



**Public Inquiry
into a potential
Retail Service Determination
regarding certain
mobile telephony services
supplied by Digicel**

RESPONSE TO COMMENTS REPORT

Issued on 26 July 2018

Contents

1	SUMMARY	1
1.1	THE 2012 RETAIL SERVICE DETERMINATION.....	2
1.2	THE NOVEMBER 2017 DISCUSSION PAPER.....	3
1.3	RESPONSE TO THE DISCUSSION PAPER	3
1.4	CROSS-SUBMISSIONS	5
2	SUMMARY OF COMMENTS RECEIVED	1

1 SUMMARY

In November 2017, NICTA published a discussion paper as part of its public inquiry into the need for a Retail Service Determination (RSD) regarding certain mobile telephone services. Supplied by Digicel. Within the specified consultation period, written submissions were received from:

- Telkom PNG Limited;
- Digicel (PNG) Limited, which was included by a report prepared by Aaron Schiff of Schiff Consulting (hereafter referred to as “the Schiff submission”);
- The Independent Consumer and Competition Commission (ICCC).

NICTA also provided an opportunity for interested parties to review and submit comments on the submissions of other respondents. Such cross-submissions were received on 6 April 2018 from:

- Digicel (PNG) Limited
- Telkom PNG Limited, which was accompanied by a report prepared by Mr John de Ridder, an independent consultant, in which the Schiff submission is reviewed and analysed (hereafter referred to as the “de Ridder submission”

On 6 June 2018 NICTA management met with representatives of Digicel (PNG) Limited and received two proposals from Digicel.

The first proposal was that the Public Inquiry process in relation to the RSD should be suspended until after the completion of the current review of wholesale services and proposals for some Wholesale Service Determinations. This proposal was not agreed by NICTA on the basis that the RSD process was not sufficiently related to the range of potential wholesale service review outcomes to warrant yet a further delay.

The second proposal was that stakeholders should be given a final opportunity to comment on the latest version of the proposed RSD before it is sent to the Minister for approval. This proposal was agreed and further comments on the Draft RSD were invited subject to receipt no later than 29 June 2018. The Draft RSD was posted on NICTA’s website on 15 June 2018.

In the event two submissions were received. The submission from Telkom fully concurred with the RSD and the approach that NICTA was proposing. The other submission, from Digicel, concerned process issues. The submissions have been posted on the NICTA website. There are no comments that deal with the substance and or changes to the words of the Draft RSD and, consequently, NICTA has made no further changes to the Draft RSD published for comment on 15 June 2018.

The key issues among those raised and considered are discussed in this Response to Comments Report. Additional information on the revisions made to the proposed RSD are set out in NICTA’s Recommendation Report, prepared for the purposes of section 159 of the

National Information and Communications Technology Act 2009 (the Act), which also serves as an Inquiry Report, prepared for the purposes of section 235 of the Act. This report should be read in conjunction with this Response to Comments report.

1.1 The 2012 Retail Service Determination

The 2012 RSD recognised that price discrimination can have pro-competitive effects in mobile service markets under certain circumstances, and particularly to encourage greater service usage from various customer segments, but that price discrimination can also have adverse impacts on mobile service markets if used by a dominant licensee in an exercise of market power to seriously reduce competition in the market by weakening smaller competitors. NICTA recognised that there is a balance to be struck between these two outcomes.

On 24th September 2012, NICTA recommended to the Minister a retail service determination that subjected mobile originated retail national voice call services supplied by Digicel (PNG) Limited (Digicel) on a prepaid basis to a pricing principle that limited any difference between on-net and off-net prices to 40%, except to the extent that:

- any greater difference in prices was objectively justifiable based on differences in the costs of supplying the service; or
- any greater difference in prices was part of a limited period promotional offer the terms of which had been approved by NICTA.

NICTA's recommendation led to the Minister making Retail Service Determination No.1 of 2012 (the 2012 Determination) on 25th September 2012, which came into effect on 25th October 2012.

NICTA's recommendation was reviewed by the ICT Appeals Panel following separate applications by bmobile Limited (bmobile), Digicel, and Telikom PNG Limited (Telikom).

