



Office of Utility Regulation

## **ADSL in Guernsey**

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### **Summary of Finding in Investigation into Cable & Wireless Guernsey's ADSL product and**

**Notice of Direction in accordance with Section 27 of the  
Telecommunications (Bailiwick of Guernsey) Law, 2001**

**Document No: OUR 02/40**

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# 1. Background

## 1.1. Investigation Process

On 17<sup>th</sup> September 2002, Cable & Wireless Guernsey (“C&WG”)<sup>1</sup> announced its proposal to the imminent launch a range of ADSL network products. On 30<sup>th</sup> September 2002, the Director General of Utility Regulation (“DG”) launched an investigation into the C&WG proposed products.

On 30<sup>th</sup> September 2002 a detailed information request was sent to C&WG and a number of other parties for response by 4<sup>th</sup> October 2002. The Office of Utility Regulation (“OUR”) received responses from C&WG and three independent Internet Service Providers (“ISPs”). A number of supplementary information requests were also responded to during this investigation.

On 7<sup>th</sup> October 2002, C&WG announced a delay of seven days in the introduction of its ADSL network products and provided additional information to independent ISPs to facilitate them in preparing and launching ISP services over the ADSL network. The launch of the ADSL product took place on 15<sup>th</sup> October 2002 at which time two ISPs entered the market; C&WG and Guernsey.Net.

Having considered the information available, the DG arrived at conclusions and findings in the investigation and proposed to issue a Direction to C&WG in accordance with section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001. On 21<sup>st</sup> October 2002 the DG provided a Notice of a Proposal to issue a Direction in accordance with section 27 to the parties who participated in the investigation for the purpose of giving those parties an opportunity to make written representations or objections in respect of the Proposed Direction.

Written representations and objections were received by 30<sup>th</sup> October 2002 in response to the Notice. On 21<sup>st</sup> November 2002, having considered the representations and objections in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 the DG gave to C&WG the Direction set out in the Annex to this document. In accordance with section 27(4)(b) of that Law, the DG hereby publishes notice of this fact.

The DG would like to thank all parties to the investigation for their co-operation and effort in providing information and responses throughout the process.

*The main body of this document provides a summary of the investigation and findings only and does not constitute technical, commercial or legal advice. The document is not binding and in the case of any inconsistencies between the text of this document and the formal Direction, the text in the Direction shall take precedence.*

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<sup>1</sup> On 1<sup>st</sup> October Guernsey Telecoms Limited changed its name to Cable & Wireless Guernsey Limited. In the initial investigation document issued on 30<sup>th</sup> September 2002, the company was referred to as GT throughout. In this document the title “C&WG” is used consistent with the changed name.

## **1.2. Issues under Investigation**

The issues under investigation were described in document OUR 02/34 and included:

- suggestions that C&WG exercised undue preference and/or unfair discrimination against Users (independent ISPs) by favouring its own tied ISP<sup>2</sup> through the provision of information to its tied ISP business and the corresponding failure to provide sufficient information to independent ISPs in relation to C&WG's ADSL offering in the lead up to the launch of the product;
- the possibility of licence breaches in relation to publication and/or provision of information as required by C&WG's licence.
- allegations that the ADSL product structure and pricing structure act as effective barriers to independent ISPs entering the market for provision of ADSL based ISP services in Guernsey, constituting behaviour that is likely to prevent, restrict or distort competition, and
- concerns that various aspects of the product structure and the relationship between C&WG and its tied ISP comprised unfair discrimination in favour of C&WG's own tied ISP.

A separate investigation into the pricing structure and levels of the ADSL products was also launched at the same time and relevant requests for information were issued to C&WG as were further requests for clarification to which the company responded on an ongoing basis.

## **2. Conclusions and Findings of Investigation**

### **2.1. Summary of Conclusions and Findings**

The DG considered a wide range of inter related issues and arrived at a number of individual conclusions on various aspects of the investigation. In some cases the DG found that the actions of C&WG did not contravene licence conditions, for example the DG accepted that there was, for a limited period, a justification for bundling the sale of the ADSL modem with the ADSL network connection.

However, overall, the DG found that as a result of the actions of Cable & Wireless Guernsey as identified in the investigation, Cable & Wireless Guernsey has acted in contravention of Condition 29 of its Fixed Telecommunications Licence issued in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

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<sup>2</sup> The term "tied ISP" is used to describe the ISP business carried on by Cable & Wireless Guernsey Limited. The term "independent ISP" is used to describe ISPs that are outside the ownership and control of Cable & Wireless Guernsey.

The DG then concluded that there were a number of actions that, if satisfactorily implemented, would remedy the breach of licence and has included these in the Direction to C&WG. In arriving at the final Direction, the DG took into account representations and objections received and she considers that the Direction in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, along with proposals by C&WG to introduce new products in the ADSL market, comprise the most constructive resolution of the issues raised.

The text of the Direction is set out in the Annex to this document. In finalising the Direction, the DG welcomed in particular some of the proposed steps by C&WG in the ADSL market, for example the proposal to introduce a self-install ADSL offering. The DG is also grateful to C&WG for commencing compliance with the Proposed Direction prior to its finalisation, in particular by submitting compliance reports in relation to customer information.

