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# Office of Utilities Regulation

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## RECONSIDERATION OF THE OFFICE'S DECISION: DETERMINATION NOTICE (TEL 2008/09:DET 02) "INDIRECT ACCESS: TWO-STAGE DIALLING"

BEFORE THE OFFICE OF UTILITIES REGULATION  
OF JAMAICA

3<sup>rd</sup> Floor, P.C.J. Resource Centre, 36 Trafalgar Road, Kingston 10, Jamaica  
West Indies

### FINAL DECISION

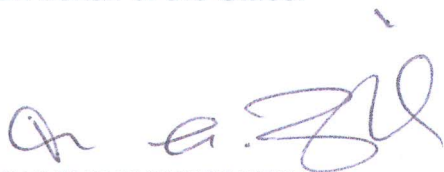
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Adoption Date: February 14, 2011  
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# OFFICE OF UTILITIES REGULATION

February 10, 2011

<b>DOCUMENT TITLE AND APPROVAL PAGE</b>		
<b>DOCUMENT NUMBER: TEL2008009_DET002RCN001</b>		
<b>DOCUMENT TITLE: RECONSIDERATION OF THE OFFICE'S DECISION: DETERMINATION NOTICE "INDIRECT ACCESS: TWO-STAGE DIALLING"</b>		
<b>1. PURPOSE OF DOCUMENT</b>		
This document contains the OUR's Decision on Cable & Wireless Jamaica's application for reconsideration of its decision in Indirect Access: Two-Stage Dialling.		
<b>ANTECEDENT DOCUMENTS</b>		
<b>Document Number</b>	<b>Description</b>	<b>Date</b>
TEL 2003/02	First Consultation Document on Indirect Access	30 May 2003
TEL 2006/03	Second Consultation Document on Indirect Access	24 Feb 2006
TEL 2007/12	Third Consultation Document on Cost Benefit Analysis for Two Stage Dialling	14 July 2007
TEL 2008/09	Indirect access: Two-Stage Dialling Determination Notice	30 May 2008
<b>APPROVAL</b>		
This document is approved by the Office of Utilities Regulation and the decisions therein become effective <b>February 14, 2011</b> .		
On behalf of the Office:		
		
..... <b>Ahmad Zia Mian</b> <b>Director General</b>		
February 10, 2011		
		<div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="margin: 0;">OFFICE OF UTILITIES REGULATION</p> <p style="margin: 0; font-size: 1.2em;">20-3009</p> <p style="margin: 0; font-weight: bold; font-size: 1.2em;">LIBRARY</p> </div>

# Executive Summary

## BACKGROUND

Cable and Wireless Jamaica Limited (“C&WJ”), (now trading as “LIME” but referred to hereinafter for the purposes of this document as “C&WJ”), made an application to the OUR for reconsideration of the decision imposing the obligation on C&WJ to provide Two-Stage Dialling (2SD) to interconnection providers. This Determination was set out in the OUR’s document entitled, *Indirect Access: Two Stage Dialling*, issued on May 30, 2008.

The Office issued its third Consultative Document on “Indirect Access” on Thursday, 12, July 2007. This document focused primarily on Two-stage Dialling, which the OUR concluded to be a particular form of Indirect Access. The document also discussed the results of the cost-benefit analysis and the unfair burden assessment which were carried out pursuant to Section 36 of the Telecommunications Act, 2000.

### Responses to C&WJ’s reconsideration

A copy of C&WJ’s request for reconsideration was sent to stakeholders on June 17, 2008 for comments. No responses were received from the industry.

## LEGAL FRAMEWORK

The functions of the Office with regard to the regulation of the telecommunications sector are set out in Section 4 of the Telecommunications Act, 2000 (the Act). In the general spirit of promoting competition by preventing and curtailing anti-competitive practices, the Office is particularly concerned with agreements containing provisions that serve to lessen competition in the industry. In this regard, the legal framework encompasses Section 17 of the Fair Competition Act. Additionally, the Act, under, inter alia, Section 4, provides for the development of a competitive regime within Jamaica’s telecommunications sector. These include provisions concerning Number Portability and Indirect Access. The requirements regarding the latter are set out at Section 36 of the Act.

Other provisions of the Act that are likely to have a bearing on the issue of Indirect Access are those at Sections 28, 29, 30, 31, 32, 33, and 34. Section 28 outlines the Office’s powers to determine the dominance of public voice carriers.

Section 8, which sets out the legislative framework for the management, assignment and use of numbering resources for telecommunications, is also relevant to the consultation on Indirect Access.

## IMPLICATIONS OF THE LEGAL AUTHORITY FOR MANDATING 2SD

The legal authority spoken to above is consistent with the Office's position as expressed in previous documents that is, Indirect Access is not prohibited by the Act nor is it dependent solely on whether the Office specifically mandates it or not. In this regard, the Office does not have to mandate the use of direct exchange lines (DELS) in providing Indirect Access before it can be allowed.

The intent of the Act is to provide the Office with the power to mandate "*a particular form of Indirect Access*" in the wholesale interconnection market wherein special arrangements may have to be made by interconnection providers. The Office remains strongly of the opinion that where retail services are used to provide Indirect Access, the relevant legislative provisions governing competitive behaviour still apply and operators should conduct themselves in a manner that is compliant with the provisions of the Fair Competition Act, in particular, Section 17, as stated above. It is the view of the Office that carriers should not block or restrict the use of retail services merely because these services may be used to compete with them in other markets.

## JURISDICTION

### Limitations to the potential providers of 2SD

The Office notes that Section 36 (1) of the Act provides "*the Office **may (emphasis added)** make rules subject to affirmative resolution imposing on a dominant public voice carrier the responsibility to offer a particular form of Indirect Access to its network to other **interconnection providers (emphasis added)**...*" This has placed a limit on those to whom the Office can actually mandate a dominant carrier to offer any form of Indirect Access. As such, the Office is only able to mandate dominant carriers to offer 2SD to other carriers who are interconnection providers.

Therefore, the Office accepts the point being made by C&WJ at paragraphs 1.2 and 1.3 of its Application for Reconsideration that the Office has overstepped its jurisdiction by mandating the provision of Indirect Access to service providers. The Office, through this reconsideration therefore amends those sections of the Determination Notice which speak to Indirect Access being provided to service providers to read '**service providers who are interconnection providers**' congruent with Section 36 (1) of the Act. The Office notes, however, that the determinations made in the Determination Notice remain unchanged as they did not specifically mention service providers.

C&WJ's point regarding the issue of already providing a form of Indirect Access is irrelevant. As long as the Office can show that there are benefits to be gained from a particular form of Indirect Access and those benefits outweigh the costs of its implementation without imposing an unfair burden, the Office can mandate its provision by a dominant provider to interconnection providers.

