



CONSULTATION PAPER ON INTERNET PRICING AT THE WHOLESALE AND RETAIL LEVELS



I. CONSULTATION PROCESS

This Consultation Paper seeks information and submissions concerning wholesale pricing and retail pricing of internet capacity. TRBR also encourages comments on related issues such as retail internet service quality and availability, and the levels of usage of retail and wholesale internet capacity and services.

The Telecommunications, Radiocommunications and Broadcasting Regulator (TRBR) welcomes and invites comment and feedback to this Consultation Paper from all stakeholders and interested parties, including wholesalers, retailers, consumers and other users of internet capacity and services, and the Vanuatu Government.

The deadline for submissions or comments is **30th August 2019**.

TRBR will accept comments in English or French or Bislama.

Respondents are required to clearly mark any information included in their submission that they reasonably claim is confidential to them or their business, and to provide reasons to support the information being confidential. Where information claimed to be confidential is included in a submission, respondents also are required to provide both a confidential and non-confidential (redacted) version of their submission. TRBR will apply the confidentiality portions of the TRBR Act, and any other relevant legal principles, to any such claim of confidential information, and will consult with a party prior to any decision to publish such claimed confidential information. Information not designated as confidential will be assumed to not be subject to any claim of confidentiality.

If comments are submitted in printed format, they must be submitted on A4 paper accompanied, where possible, by a disk containing the comments, in electronic format

Comments should be provided to TRBR via the following means

- Email address consultation@trbr.vu
- Faxed to (678) 24470
- Posted or hand delivered to:

CONSULTATION ON INTERNET PRICING AT THE WHOLESALE AND RETAIL LEVEL Telecommunications, Radiocommunications and Broadcasting Regulator
PO Box 3547, Port Vila, Vanuatu

For any phone enquiries regarding this consultation document, please call the following numbers;

- (678) 27621
- (678) 27487

This Consultation Paper does not involve TRBR making any final decision. or any decision subject to internal or judicial review., on any matter.

You are welcome to visit our website <https://www.trr.vu> for more details on the latest developments in the Telecommunications, Radiocommunications and Broadcasting industry and other related matters.

II. DEFINITIONS

Terms	Definitions
Cost Model	A method for assessing wholesale or retail pricing of telecommunications services by reference to data and calculations as to the efficient costs of providing the services.
The TRBR Act	The Telecommunications, Radiocommunications and Broadcasting Regulations Act 30 2009 as amended by Amendment 22 2018
Internet Capacity	The capacity supplied by a submarine cable or other telecommunications facility for accessing telecommunications services or content over the internet.
ICL	Interchange Limited, the owner and operator of the ICN-1 submarine cable, and supplier of wholesale internet capacity using that submarine cable.
IRU	Infeasible Right of Use, a method of selling wholesale internet capacity in large quantities for a fixed period, usually at least 10-15 years.
Mbps	Megabits Per second

Price Cap Regulations	A form of price regulation using a maximum or “cap” price, and allowing a service provider to sell the regulated service at any price that is equal to or below the price cap level.
Wholesaler of Internet Capacity	A telecommunications service provider that sells internet capacity to other suppliers telecommunications services, (rather than to consumers or the general public).
Retailer of Internet Capacity	A telecommunications service provider that that sells internet capacity to consumers and the general public.

III. SUMMARY OF REASONS FOR THIS CONSULTATION PAPER

1. In today’s “data-centric” world, access to high quality internet capacity at reasonable prices is vital to telecommunications consumers in Vanuatu, and to the development of the telecommunications sector and national development.
2. Such availability and usage of internet capacity and services depends on the effective functioning of the wholesale and retail markets for internet capacity.
3. The wholesale market involves the supply of internet capacity to telecommunications service providers, who then supply retail internet services in the retail market to consumers, businesses, the public sector, and educational and service organizations.
4. If wholesale internet prices are too high, this will tend to be passed on to consumers in the form of unduly high retail prices, thereby restricting availability and usage of such services by the public.
5. It also is important that retailers do not charge excessive prices, and that decreases in wholesales pricing of internet capacity flow through to benefit consumers, so as to not restrict availability and usage of both retail and wholesale internet capacity services.
6. Pricing at the wholesale or retail level also needs to allow for sufficient returns to telecommunications suppliers, so as to sustain and encourage efficient investment in the telecommunications sector.

