



In The Supreme Court of Bermuda
APPELLATE JURISDICTION

2025 No 35

**IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 96 OF THE
REGULATORY AUTHORITY ACT 2011**

BETWEEN: (1) LOGIC COMMUNICATIONS LTD
 (2) BERMUDA DIGITAL COMMUNICATIONS LTD
 (3) CABLE CO LTD
 (all trading as “One Communications”)

APPELLANTS

AND

THE REGULATORY AUTHORITY

RESPONDENT

-AND-

2025 no 36

**IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 96 OF THE
REGULATORY AUTHORITY ACT 2011**

BETWEEN: (1) BERMUDA TELEPHONE COMPANY LIMITED
 (2) TELECOMMUNICATIONS (BERMUDA AND WEST
INDIES) LTD
 (3) DIGICEL BERMUDA LIMITED

APPELLANTS

AND

THE REGULATORY AUTHORITY

RESPONDENT

Ex parte application for interim stay of orders and directions made and ex ante remedies imposed by the Regulatory Authority pursuant to section 72 of the Regulatory Authority Act 2011

RULING

(In Chambers)

Date of hearing: 29 September 2025

Date of Reasons for Order: 3 October 2025

Appearances:

John Wasty and Jordan Knight of Appleby (Bermuda) Limited for the Appellants in 2025 No 35 (together referred to as “OneComm”)

Ben Adamson and Sam Hudson of Conyers Dill & Pearman Limited for the Appellants in 2025 No 36 (together referred to as “Digicel”)

Mark Diel and Changez Khan of Marshall Diel & Myers Ltd for the Regulatory Authority (in attendance on a watching brief)

RULING OF MARTIN J

REASONS FOR ORDERS

Introduction

1. The Court made an Order in each of these proceedings on 29 September 2025 granting an interim stay of a number of the orders and directions and *ex ante* remedies made by the Regulatory Authority against the respective Appellants in these two sets of proceedings pending an *inter partes* hearing. The Court promised to provide reasons for those Orders as soon as possible. These are those reasons.
2. In these proceedings the Court shall refer to the appellants in Civil Appeal 2025 No 35 as “OneComm” and the appellants in Civil Appeal No 36 as “Digicel” as these are the trading names of the entities which run the businesses that trade under these respective brands and by which they are commonly known by their customers.

3. OneComm and Digicel provide internet, telephone, cable television, mobile phone, data and telecommunications services to customers in Bermuda and they are regulated by the Regulatory Authority (“the RA”) under the Regulatory Authority Act 2011.
4. Pursuant to its statutory mandate, the RA is responsible to regulate the telecommunications services market in Bermuda. Following its statutory Market Review of the Electronic Communications Sector, which was completed in 2025, the RA issued the Regulatory Authority (Market Review of the Electronic Communications Sector) General Determination 2025 (“the 2025 General Determination”) which included a number of conclusions and consequential directions, orders and “*ex ante*”¹ remedies intended to regulate the price of the provision of certain of the services that OneComm and Digicel presently offer to their customers. These orders, directions and *ex ante* remedies are intended to reduce the prices of certain of the services offered which the RA considers to be in line with what those services should cost in an efficient and competitive market, taking into account the particular market conditions that apply in Bermuda.
5. The 2025 General Determination was issued on 27 August 2025 and was effective when published in the Official Gazette on 4 September 2025. The orders and *ex ante* remedies were directed to take effect on 1 October 2025.
6. In the 2025 General Determination, the RA gave various orders and applied a number of *ex ante* remedies against OneComm. OneComm opposes these orders and *ex ante* remedies generally and has issued an Originating Notice of Motion dated 24 September 2025 to appeal against the imposition of the orders and *ex ante* remedies. Similarly, the RA gave various orders in respect of the products and services that Digicel offers. Digicel issued its (amended) Originating Motion dated 26 September 2025 to appeal against the orders made against it.
7. Pending the determination of their respective appeals, both OneComm and Digicel have each applied to the Court for an interim stay of certain of the orders and *ex ante* remedies contained in Schedule 2 of the 2025 General Determination. OneComm and Digicel submit that they are likely to prevail on the grounds of their appeals and that if the orders and *ex ante* remedies are applied in accordance with the present terms of the 2025 General Determination, they will each suffer irreparable harm² pending the determination of their appeals.

