



Fair Trading Commission

Decision on the Interconnection Agreement

between

Cable & Wireless (Barbados) Limited

and

Sunbeach Communications Inc.

filed

January 16, 2004

Decision No. FTC04/03

Date: January 26, 2004

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The Interconnection Agreement "Agreement" between Cable & Wireless (Barbados) Limited "Cable & Wireless" and Sunbeach Communications Inc. "Sunbeach" was filed with the Fair Trading Commission on January 16, 2004 pursuant to section 29 (1) of the Telecommunications Act 2001-36 "Act" which states:

" Where pursuant to subsection (3) of section 28, a person who requests interconnection and an interconnection provider agree on the terms and conditions of interconnection, an agreement shall be filed with the Commission within 30 days of the date of the agreement for the Commission's approval."

The Agreement consisted of the following:

- **Legal Framework**
- **Schedule 1 - Definitions**
- **Schedule 2 - Service Description**
- **Schedule 3 - Service Schedule**
- **Schedule 4 - Parameter Schedule**
- **Schedule 5 - Joint Working Manual**
- **Schedule 6 - Tariff Schedule**

In performing the review and analysis of the Agreement the following were taken into consideration:

- 1) The Fair Trading Commission Decision dated October 28, 2003 on the Reference Interconnection Offer (RIO) - Phase 1 "RIO Decision" ; and
- 2) The Telecommunications Act, 2001-36

Section 29 (2) provides that on review of the Agreement, the Commission may either approve the Agreement or require that the Agreement be varied. Variation would be required

- i) for the Agreement to comply with the interconnection principles elucidated in the Act Section 25; or
- ii) if the Commission considers that the Agreement unfairly discriminated against other carriers or is otherwise unlawful

The Commission conducted its analysis of the Agreement by examining the provisions and found they could generally be placed in the following categories for the purposes of its review:

Category 1. Provisions which conform with the RIO Decision either by:

- a) having the same wording; or
- b) conveying the same intent although the wording may differ;

Category 2. Provisions which were modified to accord with the RIO Decision;

Category 3. Provisions which were not the subject matter of the RIO Decision.

Having reviewed the Agreement submitted by Cable & Wireless and Sunbeach, the Commission approves the Agreement.

Reasons for Decision

Category 1 - Provisions which conform with the RIO Decision

The following sections are approved being in conformity with the RIO Decision by either having the same wording as the approved sections or where the wording has been modified, the provisions do not offend the provisions of the Act. Only instances of significant variation are discussed.

Legal Framework

Clause 1 - Definitions and Applicability

Clause 3 - Interconnection

Clause 4 - Forecasting , Ordering and Provision of Interconnect Capacity

Clause 5 - Testing

Clause 6 - Operational Changes

Clause 7 - System Changes

Clause 10 - Variation of Charges - The Agreement has enhanced the provisions in the approved clause of the RIO by giving specific timeframes for notice with respect to charges from Third Party Telecom Provider

Clause 11 - Billing

Clause 13 - CLI/ANI - The clause has been modified to include Authoritative Number Identification (ANI). This modification does not offend the provisions of the Act.

Clause 14 - Numbering

Clause 15 - Service Performance and Standards

Clause 16 - Safety and System Protection

Clause 17 - Prevention of Fraud - It is noted that this clause is different from the approved RIO for the conditions under which a party shall not be obliged to convey calls have been reduced and revised. This modification does not offend the provisions of the Act or the RIO Decision.

Clause 18 - Confidentiality - The Agreement has modified clause 18.3 of the approved RIO by removal of the provision not to supply information to personnel involved in services offered for competition to the party.

Clause 20 - Intellectual Property Rights

Clause 21 - Authorised Representatives

Clause 24 - Effects of Termination

Clause 25 - Force Majeure

Clause 27 - Relationship of the Parties

Clause 28 - Representation of the Parties

Clause 29 - Severability

Clause 30 - No Waiver

Clause 31 - Entire Agreement

Clause 32 - Assignment

Clause 33 - Notices

Clause 35 - Not Used

Clause 36 - Insurance Provisions

Clause 37 - Approval of Agreement

Clause 38 - Governing law and jurisdiction

Clause 39 - Counterparts

Clause 40 – Reference Interconnect Offer

Clause 41 – Deposits

Schedule 5 - Joint Working Manual. This schedule conforms with the RIO Decision.

Category 2- Provisions which were modified to accord with the RIO Decision

The following provisions discussed below are approved by the Commission.

Legal Framework

Clause 8 Telecommunication Services - This clause has varied from the clause of the RIO which was only approved in part because Cable & Wireless would not be permitted to withdraw Domestic Fixed to Mobile service without providing an approved alternative service.

