

Consumer Council of Fiji



Submission to

The Commerce Commission
on the
Review of the Control of Substantial Market
Power for FINTEL's Landing Station

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1.0 Introduction

The Consumer Council of Fiji (and telecommunications stakeholders) was invited by the Commerce Commission on March 4, 2010 to make a written submission on Fiji International Telecommunications Limited's (FINTEL) substantial market power over the international telecommunication sector via its link with the Southern Cross Cable Network (SCCN) submarine cable. The Council, as the statutory representative of consumers in Fiji is obliged to respond accordingly and make a submission on behalf of consumers. The Council understands that information and telecommunication services are regarded as essential tools for social and economic development in the 21st century. Thus the telecommunications sector must be subject to regular review and scrutiny if Fiji is to advance. Furthermore, quality and prices of telecommunication services and products continue to be a focus of both consumer and business dissatisfaction as evidenced by complaints received by the Council and public comments made by individuals and businesses in the media.

2.0 Government policy on Information & Telecommunications

The Government's Sustainable Economic and Empowerment Development Strategy (SEEDS) 2008-2010 include “Universal access to internationally competitive information and telecommunication services”¹ as a goal. The government has indicated that the telecom sector has the potential to significant economic growth and Information Communication Technologies (ICTs) have the potential to create not only employment through call centres and related activities, but also to improve productivity. The government also recognises the importance of using ICTs to connect and empower rural dwellers and other disadvantage communities. Many countries around the world and international agencies like the United Nations and World Bank are committed to bridging the Digital Divide which is the gap between people with effective access to information technology and those with very limited or no access at all. The Fiji government has prioritised liberalisation and deregulation as critical steps towards its overall goal on information and telecommunications.² However, it has acknowledged “the absence of competition” as a key problem facing the telecommunication sector and points to “high prices for international telecommunications and leased lines”³ Thus the Commerce Commission's initiative to look into FINTEL's market power in the international telecom market via its monopoly over SCCN submarine cable ties in well with this problem area.

3.0 Consumers & International Telecommunication Services

Consumers in Fiji in comparison to other South Pacific countries, have quite good access to a reliable international telecommunications system with access to the SCCN submarine cable linking New Zealand, Australia and North America. The international telecommunication service market is primarily a wholesale one whereby the local telecoms – Telecom Fiji Ltd, Vodafone, Digicel and other smaller players – purchase access and bandwidth at wholesale

1 Ministry of Finance & National Planning, *Sustainable Economic and Empowerment Development Strategy (SEEDS) 2008-2010: A Better Fiji For All*. '5.4 Information and Telecommunications. pp. 61-64.

2 *Ibid*, p.62

3 *Ibid*.

prices from FINTEL and in turn re-sell these to consumers via international call access, internet services, VoIP (Voice over Internet Protocol) and other products. While, FINTEL's international telecommunications landing station is primarily a wholesaler aspect of the market, the Council is fully aware that wholesale dealings between the international carrier and the phone companies ultimately affect consumers via prices and products choices. Consumers, being at the retail level of the market, access services, acquire service contracts and pay for these to the domestic service providers. FINTEL⁴ had indicated to the Council in a meeting in July 2009 that issues and consumer complaints regarding international telecom services and prices are between the consumer and the domestic network provider. FINTEL thus claims to be outside the equation as far as consumer redress on international services and pricing is concerned. The international carrier insisted that consumer concerns over high international call rates should be dealt with the domestic carriers.

4.0 FINTEL's Control of the International Gateway

4.1 Exclusive License

FINTEL held a monopoly of the international gateway via a 25-year exclusive license granted under the 1989 Post and Telecommunications Decree.⁵ That exclusive license was to expire in 2014, however this ended in July 2009 giving other telecom players the option to either provide international access or choose a gateway provider for both traditional call services and data. The pre-July 09 situation was such that the domestic telcos and Internet Service Providers (ISP) – Vodafone, Digicel and Connect – could only access the international gateway via TFL and FINTEL. This situation created a communication bottleneck and technical problems associated with domestic service providers having to go through the network of one or more (often competitor) operators to get through the international traffic. The bone of contention here for both consumers and businesses, is high international call rates and having to be subjected to 'double dipping' by the telecommunication market/sector. That is, end-user calls and data have to go through one more network before hooking up to FINTEL's gateway.

