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Our Ref: 7006-1.2/ss:aa

31st July, 2018

Mr. Charles S. Punaha

Chief Executive Officer

National Information and Communications Technology Authority

P.O. Box 8444

BOROKO, 111

National Capital District

Dear Mr. Punaha,

RE: PUBLIC INQUIRY: CERTAIN WHOLESALE SERVICES

RECEIVED
10 1 AUG 2018

BY: CEO

DECIA & A/DUAS

For your attention

We refer to NICTA's letter of 28th May, 2018, seeking comments from the ICCC on the potential declaration of certain wholesale services.

The ICCC's comments are set out below.

1. Wholesale capacity on, and access to, international fibre optic submarine cables

- The ICCC supports the declaration.
- It is not economically viable for duplication as this will raise the costs of individual licensees; hence the overall industry cost and the costs for consumers.
- The ICCC agrees with NICTA's reasoning that satellite is an inferior substitute; hence Kumul has 100% market share in this market;
- The ICCC also agrees that ex post regulation of abuse of dominant position is normally costly; hence it is better to have ex ante control to minimise potential abuse of dominant position.
- During the last declaration period, the ICCC presumes that not many players sought access and were given access to this service. One of the key reasons was that the access seekers or Kumul did not have appropriate infrastructure to transport capacity from Madang (to Port Moresby or wherever they have their base stations). Given the national transmission network (NTN) has been rolled out and is continuing, the ICCC believes the demand for access will gradually increase. NICTA should be mindful that it would be in the best interest of Kumul to slow the progress of NTN; hence, if possible, the ICCC suggest that NICTA should put pressure on Kumul to complete this network roll out and make it available through this

"Our Competition Watch Dog, Shaping our Market Economy and Protecting our Consumers"

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declaration, should such a declaration be made. Given this is going to be a re-declaration, the ICCC presumes that some of the challenges faced and lessons learnt during the past declaration period are going to be taken into account for this potential declaration.

- f. The ICCC supports the proposal for unbundled services because if this is not specifically clear, the access provider may use its market power in one service to tie the other service which could raise serious competition concerns. It would also have the effect of raising costs for the access seeker unnecessarily.
- g. Amongst others, the ICCC welcomes the proposal for the access prices to be cost-based; and that should be independently set by NICTA.

2. Wholesale voice call termination on individual fixed and mobile networks;

- a. The ICCC has no issues with regards to the definition of services for the purposes of this potential declaration.
- b. The ICCC supports the proposal for the regulation of prices based on costs; and that should be independently sent by NICTA.

3. Wholesale mobile access and call origination services

- a. The ICCC welcomes the proposal for the declaration of mobile tower sharing services. This will have the effect of reducing the overall cost of providing mobile services as operators start sharing towers; hence sharing the costs associated with maintaining and operating the towers. It will also allow competition in mobile services to be available to more customers.
- b. The ICCC believes that declaration of mobile tower sharing services will ease entry of new players and expansion of the incumbents, especially at the retail end; hence make the downstream markets (whether it be data, voice, or content) more competitive. This then gives consumers/subscribers some degree of choice, especially in the remote locations where at the moment only Digicel is predominantly operating.

4. Wholesale fixed access and call originating services

- a. Whilst the ICCC supports the proposal by NICTA **not** to declare various services identified under this category based on its assessment which the ICCC believes is sound, there is high likelihood that the access provider may leverage its market power and engage in anti-competitive conduct such as tying and/or bundling.
- b. However, the ICCC believes access to the broadband backbone for new and existing access seekers is paramount to improved customer service delivery and competition in the communications sector. With regards to access to dark fibre, whilst it is understood that access to it is not necessary for the promotion of competition in other markets, especially the retail segment, if sufficient capacity of dark fibre is not lit, then provisions of wholesale access to lit capacity would be limited. Therefore, it would result in supply being restricted to those who have already had access; hence deter entrant of potential new access seekers of lit capacity. The ICCC suggests that NICTA should therefore look at addressing this potential competition problem by allowing for sufficient capacity be lit correspondingly as

and when demand for lit capacity increases. The ICCC's understanding that such capacity can be delivered in a number of ways, but at least the provision of 'virtual' capacity to an agreed (or tariffed) capacity limit should be provided.

- c. NICTA might consider a trigger be initiated in its declaration relating to the percentage of under-utilised remaining lit fibre capacity, so that new capacity is lit and released for purchase by new or existing wholesale customers, so there is always available lit capacity for purchase. For example, an additional 20% of new lit capacity is required to be deployed once 80% of the existing lit capacity is utilised during 50% of the peak data traffic periods within the last month. Other trigger points might be considered. Such deployment should not be unreasonably delayed, with (say) a one month deployment period defined, unless a longer period is justified in writing by Kumul and agreed by NICTA in writing. To ensure compliance, a set sanction regime should be imposed on Kumul on a per month basis, for delays in deployment beyond the defined or agreed period. It should also be noted, that access seekers to this broadband capacity need to pay a price for the services and/or capacity being provided by Kumul which allows recovery of the costs of these upgrades over a reasonable period commensurate with the life of the assets deployed.

5. Wholesale broadband capacity

- a. The ICCC concurs with the assessment of NICTA and supports the proposal for declaration based on its reasons and considerations discussed in paragraphs 1 and 4 above.

6. Wholesale leased lines services

- a. The ICCC finds it difficult to agree with NICTA's conclusions and makes the following comments on the assessment and consideration of NICTA.
- b. Should access to lit capacity, as discussed in paragraph 4 above, not be available on reasonable terms and conditions, and within reasonable time frames, NICTA should leave open the option to reconsider a declaration decision on opening leased line capacity for new entrants and existing competitors. These leased line services would use lit fibre capacity on a dedicated basis by customer. And the customer could then use this leased capacity as it sees fit. Kumul should not be allowed to foreclose access to 'virtual' capacity for transmission and at the same time exclude provision of leased line services. Similarly, Kumul should not be allowed to foreclose on provision of leased line capacity and at the same time exclude provision of dark fibre service. NICTA should not completely close the door on declaration of these 'less managed' lit or unlit fibre services, as they form the basis of the transmission layer for data, and hence for content in the coming years.

7. Other comments

- a. Under paragraph 2.1.1 (d), page 4, it states that "The terms and conditions on which an access provider fulfils its non-discrimination obligations are to be **commercially agreed** between the access provider and the access seeker." Such commercial agreement may be anti-competitive. In cases where such agreements raise competition concerns, it can be challenged under the ICCC Act, unless it is specifically authorised under the ICCC Act or under NICTA's law, if any.



We thank NICTA for allowing the ICCC the opportunity to provide its comments on this matter. We trust the ICCC's comments would assist NICTA in its consideration of the proposed declaration of various wholesale services.

Yours sincerely,

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MR. PAULUS AIN

Commissioner and Chief Executive Officer