



Office of Utility Regulation

Cable and Wireless Guernsey Price Control for 2012-13

Final Decision

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Office of Utility Regulation

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH

Tel: +44 (0)1481 711120, Fax: + 44 (0)1481 711140,

Web: www.cicra.gg

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1. Introduction

This purpose of this paper is to set out the OUR's final decision in respect of the price control for Cable and Wireless Guernsey's (C&WG) fixed telephone line business for 2012-13. The OUR carried out a full price review of C&WG for the period 1 April 2008 to 31 March 2011, and this was rolled over for 2011-12.

The fixed telephone market in the Channel Islands may change significantly in future, with the potential introduction of new wholesale access products and a greater emphasis on a pan Channel Islands approach to the provision and regulation of these services. The availability of wholesale access products is expected to materially alter the competitive landscape for fixed telecom services in Guernsey.

In the meantime, the need to continue to apply a price control to C&WG fixed line business remains. Under the present circumstances a rollover of some form offers a more suitable option than a full price review. However, in considering this option, it is relevant that price control applied in 2008 was originally intended to last three years. In some areas substantial ongoing price cuts which were intended originally to apply for three years have been extended for a fourth year and a further extension of the 2008 price control without modification is not appropriate.

In its draft decision¹ the OUR proposed a rollover of the existing price control which would essentially freeze prices overall, but allow the company increased freedom to rebalance charges between different tariff baskets – so that some tariffs could be increased provided there was an offsetting reduction elsewhere. In its submissions, C&WG requested increases in line rental from £8.99 to £9.99 per month and in minimum call charges from 2 to 3p, but offered to freeze prices in the remaining price controlled baskets.

Since the draft decision was published in January, the DG has been provided with further information from C&WG in support of some change to existing tariffs, notably line rental charges and local calls.

For this final decision, the DG has determined that the existing price control will be extended for a further year but that this rollover will be modified to adopt a general freeze in prices rather than reapply the reductions applied for the last 4 years. In addition, the DG has determined that C&WG be allowed freedom to adjust charges between three tariff baskets (line rental, local calls and the main basket which includes national and international calls). The DG has also agreed that in return for a reduction in the price of peak rate local calls of 1p/minute (from 4.3p to 3.3p) he would not object to a £0.76 increase in exchange line rental taking the monthly cost from £8.99pcm to £9.75pcm.

¹ CICRA 12/02: Cable and Wireless Guernsey Price Control: Draft Decision, January 2012.

2. Structure of the document

This document is structured as follows:

| | |
|-----------|---|
| Section 3 | Sets out key legal and regulatory references relevant to this decision; |
| Section 4 | Explains the background and context to the current price control; |
| Section 5 | Responses received to the draft decision; |
| Section 6 | C&WG's original submission and subsequent responses |
| Section 7 | Final Decision |
| Section 8 | Conclusion |

In accordance with the OUR policy on consultation as set out in Document OUR 05/28 – “Regulation in Guernsey; Revised Consultation Procedures Information Paper” – all non-confidential responses to the consultation have been published on the OUR's website (www.cicra.gg) and are available for inspection at the OUR's office during normal working hours.

3. Legal requirements and licensing framework

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 behaviour²; 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 market³.

In accordance with these provisions in the Telecoms Law, both the “Fixed Telecommunications Licence Conditions”⁴ and the “Mobile Telecommunications Licence Conditions”⁵ awarded to C&WG include the following text:

² Condition 5(1) (c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

³ Condition 5(1) (f) of the Telecommunications (Bailiwick of Guernsey) Law, 2001.

⁴ Document OUR 01/18; Condition 31.2.

“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.

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:

| No. | Basket | Price Control 2008-11 & subsequent rollover |
|-----|----------------------------------|---|
| 1 | Exchange Line Rental | Frozen (RPI – RPI) |
| 2 | Local call charges | RPI – 11.75% |
| 3 | Main basket | RPI – 4% |
| 4 | On-island wholesale leased lines | Frozen (RPI – RPI) |
| 5 | Off-island retail leased lines | Frozen (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 2011-12 year.

⁵ Document OUR 01/19; Condition 27.2

5. C&WG's Submission and subsequent representations

The OUR received a single response to the consultation on the draft decision, from C&WG.

