TELIKOM PNG LIMITED

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Guidelines on Sharing of Telecommunications Towers & Service Specific Pricing Principles for UAS Funded Towers.

Telikom PNG Limited (Telikom) welcomes NICTA's separate assessment of the draft Guidelines on Sharing of Tower and Service Specific Pricing Principles for UAS Funded Towers with a view to coming up with Guidelines needed in implementing tower sharing in Papua New Guinea.

Telikom commends NICTA for yet another extensive effort into putting the proposed guidelines for Tower sharing for discussions.

1. Executive Summary

Telikom responds to NICTA's Consultation paper particularly on the proposed guidelines and service specific Pricing Principles for Tower Sharing of which it agrees much.

1) Telikom notes the advantages and disadvantages of tower sharing but agrees with NICTA on "careful handling" and "commercial grounds".

2) Telikom notes the purpose of the guidelines and agrees that there is no regulatory change regarding mandatory sharing.

3) Telikom, with KTH is of the same view in 2018 that UAS funded towers be shared-including other publicly funded towers too which it strongly pushes for. However, Telikom also suggests that enough capacity (passive elements) should be made available for the publicly built sites for sharing.

4) Telikom agrees for a fair and reasonable Terms and Conditions with the two exceptions given.

5) Telikom commends and agrees with NICTA for record keeping in a way forward to ascertaining demand.

6) Telikom agrees with the draft Model Tower sharing and

7) Telikom, in principle, agrees with the pricing principles attached in **Annex B** and further suggests for an exception for community based services, NGOs and non-commercial operators to be given special rates or discounts.

2. Background

NICTA notes that "The potential for declaring tower sharing services was recently considered by NICTA in conjunction with its wholesale services review. Access to towers to share their capacity was considered in the context of the group of services that make up the wholesale MACO (Mobile Access and Call Origination) market, which include mobile roaming and virtual network operator services" **(Discussion Paper, 3.1)**.

Telikom's position on Tower sharing under MACO services during the wholesale service review in 2018 was that "mandated sharing should be extended to include all towers that were built using World Bank Funds, DSIP Funds, PSIP Funds and Treasury Funds". "These are all in remote areas which would allow competition and reduce pricing for villages[1]".
It also agreed that tower sharing (private investment) should not be declared in the second round of submissions to the wholesale service review.
Telikom, with KTH, further suggested a fall-back option for national roaming on these publicly subsidized sites; which would require such a roaming service to be declared.

NICTA notes in its Wholesale Service Declaration Discussion Paper that "open access is a condition of USF funding, and Digicel have constructed a number of Towers using the USF, but in none of these cases have the other operators sought access to the towers. It is recognized though that this may be a reflection of the location of the USF funded towers and the ability of the Wholesale backhaul options of those towers. **(5.5.2-Whoesale Review Discussion Paper)**

Since the completion and using of the UAS funded towers, there were hesitations and expectations amongst the operators which obviously warranted a guideline to address. NICTA did a very timely exercise to coming up with the proposed guideline per Part XI of the Act. Operators initially expected NICTA to facilitate usage while NICTA was expecting operators to go ahead in doing commercial agreements. It is best done centrally, as NICTA noted.

Digicel on the other hand disagrees much that it would not satisfy both the declaration criteria and the Act as NICTA addressed in chapter 3.5 of the Discussion paper.

Telikom supports the conclusions NICTA noted from the wholesale service review in 2018 as "NICTA also concluded that the provision of a guideline could positively assist the process of seeking access and negotiating commercial access arrangements. As noted above, NICTA considers that commercial agreements for tower sharing that have been voluntarily arrived at between operators are likely to be more robust and reflective of needs than sharing that is mandated by regulation. Experience elsewhere suggests this is the case, and the preference for commercial outcomes is a principle underlying the Act".

NICTA identified from KTH's submission that there was evidence of demand in infrastructure sharing[2]

[1] Page 4, Dataco (KTH) submission on wholesale service review.
[2] It should be noted that there has been co-location between Telikom and bemobile/Vodafone for almost 10 years; but not with Digicel which refuses to share its towers. This refusal might be tolerable in metro areas where it is efficient to duplicate towers because the level of demand will justify it. But, in remote areas, where it is not economic to duplicate investment, there should be open access and a requirement that facilities subsidized with public funds should be built to allow sharing.

3. **Tower sharing Service**

Telikom agrees with the relevant market definitions that NICTA notes in the discussion paper.

