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31st May 2024

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

By Email and By Hand Delivery

Dear Sirs,

PUBLIC CONSULTATION INTO PROPOSED BUSINESS RULE FOR MOBILE NUMBER PORTABILITY – PHASE 2 SUBMISSION.

Please find enclosed Digicel's submission for phase 2 of the subject public consultation.

We look forward to NICTA's next steps in this important process.

Yours faithfully
Digicel (PNG) Limited

A handwritten signature in blue ink, appearing to read 'Michael Henao'.

Michael Henao
Head of Legal and Regulatory

DIGICEL (PNG) LIMITED

Submission to NICTA

***Public Consultation on the Proposed Business Rule for Mobile Number
Portability – Phase 2***

Issued on 29th April 2024

31 May 2024

***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. This submission sets out Digicel (PNG) Limited's ("**Digicel**") initial comments on NICTA's Consultation Paper titled *Public consultation on the Proposed Business Rule for Mobile Number Portability – Phase 2* ("**Second Consultation Paper**") issued by NICTA on 29 April 2024.
2. The Second Consultation Paper follows an initial NICTA consultation paper ("**Initial Consultation Paper**") that was released on 20 October 2023. NICTA received submissions from four parties (including from Digicel) on the Initial Consultation Paper. Those submissions were made available to Digicel on 28 May 2024 following multiple requests.
3. The delay in release of submissions on the Initial Consultation Paper is regrettable as it has hindered the opportunity for parties to be able to review and comment on other parties' views. This is especially important as the Second Consultation Paper has not always fully reflected the views of other parties and has omitted completely some comments that were not specifically in response to NICTA's consultation questions.
4. With respect, the failure to publish parties' submissions in a timely way, is at odds with:
 - a. NICTA's obligations under the *National Information and Communication Technology Act 2009* ("**Act**") and its own undertaking reflected in section 1.2 of the Initial Consultation Paper, which stated:

"Copies of all comments submitted by Respondents in relation to this Consultation Document will be published on NICTA's Public Register consistent with the requirements on NICTA under subsection 229(3) of the NICTA Act. Additional procedural information is set out in the Guidelines on the submission of written comments to public consultations and public inquiries, which are available on NICTA's Public Register. With a view to having as open a public consultation process as practical, NICTA encourages Respondents to structure their Responses not to include any confidential information"; and

- b. NICTA's advice at section 2.1 of the Second Consultation Paper, which stated:

"By the Phase 1 submission deadline on 29th December 2023, NICTA received four written stakeholder responses...

Copies of these documents can be found on NICTA's website at <https://www.nicta.gov.pg>."

5. As such, this submission should be taken as preliminary only and Digicel reserves the right to make further submissions once it has had a fair and reasonable opportunity to review the submissions made by other parties.
6. In addition, Digicel notes that since the Second Consultation Paper was released, NICTA by email dated 14 May 2024, requested Digicel's attendance at a meeting on 30 May 2024

(later deferred to 6th June 2024), the stated purpose of which was to “*delve into this important topic further*” and that “[*Digicel’s*] *insights and collaboration are invaluable as we move forward with this initiative*”. Following the email, Digicel received a further email that included a “*datasheet*” that NICTA apparently expected to be used “*as a guide*” for the proposed meeting. The datasheet, if populated by Digicel, would require voluminous amounts of confidential business information and analysis to be prepared, with much of that information not having any apparent connection to the implementation of number portability.

7. This new development is also a concern as it appears NICTA has predetermined the outcome of the current consultation and has already decided to proceed with the imposition of number portability, despite the fact that the required statutory processes have yet to be completed.
8. Finally, Digicel confirms that it continues to rely upon the comments made in relation to the Initial Consultation Paper and that the comments that have been made in this submission should be read in that context.

B. Specific Comments on Implementation Approaches (references are to NICTA’s questions)

9. Question 3 – Licensing the NPC
 - a. As noted in its initial submission, Digicel does not agree that, under the Act, a central clearing house provider is required to be licensed by NICTA.
 - b. Part III of the Act sets out the operator licensing framework. It provides that a licence is required by a person in order to:
 - i. exercise a facilities right;
 - ii. supply any facilities access service;
 - iii. supply any network service;
 - iv. supply an applications service; or
 - v. supply a content service
 - c. The terms “facilities right” and each of the other services are defined under section 4 of the Act.
 - d. Importantly, however, the provision of a clearing house service does not fit within the ambit of any of those definitions and, as such, a licence is not required for a person to provide such a service.

- e. Digicel further notes that the clearing house provider would not provide services to or have any direct interaction with members of the public and is involved solely in the provision of services to persons who themselves would hold a valid Licence.
- f. In such circumstances, Digicel considers it would be beyond the power of NICTA to require a clearing house provider to obtain a licence in order to provide its services to other licensees, and would impose unnecessary costs and complexities on the industry and, ultimately, consumers.

10. Question 4 – NPC location

- a. Digicel is of the respectful view that NICTA’s “summary” of Telikom’s response to this question in its submission on the Initial Consultation Paper appears to be at odds with the content of the Telikom submission itself, which stated:

“Telikom is also equally concerned about customer data security in the MNP space whether the porting center is physically located locally or overseas. Telikom’s preference is for a local porting center in order for appropriate licensing by NICTA of the porting services operator however mindful of higher costs to operators relative to that of a foreign hosted porting centre.

...

Telikom prefers MNP to be managed and operated in PNG through a centralized MNP system.

...

A regional NPC hosted in PNG is supported for security of data considering there would be more PNG customer data to handle and risk in the process.”

