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**Digicel**

27 June 2018

Mr. Charles Punaha  
Chief Executive Officer  
National Information & Communications Technology  
Authority  
Savannah Heights  
Waigani  
National Capital District

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Dear Mr. Punaha

*Noted  
CP  
29/6/18*

↓  
*DEUA & DUAS  
For your attention/return*

By Hand Delivery &  
By Email [cpunaha@nicta.gov.pg](mailto:cpunaha@nicta.gov.pg)

*[Signature]  
29/6/18*

**Public Inquiry into a potential Retail Service Determination ("RSD") regarding certain mobile telephony services supplied by Digicel ("Public Inquiry")**

We refer to your letter dated 24 June 2018.

Whilst we acknowledge that NICTA has shared with us a draft regulatory instrument that might accompany a Recommendation to the Minister, we note that NICTA has to date refused to share with us the draft Recommendation itself, or even the reasons why NICTA apparently continues to be of the view that a RSD is necessary. By doing so, NICTA is denying Digicel's right to natural justice. This additional information is required so that Digicel understands the context of the proposed draft instrument and be afforded a fair opportunity to correct, contradict or comment on the draft instrument and the reasons for its proposed recommendation to the Minister.

We understand that the draft Recommendation may not yet be finalised and is subject to submissions that interested parties may wish to make. However, it is clear to Digicel that it is being denied a meaningful opportunity to be heard on the draft Recommendations prior to them being made to the Minister. Our concern stems from NICTA's explicit advice that, "The recommendation and RSD referred to the Minister will be posted on the NICTA website at the same time as the referral" [emphasis added]. Respectfully, it is Digicel's view that it should be afforded a meaningful opportunity to comment on the draft Recommendation prior to it being made to the Minister. This view is re-enforced by the fact that to date NICTA has not provided Digicel with any response to the detailed submissions made by Digicel and its expert advisors or any other operator.

NICTA is compelled by law to meaningfully consult Digicel throughout the entire consultation process which it purports to conduct pursuant to the Act. NICTA's duty to do so is not limited to the process outlined by Division 3 of Part XII of the Act and should not be seen merely as a mere "box ticking" exercise.

Meaningful consultation in the context of this Public Inquiry, in our respectful view, includes affording Digicel a fair opportunity to make submissions on any draft Recommendation especially where NICTA has not provided Digicel with a response to the detailed submissions made to date. This is especially the case since the outcomes of the Public Inquiry will have a profound impact on Digicel and its legitimate business interests and the interests of its customers.

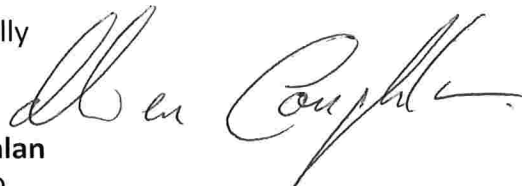
NICTA's failure or refusal to do so suggests that the result of the inquiry seems to have been a foregone conclusion leading Digicel to consider that perhaps the RSD is punitive in nature. This is underscored by the fact that NICTA appears to remain intent on controlling Digicel's retail prices for a period of five years, the maximum that is permitted under the Act, despite:

- (a) clear evidence that previous attempts to regulate Digicel's prices have been wholly ineffective as a means to change market share outcomes and that the fact they have harmed consumers by driving higher retail prices;
- (b) expert testimony that warns of the risks of imposing long-term retail price control; and
- (c) NICTA's clear knowledge that it is also proposing to make change to wholesale market regulation that will undoubtedly impact on the impact or retail markets.

For these reasons we request that NICTA provide a draft Recommendation for Digicel to review and allow a fair opportunity for submissions to be prepared.

We look forward to hearing from you.

Yours faithfully



**Oliver Coughlan**  
Regional CEO