



Office of Utility Regulation

Licence Fees for Operators
licensed by the OUR

Decision Notice

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1. Introduction

In January 2006, the Office of Utility Regulation (“OUR”) initiated a consultation (OUR 06/01 “Fees for Telecommunications Licences – Consultation Document”) on possible changes that might be made to the manner in which licence fees are collected from telecommunications operators licensed by the OUR. The OUR is funded directly by a licence fee payable by all licensed operators across the three utility sectors.

Under the current arrangement licence fees are set in one of two ways:

- for the electricity and postal sectors, the fee is set at £180,000 for both Guernsey Electricity and Guernsey Post;
- for the telecoms sector the fee is set either based on a percentage of relevant turnover (where turnover is greater than £150,000 per annum) or a flat £500 fee (for those with turnover less than £150,000)

The telecoms licence fee is payable by any operator holding a telecommunications licence issued under the Telecommunications (Bailiwick of Guernsey) Law 2001. Since the establishment of the OUR, the regulation of the telecoms sector has accounted for a greater proportion of the work of the office than the other two sectors. This is to be expected given the nature of the objectives of regulation in this area where putting in place the framework and environment for competition has involved considerable effort. However the postal and electricity sectors combined accounted for 45% of the total costs incurred by the OUR in 2005 and are likely to amount to a similar level in 2006 given the workload in both sectors.

The current licence fee mechanism was put in place in 2002. Since then a number of issues have been highlighted by operators in the telecoms sector with regard to the administration and collection of those fees. These are discussed in greater detail later in this paper. In OUR 06/01, the Director General (“DG”) sought views on certain proposals to address these concerns and sought views on the changes being proposed.

Two operators availed of the opportunity to comment on the proposals set out in OUR 06/01. These were:

- C&W Guernsey (“C&WG”); and
- Wave Telecom (“Wave”).

The DG wishes to thank both operators for their responses. In line with OUR’s standard consultation procedures, with the exception of any responses marked as confidential, written comments are available for inspection at the OUR’s office and are also published on the OUR’s website www.regutil.gg.

This paper sets out primarily the DG’s decision with regard to the future collection of licence fees from the telecoms sector but also sets out the proposed level of fees for all three utility sectors for 2007 and 2008.

2. Structure of this Paper

This paper is structured as follows:

Section 3 describes the legislative provisions for the funding of the OUR;

Section 4 presents the responses that were received from interested parties regarding the issues raised in the earlier consultation paper and, in light of consideration of those comments, the DG's decision on the issues consulted upon;

Section 5 sets out his initial indication of the level of licence fees across all sectors for the next two years; and

Section 6 describes the next steps in this process.

3. Background

3.1. *Legislative Background*

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“The Regulation Law”) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecommunications Law”), together empower the DG to regulate the telecommunications market in the Bailiwick of Guernsey.

In accordance with section 4(1)(d) of the Regulation Law, the DG’s functions include determining and prescribing 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 payable in the event of a default in the due payment of the fees or levies. The DG is also required to publish fees in accordance with section 6 of the Telecommunications Law. The fees or levies charged by the DG are expected to meet the costs associated with the exercise of the Director General’s functions and powers.

3.2. *Public Utilities Fund*

The DG is also required to establish a fund under section 9 of the Regulation Law known as the “Public Utilities Regulation Fund” in to which licence fees shall be paid and from which costs of the OUR shall be paid. The DG is also required to maintain proper accounts, have the accounts independently audited and submit the audited accounts along with its annual report to the States.

The OUR’s Annual Report and Accounts are available on the OUR’s website.

4. Telecommunications Licence Fees

In 2002, the DG determined, following consultation with industry, to set licence fees for the telecoms sector in one of two ways. For operators with an annual relevant turnover below £150,000 (i.e. income derived from licensable activities) a simple fixed fee of £500 per year was set. Above this level licence fees are calculated based on a percentage of relevant turnover. To-date C&WG has contributed the greatest portion of licence fees for the telecoms sector due to its dominant position in the market, although with increased competition other operators' contributions are increasing. In addition, a small number of licensees continue to pay the fixed licence fee of £500.

