



Digicel

Digicel Response to the Consultation on Electronic Communications (Dispute Resolution) Regulations

15th August 2016



We thank you for inviting Digicel to provide its comments on the draft Electronic Communications (Dispute Resolution) Regulations. Digicel is of course available, and would be happy, to discuss our submission further.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the draft Electronic Communications (Dispute Resolution) Regulations or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to: -

Nadia Alleyne
Legal and Regulatory Manager
Tel: +1 246 266-7414
Email: nadia.alleyne@digicelgroup.com



General Approach

Policy-makers and regulators worldwide are recognizing that effective dispute resolution is an increasingly important objective of telecommunications policy and regulation. Failure to resolve disputes quickly and effectively can: Delay the introduction of new services and infrastructure; block or reduce the flow of capital from investors; limit competition, leading to higher pricing and lower service quality; and retard general economic, social and technical development.

In this converged environment, more than ever, there is a need for predictability, transparency and speed of decision making when it comes to dispute resolution. The speed of technological and market change is requiring that faster- paced decision making in disputes.

In general Digicel supports the Draft Electronic Communications (Dispute Resolution) Regulations. The establishment of a Tribunal independent of the Commission to adjudicate on matters paves the way for a more transparent and predictable regulatory regime which is more likely to result in outcomes which balance the needs of consumers with the needs of Operators. However, establishment of an Independent Tribunal, is likely to result in increased costs which must ultimately be borne by consumers. Given that the countries to be covered by the proposals are small in an economic sense, there is a real risk that the increased cost of regulation will be disproportionately high compared to the overall benefit that is delivered.

General Comparison of clauses in the Telecommunications (Dispute Resolution) Regulations and Electronic Communications (Dispute Resolution) Regulations

For the most part, the provisions of the current regulations, have been replicated in the proposed regulations. Digicel welcomes the slight modification proposed in clause 21 (1) where the Respondent has been given 18 days to present a notice of appearance as oppose to the current 10 days. A fair and balanced dispute resolution process is important for the effective operation of any regulatory regime.

However, we must emphasize that a best practice dispute resolution process should be simple, allow appropriate stages so that matters can, wherever possible be resolved between the Parties, and encourage Parties to agree on a process that suits them if the dispute reaches the Tribunal. Decision making procedures have to be scrutinized so that an emphasis on due process does not result in losing sight of the imperative of quick and effective decision making that allows the sector to progress.



Digicel suggests a pre-screening stage by the NTRC to establish that there are legitimate prima facie grounds for the dispute. The NTRC should have the right to determine the dispute by advising the complainant that there are no substantive grounds for the dispute to proceed. This is to prevent the system getting overloaded with frivolous, vexatious, misguided or ill-founded complaints.

The matter must have been raised directly with the licensee and an adequate opportunity to resolve the matter must have been allowed before the NTRC will accept a dispute through the pre-screening process. Again this is an efficiency issue as it encourages both complainants and operators to resolve matters before they enter the formal process.

Clause 20(d) should be amended as follows: *“(d) regulatory or contractual rights, obligations or constraints imposed on any of the parties to the dispute;”* This is necessary to ensure that the proper weight is given to the legal rights and obligations of parties to the dispute.

Conclusion

The development of effective and efficient dispute resolution is an important policy goal, however, Digicel takes this opportunity to reiterate that any intervention by a regulatory body must be proportionate, reasonable and justified. The entire process as proposed by ECTEL is over engineered and is likely to become unworkable.

We reiterate that in the first instance, operators should be given the opportunity to address any complaints with customers directly and only if there is no satisfactory resolution, should the matter be referred to the Tribunal. The Tribunal envisaged under the Draft Electronic Communications (Dispute Resolution) Regulations should not be the same Tribunal that is envisaged by the proposed Bill to assist the NTRCs with decision making as set out in Part 9 Sections 108 to 123 of the Draft Bill. Digicel has reservations about the proposed Tribunal as envisaged by the draft Bill which have been made known to ECTEL previously and we reiterate that this element of the draft Bill needs to be reconsidered.

- END OF DOCUMENT -