

## CONSULTATION DOCUMENT

**Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL")  
To the National Telecommunications Regulatory Commission to consult  
on**

**Adoption in ECTEL States of Regulations Addressing Guidelines for  
Market Analysis, Access to Network Infrastructure and Wholesale  
Services, Infrastructure Sharing, Submarine Cable Access, Retail Pricing  
and Consumer Protection Regulation (Specific Rules for Consumer  
Protection in the Electronic Communications Sector)**

**Consultation Document  
[NO.2 of 2016]**

**[Date: February 1, 2015]**

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation for the following regulatory instruments in Member States (the "Regulatory Instruments"):
  - a. Regulation on "Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services"
  - b. Regulations on Access to Network Infrastructure and Wholesale Services
  - c. Infrastructure Sharing Regulations
  - d. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations
  - e. Retail Pricing Regulations
  - f. Consumer Protection Regulations - Specific Rules on Consumer Protection in the Electronic Communications Sector
2. A copy of the draft Regulatory Instruments is attached to this Consultative Document.
3. The initial comments period will run from **February 2 to March 11, 2016**.
4. The Comment on Comments period will run from **March 14 to March 25, 2016**.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the Regulations to the ECTEL Council of Ministers for its recommendations for adoption in the ECTEL Member States.

6. All responses to this Consultative Document should be written and sent by post, fax or e-mail to: -  
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**Disclaimer**

***This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.***

## **SUGGESTED GUIDELINES FOR RESPONSES TO CONSULTATION**

In order to reduce administrative lags in ECTEL's public consultation processes and to enable a reasonable degree of transparency by sharing of views submitted, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address and telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for the document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Where specific recommendations require it, commenting parties should indicate clearly via a "Yes" or "No" response, whether they concur or disagree with the recommendation and provide explanations/reasons for each response.
- 4) Where parties have no view or interest in expressing a view on a specific recommendation, parties should indicate "no comment" and number appropriately.
- 5) Responses/comments to specific recommendations should be double spaced and numbered in sequence with the recommendation. Where comments are extensive, paragraphs should be numbered. Pages should be numbered.
- 6) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 7) Where possible, comment documents should be submitted in PDF format.
- 8) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 9) If relevant, parties commenting on specific provisions of legal language should propose alternative language where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.
- 10) Comments may be submitted via letter, e-mail or fax, but should be submitted via one method only. Only comments submitted via e-mail may be acknowledged.

11) Commenting parties should expressly indicate or highlight which parts of comment documents contain commercially sensitive or confidential information that should not be published.

ECTEL reserves the right to publish all the responses received to the consultation and provides no undertakings to refuse to publish such comments where requested, on its website or otherwise.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments to this consultation.

**EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL)**

**Consultation on**

**New Regulations Addressing Guidelines for Market Analysis, Access to Network Infrastructure and Wholesale Services, Infrastructure Sharing, Submarine Cable Access, Retail Pricing and Consumer Protection Regulation (Specific Rules for Consumer Protection in the Electronic Communications Sector)**

**In ECTEL MEMBER STATES**

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## List of Abbreviations

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<b>EU</b>	European Union
<b>NGA</b>	New Generation Access
<b>NGN</b>	Next Generation Networks
<b>ICT</b>	Information and Communication Technology
<b>FBO</b>	Facilities-Based Operators
<b>SBO</b>	Service Based Operators
<b>NFPs</b>	Network Facility Providers
<b>NSPs</b>	Network Service Providers
<b>IP</b>	Internet Protocol
<b>NTRC</b>	National Telecommunications Regulatory Commission
<b>ECTEL</b>	Eastern Caribbean Telecommunications Authority
<b>VULA</b>	Virtual Unbundled Local Access

## **1. Introduction**

### **1.1 Eastern Caribbean Telecommunications Authority**

The Eastern Caribbean Telecommunications Authority (ECTEL) was established by Treaty signed by five Eastern Caribbean States, the Commonwealth of Dominica, Grenada, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines on 4th May 2000. This Treaty established ECTEL as a regional body with legal personality to promote open entry market liberalization and competition in telecommunications of the Contracting States.

In furtherance of this objective and by virtue of the purposes of ECTEL under Article 4, the functions of ECTEL under Article 5 of the Treaty, section 40, and the Second Schedule, Parts 1 and Part 2 of the Telecommunications Act 2000, ECTEL released for consultation a revision of the draft Electronic Communications Bill (the EC Bill) in October 2015. ECTEL and the NTRCs conducted a consultation upon a revision of the EC Bill, revision of its licencing regime as well as a revision of its licence application forms. Revised Draft Electronic Communications Bill (EC Bill). The comments period ran from Monday 12th October 2015 to Wednesday 11th November 2015. Comment on Comments period ran from Monday 16th November to Friday 27th November 2015.

In furtherance of the above objective and by virtue of the purposes of ECTEL under the above mentioned provisions of the Treaty and the Telecommunications Act 2000, ECTEL has also embarked upon the development of guidelines addressing market analysis, and regulations addressing wholesale access to electronic communications infrastructure and services, pricing of retail electronic communications services, submarine cable access, and protection of consumers within the electronic communications sector.

### **1.2. Background to the Development of the Regulations**

Electronic communications markets in ECTEL Member States were liberalized around 2001 and competition commenced in 2003, first in St. Lucia. In the past several years, the electronic communications markets and market dynamics in ECTEL Member States have experienced substantial change, which has impacted the level and type of competition in each of the Member States. International developments in technology – including, for example, advances in network architecture, wireless applications requiring spectrum – have also impacted markets in ECTEL Member States. The increasing use of high capacity fiber optic networks to provide a broad array of services – such as triple play and quadruple play services – requires substantial investment by electronic communications service providers, with resulting potentially lower marginal costs than earlier networks for provision of an array of services.



Despite the changes, the number of electronic communications service providers in a number of key markets remains limited.

Members States have also been impacted by other recent developments specific to the Caribbean region, including among others:

- The acquisition by Cable & Wireless (LIME) of Columbus Communications (including FLOW and a substantial position in the ECFS submarine cable consortium)
- The acquisition by Digicel of Global Caribbean Network submarine cable network
- Recent upgrades of submarine cables in the region, such as the ECFS and Antilles Crossing cables, which have increased the international capacity available to the region
- Increased concentration in various electronic communications markets, combined with existing vertical integration.

In addition, various recent activities and decisions by service providers have further impacted the markets in ECTEL Member States, including for example service price increases; blocking of “Over The Top” (OTT) services and other restrictions on usage or access by customers to certain services; significant differential pricing between on-net vs. off-net mobile telephone calls, and other concerns. Consumer groups have expressed a range of concerns regarding service pricing and quality, and the level and type of information made available by service providers, which is needed for customers to make informed decisions.

The above trends and prevailing market conditions in the region, with only one or two operators providing nearly all electronic communications services, and meaningful capital costs for fully competitive new entry with relatively small returns, raises key regulatory concerns about the viability of competition in these markets. ECTEL therefore proposes to adopt these new Regulations to facilitate ECTEL and the NTRCs both in reinforcing competitive forces wherever possible, and in protecting consumers from the consequences of non-competitive conditions where they may exist.

## **2. New Regulations**

The Telecommunications Act 2000 (the Act) and the EC Bill, upon enactment, provide the necessary legislative basis for the revision of certain existing regulations and the adoption of new regulations consistent with international best practice, to respond to developments in market conditions and market dynamics within the electronic communications sector in ECTEL Member States.

The new proposed Regulations implement key provisions of the EC Bill with respect to competitive market conditions and related issues, and address certain existing weaknesses identified in the regulatory frameworks of ECTEL Member States.

ECTEL has developed the following new draft regulations for consultation (collectively, the “Regulations”):

1. Regulation on “Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services”
2. Regulations on Access to Network Infrastructure and Wholesale Services
3. Infrastructure Sharing Regulations
4. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations
5. Retail Pricing Regulations
6. Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector

The Market Analysis Guidelines are intended to provide a roadmap with respect to process, procedures and criteria for ECTEL and the NTRCs to apply when assessing electronic communications markets to determine whether to impose specific regulatory obligations, if any, on operators designated as having Significant Market Power (“**SMP**”). The latter four Regulations are intended to provide ECTEL and the NTRCs with a “toolkit” or set of potential obligations from which they may select to impose on licensees, in order to remedy market failures and facilitate residents in accessing Information Society services at transparent conditions and affordable prices. These Regulations address certain types of obligations that may be imposed by the NTRCs and are not exhaustive.

ECTEL and the NTRCs conducted a Stakeholder Meeting on October 22, 2015 to present and discuss regulatory needs and options regarding key issues facing the electronic communications sector, including with respect to key issues addressed in the Draft Regulations. The Stakeholder Meeting followed two days of training for stakeholders in related regulatory areas.

### **3. Regulation on Guidelines on Market Analysis and Assessment of Significant Market Power**

Upon enactment, the EC Bill will provide that the NTRCs shall perform regular market analysis in order to determine if one or more Licensees have significant market power in identified relevant markets. Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, specific

obligations. The EC Bill also provides that the NTRCs shall develop and revise guidelines regarding the manner in which a relevant market will be identified and how a determination of SMP will be made.

The draft “Regulation on ‘Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services’ ” (the “Market Analysis Guidelines”) set out the principles to be adopted and used by the NTRCs in the analysis of markets and effective competition under the EC Bill upon enactment. The Market Analysis Guidelines provide ECTEL and the NTRCs with the principles to follow in order to conduct market analyses. These principles are compatible with the best practices of regulators elsewhere in the world, while taking into account the specificities of the ECTEL electronic communications markets, such as the high level of operator concentration and the average standard of living of citizens. They concern in particular:

- market definition and relevant market determination;
- criteria for assessing Significant Market Power (Dominance); and
- imposition, maintenance, amendment or withdrawal of obligations under the regulatory framework.

#### 4. Regulations on Access to Network Infrastructure and Wholesale Services

The objective of the Regulations on Access to Network Infrastructure and Wholesale Services (the “**Wholesale Access Regulations**”) is to promote competition in retail electronic communications services by defining Wholesale Network Infrastructure and Services, access to which may be imposed on Licensees holding SMP in the associated markets.

Based on the EC Bill and the Market Analysis Guidelines, the NTRCs are authorized to identify those product and service markets within the electronic communications sector whose characteristics may justify the imposition of regulatory obligations. The Wholesale Access Regulations address only relevant markets at the wholesale level – retail issues are addressed in the Retail Pricing Regulations and the Consumer Protection Rules

The NTRCs, upon the recommendation of the ECTEL, may impose on SMP Licensees the provision of following categories of access to Wholesale Network Infrastructure and Services under ex ante regulation:

- Wholesale access provided at a fixed location
- Passive backhaul infrastructure;
- Special wholesale service
- Dedicated connections and capacity (wholesale leased lines)

NTRCs may impose obligations on operators found to hold SMP in these markets including, among others, publication of a Reference Access Offer, non-discrimination, accounting separation, specific access obligations, price controls and other terms the NTRC may determine.

- (a) obligations relating to price controls, including obligations for cost-oriented prices or rates;
- (b) any other terms that the Commission upon ECTEL's recommendation determines.

Licensees must submit access agreements negotiated with other Licensees to the NTRC, which shall, on the recommendation of ECTEL, approve, or decline to approve, an access agreement or require any modification or amendment.

#### **4.1 Wholesale Access Provided at a Fixed Location**

The Wholesale Access Regulations authorize the NTRCs to impose wholesale access provided at a fixed location (including shared or fully unbundled access). Such obligations may include requirements that SMP Licensees provide access via the following means:

- physical or passive access enabling transmission of internet and related data services to end user premises such as copper local loop unbundling (“**LLU**”) and copper sub-loop unbundling (“**SLU**”). This also includes all access services available at the physical layer in a point-to-point FTTH architecture, in a point-to-multipoint FTTH architecture or in FTTC/VDSL scenarios;
- Virtual unbundling of local access (“**VULA**”);
- Wholesale broadband access, consisting of non-physical or virtual network access such as bitstream access provided at a fixed location downstream from the access covered by wholesale (physical) network infrastructure access and VULA.

#### **4.2 Special Wholesale Service**

In order to enhance competitive opportunities in certain key retail service markets, the Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available Special Wholesale Services, sometimes referred to as a “White Label” service. These services consist of the components and functions of a total retail service offered by an SMP Licensee, and any ancillary services, necessary for another Licensee to efficiently provide an equivalent retail service to end-users that is competitive with the total retail service of the SMP operator and which the other Licensee cannot economically supply by itself or obtain from a public network operator other than the SMP Licensee.

If such a requirement is imposed, the Special Wholesale Service must be provided at a discount price from retail prices at which the SMP Licensee offers such retail service.

#### **4.3 Passive Backhaul Infrastructure**

The expected growth in data traffic and required data speeds will significantly increase the need for high speed backhaul solutions in ECTEL Member States. Typically, only vertically integrated operators in the fixed and mobile markets will be able to economically provide backhaul solutions. The Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available passive backhaul infrastructure including to underground facilities such as ducts as well as to dark fiber.

#### **4.4 Dedicated Connections and Capacity (Wholesale Leased Lines)**

The Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available leased lines provided at the wholesale level in two distinct segments - terminal segments and trunk segments. These dedicated connections and capacity services consist of both leased lines for use in the development of an operator's own networks (for example, for use in the connections between elements of the mobile access network) and for support to offers of leased lines or other services in the wholesale and retail markets. Where such provision is imposed, the leased lines must:

- Provide end-to-end transparent and dedicated connections;
- Ensure no speed limitation (and ensure symmetrical and constant transmission speeds); and
- Ensure high levels of service quality.

### **5. Infrastructure Sharing Regulations**

Existing Licensees have invested in electronic communications infrastructure, including fiber optic networks, towers and other facilities. The Infrastructure Sharing Regulations provide that existing and new Licensees may obtain access and use of this infrastructure, in order (among other reasons) to avoid unnecessary duplication of infrastructure that could increase the cost of services within the country and to encourage new entrants into the electronic communications market to promote competition and the introduction of new services.

The Infrastructure Sharing Regulations provide that every Licensee must provide access on a non-discriminatory and equitable basis to all towers, sites and underground facilities of any electronic communication network owned or controlled by the Licensee. A Licensee may deny access only where it can demonstrate that there is insufficient capacity available (taking into account its anticipated requirements) or there are reasonable technical grounds to deny access.

Prices for access to and use of infrastructure must be just, reasonable and based on the costs of the owner of the facilities. The regulations provide that the NTRCs may regulate the rates, terms and conditions for sharing access to any such infrastructure, which must be just and reasonable. The prices for access to and use of different facilities may vary according to the facilities involved, but again must be just, reasonable and based on the costs of the owner of the facilities. The Infrastructure Sharing Regulations are based largely on the draft Access to Facilities Regulation, recommended for adoption by ECTEL in 2008, which were subsequently adopted in Dominica as the Telecommunications (Access to Facilities) Regulations 2010. ECTEL conducted earlier consultations on those draft regulations. However, the Infrastructure Sharing Regulations that form part of this consultation incorporate substantive revisions and updates to those earlier regulations, in order to ensure their effectiveness, address developments in electronic communications markets, take into account the draft Wholesale Access Regulations (which provide for the imposition of access obligations on SMP Licensees) and ensure consistency with the other regulations that are a part of this current consultation process.<sup>1</sup>

The following briefly summarizes the substantive additions and revisions compared to the 2008 Access to Facilities Regulations [Dominica Access to Facilities Regulation 2010]:

- Dispute resolution provision consistent with the other draft regulations
- Provisions regarding establishment of a forward deployment scheme, coordination of deployment plans, and implementation of obligations
- Provisions requiring new BTS to meet certain requirements in terms of availability of capacity and other features;
- Provision regarding Information disclosure with respect to existing networks to enable the NTRCs to ensure sharing obligations are fulfilled
- Final and transitional provisions

## **6. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations**

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<sup>1</sup> Note that ECTEL recommends that the Telecommunications (Access to Facilities) Regulations, 2010, adopted in Dominica be revoked upon adoption of these Infrastructure Sharing Regulations and the other regulations that form part of this consultation process.

The structure of the market for wholesale international connectivity in the Member States is characterized by a “vertical” duopoly of Cable & Wireless (ECFS) and Digicel (South Caribbean Fiber – formerly GCN - and Antilles Crossing)<sup>2</sup>, the lack of transparent offer of international capacity and the fact that ECFS and GCN may not exert sufficient competitive pressure on each other

This situation could be viewed as creating barriers to entry for new operators and may reinforce C&W and Digicel market power in potentially competitive retail markets while the landing of a new submarine cable system connecting ECTEL Member States to international markets appears unlikely in ECTEL countries given the small size of markets.

In this context, the EC Bill draft provides that:

1. any owner or person operating a cable landing station in [Name of ECTEL Contracting State] shall —
  - provide, on fair and non-discriminatory terms and conditions, at its cable landing station, access services including physical or virtual co-location services to an Eligible Operator in the [ECTEL Contracting State] requesting access to international submarine cable capacity on a submarine cable system;
  - provide to any Licensee in [Name of Contracting State] that makes the request, access to its landing station of submarine cable or co-location services including virtual co-location;
  - provide to any Licensee in [Name of ECTEL Contracting State] that makes the request, access to international capacity that it holds on a submarine cable connected to its landing station and with the capacity held by third persons on all submarine cables connected to the cable landing station; and
  - publish a reference interconnection and access offer, in the time and manner prescribed, on access to international submarine capacity, and
  
2. The cost of the services referred to in subsection (1) must be based on cost-oriented rates.

The International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations (the “Submarine Cable Regulations”) implement the access obligations in the EC Bill in order to enhance competition in the international connectivity segment and ensure significant reductions in international communication charges in ECTEL Member States.

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<sup>2</sup> Cable & Wireless (ECFS) and Digicel (South Caribbean Fiber – formerly GCN - and Antilles Crossing) enjoy a duopoly in the International Connectivity Capacity Market and respectively provide services in retail markets. Market power in submarine cable markets could potentially be extended to impact related competitive markets in ECTEL Member States.

## 7. Retail Pricing Regulations

The objective of the Retail Pricing Regulations is to establish the scope and mechanisms for ECTEL and the NTRCs to control the tariffs and related terms and conditions of public retail electronic communications services in the Member States, where a Licensee is found to enjoy SMP in the provision of any such retail services. The Regulations identify NTRC authority, among other matters, to do the following (section 4):

- a) set, review and approve tariffs for any licensed electronic communication services;
- b) declare a Licensee as holding Significant Market Power in a relevant retail service market;
- c) designate services as Regulated or Unregulated;
- d) impose price regulation regimes upon Regulated Services where it deems appropriate;
- e) substitute or amend tariffs or any part of a tariff for Regulated Services;
- f) request information from a Licensee relating to the cost of services or other financial information relating to the revenues or operations of a Licensee;
- g) monitor prices for all electronic communication services;
- h) make such orders and issue such directions to a Licensee in respect of tariffs as it deems appropriate; and
- i) do all things reasonable and necessary in respect of regulating tariffs to promote the purpose and objectives of the Act and ensure compliance with any license.

The Regulations further describe the rationale for identifying tariffs to be subject to regulation (section 6), and the process for identifying Regulated Services, including services not subject to competition (section 7), and those provided by a Licensee with SMP (section 8).

The Regulations provide for establishment by the ECTEL and NTRCs of a set of Basic Affordable Service packages (section 9), to ensure the availability of a low-priced minimum service option, for mobile voice service and both mobile and fixed Internet/data services, in the mobile and fixed markets, for those who cannot afford more expensive choices. The Commissions shall be empowered to mandate the terms, conditions, and pricing for such Basic Affordable Services.

The Regulations also include specific provisions defining a range of potential anti-competitive pricing practices (section 10).

Part IV of the Regulations defines the various Obligations that the NTRCs may impose with respect to the retail services of SMP Licensees and the other conditions identified. These include:

- Price Caps regime (section 11)
- Restrictions on Price Squeeze (section 12)
- Cost-orientation of prices (section 13)
- Prohibition on Price Discrimination (section 14)
- Compliance with Relevant Benchmarks (section 15)



The Regulations further set forth the procedures for implementing price regulation, particularly where it is determined that direct tariff control is required (section 17). These procedures include specific steps required for Commission approval of new tariffs and changes to existing tariffs that are subject to such regulation. Separate provision address limitations on promotional or trial tariffs (section 19).

## **8. Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector**

- The Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector (the “Consumer Protection Regulation”) address a range of concerns impacting consumers in the electronic communications sector, with the objectives of ensuring that residents have reasonable quality of service, access to all relevant information on the services, that customer contracts are fair, that advertising and sales practices are not misleading, that customer data and privacy are protected, and that consumers may access all services and applications that they choose.

To achieve these objectives, the Consumer Protection Regulation include provisions addressing the following key issues:

- Disclosure and publication of information by Licensees, including tariff information, to ensure that consumers are fully informed regarding their choices, costs, and other service conditions. (sections 5, 6, 7, 8)
- Content and provisions of customer contracts with Licensees, which are subject to Commission approval, and must be clear as to all relevant details, while prohibiting anti-competitive customer lock-in, and allowing cancellation under fair terms and conditions. (sections 9, 10, 11, 12, 13)
- Billing and invoicing practices, which ensure that customers receive all appropriate information concerning their service charges, including notification to prevent unwanted usage overages. (sections 14, 15)
- Restrictions on unfair commercial practices, including provisions relating to misleading advertising claims, clarity and limitations on promotional offers, appropriate disclaimers, and fair sales practices (sections 17, 18, 19, 20, 21, 22, 23).
- Access to emergency services and for persons with special needs. (sections 24, 25)

- Principles and requirements relating to protection of customer data and privacy. (sections 26, 27)
- Provisions on Net Neutrality, to ensure customer access to unaffiliated applications and services without discrimination or blocking by Licensees. (section 28)
- The obligation imposed on Licensees to implement a complaint handling process that is consumer focused and easy to use (sections 29, 30, 31, 32 and 33)

## 9. Attachments

A copy of the proposed draft new Regulations is attached hereto as Annex A to this consultation.

## 10. How ECTEL Proposes to Proceed

- (a) In keeping with best practices ECTEL proposes to engage first with the NTRCs for comments and contributions to this consultation.
- (b) ECTEL will share the draft Regulations with interested parties, Licensees and Stakeholders.
- (c) ECTEL will hold public discussions to engage Licensees, interested parties, and other stakeholders.
- (d) ECTEL will provide opportunities and material to discuss the new Regulations to explain the new regulatory framework.
- (e) Based on the responses received to the current consultation, ECTEL will submit a final recommendation to its Board of Directors and Council of Ministers for approval before onward submission to NTRCs for adoption.
- (f) Upon adoption of Regulations after consultations are completed, ECTEL will encourage NTRCs to conduct the market analysis contemplated by the Market Analysis Guidelines and, if appropriate, impose relevant regulatory obligations.

## 11. Questions as to Structure and Content of New Regulations ECTEL

Below is a list of questions to be considered by the NTRCs, and stakeholders, which may assist ECTEL in revising and implementing the new Regulations. Interested parties are encouraged to

make suggestions and to contribute to achieving the objective of establishing an effective regulatory regime that encourages competition and addresses the recent developments in technology and market dynamics in the electronic communications sector.

This consultation puts forward ECTEL's suggestions and seeks feedback or contributions. Contributors may suggest different approaches from those suggested. Whatever is recommended ECTEL would appreciate the justification in support of the approach taken.

ECTEL has prepared questions for stakeholders regarding the Regulations, which are provided later in this section. Stakeholders are also welcome to provide their comments not addressed in the questions below.

### 11.1 Who are you?

Please identify yourself. Are you a regulator, a Stakeholder, interested party or other operator?

