

PRESENTATION MADE BY JUSTICE FRANK KING, CHAIRMAN, FAIR TRADING COMMISSION, BARBADOS, AT MEETING OF OCUR HELD IN KINGSTON JAMAICA, JULY 24-26, 2002

“Utility Regulation In Barbados – Key Issues and Challenges”

INTRODUCTION

In 1998 the Right Honourable Owen Arthur, Prime Minister and Minister of Finance, in describing the now repealed Public Utilities Act of 1955, said it “bears all of the evidence of its antiquity”. In 1955, that Act thrust Barbados into the forefront of utility regulatory control in the Caribbean, but long before 1998 that position had been under threat and subsequently lost.

Following his statement and announcement of Government’s intention to modernise regulation of utilities, business and consumer rights in Barbados, an Advisory Committee, comprising a broad cross-section of professional persons, representatives of business associations, trade unions and consumer groups, was set up. International consultants in consumer affairs and regulatory affairs were also engaged.

A two-year consultation followed, resulting in 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.

Under the *Utilities Regulation Act 2000-30* and the *Fair Trading Commission Act 2000-3*, the Commission is to be the regulator of providers of electricity, telephone services (both domestic and international), water, sewerage and

natural gas. At present, though, the Commission is the regulator of electricity services provided by the Barbados Light & Power Company Limited, and domestic and international telephone services, provided by Cable & Wireless BET and Cable & Wireless BARTEL which recently amalgamated to form Cable & Wireless Barbados Limited.

The functions of the Commission, according to Section 3(1) of the *Utilities Regulation Act* are, in relation to service providers, to:

- Establish principles for arriving at the rates to be charged;
- Set the maximum rates to be charged
- Monitor the rates charged to ensure compliance
- Determine the standards of service applicable
- Monitor the standards of service supplied to ensure compliance and
- Carry out periodic review of the rates and principles for setting rates and standards of service.

Section 3(2) and section 4 of the act provide for matters to be regarded by the Commission in carrying out its functions.

Overseeing the Commission are seven Commissioners: A Chairman - a retired High Court 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.

In addition to its functions as an administrative tribunal, the Commission is responsible for the overall control of the work of the Commission, for formulating the policy and direction of the Commission and for the general distribution, use and expenditure of funds.

What has the Commission achieved so far and what have been its challenges?

Recruitment

The Commission has experienced some difficulties with recruitment due to:

- a general unavailability of persons with the requisite skills in the areas of utility regulation, fair competition and consumer protection. These fields are new to Barbados and the labourers are few.
- the difficulties of attracting the few available persons to the public sector pay scale.

In addition to this challenging factor, the number of staff originally sought 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.

However, two experienced senior managers have been appointed – Ms. Michelle Goddard, firstly as Director of Utility Regulation, then as Chief Executive Officer; then a General Legal Counsel/Commission Secretary, Mrs. Cyralene Benskin-Murray, with wide legal practice experience, joined the Commission in July 2001.

Despite its recruitment difficulties, the Commission has been fortunate with recruiting well qualified persons as Telecommunications Analyst, Financial Analyst, Systems Technician, Human Resources Officer, Education Officer, Accountants & Secretaries. All these join the small staff inherited from the Public Utilities Board.

So far, 16 appointments have been made and the Commission continues to strengthen its organisational capability and its ability to execute its wide mandate in respect of utility service providers.

When recruitment is complete, the Commission will have 28 persons on staff, but it is recognised that these will be inadequate to properly carry out its mandates.

Office

The Commission faced another challenge securing adequate office space. The Commission now occupies an attractive comfortable office containing all the prerequisites of a modern office. Staff is appreciative of this environment and morale is high.

The Commission initially met every week to chart a course of behaviour and activity and has succeeded in moulding itself into a close knit, knowledgeable, efficient group.

Training

Training and Education of Commissioners and staff was a high priority, and, from the outset both attended conferences, workshops etc, locally and overseas in consumer protection, alternate dispute resolution and utility matters.

The high point came in March 2002 when the Commission hosted a one-week workshop conducted by the internationally respected IP3 of Washington USA. Commissioners and staff, utility providers, Government ministries and departments, consumer rights groups, consultants on regulatory issues and the media attended.

Training continues apace, and more Caribbean oriented training will be pursued.

Drafting Rules and Regulations

The Commission has, to date, successfully handled the challenges of producing necessary rules and regulations in a number of areas. The Commission and its staff have:

- (a) drafted many rules/regulations under the two Acts and discussed them with service providers and the relevant Ministry.
- (b) implemented unique staff contracts incorporating secrecy terms, disposition of interest in regulated service providers, without objections.
- (c) participated with Cable & Wireless on a Pricing Principles Group to determine the rates to be charged in the period up to full liberalisation in August 2003.
- (d) Drawn up terms of reference for, and the engagement of, numerous consultants, to
 - (i) examine the Regulatory Accounts of Cable & Wireless Bartel for the 5-year period 1996-2000.
 - (ii) develop cost separation and cost allocation accounts, so as to accurately allocate office costs between Government and the regulated service providers.
 - (iii) examine and report on cost allocation manual prepared by Cable & Wireless.
 - (iv) develop a methodology for the Pricing Principles Group. The Commission's staff has worked alongside consultants on these matters.
- (e) held numerous meetings with the Ministry of Commerce, Consumer Affairs and Business Development and with the Ministry of Industry and International Business on the Green Paper on Telecommunications, the Memorandum of Agreement between

Government and Cable & Wireless Bartel, and on the draft Telecommunications Act, and successfully advised Government on the issues.

