



CABLE & WIRELESS

REVIEW OF C&W GUERNSEY'S WHOLESALE BUSINESS

16th May 2008



Response of Cable and Wireless Guernsey Limited

1. Introduction

Cable and Wireless Guernsey Limited (C&WG) welcomes the opportunity to respond to the Office of Utility Regulation's (OUR's) consultation document (the "Consultation") regarding the review of C&WG's Wholesale Business carried out by Regulaid BV (the "Review").

In this document we respond to the recommendations proposed in the Review in section 3, including where appropriate any other comments we have on observations made in the Review of direct relevance to those recommendations. In Appendix 1 we respond to the questions and proposals in the Consultation. It should however be noted that this document does not set out any response in order of importance or significance. Failure by C&WG to address any aspect of the submissions should not be construed as acceptance or agreement with that submission.

C&WG is grateful for the opportunity this Review brings to consider the wholesale market in Guernsey including the contractual and commercial framework.

Whilst there are some of the recommendations or suggestions that we are unable to agree or support, for reasons set out below, we do agree to and propose resolutions to many of them. We wish to be able to work with the OUR and the wholesale market in a constructive and participatory way. To enable that to happen we look forward to being able to discuss our various proposals with the OUR in order to agree upon a proportionate and effective solution to any issues and concerns, recognising where appropriate resource and other constraints and restrictions.

It is important that this is a co-operative and positive approach to ensure any historic problems and issues, however and by whoever caused, do not re-occur.

2. General

To set this response and the further process in context it is important that the OUR and other parties take account of the following general considerations:

- Section 4 of the Review referred to issues raised by the OLOs. It is important to note that the findings in the significant majority of those issues were either that there was no issue or in some cases whilst C&WG were correct, in Regulaid's opinion changes would be beneficial;
- On a number of occasions the Review refers to there being a "legalistic" rather than a "commercial" culture and yet a large number of its recommendations are in respect of proposed changes or modification of contracts and other legal arrangements. There appears to be at the very least potential for contradiction and ambiguity in these two stances;
- As the Review does note at section 3.2 and on other occasions, any change in relationship and behaviour is not simply a responsibility of C&WG. The OLOs have a great part to play in enabling a good and commercial relationship to develop through regular dialogue on a commercial, rather than antagonistic and confrontational basis, seeking to resolve issues directly rather than through or in reliance on the OUR and (commercial confidentiality accepted) being clear and unambiguous in their requirements and calls upon C&WG. The

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Review does recognise the constraints and limits of resource (whether physical or human) and it is crucial that the OLOs also accept and recognise this and behave accordingly;

- In connection with this the Review refers to what is described as the “Jersey Factor”. It is important that all involved in this consultation recognise that as stated in the Review *“it will require considerable effort from **all** involved”*. We regret to note that in the initial publicity and commentary on the Consultation and the Review this matter was presented as an issue solely relating to C&WG. As understood and accepted by Regulaid, that is not correct and should neither be repeated nor allowed to persist;
- It should also be noted that the Review states *“the two islands are independent jurisdictions and it is not a practical proposal to link the two regulatory regimes”*. This does not take account of the current and very real linking of the two regimes in the implementation of a pan-island solution for Mobile Number Portability (“MNP”) that was, proposed, initiated and promoted by the OUR, and its counterpart the JCRA. That is and has from the very start been welcomed by C&WG as a mechanism to provide for a simultaneous implementation of a tool to benefit the customer and promote competition. It is over simplistic to seek to ignore the close (indeed umbilical) relationships between the two islands and the operators on both islands and the impact and effect one has on the other. Whilst recognising and acknowledging that there are two sets of laws and two regulators, it is important that there is no sense of “cherry-picking” certain issues to consider on a pan-island basis and resolutely rejecting others. The extent of legal, regulatory, commercial and physical (interconnection and network) relationships mean there must be an appropriate and proportionate recognition of the impact one has upon the other;
- It is stated in the introduction to the Consultation that *“the OUR has sought to identify whether there are systemic issues within C&WG’s wholesale business which need to be addressed.”* No issues have been identified as such in either the Review or the Consultation, and this is in line with the evidence and C&WG’s stance that it has not intentionally (or unintentionally) discriminated against wholesale customers;
- Whilst we respond in detail to the individual recommendations and questions below, certain background facts must be noted:
 - the Review comments adversely on the retail leased line SLA, however fails to note that the SLA resulted from an OUR consultation on which they reported in December 2002;
 - the wholesale leased line agreement was published in October 2002, hence it has been ‘out of step’ with retail ever since the retail SLA was introduced in the Terms & Conditions;
 - while the Industry Working Group that met in 2006 to review the wholesale leased line agreement did ask C&WG to consider shorter provisioning times (which C&WG said at the time would probably be possible in the future and which we consider in more detail below) it did not raise compensation for later delivery or fault clearance as an issue.

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It is crucial that all involved in this process recognise and accept that this is a consultation and that no decisions or determinations have nor should be made until responses have been received and those responses have been fully and objectively considered. It is also important as referred to above that it is recognised that the wholesale relationship in the Bailiwick of Guernsey is not solely the responsibility of C&WG and that all involved, including the OUR and OLOs, must be willing and committed to open and constructive dialogue and consideration.

3. C&WG Response to the Recommendations

01. C&WG should overhaul its processes for the ordering and delivery of leased lines as a matter of urgency so that:

- **OLOs are informed of the RFS date at the same time as the order acknowledgement; the targets should be for 100% of orders, with the exception of orders that require the installation of new fibre;**
- **all circuits of 2 Mb and under should be delivered in 10 business days with the exception of orders that require the installation of new fibre;**
- **circuits of over 2 Mb should be delivered in 15 business days, with the exception of orders that require the installation of new fibre.**

The first recommendation is mixing two different points:

- (i) OLOs are informed of the RFS at the time of the order acknowledgement; and
- (ii) The targets should be for 100% of orders where fibre exists i.e. orders that require new fibre to be installed are excluded.

One is related to what the OLO is advised and the other to the general targets and KPIs related to these targets.

- (i) With respect to point one, we understand that the recommendation here is to negate the issuing of the standard delivery SLA (20 days and 60 days), and provide a more calculated RFS at the start of the process. However, at the early stage of the provisioning process it is not always possible 100% of the time to advise anything other than the standard SLA delivery date, due to limitations caused mainly by the non-availability of access equipment/NTP/line plant, up to and within the end-customer site. Despite those limitations, it must be highlighted that our current process does allow for a reality check with regards to the RFS date and a significant number of orders will be given a calculated RFS taking into account the procurement of access equipment/NTP/line plant.

We have recently changed the manager with overall responsibility for the business order provisioning team. They shall therefore as a matter of course be evaluating the current ordering process. We feel that it would be a practical step forward to create an online form for the application for wholesale services. We are also proposing to ask if the wholesale customer would want earlier delivery, should it prove possible, as an option at the start of the application process in a mandatory field. This would remove the confusion as to whether a wholesale customer wants

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C&WG to either supply a specific service on the RFS date or that same service as soon as is possible.

- (ii) With respect to point (ii) it is important to explain fully the difference between the retail and wholesale target dates:

Table 1 - C&WG delivery targets (business days)

Type of line	Retail	Wholesale
Analogue leased lines	20	95% within 20
Digital 2 Mb and under	30	95% within 20
45 and 155 Mb	Project based	95% within 60
Ethernet	60	98% within 60

Source: Review of C&W Guernsey's Wholesale Business, Table 6.1 - Regulaid

Regulaid stated that – *“We note that the targets for retail and wholesale are different, with wholesale based on a percentage, and the delivery timescales for retail 2 Mb leased lines being greater than for wholesale leased lines.”*

Regulaid has assumed that the wholesale targets are worse than the retail ones. In fact that is not the case as for all of the targets the wholesale targets are better than the respective retail rates - with retail the target is a specified RFS date while with the wholesale service the target is to deliver it **within** the RFS date. It is recognised that delivering in advance will not be possible or probable in all cases and that is why there is a percentage target. Also with respect to the 2Mb and under wholesale leased lines not only is there a commitment to deliver within the target date but the wholesale target date is 10 days shorter than the retail target.

Hence C&WG proposes that wholesale delivery times should be amended by the addition of wording to clarify that 100% of circuits should be delivered on or before the target RFS date (where access equipment/NTP/line plant exists).

The second and third recommendations refer to target RFS dates as follows:

- all circuits of 2 Mb and under should be delivered in 10 business days with the exception of orders that require the installation of new fibre;
- circuits of over 2 Mb should be delivered in 15 business days, with the exception of orders that require the installation of new fibre.

It needs to be appreciated that it is not only the lack of existing fibre (or copper) as stated above that is a limiting factor on the provisioning time of sub and above 2 Mb services but the availability of access equipment/NTP/line plant, up to and within the end-customer site and at the C&WG exchange.

It should be noted that currently one of the reasons that C&WG is not able to agree to targets as low as 10 and 15 days for under and over 2Mb respectively is due to the nature of the network architecture. The ability to deliver quickly depends on the level of physical network infrastructure that is in place and what modifications are required to implement the leased line circuits. The nearer the active, managed network equipment gets to the end-customer then the less time that implementation would take, due to the ability to “soft-provision” services over existing infrastructure,

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rather than provide new build. Additionally, if there were fibres in a location where there are multiple businesses then the configuration becomes 'in building' and simply the equipment configuration. In Guernsey the amount of active equipment deployed in customer sites is limited. Thus implementations of leased lines are usually bespoke end-to-end installations, particularly for above 2Mb LAN services and lead times are likely to be typically longer than those operators with different network configurations. This situation will change and improve over time as network technologies evolve, and the level of managed, multi-service customer premises equipment increases.

In order to find a way forward on this issue and having looked at the historic data that we have on service delivery, **it is proposed that the SLA for 2 Mb and sub 2 Mb circuits be reduced to 15 days** subject to the availability of access equipment/NTP/line plant, up to and within the end-customer site and at the C&WG exchange. Likewise the SLA for **services above 2 Mb could be reduced to 45 days**. This is again subject to the availability of access equipment/NTP/line plant, up to and within the end-customer site and at the C&WG exchange.

C&WG further commits to review these targets when the service offering/network infrastructure is altered by advancement and evolution in network technologies and services.

It should also be noted that provisioning lead times of 15 working days for circuits of 2 Mb and below, and 45 days for circuits over 2 Mb are only achievable where the end customer is ready and the site prepared and where the OLO takes an active part in facilitating the provisioning process. The OLO is C&WG's wholesale customer and it is the OLO that is primarily responsible for liaising with the end customer and ensuring all preparatory work is complete – as is required under the Wholesale Leased Circuit Services Agreement.

