



TELIKOM PNG
Always there!

Telikom PNG Limited
Legal and Regulatory Unit
P O Box 613, WAIGANI, NCD
Papua New Guinea
Phone: (675) 300 4187/300 4161
Fax: (675) 300 4167
Email: Noel.Kera@kthl.com.pg

Our Ref:

16 October 2020

Mr. Kila Gulo-Vui
Director, Regulatory & Economic Affairs
National Information & Communication Technology Authority
P.O Box 8444
BOROKO
National Capital District

Dear Mr. Gulo-Vui,


Re: NICTA's Public Consultation on DataCo's Reference Interconnection Offer (RIO)

We refer to the subject matter.

Find *enclosed* Telikom's response, which addresses the matters for consultation on the subject and also reinforces the main concerns we have already raised concerning the consultation carried out on the Draft *Amended Wholesale Pricing Principles for Broadband Capacity Services and International Submarine Cable Services*.

We look forward to the outcome of the consultation.

Yours faithfully,
Telikom PNG Limited


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Mr. Noel Kera
KTHL Group Head of Legal & Regulatory Services



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Response to
Public Consultation on the

**"Reference Interconnection Offer from PNG DataCo
Limited on various wholesale access services"**

Friday: 16th October, 2020

1. INTRODUCTION

This paper is in response to NICTA's request for the public to engage in Public Consultation in accordance with Section 229 of the NICT Act in relation to the Reference Interconnection Offer (RIO) from PNG DataCo Limited on Wholesale Submarine Cable services and Wholesale Broadband Capacity services.

The paper covers the following:

- A brief overview of Telikom's position on the principle surrounding the exercise of reviewing the RIO.
- It seeks clarifications from NICTA of RIO's product descriptions and conditions for interconnect.
- Proposes in detail specific comments and amendments on Key Matters set in relation to the Reference Interconnection Offer (RIO) from PNG DataCo Limited on Wholesale Submarine Cable services and Wholesale Broadband Capacity services.

2. BACKGROUND

PNG DataCo Limited provided to NICTA a Reference Interconnection Offer (RIO) on 13th August 2020 pursuant to Section 141 of the NICT Act, 2009. Telikom notes that the RIO was provided whilst consultative process on the Draft Amended Wholesale Pricing Principles for Broadband Capacity services and International Submarine Cable services was still going on.

DataCo's RIO specifically covers the International Submarine Cable Transmission Capacity Service and the Wholesale Broadband Capacity service that are part of the declared wholesale services by the Minister for Communications and Information Technology on 18th February 2019.

3. GENERAL TELIKOM'S VIEWS

Several basic principles should be observed when conducting the review of RIO from PNG DataCo Limited for the purposes of the competition in PNG.

The functional level at which DataCo's products and services are traded is an important element to be taken into account in this exercise. In this case, NICTA should examine the relevant market for replacement broadband services at the level of the retailer on the open market pointing out that the relationship to be considered is the relationship between DataCo and ISPs which is of importance in assessing the effects on competition on the relevant broadband market.

NICTA should, in its pending Determination and the use of RIO, distinguish between a market for the provision of communications services to end users (i.e., the retail market) and an upstream market for the provision of access to facilities necessary to provide such communications services (i.e., a wholesale market). The distinction between wholesale and retail services should be at the very core of the regulatory framework under which this RIO should operate.

In PNG like elsewhere, there is distinction between a market for the provision of communications services to end users (i.e., the retail market) and an upstream market for the provision of access to facilities necessary to provide such communications services (i.e., a wholesale market) – DataCo should

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operate solely in the latter and Telikom and other ISPs at the former.

The reasoning Telikom points out this at outset, is highly relevant to the PNG communications sector. The RIO in its current form (i.e. lack of clear definition and distinction of demarcations) risks creating incentives for DataCo to build a presence on one or more of the functional levels. Accordingly, ISPs such as Telikom require access to several upstream and downstream layers in order to provide services. For example, Telikom require access to the DataCo's wholesale products in order to provide their retail services; in the meantime, DataCo is the sole owners of these inputs in the wholesale market.

3.1. Product definition

3.1.1. Telikom notes that the word **Customer** in the RIO, MSA, and SLA is vague. Hence, Telikom suggests that NICTA must define the meaning of **"Customer"** in the RIO. Customer in the RIO, MSA, and SLA should be **"ICT Retail Customer or Telco Operator"** and not any customer to separate wholesale and retail customers from demanding the related services.

3.1.2. In addition to the point above, Telikom wishes to propose that NICTA should issue licenses only to **access seekers** who will resell capacity to **end users** and not for their own consumption. This is to protect the Retail Market and ensure that competition exists. Otherwise, Telikom suggests that ICT operators should be given the chance to participate in awarding licenses to new licensees or at least some form of conditions to penalize non-compliance should be provisioned.

3.1.3. Telikom's understanding of **"network services"** as defined in Section 4 of the NICT Act including the definitions of **"access provider"** and **"access seeker"** under Section 125 and Section 126 of the NICT Act is that there must be a clear demarcation between the provisions of **"wholesale"** and **"retail"** services.

3.2. Conditions for interconnect

3.2.1. The RIO seems to suggest that there are ambiguities and no clear demarcation between wholesale and retail, and it also suggests that NICTA does not have the power to keep the wholesaler out of the retail market.

3.2.2. Furthermore, the RIO is also suggesting that NICTA does not have the power to ensure that **"access seekers"** seek access for purposes of serving **"end users"** in the market, and prevent an **"end user"** from coming to the market in the guise of an **"access seeker"**.