- b. While Telikom did express concerns about minimising costs, it also appeared to place primacy on data security and local control. Telikom also proposed that public funds could be used to help meet set-up costs. This is something that Digicel would also support.
- c. In any event, Digicel remains of the view that a centralised clearing house approach to number portability administration with the clearing house located inside Papua New Guinea would be likely to be appropriate.

11. Question 7 – set up costs

- a. Digicel notes that Telikom’s submission proposed set-up costs be met by public funding and was not “silent” on the issue as was suggested in the Second Consultation Paper. Digicel suggests that such an approach be given further consideration.

12. Question 10 – Implementation Timing

- a. Digicel notes NICTA's comment that *"Based on experience in other markets [24 months] is not unreasonable though NICTA may want to look at ways to get closer to the 20 months mark during the implementation"*.

13. Question 11 – MNP Working Group

- a. While Digicel does not object to the establishment of an industry working group to oversee the implementation of number portability should a decision be made to proceed, Digicel is concerned that NICTA is already signalling a dictatorial approach will be taken with respect to such a working group's *"terms or reference, process and functional details as well as implementation timeframe etc"*. In Digicel's respectful view, such working groups work best when a collaborative approach is adopted.
- b. Digicel further notes that the Objectives that are enshrined in section 2 of the Act requires *"encouraging, facilitating and promoting industry self-regulation in the ICT industry in Papua New Guinea"*.
- c. Digicel urges NICTA to adopt such an approach in this case and that, to the greatest extent possible, NICTA adopt a consensus based approach towards the establishment and operation of any working group.

14. Question 13 – validation of porting requests

- a. Digicel agrees with NICTA that the use of email is not appropriate as a validation mechanism for porting requests.

15. Question 16 – 19

- a. Contrary to the statements in the Second Consultation Paper, Digicel notes that there was no indication in parties' submissions on the Initial Consultation Paper that could reasonably be construed to be *"industry support"* in respect of NICTA's proposed approaches that were expressed in these questions.
- b. Digicel further notes its position that the consideration of this level of detail be deferred until such time as a decision is made on whether or not to proceed with the implementation of number portability in Papua New Guinea and can sensibly be covered in any discussion around potential *"business rules"*.

16. Question 20 – Fixed Number Portability

- a. Digicel is concerned that the question asked is whether respondents are *"in favour of introducing Fixed Number Portability (FNP) in PNG and if you are would you prefer it be implemented in parallel with MNP or separately"*.
- b. By posing the question in such a way, it appears that NICTA is putting the question of fixed number portability to a popular vote rather than considering it objectively in the context of the criteria specified in the Act, including an analysis of the costs and benefits of its implementation.

- c. In Digicel’s submission, a technology neutral approach to the consideration of the introduction of number portability would require the inclusion of both fixed and mobile number portability. Similarly, any cost-benefit take into account the significant synergies and consumer benefits that arise from introducing fixed number portability at the same time as mobile number portability.
- d. Digicel also stands behind its statement in its submission on the Initial Consultation Paper that *“recent implementation experience in the Caribbean indicates that the introduction of both fixed and mobile number portability at the same time is becoming the norm”*. This is evidenced by the information contained in Figure 2 of the Second Consultation Paper that shows the four most recent implementations of number portability in the Caribbean to include both fixed and mobile numbers. It is disappointing that NICTA has chosen to quote and rely upon a “precis” statement in the conclusion of Digicel’s submission rather than the substantive submission on the issue that was contained in the body of the document.
- e. Digicel further notes that the countries mentioned in Figures 1 and 2 of the Second Consultation Paper reflect only a relatively small subset of the countries that have introduced number portability. For example, in Europe, the vast majority of countries have implemented mobile number portability and, in every one of those cases, fixed number portability has also been implemented¹.
- f. Finally, Digicel submits that the question of whether fixed number portability should be introduced in Papua New Guinea should be determined on the basis of the statutory criteria and whether the net benefits of introducing it at the same time as mobile number portability would be greater than the net benefits of either introducing it at a later date or not introducing it at all.

17. Question 21 – Paying for the NPC Provider’s Costs

- a. Subject to further investigation of Telikom’s proposal that public funds could be used to help meet set-up costs, Digicel remains of the view that central clearing house provider charges (both set up and ongoing operational charges) should be shared equally by all operators (including any new entrants) regardless of the number of ports.
- b. Digicel further notes its expectation that central clearing house provider charges are unlikely to be material in the context of overall costs faced by each operator and that the cost of managing any “usage” based cost allocation is likely to outweigh any benefits of perceived fairness which would be uncertain in any event.

18. Question 23 – Cost Benefit Analysis

- a. As Digicel stated in its submission on the Initial Consultation Paper, cost benefit analysis is a statutory requirement in Papua New Guinea and is clearly set out in section 189 of

¹ See ITU DataHub at <https://datahub.itu.int/data/?i=100097>

the Act which governs the process NICTA must follow when seeking to introduce any form of number portability.

- b. Digicel therefore welcomes NICTA's apparent intention to undertake a cost benefit analysis as part of the current proceeding and, subject to it being expanded to include the costs and benefits of fixed number portability, has no objection to the cost benefit analysis that was undertaken in 2017 being used as a starting point for it.

C. Conclusion

19. Digicel reiterates its position that, while it does not object to the implementation of number portability in principle, it is not costless and the economic benefits arising from its introduction needs to be weighed carefully against the costs and the potential detriments that that will arise from it. With respect, this is a position that seems to be shared by Telikom.

20. In the light of this and the clear requirements of the Act, Digicel reaffirms its view that the consultation and decision making process must be conducted in accordance with the mandatory requirements of the Act, including the consideration of fixed number portability an

21. d a full cost benefit analysis.

Respectfully submitted.