



# Digicel

Digicel's Response to Consultation C14/1624: Consultation on Adjudication Rules

20 June 2014



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 comments on this consultation and of course are available for any questions you may have.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to: -

Wayne Caines

CEO

Digicel Bermuda Ltd

Address: Washington Mall, Phase II

22 Church Street

Hamilton, HM 11

Bermuda

Tel: 1 (441) 500-1010

Email: [wayne.caines@digicelgroup.com](mailto:wayne.caines@digicelgroup.com)



## Introduction

Thank you for the opportunity to respond to the Authority's Consultation on Adjudicative Rules. We are generally supportive of the proposals. Our main concerns relate to distinguishing between circumstances where the parties do, and do not, have similar market positions, keeping adjudication procedures manageable, and avoiding unnecessary costs.

## Response

### When to Use Informal Resolution and When to Use Adjudication

Clause 60(2) states that parties have to rely on informal dispute resolution procedures before turning to adjudication.

Whether informal resolution procedures is appropriate can we think be determined from the table below as used by Ofcom<sup>1</sup>. This takes in to the account of whether one or both parties is dominant in a relevant market to decide whether alternative dispute resolution procedures have to be relied on first. We encourage a similar approach by the Authority.

|                                                                                                    | <b>Alternative forms of Dispute Resolution</b> | <b>Determination by RAB</b> |
|----------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------|
| <b>A large number of parties are involved</b>                                                      | X                                              | √                           |
| <b>One of the parties is dominant in the relevant market</b>                                       | X                                              | √                           |
| <b>Both parties are dominant in the same market</b>                                                | √                                              | X                           |
| <b>None of the parties are dominant in the relevant market</b>                                     | √                                              | X                           |
| <b>Similar disputes are resolved in other industries without the intervention of the regulator</b> | √                                              | X                           |
| <b>No welfare loss would result</b>                                                                | √                                              | X                           |

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/resp/summary/guidelines.pdf> - see table 3



|                         |  |  |
|-------------------------|--|--|
| from a failure to agree |  |  |
|-------------------------|--|--|

### **Volume of Submissions**

Clause 69(4) states that submissions can be 50 pages in length exclusive of exhibits, affidavits, authorities and other documents. It can be hugely expensive to compile documentation of up to 100 pages in total as could therefore be the case given this rule. Very large documents can greatly complicate the proceedings as well as making the cost of going to dispute or responding to a dispute document prohibitively expensive. Therefore we suggest limiting documents to 10 pages excluding exhibits, affidavits and authorities, unless the Presiding Officer determines that larger submissions are permissible.

This also impacts clause 71(2)(a). This states that where a complaint has been filed the other party may have only 10 days to respond. This is not feasible if the party is served with a huge submission. If the documentation a party is faced with is greater than 10 pages (exclusive) in length then more than 10 days would be required for a response. Certainly, if the document is 50 pages (exclusive) then at least a month would be required.

Similar comments apply to clauses 90(3) and (4) which deal with responding to a Preliminary Adjudicative Decision and Order.

### **Discovery**

Currently section 76 entitles parties to discovery. However, discovery can also make the process much more expensive and complex and we think therefore that it should be necessary to request discovery of the Presiding Officer. Further the Presiding Officer should be required to take into account the monetary value of the matter being dealt with when considering whether discovery can be justified.