



Response

to

ICTA's Consultative Paper

on

Indirect Access

12th December 2003

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1 Introduction

Digicel welcomes the opportunity to participate in the consultation process, and to comment on the ICTA's document on indirect access. We wish to acknowledge the ICTA for the preparation that went into the document and its efforts to develop effective competition.

Digicel's response is divided into general comments on the document and specific comments where responses are provided to the specific questions raised. Failure to comment on an issue raised in the consultation document and the submissions does not indicate agreement, and we reserve the right to comment at a later stage.

2 General comments

Adequate indirect access framework

To ensure maximum stakeholder benefits, the introduction of indirect access requires that adequate technical and regulatory framework be instituted prior its introduction as the process is very complex. The experience in the UK serves as a good example of such an effort. There the process was well thought out and included numerous consultation documents being published, several public workshops being held along with meetings with established industry groups. Additionally working groups were established who were responsible for dealing specifically with the introduction of indirect access.

A wider European Union framework guided the UK experience. Specifically Directive 97/33/EC required member states to introduce Carrier Pre-Selection (CPS) by January 1, 2000. In order to meet this requirement, Oftel commenced public work on CPS in December 1997. This was followed by many public consultations on general and specific aspects of CPS. Additionally, seven (7) working groups were established to deal with many of the commercial and technical implementation aspects of CPS. These groups were the – Commercial Group, Process Group; Process Improvement Group, Technical Task Group; Consumer Group, IT automation Group, Triallist Group. Due to the level of work involved, Oftel requested a deferral from and did not meet the 1 January 2000 deadline for CPS implementation set by the European Union.

It can be seen from the UK experience the level of work that went into the introduction of indirect access, specifically CPS. The ICTA is therefore encouraged to continue the consultation process, especially focusing on technical and cost aspects. Further it should encourage the formation of industry groups along the lines of those formed in the UK.

Infrastructure based competition

The early in introduction of CPS will have a negative impact in the introduction of competitive infrastructure in the Cayman Islands that is particularly critical in the early stage of the development of competition.

It is essential that the Cayman telecoms market in the long term continue to provide sufficient incentives to ensure that companies make further investments in the rollout of network infrastructure and the adoption of new technologies. The market is newly

liberalized and companies are in the early stages of network build and roll out. It is important therefore that the ICTA in fulfillment of its mandate, send the right signals to the new licence holders from now, that their potential investment will not be compromised during the early stages of market development. The focus here should be on developing infrastructure that will ensure that the provision of *all* telecoms services is possible and not just international calls.

Timing of introduction of Indirect Access

Following on from the two previous points Digicel questions the timing of indirect access considerations by the ICTA. Whilst we applaud the authority for displaying great foresight in bring this issue to a consultation process, it may be premature at this stage. Traditionally, indirect access is introduced after there is full liberalization and competition has been in the market for some time.

In the UK for example, competition had been in place for a number of years, before CPS consultations begun. This no doubt is largely due to the previous point made, but also due to the natural evolutions in competition that can happen in markets: – That is, that it is possible that competition develops to the point where the prevailing rates are so competitive for calls, that CPS need not be considered. As the market in Cayman for international calls becomes fully liberalized in April of 2004, the market should be allowed sufficient time to evolve before CPS or call by call selection is considered.

Cost benefit analysis

Prior to an introduction of any indirect access regime the ICTA will have to undertake a thorough cost benefit analysis to ensure that the benefits outweigh the costs. Indirect access can be very costly to introduce and can often entail upgrading network equipment, installing new billing software and having additional customer care support in addition to the cost of educating the consumer.

Additionally it must be demonstrated that the imposition of indirect access will not represent an unfair burden on any Licensee. In determining this, the ICTA should ensure that the assessment factors for “unfair burden” are transparent and well understood by the industry. Further that the industry will have an opportunity to consult on the assessment factors.

Consumer protection

The ICTA has correctly identified that measures will have to be instituted to adequately protect consumers against unfair practices. The consultation document mentioned “slamming”, but there is also “cramming” where unauthorized or deceptive charges are placed on customers’ telephone bills. Digicel therefore supports the proposal for the establishment of a Code of Practice if indirect access is being introduced.

Numbering issues

The introduction of CPS and/or call by call selection will be predicated on having an established numbering plan in place. This will not only provide the framework for

numbering allocation, but also establish the rules and regulations within which licensees would operate.

