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**INDEPENDENT OR INTERDEPENDENT – THE BARBADOS EXPERIENCE**

**Sandra J. M. Sealy,  
Telecommunications Analyst  
Fair Trading Commission**

The views expressed in the following document are solely those of the authors and not the views of the Fair Trading Commission or any particular Commissioners.

## **INDEPENDENCE OR INTERDEPENDENT – THE BARBADOS EXPERIENCE**

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### **1. Introduction**

The Barbados experience in the regulation of the telecommunications sector will be presented with specific emphasis on events that influence the independent operation of the regulator. This includes matters pertaining to the liberalisation of the sector in general and in particular interconnection and access deficit.

This paper will examine the legislative policy and organizational facilities that have been put in place in order for the utility regulator in Barbados, the Fair Trading Commission (Commission) to operate in an independent manner. These will be considered in association with discussion of the decision making process as applied in Barbados. Highlighted will be the factors that contribute to the degree of interdependence that influence regulation of a small Caribbean nation. These factors include government policies, service provider objectives and media publicity.

### **2. Decision Making**

In the utility regulators' quest to arrive at the best possible decisions, significant emphasis must be placed on the processes employed such as consultations, public hearings and other, quasi judicial procedures. Analysis of these begin by considering decision making at the most basic level, the individual - primarily because the basis of this process feeds into the group, organizational and societal levels decision making

#### **Models of Decision Making**

The structure of an organization has a significant bearing on the quality of the decisions made and reflect the level of transparency and fairness that exists. Conceptually there are four models for decision making in an organization

*Unitary Actor*- This is a situation where the decisions made appear as if they are being made by one individual. There is optimum coherence in activities as decisions do not reflect different objectives. This type of behavior is ideal in terms of setting strategy by heads of organizations or charting routine activities.

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*Organizational-* This occurs when the entity operates, with individual departments responsible for separate aspects of a decision. Each department is self contained and interaction exists between the departments is involved in making the decision. This is an ideal model to use when complex decisions need to be made in a number of specialist areas, which is often the case in regulatory matters .

*Contextual:* This occurs where there is separation of responsibilities in smaller departments but the individual departments are not aware of the activities of other department or the overall activity of the organization. In such situations decisions can be made which seem to be appropriate to persons based on the information available but those individuals may have chosen another alternative if he had access to all the relevant information.

*Political:* This occurs when members of individual departments prioritize their individual or departmental goals above those of the entire organization. In these cases decisions may be made which can be destructive to the organization.

In the design of the organisational structure of a regulatory body a combination of the first two models are considered to be the most desirable as the decisions are primarily (a) strategic – relating to high level policy objectives and (b) tactical – related to detailed analysis of the issue. This approach allows the regulatory entity to focus on its overall objectives while dealing with the individual elements in a collective manner.

### **3. Regulatory Framework**

The regulation of the telecommunications sector in Barbados is divided , not necessarily evenly ,between the Ministry responsible for telecommunications, currently the Ministry of Public Utilities and Energy, and the Fair Trading Commission ( FTC). The responsibilities and duties of these two bodies are described in the Telecommunications Act Cap 282B.

The Ministry is responsible<sup>2</sup>, among other things, for:

- Development and review of telecommunications policies
- Ensure compliance with Barbados' international obligations with respect to telecommunications
- Issue licences
- Determine the category of telecommunications service to be regulated
- Specify the policy to be applied to each category of telecommunications service
- Specify the interconnection policy

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<sup>2</sup> Telecommunications Act CAP282B. ( 2002) Laws of Barbados, Section 4

- Plan , manage and regulate the use of spectrum in Barbados and between Barbados and elsewhere
- Plan , manage and regulate numbering
- Inform the public about the matters relating to telecommunication

The Commission in accordance with the Act<sup>3</sup> is required to :

- Enforce the policies established by the Minister
- Be responsible for the regulation of competition between carriers and service providers to ensure that the interests of consumers are protected
- Establish and administer mechanisms for the regulation of prices in accordance with the legislation<sup>4</sup>
- Establish regulatory functions in accordance with the legislation

Further the Commission in accordance with the Act is specifically responsible for:

- Network interconnection and the approval of reference interconnection offers and interconnection agreements; and
- Establishing guidelines for the amount of access deficit charge to be paid by all carriers and service providers that interconnecting to the universal service carrier (the incumbent).

