



Office of Utility Regulation

Review of Mobile Licence Conditions

Draft Decision Document

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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

The Office of Utility Regulation (OUR) published a consultation on its review of regulation in the mobile market in May 2010. The OUR's objective was to assess the opportunity for reducing its regulatory requirements of companies holding a licence to provide mobile telecommunication services. This document sets out the OUR's draft conclusions.

There are now three players in the Guernsey mobile telecommunication market. In order to stimulate competition, the OUR has introduced Mobile Number Portability, lower Mobile Termination Rates and more appropriate site sharing charges over the past three years. The result is that competition is now becoming 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 OUR therefore considers that now is an appropriate time to review the form of regulation that is required for the mobile market for the future, having regard to its legal obligations and to developments in regulation in other jurisdictions.

The consultation paper set out the type of changes the DG was considering making to the licence conditions of the three mobile operators. The OUR requested feedback from interested parties on whether the nature of the changes proposed were appropriate given their assessment of the mobile market and whether there were alternative approaches to regulation of this sector that should be considered.

This draft decision document sets out the views of respondents, which have been carefully considered by the Director General at the OUR (DG) and informed his draft decision. It sets out the DG's draft decision and invites comments on them.

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 the Paper

Structure

The rest of this paper is structured as follows:

- Section 3:** This section describes the legal framework for mobile telecommunications licensing and provides relevant background information;
- Section 4:** For each licence condition, this section repeats the question in the consultation document, summarises the responses received and sets out the OUR's assessment of the issues;
- Section 5:** lists the draft decisions proposed in this document;
- Section 6:** sets out the next steps in the consultation process;

Comments

Parties are invited to submit comments in writing on the matters set out in this paper to the following address:

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

Email: info@regutil.gg

All comments should be clearly marked "Review of Mobile Licence Conditions – Draft Decision" and should arrive before 5pm on 10th January 2011.

In line with the policy set out in Document OUR 05/28 – "Regulation in Guernsey; Revised Consultation Procedures", the DG intends to make any further comments received available on the OUR website. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential. However the DG regrets that he is not in a position to respond individually to the responses to this consultation.

Any comments received will be taken into account by the DG in informing his consideration of the issues addressed in this consultation.

3. Background Information

Statutory Requirements

Section 2 (1) of the Telecommunications (Bailiwick of Guernsey) Law 2001 (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 of Utilities (Bailiwick of Guernsey) Law, 2001 (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 Telecoms 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.

Licensing Background

In May 2002, the DG published a consultation paper (OUR 02/18), entitled "Mobile Telecommunications Licence Terms and Conditions", 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” (OUR 01/25) published in December 2001 and the subsequent “Report on the Consultation and Decision Paper” published in April 2002 (OUR 02/14). The May Consultation Paper sought the views and comments of interested parties on issues and principles to be applied to the new mobile telecommunications network licences being awarded at that time. The DG’s intention was to develop a licensing regime that fostered 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 was launched at the end of 2002 and in March 2003 the DG awarded Wave both a 2G and a 3G mobile licence.

In November 2005 the DG commenced a further process aimed at awarding a further licence. He 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 a 2G licence and a 3G licence and launched services in March 2008.

In 2009, the 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 had been 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&WG Guernsey’s (“C&WG”) agreement to the conditions set out. C&WG confirmed its acceptance of those conditions and the DG issued a further 3G mobile licence to C&W Guernsey (C&WG) in 2009.

Licence Modifications

Under section 8 of the Telecoms Law, the DG may after giving notice and after consideration of any representations made to him, amend any condition of a licence issued by him to a licensed operator. The DG is required by law to give a minimum of seven days notice of any proposed modification. In addition each operator’s licence contains a condition which enables the DG to amend a licence subject to compliance with the Telecoms Law.

4. Responses to the Consultation document

General comments

There were three respondents to the OUR May consultation: Cable and Wireless Guernsey (C&WG), Wave Telecom (Wave) and Guernsey Airtel Limited (GAL). As well as responding on specific licence conditions, C&WG and GAL also made some general comments which are summarised and discussed below. Responses to this consultation are on the OUR website.

