

- (ii) The content and form of the guarantees and the size of the applicable penalties shall be a matter of negotiation between the parties (that is, between the Access provider and the community of Access Seekers) in the first instance.

(c) incorporates the most favourable terms and conditions to counterparties (including Affiliates of the SMP Operator and members of the KeyTech Group) of the corresponding A&I agreements relevant to each Wholesale service that were entered into prior to the effective date of this General Determination;

(d) incorporates the applicable Retail Minus pricing requirements set forth in this General Determination are implemented as at the effective date for each specific service and any related fees;

(e) modifies or eliminates any material terms or conditions that are incompatible with the new regulatory framework, including the RAIO Guidelines set out on the Regulatory Authority website; and

(f) stipulates that all terms and conditions of the A&I agreement are subject to modification in accordance with the terms of a fair and reasonable RAIO that shall comply with the Guidelines set on the Regulatory Authority website and

¹⁷ At the present time only BTC and BCV will be subject to this obligation. All references to “SMP Operator” in this Section 5.1 shall be interpreted accordingly. If at some later point Digicel or BDC elect to provide Wholesale mobile services, their SMP status will cause this obligation to be triggered at which point they would then become subject to the remedies imposed herein.

shall be developed by the SMP Operator in accordance with procedures to be established by the Authority in accordance with paragraph 75 below.

66. The SMP Operator shall notify by email all ICOL holders of its publication of the model A&I agreements and the services covered, and provide an email address to which comments or queries may be sent by Access Seekers. Access Seekers shall have 10 calendar days in which to provide their comments on any material concerns they believe it is critical to resolve within the time frame of the A&I process established by this General Determination, rather than in the subsequent RAIO process to be conducted by the Authority.

67. A copy of all model A&I agreements proposed by the SMP Operator, along with a copy of the notice required in paragraph 66, shall be filed with the Authority on the date of publication.

68. If any material issues arise, the SMP Operator or an Access Seeker may request the Authority to facilitate one-on-one or industry mediations.

69. Within 30 calendar days of the effective date of this General Determination, the SMP Operator shall submit copies of its best and final A&I agreement offers to the Authority and publish copies of the same on its website, along with a position paper setting forth:

- (a) a list of all material objections to the proposed agreements that have been raised by Access Seekers and not resolved, and

(b) a justification for the positions taken by the SMP Operator in response to the unresolved objections, if any, referenced in subpart (a).

70. Access Seekers shall have 10 calendar days to provide the Authority with their written comments in response to the proposed agreements and position paper.

71. The Authority will consider the position paper and comments submitted (including all relevant intra-KeyTech Group contracts submitted pursuant to paragraph 83) and, in due course, issue a final decision accepting or modifying the model A&I agreements.

72. The SMP Operator shall publish the approved model A&I agreement(s) on its website on the first business day following the effective date of the Authority's final decision, and shall promptly modify all existing A&I agreements to conform to the model agreement. The Authority reserves the right to allow minor variations from the model agreement in the case of modifications to pre-existing agreements where these are justified by the circumstances and not unduly discriminatory vis-à-vis other Access Seekers. These approved, model A&I agreements shall be made available to all Access Seekers on a Non-Discriminatory basis.

73. Each Operator that has been found to have SMP in a relevant market and is subject to an unconditional obligation to provide Wholesale services in that market must supply fit for purpose Wholesale services¹⁸ that are equivalent to the services it provides to its own retail operations to another ICOL holder.

74. The Authority reserves the right to waive any of the referenced requirements or conditions upon request following the relevant procedures set out in paragraphs 65-73 of this General Determination relating to the A&I agreements if it determines that

¹⁸ I.e., any service in the relevant market that is provided to another ICOL holder.

their application in a particular situation would be disproportionate, that the outcome will not harm competition and that a waiver is in the public interest.