3.2.3 The RIO seems to be based on the fact that NICTA has issued **"end users"** with **"ISP"** licenses, which has enabled those **"end users"** to bypass wholesale service **"access seekers"** such as Telikom and to go direct to the access provider.

Therefore, Telikom asks NICTA to clarify the following:

- (1) Is it not a requirement under the NICT Act that an **"access seeker"** of declared wholesale service must seek access for the purpose of providing services to **"end users"**, and not for its own consumption?

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- (2) Does the NICT Act permit an access provider of a declared wholesale service to bypass a wholesale customer or retail service provider and sell services direct to an end user?
- (3) Does the NICT Act permit NICTA to issue an “end user” a license for the purpose of seeking access to a declared wholesale service, which is already supplied by a wholesale customer or retail service provider?
- (4) Could NICTA provide the register of operators’ licenses as provision in article 4 of NICT Act?

Telikom urges NICTA to seriously address these matters as they could have among other effects, the **lessening of competition** in the retail services market including the possibility of **price squeezes** affecting the ability of retail service providers to set competitive prices or adversely affect its business continuity. With this concern of the network service definition in mind Telikom strongly requests that NICTA concludes the finalization of this draft Amended Determination together with the finalization of the Draft DataCo RIO at the same time.

4. KEY MATTERS

Below are Telikom’s views on the outlined Key Matters stated in the Consultation Paper:

Key Matters for Consideration as per NICTA.	TELIKOM PNG’s responses accordingly:
A. The form and minimum requirements of the RIO	<p>Telikom agrees that DataCo’s RIO seems to fulfill almost all the requirements for an RIO in section 141 of the Act.</p> <p>However, DataCo should make it known more clearly on its part to comply with the terms of the RIO concerning DataCo’s responsibilities, and its non-discrimination and related access obligations as per s.141 (1) (b).</p>
B. Previous involvement in this RIO by NICTA	<p>Telikom notes that regardless of NICTA’s little involvement with DataCo on the actual RIO prior to the submission on 13 August, Telikom believes that the RIO has come about due to maximum average prices proposed by NICTA as per the previous Consultation paper, <i>Draft Amended Wholesale Pricing Principles for Broadband Capacity services and international submarine cable services</i>.</p> <p>In Telikom’s response on this paper, Telikom has suggested to keep maximum prices instead of average maximum prices. Hence, Telikom still stands on that argument to remove average maximum prices and set maximum prices for ease of regulation.</p>
C. Services covered in the RIO	<p>Telikom notes in the Annexure A - Service Pricing Offer of the RIO that the Capacity (Mbps) for services: <i>Domestic P2P Metro (up to 1km) – over Fiber delivered to Customer Premises and Domestic P2P Metro (more than 1km) – over Fiber delivered to Customer Premises</i> starts at</p>

	<p>10 Mbps up to 10, 000 Mbps. Telikom and other Internet Service Providers are selling similar services up to 10Mbps to end-users in the Retail Internet Market.</p> <p>Therefore, Telikom strongly suggests that Capacity for services in the wholesale market should start at 300 mbps and above to segregate the wholesale and retail markets. 10 Mbps is too low for the wholesale market as ISPs are also selling the same services to end users.</p> <p>The understanding is that access seekers will purchase from the access provider in bulk and retail to end users. Hence, the access seeker should be selling 300Mbps and above to access seekers and let the access seekers retail to end users.</p>
<p>D. Relationship between the RIO and the proposed amendment to the <i>Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019</i></p>	<p>The RIO and the proposed amendment to the <i>Service-Specific Pricing Principles (Submarine Cable Services) Determination 2019</i> are directly related.</p> <p>Telikom notes from this Discussion Paper that same models have been used with the same cost data and demand assumptions for the maximum average prices in the amended Determination and the proposed prices in Attachment B of the RIO. However, Telikom refers NICTA back to its submission on the amended Determination that Telikom prefers maximum prices over maximum average prices which Telikom still stands on.</p> <p>In addition, Telikom still recommends that both papers be finalized at the same time once the consultative process on the RIO is finalized as mentioned in our submission on the amended Determination recently.</p>

5. CONCLUSION & RECOMMENDATIONS

In conclusion, Telikom acknowledges that the RIO from PNG DataCo Limited on various wholesale access services captures detailed Business documents and service pricing for the services concerned.

However, Telikom believes that the RIO has eventuated because of section 3.8 under Key Issue *B. Maximum average price rather than maximum price* in the Discussion Paper on the Draft Amended Wholesale Pricing Principles for Broadband Capacity services and international submarine cable services.

Therefore, Telikom refers NICTA back to its arguments in its Submission on the Draft Amended Wholesale Pricing Principles for Broadband Capacity services and international submarine cable services earlier and reiterates that Maximum prices should be set rather than maximum average prices for ease of regulation. An RIO may be unnecessary if this is accepted.

In addition, on the same, Telikom refers back to its argument on Clause 5 of Wholesale Service Declaration No.1 of 2019 in its submission on the amended Determination that the demarcation of wholesale and retail services is very critical in the ICT industry. Hence, Telikom urges NICTA to seriously address

these matters to ensure anti-competitive behaviors and market distortion mechanisms particularly in the retail market space by the access provider are handled properly.

Finally, Telikom recommends that the RIO and the Draft Amended Wholesale Pricing Principles for Broadband Capacity services and international submarine cable services be finalized at the same time once all consultative processes are finalized as mentioned earlier, given their close relation.