



Office of Utility Regulation

**Review of Cable & Wireless Guernsey's
Reference Offer for
Interconnection and Access**

Report on Consultation and Decision Notice

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1. Introduction

In August 2003, the Director General (“DG”) published a consultation paper on the further development of the Reference Offer for Interconnection and Access (“RO”) offered by C&W Guernsey (“C&WG”). The existing RO has been in the market since July 2002 and the DG believed it appropriate, given developments in the market since that date, to review the current offering with a view to establishing whether it remains an appropriate offering. She further sought to obtain the views of interested parties on a number of specific market measures that have the potential to further promote the development of competition in the telecoms market in the Bailiwick.

This report represents the next stage in what will be a continuing process of refinement and expansion of the RO to meet the continuing needs of the telecoms market. The DG believes that it is in the long term best interest of users of telecoms services within the Bailiwick that the RO continues to reflect the services required by OLOs to compete effectively in this market.

2. Structure of the Report

The remainder of this report is structured as follows:

Section 3 - Background to the Report;
Section 4 - List of respondents to the consultation
Section 5 - Reference Offer overview;
Section 6 - RO management issues;
Section 7 - Scope of services in the RO;
Section 8 - Access to facilities;
Section 9 - Future measures to enhance competition; and
Section 10 - Related Matters
Section 11 – Conclusion and next steps

The Director General wishes to thank those who have responded to this invitation to comment for their contributions. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR’s office.

3. Background

The regulatory regime for the telecommunications market in the Bailiwick has evolved over the past two years in accordance with;

- Legislation approved by the States in September 2001¹;

¹ The Regulation (Bailiwick of Guernsey) Law, 2001 (Billet d’Etat No. 1, 2001), and the Telecommunications (Bailiwick of Guernsey) Law, (Billet d’Etat No. VI, 2001).

- States Directions to the DG in relation to universal service and the extent of competition in the telecommunications sector²; and
- States Direction on the identity of the first licensee to receive a licence with a Universal Service Obligation (“USO”) in the telecommunications sector.³

Together, the legislation and States Directions provide for the manner in which telecommunications market in Guernsey has been opened up to competition with all parts of the market being open to new entry since 1st April 2003.

As has been stated previously the interconnection and access regime is a crucial element for OLOs and ensuring that it remains up-to-date and effective is paramount in providing an environment in which effective competition can develop. In the lead up to the liberalisation of the telecoms market, the OUR undertook a review of the needs of the market, including a consultation on the draft RO prepared by C&WG⁴. C&WG’s RO was published and approved in July 2002, subject to a dispute relating to the inclusion of leased lines, which is currently the subject of an appeal to the Utility Appeals Tribunal.

3.1. Legislative Provisions

Section 10 of the Telecoms Law sets out the DG’s powers with regard to interconnection and access and describes the requirements that the DG may impose in this regard on any licensee whom she determines has a dominant position in a relevant market. The DG has already determined, as set out in OUR Document 01/14⁵, that Guernsey Telecoms (now C&WG) has a dominant position in the fixed network and services telecommunications market and in the mobile network and services market.

The requirements that the DG may therefore apply to C&WG include the following;

- (a) A requirement to make its procedures for the provision of interconnection and access publicly available on a non-discriminatory basis in a manner that is to the reasonable satisfaction of the DG;
- (b) A requirement to offer a standard interconnection and access agreement (referred to as the “Reference Offer”) which is available under non-discriminatory terms, conditions and charges, and on a non-discriminatory basis, no less favourable than that offered to -
 - (i) any of the C&WG’s own services; or
 - (ii) any associated company of C&WG’s or services of such a

² Billet d’Etat No VI, 2001

³ The Billet for the States of Deliberation meeting in September included a policy letter from the Board of Industry with recommendations on this issue.

⁴ The RO was submitted by GT prior to the purchase by C&W. OUR documents 01/24, 02/10 and 02/20 are important in this regard.

⁵ Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001; Decision Notice and Report on the Consultation

company;

- (c) A requirement to provide interconnection or access on terms, conditions and charges that are transparent and cost-oriented having regard to the need to promote efficiency and sustainable competition and maximise consumer benefits;
- (d) A requirement to provide interconnection or access at any technically feasible point in its telecommunications network; and
- (e) A requirement to 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.

In addition, the Telecoms Law makes provision for the DG to direct changes to the standard interconnection and access offering and to require C&WG to justify its costs or charges for the provision of interconnection and access services.

4. Review of Comments and Decisions

The Director General in OUR 03/22 invited interested parties to comment on a range of areas relevant to the interconnection and access regime in the Bailiwick, including the current RO available from C&WG. This report summaries the comments received and the DG's consideration of those comments.

Four organisations responded to the invitation to comment, as listed below:

- Cable & Wireless Guernsey;
- Newtel (Guernsey) Ltd;
- States of Guernsey Public Thoroughfares Committee; and
- Wave Telecom Ltd.

The report is structured along the lines of the original consultation paper for ease of reference.

