



Office of Utility Regulation

Review of C&W Guernsey's Wholesale Business

Draft Decision Document

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Office of Utility Regulation

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CONTENTS

1. Introduction.....	2
2. Structure of the Paper	3
2.1. Structure	3
2.2. Comments	3
3. Responses to Consultation document.....	4
3.1. General comments	4
3.2. Leased line delivery processes.....	5
3.3. Penalties	8
3.4. Mandated wholesale products	8
3.5. Price changes	9
3.6. Price discounts.....	10
3.7. Relationships between C&WG and OLOs	11
3.8. C&WG Wholesale champion.....	12
3.9. Information systems.....	13
3.10. Regulatory compliance	14
3.11. Future options	14
4. OUR's assessment	16
4.1. General comments	16
4.2. Leased line delivery processes.....	18
4.3. Penalties	20
4.4. Mandated wholesale products	22
4.5. Price changes	23
4.6. Price discounts.....	23
4.7. Relationship between C&WG and OLOs.....	23
4.8. C&WG Wholesale champion.....	24
4.9. Information systems.....	25
4.10. Regulatory compliance	26
5. Draft Decision.....	27
5.1. Draft Decision 1.....	27
5.2. Draft Decision 2.....	27
5.3. Draft Decision 3.....	28
5.4. Draft Decision 4.....	28
5.5. Draft Decision 5.....	28
5.6. Draft Decision 6.....	28
6. Next Steps	29

1. Introduction

In March 2008, the OUR published its review of C&W Guernsey's (C&WG) wholesale business. The review, which was prompted by a number of industry disputes and concerns at the manner in which C&WG engaged with its wholesale customers, recommended a series of changes to improve the existing situation.

The Director General (DG) believes the provision of a properly functioning, fit for purpose wholesale market in the telecommunications market is critical to the development of competition in the Bailiwick, as well as for the wider benefit of the industry itself. The review of this aspect of C&WG's business identified several areas where either regulatory intervention was considered necessary, or where industry players needed to provide proposals to the DG to address his concerns.

In this draft decision, the DG has assessed the points made by respondents to his consultation. In certain areas he intends to issue Directions to the dominant operator, C&WG. Given proposals made by respondents to the consultation paper, it appears that operators will undertake to resolve some of these issues through industry arrangements rather than require regulatory intervention. Where this is the case, the DG has invited industry players to present proposals to this effect in their response to this draft decision.

This draft decision sets out the views of respondents and the DG's consideration of these views, which informed the draft decisions set out in this document. The proposals contained in this paper have therefore been informed by the response to the consultation paper, further work by the OUR and constructive discussions with C&WG over the past period.

This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.

2. Structure of the Paper

2.1. Structure

The rest of this paper is structured as follows:

Section 3: summarises responses to the consultation document;

Section 4: sets out the OUR's assessment of the issues;

Section 5: lists the draft decisions proposed in this document;

Section 6: sets out the next steps in the consultation process;

2.2. Comments

Parties are invited to submit comments in writing on the matters set out in this paper to the following address:

Office of Utility Regulation
Suites B1& B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

Email: info@regutil.gg

All comments should be clearly marked "Review of C&W Guernsey's Wholesale Business" and should arrive before 5pm on 1st September 2008.

In line with the policy set out in Document OUR 05/28 – "Regulation in Guernsey; Revised Consultation Procedures", the DG intends to make any further comments received available on the OUR website. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential. However the DG regrets that he is not in a position to respond individually to the responses to this consultation.

Any comments received will be taken into account by the DG in informing his consideration of the issues addressed in this consultation.

3. Responses to Consultation document

3.1. General comments

Cable and Wireless Guernsey, Wave Telecom and Airtel-Vodafone (Airtel) responded to the consultation.

In seeking to set its response in context, C&WG considered it important to take account of some general considerations. It argues that in the significant majority of issues discussed by the OLOs with Regulaid during the course of the review, there was either no fault on C&WG's part, or improvements, as opposed to corrections, to C&WG's approach were recommended. C&WG further suggest Regulaid adopt contradictory views on legalistic versus commercial approaches. It considers that in some cases Regulaid has in fact proposed more formal approaches to address problems identified. C&WG also argue that any change in relationship and behaviour is not simply the responsibility of C&WG. The Channel Island issue is also raised, given operators compete in both the Guernsey and Jersey markets. In particular, Jersey Telecom (JT), the parent company of Wave Telecom in Guernsey, is the incumbent in Jersey where C&WG is the entrant and must rely on JT for essential infrastructure. In Guernsey, these roles are reversed with C&WG the incumbent in Guernsey. This situation risks reciprocal behaviour in the two markets as outlined in Regulaid's report. C&WG express the view that the extent of legal, regulatory, commercial and physical relationships mean there must be an appropriate and proportionate recognition of the impact one has upon the other. C&WG suggests there is a risk of "cherry-picking" certain issues to consider on a pan-island basis and rejecting others. C&WG have suggested the joint Channel Island initiative to achieve MNP in both Islands at the same time is a linking of the two regulatory regimes. C&WG does not believe any systemic issues have been identified in Regulaid's review and make the point on a number of occasions in its response that on several issues the OLOs hadn't raised concerns with C&WG, which were then raised with Regulaid. For example, its response states that the Industry Working Group that met in 2006 to review the wholesale agreement, did ask C&WG to consider shorter provisioning times, but did not raise compensation for later delivery or fault clearance targets.

Wave Telecom states it is encouraged by the outcome of Regulaid's work, having raised concerns for some time on the service level received from C&WG wholesale and the lack of service equivalence, in particular in the leased line market.

Airtel broadly supports the findings of Regulaid's review. Airtel concur that the wholesale function within C&WG should be clearly partitioned from the retail arena and its resourcing reinforced to enable it to more effectively meet the needs of its wholesale customer base, in terms of operational resources, more robust business processes and dedicated management. Findings of the review in the areas of improved order processing and delivery processes, improved wholesale circuit pricing, rigorous focus on SLA/Penalty performance and the adoption of formal service management framework were also endorsed by Airtel.

The following sections set out the recommendation proposed in the OUR consultation paper and respondents views on the proposal. Later in this paper the DG offers his consideration of the proposal and sets out his proposed decision.

3.2. Leased line delivery processes

Recommendation 1

C&WG should overhaul its processes for the ordering and delivery of leased lines as a matter of urgency so that:

- *OLOs are informed of the RFS date at the same time as the order acknowledgement;*
- *the targets should be for 100% of orders, with the exception of orders that require the installation of new fibre;*
- *all circuits of 2 Mb and under should be delivered in 10 business days with the exception of orders that require the installation of new fibre;*
- *circuits of over 2 Mb should be delivered in 15 business days, with the exception of orders that require the installation of new fibre.*

C&WG maintain it is not always possible to advise anything other than the standard SLA delivery date due to limitations caused mainly by the non-availability of access equipment/NTP/line plant, up to and within the end-customer site, while it is not only availability of fibre where the restraint lies. C&WG have also made recent changes to management in this area and an evaluation of the current ordering process is being undertaken.

