



DISCUSSION PAPER
Public Consultation on Revised Reference
Interconnection Offer from PNG DataCo Limited on
various wholesale access services.

NICTA'S STAFF RESPONSE TO COMMENTS
REPORT

24th September 2021

1. Purpose of this Report

This Response Report sets out NICTA's Staff responses to the main comments that interested parties have included in their submissions on the Discussion Paper.

NICTA Staff has considered carefully all submissions and comments received and responded to key comments. These comments are set out in the table below and will form the basis for NICTA's consultation with DataCo.

Submissions received from Kumul Telikom Holdings Limited Retail Business and Digicel and these have been posted on NICTA's website.

The Annex to this Report only considers main comments in submissions. However, all comments have been considered carefully by NICTA's staff. The comments and responses set out in this Report combine all submissions from each party for convenience.

NICTA thanks the stakeholders who have made submissions to this consultation. Their contribution to the process and to improving ICT regulation in PNG is appreciated.

Annex: Summary of Key Comments received in Submissions

Summary of the Key Comments

1. Kumul Telikom Holdings Limited (KTHL)				
Item	Issue	subject reference	Summary of comment	Summary of NICTA response
1	Market Classification as Retail/Wholesale	June 2021, Section 2, pp. 3	KTHL submits that current public consultation on Reference Interconnection Offer (RIO) is an opportunity for NICTA to clearly distinguish between a retail and wholesale market.	<p>NICTA understands the point made but disagrees with this comment.</p> <p>The Act defines Wholesale Service very clearly in terms of the customer to whom a service is sold and the purpose to which that customer then puts the service. In addition, RIO is intended to form the basis for negotiation of an interconnection agreement for the provision of wholesale declared services, so there is no need to consider retail services or the distinction.</p> <p>There are other issues associated with the wholesale / retail distinction that are of concern to KTHL, and NICTA is taking these up separately.</p>

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2	DataCo Licence	June 2021, Section 2, pp. 3	KTHL comments that DataCo should concentrate on the wholesale market (upstream) for the provision of access facilities necessary for communications services.	<p>NICTA disagrees with this point. DataCo's licence allows it to serve both the wholesale and retail markets. NICT Act does not categorize who is going to be an "access seeker" or "access supplier". All licences issued to all operators including DataCo are unified licences, which qualify them to provide telecommunication services to the public.</p> <p>NICTA has already raised this matter (whether, as a matter of policy, any SOEs should have more limited licences) with the Minister</p>
3	Market definition	June 2021, Section 2, pp. 3	The RIO in its current form lacks clear market definition	NICTA disagrees with this point. This point appears to relate to the wholesale-retail demarcation issue, which is more fully dealt with in the items below, especially item 10.
4	Customer Definition under RIO	June 2021, Section 3, pp. 3	KTHL submits that term customer should be defined to mean "KCT Retail Customer or Telco Operators"	<p>NICTA disagrees with this point.</p> <p>There is no need to re-define the term as it is a wholesale access agreement and customer under MSA means wholesale customer. A RIO only relates to the</p>

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				provision of declared wholesale access services to wholesale customers.
5	Licensed re-sellers (wholesalers)	June 2021, Section 2, pp. 4	KTHL comments that NICTA should issue separate licenses only to access seekers who are in the business to re-sell capacity	NICTA disagrees. This is a licensing matter, not a RIO matter.
6	Definition of Network services, access provider & access seekers	June 2021, Section 2, pp. 4	KTHL submits that the definition of the terms-network services, access provider and access seekers implies that there must be a clear demarcation between the wholesale and retail services	NICTA disagrees with this comment for the reasons already given above.
7	NICTA lacks mandate to properly regulate wholesale	June 2021, Section 2, pp. 4	KTHL submits that there are ambiguities and lack of proper demarcation between wholesale and retail market. Thus, creating more challenges for NICTA to effectively regulate the different markets.	NICTA disagrees with this comment for the reasons already given above.
8	Internet Service Providers Licenses	June 2021, Section 2, pp. 4	KTHL submits that NICTA issued end users with ISP license that allowed the end users to bypass the wholesale service	This is untrue, and not related to the RIO in any case.
9	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL pose a first question "Is it not a requirement under the NICT Act than an access seeker of declared services must seek access for its purpose and not for its own consumption"	NICTA agrees with the comment. The definition in Section 4 of the Act makes it clear that wholesale services are not for own use, but for inclusion in retail services, whether as components or as resold services.

