

# Digicel

**Digicel's Response**  
**to**  
**The Consultation**  
**by**  
**Spectrum Management Authority**  
**On the**  
**Review of the Spectrum Holdings Policy**

10<sup>th</sup> December 2020

## Preliminary Comments

We thank the Authority for providing this opportunity for Digicel to comment on Authority's Review of the Spectrum Holdings Policy. Digicel is of course, available and would be happy to discuss our submission further.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the consultation documents or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to:

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## General Comments

Digicel welcomes the proposal to remove the spectrum cap for bands currently used for mobile services in Jamaica.

Irrespective of the actual number of market players it makes little sense to maintain a “hard” cap per operator, the sum of which, when apportioned to the anticipated number of market participants which would prevent all available spectrum being allocated.

Digicel believes that the competition analysis, which in effect, results in a reservation of approximately one third of the total available spectrum for future market entry, will adversely impact consumer welfare in the Jamaican market.

While the Authority has proposed the use of a “screen” above certain thresholds it has not set out for comment the criteria to be applied to any such assessment. The lack of clarity in this regard is surprising given the procedural issues that have arisen following previous spectrum awards.

Digicel’s detailed comments are set out below.

### **COMMENTS ON REVIEW OF MOBILE SPECTRUM HOLDINGS POLICY**

#### **Section C - Policy Goal, Principles and Objectives**

Digicel notes that none of the four policy objectives specified by the Minister call for the facilitation of market entry.

In summary these policy objectives call for the promotion of competition, the encouragement of investment, the efficient use of spectrum and expanded coverage for advanced services. With carefully designed regulatory incentives all of these imperatives can be met within the existing market structure. In fact, it is Digicel’s view that these can be best and most quickly met by directly regulating within the existing market structure rather than relying on indirect benefits arising from new market entry which could take an extended period to deliver.

#### **Section D - General Spectrum Holdings Rules/Policy**

Digicel notes the proposal to move from a “spectrum cap” to a “spectrum screen”. The Authority outlines that *“The screen as proposed by the SMA considers the total spectrum suitable and available for commercial mobile services and establishes a trigger point at which the SMA will conduct a more detailed competitive analysis for assignment.”*

While Digicel welcomes the removal of the current “hard” cap we believe that the threshold for the trigger point review is set too low.

Digicel notes that the criteria for the conduct of the screening assessment have not been sufficiently set out in the consultation to allow meaningful comment.

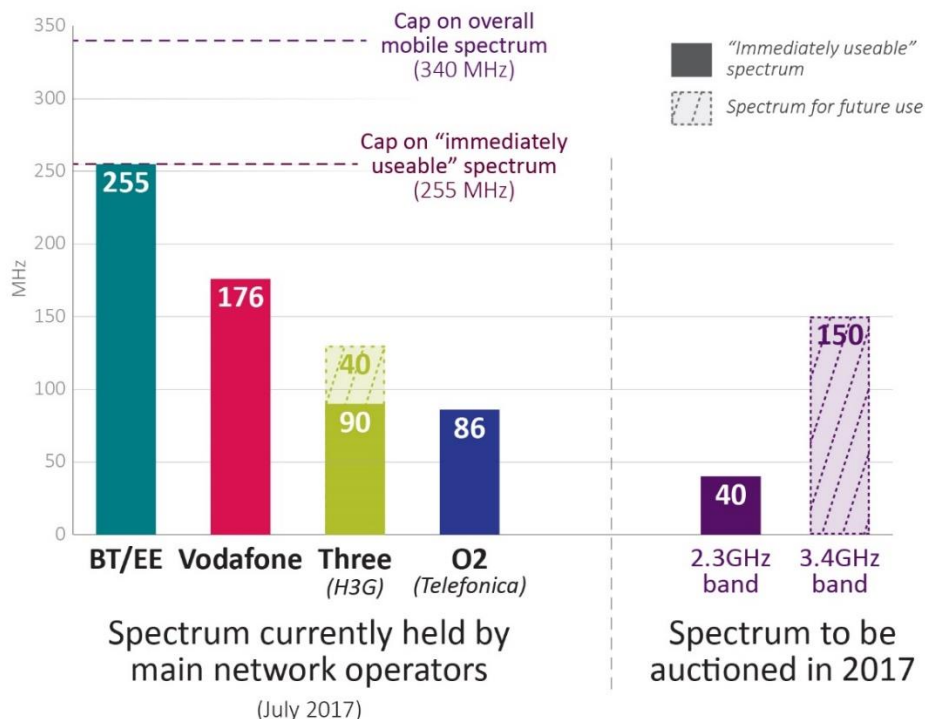
The lack of a clear framework for any screening analysis has a significant negative impact regarding regulatory certainty and consistency of regulatory decision making.