C&WG argue the retail targets are in fact worse than the wholesale targets since the former is a specified RFS date while the latter is a target to deliver within the RFS date. C&WG proposes that wholesale delivery times should be amended by the addition of wording to clarify that 100% of circuits should be delivered on or before the target RFS date (where access equipment/NTP/line plant exists). C&WG further propose that the SLA for 2Mb and sub 2 Mb circuits be reduced to 15 days subject to availability of access equipment/NTP/line plant up to and within the end-customer site and at the C&WG exchange. C&WG propose the SLA for services above 2 Mb could be reduced to 45 days subject to the same conditions as above, and commits to review these targets when the service offering/network infrastructure is altered by advancement and evolution in network technologies and services.

Wave believe it is vital that changes are made to the leased line provisioning times to bring them into line with comparable operators and make them fit for the market and customer expectations. The proposed revised targets were welcomed, including the introduction of a new target of installing 100% of circuits within the target times with greater penalties for poor performance, and the provision of the RFS date at the same time as order acknowledgement.

Recommendation 2

C&WG should offer an expedite service to the OLOs and its own retail customers at a cost based charge.

C&WG believe that if an OLO prefers circuits are delivered in advance of delivery targets, if this becomes possible and notice is given, this can be addressed. If such a change in process is adopted, together with the agreement to provide an early target installation date as proposed in response to Recommendation 1, C&WG is of the view this would eliminate the need for a mandated expedited service. C&WG also maintain that in the case of high capacity lines, if an expedited service existed it still may not be possible to expedite such an order though this is considered rare as high capacity circuits are usually ordered well in advance of the required RFS date.

On the issue of a cost-based charge for an expedited service, C&WG do not believe this service should be cost-based, arguing this would undermine the service itself, and should instead, be provided as a value added service, in such a way that it would not become the de-facto delivery. A further issue C&WG raised is the risk that an expedited service may not be distinguishable from early delivery of a circuit when circumstances allow.

Wave's view was that the inclusion of the option for OLOs to expedite certain orders should provide OLOs with some chance to compete on an equal footing with C&WG's retail arm. Wave anticipated the expedite charge would be based on the additional work required to move the order through the system at a faster speed. Wave did have some concerns around the potential for abuse by C&WG of such a facility to push its own retail orders at a quicker pace than its wholesale orders, and whether C&WG would charge itself if it effectively expedited an order for its retail business.

Recommendation 3

C&WG should publish KPIs on its public website as follows:

- *actual time taken to give OLO a ready for service date (as measured as the period between order reception and confirmation of ready for service date) as a quarterly average as against target;*
- *actual delivery times as a quarterly average (as measured as the period between order reception and ready for service) against target for wholesale and retail customers,*
- *a graph showing the number of days taken to deliver for wholesale and retail customers;*
- *percentage of wholesale and retail orders that are delivered after the target;*
- *these figures should be shown separately for 2 Mb and under leased lines, for leased lines above 2 Mb, and for bitstream orders (and any other major wholesale products introduced by C&WG);*
- *the data should distinguish between orders that require the construction of new routes and the other orders;*
- *any orders which are only administrative or billing changes should be excluded.*

C&WG do not consider the publication of wholesale information to be standard practice, in particular it argues it is not appropriate or relevant to retail customers. It argued that OLOs should be required to sign a formal and binding agreement to ensure they do not misuse this information, if this were made available. C&WG also raised concerns about the resource implications of providing such information, since it was of the view there was a need for C&WG to provide commentary to avoid misinterpretation of statistic and graphs.

Recommendation 4

OUR should require C&WG's auditor to certify annually that the information in the published KPIs is correct.

C&WG argue that the benchmarking exercise undertaken by Regulaid does not suggest there is evidence any of the operators have had published KPIs audited. C&WG do not believe audited KPIs would add any value to the quality of data published or submitted to the OUR.

3.3. Penalties

Recommendation 5

For each day beyond the target date for delivery or fault repairs for leased lines, bitstream service, or any other wholesale service, C&WG should pay twice the daily recurring fee to the OLO.

C&WG do not believe any penalty should exceed 100% of the monthly fee. C&WG proposed an alternative compensation fee for late delivery, which is equivalent to the penalty fee structure in place for its retail customers.

Recommendation 6

C&WG should revise its wholesale and retail contracts so that the penalties paid to wholesale customers are greater than for retail customers.

C&WG does not consider it appropriate to pay wholesale customers more than those penalty values paid to retail customers. C&WG argues that the OUR should incentivise identical service levels to all its customers.

Recommendation 7

C&WG should initiate the payment of penalties.

C&WG has few objections to the initiation of penalty payments, but is concerned about the management and system enhancements required to enable such a process. It is of the view that it should be allowed to recover efficient costs for the set-up and ongoing management of this process.

3.4. Mandated wholesale products

Recommendation 8

OLOs must be able to replicate technically and commercially C&WG's retail offerings, including the "service wrap", from C&WG wholesale products or other services available to them. Hence, C&WG must provide wholesale products required by OLOs to match its retail offerings, including the service wrap, unless the service is provided in a competitive market.

C&WG agrees with the general principles of this recommendation, but suggests an amended wording to ensure clarity and avoid any ambiguity as to what is meant by 'service wrap'.

Wave's position is that C&WG should be required to offer a wholesale version of the service if the component parts of a service are not easily available or cannot be replicated and that element of the service is key to the product as a whole.

Recommendation 9

C&WG should revise its wholesale and retail contracts so that delivery timescales and other terms and conditions are comparable.

C&WG agrees with this recommendation and has commenced a review of its wholesale and retail contracts and anticipates submitting revised wholesale contracts to the OUR within a month of the OUR's published final decision. It undertook to make changes to its retail terms and conditions in the same timeframe if these were needed.

C&WG would also seek to take the opportunity of the review to ensure that under the terms of the wholesale agreement it has the right to charge OLOs for work which it has undertaken but which results in no order being placed.

Recommendation 10

C&WG should offer its wholesale and retail customers upgrading a leased line the option of paying a one off cost based fee or of a new minimum contract term, and the OLOs should give their retail customers the same choice.

C&WG argue that a one-off fee would be a backward step as it abandoned the installation charge (which is now spread over the recurring charges) as it was considered by customers to create a higher 'entry to service' cost. If a contract was interrupted before its term ends, C&WG argue they are entitled to recover such a one-off fee within its pricing through:

- a) the remainder of the term charges;
- b) those installation charges from the original installation;
- c) charges for the provision of the new service; and
- d) charges for the remainder of the term of the new service beyond the date of what would be the expiry of the original service.

C&WG does not regard this option as a feasible product and an alternative pricing structure would require a more complex pricing methodology.

