

Appendix I: Decisions on Recommendations (DoRs) on the consultative document, Framework on Over the Top Services (OTTs) in Trinidad and Tobago

The following summarises the comments and recommendations received from stakeholders on the first-round consultation of this document (dated August 2022), and the decisions made by the Telecommunications Authority of Trinidad and Tobago (the Authority) as incorporated in the revised document.

The Authority wishes to express its appreciation to the following stakeholders for the submission of their comments:

1. Telecommunications Services of Trinidad and Tobago (TSTT)
2. Digicel (Trinidad & Tobago) Limited
3. Columbus Communications Trinidad Limited (CCTL)
4. Meta Platforms, Inc
5. Latin American Internet Association (ALAI)

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
1.		General	TSTT	<p>Telecommunications Services of Trinidad and Tobago Limited (“TSTT”) appreciates that the Telecommunications Authority of Trinidad and Tobago (“the Authority”) has given operators the opportunity to comment on these matters. It should be noted that TSTT's comments on this document do not preclude TSTT from making further comments in the future.</p> <p>TSTT notes that despite the urgency of this matter, exacerbated by developments in the industry over the past few years, it is unfortunate that it has taken the Authority seven (7) years to provide a framework document for consultation.</p> <p>This is further compounded by the recommendations in the paper which are of questionable enforcement given the current legislative framework.</p>		<p>The Authority thanks TSTT for its participation in the consultation of the Framework on Over-the-top Services (OTTs) in Trinidad and Tobago (the Framework). The Authority welcomes all future comments within the consultation process on the Framework.</p> <p>The Authority recognises the impact of OTTs both globally and locally and remains committed to developing best-practice policies and regulatory frameworks for their inclusion. The Authority first addressed OTTs in its consultative document, <i>Towards the Treatment of OTT Services</i> in 2015. Over the years as the issue evolved, the Authority has refined its focus on OTTs through various consultative initiatives and documents, including its Discussion paper on Net Neutrality and OTTs (2018). Throughout each stage of the consultation process, stakeholders’ feedback has been considered and incorporated, ultimately informing the development of the Authority’s Framework on OTTs.</p> <p>The Authority notes that there is no established universal approach to this complex issue and other countries, such as India, has experienced similar timelines as they converged towards a regulatory solution to OTTs.</p>

				<p>A recent study by Axon Partners Group, on behalf of CANTO (“the CANTO Report”), on the impact of OTT Services on Caribbean Networks identifies alarming trends:</p> <ul style="list-style-type: none"> - That four OTT providers account for over 60% of Caribbean Internet usage; - That Caribbean operators have invested, and continue needing to invest billions of US dollars to service their customers to support the consumption driven by OTT services; - That in the Caribbean, like Europe, there is a stagnation in revenue growth, while OTT providers’ revenue grew 150% between 2017 and 2021. <p>Apart from data usage of networks, OTTs have had a significant impact on switched voice calling both Fixed and Mobile. These trends are borne out in the Authority’s Market Reports which have demonstrated the decline of Mobile and Fixed voice revenue growth, associated with</p>	<p>The findings of the CANTO Report, and the concrete economic impact of OTT Services should be frontally addressed in TATT’s Consultation, otherwise, TATT would not be addressing the material issue that requires policy intervention</p> <p>TATT to evaluate the information for its own Market Reports holistically, that negative trends in market development are to be addressed by policy intervention which seek to not further burden regulated concessionaires, but instead focus on levelling the regulatory imbalance enjoyed by OTT’s</p>	<p>The Authority believes that feedback from stakeholders is of paramount importance to developing a strategy that is effective and beneficial to stakeholders within the local market. The Authority intends to complete its consultation of the Framework in the 2022/2023 financial year.</p> <p>The Authority thanks TSTT for data provided from the “CANTO Report”. The Authority will consider the findings expressed by TSTT in the CANTO Report and will make efforts to verify same. In particular, the Authority will consider its relevance to section 7: Recommendations on OTT Contributions: Strategy 3 Fostering OTT Investment Towards the Development of Digital Infrastructure in Trinidad and Tobago.</p>
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			<p>significant collapse of call numbers and volumes on both market segments.</p> <p>According to the Authority’s Annual Market Reports, between 2009 and 2020, fixed calls have declined from 550 million calls per annum to 200 million calls per annum or a 64% decline. Between 2019 and 2020 alone fixed voice calls declined by 26.1% from 265 million calls to 196 million calls, while on the mobile side for that same period between 2019 and 2020 mobile voice calls declined by 13.1%.</p> <p>This downward trend is not only reflected in a significant decline in local switched calling but also in international incoming and international outgoing calls. Between fiscal year 2020 (March 2020) and 2021 (March 2021) TSTT alone experienced 53 % decline in International Incoming calling as well as a 40% decline in international outgoing calling</p> <p>The trend is also evident in revenues in the Free to Air and Subscription broadcast networks where advertising revenues and household subscription numbers have been devastated.</p> <p>The CANTO Report surmises, with evidence, that these market trends are based on the invasive nature of OTT</p>		<p>The Authority acknowledges TSTT’s comments on the impact of OTTs on the local industry, and the recent trends in local service provider’s revenues.</p>
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			<p>services entering traditional telecommunications and broadcasting markets, and substituting regulated providers largely due to regulatory imbalances that exist.</p> <p>TSTT posits, like the authors of the CANTO Report, that the key matter to be addressed is the resolution of the regulatory imbalances, with a view that business models are implemented which ensure operators are given a fair share of returns for the carriage of OTT services. Such regulatory frameworks will also ensure that OTT Services adhere to principles of fair competition, consumer protection and Universal Service to which all regulated operators adhere.</p> <p>Given the disruptive nature of the Over-the-Top Services (“OTTs”), and the invasion in the lives and behaviours of consumers with increasing concerns being raised regarding the rights of consumers to particular standards/expectations for Quality of Service and Consumer Protection, and the expectation of customers for data protection and privacy, the Authority is not clear regarding its obligation and/or treatment of security concerns and the responsibility to the consumer regarding the same.</p>	<p>TSTT posits that relevant OTTs need to be brought into the fold to comply with principles of fair competition, consumer protection and Universal Service, and be required to make a monetary contribution or fair share to Concessionaire’s network capacity.</p>	<p>The Authority agrees that fair competition, consumer protection, contributions, data protection and consumer privacy are significant themes related to OTT services. The Framework addresses these issues and presents long and short-term strategies for their resolution. These include proposals for OTT authorisation, (sections 5.3 to 5.4), legislative reforms, (section 5.5) OTT local investments (section 7) and regulatory collaboration with other relevant agencies at domestic, regional, and international levels (section 6).</p>
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			<p>At least two (2) OTT Providers have been the subject of legal action regarding the use of customer data received via the use of its services. Both Meta Parent Company (also known as Facebook and Instagram) and Snapchat have been sued regarding their use of Customer Data. See articles below:</p> <ul style="list-style-type: none"> • Snapchat settles Illinois class-action lawsuit for \$35M - resolved in August 2022 https://www.usatoday.com/story/tech/2022/08/23/snapchat-illinois-class-action-lawsuit-settlement-35-million/7876602001/ <p>The lawsuit – known as "Boone, et al. v. Snap Inc." – accuses Snapchat of collecting "biometric data" without consent between 2015 and the present.</p> <ul style="list-style-type: none"> • Meta sued for violating patient privacy with data tracking tool in August 2022 https://www.theverge.com/2022/8/2/23288612/meta-hospitals-sued-patient-privacy-facebook-data-hipaa <p>The lawsuits allege that Meta and US hospitals violated the Health Insurance Portability and Accountability Act. An investigation found that the tool was sending information about patient health</p>	<p>The Authority to provide a comprehensive overview of how it intends to ensure adherence to the data protection and consumer privacy laws of Trinidad and Tobago, in accordance with its Short-Term or Long-Term Strategies.</p>	<p>The Framework recognises that the prevalence of OTTs, necessitates a greater focus on data protection and consumer privacy. As these areas may fall primarily under the purview of other authorities and legislations, the Framework underscores the Authority's role in collaborating and supporting these relevant agencies as part of its short and long-term strategies.</p>
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2.	1.	Introduction	Digicel	<p>Digicel welcomes the opportunity to comment on the draft Framework on Over-the-Top Services (OTTs) in Trinidad and Tobago dated August 2022 (Draft Framework).</p>		<p>The Authority thanks Digicel for its participation in the consultation of the Framework on Over-the-top Services (OTT) in Trinidad and Tobago (the Framework). The Authority welcomes all future comments within the consultation process on the Framework.</p>

