



The Bigger, Better Network.

Supplementary Comments by Digicel (Barbados) Limited

**Consolidated Reference Interconnection Offer  
Consultation**

**Abridged Version**

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## Table of Contents

1	THE FACTS AS DIGICEL SEES THEM .....	3
2	THE CASE FOR A SUBSTANTIAL HEARING TO BE SCHEDULED ON M2M INTERCONNECTION .....	4
3	EXPERT TESTIMONY SHOULD BE INVITED .....	6

## 1 THE FACTS AS DIGICEL SEES THEM

- C&W is charging an outrageous price for transit of mobile to mobile (M2M) calls through the fixed network.
- C&W's mobile and fixed networks come together in either the same or an adjacent building. The transit service involves a minor amount of switching and jointing facilities. A C&W charge of BBD 3.1 cents for call setup is exorbitant. The average local call termination charge (setup charges are rolled into the per minutes fee) in the UK which employs the most rigorous costing of this service in the EU was 0.14 Euro cents in 2007; about BBD 0.4 cents.
- A local termination charge involves substantially more in the way of switch processing resources compared to a C&W Barbados optimised transit service. If the average call duration is 1 minute the transit price per minute is BBD 4.26 cents. This is substantially higher than the retail charge for a completed local call (origination and termination) in many EU countries. In actual fact, Digicel average call duration in Barbados is [CONFIDENTIAL] seconds for prepaid and [CONFIDENTIAL] seconds for postpaid. The average is clearly [CONFIDENTIAL].
- C&W refuses direct M2M interconnection unless Digicel pays all of C&W's costs on its side of the interconnection point including costs for upgrading its billing system, which in Digicel's view is absolutely unacceptable and not heard of in any other part of the world (apart from where C&W operate since they effectively are using this as an illegal barrier to entry and abuse of their dominant position throughout the Caribbean) – this in addition to any joining fees and the Mobile Termination Rate (MTR).
- Digicel does not charge for items outside of the existing interconnection price items. If C&W wants a new interconnection link with Digicel it would pay for the link plus the termination charge per minute for traffic it sends to Digicel for termination. The price to put in place a connection between the network and the MTR are supposed to cover all hardware and software required to provide the termination service.
- In order to facilitate a solution which avoids us paying outrageous rates to transit through C&W's fixed network, Digicel asked C&W to inform us how much this mobile network investment would cost. A one-off fee of [CONFIDENTIAL] and an annual "license" fee of [CONFIDENTIAL] has been required by C&W before it will provide M2M interconnection.
- By effectively refusing interconnection to its mobile network in general and for M2M interconnection, C&W constructively "forces" alternative operators to pay a price for

termination of mobile calls in C&W's mobile network which exceeds the mobile termination rates in the market to the detriment of these competing operators and indirectly their subscribers. Since C&W already has an interconnection between its fixed and mobile network, the request they make of competing operators is also a breach of section 25 (2) of the Telecommunications Act. In effect, it also sets aside the principle of symmetric rates that C&W ostensibly have in their interconnection agreements. All this is clearly an abuse of its dominant position, discriminatory, anticompetitive, and a breach of section 13 and 16 of the Fair Competition Act.

## **2 THE CASE FOR A SUBSTANTIAL HEARING TO BE SCHEDULED ON M2M INTERCONNECTION**

C&W's horizontal integration (the incumbent fixed wire operator and a mobile network operator (MNO)) affords C&W a unique position to treat its competitors in a highly discriminatory and anticompetitive manner. As noted above, C&W takes advantage of its horizontal integration by charging excessively for fixed network transit and deflecting requests for interconnection to its mobile network except if Digicel and, as far Digicel knows, other competing operators agree to pay its cost claim. Digicel respectfully submits that this amounts to a constructive refusal to provide M2M interconnection.

By following this strategy, C&W is effectively able to increase Digicel's costs of doing business. If termination rates were truly based on termination costs only (e.g. no externality surcharge) then substantially asymmetric termination prices would apply.

There are three fundamental competition problems that, we submit, all support the case for an in-depth investigation into M2M call termination in Barbados:

1. The cost of the C&W claim should be checked and such investigation should include a determination, based on international best practices, on what kind of network equipment a carrier is entitled to recover via joining fees;
2. The true cost of the transit service should be established, employing a robust incremental costing methodology, again based on international best practices; and
3. An economic/competition analysis should be undertaken to determine whether C&W is or has engaged in an anticompetitive strategy and then to decide what its interconnection obligations are.

C&W presently has Digicel "between a rock and a hard place". C&W claims that it already provides a termination service through the fixed interconnection and transit

service (transit to C&W mobile) it provides. If Digicel wants M2M interconnection, all additional costs should be borne by Digicel.

