
Office of Utilities Regulation

Mobile Termination Rate

Determination Notice



OFFICE OF UTILITIES REGULATION

June 04, 2012

DOCUMENT TITLE AND APPROVAL PAGE

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DOCUMENT TITLE: Determination Notice for an Interim Mobile Termination Rate.

1. PURPOSE OF DOCUMENT

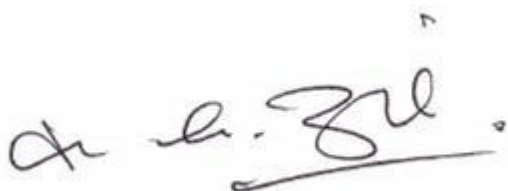
This document contains the decisions of the Office regarding the establishment of an interim mobile termination rate.

ANTECEDENT DOCUMENTS

APPROVAL

This document is approved by the Office of Utilities Regulation and the decisions therein become effective **July 15, 2012**.

On behalf of the Office:



.....
Ahmad Zia Mian
Director General

June 04, 2012

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1. LEGISLATIVE FRAMEWORK

- 1.1 As part of its overall functions, the Office of Utilities Regulation (“OUR”), regulates specified services and facilities pursuant to section 4(1) of the Telecommunications Act 2000, as amended (“the Act”). In keeping with its express power to determine the rates which may be charged in respect of the provision of a prescribed utility service pursuant to section 4(4) of the Office of Utilities Regulation Act (“the OUR Act”), the OUR is authorised to determine the prices charged by telecommunications operators for the provision of interconnection services. The applicable provisions in respect of each are as follows:

Section 4(1)(a) of the Act provides:

“(1) The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall -

(a) regulate specified services and facilities”

Section 4(4) of the OUR Act provides:

“(4) The Office shall have power to determine, in accordance with the provisions of this Act, the rates or fares which may be charged in respect of the provisions of a prescribed utility service.”

- 1.2 A “specified service” is defined in section 2 of the Act to mean, *inter alia*, “a telecommunications service or such other service as may be prescribed”. A “prescribed utility service” is defined in section 2 and the First Schedule of the OUR Act to mean “a utility service specified in the First Schedule” which Schedule states it to include “the provision of telecommunication services”.
- 1.3 The legal framework governing interconnection, which is a type of telecommunication service, is set out in sections 27 – 37 inclusive of the Act. Section 29 of the Act requires each carrier to permit to other carriers interconnection to its public network. Subsection (1) of that section states:

“Each carrier shall, upon request in accordance with this Part, permit interconnection of its public network with the public network of any other carrier for the provisions of telecommunications services”.

- 1.4 The OUR is empowered under the Act to make a determination as to the charges for call termination services included in these interconnection arrangements. Sections 29 (4), (5), (6) and (7) of the Act provides respectively:

“(4) The Office may,

- (a) *on its own initiative, in assessing an interconnection agreement, make a determination of the terms and conditions of call termination, including charges*
 - (b) ...
- (5) *When making a determination of an operator's interconnection charges, the Office shall have regard to:*
- (a) *The principles of cost orientation or reciprocity;*
 - (b) *Local or international benchmarks; or*
 - (c) *Any other approach that is relevant to the determination of interconnection charges.*
- (6) *Any determinations of the Office made pursuant to the subsection (4) shall be binding on the operator.*
- (7) *For the purpose of subsections (4) and (5)- "reciprocity" means basing a carrier's interconnection charges on the interconnection charges of another carrier ..."*

1.5 The Act grants specific powers to the OUR to assess and approve the terms and conditions of interconnection, including charges, offered by a public telecommunications carrier which is determined by the Office to be dominant. These terms and conditions are required under the Act to be embodied in a reference interconnection offer (RIO). Some of the relevant sections of the Act are set out below:

"28(1) Subject to subsection (2), the Office shall determine which public telecommunications carriers are to be classified as dominant public voice carriers for the purposes of this Act."

"32(1) Every dominant carrier shall, and any other carrier may, lodge with the Office a proposed reference interconnection offer setting out the terms and conditions upon which other carriers may interconnect with the public network of that dominant or other carrier for the provision of telecommunications services."

"32(2) Each dominant public telecommunications carriers who is required under this part to provide interconnection in relation to telecommunication services shall submit a reference interconnection offer to the Office

(a) within ninety days after the date of determination of dominance pursuant to section 28;"

"32(3) A reference interconnection offer shall contain such particulars as may be specified by the Office and shall remain in force for a period not exceeding five

years or such shorter period as the Office considers necessary having regard to technology and market developments;”

“32(4) A reference interconnection offer or any part thereof shall take effect upon approval by the Office in the prescribed manner.”

1.6 Sections 30(1)(a)(iii) and 33 of the Act further stipulate the principles upon which interconnection charges should be based as follows.