### 11.2 Questions relating to all the draft Regulations

1. Having reviewed the draft Regulations, what are your overall views concerning set of regulatory obligations that may be imposed on operators under certain conditions (for example, but not limited to, after determination that an operator has SMP)? What do you see as the main advantages and benefits? What are your key concerns or misgivings?
2. Having reviewed the draft Regulations, do you feel that the regulations properly and completely reflect the intentions of the Act (including both the current Act and the anticipated EC Bill)?
3. Having reviewed the draft Regulations, do you consider any of the clauses redundant or conflicting? If yes, please provide examples and possible resolutions or suggestions.
4. Are there any other key provisions, which in your opinion should be included in the Regulations? If yes, please provide examples and possible provisions
5. What alternative suggestions if any do you have for addressing issues of competitive growth, fairness, and consumer protection?

### 11.3 Questions relating to the Market Analysis Guidelines

1. What is your view of the three cumulative criteria to be used to identify markets likely to be subject to *ex ante* regulation (section 1.3(5))? These criteria are based on the EU framework for regulation of the electronic communications sector.
2. The Guidelines also describe factors that the ECTEL and NTRCs should consider in defining relevant markets, including substitutability of supply and demand (section

- 2.2). What is your view on this method, and do you have any suggestions as to how the description in the Guidelines can be strengthened?
3. What is your view of the criteria listed for assessment of SMP? (section 3.2)
  4. The Market Analysis Guidelines recognize that a Licensee may enjoy significant market power either individually or jointly with others. What is your opinion regarding the approach stated in the Market Analysis Regulations to assess the potential existence of collective dominance by more than one operator and the impact this may have on the market? (section 3.4)
  5. What are your views concerning the provisions authorizing the NTRCs or the ECTEL to collect all information they consider necessary to assess market power in a given market? (section 5)
  6. What alternative suggestions if any do you have?

#### 11.4 Questions relating to Wholesale Access Regulations

1. The Wholesale Access Regulations identify the following Wholesale Network Infrastructure and Services, the provision of which may be imposed on a SMP Licensee. under ex ante regulation:
  - a) Wholesale Access provided at a fixed location;
  - b) Passive Backhaul Infrastructure;
  - c) Special Wholesale Service
  - d) Dedicated Connections and Capacity (wholesale leased lines)

What is your view of the type of infrastructure and services subject to potential access obligations noted in the draft regulation? In your view, are there any other components of infrastructure and/or services that should also be subject to wholesale access obligations where SMP is found?

2. The main goal of this regulation is to provide that Licensees can obtain effective access to the infrastructure and services specified, where such obligations are imposed on a SMP Licensee. In your view, will the regulation provide sufficient clear and concrete obligations to make effective such access?

For example:

- a) With regard to Wholesale Access provided at a fixed location
  - i. What is your view of the relevance of imposing VULA instead of or in addition to traditional LLU, taking into account the evolution of networks toward NGA architecture?
  - ii. The draft regulations provide that, the NTRCs on ECTEL Recommendation may mandate access to ancillary infrastructure (for example, dark fibre or

ducts) in order to promote effective competition. Do you think this provision is useful? Insufficient? Do you have any suggestions to clarify these obligations?

b) The Wholesale Access Regulations provide that NTRCs may require an SMP Licensee to make available Special Wholesale Services (sometimes more commonly referred to as “White Label” services), provided at a discounted price from the retail prices at which the SMP Licensee offers such retail service. What is your view of this provision? Should the Regulations add further detail or specificity, for example as to how the price discount should be calculated?

c) With regard to access to Passive Infrastructure:

i. The draft regulations provide the option to impose access to Underground Facilities such as ducts and dark fiber, or any other passive infrastructure belonging to an SMP operator and needed by other Licensees to provide broadband services. What is your view on these obligations? Which elements of such passive infrastructure should be included in these mandates, and how should they be specified?

ii. What is your view of the proposed measures to ensure compliance and prevent undue refusal of access requests by SMP Licensees? Are the required justifications and technical details that SMP Licensees must provide in support of such refusal appropriate and sufficient?

iii. More generally, do you have any suggestions to improve the effectiveness of the proposed access obligations to passive backhaul infrastructure?

d) With regard to the provision of Dedicated Connections and Capacity (wholesale leased lines)

ECTEL considers that this type of access obligation is required to ensure competitive market development and encourage new entrants to the market, by making available affordable wholesale transmission capacity. What is your view of these obligations? Are they appropriate and necessary to support effective new competition? Are the provisions sufficiently detailed and specific to achieve the intended goal?

3. Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

a) The mandatory content of Reference Access Offer which SMP operators may be obliged to published (section 10 of the draft regulations);

b) The other obligations that may be imposed on SMP operators such as non-discrimination, accounting separation obligations, tariff control;

c) The mechanism of dispute resolution, in order to improve the effectiveness of this process.

### 11.5 Questions relating to the Infrastructure Sharing Regulations

1. What is your view of the necessity and the applicability of a regulation requiring sharing of electronic communications infrastructure, recognizing that these obligations apply to all Licensees, not only SMP Licensees?
2. What infrastructure should be subject to such an obligation?
3. What is your view of sections 6, 7 and 8 of the Infrastructure Sharing Regulations, which provide that the Commission may require the establishment by Licensees of forward deployment plans and may require coordination of such deployment plans (including identification by the Commission of geographic areas where systematic sharing of new BTSs must be implemented by Licensees through measures including framework sharing agreements)?
4. What is your view of Section 9, which specifies features required of any new BTS, in order to make possible the sharing of a new BTS with at least one third party operator.

### 11.6 Questions relating to the Submarine Cable Access Regulations

1. What is your view of the necessity and the applicability of a regulation mandating access and co-location to any submarine cable landing station?
2. What is your view of the obligation imposed on a CLS Licensee to provide operators seeking access the option to access capacity on an IRU basis **and** on a lease basis?
3. Regarding the proposed CLS Reference Access Offer:
  - a) Do you have any comments on the time frame for submission of a draft CLS Reference Access Offer to the NTRC within sixty (60) days from the date of commencement of the Submarine Cable Access Regulations?
  - b) Do you have any comments on the content of the CLS Reference Access Offer, as described in Schedule 1 of the Submarine Cable Access Regulations?
4. Provision of Backhaul Circuits
  - a. What is your view of imposing on a CLS Licensee the obligation to provide backhaul facilities and, where another service provider has requested provision of a backhaul circuit, the obligation to facilitate the interconnection between the operator seeking access and the said service provider at the CLS?
  - b. Do you have any suggestions in order to improve the effectiveness of this obligation?
5. Co-location: do you have any comments on the obligation imposed on CLS Licensees to provide co-location services as described in clause 17 to 22 of the Submarine Cable Access Regulations draft?

6. Tariffs: The EC Bill and the Submarine Cable Access Regulations provide that the CLS Licensees shall determine charges on the basis of cost oriented principles. Under this regulation, the NTRC has the authority to impose on offers by CLS Licensees the rates which it has determined by its own cost calculations on the basis of information at its disposal or, in a transitional manner, on the basis of international benchmarks.
  - c) Do you have any comment on these principles, or how they should be applied by the NTRCs?
  - d) Do you have any suggestions on the key issues that should be addressed in the Regulations with respect to the cost accounting methods to be established by the NTRC?

### 11.7 Questions relating to the Retail Pricing Regulations

1. What is your view of the provisions relating to identification of services that may be subject to retail pricing regulation, due to lack of competition or SMP (sections 6, 7, 8)? Do these provisions adequately reflect the intent of the EC Bill? Please suggest any specific changes or improvements.
2. What is your view of the proposed establishment of Basic Affordable Service Packages (section 9)? Will this be an appropriate and effective means to ensure access to affordable service by low-income consumers? How should the prices for such basic services be determined?
3. Do the provisions on anti-competitive pricing, including Price Squeeze (sections 10 and 12) adequately identify and define the range of potentially anti-competitive pricing behaviour that may require intervention? What are your views on the extent or risk of such practices? Should some provisions or practices be strengthened, and how?
4. Under what circumstances should the NTRCs impose Price Cap regulation rather than direct pricing controls, as outlined in this regulation (sections 11, 16, 17)? What are the advantages and disadvantages of each approach? What guidance should this regulation provide as to their implementation?
5. What are your views on the provisions relating to prohibition on undue price discrimination, particularly the option for the ECTEL and NTRCs to prohibit or control differential pricing between on-net and off-net calls? What would be the impact of such limitations on the market?
6. What are your views on the procedures for implementing price controls (section 17)? Will this be an appropriate and effective mechanism for addressing prices of non-

competitive services? What are the advantages and disadvantages? What alternatives should be considered?

7. What are your views on the provisions relating to promotions and market trials? Are the time limitations on such trials sufficient? Will the provisions ensure that competitive pricing prevails? Please suggest alternative language, if any.

### **11.8 Questions relating to the Consumer Protection Regulation**

1. Do the provisions addressing Licensee obligations with respect to provision of information to consumers (sections 4, 5, 6) adequately define these responsibilities? Are these provisions reasonable and sufficient? What further detail or specifics, if any, should be included?
2. In particular, are the requirements in section 5 for publication of tariffs for services by Licensees sufficient?
3. Do the requirements in section 12 for specific billing information provide sufficient information to customers so that they may fully understand their bill?
4. The Rules contain several key provisions regarding advertising by Licensees, and the types of information and promotional methods that may or may not be employed, to protect consumers from unfair or misleading practices (sections 14 to 21). In your view, will adoption and enforcement of these provisions adequately prevent such inappropriate marketing tactics? Are there any important “unfair commercial practices” currently used in ECTEL markets that are not addressed? Are any of the provisions too burdensome for Licensees? Please suggest any improvements or additional options.
5. In your view, do the requirements for net neutrality (section 29) appropriately balance consumer and operator needs and concerns?
6. What are your views on the process for complaints handling by the Licenses as described Part IV of the draft regulations. Are the provisions of the aforementioned Part IV likely to ensure that customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee?



## **Annex A**

**Regulation on “*Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services*”**

**Recommendation of the Eastern Caribbean Telecommunications Authority  
(ECTEL)**

**To the National Electronic Regulatory Commissions**

**To consult on a Draft**

**Regulation on “*Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services*”**

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Part 2 – Market Definition

Part 3 – Assessing Significant Market Power

Part 4 – Imposition of Obligations under the Regulatory Framework

Part 5 – Market Analysis and Powers of Investigation

Part 6 – Procedures for Consultation and Publication of Proposed Commission Decisions

## **1. Citation**

These Regulations may be cited as the Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services Regulations 20[ ].

## **2. Prescribed Guidelines**

The Guidelines set out in the Schedule are prescribed as the Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services.

## **SCHEDULE**

### **Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services.**

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## PART I

### PRELIMINARY PROVISIONS

#### 1. Interpretation

(1) In these Guidelines unless the context otherwise requires –

“Act” means the Electronic Communications Act, 20[●]

(2) A word or expression that is used in these Guidelines and is also used in the Act shall have in these Guidelines the same meaning as it has in the Act unless the contrary intention appears.

#### 2. Scope and purpose of the Guidelines:

(1) The Act provides that the Commission shall perform regular market analysis in order to determine if one or more Licensees have significant market power (“SMP”) in the relevant market concerned. Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, specific obligations, as may be prescribed under the Act.

(2) These Guidelines set out the principles for use by the Commission in the analysis of markets and effective competition under the Act.

#### 3. Principles and policy objectives underlying sector specific measures.

(1) In carrying out a market analysis, the Commission shall seek to achieve the policy objectives identified in section 3 of the Act, particularly:

- (a) ensure the overall development of electronic communications in the interest of the sustainable development of [Name of ECTEL Contracting State];
- (b) promote and maintain fair and efficient market conduct and sustainable competition between Licensees;
- (c) encourage, promote and facilitate and otherwise assist in the development of investment, innovation and competitiveness in the electronic communications sector in [Name of ECTEL Contracting State].

(2) The purpose of imposing *ex-ante* obligations on Licensees designated as having SMP is to ensure that the Licensees cannot use their market power either to restrict or distort competition in the relevant market, or to leverage such market power onto adjacent markets. This market power is generally due to the existence of barriers to entry preventing competitors from establishing themselves in the relevant markets.

(3) Having regard to the purpose of imposing *ex-ante* obligations on Licensees designated as having SMP, the competitive analysis distinguishes structural barriers to entry and regulatory barriers to entry:

- a) structural barriers result from the characteristics of demand and cost structure: they generally arise where significant investment costs to enter the market exist, in the presence of essential facilities or control of positive externalities (club effects, for example). They can create an asymmetry

- between incumbents and new entrants and thus impair the development of competition and economic efficiency;
- b) regulatory barriers are not considered to be economic barriers to entry. They result from legal or regulatory limitations on the exercise of operator activity such as licensing, numbering resources or frequencies.
- (4) Anti-competitive practices that may arise in the electronic communications sector are numerous. However, it is possible to distinguish three types of behavior of a SMP Licensee. First, the SMP Licensee may exercise its market power in markets vertically or horizontally connected or adjacent markets. Second, the SMP Licensee can implement practices directly related to its monopoly power, such as excessive prices, low quality service offering, etc. Finally, a SMP Licensee can also implement strategies for the sole purpose of maintaining its market power.
- (5) Three cumulative criteria shall be used to identify markets likely to require regulation due to the existence of SMP: (i) the existence of high and persistent barriers to entry; (ii) the absence of market developments toward a competitive dynamic; (iii) the insufficiency of competition law alone to address these market failures.
- (6) A relevant market is a market that the Commission considers to be non-competitive on the basis of the above three criteria. Where relevant markets are defined and SMP Licensees are identified, the Commission may reduce some of the barriers to entry by applying specific obligations (sometimes called "remedies").
- (7) These regulatory obligations should only be imposed on those electronic communications markets whose characteristics may justify sector-specific regulation and in which the Commission has determined that one or more Licensees have SMP.
- (8) A finding that effective competition exists in a relevant market is equivalent to a finding that no Licensee enjoys a single or joint dominant position in that market. On the other hand, when the Commission concludes that a relevant market is not effectively competitive, it will designate a Licensee or Licensees with SMP in that market, and will either impose appropriate specific obligations, or maintain or amend such obligations where they already exist, in accordance with the Act, the relevant Regulations, such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or *Retail Pricing Regulations* and any other law prescribed under the Act.
- (9) In carrying out a market analysis, the Commission will conduct a forward looking, structural evaluation of the relevant market, based on existing market conditions. The Commission shall determine whether the market is prospectively competitive, and thus whether any lack of effective competition is durable by taking into account expected or foreseeable market developments over the course of a reasonable period. Such a reasonable period shall be for at least three years unless the specific characteristics of the relevant market require that a shorter time frame be taken into account.

- (10) The Commission enjoys discretionary powers which reflect the complexity of all the relevant factors that must be assessed (economic, factual and legal) when identifying a relevant market and determining the existence of Licensees with SMP. These discretionary powers remain subject, however, to –
- a) the provisions of the Act, Regulations and any other law prescribed under the Act referenced in subsection (8);
  - b) the principle of proportionality, such that regulatory requirements are proportional to the impacts of the practice to be regulated;
  - c) the development of an internal market within the ECTEL Contracting States which means that the Commission shall ensure that it implements the provisions to which these guidelines apply in a consistent manner with the Commissions of other ECTEL Contracting States and in accordance with the recommendations of ECTEL.

#### **4. Relationship with the assessment of anti-competitive practices.**

- (1) Part 5 of the Act relates to anti-competitive practices such as, but not limited to:
- a) agreements between Licensees, decisions by associations of Licensees and concerted practices by Licensees which have as their objective or effect the prevention, restriction or distortion of competition within [Name of ECTEL Contracting State];
  - b) actions by which a Licensee abuses its significant market power within [Name of ECTEL Contracting State]; or
  - c) any other like conduct by Licensees whose objective or effect is to frustrate the benefits expected from the establishment of the CARICOM Single Market and Economy, the OECS Economic Union or the ECTEL.
- (2) Under the Act and in accordance with these Guidelines, assessment of anti-competitive practices shall use the same methodology as used to define relevant markets and define SMP. However, sector specific regulation will always be conducted on a forward looking basis as mentioned in subsection (9) of section 3. For example, in conducting a market analysis, the Commission shall include in its assessment an appreciation of the future development of the market beyond the current characteristics of the relevant market. Accordingly, the starting point of competition investigations is different: it is the suspicion of an anti-competitive practice (such as a concerted practice or abuse of dominance) which occurred in the past and sometimes still persists. Although merger analysis is also applied *ex ante*, it is not carried out periodically as is the case with the market analysis conducted by the Commission under this regulatory framework.
- (3) Another difference between the two approaches is that the SMP designation has no bearing on whether that Licensee has committed an abuse of a dominant position within the meaning of competition law. It merely implies that, from a structural and competitive perspective, and in the short to medium term, the operator has and will have, in the relevant market identified, sufficient market power to behave to an appreciable extent independently of competitors, customers, and ultimately consumers.



## **5. Functions of the Commission**

- (1) In accordance with the Act the Commission shall have the authority to:
  - a) perform regular market analysis;
  - b) determine if one or more operators have SMP in the relevant market concerned;
  - c) Impose specific obligations on a Licensee with SMP.
- (2) Prior to the exercise of any of the powers of the Commission under sub-section (1), the Commission shall consult with ECTEL and shall take into account recommendations of ECTEL.

## **6. Functions of ECTEL**

- (1) Pursuant to its functions and powers as provided in Article 5 of the Treaty, ECTEL may –
  - a) adopt a Recommendation which identifies those relevant product and service markets within the electronic communications sector in [Name of ECTEL Contracting State], whose characteristics may justify the imposition of specific regulatory obligations set out in the Act, Regulations or other laws prescribed by the Act referred to in subsection (6) of section 3;
  - b) on behalf of the Commission and in consultation with it, the ECTEL may -
    - i. perform regular market analysis in [Name of ECTEL Contracting State],
    - ii. determine if one Licensee has or more than one Licensees have significant market power in the relevant market concerned in [Name of ECTEL Contracting State].
- (2) In determining the existence of SMP as referenced in subsection (1)b), the Commission shall :
  - a) provide ECTEL with all required information;
  - b) adopt decisions relating to market analysis and determination of Licensees that have SMP in the relevant market in compliance with the findings of ECTEL.

## **PART 2**

### **MARKET DEFINITION**

## **7. Introduction**

- (1) These Guidelines do not purport to explain how any competition rules apply, generally, in the electronic communications sector, but focus only on issues related to (i) market definition; and (ii) the assessment of SMP; within the meaning of Clause 78 of the Act.
- (2) The definition of a relevant market is of fundamental importance, since effective competition can only be assessed by reference to the market thus defined. The use of

the term ‘relevant market’ implies the description of the products or services that make up the market and the assessment of the geographical scope of that market.

- (3) However, where ECTEL has adopted the Recommendation referenced in subsection (1) of section 6 identifying the presumptively relevant markets in [Name of ECTEL Contracting State], the task of the Commission will normally focus primarily on defining the geographic scope of the relevant market. However, the Commission also has the authority to define product and service markets other than those listed in the aforementioned Recommendation, subject to the approval of ECTEL.

## **8. Main criteria for defining the relevant market: Introduction**

- 1) The determination of a relevant market is based on two complementary criteria:
  - a) the determination in terms of products or services: two products or services belong to the same market if they are interchangeable or substitutable from the point of view of supply and demand;
  - b) the determination in geographic terms: an area in which the competitive conditions are similar or sufficiently homogeneous. This can be either the national territory, which is generally the case, or a region or set of regions.
- 2) With regard to the forward looking approach referenced in subsection (9) of section 3, the goal of determination of relevant markets is to establish a multi-year regulatory framework. Therefore, all the issues and methods described below must be understood in the context of a time period of about three years.

## **9. Main criteria for defining the relevant market: Demand-side and supply-side substitution**

- 1) Analysis of demand-side substitutability measures the interchangeable nature of products and services from the consumer point of view. In particular, it includes the assessment of consumer behavior when faced with a price change.  
Both products and services belong to the same market if they are sufficiently interchangeable by their users, especially in terms of the use made of the products and services, their characteristics, their pricing, their distribution conditions, mobility provided, and costs of "migration" from one product to another.
- 2) Analysis of supply-side substitutability measures the possibilities of entry in the market: it involves assessing the incentive of potential suppliers (firms that offer other products and services) to produce the product or service concerned in case of a price increase.

Supply-side substitutability exists when an operator that is not currently present in a given market is likely to enter rapidly in response to an increase in the price of products sold in this market.

## **10. Main criteria for defining the relevant market: Hypothetical monopolist test**

- 1) In order, to complete the market-definition analysis, the Commission, in addition to considering products or services whose objective characteristics, prices, mobility and intended use make them sufficiently interchangeable, may also examine, where necessary,

the prevailing conditions of demand and supply substitution by applying the hypothetical monopolist test (SSNIP test, "Small but Significant Non-transitory Increase in Prices").

- 2) This test consists of analyzing the effects that a small and permanent increase of the price of a service (5-10% for example) would have on demand or supply, in order to determine whether there are services considered substitutable by consumers and toward which they are likely to move.
  - a) From the demand-side perspective, this test considers a market for those products or services in which a hypothetical monopolist could significantly and sustainably increase prices and increase its profit. The relevant market consists of all the products or services for which a price increase (for example 5% to 10%) would maximize the benefit of the supplier.
  - b) From a supply-side perspective, the test consists of assessing whether firms offering other products or services would be able to provide, in a short time frame (e.g. 6-12 months) and easily (with moderate fixed costs), a product or a service equivalent to the products or services offered by the hypothetical monopolist in case of price increase (for example 5% to 10%).

## **11. Geographic market**

- 1) The relevant geographic market can be defined as the area:
  - a) in which the firms concerned are involved in the supply or demand for the relevant products or services, where they are subject to similar or sufficiently homogeneous conditions of competition and,
  - b) which can be distinguished from neighboring areas in which the conditions of competition are different to a significant extent.
- 2) In the electronic communications sector, the geographic scope of a relevant market has traditionally been determined by reference to two main criteria:
  - a) first, the territory covered by the network;
  - b) second, the existence of legal instruments that seek to identify or distinguish a particular geographic area or, on the contrary, national in extent.

In general, electronic communications markets are national, unless there are special conditions such as specific coverage by networks which would be likely to justify a more limited geographic market area.

## **12. The relevance of a market likely to be regulated.**

- 1) Beyond the definition of a market and its boundaries, the Commission shall demonstrate how the market is relevant for *ex-ante* regulation, that is to say, why it is necessary to apply a specific regulatory treatment to this market.
- 2) Prior to applying *ex-ante* regulation in a market, the given market shall meet the following criteria:
  - a) the existence of high and persistent barriers to entry;

- b) a lack of progress toward effective competition;
- c) competition law alone is insufficient to address these market failures.

These three criteria are cumulative and must be satisfied for a market to be considered as relevant.

- 3) The importance of barriers to entry is assessed on the basis of demand and supply conditions in the market –; e.g.: the presence of network externalities, diversity of services, existence of sunk costs, technological advantages, access to financial resources, economies of scale and scope, vertical integration;
- 4) The competitive dynamic in the market is measured through the evolution of the market shares of operators in the market, pricing behavior, diversity of offers and potential competition and other factors considered relevant by the Commission.
- 5) Finally, the insufficiency of competition law alone to address market failures is evaluated mainly from the perspective of anti-competitive behaviors, the desire to ensure the development of long-term competition and the need for specific regulatory tools *a priori* (such as price control or accounting separation) to remedy the identified competition risks.

## **PART 3**

### **ASSESSING SIGNIFICANT MARKET POWER**

#### **13. Definition**

- 1) The finding of a SMP does not preclude some competition in the market. It only enables the Licensee that enjoys such a position, if not to determine, at least to have an appreciable effect on the conditions under which that competition will develop, and in any case to act in disregard of such competitive constraint so long as such conduct does not operate to its detriment.
- 2) Accordingly, the Act defines a Licensee having SMP, as a Licensee that individually- or jointly with others- enjoys a position of economic strength that enables it to hinder the maintenance of effective competition in the relevant market by affording the Licensee the power to behave to an appreciable extent independently of its competitors and users.