The DG was pleased that all respondents gave broad support to the OUR's assessment that the development of competition justified a change in its regulation of the mobile telecommunication market. Respondents also agreed with the OUR's objectives of simplifying licence conditions. There was broad support, in principle, to move from regulation 'ex-ante' by means of licence conditions to 'ex-post' regulation of the type provided by competition legislation. However, GAL, in particular, thought that a move to 'ex-post' regulation would be premature now and needed to wait for Guernsey competition legislation to be fully effective.

Proposals for simplification depend on competition being effective in the mobile telecommunication market. The DG noted in the consultation document that competition might be stifled by operators' ability to persuade customers to sign long-term binding contracts. However respondents regarded the risk to competition presented by long-term binding contracts as low or very small.

Finally, the DG notes that, for licence conditions 15, 16, 17 and 19, there seems to be a consensus that operators' reporting requirements should be streamlined and, at most, take the form of an annual report, fully standardised and publicised. Respondents thought the OUR should take the lead in developing reporting standards and specifications with the industry. The OUR should ensure, in particular, that such annual report contain service measurements that have been defined strictly and are reliably comparable between operators.

C&WG

Technological neutrality

C&WG was disappointed that the OUR had not made any reference to the possibility that revised mobile licences could become 'technology neutral'. C&WG believes that the OUR should reconsider the question and, if appropriate, raise the matter in a separate consultation.

Licensees are able to utilise 2G frequencies (900MHz and 1800MHz) to provide 2G services and 3G frequencies (2100MHz) to provide both 2G and 3G services. C&WG believes that, when an operator has the necessary spectrum allocation and authorisation from Ofcom, it should be able to determine which frequency to use to provide which mobile services. This would enable all operators to make full and effective usage of their spectrum allocations.

C&WG also believes that ‘technology neutrality’ would allow operators to take advantage of new opportunities provided by technological development without the need to amend licences. For instance, when a new spectrum over different frequencies become available – such as the 2.6Ghz frequency – there would be no need for any licence amendments. C&WG believes technology neutrality could also have an effect beneficial to the environment by encouraging an efficient use of frequencies by each operator in the provision of a range of mobile services.

DG assessment

OUR 09/06 in fact set out a final decision on this, namely:

Once this licensing round is complete, all three operators licences will be amended to remove the restrictions on the use to which their spectrum allocation in the 900MHz, 1800MHz and 2100MHz bands can be used. Therefore the DG confirms his decision to amend all three mobile operators’ licences to remove the restriction on use of spectrum. He will later this year initiate the formal process for amending a licence as required under the Telecommunications (Bailiwick of Guernsey) Law 2001

It is the intention that this change will be effected at the same time as other mobile licence conditions included in this consultation process are amended. C&WG’s response suggests a further expansion of the concept of technology neutrality beyond the 900MHz, 1800MHz and 2100MHz frequency bands. It is however not the DG’s intention to extend technology neutrality beyond the above frequency bands since these other frequency bands potentially offer a means of furthering competition, not only in mobile, but in fixed telecom services also. He would not wish to see a situation develop where the dominant operator was able to control new spectrum without appropriate ex-ante regulation that secured the aims of promoting competition. The DG therefore considers the extension of technology neutrality to all such spectrum may impede the potential for further competition and he does not propose to extend technology neutrality beyond the 900MHz, 1800MHz and 2100MHz frequency bands.

Mobile number portability

C&WG also noted that the licence conditions relating to numbering would need to be re-written as they were written before the introduction of mobile number portability (MNP). For example, Condition 17.1 of both C&WG's 2G and 3G Licences states that it can only use numbers that have been allocated to it. This now needs to change in light of MNP.

DG assessment

The OUR agrees that this condition should be amended.

Guernsey Airtel Limited (GAL)

GAL welcomes a measured relaxation of the regulatory approach in the Guernsey mobile sector.

