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Our Ref:

21 June 2021

Mr. Kila Gulo-Vui
Chief Executive Officer
National Information & Communication Technology Authority
P.O Box 8444
BOROKO
National Capital District

Dear Mr. Guli-Vui,

**Re: NICTA Public Consultation on "Revised Reference Interconnection Offer (RIO)
from PNG DataCo Limited on various wholesale access services"**

We refer to the subject matter.

Find *enclosed* KTHL Retail Businesses' (Telikom PNG Limited and Bemobile Limited) responses, which addresses the matters for consultation on the subject and also reinforces the main concerns we have already raised during the consultation carried out on the previous Reference Interconnection Offer (RIO) from PNG DataCo Limited on various wholesale access services in 2020.

We look forward to the outcome of the consultation.

Yours faithfully,
Kumul Telikom Holdings Limited

Noel Kera (Mr)
Group Head of Legal & Regulatory Services
KTL Retail Businesses



Kumul Telikom Holdings Limited
Retail Businesses
(Telikom PNG Limited & Bemobile Limited)

Response to
Public Consultation on the
**“Revised Reference Interconnection Offer from PNG DataCo
Limited on various wholesale access services”**

Monday: 21st June, 2021

1. INTRODUCTION

This paper is in response to NICTA's request for the public to engage in Public Consultation in accordance with Section 229 of the NICT Act in relation to the Revised Reference Interconnection Offer (RIO) from PNG DataCo Limited on Wholesale Submarine Cable services and Wholesale Broadband Capacity services.

The Kumul Telikom Holdings Limited (KTHL), Retail Businesses, namely, Telikom PNG Limited and Bemobile Limited, note that the revised Reference Interconnection Offer (RIO) from PNG DataCo show a few changes from the last RIO submitted by DataCo in 2020, notably changes done to certain clauses in Annexure A: the Master Service Agreement (MSA), in response to NICTA's Statement of Reasons for the rejection of the 2020 RIO in December 2020.

Therefore, in this paper, KTHL Retail Businesses, will reiterate and re-emphasize most of its views highlighted in Telikom's responses in the 2020 RIO and raise other new matters it finds necessary.

This response paper, therefore, covers the following:

- A brief overview of KTHL Retail Businesses' position on the principle surrounding the exercise of reviewing the RIO.
- It seeks clarifications from NICTA of RIO's product descriptions and conditions for interconnect.
- Proposes in detail specific comments and amendments on Key Matters set in relation to the Reference Interconnection Offer (RIO) from PNG DataCo Limited on Wholesale Submarine Cable services and Wholesale Broadband Capacity services.

2. BACKGROUND

On 19th February 2019, the Minister for Information and Communications declared a number of wholesale access service pursuant to Section 130 of the National Information and Communications Technology Act, 2009 ('the Act').

The Reference Interconnection Offer covers the declared services below:

- the international submarine cable transmission capacity service
- and the Wholesale Broadband Capacity Service

On 13th August 2020, DataCo provided a Reference Interconnection Offer ("RIO") to NICTA pursuant to Section 141 of the Act. NICTA issued a Public Consultation on 19th August 2020. Telikom PNG and other interested parties submitted comments.

NICTA then concluded the public consultation in accordance with Section 229 of the Act and decided on that occasion to reject the RIO. On 29 December 2020, NICTA published its statement of reasons at its website (<https://www.nicta.gov.pg/download/nicta-report-statement-of-reasons-dataco-rio/>).

DataCo has taken into account the comments in the Statement of reasons referred to above and has re-submitted on 9th April 2021 a revised RIO for NICTA's acceptance.

Section 142(5) of the Act requires NICTA, before it accepts a RIO, to publish the RIO and engage in a public consultation in accordance with Section 229 of the Act, and to consider any submissions that are received within the time limit specified by NICTA (being at least four weeks after the date of publication). Hence, the public consultation process is currently going on.

If the RIO is accepted by NICTA, it becomes a written undertaking to provide the wholesale services which it covers to access seekers (other licensed operators) on the terms and conditions contained in the RIO.

3. GENERAL KTHL Retail Businesses' VIEWS

Several basic principles should be observed when conducting the review of RIO from PNG DataCo Limited for the purposes of the competition in PNG.

The functional level at which DataCo's products and services are traded is an important element to be taken into account in this exercise. In this case, NICTA should examine the relevant market for replacement broadband services at the level of the retailer on the open market pointing out that the relationship to be considered is the relationship between DataCo and ISPs which is of importance in assessing the effects on competition on the relevant broadband market.