## **COST BENEFIT ANALYSIS**

The Office used a per-minute approach whereby the actual per-minute cost of a call was used in conducting the cost benefit analysis. The Office's use of the per-minute approach is reflective of the Office's acceptance of the present demand function, and therefore an acceptance of present price elasticities of demand. The Office notes as well that the focus of the cost benefit analysis was not geared on the demand side but more towards the potential cost savings that could result from operators switching to the use of other forms of 2SD other than those that presently exist. Calculation and use of demand elasticities were therefore not relevant. The Office notes that under the per-minute approach, even without the quantity demanded changing, consumers would benefit from access to cheaper international outgoing call services, as well as from the potential savings that operators may pass through to them in a situation wherein operators have the ability to access a cheaper two-stage Dialling arrangement. Therefore, C&WJ's assertion at paragraph 2.4 of its Application for Reconsideration that the Office failed to exhibit reasonable grounds that the benefits likely to arise from this form of 2SD outweigh the likely costs is baseless and without merit. The Office used actual pricing and cost data which existed at the time to demonstrate that the benefits of 2SD exceeded the cost of its implementation.

## **BENEFITS TO CUSTOMERS FROM USING DELS**

C&WJ at paragraph 3.1 of its Application for Reconsideration claimed that the view of the Office that customers will benefit from 2SD using DELs is based on a fallacy and therefore the Office's conclusion is based upon material errors of fact. It is the view of the Office that C&WJ's position in this regard is inherently flawed. For the customer, the switch from 2SD through CWJ toll free to 2SD via DELs actually results in a higher initial cost to the customer. Using DELs for 2SD means the consumer will initially have to pay a rate of up to \$0.90 per minute for the first leg of call instead of \$0 with toll-free. The indirect access operator (IAO) will experience savings of \$2.50 from not having to pay C&WJ for toll free service. This means a net benefit of at least \$1.60 ( $\$2.50 - \$0.90$  at peak). The consumer should benefit as a result of competitive pressure on the IAO which will force some of the \$1.60 savings to be passed on to the consumers as operators cut prices to gain market share. However, the use of DELs is only one example of 2SD. Using self-provisioned toll-free numbers, the customer continues to pay \$0 for the initial leg and the IAO saves \$2.50 from not having to pay C&WJ for toll-free service (a total net benefit of \$2.50). Thus the consumer is no worse off and the IAO immediately benefits.

## **DOMINANCE/ UNFAIR BURDEN**

C&WJ asserts that it is not dominant in the market for outgoing international calls. C&WJ also goes on to submit that the Office has committed a material error of law by proceeding to impose such obligations on the carrier given the present volume of international traffic it carries and its presumption of dominance. The Office rejects

the notion of a material error of law on this basis as C&WJ is currently a dominant carrier. However, the Office accepts that C&WJ has submitted an application in January 2007 to be declared non-dominant.

#### **USE OF TOLL-FREE ACCESS NUMBERS**

C&WJ argues that the \$2.50 it charges for access to its toll-free numbers is no longer an unavoidable cost as carriers can now use self-provisioned toll-free service. The Office is of the view that the self-provisioning of toll-free numbers only serves to strengthen the OUR's analysis as it will lead to an even greater net benefit to society relative to the use of DELs for the provisioning of 2SD. The Office is in favour of 2SD which can be done in many ways such as via C&WJ's toll-free numbers, DELs, or self-provisioned toll-free numbers. Each form of 2SD will confer a different level of benefit to the industry and should all be allowed. It is the Office's position that it would be incorrect for C&WJ or any reader to interpret the Determination Notice as being about 2SD via DELs. It is in fact a Determination Notice on Indirect Access via 2SD.

#### **INFERENCE OF ANTI-COMPETITIVE BEHAVIOUR**

The Office remains of the view that C&WJ's insistence on restricting the use of retail and standard interconnection services may be at odds with the provisions of the Fair Competition Act. As such, the Office stands firmly behind its statements at paragraph 3.1 of the Determination Notice and the subsequent Determinations 2 and 3 that flow from the paragraph.

#### **RULES SUBJECT TO AFFIRMATIVE RESOLUTION**

In its Application, C&WJ posits at paragraph 7.1 that the OUR has not satisfied the requirements of statutory procedure with respect to affirmative resolution and that "this is a material error of law". The Office is of the view that this aspect of C&WJ's submissions is incorrect as the Office has endeavoured to adhere to proper statutory process regarding the prospective promulgating of rules for Indirect Access, especially with regard to the relevant cost benefit analysis as the unfair burden assessment. The Office however accepts that the next step in the process of promulgating indirect access rules is for the rules to be affirmed by Parliament. Having established that the benefits associated with Indirect Access outweigh the costs and there is no unfair burden on C&WJ, the Office intends to draft and consult on the set of Indirect Access rules to be sent to Parliament for approval. The Office will also carry out the cost benefit analysis of Indirect Access with regard to other dominant public voice carriers to determine if the rules should also be applicable to these operators.

In light of the above the Office stands by the positions promulgated in its Determination Notice entitled "Indirect Access: Two-Stage Dialling" as published on May 30, 2008 and hereby reaffirms the relevant Determinations 1-5 made therein (see Appendix 1). However, Determination 6 is withdrawn pending the formulation and affirmative resolution of the Indirect Access rules.

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# 1. BACKGROUND

Cable and Wireless Jamaica Limited (“C&WJ”), (now trading as “LIME” but referred to hereinafter for the purposes of this document as “C&WJ”), made an application to the OUR<sup>1</sup> for reconsideration of the decision imposing the obligation on C&WJ to provide Two-Stage Dialling (2SD) to interconnection providers. This Determination was set out in the OUR’s document entitled, *Indirect Access: Two-Stage Dialling*<sup>2</sup>, issued on May 30, 2008. The Determination Notice was the result of a series of consultations with the industry dating back to 2003.

The initial two Consultative Documents (May 2003 and February 2006) published by the Office, focused on traditional forms of ‘Indirect Access’ such as Carrier Pre-Selection (CPS), Call Selection (CS) and Carrier pre-selection with call-by-call basis. The Office issued its third Consultative Document on “Indirect Access” on Thursday, 12, July 2007. This document focused primarily on Two-stage Dialling<sup>3</sup>, which the OUR concluded to be a particular form of Indirect Access. The document also discussed the results of the cost-benefit analysis and the unfair burden assessment which were carried out pursuant to Section 36 of the Telecommunications Act (the Act), which states as follows:

“36. (1) *The Office may make rules subject to affirmative resolution imposing on a dominant public voice carrier, the responsibility to offer a particular form of indirect access to its network to other interconnection providers, if the Office is satisfied on reasonable grounds that such rules are necessary in the interests of customers and that –*

(a) *the benefits likely to arise from the requirement to provide a particular form of indirect access outweigh the likely cost of implementing it; and*

(b) *the requirement to provide the particular form of indirect access will not impose an unfair burden on any carrier or service provider.*

(2) *In subsection (1) "indirect access" means the method whereby customers are able to select the services of any service provider who uses a public voice carrier's network to provide specified services.”*

The Office used a per-minute approach in conducting the cost-benefit analysis. The analysis was extended to other 2SD applications, these being: (1) toll-free access and (2) access via direct carrier-to-carrier interconnection.

