



**Information & Communications Technology Authority**

**Public Consultation**

**on**

**Promotions – Regulatory Guidelines**

**(Ref: CD (2004) 2)**

**Launch Date: 16 Aug 04**

**Closing Date: 22 Oct 04**

## **1.0 INTRODUCTION AND OBJECTIVES**

In this public consultation document the Authority seeks comment from all interested parties on a particular set of guidelines that are to be employed to evaluate the legitimacy of retail service promotions.

In the Authority's view there currently exists little regulatory guidance with respect to service promotions. While Annex 5 to Cable & Wireless' ("C&W") Licence ("Annex 5") addresses the tariff treatment of C&W's retail and wholesale services, it does not explicitly address the tariff treatment of C&W's retail service promotions. To-date, the Authority has evaluated the legitimacy of Cable & Wireless (C&W) promotions on a case-by-case basis. **Attachment 1** contains a list of promotions offered by C&W since July 2003. Hence, the purpose of the guidelines in this public consultation is to reduce regulatory uncertainty by providing Licensees an understanding of how the Authority will evaluate and determine the legitimacy of service promotions.

The proposals and queries set forth in this public consultation document are offered without prejudice and do not represent the Authority's predisposition for a particular outcome with regards to the regulation of service promotions.

## **2.0 WHAT IS A SERVICE PROMOTION?**

A service promotion is an offering that is typically of a limited duration and intended to stimulate demand or encourage adoption of an existing or newly introduced service. There are often eligibility criteria associated with a promotion. The nature of a promotion may take the following forms:

- a price reduction, such as a percentage mark-off on a monthly service plan;
- a reduction or waiver in a one-off charge, such as an installation fee, equipment charge, or handset and accessory cost;
- a price-pack deal that offers additional services without an additional charge, such as a buy one, get one free offer;
- contests, sweepstakes, and/or games that automatically enter a subscriber into an event upon purchase or usage of a service; or
- a coupon or rebate that offers subscribers a price reduction of some form if they proffer a coupon ex ante or submit a rebate ex post.

## **3.0 PROPOSED PROCESS FOR REVIEWING SERVICE PROMOTIONS**

In arriving at the following proposals and questions, the Authority informally reviewed the regulatory treatment of promotions in Canada and the United States. In this section, the Authority sets out certain proposed constraints on the duration of service promotions and a proposed process for submitting service promotions to the Authority for approval.

### *3.1 Proposed constraints on the duration of service promotions*

Many jurisdictions endorse a light-handed regulatory treatment of promotions. Such treatment, however, is typically predicated on the constraint that promotions are limited in duration. Hence, in such cases the promotion's effect is considered sufficiently constrained by its limited duration to warrant less regulatory oversight.

In this section, the Authority proposes that the following constraints be applied to the duration of service promotions for tariff review purposes:

- 3.1.1 The duration of a promotion may not exceed 60 successive calendar days.
- 3.1.2 Comparable promotions may not be offered for a duration that exceeds 90 calendar days in total over any 12-month period. The 12-month period commences on the effective date of the first comparable promotion.
- 3.1.3 A comparable promotion is one that targets the same service. A comparable promotion need not have the same effect e.g., a promotional offer of a recurring monthly price discount is deemed "comparable" to a promotional offer of a one-off service or equipment fee waiver, if the promotions are applied to the same service.
- 3.1.4 A promotion is not to discriminate amongst similarly situated customers. All similarly situated customers are to be provided access to the promotion.

### *3.2 Consultation questions with respect to the proposed constraints on a service promotion's duration*

Question 1: The Authority seeks comments on the appropriateness of the proposed constraints on the duration of promotions and comparable promotions.

Question 2: Might it be preferable for the Authority to not identify a set of constraints on the duration of a service promotion ex ante, but instead to continue to evaluate the legitimate duration of a promotion on a case-by-case basis?

Question 3: Are there alternative or complementary criteria with respect to the legitimate duration of a service promotion that satisfy the twin goals of reducing regulatory uncertainty, while also maintaining sufficient flexibility for the Authority to modify its approach over time as the newly competitive market continues to develop?

All comments in the affirmative or negative are to be accompanied with a fully

supported and detailed explanation. Likewise, proposed alternative or additional criteria must be accompanied with a fully supported and detailed explanation.

### *3.3 Proposed tariff filing requirements of service promotions*

In this section, the Authority sets forth the following proposed process for submitting service promotions to the Authority for evaluation and approval.

- 3.3.1 C&W is to file its proposed promotion with the Authority a minimum of ten business days before the planned effective date. If C&W files a promotion in confidence, it is to file a redacted version for the public record as set out in the Confidentiality Regulations, 2003.
- 3.3.2 The information that is to accompany the proposal must, at a minimum, address the following issues:
- What is the duration of the promotion and what are the promotion's effective and termination dates?
  - Is the proposed promotion an extension of an earlier approved promotion?
  - When was the last time the company ran the same or a "comparable" promotion?
  - What are the eligibility criteria for the promotion?
  - Is the promotion discriminatory? That is, are there any customers that fail the eligibility criteria that are similarly situated to the customers that meet the criteria?
  - What is the business purpose of the promotion? In particular, is the proposed promotion a response to competition, a response to anticipated competition, a response to consumer demand, or some combination?
- 3.3.3 Unless more information is requested, the Authority shall accept or deny the proposed promotion within ten business days of receiving the proposal. It is expected that the Authority will meet this timeframe for the majority of promotions. In those cases where it is unable to meet this timeframe, the Authority will notify C&W prior to ten business days of receiving the proposal, indicate the reasons for the delay, and provide an anticipated date for its determination.
- 3.3.4 Proposed promotions need not include an imputation test analysis. The main reason for excluding promotions from such an analysis is because of their limited duration. Hence, a promotion's effect is considered sufficiently constrained by the time limitation.

