



# Digicel

Digicel Response to the Consultation on new Regulations for the Electronic Communications Sector in ECTEL member states

**19<sup>th</sup> April 2016**



We thank you for inviting Digicel to provide its comments on the draft new Regulations for the Electronic Communications Sector. 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 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: -

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## **Procedural issues**

Digicel notes that ECTEL embarked upon this consultation process before the outcome of the consultation process on the Electronic Communications Bill, which will be the enabling legislation for these draft regulations had been completed. This gives rise to a reasonable apprehension of pre-judgement as regards the outcome of the consultation on the draft Bill as the proposed Regulations are based on the original draft Bill before any modifications had been made to it as a result of the consultation.

That ECTEL would put itself in this position is disappointing and can only undermine confidence in the integrity of the regulatory process. This underlines the need for adequate checks and balances within the regulations on the exercise of regulatory discretion.

## **Regulation and Competitiveness**

The National policy advisory board for enterprise, trade, science, technology and innovation in Ireland set out that there is a link between regulation and competitiveness:

- Too many regulations can impose excessive administrative burdens on companies and increase overheads.
- Inappropriate regulations can impose substantial costs or inefficiencies on both specific sectors and the wider economy.
- Bad regulation can lead to a misallocation of resources, higher costs and prices and reduced innovation.
- Regulatory reform can lead to productivity improvements that substantially exceed the normal productivity increases achieved in the business sector.

These observations in a small, open, island economy surrounded by much larger trading partners are equally applicable to the ECTEL states.

The evolution in technology and services that has happened since the original ECTEL Act was passed and the undoubted scale of the changes that will happen during the currency of this new proposed legislative framework will be profound. Care must be taken in the formulation of this new framework to ensure that it delivers on the potential benefits and avoids the pitfalls outlined above. While many of the proposals which are being consulted on are welcome Digicel has a



number of concerns with the proposed Primary and Secondary legislation as currently drafted. We believe that with some careful and considered amendment a new regulatory framework can be finalised which will well serve consumers, policy makers and licenced service providers as we move forward into a “converged world”.

We would welcome a collaborative engagement with ECTEL to identify and design the changes required to equip the entire electronics communication sector to take fullest advantage of what the future may bring.

### **Consultation Question**

Who are you?

Please identify yourself. Are you a regulator, a Stakeholder, interested party or other operator?

### **Digicel Response:**

Digicel is a leading global communications provider with operations in 32 markets in the Caribbean, Central America and Asia Pacific. After more than 14 years of operation, total investment to date stands at over US\$5 billion worldwide. The company is renowned for delivering best value, best service and best network.

Digicel is the lead sponsor of Caribbean, Central American and Pacific sports teams, including the Special Olympics teams throughout these regions. Digicel sponsors the West Indies cricket team and is also the title sponsor of the Caribbean Premier League. In the Pacific, Digicel is the proud sponsor of several national rugby teams and also sponsors the Vanuatu cricket team.

Digicel also runs a host of community-based initiatives across its markets and has set up Digicel Foundations in Haiti, Jamaica, Papua New Guinea and Trinidad and Tobago which focus on educational, cultural and social development programmes.

We are active in all five ECTEL member states, directly investing the local economies, employing local staff and providing state of the art services to our customers.



## Questions relating to all the draft Regulations

### Consultation Question

Having reviewed the draft Regulations, what are your overall views concerning set of regulatory obligations that may be imposed on operators under certain conditions (for example, but not limited to, after determination that an operator has SMP)? What do you see as the main advantages and benefits? What are your key concerns or misgivings?

### Digicel Response:

The initiative to update the current telecoms legislation is to be welcomed. There seems to be a movement in the direction of evidence based regulation with the proposal to require a market analysis and finding of SMP prior to making regulatory interventions. This approach is in keeping with Regulatory best practice and ensures that regulatory intervention in otherwise functioning markets is limited to those specific instances where there is market failure. However to be effective there must be a much more consistent and robust and explicit enunciation of these principles and practices.

One concern is that these structural changes in regulatory approach have not been consistently reflected in the draft Bill and proposed Regulations. A number of the proposed Regulations appear to prejudge or totally sidestep a market analysis process. For example the provisions in respect of leased lines, the Infrastructure Sharing Regulations and Submarine Cable Access Regulations propose interventions in the market without reference as to whether these interventions are in fact required, are reasonable in the circumstance or are proportionate. Digicel believes that a more coherent approach would be to modify these regulations to being a potential suite of remedies should market conditions require them. This would alleviate the risk of overly burdensome regulation and would allow ECTEL and NTRCs the flexibility to strengthen, weaken or remove obligations should market conditions change over the lifetime of the regulations.

In addition Digicel has concerns that the draft Bill and proposed Regulations fail to properly take account of the fact that electronic communications sector is rapidly evolving and that functional substitutes for many of the services which were formerly offered by licenced operators are also being offered by unregulated service providers. There are proposals in the Regulations to impose arduous obligations in respect of consumer protection and transparency and in respect of competition law only on licenced operators, while their unregulated competitors face no such



restrictions. Either consumers require protection and should be similarly protected in all of their dealings when availing of similar services whom so ever provides them OR they do not need protection and therefore distortive regulation should not be imposed on one cohort of service providers simply because they have licences. In this regard the proposed Regulations are not fit for purpose and require to be reassessed to ensure that they take an adequate forward view of an emerging converged environment for electronic communication services. Failure to do this will destroy incentives for investment and hinder competitive and economic growth.

The proposed Bill takes no real account of the changing nature of the marketplace and the emergence of converged services. There are proposed provisions which will have to be met by locally based licenced operators but which are simply unenforceable against on-line retailers and service providers. These provisions distort competition imposing costs and operational overhead on operators who make a physical investment and provide jobs in the local economy.

The EU and Australia amongst others have recognised that frameworks based on current telecoms laws won't meet future needs and are examining changes to their regulatory frameworks to take account of convergence.

A new Communications Act and associated Regulations which are based on assumptions about old technologies, service and commercial models will disadvantage the ECTEL states compared to those who take a more progressive and forward looking approach.

### **Consultation Question**

Having reviewed the draft Regulations, do you feel that the regulations properly and completely reflect the intentions of the Act (including both the current Act and the anticipated EC Bill)?

### **Digicel Response:**

The proposed Regulations take no real account of the changing nature of the marketplace and the emergence of converged services. There are proposed provisions which will have to be met by locally based licenced operators but which are simply unenforceable against on-line retailers and service providers. These provisions distort competition imposing costs and operational overhead on operators who make a physical investment and provide jobs in the local economy.