OneComm

¹ *Ex ante* in this context means ‘from the outside’ of normal market forces: i.e. by way of market intervention by the RA.

² Under section 96 (8) of the Regulatory Authority Act 2011, these are the two preconditions that must be made out for the Court to grant a stay of a determination made by the RA.

8. As noted above, OneComm does not seek a stay pending appeal in respect of all the *ex ante* remedies which the RA has directed should be applied³, only those which have the most significant financial impact. The *ex ante* remedies in respect of which OneComm seeks an interim stay are as follows:

- (a) In the Fixed Broadband, Retail Market: the *ex ante* remedy which requires that “OneComm must lower its fixed broadband weighted average retail price (WARP) by 7% as a result of the [RA]’s initial benchmarking exercise reviewing OneComm’s median pricing” (the “Fixed Broadband Retail Remedy”);
- (b) In the Fixed Broadband, Wholesale Market: the *ex ante* remedy which requires that “OneComm must supply wholesale inputs at a price that is capped at Retail minus X% where X is set at a level to enable efficient competition in retail markets, and for the first two years of the forthcoming regulatory period, X is set at 50%” (“the Fixed Broadband Wholesale Remedy”);
- (c) In the Business Connectivity, Wholesale market: the *ex ante* remedy which requires that “OneComm must supply wholesale inputs at a price that is capped at Retail minus X% where X is set at a level to enable efficient competition in retail markets, and for the first two years of the forthcoming regulatory period, X is set at 42%” (“the Business Connectivity Wholesale Remedy”).

Digicel

9. Similarly, Digicel does not seek a stay pending appeal in respect of all the orders made against it. The two specific orders that Digicel seeks to stay are in respect of the RA’s orders requiring Digicel to:
- (a) to introduce a retail mobile entry level service as an “anchor” retail mobile product at a maximum price of BD\$50.00 per month with prominent availability across all channels; and
 - (b) to set the wholesale business connectivity price at Retail minus 42% (as described above in relation to OneComm as the Business Connectivity Wholesale Remedy)⁴.

The Appeals

10. It is not necessary to set out all the grounds of appeal that OneComm and Digicel will advance at the ultimate hearing of the full appeal. However, OneComm and Digicel have relied upon some of the grounds they will advance at the full appeal to demonstrate

³ See Schedule 2 of the 2025 General Determination (Sheehy 1 exhibit 1 pages 32 to 35)

⁴ See 2025 General Determination Sheehy 1 exhibit 1 page 34.

that the Court should grant a stay of those orders and remedies that will cause substantial and irreparable harm.

11. In essence, for the present purposes of these applications, both OneComm and Digicel say (i) that the process by which the RA arrived at its conclusions in the 2025 Market Review was procedurally unfair and unlawful and (ii) the conclusions in the 2025 General Determination are plainly wrong and based on flawed reasoning and without proper evidential support. Accordingly, it is said that the 2025 General Determination and the conclusions the RA has arrived at are fundamentally flawed, and the orders and *ex ante* remedies based on those conclusions are liable to be set aside. OneComm and Digicel say that the application of the orders and *ex ante* remedies in the meantime (i.e. pending the determination of their appeals) will cause each undertaking substantial and irreparable financial harm for reasons explained in the supporting affidavits filed by each of the companies affected⁵.

