



Office of Utility Regulation

Review of Mobile Licence Conditions

Consultation Paper

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Office of Utility Regulation
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1. Introduction

In fulfilling its duties as the regulator of communications industries the Office of Utility Regulation (“OUR”) periodically takes stock of the strategic role of regulation in the particular sectors we regulate. In performing that assessment the Director General (DG) believes it is important to have regard to whether regulation is required in any particular part of the telecoms market, and if so what form such regulation should take.

In this paper the DG is focusing his review on the mobile market to assess the scope for rolling back some regulatory requirements. He believes that, with three players in the Guernsey mobile market and with competition increasing, it is an appropriate opportunity to consult on what form of regulation is required for the mobile market for the future, having regard to his legal obligations and developments in regulation in other jurisdictions.

In commencing this review, one of the objectives of the DG is to put in place a simple and effective licensing regime that encompasses only those activities that is considered necessary to subject to regulatory controls. Therefore this paper sets out the proposed steps for building on the provisions in the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecoms Law”) and developments in regulatory frameworks elsewhere, in particular the EU.

In 2001, when regulation was introduced, the OUR developed a simple modular licence structure which had broadly common licence conditions for all operators, some of which only became active when an operator was designated as having a dominant position in a market. The licence terms and conditions which operators are currently required to comply with were designed to help promote fair competition and offer consumers an appropriate level of protection. They were also intended to ensure all consumers in the Bailiwick receive a high quality mobile service.

The conditions also looked to ensure that where scarce resources are involved, for example land or spectrum, there was an appropriate level of oversight to ensure these were efficiently managed.

Over the past three years in particular the OUR’s work has resulted in the introduction of Mobile Number Portability, lower Mobile Termination Rates and more appropriate site sharing charges. The result is that competition is now starting to become more effective. Mobile users can change service providers easily and at no cost and price competition has started to evolve in a more sustained manner.

The purpose of this consultation is therefore to identify how regulation of the mobile market should adapt given the changing mobile environment in Guernsey. The rest of this paper sets out the type of changes the DG is minded to make to the licence conditions of the three mobile operators. However he would welcome feedback from interested parties on whether the nature of the changes proposed are appropriate given their assessment of the mobile market, whether there are alternative approaches to regulation of this sector that should be considered (for instance should the general competition law that will be introduced in the near future be applied to the mobile market rather than sector specific regulation) and whether greater use of sunset clauses for certain obligations might be considered.

As the DG is looking to put in place a forward looking regulatory regime, which provides maximum certainty for mobile operators whilst balancing his duty to protect consumers, he wishes to stress that at this stage he has formed no firm view on what changes should be made. The proposals set out in this paper are to assist the consultation process.

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.

2. Structure of this Paper and Process

2.1. Structure of this Paper and Process

This consultation document is structured as follows:

- Section 3 describes the background information including the legal framework within which the mobile market is regulated, the purpose of regulation in the mobile market, and mobile licensing in Guernsey;
- Section 4 summarises the current state of the mobile market;
- Section 5 discusses the move to lighter touch regulation;
- Section 6 summarises the current licence conditions and highlights those which the DG is considering amending or withdrawing;
- Section 7 sets out the next steps.

2.2. Procedure and Timetable

Responses to this document should be submitted in writing and should be received by the OUR before 5.00pm on 11th June 2010. Written comments should be submitted to:

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

Or by email to info@regutil.gg

All comments should be clearly marked: “Review of Mobile Licence Conditions – Consultation Document”.

In accordance with the OUR’s policy on consultation set out in Document OUR 05/28 – “Regulation in Guernsey; Revised Consultation Procedures Information Paper” - non-confidential responses to the consultation will be made available on the OUR’s website (www.regutil.gg) and for inspection at the OUR’s Office during normal working hours. Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential. The DG regrets that he is not in a position to respond individually to the responses to this consultation.

3. Legal Background

3.1. *Statutory Requirements*

Section 2 (1) of the Telecoms Law 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.

