

Comments re: Engaging Legal Opinion of Solicitor General on the 3rd Mobile Provider and use of 700 MHz Spectrum¹

1. The Authority issued an RFP in August 2013 via open tendering for the following:
 - (i) Provision of a Public Domestic Mobile Telecommunications Network and Public Telecommunications Services by a potential 3rd mobile operator;
 - (ii) Award of 850 MHz and 1900 MHz spectrum to eligible mobile operator(s); and
 - (iii) Award of 700 MHz spectrum to mobile operators.

2. Upon completion of the Evaluation process in accordance with the stated criteria, three (3) firms successfully emerged in the following rank order: Digicel, Columbus Communications Trinidad Limited (“CCTL”) and TSTT.

3. The Authority, based on the evaluation results, recommended to the then Minister of Science and Technology (under whose portfolio telecommunication then lay), that in accordance with the Act: a concession be granted to CCTL for the operation of a public domestic mobile telecommunications network; a concession be also granted to CCTL for the provision of public telecommunications services; and noting that 700 MHz spectrum would be allocated among the top three firms pursuant to the RFP evaluation results and the Act.

4. The Minister of Science and Technology sought clarification on the recommendation, within the relevant period (60 days) before the recommendation became statutorily *deemed* to be approved by the Minister.

5. Subsequently, CWC plc (“Cable & Wireless”) announced its intention to acquire Columbus International, the parent company of CCTL. CCTL then applied to the Authority for ‘change of control’ of concessionaire under the Act.

6. Having regard to Cable & Wireless’ effective 49% shareholding in TSTT, relevant issues arose regarding potential anti-competitive effects if CCTL were to be granted the 3rd mobile operator concession, as well as the validity of the RFP process itself.

7. In the context of the foregoing, the Authority extensively sought and received external legal advice from prominent Senior Counsel, as to the issues canvassed. The Authority accordingly confirmed its recommendation to the Ministry of Science and Technology in February 2015, on the grant of the referenced concessions to CCTL. Concurrently, the

¹ Referenced at TATT Brief to Minister, September 2019.

Authority laid down relevant conditions on any proposed grant of approval to the acquisition of CCTL, compliance with which terms was to condition approval.

8. The Authority subsequently advised the Minister of Science and Technology in June 2015 that the recommendation to Minister for award of concessions to CCTL were “deemed” and, as such, the Minister was obliged under the Act to grant the concessions pursuant to the Authority’s recommendation.

9. This position was subsequently communicated by the Authority to the then Minister of Public Administration in October 2016 (following a change in ministerial responsibilities for telecommunications, consequent upon a change in government). Accordingly, the Ministry of Public Administration, by and through its Permanent Secretary, wrote to the Solicitor General in July 2018, seeking a **legal opinion**, inter alia, on the ‘deeming’ provision, and the Ministry’s legal obligation to award a concession for a 3rd mobile operator, in the context of Cable & Wireless’ non-divestment of its shares in TSTT and consequential anti-competitive effects in the telecommunications market.

10. The Ministry of Digital Transformation is not in receipt of the requested opinion from the Solicitor General, nor is the Ministry, upon due inquiry, in receipt of advice from the Ministry of Public Administration that such opinion has been furnished.

11. In all of the circumstances of the foregoing, the Ministry of Digital Transformation is of the view that extensive legal opinion from eminent senior counsel having been engaged on the matter, the Ministry is sufficiently advised to make an informed decision on the matter. Accordingly, the Ministry will take all appropriate steps and necessary executive action in accordance with the Act, and by way of further and continuing communication with the Authority, progress the matter in the interests of good governance and benefit to the people of Trinidad and Tobago.

Submitted by

Ministry of Digital Transformation