



Office of Utility Regulation

Publication of C&W Guernsey's Regulatory Accounts

Direction to Cable & Wireless Guernsey Limited

**in accordance with condition 27.1 of Cable & Wireless
Guernsey's Fixed Telecommunications Licence and Section
5 of the Regulation of Utilities (Bailiwick of Guernsey) Law,
2001**

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1 Introduction

Cable & Wireless Guernsey (“C&WG”) is required to submit Regulatory Accounts to the OUR in accordance with condition 27 of its Fixed Telecoms Licence. In July 2003 the Director General found C&WG in breach of its licence in this regard and issued a Direction¹ to C&WG requiring it, *inter alia*, to publish its 2002/03 Regulatory Accounts on its website by 31st October 2003 and to provide hard copies of its Regulatory Accounts on request thereafter.

The March 2002 Regulatory Accounting Guidelines (“RAG”)² published by the OUR allowed for the first set of C&WG’s Regulatory Accounts to be submitted in confidence³. However the RAG stated that the Director General would consider whether it would be in accordance with her duties to publish future Regulatory Accounts and a consultation paper was published in August 2003⁴ addressing what level of information should be in the public domain in future years.

It is common practice for the Regulatory Accounts of a dominant telecommunications operator to be published between four and eight months⁵ after the end of the financial period, depending on the size of the business and the complexity of the accounts, although the operator’s first set of accounts may take longer to produce as the company has to establish the necessary information systems as was the case with Guernsey Telecoms’ 2001 Regulatory Accounts.

This report sets out the Director General’s conclusions following consideration of the responses received to the consultation.

The Director General received five responses to the consultation with formal submissions from:

- Cable & Wireless Guernsey Limited;
- Newtel Guernsey Limited;
- Mr John McQuaigue;
- Mr William de Sausmarez; and
- Wave Telecom Limited.

The Director General wishes to thank those who have responded to the consultation document for their contributions in helping to inform the Director General’s consideration of the issue. In line with OUR standard practice, with the exception of

¹ Document OUR 03/20 Cable & Wireless Guernsey: Separated Accounts Notice of a Direction to Cable & Wireless Guernsey Limited in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 available at www.regutil.gg

² Document OUR 02/12: Accounting Separation, Regulatory Accounting Guidelines to Guernsey Telecoms

³ The fact that C&WG were unable to produce its 2001 Regulatory Accounts in a timely fashion meant that the Director General issued the company with a Direction on the 5th August 2003 (Document OUR 03/20) requiring C&WG to produce its 2001 Regulatory Accounts by 22nd August 2003. Following this Direction C&WG submitted the 2001 Regulatory Accounts on 22nd August 2003 in compliance with the Direction from this Office.

⁴ Document OUR 03/23: Publication of Cable & Wireless Guernsey’s Regulatory Accounts: Consultation Document

⁵ BT publishes its regulatory accounts eight months after the end of the accounting period, eircom five months and ,Kingston Communications four months.

any responses marked as confidential, written comments are available for inspection at the OUR's office.

This paper is structured as follows:

Section 2 sets out, for ease of reference, the Director General's proposal presented in Document 03/23 upon which she was seeking comments;

Section 3 presents the responses that were received from interested parties and, in light of consideration of those comments, the Director General's position on the appropriate level of disclosure of C&WG's Regulatory Accounts; and

Section 4 contains a Direction to Cable & Wireless Guernsey requiring the company to publish its Regulatory Accounts in their entirety.

This report and notice of a Direction should be read in conjunction with the current RAGs (Document OUR 02/12) issued to C&WG and published by the OUR in March 2002 and the original Consultation Paper (Document 03/23), both of which are available at www.regutil.gg.

2 Summary of Director General's Proposal

In Document OUR 03/23, the Director General explained the purpose of accounting separation and the preparation of Regulatory Accounts and its importance as means of regulating a dominant incumbent operator.

The Director General also explained that making C&WG's Regulatory Accounts publicly available would be in line with international best practice and would assist in ensuring that C&WG's charges are cost based, transparent and non-discriminatory and would contribute towards introducing, maintaining and promoting effective and sustainable competition in the Bailiwick's telecommunications market.

The Director General considered that publication of financial information at a sufficiently detailed level would increase the confidence of operators that there is no undue discrimination between the internal and external provision of services by the dominant operator, and would make transparent the relationship between interconnection and access charges and costs. This is considered to contribute to a competitive telecommunications environment, thus enabling the Director General to meet the general duties set out in Law.

The Director General, whilst conscious that commercially confidential information should in general not be made available unless this is necessary for the Director General to carry out her functions, noted that Regulatory Accounting information has been published in other markets and did not consider that the situation with regard to commercial confidentiality in Guernsey would differ from those situations.