5.1.2 RAIO process

75. Following the completion of the model A&I process set out in the preceding Section 5.1.1, a consultation on the establishment of RAIOs will, in due course, be initiated by the Authority. The purpose of this consultation shall be to:

- (a) evaluate the merits of undertaking a RAIO proceeding in light of the results achieved by the model A&I process; and

(b) if it is determined that the establishment of a RAIO is necessary:

(i) propose a set of comprehensive RAIO Guidelines, using those presented in Annex A as a basic framework; and

(ii) develop a RAIO approval process..

6 DETERMINATION CONCERNING PROVISIONAL KEYTECH GROUP REMEDIES

76. Pursuant to RAA Section 62(1) and ECA Section 74(b)(ii), and in compliance with the principles and objectives set out in ECA Sections 21, 23(7) and 24, the Authority hereby determines that:

(a) the *Ex Ante* Remedies provided in Sections 6.1 and 6.2, below, shall be imposed on members of the KeyTech Group on a provisional basis pending completion of the Authority's separate review of the potential competitive impact of horizontal and/or vertical leveraging by KeyTech Group members with SMP into adjacent markets, which shall consider the need, if any, for the continuation or the imposition of additional or enhanced remedies on some or all Members of the KeyTech Group (“KeyTech Review”).

6.1 Remedies applicable to KeyTech Group members found to have SMP

77. In any case in which the concentration review process set forth in RAA Section 87 does not apply, a member of the KeyTech Group that has been found to have SMP in a relevant market

shall seek prior written approval of the Authority before effectuating:

- (a) any proposed increase, through an agreement or arrangement of any type, in the ownership of its shares, stocks or securities or in the voting rights that it holds in any other member of the KeyTech Group that, directly or indirectly, holds an ICOL; or

(b) any transfer of assets, key personnel, significant employee groups, or functions (including by means of outsourcing or service agreements or arrangement) to any other member of the KeyTech Group that, directly or indirectly, holds an ICOL.

78. Notice of the transactions identified above or any similar types of changes or transfers shall be provided to the Authority at least 30 calendar days in advance of the planned closing or effective date, and shall include a full description of the transaction and true and complete copies of all relevant documentation relating thereto.

79. No member of the KeyTech Group that has been found to have SMP in a relevant market and is subject to an obligation to provide Wholesale services may supply a new or modified Wholesale service to any other member of the KeyTech Group unless and until, in the opinion of the Authority: (1) such new or modified service is provided under a written A&I agreement or RAIO; and (2) the same A&I agreement or RAIO is available to all other Access Seekers; and (3) an equivalent Wholesale service has been fully tested and is commercially available to all Access Seekers throughout Bermuda. This obligation shall apply in any case in which said Wholesale service falls within a relevant Wholesale market in which the Operator has been found to have SMP and upon which Wholesale Access obligations have been imposed. To meet this obligation the SMP Operator shall:

(a) no less than 60 calendar days prior to the planned launch date for the provision of a Wholesale service to any member of the KeyTech Group, provide to all ICOL holders a detailed description of the proposed terms and conditions of the A&I agreement or RAIO provisions that would govern the new or modified Wholesale service to be provided, by publishing notice of same and making the details available on its website;

(i) ICOL holders will have 10 calendar days within which to respond to the proposed terms and conditions of the A&I agreement or RAIO provisions, starting from the date on which those are published;

(b) within seven calendar days of the receipt of any comments concerning the proposed terms and conditions of the A&I agreement or RAIO provisions, make available to interested ICOL holders copies of:

- (i) any proposed amendments based on the comments received (shown in tracked changes against the original proposal); and

(ii) a document that describes, concisely, any points of disagreement (if any exist) between the original proposal and the amended proposal, and any comments or concerns submitted by ICOL holders regarding those agreement(s), along with a description of the company's response to those disagreements and the basis for that response;

(c) within 30 calendar days of the planned launch date, submit to the Authority copies of the original and revised (if any) proposal along with a concise description of any terms and conditions that may still be in dispute, the company's proposed resolution of same, and the basis for the proposed resolution sought by the company.

(d) cooperate with the Authority to resolve any material disputes prior to launch date; and

(e) if necessary, delay the launch date until a date approved by the Authority, which shall be no earlier than the date on which an equivalent Wholesale service, offered pursuant to an approved A&I agreement or RAIO provisions, has been tested and made commercially available to all interested ICOL holders.