Investment in spectrum based networks and services is long term in nature and the uncertainty regarding the mechanisms and criteria for spectrum screening of necessity increases the risk associated with such investment decisions. The lack of clear assessment criteria therefore appears to run counter to the policy direction issued by the Minister to the Authority which requires the Authority to take account of the need to attract investment.

### Section E - International Market Trends

The Authority cites a number of international comparators.

In particular the Authority references the UK's use of an overall cap of 37% of mobile spectrum. The Authority's analysis does not set out that this limit is set in the context of a 4 player market.<sup>1</sup>



<sup>1</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/ofcom-sets-rules-for-mobile-spectrum-auction>

This cap therefore approximates to the formula  $\text{Cap} = \text{Total spectrum} \times (N-1)/N$ , where N corresponds to the number of operators in the market. In the case of the potential 3 player market contemplated by the Authority for Jamaica this would yield an equivalent cap in Jamaica of approximately 50% of the total spectrum.

In addition, in absolute terms the cap proposed by the UK regulator is more than double the cut-off for the screen proposed by the Authority. The Authority does not highlight the high level of asymmetry in UK spectrum holdings. There is no suggestion that this level of asymmetry has in any way impaired competition in the UK mobile market. In fact Ofcom explicitly states that the opposite is the case *“Operators have always held varying amounts of spectrum in the UK, more so than in many other European countries. However, the mobile market is still among the most competitive in Europe, and has been serving consumers well”*<sup>2</sup>

While ComReg proposed caps for the award competition referenced this dates from 2012. ComReg has reaffirmed its use of completion caps in more recent awards but only as a means to avoid “excessive asymmetries” in overall holdings. However in setting its caps it set out that in relation to existing asymmetries of up to 85MHz in holdings *“ does not appear to be any strong basis to support claims that the existing asymmetry in spectrum holdings (between MNOs) is materially harming competition”* and that these asymmetries equate to 8-9% of total spectrum holdings.<sup>3</sup>

Digicel believes that the Spectrum Caps in Trinidad and Tobago cited by the Authority are also potentially under review.

## **Section F - Local Market Assessment**

Digicel notes that the Fair Trading Commission (FTC) is a specialised body dealing with competition issues. In this regard Digicel endorses its findings regarding the current status of the mobile telecommunications sector in Jamaica in particular its finding that *“the mobile telecoms market in Jamaica is competitive”*<sup>4</sup> and that *“the FTC has observed no evidence of coordinated conduct between the two telecoms operators in Jamaica”*<sup>5</sup>

While the Commission has identified a potential structural issue that this level of competition might be susceptible to anticompetitive conduct in the future, it makes no analysis of whether constraints such as regulatory overhang from its own enforcement of the Fair Competition Act provide sufficient safeguards.

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<sup>2</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2017/ofcom-sets-rules-for-mobile-spectrum-auction>

<sup>3</sup> Section 6.5.1 of Comreg Document 19/124 Proposed Multi Band Spectrum Award - Response to Consultation and Draft Decision

<sup>4</sup> Para 34 of FTC’s Assessment of Competition in the Mobile Telecommunications Market

<sup>5</sup> Para 64 of FTC’s Assessment of Competition in the Mobile Telecommunications Marke

However the FTC is not a specialised body dealing with spectrum matters. Based on the analysis set out in its report it appears to have based its recommendation of a 37% cut-off for screening on a figure used by Ofcom in the UK. As set out previously the UK spectrum cap was set in the context of a four player market and in absolute terms is more than double the screening trigger proposed.

