



NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY  
AUTHORITY

**A Public Consultation Document**

**on**

**Service-Specific Pricing Principles pursuant to  
Subsection 135(4) of the National ICT Act 2009**

Issued by NICTA, Port Moresby on 29 March 2011

## Background

Subsection 131(1) of the National ICT Act (“the Act”) deems three services to be declared from the Succession Date (i.e. 29 October 2010), namely

- Domestic mobile terminating access services
- Domestic fixed terminating access services
- All facilities access services that may be supplied by means of any facility constructed under a Project Agreement for the life of that facility

The first two of these services are described in Schedule 1 to the Act.

The Act sets out general pricing principles applicable to declared services in Section 134 and provides for NICTA to determine service-specific pricing principles as may be considered necessary or appropriate in Section 135. The latter must be consistent with the general pricing principles.

## Introduction

NICTA has considered whether it ought to provide guidance at this stage on the way in which it might interpret the general pricing principles in Section 134 of the Act. It has concluded that it should not do so at this time because it is inappropriate to do so in advance of specific circumstances and contexts that might occur as cases arise. Those circumstances and contexts may influence interpretation on a case by case, or declared service by declared service, basis.

Therefore NICTA considers it appropriate for the present time to provide guidance in the context of specific-service pricing principles, but reserves its position on broader levels of guidance in relation to the general pricing principles

Facilities access services under Project Agreements refers to access to the facilities that are commissioned and made operational as a result of a Universal Access Service (UAS) Project as defined by the Act. Service-specific pricing principles shall be considered in relation to specific Project Agreements facilities as they arise. There are no such agreements at present.

The service-specific pricing principles that are applicable to both the domestic mobile and domestic fixed termination access services are considered to be similar to a large extent. For convenience, this consultation paper invites comment on both together, notwithstanding that the draft Determinations are attached separately at the conclusion of this public consultation paper.

Also for convenience the relevant parts of Section 134 on general pricing principles are set out below:

**S.134:GENERAL PRICING PRINCIPLES.**

(1) The “general pricing principles” are that the price of access to a declared service should promote the achievement of the objective of this Part as set out in Section 124 and, in particular, that the price of access to –

- (a) that declared service should –
  - be set so as to generate expected revenue from that declared service that is sufficient to meet the efficient costs of providing access to that declared service; and
  - include a reasonable return on investment, over the economic life of the assets employed, commensurate with the regulatory and commercial risks involved,this principle is known as the “cost recovery principle”; and
- (b) .....; and
- (c) a declared service that is not a resale service should be subject to cost-based pricing; and
- (d) ....

(2) For the purposes of Subsection (1), the following words have the following meanings –

“cost-based pricing” means pricing based on the cost recovery principle in which NICTA has regard to the following factors –

- (a) the application of the cost recovery principle; and
- (b) the need for the pricing to make a fair and reasonable contribution to the access provider’s common costs; and
- (c) the need for the recovery of the reasonable costs, incurred in the provision of access and interconnection by the access provider, that would not have been otherwise incurred but for the requirement to provide such access or interconnection; and
- (d) ... ; and
- (e) any other factors that NICTA considers relevant, to the extent that such factors are consistent with the cost-recovery principle and Subsections (a) to (d) of this definition.

“efficient costs” include the direct and indirectly attributable capital, operating and maintenance costs actually incurred by the access provider in providing the declared service to itself and access seekers (including a reasonable contribution to any common costs), unless NICTA determines that such costs are inefficient having regard to the efficiency objective and any evidence before it.

.....

(3) Any provision of the following instruments has no effect to the extent it is inconsistent with the general pricing principles –

- (a) any service-specific pricing principles; and
- (b) any model terms; and
- (c) any access exemption; and
- (d) any RIO.

## **Discussion on the clauses of the draft Determinations**

The references below are to the common clauses, 1 to 5, in the draft determinations. Clause 6 of each draft determination will be discussed separately. The following is best read in conjunction with the draft determinations attached to this consultation paper.

### **Clause 1**

It is important to recognise that the cost recovery principle does not mean that the access provider of the termination access service will necessarily recover all costs as measured in accounting terms. The costs that are being considered are economic costs and not accounting costs. If an access provider were to be assured of recovering all actual costs there would be an incentive for the access provider to be inefficient, knowing that the increment of costs so incurred would be passed to its wholesale customer (and retail competitor).

NICTA must be able to consider whether various efficiencies are available and should be considered, whether adopted in practice by the access seeker or not. These efficiencies may be productive efficiencies or efficiencies associated with scope and scale, or from other sources. For example, if at an early stage of its operation, an access provider's network has extremely low utilisation and relative high unit costs, this may be considered by NICTA as a scale factor that may result in the adjustment of unit costs and termination access prices. Other regulators routinely take these matters into account in their interconnection pricing determinations.

### **Clause 2**

This clause concerns the information that may be considered by NICTA in determining efficiency issues. In this clause we have suggested a distinction between information from the affected and potentially affected parties, whose information must be considered if relevant, and benchmark and other information that may be considered. This approach reflects a gradation in the importance of information of this kind routinely adopted in many other countries. Information about costs in PNG is clearly most important, whilst information about costs in similar countries is a proxy and although potentially useful, is of a second level of importance.

