



Discussion Paper:

**To facilitate public consultation on
potential Retail Service Determination in
relation to On-net and Offnet Calls**

Issued on 21st October 2022

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1 EXECUTIVE SUMMARY

Part VII of the *National Information and Communications Technology Act 2009* (the Act) provides for the Minister, upon the recommendation of NICTA, to make a retail service determination in relation to a specific retail service supplied by an operator licensee.

NICTA has commenced a Public Inquiry into retail voice and data prices, commencing on 18 March 2022, for which it has conducted a first consultation. (The terms of reference are enclosed at Attachment A.) NICTA has concluded that it is appropriate not to recommend a general price control for these services to the Minister. However, NICTA has concluded that there is a case for prohibiting discrimination between the retail prices for on-net voice services and equivalent off-net voice services by the operator with substantial market power, Digicel PNG Limited (Digicel). The majority of the submissions received to the first consultation agreed with such an approach. An on-net voice service for this purpose is one that both originates and terminates on Digicel's network, and an off-net voice service is one that originates on Digicel's network but terminates on the network of another operator.

NICTA has also considered such a proposal for a retail service determination against the retail regulation criteria specified in section 158 of the Act and is satisfied that all of those criteria would be met by the introduction of such a retail service determination.

The recent entry of Vodafone into the PNG mobile services market has caused NICTA to propose that the retail service determination apply for a period of three years, with a review in the third year, rather than a longer period, such as five years, the maximum period permitted under the Act.

A draft retail service determination that reflects this proposal is included at Attachment B.

2 LEGAL CONTEXT AND PUBLIC INQUIRY

2.1 RETAIL SERVICE DETERMINATIONS

Part VII of the *National Information and Communications Technology Act 2009* (the Act) sets out special arrangements relating to consumer protection and the regulation of retail pricing. Under section 157 of the Act, NICTA is able to hold a public inquiry under section 230 of the Act to determine whether or not it should recommend to the Minister that one or more particular retail services supplied by one or more specified operator licensees should be subject to a retail service determination.

A retail service determination is a regulation that is made by the Minister based on the recommendation of NICTA. NICTA's recommendation must be based on the application of the retail regulation criteria that are set out in Section 158 of the Act, which are as follows:

- (a) that making a retail service determination for the retail service in respect of an operator licensee for a particular period will further the achievement of the objective set out in section 124 but disregarding section 124(2);¹ and
- (b) specifically, in relation to the competition objective, that –
 - (i) that operator licensee has a substantial degree of power in the market within which the retail service is supplied; and
 - (ii) in the absence of the retail service determination for that period, that substantial degree of power is likely to –
 - (A) persist in the market over that period; and
 - (B) expose retail customers to a material risk of higher prices and/or reduced service where they acquire the retail service from that operator licensee during that period; and
- (c) specifically, in relation to the efficiency objective, that the operator licensee will not be prevented from achieving a return on assets during that period sufficient to sustain investment necessary to supply the retail service; and

¹ Section 124(1) of the Act states 'The objective of this Part [Part VI] and Part VII of this Act is to –
(a) promote effective competition in markets for ICT services in Papua New Guinea, to be known as the "**competition objective**", subject to –
(b) promoting the economically efficient use of, and the economically efficient investment in, the facilities by which ICT services may be supplied, to be known as the "efficiency objective".
Section 124(2) of the Act, which is to be disregarded in any consideration of the retail regulation criteria, states 'In determining the extent to which a particular thing is likely to further the achievement of the efficiency objective, regard shall be had (without limitation) to all of the following matters –
(a) whether it is technically feasible for the relevant ICT services to be supplied, having regard to –
(i) the technology available or likely to become available; and
(ii) the reasonableness of the costs involved; and
(iii) the effect of supplying the ICT services on the integrity, operation or performance of other ICT services or facilities; and
(b) the legitimate commercial interests of the access provider in supplying the ICT services, including the ability of the access provider to exploit economies of scale and scope; and
(c) the incentives for investment in the facilities by which the ICT services may be supplied, including the risks involved in making the investment.'

