



## **CONSULTATION PAPER**

# **Consultation on the potential declaration of certain wholesale fixed telecommunications services**

*Issued on 10th December 2013*

## Contents

<b>1</b>	<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>2</b>	<b>BACKGROUND</b> .....	<b>2</b>
2.1	DECLARED SERVICES .....	2
2.2	THE DECLARATION PROCESS .....	3
2.3	SUBMISSIONS IN RESPONSE TO THIS CONSULTATION PAPER .....	7
<b>3</b>	<b>DEFINITION OF THE RELEVANT MARKET</b> .....	<b>8</b>
3.1	THE CUSTOMER DIMENSION .....	8
3.2	THE SERVICE DIMENSION .....	8
3.3	THE GEOGRAPHIC DIMENSION .....	8
3.4	PROPOSED CONCLUSION.....	9
<b>4</b>	<b>PARTICIPANTS IN THE RELEVANT MARKETS</b> .....	<b>10</b>
4.1	ON THE SUPPLY-SIDE .....	10
4.2	ON THE DEMAND-SIDE.....	10
<b>5</b>	<b>THE SUSCEPTIBILITY OF THE MARKET TO EX ANTE REGULATION OF SMP</b> .....	<b>12</b>
<b>6</b>	<b>ANALYSIS OF THE MARKET FOR SMP</b> .....	<b>13</b>
<b>7</b>	<b>CONSIDERATION OF WHOLESALE SERVICES FOR POTENTIAL DECLARATION</b> .....	<b>15</b>
<b>8</b>	<b>NEXT STEPS</b> .....	<b>16</b>
<b>9</b>	<b>SUMMARY LIST OF DISCUSSION QUESTIONS</b> .....	<b>17</b>

## 1 Executive summary

The *National Information and Communications Technology Act 2009* (the Act) provides for NICTA to conduct public inquiries into whether or not particular wholesale services should be designated as 'declared services' by the Minister. An operator licensee that supplies a declared service must comply with particular non-discrimination obligations. The terms and conditions of supply of a declared service must be consistent with the general pricing principles specified in the Act and the service-specific principles that must be specified by NICTA for each declared service. NICTA may also be called upon to arbitrate a dispute between two operator licensees regarding the terms and conditions of supply of a declared service.

NICTA staff have examined the issues as far as current information permits relating to certain wholesale fixed telecommunications services, in particular wholesale access to fixed network facilities and services as envisaged in subsections 131(2) and 131(7) of the Act. NICTA staff are of the view that it is not presently an appropriate time for NICTA to conduct an inquiry into the potential declaration of the services given that the relevant particular markets currently seem to be in a state of flux as a result of substantial current investment activity, and NICTA staff do not want to risk distorting those developments or preventing or delaying the potential emergence of additional competition. Accordingly, NICTA staff propose deferring examination of the potential declaration of any of these services for a period of at least 12 months (until first quarter 2015).

NICTA has preserved its position at this stage on the key issue of whether and when to hold a public inquiry into the potential declaration of the relevant services, but has nonetheless set out a range of considerations for comment by interested stakeholders and members of the public with an interest in these matters. Written comment should be submitted via email to [consultation.submission@nicta.gov.pg](mailto:consultation.submission@nicta.gov.pg) and must be received by 12 noon Friday 31<sup>st</sup> January 2014.

## 2 Background

Operator Licensees may, at any time, supply wholesale services to other Operator Licensees under terms and conditions that are commercially agreed. In addition, a regulated wholesale access regime is provided for in Part VI of the *National Information and Communications Technology Act 2009* (the Act). Under that regime:

