
Office of Utilities Regulation

**Liberalizing Telecommunications Directory
Information Markets (Products and Services)**

Consultative Document 2



OFFICE OF UTILITIES REGULATION

2002 February

Abstract

The Telecommunications Act, 2000 (the Act) designates the Office of Utilities Regulation (OUR) to function as the independent regulatory body for the telecommunications sector in Jamaica. Section 4 of the Act outlines the functions of the Office. Subsection (1)(a) states that:

“The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall – regulate specified services and facilities....”

Further, subsection (1)(i) states:

[The Office shall] “carry out such other functions as may be prescribed or pursuant to this Act.”

Directory information services and products are not classified as specified services under the Act; however, in other jurisdictions, the regulator’s duties are deemed to extend by implication to these services and products, since they are considered incidental to the provision of telecommunications services¹. However, for the avoidance of doubt, these services could be made specified services by prescribing them as such.

The OUR believes that the critical issues that remain to be determined in the consultative process are, access to directory information databases, and the terms and conditions under which access is to be granted. The OUR is also of the opinion that, to the extent that the net benefit of competition in these markets is likely to result in improved products and services in terms of price, quality and choice, entry should be facilitated. At the same time, the OUR remains cognizant of the fact that access to directory information databases should not lead to an erosion of consumer privacy or the disregard of intellectual property rights. To the extent that C&WJ has copyright

protection in relation to its directory information databases, it is important that such rights are respected. Given privacy concerns, technical, legal and other constraints outlined in the document, the extent to which competition can be introduced seems to be limited.

The OUR has proposed a model that is intended to minimize the total industry cost of providing directory information products and services and widen consumers' choices. Additionally, the OUR proposes to issue a Code of Practice which will form the basis for a notice of proposed rule making (NPRM) for the regulation of the markets for directory information services and products. This Code will, among other things, provide a clear set of rules by which the service providers, data users and other authorized users of telecommunications directory information are regulated and to satisfy the privacy concerns of subscribers.

COMMENTS FROM INTERESTED PARTIES AND CUSTOMERS

Respondents may choose to reply only to specific questions or issues in this document but comments need not be confined to these matters. Failure to provide comments on all aspects of the document will not reduce the consideration given to the response.

The submission of confidential information as part of a response should be separately and clearly identified, and will be treated as such. In the interest of promoting transparent debate, respondents are requested to limit the inclusion of confidential material in responses. Respondents are encouraged to submit their responses in electronic format, so that they can be posted on the OUR's website.

Interested parties should note that this document does not represent a determination on any issue related to this market.

TIME TABLE

Scheduling difficulties, a decision to expand the scope of the second consultative document beyond a report on the consultative process and a Code of Conduct (the basis for a Notice of Proposed Rule Making for directory information markets), necessitated a revision in the Consultative Timetable as per the Telecom Notice dated November 1, 2001. Further scheduling difficulties during November 2001 and the ensuing months prevented the publication of this second consultative document. This in mind, we now propose the following revised timetable:

Event	Date (DD/MM/YY)
Publication of 2 nd Consultative Document	28/02/02
Responses to 2 nd Consultative Document	22/03/02
Comments by Interested Parties on the Consultative Responses	05/04/02
Directory Information Forum	15/04/02
Determination Notice	22/05/02

In addition to responses to this second consultative document, respondents will have the opportunity to make further contributions to the process at a Directory Information Forum scheduled tentatively for the week of April 15, 2002.

Responses to this Consultative Document should be sent by post, fax or e-mail to:

Patrick Williams

Office of Utilities Regulation

P.O. Box 593, 36 Trafalgar Road, Kingston 10

Fax: (876) 929 3635

E-mail: pwilliams@our.org.jm

Arrangements for viewing responses

In addition to being placed on the OUR's web site, hard copies of responses will be kept in files at the offices of the OUR and will be available for viewing or to be copied by visitors. Visitors may request photocopies of selected responses at a price which just covers the cost to the OUR.

Persons who wish to view the responses should make an appointment by contacting Lesia Gregory by one of the following means:

Telephone: (876) 968 6053 (or 6057)

Fax: (876) 929 3635

E-mail: lgregory@our.org.jm

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

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

CHAPTER 1: INTRODUCTION

1.0 The Office of Utilities Regulation (OUR) is responsible for regulating the Jamaican telecommunications industry under the Telecommunications Act (the Act).

1.1 This is the second consultative document on telecommunications directory information markets. The OUR would like to thank the following organizations for responding to the first consultative document:

- ✍ Jamaica Promotions Limited (JAMPRO);
- ✍ Fair Trading Commission (FTC);
- ✍ DIGICEL¹ (Mossel Jamaica Limited); and
- ✍ Cable and Wireless Jamaica (C&WJ).

The Consultative Document, responses, comments and related documents can be viewed at the offices of the OUR or on the OUR's website at www.our.org.jm.

