



Office of Utility Regulation

Pan Channel Island Ethernet Half Circuits

Notification of Investigation into Cable & Wireless Guernsey's Pan Channel Island Ethernet Products

Information Notice

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Ethernet Products
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1. Background

1.1. Notification of Services to OUR

On 13th May 2005 C&WG gave formal notification to the OUR of its intention to launch a Pan CI Ethernet Half Circuit service on 6 June 2005. In that notification C&WG informed the DG that as this service would be likely to be of interest to only a few customers the 21 day notice period would commence following publication on C&WG's website. After a request from the OUR, C&WG published an information notice in "La Gazette Officielle" on Saturday 21st May 2005.

C&WG had conducted Beta Trials for one month with one client for the 10 Mbit and 100 Mbit direct service prior to the commercial launch of the service. During the trial the OUR was made aware of possible concerns raised by Wave Telecom regarding the commercial launch of C&WG's Pan CI Ethernet services. As a result the OUR wrote to C&WG on 12th April 2005 alerting the company of a potential investigation by this office into these new services. C&WG responded to the OUR's letter and clarified the status of the beta trials of the new services being developed by C&WG.

The OUR then sought confirmation from C&WG that the company would be developing a wholesale service for Other Licensed Operators ("OLOs") to bring competing products to market. C&WG confirmed that the company would be able to offer circuits at a wholesale basis and would respond to any requests from OLOs accordingly.

This prompted further correspondence from the OUR in order to explain how C&WG's licence applied in this instance as there appeared to be a fundamental misunderstanding on C&WG's part. In essence, for regulatory purposes, C&WG can be viewed as two separate entities; a retail business that provides services to end-users and a wholesale business which provides the means by which both C&WG's retail business and OLOs provide services to end-users. C&WG's licence requires that it treats these downstream businesses (i.e. C&WG's retail business and competing OLOs) in a non-discriminatory manner.

The OUR explained that if C&WG offers a new retail product that uses new elements not currently available to OLOs – either as one product or as a combination of products – then C&WG would need to have that wholesale / interconnect element available to OLOs at the same time as the company makes those elements available to the retail side of the business and not after C&WG had launched a retail offering.

C&WG was requested to confirm that it would comply with this requirement for the Pan CI Ethernet services. In response to this clarification from the OUR, C&WG duly confirmed that in accordance with condition 26.2 of its licence that the wholesale arm of C&WG would be able to offer to lease out the same half circuits to OLOs on

terms that would be no less favourable than those in which C&WG's wholesale arm makes available the relevant half circuits to its own business divisions.

1.2. Description of C&WG's Pan CI Ethernet Products

C&WG's Pan CI Ethernet service is provided on a half circuit basis enabling customers to link their Local Area Networks ("LAN's") or other services over the C&WW Guernsey SDH Network. The service is provided from the customer's site in Guernsey to an interconnect point with C&W Jersey's ("C&WJ") network midpoint between the islands.

C&WG's Pan CI Ethernet portfolio comprises:

- a fixed 10 Mbit bandwidth over the complete service.
- a 100Mbit Local Loop bearer linked by the 10 Mbit bandwidth across the SDH network. The service offers managed bandwidth growth as the bandwidth can be increased in 10 Mbit upgrades.
- an incremental 10 Mbit upgrade to the SDH network bandwidth for the 100/10 Mbit service; and
- a fixed 100 Mbit bandwidth over the complete service.

The Retail and Wholesale prices for these services are shown in the table below.

1 Year Term Rental and Connection Prices

	Retail		Wholesale	
	Rental	Connection	Rental	Connection
Pan CI 10 Mbit Enet	£30,900	£2,750	£28,088.10	£2,499.75
Pan CI 100 Mbit Enet	£109,000	£2,750	£99,081.00	£2,499.75
Pan CI 100/10 Mbit Enet	TBC	TBC	TBC	TBC
Pan CI 10 Mbit Enet Upgrade	TBC	TBC	TBC	TBC

2. Legal and Licensing Background

C&WG holds a licence to provide fixed telecommunications services and networks in the Bailiwick of Guernsey which was issued on 1st October 2001 in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001 and States Directions to the Director General (“DG”) of Utility Regulation¹.

C&WG has been found to have a dominant position in the fixed telecommunications market in the Bailiwick of Guernsey² and thus specific conditions in the fixed telecommunications licence have been applied to C&WG to control that dominant position in that relevant market.

The DG considers the provision of Pan CI Ethernet services to be a service in the fixed telecommunications market.

A number of C&WG’s licence conditions are relevant in the context of this investigation. These include, *inter alia*:

- **Condition 4** which addresses the provision of information by C&WG to the OUR and deals with investigations, examinations and audits.
- **Condition 28** which requires the Licensee not to unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any telecommunications network or service.
- **Condition 29** which requires the licensee not to show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access;
- **Condition 31** which requires the publication of prices for new services that are regulated a minimum of 21 days in advance of the service being introduced and further requires that those prices be transparent and non-discriminatory. This condition also provides that the DG may impose controls on the prices of any services within the Relevant Market in which the licensee has been found to be dominant.
- **Condition 32** which prohibits the Licensee from engaging in any practice or entering into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Telecommunications Networks or the provision of Telecommunications Services in the licensed area.

¹ Full licence text and conditions are published in Document OUR 01/18 available from the OUR website at www.regutil.gg

² See Document OUR 01/14 available from the OUR website at www.regutil.gg

3. Investigation into C&WG's Pan CI Ethernet Products

3.1. Reason for the investigation

The importance of off island connectivity to customers and the Bailiwick's economy is such that the DG believes it is essential that the introduction of new services happens in a manner that maximises the benefit to Guernsey as a whole. Therefore it is essential to confirm that the service is in compliance with the regulatory regime and in particular with C&WG's licence conditions as a dominant operator in the fixed telecommunications market.