In proposing this figure the FTC has not taken account of the use of existing spectrum allocations to provide service to customers using legacy services (such as 3G). The Commission has not considered that a new entrant would most likely not provide legacy 3G services on market entry. It has not taken account of the fact that too low a spectrum holding cut-off would mean that in order to compete on an equitable basis with a new entrant existing operators would have to discontinue these services. As these legacy services tend to be used by those consumers who least afford device upgrades to newer technology this would result in consumer welfare harm.

Digicel agrees that the Authority has an important role in the management of spectrum. But ultimately this should be focussed on maximising consumer welfare benefit.

The FTC recognises that *“policy must be flexible enough to accommodate situations where the assignment of additional spectrum to incumbent operators is indispensable to the preservation of competition”* Digicel agrees with this statement and believes that in order to achieve this a higher trigger point for the screening must be set.

Digicel agrees that the Authority has an important role in the management of spectrum. Ultimately this should be focussed on maximising consumer welfare benefit. The FTC’s proposals are overly narrow focussing on market entry as a cure for a hypothetical future competition issue. They do not address the wider operation of the market nor the constraints faced by existing operators using spectrum to provide legacy services.

### **Section G - World Radiocommunications Conference 2019 (WRC-19)**

Digicel notes the Authority’s summary of the work of the WRC and the likely availability of spectrum going forward.

Neither the Authority nor the Commission has taken account of the phasing of spectrum requirements of a potential third operator. It will not require the full complement of spectrum necessary to support its long term customer base and service set in the short to medium term. The Authority’s proposals appear to embed an assumption that there must be a near equal split of spectrum holdings across all tiers of the spectrum bands based on the bands which have been released in in the short term. This gives rise to unnecessary and damaging constraints in network and service deployment today.

## **Section H - Spectrum Availability**

Digicel notes the authority's summary of the current allocations. We note also the Authority's references to the overlaps between the 850MHz and 900MHz bands and the 1800MHz and 1700/2100 MHz bands.

As the Authority is aware the current assignments have given rise to a situation where there is some interference between the 850MHz and 900MHz bands rendering some spectrum unusable. Digicel and the other spectrum user have made a joint proposal to the Authority to resolve this. We would request that this be addressed in the near term so as to maximise the available spectrum.

## **Section I - Proposed Spectrum Holdings Policy for Jamaica**

Digicel welcomes the proposal to remove the "hard" spectrum cap for the existing mobile spectrum bands.

However the Authority now proposes to screen at a trigger set less than one third of the total available spectrum in what is foreseen to be a three player market. This trigger point below a equal market share cannot serve to protect competition and will give rise to unnecessary administrative burden both on operators and on the Authority itself.

Digicel is strongly of the view that the trigger point could be safely set significantly above the level proposed by the FTC while still meeting the objective to facilitate market entry. The evidence from the international comparators the Authority itself has chosen demonstrates that asymmetry in holdings does not adversely affect either market entry or completion.

If the Authority has concerns about the availability of sub 1Ghz bands then it should make these the subject of a separate trigger point. It is notable that this is the approach adopted by the international comparators referenced by the Authority.

When the following factors are taken into account in Digicel's opinion a trigger point in excess of 40% and potentially up to 50% could safely be set while meeting all of the policy objectives that the Authority was directed to take into account.

The factors are:

- The ongoing requirement for some of the existing allocations to be used to support legacy services;
- Customer base asymmetries;
- Delayed timing of requirements for full spectrum allocations from a new entrant and the likely release of new bands in advance of the requirement crystallising;

- Improvements in technology and costs for a new entrant compared to the embedded networks of current operators allowing equivalent customer bases and services to be supported in a smaller spectrum footprint;
- Some asymmetry in holdings will not adversely affect retail competition.

Digicel has very significant concerns regarding the lack of detail on the factors to be taken into account in conducting the screening exercise. Digicel urges the Authority to engage with industry on a framework for such assessments. Ideally this framework should be in place in advance of the move to a screening regime.

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