The Utilities Regulation Act Cap 282 specifically speaks to the Commissions duties with respect to rate making and the setting of the principles and standards of services of the regulated utilities which in addition to telecommunications include electricity and natural gas.

If the Minister after consulting with the Commission is satisfied that the telecommunications market is sufficiently competitive, the Minister or the Commission may refrain from exercising its regulatory powers in respect of the rate setting mechanism with respect to that particular service. Sections 37 to 40 of the Telecommunications Act Cap. 282B under the heading *rates* speak to rates that facilitate the policy of market liberalization and competition, incentive based rate setting and the question of a dominant provider.

The framework described above immediately indicates that even at this macro level there are signs that the regulators' actions and procedures are interdependent. Interdependence, interrelationship and inter-association are terms which connote a) the dependence of two or more things on each other or b) two or more elements having a close connection or relation to each other. A cursory glance at the framework described above shows that the Commission decisions must take into consideration Government policy and Barbados' commitment to international bodies. If one looks deeper into the basis of these policies, it would

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<sup>3</sup> Telecommunications Act CAP.282B. section 6

<sup>4</sup> Telecommunications Act CAP.282B, Fair Trading Commission Act CAP. 326B and the Utilities Regulation Act CAP.282

be expected that the policies set by the government were influenced by the regulatory environment that existed in other jurisdictions which have an existing liberalized telecommunications sector.

The Concise Oxford Dictionary (ninth edition) defines policy as “a course or principle of action adopted by a government”. Policy may also be described as a planned line of conduct in light of which individual decisions are made and coordination achieved<sup>5</sup>. The regulator therefore while being *governed* by policy should have the independence to determine the line of action to be utilized to achieve any set policy objective. That is to say that , for example, if the policy is to have light green walls, the regulator may decide to:

- Buy light green paint;
- Mix green and white paint;
- Mix blue and yellow paint; or
- Use light green wall covering

all of which would achieve the stated policy objective. If the regulator however is influenced in his choice by the Minister indicating that he disliked wall covering and the regulator did not consider the advantages and disadvantages of each option he would not have made his decision independently.

The events that have unfolded in Barbados which is on the path to a fully liberalized environment will now be examined to ascertain whether the regulator has been given the scope to operate in a truly independent manner and the decision making process that has been applied.

## **5. The Barbados Experience**

The Barbados telecommunications market is being transformed from one where domestic , international and mobile services were provided by the incumbent Cable & Wireless ( Barbados ) Limited to a liberalized environment with competition in all sectors. This transition to a liberalized environment is expected to evolve over three phases. Currently we are in the second phase with licenses expected to be issued to new service providers of domestic fixed wireless service; the first phase saw the granting of licenses to three new mobile operators, two ( Digicel (Barbados) Limited and A & T Wireless) of whom have commenced full operation. The other operator Sunbeach Inc. is yet to start providing a mobile service Direct interconnection to the international gateway of the incumbent or another carrier would not be permitted until phase 3. Competition in the provision of international voice service will then be possible. Annex 1 provides an example of a possible network in a fully competitive sector.

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<sup>5</sup> The New Lexicon Websters Dictionary of English Language, 1987

In order to provide an insight into some of the issues that have to be addressed by the regulator as it seeks to operate in a transparent and independent manner two subjects under that direct responsibility of the Commission will be discussed – these are access deficit charges and interconnection.