In September 2001, the States resolved to give the following direction to the DG in accordance with Section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

“The provision of telecommunications networks and services in the Bailiwick of Guernsey shall be opened up to competition at the earliest possible time consistent with the Regulation of Utilities (Bailiwick of Guernsey) Law 2001.”

3.2. *Licensing Background*

Against this 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 Telecom both a 2G and a 3G mobile licence. The telecommunications licences first awarded to C&W Guernsey ("Sure") in 2001 were used as a basis for these licences. Wave Telecom also committed to some further binding conditions which were included in their 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 further competition, in November 2005 the DG commenced a further process aimed at awarding a further 3G 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 Sure. Following a detailed assessment of both applications, the DG ranked the Airtel application first and commenced negotiations on the terms of its licences. Airtel proposed its own licence conditions which built upon the existing mobile licences. In particular, there are additional conditions referring to rollout, coverage and Service Level Agreements (conditions 15-17 of the Airtel licence), environmental protection (condition 18), MVNOs, Customer support, New services, Price reductions and an ‘Open Portal’ (conditions 34-38 of the Airtel mobile licence).

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 Sure, subject to it meeting certain criteria. In addition, he proposed to grant an allocation of 900MHz spectrum to Airtel from the spectrum released by Sure. The DG also proposed a condition for any 3G licence award to Sure, that it would actively participate in a further review of 900MHz spectrum at a date to be determined in the future with the aim of rationalising the spectrum held by it by a further 2x5MHz.

In October 2009 the OUR awarded a 3G mobile licence to Sure. All three mobile operators, Sure, Airtel-Vodafone and Wave Telecom, can now provide islanders with both 2G and 3G mobile services.

3.3. *Legislative Changes*

In March 2007, the States of Guernsey passed an amendment to the Regulation of Utilities (Bailiwick of Guernsey) Law 2001, which include a specific requirement for the DG to regulate in a manner proportionate to Guernsey’s circumstances. The revised Regulation Law states;

4. (2) The Director General shall exercise his functions and powers with fairness, impartiality and independence and in a manner which is –

- a. timely, transparent, objective and, subject to the exception set out in section 3(1), consistent with States' Directions and the provisions of this Law and any relevant Sector Law,
- b. proportionate to the Bailiwick's circumstances, and
- c. accountable, consistent and targeted only at cases in respect of which action on his part is necessary.

While such an approach has been applied by the OUR since 2001, the above legal provision makes explicit what had been implicit to-date in the regulatory regime.

4. Current state of mobile market

4.1. *The need for regulation in the mobile market*

The mobile sector is particularly challenging for new entrants – the barriers to entry are substantial. There are obstacles in terms of spectrum, technical standards and infrastructure that remain formidable in the eyes of many prospective entrants.

The objectives of regulation in such a market may therefore include the following:

- To enable co-operation in an environment where the existing owners of network infrastructure may be unwilling to co-operate and where prospective co-operation is between firms;
- To ensure all new entrants and investors in the telecommunications service sector are treated equally by the dominant competitor, who will be a supplier of inputs (e.g., interconnection) to the businesses of the new entrants;
- To ensure customers receive the benefits of competition and innovation in the market; and
- To ensure that all customers have a “voice” and their complaints and interests receive an adequate response.

In recent years, the mobile sector has become more important, and going forward it looks set to become more complex. The sector continues to evolve rapidly and is an increasingly integral part of a broader communications market. Now a new wave of data-based services, including mobile broadband, promises to bring together the flexibility of the internet and the ease and immediacy of mobility. Although there is a lot of uncertainty about how these events will unfold, they have the potential to bring significant benefits for consumers.