Summary of the Grounds of Appeal relied upon for a stay pending appeal

12. Both OneComm and Digicel complain that the process by which the RA arrived at its conclusions was unfair and unlawful because:

- (i) the RA reached its conclusions on information which was not disclosed to them during the Market Review process so that they did not have the opportunity to comment on or contribute to or contradict the information or assumptions that the RA ultimately relied upon in reaching its conclusions which underpin the orders and *ex ante* remedies⁶;
- (ii) the RA's approach to and analysis of the 'benchmarking' of comparable jurisdictions was based on information and assessment which was clearly not comparable to market conditions that apply in Bermuda and in particular market conditions relative to comparative GDP and geographic conditions⁷;
- (iii) the timeline for implementation was entirely impracticable and unreasonable in the sense that no reasonable regulator could have reached the conclusion that the timeline for implementation (less than three weeks) was appropriate⁸;
- (iv) the 2025 General Determination was itself completed outside the statutory time limit⁹.

⁵ First Affidavit of Niall Sheehy dated 29 September 2025 (Sheehy 1) and First Affidavit of Coldrex Gordon dated 26 September 2025 (Gordon 1).

⁶ Ground 1 of OneComm's Grounds of Appeal and Ground 7 of Digicel's Grounds of Appeal.

⁷ Ground 4 (d) of OneComm's Grounds of Appeal and Grounds 3 and 5 of Digicel's Grounds of Appeal.

⁸ 'Wednesbury' unreasonableness: Ground 8 of Digicel's Grounds of Appeal.

⁹ Ground 9 of OneComm's Grounds of Appeal.

13. In order to obtain a stay pending appeal under the particular provisions of the Regulatory Authority Act 2011, a special test has been imposed which is set at a higher threshold than would normally apply to an ordinary application for a stay pending appeal. First, it must be shown that the applicant is *likely* to prevail on the appeal and second it must be shown that if a stay pending appeal is not granted, the applicant *will* suffer irreparable harm.
14. If the Court considers that there is a likelihood of success on any one of the above grounds would be sufficient to render the 2025 General Determination unlawful and satisfy the test for the grant of a stay of the orders and *ex ante* remedies set out above. If so, then the Court must also consider that it is inevitable that OneComm and Digicel will each suffer some harm that cannot be recouped or remedied if a stay is not granted. These two elements of the test are addressed separately below.

Failure to provide fair opportunity to consider, respond to and comment upon material relied upon by the RA in coming to its decision

15. OneComm and Digicel submit that critical information was not provided to OneComm and Digicel during the consultation process. This missing information included (i) the “Plum Report” addressing international benchmarking on which the RA relied and the international benchmarking exercise that the RA conducted (ii) the anchor pricing analysis (iii) details about the intended implementation date for any orders or remedies.
16. The initial consultation document was published by the RA on 22 January 2025 and the initial consultation period closed on 27 February 2025. The RA published its Preliminary Report and draft General Determination on 2 May 2025 and the consultation period in relation to the Preliminary Report closed on 9 June 2025. The Final Report and 2025 General Determination was published on 27 August 2025 and was brought into force on 4 September 2025¹⁰.
17. OneComm and Digicel submit that it is clear that between the publication of the Final Market Review and the 2025 General Determination and the date it became effective, no practical opportunity was given to OneComm or Digicel to comment on or react to the interventions set out in the Final Report and the orders and *ex ante* remedies that were imposed. The orders and *ex ante* remedies become effective on 1 October 2025, and OneComm and Digicel say that there is no practical way they can achieve compliance by that date.
18. OneComm and Digicel asked the RA for an extension of time or a temporary stay of the imposition of the remedies for a period of 3 months, which was refused on the

¹⁰ Sheehy 1 Exhibit 1 page 53.

grounds that the RA had no power to grant a stay or temporary extension, and in any event the public interest demanded immediate imposition of the remedies¹¹.