### **Access Deficit Charge**

The Fair Trading Commission is charged under the legislation with the development of guidelines for determining an access deficit charge. Section 35 (2) of the Telecommunication Act Cap 282B states “The Commission shall establish guidelines in writing for determining the amount of the access deficit charge”.

In addressing the task of developing the guidelines the Commission first would have needed to define access deficit. This term though widely used is not given the same definition or interpretation in all jurisdictions. The Office of Utility Regulation (OUR) in Jamaica defines it as “*the amount by which a carrier’s revenue from connection on line rental charges falls short of the cost of providing access lines, due to regulatory constraints on those charges*”<sup>6</sup>.

OFTEL (now Ofcom) on the other hand defined access deficit as “*the amount by which British Telecom’s revenue from exchange line connection and line rentals falls short of the fully allocated costs of providing and maintaining customer connections to the network*”<sup>7</sup>.

(Note; OFTEL abolished ADC in 1995).

While these definitions are similar, the jurisdictions have their own conditionality with Jamaica referring to the regularity constraints and the United Kingdom specifically referring to the type of pricing, i.e., fully allocated costs.

The Barbados legislation does not provide a specific definition of Access Deficit Charge. The regulator, the Fair Trading Commission may therefore determine an applicable definition and seek to develop the appropriate guidelines for the regulatory regime in the country.

Further examining of the legislation does however indicate a measure of interdependence between Access Deficit Charge and Universal Service Funding and while the Commission has responsibility for the ADC, the Ministry responsible for Telecommunications has responsibility for the Universal Service Fund.

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<sup>6</sup> Office of Utility Regulation (OUR) Modification to C&WJ’s Price Cap Plan and Proposed Rules for International Telecommunications Services Consultative Document, August 31, 2002

<sup>7</sup> *Office of Telecommunications (OfTel) Glossary 1995\_98*  
[http://www.oftel.gov.uk/publications/1995\\_98/about\\_oftel/ann9596.htm](http://www.oftel.gov.uk/publications/1995_98/about_oftel/ann9596.htm)

The relevant legislation is found in Part VII of the Telecommunications Act CAP. 282B. This section addresses the Universal Service Obligation which, inter alia, is the obligation imposed upon the Universal Service Carrier to ensure that basic telecommunications service is reasonably accessible to all people in Barbados on an equitable basis<sup>8</sup>.

The legislation, section 33(2) (b) states “*the net avoidable costs that results from providing services in the course of fulfilling the universal service obligation are recovered from all carriers and service providers in accordance with sections 35 and 36 on an equitable basis*”; where sections 35 and 36 refer to the Access Deficit Charge and the Universal Service fund respectively with section 35 stating:

“The Commission shall prescribe a charge to be known as “an access deficit charge” to be paid by all carriers and service providers interconnecting to the service”

and section 36

“There is hereby established a fund to be known as a Universal Service Fund, the resources of which comprise such amounts as may be collected under the authority of this Act from all carriers and service providers for the purpose of funding the universal service”.

Review of the above may lead one to conclude that both the Access Deficit Charge and the Universal Service Fund are used to recover the net avoidable costs<sup>9</sup> of the Universal Service Provider. In that case the Commission in the development of their Access Deficit Charge would need to co-ordinate their efforts with the co-regulator of the sector, namely the Ministry so that there is not an over or under recovery of the relevant costs. Were the Commission to operate independently, carriers seeking to interconnect to the network of the Universal Service Provider may need to be assured that they are not paying twice for the same service.

In making decisions there is the tendency to consider several factors as independent variables when often one variable impacts on another input variable. Universal Service, rate rebalancing and interconnection are all factors that some may consider have the potential to influence the final determination of the ADC.

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<sup>8</sup> Telecommunications Act Cap282B: section 33(1)

<sup>9</sup> Telecommunications Act CAP 282B section 33(5) states that net avoidable cost means “*all costs incurred by the universal service provider in connection with the fulfillment of the service obligation less any revenues derived from the provision of universal service*”.

