



Decision Notice 2023-5

Telecommunications Network Licence Review

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**Turks and Caicos Islands
Telecommunications Commission**

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1 Introduction

In Public Notice 2022-8, *Telecommunications Network Licence Review Consultation Document*, issued 23 November 2022 (the “Consultation Document”), the Turks and Caicos Islands Telecommunications Commission (the “Commission”) initiated a public consultation process to review and update Cable and Wireless (TCI) Limited’s (“FLOW”) and Digicel (Turks & Caicos) Limited’s (“Digicel”) Telecommunications Network Licences (the “Licence(s)”).

Digicel’s existing Licence was issued 31 March 2006 and was subsequently amended on 4 March 2009 and 15 June 2011. FLOW’s existing Licence was issued on 26 January 2006. Both Licences applied for a term of 15 years from their respective initial issue dates; pursuant to section 21 of the Telecommunications Ordinance (“Ordinance”), they were automatically renewed in 2021, however, the automatic renewal is subject to section 9 of the Ordinance, thereby placing an additional requirement on the licenses renewal process.

The current consultation process relates to the proposed modifications of Digicel’s and FLOW’s existing Licences. The Commission’s objective in its review is to determine whether any modifications are appropriate and in the public interest, taking into account sector and market developments since the original licenses were issued. These include, among others, Government telecommunications sector policy announcements, Commission consultations undertaken and associated decisions issued, and market developments since 2006. In addition, the Commission also sought to simplify and harmonise the Licences.

To this end, the Commission prepared Proposed Revised Licences for Digicel and FLOW for public consultation purposes. The Proposed Revised Licences were provided as Annexes to the Consultation Document, and included the Commission’s rationale for all proposed revisions to the Licences.

In response to the Consultation Document, Digicel provided comments on its Proposed Revised Licence on 20 January 2023. FLOW provided comments on its Proposed Revised Licence on 31 January 2023. Neither party filed reply comments on the other’s comments or Proposed Revised Licences.

In this Decision, the Commission sets out its conclusions, with supporting rationale, on Digicel’s and FLOW’s comments on and suggested revisions to the Proposed Revised Licences. Based on its conclusions, the Commission has prepared Amended Revised Licences for Digicel and FLOW, which are being issued together with this Decision. The Commission considers that all modifications included in the Amended Revised Licences fully comply with the provisions of the Ordinance.

In what follows, the Commission first addresses general comments raised by parties regarding the Proposed Revised Licences in Section 2 and then addresses comments on and suggested changes to specific sections of the Proposed Revised Licences in Section 3. In many cases, no suggested changes were proposed and, therefore, the Commission has made no changes to those sections in the Amended Revised Licences. Lastly, Section 4 provides concluding remarks.

2 General Comments on the Consultation

2.1 Digicel's Comments

Digicel raised several general matters or concerns in its comments regarding its Proposed Revised Licence. The Commission addresses each in turn.

First, Digicel noted that in the Consultation Document the Commission indicated that it had undertaken an “informal process” to update and amend the Licences prior to issuing the Consultation Document. Digicel also noted that, in preparing the Proposed Revised Licences, the Commission indicated that it had taken into consideration Government telecommunications sector policy announcements, Commission consultations undertaken and decisions issued, and market developments since 2006 when the existing Licences were issued. Digicel claimed that it is unaware of the informal process referenced in the Consultation Document as well as the “market developments” and other matters considered by the Commission in preparing the Proposed Revised Licences.

In response, the Commission notes that it engaged informally with both Digicel and FLOW in early 2022 to seek their comments and feedback on then contemplated revisions and updates to both parties' Licences. Initial proposed revised versions of the Licences were provided to both Digicel and FLOW at the time. This is the informal process referred to in the Consultation Document. In the course of that informal process, Digicel proposed in an email dated 25 April 2022 that a more formal public consultation process should be conducted for license review purposes to ensure greater fairness and transparency. The Commission agreed. As a result, it issued Public Notice 2022-8.

