



TELIKOM PNG LIMITED
“our communication company”

**CROSS-SUBMISSION TO PUBLIC INQUIRY DECLARATION OF WHOLESALE
SERVICES IN
INTERNATIONAL CONNECTIVITY MARKETS**

21st November 2012

1. TELIKOM’S CROSS – SUBMISSION TO SUBMISSION BY DIGICEL

In response to the submissions submitted by Digicel PNG, Telikom submits the following:

As submitted by DIGICEL in Paragraph :	TELIKOM PNG RESPONDS ACCORDINGLY:
3	<ul style="list-style-type: none"> • Telikom PNG submits that the basis for the overall Inquiry is section 127 of National Information and Communication Technology Act 2009 (the Act) and not on a review of section 128; this is clearly stated in paragraph 2.21 Approach to Market Definition in NICTA’s Discussion paper. Telikom PNG has outlined the legal premise by which it proposes the Inquiry derives its authority from and adopts the same preposition as submitted then. • Telikom PNG notes the model adopted by NICTA and submits that the analytical approach adopted by NICTA for this Inquiry raises the issue of whether the circumstances and the regime to which the model applies are suitable to that of PNG.
7	<ul style="list-style-type: none"> • Telikom PNG does not agree to Digicel’s position referred to in paragraph 7 of its submission and submits that; <ul style="list-style-type: none"> a. Digicel being given the opportunity to compete in the PNG market deliberately installed its own international access gateway via satellite medium, not opting to connect through Telikom PNG’s already existing international gateway and international optic fibre connectivity, refer to the Determination dated 11 August 2008, by the Independent Consumer and Competition Commission (ICCC) and the subsequent determinations by the ICCC, being Final Revised Determination dated 9 October, 2008; and Revised Final Determination dated 1st October 2008, specifically relating to International Interconnection Access Dispute between Telikom and Digicel. Telikom recommends NICTA to refer to the ICCC’s Determinations, referred to herein. b. Telikom PNG would like to reiterate that its rights to operate the International access gateway at the time of the introduction of competition had been a point of contention. However, Telikom PNG noting the responsibilities of the ICCC, the then Economic Regulator of the telecommunications industry endeavored to resolve the issue and in the process, ICCC in allowing Digicel to operate its international gateway had inadvertently deregulated.

	<p>lated the international wholesale market.</p> <p>c. Telikom PNG’s view is that the first incident referred to in 3(b) above brought about a forced deregulation of the international wholesale market and now it appears from Digicel’s submission with a recommended investment ceiling for investors of more than US\$250 million, [only Digicel qualifies] to access Telikom PNG’s investment in optic fibre capacity is a full circle of re-regulating the wholesale market again.</p> <p>d. There was a commercial agreement between Telikom and Digicel allowing for the transmission through Telikom’s international gateway and fiber optic cable of Digicel’s international voice traffic. At the time of this submission, the commercial agreement, referred to herein, between Telikom PNG and Digicel on voice traffic no longer exist due to the fact that Digicel had exercised its discretion to terminate the agreement relating to voice traffic. Telikom PNG and Digicel then entered into negotiations for new commercial agreements.. In the negotiations for renewal of such agreement Telikom had in good faith offered Digicel two commercial agreements for access to Telikom’s Optic Fiber Capacity both for Voice (renewal of terminated agreement) and data (a new agreement). Digicel conveniently chose not to renew the voice agreement despite several commercial negotiations. The data (new) agreement is still being negotiated. Notwithstanding the negotiation on foot regarding these two agreements, Telikom currently allows Digicel to use its international services on commercial terms.</p> <p>e. Telikom PNG submits that its current commercial activities on its investment on the fibre optic cable is totally in line with Telikom PNG’s business endeavor of being a quality services provider, thus opting to offer services to access fibre optic cable on commercial arrangements to recover its investments in PIPE subsea cables.</p> <p>f. Telikom PNG maintains its position that all decisions regarding access to capacity have been entered into on a commercial basis with the objective to ensure that Telikom PNG is able to recover its costs related to such investments. Telikom PNG reiterates that the services (facilities and access), which is the subject of this Inquiry, is and has been open to all on a commercial basis especially to those who have a commercial investment in PNG. Telikom PNG is also mindful of fly-by-night operators that pose a potential threat to the ICT market in PNG and submits that NICTA take precautionary steps on this emerging issue in the near future.</p>
14	<ul style="list-style-type: none"> • Telikom PNG does not agree with the Digicel submission on the re-

