



## **Response by Sure (Isle of Man) Limited to Consultation on the Licensing of 4G Mobile Services and Notice of Proposed Modification to Existing Licences**

Sure (Isle of Man) Limited ("Sure") is pleased to provide this response to the Consultation on the Licensing of 4G Mobile Services and Notice of Proposed Modification to Existing Licences ("the Consultation"), issued by the Communications Commission ("the Commission") on the 1<sup>st</sup> July 2013.

The introduction of 4G services to the Isle of Man will be an exciting development for the island and will offer customers a greatly enhanced mobile broadband experience and an economic and effective alternative service to fixed broadband. 4G services have already been introduced in the UK and so Isle of Man customers will naturally be keen to enjoy 4G services themselves as soon as possible. Sure is therefore impressed by the sensible and pragmatic approach that is being proposed by the Commission for the allocation of 4G services in the Isle of Man and particularly the recognition that greatest consumer benefit will be delivered by a relatively straightforward and quick process. Further, we welcome the approach of the Commission whereby it will only be seeking to recover the costs associated with the allocation process, rather than attempting to use the process as a revenue generating opportunity. This will ensure that operators who succeed in their requests for 4G spectrum will not be subjected to a significant financial burden, which would ultimately have to be recovered in the prices charged to consumers.

Sure provides detailed responses to the Commission's specific questions below, together with comments on the proposed modifications that would be made to the Telecommunications Licences of any existing operators, such as Sure, were they to be successful in receiving an allocation of 4G spectrum. Sure has provided the Commission with two versions of this response: a public version, which Sure is happy for the Commission to publish on its website, and a confidential version, which contains a limited amount of information that Sure requests is kept confidential to the Commission and its consultants. This current document is the public version of Sure's response.

**Proposal 1: in order to provide 4G services, a mobile operator in the Isle of Man will require a WTA licence issued by Ofcom on the recommendation of the Commission, and the acceptance of a new part inserted into its Isle of Man Telecommunications Act licence which will include appropriate licence conditions relating to 4G mobile service provision.**

Sure agrees with the above proposal. It is important that all operators who succeed in obtaining allocations of 4G spectrum face consistent obligations with respect to those allocations. Sure agrees that the best way to achieve this is by requiring each operator to hold a WTA licence issued by Ofcom, and a separate Telecommunications Act licence issued by the Commission, which contains specific conditions relating to the 4G service.

**Proposal 2: spectrum for 4G services should be made available in the 800MHz, 1800MHz and 2.6GHz bands.**

Sure agrees that spectrum for 4G services should be made available across a range of frequency bands in order to ensure that coverage and capacity is maximised. In addition, the use of a range of

frequency bands will help to ensure handset compatibility such that any roaming customers, whether from the UK or further afield, will be able to access 4G services whilst in the Isle of Man. Sure notes that the Commission is proposing to liberalise spectrum rights in other bands that are currently used to provide 2G and 3G voice and data services. The Commission has also stated that the new 4G WTA licences will not be technology specific, such that whilst they will specify the frequency bands that the licence holder has access to, the licences will not be prescriptive regarding the technologies used within the bands.

Sure assumes that the above means that a licensed operator holding WTA licences across all spectrum frequencies would be able to provide 4G services (and indeed 2G and 3G services) across any of those frequencies. So if, for example, the operator wanted to use the 2100MHz frequency for 4G services it could do so. This would be consistent with the approach confirmed by Ofcom in July of this year,<sup>1</sup> whereby UK licensed mobile operators are allowed to employ 4G technologies in each of the 900MHz, 1800MHz and 2100MHz frequencies. Whilst recognising that operators may not want to deploy 4G services in these bands for some time, Ofcom noted the advantage of liberalising these bands now so that operators could plan and implement a transition to 4G technology in these bands without having to engage in a further regulatory process. We would welcome confirmation from the Commission that this is indeed what is also intended for the Isle of Man and that this will be the outcome under this proposal and proposal 4 below.

**Proposal 3: the Commission will consider assignments of up to 2 x 10MHz per operator in the 800MHz band; 2 x 20 MHz per operator in the 1800MHz band; and 2 x 20 MHz per operator in the 2.6GHz band, with the option of reserving spectrum in the 2.6GHz band for later assignment to the 4G licensees.**

Sure agrees with this proposal, including the suggestion that the Commission reserves the whole of the 2.6GHz spectrum at this stage, for future allocation to the existing licensees, plus any third operator that may result from this current process. Sure believes that an allocation of 2 x 20MHz in the 2.6GHz band may be superfluous at the current time if licensees will also have allocations of 2x20MHz in the 1800MHz band and 2 x 10MHz in the 800MHz band. It would therefore seem to make more sense to hold back spectrum in the 2.6GHz band for the time being, and then use it in the future for LTE advanced services. The Commission would need to make it absolutely clear that the 2.6GHz spectrum would not be made available to any other operators and was simply being held in reserve for the future use of the those operators that are awarded 4G licenses as part of this current process.