3.5. Price changes

Recommendation 11

The process for "major interest" price changes should be abolished, and all changes in the wholesale prices should follow the "minor interest" process, with the notice period extended to 30 calendar days.

C&WG argue it has a very clear process. When there is a change to the price of a wholesale service C&WG sends an individual email to each wholesale customer informing them of a change at least 21 days before it comes into effect. C&WG agree that all wholesale services should be treated as being of minor interest.

Rather than extending the notice period to 30 days as proposed, C&WG recommends that the notice period for fixed network retail services should be shortened to 15 days. It believes the current 21 day requirement causes confusion, while a sufficient gap between wholesale price publication and C&WG retail price publication will allow the OLOs to make their pricing decisions and implement them in advance of the retail prices coming into effect.

Wave agreed with a 30 calendar day notice period to wholesalers for price changes but state that notice should be provided by letter and email for all price as well as product changes.

3.6. Price discounts

Recommendation 12

OUR should ensure that there is an adequate profit margin available to OLOs for on-island leased lines, and:

- *wholesale leased lines should be available on two and three year contracts;*
- *a discount scheme should be available for two and three year wholesale contracts, although not necessarily at the same rate as the retail discounts in order to reflect the difference in retail and wholesale costs saved;*
- *OUR should apply a margin squeeze test to leased line prices, including term discounts, and ensure that an adequate profit margin is available.*

C&WG's view is that the average margin should be assessed across the product range and not at a single speed and single price and the leased line services market as a whole is the more traditional approach to assessing such an issue. It was also noted that assessment of compliance with the price control formulae does not require separation of either the on-island leased lines or the off-island leased lines but is based on the average margin across the product range.

C&WG derived a weighted average margin of over 18% for the on-island 2Mb/s leased line, providing details for same exchange and different exchange 2MB/s provision. The point was also made, that of the benchmarked countries, Regulaid had stated that with the exception of Ireland, the discounts used are over 20%, whereas Slovenia also had a margin of less than 20%.

C&WG's figures indicate the volume of customers taking the two and three year term offer is a low percentage of total volumes. C&WG's view is therefore that the term discounts have minimal impact on the ability of OLO's to compete. A further argument forwarded by C&WG is that based on its regulatory accounts there is no room to offer any further reductions on wholesale on-island leased lines prices as such a move would leave C&WG with an insufficient return on investment.

Wave's position is that it would like to see term discounts being offered to wholesalers on the same terms as retail customers. It believes C&WG has an unfair advantage in that when it offers end-to-end circuits it is in a position to offer term discounts for the combined on and off island circuit product. Wave have also said that C&WG recently announced an offer of a 10% discount to retail customers who

purchase 20 or more retail high speed internet services from 1st May, which is not being extended to wholesalers, and would welcome a similar investigation into the Bitstream product and the discounts offered at the same time as an investigation into leased line discounts to ensure that an adequate profit margin is available to OLOs.

3.7. Relationships between C&WG and OLOs

Recommendation 13

C&WG and the OLOs should implement the commitment in the wholesale leased line agreement to meet every quarter, at least for the next 12 months.

C&WG agrees to this recommendation but undertakes to do so, on an individual basis not as a group, believing that full and frank discussion on commercially sensitive issues would be stifled.

Wave welcomed more regular meetings with C&WG to keep up-to-date with product changes and provide OLOs with the opportunity to provide feedback on issues affecting them.

Recommendation 14

OUR should discuss with C&WG and the OLOs the value of an Industry Forum, and if the idea is supported, call the first meeting.

C&WG's view is that it is too early to know whether such a forum is needed in, or even suitable for, Guernsey. The absence of any draft terms of reference for the proposed committee is seen by C&WG as making it difficult to assess the value of the proposed forum. The large number of wholesale customers and a sophisticated retail market can justify a standing industry forum but C&WG believes it unlikely that the characteristics and size of the Guernsey market could justify a standing forum such as that in the Netherlands. C&WG's view is that the quarterly meetings in Recommendation 13 should be given a chance to work before further consideration is given to establishing another industry forum and proposes that this recommendation should be reconsidered in 12 months time instead. It is also C&WG's view that the NGN Industry Forum would be established in the next 12 months and this may provide a more relevant model of an industry forum than that in the Netherlands and that an issue-specific forum is more appropriate than a standing committee.

Wave responded that an Industry Forum was seen as beneficial for OLOs, with opportunities for two-way information share, resolving issues, providing C&WG product forecasting information, and for C&WG to provide information about new product development and to gain buy-in from OLOs. Wave propose that all OLOs should be represented, that the C&WG wholesale manager should chair the forum, frequency of meetings may be limited to six months only, and that an escalation process for unresolved issues should be provided.

Recommendation 15

OUR should not accept a complaint from C&WG or the OLOs about wholesale services unless the dispute process available to the operators has been exhausted or the issue has been discussed at the Industry Forum.

C&WG supports this recommendation in that a dispute process should be followed prior to lodging a complaint with the OUR, but does not believe an Industry Forum has a role to play in disputes.

Recommendation 16

OUR should require C&WG to revise its dispute process.

C&WG states that it has now reviewed its dispute process in line with Regulaid's recommendations.

3.8. C&WG Wholesale champion

Recommendation 17

C&WG should create a position for wholesale sales and relationships that does not have any other responsibilities. This position should report to the Director of Customer Operations.

C&WG states it has created such a role and has been endeavouring to fill it within the constraints of the Guernsey Housing Laws, efficiency and cost limitations imposed on it by the OUR and the headcount and cost management requirements of its management and shareholders. That role is intended to have responsibility for wholesale sales and relationships that will be across the full spectrum of the business of Cable and Wireless in the Channel Islands and the Isle of Man. C&WG do not believe it appropriate or economically feasible for such a role to be limited to Guernsey alone.

C&WG suggest the role's responsibilities will not extend to engineering and provisioning though there will be considerable communication and interface between those responsibilities. C&WG believes Regulaid has failed to take into account the existing and substantial retail responsibilities of and reports to the Director of Customer Operations in its proposal. C&WG intend that this role will report to the Director of Legal and Regulatory Affairs to ensure its separation from the retail arm.

Recommendation 18

C&WG should change its arrangements for paying staff bonuses, so that staff responsible for wholesale sales and relationships are rewarded on wholesale, not retail performance, and so that staff provisioning and repairing network services are not encouraged to favour retail or wholesale customers.

C&WG does not agree that the current bonus structure encourages staff to provision retail orders ahead of wholesale orders, maintaining that staff bonuses accrue according to the company performance against a specified set of metrics that can be achieved equally through delivering both or either wholesale circuits or retail circuits with no distinction made between the two in relation to target achievements. Bonus uplifts are then based on individual performance against personal objectives, which reflect the nature of the job. Individuals focused on wholesale orders, will be rewarded for achieving or exceeding performance in this area.

