



Office of Utility Regulation

**Competition in the Mobile
Telecommunications Market
- Further Licence Award**

Final Decision

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Office of Utility Regulation

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1. Introduction

The Director General of the OUR (“DG”) issued a consultation document (OUR 09/06) on a proposal to issue an additional 3G mobile licence to further increase competition in the mobile market in Guernsey. This consultation followed a review of the mobile market, the conclusions of which are published in a separate OUR document (OUR 09/05).

Respondents to OUR 09/06 raised no objections to the proposals in that document, nor to the option of proceeding straight to a final decision, subject to C&W Guernsey’s (“C&WG”) agreement to the conditions set out.

C&WG has confirmed its acceptance of these conditions and the DG has therefore decided to issue a further 3G mobile licence to C&W Guernsey (C&WG). In addition he is confirming his proposals and will therefore also consent to Guernsey Airtel Limited (“Airtel”) receiving 2x5MHz of 900MHz spectrum released by C&WG as a prerequisite to C&WG’s award of a 3G licence.

The DG will now inform Ofcom of this decision and commence discussions with C&WG on its 3G licence.

2. Structure of Paper and Process

2.1. Structure of Paper

The paper is structured as follows:

- Section 3 provides background information on the legal framework for issuing licences in the telecoms market in Guernsey;
- Section 4 summarises responses to the consultation;
- Section 5 sets out the DG's assessment and final decision;
- Section 6 sets out the next steps in the process.

2.2. Responses to the Consultation

The DG received responses to the draft decision paper from:

- Airtel;
- Clear Mobile; and
- C&WG.

The DG wishes to thank those who have responded to the consultation for their contributions. In accordance with the OUR's policy on consultation set out in Document OUR 05/28 – "Regulation in Guernsey; the OUR Approach and Consultation Procedures", non-confidential responses to the consultation are available on the OUR's website (www.regutil.gg) and for inspection at the OUR's offices during normal working hours.

3. Background Information

3.1. Statutory Requirements

Section 2 (1) of the Telecommunications (Bailiwick of Guernsey) Law 2001 describes the DG's responsibilities regarding the granting of licences for telecommunications networks and services. Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States Directions, the DG may grant a licence authorising any person to establish, operate and maintain a telecommunications network or to provide telecommunications services of any class or description specified in the licence. Section 3 (1) of the Telecommunications Law describes the DG's responsibilities for publishing details of the procedures to be followed and the criteria to be applied in relation to applications for, and the grant of, a licence.

The mobile telephony market in Guernsey opened to competition from 1 April 2003 with the award of both a 2G and 3G licence to Wave Telecom. A further competition took place in 2006 resulting in the award of a further 2G and 3G licence. There are currently three 2G operators (Airtel, C&WG, and Wave) and two 3G operators (Airtel and Wave) licensed to provide mobile services in the Bailiwick of Guernsey.

3.2. Licensing Background

In May, 2002, the DG published a consultation paper (OUR 02/18), entitled "Mobile Telecommunications Licence Terms and Conditions"¹, which focused on the licence obligations and conditions for the new 2G and 3G licensees. This followed an earlier consultation paper "Mobile Telephony Licensing in Guernsey"² (OUR 01/25) published in December 2001 and the subsequent "Report on the Consultation and Decision Paper"³ published in April 2002 (OUR 02/14). The May Consultation Paper (02/18) sought the views and comments of interested parties on issues and principles applicable to the new mobile telecommunications network licences awarded at that time. The DG's intention was to develop a licensing regime that fosters competition between mobile operators and service providers in order to maximise the benefits to Guernsey consumers in terms of prices, innovation and quality of service.

Following the consultation process, a competition to award the mobile licences commenced at the end of 2002 and in March 2003 the DG awarded Wave both a 2G and a 3G mobile licence.

¹ Document No: OUR 02/18 May 2002, Mobile Telecommunications Licence Terms and Conditions.

² Document No OUR 01/25 Mobile Telephony Licensing in Guernsey.

³ Document No OUR 02/14 Mobile Telephony Licensing in Guernsey Report on the Consultation and Decision Paper.