#### **14. Criteria for assessing SMP**

- 1) A position of SMP (often referred to as dominance) is found by reference to a number of criteria and its assessment is based, as stated above, on a forward-looking market analysis based on existing market conditions.
- 2) Market shares are often used as a proxy for market power. Although a high market share alone is insufficient to establish the possession of SMP, it is unlikely that a firm without a significant share of a relevant market would be in a dominant position in that market. Thus, Licensees with market shares of no more than 25 % are unlikely to enjoy a (single) dominant

position in the market concerned, while single dominance concerns normally arise in the case of firms with market shares of over 40 %.

- 3) According to the best international practices, the Commission may consider that market shares in excess of 50 % are in themselves, save in exceptional circumstances<sup>3</sup>, evidence of the existence of a dominant position.
- 4) The method used to determine the market share will be defined individually for each relevant market. It may rely especially on one or more of the following criteria:
  - a) revenues;
  - b) the number of subscribers, particularly in the retail markets for voice or fixed or mobile data;
  - c) the traffic carried, especially for retail or wholesale markets for voice or fixed or mobile data;
  - d) capacities available, in particular in wholesale access markets;
  - e) any other relevant criterion under the respective market.

The Commission may use, on a case by case basis, the most suitable criterion (or combination of criteria if necessary) for the economic conditions of the considered market.

- 5) Below the threshold of 50% of market share, a systematic and rigorous assessment of the market position of a Licensee (or group of Licensees) requires an additional qualitative analysis beyond the analysis of market shares. For example:
  - a) a high market share does not necessarily reflect dominance if the barriers to entry are low;
  - b) a meaningful market share may also reflect the effectiveness of a given Licensee in innovation or quality of service;
  - c) where a relevant market contains differentiated products, a relatively small market share may reflect some market power,
  - d) the fact that Licensees have similar market shares does not mean that there is no market power (e.g. due to presence of significant switching costs for consumers and / or different production capacity).
- 6) In general, the methodology for identification of SMP operators must assess potential competition and thus analyze the barriers to entry (sunk fixed costs, limited access to essential inputs, sector regulation, economies of scale and scope, reputation, network effects, vertical restrictions of competition), and evaluate, as the case may be, the existence of countervailing buying power and its potential effects on competition.

The potential development of existing competitors or potential entry by new competitors are strong indicators of the position of operators in the market. For example, barriers to entry may

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<sup>3</sup> E.g.: a volatile market share is an indicator of competition insofar as this may be indicative of an innovative dynamic challenging market positions

be evaluated by determining the extent to which a Licensee in the market can increase its price above the competitive level without causing new entry.

- 7) The Act and regulatory best practices provide several additional criteria which may be used by the Commission, beyond the market share criterion. These criteria include among others:
- a) overall size of the firm;
  - b) control of infrastructure not easily duplicated;
  - c) technological advantages or superiority;
  - d) absence of or low countervailing buying power;
  - e) easy or privileged access to capital markets/financial resources;
  - f) product/service diversification (e.g. bundled products or services);
  - g) economies of scale;
  - h) economies of scope;
  - i) vertical integration;
  - j) a highly developed distribution and sales network;
  - k) absence of potential competition.

A dominant position can derive from a combination of the above criteria, which taken separately may not necessarily be determinative.

## 15. Leverage of market power

- 1) Where a Licensee has SMP in a specific market, it may also be deemed to have SMP in a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the Licensee.
- 2) Under such circumstances, the Commission may consider it appropriate to find that the operator has SMP in both specific and related markets at the same time. However, in practice, if a Licensee has been designated as having SMP in an upstream wholesale or access market, the Commission may be in a position to prevent any likely spill-over or leverage effects downstream into the retail or services markets by imposing on that Licensee any of the obligations provided for in the Act, the relevant Regulations such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or any other law prescribed under the Act, which may be appropriate to avoid such effects.
- 3) Therefore, it is typically only where the imposition of *ex-ante* obligations on a Licensee which is dominant in the (access) upstream market would not result in effective competition in the (retail) downstream market that the Commission should address remedies for dominance of the aforementioned Licensee in retail markets.

## 16. Collective dominance

- 1) Under Section 76 of the Act, the Commission shall perform regular market analysis in order to determine if one or more operators have significant market power in the relevant market concerned. Accordingly, a Licensee may enjoy significant market power either individually or jointly with others.
- 2) Collective dominance is likely to occur in oligopolistic markets characterized by a lack of effective competition and in which no single Licensee has significant market power. In that case, the Commission may ascertain whether the structure of the oligopolistic markets in question was conducive to coordinated effects in those markets, even in the absence of structural or other links between the Licensees concerned.
- 3) When assessing *ex-ante* the likely existence or emergence of a market which is or could become conducive to collective dominance in the form of tacit coordination, the Commission shall analyze:
  - a) whether the characteristics of the market make it conducive to tacit coordination; and
  - b) whether such form of coordination is sustainable; that is, (i) whether any of the oligopolists have the ability and incentive to deviate from the coordinated outcome, considering the ability and incentives of the non-deviators to retaliate; and (ii) whether buyers/ fringe competitors/potential entrants have the ability and incentive to challenge any anti-competitive coordinated outcome.
- 4) In carrying out the above analysis, the Commission may consider a number of criteria, such as:
  - a) low elasticity of demand;
  - b) similar market shares;
  - c) high legal or economic barriers to entry, vertical integration with collective refusal to supply;
  - d) lack of countervailing buyer power;
  - e) lack of potential competition.

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the type of evidence that could be used to support assertions concerning the existence of joint dominance. In proving tacit coordination, the Commission does not need to demonstrate evidence of the existence of an express agreement or express contact between the oligopolists, but rather only that the outcomes in the market are indicative of results that would arise from tacit coordination.

## PART 4

### IMPOSITION OF OBLIGATIONS UNDER THE REGULATORY FRAMEWORK

#### 17. Imposition, maintenance, amendment or removal of obligations on SMP operators.

- 1) Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, the obligations set forth in section 76 of the Act.
- 2) In accordance with the Act, in assessing the proportionality of the obligations it is likely to impose on a Licensee having significant market power, the Commission shall take into account the following criteria:
  - a) the technical and economic viability of using or setting up competing facilities, given the pace of market development and the nature and type of interconnection and access involved;
  - b) the feasibility of providing the access proposed, in view of the available capacity and technical conditions;
  - c) the investment made by the Licensee and need for the Licensee to earn a reasonable rate of return on capital employed efficiently, in view of the risks involved;
  - d) the need to preserve long-term competition;
  - e) any relevant intellectual property rights;
  - f) the available offers and prices in available markets;
  - g) other factors as determined appropriate by the Commission.
- 3) Any obligations in this respect will be determined by the Commission on a case by case basis, in accordance with the Act, relevant Regulations such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or *Retail Pricing Regulation* and any other law prescribed by the Act.
- 4) The foregoing obligations shall be imposed, maintained, amended or removed, to reflect revisions of the analysis of the relevant market concerned.
- 5) Prior to review of the analysis of any relevant market, the Commission shall publish a report on actual results, given the objectives pursued, and of the measures implemented pursuant to the previous analysis.

#### 18. Transnational markets: joint analysis by several Commissions in the ECTEL Contracting States

- 1) ECTEL in consultation with the Commissions established in the ECTEL Contracting States may identify product and service markets that are transnational, i.e.: covering the whole of the Contracting States or a substantial part thereof (e.g. roaming, access to undersea capacity).
- 2) In such cases, the Commissions concerned shall jointly conduct the market analysis and decide whether obligations need to be imposed.



- 3) Joint analysis by several Commissions shall follow similar procedures (e.g. for public consultation) to those required when a single national Commission is conducting a market analysis.
- 4) Precise arrangements for collective analysis and decision-making will need to be drawn up in consultation with ECTEL and all the Commissions of each ECTEL Contracting State.

## **19. Imposition of certain specific regulatory obligations on non-SMP operators**

- 1) The foregoing sections of these Guidelines do not preclude the Commission from imposing specific obligations on Licensees other than those that have been designated as having SMP, where it is required to comply with the Act, Regulations or other laws prescribed under the Act.

## **PART 5**

### **MARKET ANALYSIS AND POWERS OF INVESTIGATION**

#### **20. Collection of information.**

- 1) In order to carry out a market analysis, the Commission shall have the authority to collect all information it considers necessary to assess market power in a given market.
- 2) To the extent that such information needs to be obtained directly from Licensees, they are required by the terms of their Licenses to provide the Minister, the Commission and ECTEL with any accounting, financial, cost, technical and other information reasonably required to enable the Minister, the Commission or ECTEL to carry out their functions under the Act and, in the case of ECTEL, under the Treaty, in such manner and at the times that they may request.
- 3) When the Commission or ECTEL requests information from a Licensee, they shall state the reasons justifying the request and the time limit within which the information must be provided.

#### **21. Publication**

The Commission shall publish all information that would contribute to an open and competitive market, acting in accordance with the Act and the rules on commercial confidentiality. This confidentiality obligation applies equally to information that has been received in confidence from another public authority.

## **PART 6**

### **PROCEDURES FOR CONSULTATION AND PUBLICATION OF PROPOSED COMMISSION DECISIONS**

#### **22. Public consultation mechanisms.**

- 1) In order to give the interested parties the opportunity to comment on a draft measure when such measure would have a significant impact on the relevant market, the Commission shall hold a public consultation on any proposed decision to determine SMP and impose specific obligations.
- 2) Where the draft measure concerns a decision relating to a SMP designation or non-designation, it shall include the following:
  - a) the market definition used and reasons therefor, with the exception of information that is confidential in accordance with the rules on business confidentiality;
  - b) evidence relating to the finding of SMP, with the exception of information that is confidential in accordance with the rules on business confidentiality, together with the identification of any Licensee proposed to be designated as having SMP;
  - c) full details of the sector-specific obligations that the Commission proposes to impose, maintain, amended or remove on the abovementioned Licensee, together with an assessment of the proportionality of that proposed measure.

#### **23. Adoption of the final decision**

- 1) Once the Commission's decision has become final, the Commission shall notify ECTEL of the names of the Licensees that have been designated as having SMP and the obligations imposed on them.
- 2) The Commission shall publish on its website the names of Licensees that it has designated as having SMP and the obligations imposed on them. It should ensure that up-to-date information is made publicly available in a manner that guarantees all interested parties easy access to that information.

## **Annex B**

*Regulations on Access to Network Infrastructure and Wholesale Services*

**Recommendation of the Eastern Caribbean Telecommunications  
Authority**

**(ECTEL)**

**To the National Telecommunications Regulatory Commissions**

**To consult on a Draft**

*Regulations on Access to Network Infrastructure and Wholesale  
Services*

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**PART I**

**PRELIMINARY**

**1. Citation and commencement**

- (1) These Regulations may be cited as Infrastructure and Wholesale Access Regulations, 20[●]
- (2) These Regulations shall come into operation on [Date].

**2. Interpretation**

- (1) In these Regulations unless the context otherwise requires -

“**Act**” means the Electronic Communications Act, 20[●];

“**access provider**” means a Licensee that owns or controls infrastructure or facilities to which other Licensees seek to obtain access for connecting portions of their own networks;

“**access seeker**” means a Licensee that seeks to obtain access to the infrastructure or facilities of another Licensee for purposes of connecting portions of its own network;

“**bitstream access**” means a wholesale product consisting of the DSL part (access link) and “backhaul” services of the (data) backbone network (ATM, IP backbone) enabling access seeker to offer their own value-added services to end users with the capability to differentiate their services by altering (directly or indirectly) technical characteristics and/or the use of their own network;

“**fiber to the x (FTTX)**” means a broadband network architecture using optical fiber to provide all or part of the local loop used for last mile telecommunications and includes:

- a) **FTTN / FTTLA** (*fiber-to-the-node, fiber-to-the-neighborhood, or fiber-to-the-last-amplifier*): Fiber is terminated in a street cabinet, possibly miles away from the customer premises, with the final connections being copper. FTTN is often an interim step toward full **FTTH** (fiber-to-the-home).
- b) **FTTC** (*fiber-to-the-curb, fiber-to-the-closet, or fiber-to-the-cabinet*): This is very similar to **FTTN**, but the street cabinet or pole is closer to the user's premises, typically within 1,000 feet (300 m), within range for high-bandwidth copper technologies;
- c) **FTTdp** (*fiber-to-the-distribution-point*): This is very similar to **FTTC / FTTN** but is one-step closer, again moving the end of the fiber to within meters of the boundary of the customer's premises in the last possible junction box known as the "distribution point" thereby allowing for near-gigabit speeds;
- d) **FTTP** (*fiber-to-the-premises*): This term is used either as a blanket term for both **FTTH** and **FTTB**, or where the fiber network includes both homes and small businesses-

- i. **FTTB** (*fiber-to-the-building, fiber-to-the-business, or fiber-to-the-basement*): Fiber reaches the boundary of the building, such as the basement in a multi-dwelling unit, with the final connection to the individual living space being made via alternative means, similar to the curb or pole technologies.
  - ii. **FTTH** (*fiber-to-the-home*): Fiber reaches the boundary of the living space, such as a box on the outside wall of a home.
- e) **FTTD** (*fiber-to-the-desktop*): Fiber connection is installed from the main computer room to a terminal or fiber media converter near the user's desk.

**“fully unbundled local loop” or “metallic path facility” or “MPF”** means the provision of a two-wire metallic transmission path between the network terminating equipment at a customer’s premises (to which a competitive operator seeks access) and a main distribution or jumper frame at the exchange of the access provider which enables the operator seeking access to offer both voice and broadband services;

**“local loop unbundling” or “LLU”** means the provision of a physical and direct connection to the local access network, commonly referred to as the local loop which enables the access seeker to install its own equipment in (or close to) access provider exchanges in order to connect its customers’ lines to its own network;

**“main distribution frame (MDF)”** means a cable rack within a base station or network node that interconnects and manages the telecommunications wiring between external and internal lines;

**“optical distribution frame (ODF)”** means a distribution frame for connecting fiber optic cables;

**“point-to-point”, “P2P”, “Pt-Pt”, or “PtP”** means that the access network architecture provides optical fiber paths from a communication node to a single premise such that the optical paths are dedicated to traffic to and from this single location, thereby providing an uninterrupted single fiber from the last communication switching equipment-point to the premises;

**“point-to-multipoint”, “P2MP”, “passive optical network” or “PON”** means that the access network architecture provides branching optical fiber paths from a communication node to more than one premises such that a portion of the optical path is shared by traffic to and from multiple premises; and where P2MP is referred to as a “Passive Optical Network”, means that the path from the active or powered communication node to the terminating fiber location has no active or powered elements;

**“shared local loop unbundling”, “shared metallic path facility” or “SMPF”** means the provision of a two-wire metallic transmission path between the network terminating equipment at a customer’s premises (to which a competitive operator seeks access) and a main distribution or jumper frame at the exchange of the access provider, which enables the access seeker to offer broadband services over the copper network, thereby allowing the access seeker to provide a broadband service to its customer while another electronic communications provider supplies voice services on the same line, which is therefore being “shared”;

**“special wholesale service”** means a wholesale service which consists of the essential components and functions of a total retail service offered by a Significant Market Power Licensee, and any ancillary services, necessary for other competing Licensees to efficiently provide an equivalent retail services to end-users;

**SMP** means significant market power as defined in the Act;

**“SMP Licensee”** means a Licensee that has been determined by the Commission to have Significant Market Power (SMP) in a market identified by the Commission as a relevant market;

**“sub -loop unbundling” or “SLU”** means a form of unbundling where the line is handed over from the access provider to the access seeker at a point closer to the end user than in local loop unbundling (LLU), which usually occurs at a street cabinet;

**“very-high-bit-rate digital subscriber line”, “VDSL” or “VHDSL”** means a DSL standard that provides high speed Internet access, being an improved version of ADSL (asymmetric DSL) that typically offers download speeds of up to 52 Mbps and upload speeds up to 16 Mbps, and operates over a single flat untwisted or twisted pair of copper wires or on coaxial cable;

**“virtual unbundling of local access” or “VULA”** means the provision of an active access line by terminating the subscriber line on the optical line termination (OLT) equipment of the access provider, with the access seeker able to connect directly to this equipment at local exchange level where, similar to LLU, the handover will take place and therefore avoid the access provider’s aggregation network.

(2) A word or expression that is used in these Regulations and is also used in the Act shall have in these Regulations the same meaning as it has in the Act unless the contrary intention appears.

### **3. Scope and purpose of the Regulations**

(1) The aim of these Regulations is to promote s in retail electronic communications services by defining specific components of Wholesale Network Infrastructure and Services, access to which may be imposed on Licensees holding Significant Market Power (SMP)



in the related markets, or on any Licensee subject to such access obligations under the Act.

- (2) In accordance with the principles defined in the Act and in the “*Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services*,” the Commission shall identify those product and service markets within the electronic communications sector whose characteristics may be such as to justify the imposition of regulatory obligations set out in the Act and the aforementioned Guidelines.
- (3) These Regulations recognise that in principle, lack of effective competition may occur at the retail level or the wholesale level or both, and the identification of a retail market (as part of the value chain) for the purposes of *ex ante* market analysis does not necessarily imply that regulatory remedies shall be applied to a retail market in which the Commission, upon ECTEL's recommendation, finds that there is a lack of effective competition.
- (4) For the avoidance of doubt, these Regulations address only relevant markets at the wholesale level and related network infrastructure, while regulatory controls on retail services are addressed by the Retail Pricing Regulations or any other Regulations with the same purpose.

## PART II

### NETWORK INFRASTRUCTURE AND WHOLESALE SERVICES SUBJECT TO ACCESS OBLIGATIONS

#### **4. Identification of Network Infrastructure and Wholesale Services, access to which may be imposed on SMP Licensees**

- 1) The Commission, upon ECTEL's recommendation, may impose on SMP Licensees an obligation to provide one or all of the following categories of network infrastructure and wholesale services under *ex ante* regulation:
  - e) wholesale access provided at a fixed location;
  - f) passive backhaul infrastructure;
  - g) special wholesale service;
  - h) dedicated connections and capacity (wholesale leased lines)
- 2) The general components and characteristics of the network infrastructure and wholesale services specified in sub-regulation (1) shall be defined as set out in these Regulations.
- 3) Notwithstanding that a market is defined to include network infrastructure and wholesale services, according to the characteristics set out in these Regulations, the Commission may, upon ECTEL's recommendation, decide on the most appropriate and proportionate

remedy to be imposed on a SMP Licensee in order to address anti-competitive conduct in a relevant market.

## 5. Wholesale Access provided at a fixed location

1) In the wholesale access market, the Commission, upon ECTEL's recommendation, may impose on SMP Licensees a requirement to provide the following categories of access:

- a) wholesale (physical) network infrastructure access, including shared or fully unbundled access at a fixed location;
- b) virtual unbundling of local access (VULA); and
- c) wholesale broadband access.

2) wholesale (physical) network infrastructure access -

(a) primarily consists of physical or passive access products enabling transmission of internet and related data services such as copper local loop unbundling (LLU) and copper sub-loop unbundling (SLU) and includes all access services available at the physical layer in a point-to-point FTTH architecture, in a point-to-multipoint FTTH architecture or in cases of FTTC/VDSL;

(b) shall -

(i) include the identification of access inputs which are forward-looking;

(ii) in relation to the Commission defining the relevant wholesale market, have regard to the availability of access inputs under development, in particular, cases of a Passive Optical Network.

3) The Commission, upon ECTEL's recommendation, may require SMP Licensees in the Wholesale Access Market to make available non-physical or virtual wholesale access products in accordance with the following-

(a) their functionalities shall be equivalent or comparable to those of local-loop unbundling in relation to the parameters that are of relevance to access seekers;

(b) access shall be provided locally, that is, network traffic shall be handed over at a level which is close to the customer premises such as where access is granted at or close to the central office/MDF (including newly built ODF) or the street cabinet;

(c) access shall be generic and provide access seekers with a service-neutral transmission capacity with uncontested access, which means, for example provision of guaranteed bandwidths according to the access seekers' needs, in accordance with the principle of proportionality, while not normally requiring the SMP Licensee to deploy new physical infrastructure;

(d) uncontested access requires in principle the establishment of a dedicated logical connection between the customer facilities and the point of handover for which the technical features of the connection shall only be

limited by the inherent capabilities of the access technologies deployed and shall support LLU-like services;

- (e) virtual unbundling of local access seekers shall have sufficient control over the transmission network to allow the product to be a functional substitute to LLU and to allow for product differentiation and innovation similar to LLU;
- (f) having regard to these Regulations, the access seekers' control of the core network elements, network functionalities, operational and business processes, as well as the ancillary services and systems such as customer premises equipment, shall allow for sufficient control over end user product specification and the quality of service provided.

3) Wholesale broadband access -

- (a) shall consist of non-physical or virtual network access such as bitstream access provided at a fixed location downstream from the access covered by wholesale (physical) network infrastructure access and the virtual access;
- (b) may be constructed using the input specified in paragraph (a) combined with other elements.

## **6. Passive Backhaul Infrastructure**

- 1) The Commission, upon ECTEL's recommendation, may require a SMP Licensee to make available passive backhaul infrastructure to other Licensees.
- 2) The provision of passive backhaul infrastructure shall have regard to:
  - (a) expected growth in data traffic and required data speeds which significantly increase the need for high speed backhaul solutions given that only vertically integrated operators in fixed and mobile markets are able to economically provide backhaul solutions; and
  - (b) the potential Significant Market Power of a specific Licensee in a wholesale market for backhaul access to underground facilities such as ducts, as well as to dark fiber.

## **7. Special Wholesale Service**

- 1) The Commission, acting upon ECTEL's recommendation, may require a SMP Licensee to make available special wholesale services to enhance competition in a retail services market.
- 2) Special wholesale services shall consist of of the components and functions of a total retail service offered by a Significant Market Power Licensee, and any ancillary services necessary for other Licensees to economically provide an equivalent retail service to end-users that is competitive with the total retail service of the SMP Licensee, and which the other Licensees cannot economically supply themselves or obtain from a public network operator other than the Significant Market Power Licensee.

- 3) The SMP Licensee shall provide the special wholesale service at discounted prices from the retail prices at which it offers the retail service and the Commission, upon ECTEL's recommendation, may determine the appropriate level of such discounts, on the basis of the principle of competitive fairness.

## **8. Dedicated Connections and Capacity (wholesale leased lines)**

- (1) The market for wholesale dedicated connections and capacity shall consist of leased lines for use in the development of operators' own internal networks, including for use in the connections between elements of mobile access networks, and for support to provide competitive leased lines or other services in wholesale and retail markets.
- (2) The Commission, acting upon ECTEL's recommendation, may require a SMP Licensee to make available leased lines provided at the wholesale level in the following two distinct segments:
  - a) terminal segments; and
  - b) trunk segments.
- (3) Where leased line services are analyzed for the purposes of market definition, the Commission shall conduct the analysis in a neutral manner, in relation to the network, technology or infrastructure used for the provision of the leased lines.
- (4) Where the Commission requires that a SMP Licensee make available wholesale leased lines, the leased lines shall have at least the following characteristics:
  - a) provide end-to-end transparent and dedicated connections;
  - b) ensure no speed limitation (and that speeds are symmetrical and constant); and
  - c) ensure high levels of service quality such as:
    - (i) guaranteed availability and high quality of service in all circumstances including Subscriber Line Agreements that provide for twenty-four hour per day, seven day per week customer support, short repair times and redundancy, that are usually found in a services environment geared to the needs of business customers;
    - (ii) high-quality network management, including of backhaul, resulting in upload speeds appropriate for business use and very low contention;
    - (iii) the possibility to offer separate ethernet continuity, including through an additional header allowing for several layers of virtual LANs.
- (5) Notwithstanding sub-regulation (3), the Commission, upon ECTEL's recommendation, may segment the regulated leased lines market according to bandwidth if it is necessary to address different market objectives of operators interested in providing lower or higher bandwidth leased lines or both.

