



Office of Utility Regulation

# **Review of C&W Guernsey's Wholesale Business**

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Decision Document

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**Office of Utility Regulation**  
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## **1. Introduction**

In March 2008, the OUR published its review of C&W Guernsey's (C&WG) wholesale business. The review, which was prompted by a number of industry disputes and concerns at the manner in which C&WG engaged with its wholesale customers, recommended a series of changes to improve the situation.

A draft decision was issued in July 2008 setting out six decisions proposed by the DG in addition to a number of initiatives C&WG had already initiated following the review by the OUR's consultants, Regulaid. An amendment was also subsequently issued to Draft Decision 3, altering the proposed penalty structure and levels from those in the draft decision document OUR 08/15 and views of respondents sought on the proposed revision.

Responses to the draft proposals were received, and these indicate strong support for the changes set out. This document is the DG's final decision after consideration of responses provided by OLOs and C&WG.

The DG wishes to express his thanks to Regulaid and the OLOs for their extensive contribution to this review, as well as C&WG for its engagement with this process and whose cooperation has enabled resolution of a number of contentious areas. The DG looks forward to seeing further progress in the relationship between C&WG and OLOs as the changes are implemented over time.

## 2. Structure of the Paper

The rest of this paper is structured as follows:

- Section 3:** summarises responses to each of the draft decisions;
- Section 4:** provides the DG's assessment of issues raised in response to the draft decision;
- Section 5:** lists the final decisions arising from this review;
- Section 6:** sets out the activities flowing from the undertakings C&WG has committed to and the DG's final decisions.

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

This section sets out the DG's proposed decisions as set out in OUR 08/15 and the responses received to his proposals. Responses were received from Newtel Solutions; Wave Telecom; and Cable & Wireless Guernsey.

#### **3.1. Draft Decision 1**

*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:*
  - a. In Year 1 (commencing 1 January 2009), in 15 business days with the exception of orders that require the installation of new fibre;*
  - b. In Year 2 (commencing 1 January 2010), in 15 business days with the exception of orders that require the installation of new fibre;*
  - c. In Year 3 (commencing 1 January 2011), in 10 business days with the exception of orders that require the installation of new fibre.*
- *circuits of over 2 Mb should be delivered:*
  - a. In Year 1 (commencing 1 January 2009), in 40 business days, with the exception of orders that require the installation of new fibre.*
  - b. In Year 2 (commencing 1 January 2010), in 25 business days, with the exception of orders that require the installation of new fibre.*
  - c. In Year 3 (commencing 1 January 2011), in 15 business days, with the exception of orders that require the installation of new fibre.*

Newtel agrees that the processes for the ordering and delivery of wholesale leased lines should be overhauled as a matter of urgency, and that OLOs should be informed of the RFS date at the same time as order acknowledgement. Newtel is disappointed with the delivery periods proposed for circuits over 2 Mb in Years 1 and 2.

Wave also agrees with the overhaul of processes and order acknowledgement, as well as targets of 100% of orders with the exception of orders that require the installation of new fibre. Wave is concerned at the delay of two years proposed for the reduction of target levels. In its response it brought to the attention of the DG that C&WG standard provisioning retail lead times for leased lines over 2 Mbit/s was, prior to 2006, 45 working days. Wave maintain that the retail SLA was changed in the summer of 2006 to match the wholesale SLA of 60 working days.

Wave also commented on the Annex to the draft decision concerning factors that affect the ready for service date. These views are set out in section 3.7 below.

Wave accepts that a delay by the customer should not count against C&WG's standard leadtime. Wave recommended the OUR obtain network drawings from C&WG and has them independently reviewed to confirm if there is any weight in C&WG's argument that in Guernsey the amount of active equipment deployed in customer sites is limited as it has reservations on this point.

C&WG welcomed the OUR's approach in requiring an improvement in provision times and regards its submission on factors that affect ready for service dates as valid reasons for the provision of specific services outside of the target dates.

### **3.2. Draft Decision 2**

*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.*

*C&WG will commence publication of these KPIs on the first quarter of the calendar year 2009, covering the last quarter of the calendar year 2008. The first four quarterly publications will be made available only to OLOs and the OUR. Thereafter, all such KPI figures will be made publicly available on C&WG website.*

Newtel agreed that C&WG should be required to publish KPIs on its public website as set out in section 5.2 in the draft decision.

Wave agreed with the draft decision and that the ability of the OUR to audit C&WG's figures negated the need for an independent auditor.

C&WG committed to work with the OUR to develop published KPIs of the type referred to in the draft decision which lead to publication on the C&WG web site after 2009.