## **2.2. Next Steps**

In summary, the key issues that will now be addressed over the coming months are as follows:

- The terms and conditions for the existing ADSL products provided by C&WG will be revised in consultation with end users (including ISPs) and republished by 15<sup>th</sup> January 2002.
- A wholesale product for sale to ISPs, comprising an “ADSL self-install” product will be introduced early in 2003, following consultation between C&WG and ISPs in the market;
- Following the successful testing and introduction of the wholesale product, all ISPs, including C&WG, will be in a position to provide self install retail ADSL products;
- C&WG shall report to OUR on compliance with the requirement not to discriminate between its own tied ISP and independent ISPs with regard to customer information; and
- Until the new wholesale product is launched, C&WG ISP customers shall be permitted to switch ISPs with six weeks notice and will not have to pay more than the amount that would normally fall due for that six week period (This provision will expire when the wholesale product is launched).

## **3. Pricing of ADSL products by C&WG**

On 17<sup>th</sup> September 2002 C&WG announced its pricing structure for its ADSL network products for ISPs and end users. C&WG is not required to obtain pre-approval for retail prices published in the marketplace, but is required to ensure that any prices it does publish are in accordance with its obligations under its licence and the relevant Laws. The prices published on 17<sup>th</sup> September 2002 were not approved by the DG.

The DG commenced a confidential investigation into the pricing levels announced by C&WG as noted in document OUR 02/34. On 15<sup>th</sup> October 2002 C&WG announced reductions in the prices for the ADSL network services to end users, including services to retail users (purchasers of ADSL connect products) and ISPs who purchased connectivity to the ADSL network.

The DG welcomed these reductions and taking into account the level of the prices now proposed in the market, concluded that the overall retail levels of pricing for the ADSL services provided by C&WG's core business (separately from its ISP charges) are now more in line with international experience and represent better value to Guernsey consumers.

Therefore, the OUR will now take the prices for these services into account as part of its ongoing regulation of retail prices for telecommunications services in the Guernsey market where one provider has a dominant position in that market, as provided for in the Law.

**/END**

## **ANNEX: Direction in accordance with Section 27 of the Telecoms Law**

The Director General finds that as a result of the actions of Cable & Wireless Guernsey already identified in the documents leading to this Direction, Cable & Wireless Guernsey has acted in contravention of Condition 29 of its Fixed Telecommunications Licence issued in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

In accordance with section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 and having complied with its obligations pursuant to section 27(3) and (4), the Director General hereby gives notice that she has issued a Direction to the Licensee (Cable & Wireless Guernsey) requiring the Licensee to do the following things;

1. Cable & Wireless Guernsey shall consult with current and potential users of its ADSL network product, in particular ISPs, and draw up revised terms and conditions for all of its ADSL services for publication by 15<sup>th</sup> January 2003. In drawing up the said terms and conditions, C&WG shall take in to account the experience gained from the initial period of operation of the product along with the specific concerns raised and documented in this investigation.

At the same time as it publishes the revised terms and conditions, C&WG shall provide a written report to OUR demonstrating how it has consulted with users of the service, in particular ISPs, and shall provide supporting evidence including but not limited to correspondence, minutes of meetings etc.

Furthermore, at the same time as it publishes its revised terms and conditions, C&WG shall provide to the DG a written report justifying the changes it has made to the terms and conditions, including a specific explanation of the outcome of its consultation, the issues raised by third parties and where there is any disagreement over the conditions, the reasons for the final position adopted by C&WG.

2. On or before 2<sup>nd</sup> December 2002, C&WG shall establish and convene a working group of interested ISPs to participate in the development of a wholesale self install ADSL product and C&WG shall take into account the proposals and input of those parties in developing the product.

C&WG shall keep a record of all matters discussed by the working group, shall take into account the proposals and input of the parties in the working group when developing the wholesale product.

On or before 21<sup>st</sup> February 2003, C&WG shall have prepared a final set of terms and conditions for the wholesale product. By this date C&WG shall also provide the OUR with a written report on these issues, including but not limited to;

- A written record of the work of the working group

- An explanation of the issues raised in the working group and how these have been addressed
- Where there has not been agreement in the working group on any issue, how C&WG has addressed these issues and its justification for its position.

C&WG shall ensure that ISPs receive adequate technical and operational information, by means of participation in trials or otherwise, to enable them to prepare and purchase the wholesale product and operate it successfully with their own equipment.

The terms and conditions for the wholesale product shall include clear and committed lead times for services to ISPs to facilitate the sale of the retail product and C&WG shall not launch a retail self install ADSL product until four weeks after the launch of the wholesale product, unless the committed lead time to ISPs is longer than this in which case the launch of the retail ISP product shall not take place until after the expiry of the said committed lead time.

On or before 28<sup>th</sup> February 2003, C&WG shall publish its terms and conditions for the wholesale ADSL product and the product shall be available from 21<sup>st</sup> March 2003. On this basis C&WG shall not launch its retail ADSL product prior to 18<sup>th</sup> April 2003

Adjustments to the dates in this Direction may be agreed by all parties to the working group if necessary for technical or operational reasons, and must be submitted to the DG for approval.

3. C&WG shall demonstrate non-discrimination in the treatment of customer information by fully documenting its internal processes and procedures, crib sheets, and mechanisms designed to ensure that customer information is treated appropriately and shall present a full compliance statement with supporting evidence to the Director General on or before 15th November 2002
4. Until such time as the items set out in section 2 of this Direction are complied with to the satisfaction of the DG, C&WG shall include as part of their terms and conditions with end users, a term to the effect that any party who contracts for the C&WG ISP service will be permitted to switch ISPs with six weeks notice and will not have to pay more than the amount that would normally fall due for that six week period.

The Director General considers that the satisfactory implementation of the above actions will remedy the breach of licence.

In accordance with the Telecommunications (Bailiwick of Guernsey) Law, 2001, failure to comply with a direction under section 27 can lead to sanctions being imposed, including financial penalties, suspension or revocation of the licence.