

April 20, 2007

David Archbold  
Managing Director  
Information and Communications Technology Authority  
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85 North Sound Road  
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Cayman Islands

**Re: Confidentiality Claims by Cable & Wireless**

Dear Mr Archbold,

We are in receipt of Cable and Wireless' (C&W) letter of 10 April 2007 concerning its redactions in the FLLRIC process.

C&W has responded to our letter of 27 March 2007 to the effect that the information which we complain it has redacted in its 23 February 2007 submission was correctly treated as confidential under Regulation 3 of the ICTA Confidentiality Regulations 2003 ("the Regulations"). Although C&W seeks to categorise our complaint as a request for public disclosure of the matters specifically raised by us, this really misses the point of our complaint. It is correct that we assert that the three matters identified in our letter of 27 March 2007 were wrongly redacted and should be disclosed so that they can be commented on by all parties involved in the FLLRIC process. However, these are just examples of a potentially broader problem which threatens to undermine the integrity of the entire process. To the extent that the Authority accepts that C&W has abused the redaction process to make controversial assertions, assumptions etc. without the other participants in the FLLRIC process being able to correct or comment on them, then it is clear that no existing redaction by C&W can be trusted.

The only way that Digicel believes that this situation can be remedied is through a full review of C&W's existing redactions (as proposed in our letter). The fact that the parties can make further submissions and supply their own inputs and that the Authority will ultimately judge the reasonableness of them, does not remedy this problem (suggested by C&W on page 3 of its letter). In order to evaluate and, if appropriate, choose between different inputs, the Authority should have the benefit

**Mr. David Archbold**  
**April 2, 2007**  
**Page 2 of 4**

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of each party's inputs etc. and their comments on the inconsistent inputs suggested by others. This is the only way for the Authority to develop a proper understanding of the inputs and the reasonableness of the assumptions underpinning them. A thorough review of what has been redacted and a consequent determination of whether material should be disclosed for comment is the only way to ensure that this happens. It also avoids unchallenged assumptions/opinions being misinterpreted as industry consensus.

Digicel does not consider that it is reasonable to expect Telcordia to carry out the review of all the redacted material. Even assuming that they have the required knowledge and local market expertise to do this, we would question whether this is a proper use of their time and the Authority's money, not least considering that C&W is responsible for the development of the FLLRIC model, subject to the input of interested parties such as Digicel. We consider that it would be more appropriate and efficient for representatives of all the parties - already familiar with the key issues in the process and the submissions made - to carry out such a review immediately and at no cost to the Authority in the manner previously proposed by us. We are happy to discuss this further with the Authority if it agrees that there is a substantial problem that needs to be dealt with.

### **C&W's Wrongful Redactions**

As we explained at length in our letter of 27 March 2007, there is clear evidence that C&W has been redacting non-confidential material. We consider that C&W's submissions on the matters raised by us are misconceived on all three points raised under Regulation 3: i.e. that (a) the claims are justified; (b) the information disclosed is commercially sensitive; and (c) neither Digicel nor any other party is prejudiced by the redaction of such information.

While C&W's letter of 10 April 2007 repeatedly asserts that the relevant information is confidential, in essence, no meaningful explanation is provided. Clearly, the Regulations require more than proof by assertion.

C&W's letter seeks to confuse matters by a general discussion of other claims for confidentiality made by it. There is also the assertion that the claims of confidentiality "relate to actual C&W demand numbers". That is an obvious sleight of hand, since Digicel has not actually sought the disclosure of those demand numbers - but rather is seeking to overturn the use of confidentiality to hide salient underlying opinions and assumptions. The Regulations are intended to protect confidential information, subject to exceptions, and not related information, assumptions and opinions that are not in fact confidential.

**Mr. David Archbold**  
**April 2, 2007**  
**Page 3 of 4**

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## **The three types of information**

### *(i) The opinion that on-net/off net pricing distinctions will become less pronounced*

Clearly, this information is not a trade secret. It is merely an opinion (albeit erroneous) as to what might happen to retail prices assuming certain changes in the mobile termination rate. It is not a calculation as to what the convergence will be in monetary terms, and neither is it an indication of C&W's likely commercial strategy.

Similarly, this opinion is not (within Regulation 3(b)) financial or commercial information, and, indeed, there is no evidence provided by C&W of it being treated in a confidential manner. Equally, Regulation 3(d) is inapplicable, because its disclosure could not be expected to result in a significant loss to C&W, unless of course, which could not be the case, C&W considers that its attempt to game the FLLRIC model by a self-serving assumption is to be regarded as a legitimate form of loss. Similarly, there is no legitimate prejudice to C&W's commercial position from the disclosure of a general prediction (but for FLLRIC volume purposes important) which make certain assumptions both as to the level and structure of a wholesale cost, and the impact on retail rates.

### *(ii) C&W's assumption that mobile traffic demand will not be susceptible to VOIP*

Again, this is an opinion, typical of the type that many operators will openly submit as part of a transparent exchange of views. This was an assumption that according to C&W had a bearing on its volume assumptions, which, again, Digicel is not seeking.

This information does not amount to a trade secret, since it does not go to the very essence of how C&W conducts its business. As with the opinion on 'on-net/off-net pricing', C&W adduces no evidence of confidential treatment. C&W insists that their assumption on VOIP is an indication of its commercial strategy, but that is not explained nor revealed in any way. Digicel has no idea as to what that strategy might be. Similarly, C&W seem to assume that its prediction as to VOIP necessarily reveals its commercial strategy, but that appears to assume that C&W's strategies (whatever they might be) will be decisive in the fulfilment of its demand prediction, not something that is readily apparent given the demise of its monopoly.

### *(iii) C&W's volume prediction showing 20% growth*

Digicel considers that volume information is presumptively confidential, since its disclosure could in conjunction with other information disclose commercial strategies. However, in this case, Digicel is not seeking disclosure of actual volumes. Instead, it

**Mr. David Archbold**

**April 2, 2007**

**Page 4 of 4**

is seeking that the public record be amended to reveal C&W's prediction about the percentage growth in demand.

Should the Authority regard this information as *prima facie* confidential, it is difficult to see what harm C&W might suffer as a result of its disclosure. Even if it could be said to indicate a proposed change in strategy by C&W in the market, what that might be is not discernible.

More importantly, this is an instance where the Authority might consider the possible significance of this assumption from a public interest perspective under Regulation 5. As a standalone figure, it would appear to be massively in excess of what might be expected in a heavily penetrated mobile market, even taking account of significant changes in commercial strategies. It also has very major implications for the FLLRIC derived cost of mobile termination.

In these circumstances, we request that the Authority disallow these claims for confidentiality and set up a review of all C&W's claims for confidential treatment made in the process.

As a final point, we note C&W's comments about Digicel's possession of the unredacted material. Digicel held copies of such material long enough to deal with the serious issues caused by C&W's underhand behaviour. This was hardly unprofessional. It no longer has copies of the documents.

Yours sincerely,



John D. Buckley  
Chief Executive Officer

cc. Rudy Ebanks, Cable & Wireless (Cayman Islands) Limited