Comments on "Methodology and Assumptions Supporting LIME's Reference Interconnect Offer 6.0 Tariff Schedule"

Purported objectivity of LIME's approach

"*LIME's approach to attribution is firstly to identify costs that can be directly attributed to services or network components. For other costs that cannot be directly attributed, **LIME identifies** the appropriate driver for each item, and, as far as possible **uses objective** operational and/or financial data relevant to that driver to generate apportionment bases."*

The OUR should be aware that LIME, as the dominant fixed line operator, have a publicly documented history as laid down by various regulatory authorities in the Caribbean region of engaging in anti-competitive behaviour ranging from predatory pricing and overcharging to falsely accusing other operators of sabotaging their operations to misleading the public on pricing issues. Among the relevant jurisdictions where LIME/C&W have actively engaged in this type of behaviour include the Cayman Islands (by the ICTA 2004), Barbados (by Barbados FTC 2004), Panama (by ERSP 2005) and Trinidad & Tobago (by TATT 2006). Indeed, in 2009, LIME Jamaica itself admitted to deliberate blocking calls from Digicel mobile customers to LIME landlines purely from a self described "retaliatory" measure.

Against this background no reasonable regulatory body could have any reliance on mere assurances by LIME as to its objectivity[1] and Digicel have valid reasons for believing that LIME's apportionment methodology referred to above is carried out in an entirely "*subjective*" rather than "*objective*" manner in order to generate results that best suits its commercial ends. Indeed in recent legal proceedings in the UK, several Cable and Wireless witnesses acknowledged that with respect to cost modeling exercises undertaken for interconnect rates, LIME was capable of "plumping" for high or low interconnect rates to be generated by their cost models in order to pursue what it saw as its strongest commercial position.

The scope for subjective cost allocation to generate precisely such desired outcomes is reflected in LIME's explanation of "*non-departmental accounts*" where they state:

"*A large portion of General Ledger costs may not be directly associated with any department*."

By implication such costs are then apportioned using LIME's "objective" apportionment methodology.

Apportionment of Network Costs

LIME claims that "*the relevant costs from the Fixed Asset Register are driven to network components using percentages established from network studies….to reflect changes in the structure of the network*."

[1] Economic theory and indeed common sense dictates that any rational entity, and not least one such as LIME with a litany of abuses already referred to across the region, who has control over such a process will inevitably engage in an exercise to that promotes their own objectives.

No details are provided in terms of what studies were conducted and from what time period, whether there are studies from various time periods etc.? Furthermore, no details are given as to what changes to the structure of the network has occurred and from what period to the present? Who has validated the accuracy of such studies? There is a complete lack of transparency on this issue which is in contravention of the telecommunications act.

Department Costs

In this section LIME claims that the main cost drivers are assigned as follows:

"*Connections – costs that are associated with equipment that has the function of providing access to the network.*

Call durations – costs that are associated with equipment that has the function of holding the network path open for the duration that a link is made across the network (call duration)."

Given that LIME has attempted to include a Mobile Termination Rate in its Tariff schedule, it offers no explanation as to why the split referred to above, that would be reflected in call set up *versus* call duration charges, does not apply to the proposed Mobile Termination Rate in the Tariff schedule.

Transmission

Digicel are deeply concerned by LIME's reference to the manner in which it has defined its transmission network with is entirely at odds with international best practice. LIME states that its 'transmission network provides the following paths:

- *"Links between customer premises connections and Distribution points (DPs/cabinets);*
- *Links between DPs and Exchanges;*
- *Links between exchanges"*

Of the three bullets listed above the only equipment that could justifiably be included under the heading of Transmission is the last i.e. links between exchanges. The other two items not only should not be included as part of the transmission network but in fact should not be included anywhere in a model designed to calculate interconnect costs. The second bullet point reflects is equipment entirely associated with the Access network for which LIME already recovers its costs through its retail line rental charges provided for under the price cap. The first bullet point is for end-user equipment i.e. it has no basis for inclusion in either the core or access network cost model in accordance with international practice. No comfort can be drawn from LIME's qualification in the last paragraph of this section that suggests that these items will be allocated to the Access Network. The fact that LIME includes these items at all under the definition of 'transmission' strongly suggest this facilitates for greater scope to misallocate cost generally. As LIME already concedes that "*non-departmental costs*" make up a "*large portion*" of costs then inevitably non-departmental costs that ought to be associated with the first two bullets can easily be assigned to other areas through the "objective" or "ABC accounting" apportionment exercise. The more inappropriate cost categories included by LIME in its model, the easier it is to 'muddy the waters' and assist it in generating results that best suits its commercial needs.

In general as a dominant fixed operator who also has mobile operations, LIME's incentive is to generate as high fixed interconnect rates as possible and as low mobile interconnect rates as possible if these rates can be imposed on other operators.

Current Cost Accounting Policies

Digicel believes that LIME's explanation on unrealized holding gains and losses is misleading. LIME indicates that:

"*unrealized holding gains for the various categories of fixed assets are treated in the same way as depreciation, so that losses increase costs and gains reduce them."*

Digicel questions the appropriateness of the methodology proposed by LIME in this regard. It is apparent that LIME sees that holding losses used as an opportunity to effectively apply accelerated depreciation to those negatively readjusted asset values. Meanwhile with respect to holding gains, Digicel expects that LIME continues to seek to earn a return on capital from the higher readjusted asset prices (and higher deprecation levels from the higher asset base) although they have failed to explain this and highlight only that "*gains reduce costs*" without further explanation. On the contrary Digicel expects that the application of methodology outlined suggests a 'win-win' situation for LIME with respect to holding gains and/or losses.

