



**NOTICES TO
INFINITY BROADBAND LTD (“C3”)**

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**NOTICE IN RESPECT OF CONTRAVENTIONS OF LICENCE CONDITIONS
PURSUANT TO SECTION 91 (9) OF THE UTILITY REGULATION AND
COMPETITION ACT (2021 REVISION) (the ‘Enforcement Notice’)**

A. Introduction

1. The Enforcement Notice is issued by the Utility Regulation and Competition Office (‘OfReg’ or the ‘Office’) pursuant to *section 91 (9)* of the *Utility Regulation and Competition Act (2021 Revision)* (‘URCA’)¹ to Infinity Broadband Ltd (T/A ‘C3’) in respect of contraventions by C3 relating to: (a) non-payment of Licence Fees (Royalty and Regulatory Fees), and (b) non-compliance with the Provision of an Audited Financial Statement.

B. Background

2. Annex 2, paragraphs 1.2 (a) – (d) (Licence Fees), of the Licences agreed to by C3 in 2004² (the ‘**2004 Licence**’) and 2021³ (the ‘**2021 Licence**’) (collectively, as the context provides, the ‘**Licences**’) each provide that⁴:

(a) *Not later than **fifteen (15) calendar days** following the end of the Quarter the Licensee shall deliver to the Office a licence fee report showing the amount of Quarterly Turnover broken down in a manner prescribed by the Office, Quarterly Revenue and all calculations applied, and Unaudited Financial Statements. [...].*

(b) *At the same time as provision of the information specified in [subclause] (a) above, the Licensee shall deliver a cheque payable to the Office which*

¹ <https://www.ofreg.ky/viewPDF/documents/legislation/2021-06-23-06-04-02-Utility-Regulation-and-Competition-Act-2021-Revision.pdf>

² **Exhibit 1** – Infinity Broadband Ltd 2004 Licence.

³ <https://www.ofreg.ky/viewPDF/documents/infinity-broadband/2021-08-06-06-38-19-View-Licence-document.pdf>

⁴ In the 2004 Licence, the reference to the Office is to the Information and Communications Technology Authority (the ‘ICTA’), the predecessor to the Office.



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shall be equal to six per cent (6%) of the Quarterly Revenue together with an amount equal to the Licensee's Quarterly Regulatory Fee.

(c) The Licensee shall include, when providing the information specified in subclauses (a) and (d), an affidavit signed by an officer of the Licensee attesting to the veracity and completeness of the information provided and that the Licensee has reported all Turnover.

*(d) The Licensee shall deliver to the Office **within three (3) months** of the end of the Licensee's Financial Year a full set of Audited Financial Statements. If the Audited Financial Statements, as accepted by the Office, show that the Licensee has under paid the Licensee Fee, a further sum in the amount of that under payment shall be paid to the Office. In the event the Audited Financial Statements show that the Licensee has overpaid, a credit shall be applied to the subsequent year's Licence Fee.*

3. Licence Condition 3 (Licence Fee) of each of the 2004 and 2021 Licences provide:

3.5 Without prejudice to any other remedies of the Office under this Licence or the Acts of the Cayman Islands, if the Licensee fails to pay any amount due to the Office or delegated administrative unit of the Cayman Islands Government under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published Cayman Islands Dollar Prime Rate published from time to time by the Office's bankers, the Bank of Butterfield International (Cayman) Limited.

4. Licence Condition 4 (Provision of Information) of each of the 2004⁵ and 2021 Licences provide:

⁵ In the 2004 Licence, the referenced Licence Conditions both form Licence Condition 4.1



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4.1 Any and all aspects of the Licensee's business shall be subject to examination, investigation and audit by the Office.

4.2 The Licensee shall provide to the Office in the manner and at the times required by the Office, on reasonable notice, any documents, accounts, returns, estimates, reports or other information so required, including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence [...].

