



Office of Utility Regulation

## **Investigation into Dispute between C&W Guernsey and Wave Telecom**

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Findings in Dispute D01/06 and Direction to  
Cable & Wireless Guernsey Ltd

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**Office of Utility Regulation**

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## **1. Background**

On 2<sup>nd</sup> December 2005, Wave Telecom (“Wave”) submitted a request for Dispute Resolution to the Office of Utility Regulation (“OUR”) regarding what it viewed as Cable & Wireless Guernsey’s (“C&WG”) refusal to provide them with interconnection to a second, differently-sited Point of Presence (“PoP”) on Guernsey. Wave believes the second PoP to be an important enhancement to its network in Guernsey and that under the terms of C&WG’s licence it is obliged to provide the service.

Upon receipt of the dispute request, and on consideration of the issues, the OUR began a formal investigation of the complaint. In February 2006 the Director General (“DG”) issued both parties with his draft findings and decision and invited comments from both parties. Both parties responded to the invitation to comment and the DG has taken account of their comments in finalising his decision.

This report summarises the issues involved and the DG’s findings. The formal, more detailed decision which sets out in full the DG’s reasoning for his decision has been provided to both C&WG and Wave. The DG would like to thank both parties for their co-operation in this investigation.

## **2. Issues under Investigation**

Wave contacted C&WG in July 2005, informing them that they were considering a second PoP on C&WG’s network and requesting confirmation of the availability of a diverse interconnection to a second exchange, with automatic re-routing (“ARR”) and with the same lead times as in C&WG’s Reference Offer (“RO”).

There followed an exchange of correspondence, during which C&WG sought to establish from Wave where they wanted to site their second PoP. Having received this information from Wave, C&WG told them that they could not supply the product Wave had requested, arguing that such an interconnection would constitute a different product from the one currently provided for in the RO and that under the conditions of their licence they were under no obligation to provide it.

Wave, in its formal dispute request, complained that, in refusing the second interconnection, C&WG infringed three of its licence conditions: Condition 21; (Access to Facilities); Condition 25 (Interconnection); and Condition 32 (Fair Competition).

## **3. Responses to the Draft Decision**

In the Draft Decision, the DG found that C&WG had breached the terms of its fixed telecoms licence through its refusal to negotiate on the provision of the service sought

by Wave and set out his reasons for his position in that document. Both parties were invited to comment on the proposed findings.

In its response to the Draft Decision, while C&WG has stated that it is now prepared to enter into negotiations with Wave on its request, it continued to disagree with the DG's findings and interpretation of its licence obligations.

Wave Telecom agreed with the DG's findings.

## **4. Findings of the DG**

The DG's powers regarding the regulation of interconnection are laid out specifically in section 10 of the Telecoms (Bailiwick of Guernsey) Law 2001, which states that:

*(2) The Director General may direct that any licensee whom he determines has a dominant position in a relevant market shall comply, for such a period as may be specified by the Director General, with any one or more of the following requirements –*

*(d) the licensee shall provide interconnection or access at any technically feasible point in its telecommunications network.*

Since C&WG has been found dominant in the wholesale fixed-line telecommunications market and the retail fixed line telecommunications market (Document OUR 05/19), the DG has the power to direct C&WG to offer interconnection services, should he see fit to do so. The following sets out the DG's formal determination with respect to the complaints Wave has made regarding what it believes are C&WG's breaches of its licence conditions.

### **4.1 Condition 21 of C&WG's Licence**

The DG notes that Wave, prior to the issuing of the draft decision, withdrew its complaint under this licence condition and therefore he does not propose to comment further on this issue.

### **4.2 Condition 25 of C&WG's Licence**

The DG has not accepted the interpretation of Condition 25 of C&WG's licence which has been put forward by C&WG, which underpins its refusal to negotiate with Wave. It believed that it is only required to provide interconnection at one location only. The DG does not agree that this is a reasonable interpretation and believes the licence condition and the RO has always provided for more than one interconnection point. Therefore, the DG finds that C&WG has breached Condition 25 of its fixed licence by refusing to negotiate on the provision of a further point of interconnection to Wave Telecom.

The DG however does acknowledge that since the publication of the draft decision, C&WG has offered to negotiate with Wave on this issue.

### **4.3 Condition 32 of C&WG's Licence**

The DG believes that the effect of C&WG's refusal to supply a second point of interconnection has been to prevent Wave from obtaining the reasonable level of resilience required by the company. The DG accepts that C&WG's refusal to negotiate the provision of the service requested by Wave was based on what they regarded as a reasonable interpretation of their licence conditions. However, he believes this interpretation to be incorrect and that C&WG's action is likely to have the *effect* of preventing, restricting or distorting competition by placing Wave in a position where it does not have the network resilience offered by C&WG or the opportunity to enhance its network resilience.

Therefore, the DG finds that C&WG has breached Condition 32 of its licence.

The DG however believes it is less clear that C&WG refused Wave a second PoP with the *object* of preventing, restricting or distorting competition.

## **5. The DG's Direction**

Having taken into account the comments from the parties involved in this dispute, the DG is making the following Direction.

The Director General directs Cable & Wireless Guernsey Limited, in accordance with Section 27 of the Telecommunications Law to comply with Condition 25 and 32 of its Fixed Telecommunications Licence, and specifically to:

- a) enter into negotiations with Wave Telecom on its request for a further CSI link with a view to providing it with interconnection at any technically feasible point on the C&WG network. For the avoidance of doubt, this can be more than one location; and
- b) follow the provisions in the existing C&WG Reference Offer relating to the provision of interconnection.

Further Cable & Wireless Guernsey Limited is directed, under Section 10(2) of the Telecommunications Law to comply with section 10(2)(d) of that Law and provide interconnection or access at any technically feasible point in its telecommunications network. For the avoidance of doubt, this means one or more technically feasible points.

This Direction shall come into immediate effect.

## 6. Conclusions and Next Steps

The DG has conveyed to both parties a more detailed decision on this dispute and now expects both operators to engage in constructive negotiations on the matters that are the subject of this dispute.

However this dispute has highlighted that there appears to be an underlying breakdown in communications between the telecommunications operators which has given rise to this dispute. There appears to have been a lack of real effort made to advance the issue at the heart of this dispute and the DG believes that common sense appears not to have been brought to bear on this dispute at any time.

The DG would highlight his concern about the impact of C&WG's approach to dealing with other licensed operators regarding the roll-out of competition in the telecoms market. He draws attention to the fact that the OUR is currently dealing with a number of disputes between C&WG and OLOs and is aware from discussions that a number of other issues may also result in formal disputes being lodged. These are on matters that have a potential impact on the ability of these other operators to compete effectively in the market.

C&WG, as an international telecoms company, should be aware of the level of service that is reasonably expected of a company of its standing. Therefore it is most disappointing that its approach to negotiations with Wave on this occasion has been less than ideal and more worryingly, that the absence of good communications with its wholesale customers appears to be a common feature in a number of disputes. The DG expects all parties to take immediate steps to improve the communications between them on matters relating to the development of their networks.

While the DG recognises that with the best will in the world disputes can and do occur, an unnecessarily high level of disputes reflects badly on the entire industry. C&WG has an obligation to treat OLOs in the same manner as it treats its own retail arm and the DG expects that immediate steps will be taken to ensure that a more customer-orientated focus is given to the wholesale side of its operations. OLOs equally have an obligation to engage constructively with C&WG and ensure that communications with C&WG are made in a manner that is designed to resolve matters.

**ENDS**