



ICT Decision 2011-1

Grand Cayman, 24 March 2011

Decision on LIME's Request for Determination on Mandate of LNP Consortium

Summary

In this Decision, the Authority confirms that the LNP Consortium mandate to implement LNP includes the post-launch operation and management of the LNP solution.

THE APPLICATION

1. In a 1 March 2011 letter, Cable and Wireless (Cayman Islands) Limited ("LIME") requested a determination from the Authority regarding the mandate of the LNP Consortium after the commercial launch of local number portability services in the Cayman Islands.

PROCESS

2. LIME's letter stated that this issue was preventing the service providers from reaching agreement with the LNP central database vendor and LIME requested that the Authority issue a quick decision on this matter.
3. In response to this request, the Authority, on 1 March 2011, issued a call for comments on LIME's letter. The Authority requested comments be received by 4 March 2011 and reply comments be received by 7 March 2011.
4. In a 4 March 2011 letter, Digicel Cayman Limited ("Digicel") requested that it be allowed until 11 March 2011 to submit comments.
5. In response to the Digicel request, on 4 March 2011, the Authority revised the due date to 11 March 2011 for comments and 14 March 2011 for reply comments.
6. Comments were received on 4 March 2011 from TeleCayman, 7 March 2011 from WestTel Ltd ("Logic"), and 11 March 2011 from Digicel. LIME submitted reply comments on 14 March 2011.

POSITION OF THE PARTIES

7. In its 1 March 2011 letter, LIME submitted that the post-implementation operation and management of the LNP solution is not within the scope of the mandate of the LNP Consortium as established by the Authority. However, LIME also stated that the LNP central reference database vendor ("Vendor") is asking to interact with the operators through a single organization and that, in its view, the operators will need a forum going forward within which they can discuss issues related to LNP.
8. LIME requested that the Authority order that an association of operators have a mandate to manage and direct the activities of the Vendor and that this association be the LNP Consortium.
9. In its 4 March 2011 letter, TeleCayman stated that it was also of the view that the post implementation operation and management of the LNP solution was not included in the mandate of the LNP Consortium. TeleCayman was in favour of creating a post implementation LNP Working Group that would be chaired by the ICTA.
10. Logic, in its 7 March 2011 letter, stated that, in its view, the initial mandate of the Consortium only covered the status up to the go-live date of LNP. Logic sees a need for a post-implementation body to oversee LNP and requested that a consortium similar to the one that exists now, with representation from each service provider holding NXX's, be formed and chaired by the ICTA.
11. Digicel, in its 11 March 2011 letter, submitted that a single legal entity needs to be established to deal with the Vendor. Digicel's letter also listed a number of questions that needed to be answered about such an entity including the form of any such legal entity and the membership and voting rights of the members. In particular, Digicel expressed concerns with the current voting system used by the Consortium and suggested an alternative voting proposal.
12. Digicel also stated that it was unclear how a body with representation by the operators and chaired by the Authority could work from a legal perspective.
13. In its 14 March 2011 reply comments, LIME submitted that a working group consisting of the operators and the Authority was somewhat attractive and it submitted that the Authority needs to be present in the LNP forum in more than a monitoring role. LIME was of the view that while there are some advantages to a corporate vehicle approach as advocated by Digicel, there are also disadvantages related to creating a new layer of complexity in a small market. Nevertheless, LIME stated that it was willing to reconsider whether the Operators should work as a working group or as a separate legal entity.
14. LIME also disagreed with and rejected a number of the items brought up by Digicel dealing with the structure and voting rights of a legal entity.

AUTHORITY ANALYSIS AND DETERMINATION

15. In support of its claim that the Authority Decisions establishing the LNP Consortium were clear that the post-implementation operation and management of the LNP Solution is not within the scope of the mandate of the Consortium, LIME quotes paragraph 122 of Decision 2005-1 and paragraph 86 of Decision 2008-5.
16. The Authority agrees that implementing LNP was not specified in the mandate of the LNP Consortium in Decision 2005-1. At that time, the mandate was to establish and cost the most appropriate method for implementing LNP. However, the LNP Consortium mandate was changed in paragraph 122 of Decision 20018-5 to "choosing an appropriate LNP solution ... and implementing this solution." The plain reading of that paragraph shows that the LNP Consortium mandate was amended to include implementing the chosen solution.
17. The Authority notes that the verb "implement" is defined variously as:
 - "carry out, accomplish; especially: to give practical effect to and ensure of actual fulfilment by concrete measures" (from: <http://www.merriam-webster.com/dictionary/implement?show=1&t=1300562752>), and
 - "put (a decision, plan, agreement, etc.) into effect" (from: http://oxforddictionaries.com/view/entry/m_en_us1257342#m_en_us1257342).
18. By definition "implementing", that is "carrying out" or "accomplishing", LNP is an on-going requirement. Therefore, the Authority is unable to agree with the operators that the implementation requirement of LNP ceases on the launch date. In order to "accomplish" and ensure the actual fulfilment of the LNP requirement, the LNP obligation must extend beyond the launch date. Indeed, if the Authority were to agree that the obligation to implement LNP ceased on the launch date, then the operators could logically argue that they would have satisfied the requirements of Decision 2008-5 simply by launching LNP and could then cease LNP immediately after the launch date because, in their view, the requirement to implement LNP had been met.
19. Therefore, the Authority confirms that the LNP Consortium mandate to implement LNP includes the post-launch operation and management of the LNP solution.
20. Quite separately, the Authority:
 - a. notes that all operators were of the view that some type of post-launch organization of operators is necessary to address any LNP issues that may arise;
 - b. remains of the view that the operators are the parties that have the required expertise and knowledge to best address any LNP process issues that may arise after the launch date;
 - c. shares the view of the operators that a post-launch organization of operators is necessary; and

- d. given the above considerations, determines that the current LNP Consortium is the appropriate organization.
-
- 21. However, as indicated by the Authority in its 17 June 2009 letter, if the LNP Consortium considers it necessary to create a formal legal entity to sign an agreement with an external LNP provider, it is free to do so. The Authority remains of this view but, for clarity, the Authority does not consider the establishment of a formal legal entity to be essential. The Consortium is free to choose whatever structure it believes will best enable it to meet its obligations.
 - 22. In terms of the membership and voting rights of the LNP Consortium, the Authority notes that its previous determinations remain in effect.