



Office of the Chief Executive Officer  
Telikom Limited  
P O Box 1349, Boroko, NCD,  
Papua New Guinea  
Telephone: (675) 3004010  
Facsimile: (675) 3250556

---

Our Ref: CA-27/01/4

**09 December,2021**

**Mr. Kila Gulo-Vui**

Chief Executive Officer  
National Information & Communication Technology Authority  
P.O Box 8444  
**BOROKO**  
National Capital District

Dear Mr. Gulo-Vui,

**Re: NICTA Public Consultation on “Revised Reference Interconnection Offer (RIO) from PNG DataCo Limited on various Wholesale Access Services”**

---

We refer to the subject matter.

Find **enclosed** Telikom Limited’s (amalgamation of Telikom PNG and Bemobile) responses, which addresses the matters for consultation on the subject and also reinforces some of the concerns we have already raised during the consultation carried out on the previous Reference Interconnection Offer (RIO) from PNG DataCo Limited on various Wholesale Access Services in June 2021.

We look forward to the outcome of the consultation.

Yours faithfully,  
**TELIKOM LIMITED**

A handwritten signature in blue ink, appearing to read "Amos Tepi".

.....  
**Mr. Amos Tepi**  
Acting Chief Executive Officer



## **Telikom Limited**

Response to Public Consultation on the **“Revised Reference Interconnection Offer from PNG DataCo Limited on various Wholesale Access Services”**

Friday: 10th December, 2021

## 1. INTRODUCTION

Telikom Limited (amalgamation of Telikom PNG and Bemobile) welcomes this opportunity to respond to NICTA's *Public Consultation on the Revised Reference Interconnection Offer from PNG DataCo Limited on various wholesale access service* – (The revised RIO). This revised RIO relates to the response from PNG DataCo to the NICTA Staff Comments Report of 24<sup>th</sup> September 2021 on the second Consultation on the subject matter in June 2021. The revised RIO comprises of the changes in the MSA including the Service Pricing under the Annexure.

Telikom as an access seeker of PNG DataCo's various wholesale services maintains its position to promoting long term interests of the end-users (either through its Fixed or Mobile products) and promoting effective competition with other access seekers. As per NICT Act, access can be requested by a valid company who possess an operator license or relevant under non-discrimination obligations. The key concern is when DataCo is extending its wholesale service where it is deemed that there is sufficient competition to provide to the end customer (Retail aspect). NICTA has addressed this particular concern separately in the draft Wholesale and Retail Services Guidelines that is simultaneously published for comments.

Telikom will comment on the changes that DataCo has made to the revised RIO, provide its views on other matters, and may perhaps reiterate some of the concerns raised earlier concerning this subject matter.

## 1. BACKGROUND

On 19<sup>th</sup> February 2019, the Minister for Information and Communications declared a number of wholesale access service pursuant to Section 130 of the National Information and Communications Technology Act, 2009 ('the Act').

The Reference Interconnection Offer covers the declared services below:

- the International submarine cable transmission capacity service
- and the Wholesale Broadband Capacity Service

On 13<sup>th</sup> August 2020, DataCo provided a Reference Interconnection Offer ("RIO") to NICTA pursuant to Section 141 of the Act. NICTA issued a Public Consultation on 19<sup>th</sup> August 2020. Telikom PNG and other interested parties submitted comments.

NICTA then concluded the public consultation in accordance with Section 229 of the Act and decided on that occasion to reject the RIO. On 29 December 2020, NICTA published its statement of reasons at its website. (<https://www.nicta.gov.pg/download/nicta-report-statement-of-reasons-dataco-rio/>).

DataCo took into account the comments in the Statement of reasons referred to above and re-submitted a revised RIO on 9<sup>th</sup> April 2021. NICTA conducted a public consultation on the revised paper that saw interested parties comment on the revised RIO. Consultation ended in June. NICTA then as-

sessed the comments and produced a comments report. NICTA had also rejected DataCo’s revised RIO. Hence, DataCo has further revised its RIO and resubmitted to NICTA on 22 October 2021.

