

**Before the
Office of Utilities Regulation
Kingston, Jamaica**

In the Matter of)	
)	NPRM for Competitive
)	Safeguard Rules and Guidelines
Competitive Safeguards to Address)	Doc. No. TEL. 2006/6
Anti-Competitive Practices by)	June 2, 2006
Dominant Carriers)	

**Columbus Communications Jamaica Limited
Comments on Responses**

Columbus Communications Jamaica Limited, dba Flow (“Flow”) hereby submits its Comments on Responses to the Office of Utilities Regulation’s (the “OUR”) referenced Notice of Proposed Rulemaking (“NPRM”) on Competitive Safeguards to Address Anti-Competitive Practices by Dominant Carriers (“Competitive Safeguards”).

Flow reiterates its belief that it is in the best interests of Jamaica to promote and protect competition in data services, as the importance of data services will continue to increase over time. In agreement with other commenters in this proceeding, Service Providers require access to essential facilities of the incumbent dominant operator in order to access customers and provide diversified and competitive services. Flow concurs with other comments in this proceeding and restates its support that the existing RIO framework be expanded immediately to include Service Providers and data services.

1. Flow Agrees with Other Comments in this Proceeding that There Needs to be a Strong Revitalization of Existing Jamaican Government Organizations and the Immediate Introduction of Effective, Remedial, and Empowering Telecommunications Legislation Allowing Enforcement of Broad Competitive Safeguards.

Flow strongly agrees with other comments in this proceeding that there needs to be a strong revitalization of existing Jamaican government organizations which are proven ineffective in dealing with dominant carrier abuses, anti-competitive practices, or the ability to enforce or establish meaningful processes to balance abuses of continuing incumbent monopoly market power.

Flow concurs with comments in this proceeding that the OUR should work with the Ministry to introduce new Telecommunications Legislation and that the Ministry should be asked to intervene immediately to address the OUR’s inability to effectively

enforce safeguards against continuing incumbent monopoly anti-competitive practices and enforce policies fostering competition in the broadest range of current and future services, especially data services.

When government organizations mandated to promote and safeguard the development of a diversified and competitive telecommunications services marketplace are frustrated to the point where they can not even act, indeed it is time to seriously reconsider the organizations and their mandates. To add insult to injury, such institutional frustrations are gleefully utilized by the incumbent monopoly, Cable & Wireless Jamaica (“C&WJ”), as its army of resources recites all possible ways in which the OUR and the FTC are prevented and incapacitated to move forward constructively or swiftly beyond the status quo, to which C&WJ clings vigorously. Flow remains sadly perplexed at C&WJ’s lack of responsibility to submit constructive comments in OUR proceedings supporting deployment of competitive services for consumers. As in this proceeding, C&WJ has compiled its usual barrage of defensive comments culminating in disguised stalling tactics of legal and regulatory OUR “can’t dos” as it narrowly interprets matters with its myopic view disfavoring competition and telecommunications services innovation for the country.

Indeed, Flow agrees with other comments in this proceeding that the regulatory process in the country of Jamaica is frustrated and that the current legislation is ineffective and flawed. Flow agrees that the Minister should be immediately requested to intervene so that together with the OUR, progressive and empowering legislation can be introduced to correct inadequate legislation being abused by the incumbent monopoly C&WJ to further stall progress and continue its numerous and unstopped anti-competitive practices.

2. Flow Supports the OUR in Promptly Implementing Competitive Safeguards to Address Anti-Competitive Practices by Dominant Carriers.

Flow, among other new entrant carriers, have been subjected to a continued series of anti-competitive practices by C&WJ hindering the development of competitive access to new services by Jamaican consumers and stifling the ability of new entrants to competitively deploy these services to the Jamaican marketplace. Such practices embraced by the incumbent monopoly C&WJ are conveniently targeted and timed to damage competitors’ ability to fairly compete with new services deployment. Specifically this includes, just one of many abuses, C&WJ’s most recent re-institution of a non-uniform dialing practice imposed only on those customers of competitors’ networks via C&WJ to dial the digit “1” before the competitors’ seven digit number. Flow believes C&WJ’s recent re-initiating of this practice against Flow at the moment of its new services roll out, is an abuse of its dominant position in the marketplace, is clearly anti-competitive, and is not in the best interests of Jamaican consumers.