1.2 The staff of the OUR also had oral consultations with the FTC, DIGICEL and C&WJ during October 2001. Although we were not able to meet with all respondents, the concerns and opinions expressed were duly noted and appreciated.

Reasons for Consultation:

1.3 Directory information services and products are not classified as specified services under the Act; however, in other jurisdictions, the regulator's duties extend by implication to these services and products, since they are considered incidental to the provision of telecommunications servicesⁱⁱ. However, to clarify any uncertainty in relation to the OUR's function regarding these services, it is

¹ DIGICEL is the second mobile service provider that began operating in April 2001.

proposed that the relevant services be made specified services by prescribing them as such.

Question 1: Should directory information services and products be prescribed as specified services? If not, why? What are the alternatives available to the OUR?

1.4 In accordance with Section 4(2) of the Act, in making a decision in the exercise of its functions, the Office is mandated to observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice. The Office shall?

- consult in good faith with persons who are, or are likely to be affected by the decision;
- give to such persons an opportunity to make submissions to and to be heard by the Office;
- have regard to the evidence adduced at any such hearing and to the matters contained in such submissions;
- give reasons in writing for each decision; and
- give notice of each decision in the prescribed manner.

1.5 The provision of directory services and products is an important component of the OUR's objective of ensuring that telecommunications customers receive the best services and products in terms of choice, quality and value for money. The proposals put forward in this document are intended to provide improvements in directory information services and products, to prevent the misuse of customer information and generally, to facilitate the creation of a competitive environment. However, given privacy concerns, technical, legal and other constraints outlined in the document, the extent to which competition can be introduced seems to be limited.

1.6 Although it is difficult to have competitive entry in upstream markets, it is comparatively easier to achieve entry at the retail level of the market. With this in mind, the critical issues to be determined in this round of consultation are, access to Cable and Wireless directory information databases, and the terms and conditions under which access is to be granted. To facilitate the consumer access to a more comprehensive database, access to other service providers' databases is also required. In proposing changes to directory information markets, the OUR remains cognizant of the fact that access to C&WJ's and other databases should not lead to an erosion of consumer privacy or the disregard of any intellectual property rights. To the extent that database owners have copyright protection in relation to their directory information databases, these must be respected.

1.7 This Consultative Document provides the following:

- ? A summary of the responses and comments on the first Consultative Document and the OUR's opinion;
- ? A proposed Code of Practice to be used in the provision of directory information services and products; and
- ? An outline of a model that facilitates real-time access.

1.8 The Office invites submissions from all interested parties and in particular, the telecommunications service providers and consumer agencies/groups, outlining their views on the proposals in this document.

CHAPTER 2: SUMMARY OF THE RESPONSES AND COMMENTS ON ISSUES RAISED IN THE FIRST CONSULTATIVE DOCUMENT

OUR's Position in Relation to Competition in the Markets for Directory Information

- 2.0 The spirit of the Act is based on the fostering of competition among public voice carriers and service providers (SP) in the provision of specified services and telecommunications equipment. Under the Act, the OUR is mandated to regulate public voice carriers and service providers but is also duty bound to facilitate competitive entry into the markets for telecommunications services and equipment and any other markets that are considered incidental to the provision of telecommunications services.
- 2.1 In this respect, the OUR is in favour of facilitating competitive entry (where feasible) into the markets for directory information. The OUR believes that, to the extent that the net benefit of competition in these markets is likely to be positive, (in terms of price, quality and choice), with minimal effect on consumer privacy, entry should be facilitated.
- 2.2 In the remainder of this Chapter, each section will be divided according to the main issues addressed in the first consultative document. These are outlined as follows:
- ✍ Dominance in directory information markets;
 - ✍ Obstacles in the Use and Provision of DQ Service;
 - ✍ Costing and pricing;
 - ✍ Identifying and Accounting for Intellectual Property Rights, and Consumer Privacy Concerns in the Context of a Competitive Directory Information Model;
 - ✍ A proposed Code of Practice;
 - ✍ A proposed change in the (114) DQ access code; and
 - ✍ Liberalization Options.

Dominance in Directory Information Markets

- 2.3 The issue of dominance in relation to directory information is pivotal to any argument justifying access to such information. The OUR proposed in its first consultative document that since C&WJ is the only supplier of a comprehensive database² of directory records (primarily of its fixed line customer), the Company's (C&WJ) control of this database can be used to leverage control in downstream markets for directory services and products. This is attributed to the fact that, the provision of substitute databases would require access to C&WJ's product database.
- 2.4 C&WJ claims that it is not dominant, based on the directory information in its databases. In its response to the question on dominance in the relevant market, C&WJ claimed that, although it has a large customer base, it is not in a dominant position. C&WJ indicated that this is so since other organizations (such as utilities, banks and business organizations) already have access to significant elements of the directory records in its core database.
- 2.5 FTC and DIGICEL agree that C&WJ is in a dominant position in the relevant market for directory information. DIGICEL suggested that customer inertia in relation to the use of 114 for directory assistance is a factor contributing to C&WJ's continued dominance in the market for directory enquiry services. This (114) has been the access code for directory enquiry or assistance for several years. DIGICEL also indicated that 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.

