

# Digicel™

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30 August 2007

Mr David Archbold  
Information & Communications Technology Authority  
PO Box 2502  
Grand Cayman  
KY1-1104  
Cayman Islands

Dear Mr Archbold:

## **C&W redactions in the FLLRIC (CD 2005-1) process - Request to Reconsider**

I refer to your letter of 16 August 2007 setting out your decision in response to our letter of 25 July 2007 requesting disclosure of certain redacted responses of Cable and Wireless ("C&W") to the interrogatories issued on 16 April 2007.

In your letter of 16 August, Digicel's disclosure request regarding this redacted information was refused, as was its request for its experts to be permitted direct access to the model in its current form (subject to confidentiality obligations). Regrettably, Digicel considers both of these decisions to be inconsistent with the Authority's prior practice, ICTA Decision 2005-4 on FLLRIC, and more generally, the ICTA Law. For the reasons indicated below, Digicel wishes to request the Authority to reconsider its decision refusing disclosure.

### **1. Lack of Clarity in the Decision**

Digicel does not understand aspects of the Authority's letter of 16 August 2007, and in particular, its statement that:

*"The Authority notes that its determination regarding confidentiality claims in this instance should not be taken as an indication of the manner in which such matters would be dealt with in the future in different circumstances."*

LOI-7537287v1

**Directors:** Denis O'Brien (Chairman), Michael Alberga, Leslie Buckley, Conor O'Dea

By its terms, it would appear to contemplate a departure from previous practice, which has been to favour and facilitate disclosure wherever possible in accordance with the ICTA Law and secondary legislation. Equally, Digicel is uncertain as to what process the Authority has engaged in where it concluded that it was:

*“ satisfied that the specific direct harm likely to result from disclosure outweighs the public interest in disclosure in these instances... ”.*

In particular, Digicel has no idea what form of harm to C&W is of concern to the Authority, or what weight was attached by it to the public interest criterion. For its part Digicel cannot conceive of any harm that might be occasioned to C&W by disclosure, a position which is based on our firm conviction that the underlying (redacted) information that has been requested is in no way commercially sensitive. Digicel is also concerned about the Authority's reference to the fact that:

*“ C&W also opposed Digicel's proposal to allow its experts to have full access to the C&W FLLRIC model. ”*

Without wishing to be pedantic, Digicel would like to restate that the FLLRIC model is being developed by C&W on behalf of ICTA under ICT Decision 2005-4 and that C&W is instructed to ascertain the long run incremental costs of the hypothetical efficient operator, not of C&W specifically.

## **2. Information redacted cannot be described as confidential**

In the letter of 16 August 2007 it is stated that:

*“Regarding the remaining disclosure requests, the Authority has reviewed each of the items in Digicel's request and notes that the information relates to specific C&W demand and cost information rather than to 'generic calculations'.”*

Digicel requests reconsideration on the basis that the information redacted in the C&W responses to interrogatories outlined above is not specific to C&W, and therefore cannot be fairly treated as confidential, and should be disclosed to all relevant parties. C&W is charged with developing a model of the hypothetically efficient operator, using a forward looking long run incremental cost methodology. To that end, C&W may be populating the model with data which is particular to it (and which therefore may be commercially sensitive), but it is also populating that model with data that is not specific to C&W. As a result, any calculations made using a mixture of inputs (specific and non-specific) cannot be fairly regarded as specific to C&W and should not be withheld.

Therefore, Digicel requests reconsideration of the quality of information redacted and disclosure of all the requested redacted materials on the basis that the information cannot be fairly described as satisfying the conditions within the confidentiality provisions of

Regulation 3 of the Information and Communications Technology Authority (Confidentiality) Regulations 2003.

Digicel wishes to restate its view that redaction by C&W of such non-specific information by C&W is an abuse of the redaction process and reiterates its concerns that disclosure of draft LRIC calculations across C&W's principal services is essential in order to allow transparency and headline detection of further cost misallocation between C&W's various businesses.

### **3. Importance of transparency at this stage**

Digicel also requests reconsideration of the decision outlined on 16 August on the grounds that it is in the public interest for the redacted information to be disclosed. The FLLRIC process is a public consultation exercise, and under Principle 11 of Decision 2005-4:

*"The process used to generate FLLRIC cost information should be transparent. In this context, transparency means that the processes for generating cost information are clear and understandable, that the numbers are objective and based on verifiable data, and that any models used in the FLLRIC process are fully documented."*

Paragraph 63 of Decision 2005-4 also states that:

*"In particular, the Authority must weigh the benefit of putting commercially sensitive information on the public record against the harm that such disclosure may cause a Licensee, such as the incumbent. Placing information on the public record is all the more important where it concerns rates for services or network elements for which Licensees have few or no practical alternatives other than using those offered by the incumbent."*

Digicel has already requested an explanation and re-consideration of the balance of possible harm against the public interest, especially in light of the non-specific quality of the information that C&W claims is confidential. Digicel also requests reconsideration of the ICTA decision outlined on 16 August 2007 on the basis that the disclosure of the redacted information is in the public interest and of significant importance for the process of generating a verifiable FLLRIC model. Specifically, it is important for the purpose of preparing Digicel's response to the C&W answers to interrogatories.

### **4. Access to the Model**

The Authority's letter of 16 August 2007 states that the above process requested by Digicel is available under the ICTA (Confidentiality) Regulations and that as such *"the additional process requested by Digicel is not necessary"*. Digicel requests that the Authority reconsider this conclusion in the light of Principle 11 of Decision 2005-4 regarding the transparency of the FLLRIC model. There it is indicated that:

*"The Authority is pre-disposed to allowing parties to have sign of the final cost methodology, including the underlying actual data used."*

ICTA has decided to change its previous position. Arguably, giving access to a costing model that was specific to C&W did involve Digicel's representatives getting access to commercially sensitive information, hence the very strict terms under which that access was afforded. So even if (which is strongly disputed with respect to the requested redacted information) access to the FLLRIC would allow Digicel's representatives access to commercially sensitive information, there is no reason not be afford access to the FLLRIC model subject to the same strict confidentiality requirements as previously applied to giving access to the FAC model.

For all these reasons Digicel respectfully requests reconsideration of the decisions outlined on 16 August 2007.

Yours sincerely



John Byrne  
General Manager  
**Digicel**

cc: Cable and Wireless