



TELIKOM PNG
Always there!

Telikom PNG Limited

Submission

**NICTA 2017 Public Inquiry for potential Retail Services
Determination regarding certain mobile telephony services
supplied by Digicel**

Date: 9 February 2018

Mobile Retail Services Determination 2017

Telikom welcomes NICTA's fresh assessment of the mobile retail services market with a view to obtaining a new Mobile Retail Service Determination (MRSD) similar to the 2012 MRSD.

This response follows the structure of NICTA's 20th November 2017 Discussion Paper (NDP).

Background

The 2012 MRSD was flawed and Digicel's behaviour since the expiry of that Determination in October 2017 shows why a new MRSD is necessary.

The ICT Appeals Panel decision of December 2012 (the ICTD¹) made a number of comments about how NICTA could have done a better job. In particular, it said that the allowed 40% differential between Digicel's on and off-net prepaid mobile prices *"is not justifiable in the circumstances of the market and the dominance of Digicel – comparisons with overseas jurisdictions are not valid unless they too experience the degree of dominance achieved by Digicel"* (para 66, ICTD).

As the NDP notes (para 2.2.5), the Minister chose not to amend the MRSD in the light of the ICTD.

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. And, *"if there really are cost differences between on-net and off-net customers this is not price discrimination and so no exemption from the prohibition on price discrimination is required"* (Para 60, ICTD).

The background section of the NDP discusses Digicel's pricing behaviour through the period of the 2012 MRSD and after it expired (paras 2.2.7 to 2.2.9). It needs further comment:

- The 40% differential was observed only for the first minute of a call in 2013 – Digicel was technically in breach of the 2012 MRSD for calls over 2 minutes (see Figures 1 and 2). This was rectified by Digicel in 2014 by increasing the rate for subsequent on-net minutes and reducing the rate for subsequent off-net minutes (the 99t plan).

1. ¹ The ICTD recommended (paraphrasing):

- 1) NICTA's decision affirmed
- 2) No price discrimination
- 3) 40% exemption rejected
- 4) Exemption 6(1)(b) unnecessary (do not have to justify cost-based price differences)
- 5) Promotions not normally considered price discrimination but specify frequency/duration
- 6) Be clear about *"when an earlier decision is being amended and when it is being replaced"*
- 7) Decisions should be in self-contained documents
- 8) Both NICTA and ICCG have powers to explore competition issue; use which is best
- 9) Documents for Appeals should be distributed through the Appeals Secretariat.

