



Grand Cayman, 23rd November 2006

### **Decision on TeleCayman Application to Investigate the MTR Agreement among C&W, Digicel and Wireless Ventures**

#### ***Summary***

*The Authority denies the application by TeleCayman to investigate as anti-competitive the agreement among C&W, Digicel and Wireless Ventures in which the parties determined a mobile termination rate. The Authority has determined that TeleCayman misinterpreted the provisions of the Agreement. Properly construed, the Agreement does not apply to telecommunications providers that are not parties to the Agreement.*

(Note: This overview is provided for the convenience of the reader and does not constitute part of the Decision. For details and reasons for the conclusions, the reader is referred to the various parts of the Decision.)

#### **The Application**

1. On 2 August 2006, TeleCayman Limited (“TeleCayman”) applied to the Authority, requesting that it investigate as anti-competitive the agreement among Cable & Wireless (Cayman Islands) Limited (“C&W”), Digicel Cayman Limited (“Digicel”) and Wireless Ventures Cayman Islands Ltd (“WVCIL”) of 23 July 2004 in which the parties determined a mobile termination rate (“MTR”) to apply among them (“the Agreement”). TeleCayman stated that it took no issue with the mobile providers deciding amongst themselves what they will charge one another. However, TeleCayman submitted that s.5 of the Agreement also sets rates for service providers that are not parties to the Agreement. To that extent, TeleCayman argued, the agreement was anti-competitive.
2. On 14 August 2006, Digicel filed an Answer to the Application. Digicel argued that s.5 of the Agreement relates only to the rates charged by the parties to each other. On 5 September 2006, C&W, at the invitation of the Authority, filed its Answer, in which it also argued that the Agreement, although it prescribes a flawed MTR, is not anti-competitive.
3. TeleCayman filed a Reply, as invited, on 15 September 2006, in which it advanced a new request. TeleCayman stated that the Answers of C&W and Digicel specified that the Agreement only applies to mobile traffic that is exchanged between the parties to the Agreement. TeleCayman advanced the argument that the Authority

should issue a declaratory order to that effect, and direct the parties to modify s.5 of the Agreement to so specify.

### **Authority Analysis and Determination**

4. In Cayman, termination rates have been traditionally addressed as part of the interconnection arrangements entered into on a bilateral basis, filed with the Authority and posted on its website. On 29 January 2004, C&W and Digicel entered into the first relevant bilateral interconnection agreement. This specified that the MTR between the parties had been determined on an interim basis only.
5. On 6 February, C&W and WVCIL entered into an analogous bilateral interconnection agreement, which also specified that the MTR between these parties had been determined on an interim basis only.
6. On 23 July 2004, as amended 27 July 2004, these three parties arrived at a supplementary Agreement which had the effect of modifying both of these bilateral agreements. It is the interpretation of this Agreement which constitutes the subject matter of the present case. It is only s.5 that is at stake, which sets the rate for terminating a call on a public land mobile network (“PLMN”) of one of the parties. It reads in its entirety as follows:

#### **Mobile Termination Rate – PLMN Terminating Access Service**

In the event that the Authority agrees that 30 June 2006 is the earliest feasible date by which the FLLRIC Model could be completed, it is agreed and proposed that the PLMN Terminating Access Service rate that shall apply as between the Parties from the date of this Agreement up to 30 June 2006 shall be \$.1845 CI (\$.225 US).

For the avoidance of doubt, it is agreed and proposed that from the date of execution of this Agreement until the completion of the transition of the PLMN Terminating Access Service rate to FLLRIC, there should be only one mobile termination rate that applies as between the Parties, as specified herein, which will apply to all calls delivered by any one of the Parties to the mobile network of any of the others, and in accordance with all Cayman Islands telecommunications regulations.

7. The Authority has concluded that TeleCayman’s application must fail on both theoretic and practical grounds. From a theoretic perspective, the Authority sees no basis in law for the TeleCayman argument that the final paragraph of this provision can rationally be interpreted to apply to any person beyond the parties themselves. Contractual law constitutes, of course, simply the private law of the parties.

8. To take merely a practical tact, furthermore, leads to the same conclusion, for on 11 May 2004, TeleCayman entered into its own agreement with C&W, specifying its own termination rates for traffic exchanged between those parties. Traffic originating on the TeleCayman network and terminating on the C&W mobile network does not pay 18,45 cents per minute, as a consequence of the bilateral negotiating process that led to that agreement. Thus the Applicant itself has proven through its own conduct that the impugned agreement does not determine its negotiated interconnection rates.
9. The argument of TeleCayman which was raised for the first time in Reply likewise fails. There is no basis whatsoever in the words of the Agreement, or the Answers of the Respondents themselves, to lend support to the notion that the rate of 18.45 cents applies solely to mobile traffic that originates and terminates on the mobile networks of the parties to the Agreement. Rather, traffic that originates on either a public switched telephone network or a PLMN of a party and terminates on a PLMN of another party is subject to that rate.
10. Accordingly, the Authority denies the Application by TeleCayman.