



# **Report on Investigation into Compliance with Determination 2010/01**

## 1. Background

1.1 Pursuant to Section 21 of the Telecommunications Act 2001 as amended (the “Act”) concessions have been granted to eleven (11) entities to operate an international telecommunications network and/or provide international telecommunications service:

- Columbus Communications Trinidad Limited (CCTL);
- Columbus Networks International Trinidad Limited (CNITL);
- Southern Caribbean Fiber (SCF);
- Digicel (Trinidad and Tobago) Limited (Digicel);
- Laqtel Limited (Laqtel);
- Lisa Communications Limited (Lisa);
- Open Telecom Limited (Open);
- Telecommunications Services of Trinidad and Tobago Limited (TSTT);
- Three Sixty Communications (Three Sixty);
- Windward Telecom Limited (Windward);
- Green Dot Limited (GDL).

Of these concessionaires, only three, namely TSTT, Digicel and CCTL have also been granted a concession to operate and provide a public domestic telecommunications network and service.

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- 1.2** Between May and July 2009, concessionaires providing international telecommunications services approached the Authority requesting regulatory intervention by the Authority under section 29 of the Act vis-à-vis the introduction of a Price Floor for the termination rate for incoming international telecommunications traffic destined for domestic fixed and mobile networks in Trinidad and Tobago.
- 1.3** The Authority considered the request, reviewed relevant cost, traffic and pricing information obtained from the concessionaires and after consultation with the relevant parties, the Authority issued on February 3<sup>rd</sup> 2010, **Determination 2010/01** *Under Section 29(3) and 29(4) of the Telecommunication Act 2001- Termination of Incoming International Telecommunications Traffic on Domestic Networks in Trinidad and Tobago* ('the Determination').
- 1.4** The Determination outlined the pricing rules and principles to be applied to rates charged by concessionaires for the termination of international incoming telecommunications traffic on domestic telecommunications networks in Trinidad and Tobago; *The rate must be no less than the sum of:*
- (a) the cost to terminate the international telecommunications traffic on the relevant domestic network; plus,*
  - (b) any relevant cost incurred in terminating the international telecommunications traffic.*
- 1.5** The Determination further outlined that these principles are to be applied through the publication of an assessment of the minimum rate for international incoming traffic termination. The Determination also explicitly stated that *'No concessionaire shall offer, negotiate on the basis of, or charge a rate which is less than the rate set out in the most recent assessment published by the Authority...'*

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**1.6** In conjunction with the Determination, the Authority also issued a corresponding Assessment of the Minimum Rate for Termination of International Incoming Traffic ('the Assessment').

The results of the Assessment indicated that for incoming international traffic which is delivered to Trinidad and Tobago via the United States of America:

- (i) The price charged by a concessionaire for the termination of international incoming telecommunications traffic on a domestic mobile network in Trinidad and Tobago should be no less than **US\$0.0893** per minute; and,
- (ii) The price charged by a concessionaire for the termination of international incoming telecommunications traffic on a domestic fixed network in Trinidad and Tobago should be no less than **US\$0.0291** per minute.

**1.7** Subsequent to publication of the Determination and the corresponding Assessment, it was necessary to issue further advice to concessionaires, that for the avoidance of doubt, the minimum rates were to take effect immediately.

**1.8** In the period immediately following publication on the Determination, the Authority received several complaints from concessionaires that there were rates being offered in the market below the stipulated price floor.

**1.9** Pursuant to investigating these complaints, and its mandate to ensure a fair and open competitive environment, the Authority initiated an investigation into compliance with the price floor set out in the determination.

## 2. Investigation Methodology

2.1 The Investigation required international concessionaires to submit detailed information relating to the carriage of international traffic, requested over three data requests (Feb 18<sup>th</sup>, March 16<sup>th</sup>, and June 18<sup>th</sup>). This information related to the period Feb 4<sup>th</sup> – June 11<sup>th</sup>, and included:

- Volume and Rate Statements for Inbound International Traffic
- Volume and Rate Statements for Outbound International Traffic
- Copies of contractual agreements with international carriers
- All correspondence between the concession and its carriers
- Invoices and receipts for interconnection and international traffic transited across domestic networks

2.2 Six international concessionaires were subject to the investigation: TSTT, Digicel, CCTL, Windward, Lisa and Three Sixty. During the period of investigation, Laqtel and GDL were not active in the provision of international telecommunications services. Additionally, CNITL operates international facilities, where its domestic affiliate (CCTL) offers international telecommunication services. Similarly, SCF operates a international telecommunications network only, and does not provide international services.

