

REPORT - WORK PROGRAMME FOR 2010-2011

TELECOMMUNICATIONS REGULATORY COMMISSION VIRGIN ISLANDS

WORK PROGRAMME FOR 2010-2011

(INCLUDING ESTIMATES OF EXPECTED EXPENDITURE AND
INCOME)

REPORT ON THE CONSULTATION

30 November 2010

Reference Number: R/05/2010



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1. Introduction

On 5th October 2010 the Telecommunications Regulatory Commission of the Virgin Islands (the “TRC”) published for public consultation (the “Consultation”) its draft Work Programme for the financial year of 2010-2011 (from 1 October 2010 to 30 September 2011) (the “Programme”). The purpose of this document (the “Report”) is to summarise the responses received and to explain the position of the TRC in relation to comments submitted by various stakeholders. The final Programme is published as a separate document.

In the draft Programme the TRC defined its Vision, Mission and Regulatory Approach. It also set the specific objective for the Programme. The tasks (33 in total) and processes (16 in total), necessary to achieve the specific objective, were grouped into 6 action lines.

The TRC has received 2 responses to the Consultation from the following stakeholders (market players):

- 1) Cable & Wireless (BVI) Ltd. (“LIME”);
- 2) Digicel (BVI) Ltd. (“Digicel”).

Furthermore, information on the Consultation posted at www.bviplatinum.com attracted one comment. The TRC considers it appropriate to take the comment into account

Responses and the comment referred to above have been published together with this report on the TRC’s website.

As there are significant differences among the responses submitted – both in content and nature – the TRC considers it appropriate to address those responses individually and has structured this Report accordingly.

2. LIME’s response

LIME has simply stated that having reviewed the document published for the Consultation it has no objections to the proposed Programme.

TRC’s considerations in relation to LIME’s response

The TRC appreciates that LIME took time to review the draft Programme and provide its feedback.

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3. Digicel's response

In its comments Digicel has expressed the following:

- 1) a concern in relation to the costs of telecommunications regulation in the Virgin Islands, in particular suggesting that it considers the TRC to be the costliest regulator in the region. To support its opinion Digicel submitted what it suggested was a comparison of the costs of telecommunications and spectrum regulation per person in various jurisdictions (including the United Kingdom). Digicel, however, acknowledged that the costs of implementing the planned number of projects and processes would necessarily be high;
- 2) a concern that, it seems for Digicel that the TRC “simply decides what it would like to do and then bill the operators the final total”;
- 3) a doubt regarding whether the population of the Virgin Islands receives much benefit from the activities of the TRC. Digicel has invited the TRC “to attempt to defend its record and indeed its existence in its current form”. Digicel, however, has recognised the importance and benefit of at least 2 projects that the TRC implemented over the course of the previous year – i.e., (a) increasing public awareness in relation to issues related to non-ionising (electromagnetic) radiation; and (b) the ICT Roadshow;
- 4) a call for additional information on TRC's activities (including financial), particularly over the course of the previous financial year;
- 5) a desire to obtain more information on how the TRC plans to spend money allocated to professional fees and capital expenditures;
- 6) a suggestion for the TRC to concentrate on a handful of areas, where it can add value. Specific areas that Digicel has indicated as being of high priority are as follows:
 - a) ensuring that cellular (mobile communications) spectrum is allocated fairly and, if equal allocation could not be achieved, that inequalities in spectrum allocation are compensated via higher termination rates;
 - b) assignment of additional spectrum – in Digicel's opinion the TRC could simply assign to Digicel the spectrum it has requested.

TRC's considerations in relation to Digicel's response

In considering the comments and suggestions above the TRC thinks it important to take into account the following:

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- 1) when comparing the costs of regulation, regard should be had to the fact that regulatory structures, distribution of different functions among various bodies and models of financing differ from jurisdiction to jurisdiction. Costs of a professional work force, which constitute a major portion of the costs of any regulatory body, are also different. Therefore, in particular in the light of the claims made by Digicel that “the TRC is going to bleed the industry dry of the monies it needs to invest in networks and services” and that “the cost of paying for the regulator will stifle the industry it is regulating”, it is more appropriate to benchmark different jurisdictions in terms of a total proportion of turnover of the industry (or its leading players) that are taken in various fees by a regulator or a Government. Figure 1 below demonstrates that in this regard the Virgin Islands are among the most conservative jurisdictions in the region (compared with jurisdictions of a similar size). Furthermore, it should be noted that the figure below includes only the equivalents of royalties and industry levies. In addition to those payments most of the other jurisdictions charge considerable spectrum fees, which are not currently applicable to the licensees in the Virgin Islands. Furthermore, many of the jurisdictions have corporate tax regimes with tariffs ranging from 10% to 37.5%. Market players in the Virgin Islands are not subject to such regimes either.

