

# Digicel

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January 28, 2016

Mr. Guy Malone  
Chief Executive Officer  
Telecommunications Regulatory Commission  
27 Fish Lock Road  
Road Town 1110  
Tortola

Dear Mr. Malone,

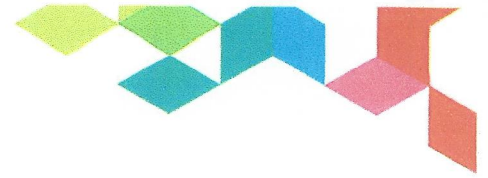
**Re: Broadband Market Consultation Part II – Regulatory Remedies**

Having declared LIME dominant in the markets for retail fixed broadband service and wholesale broadband access, the Commission proposes to implement regulatory remedies in the form of both pricing and quality of service regulation.

As it relates to price regulation, the Commission proposes the following:

- Require further price increases to be subject to Commission approval
- Require LIME to reduce prices to levels prior to 1 November 2015 increase
- Benchmark retail prices against LIME's comparable pricing in the region
- Benchmark retail prices against international broadband pricing (e.g. price per Mbps download speed) for selected countries
- Restrict price increases to a level below inflation (e.g. RPI-X)

Of all the measures proposed above, we believe that the requirement for further price increases by LIME to be subject to the Commission's approval is the most appropriate. This method allows the Commission to, on a case by case basis and without reference to any other form of price regulation at this stage, determine whether a proposed price increase is in the best interest of the market at that particular time. In demonstrating the exigency for the proposed price increase and the reasonableness of the rate proposed, LIME would then be required to refer to benchmarks and inflation rates etc. Likewise, the Commission can also rely on these measures to determine whether LIME's proposed price increase is justified under the circumstances. In this regard, the rate regulation procedure set out in Article 8.4 of the Licence shall apply.



The proposed direct control of prices in the fixed 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 influence the market in a way that would result in outcomes that would not arise from proper market operation.

Digicel has recently announced that it intends to launch competitive retail services in the BVI in the near future. The underlying costs it faces are based on a new build of network infrastructure. By contrast, LIME's cost base is largely leveraged in sunk infrastructure costs. There is a real risk that the range of pricing measures proposed by the Commission will set retail price at a level below those which would be based on the replacement costs faced by Digicel but above the marginal costs faced by LIME. In this eventuality there is simply no business case for Digicel to make the very substantial investment required to bring competitive world class services to the consumers and businesses of BVI. While retail prices may be lower in the short term, absent competition, the incentive for Lime will be to sweat its sunk assets and to limit the capital expenditure required for investment in leading edge services.

Even if the retail price controls result in price levels based on replacement costs there is the fact that the experience in many markets is that customer inertia means that new entrants have to discount prices by up to 10% in order to encourage initial switching from incumbents.

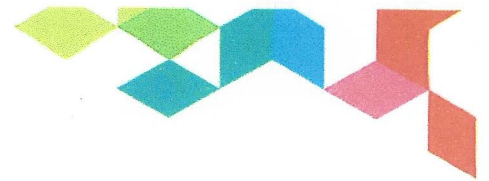
The timing of the proposed interventions in fixed retail pricing are such that they pre-empt Digicel's nascent market entry and effectively distort the competitive environment for market entry.

Digicel believes that the Commission should forebear from detailed and intrusive retail price setting at this time in order to allow an opportunity for competitive effects to manifest. The situation can be reviewed in the future to ensure that there is no ongoing need for direct retail price controls.

If however the Commission wished to make structural interventions which would make retail price competition more effective we would make the following suggestions:

- 1) A prohibition on geographic or portfolio price de-averaging by LIME in the retail market. This would prevent LIME targeting selective price reductions and promotions in areas where Digicel initially rolls out while leveraging its dominance to fund these using revenues from those areas or products where it faces no competition.
- 2) To mandate wholesale access at cost oriented prices in the upstream infrastructure market. This form of intervention encourages sustainable retail competition which is the best way to arrive at retail offerings and prices which are based on consumers' needs. It is necessary that this wholesale infrastructure access be priced on a cost oriented basis to avoid LIME simply sheltering margin in a market where it faces no competition.