GAL broadly supports the OUR's proposed move to simplify regulation but GAL recommends the OUR take a cautious and considered approach in relaxing some aspects of regulation in the mobile sector. The OUR has been successful in creating a positive environment to nurture competition in the Guernsey mobile market but the incumbent C&WG still remains strongly dominant in this sector. GAL therefore firmly believes that the Guernsey mobile market has not evolved sufficiently to enable certain key regulatory controls to be relaxed.

Additionally, in view of the different circumstances behind the development and award of each of the operators' licences over the last 10 years, GAL agrees that the OUR should align the licence conditions and obligations across all operator's licences, which they believe will further level the playing field in the Guernsey mobile market. GAL agrees that the OUR's proposed criteria for assessing the relevance of licence conditions should include 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.

Summary of responses to consultation and DG assessment of issues

The OUR considered each of the licence conditions in turn and assessed whether to amend them in view of the current and potential competitive environment. For each licence condition reviewed, the views of the DG as set out in the consultation document is provided, together with a summary of the responses received and an assessment of the issues by the DG. For simplicity, condition numbers below relate to the Airtel 3G Licence¹. The full text of each of the mobile licences currently held by the three mobile operators may be found on the OUR website.

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, as 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 asked for views of interested parties as to whether this condition was still required.

Summary of responses

- C&WG and WAVE believe that this condition can be removed.
- Wave is of the view that the mobile operator's terms and conditions would generally allow them to refuse to provide service if network integrity was at risk.
- C&WG emphasizes that it would still expect the OUR to take a role as an independent arbitrator in the event that a dispute arose in respect of the provision of mobile services and network integrity.
- GAL believes that this condition should be retained because it provides a valuable legal safeguard for operators to protect their networks, operations and consumer interests from inappropriate user behaviour.

¹ The Airtel 3G Licence can be found here:
<http://www.regutil.gg/docs/Guernsey%20Airtel%20%203G%20WEB.pdf>

DG assessment

The DG notes GAL's concerns regarding the loss of a safeguard protecting operator networks. However, the DG also notes Wave's comments that protection can be provided by the operator's own terms and conditions. The DG therefore recommends that this condition is removed and replaced with a condition stating operators accept that, in the event of any disputes relating to the integrity of the mobile network, the OUR retains its role as the final independent arbitrator.

The DG believes that such a condition, which provides comfort to operators and benefits the vast majority of customers by protecting network integrity, does not add to the burden of regulation but lightens it by clarifying operators' obligations and rights.

Condition No. 12: Service to the public

The purpose of this condition is to ensure that a minimum 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 'volunteered' by an operator in a mobile competition.

The issue for the DG is whether there is a requirement for the OUR specifically to set a minimum coverage or whether coverage extent is an issue better left to competition now that switching from network to network is fast, free and relatively simple. Alternatively, the OUR could issue a revised licence condition which simply requires a minimum coverage; but, then, the question is how that should 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 area covered by an operator's network.

Summary of responses

The response from all three respondents was a general agreement that the condition should be removed, with respondents referring to increased market competition and MNP as powerful incentives for operators to provide a high standard of coverage.

Specific points raised by respondents include:

- C&WG questioned the removal of condition 12.4, which relates to contribution to a USO (universal service obligation) fund. Whilst there is currently no such fund in place in Guernsey, C&WG suggested that such a fund may be deemed desirable in the future.

- GAL believes that specifying fixed coverage thresholds is no longer necessary; however, in view of the OUR's concerns about the risk of 'cherry picking' the most profitable geographic areas and population groups, GAL proposes replacing the existing threshold drivers with a general requirement for all operators to provide acceptable level of services across all parts of the Bailiwick
- GAL agrees with the OUR that future licences should emphasise the difference between network quality and coverage. GAL considers the latter now to be a base pre-requisite of providing mobile services in Guernsey. It believes that the former (network quality) is well assessed by the measures defined in Condition 16.

DG assessment

The DG believes that adequate coverage should not be taken for granted, particularly outside the Guernsey mainland. He therefore agrees with C&WG's comment that the condition relating to the creation of a USO fund should remain.