At its highest level the goal of the sectoral electronic communication legislation is to promote long term consumer interests, and overall economic development. In the light of foreseeable technological and market evolution the Regulations as currently formulated will not achieve these goals even in the medium term.

### **Consultation Question**

Having reviewed the draft Regulations, do you consider any of the clauses redundant or conflicting? If yes, please provide examples and possible resolutions or suggestions.

### **Digicel Response:**

We have provided detailed commentary on these issues in our responses to the questions on the individual proposed Regulations. In summary we believe there are a number of duplications and conflicts both in the operation and intent of the different Regulations. We would be more than willing to engage in a dialogue with ECTEL and its Consultants to explore how these are best addressed.

### **Consultation Question**

Are there any other key provisions, which in your opinion should be included in the Regulations? If yes, please provide examples and possible provisions

### **Digicel Response:**

The imposition of remedies should build on the Market Analysis approach. The draft Bill and proposed Regulations should have specific requirements that any regulatory intervention be proportionate, reasonable and justified and be no more than is required to address the specific competition problem identified as part of the market analysis process. This will give the required certainty that regulatory interventions will be applied in a consistent, transparent and objective manner with a clear framework for their design.

These checks and balances form part of the best in class regulatory frameworks including those across the European Union and Australia.



### **Consultation Question**

What alternative suggestions if any do you have for addressing issues of competitive growth, fairness, and consumer protection?

### **Digicel Response:**

In terms of competitive growth and fairness it is striking that the proposed regulation and the draft bill take no explicit account of the competitive pressures that licenced operators in the ECTEL States face from unregulated providers offering functionally equivalent services. Assessment criteria for market analysis fail to mention this. There is the imposition of requirements for contact centres open from 5 in the morning until 11 at night (the practical implication of 18 hour opening) while unregulated competitors can make do with email based contact. There is the requirement for complicated and administratively burdensome complaints and redress processes where unregulated competitors do not face this overhead. There are proposed administratively complicated notification and approvals processes for new propositions and changes to existing terms. These are not faced by unregulated competitors.

This unfairness will have a direct impact on competitive growth. It must be addressed if the proposed regulatory framework is to deliver an investment an economic environment where licenced operators who invest in the local economies in the ECTEL states are able to compete with global scale unregulated service providers.

The concept of “same service, same rules” deals with both fairness and competitive growth. If embedded as an underlying principle for the Regulations then a fundamental check would be whether to either impose a requirement on all services providers, both regulated and unregulated, because it was genuinely needed to protect consumers or not to impose it on any service providers because consumers are prepared to use services without these protections. In this regard the proposal to enshrine in secondary legislation consumer protection provisions which may become redundant due to market and technology developments is retrograde. To the largest extent possible obligations should be imposed by the Regulatory bodies following a market assessment of their need and there should be requirement for a reassessment to be carried out in market conditions change. This would ensure that the regulatory framework can evolve in step with the market developments.

While Net Neutrality is positioned as a consumer protection issue within the Regulations this is not its essence. It is the imposition of a particular commercial construct on every player in the



market. This favours US based service providers who do not invest in the Caribbean. It takes away the scope for competitive differentiation where some operators adopt different commercial approaches to the provision of data services. Provided the consumers have transparency, certainty and choice there is no need for regulatory intervention because the customer will decide what offering suits them. Adopting a less restrictive approach to Net Neutrality than the US would encourage innovation and competitive differentiation. Less restrictive approaches have been adopted in the European Union and Australia.

In its “Determination on Internet Neutrality” in 2014 ECTEL only identified blocking and throttling as the substantive issues to be addressed and even then did not propose introducing Net Neutrality rules, preferring instead to rely on competition provisions within a future revised communications Act. There has not been a substantive exploration of policy issues surrounding the much more restrictive and market distorting approach to Net Neutrality set out in the draft regulations and Bill. Because of this there can be no confidence on the part of any market stakeholders (legislators, consumers or service providers) that the specific provisions proposed in the Regulations are actually the appropriate ones for the ECTEL states. The very fact that the proponents of strict Net Neutrality want to eschew this debate indicates that they are concerned that on rounded examination their favoured position will be shown to be flawed. Net Neutrality should be dealt with separately to the development of these Regulations but if there is a desire to include some mention we suggest that no specific provisions are included but instead enabling provisions are put in place to allow the Minister to make Regulations for Net Neutrality if needed in the future. This would allow space for a more rounded assessment of the issues.

## **Questions relating to the Market Analysis Guidelines**

### **Consultation Question**

What is your view of the three cumulative criteria to be used to identify markets likely to be subject to *ex ante* regulation (section 1.3(5))? These criteria are based on the EU framework for regulation of the electronic communications sector.

### **Digicel Response:**

In practical terms it will not be possible for NTRCs to carry out multiple, parallel market definition and market analysis exercises. Some sequencing of them will happen. What is important is that the order in which they are addressed are those which on a preliminary assessment give rise to



the most significant potential concerns. It is Digicel's view that a periodic preliminary review must be provided for in the Regulations which will then be used to determine which markets will and will not be subject to a full market assessment. This would give regulatory certainty and stability to the market. The so called "three criteria test" could be adapted to form the framework for this preliminary assessment.

### **Consultation Question**

The Guidelines also describe factors that the ECTEL and NTRCs should consider in defining relevant markets, including substitutability of supply and demand (section 2.2). What is your view on this method, and do you have any suggestions as to how the description in the Guidelines can be strengthened?

### **Digicel Response:**

Digicel is of the view that a key pillar of any market definition process should be the so called SSNIP test (Small but Significant Non-transitory Increase in Price). This is a well recognised and understood regulatory tool. However the Guidelines should explicitly set out that non-traditional and potentially unregulated services should also be tested for inclusion in the relevant market. In addition such assessment processes should be prospective in nature and take a forward looking account of likely demand and supply side substitutes over the period of the review.

### **Consultation Question**

What is your view of the criteria listed for assessment of SMP? (section 3.2)

### **Digicel Response:**

As with the market definition criteria the criteria for SMP assessment should explicitly set out that non-traditional and potentially unregulated services should also be considered. In addition such assessment processes should be prospective in nature and take a forward looking account of likely demand and supply side substitutes over the period of the review. In this regard there are embedded assumptions in the assessment criteria as regard the indicators of market share and market power. For example the revenues of advertising funded services might be difficult to quantify but such services have very large numbers of users. Where mobile customers have downloaded one or more messaging Apps assessing the market size may not be a simple count of active SIMs. Where customers can switch between the mobile network and wi-fi for data



assessing relative market shares might require that the assessment be approached from an end-user behaviour perspective.

