Channel Islands Wholesale Access Project – Wholesale Line Rental

Draft decision regarding modification of licence of Cable & Wireless Guernsey Limited

Document No: CICRA 12/53

November 2012

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CONTENTS

1. Introduction

Wholesale access to the fixed networks of the incumbent telecommunications providers in Jersey and Guernsey is key to the further development of fixed-line competition in the Channel Islands. Competitive access to the network of Cable and Wireless Guernsey Limited (***CWG***) will stimulate greater competition in fixed-line services in Guernsey, providing consumers with greater choice and better pricing, and helping drive innovation in the services provided to telecoms users. In the event that competition is increased in fixed-line services, the need for price controls on CWG in the longer term should also be reduced.

In November 2011, the Channel Islands Competition and Regulatory Authorities (***CICRA***) reported on the progress made by the Channel Islands Wholesale Access Project. That consultation also explained the shortlisted options and sought views on which of these should be prioritised. Responses to that consultation have informed this draft decision, which relates to the wholesale line rental product (***WLR***).

WLR allows competitors to the telecom incumbents to offer a single bill that includes exchange line rental. Currently the incumbent (in Guernsey, CWG) maintains a commercial relationship with the customer given it is the only provider of exchange line rental, even if the customer uses a competitor for calls or broadband services. This allows the incumbent several potential advantages, including the obligatory continuation of a commercial relationship with all customers who take fixed-line services, and the ability to bundle products in a way its competitors cannot. WLR is intended to allow a measure of access competition to remove such obstacles to competition.

In terms of implementation, WLR is the least complex to introduce of those shortlisted in the November 2011 consultation, while the timescale for introduction is relatively short and the cost of implementation is relatively low. After consideration of a high-level cost benefit analysis, this draft decision proposes to modify the licence of CWG to make available to other operators a WLR product for its fixed-line telephony network by 3 June 2013.

2. Structure of the Draft Decision

The draft decision is structured as follows:

Section 3 sets out the legal and licensing basis for this draft decision. Section 4 provides background to the consultation process, with Section 5 explaining the cost benefit analysis undertaken and consideration of issues raised. Section 6 assesses the alternative processes required to support the WLR product and the timing for delivery of the WLR product by the incumbent. Annex C has the text of the proposed licence condition.

Interested parties can make submissions in response to this draft decision paper by post or email to the following address:

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Email: info@cicra.gg

Any comments should be clearly marked "Draft Decision on Wholesale Line Rental Product" and should arrive before midnight on 19 December 2012

Responses to this draft decision will be made available on the CICRA website. Any material that is confidential should be put in a separate Annex and clearly marked as such so that it may be kept confidential.

3. Legislation and Licensing

The general legislative background is provided by the *Regulation of Utilities (Bailiwick of Guernsey) Law*, 2001 for the Guernsey Competition and Regulatory Authority (**GCRA**).

The sector-specific legislative framework is provided by the *Regulation of Telecommunications (Bailiwick of Guernsey) Law 2001,* (***the law***) together with the telecommunications licences of the licensees in Guernsey. In addition to specific legislation, there is scope for the States of Guernsey to give formal directions to the GCRA.

In Guernsey, *Section 6 of CWG's licence provides for the modification of licence conditions.*

"The Authority may from time to time modify, revoke or add to any condition in this licence. Any modification, revocation or addition to the Conditions shall be made in accordance with Section 8 of the Telecommunications Law and any other requirements under any applicable law."

Section 8 of the Telecommunications Law states that:

"(1) Having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions and the following provisions of this section, the Authority may modify a licence by amending or revoking any condition included in it or by adding any condition to it (including, subject to the provisions of section 9, any condition as to the application in relation to the licensee of the code).

(2) Before making modifications under this section to a licence, the Authority shall publish, and (in the case of an individual licence) give to the holder of the licence, notice -

(a) stating the modifications which he proposes to make;

(b) stating the reasons why he proposes to make those modifications; and

(c) specifying the time (not being less than 7 days from the date of publication of the notice) within which written representations or objections in respect of the proposed modifications may be made by interested parties;

and he shall -

(i) before making the modification, consider any representations or objections received from any interested party; and

(ii) having followed the procedure set out in this subsection, modify the licence (and publish notice of the modification) or decide not to modify the licence (and publish notice of that decision).

