



Office of Utility Regulation

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

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Consultation Document

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**Office of Utility Regulation**

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# 1. Introduction

The OUR has indicated publicly its preference to concentrate regulation in the telecoms market at the wholesale level. The option to roll-back the scope of regulation to this level is available subject to adequate assurances that, prior to any such change, the OUR and all operators have adequate confidence that the processes, procedures and safeguards in place to ensure competitors to C&WG's own retail arm are treated in a non-discriminatory manner are comprehensive, and that the level of service provided by C&WG to all wholesale customers is appropriate. The DG has concerns on whether C&WG meets this threshold given the findings of a number of investigations into industry disputes lodged with the OUR.

In investigating these disputes there were indications that there are weak incentives on C&WG to proactively ensure adequate processes are in place in dealing even-handedly with service requests from its retail competitors. The OUR has therefore undertaken a detailed review of C&WG's business, with a focus on its wholesale performance. With the assistance of expert advisors, the OUR has sought to identify whether there are systemic issues within C&WG's wholesale business which need to be addressed and if so identify appropriate remedies to be put in place to address any such concerns.

This consultation paper presents these findings and the DG's views in response to these findings. The report is supplemented with the publication in full of the report from the OUR's experts Regulaid, and sets out a wide ranging commentary on C&WG's performance.

The OUR and Regulaid would like to acknowledge the assistance given during the course of the project by the staff of C&WG and the OLOs in Guernsey, as well as the operators in the countries used as the benchmarks.

*This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.*

## **2. Structure of the Paper**

### **2.1. Structure**

The rest of this paper is structured as follows:

- Section 3:** sets out the issues identified by the review;
- Section 4:** provides a summary of Regulaid's conclusions and recommendations;
- Section 5:** provides the OUR's comments on the points made by Regulaid;
- Section 6:** sets out the next steps in the consultation process;
- Annex 1 :** Regulaid Report

### **2.2. Comments**

Parties are invited to submit comments in writing on the matters set out in this paper to the following address:

Office of Utility Regulation  
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Email: [info@regutil.gg](mailto:info@regutil.gg)

All comments should be clearly marked "Review of C&W Guernsey's Wholesale Business" and should arrive before 5pm on 12<sup>th</sup> May 2008.

In line with the policy set out in Document OUR 05/28 – "Regulation in Guernsey; Revised Consultation Procedures", the DG intends to make any further comments received available on the OUR website. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential. However the DG regrets that he is not in a position to respond individually to the responses to this consultation.

Any comments received will be taken into account by the DG in informing his consideration of the issues addressed in this consultation.

### **3. Issues identified in Regulaid's review**

#### **3.1. View of OLOs**

OLOs raised a number of specific concerns with Regulaid during the course of their review. These are listed in Regulaid's report (which is published in full with this consultation) and their assessment informs this consultation document. The issues raised were around:

- Wholesale product, namely international half circuits, IP connectivity, dedicated denial of service protection and terms for leased line upgrades.
- Provisioning issues, namely delivery timescales and a fast track service for delivery of leased lines.
- Line fault repairs.
- Discrimination in the areas of fault monitoring and ISDN upgrades, delivery timescales and contract differences.
- Information issues, namely information on price changes and informing customers of faults.

#### **3.2. Regulaid review of C&WG processes**

Regulaid identified several issues of policy, operations, systems and processes related to the provision of wholesale and retail services. C&WG was able to address a number of these satisfactorily in Regulaid's view. However, certain issues remain unresolved and these are highlighted in this section.

##### **3.2.1. Leased line provisioning processes**

Regulaid's assessment of C&WG's delivery against target and actual time taken to install 2Mb lines lead them to conclude there is evidence of discrimination in favour of C&WG's own retail arm. For leased lines above 2Mb their assessment identified similar concerns. Regulaid further considered the time profile in terms of time taken to install leased lines. This also showed material differences between C&WG's wholesale and retail delivery in favour of its retail customers. Even when their analysis removed outliers, on average C&WG's wholesale customers had a significantly worse delivery performance than retail customers in 2007. In contrast, Regulaid's assessment of C&WG's performance in the provision of bitstream services were found to be satisfactory.