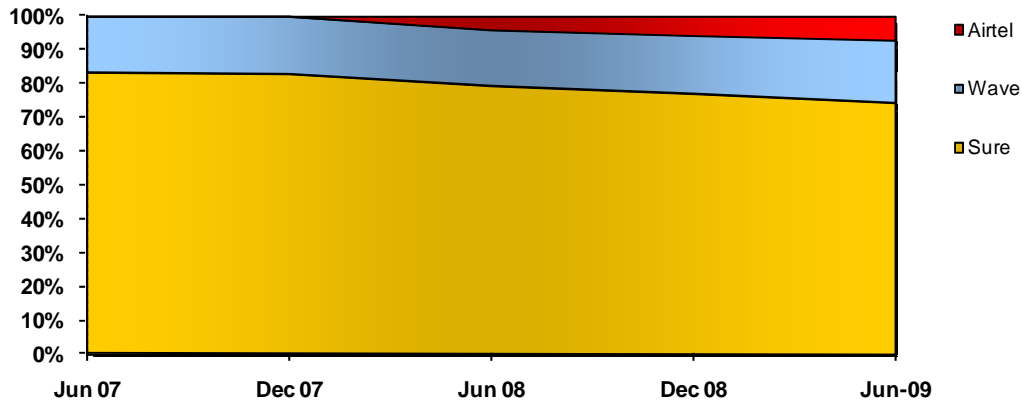
In Guernsey the mobile telephony market was opened to competition from 1 April 2003 with the award of both a 2G and 3G licence to Wave Telecom. A further competition took place in 2006 resulting in the award of a further 2G and 3G licence to Airtel-Vodafone. Sure was awarded its 3G licence in 2009. There are currently three 2G and three 3G operators (Airtel, Sure, and Wave) licensed to provide mobile services in the Bailiwick of Guernsey.

4.1 *Current state of the mobile market in Guernsey*

4.1.2 Mobile market shares

Table 1 shows the change in market share, based on subscriber numbers, in the two years from June 2007 to June 2009. The change in the market share of the three operators from June 2008 to June 2009 reflects the entry of the new mobile operator, Airtel-Vodafone, during the first half of 2008. In the first nine months of activity Airtel gained over 5% market share of mobile subscribers. Sure’s market share has reduced from approximately 80% in June 2008 to approximately 74% in June 2009, while in the same period Wave’s market share increased from 16% to 19%. With the continuing success of MNP, with over 5,000 numbers ported to-date, it is likely that there have been further changes in market share since June 2009, with Sure likely to have lost some further market share.

Table 1



4.1.2 Overall market growth

Mobile voice and SMS volumes have increased substantially since June 2007. In the second half of 2008 Guernsey’s mobile operators originated approximately 29 million minutes (a growth rate of more than 11% from the first half of 2008), and more than 30 million SMS were sent from their networks (close to 15% increase over the same period).

4.1.3 Assessment of the Market

The market share data and the market growth data suggest an increasingly dynamic mobile market where volumes are generally increasing and operators are competing at the retail level to maintain or increase their market shares. Market shares are shifting away from Sure, the dominant operator. As noted earlier, over 5,000 numbers have been ported since MNP launched. The majority of ports were from Sure to either Airtel or Wave, with Airtel gaining the largest percentage of ported numbers.

In light of this, the DG believes there is merit in considering at this time a review of how the mobile market is regulated with a view to adopting an approach that reflects the current and potential state of competition considering developments in regulation of the mobile market in other jurisdictions.

5. The need for lighter touch regulation

The continued success of the mobile sector will require regulation to change as the industry changes. To-date regulation of the mobile sector in Guernsey has seen greater competition introduced which has brought substantial benefits for consumers. Prices are falling in the mobile market, new services such as mobile broadband have been introduced and there are indications that mobile operators might influence pricing in the fixed market as well.

Given these developments, the DG is looking for opportunities to de-regulate this market where possible. The OUR's strategy is built on recognising the value to citizens and consumers of competition at the deepest level of infrastructure where that competition will be effective and sustainable, in a way that is proportionate to the Guernsey market. The DG is looking to adapt the regulatory regime to remove unnecessary regulatory obstacles to innovation and to enable the market to function more efficiently.

The benefits of lighter touch regulation is that it provides operators with greater autonomy and flexibility, enabling them to respond quickly to new technology and changing market conditions. Operators can also focus their strategy more closely on maximising competitiveness, with reduced cost of regulatory compliance and monitoring. Consumers should see these benefits in the form of better prices, better quality products, better customer service and more innovative products and services.