Figure 1: Differential between 2 and 5 minute on-net calls and calls to bemobile

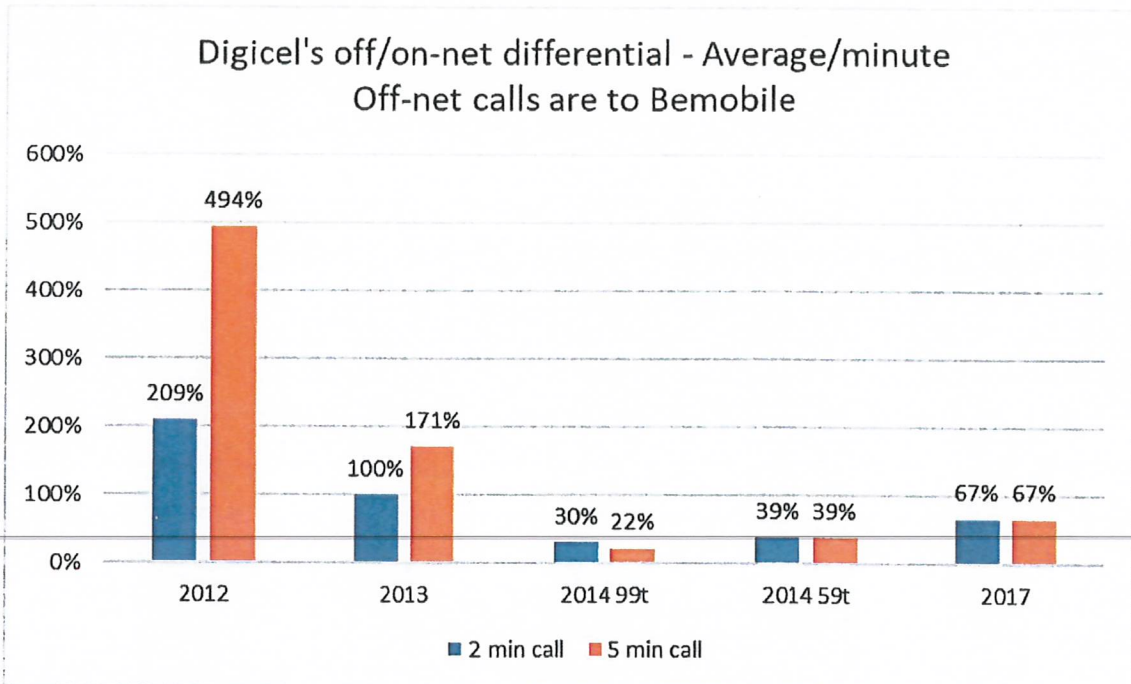
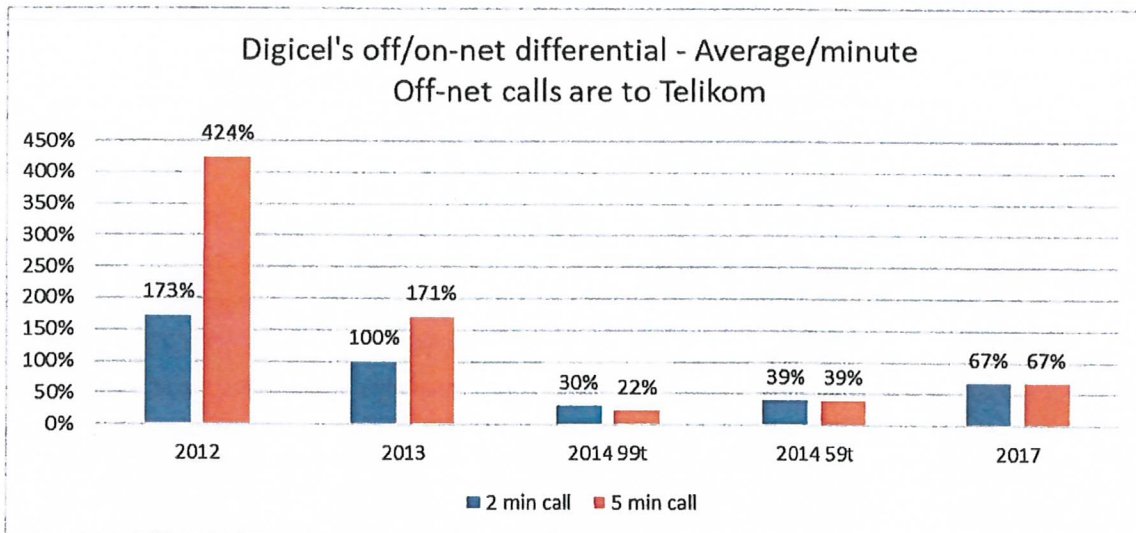


Figure 2: Differential between 2 and 5 minute on-net calls and calls to Telikom (Citifone)



- Telikom understands that NICTA was not advised about any of the following promotions (and there may be others not listed):
 - The Call Pass offer was put into the market on 16th December 2013 and withdrawn on 21 February 2014 (see box below)
 - The promotion in April 2014 noted in Table 1 below which complied with the 2012 Determination.
 - May 23 2014 - Wantok Pass Relaunch available to all Digicel Prepaid customers only. For K4.99 prepaid customers received 15mins local talk time, 150 SMS and 50 MB of data valid for 24hrs and valued at K68.

- The 1t/second for both on-net and off net prepaid calls mentioned by NICTA (para 2.2.8) would not have breached the 2012 Determination.
- The current 1TOK+ promotion² took advantage of the expiry of the 2012 MRSD to provide 1day, 7day and 30day duration Combo plans for prepaid Subscribers which allow them to "call Digicel users for unlimited duration within the validity period of the plan" (i.e. on-net calls only). No expiry date is listed³.

From Digicel website January 13th 2014 - CALL PASS – ADVISORY

Digicel customers can now pay less when subscribing to the Call Pass. Customers can get their 15minutes of Call Time now for only K2.99.

Text keyword 'TOK' or any keyword or any blank SMS to 16766 for only K2.99 and get 15 minutes Call Time.

Call Pass Expires at 11pm and customers are allowed to Opt In once per day.

Upon Subscription customers will receive a notification via SMS 'You're subscribed to K2.99 CALL TIME. Enjoy 15-minutes local talk time between 6am-11pm today. To check bundle, dial *130#'.