5. Reference Offer – Overview

The DG sought comments on the appropriateness of the current structure of the RO and whether it continues to meet the needs of OLOs.

Views of Respondents

Three respondents commented on this issue providing a range of views on general and specific issues. General comments included

- The offering needs to take greater account of the small size of the market and this may require the availability of a wider range of interconnection and access products than in other markets;
- There is no requirement in law for a single RO document;
- It is inappropriate for the DG to refer to the fact that there is an appeal outstanding on Leased Lines;
- Where the DG uses benchmarking to assist her in determining interconnect rates she should allow greater transparency of the operators/jurisdictions used by her in reaching her conclusions;
- There is no need to review the RO at this time given that OLOs have signed interconnect agreements based on the existing offer.

Comments on more specific issues included:

- It should not be possible for Clause 24 of the Legal Framework section of the RO to be used by any party to terminate an agreement where best endeavours were being used by the other party to ensure the agreement works;
- There should be a degree of flexibility in the ordering and forecasting provisions, particularly given the early stage of competition in the market;

- The timeframes for the provision of RO services are too long;
- Notification by C&WG to OLOs of third party charging changes should take place immediately and not the current 3 days as specified in the RO;
- Each party should bear its own costs for In-Span Interconnect ;
- More than one point of contact should be specified by C&WG in the RO to avoid delays;
- Some specific changes to the detailed text of certain service schedules were proposed;
- The addition of a new service schedule to Schedule 3 for an “incoming off island transit” service was suggested; and
- Schedule 3 of the RO should be expanded to provide for all of the services listed in Schedule 5.

Position of the Director General

The DG welcomes the fact that RO agreements have been signed between C&WG and OLOs in the market. She looks forward to the introduction of competitive services to the Bailiwick in the near future under these agreements. However she does not accept that signing an interconnect agreement casts the RO in stone. The relationship between these documents is clear – the RO sets out the full range of products and services that C&WG is obliged to offer to the market, and details the terms and conditions associated with those services. This becomes a contractual relationship between the parties by the signing of individual interconnect agreements. The individual agreements will list the specific products and services that an OLO wishes to purchase from C&WG and this becomes a binding contract between the two parties to the agreement.

It follows that any interconnect agreement flows from the RO but the nature of the documents is very different and it is important that this is understood.

With regard to the general comment on the range of services available in the RO, where OLOs require a specific interconnect or access service that is not currently provided for in the RO they are free to negotiate for such a service directly with C&WG. Section 4 of the Legal Framework of the RO currently sets out the process and timeframes for the development of any new service requested. The DG is conscious of the scale of the market and believes that where there are suitable alternatives to the traditional interconnect arrangements that are in compliance with the Law then she believes that these should be considered. However it is a matter between the parties to the interconnect agreement in the first instance.

Given the regulatory obligation on C&WG to be non-discriminatory in the manner in which it treats any licensee, should a service be developed for an OLO that has not previously been contained in the RO (such as a service developed under Section 4 of the Legal Framework part of the RO), this must be included in a revised and re-published RO. This new service will list the terms and conditions for such a service, including the charges to be applied. The DG may review any of the terms and conditions to satisfy her that the new service is in compliance with the regulatory requirements.

The DG believes that this framework provides a clear opportunity for OLOs to raise and negotiate any new RO services they believe may be appropriate.

The comment about possible difficulties in the implementation of Clause 24 of the Legal Framework are noted. However, no suggestions have been made or reasons given for changing the current clause and the DG considers that there is no evidence that the clause is not fit for purpose. If there is evidence of a failure in the application of the clause this will be considered at that time.

The comments regarding the notification of third party charging have been noted. However the DG considers that the requirement for C&WG to notify OLOs 'no later' than 3 days after C&WG is itself notified of third party changes is reasonable having regard to the processes required to carry out this function and does not consider that a change is appropriate.

The DG agrees that detailed service schedules should be developed in Schedule 3 for those services listed in Schedule 5 and would welcome the submission of detailed proposals from C&WG. This is addressed in section 7.1 later. The proposal to include an Incoming Off-Island transit service is also addressed in that section.

The DG has noted also the changes to certain specific RO services proposed by C&WG. One change proposed is in the level of charges for certain services. Given that C&WG has been unable to produce cost-oriented information to support its request, and in light of the fact that the company is due to present cost-oriented and justified charges for all interconnect and access services to the DG on 14th November 2003, the DG does not propose to allow the changes proposed by C&WG at this time. This will be considered further in light of the wider review of charges for all RO services.

With regard to the general issue of setting of RO rates, for the avoidance of doubt, the DG rejects the assertion by one respondent that there was a lack of transparency in the manner in which the current RO rates were determined and further considers that the comments made may be misleading. However, as this current consultation does not relate to RO rates, further comment is not appropriate in this document.

The DG has noted the proposal to amend the wording of certain services in the RO for reasons of clarity. The DG welcomes clarification of the text, but considers that it will be necessary to revise the proposed wording further and proposes that this be done in the process of approval of the new wording of the republished RO.

