Office of Utility Regulation

Cable and Wireless Guernsey Price Control

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Draft Decision

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1. Introduction

On 1st April 2011, Cable and Wireless Guernsey's (C&WG) three year price control ended and a decision to allow a one year rollover of that price control to the year ending 31st March 2012 was made by the DG in January 2011.

An ongoing pan-Channel Island project involving the OUR, the Jersey Competition Regulatory Authority and operators across both Guernsey and Jersey, was relevant to the DG's assessment in 2011 and his decision to allow the rollover. This pan-Channel Island project was initiated to facilitate the development of wholesale access products – these determine how competing operators can utilize the existing fixed telecommunications network - and the potential outputs from that project will have a bearing on the scope for future competition in the fixed telecoms market.

Progress has been made in taking this wholesale access initiative forward. In November 2011 the OUR and the JCRA jointly issued a consultation document setting out the wholesale access products identified by operators, as well as the issues and choices before the regulators. This consultation process is expected to progress the development of wholesale access products in both Guernsey and Jersey, with a view to making a final decision in the spring of 2012.

The availability of such wholesale products is expected to materially alter the competitive landscape for fixed telecom services in Guernsey. However, the need to continue a form of price control on C&WG remains at least until these are available. A form of price control rollover therefore offers a more suitable option in the circumstances.

In considering this option, it is relevant that the period over which price reductions were required of C&WG in 2008 has now extended to four years. Given these ongoing reductions were in several cases extensive and, at the time, limited to a three year period, a further rollover of the 2008 price control to five years may not be appropriate. C&WG has now requested a further increase in exchange line rental to £9.99 per month (currently £8.99) and some increases to minimum call charges, but has offered to freeze prices in the remaining price controlled baskets.

In this draft decision the DG proposes a rollover of the existing form of the 2008 price control and that a freeze is placed on all C&WG's price controlled baskets. This paper sets out these issues further and the basis for this draft decision.

This document does not constitute legal, technical or commercial advice; the DG 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 DG to regulate the market generally.

2. Structure of the Consultation Paper

The document is structured as follows:

Section 3:	Sets out key legal and regulatory references relevant to this draft decision;
Section 4:	Explains the context of the current price control and further developments;
Section 5:	Sets out C&WG's recent submission;
Section 6 :	Explains the DG's Draft Decision.
Section 7 :	Conclusion of document and next steps

Responses to this document should be submitted in writing and received by the OUR before 5.00pm on 14th of February. Written comments should be submitted to:

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

Or by email to info@cicra.gg

All comments should be clearly marked: "Cable & Wireless Guernsey Ltd's Price Control – Draft Decision 2012".

In line with OUR consultation policy, the DG intends to make responses to the consultation available on the OUR website. Any material that is confidential should be put in a separate Annex and clearly marked so it may be kept confidential. The DG regrets that he is not in a position to respond individually to the responses in this consultation.

3. Legal requirements and Licensing framework

3.1 Legal Requirements

Section 5(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 ("the Telecoms Law"), provides that the DG may include in licences such conditions as he considers necessary to carry out his functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- conditions intended to prevent and control anti-competitive behaviour[1]; and
- conditions regulating the price premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market[2].

3.2 Licensing Framework

In accordance with these provisions in the Telecoms Law, both the "Fixed Telecommunications Licence Conditions"[3] and the "Mobile Telecommunications Licence Conditions"[4] awarded to C&WG include the following text:

"The Director General may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may:

a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Service;
b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies."

This condition allows the DG to regulate the prices that a licensee charges for its telecommunications services in a way and for a time that he deems appropriate, where the licensee has a dominant position in the relevant market.

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[1] *Condition 5(1)(c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.*
[2] *Condition 5(1)(f) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.*
[3] *Document OUR 01/18; Condition 31.2.*
[4] *Document OUR 01/19; Condition 27.2*

4. Current price control and subsequent developments

The current price control came into effect in April 2008, and applies the Retail Minus approach to baskets of products, giving C&WG the flexibility to adjust prices within each of those baskets, provided it complies with the overall price cap for the basket.