Digicel disagrees strongly with the provision that market shares above 50% are evidence of dominance. In small two or three player markets this is an erroneous assumption. While higher market shares might be indicative of market power they cannot be simply accepted as “evidence”. These may trigger the need for a more fulsome examination but cannot be used in isolation as a basis for making an SMP designation. Therefore word “evidence” should not be used in the Regulations in this context.

### **Consultation Question**

The Market Analysis Guidelines recognize that a Licensee may enjoy significant market power either individually or jointly with others. What is your opinion regarding the approach stated in the Market Analysis Regulations to assess the potential existence of collective dominance by more than one operator and the impact this may have on the market? (section 3.4)

### **Digicel Response:**

The approach as set out in the proposed regulations are closer to an academic description of collective dominance rather than a set of assessment criteria for determining whether collective dominance actually exists in the market. The proposed Regulations outline that in order to make a finding of collective dominance the NTRC should demonstrate that “the outcomes in the market are indicative of results that would arise from tacit coordination”. The Regulations offer no indication of what these outcomes might be. Indeed the criteria set out for assessment include some which could also be indicative of strong competition (such as similar market shares).

As with the criteria for assessment of individual SMP there is no forward looking guidance that in assessing the market non-traditional and potentially unregulated substitutes should be considered.

A finding of collective dominance is potentially an enabler for the NTRCs and ECTEL to regulate the entire market even when it would not otherwise be able to do so on because there is no single dominance. Because of this and to balance the rights of licencees to freely run their businesses with the mandate of the NTRCs to protect competition these provisions must be more tightly defined and adequate checks and balances put in place to protect against un-necessary and unwarranted regulatory intervention in the market.



### **Consultation Question**

What are your views concerning the provisions authorizing the NTRCs or the ECTEL to collect all information they consider necessary to assess market power in a given market? (section 5)

### **Digicel Response:**

In order to carry out a market definition and market analysis exercise ECTEL and the NTRCs will require market information. However the nature and extent of such information requests are a matter of concern to licenced operators. The proposed Regulations outline that NTRCs shall set out the reasons justifying the request. However believes that Digicel that the Regulations should be more explicit requiring the NTRCs to set out why each category of information is required and that NTRCs should only collect the minimum information necessary to carry out the analysis and that this information can only be used for the purpose for which is collected.

### **Consultation Question**

What alternative suggestions if any do you have?

### **Digicel Response:**

Small markets with limited numbers of players and more straightforward service categories are likely to be capable of being analysed with information that is less granular than larger more fragmented jurisdictions with more potential service markets. Digicel suggests that a two stage approach to market analysis be adopted with an initial stage assessment based on high level data. The output of this initial stage would be a list of prospective markets which would justify a more detailed analysis and would allow other markets to be excluded from the need for further examination. This initial stage analysis would also probably yield sufficient insight to potential competition concerns to prioritise the sequence in which detailed market analyses should be carried out

It is Digicel's belief that for the ECTEL states such an approach would in most cases yield robust analytic outcomes.

It is only if the high level data indicates that a deeper analysis is required that the more granular information would be requested. This two stage approach would reduce the administrative



burden on both regulators and operators and would in most cases result in a speedier conclusion of the market analysis process.

## **Questions relating to Wholesale Access Regulations**

### **Consultation Question**

The Wholesale Access Regulations identify the following Wholesale Network Infrastructure and Services, the provision of which may be imposed on a SMP Licensee under ex ante regulation:

- a) Wholesale Access provided at a fixed location;
- b) Passive Backhaul Infrastructure;
- c) Special Wholesale Service
- d) Dedicated Connections and Capacity (wholesale leased lines)

What is your view of the type of infrastructure and services subject to potential access obligations noted in the draft regulation? In your view, are there any other components of infrastructure and/or services that should also be subject to wholesale access obligations where SMP is found?

### **Digicel Response:**

It is Digicel's view that the scope of the potential wholesale access remedies must be expanded to include Wholesale Line Rental and Carrier Pre-Select. Fixed voice services are an important component of the market and there must be viable wholesale inputs available if effective and sustainable retail competition is to be enabled.

### **Consultation Question**

The main goal of this regulation is to provide that Licensees can obtain effective access to the infrastructure and services specified, where such obligations are imposed on a SMP Licensee. In your view, will the regulation provide sufficient clear and concrete obligations to make effective such access?



### **Digicel Response:**

It is Digicel's view that the obligations as set out in the draft Regulations are so generic as to be unenforceable. They would require further specification on foot of the outcome of the market analysis process so that the specific remedy can be tailored against the particular market conditions it is trying to address.

### **Consultation Question**

With regard to Wholesale Access provided at a fixed location

What is your view of the relevance of imposing VULA instead of or in addition to traditional LLU, taking into account the evolution of networks toward NGA architecture?

### **Digicel Response:**

Digicel is of the view that copper based LLU provisions are entirely redundant. In practical terms LLU is used to provide IP based access services. The trend across the wider region and globally towards the use of FTTH or HFC networks to provide such services because of the inherent limitation of copper based technologies means that the investment required to implement LLU based services would simply not be recovered before the service offering became obsolete. Even if it were to be encouraged by ECTEL the development of a fixed broadband market based on copper access would leave the ECTEL states at a serious competitive disadvantage when compared to neighbouring countries where these have instead put in place enablers for FTTH deployment.

VULA is often associated with FTTC solutions where Sub Loop Unbundling becomes impractical or uneconomic. Again the trend across the wider region is to eschew FTTC in favour of HFC or FTTH.

In summary Digicel believes that VULA and LLU might be appropriate market interventions in some circumstances. However in the context of ECTEL the focus should be on remedies on either side of this. Either upstream in the form of duct and pole access or downstream in terms of wholesale broadband access such as bitstream. The potential to impose LLU or VULA remedies should be retained if justified on the basis of future market conditions



### **Consultation Question**

The draft regulations provide that, the NTRCs on ECTEL Recommendation may mandate access to ancillary infrastructure (for example, dark fibre or ducts) in order to promote effective competition. Do you think this provision is useful? Insufficient? Do you have any suggestions to clarify these obligations?