As to the other factors taken into account to prepare the Proposed Revised Licences, as indicated in the Consultation Document, they included major developments in the sector since 2006. These developments were, in large part, reflected in the many public consultations undertaken by the Commission since 2006, including related decisions, all of which are posted on the Commission's website. For instance, they include multiple market, price cap and forbearance reviews of FLOW's retail fixed services (including Commission decisions issued in 2009, 2013 and 2019), multiple interconnection rate reviews (including Commission decisions issued in 2010, 2014 and 2020), the establishment of Competition Guidelines (2017), the recent establishment of the Telecommunications Emergency Preparedness and Response Policy (“TEPRP”) and Emergency Preparedness Agreement (“EPA”), among other things. It is these proceedings, all of which Digicel participated in, that were taken into account by the Commission to prepare the Proposed Revised Licences.

Second, Digicel took issue with the inclusion of any form of revision or amendment to the Belonger/Islander Control conditions of its licence in this proceeding. However, the Commission notes that this issue is outside the scope of this consultation since it is being considered separately with the Minister of Communications. Annex D of the Proposed Revised Licences, which covers Islander Control obligations, was intentionally left blank for the purposes of this consultation for this reason.

Third, Digicel also suggested in its comments that under section 21 of the Ordinance, its Licence ought to have been “automatically renewed” without amendment. The Commission agrees with Digicel in this respect. However, the Commission notes that section 18 of the Ordinance makes provision for the Commission to modify the conditions of any licence. That is the purpose of the present consultation. As just noted, any modifications to Digicel’s Islander Control obligations are currently subject to a separate consultation process.

Lastly, Digicel complained that it was not provided with a copy of FLOW’s Proposed Revised Licence. For completeness and to ensure fairness, Digicel asked that parties be allowed to review all Proposed Revised Licences.

In this regard, the Commission notes that each party’s comments on their respective Proposed Revised Licences were made available to all parties for reply comment purposes. This addresses Digicel’s concern in this regard. The Commission notes that neither Digicel nor FLOW provided reply comments on each other’s Proposed Revised Licences or comments on their respective Proposed Revised Licences.

2.2 FLOW’s Comments

FLOW raised two general matters or concerns in its comments on its Proposed Revised Licence. The Commission addresses each in turn.

First, FLOW noted that its comments on the Proposed Revised License are without prejudice to the automatic renewal of its Licence as of 25 January 2021 and, further, that FLOW must be in agreement with any changes the Commission proposes to its Licence as per section 18 of the Ordinance.

In response, the Commission considers that FLOW’s Licence automatically renewed in 2021 pursuant to section 21 of the Ordinance, however, the automatic renewal is subject to section 9 of the Ordinance, thereby placing an additional requirement on its license renewal process. As set out in Section 1, the purpose of the present proceeding is to review FLOW’s and Digicel’s existing Licences and update them as necessary as well as to simplify and harmonise them to the greatest extent possible. Section 18 of the Ordinance sets out the process for making such modifications. Section 18(2) requires the Commission to provide parties with notice before any modification, which was fulfilled via the Consultation Document, and section 18(3) requires that the Commission consider representations made by the parties, which is fulfilled via this comment and reply comment phases of this proceeding.

The Commission acknowledges that section 18(4)(a) of the Ordinance sets out that any modifications proposed by the Commission require the licensee’s written consent. Indeed, it is the Commission’s preference that such modifications be mutually agreed-upon, which is why in this Decision the Commission has tried to accommodate FLOW’s and Digicel’s comments and suggestions to the greatest degree possible. The Commission notes, however, that pursuant to section 18(5) of the Ordinance, if, after consulting with the parties and taking into account their representations, such written consent is “not forthcoming”, the Commission may “modify the conditions of the licence if the Commission considers that the modifications are in the interest of national security or the public interest”. Indeed, the Commission considers that all the proposed

modifications included in the Amended Revised Licences included with this Decision are in the public interest, and further that the proposed modifications included in section 9 (Emergencies) of the Amended Revised Licences is also in the interest of national security.

Second, FLOW indicated that it does not accept the dominance designations in Annexes A and B of the Proposed Revised License, except in the case of call termination on its network, which is the case for all networks. In support of its position, FLOW offered a variety of evidence suggesting that FLOW is no longer dominant in the provision of retail fixed services. FLOW added that the “Commission cannot sally forth relying on a provision in FLOW’s licence, of almost twenty (20) years, which had declared FLOW dominant for services and networks.”

