



PRINCIPLE 3—Facilitating Market Development through proportionate regulation as far as practicable

Market Development and Proportionate Regulation

The statements provided in this document will be kept under review and amended as appropriate in light of further experience and developing law, practice, market conditions and any change to the Authority's powers and functions.

These comments provide the Authority's general view of facilitating market development via proportionate regulation and do not have binding legal effect.

Legislative Mandate

The Authority's mandate seeks to create the framework for the promotion, advancement and development of markets and the sector at large. Two of the objects of the Telecommunications Act Chap 47:31; Section 3 (a) and Section 3 (b), are based on such provisions for market development and are respectively stated as follows:

- *“an open market for telecommunications services, including conditions for fair competition, at the national and international levels;*
 - *“the facilitation of the orderly development of a telecommunications system that serves to safeguard, enrich and strengthen the national, social, cultural and economic well-being of the society.”*
-

The Authority also continues to promote market development via proportionate regulation based on the following elements of the Act:

- *Accounting Separation—Section 24(1) of the Telecommunications Act states that “...a concession for a public telecommunications network or a public telecommunications service shall require the concessionaire to adhere, where applicable, to conditions requiring the concessionaire to... (h) account for cost and keep such books of accounts and where the Authority prescribes by regulation the manner in which books are to be kept, to keep such books of accounts in accordance with such regulations”.*
- *Price Regulation—Section 29 (2) of the Act mandates that the Authority may: “...establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where- a) there is only one concessionaire operating a public telecommunications network or providing a public telecommunications service, or where one concessionaire has a dominant position in the relevant market; b) a concessionaire operating a public telecommunications network or providing a public telecommunications service cross-subsidises another telecommunications service provided by such concessionaire; or c) the Authority detects anti-competitive pricing*

Proportionate Regulation

The Authority upholds the principle that regulation should be proportionate, sufficient to achieve regulatory certainty and transparency, not unduly intrusive and/or burdensome. The Authority has generated relevant frameworks and policies such that a facilitative regulatory environment is created and the propensity to be unduly intrusive or burdensome is reduced. The Authority seeks to ensure that the regulatory environment remains transparent, encourages responsible treatment of consumers, promotes fair competition and incentivizes compliance in the most effective manner.



It is the Authority's view that the benefit of any proposed action should outweigh the costs, as far as practicable and that any action should be proportionate to the concern. Based on such consideration, the Authority will impose regulatory requirements that remain proportionate to market needs and are facilitative of development. Bearing in mind this principle of proportionate regulation, the Authority aims to:

- Intervene only when necessary and to propose remedies that will be appropriate to the risk posed, and costs identified and minimised.
- Adopt solutions that will be proportionate to the perceived problem or risk and justify the compliance costs imposed.
- Consider all of the options for achieving its objectives and contemplate alternatives that may be considered more effective.
- Enforce by imposing sanctions that would be proportionate to the risk posed and give consideration of an informative, rather than a punitive approach, where possible.

The Authority's intervention approach is subject to continuous review and will be based on ensuring:-

- the protection of consumers' interests
- the sustainability of the market
- reduction or avoidance of potential impact on the market.

Proportionate Regulation Defined:

"As regulators, their interventions and tools should deliver desired outcomes in the least burdensome way, based on the established best practice for designing regulation. This means imposing requirements only where necessary, considering alternatives to regulation and minimising the risk of unintended consequences. Competition in the market, or for the market, and consumer empowerment are usually the most efficient and effective ways of delivering benefits for consumers. Where this is not possible, regulation needs to be a cost-effective alternative."

Principles for Economic Regulation – April 2011

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf

Market Distortions and Failures

With the advent of liberalisation, competition was introduced in telecommunications markets, inclusive of Trinidad and Tobago's in 2004. As part of the Authority's aggressive liberalisation process, the Authority facilitated the creation of conditions in which consumers and competition can push markets to socially optimal results . The economic rationale for this approach was that by removing barriers to entry, and allowing consumers free choice amongst more authorised providers, competition and innovation would be fostered.

Further to the establishment of the Authority in 2004 , the statistics showed that as a result of competition, certain benefits were realised, including, greater choice of telecommunications providers for most services, reduced prices and increased access to basic telecommunications services.

However, there has also been evidence of market failures which may have arisen and which usually prevent consumers from taking full advantage of the benefits of competition. Such market failures primarily from the demand side include information asymmetries, unfair trade practices, unfair standard contract terms, high search and switching costs or imperfect decision-making processes.

Such failures are common across telecommunications markets and as a result regulators tend to institute a balance with coherent regulation, and competition law and enforcement. In like manner, the Authority, parallel to opening markets to competition, also placed a very high priority on establishing the much needed regulatory framework for regulating the liberalised sector.



Measures of Proportionate Regulation for Market Development

In the event of market failures and/or distortions of a pricing nature, the Authority is guided by its Draft Price Regulation Framework and Draft Pricing Regulations for instituting a regulatory measure proportionate to the respective failure.

A particularly common market failure in most telecommunications markets is the issue of dominance. Dominance is defined in typical legal sense as, “a position of economic strength affording a firm the power to behave to an appreciable extent independently of competitors, and customers”. In an economic sense, for a firm to be found dominant, it must be in a position to influence market price.

The Authority has in 2010, concluded a determination of dominance in the fixed voice market. A Dominance determination allows the Authority to apply a price regulation regime to the dominant player, thereby proportionately treating with the potential market impact, resulting in minimal impact on other authorised providers.

The Authority has further proposed the mapping of the following market distortions to proportionate regulatory regimes. The Authority also reserves the right to apply proportionate regulatory regimes to market failures based on the extant market conditions, on a case by case basis.

Act	Pricing Regulation for Wholesale Markets	Pricing Regulation for Retail Markets
Tied selling	Authorisation requirement	Authorisation requirement
Price-Discrimination	Authorisation requirement Floors and/or Caps	Authorisation requirement Floors and/or Caps
Pricing below Cost	Floors	Floors
Cross-subsidisation	Floors and/or Caps	Floors and/or Caps
Price Squeeze	Floors and/or Caps	Floors and/or Caps
Price Fixing	Caps and Retail-Minus	Caps
Non-cost based and/or discriminatory pricing of Essential Facilities	Cost-based pricing	N/A
Bid rigging	Floors and/or Caps	Floors and/or Caps
Vertical fixing	Floors and/or Caps	
Exclusive Dealing	Floors and/or Caps	Floors and/or Caps

Source: Draft Price Regulation Framework

For market failures and/or distortions not directly related to pricing, the Authority in 2014 also proposed amendments to the Telecommunications Act to make provisions for a competition framework within the regulatory landscape. These amendments were proposed based on the competitive landscape and the apparent gap in the regulatory framework when treating with anti-competitive issues.

**The Telecommunications Authority of
Trinidad and Tobago**

Please also see

**“Guiding Principles
on Regulatory Decision making”**

at:

www.tatt.org.tt

The Telecommunications Authority of Trinidad and Tobago

Email, write or call the Authority using the following:

Email : info@tatt.org.tt

Address: #5, Eighth Avenue Extension,
off Twelfth Street,
Barataria,

Republic of Trinidad & Tobago

Tel: 675-8288, 222-8288

Document Last Updated: 18th August 2015

Telephone : (868)675-8288 / 221-8288