In conclusion, the DG welcomes the comments on the RO text and believes that the only aspects of the RO that currently require amendment in the context of these comments are:

- The detailed textual clarifications proposed in relation to some wording in Schedule 5 for the In-Span Interconnect service; and
- The development and inclusion of detailed service schedules in Schedule 3 for all those services included in Schedule 5 (see section 7.1 later)

The DG is however, open to consideration of new service schedules, including (but not limited to) the proposal by C&WG for the inclusion of a new incoming off island transit service and would address this on receipt of a suitably detailed submission by C&WG.

Decision 5.1

The text in section 4.2 of Schedule 5 will be revised for clarification. C&WG shall develop and include detailed service schedules in Schedule 3 for all those services included in Schedule 5 for which service descriptions are not currently provided. Detailed wording shall be prepared by C&WG and submitted to OUR by 5th December 2003. OUR will review the service descriptions provided and a revised RO will be republished on 9th January 2004

6. General RO Management

6.1. RO Review

The on-going development and expansion of a RO is a common feature in other liberalised competitive markets. This is necessary to ensure that the RO remains fit for purpose and that new developments that are required or appropriate for this market – either technological or regulatory – are accommodated in the available RO. As the DG stated in OUR03/22, the current RO does not contain any provision for structured regular reviews that are undertaken outside of the agreements signed between operators. She proposed two options which were:

- a regular annual or bi-annual review of the RO by the OUR in a form similar to this consultation, or
- reviews triggered by certain events.

Views of Respondents

There was no consensus view put forward by the three respondents that commented on this issue, with one favouring an annual review and another one favouring a variation on this whereby an annual review is scheduled but only triggered if an existing operator requests such a review. The third respondent did not believe any provision for such a review is required as Clause 23 of the existing RO currently provides for a review and it does not believe that there is likely to be demand from any other parties, over and above the existing OLOs, for such a review.

Position of the Director General

The DG is aware that Clause 23 of the existing legal framework makes a provision for a bilateral review of the interconnect agreement that is signed between C&WG and an existing OLO. However the review being proposed by the DG goes to ensuring that the manner in which the RO – and as a consequence the individual interconnect agreements – is amended takes account of wider developments in the market.

The DG believes that a review undertaken by industry together may help speed up any individual reviews that parties to the agreement may wish to make. It also helps ensure that a process exists for the DG to solicit the views of interested parties on developments in other markets to assess the level of interest in such developments in the Bailiwick. It also affords an opportunity to players, other than those who have signed interconnect agreements, to be afforded a forum in which they can comment on the operation of the interconnect regime.

In addition, there is a perceived imbalance in the negotiating strength of the parties to the interconnect agreement. This is not a feature unique to Guernsey and is a common perception among OLOs in most markets. The availability of a formal review process, initiated by the Regulator, may help eliminate this perception.

Furthermore any formal review undertaken at industry level, led by the OUR, does not replace nor restrict the ability of parties to the agreement from undertaking any bi-lateral review in the manner provided for in Clause 23 of the Legal Framework.

The DG believes that for the foreseeable future it is prudent to schedule a formal review of the RO at least every two years and will take the form of the review now being completed. For the avoidance of doubt, individual issues and potential new services for the RO can be addressed by OUR between these formal reviews

The DG recognises that there may be a need to make amendments to the RO in the period between reviews, either to reflect amendments to agreements between operators or to take account of any other changes that may arise from other regulatory work. The DG does not believe that such changes – which are common in liberalised markets – should pose any undue burden on operators.

Decision 6.1

The Director General will undertake a public review of the RO every two years until such time as it is deemed by the DG to be no longer required. This industry review does not restrict nor replace any bi-lateral reviews that parties to an interconnect agreement may wish to undertake in the intervening period between review as provided for in Clause 23 of the RO Legal Framework. The Director General reserves the right to review all or part of the RO in the intervening period should she believe it to be in the best interests of the market.

7. Reference Offer – Scope of Services

As was stated in OUR 03/22, the RO is a dynamic document, reflecting the development of the market, the changing needs of OLOs and innovation and development of new services in the market. The DG believes it is important to carry out regular overarching reviews of the RO document to gain the benefits of any experience of the practical application of the RO in actual agreements, as well as to identify future market needs, prioritise those needs and put in place any amendments to the RO that are necessary to ensure the duty to promote competition and encourage innovation in the provision of utility services is met.

7.1. List of Service Schedules

The DG sought interested parties' views on whether there are other additional services that they consider should be included in the list of scheduled services in Schedule 3. The paper noted that the inclusion of leased lines in the RO is currently subject to an appeal to the Utility Appeals Tribunal.

View of Respondents

One respondent sought the addition of Carrier Preselection (“CPS”) to this list. Another stated that it wished to see a national rate call origination and mobile call termination included but believed that fundamentally the list of service should reflect C&WG’s obligations under Clause 4.3 of the Legal Framework. It also stated that C&WG should be obliged to consider variations of private circuits and partial private circuits. In the absence of such offerings, C&WG should provide dark fibre, particularly where access to C&WG ducts is not practical.