### **Clause 3**

Determining the economic lives of relevant assets is important in determining the provision that needs to be made for replacement and depreciation. This clause makes it clear that NICTA may have regard to the economic lives of assets adopted by other regulators and also the usage and replacement practices of operators, especially those in PNG. The clause provides only that these are relevant considerations, not that NICTA will be bound to conduct such enquiries or be bound to determine the result on any particular way. It means that NICTA will be entitled to take account of whether an asset category is typically maintained in operation after its presumed

economic life and after it has been written off in the accounts. In such a case NICTA would be entitled to ascribe a value to such assets but also to review economic life. NICTA may also take account of more economically efficient equipment that could be used instead of existing assets thereby suggesting a lower economic life for the existing assets notwithstanding that they are in good operational order and performing as they were designed.

#### **Clause 4**

Determination of risk-adjusted costs of capital for regulatory purposes is complex. It is inappropriate at this stage to make a determination that might be pre-emptive in relation to the submissions that parties may make as cases arise. The purpose of Clause 4 is to extend the potential range of NICTA's enquiries and make it a relevant consideration to examine the actual risks and returns that providers of capital are prepared to accept in the case of PNG operators and others. These risks and returns can be quite different from the theoretical calculations that attend these discussions. Nor should it be assumed that the actual returns will be accepted by NICTA as having additional or exceptional importance. NICTA understands that there are many reasons for actual outcomes and the parties would always need an opportunity to explain those circumstances so that a balanced consideration can be made.

#### **Clause 5**

NICTA has considered carefully the words of the Act in relation to the features of the costs and cost standard that may be implied. (This leaves out the specific mention of Retail Minus which is appropriate for some declared services, but not those now being considered.) NICTA considers that the long run average incremental cost (LRAIC) standard best matches the legislative requirements, but with a contribution to common costs. For the avoidance of doubt NICTA considers that the EPMU (equi-proportionate mark-up) methodology should be employed for determining contributions to common costs. Other methodologies are available, but tend not to be adopted because of the difficulty of obtaining suitable and agreed input data for the calculations involved.

#### **Clause 6**

Clause 6 differs in relation to mobile and fixed termination access services. It reflects the current widespread practice of including only the costs of those assets that are considered to be generally traffic-sensitive. Any discussion of the matter makes it clear that the provisioning of capacity in mobile radio access networks is generally sensitive to traffic volumes, and that fixed networks are generally not, but that there are exceptions. In the interests of certainty, Clause 6 has been included, even though it may need to be separately reviewed as network technologies further converge and developed.

### **Coverage of the Determinations**

NICTA is aware of the substantial volume of comments that have been prepared by regulators, operators, academics and others on the matters included in these draft

Determinations. An issue therefore immediately arises about how much detail and guidance to offer at this stage bearing in mind the very useful guide that already exists in Section 134 of the Act, and also bearing in mind that the Act gives primacy to commercial agreements between the parties.

NICTA has taken the view that a principle of reasonable and immediate necessity should apply, and the clauses are put forward on that basis. Therefore, the draft determinations have not sought to include substantial methodological and procedural detail that may be useful at a later time when cases emerge or appear to be imminent.

## **Invitation to submit comments**

Operators, stakeholders and the general public are invited to submit comments and views on the draft Determinations.

NICTA would ask potential respondents to bear in mind the caution offered in the last section, and, if they are proposing substantial additions at this stage to the text of either draft determination, to set out why the additional material is needed now and the consequences that will result if it is not included now. NICTA will adopt a strict view of this test, and is equally prepared to consider comment on why any of the existing draft provisions may not pass such a test.

Respondents should have regard to section 44 of the Act if they wish to request that particular aspects of their submission remain confidential.

Submissions should be submitted no later than 29 April 2011 to:

Mr. Kila Gulo-Vui  
National Information and Communications Technology Authority  
PO Box 8227  
BOROKO 111  
NCD, Papua New Guinea

Ph: 3033227, facsimile: 3004829 email: [kgulovui@nicta.gov.pg](mailto:kgulovui@nicta.gov.pg)



## NATIONAL ICT AUTHORITY

### **Determination No. 1 of 2011 in relation to Domestic Fixed Terminating Access Services**

This determination is made by the National Information and Communications Technology Authority (NICTA) in relation to service-specific pricing principles in relation to Domestic Fixed Terminating Access Services pursuant to its powers under Section 135 of the National ICT Act 2009 ('the Act'). Domestic Fixed Terminating Access Services are deemed to have been declared from the Succession Date in paragraph 131(1)(a) of the Act and are described in Schedule 1 of the Act.