(d) the aggregate likely benefits of making that retail service determination outweigh any aggregate likely detriments.²

The specific matters that a retail service determination may specify are set out in section 161 of the Act. In summary, section 161:

- requires that a retail service determination must specify the operator licensee to which it refers (and may apply to more than one operator licensee);³
- provides that a retail service determination may -
 - regulate prices for the supply of the retail service;⁴
 - specify service standards that the operator licensee supplying the retail service must meet;⁵
 - specify any pricing policies and/or principles that must be complied with by the operator licensee in pricing the retail service;⁶
 - specify conditions relating to the price of the retail service, including that any calculation is to be performed, or a matter is to be determined, by NICTA;⁷ or
 - require the operator licensee to provide specified information to NICTA, retail customers, or any other persons;⁸
 - require the operator licensee to supply the retail service in particular areas or to particular classes of retail customer;⁹ and/or
 - require the operator licensee to comply with any terms and conditions advised by NICTA that NICTA considers are necessary or desirable to give effect to any of the matters listed [in the section];¹⁰
- provides that in relation to retail service price regulation, that the retail service determination may do many things including fixing a price, determining price increases and decreases, determining indices, regulating revenue outcomes, and requiring approvals on a periodic basis.¹¹

The Act therefore gives very wide scope to the matters that the Minister, on NICTA's recommendation, may include in a retail price determination. A determination may not have retrospective effect.¹²

2.2 NICTA'S PUBLIC INQUIRY

Under section 157 of the Act, NICTA may hold a public inquiry into whether or not a recommendation should be made to the Minister that a retail service should be subject to a retail service determination in respect of a particular operator licensee. Such an inquiry may be initiated by NICTA on its own initiative or in response to a written request for any person asking NICTA to hold such an inquiry.

On this occasion the public inquiry was initiated by NICTA, and it was commenced on 18 March 2022 as part of an inquiry of broader scope that covering whether NICTA should seek to regulate retail

² Section 158 of the Act

³ Sub-section 161(1) of the Act

⁴ Paragraph 161(2)(a) of the Act

⁵ Paragraph 161(2)(b) of the Act

⁶ Paragraph 161(2)(c) of the Act

⁷ Paragraph 161(2)(d) of the Act

⁸ Paragraph 161(2)(e) of the Act

⁹ Paragraph 161(2)(f) of the Act

¹⁰ Paragraph 161(2)(g) of the Act

¹¹ Paragraph 161(2)(a) of the Act

¹² Sub-section 161(3) of the Act

voice and data services prices in Papua New Guinea. The terms of reference of that inquiry also dealt with issues associated with whether price differentials between on-net and offnet voice services should be regulated. The discussion paper to facilitate the wider inquiry was published by NICTA on 18 March 2022 and may be found on NICTA's website.¹³ The terms of reference of the public inquiry are enclosed at Attachment A to this Discussion Paper.

2.3 THE PRESENT PUBLIC CONSULTATION

The purpose of this Discussion Paper is to summarise the case for a Retail Service Determination to eliminate discrimination between on-net and offnet voice calls and to publish a draft Retail Service Determination instrument. The case was initially made in the Consultation Paper published on 18 March 2022, but is repeated here with additional emphasis on the specific form that the proposed instrument will take, in order to enable all interested stakeholders to make such further comments as they might wish.

¹³ www.nicta.gov.pg.

3 RECENT HISTORY OF REGULATION OF RETAIL PRICES FOR ON-NET AND OFFNET PRICES FOR VOICE SERVICES

The first Retail Service Determination issued by the Minister in relation to on-net and offnet prices for retail voice services was Retail Service Determination No. 1 of 2012, which controlled the extent to which Digicel PNG Limited (Digicel) was permitted to differentiate between the prices. Based on benchmarking covering a number of other countries that permitted differentiation and discrimination at the time, NICTA recommended and the Minister accepted that the price of offnet calls should not exceed the equivalent on-net call by more than 40%. This differential was considered by some to be generous at the time, but it had the effect of removing substantially greater differentials that were part of Digicel's price schedule before then.

