



COMMERCE COMMISSION

Commerce Commission
P. O. Box 5031, Raiwaqa,
Suva Level 1, Garden City,
Carpenter Street, Raiwai,
Suva

Chairman: Dr Mahendra Reddy
Phone: 3372 178
Fax: 3372 389
Email: sbaba@commcomm.gov.fj
Website: www.commcomm.gov.fj

PRICE AND ACCESS DETERMINATION FOR SOUTHERN CROSS CAPACITY & NETWORK

Final Determination

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By

Commerce Commission

PRICE AND ACCESS DETERMINATION FOR SOUTHERN CROSS CAPACITY AND NETWORK**1.0 Background**

- 1.1 There exists a plethora of studies that link the rate of growth and development of both small and large economies to the level of ICT development.
- 1.2 The level of ICT penetration within a country depends on a number of factors and one of the most important factor is Fiji's connectivity to the global economy.
- 1.3 Contemporary Fiji is connected to the global economy via the Southern Cross Cable (SCC).
- 1.4 The SCC is a submarine fibre optic cable network connecting Australia, New Zealand, Fiji, Hawaii and points on the West Coast of the USA. *This network* is operated by a privately-owned New Zealand company named Southern Cross Cables Limited (SCCL); whose shareholders are Telecom New Zealand (50 %), SingTel (40 %) and Verizon Business (10 %).
- 1.5 In 1999, FINTEL signed the agreement to land the Southern Cross Cable Network into Fiji. *This was after US\$30 million investment to ensure that Fiji has access to an optic fibre system to link Fiji to the rest of the world giving an insight on the unrivalled system in the region and also placing Fiji at the edge of technology.*
- 1.6 The SCCN was commissioned in November 2000 which saw the placement of FINTEL and Fiji as a competitive player on the global economy. It 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. *The cable* is faster and *carries* more bandwidth than satellite.
- 1.7 However, ICT penetration in Fiji's remain at an early stage of development. The World Bank, measuring various small island states ICT sector quality and performance using 2007 data, demonstrates that Fiji ranks very poorly despite landing the Southern Cross Cable. Fiji has 151 Bits per second per person while countries like Barbados has 1766 Bits per second per person. Therefore, ICT penetration remains one of the major priority of the Government of Fiji.
- 1.8 There are number of impediments to ICT penetration in Fiji including electricity connectivity, affordability of computers. However, equally important is the access and price of bandwidth. In a report prepared by IDATE for the European Commission titled "Regulatory, Infrastructure and Tariff Aspects of Electronic Communications and Broadband Connectivity in the OR's (Outermost regions): A Comparison of the current situation with that in the rest of the European Community and Neighboring Countries", IDATE notes that:

"The excess cost of intercontinental telecommunication links [to the outermost regions] imposes significant constraints on competition development, network deployment and service availability, quality of service offered and the reliability of international electronic communications".

1.9 Pricing of bandwidth can be brought to acceptable levels by either fostering competition at the international gateways and submarine cable landing stations or regulating access and pricing if a non competitive market scenario prevails. As stated in the International Telecommunications Unions (ITU) report titled “Trends in telecommunications Reform 2008: Six Degrees of Sharing”, in countries where regulators had acted to introduce competitive access to international gateways and submarine cable landing stations, a number of growth enhancing benefits result. These include:

- 1.9.1 Increased investment and economic growth;
- 1.9.2 Greater choice of international connectivity providers;
- 1.9.3 Lower prices for international communications;
- 1.9.4 Increased international bandwidth; and,
- 1.9.5 Faster market growth via increased traffic and use.

1.10 The above thus provides a case for regulating the price of bandwidth sourced from FINTEL and also ensuring that those operators who would like to have direct access to the Southern Cross Cable Network are able to do so.

2.0 Overview of FINTEL

2.1 Fiji has had a long history of connectivity with the rest of the world via submarine cable since the turn of the last century and had seen the four generations of cables that landed at Vatuwaqa landing station, which is the main housed facility for both submarine and satellite gateways. Conversely, it was developed as a hub to offer a variety of innovative services including voice, data, internet, video conferencing and television in and out of Fiji.