Terms and conditions ("Terms") govern your access to and participation in the Call Pass ("Offer") run by Digicel from 16 December 2013 and which Digicel may withdraw at any time without prior notice (Offer Period"). Valid between 6am and 11pm. Any minutes not used by the expiry time are extinguished.

- During the term of the 2012 MRSD, Digicel did not claim any cost difference (para 2.2.7, NDP) between on and off-net calls. The allowed 40% difference would have been more than enough. It remains to be seen whether Digicel can justify any difference.
- Digicel has abolished the difference in price between first and subsequent minutes not only for on-net calls (as noted by NICTA) but also for off-net calls as shown in Table 1:

Table 1: Mobile peak retail prices, toea/minute

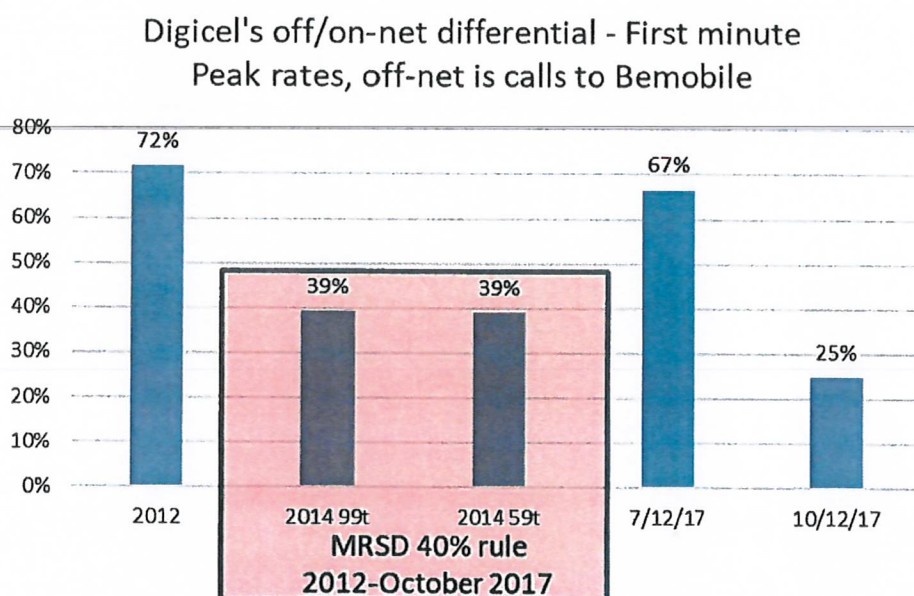
Digicel prepaid		2012	2013	From 5 April 2014 for "limited time only"			2015	2016	07/12/17	10/12/17
				99 plan 2014	Promo 2014	59 plan 2014				
On-net	1st minute	99	99	99	79	59			60	80
	Other mins	11	39	59	79	59			60	80
D-->bemob	1st minute	170	138	138	99	82			100	100
	Other mins	170	138	68	99	82			100	100
D-->Telikom	1st minute	150	138	138	99	82			100	100
	Other mins	150	138	68	99	82			100	100

² <https://www.digicelgroup.com/pg/en/mobile/help/plans-and-promotions/1tok-.html> accessed 18/12/2017

³ Unlike the Call Plus promotion between 13 December 2013 and 21 February 2014 when Digicel offered 15 minutes of calls made between 6am and 11pm for K2.99 a day.

- Figure 1 (page 5, NDP) reporting mobile termination rates (MTRs) appears to be correct.
- NICTA notes (para 2.2.9) that since the expiry of the 2012 MRSD, Digicel increased the off-net retail price to 100t per minute; which increased the differential with on-net calls to more than the 40% ceiling imposed under the 2012 DMRSD, as shown in Figure 3 below. This is a good example of a price increase made by an unconstrained operator with significant market power (SMP). Digicel must have realised this was too provocative because it increased its on-net rate from 60t to 80t (see Table 1) to bring the differential down from 67% to 25%.

Figure 3: Differential between 1 minute on-net calls and calls to Bemobile



Relevant Market

Telikom agrees with much of the analysis in the NDP.

Market Definition

NICTA's Market Analysis Guidelines (MAG)⁴ say that the relevant market has three dimensions:

- Customer – as the ICT Appeals Panel put it, the customers at risk of discrimination are those "whose calls originate on the Digicel network but do not terminate on it" (para 32, ICTD). 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.