19. RA's attorneys stated that it is the RA's view that a billing cycle of one month should be sufficient for the One Comm and Digicel to implement the orders and *ex ante* remedies imposed¹². The RA took the position that OneComm and Digicel had the opportunity to comment on the timing of the imposition of any orders and *ex ante* remedies but failed to do so during the consultation and suggested that OneComm and Digicel's request for additional time is unreasonable¹³.

The Plum Report

20. The RA has adopted the position that the 2025 Market Review "showed" that the fixed broadband market median prices in Bermuda are 50% above the prices of the benchmarked countries¹⁴. This shows that the RA was relying expressly on the benchmarking study prepared by Plum Consulting ("Plum") to inform its conclusions and the need for the imposition of orders and *ex ante* remedies by way of regulatory intervention
21. It is clear from the statements made in the RA's Final Report that the international benchmarking study that was relied upon by the RA was provided to the RA "separately" and was not shared with OneComm or Digicel¹⁵. This benchmarking study and the conclusions drawn from it go to the heart of the decisions made by the RA and is the foundation of the RA's 2025 Market Review which underpins the orders and *ex ante* remedies that were imposed.

No Anchor product pricing analysis

22. The RA required Digicel to introduce a new entry level retail mobile product at a maximum cost of BD\$50.00 per month. This was based upon an existing product offered to prepaid customers and based on the assumption that a similar product could be offered to the market without the need for market testing¹⁶.
23. The RA accepts that it did not consult Digicel with respect to the implementation of a new product but considered that Digicel should be able to introduce a new retail prepaid product within one month because it shares the same characteristics as an existing prepaid product. The RA indicated that it had a new retail anchor product was being considered in the preliminary report, and so Digicel could not be taken by surprise.

¹¹ Letter from Marshall Diel & Myers Ltd ("MDM") to Appleby (Bermuda) Limited ("Appleby") dated 24 September 2025: Sheehy 1 Exhibit 1 pages 176-9.

¹² Paragraph 7 of MDM's letter to Appleby.

¹³ Paragraph 9 of MDM's letter to Appleby.

¹⁴ Paragraph 12 of the RA's attorneys' letter.

¹⁵ Sheehy 1 Exhibit 1 page 110 at footnote 33 "*subsequent analysis contained in a separate report by Plum to the RA*" and paragraphs 46-54 of Sheehy 1.

¹⁶ Letter from MDM to Conyers Dill & Pearman ("CDP") 24 September 2025 at paragraphs 5 A and B Gordon 1 Exhibit 1 page 162.

24. However, the RA's conclusion that the pricing of that new product was based upon the premise in the 2025 Market Review that the retail price for products in Bermuda is 50% higher than it should be¹⁷, which was based on the RA's benchmarking study¹⁸, which was not shared with Digicel. No pricing analysis was conducted upon which the RA based its direction, so it is clear that Digicel had no opportunity to test or challenge the assumptions on which RA's conclusion was based.

Implementation date

25. Further, the RA did not indicate in its earlier consultation process the timeline for the implementation of any orders or *ex ante* remedies. These were disclosed in the Final Market Review. The RA suggested that OneComm and Digicel had had an opportunity to make representations about the implementation but "remained silent". It is notable that the RA's position is that it is difficult to understand how it would have been helpful to talk about implementation guidelines during consultation¹⁹. This is a clear acceptance by the RA that there was no consultation about implementation during the consultation process.
26. It is difficult to see how OneComm and Digicel could realistically have made any representations on the timeline required for implementation until the form and extent of any orders and *ex ante* remedies had been released in final form. The RA could (for example) have decided not to Gazette the Final Report until a period of further consultation on implementation had been given.
27. However, it is clear from the correspondence²⁰ that the RA did not disclose to OneComm and Digicel that it intended to allow only one billing cycle for implementation, so there was no opportunity for representations to be made about the practicality of meeting that deadline. Given that a failure to comply with the orders and *ex ante* remedies has serious consequences²¹, this is a matter on which the RA ought to have consulted and allowed a period in which representations could be made.

