



BASIC DETAILS

Consultation title: Commission Draft Annual Work Plan and Budget 2022/2023

Name of respondent: Ms. Mara Samaniego

Representing (self or organisation/s): Digicel (BVI) Limited

Address (if not received by email): Delivered by Email

CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing

Mara Samaniego | Chief Executive Officer

Digicel (BVI) Limited

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name: Ms. Mara Samaniego

Signed (if hard copy): By Email



Digicel BVI
5th Floor Jayla Place
Wickhams Cay 1
Road Town, Tortola
British Virgin Islands

T: +1(284) 300 3000
F: +1(284) 494 0111

www.digicelbvi.com

Friday 16th June 2022

Mr. Guy Malone
Chief Executive Officer
Telecommunications Regulatory Commission ("TRC")
27 Fish Lock Road
Road Town 1110
TORTOLA.

Dear Mr. Malone,

Re: Commission Draft Annual Work Plan and Budget 2022/2023

Digicel (BVI) Limited ("Digicel") notes the TRC's publication of its draft Annual Work Plan and Budget 2022/2023 ("draft Annual Work Plan 2022/2023") on 19th May 2022, and welcomes the opportunity to comment on the draft Annual Work Plan 2022/2023.

Digicel is disappointed that TRC has denied Digicel's request for an extension of time to 30th June 2022 to submit its comments. The denial is premised, *inter alia*, upon section 63 of the Telecommunication Act 2006 and the TRC's strive for greater compliance as a regulatory body and the entities that it regulates. Digicel, in principle, accepts that there may be specific timelines set out under the Act, and it is in that vein, Digicel submits its preliminary position on this matter. Notwithstanding, Digicel's comments are without prejudice to the ongoing consolidated appeal litigation case filed in the Court of Appeal Territory of the Virgin Islands on 18th May 2022, and with the view that its position may be extrapolated upon at a later juncture.

Further, Digicel finds it rather surprising, the exclusion in the draft Annual Work Plan 2022/2023, of any reference to the decision of Justice Ramdhani, dated 4th April 2022, in the consolidated matters of BVIHCV2020/0136 Caribbean Cellular Telephone Limited and BVI Cable TV Limited v. TRC, BVIHCV2020/0153 Digicel (BVI) Limited v. TRC and BVIHCV2020/0160 Cable and Wireless (BVI) Limited v. TRC, and the aforementioned consolidated appeal proceedings BCVPA2022/003 TRC v. Caribbean Cellular Telephone Limited and BVI Cable TV Limited, BCVPA2022/005 TRC v. Digicel (BVI) Limited and BCVPA2022/004 TRC v. Cable and Wireless (BVI) Limited. Justice Ramdhani's judgment has very serious implications in relation to the work of the TRC relative to the adoption of an industry levy and the associated issue of consultation on an annual work plan. Unfortunately this consultation appears not to take into account the findings of the judgement.



Overall comments

Digicel congratulates the TRC on its revamp of its vision, mission and core values. Such a move, we anticipate, will auger well not only for the TRC's operations but the industry's entities and customers who should benefit from the dovetailed positive impact thereof.

Digicel maintains several broad concerns, as detailed in its previous years' submissions in response to the TRC's annual work plans and budgets. We reiterate such concerns are, inter alia:

- i. vagueness in several elements in the draft work plan;
- ii. a general failure to give any indication of the actual level of TRC's resources (internal and external) that are expected to be allocated to a particular activity; and
- iii. the failure to develop a Strategic Plan for the sector.

A function of the TRC as per Telecommunications Act 2006 ("the Act") section 6(r) is the promotion of the systematic development of telecommunications throughout the Virgin Islands. The failure to adopt a Strategic Plan continues to have a major bearing on the manner in which the TRC formulates and adopts its annual work plans and by extension the systematic development of the sector as required by legislation.

Digicel acknowledges the conditions of licences under section 17 of the Act, and the conduct of public hearings under section 15 of the Act ahead of the renewal of any licence. The licence renewal process however has proven to be a cumbersome and onerous one, both with respect to tying up critical resourcing internally and unnecessary costs incurred by operators. Digicel understands and respects the need for transparency, and the significant draw on the TRC's resources in following the process, but we strongly recommend that TRC embarks on a simplification or streamlining of the process in the future.

The challenge of TRC providing audited accounts to the sector is an age-old one. Digicel notes that in the 2020/2021 Annual Work Plan and Budget, TRC indicated that the 2020 audit was ongoing with a view of completion by September 2021. In the subject Work Plan and Budget 2022/2023 the completion date has shifted downwards to September 2022 and the 2021 audit is promised by September 2023. The absence of audit financials affects the consultation process and Digicel reiterates the need for TRC to close this gap in the process. Justice Ramdhani's judgment also deals with the implications of audited financials not being available in connection with the budgeting process.

With regard to the TRC's focus on possible dominance and anti-competitive behaviour, Digicel requests that TRC identify specifics of the market review, the candidate markets and clarify the frequency of the market reviews. Digicel requests in depth details on the review. TRC has identified the undertaking of this project between June to September 2023.



Digicel is minded to state that such a review will require a realistic timeline of 12 months or more, therefore a proper exercise is unlikely in a period of 4 months.

As to the reformed legislative/regulatory framework, Digicel takes issue with TRC's finalisation of engagement of a local firm to assist in carrying out same. The cost of this engagement is not identified but more importantly, Digicel requests clarification on the consultation process on which TRC will embark upon re this reform. Surely, the sector ought to be consulted and be engaged in debate, if necessary, on what fragments of the law require change/updates and ambits surrounding the burdens of regulation. A similar approach was taken by the TRC during the licence renewal process when a compliance report was procured through an external law firm. The industry was not consulted ahead of such exercise being undertaken, and the TRC admitted to the same. Such exercise is now likely to result in significant costs incurred by the industry, for example, where the TRC has embarked on a separate consultation to review licence renewal fees, which incidentally includes costs incurred by the TRC procuring such report.

TRC's plans on 5G spectrum is also questionable. Digicel invites TRC to consider the business case behind such a roll out particularly in BVI, which is a small territory. The cost factors and associated pricing of 5G spectrum is a very important consideration for the TRC, which is not identified/highlighted in the Work Plan and Budget 2022/2023.

An employee compensation expenditure increase from \$1,414,009.00 in 2022 to \$1,551,191.11 in 2023 is substantive. In this regard, Digicel requests that TRC provide its organisational structure, and identify the new/additional positions duties and functions of all employees for necessary consideration.

Digicel acknowledges that the income from royalty fees received from licenced operators decreased by 1% as a result of the impact of COVID-19. Generally speaking this is a clear indication that the sector's growth was adversely affected and shrunk during the pandemic. Such adverse impact should be considered by the TRC during other similar exercises, particularly those that are likely to be at the expense of the industry.

In closing Digicel reiterates that these comments are submitted strictly without prejudice to its position in the ongoing litigation proceedings.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mara Samaniego', written over a horizontal line.

Ms. Mara Samaniego
Chief Executive Officer
Digicel (BVI) Limited