



Office of Utility Regulation

**Refusal to meet a request to provide On-
Island 45 Mbit/s Leased Line Tail Circuits -
Dispute between Wave Telecom and Cable
and Wireless Guernsey**

Finding in Dispute

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1. Introduction

1.1. Background

The functions of the Director General of Utility Regulation (“DG”) are set out in The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (as amended) (the “**Utilities Law**”) which includes, amongst others, the function to:

“Receive and to conduct inquiries and investigations (which may include inspections of any part of a utility network) and to hear complaints by any person regarding utility activities.”¹

Under Section 5 of the Utilities Law, the DG has to power to do anything that appears to him to be necessary or expedient for the purpose of exercising his functions and powers, including without limitation, the power to impose any direction, requirement or sanction under the Utilities Law or any Sector Law.

Under The Telecommunications (Bailiwick of Guernsey) Law, 2001 (the “**Telecoms Law**”) under Section 27 the DG has the power to give directions to licensees in the event that the DG is satisfied that a licensee is or has been in contravention of any condition of a licence or any provision under the Utilities Law or the Telecoms Law².

An important aspect of hearing complaints and determining disputes involves ascertaining whether there is or has been a contravention of any licence condition or a contravention of the applicable law. The DG has issued guidelines on the procedures which his office (“**OUR**”) will apply to the handling of complaints and disputes (including disputes between licensees that have not been resolved bilaterally between the parties)³ (“**DRG**”).

1.2. The Complaint

Wave Telecom Limited (“**Wave Telecom**”) submitted a formal dispute to the OUR regarding an alleged refusal by C&W Guernsey (“**C&WG**”) to meet a request to provide on-island 45Mbit/s leased line tail circuits. Wave Telecom argues such a refusal damages its competitive position and is consequently adversely affecting competition in the market for telecommunications services in Guernsey. Wave Telecom argues C&WG has breached three of its fixed telecommunications licence (the “**C&WG Licence**”) conditions, namely Conditions 26, 29 and 32. Wave Telecom has requested the DG instruct C&WG to add a 45Mbit/s leased line to its wholesale on-island portfolio on terms no less favourable than offered to C&WG’s retail customers within one month of the direction being issued.

¹ The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 Section 4 (1)(e)

² The Telecommunications (Bailiwick of Guernsey) Law 2001 Section 27 (1)

³ Dispute Resolution Guidelines Document number OUR 02/32

1.3. Investigation Process

On the 28th June 2007 Wave Telecom notified the OUR of its complaint against C&WG regarding an alleged refusal by C&WG to meet a request to provide On-Island 45Mbit/s leased line tail circuits (“**the Dispute**”).

Following receipt of the complaint and consideration of the issues the OUR launched a formal investigation and on the 3rd July 2007 OUR staff forwarded Wave Telecom’s complaint to C&WG in accordance with the DRGs. C&WG responded to the OUR’s request for comments with a letter dated 18th July 2007. That response which also dealt with the Les Caches Dispute comprised some general comments and a rebuttal of Wave Telecom’s allegation of C&WG’s non-compliance with licence conditions.

In accordance with the DRGs, C&WG’s response of 18th July was forwarded to Wave Telecom for comment. A commentary on the response was received from Wave Telecom on 20th July 2007.

A proposed finding in the dispute was provided to both Wave Telecom and C&WG for comment who responded on 10th September and 13th September respectively.

The DG has considered all of the information provided by Wave Telecom and C&WG in the correspondence referred to above. This document sets out the DG’s finding based on his consideration of the information provided.

2. Structure of the Paper

The rest of this paper is structured as follows:

- Section 3:** contains a chronology of the negotiation process between the two parties based on information provided by the parties;
- Section 4:** presents the issues under consideration;
- Section 5:** summarises both C&WG's and Wave Telecom's comments on the issues;
- Section 6:** summarises the DG's proposed finding and responses from C&WG and Wave Telecom to the proposed findings; and
- Section 7:** sets out the DG's final decision.

Responses to the DG's proposed finding from C&WG and Wave Telecom are published on the OUR's website.

3. Summary of Events

Based on the information provided by both parties the OUR has compiled a chronology of the events leading up to the lodging of a complaint by Wave Telecom with the OUR.

