



DISCUSSION PAPER

Public consultation on Reference Interconnection Offer from PNG DataCo Limited on various wholesale access services

Issued on 21st May 2021

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1 Introduction

- 1.1 On 18th February 2019, the Minister for Communications and Information Technology declared a number of wholesale services pursuant to Section 130 of the *National Information and Communications Technology Act 2009* (the Act) including the following:
- the international submarine cable transmission capacity service; and
 - the wholesale broadband capacity service (being via optic fibre within PNG).
- 1.2 On 17th December 2019, following extensive consultation with stakeholders, NICTA gazetted a number of Determinations containing service-specific pricing principles, including for the wholesale access services referred to above. The Determinations came into effect on 1st January 2020. NICTA has subsequently amended the determination relating the service-specific prices for international submarine cable capacity. The amended determination came into effect on 1st January 2021.
- 1.3 In the case of the service-specific pricing principles relating to the international submarine cable transmission capacity service maximum prices were also included in relevant Determination. In the case of the domestic wholesale broadband capacity services, no maximum or other indicative prices were set by NICTA in the relevant Determination.

2 DataCo proposed RIO of August 2020

- 2.1 On 13 August 2020 PNG DataCo Limited (DataCo) has provided NICTA with a proposed Reference Interconnection Offer (RIO) in relation to a number of wholesale services, pursuant to Section 141 of the Act. NICTA subsequently conducted a public inquiry in relation to the proposed RIO and allowed for two rounds of comments to gain the benefit of the further submissions of stakeholders who wished to comment on other first round submissions.
- 2.2 In December 2020 NICTA determined to reject the proposed RIO after taking into account the submissions received from interested stakeholders. The reasons for the rejection were set out in a Statement of Reasons which were posted on NICTA's website at <https://www.nicta.gov.pg/2020/08/cp-0-14/> on 29th December 2020. The reasons were related to a number of conditions that DataCo included in the proposed Master Services Agreement and Order Templates. These were, in NICTA's consideration, inconsistent with the criteria with which RIOs must comply as outlined in the National Information and Communication Technology Act 2009. NICTA did not have any objection to the wholesale access prices that DataCo set out at Annexure A to the RIO.

3 DataCo proposed RIO of April 2021

DataCo has considered the issues raised by NICTA in its decision to reject the earlier RIO and on 9th April 2021 submitted a revised RIO that addresses them. The revised RIO now proposed is set out in the letter from DataCo and the Annexures attached to this Paper.

4 Requirements of the Act for acceptance or rejection of RIOs

- 4.1 Section 142(4) of the Act requires NICTA, after considering the RIO, to either accept or reject it.
- 4.2 Section 142(5) of the Act requires NICTA not to accept the RIO unless –
- (a) NICTA has first –
 - i. published the RIO and engaged in public consultation in accordance with Section 229 of the Act; and
 - ii. considered any submissions that were received within the time limit specified by NICTA when it published the RIO which must be at least four (4) weeks after the date of that publication; and
 - (b) NICTA is satisfied that the RIO –
 - i. is consistent with the requirements of Section 141; and
 - ii. is consistent with any non-discrimination obligations that are applicable to the access provider; and
 - iii. contains terms and conditions that are reasonable in accordance with Section 126; and
 - iv. is consistent with the general pricing principles and any service-specific pricing principles.
- 4.3 NICTA has examined the revised proposed RIO and, subject to considering the comments in submissions of interested parties, is inclined to accept the proposed RIO as having met the requirements in Section 142(5) of the Act.
- 4.4 This Discussion Paper and the consultative process that has been initiated has been undertaken in accordance with the requirements of Sections 142 and 229 of the Act.

5 Invitation to make written submissions

- 5.1 NICTA invites interested parties to consider and comment on the RIO and, in particular, whether NICTA should accept or reject it. **Written submissions should be submitted via email to consultation.submission@nicta.gov.pg and must be received by 4 pm on Monday 21st June 2021.**
- 5.2 Copies of all submission received will be published on NICTA's Public Register consistent with the requirements on NICTA under subsection 229(3) of the Act. Additional procedural information is set out in NICTA's Guidelines on the submission of written comments to public consultations and public inquiries, which are available on NICTA Public Register (www.nicta.gov.pg). Any respondent that wishes to claim confidentiality over information that it submits as part of this consultation should follow the procedures described therein.

6 Key matters for consideration

- 6.1 The key matters associated with the RIO which NICTA considers should be highlighted are:
- a. The form and minimum requirements of the RIO
 - b. Previous involvement in this RIO by NICTA
 - c. Services covered in the RIO
 - d. Relationship between the RIO and *Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019*, as amended in December 2020.
- 5.2 Each of these matters is discussed in turn below. Respondents may well find other matters and issues on which to comment, and should do so in their submissions to NICTA if they wish.

