



FAIR TRADING COMMISSION

COMMISSION REPORT

ALLEGED ABUSE OF DOMINANCE BY CABLE AND WIRELESS (BARBADOS) LTD.

Date issued: 28 October 2004

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1. The Allegation

1. DIGICEL (Barbados) Limited (Digicel) alleged (April 02, 2004) that, Cable and Wireless (Barbados) Limited (C&W) engaged in the anti-competitive practice of “price squeezing” with regard to the pricing of its international telecommunications service.
2. Digicel alleges that under the terms of an agreement between C&W and Digicel, signed on 23rd January 2004, (An Agreement for the Provision of International Services Prior to Full Liberalisation) (the Agreement), C&W provides wholesale international telecommunication services to Digicel at C&W’s standard rack rates discounted by 30%. However on the 29th of March 2004, C&W posted an advertisement in the Barbados Advocate offering discounts to retail customers of between 40% (bMobile - general consumers) and 50% (bBiz Mobile – business customers) on international calls made during the weekends on talk away numbers for their post-paid mobile customers¹.
3. Digicel indicated that they wrote to C&W requesting confirmation that, in accordance with the terms of the Agreement it would provide Digicel with a 50% discount on wholesale international telecommunications services during the weekends for the period of C&W’s promotion. On the 31st of March 2004, C&W responded to Digicel² stating that the discount in the Agreement related only to C&W’s corporate customers on a non-discriminatory basis, while the advertisement in the press related to its retail customers. As such, there was no requirement for the weekend rates for international outgoing services as set out in the Agreement to be amended. C&W also indicated that the promotion was intended to last only until 31st May 2004.

¹ Exhibit 3.2.7: Barbados Advocate Newspaper, 29th March 2004 advertisement showing relevant C&W promotion.

² Exhibit 3.2.2: Letter from Cable & Wireless to Digicel – Reply to letter dated 28th March 2004 from Digicel, 2004-03-30

4. In a further complaint, Digicel on the 23rd September 2004 formally alleged that C&W had abused their statutory monopoly on the international wholesale voice telephony market by again offering discounts to the public that they refused to provide to Digicel. They reported that C&W (in the Weekend Nation newspaper of 17th September 2004), had advertised a reduction in its International Direct Dial rates to key destinations by up to 50% until 3rd October, 2004 (Table 5.). The offer applied to calls made from residential fixed lines for both evening and weekend periods. In addition to the discounted retail rates, the advertisement indicated that C&W customers were entitled to the SmartChoice and the 10-10-335 discounts³. Customers benefiting from both of these discounts would be entitled to an additional 55% discount on the rates advertised.
5. It should be noted also that Cellular Communications (Barbados) SRL, operating as AT&T, on 6th August 2004, also lodged with the Commission a similar complaint regarding the practice of “price squeezing”. This complaint also referred to the same 50% discounts offered by C&W, on its retail international voice telephony service.

³ *“The SmartChoice discount allows customers to receive a 20% discount on three (3) to six (6) international numbers chosen by the customer. The 10-10-335 discount also entitles customers to receive a 33% discount on every dollar spent after the first fifteen dollars spent on an international call”.*

Exhibit 1.9.1: Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission “Re: International Services (Predatory Pricing)”, 2004-09-23:

2. Price Squeezing

6. The alleged practice in this matter can be described as price squeezing, or more specifically vertical price squeezing.
7. Vertical price squeezing⁴ can be described as a particular type of anti-competitive conduct that may be engaged in by incumbent operators.
8. This form of conduct can occur if the incumbent provides services in two or more vertical markets. Vertical markets are sometimes labelled upstream and downstream markets. For example, the oil production market is upstream of the oil refining market. Instead of upstream and downstream, the terms wholesale and retail are often used.
9. If the incumbent decided to increase the price to competitors for the upstream input (i.e. wholesale services), while leaving its downstream prices the same (i.e. prices for its retail services), the effect would be to reduce or eliminate the profits (or margins) of competitors. Their margins would be squeezed. The incumbent could also reduce its downstream prices for retail service while leaving the wholesale price the same.
10. The Official Journal of the European Communities⁵ defines price squeezing as a circumstance where a dominant operator's own downstream operations could not trade profitably on the basis of the upstream price charged to its competitors by the upstream operating arm of the dominant company. This definition is consistent with that adopted by other experts⁶ on the subject.

⁴ This explanation is extracted from "Regulations and applications: ICT Industry and Markets course", Page 13 of 72 pages. Chapter: 2: Module 1: Fair Trade and Competition Policy

⁵ Official Journal of the European Communities - Notice on the Application of the competition rules to access agreements in the telecommunications sector, p19, paragraph 117.