In all cases, except where otherwise requested, we aim to provide services as soon as possible.

In summary, C&WG agrees with the general principle of what is recommended but provides counter proposals to some specific points. It must be recognized that lack of network infrastructure, not just fibre, is likely to result in provisioning times outside of the target, especially as provision might be dependant on third parties.

02. C&WG should offer an expedite service to the OLOs and its own retail customers at a cost based charge.

In their report Regulaid based their recommendation on an expedited process on three main points as follows:

(i) An operator criticised the timescales for the delivery of leased lines with speeds above 2 Mb as being too long.

In its analysis Regulaid found that: *"As the graph shows, about half of C&WG's retail leased lines are installed within ten days of the order being received, whereas about half of the wholesale leased lines are installed later (11 to 20 days)."*

It went on to state that: *"Regulaid view: We discussed our analysis (as shown in sections 6.2 and 6.3) with C&WG, and they stated that in May 2007 one of the OLOs*

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had asked them not to provide circuits in advance of the ready for service date (which is usually the target date in Table 6.1), unless by prior arrangement. As a result C&WG delivered wholesale circuits close or on the target date, and this explains why wholesale circuits are delivered later than retail circuits. It mentioned that it would be willing to review this policy. The analysis above demonstrates that C&WG can provide a faster delivery service if required.

We asked the OLO to confirm this position, and they stated that this was not a correct interpretation of the request. They wished to ensure that they were aware of the date that the circuit would be installed in order to overcome the problems experienced when they were not being informed when a circuit was handed over."

C&WG stands firmly by its position as stated and confirms that C&WG's provisioning engineering team has been installing the circuits as instructed by the relevant OLO (as per the email provided to Regulaid as evidence) on the ready for service date and not in advance, unless by prior notice on a per service basis. It is therefore no surprise that the graphs show the results that they do. However, we are disturbed to hear that the OLO denied that this was what they requested and all that they required was advance notice of delivery. If this was merely a breakdown in communication, then this could have been resolved had the issue been raised with C&WG by the OLO. However, if our understanding is not correct and they would prefer circuits to be delivered in advance if this becomes possible and notice is given then this can be addressed. If this change in process is adopted, together with the agreement to provide an early target installation date as proposed in response to Recommendation 1, then this would eliminate the need for a mandated expedited service.

In order to provide these high capacity leased lines, it may be necessary to install new fibre routes. In many cases a road closure will be required, and it takes time for permission for road closures to be granted. In most cases new equipment has to be ordered and purchased to meet high capacity orders. So in the cases of high capacity leased line orders if an expedited service existed it still may not be possible to expedite such an order. In our experience this is rarely an issue because high capacity circuits are usually ordered well in advance of the required RFS date.

(ii) C&WG should offer an expedite service to the OLOs and its own retail customers at a cost based charge. Rationale: there is a market demand for such a service (see section 4.3.2).

These statements appear to be contradictory especially in the context of other comments from the OLOs. The recommendation is that this should be a "cost based charge" and in the next it refers to there being a "market demand". Regulaid also quotes the customers stating that "Our discussions with customers suggested that there are occasional times when a fast track service will be very valuable to them." and "An operator proposed that C&WG should provide a service whereby the delivery of leased lines could be speeded up significantly when a customer needed it. It would be prepared to pay a premium for such a service."

Based on the above comments we do not believe that an expedited service (if offered) should be a "cost based service". Rather, it should be an optional product that, if offered, should be based on a market based rate that acknowledges the "value" and recognises that an expedited service would require additional resources

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and hence incur costs and also potentially mean C&WG has to de-prioritise other work with a potential revenue loss.

C&WG no longer charges an installation charge for most of its leased line portfolio. Thus many customers might be willing to pay for an expedite service at a market based rate. So if such a service is introduced then it should be at market-based rates and parameters must be set such that it would not default to a normal expectation.

In summary, a cost based expedited service would undermine the "expedited" service itself and potentially result in such a service becoming standard and thus overall increase the OLOs' and C&W's retail unit costs. If offered it should be provided as a value added service, and in such a way that it would not become the de-facto delivery.

That being said, C&WG is strongly of the view that an expedited service is not necessary. In response to Recommendation 1 we have stated we will give OLOs the option when they place an order to indicate that the circuit should be delivered ahead of the RFS if that proves possible. Also in response to Recommendation 1 C&WG has proposed reduced target provisioning times of 15 days and 45 days for 2 Mb and >2 Mb circuits respectively. We cannot see how an expedited service could be distinguished from the early delivery of a circuit when circumstances allow.

We already work closely with OLOs to prioritise their more urgent circuit requests and will continue to do so.

(iii) During the benchmarking exercise we found one example (Belgacom) where the NRA has required the introduction of a fast track provisioning service as a result of its market analysis process.

Of all of the companies that Regulaid benchmarked only Belgacom is required to provide a fast track service. None of the other companies offered an expedited service, so such a service is far from a standard offer. In fact even Belgacom does not currently offer such a service. The possibility was requested as part of the market analysis consultation, which resulted in a determination by the Belgium NRA in January 2008 that such a service should be introduced. Belgacom responded that it was too simplistic to expect such an offer as part of that consultation and time was needed to allow investigations into the details of such an offer. As a result, they were given three months to present a proposal to the OLOs as part of their bilateral meetings with Belgacom and were informed that the regulator would only get involved if the parties fail to come to an agreement. So, as of today, none of the operators benchmarked is currently offering an expedited provisioning service.

Whilst in principle the theory of an expedited service sounds reasonable care needs to be taken that the introduction of such a service delivers on the objectives of its reasons for implementation and does not undermine the incentives to strive for better delivery of the standard product offering. Furthermore, if introduced C&WG believes that the introduction of an expedited service at cost may not result in the benefits that Regulaid are seeking to gain from its introduction and would not respect the "value" of such a proposition. The introduction of such a product would require a very strict set of procedures to ensure that it is a non-standard "expedite". Failure to do so could increase costs and could result in an enforced restriction on standard delivery times so that the value and benefit of the "expedite" is gained, thus

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potentially resulting in a disincentive to strive for shorter delivery times for standard circuits.

In the light of our response to the other Recommendations in the Consultation we do not agree that it is appropriate to introduce an expedited service option, as justified above.

03. C&WG should publish KPIs on its public website as follows:

- actual time taken to give OLO a ready for service date (as measured as the period between order reception and confirmation of ready for service date) as a quarterly average as against target;
- actual delivery times as a quarterly average (as measured as the period between order reception and ready for service) against target for wholesale and retail customers,
- a graph showing the number of days taken to deliver for wholesale and retail customers;
- percentage of wholesale and retail orders that are delivered after the target; these figures should be shown separately for 2 Mb and under leased lines, for leased lines above 2 Mb, and for bitstream orders (and any other major wholesale products introduced by C&WG);
- the data should distinguish between orders that require the construction of new routes and the other orders;
- any orders which are only administrative or billing changes should be excluded.

The publication of wholesale information is not standard practice (as is proven with the benchmark sample undertaken by Regulaid). It is not appropriate or relevant to retail customers and thus if provided should only be provided to OLOs and the OUR. OLOs should be required to sign a formal and binding agreement to ensure they do not misuse this information in any way.

Table 2 - Regular liaison with OLOs

Operator	Regular meetings held with OLOs?	KPIs sent regularly to OLOs?	Are KPIs published?
C&WG	On request	On request	No
Faroese Telecom	Yes	No	No
eircom	Yes	Yes	Yes
Jersey Telecom	On request	Yes	No
KPN	Yes	N/A	No

Source: Review of C&W Guernsey's Wholesale Business, Table 7.17 - Regulaid

It should be noted that contrary to the table above, Jersey Telecom does not send KPIs regularly to OLOs. Jersey Telecom does send a regular report, a copy of which is provided in confidential Appendix 4. The report shows the provisioning time for individual circuits and fault clearance times but it does not show ANY comparative statistics.

C&WG is happy to provide KPIs to the OUR and the OLOs on a regular basis, however we are concerned about the resource implications as it will require considerable

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manual input. In addition it will not be sufficient to just provide the bare statistics. It will also be necessary for C&WG to provide a commentary, otherwise OLOs and the OUR might misinterpret the statistics and graphs. We comment on the specific Regulaid recommendations below:

Regulaid recommendation - *actual time taken to give OLO a ready for service date (as measured as the period between order reception and confirmation of ready for service date) as a quarterly average as against target;*

C&WG response - We could produce this type of statistic but at this time can only see it as being accomplished via a manual and time consuming process. This would impact on the workload of the provisioning team, potentially leading to issues with order delivery.

Regulaid recommendation - *actual delivery times as a quarterly average (as measured as the period between order reception and ready for service) against target for wholesale and retail customers;*

C&WG response - This is achievable with our current order system. The main issue would relate to how to handle exception reporting. We agree that administrative and billing changes should be excluded, but this would require manual intervention.

Regulaid recommendation - *a graph showing the number of days taken to deliver for wholesale and retail customers;*

C&WG response - This can be done.

Regulaid recommendation - *percentage of wholesale and retail orders that are delivered after the target; these figures should be shown separately for 2 Mb and under leased lines, for leased lines above 2 Mb, and for bitstream orders (and any other major wholesale products introduced by C&WG);*

C&WG response - This is achievable but would need to be created and validated. The exception reporting needed in order to achieve this would require a manual process.

Regulaid recommendation - *the data should distinguish between orders that require the construction of new routes and the other orders;*

C&WG response - This requires a manual process of data collection and processing and can only impact on the workload of the provisioning team leading to issues with order delivery.

Regulaid recommendation - *any orders which are only administrative or billing changes should be excluded.*

C&WG response - This is achievable with manual intervention.

C&WG is, therefore, in partial agreement with this Recommendation. That is we agree to producing KPIs and providing them to the OUR and OLOs, but not to publishing them.

04. OUR should require C&WG's auditor to certify annually that the information in the published KPIs is correct.

Based on the benchmark exercise undertaken by Regulaid there is no evidence any of the operators have had published KPIs audited. Only one, eircom, published KPIs while two out of the other four do not send KPIs regularly to the OLOs. Furthermore, Regulaid correctly pointed out that C&WG has commitments in its wholesale

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contracts to hold regular meetings and to provide its OLOs with performance data, although this currently only happens on request. It is C&WG's view that the publication of audited wholesale information is not standard practice (as proven with the limited benchmark sample undertaken by Regulaid) and the significant incremental cost required to have any KPIs audited would not add any value to the quality of the data published or submitted to the OUR. If it is perceived that any of the data provided is not accurate the OUR has the power to review the underlying source data and records to validate the data independently under Licence Condition 4.3.

