



Cable and Wireless Guernsey Price Control 2013

Final Decision

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CONTENTS

1. Introduction.....	1
2. Structure of this document.....	2
3. Legal requirements and Licensing framework.....	3
<i>3.1 Legal Requirements.....</i>	<i>3</i>
<i>3.2 Licensing Framework.....</i>	<i>3</i>
4. Current price control and subsequent developments	4
5. Draft Decision.....	6
<i>C&WG's dominance.....</i>	<i>6</i>
<i>Price control proposals</i>	<i>6</i>
6. Consideration of responses received	7
7. Final Decision and Next Steps.....	9

1. Introduction

On 1st April 2012, Cable and Wireless Guernsey Limited's (**C&WG**) one year price control ended and a decision to allow a rollover of that price control for a further year, to 31st March 2013, was made by the predecessor of the Guernsey Competition and Regulatory Authority (**GCRA**), the Office of Utility Regulation (**OUR**).

An ongoing pan-Channel Island project relating to the development of wholesale telecoms markets, involving the Channel Islands Competition and Regulatory Authorities (**CICRA**)¹ and operators across both Guernsey and Jersey, was relevant to the assessment in 2012 and the decision to allow the rollover. A draft decision was issued in November 2012 with regard to the introduction of wholesale line rental by C&WG (CICRA 12/53), and that draft decision indicated the intention that this access product would become available in the Channel Islands during 2013. However, the need for a price control on certain of C&WG's retail products remains, at least until such access products are available, and a price control rollover therefore offers a more suitable approach in the circumstances.

In February 2013 a draft price control decision (CICRA 13/06) was issued in which the GCRA proposed a rollover of the existing form of the 2012 price control, with some modification, and a freeze on C&WG's price-controlled baskets. Following a consideration of the responses received, this final decision confirms that draft decision.

¹ *CICRA consists of the Jersey Competition Regulatory Authority and the Guernsey Competition and Regulatory Authority.*

2. Structure of this document

The document is structured as follows:

- Section 3: Sets out key legal and regulatory references relevant to this draft decision.
- Section 4: Describes developments that have informed the draft decision
- Section 5: Sets out the draft decision.
- Section 6: Considers points raised in responses received.
- Section 7 : Sets out the Final Decision and the next steps for the implementation of this price control.

3. Legal requirements and Licensing framework

3.1 Legal Requirements

Section 5(1) of *The Telecommunications (Bailiwick of Guernsey) Law, 2001* (**the Telecoms Law**) provides that the GCRA may include in licences such conditions as it considers necessary to carry out its functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- conditions intended to prevent and control anti-competitive behaviour²; and
- conditions regulating the price premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market³.

3.2 Licensing Framework

In accordance with these provisions in the Telecoms Law, the Fixed Telecommunications Licence awarded to C&WG includes the following condition⁴:

“[The GCRA] may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may:

- a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Services;*
- b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies.”*

This condition allows the GCRA to regulate the prices that C&WG charges for its telecommunications services in a way and for a time that it deems appropriate, where C&WG has a dominant position in the relevant market.

² Section 5(1)(c) of the Telecoms Law.

³ Section 5(1)(f) of the Telecoms Law.

⁴ Condition 31.2.

4. Current price control and subsequent developments

C&WG has not sought increases in the overall price cap for any of the price controlled baskets for 2013.

The current price control for C&WG comprises three baskets:

- Basket 1⁵: Exchange Line Rental, Local Calls and a 'Main' basket⁶
- Basket 4: On-Island Wholesale Leased Lines
- Basket 5: Off-Island Retail Leased Lines

Detail regarding the precise contents of the above baskets is set out in the OUR's decision notice for C&WG's 2008 price control⁷.

A draft decision and an initial notice setting a timeline for the introduction of wholesale line rental (Basket 4) in Guernsey and Jersey respectively was issued in November 2012, and this draft decision indicated the intention that this product would be available prior to the end of 2013. This product should assist in further promoting competition in the fixed telecoms market and in light of these developments, as part of its 2013 work programme CICRA proposed to consider whether retail price controls should continue to be set for C&WG and JT (Jersey) Limited (**JT**). The GCRA also stated that it intended to carry out a review into on-island leased lines in Jersey and Guernsey during 2013 and the timing of this review may extend beyond December 2013. The draft decision therefore proposed to retain an overall price cap on the products of Basket 4 until a review of this specific product set had been carried out, rather than the 31st December 2013 deadline as for the other two baskets.