5. Licence Condition 5 (Compliance) of each of the 2004 and 2021 Licences provide:

In addition to complying with the Conditions of this Licence, the Licensee shall comply with:

- a. any obligation imposed on it by any Act, regulation or rule of the Cayman Islands that is applicable;*
- b. any decision, determination, direction, order, regulation, resolution or rule duly issued by the Office under the ICT Act, the Licence, or any Act, regulation or rule of the Cayman Islands that is applicable;⁶*
- c. the Plans submitted pursuant to **Condition 8**; and*
- d. applicable tariffs, if any.*

6. Made on **20 May 2020**, the Cabinet issued a Direction to the Office (the "**Direction**"),⁷ which instructed the Office "*to defer the collection of the information and communications technology royalty fees*" from telecommunications service

⁶ The 2004 Licence references for Licence Condition 5.1 (b): "*any direction, determination, decision request or order duly issued by the Authority under the ICTA Law, this Licence, or any law, regulation or rule of the Cayman Islands that is applicable;*"

⁷ **Exhibit 2** – and also at <http://gazettes.gov.ky/portal/pls/portal/docs/1/12962558.PDF>



providers related to the first two quarters of 2020 and for the deferred payments to become due on **30 September 2020**.

7. On **1 June 2020**, the Office notified⁸ C3, along with the other telecommunications providers, that it “*defers payment of the “Royalty” portion of the quarterly ICT Licence Fees that would normally be collected*” for Quarter 1 and Quarter 2 of 2020 until the 30 September 2020. The letter included the statement “[*f*]or the avoidance of doubt, these fees **will become due on 30th September 2020** and are expected to be submitted without delay”. (The Office’s emphasis in bold added.)
8. On **6 July 2022**, the Office issued a Notice to C3 pursuant to *section 91 URCA* in respect of possible contraventions by C3 relating to: (a) non-payment of Licence Fees (Royalty and Regulatory Fees); and, (b) non-compliance with the Provision of Audited Financial Statements (the ‘**Initial Enforcement Notice**’) (copy enclosed).
9. The Office provided C3 with the opportunity to make representations on that Initial Enforcement Notice, including providing any documentation, in relation to the suspected contraventions set out therein, within 21 days of the date of that Notice and stated that it will consider any representations and documentation submitted by C3 in accordance with the procedure set out.
10. C3 provided its response to the Office’s Initial Enforcement Notice on **27 July 2022**.

C. Contravention of the Infinity Broadband Ltd (‘C3’) 2004 and 2021 Licences, as applicable

11. The Office, in the Initial Enforcement Notice, set out the basis upon which it was satisfied that there were reasonable grounds for believing that C3 had contravened the following Licence conditions:

a. Non-Payment of Licence Fees

⁸ **Exhibit 3** - 1 June 2020 email and letter giving notice of the deferment of Royalty Fee payments.



i) Condition 1.2(b) of Annex 2 of the Licences – Royalty Fees

12. The Office set out that C3 had not paid its required Licence Fee as provided for pursuant to **Condition 1.2(b) of Annex 2** of the Licences, being the Licence requirement to pay fees to the Office equal to six per cent (6%) of C3’s relevant Quarterly Revenue (the ‘**Royalty Fee**’).

13. The Licence Fees (Royalty Fees) outstanding as set out in the Initial Enforcement Notice were:

A. Pursuant to 2004 Licence:

- a. Quarter 4 2019, in the amount of \$ [REDACTED] (Part payment of \$376.66 was applied to the original amount of \$ [REDACTED])
- b. Quarter 1 2020, in the amount of: \$ [REDACTED]
- c. Quarter 2 2020, in the amount of: \$ [REDACTED]
- d. Quarter 3 2020, in the amount of: \$ [REDACTED]
- e. Quarter 4 2020, in the amount of: \$ [REDACTED]
- f. Quarter 1 2021, in the amount of: \$ [REDACTED]

B. Pursuant to 2021 Licence:

- g. Quarter 2 2021, in the amount of: \$ [REDACTED]
- h. Quarter 3 2021, in the amount of: \$ [REDACTED]
- i. Quarter 4 2021, in the amount of: \$ [REDACTED]
- j. Quarter 1 2022, in the amount of: \$ [REDACTED]

That subtotal outstanding sum stated was: \$ [REDACTED]

The stated Total including interest was: \$ [REDACTED]⁹

14. In evidence of the above, the Office referred to the following correspondence (**Exhibits 4-14**):

- 4. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q4 2019**
- 5. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q1 2020**
- 6. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q2 2020**

⁹ Interest being “at three percentage points above the published Cayman Islands Dollar Prime Rate published from time to time by the Office’s bankers the Bank of Butterfield International (Cayman) Limited” per Licence Condition 3.



