



Office of Utility Regulation

Reviewing C&W Guernsey's Wholesale Leased Line Prices

Final Decision

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1. Introduction

In January 2007 the Director General (“DG”) of Utility Regulation (“OUR”) initiated an investigation into C&W Guernsey’s (“C&WG”) wholesale leased line prices. A key reason for this review was the importance of leased lines as a building block in the telecommunications industry and therefore the Guernsey economy. Leased lines facilitate access to the basic telecoms infrastructure and provide large business users with a means of linking different geographic locations with voice and data communications. Wholesale leased lines also enable other operators to compete with the incumbent, C&WG, through utilisation of the existing infrastructure in the Bailiwick. This means of promoting competition is particularly important where it is not economic to duplicate infrastructure.

In light of the OUR’s own concerns and those raised by Other Licensed Operators (“OLOs”) and business customers, the OUR assisted by its advisors Frontier Economics (“FE”), undertook a detailed review of how leased lines are provided and in particular the pricing approach for wholesale leased lines adopted by C&WG.

Document OUR 07/01 presented the issues arising from FE’s review and posed a number of specific questions relating to the potential development of the regulatory regime in relation to the pricing of C&WG’s wholesale leased line services. Document 07/09 set out a draft decision by the DG’s.

The DG is grateful to respondents for their contributions. All non-confidential responses received by the Office are available on the OUR’s website (www.regutil.gg) and for inspection at the OUR’s office.

C&WG has in the interim announced a 30% reduction to the price of all wholesale leased lines, both on and off island, as from 1st April 2007, a move which the DG welcomes. In compliance with its current price control, C&WG has also announced reductions in its retail leased lines charges.

This Final Decision paper therefore concludes the review of leased lines pricing having taken account of these interim developments and comments received.

2. Structure of Report & Draft Decision

2.1. Contents

The rest of this paper is structured as follows:

- Section 3: presents the legal and regulatory background which empower the DG to price control C&WG's leased line products;
- Section 4: sets out key issues from the original consultation paper together with responses from interested parties and the DG's consideration of those responses.
- Section 5: assesses additional areas raised by interested parties.
- Section 6: sets out the next steps in the process

3. Legal Background and Regulatory Framework

3.1. *Applicable Licence Conditions*

Part IV of C&WG's Fixed Telecoms Licence includes a number of conditions which are applicable to licensees which have a dominant position in a relevant market. C&WG has been found to have a dominant position in the wholesale and retail fixed-line telecommunications market in Guernsey and is therefore required to comply with these additional licence requirements.

Condition 26 of C&WG's fixed telecoms licence states the following:

26.1 The Licensee shall offer to lease out circuits for any lawful purpose:

- (a) on publicly advertised conditions and on non-discriminatory terms. This is without prejudice to discounts that are in accordance with Condition 31;*
- (b) within a reasonable and published period of time from any request;*
- (c) so as to meet the quality standards required under the Conditions; and*
- (d) at prices that do not exceed levels determined from time to time by the Director General.*

Condition 26 is included in C&WG's licence under the powers available to the DG under section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 which states, inter alia, that the DG shall have the power to determine the conditions to be included in a licence. Under Section 5 of the Telecommunications (Bailiwick of Guernsey) Law 2001, the DG may include licence conditions regulating the prices, premiums and discounts that may be charged or allowed by a licensee which has a dominant position in a relevant market.

C&WG was previously found dominant in the wholesale fixed-line telecommunications market and the retail fixed-line telecommunications market (OUR 05/19). The DG therefore has the power to determine the level of prices for both wholesale and retail leased lines levied by C&WG.

Condition 31.2 states that:

"The Director General 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;

- 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;*
- restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*

- *provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.”*

Therefore should the DG determine following the conclusion of a consultation process that amendments are required to the charges levied by C&WG for both wholesale and retail leased lines products and services he may direct that those charges be amended under the powers available to him.

4. Responses to Specific Issues in the Consultation

The DG's proposed approaches to the regulation of C&WG's leased line prices at both the wholesale and retail level which were set out in OUR 07/01 and OUR 07/09 are again summarised in Table 4.1 below.

