



Exemption of Telecommunications Licensees

Direction

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Contents

1. Background.....	3
2. Legal Background & Regulatory Framework	4
3. Decision	6

1. Background

The Channel Islands Competition and Regulatory Authorities (CICRA) will carry out a review of the telecoms licensing regimes in Guernsey and Jersey over 2013 with the aim of aligning licensing regimes and removing activities from the scope of licensing where appropriate.

In the interim it has come to the attention of CICRA that several Guernsey licensees were notified in December 2012 that any business licensed to provide a telecommunications service to third party customers, that is regulated by the Guernsey Competition and Regulatory Authority (GCRA), is classified for Tax on Real Property (TRP) purposes as a 'utilities provider'. Property owned or occupied by such service providers is classified as a Category B5.1 Utilities Provider and therefore subject to the relevant TRP tariff, which for 2012 is £30.05 per unit. This tariff represents an increase of approximately 220% for these businesses.

The telecoms licensees most affected appear to fall into two categories. Several licensees carry out telecoms activities as a relatively minor part of their larger business. The TRP increase as worded in the law applies to the entire premise where their telecom business is carried out, which in several cases represent a very small proportion of their overall usage of premises. The disproportionate effect on such businesses appears likely to force them to withdraw from the provision of telecoms services. There is also a category of licensees where overall turnover is low given they serve a small number of customers or provide only a limited set of telecom services. The level of profit generated by such businesses is argued as insufficient to cover the increase in costs from the TRP changes and as such presents a threat to their viability.

In the above circumstances such licensees have informed CICRA they cannot sustain their telecoms businesses. Discussions with officials at the Treasury and Resources Department and Commerce and Employment Department in Guernsey confirm such consequences of the TRP charges were unforeseen but it is not possible to alter the law or grant an exemption given the short time frame available.

CICRA has liaised with Cable and Wireless Guernsey, Airtel Vodafone and JT on this matter who indicated their appreciation of the issues and given a qualified assurance that they would not object to CICRA issuing an exemption to specified licensees given the particular and exceptional circumstances.

In light of the urgency of the matter, as a temporary measure CICRA has decided to use the GCRA's powers available to it to address the risk faced by such businesses until a more considered review can be carried out of the approach to setting TRP for all telecom licensees in Guernsey.

The GCRA is therefore directing that an exemption shall be applied to six of its licensees from the obligation to have a telecoms licence from the GCRA for a temporary period.

2. Legal Background & Regulatory Framework

Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 states that the GCRA may, having regard to the provisions of sections 2, 3 and 4, do anything that appears to it to be necessary or expedient for the purpose of exercising its functions and powers under this Law or any Sector Law and, without prejudice to the generality of the foregoing, it shall have power –

- (a) to determine the conditions to be included in a licence,
- (b) to require the production of such documents, accounts or information from applicants for licences, licensees and other interested persons in relation to utility activities within such time periods or at such intervals as the Authority may require,
- (c) subject to any provision to the contrary in this Law or any Sector Law, to publish information, reports and other documents,
- (d) subject to the provisions of States' Directions, to determine which universal service obligations may be imposed on a licensee and on what conditions, and how and by whom such obligations should be funded,
- (e) to give directions to a licensee concerning utility activities in cases where it is authorised to do so by or under this Law, any Sector Law or any condition of a licence,
- (f) where provided for in any Sector Law, to determine when and in respect of which utility activities a person may be made exempt from an obligation to obtain a licence,**
- (g) to impose any direction, requirement or other sanction under this Law or any Sector Law,
- (h) to appoint any person or body to advise it in relation to the exercise of any of its functions and powers under this Law or any Sector Law, and (i) to institute proceedings for injunctions under section 6.

Section 1 (3) of The Telecommunications (Bailiwick of Guernsey) Law, 2001 further states that

The Authority may, having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions, by direction grant an exemption from subsection (1).

An exemption under subsection (3) –

- (a) may be granted to a particular person or particular class of persons,
- (b) may be granted subject to such conditions as the Authority may think fit,
- (c) when granted to a particular class of persons, shall be published, and
- (d) unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in or determined by or under the exemption.

In The Telecommunications (Bailiwick of Guernsey) Law, 2001, the definition of 'publish' is set out in relation to a document to mean,—

(a) publication in 'La Gazette Officielle', or

(b) where the Authority thinks fit, publication of a notice in La Gazette Officielle of the availability of the document —

(i) on the official website of the Authority,

(ii) otherwise from the offices of the Authority,

and cognate expressions shall be construed accordingly,

3. Decision

Having regard to section 2 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and the general duties contained in that section, in particular sub-sections 2 (a) and 2 (b), the GCRA directs that the following licensees are exempted from the requirement to hold a telecoms licence for the period 30th December 2012 up to and including 1st January 2013:

- 2e2 Guernsey Limited
- Fultura Limited
- Itex (Guernsey) Limited
- Links Communications
- LP Telecom Limited
- Microtech Limited

In the GCRA's view the protection of the interests of consumers and other users in the Bailiwick is achieved by this decision given the short time period to resolve the matter and the implied risk to licensees given the impact of the latest notification regarding TRP increases on the viability of maintaining their telecoms businesses. In particular, the GCRA has had regard to the permanence and variety of utility services which would be weakened should the viability of these businesses be jeopardised through the application of the TRP mechanism as currently applied. The risk that consumers will not receive the provision of utility services they require due to circumstances as set out above is a further consideration for the GCRA in taking this decision.

Over 2013 CICRA will review the telecoms licensing regimes in Guernsey and Jersey with the aim of aligning licensing regimes and removing activities from the scope of licensing where appropriate. At the conclusion of that review a decision will be made whether all or some of the above businesses will remain exempt for the requirement for a telecoms licence in Guernsey. CICRA would also anticipate that the implementation of the law in respect of TRP fees would be clarified further and amended where necessary.

ENDS