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INDEPENDENT CONSUMER AND
COMPETITION COMMISSION

1st Floor Garden City, Angau Drive,
P.O. Box 6394, BOROKO,
National Capital District
Papua New Guinea
Telephone: (675) 325 2144
Facsimile: (675) 325 3980
Toll Free No. 180 3333
Email: infor@iccc.gov.pg
Website: www.iccc.gov.pg

Office of the Commissioner/CEO

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9th February, 2018

Mr Charles S. Punaha
Chief Executive Officer
National Information and Communications Technology Authority
Levels 4 & 5, Tower 1, Stratos Building
PO Box 8444,
BOROKO, 111
National Capital District

Dear Mr Punaha,

**RE: PUBLIC INQUIRY INTO POTENTIAL RETAIL SERVICE DETERMINATION
APPLICABLE TO DIGICEL**

We refer to NICTA's letter of 20th November, 2017 and thank you for giving the ICCC the opportunity to comment on the Discussion Paper for the proposed Retail Service Determination ("Proposed RSD").

1. Summary

The ICCC generally agrees with NICTA's discussions and reasons for the Proposed RSD. The ICCC also concurs with NICTA on its Draft Determination under paragraph 5.1.1 (a) to (f). The ICCC also suggests some additions to the requirements being considered by NICTA in the proposed RSD.

Whilst agreeing with NICTA's Draft Determination, the ICCC provides the following comments:

2. Relevant Market (Clause 3)

The ICCC notes, and consents with, NICTA's definition of the relevant market to be prepaid and postpaid voice services provided by both fixed and mobile operators. The ICCC also notes NICTA's decision to not consider data services as part of the relevant market due to the reasoning that there is a low demand for mobile data to be used as a substitute for mobile voice calls. This is a feature of the current PNG market place mainly because limited existing handset data functionality will need to be replaced by a wider take-up by consumers more modern new handsets,

"Our Competition Watchdog, Shaping our Market Economy and Protecting our Consumers"

Southern Regional Office
1st Floor, Garden City
P.O. Box 6394, BOROKO
National Capital District
Phone: (675) 325 2144
Fax: (675) 325 3980
Email: southern@iccc.gov.pg

Highlands Regional Office
1st Floor, Courts Superstore Head Office
P.O. Box 1070, GOROKA
Eastern Highlands Province
Phone: (675) 732 1077
Fax: (675) 732 1414
Email: highlands@iccc.gov.pg

Momase Regional Office
2nd Floor, Nambawansupa Haus
P.O. Box 448, LAE
Morobe Province
Phone: (675) 472 2859
(675) 472 6188
Fax: (675) 472 6122
Email: momase@iccc.gov.pg

Islands Regional Office
Ground Flr, Matanitu Building
P.O. Box 461, KOKOPO
East New Britain Province
Phone: (675) 982 9711
Fax: (675) 982 9712
Email: islands@iccc.gov.pg

However, the ICCC proposes for NICTA to consider data services that are provided by both fixed and mobile operators in its market definition, regardless of the present low demand or use by PNG consumers with their existing handsets. This is because, in general terms, data still enables a consumer to access the same services contained in prepaid and postpaid services that are offered by fixed and mobile operators; and given the current trend of innovation and growth in the telecommunication sphere. Indeed, NICTA has indicated that these are emerging OTT services.

Although the use and development of data services is still in its infancy in PNG, there is a real potential for the demand among PNG consumers to grow rapidly in the near future once the technology or platform to access data services is more accessible and affordable. This demand is also set to increase further once PNG consumers become more technologically adept, and understand the power of the services offered over data networks.

As a result of this, the ICCC is mindful of the constantly evolving and dynamic state of convergence in the telecommunications/ICT industry; and that the notion of a relevant market may change quite quickly and distinct for operators who provide telecommunication services such as mobile, internet, voice, content or broadcasting services in the future.

Instead, one can now argue that the point of contention is really that the type of device or platform that a consumer uses is irrelevant, and that service substitution better defines markets. Therefore, taking into account the type of services, and considering substitution possibilities and convergence issues in the ICT industry, the ICCC is of the view that NICTA's definition of the relevant market should be forward looking and inclusive of data services as part of this market definition.

3. Market Structure (Clause 3.2)

The ICCC notes the discussion set out in this part and would like to bring to NICTA's attention certain aspects when identifying and considering:

- a) Structural Barriers to Entry; and
- b) Market Concentration.