⁶ CASE Associates Competition and Regulatory Economists in Oftel's "Margin Squeeze Proposals Review and Assessment":- define Price Squeezing as where: "a vertically integrated undertaking, with monopoly power in the provision of an essential upstream input, prices it, and/or its downstream product or service, in such a way

11. Consider the example⁷,

<i>Cost to incumbent of upstream facility (e.g. dedicated loop)</i>	<i>\$90</i>
<i>Price charged by incumbent to competitor for loop</i>	<i>\$120</i>
<i>Cost of providing retail services to end users (e.g. dedicated Internet access service) in addition to loop cost (e.g. marketing, billing, etc.)</i>	<i>\$20</i>
<i>Price charged by incumbent to end users for dedicated Internet access services</i>	<i>\$130</i>

12. In the example, the competitor cannot match the charge by the incumbent to end-users of \$130 economically. The competitor incurs the input costs of \$120 for the wholesale service, plus \$20 to provide the retail service to its end-users, making his total input cost \$140. To compete against the incumbent by retailing his product at \$130 would cause him to incur losses. In short, the margins of the competitors are squeezed by the high wholesale input prices.

and for a sufficiently long period of time, to deny an equally or more efficient downstream rival a reasonable profit so that it can survive”.

⁷ Example taken from Network for capacity building and knowledge exchange in Information and Communications policy (ICT) policy, Regulations and applications: Page 14 of ICT Industry and Markets course.

3. Applicability of the Fair Competition Act CAP. 362C

13. The particular type of conduct described in the allegation may be reviewed pursuant to Section 16 (3), of the Fair Competition Act CAP 362C, which addresses anti-competitive practices relating to abuse of dominance, including that of price squeezing. Section 16 (3) states;

“An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular, but without prejudice to the generality of the foregoing, if it

prevents or deters any enterprise from engaging in competitive conduct in that or any other market; ...

directly or indirectly imposes unfair purchase or selling prices that are excessive, unreasonable, discriminatory or predatory;”

14. The allegation can be considered pursuant to Section 16 as it describes a case where a dominant supplier (C&W) has directly imposed wholesale purchase prices on its competitors that are unreasonable, in light of the increased discount offered to retail customers. This is likely to have the effect of reducing the ability of the competitors to make any reasonable profit, and could be said therefore to have deterred that enterprise from engaging in competitive conduct in another market.
15. Assessing the complaint, pursuant to Section 16, of the FCA is consistent with the approach adopted in other jurisdictions. An investigation conducted by the UK's Director General of Telecommunications in relation to an allegation of price squeezing by British Telecommunication Plc (BT) with regard to BT's UK-SPN calls, was done so pursuant to Section 18 (2) (a) of the UK Competition Act 1998. This Act states similarly to the FCA's provision that any

practice, which consists of “directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions” is an abuse.

16. The conduct of price squeezing may also be considered a breach of Section 13 of the FCA, which states that

“all acts or trading practices prescribed or adopted by an enterprise ...that result or are likely to result in the disruption or distortion of competition are prohibited”.

17. This is a less stringent test than that required at Section 16, in that it proscribes all acts that disrupt competition, therefore any act found to be in contravention of Section 16 will also contravene Section 13.

Consistency with Other Legislation

18. Chapter 41 of the UK Competition Act as well as Article 82 of the EC Treaty (ex Article 86), contains practically the same provisions relating to an abuse in the context of price squeezing as the FCA. The UK Competition Act reads as:

“18. - (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.

(2) Conduct may, in particular, constitute such an abuse if it consists directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;”

19. In relation to such provisions, the EC in its “Notice on the Application of the competition rules to access agreements in the telecommunications sector” determines that a price squeeze could be shown where,

“the dominant company’s own downstream operations could not trade profitably on the basis of the upstream price charged to its competitors by the upstream operating arm of the dominant company.”

20. The British Telecommunication’s Regulator “Ofcom” whose duties have now been assigned to “Ofcom” set out its policy on Margin Squeezing in its Competition Act Guidelines in this way:

“In considering whether an undertaking is engaging in price squeezing in breach of the Competition Act, the Director General will consider whether the dominant undertaking would be profitable in the relevant downstream market if it had to pay the same input prices as its competitors.”

21. These standards of price squeezing are consistent with the European Commission ruling in Napier Brown/British Sugar⁸. The European Commission determined that a margin squeeze was an abuse. The Commission stated that;

“The maintaining by a dominant company, which is dominant in the markets for both a raw material and a corresponding derived product, of a margin between the price it charges for a raw material to the companies which compete with the dominant company in the production of the derived product and the price which it charges for the derived product, which is insufficient to reflect that dominant company’s own costs of transformation (in this case the margin maintained between its industrial and retail sugar prices compared to its own repackaging costs) with the result that competition in the derived product is restricted, is an abuse of a dominant position”

22. Other cases where similar standards of competition have been outlined include investigations in Australia and the United Kingdom.

