

Annex

Digicel PNG's specific drafting changes and comments in relation to
 NICTA's *Draft Consumer Protection (Amendment) Rule 2025 Outline
 (Annotated) (Revised April 2025)* that was published alongside NICTA's
*Draft Consumer Protection Rule (Amendment) 2025 2ND CONSULTATION
 PAPER*

Section	Section Heading	Digicel PNG Comments
1	Name of Rule	Given the very extensive nature of the proposed amendments that would be made to the Rule by the Proposed Draft Rule, Digicel PNG suggests it would be preferable to revoke the existing Rule and replace it with a new Rule.
2	Preliminary	See comment relating to Section 1.
3	Commencement	Digicel PNG suggests the Commencement of the Rule is set so as to allow time for service providers to update systems (where necessary) to ensure compliance.
4	Amendments	See comment relating to Section 1.
5	Authority	NICTA's power to make, vary or revoke a Rule is contained in Section 218 of the Act.
6	Purpose	It is important to ensure the Rule is squarely focussed on Consumers.
7	Application	In order to improve clarity and consistency, including with other regulatory instruments, Digicel PNG proposes the introduction of a definition of ICT Services, which defines that term by reference to the meaning given to it in the Act.
8	Definitions	Digicel PNG proposes that definition of "Consumer" be amended to align with the definition used in the Independent Consumer and Competition Commission Act 2002 and the definitions used in the Australian TCP Code. Digicel PNG also proposes to align the definition of Small Business with the definition used in the Australian TCP Code and remove the uncertainty introduced by the final part of the definition. In addition, Digicel PNG has proposed a number of other terms that it considers useful for the clear and consistent interpretation and application of this Rule.
9	Guiding Principles	For consistency, Digicel PNG suggests minor changes so that this section uses terms that are defined elsewhere in the Rule.

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10.1	Right to full information on service choices and costs/prices	<p>It is unclear what “reasonably practicable” means in the context of this provision and notes NICTA’s following comment at page 43 of the [Response to Comments Report] (“Response to Comments Report”):</p> <p><i>“While NICTA applauds Telikom’s suggestion to extend billing and service usage information in additional formats and other languages which would be a bonus for the consumers, NICTA also notes the additional cost burden service providers may incur hence, leaves this suggestion optional to individual services providers. The key requirement is that usable information is provided for the benefit of consumer choices”</i> (emphasis added)</p> <p>Digicel therefore proposes that the approach indicated by NICTA in the Response to Comments Report is reflected in the Rule itself.</p>
10.2	Obligations to Provide Clear, Accurate and Timely Information to Consumer	<p>Digicel PNG suggests that the provisions relating to the provision of information be separated from those relating to making information accessible to people living with a disability. As proposed, the requirements regarding the latter are spread across several different sections, including the proposed 10.2.</p> <p>Also, Digicel PNG suggests that the obligation to notify Consumers of the renewal of subscriptions be limited to those with a minimum term of more than one month, and that the obligation apply in relation to Consumer ICT Contract (that is, contracts between Licensees and Consumers for ICT Services).</p>
10.3	Critical Information Summary	<p>Digicel PNG suggest that this provision would benefit from amendments to clarify the length of the CIS (which Digicel PNG suggests should align with the requirement in Australia for an individual CIS to be no longer than 2 A4 pages).</p>
10.4	Prohibited Advertising and Marketing Practices	<p>Digicel PNG notes that subsections 2, 3 and parts of 4 appear to duplicate topics addressed elsewhere in the Rule.</p>
10.5	Right to customer assistance with purchase and service options	<p>Digicel PNG suggests changes so that this section so that compliance obligations are made clearer.</p>
10.6	Customer Access to Detailed Billing and Usage Information	<p>While Digicel PNG generally supports the principles underlying the proposed provisions in this Section, they lack sufficient specificity to be enforceable or for Licensees to measure their own compliance.</p> <p>We therefore suggest that such provisions are either considered as “principles” for inclusion in a non-mandatory Guideline or are otherwise set aside for the time being pending further discussion.</p> <p>While Digicel PNG supports the timely resolution of billing errors, it may not always be practicable to issue a new bill, credit or refund within 30 days.</p>

