



**NOTICES TO
Cable and Wireless (Cayman Islands) Limited
(T/A 'Flow')**



The Utility Regulation and Competition Act (as amended) (the 'URC Act')

The Utility Regulation and Competition (Administrative Fines and Penalties) Guidelines, 2024 ('2024 Fining Guidelines')

THIS NOTICE IS WITHOUT PREJUDICE TO THE OFFICE'S FINAL DETERMINATION UNDER S.91(9) OF THE URC ACT, AS DESCRIBED IN THIS NOTICE.

To: Cable and Wireless (Cayman Islands) Limited (T/A 'Flow') ('**Flow**') or ('**you**') of PO Box 293, Leeward 1, Regatta Business Park, West Bay Road, Grand Cayman, KY1-1105.

TAKE NOTICE that the Utility Regulation and Competition Office is minded to impose on Flow an administrative fine of **\$400,000 KYD**.

If confirmed, you are required to pay the fine within the time limit provided by the Office.

The particulars of this Notice are as follows:

- a. The reasons for the Office's view that Flow may have failed to comply with or contravened one or more of the obligations in the ICTA (Interconnection and Infrastructure Sharing) Regulations, 2003 ('**INI Regulations**')¹ are as set out in the attached **ANNEX A – NOTICE**
- b. The reasons for the **proposed** fine and the amount of the fine are as set out in the attached **ANNEX B – NOTICE**.

Dated 22 December 2025

Signed: Sonji Myles – ICEO and Executive Director Information

Signed on behalf of the Utility Regulation and Competition Office

¹ <https://www.ofreg.ky/viewPDF/documents/legislation/2021-04-15-02-14-38-ICTA-Interconnection--Infrastructure-Sharing-Regs.-2003.pdf>



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NOTICE PURSUANT TO SECTION 91(1) OF THE UTILITY REGULATION AND COMPETITION ACT (2024 REVISION) IN RESPECT OF POTENTIAL CONTRAVENTIONS OF REGULATIONS (the 'Proposed Enforcement Notice')

A. Introduction

1. The Proposed Enforcement Notice is issued by the Utility Regulation and Competition Office ('OfReg' or the 'Office') - pursuant to *section 91 (1)* of the *Utility Regulation and Competition Act (2024 Revision)* ('**URC Act**')² - to Cable and Wireless (Cayman Islands) Limited (T/A '*Flow*') ('**Flow**'), in respect of potential contraventions by Flow relating to procedural deficiencies in complying with a request for infrastructure sharing made pursuant to the Office's *ICTA (Interconnection and Infrastructure Sharing) Regulations, 2003* ('**INI Regulations**').³
2. Pursuant to section 91(1) URC Act, the Office is satisfied that there are reasonable grounds for believing that Flow may have failed to comply with or contravened one or more Regulation (INI Regulations) requirements, for the reasons set out below.
3. **THIS NOTICE IS ISSUED PURSUANT TO SECTION 91(1) URC ACT AND IS WITHOUT PREJUDICE TO ANY FINAL DETERMINATION BY THE OFFICE UNDER S.91(9) URC ACT, THE CONFIRMATION OF WHICH IS SUBJECT TO ANY REPRESENTATIONS PROVIDED.**

B. Background

4. This factual background to this matter under consideration is as set out in the Office's *2025-1 ICT Determination – Logic Flow re towers infrastructure sharing dispute*.⁴ In considering this matter, the Office is guided by its statutory remit, in particular as set out in the URC Act, the *Information and Communications*

² <https://www.ofreg.ky/viewPDF/documents/2024-04-08-09-29-02-Utility-Regulation-and-Competition-Act-2024-Revision.pdf>

³ <https://www.ofreg.ky/viewPDF/documents/legislation/2021-04-15-02-14-38-ICTA-Interconnection--Infrastructure-Sharing-Regs.-2003.pdf>

⁴ <https://www.ofreg.ky/consultations/ict-determination-2025-1-logic-flow-re-towers>



Technology Act (2019 Revision) ('**ICT Act**'),⁵ and the INI Regulations (summaries of which are at **APPENDIX A** to this Notice).

C. Key Chronology

In summary (Flow as a party to each of the correspondence referenced below will have copies of that correspondence, the Office can provide any missing ones on request):

5. On **13 September 2021**, WestTel Limited, trading as Logic ('**Logic**'), wrote to Flow⁶ requesting stated infrastructure sharing services at Lower Valley (GCM) site.
6. On **1 October 2021**, Flow requested that Logic re-submit its request pursuant to the INI Regulations, provide the required information and include a non-refundable deposit of \$2000 KYD.
7. On **8 October 2021**, Logic emailed Flow with the requested information for two sites – at Lower Valley (GCM) and South Side Bluff (CYB).
8. On **8 December 2021**, Flow confirmed receipt of Logic's \$2000 KYD application fee and provided notes to Logic on missing/incorrect information that had been submitted by Logic.
9. On **10 December 2021**, Logic provided the requested information to Flow.
10. On **8 February 2022**, Flow provided a quote for one site at Lower Valley – the quote was not complete for South Side Bluff as Flow requested further information.

⁵ <https://www.ofreg.ky/viewPDF/documents/legislation/2021-04-15-01-39-56-Information-and-Communications-Technology-Law-2019-Revision.pdf>

⁶ References to Flow in this context are also a reference to CWC Carrier Services, where applicable, who communicated at times with the Office on behalf of Flow.