When choosing jurisdictions to compare, it is important to recognise that relative regulatory costs are naturally greater in jurisdictions where the population is small compared to larger countries (such as the United Kingdom). There are many matters that a regulator needs to address regardless of the size of the jurisdiction (e.g. establishing a regulatory framework (including various rules and procedures), analysis of telecommunications markets, investigation of potential competition problems etc). Whilst, as the TRC has explained in a section on its regulatory approach included in the Programme, it will seek to achieve maximum impact with the most efficient use of its resources, it is not feasible for the costs of regulatory activities to be directly proportional to the size of the Territory;

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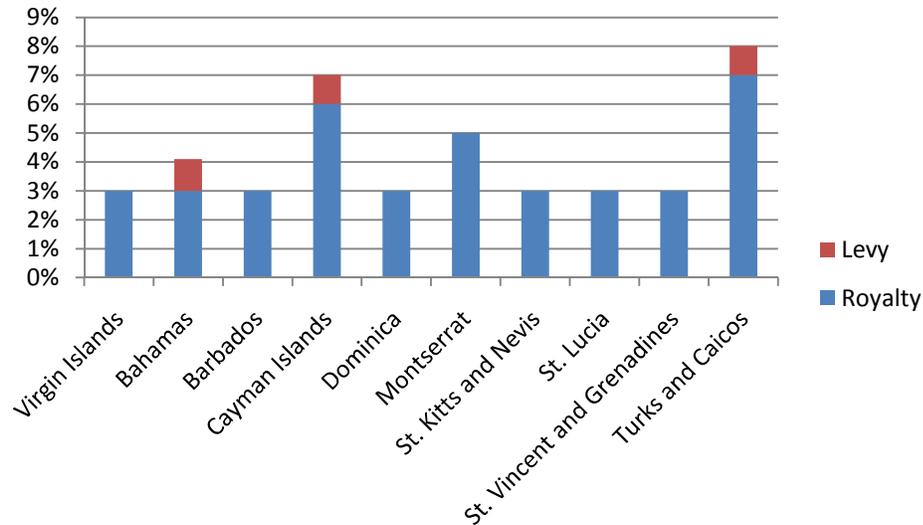


Figure 1. Levies and royalties - as a percentage of turnover of telecommunications market players¹

- 2) currently the licensees in the Virgin Islands are charged only one category of payments foreseen in the Telecommunications Act, 2006, - namely royalties. Rate of royalties is clearly prescribed by section 60 (1) of the Telecommunications Act, 2006. Neither industry levy, nor fees or charges for use of various resources (such as spectrum or numbers²), nor other types of fees or charges envisaged by the Telecommunications Act, 2006 are being applied to licensees at present. There are no plans to change this for the financial year of 2010-2011. However it should not be unexpected if, after conducting a review of its financing structure, the TRC would decide to commence collecting other types of fees and/or charges commonly applied in other jurisdictions;
- 3) the Telecommunications Act, 2006 requires the TRC to prepare a written report of its operations and activities for a financial year within 9 months after the end of the respective financial year. The TRC considers such a report to be the most appropriate vehicle to comprehensively report on its achievements in the relevant year. The TRC, however, appreciates Digicel's compliments in relation to at least 2 of the projects implemented in the financial year of 2009-2010;
- 4) together with a report of its operations and activities, the TRC, in accordance with the Telecommunications Act, 2006, shall submit to the Minister responsible for finance a copy of its audited accounts and financial statements. The TRC considers that this is the

¹ Spectrum and other regulatory fees as well as corporate taxes are not taken into account in the comparison. Such fees can be very significant – e.g., in Dominica spectrum fees constitute 36% of the payments from the market to the Government and the regulator (remaining 64% being licence fees represented in the figure). None of these are currently charged to the licensees in the Virgin Islands, but they are applicable in most of other jurisdictions.

² This type of charges are very common in many regulatory environments

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most appropriate way to address Digicel's call for more information on the TRC's financial activities in the financial year of 2009-2010;

- 5) the TRC considers that estimates for capital expenditures and professional fees need to reflect the stage of development of the regulatory framework and the infrastructure, necessary for TRC to perform its functions effectively. The largest proportion of estimated capital expenditures is expected to be spent to establish proper spectrum monitoring facilities. TRC also plans to procure a Geographic Information System, upgrade its licensing management systems and implement other essential projects. Estimates for professional fees reflect the need to invest in development of important elements of regulatory frameworks (in particular related to radio spectrum) as well as the need to ensure that the regulatory practice is built in a robust manner.