In response, the Commission notes that in preparing the Proposed Revised Licences, it took into consideration market developments and assessments undertaken since FLOW’s existing Licence was issued in 2006. These included public consultations reviewing of FLOW’s retail fixed services in 2009,¹ 2013² and 2019.³ Each of the Commission’s Decisions resulting from these public consultations upheld the dominance designations relating to FLOW’s retail fixed services, which are reflected in Annexes A and B of FLOW’s Proposed Revised Licence. The Commission also notes that in its most recent 2019 Decision, provision was made to review FLOW’s dominance designations a fourth time in 2025. Under section 16 of the Ordinance, FLOW is permitted to apply for an earlier review of these designations if it so chooses. If it does so, FLOW is required to follow the dominance review provisions set out in the Telecommunications Competition Guidelines in any such application.⁴ Otherwise, the Commission notes that any revisions to FLOW’s currently established dominance designations are outside the scope of this consultation.

3 Comments on the Proposed Revised Licences

Both Digicel and FLOW made comments on and offered suggested changes to a number of the sections of the Proposed Revised Licences. The Commission addresses these comments and suggestions on a section-by-section basis, where applicable, in what follows:

¹ Resulting in Telecommunications Decision 2009-4, *Decision on the Second Price Cap Regime*, 18 February 2009, <https://telecommission.tc/decisions/dn-2008-8-second-price-cap-regime/>.

² Resulting in Telecommunications Decision 2013-3, *Fixed Services Price Regulation Review Decision*, 27 March 2013, <https://telecommission.tc/decisions/dn-2013-3-limes-fixed-services-price-regulation-review/>.

³ Resulting in Telecommunications Decision 2019-4, *Flow’s Regulated Fixed Services Review Decision*, 29 July 2019, <https://telecommission.tc/decisions/dn-2019-4-tci-fixed-services-review-decision/>.

⁴ Telecommunications Competition Guidelines, 30 November 2017, <https://telecommission.tc/decisions/tci-tc-competition-guidelines-decision-november-30-2017/>.

3.1 Preamble Section

In Digicel’s comments on the Preamble section of its Proposed Revised Licence, it suggested that there may be a drafting error. Rather than a “Triple Play Provider” licence, Digicel suggested that it should be classified as a “Full Telecommunications Licence” in its case.

In response, the Commission notes that Digicel’s existing licence is classified as a Triple Play Provider Licence. If Digicel would like to change that designation, then it should apply to do so following the licensing application process available through the Commission’s website.⁵ Any revision to Digicel’s existing licence classification is otherwise outside the scope of this consultation.

For its part, FLOW suggested wording changes intended to generalize and simplify the Preamble section by removing the name of the Minister of Communications, the Licensee’s address, along with other minor changes. The Commission agrees that these changes would improve the wording of this section and has included them in the Amended Revised Licences.

3.2 Section 1 – Authority and Citation

Proposed new clause 1.2 of the Proposed Revised Licences states that “*The Licensee is also subject to the other applicable provisions in the Telecommunications Ordinance, the Regulations, Commission Decisions and other applicable laws.*” FLOW noted that all Commission Decisions must be lawful to be legally effective. Both Digicel and FLOW questioned the inclusion of “other applicable laws” in this provision.

In response, the Commission notes that it considers all its Decisions to be lawful, though parties are open to challenging any one or more of them if they are of a different view. Otherwise, the Commission considers inclusion of “other applicable laws” to be a useful addition to clause 1.2 to capture any new telecommunications-related laws that would be applicable to licensees in the future.⁶ That said, the Commission considers that clause 1.2 should more-specifically reference “TCI” laws. Consequently, the Commission has amended this clause to include the phrase “any other applicable TCI laws”.

In addition, on reviewing the provisions under proposed new section 1, the Commission noticed that no reference was made to the Islander Control obligations to be set out in Annex D of the Licences. Consequently, the Commission has amended the clause as follows: “*The Minister exempts the Licensee pursuant to section 9(3) of the Telecommunications Ordinance from the restrictions imposed by section 9(1) of the Telecommunications Ordinance as set forth in Annex D.*” As noted, the matter of Islander Control obligations is being considered separately with the Minister of Communications. Accordingly, Annex D of the Proposed Revised Licences was intentional left blank for the purposes of this consultation.

