



CABLE & WIRELESS

**MOBILE MARKET REVIEW: CONSULTATION ON
FURTHER DEVELOPMENT OF THE MOBILE MARKET**

RESPONSE OF CABLE AND WIRELESS GUERNSEY LIMITED

8th August 2008



1. Introduction

Cable and Wireless Guernsey Limited (C&W) welcome the proposal to allow all licensed operators to offer 3G services and to make the allocation of the spectrum for those services technology neutral. We are grateful to the OUR and Ofcom for reaching agreement that Guernsey can progress in this matter at a faster pace than the UK, which agreement reflects the different arrangements and historical background to the Guernsey, and indeed the Channel Islands market, and the proportionate approach appropriate to that market.

2. Comments in Response to Specific Questions

2.1 Mobile Termination Rates (MTRs) were last reviewed by the OUR in 2006 with the decision published in February 2007 that MTRs were to be significantly reduced. Consequently, the maximum target average rate that the mobile operators are allowed to charge is 6.75 pence per minute. The DG has previously stated that MTRs are due to be considered again in 2010.

The DG has stated¹ that, while MTRs will not be reviewed as part of this review, he would welcome comments as to the current level of MTRs and on the merits of a further review. C&W recommends that the OUR consider and take account of what happens in the UK (and indeed the wider EU) market before undertaking any review.

The current OUR MTR review date of 2010 should remain to address whether any changes are required from the previous determination (primarily based on benchmarks) taking into account any benchmark changes and a more detailed analysis of local costings. Assuming one of the outcomes of this mobile review is that C&W is able to offer 3G services it will require further investment in the mobile network to enable such services. Those costs should be factored in to the MTR, otherwise C&W would be forced into a position whereby it would under-recover its costs. The need to take account of 3G costs in determining the MTR is consistent with the position taken in the UK and most other EU Member Countries. Further, given that Airtel only launched its mobile service in March 2008 it is still building up its customer numbers. The Airtel licence was granted in September 2006, with a planned launch date of September 2007, and their business plan at that time must have taken account of the 2006 review and February 2007 decision and the review in 2007, as would both C&W and Wave.

The introduction of MNP in December 2008 will also have an impact on calling patterns and call numbers for each operator.

Hence by 2010 all the operators should have more complete costs, traffic and customer information to input into the MTR calculations.

2.2 The Director General (DG) seeks views on the options for a **rationalisation of the current mobile networks**, including the possible development of a single 'backbone' network for all three operators². Such rationalisation might follow a "...**fundamental review of the current**

¹Consultation Paper Page 9, section 5.1

² Consultation Paper Page 12, section 5.2

infrastructure utilised by the mobile operators in Guernsey.” The DG notes that whilst the current infrastructure has grown as the three mobile operators invested in their networks over very different time scales there have been a number of concerns over environmental issues and there is a need to balance the objectives of on the one hand promoting sustainable competition and improving choice for customers and on the other protecting the environment. There is therefore a need for consideration of both environmental and economic issues in undertaking such a review.

The DG refers to the Environment Department, the Commerce and Employment Department and the OUR working jointly to consider how best the apparently conflicting objectives referred to above can be addressed so as to enhance the social and economic wellbeing of the Bailiwick. C&W firmly believes that such discussions and joint working should, indeed must, include the operators, and would welcome the opportunity to participate.

C&W first launched its 2G service in the Bailiwick of Guernsey 1996 utilising an Ericsson network. C&W invested heavily in the extension and upgrading of that network and then subsequently when it was replaced by Nokia equipment in 2006/07. Without doubt C&W has invested more than any other local telecommunications operator and as a result we have nearly ubiquitous coverage and provide customers with a very high quality service in all the major islands of the Bailiwick. Clearly C&W is anxious that its significant investment should not be wasted and the quality of its mobile service must not be compromised in any way by any 'rationalisation'. Quality of service is a key differentiator for C&W in the Guernsey mobile market as C&W is not able to compete on price to the same extent as its competitors because of the limitations imposed as a result of its dominant position.