### **Digicel Response:**

Rather than being ancillary infrastructure Digicel is of the view that access to ducts, poles and in some circumstances dark fibre is an essential structural requirement in the market. They represent components of a distinct economic market which lies upstream from the wholesale markets for transmission and broadband access. It is likely that any preliminary assessment of the markets for fixed infrastructure would indicate that they merit a more detailed market analysis.

### **Consultation Question**

The Wholesale Access Regulations provide that NTRCs may require an SMP Licensee to make available Special Wholesale Services (sometimes more commonly referred to as “White Label” services), provided at a discounted price from the retail prices at which the SMP Licensee offers such retail service. What is your view of this provision? Should the Regulations add further detail or specificity, for example as to how the price discount should be calculated?

### **Digicel Response:**

SMP conditions at the retail level are usually the product of upstream bottlenecks in the infrastructure or service market. So called “white label” services do not address these structural issues and are little more than another retail sales channels for the upstream provider. While they may be an appropriate market intervention in some circumstances their imposition should be dependent on a robust analysis demonstrating that their imposition on the market will with specific competition issues in more than a superficial way. To allow for the remedy to be tailored to the specific market conditions the all aspects of it including the discount level should be left to the regulatory to set at the time the at the remedy is designed and imposed.



### **Consultation Question**

With regard to access to Passive Infrastructure:

- i. The draft regulations provide the option to impose access to Underground Facilities such as ducts and dark fiber, or any other passive infrastructure belonging to an SMP operator and needed by other Licensees to provide broadband services. What is your view on these obligations? Which elements of such passive infrastructure should be included in these mandates, and how should they be specified?
- ii. What is your view of the proposed measures to ensure compliance and prevent undue refusal of access requests by SMP Licensees Are the required justifications and technical details that SMP Licensees must provide in support of such refusal appropriate and sufficient?
- iii. More generally, do you have any suggestions to improve the effectiveness of the proposed access obligations to passive backhaul infrastructure?

### **Digicel Response:**

#### **Access Remedies in relation to passive infrastructure**

In terms of Access Remedies there should be an obligation to provide access. This needs to be more than a general obligation to provide access when requested. What is required for it to be effective is a specific obligation to provide access to ducts on defined and standard terms with the offering to be in place within a defined (and short timeframe). Even where such obligations exist significant scope exists for the dominant player to avoid their intended pro-competitive effects by claiming that ducts or poles are full, either by not removing obsolete plant creating artificial capacity shortages or by claiming that available space is reserved of future use. To avoid such gaming a further specification of the access remedy is required which states that if duct/pole space is not available then dark fibre access must be provided on commercial terms that are based on the pro-rated cost of a single fibre pair within a multi-fibre cable.

To ensure that the incumbent does not unduly delay making the access available then there should be a prohibition on it self-supplying new duct/pole access to its downstream operations until the wholesale access service is available.

In addition a Service Level Agreement should be mandated with sufficiently strong financial incentives for non-performance that the incumbent has a positive business case for supplying the service rather than delaying it.



### **Consultation Question**

With regard to the provision of Dedicated Connections and Capacity (wholesale leased lines)

ECTEL considers that this type of access obligation is required to ensure competitive market development and encourage new entrants to the market, by making available affordable wholesale transmission capacity. What is your view of these obligations? Are they appropriate and necessary to support effective new competition? Are the provisions sufficiently detailed and specific to achieve the intended goal?

### **Digicel Response:**

The proposed regulations appear to have prejudged a market definition. There is no assessment of whether the market outlined in Regulation 8(1) actually exists in the form set out. Given the physically small geographies of the ECTEL states it is not clear that the distinction between terminating and trunk segments set out in Regulation 8(2) is appropriate or necessary. Digicel has suggested that as part of the Market Analysis process that a preliminary list of markets to be analysed be developed. If ECTEL has specific concerns regarding the market for leased lines it would be better to include it on this list.

### **Consultation Question**

Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

The mandatory content of Reference Access Offer which SMP operators may be obliged to published (section 10 of the draft regulations);

### **Digicel Response:**

Digicel notes that under the new framework there may be requirements for multiple reference offers (e.g. Wholesale Access, Interconnect and Cable Landing Station) the administrative procedures, such as approve, publication etc., associated with each of these is different. This indicates that the regulations have not been developed as a coherent, integrated document set. The fragmented approach will increase the burden on operators, ECTEL and NTRCs. As such Digicel suggests that a separate coherent proposal on reference offer management and



administration is required which can then be reviewed and commented on by NTRCs and operators.

### **Consultation Question**

Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

The other obligations that may be imposed on SMP operators such as non-discrimination, accounting separation obligations, tariff control;

### **Digicel Response:**

#### **Non-Discrimination Remedies**

Even if access is made available in a timely manner the terms and operational conditions associated with the wholesale service provided to other operators could be significantly inferior to those which the incumbent self-supplies for its own use. This would allow the incumbent to continue to leverage its market power either through forcing inefficiencies and costs into its competitors or by providing itself with a non-price competitive differentiation in terms of quality of service.

To address this there requires to be a non-discrimination remedy requiring that the incumbent treats its wholesale customers no less favourably than its own downstream arms. This extends to the provision of information on new and planned duct and pole routes and incorporating wholesale requirements as well as downstream requirements into the dimensioning of new builds.

There are two approaches to implementing with non-discrimination one is Equivalence of Outputs (EoO). Here the wholesale product does not have to be identical to the internally self-supplied input. Operationally the internal processes and interfaces used to order and manage those inputs might be different to the processes and interfaces used by wholesale operators. The key measure of non-discrimination is that these different inputs allow both the incumbent's downstream arm and the wholesale customers' downstream arms provide equivalent outputs in terms of quality, performance and price. This approach, while appropriate in some circumstances, is very difficult to monitor for compliance. It puts a very high workload on the Regulator in terms of oversight and is likely to give rise to many disputes and complaints. The



incumbent is incentivised to make the external interfaces no more efficient than it can be forced to do and because of this they are unlikely to be consistently as good as the internal processes. In addition there is likely to be additional cost borne by the wholesale operator buying regulated access isn't faced by the incumbent's own retail arm. This is because the external interface into the incumbent will add additional process steps and require higher levels of resourcing compared to the internal vertically integrated processes. Even if retail pricing is identical this gives a margin advantage to the incumbent's retail arm. In circumstances where an EoO approach might be justified then the pricing of the wholesale input must reflect the dis-economies forced on the wholesale customer.

