Channel Islands Telecoms Licence Fees

Report on the Consultation and Decision Document

Channel Islands Competition and Regulatory Authorities

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1. Introduction

In July 2013, the Channel Islands Competition and Regulatory Authorities (***CICRA***) published a consultation paper (CICRA 13/33) on proposals for a revised mechanism for calculating and collecting licence fees, to be applied to telecoms licensees in both the Bailiwick of Guernsey and Jersey.

CICRA received responses to the consultation paper from Long Port Group (LP Telecoms Limited), Sure (Guernsey) Limited and Sure (Jersey) Limited as a joint response, JT (Jersey) Limited and JT (Guernsey) Limited as a joint response, and ACS Telecommunications Consultants. The individual responses are available on CICRA's website.

This report sets out CICRA's conclusions on the issues raised in the consultation paper following consideration of the responses received, and the decision that CICRA has taken regarding the imposition of telecoms licence fees for 2014 and beyond.

CICRA (the Channel Islands Competition and Regulatory Authorities) comprises the Jersey Competition Regulatory Authority (***JCRA***) and the Guernsey Competition and Regulatory Authority (***GCRA***), and all references in this document to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context requires otherwise.

2. Structure of the Report

The report is structured as follows:

Section 3:	This section provides some background information to the report.
Section 4:	This section considers the responses received to the proposed mechanism described in CICRA 13/33 and confirms the structure, giving guidelines as to its application going forward.
Appendix 1:	This appendix provides a template Certified Statement of Relevant Turnover.

3. Background

The original consultation paper (CICRA 13/33) provided detailed information describing the legislative and licensing backgrounds in Guernsey and Jersey relevant to the setting and imposition of telecoms licence fees.

Legislative and Licensing background in Guernsey

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 CICRA to regulate the telecoms market in the Bailiwick of Guernsey.

CICRA's functions[1] 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 fees. CICRA is also required to publish details of the total fees charged, which meet the costs of CICRA exercising its functions and powers in the regulation of the telecommunications market, over the term of the licence.

CICRA is also required to establish a fund known as the "Public Utilities Regulation Fund" into which licence fees shall be paid, to maintain proper accounting records, to have the accounts independently audited and to submit the audited accounts along with its annual report to the States.

Legislative and Licensing background in Jersey

The Competition Regulatory Authority (Jersey) Law 2001 (the ***CRA Law***) and the Telecommunications (Jersey) Law 2002 (the ***Jersey Telecoms Law***) together empower CICRA to regulate the telecoms market in Jersey.

CICRA's functions[2] include among others, determining and prescribing the fees payable over the term of a licence. The fees charged meet the costs of CICRA performing its functions under the Jersey Telecoms Law.

CICRA is also required to maintain proper accounting records, to have the accounts independently audited and to submit the audited accounts along with its annual report to the Minister for Economic Development.

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[1] *In accordance with section 4(1)(d) of the Regulation Law and section 6 of the Guernsey Telecoms Law*
[2] *In accordance with article 17 of the Jersey Telecoms Law*

4. Telecoms Licence Fees

4.1 Fundamental principles

In the Consultation Paper (CICRA 13/33), CICRA proposed two fundamental principles to be applied to any mechanism for the imposition of licence fees; 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 CICRA's financial year which runs from 1 January to 31 December.

Views from Respondents

All respondents agreed with the proposed fundamental principles.

CICRA's Position

CICRA welcomes the support from all respondents.

Decision 4.1 – CICRA 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 CICRA's financial year.

4.2 Mechanism for setting fees

In the Consultation Paper (CICRA 13/33), CICRA set out its view that determining annual licence fees on the basis of a simple percentage of turnover was a reasonable and objective mechanism for apportioning the costs of regulation across all licensees. This approach has a proven track record and has been adopted in many jurisdictions. CICRA therefore proposed to adopt the mechanism of setting annual licence fees based on a percentage of turnover.

Views from Respondents

Two respondents agreed with the proposal that annual licence fees should be charged as a simple percentage of turnover, one suggested a sliding scale of percentage rates inversely rated to turnover (so licensees with higher turnover paid a higher rate) whilst the fourth suggested a mechanism based on overall market share.