Section 142(5) of the Act requires NICTA, before it accepts a RIO, to publish the RIO and engage in a public consultation in accordance with Section 229 of the Act, and to consider any submissions that are received within the time limit specified by NICTA (being at least four weeks after the date of publication). Therefore, this public consultation process is currently going on.

If the RIO is accepted by NICTA, it becomes a written undertaking to provide the wholesale services which it covers to access seekers (other licensed operators) on the terms and conditions contained in the RIO.

### 3. OUR COMMENTS TO DATACO’S RIO CHANGES

Changes in RIO	Telikom’s comments
<p><b>1) Clause 3.2</b> – Every 1<sup>st</sup> of January each year, the prices set out in Annexure A of the MSA shall be reviewed in accordance with a review conducted prior to that date. It also allows for any changes to rates to be incorporate into the Service Agreement as soon as they are in effect.</p>	<p>Agree with DataCo</p>
<p><b>2) Clause 3.4</b> – A customer can be able to set a period or term for the MSA that is either 12 months or such other period as may be agreed with DataCo.</p>	<p>Minimum of 12 months is sufficient.</p>
<p><b>3) Clause 7.6 (c)</b> – The price in Annexure A is to be reviewed annually in such time for variations to be made and to come into effect from 1<sup>st</sup> January of each year covered by the RIO unless otherwise approved by NICTA.</p>	<p>Agree with clause</p>
<p><b>4) Clause 9.1</b> – Customer may upon fifteen (15) days written notice to DataCo require justification, and where it is reasonable to do so having regard to the other options available to DataCo.</p>	<p>1) Currently, it is 30 days but agree with 15 days.</p> <p>2) DataCo should also allow for special or urgent (emergency) cases where a shorter period (in hours) of notice for suspension is allowed. Customer should not be charged for the suspension of service. For example, for a mobile backhaul link, a 15 days’ notice would not be applicable in the event of increased traffic or reduced traffic depending on end-user behavior.</p> <p>3) Telikom proposes for online ordering and fault reporting to be able to order the declared Wholesale services in a timely manner and or cease with timeframes requested by the access seeker.</p>

<p><b>5) Clause 10.1</b> – DataCo may terminate a Service Agreement to Customer for reasonable justification, and where it is reasonable to do so having regard to the other options available to DataCo.</p>	<p>Fair</p>
<p><b>Clause 10.2 – Customer’s Right to Terminate Service Agreement</b></p> <p>(a) Without prejudice to any other accrued rights or remedies, Customer may terminate a Service Agreement by providing thirty (30) days’ notice to DataCo if DataCo:</p> <p>(i) commits a material breach of the Service Agreement for a Service and fails to remedy that breach within thirty (30) days’ of receipt of such notice of the breach from Customer;</p> <p>(ii) commits material breach of the Service Agreement for a Service which is incapable of being remedied;</p> <p>(iii) fails to perform or comply with any one or more of its obligations under the Service Agreement for a service for more than thirty (30) days; and</p> <p>(iv) is subject to any material change in the business, ownership, or control unless otherwise advised by the DataCo and it is demonstrated by DataCo to Customer that this shall not affect the performance of the Service Agreement relating to that Service.</p> <p>(b) From any termination of a Service Agreement by Customer under clause 10.2 (a):</p> <p>(i) DataCo shall refund the Service Bond for that Service to Customer less any amounts owing to DataCo; and</p> <p>(ii) DataCo shall be entitled to payment of all charges up to and including the date of termination of the Service Agreement for that Service.</p>	<p>1) Customer must have the flexibility to terminate for any other circumstance; apart from the trigger event in clause 10.2.a. 1 to 4.</p> <p>2) We submit that the customer should not be charged the early termination fee (referred in Annexure B Service Order form) under the trigger events specified in clause 10.2.a. 1 to 4.</p>
<p><b>6) Clause 10.3 (a)</b> – DataCo may terminate if customer fails to make payment of amounts under a Service Agreement after being provided notice of it and if applicable after resolution of a billing dispute. DataCo may also terminate where customer fails to cease a violating activity even after being given reasonable notice of such violation.</p>	<p>Fair</p>
<p><b>7) Clause 18.9</b> – An assignment may be done with the written consent of the other party. Consent not to be</p>	<p>Fair</p>