In Wave's view the appointment of a dedicated wholesale manager should help to foster a better relationship between OLOs and C&WG and focus on the specific issues of OLOs. Regulaid's proposal that wholesale staff should be rewarded on the basis of the wholesale business was supported by Wave.

3.9. Information systems

Recommendation 19

C&WG should take immediate steps to prevent its retail staff from having access to wholesale orders, and to ensure that wholesale orders cannot be easily distinguished from retail orders in its provisioning processes.

C&WG accepts these concerns but believes that in reality this has caused no misuse of information. A limiting factor in removing the risk of misuse is the age of the provisioning system, which has been in service for over 18 years. C&WG intends replacing it with a new platform ready for service in 2009/10.

In the interim C&WG proposes to

- a) audit the list of users of the current provisioning system, removing access to all staff who do not have a legitimate requirement
- b) system configuration will be made to enable the segregation of the Wholesale and Retail Sales team (completed end May 2008)
- c) separate accounts created for local OLOs so that the wholesale and retail services that C&WG provides them can be managed entirely separately
- d) billing system to be reconfigured to ensure wholesale accounts are only viewable by wholesale staff (completed end May 2008)
- e) communicate and enforce the revised processes across all staff with access to the provisioning and/or billing system(s)

C&WG also argue that wholesale and retail services are allocated with circuit titles of identical format and from a shared, sequential number range. It is this

number range that is referred to by engineers during the provisioning and subsequent repair processes.

For future services C&WG intend to develop wholesale services to comprise just the low-level elements or building blocks that may be required by a retail service. Those wholesale components would therefore carry no distinction to those that may be ordered by C&WG retail or by an OLO other than the name of the operator and would carry no reference to the overall retail service for which they are required.

3.10. Regulatory compliance

Recommendation 20

C&WG should carry out regular compliance audits to ensure that its staff are not contravening its regulatory and contractual obligations, and are complying with its own policies and regulatory guidelines.

C&WG consider its contractual obligations are covered in Recommendation 3 in respect of KPIs, and believe their response to that recommendation covers compliance with contractual obligations. On the recommendation to carry out regular audits, C&WG argue that Regulaid does not give any indication or suggestion as to how that could be achieved, but agrees to the general principles of the recommendation.

3.11. Future options

Recommendation 21

OUR should implement the recommendations drawing on a range of options, including exhortation, setting principles and processes, mandate revisions in standard wholesale offers and requesting changes in C&WG. The more radical option of seeking to require separation of network and wholesale activities in C&WG is also identified as an option should the above not be considered sufficiently robust options.

C&WG sees no need for the OUR to direct it on those recommendations it has co-operated with. C&WG also notes that a finding of breach under section 27 is first required before punitive action under section 28 of the Telecommunications Act, can be invoked, and that if a more commercial and beneficial relationship between all parties is to be realised greater focus should be given to working together in a proportionate and realistic manner.

Recommendation 22

OUR should review the position at the end of 2009 through discussions with the OLOs and C&WG, and by an examination of the KPIs. If it judges that significant improvements have not taken place, it should start to implement option 5 (separation).

C&WG argue that Regulaid provides insufficient discussion on critical issues such as how functional separation might be implemented and criteria to demarcate C&WG's

assets and activities. The process towards achieving functional separation in other countries is also cited to argue that further assessment would be required before the OUR undertook such a process.

4. OUR's assessment

4.1. General comments

The DG welcomes operators' comments on the review of C&WG's wholesale operations.

It is worth noting again the observation from Regulaid's review was that a number of concerns by OLOs had not taken the form of disputes or complaints raised with the regulator, despite objections or disagreements with C&WG's position. The fact that OLOs had not pursued a formal course of action despite holding views contrary to C&WG is, in the DG's view, consistent with a view that OLOs do attempt to resolve disagreements with C&WG in a pragmatic, commercial manner. This context is relevant when considering there have been instances where OLOs sought to pursue matters through the regulatory dispute process, and that the OUR has found C&WG in breach of its licence conditions.

The evidence from recent disputes indicated to the OUR that concerns raised by OLOs were neither frivolous nor of minor consequence. In each case the issue was not simply that mistakes were made by C&WG, but that even after the errors were apparent to C&WG, its response was in the DG's view protracted, indifferent and legalistic. It is also relevant that these delays were allowed to continue until the regulator intervened; delays which can reasonably be assumed to have singularly benefited C&WG and adversely impacted on the reputation and commercial operation of the OLOs in question.

The general inference the OUR believes is reasonable to draw from the above is that the evidence from Regulaid's review is consistent with a position that OLOs pursue regulatory intervention as a last resort. The OUR does not interpret the fact that Regulaid found a number issues raised with them by OLOs as having little or no merit, as a reason to regard those instances where disputes have been launched as isolated incidents which lessen the overall concerns underlying the basis for this review.

The OUR fully acknowledges the need to take account of the smaller scale of operation in a small economy such as Guernsey. What should also be taken into account is the current resource cost to the market as well as by C&WG, expended in regulatory disputes of the nature highlighted. The inadequate structure around wholesale support and provision of resources by C&WG to wholesale customers as highlighted by Regulaid, demonstrates that this is an area that has received inadequate investment by C&WG – in both time and other resources - and should have been addressed by C&WG prior to this review given the length of time the telecoms market in Guernsey has been open to competition.

So as to provide context, some of C&WG's general comments have been assessed in light of actual examples of disputes the DG has considered recently. The chronology of events in the dispute over 45Mbit on-island circuits shows a request made by Wave Telecom in July 2006, which was not responded to even after it was escalated to C&WG's then CEO. The first response by C&WG was in September 2006, when it indicated it was reviewing its wholesale portfolio. In January 2007 Wave Telecom

again approached C&WG on this matter without receiving a reply from C&WG. In June 2007, Wave Telecom registered a formal dispute with the regulator.

In the Les Caches dispute, a request for circuits was made in March 2007 to C&WG. After receiving a reply from C&WG that there was inadequate line capacity, Wave Telecom then indicated it had a real requirement and asked how this could be met given existing line capacity was inadequate. In response, C&WG simply repeated its previous response. Not only was this an indifferent approach to meeting a request from a potential customer, but the reason was not in fact accurate. It is pertinent that after Wave Telecom had registered a formal dispute, C&WG then stated it had a different reason for not meeting the request. It had failed to bring this reason to Wave Telecom's attention at the time of the request and was only apparent after a regulatory investigation had commenced.

In these specific examples, an argument that it was not simply the responsibility of C&WG to resolve these issues does not have merit. In the DG's view, it is the structures, incentives and processes that led to such behaviour by C&WG with which the OUR is concerned. The above instances are cited to underline a further point, namely that dialogue is not of itself a solution to the areas the OUR wishes to see resolved. These cases illustrate the structure, incentives and processes at C&WG are highly relevant to the behaviour observed in C&WG's dealings with OLOs, not only by operational staff but at a senior management level. Based on the above, a prerequisite for change will need to go beyond establishing clearer communication channels at operational level. It is in the DG's view quite clear that senior management at C&WG were aware of the issues and delays but chose not to respond to an OLO's attempts at dialogue until a regulatory investigation was initiated, and were therefore complicit in those delays.

