that all existing mobile operators have access to the 800MHz band.

In summary, Clear is of the view that the proposed structure for spectrum package distribution is anti-competitive and the likely outcome if CICRA proceeds as stated, would be to harm consumer benefit in the medium and long term. Clear would prefer to see the concerns of a competitive market addressed through a separate allocation process for each band.

Q4: Views are sought on the above minimum requirements, whether this is the appropriate set of issues to include and if the strength and clarity of the requirements is adequate?

As noted above, this process is similar to that adopted by the JCRA in 2009⁵ and along the lines proposed by the OUR in its inconclusive 2010 consultation⁶. The only material change is the addition of preconditions regarding its usage and interference protection and mitigation.

Clear provided unambiguous and concise responses to both consultations, outlining in each case its proposed business, roll-out and coverage plans. Clear therefore has no difficulty with the proposals in the current consultation and will respond accordingly.

However, as already mentioned, Clear does not agree with the proposed bundling together of 800MHz and 2600MHz band lots of spectrum. Given the substantial sub-1 GHz holdings of the islands' former incumbents, Clear is of the view that these lots should be allocated separately in order not permit (i. e actively prevent) subsequent foreclosing of the market as the existing 900MHz (and 1800MHz) bands are made technology-neutral - as is the current intention of Ofcom.

Clear is also concerned that the proposed lots of 2600MHz spectrum offering 2 x 25MHz are inconsistent with the stated intention to promote efficient use. In jurisdictions as small as the Channel Islands, Clear is of the view that adequate coverage and service can be achieved with smaller allocations. Clear would propose that there should be 3 x 10MHz and 2 x 20MHz lots so as to ensure efficient use of valuable resources. Additionally, Clear is unsure why CICRA has not also offered the 2600MHz unpaired TDD 2600MHz spectrum at this time.

Separately, Clear does welcome the proposed realignment of existing 900MHz and 1800MHz holdings and the possible reallocation of spectrum in these bands.

⁵ Consultation Paper 2009- T01 Distribution of Spectrum in 2600MHz Band
<http://www.cicra.gg/files/090603%202600%20MHz%20Consultation.pdf>

⁶ Document No: OUR 10/02 2.6 GHz - Licence Award <http://www.cicra.gg/files/OUR1002.pdf>

Q5: Views are sought on whether the six evaluation criteria are the most appropriate for delivering on the objectives set out in this document and on the proposed weights in terms of whether they appropriately guide the award of spectrum?

Clear broadly agrees with the setting of evaluation criteria as a necessary requirement of any beauty parade appraisal. While Clear acknowledges that in the Channel Islands the running of an auction is not feasible, it should be noted that the beauty parade approach is highly subjective⁷ and has been known to present legal challenges to regulatory decisions⁸.

Clear is concerned that the weighting (25%) given to coverage in the First Award process is likely to favour existing operators substantially over new entrants, given that these operators will already have substantial sunk investment in transponder sites. This bias is continued by the lower rating of environment protection (8%) which again favours incumbent operators that have already established sites. Clear is aware of the difficulties faced by operators in the earlier 3G rollout on both islands with regard to consumer fears over the health and safety of high frequency radio emissions.

Similarly Clear is concerned that the weighting given to promoting competition is rated too highly for the Second Award. The greatest impact of competition would be through the introduction of truly competitive services which can only be achieved by a new entrant or entrants with substantially less existing spectrum allocations.

Clear Mobitel is a technology driven company that wants to not only bring innovative services to the Channel Islands. It is also fully committed to training local engineers and apprentices to the technologies of the future to enable the islands to compete in a global economy. Clear commits to hiring the maximum number of local residents for jobs and is not committed to outsourcing its operations off shore simply because of lower costs.

Q6: Views are sought on the above, in particular whether respondents are in agreement with this proposal and any issues this raises for operators?

Clear has no objection to the inclusion of so-called '*use it or lose it*' conditions into any telecommunications licence it currently holds in the Channel Islands. Clear is of the view that currently, spectrum is being inefficiently utilized by some operators and would welcome the redistribution of such spectrum in order to significantly increase competition in the local markets.

⁷ Auctions vs Beauty Contests <http://www.nuff.ox.ac.uk/users/klemperer/biggestpais.pdf>

⁸ Spectrum Auctions Versus Beauty Contests: Costs And Benefits
http://istituti.unicatt.it/economia_impresa_lavoro_OECD-draft.pdf

Q7: Views are sought on the draft tender document in Annex A and whether the specific elements raise issues for respondents?

Clear will enter the competitive process in good faith and comply with the requirements of the process as currently proposed. However it is at a loss to understand the logic of CICRA's statement:

“provide four lots of spectrum to enable the provision of LTE services to, potentially, four operators without prescribing there should be four providers of LTE wireless services in the Channel Islands.”

when it has constructed the competition to include only four lots of spectrum bundles. While there is a theoretical possibility that one of the existing licensed operators would not make a claim, this is in reality highly unlikely. Therefore, it would appear that the regulator is pre-judging the market, potentially at the expense of consumer welfare and competitive services. This statement is inconsistent with the aims stated in Annex A which purports to promote competition, prices, availability and innovation among the main objectives.

Clear is satisfied that Ofcom has made competent technological evaluation of the available spectrum and is in general agreement with the arrangements for the 800MHz band proposed. This spectrum has the greatest general utility for the overall coverage of the islands with LTE services and thus is likely to be the most sought after.

Clear has already made its case regarding the current highly asymmetrical distribution of spectrum in the 900MHz band and is strongly of the view that operators should not have access to more than 20MHz of sub-1 GHz spectrum in the short term, as this is likely to seriously distort the market and reduce overall consumer benefit by stunting competition. This is another reason why Clear believes that the CICRA proposed bundles are inconsistent with consumer welfare and competition in the islands. Clear sees little likelihood of any 900MHz spectrum being released to other operators in the short to medium term. **Clear further believes that any operators currently holding 900MHz spectrum should relinquish spectrum equivalent to any 800MHz packages allocated in this process.**

Clear is of the view that the proposed evaluation criteria is subjective and can only be truly assessed ex-post. It is relatively simple to produce a business plan that covers these objectives but the proof is in the final performance after the process is closed and investment made. Clear would propose that performance markers are included in licenses and that CICRA should be prepared to levy fines consistent with failure to meet agreed milestones.

Clear has already previously commented on the matters of radar and DTT interference and is prepared to comply with any regulatory directives.

Clear looks forward to the final timetable and would urge CICRA to establish a short time-line in order to enable the earliest possible provision of LTE services to the public of the islands.

Q8: Respondents are asked to comment on any other issues they wish to raise arising from the matters set out in this consultation?

Clear would urge CICRA to re-evaluate its proposed spectrum bundles and the allocation process in view of the likely effects in foreclosing the competitive market in the islands.

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