



Office of Utility Regulation

Licence Fees for Telecommunications, Post and Electricity Licences in Guernsey

Information Note

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1 Introduction

The Office of Utility Regulation (“OUR”) is funded primarily by licence fees paid by the licensees in the postal, electricity and telecommunications sectors. This information notes describes the licence fees that have been in place in each of these sectors since the OUR was established in 2001, outlines a number of events and developments that lead to a need to increase licence fees in some areas, and sets out the new levels of fees that will apply in each sector over the period 2004 to 2006.

First, as a result of litigation commenced in 2002 and determined in 2004, the OUR has incurred exceptional costs that were not originally budgeted in its three year budget from 2002-2004. This leads to a shortfall in the income of the OUR for 2004.

Furthermore, in the light of the experience of this litigation, the Director General (“DG”) has revised the OUR budget policy and has made a decision based on prudent budgetary considerations, to build a small contingency fund against possible future litigation in all three sectors.

Finally the DG has, in line with normal practice, revised the OUR budget for the three year period 2004-2006. This takes into account a range of factors including the future work programme of the Office, the litigation costs incurred to date, the building of a litigation contingency fund, and the split of work between the three sectors that is anticipated based on experience to date.

Together this leads to a requirement to increase licence fees in the telecommunications and postal sectors over this period. No increase is anticipated in the electricity sector. Each of the three sectors is addressed separately below.

2 Legislative Background

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“the Regulation Law”) empowers the DG to charge licence fees¹ in order to cover the costs incurred by the OUR in carrying out the statutory functions of the Office.

The Telecommunications (Bailiwick of Guernsey) Law, 2001, (“the Telecoms Law”) the Post Office (Bailiwick of Guernsey) Law, 2001 (“the Postal Law”), and the Electricity (Guernsey) Law, 2001 (“the Electricity Law”), all include a requirement on the DG to determine, prescribe and publish such fees.²

The DG prescribed fees for the three sectors initially in Document OUR 01/11³ and subsequently revised the fees set for the telecommunications sector in Document OUR 02/38⁴. In both documents the DG stated that in the event of a shortfall in licence fees in any year, the manner of recovery would be considered on a case by case basis.

¹ Section 4(1)(d) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 states that one of the functions of the DG is

“subject to subsection (3), to determine and to prescribe 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 default in the due payment of fees or levies”

Section (4) (3) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 states

“The fees, levies, interest and penalties which may be determined and prescribed by the Director General under subsection (1)(d) shall be of such an amount as may be necessary to defray the costs and expenditure incurred or anticipated by the Director General, over the term of the licence in question, in connection with the exercise of his functions and powers.”

² The Telecommunications (Bailiwick of Guernsey) Law, 2001, the Post Office (Bailiwick of Guernsey) Law, 2001 and the Electricity (Guernsey) Law, 2001 all include the following text in section 6:

“(1) The Director General shall, subject to the provisions of section 4(3) of the Regulation Law, determine, prescribe and publish the fees and levies payable on an application for, and on the grant and renewal of, and over the term of, a licence and the interest and penalties payable in the event of default in the due payment of fees or levies.

“(2) The fees, levies, interest and penalties determined and prescribed by the Director General under subsection (1) shall, without prejudice to any other remedy in respect of any default in payment, be recoverable as a civil debt due to the Director General.”

³ OUR 01/11 “Licence fees for Telecommunications, Postal and Electricity Licences: Information Notice” available at <http://www.regutil.gg/docs/our0111.pdf>

⁴ OUR 02/38 “Fees for Telecommunications Licences; Report on the Consultation Paper and Decision Notice” available at <http://www.regutil.gg/docs/our0238.pdf>

3 Litigation Costs

3.1 UAT Ruling on Costs of Litigation

The Utility Appeals Tribunal (UAT) which was established to hear appeals against certain decisions of OUR, issued a certified determination in January 2004 in relation to an appeal taken by Cable & Wireless Guernsey (C&WG) against a decision of the OUR (the “Appeal”). The details of that Appeal can be viewed at the UAT website on www.utilityappeals.org.gg.

