



Fair Trading Commission

DECISION

Reference Interconnection Offer – Mobile

No. FTC/UR/2005 - 03

Date: June 22, 2005

FAIR TRADING COMMISSION

REFERENCE INTERCONNECTION OFFER - MOBILE

The Legal Framework

1. The Fair Trading Commission “Commission” established by the Fair Trading Commission Act, CAP. 326B is the independent regulator of international and domestic telecommunications services.

2. In carrying out its duties as an independent regulator, the Commission must operate in a transparent, accountable and non-discriminatory manner. Consultative documents and the public consultation process are the main ways in which the Commission discharges its responsibilities relating to transparency and accountability.

3. In addition, the Commission is specifically charged under the Fair Trading Commission Act to consult with interested persons when it is discharging certain functions.

4. Section 4(4) of the Fair Trading Commission Act, CAP. 326B states:

“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.”

5. The telecommunications sector is regulated by the Commission as well as the Minister responsible for Telecommunications.

6. Section 26(1) of the Telecommunications Act, CAP. 282B, “Act” states that the dominant carrier is required to file a Reference Interconnection Offer “RIO”, with the Commission, which sets out terms and conditions for interconnection to the public telecommunications network. These terms and conditions are set out in section 26(2) of the Act.

7. Pursuant to Section 27(3) of the Act, in deciding whether or not to approve the RIO, the Commission was required to and did:

- (i) consult with the carrier providing the RIO and any other carriers likely to seek interconnection to that carrier’s network and
- (ii) have regard to:
 - the interconnection principles set out in section 25;
 - the interconnection policy specified by the Minister;
 - the need to promote competition;
 - the long term interests of end-users; and
 - the submissions, whether oral or written, of the carriers providing and seeking interconnection.

8. In arriving at its decision whether or not to approve, the Commission also took into consideration the Fair Trading Commission’s Interconnection Guidelines - Accounting, Costing and Pricing Principles Doc No. FTC 03/03 and the Dispute Resolution Procedures Doc. No. FTC 03/04 issued on July 01, 2003 and those principles embodied in Section 25 of the Act.

The Approval Process

9. The Reference Interconnection Offer is filed by the dominant carrier, Cable & Wireless (Barbados) Limited “Cable & Wireless”, and it sets out the terms and conditions upon which other licensed carriers will be permitted to interconnect with the interconnection provider’s public telecommunications network.

10. Phase I of the liberalization process opened the market to competition in the mobile sector.

11. On August 22, 2003, Cable & Wireless filed a Barbados P1 RIO v. 1.0 “RIO Mobile” with the Commission. Interested parties were invited to submit written comments on the RIO Mobile by September 8, 2003. On September 29 and 30, 2003 a conference was held, at which oral presentations were heard.

Commission Decision October 28, 2003

12. The Commission issued its Decision on October 28, 2003. In that decision the Commission approved all sections of the RIO Mobile v. 1 save and except those pertaining to:

- **Access Deficit Charge “ADC”**

The Commission indicated that the ADC proposed in the RIO would not be permitted to go into effect. In addition the Commission stated that it will not approve an interconnection agreement that contains an ADC that has not been prescribed in accordance with section 35 of the Act.

- **Transitional Provisions – International Services (Clause 12.2)**

The Commission required Cable & Wireless to provide it with charges for international origination and termination services to other licensed mobile operators. The Commission stated that these charges and related conditions must be the same as those it imposes on its own affiliate mobile operator. The Commission further required that full pass through of avoidance costs that result from the call being originated or terminated by another operator be facilitated.

- **Part 1 - Joining Services**

The Commission advised Cable & Wireless to amend the RIO to reflect that each party is permitted to charge its own price if it purchases the equipment to the extent that the price is arrived at in a transparent and non-discriminatory manner.

- **Part 5 – Other Services**

The Commission requested Cable & Wireless to provide the data to show that the changes proposed are no less favourable than those offered to Cable & Wireless mobile service.

