



BERMUDA
**REGULATORY
AUTHORITY**

**Bermuda Telephone Company
MAIA 15% Discount Application
(Business Broadband and Leased
Lines)**

ORDER

Matter: AI- 1624

Date: 3 April 2014

Introduction

1. On 7 August 2013 the Regulatory Authority (the 'RA' or the 'Authority') issued a General Determination regarding Obligations for Operators with Significant Market Power (the 'Remedies GD'). A significant Obligation placed on BTC by the Remedies GD was the requirement that it enter into a Model Access and Interconnect Agreement ('MAIA') with any ICOL holder who requests on terms that include a 15% discount on the retail price ('the Retail Minus Discount') on certain services.
2. The MAIA is a contract setting out the terms upon which an operator with Significant Market Power offers wholesale access and interconnection services to other operators. The MAIA was negotiated between the parties with every ICOL holder being given the opportunity to comment on each version before publication. Through the various rounds of communication, contention and debate over how certain terms of the MAIA would be applied to particular services.
3. One of the main areas of contention has been whether the 15% discount should be applicable to Leased Lines and Business Broadband Services and, if so, to what extent should the discount be applied to these services. The Bermuda Telephone Company Limited (BTC) and Link Bermuda Limited (Link) were the most active parties on the debate surrounding this issue.
4. The purpose of this Order is to clarify the manner in which the 15% discount will apply to Leased Lines and Business Broad Band Services subject to the MAIA between BTC and any ICOL holder, and in particular Link. Enclosed with this decision at Annex 1 is an overview of the scenarios arising between Link and BTC (who are the protagonists in this debate) and sets out how the discount will apply to particular services under these various scenarios.

Legal Basis

5. This Order is made pursuant to the Regulatory Authority's (the 'RA' or 'Authority') power under section 63(1)(c) of the Regulatory Authority Act 2011 ('the RAA') to issue orders that clarify the application of an administrative determination.
6. For the avoidance of doubt, the publication of this Order to the relevant parties shall serve as written notice of the Order to them pursuant to RAA section 63(2).

The Contention

7. After several rounds of consultation and review, on 27 December 2013, the RA issued a Final Decision on BTC's MAIA (Core/Residential). This Decision tackled many of the issues raised by ICOL holders regarding BTC's proposed final MAIA but largely left the issue of business pricing under the MAIA to be negotiated between the parties save for this statement at paragraph 8 of the 27 December 2013 Decision;

“For the avoidance of doubt the Retail Minus 15% pricing structure is applicable only to terminating segments of leased lines (i.e. data tails) but not transport.”

8. Both BTC and Link Bermuda expressed concern at this portion of the December decision. Link complained that the limiting of the application of the discount to data only and excluding the transport section ran contrary to the Remedies GD and sought an application of the discount across all portions of the wholesale business service. BTC's complaint was more limited, arguing that there should be a split in the application of the discount to data and transport but noting that there was no such underlying infrastructure in Bermuda, BTC sought to convince the RA that a better approach was that BTC should be allowed to apply the Retail Minus Discount to only part of the data circuit provided to Link depending on its specific use.
9. BTC and Link were invited to give their views on the application of the discount to business services (Broadband and Leased Lines) at a mediation, which took place on 30 December 2013. The RA considered that the best opportunity all parties had at arriving at a clear solution was to allow Link and BTC the chance to negotiate a commercially workable agreement on their own. At the end of the mediation the parties had not yet reached full agreement on the issue. Link still argued that both data and transport should be entitled to the Retail Minus Discount. BTC argued that the discount should only apply to a circuit that was (a) a SMP service and (b) the portion responsible for delivering the service to the end user. The parties agreed to put forward proposals and counterproposals on the matter in an effort to resolve the question of the discount.
10. The Parties met independently of the RA on at least one occasion after the December mediation with a view to resolving the differences between them. Unfortunately, they were not able to come to terms. It now falls to the RA to clarify, based on the information it has been provided by both parties, and in accordance with its own Decisions and Determinations, the way in which the Retail Minus Discount structure is meant to apply to the various scenarios faced by Link and BTC.

Order

11. Pursuant to its power to do so under section 63 of the RAA, the Authority hereby Orders that the application of the Retail Minus Discount to the offer of Leased Lines and Business Broadband services by BTC to any ICOL holder under its MAIA will be applied in the manner set out in Annex 1 in so far as is various scenarios are relevant.

