



Office of Utility Regulation

Telecommunications Licence Conditions

Decision Notice and Report on the Consultation

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1. Introduction

In August 2001, the Director General Designate of the Office of Utility Regulation ("the Director General") published a consultation paper, Document OUR 01/03 on the steps she is taking to develop new licence terms and conditions in preparation for a fully liberalised telecommunications sector.

That paper covered, inter alia;

- the nature of the terms and conditions to apply to Guernsey Telecoms fixed business; and
- the nature of the terms and conditions to apply to Guernsey Telecoms mobile business.

This report sets out the Director General's conclusions following detailed consideration of the responses received.

This report is structured along the lines of the consultation document and each section summarises the matter consulted upon, the responses received and the Director General's consideration of the matter.

Four organisations/individuals responded to the consultation, as listed below:

- ActNow;
- CIBC World Markets;
- Guernsey Telecom; and
- Newtel

Deputy Roy Bisson also provided comments of a more generic nature on this and related consultations.

The Director noted that certain comments offered by respondents, while not necessarily relevant to this consultation, are nonetheless important. She proposes to deal with those issues in the context of the day-to-day business of the Office. In addition it is not proposed to comment on respondents views on the specific legal text of the licence documents. A legal review of the text has been carried out in parallel with the consultation process and, wherever appropriate, legal drafting points raised in the responses have been incorporated into the revised texts.

The Director General wishes to thank those who have responded to this consultation document for their contributions in helping to shape the regulatory regime. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR's office.

For the avoidance of doubt, this Decision Notice is concerned initially with the licence terms and conditions that will apply to the first Licensee in the telecoms sector, namely Guernsey Telecoms (GT). A further consultation shall be undertaken on the licence conditions to be applied to new entrants to the telecommunications market. However it should be noted that wherever feasible it is proposed to apply similar terms and conditions to similar categories of organisation.

2. Proposed Licences - Structure

In OUR 01/03, the Director General stated, in developing the licence terms and conditions, she had taken account of the market structure where there is one incumbent operator with a very strong position for historic reasons (GT) and the potential for new entrants to come into the market. She stressed the importance of achieving a balance between the regulatory obligations that GT will need to comply with in order to ensure a competitive market develops, with the need for GT itself to be able to operate in a commercial manner. The proposed Licence terms and conditions set out the high level obligations that the company will be required to comply with.

As was indicated in the consultation paper, the application and implementation of these conditions will be developed by the OUR in consultation and co-operation with GT, other market players and interested parties as appropriate. Therefore some comments received which were in the nature of requests for clarification on implementation will be addressed in that ongoing work and are not considered in this report.

In addition, the importance of certainty for market players is crucial – investment decisions need to be made in a regulatory environment that has a high degree of certainty and stability. For this reason, the proposed licences set out all the terms and conditions that will apply to GT and other similar operators in the market; however not all conditions may be applicable to all operators.

Comments Received

All respondents supported the proposed licence structure and the proposed terms and conditions and there were no other areas identified, over and above those mentioned, as requiring further regulatory intervention.

Director General's Position

Having reviewed the comments of respondents the Director General now proposes to finalise the licence structure of both the fixed and mobile licences along the lines of that consulted upon. Comments relevant to the specific conditions shall be dealt with later in this report.

3. Significant Terms and Conditions

The Director General sought comments on certain specific licence terms and conditions. She believes these particular conditions to be instrumental in ensuring that a competitive environment develops in the Bailiwick and therefore believes they are deserving of particular attention.

Certain conditions listed here are also covered in document OUR 01/04: Notice of Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001, which was also published by the Director General giving notice of proposed decisions in relation to dominance as well as a proposed decision to apply the Code in the Telecoms Law. A report on that consultation can be found in Document OUR 01/14.

3.1. Universal Service/Public Service Conditions

The conditions covered by this section include USO (Condition 12), Public Emergency Services (Condition 13), Directory Information (Condition 14) and Public Pay Telephones (Condition 15) – (the relevant conditions in the mobile licence are Conditions 12, 13 & 14). These conditions are designed to ensure certain key services are available to all users and that certain measures are taken to protect vulnerable users and to comply with the States Directions issued to the Director General on the USO.

Comments Received

Respondents in general agreed with the Director General's proposals, though clarification was sought by one respondent on the mechanism by which the USO fund would be met. Another respondent voiced concern about the need to ensure that data protection issues are considered in the implementation of the Directory Services condition.

Director General's Position

The purpose of this consultation was to address the basic obligations and duties that should be in place in relation to public service conditions and to provide a platform for the further development and implementation of those conditions over time, following consultation where necessary.

For example, future consultations may consider the manner in which the USO fund might operate, but would only be undertaken if need for such a fund had been identified.

Therefore the Director General will not amend this Condition. However, the condition on Directory Enquiries has been amended in light of the comments expressed on this condition.