27 July 2006	Wave Telecom write to Commercial Director at C&WG requesting the addition of wholesale on-island 45Mbit/s circuit to C&WG's portfolio.
	Wave Telecom receive no response from C&WG and Wave Telecom escalate the matter to C&WG's Chief Executive Officer.
5 September 2006	C&WG inform Wave Telecom that the company plans to review its wholesale portfolio and will discuss any changes that might be planned.
9 January 2007	Wave Telecom repeat request of 27 th July 2006. No response ever received from C&WG.
28 June 2007	Wave Telecom lodge official complaint with OUR.

4. Issues under Investigation

4.1. Refusal to Meet Request

Wave Telecom has submitted to OUR that its request for wholesale on-island 45 Mbit Leased Lines was reasonable and it considers C&WG's unresponsiveness and apparent unwillingness to enter negotiations amount to a refusal to negotiate and a refusal to supply.

Wave Telecom has asserted that its request to the C&WG network department to provide wholesale 45 Mbit/s on-island circuits was driven by a demand from Guernsey business customers and there is an identifiable market for this product in the Bailiwick. Wave Telecom argues C&WG's refusal to supply such circuits meant it could not meet its own customer requirements at competitive prices which insulates C&WG from competitive pressure.

Wave Telecom believes C&WG's behaviour amounts to an infringement of three of its licence conditions, namely:

- Condition 26 (Leased Circuits);
- Condition 29 (Undue Preference and Unfair Discrimination); and
- Condition 32 (Fair Competition).

Wave Telecom further asserts that its request for a 45Mbit leased line product constitutes a request for a form of "access" within the meaning of the Telecoms Law and Condition 21 of the C&WG Licence and that failure by C&WG to provide such access triggers the said Condition 21. Wave Telecom has requested that OUR direct C&WG to add an on-island 45 Mbit leased line product to its wholesale product portfolio on terms no less favourable than offered to C&WG's retail customers within one month of the direction, based on C&WG's currently operating retail minus formula, provisioning lead times equivalent to those for comparable services offered by C&WG to retail customers and on same terms and conditions as apply to the existing on-island leased lines portfolio. Wave Telecom has further asked the DG:

- To direct C&WG to match their on-island and off-island portfolios;
- To monitor C&WG's implementation of any such directions; and
- To impose a substantial fine on C&WG.

4.2. Licence Condition 26

Licence condition 26.1 states, inter alia, that:

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

- (a) on publicly advertised conditions and on non-discriminatory terms...*
- (b) within a reasonable and published period of time from any request;"*

Licence condition 26.3 provides that the following may be reasonable grounds for refusing a request for leased circuits:

- if the use of the leased circuits in the manner proposed would harm the integrity, security or interoperability of the Licensed Telecommunications Network or Licensed Telecommunications Services in a material way; or
- if the leased circuits will be connected to Customer Premises Equipment (CPE) that is not approved for connection to the Licensed Telecommunications Network.

Wave Telecom stated that there was no reason to believe that the integrity, security or interoperability of C&WG's network would be compromised by the provision of the service requested. Wave Telecom also pointed out that C&WG did not suggest that the circuits would be connected to unapproved CPE. Wave Telecom state that they were not aware that C&WG had provided the DG with any reasons in writing alleging that Wave Telecom or its customers are acting in a manner set out in Condition 26.3, as required by Condition 26.4. Accordingly Wave Telecom assert that C&WG has refused to meet a reasonable request and considers C&WG's unresponsiveness and apparent unwillingness to enter negotiations amount to a refusal to negotiate and a refusal to supply.

Additionally, Wave Telecom claim that while it may be argued that a request to supply a given type of leased line may reasonably be refused if the costs of product development and in-life product management of the wholesale product are disproportionate to the benefits. In Wave Telecom's view such an argument would not stand scrutiny in the current case.

Wave Telecom also refers in its complaint to condition 26.2 which states that the Licensee shall offer to lease out circuits to other licensed operators on terms that are no less favourable than those on which the licensee makes equivalent leased circuits available to its own business divisions.

Wave Telecom asserts that, when supplying a 45Mbit/s off-island retail circuit, C&WG is notionally supplying a wholesale 45Mbit/s on-island circuit to its downstream divisions (albeit one coupled with an off-island product element). Therefore, by failing to meet a reasonable request to supply a wholesale on-island 45Mbit/s circuit to it, Wave Telecom believes C&WG is in breach of Condition 26.2. Wave Telecom expresses the view that the additional costs to C&WG of providing an equivalent product to a competitor such as Wave Telecom would be minimal.