Retail Service Determination No. 1 of 2012 expired in October 2017. NICTA subsequently undertook a preliminary examination of the need to continue with some form of price regulation in this area, and concluded that there were matters that warranted being tested and considered further through a public inquiry process. In November 2017, NICTA issued a public discussion paper that set out NICTA staff's preliminary examination of what they considered to be the key relevant issues. The purpose of that discussion paper was to determine whether or not there were grounds that warranted NICTA issuing a new retail service determination and, if so, how that determination might differ from the 2012 Determination.

After considering stakeholder submissions, NICTA concluded that a general principle of non-discrimination should be adopted in relation to Digicel retail mobile voice services, with the effect that all prices (including tariffs, charges, discounts and promotional offers) relating to on-net calls should also apply to off-net calls, unless Digicel could justify any price differences in terms of cost differences.

A draft retail Service Determination was recommended by NICTA to the Minister in July 2018. In the event the Minister did not accept the recommendation because he was concerned that Digicel might set on-net and offnet prices at the same level by increasing offnet prices, and by removing popular on-net price offers from its price schedule. The Minister indicated that he was otherwise "inclined to accept and endorse NICTA's RSD Recommendation to ensure that prices for on-net calls are the same as off-net calls - making Digicel to Digicel calls; Digicel to Bmobile Vodafone calls; Digicel to Telikom calls and vice versa are all charged at the same rate".

Although the solution proposed was not accepted at that time, the problem of discriminatory pricing continues.

In the Discussion Paper published on 18 March 2022, NICTA outlined the case for a prohibition on on-net / offnet price discrimination for retail voice services. The case is summarised in Section 4 of this Discussion Paper.

4 THE CASE FOR A RETAIL SERVICES DETERMINATION TO PROHIBIT ON-NET / OFFNET RETAIL VOICE SERVICE PRICE DISCRIMINATION IN 2022

4.1 ANTI-COMPETITIVE EFFECTS

A service provider with substantial power in a market for calls may maintain and enhance that power through charging prices that differentiate between calls that originate and terminate on its network, and those that terminate on other networks – that is, between on-net and off-net calls. The effect of such price differentiation may be to encourage customers to switch their service from other networks to the relevant service provider's network to gain the benefit of reduced call prices. In these circumstances, the substantial market power of the service provider means, in effect, that smaller service providers are seriously disadvantaged from being able to compete. Smaller service providers would find it very difficult to compete using a similar strategy because their relatively small share of the market might be a poor base for on-net strategies.

The degree of competitive disadvantage resulting from on-net / offnet discrimination is likely to be proportionate to the extent of the discrimination and to the size of the market share of the dominant operator relative to other competitors in the market. On the second point, Papua New Guinea represents an extreme case, with Digicel having in excess of 90% market share by revenue, and a similarly large share when measured by subscribers.

On-net / offnet discrimination is competitive behaviour that is not based on service quality or other merit intrinsic to a service. It is essentially behaviour that is facilitated by market strength and is therefore an exercise of market power. It could lead to market foreclosure in worse case situations. Weakening competition in this way, and enhancing the position of a dominant operator, is not in the long-term interests of end-users, notwithstanding the shorter-term benefits that might be offered to users making on-net calls.

4.2 RELEVANT MARKET

Pursuant to the approach set out in NICTA's Market Analysis Guidelines, NICTA considers that mobile originated retail voice call services are supplied within a national retail mobile services market that comprises mobile access and mobile call origination (whether supplied on a prepaid or post-paid basis).

Although there is potential for substitution between mobile originated and fixed originated calls, and between mobile access and fixed access, that potential is largely in one-direction with fixed telephony being substituted in favour of mobile telephony. The geographic, service and mobility limitations of fixed telephony and the fixed network operator (relative to mobile) limit the potential for substitution of mobile telephony in favour of fixed telephony services.