	<p>defining of the definitions of wholesale services. ICCC then and now NICTA has already deregulated the wholesale services market and inadvertently opened up the international gateway as well.</p> <ul style="list-style-type: none"> • Telikom PNG’s investment is based on quality of services and emphasizes that Digicel is at liberty to invest in its own Branching Unit by liaising directly with PIPE.
16	<ul style="list-style-type: none"> • Telikom PNG submits that the position stated by Digicel is an intention to monopolize the wholesale market i.e. by recommending in its submission that access to Telikom PNG’s international capacity and facilities be limited to investors in the ICT market with a minimum investment of US\$250 million resulting in only Digicel qualifying for access to capacity and facility in direct contradiction to the conduct of Telikom PNG reacting to the previous decision by NICTA in allowing anybody to access to capacity and facilities based on commercial arrangements in lieu of its return on investment. • Under such access conditions the NICT Act’s “competition objective” will be inadequately achieved.
17	<ul style="list-style-type: none"> • Telikom PNG maintains its stance as per its prior submission that the wholesale market has already been deregulated.
18	<ul style="list-style-type: none"> • Telikom PNG is of the view that there is no need for declaration of domestic backhaul services within PNG market however Telikom recommends that national roaming be available to all license mobile operators.
19	<ul style="list-style-type: none"> • Telikom maintains its view that wholesale is deregulated.
20	<ul style="list-style-type: none"> • Telikom PNG, has responded with NICTA’s approval [of allowing other international operators like Telstra, Singtel in addition to Digicel having access internationally] by reviewing its pricing rates to reflect its recovery on its investment, [making it accessible to] any Access Seeker can access the submarine cable at a commercial rate without limitations imposed.
21	<ul style="list-style-type: none"> • Telikom PNG’s view is that the telecommunications and the ICT market in PNG is fully deregulated as mentioned earlier and the definitions of narrowband and broadband access services is dictated by the technology provided by service providers, driven by market conditions (e.g. afforda-

	<p>bility), whereas any provider could provide narrowband and broadband services by means of wireless or wire line technologies. Telikom PNG chooses to invest in optic fibre, copper and wireless technologies to deliver narrow band and broadband services. Telikom views on the European commission market definition exercise had been adequately addressed in the primary submission.</p>
22	<ul style="list-style-type: none"> • Telikom PNG maintains its view that the wholesale market has been deregulated. Telikom PNG stresses that it has not denied access rights to any access seeker on commercial terms.
23	<ul style="list-style-type: none"> • Telikom PNG would like to state that since the introduction of internet services in PNG, Telikom PNG was not participating in the internet service provider (ISP) market. There were a cartel of four (4) ISP providers who dominated the market, however, due to public outcry of high cost of retail internet services, Telikom PNG established Telinet services to force the retail pricing of internet pricing downwards. • The introduction of Telinet has resulted in the reduction of retail internet rates across the market. Telikom PNG had purposely formed Telinet to bring the internet rates down from as high as K2.00 per mega byte (Mbps) to K0.12 per mega byte (Mbps) to date. On the wholesale front Telikom PNG has reduced per mega byte from PGK0.64 to less than PGK0.10 applicable for every ISP. In addition, Telikom PNG offers a wide range of services including 3G, 4G and MPLS.
24	<ul style="list-style-type: none"> • Telikom PNG submits that Digicel and Remington at the moment are the locally based service providers purchasing data services from satellite providers. Other PNG licensed international telecommunications operators also provides services through satellite while others choose to come through Telikom PNG's international capacity. More than twenty (20) other service providers are customers with Telikom PNG (refer to list in sec 30). • Telikom PNG does not agree with Digicel's accusation of prohibitive pricing of wholesale services and poor quality. Whilst Telikom PNG had always had fibre optic international access and international gateway, Digicel chose to use satellite and have their own international gateway contrary to regulatory policies. • Telikom PNG is of the view that Digicel in realizing the effect of their