The ICT Appeals Panel confirmed NICTA's recommendation to restrict Digicel's on-net/off-net price discrimination on 18th December 2012. However, the ICT Appeals Panel rejected the proposed 40% allowance and the allowance for objectively justified differences in cost. The ICT Appeals Panel thus concluded that it would be desirable to vary NICTA's recommendation in part, believing that the correct recommendation to the Minister was a pricing policy or principle that prevented any on-net/off-net price discrimination in Digicel's supply of prepaid mobile originated retail national voice call services. The Panel made the point that any price differentials that were justified by cost differences, or other factors, would not be discriminatory and therefore should not be incorporated in the rule as an exception.

However, the Minister had already made a decision under section 160 of the Act based on NICTA's original recommendation and the Minister did not amend that decision following the decision of the ICT Appeals Panel.

The 2012 Determination was specified to apply for a period of five years. It expired on 25th October 2017.

1.2 The November 2017 Discussion Paper

On 15th November 2017 issued a discussion paper, identifying the need for a new RSD. The discussion paper noted that immediately following the expiry of the RSD in October 2017:

- Digicel increased by 19% its standard price for off-net prepaid calls from 84 toea per call minute to one Kina per call minute;
- Digicel increased the difference between its standard on-net and off-net prices for prepaid call minutes from 40% to 67% (reinstating an off-net price premium equivalent to that which existed for the first call minute prior to the 2012 Determination); and
- Digicel has adopted per second charging for on-net prepaid calls while retaining per minute charging for off-net prepaid calls.

The discussion paper included detailed analysis of the market situation and the latest academic research on the potential effects of discriminatory pricing on competition and welfare. On the basis of this analysis it proposed for a draft RSD that would:

- (a) apply to Digicel's supply of mobile originated national call minutes (both prepaid and post-paid);
- (b) remain in effect for a period of five years;
- (c) establish a pricing principle preventing any differentiation in retail pricing based on whether a call is to terminate on-net or off-net on another mobile network; and
- (d) ensure that on-net and off-net voice calls are charged and billed on a consistent basis (i.e. without discrimination in the use of per second or per minute charging).

1.3 Response to the Discussion Paper

The main responses to the discussion paper are presented in Section 2 of this report, along with analysis and the action now proposed by NICTA (which has been included in the Recommendation Report to the Minister).

After consideration of the submissions and cross-submissions received in response to the November 2017 discussion paper, and based on the evidence that they contained or referred to, NICTA has made some changes to the proposed RSD that was set out in the discussion paper. The relevant changes are as follows:

- The RSD should apply only to voice calls (prepaid and post-paid) and not to SMS. NICTA accepts the argument raised by Digicel that the prices of SMS are now suitable constrained by over-the-top (OTT) messaging services.
- Taking account of the ICT Appeals Panel, no price discrimination should be permitted. The only approach capable of ready implementation by all parties, including NICTA, is that there should be no price differential between on-net and off-net calls unless the differential has been justified in terms of cost before and the justification approved by NICTA before the tariff is implemented. NICTA accepts the argument raised both by Digicel and Telikom that a cost-justified price differential should be allowed. However, the 40% differential previously permitted was not cost-justified and may have been too generous or too restrictive in certain cases. NICTA considers that it is more appropriate for Digicel to make the case where it wants to charge on-net and off-net calls on a differential price basis.
- The above approach means that, for voice call services sold as part of a fixed-fee service bundle there should be no price discrimination between on-net and off-net calls. In the draft RSD NICTA sought to address the issue of fixed-fee service bundles through a quarterly examination of effective prices (i.e. by dividing total call revenues by total call minutes on a quarterly basis). On reflection, NICTA accepts the argument raised by Digicel that this approach would be overly complex, would require significant on-going effort both by Digicel and NICTA, and may have unintended consequences particularly when combined with a requirement to maintain an effective price for on-net calls below the prevailing interconnection charge. The revised requirement for no price discrimination at all, with any price differentials needing to be justified on a case by case basis will achieve the desired outcome without the risk of unintended consequences. It is in line with Digicel's current pricing practice both in some PNG tariffs and in other Pacific Islands.
- Digicel should publish on its website all retail tariffs and offers, and provide such detail separately to NICTA, within one business day of the tariffs and offers coming into effect. This is a transparency obligation, not a requirement for any level of additional approval beyond that required by NICTA. It is included in response to a concern expressed by Telikom that some Digicel customers are reportedly paying rates that differ from tariffs and/or promotional offers.