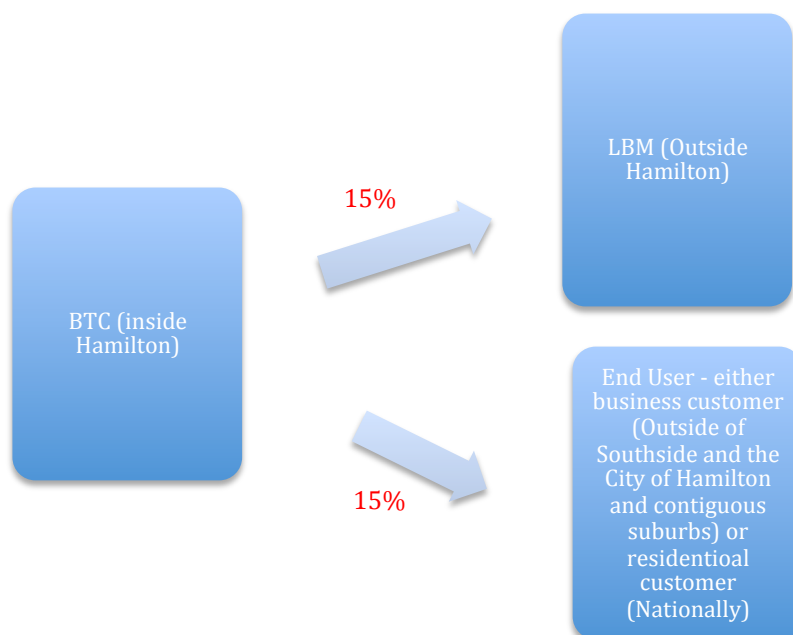
ANNEX 1

Broadband (Business and Residential)

1. The provision of Broadband Access Services to an end user outside of the city of Hamilton requires:
 - a. A circuit from BTC's central office to the end user
 - b. A circuit from BTC's central office to Link's Devonshire facility, which includes their ISP center.

In order to provide these services, both circuits are required. Thus, Both circuits are subject to the 15% discount

2. Broadband Access Services includes back haul and data stream aggregation service terminating at a competitive access provider's premises. Thus an interconnection link, or portion thereof, between BTC and LBM that is being used to provide back haul and data stream aggregation service for both business and residential Broadband Access Services is subject to the 15% wholesale discount, where applicable under the Remedies GD.
 - a. For retail business services, this refers to wholesale Broadband Access Services utilized for the provisioning of retail broadband business services outside of Southside and the City of Hamilton and contiguous suburbs;
 - b. For retail residential services, this refers to wholesale Broadband Access Services utilized for the provisioning of retail broadband residential services nationally.
3. Broadband Access Services used for provisioning broadband services in the SMP market are subject to the 15% discount. For retail residential users nationally, and for business users located outside of Southside and the City of Hamilton and contiguous suburbs, , thus, since the end user (whether business or residential) is outside of the city of Hamilton, the whole circuit from the End-user's premises all the way to the competitive access provider's termination point (i.e. LBM in Devonshire is subject to the 15% discount.
4. Starting Point: Competitive access provider (i.e. LBM)
5. Termination Point: End User



Leased Lines

1. Any leased line, excluding those used by a competitive access provider for the provision of broadband access services circuit running from a competitive access provider's termination facility to BTC's Central Office in Hamilton or BTC's Paget exchange used to provision leased line services (as these are defined in the Market Analysis and the Remedies GD) to end users in Bermuda is considered transport, and is not subject to the 15% discount.
2. The 15% discount should only apply to the wholesale provisioning of
 - a. All low speed leased line terminating segments across BTC's network
 - b. High speed leased lines involving points of connection between end-user locations that are both inside and outside the SMP market , the 15% Discount would apply to that portion of the link running from the BTC central office outside the SMP market to the end-user location within the SMP market (for example, a high speed leased line service providing a link between a bank's branches outside of Hamilton and the bank's main office in Hamilton).
 - c. High speed leased lines involving points of connection between end-user locations that are entirely located inside the SMP market , the 15% Discount would apply to that portion of the link running between each end-user location (for example, a high speed leased line service providing a link between a bank's various branches outside of Hamilton)
3. The 15% discount should not apply to
 - a. High speed leased lines involving points of connection between end-user locations located entirely within the city of Hamilton and contiguous suburbs or Southside (for example, a leased line service which provides links between a Bank's headquarters and satellite offices located inside of Hamilton)

4. Starting Point: BTC Termination Point: End User and/or branches