In summary the Director General considered that C&WG's annual Regulatory Accounts and supporting documentation should be made publicly available in their entirety and invited respondents to comment on this proposal.

3 Consideration of Responses

3.1 Respondents Views

3.1.1 Publication of Document in Entirety

Four of the respondents supported the Director General's proposal for requiring C&WG to publish its 2002/03 Regulatory Accounts in their entirety.

C&WG believes that the general principle of the publication and transparency of regulatory accounting information needs to be considered in the specific context of the Guernsey environment. C&WG further notes that a number of European countries⁶ are yet to implement proper and complete accounting separation and these accounts are not published, either at all or completely. C&WG considers that for these reasons (the Guernsey environment and the fact that not all European countries publish full regulatory accounts), its regulatory accounts and supporting documentation should not be published in their entirety and goes on to make a number of points about the level of disclosure that should apply. These points are addressed in the following sections.

3.1.2 C&WG's Proposed Level of Disclosure

C&WG submits that, whilst it accepts that, in general, its regulatory accounts should be made available to interested parties, it considers that the relevant categories of accounts to be published should be:

- Local access network business;
- Core network business;
- Mobile business;
- Aggregated retail business; and
- Other activities business.

C&WG's proposal differs from the format of the accounts submitted to the OUR and which OUR proposed should be published in full. C&WG suggests that a profit & loss account, balance sheet and return on capital employed statement should be made available to third parties only for the aggregated retail business, as compared to the proposal which was to provide this information for individual retail services. Other than the profit & loss accounts, balance sheets and return on capital employment statements mentioned above C&WG is of the view that only the Statement of Costs of Network Services (Table 1.6)⁷ which it suggests should be "appropriately amended" should be made public. C&WG contends that Table 1.7 (Transfer Charge Statement) and Table 1.8 (Inter Business Costs and Summary) should not be published for reasons of commercial confidentiality. C&WG does not expand on its position on these two issues specifically, and therefore the OUR assumes that its reasoning in this regard is the same as its reasoning in relation to disaggregated retail information.

C&WG's reasons for its position are that it considers that making retail regulatory accounting detail available to other operators and third parties on a disaggregated basis would:

⁶ including Belgium, Spain, Germany and Luxembourg

⁷ See Document OUR 02/12 to see Proforma Tables 1.6, 1.7 and 1.8.

- (a) not be proportionate to the objectives of the publication;
- (b) be in breach of Guernsey principles of commercial confidentiality; and/or
- (c) not be in line with Article 11 of Directive 2002/19/EC.

Each of these reasons is summarised below.

Proportionality

C&WG argues that the amount of regulatory accounting information to be published should be proportionate to, and should take into consideration, other methods available to the OUR in Guernsey to achieve the same objectives. In this regard the company notes that:

- other licensees and other interested parties will have a particular interest in seeing the transparency of interconnection charges and costs and in ensuring that there is no undue discrimination between internal and external provision of interconnection services and the level of disclosure proposed by C&WG will be sufficient to address this need; and
- the OUR has a number of mechanisms available to monitor its activities, from a pricing and an anti-competitive practises perspective.

Commercial Confidentiality

C&WG notes that under Guernsey company law, C&WG does not have an obligation to publish its own statutory accounts which is significantly different to practices in other jurisdictions. In this context C&WG stated that:

- In Guernsey licensed financial businesses are required to submit statutory accounts and other documents to the Guernsey Financial Services Commission ("GFSC") and these are treated as confidential and not generally published.
- The disclosure of its disaggregated retail businesses would cause substantial damage to the interests of C&WG in relation to other licensees but also in relation to other suppliers, contractors and customers.
- The required level of disaggregation would allow C&WG's competitors to specifically target an individual area with full knowledge of the minimum price that C&WG can charge without cross-subsidising that area.

Article 11 of Directive 2002/19EC

C&WG contends that Article 11 of Directive 2002/19/EC is limited to interconnection and/or access with particular reference to wholesale prices and internal transfer prices and as a result any published accounts should therefore exclude retail services at a disaggregated level.

C&WG submits that, when looking to Ireland and the UK for appropriate comparisons, Kingston Communications is the most appropriate and similar company to C&WG – addressing a small population size in a small geographic area with a limited number of potential competitors.

3.1.3 Method of Publication

The Director General proposed that, following a decision as to the level of detailed information that should be made available, that information should be published on the company's website as well as being made available on request from the company.

C&WG considers that it would be appropriate for the company to make the relevant information available on request, but does not consider that it would be appropriate to publish all the material on the company's website. It believes that this position is consistent with international practice.

Such an approach would in C&WG's view also be consistent with the fact that C&WG is not required to publish statutory accounts and would ensure that only those with a specific and genuine interest in reviewing the accounts would have access to the information.