CICRA's Position

CICRA welcomes the support from two of the respondents for the proposed mechanism for setting annual licence fees, and notes the suggestion from one respondent that larger licensees should bear a greater proportion of the cost of regulation and from the fourth that fees should be apportioned based on market share.

Having considered the responses, CICRA maintains the view that a simple percentage of turnover approach is more appropriate than the alternatives suggested for the following reasons:

Firstly, whilst CICRA is keen to encourage appropriate liberalisation of the market and to ensure that barriers to entry do not constrain new entrants, it nevertheless considers it is important for annual licence fees to be borne proportionately by all licensees, a method best and most easily achieved through the application of a simple percentage rate.

Secondly, CICRA believes that the mechanism adopted should relate the fee paid to activity and size of operators in the market, with a useful proxy for this being turnover. The suggestion that market share (with no reference to turnover) could be used when operators often have very different market shares in different aspects of the licensed telecoms market appears a more cumbersome and complex approach, resulting in a less transparent process for operators who would otherwise be able to estimate their own licence fees using their own readily accessible financial information.

CICRA has therefore decided to set annual licence fees for telecoms licensees based on a simple percentage of turnover.

Decision 4.2 – CICRA will apportion the costs of regulation across all telecommunication licensees by setting annual licence fees based on a simple percentage of turnover.

4.3 The definition of turnover

In the Consultation Paper (CICRA 13/33), CICRA set out its proposed definition of Referable Turnover being the gross revenue (exclusive of GST in Jersey) paid to the licensees in respect of all telecommunications services for which a telecoms licence is required.

CICRA proposed that the following items should be deducted from total turnover: revenue from non-telecoms related business, and revenue generated from services carried out in their entirety outside the islands' legal jurisdictions.

CICRA proposed that the following items should not be deducted from total turnover: revenue generated by one licensee from the supply of telecoms services to other licensees, revenue generated by licensees for telecoms services supplied to subsidiaries or other connected businesses of the licensee and inter-island sales.

Views from Respondents

Three respondents broadly agreed with the proposed definition and proposed various deductions to be made from total turnover.

One respondent suggested use of the term Relevant Turnover (a term already used in Guernsey), as opposed to referable turnover.

One respondent, having suggested calculating fees based on market share, did not provide a response to this question.

CICRA's Position

CICRA welcomes the broad agreement from three of the respondents to the proposed definition and the suggestions made by those respondents as to the items that should be deducted from total revenue.

CICRA recognises that the term 'Relevant Turnover' is commonly understood by Guernsey Licensees and is happy to adopt that terminology across both islands on the understanding that the definition of Relevant Turnover is as described in this document.

Having considered the responses, CICRA considers that the following sources of turnover, by virtue of the fact that no telecoms licensee is required to provide these services, should be deducted from total revenue to calculate Relevant Turnover:

- GST (Jersey) and spectrum usage charge (Guernsey)
- Non-telecoms related business
- Services carried out in their entirety outside the islands' legal jurisdiction
- Data Centre Hosting and services (although **not** connectivity services provided to data centre customers)
- Mobile handsets and accessories

- Consultancy
- Sales of customer premises equipment (CPE) & customer wiring
- Managed services
- Call Centre Services

The following items were suggested by one or more respondents as exclusions; however, they have not been accepted for exclusion by CICRA on the basis that they are all licensable telecoms services: IP feeds, inter-company revenue generated from telecoms services and telecoms services offered on a wholesale basis.

CICRA recognises that both the telecoms market and licensees' businesses are continually evolving and that it may therefore be necessary to periodically revisit the definition to ensure that it remains appropriate.

Decision 4.3 – CICRA confirms its definition of Relevant Turnover as 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 above

4.3 Certified Statement of referable turnover

In the Consultation Paper (CICRA 13/33), CICRA set out its proposal that Licensees would be 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[3].

Views from Respondents

Three respondents agreed with the proposal. The fourth respondent, having suggested calculating fees based on market share, did not provide a response to this question.

CICRA's Position

CICRA welcomes the agreement from three of the respondents to the proposal. A pro-forma Certified Statement of Relevant Turnover can be found at Appendix 1.

Decision 4.3 – CICRA confirms that Licensees will be 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.