A. The form and minimum requirements of the RIO

- 3.3 The RIO submitted by DataCo to NICTA on 9th April 2021 is annexed to this Discussion Paper exactly as received. The RIO comprises the following: -
- (a) the covering letter from DataCo setting out the information required pursuant to Section 141 of the Act;
 - (b) a Master Service Agreement (MSA) between DataCo and a customer, containing detailed general terms and conditions applicable to all the services covered by the RIO (Annexure A to the RIO);
 - (c) a Schedule of Prices for the Wholesale International Submarine Cable Services and other services covered (Annexure B to the RIO);
 - (d) the Service Order Form, by which customers may apply for a relevant service (Attachment C to the RIO); and
 - (e) the Service Level Terms and Conditions being the minimum service level terms and conditions for a service covered by the RIO (Attachment D to the RIO).
- 3.4 Set out below are the requirements for a RIO in Section 141 of the Act and in relation to each any preliminary view or comment that NICTA has to make at this stage:
- (a) Written statement of prices (with price-related terms), or standard non-price terms and conditions, or both – s. 141(1)(a): These are included. Comment on the price levels and on the relation of the prices to the services covered in the RIO is to be found later in this Discussion Paper.
 - (b) Undertaking by DataCo as access provider to comply with the RIO terms and to comply with non-discrimination and related access obligations – s. 141(1)(b): NICTA understands that this is DataCo's intention, but whether the words of the letter and of the MSA are adequate is a matter upon which respondents, including DataCo itself, might wish to comment.
 - (c) Clearly written, organised in a logical and consistent manner, and in any form specified by NICTA in rules made for the purposes of the section – s. 141(1)(c): NICTA has not made any rules relating to specified form for a RIO. NICTA's preliminary view is that the RIO is clearly written and organised in a logical and consistent manner.

- (d) Expressed to come into effect immediately after the RIO is accepted by NICTA – s. 141(2)(a): The letter from DataCo explicitly says this.
- (e) Specify an expiry date conforming to the Act – s. 141(2)(b): The letter from DataCo does this.
- (f) Must provide sufficient information for an access seeker to determine the basis on which the access provider (DataCo) will provide the relevant declared service – s. 141(3): NICTA is of the preliminary view that the RIO meets this requirement, but will carefully consider any views on this aspect from respondents in their submissions.

B. Previous involvement in this RIO by NICTA

- 3.5 NICTA has discussed the requirements for a RIO in general terms with DataCo prior to an earlier RIO being submitted on 13th August 2020, but the main focus of discussions at that time related to the services that are covered in the RIO and the prices that are included in what has become the schedule at Annexure B to the RIO.
- 3.6 NICTA has now engaged with DataCo in relation to the content of the MSA (Annexure A). NICTA has used its statement of reasons in December 2020 for the rejection of the RIO proposed on 13th August 2020 as the primary medium for conveying to DataCo and generally its concerns with some of the original clauses of the MSA. DataCo has now addressed these matters in the RIO proposed on 9th April 2021. Interested parties may wish to make comments about whether the MSA now submitted with the RIO conforms to the requirements of the Act. This comment relates to also to Attachments C and D.
- 3.7 DataCo has shared its detailed modelling of service costs with NICTA via a number of presentations. DataCo has developed costs on a top down (fully allocated historical cost) basis and also on the basis of Building Block Modelling (BBM). DataCo's models contain information on all of its costs and incorporate information of the highest level of commercial sensitivity. The same applies to the forecasts and other assumptions that DataCo has made about service demand. DataCo's network comprises a very high level of fixed costs, and, consequently, unit costing and pricing is very sensitive to demand levels.
- 3.8 NICTA has reviewed the cost model detail that DataCo has presented. NICTA will not be sharing any of DataCo's commercially sensitive information with other parties. However, NICTA encourages DataCo to provide direct briefing on its overall modelling process to other parties who may seek such briefings. DataCo will be in a position to determine the extent to which particular data and assumptions might be shared without comprising commercial confidentiality, and whether experts retained for the purpose by other parties might gain improved conditional access to some information.

C. Services covered in the RIO

- 3.9 The RIO covers a number of services. The services covered are set out in Schedule B to the RIO, namely:
 - (1) **WIS**: Wholesale Internet Service, delivered to Customer Premises;
 - (2) **DP2P-M1**: Domestic P2P up to 1 Km Metro service, delivered over fibre to customer premises;

- (3) **DP2P-M1+**: Domestic P2P over 1 Km Metro Service, delivered over fibre to customer premises;
- (4) **DP2P-LH**: Domestic P2P Longhaul Service, delivered over fibre to customer premises; and
- (5) **IP2P**: International P2P service over subsea fibre, delivered at the Cable Landing Station.

3.10 The prices for the services listed above are shown in the boxes of the same number at Schedule B to the RIO.

3.11 The services covered in the RIO comprise one or more of the declared services, as follows:

- (1) **WIS**: Utilises the international submarine cable transmission capacity service; and the wholesale broadband capacity service together with IP transit;
- (2) **DP2P-M1**: Utilises the wholesale broadband capacity service;
- (3) **DP2P-M1+**: Utilises the wholesale broadband capacity service;
- (4) **DP2P-LH**: Utilises the wholesale broadband capacity service; and
- (5) **IP2P**: Is in effect the international submarine cable transmission capacity service.

3.12 An access seeker is not bound by the selection of services set out in the RIO. An access seeker may require DataCo to provide a service that matches the specification of any declared service in the declaration decision, even if such a service is not covered in the RIO.

D. Relationship between the RIO and the proposed amendment to the *Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019 (as amended)*

3.13 The prices shown in Schedule 1 to the amended Determination which came into effect on 1st January 2021 are maximum average prices for each year shown in schedule. The average is not the price that will be charged to any particular customer, but the weighted average of all of the prices chargeable during the time period shown in the amended Determination. The prices included in the Schedule at Annexure B to the RIO are the actual prices that DataCo is proposing to charge, based on the capacity purchased by the customer.

3.14 Both the maximum average price in the amended Determination and the proposed prices in Annexure B of the RIO were derived from the same models with the same cost data and demand assumptions as described in paragraphs 3.7 and 3.8 above. In that respect they are consistent in their underlying cost assessments.

**ATTACHMENT: REFERENCE INTERCONNECTION OFFER
SUBMITTED BY DATACO TO NICTA ON 9TH APRIL 2021**