This analysis proceeds on the basis of mobile voice call services only. This is justified on the basis that a relatively small number of national calls originate on fixed services, and that the analysis of market power would not change in any material way whether fixed calls are included or not.¹⁴

¹⁴ In 2021, the total number of call minutes originating in PNG is estimated at 3.85 billion, of which 3.8 billion or 98% originated on mobile services.

4.3 APPLICATION OF THE LEGISLATED CRITERIA

The criteria to be applied are in Section 158 of the Act. Each of the four criteria is considered, in turn:

- **Paragraph (a) in relation to Section 124 (1):**

Section 124(1) refers to the promotion of a ‘competition objection’ – which is the effective competition in markets for ICT services in Papua New Guinea – which is subject to a second objective, an ‘efficiency objective’ – which is the efficient use of, and the economically efficient of investment in, the facilities by which ICT services may be supplied.

Each of these objectives is picked up in paragraphs (b) and (c), respectively, of Section 158.

- **Paragraph (b) in relation to the competition objective:**

The elements of paragraph (b) are discussed in turn:

- (i) ‘the operator licensee has a substantial degree of power in the market within which the retail service is supplied’: In NICTA’s view Digicel has a substantial degree of power in the mobile call service market in Papua New Guinea and has had for a considerable time. Digicel’s substantial degree of market power is evidenced by:
 - Digicel’s very substantial market share, which is particularly relevant to being able to succeed in implementing on-net / offnet price discrimination without a similar strategy being implemented by other, much smaller competitors, in response;
 - its substantial network footprint and the resultant advantage of being first in in many areas;
 - the strong network effects created by its on-net/off-net price discrimination, which have been a significant barrier to market entry in the past, and are barriers to competitor market expansion at present; and
 - high switching costs resulting from its on-net/off-price discrimination.
- (ii) ‘in the absence of the retail service determination for that period, that substantial degree of market power is likely to –
 - (A) Persist in the market over that period; and
 - (B) Expose retail customers to a material risk of higher prices and/or reduced service where they acquire the retail service from that operator licensee during that period’:

In April 2022, Vodafone entered the PNG mobile market. If Vodafone gains substantial traction in the market and extends its operations from areas of initial mobile network rollout as it has publicly stated, then NICTA would expect that Digicel’s position of substantial market power will be progressively eroded. However, one would expect Digicel to respond to Vodafone’s entry with appropriate offerings to encourage existing retail customers to remain with it and not to switch to Vodafone. This response is in the interests of end-users, provided the means of defending its customer base is through competitive behaviour. It is at this very time that on-net/offnet price discrimination may have the greatest effect in deterring switching to the new entrant.

NICTA considers that a five-year period, the maximum allowed for in Part VII Division 1 of the Act for a Retail Services Determination, would be too long under the current circumstances. The mobile market in Papua New Guinea is now being progressively contested by a competitor with financial and technical capacity and with experience in providing mobile services in the Region.

On the other hand, Papua New Guinea is a tough market, and for a range of reasons, Telikom and its predecessors have not been able to make substantial gains in mobile market share over the past decade. Digicel has renewed financial strength and capacity under new Telstra ownership.

It is therefore too much to say that Digicel's substantial degree of power will persist over five years. However, it is a reasonable conclusion to draw that the market power will not dissipate in the very short term and that it will persist for at least three years. It is therefore proposed that a Retail Services Determination should be imposed for a period of three years, with a review in the third year to determine whether it should be renewed thereafter.

In relation to (B), the second part of paragraph (b)(ii), in NICTA's view there is a material risk of higher prices continuing for off-net call services acquired by customers from Digicel during the three-year period. It is not enough to point to actual market behaviour, which can change in terms of service offers at short notice. The risk has materialised in the past and may well recur or persist. It is the risk that NICTA must focus on. Higher prices can arise in a number of ways, including by being higher than they otherwise might or should be without on-net/offnet discrimination, and price discounts or reductions might not be offered either at all or to the same extent to customers making off-net calls.

