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[2012

National Information and Communications Technology Act 2009

MINISTERIAL DETERMINATION ON RETAIL SERVICES

Determination No. 1 of 2012

1. Name of Determination

- (1) This Determination is Retail Service Determination No. 1 of 2012.

2. Preliminary

- (1) This Determination is made by the Minister pursuant to his powers and responsibilities under Section 160 of the *National Information and Communications Technology Act, 2009* and after his consideration of:
- a. the retail regulation criteria specified in section 158 of the Act;
 - b. NICTA's recommendation under section 159 of the Act and the accompanying Recommendation Report;
 - c. the related Inquiry Report published by NICTA on 5th September 2012 for the purposes of section 235 of the Act; and
 - d. the related Discussion Paper published by NICTA on the 4th May 2012 and the associated Response to Comments Report published by NICTA on 5th September 2012.

3. Commencement and Termination

- (1) This Determination commences 30 calendar days after the date on which it is notified in the *National Gazette*.
- (2) The date this Determination commences shall be the Commencement Date.
- (3) This Determination shall terminate on the day before the fifth anniversary of the Commencement Date unless terminated before that date in accordance with the revocation processes described in Section 160 of the Act.

Ministerial Determination on Retail Services—continued

Determination No. 1 of 2012—continued

4. Interpretation

- (1) In this Determination, unless the contrary intention appears:
 - "Act" means the *National Information and Communications Technology Act, 2009* and includes any regulations made under that Act;
 - "Digicel" means Digicel (PNG) Limited;
 - "On-net" means in relation to calls those calls that originate and terminate on Digicel's network;
 - "Off-net" means in relation to calls those calls that originate on Digicel's network but terminate on the network of another Licensee; and
 - "Pre-paid" means payment of an amount before a service is used.
- (2) Each of the following terms used in this Determination has the meaning given to it by the Act:
 - . fixed network
 - . mobile network
 - . network
 - . NICTA
 - . price
 - . retail service

5. Application

- (1) This Determination applies to the supply by Digicel of mobile originated retail national voice call services that are supplied on a pre-paid basis.
- (2) For the avoidance of doubt, the service described in 5(1) is a retail service.

6. Pricing principle

- (1) In pricing the services to which this Determination relates, Digicel shall not price discriminate on the basis of the mobile network (including its own) that will terminate the call except that Digicel may price discriminate between on-net and off-net calls:
 - a. up to a limit of 40% for each separate minute, or part thereof, of a national call, calculated by dividing the difference between the price of an on-net call and the price of an off-net call by the on-net call price (where all prices relate to calls made at the same time of the day); or
 - b. to the extent that any such differences in the price of an on-net call and the price of an off-net call are objectively justifiable based on differences in the costs of supplying the service; or
 - c. in addition to either (a) or (b) as the case may be, to the extent that any such differences in the price of an on-net call and the price of an off-net call are the subject of a limited period promotional offer the terms of which have been approved by NICTA on a case by case basis following an application from Digicel that complies with the requirements set out in clause 6(5) of this Determination, such approval being subject to the conditions set out in clause 6(6) of this Determination.
- (2) For the purposes of clause 6(1)b, only differences in cost that have been subject to assessment and approval by NICTA shall be accepted as 'objectively justified'.
- (3) NICTA shall endeavor to process applications received under clauses 6(1)b and 6(1)c as expeditiously as possible bearing in mind the complexity of the evidence and of the issues raised by the application.

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- (4) For the avoidance of doubt—
- a. Digicel may not begin charging prices that discriminate on the basis described in clause 6(1)b unless and until NICTA has assessed and approved the costs differences for the purposes of this Determination as described in clause 6(2); and
 - b. In approving cost differences claimed by Digicel pursuant to clause 6(1)b NICTA shall adjust the amount claimed by deducting an amount equal to the 40% price differential allowance in clause 6(1)a, and approving the remainder, if there is a remainder, under clause 6(1)b.
- (5) Applications from Digicel for approval of prices for promotional offers pursuant to clause 6(1)c of this Determination shall contain the following information—
- a. The purpose of the promotion, and, if there are multiple purposes, all of them;
 - b. The category or categories of persons, including existing subscribers if applicable, to whom the promotional offer is directed or targeted;
 - c. The dates on which the promotion shall commence and finish;
 - d. The terms of the promotion and the prices that will be charged to those customers that accept, or are otherwise subject to, the promotional offer;
 - e. The areas in which the promotion will be conducted (nationally or on some other basis);
 - f. A statement of how the approval sought will achieve the purposes of the promotion;
 - g. Such other information as Digicel considers will provide NICTA with a basis on which to understand the promotion and to determine the application expeditiously; and
 - h. Such other information as NICTA might subsequently request from Digicel to clarify the nature of the specific approval being sought and of the specific promotion in contemplation.
- (6) NICTA will not approve an application pursuant to clause 6(1)c of this Determination if:
- a. the promotion is not a bona fide promotion and is an attempt to avoid the requirements of this Determination;
 - b. the terms of the promotion are inconsistent with its objectives;
 - c. the duration of the promotion is intended to be more than one calendar month;
 - d. the application seeks to extend an already existing approval pursuant to clause 6(1)c on the same or similar terms; and
 - e. Digicel has received an aggregate number of approvals pursuant to clause 6(1)c covering the same area which, in NICTA's considered opinion, are inconsistent with the pricing principle contained in this paragraph of the Determination.
- (7) For the avoidance of doubt—
- a. NICTA may take into consideration in deciding whether to approve an application from Digicel pursuant to clause 6(1)c of this Determination such other considerations as NICTA considers to be relevant to deciding on the application, and NICTA shall not be constrained to consider only those matters set out in clause 6(6);
 - b. Where the objective of a promotion for which approval is sought is to gain new subscribers NICTA will not approve a promotional offer other than to such new subscribers;
 - c. Where a promotional offer involves price reductions for calls that exceed the 40% differential allowed in clause 6(1)a of this Determination, the application of such price reductions must not continue for more than one calendar month or extend beyond a date which is one calendar month after the final date of the offer, whichever is the later.

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- d. Digicel may not offer, promise or charge prices that require NICTA's approval pursuant to clause 6(1)c unless and until NICTA has assessed and approved the promotional scheme proposed by Digicel, subject to such conditions as may be imposed by NICTA.
7. Provision of information to NICTA
- (1) Within two weeks of the end of each quarter, Digicel shall submit to NICTA information that shows:
- a. the total number of national pre-paid call minutes, SMS messages and MMS messages that originated on Digicel's mobile network during each calendar month of the quarter; and
 - b. the total number of national post-paid call minutes, SMS messages and MMS messages that originated on Digicel's mobile network during each calendar month of the quarter; and
 - c. the proportions of the call minutes and messages reported under 7(1)(a-b) that terminated on:
 - (i) the mobile network operated by Digicel;
 - (ii) the mobile network operated by bemobile (PNG) limited;
 - (iii) the mobile network operated by Telikom PNG Limited; and
 - (iv) the fixed network operated by Telikom PNG Limited.
- (2) NICTA may specify the format or manner in which Digicel shall supply this information.

Made this 24th day of September 2012.

Hon. J. MIRINGTORO, MP.,
Minister for Communications and
Information Technology.