With regard to arguments around what Regulaid has termed the 'Jersey factor', it is unclear to the OUR how these comments can be applied to the OUR's investigation in a specific case or how this relates to any of the disputes already summarized above. It is for example not obvious whether C&WG is suggesting a more relaxed approach to anti-competitive behaviour towards an OLO in the Guernsey market if it perceives it receives such treatment in another market. If so, this is plainly unacceptable to the DG and he would not countenance such an approach. An alternative interpretation of C&WG's response is that if JT is able to offer a more competitive service across Guernsey, Jersey and the Isle of Man, for example, where this is due to what C&WG might consider a more relaxed approach by the Jersey regulator to JT's wholesale pricing and service offering, the OUR should mirror such regulatory forbearance until this is amended in the Jersey market.

As an overall observation on this point, it is worth noting that the issue is one which affects all telecom businesses that engage in other telecoms jurisdictions where a different regulatory jurisdiction applies. The approach taken by such operators is to address concerns in those markets where an operator believes the regulatory approach is insufficiently robust and leads to a less optimal outcome for the market as a whole. Where C&WG take the view that in the Guernsey jurisdiction, decisions by the OUR are unduly onerous or not defensible it is able to make use of the appeal process and has done so. It is not a credible argument to suggest that a regulator should engage in forbearance in the incumbent's jurisdiction until all jurisdictions in which it wishes to compete have adopted comparable standards. There is certainly no basis in law or economics for such a position.

Despite C&WG's arguments, the regulatory case for MNP introduced at the same time in both Islands is not about linking the two regulatory regimes in this area. While the approach provides opportunities to operators across both Islands at the same time, with benefits from economies of scope and scale in the cost of system development and operation, the fundamental rationale for MNP in Guernsey is the benefit to Guernsey consumers.

The evidence indicates that the incentive scheme C&WG currently has in place explicitly places a low weighting on wholesale service relative to retail service provision for C&WG staff dealing with both category of orders. The priority staff should give to wholesale versus retail service provision is apparent in the delivery timescales set by senior management, which are weaker for wholesale orders, and further reinforced through a weaker set of penalty payments for missed wholesale order targets. These same staff have the ability and opportunity to know whether an order relates to a retail customer or a wholesale customer; a situation which prevailed despite the training schemes in place and was not picked up by senior management or operating staff. Based on this evidence it is the DG's view that the structures, processes and incentives disadvantage wholesale customers.

The inability of OLOs to achieve shorter delivery times in discussions with C&WG is indicative of the discrepancy in negotiation power on such matters. C&WG's response might be interpreted to imply such discussions are on an equal basis and that significant factors such as C&WG's exclusive control of key elements of Guernsey's telecoms infrastructure are not a major factor in such discussions. If so, this is not the case. More specifically OLOs have not been successful in achieving shorter deadlines from C&WG despite requesting these. OLOs have no power to achieve such aspirations and short of seeking regulatory intervention rely entirely on C&WG's willingness to make such changes. Given C&WG was not willing to shorten its delivery targets voluntarily it is understandable that OLOs would not then pursue the matter of higher penalties for missing those deadlines.

4.2. *Leased line delivery processes*

Recommendation 1

C&WG has made the point that not only is the lack of existing fibre (or copper) a limiting factor on the provisioning time, but also consideration needs to be given to availability of access equipment/NTP/line plant, up to and within the end-customer site and at the C&WG exchange. The nature of C&WG's network architecture is also cited as a constraint, while the amount of active equipment deployed in customer sites is argued to be limited, usually requiring bespoke end-to-end installations. C&WG therefore believes lead times are typically longer than other operators where these have different network configurations. However, C&WG's response states that this situation will change and improve over time as network technologies evolve, and the level of managed, multi-service customer premises equipment increases. C&WG proposes 15 day delivery times for 2Mb and sub 2 Mb circuits, and 45 days for services above 2 Mb. Both reductions are subject to availability of access equipment/NTP/line plant, up to and within the end-customer site and at the C&WG exchange.

C&WG's current delivery times are materially longer than those achieved by telecom operators taken as benchmarks. A speedier delivery target date is therefore considered

by the OUR as necessary to bring C&WG's delivery times to comparable levels. While the OUR welcomes the proposed reductions, the 2 Mb and sub 2 Mb circuit delivery times proposed by C&WG remain higher than recommended by Regulaid's analysis; the proposal of 45 days by C&WG for over 2Mb circuits in particular does not appear to offer an acceptable long term target. Taking into account the issues around changes required to achieve reductions in delivery times, the OUR accepts that C&WG requires time to modify systems and processes, and acknowledges changes have already been instigated. While network configurations will differ between benchmarked operators and this has been offered as one of the explanations for C&WG's wholesale delivery times, it is unclear to the OUR how issues around network configuration can be quantified and the extent to which these account for the differences in delivery targets when compared to other jurisdictions. Having considered these arguments and those presented by Regulaid, the DG intends to set a three year path for the reduction of delivery targets to those levels recommended by Regulaid.

From January 2009 the OUR intends to set delivery times for 2 Mb and sub 2Mb circuits at 15 days. This target will be reduced to 10 days by January 2011. From January 2009 the OUR proposes to set delivery times for over 2Mb circuits at 40 days, reduced to 25 days by January 2010, and 15 days by January 2011. This offers a reduction in delivery times in the near future for the vast majority of circuits ordered, based on the current profile of wholesale orders, moving towards a target of 10 days. A transition period is therefore provided for C&WG to modify its processes and design new ordering processes at the same time as it will be engaged in the introduction of changes to its core network over the next few years. A delivery time of 15 days for over 2Mb circuits is set as a medium term target for C&WG's wholesale business.

An area where greater clarity is required is around which orders for leased lines are subject to these targets and which fall under a category of what might be termed bespoke services. C&WG has provided a discussion paper indicating the issues that arise. This sets out circumstances that may justify categorizing an order as 'exceptional' and therefore not within the category of orders subject to the above targets and penalties, since they might be argued to require bespoke provision. This document is provided in the Annex to this draft decision and respondents are invited to consider these arguments and propose alternatives where they disagree.

Recommendation 2

In introducing these targets, their relevance to the issue of expedite services is that in the DG's view the case for an expedited service becomes less strong given the shorter delivery targets. The DG is also mindful of the risk of a two-tiered service at a time when C&WG's resources are focused on improving overall delivery targets which entail modification of existing processes and procedures. The concerns raised by respondents about C&WG's ability to internalize the cost of an expedite service are also relevant and may require greater resource to fully address. It therefore appears to the DG that introduction of an expedite service is less of a priority for the present and he does not propose the introduction of such a facility in this draft decision.