Mobile Termination Rate

LIME inclusion of a proposed Mobile Termination Rate appears to be part of an orchestrated strategy to introduce regulation of Mobile Termination Rates through the RIO 6 process. Since 2006 LIME has taken various steps on an entirely unilateral basis to redefine the parameters within which the fixed to mobile regime operates in Jamaica. LIME's most recent attempt to readjust its position in this regard occurred subsequent to the issuance of a purported Clarification Notice by the OUR on June 5, 2009. Notwithstanding that nothing in that Notice assisted LIME in taking unmerited unilateral action to implement the changes it "wishes" to see in the market, this has not prevented LIME for continuing on a course of action to severely disrupt the market for its own financial gain.

This draft RIO 6 appears LIME's latest attempt at continuing to pursue its unilateral agenda. As LIME and the OUR are aware pursuant to the direction of a stay order put in place by the duly constituted Telecom's Appeal Tribunal, no operator in Jamaica is currently dominant in the provision of mobile termination services in Jamaica. As such and as is well understood by LIME it has no right to seek to enforce rates based on its own purported costs on any other operator for provision of services on the other operators network. If LIME's offer of an MTR is purely an offer of an MTR for termination of calls on LIME's mobile network with no requirements for reciprocity imposed on the service taker for providing mobile termination on its network then Digicel do not necessarily have a problem with this.

Without prejudice to Digicel position as outlined above it is interesting to note that despite LIME's attempt to seek regulation of the mobile termination rate, LIME appear to be deliberately evasive as to the extent of the cost modeling exercise it has carried out with respect to its mobile network in the

"Methodology and Assumptions Supporting LIME's RIO 6". The entire document has been left deliberately vague in terms of whether the principles and application of the same are applied to only the fixed network interconnection rates[2]. It is clear that the cost model incorporates the entirety of the mobile network (or at least as it stood in 2001) by virtue of LIME's concession in section 2.4.6 of the document :

"*This logic is also applied to calculate route factors for other network components, such as concentrators, local transmission,* ***mobile base stations, mobile switches*** *etc.."*

Clearly therefore, "**LIME's cost model**" does entail its mobile network. In addition LIME has put forward its "methodology" document in order to support the inclusion of its proposed rates in its RIO 6 Tariff schedule. However, it is equally clear that the principles that the methodology purports to adopt are not applicable to the proposed mobile termination rates it has outlined in the draft RIO 6. No explanation for this is given anywhere in the "methodology" document with LIME choosing to be deliberately vague in the probable hope that no one will notice its discriminatory approach to promoting one methodology for the fixed interconnect rates proposed and another, entirely different approach, for the mobile interconnect rates proposed.

Indexation

Digicel's comments on this are again without prejudice to its position that no reference to a Mobile Termination Rate should be set out in RIO 6 vis-à-vis the rates other operators are entitled to charge LIME.

It is difficult to comprehend why 8 years after liberalization LIME has chosen to continue to rely on 2000/2001 FY data as the foundation for its cost model. By its own admission for instance, LIME concedes that its mobile network in 2000/01 was woefully inadequate in terms of coverage and capacity and as such it cannot be used as a benchmark for any properly designed network that needs to cater for such coverage and capacity requirements as demanded in a competitive market. Digicel can see no valid reason for taking this approach apart from what it believes to be LIME's vested interest in taking the approach that allows it to, again, '*plump*' for the outcome its sees as the most commercially advantageous. Furthermore, based on LIME's explanation as to its application of its indexation methodology that also includes an adjustment based on US-dollar Jamaica dollar exchange rates, how can the calculation of the Mobile Termination Rate (MTR) possibly be reflected in that application given that the rates proposed in the LIME tariff schedule are the same as rates referred to in a decision by the OUR as far back as 2002 (TEL 2002/04). The Jamaican dollar has depreciated against the US dollar in that time by almost 100%.

Notwithstanding that the same 2002 decision itself was superseded by several other decisions since that time, even if that were not the case, there can be no justification for LIME steadfastly anchoring the Mobile Termination Rate to these 2002 figures while at the same time making US-Jamaican dollar exchange rate adjustments to all other rates – such an adjustment obviously resulting in higher

[2] The fixed network is only referred to twice in the entire document.

Jamaican dollar quoted tariffs. This provides the clearest evidence that LIME, who have always advocated extremely low MTR's (Jamaica already has one of the lowest MTR regimes in the world) and extremely high FTR's and Fixed Origination rates (already one of the highest rate regimes in the world) by international standards, has no interest in 'objective' application of any methodology to cost modeling but see it as an opportunity to promote its own commercial interests through arbitrary application of different methodologies. The majority of capital cost in the telecom's industry must be discharged in US dollars transactions a fact conveniently ignored by LIME except where it sees a commercial advantage in recognizing the fact.

The approach adopted by LIME also contradicts LIME claims of "*Consistency of treatment*" in the "*Accounting guidelines*" section of the document.