NICTA should, in the use of RIO, distinguish between a market for the provision of communications services to end users (i.e., the retail market) and an upstream market for the provision of access to facilities necessary to provide such communications services (i.e., a wholesale market). The distinction between wholesale and retail services should be at the very core of the regulatory framework under which this RIO should operate.

In PNG like elsewhere, there is distinction between a market for the provision of communications services to end users (i.e., the retail market) and an upstream market for the provision of access to facilities necessary to provide such communications services (i.e., a wholesale market) – DataCo should operate solely in the latter and Telikom and other ISPs at the former.

The reasoning KTH Retail Businesses points out this at outset, is highly relevant to the PNG communications sector. The RIO in its current form (i.e. lack of clear definition and distinction of demarcations) risks creating incentives for DataCo to build a presence on one or more of the functional levels. Accordingly, ISPs such as KTH Retail Businesses require access to several upstream and downstream layers in order to provide services. For example, KTH Retail Businesses require access to the DataCo's wholesale products in order to provide their retail services; in the meantime, DataCo is the sole owners of these inputs in the wholesale market.

3.1. Product definition

3.1.1. KTH Retail Businesses note that the word **Customer** in the RIO, MSA, and SLA is vague. Hence, Telikom suggests that NICTA must define the meaning of "**Customer**" in the RIO. Customer in the RIO, MSA, and SLA should be "**ICT Retail Customer or Telco Operator**" and not any customer to separate wholesale and retail customers from demanding the related services.

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3.1.2. In addition to the point above, the KTH Retail Businesses, wish to propose that NICTA should issue licenses only to **access seekers** who will resell capacity to **end users** and not for their own consumption. This is to protect the Retail Market and ensure that competition exists. Otherwise, the KTH Retail Businesses suggest that ICT operators should be given the chance to participate in awarding licenses to new licensees or at least some form of conditions to penalize non-compliance should be provisioned.

3.1.3. The KTH Retail Businesses' understanding of **"network services"** as defined in Section 4 of the NICT Act including the definitions of **"access provider"** and **"access seeker"** under Section 125 and Section 126 of the NICT Act is that there must be a clear demarcation between the provisions of **"wholesale"** and **"retail"** services.

3.2. Conditions for interconnect

3.2.1. The RIO seems to suggest that there are ambiguities and no clear demarcation between wholesale and retail, and it also suggests that NICTA does not have the power to keep the wholesaler out of the retail market.

3.2.2. Furthermore, the RIO is also suggesting that NICTA does not have the power to ensure that **"access seekers"** seek access for purposes of serving **"end users"** in the market, and prevent an **"end user"** from coming to the market in the guise of an **"access seeker"**.

3.2.3 The RIO seems to be based on the fact that NICTA has issued **"end users"** with **"ISP"** licenses, which has enabled those **"end users"** to bypass wholesale service **"access seekers"** such as Telikom and to go direct to the access provider.

Therefore, the KTHL Retail Businesses ask NICTA to clarify the following:

- (1) Is it not a requirement under the NICT Act that an **"access seeker"** of declared wholesale service must seek access for the purpose of providing services to **"end users"**, and not for its own consumption?
- (2) Does the NICT Act permit an access provider of a declared wholesale service to bypass a wholesale customer or retail service provider and sell services direct to an end user?
- (3) Is NICTA aware that end user ICT customers are going directly to DataCo for wholesale broadband capacity service at costs way less than 90% of the cost, completely decimating the duly qualified Retail Service Provider's revenue, business opportunities, and imminent loss of employment for its staffs? KTHL can provide supporting details should NICTA require.
- (4) Does the NICT Act permit NICTA to issue an **"end user"** a license for the purpose of seeking access to a declared wholesale service, which is already supplied by a wholesale customer or retail service provider?
- (5) Could NICTA provide the register of operators' licenses as provision in article 4 of NICT Act?

The KTHL Retail Businesses urge NICTA to seriously address these matters as they could have among other effects, the **lessening of competition** in the retail services market including the possibility of **price squeezes** affecting the ability of retail service providers to set competitive prices or adversely affect its business continuity.