unreasonably withheld.	
<p><b>8) Annexure A</b> – RIO pricing offer has been reviewed for WIS with a reduction of up to 12.5% at the lower capacities and for P2P Metro all price breaks have being reduced between 66%-94% across all capacities. Refer to attachment ‘1’ for the revised pricing.</p>	<p>1) Telikom notes the changes to the Service Pricing Offer. However, we are concerned whether the RIO pricing of the Wholesale Declared Services will promote long term interests of the end-users and balance the competing business interests of DataCo as the access provider with its access seekers?</p> <p>2) Secondly, is whether this pricing will promote effective competition with its access seekers in particular telecommunications providers to provide direct internet access (DIA) under non-discrimination obligations (section 136 Act). Refer to specific comments below.</p>

#### 4. Comments on Changes in Service Offer Pricing

Telikom notices that the prices for the two first services have dropped and the capacity ranges have increased or stretched for all. See our comments below accordingly:

##### 4.1 ANNEXURE A: SERVICE PRICING OFFER EFFECTIVE 1<sup>st</sup> JANUARY 2022

	Service	Capacity (Mbps)	Unit Price/Month (PGK)	Conditions	Telikom’s Comments
1	Wholesale Internet Service (WIS)	Up to 499	270	1. WIS over Fibre can be delivered in all locations where DataCo has a fibre POP. 2. The Service can be delivered to customer's single POP 3. This service is protected in the core network only. Other protection requirements will be at an additional cost.	1) Telikom notes the changes in prices and capacities for WIS. However, the revised pricing should encourage access seekers, particularly, the telecommunication providers to provide access to its Retail customers. Furthermore, NICTA should consider an inquiry into the service classification of the Wholesale declared services within main Telikom Exchange transmission hubs and regional hubs, including speed tiers for non-telecommunication providers who possess an operator license or relevant. 2) Telikom welcomes the RIO pricing and seeks a clarity on the interconnection points after the landing station.
		500	265		
		1,000	259		
		2,000	251		
		5,000	235		
		10,000	223		
		20,000	199		
		50,000	177		
	100,000	168			

2	Domestic P2P Metro - over Fiber delivered to Customer Premises	10	50	1. DP2P - M1 over Fibre can be delivered in all locations where DataCo has a fibre P2P.	<p>1) Telikom notes that 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 have been merged to one service type only. Telikom still affirms to its suggestion in the previous consultation that <b>metro services should be eliminated in the wholesale market</b> and confined to national domestic trunk routes. The Wholesale broadband capacity service declaration must be for national trunk routes only and not for local metropolitan services. Local metropolitan services should be left to the retail market segment to avoid the mix up of different market players which can further lead to market manipulation and non-competition.</p> <p>2) We consider DP2PM1 to have sufficient competition among the access seekers (telecommunication providers), thereby propose that NICTA to inquire into the impact of Wholesale downstream of communication service by the access provider (DataCo) with its access seekers (telecommunication providers/ISPs).</p>
		50	50	2. The Service can be delivered to customer's single POP	
		100	34	3. This service is unprotected. Protection will be at additional cost.	
		150	24		
		300	21		
		500	18		
		1,000	12		
		2,000	8		
		5,000	6		
		10,000	4		
		20,000	3		
		50,000	2		
		100,000	1		
3	Domestic P2P Long-haul (DP2P-LH) over Fibre delivered to Customer Premises.	10	400	1. DP2P - LH over Fibre can be delivered in all locations where DataCo has a fibre P2P.	<p>1) We consider DP2PLH as an essential transmission network via fibre optic (DWDM) or via the Submarine cable (KSCN). Following are proposed:</p> <p>a.) We consider NICTA to inquire into a separate service classification for transmissions between mobile base stations and the</p>
		50	340	2. The Service can be delivered to customer's single POP	
		100	300	3. This service is unprotected. Protection will be at additional cost.	
		150	283		
		300	266		

