



CABLE & WIRELESS
JAMAICA

C&WJ's
RESPONSE TO THE OUR'S
CONSULTATIVE DOCUMENT
ON

**STRUCTURE OF QUARTERLY
TELECOMMUNICATIONS REPORT**

Document No: Tel 2008/10 : Con/03

August 7, 2008

1.0 Cable & Wireless Jamaica (C&WJ) is pleased to be afforded the opportunity to respond to the Office's proposal regarding the structure of the quarterly Telecommunications Report, Document No: Tel 2008/10:Con/03.

1.1 We are pleased that the Office has remained faithful to consult on the publication of aggregated industry information as it had undertaken to do in the Decision titled '*Final Decision on Telecommunications Markets Information Requirements*', published January 23, 2006 (the January 2006 Determination).

1.2 In the January 2006 Determination, the OUR itemized the reasons for mandating the supply of information to the OUR by telecommunications service providers, these being:

- *To satisfy Section 16 of the Act – To impose an annual regulatory fee in relation to all Carrier and Service Provider licenses issued under the Act. The fee may be based on revenues and subscription to services.*
- *To satisfy Section 11(1) (d) of the Act – Applicants for licenses must...satisfy the financial requirements for the construction and operation of the facility or the provision of the services to which the application relates.*
- *To satisfy Section 42 of the Act which speaks to information required to enable the Office's recommendation for modification of universal service obligations. Universal Service levy may be applied to particular services and therefore the Office should be in a position to make recommendations to the Minister on the application and impact of any such levy.*
- *To satisfy Section 8 of the Act – The Office is required to promote the efficient use of numbers. The Office therefore needs to know the utilization of numbers assigned.*
- *To satisfy Section 28 of the Act – The Office shall determine which public voice carrier is to be classified as dominant This requires constant monitoring of the market for all services.*
- *To satisfy Section 2 of the Mobile Service Provider License - "the licensee must ensure that at all times the licensee satisfies any and all financial requirements as imposed by the Minister, the OUR and the Spectrum Management Authority."*
- *The Office must be in a position to determine the extent of penetration and price of supplying each service.*
- *The Office is required to provide statutory bodies with information regarding sales volume and subscriber base and prices. In doing so, the OUR will endeavour to keep the individual licensee's identity confidential except where there is no basis for such confidentiality.*

1.3 The January 2006 Determination stated at Determination 2.0 that:

‘Before each half yearly publication, each licensee that has supplied relevant data will be allowed two weeks to make reasoned correction to the draft publication’.

1.4 At Determination 2.1, the January 2006 Determination states that:

‘Where the Office does not agree with a suggested amendment to the proposed half yearly publication, the licensee will be given fourteen days notice of the proposed disclosure as indicated in Section 7(3)(b) of the Act’.

1.5 C&WJ expressly states that any failure to address any particular issue addressed by the OUR in this Consultative Document titled, ‘Structure of Quarterly Telecommunications Report’ (the Quarterly Report) does not necessarily represent agreement in whole or in part with the OUR’s position on that issue.

2. THE QUARTERLY REPORT

2.1 Application of Herfindahl-Hirschman Index (HHI)

2.1.0 At paragraph 2.2 of the Quarterly Report, the OUR states that *‘The quarterly report will provide basic data and analysis for retail fixed telecommunications, mobile telecommunications and the Internet access services segments of the industry. It will also provide market penetration data per hundred population and where possible, on a household basis. The degree of market concentration will also be assessed using the Herfindahl-Hirschman Index...’.*

2.1.1 At paragraph 3.1 of the Quarterly report, the OUR states that :

“HHI means the Herfindahl-Hirschman Index, commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.”¹

2.1.2 The OUR proposes to calculate the HHI for Fixed, Mobile and Broadband markets. This approach to defining markets is inconsistent with the OUR’s own approach for defining markets within the telecommunications industry. There is no homogenous fixed, broadband or mobile market to which the OUR can ascribe an HHI. The use of the HHI in

¹ <http://www.usdoj.gov/atr/public/testimony/hhi.htm>

this manner will present misleading information on the telecommunications market in Jamaica.

2.1.3 C&WJ references Appendix I which indicates the approach used by the OUR to define markets in the telecommunications industry, which, in general, has been supported by C&WJ.

2.1.4 In addition C&WJ applied for a review of the voice market from January 1, 2007. C&WJ's understanding is that the market survey component is about to begin. The outcome of the assessment of the markets is pivotal to how the markets will be defined and so it is very likely that those markets have evolved, since the OUR last defined markets in 2003, and no longer remain the same.

2.1.5 The use of the HHI presents three issues, that is that:

- The markets to which the OUR intends to apply the HHI have not been properly defined and as proposed are inconsistent with existing market definitions and the established approach for defining markets. Any HHI proposed would be meaningless.
- The voice market is currently being reviewed and in C&WJ's view there is likely to be changes in how the markets are defined. It is C&WJ's understanding that the OUR has selected a market research company to conduct the market survey as outlined in the OUR's invitation to bid which is attached as Appendix II.

