



***Determination regarding the disclosure of confidential information
(No. 1 of 2011)***

National Information and Communications Technology Act, 2009

The National Information and Communications Technology Authority (NICTA) makes this determination under section 44 of the *National Information and Communications Technology Act, 2009* (the "**Act**") having regard to the representations that have been made by the affected parties namely; bemobile Limited, Digicel (PNG) Limited and Telikom PNG Limited.

Dated 16 November 2011

A handwritten signature in blue ink, appearing to read "Kila GULO-VUI".

Kila GULO-VUI

Acting Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Ian G. MILENG".

Ian G. MILENG

Manager Legal Services

National Information and Communications Technology Authority

1. Name of determination

- (1) This determination may be referred to as the Determination regarding the Disclosure of Confidential Information (No. 1 of 2011).

2. Interpretation

- (1) In this determination, unless the contrary intention appears, any words or phrases used in this determination that are defined in the *National Information and Communications Technology Act, 2009* have the same meaning or interpretation as given to them in that Act.

3. Determination to publish certain confidential information

- (1) NICTA hereby determines, pursuant to section 44 of the *National Information and Communications Technology Act, 2009* to publish the wholesale prices of interconnection services charged by bemobile Limited, Digicel (PNG) Limited and Telikom PNG Limited (the "*parties*") in relation to their respective networks as part of NICTA's public inquiry into the need for a retail service determination regarding certain mobile telephony services.
- (2) NICTA has previously decided to conduct a public inquiry pursuant to section 230 of the *National Information and Communications Technology Act, 2009* to determine whether or not NICTA should recommend that the Minister introduce a retail service determination regarding certain mobile telephony services under Part VII of the Act.
- (3) In preparing the public discussion paper that NICTA will publish to commence that public inquiry, NICTA concluded that it was important that the relevant interconnection prices be included in the analysis published in that discussion paper to enable all interested parties considering and responding to that discussion paper to participate in the inquiry process in a meaningful way and to understand the arguments that might be made by Operator Licensees or by NICTA.
- (4) The interconnection prices in question are the result of negotiations between the parties over a long period and of arbitration by the Independent Consumer and Competition Commission (ICCC) on matters on which the parties were unable to agree. The parties have bound themselves in mutual undertakings not to publish or otherwise disclose the prices. However, those undertakings do not bind NICTA.
- (5) In considering whether it is in the overall public interest to publish the interconnection prices in question, NICTA has weighed out the benefits to the public that would result from publication against any commercial harm or disadvantage that might result to

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one or more of the parties. To assist in this assessment NICTA invited the parties to express their views on the issue and to advise on any specific or identifiable commercial harm to their commercial interests that would or might reasonably result from disclosure.

- (6) One of the parties opposed publication, one accepted publication, and the third did not express a view either in support of, or in opposition to publication. None of the parties provided any compelling evidence of commercial disadvantage that would or might result from the disclosure or publication. Against this, NICTA considers that there is a clear public interest in being able to better understand the factors that bear on retail prices in the ICT sector and the contribution that interconnection charges may make to the different retail price levels for on-net and off-net services, which are to be examined through the public inquiry. To enable all interested parties to participate in the discussion and understand the various arguments that might be made during the public inquiry, the actual interconnection prices and their structure needs to be known. The ability of stakeholders who are not one of the parties with direct knowledge of the relevant interconnection prices to participate in the discussion and to contribute reasoned arguments during the public inquiry is important for the transparency and cogency of ICT regulation in PNG.
- (7) For these reasons, NICTA has determined to publish the interconnection prices concerned.

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