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Digicel's Reply Comments: Public Consultation on Unbundling the Local Loop (Ref: CD 2013-1)

29 July 2013

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the consultation or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part with the Authority or any party on those issues; nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

We thank you for inviting Digicel to provide its reply comments. We are available for any questions you may have.

Chris Hayman
Chief Executive Officer
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LIME has quoted many papers in its response, and used these as the basis of its argument for denying local loop unbundling in the Cayman Islands.

Digicel has reviewed three of these papers, the first one from Crandall et al argues that copper unbundling has not accelerated the deployment or increased the penetration of first-generation (copper) broadband networks (see the conclusion) so it does not seem very relevant, as this is not the aim of this consultation.

The second, a 2009 paper (not provided and perhaps not referenced correctly) from Analysys Mason apparently questions the likely benefits of fibre unbundling compared to the costs.

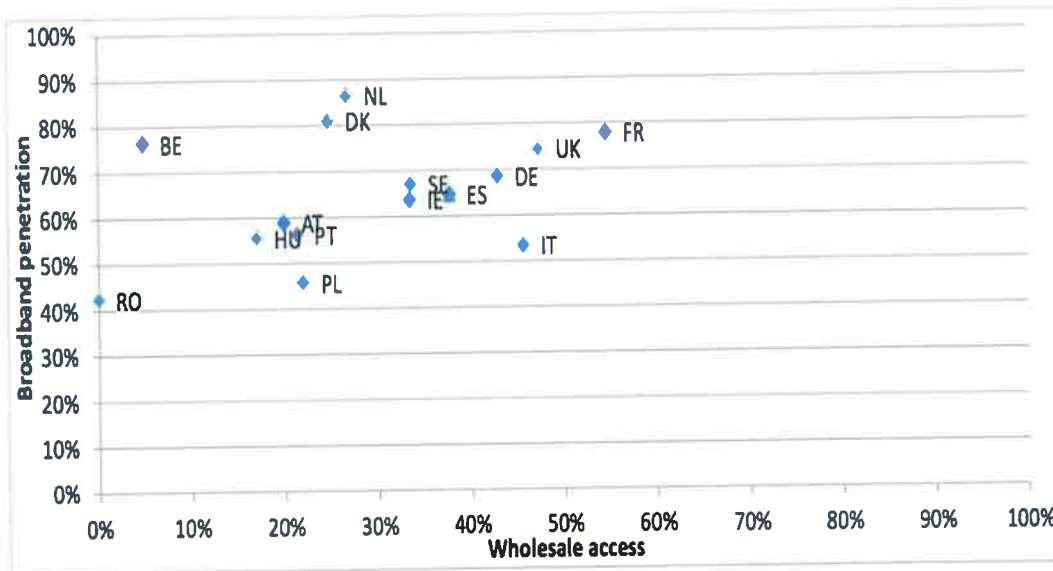
The third from Kongaut et al, generically argues that access regulation can delay the growth in infrastructure investment.

Most notably, none of the papers cited by LIME conclude that copper unbundling should not have been mandated. Digicel believe, this is because unbundling is widespread, has increased local loop competition and regulators have absolutely no intention of withdrawing the requirement for unbundling.

As stated it is difficult to see much applicability of the first paper to the matter before us currently. Digicel is arguing that unbundling should be mandated precisely because it does not make sense to replicate the first generation infrastructure. Of course it would not make sense build out more old style first generation (copper) infrastructure if unbundling were mandated. We would complement first generation infrastructure with next generation fibre based infrastructure.

