

**DIGICEL CAYMAN ISLANDS**

**Appendix A**

**RESPONSE TO:**

**ICT 2020 – 1 – Consultation on Internet Exchange Points (IXP) Regulatory Framework**

**25 November 2020**

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### ***Digicel's Response to Consultation Question 1***

Digicel agrees subject to the OfReg following the proper procedure and to lawfully appoint an IXP service provider in Cayman. Digicel also welcomes further details and consultation before agreeing to final details as it relates the basic principles.

It is also expected that while the IXP will be a licensed service provider, similar restrictions shall apply to it as with ISPs, and IXP shall therefore be precluded from entering the market as an ISP, whether now or at any time in future, even under circumstance where an IXP no longer provides services in Cayman, it must be disallowed from being able to provide ISP services to Cayman.

### ***Digicel's Response to Consultation Question 2***

We do not agree that ISPs should be mandated to send traffic through an IXP.

An IXP's services should be optional or an alternative in cases where ISPs are either unable to procure cheaper services, or requires connection to the IXP for resilience purposes. Mandating the connection to a particular IXP is likely to result in an opposite effect of what the OfReg hopes to achieve under its Basic Principles (Appendix 2). This is due to some ISPs having existing fiber networks and therefore being mandated to connect and pass traffic is likely to put other ISPs, including Digicel, at a competitive disadvantage. Basic Principle 5 under Appendix 2 refers.

### ***Digicel's Response to Consultation Question 3***

Digicel has no objections subject to receiving specific examples of this happening in practice. Further, such non ISP connections must be mandated to adhere to local laws, frameworks and policies issued by the OfReg, and importantly, must meet the relevant conditions and secure a licence to operate.

While Digicel is not opposed to non ISP connections connecting into the IXP, given that only local traffic can transit through the IXP, Digicel welcomes information that would assist with its understanding of how OfReg plans to reconcile a situation where internet-bound traffic from such entities need to transit out of Cayman.

Digicel requests the following of the IXP:

1. Any entity joining an Internet exchange (IXP) should at a minimum have:
    - a. A license to operate as an IXP service provider
    - b. Hold a provider independent AS number and public IP range
    - c. Follow and obey all the rules and regulations imposed on telecoms providers either in terms of standard legislation and/or regulation
    - d. Follow all network standards on security, protection and what is considered best practice within the IXP
  2. In general an IXP should not be used to circumvent the requirement to purchase internet access services from licensed operators – anyone seeking to drive commercial gain should not be granted membership or should have membership revoked.
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3. No AS can use another provider's BGP routes beyond the IX for international termination of traffic under any circumstances.

Finally, there would need to be transparency and governance processes, which takes into consideration serious and reasonable concerns or comments, which recommends amendments be made to any framework or policy, where necessary. IXPs should undergo the same level of scrutiny as operators in Cayman.

Digicel welcomes a continued consultation process in this regard.

#### ***Digicel's Response to Consultation Question 4***

Digicel in principle agrees to the establishment of an advisory board, and recommends that where one is established, it shall be a requirement that its composition be made up of representatives of each ISP. This however is a matter of governance and compliance, and cannot be agreed generally, unless further consulted upon with greater details provided.

It would also be necessary that an independent person is appointed to negotiate these governance and compliance board documents. Further comments are reserved by Digicel until such time these details are made available.

Digicel, however, sees no merit in the OfReg getting involved as the alternative for determining consensus of the ISPs on matters relating to the exchange of local internet traffic. This is a matter best left to the ISPs and with the establishment of a board, and the expertise that would be compounded as a result across the industry. Equally, Digicel requires that any legislation on blocking sites, etc. must be followed by all members of the IXP.

#### ***Digicel's Response to Consultation Question 5***

Digicel agrees to the definition/wording as set out by OfReg and we add that this is not a way of securing free transit/peering to protect against cost causation to other members. We look forward to the final definition and wording around the same.

#### ***Digicel's Response to Consultation Question 6***

Digicel has no immediate concerns or objections to this suggestion. With that being said, it is expected therefore that an IXP shall not provide services whether as an ISP or any other ICT services in direct or indirect competition with any operator or provider in Cayman. Equally, any member must maintain the same peering policies as the rest of the IXP members.