7. The TRBR has received several complaints from retailers of internet capacity that pricing being charged or offered by ICL for wholesale internet capacity provisioned through the ICL Cable is excessive or too high. Retailers of internet capacity have claimed that ICL's prices are excessive. Those retailers also claim that such high prices hamper the development of the telecom industry in Vanuatu and the usage and availability of retail internet services to consumers.
8. For example, in 16th January 2019 and 21st March 2019, Digicel (Vanuatu) Limited made claims of anti-competitive practices in relation to high pricing by Interchange Limited (ICL) of the submarine cable internet capacity. In the letter received by the Regulator on the 16th January 2019, Digicel stated that **"we would seek urgent review of the wholesale cable pricing to Vanuatu. This is given the very high rate when compared to the rest of the Pacific....."** Digicel further stated in another letter received on the 21st of March 2019 that **"...the pace of growth in demand for bandwidth will be highly depend on international submarine cable capacity pricing which, by any reasonable measure, remains well above cost in Vanuatu."**
9. The TRBR has also received verbal complaints from ICL that price reductions made by ICL for wholesale internet capacity have not been fully or adequately applied by retailers to benefit consumers and support demand for such capacity. This included claims that though the end users enjoyed some additional value from more data being included in some pricing offers, the price tags remained the same, which did not provide sufficient benefits for all users. ICL also noted that if sufficient price reductions do not flow through to consumers, this will tend to restrict demand for wholesale internet capacity, thereby harming ICL and its ability to offer further wholesale price reductions.
10. The TRBR has obligations and powers to regulate and monitor the pricing of internet capacity under the TRBR Act, and the Licenses and Exceptions granted to telecommunications suppliers under the TRBR Act.
11. The legal and regulatory framework administered by TRBR and applicable to the supply of wholesale internet capacity services by ICL is described in TRBR's June 2016 "Determination and

Findings Relating To The International Internet Services Market And Speedcast’s Complaint Against Interchange Limited.”

12. The legal and regulatory framework administered by TRBR and applicable to retail pricing of internet capacity includes Part 7 of the TRBR Act, and obligations of retail suppliers under their Licenses.
13. TRBR intends to ensure a regulatory environment that is fair, workable and promotes sustainable market competition and investment in telecommunications facilities to supply internet capacity.
14. As appropriate pricing of internet capacity at both the wholesale and retail level is needed to maximize the benefits of internet services to consumers, the telecommunications sector, and national development, TRBR is soliciting comments and feedback on both types of pricing, and on the effect of such pricing on consumers, the development of the sector, and national development. The TRBR will consider such comments prior to any final decision.

IV. FURTHER INFORMATION ABOUT THE WHOLESALE AND RETAIL MARKETS FOR INTERNET CAPACITY

15. Further information about the markets for wholesale and retail supply of internet capacity is provided below. (TRBR also seeks comments from interested parties whether and if so on what basis each or any of the matters sets out below are considered by either of them to be disputed, incorrect or incomplete):
16. ICL owns and operates a submarine cable (ICN-1) (“the ICL Cable”), from Port Vila, Vanuatu to Suva, Fiji. The ICL Cable provides wholesale internet capacity between the cable landing station in Vanuatu and the Cable landing station in Fiji.
17. Internet Capacity on submarine cables may be sold pursuant to difference types of contractual arrangements. One type of arrangement involves an Indefeasible Right of Use (IRU). Another type of arrangement involves leased capacity. One usual difference between IRU capacity and leased capacity is that leased capacity involves a shorter-term commitment and/or lower quantities that are, consequently, more expensive on a per-unit basis. ICL currently offers leased capacity, and has said that has been little or no demand for new IRU capacity arrangements.

18. ICL currently is the sole supplier of wholesale internet capacity in Vanuatu using the ICL Cable. ICL generally provides wholesale capacity to retailers of telecommunications services, who use such capacity to sell internet capacity or services to consumers. Retail internet services can be provided by wireless (mobile) devices, or fixed lines. The main retail suppliers of internet capacity are Digicel, TVL and Telsat. ICL also provides internet capacity to the Government of Vanuatu under an IRU arrangement.
19. Submarine cable capacity on the ICL Cable from Port Vila to Suva is only part of the international internet connectivity service that wholesale (or retail) customers in Vanuatu utilize. For example, in order to obtain connectivity beyond Fiji, customers may seek additional capacity from Suva to Sydney as transit capacity on another submarine cable, and/or IP backbone service in Sydney, and further submarine cable capacity to connect to locations beyond Sydney.
20. In June 2016, ICL was found and designated by TRBR as a “dominant” supplier of wholesale internet capacity in Vanuatu, and continues to be such a dominant supplier. As a dominant supplier, ICL has additional obligations under the TRBR Act, its License, and the Exception issued to ICL under the TRBR Act.
21. TRBR has made a series of prior decisions relating to pricing of wholesale internet capacity supplied via the ICL Cable.
22. For example, on 10 November 2017, TRBR released its Decision On ICL’s Request For Approval Of ICL’s Proposed Pricing For Leased Capacity”, and made TRBR’s Order No.8 of 2017 in relation to that pricing. This decision included consideration of detailed information about ICL’s costs and returns, and submissions from interested parties as to the rate of return ICL should be achieving at that stage of its long-term investment in the ICL Cable. TRBR approved ICL’s proposed pricing for the supply of up to 1200Mbps of capacity, subject to certain conditions, which included prices decreasing as more capacity was sold.

