



The Bigger, Better Network.

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January 13, 2010

**Attention: Mr. David Archbold**

The Managing Director  
The Information Communications and Technology Authority  
P.O. Box 2502  
Grand Cayman, KY1-1104  
CAYMAN ISLANDS

Dear Sirs:

**Re: Digicel/C&W interconnection dispute – request for right to respond**

Digicel on December 9<sup>th</sup> 2009 filed with ICTA a request for dispute resolution in relation to its discussions with C&W of a new interconnection agreement. The Determination Request comprises six disputes which C&W responded to as they are required, on January 11<sup>th</sup> 2010. They have today filed a corrected version of their response.

The Dispute Resolution Regulations at Regulation 8 sets out the actions which the Authority may take on receipt of the Determination and where the Authority opts to act as the adjudicator on the disputes, as it appears to have opted, the Authority may establish its own terms of reference and procedures for arriving at a resolution of the issues. We expect the Authority to advise us shortly of the course it intends to take as we would not wish to assume that the course to be taken will be the same as employed in the last such matter referred to the Authority. Importantly the Authority under regulation 8(h) may engage such 'other course of action as it considers necessary to resolve the dispute' giving them considerable latitude to ensure that they can achieve the mandate set out in Regulation 11(a)-(d). This regulation requires the Authority to expeditiously, comprehensively and fairly settle the disputes.

The subject matter of the disputes range from matters touching and concerning complicated economic theories, sensitive and sometimes confidential information, practice and pronouncements from NRAs in larger markets in Europe which are persuasive though not binding and as such requires the Authority to give in dept and careful thought to the need to inquire into and fully explore and investigate the disputes. Having acknowledged the above, and given the complexity of the Determination Request and the issues raised in the response from C&W which was submitted on Monday January 11, Digicel requests that it will be given a right to respond to C&W's submission.

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

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Though not bound to follow any procedure established in the judicial system, or to follow any rules of evidence, and constrained to arrive at an expeditious and fair decision, the Authority is nonetheless bound by the rules of natural justice in carrying out its mandates under the Law. In this instant case, and we accept that each case must be dealt with in its own merits, C&W's responses should be answered in a brief and comprehensive submission by Digicel. This need not unnecessarily protract the process as the Authority may set some clear and immediate timelines on our response. We feel nothing will be lost and the Authority can only benefit to give us reasonable time to submit an answer, much the same way as e.g. we would have been allowed to file a Reply to a Defense in civil proceedings before a court. Affording us this chance to answer the respondent's argument bolsters any determination of the Authority especially when a hearing is not used and we would not otherwise be able to subject C&W's arguments to vigorous examination as they have been able to do to ours.

Additionally where the respondent C&W, unlike Digicel, is not required to file an affidavit or statement of truth in support of the facts alleged in its case, it becomes even more pressing that the rules of natural justice offer Digicel the chance to comment on, contradict, clarify or set the records straight as the case may be in relation to the matters raised by C&W in its response.

Yours sincerely,  
**Digicel (Cayman) Limited**

A handwritten signature in black ink, appearing to read "Victor Corcoran", followed by a horizontal line.

Victor Corcoran  
Chief Executive Officer

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