

SPEAKING NOTES FOR SPEECH TO BE DELIVERED BY MR. JUSTICE FRANK KING, CHAIRMAN, FAIR TRADING COMMISSION, BARBADOS, CANTO CONFERENCE, JUNE 18, 2002¹

“Liberalisation of The Telecommunications Sector In Barbados – Exploiting The Opportunities”

Introduction

When the *Public Utilities Act* Cap 282 of the Laws of Barbados came into effect on January 1st, 1955, and the Public Utilities Board (the Board) was created, Barbados, still a British Colony, was thrust into the forefront of utility regulatory control in the Caribbean.

The Board was comprised of five members appointed by the Minister. The Minister also had the power to appoint two additional persons, knowledgeable in the matter under consideration, as assessors to assist the Board in its deliberations.

Initially, the Board was the regulator of electricity, domestic telephone services and transport services, but the regulatory control of transport services was removed when conflict arose between the Board’s view of a fare structure and the Government’s. Government considerations were based on social and political considerations rather than on a fair return on capital (investment) to the concessionaires as was required by the legislation establishing the Board. Consequently, for most of its existence the Board was the regulator in respect of the provider of electricity, the Barbados Light & Power Company Limited and its predecessors, and the provider of domestic telephone services, Cable & Wireless (Barbados) Ltd and its predecessors.

¹ Regulators’ Forum Caribbean Association of National Telecommunications Organisations (CANTO) conference, “Telecommunications – Exploiting the Opportunities”, St. Maarten, June 16 – 19, 2002.

The *Public Utilities Act* was described by one economist as “the most important and forward looking piece of legislation to grace the law books of Barbados, and any attempt to tamper with it would be a detrimental and retrograde step”. Maybe in 1955 it could be so described, but as time went by, the shortcomings in the Act and the lack of technical staff skills to assist the Board became more and more obvious.

Whilst the Board played an important role in the oversight of operations of telecommunications and electricity providers in Barbados, its own operations came in for criticism from several sources including the courts. One criticism was the ever-growing length and high costs of rate hearings, which occurred due to delays in the provision of information by applicants and the absence of professional staff to analyse applications.

In September 1998 the Prime Minister, the Hon. Owen Arthur, uttered these words from the floor of Parliament:

“Mr. Speaker, one of the areas of gravest deficiencies in our economic affairs is the set of arrangements in place for regulating the affairs of public utilities, and monopolies and protecting the interests of consumers and producers who have to relate to such monopolies.

Only two of our public utilities are regulated under the Public Utilities Act. That Act came into existence in 1955 and bears all of the evidence of its antiquity.

It provides only for the setting of rates for the two utilities it regulates and does not at all speak to matters such as the regulation of services standards, monitoring compliance with standards and tariffs, responding to customer complaints and customer service issues and similar concerns that are now regarded as best practices in the functioning of regulatory systems.

It provides also that rates should be fixed only by reference to criteria that guarantee a fair rate of return to the utility. This formula does not provide utilities with any reason nor incentive to increase efficiency. Also, since our law was drafted, new incentive-compatible rate setting mechanisms, including price-cap systems and profit sharing arrangements have come to enjoy widespread application in the modern world”.

This was the precursor of substantial change, for there followed considerable consultation with local stakeholders in the utilities business. An Advisory Committee was set up encompassing a broad cross-section of professional persons, business associations, trade unions and consumer groups. International consultants in consumer affairs and regulatory affairs were engaged.

A two-year consultation by all groups followed, for the body to replace the Board, the Fair Trading Commission, was to be different. It was to be responsible for a new approach to the regulation of utility providers, now to be called service providers, consumers' protection and fair competition. Of course there were detractors to the abolition of the Board. Despite its obvious shortcomings it had its admirers who saw no need for radical change; a mere facelift would do.

Out of it all came the *Utilities Regulation Act 2000-30* and the *Fair Trading Commission Act 2000-31* which created the Fair Trading Commission on January 1st, 2001.

The *Fair Trading Commission Act 2000-31* establishes a Commission to:

Safeguard the interests of consumers, regulate utility services supplied by service providers, to monitor and investigate the conduct of service providers and business enterprises, to promote and maintain effective competition in the economy and for related matters.

The Commission:

- establishes the principles for setting the rates to be charged for utility services;
- sets the maximum rates to be charged for these services;
- determines the standards of service that service providers should give to their customers;

- monitors these standards of service to ensure they are met;
- reviews the rates and principles used to set rates;
- hears complaints by consumers concerning billings and the standard of service supplied by the utility companies; and
- educates and assists consumers in settling complaints with the utility companies.