The third respondent stated that any new services being introduced should only be in response to demand and that where there is no such demand that it is not the role of the OUR to create or stimulate that demand as it would view such action as unduly interventionist and disproportionate. It believed there is a need to develop further service descriptions in Schedule 3 to match the services listed in the price list such as the ‘Other Services’ products, which includes various local information services, alarm calls and calls via the operator. It also wished to see a new service description for incoming off-island transit calls.

Position of the Director General

In the first instance, the DG has a statutory duty⁶ to “introduce, maintain and promote effective sustainable competition in the provision of utility services in the Bailiwick”, to “improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick”, and “to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and **variety of utility services**”. This consultation is being carried out in accordance with those duties and not, as implied, simply to “stimulate demand”.

⁶ Section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

C&WG has proposed the following new service for the RO: 'Incoming Off-island Transit Call Service'. C&WG explains that it has proposed this service as it has certain concerns about potential arbitrage opportunities for OLOs if they hub traffic for re-filing to other destinations. This could include traffic on geographic and non-geographic number groups. OUR has not received a detailed description of the proposed new service and is therefore unable to decide at this point whether it should be approved for inclusion into the RO. Subject to receiving a detailed service description and explanation of why the current regime (which allows for incoming off-island calls which terminate on OLO networks) is not sufficient, OUR will decide whether this new service will be introduced. Specific comments from OLOs on this potential new service are welcomed by OUR.

The DG agrees with the suggestion that detailed product descriptions for the services detailed in Schedule 5 should be developed. She therefore requests C&WG to prepare detailed service schedules for consideration by OUR and inclusion in the next version of the RO.

On the issue of CPS, this matter is considered in detail in Section 9 of this document.

In relation to the general comment on the inclusion of services in the RO, the DG notes that there is an obligation on C&WG, under Clause 4 of the RO to respond to request for new interconnection or access services and that process is clearly defined. Furthermore the general obligations in place regarding the availability of services on terms and conditions no less favorable than those provided by the incumbent to itself, along with the requirement for non discrimination together provide a framework for OLOs to request and receive appropriate services. The DG considers it important that resources and effort in this area are expended on genuinely required services that will be taken up by the requesting party and does not consider it a sensible use of resources to develop a large range of products that may not in fact be utilised by any party.

With regard to the mobile termination service mentioned, the DG is aware that a mobile termination service is available from C&WG. On the matter of the national call rate origination service, this is a matter for bi-lateral negotiation in the first instance between the parties using the process provided for in the RO.

Decision 7.1

C&WG is requested to prepare additional product specifications in Schedule 3 for the services listed in Schedule 5 for which currently there are no detailed descriptions and for its proposed new service. These should be provided to the OUR by 5th December 2003.

7.2. Use of Interconnection Links

The existing RO includes the provision of interconnection links (ISI and CSI) for the transport of traffic between C&W and an OLO. The DG highlighted that initially in the early stages of development of competition interconnection links that are in place between C&WG and OLOs may have very little traffic over them. She sought to establish

the practicalities of allowing maximum use to be made of such links for different traffic types but was mindful of the practical issues such use might create, particularly with regard to interconnect billing.

Views of Respondents

Three respondents responded on this issue and two felt that, subject to any network management or billing issues being resolved, all measures to ensure the efficient use of infrastructure should be considered. The third stated that while it supported the general sentiment, a specific implementation issue had to come light in bilateral discussions that it considered raised implications for re-engineering of the STM1 Link, the levels of service and SLAs.

Position of the Director General

The DG welcomes the general consensus that existing infrastructure should be efficiently utilised and agrees that existing interconnection links should be able to handle multiple types of traffic.

The DG is aware of the specific issues raised in bi-lateral discussions between two specific parties and will address this issue with the parties outside the scope of this report.

7.3. Timeframes for Provision of Interconnection Links

The DG was interested to know of how the operation of this element of the RO has worked in practice given that operators now have an opportunity to use the processes and procedures in practice, particularly those for completing interconnection agreements, and in particular forecasting, ordering and provisioning of interconnect links.

Views of Respondents

Three respondents commented on this matter. One stated that it believed the timeframes specified in the RO are too long and that they do not correspond to those offered by Jersey Telecom which uses similar equipment from similar sources. It argues that C&WG interpret the timeframes as the delivery times rather than the maximum timeframes. Another stated that it found the timeframes were being utilised to the full by C&WG and are treated as minimum rather than maximum timeframes. It states that it believed C&WG should be subject to penalties if it is proven that they have unduly delayed testing or the completion of interconnection arrangements to inhibit competition.

Another stated that the proper completion and testing of interconnection links was essential and that it did not support reducing timeframes that would constrain its ability to undertake appropriate levels of testing, particularly with new technology that neither party involved in the interconnect has experience of. It also stated that the choice of switch by an OLO has impacted on the testing timeframes and that should the OLO have chosen a switch of proven design and standard, such as System X, then the timeframes may have been shorter.