- **Paragraph (c) in relation to the efficiency objective:**

Digicel has invested in its initial mobile network and in subsequent expansion and technology upgrades since being initially licensed in 2008. NICTA has no reason to believe that the decisions behind these investments were based on other than sound commercial criteria. There is nothing in the proposed Retail Services Determination that would or could change that. Mobile networks globally are carrying progressively more and more data traffic and the proportion of the investment that can be allocated to voice services is rapidly decreasing. Consequently, it would be unreasonable to expect that a prohibition on on-net/ offnet voice service price discrimination will or could result in any part of the network investment becoming inefficient or stranded. Hence, the proposed Retail Service Determination will not prevent Digicel from achieving a return on assets sufficient to sustain the investment. NICTA cannot predict the return on assets that Digicel will or might make, and nor is it required to do that under the test in paragraph (c) of Section 158. It is sufficient to show that in the nature of these investments the impact of the Retail Service Determination cannot and will not have that effect. Other factors might have that effect, however.

- **Paragraph (d) in relation to the balance of aggregate benefits and aggregate detriments:**

The aggregated likely benefits of the draft determination are significant and outweigh any detriments. Those benefits include:

- Competition in the retail mobile services market would be put on a more level playing field, with mobile operators attracting subscribers based on the innovativeness,

quality and value of their services instead of disproportionate weight being given to the relative size of their subscriber base;

- Leaving Digicel as able as it is now to achieve a sustainable return on its investments through appropriate pricing. There is nothing in the draft determination that limits prices per se, or that limits return on investment. The constraint is in terms of price relationships—on-net compared to off net;
- A reduction in retail customers' switching costs;¹⁵
- A reduction in customer lock-in, and in potential lock-in, that makes it unduly difficult for Digicel's competitors to induce existing subscribers to switch networks;
- Contributes to the potential for a Digicel review of its pricing structure to stimulate increased competition in the retail mobile services market and/or lead to increased value being offered to all mobile phone users;
- In the absence of on-net/off-net price discrimination by the dominant operator a more competitive market should develop over time, leading to lower prices for consumers than exists at present.

The possible detriments include:

- The risk that Digicel may significantly increase its on-net prices to comply with the draft determination. However, this risk is small given the recent entry of Vodafone into the market.
- It is possible that the proposed determination may limit innovation in and development of certain types of price packaging, although this is doubtful given that Vodafone's recent entry may have an offsetting effect on innovation in the market.

In aggregate the likely benefits of the draft determination will in NICTA's view outweigh to a significant degree the possible detriments, particularly as the identified detriments are subject to their own constraints and are low risk.

¹⁵ The Body of European Regulators for Electronic Communications has identified on-net/off-net price discrimination as 'a major obstacle in respect of switching mobile telephone services.'

5 THE TERMS FOR THE PROPOSED RETAIL SERVICE DETERMINATION

The proposed terms of the proposed retail service determination are identified below. A draft determination reflecting these terms is provided at Attachment B.

5.1 PROPOSED LICENSEE

A retail service determination must specify the operator licensee to which it applies (s.161). Although a retail service determination may apply to more than one licensee, it may only apply to licensees that have a substantial degree of power in the market (SMP) in which the retail service is supplied (s.158).

As NICTA has found that Digicel alone has SMP in the retail mobile services market, it is proposed retail service determination apply only to Digicel.

5.2 PROPOSED RETAIL SERVICE

A retail service determination must specify the particular retail service to which it applies (s.159, s.161). It does not need to apply to all of the services in the market in which the particular retail service is supplied.

As NICTA has found that Digicel's on-net/off-net price discrimination is potentially greatest and most problematic in relation to its supply of national mobile voice calls, and is unlikely to be as problematic in relation to its supply of SMS or data services, it is proposed that the retail service determination should apply only to Digicel's supply of mobile originated national retail voice call services. That is, the retail service determination should not apply to SMS and data services or any other types of retail mobile services that might be introduced during the period the determination is in effect.

