

28 September 2018

Mr Charles Punaha
Chief Executive Officer
National Information & Communications Technology Authority
Levels 4 and 5, Tower 01, Stratos Building
Savannah Heights
Waigani
National Capital District

By Hand Delivery &
By Email inquiry.submission@nicta.gov.pg

Dear Sir

PUBLIC INQUIRY INTO THE POTENTIAL DECLARATION OF WHOLESALE TELECOMMUNICATIONS SERVICES ("PUBLIC INQUIRY")

Thank you for your letter dated 28 August 2018 and the opportunity to respond to the submissions made by other parties in relation to the Public Inquiry. Digicel's comments are set out below.

1. PNG Dataco

- a. Digicel notes that the substantive part of the PNG Dataco submission was made on Kumul Telekom Holdings Limited (KTH) letterhead.
- b. Digicel notes KTH's expectation that international submarine cable services and associated gateways would be re-declared and that KTH has not objected to such re-declaration, other than in relation to beach manholes and associated ducts.
- c. Digicel notes KTH's "agreement" that the termination of fixed and mobile calls and SMS should continue to be declared services.
- d. Digicel disagrees with KTH's position that the definition of mobile call termination should include inbound international calls. In particular:
 - i. KTH has not provided any legal basis for the inclusion of such calls. As Digicel has already shown in its submission dated 31 July 2018 (Digicel submission), it would be unlawful for NICTA to seek to either recommend the declaration of any call termination service that included incoming international calls or to act upon any such declaration.

- ii. KTH's assertion that "*Digicel has flatly refused to discuss accepting inbound international calls from Telikom*" is false and grossly misleading. Digicel has never refused to discuss any commercial proposition from Telikom and the 2014 reference made by KTH in its submission has already been well canvassed in previous proceedings both with NICTA directly, and as part of Judicial Review proceedings that are currently on foot.

Moreover, in other markets in the Pacific region, Digicel has entered into commercial arrangements which allow for the termination of inbound international calls transited via other operators. Those arrangements have been in place and operating successfully for many years now. Should KTH wish to engage in a similar commercial arrangement then Digicel remains open to engaging in discussions on the matter.

With respect, it is disappointing that KTH seems desirous to pursue what appears to be a self-serving regulatory solution without first seeking an industry-led outcome, which outcome is clearly contemplated by Sections 2 and 3 of the *National Information and Communications Technology Act 2009 (Act)*.

- iii. KTH has also failed to explain how the declaration of inbound international calls would satisfy the declaration criteria mandated by Section 128 of the Act, all of which must be met before declaration may be recommended by NICTA.
- iv. In short, KTH has not provided a properly reasoned basis for the inclusion of inbound international calls in the definition of any service that is proposed to be declared.
- e. Digicel notes KTH's "agreement" that infrastructure supported by universal access funds should be declared. However, it is already the case that UAS Projects are deemed to be declared pursuant to Section 131 of the Act and so it is not clear what further regulation KTH wishes to be imposed in respect of such services.
- f. Digicel further notes - but disagrees with - KTH's proposal that "*all facilities aided by public funds*" should be declared. In particular:
 - i. KTH has failed to explain how the declaration of such facilities would satisfy the declaration criteria mandated by Section 128 of the Act, all of which must be met before declaration may be recommended by NICTA.
 - ii. KTH has failed to properly define what it means by its proposal and which specific facilities or classes of services would be captured by its proposal.



- iii. If so-called public funders of any particular infrastructure projects considered that mandatory access by third parties was either necessary or desirable, then they would be free to require the inclusion of such terms as conditions of providing funding, as is the case with UAS Projects.
 - iv. In short, KTH's proposal is, in Digicel's submission, unreasoned and ill-considered and appears merely to be an attempt to free-ride on Digicel's investments and infrastructure.
- g. Digicel also disagrees with KTH's assertion that "*Digicel ... refuses to share its towers*". The fact is that:
- i. Digicel reached out to Telikom in late 2017 to discuss sharing. However, the idea was rejected by Telikom;
 - ii. at a meeting at the Stanley Hotel in the first half of 2018, Telikom's Acting CEO remarked that sharing should take place. Digicel approached him after the meeting and informed him that, in fact, Digicel had reached out in 2017 but that the idea was rejected by Telikom; and
 - iii. Digicel is not aware of any other request or follow-up by Telikom.

Digicel remains willing to discuss sharing of infrastructure on commercial terms. However, any such discussions must be on a good faith basis and not merely be used by Telikom as a further attempt to gain a regulated free-ride on Digicel's private investment in infrastructure.

- h. Digicel notes and agrees with KTH's conclusion that "*the miscellaneous services considered in Chapter 6 and wholesale leased lines (Chapter 8) of the consultation paper should not be declared*".
- i. Digicel disagrees with KTH's position with respect to the declaration of optical fibre domestic transmission services. For the reasons set out in the Digicel Submission, Digicel considers the declaration of such a service would meet the declaration criteria set out in Section 128 of the Act.

2. Kumul Telikom Holdings Limited

Digicel notes the Kumul Telikom Holdings Limited submission. However as it is essentially a verbatim repetition of the executive summary of the PNG Dataco submission, further comment seems unnecessary.



3. Independent Consumer and Competition Commission (“ICCC”)

Digicel notes the ICCC submission. We note, in particular, that it does not contain any additional detailed analysis or reasoning to support whether or not the declaration of any particular service would meet the declaration criteria or should otherwise be declared in accordance with the provisions of the Act.

Digicel looks forward to NICTA’s further analysis of the issues raised and the opportunity to review and comment on a Draft Recommendation prior to NICTA making any final Recommendation to the Minister.

Please do not hesitate to contact us if you would like to discuss any of these issues in further detail.

We look forward to hearing from you in due course.

Yours faithfully
Digicel (PNG) Limited

A handwritten signature in blue ink is written over the text "Digicel (PNG) Limited". The signature is stylized and appears to be "Michael Henao".

Michael Henao
Head of Legal & Regulatory