Response to Consultation Paper on Recommendation for Regulatory Impact Analysis Framework

Submitted for and on behalf of the Digicel entities operating under the ECTEL jurisdiction, including but not limited to:

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Question 1 - Are the steps in the RIA process framework clear and comprehensive or should additional / different components be included in the high-level overview?

Digicel's Response:

Yes, in broad terms the six-step sequential process set out in Exhibit 2.1 (define the problem, establish the objectives, identify the policy options, estimate the net benefit, determine the best option and plan implementation, and evaluate the chosen option) is clear, logical, and consistent with OECD and comparator (Australia, New Zealand, United Kingdom) practice. Digicel supports the recognition that the process must remain iterative, allowing earlier steps to be revisited as new information emerges.

Notwithstanding this, Digicel identifies the following areas where the high-level overview would benefit from greater clarity:

a) The proportionality ('triage') test described in Section 2.5 is, in practice, a threshold gateway that determines the intensity of every subsequent step. Digicel recommends that Exhibit 2.1 be revised to show this triage assessment as an explicit first step in the diagram itself, rather than being introduced only later in the text, so that stakeholders understand from the outset that not every proposal will receive the same depth of analysis.

b) The feedback loops shown in Exhibit 2.1 (the arrows returning to earlier steps) should be accompanied by clearer guidance on the triggers for revisiting a step - for example, materiality thresholds for new information - so that the iterative process does not become a source of delay or uncertainty for regulated parties.

c) Digicel recommends that the framework include indicative timeframes for completion of each step (calibrated to the light / medium / full RIA classification), to give operators a reasonable degree of predictability for business and investment planning purposes.

d) Given ECTEL's parallel work on a market competition assessment methodology, Digicel recommends the framework clarify how RIA is intended to interact with, and avoid duplicating, analysis already required for SMP designation, remedy selection or universal service determinations.

Question 2 - Should a requirement be introduced that all regulatory proposals - with exceptions under defined circumstances - undergo RIAs? What criteria should apply for exemptions?

Digicel's Response:

Yes. Digicel supports the introduction of a general requirement that regulatory proposals be supported by an RIA, subject to clearly defined exemptions, consistent with the OECD categories referenced in the consultation paper (emergencies; internal administrative processes; reorganisation of existing legal text; direct transposition of international treaties; and government budgetary proposals).

Digicel recommends the following refinements to the exemption criteria:

a) Minor or purely technical amendments (for example, correction of drafting errors or formatting) that have no material impact on regulated parties should also be exempt.

b) Proposals that directly implement a decision already fully analysed and consulted upon in a prior RIA should not require a duplicative full re-analysis, provided the underlying facts have not materially changed.

c) The exemption determination itself should be documented and made available to affected stakeholders (even briefly), so that the exemption process remains transparent and is not perceived as a mechanism to bypass scrutiny for proposals that in substance affect competition, investment or consumer outcomes.

Question 3 - Should any additional factors be considered within the proportionality test?

Digicel's Response:

Digicel supports the proposed 'triage system' (Exhibit 2.2) in principle as a pragmatic tool for allocating limited regulatory resources. Digicel recommends the following additional factors be incorporated:

a) **Reversibility of the intervention** - proposals that can readily be adjusted or unwound if they produce unintended effects should generally warrant a lighter RIA than irreversible interventions of comparable scale, and this distinction is not currently captured in the scoring categories.

b) **Sector-specific calibration of the 'competition impact' score** - given the small number of operators typical of ECTEL Contracting States, a competition impact score of 3 or 4 could be reached relatively easily under a generic scoring approach; illustrative, sector-specific examples should accompany the scoring guidance to promote consistent application across the six NTRCs.

c) **Indicative monetary thresholds**, developed in consultation with industry and calibrated to the size of each Contracting State's economy, would as the consultation paper itself notes at Section 2.5 provide helpful additional guidance and predictability once sufficient experience has been gained from initial test cases.

Question 4 - Are there any additional factors that should be considered when formulating objectives?