3.2. Service Levels and Quality of Service Conditions

The Director General has included specific conditions dealing with both the level of service provided by licensed operators and the quality of that service. As was stated in the consultation document, many of the people of the Bailiwick rely entirely on the incumbent operator for the provision of their telecommunications services and,

notwithstanding the proposed liberalisation and the introduction of competition into the market, this is likely to continue to be the case for some time. Furthermore, GT will be required to provide wholesale services to new entrants who in turn will seek to provide services to end users, and reassurance that sufficient network is being provided to meet such needs will be important in a newly liberalised market.

The provision of these services at a high quality and the maintenance of that level of service will be of critical importance as will the resolution of complaints from users in a speedy and efficient manner. The proposals set out in the licence conditions (Conditions 16 & 17 in the fixed licence; Conditions 15 & 16 in the mobile licence) are intended to meet these aims.

Comments Received

In general all respondents were very supportive of the Director General's proposals in respect to these issues. One respondent sought clarification on the distinction between the two conditions and felt there was a certain level of ambiguity between the purpose of both conditions. It also felt that there was a level of duplication between certain aspects of these two conditions and that some of the requirements were unduly onerous. It also felt that the timeframes for compliance were insufficient for the work to be undertaken.

Director General's Position

The Director has noted the general support for her proposals on this matter. As has been indicated already some of the matters addressed by these conditions shall evolve as the market develops, while others will have to be implemented much earlier. While she recognises that there is a considerable amount of work involved for GT, she is of the opinion that the importance of these matters to the overall economic well-being of the Bailiwick is such that she cannot delay their implementation beyond the timeframes already prescribed.

She has also noted the concerns about the intent of both conditions and has amended the final text of the licence to issue to GT to address this. However she is not prepared to lessen the protection available to users and consumers from that originally intended. Access to up-to-date information will be one of the most powerful tools available to consumers and it is the Director General's belief that this should be available in as user-friendly a manner as possible.

3.3. Conditions to be included in licences to be granted to Dominant Operators.

As required under Section 5(2)(a) of the Telecoms Law, the Director General published notice of her intent to include conditions in GT's licence relating to the control of its dominant position and conditions to regulate its prices, premiums and discounts. Document OUR 01/04 provides greater detail on the relevant Licence Conditions. In summary those conditions are Conditions 23 – 31 of the fixed licence and Conditions 22 - 27 of the Mobile Licence. The Director General sought the views of interested parties on whether these conditions provide adequate protection against the possibility of abuse of a dominant position by GT or other dominant licensee.

Comments Received

All respondents were of the view that the proposed conditions are sufficient to control the dominant position of the incumbent. One respondent stressed the need to ensure that the principle of non-discrimination be rigorously applied and that the retail price controls be applied in a manner that allows all operators make a reasonable rate of return.

Director General's Position

The Director has noted the comments of respondents on this matter and now intends to finalise the licence text having taken account of these comments and the specific drafting comments offered by certain respondents.

4. Mobile Specific Conditions

The Director General has proposed, in the interests of transparency and simplicity, to licence fixed and mobile networks and services separately. This will provide a level of assurance to any new operator(s) entering the telecommunications market that there are clear obligations on the incumbent operator in both markets with regard to how it should behave in the competitive environment that will develop.

Certain conditions applicable in the fixed market are not necessary or applicable in the mobile market and the Director General signalled her intent not to include such conditions in the mobile licence. Therefore it was proposed not to include conditions dealing with Public Pay Telephones (Condition 13), Leased Circuits (Condition 25) and Linked Sales (Condition 31) in this licence.

Comments Received

Respondents agreed with the Director General's proposals with regard to the deletion of these conditions and no suggestions were offered for additional conditions. One respondent did suggest that the condition relating to linked sales may need further consideration in the context of a licensee with a dominant position.

Director General's Position

The Director has noted respondents comments and will not include conditions relating to the above matters in the licence to issue to GT in respect to its mobile business. While the Director General has noted the comments in relation to linked sales, given the characteristics of the mobile market, where bundled offerings (e.g. handsets with connection fee or free minutes usage), have been a significant contributing factor to the growth and use of mobile communications, she does not believe it appropriate to include such a condition at this time. She will keep the matter in review and amend the licence terms if needed.

5. Licence Text

The Director General welcomes and has noted the comments of respondents in relation to the specific text of the licence documents.

Comments on significant conditions have been reported on in this document and wherever appropriate the licence text has been amended. Legal and drafting comments are not reported on in this document but have all been considered in parallel with a legal review of the texts and taken on board wherever they were considered correct. The Director General is grateful for the input of respondents on this matter. Finally, comments in the form of questions on the detailed implementation of the regulatory regime have been identified and will be considered as the regime develops and the texts that have been finalised are designed to set out the framework within which that detail can be addressed.

The final licence texts can be found in documents OUR01/18 (fixed telecommunications licence terms and conditions) and OUR01/19 (mobile telecommunications conditions).

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