



Office of Utility Regulation

Cable and Wireless Guernsey: Separated Accounts

**Notice of Direction to Cable and Wireless Guernsey
Ltd in accordance with Section 27 of the
Telecommunications (Bailiwick of Guernsey) Law,
2001**

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1. Introduction

On 24 July 2003 the Director General of Utility Regulation (the “Director General”) published¹ a Notice of Proposal to issue a Direction to Cable and Wireless Guernsey (“C&WG”) in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001. Interested parties were invited to make written representations or objections in respect of the Proposed Direction. Section 27(4) of the Telecommunications (Bailiwick of Guernsey) Law 2001 requires the Director General to consider any representations or objections received within the relevant time period before publishing any decision to issue a final Direction.

Section 2 of this document sets out the licence conditions that the Director General found had been breached by C&WG and the Proposed Direction described in Document OUR 03/18. Section 3 summarises written representations and objections received from interested parties together with the Director General’s comments on the representations and objections. Section 4 contains the Direction that the Director General now issues in accordance with the Telecommunications (Bailiwick of Guernsey) Law, 2001. Section 5 outlines the sanctions that the Director General may consider in the event that a licensee fails to comply with a Direction.

2. Findings of Breaches of Licence and Proposed Direction

2.1. Licence Breaches

The provision of Separated Accounts and the accuracy and reliability of C&WG Guernsey’s management information systems and other systems is the responsibility of C&WG in accordance with C&WG’s Licences. In this latter respect and based on the information provided to the Director General, C&WG has been found in breach of a number of its Fixed Telecommunication Licence Conditions.

Condition 27 of C&WG’s Fixed Telecommunications Licence states that:

“Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the Director General to be separately identifiable, and which the Director General considers to be sufficient to show and explain the transactions of each of those activities. The Director General may direct the Licensee as to the basis and timing of such reports as the Director General may require.”

The Guidelines published in March 2002 included a Direction to Guernsey Telecoms Limited (as it then was) to submit separated accounts on 1st May 2002, 1st October 2002 and 1st May 2003, and thereafter each year on 1st May in accordance with those guidelines and any amendments to those guidelines.

C&WG was found to be in breach of this licence condition and the Direction issued in March 2002 in that it failed to submit its 2001 Separate Accounts by 1st October 2002

¹ Document OUR 03/18 Cable and Wireless Guernsey: Separated Accounts. Notice of a Proposal to issue a Direction to Cable and Wireless Guernsey Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

and failed to produce its 2001 Separate Accounts in the format specified in the Accounting Separation Guidelines.

Condition 17.12 of C&WG's Fixed Telecommunications Licence requires that:

"The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Telecommunications Services or for the calculation of related charges."

C&WG was found to be in breach of this licence condition in that the company stated that it had identified deficiencies in its information systems and that it had been unable to reconcile the data from the various sources in compiling the Separated Accounts.

Condition 4.1 of C&WG's Fixed Telecommunications Licence requires that:

"For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the Director General in the manner and at the times required by the Director General, any documents, accounts, returns, estimates, reports or other information including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence."

C&WG was found to be in breach of this licence condition in that it failed, as set out above, to respond to information requests and the Direction made on the 18th March 2002 to provide the OUR with a final set of Separated Accounts for 2001.

In summary therefore C&WG was found to be in breach of conditions 4.1, 17.12 and 27 of its licence.

2.2. Proposed Direction

The Proposed Direction is set out in full in Document 03/18 which is available on the OUR website (www.regutil.gg). This section briefly summarises the actions required by specified times that were included in the Proposed Direction. It was proposed that:

C&WG would be directed to submit the company's Separated Accounts for 2001 **by noon on Friday 22nd August 2003**. These accounts should be accompanied by a statement in writing from at least one Director of the company confirming that they were verified and accurate;

C&WG would be directed to submit the company's Separated Accounts for 2002/03 **by noon on Friday 31st October 2003**. These accounts should be accompanied by a statement in writing from at least one Director of the company confirming that they were verified and accurate;

C&WG would be directed to submit to OUR by **noon on Friday 31st October 2003**

- a comprehensive statement setting out in detail the assumptions used in the preparation of the Separated Accounts for 2002/03;

- a comprehensive statement of any changes in the assumptions used in the Separated Accounts for 2002/03 compared to those adopted in the 2001 Separated Accounts;
- a comprehensive statement explaining and justifying any such changes.