⁴ NICTA, Market Analysis Guidelines, 12 January 2017 at http://www.nicta.gov.pg/images/consultative_papers/2016/market_analysis/Market-Analysis-Guidelines---FINAL.pdf

b) Product/service – Telikom agrees with NICTA’s market definition (para 3.1.1, NDP).

The MAG say that demand-side substitution can be assessed using the significant non-transitory increase in price (SSNIP) test. How could NICTA be unclear about the profitability of a small but significant non-transitory increase in price (SSNIP test at para 3.1.4, NDP) when Digicel increased off-net prices by 19% “immediately following the expiry of the 2012 Determination” (para 2.2.9, NDP)? That increase became transitory only because Digicel had second thoughts after the publication of the NDP on 21st November and increased its on-net prices on 8 December (Table 1).

This means not only that Digicel is an actual, not hypothetical, monopolist which uses its SMP. As the Appeals Panel said: “it is generally accepted that (SMP) exists where a firm is able to make decisions, such as pricing decisions, independently of the market; that is, without reference to its competitors” (para 34, ICTD)

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. Eventually, digital voice (voice over LTE) will become standard over 4G and charging for minutes might be abandoned (i.e. only data charged). At that point, the definition of the market may need to be re-visited as NICTA says (para 3.1.7, NDP).

With current mobile networks, the quality of voice OTT services on 3G will not be as good as over existing voice services provided over 2G and 3G networks and should not be considered part of the national market.

Telikom agrees that post-paid retail mobile calls should be included the definition of the market. Digicel’s post-paid plans at December 2017 are shown in Table 2 below. Although it is not clear from the web-site, we know that included “Minutes” and “Free Weekend” calls apply to both on and off-net calls and up to 60 minutes of calls to International destinations in Zone 1⁵. Out of bundle calls to Zone 1 are charged at 49t/minute. This is presumably the rate for domestic off-net out of bundle calls since on-net calls out of bundle are just 33t/minute. The differential is 49.7%.

Table 2: Digicel Post-Paid Plans

	Access	Plus	Value	Chrome	Silver	Pro	Gold	Platinum
Minutes	0	140	115	160	280	440	740	1440
SMS	0	40	60	80	100	150	200	440
Data (MB)	0	0	100	0	0	300	0	0
Intl. mins.	0	0	60	60	60	60	60	60
Free w/end	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PGK/month	33	65	79	99	140	199	300	500

⁵ <https://www.digicelgroup.com/pg/en/mobile/plans-services/postpaid-plans/postpaid-voice-plans-.html>
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Another reason for including post-paid calls and SMS is that potential anti-competitive behaviour is not limited to price discrimination. NICTA will be aware that Telikom has alleged that Digicel was engaged in poaching Telikom's fixed to mobile calls with an anti-competitive margin squeeze. The complaint was taken to the ICCG; where it is still.

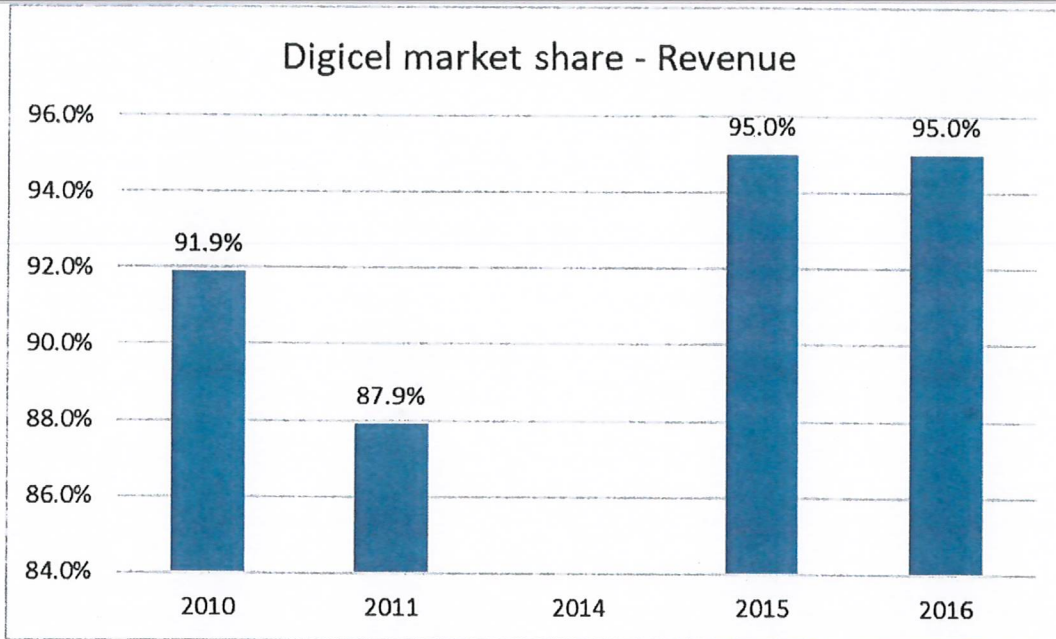
c) Geography – Telikom agrees that there is a national market.

