



ICT Decision 2004-5 (Interim)

Grand Cayman, 20th May 2004

Interim Decision and Further Process for the Indirect Access Public Consultation (CD (2003) 7)

Introduction

1. On 11 November 2003 the Information and Communications Technology Authority (“the Authority”) launched a public consultation to determine whether indirect access should be mandated. The purpose of this public consultation was to evaluate whether mandating some or all Licensees to offer indirect access services would contribute to the development of effective and sustainable competition for international telecommunications services in the Cayman Islands (CD (2003) 7). Indirect access is defined and described in the Authority’s consultation document as follows:

Indirect access is an arrangement between the end customer’s international service provider and the provider with local exchange facilities to the end customer’s premises. Under this arrangement, the local facilities provider originates and transports the international services from the end customer’s premise to an agreed point of interconnection between itself and the customer’s selected international service provider. The international service provider makes arrangements to transport and terminate the call on international network facilities.

Indirect access allows licensees other than the end customer’s access and local services provider, and who have international network arrangements, to offer international services (including carrier pre-subscription, call-by-call selection, and voice over IP international services) to the end customer.

2. The consultation document sought comment from interested parties on, among other things, two central issues:
 - a. What are the criteria most relevant to determining whether it is appropriate to mandate indirect access at this time?
 - b. If the Authority decides to mandate indirect access at this time, what are the appropriate criteria to determine the scope of this mandate, e.g. to which Licensees or category of customers should the mandate apply?
3. Hence, the purpose of this proceeding is not to address, preclude, or interfere with voluntary, market-based provisioning of indirect access services. Instead, the

determination contemplated in this proceeding pertains to whether it is appropriate to mandate indirect access and to which Licensees and/or what services the mandate should apply. As is discussed in this letter, the decision to mandate indirect access services must be based on quality information, sound analysis, and a finding, based on this analysis, that the economic benefits of mandating carriers to provide indirect access exceed the economic costs of complying with the mandate.

Process

4. The Authority initially invited interested parties to file comments in this proceeding no later than 12 December 2003.
5. On or before 12 December 2003, the Authority received comments from four parties: Cable & Wireless (Cayman Islands) Ltd. (“C&W”), Digicel Cayman Ltd. (“Digicel”), North Rock Communications (Cayman) Ltd. (“North Rock”), and TeleCayman Ltd. (“TeleCayman”).
6. On 17 December 2003, Blue Bison filed its comments. On 18 December 2003, C&W filed an addendum to its initial comments. On 24 February 2004, Blue/Cool Call filed its comments.
7. The Authority received a second set of comments from TeleCayman, on 13 February 2004, which contradicted TeleCayman’s initial comments, filed 12 December 2003. In its latter comments, TeleCayman offered no explanation for its two separate submissions. The Authority sent a letter to TeleCayman dated 19 February 2004, requesting that the company clarify its conflicting views no later than 1 March 2004. TeleCayman filed its comments on 5 March 2004. WestTel Ltd. (“WestTel”) filed its comments (dated 5 March 2004) on 4 March 2004.
8. On 10 March 2004, the Authority issued revised procedures to invite parties that had not already filed comments in the proceeding to submit their comments by 16 March 2004. Given the passage of time, the Authority also provided parties that had previously filed comments an opportunity to amend and/or to clarify their previous comments. Finally, the Authority invited all parties that filed comments in this proceeding to submit reply comments by 6 April 2004.
9. On 16 March 2004, Wireless Ventures (Cayman Islands) Ltd. (“Wireless Ventures”) filed its comments. The only party to file reply comments in this proceeding was C&W, which did so on 6 April 2004.

Comments by Interested Parties

10. Collectively, the parties offer both support for and opposition to mandating indirect access services in the Cayman Islands at this time, and propose a variety of forms of mandating indirect access in the event the Authority rules in favour of such a

mandate. The following summarises the salient points made by each party in its comments.

C&W, Digicel, TeleCayman

11. C&W and Digicel oppose mandatory provision of indirect access services at this point in the liberalisation process. TeleCayman's submissions appear to support this position as well. C&W, Digicel, and TeleCayman, however, disagree with each other on the type of indirect access mandate that should be adopted in the event the Authority decides to mandate such services. C&W concludes that if the Authority requires carriers to offer indirect access, it should apply equally to all facilities-based carriers, including mobile wireless carriers.
12. In contrast, Digicel and TeleCayman propose an indirect access mandate that applies to only a subset of facilities-based carriers. Digicel contends the mandate should be limited to fixed-line and fixed-wireless facilities-based carriers, but should exclude mobile wireless facilities-based carriers. TeleCayman's proposal is unclear, but appears to advocate that a mandate be limited to facilities-based carriers that control a sufficient share of outbound International Direct Dial ("IDD") traffic and have not reduced the price of their retail IDD services.
13. C&W and Digicel oppose mandatory provision of indirect access on the grounds that such action is premature. They contend that the decision to mandate indirect access services must be preceded by a thorough and robust assessment of the costs and benefits of mandatory indirect access. The parties contend, however, that such an assessment cannot be conducted properly until the existing liberalisation policies are adopted and the impacts of these policies are evaluated. In particular, a central element to measuring the net benefit of mandating indirect access, contend C&W and Digicel, is the identification of an existing "market failure." They indicate that the IDD and mobile services markets were only recently liberalised and sufficient information does not yet exist to make an accurate determination that a market failure is or is not present. Hence, their proposals do not foreclose the adoption of an indirect access mandate, but articulate that it not be considered until sufficient information is available to assess the viability of competition through current means, namely facilities-based competition and resale.