Hence, C&WG does not agree with this recommendation.

05. For each day beyond the target date for delivery or fault repairs for leased lines, bitstream service, or any other wholesale service, C&WG should pay twice the daily recurring fee to the OLO.

It seems highly inappropriate that twice the daily recurring fee should be paid, as if the service is 20 business days late then the penalty paid by C&WG would be 189% of the monthly rental fee. None of the other operators in the benchmarking exercise show a penalty greater than 100% so it is a concern that Regulaid considers that C&WG should be penalised by considerably more. Unless Regulaid is suggesting that it has an issue with penalties paid by the majority of the operators it chose for its benchmarking study we see no reason why C&WG should not provide the same penalties (to both our wholesale and retail customers), i.e.:

Table 3 – Proposed Compensation for Late Delivery

Delay after service delivery date	% of monthly rental fee
1 – 5 business days	25
6 - 10 business days	50
More than 10 business days	100

This is the penalty fee structure in place for our retail customers and we intend to pay the same penalties to our wholesale customers with effect from the date the amended wholesale agreements are published, which as we state elsewhere will be no later than one month after the OUR publishes its final findings, as we have recognised that 2% compensation is no longer suitable.

In summary, C&WG agrees that the current rate of compensation should be increased but puts a counter proposal as to what the rates should be.

06. C&WG should revise its wholesale and retail contracts so that the penalties paid to wholesale customers are greater than for retail customers.

C&WG believes that it should amend the penalty values paid to wholesale customers so that they fall in line with those paid to retail customers (as proposed above), however we do not consider that it is appropriate to pay wholesale customers more. The OUR should be incentivising C&WG's wholesale business to provide identical service levels to all of its customers. One of the recurring allegations in Regulaid's report is that of discriminatory treatment between C&WG's wholesale and retail

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customers. It would therefore appear at odds with their concerns if one set of customers received greater penalty payments than the other.

As with Recommendation 5, C&WG agrees that the current rate of compensation should be increased but it does not agree that the rates should be higher than those paid to retail customers, as is proposed in Recommendation 6.

07. C&WG should initiate the payment of penalties.

C&WG is aware of the recent Statement and Direction placed on BT by Ofcom, in relation to service level guarantees. In principle C&WG has few objections to the initiation of penalty payments, but is concerned about the management and system enhancements required to enable such a process. This would also need to allow for manual intervention, to ensure that no payment is made in scenarios where late delivery is requested (such as an OLO not being ready to provide its associated retail service) or where the end customer is not ready for service (e.g. in the provision of services to new build premises).

As discussed in response to Recommendation 19 below we currently have separate provisioning and billing platforms, so close integration of RFS data will need to be maintained (with a manual override provision, as above). Costs will be incurred in the set-up and ongoing management of this process and we believe that we should be allowed to recover efficient costs, in line with Ofcom's conclusions about BT's Openreach cost recovery arrangements (section 3.59)¹

C&WG agrees with Recommendation 7 subject to agreement in relation to recovery of costs.

08. OLOs must be able to replicate technically and commercially C&WG's retail offerings, including the "service wrap", from C&WG wholesale products or other services available to them. Hence C&WG must provide wholesale products required by OLOs to match its retail offerings, including the service wrap, unless the service is provided in a competitive market.

In responding to this point it is important to first define what we interpret as the recommendation. In order to do so it is important to understand the term "service wrap" in the context as expressed by Regulaid. Regulaid define "service wrap" as follows: *"Moreover, the **terms and conditions of the wholesale service** provided (the "service wrap") should be comparable to the retail service provided by C&WG."* This has been further clarified by Regulaid as all the aspects of the service included in the relevant wholesale agreement.

When read in the context of the overall comments from Regulaid the basis of the recommendation is that:

- the fundamental wholesale building blocks need to be able to be technically or commercially replicated by an OLO;
- the provision of such elements can be either from C&WG wholesale products or *"other services offered to them"* depending on whether the service is provided in a competitive market; thus

The recommendation is not stating that:

¹ www.ofcom.org.uk/consult/condocs/slg/statement/statement.pdf

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- C&WG should be required to offer all its retail products as a wholesale product; and more specifically that
- There is a requirement to wholesale retail products that are or have a “value added” component as part of the service offering or a service that is made up of fundamental underlying wholesale products, such as the transport layer.
- the terms and conditions of a retail service that includes value added items should be comparable to the terms and conditions of the underlying wholesale service

The rationale being that these value added components and additional service layers are the remit of the retail side of the respective organisations (including C&WG) to define and develop and it is at this retail service level where the operators should compete. So as long as the wholesale customers are all provided the same fundamental building blocks on a non-discriminatory basis then the respective retail organisations can compete on a level playing field with the end retail product.

This is further confirmed with Regulaid’s comments related to the provision of the retail DDOS service that C&WG offer: *“An operator believed that C&WG should provide DDOS (dedicated denial of service) protection as a wholesale service because it provides this to its retail customers. C&WG responded that as this was available as a commercial service from third party suppliers, and was not a service embedded in the network, it should not be required to supply this as a wholesale service”.*

Regulaid views: *“we accept the C&WG position. We cannot see that, based on the information provided by the operators, C&WG can add any value to a third party supplier, and so there would be little point in its supplying the service as a commercial proposition”.*

Thus it is clear from this that where an OLO can replicate a value added service either itself, or through provision from a third party, then there should be no mandate imposed on C&WG to offer it on a wholesale basis.

Additionally in reviewing the wholesale product range Regulaid specifically referred to the fact that *“the wholesale leased line market provides some of the **essential building blocks** for effective retail competition in telecommunications. Wholesale leased line products enable new entrants to **create their own transport network**, and to provide high speed retail services to business customers, **using the ubiquitous network** of the incumbent operator.”*

Thus Regulaid’s emphasis here is the provision of:

- essential building blocks;
- provision of the transport network components; and
- using the ubiquitous network of the incumbent operator

These fundamental concepts tie in with the principles as proposed by C&WG above, although C&WG would clarify that while it has a Bailiwick wide network that should not be taken to mean that there is end to end connectivity that could be supplied at any speed to any customer whatever the location, hence the network is not fully ‘ubiquitous’.

Thus for clarity and to remove any ambiguity as to what “service wrap” means C&WG propose that the recommendation should read as follows:

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"08.

- The provision of any wholesale product must include guaranteed provisioning times, fault clearance and availability.
- The C&WG wholesale products must be provided on a non-discriminatory basis to the OLOs as it would provide them to its own retail arm.
- C&W should be required to provide on a wholesale basis the essential building blocks and transport network components unless that element is available in a competitive market.
- To avoid the development of wholesale products that may not be required or used there needs to be a recognised current or forecasted future demand provided by the OLOs with the wholesale provider being entitled to recover the associated development costs through the wholesale charge.

In summary, C&WG agrees with the general principle of Recommendation 8 and suggests amended wording.

09. C&WG should revise its wholesale and retail contracts so that delivery timescales and other terms and conditions are comparable.

C&WG has commenced a thorough review of its wholesale and retail contracts, but the work cannot be completed until the outcome of this OUR review is known. It is anticipated that the revised wholesale contracts will be presented to the OUR within a month of the publication of the final OUR report. If changes are needed to the C&WG retail terms and conditions, these will be completed in the same time frame.

C&WG will take the opportunity of the review to ensure that under the terms of the wholesale agreement it has the right to charge OLOs for work which is undertaken by C&WG in good faith but which results in no order being placed. On several occasions recently an OLO has put considerable pressure on C&WG to develop a wholesale solution, which after the commitment of significant C&WG resource has then not been taken up by the OLO. It is hoped that more frequent meetings between the parties will enable the proper prioritisation of requirements, and hence allocation of resources, but C&WG must be able to charge for wasted use of those resources as and when it occurs.

C&WG agrees with this Recommendation.

10. C&WG should offer its wholesale and retail customers upgrading a leased line the option of paying a one off cost based fee or of a new minimum contract term, and the OLOs should give their retail customers the same choice.

Regulaid's recommendation is based on the following issue raised: *"An operator was concerned that when a customer wants to upgrade the speed of a leased line, C&WG restarts the contract, thus requiring a new minimum term of 12 months. It believed that no new minimum term should be imposed. C&WG pointed out that the same terms applied to retail customers as to wholesale customers."*

Regulaid view: *"We think that C&WG's position can be justified on cost grounds. However this does have the effect of locking the customer into the existing supplier (whether the OLO or C&WG), for an extended period of time, and this reduces the opportunities for competition overall. We therefore recommend that the customer*

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should have the choice of having a new minimum term, or of paying a one-off fee to recover the costs of the upgrade without a new minimum term (see section 8.4)."

The recommendation from Regulaid comes in three parts:

- (a) A recommendation to offer its wholesale & retail customers upgrading the option of paying a one off fee as an alternative to a minimum term;
- (b) The one-off fee should be a cost based fee
- (c) That the OLOs should give their retail customers the same choice.

C&WG's response will only respond to (a) and (b) as (c) relates to a recommendation directed at the OLOs, however, C&WG would expect the same principles to be applied to the OLOs by the OUR as the OUR would seek to apply to C&WG in respect of retail offerings.

C&WG does not believe that it should have to provide an option for an upgrade charge as a one off fee. Historically, leased line charges were made up of an installation charge and a monthly recurring charge. However, the customer preference was not to have a separate install charge, as this created a higher 'entry to service' cost. Therefore, that installation charge is now incorporated within the monthly recurring charges and 'spread over' the term of the agreement. To now offer a one-off charge either for installation or upgrades instead of spreading this fee over the monthly recurring charge would be a backward step.

If a contract was to be interrupted prior to the end of the term then C&WG would be entitled to recover within its pricing of such a one off fee: (a) the remainder of the term charges from the initial service taken; (b) installation charges from the original installation (if charged separately) (c) charges for the provision of the new service (if charged separately) and (d) the charges for the remainder of the term of the new service beyond the date of what would be the expiry of the original service. This when accumulated would, in C&WG's view, not be a feasible product and if we were mandated to provide this it would not be a competitive proposition, especially if the OLOs are not mandated to provide the same to their customers.

Furthermore, having an upgrade fee assumes that the initial price recovers the common costs of the service and that when a customer upgrades the only related costs are for the differential between the existing service and the new service. In order to implement such a pricing structure it would require a more complex pricing methodology with two different pricing tables, one for a customer purchasing as a new service and a different table for upgrading to a different product speed. This is not a standard approach and would be very confusing for customers. The standard approach is for pricing to be provided discretely by speed and each speed is a new product and service. We do not believe that it is too onerous for a minimum of one year term to apply when a customer takes out a contract for a new product and it is a standard approach for leased line services and almost all other telecommunication services in the Bailiwick.