“30. – (1) Without prejudice to section 29, dominant public telecommunications carrier shall provide interconnection in relation to a public network in accordance with the following principles –

- (a) the terms and conditions under which it is provided shall be -*
 - (i) on a non-discriminatory basis*
 - (ii) reasonable and transparent, including such terms and conditions as relate to technical specifications and the number and location of points of interconnection; and*
 - (iii) charges shall be cost oriented and guided by the principles specified in section 33;”*

“33. - (1) Where the Office is required to determine the charges for the provisions of interconnection by a dominant carrier, it shall, in making that determination, be guided by the following principles –

- (a) costs shall be borne by the carrier whose activities cause those costs to be incurred;*
- (b) non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;*
- (c) costs that do not vary with usage shall be recovered through flat charges and costs that vary with usage shall be recovered through charges that are based on usage;*
- (d) costs shall include attributable operating expenditure and depreciation and an amount estimated to achieve a reasonable rate of return;*
- (e) with the exception of interconnection charges for wholesale termination services, interconnection charges shall be established between the total long run incremental cost of providing the service and the stand alone cost of providing the service, so, however, that the prices shall be so calculated as to avoid placing a disproportionate burden of recovery of common costs on interconnection services;*

(f) *where appropriate, interconnection costs shall include provision for a supplementary charge, being a contribution towards the access deficit of the interconnection provider; and*

(g) *In the case of charges for wholesale termination services, charges shall be calculated on the basis of a forward looking long run incremental cost, whereby the relevant increment is the wholesale termination service and which includes only avoidable costs.*

(2) *Where the Office has been unable to obtain cost information that it is reasonably satisfied is relevant and reliable, it may take into account local and international benchmarks, reciprocity and any other approach that in the opinion of the Office is relevant.”*

(3) *In this section*

(a) *“access deficit” means the amount by which a carrier’s revenue from connection and line rental charges falls short of the cost of providing access lines due to regulatory constraints on those charges.;*

(b) *“avoidable costs” means the difference between –*

(i) *the identified total long run costs of a carrier providing its full range of telecommunications services; and*

(ii) *the identified total long run costs of the carrier providing its full range of telecommunications services, except for the wholesale call termination service supplied to any third party (which costs exclude non-traffic-related costs).”*

1.7 Express power to set interim rates and charges for wholesale and retail service is given to the Office by section 37 A of the Act which provides as follows:

“37A.-(1) Subject to subsection (2), the Office may set interim interconnection charges and an interim price cap for retail rates for telecommunications services.

(2) Interim interconnection charges and interim price caps for retail rates set pursuant to subsection (1) shall-

(a) be applicable for defined period, (being a period not exceeding twelve months);

(b) be established, pending the completion of the process to determine interconnection charges or to make price cap rules, as the case may be, in accordance with section 4(2), 33 and 46.

(3) *When setting an interim interconnection charge or an interim price cap for retail rates, the Office shall have regard to reciprocity, local or international benchmarks or such other relevant data or information as may be available to the Office, from time to time.*

(4) *In the event that the Office is unable to determine interconnection charges or make price cap rules for retail rates before the expiration of the defined period, the Minister may extend the application of the interim interconnection charges or interim price caps for retail rates for a further period, being a period not exceeding six months.*

(5) *If after the further period, the interconnection charges or price cap rules for retail rates are still not determined by the Office, the mid-point between the interconnection charges or retail rates that were applicable before and after the setting of the interim interconnection charges or interim price cap rules for retail rates shall apply until such determination is made by the Office, but shall not have retroactive effect.*

(6) *The power of the Office to set interim interconnection charges or price cap rules for retail rates under this section shall not be subject to the provisions of section 4(2), 33, 46, 60 or 62.”*

2. EFFECTS OF ABOVE-COST MTR ON COMPETITION

- 2.1 The cost of terminating a call on a competing network is one of the primary costs incurred by operators in the telecommunications sector. Having an MTR that is significantly above cost could distort the proper functioning of the markets and retard the level of competition. Some of the potential negative effects of above cost MTR are -
- ❖ Cross subsidisation;
 - ❖ Ring fencing of subscribers on network;
 - ❖ Higher retail price; and
 - ❖ High on-net off-net price differential.

Cross Subsidisation

- 2.2 Having termination rates that are higher than the cost of providing the service allows an operator to price other services, typically on-net services, below cost. This cross subsidisation between networks benefits the operator with the larger market share who tends to be a net receiver of calls. Therefore, even in a case where termination rates are high and reciprocal between two networks, the smaller network ends up paying a transfer to the bigger operator. This affects the ability of the smaller operator to compete as they will either have to carry the loss or increase the price of some other service in order to recoup the lost revenue. This could significantly affect the ability of the smaller network to innovate and expand.

