

5 August 2004

Mr. J. Paul Morgan
Director General
Office of Utilities Regulation
36 Trafalgar Road
Kingston 10

Dear Mr Morgan

OUR's Consultation on Its Preliminary Position on The Pricing Elements of C&W's Reference Interconnect Offer 5

Thank you for the opportunity to respond to this consultation document. As you know we requested more time but the OUR indicated that as it would be using the cost information submitted by C&W subject to verification of methodology and allocations it did not feel more time was justified in respect of the pricing elements. However, Digicel is grateful for the additional time granted to respond to the non-tariff issues.

You will recognize several of the comments below partly or wholly from previous responses from Digicel but given the questions asked in the consultation we thought it necessary to reiterate them.

Introduction

The OUR is the organisation external to C&W which has an opportunity to carry out a detailed scrutiny of C&W's entire costing methodology for the purpose of assessing whether its interconnection costs are reasonable. The necessary information is not available to competitor operators in the Jamaican telecommunications market. We believe that this restriction of access to information is centred on the grounds of commercial sensitivity. The lack of public information highlights why in Digicel's view it was important for the OUR to develop its own model for assessing C&W's costs, to minimise the problems with respect to confidentiality, and not to use the incumbent's as a starting point. If however, the OUR does not concur with this point of view then Digicel believe that certain Digicel staff or external consultants acting on its behalf must be afforded the opportunity to view C&W's cost model in order to make meaningful comments on the model. This process could entail established procedures in place in other regulatory regimes where *in camera* viewing of the cost models is organised for certain individuals that sign non-disclosure agreements. Digicel believe that such transparency is the all the more necessary now given that at one such *in camera* viewing in another jurisdiction and at which Digicel was represented, we found there to be serious misallocation of costs in financial models. The misallocations would have had a seriously detrimental effect on Digicel and the markets of that jurisdiction if such transparency had not been granted to voice reasonable concerns.

If an independent model had been developed the full details of cost allocation approaches could have been revealed and discussed by the OUR with the industry. In the absence of an independent model competitors to C&W will remain in the dark and always wonder whether costs have been fairly allocated.

Digicel also requests sight of the detailed results of any relevant studies that have not already been made available with confidential information struck out where the OUR deems that to be necessary. This would include the finer details coming out of the study summarised in *"Principles and Methods of Asset Valuation for C&WJ"* as published by the OUR.

Universal Service

Digicel agrees with the OUR that any form of Universal Service surcharge would have to be identified separately as a part of a RIO.

Approved MEA Valuation

The OUR states that the necessary asset valuations for 2002/2003 for assessing the tariffs for joining services, termination services, special access services and PSTN transit have been submitted to it by C&W. To comment meaningfully on C&W's interconnection tariffs, Digicel needs sight of those figures. Could the OUR consider therefore whether any of the information could be made available.

Unit Cost of Interconnection

The OUR says that it is investigating whether increased traffic flows combined with changes in asset values has resulted in an increase in the unit cost of interconnection. Again, Digicel cannot comment properly without having more details. We would at least need sight of the alleged changes in asset values.

Joining Services

The OUR indicates that the current proposal is that the cost of the joining service should be based not on projected traffic but should instead be symmetric, irrespective of the traffic pattern. In order to make a determination of whether this might be a reasonable way approach, it would be necessary to consider the extent of the difference in traffic flows in each direction. If traffic differences are minimal then symmetry might be reasonable but there is a risk of economic inefficiency if there were marked differences. Digicel does not have strong views on this matter.

Interconnect Specific Charge

Digicel has no objections to the movement to a flat rate charge for the interconnect specific charge.

Introduction of Local Retention in Addition to Regional and National

The Service Descriptions explain the introduction of the local retention. In respect of the PLMN termination access service for example it will apply to answered calls where the service taker routes the call from the service taker ISL to which the service taker PSTN

subscriber connection is directly connected to the service supplier ISL in the same interconnect access area.

