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Order of the Regulator No. 2015/T02

COMPLAINT LODGED BY DIGICEL SAMOA LIMITED AGAINST BLUESKY SAMOA LIMITED'S ANTI COMPETITIVE BEHAVIOUR WITH RESPECT TO THE ACCESS TO SUBMARINE CABLE AT A REASONABLE COST

Digicel (Samoa) Limited on 15 May 2013 initiated a complaint against Bluesky Samoa Limited in relation to 'anticompetitive conduct arising from access to international bandwidth on the submarine cables'; which evolved into a series of complaints submitted to the Office of the Regulator ("OOTR").

The regulatory process was premised on the functions and powers of the Regulator, the objectives of the *Telecommunications Act 2005* ("the Act"), and took into consideration the principles of Natural Justice.

The matters complained of were ultimately investigated by the Regulator in accordance with sub-section 8 (s) of the Act; and during the investigation process the Regulator engaged in a series of consultations with the parties involved on the matters concerned.

It is necessary for the Determination by the Regulator to address a number of matters ranging from the initial price discrimination issue to the final submissions presented by Digicel Samoa Ltd in relation to the American Samoa Company providing services to service providers licensed in the jurisdiction of the Independent State of Samoa.

The Regulator finds that the issues complained of are adequately addressed in the **Determination of the Regulator No. 2015/T02** and therefore having considered all relevant matters, information and evidence discovered during the course of investigation makes the following Order pursuant to sub-section 8(r) and 77(a) of the Act:

Order:

- 1) Bluesky Samoa must provide a Reference Access Offer ("RAO") which should offer a range of wholesale access services including international bandwidth for Internet Services equivalent in price and scope to the services provided to the Bluesky retail business in Samoa.

The following process would be adopted for the development of the Reference Access Offer:


- i. Submission of draft RAO to the Regulator by Bluesky Samoa within six(6) weeks from the date of this Order;
- ii. A dominant licensee (Bluesky Samoa in this case) to provide access related services to facilities-based under its reference access offer.
- iii. Publication of the draft RAO by the Regulator within 14 days and call for submissions; such submissions to be provided to the Regulator within three (3) weeks;

- iv. Preparation by the Regulator of a direction to Bluesky Samoa to rectify any issues in the draft RAO. This direction would be based on the Regulator's finding following his analysis of the draft RAO and any submissions that are received from other interested parties; and
- v. Publication of a final RAO by Bluesky Samoa that incorporates any changes that have been directed to be made by the Regulator within three (3) weeks.

Failure to comply with the order shall result in the Regulator invoking section 75 of the Act.

Effective date of this Order: 20th April 2015

Dated this 20th April 2015



Donnie Defreitas
REGULATOR