### **3.3. Draft Decision 3**

*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:*

- *in Year 1 (commencing 1 January 2009), 100% of the daily rental charge;*
- *in Year 2 (commencing 1 January 2010), 50% of the daily rental charge;*
- *From Year 3 onwards (commencing 1 January 2011), 25% of the monthly rental charge for delays of 1-5 days, 50% for delays of 6-10 days and 100% of the monthly rental charge for delays of over 10 days.*

*C&WG will initiate all penalties for which it is liable under this Direction.*

After the publication of the draft decision it became apparent that the structure of the penalties proposed was not sufficiently aligned to the intentions of the draft decision. The OUR subsequently altered the draft decision to remedy this and on the 8th of September sent out a modified version of this proposed decision. The modified version of draft decision 3 proposed that:

*For each service that does not meet the target date for delivery or fault repairs for leased lines, bitstream service, or any other wholesale service, C&WG should pay:*

- *In Year 1 (commencing 1 January 2009), 100% of the monthly rental charge;*
- *In Year 2 (commencing 1 January 2010), 50% of the monthly rental charge;*
- *From Year 3 onwards (commencing 1 January 2011), 25% of the monthly rental charge for delays of 1-5 days, 50% for delays of 6-10 days and 100% of the monthly rental charge for delays of over 10 days.*

*For every 30 day period after the target date the same penalty will be repeatedly incurred while the service remains undelivered, C&WG will initiate all penalties for which it is liable under this Direction.*

Newtel's original response to the draft decision agreed that C&WG should pay the penalties set out by the OUR in section 5.3 and that C&WG should initiate all penalties for which it is liable under the Direction. Its comments on the amended draft decision 3 was that it had some concerns that it does not give C&WG sufficient incentive to deliver the service once they have missed the original target date. In Newtel's view there was a risk that C&WG would miss the target date, rebate one month's rental charge and thereafter delay delivery for up to 29 days without suffering a further penalty. Newtel suggest an alternative formula, namely:

- a) If the target date is missed a rebate of 75% of the monthly rental charge would be due;
- b) For each day beyond the target date a rebate of 5% of the monthly rental charge would be due;
- c) The formula would reduce in years two and three as set out in the draft decision.

Wave stated that it was in full agreement with the amended draft decision 3.

C&WG have responded that they agree that the amended penalty structure achieves what the DG intended and referred to its previous response, namely that its proposed penalty payments for wholesale should be the same as for retail from Year 1.

### **3.4. Draft Decision 4**

*C&WG will offer its wholesale and retail customers upgrading a leased line the option of paying a one off cost based fee or a new minimum contract term.*

Newtel agreed that C&WG should offer its wholesale and retail customers that are upgrading a leased line the option of paying a one off cost based fee or a new minimum contract term.

Wave was of the view that when a bearer circuit size is not changed and there is a request for a speed change only, an administration charge is made for the speed upgrade and the contract term continues from the old service to the new service. However, if the upgrade is to a different type of circuit, Wave's view is that it would be fair for C&WG to charge the remainder of the contract term on the 2 Mbit/s circuit and for the minimum term to start again on the new service.

C&WG undertook to develop a one-off upgrade product for both wholesale and retail customers and notify the OUR and publish as appropriate.

### **3.5. Draft Decision 5**

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

Newtel agrees with the draft decision proposal

Wave agrees with the proposal in the draft decision but is unconvinced that C&WG will follow this process fully.

C&WG agreed to give 30 days notification of changes to wholesale prices, including new products, to the OUR and to each wholesale customer affected at least 30 calendar days before launch. However, C&WG notes that this will require a change in Condition 31 of its fixed licence.



### **3.6. Draft Decision 6**

*C&WG will create a position for wholesale sales and relationships that complies with the following principles:*

- *It should not report to the same Director as the retail business;*
- *It should have close links to the operational business;*
- *It should preferably not report to the same Director as for legal and regulatory affairs, although it will have close links with that department.*

Newtel agree that C&WG should create a position for wholesale sales and relationships that is compliant with the principles set out in the draft decision.

Wave agrees that C&WG should create a sales and relationships position. Wave have no issue with the reporting line suggested in C&WG's response to the OUR's consultation document.

C&WG stated that it was in the final stages of appointing the wholesale champion and making other changes to the wholesale operation within the business to reflect the discussions, recommendations and decisions. On the issue of an industry forum and whether it should be issue specific, C&WG noted it now has a regular forum which meets quarterly for all its wholesale customers. With respect to the NGN forum C&WG is looking for engagement from the industry, including the OUR and the States of Guernsey, following its presentation to the industry, as one of the key steps in that process, while also continuing to consider further developments and changes to the network.

### **3.7. Other issues commented on by respondents**

Newtel registered its disappointment at the DG's decision not to take further action, at this time, in respect of Regulaid's recommendations relating to mandated wholesale products but welcomed the DG's commitment to keep this under review as progress on NGN takes place.

