



Modification of Cable & Wireless Guernsey Limited's Fixed Telecommunications Licence

Statutory Notice

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

Modification of the Licence for Fixed Telecommunications Networks and Services issued to Cable & Wireless Guernsey Ltd under Part 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
- Condition 6 of the Licence for fixed telecommunications networks and services (*fixed telecoms licence*) issued to Cable & Wireless Guernsey Ltd (*C&W*) under Part 1 of *The Telecommunications (Bailiwick of Guernsey) Law, 2001*,

the Guernsey Competition and Regulatory Authority (*GCRA*) hereby modifies the fixed telecoms licence issued to C&W.

Modification

As a condition of its approval of the change of control through the indirect acquisition of C&W by the Bahrain Telecommunications Company B.S.C., the GCRA required modifications to the fixed telecoms licence of C&W through the inclusion of certain new additional licence conditions.

The new licence conditions relate to:

- the ability of C&W to carry out its functions; and
- the ability of C&W to provide information and comply with its regulatory obligations.

The text of the new additional licence conditions is published at the end of this Notice.

Reason for Modification

The GCRA carried out a consultation on the approaches to change of control notifications under telecoms licences (CICRA 13/01), and issued a provisional decision (CICRA 13/06) and final decision (CICRA 13/10) in respect of the proposed changes of control for C&W and Cable & Wireless Jersey Limited. The proposed licence modifications were informed by that process. Consideration was given to the fact that the size of the market in the Channel Islands is likely to comprise a minor part of any international telecoms business. The GCRA also considered it reasonable that stakeholders have reassurances in this area, since it is vital that the Guernsey telecommunications business can sustain itself when it might otherwise be placed at risk by virtue of its size within a larger business. The present market environment and international developments were taken into account, specifically in the area of telecoms.

The licence modification is therefore intended to safeguard the ability of C&W to provide licensed telecommunications services without reliance on financing, management resources or other approval processes from third parties to such an extent that this inhibits its ability to deliver its licensed obligations. The GCRA has sought to ensure the financial resources, management resources and systems of internal control necessary to fulfil the conditions of licences issued under its powers are adequately safeguarded to mitigate the risks to which a small market such as Guernsey is exposed.

A separate parent company/controller undertaking addresses concerns about the potential remote management of the C&W business and secures the availability of information to meet C&W's regulatory and statutory requirements.

Representations or Objections

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 this notice. No written representations or objections were received and the GCRA will therefore proceed with the modification as proposed. The GCRA's decision to modify the fixed telecoms licence issued to C&W is published as a Gazette Notice.

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Additional Licence Conditions

LC 2.11 - Ring Fencing

In order to facilitate the ability of the Licensee at all times to provide Licensed Telecommunications Services without undue reliance on third parties (including Associated Companies, whether in Guernsey or elsewhere), the Licensee shall at all times act in a manner best calculated to ensure that it has, or has access to, adequate –

a. financial resources; and

b. management resources and systems of internal control,

to enable it to secure the provision of Licensed Telecommunications Services including any investment necessary to fulfil its obligations under the Licence.

The Licensee shall ensure that its access to resources and systems referred to above is not dependent upon the discharge by any other person of any obligation under, or arising from, any agreement or arrangement under which that other person has agreed to provide any services to the Licensee. For the avoidance of doubt, this condition 2.11 shall not prevent the Licensee from procuring operational resources or facilities from any other person (including an Associated Company).

LC 2.12-2.18 Undertakings from Ultimate Controller

2.12. The Licensee shall procure from the Ultimate Controller of the Licensee and, when the Ultimate Controller is not a Guernsey company, procure from the ultimate parent company of the Licensee, legally enforceable undertakings in favour of the Licensee in a form agreed by the Authority as appropriate and expressed to remain in force for as long as the Licensee retains its Licence. Should the Licensee cease to hold a dominant position in a relevant market then the Authority may modify this licence condition to take account of the change in circumstance.

2.13. The undertakings referred to in sub-paragraph (1) shall provide that –

a. the persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Licensee and its subsidiaries) will, give to the Licensee all such information as could reasonably be expected to be necessary to enable the Licensee to comply with its obligations under Relevant Legislation and in order to comply with conditions of the Licence or directions of the Authority under the Relevant Legislation or the Licence; and

b. the persons providing the undertakings will, and will procure that each of their subsidiaries (other than the Licensee and its subsidiaries) will, refrain from any action which would or could reasonably be expected to cause the Licensee to breach any of its obligations under Relevant Legislation or the conditions of the Licence.

2.14. “Relevant Legislation” is defined for the purposes of condition 2.13 as The Telecommunications (Bailiwick of Guernsey) Law, 2001, The Regulation of Utilities

(Bailiwick of Guernsey) Law, 2001, The Competition (Guernsey) Ordinance, 2012, The Wireless Telegraphy (Guernsey) Order, 2006 and The Communications (Bailiwick of Guernsey) Order, 2003, or any subsequent legislation covering subjects equivalent to the legislative instruments listed above.

2.15. The Licensee shall, not later than one week after the completion of any Change of Control, produce to the Authority the original of each of the undertakings given to it in accordance with condition 2.12 and provide to the Authority such certified copies of those undertakings as it may require.

2.16. The Licensee shall immediately inform the Authority in writing if it becomes aware that any such undertaking as is referred to in condition 2.12 has ceased to be legally enforceable or that there has been any breach of its terms.

2.17. The Licensee shall not, except with the written consent of the Authority, enter directly or indirectly into any contract or arrangement with the Ultimate Controller of the Licensee (or the ultimate parent company of the Licensee as the case may be) or any Associated Company (other than subsidiaries of the Licensee) at a time when:

(i) any one of the undertakings complying with condition 2.12 does not subsist; or

(ii) there is an unremedied breach of any one of those undertakings.

2.18. For the purposes of this Condition, "Ultimate Controller" means any person who or which (alone or jointly with others, and directly or indirectly) in the reasonable opinion of the Authority is in a position to Control the Licensee.