

PUBLIC VERSION

DIGICEL (PNG) LIMITED

Submission to NICTA

Response to Submissions by

Telikom PNG & Vodafone PNG

on

NICTA's Discussion Paper: Public Inquiry into the Potential Declaration of

Domestic Mobile and Fixed Termination Access Services

issued on 21 October 2022

01 February 2023

***This submission is provided to NICTA for the purpose of the current public inquiry only
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A. Introduction

1. On 21 October 2022, NICTA released a Discussion Paper in which it proposed to make a recommendation to the Minister to declare the wholesale domestic fixed termination access service (DFTAS); and the domestic mobile terminating access service (DMTAS) ("**Declaration Discussion Paper**").
2. On the same date, NICTA released a Discussion Paper by which it proposed to recommend to the Minister that he make a Retail Service Determination ("**RSD**") by which Digicel's retail prices would be regulated for the next three years ("**RSD Discussion Paper**").
3. Digicel provided its comments on the Declaration Discussion Paper to NICTA on 30 November 2022 ("**Declaration Submission**").
4. On 12 December 2022, NICTA published a copy of Digicel's Declaration Submission on its website.
5. On the same date NICTA also published copies of submissions by Telikom Limited ("**Telikom Submission**") and Digitec Communications Limited T/A Vodafone PNG ("**Vodafone Submission**").
6. Notwithstanding the separate and distinct nature of the two Public Inquiries that had been undertaken by NICTA and for which the Discussion Papers had been prepared, the Telikom Submission and the Vodafone Submission were each submitted on the basis that they provided comments on both the RSD Discussion Paper and the Declaration Discussion Paper.
7. This submission sets out Digicel's comments on the Telikom Submission and the Vodafone Submission insofar as they related to the Declaration Discussion Paper only.
8. As will be shown in this submission, the Telikom Submission and the Vodafone Submission do not provide any cogent evidence or analysis to support the views they represent and, if anything, further undermine any argument to support the regulatory intervention proposed by NICTA.
9. Digicel is also concerned that, by making combined submissions in respect of both the RSD Discussion paper and the Declaration Discussion Paper, Telikom and Vodafone appear to be seeking to conflate two issues that are quite, in fact, separate. We therefore respectfully remind NICTA that proper procedure requires the two issues to be considered separately and on their own merits.
10. 

11. In summary, Digicel remains of the view that there is no proper legal basis for NICTA to make any recommendation to the Minister to declare Domestic Mobile and/or Fixed Termination Access Services.

B. Vodafone Submission

Proposed declaration of Domestic Mobile and Fixed Termination Access Services

12. Vodafone supports the proposed declaration of Domestic Mobile and Fixed Termination Access Services on the basis of its unsubstantiated assertions that “each fixed or mobile network operator has a substantial degree of market power (SMP) in the market for termination of calls/messages on its own network ... and ... there may be detriments to competition and efficiency if service providers refuse to supply or price these services excessively”¹.
13. Vodafone’s comments are surprising, given that it was able to commercially negotiate and implement an interconnection agreement with Digicel [REDACTED] without any dispute or delay. There was no indication at the time the agreement was negotiated that Vodafone was dissatisfied with either the terms that were agreed, or with the negotiation and implementation process that was adopted by the parties. This casts doubt about Vodafone’s assertion that service providers may refuse to supply the service either now or in the future.
14. Vodafone’s assertion that, absent regulation a service provider may price interconnection excessively, also does not stand up to objective scrutiny. The interconnection agreement between Digicel and Vodafone included [REDACTED]
15. In any case, the existing price [REDACTED] is not excessive when compared against relevant regional benchmarks. As can be seen from the following table, the price for the termination of domestic mobile calls is lower in Papua New Guinea than in any market other than Samoa, including New Zealand and Fiji where interconnection prices are set by the Regulators in those countries.

