



CABLE & WIRELESS
JAMAICA

**C&WJ's COMMENTS ON RESPONSES TO OUR'S
NOTICE OF PROPOSED RULE MAKING on
COMPETITIVE SAFEGUARDS TO ADDRESS ANTICOMPETITIVE
PRACTICES BY DOMINANT CARRIERS**

July 31, 2006

Introduction

Cable & Wireless Jamaica (C&WJ) is pleased to be provided the opportunity to comment on the responses to the NPRM. In particular, C&WJ will be responding to the scurrilous allegations of anticompetitive behaviour made by Digicel against C&WJ. C&WJ responds, not because there is any merit in Digicel's allegations, but to make it abundantly evident that Digicel's arguments are groundless so that the public, the regulators, policy makers, participants in this consultative process and other interested parties will not be deceived.

Allegation Number 1

Digicel has alleged that *"Wireless data solutions ... operators are simply not going to invest in a market if they know Cable & Wireless are going to be permitted to engage in anti-competitive conduct."*¹ Digicel has not stated the basis of its allegation, however C&WJ knows that Digicel is not seeking to ground its comments in fact but rather to impugn the reputation of C&WJ. We find such conduct reprehensible. Digicel had already identified that the data market is a nascent market and that the Office would have to follow a procedure for defining that data market and assessing dominance. It is to be noted that Digicel and several other wireless service providers have been promoting their wireless data service for sometime and therefore have not been impeded in any way from investing in that market, which is contrary to the import of Digicel's statement.

Allegation Number 2

In response to question number two (2), Digicel stated that *"..again the focus of the policy should be on giving incentives for new investments in (data) markets while ensuring the competition that it will be protected from anti-competitive strategies from declared dominant operators, in particular from Cable & Wireless"*².

As Digicel is undoubtedly aware, no proceeding has yet been conducted by the OUR to define the data market and assess that market for dominance. C&WJ is of the view that the data market will be found to be competitive. Data services are being provided by both fixed, mobile and wireless networks. MiPhone, Digicel, Flow, Internet Service Providers (ISPs) and C&WJ all provide data services. Digicel has more customers on its network than all the other service providers.

Some facts will make it clear that Digicel is not a new entrant. Digicel operates in twenty (20) geographic markets in the Caribbean, many more than the number of markets C&W operates in; Digicel's turnover for fiscal 2005/6 was greater than the turnover for C&WJ's mobile and fixed business combined and Digicel's revenues continue to grow.

The above facts and past experience of Digicel's behaviour in the mobile termination market would suggest that there is a greater threat of abuse of any dominant position, that may be found to exist in data services, from Digicel rather than C&WJ. This was manifested in the

¹ Digicel's Response to NPRM, Pg. 13

² Digicel's Response to NPRM, Pg 14

very high termination rates that Digicel had set for fixed to mobile calls. The proceeding on dominance in mobile call termination, initiated by the OUR, was intended to reduce the exorbitant termination rates set by Digicel. However the proceedings have long been delayed as a result of Digicel's challenges.

Allegation Number 3

In response to question 4, Digicel stated that *"...because the position that especially Cable & Wireless has a fixed, a mobile and an internet service provider, it is important that special attention is paid to the inherent possibility of bundling and other forms of anti-competitive behaviour from which other market parties need to be protected."*³

The Jamaican customer is a savvy telecommunications customer who recognize that telecommunications service providers in other countries, particularly in the USA, offer service bundles to their customers. Jamaican customers also want to experience the convenience and value that bundled services can offer them. Regulatory bodies throughout the world recognize that bundles in themselves are not anticompetitive and indeed can offer significant consumer benefits and in fact convergence of technology facilitates offering service bundles. Other companies in the industry, such as Flow do offer a triple play service bundle which includes voice, data and video.

Clarification from Digicel would be welcomed, as C&WJ's understanding is that Digicel will be offering service bundles to its customers. C&WJ is therefore keen to understand if Digicel is opposed to service bundles or just service bundles provided by C&WJ.

C&WJ believes that the growth and expansion of Digicel puts that Company in a position that it should be reviewed for market dominance rather than there being the continued assumption that C&WJ, as the incumbent, holds such a position. Digicel's allegation again seems intent on harming C&WJ's reputation.

Allegation Number 4

In response to question number 5, Digicel alleges that *"...Cable & Wireless will have the ability to either misallocate costs to the data services ... or they will be allowed to cross-subsidise the data services with other fixed-line activities through anti-competitive cross-subsidisation ..."*⁴

The Telecommunications Act 2000, list Accounting Separation as a competitive safeguard where dominance has been determined. It is in the individual fixed line market that C&WJ has been found dominant. That data services is offered over the same network as fixed voice is irrelevant as the definition and assessment of dominance is in relation to the services that constitute the properly defined, relevant market. C&WJ had been declared dominant for voice services in August 2003. At that time C&WJ was the only established fixed service

³ Digicel's Response to NPRM, Pg 14

⁴ Digicel's Response to NPRM, Pg 15

provider. Circumstances in the market have changed tremendously and since then Gotel, Flow, International Service Providers (ISPs) and a myriad of VoIP providers now offer voice services, including international incoming and outgoing calls. Therefore even this designation of dominance has outlived its usefulness.

In fact, in the Determination Notice, titled "*Accounting Separation for Cable & Wireless Jamaica*", published in March 2006, the OUR acknowledged that there is effective competition for international outgoing calls⁵ and therefore details on outgoing calls ought not to be reported on under accounting separation.

Where there is competition, it is the market that disciplines not regulation, therefore where the data market is found to be competitive, and C&WJ has every expectation that it will be, there is no need for accounting separation.

Allegation Number 5

Finally, C&WJ responds to Digicel's allegation that C&WJ has refused direct interconnection to its mobile network⁶. The fact is that both C&WJ and Digicel have been in active negotiations in an effort to agree the terms and conditions under which mobile interconnection will be provided. C&WJ will use this opportunity to unequivocally state that it has not refused to provide direct interconnection to C&WJ mobile, and any assertion to the contrary by Digicel is disingenuous and a deliberate attempt to mislead the public, the regulators, policy makers, participants in this consultant process and other interested parties.

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⁵ Page 28 Determination Notice, Accounting Separation for Cable & Wireless Jamaica

⁶ Digicel's Response to NPRM, Pg 8