Position of the Director General

The DG has noted the various comments made on this point. The RO sets out clearly the requirements that have to be met for interconnection to take place between two operators. It deals with the technical arrangements that must be met and undertaken and subject to those being met it imposes no additional requirements on operators. While the DG notes the comments of one of the respondents with regard to the equipment used by an OLO, the DG recognises that there will always be situations where newer, more technically capable systems are available on the market which meets the ETSI standards for C7 switching. She does not accept that because the particular switch is new to the incumbent that it should present, of itself, a significant impediment to the successful conclusion of interconnect arrangements.

She does however recognise that in completing such arrangements, particularly with newly developed technology, that difficulties can and will arise and that with best endeavours on the part of both parties these can and should be overcome. The issue in the DG's mind is whether sufficient resources and attention is dedicated to resolving these issues in a timely and professional manner and in a way that is in compliance with the RO procedures.

When the current RO was developed, consideration was given to the timeframes in use in other jurisdictions and an effort was made to ensure the timeframes in place in the C&WG RO were in line with these. Currently the DG does not believe that there exists sufficient justification to amend the existing timeframes. She accepts that rigorous testing is essential in such cases, particularly where the systems being connected are new to each other. Should any operator feel that the existing arrangements are not being complied with, either in letter or spirit, they may wish to avail of the dispute procedures open to them under the Law.

Decision 7.2

The timeframes set out in the RO for the establishment of interconnect links shall be maintained at their existing levels until a further review is undertaken in line with the provisions for review of the RO as set out in Decision 6.1

7.4. Data/IP Services

The DG wished to ascertain the degree to which there is demand for specific interconnection or access data/IP products or services to underpin any products or services operators may wish to provide to the market.

View of Respondents

Three parties commented on this matter. One indicated that it had no specific interest in this matter at this time and another stated that while it had no immediate plans to introduce IP/data type services it wished to ensure that products to support higher bandwidth broadband services should be available to support OLOs' retail plans.

The third stated that it believes the majority of the retail data/IP services are 'value-added services' which are in addition to the basic services, such as leased lines which it states are available on fair and non-discriminatory terms in compliance with its licence requirements and it does not believe there is a requirement to make such services available on a wholesale basis. It also stated that it does not believe there is demand for such services from OLOs and where there is no such demand it is not the OUR's job to stimulate such demand.

Position of the Director General

With regard to the statements in relation to the role of OUR, this matter is addressed earlier in section 7.1.

In the light of the convergence of data and voice services, the DG considers this to be an area that will become increasingly important to OLOs in the future and does not agree that data/IP services comprise retail services only. There will be clear implications for the future provision of underlying network elements and services to enable the provision of innovative data/IP services in the Bailiwick in the future and the DG will keep this under review in the light of the comments received.

7.5. Flat Rate Internet Access Call Origination (FRIACO)

The DG sought views of interested parties on the introduction of FRIACO type services to the market in Guernsey. She is aware that there is some demand from end users for such services but was interested in the views of those in the market as to whether such demand was sufficient to warrant the development of products. As the DG noted there are currently no licensees or ISPs providing, or seeking to provide, such a service within the Bailiwick to the knowledge of the OUR.

Views of Respondents

While respondents noted that there may be potential demand for FRIACO, all agreed that the availability of broadband internet services has overtaken interest in FRIACO and the provision of dial-up internet access in this manner is no longer of interest to respondents. One operator stated that the increasing bandwidth requirements of even simple browsing meant that dial-up internet has limited viability. Another felt that the availability of FRIACO had inhibited the availability of broadband in other markets and that if pursued in Guernsey it may have wider economic implications. Another stated that it did not believe there was sufficient demand from end-users for FRIACO to warrant the level of effort required to develop both a retail and wholesale service. It also pointed to potential difficulties the network in Guernsey may have in catering for unmetered access services.

Position of the Director General

As the DG pointed out in OUR 03/22, there are currently no licensees or ISPs providing, or seeking to provide, FRIACO type services in Guernsey. While she acknowledges that there is some limited interest from certain end-users, overall the demand would not appear to be such to warrant the mandating of the development by C&WG of an underlying FRIACO service at this time.

The DG proposes to keep this matter under review particularly in the context of future developments in the broadband market. However she does not propose to take any further action on this matter at this time. She believes that access to wholesale broadband services is clearly important in the promotion of e-business type applications and she wishes to encourage the development of as wide a range of broadband services as is needed to facilitate this goal.

8. Access to Facilities

The development of effective competition in newly liberalised telecommunications markets typically takes some time. There are several reasons for this, not least the time and cost associated with developing a network to reach potential customers. In other markets steps have been taken to develop measures to help address this problem, among which has included the provision for the sharing of infrastructure.

In addition, there is a recognition by all operators that given the geographic characteristics of Guernsey, there is a special need to ensure that in developing their businesses that care is taken to lessen where practicable any adverse impact on the environment. One way of balancing these issues is to promote access by new entrants to existing telecoms networks facilities.

In OUR 03/22, the DG sought views from interested parties on access to three distinct types of facilities, namely:

- (a) access to ducts;
- (b) access to mast and towers; and
- (c) collocation facilities.