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<sup>1</sup> The Application for Reconsideration was made on June 13, 2007

<sup>2</sup> Document number TEL 2008/09 : Det 02

<sup>3</sup> Two-stage dialling is generally viewed as the use of a standard retail product by an indirect access operator (IAO) to allow the subscribers of another operator to access the IAO’s calling services.

C&WJ's request for reconsideration is primarily premised on the view that "*the Determination suffers from material errors of law and fact and applies for the Determination to be withdrawn*". C&WJ goes on further to state that "*C&WJ also applies for a stay of the implementation of the Determination Notice and any other proceedings or processes directly related thereto, pending the OUR's reconsideration*".

## **1.1 RESPONSES TO C&WJ'S RECONSIDERATION**

A copy of C&WJ's request for reconsideration was sent to stakeholders on June 17, 2008 for comments. No responses were received from the industry.

## 2. LEGAL FRAMEWORK

It is the Office's view that effective competition in the supply of telecommunications services serves to confer benefits to customers and end users as well as carriers and service providers. With regard to customers, such benefits usually take the form of improved service quality and reliability as a result of the augmented choice of supplier, and lower prices. Competition can also give carriers and service providers incentives to make improvements in their efficiency as well as their facilities and plant.

The functions of the Office with regard to the regulation of the telecommunications sector are set out in Section 4 of the Telecommunications Act 2000 (the Act) which provides, inter alia;

- “4. (1) *The Office shall regulate telecommunications in accordance with this Act and for that purpose the Office shall -*
- (a) *Regulate specified services and facilities*
  - (b) *....*
  - (c) *Promote the interest of customers, while having due regard to the interest of carriers and service providers.*
  - (d) *...*
  - (e) *...*
  - (f) *Promote competition among carriers and service providers*
- .... (3) *In exercise of its functions under this Act, the Office may have regard to the following matters;-*
- (a) *the needs of the customers of the specified services;*
  - (b) *whether the specified services are provided efficiently and in a manner designed to -*
    - (i) *...*
    - (ii) *...*
    - (iii) *afford economical and reliable service to its customers.*
  - (c) ***whether the specified services are likely to promote or inhibit competition (emphasis added).***

In the general spirit of promoting competition by preventing and curtailing anti-competitive practices, the Office is particularly concerned with agreements containing provisions that serve to lessen competition in the industry. In this regard, the legal framework encompasses Section 17 of the Fair Competition Act which states:-

- “17. (1) ***This section applies to agreements which contain provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market (emphasis added).***

(2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) affect tenders to be submitted in response to a request forbids;
- (e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts, being provisions which have or are likely to have the effect referred to in subsection (1).

**(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable (emphasis added).**

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V or which the Commission is satisfied -

- (a) contributes to -
  - (i) the improvement of production or distribution of goods and services; or
  - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or
- (c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned."

Additionally, the Act, under, inter alia, Section 4, provides for the development of a competitive regime within Jamaica's telecommunications sector. These include provisions concerning Number Portability and Indirect Access. The requirements regarding the latter are set out at Section 36 of the Act.

Other provisions of the Act that are likely to have a bearing on the issue of Indirect Access are those at Sections 28, 29, 30, 31, 32, 33, and 34. Section 28 outlines the Office's powers to determine the dominance of public voice carriers.

Section 8, which sets out the legislative framework for the management, assignment and use of numbering resources for telecommunications, is also relevant to the consultation on Indirect Access. The Office has issued its Determination Notice on the management and allocation of numbering resources for various services<sup>4</sup>. These include numbering resources that are required for the proper implementation of call-by-call carrier selection. However, this subject will receive no further consideration in this document as it is not pertinent to the introduction of 2SD.

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<sup>4</sup> Jamaica National Numbering Plan, Tel 2003/09, October 2003.

### 3. IMPLICATIONS OF THE LEGAL AUTHORITY FOR MANDATING 2SD

The Office's position on the legal aspects of Indirect Access – 2SD remains firm. The legal authority spoken to above is consistent with the Office's position as expressed in previous documents that is, Indirect Access is neither prohibited by the Act nor is it dependent solely on whether the Office specifically mandates it. In this regard, the Office does not have to mandate the use of direct exchange lines (DELs) in providing Indirect Access before it can be allowed. This may be said in light of the fact that the Office has not mandated the use of toll-free lines to provide Indirect Access, yet C&WJ has been offering this specially priced toll-free service product as a means of facilitating outgoing international calls.

This toll-free product as offered by C&WJ involves the provision of wholesale international voice minutes to International Voice Service Providers (IVSPs) wishing to resell C&WJ's international voice service. The IVSP platform can be reached by the use of toll-free lines or may be reached by a regular telephone service line such as a DEL. However, in light of the fact that this service is a resale service, such calls are routed via C&WJ's international network and, as such, the IVSP cannot bypass C&WJ's international network. This provides only a limited scope for competition and hence the potential for price reductions and benefits to consumers is also limited when compared to the benefits inherent in the use of 2SD using DELs.

The intent of the Act is to provide the Office with the power to mandate "*a particular form of Indirect Access*" in the wholesale interconnection market wherein special arrangements may have to be made by interconnection providers. The Office remains strongly of the opinion that where retail services are used to provide Indirect Access, the relevant legislative provisions governing competitive behaviour still apply and operators should conduct themselves in a manner that is compliant with the provisions of the Fair Competition Act, in particular, Section 17, as stated above. It is the view of the Office that carriers should not block or restrict the use of retail services merely because these services may be used to compete with them in other markets.

