



ICT Decision 2005-2

Grand Cayman, 7th March 2005

Decision for the Indirect Access Public Consultation (CD (2003) 7)

The Authority finds that mandated Indirect Access (“IA”) from fixed and mobile accesses is not warranted at this time.

In the context of assessing mandated Indirect Access, the Authority considers that the appropriate objective is no longer simply to maximize the extent to which market forces are brought to bear on the international direct dial (“IDD”) market, but also the impact of mandated IA on the potential for competition in other markets and, in particular, on facilities-based competition in the local access/exchange market. Based on the experience in other jurisdictions and given the explicit costs of implementing IA, the Authority is also concerned about the sustainability of entry in the IDD market enabled only by mandated IA.

The Authority considers that there are currently some, albeit limited, sources of price discipline in the IDD market. However, there are a number of developments and factors that may result in sufficient pressure being brought to bear on IDD services and rates. These include: increasing substitutability over time of IDD services provided by fixed-line and mobile Licensees, emerging competition in the fixed-line services market, and IDD provided over voice over Internet technologies, among others. The Authority is cautiously optimistic that, based on the record and on Licensee roll-out commitments, fixed-line entrants will be able to provide both domestic and IDD services to significant portions of the market in the near-to-medium term using self-provisioned local exchange network facilities and other, newer forms of technology which do not require mandated Indirect Access (such as voice over Internet technology).

Notwithstanding the above, for a number of reasons, the Authority finds that there is a lack of price discipline for IDD services from payphones and is predisposed to consider alternatives for mandated IA from payphones. The Authority intends to convene a round-table discussion amongst interested parties to resolve a number of technical issues and concerns before issuing a final decision on the mandated IA from payphones.

(Note: This overview is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

Introduction

1. On 11 November 2003, the Information and Communications Technology Authority (“the Authority” or ICTA) issued CD (2003) 7, thus launching a public consultation

to determine a) whether Indirect Access (“IA”) should be mandated and b) if so, the form and scope of the mandated IA.

2. As defined in Schedule 1 to the Agreement between Cable & Wireless, the Governor in Cabinet and the Authority, dated 10 July 2003 (“Agreement”), Indirect Access is the method whereby a subscriber is able to access international ICT services provided by another Licensee, through the ICT network and ICT services of the Licensee to whom the subscriber is directly and physically connected. Pursuant to the Agreement and subsection 18(2) of the ICTA (Interconnection and Infrastructure Sharing) Regulations, 2003, (“IIS Regulations”), the Authority shall mandate the provision of Indirect Access if it first determines through a public consultation process that the benefits to the general public from such mandate will outweigh the costs to all parties and that the mandate will not impose an unfair burden on any Licensee.

Process

3. Comments and reply comments were variously filed in response to CD (2003) 7 by Blue Bison, Blue/Cool Call (“BCC”), Cable & Wireless (Cayman Islands) Ltd. (“C&W”), Digicel Cayman Ltd. (“Digicel”), North Rock Communications (Cayman) Ltd., TeleCayman Ltd. (“TeleCayman”), WestTel Ltd. (“WestTel”), Wireless Ventures (Cayman Islands) Ltd. (now called “Cingular”) over the period 12 December 2003 to 6 April 2004. These submissions were summarised in ICT Decision 2004-5 (Interim), dated 20 May 2004 (“Decision 2004-5”), and will generally not be repeated in this document, except as necessary to present the Authority’s analysis in the sections that follow.
4. Based on parties’ submissions and the Authority’s related analysis, the Authority found in Decision 2004-5 that Indirect Access should not be mandated at that time. Nevertheless, the Authority considered that mandated Indirect Access might be of benefit depending on, among other things, the scope of the mandate and the timing of its implementation. The Authority was of the view that additional information was required before a more conclusive finding could be rendered. The Authority sought this additional information by means of a) a detailed set of interrogatories, dated 16 August 2004, addressed to all facilities-based Licensees who had filed comments in response to CD (2003) 7, i.e., C&W, Digicel, TeleCayman, WestTel and Cingular, and b) the introduction of a requirement for fixed and mobile Licensees to file quarterly data regarding their international and data services activity and the size and breakdown of their customer base.
5. The interrogatories sought information concerning, among other things, the potential benefits, costs, definition, scope and timing of mandatory Indirect Access, the current and expected extent of price discipline in the fixed international direct dial (“IDD”) market, other aspects of market analysis, characteristics of mobile and fixed IDD traffic and local entry plans. Parties who are not facilities-based Licensees but who had filed comments in response to CD (2003) 7 and facilities-based Licensees

who had not filed comments were invited, but not required, by the Authority to respond to those interrogatories that were applicable to them in order to provide those parties with a comparable opportunity to present their views to the Authority. These parties included Blue Sky. Responses to the Indirect Access interrogatories were originally due to be filed by 15 October 2004. In light of Hurricane Ivan, the deadline for filing responses was subsequently extended to 21 December 2004. Responses to the Indirect Access interrogatories were received from C&W, Digicel, TeleCayman and WestTel. Cingular did not file responses to its interrogatories despite being reminded by the Authority of the requirement to do so. Blue Sky did not avail itself of the opportunity to file interrogatory responses. The Authority had originally required that quarterly monitoring data from January 2003 to 30 June 2004 be filed by 1 October 2004, with data for each quarter thereafter to be filed within 30 days after the end of the quarter. The date for the initial filing of quarterly data was later extended to 19 November 2004, and for some Licensees, to 15 December 2004.

6. By letter dated 10 August 2004, TeleCayman proposed that, as a first phase of Indirect Access, customers using public payphones in the Cayman Islands have a choice of and access to any licensed provider for long distance call completion. Parties' views on this proposal were sought by means of the interrogatories referred to above. In addition, WestTel, in comments dated 10 September 2004, endorsed TeleCayman's proposal. WestTel also noted that, in its 5 March 2004 comments in response to CD (2003) 7, it had similarly advocated that wireline pay telephone users should have the opportunity via Indirect Access to access an IDD provider other than that preselected by the payphone provider.

Definition of Indirect Access

7. Parties were generally agreed that, for purposes of this proceeding, potential methods of mandated Indirect Access could include:
 - “equal access” or “Feature Group D”¹ [i.e., carrier pre-selection (1+ dialling) and call-by-call selection (101XXXX, plus the called number, where XXXX is the carrier identification code of the alternate carrier)];
 - line-side access (i.e., access to the network of another IDD provider by dialling a standard local/domestic PSTN telephone number, combined with over-dialling

¹ Feature Group D (“FGD”) is described as “[t]he class of service associated with equal access arrangements. All facilities based IXC (InterExchange Carriers) and resellers of significance pay extra for Feature Group D terminations (connections), which is a trunk-side connection provided by the ILECs (Incumbent Local Exchange Carriers). Feature Group D is required for equal access, which allows phone users in the United States to pick up the telephone and dial 1+ to place a long distance call, with the call being handled by the IXC they have pre-selected. Without FGD, the user must first dial a 7- or 10-digit number, a calling card number and PIN number, and then the desired telephone number. FGD also is required for an end user organisation desiring ANI (Automatic Number Identification) information. Feature Group D also lets you dial around your preselected IXC to use another of your choice by dialling 101XXXX. See also 1+, 101XXXX, ANI, Equal Access, ILEC and IXC.”, Newton’s Telecom Dictionary, 2003.

for purposes of entering account numbers/PINs and destination telephone numbers).²

Legislative & Regulatory Framework

Positions of Parties

8. In response to interrogatories, TeleCayman supported the implementation of Indirect Access. TeleCayman was of the view that end-users “deserve the right to have “choice” without the necessity to make a ... change for both local and international dialling”.³
9. WestTel’s view was that the Authority could best promote the possibility of robust competition for IDD services by requiring all carriers providing local exchange services to reconfigure their switches to accommodate multiple long haul carriers.⁴ WestTel also supported the implementation of Indirect Access by payphone providers, discussed in further detail below, and mobile carriers.⁵ WestTel argued that “unless and until small business and residential users can secure Indirect Access for IDD via one digit dialling, or via a 10XXX dialling regime, less than optimal IDD competition will evolve”.⁶
10. WestTel considered Indirect Access to be a logical, necessary and straightforward regulatory burden on all carriers capable of linking end-users with carriers providing IDD. WestTel noted that the competition stimulated by Indirect Access results from placing a larger number of IDD providers on a level competitive playing field and that, with Indirect Access, rather than having to choose a single carrier for all domestic and international traffic, consumers can consider alternatives for the carriage of international traffic.⁷ WestTel’s view was that the benefits arising from Indirect Access, in the form of an improved likelihood of IDD competition at an earlier date, “should well exceed the costs that carriers and their consumers will have to incur to make multiple carrier access readily available”.⁸
11. Digicel opposed mandated Indirect Access. Digicel argued that, at the outset, the Authority must ask itself whether it remains committed to the promotion of facilities-based competition. Digicel submitted that, if the Authority remains committed, the Authority is obliged not to proceed further with Indirect Access. Digicel was of the view that if the Authority determines that it should abandon its policies favouring facilities-based entry, then mandated Indirect Access should be considered solely in respect of C&W’s fixed line network, as discussed in more detail below. Digicel

² Sometimes referred to as “Feature Group A.”

³ TeleCayman responses to interrogatories 1A) and 2A).

⁴ WestTel interrogatory responses, paragraph 27.

⁵ WestTel comments dated 5 March 2004, paragraphs 8 and 19.

⁶ WestTel interrogatory responses, paragraph 22.

⁷ WestTel interrogatory responses, paragraph 29.

⁸ WestTel interrogatory responses, paragraph 39.

noted that, even if mandated IA was restricted to C&W's fixed line network, it would nonetheless result in reduced incentives to invest in alternative infrastructure and perpetuate the need for regulation in the medium to longer term. Digicel argued that, in such circumstances, the network roll-out requirements applicable to new entrant Licensees should be withdrawn. Otherwise, the Authority may find itself, in monitoring compliance with those requirements, placed in the position of attempting to force entrants to make investments that have been rendered uneconomic by the IA mandate.

12. In response to interrogatories, C&W submitted that the only possible justification for government intervention, in the form of mandated IA, would be the presence of essential facilities, i.e., the existence of a monopoly provider with control over a facility that competitors require in order to compete in a downstream market. C&W argued, however, that the facts indicate that there is no such monopoly provider in the Cayman Islands in the relevant market.⁹ This was based on C&W's view that IDD calls originated from fixed-lines were not a separate market but rather were part of a broader relevant product market for "international calling" that also includes international calls originated from mobile accesses and dedicated access lines ("DALs"), VON international calling and call-back international services.¹⁰ C&W argued that this broader market for "international calling" services lacked a monopoly provider with control over a bottleneck or essential facility that competitors require in order to compete in the international calling market. For example, C&W noted that "mobile providers do not need to access any bottleneck facility in order to offer international services to their own customers" and that "high-speed internet providers such as WestTel do not need to access any bottleneck facility in order to offer VOIP-based international services".¹¹

Authority's Analysis

13. It is necessary, as discussed below, to derive, from the requirement for the Authority to weigh the benefits and costs of mandated Indirect Access, more practical criteria for determining whether to impose such a mandate.
14. As noted above, the Agreement and the IIS Regulations contemplate that the decision to mandate Indirect Access will be informed by a weighing of the costs and benefits of any such mandate. The Information and Communications Technology Authority Law (2004 Revision) ("Law") provides guidance as to the nature of the public interest costs and benefits of Indirect Access.

Subsection 9(3) of the Law directs the Authority to, among other things,

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

⁹ C&W interrogatory responses, paragraph 6.

¹⁰ C&W interrogatory responses, paragraphs 7-13.

¹¹ C&W interrogatory responses, paragraph 14.

(h) ... promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure; ...

15. Consequently, the Authority's assessment of the public interest costs and benefits must be based on whether Indirect Access will contribute to or detract from the development of effective competition and efficient, economic and harmonised utilisation of ICT infrastructure.
16. There are explicit costs of implementing certain forms of Indirect Access to be considered, such as:
 - the one-time general system provisioning costs caused by modifications to network and operating systems necessary to enable any access provider or providers that are mandated to provide IA to offer carrier preselection and call-by-call selection (i.e., equal access or Feature Group D);
 - the one-time costs caused by enabling carrier preselection and call-by-call selection for an individual Licensee offering IDD to subscribers of local access services provided by another Licensee;
 - costs caused by implementing the end-customer's carrier preselection for any given access line; and
 - the costs of developing, revising as necessary from time to time, maintaining, implementing and administering the various intercarrier processes necessary to support, in particular, carrier preselection and call-by-call selection and to resolve related disputes.
17. In addition, in its interrogatory responses, C&W stated that it was in the process of transitioning its fixed-line subscriber base from its Ericsson ("AXE") switch to its Nortel ("NGN") switch. C&W stated that if Indirect Access was mandated for the company and required to be implemented before the migration of its fixed-line subscriber base to the company's new switch, investments would have to be made in its old switch. The company stated that although it was unable to obtain from Ericsson a dollar estimate, it believed that the cost of any such upgrade to implement IA would involve both more investment and engineering time for its AXE switch than would be required to modify its NGN switch. The company stated that the billing system would also have to be modified. As a result, the company suggested that, if IA was mandated, the timing of required implementation could have a significant impact on costs.
18. In its 21 December 2004 interrogatory responses, C&W stated that, as a result of Hurricane Ivan, the transition of its fixed-line subscriber base to its new NGN switch would be delayed and the company provided, in confidence, a date by which it hoped to complete the transition. On 22 February 2005, the Authority requested the company to provide an update to the date for completing the transition of its fixed-

line customers from its AXE switch to its NGN switch. On 28 February 2005, the company stated that the information provided in its 21 December 2004 interrogatory response had not changed. However, C&W stated, it is possible that the overall project might be delayed beyond the date provided in its 21 December 2004 response.¹²

19. The potential public interest costs derive from the distortion of pricing, entry and investment incentives that may arise with mandated Indirect Access. There are several such potential impacts.
20. Mandated pricing and availability of IA, even if only for C&W's fixed-line access network, will also likely have negative impacts on a) the incentives for local market entry and investment and may affect the rate of Voice over Internet ("VON") rollout by entrants by providing a regulated access alternative at mandated cost-based prices, and b) the evolution of mobile wireless penetration and entry by reducing any incentive arising from IDD pricing for customers either to switch from fixed-line access to mobile wireless access or to supplement their fixed-line access with mobile access. The latter impact would, in turn, be likely to reduce the extent to which, over time, fixed-line IDD pricing can increasingly be disciplined by mobile IDD pricing.
21. Mandated IA in effect removes any technical or economic barriers to the operation of the IDD market as a completely separate stand-alone market and drastically reduces barriers to customers switching between IDD providers. Indirect Access can thus be expected to compromise the extent to which carriers can recover their fixed and common costs from IDD rates versus rates for other services. This limiting of carriers' pricing flexibility, combined with a likely increase in costs due to higher churn, may also reduce incentives for local entry and, in any case, compromise the sustainability of entry in the IDD market which is enabled only by mandated Indirect Access.
22. The potential public interest benefits of sustainable entry include:
 - reduced prices for international services;
 - improvements in the quality of international services;
 - the facilitation of entry into other telecommunications markets, such as the local access market;
 - innovation in the design, marketing and price structures of international service offerings; and
 - the macro-economic benefits of improving the competitiveness of businesses located in the Cayman Islands.

¹² C&W interrogatory responses, paragraphs 76-80 dated 21 December 2004 and updated 28 February 2005.

23. In theory, as noted in Decision 2004-5, the Authority's analysis of costs versus benefits should include only those costs and benefits caused by mandated Indirect Access and exclude any costs or benefits caused by other factors, such as local access entry or the increasing substitutability of fixed and mobile international services, and which are likely to be present even in the absence of mandated Indirect Access. The Authority notes that, in the presence of changing and uncertain market conditions, and in particular factors such as the evolution of local access entry and the increasing substitutability of fixed and mobile international services, the magnitude of future benefits that can be ascribed solely to mandated Indirect Access is likely to decline as later and later expected implementation dates are considered.
24. The Authority considers that the extent of the public interest costs and benefits listed above that is specifically causal to a potential Indirect Access mandate is neither reliably nor cost-effectively quantifiable. The Authority notes in that regard that no party provided a comprehensive quantitative cost-benefit analysis despite being asked to do so in interrogatories for those elements of public interest cost and benefit that the parties considered to be reliably and cost-effectively quantifiable.¹³ Thus, any cost-benefit analysis must necessarily involve a qualitative or judgmental weighing of the public interest benefits and costs, as well as consideration of the explicit costs, noted above, of implementing and administering IA.
25. In the Authority's view, given the explicit costs of mandated Indirect Access, the net result of the weighing of qualitative or public interest benefits and costs will be determined by whether there is evidence of market failure. As noted in Decision 2004-5:
- ...if there is evidence that competition for international services is absent or not developing as anticipated, then a properly constructed 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 ...and resale, before concluding that an indirect access mandate is required.**¹⁴ (emphasis added)
26. Put another way, the critical questions are a) whether effective competition and price discipline in the IDD market exist now, or b) if not, whether they can be expected to develop within some reasonable period of time in the absence of mandated IA.

¹³ WestTel did however provide some evidence as to international practices regarding the rates charged by local exchange carriers subject to an Indirect Access mandate for originating traffic from their end-customers.

¹⁴ ICT Decision 2004-5 (Interim), paragraph 24.

27. If either of these questions can be answered in the affirmative, then clearly it is not in the public interest either to incur the explicit costs of implementing IA or risk the market distortions noted above.
28. While mandated equal access greatly reduces both barriers to entry in the long distance (“LD”)/IDD market and barriers to switching by customers, these two factors have created a commodity market for LD/IDD calling with very small, zero or negative margin in other jurisdictions. At least in North America, participation in the LD/IDD market has ultimately been a financial burden for entrants over time as they were forced to compete on the basis of price and generally attracted more price sensitive customers. As a result, LD/IDD competition has not helped to fund local entry in any meaningful financial sense.
29. There remains the possibility that entry in the IDD market would make it easier for entrants to penetrate the local market because a) prospective local customers would likely be aware of the entrants’ presence in the IDD market, and b) customers may be less reluctant to switch to an entrant if they are only putting the IDD service “at risk” rather than if they were required to switch to the entrant for both local and IDD services.
30. The very high penetration of mobile wireless services may, however, suggest a willingness to try new services and would, in any case, presumably mitigate any risk of total service interruption that the customer might perceive as flowing from a decision to switch both fixed-line local and IDD services to an entrant. At most, though, any “market presence” benefit to entrants would appear to be relatively short-lived. By contrast, the economic impact of IA in creating a near-commodity IDD market would be long-term.
31. As a final point on the conceptual framework, the Authority notes that the question as to whether to mandate IA is considerably more complex now than would have been the case ten to twenty years ago when the issue was considered by, for example, North American regulators. The added complexity is due to the subsequent removal in many jurisdictions of technical, regulatory and certain economic barriers to entry in the local exchange market, the growth in mobile wireless penetration, the increasing substitutability of mobile wireless and fixed-line services and the potential impact of VON technologies. The Authority notes that when equal access was first implemented, there was little doubt in policymakers’ minds that the LD market was a “natural”, separate market, that operating in the LD market alone would be a sustainable business strategy and that the entire local exchange market was a durable or natural monopoly or that, at the very least, no public interest had yet been demonstrated in allowing local market entry. In these circumstances, “competition” meant LD competition and it was obvious in that context that meaningful competition in the LD market could not occur in the absence of mandated IA.
32. Consequently, the Authority considers that, in the context of assessing mandated IA, the appropriate regulatory objective is no longer simply to maximize the extent to

which market forces are brought to bear on the IDD market. Rather, the Authority must also consider: a) the impact of mandated IA on the potential for competition in other markets, and in particular facilities-based competition in the local access/exchange market, and b) given the explicit costs of implementing Indirect Access, the sustainability of entry in the IDD market enabled only by mandated IA.

Findings

Indirect Access & Mobile Wireless Licensees

33. In the Authority's view, the presence of two entrant mobile Licensees that are currently providing service, mobile market pricing behaviour to date, increasing mobile IDD usage and the experience of other jurisdictions in which no mobile IA has been mandated suggest that the inability of mobile customers to choose their IDD provider independently of their mobile access provider is not likely to be an obstacle to the development of an effectively competitive market for mobile wireless services overall. Consequently, the Authority is of the view that it would not be in the public interest to mandate the implementation of IA by mobile Licensees.

Mobile/Fixed Substitutability & IDD Price Discipline

34. C&W noted in response to interrogatories that:

a product market contains products that are close substitutes and excludes products that are not close substitutes. In practice, determining the products in a market involves starting with a very narrow definition, and adding groups of products to a portfolio and asking whether or not the products are sufficiently similar as to be close substitutes from the consumer's perspective, or more specifically, close enough to make a "small but significant and non-transitory increase in price" unprofitable.¹⁵

35. C&W argued that "at a minimum, therefore, the market for international calling includes both fixed and mobile services".¹⁶ C&W provided what it considered to be empirical evidence supporting the conclusion that mobile international calling is in the same relevant product market as fixed international calling. This evidence took the form of a graph illustrating the relationship between fixed and mobile IDD rates over time and information which implied, even prior to Hurricane Ivan, migration of fixed-line originated IDD calling to mobile-originated IDD calling.
36. Similarly, C&W suggested, at paragraphs 8 and 9 of its 12 December 2003 comments, that the fixed-access and mobile IDD markets may not be or are not separate markets and that, as a result, competition from and between mobile carriers will impose discipline on pricing for IDD originated from fixed-lines:

¹⁵ C&W interrogatory responses, paragraph 8.

¹⁶ C&W interrogatory responses, paragraph 10.

We can assume that the ICTA is concerned that the incumbent's control of the fixed network gives it market power to control prices and limit choice in international calling services. But whether the incumbent possesses market power in international services depends on whether there is a separate market for fixed international services or whether fixed and mobile international calls are substitutes for each other. If consumers can elect to make international calls either from a fixed or mobile phone, there will be competition in the market for international voice services, which will be tied to the competition in the domestic access market.

... If the ICTA's objective is to achieve greater consumer choice and lower prices through fostering competition in international voice services, then the entry of various new mobile and fixed domestic service providers will ensure the development of a vigorously competitive market in the Cayman Islands, and lower prices, for international voice services. This fact has been evident in all jurisdictions in the Caribbean where international liberalization has occurred, even in the absence of a requirement to provide IA. Cable & Wireless notes that, generally, this development has occurred whether the competition is introduced in either the fixed and mobile markets: lower prices for mobile-originated international calls have led to lower prices for fixed-originated international calls. Fixed network must lower prices in order to remain competitive and not lose traffic to the other networks.

37. WestTel submitted that IDD originated from fixed-accesses and IDD originated from mobile accesses constitute separate markets, because "limited substitution between the services currently takes place and most mobile radiotelephone subscribers continue to subscribe to a fixed local exchange carrier service".¹⁷ WestTel's view was that mobile telephone use "augments, rather than replaces fixed services for the vast majority of consumers".¹⁸ However, WestTel also considered that IDD provided by mobile carriers "has the potential, but not the absolute certainty of providing pricing discipline on rates charged by fixed-access providers".¹⁹
38. In Decision 2004-5, the Authority considered it unclear as to whether mobile and fixed-line international services are effective substitutes and expressed the view that:

Currently, mobile services lack some of the critical features required by customers, such as the high-quality of fixed-line services 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 services.²⁰

¹⁷ WestTel interrogatory responses, paragraph 33.

¹⁸ WestTel interrogatory responses, paragraph 34.

¹⁹ WestTel interrogatory responses, paragraph 41.

²⁰ ICT Decision 2004-5 (Interim), paragraph 27.

39. The Authority notes that there are two potential mechanisms by which competition from and between mobile carriers might impose discipline on pricing for IDD originated from fixed-lines.
40. First, those customers with both fixed and mobile access may be able to shift their calling back and forth between fixed and mobile accesses depending on, among other things, relative prices.
41. The Authority considers that, under normal circumstances, any meaningful degree of IDD re-allocation of this type is likely to be feasible only for residence or small business customers located in places other than multiple dwelling units (“MDUs”) or office buildings. Long-term contracts, complex customer networks, large numbers of employees, loss of certain critical features such as lack of speaker phone capability, concerns over service quality in office buildings (such as unequal coverage, poor voice quality and dropped calls), and other reliability concerns are, in the Authority’s view, likely to impede the flexibility of medium or large business customers in significantly re-allocating traffic between mobile and fixed calling. Similarly, concerns over service quality in MDUs are likely to impede such re-allocation by residence or small business customers located in MDUs or office buildings. The Authority notes that C&W estimated the “proportion of fixed accesses associated with residential customers in MDUs ... [to be] 60%”.²¹
42. The extent of any such pricing discipline will also depend on, among other things, the extent of wireless penetration, entrant wireless market share and any additional willingness of residence customers not already subscribing to both services to bear the additional cost of mobile access, in addition to their fixed-line access, purely for the purposes of accessing any potentially reduced mobile IDD rates. In this regard, the Authority notes that C&W was not able to provide an estimate of the proportion of its fixed-line residence customers who also have mobile access. However, the quarterly monitoring information strongly suggests that mobile penetration rate amongst fixed-line users is very high.
43. Second, customers may be willing and able to switch from fixed-line access to mobile access in response to an imbalance between rates for IDD calls originated from fixed lines and those originated from mobile handsets. The Authority explored this aspect of substitutability in interrogatories, but parties either did not specifically address it or were of the view that there was limited substitutability. In the absence of any record to the contrary, the Authority is of the view that the degree of demand substitutability, in the Cayman Islands’ context, of fixed-access and mobile access is at this time limited for a variety of reasons including:
- the need for or convenience of mobility;
 - differences in network reliability, voice quality and data throughput; and

²¹ C&W interrogatory responses, paragraph 38.

- in the case of medium and large business customers, the wide variety of business communications needs, in addition to the issues discussed above.
44. The Authority notes further that C&W was unable to provide an estimate of the proportion of Cayman households currently subscribing to its mobile services and not also subscribing to fixed-line access. As noted by C&W and as implied by the quarterly monitoring data, “the high number of subscribers of mobile service in the Islands suggests that the proportion of fixed-line customers subscribing to mobile service is very high”.²² This suggests that, currently, for most customers, mobile and fixed-line access services are complements or, at the very least, serve different needs.
45. Thus, while the record does provide some support for the increasing substitutability of fixed and mobile IDD, the Authority is not fully satisfied that they currently are close enough substitutes that competition between and from mobile carriers, particularly in respect of mobile IDD rates, will, now or in the near future, alone provide sufficient price discipline for IDD calling originated from fixed lines. It is reasonable to expect however that, over time and following world-wide trends, the substitutability of both fixed and mobile IDD and fixed and mobile access will increase as mobile voice quality and reliability improve, mobile wireless data throughput levels improve, and technology permits mobile local pricing to approach fixed-line local pricing, etc.
46. C&W argued that:
- The important point is that if fixed international calling prices increased, every single customer of fixed international calling would weigh the alternatives (mobile international calling, VON, call-back services, DALs, etc.) and determine whether an alternative supplier of international calling services was more appropriate. In this scenario customers who already owned mobile phones would certainly have a different decision making process than customers who didn’t own mobile phones. Nevertheless, every customer would enter a decision process.²³
47. The Authority considers that the fact that customers may enter into a decision process in response to price changes is not sufficient to find that there is sufficient price discipline amongst the substitutes. In the Authority’s view, the likely degree of price discipline is determined rather by the probable outcome of that decision process in response to a small but significant non-transitory price change. The probable outcome is determined by the attributes of the services and whether the alternatives can be considered to be close substitutes.

²² C&W interrogatory responses, paragraph 65.

²³ C&W interrogatory responses, paragraph 61.

Other Sources of Price Discipline in the Fixed IDD Market

48. The Authority notes that, in the absence of mandated Indirect Access, there currently are two alternatives open to entrants for originating IDD traffic from fixed-line customers.
49. First, entrants can enter the local exchange services market and offer both local/domestic and international services to customers over entrant-provisioned local exchange network facilities. As of March 2005, a number of Licensees have been licensed to provide such services and are in the process of commercially rolling out service. The Authority notes that there currently are four new fixed-line Licensees seeking to enter this market and is cautiously optimistic that, based on, among other things, the record and Licensee roll-out commitments, the prospects for entrants to expand access network coverage to address significant portions of the market in the near-to-medium term are good.
50. In that regard, the Authority requested that fixed-line Licensees other than C&W provide their best estimate of the proportions of each of Cayman residence and business customers that will be addressable using each of self-provisioned access facilities by year-end of each of 2004, 2005, 2006, 2007 and 2008. In response, WestTel indicated that it expected to self-provision wireless access to 90 % and 100% of Cayman end-users by year-end 2005 and 2006 respectively.²⁴
51. Second, as a result of regulatory developments since the issuance of CD (2003) 7, fixed-line customers can access international services of alternative providers via the use of certain C&W-provided services. In particular, in late 2004, further to correspondence from the Authority, C&W agreed to eliminate restrictions in its tariffs that effectively prohibited its high-speed Internet access customers from using their Internet access to access PSTN voice services, such as those provisioned using VON. Similarly, C&W also agreed to remove restrictions preventing a) retail and wholesale customers from using domestic private leased circuits (“DPLCs”) to connect to the PSTN at the local or distant end or to transmit voice services on the PSTN, and b) wholesale DPLC customers from engaging in resale of the service.
52. As a result of these changes, licensee-provided VON services, including international calling services, are now accessible by C&W ADSL Internet access customers. VON services accessed via the Internet are, in the Authority’s view, most likely to appeal to residence and small business customers. Given that residence high-speed access penetration is approximately 30%²⁵, it would appear that a considerable percentage of residential subscribers have potential access to VON services for their IDD calls.

²⁴ WestTel interrogatory responses, paragraph 44.

²⁵ Industry Quarterly Monitoring Information for 1 October - 31 December 2004. For the above purposes, high-speed Internet access is defined as a permanent Internet connection of 128 kbps and above.

53. WestTel was of the view that a proper comparative assessment of VON vis-à-vis conventional IDD originated from fixed-lines must factor in the cost of Internet access in addition to the VON calling plan. WestTel also submitted that should high-speed access not become widely available at attractive rates in the Cayman Islands, then VON service would not provide a competitive alternative to circuit-switched calling, nor would VON service impose price discipline on conventional services.²⁶
54. The removal of restrictions in the DPLC tariffs noted above also permits end-customers and entrants to use C&W-provided retail and wholesale DPLCs as, among other things, dedicated access lines (“DALs”), i.e., a fixed access, functionally equivalent to a private line, separate from the subscriber’s regular PSTN or high-speed Internet access, that connects the subscriber’s equipment to an IDD provider’s equipment and is dedicated to IDD calling. The Authority considers that DALs may in certain cases, be an economic means to originate fixed-access traffic primarily in the case of large business customers.
55. Given the extent of local entry to date and the early stages of VON adoption and market development, the Authority considers that there is little evidence that these alternative access methods are currently bringing significant pricing discipline to bear on IDD rates or on local and IDD rates overall. The Authority considers that any IDD price discipline provided by VON services will flow primarily from the potential for those end-users who are already high-speed access customers to switch all or a portion of their IDD usage to a VON provider. Consequently, the Authority agrees with the thrust of WestTel’s comments to the effect that the market penetration of high-speed access will be a key determinant of the degree of IDD price discipline provided by VON services. The ability to use high-speed access services to access VON services will however only be one of many factors determining the rate of adoption of high-speed access.
56. Finally, the Authority notes that the extent to which local entry and access alternatives are likely to supplement IDD price discipline derived from competition from and between mobile providers will only become clear over time.

Fixed Access Licensees Potentially Subject to an IA Mandate

57. In light of the above discussion, any potential current need for IA derives in whole or in part from:
- i) insufficient substitutability between mobile and fixed-line access;
 - ii) insufficient substitutability between international calling originated from fixed-accesses and that originated from mobile accesses;
 - iii) uncertainty regarding the extent to which substitutability between mobile and fixed-line services will increase over time;

²⁶ WestTel interrogatory responses, paragraph 13.

- iv) uncertainty over the impact and substitutability of VON services as a means to provide access to alternative IDD providers;
 - v) uncertainty over the economic attractiveness and adoption of DALs as a means to provide access to alternative IDD providers; and
 - vi) a lack of meaningful competition in the fixed-line local exchange market and uncertainty regarding the pace at which effective competition will develop.
58. The Authority considers that it is item vi) which makes it necessary to consider the potential for price discipline associated with items i) to v) above. Thus, any potential need to mandate IA derives ultimately from item vi). The lack of competition in the fixed-line local exchange market is, in turn, the result of, among other things, relatively limited deployment and operation of entrant-owned loop-equivalent and other local access facilities. Consequently, apart from VON and DALs, the economic attractiveness and market impact of which are uncertain, entrants currently have limited options other than C&W's fixed-line local exchange network for originating IDD traffic from fixed-line customers.
59. Accordingly, any determination on the part of the Authority to mandate Indirect Access would, in substance, be based on a determination that the switched origination or switched transport function provided by C&W over its fixed-line local exchange network is a network element for which unbundling should be mandated due to its essentiality, dominant supply, insufficient alternative supply or some similar formulation. The Authority considers that, unless provided with direct and specific evidence to the contrary, new market entrants are unlikely to control telecommunications facilities, apart from those used to provide call termination services, that could be characterised as being subject to monopoly control or dominant supply.
60. Therefore, the Authority considers that were IA to be implemented, it should be mandated only for C&W's fixed-line accesses, along with a competitively neutral method for recovery of, among other things, C&W's general system provisioning costs.
61. As noted above, Digicel was opposed to mandated IA for any carrier, with the possible exception of payphones. However, it was also of the view that if mandated Indirect Access was determined to be necessary, it should be considered solely in respect of C&W's fixed line network. Digicel submitted that "it would severely, and perhaps fatally, undermine investment incentives to invest in alternative infrastructure if indirect access ... was [to be] mandated in respect of a new entrant". Further, Digicel considered that the issue of mandated Indirect Access is relevant only to C&W's fixed network "because it is only C&W which has a position of dominance in call origination". Digicel argued that there was no legal requirement

for the Authority to limit itself to mandating Indirect Access either for all network providers or for none at all.

62. In supplementary comments, dated 17 December 2003, filed in response to the Authority's Public Consultation on Indirect Access (Ref: CD (2003) 7), C&W argued that IA is a form of interconnection and that certain consequences necessarily flow from that characterization:

There should be no doubt that indirect access is an interconnection service. This makes logical sense in view of the definition of interconnection services in Cayman law, but it is also acknowledged to be so by the simple fact that provisions relating to indirect access are covered in the ICTA (Interconnection and Infrastructure Sharing) Regulations 2003.

As such, the ICTA must recognize that there are provisions for the applicability of any indirect access mandate and cost recovery.

With respect to the Licensees subject to mandated indirect access (Questions 1.1 and 1.3), the regulations require broad application interconnection obligations. Paragraph 4(1) of the Interconnection and Infrastructure Sharing Regulations states "In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement." Thus, if the ICTA chooses to mandate indirect access, the ICTA must oblige all relevant licensees to stand ready to provide it.

63. The Authority notes first that, under the IIS Regulations, Indirect Access could conceivably be characterised as either an interconnection service or an infrastructure sharing service. While the definitions of interconnection and infrastructure sharing are set out in the IIS Regulations, neither definition has been applied or interpreted by the Authority in any significant manner to date. Therefore, little guidance has been developed regarding the classification of particular functionalities, services or network elements as between the interconnection and infrastructure sharing categories, although both definitions appear to be very broad.
64. Second, unlike in the case of other interconnection and infrastructure sharing services, the Law and the IIS Regulations give the Authority the explicit legal ability to mandate Indirect Access rather than limiting its involvement to guiding or responding to negotiations by, among other things:
- establishing guidelines, standards and directives regarding, among other things, pricing principles;²⁷

²⁷ Pursuant to subsections 65(6) and 96(3) of the Law, the ICTA can establish guidelines and regulations governing interconnection and infrastructure sharing, including pricing principles. Subsections 7(2), 22(2) and 25 of the IIS Regulations contemplate the establishment of guidelines, directives and standards

- resolving, pursuant to Sections 66(5) and 67 of the Law, disputes concerning interconnection and infrastructure sharing by, among other means, arbitration and imposing charges in the absence of agreement;
- rejecting, pursuant to subsection 22(2) of the IIS Regulations, any interconnection or infrastructure sharing agreement, or any portion thereof, if it determines that the agreement does not comply with the Law, conditions of the licence, relevant regulations, decisions, directives or standards and other guidelines that the Authority may prescribe;
- intervening, where necessary, pursuant to section 28 of the IIS Regulations, in the case of already effective agreements:

In promoting the efficient, economic and harmonised utilisation of infrastructure, the Authority may inquire into and require modification of any agreement or arrangements entered into between a responder or requestor and another licensee which has the effect of limiting either efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of public ICT services or public ICT networks.

65. The Authority notes that any mention of reciprocal provision is limited to those interconnection and infrastructure sharing services subject to the request and negotiation process set out in the IIS Regulations.
66. Third, while the IIS Regulations provide for the reciprocal provision of interconnection and infrastructure services, they do not require it except where a) it is requested, and b) none of the provisions of subsections 4(2) or 4(3) apply. Subsection 10(1)(c) does require, however, that, where service is provided on a reciprocal basis, “charges... be ... reciprocal for the same service ..., except for any applicable contribution towards an access deficit...”. Subsection 4(2)(d) states that:

A requestor or responder shall not negotiate or propose to enter into an interconnection or infrastructure sharing agreement where the Authority determines that-

- (d) **the requested interconnection or infrastructure sharing is contrary to the laws of the Islands or the public interest.** (emphasis added)

67. In addition, subsection 22(2) specifies that:

regarding interconnection and infrastructure sharing and require that interconnection and infrastructure sharing agreements be consistent with any such guidelines, directives and standards.

The Authority may reject any interconnection or infrastructure sharing agreement, or any portion thereof, if it determines that the agreement does not comply with the Law, conditions of the licence, relevant regulations, decisions, directives or standards and other guidelines that the Authority may prescribe.

68. Of further note is that subsection 6(j)(iii) requires that:

interconnection and infrastructure sharing services shall be provided in a manner that –

(iii) enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner;

69. As noted above, section 28 provides that the “... Authority may inquire into and require modification of any agreement or arrangements entered into between a responder or requestor and another licensee which has the effect of limiting either efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of public ICT services or public ICT networks”.

70. C&W’s view was that the above provisions of the Law:

...address either the Authority’s jurisdiction to alter or reject agreements that offend the law, the public interest, competition, or efficient and harmonized use of infrastructure, or the Licensees corresponding obligations to enter into agreements that do not offend the law, the public interest, competition, or efficient and harmonized use of infrastructure. Further, they apply equally to all telecommunications Licensees in the Cayman Islands, large or small, new or existing. It is a stretch to say that they would, individually or in combination, allow the Authority to require only certain Licensees to provide indirect access or other interconnection services.

Further, these provisions give the Authority jurisdiction to review agreements after they have been concluded between the Licensees involved, and to intervene only if there is something contrary to the law, public interest, competition or efficient and harmonized use of infrastructure. They could not be used as the basis for “requiring certain interconnection or infrastructure services to be made available only by certain Licensees” before those Licensees actually conclude an agreement, and if two Licensees agree that it is commercially reasonable to provide Indirect Access services to each other, the Authority should hesitate to deny one of those parties the right to offer Indirect Access services to the other.²⁸

71. In the Authority’s view, mandated provision and pricing of certain interconnection and infrastructure sharing services, such as Indirect Access, by entrants would a) given the lack of entrant market power, impose unnecessary costs on the industry, the market place and, ultimately, users, and b) discourage facilities-based entry and

²⁸ C&W interrogatory responses, paragraphs 51 and 52.

raise the costs of such entry. It thus would be “contrary to ... the public interest” (subsection 4(2)(d)), be inconsistent with enabling “the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner” (subsection 6(j)(iii)) and be inconsistent with “the promotion of competition in the provision of public ICT services or public ICT networks” (section 28).

72. Therefore, the Authority considers that subsections 4(2)(d), 6(j)(iii), 22(2), and 28 of the IIS Regulations would, in combination, provide the basis for requiring certain interconnection or infrastructure services to be made available only by certain Licensees.
73. Fourth, C&W appears to recognize that, in the case of certain services, non-reciprocal requirements are likely to be appropriate:

Cable & Wireless understands that some special conditions apply in the early stages of liberalisation. Specifically, there are some interconnection and wholesale services which only it can provide and which are critical service inputs to other licensees.²⁹

74. In that regard, the Authority notes that section 17 of the IIS regulations contemplates that operator services, directory assistance services, directory listings in the directory assistance database, interconnection to the 911 system and transit services would be covered by the Regulations and that these services are, in a local competition context, typically provided by incumbents and not by entrants.
75. Fifth, C&W’s position that all carriers must be subject to any potential IA mandate is inconsistent with its view, noted above, that the only legitimate basis for imposing such a mandate is the presence of a monopoly provider of bottleneck or essential facilities.

Net Effect of Mandated Indirect Access on the Incentives for Facilities-Based Local Entry

76. As discussed above, under the existing policy framework, the Authority’s expectation is that, ultimately, facilities-based local entry will be an important means by which effective and sustainable competition and price discipline is brought to bear on IDD and other rates. Consequently, if it is concluded that mandated IA is necessary for effective competition, it must also be concluded that IA will facilitate or, at a minimum, be neutral with respect to the mechanisms of facilities-based entry, rather than compromise them.
77. In that regard, in interrogatories, Licensees were asked to:

²⁹ C&W comments, dated 23 January 2004, regarding the Authority’s Wholesale and Carrier Services public consultation, paragraph 43.

78. Provide your company's views, with justification, as to whether i) entry in the IDD market alone as a means to acquire a customer base and a revenue stream and demonstrate competence to end-users may facilitate entry into the local access/domestic market...
79. The only party favouring mandated Indirect Access to provide a substantive answer was WestTel who rejected the proposition and stated:
80. WestTel has little confidence that success in the IDD market will provide a means for it or any market entrant to leverage and secure local market penetration absent an existing owned and operated local exchange network. IDD carriers using Indirect Access options must rely on the cooperation and access pricing fairness of a competitor. Incumbent LECs so detest forward looking pricing requirements and network unbundling obligations that they claim such requirements are "confiscatory" and illegal. If long haul carriers in the United States and elsewhere have not made a business case for local services on a resale or unbundled network element basis, then little chance exists for Cayman carriers to achieve success by leveraging IDD market share downstream into domestic markets.³⁰
81. No other persuasive arguments were made as to whether and how mandated IA may facilitate the process of local facilities-based entry and strengthen or encourage incentives for the associated investment.
82. The Authority notes that, in Decision 2004-5, it raised the possibility that restricting the availability of Indirect Access services to facilities-based Licensees might provide a means to limit the negative impact of mandated IA on investment in alternative network infrastructure by entrants.
83. However, as implied by the interrogatory responses of Digicel and C&W, the Authority considers that such an eligibility requirement would not meaningfully mitigate the impact on negative incentives for entrant investment in facilities and networks, for several reasons.
84. First, entry is not a one-time event but is rather an ongoing process of investment and facilities deployment, with build versus lease decisions required at numerous points in time. Mandated IA, even if only available to facilities-based entrants, could thus still reduce incentives or opportunities for such entrants to rely on self-supplied or other-entrant-supplied facilities to the maximum extent.
85. Second, the intent of restricting eligibility in such a manner could be circumvented by, at a minimum, entrants willing to self-provision only a minimal amount of facilities.
86. Third, the eligibility requirement would not alter the fact that barriers to customers switching between IDD providers would have been significantly reduced or

³⁰ WestTel interrogatory responses, paragraph 23.

eliminated. Consequently, the requirement would not eliminate the expectation that Indirect Access would compromise the extent to which carriers can recover their fixed and common costs from IDD rates versus rates for other services.

Sustainability of Entry Enabled Only by Indirect Access

87. In the Authority's view, experience in other jurisdictions suggests that market forces are requiring carriers to place increasing emphasis on the provision of multiple services (local, long distance, Internet access, etc.) to retail customers, due to customer preferences, economies of bundling and other economies of scope. These same market forces appear to be encouraging or requiring carriers whose business is primarily or exclusively focused on the LD market to merge with carriers participating in other markets, particularly local access markets. It is noteworthy that the trend to bundling and entry into multiple service markets has occurred even though regulators in North America have, by mandating IA, in effect removed any technical or economic barriers to the operation of the LD market as a completely separate stand-alone market. This experience casts significant doubt on whether LD or IDD should necessarily be viewed as a sustainable, stand-alone market rather than as part of a larger system or range of products that may be more naturally or efficiently provided to any one customer, at the retail level at least, by a single service provider, in competition with other such providers.

Explicit Costs of Indirect Access & Conclusion Regarding Mandated Indirect Access for C&W Fixed-Lines

88. While parties were not able to quantify all of the explicit costs caused by the implementation and ongoing administration of Indirect Access, it is clear that these costs would be significant. C&W also noted that the costs associated with the technical implementation of Indirect Access capability would depend a great deal on timing. Most of C&W's fixed line customers are or have been, until recently, served by Ericsson AXE local switches. C&W is in the process of migrating its fixed-line subscriber base to its new NGN switch.

89. C&W stated that the implementation of "Feature Group D access capability would be a significant undertaking in C&W's Ericsson local switches ... as Feature Group D is not a standard implementation on the AXE" and that "implementation of Feature Group D on the AXE would be manual". C&W indicated that, in particular, this would involve substantial labour costs and changes to the billing system. C&W stated that implementation of Feature Group D on the NGN switch can be done via a software load.³¹

90. C&W's forecast completion date for the migration to the NGN switch was provided in confidence. On 28 February 2005, C&W stated that, while it was not entirely clear, it is possible that the overall migration project might be delayed beyond the original planned completion date the company provided on 21 December 2004. In

³¹ C&W interrogatory responses, paragraphs 78, 79 and 89.

the Authority's view, based on the information provided by C&W, the limited remaining life of the Ericsson switches as implied by the forecast migration completion date does not warrant the expenditures necessary to implement Feature Group D on these switches. However, in light of the uncertainty with respect to the date that C&W will have completed cutover of its fixed-line customers from its AXE to its NGN switch, and the criticality of this information for assessing the explicit costs of mandated IA, the Authority directs C&W to file regular status reports on the progress of its migration plan.

91. In light of the Authority's expectations for the rollout of local entry and given:
- a) the element of price discipline derived from competition between and from mobile providers,
 - b) the presence of alternatives to IA in the form of DALs and VON,
 - c) the potential negative effects of mandated IA on the incentives for facilities-based local entry and associated investment in infrastructure,
 - d) the absence of credible arguments to the effect that mandated IA would facilitate facilities-based local entry and associated investment,
 - e) the industry and Authority resources and costs required to implement and administer mandated IA and, in particular, the non-capital resources and costs, and
 - f) concerns regarding the sustainability of entry enabled only by mandated IA,

the Authority considers that mandating IA in respect of C&W fixed local exchange access lines ultimately to be served by the company's NGN switch is not warranted at this time.