Market Structure

Telikom agrees that there are significant structural barriers to entry.

As NICTA says, a new entrant cannot achieve economies of scale until it has "25-30% of market share (depending on the size of the market)" (para 3.3.3, NDP). We know that Digicel has a very large share of the market⁶ – which has grown over the period of the 2012 MRSD, as shown in Figure 4. But, we do not know how big the market is now⁷. In 2011 Mobile penetration was 40% (page 36, NICTA's Second Discussion Paper on the MRSD) so that there was scope for achieving growth.

Figure 4: Digicel's market share by revenue



Sources: Fig 6, NICTA's Second Discussion paper, May 2012 and Fig 4, NICTA's Third Discussion paper, November 2017

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

⁶ Digicel's 2015 prospectus says the highest market share of subscribers in all its 30 or so markets (excluding Nauru, which is Digicel only); is in PNG at 97% - which is a much higher share than the 74% of subscribers reported by NICTA to the Minister for the Mobile Retail Service Determination in July 2012

⁷ NICTA has data on the number of subscriptions because it has published market shares (Figure 3, NDP). In 2011 the population was about 7m and today it is about 8m so the penetration level should be known; allowing for multiple subscriptions.

grew over the period of the 2012 MRSD (Figure 4) and market concentration has increased (para 3.2.7, NDP).

NICTA notes that even with the consolidation of Telikom and Bemobile, Digicel's superior coverage for mobile calls is not likely to be matched over the next 5 years.

In its submission to the ICCC on the proposed merger of Telikom and Bemobile⁸, NICTA said "potentially, a consolidated competitor could increase the competitive intensity within the market and have substantial impact on the dominant position of Digicel". That remains to be seen but seems very unlikely to be achieved on any measure of competition within 5 years.

While Telikom has a superior 4G network, it is not yet capable of delivering a voice over LTE. As noted earlier, voice calls are delivered over 3G.

Potential Effects of Discriminatory Pricing on Competition

NICTA has defined neither price discrimination nor the conditions required for it to occur.

The Appeals Panel in 2012 suggested: "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).

The necessary conditions for price discrimination to occur are (paras 44-45, ICTD):

- SMP, which was found for the 2012 MRSD and endorsed by the Appeals Panel. Without it, prices should be driven to costs by competition.
- Arbitrage should be impossible to defeat resale; which is the case for Digicel PNG
- The segments between price discrimination occurs must have different price elasticities of demand; which is the case according to the ICT Appeals Panel.

There are potentially two main effects of discrimination which should concern PNG⁹:

- A. "Exploitative" price discrimination by which a dominant firm may extract consumer surplus. This is often done with two-part tariffs where the effects can be pro-competitive. But, this does not apply when 95% of national prepaid calls are on-net for Digicel (para 4.1.19, NDP) and other key assumptions for improved welfare are not met (para 4.1.20, NDP).
- B. "Exclusionary" price discrimination which reduces competition. As NICTA say (para 4.1.2), new users are disposed to joining a larger network because of club effects; But when on-net prices are below off-net call pricing, the resulting tariff mediated network externality imposes a barrier to competition for smaller networks (para 4.1.6, NDP). 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)

Draft Determination

⁸ Letter dated 25 April 2017

⁹ P.Papandropoulos "How should price discrimination be dealt with by competition authorities?", 2007 at http://ec.europa.eu/dgs/competition/economist/concurrences_03_2007.pdf
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Telikom agrees that the competition and efficiency objectives of the NICTA Act will be promoted by a Retail Service Determination applied to Digicel.