All current licensed operators have invested in their individual networks in the setting up of sites, base stations and network to connect these sites. Most if not all of this infrastructure is currently in place and with respect to site sharing which is primarily where the environmental impact of expansion is visible as the DG acknowledges in the review there is a currently existing practice which has resulted in more than 50% of all sites being shared. As such it is unclear exactly what is meant by a single 'backbone' network for all three operators

C&W is concerned by the potential cost of the proposed review of the existing network infrastructure. We assume that the OUR will engage consultants to undertake the work on its behalf. Those consultants will require access to network diagrams, probably physical access to network sites and lengthy discussions with technical personnel. This will be a significant cost to all parties, including C&W, which would not normally be borne by an efficient operator without any conclusive assessment as to whether there would be proportional benefit as a result.

We understand that the review will inform the OUR's assessment of the feasibility of the rationalisation of the current networks. If the current mobile market in the UK is taken as a comparison, it should be noted that we understand that while Vodafone and Orange have agreed to share mobile masts they are going to retain separate networks and so this does not appear to be an example of what the OUR is considering.

We note that the DG has stated that no further mobile licences will be awarded until the review is complete and there is a better understanding of the framework in which services can develop, which is expected to be in early 2009. We are concerned that that timetable in itself is optimistic and does not fully account for all the issues and considerations impacting that review. We trust that in considering whether there should be further licence awards the DG will not only consider physical network factors but also whether a fourth service would be both proportionate to and commercially viable taking account of the size of the Guernsey market. While we appreciate it is up to potential operators to formulate their own business case (although the ability to do this may be compromised if all operators have to use the same backbone network), it would not reflect well on either the OUR or Guernsey if the market were to be overloaded and either one or more licensees were to go out of business or was unwilling to make appropriate investment in services and infrastructure to offer a real alternative to customers.

The OUR's economic advisers, Econ, recommend in their report³ that the OUR should not shut the door on additional licensees. It gives five reasons why the OUR should not do this and four reasons why the OUR should promote further market entry. One of the latter reasons is the likelihood that the OUR would not need to impose any sector-specific regulation on existing mobile players. Clearly we would welcome less regulation, but we believe that position has already been reached where the OUR should apply lighter touch regulation with three licensees in the mobile market, especially with the imminent introduction of mobile number portability.

As stated above, we are unclear as to what is meant in practical and technical terms by reference to a single 'backbone' network especially in relation to the investment made to date by all 3 operators, and the terms of reference for such a network. There needs to be differentiation between any core network and the radio access network and the continued opportunity, indeed incentive, for operators to innovate in service and quality of service.

Although there are a significant number of issues to consider and try to resolve, such that it is not possible at this stage to say whether an overhaul and rationalisation would have benefit over cost, is necessary, desirable or indeed achievable, we would welcome the opportunity to be involved in those considerations and evaluations.

- 2.3 C&W notes that the OUR is assessing **site sharing charges** outside of this mobile review. However the DG invites comments from interested parties on this issue. As we have discussed with the OUR previously the rates charged by C&W are benchmarked against rates charged in the UK and are common throughout the Channel Islands. The States of Guernsey has recently imposed new conditions for site sharing on States property which have resulted in additional rental being charged for site share arrangements and we have also been advised by private landowners of sites we occupy that they are to have increased charges from the States which they are expecting to pass onto C&W, and presumably the same applies to the other operators. This States action is outside the direct control of any of the operators.

³ Competition in the provision of mobile services in Guernsey, June 2008, Pages v & vi (Promoting Competition)

C&W would in any event question the justification for the OUR reviewing site sharing charges. The OUR has only recently amended the Licence Conditions applicable to all operators⁴ and Amended Licence Condition 20 states:

'20.3 The Licensee shall make all reasonable efforts to agree the terms of such site sharing with Other Licensed Operators and if such agreement shall not be reached within times to be stipulated by the Director General, the Director General may direct terms on which site sharing shall occur.

And

*20.5 In the event that the operators fail to reach agreement the Director General may determine the terms and conditions for such Access pursuant to this Condition, including provision for fair and reasonable compensation payable for the shared use of the facility **if the parties fail to reach a commercial agreement.**' (emphasis added)*

We are not aware of any outstanding requests for site sharing that have not been able to progress because the operators have failed to agree the financial terms. As the OUR only has the power to intervene where the parties have failed to reach a commercial agreement it does not appear to C&W that the OUR has the power to review existing commercial arrangements that are in signed legal agreements.