4.1 End of Exclusive License and Options for other players

On July 17, 2009, the wholesale international telecommunications market in Fiji was opened up, ending the monopoly of the 51% government-owned FINTEL. This effectively ended the exclusive privileges granted to fixed line operators Telecom Fiji and FINTEL over international traffic. All the players now have the option of either going directly through FINTEL's cable landing station or sought alternative gateways for international call and data services. As far as cable is concerned FINTEL's landing station is the only one available, while Digicel and TFL have their own satellites. FINTEL has both satellite and cable, while Connect relies entirely on the TFL/FINTEL network for internet bandwidth. Vodafone is yet to have its own standalone satellite link and at the moment relies on the FINTEL gateway. Wireless internet service provider Unwired also relies on the FINTEL gateway, while VoIP

4 FINTEL presentation at Consumer Council boardroom, 8 July 2009.

5 Government of Fiji, Posts and Telecommunications Decree 1989.

company VoicenetIP connects via the TFL/FINTEL network.

Table 1: International Infrastructure Ownership & Access Options

Telco	Own International Infrastructure		International Access Options	
	Satellite	Cable	Satellite	Cable
FINTEL	Yes	Yes	Own	Own
TFL	Yes	No	Own FINTEL Others	FINTEL
Vodafone	No	No	TFL FINTEL Others	FINTEL
Digicel	Yes	No	Own FINTEL Others	FINTEL
Connect	No	No	TFL FINTEL	FINTEL
Unwired	No	No	FINTEL Others	FINTEL

4.2 FINTEL's Landing Station⁶ and access to SCCN

Unfortunately, while the exclusive license over the international gateway has been removed, FINTEL still holds proprietary control over the landing station. (Table 1 shows the ownership and access options, dominated by FINTEL) Its use of the SCCN is governed by a Landing Party Agreement (LPA) with Southern Cross Cables Limited (SCCL) the owners of the SCCN submarine cable.⁷ The LPA is a long-term agreement between FINTEL and SCCL that allows FINTEL to link with the SCCN via its landing stations. According to FINTEL, the LPA with SCCL is not an exclusive access agreement and that “any other operator may also obtain from SCCL and create its own pipeline”.⁸ The international carrier noted that there is no “regulatory impediment to other operators' purchasing capacity on the cable network.” It need to be highlighted here that the essence of the liberalisation of the international telecommunications market was simply the removal of FINTEL's exclusive right to provide international services to domestic operators. It did not in anyway affect the operators' monopony control of the SCCN landing station.

In terms of access to the SCCN, the market is open and other telcos can gain access via LPA's with SCCL. However, this would mean millions of dollars of investment for the operators to establish their own landing stations and set up their network link for their domestic

⁶ FINTEL's landing station located at Rifle Range, Vatuwaqa is where the SCCN cable lands for international connection.

⁷ The Southern Cross Cable, operated by New Zealand company named Southern Cross Cables Limited, is the submarine cable and one of two-ways which Fiji accesses international telecommunications. The other system is via satellite.

⁸ FINTEL presentation at Consumer Council boardroom, 8 July 2009.

infrastructure. It must be noted that FINTEL's link to the SCCN had been possible through an initial \$47million investment. New entrants to the SCCN must be prepared to fork out such a level of investment or higher to provide competition to FINTEL.

4.3 Why the SCCN?

The SCCN is the only fibre optic submarine cable linking Fiji to the rest of the world and is very crucial to the country's telecommunication needs. Australia has about 7 international fibre-optic cables and 12 earth stations, while India has about 7 submarine cable landing sites. Fibre optic cables are faster and carry more bandwidth than satellite. The total carrying capacity of submarine cables is in the terabits⁹ per second while satellites only offer megabits per second and have higher latency (delay). Also satellite is more susceptible to adverse weather conditions that can affect connections through latency and outage.

4.3.1 Consumer demand for broadband access

Why fibre-optic? The industry trend worldwide is towards a convergence in information communications technologies (ICTs). Such convergence allows consumers or end-users to access data, voice and visual communication via a single system such as a mobile phone/Smartphone or a desktop/laptop computer. This convergence relies on faster connections or larger bandwidth which is facilitated better by fibre-optic cable systems rather than satellites. Broadband fibre-optic cables are increasingly the technology of choice for both voice and data (internet) communications. The International Telecommunications Union (ITU) sees broadband networks as the norm rather than the exception. It notes that “in the 21st century, the social and economic development of every country on earth will depend on it.”¹⁰ One of the ITU's key priorities is the delivery of “equitable, affordable broadband access to the Internet. It also recognises broadband networks as “basic national infrastructure – just like transport, energy and water networks.”¹¹

According to a 2007 study by American communications consultant Michael Ruddy¹² the unprecedented and unanticipated growth of mobile telephones in less-developed countries has made it necessary for the construction of fibre-optic connectivity. Also with population increases and growing dependence on ICTs means that consumer demand for more bandwidth is set to continue increase unabated.