On this basis NICTA has re-drafted the proposed RSD so that it:

- (a) Applies only to Digicel's supply of mobile-originated national voice call minutes (both prepaid and post-paid);
- (b) Establishes a pricing principle that prohibits discrimination and limits any difference between any individual service tariff or promotional offer for on-net and off-net calls to the levels approved, if any, after receiving cost justification on a case by case basis from Digicel;
- (c) Clarifies that where Digicel offers mobile services within a fixed-fee service bundle no discrimination between on-net and off-net calls is allowed;

- (d) Ensures that on-net and off-net voice calls are charged and billed on a consistent basis (e.g. without discrimination in the use of per second or per minute charging);
- (e) Ensures that all retail tariffs and promotional offers are published on Digicel's website, and such detail is provided separately to NICTA, within one business day of the tariffs and offers coming into effect;
- (f) Remains in effect for a period of five years, unless there is a case for reviewing or revising the RSD sooner.

1.4 Cross-submissions

The cross-submission from Digicel affirms the points made in the earlier submission and argues against specific points made in the Telikom first-round submission. There is nothing in the Digicel cross-submission that would cause NICTA not to proceed in the manner set out in Section 1.3 above or to vary that approach.

NICTA considers that the de Ridder submission provides a helpful analysis of the Schiff submission and attempts to review the academic literature on network effects in a broader manner than has been done in previous submissions. Mr de Ridder makes it clear that much of the theoretical and case study literature relates to two part tariff situations, which is not the situation that applies to the pricing of pre-paid mobile services in PNG. Mr de Ridder is also persuasive in highlighting the ambiguities that might arise in assessing various circumstances and in making judgments about why the 2012 RSD was ineffective.

The submission from Telikom, to which the de Ridder submission is attached, is strongly supportive of an outcome that closely aligns with the approach that NICTA proposes to adopt and which is set out in Section 1.3 of this report.

An important conclusion for NICTA from the cross-submissions, when considered in the light of the earlier first-round submissions, is that the RSD proposed in the Discussion Paper involve significant implementation difficulties, and that there is a consensus that the outcome should be simplified from that proposal. That is where the consensus ends. However, taking into account all of the arguments in both the submissions and the cross-submissions, NICTA can confirm its position as stated in section 1.3 above.

2 SUMMARY OF COMMENTS RECEIVED

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
1	Telikom	Review of past decision (p1)	Telikom agrees with NICTA and the ICT Appeals Panel that, unless the difference between on-net and off-net prices can be justified by differences in the cost of supply, no difference should be allowed.	NICTA agrees that any differential in prices should be justified. It notes that off-net calls involve additional costs in terms of interconnection facilities, although it should be noted that there are also costs associated with termination of on-net calls.
2	Telikom	Review of past behaviour (p1-4)	On various tariff plans and promotions and at various times during its validity period Digicel has been technically in breach of the 2012 MRSD. Telikom cites a number of specific examples. It also points out that in December 2017 (upon expiry of the MRSD) Digicel increased the off/on net differentiation to 67%.	This consultation is not the place to deal with alleged breaches under the 2012 Determination. They should be dealt with through the normal complaints procedure. However, NICTA acknowledges that it would be appropriate to make reference in the new RSD to how any breaches should be rectified. NICTA notes the fact that Digicel increased its price differentiation upon the expiry of the 2012 Determination; such behaviour precipitated the current investigation, and a new RSD is needed precisely to ensure that excessive price differentiation does not occur in the future.
3	Telikom	Market definition – customer (p4)	Telikom agrees that post-paid customers should be included not only to prevent price discrimination but also other anti-competitive behaviour that should be prevented by a retail service determination	Ex-ante regulation is attempting to address the pricing issue only because there is a reasonable expectation of abuse happening and harming competition. Anti-competitive behaviour is generally to be dealt with through ex-post regulation.
4	Telikom	Market definition – product (p5)	Telikom agrees that, at this time, digital voice and other-the-top (OTT) voice services are not part of the relevant national market. No operator in PNG offers voice calls over 4G – they are provided over 3G. With current mobile networks, the quality of voice OTT services on 3G will not be as good as over existing voice services provided over	These comments apply to voice communications but NICTA notes that SMS is already subject to significant competition from OTT services.