13. Additionally, the Commission gave partial approval with respect to the following clauses:

- **Clause 2 – Duration**

The Interconnection Guidelines – Accounting, Costing and Pricing Principles Paragraph 13 states that *“the Commission considers that the FDC historical cost approach should be applied only for a limited time frame of three (3) months.”* The Commission directed Cable & Wireless to remove the

reference to five year duration to ensure conformity with the referenced guidelines.

- **Clause 8 – Telecommunications Services**

Provisions in this section were approved save and except those pertaining to clauses 8.4 and 8.5. The Commission recommended that Cable & Wireless change the language of these clauses to reflect that if the condition stated in clause 8.4.1, 8.4.2 and 8.4.3 change Cable & Wireless will offer Domestic Fixed to Mobile Service under a revised arrangement approved by the Commission. The Commission indicated that Cable & Wireless will not be permitted to withdraw the referenced service until an alternate service for Domestic Fixed to Mobile has been approved.

- **Clause 9 – Charges and Payment**

Provisions in this section were approved save and except those pertaining to the Access Deficit Charge.

- **Clause 12 – Transitional Provisions**

Provisions in the Transitional Provisions section were approved save and except clauses 12.2 and 12.3.

- **Service Descriptions – Schedule 2**

Provisions for Service Descriptions – Schedule 2 were approved save and except Part 1 - Joining Services, and Part 5 – Other Services.

Consultation on Correction of Clauses not Approved

14. In accordance with section 27 (5) of the Telecommunications Act, CAP. 282B, the Commission consulted with the Cable & Wireless in order to resolve the inconsistencies. During this process Cable & Wireless submitted three versions of the RIO Mobile as they sought to correct the relevant clauses. Following consultation with Cable & Wireless pertaining to the resolution of the issues that were refused in the Commission decision, Cable & Wireless was advised by the Commission on January 27, 2004, that:

- (i) Clause 2 was approved; and
- (ii) full approval of the RIO Mobile would be granted if certain listed issues were addressed by revising the RIO Mobile.

15. The issues were:

- **Clause 9 – Charges and Payment ADC**

The Commission reviewed the comments in Cable & Wireless' submission and maintains that an Access Deficit Charge (ADC) is inappropriately placed or considered in the RIO and required that the references to ADC be removed from the RIO.

- **Clause 12.2 – Transitional Provisions – International Services**

The Commission reviewed the arguments presented by Cable & Wireless and determined that some measure of notice should be provided to the affected party if a service provider believes that an operator is engaging in bypass operations or in conduct that is unlawful or prohibited or restricted under the Act. Cable & Wireless was advised to amend the RIO accordingly.

- **Service Description – Schedule 2**

- Part 1 - Joining Services**

The Commission wanted to ensure that either party has the opportunity to source the relevant equipment. The Telecommunications Act, CAP 282B states in section 25 (2) that interconnection shall *“be offered at points, in addition to network termination points offered to the end-user, subject to the payment of charges that reflect the cost of construction of any additional facilities necessary for interconnection”*. The Commission therefore determined that the party that requests interconnection would be responsible for the payment of the costs of such additional facility.

- **Part 5 – Other Service**

- Domestic Fixed to Mobile Service**

The Commission’s rejection of this section of the RIO related specifically to its concerns that tariffs proposed in the RIO may be discriminatory. This would be the case if similar tariffs are not applied by Cable & Wireless to its mobile division.

The Commission required detailed documented proof of the charges including the basis for allocation where a charge is proposed. The Commission would need to examine these charges before it permitted the charging of tariffs for this service to ensure that these tariffs were not more than those charged by Cable & Wireless to its own mobile division.

RIO Mobile v. 2

16. During this period Cable & Wireless issued a RIO for phase 2 i.e. the liberalization of domestic fixed wireless service and proposed that it should incorporate the terms and conditions relevant to both phases. However, the Commission decided that the RIOs for the different phases should be distinct

and separate and on July 2, 2004 the Commission advised Cable & Wireless that the RIO – Mobile should be submitted in accordance with the letter of January 27, 2004 and in addition should include information for the PLMN¹ to PLMN Terminating Access Service.

