

Response
on

Liberalizing Telecommunications Directory Information Markets (Products and Services)
Consultative Document

To
Office of Utilities Regulation
By
Digicel

INTRODUCTION

We would like to thank the OUR for the opportunity to comment on the liberalization of the directory information ("DQ") markets. As a general comment, we found the report well put together as it covered many of the key issues involved in the DQ liberalization process. We note, however, that the Telecommunications Act 2000, (the Act), does not propose a time bar before which competition in the DQ market cannot commence, and would encourage the OUR to facilitate the introduction of competition in the DQ market as early as possible. Though an understandably detailed process to undertake, we trust that the final decision made by the OUR will be proportionate to the needs of the Jamaican market and will not place an undue burden on service providers and consumers.

Our response will be divided into two main sections: (i) main comments, (ii) specific comments - within which answers will be given to the questions raised in the consultation document.

MAIN POINTS

1. Liberalization options

The OUR has outlined four possible liberalization options in Chapter 4 of the document. The first is full liberalization and the other three are hybrid variations of this model. There are inherent benefits and limitations to each option suggested. For example, following the path of option (iii) would allow for certain synergies to be created in providing a DQ service to the market. Existing public carrier licensees already have Customer information collected and would already be delivering other services and products to the market. The provision of DQ service will benefit from their economics of scale and scope, telecoms experience and efficiency and this in turn will benefit the consumers. On the other hand option (iv), appears to be a good-long term solution, but if not managed properly, it could lead to a monopoly situation, as there would be only one single entity owning the database. Given the path of telcoms liberalization that Jamaica is now on, care must be taken to avoid re-creating monopolies in the marketplace.

We agree with the OUR that it is the players in the market, specifically the existing carrier and service provider licensees, who should determine the precise path chosen, as they have already invested heavily in establishing their own operations and have the technical know-how and knowledge of the marketplace. The issue of the structure of the databases, be it one comprehensive, or several core databases will be explored further in the detailed comments

2. Cost oriented rates

Irrespective of the final path taken towards creating a liberalized DQ market, there are a number of key elements that need to be in place. Firstly, the OUR will agree, that a level playing field must be created to ensure that effective competition in the DQ market is achieved. At the heart of this must be a non-discriminatory and cost-oriented rate to access the DQ databases. The scales should not be unfairly tipped in favour of the

incumbent and should allow entrants to compete effectively with C&WJ's downstream arm.

On the retail side, C&WJ is not currently charging for its DQ service. If competition is to emerge, C&WJ will have to begin to charge consumers for the DQ service. Under section 48(2) of the Act, charges can be levied in the provision of a DQ service.

In terms of the wholesale side, the calculation of costs must be fair and equitable and based on LRIC.

3. First mover advantage

A second essential component of a liberalized DQ market is to ensure that the incumbent does not have a first mover advantage in implementing new services. C&WJ, as the incumbent, already has the advantage of having the first (and only) DQ service at the moment. It should be restricted from introducing an upgraded service, until the DQ market is deregulated and entrants are able to compete with C&WJ by having access to the database and other essential facilities in order to offer their own services.

Under the conditions of the existing Reference Interconnect Offer, Digicel should be given, at a minimum, access to the existing C&WJ database at cost oriented rates as an interconnection service prior to the liberalization of the DQ market. Digicel has repeatedly requested immediate access to the C&WJ database, as this would allow us to offer a similar service to Consumers, but this was not facilitated.

4. New DQ Short Codes

Following on from the previous point, the market place is already very familiar with the existing 114 short code for DQ and there exists significant brand awareness of this short code. Thus if this number is retained, it could serve as a barrier to entry to potential entrants into the DQ market. Creating new short codes for DQ and completely removing the 114 short code from the market can correct this situation.

This was the route followed by a number of other countries that liberalized their DQ markets, most notable of which is Ireland. The 119X code was removed and new 118XX codes introduced.