⁸ Napier Brown / British Sugar - EC Commission Decision 88/518

23. The case of Telstra⁹ in Australia where that company's recent announcement of a retail price reduction for its broadband plans without a similar drop in its wholesale price for similar services led the Australian Consumer and Competition Commission (ACCC), to determine that on the information available to it to date that it has reason to believe that Telstra has engaged in anti-competitive conduct. In an Advisory Notice, the Commission stated;

" With effect from 26 February 2004, Telstra should reduce the wholesale prices for the supply of Broadband Services to Wholesale customers to a level below the Retail Prices being sufficient to enable Telstra's Wholesale Customers to supply Broadband Services to Retail Customers at prices which do not substantially hinder or prevent those Wholesale Customers from competing with Telstra in the Retail Broadband Market".

24. In the investigation¹⁰ (23rd May 2003), by the Director General of Telecommunications into alleged anti-competitive pricing by British Telecommunication Plc ("BT"), the Director stated;

"Where a vertically integrated undertaking is dominant in an upstream market and supplies a key input to undertakings that compete with it in a downstream market, there is scope for it to abuse it's dominance in the upstream market. The vertically integrated undertaking could subject its competitors in the downstream market to a price or a margin squeeze by raising the cost of the key input...and/or by lowering its prices in the

⁹ Trade Practices Act 1974 : Advisory Notice Issued Pursuant to Subsection 151AQB(1), The Proper Officer, Telstra Corporation Limited (CAN 051 775 556), 231 Elizabeth Street, SYDNEY NSW 2000
<http://www.accc.gov.au/content/search/>

¹⁰ The investigation was conducted in relation to its BT's UK-SPN calls, pursuant to Section 18 (2) (a) of the Competition Act 1998. Section 18(2) (a) of the Competition Act 1998 states that any practice which consists of "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions" is an abuse.

downstream market...The effect would be to reduce the gross margin available to its competitors, which might well make them unprofitable."

Essential Elements of price Squeezing

25. Based on the foregoing discussion, it is evident that to establish a case of price squeezing it is necessary to show that there is:

- Dominance in the upstream market.
- The upstream input is essential to the downstream market and the dominant firm in the upstream market is vertically integrated to the extent it also competes in the downstream market.
- Unprofitable downstream margins caused by either excessive wholesale prices or predatory retail prices, charged by the dominant firm.
- The practice is substantive enough to cause particular harm to competitors.

4. Determination of Relevant Telecommunications Markets

26. To assess any case of abuse of dominance including price squeezing, it is necessary for the Commission to first have a clear and unambiguous demarcation of the markets where the incumbent is regarded as dominant, and the market where the abuse is given effect¹¹. The Fair Competition Act states that the term “market” is a reference to a market for goods and services supplied in Barbados.
27. A market in this context is essentially defined by the products supplied (relevant product), the nature of the economic activity being undertaken (functional dimension), and the area of competition between the relevant firms (geographic dimension).
28. The European Commission¹² generally advocates two types of relevant markets in the telecommunications sector, that of the service to be provided to end-users (down-stream services), and that of access to those facilities necessary to provide that service (up-stream services). In essence, they advocate up-stream wholesale service markets and downstream retail service markets.
29. The wholesale service is distinguished from the retail in a functional context. The wholesale product is packaged for and directed to the downstream service provider, whilst the retail product is packaged for and directed to the household. The wholesale product is always delivered in substantial volumes of minutes to accommodate meaningful re-selling, whilst the retail product must be offered in very small quantities to satisfy individual consumer

¹¹ The European court in its judgment in *Stergios Delimitis v Henninger Bräu AG*, (1991), concluded with regard to the determination of the relevant market required to assess a practice of anti-competitive behaviour that “the relevant market is primarily defined on the basis of the nature of the economic activity in question...”

¹² Notice on the Application of the Competition Rules to Access Agreements in the Telecommunications Sector, Official Journal of the European Communities 286, 22.8.98, page 9, and paragraphs 43 - 45.

demands. In this regard, they satisfy different needs, and vastly different consumers and should be considered as separate markets.

30. Within the separate wholesale and retail demarcations, one must yet distinguish those products, which are not substitutable on the demand or supply side, and therefore in themselves represent further separate markets.
31. Firstly, there are international communications services, and domestic communication services. These are to be considered as separate markets because though, they are aimed at the same customers, they perform patently different functions that are not substitutable with respect to the user. Wholesale International telephony services are sold under a completely different arrangement and terms from domestic wholesale minutes. At the retail end if a consumer needs to contact someone overseas, he/she will need to be accommodated with the appropriate facility to make such a call, distinct from a domestic call.
32. Secondly, within the separation of wholesale international and retail international telecommunications markets there is voice telephony¹³ among the other forms of telecommunications messaging services. Though the voice telephony product can be substituted in some regards by voice messaging via the Internet and other forms of communication; the intimacy, spontaneity and availability of the product lends to the uniqueness of the voice telephony product, and renders its substitution in the face of a small but significant increase in price, unlikely. In addition, "Voice Over Internet" is not legally an option in Barbados.

¹³Directive 90/388/EEC, The Commission of the European Communities: 'voice telephony' means the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point.