	<p>poor decision is pushing for declared services on Telikom PNG's investment in subsea fibre optic cables through NICTA to advance its agenda as opposed to approaching Telikom PNG on commercial arrangements the same as other access seekers had done with Telikom.</p>
26	<ul style="list-style-type: none"> Telikom PNG would like to state that the penetration of internet access in PNG considering that means of access is technology neutral, the current estimated penetration is more than what has been stated in the Digicel's submission with the realization of 3G internet by both Digicel and Bemobile in the last three (3) years. The 2% internet penetration rate is outdated taking into account the technological advancement in the last 3 years. Mostly narrow band internet services through wireless technologies provided by multiple internet services providers and telecommunications carriers.
27	<ul style="list-style-type: none"> Telikom PNG would like to state that Digicel was fortunate that Telikom PNG had been constrained by regulation and policies governing State Owned Enterprises (SOE's) thus giving Digicel a window of opportunity to invest and capture the market, for e.g., ICCC on interconnection decision that favored Digicel with Telikom PNG paying out to the tune of 100 Million kina to Digicel in the domestic interconnect market for at least 2 years. Digicel's accusation is baseless.
28	<ul style="list-style-type: none"> Telikom PNG would like to state that the accusations raised by Digicel PNG are baseless. As previously stated, Telikom PNG has provided services indicated by Digicel to other customers on commercial basis. The fact that Digicel had launched its mobile services 5 years ago in PNG, and moved to subsidize its call rates, without the use of Telikom's submarine cable capacity, proves that it can still provide its innovative products at affordable prices with or without PPC –1 through other access services. Digicel's claims of foreclosure are baseless because Telikom PNG has carried voice traffic for 1 year until terminated by Digicel this year. Telikom had offered voice and data agreements for international services to be carried on APNG-2 and PIPE cables. Digicel only accepted the data agreement advising they would come back on the voice agreements, but having not done so to date. In terms of pricing issues and complaints from Access seekers, this can be addressed administratively through other provision of the NICTA

	<p>Act relating to pricing complaints. Hence, this argument should not be used to justify PPC-1 to be a declared service.</p> <ul style="list-style-type: none"> Telikom PNG does not agree with Digicel’s position that access seekers should be categorized into “have and have not invested telecommunications infrastructure “as a determination for access to international capacity; this suggestion will in fact be a barrier to competition and be contrary to the objectives of Act.
29	<ul style="list-style-type: none"> Telikom PNG still maintains that it had the international connectivity through the submarine cable with capabilities of carrying all international traffic but Digicel had chosen and opted to go via satellite. Digicel’s own choice to go via satellite was contrary to the laws of PNG, forcing the government to have its own international gateway using satellite from day one of its operations. Telikom draws to NICTA’s attention of ICC’s Determinations of 12th August 2008, 9th October 2008 and 1st October 2008. As regards to other market participants, Telikom PNG is unaware as to when they have started using satellite transmission for voice and data services.
30	<ul style="list-style-type: none"> Telikom PNG counters this that the service is currently provided on a commercial basis on a commercial rate. As a matter of fact most major clients enjoy cost effective communications using Telikom PNG facilities including subsea cables. It would be inappropriate and irrelevant for Digicel to speak on behalf of other Access Seekers as it has done here. Any aggrieved Access Seeker may speak for themselves at this Public Inquiry. There are at present more than 20 corporate organizations ranging from the mining industry, banking industry, Fisheries industry, Tourism and Education, etc, that have access to Telikom PNG’s International Gateway Services.
31	<ul style="list-style-type: none"> Telikom PNG submits that it maintains its position as stated in its submission that the facility can be substituted.
32	<ul style="list-style-type: none"> Telikom PNG submits that it is willing to extend to Digicel and for that matter any access to the fiber on terms and conditions that are commercially acceptable to Telikom PNG and other parties. In the event that such terms and conditions are not agreeable then