Wave has indicated it was happy to work with the new wholesale order process allowing customers to order earlier delivery but reserved the right to raise the issue of a formal expedite facility again if the process does not work in practice. Wave also requested that the DG enforce the requirement of equivalence in terms of the leased line products available to itself from C&WG.

Wave commented on the submission by C&WG on factors that affect the ready for service date. Concerns were expressed about C&WG's comments that implementations of leased lines are usually bespoke end-to-end installations, particularly for above 2 Mb and that lead times are likely to be typically longer than those operators with different network configurations. Wave concedes that the factors listed by C&WG will have an impact on advising the customer of the specific date when their service will be installed but argue this should have no impact on the ability to meet standard delivery timescales.

Wave argues that C&WG has a responsibility to deliver services to retail and wholesale customers in standard leadtimes and as part of that responsibility has to manage their network, which means ensuring their duct network is capable of meeting the demands of the Bailiwick of Guernsey and ensuring they have plans in place to be able to meet the vast majority of leased line orders in standard leadtimes. It is therefore Wave's view that reasonable level of stock for items such as fibre, copper cable, NTP connections, access equipment cards etc should be in place to meet forecasted demands and should not need to be taken into account by C&WG but should be a given of providing leased line services to meet installation leadtimes. Wave agree with C&WG's rationale that where delays are due to the end customer and totally out of control of C&WG, C&WG would not be expected to deliver on standard leadtimes.

Wave stated it is encouraged by C&WG's response to the holding of regular quarterly meetings to discuss leased line issues and it would like to see this kind of dialogue continuing. Wave sees value in an industry forum when major network changes are under consideration, but is of the view that such meetings could be arranged on an ad hoc basis.

## **4. DG's assessment**

There is a welcome consensus among respondents to the proposals set out in the draft decision on most of the issues. However, three areas have been raised in responses to the draft decision which merit further consideration. The DG's consideration of these issues is set out in this section. These are:

- a) The penalty structure set out in the Draft Decision (amended)
- b) Mandated wholesale products
- c) Factors that affect ready for service date

### **4.1. The penalty structure set out in Draft Decision (amended)**

Newtel raise concerns that once C&WG misses a target date it essentially has no incentive to deliver the service until a further 30 days have passed.

The DG recognizes this is a risk if C&WG does not take commitment to its wholesale customers seriously. Given the scale of the subsequent penalty, such an approach entails some risk and a practice for any commercial business to ignore an order that has missed its target date until a further 30 days has passed will in any event soon become apparent. If this turns out to be the case an alternative penalty structure will be considered by the DG. Therefore, rather than constructing a penalty system that avoids such gaming, the DG has chosen to focus on setting a penalty structure to incentivise C&WG not to miss the target date at all. The DG is confident that in placing the emphasis on avoiding missing target dates rather than putting in place a structure where the penalty grows the longer the delay, C&WG has a clear message as to where its priorities should lie and will adapt its internal processes accordingly.

### **4.2. Mandated wholesale products**

Wave has requested the DG to direct C&WG to create an on-island wholesale equivalent of any off-island retail leased line offer by C&WG. In particular, Wave cites the existence of a retail 155 Mbit/s half circuit to the UK utilising the HUGO cable. Wave argue that if an OLO wished to provide a similar circuit to its customers it would require an on-island 155 Mbit/s circuit to connect in to its own network to carry it off-island.

The DG has no basis to believe there is any retail customer taking either the off-island 155 Mbit/s leased line or the end-to-end 155 Mbit/s leased line service. Wave has stated that it requested C&WG to include a 155 Mbit/s on-island leased line in the wholesale portfolio on 14<sup>th</sup> February 2003 and at the time C&WG's response was that these products were being developed and they would be available later that year.

There is however no evidence provided by Wave that this is a current request to C&WG and C&WG have no record of this issue as outstanding. The DG believes in any event that given the existence of the Liberty cable Wave's requirements for such a service would have altered materially since 2003. Given this confusion the DG is of the view that the appropriate way forward is for Wave to approach C&WG should this requirement continue to exist, in particular given a new process of dealing with outstanding requests is now facilitated by the C&WG wholesale champion. If this approach fail to achieve a satisfactory outcome, and should the bi-lateral dispute

escalation procedures fail to resolve the matter, the option to refer the matter to the OUR as a formal dispute will still remain. The DG would hope however that this issue can be resolved between the parties.

### **4.3. Factors that affect ready for service date**

C&WG submitted a case for taking account of a number of factors it believed materially affect its ability to achieve target dates. These were set out in the Annex to the draft decision. From the responses received, it would appear there is little disagreement that where a delay is caused by a customer, the target date should take this into account.

A principle which the DG therefore does accept is that where the period of any delay is attributable to a customer, the target date should be extended by that same period, both for reporting KPIs and for purposes of the penalty system.

