



Office of Utility Regulation

Amendment to Mobile Licences of C&W Guernsey, Guernsey Airtel Ltd and Wave Telecom

Report on the Consultation

Notice of Modification to the Guernsey Airtel Ltd's 2G and 3G Licences, Wave Telecoms 2G and 3G Licences and C&WG's 2G Licence under Section 2(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001

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Office of Utility Regulation
Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: (0)1481 711120, Fax: (0)1481 711140, Web: www.regutil.gg

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1. Introduction

1.1. Notice of Modification

Document OUR 07/11 gave notice¹ of the Director General's ("DG") intention to modify:

- Guernsey Airtel Ltd's ("GAL") 2G and 3G Licences;
- Wave Telecoms 2G and 3G Licences; and
- C&W Guernsey's ("C&WG") 2G Licence

under section 2(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

Notice of the proposed modifications was also published in the Gazette Officielle on 5th September 2007.

1.2. Proposed Modifications

The DG proposed to modify the licence condition included in all mobile operators' licences relating to Access to Facilities to address specifically matters related to the sharing of mobile infrastructure.

He also proposed to reduce the time period for operators to reach agreement from 60 days to 30 days.

1.3. Reason for Proposed Modifications

The proposed modifications were intended to promote greater cooperation between Guernsey's licensed mobile operators in order to ensure solutions that would be in the best interests of the Bailiwick. The proposed modifications would complement and reinforce the operators' voluntary code² on matters related to network roll-out, planning and communication of their plans with the public.

1.4. Responses to the Proposed Modification

In accordance with section 8(2)(c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, interested parties were invited to submit written representations or objections to the proposal in this notice within seven days of publication of the notice in the Gazette Officielle.

The DG received two responses to the statutory invitation to comment from:

- C&W Guernsey ("C&WG"); and
- No More Masts ("NOMM").

The DG wishes to thank all respondents for their contribution in helping to inform his consideration of the issue. In line with OUR standard practice, non-confidential

¹ Amendment to Mobile Licences of C&W Guernsey, Guernsey Airtel Ltd and Wave Telecom, Statutory Invitation to Comment.

² This voluntary code is being prepared by the three mobile operators.

responses are available for inspection at the OUR's office and are also published on the OUR's website www.regutil.gg.

1.5. Structure of Paper

This paper is structured as follows:

Section 2 presents the response received and, in light of consideration of those comments, the DG's position on the proposed licence modifications; and

Annex 1 contains the notice of the modification to C&W Guernsey's 2G Mobile Licence;

Annex 2 contains the notice of the modification to Wave Telecom's 2G and 3G Mobile Licences; and

Annex 3 contains the notice of the modification to Guernsey Airtel Ltd's 2G and 3G Mobile Licences.

2. Consideration of Responses

This section summarises the key points raised by respondents to the Statutory Invitation to Comment and the DG's response to those comments.

2.1. Respondent's Views

C&WG made a number of points in its response covering the Environment Department's requirement for planning applications and the actual text of the proposed revised conditions.

In the first instance C&WG expressed the view that the proposal put forward by the Environment Department is not to be interpreted as requiring that a second mast should be erected and the first mast dismantled in all cases. Instead the requirement from the Environment Department should be explicitly limited to monopoles that are not capable of being shared.

C&WG accepted the change requiring operators to seek to reach agreement within 30 days rather than the current 60 days. However C&WG expressed concerns with the proposed changes to conditions 20.2, 20.3 and 20.4³.

For condition 20.2 C&WG commented that they did not believe it to be the OUR's intention for operators to share "Telecommunications Equipment"⁴ to the extent as set out in the Telecommunications (Bailiwick of Guernsey) Law, 2001. Consequently C&WG proposed that the defined term "Telecommunications Equipment" should be omitted from the proposed Licence condition. Similarly if the Condition is to include the defined term "Associated Facilities" then the DG should make clear what Telecommunications Equipment is designated for the purposes of the Condition.

With respect to the proposed wording of condition 20.3 C&WG stated that it was unable to comment on the proposal without knowing the "*times to be stipulated*" and what the "*terms of such sharing*" were likely to be. C&WG sought guidance on when and how these terms would be stipulated. C&WG believed that the proposed wording was unacceptable.

In relation to Condition 20.4 C&WG proposed that the proposed wording should include "*use best endeavours to reach agreement for sharing the use of any facility*".

Finally C&WG agreed with the proposed wording of the revised Condition 20.5.