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
5	Telikom	Market definition – geography (p6)	2G and 3G networks and should not be considered part of the national market. Telikom agrees that there is a national market	Noted. No change required.
6	Telikom	Structural barriers to entry (and expansion) – p6/7	Telikom agrees that structural barriers to entry are exacerbated by tariff-mediated network externalities arising from the use of price discrimination (Para 3.2.3, NDP). The 40% differential between Digicel's on-net and off-net prices has been too generous because Digicel's market share grew over the period of the 2012 MRSD (Figure 4) and market concentration has increased (para 3.2.7, NDP).	As noted elsewhere (see point 21) the fact that the market has become more concentrated, and the fact that Digicel's market share has risen, does not necessarily result from the 40% differential being too generous. It is one plausible explanation but others also exist, including differences in coverage and service quality, and different levels of access to financial resources by the competitors in the market.
7	Telikom	Price discrimination is evident (p7)	NICTA has defined neither price discrimination nor the conditions required for it to occur. Telikom supports the definition suggested by the Appeals Panel and notes that the conditions that the Appeals Panel considered necessary for it to occur apply to the MRSD.	The appeals panel said that "Price discrimination occurs when customers in a market are charged different prices for the same product, for reasons that do not reflect differences in the cost of supply. Thus, price discrimination exists when in relation to the same product the ratio of price to marginal cost of different buyers is not equal" (para 41, ICTD). NICTA accepts this definition, but the question then is whether it applies in the case of specific on-net / off-net calls. See also points 1 and 12.
8	Telikom	Impact of price discrimination (p7)	Price discrimination can be both exploitative and exclusionary. As the ICT Appeals Panel noted: "If price discrimination creates/increases barriers to entry, as NICTA concludes, this helps protect or maintain Digicel's SMP and so it is reasonable to conclude that the net effect on efficiency (technical, allocative and dynamic) is negative" (para 48, ICTD)	NICTA agrees. The main reason for the RSD is to avoid exploitative and exclusionary price discrimination.

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
9	Telikom	Criteria for a service determination are met	Telikom argues that all four criteria are satisfied for a retail service determination. Digicel's SMP position is bolstered by price discrimination: "Digicel's strenuous objections to the 2012 MRSD and its immediate pricing actions following the expiry of that MRSD make it clear that price discrimination is seen by Digicel as a key to growing and consolidating its customer base" and the SMP position that Digicel has enjoyed in PNG is a large contributory factor to "Digicel's aborted prospectus suggested that Digital PNG is the star performer across the 30 or more international markets the Digicel Group operates in."	The evidence from price changes that have occurred since the expiry of the 2012 RSD tends to suggest that, absent regulation, price discrimination levels may be higher than can be justified by cost and other factors. On the other hand the 2012 MSRD did not apply to post-paid calls or SMS and the levels of on-net/off-net price discrimination for those services was no greater than (and possibly less than) those for pre-paid voice calls. See also point 24.
10	Telikom	5-year MRSD (p9)	Telikom agrees that both prepaid and post-paid calls should fall within the proposed MRSD which should apply for 5 years with a possible extension dependent upon review.	Noted. No change required.
11	Telikom	Billing without discrimination (p9)	Telikom agrees that on-net and off-net voice calls and SMS should be charged and billed on a consistent basis (i.e. without discrimination in the use of per second or per minute charging).	Noted. No change required.
12	Telikom	Allowed differential between off-net and on-net calls (p10)	Telikom agrees that there should not be any differential unless there are real cost differences between off-net and on-net calls. If Digicel chooses to demonstrate a difference in costs per minute, the data should be audited by NICTA or its own consultant	This is the approach that NICTA intends to take for the new RSD. It will be for Digicel to justify any differential in the prices applying to on-net and off-net calls.
13	Telikom	Retail prices and mobile termination rates (p10)	The proposed second pricing principle is that Digicel's [average] retail prices for on-net calls (or SMS) should not fall below the applicable mobile termination rate "at any given time". This principle should not be necessary as it	NICTA does not intend to pursue this pricing principle. The current MTR has been the result of negotiation between the operators and not determined on the basis of a costing study conducted by or verified by NICTA. Nor