Recommendation 3

The publication of key performance indicators is an area where C&WG expressed some concerns about the use of such statistics and the need for it to be in the public domain. C&WG also registers concerns that such information may be misinterpreted.

The DG's view is that the performance of the market is of public interest, as is the progress made in regulated markets. The publication of C&WG's performance, as the key provider of such services in the Bailiwick is therefore relevant beyond only the regulator and OLOs. The DG does, however, acknowledge the need to ensure such information can be presented in a form that is fit for purpose and the potential risks of misinterpretation are minimised.

He therefore proposes that publication of KPIs covering the delivery times set out in Regulaid's recommendations take place on a quarterly basis by the end of the first month of each quarter, covering the previous three months delivery times. The first provision of this information would be in January 2009 covering the delivery times over Oct-Dec 2008. It is proposed that the first four publications are provided only to the OUR and OLOs and that publication of this information in the first year will not be required. Thereafter all quarterly KPIs will be made publicly available on C&WG's website. By introducing the publication of KPIs in such a way, it will allow this new process to become established and any teething issues to be sorted out over the first year. Thereafter, the presentation of KPIs should be an established resource that is clearly understood and suitably qualified.

Recommendation 4

Given the publication of these statistics, the need for a formal audit of the figures is lessened since operators will be in a position to make some comparison of C&WG's performance with that provided to them. To the extent that some degree of self-regulation will be enabled by publication of KPIs, and given the DG has powers to audit the figures if there is any question as to their accuracy, the need for an auditor to certify KPIs annually is not considered necessary in these circumstances.

4.3. Penalties

Recommendations 5 and 6

Regulaid proposed penalties for late delivery of 200% of the daily rate, with no upper limit. The objective of penalties can be seen as informing C&WG's priorities when providing leased line services to OLOs; the level of such financial penalties must therefore be both material and proportionate to achieving this. Currently C&WG's penalties for late delivery are 2% of the monthly rental fee and constant irrespective of the delay period. The DG's view is that the current level and structure of wholesale penalties are wholly inadequate as an incentive on C&WG's business when prioritizing delivery of wholesale circuits to OLOs, both relative to its own retail customers and in terms of the overall standard of service it should provide to wholesale customers.

The principle the DG proposes to adopt is that failure to meet the more relaxed delivery targets attract higher penalties, and as delivery targets are improved, the

penalties are reduced. C&WG has proposed a penalty structure of 25% of the monthly rental fee for delay after service delivery date of 1-5 business days, 50% for 6-10 days, and 100% for delays of more than 10 business days. This replicates the level and structure for its own retail customers, but is materially different to that proposed by Regulaid.

There are strong arguments forwarded by Regulaid that wholesale penalties can justifiably be set higher than retail penalties, and that penalties should be higher the longer the period of delay. The DG is however encouraged by the commitment shown by C&WG in volunteering higher penalties and improved delivery times. The DG's conclusion is that a balance between setting penalties that are material and proportionate in adequately informing C&WG's priorities in this area, can be achieved by a lower penalty than that proposed by Regulaid, but that the principle of increased penalties the later the delivery date is important while C&WG's performance is below that considered reasonable. He therefore proposes to set a penalty structure that is greatest while C&WG's delivery targets are longer than the targets informed by the benchmark, but which equal C&WG's retail penalties when those targets are lowered to the levels recommended by Regulaid.

The penalty structure is therefore set with reference to the delivery targets over three years. The level of penalties proposed for each day of late delivery are: 100% of the daily rental charge for the first year (from January 2009) and 50% of the daily rental charge for the second year. Penalties for the third year and beyond are proposed at the same level as C&WG's retail penalties, namely 25% of the monthly rental charge for delays of 1-5 days, 50% for delays of 6-10 days and 100% of the monthly rental charge for delays of over 10 days.

Recommendation 7

C&WG has argued that it incurs costs in set up and management of a pro-active compensation payments process and it should be able to recover those.

The DG's consideration of this argument is that there has never been an expectation that C&WG would run a flawless wholesale service. The costs incurred by C&WG in paying penalties and managing that process, for example, are reasonable costs by an efficient operator, where a normal error rate applies in the course of running a business operation. These costs are however embraced in the general provision of costs set by the OUR's price control on C&WG in that they are referenced to the costs considered reasonable by an efficient operator. Where C&WG's delivery performance is inferior to that of an efficient operator the question as to which party should bear those costs arises.

The DG can see no persuasive reasons why C&WG should not bear those costs alone. He therefore proposes that C&WG will initiate the payment of penalties, and that the costs of setting up and management of a pro-active compensation payments process would not be recovered by C&WG through higher prices or other charges to OLOs when providing a leased line delivery service.

4.4. Mandated wholesale products

Recommendation 8

Regarding the replication of C&WG's offerings, as set out in the OUR's consultation paper (OUR 08/09), there are several approaches that might be taken in setting criteria as to what products and services a dominant operator must provide to OLOs. For the present, there appear to be very few issues arising in this area and the industry has been able to resolve any disagreements. A regulatory decision at this stage therefore appears unnecessary, particularly given the potential for changes in the nature of wholesale products and services with the pending NGN investment in Guernsey. The DG proposes to take no further action with regard to this recommendation but will keep it under review as progress on NGN takes place.

Recommendation 9

C&WG has undertaken to present revised wholesale contracts to the OUR within one month of the publication of the final OUR report and if changes are needed to the C&WG retail terms and conditions, these will be completed in the same timeframe. In C&WG's response, it also proposes to take the opportunity of the review to ensure that under the terms of the wholesale agreement it has the right to charge OLOs for work which is undertaken by C&WG in good faith but which results in no order being placed.

The DG welcomes the initiative taken by C&WG. However, while the issue of charging for services rendered is not controversial, the DG would not wish a practice to develop where OLOs are hampered in developing new opportunities by such an approach by the dominant player. C&WG will no doubt have worked with its own or potential retail customers in developing new products and services, where those customers have not taken up an offer despite C&WG having committed resources to the development of a solution. The DG would wish to ensure that C&WG's approach to cost recovery where potential wholesale services are developed, is no different to that taken with its own retail customers.

Recommendation 10

In C&WG's response concern about this recommendation was expressed. It did not believe it should have to provide an option for an upgrade charge as a one off fee, arguing this would be a backward step. C&WG also expressed concerns that the recommendation may lead to an infeasible proposition, place curbs on C&WG's ability to recover reasonable costs, or make for an overly complex pricing methodology.

The approach where the upgrade or setup cost is spread over the term of the agreement does reduce the entry to service cost. However, a concern that has arisen and identified by Regulaid, is the effect of upgrades where the OLO is potentially placed in a position where each upgrade restarts the contract, requiring a new minimum term of 12 months. This could have the effect of locking the customer into the existing supplier for an extended period of time.

To address this concern the DG proposes that in the event of an upgrade during the

course of a contract term, that C&WG provides the option to restart the contract for a minimum term, with the alternative for OLOs to pay the upgrade cost upfront rather than have it spread across the subsequent term of the new agreement.

