



Information & Communications Technology Authority

Public Consultation

on

Wholesale and Carrier Services

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Wholesale and Carrier Services

Background

The Authority is of the view that the Liberalisation Agreement and Cable & Wireless Licence make reference to only three classes of services: retail, interconnection and wholesale (for resale). There are clearly a number of services which fall outside the definitions of these three categories. Such services are primarily those provided to other licensees, not for resale but rather as a component of their own services. For want of a better name, the Authority proposes to refer to these services as "Carrier Services", and to define the term by exception, i.e. "Carrier Services" means services, other than retail services and interconnection and wholesale (for resale) services provided by one licensee to another.

The Authority believes that it has the jurisdiction and good grounds to require the incumbent to provide wholesale and carrier services to other licensees, and for such services to be subject to regulation.

Categories of Service

Schedule 1 to the Liberalisation Agreement dated 10 July 2003 ("Agreement") between the Government of the Cayman Islands, Cable & Wireless (CI) Ltd. and the ICT Authority ("Schedule 1") sets out certain regulatory principles that are to be applied to the ICT sector in the Cayman Islands. Schedule 4 ("Schedule 4"), which is also incorporated as Annex 5 to Cable & Wireless' ICT Licence ("Licence"), covers in more detail certain tariff regulation and other matters.

1. Retail Services

Part 1 of Schedule 4 deals with Cable & Wireless' retail prices, where retail prices mean the rates that Cable & Wireless shall charge retail consumers for its services.

2. Interconnection Services

Part 5 of Schedule 4 covers Interconnection, where interconnection has the meaning given in the ICTA Law ("the Law") and includes infrastructure sharing as defined under section 48 of the Law. The Law defines interconnection to mean the physical or logical connection of public ICT networks of different ICT network providers.

3. Wholesale Services

Part 6 of Schedule 4 pertains to certain aspects of the regulation of wholesale services. The term "wholesale" is not explicitly defined in the Licence, Agreement or the Law. However, Part 6 contains the following statements:

- "64. ... C&W shall offer any service **to other licensed operators** on a wholesale basis if the Authority has issued a written direction requiring C&W to do so. The wholesale price of any service that is required to be offered **for resale** shall ...be:
- (a) ...
 - (b) ... C&W's **retail price** less a discount to reflect the **avoided retail costs** to C&W of providing that service.
65. ... Wholesale rates shall be adjusted with effect from the date that changes to the **relevant retail rate** take effect ...
66. ... If the wholesale price is lower than the cost of providing that service, the wholesale price shall be the **retail price** of that service ...
- 66.1 C&W shall not be required:
- (a) ...
 - (b) to make available on a wholesale basis any service **which it does not itself offer to retail customers, ..."**
- (emphasis added)

The Authority therefore believes that a reasonable interpretation of Part 6 is that it concerns services that:

- (a) C&W provides on a retail basis to its own customers;
- (b) Are priced at C&W's retail rates less a discount except for the circumstances listed in section 66. above; and
- (c) Are offered to other licensees,

so that other licensees may resell the same or substantially the same service to its own customers (i.e., act as resellers).

Based on the above criteria, some but not all of the services listed in Attachment 1 to Schedule 4 would be considered to be wholesale services. Two examples of wholesale (for resale) services are: Retail ADSL Internet Service Resale and IDD Resale.

The Authority notes that this interpretation of Part 6 is consistent with the Cable & Wireless response to the Authority's directive (now withdrawn) to make available International Private Leased Circuits (IPLCs) for Voice prior to February 2004. Cable & Wireless' response states, for example:

"The Main Agreement sets out in paragraph 64 of Schedule 4, the ICTA's general power to issue a directive to require the provision of a retail service to other licensed operators on a wholesale basis, including a discount on the price."

"..., C&W is not required to make available on a wholesale basis any service that it does not make available to retail customers."

4. Carrier Services

The Authority is of the view that services that do not meet **all** the criteria specified above are not "wholesale" services, and are not covered by the provisions of Part 6. For want of a better name, the Authority proposes to refer to these services as "Carrier Services", and to define the term by exception, i.e. "Carrier Services" means services, other than retail services and interconnection and wholesale (for resale) services provided by one licensee to another.

Examples of such services are:

- Unconditioned local loops – Some ISPs require such services in order to provide high-speed Internet access to individual subscribers
- Large capacity digital network – International carriers require high capacity international leased circuits, with no restriction at the foreign terminating end
- Dedicated leased circuits – National carriers require dedicated leased circuits in order to aggregate traffic from several sources
- Pay telephone basic access line service – Alternate providers of payphone service require pay telephone basic access line services in order to provide their own payphone terminals

A service listed in Attachment 1 to Schedule 4 that may be considered to be closer to the definition of carrier services, as defined above, is Internet ISP Connect.

Jurisdiction

The ICTA Law identifies the following principal functions of the Authority including, among others:

9. (3) (a) to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;

...

(h) to promote and maintain an efficient, economic and harmonised ICT infrastructure.

The Agreement states at clause 2.5:

“All ICT Services offered and all ICT Networks subject to licensure under the ICTA Law and operated by C&W are subject to regulation by the Authority. Nothing in this Agreement shall be taken to mean or imply any derogation of, or limitation in, the exercise by the Authority of all its duties, functions and responsibilities contained in the ICTA Law. The Authority’s discretion to regulate C&W shall not be limited in any way, save and except, and only to the extent specifically stipulated in this Agreement.”

With respect to wholesale services, section 64 of Schedule 4 states that C&W shall offer any service to other licensed operators on a wholesale basis if the Authority has issued a written directive requiring C&W to do so. In section 66.1, the parties agreed that C&W would not be required:

1. to offer wholesale access for traffic that neither originates, nor terminates, in the Cayman Islands;
2. to make available on a wholesale basis any service which it does not itself offer to retail customers; and
3. to make available wholesale services for which there is insufficient demand to justify the cost of development.

In section 69, the parties also agreed that C&W would not be required to offer mobile services on a wholesale basis unless, after 10 July 2004,

1. C&W was the only operator of a mobile network in the Cayman Islands; and
2. wholesale mobile services were reasonably requested by another licensee which, in the Authority’s view, such request would promote competition in the mobile market.

The balance of this Part of Schedule 4 deals with the maximum prices at which wholesale services are to be offered. The Agreement is silent on all other regulatory matters concerning wholesale services.

Carrier services, and the individual services that fall under that category, are not referenced in the body of the Agreement. However, some of the services in Attachment 1 to Schedule 4 are not offered on a retail basis and could be considered to be carrier services as defined above.

The Authority considers that its discretion to regulate Carrier Services is therefore not limited by the Agreement. Similarly, it considers its discretion to regulate Wholesale Services is limited only in respect of those matters detailed in Part 6 of Schedule 4.

Wholesale Services

Facilitating competition in the ICT market through resale is in the long term interests of end users because it may assist new entrants to overcome a number of obstacles to facilities-based entry, thereby promoting competition through infrastructure establishment. Resale entry enables new entrants to develop a customer base and brand identity, thus reducing the risks associated with high sunk costs of telecommunications facilities and the lead time required to develop a customer base. Resale entry is also capable of delivering the benefits of competition to consumers prior to the introduction of facilities-based competition.

Consistent with other jurisdictions that have liberalized their ICT markets, and pursuant to section 64 of Annex 5, the Authority therefore should require C&W to provide certain services to other licensees on a wholesale (for resale) basis.

Question 1 Among Cable & Wireless' retail services, are there services other than those listed in Attachment 1 to Schedule 4 that are required to be made available to licensees in order to facilitate resale competition?

Question 2 The principles for setting wholesale rates are set out in Schedule 4. The Authority contemplates applying the following additional pricing principles for wholesale services:

- wholesale prices should not discriminate in a way which reduces efficient competition; and
- wholesale prices should not be inflated to reduce competition in dependent markets.

Are the above additional principles appropriate? Are the above principles consistent with the ICTA Law and the wholesale regime set out in Schedule 4? Are there additional pricing principles in addition to those listed above and those set out in Schedule 4 that should be implemented?

Question 3 The Authority seeks comments on the whether the terms and conditions of wholesale services need to be reviewed and if so, the principles that ought to be used. Comment on the following principles for determining the appropriateness of proposed terms and conditions for wholesale services:

- wholesale services are to be made available on terms and conditions that are reasonable and non-discriminatory;
- when an ICT service is made available only to a limited group of customers, such a service is to be made available on a wholesale basis such that the wholesale service could be resold to the same limited group of customers that have purchased such a service in the past;
- wholesale services are to be provided with the same quality and in the same provisioning time intervals that C&W provides to itself; and
- absent prohibitions to the contrary, a competitor could lease residential telephone services and subsequently resell it to a business customer. Resale of services between categories of customers should be prohibited.

Indicate whether there are additional principles other than those listed above that should be contemplated.

Carrier Services

As carrier services have not yet been determined, the Authority seeks comments on what carrier services, if any, are required to be provided by C&W on a mandated basis and how such services should be regulated.

Question 4 Is the definition of carrier services set out in Section 4 "Carrier Services" above, an appropriate one?

Question 5 Are carrier services such as leased services and unbundled network elements required to be made available on a mandatory basis to licensees in order to facilitate the provision of their own services in a timely fashion and in an economic manner? If so, provide a detailed description of such services, why they are required to be made available, and the implications if such availability is not mandated.

Question 6 The Authority seeks comments on how carrier services should be regulated. Provide comments the following regime for regulating carrier services:

- Carrier service prices and terms and conditions would be subject to prior written approval by the Authority
- Carrier service rates would be priced at long-run incremental cost plus mark-up. In absence of an incremental costing model, C&W's

proposed rates would be based on its adjusted fully-allocated cost model.

- Carrier services would be provided in a manner that:
 - Maximizes the use of public ICT networks and infrastructure
 - Minimizes the potential for negative environmental impacts
 - Enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner

- Carrier services would be provided:
 - At reasonable rates. Charges are to be cost-oriented and sufficiently unbundled so that parties are obliged to pay only for the services they require
 - On terms and conditions that are non-discriminatory
 - For reasons of liability, with limitations to sub-lease such services to another licensee.

Parties are invited to submit any other comments pertaining to the above issues.

The ICT Authority requests written submissions from established and potential licensees, other stakeholders and the general public by 18 Jan 04.

Written submissions should be forwarded to:

By post:

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

Or by courier:

The Managing Director
Information and Communications Technology Authority
3rd Floor, Alissta Towers
North Sound Way
Grand Cayman
Cayman Islands

Or by e-mail to:

consultations@icta.ky

Or by fax to:

1-345-945-8284