

Reliant Enterprise Communications Ltd. response to OUR Document on
Competitive Safeguards to Address Anti-Competitive Practices by Dominant Carriers

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General

Reliant disagrees with one of the central tenants put forth in the document that there are existing safeguards in place. In fact, there are little if any that have been instituted, and more importantly enforced in the past six years. Reliant has pointed out any number of alleged transgressions in the past to the OUR and FTC with not even minimal action taken to at least investigate the allegations.

There is further evidence of recent “strange” incidences particularly with spectrum being granted to incumbent dominant carriers while others in the market are required to respond to a RFP. The general lack of transparency, lack of follow up, outstanding Determinations (Mobile Dominance, Indirect Access, etc) and the failure of any meaningful competition in the non-mobile markets after six years is ample testament to the lack of competitive safeguards.

- 17 licenses were granted for International in March 2003 and as of today, only Reliant remains as a competitor in this market.
- A number of licenses were granted in 2002 for domestic competition in the domestic calling market and today all are out of business.
- There were 80-90 ISP licenses granted and today there are only a handful of ISP's providing competitive service and they are, by their own admission, barely surviving.
- There is a perception that only the large incumbents get what they want with little regard to new entrants or small competitors.

Rather than belabor the points, we believe the OUR must start from scratch in developing a comprehensive set of Anti-Competitive Guidelines with **STRONG ENFORCEMENT MEASURES, PROCESSES AND ENFORCEMENT** for this determination to be effective.

It is clear that the rest of the telecommunications universe is taking major steps in regards to Mobile dominance in terms of rates, termination charges and cross-network charges. It is also clear in our eyes that, notwithstanding that mobile networks are dominant and exclusive by nature, Digicel is clearly the dominant mobile network in Jamaica but little has been done in general with the mobile carriers or with Digicel to declare dominance and set competitive standards while reviewing pricing and cost policies. In this area, we commend CW Mobile for initiating a reduction in cross-network charges.

Reliant has made recommendations before to the OUR, FTC and in Public Forums, without result. We would like to reiterate our suggestions, and add more.

- A separate Enforcement Division should be set up within the OUR to deal with complaints and have the power to act on complaints that are proven true.
- Significant fines, by category, should be established and enforced against dominant carriers for infractions of the rules as is done in most of the telecommunications jurisdictions worldwide.

- The FTC, which has essentially been neutered since 2000, should be given credible powers to investigate and determine if anti-competitive behavior has been engaged in and levy appropriate fines. This should be for all industries, not just telecommunications. The fact that the FTC has been languishing for so many years without new legislation being introduced is a travesty.
- The OUR needs to finally make a Determination on Mobile Dominance and institute appropriate regulations.
- The OUR needs to make a Determination regarding Indirect Access.
- The telecommunications landscape has changed significantly in the past six years due to new entrants, technology and convergence of services. The OUR should work with the Ministry to introduce new Telecommunications Legislation that reflects current market “landscape” conditions.

It is time to truly liberalize the market and have in place safeguards that ultimately benefit the consumer, not individual companies.

Response to Questions

Before any meaningful regulations can be developed in this area, there is a fundamental question the OUR has to answer, and that is network access. Should all networks be open to access for competitors or are they going to remain closed? Without this decision, every thing else is but an exercise in futility. Secondly, the definition of **who** is a data network carrier has to be broadened to include FLOW, Digicel and the mobile carriers. To do otherwise we believe is unfair to Cable & Wireless and does not represent the actual market environment.

Consideration must also be given to “off island access” as it is a key component of the competitiveness of data, voice, video and emerging markets. Those who have networks for off island capacity should not be allowed to quote different prices for the same service to different customers as is happening now.

1. Definitely as this ties into defining dominant carriers and expanding the view. Mobile carriers are in fact also data carriers, FLOW is entering the market and Digicel is representing that they will soon enter the data market. This alters the landscape as the focus cannot only be on Cable & Wireless exclusively.
2. Yes, but consideration has to be given to other data networks and guidelines established. We believe it would be unfair at this point in the markets evolution to just make changes in the existing CW RIO; a larger canvas must be painted.
3. Yes and it should follow Accounting Separation guidelines as previously determined, for all data networks.
4. Yes, but once again the definition of public data networks is too narrowly defined. We would submit that FLOW and Digicel as well as the mobile carriers are public data networks and should be included in any documentation.
5. Yes, for all.
6. Yes, as this is critical to Jamaica. Once again, all data networks should be included, not just CW.