However, regulation needs to be scaled back with care. Markets may not always generate the best outcome for consumers. For example, opportunities to compete at a lower cost may outweigh options that are in the longer term interest of consumers and of Guernsey as a whole. There may also be a risk of a collusive behaviour or other anti-competitive behaviour to the detriment of consumers. This needs to be taken into consideration when assessing the future regulatory regime for the mobile market.

The DG is also mindful of developments in regulation elsewhere. Since the Guernsey regulatory regime was put in place in 2001, at an EU level there have been two major reviews of how communications markets should be regulated. While the design of the Guernsey regime in 2001 had regard to the 1999 EU review (which was not formally implemented until 2003), since then a further high level review of regulation has taken place resulting in a number of new EU Directives being implemented in Member States.

In the review of regulation at an EU level, the EU adopted an approach to regulation which is more relaxed with regard to operators who do not have significant market power. While Guernsey is not bound by EU Directives, and it has a different legal framework within which regulation must be undertaken, nevertheless the OUR is keen to reflect such developments and ensure the approach to regulation is the minimum needed to achieve the objectives laid down in the Regulation Law.

In assessing how to frame any new regulatory regime for the mobile operators, the DG has started from a basis of assessing the current licence requirements for the mobile operators. While each of the three mobile operators have slightly different

licence conditions in their individual licences, there is sufficient similarity to allow for a review on a market wide basis.

There are some conditions in the Wave and Airtel licences which were commitments made as part of the licence bid process. Many of these have been discharged already. Therefore, part of this consultation process is to consider whether it is appropriate to retain such conditions as part of any forward looking licensing framework and whether there is now merit in moving towards a common licence.

The DG would like to consider which licence obligations are no longer relevant, or require amending, for reasons such as:

- The condition is no longer relevant in today's mobile market;
- The condition has already been met by the operators;
- Going forward, market competition should drive these outcomes to be achieved independently of regulation;
- The condition is unnecessarily long or complicated;
- The condition is out of date; or
- The condition may hold back market innovation if it remains within the mobile licences.

When considering the removal of each condition, the DG will take into account certain principles relating to the potential risks to consumers of removing each condition, by asking the following questions:

- Could potentially irreparable damage be caused to the development of well-functioning markets? Or can the specific problems arising be identified and dealt with on an ex-post basis?
- Is there a fundamental asymmetry of information or power between the operator and consumer which will not disappear regardless of the level of competition in the market? If so, regulation may still need to address this.

In addition, the DG is aware that a general competition law may soon be in place in Guernsey (which it is expected will resemble closely the current competition law in Jersey). He is therefore interested to assess whether a more general competition law approach could be applied to the mobile market at this time.

6. Proposed Amendments to Licence Conditions

The full text of each of the mobile licences currently held by the three mobile operators may be found on the OUR website. The OUR has considered each of the licence conditions in turn and in face of the current and potential competitive landscape is considering amending the licence conditions in a number of areas. He would welcome comments on any aspect of the regime and indeed on the necessity of any particular licence condition. For simplicity, all numeric references below are to the Airtel 3G Licence⁴

Condition No. 9: Integrity of the Network.

This condition provides for the Licensee to take steps necessary to ensure the integrity of the network. The Licensee may refuse to provide telecoms services (as defined in the Telecoms Law) which it is obliged to provide to a particular user if providing those services would be likely to cause damage or interference to the network or services.

This condition is designed to afford the operators a level of protection against having to connect any particular customer or equipment to its network when to do so may cause damage to the network. However, given there is now competition in the mobile market, it may be more appropriate for operators to make such decisions on a commercial basis. The DG would welcome views of interested parties as to whether the retention of this condition is still required.

Condition No. 12: Service to the public

The purpose of this condition is to ensure that a minimum level of mobile service and coverage is provided to mobile customers in the Bailiwick. The text of the licence condition varies from operator to operator (depending on when the licence was issued and whether it contains specific conditions ‘bid’ by the operator in a mobile competition.

In essence, its purpose is to ensure operators develop a strong Bailiwick wide network and ensure that its development and coverage remain appropriate to meet users’ needs. The rationale for this condition is to ensure accessibility of service and to avoid a situation where operators ‘cherry pick’ only the most profitable customers or islands and leave the rest of the customers without access to services. There is potentially a significant cost difference in providing coverage to smaller islands than to the main island with its high population density.