Fair opportunity to make representations in the consulting period: the legal principle

28. As a matter of ordinary legal principle, it is basic to the system of public law that a regulator which is required to engage in public consultation in the performance of a review which results in regulatory intervention must provide the public (or sector

¹⁷ Paragraph 12 of MDM's letter to Appleby and paragraph 264 2025 Market Review Report.

¹⁸ See paragraphs 339-40 2025 Market Review.

¹⁹ Paragraph 6 MDM's letter to CDP.

²⁰ MDM to Appleby 24 September 2025 Sheehy 1 Exhibit 1 page 178 and MDM to CDP 24 September 2025 Gordon 1 Exhibit 1 page 163.

²¹ For example, section 94 of the Regulatory Authority Act 2011 provides for a fine of up to 10% of annual turnover for a failure to comply with an administrative determination (which includes a general determination) section 98 provides for a fine of \$5000 a day for a failure to comply with a direction of the RA and section 100 provides for a fine of up to 30,000 and imprisonment for up to one year for a failure to comply with a general determination.

participants) the opportunity to review, comment upon and make representations as to any material that the regulator intends to rely upon when arriving at its decision.

29. A clear statement of this principle is to be found in the judgment of Andrews J in **R (British Gas) v The Gas and Electricity Markets Authority (and Others)**²²:

“Consultation, in accordance with basic public law standards, is required to operate so that the decision maker’s thinking is made transparent, in order that the formative stage thinking engages informed responses from the body of consultees, leading to conscientious consideration, resulting in a lawful decision.

*A consultation process must be fair, in the sense that it affords a fair opportunity for whom those the consultation is directed adequately to address the issue in question before a final decision is made.: see the well known principles adumbrated in **R (Moseley) v Haringey LBC** [2014] UKSC 1 WLR 3947 at [25] and **R (Keep the Horton General) v Oxfordshire Clinical Commissioning Group** [2019] EWCA (Civ) 646 at [18]. The aspect of the obligation of fairness that is particularly relevant here is the requirement to provide consultees with sufficient information. As Hickinbottom LJ put it in **R (Help Refugees) v Secretary of State for Home Department** [2018] EWCA iv 2098 at [90]*

“Consultees must be told enough—and in sufficiently clear terms—to enable them to make an intelligent response...”

30. Although the above statements of principle related to a judicial review application, it applies equally on an appeal against a regulatory decision of the regulator under the Regulatory Authority Act 2011.
31. The same principles are set out in the *Judicial Review Handbook* (7th Edition) at [61.4 and 61.6] which were quoted and approved by Mussen CJ in relation to the functions of the RA in **Bermuda Electric Light Company Limited v the Regulatory Authority of Bermuda**²³.
32. The guiding principles upon which the RA are mandated to apply in the exercise of their functions are set out in section 16 of the Regulatory Authority Act 2011 and include a duty to “(d) act in a reasonable, proportionate and consistent manner” “(f) operate transparently, to the full extent practicable” and “(g) engage in reasoned decision making, based on the administrative record.”
33. The materials produced to the Court show (a) that the benchmarking study relied upon by the RA was not shared with OneComm and Digicel during the consultation process

²² [2019] EWHC 3048 at [78-80].

²³ [2024] SC (Bda) 5 Civ at paragraph 206.

(b) the RA did not disclose the basis of the “anchor pricing” study and (c) the disclosure of the Final Report which set out the RA’s conclusions on 27 August 2025 did not afford any practical opportunity for OneComm and Digicel to react or respond before the conclusions were made binding by gazetting the Report on 4 September 2025.

34. On these grounds the Court is satisfied that OneComm and Digicel have made out a case that they are “likely to prevail” upon this ground of appeal, or in the words of Kawaley CJ in **Bermuda Digital Communications Limited v Regulatory Authority**²⁴, they have shown they have “pretty good prospects of success”. This finding is sufficient for the Court to grant a stay pending appeal on this limb of the test.