Even if such a product was offered C&WG believes that if a one-off upgrade charge was provided (which we do not believe it should be) it should not be a cost based fee. The charges for off-island leased lines are currently on the basis of retail minus 15% and not cost based. Wholesale on-island leased lines are currently regulated within the price control regime and for the period of that price control are regulated on a RPI minus RPI basis.

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Currently, for Ethernet products they are priced as a base bearer and then an "upgrade" price to move up to a different speed within that bearer (i.e. 10Mb bearer with 2Mb increments or 100Mb bearer with 10Mb increments). However, even this has caused confusion both externally and internally and C&WG is in the process of amending those products so that pricing will represent discrete speeds, in the same way as other leased line products and IP Feed services. Thus instead of a 10/2 price with N x 2Mb upgrades the pricing will represent discrete prices for the 2Mb, 4Mb, 6Mb, 8Mb and 10Mb speeds. If the OLO's concerns related to Ethernet upgrade charges then this will no longer be an issue as pricing will be not be a combination of a monthly recurring base speed charge plus a monthly recurring upgrade charge, but a single monthly recurring charge for the discrete product speeds.

Hence, C&WG does not agree with Recommendation 10.

11. The process for "major interest" price changes should be abolished, and all changes in the wholesale prices should follow the "minor interest" process, with the notice period extended to 30 calendar days.

C&WG is surprised that the matter of informing wholesale customers of price changes has been raised as an 'issue'. We have a very clear process, which as Regulaid acknowledges has been agreed with the OUR. Whenever there is a change to the price of a wholesale service C&WG sends an individual email to each wholesale customer informing them of the change at least 21 days before it comes into effect.

We are not aware of any instances where this has not happened since the process was introduced in July 2005. We request details of the allegations so we can assess whether they are valid or not.

The OUR is proposing that all wholesale services should be treated as being of minor interest, and we agree - in practice that is what happens now. All wholesale price changes – leased line, high speed Internet (broadband) and interconnection – are notified to the OLOs directly by email and published on our web site. The prices are not published in the Gazette Officielle.

The OUR is further proposing to take up the recommendation of Regulaid that the notice period should be extended to 30 days for wholesale services. Rather than extending the notification period for wholesale price changes C&WG recommends that the notice period for fixed network retail services should be shortened to 15 days for the following reasons:

- The current 21 day requirement causes confusion for retail customers, who expect the new price to be available quickly, if not immediately
- If there is sufficient gap between wholesale price publication and C&WG retail price publication the OLOs will have time to make their pricing decisions and implement them in advance of the C&WG retail prices coming into effect.

Whether the wholesale notice period was to be lengthened or the retail notice period to be shortened it would require an amendment to C&WG Fixed Licence Condition 31. Condition 31 requires C&WG to publish price changes for regulated services at least 21 days prior to their coming into effect.

It is relevant to mention here that in many cases the OLOs get a lot more than 21 days advance notice of changes to wholesale services. The current high speed

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Internet upgrade is a good example. C&WG first met with the ISPs in August 2007 to explain the upgrade that was to be launch by Christmas and to give the ISPs the opportunity to raise any problems. This discussion with the ISPs was held well ahead of any formal contact with the OUR on the plans. In addition the wholesale agreement was redrafted, including the full product range and prices, and sent to the ISPs for comment several weeks before the formal notification was sent to the OUR on 23 October 2007. At that time the roll-out of the upgrade, which was on an exchange by exchange basis had been anticipated to start on 7 December 2007. Hence it would be incorrect to assume that OLOs only hear about changes to wholesale services 21 days before they come into effect, as that is not what happens in practice in many cases.

C&WG agrees that OLOs should be notified of wholesale price changes earlier than C&WG notifies retail price changes, but proposes that the retail notice period should be shortened as opposed to the wholesale notice period lengthened.

12. OUR should ensure that there is an adequate profit margin available to OLOs for on-island leased lines, and:

- Wholesale leased lines should be available on two and three year contracts;
- A discount scheme should be available for two and three year wholesale contracts, although not necessarily at the same rate as the retail discounts in order to reflect the difference in retail and wholesale costs saved;
- OUR should apply a margin squeeze test to leased line prices, including term discounts, and ensure that an adequate profit margin is available.

Regulaid's rational and the OUR's assessment of Regulaid's analysis has suggested that *"C&WG's use of two and three year discounts for on- island 2Mb services do not leave OLOs sufficient profit margin."*

It is noted that Regulaid appear to have the incorrect values for 2 year and 3 year pricing used in their analysis. The actual two year and three year retail rates, as shown in Table 4 below, are lower than the values they have quoted in the Review. The analysis undertaken by Regulaid is replicated below using the correct figures.

Table 4 – 2 Mb Circuits

Product	Total Term Retail Price	Total Term Retail Price	Margin
2mb Service Same Exch Area (1 Yr)	£1,620	£1,288	20%
2mb Service Same Exch Area (2 Yr)	£3,078	£2,576	16%
2mb Service Same Exch Area (3 Yr)	£4,374	£3,864	12%
2mb Service Diff Exch Area (1 Yr)	£2,916	£2,318	21%
2mb Service Diff Exch Area (2 Yr)	£5,540	£4,636	16%
2mb Service Diff Exch Area (3 Yr)	£7,992	£6,954	13%

The OUR has stated that: *"The scope of services included in such an assessment is pertinent to such an analysis since the wider the scope of services included the more scope for other revenues and costs to be brought into the aggregate analysis. An assessment could, for example encompass the overall profitability of supplying on-*

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island leased line services generally. Alternatively, an assessment might confine itself to the supply of leased lines with the different terms, as done by Regulaid."

It is C&WG's view that the former overall profitability method is the more traditional approach throughout the telecommunications industry (for example in margin assessment of voice pricing time of day or peak versus off-peak is not assessed; but the overall margin of the price plan or package is) and it is this overall average that is used.

Furthermore, if the assessment was undertaken based on market segmentation it could vary from very broad to very granular:

- All leased line circuits;
- Separation of on-island and off-island circuits;
- Separation of individual product speeds within each segment;
- Separation of individual elements of each product speed (such as installation, monthly recurring charge, different term prices etc)

Up until 1 April 2008 within the assessment of compliance with the price control formulae there has been no separation of either the on-island leased lines or the off-island leased lines. The assessment has been based on the average margin across the product range. Thus we disagree with the methodology used by Regulaid i.e. undertaking the assessment at the level of separate term pricing for each speed.

Regulaid has stated: *"Our analysis showed that for the majority of products the margin between the retail and wholesale prices for one year was usually 36%, for two year 35% and for three years 33%. We believe that these differences give OLOs adequate margins for profits."*

Therefore, based on the fact that Regulaid only raised concerns with the on-island product 2Mb product (apart from the older Guernsey to UK product using the No. 7 cable which has been superseded by services over the Hugo cable) we provide an average margin assessment of that product speed. It should be noted that it is C&WG's view that the average margin should be assessed across the product range and not at a single speed and single term price.

Appendix 3 (only provided to the OUR due to commercially confidential volume information) shows that for the on-island 2 Mb/s leased line (same exchange) the weighted average margin is [X]. For the on-island 2 Mb/s leased line (different exchange) the weighted average margin is [X]. For both same exchange and different exchange the on-island 2 Mb/s leased line weighted average margin is [X].

Regulaid quotes the Frontier report in stating the following retail minus values:

Country	Retail minus discount
Cyprus	20%
Ireland	8%
Portugal	26%
Singapore	30%

Source: Frontier Economics. A review of wholesale leased line pricing in the Bailiwick of Guernsey. January 2007 Annex 1

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It goes on to state that *"With the exception of Ireland, the discounts used are over 20%, and this is in line with retail minus controls used by other countries in other services (for example, bitstream)."* However the Frontier report also included Slovenia, where the wholesale price is retail – 8.7%, so this statement is misleading.

As a follow on from the Frontier assessment the OUR put in place interim measures whereby the retail minus formula for on-island leased line circuits was set at Retail - 18% and as a result of the recent PCR determination the off-island was set at 15%. The straight average for both off-island and on-island being 16.2%. In addition C&WG voluntarily reduced the average price of wholesale leased lines by 30% with effect from 1 April 2007. As can be seen from confidential Appendix 3 the 2Mb/s on-island lease line margin is above 18% and very close to the 20% benchmark indicated by Regulaid. Therefore, based on this assessment alone we do not believe that there is a margin squeeze issue.

Furthermore, given that Regulaid identified that the majority of products *"give OLOs adequate margins for profits"* and *"for one year was usually 36%, for two year 35% and for three years 33%."* then on a weighted average margin across the product range the average margin will be even higher than that indicated just for the 2Mb speed above, which proves conclusively that there is not a margin squeeze issue.

It can be seen from the volume information in confidential Appendix 3 that the number of circuits that are on either a two or three year contract are very small. The OUR has requested this information to assess *"the object or effect on competition"* Thus even if assessed at the granular level (which C&WG does not believe is the appropriate level of assessment) the effect on competition is insignificant. Within the overall product profitability the relatively few circuits at this speed will have minimal impact on the OLOs' ability to compete.

Whether the OLOs would have the same cost savings may need to be considered. C&WG is not in a position to be able to assess what retail cost savings OLOs would be able to achieve as a result of a customer committing to a longer term as opposed to multiple customers generating the same revenue. However, the analysis does show that based on overall profitability and using the same underlying wholesale price irrespective of term the C&WG retail pricing is profitable and thus the OLO should be able to achieve at least the same profitability and potentially even more if they are entering the market with newer equipment and processes.

Furthermore, based on C&WG's latest regulatory accounts there is no room to offer any further reductions on wholesale on-island leased line prices as such a move would leave C&WG with an insufficient return on investment.

Additionally, OLOs do not need to match the structure of C&WG's retail pricing and could offer different term and/or volume discounts. As an example, it is understood that one of the OLOs is offering on-island leased line circuits at no charge as part of a bundle within their voice service packages.

Based on the above analysis the summary below indicates C&WG's response to the Regulaid recommendations:

Regulaid recommendation - *wholesale leased lines should be available on two and three year contracts;*

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C&WG response - We believe that C&WG should not be required to offer wholesale term discounts. Wholesale product pricing allows the OLO to decide its own profitable retail pricing proposition. Regulaid stated that for the majority of products that with 37% (1 year), 36% (2 yrs) and 35% (3 yr) margins these give "OLOs adequate margins for profits". We have shown above and in confidential Appendix 3 that the 2Mb product also provides an adequate average profit.