As coverage is extensive and quality of service is high, and in light of the provisions for a USO fund to ensure accessibility and availability of service, the OUR is happy to remove the other parts of condition 12. The DG believes that it is in the interest of operators to maximise coverage, and quality of service is a key differentiator for increasing market share. Therefore it is in the commercial interests of operators to maintain both these standards. While the OUR acknowledges GAL's suggestions regarding 'acceptable' levels of service, the DG would prefer to avoid using subjective wording which could create regulatory uncertainty. The DG would prefer to deal with any issues relating to coverage and quality of service through both the USO and on a case by case, ex-post basis.

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 Other Licensed Operator (OLO) that is obliged to provide such services. 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 provided by OLOs for any purpose other than the directory information service, and to comply with data protection legislation.

Sure (C&WG) 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 they 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).

Sure now publishes a 'White Pages' directory (which is in effect the USO requirement) and OLOs are currently required to provide information to Sure free of charge to enable the compilation of the White Pages directory and, generally to cooperate with Sure in this respect. OLOs (currently only Wave Telecom) that produce their own directory must however pay other operators for the data. Moreover, Sure also publishes a Yellow Pages directory in the same book at the White Pages. 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.

The consultation considered whether any amendment to this licence condition is required and asked for comments on the following issues:

- As 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?

Summary of responses

- Wave and GAL support the proposal for a charging mechanism for providing user information to directory service providers but C&WG does not.
- C&WG believes it would be inefficient for all operators to provide the Directory Information service, and to provide this at cost (although C&WG say they would receive more in total from the OLOs than it would have to pay).
- C&WG has concerns about the quality of data provided by the OLOs: any introduction of charging mechanism for that data would have to also involve assurances of quality control from the OLOs.

- GAL supports the OUR's proposed changes whereby licences are revised to; a) limit the publication of a single paper telephone directory in Guernsey; and b) specify the mechanism and charges to enable the other licensed operators to levy charges for providing user information to the single directory services provider
- Wave supports the proposal that directory information should be provided by all operators to each other at cost or on an agreed reciprocal rate card basis to avoid a regulatory barrier to other operators who choose to provide this service. Wave would like to change the current method of sourcing "white pages" data through BT OSIS which it thinks is costly and means that any OLO purchasing the data is likely to have an older version of it than Sure.

DG assessment

While there are issues raised by some respondents, the development of a charging regime and quality standards would represent a greater level of regulation than currently exists. Given the opposing views and the fact that the current system appears to function adequately, the DG is not inclined to make changes to the current approach.

Condition No. 15: Network and Service Development

All licensees are required to roll-out and operate the Mobile Network so as progressively to 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 invited 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.

Summary of responses

- All three respondents agree that this condition can be removed and that any serious issues that arise can be dealt with on an ex-post basis, with the exception of some specific points made by GAL.
- GAL proposes that the majority of the provisions in licence condition 15 be removed, specifically the coverage threshold requirements; these have been satisfied and are no longer needed. However, GAL would propose that the requirement to provide seamless roaming between Guernsey and Jersey is retained, and it may be appropriate for the OUR to require operators to provide an annual report outlining the network and service enhancements delivered in the last 12 months
- All three respondents said they did not agree that there were risks of a customer being committed to a bad contract for a long term:
 - CWG said that the importance of reputation in a competitive, close-knit community is crucial; and if a network were to deteriorate significantly, the network operator's customers would be quick to voice their dissatisfaction. Furthermore any interconnecting networks who felt that the integrity of their own network was being compromised, could refuse to interconnect. In such extreme circumstances, C&WG believes that the operator in question would not be able to fulfil its own terms and conditions of service to a customer and they would be entitled to break a contract without penalty.
 - GAL thought all operators have in place well-developed consumer service frameworks to address customer complaints – which give a clear understanding of service delivery standards and a defined and effective complaint process which culminates with the OUR's involvement.
 - Wave said this situation is unlikely in a highly competitive market where competing operators are keen to demonstrate their uniqueness. As an example, Wave noted its announcement that it had upgraded its network to provide higher speeds; Sure subsequently announced a similar development.

