



Digicel comments on responses to the Public Consultation

by

ECTEL

on

**Market Assessment of Regulated and Unregulated Retail Services and
Proposed Recommended Measures for Retail Services in the ECTEL
Member States**

27th November 2020

We thank you for the opportunity to provide our comments on the previous submissions on consultation document “Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Measures for Retail Services in the ECTEL Member States” dated 28th August 2020 . .

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the Market Assessment 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 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.

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

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Introduction.

The Consultation covers proposed regulatory market interventions in three main areas. These are a market review and assessment of the fixed and mobile markets in the 5 ECTEL Member States, issues relating to consumer transparency and issues concerning prepaid service termination relating to account inactivity.

These comments deal with the responses to the Market Assessment of Regulated and Unregulated Retail Services and Proposed Recommended Measures for Retail Services in the ECTEL Member States

Four respondents have made submissions as part of the first round of the consultation process and Digicel wishes to provide its comments and observations on these submissions.

Digicel's comments are structured thematically and deal with multiple initial inputs on the same issue in aggregate.

Digicel is in broad agreement with the findings from the market review however it has some concerns regarding the proposed remedies and obligations and the proposed Automatic Adjustment Mechanism.

In respect of the consumer transparency Digicel has concerns regarding the technical viability of some of the proposals and also concerns regarding the implementation timeframe.

Digicel's comments are set out in more detail below.

COMMENTS ON RESPONSES TO THE “MARKET ASSESSMENT OF REGULATED AND UNREGULATED RETAIL SERVICES AND PROPOSED RECOMMENDED REGULATORY MEASURES”

Comments on whether fixed and mobile are in the same markets

A number of respondents have made submissions regarding whether fixed and mobile services are sufficiently substitutable to be included in the same economic market.

Flow in particular opines that they are. If this was indeed the case it raises the question why an operator in a highly penetrated mobile market would buy a fixed line provider where a significant proportion of the acquired customers were already served by the acquiring mobile company. If indeed the two services were substitutes one would expect either the company or the customer to rationalise the service and retain only one of the two services. Following CWC’s acquisition of Columbus Communications this did not happen.

A similar analysis unfolds in the case of Digicel’s proposed entry into the fixed market. If indeed mobile is an effective substitute for fixed there would be no market opportunity as it would be attempting to sell a second subscription to for a similar service to its existing customers.

While Flow asserts that they are in the same market it does not cite any examples of other jurisdictions where such a finding has been made.

Comments on the AAM

Both Flow and the NTRC of Dominica have commented on the AAM. Digicel understands the rationale behind such a measure but believes that its structure is flawed.

Even if Digicel deploys fibre based services aimed at the retail segment the threshold of 2% penetration for the lifting of obligations is far too low. If Digicel passed 10% of premises and reached 20% penetration in that footprint its overall market share would be 2%. However this would still leave 90% of the market uncontestable and flow with 98% overall penetration.

ECTEL should reassess the trigger point metrics and thresholds to ensure that they do not result in premature lifting of obligations designed to protect the market.

Comments regarding Market #9: Mobile Voice and Data Services

A number of respondents have made submissions in relation to this market.

Both the NTRC of St Vincent and the Grenadines and the NTRC of Dominica have made statements inferring joint dominance in the mobile market. Digicel must strongly reject any such suggestion.

There is strong competition between Digicel and Flow and this is reflected in the ECTEL analysis.

Market #10: Pay TV Services at a Fixed Location

The NTRC of Dominica has made comments regarding potential traffic shaping. Digicel reminds ECTEL and the NTRCs of operators' commitment to the CANTO Code of Practice on Safeguarding the Open Internet. In particular that signatories, which include Flow and Digicel, commit that *"save for objective and transparent reasons traffic management will not selectively target the content or application(s) of specific providers within a class of content, service or application"*.

Comments regarding Mobile Consumer Safeguards

All respondents have made comments in respect of the proposed Mobile Consumer Safeguards.

Digicel supports the general consumer protection principles that underpin ECTEL's proposals however we agree with Flow that the detailed proposals themselves are likely to be unworkable.

It is notable that both Digicel and Flow in some of their markets have adopted a number of ECTEL's proposals. This demonstrates that operators are not opposed to such measures. The fact that these have not been adopted more widely is a reflection of the different system capabilities in the different markets. The safeguards proposed require an interplay between billing systems, care systems, networks and foreign roaming correspondents across multiple services. The technical scoping to determine the timeline and cost implementing these measures is not trivial and the scoping itself will incur costs.

The proposed default 90 day implementation timeframe proposed by ECTEL is simply not possible. Even absent a detailed scoping it is clear from the complexity of the system interaction and the variability of systems topology across the different markets that the implementation of any such proposals will require specific capital expenditure and budgeting together with allocation of resources. Digicel would welcome an engagement with ECTEL, the NTRCs and Flow with a view to identifying a set of consumer safeguards that balance consumer protection, cost and practicality of implementation and timeline to deployment.

Digicel believes that Flow's proposed alternative are a useful input to any such engagement.

Other Comments

Flow outlines that Digicel's entry into the fixed market is Government subsidised. Digicel reminds Flow and ECTEL that this arrangement was by way of competitive tender that was open to Flow.

The NTRC of Dominica has made a number of statements relating to the market entry of new operators. Digicel must refute any inference that it has not fully complied with its regulatory obligations in relation to interconnection. Operators have an obligation to provide interconnect. They do not have an obligation to provide free consultancy services to access seekers who do not have the requisite in-house expertise to deal with the details and intricacies of implementing secure network to network connections including the associated operational and commercial arrangements. Existing operators have a duty of care to their customers not to compromise their network and service integrity by cutting corners and standards.