
Office of Utilities Regulation

**APPLICATION BY CABLE & WIRELESS JAMAICA TO BE DECLARED NON-DOMINANT
IN THE
PROVISION OF PUBLIC VOICE TELEPHONY**
(Application in relation to Decision on Determination Notice: TEL 2003/07)

BEFORE THE OFFICE OF UTILITIES REGULATION
OF JAMAICA

3rd Floor, P.C.J. Resource Centre, 36 Trafalgar Road, Kingston 10, Jamaica
West Indies



OFFICE OF UTILITIES REGULATION

June 11, 2007

Abstract

On January 25, 2007, the Office of Utilities Regulation (OUR) received an application from Cable & Wireless Jamaica Limited (C&WJ) for a declaration of non-dominance in the provision of voice telephony. The OUR invites comments on C&WJ's application in general as well as responses in relation to the questions listed by the OUR in this document.

The OUR will consider this application by C&WJ, as well as any comments received during this consultation, in deciding whether to grant a declaration of non-dominance. Consistent with the OUR's obligation to be transparent, the OUR will post the actual text of C&WJ's application on its website www.our.org.jm. Note, however, that the OUR has deleted traffic volumes from the posted document because this information was submitted in confidence.

For the purpose of testing and verifying the information provided by C&WJ, the OUR will, if required, request that individual licensees provide relevant information. Additionally, the OUR will also rely on information submitted by licensees in quarterly data filings as well as information provided through other data filings. For the avoidance of doubt, information submitted under confidential cover will remain so, unless, in the opinion of the Office, "...disclosure is necessary in the public interest..."¹

In terms of assessing this application, the OUR will apply the same economic tests as were applied in assessing market dominance. The OUR will consider any new facts or arguments that may be submitted by the applicant or other interested parties during the consultation period.

¹ See section 7 of the Telecommunications Act 2000.

Comments from Interested Parties

Persons who wish to express opinions on this Document are invited to submit their comments in writing to the OUR. Responses to this document should be sent by post, fax or e-mail to:-

Patrick K. Williams
P.O.Box 593, 36 Trafalgar Road, Kingston 10
Fax: (876) 929-3635
E-mail: pwilliams@our.org.jm

Responses are requested by July 20, 2007. Any confidential information should be submitted separately and clearly identified as such. In the interest of promoting transparent debate, respondents are requested to limit as far as possible the use of confidentiality markings. Respondents are encouraged to supply their responses in electronic form, so that they can be posted on the OUR's Website (www.our.org.jm).

Comments on responses

The OUR's intention in issuing this Consultative Document is to stimulate public debate. The responses to this Document are a vital part of that public debate, and so as far as possible, should also be publicly available. The OUR considers that respondents should have an opportunity both to examine the evidence and views put forward in other responses, with which they may disagree, and also wish to comment on them. The comments may take the form of either, correcting a factual error or putting forward counterarguments and/or providing data relating to cost, traffic, revenues, etc.

Comments on responses are requested by August 7, 2007.

Arrangements for viewing responses

To allow responses to be publicly available, the OUR will keep the responses that it receives on files in the Information Centre, which can be viewed by and copied for visitors to the OUR's Offices. Individuals who wish to view the responses should make an appointment by contacting **Gillian Henderson** (Senior Information Officer) by one of the following means:-

Telephone: (876) 968 6053 (or 6057)
Fax: (876) 929 3635
E-mail: ghenderson@our.org.jm

The appointment will be confirmed by a member of the OUR's staff. At the pre-arranged time the individual should visit the OUR's offices at:

Application by Cable & Wireless Jamaica to be Declared Non-dominant 4
in the Provision of Public Voice Telephony,
Consultative Document
Document No: TEL 2007/06
June 11, 2007
Office of Utilities Regulation

3rd Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10

The individual will be able to request photocopies of selected responses as well as comments on responses at a price, which reflects the cost to the OUR.

Timetable

The timetable for the consultation is summarized in the table below:-

Summary of the timetable for public consultation

<i>Event</i>	<i>Date</i>
Publish Consultative Document	June 11, 2007
Response to this document	July 20, 2007
Comments on Response	August 7, 2007
Draft Determination Notice	By October 2, 2007

Cover sheet for response/reply comment in relation to an OUR Consultation

BASIC DETAILS

Consultation title (including Document Number):

State if this is a Consultation Response or Reply Comment:

To (OUR contact):

Name of Respondent:

Representing (self or organisation/s):

Address (if not sent by email):

CONFIDENTIALITY

What do you want OUR to keep confidential?

Nothing

Whole response

Part of the response

Specify parts, ensuring that the confidential part falls on

separate pages from the non-confidential pages?

