



**Digicel (PNG) Limited**  
PO Box 1618  
Port Moresby NCD 121  
Papua New Guinea  
[www.digicelpng.com](http://www.digicelpng.com)

28 December 2023

Mr Kila Gulo-Vui  
Chief Executive Officer  
National Information & Communications Technology Authority  
Punaha ICT Haus  
Frangipani Street  
Hohola  
National Capital District

By Email and By Hand Delivery

Dear Mr Gulo-Vui

**Public Consultation on the Proposed Business Rule for Mobile Number Portability**

We refer to NICTA's consultation on the Proposed Business Rule for Mobile Number Portability issued on 20 October 2023.

Please find **enclosed** Digicel's submission in response.

We look forward to NICTA's next steps in this process.

Yours faithfully  
**Digicel (PNG) Limited**

A blue ink handwritten signature, appearing to be 'Michael Henao', written over a white background.

**Michael Henao**  
Head of Legal & Regulatory

**DIGICEL (PNG) LIMITED**

**Submission to NICTA**

***Public Consultation on the Proposed Business Rule for Mobile Number  
Portability Issued on 20th October 2023***

**28 December 2023**

***This submission is provided to NICTA for the purpose of the current public inquiry only and  
may not be used for any other purpose***

## A. Introduction

1. This submission sets out Digicel's initial comments with respect to NICTA's Consultation Paper titled *Public consultation on the Proposed Business Rule for Mobile Number Portability* ("**Consultation Paper**"), which was issued on 20 October 2023.
2. At the outset, Digicel wishes to confirm that it does not object to the implementation of number portability in principle and it is widely accepted that number portability removes a barrier for consumers to switch networks. However, number portability is not costless and the economic benefits of removing that barrier need to be weighed carefully against the costs of implementation and the potential detriments that that will arise from it. A failure to undertake such an analysis risks dampening investment incentives for new infrastructure and services while decreasing service quality and increasing costs for consumers.
3. Importantly such a cost benefit analysis is a statutory requirement in Papua New Guinea and is clearly set out in section 189 of the *National Information and Communication Technology Act 2009* ("**Act**") which governs the process NICTA must follow when seeking to introduce any form of number portability. That mandatory process includes the following minimum steps:
  - a. Prepare a discussion paper and undertake a public consultation under section 230 of the Act with a view to determining:
    - i. the form of mobile number portability (if any) that would be most appropriate for implementation in Papua New Guinea; and
    - ii. the costs and benefits of implementing that form of mobile number portability;
  - b. Prepare a final report for the Minister identifying:
    - i. NICTA's recommendation whether the national numbering plan should be amended to implement mobile number portability in Papua New Guinea in any form; and
    - ii. the basis for NICTA's recommendation; and
    - iii. if the recommendation is to implement number portability in Papua New Guinea in some form, the proposed form of rules and/or amendments to the national numbering plan to implement that form of mobile number portability; and
    - iv. the costs and benefits of implementing that form of mobile number portability.
4. In circumstances where NICTA's final report to the Minister recommends the introduction of number portability, the Minister is then required to undertake his own independent inquiry that includes seeking and considering submissions from the public. Following receipt and consideration of submissions the Minister is then required under section 189(6) of the Act to release a public report:

- a. identifying the extent to which the Minister accepts NICTA's recommendations; and
  - b. if any recommendations are not accepted (in whole or in part), the reasons why those recommendations are not accepted:
5. It should also be noted that any consideration of the introduction of number portability is also governed by the regulatory principles set out in section 3 of the Act which, among other things, require regulatory measures to be:
  - a. proportionate and drafted to achieve results that are no more burdensome than necessary to achieve their stated regulatory objectives; and
  - b. based on sound economic principles and, to the extent feasible, should be technology-neutral to reflect the potential for convergence of technologies; and
  - c. administered in a transparent manner and, to the extent appropriate, should be the subject of prior public consultation (in accordance with Section 229 of the Act), published explanations and public clarifying guidelines; and
  - d. non-discriminatory in application such that, to the extent appropriate, similarly situated ICT licensees are treated on an equivalent basis subject to the recognition of legitimate differences.
6. It is only once all of the steps of the above process have been completed that NICTA can be in a position to, in consultation with the Minister, implement those recommendations that the Minister has accepted.
7. However, in the case of this consultation, none of the above mandatory steps have been followed and NICTA appears to have proceeded directly to a decision to implement mobile number portability based on a consultation process that was commenced in 2016 but which was never completed. In the case of that earlier consultation, the Minister did not consult with the public on the findings of NICTA's report to the Minister that was issued on 6 October 2017. Nor did the Minister release his own public report identifying the extent to which the Minister accepted any of NICTA's recommendations.
8. Even if the 2016 consultation had been completed in accordance with the requirements of the Act, Digicel submits that any findings reached, including in respect of any costs and benefits that were assessed at that time, must now be considered to be stale and of little relevance to the current proceeding.
9. With respect, NICTA has:
  - a. made a wide range of unsubstantiated assertions about the purported benefits of mobile number portability and various implementation approaches;