Wave Telecom believe it would not be correct for C&WG to offer as a defence against an allegation of a breach of Condition 26.2 that they satisfy the Condition by offering a wholesale 45Mbit/s off-island circuit. This is because, Section 10.2(e) of the Law states "*the licensee shall provide interconnection or access in a manner that is sufficiently unbundled so that the person requesting interconnection or access does not pay for telecommunications network components or telecommunications services that he does not require*". Wave Telecom make the point that it has sufficient infrastructure to self-provide the off-island component for retail leased lines and therefore does not require any off-island service provided by C&WG.

4.3. Licence Condition 29

Condition 29 states that:

“The Licensee shall not show undue preference to, or exercise unfair discrimination against any User or Other Licensed Operator regarding the provision of any Licensed Telecommunications Services or Access. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or an Associated Company or Other Licensed Operator so as to place Other Licensed Operators competing with that business at an unfair disadvantage in relation to any licensed activity.”

Wave Telecom asserts that when supplying a 45 Mbit/s off-island retail circuit, C&WG notionally supplies a wholesale 45Mbit/s on-island circuit to its downstream divisions. Therefore, by failing to meet a reasonable request to supply a wholesale on-island 45 Mbit/s circuit to Wave Telecom, Wave Telecom claims that C&WG is exercising undue preference to its own business. According to Wave Telecom this places it at an unfair disadvantage in relation to a licensed activity, and amounts to a breach by C&WG of Condition 29 of the C&WG Licence.

4.4. Licence Condition 32

Condition 32 states that, under Part V: Fair Competition,

“..., the Licensee shall
a) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Telecommunications Networks or the provision of Telecommunications Services in the licensed area; ...”

Wave Telecom alleges that, by refusing to supply wholesale 45 Mbit/s on-island leased lines, C&WG is preventing and restricting Wave Telecom from offering a competitive service to its business customers, resulting in an unfair competitive advantage to C&WG in competing for retail customers.

5. Summary of Responses

Following commencement of the investigation, the OUR requested C&WG's comments on the complaint raised by Wave Telecom. C&WG's response to this request on 18th July 2007, comprised some general comments and a rebuttal of Wave Telecom's allegations of its non-compliance with its licence conditions.

5.1. **C&WG comments on alleged licence breach**

C&WG claimed Wave Telecom had lodged the Dispute under a section of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (Section 10, parts 2 (a), (b) and (d)) that does not apply to services in the Wholesale Leased Circuit Services Agreement ("WLCSA"). Notwithstanding C&WG's assertion, C&WG responded to the Dispute in the interests of moving the matter forward in a constructive and co-operative manner.

C&WG stated it never refused to develop a 45 Mbit on-island leased line service. C&WG refuted allegations that it was profiteering in this segment of the market and produced market data to support its argument that the actual size of the market for off-island 45 Mbit retail leased lines was not highly sought after and a lucrative product as claimed by Wave Telecom.

C&WG informed the OUR that it had since reviewed the priority given to the development of an on-island 45 Mbit product (both wholesale and retail) and intended to meet with the OUR to discuss the addition of an on-island 45 Mbit leased line to both the company's on-island and off-island portfolio. Since responding to the investigation on 18th July 2007 C&WG has met with OUR staff and formally notified the DG of its intention to launch a 45Mbit on-island leased line wholesale product with effect from 1st September 2007.

5.1.1. **Condition 26:**

According to C&WG when any leased line is priced it is done as a new calculation to ensure the latest known costs are used as the basis for setting the price. Hence, C&WG state that the off-island 45 Mbit service would have been costed without any direct recognition of an 'on-island product' because that is not the company's standard process and no such service exists or was planned. Consequently C&WG denied and refuted the allegation that it was in breach of condition 26 of its licence.

5.1.2. **Condition 29:**

In responding to the allegation that C&WG is in breach of condition 29, C&WG stated that it does not supply a separate on-island circuit to its downstream division in response to Wave Telecom's allegation that "*when supplying a 45 Mbit/s off-island retail circuit, C&WG notionally supplies a wholesale 45 Mbit/s on-island circuit to its downstream divisions*". Consequently C&WG denied and refuted the allegation that it was in breach of condition 29 of its licence.