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7. Email Reminder- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q3 2020**
8. Email Reminder- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q4 2020**
9. Email 2021 02 12 Confirmation of Outstanding Licence Fees and Acknowledgement of Part Payment
10. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q1 2021**
11. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q2 2021**
12. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q3 2021**
13. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q4 2021**
14. Email- Licence Fee Payment and Financial Reporting Requirements Notification and Invoice **Q1 2022**

Note, there was a typo in the Initial Enforcement Notice, as the Royalty Fees owed should have read: C\$ [REDACTED].

15. C3 has yet to pay the above Licence Fees, which total C\$ [REDACTED]. As provided for by the Licences, the Office has calculated the interest on that sum as up to the date of this Enforcement Notice, which is \$ [REDACTED]. Please note that, as provided for in each of the Licences, interest accrues with each day that the owed sums are not paid to the Office.

ii) Condition 1.2(b) of Annex 2 of the 2021 Licence - Quarterly Regulatory Fee

16. The Office also set out that C3 had not paid its required Licence Fee as provided for pursuant to **Condition 1.2(b) of Annex 2** of the Licences, being the 2021 Licence requirement to pay a Licence Fee as determined by the Office. C3's Quarterly Regulatory Fee for Quarter 1 2022, equal to the amount of: C\$ [REDACTED] (the '**Regulatory Fee**'). The then stated total, including interest, was C\$ [REDACTED].
17. In evidence of the above, the Office referred to the *Licence Fee Payment and Financial Reporting Requirements Notification and Invoice Q1 2022 (Exhibit 15)*.



18. Subsequent to the Initial Enforcement Notice being sent, C3 paid the above Licence Fee (Regulatory Fee) on **21 July 2022**, **93** days after it was obliged to under its 2021 Licence; namely, it was to have been provided by the **19 April 2022**.

b. Non-provision of Audited Financial Statement for 2021

i) Condition 1.2(d) of Annex 2 of the Licences — Provision of Audited Financial Statements

19. The Office set out in the Initial Enforcement Notice that C3 had not provided its Audited Financial Statement for 2021, as required by Licence Condition 1.2(d), which requires the provision of that statement “*within three (3) months of the end of the Licensee’s Financial Year*”; namely, it was to have been provided by **31 March 2022**.

20. C3 provided the Office with its 2021 Audited Financial Statement on **12 July 2023**, **467** days after it was obliged to under its 2021 Licence.

D. C3’s Response to the Initial Enforcement Notice, and the Office’s Reply

21. C3 responded to the Initial Enforcement Notice on **27 July 2022**, where it stated that it had requested a meeting with OfReg, which had been arranged but which had to be subsequently cancelled due to illness. C3 stated that it had then asked to reschedule the meeting but that the meeting had yet to be arranged.

22. C3 requested OfReg to respond to three requests, in order to “*better understand the proposed actions in [the Office’s] letter*”:

- Request 1: C3 referenced the definition of “Regulatory Fee” at Annex 2 of the Licence:

“Regulatory Fee” means a fee payable to the Office which is determined by multiplying the Office’s costs relating to the ICT Sector, for a Quarter, which



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*the Office has determined should be paid by Licensees in ICT Sector, by the Quarterly Revenue of the Licensee, divided by the total Quarterly Revenue of all licensees in ICT Sector. **The amount of the fee shall be established and published by the Office** thirty (30) calendar days prior to each Quarter, and shall be based on data from the Quarter immediately preceding the Quarter in which the date of publication falls. The specific calculation and filing procedures shall be prescribed and published by the Office in a licence fee guidelines document. (Our emphasis.)*

C3 asked where the Office had published the applicable Regulatory Fee as indicated by the wording in bold.

- Request 2: C3 asked for the last date when the Office revised the Regulatory Fee calculation, “*given the recent economic upheavals associated with the COVID global pandemic and the unavoidable impact on Licensee revenues.*”
- Request 3: C3 asked the Office to provide it with a link to the Regulation or a copy of the Cabinet Directive which initially set out or otherwise defined the “Royalty Fee”.

23. The Office replied on **16 February 2023**, stating that:

- Request 1: it had provided C3 the amount of the applicable Regulatory Fee for the respective Quarters in correspondence, which was evidenced with the Notice.