11. On **21 February 2022**, Logic emailed Flow to request further infrastructure sharing services for five other sites: Salt Creek West Bay Road, Morritts East End, Lions Centre Red Bay, Masons Lodge Prospect and Northwest Point West Bay (GCM).
12. On **7 March 2022**, Logic followed up with Flow and asked whether there was “*any update on the previous requested site Cayman Brac Southside site.*”
13. On **4 April 2022**, Logic provided the required \$2000 KYD for the additional sites.
14. On **5 May 2022**, Flow confirmed that “[o]ur team has reviewed all [Logic’s] site requests and have attached our findings. Please provide the correct information based on each site for the areas “Not Comply”.”
15. On **17 May 2022**, Flow informed Logic that it would require a non-disclosure agreement before providing the necessary information to Logic.
16. On **24 May 2022**, Logic followed up with Flow and asked whether “*the information resent was ok.*”
17. On **31 May 2022**, Logic followed up, noted that it had provided “*some clarifying information regarding the request*”, and asked whether it was “*possible for [Flow] to confirm [it] now has all the information that is needed to process [Logic’s] request and if so [is Flow] able to give [Logic] a timeline for a response?*”
18. On **1 June 2022**, Flow responded to Logic with an excel spreadsheet setting out that the applications for each site were “*rejected*” on the basis of missing frequencies and radio channels not matching.
19. The same day, Logic responded by saying that Logic had “*verified the frequencies with RF engineering. They confirm they are correct*”, and that Logic’s concern was that Flow “*has accepted the Lower Valley site and now the frequencies are incorrect.*”

20. Flow responded that day by stating that “[o]ur response this morning is based on your last response. [...]. All your application forms (including Southside & Lower Valley) were submitted to our Mobile Radio Engineer for review and the findings outlined in our mail of May 2022 [...] for all sites.”
21. Logic followed up later that day by stating that “[t]here seems to be some disconnect here. The rejection seems to be purely based on what is determined to be incorrect frequency information.” Logic asked for a meeting to be set up the next day or the following Tuesday to “sort [it] out.”
22. Logic then followed up by stating that they were “attaching the site form for Cayman Brac Bluff site. [We] know on the lower valley site, [we] did have a mistake on the frequencies and was revised.”
23. Flow responded the same day by confirming a meeting with Logic for the next day to discuss the matters raised.
24. On **7 June 2022**, Logic provided the revised site documents. Flow confirmed receipt the next day.
25. On **15 August 2022**, Logic provided information following site visits, stating that all the criteria checked as “met OK.”
26. On **6 September 2022**, Logic followed up with Flow and asked whether it could “get an update today on the tower co-locate request for CBrac and GCM? This has been dragging on for way too long!” Flow replied that same day stating that it would “get an update on this.”
27. On **8 September 2022**, Flow informed Logic that site plans are required.
28. On **9 September 2022**, Logic responded stating that it was “assuming that if Flow is now requesting full site plans that these sites have been approved for Logic to occupy? [...] This would come at significant cost to get these diagrams drawn up to only have Flow reject our application and render them useless so please clarify the

reason for your request. Also please let us know if there are any other items that logic needs to submit as we have not been made aware of any outstanding items."

29. On **13 September 2022**, Flow responded by stating that "[t]his is our final approval process. [...] Once final approval is given we will move towards having the costing finalized and agreement submitted for signing. After signing we will proceed with installation."
30. On **17 November 2022**, Logic provided Flow with a revised drawing file for the Northwest Point site, and followed up on **9 December 2022** with the information for all six proposed sites (Northwest Point West Bay, Salt Creek West Bay Road, Lions Centre Red Bay, Masons Lodge Prospect, Morritts East End and Southside Bluff site Cayman Brac).
31. On **5 January 2023**, Logic followed up on its provided site plans "sent last year for the colocation cell sites."
32. On **20 January 2023**, Logic again followed up as to the request for infrastructure sharing, and reminded Flow of the obligation in the INI Regulations to provide a quotation within "30 days of receipt of the complete request for sharing." Logic added that "[t]he deadline for the quotation for the above sites therefore expired on 8 January 2023."
33. On **the same day**, Flow set out that "[n]ow that we have received all the site plans the next step is to have these reviewed and analysed as it relates to the infrastructure and necessary supports. [...]. Upon review and the requisite approvals received, the costing will be provided as this information now received will assist in finalizing the rates. [Flow] will submit these plans and work with the team to have the quotation finalized."
34. On **24 January 2023**, Logic responded that "[t]o say this response is disappointing would be an understatement. Logic for months has been pursuing this co-location with Flow, and at every turn has been delayed. [...] Based on [Flow's] email, it

appears that nothing has been done by Flow in respect of our infrastructure sharing request to date.”

35. On **25 January 2023**, Flow responded by apologising for the delay, explaining that a relevant person in the organisation was *“out-of-office for a period and as such resulted in the delay.”*
36. On **14 February 2023**, Flow provided another update stating that the matter was being worked *“with the team and [Flow] will provide an update as soon as possible.”*
37. On **15 February 2023**, Logic responded by setting out that it *“has now been an additional 3 weeks since the correspondence [...] whereby [Flow] confirmed [that Logic’s] attachments were submitted for internal review [...]. This continued delay is not acceptable.”*
38. On **16 February 2023**, Flow responded by stating that with *“regards to the approval for infrastructural support, [Flow’s] team conducted the relevant site visits and advised that a review by a Structural Engineer will be required to confirm if the required load can be facilitated on these towers. Currently there is another Operator on the tower and as such our team has expressed some concerns based on the additional equipment to be installed.”*
39. On **25 March 2023**, the Office sent a notice of own initiative investigation into the matters related to this Notice.