23. During 2018, ICL began supplying more than 1200 Mbps of wholesale internet capacity to its wholesale customers.
24. TRBR also was informed in mid-2018 that Digicel and TVL had entered into Agreements with ICL for the supply of wholesale internet capacity on the ICL Cable. These Agreements included reduced pricing as compared to the pricing approved by TRBR in its November 2017 Decision, and substantial up-front payments to ICL.
25. For On the 16th of January 2019, about 7 months after entering into the above supply Agreement with ICL, Digicel formally submitted its complaint that the pricing being charged by ICL under that Agreement was excessive. Digicel claims that the ICL pricing is a very high when compared to other rest of Pacific Island countries. For example, Digicel claimed that pricing for the Tonga Cable was US\$ 50 per Mbps, and that pricing of submarine cable from Fiji was less than US\$ 13 per Mbps. Digicel concluded that the high ICL pricing will continue to harm consumers and the telecommunications sector in Vanuatu.
26. Furthermore, on the 21st of March 2019, Digicel claimed that the pace of growth in its demand for internet capacity in Vanuatu bandwidth is highly dependent on ICL's pricing, which remains well above cost in Vanuatu, and suggested that capacity pricing be reduce in line with international benchmarks (pricing) in other Pacific Island countries, which Digicel claims properly reflects the costs of ICL providing such capacity in Vanuatu.
27. TRBR's investigation into the above issues as at the date of this Consultation Paper has included review of contracts and documents provided by retailers, and initial interviews with senior management of ICL, Digicel and TVL, and the Government through the OGCI. TRBR appreciates the cooperation given in providing such feedback and information.

V. SOME PRELIMINARY OBSERVATIONS RELATING TO THIS CONSULTATION PAPER

28. Price regulation of wholesale pricing typically is based on an analysis of costs, most typically via some type of Cost Model prepared using cost and financial information of supplier of the service.

This was the approach adopted in TRBR’s prior decisions relating to wholesale pricing of internet capacity supplied by ICL and FCC using the ICL Cable.

29. TRBR has requested updated cost and financial information from ICL that can be used for such a further analysis, which would update the prior work done by TRBR.

30. Pricing of internet capacity on submarine cables in other countries also may be useful or relevant to setting appropriate prices for the ICL Cable. However, as cable systems may differ substantially in terms of cost, traffic, revenue and other parameters, the relevance of pricing from other cables (also known as “benchmarking”), depends in large part on those other cables being sufficiently similar to the ICL Cable across such parameters, to be indicative of appropriate costs and pricing for the ICL Cable.

31. TRBR accordingly requests comments on the usefulness or relevance of such other cable pricing (including in Tonga and Fiji), to costs and pricing of ICL Cable services.

32. Retail pricing of internet capacity services also needs to be reflect efficient costs of providing that service (plus an adequate return), so as to encourage usage and drive efficient investment.

33. Retail pricing typically is more complex than wholesale pricing, involving more numerous and complex pricing offers, including special discounts, or offerings of additional data usage. One way to consider such retail pricing is to obtain data on average or weighted average pricing for specified amounts of capacity, and having regard to other terms, including any limits placed on available capacity during peak or other times. The extent to which such pricing treats different types of users (including low and high-volume users) fairly, also is relevant. TRBR requests comments on current pricing plans for retail internet capacity in Vanuatu, the best ways to analyse such pricing for the purpose of this review, and as to measures to ensure that wholesale price decreases are sufficiently passed on to benefit consumers.

VI. SOME SUGGESTED CONSULTATION QUESTIONS

TRBR also has suggested below some questions, in addition to those mentioned above, that interested parties may wish to respond to as part of this consultation process. This list is suggestive only, and not exhaustive. Interested parties should feel free to provide any information or raise any additional questions, as they wish.

List of questions

1. Do you think current wholesale prices of bandwidth are still too high? Please Justify.
2. If ICL were to reduce wholesale price,
 - a. What should the price per Mbps per month be for leasing:

Total Sales	Price
< 100Mbps	
100Mbps - 500Mbps	
500Mbps - 1000Mbps	
1000Mbps - 1500Mbps	
1500Mbps – 2000Mbps	
>2000Mbps	

3. Do you believe TRBR should implement Price Cap or another type of regulation of wholesale or retail pricing of internet capacity? Please explain and summarize your view?
4. What do you believe should be the Minimum and Maximum price per Mb at the retail level for the following quantities of internet capacity?

Quantity	Minimum Price per Mb	Maximum price per Mb
< 100Mbps		
100Mbps - 500Mbps		
500Mbps - 1000Mbps		
1000Mbps - 1500Mbps		
1500Mbps – 2000Mbps		
>2000Mbps		

5. What are your expectations from the industry if prices at the wholesale level were to be reduce?
6. Should the Wholesale pricing of bandwidth capacity be regulated? If so, how?
7. What would be your recommended wholesale pricing mechanism, including a cost model, or benchmarking using prices charges by cables other than the ICL Cable?
8. For consumers, are you satisfied with current pricing and other terms for retail internet services, and if not, what changes would you like to see, and why?