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Information & Communications Technology Authority

23 January 2014

Mr. Chris Hayman
Chief Executive Officer
Digicel Cayman Limited
PO Box 700
Grand Cayman KY1-1107

Mr. Bill McCabe
Chief Executive Officer
LIME/Cable and Wireless (Cayman Islands) Limited
PO Box 293
Grand Cayman KY1-1104

Dear Mr. McCabe and Mr. Hayman,

Re: Public Consultation on FTR and Transit Rate (CD 2012-1) Disclosure of Information provided to the Authority

In a letter dated 12 February 2013, Digicel submitted a number of interrogatories to be answered by LIME and, in a letter dated 14 February 2013, the Authority addressed its interrogatories to LIME.

On 22 February 2013, as directed by the Authority, LIME submitted a redacted version of the Authority's 14 February 2013 interrogatories for the public record. The Authority notes that LIME did not submit any specific confidentiality claim in relation to the Authority's interrogatories.

On 28 March 2013, LIME submitted its responses to the interrogatories provided by Digicel on 12 February 2013.

In a series of four submissions on 28 March 2013, 12 April 2013, 19 April 2013 and 3 May 2013, LIME provided responses to the interrogatories that were asked by the Authority on 14 February 2013. LIME claimed confidentiality for a number of responses provided in the 28 March 2013 to 3 May 2013 submissions, stating that the disclosure of information to the public would provide potential competitors with specific and direct information about LIME's revenues and costs, and could thus reasonably be expected to cause LIME financial harm.

In a letter dated 9 May 2013, Digicel requested that LIME should be required to provide further responses to the Digicel interrogatories submitted on 12 February 2013. According to Digicel, LIME responded to Digicel's interrogatories but it did not provide adequate answers to Digicel's questions, with some responses attempting to deflect Digicel's question and some providing irrelevant or incorrect answers.

In an email dated 13 May 2013, the Authority noted that the relevance of some of the information requested by Digicel in its letter dated 9 May 2013 was not clear to the Authority so, in order to enable the Authority to fully assess the relevance of the information that was originally requested by Digicel in its interrogatories to LIME, Digicel was instructed to submit by 23 May 2013 a revised request to LIME for further response to its interrogatories. Among other things, Digicel's revised request was to identify the specific information elements requested and explain how such elements would contribute to meeting the purposes of the proceeding. In the 13 May 2013 email, the Authority advised LIME that any response it wished to provide to Digicel's revised request should be submitted to the Authority by 3 June 2013.

On 23 May 2013, Digicel submitted a revised request to LIME for further responses to Digicel's interrogatories.

On 5 June 2013, LIME submitted supplemental responses to Digicel's interrogatories.

In the following sections, the Authority address the further responses to the Digicel interrogatories and the disclosure of other information submitted by LIME.

Disclosure determination - further response to Digicel interrogatories

In reference to Digicel's 9 May 2013 request that the Authority direct LIME to provide further responses to Digicel's interrogatories, the Authority notes that LIME's supplemental answers submitted on 5 June 2013 provided additional information and clarification. Other than the response to Digicel interrogatory 4 concerning the volume of traffic, the Authority is satisfied that LIME's supplemental answers adequately respond to Digicel's interrogatories.

In terms of LIME's response to Digicel's interrogatory 4, the Authority notes that Digicel

asked LIME to identify the proportion of traffic using the NGN that is Digicel mobile traffic. While LIME's initial response was that the FLLRIC model represents a forward-looking efficient operator and not any individual licensee, the Authority notes that the demand input used by LIME uses the actual demand from 1 April 2011 to 31 March 2012 as the basis for the demand volumes in the model. While in its supplemental response LIME stated that the volumes in the model are explicitly given, the Authority notes that the model does not break out the portion of the demand that is related to Digicel mobile. In the Authority's view, the transparency of the model inputs will be improved if LIME provides Digicel with the portion of the modeled demand that is related to Digicel's mobile traffic so that Digicel can verify from its own inter-carrier billing information the accuracy of the Digicel proportion of the assumed demand. The Authority notes that LIME has not claimed that the portion of the traffic that is Digicel mobile traffic is confidential, rather it has simply not provided that information.