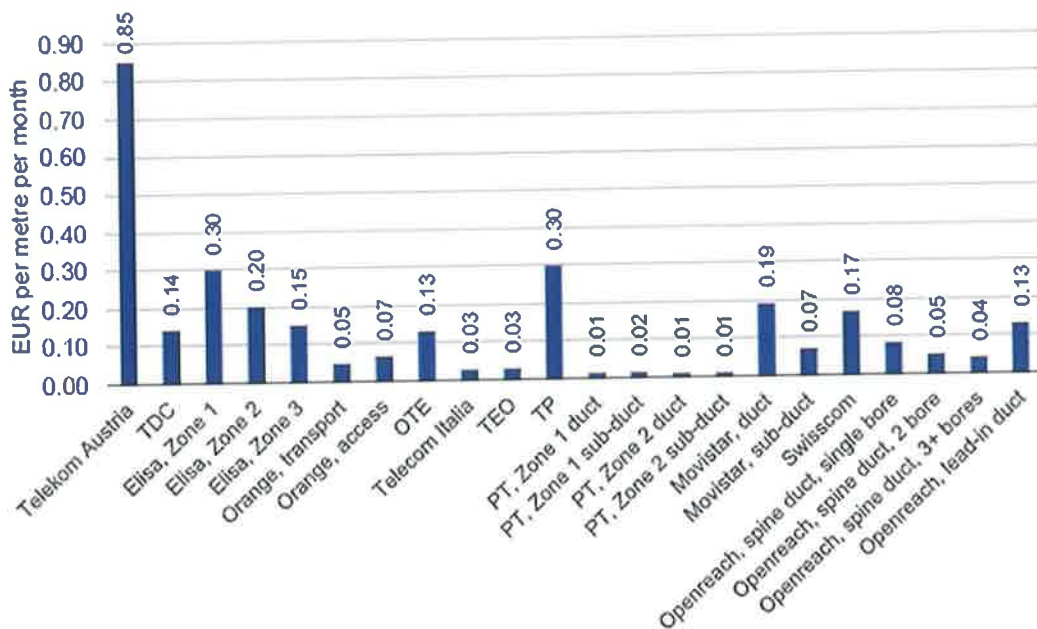
The evidence from WIK consulting (2012) is that broadband penetration is higher in countries in in which the SMP operator offers a larger share of its lines on a wholesale basis (unbundled local loops and wholesale broadband)¹:

¹ http://ectaportal.com/en/upload/File/Press_Releases/2012/NGA_Progress_Report_final.pdf



The second paper raises questions about fibre unbundling. Digicel did not originally ask for fibre unbundling of course and in our response we said that we would support it also as long as it was technically feasible. There is a greater case for fibre unbundling (and bundling in the Cayman Islands generally) than in other countries however, since LIME does not provide duct access despite the fact that the cost of network support infrastructure is by far the biggest cost involved with building a fixed underground network. Using heavy machinery digging up roads, trenching, laying ducting and restoring roads to their original condition is an expensive undertaking and is not economic island wide to replicate. This type of large engineering works can also encounter considerable problems with planning permission for such works. Those very large costs have already been recovered by LIME during the long period of monopoly prior to competition so that access can be provided at the cost of operating and maintenance associated with the underground duct work. As can be noted from the graph below; duct access is widespread in Europe. Therefore a competitor in those countries has the option of laying its own fibre down that ducting. As can be seen by the competitors all laying ducting, there is no workable option in the Cayman Islands.

Figure 4.6: Monthly charges for access to incumbent-owned ducts in Europe [Source: Analysys Mason, 2011]



The third paper from LIME makes generic statements about access regulation affecting infrastructure investment. Any form of regulation whatsoever can be detrimental to the market if not thought out properly. The important thing is to get the access terms right. The pricing of copper loops in Europe is going to remain at the current levels based on statements from European Commission Vice President Kroes in 2012:

“I do not see grounds to question the price signals sent by the current average copper unbundling price in Europe (in the region of €9 per month), around which some local variation may be quite normal.”

One alternative approach in the Cayman Islands would be to implement incentive regulation whereby access to fibre would be relaxed if and when duct access was provided.

What is perhaps most noteworthy about LIME's response are the things that have not been said:

1. Local Loop Unbundling is recognized by regulators worldwide as an effective way of enabling local loop competition and indeed it is for example the most successful form of local loop competition in Europe based on information that we provided in our first response;
2. The World Trade Organization ("WTO") also recognizes the importance of Local Loop Unbundling in the Reference Paper on Telecommunications, which sets out regulatory principles that are legally binding for those WTO governments which have committed to it by appending the document, in whole or in part, to their schedules of commitments. The Reference Paper in section 2 states the following:

"Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

*(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and **sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided;** and*

*(c) upon request, **at points in addition to the network termination points offered to the majority of users,** subject to charges that reflect the cost of construction of necessary additional facilities."*

3. Even one of the best known incumbent fixed line operators (BT in the UK) is a supporter and promoter of local loop unbundling. As is stated on the BT Global Services website:

“Many countries have therefore introduced Local Loop Unbundling (LLU) to stimulate growth and innovation on their telecoms market, often with great success.”²

“After the successful introduction of LLU, different implementations were installed by the former incumbent and the market challengers.”