		500	246		<p>nearest available point on the access seekers network (telecommunication provider or network operator).</p> <p>b.) Secondly, to provide a separate service classification for transmission services according to commonly acquired speed tiers.</p> <p>c.) Thirdly, for DataCo to include online ordering and fault monitoring as basic service features of this important transmission service.</p> <p>d.) Lastly, to clarify the meaning of the term 'point of interconnection.'</p>
		1,000	225		
		2,000	214		
		5,000	191		
		10,000	169		
		20,000	152		
		50,000	135		
		100,000	118		
380	International P2P (IP2P) over subsea fibre delivered to at the CLS	10	380	1. IP2P product over subsea fibre is only delivered in Madang and Port Moresby.	<p>1) We would like to maintain our suggestion in the previous consultation for DataCo to service only up to the landing station and leave it to the ISPs to service end users.</p> <p>2) We consider IP2P as an essential transmission network via the submarine cables. Thus, we consider a service classification of this declared service and last mile access (CAN/fibre) to be provided by access seekers (telecommunication providers) to the customer premise.</p>
		50	323	2. The Service is only delivered between Cable Landing Stations (Kila-Pad and Mad-GS).	
		100	285	3. DataCo can deliver to customers premise and to other international PoP but at additional cost.	
		150	269	4. This service is unprotected. Protection will be at additional cost.	
		300	253		
		500	234		
		1,000	214		
		2,000	203		
		5,000	182		
		10,000	160		
		20,000	144		
		50,000	128		
100,000	112				

#### 4.2 Other comments on Service Pricing Offer

a.) It is understood that the NICT Act does not discriminate any individual or company to become a license operator and any operator licensee is a wholesale customer. Section 4, the Interpretation section of the Act defines the wholesale customer as “an operator licensee, but excluding circumstances where

that operator licensee acquires an ICT service for that operator licensee's own personal use rather than to facilitate the supply of an ICT service by that operator licensee. In other words, "an operator licensee is not acting as a wholesale customer where ICT services are purchased for its own personal use rather than to facilitate that operator licensee's provision of ICT services to other customers." (Clause 2.5, draft Wholesale and Retail Services Guideline consultation paper, pg. 4.) The definition in the Act seems to qualify any operator licensee to access wholesale services for their personal use apart from resale purposes.

This seems to create an issue. Licensed operators who purchase the wholesale services above from DataCo for their own use will benefit from the proposed service pricing offer. However, they will not on-sell the capacity they purchase, hence, it seems unfair as they should be considered as a retail customer, yet benefiting from wholesale rates. In addition, competition for ICT services especially in the corporate and SME markets at the retail level will become slim and/or will automatically be distorted.

**b.)** The service pricing offer seems predatory and discriminatory to retail ICT markets like the corporate and SMEs that the wholesale customers service. License operators should purchase from the wholesaler to on-sell to corporate customers and SMEs and/or service the various ICT markets in the retail level to encourage more competition.

Therefore, to address these issues:

- 1.** Telikom considers that DataCo reviews its service pricing offer and offer different price ranges for the different services in the different markets. For example, licensed operators who will not resell should have a different price from those who will resell. This is to ensure competition is present across all ICT markets.
- 2.** Telikom suggests that there should be regional links that the wholesale provider can service and leave the metro/last mile to wholesale customers who will resell capacity to service.

## **5. CONCLUSION & RECOMMENDATIONS**

In conclusion, Telikom Limited acknowledges the importance of the revised RIO from PNG DataCo Limited on various wholesale access services, in particularly, the high capacity wholesale transmission networks which is considered as an essential input to the supply of downstream communication services (Retail), of which the Retail aspect of RIO components remains largely a concern.

We are aware that the Wholesale and Retail Services Guideline is currently in consultation, which we hope will address the aspects of the concern to serve the business interests of the access provider (DataCo) and its access seekers and more importantly, to comply with the competition objective as specified in the Section 124(1) (a) of the NICT Act prior to advancing the revised RIO.