### PART III

#### IMPLEMENTATION OF OBLIGATIONS IMPOSED ON SMP LICENSEES

#### **9. Specific obligations on Licensees required to provide access to infrastructure and/or wholesale services**

(1) Where, following a market analysis, one or several Licensees are designated as having SMP in any of the markets related to network infrastructure and wholesale services specified in regulations 5, 0, 6, and 8, the Commission may impose, as applicable, the following obligations:

- (c) publication of a Reference Access Offer providing the terms and conditions on which the Licensee subject to the access obligation proposes to enter into an agreement to provide access including price information, technical specifications and network characteristics;
- (d) non-discrimination obligations requiring a SMP Licensee to apply equivalent conditions in equivalent circumstances to undertakings providing equivalent services to other Licensees' services and information under the same conditions and with the same quality as those that they provide for their own services or those of their subsidiaries or partners;
- (e) accounting separation obligations in relation to specified activities related to access;
- (f) access obligations, such as the obligation to -
  - ▶ give third parties access to specified elements or specific network resources, including all associated elements or network resources required to ensure that such specified access is effective;
  - ▶ negotiate in good faith with undertakings requesting access;
  - ▶ not withdraw access to facilities already granted;
  - ▶ grant open access to technical interfaces, protocols or other technologies that have a vital importance for the interoperability of services;
  - ▶ provide for mandatory co-location or other forms of associated access to passive infrastructure such as underground ducts, dark fiber, towers, supporting structures and facilities at base stations, central offices, or network distribution points, which shall be provided on a transparent and non-discriminatory basis at cost-oriented rates;
- (g) obligations relating to price controls, including obligations for cost-oriented prices or rates;
- (h) any other terms that the Commission upon ECTEL's recommendation determines.

## 10. Transparency

- 1) The SMP Licensee required to provide access under sub-regulation 9 (1) shall submit a reference access offer to the Commission in the time prescribed by order of the Commission to do so, and this time shall not exceed two months after the notification to the SMP Licensee of the decision or order.
- 2) Each reference access offer published or otherwise made available by the SMP Licensee required to provide access shall contain the following information:
  - a) Preliminary Information -
    - (i) organization and network architecture, description of geographic coverage areas, and related tariff zones;
    - (ii) network elements to which access is offered;
    - (iii) information for the location of physical interconnection or access points;
    - (iv) conditions for access to more detailed prior information regarding this equipment;
  - b) Technical characteristics of access services and associated services -
    - (i) complete description of benefits;
    - (ii) complete description of the access interfaces;
    - (iii) complete description of routing traffic conditions;
    - (iv) any operational and technical requirements with which the benefiting party shall comply in order to avoid harm to the access provider's network;
  - c) Offer conditions -
    - (i) contractual conditions types of access to different offers, restrictions on use;
    - (ii) contractual conditions on ordering and delivery of physical or software resources necessary to effect access;
    - (iii) necessary information to order, suspension of commitments or conditions,
    - (iv) contractual conditions on methods of implementing the physical or logical changes to the access;
    - (v) control and termination processes;
    - (vi) process signalling and failure recovery;
    - (vii) conditions on passive infrastructure and facilities access related to collocation of equipment and networks to the physical connection;
    - (viii) the list of benefits subject to tailored offers or preliminary estimate
  - d) Quality of Service -
    - (i) contractual conditions on standard quality of services provided and enhanced quality of subscribable service options;
    - (ii) response times to requests for supply of services and resources;
    - (iii) level of commitment, associated service incentive mechanisms and compliance;
    - (iv) penalties in case of default.
  - e) Price Plan -
    - (i) full tariff conditions, including tariffs, payments and penalties for defaults by the operator providing the access services, including associated services, contained in the reference offer.
    - (ii) pricing conditions;
    - (iii) subscriptions and changes to offers;

- (iv) quality of service options.
  - f) Dispute resolution
    - confirm jurisdiction of the Commission and ECTEL under the conditions specified in regulation 14;
  - g) Any other terms and conditions required by the Commission.
- 2) The reference access offer shall be approved by the Commission upon ECTEL's recommendation and may require changes prior to its approval, in which case, the SMP Licensee shall make the modifications required in the time prescribed by the Commission.
  - 3) The reference access offer shall be available on the SMP Licensee's website and for public viewing at the premises of ECTEL and the Commission.

## **11. Non-discrimination and accounting separation obligations**

- 1) (a) The purpose of imposing an obligation to implement a cost accounting system is to ensure that fair, objective and transparent criteria are followed by SMP Licensees in allocating their costs to services in situations where they are subject to obligations for price controls or cost-oriented prices.
 

(b) To promote the purpose specified in paragraph (a) end, the Commission upon ECTEL's recommendation may impose an obligation to provide accounting separation in order to provide a higher level of detail of information than that derived from the statutory financial statements of the SMP Licensee, to reflect as closely as possible the performance of parts of the SMP Licensee's business as if they had operated as separate businesses, and in the case of vertically integrated undertakings, to prevent discrimination in favor of their own activities and to prevent unfair cross-subsidy.
- 2) Prior to imposing an obligation regarding accounting separation on SMP Licensees, the Commission, upon ECTEL recommendation, and after public consultation, shall adopt and publish accounting separation and cost accounting methods with which SMP Licensees shall comply, which shall be based upon the following principles -
  - a) allocation of costs, capital employed and revenue shall be undertaken in accordance with the principle of cost causation (such as activity-based costing, 'ABC');
  - b) the cost accounting and accounting separation systems of the SMP Licensee shall be capable of reporting the regulatory financial information required to demonstrate full compliance with regulatory obligations and to support regulatory objectives;
  - c) the cost accounting system of the notified SMP Licensee shall be capable of differentiating between and allocating direct costs (1), and indirect costs (2);
  - d) the Commission shall set clear deadlines for SMP Licensees' implementation of new cost accounting systems based on current costs;
  - e) evaluation of network assets at the forward-looking or current value of an efficient Licensee, that is, estimating the costs faced by equivalent Licensees if the market were

vigorously competitive, including a requirement that any depreciation charges incorporated in operating costs shall be calculated on the basis of current valuations of modern equivalent assets; therefore, reporting on the capital employed shall also be on a current cost basis and other cost adjustments may be required to reflect the current purchase cost of an asset and its operating cost base;

- f) evaluation of network assets at forward-looking or current value may be complemented by the use of a cost accounting methodology such as long run incremental costs (LRIC), where the Commission determines appropriate;
  - g) the Commission shall consider further adjustments to financial information with respect to efficiency factors, particularly when using cost data to inform pricing decisions where the use of cost accounting systems may not fully reflect efficiently incurred or relevant costs; such efficiency factors may consist of evaluations of different network topology and architecture, depreciation techniques, or technology used or planned for use in the network;
  - h) SMP Licensees shall be required to provide detailed financial statements using accounting separation including a profit and loss statement and statement of capital employed for each of the regulatory reporting parts of the SMP Licensee's business, based on the relevant markets and services;
  - i) transfer charges or purchases between markets and services shall be clearly identified in sufficient detail to justify compliance with non-discrimination obligations;
  - j) accounting separation reporting obligations may also require the preparation and disclosure of information for markets where an operator does not have Significant Market Power;
  - k) for consistency and data integrity, the financial reports of the regulatory accounts may be required to be consolidated into a profit and loss statement and a statement of capital employed for the SMP Licensee's business as a whole;
  - l) a reconciliation of the separate regulatory accounts to the statutory accounts of the SMP Licensee shall be conducted and shall be subject to an independent audit review;
  - m) accounting information provided by SMP Licensees shall be available to interested parties at a sufficient level of detail on the following conditions:
    - i. the detail of information provided shall serve to ensure that there has been no undue discrimination between the provision of services internally and those provided externally and allow identification of the average cost of services and the method by which costs have been calculated;
    - ii. the Commission shall ensure compliance with relevant laws on commercial confidentiality, and after consultation with ECTEL and the Licensees, shall define what information can be considered as confidential and restricted from being made available.
- 3) The following shall apply to tariff control -
- a) where the Commission, upon ECTEL's recommendation, imposes on SMP Licensees an obligation of cost-orientation for the tariffs of wholesale services or infrastructure



access, the SMP Licensees shall set the rates for the wholesale services or access in compliance with the cost accounting methods published by the Commission under sub-section (2) ;

- b) the Commission, upon ECTEL's recommendation, may also impose on SMP Licensees other pricing obligations which may include, but not be limited to, a prohibition on excessive or predatory prices, or the obligation to offer wholesale services on a retail minus basis as may be applicable for special wholesale services referred to in regulation 0;
- c) if a SMP Licensee fails to provide the documentation required for assessing its compliance with the cost accounting and accounting separation obligations, the Commission, upon ECTEL's recommendation, may make its own cost calculations in order to estimate costs on the basis of information at its disposal and determine the charges to be borne by the Licensees seeking access to network infrastructure and wholesale services of the SMP Licensee;
- d) if the Commission and ECTEL lack sufficient information or have not yet implemented the cost accounting methods specified in sub-section (1), the Commission may, upon ECTEL's recommendation and in a transitional manner, determine the tariffs of the charges payable by the SMP Licensees on the basis of international benchmarks.
- e) the Commission, upon ECTEL's recommendation, may require MP Licensees to provide wholesale offers at the rates which it has determined under the subsections (a) to (d).

## **12. Negotiating Access Agreement**

- 1) A Licensee requesting access pursuant to these Regulations shall notify ECTEL and the Commission at the same time at which the Licensee sends its request to the access provider with which it is seeking an access agreement.
- 2) The notification required by sub-regulation (1) shall include -
  - a) reference to the requesting Licensee's licence;
  - b) a technical description of the requested services;
  - c) the intended point of access;
  - d) the date on which access is intended to commence; and
  - e) the projected quantity or volume of services or access required, based on ECTEL of three (3) years or of some other period if the Licensee is unable to provide the three (3) year for ECTEL, except that such other period shall not be less than six (6) months.
- 3) The access provider who receives a request for access shall -
  - (a) as soon as is reasonable, consider and analyze each request and acknowledge receipt within seven (7) days;
  - (b) within fifteen (15) days of the date of receipt of the initial request, notify the requesting party whether any additional information is required to facilitate access.

- 4) The access provider -
  - (a) shall grant or refuse the request for access within thirty (30) days of the receipt of the later of the date of the initial request or such additional information as the access provider may have requested;
  - (b) may, in exceptional circumstances, with the agreement of the parties, extend the period specified in paragraph (a) for another thirty (30) days, and shall so notify ECTEL and the Commission;
  - (c) shall, if it is unable to respond to the request for access by the end of a sixty (60) day period or any extended period, provide, on the date on which such period expires, a written statement of the reasons to ECTEL, the Commission and to the party requesting access.
- 5) The parties to access negotiations shall cause ECTEL and the Commission to be simultaneously notified when requests and information are sent and received, as the case may be.
- 6) The Commission may specify conditions or further requirements under this regulation where it considers appropriate.

### **13. Access Agreements**

- 1) Each access agreement concluded under these Regulations shall address the following matters:
  - a) technical characteristics and location of the points of access;
  - b) capacity levels;
  - c) service levels;
  - d) forecasting;
  - e) ordering and provisioning;
  - f) provision of network information;
  - g) information handling and confidentiality;
  - h) rates;
  - i) payment procedures;
  - j) fault detection and repair;
  - k) provision for breaches;
  - l) amendments; and
  - m) suspension, termination and duration.
- 2) Each access agreement concluded under these Regulations shall include a provision for any dispute relating to the conclusion, execution or termination of the agreement to be referred to the Commission for resolution under the conditions specified in regulation 14.
- 3) The Commission shall submit the agreement to ECTEL for review and recommendation.
- 4) The Commission shall , on a recommendation of ECTEL approve, or decline to approve, an access agreement or any modification or amendment thereof that is submitted to it pursuant to the Regulations, within thirty (30) days of the submission, which period may be extended for good cause.

- 5) If the Commission requires modifications of the access agreement which has been submitted to it, the SMP Licensee shall make the modifications required in the period prescribed by the Commission by order.

#### **14. Disputes regarding Access**

- 1) Where, after having negotiated for a period of at least sixty (60) days, the parties fail to conclude an access agreement under these Regulations, one or both of the parties may submit a dispute to the Commission.
- 2) A party to a signed access agreement may, where there is a dispute, refer it to the Commission and provide proof that the parties have made reasonable efforts to amicably settle the dispute.
- 3) Pursuant to a dispute submitted to the Commission under sub-regulations (1) and (2) , the Commission may-
  - a) refer the matter to ECTEL for an opinion; or
  - b) with the consent of the parties, refer the matter to ECTEL for mediation.
- 4) Where the Commission refers a dispute to ECTEL for an opinion, the rules set out in the Dispute Regulations, the Interconnection Regulations and in any other relevant law shall be applicable.
- 5) Where the Commission, with the consent of the parties to the dispute, refers the matter to ECTEL for mediation, ECTEL shall, in consultation with the parties, cause the mediation to commence as soon as is practicable, and on its conclusion, provide the Commission and Licensees with a report within three (3) months after the receipt of the request of the Commission for mediation.
- 6) (1) The report specified in sub-regulation (5) shall include only:
  - a) whether the mediation failed; or
  - b) the parties came to an agreement; and
  - c) where the parties came to an agreement the terms of such agreement.
- 7) If mediation fails, at the end of the three (3) month period referenced in sub-regulation (5), any of the parties to the dispute may lodge a petition with the Commission to resolve the dispute under the conditions set out in sub-regulation (3)(a).

## **PART IV**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### **15. Compliance**

- 1) The Commission may issue written orders or directions to a Licensee for the purposes of compelling compliance with these Regulations, and a Licensee shall comply with the orders or directions, once issued.
- 2) Where a Licensee refuses to obey an order, a decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the Licensee to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow;
- 3) A Licensee that breaches or fails to comply with the provisions of these Regulations, or an order or a direction of the Commission under these Regulations, is, upon a determination by the Commission or the Court, as the case may be, in breach of the terms and conditions of its licence and is subject to the penalty permitted by law.
- 4) A person who fails to provide any information requested by the Commission pursuant to these Regulations, commits an offence under section [97] of the Act.

#### **16. Publications**

Unless otherwise specified, the Commission shall ensure that any orders, decisions or directions of the Commission made under these Regulations shall be published on its website.

#### **17. Conflict**

Where any law regulating wholesale access conflicts with the provisions of these Regulations, these Regulations shall apply to the extent of the conflict.

#### **18. Revocation**

The Telecommunication (Wholesale) Regulations 200[●] are hereby repealed.

## **Annex C**

### *Infrastructure Sharing Regulations*

**Recommendation of the Eastern Caribbean Telecommunications Authority  
(ECTEL)**

**To the National Telecommunications Regulatory Commissions to consult on a  
Draft**

*Infrastructure Sharing Regulations*

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## PRELIMINARY

### **Citation**

1. These Regulations may be cited as the Infrastructure Sharing Regulations, 20[●].

### **Commencement**

2. These Regulations shall come into force on the date of their publication in the Gazette.

### **Interpretation**

3. (1) In these Regulations:

“Act” means the Electronic Communications Act, 20[●]

“**RAN sharing**” means sharing of a radio access networks (RAN), which is a comprehensive form of access network sharing among mobile networks involving the sharing of all access network equipment, including the antenna, mast and backhaul equipment.

(2) Unless otherwise specified, terms used in these Regulations shall have the meanings assigned to them under the Act.

### **Application**

4. (1) These Regulations apply to all towers, sites and underground facilities of an electronic communication network as defined by the Act.

(2) These Regulations apply to all Licensees with respect to the operation of all electronic communication networks and to:

- (a) Agreements for sharing of, and or
- (b) Requests for sharing to such electronic communication networks and facilities.

## PART II

### RULES RELATING TO INFRASTRUCTURE SHARING OBLIGATIONS

#### **Obligation to provide access**

5. (1) Every Licensee shall offer to provide and provide access to all towers, sites and underground facilities-that it owns or controls, on a non-discriminatory and equitable basis, including with-respect to charges, location, and other commercial matters.

(2) A Licensee may deny access only where it can demonstrate to the satisfaction of the Commission that:

- (a) there is insufficient capacity in such facility, taking into account its reasonably anticipated requirements; or
- (b) there are reasonable technical grounds to deny such access.

(3) Where the provision of access to any facility as required by these Regulations is not technically feasible, the Commission may, acting on the recommendation of ECTEL, make such orders or issue



such directions to a Licensee as it considers appropriate, to facilitate alternative access arrangements, including, but not limited to -

- (a) virtual co-location;
- (b) conditioning additional equipment;
- (c) optimizing the use of existing space, or;
- (d) finding adjacent space.

(4) Where the aforementioned orders or directions of the Commission in subregulation (3) require additional and justified investment by a Licensee subject to obligation under these Regulations, the Licensee has two options to comply:

- (a) Prior to such investment, the Licensee may contract a joint investment agreement with one or more other operator(s) interested in sharing the relevant site, or
- (b) The Licensee may increase the price for access to such infrastructure by a specific margin reflecting the additional costs incurred, which shall be no more than 15% of the price prior to such investment. This increase is applicable only to towers, sites and underground facilities modified to comply with the aforementioned orders or directions of the Commission in subregulation (3)

(5) The implementation of either of these solutions shall exclude the other and is in any case without prejudice to obligations under sub regulation (3).

### **Establishment of a forward deployment scheme**

**6.** (1) The Commission may require that each Licensee shall establish an annual deployment scheme indicating:

- (a) The layout of wired network deployments;
- (b) The projects for implementation and/or for modifying radio sites.

If required by the Commission, this deployment scheme must be communicated to the Commission on July 31 of each year, for the next twelve (12) month period.

(2) The Commission may require that any deployment plan required in subregulation (1) must specify the following information:

- (a) For wired networks: vector data geotagged of the networks to be rolled out and the location of the break / access / interconnection points;
- (b) For mobile networks: the geographic location of the new radio base stations ("BTS"), identified by vector data geotagged or failing that by the forward-looking coverage areas of base stations identified on a card under the appropriate digital format such as prescribed by the Commission after consultation with the Licensees".
- (c) In case of modification of existing BTS: the nature of the changes and works to be done, particularly in case of migration toward new technologies.

(3) Any deployment schemes required by the Commission of Licensees must include the information stated in subregulation (2) for all:

- (a) Facilities and sites they manage directly
- (b) Facilities and sites managed by a third party as part of outsourcing contracts and/or outsourcing network and,
- (c) Facilities and locations made wholly or partly on or with the support of alternative infrastructures.

(4) Furthermore, the fact that the Licensee's network is managed or operated in whole or in part by a third party or is deployed in whole or in part with the support of alternative infrastructures cannot impact on the obligations imposed on the Licensee under the Act and these Regulations.

### **Coordination of deployment plans**

7. (1) To comply with country planning and environmental protection objectives, the Commission may ensure coordination of projected deployment plans of the Licensees in order to:

- (a) Ensure compliance with provisions relating to the sharing of passive infrastructure as set out in these Regulations;
- (b) Promote digital services in less densely populated areas.

(2) To do so, the Commission may:

- (a) Based on the deployment plans communicated by Licensees, other information of the Commission regarding existing infrastructure, the Commission may identify, upon the recommendation of ECTEL, areas which systematic sharing of new BTSs shall be implemented.
- (b) Publish the list of the above areas by September 30 of each year.

(3) The determination of these areas is justified by reasons relating to the public interest and users benefits, including for reasons of environmental protection or regional planning. Any such obligations imposed shall take into account the technical and economic viability of the obligations.

### **Implementation of the sharing obligations in section 7**

8. (1) Where the Commission has identified areas in which systematic sharing of new BTSs shall be implemented, the Commission shall notify all Licensees of such listed areas and may request that the Licensees provide within a period of six (6) months from the date of notification, a framework sharing agreement in accordance with the principles set out in the Act and these Regulations.

(2) Licensees may choose to implement a RAN-sharing solution when they deem it appropriate and preferable to the option of sharing passive infrastructure.

(3) In the event that the implementation of shared obligations requires additional investment by the owner or manager of the network to be shared, the framework agreement shall provide conditions for apportionment of the aforementioned investment between the Licensees concerned.

(4) The framework agreement shall specify the detailed modalities of sharing (technical solutions, governance, modalities for sharing information, financial arrangements, etc.).

(5) The framework agreement shall not undermine effective and fair competition in the electronic communications market.

(6) The framework agreement shall propose arrangements for its extension, in a fair manner, to a new operator entering the market for electronic communications in [the Name of the Contracting ECTEL State].

(7) At the request of one or more of the parties, ECTEL and the Commission may be involved with the negotiations of the framework agreement or consulted on legal, technical or economic issues.

### **Features of new BTS**

**9** (1) Any new BTS constructed after the entry into force of these Regulations shall comply with the following conditions to make possible the sharing of the new BTS with at least one third party operator.

In particular:

- (a) The towers shall have a height and load capacity sufficient to accommodate at least one third party operator providing services similar to those that the host Licensee provides on the BTS concerned;
- (b) The site that is deployed for the new BTS must allow the collocation of equipment for the benefit of at least one third operator;
- (c) The power supply must be sized to supply energy to the active equipment of third party operators;

(2) Licensees have two options to take account of this additional investment:

- (a) Prior to deployment, they may contract a joint investment agreement with one or more third operator(s) interested ab initio in sharing the site, or
- (b) They may increase their infrastructure sharing tariffs by a specific margin not exceeding 15% and reflecting the additional costs incurred. This increase is applicable only to new BTSs built in compliance with subregulation (1).

(3) The implementation of either of these solutions shall exclude the other and is in any case without prejudice to the obligations under sub regulation (1).

### **Price for access**

**10.** (1) Prices for access to and use of different facilities may vary according to the facilities involved, but must be just, reasonable and based on the costs of the owner of the facilities.

(2) Every Licensee shall make available, on request, prices for access to and use of facilities that it owns in a manner that is -

- (a) clear and unambiguous; and
- (b) disaggregated such that the Licensee requesting access shall only have to pay for access to those facilities or parts of the network it requires to provide the services involved.

(3) The Commission may require a Licensee to publish the prices for access on the Licensee's website and in an appropriate publicly available document.

### **Negotiating access**

**11.** (1) A Licensee may at any time, make an application to another Licensee for sharing facilities that it owns or controls.

(2) On receipt of a request, an operator must promptly provide the terms and conditions for sharing.

(3) The party offering access and the party requesting access shall promptly on receipt of the request, commence negotiations in good faith with the objective of concluding an infrastructure sharing agreement.

(4) Where the parties to a proposed infrastructure sharing agreement are unable to agree on the terms of the agreement within sixty days from the date of the application under subregulation (1), either party may request the Commission to resolve the matter, in accordance with Regulation 13.

(5) Any decision by the Commission under subregulation (4) is binding on the parties.

(6) Notwithstanding subregulations (1) to (5), a party offering access to towers, sites and underground facilities and a party requesting access to such facilities may conclude such arrangements at the time for negotiating interconnection.

### **Powers of the Commission**

**12.** (1) The Commission may regulate the rates, terms and conditions for sharing any facility or electronic communication network, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to resolve disputes concerning such rates, terms and conditions in accordance with Regulation 15.

(2) Every infrastructure sharing agreement shall be submitted to the Commission for its approval.

(3) Where operators are unable to reach an agreement regarding compensation for co-location or other forms of infrastructure sharing, the Commission shall impose rates based on costs, where appropriate.

(4) Where the Commission makes a decision to impose co-location or other forms of infrastructure sharing, the Commission may take into account -

- (a) The need to promote and safeguard competition, including the ease of market entry;
- (b) The costs of duplicating the facilities or utility installations, including the technical or economic viability of installing other facilities;
- (c) The environmental implications of deploying separate types of facilities by multiple operators;
- (d) The reasonably anticipated requirements of the operator;
- (e) Issues relating to public health and safety, security, reliability or difficulties of a technical or engineering nature;
- (f) The initial investment of the owner of the facilities involved; and
- (g) Any other matters it considers appropriate.