- (a) NICTA may, following an inquiry, recommend to the Minister that certain wholesale services should be made declared services;
- (b) The supply of declared services is subject to the general pricing principles specified in the Act and also to service-specific pricing principles that are determined by NICTA;
- (c) Access providers (i.e. operator licensees) that supply declared services are required to comply with certain non-discrimination obligations in relation to their supply of declared services (unless exempted). This means that an access provider must:
  - supply the declared service to, and interconnect relevant facilities with, any access seeker that requests such (s.136);
  - supply the declared service and associated interconnection services to access seekers with a technical and operational quality of service equivalent to that which the access provider supplies to itself (s.136);
  - supply the access seeker with ordering and provisioning and fault handling services that are equivalent to that which the access provider supplies to itself (s.136); and
  - supply the access seeker, if requested, with billing information necessary to enable the access seeker to supply retail services using the declared service (s.136).<sup>1</sup>
- (d) 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. An access provider may also set out terms and conditions in a reference interconnection offer (RIO). A RIO must be approved by NICTA;
- (e) NICTA may specify model non-price terms and conditions relating to the supply of a declared service (s.133);
- (f) In the event that an agreement on the terms and conditions relating to an access provider's fulfilment of its non-discrimination obligations cannot be reached, the terms and conditions of access will be as set out in any relevant RIO that the access provider has submitted to NICTA and which NICTA has accepted (s.138). In the absence of both an agreement and a RIO, the terms and conditions of access are those determined by NICTA through arbitration (s.138). In making such a determination, NICTA must have regard to any relevant model non-price terms and conditions it has previously specified (s.133) and among other factors (s.149).

### 2.1 Declared services

There are currently five declared services, as follows:

- Three services were deemed to be declared from the commencement of the Act in accordance with section 131 of the Act, namely:

---

<sup>1</sup>Section 21 of the *National Information and Communications Technology (Operator Licensing) Regulation, 2010* specifies the required billing information.

- domestic mobile terminating access service;
- domestic fixed terminating access service; and
- all facilities access services that may be supplied by means of any facility constructed under a universal access Project Agreement for the life of that facility (of which there is currently none); and
- two services were declared by the Minister, on NICTA's recommendation, on 22<sup>nd</sup> March 2013, namely:
  - International submarine cable transmission capacity services; and
  - International submarine cable gateway access services.

Subsection 131(7) of the Act envisages that NICTA will, within the years immediately following the commencement of the Act, inquire into the potential declaration of, *inter alia*, the following wholesale services or any similar wholesale services:

- Domestic inter-exchange transmission services;
- domestic transmission tail services;
- domestic digital data services, such as xDSL and/or Ethernet services;
- unbundling of specified facilities located between a local exchange and the network boundary, whether unconditioned and/or conditioned (including spectrum sharing);
- facilities access services associated with fixed network facilities (including exchanges); and
- facilities access services associated with fixed network facilities (including exchanges).

All six of the above-mentioned services, together with any related services, are the focus of the current Consultation Paper.

## 2.2 The declaration process

NICTA may only recommend that the Minister declare a particular wholesale service if NICTA is satisfied that such a declaration would satisfy all of the declaration criteria set out in section 128 of the Act as follows:

The "declaration criteria" are as follows –

- (a) that declaration of the wholesale service will further the achievement of the objective of this Part as set out in Section 124; and
- (b) specifically, in relation to the competition objective, that –
  - (i) access or increased access to the wholesale service (as a consequence of declaration) is necessary for the promotion of effective competition in at least one market other than the market for the wholesale service; and
  - (ii) the wholesale service is supplied in whole or in part via a facility that cannot feasibly be substituted, as a matter of commercial reality, via another facility in order to supply that wholesale service; and
- (c) specifically, in relation to the efficiency objective, that –
  - (i) declaration would not materially compromise the incentives for efficient investment in any facility over which the wholesale service may be supplied; and

(ii) access or increased access to the wholesale service (as a consequence of declaration) is technically feasible having regard to the specific factors identified in Section 124(2)(a); and

(iii) in the case of wholesale services that are facilities access services, increased access to the wholesale service would avoid inefficient replication of underlying facilities that may be efficiently shared.