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		<p>Payment methods should be a matter that is dealt with in the contract between the Licensee and the Consumer.</p> <p>It is important that, for Post-Paid Services, service suspension for non-payment is able to be effected without notice in certain circumstances. Such actions are important to protect the legitimate interests of Licensees and of Consumers who may otherwise incur unmanageable debts.</p> <p>Similarly, the terms of any security deposit will be highly dependent on the nature of the service and the credit worthiness of the Consumer. In our view, it is not reasonable or appropriate for NICTA to seek to prescribe the terms of a security deposit in this rule.</p> <p>Importantly, Pre-Paid Service options are available for Consumers who do not wish to enter into Post-Paid Service contracts for ICT Services.</p>
11.1	Publicly Available Tariff Plans	<p>Except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act.</p> <p>Prior notification of tariff plans is also likely to chill competition and limit Licensees' ability to be able to respond to market changes.</p> <p>Not all tariff plans will be available to all Consumers. For example, post-paid tariff plans will only be available to Consumers who meet relevant credit criteria.</p> <p>The provisions of Section 11.1.3 are already covered in Sections 10.2 – 10.4.</p>
11.2	Affordable Service Pricing Options	<p>Except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act.</p> <p>Consumer pricing and services are provided in accordance with market demand and are subject to Licensees' own commercial requirements.</p>
11.3	Protection against "Bill Shock," Unreasonable Charges, Price Increases	<p>Except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act.</p> <p>Moreover, the requirements sought to be imposed by this Section are already covered elsewhere in the Proposed Draft Rule.</p>
11.4	Notification and Assistance Regarding Price or Usage Changes	<p>The requirements sought to be imposed by this Section are already covered elsewhere in the Proposed Draft Rule, including in Section 10.4.4.2.</p>
12.1	Written Contracts	<p>Written agreements are most relevant in the case of fixed term contracts for Post-Paid services.</p> <p>Terms of service for Pre-Paid Services are published by Licensees on their web sites.</p>

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12.2	Minimum Content of the Contracts	Digicel PNG suggests that this provision should be amended to make clear that it applies to Consumer Contracts.
12.3	Prohibits Contract Terms	Digicel PNG considers the examples of unfair terms provided are unnecessary as they are covered elsewhere in the Draft Rule and, if included, would be likely to be subject to interpretational issues.
12.4	Cooling-Off Period	<p>Digicel PNG considers it important that a distinction be drawn between a sales process that has been initiated by the Consumer and other unsolicited offers.</p> <p>The cooling off period should only apply in relation to “unsolicited Consumer agreements”, and should not apply, for instance, to contracts entered into as a result of a Consumer signing up for the contract of their own volition via a Licensee’s app or website, or if they choose to call the Licensee themselves.</p> <p>The proposed definition of Unsolicited Consumer Agreement that Digicel PNG has incorporated into its proposed wording is based on the equivalent concept from the Australian Consumer Law.</p>
12.5	Contract Renewal Expiry	<p>Requirements for formal prior notification are only necessary where a Consumer Contract is proposed to roll over for a further fixed term or where changes to the relevant Tariff Plan is proposed.</p> <p>In circumstances where the fixed term of the Consumer Contract expires but no other material changes to the Tariff Plan occur, then no notification should be required.</p>
12.6	Variations of Contracts by Licensee	Where the change is beneficial to the Consumer no prior notice should be required as this would simply delay the conferring of the benefit.
13.1	Fair Mobile Data Practices	<p>There are a variety of reasons as to why a Licensee may legitimately need to manage data speeds to take into account network capacity and a range of other issues. This is especially the case for mobile networks where networks are necessarily capacity constrained.</p> <p>It is not practicable for Licensees to provide real time reports of data usage.</p> <p>Further, Licensee’s choice of what data packages they offer should be a matter for the commercial judgment of the individual Licensee, and not a matter to be regulated under these Rules.</p> <p>Except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act. Moreover, the requirements sought to be imposed by Section 13.1.6 are device specific and can be managed by Consumers themselves.</p>