It would therefore be premature to include HHI in the quarterly publication for fixed service, even if the markets as currently defined were used, given that the voice market is currently under review.

2.1.6 Finally the HHI must be used judiciously and interpreted with care when applied to small economies such as Jamaica. A small economy is unlikely to be able to support a large number of telecommunication service providers in all of the identified markets, because of the requirement for a minimum efficient size. In some markets concentration may arise simply because the market size is small rather than because there is market failure.

2.2 Opportunity to Review Data before Publication

2.2.0 Paragraph 1.4 references the undertaking given by the OUR to allow an operator to review its own information before publication by the OUR. It is not mentioned in the consultation on the Quarterly Report but it is expected that the OUR will maintain the undertaking.

2.3 General Listing of Operators Who Have Provided Information

2.3.0 It is important that the OUR provides a complete list of all operators who have provided information, in the Quarterly Report. This orients the reader to the players in the market and to the extent that that information is complete, then it lends credence to the validity of the statistics provided.

END

APPENDIX: GUIDELINES FOR ASSESSING DOMINANCE IN TELECOMMUNICATIONS MARKETS²

Relevant Market

1.3 Although the Act does not define the telecommunications markets, it can be gleaned from its wording which services and products may be included in the definition of the market. The OUR notes that the following may be included in a telecommunications market:

- * A network service
- * Access to facilities used in conjunction with a carrier or network service
- * Goods or services used in conjunction with a network service (for example, customer premises equipment (CPE)).

1.4 Definition of the relevant market(s) is a necessary step in determining dominance. According to Oftel³⁵:

“A market definition should normally contain two dimensions: a product and a geographic area. ... The market definition analysis has to be applied separately to determine both the product and geographic area.”

1.5 Thus, by 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.

1.6 In cases where prices do not reflect cost or are not reflective of competitive levels, the use of the ‘hypothetical monopolist test’ may lead to an incorrect definition of the scope of the relevant market. Although an analysis of changes in prevailing prices provides actual evidence of consumer behaviour, in principle, the test requires the use of competitive prices. However, in practice, cost based regulated prices are used in

² Appendix, Determination Notice : Dominant Public Voice Carrier, Document No. TEL 2003/07, Published By OUR, August 14, 2003.

cases where competitive prices are not available.³⁶ In such cases, the OUR will rely more on the functionality and characteristics of the products in question, as well as the conditions of competition and/or the structure of demand and supply in the market. In instances where prices are cost based, reference will be made to these prices.

Product Market

1.7 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 were 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.

1.8 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.³⁷

1.9 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. These three constraints are discussed in turn below.

³⁵<http://www.ofst.gov.uk/html/comp-act> <http://www.ofst.gov.uk/competition/cact0100.htm>.

³⁶ See paragraph 42 of the European Commission's Guidelines on Market Analysis and Assessment of Significant Market Power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03)

³⁷ For a comprehensive discussion of market definition and dominance see the UK telecommunications regulator's document on *The Application of the Competition Act in the Telecommunications Sector*, January 2000. The document may be downloaded from OFTEL's Web site at Source:

Demand-side substitution

1.10 Demand-side substitution occurs when the price of the 'hypothetical monopolist' increases and consumers substitute other service(s) for the

service being examined. If sufficient consumers behave in this way, even if all consumers do not, the price increase would be unprofitable. In other words, if the cross-price elasticity were positive and significant, the price increase would be unprofitable.

1.11 The cross-price elasticity of demand-side substitution gives the sensitivity of the demand for one service (say Y) in response to a change in the price of another service or basket of services (say X). The value of the crossprice elasticity of demand for a product or service may be zero, negative or positive. If the cross-price elasticity is zero, there is no relationship between the demand for X and Y. That is, a change in the price of X does not affect the demand for Y. If the cross-price elasticity is negative, the services are complements. That is, an increase in the price of X results in a decrease in the demand for Y. A positive cross-price elasticity suggests that the demand for Y increases as the price of X increases. This is the case where X and Y are substitutes. That is, a positive cross-price elasticity reflects demand-side substitution.

1.12 The existence of substitutes, i.e. goods with positive cross price elasticity of demand, indicates that there are constraints to the price setting behaviour of the 'hypothetical monopolist'. Thus, if there are two local loop access providers (one via cable from the incumbent voice telephone provider and the other via a subscriber television (STV) operator), to the extent that the quality (inclusive of reliability and security) and functionality of the services are the same or similar, the pricing of one service should constrain the pricing of the other³⁸. Therefore, a small, but significant increase in the price of voice telephony access from the incumbent is likely to result in an increase in the demand for the voice telephony access from the STV operator (assuming that the switching costs are low). Within this scenario, if the cross price elasticity is sufficiently large, subscribers could switch to the substitute access provider in sufficient numbers so that the imposition of a price increase on X is unprofitable for the 'hypothetical monopolist'. It follows that local loop access from the STV operator should be included in the relevant market for local loop access to voice telephony, since it is a potential constraint on the price setting behaviour of the incumbent's access service.