17. The RIO Mobile v. 2.0 was provided on July 30, 2004. In the revised document Cable & Wireless incorporated amended terms and conditions that reflect those that were approved by the Commission in interconnection agreements dated January 14 and 26, 2004 with new mobile carriers. However, Cable & Wireless again included access deficit charges in the tariff schedule.

RIO Mobile v. 3

18. Having been advised by the Commission to submit a revised RIO, Cable & Wireless submitted a revised RIO – Mobile v. 3.0 for consideration on October 7, 2004.

19. On review of the revised RIO – Mobile v. 3.0, the Commission requested Cable & Wireless to submit a revised RIO which:

- a) explained matters contained in RIO Mobile v. 3.0²; and
- b) removed references to access deficit charges (ADC)

20. This version of the RIO Mobile contained corrections relating to Clause 8 – Telecommunications Services, and Clause 12.2 Transitional Services – International Services which were accepted by the Commission:

¹ PLMN – Public Land Mobile Network

² Submitted to the Fair Trading Commission on October 7, 2004

- **Clause 8 – Telecommunications Services**

Clauses 8.4 and 8.5 were revised. Clauses relating to the withdrawal of the Domestic Fixed to Mobile Service were removed.

- **Clause 12.2 – Transitional provisions – International Services**

Clause 12.2 was revised to read *“The Telco shall not provide any telecommunications service in a manner which would be in contravention of the transition timetable for liberalization.”*

Cable & Wireless also provided clarification of clauses 12.3 and 12.4 and provided notice periods pertaining to action in the event of alleged breaches.

RIO Mobile v.4

21. Cable & Wireless submitted a document entitled “RIO for Phase 1 of Liberalisation Mobile Providers, Barbados P1 RIO v. 4.0” (hereinafter referred to as the **RIO Mobile v. 4.0**) and related correspondence on January 13, 2005.

22. The following represents an overview of the remaining issues of concern in the RIO Mobile v. 3.0 and the revisions that have been incorporated in the RIO Mobile v. 4.0:

- **Service Description Schedule 2 Part 5 Other Services – Domestic Fixed to Mobile Service Clause 1.5.3**

With respect to Clause 1.5.3 of the Service Description Part 5 Other Services – Domestic Fixed to Mobile Services, the C & W provided further explanation to show that this transit charge would only be applicable if:

- (i) the mobile operator is also a domestic fixed operator; and
- (ii) the call has to transit the fixed network of the terminating carrier
(this would be the case if the point of interconnection is on the fixed network).

The Commission therefore considers that the charge should not apply to service providers who only supply mobile services. **The Commission approves this clause.**

- **Tariff Schedule Part 5 Other Services – Domestic Fixed to Mobile Service**

The Commission considers the explanation of the Tariff Schedule Part 5 Other Services – Domestic to Mobile Service to be acceptable as **the Commission has already approved the rate in the interconnection agreements.**

- **Tariff Schedule, the PSTN³ Termination Access Services, PLMN to PLMN Terminating Access Service and PSTN Transit Service**

The charges detailed in the PSTN Termination Access Service, PLMN to PLMN Terminating Access Service and PSTN Transit Service, were lower than those which were previously approved by the Commission in RIO Mobile v. 1. Additionally these charges and the revised 8.5 were those approved interconnection agreements. **Therefore the Commission approves the charges applicable to the referenced services.**

³ Public Switched Telephone Network

- **Access Deficit Charges (ADC)**

The Commission's request to remove the reference to ADC has been satisfied.

The Determination

23. The Commission having been satisfied that Cable & Wireless has resolved the inconsistencies specified above, hereby approves the following sections which were not approved in the decision of October 28, 2003.

Transitional Provisions – International Services (12.2)	Approved
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Service Description – Schedule 2, Part 1 Joining Services	Approved
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Service Description – Schedule 2, Part 5 – Other Services	Approved
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Clause 2 – Duration	Approved
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Clause 8 – Telecommunications Services	Approved
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Clause 9 – Charges and Payments - ADC	Approved
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The Commission hereby approves the RIO - Mobile v. 4.0.

Dated this day of June 2005.

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Neville V. Nicholls
Chairman

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Vivian-Anne Gittens
Deputy Chairman

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Floyd Phillips
Commissioner