The Agreement has taken the above into consideration and has addressed the Commission's concerns by including the following clauses:

- 8.4 *The Parties agree that the Domestic Fixed to Mobile Service will be automatically replaced by a new service agreed to by the Parties once the following conditions have been satisfied:*
- 8.4.1 *There is a change in the policy or regulatory environment for fixed to mobile calling;*
 - 8.4.2 *C&W is permitted to charge a retail rate for fixed to mobile calls which is at least sufficient to cover the mobile termination payment, as well as C&W's costs plus a reasonable markup; and*
 - 8.4.3 *Any necessary regulatory approval of interconnection rates is obtained.*
- 8.5 *The Parties agree that if the approvals in Clause 8.4.1. above have been given, but C&W has not been permitted to charge a retail rate for fixed to mobile calls as in Clause 8.4.2 above or the approval in Clause 8.4.3 above has not been obtained, the Charges for fixed to mobile calling pursuant to the Domestic Fixed to Mobile Service set out herein, shall continue to apply until such time as all conditions in Clause 8.4 above are satisfied.*
- 8.6 *The new rates for PSTN Transit Service and the PSTN Terminating Access Service set out in the Tariff Schedule shall apply on the date that the conditions in*

Clause 8.4 are satisfied, provided, however, that in any event the new rates will apply no later than 31 July 2004.

Clause 9 Charges and Payment - The section has been revised in accordance with the RIO Decision stating that the Access Deficit Charge (ADC) had been improperly placed in the RIO. No references to the ADC have been included.

In addition the Commission notes the inclusion of Section 9.5 which makes provision for the parties to make payments on a "net " basis. This does not offend the provisions of the Act or the RIO Decision.

Clause 12 Transitional Provisions - The Agreement has made provision for notice to the relevant company where a breach of terms has been claimed. Also the Agreement no longer specifies that originating, transiting or terminating international calls is outside of the scope of the licensee. Neither is there the inclusion of Cable & Wireless' right to terminate with immediate effect the provision of the service to the relevant company for a breach of the terms of the agreement. The clauses as in the Agreement are in conformity with the intent of the Act.

Clause 22 Review and Amendment - The Commission notes that 22.1 (b) varied from the approved clause in the RIO by exempting specific services from its provision. The clause is however not at variance with those principles elucidated in the Act.

Clause 23 Suspension and Termination - The Commission notes that the clause 23.1 (d) of the Agreement has revised the terms pertaining to the payment period of a disputed invoice. This period has been extended to 3 months. The Agreement has also excluded the clause in the RIO which pertained to the suspension or termination of a service where it is no longer physically, technically or commercially feasible. This modification does not offend the provisions of the Act or the RIO Decision.

Clause 26 Liability - An increased liability for events occurring within 12 consecutive months has been included. This is not at variance with the principles elucidated in the Act.

Clause 34 Dispute Resolution - This procedure has been revised from that stated in the RIO. Timelines have been shortened and there is inclusion of the Commission in the Dispute Resolution process.

Schedule 2 - Service Description

Joining Services - The Interconnection Agreement specifies that the Service Suppliers will be responsible for providing the Joint Box. This was a revised service description. It is not at variance with the principles elucidated in the Act or the RIO Decision.

Access Deficit Charge - This is not included in any of the service descriptions and is consistent with the Commission's RIO Decision.

Domestic Fixed to Mobile Service - The description has been revised as per the Commission's RIO Decision.

Schedule 3 Service Schedule - This schedule has been revised to include the additional services identified in Schedule 2- Service Description. It is not at variance with the principles elucidated in the Act or the RIO Decision.

Schedule 4 Parameter Schedule - -This schedule has been revised to include the additional services identified in Schedule 2- Service Description. It is not at variance with the principles elucidated in the Act or the RIO Decision.

Schedule 6 - Tariff Schedule

The Agreement conforms with the RIO Decision and tariffs do not exceed those approved in the Decision.

Category 3 - Provisions which were not the subject matter of the RIO Decision

Although the subject matter of these provisions was not addressed in the RIO Decision, they are approved by the Commission as they as these provisions are not at variance with the principles elucidated in the Act or the RIO Decision.

Legal Framework

Clause 2 Three additional clauses have been introduced. The Commission notes Clause 2.4 which specifies that installation, testing and commissioning shall be initiated at the signing of the Agreement before formal approval of the Agreement by the Commission. The Commission accepts this provision as it is in accordance with the principles in the Act.

Clause 19 This clause was not used in the RIO. In the Interconnection Agreement, this clause is entitled “*Use of Subscriber Information*” and the subject matter is not at variance with those principles elucidated in the Act.

Clause 42 New services – This clause was not included in the RIO. The Clause makes provision for the availability of new services. The new Clause is not at variance with the principles elucidated in the Act.

Schedule 2 - Service Description

PLMN to PLMN Termination Access Service – A description of this service has been introduced. This service was not previously identified in the RIO.

General

Issues which were outside of the categories identified are discussed below.

Legal Framework

Clause 2. Duration

The Agreement makes provision for the incorporation into the Agreement of any resulting adjustment in tariffs on implementation of a new costing methodology as mandated by the Commission.

Schedule 1 - Definitions

The Commission considers that the definitions provided are contract specific and will therefore allow its use in the context of the Agreement.

Conclusion

Having reviewed the Agreement submitted by Cable & Wireless and Sunbeach, the Commission approves the Agreement.

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