The second approach is known as Equivalence of Inputs (Eoi). In this case both the incumbent's downstream arm and the wholesale operators use the same input. They use the same ordering interfaces and process, the same repair processes and the product/service is identical. Regulatory oversight is vastly simplified. Any bypassing of the common process by the incumbent is a breach. As the processes are identical checking performance in respect of self-supplied orders and wholesale orders is simply a matter of comparing timelines for a given process point filtered by customer. The incumbent is also incentivised to ensure that the wholesale product and its associated processes are as efficient as possible and of the highest quality as they are direct inputs to its own retail business. Incumbents will argue that this approach forces them to incur un-necessary costs in changing its internal processes. This argument has inherent in it the fact that the incumbent enjoys the advantages of vertical integration.

The processes associated with Duct and Pole are low volume, highly manual and readily capable of separation. Any non-discrimination obligation attached to these should be based on an Eoi approach.

### **Accounting Separation**

Accounting Separation is used as a transparency tool to monitor vertically integrated incumbents with SMP for cross-subsidisation. It can be a costly and time consuming exercise. The cost of this must ultimately be borne by the market. In small markets such as the ECTEL states this regulatory tool isn't necessarily appropriate. We suggest that its imposition be subject to a prior regulatory impact assessment which demonstrates a net positive consumer welfare benefit.



### **Tariff Control**

The choice of the particular tariff control to associate with a particular wholesale access obligation will depend on the specifics of the market and the access product. It is Digicel's view that in general the further upstream one moves away from the retail market towards the infrastructure layer the more appropriate cost oriented controls become. The proposed regulations highlight the inefficiencies and duplications in the proposed competition law provisions set out in the draft Bill. The proposal in the regulations is that after a finding of SMP the regulator may impose prohibitions on predatory pricing. However these practices would already be prohibited by virtue of the competition law provisions in the Bill. Abuse of dominance is precisely what properly constructed ex ante remedies imposed on foot of an SMP designation are designed to prevent. The market analysis and remedy imposition process renders these aspects of the competition law proposals redundant.

### **Consultation Question**

The mechanism of dispute resolution, in order to improve the effectiveness of this process.

### **Digicel Response:**

Digicel notes the proposed provisions.

## **11.5 Questions relating to the Infrastructure Sharing Regulations**

### **Consultation Question**

What is your view of the necessity and the applicability of a regulation requiring sharing of electronic communications infrastructure, recognizing that these obligations apply to all Licensees, not only SMP Licensees?

### **Digicel Response:**

These Regulations are incompatible with Regulation 6 of the proposed Wholesale Access Regulations dealing with passive backhaul infrastructure. The obligation to provide such access is imposed under the Wholesale Access Regulations after a finding of SMP or every licenced operator has the obligation to provide access under the Infrastructure Sharing Regulations.



The proposed Infrastructure Sharing Regulations primarily deal with Mobile network infrastructure and apply to all Mobile operators irrespective of whether there is an SMP finding. The Regulations on Access to Network Infrastructure and Wholesale Services which apply to fixed operators require an SMP finding before obligations may be imposed.

To be consistent with the overall thrust of the Market Analysis approach and to be equitable with the proposed fixed obligation the any infrastructure sharing obligations on Mobile operators should be conditional on an SMP finding in the market for the provision of such infrastructure.

The ECTEL states are located in a geographic region subject to hurricanes. Unlike underground infrastructure such as duct which is not subject to wind damage, antenna support structures are subject to such damage. There is a network and service continuity question that arises should very high levels of infrastructure sharing take place in the event of widespread damage to such shared infrastructure the redundancy associated with having multiple infrastructures is a mitigation of the risk of damage due to natural disasters.

High levels of sharing amongst mobile licencees will give rise to a situation where the coverage of various operators is largely the same. This raises the issues as to whether consumer welfare is served by this encouragement of limitations in competitive differentiation.

Instead of mandating sharing other public policy initiatives geared at reducing the barriers to base station deployment should be examined as an alternative. These could include improvements in the regime for planning approvals and consents and making public sector buildings and lands available on suitable commercial terms for Base Station deployment.

In addition simply attaching these access obligations to all licencees may infringe upon their property rights.

### **Consultation Question**

What infrastructure should be subject to such an obligation?

### **Digicel Response:**

It is Digicel's view that only passive infrastructure should be subject to such an obligation. Digicel also notes that there are other providers of such infrastructure who may exercise SMP but who are not licenced operators. An example would be pole routes in the ownership of electricity companies, or the management companies in private residential or business developments. It is



Digicel's experience in a variety of markets with similar characteristics to the ECETL states that this is a material issue and that the failure of the Draft Bill and proposed Regulations to address this does not reflect market realities and means that as currently formulated they will not achieve their intended policy goals.

A number of examples exist from other jurisdictions where such third party providers of infrastructure access have obligations of non-discrimination attached to them once they provide access to one licenced operator. This could be achieved by way of a reasonably straightforward provision in the Primary Act.

### **Consultation Question**

What is your view of sections 6, 7 and 8 of the Infrastructure Sharing Regulations, which provide that the Commission may require the establishment by Licensees of forward deployment plans and may require coordination of such deployment plans (including identification by the Commission of geographic areas where systematic sharing of new BTSs must be implemented by Licensees through measures including framework sharing agreements)?

### **Digicel Response:**

It is Digicel's view that the proposals are overly bureaucratic and administratively burdensome (for ECETEL, NTRCs and operators). If the sharing obligation was focussed on SMP operators then this would allow appropriate processes to be mandated based on the specific circumstances of the SMP.

### **Consultation Question**

What is your view of Section 9, which specifies features required of any new BTS, in order to make possible the sharing of a new BTS with at least one third party operator.

### **Digicel Response:**

The provisions of the Infrastructure Sharing Regulations act as a clear disincentive to new site development as they require such developments to be over engineered with excess capacity that might never be taken up.



In addition the proposals are discriminatory as they do not impose similar conditions licencees who build other types of infrastructure, such as ducts, to build sufficient excess capacity to facilitate sharing.

## **11.6 Questions relating to the Submarine Cable Access Regulations**

### **Consultation Question**

What is your view of the necessity and the applicability of a regulation mandating access and co-location to any submarine cable landing station?

### **Digicel Response:**

In keeping with the broad thrust of the proposed framework which is a move towards evidenced based regulation underpinned by a market analysis approach Digicel believes that while a prima face situation exists where such regulatory obligations might be warranted a more structured assessment must be carried out before they are imposed. Given the indicative market conditions a putative market for submarine cable access should be included on the preliminary list of markets amenable to the market analysis.