Ring Fence Subscribers on Network

- 2.3 As a direct result of the cross subsidisation between networks, an above cost termination rate allows the larger network to maintain a high market share by using the windfall profits from termination to offer large on-net discounts. This provides an incentive for customers to gravitate towards the network with the larger market share to benefit from the cheaper price of making an on-net call relative to the cross-network charge they would face if they were a subscriber on the smaller network. This may be especially problematic for potential entrants as they would find it difficult to gain market share.

Higher Retail Price

- 2.4 The retail price of a cross network call is made up of two components - the origination charge and the termination charge. The origination charge is the portion of the revenue that goes to the operators on whose network the call initiates while, the termination charge is revenue to the operator on whose network the subscriber being called resides. Therefore, the termination rate sets a floor on possible retail price of a cross network call as the originating network would need to set the off-net retail rate at a minimum of the termination rate so as to not incur a loss on the call. As such, a termination rate that is set above its true cost results in a transfer of welfare from consumers to the terminating

operator. However, it should be noted that in the absence of effective competition at the retail level, a reduction in the termination rate may not automatically be passed to consumers in the form of lower retail rates.

High On-Net Off-Net Price Differential

2.5 High termination rates also increase the spread between on-net and off-net rates. In situations where this difference becomes significant, consumers attempt to counter the reduction in consumer surplus from making an off-net call by purchasing multiple handsets.

Purpose of Document

- This Determination Notice summarises the Office's views on the establishment of an interim mobile termination rate (MTR). It is the Office's position that this rate will only remain in place pending the completion of the long run incremental cost (LRIC) model which will be used to determine MTR in the long term. Given the fragile state of the competition which now exists in the mobile sector, the Office is of the view that there is need for an interim MTR, pending the completion of the cost study, to prevent the two remaining mobile operators from leveraging their dominance in terminating calls on their respective networks.

3. CURRENT SITUATION

3.1 On March 17, 2011 Digicel in a joint application with Oceanic Digital Jamaica (“t/a Claro”) requested approval from the relevant Minister to merge their operations and networks. In August 2011 the approval for the merger was granted with the condition that Digicel had to maintain both networks. This decision was subsequently reviewed with Digicel being given permission to merge without the constraint of maintaining both networks. This has changed the mobile telecommunications landscape in Jamaica from one with 3 operators to now having just 2 with the largest player in the market increasing its market share. The reduction in the competitiveness of the market can be seen in the Herfindahl Hirschman index¹ (HHI) which shows that the market has become more concentrated moving from a figure of 5104 before the merger to 7223 after the merger².

Table 1: Herfindahl Hirschman Index

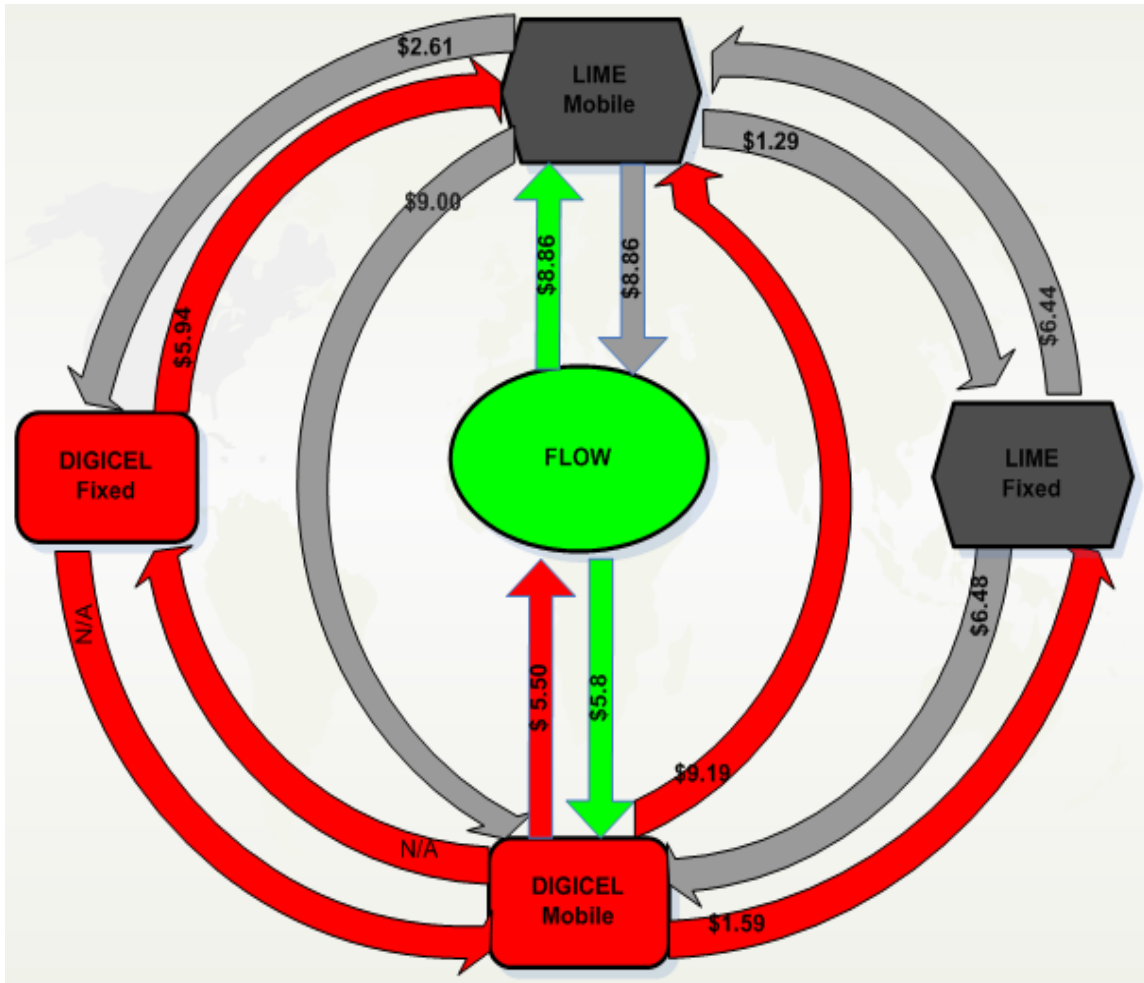
	Pre Merger	Post Merger
Mobile Subscriber HHI	5,104	7,223