3.2 Director General's Position

This section sets out the Director General's position in relation to the arguments made by C&WG that;

- disclosure should be limited to aggregate information on retail products and other proposed limitations (sections 3.2.1 to 3.2.3); and
- disclosure should not be done by means of publication on the company's website (section 3.2.4).

3.2.1 Proportionality

The Director General's duties, as set out in the Section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, requires her to balance a number of interests, including the promotion of effective and sustainable competition in the provision of utility services. The Law further sets out the manner in which the Director General must exercise her functions and powers namely with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with States' Directions and the provisions of the relevant Laws.

Having regard to these duties and to international best practice, the Director General has considered the additional requirement placed on C&WG by the obligation to publish the Regulatory Accounts in full. Taking into account that the requirement to produce regulatory accounts at a disaggregated level is already in place and will be met by C&WG, the Director General considers that the publication of the disaggregated information represents minimal further effort by C&WG and is justifiable and proportionate to the purpose for which publication is required.

In particular, while as noted by C&WG, this information will assist the market in understanding the transparency of interconnection charges and costs and in ensuring that there is no undue discrimination between internal and external provision of interconnection services it will also meet the same objective with respect to access to the C&WG network. Furthermore it will enable C&WG to demonstrate to the market that the company is neither engaging in anti-competitive practices nor abusing its dominant position. This is particularly appropriate in the Guernsey context as it is expected that the availability of this information will contribute to reducing the need for individual investigations by the OUR. Consequently the regulatory burden of individual investigations should be reduced.

3.2.2 Commercial Confidentiality

The Director General is aware that there is no legal requirement for the disclosure of C&WG's statutory accounts under Guernsey Company Law. However she does not accept that C&WG's Regulatory Accounts are comparable to the confidential reports and statements submitted by licensed financial companies to the GFSC. The GFSC's primary objective is to regulate and supervise financial services in Guernsey with integrity and efficiency, and in so doing help to uphold the international reputation of Guernsey as a finance centre. Not only does the GSFC serve a different purpose to OUR, it regulates a competitive market with over 800 licensees.

The production and publication of Regulatory Accounts serves a fundamentally different purpose. C&WG is dominant in the Bailiwick's telecommunications market and as a result is required amongst other things to produce Regulatory Accounts in order to balance the inherent commercial advantage a dominant incumbent enjoys and thus ensure a level playing field for competition to develop.

With regard to the allegation that there would be commercial damage to C&WG arising from the publication, the OUR understands that C&WG wants OUR to exercise its judgement on fundamentally qualitative grounds as the company has not provided any quantitative evidence to support its allegation.

Therefore the OUR has considered C&WG's anticipation that damage may arise because competitors would have explicit information about its cost base and therefore knowledge of the minimum price that C&WG can charge, in compliance with its licence. The Director General notes that a core reason for publishing the Regulatory Accounts with the disaggregated retail information is to allow the Director General to fulfil the obligation to promote and foster effective competition in the Guernsey marketplace. Thus the availability of this knowledge will, as recognised by C&WG, explicitly assist the development of competition and contribute towards balancing the advantage C&WG has as a dominant incumbent. Furthermore, where effective competition develops such that C&WG no longer has a dominant position in a relevant market, the licence obligations associated with dominance will fall away, and C&WG will no longer be subject to these requirements, thus leaving it free to price as it sees fit.

However notwithstanding the above, the publication of precise retail product unit costs at a time with new entrants about to launch services may lead to potential distortions in pricing behaviour by operators in the market. The Director General therefore is prepared to exclude from the published Regulatory Accounts the disaggregated retail information contained in the Statement of Costs of Network Services and the total call minutes and average cost per unit information in the Core Network Business Summary Statement of Costs in Table 1.6 (set out in OUR 03/23). The Director General reserves her right to review this position as the market develops.

With regard to alleged damage with regard to customers and suppliers, the Director is not aware of how the publication of disaggregated accounts could cause such damage and is not aware of any damage caused to operators in other markets by the imposition of the obligation to publish its regulated accounts.