Before NICTA can consider whether or not the declaration of a particular service would satisfy the declaration criteria it must first identify suitable candidate services for consideration. Although some potential wholesale services are specified in subsection 131(7) of the Act, this paper is based on the use of the market analysis process to identify suitable candidate wholesale services consistent with international best practice in ex ante competition regulation. That process is explained below.

### **2.2.1 Approach to market definition**

Although it is not intended to conduct an inquiry at this time, NICTA staff's considerations of the market definition issue are being canvassed through this Consultation Paper to permit stakeholder input to the process from the earliest time.

The theory of market definition is well-understood. Markets are defined for regulatory purposes by considering substitutability in supply and demand terms. Market boundaries are determined when substitution ceases to be material. Markets are best described in terms of the three dimensions listed below:

- **Customers:** A group of customers has a common set of objectives that are satisfied by services/products.
- **Product/service:** A supplier offers services/products to a market to satisfy customer objectives.
- **Geography:** Customer objectives, and the services/products that meet those objectives, have to be available in a common location, for a transaction to take place, and a market to exist.

The customer dimension is particularly relevant because the existence of distinct sub-sets of customers with different service requirements may well indicate that there are really two distinct markets. Most obviously there is a clear distinction between retail markets (serving end users) and wholesale markets (providing services to intermediary licensees which on-sell to end users). As the matters currently under consideration relate to Part VI of the Act, the customer dimension must be defined as 'wholesale customers'. A wholesale customer is defined in the Act as 'an operator licensee, but excluding circumstances where that operator licensee acquires an ICT service for that operator licensee's own personal use rather than to facilitate the supply of an ICT service by that operator licensee'.

As noted above, the boundaries that separate different markets are understood in terms of the services/products that comprise each market, and specifically in terms of the ability of one product to be substituted for another. The degree of demand-side and supply-side substitutability will depend on factors such as the characteristics of the underlying technology, the utility of the product, costs and prices, and trends in each of these areas (e.g. convergence of technologies, costs or service features).

Markets may also be defined in terms of geography. Within telecommunications regulation there is a general pre-disposition to define markets as national unless there are demonstrable regional variations in supply or demand.



## 2.2.2 The hypothetical monopolist test

The concept of the hypothetical monopolist test is often a useful tool to identify close demand-side and supply-side substitutes. A product is considered to constitute a separate market if a hypothetical monopolist supplier could impose a small but significant (taken to mean a 5–10% increase), non-transitory (at least one year's duration) increase in price without losing sales to such a degree as to make the exercise unprofitable. Whether or not the small but significant non-transitory increase in price (SSNIP) is profitable will depend on the number of customers that move to a substitute service or/and the extent to which alternative suppliers are enticed into the market.

The hypothetical monopolist test starts by identifying a focal product, i.e. the most narrowly-defined product that is obviously in the named market. Other candidate products will then be included in the same market depending on the extent to which any of the following forms of substitution applies between the candidate product and the focal product:

- Wholesale supply-side substitution;
- wholesale demand-side substitution; and
- retail demand-side substitution.

If the SSNIP would be unprofitable because customers/users would switch to other products or because suppliers of other products would enter the market to compete with the monopolist, then the market definition should be expanded to include the substitute products in the same market. If the SSNIP would be profitable then this will be evidence of the absence of appropriate substitutes and therefore that a discrete market exists.

## 2.2.3 Approach to determining whether a market is susceptible to ex ante regulation

The European Commission has adopted a set of three threshold criteria to be applied to markets under consideration for regulation before a full-scale market analysis is undertaken.<sup>2</sup>The application of this threshold test has been well documented by the Body of European Regulators for Electronic Communications (BEREC)<sup>3</sup>and has since been adopted in many countries outside of Europe. This test has been regarded by commentators as an important filter for determining whether or not a particular market warrants consideration for the potential introduction of ex ante regulation such as that provided for in Part VI of the Act.