**Proposal 4: all spectrum bands should be liberalised at the same time as the 4G spectrum is awarded.**

Sure agrees with the principle of technology neutrality and believes that operators should not be restricted to using specific spectrum bands for specific services. That is, and as noted in response to proposal 2 above, an operator should be free to provide 2G, 3G or 4G services over any of its spectrum holdings, whether in the 800MHz, 900MHz, 1800MHz, 2100MHz or 2.6GHz bands. The decision on which service to provide in which frequency band should be dictated by commercial and

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<sup>1</sup> See Statement by Ofcom published 9<sup>th</sup> July 2013, available at: <http://stakeholders.ofcom.org.uk/consultations/variation-900-1800-2100>

technical considerations such as device compatibility, propagation features, etc. This should help to ensure that the operator uses its frequency allocations as efficiently as possible.

**Proposal 5: up to 3 licences for the provision of 4G services should be awarded**

Sure has no difficulty with the principle of a third licence being made available for the provision of 4G services in the Isle of Man, and believes it should be up to a potential third operator to reach its own conclusions on its likely commercial viability in what is a relatively small market. The Commission will need to make clear whether, in the event that there are only two operators interested in 4G spectrum through this process, and the Commission decides to hold 2.6GHz spectrum in reserve at this point, that such spectrum will be held in reserve for the two operators only. That is, it will not be made available to any potential third operator that could emerge at a subsequent date outside this current process.

**Proposal 6: all mobile operators should hold equal amounts of mobile spectrum upon completion of the 4G licensing process**

Sure believes that all operators should have *the opportunity* to hold equal amounts of mobile spectrum upon completion of the 4G process. This should not mean, however, that any operator will be forced to take more spectrum than it actually wants and an operator should be free to opt for a smaller allocation of frequency if it so wishes. So long as the operator has been offered the opportunity to have an equal amount of spectrum as the other two operators, it will not be placed at a disadvantage if it has taken a commercial decision to accept a smaller allocation than it has been offered.

Sure is aware that both WiManx and Domicilium already have allocations (30MHz each) of spectrum for Fixed Wireless Access in the 3.6GHz band. Domicilium also has an allocation of 20MHz in the 3.5GHz band. If these operators bid for the new spectrum, would their allocations in these bands also become part of the whole process of "equalisation" between operators?

**Proposal 7: 4G operators with usage rights on the 800MHz band will need to take appropriate steps to deal with possible DTT interference in the band and to implement whatever remedial work is necessary to deal with such possible interference**

Sure is aware of the potential DTT interference issues associated with the 800MHz band, although it notes that the UK experience has shown that they have not been as significant in practice as originally feared. We agree, however, that it is appropriate for the 4G licensees to deal with any potential interference issues themselves and that it would not be proportionate for the Isle of Man to implement a similar remedial programme to that being implemented in the UK.

**Proposal 8 the 4G telecommunications licence fee should be set at £150,000 per licence**

Sure welcomes the considered approach that the Commission has taken to the question of the appropriate licence fee for 4G spectrum. The Commission has recognised that the Isle of Man is an entirely different market to countries such as the UK, both in terms of its population size and in terms of the availability of spectrum, and that an auction approach would be both disproportionate and unnecessary.

Sure agrees, therefore, that it is appropriate for the Commission to discount the fee derived from the international benchmarking process it has undertaken. This is a welcome approach, given the relatively small size and limited commercial 4G opportunity available in the Isle of Man, which means that there is a significantly smaller customer base over which an operator can recover the significant investment costs that will be required to rollout a 4G network in the Isle of Man. The Commission's approach will mean that operators will not face a significant additional cost burden from licence fees, which should help to ensure that operators will be able to provide Isle of Man customers with reasonably priced 4G services.

**Proposal 9: the 4G licence award process will comprise four stages, i.e., an Application Stage, Qualification Stage, Sealed Bid Stage and Award Stage. If three or fewer applicants are received, the Sealed Bid Stage will not be required and, in this instance, the process will proceed directly to the Awards Stage. The Commission is proposing this award process as the best method to meet its objective of concluding the licence award process as efficiently as possible.**

Sure has been impressed by the thought that the Commission and its consultants have put into the question of the appropriate approach to the award of 4G spectrum in the Isle of Man. It is clear that the Commission has considered carefully the best way to ensure that Isle of Man customers can experience the benefits of 4G services as quickly as possible, without placing unnecessary burdens on any operators who are interested in acquiring such spectrum. It actually seems quite radical for the Commission to be suggesting that a comparative selection process is not used but Sure believes that the suggested approach of instead requiring successful operators to commit to certain key service issues within specific time periods should mean that the 4G services can be completed relatively quickly in the Isle of Man. This is to be commended, especially when similar jurisdictions have suffered continued delays to their own 4G processes, and Sure hopes that other regulatory bodies will take note of the Commission's lead in this area.

We do have some concerns, however, in relation to the Commission's ability to screen out any spurious or unsupportable applications being made for 4G spectrum, given that no deposit or fee will be requested at the Application Stage. We note that applicants will be required to confirm their willingness to accept as licence conditions the prescribed minimum criteria for the provision of 4G services. However, we are unclear as to how the Commission will ensure that any commitments that are made in this respect will be genuine and indeed enforceable.