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
14	Telikom	All retail prices should be publicly available (p10)	<p>would be a clear case of an exclusionary margin squeeze. But, an ex-ante prohibition will help avoid the need to run an ex-post competition inquiry.</p> <p>Telikom believes that the two proposed pricing principles should be joined by a third: that all Digicel's retail tariffs should be publicly available. That has not been the case with post-paid call rates – Telikom cites a specific example of “secretive pricing”.</p>	<p>does NICTA have authoritative information on the costs of terminating on-net mobile calls. The proposed rule would have encouraged operators to establish and maintain MTR levels that are close to cost. This remains a worthwhile aim but will be pursued by NICTA outside the current RSD inquiry.</p> <p>The requirement for Digicel to publish all its prices and promotional offers is critical to ensure compliance with the RSD. Such a requirement should apply to both pre-paid and post-paid rates.</p>
15	Telikom	Using average retail pricing (p10/11)	<p>Telikom lists some concerns with the concept of average retail prices (i.e. dividing revenue by call minutes) and reporting requirements in particular with regard to loss of transparency. Such an approach should not replace the requirement for all retail prices and promotions to be published, and to be consistent with the MRSD.</p>	<p>NICTA acknowledges that the concept of average retail prices is not straightforward in a situation where many bundled tariffs are offered. The solution proposed in the draft RSD was to exclude the fixed fee of bundles, but this would result in artificially low average prices, and make it difficult for Digicel to meet the pricing principle discussed in point 13. In the light of the comments in response to the Discussion Paper and after further consideration, NICTA takes the view that the effective rates proposal will be too complex to manage in practice for both NICTA and Digicel, and that the better approach is to adopt a non-discrimination principle that applies across the board, including to bundles. Digicel may provide cost justification for any price differential that it proposes and will need to receive NICTA approval before implementation of such pricing proposals.</p>
16	Telikom	Monthly compliance (p 11, para d)	<p>The draft MRSD does not make it clear that Digicel should comply with the prohibition in each month (i.e. not just across the quarter that each month is reported).</p>	<p>The proposal was for compliance on a quarterly, not monthly, basis measured by effective rates. However that proposal has now been dropped from the RSD that NICTA will recommend to the Minister. See discussion in point</p>

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
17	Telikom	Separate reporting of peak and off-peak minutes (p 11, para e)	Schedule 1 to the draft Determination should require peak and off-peak minutes and associated revenues to be reported separately	Under the proposed revisions to the RSD the requirement will no longer be required. See point 18.
18	Telikom	Dealing with bundles (p 11, para f)	Schedule 1 assumes that minutes and SMS can be reported separately. How would that work with the post-paid bundles shown in Table 2? That is, how would revenues from the post-paid plans shown in Table 2 be allocated across the services in the plan?	NICTA acknowledges that the data proposed in Schedule 1 would need to be augmented in order to calculate effective rates for post-paid plans. To do this effectively for all types of bundles, including those with data and SMS as well as voice, and those with different peak and off-peak, on-net and off-net, tariffs would be complex. This would create a significant burden for Digicel and for NICTA itself in compliance checking. Under the circumstances, and in the light of various comments made about the challenges of using effective rates as a compliance measure in this context, NICTA has decided to recast the proposed RSD in terms of non-discrimination on actual prices, and not to pursue price regulation, at least in this context, based on effective rates.
19	Digicel	Lack of evidence or analysis on need (Para 5, p2). See also Para 36, p9, and p39, p10.	NICTA has failed to present any cogent evidence or analysis that would support a conclusion that "in the absence of the retail service determination for that period, that substantial degree of power is likely to ... persist in the market over that period ... and ... expose retail customers to material risk of higher prices and/or reduced service"	Given that Digicel's market share is >90% and has remained at this level consistently over the past 5 years even while the 2012 Determination has been in place, it seems highly likely that SMP will persist. The most material risk is therefore that a lack of effective competition leaves the SMP operator unconstrained and, absent regulation, could result in higher prices or poorer service levels.
20	Digicel	Lack of evidence or analysis on benefit (Para 6, p2)	NICTA has failed to present any cogent evidence or undertaken any empirical analysis to support its conclusions regarding the net benefits of the proposed intervention.	The appropriate economic analysis was undertaken in the 2012 RSD. That demonstrated the negative welfare effects of price discrimination in most circumstances. There was no need to go through all those arguments again, but a brief review of more recent academic evidence was