[3] *For limited companies with only one director appointed only one signature is required. For sole traders the proprietor should sign.*

4.4 What accounting period should Licensees use to calculate Relevant Turnover?

In the Consultation Paper (CICRA 13/33), CICRA set out its proposal to base calculations on the Relevant Turnover of the Licensee in the financial year of the Licensee that ends at any time up to 30 June during the year preceding the licence fee year. CICRA further proposed that in cases where Relevant Turnover is not available by 31 October, the licence fee payable would be estimated based on the most recent certified statement and that pro-rata estimates could be used in cases where a licensee's most recent financial period is not 12 months.

Views from Respondents

Two respondents agreed with the proposal, while another broadly agreed, though noted a 'slight' concern about the use of turnover figures from one period to calculate licence fees for another. The fourth respondent, having suggested calculating fees based on market share, did not provide a response to this question.

CICRA's Position

CICRA welcomes the broad agreement of three of the respondents.

Regarding the concern expressed by one respondent over the use of turnover figures from one period to calculate the licence fees for another, CICRA acknowledges the concern. However, it considers that the benefits of having a single 'actual' Relevant Turnover figure for each accounting period - i.e. the certainty it provides to licensees and the ease of administration - outweighs the disadvantages of discrepancies between accounting periods. (CICRA acknowledges that in situations where licensees acquire or sell significant elements of their business, appropriate adjustments will need to be made). In addition, CICRA notes that unless all Licensees have the same year end date as CICRA, there will always be a difference between the year for which Relevant Turnover is provided and the year for which licence fees are being calculated.

Decision 4.4 – CICRA confirms that 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.

4.5 Procedures for payment of licence fees

In the Consultation Paper (CICRA 13/33), CICRA set out its proposals that Licensees paying the minimum proposed licence fee would be invoiced in December of the year preceding the licence fee year for payment by 1 January and that all other licensees would be required to set up a standing order to pay the amount due in monthly instalments on the first day of each month during the licence fee year.

Views from Respondents

All respondents agreed with the proposal; however two respondents suggested that a longer period between invoicing and due date for payment would be desirable.

CICRA's Position

CICRA welcomes the broad agreement of respondents and acknowledges the request for a longer period between invoice date and due date. As such, CICRA will send 2014 licence fee invoices on or before 1 December each year in order to afford licensees with 30 days during which to make the necessary provisions for payment.

Decision 4.5 – CICRA confirms that 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.

4.6 Penalties

Failure to pay all or part of the licence fees due constitutes a breach of licence. There are various remedies available to CICRA 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 CICRA and can be collected through debt proceedings in court.

4.7 Level of fees

In the Consultation Paper (CICRA 13/33), CICRA set out its proposals that in situations where, having applied the charging percentage to a Licensee's Relevant Turnover, the resultant annual licence fee would be less than £500, then the minimum licence fee of £500 per annum would be chargeable.

Views from Respondents

Two respondents agreed with the proposal that licence fees should be set as a percentage of Licensees' Relevant Turnover with a minimum licence fee of £500 per annum, with one suggesting that there should be an upper and lower limit to the percentage that can be charged.

One respondent agreed with the proposal that there should be a minimum licence fee of £500 per annum but suggested that licence fees should be set as a percentage of market share.

The fourth respondent agreed with the continuation of scheme where licensees with low referable turnover pay a fixed fee and suggested consideration should be given to entrants having more favourable treatment, such as capped licence fees or licence fee holidays.

CICRA's Position

CICRA welcomes the agreement of three respondents that a minimum licence fee of £500 per annum should be charged.

CICRA acknowledges the suggestion that there should be an upper and lower limit to the percentage that can be charged, and will use reasonable endeavours to ensure that, unless there has been prior notification to licensees, licence fees do not vary significantly from year to year. However, the regulation of the telecoms market is solely funded from licence fee income and thus to the extent that the cost of that regulation may vary from year to year, the funding requirement may also vary. Whilst some variations in the cost of regulation are foreseeable and determined by CICRA's work plan, there are other costs which are outside CICRA's control (for example, litigation).

CICRA's position on the suggestion that licence fees should be set as a percentage of market share rather than Relevant Turnover is set out above.

CICRA acknowledges the suggestions made by the fourth respondent concerning giving new entrants more favourable treatment. However, CICRA is keen to create a 'level playing field' to ensure that all licensees are treated equally. For example, it would not be equitable to give a new licensee, who has purchased a customer base from an existing licensee, more favourable treatment than the existing licensee had they retained the customers.

