



FAIR TRADING COMMISSION

DECISION

Motion to Review and Vary the Price Cap Plan 2016

DOCUMENT NUMBER: FTC/URD/DECPCP/CW-2018-01

DOCUMENT TITLE: Decision on the Motion to Review and Vary the Price Cap Plan 2016

ANTECEDENT DOCUMENTS

Document Number	Description	Date
FTC/UR/DEC/2016-01	Price Cap Plan 2016 Decision	March 31, 2016
FTC/UR/CONS/2016-01	Consultation on Review of Price Cap Mechanism 2012	February 8, 2016
FTC/UR/DEC/2012-02	Decision on Price Cap 2012 Compliance Rules and Procedures	May 22, 2012
FTC/UR/DEC/2012-01	Decision on Price Cap Plan	March 29, 2012

Table of Contents

SECTION 1	EXECUTIVE SUMMARY	3
SECTION 2	INTRODUCTION.....	5
SECTION 3	LEGISLATIVE FRAMEWORK	6
SECTION 4	REASONS FOR DECISION	7
SECTION 5	DETERMINATION	8

SECTION 1 EXECUTIVE SUMMARY

On December 5th, 2016, Cable & Wireless (Barbados) Limited (C&W) informed the Fair Trading Commission (the Commission) that its Board of Directors had approved a change in its year end date from March 31 to December 31 to coincide with the year end date of its parent company, Liberty Global. As a result of the foregoing, C&W, by a Notice of Motion dated and filed on the 29th of August 2017 (the Application), applied for a review of the Commission's Decision on the Price Cap Plan (PCP) 2016 and the PCP 2016 Compliance Rules and Procedures FTC/UR/PCP/2016-02. This Application proposed a change in the Statutory Financial Year End from March 31 to December 31 of each year and corresponding changes in the regulatory reporting periods set out in the PCP Decision 2016 and PCP Compliance Rules and Procedures.

On January 12, 2018, the Commission commenced consultation on this matter by issuing C&W's Application to the public, inviting stakeholders and interested persons to submit written comments on or before Friday, January 26, 2018. There were no responses. Owing to C&W's change in financial year end and the need for the PCP 2016 reporting periods to remain aligned with said financial year end, the Commission has determined that the reporting dates of the PCP 2016 and PCP 2016 Compliance Rules and Procedures will be adjusted as follows:

I Section 24 of the PCP 2016 Decision outlines the periods as:

Period 1: April 1, 2016 through to March 31, 2017

Period 2: April 1, 2017 through to March 31, 2018

Period 3: April 1, 2018 through to March 31, 2019

The adjusted periods shall now be:

Period 1: April 1, 2016 through to December 31, 2016

Period 2: January 1, 2017 through to December 31, 2017

Period 3: January 1, 2018 through to December 31, 2018

- II Submission of the Annual Compliance Filing (ACF) shall be adjusted **from March 1 to December 1 of each year.**
- III As it relates to the submission of Annual Audited Statutory Financial Statements, Annual Regulatory Financial Statements and Annual updated versions of the Enhanced Allocation Model (EAM), the financial reporting periods shall no longer be for the period ending March 31, 2017 and March 31, 2018, but shall now be for **the period ending December 31, 2016 and December 31, 2017.**
- IV The period for the Audited Statutory Financial Statements will no longer be from April 1 - March 31, to be filed by July 15 of each year, but shall now be **January 1 - December 31, to be filed by April 15 of the following year.**
- V The period for the Reconciled Regulatory Financial Statements will no longer be from April 1 - March 31, to be filed by September 15 of each year, but instead shall now be a **period of January 1 - December 31, to be filed by June 15 of the following year.**
- VI The submission of the EAM, currently required under the PCP 2016 Compliance Rules and Procedures by September 15 of each year, **shall now be required by June 15 of each year.**
- VII Currently, as it relates to the Unaudited Financial Results, the submission date is November 15, 2018 for the period ending September 15, 2018. The new submission date **shall be September 15, 2018 for the period ending June 30, 2018.**

SECTION 2 INTRODUCTION

On March 31, 2016 the Commission issued the PCP 2016 to govern the adjustments of rates of the regulated telecommunications services of C&W. It is based on two service baskets, one for 'competitive' services and the second for 'non-competitive' services. In addition there is a sub-cap on residential fixed line services (access and installation). The PCP 2016 stipulates that the prices of regulated services are restricted such that any price increases across the Basket will be below or equal to the level of inflation, or 3% per year in case inflation exceeds 3% during that year. In case of when the inflation rate is less than zero (i.e. negative), then the allowable price increase in that year will be set to zero for that year.

Paragraphs 22 to 24 of the Decision on the PCP 2016 outline its temporal nature. It was approved for three (3) years and was based on the following three reporting periods which were are aligned with the Company's financial year at the time i.e.:

Period 1: April 1, 2016 through to March 31, 2017

Period 2: April 1, 2017 through to March 31, 2018

Period 3: April 1, 2018 through to March 31, 2019

However, in 2016 C&W's Board made the decision to align its financial year with that of Liberty Global, its parent company and thus began to follow a financial year with mirrored the calendar year i.e. January 1 to December 31. In view of this change in circumstances, C&W, on August 29, 2017 filed its Application for a review of the Decision and the Commission subsequently commenced consultation on the matter. This Decision will outline the legislative basis upon which the Commission has the power to make these adjustments, the reasons for the adjustments and the final determination of the nature of the adjustments.

SECTION 3 LEGISLATIVE FRAMEWORK

Section 4 (3) (a) (b) (d) and (f) of the Fair Trading Commission Act, CAP.326B (FTCA) states that the Commission shall:

- a) *“establish principles for arriving at the rates to be charged by service providers”.*
- b) *“set the maximum rates to be charged by service providers”.*
- d) *“determine the standards of service applicable to service providers”*
- (f) *“carry out periodic reviews of the rates and principles for setting rates and standards of service of service providers”.*

The Commission is also charged with this responsibility under Section 3 (1) of the Utilities Regulation Act, CAP.282 (URA).