## **Interconnection**

The Commission established the ground rules for interconnection by:

1. Issuing a Accounting and Pricing Principles;
2. Establishing Guidelines for dispute resolution
3. Requiring that the incumbent submit a Reference Interconnection Offer (RIO)

The Accounting and Pricing Principles and the dispute resolution Guidelines were established following a consultative process<sup>10</sup> which involved the incumbent, new carriers and interested parties. This sought to ensure that the process was transparent and non discriminatory. The Commission, in accordance with legislation, and cognizant of the importance of setting a framework for new carriers desirous of interconnecting to the existing network, also opened the review of the RIO to the public through the consultative process.

The Commission decision and approval of a significant part of the RIO on October 28, 2003 was made with consideration being given of the views of the players in the market<sup>11</sup>. The incumbent and the new mobile licensees took issue with various aspect of the Commissions Decision and they all filed Notice of Motions for review of the Decision on the RIO.

While the RIO was being considered by the regulator, the commercial negotiation between the parties was on-going. These negotiations reportedly started when the new entrants officially received their licences on August 31, 2003. Like negotiations in other spheres this process was not straightforward. This was not surprising considering the divergent objectives of the parties:

Incumbent Objective – To ensure that they are appropriately compensated for the use of and access to their network

New Entrants Objective – To interconnect at a cost which allows its operation to be commercially viable and does not place it at a competitive disadvantage

Public interest in the interconnection and liberalization process was heightened by the media coverage and during the months of September to December 2003 matters related to the negotiations and related issues made headlines in the leading local newspapers . A few examples are given in Table 1.

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<sup>10</sup> These are available on the Commission's website <http://www.ftc.gov.bb>

<sup>11</sup> Fair Trading Commission Decision Reference Interconnection Offer. (2003). Paragraph 13 “ *In reaching its decision the Commission took into consideration the written and oral submissions of all parties*”



**Table 1 Examples of Newspaper Articles**

<b>Date</b>	<b>Source</b>	<b>Headline</b>	<b>Issues</b>
2003-09-30	Barbados Advocate	<b>C&amp;W ‘Surprises’ Telecommunications Company reacts to allegation of stalling</b>	C&W <ul style="list-style-type: none"> <li>▪ Rate Appeal cost-based domestic charging</li> </ul>
			<ul style="list-style-type: none"> <li>▪ RIO</li> <li>▪ Move CPP for fixed to mobile calls</li> </ul>
2003-10-01	Barbados Advocate	<b>“Link System Now”</b>	Importation <ul style="list-style-type: none"> <li>▪ Installation testing of interconnection network prior to FTC RIO decision</li> </ul>
2003-10-27	Nation	<b>Prime Minister: Cut the Crap</b>	<ul style="list-style-type: none"> <li>▪ Delays in staff of public hearing on C&amp;W application before the FTC</li> <li>▪ Reform of telecommunications sector</li> </ul>
2003-12-11	Nation	<b>Talks off: Fed up call players C&amp;W not serious at all</b>	<ul style="list-style-type: none"> <li>▪ Interconnection Agreement</li> <li>▪ Break down of talks over interconnection prices</li> </ul>
2003-12-11	Nation	<b>Company denies stalling</b>	<ul style="list-style-type: none"> <li>▪ C&amp;W's response to complainant's allegations</li> </ul>
2003-12-18	Barbados Advocate	<b>It's settled: Cellular licenses finally “connect” will Government help?</b>	Government's mediation <ul style="list-style-type: none"> <li>▪ Interconnection prices agreed</li> <li>▪ Withdrawn of Motion to Review RIO Decision</li> </ul>

With reference to the last item in the table, the withdrawal of the Notice of Motion review the Commission decision allowed the parties to concentrate on finalizing the interconnection agreements. These Agreements were subsequently submitted to the Commission for consideration. Commission approval of the interconnection agreements is required before the service providers can begin operation. The Commission issued its decision on the interconnection agreement on January 14<sup>th</sup> and 26<sup>th</sup>, 2004 and competition started soon thereafter.