As stated in the Office's Consultative Document entitled "Indirect Access: The Cost Benefit Analysis for Two-Stage Dialling: Consultative Document No.3" as well as the aforementioned Determination Notice dated May 30, 2008,

*"Following a market analysis conducted by the Office of Utilities, C&WJ was declared dominant in the markets for (1) fixed line access (2) fixed line domestic retail services (3) fixed line international retail services and (4) fixed network interconnection services<sup>3</sup>. However, for the purpose of the cost-benefit analysis only the following markets were considered:*

- *Outgoing international calls from fixed lines;*
- *Local fixed - to mobile calls; and*
- *Calls from fixed lines to non-geographic numbers in Jamaica.*

*Given the probable use of 2SD, the Office did not consider it necessary to include national fixed - to - fixed calls in the cost-benefit analysis.”*

## 4. JURISDICTION

### 4.1 LIMITATIONS TO THE POTENTIAL PROVIDERS OF 2SD

The Office notes that Section 36 (1) of the Act provides “*the Office may (emphasis added) make rules subject to affirmative resolution imposing on a dominant public voice carrier the responsibility to offer a particular form of Indirect Access to its network to other interconnection providers (emphasis added)...*” This has placed a limit on those to whom the Office can actually mandate a dominant carrier to offer any form of Indirect Access. As such, the Office is only able to mandate dominant carriers to offer 2SD to other carriers who are interconnection providers<sup>5</sup>.

Therefore, the Office accepts the point being made by C&WJ at paragraphs 1.2 and 1.3 of its Application for Reconsideration that the Office has overstepped its jurisdiction by mandating the provision of Indirect Access to service providers. The Office through this reconsideration therefore amends those sections of the Determination Notice which speaks to Indirect Access being provided to service providers to read ‘**service providers who are interconnection providers**’ congruent with Section 36 (1) of the Act. This, however, should not be construed that the Office sanctions the practice of denying access to a service provider’s platform by the way of a retail service. The Office still considers this to be an anti-competitive practice and will take this into consideration in the carrying out of other functions under the Act. The Office notes however that the determinations made in the Determination Notice remain unchanged as they did not specifically mention service providers, in particular Determination 6 which states:

#### **Determination 6**

The Office mandates C&WJ to offer Two-Stage Dialling by way of Direct Exchange Lines (DELs), toll-free lines and through the use of an interconnection service to other interconnection providers to enable C&WJ subscribers to access services offered by those providers.

It is the view of the Office that its statutory powers in this matter are clearly defined and the Office embraces the concept that it may only mandate Indirect Access to parties who are interconnection providers.

C&WJ states at page 3 paragraph 1 of its submission that:

**“C&WJ submits that where C&WJ already provides an Indirect Access product to “*other interconnection providers*”, as is the case here, that such rules are unnecessary, and any such imposition by the Office is not grounded in the clear words of the Act and is therefore based upon material errors of law and fact as is the case with Determination 6 (emphasis added).”**

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<sup>5</sup> The Telecommunications Act 2000 (Section 27) requires for Interconnection providers/seekers to be carriers. To be a carrier under the Telecommunications Act 2000 the entity must obtain a Carrier License.

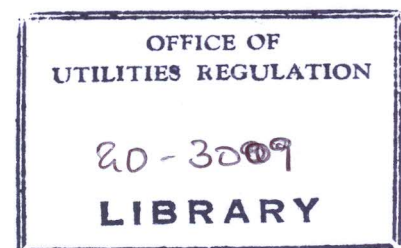


The Office's stance regarding its jurisdiction to promulgate Indirect Access via 2SD is clearly grounded in law as laid out in Section 2 of this document. Section 36 (1) of the Act states

*"the Office may make rules subject to affirmative resolution imposing on a dominant public voice carrier the responsibility to offer **a particular form of Indirect Access (emphasis added)** to its network to other interconnection providers, if the Office is satisfied on reasonable grounds that such rules are necessary in the interest of consumers and that –*

- (a) the benefits likely to arise from the requirement to provide a particular form of indirect access outweigh the likely cost of implementing it; and*
- (b) the requirement to provide the particular form of indirect access will not impose an unfair burden on any carrier or service provider (emphasis added)".*

The main issue is not whether C&WJ already provides an Indirect Access product. The Act specifically gives the Office the power to impose on a dominant public voice carrier the responsibility to offer **a particular form** of Indirect Access to its network to other interconnection providers, if the Office is satisfied on reasonable grounds that such rules are necessary in the interest of consumers. Therefore, C&WJ's point regarding the issue of already providing a form of Indirect Access is irrelevant. As long as the Office can show that there are benefits to be gained from a particular form of Indirect Access and those benefits outweigh the costs of its implementation without imposing an unfair burden, the Office can mandate its provision by a dominant provider to interconnection providers. The Office is satisfied that the cost benefit analysis and unfair burden test carried out in Sections 4 and 5 of the Determination Notice have conclusively shown that there are benefits to be gained from Indirect Access via 2SD and that there will be no unfair burden on C&WJ as a result of its implementation.



## 5. COST BENEFIT ANALYSIS

C&WJ at paragraph 2.2 of its request for reconsideration refers to the OUR's statement at paragraph 4.0 of the Determination Notice that: "...no one disputed the findings of the cost-benefit analysis" asserting that the said statement is erroneous as C&WJ had in fact disagreed with the Office's per-minute approach for calculating the cost-benefit. C&WJ also questioned "...whether failure to comment and/or dispute the findings of the cost benefit analysis translates to the Office's assumption that those findings are correct".

The Office acknowledges that C&WJ did indeed object to the cost-benefit analysis done by the OUR and its findings stating that the OUR's approach was "overly simplistic". C&WJ questioned how the OUR arrived at the position that "customers of international calls using 2SD via DELs will benefit from reduction in the price of international calls as well as increased volumes of calls" without developing a demand function to estimate the demand for international calls.

The Office however stands firmly behind the approach used to conduct the cost-benefit analysis. The Office used a per-minute approach whereby the actual per-minute cost of a call was used in conducting the cost benefit analysis. The Office's use of the per-minute approach is reflective of the Office's acceptance of the present demand function, and therefore an acceptance of present price elasticities of demand. The Office notes as well that the focus of the cost benefit analysis was not geared on the demand side but more towards the potential cost savings that could result from operators switching to the use of other forms of 2SD other than those that presently exist. Calculation and use of demand elasticities were therefore not relevant. The Office notes that under the per-minute approach, even without the quantity demanded changing, consumers would benefit from access to cheaper international outgoing call services, as well as from the potential savings that operators may pass through to them in a situation wherein operators have the ability to access a cheaper two-stage Dialling arrangement.

The analysis carried out by the OUR shows that even if there is no increase in quantity demand, consumers would still be made better off as competitive pressure will cause them to pay lower prices thus, increasing their consumer surplus. There was no need to derive demand functions and elasticities as 2SD was already being provided via C&WJ's toll-free numbers and so the Office conducted its cost-benefit analysis by looking at the incremental net benefit/cost of introducing 2SD via DELs. This clearly showed that there was benefit to be derived from its implementation.