⁵ See: <https://telecommission.tc/application-for-telecommunications-licenses/>.

⁶ Such as, for example, the recently introduced *Interception of Communications Ordinance 2022*, section 61 of which applies to licensees.

3.3 Section 2 – Interpretation

The Commission notes and agrees with FLOW’s suggested wording changes to the definitions of the “Commission”, “Force Majeure” and “Licensee”. The Commission has included these suggested revisions in the Amended Revised Licence.

The Commission also notes that the definition of the “Telecommunications Ordinance” has been updated to reflect the 2021 rather than 2018 version of the Ordinance.

3.4 Section 3 – Grant

FLOW suggested that the proposed new clause 3.1 should clarify that the “Licensed Area” includes connections between “points within the Licensed Area and points outside of the Licensed Area”.

In response, the Commission considers this suggested clarification to be unnecessary and redundant. The Licensed Area necessarily includes connections between points within the area and, clause 4.1, already addresses connections between points within and outside the Licensed Area.

In a similar vein, Digicel suggested that the proposed new clause 3.1 include reference to section 4 for greater clarity, which sets out the scope of the Licence, including interconnection with other networks inside and outside the Licensed Area.

In response, the Commission again considers that section 3 is clear as worded in the Proposed Revised Licence and no reference to section 4 is required. Ultimately the two sections must be read together and, therefore, in the Commission’s view, cross-references between the two are unnecessary.

3.5 Section 4 – Scope

Only Digicel commented on the proposed new section 4 of the Proposed Revised Licences. It questioned whether the scope set out in this section would be applicable to new entrants. Digicel noted that the Proposed Revised Licence is intended to be used for all operators, with a view to achieving harmonised scope provisions for all licensees. That being the case, Digicel suggested that it would be unfair to allow new entrants to bypass any existing licence scope conditions that all existing operators were required to adhere to.

The Commission’s intent of the Proposed Revised Licence is indeed to achieve harmonised licensing provisions for all licensees, and it fully expects that it would equally apply in the case of new entrants. That said, in considering any new entrant licence applications that may be filed in the future, the Commission would need to take into account all relevant circumstances as well as any unique features of any such applicant’s telecommunications network and proposed telecommunications services. The need for any potential amendments to this or any other sections of the Proposed Revised Licence in the case of a new entrant would be evaluated at that time. The Commission notes that, as it currently stands, while the Proposed Revised Licences are harmonised to the greatest extent possible, they are not identical for Digicel and FLOW.

Consequently, some licence conditions would also likely differ somewhat in the case of a new entrant.

3.6 Section 7 – Sub-Contracting

Only Digicel commented on section 7 of the Proposed Revised Licences. It suggested that the proposed new clause 7.1 is at odds with both the existing sub-contracting clause 8.1 and the proposed new clause 7.3. Digicel noted that the proposed new clause 7.1 states that the Licensee may employ subcontractors, who may “*install and maintain, operate or provide, some or all of the Licensed Networks or Licensed Services*” (Digicel’s emphasis). Digicel also noted that the existing clause 8.1 and the proposed new clause 7.3 states that, “*nothing under this sub-clause grants to any subcontractor any right to provide telecommunications services or operate any telecommunications network under the Telecommunications Ordinance*” (Digicel’s emphasis). Based on its interpretation of the proposed new clauses 7.1 and 7.3, Digicel suggested that the Commission should consider amending the proposed new clause 7.3 to the extent that it may be contradictory with the proposed new clause 7.1.

The Commission agrees that there is a contradiction between the proposed new clauses 7.1 and 7.3. Accordingly, the Commission has decided to delete clause 7.1 and replace it with the proposed new clause 7.3 to address this issue. Clause 7.2 otherwise remains unchanged.

3.7 Section 9 – Emergencies

Digicel welcomed the changes in the Proposed Revised Licences relating to the implementation of the TEPRP and EPA. Otherwise, in light of the TEPRP and EPA, Digicel questioned the need for the proposed new clause 9.2 that states: “*In addition, the Licensee shall provide other emergency-related telecommunications services, as the Commission may determine in writing.*” And lastly it suggested that a definitive date be included in the clause 9.3.3 – i.e., April 30th rather than the end of April each year.