- b. incorrectly determined that, despite it recognising that “*implementing and launching MNP can be expensive and resource intensive*” it need not undertake the cost benefit analysis mandated by the Act on the basis that it apparently considers “*cost benefit analysis of MNP is now widely regarded as no longer appropriate for determining feasibility of introducing MNP into specific markets, especially for small jurisdictions*”<sup>1</sup>; and
  - c. failed to adopt a technology neutral approach by only considering the introduction of any form of number portability other than mobile number portability. This is despite it now being understood that there are significant synergies and consumer benefits that arise from introducing fixed number portability at the same time as mobile number portability, and recent implementation experience in the Caribbean indicates that the introduction of both fixed and mobile number portability at the same time is becoming the norm.
10. In the circumstances, Digicel respectfully submits that NICTA should discontinue the current proceeding pending the completion of a consultation and decision making process that is conducted in accordance with the mandatory requirements of section 189 of the Act, including the consideration of fixed number portability and a full cost benefit analysis.
11. In order to be meaningful, any such cost benefit analysis should be based on implementation experiences in other jurisdictions including but not limited to:
- a. total cost to industry of implementation and operation of number portability infrastructure and systems; and
  - b. a detailed assessment of demand and estimated benefits based on objective customer survey data that has been obtained in Papua New Guinea.

## **B. Specific Comments on Implementation Approaches**

12. Notwithstanding Digicel’s objections to the approach adopted by NICTA in this consultation process and subject to any future consultation including consideration of both fixed and mobile number portability, Digicel makes the following comments in relation to potential approaches to implementation that may be of assistance in any cost benefit analysis that is undertaken.

### *Recipient Led versus Donor Led number portability*

13. Consistent with industry practice in other jurisdictions, Digicel considers a “Recipient Led” approach to number portability is likely to be appropriate in Papua New Guinea.

### *Number portability administration*

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<sup>1</sup> Consultation Paper at page 9

14. Digicel considers a centralised clearing house approach to number portability administration with the clearing house located inside Papua New Guinea is likely to be appropriate.
15. In our view, such an approach is likely to provide the most competitively neutral outcomes and is likely to be relatively straightforward to implement.
16. Digicel does not agree that, under the National ICT Act, a central clearing house provider is required to be licensed by NICTA and that any contractual arrangements are made directly between the central clearing house provider and relevant licensees.

*Traffic routing*

17. Consistent with the approach that has been adopted in many other jurisdictions in the region and for the reasons articulated in the Consultation Document, Digicel considers an “All Call Query” approach to traffic routing is likely to be appropriate in Papua New Guinea.

*Allocation of implementation and operating costs related to number portability*

18. Digicel considers the following approach for cost allocation mechanism is likely to be appropriate in Papua New Guinea:
  - a. Each operator covers its own set up costs in relation to the implementation and launch costs of number portability and any operational costs associated with inbound porting of numbers;
  - b. Operational costs of outbound porting may be recovered by the donor network from the recipient network through an approved “porting charge”; and
  - c. Central clearing house provider charges (both set up and ongoing operational charges) are shared equally by all operators (including any new entrants) regardless of the number of ports.
19. In Digicel’s submission, such an approach is likely to strike a fair balance between ensuring:
  - a. incentives for cost minimisation are maximised;
  - b. all market participants, including new entrants, pay their fair share of the costs of establishing and operating common number portability systems;
  - c. donor operators are able to cover the reasonable costs of customers porting out of their networks; and
  - d. competitive neutrality is maintained.
20. Digicel also considers that the donor network operator should not be able to charge customers directly for porting their number out of the network. However, recipient network operators

should be permitted (should they wish to do so) to charge customers for porting their number into the recipient's network.

*Implementation timing*

21. Digicel is of the strong view that, consistent with what has been able to be achieved in other markets, both mobile number portability and fixed number portability should be introduced at the same time.
22. Based on our understanding of experiences in other jurisdictions, we are of the view that at least two years would be required to implement number portability in Papua New Guinea.
23. We are also of the view that any implementation timing must commence from the time a decision is made by the Minister to accept a recommendation from NICTA to introduce number portability, and not from the "conclusion of consultation" as has been proposed in the Consultation Paper.

**C. Conclusion**

24. While Digicel does not object to the implementation of number portability in principle, it is not costless and the economic benefits arising from its introduction need to be weighed carefully against the costs and the potential detriments that that will arise from it.
25. In the light of this and the clear requirements of the Act, Digicel reaffirms its respectful view that the current consultation is ill founded and should be discontinued pending the completion of a consultation and decision making process that is conducted in accordance with the mandatory requirements of section 189 of the Act, including the consideration of fixed number portability and a full cost benefit analysis.
26. Any proposed implementation of number portability should include both fixed and mobile number portability to ensure the Act's requirements for technological neutrality and non-discrimination are adhered to. This is especially the case given recent developments in other jurisdictions where concurrent implementations of fixed and mobile portability have become the norm.