D. Contraventions of INI Regulations

40. The INI Regulations, **Regulation 5**, requires that infrastructure sharing arrangements be concluded *“as quickly as possible”* and in any event, *“no later than the time limits set out in [the INI Regulations], unless otherwise agreed between the parties.”*

41. The INI Regulations, **Regulation 6 (a)** requires that “*each licensee has an obligation to treat requests, to negotiate [...] infrastructure sharing agreements and to provide [...] infrastructure sharing services in good faith.*”

42. **Regulation 8** of the INI Regulations sets out the requirements for a properly constituted infrastructure sharing request, which are in summary:

42.1 **Regulation 8 (2)** - request for a quotation shall contain at least the following information-

(a) the reference number of the requestor’s ICT licence;

(b) a technical description of the requested services;

(c) locations;

(d) dates required; and

(e) projected quantities to be ordered with a period of 3 years forecast.

42.2 **Regulation 8 (3)** - a requestor shall be responsible for the reasonable costs incurred by the responder in processing the request, and shall include with the request a non- refundable deposit of \$2000 or such other amount as specified from time to time by the Authority.

42.3 **Regulation 8 (4)** - the responder shall acknowledge receipt of each request no later than 3 days following receipt of the request; and the responder shall provide the Office with a copy of the original request and the acknowledgement receipt.

42.4 **Regulation 8 (6)** - the responder shall consider and analyse each request and advise the requestor within 14 days of the acknowledgement of receipt of the request, or such other time period as agreed between the parties of-

(a) the need for any further information for purposes of having a sufficiently complete and accurate request; or

(b) that the request is sufficiently complete and accurate to provide a quotation.

42.5 Regulation 8 (7) - the responder shall provide a quotation as quickly as possible and in any event no later than 30 days, or within such other time period as agreed between the parties, after receipt of a complete and accurate request.

42.6 Regulation 8 (8) - where the responder denies a request, the responder shall provide detailed written reasons for such denial to the requestor within 20 days of the receipt of a complete and accurate request.

42.7 Regulation 8 (9) - a quotation shall contain all information required by the requestor to fully consider the rates, terms and conditions for obtaining the requested services, including the following minimum information-

(a) date of availability;

(b) installation intervals;

(c) applicable rates;

(d) request development and processing costs; and

(e) other such necessary terms and conditions required to effect interconnection or infrastructure sharing.

43. The Office, in the Proposed Enforcement Notice, sets out below the basis upon which it is satisfied that there are reasonable grounds for believing that Flow may have contravened the INI Regulations.



- a. **Regulation 8 (6) INI Regulations – Failure to advise the requester within 14 days of the need for any further information for purposes of having a sufficiently complete and accurate request.**
44. The obligation as set out in the INI Regulations, which make it clear that the timelines set out therein are to be followed unless otherwise agreed to by the parties, is for Flow to have set out to Logic within 14 days of the acknowledgement of receipts (or from when such acknowledgement should have been given) the need for any further information for the purposes of having a sufficiently complete and accurate request.
45. Logic made its first request to Flow on **8 December 2021** for access to Lower Valley and South Side Bluff (the '**First Request**') and its second request to Flow on the **4 April 2022** for access to Salt Creek West Bay Road, Morrits East End, Lions Centre Red Bay, Masons Lodge Prospect and Northwest Point West Bay (the '**Second Request**'), when it provided its \$2000 KYD non-refundable deposit to Flow for each.
46. In relation to the First Request:
- (a) The request was made on **8 December 2021** (payment of \$2000 KYD was confirmed by Flow) – and, on **10 December 2021**, Logic provided further information to Flow that Flow had requested.
- Flow provided a quote for the Lower Valley site on **8 February 2022 – 73 days later.**
- On **8 February 2022**, Flow requested further information for South Side Bluff – **73 days later.**
- There was then correspondence between Flow and Logic re various matters including Flow's request for an NDA from Logic.
- (b) Logic provided the updated information, the revised site documents, on **7 June 2022**, which Flow confirmed on **8 June 2022** that it had received.

During this time there was a discussion re provision by Logic of an NDA – which Logic provided on **14 July 2022**.

Flow informed Logic on **8 September 2022** that site plans are required – **93 days later**.

- (c) Logic provided site plans for the sites on **9 December 2022**.

Flow informed Logic on **16 February 2023** that a review by a structural engineer was needed – **69 days later**.

47. In relation to the Second Request:

- (a) The request was made on **4 April 2022**, the request should have been acknowledged on **7 April 2022** but Flow responded on **5 May 2022** asking for further site information – **30 days later**.

- (b) Logic provided the further site information and followed up with Flow on **24 May** and **31 May 2022** whether the information provided was “ok.”

Flow responded on **1 June 2022** with an excel spreadsheet setting out that the applications in the First and Second Requests were “*rejected*” on the basis of missing frequencies and radio channels not matching – **8 days later** (counted from 24 May).

- (c) Logic provided updated information on **7 June 2022**, which Flow confirmed on **8 June 2022** that it had received.

During this time there was a discussion re provision by Logic of an NDA – which Logic provided on **14 July 2022**.

Flow informed Logic on **8 September 2022** that site plans are required – **93 days later**.

- (d) Logic provided the site plan for Northwest Point on **17 November 2022**, and the remaining site plans on **9 December 2022**.

Flow informed Logic on **16 February 2023** that a review by a structural engineer was needed – **91 days later** for Northeast Point site and **69 days later** for the other sites.