Table 4.1 Summary of Proposed Approaches

	Wholesale Price	Retail Prices
On-Island	Cost plus or wholesale price cap	Exclude from new price control with focus on facilitating competition in wholesale market.
Off-island	Retail Minus	Include within new price control.

The response from interested parties and the DG's consideration of these is set out below.

4.1. Approach to setting Wholesale On-Island charges

Draft Decision 1

The DG proposed to cease regulating wholesale on-island leased lines charges through the 'Retail Minus' approach after 31st March 2008. He proposed to delay setting any new wholesale charges to on-island leased lines until April 2008 based on FE's recommendations, and would take account of new evidence that might alter the current finding of dominance. Until that date, the DG proposed to maintain the existing Retail Minus regime for on-island leased lines and accept the reductions volunteered by C&WG.

Responses from Interested Parties

Wave Telecom had concerns about the length and cost of a transition from the present approach as proposed in the draft decision. It requested strict timeframes, with penalties for any failures by C&WG to mitigate such risks if this approach was implemented. Wave also wished to ensure implementation of this area did not detract from addressing other problems it perceived with the leased lines product which it had already raised. C&WG had no additional comment to make on this issue and Newtel stated it supported the DG's proposal.

DG's Decision

The DG acknowledges the concerns raised. The implementation process will be managed as part of the current price control process and risks to implementation dealt with through that consultation process. The DG will cease setting wholesale on-island leased lines charges through the 'Retail Minus' approach after 31st March 2008.

Draft Decision 2

The DG proposed to introduce a wholesale control for C&WG's on-island leased lines charges from 1st April 2008 and remove retail on-island leased lines from any future retail price control. In view of the recent reductions in all of C&WG's wholesale leased line prices, the DG was of the view that if there was a change to a wholesale price cap or cost-plus approach this should be introduced after 31st March 2008. This would mean that unless there is evidence that alters the current finding of dominance, the appropriate level of a new wholesale control could be addressed at the same time as any new C&WG retail price control. Issues such as the appropriateness of a P_0 adjustment as well as the duration and form of a price control would also be considered during that process.

Responses from Interested Parties

C&WG sought clarification as to the implications of the removal of on-island leased lines for any future price control. Wave welcomed the approach but requested that C&WG was made to comply with their licence and all provisions contained within it. Newtel's preference was for a cost plus pricing approach capable of being monitored on an ongoing basis by the OUR. Newtel emphasised the importance of ensuring C&WG treats its competitors in the same way that its own retail arm is treated. Newtel therefore believe a wholesale price cap with a P_0 adjustment might offer a better approach.

DG's Decision

Given the issues raised around the detail of implementing the proposal it is appropriate that clarification of the implications of such a change and other issues are dealt with as part of the wider current price control process, including an assessment of dominance. In the event there is no change in the assessment of dominance it is the DG's intention to introduce a wholesale price control for C&WG's on-island leased lines charges from 1st April 2008 and remove retail on-island leased lines from any future retail price control. The detailed nature and implementation of such a control will be consulted on further as part of the current price control process.

4.2. Approach to setting Wholesale Off-Island charges

Draft Decision 3

The DG proposed to regulate wholesale off-island leased line charges using the Retail Minus approach and to place retail off-island leased lines charges within a safety cap in any future retail price control from 1st April 2008. Unless there was evidence that altered the current finding of dominance, the DG proposed to proceed on the basis of regulating wholesale off-island charges using the current retail minus approach and place a price cap on the equivalent retail service when the next price control decision is made.

Responses from Interested Parties

C&WG state it is essential that the market for retail off-island leased lines is kept under review. Wave supported the draft decision, while Newtel agreed with the proposal but remain concerned that C&WG could leverage its position in other territories to develop pricing for end-to-end leased lines that could undermine competitive offerings.

DG's Decision

In the event there is no change in the assessment of dominance it is the DG's intention to regulate wholesale off-island leased line charges using the Retail Minus approach and will place retail off-island leased lines charges within a safety cap in any future retail price control from 1st April 2008. The detailed nature and implementation of such a control will be consulted on further as part of the current price control.