The conclusions of the RA based on the Plum Report and benchmarking study are flawed

35. The second primary argument that OneComm and Digicel advance in support of the application for a stay is also based on the reliability of the information contained in the Plum study.
36. OneComm and Digicel have adduced expert evidence which explains that the countries that were used as comparative markets in the benchmarking study that was relied upon by the RA include a number of countries that are not truly comparable to Bermuda in two respects (a) many of the countries included as comparators have a GDP which is substantially lower than Bermuda and therefore the costs base for comparison is entirely dissimilar to Bermuda²⁵ (b) some of the countries are onshore countries which have access to the economies of scale, population and infrastructure which are not similar to Bermuda²⁶. In addition, a criticism is made that the RA omitted potential comparators which would be more appropriate in terms of costs, GDP and population²⁷.
37. The expert evidence suggests that the conclusions of the RA based upon the benchmarking study are unreliable because they have been skewed by the inclusion of data that artificially lowers the assumed costs base and the RA’s assessment of the efficiency that OneComm and Digicel can realistically achieve in the Bermuda market. If the benchmarking study is fundamentally flawed, it follows that the conclusions of the RA based on the benchmarking study are equally flawed, such that no reasonable regulator would rely upon or base the imposition of orders or *ex ante* remedies on that study.
38. The Court considers that the criticisms of Dr Soria and Mr Allen are cogent and compelling and make out a sufficiently strong prima facie case on the merits that the

²⁴ [2015] Bda LR 22 at [15-16].

²⁵ See Mr Allen’s Report (OneComm) at paragraphs 55-6 and Dr Soria’s report (Digicel) at paragraphs 16-19.

²⁶ See Mr Allen’s Report at paragraph 75 and Dr Soria’s report at paragraphs 12-14

²⁷ See Dr Soria’s report at paragraph 14.

prospects of success on these grounds of appeal are “pretty good”, and that OneComm and Digicel have also satisfied the test for a stay on this limb of the statutory test.

Lawfulness of the 2025 Market Review

39. OneComm argued that the 2025 Market Review is unlawful because it was conducted outside the statutory period for the conduct of the Market Review pursuant to section 17 of the Regulatory Authority Act 2011, which had originally fallen due by the end of 2024. The Minister granted an extension of 12 months to the RA to conclude the Market Review. OneComm will argue on the appeal that notwithstanding the extension, the information relied upon by the RA for its conclusions relies upon data that falls outside the statutory period and is therefore outdated.
40. On this point, the Court is not satisfied that OneComm has a likelihood of success at this stage, without the benefit of full argument and analysis. Therefore, the Court would not have granted a stay based on this ground.
41. The Court emphasises that these assessments of the merits of the grounds of appeal relied upon in support of a stay are necessarily provisional, and that it does not follow that the Court will ultimately uphold (or refuse) the appeals on all or any of these grounds: the test is likelihood of success, not certainty.

Irreparable harm

42. The second limb of the test that must be satisfied before a stay can be granted is that OneComm and Digicel will each suffer irreparable harm if a stay pending appeal is not granted.
43. Both OneComm and Digicel have adduced evidence that the effect of the imposition of the *ex ante* remedies and the orders will cause substantial financial harm to their business model and their ability to operate within tolerable cost and profit margins²⁸. This evidence is obviously as yet untested, but on the face of it, the evidence of financial harm is cogent and compelling and satisfies the test that harm will be suffered.
44. But the harm must be ‘irreparable’, in the sense that it cannot be compensated for in some other way, for example by some later adjustment.
45. The Court is satisfied that the harm that would be caused by implementing the orders and *ex ante* remedies will be irreparable in that (a) these measures will cause significant financial cost which will impinge on operational profitability of both OneComm and Digicel (b) in real terms it will not be possible to recoup those costs or change the operating model once the measures have been adopted (c) there is no recourse against the RA and (d) it will not be possible to unwind the introduction of substantially lower

²⁸ See Sheehy 1 at paragraphs 27-37 and Gordon 1 paragraphs 21-24.

costs because the public will be confused and market conditions (including customer expectations) will have been altered in a way that cannot be undone.