³ All conditions referred to in this section relate to condition 20 of C&WG's Mobile Licence, 22 of Wave Telecoms Mobile Licences and Condition 23 of GAL's Mobile Licences.

⁴ A defined term in the Law means equipment designed, constructed or adapted for use in connection with the establishment or operation of a telecommunications network or the provision of a telecommunications service, including telecommunications apparatus, poles, poles, structure, ducts, man-holes and other tangible property" with Telecommunications Appartus also a defined term.

In its response to the proposed modifications NOMM sought clarification as to the meaning of the expressions “*masts in locations close to existing masts*” and “*not significantly higher than the existing masts on the nearby site*”.

2.2. Director General’s Response

The DG welcomes the general support for the proposal to amend the requirement requiring operators to seek to reach agreement within 30 days rather than the current 60 days.

The DG notes C&WG’s comments regarding the proposed wording of 20.2 of its licence and the request that the DG designate any “Associated Facilities” prior to the licence modification. However this change to C&WG’s licence is in effect simply harmonising the licences which have been awarded to all the Bailiwick’s mobile operators. In any event the DG would expect operators to reach agreements through commercial negotiations and it would not be necessary for the DG to intervene and make any designations.

In relation to C&WG’s request for guidance on the timeframes that were to be stipulated, the DG is not in a position to predict what circumstances would occur or what timeframes would apply and indeed these may vary from site to site. Consequently the DG does not believe that it would be appropriate to specify a timeframe in condition 20.3 as each case will need to be considered on its merits. In event the DG would be disappointed if he has to intervene to enforce this condition in any event.

The DG considers that the proposed wording from C&WG could weaken the requirement on operators and that there is the possibility that what one party may consider another party’s “best endeavours” as wholly unacceptable. The DG therefore has decided to amend the licence to require parties to “make all reasonable efforts”.

In response to the queries relating to Environment Department’s policy which were raised by NOMM and C&WG the DG reiterates that the consultation paper summarised his understanding of the Environment Department’s policy with respect to consideration of mast applications. Any decisions with regard to actual changes to existing structures is a matter for the Environment Department and would be addressed as part of the normal planning approval process.

/ENDS

Annex 1 Notice of Modification of Licence

On the 20th of August 2007, the Director General issued a Statutory Invitation to Comment and on 5th September published notice of his intention to modify the 2G and 3G licences of C&W Guernsey, in accordance with:

- Section 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001; and
- Condition 6 of the 2G Mobile Telecommunications Licence issued to C&W Guernsey on 1st October 2001 under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, (collectively the “Licence”).

The notice was published in Document OUR 07/11 on the OUR website and a notice was also placed in the Gazette Officielle inviting comments on the proposal in accordance with section 8 (2) (c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The Director General has considered all written representations and objections to the proposed licence modifications.

Having followed the procedure set out in subsection 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby gives notice of the following modification of the 2G licence issued to C&W Guernsey under section 2(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 as follows:

Condition 20 of the 2G licence is hereby deleted and replaced with the following condition:

Access to Facilities

20.1 If the Licensee and any Other Licensed Operator fail to reach agreement within thirty days in respect of a request by the Other Licensed Operator for Access, and the Director General considers that such Access is essential as being the only economically feasible means by which a licensed Telecommunications Network can be installed or connected to the premises of a User or Subscriber, or over, under, in or across any public right of way or as being the only feasible means of avoiding material damage to the environment, the Director General may instruct the Licensee to allow, or to procure that the Licensee’s Associated Company allows the Other Licensed Operator, Access on reasonable terms unless the Director General determines that the Licensee or the Licensee’s Associated Company concerned, alone or with any other person willing or required to do so, is unable to grant the necessary Access, or that it would otherwise be unreasonable for it to do so.

20.2 Without prejudice to the foregoing Access provided under Condition 20.1 shall include but not be limited to the sharing by the Licensee of Telecommunications Equipment and Associated Facilities such as housing, masts, electricity supply etc with Other Licensed Operators within the Bailiwick.

20.3 The Licensee shall make all reasonable efforts to agree the terms of such 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 the terms on which such sharing shall occur.

- 20.4 The licensee shall coordinate and cooperate with any other licensees licensed to provide public mobile telecommunication services with regard to the planning and development of any new mast sites or alterations to any existing masts sites and to share the use of any facility owned or used by it where it is in the public interest to do so.
- 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.

Annex 2 Notice of Modification of Licence

On the 20th of August 2007, the Director General issued a Statutory Invitation to Comment and on 5th September published notice of his intention to modify the 2G and 3G licences of Wave Telecom, in accordance with:

- Section 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001; and
- Condition 6 of the 2G and 3G Mobile Telecommunications Licences issued to C&W Guernsey on 23rd March 2003 under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, (collectively the “Licences”).