Since 2002, the OUR's telecoms licensees have been required to submit a certified statement of relevant turnover which is essentially a statement from the company's auditors confirming the levels of relevant turnover upon which the OUR then bases the following year's licence fee. Relevant turnover refers to turnover associated with activities for which a licence is required. This is not necessarily the same as a company's turnover recorded in its statutory accounts as a company may earn revenue from activities for which no licence is required. An example is revenue earned from the sale of mobile handsets which is a non-licensable activity and therefore forms part of a company's non-relevant turnover.

Following feedback from licensees, the DG consulted with industry in January 2006 on simplifying the administrative processes for both the calculation of fees and the verification that fees were being calculated and submitted correctly. The changes now being implemented for future licence fee submissions, which will come into effect for fees applicable from 2007 onwards, should ensure that the administration of the licence fee system reduces substantially the work required by the majority of licensees whilst ensuring that all operators contribute appropriately towards the cost of implementing the regulatory regime.

4.1. *Level of Licence Fees*

As noted in OUR 06/01, the total level of the income collected remains directly related to the costs of the Regulator's office in regulating that sector. Currently, licence fees for the telecoms sector are set by reference to the relevant turnover of the licensed operators. In 2006 the fee is set at 1.4% of relevant turnover for operators with a relevant turnover greater than £150,000. This was increased from the original 1% in 2003 following the costs incurred in an appeal to the Utility Appeals Tribunal of a decision of the OUR by C&WG. For operators with turnover below this threshold a flat fee of £500 applies.

The DG proposed amending the basis for the calculation of the licence fee to provide for a simpler method of calculation and to take account of the different scale of operator currently operating in the Guernsey market. He proposed:

- For operators with an annual relevant turnover less than £200,000 a flat licence fee of £500 will be payable;
- For operators with an annual relevant turnover less than £500,000 a flat fee of £2,500 will be payable; and

- For operators with an annual relevant turnover greater than £500,000 a licence fee based on a percentage of relevant turnover will be payable.

Comments Received

Both C&WG and Wave supported the proposed move to a more tiered structure of payments. C&WG noted that for its business the move to fees based on its Regulatory Accounts would cause certain revenues from non-regulated businesses to be included. However it acknowledged that the practical impact (based on its assessment of the 2004 Regulatory accounts) would be marginal and most likely offset by the reduction in administration costs associated with the proposed change. It also believed that any such move should not result in services being reclassified as 'licensable' just because they are included in the Regulatory Accounts.

DG's Decision

The DG is grateful for the responses received. It is the DG's intention that, regardless of the basis of the underlying calculation of the licence fee (regulatory accounts, statutory accounts etc), the level of fees would in any event be adjusted to take account of the costs of running the OUR. In the event that the calculation based on regulatory accounts might result in higher levels of fees than required, the DG would adjust downwards the percentage upon which fees are calculated. The DG would wish to ensure that operators are not disadvantaged by any change being proposed as the intention is to simplify the administrative procedures for calculating the annual fee, not increase the OUR's licence revenue.

Similarly, regardless of the means of calculating the licence fee, this would not in any way over-ride the provisions in the various Laws with regard to what constitutes a licensed service. The proposal to use the Regulatory accounts is for administrative simplicity and to address certain issues that have been highlighted to-date. For example, using C&WG's calculations, using its latest regulatory accounts as the basis for calculation, C&WG will pay a licence fee based on 1.38% of its turnover in those accounts. Using its 'relevant turnover' as the basis, the percentage fee would be 1.4%.

The DG therefore will, for licence fees applicable from January 2007 onwards, calculate licence fees for the telecoms sector on the following basis:

- For operators with an annual relevant turnover less than £200,000 a flat annual licence fee of £500 will be applicable;
- For operators with an annual relevant turnover less than £500,000 a flat annual licence fee of £2,500 will be applicable; and
- For operators with an annual relevant turnover greater than £500,000 an annual licence fee based on a percentage of turnover will be applicable.

4.2. Certified Statement of Turnover

The requirement to provide a certified statement confirming the relevant turnover of a licensed operator was introduced in 2002. The OUR has published guidelines (OUR

02/39R) to assist operators provide an appropriate statement to comply with this requirement. OUR 06/01 noted that the feedback from operators to-date has highlighted that the requirement to provide a statement of relevant turnover requires them to incur a cost which, for some operators, is in excess of the actual licence fee payable. For others, such as C&WG, it is an additional requirement it must meet over and above the audit of its regulatory accounts and its normal company accounts.