5.1.3. Condition 32:

C&WG stated that there has been no delaying tactic as alleged by Wave Telecom. C&WG stated that unless and until there is a real customer and business requirement for such a product the technical constraints and resulting associated infrastructure costs means it would not be a good investment for the company. Indeed C&WG does not know of or believe there to be a market of the magnitude suggested by Wave Telecom. C&WG assert therefore that there is no unfair competitive advantage to C&WG in competing for retail customers. Consequently C&WG denied and refuted the allegation that it was in breach of condition 32 of its licence.

5.1.4. Financial penalties

C&WG noted that in the Dispute, Wave Telecom proposed that a punitive approach be taken by imposing a substantial fine by reference to section 28 of the Law. In C&WG's view this is a course of action that cannot be taken.

In the first instance C&WG denied that it is in breach of any condition of its licence, and secondly, C&WG asserted that in any event unless and until there has been a section 27 direction in respect of the DG's findings there can have been no contravention of such direction and therefore section 28 does not apply.

5.1.5. Suggested next steps

In summary C&WG rejected all the allegations that it was in breach of conditions 26, 29 and 32 of its licence and that the request for services in the dispute amounted to a request for access within the meaning of the Telecoms Law. C&WG indicated it would be bringing a wholesale on-island 45 Mbit leased line to the market on 1st September 2007. Consequently C&WG suggested that Wave Telecom should provide C&WG and the OUR with a forecast of its on-island 45 Mbit requirements for the next six months so that C&WG can assess the availability of infrastructure and prevent a similar dispute in the future.

5.2. Wave Telecom Comments

Wave Telecom submitted a limited response to C&WG's response to the Dispute and alleged licence breaches. Specifically Wave Telecom observed that it was predictable that C&WG would now (after commencement of the dispute process) provide the OUR with pricing of a 45Mbit on-island service. Wave Telecom did not believe that this would have occurred had it not submitted its complaint and contended that in fact this further supports the requirement for clear obligations in respect of the alignment of the off-island and on-island portfolios.

6. Proposed Finding and Responses

6.1. Summary of Proposed Finding

The DG proposed to find C&WG in breach of Condition 32 in regard to the complaint lodged by Wave Telecom with respect to the refusal by C&WG to meet a request to provide on-island 45Mbit/s leased lines tail circuits.

6.2. Responses to Proposed Finding

Wave Telecom restated arguments it had previously made which are already set out above.

C&WG refuted the finding that it was in breach of licence condition 32. However, in light of concerns expressed by the OUR in its draft findings C&WG undertook to start a new process of raising staff awareness of legal and regulatory obligations. C&WG argue that the DG should take account of wider issues than the specific complaint and any consideration of allegations of misconduct in Guernsey should take into account relevant and connected circumstances and behaviours in Jersey.

C&WG maintain the DG relies to a considerable extent on the elapsed time that passed between Wave requesting an On-Island 45 Mbit/s service be made available and the date it was introduced, in finding that the behaviour by C&W Guernsey equated to a refusal to supply. However, C&WG believes the timing of the Wave requests has been ignored. Having been advised by C&W Guernsey at the beginning of September 2006 that it was reviewing its portfolio, C&WG argue Wave did not raise the matter again until over four months later and this was in the form of an email that only requested an update on progress. C&WG argue that such a delay and such wording does not portray an urgent requirement. C&WG are also of the view that a gap of over 5 months between that second request and the lodging of the formal complaint does not demonstrate that the matter was of the utmost importance Wave Telecom.

C&WG is of the view that if the 45 Mbit/s On-Island leased line service is in as much demand by the local market as Wave implies:

- Wave would have communicated with others within C&W Guernsey regarding the required service
- Escalated the matter again to the Chief Executive as a matter of urgency soon after 9 January 2007
- C&W Guernsey would have received at least some requests for prices for 45 Mbit/s retail circuits, or requests for wholesale circuits from other OLOs

C&WG took the view that since Wave did not pursue its request for the development of a 45 Mbit On-Island leased line service, this was taken by C&W Guernsey to mean that it was a speculative request on the part of Wave, and hence the matter was treated as low priority by C&W Guernsey. The importance to Wave of the service only

became apparent when they lodged the formal complaint, and C&W Guernsey took immediate steps to develop the service and introduce it in the wholesale and retail portfolios. Since the announcement of the availability of the service, C&W Guernsey states it has not received any specific enquiries or orders from either retail or wholesale customers and sees this as evidence that Wave has exaggerated the potential market. If there is no real demand for the service, then C&WG argue Wave cannot have suffered as a result of the service not being available and it cannot be in breach of Licence Condition 32.