##### **3.2.2. Penalties for poor performance**

Assessment of C&WG's own penalties for missing leased line delivery dates shows these are higher for retail customers than for wholesale customers. It is also the case that C&WG's penalties are low in comparison with benchmarks. As a consequence, the incentives to achieve delivery targets are generally weaker than benchmarked operators given the size of the penalties, while the discrepancy between retail and wholesale penalties give C&WG an incentive to deliver retail leased lines more

quickly than wholesale lines. It is also Regulaid's view that the structure of the penalties for late delivery is such that once a delivery date has been missed, there is insufficient incentive for C&WG to avoid further delays.

Similar conclusions were reached when C&WG's bitstream services were assessed, where the penalty structure follows a similar pattern to that of leased lines, with low penalties applicable and retail penalties substantially greater than those for late wholesale delivery. The lack of incentives to deliver once the delivery date for bitstream services were missed, given the low levels and structure of the penalties, raises similar concerns to those for leased lines.

#### 3.2.3. Mandated wholesale products

Regulaid's review identified different expectations in the market over which wholesale products C&WG was required to provide as part of its wholesale service. Specific issues over which wholesale products C&WG must provide are covered in Regulaid's assessment, and the report concludes the OUR should provide further clarity on this area. Contract upgrades are also covered under this heading, where concerns have been expressed by OLO's about the extension to existing agreements required by C&WG when it upgrades a leased line. Regulaid's view is that further options should be available when existing agreements are extended due to upgrades in leased lines.

#### 3.2.4. Price changes

The area of price changes was identified as of potential concern. The classification of 'minor interest' and 'major interest' services has proved confusing for OLOs and Regulaid proposes all notifications should adopt the 'minor interest' process.

#### 3.2.5. Term discounts

Regulaid's analysis suggests C&WG's use of two and three year discounts for on-island 2Mb services do not leave OLOs sufficient profit margin.

#### 3.2.6. Liaison between C&WG and OLOs

Regulaid suggests the absence of regular formal meetings between OLOs and C&WG contribute to poor communication and difficulties in resolving issues directly. The publication of key performance indicators showing the provisioning and fault repair performance by C&WG is a further area where the review identified the need for improvements in transparency.

#### 3.2.7. Structure of wholesale

At present C&WG has no one position which is solely responsible for wholesale customers. This has been identified as a major cause of problems found between C&WG and the OLOs. Change to this is considered an important step in moving C&WG to a 'commercial culture' with OLOs. In Regulaid's view the compensating benefits include fewer resources currently expended on resolving the disagreements and disputes generated by poor relationships with the OLOs.

In C&WG all staff receive a bonus based on the total revenues of the company and on the results of a customer satisfaction survey. In addition retail sales staff have a target related bonus. Given C&WG has about 3% of its revenues from wholesale customers and the satisfaction survey is heavily outweighed by the number of retail customers,

the current reward system essentially encourages staff to favour retail customers. The review therefore also concludes the present bonus reward system in C&WG is biased towards retail customers and encourages discriminatory behaviour by staff.

#### 3.2.8. Information systems

While C&WG's wholesale arm does use the same systems for retail and wholesale staff, reducing the risk of discrimination, it is the case that staff can readily distinguish wholesale orders from retail orders due to C&WG's system providing different product codes for identical wholesale and retail products. The ability to make such distinctions creates opportunity to discriminate in these circumstances. When this opportunity is set alongside other incentives such as bonus payments, there is a material risk that OLOs may be discriminated against.

Regulaid also identified further serious weaknesses in the wholesale-retail separation built into C&WG's system. Retail staff have the ability, and experienced little difficulty, accessing orders from wholesale customers through the ordering and provisioning system. This is unsound practice and urgent remedies are considered by Regulaid as necessary to alter the situation.

#### 3.2.9. Regulatory compliance

The findings by Regulaid essentially identify an approach to compliance that is not sufficiently proactive. While C&WG carries out training and has codes of practice, based on the number of issues identified in Regulaid's review a more proactive approach to compliance would have addressed the concerns and issues arising from this review. In Regulaid's view insufficient resources appear to have gone into checking whether staff comply with the regulatory requirements.

