

## BERMUDA SUPREME COURT

***Telecommunications (Bermuda & West Indies) Ltd (Trading As Digicel) and Another -v- Bermuda Digital Communications Limited (Cellone) and Others, 2011 Civil Jurisdiction No. 387 [Original Location: Sc Vol. 76 P 201] (28 February 2012)***

TELECOMMUNICATIONS - JUDICIAL REVIEW - BIAS

The Bermuda telecoms industry, which is undergoing consolidation, is locked in litigation pending the passing of regulatory reform. This ruling was the latest in a running dispute between Digicel, its competitors and the Government as to the legality of service bundling and the proper forum for deciding such issues.

The Parties had been heading to trial on whether the service bundling was legal when, last year, the Supreme Court stayed the proceedings to allow the telecoms regulator to determine the issue. The latest twist was a (failed) attempt to reverse this decision on the grounds that the regulator was biased. The resulting interlocutory ruling deals (briefly) with the following issues:

1. interplay of private and public law actions and precedence to be given to statutory processes for determination of disputes;
2. bias presented when civil servants present an official position when the Government Minister may later play a quasi-judicial role under a statutory appeal process; and
3. the ability of the Courts to re-consider previous interlocutory decisions.

In the event, the Chief Justice ruled that there was no material change of circumstances which would warrant his reconsidering the previous decision to stay the proceedings.

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