

DRAFT RETAIL SERVICE DETERMINATION

RETAIL SERVICE DETERMINATION No. 1 of 2018

National Information and Communications Technology Act 2009

I, SAM BASIL, Minister for Communication and Information Technology, acting on the recommendation of the National Information and Communications Technology Authority and having had regard to the Retail Regulation Criteria, make the following Retail Service Determination under section 160 of the *National Information and Communications Technology Act 2009*.

PART I – PRELIMINARY

1 Name of the Determination

This Determination may be cited as *Retail Service Determination No.1 of 2018*.

2 Commencement and expiry

- (1) This Determination shall come into force on the date gazetted (*the Commencement Date*).
- (2) This Determination shall expire on the day before the fifth anniversary of the Commencement Date, provided however that by the third anniversary of the Commencement Date, NICTA will review this determination and make a Report to the Minister, including any recommendation, if warranted, to revise or revoke this Determination.

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3 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in this Determination have the same meaning as in the Act.
- (2) In this Determination, unless the context otherwise requires:
 - (a) “*Act*” means the *National Information and Communications Technology Act 2009*;
 - (b) “*day*” means a calendar day;

- (c) **“Digicel”** means Digicel (PNG) Limited with company registration number 1-55909;
- (d) **“fixed-fee service bundle”** means any combination of voice calls, whether On-net Calls or Off-net Calls, and/or SMS and/or data services that is sold by Digicel for a pre-determined price regardless of usage up to certain pre-determined usage limits.
- (e) **“individual service tariff”** means the price charged for a Regulated Mobile Service when sold on a stand-alone basis
- (f) **“on-net call”** means a national voice call that originates and terminates on Digicel’s mobile network;
- (g) **“off-net call”** means a national voice call that originates on Digicel’s mobile network and terminates on the mobile network of another licensee;
- (h) **“prepaid”** means being charged in such manner that payment is made before a service is used;
- (i) **“post-paid”** means being charged in such manner that payment is made after a service is used, normally by means of a monthly bill;
- (j) **“promotional offer”** means any special tariff offer of limited duration that is made by Digicel;
- (k) **“regulated mobile service”** means:
 - (i) a prepaid mobile originated retail national voice call service; or
 - (ii) a post-paid mobile originated retail national voice call service.
- (l) **“SMS”** means short message service.

NOTE: The following terms are defined in the Act:

- retail regulation criteria;
- network
- NICTA
- price
- retail service

4 Application

- (1) This Determination applies to Digicel’s supply of Regulated Mobile Services.

PART II – PRICING PRINCIPLES

5 Limit to price discrimination between On-net Calls and Off-net Calls

- (1) Digicel shall not offer or charge prices for a Regulated Mobile Service that discriminate on the basis of the mobile network that will terminate the call, except that Digicel may price Off-net Calls above the price of On-net Calls to the extent that:
 - (a) any such price differential is objectively justifiable based on differences in the costs of supplying the service;
 - (b) such objective justification has been approved by NICTA following application by Digicel, such approval to be granted as expeditiously as possible bearing in mind the complexity of the evidence and of the issues raised by the application; and
 - (c) the price differential applies only to Individual Service Tariffs and, separately, for calls within a Promotional Offer, and separately for call usage outside of a Fixed-fee Service Bundle.
- (2) For the avoidance of doubt, where Digicel offers Regulated Mobile Services within a Fixed-fee Service Bundle no discrimination between On-net Calls and Off-net Calls is allowed.

6 Consistent basis for charging and billing

- (1) The basis upon which a Regulated Mobile Service is charged or billed (for example, per minute or per second) shall not differ between On-net Calls and Off-net Calls.

PART III – IMPLEMENTATION

7 Compliance reporting

- (1) Digicel shall, within one (1) day of launching any new Individual Service Tariff, Fixed-fee Service Bundle or Promotional Offer, publish details of the price and related conditions for the service or offer on its website and provide full details to NICTA demonstrating its compliance with the requirements of this Determination.
- (2) Digicel shall, within one (1) day of withdrawing any new Individual Service Tariff, Fixed-fee Service Bundle or Promotional Offer, remove details of the price and related conditions for the service or offer from its website and inform NICTA of the withdrawal.

8 Compliance enforcement

- (1) NICTA may at any time serve notice to Digicel requiring it to withdraw from service any Individual Service Tariff, Fixed-fee Service Bundle or Promotional Offer that it finds to be in breach of the requirements of this Determination.
- (2) In serving such notice NICTA must:
 - (a) provide reasons for its decision; and

- (b) give Digicel a minimum of ten (10) days to:
- i. accept the notice, withdraw the offending tariff and notify all customers affected by the withdrawal; or
 - ii. submit additional evidence that demonstrates the tariff's compliance with the requirements of this Determination.
- (3) In the case of Digicel providing additional evidence under paragraph (2)(b)ii, NICTA may either accept this evidence and rescind its notice to withdraw a tariff or promotional offer or it may issue a final notice that requires Digicel immediately to withdraw the offending tariff or promotional offer and notify all customers affected by the withdrawal, or take such other action as is permitted to NICTA under applicable law.

Made at Port Moresby this [DATE] day of [MONTH] 2018.