- 2.4 The DG has stated that he will consider the requirement for C&W to **notify mobile price changes** as part of the wider review of licence conditions planned for later this year⁵. C&W welcomes this statement. In our view, given that the two new entrants have positioned themselves as price players (for example adverts for 1 pence per minute and the bundling of low cost broadband with pay as you go mobile services), it would seem that they are already progressing with promotions despite any price enhancements developed by C&W. Based upon this, a 21 day notice period does nothing to enhance the benefit to customers, it merely allows the other mobile licensees an additional period to prepare and launch their own price plans in advance of any launch by C&W. Indeed, many regulators, including Ofcom, have recognised that lengthy price notification periods can actually hinder competition as competitors may not initiate price reductions themselves until they see that the dominant operator has done so. Consumers may therefore be denied the more frequent price reductions that would tend to happen without such a lengthy notification period. In recognition of this, the tendency has been for regulators to either eliminate the need for such notification completely or to reduce the period to just one day. Furthermore, the consumers are often confused by the 21 day notice requirement and do not understand why they cannot benefit from the "new" prices immediately. This can result in a perception that the consumer is in some way "losing out".

- 2.5 The proposal that **licences should be technology neutral** is the key point in the Consultation Report and is welcomed by C&W.

We deal with each of the important points raised by the OUR on page 15 of the Consultation Report below.

⁴ OUR 07/14 – Amendment to the Mobile Telecommunications Licences of Cable & Wireless Guernsey, Guernsey Airtel Limited and Wave Telecom

⁵ Consultation Report Page 14 section 5.5

2.5.1 Surrender of some 900MHz spectrum

The OUR is considering whether C&W should be required to surrender some 900MHz spectrum based on whether C&W would be in a position of material competitive advantage if it retains its full allocation of spectrum. Given that Wave has rolled out its 3G network over the last four years, and also has been allocated EGSM spectrum, and Airtel launched its 3G services some months ago and heavily promotes its mobile broadband capability we cannot see that C&W would be at a material competitive advantage. The OUR highlights the fact that both operators have rolled out their networks utilising 3G, 1800 GSM and/or extended EGSM spectrum in the Consultation Report.

We note however that the report is silent as to the 1800 and 2100 spectrum utilised by the other operators.

If the OUR concludes that C&W is at a material competitive advantage and requires it to surrender 2 x 5MHz of 900MHz spectrum at this stage, it would presumably be with the intention of awarding 900MHz spectrum to each of the other two licensed mobile operators (through Ofcom). To do otherwise would not affect the mobile market at all. Clearly if it is contemplated that Wave and Airtel could gain 900MHz spectrum through that process i.e. without a competition, then 2100MHz spectrum could be awarded in a similar way. C&W wishes to express an interest in being awarded 2100MHz spectrum. If the OUR does not believe it can allocate 2100MHz spectrum to C&W (through Ofcom) without a competition, then similarly it cannot offer 900MHz spectrum to the other operators.

Contrary to being at a competitive advantage, C&W would continue to be at a disadvantage if it were not awarded some 2100MHz spectrum. We have what might be a unique situation in the Channel Islands whereby each of the three licensed telecommunications operators in Guernsey is a member of the same group of companies as one of the three licensed operators in Jersey. Each counts customers as being on-net when on the network of their sister company in the other island. The effect of this is that all companies already have a range of pan-island tariffs, as well as any island specific tariffs or promotions.

Airtel has launched 3G in both Guernsey and Jersey using 2100MHz spectrum, as has Wave so both operators can offer continuity of 3G service throughout the Channel Islands. C&W's sister company, C&W Jersey has launched 3G services using the 2100MHz spectrum licensed to them, but their customers will not be able to use 3G services on the C&W Guernsey network as their handsets will not be 900MHz compatible. Similarly visiting 2100MHz roamers will not be able to use the C&W 900MHz service for 3G roaming.

