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Information & Communications Technology Authority

ICTA/1/1/Pol

14 January 2010

Mr. Victor Corcoran
Chief Executive Officer
Digicel Cayman Limited
PO Box 700
Grand Cayman KY1-1107

Dear Mr. Corcoran,

**Re: Public Consultation on Deep Packet Inspection & Similar Technologies
- Confidentiality Claims**

This letter deals with claim for confidentiality made by Digicel in its responses to questions 25 (a), (b), (c) and (d) of Consultation Document 2009-4.

Process

On 1 September 2009, Digicel filed confidential and redacted versions of its responses to the questions in the above-mentioned proceeding. In the redacted version, Digicel concealed the responses to questions 25 (a), (b), (c) and (d) in their entirety.

Shortly thereafter, the Authority replied with a brief e-mail indicating that, in accordance with the Information and Communications Technology Authority (Confidentiality) Regulations, 2003 (the "Regulations"), a confidentiality claim must be accompanied by an application which should include a detailed justification for the requested confidentiality. Merely submitting a redacted document does not meet this requirement.

On 2 September 2009, Digicel filed a letter indicating that the information supplied in its submissions deals with the technical processes in place to protect the integrity of its network. According to Digicel, the technologies discussed in its submissions are used in part to identify third party attacks on its system, deliberate attempts at hacking into and interrupting its service, and to prevent the infiltration of viruses and other electronic intrusions which may unlawfully interfere with its subscribers' information and the efficient administration of the ICT service. Digicel noted that disclosure of such information would make its security measures known to the public and would expose its network to risk.

Digicel also argued that disclosure of this information would give a competitive advantage to its competitors by revealing its traffic management policies. According to Digicel, this information would give a rival ISP a distinct edge, in so far as they would be able to 'tweak' their own policies to attract subscribers.

On 3 December 2009, the Authority wrote a letter to Digicel indicating that it may be appropriate to place on the public record the information provided by Digicel in its responses to questions 25 (a), (b), (c) and (d) of CD 2009-4. Therefore, in accordance with s. 4(1)(h) of the Regulations, Digicel was afforded an opportunity to file a reply.

On 18 December 2009, Digicel filed a submission reiterating that the disclosure of Digicel's security and traffic management measures to the public and to possibly unscrupulous persons would be dangerous and self defeating. Digicel therefore requested that this information be kept in confidence.

Regulatory Principles

Confidentiality claims on information submitted to the Authority are assessed in light of sections 3, 4 and 5 of the Regulations. For each confidentiality claim, the public interest in disclosure is weighed against the specific direct harm, if any, likely to result from disclosure.

The expectation that specific direct harm might result from disclosure is not, by itself, sufficient to justify maintaining a claim of confidentiality. Rather, the Authority must determine whether this potential harm outweighs the public interest in disclosure. In making this assessment, the Authority considers a number of factors. As specified in ss. 3(b) of the Regulations, the Authority takes into account whether the information has been treated consistently in a confidential manner by the submitting party or is otherwise in the public domain. Furthermore, consideration is given to the degree of competition that exists in a particular market. All things being equal, the greater the degree of competition in a particular market, the greater the specific harm that could be expected to result from disclosure. Another factor in assessing the extent of harm is the expected usefulness of the information at issue to parties in furthering their competitive position.

Authority Determination

The Authority has reviewed each of the items in Digicel's responses to questions 25 (a), (b), (c) and (d) of CD 2009-4. The Authority's determination with respect to each question is provided below:

25 (a): Do you currently employ, or do you plan to employ, DPI or similar technologies on your networks?

