

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

30 August 2007

Dear John

Representations re proposal to modify the licence of Guernsey Airtel Limited (GAL)

Cable and Wireless Guernsey Limited (C&W Guernsey) is grateful for the opportunity to comment on the proposals to modify the GAL licences contained in OUR 07/10¹. These comments should be considered alongside our response to OUR 07/11², which is submitted in a separate letter.

1. 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. GAL will have scored points in the marking of their application for any launch commitment, with 15 September 2007 some six months earlier than the required launch date as stated in the 3G Tender Document. If GAL had proposed the 15 March 2008 in its application, we presume it would have been awarded a score of zero for that element as we understand that marks were awarded for commitment to launch ahead of the required date.

GAL has asked for a delay in the launch date to 15 March 2008, that is to the latest possible date required in the Tender Document (allowing for the delay in the issuing of the licences). If GAL miss that launch date they will be in breach of one of the minimum requirements of the 3G competition.

In contrast, C&W Guernsey committed to launching 3G services in December 2006, nine months ahead of the GAL launch date, 15 months ahead of the launch date GAL has now proposed and a full year ahead of the new launch date proposed by the OUR. C&W Guernsey's confidence that its launch date would be met was evidenced by the performance guarantee it gave which was a real potential cost based upon free rental.

GAL could, and should have avoided the need to request a delay to the date of launch by commencing the process of obtaining planning permission far earlier than it did. As far as we are aware the first application was made in March 2007, as much as six months after its licence was awarded. Moreover, it is only recently that the bulk of the planning applications have been made by GAL, a matter of a few weeks before the committed launch date.

¹ Amendment to Guernsey Airtel Ltd's 2G and 3G Mobile Licences – August 2007

² Amendment to Mobile Licences of C&W Guernsey, Guernsey Airtel Ltd and Wave Telecom – August 2007

Indeed we note that they are still in the process of making applications. The likelihood of planning difficulties should have been foreseen by both the OUR and GAL and steps taken at a far earlier date to mitigate the risk that the process would not run smoothly.

2. Performance Guarantees

We note that GAL has undertaken to honour its performance guarantees in missing the 15 September 2007 launch date. While this appears admirable, those guarantees are actually of little worth. While we cannot see the exact details in the draft Condition 15.5 as it is shown as [XXX] we can see that the nature of the commitment is additional free airtime. It should be remembered that GAL will be a new mobile operator launching mobile services for the first time. Any such operator would have special launch offers to attract customers away from the existing operators. The offer of additional free airtime is not a penalty paid by GAL, but rather a marketing cost which is normal for any launch – especially as it is limited to customers that sign up within the first three months of commercial launch.

In contrast, the performance guarantee proposed by C&W Guernsey was one that would entail a real cost to the company and a real, upfront benefit to all C&W Guernsey customers. Had the C&W Guernsey launch been delayed for 3 months, the period of extension now being proposed for the GAL services, the real and actual cost would have been approximately £1M.

If GAL is to be allowed an extension of time for launch, they should be required to make a more significant commitment to their customers if they fail to achieve that date.

3. Mast Sharing

On the matter of mast sharing whilst we note the statements made in this Invitation to Comment, we refer the OUR to our response to OUR 07/11 where we have commented in detail. Of direct relevance to the launch of 3G services by Airtel is that C&W Guernsey stated in its application for a 3G licence that it would not need to erect any new masts as a direct result of launching 3G services. It is self evident that C&W Guernsey has an extensive mobile network. At the time of the application C&W Guernsey was planning to replace the complete network with new Nokia equipment, including the provision of 3G functionality. Existing 2G antennae would have been replaced by dual frequency antennae i.e. 2G and 3G. The change out of equipment was carried out in 2006 as planned with the exception that it was limited to 2G only.

If C&W Guernsey had been awarded the 3G licence the current heated public debate which has been prompted by GAL applications for planning permission for 50 or so new masts, would not have occurred.

In Summary, GAL was awarded a 3G licence with the commitment to launch service on 15 September 2007. The planning approval difficulties being faced by GAL could and should have been foreseen by the OUR when it launched the 3G competition, and certainly when the decision was made to award GAL the 3G licence. Similarly GAL should have commenced the process of obtaining permission for mast sites far earlier than it did, thus avoiding the current request for a delay to launch. While C&W Guernsey has no option but to accept the OUR proposal that launch should now be required by 15 December 2007, it does so with great reluctance. It would also urge the OUR to reconsider the performance guarantees offered by GAL and suggests that they should be replaced by guarantees with real financial cost to GAL if there is further delay.

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. A similar Direction should be issued to GAL, given that GAL should have applied for planning permission earlier. We seek assurance from the OUR that, should GAL miss the new launch date then it will be faced with the stiffest penalties possible under the Law.

Kind regards

JANE LANGLOIS
Regulatory Adviser