### **Consultation Question**

What is your view of the obligation imposed on a CLS Licensee to provide operators seeking access the option to access capacity on an IRU basis **and** on a lease basis?

### **Digicel Response:**

Digicel believes that there is merit in both approaches. The exact nature of the pricing remedy should be designed on foot of a Market Analysis exercise which identifies specific competition issues and the remedy should be tailored to most effectively deal with these.

### **Consultation Question**

Regarding the proposed CLS Reference Access Offer:



Do you have any comments on the time frame for submission of a draft CLS Reference Access Offer to the NTRC within sixty (60) days from the date of commencement of the Submarine Cable Access Regulations?

Do you have any comments on the content of the CLS Reference Access Offer, as described in Schedule 1 of the Submarine Cable Access Regulations?

**Digicel Response:**

Digicel notes that under the new framework there may be requirements for multiple reference offers (e.g. Wholesale Access, Interconnect and Cable Landing Station) the administrative procedures, such as approve, publication etc., associated with each of these is different. This indicates that the regulations have not been developed as a coherent, integrated document set. The fragmented approach will increase the burden on operators, ECTEL and NTRCs. As such Digicel suggests that a separate coherent proposal on reference offer management and administration is required which can then be reviewed and commented on by NTRCs and operators.

**Consultation Question**

Provision of Backhaul Circuits

What is your view of imposing on a CLS Licensee the obligation to provide backhaul facilities and, where another service provider has requested provision of a backhaul circuit, the obligation to facilitate the interconnection between the operator seeking access and the said service provider at the CLS?

**Digicel Response:**

The question of backhaul capacity is linked to the proposed leased line provisions in the Wholesale Access Regulations. CLS backhaul capacity is a specific use for point to point dedicated capacity and the approach proposed risks fragmenting an already small economic market for leased lines.

**Consultation Question**

Do you have any suggestions in order to improve the effectiveness of this obligation?



**Digicel Response:**

The proposed regulations on cable landing stations should be aligned with the proposed Regulations on Market Analysis, Wholesale Access and Infrastructure to avoid duplication.

**Consultation Question**

Co-location: do you have any comments on the obligation imposed on CLS Licensees to provide co-location services as described in clause 17 to 22 of the Submarine Cable Access Regulations draft?

**Digicel Response:**

It is notable that a significant proportion of the draft regulations are more akin to process or procedural provisions and it may be inappropriate to specify these in secondary legislation. It may be more practical to require the Cable Landing Station owner to document a process which would be subject to NTRC/ECTEL approval. This would allow process changes to be made going forward without need legislative changes.

It is not clear why the CLS co-location cannot be dealt with under the Infrastructure Sharing or Wholesale Access Regulations rather than having multiple regulations all dealing with the same issue. This is especially true as Cable Landing Stations are extremely limited in number.

**Consultation Question**

Tariffs: The EC Bill and the Submarine Cable Access Regulations provide that the CLS Licensees shall determine charges on the basis of cost oriented principles. Under this regulation, the NTRC has the authority to impose on offers by CLS Licensees the rates which it has determined by its own cost calculations on the basis of information at its disposal or, in a transitional manner, on the basis of international benchmarks.

Do you have any comment on these principles, or how they should be applied by the NTRCs?

**Digicel Response:**

Digicel believes that such remedies should only be specified in detail on foot of a Market Analysis process that identifies specific competition issues and proposes remedies tailored to deal with these issues.



### **Consultation Question**

Do you have any suggestions on the key issues that should be addressed in the Regulations with respect to the cost accounting methods to be established by the NTRC?

### **Digicel Response:**

The proposed Regulations set out that the accounting methods are to be defined by the NTRCs. Presumably this will be done as part of a consultation process. On that basis there is no need for the Regulations to further specify the requirements as this will be done as part of the output from the consultation process

### **Questions relating to the Retail Pricing Regulations**

#### **Consultation Question**

What is your view of the provisions relating to identification of services that may be subject to retail pricing regulation, due to lack of competition or SMP (sections 6, 7, 8)? Do these provisions adequately reflect the intent of the EC Bill? Please suggest any specific changes or improvements.

#### **Digicel Response:**

In a properly functioning market there is no need for retail price regulation. Even in circumstances where the retail market is not functioning properly direct price regulation is a poor proxy for effective competition.

On its own direct control of prices in a retail market is not an appropriate or sustainable structural intervention in the market. Such direct intervention is at best an attempt to replicate the effects of competition and at worst a form of economic engineering which attempts to manipulate the market in a way that would result in outcomes that would not arise from proper market operation.

Mandating wholesale access in upstream markets encourages sustainable retail competition which is the best way to arrive at retail offerings and prices which are based on consumers' needs.

Digicel believes that the Commission should forebear from detailed and intrusive retail price setting in order to allow an opportunity for competitive effects to manifest themselves. The



situation can be reviewed in the future to ensure that there is no ongoing need for direct retail price controls.

Early and stringent interventions in retail pricing are likely to pre-empt and distort the competitive environment for market entry.

Digicel believes that there should be forbearance from detailed and intrusive retail price setting in the short to medium term. This is in order to allow an opportunity for sustainable competitive effects in the retail market based on the use of mandated wholesale inputs to manifest themselves. The situation can be reviewed in the future to ensure that there is no ongoing need for direct retail price controls.

In terms of the range of services that might be amenable to retail price control Digicel is of the view that these should be limited to those where there is a finding of SMP in the relevant retail market. By definition if there is no SMP then the non-SMP operator cannot act independently of the market and so faces competitive constraints on its range of action in terms of pricing. To regulate the retail prices of non-SMP operators would represent an unwarranted, unjust and overly intrusive form of regulation which would have the effect of limiting the scope for competitive price differentiation and pricing innovation.

### **Consultation Question**

What is your view of the proposed establishment of Basic Affordable Service Packages (section 9)? Will this be an appropriate and effective means to ensure access to affordable service by low-income consumers? How should the prices for such basic services be determined?

### **Digicel Response:**

There are two aspects to this proposal. The first relates to the actual service content what might be described as an entry level service offering and the second relates to its pricing. There has been no suggestion that the functionality of the different entry level packages offered by the different operators does not meet customer needs. Operators have a straight commercial incentive to maximize the number of customers. To do this they will offer new packages targeted at those non-users who are outside the catchment of their existing portfolio. Operators will compete by offering propositions differentiated based on either functionality or price or both. Forcing every operator to offer the same functionality within a Basic Affordable Service Package



targeted at entry level customers would remove the differentiation which allows these consumers to self-optimize based on their particular needs.