Notwithstanding the explanation above regarding the timing of financial reporting, the TRC considers it appropriate to remove a misunderstanding in relation to the capital expenditures and professional fees budgeted for both – the financial year of 2010-2011 and the financial year of 2009-2010. The unaudited financial statements for the financial year of 2009-2010 shows that the TRC's actual expenditures during that period were around US\$90,000 for professional fees and it incurred less than US\$80,000 of capital expenditures. Projects planned for the financial year of 2010-2011 are mainly continuation of the activities planned and commenced during the financial year of 2009-2010. The need for the TRC to adhere to robust, objective and transparent procurement policies resulted in the lead times that were longer than initially expected. Hence the funds for the projects (with adjustments based on additional information obtained) are now included into the estimates for the financial year 2010-2011.

- 6) the TRC appreciates that Digicel considers certain areas identified by it to be of immediate importance in conducting and expanding Digicel's business. However it is important to recognise that the TRC's remit, as set out in the Telecommunications Act, 2006, requires many other actions related to development of the telecommunications sector and protection of interests of users to be taken. The TRC cannot arbitrarily ignore the full scope of its remit and limit itself to the initiatives that would satisfy the needs of individual stakeholders only. On the contrary, it shall seek to implement the Telecommunications Act, 2006 and other related instruments in their entirety and shall promote interests of users as well as the public interests to the maximum possible extent. Inevitably in this stage of development of the regulatory framework, the TRC's agenda needs to include a significant number of items. However, the TRC recognises that implementation of such an agenda takes time. Therefore the TRC emphasised continuity of its activities in the Consultation. Furthermore, the TRC will consider advising the relevant policy bodies to replace the annual planning of the TRC's activities and operations, which is now set out in the Telecommunications Act, 2006, with a multi-annual approach.

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It is also important to note the need to ensure that interests of all stakeholders are properly balanced and the public interests is adequately served. Therefore, the TRC shall always ensure that its actions are undertaken in a thought-through and robust manner. The TRC shall also always act on an objective, transparent and non-discriminatory basis. These requirements may not, for example, be met if the TRC were to arbitrarily assign scarce spectrum resource to an operator who decides to request it without even proposing any commitments in relation to how the interests of public and telecommunications users would be met. Generally, in order to serve the public interest, such assignment shall be subject to: conducting a proper planning of spectrum use to ensure that needs of telecommunications users will be adequately met, affording non-discriminatory treatment to every potential user of spectrum, and ensuring that spectrum will be used effectively and efficiently. Hence the TRC will be addressing Digicel's suggestion for prioritisation of spectrum related matters through Tasks 1.3.3 and 1.3.4 set out in the Programme (Spectrum Policy and Action Plan as well as the subsequent implementation thereof). As Digicel would be aware, important progress on Task 1.3.3 has already been made.

4. Response posted at www.bviplatinum.com

The comment posted at www.bviplatinum.com relates to the following issues:

- 1) Level of tariffs for telecommunications services – especially the Internet services and voice calls;
- 2) Advertising practices (i.e., the respondent alleges that there is a mismatch between advertised and actual speed of Internet services);
- 3) Quality of services (especially SMS messaging);
- 4) Consumer care practices (in particular the manner that complaints are dealt with by LIME).

TRC's considerations in relation to response posted at www.bviplatinum.com

The TRC appreciates the identification of areas of concern and agrees that those areas should be reviewed by the TRC and, where needed, corrective actions should be taken. The TRC considers however that it is the most appropriate to address the relevant issues via the following tasks:

- 1) Issues related to the level of tariffs for telecommunications services will be reviewed in the course of the Market Review (Task 2.1 of the Programme), which will also enable remedial measures to be implemented where needed. Strategic Sector Review (Task 2.2

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of the Programme) will ensure that any additional actions that may be needed are identified.

- 2) Issues related to advertising practices will be addressed via the implementation of the Quality of Service reporting framework (Task 3.2 of the Programme) and the Consumer protection framework (Task 4.1 of the Programme). It is noteworthy that the TRC has already adopted the Quality of Service reporting framework and it will commence implementation thereof immediately after the document is published in the Gazette.
- 3) Quality of services will be first of all addressed through the Quality of Service reporting framework referred to above. Once the TRC collects information on the actual level of quality achieved by market players, it will then be able to take targeted measures aimed at improving such quality, where it is not adequate.
- 4) Consumer care practices will be addressed via implementation of the Procedures for Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes. This document has been adopted by the TRC and is in the process of being published in the Gazette. Remaining issues will be addressed via the Consumer protection framework referred to above.

5. Final Work Programme

The TRC does not consider that major changes to the Programme are necessary as a result of the consultation process. The TRC will, however, take the responses received into consideration when implementing specific tasks set out in the Programme. In finalising the Programme, the TRC has reviewed the document in the light of the ongoing progress of implementation of the Programme and made some slight amendments to the timelines, estimated expenditures and the presentation of estimates of income and expenditures.