Indirect Access & Payphones

Positions of Parties

92. As noted above, TeleCayman proposed that, as a first phase of Indirect Access, customers using public payphones in the Cayman Islands have a choice of and access to any licensed provider for long distance call completion. Parties' views on this proposal and on the appropriateness of implementing Indirect Access for payphones by means of line-side access were sought in the interrogatories referred to above.
93. TeleCayman noted that large numbers of tourists and business travellers visit the Cayman Islands and that these visitors have communications needs that typically involve international calling and that are not carrier-specific. TeleCayman argued

that since payphone users are not subscribers of any specific Licensee, they should have access to any licensed provider for international call completion.³²

94. WestTel, in comments dated 10 September 2004, endorsed TeleCayman's proposal. WestTel noted that, in its 5 March 2004 comments in response to CD (2003) 7, it had similarly advocated that wireline payphone users should have the opportunity via Indirect Access to access an IDD provider other than that chosen by the payphone provider.
95. WestTel argued that Indirect Access would free payphone users from a near captive arrangement: the limited ability to access an alternative international carrier other than the one selected by the payphone provider. WestTel suggested that end-users be provided with "dial-around" capability at payphones.³³
96. Digicel expressed the view that mandated Indirect Access for payphones would eliminate the potential for competitive provision of payphones.³⁴ However, Digicel also suggested that there might be limited or no potential for such competition in any case. Digicel stated that:

The only way to arrive at some form of judgement about whether alternative payphone provision could be viable would be to carry out a full business assessment. Naturally that would require considerable resources and we have no plans currently to carry out such an exercise.

97. C&W noted in its interrogatory response that its original comments filed in response to CD (2003) 7 addressed the appropriateness of line-side access in respect of payphones:

Cable & Wireless expects competition to arise in the market for payphone-originated international voice services, in the absence of any IA requirements, through the use of toll-free access to a pre-paid card platform. Imposing additional regulatory requirements upon payphone service providers will likely not materially impact competition in this market.³⁵

98. C&W further noted that:

Since December 2003, a competitive payphone provider has in fact entered the market in the Cayman Islands, and appears to have made a substantial investment and to have enjoyed remarkable success in the market. Mandating Indirect

³² TeleCayman letter dated 10 August 2004.

³³ WestTel comments, dated 5 March 2004, in response to CD (2003) 7, paragraphs 8 & 9.

³⁴ Digicel response to interrogatory 19.

³⁵ C&W responses to interrogatories, paragraph 90; C&W comments, dated 12 December 2003, paragraph 23.

Access from payphones might well affect that provider's decisions regarding existing and future investments in the Cayman Islands.³⁶

99. C&W also noted that it employs line-side access for its own customers to obtain pre-paid card-based international calling services and offers line-side access services to AT&T, for example, for the Home Country Direct services it provides to its US-based customers.³⁷
100. As noted above, Blue Sky (the competitive payphone provider) did not avail itself of the opportunity provided by the interrogatories to make its views regarding this issue known to the Authority or ensure that its interests were addressed.

Authority's Analysis & Conclusions

101. The Authority considers that the primary users of payphones are tourists, business travellers and workers engaged in lower-income, short-term employment. The Authority notes that these are key areas of the customer market and is concerned that any lack of price discipline in this market could negatively affect the country's ability to attract such visitors and workers.
102. Parties provided no material evidence regarding the degree of any current price discipline or describing the extent to which price discipline would be likely to develop in the future in the absence of mandated IA. The Authority's view is that there is little or no evidence of significant price discipline currently nor any persuasive reasons for concluding that it will arise in the near to medium term absent mandated IA. Furthermore, the Authority considers that the normal mechanisms of facilities-based local competition and entry cannot be relied upon to provide significant price discipline in absence of some form of intervention by the Authority.
103. These views are based on the following: first, while roaming provides an alternative for visitors subscribing in their home country to GSM and TDMA mobile services, no such alternative is currently available to CDMA users as of the date of this decision. Two CDMA mobile providers have been licensed in the Cayman Islands but they have not commenced operations yet.
104. Second, while C&W's 1-800 CALL USA service provides an alternative payment arrangement for visitors possessing a Canadian, U.K. or U.S. calling or credit card or wishing to make a collect call to the U.S., the rates are and remain very high compared to IDD rates from fixed-line and mobile accesses.
105. Third, it is the Authority's understanding that payphone providers generally block calls from payphones to toll-free numbers other than those numbers served by the payphone provider or associated with services, such as 1-800 CALL USA, provided by the payphone provider. Consequently, it would not be open to other Licensees to

³⁶ C&W responses to interrogatories, paragraph 91.

³⁷ C&W responses to interrogatories, paragraph 3.

establish their own toll-free numbers for purposes of a) originating their own calling-card or prepaid card traffic from payphones, or b) competing for the calling card traffic originated by calling card holders of foreign carriers absent mandated IA.

106. Fourth, payphone users, due to location and circumstances, may not generally have the option of choosing between payphones provided by the two current Licensees. Unlike in the case of regular fixed-line or mobile telephone service, the decision as to which payphone provider is available in any given location is made either by the payphone provider or the premises provider, not the end-user.
107. Fifth, even in those locations in which visitors have a choice of payphone providers, insufficient information regarding payphone IDD pricing is easily and publicly accessible to those users.
108. In light of the above, the Authority is predisposed to consider alternatives for permitting access to other Licensees for purposes of originating calling card, credit card or collect calls from payphones provided by all payphone Licensees. The Authority considers that TeleCayman's proposal and the record of the proceeding are insufficient to fully specify the nature of any such mandated Indirect Access arrangements. However, the Authority's preliminary view is that access would be best provided through a form of line-side access and consist of the following:
- i) access by the payphone user, without coin charges, to the international services of other Licensees by means (at the non-payphone Licensee's option) of either a) mandated line-side access provided by C&W in the form of a domestic toll-free service, or b) an entrant-provisioned domestic toll-free service/number designated for that purpose;
 - ii) a requirement that payphone Licensees complete calls to the toll-free numbers referred to in i); and
 - iii) arrangements for compensation to flow either from the Licensee providing the domestic toll-free service or the Licensee providing the international services to the payphone Licensee to a) compensate for any usage-sensitive costs of payphone origination, other costs caused by individual calls and costs caused by the establishment of routing or other arrangements between the payphone provider and the other Licensees, and b) provide a reasonable mark-up towards the recovery of payphone fixed and common costs, such as the costs of payphones, payphone access lines, etc.
109. The Authority notes that there are a number of technical issues which may affect the feasibility and nature of Indirect Access for payphones. These issues include the specific nature, magnitude and structure of compensation arrangements, the general entry plans of non-payphone Licensees with respect to originating traffic from payphones and the precise nature of those Licensees' technical requirements, the feasibility of ensuring that, in the case of line-side access provided by C&W, the

only calls completed to the domestic toll-free numbers referred to above are those originated from payphones, etc.

110. Consequently, in order to resolve these concerns and issues and enable a final decision regarding Indirect Access from payphones, the Authority intends to convene a round-table discussion amongst interested parties. Payphone Licensees will be required to attend. Invitations to attend will be extended to other stakeholders, such as other Licensees, the Chamber of Commerce, the Hotel and Condo Association and the Ministry of Tourism. All Licensees attending will be required to file, prior to the meeting, written submissions addressing issues and questions to be identified by the Authority and any other issues or concerns that they consider to be relevant. Other parties will be encouraged, but not required, to file similar submissions.
111. The Authority will identify the issues that it wishes Licensees to address when it announces the timing and other aspects of the roundtable discussion. Parties will be asked to provide an overview presentation of their positions at the meeting. Following the presentations, parties and Authority staff will have an opportunity to ask parties questions of clarification. The Authority will determine what further process is required after the completion of the roundtable discussion.