Furthermore there is an increase consumer demand for Internet services and use of Internet-based applications like VoIP. According to the ITU internet users (by subscribers) in Fiji numbered approximately 7,500 in 2000 and by 2009 internet penetration was estimated at 9.7% of the population in 2009.¹³ The World Bank estimate of internet users in Fiji was 1.5%

9 A terabit is a unit of information or computer storage, abbreviated Tbit (or Tb). 1 terabit = 1012 bits = 1,000,000,000,000 bits (one trillion, or, using the long scale, one billion). 1 terabit is equal to 1,000 (decimal) gigabits and a tebibit to 1,024 (binary) gibibits. 1 terabit is also equal to 125 gigabytes. (Wikipedia)

10 <http://www.itu.int/en/broadband/Pages/default.aspx>

11 *Ibid*

12 Ruddy Michael, 2007 *Undersea Cable Markets and the Developing World*, Terabit Consulting, Massachusetts.

13 Internet World Stats, Usage & Population Statistics > www.internetworldstats.com/sp/fj.htm and <http://www.itu.int>

in 2000, but this jumped to 8.5% in 2005.¹⁴ These are conservative estimates and also do not take full account of bandwidth usage and access. The Council's observations suggests that internet usage in Fiji has increased tremendously as shown by the number of ISPs and companies providing retail internet services. About ten years ago, Connect was the sole retail ISP, but we now have four other players offering services/products, namely: Unwired, Kidanet, Vodafone and Digicel. The University of the South Pacific is also an ISP that offers dedicated internet access for students and staff. The provision of wireless internet and mobile phone companies offering prepaid internet access to consumers' has increased substantially over the last couple of years.

5.0 Price movements after the July 2009 liberalisation

The months preceding the cessation of exclusive rights to the international gateway, the telecommunications companies were already going directly to FINTEL instead of TFL for international calls. For instance Vodafone came up with its 'Call International and talk like a local!' promotion where customers could call any overseas network for just 29 cents per minutes. Digicel introduced its 'Free Overseas' promotion where its customers could call overseas, talk for 2 minutes and get 28 minutes free. Unfortunately, consumers' hopes were short lived as Vodafone's '29¢ per min.' deal ended on July 31, 2009 just two weeks after the liberalisation of the international call gateway. Vodafone currently runs a 'Weekend Mania'¹⁵ promotion at '29¢ per min' but unlike the previous promotion, this one is only for weekends beginning 7pm Fridays and ending 7am Monday. According to the Vodafone promotion advert: "...this offer runs every weekend from 7pm Friday to 7am Monday until further notice." Vodafone's current promotion – 'Call the World' – for prepaid international calls is 70 cents per minute which excludes a number of neighbouring Pacific Island countries.¹⁶ Digicel's one-off promotion 'Get Free with Digicel' for prepaid users was running at a flat rate of 40 cents/minute (included landline calls to Australia, NZ, UK, Canada, India and China). This promotion ended in February. Its permanent international call rate for prepaid users is 90cents/minute for Band 1, \$1.50/min for Band 2 and \$3/min for Band 3. Each band represents a group of countries. (See Table 2 below for details)

Table 2. Mobile phone charges by Vodafone & Digicel (Peak Hours)

Operator	Service	Talks on Deregulation (Jan-Mar 2009)	Post-deregulation (Apr – Jun 2009)	2010 (Jan-March)
Vodafone	Prepaid	30cents/min	50cents/min	70cents/min*
Digicel	Prepaid	40cents/min	50cents/min	90cents/min**
* "Call the World" - Excludes Pacific Islands and satellite calls.				
** Includes landline, Band 1 – common countries including Pacific Islands, Billed per second.				

Source: Pre-2010 rates from Consumer Council 2009 comparisons. Rates derived from print and web advertising and subject to change.

What is evident here is that international mobile phone call rates at the retail level have remained virtually the same. The two networks only reduced international call rates on a

14 http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&HF=N&WSP=N

15 <http://www.vodafone.com.fj/pages.cfm/personal/specials-offers/weekend-mania-dial-01.html>, Accessed 22/03/10

16 <http://www.vodafone.com.fj/pages.cfm/personal/specials-offers/lowest-international-call-rates.html>, Accessed 19/03/10

limited period promotional basis. The Council has regularly called for these international rates not to be sold on a promotional basis only but to be permanent.