5. Numbers to be included

The database used in providing a DQ service must include all numbers - i.e. landline as well as mobile numbers. One of the measurements of a successfully liberalized DQ market will be the quality of the information available to consumers. The current service is limited to only landline numbers. With the advent of three mobile service providers in the sector, inclusion of mobile numbers is therefore a necessity.

We question though the practicality of including prepaid mobile numbers. As subscribers' names are not required as part of our purchasing process, it would not be very useful to have these numbers in the database without contact names associated with them.

Furthermore, we feel that ex-directory numbers should be included, with the consent of the customers. However these numbers could be accessed via a DQ call completion service and the actual number would not be given out. Additionally, the numbers would not be released to direct marketers or telemarketers.

6. Database format and creation of an Industry group

To ensure that all entities are able to equally access the available database(s), the format must be standardised. This will ensure that service providers are not penalised by differences in format. In addition, we recommend the formation of an industry group responsible for the dealing with the implementation issues involved in the DQ liberalization process. We propose that this group act in an advisory capacity to the OUR on such matters, which would complement the OUR's decision making process.

7. Funding

Regardless of the path taken to full liberalization any funding mechanism must be fair and equitable.

8. Timeframe

Further examination of the Act shows that it does not specify a time bar before which competition in the DQ market cannot commence. We believe that the legislature did not intend to delay the process of bringing the benefits of all aspects of a liberalized telecommunications market to the Jamaican consumers, save for those areas that have been expressly delayed as defined in the Act. In keeping with this, we respectfully propose that the period for issuing the Determination Notice be shortened. Whilst we understand the need for complete thorough examination of the related issues, a lengthy process only serves to deny the consumers of the benefits of a liberalized DQ market. We therefore suggest that the Determination Notice could be issued in January 2002, rather than in April 2002.

DETAILED COMMENTS

In this section of the document we will give specific comments on items in the chapters. Responses to the various questions raised in the consultative document will also be given. We wish to reiterate the point made by the OUR that the absence of comments on an issue does not necessarily indicate Digicel's concurrence with the opinion(s) articulated in the document.

Chapter 1: Introduction

Paragraph 1.2

We wish to highlight a correction that the Digicel and Centennial licences were not licensed under section 13(1)(a) of the Telecommunications Act 2000. They were instead issued under section 78(2)(b)(i).

Paragraphs 1.12 to 1.14

Whilst the importance of intellectual property rights in any liberalized telecoms market should not be ignored, the absence of data protection law should not unduly delay the process of DQ liberalization. The benefits of providing competitive directory information services and products should always be the driving force underpinning the liberalization of the DQ market.

Chapter 2: Directory Information Markets

Paragraph 2.6

The database currently being used by C&WJ to provide DQ service to the public cannot be correctly referred to as a comprehensive database, since it does not contain mobile numbers. Therefore, even in advance of the liberalization of the DQ market, the existing database is incomplete and should be referred to as C&WJ's core database.

Paragraph 2.10

The OUR analysis of the dominant position of C&WJ is also a view shared by Digicel.

Question 1: Do you agree that C&WJ is in a dominant position in the provision of directory information in a competitive database?

Answer to Question 1: Yes, it is the view of Digicel that C&WJ is in a dominant position. In addition to the OUR analysis, the incumbent's dominance can be illustrated in the following ways:

C&WJ has the largest pool of available numbers: It currently has the only pool of fixed line numbers, which also includes data, fax and lease lines. When their mobile subscriber base is added, C&WJ has approximately 90% of all the active numbers in the Jamaican numbering plan.

- Economies of scope and scale: Given that C&WJ holds the majority of telephone numbers in Jamaica, new entrants into the DQ market would find it a costly undertaking if they had to re-create and maintain the C&WJ database of customer information.

In terms of economy of scale, C&WJ has a clear advantage in this area, as they already would have sunk costs in their current DQ infrastructure. Once the market is liberalized, the addition of new DQ services would now only represent incremental costs. New entrants would be at a disadvantage, as they would have to invest in start-LIP Costs.