3 Specific Comments

3.1 Licensee Obligations to Provide Indirect Access

Question 1.1 Should indirect access be mandated only for Cable & Wireless at this time? Should it be mandated for all licences ICTA service providers that have fixed line access network arrangements?

Question 1.2 Assuming a decision in favour of indirect access, what proposed limitations, if any should apply to the provision of indirect access including limiting implementation of indirect access to certain types of access lines and/or limiting implementation of indirect access before or after 1 April 2004?

Answers to 1.1 and 1.2: These issues have been somewhat address in the General Comments in the aforementioned sections. To reiterate, Digicel feels that at such an early stage of liberalization of the Telcoms market in Cayman the focus should be on developing infrastructure based competition. Further the market should be allowed time for competition to evolve as this could result in competitive prices being offered in the market for international calls.

Question 1.3 Should indirect access be mandated for mobile carriers at this time, in addition to the licensees addressed in Question 1.1?

Answer: Digicel disagrees that the mandate to provide indirect access should be extended to include mobile carriers at this time. In addition to the points raised above, as the ICTA pointed out in its consultation doc¹ the new mobile operators will have to invest substantial amounts of money in rolling out their network and will not be incentivised to do so if indirect access obligations are imposed on them. However more importantly, with roll out obligations imposed on mobile operators, it would be unfair to impose further obligations through indirect access until their networks have been sufficiently rolled out and sustainable competition has emerged. This would not only affect the companies, but also will undermine the quality of service available to consumers and affect the development of the industry as a whole.

Question 1.4 If indirect access should not be mandated for mobile carriers at this time, what is the contemplated time scale for investigating the potential extension of mandated indirect access on mobile carriers. What factors should be taken into account in such an investigation.

Answer: An assessment of the level of competition in the market would need to be done to gauge whether or not there is market failure in the provision of international calls.

¹ Page 5 para 4

3.2 Licensee Eligibility to Avail Itself of Indirect Access

Question 2.1 Assuming a decision in favour of indirect access, are the proposed qualification criteria for indirect access operators appropriate? Should there be tighter restrictions on which licensees can avail themselves of indirect access?

Answer: Without prejudice to the aforementioned points another factor that should be considered Digicel would add that the indirect access operator should also possess their own infrastructure.

3.3 Cost and Benefits and any Unfair Burden of Indirect Access

Question 3.1 Is there agreement with the costs and benefits of mandating indirect access? Are there other costs and benefits the Authority should take into account? How should the Authority assess the notion of unfair burden?

Answer: Whether or not the ICTA decides to introduce indirect access will depend on the completion of a two-tier assessment. That is, firstly a cost benefit analysis has to be done which results in the benefits outweighing the cost. Secondly, an unfair burden test demonstrates that the introduction will result in a fair and reasonable mechanism.

There is general agreement by Digicel on the cost and benefits identified in the consultation document. This is not an exhaustive list as for example there is the possibility of efficiencies in network utilization being generated. However as the Telecoms market is developing the ICTA will need to identify a time period within which any cost benefit assessment will take place. The dynamic nature of the market will obviously yield different results depending on the time frame within which the assessment is done. In respect of the notion of unfair burden cost recovery principles will largely determine whether or not the introduction of indirect access is fair and reasonable.

3.4 Proposed Indirect Access Regime

Question 4.1 Assuming a decision in favour of indirect access, is there agreement with the proposed indirect access regime and, in particular, the proposal for the availability of both carrier pre-selection with call-by-call override capability for publicly available international voice services?

Answer: The introduction of both CPS and Call-by-call override might add unnecessary complications for consumers when indirect access is introduced. In the UK, customers were given the option of call-by-call override first and then progressed to CPS. A similar evolution path could be followed in the Cayman market.

Question 4.2 Are there implementation issues with the proposed indirect access regime, which may preclude the economic and/or timely introduction of competition in international ICTA services in the Cayman Islands? Are there proposed solutions to such implementation issues?

Answer: As mentioned before the introduction of indirect access is a costly undertaking, the benefits of which may result from a natural evolution of a competitive market. Therefore diverting resources prior to the introduction of full competition in the market can stymie this evolution have a negative effect on the growth of the market.

Question 4.3 Are there additional service functions that would be required in order to implement CPS with call-by-call selection?

Answer: No comments at this time.

Question 4.4 As the industry trend is simplify billing for customers as much as possible, is there customer demand in the Cayman Island for single bill option? If so, what benefits and costs would such an additional service bring and how should it be implemented?