The Office also noted that the specific calculation and filing procedures referenced in the definition are as published by the Office at —

<https://www.ofreg.ky/viewPDF/documents/Forms--Fees/2022-07-12-02-00-38-ICT-Long-term-Licence-Fee-Guidelines.pdf>



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- Request 2: The Office stated that it did not nor was it required to revise (i.e. make alterations to) its calculation of the Regulatory Fee. The Licence Fees due are as set out in C3's Licence.

The Office further stated that the Direction related to the collection of the Royalty Fee payments being deferred until 30 September 2020 rather than revised. Therefore, the Royalty Fee payment as set out in the Notice is still owed.

- Request 3: The Office referenced its *section 23(2) of the Information and Communications Act (2017 Revision)* ('**ICT Act**') Regulatory Notice which sets out the licences for which a Royalty Fee based upon a percentage of annual gross revenue are subject to (see Tables 1 and 6) (<https://www.ofreg.ky/viewPDF/documents/gazette-notices/2021-04-28-00-26-05-Gazetteissue25of2017Section232RegulatoryNoticepp1771-1779.pdf>.)

The Office explained that the networks and services C3 is licensed to operate and provide fall within those aforementioned tables, and referenced *sections 9 (3) (e) and (f) ICT Act* state that the Office's functions include to "license and regulate ICT services and ICT networks as specified in this Law" and "collect all fees, including licence fees."

The Office referenced that *section 23 (6) (b) ICT Act* sets out what a licence may specify, being the conditions to which the licensee is subject. The Office confirmed that C3 had agreed to the referenced obligations when it accepted its respective licences in 2004 and 2021.

Therefore, the Office set out, C3 was and is under a clear licence obligation to pay to the Office a sum of *six per cent (6%) of the Quarterly Revenue* together with an amount equal to the Licensee's Quarterly Regulatory Fee.

24. C3 and the Office subsequently exchanged legal correspondence on the matters related to the non-payment of the referenced Licence Fees. The Office maintains



its position as expressed in that correspondence, namely that C3 has been and is obliged to pay the Licence Fees as set out.

25. The Office sent a letter to C3 on **23 June 2023** which, noting the exchanged detailed legal correspondence, set out that the Office did not consider it necessary to hold the meeting on the non-payment of the Licence Fees matter. The Office stated that C3 had made its representations on this point, which were detailed and had set out its position clearly.
26. Further, the Office noted that C3 had yet to set out any representations in relation to having not provided its 2021 Audited Financial Statement, as referenced in the Initial Enforcement Notice.
27. Prior to moving to a decision on this matter, either to issue an Enforcement Notice or withdraw the Initial Enforcement Notice, the Office provided C3 with an opportunity to give any written representations by **7 July 2023** on the Initial Enforcement Notice, including in relation to C3 not having provided the Office with its 2021 Audited Financial Statement.
28. C3 responded to the Office's letter on **5 July 2023**, and confirmed that the 2021 Audited Financial Statement would be available to be provided to the Office by 13 July 2023. C3 did not make any further submissions in its response.
29. C3 provided the Office with its 2021 Audited Financial Statement on **12 July 2023**.
30. Therefore, and noting the correspondence referenced above, the Office has not allowed C3's meeting request in relation to the 2021 Audited Financial Statement. The Office considers that C3 has now had the opportunity to provide its representations on that matter and C3 did make comment and has subsequently provided the 2021 Audited Financial Statement. Further, the Office considers that a hearing is not needed in order to clarify what factually has happened.



E. Determination

31. **Therefore, for the reasons set out above, the Office determines that, pursuant to section 91 (9) URCA, C3 has failed to comply with its 2004 and 2021 Licence obligations, as relevant, namely:**

- *Licence Condition 1.2(b) of Annex 2 of the Licences – Royalty Fees.*
- *Licence Condition 1.2(b) of Annex 2 of the 2021 Licence - Quarterly Regulatory Fee.*
- *Licence Condition 1.2(d) of Annex 2 of the 2021 Licence - Provision of Audited Financial Statements.*



NOTICE IN RESPECT OF POSSIBLE ADMINISTRATIVE FINES PURSUANT TO SECTION 91 (9) OF THE UTILITY REGULATION AND COMPETITION ACT (2021 REVISION) (the 'Proposed Fine Notice')

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THE UTILITY REGULATION AND COMPETITION OFFICE, 18 August 2023