There are four statutory criteria that must be satisfied for a retail service determination:

1. Economic efficiency: The ICT Appeals Panel said (para 48, ICTD) *"If price discrimination creates/increases barriers to entry, as NICTA concludes, this helps protect or maintain Digicel's substantial market power and so it is reasonable to conclude that the net effect on efficiency (technical, allocative and dynamic) is negative"*. There may be a short-term trade-off between loss of technical efficiency and gain from dynamic efficiency. The benefits of the latter will outweigh any losses from reduced technical efficiency through increased competition promoted through the proposed Retail Service Determination.
2. Competition: The ICT Appeals Panel thought that NICTA should have paid more attention to the cause and effect relationship between price discrimination and SMP (para 50, ICTD). 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.

Telikom believes that a new MRSD will help address abuse of Digicel's SMP. But, by itself it will not be enough to see competition flourish. NICTA will have to consider other measures such as one-way mobile number portability (i.e. from Digicel) to promote the emergence of a significant competitor to Digicel.

3. The legitimate interests of Digicel (rate of return): Digicel is not entitled to a guaranteed rate of return. It admits that *"Increased competition may result in pricing pressure, reduced margins and profitability, increased customer churn and the loss of revenue and market share"*¹⁰. Digicel's aborted prospectus suggested that Digital PNG is the star performer across the 30 or more international markets the Digicel Group operates in. In 2015 it had the largest share of the Digicel Group's revenues (17.9%), 20.3% of Group profits (EBITDA) and its gross margin (EBITDA/sales) was 48% versus 42% for the Group as a whole. The SMP that Digicel has enjoyed in PNG must be a large contributory factor.
4. Net benefits test: Telikom agrees with NICTA's discussion and conclusion (paras 5.2.10 to 5.2.12, NDP).

There is a close correspondence to the European Union's three criteria test (3CT) discussed by NICTA in its market analysis guidelines (section 5, MAG):

- A. The market shows high and non-transitory barriers to entry: this is dealt with in Section 3.2 of the NDP.
- B. Market structures do not tend towards effective competition in a relevant time horizon: NICTA has established this will be the case for the proposed 5-year term of the MRSD (para 3.2.11, NDP).

¹⁰ Page 26 discussion of risk factors in F1 filed by Digicel Group with US SEC 26 June 2015 at <https://www.sec.gov/Archives/edgar/data/1645826/000119312515335867/d946689df1a.htm> accessed 18 December 2017

- C. The ex-post application of competition law alone would not adequately address the market failure in a suitable time frame. Telkom can attest to this from its own experience with a competition complaint lodged with the ICCC.

The four statutory criteria and the 3CT tests show that ex-ante intervention with a Mobile Retail Service Determination is appropriate.

Telkom 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.

Telkom 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).

Telkom agrees with the first pricing principle that there should not be any differentiation between Digicel’s [average] retail prices based on whether the call (or SMS) is to terminate on-net or off-net. The allowed difference was up to 40% under the expired Determination. But the ICT Appeals Panel said there should be no difference that could not be justified by differences in the cost of supply: *“If there really are cost differences between on-net and off-net customers this is not price discrimination and so no exemption from the prohibition on price discrimination is required”* (para 60, ICTD).

If Digicel chooses to demonstrate a difference in costs per minute, the data should be audited by NICTA or its own consultant.

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 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.

Telkom believes that the two proposed pricing principles should be joined by a third¹¹: that all Digicel’s retail tariffs should be publicly available¹². That has not been the case with post-paid call rates.

In September 2013, Digicel offered post-paid call rates to selected corporate customers of 29t/minute for on-net calls and 69t/minute for calls to Bemobile: a differential of 138% versus the 40% limit that applied to prepaid calls only. The customer who provided the secret pricing brochure risked losing the benefit of the deal by sharing the information with Telkom¹³. Such secretive pricing behaviour by an operator with SMP should not be tolerated. Making all Digicel’s retail rates public would help stop Digicel hiding potentially anti-competitive behaviour.

Digicel 2013	Rate per Minute (in PGK)
Call Destination	
Digicel to Digicel	0.29
Digicel to Bemobile	0.69

Telkom has some concerns with the concept of average retail prices (i.e. dividing revenue by call minutes) and reporting requirements:

¹¹ Paragraph 161(2)(c) of the Act provides that a retail service Determination may *“specify any pricing policies and/or principles that must be complied with by the operator licensee in pricing the retail service”*

¹² Paragraph 161(2)(e) of the Act provides that a retail service Determination may *“require the operator licensee to provide specified information to NICTA, retail customers, or any other persons”*

¹³ After Telkom submitted a case to the ICCC of a potential margin squeeze¹³, the ICCC asked *“Would you please substantiate this claim? Advise whether 0.29t/minute post-paid retail call rate for on-net calls charged by Digicel is a “reduced” price? If so, what was the previous announced rate?”* (ICCC, 10 July 2014).

