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UTILITY REGULATION AND COMPETITION OFFICE

## PRESS STATEMENT

11 December 2024

It has come to OfReg's attention that Infinity Broadband Ltd, D/B/A "C3", which is an OfReg ICT Licensee which is under the management of Mr. Bryce Merren and Mr. Randy Merren and its directors, has issued the following notice to its current customers:

### C3's Notice to Customers

*"We are writing to update you about C3's ongoing legal challenge against the Utility Regulation and Competition Office (OfReg) and how this may benefit you as a customer of C3 Pure Fibre.*

*For many years, OfReg has charged ICT providers a 6% tax, which has been passed on to customers. C3 do not think that this tax is fair or lawful. We therefore issued a legal challenge against OfReg hoping to secure a reimbursement of these fees for our customers.*

*In November 2023, the Grand Court dismissed C3's claim at an initial hearing. We appealed the Grand Court's decision and, on 10 September 2024, the Court of Appeal granted C3's appeal. In its judgment in November 2024, the Court of Appeal confirmed that C3's challenge raises "powerful arguments" that OfReg is not authorized to charge the 6% tax. The case will now proceed in the Grand Court and we expect to obtain a decision next year.*

*We pledge to our customers that if we win at trial we will offer to reimburse the 6% tax to all our customers through an account credit. C3 is the only 100% Caymanian owned ICT provider in the Cayman Islands, and we are the only ICT company in the Cayman Islands defending the interests of its customers in this way.*

*We will update you on the reimbursement to which you may be entitled following the outcome of these proceedings."*

The notice is factually incorrect in numerous respects and, in the spirit of full transparency and for the public to be fully and properly informed, we have decided to provide the following facts, and, in doing so, we hope that going forward the management and directors of C3, some of who are notable public figures, ensure that any public statement they may make are factually accurate and fully represent the relevant details of important matters, so as to not potentially mislead its customers which C3 under licence has an obligation to protect:

### Accurate representation of facts:

1. The referenced 6% fee is collected by OfReg on **behalf of and delivered to the Cayman Islands Government**. Such fees are deposited into the Government coffers for public use which generally is to benefit the Cayman public. This practice is common in other sectors locally and in utility regulation and licensing globally.
2. C3 has for **many years** billed its customers various fees as part of its provision of service.
3. OfReg has **NOT** imposed any obligation on C3 to charge any fees to its customers.



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4. C3 **collects fees from its customers attributing them to requirements of the Office.** However, C3's notice to its customers omits to mention that **C3 has failed to pay those collected fees** (which is due from all licensees) **over to OfReg.**
5. C3 has been collecting these fees from its customers and presumably holding them for approximately **four successive years.**
6. C3's legal challenge only arose after and as a result of OfReg commencing enforcement proceedings under its legislation against C3 for its failure to pay its licence fees. Prior to action by the Office, C3 simply was just not paying its fees.

### Court Proceedings

In fact, C3 has sought, by way of Judicial Review, to challenge the licence fees which have always been collected by OfReg (and its predecessor, the Information Communications Technology Authority from as far back at 2003) in relation to a licence to operate and provide internet and communication services.

The recent ruling by the Court of Appeal on an appeal by C3 against the Grand Court's refusal to grant leave to commence judicial review proceedings, which appeal was successful, and, consequently, C3 will now be able to file its judicial review claim, if it wishes to proceed. As OfReg anticipates that the matter will be litigated before the Grand Court in due course, we do not think it is appropriate to comment in detail in relation to issues which will be determined by the Court.

It is however important to clarify that the Court of Appeal only decided that C3's claim is *arguable* or in other words, is not completely unmeritorious and involve issues which can be properly considered by a court. Therefore, C3 has been allowed by the Court of Appeal to proceed to have its case heard by being granted leave to commence judicial review proceedings. This process will allow the Grand Court to determine C3's claims, if C3 decides to proceed with its judicial review application.

Notably the Court of Appeal "***expressed no concluded view as to whether, at the end of the day, the Appellant's [C3's] arguments will succeed***" and was very careful throughout its judgment to make it clear that it was not the Court of Appeal's task to determine whether or not C3's arguments were correct, and that in granting leave to C3 to commence judicial review proceedings the Court of Appeal was not deciding anything more than that C3's case was arguable and should be heard and determined by the Grand Court.

### Impact on Consumers

C3's notice is also silent as to whether, if it should lose the judicial review application and be forced to pay all outstanding amounts with interest and costs to OfReg, C3 will seek to pass on such amounts and the costs of the litigation to its customers, given that the notice claims that their claim against OfReg is being brought "*to defend the interests of its customers*".

### Outstanding Fees

C3's unpaid licence fees since 2019 amount to approximately KYD\$1.4M as at the end of quarter three of 2024.



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**ABOUT OFREG**

The Utility Regulation and Competition Office ('OfReg' or the 'Office') is the independent regulator established by section 4 of the Utility Regulation and Competition Act (as revised) (the 'URC Act') for the electricity, information, and communications technology, water, wastewater, and fuel sectors in the Cayman Islands.

OfReg provides the opportunity for consistency and collaboration in regulation across the energy, fuel, ICT, and water sectors; better utilisation of skills and resources resulting in more efficient and effective regulatory processes; encouraging competition where appropriate and feasible; championing sustainability and innovation across markets, contributing to the economic and social goals of the Cayman Islands.

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