DG assessment

The DG acknowledges the reassurances provided by all operators regarding the minimal risk of consumers being stuck in bad contracts. Therefore the DG is confident that he can remove the condition and deal with such problems on an ex-post basis. However, the DG will keep the existence of long-term contracts under review in case control became required.

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 invited 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.

Summary of responses

- C&WG agrees that this condition can be removed – however, if it was proposed by Wave & Airtel as part of their bids for spectrum, C&WG says it should only be removed if the obligation has been fulfilled and proven to be so to the satisfaction of the OUR
- GAL believes that the service measurements specified in this condition are well defined and appropriate and should be retained, apart from the speech quality metric which is ambiguous and difficult to quantify on a universal or

consistent basis – and GAL suggests that the OUR review the validity of this metric and if it is still considered valid, that the OUR provide a robust definition and collection methodology; and that Network Technical Quality parameters are included and applied universally across all the Guernsey mobile operators

- Wave re-emphasises the comments made above in relation to conditions 12 and 15

DG assessment

The DG recognizes that there is a difference in opinion between GAL’s more cautious approach to scaling back regulation and C&WG and Wave’s more liberal approach. In order to maintain the move to lighter touch regulation, the DG proposes to reconcile these positions by removing the condition but providing for a periodic review of investment in the network and review of issues arising.

Condition No. 17: Consumer Protection

This condition requires the licensee to publish certain information with regard to its services and conditions and file it with the DG, 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 consumer 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, to 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 relevant EU Framework Directive (Article 8, part 4)², 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 was less persuaded to remove this element of the condition.

² 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

The OUR also emphasised that the complaints process should be easy to follow, and the OUR should remain as the last resort for complaints. The DG noted that as products and services become increasingly complex, it was important that the terms and conditions are easy to understand, transparent and accessible. To-date, the OUR 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 was minded no longer to require notification of changes to terms and conditions. He believed that if matters came to light with respect to the T&Cs, the OUR would reserve the ability to review and make amendment to those T&Cs where concerns are well founded and address any consumer issues arising. It would however be important that terms and conditions were easily accessible and simple for consumers to understand.

An area where the DG was also 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 believed it good business practice for operators to satisfy themselves as to their approach to dealing appropriately with consumer issues. In a more competitive market the incentives to do so are stronger than those brought about simply by regulation alone. Therefore the DG was minded to drop the requirement to report on consumer complaints but proposes to retain the right to request information on how complaints were dealt with and request a log of all complaints in the event that evidence of any systemic issues arose.

One further area where the DG welcomed comments was 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 is required. For the purpose of this consultation, the DG's focus was 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 consumer council in telecoms has been limited, he welcomed views on whether there remains a need for a consumer council in the telecoms market.

Summary of responses

- The operators broadly agreed with all the OUR's comments above
- Specific suggestions from the operators included the following:
 - C&WG does not think that 17.3 regarding data protection is necessary given the already strong data protection laws in Guernsey

- C&WG is happy to see the removal of the 6 monthly reports on consumer complaints to the OUR subject to the OUR retaining the right to request the relevant information and a log of issues in the event of any issues arising
- C&WG does not think that a consumer council would be useful
- GAL agrees with the removal of the notification requirement but would suggest that the revised licence condition contains an obligation on operators to track changes to their terms and conditions and make such records to the OUR on request and on an annual basis
- GAL suggests the OUR set up and operate central consumer councils to help mould the OUR's regulatory and technological policy to meet the future requirements of Guernsey. This could help with spectrum management, protecting the Guernsey environment and general technological development;
- WAVE suggested that the Guernsey Consumer Group could arrange a 'telecoms day' as recently organised by the Jersey Consumer Council

DG assessment

The DG's view is that the conditions discussed above can be removed, provided there is an obligation that changes to terms and conditions are tracked, issues are logged, and records are made available to the OUR on request, otherwise potentially on an annual basis. The other is that there is demand for some type of forum in which consumer and technology issues in Guernsey can be exchanged. The OUR sees the value of this and, if resources permitted, would take a role of facilitator if required. However, the DG does not consider that this needs to be provided by licence conditions.