If you want part of your response to be confidential, the OUR requests that you provide electronic confidential and non-confidential versions.

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response/reply comment. It can be published in full on OUR's website, unless otherwise specified on this cover sheet, and I authorise OUR to make use of the information in this response to meet its legislative requirements. If I have sent my response by email, OUR can disregard any standard e-mail text about not disclosing email contents and attachments.

Name

Signed (if hard copy)

CHAPTER 1: METHODOLOGY FOR ASSESSING DOMINANCE

- 1.0 The analytic procedure is a two-step framework involving:
- i) The definition of the relevant market
 - ii) An assessment of dominant position

Relevant Market

- 1.1 The definition of the relevant market(s) is a necessary step in assessing market dominance. In defining the relevant market, the analyst will identify the relevant products/services, as well as the extent of competition or the potential competition among firms within a specified geographic area. In relation to the geographic market analysis, the relevant question is whether a small but significant non-transitory increase in price (SSNIP) will result in customers switching to suppliers in other areas. The geographic area could be any part of Jamaica or the entire country. Similarly, in relation to the product market, the analyst would be concerned with the set of products that the consumers would switch to on the basis of a SSNIP. These products are identified based on functionality, quality, price, cost and customer groups.

Product Market

- 1.2 The critical issue in market definition is the identification of products to which the consumers might switch. The most well known, and used approach to market definition in competition and regulatory agencies across jurisdictions, is the aforementioned SSNIP or 'hypothetical monopolist' test. The underlying approach is as follows: if there was a sole supplier of a defined set of products or services in a defined geographical area, would that 'hypothetical monopolist' find a small but significant (and permanent) price increase (say 5-10%) profitable? If so, then a relevant market can be defined for competition and regulatory purposes. The logic is that, if such a price increase was profitable, then other products or services and other geographical areas would not provide a competitive constraint on the set of services and geographical area under examination.
- 1.3 To apply the test, one starts first with the narrowest set of services and geographical area. Gradually widen the set of products and the geographic area and if the answer to the above question remains in the affirmative, then the supplier is dominant. The reason why a small but significant price increase might not be profitable is that the hypothetical

monopolist could lose a sufficiently large volume of sales because of demand-side or supply-side substitution or potential competition or all three sources of competitive constraint.

- 1.4 To the extent that there are products or services with similar functionality, quality and price, demand substitutability usually imposes the greatest constraint on a 'hypothetical monopolist'. Supply substitutability and potential competition are usually less immediate as they generally take effect with a significant lag.

Potential Competition

- 1.5 The extent to which potential competition is taken into account depends on the analysis of the extent of entry barriers. If barriers to entry are insignificant, then potential competition imposes a significant constraint on the 'hypothetical monopolist'.

Geographic Market

- 1.6 In defining the relevant market, the relevant dimensions are not only the products or services and potential suppliers but also the geographic boundary of the market. This may be defined in terms of the entire country or a region within a country. The geographic boundaries of the relevant market are defined by the extent to which the product or products of rival suppliers at different geographical locations can impose competitive constraints on the pricing behaviour of firms operating in the relevant market.

Determination of Dominance

- 1.7 After defining the relevant market, the next step is to assess whether any supplier is dominant. According to section 19 of the Fair Competition Act of 1993, "... 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."
- 1.8 The assessment of dominance should consider factors such as market share, barriers to entry, buyer power, prices and profitability, and vertical relationships.

CHAPTER 2: APPLICATION BY C&WJ AND ISSUES ON WHICH THE OUR INVITES SPECIFIC COMMENTS

2.0 Although C&WJ's application is not set out in a manner that facilitates clear identification of this two step process, in the interest of time, the OUR offers the following brief summary of the application².

2.1 According to C&WJ,

“Section 28 (3) of the Telecommunications Act, provides that:

“A dominant public voice carrier may at any time apply to the Office to be classified as non-dominant”

In accordance with section 23 (8)³ of the Telecommunications Act 2000, C&WJ applies to the Office of Utilities Regulation to be classified as non –dominant in the provision of public voice telephony services.

Specifically, C&WJ applies to be classified as non-dominant in the supply of the following services, which have previously been defined as markets by the OUR:

[(a)] Fixed Access

- (i) Business Access: This includes installation and rental of ordinary business lines and direct inward dialing (DID). Relocation and reconnection should also be included.
- (ii) Residential Access: This includes installation and rental of ordinary residential lines and direct inward dialing (DID). Relocation and reconnection should also be included.

(b) Domestic Retail Services

- (i) Intra-parish Calls: These are calls originating from a fixed access line (residential or business telephone) in one parish to a fixed access line in the same parish.

² It is recommended that those responding to this application view the actual submission at www.our.org.jm.

