

## **Order of the Regulator No. 2012/T07**

### **COMPLAINT BY BLUESY SAMOA LIMITED AGAINST DIGICEL SAMOA LIMITED'S FREEDOM BUNDLE PROMOTION**

Bluesky Samoa Limited has lodged a complaint with the Office of the Regulator regarding Digicel Samoa Limited's "Freedom Bundle" promotion claiming that the retail rates associated with Digicel's promotion are in breach of section 29 of the Telecommunications Act 2005.

In keeping with the principles of natural justice and fair process, the Office of the Regulator will provide Digicel Samoa Limited with the opportunity to provide a response to the complaint lodged. The Office of the Regulator has forwarded the complaint to Digicel Samoa Limited for such purpose and has specified a deadline of 26<sup>th</sup> November 2012 for submission of Digicel's response.

The Regulator has advised Bluesky Samoa Limited and Digicel Samoa Limited that the Office of the Regulator will conduct an investigation into the matter; such investigation may result in a determination on the issue at a later date.

However, in evaluating the letter received, the Regulator confirms that the retail rates associated with Digicel Samoa Limited's Freedom Bundle promotion are subject to the statutory requirement for tariffs specified under of the Telecommunications Act 2005 (Act).

Pursuant to section 40 of the Act, dominant service providers (or any other service provider specified by the Regulator in any order) shall file with and obtain the approval of the Regulator for retail tariffs; such approval is to given in the form of an order of the Regulator prior to the implementation of the related tariffs.

By virtue of Order No. 2006/06, Digicel Samoa Limited is the dominant service provider in the cellular radio market. The Freedom Bundle promotion is associated with services Digicel Samoa Limited provides using its cellular radio network and accordingly, any tariffs associated with the promotion should have been approved by the Regulator prior to implementation.

The Office of the Regulator's records show that Digicel did not apply for regulatory approval for the tariffs included in its Freedom Bundle promotion. The Regulator also confirms that Digicel was made aware of this requirement in correspondence between the Office of the Regulator and Digicel Samoa Limited when Digicel applied for use of short codes for this promotion.

Digicel is aware that any agreement or arrangement between a service provider and a customer with regard to unapproved tariffs shall be regarded for all purposes null and void.

Pursuant to section 77(d) of the Act, the Regulator hereby orders the following –


**Order instructing Digicel to cease from continuing its “Freedom Bundle” promotion**

1. Digicel is instructed to cease *all* advertisements for its Freedom Bundle promotion until such time when the Regulator has completed his investigation of the complaint lodged by Bluesky and has subsequently issued a decision on the matter;
2. Digicel is instructed to issue a public notice on television and in relevant newspapers advising the public that it will not be continuing its Freedom Bundle promotion until regulatory requirements have been satisfied;
3. Digicel is instructed that it must submit to the Office of the Regulator within three (3) days from the date of this Order an application for the approval of any tariffs associated with its Freedom Bundle promotion for the Regulator’s consideration.

Failure to comply with any of the instructions set forth above may result in penalties being imposed against Digicel (Samoa) Limited in accordance with section 75 of the Act.

Effective date of this Order: 26<sup>th</sup> November 2012

Dated this 22<sup>nd</sup> day of November 2012



Donnie De Freitas  
Regulator

