



Pan-Channel Islands Consultation on Spectrum Awards in the 2.6GHz Band

Consultation Document

Channel Islands Competition & Regulatory Authorities

Document No: CICRA 17/16

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1. Introduction

- 1.1 The purpose of this consultation is to assess demand in the Channel Islands for the available spectrum in the 2.6 GHz band.
- 1.2 The effective use of the radio spectrum for telecommunications purposes is a matter of public interest for the Islands and, in this context, allocation of spectrum goes beyond the interests of one or more telecommunications operators. It is important that licences to use spectrum are granted in such a way as to make the most efficient use of it and render the maximum benefit to the Islands.
- 1.3 Following an assessment of responses to this Consultation, CICRA will determine whether to proceed with any recommendation to Ofcom or, if there is excess demand, whether an alternative competitive process is required.

2. Structure and Timetable for Consultation

- 2.1 This consultation document is structured as follows:

| | | |
|------------|--------------------------------------|--|
| Section 3 | CICRA's Objectives | Records the set of objectives that guide CICRA's processes in determining spectrum allocation generally and, in particular, assessing how to respond to Airtel's request |
| Section 4 | 2.6 GHz Spectrum | Discusses spectrum availability in Jersey and Guernsey and related issues |
| Section 5 | Clear Mobitel (Jersey) | Describes the steps taken to address this outstanding issue |
| Section 6 | Next Steps | Sets out likely future steps |
| Appendix 1 | Legislative and licensing background | This section outlines the legal bases for the JCRA and GCRA's roles in the allocation of spectrum for telecommunications purposes as well as the role of UK legislation in this area |

- 2.2 Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to the following addresses:

| | |
|---|---|
| 2nd Floor, Salisbury House 1-9 Union Street St Helier Jersey JE2 3RF Email: info@bicra.je | Suite 4, 1st Floor Plaiderie Chambers La Plaiderie St Peter Port Guernsey GY1 1WG Email: info@bicra.gg |
|---|---|

2.3 All comments should be clearly marked 'Pan-Channel Island Consultation on Spectrum Awards in the 2.6 GHz Band' and should arrive by 5pm on 16 August 2017.

2.4 In line with CICRA's consultation policy, the regulators intend to make responses to the consultation available on the CICRA website. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

3. CICRA's Objectives

3.1 In Jersey, the Digital Policy Framework was issued in February 2017. This provides that the delivery of advanced digital infrastructure will be supported by a telecommunications policy that will describe the specific steps to be taken, including the optimal use of spectrum so that consumers have access to the range of services they require. The framework also confirms that the States of Jersey will encourage a competitive market that promotes affordability and high quality products and services. In Guernsey, an equivalent document is under development.

3.2 CICRA has previously proposed the following objectives to guide process and criteria for joint allocation of spectrum in the Channel Islands:

- i) To further consumers' interests in the short and long term, having regard to prices and costs, and the availability and range of services suitable to consumers' different needs
- ii) To promote competition as a mechanism to further its consumer interest objective
- iii) To have regard to and, where it lies within its powers and is practicable, to lessen the impact of the spectrum dependent activities it regulates on the environment
- iv) To the extent allowed by legislation, to deal with the Jersey and Guernsey Bailiwicks as a single economic and social entity
- v) To seek to ensure the processes and criteria adopted by CICRA are consistent with Ofcom's duties, including the duty to secure the optimal use of wireless telegraphy of the electromagnetic spectrum

3.3 The first three objectives summarise the duties that CICRA has, in one form or another, in the Islands' respective legislation. The last one is necessary to ensure that Ofcom is able to act on CICRA's recommendations, as they need to be made in furtherance of similar objectives to those assigned to Ofcom.

4. 2.6 GHz Spectrum

Previous CICRA Decisions on this Band

4.1 The following lists previous CICRA publications on spectrum allocation in this band:

| Consultation | Decision Reference | Date |
|---|--------------------|---------------|
| Consultation on distribution of Spectrum in 2600MHz Band | 2009-T01 | June 2009 |
| 2.6GHz Licence Award | 10/02 (Gsy) | February 2010 |
| Pan CI Consultation on 800MHz and 2.6GHz spectrum awards | 12/28 | April 2012 |
| Information Note – Pan CI Consultation on 800MHz and 2.6GHz Spectrum Awards | 12/30 | May 2012 |
| Pan CI Second Consultation on award of 800MHz and 2.6GHz spectrum | 13/54 | December 2013 |

Current Allocation

4.2 The current allocation in this band across both islands is:

| Sure | Airtel | JT | Unallocated |
|-----------------|-----------------|-----------------|-------------|
| 2620.0 – 2630.0 | 2630.0 – 2640.0 | 2040.0 – 2650.0 | |
| 10 | 10 | 10 | 40 |

4.3 This consultation seeks any expressions of interest in order to assess the level of demand for the remaining spectrum in this band, either from existing or potential new operators. Existing operators may wish to consider spacing their allocations out if a further award was made in order to receive non-fragmented allocations. Respondents are also asked to comment on whether the objectives set out in paragraph 3.2 remain appropriate

Question 1: Respondent views are sought on the continued appropriateness or otherwise of the objectives to guide process and criteria for joint allocation of spectrum in the Channel Islands.