Structural Barriers to Entry

The ICCC agrees with NICTA's position that the retail mobile services market in PNG currently has large sunk costs in terms of network constructions (and possibly the advertising costs once one is established in the market). This is mostly due to PNG's geographic terrain, the cultural practices of land rights and usage, and customers' behaviour and loyalty.

While the entry barrier due to high sunk costs may be true for a potential new entrant, the ICCC considers that this should not be an issue for Telikom and Bemobile. It is understood that both Telikom and Bemobile had entered PNG's telecommunications market several decades prior to Digicel's entry in 2007 (Telikom has been operating in PNG since 1955 but only with mobile technology following de-merger with Bemobile which commenced independent operations in 1997). Being the initial incumbents, Telikom and Bemobile would have incurred lower sunk

costs at a time when PNG's economic environment was less volatile; thus, faced lower capital cost in setting up their networks. Most, if not all, of the current existing network infrastructures for Telikom would have been compulsorily acquired by the State just prior to Independence. As a result many of these network infrastructures would not have been subjected to high rental/compensation payments to resource owners such as customary landowners in contrast to the environment Digicel experienced when it entered the market.

Thus when considering barriers to entry, it is important to understand that it must be an advantage that an incumbent in a market currently enjoys over a potential entrant. It is cost asymmetry in that these barriers are costs that must be taken into account by the entrant but not by the incumbent.

At this stage, Digicel now exhibits the characteristics of the incumbent. This is mostly because in the greater percentage of town and villages within PNG, and in geographic area, Digicel is indeed the first entrant. In these new areas of service provision Telikom and Bemobile are the new entrants and experience significant barriers to entry which could be argued to be greater than Digicel for reasons including that the best mobile cell tower sites have been selected and used, and landowners are now more resistant to additional sites being provided to the next mobile carriers entering those geographic areas.

Market Concentration

The ICCC notes NICTA's comments on the current market concentration in the telecommunications industry calculated from the market share data.

While the ICCC agrees with NICTA that the market is highly concentrated with Digicel having larger market share, it submits that market share information alone does not give a clear picture of how powerful a firm is in a market. NICTA should be cautious in using market share as the only criteria to determine Digicel's market power. Instead, it is the ease of entry at which a potential entrant can enter the market in order to compete, which is the real indicia of market power. The ICCC also notes the use of the HHI index is a strong indicator which backs up the high market share enjoyed by Digicel.

4. Potential Effects of Discriminatory Pricing on Competition (Clause 4)

The ICCC notes the competition concerns raised by NICTA in relation to the notion of "club effect". While this may be true in theory, and may be occurring within PNG, NICTA may need to do more work to demonstrate that this is practically happening in PNG.

The preference of a consumer to choose a network may also be affected by different other associated services the network operator is offering (such as data, content, other value added services such as mobile banking, power purchase, etc.) besides the voice services and its rates. The ICCC is of the view that the number of services that are offered or the rates of the type of services offered, should not be seen as a hindrance to competition. The freedom of choice is a fundamental right of all consumers; and is pro-competitive. The licenced carriers should be encouraged to innovate and develop new services so consumers are attracted to join their competing networks.

While heavy or extreme price discrimination on service can be a huge issue leading to competitive damage when employed by a carrier with market power, to a certain extent price

discrimination is more a commercial decision for mobile operators on how best to efficiently allocate their resources and effectively market their services and prices to consumers. In other words, this relates to how best they can compete with each other. Why should the ability of one firm to promote and market its services more rigorously or innovatively to consumers, be seen as not being in the best interest of consumers and competition? It is the combination of the exploitation of market power and extreme price discrimination which causes damage to the market, and may potentially be in breach of the provisions of the NICTA Act and or the ICC Act.

Competition is meant to be ruthless because operators compete to take away market share from each other. This rivalry will ultimately result in benefits such as efficiency, innovation and quality services at affordable prices (to consumers and industry as a whole). Albeit the concentration of market share, the current circumstances may be an indicator for misuse of market power.

5. Proposal to remove ex post regulation (Clause 4.1.22)

As previously indicated to NICTA in the ICC's letter dated 4th October 2017, the ICC is against any proposal to remove ex post competition regulation in the telecommunications/ICT industry, or any other industry for that matter (a copy is attached).