² The directory information in the core database is used to provide comprehensive downstream product databases for DQ services and other product. The C&WJ's database is comprehensive in the sense that it has all the listed fixed line numbers.

2.6 The OUR's opinion is that databases of other utilities, banks and other businesses are not likely to be substitutes for C&WJ's directory information databases since their composition is not likely to be similar. Further, the provision of telephone services is not conditional on the provision of other utilities or other products, so there is no reason why other entities would maintain similar databases to those of C&WJ. In order to provide a directory service or product that is reasonably competitive with that of C&WJ, access to C&WJ's databases is required. Based on these arguments and the reasoning put forward in the first consultative document, the OUR is still not convinced that C&WJ is non-dominant in relation to the provision of directory information. However, the OUR is still willing to consider evidence on this issue.

Obstacles in the Use and Provision of DQ Service

2.7 In addition to addressing the issue of dominance, the OUR also sought to identify specific obstacles to the provision and use of directory enquiry services. It was hoped that consumers and/or consumer agencies/groups would have commented on any difficulty experienced in using the existing service, but only one "consumer advocate" (FTC) commented on this matter.

2.8 According to the FTC, the most frequent complaints in relation to the C&WJ DQ service are incorrect entries. The FTC also stated that the current arrangement restricts the consumer to a single DQ service provider.

2.9 Currently, C&WJ provides a DQ service that is available (through interconnection) to customers of other service providers (including mobile operators). Other service providers purchase interconnection services to C&WJ's DQ services and resell those services to their customers using the same access code (114). Service providers purchasing DQ services from C&WJ are required to pay a per call charge.

- 2.10 Both DIGICEL and the FTC object to the continued use of the default access code. Among other things, it is argued that this will limit competition since the default code is associated with a free service. This association is based on the fact that C&WJ's subscribers (fixed and mobile) do not pay an explicit fee to access its DQ service.
- 2.11 The FTC is of the opinion that without non-discriminatory access to C&WJ's DQ database, entrants will find it difficult to provide a competitive service. However, on one hand, C&WJ noted that there is a higher risk of disclosing ex-directory information where online access to DQ database is open to third parties. On the other hand, DIGICEL noted that the use of ex-directory information would be critical in the provision of a call completion service. Further, DIGICEL indicated that DQ "... service providers should be free to innovate using the [C&WJ] database and any special software they might purchase." But C&WJ suggests that what is important is basic access to a comprehensive DQ service and "White Pages" directory.
- 2.12 In addition to these constraints and conflicting positions, one respondent noted that the Jamaican market is relatively small and may not have the economies of scale that would make it an attractive market for competing DQ Service Providers.
- 2.13 The OUR agrees that non-discriminatory access to directory information contained in DQ databases is critical for competition in the market for DQ services. Since all fixed line directory records are stored exclusively in C&WJ's database, access to this database will facilitate the provision of a 'near' comprehensive database. Currently, by default, all mobile subscribers are currently unlisted. The establishment of a framework by which access to all service providers' directory information databases is allowed would facilitate the provision of a more comprehensive DQ database.

- 2.14 In relation to the per call charge for DQ service under the RIO, C&WJ needs to demonstrate that these charges are applied to its mobile division. Failure to demonstrate this will indicate that C&WJ is cross subsidizing its mobile division.
- 2.15 The OUR agrees that basic customer access to a comprehensive DQ service and White Pages directory is important to the industry. However, the provision of basic customer access to directory information need not preclude the provision of other services by the existing or new DQ service providers.
- 2.16 In relation to call completion, this service would have to be offered to customers at the point of application for telephone service (mobile or fixed). To maintain the protection of consumer privacy, service providers or DQ operators must receive authorization from existing customers in order to use their directory record for this service before they are included in a call completion database.

Costing and Pricing

- 2.17 DIGICEL suggested that the appropriate cost standard for the wholesale charges that relate to DQ services should "... be fair and equitable, and based on LRIC [long run incremental cost]."
- 2.18 The OUR is of the view that it is critical that cost in a multi-provider market be non-discriminatory and cost oriented. However, while it is desirable to move towards a long run incremental cost standard, its imposition at this time may not be realistic based on the existing accounting system and the status of discussion for the implementation of an appropriate system of regulatory accounts.
- 2.19 In relation to subscriber charges, C&WJ expressed the opinion that other operators have the choice of applying a direct charge to its subscribers who use the DQ service or, as is C&WJ's current practice, spreading the cost across its customer base. However, one respondent indicated that subscribers who

benefit from the DQ services should pay for those services. Further, it was noted that, spreading the costs over the incumbent's large database results in a competitive advantage over entrants. Additionally, the respondent asserts that providing the service 'free' (without an explicit charge) will act as a barrier to entry to the DQ service market.