(3) A modification to a licence shall take effect from such time as the Authority directs, not being earlier than the expiry of the period specified by the Authority in accordance with subsection (2)(c)."

4. Background

In November 2011, CICRA published a consultation on wholesale access products. Responses to that consultation have been considered; in particular, the implications for any high-level cost benefit analysis (***CBA***). It is apparent from those responses and subsequent enquiries that a number of interdependencies between the products listed exist. The nature of assumptions required further increases the complexity and cost of carrying out a CBA of all wholesale products together. Such interdependencies include relative take-up, timescales and cross-elasticity of demand between the products. Specific examples include the fact that the benefits from introducing the naked digital subscriber line (***DSL***) bitstream product are potentially influenced by the length of time any WLR product might be available prior to its introduction. There is also an argument that WLR may be justified as a stand-alone product, given it may have an important role in preventing foreclosure of the market to allow the benefits of the naked DSL bitstream product to be realised when it is implemented at a later date.

Given this further information, in the GCRA's view, the complexity and resulting cost of carrying out a CBA of all the products with these interdependencies at this stage is disproportionate to the scale of the project. The range of outcomes seems especially prone to wide confidence intervals when carrying out the CBA on this basis. In particular, there appears to be an alternative way forward that is less burdensome on operators which has the potential to offer significant benefits in a shorter timeframe.

For these reasons, the GCRA has chosen to carry out a CBA only on WLR at this stage. It is also the case that the needs of the market are in the GCRA's view appropriately met at the present stage of competition by removing the advantage the incumbents currently have over their competitors in terms of ability to bundle their offers. A more even playing field is also enabled through the removal of the ability of CWG to enjoy an exclusive billing relationship with their customers in the Jersey and Guernsey markets in which they are the incumbent.

In terms of the benefits arising from this decision, the GCRA's view is that irrespective of whether customers choose to switch or not, the improved level of competitive pressure in the market is beneficial to all customers, and not confined to those that switch away from the incumbent. This is because the incumbent is likely to have to react to this competitive pressure in serving its existing customers, with related benefits to those customers who remain with it.

The GCRA further considers that WLR is likely to contribute to the potential benefit of introducing other wholesale products, including a naked DSL bitstream product in the future. The ability of other operators to offer bundles will improve their ability to compete against the incumbent and grow their market share. A higher market share enables an entrant to more easily market further services such as naked DSL bitstream if it were introduced at a later stage an existing commercial relationship with customers is likely to reduce marketing and acquisition costs when selling new products.

5. Cost-Benefit Analysis

The GCRA has taken into account the fact that WLR is currently made available in many countries of various population sizes and GDP per capita. The processes required for WLR are also relatively simple and well understood. Reliable cost estimates of around £30,000-£40,000 per annum (including set-up costs) in each island have been provided by CWG for the provision of a WLR product in Guernsey, which is low by any measure.

JT in its response to questions submitted by CICRA on the specific proposal by CWG and issues around the introduction of WLR in Jersey following the November 2011 consultation, has indicated it would require double the staffing resource proposed by CWG to provide a similar WLR solution, with an estimated annual cost of the order of £110,000, and potentially further costs from a change in specification required for the billing process.

CICRA has considered the alternative costs suggested by JT and is not convinced that JT can justify requiring twice the resource estimated by CWG to introduce the same product. Not only are there greater economies of scale in Jersey given its higher population (as a result of which we would expect JT's costs per population to be lower than in Guernsey), but JT has offered no convincing evidence to support the argument that JT must develop and implement WLR processes that are materially more complex (and costly) than those proposed by CWG. The process design and implementation would seem to the GCRA to be very similar between CWG and JT and the billing package used by JT, Comverse, is the same as that used by CWG. Given an annual cost of between £30,000 and £40,000 for the WLR to be introduced in each island, this amounts to roughly between £0.67 and £0.87 per Jersey household and £1.00 to £1.40per Guernsey household per annum. Even if JT's estimate of annual costs were accepted, this would set the cost per household in Jersey for the provision of a WLR product at around £2.40 per annum.