Regulaid recommendation - *a discount scheme should be available for two and three year wholesale contracts, although not necessarily at the same rate as the retail discounts in order to reflect the difference in retail and wholesale costs saved;*

C&WG response - As raised in response to the first recommendation a discount factor is already built into the wholesale pricing and this discount factor is sufficient to allow the OLO to match if not better the C&WG retail pricing proposition. Furthermore, as previously mentioned, based on C&WG's latest regulatory accounts there is no more room to offer any further discounts on the wholesale leased line prices.

Regulaid recommendation - *OUR should apply a margin squeeze test to leased line prices, including term discounts, and ensure that an adequate profit margin is available.*

C&WG response - Regulaid only identified the 2Mb on-island lease line prices as an issue of concern. C&WG has undertaken the recommended margin squeeze test and even at the individual on-island product level at the 2Mb speed the overall profitability was shown to be adequate. If the portfolio is taken as a whole, which is the most appropriate methodology, the margin is considerably higher. Therefore, at this stage it is C&WG's view that given this fact and also the relatively small number of circuits on retail term discounts, any further assessment or analysis would be disproportional to the impact or competitive effect and thus no further action should be required at this stage.

In summary C&WG does not agree with the first two elements of Recommendation 12 and has demonstrated that there is no margin squeeze.

13. C&WG and the OLOs should implement the commitment in the wholesale leased line agreement to meet every quarter, at least for the next 12 months.

C&WG agrees to this recommendation, but to ensure there is no ambiguity, will meet with the OLOs as individuals not a group. If we were to meet as a group it would stifle full and frank discussion on commercially confidential issues.

Should an OLO decline to attend a meeting we would require this response to be put in writing including an explanation as to why such a meeting should not take place.

Hence, C&WG agrees with Recommendation 13.

14. OUR should discuss with C&WG and the OLOs the value of an Industry Forum, and if the idea is supported, call the first meeting.

Regulaid's Recommendation 14 is for the OUR to consider the value of an industry forum to discuss 'technical developments and related matters' associated with C&WG's provision of wholesale services.

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Although C&WG is not opposed in principle to the idea of a self-regulatory industry forum being charged with the specification and implementation of obligatory wholesale products and services, it is too early to know whether such a forum is needed in, or even suitable for, Guernsey.

Regulaid has not proposed any draft terms of reference for the proposed committee, making it difficult to assess the value of the proposed forum. Instead, Regulaid points to the example of the Dutch Forum for Interconnection and Special Access (FIST). The FIST operates exclusively in Dutch, which makes it difficult to evaluate whether a forum with a similar purpose, terms of reference and working arrangements would be useful in Guernsey. However, C&WG understands that the FIST principally serves 'an information and coordinating function' and 'provides a framework, supervision and opportunity to debate' issues relating to 'interconnection and special access', which includes commercial aspects of new wholesale services (other than prices).² Its decisions are 'morally binding' on participants.³

The wholesale market in the Netherlands is of course much larger and much more complex than Guernsey's. For instance, in the Netherlands there are at least 12 operators offering a double-play package of fixed voice telephone and broadband, and a further seven offering a double-play package comprising television and broadband. There are also eight operators currently offering a triple-play bundle comprising television, broadband and fixed voice telephony, an option that has been taken up by over one million people. At the wholesale level, as at October 2007, there were 237,000 shared access lines and 336,000 fully unbundled lines. With such a large number of wholesale customers and such a sophisticated retail market, the Netherlands can easily justify maintaining a standing industry forum to deal with the multitude of wholesale services and products (including LLU) and the multitude of customers.⁴ (C&WG notes that there are 30 organisations represented at FIST meetings.⁵)

It is unlikely that the characteristics and size of the Guernsey market could justify a standing industry forum like the FIST. C&WG believes that the communication issues identified by Regulaid will be adequately addressed through the quarterly bilateral meetings that Regulaid has recommended that C&WG and the OLO recommence (under Recommendation 13). These quarterly meetings should be given a chance to work before further consideration is given to establishing another industry forum. The value of the proposed industry forum would thus be better assessed in twelve months time after a series of bilateral meetings have been completed and the need for any additional meetings can be properly evaluated.

During those 12 months, the NGN Industry Forum should be established and will be able to be used to trial the usefulness of the industry forum approach, perhaps providing a more relevant model of an industry forum than the FIST. C&WG suspects that an ad hoc issue-specific use of industry forum (such as the NGN Industry Forum) would be more appropriate to Guernsey than a standing committee,

² FIST's principles and procedures, available at http://www.stichting-fist.nl/media/fist_procedures_2003-11.pdf

³ www.stichting-fist.nl

⁴ European Commission, *13th Report on the Implementation of the Telecommunications Regulatory Package – 2007*, p.230–236

⁵ www.stichting-fist.nl

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particularly in an environment where the committee participants would be meeting bilaterally every quarter.

C&WG does not agree that an Industry Forum is appropriate for Guernsey.

15. OUR should not accept a complaint from C&WG or the OLOs about wholesale services unless the dispute process available to the operators has been exhausted or the issue has been discussed at the Industry Forum.

C&WG agrees with Recommendation 15 in that the OUR should not accept a complaint from C&WG or an OLO about wholesale services unless the disputes process has been followed. We are not aware of any instances where an aggrieved OLO has gone through the disputes process laid down in a wholesale agreement, let alone done so before approaching the OUR for intervention.

C&WG does not agree that an Industry Forum has a role to play in disputes as already explained in response to Recommendation 14, and further below in response to Recommendation 16.

C&WG agrees with Recommendation 15.

16. OUR should require C&WG to revise its dispute process.

C&WG has reviewed its disputes process, which is the same in the wholesale leased line and the wholesale broadband agreements. On the specific points raised by Regulaid:

- *there is no process set out if one party does not agree to the appointment of an expert* – The process has been amended to remove the opportunity for the parties not to agree.
- *There is no process set out if one party does not sign the expert's decision* – the process has been amended to make the finding of the expert final and binding in the absence of manifest error or fraud. It is unnecessary for the parties to sign the expert's report.

Regulaid has suggested that the proposed Industry Forum might play some part in the disputes process. C&WG disagrees with this suggestion as it is highly likely that the subject of the dispute will be commercially confidential – in that circumstance it would be entirely inappropriate for competitors in the industry to be involved in the dispute resolution process.

A copy of the amended dispute process is attached in Appendix 2. It will replace Clause 22 in the Wholesale Leased Circuit Services Agreement and Clause 23 in the Wholesale Agreement High Speed Internet.

Hence, C&WG agrees with Recommendation 16.

17. C&WG should create a position for wholesale sales and relationships that does not have any other responsibilities. This position should report to the Director of Customer Operations.

C&WG has created such a role and has been endeavouring to fill it within the constraints of the Guernsey Housing Laws, the efficiency and costs limitations

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imposed on it by the OUR in its price control, and the headcount and cost management requirements of its management and shareholders.

It is already noted in the Regulaid report that C&WG's headcount and staffing levels are considerably below those other operators used for benchmarking purposes.

Whilst that role will have responsibility for wholesale sales and relationships that will be across the full spectrum of the business of Cable and Wireless in the Channel Islands and the Isle of Man, which as the OUR is aware, is operated as one business unit where and as permitted under the respective licence conditions and obligations.

As is recognised in the Regulaid report there is a very small number of wholesale customers and wholesale revenues only account for approximately 3% of total C&WG income. Whilst it is hoped that if the OLOs adopt the more proactive communication and forecasting of their requirements as referred to elsewhere in this response, then those revenues would increase, there is neither the market nor the opportunity for a significant increase. Consequently it is neither appropriate nor economically feasible for such a role to be limited to Guernsey alone.

This role's responsibilities will not extend to engineering and provisioning which will continue to be dealt with by the existing teams. There will be considerable communication and interface between those responsibilities.

By recommending that the role should report to the Director of Customer Operations, Regulaid has failed to take into account the existing and substantial retail responsibilities of and reports to that director, including the Head of Retail Sales. In the current structure the role holder is responsible for the retail sales activity of the Guernsey, Jersey & Isle of Man stores and it would be inappropriate for the wholesale role to report to the same director.

Regulaid states that if this role were to report to the Director of Legal and Regulatory Affairs that would reinforce what it perceives to be a legalistic approach. We have already addressed above the contradictory nature of Regulaid's comments in this respect as against its various recommendations for amendments to and reliance upon the contractual relationships.

The relationship between the various parties is reliant upon attitude and behaviour rather than reporting lines. C&WG would suggest that Regulaid should look at the actual behaviour and approach of the benchmarking operators and their relevant staff it relies upon, rather than what it has been told or assumed in relation to other operators' structures, allocation of responsibilities and indeed behaviour.

This role will report to the Director of Legal and Regulatory Affairs to ensure its separation from the retail arm. If any competition or other issues arise at any time then they will be considered and dealt with appropriately.

In summary C&WG agrees that a wholesale position should be (indeed has been) created, but has put a counter proposal as to the reporting structure.

18. C&WG should change its arrangements for paying staff bonuses, so that staff responsible for wholesale sales and relationships are rewarded on wholesale, not retail performance, and so that staff provisioning and

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repairing network services are not encouraged to favour retail or wholesale customers.

C&WG does not agree that the current bonus structure encourages staff to provision retail orders ahead of wholesale orders. Staff bonuses accrue according to the company performance against a specified set of metrics that can be achieved equally through delivering both or either wholesale circuits or retail circuits with no distinction made between the two in relation to target achievement. Bonus payments are then uplifted according to individual performance against a set of personal objectives. These objectives reflect the nature of the job being done and consequently for an individual who is focused on wholesale orders they will be rewarded for achieving or exceeding performance in this area thereby encouraging them to ensure that performance is at or above the required level.

C&WG does not agree that its staff bonus scheme should be amended.

19. C&WG should take immediate steps to prevent its retail staff from having access to wholesale orders, and to ensure that wholesale orders cannot be easily distinguished from retail orders in its provisioning processes.

Our response is in two parts – first the issue of retail staff having access to wholesale orders, and second the distinction between retail and wholesale orders.