In response, the Commission first notes that while the TEPRP and EPA have been relatively recently implemented, that does not preclude the potential for licensees to be required to provide other emergency-related telecommunications services in the future. Any such additional requirements would be subject to public consultation and a resulting determination by the Commission, and explained in writing to affected licensees. Therefore, the Commission considers that clause 9.2 should remain as drafted in the Proposed Revised Licences. Otherwise, the Commission agrees that a more specific date could be included in clause 9.3.3. In this respect, the Commission has made the proposed change in the Amended Revised Licences.

For its part, FLOW raised concerns with proposed new clause 9.3.2, which indicates that Licensees shall “*Adhere to all polices and requirements set out in the National Disaster Management Plan and Sub-Plans, as established by DDME*”. FLOW expressed concern with this proposed provision since, in its view, Department of Disaster Management and Emergencies or DDME obligations may or may not have been established through a statutory decision-making process as under the Telecommunications Ordinance and/or as undertaken by the Commission. According to FLOW this could lead, effectively, to it having two regulators – the Commission and the DDME. FLOW added that the obligations resulting from clause 9.3.2 should be clearly

specified and, importantly, be subject to override by provisions established under the Ordinance, Regulation and/or Commission Decisions.

The Commission considers the provision set out in the proposed new section 9 to be clear as written. They include emergency-related obligations established by the Commission as well as the DDME. Any National Disaster Management Plan and Sub-Plans obligations established by the DDME applying to the telecommunications sector generally and licensed operators more specifically would apply to all licensees, as indicated in clause 9.3.2. In the Commission's view, these obligations would apply to licensees whether the Commission had enshrined any such obligations in Regulations established pursuant to the Ordinance or by Commission Decision. Accordingly, the Commission see no need or basis for amending section 9 as drafted in the Proposed Revised Licences based on FLOW's comments in this respect.

3.8 Section 10 – Dominance

Digicel stated that it considered clause 10.3 of the Proposed Revised Licences to be somewhat unnecessary since it simply referred to powers already in the Ordinance and polices set out in the Competition Guidelines. It also indicated that it expects that a proper process would be followed, including advance discussions with affected parties ahead of any Commission decision issued on dominance matters as contemplated under the proposed new clause 10.5.

The Commission appreciates Digicel's comments in this regard. However, it is of the view that inclusion of proposed new clauses 10.3 and 10.4 serve to clarify the basis and process for reviewing an existing dominance designation or establishing a new dominance designation. Any such changes would involve a public consultation process (including consideration of the relevant market assessment factors set out in the Competition Guidelines) before any decision on dominance matters would be issued by the Commission, as indicated in proposed new clause 10.5. Accordingly, the Commission sees no reason to change the wording of section 10 as drafted in the Proposed Revised Licences.

In regard to this section, FLOW reiterated that it does not accept the dominance designations for its retail fixed services included in its Proposed Revised Licence. As the Commission explained above, the review of FLOW's existing dominance designations is outside the scope of this consultation.

3.9 Section 11 – Price Regulation

Only Digicel commented on this section of the Proposed Revised Licences. It noted that it expects that a proper process would be followed, including early discussions with affected licensees ahead of any Commission decision as contemplated under the proposed new clause condition 11.1.

The Commission confirms that any Commission decision relating to the removal of existing or establishment of new pricing regulations would result from a public consultation process, following the procedures set out in the Competition Guidelines and applicable Regulations, as set out in the proposed new section 11.

3.10 Section 13 – Licensee’s Obligations to Users

Regarding the various provisions included under the proposed new section 13, Digicel noted that existing as well as the proposed new obligations under this section should apply to new entrants for reasons of fairness. Digicel also suggested that the proposed new clauses 13.2 and 13.3, relating to the optional provision of public telephone directory and yellow page listings, should be eliminated, unless some good reason for keeping them is provided by the Commission.

In response, the Commission first notes that the generic network licence resulting from this consultation is intended to generally apply to all licensees, including any new entrants. That said, for the reasons explained in Section 3.5 above, certain modifications may be required to reflect any unique characteristics of a specific licensee’s network and services. This is already the case with Digicel’s and FLOW’s Licences and would likely be the case for any new entrant’s licence. Secondly, the Commission considers that proposed new clauses 13.2 and 13.3 provide useful and, indeed, necessary guidance on the provision of public telephone directory and yellow page listings, should licensees choose to provide either one or both. As such, the Commission considers that they should remain as drafted in the Proposed Revised Licences.