2.2 FINTEL plays a vital role in the provision of leading-edge technologies and services that enables Fiji to produce innovative goods and services of higher value. Telecommunications markets are dynamic and characterized by technological progress and uptake of new technologies.

2.3 FINTEL is a private Company, jointly owned by the Government of Fiji (51 %) and Cable and Wireless Plc of UK (49 %) and was licensed by Government to provide Fiji’s international telecommunications services to the global and into the domestic network.

2.4 Under the previous industry regime, FINTEL held a 25 year exclusive International Access License from 1990 to 2014 which came to end in 2007 after the anticipation of government reforms to open the market for competition in telecom industry; which endorsed the FINTEL to get in Mediation process to reach an agreement via Radisson Accord. In accordance with the 2007 Radisson Accord signed with the government of Fiji, and the issuance of the telecommunications promulgation 2008, FINTEL’s gateway exclusivity ended on 17th July 2009, giving carriers liberty to use gateway of *their* choice.

2.5 Additionally, necessary provision for reforms were initiated with an amendment of Commerce Act to achieve a review of telecommunications prices, which the Commerce

Commission accordingly reviewed the prices of products and services offered, via two price determinations in 2005 and 2007¹.

2.6 In addition, FINTEL's investment for the landing of the Southern Cross Cable in Fiji is governed by a long term contract between SCCL and FINTEL for the accommodation, operation and maintenance of the cable terminal.

2.7 The wide-range of gateways to deliver international services are outlined as follow:

- 2.7.1 FINTEL gateway – maintains an international gateway that has the capability to provide services both via satellite and submarine cable connectivity.
- 2.7.2 TFL gateway – that is capable of providing satellite based services such as Yaqara satellite station which was initially for domestic services but now carries international services as well.
- 2.7.3 Digicel gateway – the Digicel network, *brought into service in 2008, has its own satellite earth station and is an international gateway.*

3.0 Concerns of Network Operators Sourcing Bandwidth from FINTEL

3.1 Operators have raised two keys issues with the Commission:

- 3.1.1 That the bandwidth price levied by FINTEL is way above a competitive market price and thus directly affecting the ICT penetration in Fiji via a high retail price;
- 3.1.2 That given the Telecommunications sector is now liberalized, FINTEL must now allow operators source bandwidth directly from SCCN and internet and backhaul capacity from other providers thus bringing down prices to Fiji consumers as well as increasing ICT penetration;

4.0 Concerns of FINTEL

4.1 FINTEL's gateway is now in direct competition with facilities provided by other providers, which significantly offsets the substantial market power between a wholesale and a retail provider with the latter now having access through their own gateway facilities. The scope of the review should appropriately address this.

4.2 FINTEL provides co-location services to various suppliers and currently working with operators for future synergies to take advantage of FINTEL's positioning and its ongoing plans are to provide operators seeking services and access to its cable landing station, which FINTEL is happy to accommodate within its Landing Party Agreement. (LPA)

¹ Also in 2008, the *Telecommunications Promulgation 2008* was implemented together with the *Amendments to the Commerce Act* to provide the necessary legislative framework for the telecom industry reform to be effective.

- 4.3 As part of its business model, FINTEL endeavors to maintain costs and prices that are commercially viable and comparable if not competitive with comparable markets. In terms of access to the SCCN, the market is open and other *Telecommunication companies (Telco's)* can gain access via LPA's² with SCCL.
- 4.4 FINTEL has stated that they would welcome any regulation of gateways that would enhance and promote the obligations set out in section 3 of the telecommunications Promulgation 2008. They have reaffirmed their continued support for the ongoing reforms and the promotion of the objectives set out under section 3 of the Telecommunications Promulgation 2008.