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
21	Digicel	The 2012 RSD was ineffective (para 8, p 3). See also para 68-86, p 16-20.	Digicel argues that Telikom/Bmobile's failure to succeed had nothing to do with any differences between on-net and off-net prices but was merely a reflection of commercial decisions, including a failure to invest.	presented in the discussion paper. It is true that the emergence of effective competition depends on Digicel's competitors making investments and implementing other measures to become competitive with Digicel. However, on-net / off-net price discrimination will make it impossible for Telikom/Bmobile to compete even if they now invest heavily to match the coverage and service of Digicel. A continuing RSD is therefore necessary to provide an environment in which effective competition can develop and flourish. NICTA can never guarantee that effective competition will result – that is a matter for the competitors concerned. NICTA's job is to ensure that the regulatory settings to enable effective competition are in place.
22	Digicel	Digicel is not an "incumbent" (para 10, p 3)	Digicel grew its market share on the basis of extensive, risky private investment, world-class management and operations and a strong belief that the customer came first. Telikom/Bmobile had and still has an equal opportunity to invest.	The issue is not how Digicel's position of extreme SMP arose, but how to prevent that position being exploited now and in the future for anti-competitive purposes.
23	Digicel	The ICT Appeals Panel decision (para 13a, p 3). See also para 47-52, p 12.	NICTA should not have relied on this purported decision which contained a number of errors both in law and substance, was not given any effect and was made more than five years ago.	It is true that the ICT Appeals Panel decision was not used in the Ministerial decision of 2012. The decision was made after the Minister adopted the RSD. The key reasoning in the ICT Panel decision concerning the nature of discrimination remains valid and is not of a kind that would be affected by the passage of time.
24	Digicel	Impact of the 2012 RSD (para 13b, p 4). See also para 53-56, p 12-13, and para 57, p 13.	With the benefit of hindsight the 2012 RSD did not meet the Retail Regulation Criteria: it was completely ineffective as a tool to drive competition. The proportion of off-net calls is higher for post-paid services, which were left unregulated, than for regulated prepaid calls.	It is unarguable that Digicel's SMP has remained intact despite the 2012 RSD. As noted in point 21 above, it is not NICTA's role to reduce Digicel's market share or even its SMP (which Digicel argues was achieved through legitimate investment and marketing means) but to ensure that the risks of abuse and for anti-competitive outcomes

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
				<p>inherent in such an extreme level of SMP are reduced through appropriate regulatory settings.</p> <p>In these circumstances several possible interpretations and responses are possible:</p> <ol style="list-style-type: none"> 1. The RSD was ineffective and should be dropped 2. The RSD was ineffective because it didn't go far enough – and so should be tightened (as proposed in the consultation paper) 3. The RSD should remain so as to prevent possible abuses of SMP by Digicel, while recognising that it will not on its own achieve a more competitive market. <p>Digicel favours interpretation (1); the discussion document favoured interpretation (2). NICTA considers that interpretation (3) is preferable because there clearly are factors other than price differentials that have caused Digicel's market share to remain high.</p>
25	Digicel	<p>Selective use of academic literature (para 13c, d, p 4). See also para 64-67, p 15-16.</p>	<p>The models relied upon are simplified and rely on market assumptions not relevant to PNG. Also NICTA appears to have ignored any studies that do not accord with its view – the one empirical study that looked at banning on-net prices in Chile in 2012 concluded that this reduced economic welfare.</p>	<p>The academic literature was examined thoroughly as part of the 2012 Determination, and a number of more recent studies were referenced in the discussion paper and Digicel's economic adviser (Dr Schiff) provides evidence from a number of other academic papers. However, Dr Schiff's conclusion is the same as NICTA's: the evidence from the theoretical and empirical literature is mixed and the effects of on-net pricing are dependent on the local circumstances and market structure. The approach that NICTA is now taking recognises that there may well be circumstances where price differentials between on-net and off-net calls are justified because of cost differences, and leaves open the option for Digicel to make the case in circumstances where it is proposing differential prices.</p>