Furthermore, broadband internet¹⁷ rates have not dropped substantially since July 2009. For instance Connect's business-end wireless EVDO (now Nomad) has for the last two years remained the same at \$59.95 per month, although the data cap has increased to 6GB/month.¹⁸ A similar product range with Vodafone, Flashnet, remains \$59.95/month with a 5GB/month data cap. So the expected fall in prices has not been realised since the liberalisation of the international gateway.

6.0 Commerce Commission Issues/Questions

The Council is able to answer the following issues/questions raised by Commission in its review of FINTEL's substantial power over landed international traffic.

6.1 Is there reason to believe that the advancement of the objectives in Section 3 of the Telecommunications Promulgation 2008 are not adequately assured by prevailing market conditions for wholesale interconnect at FINTEL's landing station.

The Council feels that despite the liberalisation of the international communications gateway, FINTEL still holds power and control over traffic through its SCCN landing station. It must be noted that the fibre-optic cable is where most of the international traffic flows through in terms of voice, internet and data. While the options for other international gateways were opened up in July 2009, domestic telecommunication providers have still maintained traffic through FINTEL's SCCN landing station. No relief has been offered to the Internet Service Providers as it appears that pricing has not changed. Furthermore, FINTEL's internet service Kidanet is placed in an unfair advantage over the other ISPs who rely on the carrier's landing station for international traffic. Kidanet's being a wholly-owned FINTEL subsidiary has unfair advantage in pricing and bandwidth access. What guarantee is there that the FINTEL will not unfairly treat other ISPs like Connect and Unwired in terms of uninterrupted connectivity? FINTEL continues to enjoy a dominant position in the international gateway because it is the only landing party for the SCCN fibre-optic cable where highly significant amount of Fiji's ICT traffic is dependent upon. While other operators are free to acquire an LPA with SSCL, most would need to fork out high capital investments (much larger than FINTEL's \$47m initial investment) to build a landing station and establish subsidiary infrastructure. The satellite option is not attractive with the world moving towards fibre-optic broadband networks.

Furthermore, being the only international gatekeeper to the SCCN, FINTEL is by default having an unfair advantage. It does not have any effective competitor and does not need to invest heavily in advertising like the domestic providers are doing.

Also FINTEL has in the past jealously guarded the international gateway and at one stage was

¹⁷ Broadband internet relies on FINTEL connection.

¹⁸ www.connect.com.fj

at the centre of allegations of blocking off a cut-price international call provider TELPAC in 2003. TELPAC has since moved its business to Mauritius. TELPAC which used VoIP to provide cheap international calls to consumers, claimed that FINTEL had re-routed internet signals meant for the United States through Australia and New Zealand, causing delays and costs to its (TELPAC) customers.¹⁹ In 2009 FINTEL had raised concerns with TFL over the fixed line operators' non-display of the "00" international access code in the telephone directory. The "00" access is FINTEL's which allows users to call overseas using its network. FINTEL was justified as TFL had instead put its "052" code (which runs on VoIP) and not provided the "00" choice for consumers. These cases show how FINTEL is very protective of its international gateway and is a hint of its obvious resistance to consumers' or service providers right to choice.

The Council believes that the objectives of Section 3 of the Telecommunications Promulgation 2008 are not adequately assured under the status quo for wholesale interconnection at FINTEL's landing station.

6.2 Is the scope of the Commission's review of FINTELS Landing station appropriate?

The Council believes the Commission's review is absolutely appropriate. FINTEL is not purely a private entity, but is majority owned (51%) by the Government of Fiji. Thus it is partially a state asset which makes any issue regarding its business a matter of public or national interest. FINTEL's investment in the landing station and its contribution to the SCCN is not by a private company, but essentially an investment by the state through taxpayers' money. Thus the landing station is partially owned by the public or citizens of this country. The telecommunication companies that access FINTEL's landing station and the SCCN are in fact the proxy connector for the people and consumers for their international communication needs. We regard the landing station a public asset and thus worthy of some intervention by the Commission. The Commission must consider the public interest and the Government's broader goal of "Universal access to internationally competitive information and telecommunication services". Further, as the world moves towards national broadband networks, it is vital that an enabling telecommunications environment is created. This can certainly be achieved through controlled competition and effective regulation where the operators, business community, government and consumers benefit.

