



**CABLE & WIRELESS**

**Review of Mobile Licence Conditions**

Response to Consultation Paper OUR 10/05

**11 June 2010**



# 1 Introduction

Cable and Wireless Guernsey Limited (C&WG) welcomes the opportunity to respond to the Office of Utility Regulation's (OUR's) Consultation Paper: Review of Mobile Licence Conditions<sup>1</sup> (the "Review" or "Paper").

C&WG agrees with the OUR's view that the mobile market is increasingly dynamic. The evolving nature of services provided over mobile networks – most notably the continuing development of data-based services – means that the sector will continue to bring significant benefits to both residential and business consumers.

C&WG believes that the sector is now very competitive and therefore it is timely for the OUR to consider whether it should ease regulation within the sector. This would be in line with good regulatory practice whereby the extent of regulation in a market is reduced as the competition within that market increases. Regulatory intervention in the form of specific *ex ante* rules – such as those included within some of the existing licence conditions – should be reduced such that greater emphasis is placed on the market mechanism and where necessary, *ex post* regulatory intervention, such as competition law.

As the OUR recognises, developments at the EU level have seen a relaxation of regulation with respect to operators that do not have significant market power (SMP). In fact, as far as the mobile sector is concerned, the EU has gone further than this and removed practically all mobile markets as relevant markets that may require *ex ante* regulation by the individual National Regulatory Authorities (NRAs) of the EU Member States.<sup>2</sup> The only exception to this is the market for mobile termination, which is not included in the scope of this current consultation given that this market was recently reviewed separately by the OUR, with new termination rates coming into force from 1<sup>st</sup> April 2010.

Regulators in other parts of the world have adopted a similar approach to the EU such that there are now very few regulators that apply *ex ante* regulation to any mobile services except mobile termination. Most recently of course, the Jersey Competition and Regulatory Authority (JCRA) effectively lifted regulation on the mobile sector in Jersey (apart from mobile termination) when it removed the SMP designation on Jersey Telecom. Whilst our affiliate company, C&W Jersey, believes that this was premature given that - in contrast to Guernsey - there is a lack of robust regulation in other parts of the Jersey communications sector, offering Jersey Telecom the ability to leverage its SMP in other markets into the mobile market, it does highlight that the need to review the appropriateness of *ex ante* regulation in the mobile market in Guernsey is overdue. This is borne out by the market data in section 4 of the Paper, which confirms that the newer mobile entrants in Guernsey continue to be able to gain market share from C&WG, showing that the sector is now very competitive.

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<sup>1</sup> OUR document 10/05 dated May 2010

<sup>2</sup> See Commission Recommendation of December 2007 on relevant product and service markets susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

## 2 Comments on proposed amendments to Licence Conditions

C&WG provides comments on the specific licence conditions identified by the OUR as meriting review below. Before doing that, however, it would like to express its disappointment that the OUR has not made any reference in the Paper to the revised mobile licences being made technology neutral. C&WG believes this is a major shortcoming and would ask the OUR to take this into account at the next stage of this consultation or even, if the OUR deems it appropriate, publish an update to the current Paper.

C&WG has raised this issue in previous responses and discussions with the OUR. Indeed we note that in the OUR document 09/06, which dealt with changes that would allow C&WG to get a 3G licence the OUR said:

*Once this licensing round is complete, all three operators licenses 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.*

Currently, both C&WG's 2G and 3G licences specify the frequencies over which it must provide its services. For example, the Definition of Licensed 3G Mobile Telecommunications Services in its 3G licence states: "These services shall be provided in the 1900/2100 Mhz band in accordance with the Wireless Telegraphy Act and the relevant ETSI technical specifications." The equivalent Definition in its 2G licence refers specifically to the 900 Mhz band, and Wave and Airtel's licences contain similar Definitions.

C&WG believes that, providing 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 and would also have the advantage of mobile licences being future proof. As technology develops and/or new spectrum over different frequencies become available – such as the 2.6Ghz frequency – there would be no need for any [mobile service] licence amendments.

C&WG also believes that the OUR needs to review the licensing conditions related to numbering, given that 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, which would seem to require updating in the light of MNP.

Turning now to the specific licence conditions highlighted by the OUR for review:

### Condition No. 9: Integrity of the Network

C&WG will always want to ensure that the integrity of its network is not compromised and does not believe this needs a specific licence condition to ensure this happens. It therefore agrees with the proposal by the OUR to remove this licence condition but would expect that the OUR would still be prepared to take a role as an independent arbitrator in the event that any disputes arise as a

result of any mobile operator refusing to provide mobile services due to concerns about the integrity of its network.

#### Condition No 12: Service to the Public

C&WG believes that the market is now at a stage where it can be left to competition to ensure that the mobile operators continue to provide a minimum level of service and coverage. In trying to differentiate their services the mobile operators already compete on quality factors such as network coverage as well as price and C&WG believes that this will continue as the range of services available over mobile expands.

C&WG is not clear if the OUR is proposing to remove the whole of Condition 12 as it notes that condition 12.2 gives the Director General the ability to make directions requiring mobile Licensees to contribute to any fund that may be established to cover the net cost of the provision of Universal Service. Whilst there is currently no such fund in place in Guernsey, such a fund may be deemed desirable in the future so C&WG wonders whether this part of condition 12 should remain.

#### Condition 14 Directory Information

As the Paper notes, C&WG, under its brand name "Sure", has to provide a White Pages directory as part of its Universal Service Obligation (USO). Meeting that obligation involves considerable resource and year round support. Operators provide customer data for the White Pages directory but this is often of poor quality with a large number of errors, requiring C&WG to verify and correct much of the data. Therefore we do not agree that there is any commercial value in the basic information provided by OLOs for the White Pages listing. Furthermore, any customer information for Yellow Pages listings comes directly from individual customers or is verified directly with the customer rather than sourced from the OLOs. C&WG does not see any justification for it to be required to pay for this OLO provided data.

With respect to the second question, namely whether Directory Information should be provided by all other operators to each other at cost, or whether it should only be provided to the USO provider who is obliged to provide this service, C&WG believes that the effort of doing this is probably not worth the cost, even though C&WG would receive significantly more in total from the OLOs than it would have to pay to the OLOs. As noted above, we do have concerns about the quality of the data provided by the OLOs so the introduction of any charging mechanism for that data would have to also involve assurances of quality control from the OLOs.

C&WG notes the comment that Wave Telecom sources the data for its directory from BT. Whilst this is correct, C&WG would like to emphasise that this is the result of Wave's commercial decision and is not the result of any refusal on C&WG's part to supply Wave with the data.

#### Condition No 15 network and service development

C&WG believes that the market mechanism ensures that it provides leading edge mobile services on a par with those available in other developed countries. There is no need, therefore, for a specific Licence condition. C&WG networks are designed and built to ITU and GSM standards to ensure interoperability between operators and to ensure the customer has freedom of choice of mobile devices.

C&WG believes that it will be in the interests of all mobile operators to ensure that they keep up with the latest developments as this is one of the main ways in which they can continue to attract new customers and retain existing customers. With MNP, it is now much easier for customers to switch between competing networks so each mobile operator has the incentive to remain “ahead of the game”, without the need for regulatory intervention.

C&WG notes the OUR's concern that some customers may be tied into long-term contracts, which would make it difficult for them to switch networks in the event that its network becomes unreliable or, presumably, does not offer the latest technological developments. Whilst acknowledging that this is a risk, C&WG believes that in practice it is a very small risk. The mobile sector in Guernsey is very competitive, with all the operators aware of the need to ensure that their networks remain reliable and up to date with the latest technologies. Being a relatively small community, a reputation for reliability and offering the latest developments will play an important part when customers are choosing their mobile supplier, especially when a customer is contemplating signing up to a postpay contract as opposed to taking out a prepay service.

Indeed, if a network were to deteriorate significantly then its operator would be unlikely to be able to survive for very long. Not only would that network operator's customers be quick to voice their dissatisfaction, but any interconnecting networks who felt that the integrity of their own network was being compromised, could start to 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.

Where a mobile operator simply failed to keep up with the latest technological developments then any contracted customers would have to stay with that operator for the term of its contract, or pay to terminate it. However, where a customer places a lot of importance on being able to keep up with the latest technological developments, he or she will be likely to be aware of the speed at which different operators innovate and will also be prepared to ask directly about the timing of the introduction of any new developments before committing to a particular network. C&WG believes that the risk of a significant number of customers being tied into long-term contracts that no longer meet their needs is actually very small.

C&WG is of the view, therefore, that any serious issues that may arise with network reliability could be dealt with by the OUR on an ex post basis. The competitiveness of the mobile market should ensure that mobile operators keep up with the latest technological developments as otherwise they would not be able to continue to attract customers.

