



**INDEPENDENT CONSUMER AND
COMPETITION COMMISSION**

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9 October 2014

Mr. Charles Punaha
Chief Executive Officer
National Information & Communications Technology Authority
PO Box 8444
BOROKO
National Capital District

Dear Mr. Punaha,

**RE: NOTICE OF INQUIRY FOR THE PURPOSES OF SECTION 231 OF THE NATIONAL
INFORMATION AND COMMUNICATIONS TECHNOLOGY ACT 2009 (NICT Act)**

Thank you for inviting submissions from the Independent Consumer and Competition Commission ("ICCC" or "Commission").

ICCC would like to provide comments on the areas which are relevant to its responsibilities. In terms of relevant market(s), the Commission concurs with the two markets identified by National Information and Communications Technology Authority (NICTA) in its discussion paper. However, in parts of this submission, the Commission would be referring to them collectively as 'the market for termination services'.

1. Extent of competition in the markets for termination services

The information available to ICCC suggests that there is no competition in the termination service market; and it is difficult for competition to exist there.

As identified by NICTA, given the nature of the business in the respective markets, each network operator is a monopoly in its own fixed/mobile network and there is no competition existing and is likely to exist in the relevant markets identified. Given the current structure of the market where one player is dominant and has stronger presence than other players, the Commission is of the view that if declaration is not renewed, both the wholesale and retail segments of the markets would suffer in terms of high termination rates at the wholesale level and high call/SMS/MMS rates for subscribers at the retail level.

Furthermore, due to the Calling Party Pays Arrangement¹, the termination service of each individual network operators are not substitutable for each other in that a subscriber (called party) chooses a network while the calling party pays for its call originating at its network and terminating on the called party's network; hence the called party does not have the incentive to choose a substitute network operator. The Commission believes that this is likely to give the ability to the individual network operators to raise the prices of their termination services above costs. (There is

¹ Under this arrangement the calling party and not the called party pays for the total price of a retail call to a mobile. This means that the voice call termination charge is included in the cost base of the network operator (that is either fixed or mobile) originating the call, and is reflected in the retail price it sets for calls originating on its network.

no publicity available in PNG to show that each network operators are pricing above cost.) In this regard, the Commission is of the view that network operators should not be allowed to have mark-ups for termination services. In other words, NICTA determines the termination rates for the duration of the declaration.

In respect of pricing and cost between mobile and fixed termination services, as mentioned above, each network operator is a monopoly in its own network and if the termination rate of a mobile operator is above cost, it would raise the cost for fixed network operator. Although the Commission does not have statistical information, the Commission believes that combined mobile network subscribers are much greater than fixed network subscribers. Hence it is likely that there will be more fixed calls terminating on mobile networks. Thus if declaration is not renewed, the more fixed calls terminating on mobile networks, the fixed operator could be incurring high termination costs.

As mentioned, the information available to ICCC suggests that there is no competition in the termination service market; and it is difficult for competition to exist there. Hence ICCC is of the view that declaration should be renewed. If without declaration, network operators are likely to overcharge their termination rates and it will consequently increase the retail rates. A stable termination rate would result in competitive retail rates. This would then drive and increase demand at the retail level which will have chain effects in reduction in the price of the unit cost of providing the service. Having the declaration continued would also set a benchmark for the network operators to offer cost based wholesale termination charges to third party operators who terminate calls on their network.

The ICCC is also of the view that with the declaration, there will be limited scope for vertically integrated firms who operate both at wholesale and retail markets (which all network operators do) to engage in anti-competitive practices such as margin squeeze and/or predatory pricing.

The Commission thinks that with the lack of competition at the wholesale level, if declaration is renewed, it would promote competition in the retail markets where each network operator would aggressively compete in the market place in terms of rates and service quality as they are currently doing. ICCC therefore believes that the termination services should continue to be declared services under Section 130 of the NICT Act.

2. The declaration promotes efficiency in investment in the facilities by which ICT services may be supplied

The Commission considers that while there may not be any direct efficiency gains in the termination services, it is likely that some efficiency could be achieved at the retail level through subsidized retail services from profits obtained in the wholesale market. This is based on the assumption that at the wholesale level, the more calls/SMS/MMS terminating on one network (the called network), it is likely that the network (the called network) operator would earn increased profits. The profits earned could then be used to cross subsidize its costs in its pursuit to provide incentives to its subscribers in the retail market. The incentives could be in the form of providing free or cheaper handsets, lower retail call rates, etc to lure more customers at the retail level. This will then impact on increasing its subscriber base to be more competitive in the retail market. For this to happen, the challenge is on the network operator to encourage and ensure that more calls/SMS/MMS are terminating at its network.

Given the nature of the market where SIM cards are 'locked' to their respective network and there is competition among network operators to increase their subscriber base at the retail level, the Commission is of the view that without declaration, calls/SMS/MMS termination is likely to be

expensive and consequently less calls/SMS/MMS will be terminating on each other's network which will result in network operators operating on losses at the wholesale market. Hence the type of efficiency discussed here would not be realized.

3. The declaration of these service will promote any to any connectivity and limit entry barrier

The Commission believes that the declaration of these services will promote any to any connectivity by subscribers of respective networks. With respective network operator being monopoly over their own network, there is already high barrier to entry for any new potential entrant who wishes to operate at the retail level. Even with new potential network operators, without the declaration there maybe incentives for established operators to prevent new entrants from interconnecting with their networks. Hence with the continuation of declaration the competitive threats to the new entrants are eliminated. Declaration gives a new entrant the right of access to mobile termination on an existing carrier's network.

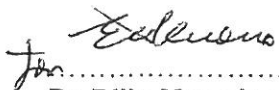
In this regard, the Commission proposes that declaration should take into account the possibility of new potential entrants in that they have the same right as the incumbents in terms of accessing existing networks without unnecessary delays.

The Commission's overall view is that declaration of the mobile/fixed termination access service should continue as there is no competition in the termination services market and this declaration has the potential to promote competition in the retail mobile services market and also helps to encourage new entrants to interconnect with existing networks. It is also likely to encourage efficiency at the retail level and discourages anticompetitive market conduct.

Furthermore, reductions in termination rates may result in a reduction in the price of the unit cost of providing the service thus users at the retail level will enjoy the benefits such as lower rates.

Overall, the Commission believes that regulation is second best to having a competitive market. However, given the nature of the business activities involved that there is no competition in the termination services and one is difficult to exist there, the Commission is of the view that declaration of termination services should continue for another five years.

Yours sincerely,



Dr Billy Manoka, PhD
Commissioner & Chief Executive Officer