

Fair Trading Commission

TERMS OF REFERENCE

*Engagement of Consultants for the Development of a
Price Cap System for the Telecommunications Sector in
Barbados specifically applicable to
Cable & Wireless (Barbados) Limited*

1. INTRODUCTION

The Fair Trading Commission (the Commission) is a statutory body established by the Fair Trading Commission Act 2000-31. The Commission is responsible for, *inter alia*, regulating utility services, safeguarding the interests of consumers, and promoting and maintaining effective competition in the Barbados economy.

The Commission currently regulates domestic and international telecommunications services as well as the electricity service.

2. BACKGROUND

The incumbent service provider in the telecommunications sector in Barbados is Cable & Wireless (Barbados) Limited (Cable & Wireless). Cable & Wireless provides a range of telecommunications services and is the sole provider of domestic, mobile and international telephony services. The rate of return method has been used to regulate Cable & Wireless.

A Memorandum of Understanding (MOU) was signed on October 16, 2001 between the Government of Barbados and Cable & Wireless to facilitate the liberalisation of the telecommunications sector.

It is intended that the services in the sector would be liberalised in three phases and the MOU provided a transition timetable which described this phased approach as follows:

- ❖ Phase 1 was scheduled to start on December 1, 2001 and conclude on November 30, 2002. It was intended that during this phase, competition would be introduced in a range of services including mobile services, value-added services, Customer Premises Equipment

(specifically in single line sets and multi-line systems under 30 ports), inside wiring, and resale of international switch-less leased circuit capacity.

- ❖ Phase 2 was scheduled to start on December 1, 2002 and conclude by July 31, 2003. It was intended that during this phase, competition would be introduced in multi-line systems over 30 ports and domestic fixed wireless based competition.
- ❖ Phase 3 was scheduled to start on August 1, 2003. It was intended that the sector would be fully liberalised from this date with competition introduced in full network based international voice services including the use of Very Small Aperture Terminals (VSAT's). A Price Cap scheme is to be implemented prior to the end of the transition period (Phase 3) and in any event, prior to the issuance of a second international licence by Government.

The implementation of these Phases was contingent on the Government and the Commission fulfilling certain obligations under the MOU. However these obligations took longer than anticipated and Phase 1 actually started on November 1, 2002. During this phase the Government indicated its intention to issue mobile licences to three new service providers. The commencement dates for the subsequent phases are yet to be finalised.

The following provides a report of the current status of the obligations of the Commission under the MOU that are relevant to the development of the Price Cap scheme.

2.1 Status Report of Activities under the MOU

Commission obligation:

- Develop incentive based regulation to be used during the transition to liberalisation and in a competitive environment and agree the proposals for implementing cost-oriented pricing.

Commission action:

The Commission developed and issued a consultation paper on the Interim Mechanism on 2002-08-26. This mechanism is to be used during the transition period.

The Commission issued the Determination Notice on the Interim Mechanism – Rate Setting Principles on November 11th, 2002. Embodied in the Interim Mechanism Determination is a regulation scheme to be used for international and domestic services. The Interim Mechanism also outlines principles for moving towards cost-oriented pricing through rebalancing of rates.

Cable & Wireless has challenged the legality of the Interim Mechanism Determination Notice as issued by the Commission. Cable & Wireless is seeking to have an order from the High Court of Justice to quash the decision as issued by the Commission.

The Commission is still awaiting a rate application to be filed under the Interim Mechanism and as such there has been no rebalancing of prices to date.

On November 30th 2001 the Commission identified a Price Cap Model of Regulation to be used in regulating the telecommunications sector in a fully liberalised and competitive environment (Phase 3).

Commission obligation:

- Review Accounting Separation methodology presented by Cable & Wireless companies.

Commission action:

Accounting separation is required to identify cross-subsidisation between services. The accounting separation exercise is also conducted with a view toward assisting with the determination of existing subsidies. This in turn assists with rate rebalancing and the determination of access deficit contributions and universal service funding.

On 14th February 2002, the Commission completed its initial review of the first Cost Allocation Manual (CAM) presented by Cable & Wireless as part of its Accounting Separation Methodology.

The Commission is in the final stages of assessing the CAM as presented by the company and has issued a Directive to address concerns still outstanding.

Commission obligation:

- Settle outstanding appropriate depreciation lives application for C&W Bartel's assets.