33. In the context of this matter, therefore we define two distinct markets, wholesale international voice telephony and retail international voice telephony¹⁴, both defined geographically with respect to Barbados.
34. It must be noted that within the “downstream retail international voice telephony” market, there is included fixed line service and the mobile service. They are considered part of the same market because in the context of international communication, mobile and fixed line service represent quite substitutable products, quite capable of satisfying the same demand. An international call as opposed to a domestic call, within the Barbadian context tends to be a planned activity, and the consumer will where possible deliberately select the option by which the international call is made. If fixed line international calls become quite expensive relative to the mobile line calls, the consumer will choose to make the international call via the mobile line, and vice versa. The same argument cannot be made with respect to the domestic communication where spontaneity, accessibility and convenience are more important. The mobile service, as expressed by the Commission for Communications Regulation in the Republic of Ireland¹⁵ is distinguished in this context from the fixed line because it allows mobility, and availability for the consumer irrespective of location. The fixed line cannot do this.
35. In this matter, we can define the upstream market as the provision of wholesale international voice telephony services. The current licensing arrangements make C&W the only licensed provider of this service¹⁶.
36. In the downstream market for the provision of retail international telecommunications services, the existing licensing arrangements means that

¹⁴ International voice telephony is technically referred to as International Direct Dial Public Switched Telephone Network (PSTN) Services

¹⁵ Document No. 04/94, Market Analysis – Retail Fixed Narrowband Access Markets, 01 September 2004

¹⁶ Telecommunication (Declaration of Dominance Regulations 2003) Statutory Instrument 2003 No. 75

there are four providers eligible to operate in this market with only three players currently operating, C&W, Digicel, and AT&T.

37. On the question of the relevant market, C&W has indicated¹⁷ that:

“it does not describe the supply of mobile international services as a distinct and separate market, as is inferred by the question”.

38. There is no distinction made here however, between fixed and mobile retail international services. The supply of mobile international services is not described as a separate market, but rather the supply of wholesale international services is defined as one market and the supply of retail international services as the other.

39. C&W has further stated with regard to the supply of mobile international services that:

“Customers typically choose a mobile operator on the basis of the combination of a whole bundle of retail mobile services offered, rather than on the basis of any individual mobile services. Indeed, it is not possible for a customer to select different mobile operators to provide different types of mobile calls”.

40. Retail international services is sold to the individual consumer, and though consumers tied to one individual supplier will find it difficult to change to another supplier because of a particular promotion, yet there are those potential consumers seeking to identify a provider who will be influenced by the particular offers the different providers are able to make.

¹⁷ Exhibit 3.2.5: Response by cable and Wireless (Barbados) limited to “Fair Trading commission’s Preliminary Enquiry” Form

41. In addition, because the market is not defined with respect to fixed and mobile communication, where one package is more attractive, customers who do have a choice in this case and will choose to use the more attractive offer. Most customers in Barbados who have access to a mobile option also have access to the fixed line option, therefore especially as it relates to international calls the consumer will choose to make the long distance call via the more economical option.
42. Furthermore there are several customers because of the way the market has developed, (new providers have often captured former incumbent consumers) with opportunities to access more than one mobile provider. These customers for various reasons will have accounts with more than one provider, and those customers will utilise where possible, the option that is more attractive.
43. The argument is accepted however, that customers typically choose a mobile operator based on the combination of a whole bundle of retail mobile services offered. This makes the manner therefore in which a provider is able to manipulate its package critical to attracting consumers. When one party is able to shape its package without its competitors being able to respond effectively, this can have ominous consequences for those competitors.

5. Dominance in the Upstream Market

44. The Fair Competition Act indicates that a dominant firm is generally an enterprise that is capable of operating in the related market without effective competition.
45. To assess whether or not a firm holds a position of dominance the Commission will, having defined the market, look at the market share of the firm relative to the other market participants. The Commission may then assess the consequent level of competition in the particular market based on the relative strength of the competitors and the contestability or existing barriers to entry to the market. If a firm has a large market share, then it may not be effectively constrained by its competitors.
46. As a general guide, the Commission considers a firm that has had a sustained market share of 50% or more is likely to be in a position of dominance, whereas a firm with a market share of less than 40% is less likely to hold a position of dominance.
47. C&W has a monopoly license to provide wholesale international minutes in Barbados¹⁸. Whenever a firm can influence the price it receives for its product, the firm is said to have monopoly power¹⁹. In this regard, C&W having sole control over the supply of this product has substantial influence over its price. Based on the criteria determined under the Fair Competition Act, C&W can be deemed to enjoy a position of dominance in this market.