3.2 The current situation with respect to termination rates is that differential rates exist, with each carrier charging a termination rate that varies in connection with the carrier from whose network the call originates. The differential is especially evident with respect to the termination rate paid by fixed networks to mobile networks relative to the rates it receives from those mobile networks (see Figure 1: Termination Rates Charged and Paid by Mobile Networks). The rate that some fixed networks pay to mobile networks for termination is several multiples above that which it receives from those networks when it terminates a call. This is especially true for LIME’s fixed network due to the fact that unlike the other fixed networks which can set reciprocal rates, LIME’s fixed termination rate is regulated to reflect cost. Given that mobile networks are charging termination rates above the actual cost of providing the service (as determined in section 4), it essentially means that these mobile networks are receiving a transfer from the fixed networks which they can use to subsidise other services or increase their profit. As explained in Section 2, this may impact the fixed networks’ ability to compete, innovate, and expand.

¹ HHI ranges from 0 to 10,000. A HHI close to 10,000 indicates that the market is close to being a monopoly and as such less competitive.

² This is calculated assuming that Digicel acquired the majority (90%) of Claro subscribers with LIME getting the remaining subscribers. This is likely to be the case at least in the initial stages after the merger.

Figure 1: Termination Rates Charged and Paid by Mobile Networks³



Source: Data submitted by operators

3.3 Although the Office has already embarked on a process to determine cost based mobile termination rates, given the fragile state of the competition which now exists in the mobile sector as exhibited by the increase in the HHI, the Office has decided that there is need for an interim MTR, pending the completion of its cost study, to prevent the two remaining mobile operators from leveraging their dominance in terminating calls on their respective networks. The interim measure will also immediately reduce the imbalance which exists between fixed line networks and mobile networks. This is as the superfluous transfer of resources from fixed networks to mobile networks will be diminished.

³ All rates in the figure are peak rates. The termination rates for LIME fixed network are the actual average rate received by LIME. The difference is rate paid by Digicel mobile and LIME mobile reflects the fact that Digicel has more regional and national interconnect traffic than LIME.

4. DETERMINING THE INTERIM MTR

- 4.1 The Office is of the view that it does have cost information which is “*reasonably*” relevant and reliable and therefore does not need to use a benchmarking approach to determining the interim MTR. In preparation for setting a regulated MTR, the Office asked operators to submit a RIO inclusive of rates along with justification for how those rates were derived. In response, LIME submitted a fully allocated cost (FAC) model and Claro submitted a top-down LRIC model while, Digicel to date has not submitted any justification for its termination rate despite repeated requests to do so. (See Appendix 1).
- 4.2 The information in the model submitted by Claro and LIME is relevant because it is representative of cost faced by companies which operate in the local market and as such takes account of all the applicable indigenous factors which would affect the termination rate.
- 4.3 The Office is reasonably satisfied that the information in the models is reliable because it forms the basis of termination rates which profit maximising operators are proposing to charge for terminating calls on their network. Given that termination is a monopoly service, the operators would have no incentive to propose a termination rate below the true cost of providing the service. In fact, due to this monopoly position, operators are more likely to exaggerate their costs in order to have the MTR set above the actual cost and earn monopoly profit. Therefore, the Office is only reasonably satisfied about the reliability of the information in the cost model as it perceives a possible risk of overestimation. This view is supported by the fact that the MTR proposed in the tariff schedule of LIME is above the rate that was being charged between Claro and LIME when Claro⁴ was in operation. The monopoly rent seeking behaviour is also exemplified in Digicel’s tariff schedule which proposes a rate of \$9.00 which is almost twice the rate proposed by the other operators although Digicel has a subscriber and traffic base that is significantly larger than that of the other two operators (See ‘Digicel’s Reality’ in Section 4.11 for more discussion on this point).