Original submission

C&WG made its original submission about the price cap for the period beyond March 2012 in September 2011. In it C&WG 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 suggested that any extension of a price cap for a further year should contain the following features:

| | Basket | C&WG Proposal |
|---|------------------------------------|---|
| 1 | Exchange Line Rental | Increase by £1 (11%); from £8.99 to £9.99pcm |
| 2 | Local call charges | Freeze Increase min call charge to 3p |
| 3 | Main basket | Freeze Increase min call charge to 3p |
| 4 | On-island leased lines (wholesale) | Freeze |
| 5 | Off-island leased lines (retail) | Freeze |

In addition to the headline changes to the main tariff baskets, C&WG also proposed:

- no change in the price for the Telephone Assistance Scheme, which remains at £3.99; and
- an increase in minimum call charges (baskets 2 & 3) from 2p to 3p;

C&WG Response to Draft Decision

Following the publication of the Draft Decision, C&WG objected to the OUR's proposals and submitted a revised proposal. This proposal offered a smaller increase in line rental combined with a reduction in the charge for peak time local calls.

| | Basket | C&WG Proposal |
|----------|------------------------------------|--|
| 1 | Exchange Line Rental | Increase by £0.76 (8.5%); to £9.75pcm |
| 2 | Local call charges | Freeze <i>And cut peak call charges from 4.3p to 3.3p per minute</i> |
| 3 | Main basket | Freeze |
| 4 | On-island leased lines (wholesale) | Freeze |
| 5 | Off-island leased lines (retail) | Freeze |

The DG has given extensive consideration to C&WG's initial proposals and its subsequent representations. The OUR has met and spoken with C&WG to discuss these issues on a number of occasions in order to understand the issues and in reaching the Final decision set out in section 6 of this document.

6. Final Decision

Rollover

The DG has determined that a second straight rollover of the original 2008 Price Control, as took place for 2011-12, would not be appropriate. Therefore, as proposed in the draft Decision, a modified approach should be adopted.

Dominance

As set out in the Draft Decision the DG does not see a basis for revisiting the assumption of dominance by C&WG in the relevant markets at this stage.

Inflation

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.

Basket 1: Exchange Line Rental

The OUR did not agree C&WG's original proposal for a £1 increase in line rental and was not persuaded by arguments that significantly higher prices in Jersey for line rental (£12.75) should justify an increase in Guernsey. The OUR was also not persuaded on the basis of the

evidence presented that C&WG's concerns that a margin squeeze may exist should competition be introduced to the exchange line market if retail prices remained at current levels.

The DG has however considered C&WG's planned investment associated with, among other things, replacement of its existing exchange technology and introduction of soft switch and other planned investments in the telecoms infrastructure in Guernsey. The DG has therefore decided that he would not object to C&WG's revised proposal to increase line rental by £0.76pcm, given that C&WG are now proposing a reduction in call charges which will partly offset this increase, and on the basis that in future the revenues from tariff baskets 1, 2 and 3 (line rental, local and other call charges) will be looked at on a combined basis which will allow the company freedom to rebalance charges within the basket (see below).

Basket 2: Local Call charges

The DG accepts C&WG's proposal for a general freeze in charges with a reduction in peak local call costs from 4.3p to 3.3p per minute.

Basket 3: main Basket:

The DG accepts C&WG's proposal to freeze call charges at current levels.

Basket 4: On-island leased lines (wholesale)

The DG agrees C&WG's proposal to freeze prices.

Basket 5: Off-island leased lines (retail)

The DG agrees C&WG's proposal to freeze prices.

Flexibility between baskets

In many jurisdictions, including in the Channel Islands (Jersey and Guernsey) it has become common practice to include a package of calls alongside line rental for a fixed monthly fee. This practice moves away from the clear distinction between a fixed monthly charge for line rental and various per minute charges for calls.

The DG has decided that the company should be allowed flexibility to adjust charges between baskets 1, 2 and 3 (line rental, local and other calls) and that for the purposes of this and any future price control, the revenues from these baskets should be considered on a net basis. Combining the baskets is appropriate at this time and will allow C&WG a greater degree of flexibility in its retail offerings. It also 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. However, the OUR does not

believe that it is yet appropriate to remove controls entirely or to completely merge the three baskets while C&WG maintains a position of market dominance.

This change does open the risk that cross subsidies between calls and exchange line rental could occur which may unfairly disadvantage competitors to C&WG. Over the course of several price controls the OUR has ensured that costs are allocated appropriately between products. Costs and revenues will continue to be required to be separated between the areas and declared transparently in the company's regulatory reporting and accounts. This will ensure the appropriate 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 specific concerns in this area, fair competition provisions in C&WG's licence are available to address any valid concerns.

7. Conclusion

This DG believes this decision balances the competing interests and priorities of stakeholders. It allows C&WG to increase its Line Rental charge the impact of which is offset somewhat by a reduction in call charges. This enables C&WG to act more flexibly in setting its tariffs across three price baskets comprising line rental, local and other calls.

This price determination is the DG's Final Decision and will take effect from 1 April 2012.