¹⁸ Telecommunications (Declaration of Dominance Regulations 2003) Statutory Instrument 2003 No. 75

¹⁹ Modern Industrial Organisation, Third Edition- Dennis W. Carlton and Jeffrey M. Perloff

6. Dominant Vertically Integrated Firm supplying Essential Input

48. A firm that participates in more than one successive stage of the production or distribution of goods or services is vertically integrated²⁰. C&W by virtue of being the sole supplier of wholesale international voice telephony service in Barbados, as well as retailing international voice telephony service is vertically integrated.
49. Wholesale international telecommunications minutes sold by C&W (the Agreement), are a necessary input for its downstream competitors, as reported by Digicel²¹. Digicel and AT&T would be unable to provide retail international voice telephony service without the wholesale minutes, hence the detailed agreements signed between the parties, which set out the economic, and technical terms on which this service will be delivered. Data from C&W²² further demonstrate the substantial volume of wholesale international minutes sold to these competitors over the period February through May 2004, since the start of their operations.
50. C&W also competes with these two firms at the retail end of the market. The list of services²³ provided by C&W and their stated competitors, along with the advertisements²⁴ appearing in the press, which were prepared by C&W, show

²⁰ Modern Industrial Organisation, Third Edition- Dennis W. Carlton and Jeffrey M. Perloff

²¹ Exhibit 1.1.1: Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission
“Re: International Retail Discounts”, 2004-04-02

²² Exhibit 3.2.5: Response by Cable and Wireless (Barbados) Limited to “Fair Trading Commission’s Preliminary Enquiry” Form

²³ Exhibit 3.2.5: Response by Cable and Wireless (Barbados) Limited to “Fair Trading Commission’s Preliminary Enquiry” Form

²⁴ Exhibit 3.2.7: Barbados Advocate Newspaper, 29th March 2004 – Advertisement showing relevant C&W promotion

Exhibit 3.2.8: Nation Newspaper, 30th May 2004 - Advertisement showing relevant C&W promotion

Exhibit 3.2.9: Nation Newspaper, 17th September 2004 - Advertisement showing relevant C&W promotion

comparisons between the rates provided by C&W's competitors and those of C&W.

7. Unprofitable Downstream Margins

51. At page 12, of the “Agreement for the Provision of International Services Prior to Full Liberalisation between Cable and Wireless (Barbados) Limited and Digicel (Barbados)”, under the heading Outgoing International Service Usage Charges, it is stated that:

“Payable by Service Taker to Service Supplier. The following rates are based on the principle of standard retail rack rates (excluding VAT) less the discount applied to C&W’s Corporate customers taking into account volume and term. The maximum discount taking into account a 3 year term and the maximum volume commitment is 30%”.

52. Both parties signed this Agreement on the 23rd January 2004. It sets out in detail the terms and conditions under which C&W would supply wholesale services to Digicel. On page 13 of the document the Peak, Off Peak, and Weekend, wholesale per minute charges²⁵ are set out (Table 2). These charges are presented in the Agreement, (exclusive of Value Added Taxes) and have formed the basis of a mutually acceptable arrangement between the parties until the 29th March 2004.

- On 29th March 2004, C&W published an advertisement in the Advocate newspaper offering to the public discounts of 40% on Residential Mobile Talk Away numbers, and 50% discount on Corporate Mobile Talk Away numbers. The actual discounted rates quoted are as set out in Table 3. The advertisement indicated at that time that the offer was intended to apply until 31st May 2004.

²⁵ Peak: 0800 to 1759 Monday to Friday
Off Peak: 1800 to 0759 Monday to Friday
Weekend: Saturday 0000 to Sunday 2359

Exhibit 3.2.6: Agreement for the Provision of International Services for the Period Prior to Full Liberalisation Between Cable and Wireless (Barbados) Limited and Digicel (Barbados) Limited

- On the 30th of May 2004 a further advertisement, appearing in the Nation Newspaper indicated that the same offer had been extended. This advertisement did not provide a closing date. The rates offered in this promotion are set out in Table 4.
- On the 17th of September 2004, another advertisement appeared in the Nation Newspaper indicating that C&W had reduced International Direct Dial rates to key destinations by up to 50% until 3rd October 2004 (Table 5.). This offer applied to both evening and weekend calls but only to calls made from residential fixed lines. Customer accounts categorised as business were not eligible for the offer.

53. Digicel has provided to the Commission copies of letters²⁶ it sent to C&W following the first and last offers. In both letters it requested of C&W that, in accordance with the terms of the Agreement it should provide Digicel with a similar 50% discount on wholesale international telecommunications services during the weekends for the period of C&W's promotion, as that offered to its retail customers. Digicel has requested this discount based on the clause in the Agreement, which states that:

"Should the discount made available to customers be amended either higher or lower, the discount rates for international outgoing services will be amended accordingly to reflect the new corporate discount program, volume and terms conditions".

54. On the 31st of March 2004, C&W responded to Digicel²⁷ stating that the discount in the agreement relates only to C&W's corporate customers charged on a non-discriminatory basis. The advertisement in the press related to its

²⁶ Exhibit 1.1.2: Letter from Digicel to Cable and Wireless (Barbados) Limited "Re: International Rates", 2004-03-28, Exhibit 1.6.1: Letter from Digicel to Cable and Wireless (Barbados) Limited "Re: International Rates", 2004-09-17

²⁷ Exhibit 1.1.3: Letter from Cable and Wireless (Barbados) Limited to Digicel "Re: International Rates", 2004-03-30

retail customers, therefore, there was no requirement for the weekend rates for international outgoing services as set out in the agreement to be amended.

