

Mr J Curran
Director General
Office of Utility Regulation
Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
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14 December 2005

Dear John

COMPETITION FOR MOBILE TELECOMMUNICATIONS LICENCE – EXPRESSIONS OF INTEREST AND COMMENTS ON PRELIMINARY TENDER DOCUMENT

C&W Guernsey is grateful for the opportunity to comment on the proposed competition for the awarding of a 3G mobile telecommunications licence together with the release of spectrum in the 1800MHz range through a beauty contest process. Information of a confidential nature is provided in Appendix 1, which should not be published on the OUR website or made public in any other way. Comments that may be published are given below using paragraph numbering from OUR 05/27.

Paragraph 4.5 Telecommunications – We note that C&W Guernsey is named as the incumbent operator in Guernsey. While we accept that this term may apply as regards the fixed network and services and 2G GSM network and services, we cannot be the incumbent operator as regards 3G mobile network and services as we do not have a 3G licence. We have previously commented on the market definitions used by the OUR and we consider that this example highlights some of the problems that arise with the definitions that are used. Wave is the only 3G operator and hence C&W Guernsey should be seen as a new entrant in this market and treated accordingly. To treat C&W Guernsey as the incumbent in this market could have significant implications on the process of a licence award.

Further we assume that in OUR 05/27 the term ‘incumbent operator’ refers to Wave Telecom Limited in the context of 3G networks and services. In fact this is stated in Part 1, section 1 of “Appendix 1 Preliminary Tender Document” where the second principal objective is:

- *To facilitate competition between the incumbent 3G operator and any new entrant 3G network operator in the Guernsey mobile market, and thereby promote further consumer choice in the mobile sector.*

C&W Guernsey seeks clarification that the applicant that is awarded the second 3G licence will be the “new entrant”, whichever mobile operator that may be.

Paragraph 5.3 Network and Service roll out – the proposed roll out timetable is shown in the OUR consultation paper under “Appendix 1 Preliminary Tender Document” section 7.2. It is the view of C&W Guernsey that the requirement for commercial launch of service within 18 months of the Licence Commencement date is reasonable. The further requirements for service in all the main islands within 24 months and 80% of coverage of the Bailiwick’s population by residence within five years of the Licence Commencement date are also reasonable.

Paragraph 5.4 Design of the Competition – the OUR has invited views of the proposed design of the competition. C&W Guernsey notes that the overall design is the same as that used for the previous competition that was run in 2002. We see that the time allowed for the submission of an application is one month shorter on this occasion. In our view this time period is acceptable. C&W Guernsey considers that in the event that only one operator applies for the licence, then the process should be shortened to minimise costs and the requirement for a beauty parade dropped. This should then feed through into the costs of the process.

Appendix 1 Preliminary Tender Document

Section 4 Available frequency spectrum – We have no specific comment on the frequency spectrum offered. However, we note that there is spare spectrum and seek clarification that the OUR intends that there will be a maximum of two licensed 3G operators for the duration of this licence. Clearly, if there were to be more than two licensed 3G operators in the small market of the Bailiwick it would have a significant affect on the business plan of any operator submitting a tender in response to the current offer of a licence. In our view, a maximum of two mobile operators are sustainable in the mobile market in the Bailiwick.

Section 7.3 Mast and site sharing – C&W Guernsey requests clarification that any mast or site sharing will be on a commercial basis between the two parties by the inclusion of wording to that effect in the final tender document. In our view wording similar to that used by the OUR in OUR 05/24 would be appropriate:

“Mast sharing is a facility that one would not expect to be addressed in a Reference Offer. Instead it should be dealt with through an agreed mechanism and procedures between parties.”

Section 10.1 Application fee/deposit – C&W Guernsey is concerned that, while the proposed fee is £250,000, if the administration costs are higher then the Successful Applicant will be required to pay the balance. That is, as it says in note 11 on page 22, the estimate of £250,000 Application Charge is a minimum charge. This policy is unreasonable in two ways:

1. The cost of the competition might be less than £250,000 but the Successful Applicant will still have to pay the minimum fee, thus the OUR will profit from the competition. C&W Guernsey considers, as mentioned above, that the OUR should be looking to reduce costs and pass those reduced costs on to the industry.
2. The cost of the competition might be considerably more than £250,000. For example, the cost of the first competition was estimated to be £500,000 at the start of the process. The Successful Applicant has no control on the number of applications received by the OUR or the terms of reference of the consultants that the OUR engage to help with the process (for which they have already issued an invitation to tender), and hence no control of costs. It is unreasonable for the OUR to expect to recover their costs from the Successful Applicant under these circumstances.

C&W Guernsey suggests that the Application fee should be capped at £250,000 and that the OUR should be able to run a process within this budget that meets the needs of the market in a proportional manner. .

Section 12 Questions relating to the Tender Document - We note that the final deadline for written questions is 24 February 2006, but there is no undertaking given as to how soon the questions will be answered. We suggest that the document should state that all written questions will be answered, also in writing, within 5 working days of submission.

Section 21 Competition rules - we note that rules c), d) and e) refer to the requirement that Persons submitting Applications cannot be associated Applicants. We strongly recommend that the wording should be amended to exclude Persons that are associated with the incumbent 3G mobile operator, that is Wave Telecom Limited. As currently worded, the rules only exclude Persons associated with other Applicants.

Once again, we are grateful for the opportunity to comment on the process prior to its commencement in February 2006, and would be happy to meet to discuss the various points made above should you believe that would be of benefit.

Kind regards

GEOFF HOUSTON
Chief Executive