First, C&WG understands the OUR's concerns in relation to the accessibility of wholesale related information by its retail staff, but believes that in reality this has caused no misuse of information. We have a strict ethics policy in place that is stringently enforced. The limiting factor in removing the risk of misuse is the age of the provisioning system, which has been in service for over 18 years. It has been recognised that the system architecture cannot fully support the operational needs of a modern business. For this reason C&WG is replacing it with a new platform, with a ready for service date of 2009/10. Preparatory work is underway and it is considered that the ongoing activities could be jeopardised by the team carrying out on-going development work on the existing platform. However, in recognition of the level of importance placed on this matter by the OUR, we are already taking steps to:

- Audit the list of users of our current provisioning system and remove access for all staff who no longer have a legitimate requirement - this is an existing standard procedure
- CWG will undertake system configuration to enable the segregation of the Wholesale and Retail Sales teams, this work will be completed by the 31st May 2008. Members of the Retail Sales Work Group will only have access to works orders raised by members of the Retail Sales Work Group.
- Create separate accounts for local OLOs, so that the wholesale and retail services that C&WG provides them can be managed entirely separately i.e. separate 'Wholesale Accounts' and 'Retail Accounts', in co-operation with the OLOs
- CWG will undertake system configuration on the Billing System (CIS) to ensure that Wholesale Accounts are only viewable by wholesale staff when the required "flag" is set on both the wholesale customer and wholesale staff, this work will be completed by the 31st May 2008. Business sales staff will not be able to view the Wholesale Accounts.

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- Communicate and enforce the revised processes across all staff with access to the provisioning and/or billing system(s)

We have also scoped out the requirements to restrict access to wholesale customers' details within the replacement provisioning system and will implement these in the new system from the go-live date.

Second, the OUR seems to place equal weight on the use of different product codes in permitting wholesale and retail products to be differentiated. However, C&WG consider this to be a more minor point. The use of different product codes is a necessity of the system design, as it is this that controls the pricing of the service being ordered, which is clearly different in the case of wholesale. In any case, the requirement for C&WG to separate and report on the provision of retail and wholesale services would necessitate the provision of some flag or marker within an order to indicate that a service was provided on a wholesale basis.

It is important to highlight that wholesale and retail services are allocated with circuit titles of identical format and from a shared, sequential number range and it is this, rather than the product code, that is referred to by engineers during the provisioning and subsequent repair processes. (Unlike C&WG, it would appear that one of the benchmark companies, Jersey Telecom probably distinguishes between retail and wholesale circuits in that they allocate circuit titles starting 'WH' to wholesale circuits. This can be seen in confidential Appendix 4 where circuits such as WHKX/JJ5008 are listed).

Regulaid state (in section 5.3.1) that *"It was therefore difficult to distinguish between orders for wholesale and retail and wholesale staff, and that in practice, discrimination did not take place"*.

C&WG maintains its assertion that there is no discrimination between wholesale and retail circuits during the provisioning or repair processes, and that services are dealt with in a sequential fashion.

As indicated earlier, for future services, C&WG intends to develop wholesale services to comprise just the low-level service elements or building blocks that may be required by a retail service. Therefore in future, the provision of a retail service may require the processing of separate orders for the wholesale components required, plus a separate retail order for the overall service. Those wholesale components ordered by C&WG retail would therefore carry no distinction to those which may be ordered by an OLO, other than the name of the operator and would carry no reference to the overall retail service for which they are required.

In summary C&WG agrees to the general principles of Recommendation 19 and puts counter proposals as to how the objectives will be achieved.

20. C&WG should carry out regular compliance audits to ensure that its staff are not contravening its regulatory and contractual obligations, and are complying with its own policies and regulatory guidelines.

There are two very different issues covered by this one Recommendation:

- Regulatory obligations; and
- Contractual obligations.

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To deal with the question of contractual obligations first, this appears to be a replication of Recommendation 3 in respect of KPIs. We have responded to that Recommendation above and that response equally applies to the question of compliance with contractual obligations.

Those KPIs will also be reported to the C&WG Senior Management Team and any failure to meet targets or agreed delivery dates will be fully investigated.

So far as the statement that "*C&WG should carry out regular compliance audits to ensure that its staff are not contravening its regulatory obligations, and are complying with its own policies and regulatory guidelines*" Regulaid does not give any indication or suggestion as to how that could be achieved. Regulaid does confirm that C&WG follows best practice with its regulatory handbook and codes of practice (section 7.4.4).

The specific examples raised by Regulaid (delivery of leased lines, regular meetings, terms and conditions of contracts) are all responded to within this document against the individual recommendation.

As the OUR is aware, having been invited to participate, C&WG has recently held training courses for all members of staff and will train new members of staff in these matters. Every member of staff is required on joining the Company to sign a statement confirming they have read, understood and will conform to and continue to abide by the regulatory requirements of the Company.

C&WG will maintain regular training for all staff, whether new or on a refresher basis, on competition and regulatory matters and require all staff to confirm on an annual basis, as with data protection compliance, their acceptance to and compliance with the provisions of the regulatory handbook and codes of practice. We will continue to regularly review and update those publications as required.

We have also confirmed above that we have been seeking to fill a wholesale role of the type identified in the Review, with that role being part of the regulatory function and team in C&WG. One key responsibility of that role will be to monitor and check on the fulfillment of wholesale orders and therefore will be seeking to ensure compliance with regulatory and contractual obligations.

In summary C&WG agrees to the general principles of Recommendation 20 and outlines how the objectives will be achieved.

21. OUR should implement the recommendations drawing on a range of options, including exhortation, setting principles and processes, mandate revisions in standard wholesale offers and requesting changes in C&WG. The more radical option of seeking to require separation of network and wholesale activities in C&WG is also identified as an option should the above not be considered sufficiently robust options.

While this recommendation is for the OUR to consider, C&WG wishes to provide some comment.

It can be seen that we have responded in detail and with explanation and justification to all the recommendations, both when C&WG is fully or largely in agreement with the recommendation, as in the majority of cases, and when C&WG

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considers that the specific recommendation is either unnecessary (due to other recommendations or responses) or cannot be agreed.

In the light of our co-operation it is not appropriate or necessary for the OUR to direct C&WG to comply with those recommendations that are ultimately enforced, except perhaps those where C&WG has expressed a view that they are not appropriate.

C&WG is sure that certain respondents to this consultation will seek to persuade the OUR that there is a need for punitive action against C&WG under section 28 of the Telecommunications Act. We would remind the OUR that to do so there first needs to be a finding of breach of a section 27 Direction and that such has not occurred.

Even without the fact that such action is neither available nor allowed at this point, if the wish of the OUR and crucially the OLOs is for there to be a more commercial and beneficial relationship between all parties, then all parties should concentrate on working together in a proportionate and realistic manner. Disputes will arise, but all involved should work towards a resolution of those disputes, which allows the key requirement, to offer viable, effective and useable services to the customer in a competitive and level environment.

22. OUR should review the position at the end of 2009 through discussions with the OLOs and C&WG, and by an examination of the KPIs. If it judges that significant improvements have not taken place, it should start to implement option 5 (separation).

C&WG is very concerned that the OUR is recommended to *'start to implement'* some form of functional separation of C&WG in 2009/10 if, after further review, the OUR *'judges that significant improvements have not taken place'*. Whilst we are pleased to note that Regulaid *"do not think that C&WG should be required at this stage to separate its network and retail activities"*, we are surprised that Regulaid even considers this to be a valid or indeed appropriate option and that they would recommend that the OUR should do so without a detailed evaluation of the costs, benefits, suitability, or practicability of separation given the specific circumstances of the Guernsey market. How and by what objective measurement will it be determined whether *'significant improvements have not taken place'*?

Regulaid does not go into detail about the precise form of separation that it envisages other than to suggest that *"the model implemented by Faroese Telecom would be appropriate"*. Thus the Report is silent on such critical issues as how the OUR would (legally and administratively) implement such a policy and the criteria that should be used to demarcate C&WG's assets and activities (if replicability is to be the sole criterion, as Regulaid suggests was the case in Faroe Islands, who determines what is replicated and how do they do so?). Other regulators have tended to take upwards of a year to assess diligently whether some form of functional separation would be appropriate given the particulars of their market, and if so, what it might look like given the particulars of the company to be separated. As Regulaid notes, the Faroe Islands spent four years devising a model of separation that was considered appropriate to its specific circumstances.

In other jurisdictions, after undertaking such market-specific analysis, many regulators—including those in Spain, Germany and the Netherlands—concluded that

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any type of imposed separation is neither an appropriate nor practicable solution within their jurisdiction.

In its rationale for recommending that functional separation not be pursued at this stage, Regulaid explains that the other identified options "*are a proportionate response to the problems found in this report*", implying that functional separation is not a proportionate response. If separation is not a proportionate response today, C&WG fails to see how it could subsequently become proportionate simply because "*significant improvements have not taken place*". Proportionality is determined by the nature of the perceived problem and the conditions of the relevant market, not the level of progress or success achieved through the implementation of other options.

According to the European Regulators Group, '*in order to assess whether a remedy is proportionate and justified...[regulators] should balance the burden of the remedy imposed on the [operator] and other costs which the imposition of a remedy may entail against its prospective benefits*'.⁶ On this score, Regulaid significantly understates the 'disadvantages' of its separation proposal, mentioning only that separation '*would impose some costs on C&WG, and would take up senior management time and responses in order to design and implement the separation*'.

As has been noted by the French regulator, ARCEP:

'The implementation of functional separation entails costs which are well in excess of those involved, for instance, in the implementation of accounting separation. These costs relate to the reorganisation of the company, the duplication of technical staff and engineers and, in general, the splitting up of various activities which had presented a certain degree of synergy...it is therefore possible that functional separation will therefore result in increased network access costs for all operators across the board...and runs the risk that the incumbent will then make less effort with respect to the overall quality of the services provided [as Ofcom discovered with respect to Openreach]'.⁷

While C&WG notes that Regulaid's recommendation is that there be no further consideration of separation until after the next review at the end of 2009—and then only on the basis that '*significant improvement*' has not been achieved—C&WG considers it important that the OUR makes it clear now that it does not accept the second part of Regulaid's recommendation (i.e. that it '*start to implement*' the separation of C&WG...) and that it will not be pursuing the separation of C&WG.

⁶ European Regulators Group, Revised ERG Common Position on the approach to Appropriate remedies in the ECNS regulatory framework, ERG (06) 33, May 2006, p.56

⁷ ARCEP, La Lettre de l'Autorite, No 55 March/April 2007, p.4

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Appendix 1 – C&WG Response to Observations and Requests for Comment

The DG raises several general questions in section 5 of OUR 08/09 that are dealt with here.

1.1 Mandated wholesale products (section 5.1.3 of OUR 08/09)

The OUR made the following comments:

- C&WG have to-date adopted a criterion based on whether or not other operators can replicate the equivalent wholesale service element from other sources.
- It would appear that C&WG essentially takes a view that where elements can be obtained elsewhere by OLOs, these are not made available as part of its obligatory wholesale service.