55. For as long as the advertised discounts have remained in place, it has meant that Digicel has had to purchase its wholesale international outgoing minutes at a 30% discount rate, whilst it had to contend in the market place with a 40% and 50% discount on retail services from C&W. In order for Digicel to match these rates, it would have to retail its international service at a loss of between 10% and 20% on residential and corporate calls, respectively.
56. For the third offer, the discounts introduced by C&W affected primarily rates to the Caribbean. Only these rates fell below the wholesale discounted rates. The rates for the USA, the United Kingdom and Canada, remained in excess of the 30% discounted rates offered to the wholesale customer.

8. Restriction of Competition

57. Section 16 (3) of the Fair Competition Act submits that an enterprise will abuse its dominance if it impedes the maintenance or development of effective competition in a market. To establish a case of price squeezing in this context therefore, it is necessary to show that the enterprise in question through its actions has restricted competition in a particular market.
58. The first two promotions run by C&W in this matter, targeted only weekend outgoing international rates made on mobile lines. The third promotion related specifically to fixed line outgoing international rates over both weekend and evening periods. These specific services represent only a segment of the entire market for retail international telecommunications services, but the allegations made suggest that the practices instituted, though affecting only these segments of international telephony services, have had and may continue to have, a negative affect on competition in the retail international service market.
59. Redacted for commercial confidentiality.
60. Redacted for commercial confidentiality.
61. Redacted for commercial confidentiality.
62. Redacted for commercial confidentiality.
63. Redacted for commercial confidentiality.
64. Redacted for commercial confidentiality.
65. Redacted for commercial confidentiality.

66. Redacted for commercial confidentiality.
67. The pattern emerging from the figures reviewed, suggests that the practice did have quite a dramatic effect on the landscape of the mobile international outgoing services submarket, and by extension the entire market for retail international services.

9. Summary of Findings

68. Evidence compiled indicates that all the necessary elements required to make a case for price squeezing are present.
1. C&W enjoys super dominance because of its statutory license in the upstream wholesale international voice telephony market, where it is the sole supplier of such services.
 2. The wholesale minutes they supply represent a necessary input to the downstream retail international market. They in turn as a vertically integrated enterprise, also compete against those to whom they supply in the retail market.
 3. The rates offered by C&W to its wholesale corporate customers is the standard retail rack rates (excluding VAT) less a discount of 30%. The rate offered to the public through the various promotions are either 40% or 50% below the standard retail rack rates (excluding VAT). For corporate customers to compete at these rates they must incur a loss.
 4. Though the offers have applied primarily to outgoing weekend international rates, which are but a subset of the total retail international voice telephony service, statistics indicate that the

practice has resulted in some gains for C&W. The practice has also been shown to have affected the performance of its competitors. The initial advertisement of 29th March 2004 indicated that the offer was intended to last for two months. The offer was then extended for a shortened period and then a related additional offer was made on September 17th to last until October 3rd. This pattern of introduction of the practice indicates that the company recognised its benefits.

69. The initial offer, the extension and the reintroduction of the practice indicates that a pattern of such behaviour has emerged, and the subsequent harm likely to be caused to C&W's competitors could become substantial should this practice be continually repeated.
70. The practice allows C&W, because of an advantageous position in one market to exploit that position by knowingly establishing such rates as their competitors are unable to match in a related market.
71. The size of the estimated loss is not the primary concern. Whether the loss is very huge or merely sufficient to be restrictive of competition, the fact that the practice places one's competitors in a situation where they are unable to compete realistically is the main concern, and is in breach of Section 16 of the FCA.
72. In light of the evidence presented, the Commission finds that C&W has abused its dominance in the wholesale international voice telephony market, by engaging in the practice of price squeezing to the harm of its downstream competitors.

Annex 1.

Table 2.

Outgoing International Service: Usage Charges

from

“Agreement for the Provision of International Services for the Period Prior to Full Liberalisation
Between Cable and Wireless (Barbados) Limited and Digicel (Barbados) Limited”

Barbados \$

Country	Peak		Off Peak		Weekend	
	Excl. VAT	VAT Incl.	Excl. VAT	VAT Incl.	Excl. VAT	VAT Incl.
USA, Hawaii						
United Kingdom, Ireland						
CANADA						
St. Lucia, St. Vincent, Martinique, Grenada, Guyana, Trinidad and Tobago, Anguilla, Antigua, Bermuda, Dominica, BVI, Cayman, Jamaica, Montserrat, St. Kitts and Nevis, Turks and Caicos						
Belize, Bahamas, Cuba, Haiti, Dominican Republic, Guadeloupe, French Guiana, Puerto Rico, US VI						
Rest of the World						

Redacted for commercial confidentiality.

