



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

## Recommendation

### Channel Islands Competition & Regulatory Authorities

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## 1. Introduction

- 1.1 The Channel Islands Competition and Regulatory Authorities (**CICRA**) issued a Consultation<sup>1</sup> on 5 July 2017 to assess demand in the Channel Islands for available spectrum in the 2.6GHz band. The consultation closed on 16 August 2017. Five responses were received from Jersey and Guernsey Airtel, Clear Mobitel Limited, Flo Connect Limited, JT (Jersey and Guernsey) and Sure (Jersey and Guernsey) (see Annex 1).
- 1.2 On 25 June 2017, Clear Mobitel formally withdrew its interest in a prior recommendation by the Jersey Competition Regulatory Authority (**JCRA**) to Ofcom for an allocation in the 2.6GHz band. This made all unallocated spectrum in this band available to other operators as part of this, or any future, award process.
- 1.3 Previous responses to consultations on this band have indicated that the 2.6GHz band was less attractive to existing mobile operators. Responses to this Consultation however indicated that the 2.6GHz band is now attractive to existing and new operators, in particular to Flo Connect Limited who requested 2 x 5MHz of spectrum with an accompanying business plan. Existing operators requested a further allocation of 10MHz each in this band, but the evidence to support the requests was not provided in responses.
- 1.4 The effective use of spectrum for telecommunications purposes is a matter of public interest in the islands and, in this context, allocation of spectrum goes beyond the interests of one or more telecommunications operators. It is therefore important that spectrum recommendations by either the JCRA or the Guernsey Competition and Regulatory Authority (**GCRA**) are granted in such a way as to make the most efficient use of spectrum and deliver the maximum benefit to the Islands.
- 1.5 Following an assessment of responses, CICRA considers that demand does not exceed supply in this band and will:
  - i. proceed with a recommendation to Ofcom regarding an allocation of spectrum to Flo Connect Limited in this band. This allocation to be on a conditional basis, pending a wider review as part of the development of 5G; and
  - ii. as new demand has also been indicated from existing operators, to consider an appropriate form for a competitive process which will be considered alongside the upcoming work on spectrum for 5G.

## 2. Policy Framework

### ROLE OF OFCOM AND CICRA

- 2.1 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.
- 2.2 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.

<sup>1</sup> <https://www.cicra.gg/cases/2017/t1309gj-26ghz-spectrum-assessment-of-demand/t1309gj-consultation-26ghz-spectrum/>

- Ofcom issues licences for spectrum use under the Wireless Telegraphy Act where it is satisfied CICRA's recommendation is consistent with its own statutory duties.

## GOVERNMENT POLICY

2.3 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 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.

2.4 The Digital Sector Strategic Framework for Guernsey, describes a vision to drive economic growth by investing in the digital sector to support existing businesses and strengthen the offer to new business opportunities. It aims to drive digital sector economic growth (current and new) and competitive advantage. Under its aim to deliver responsive legislation and regulation, the framework states a metric as being to make Guernsey the location of choice for test-bedding new products.

2.5 In terms of 2.6GHz spectrum, in May 2013 the Minister for Economic Development in Jersey and Minister for Commerce and Employment in Guernsey wrote a joint letter to CICRA regarding the award of 800MHz and 2.6GHz spectrum and outlining an agreed policy position, as follows:

- *We expect the roll-out of 4G services will deliver benefits to mobile consumers in the Channel Islands, as well as to the economies of Guernsey and Jersey*
- *We are agreed that it will be beneficial to operators and consumers if spectrum used for 4G services in the Channel Islands is aligned with that of the UK and France (800MHz, 1800MHz and 2.6GHz)*

## CICRA OBJECTIVES

2.6 CICRA has set out previously, 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 power 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; and
- 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.

2.7 The first three objectives summarise the duties that CICRA has, in one form or another, in the Islands' respective legislation. The last objective 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.