#### 3.2.10. 'Jersey Factor'

Regulaid's review highlighted the very specific nature of the problems that arise in the relationship between C&WG and Wave Telecom, what it terms the 'Jersey Factor'. Arising from both companies' respective positions in both Guernsey and Jersey, Regulaid detected that this may lead to a "revenge" culture, where one operator may use its dominance on one island to return indignities suffered on the other island. During its meetings, Regulaid noted a poor level of communications and trust between C&WG and the OLOs (and in particular Wave Telecom) and it believes this is made worse by the ambivalence in personal relationships because of the 'Jersey factor'.

While the regulatory regimes on the two islands are different, Regulaid met an argument that regulatory change on one island should be dependent on similar progress on the other island taking place at the same time. It rejects this argument because:

- the two islands are independent jurisdictions, and it is not a practical proposal to link the two regulatory regimes;
- any efforts to change the regulatory regime in one island should be focussed on that island, not on the other.

Regulaid believe that the perceived strengths or weaknesses of the regulatory regime in Jersey held by C&WG should not be used as arguments for delaying improvements in the regulatory regime in Guernsey.



## 4. Regulaid's conclusions and recommendations

Regulaid's key conclusions are that:

- A. C&WG needs to alter its approach to its wholesale customers from a legalistic approach to a commercial approach;
- B. C&WG appears to be contravening Licence Condition 29.1. There are incidences where it supplied leased lines to its retail arm faster than to its wholesale customers;
- C. C&WG retail sales staff have access to information about wholesale orders which is inconsistent with a position that the retail and wholesale functions are adequately separated, and C&WG risks contravening Licence Condition 33;
- D. a dedicated wholesale position in C&WG is needed to resolve many of the issues between the OLOs and C&WG;
- E. the OLOs and C&WG must improve their communications with each other substantially.

The recommendations of the review are therefore:

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.
02. C&WG should offer an expedite service to the OLOs and its own retail customers at a cost based charge.
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.
04. OUR should require C&WG's auditor to certify annually that the information in the published KPIs is correct.
  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.
  06. C&WG should revise its wholesale and retail contracts so that the penalties paid to wholesale customers are greater than for retail customers.
  07. C&WG should initiate the payment of penalties.
  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.
  09. C&WG should revise its wholesale and retail contracts so that delivery timescales and other terms and conditions are comparable.
  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.
  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.
  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.
  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.
  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.

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.
16. OUR should require C&WG to revise its dispute process.
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.
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 repairing network services are not encouraged to favour retail or wholesale customers.
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.
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.
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.
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).

Unless otherwise indicated in this consultation document, the DG proposes to adopt in full Regulaid's recommendations with regard to the issues addressed above.

## 5. OUR's assessment

Despite assurances from C&WG prior to and during the course of this review of C&WG's wholesale business, based on the evidence from this review, the OUR's conclusion is that the concerns from entrants to the Guernsey telecoms market have merit.

Incentives on C&WG staff to provide a high quality wholesale service to OLOs do not appear adequate. C&WG staff bonus schemes are dominated by retail priorities, while the penalties for missing wholesale delivery targets are weak. Retail staff are able to access wholesale ordering information on their retail competitors, while their bonuses are based on how successful they are in competing with these businesses. C&WG's systems use product codes that visibly distinguish wholesale orders from retail orders. This visibility of a competitor's order while it is processed, together with the current reward scheme and delivery penalties would, from any sensible perspective, lead to the conclusion that a substantial risk exists that when staff must balance priorities, a wholesale competitor's order is more likely to experience delays.

This is borne out when performance in meeting delivery targets are compared. C&WG's performance in delivering wholesale leased lines is significantly weaker than for the same retail services. Not only are the delivery times materially longer for wholesale customers, but the penalties on C&WG for missing delivery targets are both low and the period based penalties do not increase the longer the delay period. The Regulaid review has therefore identified a combination of poor incentives followed by poor and discriminatory service.

C&WG has also adopted a particular approach to deciding which services it offers. This leaves considerable room for discretion by a dominant operator and exposes OLOs to uncertainty when procuring services from C&WG with whom they compete at the retail level. Whether or not this is appropriate going forward is not straightforward and the OUR sets out alternative views on this issue below.