Given that functionality of entry level offerings is likely to be addressed by competitive and market expansion dynamics this means that the net issue is one of affordability. In competitive markets there will be a downward constraint on pricing. This means that any affordability gap is not an issue of service price but rather one of customer spending power. Forcing the price of Basic Affordable Service Packages below the competitive market price of the service as a means of closing the affordability gap runs the risk of being distortive in the market as it would mean that operators would have to cross subsidise such packages from the rest of their service portfolio. It would create an arbitrage gap which is likely to be exploited by some consumers who could afford the higher prices simply taking up the discounted packages.

If the issue is one of low-income then the questions arises as to the eligibility for the Basic Affordable Service Packages. In other jurisdictions the availability of such packages is tied to some indicator of low income such as receipt of welfare benefits. The providers of the packages are then compensated for the “affordability discount” from either central public funds or from a Universal Service Fund.

The logistics associated with these involve the transfer of personal information between the welfare authorities and the operators and the transfer of funds back to the operators. Setting these up has a cost.

The proposed Regulations go into a degree of detail which pre-supposes a particular solution to the affordability issue. It may or may not be the best solution. As an alternative Digicel proposes that an enabling provision be put in place which would allow for the future implementation of a Basic Affordable Service scheme without being prescriptive about how it might be achieved. This would allow space for an engagement between the various stakeholders to design a fit for purpose solution, which might vary from country to country

### **Consultation Question**

Do the provisions on anti-competitive pricing, including Price Squeeze (sections 10 and 12) adequately identify and define the range of potentially anti-competitive pricing behaviour that may require intervention? What are your views on the extent or risk of such practices? Should some provisions or practices be strengthened, and how?



### **Digicel Response:**

These proposals represent a form of redundancy and double jeopardy the activities they seek to address are already covered by the Competition Law provisions of the draft Bill. As such they are an un-necessary duplication and these provisions should be removed.

Even on their face they are overly prescriptive. For example regulation 10(1)(d) prohibits *“entering into an exclusive agreement with a person on certain terms and conditions, such that the exclusivity has or may have the effect of substantially lessening competition in a related market”*

Given the size of the ECTEL markets this would prevent the public service or the larger corporate bodies entering into exclusive fixed term contracts with telecoms providers.

### **Consultation Question**

Under what circumstances should the NTRCs impose Price Cap regulation rather than direct pricing controls, as outlined in this regulation (sections 11, 16, 17)? What are the advantages and disadvantages of each approach? What guidance should this regulation provide as to their implementation?

### **Digicel Response:**

Price caps are the least intrusive form of retail price regulation giving the maximum flexibility to operators. In line with the views expressed previously regarding the desirability of de minimis retail pricing intervention in favour of structural interventions on the upstream wholesale markets Price caps would be preferable to direct price control of SMP operators.

### **Consultation Question**

What are your views on the provisions relating to prohibition on undue price discrimination, particularly the option for the ECTEL and NTRCs to prohibit or control differential pricing between on-net and off-net calls? What would be the impact of such limitations on the market?

### **Digicel Response:**

Unless there is a finding of retail SMP then any retail price intervention is improper. Even if there is a finding of retail SMP unless the retail pricing is predatory or is below cost then it is a legitimate



commercial decision of the operator. There is no need or justification to further specify constraints on retail pricing which is not anti-competitive. In fact unless it is below cost or predatory such pricing is part of the normal operation of the retail market.

The types of interventions proposed would be distortive and restrict the scope for competitive differentiation and innovation and are unnecessary.

### **Consultation Question**

What are your views on the procedures for implementing price controls (section 17)? Will this be an appropriate and effective mechanism for addressing prices of non-competitive services? What are the advantages and disadvantages? What alternatives should be considered?

### **Digicel Response:**

It is not clear the extent to which retail price controls will be a feature of the market given that they require a finding of SMP on the retail market before they can be imposed. These provisions are quite detailed and there is a risk that they are over engineered for the actual market circumstances, imposing an unnecessary administrative overhead on both operators and regulators. It may be more practical to define the process once the extent of the prevalence of retail price control becomes clear. This could be done as part of the market assessment and remedy design. This would allow processes that are appropriate in the particular market circumstances to be defined. This approach is more likely to result in sustainable and appropriate levels of market intervention.

### **Consultation Question**

What are your views on the provisions relating to promotions and market trials? Are the time limitations on such trials sufficient? Will the provisions ensure that competitive pricing prevails? Please suggest alternative language, if any.

### **Digicel Response:**

Given the limited duration for which such promotions can be in the market it is unlikely that they could have any material anti-competitive effects.



## Questions relating to the Consumer Protection Regulation

### Consultation Question

Do the provisions addressing Licensee obligations with respect to provision of information to consumers (sections 4, 5, 6) adequately define these responsibilities? Are these provisions reasonable and sufficient? What further detail or specifics, if any, should be included?

### Digicel Response:

Digicel believes that these provisions more than adequately deal with the issue of providing clear and adequate information to consumers so that they can understand the pricing and other conditions of the service they are purchasing. However they are not prospective in nature. During the currency of the Regulations it is likely that there will changes in consumer behaviours with a move towards a more on-line presence and also to on-line sales channels. Specifying the transparency mechanisms in Regulation based on the current market, technology and customer conditions will act as a drag on market evolution if operators and consumers are locked into legacy channels. It would be preferable if there was an enabling provision allowing ECTEL and the NTRCs to specify appropriate transparency mechanisms based on market conditions which may change over time.

### Consultation Question

In particular, are the requirements in section 5 for publication of tariffs for services by Licensees sufficient?

### Digicel Response:

Digicel believes that these provisions more than adequately deal with the issue of providing clear and adequate information to consumers so that they can understand the pricing and other conditions of the service they are purchasing. However they are not prospective in nature. During the currency of the Regulations it is likely that there will changes in consumer behaviours with a move towards a more on-line presence and also to on-line sales channels. Specifying the transparency mechanisms in Regulation based on the current market, technology and customer conditions will act as a drag on market evolution if operators and consumers are locked into legacy channels. It would be preferable if there was an enabling provision allowing ECTEL and the



NTRCs to specify appropriate transparency mechanisms based on market conditions which may change over time.