### 3. Consultation: Criteria for Joint Allocation of Spectrum in the Channel Islands

3.1 Respondents were asked to comment on whether the objectives set out in 2.6 above remain appropriate.

*Q1: Respondents 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*

#### RESPONSES

3.2 The responses received are summarised in the following table:

From	Response
Airtel	Agreed with the joint allocation of spectrum, and stated that it firmly believes that spectrum in this band is important to the growth of wireless broadband in the Channel Islands.
Clear Mobitel	Supports CICRA's policy on the use of spectrum.
Flo Connect	Broadly agreed with the objectives for joint allocation of spectrum but only where this best serves the customer. If better competition or faster roll out of new services could be achieved by separate allocation, then Flo Connect would support this.
JT	Supports the view that Jersey and Guernsey should be considered together for the purpose of spectrum management. Its view is that sufficient spectrum should be made available to existing mobile operators, rather than holding spectrum for 'hypothetical new entrants' which may limit the potential for existing networks to utilise the spectrum, and that it will require a third of any forthcoming available spectrum in order to cater for the predicted increase in data volumes. JT also claimed that the provision of spectrum to Clear Mobitel has meant that its network has been operating below capacity and that Channel Island operators are falling behind the UK for this reason. No evidence was provided to support this.
Sure	CICRA's objective should be extended and be consistent with Ofcom's duties under the Communications Act; however this is already included as objective (v). Sure also stated that it believes CICRA should take action against Clear Mobitel for failing to use spectrum allocated to it. Sure believe that allocation should be joint, given the small economies of scale in the Channel Islands and the fact that existing operators operate on a pan-Island basis.

#### CICRA CONSIDERATION

3.3 The only operators with an allocation in the 2.6GHz band in Jersey and Guernsey currently are JT, Sure and Airtel. The comments from JT and Sure regarding Clear Mobitel do not appear relevant to this consultation.

3.4 As stated in Section 2 above, CICRA's stated aim is to seek to ensure the processes and criteria adopted are consistent with Ofcom's duties, including the duty to secure the optimal use of wireless telegraphy of the electromagnetic spectrum.

3.5 For reasons of co-ordination and to promote competition in Jersey and Guernsey, CICRA aims to align mobile spectrum across mobile operators in the Channel Islands. However, CICRA does not consider that this means that an allocation could not be made in one island as the regulatory approach must also be responsive to circumstances.

## CONCLUSION

3.6 CICRA has considered the responses made, and maintains its aim to deal with the Channel Islands as a single economic and social entity as its default approach. However, it does not believe that this prevents it making a recommendation to Ofcom in relation to one island when circumstances demand.

## 4. Consultation: 2.6GHz Spectrum

*Q2: Respondents are invited to comment on, with supporting evidence and explanation, current and prospective demand for spectrum in the 2.6GHz Band that CICRA should consider in making any spectrum recommendation to Ofcom*

4.1 The current allocation in this band across both Islands is:

Sure	Airtel	JT	Unallocated
2620.0 – 2630.0	2630.0 – 2640.0	2640.0 – 2650.0	
10	10	10	40

4.2 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. 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 2.6GHz band. On 25 June 2017, Clear Mobitel formally withdrew its interest in the 2.6GHz recommendation. This makes all unallocated spectrum in this band available for other operators as part of this, or any future, award process.

4.3 The July 2017 Consultation sought 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.

## RESPONSES

4.4 The responses received are summarised in the following table:

From	Response
Airtel	Stated that it has seen an over 1000% increase in wireless data consumption since the launch of 4G, and that market of usage of mobile broadband will only be possible if mobile networks have sufficient capacity made available to them, which will ideally be a mix of high and low frequency spectrum as different types of spectrum are better suited to different purposes. Airtel believes that 20MHz in this band allocated to each service provider would be a better distribution to the current 10MHz because this higher frequency band is better suited to providing the capacity necessary to meet high demand for high data rates from a large number of users in urban areas, airports and other high traffic areas. In general, LTE networks in 2 x 10MHz channels will cost twice as much as in 2 x 20MHz channels.
Clear Mobitel	Noted that handset providers are now configuring handsets for the use of 4G services on 2.6GHz. Clear Mobitel observed that active licence holders have yet to deploy services in this band and that there are technical difficulties in this band in Jersey. Clear Mobitel indicated that it would like to seek an allocation of 2.6GHz in addition to its existing allocations to allow it to develop its network across the Channel Islands.
Flo Connect	Explained that its business will not impact directly on the existing Channel Islands mobile market, and requested 2 x 5MHz slots in the 2.6GHz band to establish a test bed in Guernsey only. This will enable real world testing for the rollout of existing and future