Firms should not be prevented from acquiring or attempting to acquire market shares through innovation or by other means. This is because the incentive for businesses to attain market share encourages risk taking that generates innovation and economic growth, and provision of new innovative services.

The ICC was concerned with the proposal to remove ex-post competition regulation, and will continue to oppose such a provision, as it will effectively restrict application of Section 58 of the ICC Act and chill competition in the telecommunications/ICT industry of PNG, where the ICC is aware of a conduct of the dominant firm likely to abuse its dominance or market power. The ICC, as the competition regulator, will continue to take actions on any ex-post competition concerns in the ICT sector, and for this case, in the voice market.

6. Proposal for a Retail Service Determination (Clause 5)

Clause 5.2.3: Barriers to entry should be cost asymmetry based, and not focused solely on market share.

Clause 5.2.4: It is not anti-competitive to either have greater market share or attempting to acquire greater market share through the use of innovative measures or capital. The ICC also suggests for NICTA to take into consideration the possibility of customers switching and the ease of switching networks, if voice call rates or service offerings of one carrier change. Customers should not be locked into the one carrier by its exercise or misuse of market power of that firm.

Clause 5.2.8: Similar to comments made on Clauses 5.2.3 and 5.2.4.

Clause 5.2.10: Regulatory intervention such as the determination of Retail Service Price should be focused on protecting the competitive process to ensure that

consumers are not harmed, and NOT protecting individual competitors who are inefficient or un-innovative competitors.

7. Access Regime Proposal for NICTA

Given the capital intensive nature of the telecommunications industry in PNG, the ICCC believes that the entry of a new operator may not be forthcoming in the near future. In other words, the absence of an effective access regime is a barrier to entry. As such, the ICCC would like to propose to NICTA to consider improvements to the access arrangements/regimes for key network infrastructures that Telikom, Bemobile and Digicel already have and are using to provide fixed and mobile services. Whilst there are issues such as 'free-riding' associated with allowing smaller players to access infrastructures of established networks, where an access regime is introduced, NICTA should have some guidelines to ensure access to competitor's infrastructure is given on a reasonable terms so as to ensure the network operator earns return on its investment.

As indicated by NICTA, Digicel currently enjoys over 90% penetration in the telecommunications industry. This is attributed to Digicel's ability to construct new and maintain existing network infrastructures through effective capital raising and infrastructure deployment. As a result, Digicel has been able to significantly increase its subscriber base which has resulted in it acquiring a larger market share than Telikom and Bemobile.

Despite not having extensive capital resources, the ICCC understands that Telikom does enjoy a larger market share and exclusive rights over the key infrastructures such as submarine fibre cables in PNG in the provision of data services which rely on these. Currently Telikom and DataCo PNG Limited (DataCo) are the only companies in PNG that own and have access to the infrastructures for both domestic and international data services on terrestrial networks. All competitors have access to these services by satellite.

With the PNG Government's recent proposal to merge Telikom, Bemobile and DataCo into a single state owned telecommunications entity, Telikom and Bemobile will have a significant influence in the provision of data services.

Ultimately, Digicel, Telikom and Bemobile have some form of market power in different aspects of the telecommunications industry: Digicel, through its domestic network infrastructures for fixed and mobile services and its ownership of international correspondent carriers; while Telikom and Bemobile, through their network infrastructures of domestic and international fibre cables for data services.

Since convergence in the telecommunications industry is inevitable, consumers can now access both fixed and mobile services through the use of data services. Depending on the type of platform or device a consumer uses, the markets in the telecommunications industry will, or have already, overlapped each other and the interests of incumbent infrastructure owners.

The ICCC therefore proposes for NICTA to consider access regimes for key infrastructures in the telecommunications industry so that it can promote and protect the competitive process for the economic benefit of consumers and the country.

8. Conclusion

Whilst the ICCC fully supports NICTA's Draft Determination, the ICCC considers that 'access to certain essential inputs (such as towers or submarine cables for that matter) by third parties be made mandatory'; but with consideration for return on investment for the owner on a fair, reasonable and non-discriminatory terms.

We thank NICTA again for allowing the ICCC the opportunity to provide comments on the Proposed RSD.

Yours sincerely,



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for. **MR. PAULUS AIN**
Commissioner and Chief Executive Officer