Mobile Termination Prices (per minute)		
Country	Papua New Guinean equivalent rate (Toea) ²	Local Currency
Samoa	[REDACTED]	[REDACTED]
Papua New Guinea	[REDACTED]	[REDACTED]
Fiji	7.80	FJD 5 cents
New Zealand	7.80	NZD 3.56 cents
Tonga	[REDACTED]	[REDACTED]
Vanuatu	[REDACTED]	[REDACTED]

¹ Vodafone Submission at page 3.

² Prices converted from local currency using exchange rate information from Oanda.

16. Importantly, the cost of providing services in Papua New Guinea is substantially higher than any of the other markets shown in the table. That is because Digicel in Papua New Guinea is faced with unique network- and demand- challenges that are not present in any of the other countries.
17. In short, there is no evidence to support Vodafone's assertions that mobile termination prices are excessive, or that the supply of interconnection services may be refused and, as such, little to no weight should be given to their submission.
18. The fact that the market is working is particularly important in the context of the *National Information and Communications Technology Act's* regulatory principles. Specifically, s.3 of the Act states that "*Parliament intends that the ICT industry in Papua New Guinea be regulated in a manner that recognises ... the effectiveness of market forces in promoting consumer welfare, specifically that ... to the extent that markets are competitive, primary reliance should be placed on commercial negotiations and the greatest practicable use of industry self regulation, subject to minimum regulatory requirements consistent with the objective of this Act*".
19. Section 9 of the Act further provides that, "*The functions of NICTA are ... to give effect to the objective of this Act and the regulatory principles...*".
20. It is quite clear that in the case of mobile termination, there are no grounds for regulatory intervention by NICTA, and that any such intervention would be contrary to its statutory functions and the regulatory principles enshrined in the Act.
21. In the final section of its submission, Vodafone states that, "*... when interconnecting with Digicel, Vodafone PNG does not pay on a per second basis*". Vodafone then goes on to state that, "*Vodafone PNG considers that Digicel and other mobile networks should be obliged to offer interconnection on the same basis as which Vodafone PNG offers its retail services. It is apparent that this will produce material benefits for consumers, in the form of lower retail prices*".
22. While it is not appropriate for Digicel to comment on Vodafone's retail pricing or billing practices, in our view it would be highly arrogant and presumptuous for Vodafone to require that its own commercial practices should dictate how the rest of the industry operates.
23. In any case, we can confirm that Vodafone's apparent contention that interconnection billing is in either 30 second or 1 minute increments is wrong. [REDACTED]

C. Telkom Submission

Proposed declaration of Domestic Mobile and Fixed Termination Access Services

24. While Telkom's one-page submission unreservedly supports NICTA's proposed recommendation to declare domestic mobile and fixed termination access services, it does not offer any additional evidence, analysis or reasoning whatsoever in support of its views. Digicel submits therefore that Telkom's submission should not be given any weight whatsoever as it does not add any value to the matters under consideration.

D. Conclusion

25. In conclusion, Digicel submits that neither the Vodafone Submission nor the Telkom Submission provide any reasoned arguments, evidence or analysis that would support the declaration of Domestic Mobile and Fixed Termination Access Services.

26. On the contrary, the statements in those submissions undermine the case for any regulation, and support Digicel's previously stated position i.e. that the proposed intervention is unwarranted and may be unlawful if implemented.

27. Importantly, the Vodafone and Telkom Submissions do not fill any of the gaps in NICTA's previous analysis, and do not provide a basis upon which NICTA can be reasonably satisfied that the proposed declaration of Domestic Mobile and Fixed Termination Access Services would meet the declaration criteria, or would otherwise be in accordance with the Act's regulatory principles.

28. Digicel hereby reaffirms the views expressed in its Declaration Submission, and repeats its call for NICTA to conclude that the proposal to declare Domestic Mobile and Fixed Termination Access Services on the terms that have been proposed would not meet the high threshold required by the Act and, therefore, should not be declared.