WestTel, Blue Bison, Blue/Cool Call

14. WestTel, Blue Bison, and Blue/Cool Call favour adoption of an indirect access mandate that applies equally to all facilities-based carriers, including mobile wireless carriers. The basis for their proposals is that it will offer greater choice to consumers and stimulate competition for IDD services. Furthermore, Blue Bison contends that there are additional benefits in that it will "allow fixed access providers to offer complimenting [sic] services" to their customers; namely, "as consumers become interested in indirect services," this will stimulate demand for other services.

15. WestTel points to resale regulation in the United States and asserts that it “does not believe market-driven resale options will appear in the Caymans without the Authority [mandating] an Indirect Access regime.” WestTel concedes that it is not yet possible to determine how facilities-based competition will develop or whether it will offer a sufficiently effective means of competition.

Wireless Ventures

16. Wireless Ventures favours the application of an indirect access mandate only to C&W’s mobile and fixed networks. Wireless Ventures explains that any expansion to this application should await further development of a fully competitive telecommunications marketplace. Wireless Ventures concludes that “a fully competitive telecommunications marketplace in the Cayman Islands will likely preclude the need for an expanded indirect access mandate.”

North Rock

17. North Rock favours adoption of an indirect access mandate, but appears to limit its proposed application to fixed-line and fixed-wireless facilities-based carriers, excluding mobile wireless carriers.

Legislative & Regulatory Framework

18. In reaching a determination in this proceeding, the Authority is guided the ICTA Law, 2002, as amended (“the ICTA Law”) and the agreement between the Cayman Islands Government, C&W and the Authority, dated 10 July 2003 (“the Liberalisation Agreement”). The Liberalisation Agreement allows for the implementation of an indirect access mandate only after the Authority has “determined after consultation with interested parties that the benefits to consumers from such mandate would outweigh the cost to all parties ...”
19. The ICTA Law directs the Authority to, among other things, “promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so...[and] promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure.” Hence, the Authority’s assessment of indirect access is to be evaluated in the context of whether it will contribute to or detract from the development of effective competition and efficient, economic and harmonised utilization of ICT infrastructure.

Authority’s Analysis

20. Based on the information on record, there appear to be a set of well-defined benefits and costs that are central to evaluating the net value of mandatory indirect access. The following lists are not an exhaustive evaluation, but offer an initial framework comprised of the primary costs and benefits that are apparent ex ante. Additional

factors may likely be germane to the investigation, but may not become evident until the investigation proceeds; and/or the scope of the mandate is defined.

21. As an initial matter, the cost-benefit analysis must first assess how the market will develop, but for the mandate. In other words, it is important that the cost-benefit analysis distinguishes between those effects caused by external factors, such as market liberalisation and the increasing substitutability of fixed and mobile international services, from those effects expected to result from mandated indirect access services. Only after these external factors are identified can one accurately evaluate the costs and benefits of mandating indirect access.
22. The principle benefit of mandating indirect access articulated in the parties' comments is that it will encourage market entry and offer customers a greater choice of providers. Market entry is not a benefit in and of itself. Rather, it is the Authority's view that market entry is a benefit to consumers when it is sustainable and based on appropriate economic incentives. The benefits of sustainable entry include:
 - an increased diversity of international service offerings;
 - improvements in the service quality of international service offerings;
 - reduced prices for international service offerings; and
 - facilitating entry into adjacent markets, for services such as enhanced features.
23. There are two principle categories of cost from adopting an indirect access mandate. These categories are the following:
 - Implementation and transactions costs. The implementation costs include the expenditures necessary to modify the carriers' internal systems and processes, and costs incurred by the consumer to reprogram their CPE and become educated on the effects of the mandate.
 - Distortion of economic incentives. This effect hinges on the price carriers charge for providing indirect access services to other Licensees. In particular, if the rate is set above or below true economic cost, this will affect the development of facilities-based competition. If, for example, the price is not compensatory, then this may discourage facilities-based carriers from maintaining, improving and expanding their networks in existing markets.
24. An evaluation of the development and extent of competition for international services is central to a determination in this proceeding. From this examination derives the potential benefits of an indirect access mandate. For instance, if there is evidence that competition for international services is absent or not developing as anticipated, then a properly structured indirect access mandate may offer substantial benefit to consumers. C&W and Digicel characterize such evidence as an indication of "market failure." The Authority concurs with these parties' characterization of market failure, and the prerequisite that there is an existing market failure that is unlikely to be addressed by the current mechanisms of facilities-based competition (specifically, in

the local exchange market) and resale, before concluding that an indirect access mandate is warranted.

25. A principle argument for requiring carriers to offer indirect access services is that it will stimulate entry of international service providers which, in turn, will benefit consumers by providing them with IDD alternatives that might not have existed absent an indirect access mandate. The Authority appreciates the potential magnitude of this benefit. For instance, Digicel and C&W refer to the UK and United States to clarify the different contexts under which indirect access was mandated in those jurisdictions, and the cost and complexity of adopting such indirect access regulations. However, it is also important to note from these examples that when indirect access regulations were eventually adopted they appear to have provided an unequivocal net benefit to consumers in promoting competition for long-distance and international services.
26. Furthermore, the limited evidence on the record appears to suggest that there may be insufficient competition for international services in the Cayman Islands and that an indirect access mandate may be appropriate to address the lack of competition in this area. For instance, since the liberalisation of international services on 1 April 2004, and as of the date of this letter, serious competition has yet to emerge; two new mobile providers began commercial operations on 3 March 2004 and there are currently no alternate fixed-line providers offering IDD services in the Cayman Islands. C&W still holds the majority market share in both fixed and mobile markets.
27. While C&W asserts that “the entry of various new mobile and fixed domestic service providers will ensure the development of a vigorously competitive market in the Cayman Islands,” it is unclear whether mobile and fixed-line international services are effective substitutes. Currently, mobile services lack some of the critical features required by customers, such as the high quality of service offered by fixed-line service inside all buildings, and, for business customers in particular, speaker phone functionality. In the Authority’s view, these shortcomings, among others, may limit the substitutability of mobile and fixed-line international services.
28. In addition, the Authority notes that while C&W is mandated to resell its retail international services under the terms of the Liberalisation Agreement, there are currently no Licensees reselling C&W’s IDD services. The Licensees that had previously obtained C&W’s wholesale IDD services did so under the pre-liberalisation regime (i.e., before 1 April 2004) in order to offer their customers mobile IDD services. After 1 April 2004, these Licensees immediately made alternate arrangements with other international facility providers. This evidence, albeit limited, suggests the absence of a viable and effective wholesale IDD regime.
29. Finally, the Authority notes that the absence of number portability combined with no mandated indirect access, may inhibit the roll-out of competition in the fixed-line telecommunications market. For instance, an entrant to the international services market must not only offer international services but also local exchange services in

order to compete against the incumbent. Furthermore, it must offer this service bundle at a price that is sufficient to overcome customer inertia including convincing the customer to change his existing telephone number.

Findings

30. Given the above, the Authority concludes that indirect access should not be mandated at this time.
31. Nevertheless, the Authority considers that the introduction of an indirect access mandate may be of benefit to the Cayman Islands, depending on, among other things, the scope of the mandate and the timing of its introduction.
32. In order for the Authority to determine whether indirect access should be mandated, the Authority must obtain quality information regarding the current and near-term state of competition for mobile and fixed-line international services. Generally, this would entail information that quantifies the size and the Licensees' shares of the international services marketplace, the rate of change in the size of the international services marketplace, the cost of providing international services, and international service rates. This information is required, at a minimum, in order for the Authority to establish a baseline against which the benefits of introducing mandated indirect access can be assessed.
33. C&W, Digicel, TeleCayman, and Wireless Ventures state that an effectively competitive international services marketplace in the Cayman Islands may preclude the need for adopting or expanding an indirect access mandate. If effective competition develops and is sustainable, an indirect access mandate may not benefit and may in fact impede the development and sustainability of other forms of competition in the Cayman Islands. The Authority, however, reemphasizes that sufficient information does not yet exist to determine whether this outcome is likely to occur.
34. The Authority appreciates the potential investment distortions engendered by mandatory indirect access. Accordingly, in the event that the Authority issues a determination mandating indirect access, it is of the view that a facilities-based requirement may offer a method of limiting any such distortion. In particular, should indirect access be mandated, the Authority is minded, at this time, to limit the availability of indirect access services to those Licensees that:
 - a. hold a Fixed Telephony or Internet Telephony license and provide publicly available international ICT services to retail subscribers;
 - b. have interconnection arrangements with an access network operator that is obligated to provide indirect access;
 - c. can deliver calls to all international destinations; and
 - d. have relevant numbering codes from the Authority.

35. The Authority notes that all parties supported these criteria as being appropriate in the public consultation proceeding. Among other things, the above-noted criteria should discourage resellers that are only interested in “cream-skimming”, as they would require a minimum amount of investment and facilities to provide international services.

Further Process

36. The Authority will be issuing interrogatories shortly to all facilities-based Licensees for information on their international services, and the anticipated costs of implementing various forms of an indirect access mandate. The purpose of the interrogatories is to compile a sufficient record regarding the current and near-term state of competition for international services, and the potential direct and indirect costs of implementing mandated indirect access services.