This service is hugely over-priced. C&W sets this price at virtually the cost of terminating a local fixed call. Yet C&W's fixed switch can and should have been configured to send Digicel calls to C&W's mobile network so that only a fraction of the processor capacity needed to terminate the average local call on C&W fixed network is used per M2M call from Digicel. The link between the fixed switch and C&W's mobile network is a relatively small expense which, we understand, is in any case the same link used to send all traffic that must go from C&W's fixed network to its mobile network.

With interconnection prices already established, a Mobile Network Operator ("MNO") that did not also own the incumbent fixed network would have proper incentives to provide the service and facilities at least cost because whatever the M2M call termination charge, if the receiving MNO can terminate more cheaply the cost saving is its to keep.

C&W on the other hand has an incentive to inflate the cost if it can pass them onto its competitors, which is exactly what it is banking on here.

If each network were able to offload claimed costs on its competitors and charge this as part of its interconnection charge, we should expect that interconnection prices would be outrageous – A simple model of this 'game' shows that they would end up at the higher of the preferred prices of the two operators.<sup>1</sup> In the present case, the usual reciprocity principle does not function, since Digicel already provides M2M termination for C&W's mobile callers at established prices. In Digicel's respectful submission, C&W has gone outside of the established prices and insisted on claimed network upgrade costs, investments it says it must make in order to provide a M2M termination service.

The situation is unfair and acts profoundly to C&W's competitors' disadvantage. Indeed, Digicel is convinced it amounts to an abuse of C&W's dominance – both the excessive prices charged for fixed transit and the refusal to provide M2M interconnection unless Digicel first pays the one-off fee and the annual licensing fee for a new billing system.

The really important issues for competition are:

- (a) the rates in Tariff Schedule, and

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<sup>1</sup> See for example, Cave, M., and Donnelly, M.P., "The Pricing of International Telecommunications Services by Monopoly Operators", *Information Economics and Policy*, 8 (1996), pp 107-123.

(b) the strategy to develop, in effect, non-reciprocal MTR rates through channelling Digicel and others into interconnection with the PSTN rather than M2M interconnection.

Accordingly, Digicel respectfully urges the Commission to include the issue of M2M as well as transit in those matters to be fully addressed within this proceeding. In Digicel's view, the current wording of the RIO itself need not be modified in order to accommodate M2M interconnection.

We also believe that the hearing should consider what it means in best international practice when the statute says the new entrant pays the costs of the interconnection. C&W seems to have taken the approach that whoever ask another operator to interconnect should carry the other operators costs. This clearly cannot be a correct interpretation, as will be seen by the following hypothetical (but realistic) example of two operators being awarded licenses at the same time.

Assume for the purpose of this example, that the two operators proceed to roll out their networks simultaneously and get ready to launch at the same time. In this example, in order to launch, both operators would need to interconnect to each other.

To apply the C&W interpretation of the statute to this situation would mean that whichever of the operators that poses the question of interconnection to the other would need to cover that operator's costs. It is easy to understand that this cannot be the purpose of the act.

In essence, whenever an operator hands over a call for termination to another operator, this action is by itself a request for interconnection. Or, in other words, the act should be read as if the cost should be split based on the actual in/out ratio of calls between the networks.

### **3 EXPERT TESTIMONY SHOULD BE INVITED**

Digicel respectfully submits that expert witness written statements should be invited to be filed with the Commission to assist the Commission on the M2M issue.

It is not sufficient to ask C&W what its costs are. Nor is it enough to look at C&W's accounts in order to assess what the costs are.

This is because accounting costs bear little relationship to the real or economic costs that relate to fair competition. Accounts are primarily designed to provide a stewardship function. They are typically recorded in historic values and use arbitrary allocators to assign common and joint costs. The numbers provided by accounts for networks in large

capital investment sectors like telecoms can be many times the economic cost (or the internal cost) depending on the way common and joint costs are assigned.

What is more, accounts are typically not granulated in a way that enable incremental (or “LRIC”) costs to be estimated even if many hours are allocated to trying to do so. C&W has an incentive to apply judgments throughout the costing process which have the effect of producing have any cost figures that best suit its corporate interests.

Expert statements and costing data should thus be sought regarding:

- The cost claimed by C&W (the one-off fee and the annual licensing fee)
- An economic/competition analysis concerning whether this is amounts to breach of the Fair Competition Act by C&W
- The termination charge C&W imposes on Digicel’s call that terminate on C&W’s mobile network.

However, Digicel respectfully proposes that the Commission impose interim measures as well as interim rates, since the full investigation as outlined above is likely to be quite lengthy. It ought to be possible for the Commission to establish that the current terms and conditions offered by C&W are anticompetitive and accordingly unlawful both as they relate to the M2M offer and rates for transiting its fixed network, by just using benchmark data and information from other jurisdictions. It is respectfully submitted that interim measures are warranted in the present case. Digicel respectfully submits that delay by the Commission will continue to permit a severe negative effect on competition in Barbados.