In its certified determination the UAT decided that the costs incurred by the parties in the Appeal should be born by the parties. In addition, it determined that the costs incurred by the UAT, including those incurred in the Appeal and those relating to the establishment of the UAT, should be born by the OUR and consequently recovered from the regulated industries through licence fees. Finally, the UAT stated that the manner in which the costs were to be recovered by OUR is a matter for the discretion of the OUR.

The relevant sections of the certified determination are attached at annex 1.

The UAT ruling in relation to costs comprises the following elements:

- The UAT determined that its costs are to be recovered from the OUR;
- The UAT noted that the OUR funding arises from licence fees from telecommunications, postal and electricity licensees;
- The UAT expressed its view that some of its costs were “start up” costs, and that some of its work may have been “helpful in clarifying the nature of the regulatory process in the Bailiwick”, and implied that some or all of the costs in these categories should be recovered from “the three regulated industries”.
- When invited, the UAT declined to provide any guidance or indication whatsoever on the quantification of these two elements of cost, i.e.
 - What constitutes a “start up” cost, or
 - What elements of its work did the UAT believe was helpful in clarifying the nature of the regulatory process in the Bailiwick.

The UAT ordered the OUR to exercise its discretion;

- *“in what proportion of the Tribunal’s work has actually been helpful in clarifying the nature of the regulatory process in the Bailiwick”, and*
- *“in apportioning the costs between the three regulated industries”.*

3.2 Disagreement of OUR

For the information of interested parties, during the hearing of the case, the OUR disagreed with the position of the UAT on costs in its entirety and indicated that it did not agree that any costs were appropriate to be recovered from any sector other than the telecommunications sector. That remains the position of the OUR.

In conclusion the UAT has, against the wishes of the OUR, directed the OUR to exercise its discretion in the apportionment of the UAT costs but has declined to provide any useful guidance on how this should be done.

3.3 Apportionment of UAT Costs

The OUR has now received confirmation of the costs of the UAT from the Board of Industry. In addition the OUR 2003 accounts are currently under audit and therefore the OUR has now been able to fully quantify the cost that OUR incurred during the litigation. The following paragraphs indicate how the OUR has apportioned these costs and the reasons therefore.

3.3.1 Start up Costs of Tribunal

The OUR has been assisted by the Board of Industry which has calculated the costs incurred by the UAT and separated out those costs associated with the establishment or “start-up” of the UAT from the costs incurred in this Appeal. Furthermore, the Board has taken the view that the cost of establishing the UAT shall be met from its central budget, making it unnecessary for the OUR to increase any licence fees to recover this amount. Therefore this cost has no implications for licence fees, and given that it is not considered as ongoing costs it is not necessary to consider it as a cost implication for the future.

3.3.2 Cost of this first Appeal

Without prejudice to the OUR’s own view as to where the costs of this Appeal should lie, the OUR has considered the position of the UAT in relation to the recovery of UAT costs incurred in this specific Appeal. Unfortunately the OUR finds it necessary to implement a ruling with which the OUR disagrees and which, in the view of the OUR is impossible to carry out in any cost effective or non contentious manner.

In particular, the Tribunal, while it seems to be of the view that the Appeal was “*beneficial in clarifying the regulatory regime*” for all three sectors, not just telecommunications, has declined to indicate what proportion of the costs of the Appeal it considers to be so beneficial. Indeed the exercise of apportioning costs between categories was recognised by the UAT as not cost effective when it stated that it would “*not be cost effective to seek to engage in a detailed apportionment of our own costs in what has, essentially, been a complex ‘score draw’*”

The OUR is disinclined to engage in a costly and time consuming exercise of reviewing all UAT invoices in detail and requesting the UAT to submit time allocations and costs by activity. This appears to OUR to be consistent with the view of the UAT that this would only increase costs across all of the regulated sectors without a corresponding benefit.