4. KEY MATTERS

Below are KTHL Retail Businesses' (Telikom/Bemobile) views on the outlined Key Matters stated in the Consultation Paper:

Key Matters for Consideration as per NICTA.	KTH Retail Businesses' responses accordingly:
A. The form and minimum requirements of the RIO	<p>The KTH Retail Businesses (Telikom/Bemobile) agree that DataCo's RIO seems to fulfill almost all the requirements for an RIO in section 141 of the Act.</p> <p>However, DataCo should make it known more clearly on its part to comply with the terms of the RIO concerning DataCo's responsibilities, and its non-discrimination and related access obligations as per s.141 (1) (b).</p>
B. Previous involvement in this RIO by NICTA	<p>The KTH Retail Businesses (Telikom/Bemobile) note from the Discussion Paper that DataCo has had previous discussions with NICTA on the requirements for the RIO in general, prior to the 2020 RIO and NICTA has now engaged with DataCo in relation to the content of the MSA. DataCo has also shared its detailed modelling of service costs with NICTA via a number of presentations.</p> <p>The KTH Retail Businesses (Telikom/Bemobile) also understand that the RIO has eventuated due to the Service Specific Pricing Principles (Submarine Cable Services) Determination 2019.</p>
C. Services covered in the RIO	<p>The KTH Retail Businesses (Telikom/Bemobile) note in the Annexure A - Service Pricing Offer of the RIO that:</p> <ol style="list-style-type: none"> <i>Wholesale Internet Service (WIS)</i> – capacity starts at “Up to 300 mbps”. The KTH Retail Businesses disagree with this and strongly suggest that capacity should start at 500Mbps to restrict service to be available only to licensed ISPs and not open to non ISP customers/end users. The “up to designation” will seem to create room for abuse where non ISP customers can also purchase. <i>Domestic P2P Metro (up to 1km) – over Fiber delivered to Customer Premises and Domestic P2P Metro (more than 1km) – over Fiber delivered to Customer Premises</i>, capacity starts at 10 Mbps up to 10, 000 Mbps. The KTH Retail Businesses (Telikom/Bemobile) strongly suggest that these metro services should be eliminated and confined to national domestic trunk routes. The Wholesale broadband capacity service declaration must be for national

	<p>trunk routes only and not for local metropolitan services. Local metropolitan services should be left to the retail market segment to avoid the mix up of different market players which can further lead to market manipulation and non-competition. This is because Telikom PNG and other Retail Internet Service Providers are selling similar metro services up to 10Mbps to end-users in the Retail Internet Market at prices that are higher than what those proposed by DataCo in this RIO, to cater for their costs as well.</p> <p>Therefore, the KTH Retail Businesses (Telikom/Bemobile) strongly suggest that these metro services should be eliminated in the wholesale market.</p> <p>The understanding in all other industries including the ICT Industry has always been that access seekers (retailers) will purchase from the access provider (wholesalers) in bulk and retail to end users.</p> <p>3. <i>International P2P (IP2P) over Subsea Fibre delivered to at the CLS.</i> The KTH Retail Businesses (Telikom/Bemobile) strongly suggest that DataCo should service only up to the landing station and leave it to the ISPs to service end users.</p>
<p>D. Relationship between the RIO and the proposed amendment to the <i>Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019</i></p>	<p>The RIO and the proposed amendment to the <i>Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019</i> are directly related.</p> <p>The KTH Retail Businesses (Telikom/Bemobile) note from this Discussion Paper that same models have been used with the same cost data and demand assumptions for the maximum average prices in the amended Determination and the proposed prices in Attachment B of the RIO. However, The KTH Retail Businesses are not given full access to details of the models, hence, it is still unclear whether DataCo's Cost Modelling covers last mile since DataCo has been approaching end users/retail customers who are not licensed ISPs?</p>

5. CONCLUSION & RECOMMENDATIONS

In conclusion, The KTH Retail Businesses (Telikom/Bemobile) acknowledge that the RIO from PNG DataCo Limited on various wholesale access services captures detailed Business documents and service pricing for the services concerned.

However, the KTH Retail Businesses (Telikom/Bemobile) main concern is of the matter of market demarcation between wholesale and retail markets. Therefore, we refer NICTA back to our argument on Clause 5 of Wholesale Service Declaration No.1 of 2019 in our submission on the amended Determination that the demarcation of wholesale and retail services is very critical in the ICT industry. Hence, we urge NICTA to seriously address these matters to ensure anti-competitive behaviors and market distortion mechanisms particularly in the retail market space by the access provider are handled properly before accepting this RIO. Otherwise, ISPs including Telikom and Bemobile will be forced out of the market and the competition objective as specified in the Section 124(1) (a) of the NICT Act will be violated.