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

By Email & By Hand Delivery

Dear Mr Gulo-Vui

Submissions in Reply - Public consultation on Reference Interconnection Offer from PNG DataCo Limited on various wholesale access services

Thank you for your letter dated 5 November 2020 inviting Digicel to make submissions responding to other parties' submissions on *NICTA's Public consultation on Reference Interconnection Offer from PNG DataCo Limited on various wholesale access services*, issued on 19 August 2020 ("**Public Consultation**").

We understand that the primary purpose of this part of the process is to make "submissions in reply" to other submissions that have been made in respect of PNG DataCo Limited's ("**DataCo**") proposed Reference Interconnection Offer ("**Proposed RIO**"). In the event that any other party does seek to raise any new issues then Digicel would expect that NICTA will afford Digicel a further opportunity to respond to those new issues.

Please note that these comments are consistent with and rely upon Digicel's previous submissions and correspondence with NICTA on the Public Consultation ("**Digicel's Prior Submissions**"). Importantly, nothing that has been raised any other parties' submissions that gives us cause to change our views on any aspect of Digicel's Prior Submission.

*Issues Raised by Telikom PNG Limited ("**Telikom**")*

1. Eligibility to be considered as an Access Seeker

Telikom raises a valid concern in respect of what we understand to be an emerging practice, whereby end users of DataCo's declared services have sought and been granted licences by NICTA so that they may take advantage of DataCo's wholesale pricing directly without being required to purchase services through another service provider. Digicel further understands that DataCo may be encouraging such a practise in order to limit other service providers from being able to compete in the supply of services provided by DataCo.

The licensing provisions of the Act are clearly intended to apply to persons wishing to exercise a facilities right, or supply any facilities access service, or supply any network service, applications service or content service. They are not intended to be used as a mechanism by which to obtain access to declared services on preferential terms as appears to be the case.

In Digicel's respectful view, this is an important issue that warrants further consideration and should be dealt with as a matter of urgency by NICTA, in order to ensure that it does not unintentionally become party to an attempt to undermine service provider competition or to allow DataCo to engage in what appears to be an anti-competitive margin squeeze.

2. Restriction of the Application of DataCo's Proposed RIO

Digicel understands Telikom would like the Proposed RIO to contain terms that would restrict its application so that the services provided by DataCo would, in effect, only be available to wholesale access seekers and not to retail end users of the services proposed to be provided. While Digicel understands the intent behind Telikom's proposals, we consider the approach to be misguided.

We agree that by offering declared services to both wholesale access seekers and to retail end users at the same price, DataCo has made a fundamental error in its costing approach. That is because DataCo has assumed and applied the same underlying costs to both wholesale access seekers and to retail end users when they should not have done so; they have included the additional costs of providing a retail service in the prices in the Proposed RIO. This category of costs is not relevant to wholesale access seekers and should be excluded from the price calculation, so that the prices paid by wholesale access seekers reflect the costs that DataCo would reasonably avoid by not retailing the relevant services. By following such an approach, two sets of prices (wholesale and retail) would be established and the price squeeze problem would not arise.

3. Inter-relationship Between the Service Specific Pricing Principles and the DataCo Proposed RIO

Digicel notes Telikom's preference that NICTA conclude its *Public consultation on draft amended wholesale pricing principles for broadband capacity services, and international submarine cable services* and its consideration of the DataCo Proposed RIO at the same time.

Digicel strongly disagrees with such an approach and considers that, as a matter of principle and of law, the service specific pricing principles must be established before DataCo's Proposed RIO is given final consideration. This is because:

- a. It would, in Digicel's respectful submission, be illogical for NICTA to consider the Proposed RIO pricing before the principles applying to such pricing have been established;
- b. Section 142(5)(b)(iv) of the Act requires that NICTA must not approve a RIO unless it is satisfied that it is "*consistent with the general pricing principles and any service-specific pricing principles*". This clearly indicates an expectation that any RIO will be considered in the context of service specific pricing principles that exist at the time of the RIO application;
- c. It would also be plainly wrong to try and retrospectively "fit" service specific pricing principles with a RIO that had been prepared by an access provider. Importantly, a RIO is a written undertaking by a service provider setting out the commercial terms on which they would be

willing to provide a declared service. They represent that access providers necessarily self-interested view of the terms on which they would prefer to provide a declared service. This commercially oriented view of the prices that a service provider wishes to charge for its services may not be the same as, or reflect, a Regulator’s properly considered view of the principles that should apply to the calculation of those prices.

- d. Prioritising the RIO Consultation ahead of the SSPP Consultation may be taken to suggest that NICTA has predetermined the outcome of the SSPP Consultation and bring the SSPP Consultation process itself into question.

Issues Raised by The Australian National University (“ANU”)

4. Status of the ANU Submission

Digicel notes the submission that has been provided on ANU letterhead. However, it is not clear whether the submission represents the official position of the ANU or the personal views of the submission’s authors, only one of whom actually appears to be directly connected with the ANU. In Digicel’s view, this is an important matter and should be clarified by NICTA before giving any weight to the “ANU Submission”.

