

06 September 2019

Mr. Charles Punaha  
Chief Executive Officer  
National Information & Communication Technology Authority  
Frangipani Street  
Hohola


"By Email & Hand Delivery"

Dear Mr. Punaha,

**Submission on Pricing Principles for Broadband and International Cable Services**

Please find **enclosed** Digicel's submission on the Wholesale Pricing for Broadband and International Submarine Cable Services.

Yours faithfully  
Digicel (PNG) Limited

  
Michael Henao  
Head of Legal & Regulatory

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**DIGICEL (PNG) LIMITED**

**Submission to NICTA**

*Public consultation on draft wholesale pricing  
principles for broadband capacity services, and  
international submarine cable services*

**6 September 2019**

*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 and General Comments

1. This submission sets out Digicel's comments with respect to NICTA's Discussion Paper titled *Public consultation on draft wholesale pricing principles for broadband capacity services, and international submarine cable services* ("Discussion Paper"), which was issued on 3 July 2019.
2. In making this submission, Digicel notes its support the establishment of wholesale pricing principles that assist in improving certainty and expediting the conclusion of negotiations for access to broadband capacity services and international submarine cable services that were declared by the Minister pursuant to Wholesale Service Declaration No. 1 of 2019 and Wholesale Service Declaration No. 2 of 2019 ("Declarations").
3. Digicel further notes that any pricing principles that are determined by NICTA must be consistent with the requirements of section 135 of the National Information and Communication Technology Act 2009 ("Act"), subsection (2) of which provides:

*"The service-specific pricing principles may contain price related terms and conditions (whether relating to a price or the method of ascertaining a price) and non-price terms and conditions relating to access to the declared service."*

4. The pricing principles must also be consistent with the General Pricing Principles that are specified in section 134 of the Act and that, pursuant to section 134(3) of the Act, *"any provision of the [service-specific pricing principles] has no effect to the extent it is inconsistent with the general pricing principles"*.
5. As the services are not resale services for the purposes of the Act, section 134(1)(c) requires that they should be subject to cost-based pricing.
6. Section 134 of the Act further provides:

*"(1) The "general pricing principles" are that the price of access to a declared service should promote the achievement of the objective of this Part as set out in Section 124 and, in particular, that the price of access to –*

*(a) that declared service should –*

- (i) be set so as to generate expected revenue from that declared service that is sufficient to meet the efficient costs of providing access to that declared service; and*
- (ii) include a reasonable return on investment, over the economic life of the assets employed, commensurate with the regulatory and commercial risks involved, this principle is known as the "cost recovery principle"; and*

...  
*"cost-based pricing" means pricing based on the cost recovery principle in which NICTA has regard to the following factors*

- (a) the application of the cost recovery principle; and*
- (b) the need for the pricing to make a fair and reasonable contribution to the access provider's common costs; and*
- (c) the need for the recovery of the reasonable costs, incurred in the provision of access and interconnection by the access provider, that would not have been otherwise incurred but for the requirement to provide such access or interconnection; and*
- (d) the availability and capacity of the facilities operated by the access provider and the timeframe reasonably required to provide access to additional capacity; and*
- (e) any other factors that NICTA considers relevant, to the extent that such factors are consistent with the cost-recovery principle and Subsections (a) to (d) of this definition.*

*"efficient costs" include the direct and indirectly attributable capital, operating and maintenance costs actually incurred by the access provider in providing the declared service to itself and access seekers (including a reasonable contribution to any common costs), unless NICTA determines that such costs are inefficient having regard to the efficiency objective and any evidence before it."*

7. Importantly, as well as providing price related terms and conditions, the pricing principles may also include non-price terms and conditions relating to access to the declared service. This is already recognised by NICTA in the Discussion Paper.
8. Given the specific and prescriptive nature of the General Pricing Principles, Digicel suggests that they should be referred to directly in the proposed Service Specific Pricing Principles and that it is made clear that the additional price and non-price related terms and conditions are subject to the General Pricing Principles.
9. It is in this context of these general comments that Digicel's specific comments are provided below.

