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Mr. Apollo Knights
The Coordinator
National Telecommunications Regulatory Commission (NTRC)
2nd Floor, NIS Building, Upper Bay Street
P.O. Box 2368, Kingstown
St Vincent & the Grenadines

30th April 2015

Dear Mr. Knights,

Consultation on Recommended Price Caps Plans and Defining Relevant Markets

It is Digicel understanding that the Commission has re-opened the consultation in to *ECTEL's Recommended Price Caps Plan for the Regulation of Price Capped Retail Services Provided by LIME*. We are very concerned about this action given that the additional information gathering process and market analyses required post the announcement of the merger between CWC ("LIME") and Columbus ("Flow") has not, to the best of our knowledge, taken place. Consequently, neither the public nor competing operators have the information necessary to make fulsome responses to this renewed Price Cap Plan Consultation.

We recognise that this particular consultative process focusses on retail pricing. However, it would be better to approach the regulation of the market holistically given the dramatic impact of the merger in terms of concentrating market shares in a number of markets. In addition to any retail controls that the Commission deems necessary at this time divestment of duplicate assets by the merged entity, and if not then wholesale remedies, are necessary actions. The non-retail remedies will in fact be the most crucial part of the equation in terms of ensuring reasonable retail prices that are market led.

As the Commission knows we did respond to the first Price Cap Plan Consultation on 28 November 2014. We stated that since LIME and Flow had announced their merger just after the data collection, market assessment, and PCP review process used as the basis for the consultation had been completed, the process should be re-started. In other words, before recommencing the consultation, the Commission would need to:

- 1/ undertake a revised data collection process;
- 2/ carry out market assessments from scratch.

These comments remain valid and we continue to urge the Commission first to undertake that revised data collection and market analysis process in the light of the increases in market concentrations that would result from the merger and before determining what retail and other controls are necessary.

Market Shares

The broad brush market data available to Digicel leads us to estimate that the market shares on the markets for the retail provision of fixed telephony, fixed internet/broadband and subscription TV services in St Vincent and the Grenadines are as follows:

Market Share Fixed Telephony	Market Share Fixed Broadband	Market Share Cable TV
<p>A pie chart showing market share for Fixed Telephony. LIME (dark green) holds 96% and FLOW (blue) holds 4%. A legend on the right shows a blue square for FLOW and a dark green square for LIME.</p>	<p>A pie chart showing market share for Fixed Broadband. LIME (dark green) holds 56% and FLOW (blue) holds 44%. A legend on the right shows a blue square for FLOW and a dark green square for LIME.</p>	<p>A pie chart showing market share for Cable TV. FLOW (blue) holds 100%.</p>
<p>Assumptions:</p> <ul style="list-style-type: none"> • Total number of households: 36,829 • Fixed Telephony penetration: Subscriber estimates: 14,718 (40%) <ul style="list-style-type: none"> ○ Flow – 600 (4%) ○ LIME – 14,118 (96%) ○ Total – 14,718 (100%) <p>(Residential plus business)</p>	<p>Assumptions:</p> <ul style="list-style-type: none"> • Total number of households: 36,829 • Fixed Broadband penetration: Subscriber estimates: 14,732 (40%) <ul style="list-style-type: none"> ○ Flow – 6,500 (44%) ○ LIME – 8,300 (56%) ○ Total – 14,732 (100%) <p>(Residential plus business)</p>	<p>Assumptions:</p> <ul style="list-style-type: none"> • Total number of households: 36,829 • Subscriber TV penetration: Subscriber estimates: 15,100 (60%) <ul style="list-style-type: none"> ○ Flow – 15,100 (100%) ○ Total – 15,100 (100%) <p>(Residential)</p>

In other words the merged entity will have a monopoly in fixed telephony, fixed internet/broadband and subscription television. We do not have available the more granular information we would require to analyse the markets more finely.

ECTEL Price Cap Plan Markets

ECTEL has defined the seven retail markets listed below, but reached the existing conclusions in its consultation document with respect to the remedies that should be imposed in those markets based on LIME competing with Flow, and not in the light of them acting as one entity¹.

¹ The consultation documents states that the data collection, market assessment and PCP review process over the period from late May, 2014 to late September, 2014 which is just prior to the announcement of the merger.

Market No.	Relevant Retail Markets
1	Residential Access at a Fixed Location
2	Business Access at a Fixed Location
3	Domestic Calling from a Fixed Location
4	Internet Access at a Fixed Location
5	Domestic Private Leased Circuits
6	International Private Leased Circuits
7	Data Services

In this respect on 2nd March 2015 Digicel made a submission to ECTEL, copied to the Commission, in respect of the proposed merger and the risk it posed for competition. I enclose a copy for ease of reference.

Further, we note that if the same criteria (listed below) that were used to assess the need for remedies in these seven retail markets prior to the merger as part of the price control exercise were applied to the merged entity, the Commission would have to reach very different conclusions. The Commission would find in the fixed sector, inter alia, a substantial lessening of competition, higher market shares, a reversed trend towards market concentration, greater barriers to entry and a substantially greater risk of adverse outcomes for consumers due to a lack of competitive options.

Market Assessment Criteria
LIME Relevant Market Specific Data [which must now include Columbus]
Competitive Alternatives (including evidence of rivalrous behaviour)
Market Shares
Market/Sector Trends
Barriers to Entry
Consumer Behaviour

Therefore the seven retail markets, and the overall market, must be reviewed in the light of the impacts of the merger, and prior to making any decisions about remedies. As indicated, the Commission needs to consider what combination of divestment, wholesale and retail remedies are necessary and arrive at an overall strategy which seeks to use competition at the network level where possible to derive the desired consumer outcomes. Most regulators will agree that an outcome based on competitive inputs rather than intervention at the retail level is strongly preferable². We mention the possible structural and wholesale remedies below.

² <http://www.ictregulationtoolkit.org/2.7>

Structural/Wholesale Market Regulation is needed to Best Control Retail Market Outcomes

In our submission to ECTEL on the merger we stated that the best remedy would be divestiture of duplicate assets by the merged entity, in particular the divestment of duplicate on-island fibre.³ In the absence of that Digicel proposed:

1. full structural or functional separation of the new entity's fixed network assets;
2. transparency of costs and accounting separation of the merged entity;
3. non-discriminatory and cost-oriented access to ducts, conduits, poles and associated on-island fibre infrastructure for competitors of the merged entity;
4. non-discriminatory and cost-oriented access to fibre and associated on-island fibre infrastructure for competitors of the merged entity;
5. removal of exclusivity provisions from agreements with suppliers and customers of the merged entity;
6. a restriction on the merged entity from offering bundles of services that cannot be replicated by other providers until such time as at least one other provider is in a position to offer a competing bundle.

We urge the Commission to implement such additional remedies alongside the review of the retail price controls.

As the acquisition by Cable & Wireless of Columbus remains under review at this time Digicel wishes to reserve the right to make further submissions to the Commission further to the Consultation on Recommended Price Caps Plans and Defining Relevant Markets.

Yours sincerely,



John Gidharry
CEO

³ An example of a commitments agreement used by the European Commission when divestiture is required may be found at: http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf