



Office of Utility Regulation

Fees for
Telecommunications Licences

Consultation Paper

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1. Introduction

This paper proposes a mechanism for calculating and collecting licence fees for telecommunications licences throughout the lifetime of the relevant licence. Following the setting of fees for the first year of operation of the Office of Utility Regulation (“OUR”), the Director General is reviewing the most appropriate mechanism to be used, given the imminent changes in the market, in particular the likelihood of multiple licensees in both the fixed and the mobile markets in the near future.

In this paper, the Director General sets out her proposals to set fees based on a percentage of the relevant turnover of telecommunications licensees in the Bailiwick. She also describes various mechanisms to deal with situations where turnover is low and a proposed adjustment to the frequency of payment. Respondents are invited to comment on the proposals.

2. Consultation Procedure and Timetable

The consultation period will run from Friday 29th August to Monday 30th September, 2002. Written comments should be submitted before 5.00pm on 30th September, 2002 to:

Office of Utility Regulation
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Licence Fees for Telecommunications Licences - Consultation Document”.

All comments are welcome, but it would make the task of analysing responses easier if comments reference the relevant question numbers from this document. In line with the policy set out in Document OUR 01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a response to the consultation shortly after the receipt of responses.

This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.

3. Background

3.1. *Legislative background*

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“The Regulation Law”) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecommunications Law”), together empower the Director General of Utility Regulation to regulate the telecommunications market in the Bailiwick of Guernsey.

In accordance with section 4(1)(d) of the Regulation Law, the Director General’s functions include determining and prescribing 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 a default in the due payment of the fees or levies. The Director General is also required to publish fees in accordance with section 6 of the Telecommunications Law.

The fees or levies charged by the Director General are expected to meet the costs of the OUR over the term of the licence in connection with the exercise of the Director General’s functions and powers.

The Director General is also required to establish a fund known as the “Public Utilities Regulation Fund” in to which licence fees shall be paid and from which costs of the Office of Utility Regulation shall be paid. The Director General is also required to maintain proper accounts, have the accounts independently audited and submit the audited accounts along with its annual report to the States.

3.2. *First Year Licence fees*

In advance of the establishment of the OUR, the Director General calculated the cost of regulating the first licensees in the three markets for which she has responsibility (post, telecommunications and electricity) for the first full financial year of operation of the Office and proposed to apportion those costs across the three sectors based on an estimate of the percentage of time and effort that would be required in each sector. Having consulted with each of the three organisations that would be licensed in the first year (Guernsey Post, Guernsey Telecoms and Guernsey Electricity), she set fees for the Office’s first financial year based on that apportionment estimate (see document OUR 01/11).

She also stated that following the conclusion of the first full financial year of operation of the Office of Utility Regulation she would review these amounts and the split between the various sectors and make adjustments as appropriate. That review will be undertaken when a full year of data is available, i.e. after 31st December 2002.

3.3. *Public Utilities Fund*

The Director General has established the Public Utilities Regulation Fund in accordance with the legislation and the Fund has been audited for the end of the first calendar year (i.e. to 31st December 2001) during which the office operated for three months only.

The accounts and annual report of the Director General have been submitted to the Board of Industry in accordance with the Laws and will be presented to the States of Guernsey in due course. The annual report and accounts for the calendar year 2002 will be available as soon as practicable in 2003.

4. Telecommunications Licence Fees

In the first year of operation of the OUR, the Director General concluded that it was simplest to set a licence fee for each of the three former incumbent operators in each sector, including Guernsey Telecoms Ltd. in the telecoms sector, based on the apportionment exercise described above. However, the Director General noted that this should be reviewed for markets where there was likely to be multiple licensees and an appropriate mechanism adopted that ensures:

- the costs of regulation are fairly spread across all players in the market;
- ease of administration, calculation and payment, and
- the fees and levies are sufficient to meet the statutory functions of the OUR.

With the opening of the fixed telecommunications market to competition during 2002 and the opening of the mobile market in 2003, there is likely to be more than one licensee in each of these markets going forward, thus prompting the requirement for a review at this time.

4.1. Types of Fees

The legislation provides that fees may be collected:

- on an application for,
- on the grant of,
- on the renewal of, and
- over the term of,

a licence.

Application Fees

In document OUR02/09 the Director General set out the fees to be paid on submission of an application for a fixed telecommunications licence. This fee is based on an estimate of the cost of assessing the application and issuing the licence and is set at GBP £2,500. This is a one-off fee that will not recur over the lifetime of the Licence.