The OUR has adopted a pragmatic review of the activities of the UAT based on the published documents in the case as these documents are visible to all affected parties. The steps that the OUR has undertaken are as follows:

- A review of the key published documents in the case (created by the UAT), with a view to identifying those paragraphs of the documents that deal with
 - Issues specific to this Appeal or to the telecommunications sector, and
 - Issues that could be considered “generic” across all three sectors.
- Use of the proportion of total paragraphs as the best guide for the proportion of the UAT costs that apply to each of the above categories, and
- Allocation as follows;

- Issues specific to this Appeal or the telecommunications sector: allocated in total to the telecoms sector, and
- Issues that could be considered “generic” across all three sectors: allocated across the three sectors in the proportion used to allocate overhead costs of OUR

Annex 2 sets out further detail on the OUR review of the UAT activities. In carrying out this review, the OUR notes that the case was a telecommunications case and licensees in the telecommunications sector were present and represented throughout the case and had visibility of the issues and the view of the UAT in relation to costs. On the other hand licensees in the postal and electricity sectors were not present, had no interest whatsoever in the outcome of the proceedings or the vast majority of the issues raised by the matter, had no input into or opportunity to influence the rulings or decisions, and had no visibility of the UAT view on costs.

In the circumstances the OUR is of the view that to allocate costs of this Appeal to sectors other than the telecommunications sector requires clear and objective identification of an incremental benefit to those sectors. Where it is not possible to identify clearly such a benefit, the OUR believes that the only reasonable way of bringing matters to a fair conclusion lies with allocating the costs to the telecommunications sector. This is considered fair and equitable as clearly, future appeals will raise their own case management issues and these, while they could be generic in nature, could very well fall to the sector in which the appeal is raised. In addition, insofar as procedural issues arose in the recent case, many of those issues came about by reason of the manner in which that particular case was presented and conducted. In the OUR’s view it is not reasonable to expect other sectors, in effect, to fund the resolution of those particular issues.

Having concluded the review of the relevant documentation as described in Annex 2, the OUR is of the view that 7.5% of the UAT costs in this Appeal can be attributed to generic issues raised during the Appeal. Therefore the OUR has taken 7.5% of the UAT costs in this Appeal and apportioned these across the three sectors in the same proportion as staff and general overheads were allocated in 2003. The remaining 92.5% of the costs of the UAT have been allocated to the telecommunications sector.

Consequently 96% of the costs of the UAT in this Appeal lie with the telecommunications sector, 2% lie with the postal sector and 2% with the electricity sector.

3.4 Apportionment of OUR Costs

The UAT ordered that the costs of the parties lie where they fell, i.e. the OUR should bear its own costs in this appeal. Notwithstanding the paragraph in the ruling that indicates OUR agreement to this, the OUR has written to the UAT noting that the OUR did not at the time and does not now agree with this position.

The certified ruling of the UAT is silent on the manner in which the OUR should recover its costs from its licensees. However, during the hearing, the UAT implied that the OUR costs should, as with the costs of the UAT, be recovered from not just the telecommunications industry but from all of the regulated sectors in some proportion.

The OUR's internal procedures include the allocation of costs between the three sectors of post, electricity and telecommunications. This involves direct allocation of costs where possible, e.g. the allocation of consultants' costs on specific projects, legal costs etc, and indirect allocation of overheads based on staff time spent working on each sector.

The costs that the OUR has incurred in this Appeal have been allocated in the OUR's 2002 and 2003 accounts as follows:

- Legal and directly attributable costs incurred have been allocated to the telecommunications sector;
- Staff time spent on the Appeal has been allocated to the telecommunications sector; and
- Overhead costs incurred by OUR have been allocated to telecommunications in proportion to the split of staff time between the three sectors as part of the overall allocation of overheads.

These costs have been independently audited and will be included in the OUR published accounts.

The OUR agrees with the UAT that the exercise of apportioning costs between categories is not an efficient use of OUR's limited resources. In the case of the OUR costs, the OUR management processes did not involve an allocation of the costs incurred in this appeal by topic, or by perceived "benefit" to each of the three sectors as it was not possible to predict in advance the relevance these issues have now gained. Therefore a reallocation at this stage would involve a retrospective, complex and time-consuming review (incurring significant further costs), an amendment of the OUR's statutory accounts and a revised audit for 2003.