5.0 Legal Framework

- 5.1 The international telecommunications market was opened up on 17th of July 2009 in accordance with the terms of the Radisson Accord and after the coming into legal effect of the Telecommunications Promulgation of 2008 on 1st August, 2008.
- 5.2 The main purpose of the Telecommunications Act is to regulate the supply of telecommunications services⁴. While various parts of the Act have specific purpose statements, the general theme from this statement is the promotion of competition in telecommunication industry to end-users within Fiji. The Act also established the regulatory framework for telecommunications service obligations.
- 5.3 Radisson Accord is a 'Settlement Deed', signed between *Vodafone Fiji Limited (VFL)*, *Telecommunications Fiji Limited (TFL)*, FINTEL, *Amalgamated Telecoms Holdings Limited (ATHL)* and the Government of Fiji. The Radisson Accord Agreement which was signed between VFL, TFL, FINTEL, ATHL and Government of Fiji, expired on January 17th 2010. The government stated in Radisson Accord that, government will procure that for a period of 18 months from the effective date of Radisson Accord, no person shall be issued a license which competes with FINTEL's International Gateway Rights.
- 5.4 "SCCL Landing Party Agreement": By agreement with SCCL, FINTEL is the authorized Landing Party agency in Fiji that provides backhaul services into the Fiji Network. It is also through this agreement that FINTEL is responsible for the operation and maintenance of the cable landing station in Fiji. FINTEL's obligations to operate, manage and maintain the cable station as per the LPA also requires that it also provide international connectivity to any party requiring international access from the same to its system as required by its license, hence the current status of operation.

² 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.

⁴ See "Promulgation 2008", Section 3.

6.0 Substantial Market Power Study

6.1 On the 4th of March 2010, The Commission undertook a study to examine if FINTEL had Substantial Market Power in relation to control of the Landing Station where Southern Cross Cable lands. The study concluded on 14th April, 2010 and it found that FINTEL had Substantial Market Power in relation to its control of the Landing Station. The Commission concluded that such SMP over the Landing Station could be detrimental for the Country as demonstrated by prevailing high bandwidth price offered to operators obtaining bandwidth from FINTEL.

7.1 The Review

7.1.1 The Commission having undertaken an extensive and thorough review of the current pricing model for the SCC bandwidth and the access to the SCC is satisfied with the process being fully exhausted to ensure that there is objectivity in the outcome.

7.1.2 The process involved a much wider consultation with the industry, operators and various other stakeholders including the Cable owners in Southern Cross Cables Limited (SCCL).

7.1.3 The Commission is pleased that the review clarified on the many complex issues relative to the nature of Cable technology, and that confirmation is received that it is not possible to add another landing or a spur to the current cable network in order to satisfy the competition model.

7.1.4 The Commission also noted that given the single landing point at the Fiji International Telecommunications Limited (FINTEL) Cable Station in Vatuwaqa, vulnerability require top level security arrangements are necessary to ensure that the availability of connectivity to the SCC remains a priority for Fiji and its people.

7.1.5 It has also being confirmed that the landing station has been listed a National Security Risk A location and hence, the necessity to expend on maintaining an appropriate level of security so that Fiji remains connected to the global markets.

7.1.6 The Commission then notes that there are two keys issues to be examined: the pricing of the bandwidth from FINTEL and direct access to the SCC.

8.0 Pricing of Bandwidth

- 8.1** The Commission having exhausted its review of FINTEL’s cost structure and pricing models with key reference points to the SCCL’s Capacity acquisition costs for the Bandwidth products and other suppliers marketing the same, has decided that the price determination be scheduled for a staggered and glide path approach.
- 8.2** The Commission also considered the LRIC cost model approach under the replacement cost methodology using the minimum acquisition requirement for the purchase of a new STM4, the price determination for the bandwidth products are as listed in schedule I below.

Schedule I: Products and Price Determination (F\$) per Meg of Bandwidth per Month

	FINTEL Current Rate	FINTEL Rate Effective 1/7/2010	FINTEL Rate Effective 1/1/2011	FINTEL Rate Effective 1/7/2011
IP Transit (Australia)	832	600	540	420
IP Transit (USA)	1300	459	413	360
IP Transit – Premium	843	750	675	550
IP Transit Plus (Australia)	998	715	644	504
IP Transit Plus (USA)	1560	550	495	432
IP Transit Plus Premium	1012	900	810	710

- 8.3** The price determination recognizes that future price reviews are dependent on the market economy of scale and the Commission will undertake a further review in 12 months time.

9.0 Access to the Southern Cross Cable Network

- 9.1** The Commission is satisfied that access to the SCC network is appropriate and possible to promote competition and it has therefore decided that operators can have access to SCC network subject to normal commercial trading terms and conditions which are stated in this determination.
- 9.2** Access to the SCC network, for the purpose of this determination is defined that “any operator may choose to procure and purchase or lease capacity from SCCL or any other supplier of capacity on the SCC network subject to the normal commercial trading terms and conditions for FINTEL to facilitate the access requirement.