We do not consider the forms of wholesale access proposed by the Commission in the previous round of consultation to be appropriate. Rather, we wish to reiterate our need for access to all ducts owned and maintained by LIME throughout the Territory to facilitate the roll out of our fibre network. This is already a requirement under the **Telecommunications Code (Part 6) (Interconnection and Access to Facilities) Requirements, 2011**, which also requires the Commission to exercise such oversight and to intervene in negotiations to the extent necessary to ensure that access is granted. While the existing legislative framework might impose a general obligation the Commission should take this opportunity to further specify this wholesale



obligation. In particular the Commission should mandate cost oriented pricing with an interim wholesale price control based on benchmarks of comparable cost oriented or competitive prices for ducts etc. Further in order to ensure the timely execution of this obligation LIME should be prohibited from self-supplying any new access to ducts or the upgrade or activation of any cables or systems carried within its ducts unless there is an effective wholesale product offered to the market. This approach would greatly simplify the Commission's task of oversight and enforcement.

The Commission also proposes the following forms of quality of service regulation:

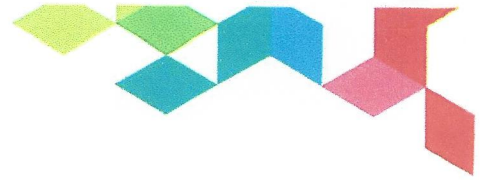
- Incentive regulation to enforce the delivery of sold connection speeds through required reporting and refund system
- Ability for consumers to terminate contracts if connection speeds do not meet sold standard
- Commission monitoring of connection speeds and fines for not meeting advertised connection speeds
- Commission monitoring of time to receive a new connection and fines for exceeding a certain delay
- Commission monitoring of fault repair and fines for delay

**Section 17(4) of the Telecommunications Code (Part 3) (Quality of Service) Requirements, 2010** provide that a public supplier who fails to meet quality of service targets specified commits an offence and is liable to enforcement measures set out in ss. 75-77 of the **Telecommunications Act**. Section 75(2) of the Act sets out the powers that the Commission can exercise under the circumstances, including imposing a fine on the licensee. The Quality of Service Requirements also allow the Commission to direct the public supplier to implement a remedial plan to improve the quality of service of the relevant service or services over a period to be determined by the Commission. Schedule 3 of the Requirements sets out the quality of service targets that apply to Internet Access Service, which necessarily includes fixed line broadband. Therefore, it is clear that the measures proposed in the Consultation Document are already, to a great extent, provided for in the Quality of Service Requirements.

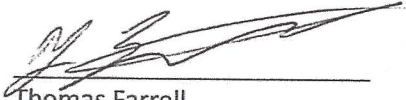
In the Consultation Document, the Commission has not identified its efforts to regulate LIME's fixed line broadband service in accordance with the existing Quality of Service Requirements and the extent to which the measures set out in the Requirements have proven to be inadequate to properly regulate LIME's provision of the service in the BVI.

Under the circumstances, therefore, Digicel considers that there is no reason why the current provisions of the Quality of Service Requirements cannot adequately regulate quality of service standards in the provision of fixed broadband services by LIME in the BVI. We believe that if these measures are properly enforced, there would be no need to introduce further regulation, as proposed by the Commission.

Digicel understands that the Commission wishes to regulate the provision of broadband in the BVI in the best interest of consumers throughout the Territory. However, we do not believe that price regulation is an appropriate measure to achieve the desired objective at this time. For that matter, we consider that this would only lead to regressive outcomes. Rather, the Commission should place greater emphasis on enforcing the measures that exist within the current legal frame work to address any anti-competitive behavior by LIME and to create the right conditions for the growth of competition in the market.



Yours sincerely,

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

Thomas Farrell  
Financial and Commercial Director  
Digicel BVI Ltd.