2.20 As stated in paragraph 2.14, per call charges paid by DIGICEL should also be imposed on C&WJ mobile division. The OUR had long agreed that C&WJ should charge per DQ call. In charging for DQ services, it is important that the principle of cost causation should be adhered to.

2.21 C&WJ suggested that "... cost causation and measurement would also have to include fair compensation in respect of intellectual property of CWJ and third party suppliers.... In relation to the cost minimization principle, C&WJ does not consider that cost minimization is only likely to be achieved if effective competition exists. C&WJ argued that "... incentives which have been adopted in other markets where competition has not been deemed practical or timely..." should be considered.

2.22 The OUR agrees that adequate compensation must be made for intellectual property rights where they exist. In relation to the cost minimization principle, the OUR is of the view that competition is possible in some of these markets, so the use of incentive regulation can be avoided in these instances.

Identifying and Accounting for Intellectual Property Rights, and Consumer Privacy Concerns in the Context of a Competitive Directory Information Model

Intellectual Property Rights

- 2.23 C&WJ has indicated that it has proprietary rights in its databases and that the Jamaican law explicitly recognizes that copyright exists in databases and compilations of data. The Company (C&WJ) claims that its proprietary rights in the electronic database extend to the internal methodologies and structures of the database. The Company also claims that it owns rights in the printed directory and the internal methodologies, structures, Yellow Pages, geographical arrangements and classifications used in said directories. It is further claimed "... that protection afforded by law to the CWJ databases and the data therein recognizes the significant time, money and effort (both intellectual and otherwise) which has been invested and continues to be invested by CWJ in the creation, maintenance and verification of these databases".
- 2.24 With respect to the white pages, one respondent indicated that this product is not generally subject to copyright since the alphabetical listing of data is not generally considered original.
- 2.25 C&WJ also indicated that the property rights of third party suppliers of software and systems that are an integral part of the C&WJ directory services must also be taken into account. The Company also noted that the "... restrictions on the data accessible, the manner of such access, the use of such data, and appropriate, fair compensation for such access must be considered in order to ensure that any new system respects intellectual property law and the rights granted there-under."

- 2.26 It is the view of the OUR that copyright may exist for a database to the extent that the database constitutes an intellectual creation by reason of selection or arrangement of the data or any other material comprised therein³.
- 2.27 In the UK consultative document, “Provision of Directory Information Services and Products” OFTEL indicated that British Telecom (BT) claimed to have copyright in its directory information. However, OFTEL noted that “... an act done under statutory authority or done with the consent of the copyright owner is not an infringement of copyright.”
- 2.28 Under Section 48(1) of the Act, each service provider is obligated to provide access to a directory assistance service. It is the opinion of the OUR that the Act seems to contemplate subscriber access to a reasonably comprehensive database. To provide this service would necessitate the provision of subscribers’ directory information by each service provider to other service providers on request, for the purpose of providing access to a reasonably comprehensive directory assistance/enquiry service. Therefore, if the OUR directs the incumbent and any other service provider to supply directory information upon request to other service providers for the purpose of providing a directory assistance service, this should not constitute an infringement of any property right. Nonetheless, the OUR is open to comments on this interpretation of the Act.

Telemarketing and Consumer Privacy

- 2.29 In attempting to assess the views of consumers and interested parties on telemarketing, the OUR proposed that all new customers could be given the option of being excluded from telemarketing. This option could also be offered to all existing customers. Further, all databases with directory information

³ This argument is supported by the US landmark case *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991), U.S. Supreme Court.

would clearly indicate which customers have chosen the option of not being targeted by telemarketers.

- 2.30 According to C&WJ, it agrees with all recommendations which give individual subscribers choice over their directory records in publicly available directory services and control over the calls they receive. However, C&WJ indicated that any change to the policy of using directory records for the purpose of providing directory information services and products would erode consumer privacy if the explicit permission of each individual customer (existing and new) were not received.
- 2.31 In the absence of comments from consumer organizations on the issue of telemarketing, the OUR is of the opinion that it is best to abide by the common consumer expectation that directory information should be used for the provision of directory information products and services. If compelling evidence of consumer desirability for a telemarketing option is presented to the OUR, this directory status classification would be reconsidered.

Proposed Code of Practice

- 2.32 DIGICEL, C&WJ and the FTC all indicated that a Code of Practice (CoP) would be appropriate in the event that access to DQ information is granted to third parties. According to C&WJ, "... a binding Code of Practice could be useful in ... [helping to] ... protect consumers and ensure consistency of treatment by all interested parties. However, any such Code would be subsidiary legislation. As such, it cannot validly or legally derogate from the requirements of statute, in particular Section 47 of the *Telecommunications Act*." The FTC stated that under the CoP, the OUR and licensees should be able to take action for breaches committed by other licensees.
- 2.33 Based on discussions to date, it seems that a binding CoP should be sufficient to regulate the markets for directory information and the use of such

information. The OUR has proposed a CoP that is intended to be reviewed from time to time, to accommodate changing needs based on public consultation. It is important to note that the proposed CoP is not intend to have any legal effect. However, the Office intends to issue a NPRM based on the principles outlined in the CoP.