Question 4.5 Are there technical, legal or other impediments, which would prevent one bill to be issued either by the indirect access operator or the access and local service provider? If single billing of indirect access customers was to be implemented, would single billing by the indirect access operator or by the access and local services provider be more desirable?

Answers to 4.4 and 4.5 : Digicel objects to the notion of single billing and would suggest that each CPS provider bill directly for the following reasons:-

- C&W or any other company mandated to make its network available for indirect access services would have to substantially expand its billing system to deal with the billing requirements of indirect access operators – especially those providing CPS. This could include all the pricing permutations and discounts offered by the CPS operator. Understandably, additional customer service personnel would have to be hired by the access network licensee to deal with the fact that by default they will have to deal with calls on billing issues that are not related to its own operations. Given the requirement in the legislation, that the introduction of indirect access is contingent on the benefits outweighing the costs, the access network licensee could use these associated expenses to add to the costs of the service.
- By allowing the CPS operator to directly bill their customers, they would have greater control over all aspects of customer service as they would:
 - Deal directly with customers on issues related to bill enquiries, payments and special promotions
 - Market directly to these customers through marketing inserts included in the bills. The access network licensee may be reluctant to include literature from its competitor in its bills as their own tariffs would face downward pressures from indirect access operators. Further the access network licensee could argue that the cost and time for doing this for a large number of indirect access operators would be high and could levy prohibitive fees to doing so.

Direct billing also increases the public awareness of the existence of indirect access operators. This not only aids in the awareness of differing competitive options, but can also bring greater level of scrutiny over the actions of these operators.

In the UK customers receive separate bills from their related Telecoms provider.

3.5 Consumer Protection

Question 5.1 Assuming a decision in favour of indirect access, is a Code of Practice required? What issues might be addressed in such a Code? Which parties should be required to adopt the Code of Practice- indirect access operators only or both indirect access operators and indirect access providers? How should such a code be developed?

Question 5.2 Are consumer protection measures other than or in addition to a Code of Practice as addressed in Question 5.1 necessary to protect consumers against fraud or misuse of personal information, and, in general, to ensure consumer confidence in licensed international ICTA service providers?

Answer to 5.1 and 5.2: At the appropriate time when indirect access is introduced a Code of Practice will be required and all entities involved in the provision of such services should be signatories of the document. The development of the code could be handled by one of the industry working groups.

Included in the code should be issues such as

- Slamming and cramming
- Procedures for switching customers (if going with CPS)
- Handling customer complaints and billing issues
- Timescales for inter operator disputes

3.6 Numbering Issues for Indirect Access

Question 6.1 Assuming a decision in favour of indirect access, are there any technical or other impediments preventing the timely and economic implementation of the proposed format of CAC and CIC codes?

Answer: As mentioned in the General Comments, prior to any CAC or CIC codes being allocated, a numbering plan for the Cayman Islands needs to be developed. This will establish the wider framework of numbering allocation that will govern these codes. As Cayman is part of the North American Numbering Plan any development of a local numbering plan should take place within this framework.

3.7 Cost Recovery for Indirect Access

Question 7.1 Assuming a decision in favour of indirect access, is there agreement on the proposed cost recovery proposals? Are there any practical problems implementing any of the proposals regarding cost recovery?

Answer: Digicel strongly agrees that there are three main types of cost associated with providing indirect access. We are, however, concerned that there does not appear to be the ability of the access network licensee to recover cost for the yearly administration of the service.

Digicel would also like further clarification as to what the ICTA means by recovering costs from indirect access operators directly and not through interconnection charges. It is our assumption that this means that each indirect access operator would be required to pay a per transaction charge to the access network licensee for each network calling line identity on which the CPS operator requires indirect access to be set-up, changed, cancelled or removed.

3.8 Other issues

Question 8.1 Assuming a decision in favour of indirect access, is there a requirement for the establishment of an industry committee to implement indirect access?

Answer: With reference to the General Comments, Digicel feels that the establishment of an industry committee will be critical to the implementation of indirect access. As seen in the UK example several working group were also established to oversee the specific aspects of implementation that arise with indirect access. Whilst there may not need to be the exact number of groups as in the UK experience, some groups will still need to be established.

Question 8.2 Are there any other issues that the Authority should take into account in its determinations on indirect access?

Answer: Please see comments made in the General Comment section.