The notice was published in Document OUR 07/11 on the OUR website and a notice was also placed in the Gazette Officielle inviting comments on the proposal in accordance with section 8 (2) (c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The Director General has considered all written representations and objections to the proposed licence modifications.

Having followed the procedure set out in subsection 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby gives notice of the following modification of the 2G and 3G licences issued to Wave Telecom under section 2(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 as follows:

Condition 22 of the 2G and 3G licences is hereby deleted and replaced with the following condition:

Access to Facilities

22.1 If the Licensee and any Other Licensed Operator fail to reach agreement within thirty days in respect of a request by the Other Licensed Operator for Access, and the Director General considers that such Access is essential as being the only economically feasible means by which a licensed Telecommunications Network can be installed or connected to the premises of a User or Subscriber, or over, under, in or across any public right of way or as being the only feasible means of avoiding material damage to the environment, the Director General may instruct the Licensee to allow, or to procure that the Licensee’s Associated Company allows the Other Licensed Operator, Access on reasonable terms unless the Director General determines that the Licensee or the Licensee’s Associated Company concerned, alone or with any other person willing or required to do so, is unable to grant the necessary Access, or that it would otherwise be unreasonable for it to do so.

20.2 Without prejudice to the foregoing Access provided under Condition 22.1 shall include but not be limited to the sharing by the Licensee of Telecommunications Equipment and Associated Facilities such as housing, masts, electricity supply etc with Other Licensed Operators within the Bailiwick.

20.3 The Licensee shall make all reasonable efforts to agree the terms of such 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 the terms on which such sharing shall occur.

20.4 The licensee shall coordinate and cooperate with any other licensees licensed to provide public mobile telecommunication services with regard to the planning and development of any new mast sites or alterations to any existing mast sites and to share the use of any facility owned or used by it where it is in the public interest to do so.

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.

Annex 3 Notice of Modification of Licence

On the 20th of August 2007, the Director General issued a Statutory Invitation to Comment and on 5th September published notice of his intention to modify the 2G and 3G licences of Guernsey Airtel Ltd, in accordance with:

- Section 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001; and
- Condition 6 of the 2G and 3G Mobile Telecommunications Licences issued to C&W Guernsey on [] 2003 under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, (collectively the “Licences”).

The notice was published in Document OUR 07/11 on the OUR website and a notice was also placed in the Gazette Officielle inviting comments on the proposal in accordance with section 8 (2) (c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The Director General has considered all written representations and objections to the proposed licence modifications.

Having followed the procedure set out in subsection 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby gives notice of the following modification of the 2G and 3G licences issued to Guernsey Airtel Ltd under section 2(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 as follows:

Condition 23 of the 2G and 3G licences is hereby deleted and replaced with the following condition:

Access to Facilities

23.1 If the Licensee and any Other Licensed Operator fail to reach agreement within thirty days in respect of a request by the Other Licensed Operator for Access, and the Director General considers that such Access is essential as being the only economically feasible means by which a licensed Telecommunications Network can be installed or connected to the premises of a User or Subscriber, or over, under, in or across any public right of way or as being the only feasible means of avoiding material damage to the environment, the Director General may instruct the Licensee to allow, or to procure that the Licensee’s Associated Company allows the Other Licensed Operator, Access on reasonable terms unless the Director General determines that the Licensee or the Licensee’s Associated Company concerned, alone or with any other person willing or required to do so, is unable to grant the necessary Access, or that it would otherwise be unreasonable for it to do so.

23.2 Without prejudice to the foregoing Access provided under Condition 23.1 shall include but not be limited to the sharing by the Licensee of Telecommunications Equipment and Associated Facilities such as housing, masts, electricity supply etc with Other Licensed Operators within the Bailiwick.

23.3 The Licensee shall make all reasonable efforts to agree the terms of such 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 the terms on which such sharing shall occur.

- 23.4 The licensee shall coordinate and cooperate with any other licensees licensed to provide public mobile telecommunication services with regard to the planning and development of any new mast sites or alterations to any existing mast sites and to share the use of any facility owned or used by it where it is in the public interest to do so.
- 23.5 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.
- 23.6 The Licensee will use best endeavours to allow Other Licensed Operators to access its infrastructure. The Licensee will prepare a standard Access to Facilities agreement for use with Other Licensed Operators within three months of any request and a copy of the agreement will be filed with the Director General.

/ENDS