



Office of Utility Regulation

ADSL in Guernsey

Notification of Investigation into Cable & Wireless Guernsey's ADSL product

Information Notice

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Office of Utility Regulation
Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: [0]1481 711120, Fax: [0]1481 711140, Web: www.regutil.gg

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1. Background

1.1. Demand for High Speed Internet Access

With increasing use of communications technology and the Internet in particular, fast, affordable, reliable connectivity has become more and more important for both business and personal purposes. While the demands of large business can be met by high speed private connections, smaller businesses and residential users have, for a long time now, been restricted for reasons of cost, to using existing analogue telephone systems to dial up to the Internet.

Limitations on the capacity of the analogue network can make this a slow and cumbersome operation and this, along with the pence per minute usage charges that have traditionally applied throughout Europe, are believed to have inhibited uptake and usage of the Internet.

Against this background, telecommunications operators around the world have been moving to install broadband solutions that meet the needs of this customer segment, ranging from broadband wireless to ADSL.

1.2. ADSL – a solution

ADSL (Asynchronous Digital Subscriber Line) is one of a number of technologies capable of delivering “always-on” connectivity at higher speeds than the traditional analogue network and this technology has been deployed in a number of EU countries over recent years.

Demand within the Bailiwick of Guernsey for high speed Internet connectivity in general, and ADSL in particular, has been driven by these same requirements, and Cable & Wireless Guernsey¹ (“GT”) has, on a number of occasions, announced its intention to introduce the technology on a Bailiwick wide basis.

ADSL technology is applied to the existing analogue network to enable customers to continue use their telephone network to make normal voice calls, while at the same time creating an always-on circuit that connects the user to the Internet via a chosen ISP. The download speed of the connection is faster than the upload speed. This makes it particularly well suited for many residential or small business users who wish to access large amounts of information on the Internet (requiring higher download speeds) but only use the net to send small amounts of data, such as emails or regular sized files (uploading).

For the purposes of this investigation the total end-to-end ADSL service is broken down into the following components:

- Equipment at the end user site (e.g. ADSL modem, line splitter)

¹ On 30 September 2002, GT changed its name from Guernsey Telecoms Limited to Cable & Wireless Guernsey. This paper will refer to GT throughout.

- The local loop connection to the network provider's DSLAM
- The connection from the DSLAM to network operator PoP (Point of Presence)
- The connection from the PoP to the ISP equipment
- ISP services (sited on the ISP equipment)
- The ISP backhaul connection to the Internet

Therefore, for an ADSL service to be used by an end user it is necessary that the following elements are in place:

- The customer must have an ADSL connection to the telecom network – the contract for this service may be directly with the operator of the telecoms network or with a third party, e.g. an ISP, who has purchased the service on a wholesale basis and resells it to the customer;
- The customer must also have contract with a chosen ISP for access to the Internet; and
- The ISP concerned must have an appropriate network for connection to the Internet and connection to the telecoms network that the customer is connected to so as to be able to collect the customer's internet traffic.

These elements of the service to the end user may be provided by separate operators in which case the customer will have more than one contract, e.g. one contract with the telecoms operator for the ADSL connection and another with the ISP for the ISP services and Internet access.

Alternatively the customer may have one contract with one service provider who in turn purchases all of the necessary elements to provide the service at wholesale rates and resells these to the customer as one bundled package.

1.3. Introduction of ADSL in Guernsey

Trials

Prior to the commercialisation of GT in October 2001, the former States Telecommunications Board commenced a project to introduce ADSL services on its network in Guernsey. This project encountered some difficulties and was delayed on a number of occasions. Trials were initially commenced by GT in August 2001. In February 2002 GT informed OUR of the abandonment of initial trails and made a public announcement on the matter and in July 2002 GT notified its intention to restart trials following further technical work that had been carried out. Further alpha trials and subsequently beta trials were carried out in 2002. Participation in these trials is a matter of contention and is one of the subjects of this investigation.

Under new ownership (Cable & Wireless plc), GT has now announced the launch of its ADSL "transport" service.

Representations and Discussions with OUR

GT provided information to OUR on its proposed products at a number of meetings in September and responded to some initial queries by OUR on the product and its pricing.

OUR also received representations from a number of ISPs (in writing and at meetings) during August and September expressing concerns in relation to the ADSL product.

Finally a number of private individuals made representations to OUR about the announcement of the ADSL product, raising more issues of concern. The issues raised in these representations are, where appropriate, the subject of this investigation.

GT Discussions with ISPs

GT met with ISPs – in groups and individually during September 2002 to provide information on the ADSL products. The amount and type of information provided by GT to ISPs and the amount and type of information available to GT's own downstream ISP (GT Online) are matters for contention and are subjects of this investigation.