Table 3.

Outgoing International Service: Usage Charges
&
Discounted Rates – Offer: 29th March 2004 - May 30th 2004

Barbados \$

Country	Wholesale Weekend Per Minute Charge		Wholesale Weekend Per Minute Charge		Difference between Wholesale and Discounted Rate	
	VAT Excluded Price (Agreement pg. 13)	VAT Inclusive Price	Residen- tial	Corpor- ate	Residen- tial	Corpor- ate
USA, Hawaii						
United Kingdom, Ireland						
CANADA						
St. Lucia, St. Vincent, Martinique, Grenada, Guyana, Trinidad and Tobago, Anguilla, Antigua, Bermuda, Dominica, BVI, Cayman, Jamaica, Montserrat, St. Kitts and Nevis, Turks and Caicos						
Belize, Bahamas, Cuba, Haiti, Dominican Republic, Guadeloupe, French Guiana, Puerto Rico, US VI						

Redacted for commercial confidentiality.

Table 4.

Outgoing International Service: Usage Charges
&
Discounted Rates – Offer: 30th May 2004

Barbados \$

Country	Wholesale Weekend Per Minute Charge		C&W Discounted Rates		Difference between Wholesale and Discounted Rate	
	VAT Excluded Price (Agreement pg. 13)	VAT Inclusive Price	Residen- tial	VAT Excluded Price	VAT Inclusive Price	Residen- tial
USA, Hawaii						
United Kingdom, Ireland						
CANADA						
St. Lucia, St. Vincent, Martinique, Grenada, Guyana, Trinidad and Tobago, Anguilla, Antigua, Bermuda, Dominica, BVI, Cayman, Jamaica, Montserrat, St. Kitts and Nevis, Turks and Caicos						
Belize, Bahamas, Cuba, Haiti, Dominican Republic, Guadeloupe, French Guiana, Puerto Rico, US VI						

Redacted for commercial confidentiality.

Table 5.

Outgoing International Service: Usage Charges
&
Discounted Rates – Offer: September 17th 2004 until October 3rd 2004

Barbados \$

Country	VAT Inclusive Price		C&W Discounted Rates		Difference between Wholesale and Discounted Rate	
	Residential		Residential		Residential	
	Weekend	Evening	Weekend	Evening	Weekend	Evening
USA, Hawaii						
United Kingdom, Ireland						
CANADA						
St. Lucia, St. Vincent, Martinique, Grenada, Guyana, Trinidad and Tobago, Anguilla, Antigua, Bermuda, Dominica, BVI, Cayman, Jamaica, Montserrat, St. Kitts and Nevis, Turks and Caicos						
Belize, Bahamas, Cuba, Haiti, Dominican Republic, Guadeloupe, French Guiana, Puerto Rico, US VI						

Redacted for commercial confidentiality.

Annex 2.

Schedule of Exhibits

Exhibit No.	Document	Source
1.1.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Retail Discounts", 2004-04-02	Digicel
1.1.2	Letter from Digicel to Cable and Wireless (Barbados) Limited "Re: International Rates", 2004-03-28	Digicel
1.1.3	Letter from Cable and Wireless (Barbados) Limited to Digicel "Re: International Rates", 2004-03-30	Digicel
1.2.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Retail Discounts (Additional Information)", 2004-04-08	Digicel
1.3.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Retail Discounts (Additional Information)", 2004-04-14	Digicel
1.4.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Retail Discounts (Additional Information on Temporary Discounts)", 2004-04-16	Digicel
1.5.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Retail Discounts (Price Squeeze)", 2004-05-24 - Responses by Digicel to "Fair Trading Commission's Preliminary Enquiry" Form	Digicel
1.6.1	Letter from Digicel to Cable and Wireless (Barbados) Limited "Re: International Rates", 2004-09-17	Digicel
1.7.1	Letter from Digicel to The Hon. Anthony Wood, MP - Minister of Energy and Public Utilities "Re: International Rates", 2004-09-21	Digicel
1.8.1	Letter and Copy of Response from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: Fair Competition Act CAP. 326C Preliminary Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing) International Rates", 2004-09-21	Digicel
1.9.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: International Services (Predatory Pricing)", 2004-09-23	Digicel
1.10.1	Letter from Digicel to Michelle Goddard, CEO- Fair Trading Commission "Re: Fair Competition Act CAP. 326C, Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing) - International Rates", 2004-09-23	Digicel
1.11.1	Digicel Response to Fair Trading Commission's Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Barbados) Limited – Price Squeeze (international Rates) 23 rd September 2004	Digicel
2.1.1	Letter from Michelle C. Goddard, CEO – Fair Trading Commission to Digicel " Re: Fair Competition Act CAP. 326C Preliminary Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing)", 2004-04-30	FTC