In accordance with Section 36 of the FTCA *“the Commission may on application or on its own motion review and vary or rescind any decision or order made by it and, where under this Act a hearing is required before any decision or order is made, such decision or order shall not be altered, suspended or revoked without a hearing”.*

The Commission is obligated to consult with interested parties in accordance with Section 4 (4) of the FTCA 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.”

The nature of this motion to review and vary does not result in a review of the rates and principles for setting rates under the PCP 2016. As such, the Commission invoked Rule 55(3) of the Utilities Regulation (Procedural) Rules, 2003 (URPR) which allows the Commission to adopt whatever procedures it deems to be just and expeditious in the individual circumstances of each motion. In this regard, the Commission issued a public notice outlining the basis of the Motion and allowed for comments, rather than issuing a consultation paper as would ordinarily be required.

SECTION 4 REASONS FOR DECISION

As previously mentioned, C&W's financial year end date was changed in December 2016 from March 31 to December 31 in order to be in alignment with that of its parent company, Liberty Global. This development constitutes a change in circumstances and necessitates an adjustment in the reporting periods of the PCP 2016 and the PCP 2016 Compliance Rules and Procedures. This adjustment will allow the reporting periods of the PCP 2016 and the submission dates for the relevant regulatory and statutory financial statements to remain aligned with C&W's financial year as is intended in the PCP 2016 Decision. To have its financial year end and PCP 2016 reporting periods remain out of alignment would significantly increase C&W's regulatory burden as it would require the submission of an altered set of financial statements. This would be impractical and come at a potential cost to ratepayers.

In view of the foregoing the Commission deems it prudent to adjust the reporting periods and submission dates of the PCP 2016 and the PCP Compliance Rules and Procedures accordingly.

SECTION 5 DETERMINATION

4.1 PCP 2016 Reporting Periods

As previously mentioned, C&W's recent decision to align its financial year end with that of its parent company, Liberty Global, is a change in circumstances that impacts the reporting periods of the PCP 2016. Consequently, the Commission holds the view that a number of adjustments are required. The Commission therefore determines that the reporting and submission dates as prescribed by the PCP 2016 and PCP 2016 Compliance Rules and Procedures shall be adjusted as follows:

Section 24 of the PCP 2016 Decision states:

“The Commission determined that PCP 2016 will therefore be based on the following three reporting periods which are aligned with the Company's financial year:

Period 1: April 1, 2016 through to March 31, 2017

Period 2: April 1, 2017 through to March 31, 2018

Period 3: April 1, 2018 through to March 31, 2019”

As the intention is to have the reporting periods “aligned with the Company's financial year”¹, it is determined that the reporting periods of the PCP 2016 shall be adjusted as follows:

Period 1: April 1, 2016 through to December 31, 2016

Period 2: January 1, 2017 through to December 31, 2017

Period 3: January 1, 2018 through to December 31, 2018

This represents a variation in the period of the PCP 2016 from three (3) years to two (2) years and nine (9) months.

¹ Fair Trading Commission, Price Cap Plan 2016 Decision, Document No: : FTC/UR/DEC/2016-01, Page 14, Paragraph 24, 2016

4.2 Submission of the Annual Compliance Filing (ACF)

Presently, the PCP 2016 Compliance Rules and Procedures stipulate that the ACF is to be filed one month before the start of each period on March 1st. As it is determined that the periods be adjusted to begin on January 1st, this requirement shall be adjusted to state that the ACF is to be filed **one month before the start of each period on December 1st**.

4.3 Submission of Annual Audited Statutory Financial Statements, Annual Regulatory Financial Statements and Annual Updated Versions of the EAM.

Presently the PCP 2016 Compliance Rules and Procedures stipulate that the financial reporting is to be “for the period ending March 31, 2017 and March 31, 2018”.

In order to remain congruent with C&W’s new financial year end and the aforementioned updates to the PCP 2016 reporting periods, the Commission determines that these requirements be adjusted to **the period ending December 31, 2016 and December 31, 2017**.

Additionally, the period for the Audited Statutory Financial Statements shall no longer be from April 1 – March 31, to be filed by July 15 of each year.

The Commission determines that it shall be adjusted to a **period from January 1 – December 31, to be filed by April 15 of the following year**.

Similarly, the period for the Reconciled Regulatory Financial Statements shall no longer be from April 1 – March 31, to be filed by September 15 of each year. The Commission determines that it shall be adjusted to a **period from January 1 – December 31, to be filed by June 15 of the following year. It is further determined that submission of the EAM, currently required under the PCP 2016 Compliance Rules and Procedures by September 15 of year, shall now be required by June 15 of each year**.

4.4 Submission of Unaudited Financial Results.

Presently, the PCP 2016 Compliance Rules and Procedures at Section 17.5 states:

“By November 15, 2018, the Company shall file Unaudited Financial Results in summary form, showing revenues, expenses, net investment, price base, capital structure, and rate of return on mean capital employed (MCE) for the period of this price cap plan, ending September 30, 2018.”

The Commission determines that this shall be adjusted to state:

“By September 15, 2018, the Company shall file Unaudited Financial Results in summary form, showing revenues, expenses, net investment, price base, capital structure, and rate of return on mean capital employed (MCE) for the period of this price cap plan, ending June 30, 2018.”

Dated this day of 2018

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Jefferson Cumberbatch
Chairman

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Adrian M. Elcock
Deputy Chairman

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Donley Carrington
Commissioner

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Kendrid Sargeant
Commissioner