	<p>parties can refer the matter to NICTA for arbitration as was the case in the Domestic Access Agreement.</p>
33	<ul style="list-style-type: none"> • Telikom PNG adopts the same view as expressed above and in response to paragraph 24 of Digicel’s submission.
34	<ul style="list-style-type: none"> • Telikom PNG disagrees in that the declaration of the wholesale services as described in paragraph 14 of Digicel’s submission would materially compromise Telikom PNG’s investment.
35	<ul style="list-style-type: none"> • Telikom PNG submits that it does not agree to the position as stated and maintains its offer as stated above offering Digicel access to the fiber on the terms and conditions agreeable on a commercial basis.
36	<ul style="list-style-type: none"> • Telikom PNG submits that this statement is irrelevant to the Inquiry, Digicel being an international operator in Caribbean and South Pacific, has been operating in PNG since 2007 and assuming that they have invested in excess of US\$600 million. Digicel would have easily invested in a subsea cable but has opted for Satellite services to date. Telikom PNG submits that the unfair assessment by Digicel in its submission of Telikom PNG’s business acumen without comprehending the legal constraints in place by the PNG Government has over the years worked against Telikom PNG. • In fact, Telikom’s foresight in the future industry led to investment decisions including PIPE and APNG-2.
37	<ul style="list-style-type: none"> • Telikom reserves its comments.
38	<ul style="list-style-type: none"> • Telikom maintains its stand that access to Telikom PNG enabled capacity on the PPC-1 cable is purely commercial and without technical difficulty or impediments as adversely portrayed by Digicel. All access seekers are free to enter into either, International Access Agreements, the terms of which were as per paragraph 5 (Draft International Gateway Access Agreement) of Revised Final Determination by the ICCC dated 1st October 2008 or commercial contracts with Telikom PNG for leasing of wholesale capacity for their own business uses. • Digicel needs to understand in full the arrangements by other cable operators and vendors in the world in the leasing of their controlled capacity to access seekers, as models are different and based on the nature and situation of various countries based on their geographical, political and economical scenarios.

<p>39</p>	<ul style="list-style-type: none"> • Contrary to Digicel’s submission under this paragraph, Telikom’s Wholesale Capacity has been extended already to over twenty corporate organizations (see paragraph 30 above) who are currently utilizing these services provided by Telikom for their international services. Telikom maintains it’s position that there is no need to declare International Access facilities.
<p>40</p>	<ul style="list-style-type: none"> • Telikom is not denying anybody access to its International facilities. As indicated earlier paragraph 30, we have provided services to a range of Wholesale Access Seekers including Digicel on commercial basis.
<p>41</p>	<ul style="list-style-type: none"> • There is nothing stopping Digicel to re-invest its profits gained in the PNG domestic market, in the domestic market and the sub-sea optical fiber cable to any overseas destination, the same as it had done to the International Satellite Gateway. Digicel by its own conduct has already set the precedent in Haiti.
<p>42-46</p>	<ul style="list-style-type: none"> • PNG telecommunications market has been fully deregulated both Retail and Wholesale. Telikom’s current International inbound call termination is approximately 70% cheaper than Digicel’s international inbound call termination rate. • Telikom continues to review its operations in its endeavor to make communications more accessible and affordable.
<p>47 - 50</p>	<ul style="list-style-type: none"> • On the NEXT STEPS indicated by Digicel in its submission, Telikom recognizes NICTA’s independent role and therefore have no comments on what NICTA would like to do, except where NICTA obtains expert advice, Telikom respectfully requests a copy.

2. TELIKOM'S CROSS – SUBMISSION TO SUBMISSION BY TELSTRA

In response to the submissions submitted by Telstra International PNG Ltd, Telikom submits the following:

Telikom PNG recognizes NICTA as an Independent regulatory regime governed by National ICT Act. Telikom welcomes submission by Telstra International PNG Limited or any other licensed or interested parties in this inquiry. Telikom PNG reiterates its position in its submission and cross submission, respectfully noting that NICTA has a role and is governed by policies relating to the Act.

For the avoidance of doubt, Telikom PNG reiterates its position that the PNG telecommunications market is fully deregulated, therefore any inter-arrangements between Operators and Carriers, more particularly, those arrangements relating to the co-sharing of each others facilities, be it domestic or international facilities shall be based on commercial business decisions.