Under this approach a particular market will be considered susceptible to ex ante regulation if:

- (1) it has high and continuing barriers to entry;

---

<sup>2</sup>European Commission (2007), Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications and service, OJ L344/25 of 28 December 2007. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:344:0065:01:EN:HTML> See also the Explanatory Note - Accompanying document to the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications and services, SEC (2007) 1483 final.

<sup>3</sup>European Regulators Group (2008), Report on guidance on the application of the three criteria test, Available at [www.erg.eu.int/doc/publications/erg\\_08\\_21\\_erg\\_rep\\_3crit\\_test\\_final\\_080604.pdf](http://www.erg.eu.int/doc/publications/erg_08_21_erg_rep_3crit_test_final_080604.pdf)

- (2) it is not tending towards being effectively competitive; and
- (3) ex post regulatory controls are unlikely to be sufficient to address concerns associated with market dominance.

A market that satisfies all three criteria is susceptible to ex ante regulation—that is, the application of ex ante regulation *may* be warranted. In such a case, a further more detailed analysis of the market is in order. However, even if a particular market fulfils all three criteria it does not automatically mean that ex ante regulation is necessary in that market. NICTA may still forbear from regulation to monitor the way the market develops, particularly if there are other constraints that might discourage or prevent the exercise of any significant market power (SMP) or dominance.

#### **2.2.4 Approach to market analysis**

Significant market power (SMP) is not a concept that is defined in the Act, and therefore it is appropriate to consider the usual meaning of the term in relevant literature, including the literature on market dominance, and equivalent term or near equivalent term in other jurisdictions such as in Europe.

SMP is the ability of a participant in a market to act substantially independently of its competitors and consumers, and not be unduly constrained in decision-making on price or service by the possible reactions of competitors and customers. In an effectively competitive market competitors are constrained by each other and by customers. They know that if they increase prices or reduce output they will lose customers to competitors and will sustain commercial damage as a result. However, if they are dominant they know that these constraints either do not apply or will apply only if the decisions involve very large changes in price or production.

A number of considerations typically impact on whether there is SMP in a market. None of these considerations is determinative of the issue when taken alone.

#### **2.2.5 Period of analysis**

Applying economic definitions in a clear and easily administered way is a major challenge in any sector of the economy. However, in the ICT sector there are further difficulties that result from the dynamic nature of the sector, such as:

- Rapid pace of underlying technological development. Services are defined in market and in technical terms. As the technologies change or merge the service characteristics change as well. In telecommunications the fundamental shift to common IP platforms for the provision of services, rather than discrete technology and discrete service platforms has significant impact at the service and supplier levels.
- Fast changing cost structures and cost relationships. The ‘distance’ between services and markets, in terms of substitutability, may be measured in many ways, including cost. As unit costs fall, or cost relationships change through convergent technologies, the market boundaries that were established when earlier technologies held sway come under question.
- Fast changing patterns of demand and of substitution between services and applications that follow from changes in the underlying technological and cost realities.
- Convergence of services and technologies, underpinned by the extension of ubiquitous digital technologies and particularly packet technologies.



- Convergence of suppliers resulting from changes in the value chains associated with the sector, and the changing value relationships of functions and those who undertake them, and from the commoditisation of many services in the sector.

These factors make it difficult to segment and define specific service markets in the first place, and to ensure that they remain relevant in future as a basis for regulation. A time horizon for market definition and analysis of 18 months to 2 years may be appropriate.

### **2.3 Submissions in response to this consultation paper**

NICTA invites written submissions in response to the specific questions and issues raised in this discussion paper from any interested parties. Arguments and assertions (as distinct from statements of opinion) should be supported with evidence and data, particularly if they are contrary to the current understanding or to any matter set out in this discussion paper.