2.3 The investigation was carried out to examine two primary compliance issues:

2.3.1 The degree to which concessionaires engaged their best efforts to immediately implement rate increases pursuant to the Determination.

This would determine whether there was any breach in initial implementation, and whether any potential anti-competitive issue arises where late implementation gave a potentially tardy concessionaire an unfair advantage over its competitors in the market segment.

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2.3.2 The incidence of continued non-compliance after initial implementation of the price floor.

In addition to detailed tariff analysis, this process sought to determine whether there was any unreported traffic volumes creating a potential grey market by investigating the following issues:

2.3.2.1 Internal consistency of volumes reported by the concessionaire: This was done by comparing traffic volumes reported in submitted statements against certified copies of invoices between the concessionaire and each of its respective carriers during the period of investigation.

2.3.2.2 Market-wide consistence of volumes: This was done by comparing total incoming traffic reported by concessionaires against total traffic reported as terminated by concessionaires that operate domestic networks (TSTT Fixed, CCTL Fixed, TSTT Mobile & Digicel Mobile). Such analysis was possible via thorough analysis of interconnection invoices and traffic statements as inputted into a traffic aggregation model created for this purpose and based on existing interconnection and transit arrangements.

2.4 Additionally, the Authority received multiple complaints of breaches concerning specific carriers. These allegations were investigated on a case by case basis, by analysis of carriage agreements, traffic statements and relevant invoices between the respective carrier and the relevant concessionaires (with whom the carrier is known to have an active agreement).

### **3. Contents of Report**

**3.1** While the Authority has engaged in thorough analysis of traffic volumes and termination rates, it is of the view that publication of such details would be in violation of the confidentiality of the data submitted by concessionaires. In particular, such highly commercially sensitive includes details of:

- the number of carriers with which each concessionaire has carriage agreements;
- concessionaire specific details of the terms and conditions negotiated with carriers
- the composition of the traffic exchanged with such carriers;
- the rates negotiated between the concessionaire and each such carrier;
- suggestions of the competitive strategies utilized by concessionaires to compete in the market segment.

**3.2** In addition to these considerations, it is noted that in each instance, concessionaires have submitted such information in accordance with Concession Condition A29, which stipulates the contents of the submissions as ‘Corporate Proprietary and Confidential’. As such the Authority concludes that disclosure of the details and/or the subsequent analysis, beyond the summary findings of the investigation, would be in violation of its confidentiality obligations.

## 4. Summary of Findings

### 4.1 Initial Implementation of Revised Rates

It was concluded that initial implementation was impacted by contractual notification periods which varied between carriers and concessionaires generally in the range of 7 to 28 days. Additionally, rate increases would have been subject to negotiating processes between concessionaires and their carriers. Notwithstanding these implementation delays it was found that two concessionaires in particular appeared to have not engaged their best efforts in implementing the determination-compliant rates, namely TSTT and Digicel.

It is however noted, that within the market segment concessionaires would compete for traffic volumes mostly in terms of common carriers. Any unfair advantage from late implementation would hence only exist to the extent that the tardy concessionaire exchanges traffic with carriers that also have agreements with its competitors. In this regard analysis was undertaken of traffic volumes terminated for such common carriers. No significant evidence was found to suggest that late implementation specifically gave any particular concessionaires an unfair advantage over its competitors; accordingly no concrete incidence of anti-competitive practices can be concluded.

### 4.2 Internal Validity of reported traffic volumes

It was found that traffic statements passed internal validity tests, where compared against volumes as cited in invoice statements. In all instances where there were notable discrepancies, such fell within a +/- 5% threshold. Subsequent to engaging concessionaires on this issue, the Authority understood this threshold to be the de facto industry standard for traffic volume accounting. As such, no evidence was found to suggest that any concessionaire was incorrectly reporting traffic volumes.