Therefore the OUR concludes that the costs incurred and already allocated to the telecommunications sector should lie where they fall and should not be revisited at this stage. In the interests of fairness and transparency the OUR will, unless directed otherwise in any particular appeal to the UAT, adopt this same principle in future where relevant.

3.5 Litigation Contingency Fund

On the basis of the experience incurred in this first appeal, and in anticipation of appeals being initiated against other decisions of the OUR, the budgetary policy of the Office has been amended to commence building a small contingency fund to assist in defraying any such costs should they arise.

The contingency fund shall be built up in each of the three sectors, commencing in 2005. For the first two years the amount in the fund will be 10% of the total income of OUR in each of the sectors. The fund will be reported on separately in the OUR accounts.

It is considered unlikely that this fund would adequately cover all legal costs of another appeal on a scale similar to that already heard, and in the event of a shortfall in funds a further review of licence fees would be necessary.

4 Work Programme

4.1 Allocation of Costs between sectors

When the OUR initially set licence fees it was on the basis of an estimated split of costs between the three sectors. Following the first full year of operation of OUR, that split was revised with a view to identifying more accurately the basis for allocation of costs between the three utilities.

Current practice of OUR is as follows:

- Directly incurred costs are allocated to the sector to which they relate, e.g. consultants fees, investigation costs, etc.
- Indirect costs (including staff time and overheads) are allocated across the sectors in proportion to the amount of time that is spent by OUR staff on each sector. This is derived from timesheet information within OUR.

This same information is used to project forward budget costs, i.e. costs of specific projects are estimated and allocated to the relevant sectors while staff costs and overheads are budgeted in total and split across the utilities in accordance with the previous year's actual split of time across the sectors.

4.2 Revised work programme 2004-2006

The OUR prepares, publishes and updates its work plan on a regular basis on its website. This work plan is reflected in the detailed budgeting of the OUR and has been reviewed for the OUR three year budget for 2004 - 2006.

4.2.1 Telecommunications

During 2003, the OUR spent significant time and resources on the management and running of the Appeal and this, along with various other factors had an impact on the timing of some of the projects that the OUR had planned during 2003 in the telecommunications sector. Therefore the OUR has revised the telecommunications work plan for the period 2004 – 2006 to enable key projects to be completed in this timetable. The key projects over this period will be as follows:

- Review of C&WG retail price control: The timing of this has been revised with the project due to be completed in the second half of 2004 due to the change in C&WG year end. In addition, extra outside resources will be needed to complete the project on time due to diverted resources that caused a later start on the project than had been anticipated;
- Review of C&WG separated accounts: This was originally scheduled to take place in 2003, leading to better information to inform regulatory decisions. It has been deferred until 2004 due to delays in the preparation of the Separated Accounts and requires additional external expertise due to diversion of internal resources. Given the stage of development of the accounts further reviews have had to be scheduled for 2005/6.
- Review of interconnection rates: Timing of this project has been linked to the review of the separated accounts and requires external assistance due to time and staff pressures;

Other work programme items remain in place although the timing may be affected by the above major projects. These include reviewing the Reference Offer text, reviewing market dominance in telecommunications, examining the appropriate cost of capital for C&WG, ongoing dispute resolution, licensing etc.

4.2.2 Electricity

The OUR work programme for the electricity sector remains largely unchanged and is driven by the need to identify sufficient clarity on strategic policy direction for Guernsey to enable the OUR to implement a new price control for retail electricity prices from 1 January 2005.

4.2.3 Post

The OUR work programme for the postal sector has been reviewed in the light of:

- The unbudgeted staff time that had to be spent on a comprehensive investigation and direction in relation to quality of service following Christmas 2002, and;
- The need to develop a framework for Guernsey Post's business planning for further price control reviews reflecting significant changes in its main partner – Royal Mail, including proposals to move to Size Based Pricing in 2004/5.