- 2.34 Outlined in the Appendix to this Document is the framework of the OUR's proposed CoP. Aspects of this proposal are subject to change depending on the final model adopted. The basic structure of the model should be finalized at the Directory Information Forum scheduled for April 2002.

Proposed Changes in the (114) DQ Access Code

- 2.35 The current access code 114 has been the default access code for several years. According to C&WJ, given the importance of DQ services to the general public and the public's familiarity with the 114 access-code, any changes should be limited to the minimum needed to route such calls.
- 2.36 DIGICEL sees the default access code as a barrier to entry since it is associated with the incumbent and with a 'free' service. In agreeing with DIGICEL, the FTC also said that the continued use of 114 limits consumers' choices.
- 2.37 The OUR agrees that the continued use of 114 would limit the degree of competition between DQ service providers. The conditional medium term proposal of the OUR is to discontinue the use of this code if additional market information justifies this. In the event that it is decided to discontinue the use of this code, appropriate steps would have to be taken to ensure that there is a smooth transition to any new codes.

- 2.38 In a recent press release⁴, OFTEL stated that, "... after a transitional period of a year, [new] numbers will replace the current 192 directory enquiry code." A similar transitional plan could be implemented in the Jamaican market.
- 2.39 In the interest of deepening competition, a mere change in the access code would not be sufficient. In order to widen consumer choices, it may be necessary to mandate consumer access to other DQ databases, in addition to that provided by its service provider. However, C&WJ questions whether the expected interest in the provision of DQ services is likely to be sufficient to justify mandatory customer access to other DQ service providers given the potential size of the Jamaican market. C&WJ considers that any such arrangement should be deferred until the Jamaican market is sufficiently attractive to other SPs to directly provide a DQ service.
- 2.40 Given the current paucity of information on the markets for directory information, the OUR cannot say if this requirement would be justified at the present time. The OUR expects to be in a more informed position when it collects additional information on the market for DQ services. However, since the total number of telephone subscribers is estimated to be over one million and growing, the potential market is substantial⁵.
- 2.41 The OUR recognizes that mandating consumer access to multiple DQ services is likely to be costly, however, competition could yield significant benefits in price and quality of service for consumers. However, given the context of uncertainty, this option should remain as a medium term consideration and should only be implemented if additional information justifies this change.

⁴ See OFTEL's Press Office Release, September 19, 2001, Ref: 63/01.

⁵ According to Conduit Enterprises Limited, Ireland's default access code was withdrawn in May 2000 after a transitional period of one year. With the transition to an equal access arrangement, the market grew by 20% within six months after the withdrawal of the default access code. Eircom, the incumbent DQ service provider became more efficient but lost market share to new entrants. However, because of the increased overall growth, Eircom also experienced growth. (See Conduit's Response to OFTEL's Consultation Document, February 2001.

Further, any change in the access code will depend on the specific DQ model decided on.

Question 2: Do you agree that a change in the default access code and the requirement of mandatory customer access to other DQ services should remain as a medium term objective? Why?

Liberalization Options

2.42 According to C&WJ, the four options presented in the Consultative Document focus on degrees of competition rather than the logistics of directory service supply. Further, C&WJ states that these "... options do not take systematic account of the regulatory principles which must apply in order that universal access to directory services continue to be safeguarded." C&WJ suggests that its proposed fifth option reduces the problems of security, technical access and duplication of costs, as well as satisfy all privacy, commercial confidentiality and legal rights of all parties.

C&WJ suggests that its option offers the following benefits:

- "The interconnect DQ service provided by CWJ is cost-based (on terms regulated by the OUR) and the service is provided on exactly the same terms to all existing and potential operators;
- The proposed DQ service meets customer requirements for access to comprehensive DQ services, regardless of PTN;
- Usage of DQ listings respects user privacy;
- Security of private customer information is guaranteed since the DQ database will contain only the set of data needed to provide DQ;
- CWJ will provide a comprehensive printed WHITE PAGES directory, which will include all subscribers who wish to have a listing."

- 2.43 C&WJ noted that a competitive solution based on multiple databases would not provide an optimal alternative to the existing model. Additionally, C&WJ stated that "... this requires a complex IT solution to ensure the effective performance in real-time of a series of distributed databases."
- 2.44 It is the OUR's opinion that the acceptance of C&WJ's proposal would result in the continued dominance of C&WJ in directory information markets. The OUR is willing to consider aspects of the C&WJ's proposal based on:
- ? The importance of directory services and products to telecommunications markets;
 - ? The objective of finding the most economic solution given the technical, legal and other constraints; and
 - ? The limited interest in some directory information markets.

However, the inability to access the C&WJ databases remains a major barrier to entry into the market for DQ services and other directory information markets. The OUR has proposed an outline of a DQ model in Chapter 3 of this document that provides for real-time access, minimizes the industry's additional costs of providing these services and provides consumers with wider choices.