6.3 Should FINTEL be asked to provide a Reference Interconnection Offer (RIO) at cost based prices determined using the Long Run Average Incremental Costs Methodology (LRAIC), what could be that RIO

The Council agrees that FINTEL should be asked to provide a RIO at cost-based prices. This is only fair as it would allow for transparency and also resolve the ongoing blame game between FINTEL and the domestic service providers. As FINTEL is player with substantial market power (SMP), the Commission should follow international best practice which is that a company having SMP should regularly produce a document with the terms and conditions at

¹⁹ Radio New Zealand International, <http://www.rnzi.com/pages/news.php?id=3769&op=read> Accessed 19/03/10.

which it will provide access to specified services. The Council is unable to provide an RIO as it is outside our current scope of expertise. However the Council believes that the RIO should include: some standard contract framework for interconnection; set terms and conditions for interconnection including items such as fair prices; compensation for outage due to unnatural causes etc. In addition the RIO should be non-discriminatory (e.g. against ISPs in competition to Kidanet) and transparent.

6.4 Will the benefits reasonably anticipated to users as a result of the regulation of the Landing Station in Fiji outweigh the burden reasonably anticipated to be placed on FINTEL or other operators?

The Council is of the view that any resulting regulation of the FINTEL's landing station operations would benefit both end-users and the operator. FINTEL is in a position to maintain monopoly control and access to the SCCN for a long time considering that the other players would need to provide substantial capital/infrastructure investment. The benefits of lower international voice and data rates to consumers would be substantial. Mobile phone and internet uptake is increasing rapidly and more products/services are being put out to consumers. The demand for bandwidth will forever increase, limited only by the technical ability of the networks to provide this. ICT experts around the world are aware of the growth of mobile telephony in the developing world and have highlighted how it has and continues to exceed forecasts. The same can be said of the internet. The number of internet users in the world's poorest 53 countries at the end of 2006 was estimated at \$10million.²⁰ This figure has increased significantly in the last couple of years. For Fiji, the opening up of the mobile market in October 2008 and the likelihood of another entrant should indicate the increase in demand. FINTEL is poised to benefit substantial from the increase in traffic as the number of end-users and applications increase.

6.7 What are some of the benchmarking data for wholesale prices of international connectivity via submarine cables in comparable markets.

(Benchmarking data can only be accessed at this time by the telecommunication companies as these transactions occur at the wholesale level. This question is better answered by the telecommunication operators. Vodafone and Digicel should be able to procure data from their respective parent companies as they have branches around the world who deal with submarine cable communication.)

6.8 Having regard to the Commerce Act 1992 (Fair Trading Decree/Act 1992?), as amended, what specific regulatory obligations should the Commission impose should FINTEL hold Substantial Market Power with respect to its Landing Station operations?

The Commission should consider imposing the Restrictive Trade Practices provisions under Part III of the Fair Trading Act such as:

²⁰ Ruddy Michael, 2007 Undersea Cable Markets and the Developing World, Terabit Consulting, Massachusetts.

- (27) Contracts, Arrangements or Understandings Restricting Dealings or Affecting Competition
- (28) Contracts, Arrangements or Understandings in Relation to Prices
- (29) Covenants Affecting Competition
- (30) Covenants in Relation to Prices
- (31) Restriction on Conduct that Hinders or Prevents the Supply of Goods or Services to Others
- (32) Prohibition of Contracts, Arrangements or Understandings Affecting Supply or Acquisition of Goods or Services
- (33) Misuse of Market Power

7.0 CONCLUSION

International connectivity in both voice and data communication in Fiji is still at a higher rates despite the removal of FINTEL's exclusive right to provide such a service. This is because the telecommunication operators here are unable to fully exercise economically viable options such as satellite communications and establishing new landing stations to connect to the SCCN will require substantial investment. It is unlikely that any of the current domestic players will, in the immediate future, establish a landing station comparable in bandwidth with FINTEL. Apart from the initial establishment costs, the new entrants would also have to pay regular maintenance and service fees to SCCL. The SCCN marine cable and FINTEL's landing station is the only direct fibre-optic communication network Fiji has with the outside world. If Fiji is to advance its ICT economy it must have access to low or competitively priced international traffic. FINTEL holds substantial market power for international connectivity as a result of decades of being the both an exclusive license holder and the first to offer direct international telecommunication services in Fiji. Also the company is partially state owned and while its expatriate partner – Cable & Wireless – has contributed to its development, taxpayer dollars have been forked for many decades to ensure FINTEL was a viable international telecommunication provider. The Commerce Commission has every right to take regulatory action to address the anomalies associated with FINTEL's market power.