8.1. Access to Ducts

View of Respondents

All respondents recognised the role that facility sharing might play in lessening the impact on the environment of alternative networks but were realistic in their assessment of the practical issues that need to be addressed in order to achieve this. One respondent noted that there may be more attractive alternatives than duct sharing such as Wholesale Line Rental (“WLR”), access to dark fibre or Local Loop Unbundling (“LLU”). Another stated that it believed Condition 21 of C&WG’s licence requires it to enter into agreement on access to facilities and has a current request with the company for access to a particular location.

C&WG noted in its response that it was not aware of any demand for general commercial duct sharing in the Bailiwick. It also stated that it believed that the overriding principle should be a presumption that sharing should be commercial matter between operators and should apply to all types of facility sharing. It went on to highlight specific issues associated with duct sharing that would need to be addressed and noted that in the UK only limited duct sharing commercial agreements had been entered into. It also drew attention to the fact that there is little continuity of spare capacity and that certain manhole covers are locked for security reasons.

The States Public Thoroughfares Committee (“PTC”) welcomed the proposals to encourage sharing of existing and future duct space. It also highlighted the PTC’s policy in respect of roads which have been reconstructed and resurfaced to which the PTC applies a ‘no-dig’ policy for a period of 3 years. The DG believes it is important that all

operators make themselves aware of the policy of the PTC on this matter and in regard to network build generally.

Position of the Director General

The DG is grateful to the PTC for its comments and support on this matter. She also notes the general support from the States for the development of telecommunications networks as highlighted by its comments in the 2003 Strategic & Corporate Plan (Strategic Land Use Plan).

It is recognised that the sharing of ducts is a complicated issue as was noted by the DG in the consultation paper. However, while duct sharing may not have taken place to date in Guernsey, it has been undertaken in other markets where the same technical and practical issues have arisen. In a geographic market the size of Guernsey, even limited duct sharing will be of considerable benefit to the environment and will reduce the need for road openings thus lessening the impact and disruption to the general public.

The obligations on C&WG with regard to access to facilities are set out in Condition 21 of its fixed licence and Condition 20 of its Mobile licence. Should it receive a request for access to its facilities it is required to participate in good faith in those negotiations with a view to reaching a commercial agreement with the requesting party. The DG does not propose to be more prescriptive on this matter at this time but will intervene in any dispute on the issue of access to facilities if requested to do so.

8.2. Access to Masts & Towers

Similar arguments made with respect to ducts can be applied equally to access to mast and towers. In general it is anticipated that access to these facilities will be required in relation to the roll-out of mobile and other wireless services. The limitations on suitable available sites in a geographic area the size of Guernsey for mobile services is a factor in considering the need to promote the sharing of access to masts and towers well noted.

The DG wished to consider the degree to which there is a need for regulatory intervention at this time in this matter.

Views of Respondents

One respondent pointed out that it is currently in ongoing discussions with an OLO for access to its masts. There are a number of technical and legal matters that need to be resolved. It sought clarification that Condition 21 of all licences will be enforced by the DG as it is the basis upon which it has entered into discussions with the OLO. It agreed that there was a need to protect the environment and that new masts by OLOs should be carefully monitored from a regulatory and planning point of view. It also wished to ensure that OLOs were taking a long term approach to planning its mast needs.

Another respondent noted that while it is engaged in discussions with regard to facility sharing the practical difficulties that exist relate to its dealings with C&WG.

Another noted that mast sharing arrangements have been concluded in other markets and see no reason why this can not be achieved in the Bailiwick

Position of the Director General

The DG is strongly in favour of mast sharing and is anxious to see this concluded on a commercial basis and in a timely fashion where possible. She is aware that discussions are on-going between certain parties and she hopes that this results in a commercial agreement in the immediate future so that telecommunications users in the Bailiwick can start to reap the benefits of competition in the mobile sector. She also notes the general consensus view of respondents of their willingness to share masts and towers.

However there is a considerable gap between the belief that mast sharing is a commendable goal and the actual realisation of that goal. It is for this reason that the DG wished to explore the degree to which further regulatory intervention is required in this issue at this time. She notes that the incumbent has had a considerable advantage in the development of its mobile and fixed networks, having been constructed while a States body and with being the first entrant it had first call on key sites in the Bailiwick. Its comments with regard to the approach of other new entrants have been noted but the DG does not believe that the new entrant, which is familiar with the type of environment and the related issues that exist here, should need to be reminded of its duties in this regard. A constructive approach to mast sharing would make redundant the need for many additional masts.

As licensees have an obligation under their licence to allow access to facilities and there are at present discussions on going on mast sharing between parties, the DG does not propose to make any specific determinations on this matter at this time. However she will keep the matter under review and if requested to intervene under the dispute resolution procedures she will consider the matter further at that time.

