



4th September 2008

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

Dear Sirs

**Re Comments on the OUR's Draft Decisions in relation to the Review of C&W
Guernsey's Wholesale Business – OUR Document 08-15**

We refer to the above document and have the following comments on the draft decisions, which stem from the Regulaid review and the earlier consultation published as OUR Document 08-09.

We recognise that we did not respond to the earlier consultation in due time but, nevertheless, we welcomed the Regulaid review since it reflected many of Newtel's concerns that we have raised with the OUR. In particular, we supported the underlying message that C&WG has been in breach of its Licence in that it has discriminated in favour of its downstream activities and acted in a manner that is designed to inhibit its competitors. This has been seen in its wholesale product availability, its pricing and delayed service delivery.

In relation to Regulaid's key conclusions:

- A. We agree that C&WG needs to significantly alter its approach to its wholesale customers.
- B. We have believed for some time that C&WG has been contravening Licence Condition 29.1 and we were pleased to see that Regulaid confirmed incidences where it supplied leased lines to its retail arm faster than to its wholesale customers. We have flagged this previously.
- C. We have believed also that C&WG's retail staff have had access to information about wholesale orders and that this has led to contraventions of Licence Condition 33.
- D. We agree that C&WG needs a dedicated staff position to manage its wholesale business but we do not believe that the lack of such a position should have stopped C&WG from resolving the many issues that have existed between

themselves and their OLO customers.

- E. We agree that OLOs and C&WG should improve their communications with each other substantially but, from our own experience, communication with C&WG has not been an easy task.

In relation to the OUR's draft decisions, we have the following comments:

Draft Decision 1. We agree that C&WG should overhaul its processes for the ordering and delivery of wholesale leased lines as a matter of urgency in line with this decision and that OLOs are informed of the RFS date at the same time as the order acknowledgement. However, in terms of targets for delivery, whilst we note the arguments that C&WG needs a transition period within which to get processes in place to deliver circuits of over 2 Mb within the times recommended by Regulaid, we are, nevertheless, disappointed with the 40 days in year 1 and 25 days in year 2 allowed for by this decision.

Draft Decision 2. We agree that C&WG should be required publish KPIs on its public website in line with section 5.2.

Draft Decision 3. We agree that 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 penalties as defined by the OUR in section 5.3 and that C&WG should initiate all penalties for which it is liable under this Direction.

Draft Decision 4. We agree 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.

Draft Decision 5. We agree that 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.

Draft Decision 6. We agree that C&WG should create a position for wholesale sales and relationships that is compliant with the principles set out in this decision.

As an attachment to this response, we have commented on both Regulaid's original recommendations and the OUR's assessment as published in Document 8-09. As far as the above decisions are concerned, the one area that we are somewhat disappointed by is the DG's decision not to take further action, at this time, in respect of the recommendations related to mandated wholesale products – see our comments under 5.1.3 in the attachment. However, we welcome the DG's commitment to keep this issue under review as progress on NGN takes place. We hope this will provide the supporting reasoning behind our comments on the draft decisions.

In summary, the important point for all concerned is to ensure that, in accordance with its Licence, C&WG treats its competitors in the same way that its own retail arm is treated. We have no confidence that this is the case currently nor has it ever been. We hope that the outcome of this review will be that the OUR will ensure that C&WG complies with the relevant conditions in its Licence.

Yours faithfully
NEWTEL GUERNSEY LIMITED

MALCOLM TAYLOR
REGULATORY ADVISOR

Attachment to Newtel Letter

Newtel comments on Regulaid recommendations and the OUR's assessment as published in OUR Document 08-09 (April 2008)

In relation to Regulaid's recommendations (Section 4):

1. We support the recommendation (4.01) that C&WG should overhaul its processes for the ordering and delivery of leased lines as a matter of urgency. It is critical that OLOs have an RFS date with order acknowledgement, and that all circuits are delivered within non-discriminatory timescales such as those recommended; i.e. 2 Mb and under in 10 business days and over 2 Mb in 15 business days (although we agree that orders that require the installation of new fibre will require different timescales).
2. We would welcome a requirement (4.03) that C&WG should publish KPIs on its public website and that the OUR should require (4.04) C&WG's auditor to certify annually that the information in the published KPIs is correct.
3. We agree that C&WG should be penalised for late delivery (4.05). However, in terms of the level of penalties paid to wholesale customers, we question how this stands against Condition 29.1 of the C&WG Licence, which requires all customers to be treated the same.
4. We agree that C&WG must provide wholesale products that will allow OLOs to replicate technically and commercially C&WG's retail offerings, including the service wrap (4.08). We are not sure of the meaning of the provision that seems to exclude services provided in a competitive market.
5. We agree that C&WG should offer its wholesale and retail customers the option of paying a one off cost based fee or of a new minimum contract term (4.10) but we do not accept that OLOs should, in turn, give their retail customers the same choice.
6. We agree that 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 (4.11).
7. We agree that the OUR should ensure that there is an adequate profit margin available to OLOs for on-island leased lines and that the OUR should apply a margin squeeze test to leased line prices, including term discounts, and ensure that an adequate profit margin is available (4.12).
8. We are willing to participate in further discussions about the creation of an Industry Forum (4.14).
9. We note the recommendation that C&WG should change its arrangements for paying staff bonuses (4.18), 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. However, we do not see this as relevant to achieving a non-discriminatory service delivery to OLOs.