In considering the potential benefits, WLR offers a means for all market operators to bundle their services. The absence of significant bundling activity in the islands in fixed telecom services, other than by JT, is evident from our initial research. Where this is in evidence, the GCRA notes that the reduction in total bill can be substantial. For example, the current bundling offer from JT, 'JT Fibre Complete', indicates that the bundled price for mobile, broadband and fixed line calls is around £8 lower per month than the total price of the separate component products. While the GCRA has previously raised concerns around the composition of JT's bundles, it is nevertheless apparent that the price point JT believes is commercially feasible represents a significant reduction on the sum of the individual services sold separately. In addition, there are enhanced features offered as part of the JT Fibre Complete bundle not included for free in the standard individual products with which this price comparison is made, which would indicate the benefit to consumers is considerably greater than £8 per month.

It also appears to the GCRA there are further benefits to competition in removing the compulsory relationship the incumbent has with all customers regardless of who they take their calls or broadband services from. As explained already in this document and previous documents, this weakens the relationship of an entrant with its customers; WLR removes this limitation to competition.

The GCRA also takes the view that the introduction of WLR prior to consideration of any CBA of a naked DSL bitstream product will enable a sounder basis on which to carry out that analysis, given actual penetration figures following the introduction of WLR will be available at a later stage. The ability of other operators to compete in the market should also be improved as a result, and the extent to which the introduction of WLR will have improved the scale of their customer base will have implications for lowering their customer acquisition costs. WLR could also provide economies of scope and scale in marketing services, informing operators' options on how much to invest in naked DSL bitstream and fixed number portability in the future.

Given an annual cost of between £30,000 and £40,000 for each island, amounting to between £0.67 and £1.40 per household per annum in the Channel Islands, the GCRA concludes that the benefits from bundling alone, which WLR facilitates, exceed the costs of implementing the product on a high level CBA. Even if JT's higher cost estimates were taken and the cost threshold was £2.40, it is apparent that the benefits exceed the costs.

Objections to WLR have been raised by JT on the grounds that it would prefer that the naked DSL bitstream product is progressed instead of WLR, as it considers that WLR an "old technology", and is specific to copper networks, and because it considers there is no business case for JT Guernsey to offer WLR in Guernsey.

Given the success of bundled offers generally in telecoms and, in particular, JT's own record in Jersey of seeking to bundle fixed-line calls, mobile and broadband, the GCRA does not consider JT's objections reflect its own practice in Guernsey. The GCRA would also fully expect JT to offer bundled services as a result of WLR, given this offers an improved ability to compete. Also, WLR is primarily a billing service and therefore not specific to copper networks, contrary to what JT has argued.

The GCRA does, however agree with JT's view that the availability of naked DSL bitstream may offer a more significant step forward in terms of the flexibility available to other operators. However the GCRA has reservations about whether naked DSL bitstream can be delivered in a comparable timescale to that of WLR. Naked DSL bitstream is a more complex product and the risk of delay is that much greater as a result. It is also the case that the resources required to provide the wholesale product are more significant and JT's repeated concerns around availability of resources seem even more relevant to naked DSL bitstream than WLR.

An overarching reservation that the GCRA has with JT's response to the CIWAP consultation is that JT cites its investment in fibre access networks as determinative of the resources it has available to develop wholesale access products. The business interests of JT and where it believes it should dedicate its resources are not the only factor to take into consideration. The existence of a vibrant competitive environment is key to the health of the market. Indeed, competitors of JT have voiced concerns that it has failed to engage appropriately with them in the rollout of the fibre network and transparency has been poor. JT appears to be of the view that access by entrants will largely rely on the speed at which it chooses to roll out its new network, which is taking place over a five year timespan. Delays of this magnitude for competitors of JT are clearly not in the interests of furthering competition in the fixed-line telecoms market.

While JT has offered to 'fast track' Jersey customers to fibre where they wish to switch to another operator, other operators have clear reservations about relying exclusively on such arrangements. The reality is that a large proportion of the network in Jersey will still rely on copper networks to deliver access services for at least another 18 months, and further delay to wholesale competition is not in the best interests of consumers. The GCRA has therefore given greater emphasis to the speed at which it seeks to facilitate competition, but will consider the introduction of additional wholesale access measures as provided by the remaining short-listed products at a later stage, ideally drawing on evidence of the success of WLR is available and more reliable assumptions as to the potential benefits of naked DSL bitstream.