## **B. Specific Comments**

## 10. Price related terms and conditions

- a. While Digicel supports the use of the TSLRIC+ pricing methodology as being consistent with the General Pricing Principles, we submit that is not the case for the FAC pricing methodology. That is because the FAC pricing methodology is less likely to reflect:
  - i. the volume independent nature of the costs of providing the services;
  - ii. the rapidly increasing data volumes that will arise as bandwidth prices drop; and
  - iii. ongoing efficiencies that continue to be realised through technological change and lower deployment costs.
- b. Accordingly, Digicel proposes that the references to the FAC pricing methodology are removed.
- c. It is Digicel's understanding that a material portion of the costs of international submarine cable deployment have been met through donor funding arrangements. In Digicel's submission, this must be reflected in any costs calculation as it would be unreasonable for the provider of the service to expect to profit from funding that was provided by donor agencies for the benefit of the people of Papua New Guinea.
- d. In addition to using one or cost models that have been prepared by an access provider, an access seeker or NICTA itself, Digicel proposes that NICTA also consider relevant international benchmarking reports to inform it in the determination of efficient cost-based prices. Digicel submits that such an approach would be beneficial for the following three reasons:
  - i. firstly, international benchmarking of cost-based access prices is likely to be achieved much more quickly than embarking on PNG specific, cost modelling exercises;
  - ii. secondly, international benchmarking is likely to be a less costly way of estimating the efficient costs of providing the services; and
  - iii. thirdly, even where cost modelling is undertaken, international benchmarking provides a useful check against which the assumptions and analysis undertaken as a part of the cost modelling can be verified.
- e. Digicel further submits that international benchmarking will be highly relevant to any interim determination that NICTA may make pursuant to its powers under section 146 of the Act.
- f. While Digicel agrees that the price of the service should be permitted to vary to recognise different capacity or term commitments that are made by an access seeker, Digicel submits that other factors should also be taken into account. In particular, Digicel proposes that the payment methodology should be a relevant consideration in

determining the price for access. For example, an access seeker who commits to a long-term IRU with an upfront payment should receive recognition by way of lower pricing. Similarly, prompt payment (or payment in advance of services being used) should be recognised through any prices that are determined by NICTA.

- g. Digicel also considers that any prices determined by NICTA should be subject to review on at least an annual basis to take into account market developments and changes in demand for bandwidth and that all access providers, including those that have already made a contractual commitment to acquire capacity, receive the benefit of that review. Such arrangements are a common feature of commercial contracts in competitive markets and should be carried through into any regulated pricing determinations.

#### 11. Non-price related terms and conditions

- a. Digicel understands the services that are relevant to the Declarations are, from a practical point of view, to be provided by companies within the Kumul Telecom Holdings Limited Group (“KTH”). We further understand that each of those companies operates in both the wholesale and retail spaces and provides services to each other. As a result, KTH has the opportunity and incentive to structure and operate its businesses to favour its own companies at the expense of its competitors.
- b. In such circumstances, Digicel submits that any Service Specific Pricing Principles include non-price terms and conditions that protect the integrity of the Declarations and the application of the price related terms and conditions.
- c. In particular, Digicel proposes that KTH Group companies who are access providers for the purposes of the Declarations are subject to the following additional non-price terms and conditions:
  - i. the provision of the declared wholesale services should be operationally separate from the provision of any other services provided by the companies so that only those costs that are directly incurred in the provision of the services are included in any cost calculation;
  - ii. the companies should report quarterly on the volumes and prices of the services that are sold to other members of the KTH Group; and
  - iii. in the event it is determined that any KTH Group company has provided preferential pricing, or pricing that is lower than the pricing charged to another access seeker, to another KTH Group company then the benefit of that preferential or lower pricing must be passed on to all other access seekers with the application of that pricing backdated to the date on which the pricing first came into effect.

#### 12. Other Issues

- a. Digicel notes that indicative prices have not been provided for the Kumul Cable System 1 that is listed in Schedule 1 to the draft *Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019* and that no such indicative prices are expected to be determined until January 2020. As that service is operational and available for sale now, there does not appear to be any reason for such a delay and, in Digicel's respectful view, indicative prices should be determined now so that the benefits of competitive access at cost-based prices may be enjoyed now and not delayed further.