Digicel's Response:

Digicel supports the application of SMART criteria (specific, measurable, assignable, realistic, time-related) to the formulation of RIA objectives. Digicel recommends the following additional factors be considered:

a) Objectives should explicitly include an investment and innovation dimension, and not be confined to consumer-facing metrics such as price or take-up. A narrow focus on short-term outcomes risks understating the impact of a proposal on the incentives for continued capital investment in network infrastructure and resilience, which is of particular importance in small island economies with high fixed and sunk costs.

b) Where a proposal is likely to be relevant across more than one ECTEL Contracting State, objectives should explicitly consider regional consistency, given that a number of operators - including Digicel - operate on a regional basis with shared infrastructure strategies and group-level investment decisions.

c) Objectives should be cross-checked against existing licence conditions and quality of service obligations to avoid the introduction of duplicative or conflicting measures of success.

Question 5 - Are there any intervention options that would not be appropriate in ECTEL Contracting States?

Digicel's Response:

Digicel cautions against treating more intrusive regulatory options - such as price controls or structural or functional separation - as a default or first-choice intervention in ECTEL Contracting States. Consistent with the investment-competition trade-off already recognised in the consultation paper (Section 6.8) and in Digicel's response to ECTEL's related consultation on market competition assessment methodology, such measures should remain interventions of last resort, supported by robust, sector-specific evidence.

Digicel also cautions against the introduction of untested regulation without a phased or trial approach (for example, sandboxes or short-duration pilots), given the limited administrative and monitoring capacity of NTRCs in small markets. Lighter-touch and non-regulatory options - including quasi-regulation, industry codes of practice, guidance notes, and information or education campaigns - are generally more proportionate first responses and should be given genuine consideration before more prescriptive alternatives.

Question 6 - What would be an appropriate range for the discount rate for use in ECTEL Contracting States?

Digicel's Response:

Digicel's primary question is how the illustrative 4% to 6% range referenced in the consultation paper (drawing on the comparator STPR rates at Exhibit 6.3) was derived, and whether it is in fact a suitable measure for the ECTEL Contracting States from an operator's perspective.

Digicel does not consider the 4% to 6% range to be suitable, and recommends it be revisited. The ECTEL Contracting States sit within the Caribbean hurricane belt. As a direct consequence, Digicel pays high insurance premiums and incurs recurring, material expenditure to rebuild and continually strengthen its networks following storm damage. This is a structural, ongoing risk borne by telecommunications operators in the region that is simply not present, or present to a far lesser degree in the jurisdictions cited as comparators, namely Ireland, Denmark and Canada, whose operating environments are markedly different from a telecommunications infrastructure perspective.

As the discount rate used in an NPV calculation is itself a measure of risk, it should capture this inherent, region-specific exposure. A rate derived predominantly from non-Caribbean, non-hurricane-exposed comparators will understate the true risk faced by telecom operators in the ECTEL Contracting States, and should accordingly be set higher than the proposed 4% to 6% range.

Digicel recommends that:

a) ECTEL clarify and publish the methodology and evidence base used to derive the proposed 4% to 6% range, including the extent to which climate and catastrophe risk specific to the region was taken into account;

b) the discount rate for ECTEL Contracting States be calibrated with specific reference to the region's hurricane and climate risk profile - for example, informed by reinsurance / catastrophe-linked pricing, historical storm-related network rebuild and restoration costs, and telecom sector-specific risk premia - rather than relying solely on generic social discount rate benchmarks drawn from jurisdictions outside the hurricane belt;

c) where a proposal has implications for long-lived network assets, ECTEL nonetheless consider a declining rate schedule for later years, consistent with the approach adopted in New Zealand and Peru, provided the initial rate appropriately reflects regional risk;

d) the discount rate be reviewed periodically to ensure it remains reflective of prevailing economic and climate-risk conditions; and

e) consistent with the consultation paper's own recommendation at Section 6.6, sensitivity testing using reasonable alternative rates should be mandatory for any full RIA, to demonstrate the robustness of the recommended option to this key assumption.

Question 7 - Are the processes described in this section for assessment of net benefit / cost sufficiently clear and workable or is further clarification required? Are there any additional tools which would add value to the appraisal process if included in the RIA framework?