CHAPTER 3: PROPOSED MODEL FOR DIRECTORY ASSISTANCE/ENQUIRY MARKET

Policy

3.1 The proposed model is based on the following policy objectives:

- ? Addressing the subscribers' privacy concerns in relation to the use of their directory information;
- ? The provision of subscriber access to at least one comprehensive directory enquiry/assistance service and white pages directory; and
- ? Facilitate the development of competition in the provision of comprehensive directory enquiry/assistance service.

To the extent that these are conflicting objectives, priority will be given to the privacy concerns of subscribers. This approach will assist in minimizing the number of ex-directory or 'unlisted' subscribers and therefore, increase the value of the services and products offered using directory information.

Legal Requirements/Issues

3.2 The OUR proposes that only licensed service providers⁶ be allowed to supply directory information services and products. The OUR expects that this restriction will assist in the maintenance of consumer privacy. This expectation is based on the requirement that each licensed service provider providing directory information services and products is obligated to act in accordance with any rule established for the purpose of regulating these markets and by extension, Code of Practice. (See Appendix).

Question 3: Do you agree that only licensed service providers should be allowed to provide directory information services and products? Explain.

3.3 Under Section 40 of the Act, subject to being designated a universal service provider, C&WJ or another licensee could be requested to maintain and operate a National Directory Database (NDD) as a universal service obligation (USO). This obligation could include the provision of a comprehensive printed 'white pages' directory of subscribers regardless of public switch networks (PSTN). The designation of the particular licensee would depend on the consultation on USO, scheduled for financial year 2002/2003. However, the legal issues surrounding this designation are subject to further analysis. Alternatively, the OUR could include a procedure in the NPRM for directory information markets for designating the responsibility of NDD operator to a service provider.

Question 4: What method should the OUR use in designating a NDD operator? Why?

DQ Market

3.4 The model below was informed by those implemented or being implemented in the UKⁱⁱⁱ and Ireland. However, the model itself will not seek to duplicate any specific model. The market for DQ services in Jamaica could differ significantly from other more developed markets due to economic and social factors. For example, the demand for DQ services in developed countries such as Ireland is expected to be significantly more than demand in Jamaica. Relatively speaking, the populations of both countries are similar in size but the significant per capita⁷ difference could suggest differences in effective demand and the type of services demanded. However, although Jamaica has a lower per capita income, it also has one of the fastest growing mobile markets in the world.

3.5 The fact that mobile callers are not likely to have access to an alternative form of telephone directory coupled with the high rate of growth in mobile lines relative to fixed lines, any growth in the demand for DQ services is likely to

⁶ The holder of a service provider licence issued under section 13 of the Act.

⁷ See http://www.cia.gov/cia/publications/factbook/fields/gdp_-_per_capita.html

come from mobile customers. Additionally, the absence of number portability places a higher value on DQ services. Against this background, it is difficult for any regulator to second-guess the market.

DQ Model

3.61 The proposed model consists of a single National Directory Database in a multiple DQ service provider environment based on real-time access on a non-discriminatory basis⁸. Each operator will be required to operate in accordance with the Code of Practice (CoP). (See Appendix). The CoP itself is not legally binding. However, the principles embodied in it will form the basis for proposed rules to regulate the markets for directory information. These rules would be issued pursuant to section 71 of the Act.

3.62 Only licensed public voice service providers (fixed and mobile) will be allowed to access directory information for the purpose of supplying DQ services. Directory information consists of directory records collected from subscribers by individual service providers and supplied by those providers to the NDD operator for the sole purpose of providing DQ services.

National Directory Database (NDD)

3.63 At a minimum, this database would consist of directory information associated with all listed numbers and would be maintained and operated by the designated licensee. The ownership, operation and maintenance of the NDD would be an item on the agenda at the Directory Information forum. One option is to allow C&WJ to operate and maintain the NDD. This option would be similar to C&WJ's proposed fifth liberalization option. However, if this option were adopted, competitive safeguards would be necessary. These could be included in the NPRM.

⁸ The basic structure of this model is similar to that which was implemented in Ireland. See the Ireland's Office of Director of Telecommunications Regulation Report on Consultation, March 2001, Doc. No. ODTR 01/19.

Access Codes

3.64 The default access code would be retained for a minimum of 12 months subsequent to the commencement of real-time access to the NDD. After this period, the OUR would review the market situation with a view to introducing new codes if they are deemed necessary. This action would be subject to the regular consultative process.

Supply of Directory Information

3.65 At a minimum, each service provider would be obligated to supply its listed directory information (business and residential, and fixed and mobile directory records) to the NDD operator as indicated in the CoP. The precise format and frequency at which the data would be supplied, would be determined by an industry group consisting of representatives from each licensee. However, it should be in a machine-readable form.

Funding

3.66 Subject to the acceptance of this or a similar model, funding of the NDD operator would be discussed at the industry forum scheduled for April 2002.