The reason for this is that the research referred to in the ANU submission:

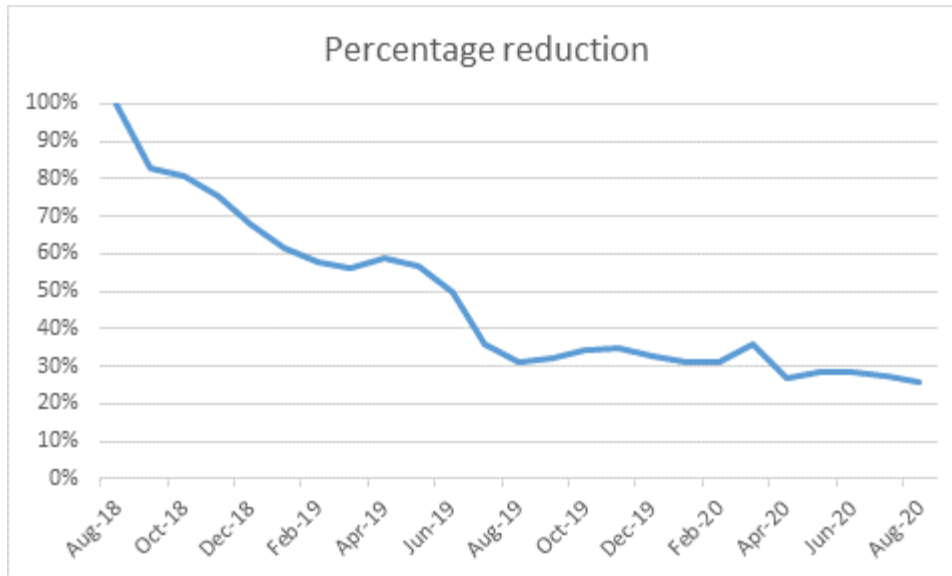
- a. Is narrow in its scope and methodology;
- b. Does not include any detailed results or methodology which appears to be based on an article by the same authors entitled *No change in mobile internet prices in PNG*, Amanda H A Watson, Picky Airi, Moses Sakai July 30, 2020 in the “Devpolicy blog”¹. (“**Devpolicyblog article**”);
- c. Does not appear to have been subject to any review whether by peers or otherwise; and
- d. Appears to have been geared towards a particular outcome.

In Digicel’s submission this has resulted in a clear and unwarranted bias against Digicel.

5. ANU’s Conclusions Reflect a Flawed Methodology

This flawed methodology is reflected in results that do not match the reality of what is happening to retail prices in Papua New Guinea. In particular, the ANU submission asserts that “there has been no change in mobile internet pricing since the start of 2020”. However, this does not reflect what has actually happened to Digicel’s data pricing (on a price per GB basis) since 2018 which is shown in the graph below.

¹ <https://devpolicy.org/no-change-in-mobile-in-internet-prices-in-png-20200730/>



This graph shows that the price of data for prepaid customers (calculated on a per megabyte basis) in August 2020 was only one third of the price that prevailed in August 2018 and that the price drop from December 2019 to August 2020 was more than 20%.

In addition, Digicel has also just launched its Digital Operator bundles which are available for as low as PGK 3.00. As well as providing minutes, SMS and Data, this bundle also includes 1.8GB (300MB for each app) of lifestyle applications which include the following –

- a. BIP (messaging app) – unlimited messaging for the day;
- b. Billo (cloud storage) – upload of documents to the cloud for storage with allocation to deliver 300 photos uploaded per day. This helps solve an identified issue of low storage capacity on the average Papua New Guinean customers’ phones;
- c. D-Music – 5 hours of premium music (more content than Spotify);
- d. Go-Loud – 5 hours of radio and podcasts streamed to the device;
- e. My Digicel App – Self-care portal unlimited access; and
- f. Loop – 1,500 articles a day.

Importantly, all of these are not in-country and require internet access to the world to operate.

Digicel also notes the authors make further claims in the Devpolicyblog article about Digicel’s data pricing that are based on a very limited analysis between Digicel and “bmobile/Telikom”. These claims include that Digicel’s “most accessible” pricing is “more than ten times as expensive” than bmobile/Telikom and concludes that the main reason why customers do not leave Digicel is “the geographical coverage of the Digicel mobile network is much wider than the coverage of its competitor”. However, there is no analysis to support such a claim or why the claimed “most accessible” pricing is the relevant benchmark.

The reality is that the relationship between international bandwidth and domestic retail prices is much more complex than is suggested by the ANU Submission. For example, because the international bandwidth service offered by DataCo in the Proposed RIO is very low by industry standards and is provided on an “unprotected” basis, Digicel has been forced to acquire satellite back-up capacity from O3b to ensure the integrity of its services. This is despite DataCo having access to multiple cables and seeking to count all of the costs of all of its cables in the prices it charges access

seekers, even when those cables are not used.

Relevantly, the service availability standard of 99.7% that is offered by O3b is substantially higher than that which is offered by DataCo. Because we are required to provide and pay for our own back-up capacity, Digicel's costs of service are inevitably substantially higher than is being implied by the pricing in the Proposed RIO.

In addition, Digicel faces many other costs of provision of service which, due to the COVID-19 Pandemic have continued to increase while consumer demand has been reduced.

In the circumstances, Digicel considers that the ANU submission - insofar as it seeks to make any connection between DataCo's proposed pricing and retail prices, or any other claims about retail data pricing - should not be relied upon by NICTA and should be set aside.

6. Other Issues raised in the ANU Submission

Digicel broadly agrees with the concerns raised in the ANU Submission in respect of the lack of any reliable price review mechanism in the Proposed Rio and that the proposed collection of end user information by DataCo is inappropriate.

We also agree with the concerns raised in the ANU Submission in respect of the adoption of a "maximum average price" by NICTA. For the reasons set out in our Prior Submissions we submit that such an approach is unworkable and inappropriate in this context.

We look forward to your consideration of our views and to receiving NICTA's final decision in this matter in due course.

Yours faithfully
Digicel (PNG) Limited



Michael Henao
Head of Legal & Regulatory