80. The Authority reserves the right to waive any of the above requirements and conditions listed in the preceding paragraph if it determines that their application in a particular situation would be disproportionate provided that the outcome will not harm competition and is in the public interest.

81. Each member of the KeyTech Group that has been found to have SMP in a relevant market and is subject to an obligation to provide Wholesale services in that market shall take appropriate steps to ensure that any information it obtains from or about its Wholesale customers relating to the provision of regulated Wholesale services is kept confidential within the company and is not shared with, made accessible to or otherwise disclosed to any individual who holds a position with another member of the KeyTech Group, unless the informed written consent of the Wholesale customer has been obtained in advance.

(a) Any violation of this rule (see also ICOL Condition 13.7) shall be notified to the Wholesale customer and to the Authority within one business day of the breach.

(b) The CEO and executive responsible for Wholesale services of each SMP Operator shall execute and file with the Authority a semi-annual declaration confirming that adequate physical, technical and/or organizational measures are in place and that reasonable training and notice have been provided to relevant personnel. The declaration shall be accompanied by a brief description of the measures taken by the SMP Operator to ensure that no Wholesale customer data is disclosed to any individual that works for another member of the KeyTech Group.

82. Each member of the KeyTech Group that holds an ICOL and has been found to have SMP in a relevant market shall, no later than 30 calendar days following the effective date of this General Determination, provide the Authority with a meeting schedule of all regular or specially scheduled non-public meetings or functions that involve personnel employed by, or working for, any other member of the KeyTech Group (regardless of whether the latter has been found to have SMP in a relevant market). For this purpose:

(a) the presence at an ICOL holder's board meeting of a board member previously identified to the Authority in accordance with paragraph 84 below shall not, in and of itself, be deemed to trigger this obligation;

(b) the meeting schedules shall indicate the purpose of each such meeting or function, the names, positions and affiliations of the individuals invited to attend such meetings, the frequency of such meetings if held on a recurring basis, and any other information that the Authority considers to be relevant to potential competition concerns arising from any vertical or horizontal relationships between members of the KeyTech Group; and

(c) the meeting schedules initially provided to the Authority in accordance with this paragraph 82 shall be updated by KeyTech Group members when submitting any changes or additions to those schedules. Any such changes or additions shall be notified to the Authority within seven calendar days following their occurrence. The changes and additions must be provided to the Authority even after the 30 day initial period has passed.

6.2

Remedies applicable to all KeyTech Group members holding ICOLs

83. Each member of the KeyTech Group that holds an ICOL shall, no later than 30 calendar days following the effective date of this General Determination, provide the Authority with true and complete copies of all intra-Group contracts to which it is party, including but not limited to any form of secondment agreement, supply contract or outsourcing agreement that it has entered into with any other member of the KeyTech Group. If any such agreements are not in writing, a written description of the basic terms and conditions between the relevant KeyTech Group members should be provided to the Authority. Any new agreements or modifications to existing agreements already filed shall be notified to the Authority no later than seven calendar days following their execution. In all cases, the relevant documentation shall be accompanied by a comprehensive overview of the relationships between the parties and a reasonable summary of the key terms of the agreements (or amendments) reflected in the documentation submitted.

84. Each member of the KeyTech Group that holds an ICOL shall, no later than 30 calendar days following the effective date of this General Determination, provide the Authority with a list of all executive and non-executive board members and members of the senior management team that hold similar positions, whether or not remunerated, with any other member of the KeyTech Group. The list shall contain a full description of the roles and responsibilities of the listed individuals. Any changes to the list (including the individuals or their positions or responsibilities) shall be notified to the Authority no later than seven calendar days following the effective date of the change. In all cases, the information submitted shall include the full name, title and a full description of the position and responsibilities of each listed individual in every relevant KeyTech Group member company.