Digicel's response to this question states that "*Yes, Digicel Cayman uses a limited form of DPI-on the broadband ISP network only.*"

The Authority notes that the use of DPI by Digicel was disclosed publicly by Digicel in its response to question 25(e) and therefore cannot be considered to be "treated consistently in a confidential manner", as required by section 3(b) of the Regulations. Furthermore, the Authority considers that there is significant public interest in the disclosure of the fact that Digicel is using DPI on its broadband ISP network. Following disclosure of this information, Digicel's customers and potential customers would have the ability to make more informed decisions when purchasing Digicel's broadband products. In the Authority's view, any specific direct harm resulting from the disclosure of this information would be minimal given that all other ISPs in the Cayman Islands, and a significant number of ISPs worldwide, have publicly acknowledged using DPI. The Authority remains unconvinced that the disclosure of the fact that Digicel is using DPI on its broadband ISP network, without providing any details regarding Digicel's network architecture, would jeopardize the integrity of Digicel's network. Accordingly, the Authority determines that any specific direct harm from disclosing Digicel's response to this question is not sufficient to outweigh the public interest in disclosure.

25 (b): If the answer to (a) is yes, describe in detail the use you make, or plan to make, of these technologies.

Digicel's response to this question states that "*Digicel Cayman only use DPI type technology to protect network integrity (for example to prevent Denial of Service, Zombie, Spambot attacks) and for congestion management purposes*".

The Authority considers that there is significant public interest in the disclosure of the fact that Digicel is using DPI to protect network integrity and for congestion management purposes. Following disclosure of this information, Digicel's customers and potential customers would have the ability to make more informed decisions when purchasing Digicel's broadband products. In the Authority's view, any specific direct harm (including possible competitive and security harm) resulting from the disclosure of this information would be minimal. The fact that DPI is used for these purposes is widely known throughout the ICT sector worldwide. Accordingly, the Authority considers that any specific direct harm from disclosing Digicel's response to this question is not sufficient to outweigh the public interest in disclosure.

25 (c): Do you currently employ traffic management technology or techniques, other than DPI, such as traffic shaping or traffic throttling, that result in the control of a customer's bandwidth?

Digicel's response to this question states that "*Digicel doesn't currently use any technology to restrict a customer's bandwidth*".

The Authority considers that there is significant public interest in the disclosure of the fact that Digicel does not currently use any other technology to restrict a customer's bandwidth. Following disclosure of this information, Digicel's customers and potential customers would have the ability to make more informed decisions when purchasing Digicel's broadband products. In the Authority's view, any specific direct harm (including possible competitive and security harm) resulting from the disclosure of this information would be minimal. Accordingly, the Authority considers that any specific direct harm from disclosing Digicel's response to this question is not sufficient to outweigh the public interest in disclosure.

25 (d): If the answer to (a) or (c) is yes, describe in detail your Internet Traffic Management Policies.

Digicel's response to this question states that "*Digicel Caymans Traffic Management policy is applied to residential services to allocate bandwidth evenly per customer as part of our fair usage policy. Without such a policy the vast majority of customers would have an inferior broadband experience (specifically Web Browsing, VoIP, Streaming etc) due to bandwidth hungry applications such as Peer2Peer, Denial of Service, Spam etc.*"

The Authority considers that there is significant public interest in the disclosure of Digicel's traffic management policy and its consequences for customers. Following disclosure of this information, Digicel's customers and potential customers would have the ability to make more informed decisions when purchasing Digicel's broadband products. In the Authority's view, any specific direct harm (including possible competitive and security harm) resulting from the disclosure of this information would be minimal. Accordingly, the Authority considers that any specific direct harm from disclosing Digicel's response to this question is not sufficient to outweigh the public interest in disclosure.

Further Process

In light of the above, Digicel is directed to provide a new version of its 1 September 2009 document to the Authority and all parties in this proceeding no later than **21 January 2010**. This document must be identical to the confidential version of the

1 September 2009 submission, but must not include the word "CONFIDENTIAL" on the top left-hand corner of each page. Following receipt of this document, the Authority will add this document to the public record of this proceeding.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "David Archbold", with a long horizontal flourish extending to the right.

David Archbold
Managing Director