



BERMUDA
**REGULATORY
AUTHORITY**

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

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

Final Decision

Matter: SPD -1615

Date: 12 March 2014

Promotion

On 23 January 2014, Digicel Bermuda Limited (Digicel) announced an Internet service promotion (Free Internet Promotion) inviting potential customers to sign up for free Internet for 1 year. The terms of the Free Internet Promotion are as follows.

- The promotion ran from January 26th to March 1st, 2014.
- Any new customer who Subscribes to a Digicel postpaid voice and/or data plan valued at \$100 or more per month may choose to receive 12 months of free Digicel Internet (6 Mb) home Internet service. The customer must sign a two-year voice and/or data agreement as well as a two-year Internet agreement.
- Any customer with six months or less remaining on their current agreement may choose to receive 12 months free Digicel Internet (6 Mb) by ensuring that the subscribed mobile plan is valued at \$100 or more per month, extending the mobile agreement by two years, and signing a two-year Digicel Internet agreement.
- Any customer with more than six months remaining on your agreement may choose to open a new Digicel postpaid account to qualify for this promotion.
- Customers that wish to open a new account at Digicel will be required to pay full price for any mobile device purchased in order to take advantage of the promotion.
- Customers who prefer a higher speed can instead receive a \$50 discount per month for 12 months towards any Internet plan higher than 6 Mb.
- After 12 months, the free promotional period will end and customers will be charged at the standard monthly rate of \$50 for the 6 Mb plan for the duration of your two-year Digicel Internet agreement. Should customers choose a higher speed, they will be charged per the standard rates below once the promotional period ends.
- A termination fee of \$250 will apply to any customer terminating the Internet contract prior to its 24-month duration.

Throughout the promotion, the percentage of savings will decline with the speed selected. All customers will save \$600 over the course of one year, however, the proportion of savings compared to the total cost of Internet Service for the 24-month period is outlined below.

Speed	Year 1	Year 2	Savings
6 Mb	0	50	50%
8 Mb	10	60	42%
10 Mb	20	70	36%
15 Mb	40	90	28%
25 Mb	100	150	17%

Complaint

On 23 January 2014 Logic Communications Limited (Logic) wrote to the Regulatory Authority ('the RA') to request an investigation into Digicel's Free Internet Promotion. On 18 February 2014 the RA requested that Logic provide cost data or any information at their disposal, which would aid the RA in fully understanding Logic's claim against Digicel. Logic provided the RA with further arguments for why they initially requested an investigation into Digicel's promotion. Logic's justifications for requesting an investigation will be outlined in the proceeding section

Logic's Concerns

Concern 1

1. Logic claims that Digicel is using its revenue from the provision of mobile services to subsidize the Free Internet Promotion. They argue that 'the giveaway of free Internet services in this case is predatory and anticompetitive'.

Concern 2

2. Logic also claims that given that Digicel has SMP in the mobile market, their promotion violates the prohibition of abuse of dominant position in section 85 of the Regulatory Authority Act (RAA).

Concern 3

3. Logic presents the Canadian competition authority guidelines involving predatory conduct, which define predatory conduct as:

"A firm deliberately setting the price of a product below an appropriate measure of cost to incur losses for a sufficient time in order to eliminate, discipline, or deter entry or expansion of a competitor, in the expectation that the firm will thereafter recoup its losses by charging higher prices than would have prevailed in the absence of the impugned conduct"

Logic claims that a year of free Internet is sufficient time to eliminate, discipline, or deter entry or expansion into the ISP industry, while adding that the effect of the Free Internet Promotion on all competitors and potential entrants should be considered.

Concern 4

4. Logic argues that the concept of predatory pricing is characterized by a temporary reduction in price with the intention of reaping extraordinary profits thereafter. In this situation, Logic claims that the first 12 months of the promotion are the predatory period, followed by the reaping period during the remaining 12 months of the promotion. Logic believes that in a year's time, should the market price for the speeds available in the Free Internet Promotion be reduced following the current trend of falling Internet service prices, Digicel will maintain the ability to charge customers a higher rate of \$50 a month for 6Mb.

The Power to Investigate

5. Pursuant to section 89 of the Regulatory Authority Act 2011 ('the RAA'), the RA carried out an investigation of the Free Internet Promotion on the Request of Logic. The Purpose of the investigation was to consider and make a determination as to whether Digicel had contravened its obligation under section 85(5) of the RAA not to enter into anti-competitive conduct including, but not limited to, predatory pricing.
6. Most of the information provided to the RA pursuant to this investigation was done so on a voluntary basis. There was only one Order to Produce Information made of Digicel pursuant to section 91 of the RAA.
7. The RA would like to thank both parties for their assistance during this investigation.