Commission action:

The Commission delivered its decision on October 25th, 2002. Thereafter, Cable & Wireless (Barbados) Ltd. filed a Motion for Review of the decision. The resolution of this matter will affect Cable & Wireless' costs and therefore the rebalancing exercise.

Commission obligation:

- Develop interconnection guidelines and issue such guidelines.

Commission action:

The Commission developed and issued consultation papers on Interconnection Guidelines – Accounting, Costing, Pricing Principles and Dispute Resolution on April 3, 2003.

It is expected that these guidelines will be used in the preparation of a Reference Interconnection Offer (RIO) to be filed by Cable & Wireless who was declared the dominant carrier by the Government in April of 2003.

The Commission issued a Decision on these Guidelines on July 1, 2003. Cable & Wireless has filed a Motion for Review of the Guidelines and a stay on the submission of the RIO.

2.2 Legislative Framework

Under section 4 (3) of the Fair Trading Commission Act 2000-31 the Commission is charged with responsibility to, *inter alia*, “establish principles for arriving at the rates to be charged by service providers.”

The Commission is also charged with this responsibility under section 3 (1) of the Utilities Regulation Act 2000-30. Further in section 6 (1) (d) of the Telecommunications Act 2001-36 it states that the Commission shall:

“establish and administer mechanisms for the regulation of prices in accordance with this Act, the Fair Trading Commission Act and the Utilities Regulation Act.”

In this regard, the Commission has developed the Interim Mechanism to be used during the transition to liberalisation. This Mechanism is intended to establish rate setting principles to:

- (a) move toward cost oriented pricing;

- (b) review the cross-subsidy between domestic and international services;
and
- (c) permit the service provider some degree of pricing flexibility.

The Commission now wishes to establish an incentive based regulation scheme to be used in the liberalised environment.

The Commission has identified Price Cap regulation as the system of incentive regulation that it wishes to adopt. To this end, the Commission is seeking to engage Consultants with proven experience and expertise in the area of Price Cap regulation to design the optimum Price Cap regulatory system for the telecommunications sector in Barbados.

In order to implement this new regulatory system, the Commission is obligated to consult with interested parties in accordance with Section 4 (4) of the Fair Trading Commission Act 2000-31 which states that:

“The Commission shall, in performing its functions under subsection (3) (a), (b), (d) and (f) consult with the service providers, representatives of consumer interest groups and other parties that have an interest in the matter before it.”

A Public Consultation process on the proposed Price Cap scheme would therefore be a part of the project.

3. OBJECTIVES

The Consultants will be engaged to develop a Price Cap regulation scheme for the telecommunications sector in Barbados specifically applicable to Cable & Wireless to meet the following objectives:

- ◆ to promote efficiency within incumbent's (Cable & Wireless) operations;
- ◆ to allow Cable & Wireless to adjust prices to reflect the effects of inflation, industry cost trends and exogenous factors;
- ◆ to provide Cable & Wireless with some degree of pricing flexibility;
- ◆ to promote innovation within the telecommunications sector; and
- ◆ to ensure that quality of service is maintained or increased.

4. SCOPE OF WORK

The Consultants shall design a Price Cap regulatory scheme for implementation by the Commission in accordance with the Fair Trading Commission Act 2000-31, the Utilities Regulation Act 2000-30 and the Telecommunications Act 2001-36. The Consultants shall provide appropriate rationale for the Price Cap scheme proposed for adoption.

In developing the Price Cap scheme, the Consultants shall:

1. Evaluate the suitability of current prices for migration to the Price Cap regulatory mechanism and recommend any necessary transitional arrangements for implementation of the scheme taking into consideration that prices have not been rebalanced.
2. Group services into baskets based on criteria such as homogeneity of services including similarities in demand price elasticity. Consideration should be given to the following factors:
 - the number of baskets;
 - the services in each basket; and
 - the placement of further restrictions on the price movements within the recommended baskets. These additional constraints

can be upper or lower limits to price changes for services within the baskets.

3. Establish a framework for monitoring the price movements within the service groups or baskets.
4. Develop the most appropriate formula for the Price Cap Index (PCI) and the Actual Price Index (API).
 - 4.1 Determine the appropriate Productivity factor and provide consideration of any offsets or adjustment factors that may be required. These offset factors should reflect Cable & Wireless' productivity growth and the adjustment factors should be included to take into consideration the Barbados environment.
 - 4.2 Determine the appropriate Inflation factor and identify events that could trigger adjustments to the Inflation factor outside any proposed adjustment period.
 - 4.3 Determine the applicability of incorporating an Exogenous factor. If it is decided to include the Exogenous factor, the types of cost changes covered must be carefully defined.
 - 4.4 Determine the appropriate application of a quality of service factor to ensure that there is no decline in the standard of service.
5. Make appropriate recommendations for administrative procedures and rules or regulations to govern the Price Cap system, including, but not limited to, the time period for the initial price cap, removal and or addition of services to a basket and notice to customers.