In contrast, FLOW did not suggest that either proposed new clauses 13.2 and 13.3 be eliminated, but rather that the first of the two clauses be amended to remove the wording “*in hard copy (such as paper or other media)*”.

In response, the Commission notes that directory of listings could be provided in hard and/or soft copy formats. Consequently, rather than delete the phrase highlighted by FLOW, the Commission considers that it should be clarified to cover both hard and soft copy directories, as may be applicable. The Commission has revised clause 13.2 in the Amended Revised Licences accordingly.

Both Digicel and FLOW expressed concern with the proposed new clause 13.6 that requires licensees to file all standard customer agreements for their licensed services annually with the Commission. They claimed that this obligation would be overly burdensome and suggested that it be amended to require such filings should be limited to standard customer agreements that had changed relative to the previous filing.

The Commission agrees with this suggestion. It should result in reduced burden for both the licensees and the Commission. Consequently, the Commission has revised clause 13.6 in the Amended Revised Licences to capture only standard customer agreements that are either new or changed relative to the previous year.

3.11 Section 15 – Non-discrimination and Fair Competition Practices

In regard to the proposed new clause 15.4, FLOW stated that while the referenced Competition Guidelines in this clause were issued by the Commission pursuant to the Ordinance, they are in effect “policy” guidelines as opposed to regulations. FLOW added that, in its view, no power is given under the Ordinance for the Commission to create additional enforcement mechanisms by way of fines or other penalties which fall outside the provisions of the Ordinance or related

regulations. Therefore, FLOW proposed that clause 15.4 should be amended to remove the clause "... and if so, to impose corresponding remedies and penalties as appropriate".

In response, the Commission notes that the Competition Guidelines are indeed "policy" guidelines not regulations as suggested by FLOW. They set out the framework the Commission would follow to conduct, for instance, dominance or anti-competitive complaints reviews. Any remedies for penalties arising from such reviews would be imposed under the applicable provisions of the Ordinance or Regulations, not the Competition Guidelines. The Commission has revised clause 15.4 in the Amended Revised Licences to clarify this distinction.

3.12 Section 16 – Interconnection

In regard to this section, Digicel noted that it would expect that any such Commission decision relating to interconnection services and prices would follow only after properly undertaking consultations and engaging with the operators.

In response, the Commission once again confirms that all Commission decisions would necessarily be a result of a public consultation process and would provide all affected parties with the opportunity to participate in that process.

3.13 Section 20 – Force Majeure and Service Interruptions

Both Digicel and FLOW were opposed to the outage provision set out in proposed new clause 20.3 that requires licensees to "notify the Commission of any Licensed Network or Licensed Service outage lasting more than fifteen (15) minutes." Digicel expressed concern with the timeframe for outages being as short as 15 minutes. FLOW expressed a similar concern, and suggested that such the reporting requirement in this respect should be raised to outages of 3 hours or more rather than 15 minutes or more.

The Commission considers – and no doubt end users do so as well – that network or service outages of 15 minutes or more are significant service interruptions. That said, the Commission has decided to raise the outage threshold under this provision to 30 minutes or more. The Commission considers it important to have a formal record of the number, frequency and length of outages of network/service interruptions. It also considers that it should be informed of all such outages on a timely basis. Therefore, in addition to the noted outage threshold revision, the Commission also considers that Licensees should inform the Commission of all outages of 30 minutes or more as soon as possible, but no later than 24 hours after the time the outage began. The Commission has revised clause 20.3 of the Amended Revised Licence accordingly.

3.14 Section 22 – Compliance and Dispute Resolution

FLOW expressed concerns with the proposed new clause 22.2 which states that "The Licensee shall comply with the ITU Treaties, other applicable international agreements or acts, regulations, directions, orders and recommendations, and shall comply with the decisions, directions, orders and recommendations issued by the Commission". FLOW stated that ITU Treaties are not legal documents and are not part of TCI law. In FLOW's view, they should not become part of the licensing regime in TCI without specific regulations being made by

Government confirming how the extra jurisdictional treaties are to be interpreted in TCI. Further, FLOW added that there is no dispute that a licensee is required to follow the law, but a “recommendation” has no legal status. FLOW added that if it is a condition of a license that a recommendation be followed, then it is no longer a recommendation but a direction as it becomes mandatory rather than advisory. In view of these concerns, FLOW suggested the Commission to revisit the wording of clause 22.2.