### **Consultation Question**

Do the requirements in section 12 for specific billing information provide sufficient information to customers so that they may fully understand their bill?

### **Digicel Response:**

Digicel believes that there is a typographical error in this question that in fact refers to Section 14 of the proposed Regulations.

In this context Digicel believes that the proposed provisions more than adequately meet their intended purposes.

### **Consultation Question**

The Rules contain several key provisions regarding advertising by Licensees, and the types of information and promotional methods that may or may not be employed, to protect consumers from unfair or misleading practices (sections 14 to 21). In your view, will adoption and enforcement of these provisions adequately prevent such inappropriate marketing tactics? Are there any important “unfair commercial practices” currently used in ECTEL markets that are not addressed? Are any of the provisions too burdensome for Licensees? Please suggest any improvements or additional options.

### **Digicel Response:**

- The advertising proposals are very detailed and are unlikely to be future proof when one considers the potential evolution of converged goods and services over the likely currency of the Regulations. When coupled the transparency requirements a more general prohibition on misleading advertising would be more appropriate.
- In terms of pre-paid services the proposed regulations are not fit for purpose as they would restrict the development of mobile payment services and e-commerce service which use direct carrier billing. We suggest a more generic form of words be used which



deal with transparency of charges rather than a narrow definition of the class of things for which pre-paid credit might be used for.

- In terms of a post paid service the administrative cost of the “trial” period will be high. It will causes difficulties with Agent and Reseller commissions and potentially opens up new fraud risks. There is a risk that customers will use this as an opportunity to trial the handset rather than the service. In this scenario the cost of the scheme and the returned handsets will have to be passed into the wider customer base. If the customer has ported their number in order to take up the trial period then the practicality of them wishing to revert to their previous provider and package plan has not been considered. In the round, this proposal while potentially populist, has not been properly thought through and will be unworkable.
- There has been no analysis of whether the cost of implementing usage notifications is less than the consumer welfare benefit. Given the reasonably small size to the markets in the ECTEL states the unit cost of this implementation could be disproportionately high.

### **Consultation Question**

In your view, do the requirements for net neutrality (section 29) appropriately balance consumer and operator needs and concerns?

### **Digicel Response:**

Digicel recognises that the open internet is an important enabler of economic and societal growth.

An open internet means that it must be open to all stakeholders to try to either produce or consume new products and services or stick to tried and tested ones. What is important is that customers have choice and once they have made that choice can freely access and exchange information, ideas and services within the context of that choice.

ECTEL itself recognised this in its 2014 Determination on Internet Neutrality where it identified the key issues as being related to blocking and throttling. It was also implicitly recognised in ECTEL’s proposal at that time to deal with such issues by way of competition law provisions in a future Electronic Communications Bill.



There is a need to balance the freedoms of end users and content providers with the requirement of Operators to run their networks and their corresponding freedom to innovate and develop new services and business models.

Digicel believes that striking this balance will foster the development of a wider range of service offerings from different Operators as they tailor these offerings to meet the different needs of different customers.

This flexibility and potential for competitive differentiation will allow the region to become a proving ground for online services that are simply prohibited by the more restrictive environments in the US and Europe. This flexibility to innovate both technically and commercially is itself a differentiator allowing the region to develop a distinct and unique environment to attract technology companies and investment.

Globally there are a very wide range of approaches to Net Neutrality, from the restrictive approach adopted in the United States to the forbearance approach adopted in Australia with a middle course being pursued in the European Union. This demonstrates that Net Neutrality is not an immutable law of nature but a policy choice which has a variety of forms.

There has been no meaningful debate as to which is the appropriate course for the ECTEL states. In the absence of such a debate it is Digicel's strongly held view that these proposed provisions are inappropriate and premature at this time as they pre-judge the outcome of such a dialogue.

Should there be a desire to make some provision for Net Neutrality it should be an enabling provision that would allow Ministers to make appropriate Net Neutrality regulations in the future.

Digicel has attached a copy of a publication it has prepared entitled "Net Neutrality – What is the best approach for the Caribbean". This sets out in greater detail the reasons why there is a need for substantive debate on the issue and should be considered part of this consultation response.

### **Consultation Question**

What are your views on the process for complaints handling by the Licenses as described Part IV of the draft regulations. Are the provisions of the aforementioned Part IV likely to ensure that customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee?



### **Digicel Response:**

Digicel is of the view that the provisions of this section are overly prescriptive and are disproportionate. There is no indication that there is any customer requirement for this change. These mandatory requirement disadvantages local operators as against OTT providers who do not have to bear the same operational cost overhead.

The requirement to establish two contact lines (proposed Regulations 8 and 32) is burdensome and the requirement for 18 hour opening doesn't seem to be based on empirical evidence of market need.

The requirement that the making of a complaint would suspend legal action being taken by the Operator against the customer encourages abuse of the complaints process to delay legal action. It is unnecessary as any complained of issues that we relevant to the legal action can be aired as part of the legal action.

We suggest that enabling provisions are included instead that would allow NTRCs impose this obligation in the future if there is evidence that it is required.

### **Other comments regard the proposed Consumer Protection Regulations**

- In Digicel's view Section 9 (approval of customer contracts) of the proposed Consumer Protection Regulation are overly intrusive and un-necessary. Section 10 and 11 of the same Regulations set out the mandatory elements that must be in a contract. Transparency requirements mean that it is straightforward for ECTEL to monitor compliance with these provisions. There is no practical reason why the administrative burden for the pre-approval process set out in Section 9 should be imposed on the market.
- The proposed conditions relating to minimum terms have not been properly canvassed by ECTEL and the implications of their introduction on the market has not been assessed.
- There are no lead in or transition provisions in the proposed Regulations which would afford adequate time for licencees to put in place the necessary support mechanism to be compliant the raft of new obligations which these Regulations would impose.
- While developing a consumer protection regulatory environment is a laudable endeavour the process used is unlikely to yield balanced or workable outcomes. Instead of consulting



on the market behaviours which might justify regulatory protection mechanisms and design market appropriate solutions to address these detailed draft regulatory interventions have been advanced with no way to assess whether they address an actual market need. This flies in the face of the evidenced based market analysis approach set out elsewhere in this suite of regulation. It feeds operator apprehension that the provisions of the various regulations will not be exercised in a proportionate way. These very specific provisions should be replaced with enabling provisions whereby ECTEL can consult on the underlying market need for such interventions and introduce informed and appropriate regulations that have had the benefit of meaningful stakeholder input.

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