4.2.4 Conclusion

In conclusion, the work programme for telecommunications has suffered some slippage and requires additional effort to meet targets and achieve stated outcomes. The electricity work programme continues as originally envisaged after the first review of electricity prices in 2002. The postal work programme requires greater input from OUR given the changes that GPL is facing in its relationship with Royal Mail and will therefore require additional effort in the future.

The current work programme of the OUR is on the OUR website (www.regutil.gg) and is updated on an ongoing basis.

5 Licence Fees

5.1 Telecommunications

In order to meet the work programme for the three years from 2004 to 2006 inclusive, to recover the cost of the UAT in the first Appeal and to build a small contingency fund, the OUR regrets that licence fees for telecommunications operators (fixed and mobile) must increase from their previous level of 1% of relevant turnover to the following levels:

- Licence fees in 2004: 1.6% of relevant turnover
- Licence fees in 2005: 1.5% of relevant turnover
- Licence fees in 2006: 1.4% of relevant turnover

In accordance with Condition 4 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and Section 6 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby prescribes the following fees payable annually over the term of a telecommunications licence where the relevant turnover⁵ of the licensee is greater than £150,000;

- 2004: 1.6% of relevant turnover
- 2005: 1.5% of relevant turnover
- 2006 and subsequent years unless modified: 1.4% of relevant turnover

Where the relevant turnover of the licensee is less than £150,000 the fee payable annually shall be £500.

This decision shall be kept under review and may be revised from time to time. The full and up to date fee schedule for all licence fees is available from the OUR website

5.2 Electricity

The OUR originally set the licence fees for the three licences held by Guernsey Electricity Ltd at £180,000 per annum. Since the establishment of the OUR this amount has remained unchanged. This represents less than 0.7% of the turnover of the electricity company. Notwithstanding that the turnover of the company has increased significantly over that time.

The OUR is pleased to announce that there is currently no need to increase this licence fee and therefore the fee shall remain set at £180,000.

In accordance with Condition 4 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and Section 6 of the Electricity (Guernsey) Law, 2001, the Director General hereby prescribes the following fees payable annually over the term of an electricity licence;

- 2004 and subsequent years until further notice: £180,000

⁵ For a description of relevant turnover see Document OUR 02/39R Annual Licence Fees: Guidelines for Telecommunications Licensees

This decision shall be kept under review and may be revised from time to time. The full and up to date fee schedule for all licence fees is available from the OUR website.

5.3 Post

The licence fee charged to Guernsey Post Ltd as the universal postal operator in Guernsey was set in 2001 at £120,000 and has not changed since then. This represents 0.6% of the current turnover of the company.

Regrettably however, the extent of the work that the OUR has had to and will have to undertake in this area, driven largely by the significant changes in this sector, require an increase in funding. Therefore the licence fee will remain unchanged in 2004 but will be increased in 2005 to £180,000 and will remain at that level for 2006.

In accordance with Condition 4 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and Section 6 of the Post Office (Bailiwick of Guernsey) Law, 2001, the Director General hereby prescribes the following fees payable annually over the term of a postal licence;

- 2004: £120,000
- 2005 and subsequent years until further notice: £180,000

This decision shall be kept under review and may be revised from time to time. The full and up to date fee schedule for all licence fees is available from the OUR website.

ANNEX 1: Extract from Determination of the Tribunal made in January 2004 (UAT Document 2003/1/14)

