



Office of Utility Regulation

Amendment to Cable & Wireless Guernsey's Fixed Telecommunications Licence

Statutory Notification

Notice of a Modification of the Licence for Fixed
Telecommunications Networks and Services issued to
Cable & Wireless Guernsey Ltd under Part 1, Section 1 of
the Telecommunications (Bailiwick of Guernsey) Law,
2001

[originally granted to Guernsey Telecoms Ltd in 2001]

Document No: CICRA 12/03

January 2012

Office of Utility Regulation
Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: (0)1481 711120, Fax: (0)1481 711140, Web: www.regutil.gg

Notice of a Modification of the Licence for Fixed Telecommunications Networks and Services issued to Cable & Wireless Guernsey Ltd under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 [originally granted to Guernsey Telecoms Ltd in 2001]

In accordance with:

- Section 8 of The Telecommunications (Bailiwick of Guernsey) Law, 2001; and
- Section 6 of the Licence issued to Cable & Wireless Guernsey Ltd under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001,

the Director General of Utility Regulation hereby gives notice that he has modified the Licence for fixed telecommunications services issued to Cable & Wireless Guernsey Ltd (C&W). This modification takes effect on 1 February 2012.

Modification

The Director General is modifying Condition 31 of the Licence. This is a condition which the Director General may determine applies to licensees that have a dominant position in a relevant market.

The modification extends the notice period required by Condition 31.1 (requirement on a dominant operator to publish changes to its service offering) and gives the Director General the power to grant an exemption from this condition when he determines certain conditions are satisfied. Such a proposal would improve competitive pressures in the telecommunications sector and, thus, help reduce the burden of regulation.

The text of the modifications to Condition 31 is published with this Statutory Notice. The modified Condition 31.1 includes modifications on which the Director General consulted in July 2010 (OUR 10/08). The new Condition 31.5 was the object of a Statutory Invitation to Comment in November 2011 (OUR 11/13).

Reasons for Modification

The regulations applicable to an operator that has been found dominant in a relevant market need to be more demanding than those that apply to non-dominant operators. In particular, Condition 31 provides for a control of the prices that a dominant operator can charge and requires a dominant operator to publish its prices, and any changes to them, in advance of the changes coming into effect.

However, the Director General believes that removing the notification duty on C&W may, in some circumstances, encourage competitors to compete on prices and with innovations. It would be so in circumstances when C&W, though dominant, would not be able to abuse its dominance to distort or reduce competition. By improving competitive pressures, the Director General believes he can reduce the need for regulation and its burden on the telecommunications sector.

Responses to the Statutory Consultations

In accordance with section 8(2)(c) of The Telecommunications (Bailiwick of Guernsey) Law, 2001, interested parties were invited to submit written representations or objections to the proposal in the Statutory Notices issued on 21 July 2010 and 16 November 2011.

The Director General received comments from Guernsey Airtel Ltd and from another respondent, who asked for confidentiality. The Director General thanks them for their responses. The full text of Guernsey Airtel's response is published in accordance with the OUR's consultation procedure on the OUR's website.

Guernsey Airtel Ltd was supportive of the decision to extend the notification period in Condition 31.1 from 21 days to 30 days for wholesale products. It thought that C&W practice of including date-stamped notices on its website should be prescribed in the licence condition. It also suggested that a similar change should be considered for C&W mobile licence.

The other respondent also supported the extension of the notification period in Condition 31.1 as it is concerned that competition in the fixed line telecommunication sector is not likely to be established soon. Firm controls on dominant operators need to be maintained until competition is established. It therefore believes that removing an obligation to notify price changes in advance of a change cannot be warranted as it might distort competition. It also warns that the placing of a notice on a dominant operator's website is an insufficient publication mechanism and proactive notification of price changes is essential.

Conclusion

The Director General considered the responses he received carefully. He has implemented the extension of the notification for wholesale product prices in Condition 31.1 since nobody objected to it.

In the review of the C&W wholesale business that the OUR conducted in 2008, it was found that C&W sent an individual email to each affected customer informing it in advance of wholesale price changes. The DG noted that C&W agreed to continue with this practice. He does not believe that it needs to be recorded in a licence condition. The DG also notes that all mobile operators supported the review of mobile licences that he completed in summer 2011.

The new condition 31.5 is an enabling condition only. By itself, it introduces no change. The Director General is concerned to avoid distortions of competition and believes that competition may be dampened, in some cases, by the existence of early notices of price changes: competitors may rely on the practice of early notices to react in a very passive way that does not elicit truly and innovative behaviour from them. The Director General is bound to consult on the details of each specific case before determining whether the exemption of condition 31.5 may be applied. This will ensure that all relevant arguments are brought to his attention. The Director General has decided to add condition 31.5 to C&W's licence.

/END

Condition 31 Price Regulated Services

31.1 Where the Licensee intends to introduce:

- (a) new prices for any Licensed Telecommunications Services, or prices for new Licensed Telecommunications Services to be introduced by the Licensee;
- (b) any discounts to published prices for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant or for any Subscribers to whom additional services or goods are provided by the Licensee or any of its Associated Companies;
or
- (c) special offers to all or any of its customers for particular categories of Licensed Telecommunications Services where those Licensed Telecommunications Services have been found to be within a Relevant Market in which the Licensee has been found to be dominant,

it shall publish the same at least twenty one (21) days for retail products and services and thirty (30) days for wholesale products and services prior to their coming into effect or otherwise as required by law, and provide full details of the same to the Director General.

(31.2 to 31.4 - unchanged)

31.5 The Director General may, after consulting the Licensee and such other persons as he may determine, and for specific services only, replace the obligation in Condition 31.1 to publish changes at least 21 or 30 days in advance of their coming into force with an obligation to notify the Director General on the day of the changes coming into force and to put the notification prominently on its website.