9.3 This access facilitation is subject to the operator having satisfied all the following requirements:

- 9.3.1 Landing Party Agreement process for the landing of capacity;
- 9.3.2 Facilities interconnect technical protocol for co-ordination of access;
- 9.3.3 Commercial terms and conditions obliging FINTEL to provide;
 - 9.3.3.1 All facilities interconnect services;
 - 9.3.3.2 Ongoing operations and maintenance support required of the Landing Party;
 - 9.3.3.3 Co-locations services that provides for the sustainability of the access long term.

9.4 On application by a third party, FINTEL is obligated to facilitate access for the landing of an operator's capacity and the delivery of this shall be within 6 weeks.

9.5 FINTEL shall undertake a project refurbishment and configuration to accommodate for Customers Co-location and facilitate access without compromising the LPA obligations.

9.6 Commercial Terms and Conditions

- 9.6.1 The Commission, having consulted widely on this matters with all the stakeholders including Southern Cross Cable Limited and is satisfied that Facilities Interconnect Services incurs ongoing Operations & Maintenance Costs and therefore entitles FINTEL to recoup such costs;
- 9.6.2 For the purpose of making this determination, Operators will be charged for all costs of facilitating the access, operations and Maintenance Costs for sustaining the access and co-location costs for hosting all customer equipment in the designated customer area and including utilities.

9.7 Determination of Commercial Terms & Conditions

- 9.7.1 Co-ordination of Access Approval & landing of Capacity (One-Off-Charge): This is a one-off-charge and attracts a 20% of Capacity Acquisition Costs using the SCC limited price list. Where the operator chooses a lease only arrangement for bandwidth from SCC limited or another supplier of SCC network capacity, the charges shall be calculated as if the operator has purchased the same and shall attract a 20% one-off-charge.

- 9.7.2 Facilities Interconnect Services: Facilities Interconnect Services is an ongoing or recurring charge for the everyday operations and maintenance of the Operator's Landed Capacity and shall attract a monthly O&M cost component based on the overall Maintenance costs for the facility. The Charge formula for this service shall be calculated based on the volume of capacity landed into the FINTEL Cable station and interconnected to the system. A determination for this charge shall attract a rate of \$4,000 per STM1 per month. This rate will be reviewed in 12 months time based on the costs of providing this service.
- 9.7.3 Co-location Service: Co-location charges are a normal commercial term and condition where Operators equipment are housed on the principal's property and shall attract charges for accommodation, utilities and overheads. Co-location for accommodation of equipments shall attract a rate charge of F\$125 per square footage per month.

10.0. Effective Date

- 10.1 This determination will take effect immediately with specific dates stated in this Determination.

11.0 Ensuring Flow on Effects from this Determination

- 1.1.1 The Commission notes that the reduction of Bandwidth prices and the move towards a competitive market must ensure that benefits will pass on to the end user.
- 11.2 The Commission requires that all internet providers register their retails prices with the Commission on a quarterly basis.
- 11.3 The Commission further cautions that if it does not see retails rates falling in line with the fall in the wholesale rate, then it will have no option but to regulate retails prices as well.

11.1. Impact of this Determination

This determination will make substantial contribution towards growth and development of Fiji's Economy. It will:

- Increase ICT penetration in Fiji thus allowing for ease of access to education materials.
- It will open up new markets for the business sector.
- It will reduce costs of internet access to internet services for the education and business sector and thus contributing to reduction in units costs.

This determination will also be a catalyst for attraction of new types of businesses to Fiji's shores. In particular, Fiji will now witness increased proliferation of Business Process Outsourcing (BPO) operations. Fiji has a number of BPO linked critical factors to its advantage such its close proximity to major markets like Australia and New Zealand, convenient time zone, relatively high literacy rates and endowment of English speaking workforce and good connectivity to the rest of the world.



Dr Mahendra Reddy
Chairman
4th June, 2010



Ms. Leba Mataitini
Commissioner
4th June, 2010



Mr. Krishan Shah
Commissioner
4th June, 2010