



### **TRR's SECOND 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 later decided to extend these two Orders, for a period of 90 days, on 29 May 2017 in its Order No. 5 of 2017 and accompanying 'TRR's Decision To Extend Paragraphs 3 & 4 Of Order No. 3 Of 2016'.

In this, "TRR's Second Decision To Extend Paragraphs 3 & 4 Of Order No. 3 Of 2016", TRR has decided to further extend these two Orders so that they continue to apply until 31 December 2017.

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 resolved so as to negate the purpose or appropriateness of the above Orders.
- b) TRR currently 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) ICL also has not, since TRR's June 2016 Determination and Orders, put forward any additional supplies of capacity for approval by TRR, and TRR therefore has not had to approve or determine any such pricing pursuant to Paragraph 3 of the above Orders.
- d) TRR understands that in the near future, ICL intends to put forward pricing for approval or determination by TRR, such that the Order in Paragraph 3 above will have occasion to be applied.
- e) TRR has only recently been provided some of the information required from ICL as to its prices and costs, and intends to utilize the extension period of this Order to obtain additional relevant information and establish cost-based pricing, consistent with the TRR Act, for cable capacity supplied by ICL.
- f) 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.
- g) 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.
- h) 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 31/08/2017