Also what users’ needs might be will invariably continue to change over time – for example when Sure’s 2G licence was issued in 2001, the prospect of mobile broadband – and the implications it has for network development – was less important. The focus was on voice services. However, changing consumer needs and

⁴ The Airtel 3G Licence can be found here:
<http://www.regutil.gg/docs/Guernsey%20Airtel%20%203G%20WEB.pdf>

behavior, such as accessing social networking sites through mobile devices, is changing the nature of what mobile networks need to look like.

However, the issue for the DG is whether there is a requirement for the OUR to specifically set a minimum level of coverage or is this an issue driven better by competition now that switching from network to network is fast, free and relatively simple. Alternatively should a revised licence condition simply state a minimum level of coverage (and if so how should that be defined)?

The DG would like to emphasise the difference between *quality* of coverage which relates to the quality of the mobile signal received and '*sufficiency* of coverage' which relates to the percentage of the population and geographic regions covered. To clarify the difference between these two targets, consider a situation where competition is absent. In the absence of competition it is likely that an operator still has an incentive to increase its population coverage as this will improve revenues and profits. However, with no competitive pressure there is little incentive to improve quality of coverage as customers have no choice but that one network. Discriminatory service provision will not help operators to increase market share, since in a jurisdiction such as Guernsey coverage levels (particularly population coverage levels, but also geographic coverage) are likely to be a key determinant of an operator's ability to gain market share.

The DG would therefore like to invite comments on whether there are sufficient commercial drivers for operators to retain a presence on all islands and maintain an acceptable quality of coverage on these islands without the need for regulatory intervention.

Condition No. 14: Directory Information

This condition requires the licensee to ensure that users have access to directory information services and operator assisted services offered by the licensee or any OLO who is obliged to provide such services under the USO. This condition also requires a licensee to co-operate in making information available to enable a directory information service to be provided. It also requires the Licensee to ensure that it does not use information for any purpose other than the directory information service, and comply with data protection legislation.

Sure is obliged, as the USO provider, to provide a paper based directory and to make available a telephone based directory enquiry service. Neither Wave nor Airtel has any such obligations but are required to ensure their customers can access directory services.

Wave and Airtel are currently obliged to provide directory information to Sure to enable it to meet its obligations in providing the USO insofar as it relates to directory services. Sure is not similarly required under its licence to make directory information available to OLOs, and such operators must source their directory information (if required) commercially (for example the DG understands Wave Telecom sources the data for its directory from BT).

The USO is set by the States of Guernsey. Insofar as it relates to directory services states:

“Directory enquiry services and directories:

- *at least one subscriber directory covering all subscribers of direct public telephone service providers shall be made available to users and shall be updated regularly and at least once a year;*
- *at least one telephone directory enquiry service covering all listed subscribers’ numbers shall be made available to all users, including users of public pay telephones; “*

Currently Sure publishes both a ‘White Pages’ directory (which is in effect the USO requirement) and a ‘Yellow Pages’ (i.e. classified) directory in one book. OLOs are required to co-operate with Sure in publishing the White Pages directory. However Sure in turn publishes, in conjunction with the White Pages, for commercial reasons a Yellow Pages directory. OLOs are currently required to provide information to Sure free of charge to enable the compilation of the White Pages directory. OLOs (currently only Wave Telecom) that produce their own directory must however pay other operators for the data. As Sure benefits commercially from the inclusion of the classified directory with the USO directory, it might be argued that the current licence condition on OLOs may be discriminatory.

Sure is required to meet the USO obligation and therefore has to collect this information, whereas for other operators, providing directory services is a commercial choice. The OUR in considering whether any amendment to this licence condition is required, would welcome comments on the following issues:

- Given that Sure benefits commercially from producing Directory Information, should Sure receive this data free of charge from the OLOs, or should it be required to pay a cost related fee for it?
- Should Directory Information be provided by all operators to each other at cost to avoid a regulatory barrier to other operators providing this service; or only be provided to the USO provider who is obliged to provide the service?

The DG would welcome views on this issue.

Condition No. 15: Network and Service Development

All licensees are required to roll-out and operate the Mobile Network so as to progressively achieve standards in line with best practice and comply with the relevant standards. The purpose of the condition is to ensure mobile services are provided in Guernsey in such a way as to ensure Guernsey mobile users benefit from the availability of leading edge mobile services that are on a par with those available in other developed countries.

There are arguments both for and against removing or amending this condition. On one hand, it can be argued that the presence of competition now means that the market may be a better means of regulating network and service standards going forward. It might also be argued the role of a regulator should not be to force operators to develop services and innovate where market incentives exist to achieve this goal.

On the other hand, it is not clear that the market does indeed fix issues of network and service development. For example, if a customer is tied to an 18 month contract, and is finding the network unreliable, they may technically be able to switch with MNP. However, in reality this would involve paying for the terminated contract. Therefore

it can be argued that removal of this condition could result in various risks to consumers or a general deterioration in standards applied across all mobile operators.

However, it is possible that such issues might be best dealt with on an ex-post basis as they arise, rather than maintaining a broad condition which attempts to pre-empt these problems. The OUR invites comments on the risks related to removing this condition, and whether these are specific problems which can be dealt with as they arise or whether they could be more fundamental to a healthy functioning market and therefore still require ex-ante regulation.

Condition No. 16: Technical Quality of Network

This licence condition currently appears in the Airtel and Wave mobile licences. Under the condition, the Licensee is required to meet the minimum standards with respect to the following quality of service indicators: blocking rate, call drop rate, network capacity, service availability and speech quality. The purpose is to ensure high quality voice and data service quality across the network.

Again, there are arguments both for and against removing or amending this condition. A forward-looking harmonisation of the three current 3G licences would itself suggest that, if the condition was not part of the most recent licence of the operator with the largest market share, it should not be necessary to keep the condition in the licence of the other operators. (It is noted though that the Sure 3G licence merely reflected its 2G licence in structure and it had not 'bid' any specific commitments on the matters that are addressed in the Wave and Airtel licences on this aspect). Given the presence of competition in the mobile market, there may be benefits in relaxing or withdrawing this condition so as to allow operators to compete on quality. When markets are competitive, signals from the consumer are clearer and stronger so operators can focus on what consumers want rather than the regulator prescribing what is best for the market. Resources can then be dedicated to satisfying the consumer.

On the other hand, the risk of not specifying certain quality of service measures is that the potential for network quality and coverage to diminish over time may arise or investment in the network may be 'patchy', resulting in greater investment in the more profitable geographic areas to the detriment of other parts of the Bailiwick. The DG invites comments on whether this aspect of the mobile services requires direct regulation and if so, to what level is it necessary to specify operators' obligations.

Condition No. 17: Consumer Protection

This condition requires the licensee to publish certain information with regard to its services and conditions and file this with the Director General, to publish the manner in which it will deal with customer complaints, the protection of consumer privacy, the provision of itemised billing and the publication of a consumers code for the resolution of disputes and in relation to the non-payment of bills and disconnections. It also requires licensees to prepare a draft statement on its minimum service levels for customers, ensure the accuracy and reliability of systems including billing systems.

The importance of some level of consumer protection is generally widely accepted. In Guernsey, given the absence of wider consumer protection legislation, the need for

oversight may be considered greater. At an international level, the EU Framework Directive (Article 8, part 4)⁵, which all member states have adopted, says that the national regulatory authorities shall protect their citizens by:

“(b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures;

(c) ensuring a high level of protection of personal data and privacy;

(d) requiring transparency of tariffs and conditions for using publicly available electronic communications services”

In light of this, the OUR is less inclined to remove this element of the condition.

The OUR also emphasises that the complaints process should be easy to follow, and the OUR would remain as the last resort for complaints. The OUR notes that as products and services become increasingly complex, it is important that the terms and conditions are easy to understand, transparent and accessible. To-date the OUR has required operators to notify it of changes to terms & conditions. Given the level of competition in the market and the ease with which mobile users can now switch operators, the DG is minded to no longer require notification of changes to terms and conditions. He believes that if matters come to light with respect to the T&Cs, the OUR would reserve the ability to review and direct amendment to those T&Cs where concerns are well founded and address any consumer issues arising. It will however be important that terms and conditions are easily accessible and simple for consumers to understand.