In document OUR 02/30 the Director General set out the mechanism used to set and collect fees payable on application for and on grant of a mobile licence in Guernsey. The fees are designed to cover the cost of processing the applications and awarding the licences and are based specifically on an estimate of the costs of running a competitive process for the limited number of licences available. These fees are one-off and will not recur over the lifetime of the mobile Licences.

This mechanism to directly recovery of the costs of processing applications and awarding licences from the successful licensees is considered fair and equitable and is common practice in other jurisdictions.

Renewal fees or fees over the term of a Licence

The legislation also provides for the payment of renewal fees or fees over the term of a licence. This provides the mechanism by which the Director General can fund the ongoing activities of her Office in carrying out the statutory functions assigned by law, i.e. those functions other than the processing and award of licences.

As already stated, the fee for the telecoms licences in existence for the first year of operation of the OUR were set at a specified amount relative to the anticipated cost of running the Office. This paper now consults on the most appropriate mechanism to calculate such fees in a market where there are multiple licensees, many of whom will be new entrants.

4.2. Fees over the term of a Licence

Mechanisms for setting Fees

In document OUR01/11 the Director General explained her decision to charge a set licence fee to Guernsey Telecoms Ltd. This fee related to both its mobile and fixed licences for the first calendar year of operation of the Office from 1 January to 31 December 2002, based on estimates of the relevant costs of the Office for one year. The principal reasons included the limited number of licensees in the market, and the urgent need for clarity as to the level of the fee for the first year.

However, this mechanism for setting fees has some drawbacks. In particular, where there is the potential for entry into a market it is not possible to accurately calculate the total number of licensees that may enter the market, and thus apportion costs in advance across a set number of licensees to recover the precise costs of running the regulator's office in any one year. This can be addressed using a rebate or shortfall method and is addressed in section 5 below.

Furthermore, it is essential to have some means of apportioning the estimated costs of regulating the market across different types, categories and sizes of licensee in a fair and proportional manner, without developing a complex and potentially burdensome differentiated licence regime. This issue has been addressed in many other jurisdictions by setting ongoing licence fees at a percentage of the turnover of the Licensees¹. The reason for this is that the national regulatory authority's expenditure in regulating each licensee has generally been shown to be broadly in line with licensee's share of telecommunications turnover. Thus this mechanism spreads the costs of running the Regulator's office across all licensees in proportion to their activities in the market based on a clear and objective measure - turnover.

The Director General considers that this is a reasonable and objective mechanism for apportioning the costs of regulation across all players in the market and proposes to adopt the mechanism of setting ongoing fees based on a percentage of turnover of Licensees for future years' operation of the OUR.

¹ In Italy there is a complex series of fee mechanisms for fixed licences comprising once off and annual fees. The latter includes a tax of 3% of turnover in 1999 falling to 1.5% of turnover by 2003 on the incumbent telecoms operator.

In Luxembourg fixed licence fees are approx. €49,500 plus 0.35% of turnover.

In Sweden the incumbent operator pays 0.15% of turnover plus 0.5% of its turnover on voice telephony.

Q 3.1 Do respondents agree that this is an equitable and objective means of setting fees? If not what alternative do you suggest and why?

Level of Fees

Irrespective of the mechanism used to spread the cost of running the OUR across all of the regulated licensees in the sector, the total level of the income collected remains directly related to the costs of the Regulator's office in regulating that sector. The different mechanism merely expresses the same figure in manner designed to treat all players in a proportionate manner based on their position in the market.

The Director General calculated the appropriate fee level designed to cover the anticipated costs of her Office's regulatory commitments with respect to the structure of the telecommunications market in 2002. As such, the Director General set a fee payable by the one licensed operator in the market at that time. That fee was set at £300,000 for one full year and this amount covered the two licence held by GT Ltd – a fixed and a mobile licence. This amount equates to approximately 1% of the total turnover of Guernsey Telecoms Ltd as reported in its statutory accounts in 2000.

The Director General proposes to set the ongoing licence fee for Guernsey Telecoms Ltd for its mobile and fixed licences as a percentage of the turnover of that company. On the basis of the above year's calculation this would be set at 1% of turnover.

In general, it would appear reasonable that as new entrants enter the market, they should also pay licence fees to fund the cost of running the Office of Utility Regulation, particularly if their operations are on a scale similar to Guernsey Telecoms Ltd. Therefore the Director General proposes that ongoing annual fees for all telecommunications licences (subject to the exception discussed below) should also be set as a percentage of turnover. Based on the first full year estimated costs this would therefore also be 1%.