C&W is concerned that the use of 900MHz spectrum for 3G services is very new worldwide and such use would be recognised as leading edge as far as UK (and indeed Europe) spectrum management is concerned. C&W can technically deliver 3G services on its allocated 900MHz spectrum with its current mobile vendor, but the UK default is currently 2100MHz. There is a risk that the usage and technology will not 'catch on' and the handset manufacturers will not invest in the mass production of handsets that use that frequency for 3G services. There are no guarantees that should C&W solely use 900MHz for 3G that the UK will also follow and vendors may

optimise their product ranges to suit dominant UK mobile spectrum only i.e. 2100MHz. Furthermore developments to 4G/LTE (Long term evolution) cannot be guaranteed at 900MHz. That is, a situation could arise similar to the 'Rabbit' telecommunications service which flopped in the early 1990s, or in another industry, the better known Betamax video recording system which was not supported in competition to VHS. Therefore C&W should be allocated 2100MHz spectrum to ensure it can continue to develop and deliver mobile services to its customers/market.

We note that the DG proposes to engage with industry separately to this mobile review on the issue of the surrendering of 900MHz spectrum. We would urge that the OUR recognise the wider implications of such an engagement as any consideration of the use of spectrum has to involve all of the Channel Island operators, the licensing authorities in France as well as the OUR, JCRA and Ofcom. We have attached at confidential Appendix 1 a copy of a previous Memorandum of Understanding (MoU) between the three regulators and a copy of a previous Memorandum of Understanding (MoU) between the administrations of the United Kingdom and France. We would expect the OUR to consult and discuss with the JCRA and Ofcom any revision of the MoU and consideration of spectrum frequency management cannot be undertaken solely as regards Guernsey. Presumably if the outcome is the requirement that C&W surrender spectrum to Ofcom it would have implications in the UK which should also be considered at the time of the review.

Another aspect of the surrender of 900MHz spectrum which must be considered by the OUR is of compensation to C&W for releasing spectrum. Guernsey Telecoms Limited (GT) was allocated the whole of the 900MHz range and since that time the very significant investment and development by both GT and C&W has been into that spectrum. As far as we know there is no precedent for the imposed surrendering of spectrum (although Ofcom is seeking to re-allocate spectrum in the UK) so the matter of compensation has not yet been fully considered and answered.

A final consideration regarding the surrendering of 900MHz spectrum is that C&W would have to undertake a full frequency planning exercise at considerable time, cost and disruption including assessing whether there would be any degradation of the current service. Full drive tests pre and post the change would be required for voice and data services. The costs and effort in undertaking this exercise, as well as any impact on customers and other interested parties, would also have to be taken into account and there must be consideration of the risk of degradation of service.

In any event the issue of the surrendering of 900MHz spectrum should not delay the amendment of mobile telecommunications licences to make them technology neutral and allow all licensed operators to offer 3G services to the consumers.

2.5.2 The appropriate fee

In OUR 06/03 – Competition for 3G Mobile Telecommunications Licence – Report on the Consultation - page 9 the OUR states:

'In setting the charge for the 3G Mobile Telecommunications Licence, the DG has been conscious of two principle requirements: the need for equity between 3G mobile operators and the application of the cost recovery principle. Wave Telecom was awarded the first 3G Mobile

Telecommunications Licence in 2003 for which it paid an application fee of £250,000. As part of the licence award Wave Telecom received in effect a "free" 2G Mobile Telecommunications Licence – which was consistent with Guernsey Telecoms' "free" 2G Mobile Telecommunications Licence which it acquired on 1st October 2001. The DG considers it entirely appropriate for any new licensee to pay the same amount as Wave Telecom.

In addition the DG considers it appropriate and entirely consistent with the cost recovery principle that the Successful Applicant be required to pay for the costs for the award of the licence. While the DG does not at this time envisage the cost of running this competition exceeding the £250,000 application fee, he believes it appropriate to ensure that any Applicant is aware that they will be required to meet the costs of the competition in the event that it does exceed £250,000.'

The functions of the Director General are prescribed under The Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the "Law"). Section 4 (Functions of the Director General) subsection (1)(d) states:

'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;'

And subsection (3) 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.'

Hence the DG is able to set **the application fee** for a [3G] licence (subsection (1)(d)) but only at such a level as to defray the costs and expenditure incurred (subsection (3)). The proposal to make licences technology neutral does not include a competition like that followed for the award of the two existing 3G licences and thus presumably does not incur any such costs. The amendment of existing licences to be technology neutral would apply, and be of equal benefit, to all licensed operators and so any costs in respect of this review should be apportioned equally between all operators.

