



Telecom licence fees

T1605G

Information Notice

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GUERNSEY COMPETITION AND REGULATORY AUTHORITY

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Summary

- 1.1 This document is an Information Notice replacing Information Notice **CICRA 13/45**¹.
- 1.2 Licence fees are charged by the Guernsey Competition and Regulatory Authority (**GCRA**) to licensed telecommunication providers in Guernsey to meet the costs of regulating the telecoms industry. Information Notices are published by the GCRA informing stakeholders about the level of those charges and the principles that inform the setting of those charges.
- 1.3 The GCRA has finalised its position in respect of two areas it consulted on in February of this year with the benefit of responses to its Call for Information. As required by law through this Notice the GCRA is publishing the fees and levies payable on an application for, and on the grant and renewal of, and over the term of a licence, and the interest and penalties payable in the event of a default in the due payment of the fees.
- 1.4 The Information Notice incorporates the principles and levels set out in its previous Information Notice (which are unchanged) with additional changes in two specific areas that were the subject of the consultation issued in February 2022² which are highlighted in bold for reference in the Table below.

¹ <https://www.gcra.gg/media/3862/t1001gj-telecoms-licence-annual-fees-information-note.pdf>

² <https://www.gcra.gg/media/598416/telecoms-licence-fees-call-for-information.pdf>

Telecom licence fees

- The GCRA will apply the two fundamental principles; namely that licence fees will be payable by all those granted a telecoms licence and that the licence fee will be calculated with regard to GCRA's financial year.
- All Licensees paying the minimum proposed fee would be invoiced on or before 1 December each year with all other licensees paying by monthly standing order, on the first day of the month, with the amount confirmed on or before 1 December each year.
- GCRA will apportion the costs of regulation across all telecommunication licensees by setting annual licence fees based on a simple percentage of turnover with the minimum licence fee set at £500.
- The definition of Relevant Turnover is the gross revenue paid to the licensees in respect of all telecommunications services for which a telecoms licence is required, subject to the exclusions listed in Appendix B.
- Licensees are required to provide a set of financial statements together with a certified statement of Relevant Turnover signed by two directors of the licensed entity in a prescribed format.
- Calculations of Relevant Turnover should be based on the financial year of the licensee that ends at any time up to 30 June during the year preceding the licence fee year, with the most recent certified statement used in cases where Relevant Turnover is not available by 31 October and pro-rata estimates used in cases where Licensee's accounting periods are not 12 months
- Failure to pay all or part of the licence fees due constitutes a breach of licence. There are various remedies available where there is a breach of licence and without prejudice to those remedies, or any other remedies under the Licence or Laws, if the Licensee fails to pay any amount by the due date, the Licence Conditions include a requirement that the unpaid amount will accrue interest daily from the due date to the date of payment calculated at a rate as specified in the licence. The laws provide that licence fees are a debt owing to GCRA and can be collected through debt proceedings in court. **The GCRA will impose a minimum daily charge of £450 for a failure to pay all or part of the licence fee.**
- All Licensees will pay licence fees based on a percentage of Relevant Turnover. **The minimum level of licence fee for all licensees holding spectrum is £16,500 per annum.**
- Excess licence fees will be refunded to Licensees in the same proportion as originally paid by Licensees in the given year.
- Where additional licence fees are required and where the amount is less than or equal to 10% of the telecoms licence fee income for the year then additional licence fees would be invoiced in that year, with GCRA endeavouring to secure short term funding for amounts greater than 10%
- All applications for telecom licences must be accompanied by the appropriate application fee of GBP £2,500.

