



Response

to

OUR's comments on responses

“Dominant Public Voice Carriers “

June 2003

June 26, 2003

Mr. Patrick K. Williams
Office of Utilities Regulations
36 Trafalgar Road,
Kingston 10,

Dear Mr. Williams

I refer to the publication by the OUR 'Document Public Voice Carriers – OUR's Comments on Responses.' Digicel welcomes aspects of the clarifications provided by the OUR, and in two important areas, it wishes to make the following comments and request.

Digicel notes that in response to concerns expressed by C&W in respect of the dangers of using the SSNIP test for the purpose of defining a relevant market, the OUR has changed its position, but in relation to an identical point made by Digicel, it does not respond in any way. Specifically, while the OUR accepts the point made by C&W (principally in relation to Gotel) that the definition of the relevant market for fixed telephony should be broadened, the OUR does not address an identical concern raised by Digicel concerning the application of the SSNIP test, leading to the incorrect conclusion that fixed and mobile telephony are separate markets. That has knock-on consequences for the definition of relevant interconnection market. As you will be aware, Digicel's repeated view is that there is a single market for call termination.

Given that the price set by C&W for line rental and national calls is below cost, it is not surprising that SSNIP test would suggest that fixed and mobile telephony are not part of the same market. As the OUR is aware, it was envisaged that C&W's tariffs would be fully re-balanced over a period of 3 years, so as to be completed by March 2003, the date from which international services were to be liberalized. C&W has not done so. As such, the tariffs used to apply the SSNIP test bear no relationship to cost. In Digicel's view, that invalidates any conclusion about fixed and mobile telephony being separate markets. Therefore, in accordance with the procedural and non-discrimination requirements of the Telecommunications Act 2000, Digicel requests clarification on how the OUR's stated intention to revisit the use of regulated prices for the purposes of the SSNIP test, affects the OUR's conclusion that there are separate network specific markets for call termination.

A second concern of Digicel is the OUR's restatement of the contents of a prior letter to Digicel, wherein it states that the OUR will proceed to make a determination of dominance in advance of the data collection exercise necessary to determine the degree of effective competition in the market. Given that dominance is inextricably linked to the

effectiveness of competition, Digicel cannot understand how determinations as to dominance can be made, and immediately revisited (once the data collection phase is over), possibly leading to a reversal of those prior determinations. Obviously, the OUR is not in possession of the information that is necessary to determine the degree of effective competition, which inevitably means that the OUR is not in a position to determine whether or not certain carriers are dominant.

Given the seriousness for any carrier of the consequences of dominance, as expressed in the last page of your paper, it is flawed in the extreme for the OUR to act precipitously by making determinations without having all of the necessary information. Furthermore, since certain of the obligations in relation to dominance appear to arise automatically on foot of a determination to that effect, a subsequent declaration of non-dominance will not remedy the prejudice to the carrier in question. Accordingly, we request that you treat this letter as a request for reconsideration of your decision, in accordance with the Telecommunications Act 2000, to make determinations as to dominance in advance of the completion by you of your study of the effectiveness of competition in the market. We would also request that you notify us of your decision in writing as soon as possible, so that Digicel can proceed to protect its rights as appropriate.

Yours faithfully,

Natasha Francis-Cunningham
Regulatory Affairs Manager

cc: Maurice Charvis