



Office of Utility Regulation

Cable and Wireless Guernsey: Separated Accounts

**Notice of Proposal to issue a Direction to Cable and
Wireless Guernsey Ltd under Section 27 of the
Telecommunications (Bailiwick of Guernsey) Law,
2001**

Document No: OUR 03/18

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1. Introduction

Separated, or Regulatory, Accounts are prepared in order to provide financial information about regulated businesses for use by the regulator, the industry, consumers and other stakeholders. They provide information that is more focused than that contained in statutory accounts as they relate to the regulated businesses or activities, whereas statutory accounts relate to the regulated company as a whole and are more focused on the requirements of investors only.

Accounting separation has a proven track record and is the most common tool used worldwide to address regulators' concerns about potential abuses of dominant positions and market power. This regulatory tool requires that the operator's activities are split for accounting purposes into separate businesses and specifies how financial accounting information should be collected and reported.

Regulatory accounts may assist regulation in a variety of ways, depending on the market structure and regulatory emphasis, including inter alia:

- Monitoring performance against the assumptions underlying a current price control for retail and wholesale services;
- Informing future price controls for both retail and wholesale services;
- Informing decisions regarding the level of interconnection rates; and
- Assisting in the detection (or verification of the absence) of certain anti-competitive behaviour such as unfair cross subsidisation and undue discrimination at levels of disaggregation appropriate to the relevant retail and wholesale markets.

C&W Guernsey's telecommunications licences include requirements for C&W Guernsey as a dominant operator in the fixed and mobile markets to keep separate financial accounts in such form and at such a level to enable the Director General to assess whether C&W Guernsey is complying with its licence conditions with respect to for example, interconnection and fair competition.

To assist C&W Guernsey, the OUR's Regulatory Accounting Guidelines¹ ("The Guidelines") which were published in March 2002 set out the Director General's detailed requirements for the preparation of separated accounts for regulatory scrutiny.

2. Findings of Breaches of Licence

The provision of Separate Accounts and the accuracy and reliability of C&W Guernsey's management information systems and other systems is the responsibility of C&W Guernsey as is reflected in C&W Guernsey's Licences. In this latter respect and based on the information provided to the Director General C&W Guernsey is hereby found to be in breach of a number of its Fixed Telecommunication Licence Conditions.

Condition 27 of C&W Guernsey's Fixed Telecommunications Licence states that:

"Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the Director General to be separately

¹ Document OUR 02/12

identifiable, and which the Director General considers to be sufficient to show and explain the transactions of each of those activities. The Director General may direct the Licensee as to the basis and timing of such reports as the Director General may require.”

The Guidelines published in March 2002 included a Direction to Guernsey Telecoms Limited requiring the company to submit separated accounts on 1st May 2002, 1st October 2002 and 1st May 2003, and thereafter each year on 1st May in accordance with those guidelines and any amendments to those guidelines.

C&W Guernsey is found to be in breach of this licence condition and the Direction issued in March 2002 in that it has failed to submit its 2001 Separate Accounts by 1st October 2002 and has also failed to submit accounts by any of C&W Guernsey’s own revised deadlines. C&W Guernsey has also failed to produce its 2001 Separate Accounts in the format specified in the Accounting Separation Guidelines.

Condition 17.12 of C&W Guernsey’s Fixed Telecommunications Licence requires that:

“The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Telecommunications Services or for the calculation of related charges.”

Cable & Wireless Guernsey is found to be in breach of this licence condition in that the company has stated that it has identified deficiencies in its information systems and that it has been unable to reconcile the data from the various sources in compiling the Separated Accounts.

Condition 4.1 of C&W Guernsey’s Fixed Telecommunications Licence requires that:

“For the purpose of monitoring the Licensee’s compliance with the Conditions and the Laws, the Licensee shall provide to the Director General in the manner and at the times required by the Director General, any documents, accounts, returns, estimates, reports or other information including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.”

C&W Guernsey is found to be in breach of this licence condition in that it has failed, as set out above, to respond to information requests and the Direction made on the 18th March 2002 to provide this Office with a final set of Separated Accounts for 2001.

In summary therefore C&W is found to be in breach of conditions 4.1, 17.12 and 27 of its licence.

3. Proposed Direction

In the light of the licence breaches set out above and in accordance with section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General proposes to direct C&W Guernsey to do the things set out in the following paragraphs by the time specified in those paragraphs, in order to address the licence breaches.

C&W Guernsey is directed to submit the company's Separated Accounts for 2001 **by noon on Friday 22nd August 2003**. These accounts shall be accompanied by a statement in writing from at least one Director of the company confirming that they are verified and accurate.

C&W Guernsey is directed to submit the company's Separated Accounts for 2002/03 **by noon on Friday 31st October 2003**. These accounts shall be accompanied by a statement in writing from at least one Director of the company confirming that they are verified and accurate.

C&W Guernsey is directed to submit to OUR by **noon on Friday 31st October 2003**

- a comprehensive statement setting out in detail the assumptions used in the preparation of the Separated Accounts for 2002/03;
- a comprehensive statement of any changes in the assumptions used in the Separated Accounts for 2002/03 compared to those adopted in the 2001 Separated Accounts;
- a comprehensive statement explaining and justifying any such changes.

These statements shall include a statement in writing from at least one Director of the company confirming that they are verified and accurate.

C&W Guernsey is directed to publish on its website, and provide hard copies on request, its 2002/03 Separated Accounts in the format specified in the Accounting Separation Guidelines issued by the OUR in March 2003 by **noon on Friday 31st October 2003**.

C&W Guernsey is directed to issue a notice in the Gazette Officielle on **Monday 3rd November 2003** informing the market of the publication of its Separated Accounts for 2002/03 and alerting interested parties on how to obtain copies of the document.

C&W Guernsey is directed to provide a copy of its 2002/03 Separated Accounts model in a simplified Excel format specified by the OUR by **noon on Wednesday 31st December 2003**.

4. Sanctions

In the event that C&W Guernsey does not comply with any Direction issued in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General may impose any of the sanctions available under the Law. The sanctions set out in section 27 of the Law are;

- Suspension of licence
- Revocation of licence or
- Imposition of a financial penalty

Before invoking any of these sanctions the Director General must follow the procedure set out in section 28 of the Law.

The Director General reserves the right to invoke any of these sanctions but clearly cannot fetter her discretion or prejudge the final Direction that may be issued until

after she has complied with the procedure set out in section 27 of the Law and considered any written representations or objections.

5. Conclusions

In accordance with Section 27(3) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General gives notice in this document, of her intention to issue a direction under Section 27(2) of that Law to C&W Guernsey.

C&W Guernsey and any interested parties may make any written representations or objections in respect of the proposed Direction. Such written representations or objections must be provided by 5pm on 31st July 2003 and shall be sent to the following address:

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

In accordance with section 27(4) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General shall consider any representations or objections received within the relevant time period before publishing her decision to issue a final Direction. Following the making of any direction, C&W Guernsey's compliance will be monitored and the Director General is empowered to invoke the sanctions available in the Law in the event of any failure in compliance.

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