



CABLE & WIRELESS

Cable and Wireless (Cayman Islands) Limited
P.O. Box 293GT
Grand Cayman
Cayman Islands
British West Indies

Office: +1 (345) 949-7800
Fax: +1 (345) 949-7962

Our Ref: GRCR / COMP 8.7
31st July, 2006

Mr. David Archbold
Managing Director
Information Communications Technology Authority
P.O. Box 2502GT
3rd Floor Alissta Towers
George Town
Grand Cayman

Dear Mr. Archbold:

Re: TeleCayman's Determination Request of 11 July 2006

1. Pursuant to the Authority's 13 July 2006 and to section 6(2) of the *Information and Communications Technology Authority (Dispute Resolution) Regulations, 2003* (the "Regulations"), Cable and Wireless (Cayman Islands) Limited (C&W Cayman) is pleased to provide the following Answer to the 11 July 2006 Determination Request (the "Request") filed by TeleCayman Limited ("TCL"). In that Request, TCL requested declarations that C&W Cayman's MPLS offering is a Category 2 service, and that C&W Cayman engaged in anti-competitive practices (specifically, tied sales). TCL also requested lower prices for CJFS capacity and an order for an expedited process pursuant to the Regulations.
2. TCL subsequently filed a letter on 18 July 2006 providing additional information and an additional complaint alleging anti-competitive pricing practices with respect to CJFS capacity.
3. The request for an expedited process was determined by the Authority in its letter of 13 July 2006, and C&W Cayman will not address it here. The other requests will be answered in turn below.

REDACTED VERSION

Categorization of MPLS Service

4. The TCL request itself betrays TCL's misunderstanding of MPLS, and the statement at paragraph 2 of the Request, that "MPLS is a private IP enabled network service and not an Internet service", is fundamentally in error.
5. "Multi-Protocol Label Switching", or "MPLS", is an Internet Protocol-based technology, not a service.¹ Rather, it is deployed in IP networks in order to support or enhance services, by allowing service providers to offer improved quality of service and by allowing customers to prioritize their traffic depending upon their specific requirements.
6. MPLS enhances an IP network by adding full quality of service ("QoS") functionality and the ability to uniquely classify traffic using a predefined Class of Service ("CoS"). It does this by attaching a small label to each data packet that identifies the route that packet must take on its trip through the network. This enables the packet to be transferred faster through the network than using traditional routing and allows packets to be prioritized as they travel to their destination, including allowing the network to detect and quickly re-route traffic around faults. It also allows application data to be tagged and given a priority level (CoS).
7. Some of the other advantages of MPLS technology are that it works over existing access technologies, and is fully compatible with all IP applications and equipment. In addition, it is less complicated than ATM technology but offers the same levels of QoS.
8. In this particular case, C&W Cayman has joined with affiliates in the Caribbean region to deploy MPLS technology in order to support and enhance its existing IP-VPN service. Businesses that want the ability to access corporate data quickly, securely and economically between locations that are often geographically dispersed have two basic choices - establish a dedicated, private network to connect those sites, or establish a Virtual Private Network based on IP technology. C&W Cayman's IP-VPN service allows customers to easily create their own private networks over the over the public Internet to facilitate site to site connectivity and remote user access. C&W Cayman will use its MPLS platform to add QoS to its IP-VPN offering, but the service will remain a "Virtual Private Network based on IP technology" connecting geographically-dispersed corporate locations.
9. It should be noted, though, that the deployment of C&W Cayman's MPLS platform is not yet complete. As a result, C&W Cayman does not understand the origin of TCL's comment that "at present only C&W has MPLS customers". At the present time, C&W Cayman is not providing MPLS-based IP-VPN services to customers, although it intends to do so in the near future, once the necessary regulatory requirements and technical and back-office arrangements have been completed.

¹ Similarly, "Internet Protocol" is not a service, but a technology that can be deployed to support or enhance existing services such as "international voice".