Conclusions

46. The Court was therefore satisfied that in relation to the grounds of appeal relied upon for the grant of a stay, One Comm and Digicel are “likely to prevail”. These grounds go to the fundamental lawfulness of the measures OneComm and Digicel have been directed to take and the *ex ante* remedies that have been imposed.
47. The Court was also satisfied that OneComm and Digicel have demonstrated to the required standard that they will each suffer irreparable harm if a stay is not granted pending determination of their appeals.
48. Accordingly, the Court granted a stay of each of the orders and *ex ante* remedies identified in each of the applications.

Ex parte applications

49. The applications for a stay were made pending the final determination of the respective appeals. However, due to the urgency of the matter the applications were made on an *ex parte* basis. This was because the effective date by which the orders and *ex ante* remedies were to become effective was 1 October 2025, which was 19 working days after the gazetting of the Final Report and 2025 General Determination.
50. Both OneComm and Digicel say in their respective factual evidence in support that the timeline for implementation is unrealistic. They point to the “rush” between the publication of the Final Report on 27 August 2025 and the Gazetting 8 days later, with an implementation by 1 October 2025 in respect of which there was no consultation. OneComm and Digicel say that there has been insufficient time to introduce a new product or take the steps to give effect to the orders and *ex ante* remedies, and they lack the staff and resources to put in place the necessary systems, checks and controls to implement the orders.
51. The RA took the position that it lacks the statutory power to grant an extension or stay of its orders and *ex ante* remedies. Be that as it may, the Court has already observed that the RA could easily have (and ought to have) decided to allow some time for consultation on implementation after the publication of the Final Report and before proceeding to publish the 2025 General Determination in the Gazette to make it legally binding. This is particularly so when it is acknowledged in correspondence by the RA that there had been no prior consultation on implementation²⁹, and the penalties for a failure to implement the RA’s orders and *ex ante* remedies are potentially severe.

²⁹ MDM to Appleby 24 September 2025 Sheehy 1 Exhibit 1 page 178 and MDM to CDP 24 September 2025 Gordon 1 exhibit 1 page 163.

52. The Court accepts the evidence of OneComm and Digicel that they had no realistic alternative but to apply for relief on an *ex parte* basis.
53. The RA attended on a watching brief and did not actively participate in the hearing. However, when it came to the discussion about potential directions, the RA indicated through counsel that it wished to have the matter adjourned to an *inter partes* hearing so that it could have the opportunity to challenge the grant of the interim stay pending appeal.
54. The Court agreed that if the RA wished to have an *inter partes* hearing that was its right to do so, and directions were given for the exchange of evidence and listing of an *inter partes* hearing on a short timescale.
55. These directions are for the service of the factual and expert evidence by the RA in opposition to the stay within 14 days and reply evidence from OneComm and Digicel within 14 days thereafter. Leave to adduce expert evidence was granted. The costs of the application were reserved. Because these appeals are similar in scope and content and although they remain separate appeal proceedings, the Court directed that they should be case managed together. The parties were directed to agree dates for hearing within 14 days.
56. Therefore, the stay that was granted is an interim stay pending an *inter partes* hearing at which the RA may produce evidence and present argument to persuade the Court that OneComm and Digicel have not met the required standard on the evidence and the law to justify a full stay pending the determination of the appeals. After the *inter partes* hearing the Court will either decline to continue the interim stay or continue the stay pending appeal on such terms as seem appropriate at that time.
57. In the meantime, if the parties decide that greater efficiency would be achieved by the Court giving expedited directions for the full appeal, liberty to apply for that purpose has also been granted.

DATED the 3rd day of October 2025



HON. ANDREW MARTIN
PUISNE JUDGE