As there remained sufficient spectrum to accommodate a further 3G licence, in November 2005 the DG commenced a further process aimed at awarding a further licence. In November 2005, the DG published a document entitled “Competition for Mobile Telecommunications Licences; Call for Expressions of Interest and Call for Comments on Preliminary Tender Document” (05/27), inviting expressions of interest from interested parties. Following consideration of the two responses and further work by the OUR itself, the DG launched the second mobile licence competition in February 2006 with the publication of the rules of the competition in “Competition for 3G Mobile Telecommunications Licence; Information Memorandum” (OUR 06/04). He also published his consideration of the comments made by respondents to the earlier call for expressions of interest to address certain matters raised by respondents at that time in a document entitled “Competition for 3G Mobile Telecommunications Licence; Report on the Consultation” (OUR 06/03).

Two applications were received, from Airtel and C&WG. Following a detailed assessment of both applications, the DG ranked the Airtel application first and commenced negotiations on the terms of its licences. These discussions concluded successfully and in September 2006 Airtel was awarded both a 2G licence and a 3G licence and launched services in March 2008.

In April 2009 the OUR issued a further consultation (OUR 09/06) following his Mobile Market Review decision paper (OUR 09/05). This consultation sought views on a proposal to issue an additional 3G mobile licence to further increase competition in the mobile market in Guernsey. In that consultation paper, the DG proposed to issue a further 3G mobile licence to C&WG for the reasons set out, subject to it meeting certain criteria. In addition, he proposed to grant an allocation of 900MHz spectrum to Airtel from the spectrum released by C&WG. The DG also proposed a condition for any 3G licence award to C&WG, that C&WG agree to actively participate in a further review of 900MHz spectrum at a date to be determined in the future with the aim of rationalizing the spectrum held by it by a further 2x5MHz.

4. Responses to consultation

The OUR received three responses to the consultation paper.

4.1. C&WG

C&WG fully supports the award of a 3G license to it which it argues helps ensure real competition exists throughout the mobile market in Guernsey. C&WG stated its willingness to surrender 2 x 5MHz of 900 Spectrum. C&WG also agreed to actively participate in a further review of 900MHz spectrum at a future date, but noted that this does not amount to a commitment to release further spectrum without proper and appropriate compensation for the cost of releasing and the value of that spectrum.

C&WG has already started the process for the release of spectrum and expects the release of the 2x5MHz of 900 spectrum to be complete by 20 July 2009 with the proviso there are no technical difficulties to delay this.

C&WG has no objections to the 900MHz spectrum being re-allocated to Airtel, and does believe that a spectrum plan for the efficient and effective use of any future spectrum should be agreed between the operators as soon as possible.

C&WG argues it is appropriate for it to receive an allocation of 1800MHz as customers could benefit from a complete range of different services, enjoy greater economies of scale as it would have a common pool of spares and equipment share between Guernsey, Jersey and the Isle of Man and would be able to enhance its indoor service by using PICO cells which are only available on 1800 MHz. In C&WG's view the 1800 MHz spectrum is also important as it understands this will be the first spectrum application to be used for Long Term Evolution (LTE) technology and will be supported by the development and marketing of 1800 MHz handsets.

4.2. Airtel

Airtel supports the OUR proposals and welcomes increased competition in the 3G mobile market in Guernsey. Airtel has no objection in principle to C&WG receiving a 3G licence and welcomes the proposal to award the 2x5MHz of 900 spectrum to Airtel. However, the operator understands that this spectrum allocation is made at no cost to itself. Airtel believes this allocation will go a significant way to redressing the current imbalance in spectrum allocation. Airtel has indicated that it intends to rapidly deploy 2x5MHz 900 spectrum which it maintains will significantly enhance its 2G coverage across Guernsey, enabling reductions in planned build of additional sites. Airtel welcomed the OUR's proposals to relax constraints on the use of mobile operators of allocated spectrum however it recommends that the OUR's current proposals are the start of a more detailed audit programme to assess the balancing of spectrum across all frequencies.

4.3. Clear Mobile

Clear Mobile supports the decision to begin the process of spectrum refarming of bandwidth in the GSM 900 as well as welcoming technology neutrality. Clear Mobile believes that competition between mobile operators can be extended further without damaging the competitive environment developing in Guernsey and that this can be achieved by encouraging the innovation of brand new, non-voice service applications being delivered alongside standard 3G mobile voice and internet services as a holistic package. Clear Mobile expresses an interest in attaining a licence in the 900 MHz band and argue that the Guernsey mobile market is sufficiently vibrant enough to accommodate the presence of a fourth operator.