	technology.
JT	Explained that its 4G network was designed and built with the expectation that 20MHz of 2.6GHz spectrum would be available, and expressed frustration that only 10MHz spectrum was made available. It would also like to receive an additional 10MHz as soon as possible in order to attain the highest possible speeds and optimise the performance of the current 4G network, and move through 4.5G and eventually 5G.
Sure	Explained that 2.6GHz spectrum will be key to meeting bandwidth requirements in the Channel Islands, in 2 x 20MHz blocks as this is more cost effective. In order to meet this increased demand, Sure has requested an additional 10MHz of 2.6GHz spectrum. Existing operators could have an equal share of the available 40MHz bandwidth, whilst leaving a small amount in reserve.

## CICRA CONSIDERATION

- 4.5 No evidence was provided to support the claim that a third of available spectrum in this band will be required to cater for anticipated demand, or that operators are currently experiencing a lack of sufficient spectrum to meet peak mobile speeds. No requests have been made prior to this consultation, and the band was not seen as a priority during the 4G award process.
- 4.6 As there is sufficient spectrum available in this band to meet the initial demand indicated in the responses to the consultation, there appears to be no reason why Flo Connect could not be given a small allocation in this band. In the short term, it is proposed that Flo Connect is asked to confirm whether, as a condition of CICRA's recommendation to Ofcom, it would be prepared to accept a conditional allocation of spectrum that could be used until the 2.6GHz band is optimised, at which time a permanent allocation would be made.
- 4.7 If the other initial requests from other existing operators are substantiated as part of a more detailed review, sufficient spectrum will still remain available to meet indicative demand.
- 4.8 As with all other requests, the suggestion that Clear Mobitel be granted a further allocation of spectrum in this band would only be considered after progress against its existing business plan has been demonstrated.

## CONCLUSION

- 4.9 It is clear from the responses made to this consultation that there is a need to examine more closely demand from existing operators in this band. This review can take place alongside the award of spectrum to support new 5G technology.
- 4.10 CICRA therefore proposes to recommend to Ofcom that Flo Connect be allocated with 2 x 5MHz of spectrum. The Wireless Telegraphy Act 2006 licence would be temporary, pending the re-organisation of the band.

## 5. Recommendation

- 5.1 The effective use of spectrum for telecommunications purposes is a matter of public interest in the islands and, in this context, allocation of spectrum goes beyond the interests of one or more telecommunications operators. It is important that spectrum licences are granted in such a way as to make the most efficient use of it and render the maximum benefit to the Islands.

5.2 Following an assessment of responses, CICRA has decided to:

- a. Proceed with a recommendation by the GCRA to Ofcom regarding an allocation of spectrum to Flo Connect in this band. This allocation to be on a conditional basis, pending a wider review as part of the development of 5G; and
- b. As new demand has also been indicated from existing operators, to consider an appropriate form for a competitive process, which will be considered alongside the upcoming work on spectrum for 5G.

## **Annex 1: Responses**

*Question 1: Respondents 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*

**Attached:**

**Airtel**

**Clear Mobitel**

**Flo Connect**

**JT**

**Sure**

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

**Airtel**

**Clear Mobitel**

**Flo Connect**

**JT**

**Sure**

## Annex 2: Legislative Background

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)*<sup>2</sup>.

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) *(...)*

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.*

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.

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.

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<sup>2</sup> 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*.