The following five retail baskets are price controlled, with the price caps for the 2008 decision set out:

- Basket 1 - Exchange Line Rental: RPI-RPI
- Basket 2: Local Calls Basket : RPI -11.75%
- Basket 3: Main Basket : RPI - 4%
- Basket 4: On-Island Wholesale Leased Lines: RPI - RPI
- Basket 5: Off-Island Retail Leased Lines: RPI - RPI

The DG also applies the Retail Minus pricing mechanism (of at least 15%) to derive C&WG's Wholesale Off Island Leased Lines prices. This control was then extended to the 2011/12 year.

5. C&WG's Submission

C&WG has indicated that whilst it may be prepared to consider a further year of retail price control, this should be in the form of an extension of price control for another year – with different constraints on some of the baskets – rather than a rollover of the price control in its current form. C&WG suggests any extension of a price cap for a further year should contain the following features:

- Basket 1 - Exchange Line Rental: Increase from £8.99 to £9.99 per month with no changes made to the pricing of exchange line rentals under the Telephone Assistance Scheme.

- Basket 2: Local Calls Basket: RPI –RPI and an increase in the minimum call charge from 2p to 3p.

- Basket 3: Main Basket: RPI – RPI and an increase in the minimum call charge from 2p to 3p.

- Basket 4: On-Island Wholesale Leased Lines: RPI – RPI

- Basket 5: Off-Island Retail Leased Lines: RPI – RPI

6. DG's Draft Decision

C&WG's dominance

The DG does not see a basis for revisiting the assumption of dominance by C&WG in the relevant market/s at this stage.

Inflation

This aspect was assessed previously and the DG remains of the view that setting an inflation figure for the price control roll-over of one year should be based on the general practice of taking the RPI figure for December of the prior year.

C&WG's proposals

The DG does not propose to agree to C&WG's specific proposal to further raise exchange line rental prices. The DG would require a more comprehensive set of information before he could form a view and, if he were to undertake such an analysis, it would seem more appropriate, in light of the wholesale access initiative currently underway, to do so as part of that workstream prior to agreeing any change. This has been the position adopted in Jersey for the price control on Jersey Telecom.

The DG is also not persuaded by C&WG's arguments that it should be allowed to raise exchange line prices because they are higher in Jersey. C&WG has in addition raised the risk of margin squeeze. In the DG's view there cannot be a presumption that a margin squeeze problem would exist at the current price level. As above, it would in any event seem more appropriate to resolve such an issue in a more comprehensive manner as part of the wholesale access project.

It does however seem to the DG that at the retail level, affording C&WG a greater degree of flexibility by combining Baskets 1, 2 and 3 may be appropriate at this time. In anticipation of the conclusion of the wholesale project in the spring of 2012, combining these three baskets gives C&WG the ability to address the type of risks it suggests may occur, while ensuring there is an overall pricing constraint on the telecom services which are taken together by many islanders. C&WG's reporting requirements will require some alteration in this case.

This does open the risk that cross subsidies between calls and exchange line rental could occur which may unfairly disadvantage competitors to C&WG. Through the process of several price controls the OUR has ensured costs are allocated appropriately between products. It therefore seem to the DG that a substantially greater level of transparency and clarity of C&WG's underlying costs is available to support the assessment of any such subsidies that occur, and whether they are detrimental to fair competition. In the event of concerns in this area, fair competition provisions in C&WG's licence are available to address any valid concerns.

In terms of the remaining proposals by C&WG, the DG notes C&WG's offer to freeze these lease line products that are price controlled and he is minded to accept this offer by C&WG. He is however not minded to accept C&WG's proposal to raise minimum call charges and proposes that these should be frozen also, given he has requested further supporting information but to date has no basis on which to approve a price increase of the order of 50% for this service. If C&WG have further information to support this request the DG would of course consider this before making a final decision.

The above proposals by the DG would amount to an annual reduction in the real prices of those telecoms services subject to price control, equivalent to the rate of RPI which currently stands at 3.5%.

7. Conclusion

This draft decision sets out how the DG is minded to proceed in agreeing to a form of price control rollover for C&WG that balance the competing interests and priorities of stakeholders.

Respondents are requested to provide their views on this draft decision, and the DG will then issue a final decision prior to 1st April 2012.