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10	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL second question “does the NICT Act permit an access provider of declared services to bypass a wholesale customer or retail service provider”	<p>The NICT Act does allow for that, but in those circumstances the sale will be of a retail service not a wholesale service, and will be subject to terms and conditions that apply to retail services. The RIO has terms and conditions that apply to wholesale services.</p> <p>This is a matter that NICTA is addressing separately to the RIO. NICTA is now preparing an instrument to provide guidance to the industry about the definitions of ‘wholesale’ and ‘retail’ in the Act and the consequences of those definitions for the way services may be provided and for NICTA’s monitoring and enforcement activities.</p>
11	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL third question was “NICTA aware that end user customer approaching DataCo for wholesale broadband capacity at a cost way less than 90% of the cost”	NICTA was recently made aware of this and is addressing it as a separate matter. It is not a RIO issue.
12	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL fourth question was “does NICT Act permit NICTA to issue an end user a licence for the purpose of seeking access to declared services”	The question is confused. Once licensed, the licensee is not an end-user, but a licensed operator subject to the licensing requirements under the Act.

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13	Public Register on licensing	June 2021, Section 2, pp. 4	KTHL fifth question was “could NICTA provide the register of operator licence data”	NICTA does have such a public register and it is available on-line on NICTA's website (www.nicta.gov.pg)
14	Form and requirement of RIO	June 2021, Section 2, pp. 5	KTHL agrees with the DataCo's RIO submission.	NICTA notes the comments offered by KTHL. Refer to NICTA's response to Digicel's key comments below.
15	Services covered in the RIO	June 2021, Section 2, pp. 5	KTHL commented that the current bandwidth offering by DataCo as Wholesale Internet Service (WIS) should start from 500Mbps instead on 300Mbps.	NICTA disagrees with this proposal. The proposal is based on the incorrect assumption that capacity determines what is wholesale and what is not. This is incorrect and the Act makes the distinction between wholesale and retail very clear without using capacity as a determinant. The proposal would have the further problem of unfairly disadvantaging smaller retail service providers

2. Digicel PNG Limited

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1	Proposed amendments	June 2021, Section A, para 8, p 2	Digicel claims that NICTA has not satisfactorily analyze the proposed variation prior taking a decision	NICTA disagrees with this comment. NICTA has done a lengthy analysis and published it under the statement of reasons for NICTA's decision in December 2020 and published the analysis on its website.
2	Review period	June 2021, Section A, para 9, p 3	Digicel is concerned that the proposed RIO only permit prices to be reviewed on the anniversary of the agreement.	NICTA notes this point and will approach DataCo to reword the clause to allow for review in such time for changes to take effect at the beginning of each calendar year, while the Declaration is in force.
3	Term	June 2021, Section A, para 21, p 4	Digicel is concerned about the term of the agreement that might affect any future revised price change.	The term of the agreement does not necessarily mean price will remain unchanged for the duration of the contract. NICTA will request DataCo to consider including a review clause requiring review at the beginning of each year for the duration of the contract.
4	Term	June 2021, Section A, para 22, p 4	Digicel objected to the proposed wording under clause 3.3. Digicel claims that any agreement reached can only be reviewed after the expiry of the contract.	NICTA agrees with the comment. NICTA will propose to DataCo rewording the clause so that the contract can be reviewed annually (12 months basis) in a

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				timely and fair manner, with timing consistent with item 3 above.
5	Objective criteria	June 2021, Section A, para 28, p 5	Digicel submits that clauses under service bond still does not include any objective criteria.	NICTA disagrees with the comment. Credit worthiness is an objective criterion that can be reasonably applied and objectively determined.
6	Billing disputes	June 2021, Section A, pp. 5	Digicel commented that the 5 days allowed to raise any billing disputes is not sufficient.	NICTA agrees with this comment and will propose to DataCo to consider setting an extended time period.
7	Suspension of Service	June 2021, Section A, para 36, p 6	Digicel raised a valid point against clauses 9 “suspension of service”. Wording under the clause is vague.	NICTA agrees with this point. NICTA will propose to DataCo to add more clarity into the relevant clause.
8	Termination	June 2021, Section A, para 45, p 6	Digicel commented that despite DataCo’s effort to rectify mutual grounds for contract termination the current wording under the revised RIO has not addressed the concern.	NICTA agrees with this point and will approach DataCo to address the concern expressed.
10	Service level standard	June 2021, Section A, para 49, p 7	Digicel submits that the current service level promised by DataCo is below the international standards.	No, PNG standards apply here because of the limitations of the domestic network at this stage. Will be reviewed however, outside of the RIO.

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11	Internal ambiguity	June 2021, Section A, para 58(b), p 8	Digicel commented that there is confusion under clause 18.9 of the RIO on the use certain terms.	NICTA agrees and will ask DataCo to remove the ambiguity identified.
12	Prices	June 2021, Section A, para 62, p 8	Digicel submits that the proposed pricing has not been meaningfully analysed.	NICTA disagrees. NICTA has independently examined the basis of pricing and is satisfied with the levels and structure in the RIO.
13	Further consultation of final draft.	June 2021, Section A, para 67.p8	Digicel expresses its interests to comment on the RIO draft determination prior NICTA finalizing.	A final draft will be circulated following further discussions with DataCo as suggested in this report, but it will not be circulated as a new RIO. However, NICTA believes that the RIO has gone through the consultation required by the Act and sees that as sufficient.