JT has cited the additional burden of developing wholesale processes for WLR as detracting from resources needed to achieve fibre rollout. The GCRA does not accept these arguments given the relatively straightforward processes entailed, much of which already exist through the provision of wholesale broadband. However, in the event these arguments had merit, it seems more likely that a naked DSL bitstream product, which is more complex and resource-intensive than WLR, would detract from JT's resources to a greater extent than WLR. Despite this, JT has indicated a preference for the launch of the naked DSL bitstream product.

An issue raised in the November consultation is whether WLR should include both single-line/PSTN and ISDN services. This draft decision does not propose to introduce a WLR-ISDN product and is limited to the single-line product at this stage. A reason for not including WLR-ISDN is that the complexity, cost and timescales for implementation may be substantially greater than for single-line WLR, which potentially involves more resource and greater complexity to provision. The consultation sought views on whether a separate CBA may be needed for each alternative given the above issues. The estimated costs of single-line WLR have been provided and the GCRA considers it has a reliable basis on which to proceed with a decision on that product. The same is not true of WLR-ISDN at this stage of the WAP project. The GCRA intends to further investigate the additional complexities of the WLR-ISDN service and the estimated cost as part of the on-going project. Operators such as Newtel Jersey have placed a particular priority on the provision of such a wholesale service and the GCRA is mindful of this demand. The GCRA therefore intends to progress with an assessment in this area at the earliest opportunity when it has a sufficiently reliable base of information with which to carry out a CBA analysis.

6. Processes

The diagram in Annex B sets out the processes required for the provision of a WLR product. These processes have not been contentious and will therefore be adopted as part of this draft decision. The specific billing processes are, however, likely to depend on the precise requirements of operators. In terms of the processes, it appears to the GCRA that the retail processes are likely to involve a daily process, leading to the provision of a high-usage report and the availability of call detail records on a daily basis. Responses have identified three alternative wholesale billing arrangements that therefore may need to be available to other licensed operators (***OLOs***) as part of the WLR product, namely:

1. **Option 1** - these processes would provide for the likely requirements of an existing operator that already has systems in place for the management of call related services
2. **Option 2** –these processes would enable existing licensed operators to offer WLR where they do not have the systems in place to manage call related services
3. **Option 3, along with further add-on services** – these processes would provide the wider services of an incumbent operator to new entrants (for example) who may wish to provide a white-labelled service.

Options 1 to 3 require a progressively greater level of involvement in the OLO’s billing processes by the incumbent since the incumbent draws to an increasing extent on its own systems to provide WLR due to the absence or lower level of investment by a potential OLO in such processes. It would appear that Option 1 is likely to be the preference for OLOs currently providing their own call billing; Option 2 may be more applicable to existing OLOs that do not at present provide their own call billing but may choose to do so given the availability of WLR. Option 3 may be more relevant to future operators who would look to offer only a white-label service, relying to a larger extent on the incumbent’s billing processes.

Whether all of the above options for billing need to be made available at the launch of WLR is questionable given the low likelihood of operators requiring the final two services from the incumbent. It is therefore not the GCRA’s intention to mandate that all of the above options should be in place at launch. The GCRA intends to mandate that in the first instance, Option 1 should be made available by the deadline under this draft decision and if there is demand, Option 2 should be made available also as soon as feasible after the deadline. This appears to cover all of the parties that have displayed an interest in the wholesale access project to date. In the event that further entry into the fixed market did take place which required greater support in the provision of billing processes than provided by Options 1 or 2, then the GCRA would consider that further.

WLR is a service which allows alternative communications providers to rent access lines on wholesale terms from the (incumbent) network owner and resell those lines to customers. For this service, the communications providers effectively lease an exchange line and decide how best to route a customer's calls. The November 2011 consultation document explained that this would generally include residential and business customers (PSTN & ISDN-2).

This draft decision is for the introduction of single line WLR at this stage of the wholesale access project. Feedback from operators indicates that WLR could be launched in nine months from the commencement of the project, should it be confined to a single line service. However, the majority of OLOs and operators were keen to see WLR implemented as quickly as possible in order to compete in the market with single provider solutions. While operators appear to agree that in the long term, naked DSL with Bitstream and the availability of fixed number portability offers the most opportunities to develop retail products for customers, single line WLR provides the most immediate opportunities for competition and should therefore be the highest priority at this stage.

A deadline date of 3 June 2013 is therefore set for the introduction of this access product.