These statements should include a statement in writing from at least one Director of the company confirming that they were verified and accurate;

C&WG would be directed to publish on its website, and provide hard copies on request, its 2002/03 Separated Accounts in the format specified in the Accounting Separation Guidelines issued by the OUR in March 2003 by **noon on Friday 31st October 2003**;

C&WG would be directed to issue a notice in the Gazette Officielle on **Monday 3rd November 2003** informing the market of the publication of its Separated Accounts for 2002/03 and alerting interested parties on how to obtain copies of the document;

C&W Guernsey would be directed to provide a copy of its 2002/03 Separated Accounts model in a simplified Excel format specified by the OUR by **noon on Wednesday 31st December 2003**;

3. Representations and Objections

Representations and objections were received from C&WG and Newtel and are available for inspection at the OUR's offices during working hours.

Newtel fully supported the Director General's proposed Direction to require C&WG to comply with its Licence obligations and provide the separated accounts in line with the programme laid down for the following reasons;

- The failure to provide separated accounts can have a material effect on competitors because of insufficient evidence for the OUR to determine whether C&WG's terms for the provision of interconnection and access services are appropriately cost based and non-discriminatory, and
- Newtel is heavily dependent upon interconnection and access services being provided by C&WG for its market entry but has no confidence that the terms that are currently being offered do not materially favour C&WG.

C&WG acknowledged the OUR's concerns regarding the problems that have been encountered by C&WG in submitting the Separated Accounts by various deadlines and assured the OUR that it is well aware of the obligations under its licence and has been striving, in co-operation with the OUR's office, to meet those obligations. C&WG stated that the failure to meet those obligations arises because of insufficiencies in its legacy systems but that ongoing efforts to upgrade these systems have not resolved the problems.

C&WG's comments on the specific timescales set out in the various elements of the proposed section 27 Direction are summarised below. The Director General's position in light of the written representations and objections in response to each part of the Proposed Direction follows C&WG's comments.

3.1. 2001 Separated Accounts to be Submitted by 22nd August 2003

C&WG commented that it had undertaken to submit the 2001 accounts during the week ending Friday 29th August 2003 and understood that the reason for OUR proposing to require this action by 22nd August 2003 was due to the OUR's resourcing plan. C&WG went on to state that in the absence of any concrete reasons or justification for the proposal to bring this date forward, C&WG was unable to understand what the benefit of setting the deadline as 22nd August 2003 would be and requested that the deadline revert to C&WG's original proposal of Friday 29th August 2003.

Director General's Position

It is in fact the responsibility of C&WG to explain the reasons for the continued delay in producing the Separated Accounts and justify moving the deadline for submitting the 2001 Separated Accounts by almost 11 months from the original 1st October 2002 deadline. The benefit of providing separated accounts has been rehearsed elsewhere and the continued delay in providing these accounts deprives the market of that benefit. Every week's delay means that the final information provided is further out of date, potentially reducing the benefit of that information in a market that is faced with ongoing rapid change. These points, *inter alia*, comprise the reasons for the requirement to submit the regulatory accounts in a timely manner. The comment by C&WG on OUR resourcing plans reflects a general observation made at a meeting that the OUR faces a need to deploy skilled staff to analyse and review the accounts in a timely manner. This applies to all OUR work.

C&WG has not provided sufficient reason for moving the deadline and the Director General will direct that the 2001 Separated Accounts be submitted on 22nd August as set out in the Proposed Direction.

3.2. 2002/03 Separated Accounts to be Submitted by 31st October 2003

C&WG expressed concern that OUR was setting a deadline for the production of the 2002/03 Accounts that is only two months after the production of the 2001 accounts, believing this to be unachievable. C&WG commented that both eircom, the incumbent operator in Ireland (using Historic Cost Accounting principles) and BT (using Current Cost Accounting principles) had published their Separated Accounts in recent years within five to eight months from their year ends.