The cost-benefit analysis conducted by the Office was based on the actual price of a retail call (\$0.60 off peak and \$0.90 peak)<sup>6</sup> from a C&WJ fixed line and the actual price of C&WJ's toll-free service (\$2.50). The Office further assessed the expected cost of imposing 2SD via DELs which would result from the routing of calls on C&WJ's network, which is akin to setting up a second call. This would lead to

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<sup>6</sup> These were the retail rates being charged by C&WJ at the time when the Determination Notice was written.

additional network conveyance cost being incurred for each call. These costs were determined by looking at the rates in C&WJ's RIO. Therefore, C&WJ's assertion at paragraph 2.4 of its Application for Reconsideration that the Office failed to exhibit reasonable grounds that the benefits likely to arise from this form of 2SD outweigh the likely costs is baseless and without merit.

C&WJ made reference to the diagram at paragraph 4.3 of the Office's Determination Notice, noting that the diagram did not show any analysis of the present situation. The Office does not accept this view, seeing that the diagram was merely explaining the concept of consumer surplus, how the cost-benefit could be determined as well as how it is represented on a diagram following a change in price. It therefore would not include figures from the present Jamaican context but it would have been used to graphically demonstrate the theoretical basis of the benefits to be derived from the introduction of 2SD. Simply put, the diagram was included to illustrate the concept of consumer surplus which forms the basis of the cost-benefit analysis.

As indicated previously, the Office used actual pricing and cost data which existed at the time to demonstrate that the benefits of 2SD exceeded the cost of its implementation. The Office therefore refutes C&WJ's view about the use and importance of the diagrams when it claims that the Office's "...*decision sets a dangerous precedent, as it would allow the OUR to simply extract theoretical figures and models from textbooks or borrow from theorists without any obligation to test whether or not the theories hold true in the particular circumstances*". An unbiased assessment of the Determination Notice on Indirect Access – Two-Stage Dialling and the preceding Consultation Documents clearly shows that the Office's findings were based upon sound economic reasoning and analysis of market data. As such, the Office stands firm in its approach and believes that said approach was appropriate given the appurtenant issues under consideration.

At paragraph 2.3 of its Application for Reconsideration, C&WJ includes an excerpt from its response to the third Consultation Document on Indirect Access, a part of which states that "*a satisfactory cost-benefit analysis looks at all the costs and benefits that would accrue from the introduction of a new service*". C&WJ states further that "*the Office's analysis has omitted some potential costs that customers will face from the introduction of 2SD, including an estimation of the likely costs resulting from an increase in C&WJ's access rates to cover lost revenue from 2SD. More particularly, C&WJ is able to recover the cost of the access line from IAOs<sup>7</sup> from the current commercial 2SD arrangement, hence the company is able to continue to subsidize access to its customers. ...*"

In the interest of thoroughness in its analysis, the Office used best endeavours to include and assimilate all the applicable costs relating to 2SD. The Office considers C&WJ's position that the Office's analysis has omitted some potential costs that customers will face from the introduction of 2SD, including an estimation of the likely costs resulting from an increase in C&WJ's access rates to cover lost revenue

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<sup>7</sup> Indirect access operator

from 2SD to be irrelevant as this does not represent a legitimate cost that is directly imposed by the introduction of 2SD by way of DELs. It is unreasonable for C&WJ to expect compensation for lost revenue as a result of increased competition. The Office notes that the cost-benefit analysis focused more on operators obtaining cheaper access to 2SD, that is, providing access to cheaper or more cost-effective solutions to providing services to end-users. Therefore, the salient issue is not that concerning the introduction of a new service to end-users but rather that of newly available solutions for providing particular end products and services. The Office maintains the view that access rates should be at rebalanced levels and therefore does not accept the view that IAOs should be charged above cost rates in order to allow C&WJ to subsidize access rates to its retail customers. The Office also reiterates its view that any service C&WJ makes available to itself, should also be made available to its competitors on similar terms.

C&WJ also took issue with the use of the figure of J\$10M, when estimating the annual expenses that will occur for a typical IAO. The J\$10M figure was derived via benchmarking and survey studies of operators in Jamaica.

To further illustrate the depth of the analysis conducted by the OUR in arriving at its conclusion, the OUR exhibits below its discussion on the cost benefit analysis from the relevant Determination Notice:

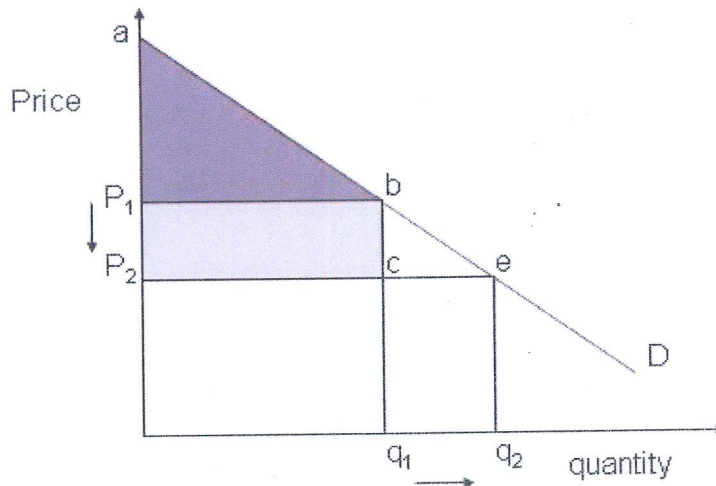
***“The Cost-benefit analysis discussed***

*4.0 In the previous consultation, document number three (TEL 2007/12), the Office showed in its cost-benefit analysis that the Jamaican public stands to benefit from the introduction of 2SD via the use of DELs. The Office took a different approach to the cost-benefit analysis. A cost benefit analysis generally looks at the net benefit or loss to society of introducing a product or service in a particular market for the first time. In the case of Jamaica, toll-free access is presently available and is used for 2SD purposes to complete outgoing international calls. On that basis, the Office conducted the cost-benefit analysis by looking at the incremental net benefit or cost of introducing 2SD using DELs. ....*

*4.1 As mentioned in the previous consultation, the Office used the much simpler per-minute approach. The approach diverted from the traditional approach of estimating price elasticities of demand and conducting demand forecasts. The Office was able to use the per-minute approach as the cost (network cost, software cost, etc) of introducing the service are already present in the market because operators and/or service providers are already providing service in the market using toll-free access lines as part of a 2SD service. The Office is of the view therefore that if the existing service providers and/or operators were to use DELs instead of toll-free access lines, consumers stand to benefit on a per-minute basis. This to the extent of the difference between the per-minute toll-free access charge and the per-minute DEL charge, on a per-minute basis.*

4.2 With toll-free access charge per-minute of J\$2.50, if operators switch to using DELs (at \$0.99 peak), a savings of J\$1.51 (J\$2.50 – J\$0.99) can potentially be passed on to consumers on a per-minute basis using the postpaid phone service. With a prepaid DEL access, potential savings of J\$1.15 (J\$2.50-J\$1.35) at peak rates exist. The Office notes that even if consumers do not enjoy the total benefit of J\$1.51 postpaid or J\$1.15 prepaid, the Office still expects that a portion of the savings will be passed on to consumers, as operators and/or service providers try to increase market share through retail price cuts. Any reduction in prices could increase quantity demanded for services in the markets under consideration. With no additional cost imposed by switching, the impact of operators adopting DEL will result in a net benefit, i.e. a net welfare gain to the Jamaican society. This scenario is displayed graphically below in Figure 1.