**Submissions should be submitted via email to [consultation.submission@nicta.gov.pg](mailto:consultation.submission@nicta.gov.pg) and must be received by 12 noon Friday 31st January 2014.**

Copies of all submissions received will be published on NICTA's Public Register consistent with the requirements on NICTA under subsection 229(3) of the Act. Claims for confidentiality over any written information submitted to NICTA in response to this public consultation process are governed by section 44 of the Act. Under section 44 of the Act, NICTA ultimately determines whether or not it will accept a claim for confidentiality and exclude from publication the information that is subject to that claim. The process for claiming confidentiality is set out in the *Guidelines on the submission of written comments to public consultations and public inquiries*, which are available from NICTA's Public Register. Any respondent that wishes to claim confidentiality over information that it submits in response to this discussion paper should follow the procedures described therein.

### **3 Definition of the relevant market**

There are three dimensions to the definition of a relevant market for the purposes a market analysis process. Markets need to be defined in terms of customer, service and geography.

#### **3.1 The customer dimension**

As this Discussion Paper relates to Part VI of the Act, the customer dimension of the market must be defined as 'wholesale customers'. The Act defines a wholesale customer as:

'an operator licensee, but excluding circumstances where that operator licensee acquires an ICT service for that operator licensee's own personal use rather than to facilitate the supply of an ICT service by that operator licensee'.

That is the definition of wholesale customer used for the purposes of this paper. Under this definition, the customers in the wholesale market are the suppliers in the downstream retail market.

#### **3.2 The service dimension**

The services that are described in the six paragraphs from subsections 131(2) and 131(7) are all associated with wholesale access to fixed network services. The services appear to NICTA staff to be of two distinct types, which are not substitutable one for another as follows:

A. Wholesale transmission services in the fixed network, comprising:

- Domestic inter-exchange transmission services; and
- Domestic transmission tail services (which form a complementary service to inter-exchange transmission services, particularly where the transmission service is supplied end-to-end); and

B. Wholesale fixed broadband services, comprising:

- Domestic digital data services, such as xDSL and/or Ethernet services;
- Unbundling of specified facilities located between a local exchange and the network boundary, whether unconditioned and/or conditioned (including spectrum sharing);
- facilities access services associated with fixed network facilities (including exchanges); and
- Facilities access services associated with fixed network facilities (including exchanges).

The services in Market A are not substitutable for those in Market B and vice versa. In addition the transmission services referred to in Market A may be used more broadly than for the provision of retail broadband services, and so ought not to be defined by reference only to broadband. In practice this is the precise use of the wholesale services in market B.

#### **3.3 The geographic dimension**

The geographic dimension of the relevant market is a national one because licensees operate nationally with national brands, with intended national coverage and connectedness, and with common national back-of-house functions. The dimensions of competition are national.

### 3.4 Proposed conclusion

The relevant markets appear to be the national markets for wholesale transmission services in the fixed network and for wholesale fixed broadband services, respectively.

**Question 1:** Do you agree with the proposed definition of the relevant markets as the national markets for wholesale transmission services in the fixed network and for wholesale fixed broadband services, respectively? Please provide argument and if appropriate evidence to support your views.

## **4 Participants in the relevant markets**

### **4.1 On the supply-side**

There is one Operator Licensee that is active in the two relevant markets and that is Telikom. NICTA staff are not aware of any other existing Network Licensees or potential new entrants that intend to deploy fixed network infrastructure within the next two years.

Telikom operates the following fixed networks and related facilities in PNG:

Telikom's Fixed Network covers the major population centres including Port Moresby, Lae, Mt. Hagen, Kokopo, Madang, Wewak, Kimbe and Alotau and the provincial centers. In urban areas most customers are within three kilometers of the local exchange.

Transmission of voice and data for domestic traffic is provided primarily by means of point-to-point microwave radio links. These provide inter-connection between telephone exchanges and links for digital data services to customers. Satellite links have also been established to major towns as means of improving the reliability of the transmission network.

Telikom customer access network comprises telecommunications infrastructure from telephone exchange main distribution frame outwards towards the customers. This includes fiber, copper cables, conduits, manholes, termination points, pits, lead-ins, wall outlets and where applicable network termination units. For a small number of rural and remote customers, the customer access network includes a radio to the nearest exchange.