4.3. HUGO Off-Island Leased Line Wholesale charges

Draft Decision 4

The DG proposed to regulate the HUGO wholesale off-island leased lines on the same basis as set out in Draft Decision 3. Given the retail minus discount C&WG introduced for its HUGO leased line services with effect from 1st April 2007, the DG proposed not to take any further action with respect to C&WG's basic wholesale HUGO prices. In view of the recent reductions in all of C&WG's wholesale leased line prices, any move to a wholesale price cap for HUGO off-island leased lines will only be introduced after 31st March 2008.

Responses from Interested Parties

C&WG had no further comment on this proposal, while Wave and Newtel supported the proposal.

DG's Decision

The DG welcomes the general support for the proposed approach. In the event there is no change in the assessment of dominance it is the DG's intention to regulate the HUGO wholesale off-island leased lines on the same basis as set out in Section 4.2 above.

5. Additional Issues Raised in the Consultation

5.1. Constraint of C&WG's Wholesale Product Portfolio

Draft Decision

The DG proposed to investigate the conditions for receiving certain leased line services further as a standalone investigation. His initial view is that it is a concern if obligations to take off-island services are imposed by C&WG on OLOs who have no need of such services if their access to an alternative provides a viable substitute. The materiality of the issue could increase with the arrival of the Liberty cable installed by Wave. C&WG's current practice appears to require Wave to use the HUGO cable, number 4 or number 7 cable if Wave wishes to provide an end-to-end leased line service requiring 45Mbit on-island leased line.

DG's Decision

The DG has since dealt with a specific dispute in this area (OUR 07/16). To the extent that other issues remain he anticipates this will be dealt with further through a review of the wholesale business of C&WG which has recently been announced.

5.2. Retail Term Discounts

Draft Decision

The DG did not propose to consider this matter further in the context of the wholesale pricing review.

Responses from Interested Parties

Wave believe any term discounts applied on a retail level must be provided transparently to the wholesale offering as well.

DG's Decision

The DG does not intend to make any decision on this matter in this decision paper. Given the strong view of parties on this aspect of C&WG's portfolio, the matter has been included in the terms of reference for the review of C&WG's wholesale business referred to above.

5.3. Ethernet Circuits

Draft Decision

The DG noted that all leased lines, including Ethernet circuits, will be subject to a wholesale price control from 1st April 2008, and the OUR will look at the costing and pricing of services as part of the price control work programme.

Responses from Interested Parties

No respondents commented on this issue.

DG's Decision

In the event there is no change in the assessment of dominance it is the DG's intention that all leased lines will be subject to a wholesale price control from 1st April 2008 and the OUR will look at the costing and pricing of services as part of the price control work programme.

5.4. Retrospective Pricing

Draft Decision

Given C&WG's voluntary reduction in leased line prices prior to the DG having to make a final decision, the DG did not consider it necessary for any retrospective pricing at this stage.

Responses from Interested Parties

Wave's view is that where C&WG reduces the retail pricing without reducing the wholesale price or providing the required notice under the terms of their licence, then retrospective pricing should apply, as well as OUR sanctions for breach of their licence.

DG's Decision

The DG has welcomed C&WG's voluntary reduction in its wholesale leased line prices which came into effect on 1st April. These changes have been introduced with immediate effect and the DG therefore does not consider it necessary for any retrospective pricing at this stage.

5.5. Pricing Structure

Draft Decision

The DG intended to investigate this issue further as a standalone investigation.

Responses from Interested Parties

Newtel and Wave Telecom welcomed the DG's intention to investigate these issues further.

DG's Decision

The DG has since made a finding as part of a dispute resolution in this area and anticipates the review of C&WG's wholesale business referred to above will address any additional concerns in this area.

5.6. Quality of Service

Draft Decision

The DG proposed to investigate this issue further as a standalone investigation subject.

Responses from Interested Parties

Wave and Newtel welcomed the DG's commitment to such a review.

DG's Decision

The DG intends to address these issues within a review of C&WG's wholesale business and its relationship with its retail business, particularly with respect to the provision of leased lines.

6. Next Steps

There are a number of inter-related projects that the DG and his staff will continue working on over the coming months:

- A review of the Bailiwick's Wholesale Business focusing on aspects of C&WG's product offerings (e.g. terms and conditions, product range etc); and
- A review of C&WG's Retail Price Control to consider whether any new price control is required from 1st April 2008.

The DG will look to keep all interested parties informed of any future developments in this area.