Figure 1: Change in consumer surplus resulting from a reduction in prices of access lines



4.3 If the cost savings ( $P_1 - P_2$ ) from switching to DELs is passed on to consumers by way of lower retail prices then quantity demanded is likely to increase (but certainly not fall) and this could represent even higher overall benefits to consumers. At the present retail DEL-rate which is less than toll-free access rates, switching to the lower priced DELs will result in lower prices to consumers (represented by  $P_2$ ) brought on by competition. Due to increased competition the cost savings will be passed on to consumers and so consumer surplus stands to increase from the shaded region bounded by  $abP_1$  to  $abcP_2$  (if quantity demanded remains the same) or  $aeP_2$  (if quantity demanded increases).

**Comments on the per minute approach**

- 4.4 Both Columbus Communications (Flow) Jamaica Limited and C&WJ disagreed with the Office's per-minute approach for calculating the cost benefit. Flow notes that the potential benefits on a per-minute basis of J\$1.90 highlighted in paragraph 3.5 could not apply to them if a Flow number is dialled as the first stage of the 2SD. This, Flow argues, is so given that C&WJ currently charges \$3.00 (any time of day, from a postpaid line) to call Flow and \$4.25 (any time of day, from a prepaid C&WJ line) to call Flow on a per-minute basis. The Office notes however that the existence of that arrangement does not change the present analysis.
- 4.5 C&WJ posits the view that the per-minute approach is over-simplified and therefore is insufficient for the conduct of a proper cost-benefit analysis. The Office is of the view that even though the approach is simple, it is both effective and robust in the present scenario as quantity demanded of 2SD enabled services are likely to remain the same or increase if the retail rate falls. As noted above there is an overall net benefit of operators switching from using toll-free access (at J\$2.50 per minute) to the use of retail DELs. Given that DEL is a cost element in the production of the retail call product, the direct benefit is realized on the cost side. The resulting reduction in the production cost of operators will provide room for operators to be more competitive in the market by being able to lower the retail price of calls to end-users. Therefore the producers' surplus will be reduced, resulting in an even larger consumers' surplus due to the reduction in retail rates facilitated by switching from toll-free access to a cheaper DEL access.
- 4.6 The above analysis is acceptable as the only cost consideration is the cost of the toll-free service versus the DEL service. As there are no additional cost considerations for the analysis the net benefit to the society is therefore the increase in consumer surplus which is expected from a reduction in the price of retail service.
- 4.7 C&WJ noted that the cost-benefit analysis must include an estimation of the likely costs that could result from an increase in C&WJ's access rates to cover lost revenues from 2SD. The Office considers C&WJ's position to be irrelevant as this does not represent a legitimate cost that is directly imposed by the introduction of 2SD by way of DELs. Furthermore, the Office is of the view that the service provider using 2SD will compete in the international outgoing calls market and as such will compete for revenue that is shared by all other service providers in the market inclusive of C&WJ. It is therefore difficult to ascertain what portion of any revenue loss by C&WJ that could be directly attributable to a 2SD service. It is unreasonable for C&WJ to

expect compensation for market share losses resulting from a more competitive market environment.

- 4.8 C&WJ further argued that if 2SD via DELs is mandated, the company will be unable to cover the cost of the access line from Indirect Access Operators and hence will be unable to continue to subsidize access for its customers. The Office disagrees with this argument and reiterates that C&WJ is not restricted under price cap regime from adjusting access prices to cover the economic cost of providing the service. In any event, a shadow is cast on C&WJ's assertions by the fact that it currently offers among, if not the lowest priced international outgoing calling card in the market (C&WJ's **JusTalk** at J\$5.00 per minute). The Office also takes this opportunity to point out that subsidization in a liberalized market environment by an entity with market power may be viewed as anticompetitive and could serve to limit or lessen competition in the market.

**An extension of the cost-benefit analysis**

- 4.9 In addition to the above, the Office has considered the position where toll-free access line and DEL (through third party number dialing) are not present in the market, and conducts a cost-benefit analysis of that situation. This is an extension to the above analysis which focus was narrowed to the introduction of 2SD using only a normal DEL service.
- 4.10 A simple analysis on a per-minute basis shows that international outgoing calls at J\$15.75 and above, provide significant room for price reductions. The analysis is conducted by comparing the prevailing rates for outgoing international calls (using mobile and fixed line direct dialing) with the rates for making such calls using the 2SD mechanism. The present 2SD rates (C&WJ and Flow) stand at J\$5.00, a difference of J\$10.75 when compared with the minimum calling rate of J\$15.75 on a per-minute basis using direct dialing (mobile and fixed). At J\$5.00 the reduction represents a substantially reduced charge for international calls. If this service becomes widely available and a formal regime introduced then it could provide substantial competitive pressures on existing international outgoing rates regardless of network and technology used.
- 4.11 Given the potential price reductions of J\$10.75, the benefits largely outweigh the likely cost of implementation. 2SD represents an intrinsic feature of the telephone network and as such the supplementary cost of its introduction is minimal. The Office has estimated the annual cost to service providers of offering a 2SD dialing to be in the region of J\$10,000,000. With such potential for price reductions (J\$10.75) and given the total number of international outgoing minutes (whether originating from C&WJ's PSTN or by other means) since Phase III of the liberalization process to date, the likely gains that could have been

passed on to society (consumer surplus) would have certainly outweighed the cost of its introduction. In addition, with minimal recurring costs going forward, the benefits are still quite substantial and will continue to outweigh the cost of operating the service.

- 4.12 The Office notes that society has benefited from the cheaper outgoing international rates provided by the availability of prepaid calling cards, which came at minimal supplementary costs, and which will continue to provide benefits going forward. The Office also notes that prepaid calling cards will have a much greater competitive influence on the retail price for outgoing international calls on regular PSTN (Public Switched Telephone Network).