5.3 PROPOSED PERIOD

A retail service determination must specify an expiry date that is not longer than five years from the commencement of the determination (s.159). A determination may not apply retrospectively (ss.161(3)).

It is proposed that the retail service determination remain in effect for a period of three years unless revoked or amended earlier, and that a review will be undertaken in the third year by NICTA to consider whether any extension is appropriate.

5.4 PROPOSED TERMS

A retail service determination may specify a pricing policy and/or principle that must be complied with by a licensee in its pricing of a retail service (s.161(2)(c)). A determination may also specify conditions relating to the pricing of a retail service that are to be determined by NICTA (s.161(2)(d)) and require a licensee to supply specified information to NICTA on specified terms (s.161(2)(e)).

It is proposed that the retail service determination establish a pricing principle that there must be no price discrimination based on the identity of the terminating mobile network. Further all differences in pricing based on whether the service is on-net or off-net shall be deemed to be discrimination and therefore prohibited, unless such differentiation has been approved by NICTA in writing.

It is appropriate to note that, as of the date of this discussion paper, no currently charged fixed or mobile terminating access service prices in Papua New Guinea have been approved by NICTA, and,

until they are, they will not be considered by NICTA to be a basis on which prices for services that are on-net and off-net may be differentiated.

ATTACHMENT A: PUBLIC INQUIRY TERMS OF REFERENCE



National Information and Communications Technology Authority

Public Notice

PUBLIC INQUIRY– POTENTIAL RETAIL SERVICE DETERMINATION IN RELATION TO VOICE AND DATA SERVICES – ON-NET/OFF-NET VOICE AND MESSGING SERVICES.

On 18 March 2022, the National Information and Communications Technology Authority (NICTA) commenced a Public Inquiry into a potential retail service determination in relation to voice and data services.

The terms of reference of the inquiry are to consider:

1. whether or not a recommendation should be made to the Minister under section 159 of the National Information and Communications Technology Act 2009 (the Act) that:
 - (a) national voice services supplied by Digicel;
 - (b) mobile data services supplied by Digicel; and
 - (c) fixed data services supplied by Telikom.should be subject to retail service determinations to control price levels, and, in the case of (a) to prohibit price discrimination between on-net and off-net calls; and, if so;
2. the appropriate terms of such a retail service determination; and
3. the extent to which those terms would meet the retail regulation criteria in section 158 of the Act.

Following the first phase of the Public Inquiry, and taking into account comments in submissions from operators and other interested parties, and having regard to new competitive entry into the market, NICTA decided not to proceed with any form of price capping for these services. However, the issues associated with price discrimination and differentials between on-net and offnet voice and messaging services were raised. The second phase of the Public Inquiry has now commenced into whether a draft retail service determination that NICTA has prepared is appropriate to address the issues raised.

A discussion paper for the purposes of Section 232 of the Act is available on NICTA's website (www.nicta.gov.pg) from **Friday October 21, 2022**. The public inquiry shall commence from that date and end in early by or before December 2022. Up to date information on the inquiry shall be available from NICTA's website. All written submissions should be submitted by email to: consultation.submission@nicta.gov.pg by close of business, **Friday November 4, 2022**. Copies of the submissions received will be published on NICTA's Public Register consistent with the requirements under subsection 229(3) of the Act. Any respondent that wishes to claim confidentiality over information that it submits should follow the procedures set out in the current guidelines on the submission of written comments to public consultations and public inquiries, which are also available from NICTA's Public Register at www.nicta.gov.pg

For further enquiries contact Mr. Polume Lume, Acting Director, Economic, Consumer & International Affairs on telephone 3033272 during business hours or email: plume@nicta.gov.pg.

This notice fulfils the requirements of Section 231 of the Act.