Information and Data considered in the Investigation

8. 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. On 11 February 2014, the RA requested further information from Digicel, which would provide more insight into the cost structure of Digicel's Internet service. The RA asked Digicel to provide the following information in its responses.

Response 1

- a. Total Number of Subscriptions by Internet Speed (I.E. 4Mb, 6Mb, 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. 4Mb, 6Mb, etc.)
- d. The number of customers with 6 months or less on their contract

Response 2

- a. Digicel's consolidated income statement for Wireless Holdings Bermuda for the year ended 31 March 2013
- b. An explanation of how the costs to provide the Free Internet Promotion and the internet service by speed were derived
- c. A financial report of all of Transact's services calculated to demonstrate the percentage of costs/revenue attributed to the provision of Internet service

Digicel provided the RA with all of the requested information.

Analysis of Free Internet Promotion

9. The RA has reviewed all of the submitted information by both parties, and provides an analysis based on Logic's concerns previously mentioned in this section

Concern 1 - *Use of revenue from mobile market to subsidize loss of revenue in the Internet market*

10. In the RA's analysis on this concern, various tests on Digicel's cost data were performed to determine if the Mobile line of Digicel's business would remain profitable in different scenarios including a if the costs to provision Internet service were significantly higher than reported by Digicel.
11. The RA concluded that Digicel is not using revenue from non-internet services to compensate for providing the free Internet promotion.

Concern 2 – Abuse of dominance

12. A high level understanding of Digicel's current promotion could falsely indicate that Digicel is using its market power in the mobile industry to become a dominant player in the ISP industry.

A portion of this analysis has been removed due its confidential nature.

13. The parameters of the promotion and Digicel's small market share indicate that the ISP market is unlikely to be dominated by a carrier, especially since the market has been deemed competitive. As mentioned before, there have been new entrants into the ISP market, and more are expected to enter in the near future. The increase in competition due to new entrants will cause a redistribution of market share, which will makes it even less likely that Digicel will be able to gain dominance over the ISP sector.

Concern 3 – General Predatory Conduct

14. It is improbable that Digicel's free Internet promotion could potentially eliminate, discipline, or deter entry or expansion in the ISP industry for a few reasons.

A portion of this analysis has been removed due to its confidential nature.

- a. It is unlikely that a five-week promotion with a limited number of eligible customers will cause an elimination or deterrence to entry of any of the other carriers in both the ISP and mobile industries. With regard to the ISP market, there have been two new entrants in recent months that offer Internet promotions¹. The RA expects that other carriers will enter the ISP market in the near future. Thus the limited scope and length of the promotion is unlikely to cause a serious effect. As far as discipline is concerned, the RA is of the view that any loss in market share due to Digicel's free Internet promotion is the result of the company's response to an increase in competition in the ISP industry.
- b. As previously mentioned, should customers terminate their agreement before the end of the two-year period, they are required to pay an ETF, which is designed to subsidize the loss of revenue incurred by Digicel in providing Internet service to that customer for no fee for the 12 month period. It should be noted that a similar principle is common in cellphone subsidies. Firms provide cellphones at a discount in an effort to recover the cost of the phone over the period of a contract with the customer. Terminating the contract early would result in an ETF to recuperate the costs of the Cellphone.

Concern 4 –Reaping of extraordinary profits

15. For reasons which have been redacted because of their confidential nature, the RA has determined that Digicel will not gain extraordinary profit at any period throughout the promotional period

1. Both CellOne and Link have recently entered into the ISP market

Final Decision

16. Based on the RA's investigation, the cost analysis, the RA finds that Digicel's free Internet promotion is not predatory in nature. It is concluded, therefore, that Digicel is not in breach of its obligations under part 7 of the RAA.

The remainder of this section has been redacted due to its confidential nature.

Post Script

17. The RAA sections 85, 86 and 88 oblige the RA, giving due regard to international best practices, to establish the criteria to be used to determine whether a person has contravened a particular prohibition within part 7 of the RAA. The complaints raised by Logic against Digicel have highlighted the importance of this work to the industry and, in light of this fact, the RA has determined that, in due course, a consultation concerning the definition of predatory pricing and the method the RA will use to determine whether or not an operator's conduct can be categorized as predation. The consultation will also include information that the RA will expect to be submitted by the carrier alleging anti-competitive behavior.

Annex 1

Cost Study & Sensitivity Testing

The information contained in Annex 1 has been removed due to its confidential nature.

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