**The case for 2SD using standard interconnection**

- 4.13 Even though the Office's base cost-benefit analysis focused primarily on the introduction of 2SD via the use of retail DELs, it is noteworthy that direct dialing service of the kind that was established between, Flow and C&WJ, will still provide competitive pressures relative to the use of toll-free lines. C&WJ's current tariff for calling customers of interconnected fixed networks with a single point of interconnection is \$3.00. This amount is shared between the C&WJ retention rate and Flow's termination rate [which is greater than J\$0.50 (J\$3.00 - J\$2.50)]. At the current retail rate of \$3.00, an operator could potentially provide outgoing international calls to end-users at a lower price than if they were to use C&WJ toll-free line. The magnitude of the costs savings is equal to Flow's termination rate (\$) less J\$0.50.

- 4.14 In another way, if all operators used their standard interconnection links to offer service instead of toll-free access lines there will be room for further price reduction and competition if the net calling rate for the local call origination falls below the present toll-free charge of J\$2.50 per minute. The difference in the two charges (the toll-free charge of J\$2.50 less C&WJ's origination charge on a per-minute basis) represents the potential cost savings for the operator which can then be transferred to end-users in the form of lower retail prices for outgoing international calls.

**Determination 4**

**The Office has determined (based on the result of the cost-benefit analysis) that a net benefit will result to society if Two-Stage Dialling by way of Direct Exchange Lines (DELs), toll-free lines and/or standard interconnection service is introduced as a form of Indirect Access."**

**In light of the aforementioned facts, the Office remains adamant that it did not proceed by virtue of a material error of law or fact in determining that a net benefit**



will accrue to society by mandating C&WJ to allowing interconnection providers access to products<sup>8</sup> that would facilitate their sale of 2SD retail products to end users.

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<sup>8</sup> Toll-free lines, DELs and standard interconnection service.

## 6. BENEFITS TO CUSTOMERS FROM USING DELS

In its submissions, C&WJ reproduced the position provided by the Office in its Determination Notice describing the potential benefits to society of customers being able to use DELs to select the services of another operator. C&WJ at paragraph 3.1 of its Application for Reconsideration claimed that the view of the Office that customers will benefit from 2SD using DELs is based on a fallacy and therefore the Office's conclusion is based upon material errors of fact. It is the view of the Office that C&WJ's position in this regard is inherently flawed. For the customer, the switch from 2SD through C&WJ toll-free to 2SD via DELs actually results in a higher initial cost to the customer, a point which was fully acknowledged by the OUR in paragraph 3.5 of the Consultation Document, contrary to CWJ's claims. Using DELs for 2SD means the consumer will initially have to pay a rate of up to \$0.90 per minute for the first leg of the call instead of \$0 with toll-free. The indirect access operator (IAO) will experience savings of \$2.50 from not having to pay C&WJ for toll-free service. This means a net benefit of at least \$1.60 (\$2.50 - \$0.90 at peak). The consumer should benefit as a result of competitive pressure on the IAO which will force some of the \$1.60 savings to be passed on to the consumers as operators cut prices to gain market share. However, the use of DELs is only one example of 2SD. Using self provisioned toll-free numbers, the customer continues to pay \$0 for the initial leg and the IAO saves \$2.50 from not having to pay C&WJ for toll-free service (a total net benefit of \$2.50). Thus the consumer is no worse off and the IAO immediately benefits. Again, competitive pressure should see some of the \$2.50 saving being passed on to consumers as operators jostle for a greater share of the market.

## 7. DOMINANCE/ UNFAIR BURDEN

C&WJ asserts that it is not dominant in the market for outgoing international calls. C&WJ also goes on to submit that the Office has committed a material error of law by proceeding to impose such obligations on the carrier given the present volume of international traffic it carries and its presumption of dominance. The Office rejects the notion of a material error of law on this basis as C&WJ is currently a dominant carrier. The Office's determination mandating dominant carriers to provide Indirect Access via 2SD has a solid basis in law as indicated above. However, the Office accepts that C&WJ has submitted an application in January 2007 to be declared non-dominant. Based on the OUR's current work plan, a decision on C&WJ's application for non-dominance should be issued in the second half of this fiscal year. At the moment, and based on the last Determination of the Office in this regard, C&WJ is still dominant in the market for international outgoing calls.

The Office does not seek to impose any unfair burden on C&WJ by delaying any part of the market review and analysis. The Office continues to work assiduously and within the ambit and guidelines of the Laws of Jamaica. In light of the foregoing, the Office has faced major impediments, well beyond its control, which has retarded the progress of the relevant market review and analysis. This has caused major delays to the Work Program alluded to by C&WJ. However, until C&WJ is declared non-dominant, the Office's decision in this regard stands.

## 8. USE OF TOLL-FREE ACCESS NUMBERS

C&WJ's allusion to the fact that as of April 29, 2008 all carriers who apply to the OUR for toll-free numbers now allocated same in a block of 1000 numbers is of little significance to the substance of the 2SD determination. At paragraph 5.1 of its Application for Reconsideration, C&WJ argues that the \$2.50 it charges for access to its toll-free numbers is no longer an unavoidable cost as carriers can now use self-provisioned toll-free service. The relevant issue is not whether customers can access a toll-free number but whether customers may access a DEL relative to a toll-free number. The Office is of the view that the self-provisioning of toll-free numbers only serves to strengthen the OUR's analysis as it will lead to an even greater net benefit to society relative to the use of DELs for the provisioning of 2SD. The Office is in favour of 2SD which can be done in many ways such as via C&WJ's toll-free numbers, DELs, or self-provisioned toll-free numbers. Each form of 2SD will confer a different level of benefit to the industry and should all be allowed. The view of the Office is that 2SD will benefit the industry by increasing the level of effective competition and C&WJ or any other carrier for that matter should not seek to prevent 2SD in any form using anti-competitive measures.

It is the Office's position that it would be incorrect for C&WJ or any reader to interpret the Determination Notice as being about 2SD via DELs. It is in fact a Determination Notice on Indirect Access via 2SD and that is what the Office is mandating should be provided by **all dominant carriers**. At the time when the determination was written, self-provisioned toll-free numbers were not available and so the analysis focused on DELs versus C&WJ toll-free. DELs constitute only one form of 2SD, toll-free whether via C&WJ or through self-provisioned numbers are other forms. All forms of 2SD should be allowed. This point was clearly made from the very beginning of the Determination Notice as paragraph 1.1 states that "the Office used a per-minute approach in conducting the analysis primarily because it was examining the cost-benefit of **the application of direct exchange lines (DELs) as an example of the Two-stage Dialling (2SD) process** (service). **The analysis can, however, be extended to other 2SD applications such as toll-free access and access via direct carrier-to-carrier interconnection** (*emphasis added*)." C&WJ's assertion that Determination 4 is based on a material error of fact is therefore inherently flawed.