8.3. Co-location and Co-mingling

The DG was interested to know the degree to which there is demand for co-location or co-mingling in Guernsey. Experience in other countries has shown that co-location and co-mingling may be a cost-effective and efficient means of implementing interconnection and access. However as with the other forms of facility sharing mentioned above, there are practical issues that would need to be addressed in order for it to be come a reality. However as was noted during the course of the development of the first RO, C&WG is already obliged to enter into negotiations with parties who seek to obtain access to these or other services in order to enter the Guernsey telecommunications market.

Views of Respondents

Three Respondents commented on this issue. One noted that while most operators will have their own switch on their own premises, there may be certain situations where co-location is a practical and efficient means of delivering additional services. Another stated that it did not believe there is a requirement for a switch to be located on-island and that the flexibility to enable OLOs use off-island switching would help deliver

competition in the telecoms sector sooner. It is of the view that C&WG should be required to interconnect with OLOs regardless of where the switch is located.

C&WG did not agree that the example given in 03/22 represented co-location but was more akin to 'hosting' type applications. It also stated that it did not consider it appropriate that it should have to develop alternatives to support peculiar requirements for interconnection.

Position of the Director General

The DG is aware of the demand from certain quarters for more flexibility to be allowed in relation to the location of switching equipment. However the legislative framework and the current approved RO makes the location of the interconnect point on-island a requirement. It is because of this obligation that the DG wished to consider the degree to which respondents require access to services that would allow for this requirement to be met with some reduction in the costs associated with full switch build. However she does not propose to lessen the requirement currently stated in the RO with regard to this matter.

There is a requirement in the RO for the incumbent, where requested by an OLO to develop a new service, to comply with the provisions set out in the Legal Framework section of the RO for such new services. Co-location/co-mingling of switching equipment is, in the view of the Director, a service that would fall within the ambit of this requirement should an OLO request such a service. The DG does not consider either co-location or co-mingling 'peculiar' services as they are common in other markets.

The DG notes that there currently exists an obligation on C&WG to consider requests from OLOs for access to its facilities. Given the current position of interested parties, she does not see a need to intervene further on this matter at this time but will keep the matter under review.

9. Further Measures to Promote Competition

In OUR 03/22 the DG sought initial comments on a range of measures that have been implemented in other jurisdictions to further promote effective competition between incumbents and new entrants. The DG sought comments at this time as there will be considerable work involved and input required from operators in the market if the measures being considered are to be implemented.

It is also appropriate that the DG seeks views from all parties to determine the degree to which there is demand for any of the measures being proposed and the timeframes within which they should be considered. As the DG stated in the consultation paper, there will be further more detailed consultations with all interested parties prior to any decisions being taken on the specific measures. The responses to this consultation will help frame the work programme for this further work.

In general respondents were in favour of seeing further choice in relation to the mechanisms available to further promote competition, although one respondent stated that it did not believe there was demand from its end-users for the measures being proposed and cautioned against the costs of implementation of the various measures. It believes that the measures may have the potential to inhibit investment in the market which may be damaging for consumers in the longer term.

9.1. Numbering Issues

The DG made reference to a number of mechanisms by which consumers can choose alternative operators to the incumbent. These include:

- Carrier Access/Carrier Selection (CA/CS) short codes for accessing alternative provider services,
- Carrier Preselection (CPS) and
- Number Portability.

The DG's primary interest in this review is in the views of operators on the demand for CPS and Number Portability.

Views of Respondents

There was no consensus view on the priority for these services with one respondent favouring the development of Number Portability at an early stage and another stating an immediate demand for CPS. In addition one agreed that there may be value in considering CPS/WLR as an appropriate combination to help drive competition.

The third respondent stated that it had no evidence from its end-users of demand for any of these measures. As such it believes it should not be responsible for any cost associated with its development should it be determined to proceed to mandate them. It also highlighted that there would be a need to rebalance tariffs should certain of the services being considered be introduced.

Position of the Director General

The DG has noted the comments of the respondents on this matter. While there is a lack of detail in the comments, particularly with regard to the manner in which the costs of implementing these services might be allocated, the DG notes a general demand for alternative measures to promote access to end-users. While she has noted C&WG's comments on user demand, as its customer have no need for these services to access the C&WG network, the DG believes that this should not be taken to mean that there is no consumer demand for a choice of alternative provider.

The issue of who pays for these services will be considered in more detail in a separate consultation. In general, as these are consumer enhancing measures for all users in the Bailiwick – i.e. increased competition drives efficiencies and cost savings for all users – it would seem appropriate that the cost be shared across the whole of the market. However the DG will proceed in the near future to consult further on both these issues and seek more specific comments on the matters raised.

Based on the information provided by respondents and on information available to the DG, she intends to proceed on the basis that, for the market as a whole, priority will be given to considering further CPS (linked to WLR) in the next round of consultations. Developments in other markets have shown that CPS alone has not been as successful in delivering real alternative to the incumbent provider to end-users as was envisaged. However there is increasing evidence that CPS combined with WLR - or alternatively with single billing – offers real potential for choice for consumers.

The DG will issue a consultation on these matters to consider the practical implication issues associated with the possible introduction of these measures before finalising her position.