7. DG's Decision

The DG considers that, having regard

- (a) to his duties and functions under Sections 2 and 4 respectively of the Utilities Law, including in particular the duty to secure, so far as reasonably practicable, the provision of utility services that satisfy all reasonable demands for services within the Bailiwick and to maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick and the function to receive and conduct inquiries and investigations and to hear complaints; and
- (b) to his powers under Section 5 of the Utilities Law to do anything which appears to him necessary or expedient for the purpose of exercising his functions or powers, including without limitation the power to impose directions under Section 5(1)(e) .

it is appropriate that the DG consider the Dispute and that he has the power to make the findings and issue directions.

The DG's consideration of the Dispute involves the DG forming a view as to whether or not C&WG's actions in the matter under review have constituted a breach of any of the terms of the C&WG Licence as referred to by Wave Telecom in its initial complaint. In assessing this, the DG has considered, amongst other things, the terms of the relevant conditions of the C&WG Licence and C&WG's obligations thereunder, the factual circumstances in which C&WG's behaviour occurred and whether the communications cited offer sufficient evidence of failure to enter into discussions for the provision of a service sought by a customer.

The DG does not consider it necessary to consider whether or not C&WG has contravened all three licence conditions cited by Wave Telecom. It would appear to the DG that the licence condition most relevant to the behaviour by C&WG is Condition 32. The applicability of Licence Condition 32 is therefore considered below.

7.1. Condition 32

C&WG has offered the argument that the higher the capacity of a circuit the more complex it is to provision and technical constraints can make provision of a 45Mbit circuit to a specific site impossible without significant investment in infrastructure. However, there is no evidence that Wave Telecom's request fell into this category and, if so, there is no evidence that C&WG conveyed such reasons to Wave Telecom. It is therefore unclear how C&WG can argue such reasons were reasonable grounds to refuse Wave Telecom's request when there was no attempt to convey such reasons to Wave Telecom. C&WG also questioned Wave Telecom's view that the 45Mbit service represents one of the most important services for the island's business community. The DG takes no view on this but notes that it is not appropriate for C&WG to place conditions for provision of a service based on its own view as to the commercial viability of that service to its competitor, and in particular refuse to enter

into discussion about such provision on the basis of its opinion as to the priority of the request.

The present situation therefore, is that a request made on 27th July 2006 received no response until 5th September 2006. This response by C&WG communicated an intention to “*review the present wholesale portfolio in light of potential changes to the underlying technologies employed by C&W later this year.*” As at 28th June 2007 no provision of the service requested by Wave Telecom had taken place. A period of some thirteen months therefore passed without C&WG offering any reasons to Wave Telecom as to why it could not provide the service requested or negotiate such provision with Wave Telecom.

C&WG’s response to the provisional findings expands on its original arguments discussed above, namely that the infrequency of Wave Telecom’s requests suggest a lack of urgency by Wave Telecom and justify its failure to respond to the request. The DG finds this line of reasoning wholly subjective. It is for C&WG to treat OLOs in a manner that complies with its licence conditions and it is not for C&WG to set these obligations aside based on its opinion as to the importance of a service to a retail competitor. The fact that Wave Telecom did not begin the formal dispute process when C&WG chose to respond to its initial request by initiating a review of its wholesale portfolio, is not an indication it accepted this was a reasonable response by C&WG or that the service was not important. It would seem more plausible to assume Wave Telecom chose to let commercial negotiations take their course before pursuing the regulatory route.

The DG interprets the response by C&WG as behaviour that equates to a refusal to provide a service to Wave Telecom. The arguments C&WG raise regarding technical issues and complexity are issues that may or may not be valid and the DG takes no view on these. The key issue in the DG’s view is that the evidence demonstrates that C&WG’s behaviour equated to a refusal to negotiate. The significant period of time which elapsed after a request was made, the failure to adequately communicate, and C&WG’s reference to technical issues which it never communicated to Wave Telecom, is behaviour that equates to a refusal to provide a service.

