

DIGICEL (PNG) LIMITED

Submission to NICTA

**Public Inquiry into the Potential Declaration of Certain Wholesale
Services**

27 June 2025

*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

1. Digicel (PNG) Limited ("**Digicel PNG**") welcomes this opportunity to share its comments and views on the National Information and Communications Technology Authority ("**NICTA**") Discussion Paper titled *Public Inquiry into the Potential Declaration of Certain Wholesale Services* dated 14 May 2025 ("**Discussion Paper**") in which NICTA has considered a number of Wholesale Services for potential declaration in accordance with the provisions of Part VI of the National Information and Communication Technology Act 2009 ("**NICT Act**").
2. The services that are the subject of the Discussion Paper are:
 - Wholesale International dedicated submarine cable capacity service;
 - International submarine cable facilities access service;
 - Wholesale long-haul dedicated capacity service;
 - Wholesale local dedicated capacity service; and
 - Wholesale Internet access service (together, the "**Proposed Declared Services**").
3. NICTA's preliminary view is that all of the Proposed Declared Services should be recommended to the Minister for declaration in accordance with his powers under section 130 of the NICT Act.
4. As NICTA notes in Section 3 of the Discussion Paper, a decision to recommend the declaration of a wholesale service is subject to the provisions of Part VI of the NICT Act which provides, *inter alia*, that before it may make a recommendation to the Minister to declare a wholesale service, NICTA must be satisfied that all of the declaration criteria specified in section 128 of the NICT Act ("**Declaration Criteria**") will be met. Importantly, the Declaration Criteria are not mere guidelines but are mandatory statutory requirements that must *all* demonstrably be met before NICTA can make a recommendation to the Minister to declare a wholesale service.
5. In addition to the Declaration Criteria, any recommendation must also satisfy the Objectives and Regulatory Principles that are enshrined in sections 2 and 3 of the NICT Act. In particular, any proposed regulation must recognize the effectiveness of market forces in promoting consumer welfare and any regulatory measures must be proportionate and no more burdensome than necessary to achieve their stated regulatory objectives.
6. In Digicel PNG's submission these requirements provide a very high threshold for intervention. Importantly, the burden of proof is upon NICTA to show that the recommended declaration of a wholesale service would meet the requirements of the NICT Act.
7. Subject to our further comments below, Digicel PNG is of the view that, in this case, NICTA has met the relevant analysis threshold and the proposed declarations are currently justified, except in the case of the supply of wholesale local dedicated capacity services in

the National Capital District ("NCD"), where Digicel PNG is of the view that the service is now capable of feasibly being substituted by other commercially viable fibre services.

8. We further note that, within the 5 year term proposed for the declaration, it may become commercially viable to provide substitutes for the wholesale local dedicated capacity service in some other metropolitan centres. As such, we propose that the declaration review period for this service be reduced to 3 years to ensure that the declaration continues to comply with the requirements of the Declaration Criteria.
9. Finally, Digicel PNG welcomes NICTA's recognition that *"Telikom PNG Limited which is owned by the same parent company as DataCo, competes against other licensed operators in the downstream retail markets for mobile and fixed voice and Internet services"* and that *"in the absence of the proposed declaration, the access provider [DataCo] would have the ability to sell the wholesale service to an access seeker, with which it competes in a retail market, at a price inconsistent with the cost-based pricing or the cost recovery principles in Section 134 of the Act"*.
10. This fact, in Digicel PNG's submission, reinforces the need for continuing regulatory oversight of the Proposed Declared Services and the need to establish a Reference Interconnection Offer ("RIO") and Service Specific Pricing Principles that recognise the fixed cost nature of the services and that unit prices for capacity should continue to reduce in line with increasing service volumes.

B. The Proposed Declared Services

International and Internet Services

11. Digicel PNG welcomes and supports NICTA's analysis and conclusions with respect to:
- the wholesale International dedicated submarine cable capacity service;
 - the international submarine cable facilities access service; and
 - the wholesale Internet access service.
12. In particular, Digicel PNG agrees with NICTA's preliminary conclusion that declaration of these services will satisfy the Declaration Criteria and would otherwise be in accordance with the NICT Act.
13. Access to capacity on international submarine cables on fair and non-discriminatory cost-based terms is essential for the development of a competitive ICT market and the future growth and development of Papua New Guinea and its people as domestic network capacity and consumer demand for services continues to grow.
14. This is especially the case since access to and the provision of capacity on existing international submarine fibre optic cables is not feasibly able to be replicated in the foreseeable future.
15. It is also relevant that satellite capacity is unlikely to ever be an effective substitute for fibre optic capacity due to its cost and quality characteristics.
16. The problems that arise from the existing monopoly provision of international fibre optic cable-based capacity services are further exacerbated in Papua New Guinea, as the facilities and services are effectively controlled by PNG DataCo Limited ("**DataCo**"), which competes directly with operator licensees that provide fixed Internet services. In addition, Telikom PNG Limited, which is owned by the same parent company as DataCo, competes against other licensed operators in the downstream retail markets for mobile and fixed voice and Internet services¹.
17. This means that, in order to gain access to essential international submarine fibre optic cable-based capacity services, Digicel PNG is required to negotiate with a competitor that has the ability and incentive to deny or frustrate the provision of access to Digicel PNG and other competitors on fair and non-discriminatory terms.
18. This is unusual in the Pacific context where the provision of submarine fibre optic cable services is usually undertaken by a party that is independent from, and does not compete in the downstream retail markets with, other domestic telecommunications service providers.