5. DG's assessment of responses and final decision

Under the Telecommunications (Bailiwick of Guernsey) Law 2001, the DG is required to set out the process by which a licence will be granted. Section 3(1) of the Telecoms Law states that:

“The Director General shall publish -

(a) details of the procedures to be followed and the criteria to be applied in relation to applications for, and the grant of, a licence (which procedures may, without limitation, include requirements as to the submission of information and documents with an application);

(b) any changes made by him from time to time to such procedures, criteria and requirements.”

In addition Section 3 provides for the DG to be able to require an applicant to provide such additional information and documents as he may reasonably require for the purpose of determining an application for a licence and that an application for a licence shall be accompanied by the appropriate fee or levy prescribed by the DG under section 6 of the Telecoms Law.

In the past, applications for mobile licences have been made through a competitive tender process and there has, as a consequence, been a need to specify in some detail the format that applications should take and the criteria against which applications for licences would be assessed. This ensured all potential applicants were able to submit bids that could be assessed and compared in a fair manner.

In OUR 09/06, the DG proposed that the interests of the market and of consumers are best served at this time by ensuring that competition between existing operators is maximized. Therefore, subject to C&WG meeting the criteria established by the DG, he proposed that C&WG should be invited to apply for a 3G licence which would also involve the award of 3G (2100MHz) spectrum. The DG also indicated his willingness to consider an application for an allocation of 1800MHz subject to C&WG establishing a need for such spectrum.

For the purposes of considering an application from C&WG for a 3G licence the DG proposed that an application be made in writing requesting a 3G licence which confirmed that C&WG agrees to comply with the criteria set by the DG for the grant of such a licence. The DG proposed that the criteria to be applied in this case shall be:

- (a) C&WG agrees to surrender 2x5MHz of 900MHz spectrum prior to the granting of a 3G licence;
- (b) C&WG agrees to pay £250,000 on the date that a 3G licence is granted to C&WG; and

- (c) C&WG agrees to actively participate in a further review of 900MHz spectrum at a date to be determined in the future with the aim of rationalizing the spectrum held by it by a further 2x5MHz.

No respondents have objected to the award of such a licence on the basis set out above. Also, C&WG has confirmed its acceptance of these criteria. and has now written to the DG requesting a 3G licence. With regard to condition (c) above C&WG has raised certain issues which it believes it will look to see addressed in any future review of 900MHz spectrum. In OUR 09/06 the DG also sought views on the option of issuing a final decision and foregoing the draft decision phase of the consultation process and no respondents have raised concerns with this approach.

Following the consultation stage, prior to reaching a final decision an additional stage in the consultation process, namely the draft decision stage, is provided for in the DG's own procedure guidelines. Those stages in the consultation process are not a requirement of the regulatory law. Given the extent of agreement in the industry, the DG believes the interests of consumers are best served by expediting this decision and publishing a final decision without the need to consult on a draft decision. He will therefore enter discussions with C&WG on the terms of the 3G mobile licence to be granted to it and intends to issue C&WG with a 3G licence that will provide for 2x10MHz of 2100MHz spectrum and 2x5Mhz of 1800 spectrum..With regard to any future review of spectrum, while the DG has noted C&WG's comments, he believes it would be inappropriate to fetter his discretion at this time with regard to the nature or possible outcomes from that review. .

6. Next Steps

The OUR will now commence discussions with C&WG on the terms of its licence which will be published once agreed. C&WG will in the interim proceed with clearing the 2x5 Mhz of 900 spectrum required, in consultation with Ofcom, and confirmation will be required from Ofcom that the spectrum is available for refarming. Following the satisfactory conclusion of these elements of the decision, the OUR will issue the licence to C&WG who will pay the required licence fee.

Once this process is complete, the DG will action the measures announced in OUR 09/05 which will see licence amendments made to all mobile operators' licences to enable mobile spectrum to be used for any 2G or 3G mobile service. The DG anticipates that the formal licence amendment process will take place in September 2009.

The DG believes these measures are the most appropriate to take at this time in the context of the Guernsey mobile market. In the event that there is demand from an operator not currently licensed to provide mobile services in the Bailiwick, the DG will consider such interest once this process is complete.

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