The excessive publicity of the views of the incumbent , the new entrants, Prime Minister , Opposition Leader, Trade Union, etc. may not have escaped the attention of the members of the Commission who were engaged in various stages of the decision process on the matters pertaining to (a) the RIO, (b) interconnection agreements and (c) the rate hearing. Unlike a jury that can be sequestered during a trial, the Commission is not subject to such isolation. The Commission in making its decision could not allow public sentiment to factor into its decision but was obligated to making a determination by concentrating on the facts and information before it.

## **6. Decision Making in the Commission**

The experiences described shows us that the environment that the Commission operated in was not dissimilar to that of other regulators who are also exposed to the public lobbying by various parties. Making an independent decision requires consideration of all of the relevant factors involved and the regulator must not allow himself to be influenced by the emotional but must focus on the empirical.

The Fair Trading Commission is structured in two levels – Staff and Commissioners. In the decision making process technical analysis of the information submitted is, where appropriate, performed by the specialist staff who include engineers, lawyers, economists and financial analysts. In addition external assistance from consultants is also utilized to provide assessment of specific issues .

The Commission panel comprises at least three persons and the number of persons on the panel is always an odd number. The number of Commissioners has recently been extended from 7 to 11 persons (this increase was probably influenced by the number of matters that have to be considered simultaneously by the Commission and the time constraints of the part time Commissioners). The Commission Panel sits and considers the information that has been submitted by all parties as well as the staff reports.

This decision making process is thus achieved through the organizational model with some aspects of Unitary Actor model that was described earlier in the paper. This process must be monitored for an organizational structure where communication is lacking can lead to contextual decision making and a unitary actor model which if poorly defined can also lead to political decision making.

As the Commission deliberates on the matter and in order to reach an independent decision the biases that can come to the decision table have been minimized through the organizational and legislative policies as described below.

Composition of the Panel - The use of a three member panel as opposed to a single Commissioner (as in Ireland) helps to decrease or balance any individual biases that are inherent. These biases may also be due to professional background where one is more comfortable in dealing with issues which are in line with our specialty than those which may be a little outside of our current view or interest. The mix of professions provides the balance that is required to avoid attempts to limit attention to specific areas.

Legislation - The decision making process in accordance with the section 35 of the Fair Trading Commission Act Cap 326B requires that the Commission publish the decision in writing with supporting reasons. This requirement promotes an analytical approach to making the decision as opposed to the use of a “gut” feeling to choose between alternative approaches. While the latter method is suitable in circumstances where emotional aspects are important and the decision does not need to be justified or legitimized by another party, this type of decision making is certainly not suitable in a regulatory environment, where a poor decision could lead to substantial disadvantages to the stakeholders involved.

Consultative Process – This provides for transparency and allows several parties to be involved in the process. In this manner the Panel is cognizant of the positions of all parties and is not overly influenced by one position.

## **7. Conclusion**

Liberalisation of the telecommunications sector is a very complex undertaking. The experiences described in previous sections, while not being detailed or exhaustive, indicate that the regulator has to grapple with many interrelated issues at the same time. In its decision-making process members may inevitably unconsciously prioritize matters and this affects the decision making process.

In striving to be independent in its decision-making the regulators often adopt an Organizational Model where most decisions may be described as the technical decisions requiring specialist analyses such as financial, engineering and legal. Regulatory bodies in general, must ensure that its decision making process does not become too fragmented where the different departments lose sight of the “big picture”. For this reason the team approach is critical. Pressure exists to meet international policy commitments and government policy objectives and to satisfy public demand. The legislation in Barbados has placed the responsibility of the liberalisation process in two sets of hands – the Ministry and the Commission. The regulator cannot ignore the interrelationship but must still seek to maintain its independence in its decisions.

# Annex 1

## Possible Competitive Network