The review also identified that general suspicion and poor communications between C&WG and other operators further raises the likelihood of delays and problems in the process of obtaining services from C&WG, with implications for demands on the resources of both C&WG and the OUR.

A structural change is therefore almost certainly required, and one area that Regulaid has identified as critical is the need for dedicated wholesale personnel serving OLOs.

The individual areas of concern identified by Regulaid's review are listed below and the OUR provides its comments on each of these specific points below.

### 5.1.1. Leased line provisioning processes

The OUR concurs with Regulaid that C&WG has delivered poor performance against generous delivery targets for leased lines and this situation requires correction.

For *2Mb leased lines*, C&WG is missing its target for wholesale leased lines in 25% of cases against a target of 5%. This compares to between 15% and 22% of delivery

deadlines missed against a target of 0% for its own retail service. In terms of delivery times, an 18% difference in wholesale performance relative to retail is evident, suggesting a markedly poorer service to OLOs than C&WG's retail customers. An assessment of time profiles shows that in 50% of cases retail lines are installed within ten days, and around 22% are made between 11 and 20 days. This compares with around 20% of wholesale lines delivered within ten days and 54% of wholesale lines between 11 and 20 days. This difference in time profiles identified by Regulaid raises concerns that C&WG's approach to providing a wholesale service leads to preferential outcomes for its own retail customers, to the detriment of service to OLOs.

For *leased lines above 2 Mb*, a worse performance for wholesale customers is evident. For 2007, the majority of retail lines were delivered within 20 days compared with 40 to 60 days for wholesale leased line services. Even after exceptions are excluded from the comparison the average delivery time for wholesale leased line services is more than twice that of C&WG's retail customers. In the delivery of leased lines above 2Mb, the evidence again supports a case of preferential outcomes for C&WG's own retail customers.

#### 5.1.2. Penalties for poor performance

The OUR agrees that the low level of penalties when delivery targets are missed has meant C&WG has a weak financial incentive to improve on its performance compared to operators used in benchmarks. Also, C&WG's penalties for late delivery of retail lines are substantially different to those that apply to wholesale lines. This creates a further financial incentive on C&WG staff to provide preferential treatment to their own retail services when meeting delivery targets.

Regulaid's analysis has also highlighted that the period based penalties do not increase the longer a delay persists. The OUR's view is that such a penalty structure is a further contributory factor to the differences in delivery times seen above.

#### 5.1.3. Mandated wholesale products

From Regulaid's review and the OUR's own investigations, it is apparent there have been several issues with the services C&WG provides as part of its wholesale service portfolio. 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. If C&WG's position has been understood correctly, this creates a number of risks to OLOs.

One issue with this approach, is that 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. 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.

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 will be a factor when OLOs draw up their business plans since it may not be clear which wholesale services will be received from C&WG in a given situation since the incumbent is making its own judgments on a case by case basis.

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.

For the above reasons, it could be argued C&WG's present approach is not in the best interests of the telecoms market in Guernsey. The OUR therefore considers in this paper what approach may be appropriate in mandating wholesale products. C&WG is dominant in the wholesale telecoms market and is therefore subject to a non-discrimination obligation which places an onus on C&WG to provide wholesale services.

The appropriateness of any regulatory approach is contingent on the market context and specifically, the phase of market development. These influence the importance given to avoiding discriminatory behaviour, compared to the promotion of innovation, for example. Depending on the weight given to certain arguments, the strength of a non-discrimination obligation on C&WG could justifiably vary. As part of this wholesale review, and given the issues raised, the OUR believes there is merit in seeking views on the different approaches, or other alternatives, in the Guernsey context.

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.

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.

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.

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.

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.

The OUR welcomes views on the issues set out above.

#### 5.1.4. Price changes

Regulaid propose removal of the distinction between 'major interest' and 'minor interest' price changes. Its view is that all wholesale price changes should follow the current process for 'minor interest' price changes. Regulaid also propose that wholesale customers should receive a longer period of notice than retail customers, so that they can amend their own retail services as necessary, and inform their own

customers of any price changes. A period of 30 calendar days is proposed rather than the current 21 days.