48. In summary:

- (a) for the First Request – **184 days were lost in the process** (73, 93, 69 days it took Flow to respond to Logic's request minus the 14 days for each response, required by the INI Regulations).
- (b) for the Second Request – for the Northwest Point site, **172 days were lost in the process** (30, 93, 91 days it took Flow to respond to Logic's request minus the 14 days for each response, required by the INI Regulations).

For the other sites, **150 days were lost in the process** (30, 93, 69 days it took Flow to respond to Logic's request minus the 14 days for each response, required by the INI Regulations).

49. Therefore, Flow in responding to Logic's request for infrastructure sharing services failed to comply with the time limits set out in the INI Regulations. Such delays prompted the Office to intervene in a matter that should have been resolved by the Licensees in accordance with the INI Regulations.

- b. Regulation 5 INI Regulations – Infrastructure sharing arrangements shall be concluded as quickly as possible and in any event, no later than the time limits set out in the INI Regulations.**

50. For the reasons set out at paragraphs 44 to 49 above, the Office does not consider that the requested infrastructure sharing arrangements between Logic and Flow were concluded within the time limits set out in the INI Regulations due to Flow's non-compliance with those time limits.

c. **Regulation 6 (a) INI Regulations** – (a) each licensee has an obligation to treat requests, to negotiate [...] infrastructure sharing agreements and to provide [...] infrastructure sharing services in good faith.

51. Noting the delays in Flow complying with the time limits set out in the INI Regulations, as set out at paragraphs 44 to 49 above, the Office does not consider that Flow negotiated the requested infrastructure sharing arrangements in good faith.

d. **Regulation 10 INI Regulations** – Within 20 days of the receipt of the quotation [...] the requestor and responder shall undertake good faith negotiations to resolve any outstanding matters for purposes of producing an [...] infrastructure sharing agreement.

Regulation 11 INI Regulations – For the purposes of paragraph (10), the following actions or practices violate the obligation to act in good faith- [...]

(c) intentionally refusing to provide or delaying the provision of information necessary to reach an agreement;

(d) obstructing or delaying negotiations, the provision of services according to a final interconnection or infrastructure agreement, or the resolution of pre-contract disputes;

52. As set out at paragraph 46 above, Flow provided a quote for the Lower Valley site on **8 February 2022**. However, Flow then on **8 September 2022** informed Logic

that site plans were required. Logic provided those site plans on **9 December 2022**. Flow then informed Logic that a review by a structural engineer was needed on **16 February 2023**.

53. Noting the delay by Flow in resolving the outstanding matters after having given Logic a quote for Lower Valley, the Office does not consider that Flow undertook good faith negotiations for the purposes of producing an infrastructure sharing agreement. Indeed, Regulation 11 INI Regulations sets out that for the purposes of Regulation 10 INI Regulations, the action or practice of “*delaying negotiations*” violates the obligation to act in good faith.

E. Proposed Determination

54. **Therefore, for the reasons set out in this Proposed Enforcement Notice, the Office is satisfied that there are reasonable grounds for believing that Flow may have failed to comply with Regulations 5, 6 (a), 8 (6) and 10 of the INI Regulations.**

F. Next steps

55. In relation to the Proposed Enforcement Notice, the next steps in the procedure are:
- (a) Flow may submit a written response to the Proposed Enforcement Notice, and provide any documentation it wishes the Office to consider in making the determination, within **21 days of the date of this Proposed Enforcement Notice**.
 - (b) Flow, in its written response, may request that the Office hear Flow in person or through a representative and, if so requested, the Office may in its discretion allow such a request. Any document which Flow wishes the Office to consider at such a hearing shall be submitted within the time specified above.



REF: 2025_12_22_NOTICES to FLOW re non-compliance with INI Regulations

- (c) If the Office decides to hold a hearing, it shall do so within 21 days next following the 21-day period set out above, unless otherwise agreed, and in accordance with such procedure as it may determine.

THE UTILITY REGULATION AND COMPETITION OFFICE, 22 DECEMBER 2025

APPENDIX A: LEGAL BACKGROUND

The following provisions are of particular relevance:

URC Act Section 6

- (1) The principal functions of the Office, in the markets and sectors for which it has responsibility, are -

[...]

- (b) to promote appropriate effective and fair competition;
- (c) to protect the short and long term interests of consumers In relation to utility services and in so doing –

- (i) supervise, monitor, and regulate any sectoral provider, in accordance with this Law, the regulations and sectoral legislation and any general policies made by Cabinet in writing;
- (ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and

[...]

- (d) to promote innovation and facilitate economic and national development.

- (2) In performing its functions and exercising its powers under this or any other Law, the Office may –

[...]

- (d) make administrative determinations, decisions, orders and regulations;

[...]

- (w) take such action as the Office considers necessary to protect the health and safety of the public in relation to covered services;
- (cc) resolve disputes between sectoral providers, and between sectoral providers and sectoral participants;

[...]

- (gg) take appropriate enforcement action, including the imposition of administrative fines, in any case where a sectoral participant has contravened this Law, the regulations and any sectoral legislation or any administrative determination;
- (hh) take any other action, not expressly prohibited by Law, that is necessary and proper to perform its duties under this Law and sectoral legislation;

[...]

- (4) In performing its functions and exercising its powers under this or any other Law, the Office shall —

- (a) act in a timely manner;
- (b) rely on self-regulation and co-regulation, where appropriate;
- (c) act in a reasonable, proportionate, impartial and consistent manner;

- (d) operate transparently, to the full extent practicable;
- (e) engage in reasoned decision-making, based on the administrative record;
- (f) act without favouritism to any sectoral participant, including any sectoral participant in which the Government has a direct or indirect financial interest; and
- (g) subject to section 12, act free from political interference.