IX.e Costs

329. The award of costs is provided for in Rule 24. The Applicant has succeeded in this Appeal but only in part. The Respondent has succeeded in part. The Appeal has involved exploring areas that are novel to Guernsey Law, to regulatory practice in the Bailiwick and to practice in and before this Tribunal. To at least some extent, the costs of this Appeal represent part of the start up costs of the new regime.
330. The Applicant has already alerted us to the fact that costs incurred by the Respondent are likely to have to be paid by the industry. The costs of the Tribunal itself have also to be recovered and the Tribunal is expected to look to the Parties in recovering them. In the particular circumstances of this first Appeal, the Tribunal recognises that many of the costs reflect a 'start-up' situation. It seems appropriate, on an initial view, that these costs should fall – in the first instance – to the Respondent with a view to their recovery as part of the cost of regulation.
331. The Tribunal has listened to submissions upon costs having already indicated that, without prejudice to its consideration of those submissions, its initial inclination would be that the parties' own costs should lie where they fall. The parties, including the interveners, have accepted that approach.⁵⁴
332. On considering the submissions, the Tribunal believes that it would not be cost effective to seek to engage in a detailed apportionment of our own costs in what has, essentially, been a complex 'score draw'.
333. We do believe that some of the matters considered have been generic and not specific to telecommunications and therefore should be borne by all regulated industries. We accept the principle that telecommunications costs should not be borne by posts and electricity.
334. Our own costs will therefore be borne, in the first instance, by the Respondent and we leave it to the Respondent to exercise her discretion in what proportion of the Tribunal's work has actually been helpful in clarifying the nature of the regulatory process in the Bailiwick. She may then use her discretion in apportioning the costs between the three regulated industries.

⁵⁴ Whilst the decisions of the UK Competition Appeal Tribunal on costs do not provide precedents for this Tribunal, they may illustrate the practice of a sister tribunal faced with not dissimilar situations. There have been costs decisions in *IIB v DGFT ("GISC") [2002] CAT 2*, *Napp Pharmaceuticals v DGFT [2002] CAT 3*, and in subsequent decisions see www.catribunal.org.uk

ANNEX 2: Review of UAT documentation

This document describes the method used by the OUR to attempt to implement the order of the UAT when it stated that the DG should use her discretion;

- “*in what proportion of the Tribunal’s work has actually been helpful in clarifying the nature of the regulatory process in the Bailiwick*”, and
- “*in apportioning the costs between the three regulated industries*”.

The DG does not consider it practical or feasible to carry out an analysis of what benefit has been derived from the UAT work generally across all sectors that are regulated by the OUR. However, the DG has sought to identify those paragraphs of the UAT’s published decisions, orders, determinations and findings that could possibly be considered relevant across all three sectors and that are considered specifically in that wider context. All issues that are considered within the specific context or background of the specific case or the telecommunications sector are excluded from consideration as generic costs.

The conclusion of this review is that a total of 7.5% of the relevant documents could be considered generic, and consequently 7.5% of the UAT costs in this appeal can be considered appropriate to be apportioned across all three regulated industries – telecommunications, post and electricity. The remaining 92.5% should be allocated directly to telecommunications. The final allocation is therefore as follows:

Telecommunications:	96% of total costs of UAT in this appeal
Post:	2% of total costs of the UAT in this appeal
Electricity:	2% of total costs of the UAT in this appeal

Directions and Judgement following a Hearing for Directions and upon Requests to Intervene on 18 June 2003 (UAT Document No. 2003/1/3)

This document comprises 10% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered which are:

- Introduction
- Parties and Prospective Intervenors
- Contents
- The Legal Background to the Direction
- The Immediate Background to the Appeal
- Interest and Intervention
- The Rules and preliminary points of procedure before the Tribunal
- Timetable in this Appeal
- Conclusion

While the consideration of “Rules and preliminary points of procedure before the Tribunal” could in isolation be considered generic, there is no indication that this provides any benefit across the regulated sectors. These issues arose by virtue of particular decisions made by the Appellant in the conduct of the Appeal. It does not appear to the OUR to follow that an Appellant from any of the other regulated sectors

would have conducted the Appeal in the manner giving rise to these issues. The OUR considers that the issues arising were so specific to this Appeal that it would neither be fair nor equitable to impose the costs of these across the other sectors.

Furthermore it is the view of the OUR that the UAT would have to consider new cases on their merits and develop its case management rules in the context of each case, whatever sector that might be in. Therefore the OUR does not consider that there is any clear, objective or rational basis for allocating any of the costs of this Directions hearing to any sector other than the telecoms sector.