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
26	Digicel	Impact of OTT (para 13e, p 4). See also para 40-45, p 10-12	The rapid rise of OTT services means that messaging is already subject to strong competitive forces.	This is true and upon reflection NICTA agrees that the inclusion of messaging within the RSD is probably not required. The constraining effect of OTTs is likely to be at least as effective as inclusion of SMS in the RSD. NICTA has therefore decided to exclude messaging and SMS from the new RSD.
27	Digicel	Digicel financial data (para 13f, p 4). See also para 94-95, p 23-24.	Selective financial data from a single point in time (2015) cannot reasonably be used as a basis to determine whether market outcomes are persistent.	NICTA has used the best data available. If Digicel is willing to provide more recent equivalent data then that will be used as well. Digicel included no further data in its submission.
28	Digicel	Network coverage (para 14-16 p 4) See also para 68-86, p 16-20.	Customers' choice of network and service provider is driven more by coverage and service quality than on-net/off-net pricing differentials. Calls have to be off-net if the called party is located outside the coverage area of the Telkom/Bmobile network. If Digicel is making excess profits there is a clear business case for the other operators to expand their coverage.	See answer to point 21.
29	Digicel	Term of the RSD (para 17 p 5). See also para 87-90, p 20-21.	The proposed 5-year term is excessive particularly given the failure of the 2012 RSD to meet its stated objectives.	See discussion at point 24 above. If the 2012 RSD was ineffective (and Digicel would seem to have a difference of view to NICTA about how it was ineffective) then this goes to content rather than term. In any case, all regulatory measures require time to take effect, and NICTA is taking advantage of the full term for an RSD permitted by the Act. It remains open to Digicel during that term to put submissions to NICTA to terminate or further modify the RSD if circumstances, as they develop, would seem to justify a different approach at that point.
30	Digicel	Cost benefit analysis (para 18, p 5). See also para 91-93, p 22-23.	The cost benefit analysis is simplistic and flawed. Contrary to NICTA's assertions there will be substantial net detriments to consumers arising from higher prices and	There is nothing in the RSD that prevents Digicel continuing to offer bundles like "ITok" so long as the same rates apply to on-net and off-net calls. Since more

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
31	Digicel	Incorrect reliance on price changes following the expiry of the 2012 RSD (para 61, p 14)	<p>disincentives for continuing investment. For example, Digicel would not be able to continue with its "ITok" bundled price that generates welfare benefits of PGK 1.2m per day.</p> <p>It should not be surprising that Digicel has experimented with a number of new pricing offers once the strict price regulation under the 2012 RSD expired. Such experimentation included the development of bundled offers and is a common feature of unregulated competitive markets where commercially driven operators seek to find ways to stimulate demand for services for the mutual benefit of the operator and their customers. This is exactly what has happened in PNG.</p>	<p>than 90% of calls are on-net anyway, it would not necessarily be problematic for off-net calls to be included in the same offer at the same price.</p> <p>NICTA has no desire to prevent Digicel or any other operator experimenting with various tariffs, and acknowledges that Digicel was entitled to test out a broader range of tariffs following the expiry of the 2012 RSD. However, such experimentation should be on terms that are fair to consumers and consistent with the development and sustainment of effective competition. That is the purpose of the RSD.</p>
32	Digicel	Proposed terms of the RSD (para 98-104), p 24-26	<p>The terms proposed by NICTA are inappropriate in the circumstances.</p> <p>The practical effect of the proposed RSD is that, although Digicel will have some flexibility in terms of "intra month" pricing:</p> <ul style="list-style-type: none"> • Digicel will not, on average over any particular month, be permitted to charge any more for an on-net call or SMS than for an off-net call or SMS; • the average price for an on-net call must not be below the current domestic interconnection rate; • on-net calls and off-net calls (and SMS) must be charged and billed on a consistent basis (i.e. without discrimination in the use of per second or per minute charging); and • as noted above, Digicel is the only party NICTA proposes to be regulated and Telikom/bmobile will be able to continue to set retail prices as they 	<p>The aim of the draft RSD was to give Digicel some flexibility in setting prices, whilst preventing unfair price differentiation between on-net and off-net calls. NICTA also acknowledges that the regulation needs to be practical, and the application to tariff bundles proposed in the draft RSD was probably too complex.</p> <p>In the revised RSD Digicel will be able to price SMS as it wishes and will be allowed to maintain a differential that it can justify in terms of differences in the cost of supply. The requirement for on-net call prices to be below the current domestic interconnection rate has also been dropped.</p> <p>These changes provide Digicel a great deal more pricing flexibility, but there remains a need to ensure that Digicel does not structure its tariff bundles with the intent or effect of being anti-competitive.</p> <p>On the last dot point, it is Digicel, not other operators, which has high SMP in the mobile call market in PNG and</p>