URC Act Section 87

(1) Subject to subsection (2), where the Office is satisfied that action is necessary to —

- (a) protect public health, safety or the environment;
 - (c) protect the interests of other licensees;
 - [...]
 - (d) prevent a licensee from contravening or attempting to contravene a term, condition or requirement of its licence or a provision of this Act or any other Law;
 - [...]
- the Office may, by notice in writing, direct the licensee concerned to immediately discontinue or refrain from a practice or to do or perform such act or thing as may be specified in the notice or procure that such act or thing be done.

ICT Act Section 2

“Infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilisation of a public ICT network; and for the purposes of this definition —

- (a) “tangibles” include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; ...”
- (b) “intangibles” includes agreements, arrangements, licences, franchises, rights of way, easements and other such interests;

ICT Act Section 9

[...] the principal functions of the Office are -

- (a) to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;
- [...]
- (g) to resolve disputes concerning the interconnection or sharing of infrastructure between or among ICT service providers or ICT network providers;

- (h) to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure;
- [...]
- (4) The Office may regulate the rate, prices, terms and conditions of any ICT service or ICT network that is required to be licensed where the Office is of the opinion that it is in the interests of the public to do so.

ICT Act Section 65

- (1) Subject to this section, a licensee that operates a public ICT network shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection with its ICT network or the sharing of any infrastructure and shall, in accordance with this section, ensure that the interconnection or infrastructure sharing provided is made at technically feasible physical points.
- (2) A licensee who wishes to make any interconnection or share infrastructure shall make the request for interconnection or infrastructure sharing with another licensee in writing.
- (3) A licensee to whom a request is made in accordance with this section shall, in writing, respond to the request within a period of one month from the date the request is made to him and, subject to subsection (5), provide the interconnection or infrastructure sharing service in a reasonable time.
- (4) A request by a licensee to make any interconnection or infrastructure sharing with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.
- (5) Any interconnection or infrastructure sharing provided by a licensee under this section shall be provided at reasonable rates, terms and conditions which are not less favourable than those provided to —
 - (a) any non-affiliated supplier;
 - (b) any subsidiary or affiliate of the licensee; or
 - (c) any other part of the licensee's own business.
- (6) Without prejudice to subsection (5), the Authority shall prescribe the cost and pricing standards and other guidelines on which the reasonableness of the rates, terms and conditions of the interconnections or infrastructure sharing will be determined.

ICT Act Section 67

- (1) Where, during negotiations for the provision of interconnection or infrastructure sharing, there is any dispute between the parties (hereinafter in this section

referred to as the “pre-contract dispute”) as to the terms and conditions of such provision, either of them may refer the dispute to the Office for resolution.

- (2) The Office may make rules applicable to the resolution of pre-contract disputes by means of arbitration or other dispute resolution mechanisms.
- (3) A decision of the Office in relation to any pre-contract dispute shall be consistent with any agreement reached between the parties as to matters that are not in dispute.

ICT Act Section 67A

- (1) The Office may decide, on its own initiative, to consider and determine what, in its view, is a dispute between any persons concerning the potential or actual operation of an ICT network or provision of an ICT service and in so doing shall notify all parties to the dispute that it is doing so.
- (2) The Office shall include in any notification under subsection (1), a timetable for considering and determining the dispute and may give directions with which the relevant persons to the dispute are to comply in order to enable the Office to carry out its functions, responsibilities and duties.
- (3) The Office’s determination shall be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of its functions, responsibilities and duties, and may include any one or more of the following —
 - (a) the making of a declaration setting out the rights and obligations of the parties to the dispute;
 - (b) the giving of a direction fixing the terms or conditions of transactions between the parties to the dispute;
 - (c) the giving of a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the Office;
 - (d) for the purpose of giving effect to a determination by the Office of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, the giving of a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment; and
 - (e) such other course of action as the Office considers necessary to resolve the dispute.
- (4) The procedure for considering the dispute and making a determination is the procedure that the Office is required, by Law, to follow. (5) Where the Office makes a determination under this section, the Office shall publish the determination.

ICT Act Section 68

- (1) The cost of making any interconnection or infrastructure sharing to the ICT network of another licensee shall be borne by the licensee requesting the interconnection or infrastructure sharing.

[...]

- (3) The cost referred to in subsection (1) shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and shall be sufficiently unbundled such that the licensee requesting the interconnection or infrastructure sharing service does not have to pay for network components that are not required for the interconnection or infrastructure sharing service to be provided.

ICT Act Section 69

- (2) The Office, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may-

[...]

- (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.
- (3) A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except —
- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
 - (b) there are reasons of safety or security; or
 - (c) there are technical and engineering matters which would make such access difficult or impossible.

INI Regulation 2

[...]

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilisation of a public ICT network; and for the avoidance of doubt-

- (a) tangibles include lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and
- (b) intangibles include agreements, arrangements, licences, franchises, rights of way, easements and other such interests.

INI Regulation 3

3. In these regulations, the word “licensee” refers only to licensees under the Law that hold licences for major public ICT networks as prescribed in the notice gazetted pursuant to section 23(2) of the Law.

INI Regulation 4

- (1) In accordance with the provisions of section 44 of the Law, a licensee shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection or infrastructure sharing arrangement.

[...]

- (3) A responder shall not refuse to provide infrastructure sharing services, except where-
- (a) there is insufficient capacity, taking into account its reasonably anticipated requirements; or
 - (b) such provision would create a technical or engineering difficulty that could not be reasonably addressed.