Supply-side substitution

1.13 Supply-side substitution refers to the extent to which suppliers, other than those offering the product being examined can offer the same or similar products within a reasonable time period without incurring significant cost. In response to a non-transitory price increase by the 'hypothetical monopolist', supply-side substitution can be a major constraining influence on the pricing behaviour in the relevant market.

1.14 The easier it is for alternative suppliers to make substitute products available in sufficient quantity and within a relatively short time period, the greater the constraint on the pricing behaviour of the 'hypothetical monopolist'. If it is difficult to switch supply in a reasonable time period at sufficiently low costs, these services should be excluded from the definition of the relevant market.

Potential Competition³⁹

1.15 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

1.16 In defining what is 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.

Time Dimension of the Market

1.17 In assessing the extent of the market, the OUR is also willing to examine the time dimension of the market to the extent that potential competition is considered, and the global telecommunications market trend is taken into account. However, "potential products" are not considered in the definition of the relevant market. This is due to the fact that dominance is assessed at a particular point in time. If a telecommunications carrier or service provider is declared dominant today, at any point in the future, that firm may apply to the OUR to be declared non-dominant should new substitutes become available.....'

CONCLUSION

.....

1.29 The two-stage methodology firstly identifies the relevant market. This involves a definition of the product and geographic markets. The second stage involves an assessment of the economic strengths of the firm being assessed and its ability to operate without effective constraints from competing suppliers and consumers within the relevant market.....

38 This example assumes that there are no cross-subsidies.

39 Pressure exercised upon incumbent firms by the possibility that new or existing firms will enter a specific market [is referred to as potential competition]. New entrants may be attracted by above normal profits made in this market by incumbent firms, possibly as a result of weak competition. Additional firms entering the market will increase the overall quantity supplied with the effect that prices fall and above normal profits disappear. Thus, the possibility of market entry has a certain "disciplinary effect" on the behaviour of incumbents. However, the threat of potential competition is relatively small when entry barriers are high. See http://europa.eu.int/comm/competition/general_info/t33.

OFFICE OF UTILITIES REGULATION

The Office of Utilities Regulation is inviting bids to undertake a:

Survey of the Local Fixed Telephone Access and International Outgoing Call Markets

OBJECTIVE:

The OUR is embarking on a comprehensive market survey to glean critical statistics on the telecommunications markets in Jamaica for retail services and specifically for fixed telephone access and international calling services. The market survey is expected to provide critical statistical data on consumers' behaviour as well as the market conditions in which carriers and service providers operate within the markets for telecommunications services in Jamaica. The data and information gathered from the market survey will be used to complete a market analysis and review relating to an application by Cable and Wireless Jamaica Limited (C&WJ) for a declaration of non-dominance in markets in which they were declared dominant by the OUR in August 2003.

ELIGIBILITY:

- Interested local bidders must be in possession of a valid Tax Compliance Certificate (TCC)
- Foreign bidders, whilst not required to be in possession of a TCC at the time of the submission of their bid, must provide a valid TCC at the time of contract signing in order to demonstrate that they are tax compliant

REQUISITE QUALIFICATION/ EXPERIENCE:

- Outstanding knowledge and understanding of conducting market research and surveys
- Experience in conducting market surveys
- General understanding of the telecommunications sector in Jamaica

DURATION OF CONTRACT: Seven (7) weeks

COLLECTION OF DOCUMENTS:

The full Terms of Reference can be collected from the Receptionist at the OUR. It can also be viewed on the OUR's website at www.our.org.jm.

SUBMISSION OF PROPOSALS:

All bids, along with (3) referees, should be received no later than 3:00 p.m. (Eastern Standard Time) on Friday, July 11, 2008 and should be addressed to:

"SURVEY: INTERNATIONAL OUTGOING CALL MARKETS"

**Office of Utilities Regulation
3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10**

Proposals are to be submitted in separate sealed plain envelopes for
(a) Execution of the Work Programme and (b) Financial Terms. Each envelope

is to be clearly imprinted to indicate the Project for which it is being submitted, whether the particular envelope contains the Work program or the Financial Proposal. Bids will be opened publicly at 3:15 p.m. EST on July 11, 2008 at the address below.

All queries and comments concerning the above can be directed to:

Carey Anderson - Regulatory Economist

OFFICE OF UTILITIES REGULATION

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

Tel: 1-888-CALL-OUR, (2255-687), (876) 968-6053. Fax: (876) 929-3635

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