The OUR recognizes that in some cases OLOs have not been notified of price changes and the difference between the two processes has not been understood. A change in the manner suggested by Regulaid therefore appears sensible in the circumstances. The justification for a longer notice period for wholesale customers is to allow for the additional time needed to respond to the changes, and to the OUR this also seem sensible. The DG also notes that with the States decision to no longer continue the use of the Gazette Officielle, a revision to the notification process is required in any event. Views on an alternative process are welcome.

#### 5.1.5. Term discounts

The analysis by Regulaid indicated a concern that 2 and 3 year term contracts for on-island leased lines were loss making. This raises the question as to whether C&WG's pricing contravenes fair trading licence condition 32. An assessment of the object or likely effect of such pricing by C&WG's retail arm is relevant to any finding in this area. 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-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.

At this stage the OUR has no information on how many customers take the various term options. This is relevant in assessing the object or effect on competition. 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. The OUR therefore requests views on these issues. It would also support the analysis if operators supply statistics on how many of their customers take the on-island leased line services for which C&WG offer term discounts. C&WG is requested to provide the same information, as well as for each of the on-island leased line services where term discounts apply at retail level but are not offered at wholesale.

#### 5.1.6. Liaison between C&WG and OLOs

The OUR believes there is considerable merit in Regulaid's assessment and recommendations. In particular, the proposal to have the forum as part of the dispute process, could act as a filter for issues that arise where their origins are in poor communication. The frequency of such meetings and the use of such a forum as a first step in resolving potential issues would place a particular emphasis on how this forum functions. However, the OUR would not wish to see such a forum being used as a delaying tactic by any party in drawing out a specific dispute. The OUR welcomes comments on the merits of this proposal and, in particular, how this would work in practice.

#### 5.1.7. Structure of wholesale

In the OUR's view, in order for C&WG to move towards a commercial approach in dealing with OLOs, a dedicated carrier services staffing position, with appropriate authority within the company, is a necessity. There are strong reasons to support this



position and the OUR welcomes comments on the arguments made by Regulaid. There is also a view that the reduction in involvement in issues that could have been resolved if concerns about C&WG's conflicts of interest in dealing with its retail competitors, were lessened, could more than compensate for the additional costs of such a dedicated position.

#### 5.1.8. Information systems

Regulaid's findings on the ability of C&WG retail staff to access details of its wholesale customer orders is an extremely serious matter and is unacceptable. C&WG will be required to address this as a matter of urgency. As is the use of product codes that allows a distinction to be made between orders from OLOs and those from C&WG retail customers.

#### 5.1.9. Regulatory compliance

Regulaid's concerns in this area might be depicted as a failure to monitor and audit activities in a sufficiently proactive manner that goes beyond training and documentation, as important as these are, and ensures that these lead to appropriate behaviour. This would encompass how programmes that manage ordering systems are set up, as well as identify where issues such as financial incentives are likely to act against the priorities conveyed as part of staff training and in handbooks.

Regulatory compliance is about ensuring that the company has internal processes and procedures which identify problems with compliance with the company's regulatory obligations. It also about ensuring that swift and decisive remedies are put in place to address such failings when they occur. Clearly in light of the number and range of issues identified in this review regulatory compliance within C&WG has failed in this regard. The OUR will wish to understand how the company proposes to address this issue going forward.

## **6. Next Steps**

This review has provided an objective assessment of the weaknesses and strengths of C&WG's wholesale service. While OLOs have raised a number of issues during the course of the review, a number of these have not been identified as having merit. Regulaid have therefore distilled the issues raised by OLOs and identified nine specific areas where change is considered a high priority.

The OUR has set out the high level issues and proposals by Regulaid and provided its views on these in section 5. The full Regulaid report is included as an Annex to this document. As mentioned earlier, unless indicated the DG proposes to accept in full Regulaid's recommendations with regard to this review.

Parties are invited to comment on the issues raised in this consultation and any other areas covered by this review that might further inform any draft decision by the DG.

ENDS

# **Annex 1 – Regulaid Report – Review of C&W Guernsey’s Wholesale Business**

Published Separately