



Telecommunications &
Radiocommunications
Regulator

PO Box 3547
Port Vila
Vanuatu
t: +678 27621
e: enquiries@trr.vu

TRR'S DECISION TO EXTEND PARAGRAPHS 3 & 4 OF ORDER NO. 3 OF 2016

On 1 June 2016, TRR issued Order No. 3 of 2016, and its "Determination And Findings Relating To The Wholesale International Internet Services Market And Speedcast's Complaint Against Interchange Limited" ("TRR's June 2016 Determination").

Paragraphs 3 and 4 of Order No. 3 of 2016 provide as follows:

3. "For a period of 12 months, prior to providing, or agreeing to provide, any further capacity on the ICL Cable, ICL shall first obtain the advance approval of TRR for the pricing and related terms for the supply of any such capacity, and in seeking such approval, shall provide substantiation that the price proposed is cost-based, and commercially reasonable, and not discriminatory, or anti-competitive.

4. From 30 June 2016 and for the remaining period of the Order in Paragraph 3 above, ICL shall provide a summary report, at the end of each calendar month, describing ICL's compliance, or any non-compliance, with the Order in Paragraph 3 above."

TRR has decided to extend these two Orders, for a limited period of 90 days, as provided for in the Orders accompanying this Decision.

TRR reasons for this Decision include that:

- a) The issues, concerns and findings as to ICL's pricing that supported the above Orders have not been addressed or resolved.
- b) TRR is not satisfied that, in the absence of a continuation of the above Orders, ICL's pricing is or will be consistent with the Telecommunications and Radiocommunications Act, 2009 ("the Act"), or ICL's obligations under that Act and its licensing instruments.
- c) TRR also does not have sufficient information substantiating ICL's prices as being in compliance with ICL's obligations. For example, as stated in Paragraph 110 of TRR's June 2016 Determination, at that time ICL's price advised to TRR 1 x STM-1 of capacity was \$US 3.1 million. However, since

that time, TRR has been advised that ICL's price is much greater, being \$US5.4 million. No substantiation for such a large price increase, or price, has been provided. ICL also has not, since TRR's June 2016 Determination and Orders, put forward any additional supplies of capacity for approval by TRR. ICL also has not, since about July 2016, provided TRR with any of the monthly reports ICL is required to provide under Paragraph 4 of TRR's Order No. 3 of 2016.

- d) TRR is in the process of obtaining further relevant and up-to-date information from ICL as to its prices and costs, and intends to utilize the 90-day extension period of this Order to made a further decision as to whether, and if so what, type of regulation of ICL pricing is appropriate going forward.
- e) The extension of this Order would not appear to cause undue harm or prejudice to the interests of any party, and is likely to further the objectives and requirements of the Act.
- f) For example, as stated in TRR's June 2016 Determination, TRR has broad powers to regulate the pricing of ICL, including by using "price cap" regulation (as referred to in Section 36 of the Act). Paragraph 3 of Order No. 3 of 2016 is a less onerous and more flexible type of price regulation than TRR could impose on ICL. ICL also has very recently informed TRR that ICL is in discussions with potential customers as to arrangements to sell further capacity, and intends to and will seek TRR approval for such arrangements. ICL therefore could not (and apparently does not) assert an entitlement to be free of any regulation as to its pricing, or from a continuation of the above Paragraphs of Order No. 3 of 2016.
- g) Paragraph 3 of Order No. 3 of 2016 also is entirely consistent with ICL's obligations under the Act and its License, including to not abuse its position as a dominant service provider or otherwise act so as to substantially lessen competition in this Market. ICL's obligations include that, under 23(b)(2) of the Act, it is deemed to have abused its dominance if it "fails to supply a bottleneck facility to a service provide within a reasonable period for time and on commercially reasonable terms and conditions." Paragraph 3 of Order No. 3 of 2016 assists to implement this obligation, and prevent a contravention of ICL's pricing obligations and any adverse market consequences.

Signed on 29/05/2017

Dalsie Baniala

Telecommunications & Radiocommunications Regulator

