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National Information & Communications Technology Authority (NICTA)
Section 34, Lot 19 and 20
Frangipani Street
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Papua New Guinea

Dear NICTA

Public Inquiry into International Connectivity Markets – Draft Recommended Declaration

I refer to your letter of 7 December 2012 inviting Telstra to make submissions in relation to the draft recommended declaration titled *Wholesale Service Declaration No. 1 of 201x (Draft Declaration)*.

Thank you for providing Telstra with the opportunity to make submissions on the Draft Declaration. We generally agree with the drafting, but have proposed some minor refinements.

I have therefore set out in the Attachment to this letter some proposed edits to the Draft Declaration with explanatory comments.

Please let us know if you would like to discuss any of these comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CD', is written over a horizontal line.

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Encl.

ATTACHMENT - PROPOSED AMENDMENTS TO DRAFT DECLARATION

Wholesale Service Declaration No. 1 of 201x

1. Name of declaration

- (1) This declaration is the *Wholesale Service Declaration No. 1 of 201x*.

2. Commencement and expiry

- (1) This Declaration commences 30 calendar days after the date on which it is notified in the National Gazette.
- (2) The date this Declaration commences shall be the Commencement Date.
- (3) This Declaration expires on the day before the fifth anniversary of the Commencement Date unless it is varied or revoked earlier pursuant to Section 130 of the Act.

3. Interpretation

- (1) In this Declaration, unless the contrary intention appears:

“Act” means the *National Information and Communications Technology Act, 2009* and includes any regulations made under that Act;

“Cable landing station” is a Site at which an international fibre-optic submarine cable is available onshore for the purpose of accessing transmission capacity on the cable. For the avoidance of doubt this includes the cable landing stations located at Ela Beach and Madang;

“end point” means a nominal point at a Cable Landing Station or international gateway Switching Centre in a foreign jurisdiction that is used to demarcate an end of a service normally if it is supplied in the form of a full circuit; ¹

“mid point” means a nominal point along an international fibre-optic submarine cable that is used to demarcate an end of a service, normally if it is supplied in the form of a half circuit;

“point of interconnection” means a location in Papua New Guinea which is a physical point of demarcation between the Access Seeker’s Network and the Access Provider’s Network;

- (2) Each of the following terms used in this Declaration has the meaning given to it by the Act:

- Access
- Access Provider
- Access Seeker
- Facilities Access Service
- International Gateway
- Network
- Network Service
- Operator Licensee
- Site
- Switching Centre
- Wholesale Service

4. Declaration

- (1) The following Wholesale Services are hereby declared:
- (a) the international submarine cable transmission capacity service; and
 - (b) the international submarine cable gateway access service.

5. Service descriptions

- (1) The international submarine cable transmission capacity service is a Network Service:

- (a) for the carriage of any combination of voice communications and/or data via an international fibre-optic submarine cable between:

(i) any of the following Points of Interconnection, at the election of the Access Seeker: [2]

(A~~ii~~) a Point of Interconnection located at the Access Provider's Cable Landing Station; or

(B~~iii~~) an existing Point of Interconnection located at any the Access Provider's Switching Centre that is nearest to that Cable Landing Station and which contains an existing Point of Interconnection between the Access Provider and an Operator Licensee; or

(C~~iii~~) a new Point of Interconnection located at any other the Access Provider's Switching Centre that is mutually agreed to by the Access Provider and the Access Seeker technically feasible for that purpose;

and

(iv) a Mid Point or End Point; and

- (b) with any unit of transmission capacity.

- (2) The international submarine cable gateway access service is a Facilities Access Service that provides an Access Seeker with such access to, or use of, the Facilities of an Access Provider at the Access Provider's:

(a) Cable Landing Station; or

(b) Switching Centre that is nearest to the relevant Cable Landing Station and which contains, or will contain, a Point of Interconnection between the Access Provider and an Operator Licensee, or [3]

~~(c) Switching Centre the use of which for this purpose is mutually agreed by the Access Provider and the Access Seeker;~~

as is necessary to enable the Access Seeker to interconnect its Facilities to an international fibre-optic submarine cable.