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 and only GAL has this specific licence condition. 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 date³.

³ 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.

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 scrutiny of such issues over 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 asked for 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.

Summary of responses

- Respondents broadly agreed with the OUR's comments
- Specific suggestions included:
 - C&WG suggested that making licences technology neutral would also help to minimize the environmental impact as Licensees would be able to use their allocated frequencies as efficiently as possible over a range of different mobile services
 - C&WG also suggested that environmental impact could be minimized by ensuring that any future new entry to the Guernsey mobile market is restricted to entry in the form of an MVNO (Mobile Virtual Network Operator), which would remove the need to build new infrastructure
 - GAL agrees that these conditions are no longer pertinent since the networks are established and operational, and consequently believes it may be appropriate to reduce or remove these conditions
 - However, GAL suggests that a licence condition should mandate operators to implement mobile telephony-specific environmental protection initiatives such as mobile phone recycling
 - Also, since Guernsey's mobile operators have progressed from start-up to full operators, GAL suggests that environmental protection interests would now be better served by requiring operators to be accredited or meet the requirements of recognized environmental protection schemes such as the Eco-Active programme operated in Jersey.

- GAL has the unique feature of being obliged to hold an annual environmental meeting opened to the public. Despite advertising and promotion, only two members of the public attended last year. GAL requests that this condition is either removed from the licence or applied to all operators so that they can collaborate and hold joint annual public meetings
- Wave developed its environmental policy objectives as far back as 1997 and believes that Sure has similar policies and therefore a specific licence requirement for that purpose is not necessary
- Wave suggests it would be more appropriate for the OUR to include a specific condition with regard to telecoms-specific scarce resources such as spectrum and perhaps numbering. Items such as energy efficiency are not necessary as these are costs which operators are keenly focused on controlling

DG assessment

This licence condition is applicable only to GAL. While it made these commitments and they go beyond those required of either C&WG or Wave, it is the case that the market has now developed further since 2006 when GAL placed its bid offering these conditions as part of its licence.

The OUR is not aware that the absence of this condition in C&WG or Wave's licence has led to concerns in this area. The DG's is therefore of the view that market forces are best left to dictate what operators bring to the market rather than regulatory requirements of this nature through a licence condition and he proposes to remove this licence condition from GAL's licence and bring it into line with the licences of C&WG and Wave.

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. The DG raised the issue whether 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 accepted that the nature of the metrics to be used

would need to be agreed, and the measurement and reporting of the information would also need to be consistent. However, he did not see these as insurmountable problems.

He therefore welcomed observations on the proposal and in particular on the type of metrics that should be reported in helping consumers make informed decisions.

Summary of responses

C&WG suggested it would be useful for the OUR to adopt a standard methodology for the provision of any quality of service measures relating to the different mobile operators' networks, to collect quality data and report them annually in a published report. A number of Key Performance Indicators were suggested by C&WG who noted that it could be appropriate to adopt a similar approach to that used by Ofcom, where an independent third party is used to measure the coverage of networks, if this is a proportionate measure to use in Guernsey given its size. But C&WG also noted that the customer's end-to-end experience is a better way to monitor performance of all the network elements.

GAL suggested the current measurements should be included in its licence and believes the OUR should define the standardised collection methodology for each of the specified metrics

Wave emphasised the importance of providing information which customers can understand easily, suggesting several measures that might be useful to customers:

DG assessment

The DG acknowledges these comments in relation to quality of service data and has since researched the option of setting up an independent collector of such data. In particular, the OUR has considered the UK experience, where it was held that an independent provider of data for comparison purposes would be of benefit to the customers in the UK. The organisation set up to do this has since been dismantled due to the high cost of the service to the operators and to the low use of the website by consumers. Therefore while the DG acknowledges the ideal of having easily comparable data across companies, he notes the significant practical problems involved in implementing this.