3.3.5 Promotions need not be made available on a wholesale (resale) basis. This proposal is based on the limited duration of promotions. It is the Authority's view, however, that if promotions are permitted for an extended duration, this may necessitate the examination of mandated resale of promotions.

*3.4 Consultation questions with respect to the proposed tariff filing requirements of a service promotion*

Question 4: The Authority seeks comment on the appropriateness of each of the proposed tariff filing requirements.

Question 5: The Authority seeks comments on whether C&W should be allowed to file promotions in confidence? If so, how long should the proposed promotion be kept in confidence (e.g., date of approval, date of implementation, or some later date)?

Question 6: Should promotions that are denied be put on the public record?

Question 7: Should consideration of the degree of competition for the promotional service be taken into account in determining the above issues? If so, how should the Authority account for this consideration?

Question 8: Should consideration of potential interveners and their opportunity to submit comments be taken into account in determining the above issues? If so, how should the Authority account for this consideration?

Question 9: Should C&W be allowed to implement promotions before receiving approval from the Authority? Some considerations might be that a requirement for ex ante approval impedes C&W's incentive to introduce legitimate promotions that benefit consumers; or, in the alternative, without a requirement for ex ante approval, and despite the limited duration of the promotion, damage could be done to the market if C&W introduced promotions that were found ex post to be illegitimate.

Question 10: Might it be preferable for the Authority to not identify a set of tariff filing requirements ex ante, but instead to continue to evaluate the legitimacy of promotions on a case-by-case basis?

Question 11: Are there alternative or complementary tariff filing procedures that satisfy the twin goals of reducing regulatory uncertainty, while also maintaining sufficient flexibility for the Authority to modify its approach over time as the newly competitive market continues to develop?

Question 12: The Authority seeks comments on the merits of adopting promotions *guidelines* or, instead, implementing promotions *regulations* at this stage in the liberalisation process. How might this decision benefit or deter from the Authority's twin objectives cited in Question 11 above?

Question 13: Do separate and/or additional criteria or tariff filing requirements need to be adopted to evaluate the legitimacy of "winback" and/or "win"

promotions? In this context, the Authority defines a winback promotion as one that targets former C&W retail customers whom voluntarily terminated their service(s) with C&W, and a win promotion as one that targets new customers that have not previously subscribed to the promotional service?

All comments in the affirmative or negative are to be accompanied with a fully supported and detailed explanation. Likewise, proposed alternative or additional criteria must be accompanied with a fully supported and detailed explanation.

#### **4.0 CONSULTATION PROCESS**

The Authority requests written comments from established and potential Licensees, other stakeholders and the general public no later than Friday, 1 October 2004.

The Authority invites all parties that file written comments in this proceeding no later than 1 October 2004 to file reply comments. Parties choosing to file reply comments are to limit the scope of their comments to those issues raised in other parties' initial comments; reply comments should not address new issues, as this is not an opportunity to add comments. The deadline for submitting reply comments is Friday, 22 October 2004.

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  
3<sup>rd</sup> Floor, Alissta Towers  
North Sound Way  
Grand Cayman  
Cayman Islands

Or by e-mail to:

[consultations@icta.ky](mailto:consultations@icta.ky)

Or by fax to:

1-345-945-8284

**Attachment 1****Cable & Wireless Promotions**

<b>Filing Date</b>	<b>Promotion</b>	<b>Effective Date</b>	<b>End Date</b>
4 August 03	August Weekend SMS Promotion	7 Aug 2003	Four wknds in Aug (8 days)
18 Sept 03	"Promotion" of Text Messaging	23 Sept 2003	10 Oct 2003
23 Sept 03	Dial up Internet Migration/Incentive scheme/ADSL uptake	3 Oct 2003	7 Nov 2003
20 Nov 03	Christmas Promotion Notification	21 Nov 2003	31 Dec 2003
15 Jan 04	TDMA Handset Trade In Programme	22 Jan 2004	1 June 2004
15 Jan 04	GSM Handset Valentines Promotion	20 Jan 2004	14 Feb 2004
20 Jan 04	Text Messaging Promotion	23 Jan 2004	26 Feb 2004
20 Feb 04	TDMA/GSM Handset Trade in Programme	20 Feb 2004	1 June 2004
26 Feb 04	Coupon Offer	4 Mar 2004	31 Mar 2004
26 Feb 04	GSM Handset Motorola Promotion	1 Mar 2004	15 Mar 2004
12 Mar 04, 5 Apr 04, 23 Apr 04	bFree (GSM) Prepaid Scratch and Win Promotion	27 May 2004	When all cards distributed
23 Mar 04	Handset Trade In Programme	29 Mar 2004	1 June 2004
1 Apr 04	Buy One Get One Free and Web/Authorised Agents Special	7 Apr 2004	21 Apr 2004
23 Apr 04	Mother's Day Promotion-GSM Motorola Handset	4 May 2004	8 May 2004
28 Apr 04	C&W Blackberry Service Limited Introductory Offer	4 May 2004	31 May 2004
8 June 04, 10 June 04	Father's Day GSM Handset Promotion (Revised)	11 June 2004	19 June 2004
21 June 04, 1 July 04	IDD \$0.15 Mobile Calling for the Big 5 July Promotion	10 July 2004	31 July 2004 (wknds only)
21 June 04	Marquee Retail Store Grand Opening Specials	25 June 2004	30 June 2004
06 July 04, 8 July 04	Data Roaming Service	22 July 2004	16 Sept 2004
21 July 04	Customer Appreciation Promotion	27 July 2004	31 Aug 2004