Therefore, LIME is directed to provide the following information to Digicel, in reference to the volume of calls and minutes reported by LIME in columns X and Z, respectively, in the 'Volume Input for TD' sheet of the Excel file submitted by LIME as '2013 05 06 CYM fixed – Public.xls':

1. For the '900-DOMESTIC TRANSIT' service (row 11), LIME reported 22,046,397 calls (cell X11) and 24,343,486 minutes (cell Z11). LIME should provide the proportions of calls and minutes for this service that correspond to total traffic received by LIME from Digicel as 'Mobile to Other Fixed' and 'Mobile to Mobile';
2. For the '900-FIXED CALL TO OTHER MOBILE' service (row 15), LIME reported 1,789,105 calls (cell X15) and 3,432,864 minutes (cell Z15). LIME should provide the proportions of calls and minutes for this service that correspond to total traffic received by Digicel from LIME as 'LIME Fixed to Mobile' and 'Other Fixed to Mobile';
3. For the '900-PSTN TERMINATION' service (row 32), LIME reported 9,872,817 calls (cell X32) and 16,206,142 minutes (cell Z32). LIME should provide the proportions of calls and minutes for this service that correspond to traffic received by Digicel from LIME as 'Mobile to LIME Fixed';
4. For the '900-INTERNATIONAL TRANSIT to OLO' service (row 35), LIME reported 2,570,208 calls (cell X35) and 4,178,199 minutes (cell Z35). LIME should provide the proportions of calls and minutes for this service that correspond to traffic received by Digicel from LIME as 'Incoming Int'l to Mobile'.

The Authority notes that, while the volume of calls and minutes for items 1, 3, and 4 above in the public version matches the corresponding volumes in the confidential version, the volume of minutes reported for the '900-FIXED CALL TO OTHER MOBILE' service (cell Z15) in the Excel file submitted by LIME as '2013 05 06 CYM fixed – Public.xls' does not match exactly the volume of minutes reported in the confidential

version of this file ('2013 05 06 CYM fixed – Conf.xls'). Therefore, if Digicel attempts to reconcile the Digicel mobile proportion of demand for the above items, it should take into account a small difference between the confidential and public data provided for this demand element.

Disclosure determinations - other information submitted by LIME

The Authority may require the disclosure of information in respect of which there has been a claim for confidentiality in the circumstances where a request for the public disclosure, or part thereof, has not been received. In such circumstances, under regulation 4(h) of the Confidentiality Regulations, where the Authority determines a document, or part thereof, shall be placed on the public record, the submitting party may file a reply within ten days of such determination.

a) Information submitted by LIME not qualifying as confidential

Under regulation 3 of the *Information and Communications Technology Authority (Confidentiality) Regulations* ("Confidentiality Regulations"), parties who submit information to the Authority may request that such information be designated as confidential by the Authority if the information satisfies the criteria stipulated in that regulation such as if the information is consistently treated in a confidential manner and is not otherwise publicly available.

In reference to LIME's submissions of the redacted versions of the Authority's 22 February 2013 interrogatories and the interrogatory responses submitted between 28 March 2013 and 3 May 2013, the Authority considers that certain of the information redacted by LIME as detailed below does not satisfy the criteria specified in regulation 3 of the Confidentiality Regulations and determines that the identified information be placed on the public record.