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		If NICTA considers Consumers require additional education in their use of such handset features, then Digicel PNG suggests that NICTA itself may be best placed to assist in that process.
13.2	Mobile Data Network Management	<p>Digicel PNG notes that data speed management and throttling are already covered in Section 13.1. Hence, this section is not required.</p> <p>Digicel PNG also does not support the inclusion of the broadly worded “net neutrality” provision in this Rule. There may well be other reasons why, for the purposes of network management, a Licensee may wish to prioritise certain forms of traffic, such as to ensure quality of service for voice traffic in areas of high network demand.</p>
14.1	Roaming Rules Applicable to Consumer Protection	<p>Except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act.</p> <p>It is not possible for Licensees to be able to predict when Consumers are intending to travel internationally. The internationally accepted approach to roaming notification is to send a message when the Consumer first connects to an overseas network confirming that they are roaming and providing information on where relevant roaming charges and other information can be accessed.</p>
15.1	Services and Access Support for Vulnerable Consumers	<p>While Digicel PNG strongly supports digital inclusion and agrees that the provision of services to persons with disabilities is an important issue, we wonder if the substantive measures required to address the challenges faced by people with disabilities may be beyond the remit of the Draft Rule, and that meaningful improvements in digital inclusion would be better achieved through a Universal Access and Service (“UAS”) initiative through a separate consultation.</p> <p>Digicel PNG further notes that, except in circumstances where a Retail Service Determination has been made, retail pricing is not subject to regulation or control by NICTA under the NICT Act.</p>
15.2	Non-Discrimination, Equal Treatment of All Customers	
16.1	Minimum Service Standards	<p>Quality of Service and related Licensee requirements are already covered in other instruments, including the Standard and Special Conditions of Individual Licences Rule, 2025, and the Telecommunications Quality of Services Rule 2022.</p> <p>In Digicel’s submission, it is inappropriate to seek to amend or qualify those requirements through the operation of this Rule.</p> <p>Nevertheless, should NICTA wish to review quality of service requirements then Digicel PNG would welcome the opportunity to participate in such a review.</p>

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16.2	Fault Repair and Restoration Timelines	See comment above re section 16.1
16.3	Service Disruptions and Downtime Notifications	See comment above re section 16.1
16.4	Compensation for Service Disruptions	See comment above re section 16.1
16.5	Transparency in Disruption Reporting	See comment above re section 16.1
16.6	Proactive Notification of Disruptions for Critical Services	See comment above re section 16.1
16.7	Customer Right to be Informed About Recovery Plans	See comment above re section 16.1
16.8	Post-Disruption Feedback and Resolution Process	See comment above re section 16.1
16.9	Service Resumption Notifications	See comment above re section 16.1
17.1	Protection of Customer Privacy, Unauthorized Use of Data	<p>Regardless of what steps a Licensee may take, there is still a risk of unauthorised use or disclosure of that information.</p> <p>Hence, Licensees obligations should be limited to taking reasonable steps to ensure that Consumer's personal information is protected from unauthorised use or disclosure.</p>
17.2	Protection from Abuse, Mistreatment	<p>Digicel PNG understands that it already has obligations to cooperate with relevant agencies to, among other things, assist in protecting Consumers from unlawful abuse and will continue to cooperate in that regard.</p> <p>However, the proposals contained in this section are beyond the scope of the proposed Rule and NICTA's powers to implement.</p> <p>Accordingly, Digicel PNG submits that matters contemplated by this Section should more properly be the subject of a separate discussion with NICTA and relevant law enforcement agencies.</p>
17.3	Data Privacy and Security in AI System	<p>The use of AI systems by Licensees to support their provision of ICT services to Consumers in Papua New Guinea is still in the early stages of development.</p> <p>As such, Digicel PNG considers it to be premature to be looking to develop specific rules governing the use of AI.</p> <p>Having said that, Digicel considers that, in principle, AI systems are merely tools to assist businesses to become more efficient and that, in keeping with that principle, they should be held to the same standard as any other systems and processes used by Licensees.</p>