2.2.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Cable and Wireless “Fair Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing)”, 2004-06-22	FTC
2.3.1	Letter from Michelle C. Goddard, CEO – Fair Trading Commission to Cable and Wireless “Re: Fair Competition Act Cap 326C, Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing)”, 2004-06-29	FTC
2.4.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Cable and Wireless “Re: Fair Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance”, 2004-07-27	FTC
2.5.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Digicel “Re: Fair Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance”, 2004-07-30	FTC
2.6.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Digicel “Re: Fair Competition Act CAP 326C, Preliminary Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Price Squeezing) International Rates”, 2004-09-27	FTC
2.7.1	Letter from Cable and Wireless (Barbados) Ltd. to General Manager – Cellular Communications (Barbados) SRL “Re: AT&T Letter dated 6 th August 2004”, 2004-08-10	FTC
2.8.1	Letter from Cyralene Benskin-Murray, CEO (Ag.) – Fair Trading Commission to the General Manager – Cellular Communications (Barbados) SRL “Re: Practices of Cable & Wireless (Barbados) Ltd.”, 2004-08-16	FTC
2.9.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Cellular Communications “Fair Competition Act CAP. 326C, Inquiry – Alleged Abuse of Dominance”, 2004-09-14	FTC
2.10.1	Letter from Director of Fair Competition for CEO – Fair Trading Commission to Cellular Communications (Barbados) SRL “Re: Cable and Wireless (Barbados) Ltd. – Mobile Rate Reductions”, 2004-09-27	FTC
3.1.1	Letter from Cable & Wireless to CEO – Fair Trading Commission “Re: Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance by Cable and Wireless (Barbados) Limited (Price Squeezing)”, 2004-06-28	C&W
3.2.1	Letter from Cable & Wireless to CEO - Fair Trading Commission “Re: Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance”, 2004-07-07	C&W
3.2.2	Letter from Cable & Wireless to Digicel – Reply to letter dated 28 th March 2004 from Digicel, 2004-03-30	C&W
3.2.3	Letter from Digicel to Cable & Wireless - 2004-03-28 – Re International Rates- Request by Digicel for similar 50% discount	C&W
3.2.4	Request for Confidentiality: July 7 th 2004	C&W
3.2.5	Response by Cable and Wireless (Barbados) Limited to “Fair Trading Commission’s Preliminary Enquiry” Form	C&W

3.2.6	Agreement for the Provision of International Services for the Period Prior to Full Liberalisation Between Cable and Wireless (Barbados) Limited and Digicel (Barbados) Limited	C&W
3.2.7	Advertisement No.1: Barbados Advocate Newspaper, 29 th March 2004 advertisement showing relevant C&W promotion.	C&W
3.2.8	Advertisement No.2: Exhibit 3.2.8. Nation Newspaper, 30 th May 2004 advertisement showing relevant C&W promotion.	C&W
3.2.9	Advertisement No.3: Nation Newspaper, 17 th September 2004 advertisement showing relevant C&W promotion.	
3.2.9	List of C&W rates: Mobile International excluding Talkaway, Mobile bSmart, bBold, bSharp, bConnected incl. Talkaway, bBiz Packages incl. Talkaway	C&W
3.3.1	Letter from Cable & Wireless to CEO – Fair Trading Commission “Re: Fair Competition Act CAP 326C, Enquiry – Alleged Abuse of Dominance (Price Squeezing)”, 2004-06-22	C&W
4.1.1	Letter from Cellular Communications (Barbados) SRL to Cyrilene Benskin-Murray, Commission Secretary – Fair Trading Commission, 2004-08-06	AT&T
4.2.1	Letter from Cellular Communications (Barbados) SRL to Cable and Wireless (Barbados) Ltd., 2004-08-06	AT&T
4.3.1	Letter from Cellular Communications (Barbados) SRL to Michelle Goddard, CEO – Fair Trading Commission “Re: Cable & Wireless (Barbados) Ltd. Mobile Rate Reductions”, 2004-09-23	AT&T

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- Fair Competition Act CAP. 326C
- Telecommunication (Declaration of Dominance Regulations 2003) Statutory Instrument 2003 No. 75
- UK Competition Act 1998
- Article 82 of the EC Treaty (ex Article 86)
- Oftcom Competition Act Guidelines

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- Stergios Delimitis v Henninger Bräu AG, (1991
- Napier Brown / British Sugar - EC Commission Decision 88/518

NEWSPAPER ADVERTISEMENTS REFERRED TO:

- Nation Newspaper, 30th May 2004 advertisement showing relevant C&W promotion.
- Nation Newspaper, 17th September 2004 advertisement showing relevant C&W promotion.
- Barbados Advocate Newspaper, 29th March 2004 advertisement showing relevant C&W promotion

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- Directive 90/388/EEC, The Commission of the European Communities
- International voice telephony is technically referred to as International Direct Dial Public Switched Telephone Network (PSTN) Services

- Document No. 04/94, *Market Analysis – Retail Fixed Narrowband Access Markets*, 01 September 2004
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