Telikom notes the considerations affecting declaration of Tower Sharing services which were particularly the criteria contained in the Act.

The considerations in the 2018 wholesale service review and public inquiry now warranted the proposed tower sharing guideline. Under the current Regulatory regime, sharing is mandatory and it promotes open access for publicly funded Towers under UAS and as such, sees it as a way forward for sharing.

Background-Advantages and Disadvantages of Tower Sharing

The background of the proposed guideline in **Annex A** provides the advantages and disadvantages and challenges faced. The first disadvantage that was pointed out would not be effective as Telikom believes those towers shared would be on commercial basis. It would be seen as compromising for the access provider if the provider finds it hard to complying with fair terms and conditions required **(Discussion Paper 9.1)**.

NICTA also notes that "NICTA believes that the commercial terms for tower sharing should give the access provider an adequate risk-adjusted return on its investment, so that the possibility of tower sharing could act as an incentive for operators to deploy new towers in previously unserved areas. Nevertheless the matter is not beyond doubt" **(Discussion Paper 3.4.6)**.

A recent study by PWC Indonesia stated that "in the second wave of GSM deployment, the strategic focus shifted to driving rapid network deployment to close coverage gaps. Incumbents resisted this pressure and sought to protect their dominant position by land-banking sites and refusing to share tower locations"[3].

In the case of PNG, Telikom sees that the sharing of UAS funded towers would be viable also as per the Act and will pave way for a regulatory change in the future as network coverage won't be that significant given that Mobile success will be driven more by distribution, branding and service design notwithstanding the cost challenges in uneconomic areas. All the coverage gaps between operators will have been narrowed by then.

Telikom notes and agrees on the specific focus of the guidelines and sees the proposed guideline as the solution to the issues affecting commercial tower sharing in PNG. Going forward, all UAS funded towers built must have physical load-bearing capacities as most if not all privately built don't.

[3] https://www.pwc.com/id/en/publications/assets/communication-03-2010.pdf

4. Proposed Tower Sharing Guideline

4.1 UAS Funded Towers

Telikom agrees with the deeming provisions in relation to the declaration of access to facilities funded in Project agreements relating to the UAS Scheme.

a. Criterion 1

NICTA looked at TS five years ago because it understood there was demand for such access services. But, that was not the case then and NICTA thinks it may not be the case now: "*NICTA also notes that there remains no empirical evidence that declaration is necessary for the promotion of competition in the retail services market and some evidence (on the basis of USF-funded facilities) that declaration will not in and of itself promote effective competition although it will undoubtedly provide competitive choices not currently available in locations which will not sustain the duplication of towers and related infrastructure*" (p29).

However, access to UAS funded sites is applicable for only sites built under the 2018 Program. Access to the funds is based on competitive tender. Both Digicel and Telikom were awarded sites under the 2018 Program after the Tender evaluation. Bemobile is actively considering access to roaming under the 2018 UAS funded program to increase its coverage footprint. Once the 2019 Program Tender is released it will consider participation.

Ultimately, "*Although a finding of ineffective competition in a relevant market is not required by the Act in order to recommend the declaration of a service to the Minister, NICTA believes that, consistent with international best practice in competition regulation, obligations such as those that flow from a declaration should only be imposed to address identified risks of market failure and/or anti-competitive consequences*" (p7, NICTA 2014).

b. Criterion 2

NICTA's current view: "*The second criterion is that mobile tower sharing services be 'a pre-requisite for the promotion of competition in at least one market other than the market for the wholesale service/facility itself'. Today, with the benefit of hindsight, it may be possible to argue that the lack of increased competition in retail mobile services over the past four years is at least in part a result of access to towers not being declared*" (NICTA p28).

c. Criterion 3

In 2014: "*NICTA believes that if there are particular types of facilities in particular geographic areas that are not commercially feasible to replicate, then it will not be not possible to identify them until after both bemobile and Telikom have completed the rollout of their network infrastructure, including the fulfilment of their mandatory coverage obligations*" (para 36, NICTA 2014). Now we know.