The Commission agrees with FLOW’s comments regarding the legal status of ITU treaties, international agreements and general recommendations. At the same time, the Commission considers that the balance of the proposed new clause 22.2 is redundant in view of clause 1.2. Consequently, the Commission has decided to delete the proposed new clause 22.2. Its deletion is reflected in the Amended Revised Licence.

3.15 Annex A – Licensed Services

In regard to Annex A, Digicel indicated that it is not aware of any market analysis that led to the Commission concluding findings of dominance, other than the recent (2019) public consultation conducted for FLOW’s retail fixed services. As result, Digicel objected strongly to changes to Annex A as they relate to dominance designations for its own Licensed Services.

In response, the Commission notes that the only Licensed Services for which Digicel is designated as dominant are domestic and international call termination services provided on the Licensee’s fixed and mobile networks (as listed in clause 3.a of Annex A). In the case of mobile call termination, Digicel’s dominance designation arises from section 19 of the Interconnection Regulations (which applies to all licensed mobile service operators, including FLOW). In the case of fixed call termination, Digicel’s dominance designation was determined in a Commission Decision issued in 2014⁷ (and that determination applies to all licensed fixed service operators, including FLOW). That Decision resulted from a public consultation in which both Digicel and FLOW participated. The most recent interconnection rate consultation concluded with Commission Decision issued in 2020,⁸ which once again confirmed these call termination dominance designations. Consequently, the changes to Annex A of Digicel’s Proposed Revised Licence accurately reflect the current dominance designations relating to Digicel’s Licensed Services.

For its part, FLOW objected to the inclusion of clause 2 of Annex A in its Proposed Revised Licence. The clause states that “*For any telecommunications service that requires a licence under the Telecommunications Ordinance and that is not included in Clause 1, the Licensee is expressly subject to all applicable provisions under the Telecommunications Ordinance and Regulations in relation to any such telecommunications service*”. FLOW claimed that since it has a Full Telecommunications Licence, this provision is unnecessary.

⁷ Telecommunications Decision 2014-4, *Decision on the Review of Interconnection Rates*, 20 June 2014, <https://telecommission.tc/decisions/dn-2014-4-review-of-interconnection-rates/>.

⁸ Telecommunications Decision 2020-2, *Decision on the Third Review of Interconnection Rates*, 13 October 2020, <https://telecommission.tc/decisions/dn-2020-2-press-release-third-review-of-interconnection-rates/>.

The Commission agrees with FLOW in this regard and, accordingly, has removed clause 2 of Annex A from FLOW's Amended Revised Licence. As well, for additional clarity, the Commission added a fourth catch-all Licensed Services category under clause 1 of Annex A to cover "any other services defined as telecommunications services", which is also included in FLOW's Amended Revised Licence.

Otherwise, FLOW once again stated that it does not accept the dominance designations included in Annex A of the Proposed Revised Licence, except in the case of call termination on FLOW's network. For the reasons set out above, the Commission reiterates that any revisions to FLOW's current dominance designations are outside the scope of this consultation.

3.16 Annex B – Licensed Networks

Digicel's comments on Annex B repeat its concerns relating to Annex A. The Commission has addressed those concerns above.

Similarly, FLOW reiterated its objection to the dominance designations in Annex B, which is consistent with those in Annex A. Here again, the Commission has addressed these objections above.

3.17 Annex D – Islander Control

Digicel noted in its comments that matters relating to Annex D are being considered separately with the Minister of Communications. The Commission agrees, and as explained above, considers this Islander Control obligations to be outside the scope of this consultation.

4 Conclusion

Taking into account Digicel's and Flow's comments and suggestions on the Proposed Revised Licence, as noted, the Commission has prepared Amended Revised Licences. Clean and redline versions of the Amended Revised Licences for Digicel and FLOW are being issued with this Decision. Annex D of both Digicel's and Flow's Amended Revised Licences, which relate to Islander Control obligations, have been intentionally left blank since they are being considered separately with the Minister of Communications.