

**Reliant Enterprise Communications Ltd. Response to Comments on the
Competitive Safeguards Determination**

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President/CEO
31, July 2006**

General

There seems to be a misunderstanding based on the comments by others as to the true intent of the OUR's Determination in spirit and practicality. While a focus on legality, terms and process are fine, there are major issues ignored by the other respondents. Also, we believe the focus on Cable & Wireless as the dominant carrier, while justified, misses the point and is too narrow. We believe the OUR needs to focus on broader issues in terms of competitiveness and open markets, consumer access and competitive safeguards.

1. Digicel and Flow position this as a matter of data networks as it pertains to the Dominant Carrier, C&W. We believe a broader look at the market is required. Digicel (wireless WIMAX) and Flow (Fiber) both have data networks and therefore **must** be considered in terms of access and competitive safeguards.
 - Should smaller companies (service providers) have equal access to their networks at wholesale rates
 - What safeguards will be made available to assure that they, as well as CW, will not use a "monopoly" network and pricing to keep smaller service providers out of the market
2. The three mobile operators all have data capability they are selling into the marketplace, including Internet access. As these networks are "natural monopolies" then they should be included in any competitive safeguards as well as open access to service providers who wish to resell. C&W currently does this as does MIPHONE (voice). While we would argue over the wholesale rates they charge, at least they have opened up their networks for others.
3. There currently exists, no safeguards or process for complaints other than the Judicial System. The FTC by its own admission has been "neutered" since 2000 when they lost an appeal in the DBG vs. JSE law suit. The fact that no law has even been proposed to rectify this situation is unconscionable and provides no industry in Jamaica with a mechanism to resolve fair trade complaints. The OUR for whatever reason, has not involved itself in dispute resolution, In fact, on a number of occasions it has referred people to the FTC which in reality has no power!
4. There really is no process today to resolve allegations, complaints or disputes within the telecommunications marketplace. The industry desperately requires a formal process and safeguards if it is to continue to evolve and provide a wide variety of services and pricing to the public.
5. The Telecommunications Act 2000 needs to be rewritten to take into account technology, current market conditions, lack of regulatory oversight and power, consumer requirements and strategy. The current act just does not address the existing and future market. Other jurisdictions have found the same issue and have taken action to address the problem; the US is working on its 4th Telecommunications Bill.

Cable & Wireless

C & W has opted to take a legal position regarding the OUR's effort. We will leave that to those much more capable of interpreting the law than us. However, there is ample precedent for regulatory institutions to have oversight responsibility. For example, the FCC, UK and Canada authorities not only investigate complaints in the telecom market, but set rulings and can fine offenders. Suffice, to say, we believe C&W should be included in any final outcome.

Digicel

We ask the OUR to view our comments in light of what we have stated before.

1. We agree that there is no justification for regulatory intervention if retail markets are effectively competitive. However, the retail markets are not competitive nor is there open access for all. We would like to see specific proof of this comment from Digicel.
2. Regulatory intervention is **absolutely required** in nascent markets in order to allow growth, introduction of new technologies, assurance of equal treatment and eliminate abuse of dominant power (natural or granted), predatory pricing and the erection of artificial barriers. In fact, the telecommunications regulatory environment worldwide is based on this type of intervention. Digicel would not exist if government via regulatory intervention had not opened up the Mobile market in Jamaica. This position is without any merit.
3. Is there an industry in any country that does not believe that Competitive Safeguards do not add value to markets? Ask MCI, Sprint, Teleglobe, Netscape, Linux, the 1980's computer manufacturers, and any one who has competed against entrenched monopoly telephone companies. Once again contradicts itself both in its former life in Ireland and its current position around the Caribbean. Digicel does the OUR and Jamaica a disservice with these comments as they have the opposite position in other jurisdictions.
4. Digicel's remarks on Nascent Markets (2.5) is self serving and in fact if that position were taken, would inhibit the development of a competitive market even more. There is ample evidence not only in telecommunications but other industries (mature and nascent) to provide proof that intervention works. There comments also dismiss the role of service providers within the market and their ability to have safeguards to assure equality. An excellent example of this was the deregulation of the Airline industry in the US. One of the chief barriers to entry for new players was the "dominant position of gate facilities at airports" by the natural monopolies that existed. Without regulatory intervention in this "nascent market" the new entrants would never have gotten off the ground. In fact, the FAA mandated that airlines had to give up specific amounts of gates at airports across the nation!