Under these two pieces of legislation the Commission is to be the regulator of providers of electricity, telephone services (both domestic and international), water, sewage and natural gas. At present, though, the Commission is the regulator of the electricity and telephone services. In due course, the Minister responsible for Consumer Affairs will issue the necessary orders bringing the other regulated services under regulatory control.

There has been substantial and significant provision for staff; substantial in that the total staff is to be 28 persons, and significant in that there will be numerous professionals in various disciplines needed to carry out the Commission's mandates. Unhappily, there seems to be some reluctance to such employment with the Commission in some fields, notably, economics and sector analysis. The Commission appreciates that its work is new and that there may be a limited pool from which to draw persons qualified in some aspects of its specialised work.

The staffing is divided into three divisions: Administration, Utility Regulation, Consumer Affairs and Fair Competition. The senior management structure includes a Chief Executive Officer who is executive head of the Commission, a Director of Utility Regulation, a Director of Consumer Protection and Fair Competition and a General Legal Counsel/Commission Secretary.

The staff originally sought to set up the Commission was reduced by the powers that be. For example, an electricity analyst and a water analyst were sought, however, these positions were combined and one can appreciate how difficult it will be to find one person with both disciplines to his/her credit.

From the outset the Commission recognised the need for more than 28 persons to support its responsibilities and, in due course, will be making representations for an increase in the necessary staffing levels to properly carry out its mandates.

Overseeing the Commission are seven Commissioners: A Chairman - a retired High Court Trial Judge; a Deputy Chairman who is an engineer and an accountant; an attorney-at-law, an engineer, an economist, a telecommunications marketing expert and an accountant.

This is a workshop conference under the aegis of CANTO whose business deals with telecommunications, but I thought it essential to provide a historical background to the Commission so that there can be a greater appreciation of the vast scope of its work and responsibilities.

Telecommunications Policy in Barbados

As with the former Public Utilities Board, regulation of the telecommunications sector in Barbados makes up a high proportion of the Commission's work.

Competitive prices, technological innovation and the introduction of new services are essential to developing the productive sectors of the Barbadian economy, to improving Barbados' competitiveness in the global marketplace, and, as the Honourable Prime Minister has put it on occasions, to develop and

enhance the lives of the older persons in the society. The Government of Barbados is committed to liberalisation, for this process will:

- catalyse the development of the international business sector by establishing competitive telecommunications prices;
- increase the quantity and quality of products and services available to consumers;
- improve the operational efficiency of service providers; and
- permit Barbados to meet its commitments as a member of the World Trade Organisation and signatory to the General Agreement on Trade in Services (GATS).

These objectives are, of course, in keeping with the theme of this workshop – “Telecommunications – Exploiting the Opportunities”.

Through liberalisation, the Barbados Government envisions the country being the centre of excellence for information technology and telecommunications in the region. To this end, since December 1996, the Government has undertaken reform of the telecommunications sector, the aim being full liberalisation of the industry by August 2003.

Structure of the Telecommunications Sector

One company owns and operates Barbados’s public telecommunications infrastructure and is the exclusive supplier of international, domestic and mobile telecommunications services.

That company, Cable & Wireless (Barbados) Limited is a recent amalgamation of the former companies Cable & Wireless BET Limited, Cable & Wireless BARTEL Limited, Cable and Wireless Digital Information Systems Limited and Cable & Wireless Caribbean Cellular (Barbados) Limited, and is currently

negotiating a new licence with Government to facilitate full liberalisation by the end of 2003.

Under exclusive international and domestic licences, respectively, Cable & Wireless BET provided external telecommunications services, while Cable & Wireless BARTEL provided national telecommunications services. Cable & Wireless Caribbean Cellular (Barbados) Limited, a joint venture owned by BET and BARTEL, under licence of BARTEL, provided Cellular services.

The telecommunications arena has long been conceived as a natural monopoly since the high cost of building a telecommunications infrastructure prohibited duplication, especially in small countries, and led governments worldwide to permit monopoly control of the sector. In such cases, regulation was introduced to simulate competition and to prevent the operators from exploiting their monopoly status to the detriment of consumers.

Barbados currently enjoys a reasonably high level of penetration of telecommunications services.

At September 2001, Barbados recorded 123,832 fixed main telephone lines connected. Of these 85, 115 were provided to residences and the remainder, 38, 717, to businesses.

The cellular service, started in 1991, grew from 370 customers at the end of the first year of business, to 20, 309 customers by March 2000. This represents eight per cent of the population. Growth is expected to be spectacular on liberalisation when prices fall to within the ability of most of the population to pay.

The island has five known Internet service providers and a subscriber base of 12, 000 users – approximately five per cent of the population. This sector is

rapidly growing due to Barbadians' increased use of computers in businesses, homes, schools and community centres.