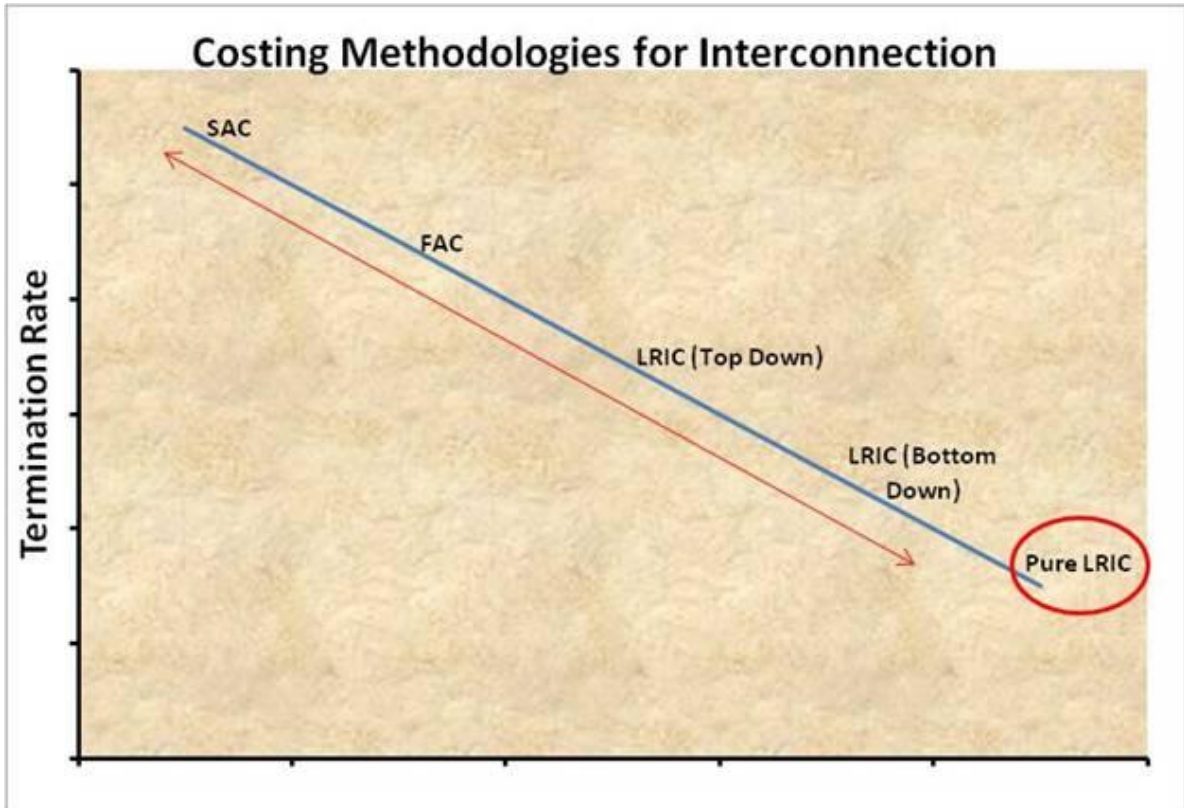
LIME Model

- 4.4 LIME submitted a FAC model in line with the methodology it uses to calculate termination rates for its fixed network. The FAC model uses data from the company’s accounting system to attribute costs (both network and non-network) to the relevant services based on cost drivers. The total cost for the relevant service is then divided by the total amount of traffic for the particular service in order to determine the termination rate. The problem with the FAC methodology is that it aims to recover all costs regardless of whether those costs were efficiently incurred. The model takes no account of how traffic is expected to change going forward and could therefore include

⁴ Claro did not submit a tariff schedule to say what rate it was proposing to charge. However, it submitted the MTRs it had to the main players in the market and its cost model to show its calculated cost.

inefficiencies relating to overcapacity if the network was not dimensioned on the basis of efficient traffic levels. The FAC model will generally produce MTRs at the higher end of the costing spectrum as shown in Figure 2: Costing Methodology.

Figure 2: Costing Methodology



4.5 LIME’s model generates an MTR of \$4.99 per minute apportioned to call setup and duration charge as shown in Table 2: LIME Model. Table 2: LIME Model It was also indicated that this rate is equivalent to US\$ 0.0561.

Table 2: LIME Model

Setup Charge (per call)	\$0.44
Duration Charge (per minute)	\$4.56
Total Cost (1 minute call)⁵	\$4.99

⁵ Difference due to rounding.

4.6 LIME’s model uses a pre-tax cost of capital of 26.7%, slightly below the OUR’s determined 27.95% which would result in a higher MTR than that calculated by LIME. However, this is more than offset by the fact that the model allocates all mobile network cost to voice services and none to data. The overall effect of these two adjustments would be a reduction in the calculated MTR.

Claro Model

4.7 Claro submitted a top-down LRIC model. Like the FAC model, the top-down LRIC model uses accounting costs as the basis of calculating the MTR. However, a top-down LRIC model contains some inefficiencies.

4.8 Claro’s model produced a range of results depending on the scenarios for different scale economies. It also gave results using two types of costing approaches:

- Stand-alone cost (SAC) – measures the cost of providing call termination service as if it were the only service provided by the company. Therefore, all joint and common costs are allocated to interconnection service. This methodology will essentially produce MTRs that represent the maximum level as all possible costs are allocated to the single service of interconnection.
- Top-Down Incremental cost – with this approach joint, common and corporate overhead costs are shared on an equitable basis between all the services that are provided. An increment can be thought of as a finite quantity of a particular output (e.g. the wholesale voice call termination in total).

4.9 The results as shown in Table 3: Claro Model, indicate that the MTR ranges from \$1.548 to \$5.117 when adjusted based on the various scale economies.

Table 3: Claro Model

SUMMARY UNIT COSTS	<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>
Scale Factor	1.3	1.5	1.7
Unit Incremental cost (J\$/min)	2.025	1.755	1.548
Unit Stand-alone costs ⁶ (J\$/min)	4.025	4.644	5.117

4.10 Claro’s model separated cost associated with data services from those associated with voice services in estimating the MTR. The model however used an after-tax cost of capital of 15.1% which is lower than the 18.6% determined by the OUR. Taking this adjustment into account, the MTR ranges from a \$1.910 to \$6.311 as shown in Table 4: Revised Claro Model.

⁶ Stand-alone cost increases as the scale factor increases because an increase in the scale factor reduces the incremental cost and thus increases the common cost. Stand-alone cost is off-net cost plus common cost.