The DG therefore proposes to remove this licence obligation and replace it with a requirement on the operators to develop guidance in line with requirements set by the OUR. In this way it is intended that a more dynamic, proportionate approach might be taken in future that provides information to consumers where it is needed.

Condition No.31: Price Regulated Services

This condition is applicable to dominant operators only. 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 DG 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 DG considers any published price, discount scheme or special offer is in breach of the Telecoms Law or this License, the DG may require these prices to be brought in line with the requirements of this Licence. This condition is applied only to dominant operators, and here only to 'regulated services'.

It could 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 raised in the consultation was to remove the notice period, another was 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 DG proposed that if this condition is removed, greater reliance would need to be placed on applying the fair competition licence condition to all operators. Condition 32 in C&WG's licence, 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 consultation suggested 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 also noted 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.

Views were therefore requested on whether changes are required to this condition and if so how should any such changes be implemented.

Summary of responses

- C&WG express the view that the condition to notify in advance of implementation is counter-productive. They also cite the Jersey example where the JCRA has removed this requirement from Jersey Telecom, while the regulatory framework in Guernsey is more ‘robust’ than in Jersey (eg the obligation on C&WG to produce separated accounts)
- GAL believes this requirement should remain, and disagrees with the idea that this notification period could stifle innovation or hinder competition – saying that both GAL and WAVE have been proactively and consistently driving price competition in the market place independently of this requirement
- GAL concedes that the notification length could be reassessed
- In the absence of the competition legislation, GAL does not see how the provisions of condition 32 – which promotes fair competition and could be a substitute for condition 31 – can be applied in practice. Therefore until Guernsey competition legislation is enforceable, GAL believes the current condition should remain
- WAVE agrees that this condition could be removed as competition conditions are such that Sure cannot increase prices without regard to the market and its impact on it. The new competition law provisions and licence condition 32 are sufficient.

DG assessment

The existence of market share in excess of 70% by Sure in the provision of retail mobile services remains high, even after some 7 years since competition commenced with the award of a mobile licence in 2003 to the first new entrant. This suggests a considerable degree of caution is required so as not to hinder the continued development of competition.

There are however drawbacks to the notification system. There is a concern that the system dampens competitive response by operators who can rely on the 21 day price notification system to match offers made by the incumbent. A dampening of the competitive response is particularly likely when bidding for large contracts, where other operators might be tempted to bid prices relative to the dominant operator’s prices rather than their own costs, which may be less than that of the dominant

operators. In such cases the consumer does not benefit from the full potential of competition. An additional concern is that the dominant operator is inhibited in terms of innovation given it is required to give a long period of notice to its competitors of product launches. Since innovation by the dominant operator makes a positive contribution to the market it is appropriate to consider how this negative impact might be reduced without unduly exposing the market to abusive pricing practices.

Given other operators have a means of redress through the fair competition licensing condition in Sure's licence, the DG is satisfied he has sufficient powers to address any concerns that may arise in future. He also sees merit in removing what might be a restraint on Sure's potential to innovate given the stage of competition development in this market. He therefore proposes to remove the 21 day notice requirement placed on the dominant operator in the licence conditions. He will however require the dominant operator to notify the DG of price changes on the day they come into effect so that he has all the relevant information to hand when the offer is made to the market.

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 asked for 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.

Summary of responses

- C&WG agrees that we are now in a more competitive environment, but given that these conditions were part of the Airtel bid, the OUR must first make clear the extent to which GAL have complied with and met these conditions. The specific commitments are redacted from the published GAL licenses, so C&WG cannot evaluate how well they have been satisfied and comment

- GAL says it is fully compliant with this condition – and cites examples of innovative products it has launched (free SMS on pre-pay, 6-month post-pay contract products, SIM-only products etc). It would therefore support the removal of condition 36
- GAL responded that it is fully compliant with licence condition 37, proactively leading innovative and radical tariffs which have driven market pricing down beyond the target level. It would therefore support the removal of condition 36
- GAL also considers it is fully compliant with developing and maintaining the open portal and is happy for this to remain in the licence
- WAVE is happy for these conditions to be removed from the GAL licence.