Telikom has deployed the following data network as part of its fixed network;

- Digital Data Network (DDN)
- Packet Switch Data network
- Frame Relay Network
- Asynchronous transfer Mode (ATM) Network
- Corporate LAN
- Internet Gateway

Voice communications comprises both fixed and CDMA mobile. Under its fixed voice, Telikom has offered range of voice services from business lines, residential, corporate packages and a public phone system consists of combination of coin and card phones located throughout PNG.

Telikom still maintains HF Radio Broadcast Network in certain parts of the country which the network is also utilised for Ship to Shore and Safety of Life at Sea communications requirements. The HF network uses both the automatic and manual PSTN interconnection facilities for transmission.

### **4.2 On the demand-side**

NICTA staff are aware informally of demand for transmission services in the fixed network (Market A services), particularly backhaul services for mobile networks that will increasingly carry a greater and greater data traffic load. However, NICTA staff are not aware of specific demand for line (or access network spectrum) sharing, for xDSL or for ULL. However NICTA staff believe that there may well be demand for bitstream access (a Market B service).

In neither case have NICTA staff received any information that it might rely on for the purposes of determining whether the declaration criteria may exist for the services under review.

**Question 2:** Are you able to confirm that there is demand for any of the six services that are being discussed in this Paper? Please provide details of that demand and of the related retail services that the wholesale services will be used for. Please note that if the information is regarded as commercially confidential, this might also be stated and the information being provided might be included in a separate detachable part of your submission.



## 5 The susceptibility of the market to ex ante regulation of SMP

If an ICT market can become effectively competitive within the short-medium term without regulatory intervention then it should be allowed to do so. This view of regulation is based on the recognition that regulatory intervention in markets has its own risks and there may be inadvertent distortion of market development as a result.

In the case of the six services under consideration NICTA staff has little information, and nothing upon which it is inclined to rely, about the nature of the demand and of the relevant market structures. NICTA therefore does not have the information that might allow it to determine whether the markets are susceptible to ex ante regulation. Although NICTA is only aware of a single Operator Licensee—Telikom—as operating in these markets, it is open to other Licensees to self-provide, including via the use of terrestrial radio-based technologies, to bypass the need to deal with Telikom.

**Question 3:** Do you agree that the information available about the wholesale transmission in the fixed network and the wholesale fixed broadband services markets is insufficient to determine whether either or both markets are susceptible to ex ante regulation of significant market power? If not, please provide argument and if appropriate evidence to support your views.

## 6 Analysis of the market for SMP

Although the existence of only one Operator Licensee—Telikom—might quickly lead to a conclusion that it occupies a position of SMP in the relevant markets, NICTA is reluctant to draw such a conclusion without considerably more information on demand and the operation of the respective markets than it currently has. In addition these markets would seem to be in a state of flux, and precipitate intervention on NICTA's part might distort the developments that are occurring and also prevent or delay the emergence of additional competition.

NICTA staff consider that the better course for NICTA is to monitor market developments and to defer a public inquiry into these markets for at least 12 months (or until first quarter 2015).

The factors that have resulted in the conclusion that the markets are undergoing short-term significant change and that an inquiry in 12 months' time might be more appropriate are:

1. The *Wholesale Service Declaration No. 1 of 2013* was made by the Minister on 22<sup>nd</sup> March 2013, and declares the international submarine cable transmission capacity service and the international submarine cable gateway access service to be declared services. That declaration has the capacity to substantially affect demand patterns and market conditions affecting all of the services now being considered. For example, backhaul service demand to Telikom's international gateway facilities could increase as a result. However the declaration is only around nine months old and may well have had insufficient time for its impact to play out in the market.
2. Telikom announced in April that the terms that it is offering to internet service providers (ISPs) for conveying data to the internet are being changed with the prospect of significant discounts to larger wholesale customers.
3. Telikom is soon to begin deployment of a new National Broadband Network (NBN) that is expected to:
  - a. be capable of supplying better broadband services (via ADSL2+) across a wider area (approximately 80,000 premises); and
  - b. connect a further 8,000 locations via Gigabit Passive Optical Network (GPON) technology; and
  - c. involve the construction of a new high-speed broadband backbone that will be made available on an open access basis;.
4. Mobile operators are currently expanding their mobile networks and will soon be able to offer services over a much wider area, which could significantly change the potential demand for transmission and other wholesale fixed network services.
5. Telikom PNG has begun rolling out the NBN starting in NCD with the installation of new Multi-service Access Nodes (MSANs) to deliver high-speed broadband to residential and small business customers and will over the next six (6) months see the retirement of five (5) aging digital telephone exchanges and the full-scale deployment of Next Generation Network Soft Switches which work with the new MSANs to provide the fastest broadband in the market. The network upgrade is part of Telikom PNG's National Broadband Network (NBN) rollout program, a two year initiative to transform broadband services within PNG.

These factors, together with possible uncertainty in demand, may well constrain Telikom's ability to implement its own policies on price and production capacity in the relevant markets. Therefore it

would be inappropriate to conclude that Telikom is dominant in either or both markets under consideration in this Consultation Paper.

**Question 4:** Do you agree with the proposition that there is insufficient information to determine whether Telikom (or anyone else) has a position of SMP in either or both of the relevant markets at this time? Please explain the reasons for your answer and support it with evidence where possible.

## 7 Consideration of wholesale services for potential declaration

Given the tentative conclusions that NICTA staff have reached about the insufficiency of evidence about wholesale service demand, the uncertainty of the impact of current forces for change in these markets, and the consequent uncertainty as to whether Telikom has a position of SMP in the relevant markets, it would seem to be difficult to reach a firm conclusion on whether the declaration of any particular services within the relevant markets would satisfy the declaration criteria. This does not mean that the criteria might not be met once adequate data is available and once the forces for change in the market are better understood. NICTA staff believe that it is not possible to be conclusive at the present time. Although there is no guarantee, NICTA staff expect that the circumstances of the relevant markets may have changed sufficiently in 12 months' time that will enable a more definitive conclusion to be made.

**Question 5:** The views of operators and interested parties are sought as to whether the declaration criteria would be met. Please explain the reasons for your answer and support it with evidence where possible.

## **8 Next steps**

NICTA has reserved its position on the relevant issues pending, amongst other things, consideration of the feedback received in response to this consultation paper. If the view of NICTA staff is adopted, then further consideration of the potential declaration of any services in the two market concerns is deferred for a period of 12 months, during which time NICTA staff will monitor developments and collect relevant data.



## 9 Summary list of discussion questions

**Question 1:** Do you agree with the proposed definition of the relevant markets as the national markets for wholesale transmission services in the fixed network and for wholesale fixed broadband services, respectively? Please provide argument and if appropriate evidence to support your views.

**Question 2:** Are you able to confirm that there is demand for any of the six services that are being discussed in this Paper? Please provide details of the demand and of the related retail services that the wholesale services will be used for. Please note that if the information is regarded as commercially confidential, this might also be stated and the information being provided might be included in a separate detachable part of your submission.

**Question 3:** Do you agree that the information available about the wholesale transmission in the fixed network and the wholesale fixed network broadband services markets is insufficient to determine whether either or both markets are susceptible to ex ante regulation of significant market power? If not, please provide argument and if appropriate evidence to support your views.

**Question 4:** Do you agree with the proposition that there is insufficient information to determine whether Telikom (or anyone else) has a position of SMP in either or both of the relevant markets at this time? Please explain the reasons for your answer and support it with evidence where possible.

**Question 5:** The views of operators and interested parties are sought as to whether the declaration criteria would be met. Please explain the reasons for your answer and support it with evidence where possible.