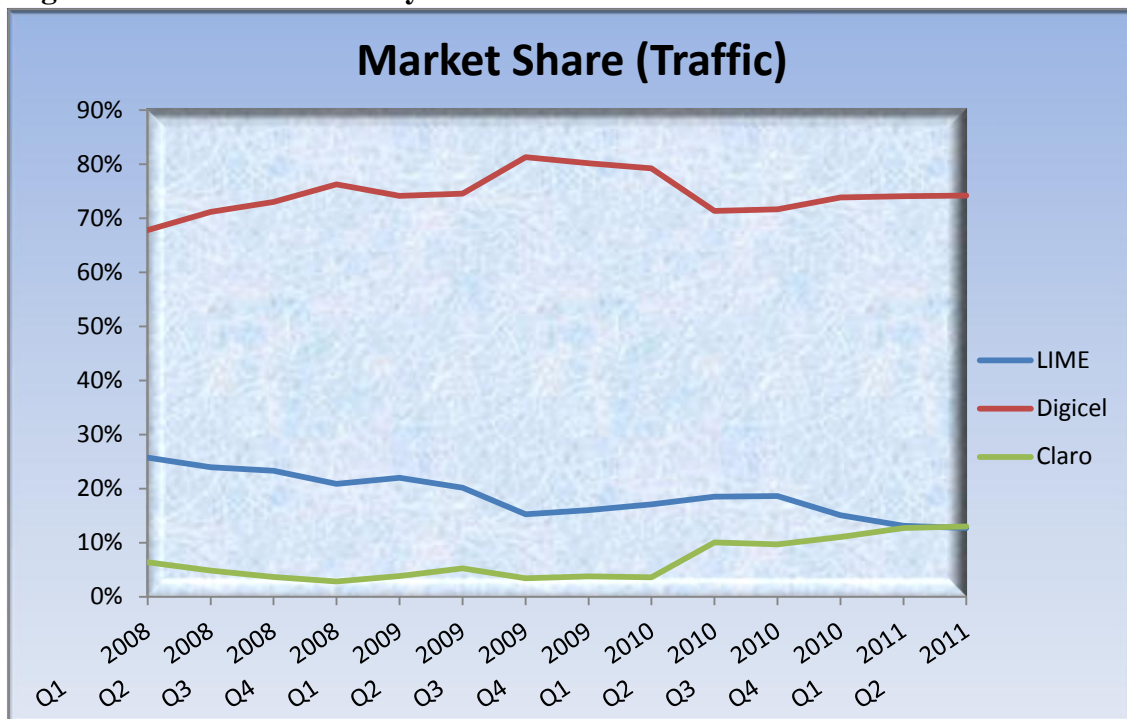
Table 4: Revised Claro Model

SUMMARY UNIT COSTS	<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>
Scale Factor	1.3	1.5	1.7
Unit Incremental cost (J\$/min)	2.497	2.164	1.910
Unit Stand-alone costs (J\$/min)	4.964	5.727	6.311

Digicel’s Reality

4.11 As indicated earlier, Digicel did not comply with the Office’s request to supply cost and traffic data to substantiate the MTR proposed in its RIO. The proposed tariffs in Digicel’s RIO ranged from \$7.75 for domestic calls on weekends to \$9.00 for domestic calls during peak hours. The proposed rate for terminating international calls is US\$0.138 which when converted to Jamaican dollars is equivalent to approximately \$12.00. Digicel therefore proposed an MTR for terminating international calls that is significantly above the MTR it proposes for terminating domestic calls. Even the lowest rate proposed by Digicel for terminating a domestic call is above the highest MTR of \$6.311 calculated on a stand-alone cost basis from the submitted models. Given that traffic on Digicel’s network is significantly higher than that of the other networks (see Figure 3: Market Share by Traffic), the MTRs proposed by Digicel are unrealistic and cannot be substantiated.

Figure 3: Market Share by Traffic



4.12 Using data from Digicel's 2009⁷ audited annual report and data relating to Digicel's network traffic for the corresponding period, the company's estimated total voice service cost is more than 2.5 times that of Claro. However, the higher network cost is more than offset by total traffic on Digicel's network which is approximately 11.9 times the traffic on Claro's network. Therefore an MTR calculated for Digicel's network would be lower than that calculated for the other operators as Digicel experiences significant benefit from economies of scale. This underscores the point that Digicel's submitted MTRs are baseless.

⁷ The 2009 period was chosen for comparison purposes as Claro's model used data for 2009.

5. THE ISSUE OF INCOMING INTERNATIONAL TRAFFIC

- 5.1 The Jamaican market for international incoming traffic has two main sets of players. There are the domestic carriers who terminate calls to their subscribers and the international carriers who contract with foreign carriers for traffic and then in turn send the traffic to the domestic carriers for termination. Some operators do business in both markets. The question is, can the Office set different termination rates for traffic originating from overseas and for traffic of local origin? There have been responses to the OUR's LRIC consultation which suggest that the Office could, acting under the objective of the Act to promote the telecommunications industry by encouraging investment or under the new powers of forbearance, set differential termination rates.
- 5.2 The specific provisions in section 30 (1) (a) for interconnection terms and conditions to be based on the principles of non-discrimination and cost orientation overrides the general provisions contained in the objectives of the Act. This would suggest that the Office cannot set one price at cost and another price for the same service of termination, but with a different origin, above cost.
- 5.3 The Office would also be directing an operator that does business in both sub-markets to pay two different termination rates for the same service. It would also be directing the Jamaican international carriers to pay more for termination than domestic carriers.
- 5.4 The principle of forbearance would empower the Office not to intervene by setting a rate for termination if it is satisfied about certain conditions. If it does decide to set a rate, the forbearance principle does not entitle it to discriminate against operators by setting two rates or omitting to set a rate for the same service but of different origination.

Previous Experience

- 5.5 The Office faced a similar situation at the early stages of the liberalisation of the international traffic in 2004. The international settlement rate for calls from the United States had fallen from US 62.5 cents in 1998 to US 3.0 cents. The Domestic carriers complained about the effect of falling settlement rates on their businesses especially as they contended that these benefits were not being passed on to foreign callers in order to trigger increased volumes. The Jamaican international carriers were also complaining of margin squeeze by domestic operators seeking to attract international traffic to their own networks.
- 5.6 Following two Ministerial Directives, the Office, in January 2004, intervened in the market by setting termination rates of US 5.0 cents and US 13.8 cents for incoming international calls to fixed and mobile networks respectively and corresponding minimum settlement rates of US 8.1 cents and US 16.9 cents. The prevailing interconnection rates for domestic traffic were much lower in both cases.

- 5.7 A group of Jamaican International carriers took action at both the appeals tribunal and the Supreme Court charging that the Office had set interconnection rates that were not cost oriented. The Office, in acknowledging their arguments, reversed its decisions on the matters of termination rates and settlement rates in June 2004.

