



TURKS AND CAICOS ISLANDS TELECOMMUNICATIONS COMMISSION

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TURKS & CAICOS ISLANDS

December 5, 2008

COMMISSION DECISION 2008 – 5

Re: TCT Internet Complaint re Cable and Wireless Delays

BACKGROUND

On November 5, 2008, TCT Limited (TCT) filed a formal complaint with the Commission alleging that Cable and Wireless (C & W) had delayed unnecessarily, the provision of wholesale international facilities required by TCT to compete effectively with C & W by adding additional circuits to their connection with the global internet. The circuits to be provided were to be operated by Columbus Networks Ltd., the operator of the undersea cable connecting Turks and Caicos Islands with the rest of the world. TCT sought relief in the form of a fine on C & W equal to the two and a half month's rental they would have paid for the circuits if they had been provided in a timely way. C & W was asked to respond by November 14, and did not respond until November 19.

On November 24, 2008, TCT filed a further response commenting on the C & W submission, noting that they had not received the C & W letter until November 21.

Sequence of Events

From the TCT document, augmented by information from C & W, the following describes the most important events in a long sequence of exchanges between the companies:

July 15, 2008 – quotation for the circuits accepted by TCT;

July 30, 2008 – C & W advised by Columbus Networks that a larger quantity of circuits ordered by C & W would be provisioned from Jamaica via Turks;

August 11, 2008 – Columbus advised C & W that the circuits ordered by TCT would be available in 3 weeks;

August 31, 2008 – Columbus delivered the larger quantity of circuits ordered by C & W for its use, and subsequently, C & W cancelled the order for the circuits for TCT – apparently thinking that they had sufficient capacity to provide it in that lot of circuits, a decision that later turned out to be incorrect;

August 31 – October – many emails were exchanged between C & W and TCT, with C & W never admitting that there had been an internal error leading to the delays;

October 2, 2008 – C & W was able to provide TCT about ¼ of the capacity sought on an interim basis;

October 13, 2008 – C & W sent email to TCT, apologizing for the delay, but providing no explanation as to the cause;

October 30, 2008 – C & W requested Columbus Networks to reinstate the order for the TCT capacity, saying to TCT that it would be ready in about two weeks.

November 13, 2008 – Columbus Networks confirmed that the capacity would be ready for November 30, 2008.

All of the above events are interspersed by emails copied to the Commission in the TCT complaint documents, most of them confirmed in the C & W chronology provided in their reply.

In its final response, TCT pointed out that during the 60 days that passed after C & W cancelled the order for their capacity (in error), TCT had sent 13 emails to C & W personnel following up on their order, and they were never told that there was a problem with the order.

COMMISSION ANALYSIS

The record of events following the initial order of facilities clearly shows that a critical error was made by C & W some 6 weeks after the initial order, and the company has never really accepted responsibility for this error. Moreover, despite repeated follow up notes from TCT, the error was either not discovered or acknowledged until some 107 days after the initial order was placed.

In its letter of November 19, 2008, C & W insisted that the company did nothing deliberate to frustrate the provision of circuits to TCT, but that the delay was due to a misunderstanding between them and Columbus Networks, the operator of the undersea cable containing the required circuits. That is, the cancellation of the TCT order was based upon the (erroneous) understanding that the TCT order could be filled from the facilities already ordered from Columbus. C & W went on to say that the misunderstanding had been resolved and the provisioning action was underway, with capacity to be made available by mid-December 2008 if that were acceptable to TCT.

While it is clear that a decision made internally within C & W is the prime reason for the long delay, the motivation behind it will never be known. However, the cancellation was not reversed until almost 9 weeks after the decision to abort the initial order, despite repeated requests from TCT for feedback on the status of the order. This is unacceptable performance in any business, and is particularly egregious, bearing in mind that the delays were advantageous to C & W in the internet marketplace, as TCT had become unable to respond with competitive offerings to meet the increased capacity being offered to customers (including TCT customers) by C & W. In other words, the delay aided C & W to compete with TCT. Whether the delay was deliberately caused or not, the Commission believes that the company should have been redoubling its efforts to provide the capacity when failure was so self-serving. There is no evidence that C & W recognized this, in their replies or in their actions.

COMMISSION DECISION

The Commission has concluded that Cable and Wireless has behaved irresponsibly in its handling of this matter, and does not accept the excuse that an innocent error is responsible for this unacceptable delay in providing service to a competitor. It is disappointing to note that the company does not seem to recognize this in any of its correspondence. Apologies for omission are not sufficient when the delay is not followed up diligently and with a customer service attitude.

The Commission also notes that TCT has decided to use an alternative source of supply for the capacity needed, so it is clear that C & W has lost a customer in this case, which may be sanction enough, and perhaps a lesson relating to the importance of serving customers in a timely manner, even if the customer is a competitor.

However, the Commission has concluded that the company may be in breach of Section 13.4 of its licence, which reads as follows:

13.4 – The licensee shall not engage in anti-competitive pricing and other similar practices or any other activities, whether by act or omission, which have, or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed services

In this instance, an error of omission has led to a decided competitive advantage for C & W lasting almost 5 months, during which time TCT has stated that C & W sales people were actively marketing high speed services to TCT customers, which TCT was unable to provide due to their capacity problem. C & W therefore had no incentive to vigorously pursue this order, and benefited significantly in the market for internet services from the delay.

On the basis of this finding, C & W is directed to act expeditiously to provide TCT, and Columbus networks, with the facilities and opportunity to effect the direct connection between the TCT system and that of Columbus Networks, and to complete this work

before December 15. The Commission will monitor compliance with this directive, and expects a full report from the company on the completion of the work.