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		If that principle is adopted, then Digicel PNG considers that no special rules should be needed to govern their use. Digicel PNG proposes that any discussions around the use of AI by Licensees be the subject of a separate process.
18	Artificial Intelligence in Customer Services	See comments above.
19.1	Division 1 – General Principles	Digicel PNG has proposed some changes to the wording for greater consistency of terms and making it clear that the issues giving rise to a complaint should be investigated before any conclusions are reached.
19.2	Division 2- Complaints Handling Policy	No material comments
19.3	Division 3- Complaints Handling Process	Digicel PNG does not consider it appropriate to give out staff names or contact details to complainants.
19.4	Division 3 – Escalation and Dispute Resolution	While Part XII of the NICT Act provides NICTA with powers to gather information that is relevant to the performance of its powers and functions, it does not expressly confer upon NICTA the power of audit. It is therefore inappropriate for NICTA to seek to assume such a power in this Rule. NICTA also does not have the power to issue fines. While it is certainly within NICTA's power to facilitate the resolution of a Consumer complaint, we disagree that NICTA has the power to refer Consumer complaints to mediation or arbitration. It is also our view that the costs associated with any such referral would be prohibitive.
19.5	Division 4 – Remedies	What constitutes a “fair remedy” will depend on the circumstances of each individual complaint.
19.6	Independent Arbitration Process	In Digicel PNG's view referral to arbitration would be prohibitively expensive for all parties and amount to a serious regulatory overreach. Given the costs and complexities involved in arbitration, it is highly unlikely to be able to satisfy the stated objective of being “easily accessible to all Consumers” In any case, we consider such a provision to be superfluous given NICTA's duties and powers under the NICT Act to investigate Consumer complaints.
19.7	Record-Keeping of Complaints:	Amended to refer to the defined term Complaint.

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19.8	Provisions on Whistleblower Protections	Digicel PNG considers the inclusion of this provision is beyond power and, in any case, whistleblower protections already exist in Papua New Guinea pursuant to the Whistleblower Act 2020.
20.1	Compliance and Monitoring	<p>While Parts XII and XIV of the NICT Act provides NICTA with powers to gather information and undertake inspections that are relevant to the performance of its powers and functions, the NICT Act does not expressly confer upon NICTA the power of audit.</p> <p>Digicel PNG submits that it is therefore not appropriate for NICTA to seek to assume such a power in this Rule.</p>
20.2	Reporting Obligations	Digicel PNG submits that regular reporting should be undertaken on an annual basis. The report should detail the Licensee's compliance with the Rule, and be submitted by the first of March each year, allowing Licensee's a suitable period of time following the end of the previous financial year in which to report on its compliance for the preceding financial year.
20.3	Investigations	<p>This provision is unnecessary as NICTA's investigatory powers are prescribed in Part XII of the NICT Act.</p> <p>However, if retained, this provision should be amended to clarify that NICTA's power to investigate is the power already granted to it under Part XII of the NICT Act.</p>
20.4	Corrective Actions	<p>While the NICT Act confers some powers on NICTA in terms of enforcement and corrective actions, those powers do not extend to what has been proposed in the Rule.</p> <p>Accordingly, Digicel PNG submits that references to Corrective Actions and Penalties should be removed from this Rule and that, in the event NICTA considers a breach of the Rule has occurred, it deals with that alleged breach in accordance with the express terms of the NICT Act.</p>
20.5	Penalties	Digicel PNG notes that any penalties imposed must be consistent with, and in accordance with, the NICT Act.
20.6	Appeals	Licensees' rights to appeal or review a decision of NICTA are generally contained in the NICT Act. There is no need to seek to summarise them in this Rule.
21.1	Existing Contracts and Arrangements	<p>It should be made clear that the reference is to Consumer Contracts rather than contracts in general. Digicel PNG has hence proposed the inclusion of a defined term of Consumer Contract, being a contract for the supply of ICT Services.</p> <p>Digicel PNG submits that the 12 months is a more appropriate time for a Licensee to have to review pre-existing contracts and make amendments to address those inconsistencies.</p>
21.2	Ongoing Complaints and Disputes	No material comments

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21.3	Phased Implementation of New Obligations	<p>Digicel PNG considers that a minimum time period of twelve (12) months is appropriate in the context of the subject matter covered by the Revised Draft Rule.</p> <p>That time should be the minimum amount of time allowed, regardless of whether a particular timeframe is specified in a notice or not.</p>
21.4	Savings of Prior Actions	No material comments
21.5	Expiry of Transitional Arrangements	No material comments