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- a) The most significant issue is the loss of transparency. Price discrimination will only be observed after the event by Digicel and NICTA using Digicel data (which would have to be audited).
- b) Given the above, it is vital that Digicel makes retail prices and promotions publicly available on its site because it will alert market participants and NICTA to possible anti-competitive issues (i.e. not just price discrimination).
- c) All promotions should be publicly listed with clear expiry dates. Telikom understands that a 30 day expiry rule applies to promotions. Such promotions should not be rolled forward and any variations should not be deemed to create a new promotion without NICTA's approval.
- d) 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).
- e) Schedule 1 to the draft Determination should require peak and off-peak minutes and associated revenues to be reported separately.
- 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?

Annex – screen shots of retail prices

Digicel Prepaid rates at 7/12/2017


Voice & SMS Rates			
BEST RATES In PNG!			
Enjoy best call rates in PNG from Mondays to Sundays!			
	On Net - Digicel to Digicel	Off Net - Bmobile Vodafone & Citifone	Off Net - Landline, Telikom/Xcess
Voice Calls - Peak Hour (6pm - 10pm)	PGK0.60/min	PGK1.00/min	PGK1.00/min
Voice Calls - Off Peak (10pm - 6pm)	PGK0.80/min	PGK1.00/min	PGK1.00/min
SMS - All Day (24/7)	PGK0.25/per SMS	PGK0.25/per SMS	PGK0.25/per SMS

Digicel Prepaid rates at 10/12/2017

	On Net - Digicel to Digicel	Off Net - Bmobile Vodafone & Citifone	Off Net - Landline, Telikom/Xcess
Voice Calls - Peak Hour (6pm - 10pm)	PGK0.80/min	PGK1.00/min	PGK1.00/min
Voice Calls - Off Peak (10pm - 6pm)	PGK0.60/min	PGK1.00/min	PGK1.00/min
SMS - All Day (24/7)	PGK0.25/per SMS	PGK0.25/per SMS	PGK0.25/per SMS

Bemobile at 7 Dec 2017


To bmobile-vodafone network



Peak hour 50 toea
Monday - Sunday, 6am - 9pm

off-peak hour 25 toea
Monday - Sunday, 9pm - 6am

To other networks



Peak hour 77 toea
Monday - Sunday, 6am - 9pm

off-peak hour 47 toea
Monday - Sunday, 9pm - 6am

Telikom 7 Dec 2017 - Call Rates

Call Anywhere, Anytime with PNG's Lowest Call Rates!

CALLS FROM	CALLING TO	CHARGES PER MINUTE	
		Peak	Offpeak
Telikom Mobile	Telikom Mobile	20t	20t
	Fixed Line	20t	20t
	Bemobile	40t	40t
	Digicel	40t	40t
	IDD Standard	K2.00	K2.00

Digicel standard post-paid rates at 18 December 2017

<https://www.digicelgroup.com/pg/en/mobile/plans-services/postpaid-plans/standard-postpaid-rates.html>

Postpaid Standard Voice Rates			
	Peak Hours Weekdays (8am - 7:59pm)	Off-Peak Hours Weekdays (8pm - 7:59am)	Weekends (All Day)
Digi to Digi Calls	PGK 0.71/min	PGK 0.45/min	Free
Calls to Bemobile	PGK 0.90/min	PGK 0.61/min	PGK 0.61/min
Calls to Telikom	PGK 0.90/min	PGK 0.71/min	PGK 0.71/min

Standard Postpaid SMS Rate		
	Peak hours Weekdays (8am - 7:59pm)	Off Peak hours Weekdays (8pm - 7:59am)
Digi to Digi SMS	PGK 0.15/sms	PGK 0.15/sms
SMS to Bemobile	PGK 0.35/sms	PGK 0.35/sms
International SMS	PGK 0.35/sms	PGK 0.35/sms

Note:

* Out of bundle rate for Digi to Digi SMS is charged at K0.15 on all plans except on Access where Digi to Digi SMS will be charged K0.25