Directions following a Hearing on 24 July 2003(UAT Document No. 2003/1/4)

This document comprises 11% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered which are:

- A Second Hearing For Directions
- Preliminary Point on Acquaintance
- The Nature of an Appeal under Section 15 of the Regulation Law
- The Status of Direction OUR 02/20C
- The burden of proof
- Leased Lines
- Leased Lines and the interpretation of Section 10
- The timing and legitimacy of the finding of Dominance
- The scope of the finding of Dominance
- The consequent scope of discretion open to the Respondent in relation to including Leased Lines within the Reference Offer and the scope of the Tribunal
- Evidence
- The question of what individuals had in mind about Leased Lines and the Reference Offer in 2001
- The question of what actually influenced individuals thinking about Leased Lines and the Reference Offer as matters developed in 2002 and what the parties could reasonably have expected of each other
- Estoppel in respect of timetabling
- Commercial Confidentiality
- Conclusion and Directions

Once again, these issues relate primarily to the appeal in hand and consequently the telecommunications sector and where certain issues could, in isolation, be considered “generic”, for example the “The Nature of an Appeal under Section 15 of the Regulation Law” and “Estoppel in respect of timetabling”, a reading of the document illustrates that these points were in fact considered in the specific context of this Appeal and the decision in the telecommunications sector only. There does not seem to the OUR to be any clear or objective basis for extracting or quantifying any generic benefit of this Direction separately from the telecommunications sectoral issues considered.

Furthermore it is the view of the OUR that the UAT would have to consider new cases on their merits and develop its case management rules in the context of each case, whatever sector that might be in. Therefore the OUR does not consider that

there is any clear, objective or rational basis for allocating any of the costs of this Directions hearing to any sector other than the telecoms sector.

Order following an urgent request for a second Stay of a Direction published by the Respondent as OUR 02 20C (UAT Document No 2003/1/5) and Order following a request for a third Stay of a Direction published by the Respondent as OUR 02 20C (UAT Document No 2003/1/7)

Document No 2003/1/5 comprises 10% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered which are:

- The Applicant's second application for a stay
- The Status of Direction OUR 02/20C
- Second Hearing For Directions – the proposed Undertaking
- Grounds for a stay
- Comments upon these grounds
- Undertakings and Human Rights
- Undertaking now offered
- Guidance from the Law
- Conclusion and Ruling

Document 2003/1/7 comprises 2% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered which are:

- The Applicant's third application for a stay
- Human rights aspect
- Undertaking now offered
- Conclusion and Ruling

The requirement to hear three separate applications for a stay of the OUR Decision arose due to the nature of the decision under appeal, the specific stay sought by the Applicant and the subsequent actions of the Applicant in relation to undertakings. While clearly applications for a stay on a decision and provision of undertakings could apply in other sectors, the OUR is of the view that any future applications for any stay will have to be considered on their merits and the UAT would have to develop its case management rules in the context of each case, whatever sector that might be in.

Therefore the OUR does not consider that there is any clear, objective or rational basis for allocating any of the costs of these Directions hearing to any sector other than the telecoms sector.

Preliminary Ruling on Estoppel dated 26 September 2003 (UAT Document no 2003/1/8)

This document comprises 9% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered which are:

- A preliminary question on estoppel
- The Respondent's proposition

- The Applicant's counter propositions
- Question of Law in Guernsey in relation to the review of administrative actions
- Considering the Evidence
- The statutory role of the Respondent
- Conclusion

These issues relate primarily to the appeal in hand and consequently the telecommunications sector and where certain issues could be considered "generic", for example the "A preliminary question on estoppel", a reading of the document illustrates that these points were in fact considered in the specific context of this Appeal and on the facts of the case. There does not seem to the OUR to be any clear or objective basis for extracting or quantifying any generic benefit of this Direction separately from the telecommunications sectoral issues considered.

Furthermore it is the view of the OUR that the UAT would have to consider new cases on their merits and develop its case management rules in the context of each case, whatever sector that might be in. Therefore the OUR does not consider that there is any clear, objective or rational basis for allocating any of the costs of this Directions hearing to any sector other than the telecoms sector.