- Market familiarity with the C&WJ DQ product: As stated in our comments in the previous section, the Jamaican market is already very familiar with the C&WJ DQ product. The 1] 4 number is the only one that consumers have used since the inception of the DQ service to Jamaica. This is a situation that new entrants to the market will have to overcome in the provision of their own DQ service.

Paragraph 2.11

Though it is hoped that the newly liberalized DQ market will not be overly regulated, we agree that the OUR may have to impose regulatory requirements on C&WJ to make competition possible.

Paragraph 2.15

As discussed earlier, with three mobile licensees in Jamaica, mobile numbers are becoming more widespread and must be included in any database(s) being used to provide a DQ service, if the DQ service is going to have any value to consumers.

Question 2: What are the obstacles to providing/using directory enquiry services?

Answer to Question 2: In Digicel's view, the key obstacles are as follows:

- Overcoming C&WJ's dominant position in the DQ market: Supporting points were articulated in OUR's response to question 1 above.
- Cost of DQ infrastructure: The establishment of a DQ service is a very expensive undertaking. The requirement of significant capital as well as operational expenditure could serve as a deterrent to potential entrants.

Economy of scale of C&WJ: see question number 1

Current retail service is free of charge: C&WJ does not currently charge for its DQ service, hence there is a consumer expectation of DQ being a free service. Furthermore, it raises the issue of C&WJ subsidising its current DQ. New providers are therefore at a disadvantage, as without the benefit of C&WJ's economics of scope and scale, they will have to begin to charge for this service and go against the grain of consumer expectation.

Question 3: Identify additional directory service products that could be provided. Are there technical difficulties or bottlenecks preventing the provision of these products?

Answer to Question 3: There are many types of DQ products that could be provided such as call completion and international DQ. Service providers should be free to innovate using the database and any special software they may purchase. Neither the OUR nor C&WJ should be in a position to prescribe a definitive list of services that DQ providers can offer.

Chapter 3: Costing and Pricing

Question 4: Should the price of DQ service reflect cost to the users based on benefits received or should this cost be spread over the customer base? Why?

Answer to Question 4: The retail price of DQ service should be based on the benefits received. This will allow service providers to differentiate their products in the market place and provide greater scope for value added services to the consumers.

Question 5: Are there any objections to the proposed charging principles? If yes, state the basis of the objections

Answer to Question 5: In principle, Digicel has no objections to the proposed charging principles as stated.

Chapter 4: Intellectual Property Rights, Privacy Issues and the Liberalisation Process

Question 6: Does the service provider have proprietary rights to the information in the DQ database or the printed telephone directory?

Question 7 (a): What are the constraints (if any) on those rights 7 (b) What should these constraints be?

Answer to Questions 6 and 7: Insofar as the information is deemed public or non-confidential, service providers should make all the necessary information available for the purpose of providing a common DQ database to which all service providers can access in order to provide a competitive service.

Paragraph 4.10

We note the OUR's comment about the likelihood of the liberalization process being a lengthy one as it requires much public consultation. Whilst we would not wish to underplay the important consultation process, parties who wish to enter the DQ market should not be unduly penalised by an overly regulated process nor should consumers be denied the benefits of alternative DQ service for any longer. We therefore reiterate our previous request for immediate access to the C&WJ database as well as shortening of the timeframe for the issuing of the OUR Determination Notice.

Question 8: Do you think all the markets for directory information should be open to competition?

Answer to Question 8: Yes, all the markets should be open to competition. See 4.24 for additional comments.

Question 9: Are you in agreement with the Office's Suggestions as stated in paragraph 4.21?

Answer to Question 9: Digicel supports the suggestion stated in paragraph 4.21

Paragraph 4.24

As mentioned in the previous section of our response, there are advantages and disadvantages to the liberalization options proposed. The right balance must be struck between the needs and concerns of the service providers and what is good for the consumers.

Generally speaking, however, should the path of a single database owner/operator be followed, there should be sufficient safeguards in place to prevent anti-competitive behavior should this entity abuse its market power. As the sole owner/operator, this entity would effectively have a monopoly and would have to be monitored to ensure above board behavior.