An area where the DG is minded to remove a requirement is in the provision of 6 monthly reports on consumer complaints. While the monitoring of operators' responses to complaints remains important, the frequency of the provision of this information is less so. He believes it is good business practice for operators to satisfy themselves as to their approach to dealing appropriately with consumer issues. In a competitive market the incentives to do so are stronger than those brought about simply by regulation alone. Therefore the DG is minded to drop the requirement to report on consumer complaints but proposes to retain the right to request information on how complaints are dealt with and request a log of all complaints in the event that evidence of any systemic issues arise. He would however welcome views of interested parties on this matter.

One further area where the DG would welcome comments is on the need for consumer councils in the telecoms market. This requirement was included in the original licences issued to all three incumbent utility providers in 2001 and reflected that, as there was no competition some avenue for consumers' views and concerns to be communicated directly to the company was required. For the purpose of this consultation, the DG's focus is on the continued relevance of such councils for a market where competition is becoming more effective. Choice is a powerful weapon for consumers in sending signals to a company on whether its performance is delivering what consumers need. While the DG understands the activity of the

⁵ European Framework Directive *“On a common regulatory framework for electronic communications networks and services”* (2000),
http://ec.europa.eu/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00330050.pdf

consumer council in telecoms has been limited, he would welcome views on whether there remains a need for a consumer council in the telecoms market.

Condition No. 18: Environmental protection

Condition 18 reflects the DG's duty to lessen where practicable any adverse impacts of utility activities on the environment. In Airtel-Vodafone's licence this includes the use of methods to minimise the visual disruption caused by deploying its network, equipment solutions which are energy efficient where possible, providing recycling facilities for unused parts, holding an annual environmental meeting, publishing details of its environmental strategy and approach and reporting on these steps within six months of the Licence commencement date⁶.

The OUR notes that environmental damage is a potential market failure not addressed by competition. The OUR is also of the view that significant progress has been made in recent years in reducing the impact of mobile networks on the environment. There is now significant sharing of base station sites, greater co-ordination by the Environment Department of planning applications and reduced site sharing charges which should encourage sharing wherever possible. In light of this, an argument could be made that the need for the economic regulator (i.e the OUR) to monitor such issues is less relevant, particularly given the more focused approach taken in recent years by the Environment Department.

However, the need for operators to be energy efficient in their networks and the potential for further utilisation of spectrum to promote greater competition, coupled with the DG's specific duty under the Regulation Law suggests that some provision for oversight should be explicit in the licence. The DG would welcome views of interested parties on the extent to which environmental issues should be regulated through licence conditions and if such oversight is retained what should its focus be.

Condition No. 19: Monitoring Performance

The mobile licences all contain requirements for the operators to report on their performance against certain quality of service targets. The detail and the nature of what is required in that report is varied and the nature of the reports submitted has also varied in detail. The licence conditions do make provision for the DG to specify how this information should be presented, however to-date there has not been a standard methodology or approach mandated by the OUR.

Access to information is important in helping consumers make informed choices on which network to use. With this in mind the DG is minded to amend this condition to provide for the reporting of a standard set of information on a yearly basis which would then be published. The DG accepts that the nature of the metrics to be used will need to be agreed, and the measurement and reporting of the information will also need to be consistent. However, he does not see these as insurmountable problems.

⁶ The OUR notes that C&WG and Wave do not have this condition in their Licences, as this condition was part of Airtel's 3G Licence bid.

He would therefore welcome observations on the proposal and in particular on the type of metrics that should be reported upon which would be considered of value to helping consumers make informed decisions.

Condition No.31: Price Regulated Services

This condition is again only applicable to dominant operators. In the mobile market in Guernsey currently it is applied to Sure.

