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Office of Utilities Regulation

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# **Alleged Price Squeezing: Directory Enquiry Service**

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## **Opinion**

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**OFFICE OF UTILITIES REGULATION**

May 13, 2008

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## **Abstract**

The Telecommunications Act 2000 (The Act) is the primary legislation governing Jamaica's telecommunications sector. Under this Act the Office of Utilities Regulation (OUR) has been assigned certain regulatory duties. These include the promotion and protection of the interests of the public and the facilitation of competition.

Based on Section 48 of the Act, every service provider shall take such steps as are necessary to ensure that, in relation to its retail public voice services, each customer of that service can reasonably and reliably reach a directory assistance service. Additionally, the service provider may charge a fee for the provision of the directory assistance/enquiry (DQ) service it offers.

Currently, C&WJ has the only database of its fixed line subscribers and offers a wholesale and retail service for directory assistance/enquiry (DQ). Based on the complaints from Digicel in relation to the purchase and resale of the referenced product from C&WJ, the OUR offers its opinion<sup>1</sup> regarding the allegation of a price squeeze and/or predatory pricing by C&WJ.

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<sup>1</sup> **The comments reflected herein, represent the opinions of the Office of Utilities Regulation and are not intended to be legally binding.**

## CHAPTER 1: REGULATORY FRAMEWORK

- 1.0 The Office of Utilities Regulation (OUR) has a statutory duty to regulate the telecommunications markets in Jamaica in accordance with the provisions of the Telecommunications Act 2000 (the Act). Consistently with this, the OUR is required to promote fair competition and promote the interest of consumers as per Section 4(1) of the Act.
- 1.1 The substantive section of the Act which deals with Directory services is Section 48 which states:
- (1) Every service provider shall take such steps as are necessary to ensure that, in relation to its retail public voice services –
    - (a) each customer of that service can reasonably and reliably reach -
      - (i) emergency services by dialing the number specified for use in connection with such services; and
      - (ii) subject to subsection (2), a directory assistance service;
    - (b) no charge is imposed for calls to emergency services.
  - (2) A service provider may charge a fee for the provision of directory assistance.
- 1.2 In undertaking its duties under the Act to promote fair competition and promote the interest of consumers, the OUR is required to refer matters of competitive significance to the Fair Trading Commission as per Section 5 of the act which states:
- Where after consultation with the Fair Trading Commission the Office determines that a matter or any aspect thereof relating to the provision of specified services -
- (a) is of substantial competitive significance to the provision of specified Commission.
  - (b) falls within the functions of the Fair Trading Commission under the Fair Competition Act, the office shall refer the matter to the Fair Trading Commission.
- 1.3 Sections 19 and 20 of the Fair Competition Act (FCA) are also relevant to the assessment of the referenced complaint.
- 1.4 Section 19 of the FCA defines dominance by stating, “For the purposes of this Act an enterprise holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic strength as will enable it to operate in the market

without effective constraints from its competitors or potential competitors.”

1.5 This is complemented by Section 20 of the said Act which defines the abuse of a dominant position as follows:

(1) An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular but without prejudice to the generality of the foregoing, if it-

(a) restricts the entry of any person into that or any other market;

...

(d) directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices;

### **Purpose of this Document**

1.6 This paper seeks to assess the merits of the complaint made by Digicel in relation to an allegation that C&WJ is engaged in price squeezing in relation to its Directory Enquiry service.

## **CHAPTER 2: ASSESSING THE ALLEGATION OF A VERTICAL PRICE SQUEEZE IN THE MARKET FOR DIRECTORY ENQUIRY SERVICE**

### **Background**

2.0 Digicel Jamaica Limited sent a letter dated December 5, 2005 to the Office of Utilities Regulation lodging a complaint that Cable and Wireless Jamaica Limited (“C&WJ”) was engaging in what is commonly known as “exclusionary excess pricing” or “price Squeeze”. The letter states, inter alia:

“C&WJ is currently charging its retail customers 25 Jamaican Dollars per call for national DQ services (“directory enquiry services”) while it charges other operators between 51.966 Jamaican Dollars and 32.278 Jamaican Dollars per minute for the same interconnection service. C&WJ is therefore charging up to over one hundred percent (100%) more for the services to other operators than it charges its retail customers.