Paragraphs 4.27 and 4.28

We agree that individual databases, with access being granted at cost-based rates and on a non-discriminatory basis, is the preferred structure for a liberalized DQ market. This structure would be advantageous as each number-holder would only be responsible for updating his own database. Additionally, access to multiple databases is technically feasible, providing the database format is standardized. The ATM banking network is an example of a similar network structure. Under this system, customers are able to access their own personal banking information at ATM machines of banks other than their own.

*Question 10 (a) Are there other liberalization options that the Office should consider?
10 (b) What is the preferred option ?*

Answer to Question 10: The options presented by the OUR are sufficient for consideration. Please refer to 4.24 for further comments.

Chapter 5: Proposals to Ensure the Maintenance of Privacy

Question 11: Do - You agree that the rules embodied in a Code of Practice should constitute the subsidiary regulatory framework for access to directory information and databases?

Answer to Question 11: Digicel agrees in principle with the development of a code of practice. However it should be arrived at after industry consultation has taken place and has received industry approval.

Question 12: Is specific legislation for data protection necessary?

Answer to Question 12: Given that the Government has to date seen no need to legislate for data protection and that it is doubtful the introduction of competition in the DQ market will suddenly bring about a situation that has never been in existence in other industries in Jamaica, neither the OUR or the industry should begin to act as the legislature. Provided the industry acts within the confines of the law for the time being in force, the issue of data protection should not delay the introduction of competition into the DQ market.

Chapter 6: Access Numbers for DQ service

Question 13: Are there any objections to the continued use of 114 to access DQ services (irrespective of service provider)? If yes, indicate the basis of any objection.

Answer to Question 13: As stated previously, Digicel is advocating the discontinuation of the 114 short code for the DQ service. The introduction of new short codes could either see the extension of the existing code e.g. 114xx, or the introduction of completely new codes.

It is not our belief that keeping the existing 114 code would '*facilitate a seamless transition from the existing single DQ service provider to multiple DQ service providers*'. In fact, we are firmly of the view that it would be a potential barrier to entry, because not only does it have an association with the incumbent, C&WJ, but also it would also be associated with a 'free' service.

In a truly liberalised market, a level playing field must be created for all entrants. Separate access codes would indeed facilitate differentiation of the DQ services available.

Question 14: In the interest of deepening competition, should all service providers be mandated to provide customer access to other DQ service suppliers?

Answer to Question 14: Digicel agrees that consumers should be able to choose DQ service from any DQ service providers, and not only from their local service providers or those who are providing, their existing telecoms services.

CONCLUSION

Jamaica has begun its journey towards a fully liberalized telecommunications market with the recent introduction of competition in mobile, and the imminent liberalization of fixed line services. The introduction of competition in the DQ market will no doubt move Jamaica further along this path.

As mentioned previously, we believe that the liberalization process should not be a lengthy one and that competition should be introduced into the DQ market as soon as possible. Moving the issuing of the Determination Notice from April 2002 to January 2002 would allow consumers earlier access to the benefits of competition. Further, by closely involving the existing carrier and service providers in the decision making process, the marketplace will benefit from their technical know-how and expertise.

In the process, however, care must be taken to ensure that the incumbent does not have a first mover advantage in implementing new DQ services. Until the market is deregulated and entrants are able to compete with C&WJ, through access to the database and other essential facilities, C&WJ should be restricted from introducing an upgraded DQ service. This access in turn, should be based on non-discriminatory and cost-oriented rates involving the introduction of above-cost charges on the retail side, and calculations based on LRIC on the wholesale side.

The establishment of view DQ short codes and the inclusion of mobile numbers in the database(s) being used are practical implementation issues to be considered, as is the standardization of the format of the database(s). The creation of an industry group could assist the OUR in dealing, with such implementation issues.

In closing, Digicel would like to reiterate our support for the OUR and its efforts to liberalise the DQ market. We look forward to reviewing the comments to the issues we have raised, and further participating in the liberalization process.