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
			<p>see fit</p> <p>The impact of such a regulation would be profound with welfare losses measured in the millions of Kina per day.</p>	<p>it is Digicel, not other operators, which has the power to abuse this power. It was always the case that the RSD constraints should therefore apply to Digicel and not other market participants.</p> <p>Digicel has not provided any evidence of the welfare losses asserted in its submission.</p>
33	ICCC	Market definition (s2, p1/2)	The ICCC agrees with the definition of the relevant market as prepaid and postpaid voice services provided by both fixed and mobile operators. However it proposes that data services should also be considered in the definition as they enable consumers to access the same services.	It is true that data services can be used to provide alternatives to voice and messaging. However this is not their principal purpose – customers purchase data services primarily for internet access, social media and access to a wide range of apps. The degree of substitution remains small, other than for messaging services and possibly for international calls.
34	ICCC	Market structure (s3, p2/3)	There are high barriers to entry due to sunk costs in terms of network constructions, but this should not be an issue for Telikom and Bemobile, which entered the market several decades prior to Digicel. However, in those geographic areas where Telikom and Bemobile are not currently providing service, the barriers to entry remain and may be greater than those that faced Digicel.	NICTA notes and agrees with this point – perhaps barriers to expansion rather than entry is the relevant term. But the barriers are real and significant investment is needed to overcome them. The RSD will not by itself achieve that investment but will provide a regulatory setting that reduces the risk of abuse of dominance through particular pricing strategies. This will encourage investment – but the decision to actually invest depends on many other factors as well.
35	ICCC	Market concentration (s3, p3)	Market share and market concentration both point to Digicel's market power but "the ease of entry at which a potential entrant can enter the market in order to compete is the real indicia of market power."	Market share and concentration indicate the current level of SMP. The barriers to entry and expansion indicate the tendency to maintain the market power that has been established.
36	ICCC	Potential Effects of Discriminatory Pricing on Competition (s4, p3/4)	Whilst noting the theoretical concerns associated with the "club effect" ICCC notes that many factors other than price determine a consumer's choice of network and ICCCC questions why NICTA would seek to limit the ability of	Agreed – the question is whether price discrimination has the intention or effect of harming competitors. It is NICTA's view (supported by the ICT Appeals Panel and by other respondents) that harm would arise if and when

Ref.	Submission	Issue / subject and reference	Summary of comment	Summary of NICTA staff's response
37	ICCC	Proposal to remove ex post regulation (s5, p4)	<p>one firm to promote and market its services more rigorously or innovatively. The ultimate question is whether such action is or would be an indicator of abuse of market power.</p> <p>The ICCC is concerned by any proposal to remove ex-post competition regulation, and will continue to oppose such a provision as it will effectively restrict application of Section 58 of the ICCC Act.</p>	<p>the price differential between off-net and on-net calls is greater than the cost differential. See also point 1. NICTA does not seek to limit the ability of any operators to develop offers and to price in a way that is innovative, except to the extent that it is necessary to reduce the risk of abuse of dominance through anti-competitive pricing behaviour.</p> <p>It is not the intention to remove ex-post regulation, but to complement it with effective ex-ante regulation. ICCC will always retain the ability to act under Section 58 of the Act.</p>
38	ICCC	Proposal for a Retail Service Determination (s6, p4/5)	<p>Regulatory intervention such as the determination of Retail Service Price should be focused on protecting the competitive process to ensure that consumers are not harmed, and NOT protecting individual competitors who are inefficient or un-innovative.</p>	<p>Agreed. It is precisely in order to protect the competitive process that the RSD is required. Whether individual competitors are able to take advantage of the competitive process will depend on their ability to operate efficiently and to innovate.</p>
39	ICCC	Access Regime Proposal (s7/8, p5/6)	<p>Ultimately Digicel, Telikom and Bemobile have some form of market power in different aspects of the telecommunications industry: Digicel through its domestic network infrastructures for fixed and mobile services and its ownership of international correspondent carriers; Telikom and Bemobile through their network infrastructures of domestic and international fibre cables for data services. The ICCC therefore proposes access regimes for key infrastructures to promote and protect the competitive process for the economic benefits of consumers and country.</p>	<p>The issue of an Access Regulation is worthy of consideration but is outside the scope of the current consultation.</p>