Background

- 1.5 The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (**the Regulation Law**) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (**the Guernsey Telecoms Law**), together empower the GCRA to regulate the telecoms market in the Bailiwick of Guernsey. The GCRA's legal powers include, among others, determining, prescribing, and publishing the fees and levies payable on an application for, and on the grant and renewal of, and over the term of a licence, and the interest and penalties payable in the event of a default in the due payment of the fees³. GCRA is also required to publish details of the total fees charged, which meet the costs of exercising its functions and powers in the regulation of the telecommunications market, over the term of the licence.
- 1.6 The GCRA consulted on two aspects, namely whether there should be a separate minimum licence fee for spectrum holders and a proposal to set a debt recovery charge of £450 per day for time spent recovering outstanding licence fees. Responses were received from Guernsey Airtel Limited (**Airtel**), Sure (Guernsey) Limited (**Sure**) and Clear Mobitel (Guernsey) Limited (**Clear Mobitel**).
- 1.7 **Call for Information Question 1: Do you agree with the GCRA's proposal to set a minimum licence fee of £16,500 per annum for existing spectrum holders?**
- 1.8 Airtel supported the setting of a minimum licence fee of £16,500 for existing spectrum holders who have not rolled out network operations in the island and Airtel was of the view this should lead to a decrease in the licence fees of the three telcos currently operating networks in Guernsey.
- 1.9 In terms of comments that relate to Q1, Sure's expressed the view that Clear Mobitel (one of the four holders of spectrum in Guernsey) has not made a fair contribution to the costs of regulation for a number of years, but continues to actively participate in regulatory and industry discussions, including the previous 5G summits. Sure's view is that this should not be allowed to continue. As regards the increased fee proposal confined to current holders of Guernsey spectrum, Sure took the view that this will not fully address the problem given there were other workstreams Clear Mobitel is not excluded from or from potentially benefitting from their outcome. Sure noted that the GCRA proposal did not envisage factoring the costs of that regulatory work into the annual licence fee amount. Sure also asked for clarification in the event that those direct regulatory cost estimates turned out to be greater or if further licensees entered the Guernsey market were awarded spectrum. It requested that the GCRA future-proof the new Information Note and licence fee process for such an eventuality. Sure also asked for clarity on how other licensees holding spectrum might benefit from a proportionate reduction in their licence fees should the minimum fee for spectrum holders be set at £16,500.
- 1.10 Clear Mobitel suggested the setting of a minimum licence fee for spectrum was based on the same premise and consequently equally flawed attempt by the Minister for Commerce and Employment to introduce a charge on mobile operators for the use of the spectrum allocated to them. It also considered the purpose of the proposal was to increase licence fee revenue and to that end a review of the de minimus licence fee should be considered instead of what the GCRA was proposing.

³ In accordance with section 4(1)(d) of the Regulation Law and section 6 of the Guernsey Telecoms Law

GCRA Consideration

- 1.11 The GCRA welcomes Airtel's support for the proposed minimum licence fee for spectrum holding licensees.
- 1.12 Sure's view that there is a risk of a free-rider problem have merit. The point made by Sure about the extent to which the fourth spectrum holding licensee, Clear Mobitel, participates in other regulatory areas as well as spectrum workstreams have also been considered carefully.
- 1.13 The GCRA believes it has a case to intervene, where the risk of free-riding is most apparent and where a solution can be introduced without introducing unpredictability and disproportionality. While acknowledging that Sure's view has merit, it is not as apparent that Clear Mobitel will participate in or benefit from the regulatory workstreams Sure identifies, as in the case for spectrum workstreams where Clear Mobitel has an obvious and material interest.
- 1.14 There is generally an inevitable and probably unavoidable free-rider issue when it comes to covering the cost of telecoms regulation through licence fees since the licensees with the largest turnover bear a higher proportion of the costs when they do not necessarily impose costs in the same proportion. In the case of the incumbent, they don't necessarily benefit from the outcome of those regulatory workstreams. Neither is this unique to spectrum related regulatory workstreams.
- 1.15 The extent to which this is an issue in spectrum is however arguably more acute than other areas. It is a more regular concern raised by licensees than other areas of the Authority's work. Spectrum workstreams feature to an increasing extent in the Authority's priorities where the Authority has an identifiable and quantifiable free-riding challenge since 5G will be a substantive part of the regulatory workstream whilst not in 2022 (as originally anticipated), in the years following. The Authority has a budget specific to this regulatory workstream, and a closed group of licensees that this workstream will engage (and who will benefit from it). One of those licensees, Clear Mobitel, has been a licensee with awarded spectrum in Guernsey since 2009 but has paid the minimum £500 a year in licence fees when it is expected to fully participate in the process. In these circumstances, at least some adjustment seems warranted to address the issue.
- 1.16 The GCRA has also drawn on the principles of predictability and proportionality in weighing up the relative arguments. The level of licence fees paid by licensees with low levels of turnover can represent a material cost. A rise in the minimum licence fee from £500 to £16,500, albeit a fair reflection of direct regulatory costs, already represents a significant increase, relative to turnover of a small licensee. The GCRA has therefore sought to balance the competing risks of free-riding with the exposure of a smaller licensee to unpredictable and large future licence fee costs from a starting level of £500 per annum. Its judgment is that it should at this time confine itself to recovery of costs where regulatory costs and the benefits of that approach are most apparent and objective. Should developments contradict its assumptions it will need to revisit its position.
- 1.17 The additional comment Sure had was about the possibility that the direct costs of regulatory work in spectrum may be greater than budgeted. For reasons given above the GCRA would intend to address such a scenario by other means available where feasible, such as drawing from its reserves rather than add further unpredictability to smaller spectrum holding licensee. The request for clarity as to how a proportionate reduction in the licence fee would be done will be informed by the timing of any decision, which is dealt with further below. Regarding Sure's final point about how further entry by licensees holding spectrum might be dealt with, this does not appear to be

more than a theoretical risk at this stage, however a reasonable assumption is that the same approach to a minimum licence fee would apply to any new licensee holding spectrum.

