



ICT Decision 2006-3

Grand Cayman, 20th November 2006

TeleCayman's Request re: MPLS and CJFS Cable System Pricing

The Application

1. In a request dated 11th July 2006, TeleCayman stated that its submission was in response to certain Multi-Protocol Label Switching ("MPLS") bid activity engaged in by Cable and Wireless (Cayman Islands) Limited ("C&W"). TeleCayman requested an Order from the Authority whereby any MPLS service offering by C&W be deemed a Category 2 Service that should be provided by C&W in accordance with the rules for such categorization. TeleCayman also requested an Order finding that C&W engaged in anti-competitive practices (tied sales) contrary to subsection 40 (2) (d) of the ICT Authority Law. Finally, TeleCayman requested that C&W be required to provide it with E1 capacity and pricing on the Cayman-Jamaica Fibre System ("CJFS") at the lesser of a cost oriented rate or 20% less than that offered by C&W in response to, what TeleCayman characterized as, "MPLS bids". TeleCayman requested an order, under the provisions of section 6(3) of the ICTA (Dispute Resolution) Regulations, 2003, expediting the process .

Process

2. In a letter dated 13 July 2006, the Authority refused the request by TeleCayman for an order expediting the proceedings. In that letter, the Authority identified a period of twenty days for C&W to provide its Answer to the Application and accorded TeleCayman the opportunity to file a Reply to the Answer of C&W within ten days of receipt of the Answer.
3. In a letter dated 18 July 2006, TeleCayman expressed additional concerns regarding the CJFS pricing it had received from C&W on 17 July 2006. TeleCayman requested that the Authority conduct an investigation in accordance with section 41 of the ICT Authority Law as TeleCayman was of the view that there were reasonable grounds for suspecting that the section 36 (agreements affecting competition) and section 40 (abuse of dominant position) prohibitions had been infringed.
4. In a letter dated 31 July 2006, C&W provided its Answer to the Application.
5. On 7 August 2006, TeleCayman provided a Reply to the Answer.

6. Via an email sent 23 August 2006, Authority staff requested, among other things, that TeleCayman and C&W provide the Authority with copies of the RFPs that were the subject of the Application.
7. In a series of subsequent letters, TeleCayman provided the requested documents and C&W declined to comply with the staff request.

Authority Analysis and Determination

Service Categorization

8. C&W submitted that MPLS is an Internet Protocol-based technology rather than a service and that C&W will use MPLS to add quality of service to its IP-VPN service. C&W stated that its IP-VPN service allows customers to create their own private networks over the public Internet.
9. The Authority notes that the description of MPLS given by C&W was inconsistent with an earlier briefing given to the Authority staff by C&W staff and with the Authority's own understanding of the technology.
10. Based on C&W's Answer, TeleCayman changed its view regarding the correct categorization of C&W's MPLS service and suggested that it should be a Category 1 service or, if not Category 1, then a Category 3A service.
11. The Authority notes that in a 8 September 2006 letter to the Authority regarding C&W's IP-VPN QoS Service, C&W identified that it was converting its original IP-VPN service into a fully-managed IP-VPN QoS service in order to meet the guaranteed quality-of-service requirements of its corporate customers. C&W stated that the new IP-VPN QoS offering will be provided over an MPLS-enabled purpose-built regional network and not over the Internet. In addition, C&W stated that its IP-VPN QoS service offers the same levels of quality-of-service as ATM.
12. The Authority considers that this latter explanation correctly describes C&W's service offering and concludes that, in this circumstance, MPLS is a technology that enables C&W to provide Quality of Service guarantees and prioritization of traffic. C&W has used MPLS technology to implement a service offering called IP-VPN QoS. The Authority determines that the new IP-VPN QoS service is significantly different from the old IP-VPN service which was provided over the Internet with the quality-of-service for traffic being on a "best effort" basis.
13. In the Authority's view, a service with a guaranteed quality-of-service provides similar functionality as that provided by IPLC or Frame Relay services. These are categorized as Category 1 Services. However, the Authority notes that paragraph 32 of C&W's Licence states that an ICT Service shall only be included as a Category 1 Service if the Authority determines that there is not sufficient competition for the ICT Service and that the ICT Service is of a non-discretionary nature such that price cap regulation is appropriate. The Authority is not of the view that the IP VPN QoS service is of a non-discretionary nature.
14. The Authority notes that Category 2 services are re-classified to Category 3 once a licensee other than C&W starts to commercially provide the service and the

Authority notes that TeleCayman has offered to provide an MPLS-enabled service to, at least, two corporate customers.

15. However, as the Authority has no information on the degree of competition for MPLS-enabled services, the Authority is of the view that the new IP-VPN QoS service is appropriately categorized as a Category 3A service.
16. In its 8 September 2006 letter notifying the Authority of the IP-VPN QoS service, C&W proposed that the new service be classified as a Category 3A service. The Authority notes that paragraph 20.1(a) of C&W's Licence states that, for sub-category 3A services, "C&W is required to publish all of its rates, terms and conditions (in a manner that is easily accessible and clearly indicates to users what terms and conditions apply to each ICT service." The Authority determines that C&W's submission of 8 September 2006 does not satisfy this requirement and C&W is hereby directed to forthwith file complete tariff pages containing the full rates, terms and conditions for the IP VPN QoS service with the Authority and to make those tariff pages available on the C&W website.