The licence condition to be inserted as the new Licence Condition 16.9 will not mandate the price at which CWG is required to offer the WLR product, although it does stipulate that CWG is entitled to share the efficient costs of the provision of the WLR service equally with each of the Other Licensed Operators that seek WLR. The GCRA will intervene if CWG and potential customers for the WLR product are unable to agree on a price.

The proposed licence modification will take effect on 19 December 2012, unless the GCRA receives representations or objections about the proposal prior to that date which are persuasive, in which case the effective date will be specified in any final decision issued by the GCRA.

7. Next Steps

Parties are invited to comment on this draft decision. In the event that there are representations or objections raised, the GCRA will consider those prior to issuing a Final Decision. The condition that the GCRA intends to add to CWG's licence is set out in Annex D.

Annex A - Considerations under Section 2 of The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

The GCRA considers that the ability of other telecom operators to compete more aggressively in the fixed line telecom market by offering a fuller set of products protects the interests of consumers in respect of price charges, quality service levels, permanence and variety of utility services available to them. As with the assessment under Article 7 of the Jersey law, WLR is seen to meet an existing demand. The wider economic and social well-being of the Bailiwick is, in the view of the GCRA, improved in that increased competition in telecoms markets contributes to stable, low inflation, well regulated, competitive domestic markets and maintenance of a stable, competitive environment where infrastructure providers such as telecoms have business confidence and are faced with sufficient demand to continue to re-invest. Further competition is also likely to improve the quality of service that customers receive, given the improved choice and impetus this brings to the competitive process. WLR is a less intrusive form of access competition, and may be preferable to duplication of infrastructure on the island, which would lead to road closures and roadworks for islanders. Since WLR will be offered across the island, it will benefit all islanders.

Annex B – Considerations under The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012

Section 2 of the Regulation of Utilities (States' Directions) Ordinance requires the GCRA to follow the six principles for economic regulation set out in paragraph 5.11 of the report of the States Commerce and Employment Department entitled "Review of Utility Regulation" and dated 8 July 2011 and to take them into account in the performance of its functions and powers.

The six principles of better regulation are accountability, focus, predictability, coherence, adaptability and efficiency.

The GCRA has considered and fully taken into account the States of Guernsey Strategic Plan and the Fiscal and Economic Plan. These set out the need for stable, low inflation, well regulated, competitive domestic markets and maintenance of a stable, competitive environment where infrastructure providers such as telecoms have business confidence and are faced with sufficient demand to continue to re-invest. The GCRA therefore considers this draft decision it is made within a framework and is fully consistent with the wider States Strategic Plan.

This draft decision is focussed on a specific existing weakness in the competitive landscape of fixed line telecoms services, an area where there is clear concern from customers around charges in this sector. An improvement in the ability of operators to compete against the incumbent is in the view of the GCRA critical to addressing these deficiencies and is focussed on a specific area of weakness, namely the exclusive ability of the incumbent to provide exchange line rental.