NICTA now: "*The third criterion is that the wholesale service/facility cannot feasibly be substituted as a matter of commercial reality. The commercial reality over the past four years is that such substitution has not occurred. The analysis conducted by NICTA in 2013/14 suggested that the other MNOs would increase and broaden their tower roll-out programmes (especially in the absence of declaration). To a significant extent this has happened, but there remain parts* *of the country in which only Digicel operates towers, and in many of these locations there is no commercial case for a rival to duplicate this investment*" **(3.4.5,TS Discussion Paper)**.

d. Criterion 4

There is no danger to investment incentives: "*In 2014 NICTA judged that there was a risk that declaration would jeopardise such investment in alternative infrastructure. However, bmobile and (to a lesser extent) Kumul (Telikom), have invested in new towers, so that it can now be said with some confidence that declaration really could not compromise their investment incentives significantly further*" (p29 NICTA Discussion Paper).

NICTA's view in 2018 after Wholesale Service declaration consultation: "In 2018 therefore the risk of compromising investment incentives has at least been reduced to the extent of additional investment that has already occurred. NICTA believes that the commercial terms for tower sharing should give the access provider an adequate risk-adjusted return on its investment, so that the possibility of tower sharing could act as an incentive for operators to deploy new towers in previously unserved areas. Nevertheless the matter is not beyond doubt" **(TS Discussion Paper 3.4.6)**.

KTH has met the mobile coverage obligations set out in Schedules 7 and 8 of the Standard and Special Conditions of Individual Licences Rule, 2011 where it is not allowed to use roaming anyway. KTH is allowed to use roaming to meet coverage obligations in places designated in Schedules 9 and 10 and has already met its minimum coverage obligations; with plans to increase the number of sites. And, it is more than half-way to meeting its minimum coverage obligations for places designated in Schedule 10; with plan to exceed minimum requirements.

Claiming that declared roaming or tower sharing will chill investment is ambiguous as one (operators) would say it even without knowing what the price of access might be.

e. Criterion 5

NICTA found MR/TS technically feasible four years ago and that has not changed. (NICTA p28)

f. Criterion 6

Four years ago, NICTA found that increased access to MR/TS would avoid inefficient replication of underlying facilities that may be efficiently shared; and this has not changed. (NICTA p28)

4.2 Fair and Reasonable Terms and Conditions

Telikom notes and agrees with two exceptions that NICTA put notwithstanding a purely commercial agreement which are as follows:

1. If access to towers and related facilities and services are wholesale services declared by the Minister under Section 130 of the Act; or
2. If the towers and related facilities and services are funded or part-funded from the UAS Fund as a UAS Project.

Telikom agrees that charges for sharing UAS funded towers and sites are to be commercially determined as per the policy of the NICT Act itself. It is also agreed that charges are of ex-post in nature and would be inappropriate if declaring them ex-ante for tower sharing and roaming arrangements.

4.3 Recording information

Telikom agrees with NICTA that a recording system be put in place to capture data needed to ascertain demand.

4.4 Model Application for Tower sharing

Telikom agrees with the model application for tower sharing at this time and understands that it is also subject to circumstances/situations when an application has been filled at a particular period of time. Telikom suggests that NICTA can proceed further with a guideline should demand and complex issues warrants it or after the 12-month period of the proposed Guideline on Tower sharing and Service specific pricing principles

4.5 Service Specific Pricing Principles

Notwithstanding section 135 of the Act, Telikom suggests for all publicly funded sites to be declared and rendered service specific pricing principles.

Telikom agrees with the Service specific pricing principles in **Annex B**

Telikom further suggest that the Service Specific Pricing principles should consider:

1. If the site was 100% built by UAS funds; and
2. The operator & UAS combined funding of the tower.

Where point (1) is concerned, UAS has a policy (if it does) whereby a fee is charged to the telecommunications provider (a % rate of the end user revenue). If operators are to share the tower than this UAS fee must be shared as well.

Where point (2) is concerned, there are a couple of options to approach it; operators sharing the tower must share the UAS charged fee and also pay a co-location fee to the host operator (the co-location fee charged should reflect the portion of investment in the tower by the host operator).

Where the promoting of universal access of telecommunication services is concerned, should any operator who have benefited from such UAS funding, that operator should declare the towers funded under such arrangement and also reflect the benefit in pricing to the end consumers.

Also, Telikom further suggest that community based operators such as churches, NGO's and non-commercial operators using towers must be given discount rates or charge on cost recovery basis only for maintaining the site.

5. Summary

Telikom agrees with what NICTA proposes and suggests that all publicly funded sites be declared and future towers built to have ample capacity for sharing. It further suggests for sharing of potential UAS fees by operators and discounts rates to be given for community based operators.