### **Disputes regarding infrastructure sharing**

**13.** (1) Where, after having negotiated for a period of at least sixty (60) days, the parties fail to conclude an infrastructure sharing agreement under these Regulations, one or both of the parties may submit a dispute to the Commission.

(2) A party to a signed infrastructure sharing agreement may, where there is a dispute, refer it to the Commission and provide proof that the parties have made reasonable efforts to amicably settle the dispute.

(3) Pursuant to a dispute submitted to the Commission under sub-regulations (1) and (2), the Commission may-

- (a) Refer the matter to ECTEL for an opinion; or

(b) With the consent of the parties, refer the matter to ECTEL for mediation.

(4) Where the Commission refers a dispute to ECTEL for an opinion, the rules set out in the Dispute Regulations and in any other relevant law shall be applicable.

(5) Where the Commission, with the consent of the parties to the dispute, refers the matter to ECTEL for mediation, ECTEL shall, in consultation with the parties, cause the mediation to commence as soon as is practicable, and on its conclusion, provide the Commission and Licensees with a report within three (3) months after the receipt of the request of the Commission for mediation.

The report specified in sub-regulation (5) shall include only:

(a) whether the mediation failed; or

(b) the parties came to an agreement; and

(c) where the parties came to an agreement the terms of such agreement.

(6) If mediation fails, at the end of the three (3) month period referenced in sub-regulation (5), any of the parties to the dispute may lodge a petition with the Commission to resolve the dispute under the conditions set out in sub-regulation (4).

### **PART III**

#### **RULES RELATING TO THE PROVISION OF INFORMATION ON THE EXISTING NETWORKS**

##### **Information disclosure**

**14.** (1) The Licensees shall inform the Commission, prior July 31 of each year, on existing electronic communications network infrastructure that they hold, in full ownership or on the basis of a long-term right of use. Where a Licensee uses a hosting infrastructure of which it is not the owner, the Licensee shall communicate the name of the infrastructure's owner.

This disclosure obligation covers:

(a) For wired networks: vector data geotagged for existing networks including overhead wiring networks and the location of the access / interconnection points;

(b) For mobile networks: existing radio sites and equipment deployed and resources available regarding the sites.

(3) Regarding the information on mobile networks, Licensees must specify:

(a) number and the exact identification (name, geographic location and vector data geotagged of all of the deployed sites

(b) number and type of tower (s) deployed (s) on each site;

(c) identity of tower users;

(d) total height of each tower, heights already used and those on which space is available (in meters);

(e) total load on the infrastructure, the charge used and the load available to third parties;

(f) If applicable, the existence of a roaming agreement or of an infrastructure sharing agreement.

(g) Information on the power supply (electricity connection, presence and number of generators, solar panels, etc.)

(h) Number of shelter (s), occupied offices, the space available in these shelters and the occupant (s) of these shelters;

- (i) Technology used to connect the site to the electronic communications network (microwave systems, backbone, etc.).

(4) When the capacity of a site is limited (for example, because of height or load used on the towers, power, space in the shelters, etc.) and does not allow the sharing of the site, Licensees must provide justification for the equipment already deployed, if requested by the Commission, in order to ensure that relevant sharing opportunities are maximized.

The Commission may request additional information of Licensees, who must provide the information requested within a period of one month.

(5) ECTEL and the Commission may post the list of towers, sites and underground facilities available for sharing on their respective websites.

(6) The Commission may conduct checks on site to verify the statements of Licensees. In case of error, omission or misrepresentation, the Commission may exercise its power to impose sanctions in accordance with subregulation 15 (4).

## **PART IV**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### **Compliance**

**15.** (1) The Commission may issue written orders or directions to a Licensee for the purposes of compelling compliance with these Regulations, and a Licensee shall comply with the orders or directions, once issued.

(2) Where a Licensee refuses to obey an order, a decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the Licensee to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow;

(3) A Licensee that breaches or fails to comply with the provisions of these Regulations, or an order or a direction of the Commission under these Regulations, is, upon a determination by the Commission or the Court, as the case may be, in breach of the terms and conditions of its license and is subject to the penalty permitted by law.

(4) A person who fails to provide any information requested by the Commission pursuant to these Regulations, commits an offence under section [97] of the Act.

#### **Use of information provided by Licensees**

**16.** (1) With the exception of the list of towers, sites and underground facilities available for sharing which may be published on the respective websites of the Commission and ECTEL, in accordance with subregulation 14 (5), the Commission and ECTEL shall ensure the confidentiality of data transmitted to them by Licensees and shall take necessary measures to prevent access to such data by unauthorized persons.

(2) The staff of the Commission and ECTEL having access to such information are bound by professional secrecy.

(3) The Commission and ECTEL are authorized to communicate information provided under this Regulation to State Service(s), after informing relevant Licensees. Such communication shall be the subject of an application by the State Service(s) requesting the information. The recipient of the communication is subject to the same confidentiality requirements as ECTEL and the Commission. The information supplied is limited to that necessary in order for the recipient to carry out its tasks.

(4) Data communication must not create discrimination between Licensees and should not undermine commercial and industrial secrecy.

### **Publication**

**17.** (1) The Commission, acting on the recommendation of ECTEL may establish rules in relevant orders or decisions to give purpose and effect to these Regulations, setting out such guidelines, procedures, standards and other requirements as the Commission may issue or specify;

(2) Unless otherwise specified, the Commission shall ensure that any orders, decisions or directions of the Commission made under these Regulations shall be published on its website.

### **Revocation**

**18.** The Telecommunication (Access to facilities) Regulations 200[●] [Dominica only] are hereby repealed.

Made this [date].

[NAME]

*Minister for Telecommunications*

## **Annex D**

*“International electronic communications access to essential facilities at Cable Landing Stations regulations”*



**Recommendation of the Eastern Caribbean Telecommunications Authority**

**(ECTEL)**

**To the National Telecommunications Regulatory Commission**

**To consult on a Draft**

***“International electronic communications access to essential facilities  
at Cable Landing Stations regulations”***

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**Part I**  
**Preliminary**

**1. Citation and commencement**

- 1) These Regulations may be cited as Cable Landing Stations (Access) Regulations, 20[●]
- 2) These Regulations shall come into operation on [Date]

**2. Interprétation**

- 1) In these Regulations unless the context otherwise requires –

“**Act**” means the Electronic Communications Act, 20[●];

“**access facilitation**” means access or interconnection, as the case may be, to the essential facilities, including landing facilities for submarine cable, at cable landing station provided by a CLS Licensee to an Eligible Operator to enable the operator to:

- (a) access capacity belonging to it on any one of the cables connected to the cable landing station , or
- (b) access capacity held by third parties - including the CLS Licensee - on any of the cables connected to the cable landing station;

“**backhaul circuit**” means a domestic telecommunications link which connects a cable landing station to the infrastructure or equipment of an Eligible Operator at its premises;

“**Cable Landing Station Licensee**” means a Licensee operating a submarine cable landing station (“**CLS Licensee**”);

“**Cable Landing Station-Reference Access Offer**” or “**CLS Reference Interconnection and Access Offer**” means a document containing the terms and conditions of access facilitation and co-location services at the cable landing stations for specified levels of international submarine cable capacity;

“**capacity**” means the international submarine cable capacity:

- (a) in the submarine cable system landing at the cable landing station in [ECTEL Contracting State];
- (b) acquired either on ownership basis or lease basis by an Eligible Operator;
- (c) activated by the owner of the submarine cable system or a member of consortium of a submarine cable system;

“**co-location or co-localisation**” means the facilities and resources, including building space, power, cooling, security and maintenance services, offered by a CLS Licensee to an Eligible Operator;

**“Eligible Operator”** means an undertaking which is entitled to request access to a cable landing station, with the intention of being an operator of electronic communications network or a provider of electronic communications services duly authorized in [ECTEL Contracting State], and includes Internet service providers and Internet Exchange Points;

**“Grooming Service”** means breaking down higher capacity outputs from the submarine cable at a place or point at which it terminates into the lower capacity channels for connection to the backhaul circuits of an Eligible Operator;

**“indefeasible right of use”** or "IRU" means the right to use the capacity on a long term lease, for example for the period for which the submarine cable remains in effective use under an agreement entered into between the capacity owner and an Eligible Operator in respect of which maintenance cost incurred becomes payable in any circumstances during the period of validity of such agreement;

**“specified international submarine cable”** means a submarine cable having international submarine cable capacity landing at a cable landing station in [ECTEL Contracting State];

**“Submarine Cable”** or **“Submarine Cable System”** means a physical, signal bearing medium installed in a marine environment for the routing of electronic communications;

**“submarine cable landing station”** or **“cable landing station”** or **“CLS”** means technical installations for the landing and operation of a submarine cable;

**“virtual co-location”** or **“co-localisation”** means the connection to the CLS by a link between a remote or virtual co-location point and the CLS which shall be located outside the CLS, either adjacent to the station or at a reasonably distant location and at which point an Eligible Operator is authorized to install its equipment so as to access the submarine cable capacity from the CLS;

(2) A word or expression that is used in these Regulations and is also used in the Act shall have in these Regulations the same meaning as it has in the Act unless the contrary intention appears.

### **3. Objective**

The objective of these Regulations is to set out conditions for fair access to international bandwidth with the view to supporting the development of a competitive electronic communication market in [ECTEL Contracting State] and ensuring significant reductions in international communication charges in [ECTEL Contracting State].

### **4. Scope of Application**

These Regulations shall apply to every Licensee operating submarine cable landing stations in [ECTEL Contracting State] for any cable landing station which it operates [ECTEL Contracting State]

## **Part 2 -**

### **Access to Cable Landing Station and related international submarine cable capacity**

#### **5. Obligations of CLS Licensees**

- 1) Every CLS Licensee in the [ECTEL Contracting State] shall—
  - a) provide, on fair and non-discriminatory terms and conditions, at its cable landing station, access services including co-location services to an Eligible Operator in the [ECTEL Contracting State] requesting access to international submarine cable capacity on a submarine cable system;
  - b) interconnect specified international submarine cables landing at its cable landing station in accordance with the provisions of these Regulations;
  - c) provide landing facilities for submarine cables at its CLS to an operator that has been granted a license to operate a CLS under the rules applicable in ECTEL Contracting State];
- 2) A CLS Licensee in the [ECTEL Contracting State] shall provide Eligible Operators the option to access capacity on an IRU basis and on a lease basis.

#### **6. Transparency Obligation**

- 1) Every CLS Licensee in [ECTEL Contracting State] shall submit to the Commission, within sixty (60) days from the date of commencement of these Regulations, a document containing the terms and conditions of access facilitation and co-location services, namely the CLS Reference Interconnection and Access Offer, including landing facilities for submarine cables at its cable landing stations, for specified international submarine cable capacity in accordance with the provisions of these Regulations for the approval of the Commission.
- 2) A CLS Licensee, which comes into existence after the commencement of these Regulations, shall submit, three (3) months before the cable landing station commences operations, the CLS Reference Interconnection and Access Offer in respect of the CLS to the Commission for its approval.
- 3) Every CLS Reference Interconnection and Access Offer shall include co-location services and shall be prepared in accordance with the Schedule 1.

#### **7. Submission of Reference Access Offer to the Commission**

- 1) The Commission shall ensure that the CLS Reference Interconnection and Access Offer is compliant with the Act and these Regulations.
- 2) The Commission, upon the recommendation of ECTEL, shall approve the CLS Reference Interconnection and Access Offer within sixty days of the date of its submission to the Commission.

- 3) If the Commission, upon the recommendation of the ECTEL, is of the opinion that the CLS Reference Interconnection and Access Offer requires modifications so as to protect the interests of Licensees or consumers of the telecommunications sector, or to promote or ensure orderly growth of the telecommunications sector or the CLS Reference Interconnection and Access Offer has not been prepared in accordance with the provisions of these Regulations, the Commission may, after giving the CLS Licensee concerned an opportunity to be heard, require the operator to modify the offer submitted by it.
- 4) Pursuant to sub-regulation (3), the CLS Licensee shall make the modifications required by the Commission and submit, within fifteen days of receipt of requirement for the modifications, the said offer after incorporating the modifications, to the Commission for review and approval.

## **8. Publication of the CLS Reference Interconnection and Access Offer**

- 1) Within 7 days of approval of a CLS Reference Interconnection and Access Offer, the CLS Licensee shall publish its offer -
  - a) on its website;
  - b) by making printed and electronic copies of the offer available to an Eligible Operator upon request.
- 2) Every CLS Licensee, desirous of making modification to its CLS Reference Interconnection and Access Offer published under these Regulations, shall submit the proposed modifications in the CLS Reference Interconnection and Access Offer for the prior approval of the Commission.
- 3) The provisions of these Regulations, which govern the approval of the CLS Reference Interconnection and Access Offer, shall, mutatis mutandis, apply to the modifications of the CLS Reference Interconnection and Access Offer approved by the Commission.

## **Part 3**

### **Cable Landing Station Agreements**

## **9. Application for access to Cable Landing Station and related international submarine cable capacity**

- (1) Every Eligible Operator desirous of accessing international submarine cable capacity on a submarine cable system may make an application in writing to a CLS Licensee, and which shall contain the following details:
  - (a) name and address of the company;
  - (b) billing address;
  - (c) contact person (name, phone number, email; );
  - (d) licence date and number;

- (e) reference capacity details including speed (STM-1/STM-4/STM-16/ STM-64 etc.) and number of capacity units;
  - (f) indefeasible right of use or lease;
  - (g) duration, in the case of a lease;
  - (h) if necessary, details of backhaul circuit provider and domestic link including local loop;
  - (i) any other details that the Commission may require.
- (2) Every CLS Operator shall, within a period of ten days after receipt of the application for access to international submarine cable capacity and to cable landing station facilities, send to the applicant confirmation of its ability to provide the access and details of required testing to be undertaken for provision of the access to the applicant.
- (3) A refusal of the requested access by the CLS Licensee shall be duly substantiated and communicated in writing to the applicant and the Commission within the same period of ten days of receipt of the application specified in sub-regulation (2).

#### **10. Access Facilitation agreement**

- 1) After receipt of confirmation for access to international submarine cable capacity and to cable landing station facilities, an Eligible Operator that makes an application under regulation 9 shall enter into an access facilitation agreement with the CLS Licensee.
- 2) Where the CLS Licensee and the Eligible Operator fail to enter into an access facilitation agreement within **two months** of the initial application of the Eligible Operator requesting access, either of the two parties may refer the matter to the Commission, or to ECTEL, in accordance with regulation 24.
- 3) A CLS Licensee and an Eligible Operator shall not enter into an access facilitation agreement unless the agreement is approved by the Commission acting in accordance with the advice of ECTEL pursuant to the provisions of the Act and applicable Regulations.
- 4) If the Commission, upon the recommendation of ECTEL, is of the opinion that the access facilitation agreement requires modifications so as to comply with the provisions of these Regulations or with the CLS Reference Interconnection and Access Offer, the Commission may require the parties to the agreement to modify it and the parties shall make the modifications and submit, within fifteen days of receipt of requirement for the modifications, the agreement after incorporating such modifications, to the Commission for approval.
- 5) An access facilitation agreement with regard to access to international submarine cable capacity and to cable landing station facilities which entered in force before the commencement of these Regulations shall be amended to comply with these Regulations by a process in which the CLS Licensee shall, after the publication of its CLS Reference Interconnection and Access Offer, give an option to an Eligible Operator already connected to its CLS to make an application for access facilitation and colocation services in accordance with these Regulations.



## **11. Provision of Backhaul Circuit**

- 1) The CLS Licensee requested to provide access to international submarine cable capacity and to cable landing station facilities shall, in addition, provide to the Eligible Operator that makes an application under regulation 9, and upon the request of the Eligible Operator, a backhaul circuit between the CLS and the premises of the Eligible Operator if it is technically feasible to do so.
- 2) The CLS Licensee and the Eligible Operator shall conduct necessary tests according to a mutually agreed testing procedure, approved by the Commission in the absence of agreement between the parties, to permit the backhaul circuit to remain in a state of readiness for interconnection before the tests for reference capacity provisioning are carried out.
- 3) Nothing contained in sub-regulation (2) shall be construed to prevent the Eligible Operator requesting access to international submarine cable capacity and to cable landing station facilities from arranging the provision of backhaul circuit by another service provider who has been granted a license to do so in [ECTEL Contracting State].
- 4) Pursuant to sub-regulation (3), where another service provider is requested to provide a backhaul circuit, the CLS Operator shall facilitate the interconnection between the Eligible Operator and the said service provider at the cable landing station in providing the backhaul circuit.

## **12. Testing of Capacity proposed to be acquired by Eligible Operators**

- 1) The CLS Licensee shall, upon successful testing of the backhaul circuit to the cable landing station, complete all necessary steps for access facilitation to the capacity, which shall include -
  - a) testing of links;
  - b) interconnecting the capacity to the backhaul circuit or equipment of the Eligible Operator co-located at the cable landing station or at a virtual co-location.
- 2) The CLS Licensee, and the Eligible Operator who makes an application under regulation 9, shall conduct necessary tests, in accordance with the testing procedure for the provisioning of Capacity from CLS to the other country's submarine cable station, within ten days or such other time as may be mutually agreed upon by them.
- 3) The CLS Licensee shall—
  - a) send a request, after taking the steps referred to in sub-regulation (2), to the Eligible Operator for taking control of the required capacity; and
  - b) declare the capacity as commissioned by the Eligible Operator.

## **13. Access Facilitation and Backhaul Circuit Charges**

- 1) For the purposes of accessing the landing facilities at a cable landing station, the access facilitation charges shall be:
  - a) payable by the Eligible Operator to the CLS Licensee; and

- b) determined on fair and reasonable conditions to be agreed by the two parties and based on cost-oriented rates compliant with these Regulations and the Act
- 2) Backhaul Circuit Charges shall be cost oriented, determined on the basis of the direct cost of network elements involved in its provision.
- 3) The access facilitation agreement, including, where appropriate, the provision of backhaul circuit shall, subject to the payment of the operation and maintenance charges by the Eligible Operator to the CLS Licensee, continue to be in force during the period of the infeasible right of use or on an annual lease basis, as the case may be.
- 4) If required by an Eligible Operator, the CLS Licensee shall allow the Eligible Operator to provide grooming services at its CLS, namely to install equipment in the colocation room which allows local operators to access capacity at a rate which is below the capacity acquired or rented by the Eligible Operator.

#### **14. Guarantees of Service Quality Levels**

- 1) The CLS Reference Interconnection and Access Offer of each CLS Licensee referred to in regulation 6 shall contain:
  - a) conditions on standard quality of services that are provided and enhanced quality of subscribable service options; and
  - b) reasonable response times to requests for supply of services and resources.
- 2) The access agreement to be concluded between a CLS Licensee and an Eligible Operator, referred to in regulation 10, shall include:
  - a) level of commitment,
  - b) associated service incentive mechanisms and compliance; and
  - c) penalties in case of default.
- 3) The Commission shall ensure that the CLS Licensee provides Eligible Operators with a service level guarantee that is consistent with international best practices and equivalent to those applied to their own services or to those of their subsidiaries or partners.

#### **15. Increase in Capacity Requirement by Eligible Operator**

Where additional capacity is required at the CLS by the Eligible Operator, the CLS Operator shall, subject to technical feasibility, on receipt of the request and related payment from the Eligible Operator, facilitate the provision of the additional capacity in accordance with the provisions of these Regulations relating to access to capacity.

#### **16. Termination or Discontinuance of Access Facilitation**

- 1) The access facilitation agreement, including, as the case may be, the provision of a backhaul circuit, may be terminated by the CLS Licensee -

- a) if the Eligible Operator ceases to hold a valid licence either by way of termination or suspension;
  - b) where the arrangement to acquire capacity by way of an indefeasible right of use or on the basis of an annual lease, as the case may be, from a submarine cable system owner or a member of the submarine cable system consortium or from a cable consortium, is terminated by the Eligible Operator;
  - c) where the operation and maintenance charges due and payable by the Eligible Operator remain unpaid beyond the time period allowed by the access agreement, provided that a notice of not less than thirty days had been given to the Eligible Operator and if there is no response by the Eligible Operator to the notice by the fifteenth day.
- 2) Upon the termination of an access facilitation agreement, including, as the case may be, the provision of a backhaul circuit, upon the request of an Eligible Operator, prior to the expiry of the access agreement term, the charges payable by the Eligible Operator shall not exceed access facilitation and backhaul circuit charges payable for a three-month period.

#### **Part 4 - Co-location**

#### **17. Co-location**

- 1) As provided by section 52 (1) of the Act, every Eligible Operator who makes an application to access international submarine cable capacity on a submarine cable system under regulation 9 shall make, simultaneously, another application to the CLS Licensee for co-location at the CLS, if the co-location is required by the Eligible Operator to access international submarine cable capacity on any submarine cable system from the CLS Licensee, and shall enclose with the application the following:
  - a) equipment layout plan at the co-location site at which co-location space is requested;
  - b) purpose of accessing submarine cable capacity;
  - c) details of co-location equipment proposed to be installed;
  - d) details of space and power requirements;
  - e) floor loading of the co-location equipment;
  - f) specification of the transmission tie-cable required;
  - g) type of optical fibre cable to be used;
  - h) address, phone number, fax and e-mail of applicant at which communications may be sent by the owner or operator of the cable landing station; and
  - i) any other requirement for co-location of equipment.
- 2) The CLS Licensee shall, within ten days after receipt of the application made under sub-regulation (1), acknowledge receipt and communicate the acceptance or rejection of the application to the requesting Eligible Operator referred to in sub-regulation (1).
- 3) A refusal of the requested co-location by the CLS Licensee shall be duly substantiated and communicated in writing to the applicant and the Commission within the same period of ten days of receipt of the application.

- 4) After receipt of acceptance from the CLS Licensee under sub-regulation (2), the requesting Eligible Operator referred to in sub-regulation (1) shall, within five days from the date of receipt of the confirmation, enter into a co-location agreement with the CLS Licensee.
- 5) If the CLS Licensee and the requesting Eligible Operator fail to enter into an agreement within **fifteen days** of the initial application of the Eligible Operator who makes an application under sub-regulation (1), either of the two parties may refer the matter to the Commission or to ECTEL in accordance with regulation 24.
- 6) A CLS Licensee and an Eligible Operator shall not enter into a co-location agreement unless the agreement is approved by the Commission acting in accordance with the advice of ECTEL pursuant to the provisions of the Act and applicable Regulations.
- 7) Where the Commission, upon the recommendation of ECTEL is of the opinion that the co-location agreement requires modifications so as to comply with the provisions of these Regulations and with the CLS Reference Interconnection and Access Offer, the Commission may require the parties to the agreement to modify it and the parties shall make the modifications and submit, within fifteen days of receipt of the requirement for the modifications, the agreement after incorporating the modifications, for approval to the Commission.

#### **18. Allocation of alternative co-location space**

- 1) If the CLS Licensee is unable to offer, due to space limitations or any other valid reason, the physical co-location requested by Eligible Operator, who makes an application under regulation 11 (1), the CLS Licensee shall take reasonable measures to give an option of virtual co-location to enable the CLS Licensee to have access facilitation services.
- 2) If an Eligible Operator who makes an application under regulation 11 (1) is offered, due to space constraints at cable landing station or any other valid technical reason, a virtual co-location facility by the CLS Licensee, the CLS Licensee shall make available required elements, including ducts within the building, for the purpose of running an interconnection cable within the cable landing station for which the charges shall be payable and borne by the Eligible Operator.

#### **19. Additional co-location space and co-location equipment**

- 1) If the Eligible Operator intends to replace, modify or re-arrange any of its co-location equipment in the co-location space or install additional co-location equipment in the co-location space, it shall submit a request in writing to the CLS Licensee for the modification, rearrangement or additional co-location equipment or replacement.
- 2) Pursuant to sub-regulation (1), the CLS Licensee shall communicate, within ten days of receipt of the request, its decision for the replacement, modification or re-arrangement

and, as the case may be, the amount of additional charges or other requirements related to the replacement, modification or re-arrangement.

