



# In The Supreme Court of Bermuda

(COMMERCIAL COURT)

CIVIL JURISDICTION

2011: No. 387

BETWEEN:

TELECOMMUNICATIONS (BERMUDA & WEST INDIES) LTD.  
(trading as Digicel)

First Plaintiff

-and-

TRANSACT LIMITED

Second Plaintiff

-v-

BERMUDA DIGITAL COMMUNICATIONS LIMITED  
(trading as CellOne)

Defendant

## **RULING** **(Chambers)**

Date of Hearing: October 18, 2011

Date of Ruling: October 18, 2011

1. The Plaintiffs apply for a mandatory injunction compelling the Defendant, until trial or further order:

*“to take all necessary steps to establish, as soon as practicable and in any event within two days of the date of this Order, full interconnection (within the meaning of section 21(1)(b) of the Telecommunications Act 1986) between the Defendant’s network and the networks of the Plaintiffs for the purpose of enabling all mobile telephone customers of the defendants to have full access to the long distance telephone service offered by the Second Plaintiff.”*

2. The substantive relief sought in the Plaintiffs’ Specially Indorsed Writ includes declarations that, *inter alia*, the Plaintiffs are lawfully permitted to market the long distance telephone service provided by the Second Plaintiff under the Digicel brand name and that the Defendant is obliged to provide the interconnection sought by way of mandatory interim relief. The Defendant crucially objects to this interim relief on the grounds that:
  - (a) It will suffer reputational damage if its customers are encouraged to elect to use the Plaintiffs new service and it is subsequently found to be unlawful causing their arrangements to be unwound;
  - (b) The 30-day period required for interconnection has not yet elapsed.
3. The evidence presently before the Court suggests that the Plaintiffs have acted with due propriety and sought and obtained the necessary regulatory consents to introduce a lucrative new service which has provoked their competitors’ ire. The Defendant is not strictly a competitor, but quite understandably is concerned about the Department of Telecommunication’s failure to promptly respond to a query as to whether the new service has been actually approved. Mr Mussenden implied that the Plaintiffs, with aggressive commercial and legal manoeuvrings, may have “blindsided” the regulators into giving uninformed approval to their new service plans.
4. This seems implausible, but in my judgment the Ministry should be afforded an opportunity to be heard before the Court makes an order with potentially wide-ranging ramifications. I take this view because the only serious issue to be tried is whether or not the (Acting) Minister of Business Development and/or the Minister of Telecommunications has/have as a matter of fact granted the Second Plaintiff’s September 1, 2011 license on the understanding that (as read with the earlier July 1, 2009 Class C License) it permitted the Plaintiffs to do what they are seeking to do. The position of the regulatory authorities is so decisive and ought to be so easy to ascertain, that there is no rational justification for a “rush to judgment” on this Court’s part.

5. Mr. Woloniecki submitted that the Court should ignore the 30 day time-limit in section 21(3) in circumstances where there was no good reason for a carrier requiring the specified time. I agree, bearing in mind that allowing a carrier to delay without good cause could inflict unjustified financial loss, the 1986 Act should be construed in a manner which does not interfere with vested property rights under a license.
6. I therefore grant an Order in the following terms:

*“Unless the Minister for Tourism and International Business and/or the Minister for Telecommunications apply within seven (7) days by letter to the Registrar to be heard in opposition to the Plaintiffs’ application for ex parte relief, until trial or further Order the Defendant shall take all necessary steps to establish, as soon as practicable and in any event within two days of the date of this Order, full interconnection (within the meaning of section 21(1)(b) of the Telecommunications Act 1986) between the Defendant’s network and the networks of the Plaintiffs for the purpose of enabling all mobile telephone customers of the Defendant to have full access to the long distance telephone service offered by the Second Plaintiff.”*

7. I will hear counsel as to costs.

Dated this 18<sup>th</sup> day of October

\_\_\_\_\_  
KAWALEY J