The service-specific pricing principles hereby determined are:

1. In determining the efficient costs of providing access to Domestic Fixed Terminating Access Services under the 'cost recovery principle' provided for in Section 134 of the Act, NICTA may make adjustments to actual costs claimed to reflect:
  - (a) productive efficiencies available in the operation of the operator providing the access service;
  - (b) scale and scope efficiencies available to the operator; and
  - (c) other efficiencies available to the operator,which costs should, in the view of NICTA, be shared with users of the access service.
2. In determining the availability of efficiencies that may be considered and which may reduce the cost of the Domestic Fixed Terminating Access Services, NICTA shall consider:
  - (a) relevant information provided by the access provider in relation to its own costs and potential efficiencies; and
  - (b) relevant information provided by other operators in relation to their costs and potential efficiencies in Papua New Guinea;and NICTA may consider benchmarked information from countries that, in the opinion of NICTA, are reasonably similar to Papua New Guinea for the consideration of telecommunications costs.
3. In determining its view on the economic life of the assets employed in the provision of Domestic Fixed Terminating Access Services, commensurate with the regulatory and commercial risks involved, NICTA may consider:

- (a) the economic lives accorded to similar assets by other regulatory authorities in other countries considered by NICTA to be similar in this regard to Papua New Guinea; and
  - (b) the practices of the access provider and other operators in the use and replacement of similar assets in Papua New Guinea and in other countries considered to be similar by NICTA for this purpose.
- 4. In determining a reasonable return on investment, over the economic life of the assets employed in the provision of Domestic Fixed Terminating Access Services, commensurate with the regulatory and commercial risks involved, NICTA may consider the actual risks and returns accepted by providers of debt and equity capital to the operator providing Domestic Fixed Terminating Access Services, and the actual risks and returns accepted by providers of debt and equity capital to other operators providing such services both in Papua New Guinea and in countries considered by NICTA to be similar for this purpose.
- 5. The cost standard that shall be applied consistently with the requirements of Section 134 of the Act shall be long run average incremental costs to which shall be added an equi-proportionate mark-up to reflect a reasonable contribution to common costs that have been accepted by NICTA as reasonably needed and appropriate for the provision of Domestic Fixed Terminating Access Services.
- 6. The cost of the subscriber access network connecting the subscriber's premises to a distribution framework in a public exchange or in a remote subscriber access unit associated with the fixed network shall not be included as a relevant cost for the calculation of the costs of Domestic Fixed Terminating Access Services.





## **NATIONAL ICT AUTHORITY**

### **Determination No. 2 of 2011 in relation to Domestic Mobile Terminating Access Services**

This determination is made by the National Information and Communications Technology Authority (NICTA) in relation to service-specific pricing principles in relation to Domestic Mobile Terminating Access Services pursuant to its powers under Section 135 of the National ICT Act 2009 ('the Act'). Domestic Fixed Terminating Access Services are deemed to have been declared from the Succession Date in paragraph 131(1)(a) of the Act and are described in Schedule 1 of the Act.

The service-specific pricing principles hereby determined are:

1. In determining the efficient costs of providing access to Domestic Mobile Terminating Access Services under the 'cost recovery principle' provided for in Section 134 of the Act, NICTA may make adjustments to actual costs claimed to reflect:
  - (a) productive efficiencies available in the operation of the operator providing the access service;
  - (b) scale and scope efficiencies available to the operator; and
  - (c) other efficiencies available to the operator, which costs should, in the view of NICTA, be shared with users of the access service.
2. In determining the availability of efficiencies that may be considered and which may reduce the cost of the Domestic Mobile Terminating Access Services, NICTA shall consider:
  - (a) relevant information provided by the access provider in relation to its own costs and potential efficiencies; and
  - (b) relevant information provided by other operators in relation to their costs and potential efficiencies in Papua New Guinea;and NICTA may consider benchmarked information from countries that, in the opinion of NICTA, are reasonably similar to Papua New Guinea for the consideration of telecommunications costs.
3. In determining its view on the economic life of the assets employed in the provision of Domestic Mobile Terminating Access Services, commensurate with the regulatory and commercial risks involved, NICTA may consider:

- (a) the economic lives accorded to similar assets by other regulatory authorities in other countries considered by NICTA to be similar in this regard to Papua New Guinea; and
  - (b) the practices of the access provider and other operators in the use and replacement of similar assets in Papua New Guinea and in other countries considered to be similar by NICTA for this purpose.
- 4. In determining a reasonable return on investment, over the economic life of the assets employed in the provision of Domestic Mobile Terminating Access Services, commensurate with the regulatory and commercial risks involved, NICTA may consider the actual risks and returns accepted by providers of debt and equity capital to the operator providing Domestic Mobile Terminating Access Services, and the actual risks and returns accepted by providers of debt and equity capital to other operators providing such services both in Papua New Guinea and in countries considered by NICTA to be similar for this purpose.
- 5. The cost standard that shall be applied consistently with the requirements of Section 134 of the Act shall be long run average incremental costs to which shall be added an equi-proportionate mark-up to reflect a reasonable contribution to common costs that have been accepted by NICTA as reasonably needed and appropriate for the provision of Domestic Mobile Terminating Access Services.
- 6. The cost of the radio access network associated with the mobile network shall be included as a relevant cost for the calculation of the costs of Domestic Mobile Terminating Access Service