“As a result, BT Advise for Communications was able to develop recommendations for the introduction of a refined LLU concept which forms a solid basis for future growth in the market.”

BT is under no regulatory obligation to promote unbundling. This demonstrates that once structural separation of a fixed operator takes place, and BT no longer has a motive to restrict access to its network so as to feed through benefits to its retail arm, unbundling is seen as a positive development by a fixed operator. This is more telling than one or two papers from consultants who may have a particular axe to grind.

4. Cable and Wireless Communications (“C&WC”), the parent company of LIME, in its submission to a public consultation conducted by OFTEL in September 1999 entitled Access to Bandwidth: Proposal for Action supported the unbundling of the local loop. C&WC conclusion in its submission was as follows:

“C&WC believes that there are a number of developments to BT’s current wholesale ADSL offerings that are necessary if a genuinely competitive market for higher bandwidth services is to develop. Only then will the demands of consumers and businesses be adequately met. An important requirement is the unbundling of the current BT offerings to enable other operators to compete in the provision of backhaul links between BT’s local exchange buildings and service provider sites. Oftel’s recent proposal may help to fulfil this requirement. Such wholesale offerings should, however, be in addition to Option 2. Option 2

² http://www.globalservices.bt.com/uk/en/microsite/Global_Telecom_Markets/casestudy/local_loop_unbundling_concept_refinement

*provides the potential for additional functionality over and above that provided by the current BT proposals and also gives operators control over the timing of the roll-out of their services. We do not underestimate the issues that need to be resolved, in particular the technical issues and process issues such as collocation. However, we believe that it is possible to achieve Oftel's proposed timescales and will be working with industry groups to achieve this."*³

5. Clearly there was considerable investment directly as a result of unbundling as can be seen from the enormous numbers of unbundled local loops in use and the market entry that has been enabled thereby. The investment has gone in to service provision rather than replicating first generation networks and the supporting infrastructure. Therefore capital has been employed efficiently rather than being wasted.

On the 16th of September 2004, the Chief Executive Officer of Cable & Wireless PLC, Francesco Caio, made a presentation to investors highlighting the opportunities presented by local loop unbundling and the investment Cable and Wireless would undertake as a result of the same. In the press release associated Cable and Wireless would advise investors that as a result of Local Loop Unbundling (LLU) it was initially expected to make the following investments:

" LLU capital investment is expected to be £40-50 million in the year to 31 March 2005. An additional £15 - 35 million will be required in the year to 31 March 2006, subject to the speed of subscriber growth*

** Our investment will also include operational funding, which is expected to be approximately £30 million in the year to 31 March 2005 and at a similar level in the following year, subject to the speed of subscriber growth"*

6. We do not think it is disputed that local loop unbundling leads to better services in terms of lower pricing of fixed calls and greater broadband speeds. It also enables third party operators to develop bundles of services which many customers demand from a single provider. This has helped to intensify competition across telecommunications markets.

³ www.ofcom.org.uk/static/archive/oftel/ind_groups/op_policy/cwg/cwc.doc

Conclusion

LIME is a vertically integrated fixed line operator that is dominant at both the wholesale and retail levels for fixed voice calls and fixed broadband services. LIME is making extremely large margins on its copper broadband product for example as is demonstrated by Digicel's original response. Further, LIME has no intention of extending its copper network. It is, naturally, incentivized to restrict access to its network at the wholesale level so that it can keep those large margins within its own operations through its retail arm and to force other operators to attempt to compete by trying to string overhead fibre which will cost a huge sum of money and moreover never be seen as a viable alternative by some customers. Mobile and fixed wireless do not offer a competitive alternative as vastly more data can be fed down a depreciated fixed underground infrastructure (the supporting infrastructure as well as the fixed network) for any given price. Even where final delivery is via short range wireless devices in places such as internet cafes the service is only viable because it is delivered by fixed line up to the point at which it reaches the very short range very high frequency wireless router. Consequently there is no harm and a strong public interest in, enabling unbundled access to LIME's copper network to bring real fixed line islandwide competition to the Cayman Islands for the first time.

With respect to fibre access, and again subject to technical feasibility, we would support access in this regard as a number of European countries have required, especially given that operators have no means of accessing LIME's underground ducting without which operators cannot reasonably compete islandwide. Incentive regulation could perhaps relax access requirements to some extent on LIME when duct access is provided.