5. In 2.6, Digicel prefers to focus narrowly on C&W. What if a service provider wants to interconnect to Digicel's mobile network or new data network; same with FLOW. What protection, guarantees, and safeguards do these people have? If regulatory intervention is not available, we believe nascent markets and new entrants will fail.
6. 2.7, we believe is very simple. The ten examples have been debated, adjudicated and cast in legal history not only in telecommunications, but almost every industry. WTO, FCC, Anti-Trust et al have not found these complicated so we do not understand why Digicel does.
7. 2.7.1 by definition if there is discrimination in one area then some other area is disadvantaged. We do not understand then why it would be welfare enhancing for the entire market or "group".
8. 2.7.2 is similar to comparing "apples to airplanes". In the days of government sanctioned monopolies there were instances where one group paid more than another primarily to subsidize. For example, during the telephone monopoly regime, business and long distance (international) customers paid more than consumer to keep rates affordable and expand the service to rural communities and disadvantaged. When competition was introduced, policy changed to establish Universal Service Funds which were funded by taxes put on companies and/or consumers to achieve the certain social goals. In fact rural telephone companies in the US are still subsidized in terms of the cost of providing the service. This is not price discrimination as it is taxes on services that pay for this, not discriminatory pricing to one consumer versus another. This argument does not stand to scrutiny.
9. 2.7.3 seems to be just another way to delay. The impact of predatory pricing has been studied to death and dealt with at the highest levels of regulatory intervention from the WTO to local authorities. Waiting on yet another definition or study is wasteful and achieves nothing.
10. 2.7.4 is a canard.
11. 2.8 is relevant notwithstanding the lack of Determination by the OUR. We are experiencing a worldwide intervention of regulatory bodies on reducing mobile call termination rates as they believe it is artificially keeping prices high and the consumer is suffering. The OUR only needs to look as far as the FCC, UK and EU to determine what is happening in this area.
12. We agree that any regulation should be technology neutral including wireless. While the abuse of dominance should be minimized, open access to all networks should be made available to assure dominance does not occur nor others are disadvantaged.
13. Regardless of how voice and data are transmitted, it has nothing to do with safeguards or RIO's unless the operators are charging for one more expensive technology while actually employing a cheaper technology for their own purposes.
14. It is not the OUR's purview or mandate to incentive investments or make decision based on the precept. That is the role of government and policy makers. The fact is by utilizing technology, the mobile carriers can provide voice, data, mobile fixed line service, etc. In fact, when I was at CW Mobile we had a fixed line product in use by customers utilizing the mobile network. Any mobile entity has the capability to provide the same today if they so choose. Digicel and FLOW have

already disproved the statement “operators are not going to invest in a market if they know CW is going to be permitted to engage in anti-competitive conduct”. They have already done so without any guarantees in place. People make investments based on many reasons, not just regulatory. Encouraging a policy that favors incumbent operators, even those with “natural monopolies” is bad for the market, service providers, competition and most of all the consumer.

Protectionism wears many hats.

15. Looking at mobile carriers as offering data services and with a penetration rate of 85% in Jamaica, it is hard to imagine that the mobile market is not mature. Therefore, access, rates and safeguards should be equally applied to all carriers.
16. We are now in the 6th year of mobile and it has been very successful. However, with the world clearly moving towards some type of regulation of mobile termination rates we have difficulty understanding why Digicel uses this as an example.
17. Digicel seems to be putting forth every argument as if CW is the only one who can abuse dominant market position. Investments come not only in infrastructure but also service provisioning and we feel Digicel is trying to make sure there is no access to their network either mobile or WIMAX. Interesting as other markets are seeing the rise of MVNO’s and successful ones at that. To only focus on CW would be a huge mistake by the OUR.
18. If information is not available on dominant operators than how can smaller players in the market or the regulator make informed decisions in any number of areas. There is a need for transparency in our industry – period.
19. We should not confuse how services are transmitted by a company, with defining the services from a market and reality perspective. The merging of transmission technology that makes a carrier more efficient has nothing to do with “lumping all services together”. In fact, Digicel is a mobile, Internet (using mobile network) and soon to be fixed service provider via it announced WIMAX services; so what then distinguishes them from CW? They will have the inherent possibility of bundling services, cross – subsidizing, predatory pricing and other forms of anti-competitive behavior. Why should they be exempt from the rules? We agree other market parties need to be protected from CW, Digicel and FLOW.
20. We would argue that Digicel is dominant, with a self pronounced 70-75% of the mobile market which includes data services and should be included in the competitive safeguards.
21. We see great humor in Digicel’s statements regarding price gouging by US carriers. Notwithstanding that I am a US citizen, the Government has de- facto taxed the US consumer to fund Universal Service and we know what Digicel pays to other carriers to terminate a call on a foreign network and retail rates do not reflect this cost at all; so them accusing others of gouging is “rich”.

FLOW

We have mentioned FLOW in other parts of this document. Specific comments on there response follow:

1. Service providers require access to the essential facilities of all data networks, not just CW in order to provide access to customers, diversified services, pricing options and customer choice.

We would like to reiterate our position in the first submission:

1. The OUR should be given the authority to have an independent Enforcement Division that can investigate complaints and allegations and present its findings to the OUR, who then should have the authority to take corrective actions including levying fines.
2. The Minister should file new legislation immediately to make the FTC an effective body for all industries or close it down. In its current state it is of no use to any one.
3. New legislation should be introduced to replace and update the Telecommunications Act 2000.

As a final point, would Vonage be in business today if it were not for regulatory intervention and competitive safeguards?

We would like to thank the OUR for the opportunity to participate in this Determination and look forward to working with them to achieve a fair and level environment for all, regardless of size.