Question 5(a): Respondents are requested to provide a detailed proposal and comments on the structure and ownership of the NDD.

Question 5(b): How should the NDD be funded? Respondents are requested to outline a detailed proposal?

Implementation Schedule

3.67 The licensee designated to be the NDD operator would propose an implementation schedule for, among other things:

- ✍ Changes in directory information collection procedure;
- ✍ The start date for providing directory information to the NDD operator;
- ✍ The frequency with which directory information is supplied; and
- ✍ The date for commencing real-time access to the NDD.

3.68 In relation to customer access to the service of other DQ service providers, a decision on this matter would be delayed to allow for the acquisition of more market data.

3.69 Although the model does not address the provision of other directory information services and products, it is proposed that directory information databases (example White Pages and Government listings) will be supplied in accordance with Section E of the Code of Practice (CoP) for the other uses outlined at Section F paragraph 1.18 of the CoP.

APENDIX: PROPOSED CODE OF PRACTICE

A Introduction

- 1.1 All public voice service providers or licensees issued with a licence pursuant to Section 13 of the Telecommunications Act (the Act) that are entitled to direct allocation of numbers/codes are required to abide by the Code of Practice (CoP)⁹. The CoP outlines the allowable uses of directory information for business and residential customers and specifies the directory information that Public Telephone Operators are required to collect from their customers and supply routinely at specified intervals to the National Directory Database (NDD) Operator.

- 1.2 Each service provider is required to follow the CoP in the use of their subscribers' directory information and directory information of subscribers from other service providers. Service providers are required to establish agreements with the NDD detailing a standard set of terms and conditions under which directory information should be provided to the NDD Operator. Additionally, service providers should establish agreements with the NDD Operator detailing a standard set of terms and conditions of real-time access to the NDD.

- 1.3 For the avoidance of doubt, the CoP does not apply to information that was collected by the service providers for purposes other than the provision of directory information services and products. Additionally, it should be noted that the CoP has no legal effect, but will form the basis of rules to be issued subsequent to a determination on the CoP itself.

⁹ The Code of Practice outlined here is based on the UK CoP. See www.oftel.gov.uk/publications/1995_98/consumer/dqannex.htm

1.4 The Office may review the CoP from time to time based on consultation with: -

- ✍ Public Telecommunications Operators/service providers;
- ✍ The National Directory Database Operator;
- ✍ Consumer representatives; and
- ✍ Other interested parties.

Note however, any such revision must not be contrary to any rule established to regulate the relevant markets.

B Purpose

1.5 The CoP was prepared by the Office of Utilities Regulation for the purposes outlined as follows:

- i) To provide a clear set of rules by which the service providers, data users and other authorized users of telecommunications directory information are regulated.
- ii) To satisfy the privacy concerns, primarily of residential telecommunications subscribers in relation to the use of their directory information.
- iii) To outline the minimum status classifications that service providers must offer their subscribers; and
- iv) To set out the type of directory information that must be provided to the National Directory Database Operator on request.

C Definitions

- 1.6 For the purposes of the CoP, the following words and phrases will have the meaning stated below.
- 1.7 "Business record" is a directory record for an individual, partnership, body corporate or statutory body that is recorded by a service provider as in a business category.
- 1.8 "Customer" is any residential or business subscriber whose data forms a directory record.
- 1.9 "Data user" is a person or organization processing directory information to produce directory services and products.
- 1.10 "Directory information" consists of directory records collected from customers by service providers.
- 1.11 "Directory record" consists of information on an individual customer that service providers must collect and supply on request in accordance with Sections E and F of the CoP. Each directory record comprises the following fields of information:
- ? customer's name
 - ? customer's address (full or partial address)
 - ? telecommunications number
 - ? type of number (example fixed, mobile, fax etc)
 - ? category of entry (business or residential)
 - ? type of business, (example mechanic, plumber)
 - ? directory status classification (see Section D below)

1.12 "Directory status classification" is the classification that signifies how a directory record may be used in accordance with the rules set out in the CoP.

1.13 "Residential record" is a directory record that is recorded by a service provider in a residential category.

1.14 "Matching records": The total number of directory records generated from a single search.

D Directory Status Classification

1.15 Each service provider (fixed or mobile) will offer their residential subscribers the following directory classifications [commencing on a date to be decided].

- (i) Listing: this signifies that the directory record may be used for all directory services and products in section F paragraph 1.18 of the CoP;
- (ii) Unlisted or Ex-directory;
- (iii) Call completion only; and
- (iv) Partial Address Option.

These classifications will form part of all new residential directory records [on a date to be decided].

1.16 Each service provider (fixed or mobile) will offer their business subscribers the following directory classifications [commencing on a date to be decided].

- (i) Classifications (i) and (ii) in rule 1.15(D).

These classifications will form part of all new business directory records [on a date to be decided].

Question 6: Are there other status classifications that should be considered?