Legal Framework for Telecommunications Regulation

As indicated previously, the Commission exercises its regulatory power under two pieces of legislation – the *Fair Trading Commission Act 2000-31* and the *Utility Regulation Act 2000-30*.

With respect to regulation of telecommunications, the Commission will be guided also by the *Telecommunications Act, 2001-36* which, it is expected, will be proclaimed shortly. Under this new legislation, created to replace existing telecommunications legislation of 1991, the Commission will share regulatory duties in the telecommunications sector with the Ministry of Economic Development. Along with the duties prescribed in the *Utilities Regulation Act, 2000-30*, the Commission will:

- develop an incentive based regulatory mechanism
- establish rules for Interconnection in accordance with interconnection policy; and
- regulate the sector in accordance with the Minister's policy as set out in the *Telecommunications Act*.

The Ministry of Economic Development will continue to set telecommunications policy and manage the sector through its Telecommunications Unit. This unit, among other things:

- advises the Minister on sector planning and policy development
- manages all aspects of licensing in the telecommunications sector
- supervises allocation and pricing of the spectrum and the administration of numbers.

The Telecommunications Unit and the Commission complement each other, and will work to realise the Government's regulatory objectives for the sector.

Liberalisation of the Telecommunications Sector

Reform of the sector began in 1996 when the Prime Minister appointed a Technical Committee to assist in the formulation of a National Telecommunications Policy. That committee comprised representatives of Government, the incumbent providers, regulators and the independent private sector. Also as part of the reform process, the Ministry of Economic Development, which is responsible for telecommunications policy – held discussions with Cable & Wireless (Barbados) Limited to renegotiate the exclusive domestic and international licenses which were held by that company and were due to expire in 2010.

In December 2001, the Government and Cable & Wireless (Barbados) Limited signed a Memorandum of Understanding which is consistent with the National Policy on Telecommunications.

The Government of Barbados has adopted a phased approach to liberalisation to allow for smooth transition during the process. The sequence and timing for the services to be liberalised is structured to:

- facilitate the transition to cost based pricing;
- give the regulator time to develop appropriate regulatory mechanisms for the competitive telecommunications sector, and
- allow the regulator and the incumbent service provider to manage issues which may arise during each phase.

Liberalisation in phases will also give consumers time to adapt to new pricing structures for telecommunications services.

Phase 1 of the liberalisation process is due to end on October 31st this year, and will see the development of competition in areas including the switchless

resale of international minutes, Customer Premises Equipment services (such as small multi-line systems of fewer than 30 ports), and the value added services of domestic voice services. Phase 1 will also encompass the development of competition in cellular services through Interconnection to Cable & Wireless's domestic network.

Phase 2 (scheduled for November 1st, 2002 to July 31st, 2003) will see full liberalisation of CPE services – with the inclusion of large multi-line systems - and the development of fixed wireless network-based competition between domestic providers.

By August 31st, 2003, the start of Phase 3 of this liberalisation process, all areas of the telecommunications sector should be fully competitive due to the development of full network-based competition in international telecommunications. This is the final stage of liberalisation and would give new entrants to the market the opportunity to own, operate and install international facilities such as VSATs (Very Small Aperture Transmitters).

Until full liberalisation is effected, no bypass of the incumbent's international network will be permitted.

Pre-requisites for Liberalisation

Barbados recognises the need for certain pre-requisites if liberalisation of the telecommunications sector is to be successful. These requirements are:

- a flexible regulatory framework to accommodate present and future sector structure;
- a new and flexible licensing regime;
- facilitation of network access and continued provision of Universal Service;
- an incentive-based regulatory mechanism;

- the implementation of cost-based pricing;
- an industry structure which permits fair competition; and
- a flexible legislative framework.

Achievement of these pre-requisites is currently underway.

The transition to full market competition may create a number of challenges for the Commission, including the need to develop an incentive-based regulatory mechanism and for Account Separation Principles. The Commission's staff has worked on these two matters with the assistance of consultants engaged for this purpose.

Rate of return regulation is the current regulatory mechanism used to determine the rates charged to customers for products and services. This method examines the total costs incurred in operating the entire utility and sets a reasonable rate of return to investors. This model of regulation does not, however, offer a service provider any incentive to achieve optimum levels of efficiency and instead encourages wastage. It is also costly and time-consuming to administer, and does not foster a competitive environment.

The Commission, mandated to develop incentive-based regulation, has analysed various incentive-based mechanisms and determined the extent of gains in efficiency. The Price Cap method seems to best meet the requirements for Barbados's telecommunications sector, and recommendation has been made for the adoption of this mechanism. Whether this mechanism will be used in its classical form or with some changes, is to be determined.