- (f) created rules for written hearings on some circumstances, thus, hopefully, providing greater accessibility to the public and other clients

Multi-Sector Regulation

The function of the Commission is to enforce the *Utilities Regulation Act* and the *Fair Trading Commission Act*. Section 4 of the latter states,

to promote efficiency and competitiveness amongst; and improve the standards of service and quality of goods and services supplied by service providers and business enterprises over which it has jurisdiction.

However, the majority of the Commission's time and resources are devoted to regulation of the telecommunications sector and this imbalance will increase as the soon-to-be proclaimed *Telecommunications Act 2001-36*, makes the Commission responsible for:

- regulating competition between all utility companies and carriers,
- ensuring the interests of consumers are protected,
- establishing and administering mechanisms for the regulation of prices
- determining, where there is no agreement between parties, the terms and conditions of interconnection
- reviewing and approving Reference Interconnection Offers
- reviewing complaints from carriers re refusal of applications to interconnect with other carriers
- providing public access to interconnection agreements and RIOs,

- resolving disputes between service providers and between service providers and consumers,
- advising the Minister responsible on the designation of the island's universal service carrier,
- setting the Access Deficit Charge (ADC) and establishing guidelines for determining the percentage of that charge to be paid by all carriers and utility companies,
- establishing the incentive based rate setting mechanisms,
- upon application, reviewing decisions of the Commission,
- making rules, regulations and orders with respect to interconnection, at the discretion of the Commission.

During the ongoing process of liberalisation of certain telecommunications services in Barbados, the Commission has encountered a number of challenges including:

- Rate Rebalancing
- Development of Incentive Based Regulatory Mechanisms
- Service Standards
- Interconnection and
- Universal Service.

Rate Rebalancing

Since, with the advent of liberalisation, the rates of international telephone services will no longer subsidise the cost of the domestic service, all telephone 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 FTC will have to address the associated cultural, political and social fallout amongst consumers with the switch to cost-based pricing.

It is hoped that overall costs should have so come down due to newfound efficiencies, reduced costs of equipment, elimination of entrenched wastes and overstaffing, that the effect of rebalancing will not be as severe as anticipated.

Development of Incentive Based Regulatory Mechanisms

Rate of return regulation is the current regulatory mechanism used in Barbados.

The Commission has analysed various incentive-based mechanisms and determined that a price cap model of regulation with a “quality of service factor” should be adopted in Barbados.

Once implemented, the Commission will review the new mechanism regularly to:

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

Service Standards

Under the Price Cap system service providers tend to lower the quality of service to reduce costs. Therefore, it is important that service providers and regulator agree on the Standards of Service to be 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

The Commission and the Ministry of Economic Development share responsibility for management of the local telecommunications sector.

While the Ministry's Telecommunications Unit advises the Minister on sector planning and policy development, manages all aspects of licensing and supervises allocation and pricing of the spectrum and the administration of numbers, the Commission must, among other things, develop and issue guidelines with respect to Interconnection.

I foresee many problems in the duplicate responsibilities of the Commission and the Ministry.

This general regulatory framework should set terms and conditions that will facilitate competition, promote efficiency and foster growth in the telecommunications industry. The Commission will develop the requisite guidelines where necessary.

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

The proposed Telecommunications Act directs that Universal Service 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 develop guidelines that will set out the principles for determining that charge.

Memorandum of Understanding

The Government of Barbados and Cable & Wireless (Barbados) Ltd signed a Memorandum of Understanding as part of the telecommunications liberalisation process. Under this MOU, the Fair Trading Commission is required to:

- develop the interim pricing mechanism to be used during the transition to liberalisation
- review the accounting separation methodology presented by C&W
- complete the hearing of the depreciation lives application for C&W's assets – the FTC's first public hearing
- implement Government's policies in relation to the regulation of the telecommunications sector
- spearhead the development of interconnection guidelines

Future challenges in this area include:

- review of the interim mechanism to be used for international telecommunications services during the transition to full liberalisation.
- Settling the recovery by C&W of stranded investment for Customer Premise Equipment
- Time and timing – a crucial challenge for the Fair Trading Commission.

The Liberalisation process is to take place in three phases, starting in 2001 and ending in 2003. with the stated deadline approaching, the Commission finds itself in the position of “so much to do, so little time in which to do it”.

Funding

The Fair Trading Commission is currently funded by Government subvention which covers the organisation's budgeted expenses. Regulatory costs are recovered by a levy on the regulated service providers.

The challenge for the Commission, as a multi-sector regulator, is to ensure fair allocation of costs between the utility companies and Government. We are working, with the assistance of consultants, to establish an appropriate method of separating and allocating costs proportionately amongst the various utility companies, and identifying those costs which should properly be borne by Government.

Our Aspirations

- The successful completion of the tasks undertaken and outlined earlier in this presentation.
- Completion of the Commission's website.
- To continue to rise to the ongoing challenges of regulating service providers; to foster relationships with these providers based on mutual appreciation of each others' roles; to encourage the timely production of documents and materials which would assist the Commission in its decision-making processes, and to encourage compliance with the directives and orders of the Commission.

CONCLUSION

In conclusion, the Commission's activities over the past year have been geared towards establishing itself as a body which is accessible and functions with integrity, transparency and efficiency .

The Commission enjoys unique status since it regulates utilities, and will also manage the country's consumer rights and fair competition in business, under the soon-to-be-proclaimed Consumer Protection Act, and the Fair Competition Act.

Given the distinctive tripartite nature of the Commission, its key requirements are:

- continuous training for staff and Commissioners through workshops, conferences and twinning arrangements with regulatory organisations in jurisdictions of similar economic scale, and
- the continued consultation and development of alliances through organisations such as OCUR, for through our shared experiences and resources we can create an efficient regional regulatory environment.