The GCRA's draft decision proposed that the overall price caps for Basket 1 and Basket 5 should be frozen for 9 months, until 31 December 2013, which is the point at which the 2013 retail price control for JT expires. This would allow for the timing of any change in price regulation of these two baskets to take place at the same time in both islands.

⁵ In the 2008 price control decision, the components of this basket were separated into Baskets 1, 2 & 3 but were combined into a single basket in the 2012 control decision.

⁶ This term refers to the products that used to be included in a single Basket 3 ('Main' Basket); such products included Fixed Line local ISP calls, Fixed Line non-geographic calls charged at local rate, Fixed Line Jersey and National calls, Fixed Line non-geographic calls charged at national rate, Fixed Line international calls, Fixed Line calls to Guernsey mobiles, Fixed Line calls to Other mobiles, Public Payphones, Exchange Line connection and ISDN services.

⁷ Document No: OUR 08/07, February 2008

Off-island connectivity charges have been identified as an area of priority for the States of Guernsey and Jersey and CICRA is currently contributing to the deliberations of the ICT Strategy Group for the States of Guernsey in this area. In light of this on-going review, the GCRA proposed the overall cap on prices in Basket 5 (i.e. retail prices for off-island leased lines) should be frozen over the period of this control.

In the proposed 2013 control, the cap on Basket 4 and Basket 5 (C&WG's on-island wholesale prices and off-island retail products as proposed), would apply at the aggregate level only and not to individual services within those baskets. C&WG would therefore be able to re-balance charges within these baskets, which it was restricted from doing in previous controls.

5. Draft Decision

The draft decision set out the following position.

C&WG's dominance

The GCRA did not see a basis for revisiting the finding of dominance by C&WG in the relevant markets at this stage since market reviews were likely to be carried out on a pan-Channel Island basis in late 2013 or early 2014, at which point findings of dominance would be revisited.

Price control proposals

The tables below set out the price controls proposed.

Baskets 1 and 5 would continue to be subject to the standard price control:

Basket	Description	Control proposed	Expiry
1	Exchange line rental, Local Calls and Main	Frozen (RPI-RPI)	31 December 2013
5	Off-island leased lines (retail)	Frozen (RPI-RPI)	31 December 2013

C&WG would be permitted to rebalance prices of individual products within Basket 5, provided that the overall weighted average of prices did not increase (with weights for individual products established by the value of sales for each product in the year to 31 March 2013).

4	On-island leased lines (wholesale)	Frozen (RPI-RPI)	Until replaced by further control or removed
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The price cap applying to Basket 4 would remain in place, pending the results of the review of on-island leased lines. However, C&WG would be permitted to rebalance prices of individual products within Basket 4, provided that the overall weighted average of prices did not increase (with weights for individual products established by the value of sales for each product in the year to 31 March 2013).

6. Consideration of responses received

Two responses to the draft decision were received, from C&WG and LP Telecoms Limited.

C&WG remains concerned with the ongoing delays in the progression of any new wholesale access services, particularly wholesale line rental (WLR), for which a Draft Direction was issued in November 2012. C&WG states that the lack of competition in the fixed line market in Guernsey (primarily the absence of WLR) continues to hamper C&WG's plans for the full bundling of fixed network services.

C&WG considers that its market position may have been constrained by the lack of market share information and believes this would be helpful to all parties prior to the upcoming market reviews.

In relation to the individual baskets, C&WG's views are:

Basket 1 (Exchange line rental, local calls & main)

C&WG welcomes the clarification of the proposal for the existing basket 1, 2 & 3 to be operated as a new single basket ('Basket 1'). C&WG state it would be unlikely to accept a further roll-over on the existing terms of the price control, should the introduction of WLR be further delayed beyond December 2013 (being the proposed end of the latest price control).