#### Condition No 16: Technical quality of Network

C&WG believes it may be no longer necessary to keep this condition in Wave and Airtel's licences, subject to the proviso in the following paragraph. For the same reasons as noted in relation to Condition No. 15 above, the competitiveness of the mobile market in Guernsey will ensure that any failure to meet quality standards expected by customers will soon result in loss of market share.

However if this condition was part of Wave and Airtel's bid for spectrum – for example, it was conditional on a certain QoS and coverage in and outdoor - this condition should remain unless the fulfilment of this obligation has been proven

directly to the OUR. This ensures that appropriate investments are made and committed to and that investments in people and support services are in customers' interests.

#### Condition 17: Consumer Protection

This is Condition 16 in C&WG's mobile licences.

C&WG agrees with the OUR that consumer protection is an important area. Customers should have the right to expect accurate bills and should also know how to raise a complaint with its provider and how non-payment of bills will be treated. C&WG therefore agrees that the parts of the Licence Condition that deal with these issues should remain.

C&WG understands the importance of protecting the privacy and confidentiality of any customer data. Given, however, that all operators are already subject to strong data protection laws in Guernsey, which reflect those that apply in Europe, C&WG believes that Condition 16.3 in its licences (Condition 17.3 in Wave and Airtel's licences) may be superfluous.

C&WG believes that customers should be made aware of the standard terms and conditions (T&Cs) of their services, including the tariffs, as this forms part of the contract with the customer. C&WG agrees that the requirement to file T&Cs with the OUR should no longer be required, whilst still giving the OUR the right to review and direct amendment to T&Cs where well-founded concerns or issues arise and are proven.

C&WG welcomes the proposal to remove the requirement to provide 6 monthly reports on consumer complaints to the OUR, subject to the OUR retaining the right to request information on how complaints are dealt with, and a log of complaints, in the event that any systemic issues arise. C&WG would have no difficulty with this, given that it sees the ongoing collection of such information as important for its own internal purposes in terms of measuring its performance against key indicators.

C&WG agrees that there is no need for consumer councils, as provided for in Condition 16.13 of C&WG's mobile licences.

#### Condition 18: Environmental protection

Whilst there are no specific conditions relating to environmental protection within C&WG's (or Wave's) mobile licences, C&WG believes that environmental issues are important and it has been supportive of the efforts made to minimise the environmental impact of mobile networks, including sharing of mobile base stations, better co-ordination with the planning authorities, etc.

C&WG uses the latest Nokia award winning base site technology which really addresses any environmental concerns. Nokia Siemens Networks Flexi BTS platform enables operators to use new and existing sites more efficiently, enabling them to operate with the lowest number of sites needed for coverage and capacity. In fact, due to their market-leading RF performance, radio network operators can halve the number of sites they need and also use shorter antenna lines, which together minimise the impact on the environment. The demand for power is also dramatically reduced, resulting in smaller power systems.

C&WG believes that making licences technology neutral would also help to minimise the environmental impact as Licensees would be able to use their

allocated frequencies as efficiently as possible across a range of different mobile services.

Further, the impact on the environment could be minimised by ensuring that any future new entry to the Guernsey mobile market is restricted to entry in the form of an MVNO, which would remove the need to build new infrastructure.

#### Condition 19: Monitoring Performance

Quality of service indicators can be useful to enable comparison between operators. However the results are open to interpretation and can be potentially misleading if different operators use different indicators. C&WG agrees, therefore, that 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, and to consider collecting and reporting a standard set of information on a yearly basis for publication. This would help customers to make informed choices and indeed could go some way towards alleviating the OUR's concerns expressed about the removal of Licence Condition 15 as discussed above. C&WG would suggest that any QoS monitoring should be under taken by the OUR or its appointed agents in a similar manner to that of the existing radio emission audits.

C&WG would suggest the following network Key Performance Indicators (KPIs) could be used:

Measurement
Average BCCH RxLev
Average Downlink MOS
Average MS Transmit Power
Average RSSI
Average RxLev(Sub)
Average RxQual(Sub)
Average Timing Advance
Average Uplink MOS
Count of Attempted Handovers
Count of Calls (Start)
Count of Dropped Calls (End)
Count of Failed Handovers
Count of Inter Cell Handovers
Count of Intra Cell Handovers
Count of Successful Handovers
Percentage of Dropped Calls (End)
Percentage of Failed Calls (Start)
Percentage of Failed Handovers
Percentage of Inter Cell Handovers
Percentage of Intra Cell Handovers
Percentage of Successful Handovers

If it is proposed to include measures of network coverage or quality, etc. then the OUR will need to consider how to ensure that any such measures are objective. It may be appropriate to adopt a similar approach to that used by Ofcom, whereby an independent third party is used to measure the coverage of the networks but should consider whether this is in fact a proportionate measure to use in Guernsey, given its size.

