

BEFORE THE PUBLIC UTILITIES COMMISSION

**In the matter of the Public Utilities
Commission Act 1999, No. 10 of 1999**

-and -

**In the matter of a complaint filed by
Swansea Industrial Associates (SIA)
against The Guyana Telephone and
Telegraph Company Limited (GT&T).**

PRESENT WERE:

Prem Persaud C.C.H.	-	Chairman
John Willems A.A.	-	Member
Chandraballi Bisheswar	-	Member
Badrie Persaud	-	Member
Mr. A. Wilson	-	Deputy Secretary/Legal Officer, PUC.
Ms. J. Ganpatsingh		Financial Analyst, PUC.

APPEARANCES

Swansea Industrial Associates	-	Mr. Sanjeev Datadin, Attorney-at-Law
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Guyana Telephone & Telegraph
Co. Ltd

- Mr. K.S. Massiah, S.C.,
Attorney-at-Law
Mr. M.G. Fitzpatrick S.C.
Attorney-at-Law

DECISION

Swansea Industrial Associates (SIA) is a company, which sells cellular phones in Guyana.

Guyana Telephone & Telegraph Company Limited (GT&T) is a limited liability Company carrying on business in this country, and is a public utility.

SIA is not a public utility. It has filed a complaint that GT&T is engaged in unfair trade practice in that GT&T also sells cellular phones in the country but waives the activation charges for anyone who purchases sets from it, whereas it charges other customers who purchase sets from SIA an activation fee of \$10,657.00

We mentioned that SIA is not a public utility but there is nothing to prevent it from initiating these proceedings. Section 52(1) of the Public Utilities Commission Act, No. 10 of 1999 provides for a complaint under the Act against a public utility to be made by the Minister or any person including any other public utility having an interest in the subject matter.

The facts which propelled this application before the Commission are not in dispute. But GT&T insisted and maintained that it has done nothing which can be deemed unfair practices, but rather it is within the scope of the Company's business to increase its subscriber base. By offering the incentive to the public, that is to say, the waiver of the activation fee, that is likely to influence more persons to purchase their sets. GT&T urges that the essence of marketing comes into play and it will not subsidise SIA or any other business in a competitive environment.

The offer to waive the activation cost was designed to stimulate customer base growth by lowering the cost of accessing the service; growth in subscriber base will lead to an increased demand for cellular handsets, thereby allowing for increased sales.

No one can dispute the logic and reason which inform such concept: But SIA doth protest and claims unfair trade practices and not playing on a level field:

This Commission is prepared to encourage healthy competition and fair dealings and in the process may remove obstruction to the growth of competition which will accrue to the benefit of the consumer whilst at the same time protecting the interest of the utility.

In terms of section 21(2) of the Act, our decisions and orders shall be fair, in accordance with the Act and other written laws in operation in this country: So let us look at how the law guides us in the discharge of our function with respect to the application by SIA.

The Commission by Order dated 20th June, 1995, No. 2/95 fixed the rate of \$10,657.00 for which GT&T should impose for the activation of a cellular phone. That order is extant. And section 34 of the Act provides that no public utility shall provide to any person any service at a rate which is unduly preferential or discriminatory. A question which we have to resolve is this: Having regard to the fact that GT&T charges a fee from him who does not purchase a phone from it, and waives that fee from someone who purchases a phone from GT&T, is that act of GT&T discriminatory?

We mentioned earlier that no one can properly challenge the motive from GT&T's act in an open and competitive market, and with the object of increasing its customer base with respect to cellular phones. It seems to us, however, that the fly in the ointment, so to speak, is that GT&T has at the moment exclusive right (or the monopoly) to activate the phones: No one else has that facility and capable of doing so. That, complains, SIA is not operating on a level playing field: because unless GT&T activates the set, it will be useless.

We are of the judgement that GT&T is using its monopoly to unduly and unfairly influence the market in its favour. If another public utility had the facility, and the right and licence to activate cellular phones, then other considerations come into play, and they will be able, on an equal footing, to compete with each other.

We acknowledge that we are not infallible in our reasoning and if we are wrong for the reasons we advanced, then we go on to consider still, the other aspects of the legal position.

Section 40 of the Act mandates that no public utility shall, directly or indirectly, demand or receive, for any service provided by it, a greater or lesser rate than the rate specified in the tariffs of such public utility applicable thereto, but it shall be lawful for a public utility, with the permission of the Commission, to demand and receive from a consumer any special rate agreed to by the public utility and such consumer.

There is no evidence that the rate fixed by the Commission for the service of the cellular telephone has been varied, neither is there any evidence that the Commission had permitted GT&T to demand and receive any special rate from any customer.

We must add that GT&T had misconceived the complaint made by SIA. In its written submission dated August 9, 2000, GT&T in its final paragraph submitted that: As stated above GT&T believes that handsets not being a regulated item, the price at which they are sold, ought not to fall within the purview of the PUC. SIA has not complained about the cost of the handsets; it has complained about the charges for activating the sets.

ORDER

We find therefore, in the circumstances that:-

- (a) GT&T has been engaged in preferential practice with respect to activation charges.
- (b) GT&T had been receiving a lesser rate than the rate specified in the tariffs applicable thereto; without the approval of the Commission, in breach of Section 40 of the Public Utilities Commission Act, No. 10 of 1999.

Dated this 10th October, 2000.


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Prem Persaud C.C.H.

- Chairman


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John Willems A.A.

- Member


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Chandraballi Bisheswar

- Member


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Badrie Persaud

- Member