The fact that C&WJ’s retail prices is substantially lower than the interconnection rates means that no operator in Jamaica can match C&WJ’s retail price. This places all operators in Jamaica at a competitive disadvantage vis-à-vis C&WJ in the downstream retail market in which C&WJ and Digicel compete and constitutes contravention of section 30 (i) (a) (iii) of the Act that requires dominant operators to provide interconnection services on a cost-oriented basis”.

2.1 C&WJ responded to Digicel’s complaint set out in its letter of December 5, 2005 by letter dated 4<sup>th</sup> January 2006 to the Office in which it stated inter alia that in compliance with the Office’s previous indication “that the National DQ and other services of its kind classified by C&WJ as Special Services should be included as interconnection services in the Reference Interconnection Offer (RIO), C&WJ “submitted the rates in conjunction with the statutory pricing principles” and that “The most recent rates that were submitted to the Office for approval are those contained in the RIO5a Tariff Schedule which came into effect on November 26, 2004”.

2.2 C&WJ then sets out the “interconnection rates that are charged for National DQ”. The said letter of January 4, sets out the provisions of Section 48 (i) and (2) to wit:

“48. (1) Every service provider shall take such steps as are necessary to ensure that in relation to its retail public voice services –

(a) each customer of that service can reasonably and reliably reach

(i) emergency services by dialing the numbers specified for use in connection with such services; and

(ii) subject to subsection (2) a directory assistance service,

(b) no charge is imposed for calls to emergency services

(2) A service provider may charge a fee for the provision of directory assistance”.

2.3 C&WJ then states –

“In relation to the National DQ services the statute gives the operators the option of charging a fee, as a corollary the operators also have the option of not charging a fee. bMobile has opted to charge a fee to its customers, however, in the same way that it bears the full cost of emergency services, it has chosen to bear a portion of the cost for National DQ”.

2.4 On the basis of this submission, C&WJ denies that it is in breach of Section 30 (1) (a) (iii) of the statute and “urges the Office to deny Digicel’s request for an application for enforcement procedure pursuant to Section 65”.

## Complaint Summary

2.5 Digicel's complaint is summarized as follows.

**Table 1:**

<b>Pricing per Call</b>	<b>Peak</b>	<b>Off-Peak</b>	<b>Weekend</b>
C&WJ Wholesale Price	J\$51.966	J\$47.044	J\$32.278
C&WJ Retail Price	J\$15.00	J\$15.00	J\$15.00
C&WJ Bmobile Rate	J\$25.00	J\$25.00	J\$25.00
Digicel Retail Price	J\$25.50	J\$25.50	J\$25.50
Digicel Gross Margin	-\$26.466	-\$21.544	-\$6.778

Source: Digicel

2.6 Digicel alleges that C&WJ has either set the retail price below cost (predatory pricing), or set the wholesale price significantly above cost, creating a margin (price) squeeze or a combination thereof.

### Existence of Dominant Position

2.7 Usually, a price squeeze occurs in cases where an integrated telecommunications carrier controls access to an essential input. This suggests that the possession of dominance usually assists in effecting a price squeeze. It could be argued that C&WJ possesses market power in the wholesale market for access to the database of directory information on its fixed line subscribers.

2.8 According to Section 19 of the Fair Competition Act, "...an enterprise holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors." For the purpose of this analysis, the OUR will simply assume that C&WJ has a position of dominance in the market for access to directory information on fixed line subscribers. Although no detailed analysis was undertaken by the OUR on this matter based on current market conditions, C&WJ remains the sole carrier with a database of C&WJ's subscribers. It will be demonstrated below that this assumption is not critical to the findings of this assessment.

### Abuse of dominant position

2.9 In Section 20, the Fair Competition Act further states that "An enterprise abuses a dominant position if it impedes the maintenance or development of effective competition in a market and in particular but without prejudice to the generality of the foregoing, if it-

(a) restricts the entry of any person into that or any other market;

...

(d) directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices;



2.10 The typical definition of a price squeeze is similar to that of the European Commission:

*"a price squeeze could be demonstrated by showing that the dominant company's own downstream operations could not trade profitably on the basis of the upstream price charged to its competitors by the operating arm of the dominant company".<sup>2</sup>*

Base on this definition, a price squeeze falls in the category of "...directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices...."