C&WG – and indeed the Cable & Wireless Communications (CWC) group as a whole - believes, however, that the customer's end to end experience is a better way to monitor performance of all of the network elements. That is, the emphasis should be on service rather than network monitoring. This approach, which all businesses within CWC follows, ensures that CWC's customers can and do receive new and emerging data services that can be proven to meet the service offering claims. Good service results are only achieved if network KPI's are correct and appropriate. This approach enables CWC to benchmark new and emerging services and to ensure the customer gets the service they want. It enables verification of marketing and advertising claims and gives an honest product to the customer.

C&WG has included as a separate and confidential document details of some of the KPIs it currently uses to monitor the quality of service that it provides to its customers.

#### Condition 31 Price regulated Services

This is Condition 27 in C&WG's 2G mobile licence and Condition 28 in its 3G licence.

C&WG believes that there is no longer any justification, from either a consumer or competition perspective, for a 21 day notification requirement in relation to prices, changes, discounts or special offers. The mobile market in Guernsey is intensely competitive, especially given that MNP has been in place for 18 months. C&WG agrees that the condition may now actually be stifling competition if it is encouraging competitors to wait to see what C&WG wants to do rather than initiate their own price or product changes.

Most fundamentally, it does act as a disincentive on C&WG to introduce innovative services or pricing proposals in Guernsey as it knows that as soon as it notifies, its competitors could either replicate that service exactly or "tweak" it slightly and introduce their version to market before C&WG. Consumers are therefore being potentially disadvantaged if the impact is a reluctance by C&WG to innovate as much as it would like to.

C&WG has already noted in the introduction how the JCRA has recently removed this requirement from Jersey Telecom in Jersey and fails to see how the OUR – or any of C&WG's competitors – could then justify its continued existence in Guernsey, albeit they are separate jurisdictions with separate regulatory frameworks. In fact, the regulatory framework in Guernsey is far more robust than that in Jersey, with for example, C&WG required to publish separated accounts that allow its competitors and the regulator to ensure that it does not cross-subsidise its mobile services.

The OUR would be able to deal effectively with any attempts to act anti-competitively. In particular, and as the OUR notes, there is a Fair Competition condition in all the mobile operators' licences that could be relied upon to ensure that any mobile offerings do not have any anti-competitive effects.

#### Conditions 35 – 38 Customer Support

C&WG does not wish to reopen any debate about the process and evaluation undertaken by the OUR in 2006 in awarding a 3G licence to Airtel, but does not agree with any suggestion that the licence conditions of the Airtel 3G licence referred to (Conditions 35 – 38) should be removed.



As noted in the Paper these conditions were part of the Airtel 3G bid and must therefore have been part of the OUR's consideration and evaluation when choosing to grant a 20 year licence to Airtel. We note for example that the criterion against which bids were to be judged included "Promotion of Competition" which in the Tender Document included "*instigate activities that will increase the competitive dynamics in Guernsey and provide benefits to consumers (such as lower and more flexible prices, new services, greater choice etc*"<sup>i</sup>. The more detailed review and consideration of such criteria produced by GOS Consulting for the OUR also stated that "*promotion of competition could be achieved by, for example...competitive price schemes and packages....flexible customer service...*".

Taking all such matters into account, whilst agreeing that in a competitive environment such as the current Guernsey mobile market, there is a commercial incentive to provide customer support, new services, price reductions and innovative features, C&WG does not agree that such conditions, offered by Airtel as part of their response under a competitive tender process should be removed now. If there were to be consideration of removing all or any of these conditions, the OUR must first make clear the extent to which Airtel have complied with and met these conditions. We are unable to comment or evaluate that in anyway as the specific commitments are redacted from the published versions of the Airtel licences

#### Term Limits

C&WG believes it would be appropriate to remove the term limits from all mobile licences as suggested. This would ensure that long-term investment incentives are maximised. It would also be consistent with developments in other liberalised markets, where perpetual licences are now becoming the norm. C&WG notes that in the OUR document 09/06 the DG stated:

*In addition, in reflecting on the need to ensure an appropriate environment is created for on-going investment in mobile networks in the Bailiwick, the DG will also consult on removing the term limit from each of the mobile licences with a view to allowing all three operators to hold their licences in perpetuity.*

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<sup>i</sup> Paragraph 8.5 of the OUR's document dated February 2006