C&WG believed that "these periods are a significant time post liberalisation (in BT's case, 18 years)". C&WG claims that the OUR deadline fails to reflect the difficulties that C&WG faces and has faced with the production of the 2001 year accounts in the interim.

Finally, C&WG states that it has significantly increased the resources allocated to the project and has proposed a deadline of 15th January 2004 for submission of the 2002/03 accounts with all subsequent deadlines adjusted accordingly.

Director General's Position

With regard to C&WG's comments in relation to BT and eircom, the Director General considered practice elsewhere when publishing the original guidelines to GT on the production and timing of separated accounts. In relation to such international practice, it is notable that;

- the Irish telecommunications market was liberalised on 1st December 1998 and eircom was required to produce Separated Accounts for the first time in 1999;
- the first set of separated accounts were prepared by eircom seven months after the year end;
- since then the time taken by eircom to produce separated accounts has been reduced to five months;
- BT & eircom, with annual turnovers of £18.7 billion² and £1.1 billion³ respectively, face significantly more complex requirements and systems than C&WG;
- Kingston Communications with annual turnover of £330m⁴ produces audited Separated Accounts within four months of the year end.

The Director General does not consider that these benchmarks support C&WG's proposed timetable for the production of the 2002/03 accounts. The C&WG relevant year end is 31 March 2003 and the deadline in the proposed direction is 31 October 2003 – seven months after the year end, a date that would appear to be very much in line with the benchmarks.

Furthermore, C&WG attributes its proposed later production of 2002/03 accounts to the fact that the company has still not produced 2001 Separated Accounts. The benchmarks above would indicate that the first set of separated accounts should have been produced within a seven month period after the relevant year end. In fact, it is now more than 19 months after the end of the relevant accounting period and C&WG has still not produced the separated accounts for 2001. The Director General takes the view that to delay the 2002/03 Separated Accounts because of the failure of C&WG to meet its obligations in relation to the 2001 accounts would be wholly inappropriate and would set a precedent whereby licensees could claim a failure to meet a licence obligation as a justification for failing to meet another obligation. Furthermore it would be inequitable and would not be in the best interests of the market and affected parties.

Finally, the Director General is not confident that C&WG's proposed work plan represents appropriate steps to meet its obligations and is conscious of the fact that the company has failed to achieve any of its own self imposed deadlines on this matter since October 2002.

In conclusion, the Director General considers the timetable set out in the Proposed Direction strikes a balance between the interests of the market, the benchmarked

² BT Annual Review and Summary Financial Statement 2003 available at www.btplc.com/report/review03/review2003.pdf BT Retail accounted for £13.3 billion, BT Wholesale £11.3 billion, Intra Group transfers of -£11.1 billion with the balance from Global and other.

³ 2002 eircom Annual Report available at www.eircom.ie/bveircom/pdf/financial_2002.pdf

⁴ Consolidated turnover for year ending 31st March 2003 available at www.kcom.com/annualreport/downloads/five_year.pdf

practice in other jurisdictions and the practical difficulties that are a matter for C&WG's management to resolve. The Director General will not amend the timetable in the proposed direction.

3.3. Supporting Documentation to be submitted by 31st October 2003

C&WG proposed to submit a Methodology Document and Accounting Documents, both of which will be updated for 2002/03 if changes are made. Any changes between periods would be separately documented and justified. In accordance with the adjustments in the timetable proposed by C&WG, the company proposed to submit this Documentation by 15th January 2004.

Director General's Position

Given the conclusion in section 3.2, the Director General will not change this requirement and the timetable set out in the Proposed Direction.

3.4. Publication on Website on 31st October 2003

C&WG noted that the OUR's Guidelines on Separated Accounts⁵ state:

"For the time being the first set of GT's separated accounts will be submitted in confidence to the OUR. Going forward the Director General will consider whether it would be in accordance with her duties to publish regulatory accounts and will consult with interested parties before making a final decision on what level of information should be in the public domain in future years."