Decision 4.6 – CICRA confirms that all Licensees will pay licence fees based on a percentage of Relevant Turnover subject to a minimum of £500 per annum.

4.8 Rebates of excess fees

In the Consultation Paper (CICRA 13/33), CICRA set out its proposals that in the event that CICRA collects licence fees that are greater than the amount needed to carry out the relevant functions by Law, CICRA will refund the excess to Licensees in the same proportion as originally paid by Licensees in the given year.

Views from Respondents

Two respondents agreed with the proposal to refund excess licence fees to Licensees in the same proportion as originally paid by Licensees in the given year, with one suggesting that, in addition, there should be a minimum threshold for a refund to be triggered.

One respondent suggested that CICRA should publish licence fees and costs by topic and sector on an annual basis.

The fourth respondent suggested that rather than refunding excess licence fees to operators, the licence fees should be reduced for the following year.

CICRA's Position

CICRA welcomes the agreement of two licensees to the proposal to refund excess licence fees to Licensees. Having considered the suggestion of the fourth respondent that licence fees should be discounted for the following year, it is CICRA's opinion that excess licence fees should be returned to Licensees as soon as possible so that the funds can be utilised in the licensees' businesses. Reducing the following year's licence fees has the disadvantage that the 'refund' will take a year to return in its entirety to operators. In addition, it is CICRA's opinion that excess licence fees should be returned in the same proportion that they were originally paid, which would not be the case if the following year's Relevant Turnover percentage were to be reduced.

CICRA acknowledges the suggestion that CICRA should publish licence fees and costs by topic and sector on an annual basis. Licence fees and costs per sector are already available, though prepared for a different purpose. CICRA will give due consideration to inclusion of such information in its 2013 Annual Report.

Decision 4.7 – CICRA confirms that excess licence fees will be refunded to Licensees in the same proportion as originally paid by Licensees in the given year.

4.9 Collection of shortfall in licence fees

In the Consultation Paper (CICRA 13/33), CICRA set out its proposals that in the event of any shortfall in licence fees for a particular year CICRA would make up the shortfall: by imposing addition fees within the calendar year in which the shortfall arises, and/or by obtaining short term funding and increasing licence fees in the following year (with licensees bearing the additional cost of funding in addition to the additional licence fees), and/or by seeking loans or grants from the States of Jersey and States of Guernsey under the provisions set out in the respective laws.

Views from Respondents

Two respondents indicated a preference for CICRA, in the event of a shortfall, to obtain short term funding with a view to recovering the shortfall in future periods. One respondent's preference was to apportion the additional licence fees proportionately between existing licensees in the current year and invoice accordingly.

The fourth respondent offered no preferred solution instead suggesting that every shortfall should be considered on its own merits and resolved appropriately.

Two respondents noted that in the event that a shortfall was anticipated, consultation and communication with licensees was key.

CICRA's Position

CICRA acknowledges that licensees set their budgets many months in advance and depending on the sums involved, may have to get internal approval for the additional licence fees to be paid.

Historically, the GCRA has built a level of reserves which has been used to help smooth annual licence fees charged. Historically, the JCRA has not maintained any significant level of reserves, instead refunding surplus funds to licensees on an annual basis and therefore had no ability to smooth licence fees over time.

There are costs, both to CICRA and to licensees, associated with seeking short term funding.

Having weighed up the implications of raising additional licence fees invoices in any given year against the cost of sourcing separate external funding, it is CICRA's opinion that in the event that a shortfall is identified and that the shortfall is less than or equal to 10% of the telecoms licence fee income for the year then the additional licence fees would be invoiced to the licensees in that year. For amounts greater than 10%, CICRA would endeavour to secure short term (less than twelve months) funding.

CICRA acknowledges its responsibility to communicate the possibility that additional licence fees may be required at the earliest opportunity.

Decision 4.8 – CICRA confirms that in situations 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 CICRA endeavouring to secure short term funding for amounts greater than 10%.

Appendix 1 – Certified Statement of Relevant Turnover

Licensee Name ____

Certified Statement of Relevant Turnover for the year ending <enter date>

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 CICRA 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 CICRA.

We enclose a copy of the financial statements.

Signed Director 1
Name
Date

Signed Director 2
Name
Date