INI Regulation 5

5. Interconnection and infrastructure sharing arrangements shall be concluded as quickly as possible and in any event, no later than the time limits set out in these regulations, unless otherwise agreed between the parties.

INI Regulation 6

The following general principles and guidelines shall apply to the provision of interconnection and infrastructure sharing services –

- (a) each licensee has an obligation to treat requests, to negotiate interconnection and infrastructure sharing agreements and to provide interconnection and infrastructure sharing services in good faith;
- (b) consistent with sections 44 to 46 of the Law, licensees shall, in the first instance, attempt to reach agreement on interconnection and infrastructure sharing by negotiation; where there is a dispute, the parties may refer the matter to the Authority for resolution in accordance with the Dispute Resolution Regulations;
- (c) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at reasonable rates, on terms and conditions which are no less favourable than those provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder and shall be of no less favourable quality

than that provided by the responder to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;

- (d) interconnection and infrastructure sharing rates shall be determined in a transparent manner;

[...]

- (a) costs and tariffs shall be sufficiently unbundled so that the requestor shall be obliged to pay the responder only for the network elements or infrastructure sharing services that it requires;
- (b) costs shall be borne either by the requestor or the responder or both based on whether their respective requests and compliance with those requests cause those costs to be incurred; and in accordance with an interconnection or infrastructure sharing agreement between the two parties;
- (c) interconnection and infrastructure sharing rates shall be cost-oriented and shall be set to allow the responder to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards the responder's fixed and common costs;
- [...]
- (j) interconnection and infrastructure sharing services shall be provided in a manner that
 -
- (d) maximises the use of public ICT networks and infrastructure;
- (ii) minimises the potential for negative environmental impacts; and
- (iii) enables the development of competition in the provision of public ICT networks and public ICT services in a timely and economic manner;
- (k) interconnection and infrastructure sharing services shall be provided by the responder to the requestor at any technically feasible point on terms and conditions that are just, reasonable and non-discriminatory and in accordance with an interconnection or infrastructure sharing agreement between the two parties;

INI Regulation 8

- (1) Licensees shall have a right and, when requested by other licensees, an obligation to negotiate interconnection and infrastructure sharing services in order to ensure the provision and interoperability of services throughout the Islands.
- (2) A request for a quotation to provide interconnection or infrastructure sharing services shall contain at least the following information-
 - (a) the reference number of the requestor's ICT licence;
 - (b) a technical description of the requested services;
 - (c) locations;
 - (d) dates required; and
 - (e) projected quantities to be ordered with a period of 3 years forecast.
- (3) A requestor shall be responsible for the reasonable costs incurred by the responder in processing the request, and shall include with the request a non refundable deposit of \$2000 or such other amount as specified from time to time by the Authority.
- (4) Requests may be cancelled at any time by the requestor.
- (5) The responder shall acknowledge receipt of each request no later than 3 days following receipt of the request; and the responder shall provide the Authority, with a copy of the original request and the acknowledgement receipt.
- (6) The responder shall consider and analyse each request and advise the requestor within 14 days of the acknowledgement of receipt of the request, or such other time period as agreed between the parties of-
 - (a) the need for any further information for purposes of having a sufficiently complete and accurate request; or
 - (b) that the request is sufficiently complete and accurate to provide a quotation.
- (7) The responder shall provide a quotation as quickly as possible and in any event no later than 30 days, or within such other time period as agreed between the parties, after receipt of a complete and accurate request.
- (8) Where the responder denies a request, the responder shall provide detailed written reasons for such denial to the requestor within 20 days of the receipt of a complete and accurate request.
- [...]
- (10) Within 20 days of the receipt of the quotation, or such other time period as agreed between the parties, the requestor and responder shall undertake good faith negotiations to resolve any outstanding matters for purposes of producing an interconnection or infrastructure sharing agreement.

- (11) For the purposes of paragraph (10), the following actions or practices violate the obligation to act in good faith-
- (a) refusing to include in an interconnection or infrastructure sharing agreement a provision that permits the agreement to be amended in the future to take into account applicable changes to the laws rules and regulations of the Islands and to the determinations and court decisions of the Authority;
 - (b) intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;
 - (c) intentionally refusing to provide or delaying the provision of information necessary to reach an agreement;
 - (d) obstructing or delaying negotiations, the provision of services according to a final interconnection or infrastructure agreement, or the resolution of pre-contract disputes; and
 - (e) refusing to designate a representative with the Authority to make binding representations, if such refusal significantly delays the resolution of issues.

INI Regulation 9

The rates offered by the responder to the requestor shall clearly identify all charges for interconnection or infrastructure sharing.

INI Regulation 10

- (1) A responder's charges for interconnection or infrastructure sharing shall be-
- [...]
- (b) non-discriminatory in order to ensure that a responder applies equivalent conditions in equivalent circumstances in providing equivalent services, as the responder provides to itself, any non-affiliated licensee or any subsidiary or affiliate of the responder;

INI Regulation 30

30. In accordance with section 70(2) of the Law, the contravention of any provision of these regulations constitutes an offence and any person contravening any provision of these regulations shall be liable, on summary conviction, to a fine not exceeding \$20,000 or to imprisonment for a period not exceeding one year.