The OUR has highlighted three potential concerns with this approach:

a. Level of Regulatory Intervention Required

“OLOs have to seek regulatory intervention to overrule C&WG’s view on the replicability of elements of its service. Given the incentives and scope for C&WG to come to a conclusion that favours its business interests, and the small scale of the OLO businesses in Guernsey, the resources needed to pursue regulatory intervention may dissuade challenges to C&WG in this area.”

The primary area of investigation that Regulaid highlighted within its investigation was the wholesale provision of leased lines. More specifically Regulaid stated:

“We were required by our terms of reference to review whether OLOs could replicate the leased line offerings made by C&WG to its retail customers from the wholesale leased line product range. C&WG assured us that all the leased lines available to retail customers were available to wholesale customers. We compared the two product ranges, and found this to be correct.”

Regulaid go on to confirm that for the provision of wholesale circuits the OLOs had no problem with this. Therefore it is unclear what *“resources needed to pursue regulatory intervention”* are required when there appears to be little if any complaints of this nature. Where there may have been issues perceived by the OLOs these were related to the value added services such as DDOS or services provided by third parties, in relation to which Regulaid has supported C&WG’s approach.

In addition to the provision of wholesale leased lines the C&WG wholesale portfolio includes wires only high speed Internet services (referred to as ‘bitstream’ by Regulaid) and interconnection services. Hence the list of wholesale services could not be clearer.

The OUR goes on to state that *“While OLOs have made representations to the OUR in previous cases, it is the case that under the current approach C&WG is effectively a gatekeeper, deciding what access its competitors will have to elements of a telecom service, and the onus is on OLOs to reverse that position.”*

It is incorrect to state that C&WG is effectively acting as the gatekeeper with respect to which wholesale products to offer. C&WG Licence Condition 26.2 states that it

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must offer to lease out circuits to OLOs on terms that are no less favourable than those on which it makes equivalent leased circuits available to its Associated Companies or its own business divisions – and that is exactly what C&WG does. Therefore, C&WG in its product decision process is applying this principle. In fact it would appear to be working on the whole very well since Regulaid investigated whether leased lines products are offered both on a wholesale and retail level and found that they were. Furthermore, there have been few if any concerns raised by OLOs on this issue. One issue that was raised was the delivery of an on-island 45Mb product, which in C&W's opinion had technical delivery constraints, which has now been resolved and it is offered as a product.

In section 3 C&WG proposes an amendment to the OUR recommendation which we believe should be sufficient to clearly identify what wholesale products are required to be delivered. Inevitably, there may be the occasional debate on this area and it is C&WG's view that these should be addressed on a case-by-case basis. C&WG believes that this is a practical and efficient approach and should not result in an undue burden being placed on C&WG to deliver unnecessary products or for the OUR to be inundated with a large volume of requests for intervention and a need to make determinations on frivolous requests.

b. OLO Planning Uncertainty

The OUR goes on to state: *"A further risk is the planning uncertainty created for OLOs given the lack of transparency, where C&WG will make judgments as to what services it is obliged to provide. The OUR is not aware that C&WG has publicized its approach in making decisions of this nature, and the lack of transparency is therefore a related concern."*

This concern is effectively implying that the underlying principle upon which C&WG decides what to wholesale is not known. C&WG finds it difficult to believe that this is an issue of lack of transparency from C&WG. However, given that the underlying principle has been spelt out clearly in OUR 08/09 and the Regulaid report any uncertainty can no longer exist. Thus from both a planning and business case perspective the OLOs should be able to make a reasonable assessment given the products that are currently on offer and the criteria mentioned. With further clarification of this as specified in the amended recommendation (see section 3) this should not be an issue.

The planning uncertainty also works both ways. It would also be unreasonable and a waste of C&WG's time and resources to mandate that C&WG should offer a wholesale product when there is no existing or forecasted demand for such a product.

The initial regulatory approach adopted by the OUR required C&WG to provide wholesale leased lines on a "Retail-Minus" basis, and that is still the case for off-island leased lines. Aside from the price differential, which was the primary objective of the OUR in order to introduce competition, the majority of leased-line services were provided essentially as a "White-Label" (resale) version of those used by C&WG's retail service, therefore offering no technical differentiation between operators. Based on the principle that it should be the underlying essential building block at the transport layer that should be provided on a wholesale basis as opposed to the end retail service itself then this should encourage a more facility based competitive environment, greater innovation on services offered and more service based competition at the retail level. Hopefully, with the clarification of this in line

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with the C&WG proposed revised wording (see our response to Recommendation 8) this will resolve any remaining ambiguity in the type of wholesale services that C&WG would be required to provide.

c. Transaction Costs

The OUR states the third risk as follows: *'A third risk, is that where OLOs are required to provide certain elements of a C&WG wholesale package needed to deliver a given service, they may be faced with transaction costs that are not an issue for C&WG's retail arm. While elements of a service may be available from sources other than C&WG's wholesale arm, acquiring these and where necessary, liaising with C&WG's wholesale arm to integrate the various elements into a coherent service, may involve transaction costs C&WG's retail arm does not have to bear.'*

C&WG believes that this is not a major consideration. In the supply of the wholesale service the OLOs and C&WG are offered the same service on a non-discriminatory basis. The wholesale costs provided to the OLOs are also applied to C&WG in its regulatory accounts. With respect to the additional elements required to provide the final retail service both the OLOs and C&WG have the option to provide themselves or source from third parties. In either case the transaction costs for acquisition or development should be comparable. As for the additional integration costs (if any) we do not believe that these would be of a significant enough impact to be a barrier to entry and not such that they would be large relative to other retail costs incurred by either OLOs or C&WG.

The OUR presented a number of alternative proposals for comment: *"1. One approach, is that C&WG is required to provide wholesale services which it provides to its own retail arm unless it can demonstrate to the OUR's satisfaction that in a given case, failure to do so does not give rise to the issues set out above. The onus would therefore be on C&WG and the default will be that all elements of any retail service are made available. This would essentially allow for the current approach by C&WG but set a specific hurdle for C&WG to pass in making decisions of this nature in future."*

C&WG's view is that this approach is completely impractical in the amount of time and resources required to implement this method both from a C&WG and equally an OUR perspective. C&WG offers a very large range of retail products at various different levels from transport layer services to various value added services either sourced externally, with additional functionality on equipment, or internally developed value added services. It would be practically impossible and would be resource intensive to follow such a process and therefore would require C&WG to continually put forward requests to the OUR that there is no requirement to wholesale a certain product. Additionally, C&WG internally is required to put forward business cases to authorise capital and operating expenditures for the development of all products including wholesale ones in order to establish that there is sufficient demand and revenues to result in a reasonable return on the investment. So both from a practical and commercial perspective it is not reasonable to expect C&WG to develop a wholesale version of all its service as a default position unless justified otherwise.

This approach would be significantly more resource intensive for the OUR as it would be required to respond to all such requests including any related to the numerous existing retail services. In the interests of consumers this process is also likely to

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suppress the pro-active development of new services and their introduction in a timely manner.

The second alternative approach stated by the OUR was: '2. An alternative approach, is one where non-discrimination by a dominant firm is considered a key priority where there are limits on the ability of OLOs to differentiate their services. OLOs are able to add further value and/or incur lower costs or profits than C&WG in providing certain components or layers of the overall package that make up the retail service. The extent to which competition through innovation or differentiation takes place depends on how far up the value chain OLOs have to rely on C&WG for service provision. If the market is at a stage where this involves a large proportion of the value chain, there are limits on the ability of an OLO to differentiate its services from those of C&WG. In this context, ensuring that entrants have access to key wholesale services and entry is not hindered by denial of key service elements, may require a strict non-discrimination obligation on the dominant operator to provide all elements of any retail service it provides. There are components or layers to those services which have been developed for existing services and on which the market currently relies. These may or may not be exclusively available from C&WG, but the obligation would cover all components or layers of a given service.'

C&WG does not agree that this is a reasonable approach. C&WG's view is that the approach to wholesale services should be based on a layered approach (as indicated in fig 1) but the mandate for the provision of wholesale services should be limited to the non-discriminatory provision of the essential building blocks such as the transport network components at the "Transport" layer and not all layers. From these fundamental building blocks the respective C&WG and OLO retail arms can innovate and compete at the retail level on the service offerings.

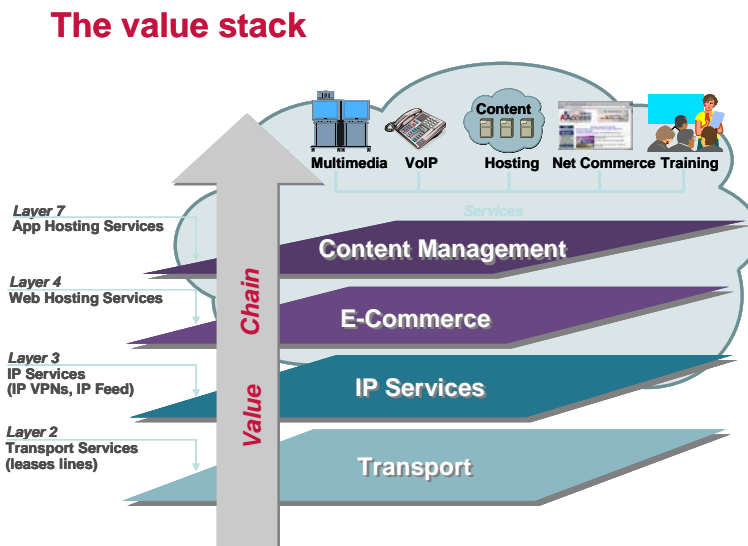


Fig 1: The Value stack

It is C&WG's view that this is a practical approach that:

- achieves the balance of allowing the OLOs to replicate C&WG products given the essential building blocks and complementing with its own value add or those purchased from other third parties;

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- encourages innovation and incentivises sustainable competition as operators would be encouraged to look at alternatives rather than solely relying on a reseller model which generally is recognised as only a short term regulatory objective;
- ensures that time and effort can be focused on the provision of the essential components for which there is a forecasted market demand; and
- represents a fairer balance between the needs of the OLOs and the fact that C&WG has a responsibility to its shareholders and is entitled to a reasonable return on its investments.

However, it will be seen below that C&WG prefers the third approach put forward by the OUR.