## **20. Authorization for physical access for co-location space at cable landing station**

- 1) If the application made by the Eligible Operator under regulation 9 has been accepted by the CLS Licensee, the Eligible Operator shall have the right to access the equipment co-located at the CLS or, as the case may be, at a virtual co-location point.
- 2) Pursuant to the access rights in sub-regulation (2), the Eligible Operator shall communicate the names of its personnel to the CLS Licensee, which shall allow them access to the co-location space and issue the authorization for physical access.

## **21. Co-location charges**

- 1) For the purpose of accessing co-location services at the Cable Landing Station or, as the case may be, at the virtual co-location point, co-location charges shall be:
  - d) payable by the Eligible Operator to the CLS Licensee;
  - e) based on cost-oriented rates.
- 2) The charges shall be determined on the basis of the cost of the facilities dedicated to the co-location service, the space and usage of the Eligible Operator, and on fair and reasonable conditions, compliant with these Regulations and the Act, to be agreed by the two parties.

## **22. Termination of co-location agreement**

- 1) The CLS Licensee may, in the event of the closure of a co-location site or the expiry of the lease of capacity, terminate the lease of co-location space after giving to the Eligible Operator a notice, in writing, of not less than twelve months from such closure or before the expiry of the lease of capacity, as the case may be, and the termination of the lease of co-location space shall take effect from the date specified in the notice. In case of closure of the co-location site, the CLS Licensee shall work closely with the Eligible Operator in order to find suitable alternatives that will allow the capacity service to continue to operate.
- 2) The CLS Licensee may, in addition to the circumstances specified in sub-regulation (1), terminate the lease of co-location space if-
  - a) the Eligible Operator ceases to hold a valid licence;
  - b) the Eligible Operator uses or allows to be used the co-location space in contravention of the Regulations or directions issued under the Act or any other law for the time being in force or in contravention of the terms of the licence;
  - c) the Eligible Operator removes or abandons its co-location equipment or keeps such space idle for a period of more than ninety days;
  - d) in relation to paragraphs (b) and (c), a notice of not less than thirty days has been given to the Eligible Operator.

- 3) Notwithstanding sub-regulations (1) and (2):
  - (a) the CLS Licensee shall provide a minimum period for co-location to ensure a reasonable balance between the need to encourage competition and that of safeguarding a reasonable return on the investments made for the co-location;
  - (b) the Commission shall ensure that the minimum period of commitment is not less than three years and the co-location offer can be extended beyond the initial period.
- 4) Upon termination of the lease of co-location space by the request by an Eligible Operator prior to the expiry of the term of the lease, any charges payable by the Eligible Operator shall not exceed co-location and backhaul circuit charges payable for a six-month period.
- 5) Upon expiry or termination of the lease of co-location space of the Eligible Operator, the operator shall remove its co-location equipment within a fixed time period agreed with the CLS Licensee and upon failure to do so the CLS Licensee may:
  - a) remove the co-location equipment and restore the co-location site to its original condition;
  - b) charge the Eligible Operator for the costs that it has incurred for the work done under paragraph (a).
- 6) Without prejudice to the rights of the CLS Licensee, the Eligible Operator may negotiate with the CLS Licensee or another member of the consortium of the submarine cable system, as the case may be, for any restoration arrangement including alternate transmission medium, if necessary.

## **Part 5**

### **Control by the Commission**

#### **23. Tariff monitoring**

- 1) Charges for access facilitation, co-location, backhaul circuit and related operation and maintenance fees shall be calculated in accordance with the principle of cost orientation set out in regulations 13 and 21 and the cost accounting methods defined by the Commission upon the recommendation of ECTEL.
- 2) On the basis of the cost calculation framework set out by the Commission, upon the recommendation of ECTEL, CLS Licensees shall determine the charges to be paid by the Eligible Operators, taking into account direct costs involved in the provision of access facilitation, international capacity, co-location services and backhaul circuits, and submit them to the Commission.
- 3) In submitting the CLS Reference Interconnection and Access Offer referred to in regulation 6 for approval to the Commission, CLS Licensees shall set out the details of

cost for each network element, costing methodology and calculation sheets or any other element for calculation.

- 4) The charges to be paid by the Eligible Operators shall be approved by the Commission on the recommendation of ECTEL on the basis of the cost accounting methods established and published by the Commission upon the recommendation of ECTEL in accordance with sub-regulation (1).
- 5) The charges payable under these Regulations shall be subject to the prior approval of the Commission to ensure transparency, fairness and reasonableness and to prohibit CLS operators from adopting an arbitrary approach to setting various charges.
- 6) If a CLS Licensee fails to provide the required documentation to facilitate the determination of costs that are payable, the Commission may make its own cost calculations in order to estimate costs on the basis of information at its disposal and determine tariffs of the charges to be paid by the Eligible Operators, as the case may be.
- 7) If the Commission and ECTEL lack sufficient information or have not yet implemented the cost accounting methods referred in sub-regulation (1), the Commission may, upon the recommendation of ECTEL and in a transitional manner, determine the tariffs of the charges to be paid by the Eligible Operators on the basis of international benchmarks.
- 8) The Commission, upon the recommendation of ECTEL, shall impose on offers by CLS Licensees the rates which it has determined under the sub-regulations (6) and (7).

## **24. Dispute resolution**

- 8) A dispute involving the conclusion, the execution or the termination of an agreement related to access facilitation, including the provision of capacity, co-location services or the provision of backhaul circuit between a CLS Licensee and an Eligible Operator, shall be submitted to the Commission, subject to the requirement that the Commission is satisfied that the parties have made reasonable efforts to amicably settle the dispute prior to submitting the dispute.
- 9) Pursuant to a dispute specified in sub-regulation (1), the Commission may-
  - c) refer the matter to ECTEL for an opinion; or
  - d) with the consent of the parties, refer the matter to ECTEL for mediation.
- 10) Where the Commission refers a dispute to the ECTEL for an opinion, the provisions of the Dispute Regulations 200[●], the Interconnection Regulations 200[●] and any other relevant law shall be applicable.
- 11) Where the Commission, with the consent of the parties to the dispute, refers the dispute to ECTEL for mediation, the ECTEL shall, in consultation with the parties, ensure that mediation commences within 2 weeks of the referral and, upon its conclusion, provide the Commission and the parties to the dispute with a report within three months after the receipt of the request by the Commission for mediation.

12) (1) The report specified in sub-regulation (4) shall include only:

- d) whether the mediation failed; or
- e) the parties came to an agreement; and
- f) where the parties came to an agreement, the terms of such agreement.

13) If mediation fails, at the end of the period of three months referred in sub-regulation (4), any of the parties to the dispute may lodge a petition with the Commission to resolve the dispute under the conditions set out in the sub-regulation (3).

## **Part 6**

### **Miscellaneous**

#### **25. Compliance**

- 5) The Commission may issue written orders or directions to a Licensee for the purposes of compelling compliance with these Regulations and a Licensee shall comply with any such orders or directions, once issued.
- 6) Where a Licensee refuses to obey any order, decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the Licensee to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow;
- 7) A Licensee that breaches or fails to comply with the provisions of these Regulations, or any order or direction of the Commission under these Regulations, shall be, upon a determination by the Commission or the Court, as the case may be, in breach of the terms and conditions of its License, and the Commission or the Court shall be empowered to impose the sanctions permitted by the Act, Regulations or other law prescribed by the Act.
- 8) A person who fails to provide any information requested by the Commission pursuant to these Regulations, commits an offence under section [●] of the Act.

#### **26. Publication**

Unless otherwise specified, the Commission shall ensure that any orders, decisions or directions of the Commission made under these Regulations are published on its website.



**SCHEDULE 1: CABLE LANDING STATION-REFERENCE INTERCONNECTION AND ACCESS OFFER –  
REQUIRED PROVISIONS**

**I. RATES**

Details of Charges	Amount payable
<b>1. Access Facilitation Charges</b>	
1.1 In relation to infeasible rights of use or lease of capacity, one time access facilitation charges per unit of capacity are payable on execution of the access facilitation agreement	
Charges	Per Unit Capacity
(i)	STM-1
(ii)	STM-4
(iii)	STM-16
(iv)	STM-64
1.2 In relation to a lease, recurrent access facilitation charges per annum per unit of capacity are payable upon execution of the access facilitation agreement and thereafter before the due date (anniversary of commissioning date) of each subsequent year.	
Charges	Per Unit Capacity
(i)	STM-1
(ii)	STM-4
(iii)	STM-16
(iv)	STM-64
<b>2. Annual Operation &amp; Maintenance (O&amp;M) charges</b>	
2.1 In relation to infeasible rights of use (not lease of capacity) charges per annum per unit are payable upon the execution of the access facilitation agreement and thereafter before the due date (anniversary of commissioning date) of each subsequent year.	
Charges	Per Unit Capacity
(i)	STM-1
(ii)	STM-4
(iii)	STM-16
(iv)	STM-64

<b>3. Co-location charges:</b> (Please specify items and their charges separately i.e. building space charges per square feet, duct & cable runway charges, distribution frame, AC power including standby AC Power, DC power, air conditioning including other physical / environmental services, security and site maintenance etc.)	
<b>4. Cancellation charges</b>	
<b>Items</b>	<b>Per Unit Capacity</b>
<b>(i)</b>	STM-1
<b>(ii)</b>	STM-4
<b>(iii)</b>	STM-16
<b>(iv)</b>	STM-64
<b>5. Any other charges payable by the Access Seeker or details not already specified in serial numbers 1 to 5 of this Form</b>	

*Note: The CLS Licensee shall provide to the Commission with the costing elements considered, their costs and costing methodology employed along with a calculation sheet in arriving at all charges submitted above for international submarine cable capacity access, O&M charges, Restoration Charges, co-location facilities, cancellation charges, etc., when the CLS Licensee submits the CLS-Reference Access Offer as per regulation 7 of these Regulations.*

**II. TIME PERIOD FOR PROVISION OF ACCESS FACILITATION SERVICES AND CO-LOCATION SERVICES BY OWNER OF CABLE LANDING STATION**

- 1) **Time period for provision of access facilitation services**
- 2) **Time period for provision of co-location services**

**III. SERVICE LEVEL AGREEMENT**

(...)

**IV. CO-LOCATION EQUIPMENT INSTALLATION AND MAINTENANCE GUIDELINES**

(...)

**V. SCHEDULES**

- 1) Form of application for request to Access Facilitation at Cable Landing Station for International Submarine Cable Capacity**
  
- 2) Form of Request for Co-Location Facility and Services**

## **Annex E**

### ***“Retail Pricing Regulations”***

**Recommendation of the Eastern Caribbean Telecommunications Authority  
(ECTEL)**

**To the National Telecommunications Regulatory Commissions**

**To consult on a Draft**

***“Retail Pricing Regulations”***

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## PART 1

### INTERPRETATION AND GENERAL PROVISIONS

#### 1. Citation and commencement

- 1) These Regulations may be cited as Retail Pricing Regulations, 20[●]
- 2) These Regulations shall come into operation on [Date].

#### 2. Interpretation

- 1) In these Regulations, unless the context otherwise requires, the terms not defined in these Regulations shall have the meaning given to them in the Electronic Communications Act, 20[●].

“**Act**” means the Electronic Communications Act, 20[●].

“**basic affordable service package**” means the basic tariff offers referred to in regulation 9.

“**bundle**” means a combination of electronic communications services, whether regulated or unregulated, provided by a Licensee under a combined rate or rate formula where the offering of one or more services within the combination is contingent on acceptance of the entire combination;

“**cost-orientation**” means pricing for services which are reasonably aligned with the underlying cost structure of the Licensee as determined by Commission review of relevant Licensee cost information, including appropriate assignment and allocation of direct, indirect, incremental, overhead, and shared costs.

“**club effect (or network effect)**” means a condition under which the value of a good or service depends on the number of other users or customers of the good or service.

“**on-net calls**” means telephone calls placed from a Licensee's subscriber to another subscriber of the same Licensee.

“**off-net calls**” means telephone calls placed from a Licensee's subscriber to a subscriber of a different Licensee's service.

“**price cap**” means an incentive-based method for regulation of the rates, terms and conditions established by a Licensee for one or more regulated services, which establishes a regulated cap or maximum allowed price for a service or “basket” of services, while permitting the Licensee to modify prices below the cap at its discretion;

“**predatory pricing**” means an anti-competitive pricing strategy under which a SMP Licensee deliberately sets low prices for a given retail service in order to compel non-dominant competitors to meet such low prices in the market, with the goal of undermining the profitability and ultimate commercial viability of such competitors.



“(vertical) price squeeze” means an anti-competitive pricing strategy under which a dominant, vertically integrated Licensee establishes high, above-cost prices for essential wholesale service inputs required by competitors, while also setting low retail prices for the competing downstream services, such that competitors cannot profitably purchase the essential wholesale inputs and also charge retail prices that match those of the dominant operators.

“regulated service” means an electronic communication service that is designated by the Commission as a regulated service under these Regulations, and consequently subject to some form of price regulation or control by the Commission;

“unregulated service” means an electronic communication service that is not designated as a regulated service;

### **3. Scope**

These Regulations apply to electronic communications services that a Licensee provides or offers to provide to one or more end-user customers and, for the avoidance of doubt, do not include services that a Licensee provides or offers to provide to other Licensees.

### **4. Powers of the Commission**

Subject to Sections 11 (1) (e) and 76 of the Act and these Regulations the Commission shall have the authority to regulate the tariff prices/rates, terms and conditions of electronic communications services offered by a Licensee.

- 1) Without limiting the generality of sub-regulation (1), the Commission shall have the authority to—
  - a) set, review and approve tariffs for any licensed electronic communications services;
  - b) declare a Licensee as holding significant market power in a relevant retail service market;
  - c) designate services as regulated or unregulated;
  - d) impose price regulation regimes upon regulated services where it deems appropriate;
  - e) substitute or amend tariffs or any part of a tariff for regulated services;
  - f) request information from a Licensee relating to the cost of services or other financial information relating to the revenues or operations of a Licensee;
  - g) monitor prices for all electronic communications services;
  - h) make such orders and issue such directions to a Licensee in respect of tariffs as it considers appropriate; and
  - i) do all things reasonable and necessary in respect of regulating tariffs to promote the purpose and objectives of the Act and ensure compliance with a licence.
- 2) Prior to the exercise of any of the powers of the Commission under sub-regulation (2), the Commission shall consult with ECTEL.

### **5. Minimum conditions applicable to all tariffs**

Each Licensee shall establish tariffs for electronic communications services which—

- a) are fair and reasonable;

- b) do not discriminate unduly among similarly situated persons;
- c) are not anti-competitive;
- a) are clear, up to date and easily accessible by the general public; and
- b) impose charges based on actual usage by a customer or service provision by a Licensee.

## PART 2

### REGULATING TARIFFS FOR ELECTRONIC COMMUNICATIONS SERVICES

#### **6. Rationale for Tariffs to be regulated**

- 1) In accordance with section 11 (1) (e) and in order to protect consumers, ensure fairness between consumers and Licensees, and ensure public health and safety, the Commission may establish retail tariff regulation regimes including the setting, review and approval of tariffs where -
  - a) electronic communications services are not subject to competition;
  - b) electronic communications services are eligible to receive compensation from the Universal Service and Access Fund;
  - c) electronic communications services are provided within a basic affordable service package;
  - d) one or a group of licensees has Significant Market Power in a relevant retail market;
  - e) there is evidence of anti-competitive pricing or conduct; or
  - f) such regulation is necessary in the public interest.
- 2) The electronic communications services specified in sub-regulation (1), with the exception of paragraph (e) are hereby designated as regulated services under these Regulations.
- 3) For the avoidance of doubt, sub-regulation (1) (b) is addressed in separate Regulations relating to the Universal Service and Access Fund.

#### **7. Electronic communications services which are not subject to competition**

- 1) For the purposes of these Regulations, electronic communications services are not subject to satisfactory competition where -
  - a) there is only one Licensee providing a public electronic communication service, being a monopoly; or
  - b) a Licensee provides a joint offer of electronic communications services that is subject to competition together with services for which it holds a monopoly.
- 2) The Commission, on the recommendation of ECTEL, shall add to or otherwise amend the list of regulated services specified in regulation 17, the electronic communications services which fall within the categories specified in sub-regulation 6 (1)
- 3) After carrying out the procedures described in regulation 18 the Commission, on the recommendation of ECTEL, may:
  - a) require the modification, and where appropriate, suspend immediately the commercialization of a Licensee service tariff until any identified anti-competitive or

abusive conditions arising from the tariff and other service terms and conditions are rectified;

- b) establish a price cap regime related to the tariffs for electronic communications services that are designated as regulated services under these Regulations;
  - c) impose direct price regulation or control with respect to electronic communications services that are designated as regulated services under these Regulations, for which a price cap regime is considered inappropriate; Such price regulation may be based on cost orientation, among other factors;
  - d) establish such other tariff regulation measures or remedies as are consistent with the provisions of these Regulations.
- 4) A Licensee which fails to provide to the Commission the information required on its services and tariffs falling under the categories set out in sub-regulation 6 (1) in compliance with regulation 18 commits an offence under section [97] of the Act.

### **8. Electronic communications services provided by a SMP operator**

- 1) Acting on a recommendation of ECTEL, the Commission may designate that a Licensee holds Significant Market Power with respect to a relevant retail market of electronic communications services where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and customers.
- 2) In making a determination as to Significant Market Power, the Commission shall take account of the “*Guidelines on market analysis and the assessment of significant market power in the Electronic Communications Authority (ECTEL) Contracting States for electronic communications networks and services*”, (the “Market Analysis Guidelines”) and the opinion of ECTEL.
- 3) The Commission, on the recommendation of ECTEL, shall add to or otherwise amend the list of regulated services specified in regulation 17 the electronic communications services provided by a Significant Market Power Licensee in the retail market where the dominance has been found.
- 4) A Licensee which fails to give to the Commission the information required on its services and tariffs where it has been designated as holding a Significant Market Power, in compliance with regulation 19 commits an offence under section [97] of the Act

### **9. Basic Affordable Service Package**

- 1) Each year, before October 15, the Commission in consultation with ECTEL and all Licensees may:
  - a) establish the characteristics of a basic affordable service package consisting of one or all of the following:
    - (i) a basic offer of mobile voice service;
    - (ii) a basic offer of mobile data service;
    - (iii) a basic offer of access to Internet service at a fixed location, limited to Licensees operating a fixed network;

- b) publish the list of Licensees obliged to provide the basic affordable service package;
  - c) prescribe the minimum service configurations and usage volumes for the basic affordable service package, together with maximum tariff prices and other conditions.
- 2) The Commission, on the recommendation of ECTEL, may require a Licensee to provide the basic affordable service package under a price cap regime, or under direct tariff control.

## **10. Anti-competitive pricing**

- 1) For the purposes of these Regulations, the Commission may consider any of the following acts by a Licensee to constitute anti-competitive conduct or acts of unfair competition—
- a) tying services together in such a manner that a customer is required when purchasing one service to purchase another service that the customer does not require;
  - b) agreeing with other Licensees on prices, by fixing, colluding with or otherwise agreeing to manipulate prices, terms, or conditions for services which has or is likely to have the effect of preventing, substantially restricting or distorting competitive pressures;
  - c) attempting to impose restrictions on the prices charged by another Licensee, where the first Licensee supplies the other with products or services;
  - d) entering into an exclusive agreement with a person on certain terms and conditions, such that the exclusivity has or may have the effect of substantially lessening competition in a related market;
  - e) abusive differentiation between on-net and off-net tariffs, or,
  - f) doing anything or taking any action which has or is likely to have the effect of preventing, substantially restricting, or distorting competition in any market.
- 2) For clarity in applying subregulation 1) (e), the Commission, upon the recommendation of ECTEL, may determine that differentiation between on-net and off-net tariffs is abusive, if this differentiation causes an anti-competitive club effect and:
- a) the difference between on-net and off-net tariffs is significant;
  - b) the evolution of on-net tariffs to off-net tariffs over time for each Licensee is correlated with each Licensee's respective market share;
  - c) the structure of the Licensee's traffic flows, namely the share of on-net traffic of the Licensee's total traffic exceeds the Licensee's off-net traffic by 15% or more.
- 3) The Commission may also consider any of the following acts by a Licensee designated as holding Significant Market Power in a relevant market to constitute anti-competitive conduct or acts of unfair competition:
- a) providing to a customer or group of customers more favorable tariffs than those offered to other customers, where such favorable terms are not justified by differences in cost, and where the preferred customer purchases another service that it does not require;
  - b) attempting to leverage a dominant position in one market so as to increase market share in a market where it is not the SMP Licensee, in order to gain an unfair advantage in the second market;
  - c) deliberately reducing retail prices for a service without making corresponding reductions in the wholesale prices for that service, where it also provides that service at wholesale prices to a competing provider, in order to gain an unfair advantage in the retail market;
  - d) utilizing revenues or the allocation of costs from one electronic communication service in which the Licensee holds SMP in order to cross subsidize another telecommunications service in which it does not hold such SMP.;

- e) practicing predatory pricing.
- 4) In the cases identified in sub-regulations (1) and (2), the Commission, on the recommendation of ECTEL, may:
- (a) order the cessation of the abusive conduct or specify changes in the conduct to limit the abusive aspects;
  - (b) require the modification and where appropriate, suspend immediately the commercialization of a Licensee's offer in the retail market until the modification is in place, in cases of serious and immediate damage to competition in the electronic communication market.

#### **PART 4**

#### **OBLIGATIONS THAT MAY BE IMPOSED**

### **11. Price Caps**

- 1) Under these Regulations, the Commission, on the recommendation of ECTEL, may establish a price cap plan to regulate the tariffs of:
  - a) electronic communications services included in the basic affordable service package specified in regulation 9;
  - b) electronic communications services provided under monopoly conditions pursuant to sub-regulation 7 (1)a);
  - c) any other regulated service included within the list identified in regulation 17.
- 2) The Commission, on the recommendation of ECTEL, shall designate which regulated services shall be subject to a price cap plan, and the terms, conditions, cap levels, adjustment factors, and other features of the plans.
- 3) The Commission, on the recommendation of ECTEL, may subject regulated services which are not designated to be subject to price cap plans, to alternative tariff control measures as specified in these Regulations.

### **12. Restrictions on Price Squeeze**

- 1) in assessing the tariffs of regulated services under the procedures set out in regulation 18 the Commission shall determine whether the tariffs lead to a situation where Licensees that depend upon wholesale services provided by vertically integrated competitors face conditions in which their ability to compete is significantly impeded by a vertical price squeeze imposed by the

Significant Market Power Licensee (i.e., if retail prices are lower than wholesale access prices plus additional costs).

- 2) a potential vertical price squeeze condition may also be investigated by the Commission when electronic communications services are supplied as a part of a bundled package.
- 3) the Commission, on the recommendation of ECTEL, may, where it finds evidence of a price squeeze, require modification and where appropriate, suspend immediately the commercialization of a Licensee's offer until the price squeeze conditions have been rectified.

### **13. Cost-Orientation of prices**

- 1) Where a Licensee designated as holding Significant Market Power is subject to the obligation to provide tariffs that are cost-oriented, the Licensee shall provide to the Commission under the procedures set out in regulation 18 all relevant information which:
  - a) clearly sets out how the tariff complies with the cost orientation obligation; and
  - b) sufficient, relevant documentary evidence to enable the Commission to assess the compliance.
- 2) A Licensee which fails to provide to the Commission the information required in sub-regulation (1) in compliance with regulation 19 commits an offence under section [97] of the Act
- 3) Where the Commission finds evidence that a tariff offered by a Significant Market Player Licensee in the relevant retail market does not comply with an obligation of cost orientation, the Commission, on the recommendation of ECTEL, may, in accordance with the procedures set out in regulation 19:
  - a) require the modification of the tariff to achieve its compliance with the obligation of cost orientation; and/or
  - b) determine the appropriate tariff and require the SMP Licensee to provide the service at such tariff.