### 4.3 External Validity of traffic volumes

For the purpose of examining consistency of reported volumes across the market, the Authority requested information in greater detail from international concessionaires who also operate domestic networks. The Authority then sought to input this information into an aggregation model based on existing interconnection and transit agreements. Initially, the Authority noted certain disparities between these results (*international traffic terminated on respective domestic networks as reported by concessionaires who operate domestic networks*), and the aggregated international traffic volumes reported by all international concessionaires for termination on respective domestic networks (*as reported by individual international concessionaires*).

In order to further investigate these discrepancies, the Authority requested clarifications from the relevant parties where necessary. Ultimately, it was evident that the results of this process were inconclusive due to inherent methodological limitations in the disaggregation of domestic and international traffic over interconnections points, and current arrangements for trunk allocations. This element of the investigation therefore did not yield any concrete evidence to suggest that any concessionaire was misrepresenting international traffic volumes and/or underreporting carrier relationships.

### 4.4 Investigations of individual complaints regard specific carriers

In all such cases that the Authority investigated individual allegations of breaches in respect of specific carriers, analysis of volumes and invoices of concessionaires with whom such carriers had agreements did not provide evidence of breaches by any of the respective concessionaires.

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### 4.5 Reporting Requirements

Notwithstanding the specific data request made pursuant to the investigation, it was found that concessionaires were generally non-compliant with the reporting requirements of the Determination, which stipulated that:

*“Each concessionaire shall provide to the Authority for each three month period ending on 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December in each year, a statement in the form set out in the Annex to this determination, containing:*

*○ all rates charged by the concessionaire for the termination of incoming international traffic and the volume of such traffic carried/terminated in the preceding three calendar months;*

*○ all rates paid by the concessionaire for termination of outgoing international traffic and the volume of such traffic terminated in the preceding three calendar months.*

*The information shall be submitted to the Authority within fourteen (14) days of the end of the period to which the information relates.”*

The Authority does however note the absence of such an Annex (within the published Determination), and that in instances of compliance with the reporting requirements - concessionaires used the relevant reporting form(s) provided by the Authority for data collection purposes.

Given these circumstances, and the requests made pursuant to the investigation, the Authority considers that it is prudent to exercise forbearance with breaches of the Determination's reporting requirements up until the date of publication of this report. Accordingly, the Authority shall publish the relevant forms for the purpose of all subsequent compliance monitoring.

**4.6** Possible Grey Market

In light of the results of the investigation there appears to be possible superficial evidence of grey market traffic. Therefore, reports of continued breaches maybe accounted for by the existence of illegal operators and/or network by-pass. Given the potentially significant negative impact of such activities, the Authority will prioritize and expedite its efforts in identifying and addressing such illegal operators in the instance that such do exist, and take the relevant enforcement action against such parties pursuant to its statutory powers.

Notwithstanding, the issues outlined above, as of at the end of the investigation period, the Authority has noted that market share distribution in the incoming international telecommunications market appears to have reached a competitive equilibrium approximately proportional to the pre-determination market equilibrium.

## 5. Conclusion

- 5.1** In light of the results of the Authority's findings, it is concluded that there is currently no substantial evidence to suggest there is currently, or has been any, material breach of Determination 2010/01 by international telecommunications concessionaires.
- 5.2** Notwithstanding the conclusion cited above, nothing in this report shall be construed as prejudicing the Authority's right to take action against any concessionaire within its statutory powers under the Act, for any potential breach of Determination 2010/01, once such has been determined through investigation and due process.
- 5.3** Pursuant to the Determination, the Authority is required to periodically analyze the cost of service provision in order to issue accurate assessments of minimum termination rates in accordance with the principles outlined in the determination. *Concessionaires are advised that the most recent Assessment of minimum termination rates shall be published separately.*
- 5.4** The Authority shall continue to work with the industry in order to monitor developments in the international telecommunications market, to ensure the orderly development of the sector pursuant to the objectives of the Act.