

The Managing Director
Information and Communications Technology Authority
P.O.Box 2502GT
Grand Cayman
Cayman Islands

29 January 2004

Dear Mr Archbold

C&W Wholesale and Carrier Services

Thank you for consulting on the above. We are grateful for the extra time you have allowed us to reply to the consultation.

Wholesale and carrier services, as defined by the Information and Communications Technology Authority (the "Authority"), are clearly an important part of the competitive mix for the communications industry in the Cayman Islands. In commenting on how they might be regulated we have tried to bear in mind the possible impact that regulation of these services will have on the telecommunications sector in the Cayman Islands as a whole. We believe that there is a risk, when looking at price controls within sub-segments of the market, that one area might be favoured and benefit from regulatory intervention in the short term at the expense of the greater well being of the sector overall. As we are sure that the Authority will agree, it is the overall health of the sector which is paramount.

We believe that the vast majority, if not all, of the possible benefits from liberalisation to the Cayman Islands economy, customers of telecommunications services and industry will be delivered if all the Authority's actions are consistent with the, in our view, two key aims of promoting competition and encouraging efficient investment. We hope, therefore, that the outcome of this consultation will be fed into and improve the Authority's overall model for ICT regulation in the Cayman Islands. That model can then be used as a basis for reaching any decisions about action with respect to the particular areas of wholesale and carrier services.

Consistent with a holistic approach to regulation we think that when approaching the question of how to control wholesale and carrier prices a **value creation** based approach should be adopted. Rewards and therefore revenues for service provision should flow to the source of value creation for customers. Consequently, if it is demonstrated that customers would value one service twice as much as another, or value the part of the service provided by the network operator or wholesale provider twice as much, then twice as much of the reward should flow to the party generating the greater value. Using a value based approach, the correct proportion of revenues will then flow to, and can be invested in, developing services that are most valued by customers. This will maximize the benefits that can be generated from each dollar invested in the sector and maximise the efficiency of investment and the efficiency with which infrastructure is utilised.

In order to generate value, new entrants which are not providing their own networks will, as anticipated by the Authority, need access to the network of Cable & Wireless

("C&W"). We believe that access is justified given C&W's legacy monopoly position which is likely to remain relatively static for some time to come. C&W will retain a stranglehold over the customers of fixed line networks unless the Authority intervenes. Setting prices for wholesale and carrier services will be a difficult matter however. Digicel believes that this would have to be done in conjunction with a form of separation between C&W's network and retail arms. Merely regulating the wholesale price of services may not provide a level playing field as C&W will still have the advantage of the information it has gathered from customers as a part of its network service provision. This information can be passed on to C&W's sales and marketing departments within its retail arm to enable it to make more informed strategic decisions than competitors attempting to resell C&W's wholesale services. It is another mechanism by which a monopoly position can be levered from an upstream to a downstream area of C&W's business. If not addressed this could leave a retail competitor at a competitive disadvantage. We suggest potential solutions to this later in our response.

Any price controls should not discourage C&W from a reasonable level of investment in new and innovative infrastructure as existing and future wholesale services will depend on those investments e.g. a higher cost of capital could be used in setting wholesale prices for innovative services such as bitstream. We would therefore aim on the cautious side of regulating wholesale and carrier services provided the necessary separation in terms of information flows about customers exists. Any decisions about price regulation could then be reviewed at predetermined intervals.

Digicel would need to have sight of C&W's costs before it could provide more detailed observations about pricing.

Question 1

We think that the Authority should consider requiring the provision of a wholesale line rental product. The customers of fixed line service providers are more inclined to use an alternative service if they can obtain a single bill for their line rental and their resold service.

Question 2

Regulation 9 of the Authority law picks out two principal functions which, if fulfilled, will deliver the vast majority of the possible benefits from telecommunications services to the Islands. Those are the promotion of competition and the promotion of an efficient, economic and harmonized ICT infrastructure.

Wholesale regulation is likely to play a significant role in the development of competition to C&W. Wholesale service provision will provide a less risky mechanism for new entrants to generate the necessary revenue stream to maintain sustainable businesses, which will help them also to invest in infrastructure of their own. Very low wholesale prices could however undermine the case for network investment. We are sure that the Authority will be alert to this.

Given this context we would like to advance two principles which are of general application to the communications market including the approach for pricing in the wholesale market. Those are:

1/ Maximising overall communications market growth in the medium term (by medium term we mean 3 to 5 years);

2/ Stimulating investment and innovation.

Maximum market growth (in terms of real terms revenue growth), provided it does not reflect an unfair extraction of value from customers by a provider that is abusing a monopoly position, is most likely, we think, to reflect whether the Authority is achieving its goals for the telecommunications sector. Increased levels of investment and innovation across the market, both at the network and wholesale level are also key indicators. If the Authority were to regulate the network too severely when determining wholesale prices and did not incentivise innovative network development sufficiently, then the market for wholesale services might tend to become relatively stagnant over time with little new development, especially when compared to developments in the United States and leading European telecommunications countries.