### **14. Prohibition on Price Discrimination**

- 1) The Commission may examine and review a Licensee's tariffs to determine whether a Licensee may be imposing undue price discrimination between similarly situated customers.
- 2) Where the Commission finds evidence that price discrimination is occurring, the Commission, on the recommendation of ECTEL, may require modification and where appropriate, suspend immediately the commercialization of a Licensee's tariff until the price discrimination conditions have been rectified.

- 3) In the specific case of mobile communication services and in accordance with subregulations 10.1) (e) and 10.2) the Commission may do any or all of the following:
  - a) prohibit differentiation between on-net and off-net tariffs;
  - b) determine the maximum difference between the nominal rate of on-net communications and off-net calls;
  - c) determine the minimum difference between the terminating interconnection call charge and the retail price for on-net calls.
- 4) The obligations referred to in sub-regulation (3) may be imposed by the Commission at any time on all the tariffs of regulated or unregulated services offered by mobile service operators in the retail market.

#### **15. Compliance with relevant benchmarks.**

- 1) Without prejudice to the sanctions that can be imposed on Licensees pursuant to regulation 22 or any other provisions applicable under the Act, where a Licensee fails to provide to the Commission the information required to assess the compliance of its tariffs with these Regulations, or where it otherwise considers appropriate, the Commission may, on the recommendation of ECTEL, require the Licensee to establish tariffs for specified regulated services that are based on relevant benchmark prices in other markets, whether within the Eastern Caribbean or in other international markets;
- 2) The benchmark prices shall be based upon verified prices for comparable services in demonstrably similar electronic communications markets, where the Commission can reasonably estimate the relevant competitive price that would likely prevail for the services that are subject to the benchmarks.

#### **16. Procedures for discontinuance of tariff application**

- 1) At least 60 days prior to the proposed discontinuation of regulated service is to take effect, a Licensee applying shall
  - a) file an application with the Commission clearly setting out its reasons for discontinuing the service and ;
  - b) Simultaneously provide a copy of the entire application to ECTEL.
- 2) The Commission shall not unreasonably withhold approval for a Licensee to discontinue a regulated service.

## **PART 5**

### **PROCEDURES FOR IMPLEMENTING PRICE REGULATION**

#### **17. Designation of Licensees and regulated services to price regulation regime**

- 1) The Commission shall publish before October 15 of each year the list of Licensees and regulated services that shall be subject to pricing controls under these Regulations during the following year and the list shall define the obligations applicable to each regulated service in accordance with regulations 11 to 14.
- 2) The Commission shall determine and designate which regulated services on the list referred to in sub-regulation 17 (1) shall be subject to one or more price cap regimes or direct tariff regulation or control, or subject to forbearance from price regulation.
- 3) The Commission shall publish and maintain an up to date list of all regulated services on its website.
- 4) Where the Commission has determined and designated a regulated service to be subject to direct tariff control, the Commission shall review the tariffs for the service in accordance with regulation 18.

#### **18. Procedures for controlling regulated tariffs**

- 1) For regulated services subject to direct tariff control which are commercialized before the first publication of the list specified in regulation 17 (1), the following tariff approval measures shall apply:
  - a) within sixty [60] days of the date of the first publication of the list specified in regulation 17 (1), Licensees shall provide to the Commission, by any means which provides a receipt of acknowledgement, all their existing service offers meeting the criteria of the list;
  - b) the offers shall be presented with all the information identified in the Schedule;
  - c) within fifteen [15] days of the date of receipt of a description of the regulated service offers, the Commission may ask the Licensees to provide additional relevant information, within a period not exceeding 15 days;
  - d) within sixty [60] days of receipt of the information or of receipt of any additional information under paragraphs (b) and (c) respectively, the Commission shall approve or disapprove the tariffs of the regulated services;
  - e) where the Commission approves an application to provide a tariff, it may do so with or without conditions;
  - f) where the Commission determines that a tariff application shall not be approved, it may—
    - (i) order a Licensee to amend or withdraw the tariff in accordance with regulations 11 to 15; or



- (ii) prohibit a Licensee from introducing the tariff.
  - g) the Commission's approval or disapproval of a tariff under this regulation shall be made based upon the ECTEL's recommendation.
- 2) For regulated services subject to direct tariff control which are launched after the first publication of the list specified in regulation 17 (1), the following tariff approval measures shall apply:
- a) at least ten (10) working days prior to introducing a new regulated service or modification of an existing regulated service tariff, including permanent options or promotions subject to the provisions of regulation 20, Licensees shall provide the Commission with notice of the proposed new service or modification, including terms and conditions, by any means which provides for a receipt of acknowledgement;
  - b) the new offers and modifications shall be presented with all the information identified the Schedule;
  - c) within 5 working days of receipt of the application, the Commission may-
    - (i) approve the new offers or modifications;
    - (ii) ask the Licensee to modify new tariff offers or new options if they clearly violate the rules laid down by these Regulations and the changes imposed by the Commission shall be strictly limited to what is necessary for compliance with these Regulations; or
    - (iii) notify the Licensee of an extension of time for reviewing the new tariff offers or new options, provided that this additional period may not exceed one (1) calendar month and shall be justified by:
      - A. serious doubts by the Commission as to the compliance of the submitted offers or options with the provisions of these Regulations,
      - B. consultation with ECTEL, and
      - C. the need for complex economic analysis to determine compliance; or
    - (iv) prohibit a Licensee from introducing the tariff
  - d) after the extension of time for review, the Commission may notify the Licensee that it is permitted to market the new tariff offer or the relevant new option, if need be with the amendments imposed by the Commission upon ECTEL's recommendation;
  - e) if the Commission does not issue an opinion within the five working day period set out in paragraph (c), the Licensee concerned may consider the proposed new tariff offers or options as presumptively approved, and may introduce them in the market.
- (3) For avoidance of doubt, the five working day period specified in sub-regulation 2(c) begins upon the Commission's confirmed receipt of all necessary information identified in the Schedule.

(4) The same rules set out in sub regulations 1 to 3 apply to joint offers of electronic communications services, namely bundles, where –

- a) There is only one Licensee providing the bundle;
- b) The bundle includes at least one public electronic communication service, being a monopoly;

(5) In this case, the relevant Licensee shall file additional information to satisfy the Commission that–

- a) a bundle does not unfairly distort competition;
- b) customers shall be able to obtain the individual services comprising the bundle separately where they require;
- c) bundles are not provided in an unduly discriminatory manner;
- d) where the bundle relates to services subject to a price regulation regime, it complies with any rules contained in such regime; and
- e) the tariff for any bundle otherwise complies with these regulations.

(6) A Licensee shall comply with any Regulations adopted for tariffs related to bundles, provided that such guidelines shall not take effect until the expiration of at least 30 days from the date of publication of such guidelines on the Commission’s website.

## **19. Data for Market assessment**

(1) The Minister may, on the recommendation of the Commission, by Order published in the [Official] Gazette, specify the Data for Market Assessment required for the purpose of allowing the Commission to measure the impact of measures pertaining to these Regulations and to publish updated market assessment reports,

(2) Licensees subject to price regulation obligations must make available the information listed in any Order made under subsection (1) upon request by the Commission.<sup>4</sup>

## **20. Promotions and Market trials**

1) A Licensee may conduct a market trial for a short term promotion of a regulated service which may involve a change in tariff rates or terms for the regulated service, without prior approval of the Commission as specified in 18 (2), provided that–

- a) the market trial or promotion does not exceed 30 days in duration;
- b) the market trial or promotion is not similar to a market trial or promotion that concluded less than 60 days earlier; and
- c) the Licensee has filed a tariff and a description of the market trial or promotion with the Commission under the conditions set out in regulation 18 (2).

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<sup>4</sup> Optional Clause. ECTEL if it wishes may state the information which the Commission may require.

- 2) Where the Commission finds evidence of predatory pricing following the assessment of the tariff of a promotional offer under regulation 18, the Commission shall prohibit a Licensee from introducing the tariff.
- 3) Upon the expiration of the market trial or short-term promotion, a Licensee shall apply for approval under regulation 18 (2), as the case may be, where it proposes to make the tariff permanent.
- 4) A Licensee shall not undertake a similar market trial or a short-term promotion more than three times within a 12 month period.
- 5) In any case, the Commission upon ECTEL recommendation, may prohibit promotions related - or not related- to regulated services subject to the evidence that the aforementioned promotions do not meet minimum conditions established by these regulations or are anti-competitive

## **21. Competitive safeguards**

A Licensee may file the information under regulation 18 on an ex parte basis, and the Commission and ECTEL shall not disclose the information until such time as the Licensee has publicly launched the regulated service or the market trial or the promotion relating to the regulated service.

## **PART 6**

### **FINAL AND TRANSITIONAL PROVISIONS**

## **22. Compliance**

- 9) The Commission may issue written orders or directions to a Licensee for the purposes of compelling compliance with these Regulations and a Licensee shall comply with the orders or directions, once issued.
- 10) Where a Licensee refuses to obey an order, a decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the Licensee to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow.
- 11) A Licensee that breaches or fails to comply with the provisions of these Regulations, or an order or a direction of the Commission under these Regulations, is in breach of the terms and conditions of its licence and commits an offence under section [97]
- 12) A person who fails to provide information requested by the Commission pursuant to these Regulations, commits an offence under section [97] of the Act and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

### **23. Publications**

Unless otherwise specified, the Commission shall ensure that orders, decisions or directions of the Commission made under these Regulations shall be published on its website and be available, upon request, at its office.

### **24. ECTEL to make recommendations in writing.**

In any case where ECTEL is required, pursuant to these Regulations, to make a recommendation to the Commission, ECTEL shall provide the recommendation in writing, and the Commission shall not exercise its powers pursuant to these Regulations unless it is in receipt of the recommendation.

### **25. Transitional regime**

From the entry into force of these Regulations, the provisions of regulation 18 (1) shall apply to the procedure for the approval by the Commission on the recommendation of ECTEL of the tariffs for regulated services subject to direct tariff control which are already commercialized.

### **26. Revocation**

The Telecommunications (Retail Tariff) Regulations, 200 [●] are hereby repealed.

## **SCHEDULE**

### **Information to be provided for Controlling Regulated Tariffs**

#### **Category 1: permanent offer**

Notice required for a new permanent offer

- Trading name
- Launch date
- Description of the concept
- Target audience
- Pricing conditions
- All the information related to underlying cost clearly setting out how the tariff comply with the Regulations, supported by sufficient, relevant documentary evidence to enable the Commission to such compliance for Assessment
- Activation method (means, USSD code, etc.)

#### **Category 2: promotions**

Notice required for a new promotion

- Trading name
- Marketing period:
  - Subscription
  - Validity
- Description of the concept
- Target audience
- Pricing conditions
- All the information related to underlying cost clearly setting out how the tariff comply with the Regulations, supported by sufficient, relevant documentary evidence to enable the Commission to such compliance for Assessment
- Activation method (means, USSD code, etc.)
- List of advertising media (TV, radio, billboards, sms, web, social networks, etc.)

#### **Category 3: updating a permanent offer**

Notice required to update a permanent offer

- Trading name
- Launch date
- Description of the previous concept
- Target audience
- Pricing conditions
- All the information related to underlying cost clearly setting out how the tariff comply with the Regulations, supported by sufficient, relevant documentary evidence to enable the Commission to such compliance for Assessment
- Activation method (means, USSD code, etc.)

#### **Category 4: value added services**

Notice required for value added services

- Trading name
- Launch date
- Description of the previous concept
- Target audience
- Pricing conditions
- All the information related to underlying cost clearly setting out how the tariff comply with the Regulations, supported by sufficient, relevant documentary evidence to enable the Commission to such compliance for Assessment
- Activation method (means, USSD code, etc.)

## **Annex F**

### ***Consumer Protection Regulation (Specific Rules on Consumer Protection in the Electronic Communications Sector)***

**Recommendation of the Electronic Communications Authority**

**(ECTEL)**

**To the National Electronic Regulatory Commissions**

**To consult on a Draft**

***Consumer Protection Regulation  
(Specific Rules on Consumer Protection in the Electronic  
Communications Sector)***



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**PART I**  
**PRELIMINARY PROVISIONS**

**Citation and commencement**

1. (1) These Regulations may be cited as, 20[●]
- (2) These Regulations shall come into operation on [Date].

**Interpretation**

2. (1) In these Regulations unless the context otherwise requires –

“Act” means the Electronic Communications Act, 20[●]

“consumer” means a consumer of a Licensee to whom these Regulations apply and includes its customers, and subscribers;

“customer” means a consumer who subscribes to a public electronic communications service by entering into a contract with a Licensee and includes a retail customer;

“net neutrality” means the principle that service providers are obliged to treat all data on the internet the same, not intercepting, interrupting, blocking, degrading, discriminating or charging differentially, by user, content, site, platform, application, type of attached equipment, mode of communication or source or destination of communication;

"included value plan" means a mobile post-paid service plan under which the customer receives a larger amount of monthly included value than the minimum monthly charge he pays (e.g. for \$50 per month, receive \$500 included value), to use on a combination of eligible services across standard national mobile calls, standard national mobile SMS and national data usage, and the use of any of these three eligible services is not unlimited;

“over the top” refers to voice, video, television and other applications and services, which are accessible over the internet and transmitted over a telecommunications network;

“pre-paid mobile phone service” means a type of mobile phone account that requires its owner to purchase credit before services can be used;

"post-paid service" means an electronic communications product that can be used fully or in part prior to being paid for by the consumer;

“Regulations” means these Regulations unless otherwise stated;

"single price" means the minimum quantifiable price for the supply of the electronic communications services or goods at the time of the representation;

"small online advertising" means an online strip, a banner or tile advertising or the equivalent;

"special promotion" means an offer of limited duration, limited quantity or offered to a limited sub-set of consumers, such as discounts off electronic communications goods or components of electronic communications services.

"text advertising" means-

- (a) a Licensee-placed advertisement in newspapers, magazines and press inserts and service provider-generated flyers, leaflets, brochures and catalogues.
  - (b) service provider-placed outdoor static large format advertising, including advertisements displayed upon:
    - (i) public transport panels;
    - (ii) outdoor street furniture; or
    - (iii) billboards;
  - (c) online advertisements on a service provider's own website and service provider-placed advertising on other online sites, other than online strip, banner or tile advertising or the equivalent.
- (2) A word or expression that is used in these Regulations and is also used in the Act shall have in these Regulations the same meaning as it has in the Act unless the contrary intention appears.

## **Objectives**

3. The objectives of these Regulations are to-

- (a) ensure reasonable quality of service regardless of geographical location;
- (b) ensure access to free emergency telephone calls and to enable persons with disabilities or specific needs to access electronic communications services;
- (c) ensure net neutrality so that consumers are able to access and disseminate any content which does not contravene public policy or fundamental rights, as well as to access applications and services of their choice;
- (d) ensure that persons who use electronic communication services receive a written contract, which shall include specific details of tariffs and costs, and the manner in which the contract may be terminated if the Licensee changes its terms;
- (e) ensure that each customer can reasonably and reliably have access to information and receive assistance with regard to queries relating to the Licensee's services;
- (f) ensure the implementation by the Licensee of efficient procedures for the resolution of complaints and disputes with customers;
- (g) avoid abusive solicitations and misleading advertising by Licensees;
- (h) prevent unfair restrictions on customer choice and unduly burdensome customer contract terms and conditions;
- (i) ensure high standards of privacy and confidentiality for personal data stored or transmitted over the electronic communication network.

### **Guiding principles**

4. These Regulations are based on the following principles—
- (a) promoting the consumer as an active, well-informed and rational agent in the marketplace;
  - (b) promoting the conscientious provision of service by Licensees;
  - (c) ensuring transparency in the operations of Licensees, while equipping consumers with the information needed to make reasonably informed transactional decisions;
  - (d) maximizing the socio-economic benefits to all stakeholders in the sector, while respecting and guarding consumers' rights and privacy; and
  - (e) facilitating and promoting a regulatory environment in which all stakeholders, including consumers, are able to adapt to changing market conditions.

## **PART II PROVISION OF INFORMATION**

### **Disclosure and publication of information**

5. A Licensee shall-
- (a) provide or make available to consumers information on its products and services that is clear, accurate, free of material omissions, relevant, current, comprehensive and where required, is delivered in a timely manner;
  - (b) communicate with a consumer in a manner that is appropriate to the consumer's communications needs including those with special needs; and
  - (c) provide consumers with the ability to receive all relevant terms and conditions of its electronic communications services and products at no charge prior to concluding a contract by -
    - i. viewing and downloading them from a public website;
    - ii. accessing them in a physical format.

### **Publication of tariffs**

6. (1) In accordance with section 68 (3) of the Act, a Licensee shall publish the tariffs for its electronic communications services by –
- a) the format of a directory, if appropriate;
  - b) publishing current tariffs on the Licensee's website;
  - c) sending or providing a copy of the tariffs or any part of the tariffs to any customer or group of customers who requests such a copy at no charge; and
  - d) placing a copy of the tariffs in every registered office and place of business owned or controlled by the Licensee.
- (2) Tariffs shall be published to allow consumers the ability to review all applicable tiers of costs associated with the provision of the electronic communications services and product, having regard to the needs of the consumer.

## **Disclosure of other information**

7. A Licensee shall publish the following -
- (a) description of the services;
  - (b) standard rates;
  - (c) details of standard discounts and special and targeted tariff schemes in respect of –
    - i. access,
    - ii. where any subscription or periodic rental charge is applicable, details of which electronic communication services are included within such charges;
    - iii. all types of usage charges, and
    - iv. any maintenance service; and
  - (d) quality of service commitments and details on any compensation or refund policy, and
  - (e) installation and maintenance policy.

## **Hot Line**

8. (1) A Licensee shall provide a dedicated telephone line for the purpose of allowing persons to submit complaints.
- (2) A Licensee shall not impose a surcharge on calls made to the dedicated telephone line provided pursuant to sub-regulation (1).
- (3) A Licensee shall, in relation to calls made to it by persons about its electronic communications services and products:
- (a) cause its operators to provide information on all offers, electronic communications services and products relevant to the person's request;
  - (b) create a charging mechanism that:
    - i. prohibits 900 type charges (e.g. surcharges imposed for access to information services) or provides the ability to disconnect the call; or
    - ii. prohibits the imposition of any charges for calls made to the operator.
- (4) Each Licensee shall establish a call centre that is fully accessible via telephone and online and free of charge pursuant to quality of service parameters.

## **PART III**

### **CUSTOMER CONTRACTS**

#### **Approval of customer contracts**

9. (1) The Commission may require a Licensee to submit draft terms of service to it for approval, and may prescribe a timetable for review, approval and implementation of the terms of service.
- (2) Terms of service shall describe the basic terms of the relationship between the Licensee and its customers with respect to the provision and use of electronic communications services.

(3) The Commission shall, acting on the recommendation of ECTEL, approve draft terms of service, and may require changes that it considers appropriate.

(4) Approved terms of service shall replace existing terms used by a Licensee.

(5) A Licensee shall not disclose personal information about a customer unless the customer consents to the disclosure.

### **Customer Contracts**

**10.** (1) A Licensee shall-

- (a) make its standard form customer contracts available and provide a copy to the customer upon request at no charge;
- (b) retain the sections of its standard form customer contracts that contain the terms of offers which are withdrawn by the Licensee after the date that these Regulations come into force, for as long as customers continue to receive electronic communications services pursuant to the offers, to enable a response to consumer queries about offers which are no longer current; and
- (c) make available information about the activation and expiry date of any current customer contract that the customer has with the Licensee for an electronic communications service upon the customer's request for this information from the Licensee.

(2) A Licensee shall not:

- 1. require a customer to pay a fee for electronic communications services or products that the customer has not ordered;
- 2. charge a customer except for the charges specified by the Licensee for the provision of electronic communications services or products and agreed to by the customer.

### **Clear Contractual Terms**

**11.** (1) A contract between a Licensee and customers for the provision of electronic communications services shall specify the following minimum requirements in a clear, easily understandable and easily accessible form-

- (a) a description of the service to be provided;
- (b) description of the commitment period, the minimum service period, if any, and any minimum notice period to be given by the customer prior to terminating the contract outside of the commitment period;
- (c) the detailed charges applicable to the service, including-
  - i. any fixed recurring charges;
  - ii. any one-time charges; and
  - iii. usage charges (for voice calls, sms messages, data download and upload, and all other usage-based services and applications);
- (d) a description of the circumstances in which the customer may be disconnected by the Licensee;
- (e) any charges that apply upon termination of the contract, whether within or outside of the minimum service period;
- (f) details of the minimum service quality standards for the service and any applicable

- compensation arrangements which shall apply if quality service levels are not met;
- (g) a description of the Licensee's written complaints code and the dispute resolution process, including details of how a customer may lodge a complaint;
- (h) a clause stating the terms applicable to payment for the services; and
- (i) a clause disclosing the maximum period of time between issue of the bill and payment, and any fees for late payment.

**12. Protection against anti-competitive customer lock-in**

(1) A contract between a Licensee and customers for the provision of electronic communications services shall not -

- (a) include terms with the effect that at the end of a customer's commitment period, the contract can be automatically renewed for a further commitment period without the Licensee first obtaining the customer's express consent; or
- (b) enable the Licensee to impose a charge on a customer for termination of a contract within the minimum service period if that charge is disproportionate in relation to the payments that are still to be paid by the customer for the remainder of the commitment period.

(2) A Licensee shall-

- (a) provide a customer at least 21 days written notice, or such other notice as specified by the Commission, of any contractual service changes that are likely to-
  - i. substantially reduce the benefit of the contract or service to the customer;
  - ii. substantially increase the burden of the customer under the contract or service; or
  - iii. in relation to the customer, make the benefit or burden of the contract or service substantially different from that previously represented or contracted for;
- (b) allow a customer to withdraw from the contract without penalty upon receipt of the notice specified in paragraph (a); and
- (c) at the same time as the notice given in paragraph (a), inform the customer of the customer's ability to terminate the contract without penalty if the proposed change is not acceptable to the customer.

(3) A Licensee shall not-

- (a) tie services together in such a manner that a customer is required when purchasing one service to purchase another service that the customer does not require;
- (b) provide to a group of customers more favourable tariffs that are not justified by differences in cost, if that customer acquires another service that it does not require;

**Cancellation of contracts by customer - Minimum terms**

- 13.** (1) A customer may cancel his contract at any time by notifying the Licensee.
- (2) A cancellation shall take effect a minimum of one day following the date on which the Licensee receives notice of the cancellation or on the date requested by the customer.



- (3) Where a customer cancels a contract before the end of the commitment period, the Licensee shall not charge the customer a fee or penalty other than the early cancellation fee specified in sub-regulation \*\* (12).
- (4) When a subsidized device is provided as part of-
  - (a) a fixed-term contract, the early cancellation fee shall –
    - i. not exceed the remaining value of the device subsidy that has not yet been reimbursed; and
    - ii. be reduced by an equal amount each month, for the lesser of 24 months or the total number of months in the contract term, such that the early cancellation fee is reduced to \$0 by the end of the period.
  - (b) an indeterminate contract, the early cancellation fee shall-
    - i. not exceed the remaining value of the device subsidy that has not yet been reimbursed; and
    - ii. be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period.
- (5) When calculating the early cancellation fee, the value of the device subsidy shall be the lesser of-
  - (a) the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and
  - (b) the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the Licensee without a contract.
- (6) Where a subsidized device is not provided as part of a fixed term contract, the early cancellation fee shall-
  - (a) not exceed the lesser of \$50 or 10 percent of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months; and
  - (b) be reduced to \$0 by the end of the period.
- (7) A Licensee shall not charge an early cancellation fee for indeterminate contracts other than as specified in subsection 4(b).
- (8) Where a customer agrees to a contract which is subject to an early cancellation fee, a Licensee shall offer the customer a trial period lasting a minimum of 15 calendar days to enable the customer to determine whether the service meets his needs.
- (9) The trial period under sub-regulation (8) shall start on the date on which the service begins.
- (10) A Licensee may establish reasonable limits on the use of voice, text, and data services for the trial period.
- (11) During the trial period, customers may cancel their contract without penalty or early cancellation fee if they have –
  - (a) used less than the permitted usage; and

- (b) returned any device provided by the Licensee, in near-new condition, including the original packaging.
- (12) Where a customer self-identifies as a person with a disability, the Licensee shall extend the trial period to at least 30 calendar days, and the permitted usage limits shall be at least double the Licensee's general usage limits for the trial period.
- (13) A Licensee shall notify a customer on a fixed-term contract at least 90 calendar days before the end of the initial commitment period whether or not the contract will be automatically extended.
- (14) Where a Licensee offers a customer a device upgrade, the Licensee shall clearly explain to the customer any changes to the existing contract terms caused by accepting the new device, including any extension to the commitment period.