Publication of notice of new product

On 17th September 2002 GT published notice in the Gazette Officielle and on its website that its ADSL product would be available from 8th October 2002. The publication included a price list for the products. The extent and nature of information published supporting the new product is a matter for contention and is one of the subjects of this investigation.

1.4. Description of GT's ADSL product

GT has announced a range of products as part of its ADSL offering, but in summary these can be divided into two categories:

End user connection to the ADSL network

This is a product or service that is offered directly to individual customers or users of the GT telephone network. It provides the user with the equipment and software necessary to have an ADSL connection. The customer may choose between various upload speeds depending on the customers needs.

However this product in itself simply provides a high speed always on connection to the GT DSLAM and onward to the GT PoP and cannot in fact be used by the end user without a further purchase of service from an ISP to provide access to the Internet.

ISP connection to the ADSL network

Any ISP who wishes to provide service to customers with ADSL connections must purchase from GT one of the second groups of products, which is a connection from the ISP premises and equipment to the GT ADSL network. With this product, and its connection to the Internet (normally via further capacity purchases from GT), the ISP can offer services to the end customer.

Conclusion

In summary therefore, for a customer to gain high speed always on connectivity to the Internet using GT's ADSL offering, they must purchase one of the options for connecting to GT's ADSL network and purchase from an ISP a bundled set of services that includes access to that ISP's network, access to the Internet and such other value added services that the ISP might provide, e.g. email, webpage, etc.

For ISPs to develop this product for end users they must consider the cost of the ADSL connection from GT, their other costs, the value added ISP services they propose to provide, and cost these with a view to determining the final pricing structure and level that they might offer to customers. They must further prepare technically and operationally for the use of the new ADSL product and install and test it so as to ensure that they can support their proposed new product.

Figure 1 sets out a schematic diagram of ADSL internet access as proposed by GT. (NB This does not purport to be a technically accurate or total representation of the service, but is merely an illustration to assist in setting out the issues in this paper).

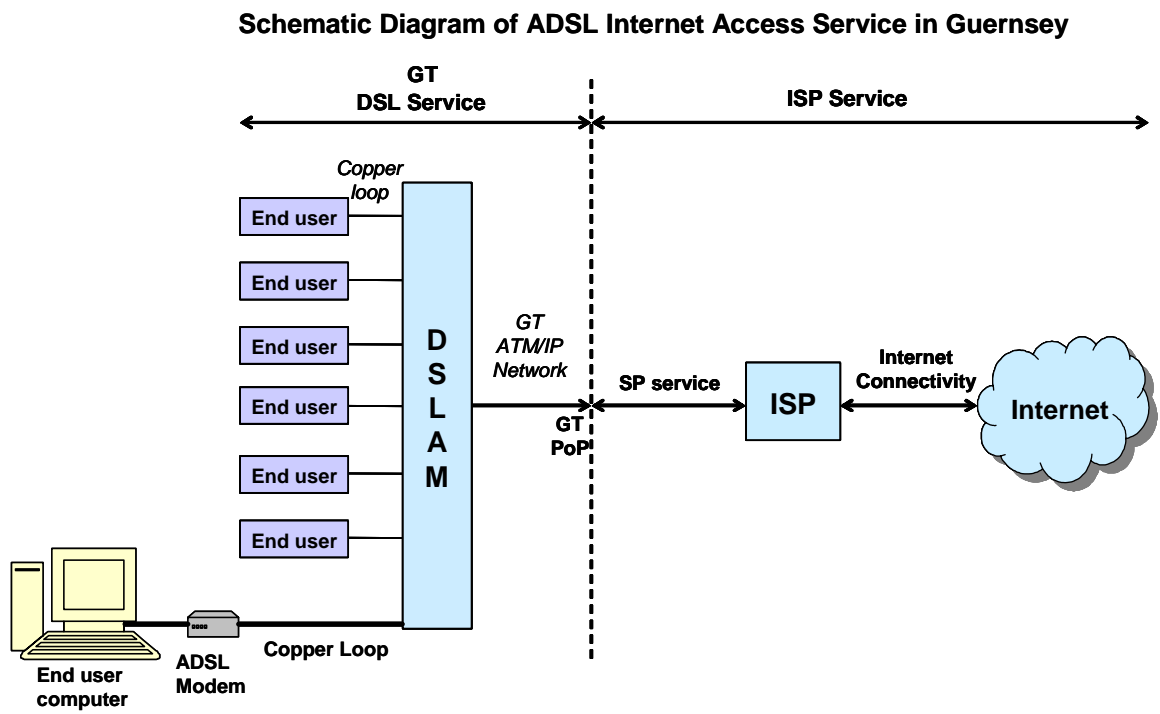


Figure 1

2. Legal and Licensing Background

GT holds a licence to provide fixed telecommunications services and networks in the Bailiwick of Guernsey which was issued on 1st October 2001 in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001 and States Directions to the Director General of Utility Regulation².