The Authority suggests a principle that “wholesale prices should not be inflated to reduce competition in dependent markets”. We think that this is just one side of the coin. On this basis wholesale prices could be forced down to a level that undermines the network investment of even the most efficient network operator. Consequently we would add the wording “provided that this is balanced against the need to provide sufficient incentives for network investment”.

Question 3

Drawing partly on the comments we have made already we conclude that the additional principles below are required. One builds on those already suggested by the Authority.

Other requirements include:

1/ information about the launch of forthcoming wholesale services should be provided sufficiently far in advance to enable a reasonably effective reseller to have a retail launch simultaneously with C&W. In any event C&W should provide resellers with at least 4 weeks notice of the launch of new wholesale services.

2/ from a certain future date information gathered from customers by C&W as a part of network access provision should either be provided to all wholesale providers for marketing efforts (customers would need to be asked for their permission we believe); or should not be passed to C&W 's sales and marketing teams. Competition will have to take place on a level playing field if it is to succeed. However this cannot happen if for example, C&W were able to make a sale on 3 out of 10 approaches to potential customers rather than 1 out of 10 for a competitor, if this higher success rate was based on C&W's superior knowledge of potential customers resulting from its network operations;

3/ accounting separation should ensure transparency about C&W's costs of network and retail provision which are the basis for the C&W wholesale prices. Costs should be broken down by service in a manner agreed by the Authority that can be understood reasonably well by an external accountant. Without this information and the aid of industry's analysis of this information, we are concerned that C&W would be able to conceal the full truth about its pricing from the Authority. There is a case for general

internal structural separation which incentivises C&W's network services arm to see retail competitors in the same light as C&W retail. If this does not happen C&W retail will receive preferential treatment on an ongoing basis;

4/ the same fault repair times for competitor as C&W services.

Question 4

Digicel believes that the use of the term "carrier services" normally conjures up the idea of services such as interconnection and leased lines. In this sense it seems out with the normal application of the term in the telecommunications lexicon. Ideally, Digicel would prefer the Authority to use another expression along the lines of Associated Telecommunications Network Services (or Special Network Access). That said we will stick with the term carrier services for the purposes of this consultation.

We agree that given the structure of the legislation and the liberalisation agreement there is a category of C&W services outside the definitions of interconnection, retail and wholesale and that the Authority has the jurisdiction to intervene in these areas of C&W's business should it wish to do so.

Question 5

Digicel would like more clarity about what the Authority means by leased services. The Authority has recognized International Private Leased Circuits and Domestic Leased Circuits as retail services in the liberalization agreement and has provided for wholesale variants of them.

When considering undertaking any intervention in the realm of leased lines the Authority should bear the impact of bulk purchases in mind. In order to make any difference in the market place, wholesale prices for leased lines have to incorporate sufficient discounts for bulk purchases to ensure that a competitor would do better than simply buying at the retail discounted bulk price.

Digicel would like at this time to be able to provide a detailed analysis of which fixed line carrier services products it might want to obtain in the future from C&W. However, currently, as the Authority knows, our limited resources are predominantly focused on getting our mobile network up and running.

We can only suggest at this point that the Authority could have some preliminary discussions with C&W about whether in principle it would want to offer unconditioned local loops to competitors, or Indefeasible Rights of Use (IRUs) for cable access and on roughly what terms C&W would wish to do so. The latter would be of more interest to Digicel at this point in order that we could reduce the cost of our international conveyance.

Question 6

We reiterate the points we have made above about feeding the views gathered from this consultation into a holistic model for regulation on the Cayman Islands before reaching any conclusions for action. This applies equally for carrier services.

We feel that the above principles are correct for approaching the regulation of carrier services if they need to be regulated. Whether they need to be regulated should be assessed on a case by case basis.

We would add a provision that would ensure that the Authority agrees with C&W and the industry the terms on which competitors can and cannot obtain access to C&W buildings, racks/cages and other infrastructure to connect with the C&W network. Perhaps this could be achieved through a memorandum of understanding. This would be required in advance of any building access.

Let us take, for example, unconditional local loops as a possible proposition for regulated access. It might be difficult to assess what demand there would be for this product. Competitors may seek ULL provision from C&W in the hope that the prices will be regulated sufficiently hard to appear attractive and on the basis that it will be possible to obtain the necessary and timely building access. However that interest might melt away if the final decision by the regulator does not meet competitor expectations or if the incumbent is not forthcoming in terms of required access. It would therefore help the market if, should the Authority consider that a particular carrier service needs to be mandated, the Authority attempts to carry out a thorough consultation and first analysis of how the carrier service could be made available to competitors and the approximate prices on which that would occur. The Authority could then publish a firm proposal and competitors would have a good idea of whether it would be worthwhile asking C&W for ULLs. Such a process should be driven by the regulator and not be left to commercial negotiation. Commercial negotiation does not work, or tends to be tortuously slow and acrimonious, where the network provider has a monopoly position and consequently is disincentivised from negotiating.

Yours sincerely

Andrew Gorton
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Digicel Cayman Islands