¹ Discussion Paper at paragraph 142

19. Moreover, Digicel PNG's experience indicates that the benefits that have arisen from the effective regulation of access to international submarine fibre optic cable based services have been real and substantial, and we would expect similar benefits going forward.
20. Critical to this ongoing success will be NICTA's prompt establishment of new service specific pricing principles ("**SSPPs**") for these services and appropriate model non-price terms and conditions pursuant to NICTA's duties and powers under sections 133 and 135 of the Act.
21. In Digicel PNG's view, this work should be undertaken as soon as possible so that any instruments are ready to be adopted at the same time as the services are declared and prior to DataCo being required to prepare and supply to NICTA a RIO in accordance with the terms of NICTA's proposed declarations.
22. Digicel PNG submits that the early preparation of these instruments is necessary so as to limit the potential for delay in negotiations or any potential determinations that NICTA may be required to make in the future.

Domestic Capacity Services

23. Digicel PNG also welcomes and supports NICTA's analysis and conclusions with respect to the wholesale long-haul dedicated capacity service. In particular, Digicel PNG agrees with NICTA's preliminary conclusion that declaration of this service will satisfy the Declaration Criteria and would otherwise be in accordance with the Act.
24. Access to long-haul wholesale broadband capacity on domestic fibre optic cables on fair and non-discriminatory cost-based terms is essential for the development of a competitive ICT market and the future growth and development of Papua New Guinea and its people as demand for content rich ICT services continues to grow.
25. As NICTA observes, relative to a fibre-based solution, microwave links have a number of limitations in terms of cost, quality and capacity of service. As demand for additional capacity has grown in recent years, these limitations have been accentuated so that microwave links can no longer be considered to be a viable alternative to fibre.
26. It is also the case that, for the foreseeable future, such long-haul fibre optic networks will be provided and controlled by DataCo and that, through its parent company and relationship with Telikom Limited, it has the ability and incentive to deny or frustrate the provision of access to Digicel PNG and its other competitors on fair and non-discriminatory terms.
27. However, while Digicel PNG is also generally supportive of NICTA's proposal to declare the wholesale local dedicated capacity service, we are concerned that, in the case of that service, NICTA may not have fully taken into account the more recent developments in the deployment of fibre optic facilities that have occurred in some metropolitan areas, including in the NCD.
28. Such deployments are relevant to NICTA's statement in paragraph 105 of the Discussion Paper that *"PNG DataCo Limited is the sole provider of this wholesale service using its fibre*

optic network in the main cities and urban centres". That is because, although DataCo is currently the only provider of these services on a wholesale basis, it is not necessarily the only organisation that has deployed fibre infrastructure, or that might be capable of providing some domestic capacity services in the NCD going forward within the proposed term for the declaration.

29. Importantly, the fact that there are already other deployments of local fibre in the NCD besides those used by DataCo to supply a wholesale service, and that further deployments may occur in other metropolitan areas in Papua New Guinea in the future means that the wholesale service, as currently defined, *may* be supplied in whole or in part via a facility that *can* feasibly be substituted, as a matter of commercial reality, by another facility in order to supply that wholesale service. As such, Digicel PNG submits that the proposed terms of the wholesale local dedicated capacity service declaration would not satisfy the Declaration Criteria specified in section 128(b)(ii) of the NICT Act in respect of services provided in the NCD, and hence that the service could not be declared on those terms.
30. In order to address this issue and to ensure the proposed declaration meets all of the Declaration Criteria, we suggest that:
 - a) the definition of the wholesale local dedicated capacity service be amended to exclude services provided in the NCD; and
 - b) the declaration of the wholesale local dedicated capacity service be reviewed after three years to ensure it continues to only apply to services provided in areas where, consistent with the requirements of section 128(b)(ii) of the NICT Act, *"the wholesale service is supplied in whole or in part via a facility that cannot feasibly be substituted, as a matter of commercial reality, via another facility in order to supply that wholesale service"*.
31. Finally, and consistent with Digicel PNG's position in respect of the international and Internet services discussed above, any declaration should be accompanied by appropriate service specific pricing principles and model non-price terms and conditions relating to access in accordance with the provisions of sections 133 and 135 of the NICT Act.

C. Conclusion

32. In conclusion, Digicel PNG confirms its agreement with NICTA's view that any proposed declaration must meet all of the requirements of the Declaration Criteria and otherwise be in accordance with the NICT Act.
33. Digicel PNG further confirms its view that, subject to its comments relating to the provision of wholesale local dedicated capacity services NDC and other metropolitan areas, the Proposed Declared Services meet the requirements for declaration under the NICT Act.
34. Digicel PNG welcomes the opportunity to comment on the submissions of other parties and looks forward to continuing to discuss these issues with NICTA as the Public Inquiry progresses.

