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Information & Communications Technology Authority

ICTA/1/1/Pol

14 January 2010

To: DPI distribution list

**Re: Public Consultation on a Policy for Deep Packet Inspection and Similar Technologies (CD 2009-4)**

In this letter, the Authority deals with recent submissions by LIME, Digicel and WestTel regarding the implementation and continued use of Deep Packet Inspection and similar technologies ("DPI") pending a final determination in the above-mentioned proceeding.

**Submissions of December 2009**

On 3 December 2009, the Authority wrote letters to Digicel and WestTel indicating that, as part of their submissions in the DPI proceeding, each company has confirmed that it is currently using DPI on its network. The Authority noted its concern that this use of DPI may not have been adequately communicated to customers. Moreover, the Authority considers that this continued use of DPI may give Digicel and WestTel a competitive advantage, as other licensees are prevented from installing or implementing DPI under the Authority's 10 July 2009 directive (the "Directive"). Accordingly, Digicel and WestTel were directed to demonstrate why they should be allowed to use DPI pending the completion of this proceeding.

On 8 December 2009, the Authority received a letter from LIME indicating it was deeply concerned to learn that Digicel and WestTel had been effectively managing their networks using DPI, while LIME, being compliant with the Directive, was being denied the ability to do the same. Not wishing to continue to be placed at a competitive disadvantage, LIME requested permission to proceed with the installation of DPI within its network.

On 11 December 2009, WestTel filed a submission stating that it has been using DPI since 2005 and that its use of this technology encompasses all of its residential and corporate customers. WestTel emphasized that it uses this technology exclusively for the purpose of traffic management and that it does not utilize DPI to gather, record or store any information concerning internet usage of any customer.

WestTel also noted that its use of DPI enhances the customer experience by enabling the acceleration and prioritization of time-sensitive applications, including voice and video, and by providing a non-intrusive method of managing congestion during periods of peak usage. According to WestTel, a mandate by the ICTA to remove DPI from the WestTel network would have significant negative repercussions. In addition to the expenses associated with equipment replacement and network re-design, WestTel would be required to implement less effective traffic management solutions, thereby decreasing the customer experience.

On 18 December 2009, Digicel filed a submission arguing that its specific use of DPI is permitted by the legislation and therefore that any mandate to cease this use prior to a fulsome consultation would be unjustified. Digicel also noted that a cursory review of the deployment of DPI internationally suggested more support of its use than against it. Furthermore, Digicel considered that the removal of DPI would expose its network to abuse, hackers or risks to its customers' privacy.

## **Determination**

After careful consideration, the Authority acknowledges that its Directive may well create a temporary competitive imbalance between LIME and its competitors. However, given the lack of empirical evidence that this competitive imbalance will harm LIME or its customers, the Authority considers that consequences of that imbalance are outweighed by the public interest in maintaining the embargo upon the installation of new DPI systems prior to the final determination in these proceedings.

The Authority is also of the view that requiring Digicel and WestTel to cease using DPI pending a final determination in this proceeding is likely to be disruptive for Digicel and WestTel's networks and customers. Moreover, requiring these licensees to pay for replacement equipment and network redesign for what might be a very short time (depending upon the final determination) is also undesirable. On balance, therefore, the Authority has determined that the status quo should be maintained. To minimize the duration of the resulting imbalance, the Authority will make every effort to issue a final ruling in the main proceeding by no later than 1 March 2010.

The Authority would like to stress that this determination is intended as an interim measure only and is without prejudice to its final ruling. In particular, the Authority emphasizes that it has not made any determination regarding the legality or otherwise on the use of DPI in the Cayman Islands.

Yours sincerely,

*"Signed"*

David A Archbold  
Managing Director