10. C&W Cayman's IP-VPN service has been listed in Annex 5 of its ICT Licence as a Category 3 "Value Added Service" since C&W Cayman was issued its new licence in 2003. C&W Cayman submits, therefore, that its IP-VPN service is and remains a Category 3 service, under the terms of Annex 5 of its ICT Licence.
11. C&W Cayman also notes that the only Category 2 service it is offering at this time is "Dial-Up Internet" service. Except for the fact that both employ Internet Protocol in some fashion, C&W Cayman's IP-VPN Service is in all respects materially different from Dial-Up Internet Service.

Tied Sales

12. TCL alleges C&W Cayman engaged in tied selling, contrary to section 40 of the *Information and Communication Technology Authority Law* (2004 Revision) (the "Law") in its response to an RFP by # #. However, TCL does so on "belief", and advances only as evidence the fact that the response to an RFP addressing MPLS only, also included Internet and voice services. Unfortunately, TCL's belief is in error.
13. First and foremost, the fact that a response to an RFP might include services other than those requested in the RFP should come as no surprise to TCL. It is open to any service provider to offer to any customer more than they requested, i.e., to "up-sell" the customer, if the service provider believes the offer provides better value for money. Conversely, it is open to the customer to reject (or accept) any offer that does not fall squarely within the terms of the RFP.
14. Second, in this particular case, C&W Cayman was not the direct responder to the # # RFP. Rather, Cable and Wireless Bermuda Limited was responsible for responding to the RFP.² C&W Cayman's role in the bid was to commit to provide to the customer standard Frame Relay services at existing tariffed rates. Once the necessary regulatory requirements and technical and back-office arrangements for C&W Cayman's MPLS-enabled IP-VPN service have been completed, it is expected that the Cayman location will be integrated into the VPN serving the customer's other countries / locations, again at standard list prices.
15. Third, the voice and Internet services that C&W Cayman provides to # # in Cayman are provided under separate contracts. To the best of C&W Cayman's knowledge, these services are not included in the contract signed in Bermuda for VPN services.
16. Fourth, "tied selling" is more than simply making two services available together. A tied sale is where the sale of one product or service is made conditional on buying another service as well. This is made explicit in paragraph 40(2)(d) of the Law which reads:

² C&W Cayman understands that, similarly, TeleBermuda Inc., and not TeleCayman Limited, was responsible for responding to the RFP.

“making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.”

17. However, C&W Cayman offers its IP-VPN, Internet access and voice services available on a stand-alone basis. They are not, therefore, “tied” to each other. It may be that, from time to time, C&W Cayman might develop bundles of two or more of its services. “Bundles”, however, are not the same as “tied selling”. Further, C&W Cayman notes that bundles are not *per se* illegal, and, should it do so, C&W Cayman will develop its bundles in full compliance with the terms of the Law and of its Licence.
18. As a result, it is a stretch to argue C&W Cayman contravened any tied-selling provisions of the Law.

Prices for CJFS Capacity

19. Somewhat inconsistently with the rest of the Request, TCL also includes a request for specified pricing for capacity on CJFS, apparently because “a significant portion of the # # bid involved capacity on the CJFS cable system.” TCL also complains about high prices and a supposed inability to get “a complete quote” from C&W.
20. C&W Cayman is at a loss to understand what TCL means by its statement that the # # bid involved capacity on CJFS, and that TCL should be advised of the price quoted for such capacity. “Capacity” on CJFS is made available to customers in the form of IPLCs to Jamaica, for retail customers, and in the additional form of Cable Capacity leases, for carrier customers. However, neither of these involves MPLS technology. Further, neither was quoted to # # in response to their RFP. Further, if the # # bid had involved an IPLC, C&W Cayman would have quoted its standard retail tariff prices for IPLCs.
21. C&W Cayman confirms that, if TCL is interested in an IPLC, these are available at a wholesale discount of 20% off the standard retail tariff prices, and TCL is welcome to contact C&W Cayman’s Carrier Services for more information.
22. With respect to the question of supposedly high prices and incomplete quotes, in actual fact, C&W Cayman’s Carrier Services provided to TCL a “complete quote” on # #, based on the prices in effect at the time. This issue will be addressed in greater detail below.

