

Mr J Curran  
Office of Utility Regulation  
Suites B1 & B2  
Hirzel Court  
St Peter Port  
Guernsey  
GY1 2NH

11 September 2007

Dear John

**Formal dispute between Wave Telecom and Cable and Wireless Guernsey  
– Refusal to develop infrastructure at Les Caches**

C&W Guernsey is extremely disappointed by the conclusion reached by the DG as stated in OUR D07/12<sup>1</sup>. We refute categorically the finding that C&W Guernsey is in breach of Licence Condition 32.

Without prejudice to that, we understand that the OUR is concerned about any suggestion of anti competitive behaviour, as is C&W Guernsey. We are committed to ensure that as a business the best commercial practices are followed and implemented. As the OUR is aware the Company already has a process for ensuring that all staff are aware of our legal and regulatory obligations. Following the recent reorganisation it was already intended to repeat and re-emphasise this training. In light of the concerns expressed by the OUR in its draft findings we will start that new process immediately.

We would ask the OUR to consider becoming a part of that process to give guidance about its interpretation and considerations and how they impact on a commercial business.

We are also extremely disappointed that Wave Telecom have chosen to involve the OUR in this matter which we consider to have been a normal commercial issue. In considering such matters we would urge the OUR to take a wider view than merely considering the single specific issue and also taking into account the wider pan island position, which approach is that pursued by the OUR themselves on other issues upon which they have consulted.

It is an inescapable fact that there are legal, regulatory and commercial relationships between Cable and Wireless and Jersey Telecom, the sole shareholder in Wave Telecom, at all levels over the islands of Guernsey and Jersey. Cable and Wireless believes that this presents an important challenge for us and for the regulatory authorities in both islands because, whilst the current legislative framework is on a single island basis, in fact a more proportionate, effective and useful regulatory response would consider the broader relationship between the two companies across both islands. The OUR has a clear interest in

---

<sup>1</sup> OUR D07/12 – Refusal to develop infrastructure at Les Caches – Dispute between Wave Telecom and Cable and Wireless Guernsey – Proposed Finding in Dispute – September 2007

both the market in Jersey and the investment and commitment in and to Guernsey and Jersey by Cable and Wireless and JT respectively because it has a direct impact on trade in Guernsey (the same of course is true in reverse for the JCRA). Hence, in a case like this, the OUR would be able to consider allegations of misconduct in Guernsey taking account of relevant and connected circumstances and behaviours in Jersey.

As we stated in our response to the original dispute<sup>2</sup>, there was insufficient capacity to provide a 45 Mbit circuit to the Les Caches site however we acknowledge that we did not also explain to Wave at that time that we were concerned that planning permission might not be granted for the technical park and hence that the investment could be wasted. We did not consider this to be necessary as planning applications are a matter of public record in Guernsey and Wave is as aware and knowledgeable of the approach of the Planning Department to such applications as C&W Guernsey, as indeed is the OUR.

In that response we went on to say *"We note that Wave states that any argument about requests being reasonably refused on the grounds of cost does not apply because '...Wave will be meeting the infrastructure development costs...'.* C&W Guernsey said then, and confirms that Wave did not expressly request that we provide them with a price for providing the entire infrastructure required to enable the installation of a high capacity circuit. The request received from Wave asks for nothing over and above a standard product. We have not received any communication that leads to a request for a quotation outside of the standard product. While we note that on page 13 of OUR D07/12 the DG chooses to take no view on the issues of risk to investment and who would bear the infrastructure cost to meet the request, in the view of C&W Guernsey this is a key point.

C&W Guernsey has a standard process for dealing with requests for circuits. Currently Wave have over 100 wholesale circuits and we receive around 5 enquiries a week regarding capacity for new circuits or upgrades of existing circuits. Under the wholesale service level agreement we respond to the wholesale customer with a ready for service date within 5 working days of receipt of the original enquiry. Most can be provisioned within the target times and have no network provisioning issues.

If an order cannot be fulfilled within the standard lead times an alternative ready for service date is provided. If there is no suitable network capacity to the site C&W Guernsey advises the wholesale customer that we cannot fulfil the order due to network capacity issues. We advise if the problem is lack of fibre and in these cases there is often more detailed discussion of the issues with the wholesale customer. On a number of occasions C&W Guernsey has been asked to provide costs for the work needed to provide the necessary infrastructure. In our experience Wave has sent an email specifically requesting we advise them of the additional cost. We believe this has happened on around 5 occasions, resulting in Wave requesting the work to be undertaken at its cost on only one occasion<sup>3</sup>. They did not make such a specific request in this matter.