4.5. Price changes

Recommendation 11

No objections have been raised to the OUR's proposal that all notifications should follow that taken by the minor notification process, though Wave Telecom did propose that written notice should also be given. The notification process proposed involves C&WG announcing all wholesale price changes to the OLOs directly by email and published on the C&WG web site, which the DG considers sufficient. No notifications in the Gazette Officielle would therefore be required under this process.

The DG is of the view there is merit in Regulaid's recommendation that wholesale customers should receive a longer period of notice than retail customers, so they can amend their own retail services as necessary, and inform their own customers of any price changes. He therefore proposes to adopt a 30 day notice period for wholesale customers. This will require an amendment to the relevant licence condition and the DG will deal with this separately.

4.6. Price discounts

Recommendation 12

Regulaid presented an analysis identifying potential issues with the use of term discounts by C&WG. C&WG has responded by setting out its views on the appropriate regulatory analysis, and Wave Telecom has argued that the wholesale offering should also offer term discounts.

With regard to this issue, the DG finds no strong evidence of discriminatory behaviour by C&WG's wholesale arm. It is not apparent from even the narrowest of product margin analysis that these concerns are borne out to the extent that they justify regulatory resources at this time. Also, the proportion of customers taking two and three year term contracts is also not at a level where the scale of concern appears to warrant further examination, while respondents have not been able to provide evidence that the level of potential demand justifies further significant regulatory resource. The DG has taken these factors into account and does not propose to pursue this recommendation further at this time.

4.7. Relationship between C&WG and OLOs

Recommendations 13, 14 & 15

C&WG raised no objection to the recommendation that commitments in the wholesale leased line agreement with regard to meeting with OLOs should be adhered to. The DG accepts C&WG's argument that such meetings are most appropriately held on an individual basis.

C&WG and OLOs have expressed an interest in an Industry Forum although the detail of how such a Forum would work in practice was an aspect where further clarity was required by respondents. The DG is of the view that an Industry Forum has an important role to play in moving the industry forward and accepts the need for such a forum to be issue specific. Given the success of the NGN Industry Forum meeting between C&WG and OLOs earlier this year, there appears to be merit in C&WG's proposal that an NGN Forum offers an appropriate initial vehicle in moving this issue forward. Rather than stipulating how such a body would work, the DG believes it is more appropriate to look to C&WG to set out in its response to this draft decision how it proposes to engage with the telecoms industry on Next Generation issues going forward, if such a forum is proposed as a template. The likely success of this initiative will reduce the need for formalization of such an Industry Forum by the regulator.

He therefore does not intend to issue a Direction to C&WG or other operators at this time, but would anticipate that C&WG's stated willingness, as well as that of OLOs, to engage in regular formalized meeting arrangements, which are also part of the dispute process, will be followed by proposals from the industry. He would expect that submissions to this draft decision will set out such arrangements, which can be finalized shortly after the final decision.

4.8. C&WG Wholesale champion

Recommendation 17

Regulaid have emphasized the importance of a dedicated wholesale role and view this as critical in improving relationships between C&WG and the OLOs. Its proposal was that this position should report to the Director of Customer Operations. There are some questions by C&WG as to whether staff reporting lines have been adequately reflected in Regulaid's recommendation. C&WG also argue that there is neither the market nor the opportunity for a significant increase in wholesale revenues and the very small number of wholesale customers and wholesale revenues raise doubts as to whether a dedicated role in Guernsey is feasible. The proposal by C&WG is that the wholesale role will have responsibility for wholesale sales and relationships that will be across the full spectrum of the business of Cable and Wireless in the Channel Islands and the Isle of Man. The role would report to the Director of Legal and Regulatory Affairs to ensure its separation from the retail arm.

The DG's concerns around this counter proposal are that the role is not solely focussed on wholesale customers in Guernsey, given the need to make significant changes in the wholesale processes and relationships in Guernsey, and that this will exacerbate the "Jersey factor". Given this, and C&WG's issues as stated above, rather than prescribing the reporting line for such a position, Regulaid have further clarified their recommendation, proposing the reporting line for the wholesale position should be based on the following principles:

- It should not report to the same Director as the retail business;
- It should have close links to the operational business;
- It should preferably not report to the same Director as for legal and regulatory affairs, although it will have close links with that department.

The DG recognizes the constraints of a small Island economy and has therefore

decided to adopt a flexible approach on how C&WG seeks to fill such a role and match the criteria suggested by Regualid to reconcile the various tensions in creating such a position. It is also to C&WG's advantage to achieve the closest fit to Regualid's recommendation possible since perceptions around conflict of interest will detract from the success of such a position. This draft decision will therefore reflect the principles set out by Regualid in defining this role.

Recommendation 18

The issue of staff incentive schemes is a related matter and dealt with under this heading. Regualid's conclusion was that staff working in the network and wholesale businesses should be rewarded on wholesale, not retail performance. C&WG did not agree that the current bonus structure encouraged discrimination.

In subsequent meetings with C&WG, the principle proposed by the utility is that wholesale staff, in particular the wholesale role proposed in Regualid's recommendations, would have incentive schemes that related to the performance of C&W plc and not that of C&WG's retail arm. The DG's view is that the primary issue is that wholesale staff incentives should not be directly related to C&WG's retail performance. The incentive scheme as suggested by C&WG would therefore be acceptable to the DG and he would look to C&WG to provide adequate assurances to this Office through a communication setting out these arrangements and the implementation of an accepted framework.

4.9. Information systems

Recommendation 19

The ability of retail staff to have access to wholesale orders is not consistent with a separation between C&WG's retail and wholesale business. The underlying concern identified by Regualid's review in this area was that C&WG's systems offered the means for C&WG's retail arm to have information about the detailed ordering activity of a competitor.

C&WG accepts these concerns and cites the age of the provisioning system as a limiting factor. C&WG intends replacing the current system with a new platform with a ready for service date of October 2009. C&WG has also taken several steps to audit access, reconfigure its system to enable segregation between wholesale and retail teams, create separate accounts for local OLOs, and ensure wholesale accounts are only viewable by wholesale staff where justified. C&WG do not consider the issue of product codes as a major point since they argue it is a necessity of the system design. The argument that wholesale and retail services are allocated with circuit titles of identical format and from a shared, sequential number range which is used by engineers during provisioning and subsequent repair processes appears to support this position.

The DG accepts that C&WG is committed to addressing his concerns and the practical limitations of its system are no doubt a constraint, although he notes that C&WG has had ample opportunity since acquiring Guernsey Telecom to address this issue. However, given a commitment to have a new platform in place by October 2009 and the immediate steps C&WG has already implemented, he proposes to keep abreast of progress towards the target C&WG has set itself to address these real concerns

identified by Regulaid and will consider at a later date whether any formal direction is required.

