



BERMUDA  
**REGULATORY  
AUTHORITY**

**Request for Investigation by Logic  
Communications Limited:**

**Digicel Bermuda Limited (*Free  
Internet Promotion*)**

**Preliminary Decision**

Matter: SPD-1559

Date: 4 February 2014

## **Complaint**

1. On 23 January 2014, Digicel Bermuda Limited (Digicel) announced an internet service promotion inviting potential customers to sign up for free internet for 1 year ('the Free Internet Promotion'). The terms of the Free Internet Promotion were spelled out in literature from Digicel to customers, given during a press conference by Digicel CEO Wayne Caines, and posted on Digicel's website<sup>1</sup>. In general terms, customers who agreed to sign up for Digicel mobile post paid voice and/or data services (paying a minimum of \$100 per month) for a minimum of 24 months would be eligible to have free internet service (6mbps) for 1 year.
2. On 23 January 2014 Logic Communications Limited (Logic) wrote to the Regulatory Authority ('the RA') complaining about Digicel's Free Internet Promotion. Chief among the allegations made by Logic was that that Digicel, who is a dominant operator in the mobile telephone market, is leveraging its dominance in that market (by linking the free internet with mobile telephone subscriptions) by using the profit gained from that sector to fund the internet give away in the internet service provider (ISP) space. Logic requested an investigation into Digicel's pricing strategy regarding the Free Internet Promotion pursuant to the RA's power to do so under section 89 of the Regulatory Authority Act 2011 ('the RAA').
3. Logic also requested that Digicel be required to immediately cease the Free Internet Promotion until after the RA concludes any investigation. Logic argued that doing so would prevent likely harm that could result from Digicel's offer, which Logic says is anticompetitive.

## **Preliminary Investigation**

4. The RA wrote to Digicel on 24 January 2014 enclosing Logic's complaint and sought an initial explanation of Digicel's offer. The RA also gave Digicel the opportunity to respond generally to Logic's complaint. In particular, the RA asked Digicel to provide the following information in its response;
  - a. Total Number of Subscriptions by Internet Speed (I.E. 4Meg, 6Meg, etc) as of the most recent date that Digicel would have this information;
  - b. The cost to provide the Free Internet Promotion;
  - c. The cost to provide the internet service by speed (I.E. 4Meg, 6Meg, etc); and

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<sup>1</sup> <http://www.digicelbermuda.com/en/about/promotions/kiss>

- d. The Number of Customers with 6 Months or less on their contract

Digicel was given until 31 January 2014 to respond. Digicel provided a response on 31 January 2014 and the RA, having considered Digicel's response concludes as follows;

### **The Free Internet Promotion Continues**

5. At this time, the RA is not convinced that the potential harm that could be suffered by other market players (including Logic) and/or the consumer, is so serious that Digicel should be forced to suspend the Free Internet Promotion to prevent it.
6. In coming to this conclusion, the RA has considered the information provided by Digicel on 31 January 2014 and takes the view, based on the information provided thus far, that there is no reason to consider the Free Internet Promotion is likely to cause harm that could not be rectified and/or satisfied by fine or some other means in the event Digicel is found to have been acting in an anticompetitive manner.
7. The RA has also considered the fact that the Free Internet Promotion has only been offered for a limited period of time 5 weeks, on a limited variety of internet service, namely the 6 mbps service and to a limited category of customers, namely those customers who are new to Digicel or who have 6 months or less remaining on their initial service contract. In these circumstances, the likelihood that Digicel's Free Internet Promotion will cause harm in the ISP market by driving out its competitors through a downward trend in pricing is low.
8. Finally, when these two major considerations are taken together with the fact that any shift in the market share causing a more redistribution of subscribers across ISP providers is more likely to be a result of new entrants into the market and the competitive pricing from numerous carriers than to be mainly contributed to the Free Internet Promotion on its own. Logic currently holds the largest market share in the ISP market, the RA would find it difficult to conclude, at this stage, that the Free Internet Offer will cause serious harm to the ISP Market, let alone that its effect would be so serious as to warrant the very drastic step of Ordering Digicel to suspend the promotion.

## Further Investigation

9. To date, Digicel has been forthcoming in its answers to the RA's requests for information. The RA has not had to make any demand under section 91 of the RAA for such information and does not anticipate having to do so at this stage. Digicel has stated publically that it will cooperate with the RA during the investigation stage and its actions so far have not run contrary to this public assurance.
10. The RA has made a further request of Digicel for other information pertaining to the Free Internet Promotion in order to gain further understanding of how it works. Naturally, much of the information requested from Digicel (and so far provided to the RA) is of a confidential nature and will not be released without Digicel's permission.
11. The investigative process is not anticipated to take very much longer and will follow the procedures set out in Part 8 of the RAA 2011. The RA will do its best to keep the parties and the public informed of the process and the outcome (insofar as it possible) will be the subject of an administrative determination in due course.

Signed this 4<sup>th</sup> Day of February 2014



Carl Musson

Commissioner, Regulatory Authority Bermuda