Hence C&WG stated that it had a legitimate expectation that there would be a consultation process and would reserve its comments on the level of information that should be in the public domain until that time. Consequently C&WG would not be in a position to publish regulatory accounts until the outcome of that consultation is known.

Director General's Position

The Director General considers that it would be appropriate for C&WG's 2002/03 Separated Accounts to be published. A consultation on the contents and the level of information that should be made available in the public domain will be concluded before the proposed publication date, thus addressing C&WG's concerns in this matter. Therefore the Director General has not been provided with any reasons to amend the requirement to publish C&WG's Separated Accounts according to the timetable in the Proposed Direction.

3.5. Notice in the Gazette Officielle by 3rd November 2003

C&WG did not accept that the outcome of the consultation that the OUR is bound to hold in relation to publication of regulatory accounts will inevitably require it to

⁵ Document OUR 02/12 Accounting Separation Regulatory Accounting Guidelines To Guernsey Telecoms

publish such regulatory accounts. In the event that publication of the accounts was the outcome of the consultation, C&WG suggested that this deadline should be adjusted accordingly.

Director General's Position

As already stated, the Director General considers that the Separated Accounts should be published and a consultation on the level of information that should be included in such accounts will be undertaken. Therefore there is no reason to amend the requirement to publish C&WG's Separated Accounts according to the timetable in the Proposed Direction.

3.6. *Excel spreadsheet version of 2002/3 Separated Accounts by 31st December 2003*

C&WG suggested that this deadline should be adjusted to 29th February 2004 if the 2002/03 Separated Accounts are to be submitted on 15th January 2004.

Director General's Position

As explained earlier and in light of the written representations and objections the Director General has been given no reasons to change the Proposed Direction.

4. Direction in accordance with Section 27 of the Telecommunications Law

The Director General finds that as a result of the actions of C&WG identified in the documents leading up to this Direction, C&WG has acted in contravention of Conditions 4.1, 17.12 and 27 of its Fixed Telecommunications Licence issued in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

In accordance with section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 and having complied with her obligations pursuant to section 27(3) and 27(4), the Director General hereby issues a Direction to the Licensee (Cable and Wireless Guernsey) requiring the Licensee to do the following things:

- to submit the company's Separated Accounts for 2001 **by noon on Friday 22nd August 2003**. These accounts shall be accompanied by a statement in writing from at least one Director of the company confirming that they are verified and accurate;
- to submit the company's Separated Accounts for 2002/03 **by noon on Friday 31st October 2003**. These accounts shall be accompanied by a statement in writing from at least one Director of the company confirming that they are verified and accurate;
- to submit to OUR by **noon on Friday 31st October 2003**
 - a comprehensive statement setting out in detail the assumptions used in the preparation of the Separated Accounts for 2002/03;

- a comprehensive statement of any changes in the assumptions used in the Separated Accounts for 2002/03 compared to those adopted in the 2001 Separated Accounts;
- a comprehensive statement explaining and justifying any such changes, and

these statements shall include a statement in writing from at least one Director of the company confirming that they are verified and accurate;

- to publish on its website, and provide hard copies on request, its 2002/03 Separated Accounts in the format specified in the Accounting Separation Guidelines issued by the OUR in March 2002 by **noon on Friday 31st October 2003**;
- to issue a notice in the Gazette Officielle on **Monday 3rd November 2003** informing the market of the publication of its Separated Accounts for 2002/03 and alerting interested parties on how to obtain copies of the document; and
- to provide a copy of its 2002/03 Separated Accounts model in a simplified Excel format specified by the OUR by **noon on Wednesday 31st December 2003**.

5. Sanctions

Section 27(5) of the Telecommunications (Bailiwick of Guernsey) Law 2001 allows that, in the event that a licensee contravenes any provision of a section 27 direction, the Director General may, without prejudice to any criminal proceedings which may be instituted under section 23 in respect of the contravention, enforce any remedy available under the licence, including (subject to the provisions of section 28) any remedy of suspension or revocation of the licence or imposition of a financial penalty.

Before invoking any of these sanctions the Director General must follow the procedure set out in section 28 of the Law.

The Director General may also apply to the Court for an injunction in accordance with the provisions of section 6 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

/END