

Mr J Curran
Director General
Office of Utility Regulation
Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

18 January 2008

Dear John

Representations re proposal to issue a Direction to Guernsey Airtel Limited ("GAL") under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law 2001 (the "Law")

Cable and Wireless Guernsey Limited (C&W Guernsey) is grateful for the opportunity to comment on the proposal to issue a Direction to GAL following their breach of licence conditions contained in OUR 08/01¹. These comments should be considered alongside our response to OUR 07/10², as submitted on 30 August 2007. In that response we noted that when Wave Telecom failed to launch service on the promised date, the OUR issued a Section 27 Direction setting a new date by which the company was required to launch service and we proposed that a similar direction should be issued to GAL. Had that been done in September 2007 the OUR would now be in a position to consider and impose sanctions as provided for in Section 27 of the Law (following GAL's failure to launch on the revised date of 15 December 2007), rather than having to seek further representations and waiting until a later date to consider any such sanctions.

Launch Date

We presume that GAL committed in its application to the 3G competition to launching service by 15 September 2007 (i.e. one year from the date the licences were issued), as that date is currently enshrined in its licence conditions. That launch date was extended to 15 December 2007 by OUR in September 2007.

We note that in August 2007 GAL had asked for a delay in the launch date to 15 March 2008. That date was the latest possible date required in paragraph 7.2 of the Tender Document (OUR 06/04A) (allowing for the delay in the issuing of the licences)³.

The OUR now proposes an extended launch date for GAL of 31 March 2008, and indeed we note that the OUR website already states that an extension has been given to the end of March. If such date is set by OUR, GAL will miss the last possible launch date specified in

¹ Notice of Proposal to issue a Direction to Guernsey Airtel Limited (GAL) under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law 2001 – January 2008

² Amendment to Guernsey Airtel Ltd's 2G and 3G Mobile Licences – August 2007

³ 3G Mobile Telecommunications Licence – Tender Document - February 2006

that Tender and as such they will be in breach of one of the minimum requirements of the 3G competition. Why does the OUR now believe that this is acceptable and appropriate?

In contrast, C&W Guernsey committed to launching 3G services in December 2006, nine months ahead of the GAL launch date and 15 months ahead of the launch date the OUR has now proposed.

GAL could, and should, have avoided the delays to the date of launch by commencing the process of obtaining planning permission far earlier than it did. By failing to do so GAL is now to launch six months later than they committed to and as shown above later than the latest possible date set out in the Tender.

In Summary, GAL was awarded a 3G licence with the commitment to launch services on 15 September 2007. That launch date was extended to 15 December 2007. When the decision was made to award GAL the 3G licence there was an absolute binding requirement that to take part in the competition the 3G network must be based on a commercial launch of service within 18 months of the Licence Commencement Date, 15 September 2006, thus requiring commercial launch by 15 March 2008. Despite this the OUR now proposes a further extended launch date of 31 March 2008.

While C&W Guernsey has no option but to accept the OUR's proposal that GAL's launch deadline should be further extended, we do so with great reluctance. We also urge the OUR to comply with the terms and rules of its own competition and require GAL to launch commercial services by no later than 15 March 2008. If the OUR does not do so, we presume that there are no other provisions of the Tender and / or competition process which can continue to be applied.

Our comments above are particularly related to, but not restricted to, any reconsideration of the 3G market in the Bailiwick of Guernsey at this time. Currently there is no level playing field for operators in the island which negates the opportunity for true competition. Whilst Cable & Wireless supports competition, we remain deeply concerned that consumers will not have true choice since they presently will not be able to move from a 3G service with another operator back to Sure mobile. Potentially that will leave consumers, and business customers in particular, feeling trapped paying high prices or receiving poor service.

Furthermore, the OUR should have issued a Section 27 Direction in September 2007 when it set the new date of 15 December 2007 by which GAL was required to launch service. We now want assurances made to all licensed operators, and to the people of Guernsey that, should GAL miss the new extended launch, it will immediately be faced with the stiffest penalties possible under the Law.

Yours sincerely

Peter Stahelin
Director of Legal and Regulatory Affairs