Question 2: Respondents are invited to comment on, with supporting evidence and explanation, current and prospective demand for spectrum in the 2.6 GHz Band that CICRA should consider in making any spectrum recommendation to Ofcom.

5. Clear Mobitel

5.1 In 2009, the JCRA made a recommendation to Ofcom relating to an allocation in the 2.6GHz band. This recommendation was subsequently revoked, and later re-instated by the Royal Court in Jersey following a judicial review brought by Clear Mobitel (Jersey) Limited (**CMJ**).

5.2 In 2015, following a recommendation by the JCRA (and GCRA in Guernsey), Clear Mobitel was awarded spectrum licences by Ofcom in both the 2.1GHz and 3.6GHz bands in both Islands on the understanding these allocations better met its business needs. Clear Mobitel also undertook to withdraw its claim to spectrum in the 2.6 GHz band.

5.3 On 25 June 2017, Clear Mobitel formally withdrew its interest in the 2.6MHz recommendation. This makes all unallocated spectrum in this band available for other operators as part of this, or any future, award process.

6. Next Steps

6.1 The purpose of this consultation is to seek interest from parties in order to assess demand for spectrum in this band

6.2 CICRA will assess responses to the above matters in order to inform its views as to the re-organisation of the spectrum allocation in this band and demand for the spectrum sought. Where supply of spectrum does not exceed demand CICRA may decide to make a recommendation to Ofcom for an award of spectrum in this band and, if so, will publish a decision to do so.

Appendix 1: Legislative and Licensing Background

Legal Framework

6.3 The use of spectrum in the Channel Islands is governed by UK legislation and international agreements between the UK and other countries on the use to which various bands of radio spectrum can be put and the avoidance of interference across borders. The licensing of spectrum, in the UK and in the Channel Islands, is carried out by the Office of Communications (**Ofcom**), by virtue of powers given to it by the *Wireless Telegraphy Act 2006 (WTA)* and the *Communications Act 2003 (UK Communications Act)*¹.

6.4 Ofcom's principal and secondary duties are in S.3 of the UK Communications Act ('General Duties of Ofcom'), which provides that:

- (1) *It shall be the principal duty of OFCOM, in carrying out its functions –*
 - (a) *To further the interests of citizens in relation to communications matters; and*
 - (b) *To further the interests of consumers in relevant markets, where appropriate by promoting competition*
- (2) *The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following:*
 - (a) *The optimal use for wireless telegraphy of the electro-magnetic spectrum;*
 - (b) *(...)*

6.5 Moreover, S.3 of the WTA ('Duties of OFCOM when carrying out functions') further specifies Ofcom's duties as follows:

- (1) *In carrying out their radio spectrum functions, OFCOM must have regard, in particular, to –*
 - (a) *The extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy;*
 - (b) *The demand for use of the spectrum for wireless telegraphy; and*
 - (c) *The demand that is likely to arise in future for the use of the spectrum for wireless telegraphy*
- (2) *In carrying out those functions, they must also have regard, in particular, to the desirability of promoting –*
 - (a) *The efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;*
 - (b) *The economic and other benefits that may arise from the use of wireless telegraphy;*
 - (c) *The development of innovative services; and*
 - (d) *Competition in the provision of electromagnetic communications services.*

6.6 Licences granted by Ofcom for the Channel Islands are issued subject to there being in force a licence granted to the Licensee by either the JCRA or GCRA for the provision of a telecommunications service in that territory.

¹ For the Channel Islands, as and to the extent that these Acts are extended to Jersey by *The Wireless Telegraphy (Jersey) Order 2006* and Guernsey by *The Wireless Telegraphy (Guernsey) Order 2006*.

6.7 For the purposes of spectrum allocation, the respective roles of CICRA and Ofcom in coordinating the award of spectrum licences in the Channel Islands are as follows:

- CICRA ascertain the level and nature of demand for the spectrum which is on offer. When the assessment and selection process is completed, a recommendation is provided to Ofcom.
- Ofcom issues licences for spectrum use under the WTA where it is satisfied CICRA's recommendation is consistent with its own statutory duties.