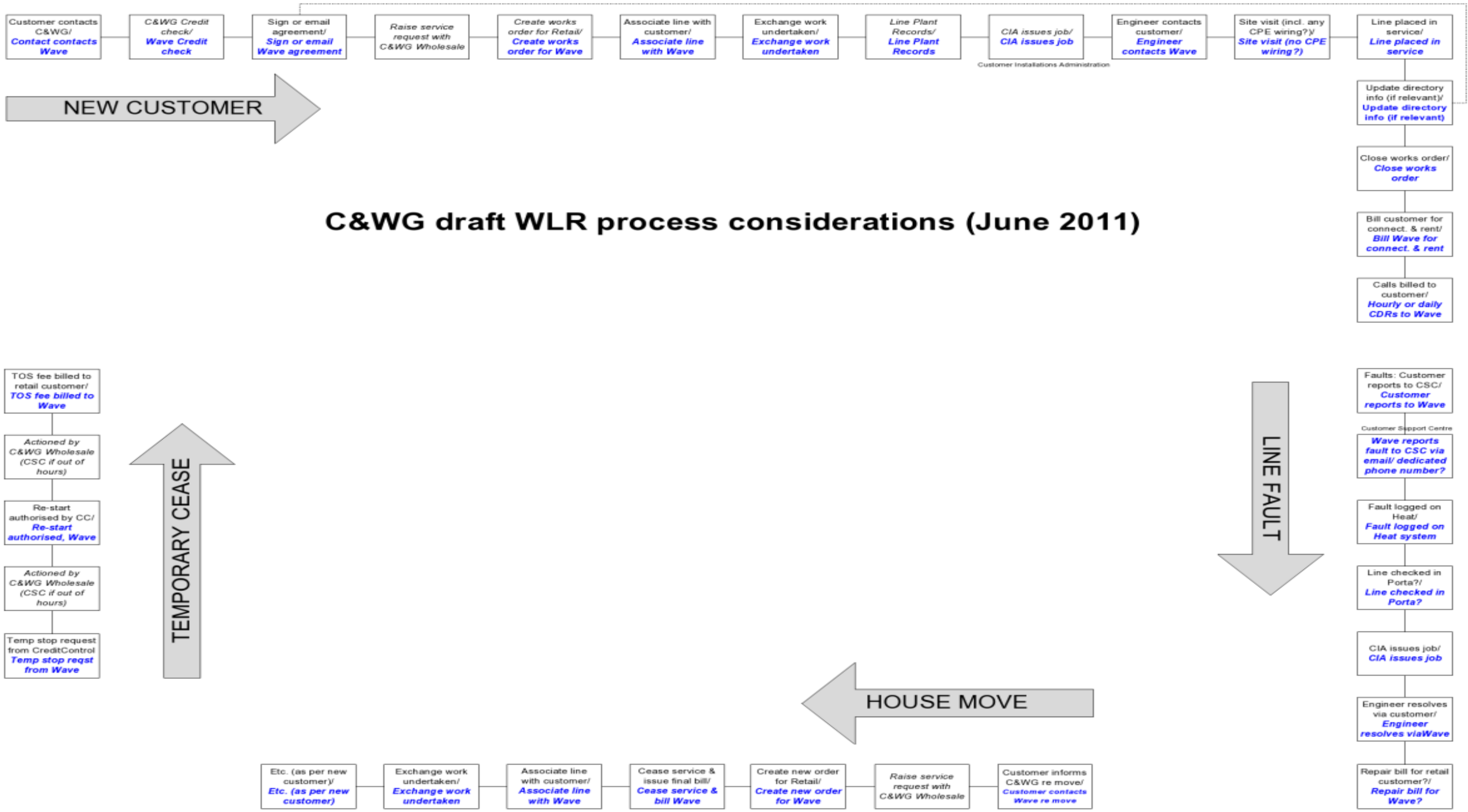
The wholesale access project has involved extensive consultation and regular discussions with all operators that have indicated an interest in developing further wholesale access for the market. This draft decision follows that process and the November 2011 consultation, which set out a short list of potential wholesale access candidates. WLR was identified as a potential access product in that consultation specifically and CICRA has held separate discussions with the incumbents in both islands to discuss issues around the introduction of WLR. The GCRA therefore considers this draft decision is the next step following that process.

It is apparent that the States places a priority on improvements in the availability and cost of fixed line services and this draft decision is consistent with that aim.

This WLR draft decision is intended as a first initiative in facilitating wholesale access. The development of more comprehensive wholesale access products will be considered after an assessment is made of the contribution of WLR to creating a more even competitive playing field. The approach taken is therefore flexible in that, as has been argued in the document, WLR offers benefits that may improve the cost-benefit equation of further access products in the future.

WLR offers the least intrusive means of achieving greater competition at the access level and is promoted on the basis that it offers a low cost burden on operators to provide an access product that is likely to enable bundling by operators. The potential efficiencies in the provision of services are also likely to be realised through the offering of fixed line services in this way to customers.

Annex C – Wholesale Line Rental Processes



Annex D – Licence modification

The proposed addition to the CWG licence shall be Licence Condition 16.9. The licence condition proposed is as follows:

"From the earliest reasonably practicable date after this licence condition takes effect, and in any event no later than 3 June 2013, the Licensee shall provide Wholesale Line Rental (WLR) for single lines on its fixed-line network to Other Licensed Operators. WLR shall be provided in conformance with the processes as set out in Annex D, of the initial notice of document CICRA 12/53. The Licensee shall be entitled to share the efficient costs of the provision of the WLR service equally with each of the Other Licensed Operators that seek WLR and will ensure that it makes representatives available to attend meetings, upon reasonable notice, with CICRA and/or its representatives to discuss the implementation or operation of WLR. Where a dispute arises in respect of WLR charges, the GCRA may set the maximum price for the provision of such a service."