9.2. Wholesale Line Rental (WLR)

The DG sought comments on the interest in the availability of Wholesale Line Rental (WLR) and how it might be implemented and the relationship between it and other measures being considered

View of Respondents

Two operators signalled a clear interest in the availability of WLR and one added that its availability would negate the need for separate work on Number Portability. A third stated that the introduction of WLR would be wholly inappropriate as it is a service that has only recently been introduced in EU markets that have been liberalised for some time. It highlighted issues with regard to rebalancing that need to be addressed as the wholesale price for exchange lines will be above the current retail cost. Also the availability of WLR would negate the demand for CPS and that in a market the size of Guernsey questioned the logic of both services being available. It also highlighted certain technical, operational and consumer protection matters that would need to be addressed.

Position of the Director General

Based on the responses the DG considers there to be clear interest in WLR. The DG is aware that it is a recent service offering in some EU countries which have been liberalised for some time. However she does not accept that of itself this should prevent its being offered in Guernsey as a service. As it has clear potential to offer real and beneficial choice to consumers and the potential to make an impact on the speed with which competition develops, the DG does not believe there is a convincing argument for not considering its introduction at this time in Guernsey. As was noted earlier, WLR with CPS has the potential to offer real choice to end-users and become an effective competition enabler. She sees no reason why the mistakes in other markets need to be repeated here before moving to consider measures that may offer real alternatives for end-users.

The DG will begin work on considering further this matter with a view to seeking more detailed and specific comments on this and CPS to identify the practical issues associated with the possible introduction of this service.

9.3. Local Loop Unbundling (LLU)

Local Loop Unbundling requires the incumbent operator to make its local network (the copper cables that run from customers premises to the telephone exchange) available to other companies on specified terms and conditions. There is a number of ways in which it can be provided and the DG sought views on the demand for and issues associated with the introduction of LLU.

Views of Respondents

Respondents were generally in agreement that LLU may not be a suitable option for Guernsey, particularly if the other measures being considered, such as CPS and WLR, are implemented. One respondent highlighted the relatively low level of take-up of LLU in European markets and the technical issues that would need to be addressed before such a service could be considered.

Position of the Director General

While the DG notes that LLU has potential to further enable competition, there would not appear to be sufficient interest in the service at this time and there is a general view that other measures are more urgent and have more potential for the Guernsey market. Therefore DG does not propose to consider LLU further at this time but reserves her right to consider the issue at a later date in light of development in the market going forward.

Decision 9.1

The DG will proceed to consider CPS and WLR further as the services required by the market at this time. She proposes to consult further with interested parties in the near future on the issues associated with the introduction of these services with a view to identifying the practical and commercial issues associated with their introduction.

10. RO Related Matters

10.1. Interconnect Rates:

The DG is conscious that the rates charged for interconnection and access products and services are of fundamental importance to the market. In 2002 the OUR undertook an exercise to set interconnection and access rates that involved a mixture of benchmarking and considering the limited information available from the incumbent. These rates were set as interim rates pending the submission by C&WG of fully justified cost-oriented rates for consideration.

To-date, C&WG has not submitted any justified cost-oriented rates. The DG does not consider it appropriate that interim rates determined in July 2002 should continue in the market. C&WG has been required to submit justified cost-oriented rates by 14 November 2003. The DG will consider the information submitted by C&WG and will consider what further actions are required on this point at that time.

10.2. Appeal of DG's decision on Leased Circuits

Following the review of C&WG's initial RO early last year the DG directed C&WG to make certain amendments to its RO. Among those changes was a requirement to include leased lines in the RO. C&WG objected to this requirement and appealed the DG's decision to the Utility Appeals Tribunal. Following on from directions hearings on 18 June and 24 July 2003 a full hearing of the substantive appeal was heard on 20th & 21st October 2003.

As was stated earlier, in the context of that appeal, C&WG applied to the Tribunal under Section 15 (6) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 for a suspension of the Direction of the 4th July 2002, and offered an undertaking to the Tribunal. The undertaking offered was agreed by the OUR and the notice parties as adequate to reasonably protect the legitimate interests of affected parties pending the consideration of the appeal. Having considered the application and the proposed undertaking the Tribunal on the 6th of August granted the suspension sought, pending the outcome of the appeal. Having regard to the suspension granted by the Tribunal the OUR does not propose to take further action in relation to the proposed Direction, pending the full outcome of the appeal.

The Utility Appeals Tribunal has indicated it will aim to deliver its findings on this appeal by mid- December. The DG will consider this matter further after full consideration of the Tribunal's determination.

11. Future Work

The DG has set out her position on certain matters raised in the context of the review of the RO. On the future competition enhancing measures, the DG will consult further with interested parties on these issues where support for their development has been shown. C&WG is required to develop full service descriptions for the range of services listed in Schedule 5 for which not description currently exists, including the services for which it is proposing to amend certain wording. C&WG is required to submit these to the OUR by 5th December 2003. They will be reviewed by the OUR and included in a revised RO to be republished on 9th January 2004.