Certificate and Determination (UAT document No 2003/1/14)

This document comprises 58% of the total published rulings, decisions, directions or determinations of the UAT measured by total number of paragraphs. The headings used in this Direction indicate the issues considered and are as follows (note not all headings have paragraphs under them):

- Part I Brief summary
- Part II Historical and legal background
- II.a Brief historical background
- II.b Summary of the immediate past history leading to privatisation, liberalisation, regulation and the appeal mechanism
- The United Kingdom and the European Union
- Convention for the Protection of Human Rights and Fundamental Freedoms and its jurisprudence
- European Union Telecommunications Law and its jurisprudence
- II.c Developments in the Bailiwick – a legal framework for regulated competition
- II.d States Directions
- II.e Regulatory Discretion, Duties and Preparations
 - generic (paragraphs 65-66)
 - telecommunications (paragraphs 67-72)
- II.f Consultation by the Regulator
- II.g Time limits for responses, representations or objections
- August 2001 – a request for a Reference Offer
- II.h The Direction and its implications
- II.i The Applicant's defiance of the Direction, enforcement proceedings commenced by the Respondent and a subsequent stay of the Direction
- II.j The Appeal and the timings

- Part III Developing a framework for regulated competition in telecommunications
- III.a The Legal Framework: Intentions, Laws, States Directions and Rules
- III.b Preparatory steps and a preliminary finding
- III.c The Licence to the Applicant – Interconnection and Leased Lines
- Part IV Determination of a dominant position
- IV.a Relevant market
- IV.b The Determination – Decision 1.1 in OUR 01/14
- IV.c Contentions for the Applicant
- IV.d Contentions for the Respondent
- IV.e Considerations by the Tribunal
- Part V The Nature of an Appeal to Utility Appeals Tribunal
- V.a The Regulator is entrusted with discretion
- V.b The burden and standard of proof
- V.c The Tribunal may also be entrusted with discretion
- Part VI The Legal Foundations for the Direction
- VI.a Background to the interpretation of ‘interconnection and access’
- VI.b Les travaux préparatoires
- Terms in the Telecoms Law – defined and undefined
- The law leading to a Reference Offer
- The Applicant’s Submissions
- The Respondent’s Submissions
- Background to both the discussion of section 10(2) and related policy considerations
- An Intervener’s Viewpoint
- Discussion on the scope of section 10(2)
- Duty and policy considerations and extra-territoriality
- The Applicant’s arguments
- The Respondent’s response
- Discussion
- The essence of the dispute
- Part VII The process in which the parties were engaged
- Criteria
- The Applicant’s case on fairness
- The Respondent’s case on fairness
- The Respondent’s Argument on Estoppel
- The Applicant’s Response on Estoppel
- Handling estoppel in the circumstances
- The Applicant’s case on lack of transparency
- A complete absence of reasons and of reasoning
- The Respondent’s case on transparency
- Observation by the Tribunal
- The Evidence
- Evidence as to activity before the States
- Evidence from the Parties
- Foreshadowing

- Part VIII The Debate about leased lines and the Reference Offer before and immediately after the Direction
- Part IX Conclusions and Proposed Order
- IX.a Findings
- IX.b Considerations as to what remedies should apply in the circumstances
- IX.c Declarations
- IX.d The Status of the Direction
- IX.e Costs
- IX.f Gratitude and Looking Ahead

Paragraphs 65-66 of the heading “*II.e Regulatory Discretion, Duties and Preparations*”, along with the paragraphs under “*Part V The Nature of an Appeal to Utility Appeals Tribunal*”, “*V.a The Regulator is entrusted with discretion*”, “*V.b The burden and standard of proof*”, and “*V.c The Tribunal may also be entrusted with discretion*” can be considered generic. Together these comprise 13% of this document, or just over 7.5% of the total paragraphs in the case.

Thus the OUR has taken 7.5% of the UAT costs in this Appeal and apportioned these across the three sectors in the same proportion as staff and general overheads were allocated in 2003.