Fair Trading Commission

FTC'S RESPONSE IN RESPECT OF DOMINANT PUBLIC VOICE CARRIERS NO. 2

January 2003

The FTC believes that promotion of competition at all levels in the supply chain of telecommunications services will ultimately give the customer the best deal. Where competition is non-existent or limited then it is the job of the regulator to mimic the effects of the competitive process and to protect the customer from being exploited.

The view may be held that dominance should be an instrument for regulating the former monopolist, and should not be applied to other operators, regardless of their market position. This view however, is not sustainable within the regulatory framework of the current Telecommunications Act. The OUR is required by law to designate carriers as being dominant, based on the definition set out in Section 19 of the FCA and to regulate such carriers. If there are carriers other than the incumbent, that are dominant in a relevant market then the scope of dominance obligations must extend to them as well.

Answers to the Consultative Questions

Q3.1 *Should each mobile carrier be declared dominant in relation to the provision of call termination? Give details of the reason for your response.*

ANS. Yes. The key issue is whether in the absence of regulation mobile carriers could charge excessive prices in relation to cost. The FTC agrees with the OUR's position that in the provision of call termination on its network each carrier has the ability to operate in the market without effective constraints from its competitor or potential competitors.

One factor that should be taken into consideration when assessing the intensity of competition in the call termination market is the fact that with Calling Party Pays (CPP) the person bearing the cost of the call has no direct relationship with the mobile carrier on whose network the call terminates. Mobile carriers therefore have no incentive to reduce call termination charges because the callers cannot take their business elsewhere if they are dissatisfied (i.e. callers have no option but to use that network to reach those particular phone numbers).

The effect of CPP could be offset if callers to mobiles utilized other forms of communication in order to avoid calling mobiles as this could influence mobile carriers to reduce termination charges in order to compete for incoming calls. The majority of the voice telephony customers in Jamaica however, are unaware of the retail pricing structure for telephone calls. It has come to the FTC's attention, via its interaction with the public, that consumers have placed the blame for the high fixed to mobile rates squarely at the feet of the incumbent, CWJ. With the existing level of ignorance about these markets, mobile carriers will be even less inclined to reduce call termination rates.

Q3.2 *Are there alternatives to the services or network components that were identified in the definition of the relevant markets that could constrain the market behaviour of carriers identified as dominant public voice carriers? Identify these alternatives and demonstrate why each alternative would constitute a substitute.*

ANS. The FTC is currently unaware of any such alternative but would like to point out that the telecommunications industry is one that is characterized by rapid technological change. It is likely that technological development in this industry will lead to improvements to current products as well as extend the set of alternative services available to customers. One consequence of these technological developments is that relevant market definitions in this industry will change over time. The OUR therefore needs to recognize the dynamic element of this industry.

Q3.3 *To what extent does C&WJ's vertically integrated structure enhance its position of dominance in the markets for telecommunications services?*

ANS. Where there is market power at one of the input levels in the supply chain, a vertically integrated operator has every incentive to hinder or foreclose competition in downstream markets by denying access to the essential inputs. Alternatively, access may be given only on discriminatory and competitively disadvantageous terms. Indeed, the terms may be so unrealistic that they are tantamount to a refusal to provide access.

The ability of a vertically integrated firm to bundle can also enhance its position of dominance. Bundling can lead to anti-competitive behaviour such as cross-subsidization and predatory pricing and can therefore be used to foreclose the market for part of that bundle, even where the different elements of the bundle are supplied separately.

The onus is therefore on the OUR, as sector-specific regulator and the FTC as the competition agency to ensure that there is mandated access to the incumbent's infrastructure on transparent, cost-oriented and non-discriminatory terms. Both institutions will also have to establish (i) non-structural safeguards such as accounting separation (to permit the detection of unjust price discrimination and cross subsidization) (ii) and behavioural rules prohibiting abusive activities and ensure that these safeguards are supported by vigorous enforcement.

Q3.4 *Are there other markets in which C&WJ should be assessed for dominance? If yes, identify these markets and the reasons why C&WJ is dominant.*

ANS. The FTC is currently unaware of any other markets in which C&WJ should be assessed for dominance. As in 3.2 above we would like to point out that relevant market definitions in this industry will change over time and the OUR needs to keep abreast of these developments.

Q4.1 *Is the competitive checklist outlined in Table 4.1 adequate for the Jamaican telecommunications sector? If not, what additions or modifications would you make?*

ANS. No. The FTC would like to add "White Pages Directory Listing", "Local Dialing Parity" and "Resale of Other Services".

White Pages Directory Listing: - Adding this item to the checklist ensures that white pages listing for customers of different carrier/service providers are comparable in terms of accuracy and reliability not withstanding the identity of the customers' telephone service provider.

Local Dialing Parity: - Local dialing parity permits customers to make local calls in the manner regardless of the identity of the carrier. The incumbent must establish that customers of another carrier are able to dial the same number of digits to make a local telephone call. In addition, the dialing delay experienced by the customers of another carrier should not be greater than that experienced by customers of the incumbent.

Resale of other services (e.g. Domestic minutes): - The incumbent should be obligated to offer to other carriers/service providers its retail services at wholesale rates without unreasonable or discriminatory condition or limitations such that carriers may resell those services to an end user. This will ensure a mode of entry into these markets for carriers/service providers that have not deployed their own facilities.