Basket 4 (On-island wholesale leased lines)

C&WG intends to use the benefit of greater flexibility in its pricing within this basket to benefit the market through the removal of differential pricing for on-island circuits. C&WG proposes that the rebalancing of prices of individual circuit types would be established by using the overall weighted average of circuit volumes multiplied by circuit prices in the year to 31st March 2013.

C&WG maintain that without a clear end point for the control of this basket it will however be difficult to ascertain compliance. In relation to this particular basket, there is a significant change in the monthly volumes during the 12 month period to March 2013 and there are therefore concerns over the calculation of the overall weighted average of prices for Basket 4. C&WG requested that the GCRA take this matter into account before any compliance requirements were formalized.

C&WG has particular concerns that the control of on-island wholesale leased lines has no end-point and believes a control is in any event unfair given JT in Jersey is under no price control obligations from the JCRA. C&WG therefore requested that the expiry of the compliance of this basket for price control purposes be set at 31

December 2013, i.e. the same expiry date as for the other baskets currently being controlled by the GCRA.

Basket 5 (Off-island retail leased lines)

As with Basket 4, C&WG welcomed the GCRA's proposals to allow it to rebalance prices of individual circuit types and welcomed the planned expiry of the 2013 price control in December 2013, rather than March 2014.

LP Telecoms Ltd was concerned at the slow progress in the opening of the Channel Islands' telecommunications markets and the resulting need to extend C&WG's existing price control. LP Telecoms does not consider there will be any significant change to the current competitive landscape while there are barriers to entry such as lack of access to both on-island and off-island dark fibre infrastructure and urged that these work areas be completed as soon as possible.

It is apparent from the responses received that respondents consider access to the telecoms infrastructure as critical to the development of further competition in Guernsey. The need to achieve the delivery of the wholesale access project, to ensure the cost of access to on-island and off-island lines is fair and that the terms on which those are made available are reasonable, are a priority for CICRA and those reviews are planned for completion over the course of 2013. It should, however, also be noted that the pace of change in the competitive landscape will strongly inform the GCRA's views on the need to maintain price controls. An assessment of this area will be necessary and, in particular, the existence of suitably strong constraints on C&WG's market position in these areas would be a prerequisite for removal of C&WG's price controls.

GCRA is sympathetic to the issues raised by C&WG on the need for an end-point for the control of on-island leased line prices in order to ensure compliance. GCRA will therefore provide that the control of the relevant basket is set to expire at the same date as the other baskets.

7. Final Decision and Next Steps

C&WG has not sought increases in the overall price cap for Baskets 1, 4 and 5 for 2013.

The current price control for C&WG comprises three baskets:

- Basket 1⁸: Exchange Line Rental, Local Calls and a 'Main' basket⁹
- Basket 4: On-Island Wholesale Leased Lines
- Basket 5: Off-Island Retail Leased Lines

Detail regarding the precise contents of the above baskets is set out in the OUR's decision notice for C&WG's 2008 price control¹⁰.

The overall price caps for Basket 1, Basket 4 and Basket 5 will be frozen for 9 months, until 31 December 2013, which is the point at which the 2013 retail price control for JT expires. This would allow for the timing of any change in price regulation of these two baskets to take place at the same time in both islands.

The cap on Basket 4 and Basket 5, C&WG's on-island wholesale prices and off-island retail products will apply at the aggregate level only and not to individual services within those baskets. C&WG would therefore be permitted to re-balance charges within these baskets, which it was restricted from doing in previous controls.

This price control will come into effect from 1st April 2013 and expire on the 31st December 2013.

⁸ In the 2008 price control decision, the components of this basket were separated into Baskets 1, 2 & 3 but were combined into a single basket in the 2012 control decision.

⁹ This term refers to the products that used to be included in a single Basket 3 ('Main' Basket); such products included Fixed Line local ISP calls, Fixed Line non-geographic calls charged at local rate, Fixed Line Jersey and National calls, Fixed Line non-geographic calls charged at national rate, Fixed Line international calls, Fixed Line calls to Guernsey mobiles, Fixed Line calls to Other mobiles, Public Payphones, Exchange Line connection and ISDN services.

¹⁰ Document No: OUR 08/07, February 2008