The effect of an operator refusing (implicitly or explicitly) to negotiate the provision of a wholesale service in the wholesale market in which it is dominant raises concerns about fair competition. The failure by C&WG in this instance amounts to a practise that denied Wave Telecom timely provision of a service; a service Wave Telecom believe is potentially lucrative, driven by a demand from Guernsey’s business customers. C&WG currently offer 45Mbit off-island wholesale private circuits. It is also noted that there is no suggestion made by Wave Telecom or C&WG that the provision of a 45Mbit wholesale end-to-end service could not be met, i.e. a 45Mbit services that would cover both the on-island as well as the off-island service. The issue is that Wave Telecom’s request for an on-island wholesale 45Mbit service was effectively refused unless a further implicit condition was met, namely that Wave Telecom also source its off-island provision of the circuit from C&WG’s wholesale arm. Wave Telecom argues that the effect of C&WG’s behaviour is that Wave Telecom cannot meet its own customer requirements at competitive prices and insulates C&WG from such competitive pressure.

The DG's view is that where end-to-end provision of the relevant wholesale circuit is provided entirely by C&WG's wholesale arm and no valid reasons are given as to why the off-island and on-island component cannot be provided separately⁴, this confined the nature of competition to a service based form. This arose since Wave Telecom's ability to compete was constrained over an extended period of time when compared to a situation where Wave Telecom was able to provision the off-island component from its own wholesale arm. Wave Telecom's ability to compete through infrastructure based competition would have allowed Wave Telecom greater flexibility and provide a greater degree of competitive pressure through price and quality as it argues in its submission.

The DG also takes the view that a further consequence of C&WG's refusal to negotiate is the risk to future investment in off-island capacity. C&WG's effective refusal to provide a service over an extended period of time that would have allowed Wave Telecom to utilise its own off-island capacity, rather than require the use of C&WG's own off-island capacity, risks reducing the value of that investment to Wave Telecom. The implication of C&WG's behaviour was therefore to reduce the incentive of its competitor to invest in infrastructure in the Bailiwick.

The DG notes C&WG's view that the OUR should take account of pan-Channel Island issues when considering any disputes that may arise as in its view the relationship between C&WG and Jersey Telecom is relevant. The DG does not accept this as having any merit. C&WG has obligations under its licence issued under Guernsey Law. The DG is aware that Jersey Telecom has its own licence and specific obligations which are imposed by the JCRA, the regulator in Jersey. C&WG is required under its licence to treat all OLOs fairly and impartially. This is regardless of what other dealings it may have with any associated companies in other jurisdictions. If C&WG, as it appears to allude to, has concerns about its treatment in Jersey then this is a matter to be addressed with the regulator in Jersey. The DG would be extremely concerned if C&WG were to allow factors outside of those it should reasonably take account of to determine how it interacts with OLOs.

C&WG's behaviour had the effect of restricting and distorting Wave Telecom's ability to compete in the establishment, operation and maintenance of Telecommunications Networks and the provision of Telecommunications Services in the licensed area. The DG therefore proposes to find C&WG in breach of condition 32 of its fixed licence. The DG does not consider it necessary to consider whether or not C&WG has contravened licence conditions 26 and 29 as requested by Wave Telecom.

7.2. Conclusion

The DG finds C&WG in breach of Condition 32 in regard to the complaint lodged by Wave Telecom with respect to the refusal by C&WG to meet a request to provide on-island 45Mbit/s leased lines tail circuits. Since submitting its response to Wave Telecom's original complaint, C&WG has now notified this Office of its on-island 45 Mbit/s wholesale leased line service which was made available on 1st September 2007. The issue of supply of this specific service has therefore effectively been resolved.

⁴ The Wave Telecom dispute submission argues that there are no substantive reasons why C&WG could not provide the on and off-island components separately, C&WG's response to that submission forwarded no arguments that contradict this.

The DG has welcomed the development of the product to the market by C&WG, but is disappointed that it has taken such a lengthy period of time for it to take place given Wave Telecom's request was made 15 months ago.

This offer does not however detract from the DG's view that C&WG's behaviour over this period had the effect of restricting and distorting Wave Telecom's ability to compete in the establishment, operation and maintenance of Telecommunications Networks and the provision of Telecommunications Services in the licensed area. This licence condition breach is a further instance of behaviour that effectively constitutes refusal to supply and resulted in the need by a competitor to issue a formal dispute. These have led to formal or informal remedies by the DG without altering an underlying pattern of behaviour in dealing with OLOs. This raises broader concerns and the DG will consider what future measures are appropriate to address what appears to be a wider issue regarding C&WG's approach to dealing with OLOs.

/END