7 ICOL COMPLIANCE TRIGGERS

85. The Authority will issue a notice of compliance to an SMP Operator pursuant to ECA Section 73(5)(a) authorising full use of that Operator's ICOL when the Authority determines that each and every compliance trigger (“ICOL Compliance Trigger”) identified in this section of the General Determination that applies to that Operator has been complied with. For the avoidance of doubt, these compliance triggers are in most cases a subset of the full complement of *Ex Ante* Remedies that are imposed by this General Determination on individual SMP Operators. All SMP remedies will be enforced by the Authority on an on-going basis using the tools made available to it under the RAA, the ECA and the respective ICOLs.

7.1 Compliance with Retail market remedies in Markets 1-9

86. The Authority determines that the ICOL Compliance Trigger for the Retail market remedies will be met for purposes of ECA Section 73(5)(a) when:

(a) the Chief Executive Officer of the SMP Operator upon which Retail price caps have been imposed undertakes to comply with the Authority's relevant determinations concerning the imposition of the price cap per Section 4.1.2; and

(b) the SMP Operators upon which Retail tariff notification filing obligations have been imposed have filed with the Authority a copy of all existing tariffs as per paragraph 33(a).

87. An SMP Operator meeting the ICOL Compliance Triggers set out above will be considered to be in compliance for the purposes of ECA Section 73(5)(a) only.

7.2 Compliance with the obligation to provide Wholesale line rental and local calls (WLRLC) services in Market Nos. 10 and 11

88. The Authority determines that the ICOL Compliance Triggers for the obligation to provide WLRLC services will be met for purposes of ECA Section 73(5)(a) when:

(a) the Authority has issued a final decision either approving or modifying the model A&I agreement;

(b) the SMP Operator on which the obligation has been imposed satisfactorily demonstrates that it has modified all of its existing A&I agreements to conform to the approved A&I agreements and that it has offered the approved A&I agreement to any Access Seeker requesting or likely to be interested in this service; and

(c) the Chief Executive Officer of the SMP Operator on which the obligation has been imposed signs an undertaking:

- (i) agreeing to cooperate fully in the development of a fair and reasonable RAIO conforming to the RAIO Guidelines in a further consultation to be carried out by the Authority; and

(ii) committing not to exceed the price ceiling established by the LAC (local access charge) decision unless directed otherwise by the Regulatory Authority.

89. An SMP Operator meeting the ICOL Compliance Triggers set out above will be considered to be in compliance for the purposes of ECA Section 73(5)(a) only.

7.3 Compliance with the requirement to provide fixed Broadband Access Services in Market Nos. 12 and 13

90. The Authority determines that ICOL Compliance Triggers for the obligation to provide Wholesale fixed Broadband Access Services will be met for purposes of ECA Section 73(5)(a) when:

(a) the Authority has issued a final decision either approving or modifying the model A&I agreement;

(b) the SMP Operator on which the obligation has been imposed satisfactorily demonstrates that it has modified all of its existing A&I agreements to conform to the approved A&I agreements and that it has offered the approved A&I agreement to any Access Seeker requesting or likely to be interested in this service; and

(c) the Chief Executive Officer of the SMP Operator on which the obligation has been imposed signs an undertaking agreeing to cooperate fully in the development of a fair and reasonable RAIO conforming to the RAIO Guidelines in a further consultation to be carried out by the Authority;

91. An SMP Operator meeting the ICOL Compliance Triggers set out above will be considered to be in compliance for the purposes of ECA Section 73(5)(a) only.

7.4 Compliance with the requirement to provide Wholesale Leased Line (“WLL”) services in Market Nos. 18, 19 and 20

92. The Authority determines that the ICOL Compliance Triggers for the obligation to provide WLL services will be met for purposes of ECA Section 73(5)(a) when:

(a) the Authority has issued a final decision either approving or modifying the model A&I agreement;

(b) the SMP Operator on which the obligation has been imposed satisfactorily demonstrates that it has modified all of its existing A&I agreements to conform to the approved A&I agreements and that it has offered the approved A&I agreement to any Access Seeker requesting or likely to be interested in this service; and

(c) the Chief Executive Officer of the SMP Operator on which the obligation has been imposed signs an undertaking agreeing to cooperate fully in the development of a fair and reasonable