4.10. Regulatory compliance

Recommendation 20

The expectation is that C&WG would install a proactive programme that ensures appropriate monitoring and implementation of the changes proposed by this review. Where such a programme is in place the DG would not expect to see the type of behaviour that was evident in disputes he has dealt with, such as prolonged periods of failure to respond to reasonable requests, or failure to give consistent reasons for not responding to requests from OLOs. Should further disputes arise, the success or failures of such a programme will be assessed and if it is found to be ineffective, the DG will formalize a programme through regulatory intervention, though this is obviously not his preferred approach.

5. Draft Decision

This section of the Draft Decision sets out the DG's proposed decisions in respect of the issues addressed above. Subject to his consideration of any comments on these proposals he expects to confirm these decisions in September 2008.

5.1. Draft Decision 1

C&WG should overhaul its processes for the ordering and delivery of leased lines as a matter of urgency so that:

- *OLOs are informed of the RFS date at the same time as the order acknowledgement;*
- *the targets should be for 100% of orders, with the exception of orders that require the installation of new fibre;*
- *all circuits of 2 Mb and under should be delivered:*
 - a. In Year 1 (commencing 1 January 2009), in 15 business days with the exception of orders that require the installation of new fibre;*
 - b. In Year 2 (commencing 1 January 2010), in 15 business days with the exception of orders that require the installation of new fibre;*
 - c. In Year 3 (commencing 1 January 2011), in 10 business days with the exception of orders that require the installation of new fibre.*
- *circuits of over 2 Mb should be delivered:*
 - a. In Year 1 (commencing 1 January 2009), in 40 business days, with the exception of orders that require the installation of new fibre.*
 - b. In Year 2 (commencing 1 January 2010), in 25 business days, with the exception of orders that require the installation of new fibre.*
 - c. In Year 3 (commencing 1 January 2011), in 15 business days, with the exception of orders that require the installation of new fibre.*

5.2. Draft Decision 2

C&WG should publish KPIs on its public website as follows:

- *actual time taken to give OLO a ready for service date (as measured as the period between order reception and confirmation of ready for service date) as a quarterly average as against target;*
- *actual delivery times as a quarterly average (as measured as the period between order reception and ready for service) against target for wholesale and retail customers,*
- *a graph showing the number of days taken to deliver for wholesale and retail customers;*
- *percentage of wholesale and retail orders that are delivered after the target;*
- *these figures should be shown separately for 2 Mb and under leased lines, for leased lines above 2 Mb, and for bitstream orders (and any other major wholesale products introduced by C&WG);*
- *the data should distinguish between orders that require the construction of new routes and the other orders;*

- *any orders which are only administrative or billing changes should be excluded.*

C&WG will commence publication of these KPIs on the first quarter of the calendar year 2009, covering the last quarter of the calendar year 2008. The first four quarterly publications will be made available only to OLOs and the OUR. Thereafter, all such KPI figures will be made publicly available on C&WG website.

5.3. Draft Decision 3

For each day beyond the target date for delivery or fault repairs for leased lines, bitstream service, or any other wholesale service, C&WG should pay:

- *in Year (commencing 1 January 2009), 100% of the daily rental charge;*
- *in Year 2 (commencing 1 January 2010), 50% of the daily rental charge;*
- *From Year 3 onwards (commencing 1 January 2011), 25% of the monthly rental charge for delays of 1-5 days, 50% for delays of 6-10 days and 100% of the monthly rental charge for delays of over 10 days.*

C&WG will initiate all penalties for which it is liable under this Direction.

5.4. Draft Decision 4

C&WG will offer its wholesale and retail customers upgrading a leased line the option of paying a one off cost based fee or a new minimum contract term.

5.5. Draft Decision 5

The process for “major interest” price changes is abolished, and all changes in the wholesale prices will follow the “minor interest” process, with the notice period extended to 30 calendar days.

5.6. Draft Decision 6

C&WG will create a position for wholesale sales and relationships that complies with the following principles:

- *It should not report to the same Director as the retail business;*
- *It should have close links to the operational business;*
- *It should preferably not report to the same Director as for legal and regulatory affairs, although it will have close links with that department.*

6. Next Steps

Following consideration of responses to this draft decision document, the DG will issue a final decision document. In several areas he has requested respondents to propose concrete actions to address the concerns identified in this review. He would expect such proposals will accompany responses.

Parties are therefore invited to comment on the issues raised and any other areas covered by this draft decision document that might further inform any final decision by the DG.

ENDS

ANNEX – C&WG’s submission on factors that affect the ready for service date

The matters which would impact on the time for providing service to a customer lie around the provisioning of the physical path from the core switching network (the Serving Exchange / C&W Network) to the Network Termination Point (NTP) (can also be known as the Customer’s Site). For these purposes “Network Termination Point” means any physical point of connection forming part of a Telecommunications Network at which another Telecommunications Network or Customer Premises Equipment may be connected.

Therefore any statement on the availability of line plant needs to take into account that the following components are required in order we can install service in line with our SLA and agreed provisioning times: .

- The Customer's Site is already equipped with the **external** cabling and equipment required for installing the service (e.g. ducts, fibre or copper, etc is already in place).
- The Customer's Site is already equipped with the **internal** cabling and equipment required for installing the service (e.g. cable routes, fibre or copper, etc is already in place).
- The Customer's Site is already equipped with the **Network Access** equipment required for installing the service.
- The Serving Exchange is already equipped with the **Network Access** equipment required for installing the service.
- That we have the required NTP connection point either already installed on site or held in our stores.
- That we have the required access equipment card either already installed on site or held in our stores, for the Serving Exchange.

As well as these various items of physical equipment, the set up of the Customer’s Site is also key to the issue of ascertaining if the service can be supplied. Cable and Wireless require the following issues to be addressed:

- The end customer has a signed lease for the building or has ownership.
- The end customer has the relevant landlord’s permission to install such services.
- The wholesale customer must provide a suitable location and environment for our Telecommunications Equipment. The wholesale customer must prepare the premises before Service is provided according to any reasonable instructions that we give. The wholesale customer must guarantee that the physical environment complies with the C&W requirements for EMC environment, temperature, relative humidity, ventilation system and safety regulations.
- The wholesale customer must ensure the supply at their (or the end customer’s expense), a suitable mains electricity supply where and when required in order for the connection of our Telecommunications Equipment. The customer must also ensure unrestricted access to said power source.

In the area of External cabling we should emphasis that if there is no external access plant such as duct or cable with capacity available at the service delivery address, C&W have to instigate a process that involves the design of the access equipment and integration into the existing network, obtain the wayleaves from the landlord(s), permissions for the relevant roadwork’s and associated allocation

of resource to complete the works. Some of these elements are governed by restrictions beyond the control of C&W, such as roadwork's/ road closures which are co-ordinated and approved by the States.

The dates and conditions we have to work by are not always capable of being advised or confirmed at the time of the service order creation; we do have to obtain dates that may affect the ready for service date from third parties.