E Provision of Directory Information

1.17 All licensed service providers are expected to provide directory information on its subscribers [in a format to be specified] and at a minimum, in machine-readable form, to the NDD Operator. Each directory record should be in accordance with the definition of a directory record at Section C.

F Permitted Uses

1.18 Directory information may be used for the purposes of providing: -

- ? Voice directory enquiry services including operator assisted and automated voice services;
- ? Publishing printed telephone directories; and
- ? Compiling and publishing directories that can be accessed electronically.

1.19 In relation to the use of directory information for the purposes of providing voice directory enquiry services including operator assisted and automated voice services, such services must meet the following rules: -

- (a) Directory records must be ordered alphabetically by name;
- (b) Permit searching only on the basis of the enquirer providing a name and approximate address.
- (c) The number of matching records generated from a single search must be no greater than [number to be

determined]. This limitation is geared at preventing bulk downloading of directory information.

- (d) Ex-directory records are only used to confirm that a customer is ex-directory.
- (e) For call completion services, the directory records are only used to directly connect the enquirer to the number required without disclosure of the number and gives the called party the option of accepting the call or not. In instances where this service is not offered, records with the call completion classification must be treated as ex-directory records in accordance with paragraph 1.19(d).

1.20 Directory information may be used for compiling and publishing printed telecommunications directories that:

- (a) Are ordered alphabetically by name;
- (b) Do not contain directory records that are:
 - ? Ex-directory; and
 - ? Listed for call completion in a directory enquiry service.
- (c) Contain at least [number to be decided] directory record (this is aimed at preventing the publication of small directories that will facilitate easy searches and increase privacy concerns); and
- (d) Contain at least the customer's name (business or residential), full or partial address and telecommunication numbers within a geographic area.

1.21 In relation to directories that are compiled and published for electronic access (example, Internet access), such directories must:

- (a) Be ordered alphabetically by name;
- (b) Not contain directory records that are:
 - ? Ex-directory; and
 - ? Listed for call completion in a directory enquiry service.
- (c) Only allow searches to provide directory records based on the enquirer providing the name and partial address of the party been sought. However, searches for business customers may be conducted by name only;
- (d) Contain at least the customer's name (business or residential), full or partial address and telecommunication numbers within a geographic area;
- (e) Contain at least [number to be decided] directory record (this is aimed at preventing the publication of small directories that will facilitate easy searches and increase privacy concerns);
- (f) The number of matching records generated in a single search should be no less than [number to be decided];
- (g) Encrypted to prevent searches other than allowed by rule 1.21(c) and to prevent bulk downloading of directory records; and
- (h) Enquirer should not be able to change directory records.

G Application for Review

- 1.22 Any person may submit an application for the review of parts or the entire CoP based on changes in the economic, legal, general market environment or any other factors that are likely to warrant such changes. The OUR shall consider and consult on such matters, allowing the applicant a fair hearing. Decisions on such matters will be issued in writing.

Proposed Penalties

- 1.23 It is proposed that the rules in the NPRM incorporate penalties applicable under section 71 of the Act. These will be applicable in cases where directory information is used for purposes other than those specified at Section F of the CoP. Additionally, it is proposed that repeated breaches of such rules may result in the reclamation of the assigned access code. Further, it is also proposed that DQ service providers will be subject to any rule that may be issued pursuant to Section 8(2) of the Act.

LIST OF QUESTIONS

- Question 1:** Should directory information services and products be prescribed as specified services? If not, why? What are the alternatives available to the OUR?
- Question 2:** Do you agree that a change in the default access code and the requirement of mandatory customer access to other DQ services should remain as a medium term objective? Why?
- Question 3:** Do you agree that only licensed service providers should be allowed to provide directory information services and products? Explain.
- Question 4:** What method should the OUR use in designating a NDD operator? Why?
- Question 5(a):** Respondents are requested to provide a detailed proposal and comments on the structure and ownership of the NDD.
- Question 5(b):** How should the NDD be funded? Respondents are requested to outline a detailed proposal?
- Question 6:** Are there other status classifications that should be considered?

ENDNOTES

ⁱ This is similar to the position taken by OFTEL. See “*Provision of Directory Information Services and Products Statement*” at www.oftel.gov.uk/publications/1995_98/consumer/dq998.htm paragraph 1.4.

ⁱⁱ See note (i) above.

ⁱⁱⁱ In the UK, customers access DQ services by dialing 192, irrespective of the SERVICE PROVIDER they subscribe to. Callers to 192 are automatically transferred to the subscriber’s SERVICE PROVIDER DQ service provider. Customers are not able to access another SERVICE PROVIDER’s DQ services. However, OFTEL recently announced that it will be effecting changes to the DQ market that will end “... BT’s historic near monopoly in voice based directory enquiry services ... as directory enquiry companies will be able to offer their own services to customers.” See OFTEL’s press release, *New services, more choices and lower prices for directory enquiry customers*, September 19, 2001, Ref. No. 63/01.