GT has been found to have a dominant position in the fixed telecommunications market in the Bailiwick of Guernsey³ and thus specific conditions in the fixed telecommunications licence have been applied to GT to control that dominant position in that relevant market.

The Director General considers the provision of ADSL services to be a service in the fixed telecommunications market.

A number of GT licence conditions are relevant in the context of this investigation. These include, *inter alia*:

- **Condition 4** which addresses the provision of information by GT to the OUR and deals with investigations, examinations and audits.
- **Condition 17** which addresses consumer protection and includes provisions requiring the publication of comprehensive terms and conditions, including prices for services.
- **Condition 28** which requires the Licensee not to unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any telecommunications network or service.
- **Condition 29** which requires the licensee not to 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;
- **Condition 31** which requires the publication of prices for new services that are regulated a minimum of 21 days in advance of the service being introduced and further requires that those prices be transparent and non-discriminatory. This condition also provides that the Director General may impose controls on the prices of any services within the Relevant Market in which the licensee has been found to be dominant.
- **Condition 32** which prohibits the Licensee from engaging in any practice or entering 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.

² Full licence text and conditions are published in Document OUR 01/18 available from the OUR website at www.regutil.gg

³ See Document OUR 01/14 available from the OUR website at www.regutil.gg

3. Investigation into GT's ADSL product

3.1. Reason for the investigation

The importance of broadband connectivity to customers in the Bailiwick and the role it can play in enabling a technology literate, e-enabled society, supporting the State's strategy of promoting e-business, is such that the Director General believes it is essential that the introduction of these services happens in a manner that maximises the benefit to Guernsey as a whole. Therefore it is essential to confirm that the service is in compliance with the regulatory regime and in particular GT's licence conditions as a dominant operator in the fixed telecommunications market.

Furthermore, both the OUR's initial review of the information provided by GT and the representations received from ISPs and customers raise a number of concerns as to compliance with the relevant licence conditions.

Therefore, the Director General considers it necessary to carry out an investigation into the introduction of ADSL in Guernsey by GT.

3.2. Format of investigation

The investigation will be undertaken in accordance with the duties and obligations of the Director General and in particular Condition 4 of GT's licence.

On the basis of the information provided to date, OUR will set out the initial concerns about the introduction of ADSL, linking these to the relevant licence conditions, and will seek any additional information from relevant parties.

GT and other relevant parties involved in the investigation will at the same time be afforded the opportunity to comment on the concerns about the product and the relevant licence conditions and will be invited to suggest the action or steps that would, in their view remedy any of those concerns.

Given the time critical nature of some of the concerns, relating in particular to the launch of competing ISP offerings, comments will be requested within a very short period of time. The Director General appreciates the effort that will be required to respond to these questions, but believes that the short timescale is essential given the potential effect of alleged breaches of licence. Following receipt of comments, OUR will review the information and finalise a finding. The finding will take into account the comments and any actions proposed by any of the respondents to remedy the concerns raised.

Information sought from GT will be in the context of Condition 4 of its licence. In accordance with that Condition, the Licensee shall bear all reasonable costs associated with the investigation.

3.3. Issues under investigation

There are three sets of issues under investigation by OUR:

Publication and Provision of Information

First is the issue of provision of information by GT to ISPs prior to the launch of its ADSL product. It is suggested that GT may have exercised undue preference and/or unfair discrimination in favour of its own tied ISP (GT Online) by the provision of information to GT Online (including during participation in trials) and the corresponding failure to provide sufficient information to independent ISPs in relation to GT's ADSL operation in the lead up to the launch of the ADSL product. It is suggested that this may have the effect of preventing restricting or distorting competition.

In addition, the OUR is investigating GT's compliance with the requirements of its Licence in relation to publication and/or provision of information on new or existing products.

Barriers to Entry and Unfair Discrimination

Second, the OUR is investigating the suggestion 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 also suggestions that the structure may further constitute unfair discrimination in favour of GT's own tied ISP, GT Online.

Prices

Finally, in a separate confidential investigation, OUR is examining the pricing levels announced by GT for the ADSL services and is in consultation with GT on this matter.

4. Conclusion

A detailed information request has been issued to a number of affected parties, including GT, and the Director General has required a response by 4th October to enable her to conclude her investigation into these matters.

The issues addressed in this document are not necessarily exhaustive, nor do they prevent the Director General from requesting such further information as she may consider necessary, or from raising additional issues in relation to this or any other relevant product as she deems necessary.

If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price is in breach of the Regulation Law, Telecommunications Law or GT's Licence, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices into conformity with the Laws and/or the requirements of the Licence.

/ENDS