However, C&WG listed several issues to be addressed in the set up of the customer site, arguing that these were key to the issue of ascertaining if the service can be supplied, which Wave, in particular raised objection to and which are summarized above.

The DG sees merit in the argument by OLOs that C&WG has a responsibility to manage its network, which entails holding of adequate stock to meet reasonable demands. The DG also recognises that adequate stock holding to meet reasonable demands does, however, depend to some extent on the quality of forecasts OLOs provide to C&WG. With the above as broad parameters, the DG's position remains, namely that with the exception of installations requiring new fibre (as set out in Decision 1), the default position in terms of reporting and applicability of penalties is that an order must meet the standard target dates. Where C&WG believe this is not reasonable given specific circumstances, the DG's view is that the most sensible approach is for it to seek agreement with the relevant OLO that the order is treated as an exception for reporting and penalty purposes. Where differences arise between OLOs and C&WG over the treatment of an order as an exception, a dispute process is in place and a regulatory complaints procedure is then available if the issue remains unresolved. This offers an approach that avoids too wide a scope for orders being treated as exceptions given the regulatory difficulties of defining all the possible combination of circumstances where this may be reasonable, but allows for an approach where on a case by case basis a combination of factors may require treatment as an exception and on which reasonable parties should be able to agree.

## 5. Final Decision

This section sets out the DG's final decisions in respect of the issues addressed above.

### 5.1. Decision 1

*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:*
  - a. *In Year 1 (commencing 1 January 2009), in 15 business days with the exception of orders that require the installation of new fibre;*
  - b. *In Year 2 (commencing 1 January 2010), in 15 business days with the exception of orders that require the installation of new fibre;*
  - c. *In Year 3 (commencing 1 January 2011), in 10 business days with the exception of orders that require the installation of new fibre.*
- *circuits of over 2 Mb should be delivered:*
  - a. *In Year 1 (commencing 1 January 2009), in 40 business days, with the exception of orders that require the installation of new fibre.*
  - b. *In Year 2 (commencing 1 January 2010), in 25 business days, with the exception of orders that require the installation of new fibre.*
  - c. *In Year 3 (commencing 1 January 2011), in 15 business days, with the exception of orders that require the installation of new fibre.*

### 5.2. Decision 2

*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.*

*C&WG will commence publication of these KPIs on the first quarter of the calendar year 2009, covering the last quarter of the calendar year 2008. The first four quarterly publications will be made available only to OLOs and the OUR. Thereafter, all such KPI figures will be made publicly available on C&WG website.*

### **5.3. Decision 3**

*For each service that does not meet the target date for delivery or fault repairs for leased lines, bitstream service, or any other wholesale service, C&WG should pay:*

- *In Year 1 (commencing 1 January 2009), 100% of the monthly rental charge;*
- *In Year 2 (commencing 1 January 2010), 50% of the monthly rental charge;*
- *From Year 3 onwards (commencing 1 January 2011), 25% of the monthly rental charge for delays of 1-5 days, 50% for delays of 6-10 days and 100% of the monthly rental charge for delays of over 10 days.*

*For every 30 day period after the target date the same penalty will be repeatedly incurred while the service remains undelivered, C&WG will initiate all penalties for which it is liable under this Direction.*

### **5.4. Decision 4**

*C&WG will offer its wholesale and retail customers upgrading a leased line the option of paying a one off cost based fee or a new minimum contract term.*

### **5.5. Decision 5**

*The process for “major interest” price changes is abolished, and all changes in the wholesale prices will follow the “minor interest” process, with the notice period extended to 30 calendar days.*

### **5.6. Decision 6**

*C&WG will create a position for wholesale sales and relationships that complies with the following principles:*

- *It should not report to the same Director as the retail business;*
- *It should have close links to the operational business;*
- *It should preferably not report to the same Director as for legal and regulatory affairs, although it will have close links with that department.*

## **6. Next Steps**

Decision 5 will require a change to C&WG's licence condition and the DG will commence this process now. A number of Regulaid's recommendations have already been acted upon by C&WG and the DG has therefore not issued decisions on those matters. C&WG has already begun a process of change and the various actions are set out below for reference:

1. submission of a revised set of wholesale contracts to the OUR within one month of this decision;
2. change the dispute process;
3. to develop a one-off upgrade product for both wholesale and retail customers and notify the OUR and publish as appropriate.
4. provide the OUR with its proposals on staff incentive schemes given the issues highlighted by Regulaid;
5. overhaul its ordering system by October 2009 to address the problems identified in this review
6. C&WG and the OLOs to implement the commitment in the wholesale leased line agreement to meet every quarter at least for the next 12 months. Meetings to take place on an individual basis rather than as a group.
7. C&WG proposes to develop wholesale services to comprise just the low-level services elements or building blocks that may be required for retail services.
8. create an online form for the application of wholesale services'..

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