Kila Gulo-Vui

Chief Executive Officer

ATTACHMENT B: DRAFT RETAIL SERVICE DETERMINATION

RETAIL SERVICE DETERMINATION No. 1 of 2022

National Information and Communications Technology Act 2009

I, **Hon. Timothy Masiu**, Minister for Communication and Information Technology, acting on the recommendation of the National Information and Communications Technology Authority and having had regard to the Retail Regulation Criteria, make the following Retail Service Determination under section 160 of the *National Information and Communications Technology Act 2009*.

PART I – PRELIMINARY

1 Name of the Determination

This Determination may be cited as *Retail Service Determination No.1 of 2022*.

2 Commencement and expiry

- (1) This Determination shall come into force on [DATE] 2022 (***the Commencement Date***).
- (2) This Determination shall expire on the day before the third anniversary of the Commencement Date.

3 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in this Determination have the same meaning as in the Act.
- (2) In this Determination, unless the context otherwise requires:
 - (a) ***“Act”*** means the *National Information and Communications Technology Act 2009*;
 - (b) ***“day”*** means a calendar day;
 - (c) ***“Digicel”*** means Digicel (PNG) Limited with company registration number 1-55909;
 - (d) ***“fixed-fee service bundle”*** means any combination of voice calls, whether On-net Calls or Off-net Calls, and/or SMS and/or data services that is sold by Digicel for a pre-determined price regardless of usage up to certain pre-determined usage limits.
 - (e) ***“individual service tariff”*** means the price charged for a Regulated Mobile Service when sold on a stand-alone basis

- (f) **“on-net call”** means a national voice call that originates and terminates on Digicel’s mobile network;
- (g) **“off-net call”** means a national voice call that originates on Digicel’s mobile network and terminates on the network of another licensee;
- (h) **“prepaid”** means being charged in such manner that payment is made before a service is used;
- (i) **“post-paid”** means being charged in such manner that payment is made after a service is used, normally by means of a monthly bill;
- (j) **“promotional offer”** means any special tariff offer of limited duration that is made by Digicel;
- (k) **“regulated mobile service”** means:
- a prepaid mobile originated retail national voice call service; or
 - a post-paid mobile originated retail national voice call service.
- (l) **“SMS”** means short message service.

NOTE: The following terms are defined in the Act:

- retail regulation criteria;
- network
- NICTA
- price
- retail service

4 Application

- (1) This Determination applies to Digicel's supply of Regulated Mobile Services.

PART II – PRICING PRINCIPLES

5 Limit to price discrimination between On-net Calls and Off-net Calls

- (1) Digicel shall not offer or charge prices for a Regulated Mobile Service that discriminate on the basis of the network that will terminate the call.
- (2) Except as provided in subsection (3), any difference between the price of a Digicel Off-net Call and the price of a Digicel On-net Call made at the same time and under other relevant circumstances that are the same, shall be deemed to be discriminatory and subject to the probation in subsection (1).
- (3) Digicel may differentiate between the price if On-net Calls and Off-net Calls only where it has prior written permission to do from NICTA based on NICTA’s acceptance that there are cost differences that justify the differences in price.

- (4) For the avoidance of doubt:
- (a) where Digicel offers Regulated Mobile Services within a Fixed-fee Service Bundle no discrimination between On-net Calls and Off-net Calls is permitted; and
 - (b) Voice service terminating charges that Digicel pays for the termination of calls on the networks of other operator licensees, and which have originated on Digicel's network, shall not be considered to be the basis of a justified difference in on-net and off-net call prices unless those charges have been formally approved by NICTA in advance.

6 Consistent basis for charging and billing

The basis upon which a Regulated Mobile Service is charged or billed (for example, per minute or per second) shall not differ between On-net Calls and Off-net Calls.

PART III – IMPLEMENTATION

- 7** Digicel shall implement this Determination on and from the Commencement Date, which has been set to allow time for Digicel to make arrangements for price changes, where necessary, and for Digicel's to advise its customers.

Made at Port Moresby this [DATE] day of [MONTH] 2022.