6. MTR DETERMINATION

The maximum MTR from the cost model of Claro is \$6.311 on a SAC basis and \$2.497 using a top-down incremental cost approach, the FAC model of LIME gave an MTR of \$4.99 which is likely overstated as indicated earlier. An MTR calculated for Digicel will be below the rates for both Claro and LIME.

- 6.1 The Act indicates that wholesale interconnection cost should be calculated on the basis of forward looking LRIC, whereby the relevant increment is the wholesale termination service and which includes only avoidable costs. This methodology is what is termed 'pure LRIC' and has become the standard in Europe. As shown in Figure 2, rates calculated using the pure LRIC approach will certainly be lower than those of FAC and top-down LRIC. It should also be noted that LIME and Claro had been charging each other an MTR of \$4.00 for over three years.
- 6.2 Taking all the above analysis into consideration, the Office prefers to err on the side of caution and will implement an MTR above the estimated maximum top-down LRIC rate but below the estimate SAC rate. While this may represent a decrease on some of the rates being charged by some operators it is above the true cost that those operators actually face in providing the service.
- 6.3 The Office therefore in accordance with the powers conferred on it **DETERMINES** that
 - (i) An interim MTR of **\$5.00** per minute be implemented for all calls of both domestic and international origin with effect from the **15th day of July 2012**.

APPENDIX 1

Responses to Request for RIO and Supporting Data

- On March 30, 2004, the Office issued a supplementary Consultative Document entitled “*Assessment of Dominance in Mobile Call Termination*” (TEL2004/03) in which it proposed that “*each mobile carrier is dominant in relation to the voice call termination service it offers.*” At the end of its consultative process, the Office published a Determination dated September 2, 2004 entitled “*Decision on Assessment of Dominance in Mobile Call Termination*” (TEL2004/10) containing “*Determination 4.0: All mobile carriers are dominant with respect to the call termination service offered.*”
- Mossel Jamaica Limited (“Digicel”) lodged an appeal to the Office’s decision on dominance in call termination with the Telecommunications Appeal Tribunal (the “Tribunal”). The Tribunal upheld the Office’s determination and dismissed Digicel's appeal, publishing its findings on May 31, 2010.
- Following the ruling of the Tribunal, the Office informed each mobile operator on June 8, 2010 that it was required to file a RIO with the OUR by the latest September 1, 2010 in accordance with section 32 of the Act for the Office’s assessment and approval of the terms and conditions of interconnection, including charges. The operators were also informed that along with the RIO, supporting cost and traffic data should be submitted to facilitate the Office’s assessment.
- Following the receipt of the letter from the Office, both Claro and LIME complied and submitted their RIO and supporting documents by the stipulated date of September 1, 2010. However, Digicel sent an email dated June 8, 2010 stating that

“ ...

we also curiously note your request that we also provide "supporting cost and traffic data for the Office to make its assessment". In the circumstances, can you please clarify the basis on which you require 'cost and traffic information' and how this is relevant to our obligations under s32 of the Act. Further please clarify what 'assessment' you appear to be undertaking.

...”

- The OUR by email dated June 9, 2010 in response to Digicel’s email, indicated that

“ ...

the Act clearly specifies the principles under which interconnection should be provided by a dominant carrier in Section 30, among these is the condition that

charges should be cost oriented. The Act also gives the Office the power in Section 32 (3) and (4) to prescribe particular condition[s] in the RIO and that a RIO takes effect after it has been approved by the Office. Before the Office approves any RIO it would have to do an evaluation of the included conditions to ensure that they are in line with the provisions laid out in the Act. The Office cannot do this assessment and give its approval for a RIO in the absence of relevant data and it is in this regard that the Office has requested that cost and traffic data be provided.”

- Notwithstanding the clarification provided to Digicel, the company’s RIO submission was not received until November 22, 2010 after the specified due date of September 1, 2010 and did not contain any of the requested supporting information.
- The Office subsequently sent a letter to Digicel dated February 1, 2011 informing the company that

“... Digicel has deliberately chosen to disregard the request from the Office for supporting cost and traffic data to be submitted with the RIO to facilitate its assessment.

Therefore, Digicel is in breach of its statutory obligation by virtue of its non-compliance with the Office’s request made by letter to the entity on June 8, 2010.

In this regard, the Office again requests that Digicel provide the Office with the relevant cost and traffic data for the assessment of its RIO by February 11, 2011.

The Office would specifically like:

- *A document detailing the methodology and assumptions used to arrive at the tariffs in the RIO;*
- *Traffic data used in the model;*
- *Cost data used in the model.”*

- In response to this letter, Digicel sent an email on February 21, 2011 in which it indicated that *“should be advised that we are in the process of putting the required information in the requested format and same shall be submitted to you once complete.”* However, to date, the OUR has not received the requested information on their model and the data used therein from Digicel.