## 9. INFERENCE OF ANTI-COMPETITIVE BEHAVIOUR

C&WJ states in its submission at paragraphs 6.1 and 6.2 that it “...refutes all allegations of anti-competitive behaviour alleged against it as baseless and prejudicial to the overall assessment of the imposition of 2SD. C&WJ further states that the allusion of anticompetitive behaviour at paragraphs 3.1 and in Determinations 2 and 3 as material errors of fact”

The Office remains of the view that C&WJ’s insistence on restricting the use of retail and standard interconnection services may be at odds with the provisions of the Fair Competition Act. As such, the Office stands firmly behind its statements at paragraph 3.1 of the Determination Notice and the subsequent Determinations 2 and 3 that flow from the paragraph that, to wit:

*“... any DEL access rate that C&WJ charges itself, should be available to any interconnection provider wishing to access a DEL as well. Charging different rates for the same service would be discriminatory and may be a breach of the Fair Competition Act.*

### **Determination 2**

*The Office determines that the rate that C&WJ charges to any interconnection provider wishing to access a DEL should be exactly the same as that which it charges itself.*

### **Determination 3**

*The [Office] reaffirms that C&WJ must not include provisions in its contracts for retail services that contravene the provisions of the Fair Competition Act. This extends to the inclusion of any Access Deficit Charges in final prices charged to operators and/or service providers”*

## 10. RULES SUBJECT TO AFFIRMATIVE RESOLUTION

In its Application, C&WJ posits at paragraph 7.1 that the OUR has not satisfied the requirements of statutory procedure with respect to affirmative resolution and that “this is a material error of law”. C&WJ then goes on to set out what it submits is proper “statutory procedure”, stating whether implicitly or explicitly that the Office has not followed proper statutory procedure. The Office is of the view that this aspect of C&WJ’s submissions is incorrect as the Office has endeavoured to adhere to proper statutory process regarding the prospective promulgating of rules for Indirect Access, especially with regard to the relevant cost benefit analysis as the unfair burden assessment. The Office however accepts that the next step in the process of promulgating indirect access rules is for the rules to be affirmed by Parliament. Having established that the benefits associated with Indirect Access outweigh the costs and there is no unfair burden on C&WJ, the Office intends to draft and consult on the set of Indirect Access rules to be sent to Parliament for approval. The Office will also carry out the cost benefit analysis of Indirect Access with regard to other dominant public voice carriers to determine if the rules should also be applicable to these operators.

C&WJ also states further in paragraph 7.4 of their submission that:

*“The Office has not presented a clear basis for its current position that 2SD is a form of Indirect Access. Section 4(2) (d) of the Act provides that the OUR is required to “give reasons in writing for each decision”. C&WJ submits that given the OUR’s previous position on 2SD which spanned several years, the Office ought to have provided reasons for its changed view. It is arguable that in order to impose 2SD the Office has brought it within the scope of Indirect Access. C&WJ submits that the OUR’s failing to provide reasons for its reconsideration of 2SD as a form of Indirect Access is a material error of law.”*

Contrary to C&WJ’s claim, the Office indicated that its reconsidered view on 2SD was based on an assessment of the Act. In the Determination Notice, the Office indicated that it had reviewed the definition of Indirect Access as provided in Section 36 (2) of the Act and is now satisfied that 2SD is in accordance with Indirect Access described by the Act, a point which was argued by C&WJ itself in previous consultations. Paragraph 2.0 of the Determination Notice states that:

*“In the first two consultations on Indirect Access the Office refrained from considering 2SD as a form of Indirect Access due to its keen interest in pursuing more traditional forms of Indirect Access such as Carrier Pre-Selection (CPS), Carrier Selection (CS) and CPS with call-by-call override. C&WJ however, argued that 2SD is a form of Indirect Access and that it should be treated as such. C&WJ, in its responses to the consultation, noted that “C&WJ has consistently asserted and continue to assert its position that 2SD is a form of Indirect Access...” **The Office reviewed the Act and has reconsidered its earlier position and now accepts that 2SD can be reconciled with the definition for Indirect Access in the Act (emphasis added), viz:***

*“...indirect access means the method whereby customers are able to select the services of any service provider who uses the public voice carrier’s network to provide service.””*

Therefore, the Office is of the view that the position as set out in C&WJ’s submission and referred to above, is incorrect. The Office has duly consulted on each aspect of the Indirect Access issue and its implications for the industry and has provided clear and elucidatory reasons for its views and standings on the issues, as can be seen from the antecedent plethora of Consultative Documents and the relevant Office Determinations on this matter. At every step of the way, the Office has provided clear reasons for its positions as well as reasons for any divergence from previously held views, as can be seen from an ardent perusal of the relevant Consultative Documents.

In light of the above, the Office stands by the positions promulgated in its Determination Notice entitled “Indirect Access: Two-Stage Dialling” as published on May 30, 2008 and hereby reaffirms the relevant Determinations 1-5 made therein (see Appendix 1). However, Determination 6 is withdrawn pending the formulation and affirmative resolution of the Indirect Access rules. This notwithstanding, the Office reiterates that Indirect Access does not have to be mandated by the Office for it to be provided by carriers and that where it occurs naturally, carriers should not seek to prevent it as this may be anticompetitive and contrary to the legislative intention and provisions of the Fair Competition Act, in particular, Section 17. The Office would like to make it abundantly clear that it is opposed to any carrier using its position in an upstream market to stifle competition to its business in downstream markets.

**Determination 6**

**The Office mandates C&WJ to offer Two-Stage Dialling by way of Direct Exchange Lines (DELs), toll-free lines and through the use of an interconnection service to other interconnection providers to enable C&WJ subscribers to access services offered by those providers.**

## **Appendix 1 – List of Determinations**

### **Determination 1**

The Office has determined that Two-Stage Dialling is a form of Indirect Access based on the description of Indirect Access in the Telecommunications Act.

### **Determination 2**

The Office determines that the rate that C&WJ charges to any interconnection provider wishing to access a DEL should be exactly the same as that which it charges itself.

### **Determination 3**

The Office reaffirms that C&WJ must not include provisions in its contracts for retail services that serve to contravene the provisions of the Fair Competition Act. This extends to the inclusion of any Access Deficit Charges in final prices charged to operators and/or service providers.

### **Determination 4**

The Office has determined (based on the result of the cost-benefit analysis) that a net benefit will result to society if Two-Stage Dialling by way of Direct Exchange Lines (DELs), toll-free lines and/or standard interconnection service is introduced as a form of Indirect Access.

### **Determination 5**

The Office has determined based on its findings that no unfair burden is likely to result from mandating Two-Stage Dialling via DELs, toll-free lines and standard interconnection service on any carrier or service provider.