#### ***Digicel's Response to Consultation Question 7***

Digicel, in response to question 7(2), is of the view that as not all ISPs have the ability to seamlessly provide connectivity into an IXP, it would be advantageous to, and benefit only those ISPs that presently have their own existing fiber network in Cayman. The OfReg should therefore consider whether some form of subsidy should apply to those ISPs that are unable to connect without incurring significant costs if

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mandated to connect. Alternatively, the IXPs cost based fees should be tiered in a manner that takes this concern into consideration and factors the charging of fees commensurate to the costs ISPs are likely to incur in connecting to the IXP. This would otherwise result in a costly exercise for some ISPs to the greater detriment of the ISP, where the same expense may be deployed into infrastructure upgrade or enhancing services to its customers.

Digicel, in principle, agrees with the statement as set out under question 7(3). Connection to an IXP should not be dependent on any other operators' facilities. This may however mean that the OfReg and IXP would need to provide other alternatives to ISPs to enable access.

Digicel agrees with the statement under question 7(4), that ISPs should not charge each other for the exchange of local internet traffic across the IXP.

#### ***Digicel's Response to Consultation Question 8***

It is Digicel's respectful view that IXPs should not be permitted to obtain licences to operate International Cable Landing Stations.

IXPs must be restricted to services relating to the transit of local-based traffic from within its facility. If the OfReg is seriously considering this as an option, Digicel expects that further detail will be provided and that a formal engagement process, in the form of a Consultation will be commenced in order to allow the industry to review any suggestions or recommendations by the OfReg, and importantly its reasoned basis for arriving at such recommendation.

#### ***Digicel's Response to Consultation Question 9***

Digicel agrees in principle.

#### ***Digicel's Response to Consultation Question 10***

Comments relating to the proposed Draft IXP Regulatory Framework are set out separately below.

#### ***Digicel's Response to Section F Draft Determination***

The Draft Determinations set out by the OfReg under paragraph 109, while acknowledged, seems to suggest the OfReg has already made up its mind that these Determinations are necessary and shall be in place in Cayman.

#### ***Digicel's Response to Appendix 3 – Draft IXP Regulatory Framework***

Under framework 3.3.1 the OfReg should consider including for reference how the applications will be evaluated and how it seeks to define "merit" in this regard. Presently, this is unclear and may be open to interpretation and future disputes.

Pursuant to framework 3.3.4, the OfReg expects to only consider applications for grant of IXP licence from companies registered in Cayman. This however may extend to those applicants that have only recently registered in Cayman in order to meet this criteria, including those that register for this specific purpose. It is not clear if certain other conditions will be attached to this framework, for example, whether the IXP

is ordinarily resident in Cayman, or for a certain period prior to applying was deemed to have been ordinarily resident in Cayman, or more importantly what steps will be taken by OfReg to evaluate the company, its history, its abilities/capabilities or even its parent and control structure. It is recommended these are included in the framework.

Notwithstanding the prohibition set out in framework 3.3.8, framework 3.3.7, *au contraire* appears to suggest that an IXP, while it may not provide services in Cayman other than IXP services and, which other services requires a license, it does not however proscribe it from applying for such other license to provide services in Cayman. In fact, and with some concern, Digicel refers to the ultimate sentence, which reads, "An IXP Service Provider shall apply separately for any licence in accordance with the Office's established procedures". Evidently, this is an open invitation, perhaps an encouragement, to the IXP to apply for such other licences if it deems it necessary to do so. This must be removed or amended to ensure the IXP is explicitly proscribed from entering the market at a later time to compete with ISPs or any other ICT provider in Cayman, and does not conflict with the framework that follows immediately after.

The concerns set out in the above paragraph is exacerbated by framework 3.3.9, which goes on to further contradict its immediately preceding framework. Digicel is of the strongest view that any IXP that is appointed and a licence issued to, must not provide competing ISP services, or services of any kind with the ICT sector in Cayman. It must remain independent and other than providing IXP services it must remain neutral and specifically noncompetitive to the ISP and ICT industry. The ISPs are funders of the IXP, the project, and ultimately enablers to the OfReg's vision to bring to Cayman an IXP arrangement for the benefit of the people. We strongly recommend the lines are clearly defined in the final agreed framework. This will otherwise be met with resistance and Digicel, in this regard, reserves its rights.

For the avoidance of any doubt, Digicel remain of the view and agrees that the Cayman Islands would benefit from the establishment of an ISP Peering Point, and if the Country and Government is committed to the development of an IPX as a National Asset Digicel is willing to work together with OfReg, other ISP's and The Government to achieve its goals. However, we request this consultation process continue and draft determinations, regulations and polices be finalised after extensive consideration of ISPs concerns and comments.