C&W Licence Requirements

17. In its Application, TeleCayman submitted that C&W should provide tariffs for MPLS and offer such services in accordance with tariffs.
18. C&W responded in its Answer that, at that time, C&W was not providing MPLS-based IP-VPN services to customers, although it intended to do so in the near future once the necessary regulatory requirements and technical and back-office arrangements had been completed. Rather, C&W stated that, in response to the RFPs, it proposed only existing tariffed services at existing tariffed rates.
19. The Authority is disappointed by C&W's response to its request for information. Whilst understanding some of C&W's concerns, the Authority does not share C&W's interpretation of the relevant legislation. However, because the Authority was able to review the copies of the RFPs that were issued by the potential customers and that were provided to the Authority by TeleCayman, the Authority concludes that there would be no benefit in pursuing the matter further at this time. Having completed this review, the Authority has determined that there is nothing to support TeleCayman's complaint that the RFPs could only properly be responded to through deployment of an MPLS-enabled solution. A non-MPLS enabled solution was not prohibited by either RFP.
20. There therefore are no grounds to conclude that C&W was non-compliant with its regulatory obligations.

Tied Sales

21. In its Application, TeleCayman stated that it had a belief that C&W was requested by one of the RFP issuers to reduce its pricing and that C&W agreed to address the RFP issuer's pricing request provided the RFP issuer subscribed to C&W Internet and voice services.

22. In its Answer, C&W stated that the voice and Internet services that C&W supplies to the RFP issuer are provided under separate contracts.
23. In its Reply to C&W's Answer, TeleCayman stated that its issue is whether C&W engaged in a discussion with a potential customer that it would reduce its price to a competitive bid on condition that the potential customer take other services.
24. The Authority notes that TeleCayman has provided no evidence to support its belief. Therefore, the Authority has insufficient evidence on which to form reasonable grounds for suspecting that C&W has engaged in tied sales.

CJFS Pricing

25. TeleCayman made two requests regarding the CJFS pricing. First, in its application, TeleCayman requested an Order that it be provided by C&W with E1 capacity and pricing on the CJFS cable system at the lesser of a cost oriented rate or 20% less than the rate allegedly offered by C&W in response to, what TeleCayman characterizes as, the MPLS bids. Second, in its 18 July 2006 letter, TeleCayman submitted that there are reasonable grounds for suspecting that C&W has infringed the section 36 (and section 40) prohibitions on agreements that distort competition and behaviour that is an abuse of dominant position.
26. TeleCayman claimed that after, initially quoting prices to TeleCayman for CJFS capacity, C&W reduced its prices, failed to advise TeleCayman, and then used those reduced prices to respond to one of the RFPs.
27. In support of its claims, TeleCayman provided a number of email exchanges between itself and C&W regarding the CJFS pricing. In particular, TeleCayman references the email of 23 March 2006 from Mr. Andy Tybell of TeleCayman to Mr. Graham Scott of C&W as demonstrating that C&W must have been aware that the TeleCayman request for quotes was related to specific TeleCayman retail activity.
28. In its Answer, C&W indicated that:
 - a. on 20 April 2006, TeleCayman requested and received quotes for an E1 IPLC,
 - b. on 29 May 2006, C&W internally approved new prices for capacity on CJFS based on a recently-completed upgrade, and
 - c. on 14 July 2006, TeleCayman requested and received quotes for capacity on both CJFS and Maya-1.
29. C&W stated that the E1s it offers are provided under tariffs and all are offered to carrier customers at a 20% discount off the retail price. C&W also stated that, in addition to those retail services, C&W offers carrier customer Cable Capacity Leases, including E1s on CJFS, that are not offered to retail customers.
30. C&W's Answer stated that none of the C&W quotes to TeleCayman were for the bids in question but were simply C&W's responses to TeleCayman's request for prices.

31. The Authority has reviewed the email exchanges provided by TeleCayman and concludes that C&W responded within reasonable timeframes to TeleCayman's requests. In the Authority's view, the 23 March 2006 email referenced by TeleCayman could reasonably be interpreted as a dual purpose email: first, the TeleCayman inquiry regarding CJFS capacity pricing and second, an offer by TeleCayman to "propose something" that C&W may consider putting in its response to one of the RFPs.
32. The Authority has no evidence before it that, in the relevant time period, C&W knew that TeleCayman was preparing a quote in response to one of the RFPs that would include, as an integral component, capacity on CJFS. Therefore, the Authority concludes that there is not sufficient evidence to form reasonable grounds for suspecting that C&W has engaged in behaviour that distorts competition or is an abuse of any dominant position.
33. However, the Authority considers that C&W is under a continuing obligation to make certain that it notifies carrier customers of price changes in a timely manner. Therefore, C&W is hereby directed to ensure that it advises other service providers of price reductions in the facilities and services normally used by other service providers at the time of those price reductions.
34. Regarding TeleCayman's request in its Application for revised rates for capacity on the CJFS, the Authority does not find any evidence that C&W is not meeting its current regulatory obligations and the Authority is not persuaded that any change to those obligations is appropriate.

Conclusion

35. For the above identified reasons, the Authority hereby denies the requests in TeleCayman's Request.