The 18 July 2006 Follow-Up Letter

23. The Follow-Up Letter is misleading to say the least. It suggests that C&W Cayman revised its pricing for CJFS capacity in response to TCL’s Request and to various

reports in the local media, and forwarded the new pricing other than in response to a TCL request for such pricing.

24. In actual fact, C&W Cayman has been highly responsive to TCL's requests for quotes all along.

a. #

#.

b. #

#.

c. #

#.

d. #

#.

25. The quotes to TCL noted above are attached to this letter.
26. It should also be emphasized that the new prices for Cable Capacity Leases were driven by the upgrade to the CJFS cable system, which increased the available capacity from an STM3 to an STM16, lowered the per-unit cost of the system, and enabled C&W Cayman to pass those lower costs through to carrier customers in the form of lower prices. The upgrade and these prices had nothing to do with TCL's Request or any other TCL activity.
27. C&W Cayman notes that TCL's comparison of the April and July quotations is not appropriate, as they are not comparing the circuits of the same capacity. In April 2006, the prices for an E1 and a DS-3 Cable Capacity Lease, each on a one-year contract, were approximately \$10,000 and \$28,000 per month, respectively. In July 2006, after the upgrade in capacity on CJFS of a factor of 5 to 1, the prices for the same services were \$2,400 and \$12,000, respectively.
28. The Follow-Up Letter is also misleading in that it suggests that there was a connection between the new Cable Capacity Lease pricing and TCL's bids to provide services to #

#.

29. Finally, the Follow-up Letter again suggests that C&W Cayman provided pricing for E1 circuits on CJFS to #, and that C&W Cayman would be in "serious breach" of its Licence and of the regulatory regime if it did not offer TCL a 20% discount off of those prices. C&W Cayman refutes either suggestion.
30. The retail E1s that C&W Cayman offers are DPLCs, IPLCs and DIA circuits. Each is offered under separate tariffs. None of them include carriage on CJFS as a contractual term of the service, although it is reasonable to assume that an IPLC from Cayman to Jamaica would be carried on CJFS. All of these are offered to carrier customers at a 20% discount off the retail price.

31. In addition to these retail services, C&W Cayman also offers carrier customers Cable Capacity Leases, including E1s specifically on CJFS. These services are not offered to retail customers (and were not offered to # #).

32. #

3

#

Confidentiality

33. C&W Cayman is filing portions of this submission, and the attachments to this letter, in confidence with the Authority. Much of this information relates directly to quotations and other dealings between C&W Cayman and TCL on a carrier-to-carrier basis, and it protected by the terms of a Non Disclosure Agreement in place between our two companies. Other information relates to C&W Cayman's dealings with customers or potential customers. It would be inappropriate to disclose either type of information to the general public. C&W Cayman notes that, notwithstanding the foregoing, TCL has chosen to place some of this information on the public record, and trusts that TCL will be more careful in the future.

34. A copy of this confidential submission will, of course, be provided to TCL. A redacted version, with all confidential information replaced by "###", will be provided for the public record.

Conclusion

35. C&W Cayman requests that the Authority decline to deal with TCL's Request, on the basis that TCL has not demonstrated any legitimate grounds for a complaint (1) with a

³ #

#.

REDACTED VERSION

proper understanding of the MPLS platform, there is no basis for considering "MPLS" to be a service, let alone a Category 2 service; (2) C&W Cayman has not engaged in any tied selling of so-called "MPLS" services with others; and (3) TCL was aware that prices for capacity on CJFS would be coming down and is welcome at any time to contact C&W Cayman's Carrier Services to inquire as to rates for capacity on CJFS.

Yours sincerely,
Cable & Wireless (Cayman Islands) Ltd.

"Signed"

Rudy B. Ebanks
Chief Regulatory & Carrier Relations Officer

Cc: Mr. Timothy P. Adam, C.E. Cable & Wireless (CI) Ltd.
Mr. Ian Tibbetts, Chief Operating Officer, Cable & Wireless (CI) Ltd.
Mr. Frans Vandendries, Vice President Regulatory Affairs, Cable & Wireless (CI) Ltd.