The Licensee in question must publish 21 days in advance, notice of any price changes, discounts or special offers it intends to introduce. The Director General may determine the maximum level of charges the Licensee may apply for services within a Relevant Market in which the Licensee has been found to be dominant. If the Director General considers any published price, discount scheme or special offer is in breach of the Telecommunications Law or this License, the Director General may require these prices to be brought in line with the requirements of this License. This condition is applied only to dominant operators, and here only to 'regulated services'.

It can be argued that there is no longer a need for 'early warning' and that this condition:

- hinders competition by encouraging the other operators to change prices only in response to announcements from the other licensees;
- stifles innovation because other operators are able to preview all the new products offered by Sure, which reduces Sure's incentive to innovate; and
- prevents the functioning of a dynamic market by preventing quick pricing responses to changing conditions

Therefore one option is to remove the notice period, another is to remove the whole condition. It is unclear whether competition is sufficiently developed that the market does not require any ex-ante protection against anti-competitive behaviour. While almost 75% of the market share still remains with Sure, which can be argued to be indicative of significant market power, other operators have demonstrated an ability to gain market share.

However, the OUR proposes that if this condition is removed, greater reliance will be placed on applying condition 32 to all operators. Condition 32, the 'Fair Competition' condition, requires that the Licensee shall not engage in any practice that has the object or likely effect of preventing, restricting or distorting competition in the market and will comply with any direction issued by the Director General to achieve this.

This condition is currently in all the operator's mobile licences. The OUR believes that the key risks to consumers and to competition that may arise from removing condition 31 might in future be dealt with through condition 32.

The DG would also note that with the proposed introduction of competition law, which includes the provision for significant penalties for breaches of competition law (including abuse of dominance) the DG will have available to him new deterrents for preventing anti-competitive behaviour.

However he would welcome comments on whether changes are required to this condition and if so how should any such changes be implemented.

Condition No.35 - 38: Customer Support

These final conditions exist only in the Airtel licence and were part of their 3G license bid. Below we set out what each condition relates to and then some general issues for consideration relating to all the conditions.

<u>Condition No.35: Customer Support</u>	The Licensee shall ensure its Users are provided with customer support 24 hours a day throughout the year, as well as other customer service standards and penalties for failing to satisfy them.
<u>Condition No.36: New Services</u>	This condition sets minimum numbers of new product, service and tariff launches for Licensees and penalties for non-compliance.
<u>Condition No.37: Price Reductions</u>	In order to promote increased competition in the 3G mobile telecommunications market, the Licensee will deliver annual price reductions for the specified years, with progress reports and penalties for non-compliance.
<u>Condition No.38: Open Portal</u>	The Licensee will provide a local information portal, with major travel and weather news, with open and non-discriminatory access to this portal, as well as assisting the local culture and tourist boards the means to develop a mobile portal listing.

In a competitive environment, there is a commercial incentive to provide customer support, new services, price reductions and innovative features. The DG would welcome comments on whether, in a move to a standardised licensing regime, conditions such as this should now be removed even where the condition was originally included as part of a licence bid process.

Term Limits

Each of the mobile licences contains a definition for what the term of the licence is. In the case of Airtel's 2G and 3G licences and Sure and Wave's 3G licences the term is 20 years, all other mobile licences are 15 years. As the licences have been granted at different stages the length left to run on each licence term varies from 5 years in the case of Sure's 2G licence to 19 years in the case of its 3G licence which was granted in 2009.

The DG has previously indicated he was minded to address the issue of term limits. It appears to him that there are a number of approaches which he might consider. Previously he had indicated that removing term limits altogether might be worth considering in terms of giving operator's maximum certainty and therefore provide appropriate incentives for long term investment. He also believes standardising the expiry date for all licences for all operators at an appropriate point in the future might also achieve this objective which enabling the OUR to still discharge its duties to the market more generally. The DG would welcome comments on this aspect of the mobile licences.

7. Next Steps

The DG is open to comments on the proposals set out above or any other suggestions interested parties might have for how the mobile market should be regulated going forward.

Interested parties are requested to provide responses to this consultation paper by 11th June 2010. Following consideration of the responses the DG will publish details of his findings and what, if any, changes that he considers might be necessary to the current mobile licences as a Draft Decision.

ENDS