The DG proposes amending the requirement for a certified statement of relevant turnover and replacing it with a simplified process as follows:

- for licensed operators required to prepare regulatory accounts, the DG proposed accepting these accounts as the basis upon which to base the licence fee calculation;
- for all other operators the DG proposes to accept a statement of relevant turnover signed by two directors of the company as the basis for calculating the fee.

Comments Received

C&WG and Wave both commented and were supportive of this proposal. C&WG set out its understanding of how the Regulatory Accounts would be used in calculating its licence fee and what elements of its regulatory accounts would be used to set its fee.

DG's Decision

The DG again welcomes the support for the proposed changes. The DG will therefore remove the requirement for a Statement of Certified Turnover for all operators. Operators will in future be requested to provide a statement of relevant turnover signed by two directors of the company as the basis for calculating their licence fee. For the year 2007, this statement will be required in September 2006 so that fees for the year commencing January 2007 can be finalised.

For operators required to prepare Regulatory Accounts, they will be required to submit the details upon which their licence fee is calculated when their accounts are submitted in September of the preceding year to which the licence fee will apply (i.e. September 2006 for the calculation of 2007 licence fee). In the event that there is any delay in the submission of the regulatory accounts which impacts upon the ability to set the licence fee, the DG may, at his discretion, use such information as is available (including a licensee's statutory accounts) to base the calculation of fees upon.

The DG intends to require operators to pay the same percentage fee regardless of the basis for determining the fee (i.e. regulatory accounts or statement of relevant turnover). The DG is aware that this will result in slightly different basis being used for some operators but believes that the simplification to the administrative process for operators and reduced cost should outweigh any concerns.

The DG noted in OUR 06/01 that he reserves the right to undertake a separate audit (essentially spot-checks) on any submission made by operators. The cost for such an audit will be borne by the licensee and will be undertaken by an auditor appointed by

the DG. The DG would anticipate that the new proposals should result in a much simpler process for all licensees and reduce the administration required by operators in complying with the licence fee requirements.

5. Licence Fees for the Utility Sectors

The DG had indicated previously that he proposed to review the actual level of licence fees paid by all operators in the three utility sectors. As noted earlier, the licence fee mechanism is designed to ensure that the OUR has sufficient resources available to it to undertake its statutory duties in accordance with cost recovery principle.

However the OUR is a not-for-profit organisation and as such, with the exception of a contingency reserve established following the C&WG appeal to fund any future litigation, the OUR would seek to ensure that licence fees are as low as possible for operators. In the event that any excess fees are collected in one year over and above the costs of running the OUR, these will be used to offset the projected costs in following years where practicable.

It has always been the intention that as the regulatory regime matured and the main elements of the regime for the three utility sectors were put in place, efforts would be made to reduce further the cost to licensees associated with the funding of the OUR. The DG believes it is now appropriate to reduce the licence fees payable by all operators.

Therefore the DG proposes that for 2007 and 2008 licence fees will be set at the following levels for the three sectors:

- For the telecoms industry: ;
 - For operators with an annual relevant turnover less than £200,000 a flat annual licence fee of £500 will be applicable;
 - For operators with an annual relevant turnover less than £500,000 a flat annual licence fee of £2,500 will be applicable; and
 - For operators with an annual relevant turnover greater than £500,000 an annual licence fee of 1.0% (reduced from 1.4%) will be applicable.
- Guernsey Electricity will be required to pay a licence fee of £120,000 (reduced from £180,000); and
- Guernsey Post will be required to pay a licence fee of £120,000 (reduced from £180,000).

These licence fees will be confirmed formally to operators in September 2006.

6. Next Steps

The DG is grateful to those operators that responded for their comments. The DG will in the near future update the guidelines published previously to assist operators in submitting their statement of relevant turnover to take account of the changes now being implemented.

As mentioned earlier, the DG will later this year confirm the level of licence fees for the three utility sectors and will communicate this to all operators in September 2006. Therefore, following the consideration of the review of commercialisation and regulation by the States, the DG will undertake a further review of the licence conditions applicable to the various sectors with a view to simplifying further the regulatory regime.

This initiative will take account of the current state of the utilities market in Guernsey, developments in Guernsey and elsewhere since the initial licensing regime was put in place in 2001 and to ensure that regulatory oversight is applied only where it is required. The DG has already sought the initial views of operators on the changes they believe can be made to the licensing regime and the DG would like to thank operators for their comments. These comments will inform a formal consultation which will be carried out later this year.

/ENDS