- (3) For the avoidance of doubt:
- (a) the international submarine cable transmission capacity service and the international submarine cable gateway access service are separate Wholesale Services;
 - (b) the international submarine cable transmission capacity service includes the supply of **additional** backhaul transmission capacity to the extent that such is necessary to connect an Access Seeker's Facilities at a virtual collocation Site to the Access Provider's Facilities in a Cable Landing Station; [4]
 - (c) the international submarine cable gateway access service enables an Access Seeker to:
 - (i) Access the International Gateway Facilities of an Access Provider including, but not limited to, physical network infrastructure;
 - (ii) physically collocate its Facilities if technically feasible in any available space within the Access Provider's Cable Landing Station;
 - (iii) virtually or physically collocate its Facilities if technically feasible in any available space within the Access Provider's ~~nearest~~ Switching Centre that contains, **or will contain**, a Point of Interconnection; [5]
 - (d) if an Access Provider supplies an international submarine cable transmission capacity service with a particular transmission capacity from:
 - (i) a Cable Landing Station that is under its control; or
 - (ii) a Switching Centre ~~near to a Cable Landing Station~~ **that is** under its control; [6]

then, subject to the constraints of the relevant submarine cable capacity available through contract or ownership to the Access Provider, the Access Provider shall be deemed to be able to supply international submarine cable transmission capacity services with other transmission capacities **over the same route or any component of that route.** [7]

ATTACHMENT - EXPLANATION FOR PROPOSED AMENDMENTS

- [1] For completeness and consistency, Telstra suggests that the words “*normally if it is supplied in the form of a full circuit*” are added to the definition of an “end point”. This definition will then match the equivalent words “*normally if it is supplied in the form of a half circuit*” in the definition of a “mid point”.
- [2] Telstra agrees with the proposed drafting, but suggests the following refinements:
- The decision as to the point of interconnection should be expressly made at the election of the Access Seeker. As identified in Telstra’s initial submission, access to the cable landing station should include potential access to any other gateway exchange located within PNG (bundled with backhaul from the cable landing station to that gateway exchange). In this manner, Telikom has no ability to impede access to international connectivity by providing access to backhaul transmission on unreasonable terms.
 - Rather than requiring agreement as to which Switching Centres other than the nearest Switching Centre should be used, Telstra proposes that the relevant concept should be whether or not an existing Point of Interconnection between the Access Provider and an Operator Licensee exists at the Switching Centre:
 - If such a Point of Interconnection already exists, then the Access Provider should be required to provide interconnection without need for further agreement as to technical feasibility. In such circumstances, the Switching Centre is necessarily a point at which it is technically feasible that such interconnection can occur.
 - If such a Point of Interconnection does not already exist, then it will be necessary for the parties to reach agreement that it is technical feasible to use that Switching Centre as a Point of Interconnection.
 - For new Points of Interconnection, Telstra suggests that the need for agreement on such technical feasibility is not specified in the service declaration because that may give rise to an argument that only Switching Centres for which commercial agreement is reached are subject to regulation. Telstra’s suggested drafting instead ensures that NICTA will have the right to itself resolve any dispute as to whether it is technically feasible to enable interconnection at any Switching Centre.
- [3] Telstra has suggested drafting to address the points made in [2] above. In effect, the proposed drafting can be simplified to require access to be provided to a Switching Centre that contains, or will contain, a Point of Interconnection between the Access Provider and an Operator Licensee.
- [4] Telstra agrees with the proposed drafting, but has suggested the addition of the word “additional” to clarify that any backhaul transmission capacity between a virtual collocation site and a Cable Landing Station is additional to the backhaul contemplated within the service definition itself. If the word “additional” is not included, an interpretative risk is created that the Access Provider may argue that the only backhaul contemplated by the service definition is backhaul between the virtual collocation site and a Cable Landing Station, contradicting the intent of enabling interconnection to occur at any other Switching Centres.
- [5] Telstra has suggested drafting to ensure that the drafting remains consistent with [2] above. The previous drafting was also limited to the nearest Switching Centre so did not address access to Switching Centres mutually agreed under paragraph 5(1)(a)(iii), so even if Telstra’s drafting in [2] were not accepted, this amendment would still be required.
- [6] Telstra has suggested drafting to ensure that the drafting remains consistent with [2] above.
- [7] Telstra agrees with the proposed drafting, but proposes that the words “*over the same route or any component of that route*” are added to clarify that if transmission capacity is supplied via a Switching Centre, the transmission capacity is also available from intermediate Switching Centres on that route and from the Cable Landing Station.