³ The appropriate reference is Section 28 (3) of the Telecommunications Act.

- (ii) Inter-parish Calls: These are calls originating from a fixed access line (residential or business telephone) in one parish to a fixed access line in another parish.
 - (iii) Public Pay Phones
 - (iv) Other Domestic Retail: These include call waiting, three way dialing, call forwarding, automatic busy redial, priority ring, automatic call back, selective call rejection, selective call forwarding, directory assistance and freephone services.
- (c) International retail services
- (i) Outgoing International Calls: These are calls on a fixed access line and wholesale minutes (including sales to mobile service providers) to points outside of Jamaica.
 - (ii) Incoming International Calls
- (d) Fixed Network Interconnection Services
- (i) These carrier interconnection services are sold by C&WJ to other operators and downstream Businesses. They include switching, transmission, termination and other apparatus and system used in supplying telecommunications services.”

Relevant Markets

- 2.2 C&WJ seems to be suggesting that the relevant markets consist of call origination services (divided into calls terminating domestically and those terminating on networks outside of Jamaica). In addition to domestic calling services and outgoing international calling services, C&WJ has applied for a declaration of non-dominance in the various fixed network interconnection services markets.
- 2.3 C&WJ suggests that the markets for calling services include both fixed and mobile calls. C&WJ stated that “...In none of the developed countries does mobile penetration surpass fixed line penetration, as is the case in Jamaica. In those markets mobile has always been complementary to fixed voice. In the case of Jamaica, the majority of Jamaicans have had no experience of having a fixed line at home. Their only experience of voice telephony is mobile telephony, particularly prepaid. Indeed, C&WJ experienced dramatic churn on its fixed network, particularly in the first three (3) years of competition in the mobile market, as fixed line customers who refused to pay their bills merely switched to using a mobile phone. In the case of Jamaica, for voice origination, both mobile and fixed are substitutable....”

2.4 In relation to interconnection services such as switching, transmission and termination no relevant markets were defined. However, based on the information presented in relation to the call service markets, it is assumed that the suggestion is that the switching transmission and termination services of other service providers would be substitutes for these services.

Question 1: What are your comments on the market definitions suggested by C&WJ? If you are not in agreement with this definition, please give reasons as well as what you consider to be the relevant markets?

Assessment of Dominance

Market Share

2.5 Estimates of traffic volume data submitted by C&WJ indicate that mobile service providers supply just over 50% of the demand for public voice telephony minutes.

Table 1: Total Domestic Originated Minutes (September 1, 2005 – August 31, 2006)

	'000 Minutes	
	Fixed	Mobile
Total Minutes	XXXXXXXXXXXX	XXXXXXXXXXXX
<i>As %</i>	49.57%	50.43%

International Incoming

2.6 C&WJ estimates that 54% of all international calls into the island are carried by third party mobile operators.

International Outgoing

2.7 At December 2006, the breakout for outgoing international traffic in millions of minutes (as supplied by C&WJ) was as follows:

	'000 000 Minutes	
	Fixed	All Mobile
Total Minutes	XXXXXXXXXXXX	XXXXXXXXXXXX
<i>As %</i>	9.52%	90.48%

C&WJ estimates that third party mobile operators' share of the international outgoing market is between 65.2% - 75%. C&WJ also claims

that the decline in outbound international minutes from the fixed network was as much as 70% as at December 2006.

- 2.8 Information was also supplied to indicate that several licences were issued for the domestic and international carrier facilities as well as domestic and international service providers.

The table below shows a listing of licences issued in the various categories during the course of calendar year 2005 and the total numbers of such licences that have been issued to December 2005.

Table 3.3
Number of Telecoms Licences Granted

Licences	2000	2001	2002	2003	2004	2005	Total Issued
ISP		45	12	3	14	2	77
ISP STVO)		7					7
IVSP		31	10	6	5	1	53
DC		11	8	8	7	2	36
DVSP		17	8	13	6	2	46
DSP		22	2	5	1	2	32
FTZC	1	6	2	1			10
FTZSP	1	6	1				8
IC				48	20	5	73
INTL.SP				41	21	7	68
Total Issued	2	145	43	125	74		410

- 2.9 Although C&WJ did not comment specifically on barriers to entry or contestability, the OUR assumes that the information on the number of licences issued and the entry of two mobile operators are intended to suggest that the relevant markets are contestable.

Question 2: Do you have any comments on the views expressed by C&WJ concerning the degree of competition in what it considers the relevant markets?

Question 3: Do you have any other relevant comments or representation you think should be taken into account when considering whether C&WJ is dominant or not in the relevant markets?

NB: For the avoidance of doubt, this document does not represent the Office's position in relation to the definition of the relevant markets or the assessment of dominance in such markets.