The redacted reference in *effective discount of ##% on Transit Charges* in interrogatory 6 is already publicly available information, albeit not in the same form as used in the Authority's interrogatories. The Authority notes that the redacted version of the interconnection agreement between LIME and Digicel, as amended on 17 May 2012, specifies on page 8 that for any volume of calls exceeding the minimum qualifying volume (440,000) discounted Transit Charges (including the Transit Part of the PSTN and PLMN Terminating Access Services) apply in lieu of standard Transit Charges. The effective discount on Transit Charges can be obtained by calculating the difference between the standard and the discounted Transit Charges. For that reason, the Authority is of the opinion that the information contained in its interrogatory 6 is otherwise publicly available and therefore does not qualify to be considered as confidential information. It therefore must not be redacted.

The redacted reference in *costs related to the ##% duty fees* in the interrogatory 21 is already publicly available information, since it is provided under code number 85.31 (Telephones and telephone equipment; telecommunications equipment) in Section XVI (Machinery and mechanical appliances; electrical equipment) in Schedule 1 of the Customs Tariff Law (2011 Revision). For that reason, the Authority is of the opinion that this redacted reference contained in its interrogatory 21 is otherwise publicly available and therefore does not qualify to be considered as confidential information. It therefore must not be redacted.

Therefore, within ten days, LIME is directed to either provide the identified information to the distribution list for this proceeding or, under regulation 4(h), provide a reply to this determination and copy the distribution list for this proceeding.

b) Information submitted by LIME - routing diagrams

In LIME's 12 April 2013 submission, in response to ICTA interrogatories 7-9, 11, 13 and 15, LIME submitted "Attachment – response to ICTA Interrog 7-9 11 13 15 (network diagrams) CONFIDENTIAL.ppt" showing various call routing diagrams (the "routing diagrams"). LIME did not provide a redacted version of those diagrams. In support of the confidentiality claim, LIME stated:

Please note that some of the information in LIME's responses to the Authority's interrogatories and the attached confidential Fixed FLLRIC model is commercially sensitive information, and LIME requests that the Authority designate it as confidential pursuant to the Information and Communications Technology Authority (Confidentiality) Regulations. Disclosure of this information to the public would provide potential competitors with specific and direct information about LIME's revenues and costs, information which is consistently not disclosed to the public, and the disclosure of which could reasonably be expected to cause LIME financial harm.

The Authority notes that regulation 4(b) of the Confidentiality Regulations requires a party claiming specific direct harm to provide detailed information for the reasons for such a claim including an explanation how the disclosure of the information could be expected to result in significant financial loss. The Authority notes that LIME's confidentiality claim provides no explanation of how the disclosure of the routing diagrams will cause LIME financial harm.

Based on the information before it and given the high-level nature of these routing diagrams, the Authority does not consider that their disclosure will provide competitors with specific and direct information about LIME's revenues and costs.

In any event, as the routing of the transit and fixed termination services are the main topic under review in this proceeding, and the use of the involved network elements by

both retail services and services provided to other operators can have a significant impact on the demand and associated cost of those elements, the Authority is of the view that any specific direct harm that would be likely to result from disclosure is outweighed by the public interest in knowing which call routing mechanisms are being modelled and used to develop the costs for the transit and fixed termination services.

Therefore, within ten days, LIME is directed to either provide the routing diagrams to the distribution list for this proceeding or, under regulation 4(h), provide a reply to this determination and copy the distribution list for this proceeding.

Remaining procedures for this disclosure determination

In accordance with the disclosure determinations stipulated above, by **6 February 2014**, LIME is directed to provide:

- a response to Digicel interrogatory 4 as specified above;
- either revised confidential and public versions of the attachment containing LIME's redacted response to the Authority's interrogatories, wherein the above identified redacted information contained in interrogatories 6 and 21 must be provided in the public version or a response to the Authority's determination regarding the information in those interrogatories; and
- either revised versions of the routing diagrams removing the "Confidential" indication or a reply to the Authority's determination related to the routing diagrams.

LIME's submission should be copied to the CD 2012-1 distribution list at the same time it is submitted to the Authority.

Yours sincerely,

[signed]

Mark Connors
Head of Economics and Regulation

cc: CD 2012-1 distribution list