However, the Director General also acknowledges that new entrants may have very low turnover in the initial stages of their business and a fee based on a percentage of turnover at that stage might not be appropriate. Similarly Licensees operating with a very low level of turnover may not have the resources to carry out the necessary audit and calculation of turnover required to assess the appropriate level of turnover on which the licence fee is payable.

In order to deal with these types of situations, the Director General proposes to set a level of turnover below which the Licensee would pay a flat annual Licence fee for the duration of the Licence, irrespective of turnover. The Director General proposes that any Licensee with a relevant turnover of less than £150,000 shall pay an annual licence fee of £500 per annum. Where the turnover of a licensee exceeds this threshold, the percentage mechanism would apply.

Q3.2: Do respondents agree that the same percentage should be applied to the turnover of all Licensees? If not what alternative do you suggest and why?

Q 3.3: Do respondents agree with this approach? If not what alternative do you propose and why?

5. Rebate of excess fee/collection of Shortfall

In document OUR 01/11 the Director General decided that in the event that the Office of Utility Regulation collects licence fees that are greater than the amount needed to carry out the relevant functions assigned by Law, the Director General will refund the excess to licensees. She proposes to continue with this practice in the telecoms sector.

She also decided that in the event of any shortfall arising, she will consider making up such a shortfall by:

- imposing an additional fee or levy on the licensees within the calendar year in which the shortfall arises; or
- obtaining short term funding and increasing licence fee or levy in the following calendar year; or
- seeking loans or grants from the States in accordance with section 10 of the Regulation Law if appropriate.

The mechanism to be used will depend on the nature and size of any shortfall and will be decided on a case by case basis.

Q 4.1: Do respondents agree with this approach? If not, what alternative do you suggest and why?

6. Guidelines

In proposing the above mechanism for setting and collecting of telecommunications licence fees, the Director General proposes to prepare more detailed guidelines on the operation of the mechanism and will publish these in response to this consultation. The Director General proposes that the guidelines will address the issues set out in this section:

6.1. *Persons and Organisations Liable to pay the Fees*

The Licence fees will be payable by all persons and organisations granted licences in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

6.2. *Licence Fee Year*

The Licence fee will be calculated with regard to the financial year of the OUR which ends on 31st December each year.

6.3. Relevant Turnover

Relevant turnover will be taken to mean the gross revenue (exclusive of VAT²) paid to the licensee in respect of telecommunications services and networks. Relevant turnover will include revenue generated from the licensee's Guernsey operations and services provided to persons outside the Bailiwick of Guernsey for clients outside the Bailiwick will not be included.

Relevant turnover will be calculated on an annual basis, and will be based on the annual relevant turnover of a licensee for the financial year of that licensee that ends within the Licence Fee Year (i.e. the OUR financial year) prior to the year in which payment will fall to be made. For example, the licence fee payable in calendar year 2003 (which is also the OUR financial year) will be calculated based on the financial year of the licensee that ended at any time during 2002.

Revenue generated by a Licensee from other licensee's telecommunications services and networks will be treated as relevant turnover, including revenue for services supplied to subsidiaries or other connected undertakings.

6.4. Frequency of Payment

The current arrangement is that the licence fee is payable in twelve instalments, monthly in advance. The Director General proposes to adjust this and collect the Licence fees quarterly in advance in four equal instalments. Therefore one quarter of the licence fee would be payable on each of 1st January, 1st April, 1st July and 1st October.

6.5. Calculation of Fee: Information to be provided

In order to allow the OUR to calculate the licence fee, all licensees will be required to send to the OUR a statement of relevant turnover certified by their auditors. In cases where the figure for relevant turnover differs from total turnover, precise details and the nature of the non-relevant turnover deducted from total turnover must be given.

If the relevant information is not available in time for payment to be calculated, e.g. if the Licensees financial year ended on 30th December and the audited information to calculate the licence fee for 2003 was not likely to be available until early in 2003, then the Licensee may pay its licence fee based on an estimate of the amount due, calculated using an estimate of relevant turnover. In such cases, a reconciliation of the estimate and the actual amount due will be required as soon as the certified statement is available.

Q 5.1: Respondents are invited to suggest other issues that might be addressed in the guidelines and how such issues should be addressed.

²There is currently no VAT in the Bailiwick of Guernsey.

7. Penalties

The requirement to pay Licence fees will be included in the relevant licences and therefore a failure to pay a fee will constitute a breach of licence. There are various remedies available to the Director General where there is a breach of licence and without prejudice to those remedies, or any other remedies under the Licence or the Laws, if the Licensee fails to pay any amount due by the due date, the Licence Conditions include a requirement that the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published base rate of the Bank of England.

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