Further, with reference to the statement on page 13 of OUR D07/12 as follows *'It would not appear plausible that C&W's wholesale business would engage in such a way with its own retail business if a similar request had been made...'* we are surprised that the OUR is considering publishing such a statement which is unsubstantiated and based on no evidence whatever.

---

<sup>2</sup> Letter from Jane Langlois to John Curran dated 18 July 2007

<sup>3</sup> The supply of a 2 Mbit circuit to a mast site in Sark

C&W Guernsey have received many hundreds of enquiries for service over the past 5 years and on occasion cannot fulfill the service enquiry completely or have engineering work to perform to complete fulfillment. Once an enquiry or request for service has been submitted by either a retail or wholesale customer, a number of actions are instigated to ensure the order can be fulfilled. One of these actions is to assess and report back on the availability of network plant and the limits at which a service will work satisfactorily. A number of examples of the scenarios we encounter are listed below:

- Line plant is not immediately available but can be provided within the timescales associated with the provision of a certain product. In this circumstance we will inform the customer that the order can be fulfilled.
- The required engineering work will take longer than the standard maximum number of days for provision of a certain product or service. In this circumstance we will communicate the revised ready for service date taking into account the engineering work.
- There is no network plant available at all in some locations and it is not economically viable to provide network suitable for the services in question in these areas. An example of this is the Pleinmont Mast site. On this site three applications for service have been made over the last 5 years for services of 2 megabit and above from Wave, The States of Guernsey and C&W Guernsey Mobile Engineering. The provision of fibre optic derived services required 1,700 metres of trenching through Pleinmont Road and 5,000 metres of fibre optic cable plus equipment costs. The total cost was approximately £220k with a timescale of 7 months to allow for resource and road closure allocation.

Other examples of C&Ws Guernsey not being able to provide service due to network constraints are:

A request by Cable & Wireless Guernsey Mobile Engineering for a 2 megabit service to the GSM site at Leree;

A request by Aurum Ltd for a 2 megabit service at Le Tracheries;

ITU Motor Tax for a 2 megabit service at Les Tracheries complex.

[It should be noted that copper delivery was not available at Les Tracheries complex due to line length issues. The customers were advised of this and chose alternative sites and services]

- A service order or enquiry is received for service and the network plant is not suitable for this type of service delivery at the location requested. The copper network is used to deliver the majority of service orders and has limitations in terms line length and attenuation as the bandwidth increases. A 2 megabit service delivered over copper has to be within 2.5km of the terminating exchange to function within manufacturers' specifications.

If a request for a 2 megabit service is beyond 2.5km but less than 3km we will liaise with the customer and perform line tests to ascertain the exact working limits of a service. Over the last month we have performed just this for Itex at La Moye Chapel. We consulted the customer after carrying out our own assessment and as a result line tests were carried out to the premises where service was requested. After testing for a suitable period

of time the results were negative and other products and services that will run over the distance have since been offered.

Specifically regarding Licence Condition 32, we note that '*...the Licensee shall (a) not engage in any practice or enter 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...*'.

C&W Guernsey has not breached any part of this Condition. We note that there is no suggestion in the draft finding that there is any arrangement entered into by C&W Guernsey. In relation to the alleged practice, this is neither accepted nor correct.

To state the fact that line plant was not available is not a breach as it does not in itself have *the object or the likely effect of preventing, restricting or distorting competition*. Any OLO that had made a similar request for high capacity circuits to Les Caches would have been given the same response. If an enquiry had been made by the C&W Guernsey retail arm a similar action would have been taken i.e. C&W Guernsey would have waited for the confirmation that planning permission had been granted to the technology park before investing in infrastructure.

In respect of other specific applications for Les Caches, we did wait until Airtel had Environmental and evidence of a building lease agreement before we proceeded with the Interconnect infrastructure planning. We first had visibility of the lease to Airtel of the Les Caches site on the 20/06/07 and landlords wayleave for the installation of C&W line plant.

Newtel asked about the product on 20th of June without telling us the addresses and then on 26th of June formally requested the service with address),

C&W Guernsey has not gained a competitive advantage from this action. Rather it has lost the potential sale of a high capacity circuit and missed out on the alleged opportunity to benefit from an OLO paying for the installation of infrastructure.

C&W Guernsey appreciates that the OUR regards any breach of Licence Condition 32 as of great concern. C&W Guernsey regards any allegation that there may have been any such breach with equal concern.

We trust that the OUR will reconsider its proposed finding in the light of the further case made by C&W Guernsey above.

Kind regards

PETER STAHELIN Director of Legal & Regulatory Affairs