The DG sets the C&W annual telecommunications licence fee at a level that is sufficient to cover the costs the OUR incur in relation to our licence over the year. Similarly the other operators annual licence fee is set at a level sufficient to cover the costs incurred in relation to their licences. Those fees should be sufficient to cover the costs of this review. If C&W is charged a fee for the change to the wording of our mobile licence we would expect a corresponding reduction in our annual licence fee for 2008. Otherwise it would appear to us that the DG would be acting outside of the powers given by the Law.

There is no unfairness on Wave Telecom or Airtel since they did participate in a competition for which the OUR will have incurred costs that were recovered through the administration fee as is allowed under section 4 (3) of the Law. It is relevant to note here that in other jurisdictions where

there was no such competition process for the 3G licences, there was no fee charged.

2.6 Should the OUR decide to request that Ofcom carries out an **audit of how spectrum is used** in the Bailiwick⁶, C&W will be happy to co-operate.

2.7 We have already addressed the issue of the **number of mobile operators** in section 2.2 above. In addition we would be interested to understand the views of the States of Guernsey on the number of players being licensed into the telecommunications sector. In 2007 Deputy Stuart Falla, Commerce and Employment Minister, expressed the view, in relation to transportation services between the island, the UK and France, that it is better to have one quality operator rather than many low quality operators. Now that we have three mobile operators in the Bailiwick, and if all operators are allowed to offer both 2G and 3G services, it is hard to envisage where a fourth or fifth mobile operator would bring true benefits to the island.

Investment is crucial in order that the Bailiwick retains its telecommunications infrastructure to support the many different sectors including but not limited to residential customers, the finance industry, data hosting, fulfilment, light industry and retail. Mobile operators need to make a return in order to enable continued local investment. If there are more players the return earned by each of the existing operators is likely to reduce.

2.8 As we say above C&W supports the principle of the **liberalisation of spectrum** for the use of 2G and 3G services. This would make Guernsey a leading light in the development of telecommunications services and would give the operators the flexibility to offer services in response to customer needs. C&W looks forward to having the opportunity to offer 3G services to customers in the Bailiwick.

We have addressed the **rationalisation of 900MHz spectrum** above in section 2.5.1. The last Ofcom review undertaken by Ofcom on a Channel Island basis was carried out in 2004. The result of which is attached as Appendix 2.

This document is already out of date as it does not include spectrum allocated to Guernsey Airtel. It would also need to be updated if any revisions to spectrum allocation arise from this or the proposed rationalisation review.

2.9 The OUR has provided draft wording for an amendment to the definition of Licensed Mobile Telecommunications Services in each of the three mobile operators' licences. We understand that the DG will undertake a formal licence modification process in accordance with section 8 of the Telecommunications Law to bring this **licence modification** into effect. The draft wording is as follows:

"Licensed Mobile Telecommunications Services"; means services (other than satellite services) the provision of which consists, wholly or partly, in the establishment of radio communications to Users, which makes use wholly or partly of a Mobile Telecommunications Network and which has

⁶ Consultation Report Page 16 section 5.7

*the characteristic of a pan-European, cellular, digital, land based, mobile telephony service compatible with the European GSM or UMTS standard. **These services shall be provided utilising the frequency bands assigned to the Licensee, with the approval of the Director General, by the Office of Communications (Ofcom) in accordance with the Wireless Telegraphy Act and the relevant ETSI technical specifications.*** [New wording shown as bold]

C&W recommends that the new wording should also refer to ITU technical standards.

3. General Comments

The mobile data market needs stimulating and real competition. Wave was the first to market with 3G services, and as such is likely to have significant market power in the 3G market. The launch of Airtel 3G services has provided price and service competition and C&W is keen to introduce further price competitive and innovative services.

For example, broadband services provided using mobile technology appeal to a different market segment than fixed broadband services. It is generally expected in a mature and developed market such as Guernsey where there is an existing high quality fixed service, that mobile services will be in addition to, rather than a replacement for, such services. It is not attractive to avid gamers, but is attractive for mobile VOIP and those that want true mobility as opposed to fixed WIFI hotspots. If C&W is able to compete in the 3G market it will help to drive elasticity in the market and encourage and support a new work/lifestyle approach among customers.

4. Next Steps

C&W supports the proposal to shorten the consultation process on condition that the final decision does not include any new or amended material requirements that have not been consulted on and which could either be detrimental to C&W or require amendment to any of our above responses.