C&WJ anti-competitive +1 pre dial practice

Despite assignment of an NNX code and an established interconnection agreement between Flow's public switched telephone network ("PSTN") and C&WJ's PSTN, consumers now accessing Flow's network via C&WJ, at the moment of Flow's public announcement of deployment of its new services, are required to dial the digit "1" before a Flow seven digit number. Calls placed without the pre-dial "1" result in a pre-recorded message that erroneously indicates that long distance charges apply and the call is terminated. Clearly consumers will resist making a call when it has been implied that long distance charges apply. This impedes Flow's ability to compete and gain market share from the incumbent monopoly and build a successful business. This C&WJ practice is an effective deterrent to competition.

As well, a uniform numbering pattern makes it easier for a new entrant to present to the consumer seamless and familiar access to the PSTN. Every digit translates into a cost to program the switch that is eventually passed on in the cost of interconnection. Further, the longer the numbers, the greater the chance for misdialled traffic which aside from inconveniencing the consumer can tie up equipment unproductively thus increasing costs.

This recent C&WJ re-imposition on Flow customers of this anti-competitive +1 pre-dial practice represents an additional hurdle that Flow customers now must overcome to access Flow's innovative and competitive services. This is an obstacle imposed by incumbent monopolist C&WJ, that it does not have to overcome and which it does not impose on its own affiliate providers of competing services.

Disparity of C&WJ wholesale and retail rates

Additionally, this example further highlights yet another huge barrier to entry raised by C&WJ. There is a huge disparity between wholesale interconnection rates imposed on Flow and C&WJ retail rates for the same services. How can a new service provider possibly compete when the incumbent monopoly levies costs on its competitors at the wholesale level significantly higher than it provides its own same services directly to consumers! C&WJ commercial affiliates should not be permitted to retail services at less than the interconnection rate plus reasonable mark-up for overhead and profit.

Such predatory pricing and unsubstantiated additional costs imposed on C&WJ competitors, which include by way of another example, fictitious "transit" and other costs that should not exist in a data interconnect given existing interconnection points on the C&WJ data network, are mounting unstoppable by the same institution which mandate is to regulate anti-competitive incumbent monopoly behavior. The allowance of such C&WJ predatory pricing practices hardly promotes the competitive environment Jamaica requires for the serious development of the country's telecommunications and ICT infrastructure.

C&WJ affiliate accounting separation and transparency

Such example also clearly demonstrates that in its consideration of competitive safeguards, the OUR should insist that any interconnection between C&WJ and any of its commercial affiliates (i.e., Bmobile and Net to Speak) should be transparent and in the public domain. Flow and others should be in a position to access a copy of the interconnect agreement between C&WJ and Net to Speak and see why it is that such imposition of cumbersome costing and anti-competitive practices are not imposed on C&WJ commercial affiliates providing the same Flow services.

CONCLUSION

Flow respectfully submits that prompt implementation of competitive safeguards will have a positive impact on the development of competition in the Jamaican telecommunications sector. Additionally, new entrants and the market require that the dominant PSTN operator, C&WJ, offer wholesale call origination product to alternative service providers, in as competitive a manner to which it currently offers to its own affiliated service entities. The implementation and enforcement of these and such other OUR policies referenced herein would send a clear signal to investors and consumers that the country is encouraging the implementation of diversified and competitive networks and services. Providing businesses and consumers innovative and competitively priced service options will further develop and expand the Jamaican economy and market place.

Respectfully submitted,

ON BEHALF OF COLUMBUS COMMUNICATIONS JAMAICA LIMITED

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