CONTENTS SHEET

ANNEX B:

PROPOSED NOTICE IN RESPECT OF POSSIBLE ADMINISTRATIVE FINES PURSUANT TO SECTION 91 (9) OF THE UTILITY REGULATION AND COMPETITION ACT (2024 REVISION) (the 'Proposed Fining Notice')

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**PROPOSED NOTICE IN RESPECT OF POSSIBLE ADMINISTRATIVE FINES
PURSUANT TO SECTION 91 (9) OF THE UTILITY REGULATION AND
COMPETITION ACT (2024 REVISION) (the ‘Proposed Fining Notice’)**

A. Introduction

1. The Proposed Fining Notice is issued by the Office in draft pursuant to *section 91 (9)* of the *Utility Regulation and Competition Act (2024 Revision)* (**‘URC Act’**)⁷ to Flow in respect of the proposed issuance of a fine relating to the [provisional] contravention by Flow as referenced at paragraph 54 of the Proposed Enforcement Notice, namely that the Office is satisfied that there are reasonable grounds for believing that Flow may have failed to comply with Regulations 5, 6, 8 (6) and 10 of the Office’s *ICTA (Interconnection and Infrastructure Sharing) Regulations, 2003* (**‘INI Regulations’**).⁸
2. Section 91 (9) URC Act states that, where the Office determines that a licensee has failed to comply with or contravened any regulation, the Office may consider the nature, circumstances and any actual or potential consequences of that failure to comply or contravention by the licensee as well as any prior determinations in respect of that licensee by the Office, and may issue a warning or impose a fine not exceeding five hundred thousand dollars in respect of each such failure to comply or contravention and twenty-five thousand dollars for each day that the failure or contravention occurs.
3. **THIS IS A PROVISIONAL NOTICE, THE CONFIRMATION OF WHICH IS SUBJECT TO CONFIRMATION OF A CONTRAVENTION BY FLOW OF AFOREMENTIONED REGULATION REQUIREMENTS, AND CONSIDERATION OF ANY REPRESENTATIONS PROVIDED.**

⁷ <https://www.ofreg.ky/viewPDF/documents/2024-04-08-09-29-02-Utility-Regulation-and-Competition-Act-2024-Revision.pdf>

⁸ <https://www.ofreg.ky/viewPDF/documents/legislation/2021-04-15-02-14-38-ICTA-Interconnection--Infrastructure-Sharing-Regs.-2003.pdf>

4. Subject to confirmation that the Office is of the view that there has been a contravention as set out in **ANNEX A**, and any representations that Flow may make, the Office's intention is to issue a fine in the matter and the level of that fine to be **\$400,000 KYD**, for the reasons set out below.
5. Where the Office determines that the application of a fine is appropriate, it is guided as to the setting of its fine amount by among other things the following guidelines – the general *Utility Regulation and Competition (Administrative Fines and Penalties) Guidelines, 2024* (the '**2024 Fining Guidelines**')⁹ and, in relation to this ICT specific matter, the *ICT Sector Fining Guidelines* (the '**ICTA Fining Guidelines**').¹⁰
6. In relation to Flow's proposed non-compliance with **Regulations 5, 6 (a), 8 (6) and 10 of the INI Regulations**, as set out in the Proposed Enforcement Notice, the Office is minded to issue Flow with a fine of **\$400,000 KYD**. For the fine calculation, the Office treats the episodes of non-compliance referenced as one continuing course of conduct.
7. In proposing such a fine, the Office notes, in particular:
 - (a) the importance of complying with the timelines set out in the INI Regulations in order to ensure a timely consideration of infrastructure sharing requests;
 - (b) the Office considers there to have been a serious lack of oversight by Flow's senior management as to compliance with Flow's INI Regulations regulatory obligations;
 - (c) such a fine will act as sufficient incentive to Flow and other ICT Licensees to comply with the requirements of the INI Regulations; and,

⁹ <https://www.ofreg.ky/viewPDF/documents/2024-06-11-14-16-58-Administrative-Fines-and-Penalties-Guidelines-June-2024.pdf>

¹⁰ <https://www.ofreg.ky/viewPDF/documents/ict/2021-12-21-00-59-59-146178172220160427ICTAFiningGuidelinesFINAL.pdf>

(d) the Office had to intervene in order to resolve the substantial matters.

8. The Office considers such a proposed fine to be proportionate to the significance of the failure in the context of the obligations and the impact on Flow, the general ICT Industry and particularly ICT consumers of the Cayman Islands.

B. Setting of a Fine and Proposed Fine Amount

Fine – Relevant Factors

9. When deciding whether an administrative fine level is appropriate, and as set out in the ICT Fining Guidance, in general the Office is likely first to consider the following factors in determining the starting figure of any fine: (i) the seriousness of the contravention; (ii) any precedents set by previous cases; and, (iii) the need to ensure that the threat of fines will act as a sufficient incentive to comply.
10. In relation to the seriousness of the matter, the 2024 Fining Guidelines state that failure to comply with or contravened one or more statutory regulations is classified as **serious**. This means that the starting level of any financial penalty is 60% of the maximum fine – which, noting that the maximum fine is \$500,000 KYD, equates to \$300,000 KYD.
11. As set out in the 2024 Fining Guidelines and the ICTA Fining Guidance, specific criteria may be relevant to then adjust the starting figure of any fine depending on the type of contravention. This may include, but would not necessarily be limited to:
 - (a) any gain (financial or otherwise) made by the Licensee (or any connected body);
 - (b) the degree of harm caused, or increased cost incurred by consumers or other market participants;
 - (c) size and turnover of the Licensee;

- (d) the extent to which any contravention was caused by a third party, or any relevant circumstances beyond the control of the Licensee;
- (e) the duration of the contravention;
- (f) whether a fine in respect of the same conduct has already been imposed by the Office; and,
- (g) the party's history of compliance, in the five years before the breach, with the Act and sectoral laws.