This is opposed to the regional retention which is applied in the instance where the service taker routes the call to a service supplier ISL in the Interconnect Access Area where the service supplier PSTN subscriber connection is located.

By implication C&W appears to be saying that there are several switches in an Interconnect Access Area to which service suppliers could interconnect which would allow them to reduce the retention for a particular call depending on the call origin. This would seem to bear investigation by the OUR.

Whether or not the new category is a reasonable addition depends on C&W's network architecture and whether it permits interconnection in a way which would enable an operator to reduce the retention by C&W to the local rate. The move to split traffic by local as well as regional and national areas may lead to a more efficient charging mechanism. However we would like the OUR to ensure that it does not in fact result in charges being kept higher than might otherwise have been the case.

C&W Incentives in Terms of the provision of Costing Information

We imagine that the office may be reluctant to look again at whether C&W has allocated an excessive proportion of its costs to its fixed operations. We would nonetheless ask the OUR to keep this in mind given the incentives that C&W has to load costs into areas where it has virtually a complete command of the market (the fixed sector) from areas where it faces competition (the mobile sector).

Increases to Charges, including Special Access Charges and Transit Charges

We note a number of increases to C&W's charges but Digicel is unable to comment particularly meaningfully about them unless it is provided with the underlying cost data. All we can say at this point is that we have seen no justification for these increases. In the absence of any justification charges should not rise.

The OUR sometimes quotes the former Oftel in its considerations. Digicel believes that the underlying cost information necessary for competitors to make meaningful comment was generally made available by Oftel about BT's charges and this can be confirmed by looking at the legacy Oftel documents on the web site of Ofcom.

In respect of the fixed to mobile retention we are unclear whether C&W intends to add a surcharge under the latest version of the tariff schedule for RIO 5 as it does for Digicel under RIO 3.

Digicel would have liked to have given more time to considering whether all special services should be cost based. We offer a few initial thoughts however. We are clear for example that emergency services must be cost based. Digicel must provide such services and could be forced to pay extortionate prices if C&W were free to charge as it saw fit. Our feeling currently is that as a general rule any service which it is vital for an operator to have to compete with C&W and over which C&W exercises a monopoly needs to be cost controlled in the event that commercial negotiation breaks down and if

abuse of the monopoly position takes place. However, the severity of any cost controls then imposed might need to vary from service to service.

Bad Debt

As the OUR knows Digicel has consistently objected to the addition of a bad debt retention to the retail rate for calls from C&W fixed lines to Digicel subscribers. Digicel is no more responsible for business risk that is entirely in the hands of C&W to mitigate than C&W is responsible for similar risk suffered by Digicel. In that light it seems somewhat bizarre then to have to try and estimate how large C&W's business risk is in respect of fixed to mobile calls for the purpose of providing more revenues to C&W. In fact the only consideration in the light of market developments should be to consider how large an externality charge the mobile operators should add.

Notwithstanding, in our view, the incomprehensibility of a bad debt retention by C&W we will comment on C&W's business risk with respect to fixed to mobile calls.

C&W's business risk in respect of fixed to mobile calls will in our view have reduced significantly since the prices of fixed to mobile calls have been dropping rapidly. The full explanation for this is contained in Digicel's submission earlier this year on mobile call termination. We would refer OUR to the section on pricing for the full story about price declines.

Deposits

Digicel notes the wording of RIO 5 with respect to security deposits. We would encourage the OUR to consider the consultations that Oftel undertook in this area in the course of the last 18 months.

See for example:

<http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/credvet0703.htm#chapterone>

Essentially, Digicel believes that a case by case approach is necessary. Where a company does not represent a credit risk there is no need for a security deposit. The OUR may wish to consider what straightforward and easily verifiable criteria might be permitted for determining what credit risk a company represents.

Yours sincerely

[Signed]

Andrew Gorton
Regulatory Manager