We note that Annex 1, which sets out the additional obligations in respect of 4G service provisions, does not include any details of what would happen should an operator fail to meet the licence conditions. Sure is aware that paragraph 4.17 of the Consultation states that the Commission will ensure compliance with the minimum service criteria in line with Section 11 of the Telecommunications Act 1984. However, the Act does not offer the Commission the ability to impose fines for non-compliance and so we wonder how effectively the Commission will be able to enforce the licence obligations. Whilst we understand that Tynwald is currently considering amendments to the Act we are not sure how soon any such changes will be implemented. We would therefore ask the Commission to consider whether it would be appropriate and possible to include in the proposed licence conditions themselves specific provisions for financial penalties for non-compliance.

We suggest that, if it is possible, there should be such provisions, especially if the Commission feels it is outside its legal authority to ask all operators to provide a non-refundable deposit at the Application Stage. The level of penalties for non-compliance with licence obligations should be specified now so that all applicants will be aware of the implications should they be awarded a licence but then subsequently find they cannot meet their obligations. The penalties should be set at such a level that they would discourage spurious applications for 4G licence awards.

Without such penalties being specified at the Application Stage, the Commission could receive more than 3 applications – hence triggering the Sealed Bid Stage - but some of those applications may turn out not to be serious or viable. We recognise that there is a Qualification Stage, during which we assume the Commission will be able to assess the strength of individual applications and try to ascertain whether an applicant really will be able to meet the licence conditions. However, there will always be a possibility that a bid could get through as a valid bid but then the operator would be unable - or unwilling - to meet the licence obligations. If the Sealed Bid Stage is unnecessarily triggered, this would raise the costs of all operators in the process, which would eventually flow through to customers in the form of higher prices. If a successful bidder then subsequently fails to meet its obligations, customers would suffer a second time as they would not be receiving the 4G services that they should be entitled to receive. Sure would therefore urge the Commission to consider whether it would be possible to include in the licence conditions the ability to levy financial penalties for failing to meet the additional licence obligations in respect of 4G service provision.

As a minor point, Sure notes that paragraph 4.12 makes reference to operators being able to launch 4G services before the end of 2013 and questions whether this should read end of 2014, given that operators will be obliged to launch commercial services within nine months of licence award?

**Proposal 10: the Commission proposes to include a number of service criteria in the areas outlined above within the 4G licences. Respondents are invited to provide views on the proposed characteristics, including what parameters they believe would be appropriate for each.**

Sure supports the Commission's intention to include service criteria within the 4G licences. We believe that overall the proposed conditions are reasonable and fair, but we do have some concerns regarding the obligation related to minimum download speeds. In particular, we are concerned that a minimum download speed of 5Mbps may not be achievable at all times in all areas for a number of reasons. These could include the type of device being used by the customer; where in the network the measurement of this download speed is being taken; how congested a cell site is at a certain time (for example, the Isle of Man does suffer a few abnormal peaks during events like the TT), and how close a customer is to a cell site.

We are not sure whether the extent to which these factors could affect the customer experience have been adequately taken into account by the Commission in the draft licence condition through, for example, the inclusion of the words "...when the network is lightly loaded...". We have therefore suggested some additions to the draft licence condition x., which may make this clearer.

Sure would also like to understand the process by which the Commission proposes to enforce compliance with the rollout conditions. For example, would the Commission be asking operators to provide regular reports on download speeds, or does the Commission intend to put in place a process for conducting regular independent testing of download speeds? Sure believes that the

process for monitoring and enforcing compliance with the rollout conditions needs to be transparent to all potential licensed operators for 4G services. This should also help to ensure that the Commission only receives expressions of interest from those operators who are genuinely capable of complying with the 4G rollout obligations.

### **Sure's comments on the proposed licence modifications**

Sure agrees with the Commission's proposal to include modifications to its current operator's licence, should it be awarded a 4G licence, and notes that it must make any comments on the proposed modifications within the same time period as this current Consultation.

We have therefore considered the proposed modifications as set out in Annex 1 of the Consultation. As noted above, we do have concerns regarding the obligation relating to minimum download speed of 5Mbps, and believe this may need to be modified slightly to take account of external factors that could affect the ability of an operator to comply with this condition. We would suggest that condition x. could be modified slightly, with the words in italics:

x. The Communications Provider shall not be in breach of this condition by reason of temporary interruptions to service, provided that it has taken reasonable precautions to minimise such temporary interruptions. *In addition, the Communications Provider shall not be in breach of this condition due to factors outside its immediate control, including but not limited to inappropriate device selection by the customer.*

Further, and as noted in our main comments on the Consultation, we would question whether the modifications should contain reference to the penalties for non-compliance with these additional obligations, and whether there is scope for the Commission to include financial penalties for non-compliance.

Finally, we note that under Payment of Fees reference is only made to the payment of £150,000 within 14 days of the Commission's award. Does the Commission also need to refer to the possibility of payment of an additional fee in the event that the allocation process requires a Sealed Bid Stage?

Sure (Isle of Man) Limited  
1<sup>st</sup> August 2013