### **Incumbent's Conflict of Interest**

2.11 Since an incumbent like C&WJ typically operates as both:

- a supplier of critical inputs (interconnection and other wholesale services) to downstream service providers; and
- a competitor against these service providers in downstream retail markets;

it faces an inherent conflict of interest. Expanding the sale of its wholesale product would benefit the company but this could also lead to a fall in sale of its retail product.

### **Imputation Test**

2.12 The imputation test is generally conducted by comparing:

- the retail price charged by the dominant operator for a particular service, with
- the wholesale access price charged by the dominant operator for access to its network, plus the additional expenditure needed to transform the essential input into the retail service.

### **Imputation Test for Vertical Price Squeezing in the Market for DQ Service**

2.13 What is commonly referred to as a vertical price squeeze or margin squeezing is a specific form of anti-competitive conduct that is sometimes engaged in by dominant carriers or service providers. This conduct is possible when the dominant operator (usually the incumbent), supplies services in two or more *vertical* markets. That is, if the dominant operator operates in upstream or wholesale markets as well as downstream or retail markets.

2.14 This conduct usually occurs when a carrier or service provider with market power controls certain products/services that are key inputs or essential inputs for competitors in retail markets, and these inputs are also used by the dominant operator (or the operator with market power) to compete in the same retail market.

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<sup>2</sup> Notice on the application of the competition rules to access agreements in the telecommunications sector, OJ 1998 C 265/2  
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- 2.15 In most telecommunications markets, the incumbent operator usually controls local access and switching services. "Consider one such service - the provision of dedicated local circuits from customer premises to local exchanges. Dedicated local circuits can be viewed as "Upstream" services. These services are used as input by the incumbents in providing "downstream" services, such as dedicated internet access services. Dedicated local circuits are also a key input for competitors who provide dedicated internet access services. In other words, both the incumbent and other suppliers compete in the downstream market for dedicated internet access services.
- 2.16 If the incumbent decided to engage in vertical price squeezing, it could increase the price to competitors for the upstream input (i.e. dedicated local circuit rates) - while leaving its downstream prices the same (i.e. prices for its dedicated internet access services). The effect would be to reduce or eliminate the profits (or *margins*) of competitors. Their margins would be *squeezed*. To increase the squeezing effect, the incumbent could also reduce its downstream prices for internet access. This would be a *two-way* or margin squeeze."<sup>3</sup>
- 2.17 In the current case, the comparison is between the wholesale and retail prices for directory information service. The following calculation is based on the peak wholesale and retail prices for C&WJ's fixed and mobile DQ services.

<b>Table 2</b>	
<b>Example of Vertical Price Squeeze by Incumbent Operator</b>	
Cost to incumbent of upstream facility, service/product (DQ access)	J\$51.966
Price charged by incumbent to competitor for DQ access	J\$51.966
Additional cost of providing retail services to end users include marketing, billing, etc.	\$0
Price charged by incumbent to end users for DQ access services by C&WJ Fixed Retail	J\$15.00
Price charged by incumbent to end users for DQ access services By Bmobile	J\$25.00
Imputed Margin for C&WJ Fixed Retail	-J\$36.966
Imputed Margin for Bmobile	-J\$26.966

- 2.18 The price for the DQ access plus the cost of providing the retail service is greater than the retail prices for both the fixed and mobile services (an imputed margin of -\$36.966 and -\$26.966 respectively). This suggests that the test was failed and the incumbent is engaging in price squeezing.

<sup>3</sup> See <http://cbdd.wsu.edu/kewlcontent/cdoutput/TR503/page14.htm>

2.19 Notwithstanding this, this information must be considered in the context of the existing regulatory framework. According to Section 48 of the Telecommunications Act:

(1) Every service provider shall take such steps as are necessary to ensure that, in relation to its retail public voice services –

(a) each customer of that service can reasonably and reliably reach -

(i) emergency services by dialing the numbers specified for use in connection with such services;

and

(ii) subject to subsection (2), a directory assistance service;

(b) no charge is imposed for calls to emergency services.

**(2) A service provider may charge a fee for the provision of directory assistance.**

2.20 In some sections of the Telecommunications Act 2000, the legislators specifically stated that charges should be cost oriented. However, in this instance, the Act specifically stated that "...service provider may charge a fee for the provision of directory assistance." Therefore, the legislation gives the service provider the option of charging cost oriented prices, pricing below cost or the option of absorbing all the cost of providing the service. In this context, it is difficult to conclude that C&WJ is guilty of price fixing.