Furthermore, both the OUR's initial review of the information provided by C&WG and the representations received from Wave Telecom raise a number of concerns as to compliance with the relevant licence conditions.

Therefore, the DG considers it necessary to carry out an investigation into the introduction of C&WG's Pan CI Ethernet services.

3.2. Format of investigation

The investigation will be undertaken in accordance with the duties and obligations of the DG and in particular Condition 4 of C&WG's licence.

On the basis of the information provided to date, OUR will set out the initial concerns about the introduction of C&WG's Pan CI Ethernet services, linking these to the relevant licence conditions, and will seek any additional information from relevant parties.

C&WG and other relevant parties involved in the investigation will at the same time be afforded the opportunity to comment on the concerns about the product and the relevant licence conditions and will be invited to suggest the action or steps that would, in their view, remedy any of those concerns.

Given the time critical nature of some of the concerns, relating in particular to the launch of C&WG's services, comments will be requested within a very short period of time. The DG appreciates the effort that will be required to respond to these questions, but believes that the short timescale is essential given the potential effect of alleged breaches of licence. Following receipt of comments, OUR will review the information and finalise a finding. The finding will take into account the comments and any actions proposed by any of the respondents to remedy the concerns raised.

Information sought from C&WG will be in the context of Condition 4 of its licence. In accordance with that Condition, the Licensee shall bear all reasonable costs associated with the investigation.

3.3. Issues under investigation

There are three sets of issues under investigation by OUR:

Provision of Information & wholesale products

First is the issue of provision of information and the availability of appropriate wholesale services by C&WG to OLOs prior to the launch of its Pan CI Ethernet products. It is suggested that C&WG may have exercised undue preference and/or unfair discrimination in favour of its own retail business by failing to provide sufficient information to OLOs in relation to C&WG's leased line business in the lead up to the launch of the Pan CI Ethernet products.

Importantly at the time of the launch of the retail service, C&WG did not have an equivalent wholesale service available for OLOs to purchase and compete against C&WG in the retail market. Wave Telecom requested a wholesale variant from C&WG on 23 May 2005, but did not have access to a wholesale service at the time of C&WG's retail launch on 6 June 2005. As such it is suggested that C&WG had given itself first mover advantage and the opportunity to capture the market before other operators could offer consumers a competitive alternative. It is suggested that this may have the effect of preventing, restricting or distorting competition.

In addition, the OUR is investigating C&WG's compliance with the requirements of its Licence in relation to publication and/or provision of information on new or existing products.

Barriers to Entry and Unfair Discrimination

Second, the OUR is investigating whether the Pan CI Ethernet products pricing structure acts as an effective barrier to OLOs from entering the market for provision of Pan CI Ethernet services in Guernsey. In particular the wholesale prices at which C&WG make the Pan CI Ethernet circuits to OLOs are set at such a level as to provide excessive returns to C&WG in the wholesale market and reduce the scope for OLOs to compete effectively in the retail market. It is suggested that this pricing strategy constitutes behaviour that is likely to prevent, restrict or distort competition.

Prices

Finally, the OUR is examining the connection and rental pricing levels announced by C&WG for the Pan CI Ethernet products.

The evidence provided to the OUR to date suggests that C&WG's Pan CI Ethernet wholesale and retail prices are set at levels which generate excess returns for the company and exceed those which a competitive market would deliver. It has been suggested that C&WG's retail connection charges for the Pan CI Ethernet services are markedly out of line of other connection charges for similar leased lines provided by C&WG.

For example a comparison of connection charges is shown below:

Pan CI 10 Mbit Ethernet	£2,750	Pan CI 100 Mbit Ethernet	£2,750
Lanlink 10 Ethernet (same exchange)	£4,999	Lanlink 100 Ethernet (same exchange)	£7,499
Lanlink 10 Ethernet (different exchange)	£9,544	Lanlink 100 Ethernet (different exchange)	£14,316

C&WG have provided a number of reasons explaining the retail prices for the Pan CI Ethernet connections:

- The connection costs for Pan CI Ethernet Half Circuit products are for providing termination at 1 customer location, as the remote location is not located in Guernsey (i.e. there is an additional connection charge for the customer in Jersey).
- The connection costs for Lanlink products are for providing termination at 2 customer locations, as both locations are in Guernsey.
- In addition the hardware required at the customer location for the Pan CI Ethernet (requires different protocols to enable it to run over the SDH network) is different to that required for LanLink Ethernet.
- The method of delivery over the local access and the hardware equipment for Pan CI Ethernet is able to handle either 10 or 100 Mbit services, hence the same cost for connection.
- When a LanLink service has to transit between exchanges it does not transit across the general SDH ring. It uses a direct fibre link, hence there are increased costs for the network/engineering/hardware.

4. Conclusion

A detailed information request has been issued to C&WG, and the DG has required a response by midday on Wednesday 22nd June 2005 to enable him to conclude his investigation into these matters.

The issues addressed in this document are not necessarily exhaustive, nor do they prevent the DG from requesting such further information as he may consider necessary, or from raising additional issues in relation to this or any other relevant product as he deems necessary.

If the DG, after consulting the Licensee and such other persons as he may determine, is satisfied that either the manner in which the service has been provided by C&WG or any published price is in breach of the Regulation Law, Telecommunications Law or C&WG's Fixed Telecoms Licence, the DG may, by issuing a direction, require the Licensee to take such measures as the DG considers necessary to bring the provision of the service into conformity with the Laws and/or the requirements of the Licence.

/ENDS