## **Billing**

- 14.** (1) A Licensee shall provide a bill to a customer, with regards to the provision of electronic communications service or products, which accurately represents and does not exceed the true extent of the amounts due for the service or products that are actually provided to the customer.
- (2) A Licensee who offers a direct debit facility shall ensure that its customers are able, on request, to verify all charges and direct debit authorization details.
- (3) A Licensee shall provide customers with bills-
- (a) at least once every three months at no charge;
  - (b) in paper form, or in electronic form if the customer consents;
  - (c) that are in a plain, simple and easy-to-understand format; and
  - (d) that provide accurate information on the services provided, the amounts due for each service and the method of calculation or tariffs for any service on which bills are based, including the number, location, and duration of calls, number of SMS text messages, amount of data transmission, or other relevant measures of usage.
- (4) Where a customer has chosen to receive electronic bills, a Licensee shall ensure that electronic bills are accessible by that customer on request, for a minimum of at least the preceding twelve months of the billing cycle.
- (5) A bill shall-
- (a) acknowledge payments made on the previous bill; and
  - (b) state any deadline by which non-payment may result in disconnection.

## **Plan with set included value**

- 15.** (1) A Licensee shall provide electronic notification to a customer who has subscribed to a plan with a pre-set included usage or value (such as an allowance for calls, SMS, or data), when the customer reaches 80% and 100% of the usage measure, monthly expenditure or other allowance permitted under that plan.
- (2) A notification under sub-regulation (1) shall-

- (a) be provided within 24 hours of reaching the allowance;
  - (b) be provided electronically, by email, SMS or other application; and
  - (c) clearly inform the customer that the limit of the relevant allowance has been reached and the implications for continued use of the service (including charges that will then apply or will apply to future usage).
- (3) A Licensee shall provide retail customers with the ability to prevent the limit of the relevant allowance from being exceeded, including through automatic restriction of service upon reaching the relevant allowance.

### **Sales by phone and internet**

16. (1) A Licensee may, in relation to sales conducted through the telephone or internet, impose upon customers a usage charge billed per minute commencing after the first minute of the call.
- (2) A Licensee shall cause to be provided to customers who conduct sales by phone or internet information on the rate of charges and the ability to disconnect from the service before any charge is imposed.
- (3) A Licensee may impose a usage charge for value added services.
- (4) A Licensee may collect charges on behalf of another Licensee, for any goods and services provided by that other Licensee.

## **PART IV PRE-PAID**

### **Terms and conditions**

17. Every Licensee shall publish on its website the terms and conditions of a pre-paid electronic communications service provided, sold, resold, issued, or distributed by such Licensee or its distributor.

### **Prohibited actions**

18. A Licensee that provides a pre-paid electronic communications service shall not to do any of the following-
- (1) assess or deduct from the balance of a pre-paid electronic communications service card or pre-paid electronic communications service account any fee or other amount for use of the pre-paid electronic communications service, except—
    - (a) the per minute rate or value for each particular destination called by the consumer;
    - (b) the rate for the amount of data sent or received; and
    - (b) fees that are disclosed under its Terms and Conditions.
  - (2) provide less data transmitted than promoted or advertised or to provide fewer minutes than the number of minutes promoted or advertised, or to charge a higher per megabit rate for

data than the rate promoted or advertised or to charge a higher per minute rate to a specific destination than the per minute rate to that specific destination promoted or advertised, on—

- (a) the pre-paid electronic communications service card;
  - (b) any point-of-sale material relating to the pre-paid electronic communications service;
  - (c) any other advertising related to the pre-paid electronic communications service.
- (3) provide fewer minutes than the number of minutes announced, promoted, or advertised through any voice prompt or text message given by the Licensee to a consumer at the time the consumer places a call to a dialed destination with a pre-paid telephone calling card or pre-paid telephone service.
- (4) Provide, sell, resell, issue, or distribute a pre-paid electronic communications service card or pre-paid electronic communications service that expires—
- (a) before the date that is 3 months after the date on which such card or service is first used;
  - (b) in the case of a pre-paid electronic communications service card or pre-paid electronic communications service that permits a consumer to purchase additional usage minutes or add additional value to the card or service, before the date that is 6 months after the date on which the consumer last purchased additional usage minutes or added additional value to the card or service.

## **PART V ADVERTISING AND PROMOTIONS**

### **Unfair commercial practices**

19. (1) A Licensee shall include all important conditions, limitations, qualifications or restrictions about an offer when advertising the offer in order to allow consumers to make informed choices and to avoid consumers being misled.
- (2) Notwithstanding the generality of sub-regulation (1), a Licensee shall not engage in the following practices –
- (a) use of headline representations as to a price or offer in circumstances where the overall impression of the price or offer is subsequently qualified by fine print terms and conditions that make it unlikely or impossible that a consumer, by the ordinary use of the service, could reasonably achieve the price or benefits offered in the headline representation;
  - (b) use of the term ‘unlimited’ or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in [Member State] is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;
  - (c) use of the terms ‘no exceptions’, ‘no exclusions’ or ‘no catches’ or equivalent terms without sufficient disclosure when referring to a price or service offer, unless there are genuinely no exceptions to the offer;

- (d) use of the term ‘free’ or an equivalent term to promote or advertise a handset or other hardware product or service unless the cost of the handset or other hardware product or service is not recovered from the consumer over the life of the contract by way of higher charges, including by way of higher call charges, higher recurring charges, higher early cancellation fees, or similar charges, compared to the costs that will be payable by the consumer over the life of the contract where the handset or other hardware product or service are not provided free of charge;
  - (e) use of headline representations as to the price for a particular product or service, unless that product or service is available for purchase at the advertised price without being part of a bundled product or service, or the advertised price is clearly identified as the price for that product or service when purchased as part of a bundled product or service;
  - (f) use of headline representations as to prices for an offer, unless exclusions are prominently displayed;
  - (g) use of unqualified headline representations as to ongoing prices for specified data usage allowances in circumstances where the price for the data usage is likely to increase within a reasonable period of use;
  - (h) advertise or promote network coverage unless the network coverage is generally available to consumers in the claimed coverage area;
  - (i) advertise or promote a periodic price to be paid for an electronic communications service without also prominently displaying (but not necessarily as prominent as the periodic price) the “single price”; and
  - (j) make claims in advertising in relation to broadband speed, network coverage and other performance characteristics of an electronic communications service unless the Licensee is able to substantiate the claims.
- (3) A Licensee shall publish on its website its Fair Usage Policy intended to assure that all broadband customers enjoy the same experience and have access to a quick and reliable service at all times.

### **Clarity in advertisements**

20. (1) A Licensee shall provide a level of detail in its advertising that is appropriate to the manner in which the advertising is displayed to consumers.
- (2) Pursuant to sub-regulation (1), a Licensee shall take the following actions -
- (a) cause the principal message and the main terms to be clearly captured in the body of the advertising;
  - (b) ensure that use of any disclaimers does not negate the principal message and main terms of the advertising; and
  - (c) take into account the typical amount of time that consumers are able to view or hear, or both view and hear, the particular advertising in deciding how much information to include in the advertising.

### **Special promotions**

21. (1) A Licensee shall communicate important limitations -
- (a) which apply to its special promotions to inform consumers of the limitations;
  - (b) in a manner that will most directly be communicated to and received by consumers.

(2) Pursuant to sub-regulation (1), a Licensee shall take the following actions -

- (a) disclose the terms of the special promotion and any limitations on availability, quantities, or other constraints;
- (b) disclose the end date for the special promotion; and
- (c) where there are special eligibility requirements, such as the provision of coupons, bundling with other products and services, or restrictions on a specific class of customers, the Licensee shall disclose each requirement of the special promotion in a clear and easily visible manner.

### **Standard Charges for text advertising**

22. (1) A Licensee, when advertising the price or dollar value of either an included value plan or a post-paid tariff for mobile telephone service using text advertising, shall-

- (a) prominently display the following three standard pricing elements when advertising an included value plan-
  - i. the price (prior to any discounts being applied) of making a one minute standard national mobile call;
  - ii. the price (prior to any discounts being applied) of sending a standard national mobile SMS; and
  - iii. the price (prior to any discounts being applied) of using one megabyte of data within (Member State);

provided that if any of the above usages are unlimited, the Licensee is not required to quote a standard price for the type of usage that is unlimited in the text advertising;

(2) In the case of post-paid data plans with an included data allowance, the Licensee shall prominently display the following standard pricing element when advertising the price or dollar value of a post-paid service the price (prior to any discounts being applied) of using one megabyte of data within (Member State), provided that if the usage is unlimited, the Licensee is not required to quote a price for the data usage that is unlimited in the text advertising.

### **Standard charges for brief online advertising**

23. When advertising using brief online advertising the price or dollar value of either an included value plan or a post-paid tariff for mobile telephone service, a Licensee shall ensure that the page to which the small online advertising links, displays more detailed pricing information and the standard pricing elements as described in this regulation.

### **Disclaimers**

24. (1) A Licensee shall ensure that disclaimers are clear and understandable, having regard to the type of advertising.

(2) Pursuant to sub-regulation (1), a Licensee shall take the following actions -

- (a) ensure that a disclaimer does not negate the principal messages of advertising; and
- (b) ensure that a disclaimer is clear and understandable, having regard to the type of advertising, including the medium or format used and its intended audience.

## **Fair sales practices**

**25.** (1) A Licensee shall-

- (a) ensure that its sales representatives are appropriately trained to promote and sell its electronic communications services in a fair and accurate manner to assist consumers in making informed purchasing decisions;
- (b) ensure that the conduct of its sales representatives is monitored periodically to assess the manner in which they interact with consumers, and take steps to address emerging or systemic deficiencies in the sales conduct; and
- (c) monitor complaints about the sales conduct of the Licensee's sales representatives and take steps to address areas of conduct generating multiple, repeated complaints.

## **Emergency calls**

**26.** A Licensee shall provide free of charge access to emergency services [in accordance with the Numbering Plan].

## **Access for persons with specific needs**

**27.** (1) A Licensee shall make information available about electronic communications products and services offered by the Licensee specifically for consumers with physical disabilities or other special needs and the manner in which the products and services operate.

(2) A Licensee shall-

- (a) provide training to its sales representatives on the manner of interacting with disadvantaged or vulnerable consumers appropriately; and
- (b) take appropriate measures to ensure that persons with physical disabilities or other special need groups are able to access their premises and complaint handling processes.

(3) A customer with a physical disability or other special needs shall be able to nominate or rescind the nomination of an individual who may engage with the Licensee in respect of the customer's account, including with respect to the nominee -

- (a) receiving the customer's telephone bill;
- (b) paying the customer's bill on the customer's behalf; and
- (c) making enquiries about the customer's account on behalf of the customer.

(4) For the avoidance of doubt, the nominated individual referred to sub-regulation (3) shall not be required to enter into a contract with the Licensee and shall not be held legally liable by the Licensee for the individual's actions on behalf of the customer.

## **Protection of consumer data**

**28.** (1) A Licensee shall be responsible for protecting information it holds relating to its customers and their communications, and shall not collect, use, retain or advertise any customer information unless the customer's prior written approval is obtained or as permitted by law.

(2) A Licensee shall ensure that all customer information submitted to it is accurate, complete and valid for use.

(3) Customers shall have the right to review any of their information held by or on behalf of the Licensee, and to require the Licensee to correct any mistaken information.

### **Privacy and confidentiality**

**29.** A Licensee-

- 1) shall take all reasonable steps to ensure the confidentiality of customer communications, and shall not intercept, monitor or alter the content of a customer communication, except with the explicit consent of the customer or as permitted or required by applicable laws of [Member State];
- 2) shall identify the purposes for which customer information is collected at or before collection and shall not, unless permitted or required by law or with the consent of the person to whom the information relates, collect, use, maintain or disclose customer information for undisclosed or unauthorized purposes;
- 3) shall be responsible for customer information and customer communications records which are under its control or in its custody or that of its agents;
- 4) shall ensure that customer information and communications records are protected by security and technical safeguards that are appropriate to their sensitivity;
- 5) shall not disclose customer information to any person without the customer's consent unless disclosure is lawfully required or permitted under the laws of [Member State]; shall retain and use all customer-specific information only for purposes specifically set out in the Licensee's terms, or in accordance with rules or orders made by the Commission or in accordance with applicable laws; and
- 6) shall ensure that customers' information is accurate, complete and updated regularly for the purposes for which it is to be used.

### **Net neutrality**

- 30.**(1) A Licensee shall comply with the principles of net neutrality that requires electronic communications providers to enable access to all content and applications regardless of the source and without favouring, degrading, interrupting, intercepting, blocking access or throttling speeds to websites or content.
- (2) A Licensee shall apply non-discriminatory practices, between electronic communications services providers to the public for traffic routing and access to its services.
- (3) A Licensee shall ensure that its customers have the ability to access and disseminate information as well as access applications and services of their choice, thus facilitating the use of over the top services (OTT).

## **PART VI COMPLAINTS HANDLING**

### **Right to submit complaints**

- 31.** (1) The customer has a right to communicate with the Licensee regarding queries about its services or products or to complain about its services, products or any related matter.
- (2) A customer complaint or query may be made via customer assistance telephone numbers, email to a customer service email address, fax or posted letters, or using a complaint form available at all places of business or customer service centres of the Licensee.



- (3) A Licensee shall make available copies of their complaint forms together with a receptacle for its submission at all places of business and customer service centres.

### **Toll free customer services**

**32.** (1) Every Licensee shall implement toll-free customer care service telephone lines for all categories of services provided that at a minimum—

- (a) they are available for a minimum of eighteen hours a day; and
- (b) customer care and assistance services, which include fault clearance assistance, are provided.

- (2) A Licensee shall bear all costs associated with its provision of the toll-free service, including any interconnection costs.

### **Complaint handling procedure**

**33.** (1) This regulation shall not apply to-

- (a) complaints or specific consumer issues that are the subject of legal action; or
- (b) complaints made in respect of, or on behalf of consumers by entities levying fees or charges for their services, other than legal practitioners.

(2) A Licensee shall implement a complaint handling process that-

- (a) is consumer focused and easy to use;
- (b) is free of charge, except for-
  - i. any relevant call costs;
  - ii. the provision of information where -

- A. a consumer or former customer requests access to information held by the Licensee about the consumer or former customer which was collected by the Licensee more than 2 years prior to the date of the request, unless the complaint relates to an interference with the privacy of the consumer by the Licensee; or
- B. the free provision of the information in the form or quantities requested is inconsistent with the Licensee's standard form customer contract unless the complaint relates to an interference with the privacy of the consumer by the Licensee;

in which circumstances, the Licensee may levy a charge to recover its costs;

- (c) is approved by, and provides that the Chief Executive Officer or the designate of the Licensee is responsible for ensuring its implementation, operation and compliance in accordance with the requirements of this regulation;
- (d) is under the direction of a senior manager who is responsible for maintaining its regulation;
- (e) clearly states that consumers or former customers have a right to make a complaint and that a proposed resolution of the complaint shall be accepted by a consumer or former customer before a Licensee is required to implement it; and
- (f) specifies the response times for individual steps in the management of complaints.

- (3) A complaint handling process under this regulation shall include-
- (a) providing a number which is free, local or at low cost when accessed from the service provided by the Licensee;
  - (b) setting out how, when and where a consumer or former customer can make and monitor the progress of a complaint;
  - (c) allowing a complaint to be made by letter, telephone, fax, online or email;
  - (d) where a Licensee has retail operations, allowing a complaint to be made in person in store;
  - (e) providing assistance to a consumer or former customer to formulate, lodge and progress a complaint including to consumers or former customers with disabilities, consumers or former customers suffering hardship and consumers or former customers from non-English speaking backgrounds;
  - (f) allowing consumers or former customer to use an authorised representative or an advocate to make a complaint; and
  - (g) setting out the circumstances in which a complaint shall be treated as urgent and how the management of urgent complaints differs from other complaints.
- (4) Pursuant to sub-regulation (2) (b) (ii), the Licensee shall inform the consumer or former customer of -
- (a) the proposed charge and notify the consumer or former customer of the option to pursue the complaint and pay the charge or to discontinue the complaint;
  - (b) the options for external dispute resolution before levying any charge under this regulation.
- (5) A Licensee shall not cancel a consumer's telecommunications service solely because, being unable to resolve a complaint with the Licensee, the consumer pursued his options for external dispute resolution.

### **Complaint management**

**34.** (1) Consumers or former customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee.

- (2) A Licensee shall demonstrate fairness, courtesy, objectivity and efficiency by:-
- (a) acknowledging a complaint-
    - i. immediately where the complaint is made in person or by telephone;
    - ii. within 2 working days of receipt where the complaint is made by email or fax;
    - iii. that is submitted via the Licensee's website or another website endorsed by the Licensee for that purpose.
  - (b) post;
  - (c) telephone and providing a recorded message without the need for direct contact with a staff member of the Licensee;
  - (d) where possible, seeking to resolve a complaint on first contact;
  - (e) implementing a process for the identification and management of urgent complaints;
  - (f) requiring the appropriate resolution of complaints including:

- i. ensuring relevant staff are aware of the potential remedies available to resolve a complaint;
  - ii. tailoring any remedy offered to address the root cause of the complaint and to address the individual circumstances of the consumer or former customer where these have been advised to the Licensee;
  - iii. where the complaints are indicative of a wider problem or issue, addressing the root cause of the problem or issue; and
  - iv. resolving billing errors in current bills;
  - v. delaying commencement of any legal proceedings while a complaint is being handled internally and for 7 working days after a consumer or former customer is advised of the outcome of their complaint;
  - vi. advising the consumer or former customer of the proposed resolution of their complaint within 15 working days from the date the complaint is received in accordance with sub-regulation (2) (a); and
  - vii. for urgent complaints, providing confirmation of the proposed resolution of the urgent aspects of the complaint and, if accepted by the consumer, implementing the urgent aspects of the resolution within 2 working days the date the complaint is received.
- (3) Where a Licensee does not believe that the complaint can be resolved in 15 working days, or within 2 working days for the urgent aspects of an urgent complaint, the Licensee shall advise the consumer or former customer before working day 15 or working day 2 for urgent complaints, of-
- (a) the reasons for the delay;
  - (b) the specific timeframe for completion of the resolution;
  - (c) if the anticipated delay is a further 10 working days or more and is not the result of a declared mass service disruption, advising the consumer or former customer of their options for external dispute resolution;
  - (d) advising consumers or former customers of any delays to promised timeframes;
  - (e) providing a means for the consumer or former customer to monitor the complaint's progress;
  - (f) advising consumers or former customers of the resolution of their complaint, as soon as practicable after the Licensee completes its investigation of the complaint;
  - (g) days of the consumer's or former customer's acceptance of that resolution unless:
    - i. otherwise agreed with the consumer or former customer; or
    - ii. the actions are contingent on actions by the consumer or former customer that have not been completed;
  - (h) only closing a complaint with the consent of the consumer or former customer or if sub-regulations (4) or (5) have been complied with; and
  - (i) where a complaint is closed with the consent of the consumer or former customer, at the consumer's or former customer's requests, providing a written confirmation of the resolution of that complaint to be sent to the consumer or former customer within 5 working days.
- (4) Where a consumer informs the Licensee that he is dissatisfied with the timeframes that apply to the management of a complaint or seek to have a complaint treated as an urgent complaint, the Licensee shall -
- (a) inform the consumer of the Licensee's internal prioritisation and internal escalation processes;

- (b) if, after internal prioritisation and internal escalation the consumer remains dissatisfied, inform the consumer of the options for external dispute resolution.

(5) Where a consumer or former customer informs the Licensee that he is dissatisfied with the progress or resolution of a complaint or asks about his options to pursue a complaint further, the Licensee shall inform the customer or former consumer of-

- (a) the Licensee's internal escalation process; and
- (b) the options for external dispute resolution.

### **Complaint analysis**

**35.** (1) A Licensee shall implement processes and undertake analysis of its complaint information to identify and prevent the recurrence of complaints arising from systemic issues.

(2) Pursuant to sub-regulation (1), a Licensee shall take the following actions -

- (a) classify and analyse complaints at least every 6 months to identify recurring problems and issues including areas of non-compliance with these Regulations;
- (b) monitor complaints to identify emerging issues requiring specific attention and address those as soon as practicable; and
- (c) monitor and record progress to address areas requiring attention.

(3) Licensees shall ensure there is a process for the rapid and effective management of, and notification to appropriately senior management of any significant complaints or complaint issues.

### **Record keeping**

**36.** (1) Licensees shall keep records of complaints which include identification of the consumer or former customer making the complaint, the nature of the complaint, the steps taken to address the complaint and the resolution, if any, of the complaint.

(2) Pursuant to sub-regulation (1), a Licensee shall take the following actions -

(a) make and keep systematic records of complaints including -

- i. a unique reference number or such other means that will ensure the Licensee's ability to subsequently identify the complaint and its subject matter;
- ii. the issues raised as part of the complaint;
- iii. the requested resolution;
- iv. the due date for a response;
- v. the results of an investigation;
- vi. the proposed resolution of the complaint including any associated commitments and the date this is communicated to the consumer or former customer;
- vii. the Licensee's reasons for proposing its resolution;
- viii. the consumer's or former customer's response to the proposed resolution of the complaint, any reasons given by the consumer or former customer and if he has requested the resolution in writing, that this request has been made;
- ix. the implementation of any required actions;
- x. the underlying cause of the complaint; and
- xi. copies of any correspondence sent by or to the consumer or former customer;

- (b) monitor the progress of a complaint and any commitments made to the consumer or former customer in relation to a complaint.
- (3) Without limiting the Licensee's obligations under any other law, the Licensee shall retain the information under sub-regulation (2) for at least two years.
- (4) A Licensee shall ensure that personal information concerning a complaint is not disclosed except as required to manage a complaint with any relevant authorities or with the express consent of the consumer.

## **PART VII**

### **MISCELLANEOUS**

#### **Compliance**

- 37.** (1) The Commission may issue written orders or directions to a Licensee for the purposes of compelling compliance with these Regulations and a Licensee shall comply with the orders or directions once issued.
- (2) Where a Licensee refuses to obey an order, a decision or direction by the Commission under these Regulations, the Commission may apply to a judge of the High Court for an order compelling the Licensee to comply with the order, decision or direction and for such costs and other relief as the Court may allow.
- (3) A Licensee that breaches or fails to comply with the provisions of these Regulations, or any order or direction of the Commission under these Regulations, shall be in breach of the terms and conditions of its licence.
- (5) A person who fails to provide any information requested by the Commission pursuant to these Regulations, commits an offence under section [● ] of the Act.

#### **Publications**

- 38.** Unless otherwise specified, the Commission shall ensure that any orders, decisions or directions of the Commission made under these Regulations shall be published on its website.

#### **Amendment of the Telecommunications (Dispute Resolution) Regulations**

- 39.** The Telecommunications (Dispute Resolution) Regulations are amended-

- (a) in regulation 4 –
  - (i) by deleting the words "between a retail customer and telecommunications provider, or";
  - (ii) by deleting sub-section (3)and
- (b) in regulation 6 by inserting after the words or “ pursuant to regulation 4” insert the words “ or under section 29 of the Consumer Protection Regulations”.