Digicel's Response:

The suite of appraisal methods described (least-cost analysis, cost-effectiveness analysis, cost-benefit analysis, multi-criteria analysis, and qualitative approaches) is comprehensive and appropriately suited to the data-constrained environment acknowledged throughout the consultation paper. Digicel recommends the following clarifications and additions:

a) Guidance ideally in the form of a simple decision tree on selecting between CBA and MCA (or a hybrid) for a given proposal, to promote consistent application across the six NTRCs.

b) Given the data limitations recognised throughout the paper, Digicel recommends ECTEL develop standardised benchmarking templates against comparable small island jurisdictions, to reduce the burden of bespoke primary research for each individual RIA.

c) Digicel welcomes the caution (Section 6.3) that behavioural research has found a tendency to over-estimate benefits and under-estimate costs. Digicel recommends this be reinforced through an independent challenge or peer-review function for full RIAs, to mitigate this bias in practice.

d) Digicel recommends that consideration of dynamic efficiency effects the impact of a proposal on longer-term investment and innovation be made an explicit, mandatory element of every RIA (not only full RIAs), given that static welfare analysis alone, as acknowledged at Section 6.8, may understate investment risk in markets of this size.

Question 8 - At what stages during the RIA process would it be appropriate to conduct stakeholder consultation?

Digicel's Response:

Digicel supports treating stakeholder consultation as an ongoing input into the RIA process rather than a single, discrete step. Digicel recommends that, at a minimum, consultation occur at three points:

a) at the problem definition and options identification stage, to validate the baseline evidence and ensure that all genuinely viable options (including non-regulatory alternatives) have been captured;

b) prior to finalisation of the net benefit appraisal, to test the data, assumptions and (where applicable) MCA criteria and weightings that underpin the analysis; and

c) on the draft recommendation and implementation plan, before a final decision is taken.

Digicel further recommends that consultation on RIAs be coordinated with, rather than run in parallel to and separately from, the sectoral consultation requirements already in place under the EC Bill in relation to SMP and universal service obligations, and that stakeholders be afforded sufficient time to respond, given the technical and financial complexity of the underlying evidence.

Question 9 - Are there any other factors that should be considered as part of the decision making process?

Digicel's Response:

In addition to the factors listed at Section 8.1, Digicel recommends the decision-making process also take into account:

a) the proportionality of implementation costs and timelines for operators including smaller operators relative to the scale of the relevant Contracting State's economy;

b) regulatory certainty and consistency with prior ECTEL / NTRC decisions and precedent, with any departure from precedent clearly justified and explained; and

c) regional harmonisation across the six ECTEL Contracting States, given that a number of operators, including Digicel, operate on a regional basis and would otherwise face a fragmented compliance landscape for substantively similar issues.

Question 10 - Data requirements involve balancing the need for timely information against the costs and burden of data collection. What would be a realistic schedule for supplying data - monthly, quarterly, annually?

Digicel's Response:

Digicel recommends quarterly reporting as the default frequency for monitoring and evaluation of an implemented RIA option, as this reasonably balances the need for timely information against the administrative burden on both regulated entities and NTRCs. Monthly reporting should be reserved for the highest-impact interventions (full RIA classification) and, even then, only for a defined transitional period for example, the first six to twelve months following implementation, reverting thereafter to quarterly or annual reporting.

Digicel further recommends that reporting frequency and format be proportionate to the RIA's own triage classification (light / medium / full) and that, wherever possible, ECTEL and the NTRCs rely on data already collected for other regulatory purposes (for example, existing quality of service reporting), rather than creating new, parallel data collection obligations.

Conclusion

Digicel supports ECTEL's objective of introducing a robust, proportionate and transparent Regulatory Impact Analysis framework across the Contracting States, and remains committed to engaging constructively in this Consultation.

The framework should strike an appropriate balance between analytical rigour and the resource constraints inherent in small island economies, while preserving the regulatory certainty and investment incentives that are essential to continued network development in the region. Digicel looks forward to continued engagement with ECTEL as the framework is finalised and applied to initial test cases.