10. We agree that C&WG should carry out regular compliance audits (4.20) to ensure that its staff are not contravening its regulatory and contractual obligations, and are complying with its own policies and regulatory guidelines.
11. We agree that the OUR should implement the recommendations from the Regulaid review as widely and as quickly as possible (4.21) with the fall back of seeking a separation of network and wholesale activities in C&WG if it fails to cooperate.

In relation to OUR's assessment (Section 5)

Re 5.1.1 - Leased line provisioning processes. The OUR must address the poor delivery and discrimination outlined in this paragraph, particularly in relation to the delivery of leased lines above 2Mb.

Re 5.1.2 - Penalties for poor performance. C&WG staff should not need a financial incentive, other than penalties for non-performance. If C&WG staff are known to have been providing preferential treatment to their own retail services when meeting delivery targets this is clearly a Licence breach.

Re 5.1.3 - Mandated wholesale products. It should not be for C&WG to determine whether or not other operators can replicate the equivalent wholesale service element from other sources and OLOs should not have to regularly seek regulatory intervention to overrule C&WG's view on the replicability of elements of its service. The small scale of OLO businesses in Guernsey does make it difficult to allocate significant resources to constant regulatory challenges. Similarly, liaising with C&WG's wholesale arm to integrate the various elements into a coherent service is not a route that OLOs find attractive.

Therefore, we fully support the view that C&WG's present approach is not in the best interests of the telecoms market in Guernsey. It cannot be disputed that C&WG is dominant in the wholesale telecoms market and we have regularly urged the OUR to enforce non-discrimination provision in the C&WG Licence.

We understand that the strength of a non-discrimination obligation on C&WG could justifiably vary but, at this stage of market development, we believe that C&WG should be required to provide wholesale services that it provides to its own retail arm since we do not believe that the scope for innovation is significant.

For the future, C&WG will undoubtedly upgrade its existing network to a 'next generation network' but we have no visibility of such plans and would expect the OUR to take a view on how this could change the landscape for wholesale product definition and how a non-discrimination principle should apply going forward. We understand the point that a more ex-post approach might be relevant in future but we do not believe that the market is mature enough for such an approach.

Furthermore, C&WG's attitude and approach must change radically before such a step can be contemplated.

Re 5.1.4 - Price changes. As mentioned above, we agree that all wholesale price changes should follow the current process for 'minor interest' price changes and that a period of 30 calendar days, rather than the current 21 days, is sensible.

Re 5.1.5 - Term discounts. We welcome Regulaid's analysis that 2 and 3 year term contracts for on-island leased lines are loss making and we do believe that C&WG's pricing may well contravene the fair trading provisions in its Licence (Condition 32).

We note that the OUR has no visibility of the number of customers that take various term options. Newtel does offer term discounts for on-island leased line services on the grounds that it has to compete with C&WG.

Re 5.1.6 - Liaison between C&WG and OLOs. We support the establishment of forum for OLOs and C&WG that could review issues on a regular basis and act as a filter for disputes. We agree with the OUR that a forum should not be used as a delaying tactic by any party in drawing out a specific dispute. In this respect, we cannot imagine that any OLO would wish to create delay because time in providing services to customers is critical.

Re 5.1.7 - Structure of wholesale. Whilst we agree with the OUR that, for C&WG to move towards a commercial approach in dealing with OLOs, a dedicated carrier services staffing position, with appropriate authority, is a necessity, this does not excuse C&WG's behaviour to date. They should be willing to accept the need for such a position without being concerned about the costs, which should not be significant. They have an obligation to provide wholesale services and this should have been viewed as a necessity all along.

Re 5.1.8 - Information systems. We welcome Regulaid's findings on the ability of C&WG retail staff to access details of its wholesale customer orders and we agree that this is an extremely serious matter. C&WG should certainly be required to address this as a matter of urgency.

Re 5.1.9 - Regulatory compliance. We agree that C&WG should have internal processes and procedures in place to identify problems with compliance. As we have commented above, C&WG has had regulatory obligations since it was awarded its Licence and it has shown no real intent or desire failed to honour these unless pressurised by the OUR. We support the OUR's objective to get C&WG's proposals to address this deficiency in future.

Newtel Guernsey Ltd
4th September 2008