



Comments on:
OUR's Determination Notice on "Price Cap Plan for Cable and Wireless Jamaica"
(issued October 30, 2013)

Submitted by:
Fair Trading Commission

January 29, 2014

1. General Comments

- 1.1 In several instances throughout the Notice, the Office of Utilities Regulation ('Office') offers its view on the prospects for competition in various markets segments. For example, paragraph 1.3 reads in part "...The Office argued that although the level of competition had increased, it was still of the view that some markets were not yet effectively competitive..."
- 1.2 Given the prominent role that the Office's view on the scope for competition in the various markets played in the (provisional) Determinations, the Fair Trading Commission (FTC) believes that the Office should identify the research document which it relied on in forming this view. Ideally, the document would contain a detailed report (with confidential information redacted) on the forensic analysis which was conducted in the respective markets. Although the Office included brief commentaries on the factors which they considered in support of its view in this regard, the FTC believes that a detailed report would make the Consultation exercise more transparent and Stakeholders would have a proper basis on which to support or challenge the Office's view.
- 1.3 Going forward, it would be preferable for the Office to consult with the FTC earlier in the consultative process, prior to forming a view on matters regarding competition in the sector, rather than inviting the FTC's comments only after the Office's view is formed. This would give the FTC the opportunity (and hopefully, ample time) to undertake and document the forensic analyses required to assess the prospects for competition in the various markets.

2. Specific Comments

- 2.1 The Notice identifies three important conditions that would be sufficient for the Office to "...consider a product or service to be subject to effective competition..." The FTC seeks clarification as to whether these conditions are in fact sufficient as indicated in paragraph 1.5 or necessary as indicated in paragraph 3.7.

- 2.2 The second condition listed in paragraph 1.5 is purportedly the same as the second condition listed in paragraph 3.7. One distinction to be made, however, is that paragraph 1.5 speaks to total demand whilst paragraph 3.7 speaks to total output. To the extent that industry demand may exceed industry output, say suppliers are either unwilling or unable to meet the entire demand for fixed line services, the FTC recommends that the Office resolve the discrepancy.
- 2.3 The Office should state whether the Office has a threshold percentage point to identify what constitutes a “large portion” as described in the second condition in paragraphs 1.5 and 3.7. Stating the threshold level, or lack thereof, would make the process more transparent.
- 2.4 In paragraph 3.8, the Office provides the bases on which it concludes that the fixed line market is subject to effective competition. This is a positive aspect of the Notice as it makes the consultation more transparent.
- 2.5 Given that the Office identified three necessary conditions to make such a determination, however, the FTC would have expected the Office to demonstrate that the conditions for all three conditions were met. We observe that the requirements of the first condition were established but it was not demonstrated that the requirements for second and third conditions were met. For example, no mention is made of what portion of the market demand or output is served by competing providers (pursuant to condition 2) and, notwithstanding paragraph 1.5(b), paragraph 3.8 was silent on whether there were anticompetitive conduct on the part of competing fixed line service providers (pursuant to condition 3) .
- 2.6 Further, the third listed condition is implicated when “The Office determines that the market for the service is not characterized by anticompetitive practices.” The link between the anticompetitive conduct and whether the market is subject to competition is tenuous at best. Notwithstanding the preceding observation, the FTC seeks clarification on the criteria/methodology used to characterise market conduct as being anticompetitive.
- 2.7 In paragraph 3.9, the Notice indicates that the Office may be called upon to determine when “...effective competition is deemed to be imminent...” The FTC recommends that the Office identify to stakeholders, the conditions under which the Office would likely make such a determination.

3. Conclusion

- 3.1 In general, the FTC supports the determinations outlined in the Notice but believes that the Office should disclose in greater details, the bases upon which they were developed.