The OUR further states: *"Another approach, is one where the regulator places a higher priority on innovation, and less on non-discrimination, given the stage of market development. Where the scope for innovation is significant, stringent non-discriminatory obligations can remove incentives on entrants to innovate. These can also be detrimental to the dominant operator whose services are inevitably duplicated each time it innovates. As Regulaid notes in its report, there have been several problems over which wholesale products C&WG must provide as part of its wholesale service. Issues such as IP connectivity, DDOS protection and fault monitoring have all been raised."*

Of the approaches suggested by the OUR this is the preferred and proportionate approach and this offers the correct incentives in the market and it will be more beneficial to consumers as they will benefit from more innovative and alternative offers in the market and not just the availability of "resold" or "white-labeled" products which essentially focus on price alone.

With respect to the specific products highlighted C&WG agrees with Regulaid's view, as clearly stated in section 4.2 of the Review, that services such as DDOS, IP connectivity etc. should not be mandated to be sold at a wholesale level as OLOs can equally decide to provide these elements themselves or source from third parties and they are usually unregulated products.

To require wholesaling up the value chain beyond the essential service elements and transport layer would, as stated by the OUR, be a disincentive for C&WG to innovate since the OLO would be able to easily duplicate the service purely through resale. This leaves little room for innovation and differentiation in products, which ultimately would be detrimental to the end consumer who would otherwise benefit through competition at the retail level on the service offered from the fundamental wholesale service building blocks.

C&WG believes that the requirement to wholesale should continue to be limited to just the essential service elements and transport layer. This does not preclude the potential to offer any services or components higher in the value chain for resale as "white-label" services which may be offered by C&WG (or any other OLO), on a purely commercial basis, rather than as mandated wholesale offering. In making this comment we recognise that wholesale services in the future may look nothing like a retail product, but they would provide the fundamental transport element between a service provided and the end-customer. An OLO, or C&WG's retail arm would need to 'stitch together' one or more wholesale elements, together with value added elements to form a retail service. The value added elements would be

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available from the competitive market, so it would be purely a C&WG commercial decision as to whether it wanted to white-label such elements or the entire retail service on a commercial basis.

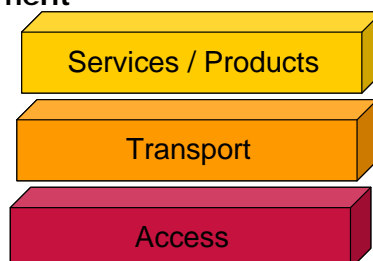
The OUR goes on to state: *"It could be argued that given the extent of competition, and the different network technologies used to provide different services, translation of the non-discriminatory principle into practice in these circumstances should be very specific to the components or layers required to make up the service. The scope for differences in view is therefore that much greater and when industry players take different views on replicability, the level of regulatory intervention needed is that much more specific. This implies a more ex-post approach to this issue. The fact that the OUR receives very few complaints in this area suggest the industry is largely able to resolve these differences. The OUR notes that even those concerns that have been considered by Regulaid have not in its view been compelling."*

We agree with the views expressed by the OUR that the industry has been *"largely able to resolve these differences"*. Taking this into account C&WG believes that the current approach in the whole is working well. The addition of the additional words suggested in section 3 should also clarify the situation with respect to non-essential or value added components and thus further reduce the number of non-compelling or frivolous complaints.

With respect to looking forward the OUR has made the following comments: *"Looking forward, a related consideration, is the need to take account of the implications of C&WG's plans to replace the existing network with a next generation network. There is an argument that where all services are potentially available through the same network technology, in future there may be less of a distinction between what are currently technologically different wholesale services. A bitstream product purchased at the wholesale level could, for example, support an ultra-high performance broadband service, or support a voice service. In an NGN environment there may therefore be greater regulatory tension than at present between allowing enough scope for innovation, while requiring C&WG to provide all the same wholesale services used by its retail arm in order to prevent entry barriers. This may be particularly true when retail services bear no unique relationship with the wholesale service needed to support it. The risks of an overly prescriptive approach to non-discrimination are therefore apparent in this context."*

C&WG agrees that the introduction of NGN could change the way services are delivered. However, fundamentally in its simplistic definition NGN is just the ability to deliver a number of different services over one transport layer as opposed to a separate network required to deliver each service. With this in mind C&WG does not believe that the introduction of NGN would fundamentally affect the proposed approach that C&WG should only be required to deliver the essential building blocks and access/transport layers and that the respective operators will then compete at the retail level depending on the applications, content or terms they apply on top of the fundamental building block. This is shown schematically in Fig. 2 that indicates a typical NGN deployment layer model.

Fig 2: Typical NGN Deployment



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1.2 Price Notification

The DG invites suggestions for the replacement of publication in the Gazette Officielle (section 5.1.4 of OUR 08/09), given that publication of the Gazette Officielle in the Guernsey Press is to cease and it is only to be published on the Internet.

As the Review is in respect of the wholesale market and treatment of wholesale customers, we propose that the appropriate solution for those customers and the OUR is to maintain the current situation, that is notifying each wholesale customer directly on an individual basis

The question of notification to retail customers is one to be considered separately, and should take account of the interest and obligations of other regulated utilities who have similar obligations to those of C&WG. The OUR will be aware that while the Guernsey Press has very high readership figures it is doubtful that many members of the general public read the Gazette Officielle on a regular basis. As far as we are aware the States and Parishes will be using the Internet, on-line version of the Gazette to publish their notices and it would seem appropriate to combine that with existing publication on the Sure website.

1.3 Term Discounts

The OUR seeks views on various aspects of term discounts in section 5.1.1 of OUR 08/09. C&WG deals with the profitability of leased line services in its response to Recommendation 12 in section 3 above.

The DG has stated that he wishes to move towards regulation of wholesale services as opposed to retail services, and C&WG supports that approach. In the recent price control determination the DG placed wholesale on-island leased line services in a basket subject to an RPI minus formula. At that time the OUR removed retail on-island leased lines from price control. Hence the direct link between wholesale and retail on-island leased lines has been broken (formerly wholesale on-island leased lines were priced on a retail minus basis).

C&WG has defended its position regarding retail term discounts on several occasions in the past. In our view the retail arm of our business must be able to differentiate its leased line services in the same way as OLOs are able to do. This is even more the case now that C&WG has commercial freedom to set the price of retail on-island leased lines. Any suggestion by the OUR or Regulaid that term discounts should be offered in the C&WG wholesale portfolio because they are in its retail portfolio is a backward step that contradicts the recent price control determination.

The OUR sought views on its comment that *"It is also unclear to what extent C&WG's retail competitors are in a position to provide similar term discounts profitably, or why costs savings at retail are not also true at the wholesale level."* C&WG believes that the OLOs are able to provide a similar term discount profitably and this is proven in the margin analysis provided in response to Recommendation 12. With respect to whether *"any cost savings are available at retail level are not also true at the wholesale level"* such cost savings as a result of term contracts are already implicit in the price of that wholesale product. In a retail minus approach to wholesale pricing the difference between the wholesale and the retail price relates to the "avoidable" costs and is primarily down to the additional retail (e.g. sales and marketing) costs. With a term contract there is cost saving at the retail level in that

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there is less sales and marketing required for the sale of one three year contract compared to three one year contracts. However, since these retail costs are eliminated in the wholesale product then the cost savings are already taken off the wholesale price. Whilst it may appear that similar cost savings could be apparent at the wholesale level this is generally not the case. The level of sales and especially marketing at a wholesale level is nowhere near the level of the retail side and thus savings (if any) are not substantial enough to realise any material difference in the wholesale costs.

The OUR asks C&WG to provide statistics to assist analysis:

- a) The number of wholesale on-island leased line circuits taken by OLOs; and
- b) The number of C&WG retail on-island leased line services taking term discounts.

They are provided in confidential Appendix 3.

In section 5.1.5 of the Consultation, the OUR raises the question as to whether C&WG's pricing contravenes fair trading licence condition 32. The statistics and the financial analysis provided by C&WG clearly demonstrate that it is not in breach of this condition.

1.4 Liaison between C&WG and OLOs

The OUR seeks views on the proposal that an Industry Forum should be set up in section 5.1.6 of OUR 08/09. C&WG gives its response under Recommendations 14 (Industry Forum) and 16 (Disputes) in section 3.

1.5 Structure of Wholesale

The C&WG response is given in our comments on Recommendation 17 in section 3.

1.6 Regulatory Compliance

The C&WG response is given in our comments on Recommendation 20 in section 3.

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Appendix 2 – Recommendation 16 – Revise Disputes Process

23. DISPUTE RESOLUTION

- 23.1 The Parties shall use their reasonable endeavours to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination). Either Party may, by giving the other a notice in writing, declare the dispute to be a formal dispute that should be dealt with under Clauses 23.2 to 23.4 of this Agreement (a "Dispute").
- 23.2 If a Dispute cannot be settled through negotiations between appropriate representatives of each of the Parties within 3 months, either Party may give to the other a notice in writing (a "Dispute Notice") that the Dispute should be escalated. Within five (5) days of the Dispute Notice being given the Parties shall each refer the Dispute to the senior representatives nominated by the managing director (or equivalent) of each Party who shall meet in order to attempt to resolve the Dispute. If the Dispute is not settled by agreement in writing between the Parties within 14 days of the Dispute Notice, it shall be resolved by an expert pursuant to Clause 23.3.
- 23.3 Any Dispute with respect to any matter which is referred to an expert shall, be referred to a person agreed between the Parties, and, in default of agreement within seven days of a notice from either Party to the other calling upon the other so to agree, to a person chosen on the application of either Party by the Chairman for the time being of the Centre for Effective Dispute Resolution.
- 23.3.1 Such person:
- 23.3.1.1 shall act as an expert and not as an arbitrator;
- 23.3.1.2 shall decide on the procedure to be followed in the determination (provided that, in any event, he shall give both Parties a full opportunity to make such representations as they may reasonably require) and be required to deliver his determination in writing to the parties as soon as reasonably practicable.
- 23.3.2 The expert's written decision on matters referred to him shall be final and binding in the absence of manifest error or fraud. The costs of such expert shall be in the expert's discretion. In default of a determination by the expert on costs they shall be borne equally by the Parties. Each Party shall provide to the expert all information reasonably requested by him to aid his determination of the Dispute.
- 23.4 All negotiations connected with a Dispute pursuant to Clause 23.2 or 23.3 will be conducted in complete confidence, and the Parties undertake not to disclose details of such negotiations except to their professional advisers who have been advised of such confidentiality. All negotiations will be without prejudice to the rights of the Parties in any future proceedings. For the purpose of this Clause "negotiations" shall include the decision of the expert.

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Confidential Appendix 3

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Confidential Appendix 4 – Jersey Telecom Wholesale Reports