DG assessment

The DG accepts the comments above and plans to meet GAL to confirm compliance with these conditions. If compliance is confirmed, these conditions will be removed.

Term Limits

Each of the mobile licences contains a determination of its term. 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 for 15 years. As the licences have been granted at different stages the length left to run on each licence 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, particularly at the end of the current licence term. 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 while enabling the OUR still to discharge its duties to the market more generally. The DG asked for comments on this aspect of the mobile licences.

Summary of responses

- C&WG and WAVE agree with removing the term limits from all mobile licenses to ensure long-term investment incentives
- GAL also agrees with the above, but suggests a minimum term of 5 years to encourage longer term investment and a 3-year notice period to protect consumers and find alternatives

DG assessment

The DG recognizes the need for a notice period to protect consumers and find alternatives. Therefore the DG will remove the term limits but include a 3-year notice period in the licence.

5. Draft Decisions

This section of the Draft Decision sets out the DG's proposed decisions in respect of the issues addressed above. Subject to his consideration of any comments on these proposals he expects to confirm these decisions early in 2011.

Draft Decision 1: Technology neutrality

All three operators licences will be amended to remove the restrictions on the use to which their spectrum allocation in the 900MHz, 1800MHz and 2100MHz bands can be used.

Draft Decision 2 : Numbering

The OUR will amend the licence condition related to numbering to address the issues raised by mobile number portability.

Draft Decision 3 : Integrity of the Network

The DG proposes to remove the licence condition relating to the 'Integrity of the Network'. He proposes to replace this condition with one that states operators will accept that, in the event of any disputes relating to the integrity of the mobile network, the OUR retains its role as the final independent arbitrator.

Draft Decision 4 : Service to the Public

The DG proposes to retain the condition relating to the creation of a USO fund. He proposes to remove the other parts of the licence condition relating to 'Service to the Public'. He will deal with any issues relating to coverage and quality of service through both the USO and on a case by case, ex-post basis.

Draft Decision 5 : Directory information

The DG does not propose to make changes to the current approach.

Draft Decision 6 : Network Service Development

The DG proposes to remove this condition and deal with such problems on an ex-post basis. However, the DG will keep the existence of long-term contracts under review.

Draft Decision 7 : Technical quality of the Network

The DG proposes to remove this condition but provide for a periodic review of investment in the network and review of issues arising.

Draft Decision 8 : Consumer protection

The DG's view is that the condition can be removed, provided there is an obligation that changes to terms and conditions are tracked, issues are logged, and records are made available to the OUR on request, otherwise potentially on an annual basis. The OUR sees the value of a consumer forum and, if resources permitted, would take a role of facilitator if required. However, the DG does not consider that this needs to be provided through licence condition.

Draft Decision 9 : Environmental Protection

This licence condition is applicable only to GAL. The DG proposes to remove this licence condition from GAL's licence and bring it into line with the licences of C&WG and Wave.

Draft Decision 10 : Monitoring Performance

The DG proposes to remove this licence obligation and replace it with a requirement on the operators to develop guidance in line with requirements set by the OUR.

Draft Decision 11 : Price Regulated Services

The DG proposes to remove the 21 day notice requirement placed on the dominant operator in the licence conditions. He will however require the dominant operator to notify the DG of price changes on the day they come into effect so that he has all the relevant information to hand when the offer is made to the market.

Draft Decision 12 : Customer Support

The DG will meet with GAL to confirm compliance with these conditions. If compliance is confirmed, these conditions will be removed from GAL's licence.

Draft Decision 13 : Term Limits

The DG proposes to remove the term limits but include a 3-year notice period in the licence.

6. Next Steps

Following consideration of responses to this draft decision document, the DG will issue a final decision document.

Parties are invited to comment on the issues raised and any other areas covered by this draft decision document that might further inform the DG's final decision. In several areas he has requested respondents to propose concrete actions to address the concerns identified in this review. Responses should include such proposals.

The DG will then produce a new set of licence conditions based on the principles set out in the final decision. He will consult licensees on the specific wording of such changes through the process set out in the law.