3.2.3 Article 11 of Directive 2002/19/EC

With regard to C&WG's comments that the requirement for full publication of the Regulatory Accounts does not comply with Article 11 of European Directive 2002/19/EC the Director General notes that in the first instance, this Article does not apply in Guernsey and the relevant legislation is the Guernsey legislation and the Licence conditions

Notwithstanding this, the Director General has considered practice under the EU legislation and its implementation in the Member States. The European Commission's Eighth Report on the Implementation of the Telecommunications Regulatory Package which contains a discussion on accounting separation states (emphasis added):

“The implementation of cost accounting and accounting separation in Ireland and in the United Kingdom can be regarded as best practice in the EU as regards the approach and methodology used, the detail of the verification carried out by the regulators and the availability of information to third parties. All these elements result in greater transparency of the tariff determination process and contribute to establishing confidence in the cost accounting systems of the notified operators and indirectly in the cost orientation of tariffs.”⁸

The Director General believes it entirely appropriate that practice in the Bailiwick should follow best practice elsewhere. Given this, and the other issues addressed above, the Director General does not consider there is a reason to match the publication practice of Kingston Communications over and above other operators. In particular, the Director General does not consider it appropriate to consider Kingston isolation as a benchmark for the issue of publication in isolation, particularly where the RAGs and the structure of the accounts have already been consulted on and determined.

3.2.4 Method of Publication

The Director General does not consider C&WG's proposal to only make the Regulatory Accounts available on request to those with a “specific and genuine interest” in reviewing the accounts is appropriate or workable. Apart from the potential for disputes as to who has the right to access to the information and what comprises “specific and genuine interest”, with the resultant increase in the administrative and regulatory workload, the proposal is not in accordance with international best practice. Furthermore, the Director General can see no reason for restricting access to the information to any class of persons. Clearly the publication of the accounts on the company's website ensures the widest dissemination to interested parties and the Director General continues to be of the view that this is the most appropriate form of publication.

The Director General considers it reasonable for C&WG to recover the costs of providing hard copies of its Regulatory Accounts to interested parties and should

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www.europa.eu.int/information_society/topics/telecoms/implementation/annual_report/8threport/finalreport/com2002_0695en01.pdf, p.37, EIGHTH REPORT FROM THE COMMISSION on the Implementation of the Telecommunications Regulatory Package *European telecoms regulation and markets 2002*

therefore be allowed to charge an administrative fee for providing the document on request which reflects the costs of providing the document. The electronic copy of its Regulatory Accounts available on its website however will be available free of charge to interested parties.

3.2.5 Conclusion

In conclusion, the Director General considers C&WG's annual Regulatory Accounts and supporting documentation should be made publicly available with the exception of disaggregated retail information included in the Statement of Costs of Network Services (usage factors and average costs per minutes) and total call minutes and average cost per unit in the Core Network Business Summary Statement of Costs. C&WG may also charge an administrative fee for providing hard copies of its Regulatory Accounts to interested parties. The existing RAGs (Document 02/12) will be updated and issued shortly by the Office to reflect this decision.

4 Notice of Direction to C&WG

In accordance with Condition 27.1 of Cable & Wireless Guernsey Limited's Fixed Telecommunications Licence issued under the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General, and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 hereby Directs Cable & Wireless Guernsey Limited that the publication of its 2002/03 Regulatory Accounts and all future Regulatory Accounts will comprise making the following documents available on its website and making available on request:

- Audited Regulatory Accounts for:
 - Local Access Network (Profit and Loss Account & Statement of Mean Capital Employed);
 - Core Network Business (Profit and Loss Account & Statement of Mean Capital Employed)
 - Statement of Costs of Network Services – usage factors (excluding disaggregated retail products);
 - Statement of Costs of Network Services – average cost per minute (excluding disaggregated retail products);
 - Summary of Statement of Costs – (excluding total call minutes and average cost per unit).
 - Retail Business (Core Network Business (Profit and Loss Account & Statement of Mean Capital Employed);
 - Disaggregated financial statements (i.e. Profit and Loss Account & Statement of Mean Capital Employed) for:
 - Exchange line rental and connection;
 - Local calls;
 - Local internet calls;
 - Jersey calls;
 - National Calls;
 - International Calls;
 - Calls to Guernsey Mobile;
 - Non-geographic calls free to calling customer;
 - Non-geographic calls charged at local rate;
 - Non –geographic calls charged at national rate;

- Non-geographic calls charged at premium rate;
- Internet;
- Directory Enquiry;
- Public Payphones;
- Leased Lines;
- Remaining Activities
- Mobile Business (Profit and Loss Account & Statement of Mean Capital Employed);
- Other Activities (Profit and Loss Account & Statement of Mean Capital Employed);
- Inter Business Costs Summary;
- Transfer Charge Statement;
- Profit and Loss Reconciliation Statement; and
- Balance Sheet Reconciliation.
- Accounting Documents; and
- Cost Attribution Methodology.

These accounts shall be published on 31st October 2003 in accordance with the Direction set out in document OUR 03/20 and in accordance with the Regulatory Accounting Guidelines as amended and updated from time to time (Document OUR 02/12). Cable & Wireless Guernsey may charge an administrative fee for providing hard copies of its Regulatory Accounts to interested parties which shall reflect the costs to C&WG of providing the hard copies.

/ENDS