6. Establish a framework for reviewing the performance of the Price Cap scheme proposed to ensure that objectives continue to be met.
7. Develop a computer model to enable the Commission to derive the values of factors or indices in the Price Cap and allow for efficient monitoring and enforcement of the rules relating to the Price Cap. Consultants are expected to provide training to designated staff of the Commission in the use of the model.
8. Review responses from the Public Consultation process on the Price Cap mechanism and where warranted, make recommendations for adjustments to the Final Price Cap scheme.

(It is presently proposed that this Public Consultation will be conducted over a period of six (6) weeks. This period includes three (3) weeks during which any adjustments to the proposed scheme would be recommended.)

5. STAFFING

Consultants would be expected to identify, evaluate and give feedback on critical issues that could impact on the timeliness or quality of the project.

The Consultants shall ensure that there is involvement of the Commission's staff during the engagement as much as possible to facilitate effective transfer of knowledge and expertise.

6. DURATION

The Commission is seeking to formally engage the services of the Consultants with effect from **September 15, 2003**.

The Price Cap project is required to be completed no later than **March 31, 2004**.

7. CLIENT MEETINGS

Meetings with the Commission and other interested parties will be agreed at the commencement of the project or as may be required.

8. REPORTS

The Consultants shall submit to the Commission, five (5) copies of the following:

- ◆ An Initial Report within two (2) weeks of the start of the project indicating any areas of difficulty that could impact on progress of the project.
- ◆ An Interim Report midway through the project indicating the degree of progress and success accomplished, together with a needs assessment that will impact on the completion of the project. The report should also indicate work completed on the variables of the proposed Price Cap scheme.
- ◆ A report incorporating the Proposed Price Cap scheme. This proposal which is to be used for the Public Consultation process shall be presented to the Commissioners for approval.

- ◆ A report incorporating the Final Price Cap scheme to be presented to Commissioners at a Commission meeting and should be submitted no later than **March 31, 2004**.

9. PROPOSALS

Consultants will be required to submit two separate proposals; a financial proposal and a technical proposal.

The financial proposal should at least include:

- ◆ A schedule of fees, the time each Consultant is expected to spend on the project, the stages of payment, travel and accommodation and other expenses related directly to the project. The schedule of fees included in the proposal should be related to the deliverables at each stage payment is to be made.

The technical proposal should at least include:

- ◆ A project plan detailing the approach, methodology and dates for completion of tasks to meet the specified deadlines. Revision of the specified deadlines may be discussed with the Commission.
- ◆ A list of the individual consultants that will be involved in the project along with details of their expertise and the amount of time each would be expected to contribute to the project. The consultants should demonstrate expertise and experience in the areas of regulatory matters and Price Cap development. Previous work in the Caribbean or other developing countries would be considered an asset.

Any matters which are considered pertinent to the work to be performed but which have not been included under the “Scope of Work” should be included in the proposal.

The deadline for the receipt of proposals is **August 22, 2003**.

10. EVALUATION OF PROPOSALS

Proposals will be evaluated based on Consultants’ experience, qualifications, and the quality of the proposals. The Commission is not bound to accept the lowest or any offer. Proposals and/ or queries should be submitted by **4.00 p.m. EST, on August 22, 2003** to:

**Chief Executive Officer
Fair Trading Commission
Manor Lodge, Green Hill
St. Michael, Barbados
West Indies.**

An electronic copy should also be submitted to the Fair Trading Commission by **4.00 p.m. EST, on August 22, 2003** to: info@ftc.gov.bb.

11. PROVISION OF FACILITIES

The Commission will provide physical office accommodation.

12. SUMMARY OF KEY DATES

The Consultant should be aware of the following key dates/deadlines when submitting proposals.

<u>TASK</u>	<u>DATE/DEADLINES</u>
Submission of Proposals	August 22, 2003
Selection of Consultants	September 01, 2003
Start of Project	September 15, 2003
Initial Report	September 29, 2003
Interim Report	Midway through the project
Price Cap Scheme and Final Report	March 31, 2004

23rd July 2003