The development of Account Separation Principles is a necessary competitive safeguard to assist in preventing the need for carriers to establish separate entities for each competitive service being offered. It will also ensure that cross-subsidy of regulated and unregulated services, and between regulated

services offered by the incumbent service provider are identified should they arise.

With the increased public awareness of the liberalisation process, the Barbados government has recorded a significant increase in the number of queries about licence applications for the provision of mobile services.

Barbados, then, is well on the way towards telecommunications liberalisation and the Commission has much more to accomplish during this journey.

Challenges of Liberalisation

The expected challenges for the Commission are related to Rate Balancing, Price Caps, Service Standards, Interconnection and Universal Service.

Rate Rebalancing

Barbados has practiced the global tradition of permitting international telecommunications prices to be set high to subsidise the domestic service prices – usually set below cost.

Fifty-five per cent of the international revenues were paid to the national provider, under Statutory Instrument 54 of 1989, in order to maintain its low fixed monthly charges, but even with this “subsidy”, domestic line rates are said to be below cost.

While this approach has allowed for the fulfillment of Government’s Universal Service Policy, this imbalance in the international and domestic pricing must be addressed since it is not sustainable in a competitive environment. Considering this and other factors – such as the worldwide reduction of telecommunications rates due to technological innovation – Barbados will make the transition to cost-based pricing of the

telecommunications market. But if Barbados so moves, costs should have so come down due to increased efficiencies, elimination of entrenched wastes, and the elimination of overstaffing, that the need for this subsidy should disappear.

Since the rates of international telephone services will no longer subsidise the cost of providing domestic service, these rates must be rebalanced in keeping with the promotion of a competitive environment. As this Rate Rebalancing may result in an increase in the current domestic rate, the regulator will have to address the associated cultural, political and social shocks of the switch to cost-based pricing.

Price Caps and Service Standards

Once implemented, the Price Cap regulatory mechanism will be reviewed regularly to:

- ensure the service provider does not benefit from unexpected windfall profits
- protect that provider from unexpected losses, and
- monitor whether or not consumers are benefiting from any increased efficiency of the company.

Given the tendency of a service provider to lower the quality of service to reduce costs in a Price Cap environment, it is important that mutually agreed upon Standards of Service are devised and adopted. The Commission will establish certain targets and service providers will be penalised, according to the provisions of the *Utilities Regulation Act 2000-30*, for failing to comply with these service goals.

Interconnection

Interconnection, the linking of public telecommunications networks to allow users of one licensed service provider to communicate with users of another

licensed service provider, is critical to ensuring the development of a competitive market. The Commission must develop and issue regulations for the management of Interconnection. This regulatory framework should set terms and conditions that will facilitate competition, promote efficiency and foster growth in the telecommunications industry.

The Commission will also be responsible for approval of Interconnection Agreements between service providers, and will ensure that, among other things, the agreements are non-discriminatory and transparent, and that the associated charges are cost-oriented.

Universal Service

In the provision of basic telecommunications services, Barbados boasts a household penetration of 83% according to International Telecommunications Union (ITU) World Telecommunications Indicators of 1999. The current figure is known to be higher but is not yet available. This is significant considering that, in 90 years of telecommunications network development, most developed countries achieved 90% household penetration only during the last thirty years of the 20th century. Barbados is, therefore, well on the way to exceeding that norm.

While the ITU defines Universal Service as household penetration in excess of 90%, Barbados's Universal Service policy is aimed at, to quote the proposed *Telecommunications Act*, "ensuring that every resident and every business enterprise on the island has reliable, affordable telecommunications services throughout Barbados on an equitable basis", for the Government is well aware of the social and cultural importance of telecommunications services to Barbadians.

The Minister responsible for telecommunications will designate a carrier to be the Universal Service Carrier in Barbados. Cable & Wireless (Barbados) Limited will probably be that designated carrier.

Universal services will be funded by:

- (1) payment of an access deficit charge by all carriers and service providers connecting to the universal carrier's telecommunication network; and
- (2) contributions by all licensees to a Universal Service Fund.

The Commission, in consultation with the designated carrier, will establish the access deficit charge, and will develop guidelines that will set out the principles for determining that charge.

Concluding Remarks

In a monopolistic environment, regulation is the tool through which economic development is facilitated while ensuring that public interests are protected. The regulator must ensure that national and social objectives are met through pricing, service quality and continued investment in the sector. In the absence of competition, regulation provides checks and balances for the monopoly.

In the soon-to-be-liberalised telecommunications environment of Barbados, the regulator will be the facilitator of competition, guarding consumer interests and, in so doing, striking a balance that inspires investors with confidence in the business environment and in the country's decision making processes.

The Commission looks forward to the challenges that lie ahead and to the role we will play in creating an efficient, liberalised market.