General Criteria

12. The Office considers it appropriate to apply a fine for Flow's non-compliance, **if confirmed by the Office**, with its failure to comply with Regulations 5, 6 (a), 8 (6) and 10 of the INI Regulations.
13. In this regard, the Office notes its statutory functions as set out in the URC Act¹¹ and ICT Act¹² which include, in particular, protecting the interests of consumers in relation to utility services and applying the obligations set out in the licences it issues.
14. The customers of the Office's ICT Licensees should have confidence that those that they deal with follow what they are obliged to do in their regulatory obligations.
15. The issuance of a fine will be dissuasive of future failures by ICT Licensees to comply with obligations in the INI Regulations, whether it is Flow or on publication of any final Enforcement and Fining Notices, other such ICT licensees in similar circumstances.

¹¹ See for example the functions set out at section 6.

¹² See for example the functions set out at section 9.

16. The Office considers that the proposed fine is proportionate to Flow, noting in particular that the level of the fine represents a ## ## percentage **less than** ##\$ ## of Flow's net 2024 annual turnover of ##\$ ## KYD.

Specific Criteria

- a. *Any gain (financial or otherwise) made by the Licensee (or any connected body)*
17. Logic has requested infrastructure sharing services in order to place transmitting equipment for its 5G Mobile network, to provide mobile ICT services in competition with Flow's. Flow, by delaying its responsiveness to Logic's requests, delays the rollout of Logic's 5G competing service. Therefore, Flow benefitted by delaying the potential competition of a competitor when providing consumers with access to 5G mobile services.
- b. *The degree of harm caused, or increased cost incurred by consumers or other market participants*
18. Cayman Island consumers of ICT mobile services have been harmed by this lack of competition potential through reducing the number of mobile providers.
- c. *Size and turnover of the Licensee*
19. The net turnover of Flow for 2024 was ##\$ ## KYD (as reported in Flow's Licence Fee Report submissions over this period).
- d. *The extent to which any contravention was caused by a third party*
20. Not relevant.
- e. *Duration of the contravention*

21. The duration of the contravention is not ongoing insofar as the failure to comply relates to the negotiations for infrastructure sharing between Flow and Logic that were brought to a conclusion by the Office on publication of *ICT Determination 2025-1*.¹³

f. Whether a fine in respect of the same conduct has already been imposed by the Office

22. No fine has been imposed by the Office in respect of the same conduct.

g. The party's history of compliance, in the five years before the breach, with the Act and sectoral laws.

23. In 2023 (**20 July 2023**), Flow was issued with a \$400,000 KYD fine and warning Notice regarding its non-compliance with specified Licence Conditions.¹⁴

24. Therefore, the Office considers that a starting level of **\$300,000 KYD** for the [proposed] fine is appropriate in these circumstances.

Factors tending to lead to an increase in the fine level

25. In increasing the starting level of the fine by **\$100,000 KYD**, the Office has taken into consideration:

(a) the importance of complying with the timelines set out in the INI Regulations in order to ensure a timely consideration of infrastructure sharing requests;

¹³ <https://www.ofreg.ky/consultations/ict-determination-2025-1-logic-flow-re-towers>

¹⁴ <https://www.ofreg.ky/viewPDF/documents/2023-08-17-13-26-17-Determination-CWCIL-Flow-Fine-and-Warning-Notice-.pdf>

- (b) the Office considers there to have been a serious lack of oversight by Flow's senior management as to compliance with Flow's INI Regulations regulatory obligations;
- (c) such a fine will act as sufficient incentive to Flow and other ICT Licensees to comply with the requirements of the INI Regulations;
- (d) the Office had to intervene in order to resolve the matters which meant that the Office incurred costs (in that its staff had to prepare and finalise the draft and final determination and fining notices) that it should not otherwise have incurred; and,
- (e) this is Flow's second (proposed) enforcement and fining notices, and the non-compliance identified occurred subsequent to the date of the first notices (see paragraph 23 above).

Factors tending to decrease the fine level

- 26. The Office has not identified any factors to decrease the proposed level of fine.
- 27. If confirmed, while this would be the first fine to be made under section 91 (9) *URC Act* regarding non-compliance with the procedural requirements of the INI Regulations, and that there is little precedent for Flow to guide its behaviours on this matter, the Office considers that the referenced lack of senior management oversight, and obvious ineffectiveness and failure of internal mechanisms, is a very serious omission which puts any fine at the higher end of the scale.

C. Proposed Determination

- 28. In relation to Flow's proposed non-compliance with **Regulations 5, 6 (a), 8 (6) and 10 of the INI Regulations**, as set out in the Proposed Enforcement Notice, the Office is minded to issue Flow with a fine of **\$400,000 KYD**. For the fine calculation,

the Office treats the episodes of non-compliance referenced as one continuing course of conduct.

D. Next Steps

29. In relation to the Proposed Fining Notice, the next steps in the procedure are:

- (a) Flow may submit a written response to the Proposed Fining Notice, and provide any documentation it wishes the Office to consider in making the determination, within **21 days of the date of this Proposed Fining Notice**.
- (b) Flow, in its written response, may request that the Office hear Flow in person or through a representative and, if so requested, the Office may in its discretion allow such a request. Any document which Flow wishes the Office to consider at such a hearing shall be submitted within the time specified above.
- (c) If the Office decides to hold a hearing, it shall do so within 21 days next following the 21-day period set out above, unless otherwise agreed, and in accordance with such procedure as it may determine.

THE UTILITY REGULATION AND COMPETITION OFFICE, 22 DECEMBER 2025