- 1.18 The GCRA does not consider that Clear Mobitel's comparison between a States' tax mooted in 2013 by the States of Guernsey and recovery of regulatory costs has merit. The recovery of regulatory costs does not represent a tax but a reasonable approach to recovery of costs from licensees. The GCRA considers that the level set is if anything conservative as it does not seek to recover overhead costs nor the areas that Clear Mobitel might benefit from in future such as those Sure identify in its response which go wider than spectrum matters.
- 1.19 The GCRA's budgeted direct cost of spectrum work anticipated in 2022 divided between the four existing spectrum holding licensees was £16.5k. Since States policy is now likely to be finalised later in 2022 or the first part of 2023, and therefore the regulatory work is likely to fall largely in 2023 rather than 2022, the minimum licence fee for spectrum holding licensees of £16.5k should apply and commence from (including) 2023.
- 1.20 **Call for Information Question 2: Do you agree with the GCRA's proposal to set a debt recovery charge of £450 per day for time spent in recovering outstanding licence fees?**
- 1.21 Airtel considered that any debt recovery charge should be levied only against operators holding spectrum and not using it. Sure supported the proposal to set a debt recovery charge of £450 per day for time spent in recovering outstanding licence fees and that the GCRA should also make it clear that failure to pay the licence fees and any associated debt recovery charges by a certain date would be grounds for revoking the licence. Clear Mobitel acknowledged the principle of cost recovery of recovery of monies to the GCRA but was not in a position to comment on the calculations of how the Authority arrived at this figure.

GCRA Consideration

- 1.22 Airtel's support for the proposal is welcomed. Debt recovery should not however in its view be limited to operators holding spectrum. Since issuing its Call for Information all late payees have in fact paid their outstanding licence fees and while the amounts were not significant to the extent that it put the GCRA's financial position at risk, there are important principles of fairness and accountability that need to be underlined and enforced. The prevailing issues highlighted in the Call for Information appear to have been quickly resolved for now. At Sure's suggestion, the GCRA will communicate all of the remedies available to it in the event of persistent late payment of licence fees. Regarding Clear Mobitel's question about the basis for the £450 per day charge, this arises from the product of estimated direct costs of staffing over a working day.

Conclusion

- 1.23 The GCRA has finalised its position in respect of the two areas it consulted on in February of this year with the benefit of responses to its Call for Information. Appendix A is provided to fulfil the requirement on the GCRA to publish the fees and levies payable on an application for, and on the grant and renewal of, and over the term of a licence, and the interest and penalties payable in the event of a default in the due payment of the fees.
- 1.24 Appendix B provides the prescribed format for financial statements and certified statement of Relevant Turnover.

END

Appendix A - Fees and levies payable on an application for, and on the grant and renewal of, and over the term of a licence, and the interest and penalties payable in the event of a default in the due payment of the fees.

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Appendix B – Prescribed format for financial statements and certified statement of Relevant Turnover

Licensee Name _____

Certified Statement of Relevant Turnover for the year ending <xx>

Turnover per Financial Statements	£x
Non-telecoms related business	(£x)
Services carried out entirely outside the Bailiwick	(£x)
Data centre hosting and services	(£x)
Mobile handsets and accessories	(£x)
Consultancy	(£x)
Sales of CPE and customer wiring	(£x)
Managed services	(£x)
Call Centre Services	(£x)
Other deduction 1	(£x)
Other deduction 2	(£x)
Relevant Turnover	£x

Explanation of Deductions

Deduction 1	Nature and explanation for the deduction
Deduction 2	Nature and explanation for the deduction

Declaration

This statement is to certify the Relevant Turnover of <enter licensee name> for the purposes of calculating telecoms licence fees for the GCRA for the year ending 31 December <enter year>.

In our opinion the Relevant Turnover of <enter licensee name> amounts to <enter amount>, has been properly extracted from the books and records of the licensee (including the financial statements), and complies with the guidance issued by the GCRA.

We enclose a copy of the financial statements.

Signed Director 1

Signed Director 2

Name

Name

Date

Date

END/