3.	1	Introduction	CCTL	<p>The views expressed herein are not exhaustive. Failure to address any issue in this response, does not in any way indicate acceptance, agreement or relinquishing of Columbus Communications Trinidad Limited's (CCTL's) rights.</p> <p>Currently OTTs are free to enter the local markets in Trinidad and Tobago (1) without concern for local regulations or customs; (2) without accepting responsibilities and obligations that other local operators must bear, such as paying taxes, paying license fees, providing employment or investing in the local economy (3) without concern for preventing piracy of local content; and (4) without concern for protecting the data and privacy rights of local consumers.</p> <p>Since 2015 the Telecommunications Authority of Trinidad and Tobago ("the Authority") has conducted several consultations on the issue. Throughout these processes CCTL has encouraged the Authority to focus on addressing the regulatory imbalances by adjusting the regulatory framework so that there is a level playing field for all market players, and all players who benefit from the market contribute to the development of the local market. Otherwise, the sustained and</p>		<p>The Authority thanks CCTL for its participation in the consultation of the Framework on Over-the-top Services (OTT) in Trinidad and Tobago (the Framework). The Authority welcomes all future comments within the consultation process on the Framework.</p> <p>The Authority notes CCTL's concerns on OTTs operations locally and the applicability of the laws and conventions to them. The Authority recognises the proliferation of OTTs in the local market and remains committed to achieving the objects of the Act inclusive of establishing conditions for fair competition for all market players including OTT providers, promoting and protecting the interest of the public, and encouraging investment in telecommunications infrastructure.</p> <p>The Framework proposes long and short-term strategies to achieve the Act objectives through proposals for OTT authorisation and investment (sections 5.3 to 5.4), legislative reforms (section 5.5), OTT local investments (section 7) and regulatory collaboration with other relevant agencies at domestic, regional, and international levels (section 6).</p> <p>The Authority recognises the impact of OTTs both globally and locally and remains committed to developing best-practice policies and regulatory frameworks for their inclusion. The Authority first addressed OTTs in its consultative document, <i>Towards the Treatment of OTT Services</i> in 2015.</p>
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			<p>robust development of the sector could be at risk.</p> <p>In 2022, we are still consulting on the issue. There is an urgent need to take appropriate actions. In this regard, we welcome the opportunity to provide comments to this latest process.</p>		<p>Over the years as the issue evolved, the Authority has refined its focus on OTTs through various consultative initiatives and documents, including its the Discussion paper on Net Neutrality and OTTs (2018). Throughout each stage of the consultation process, stakeholders’ feedback has been considered and incorporated, ultimately informing the development of the Authority’s Framework on OTTs.</p> <p>The Authority notes that there is no established universal approach to this complex issue and other countries, such as India, has experienced similar timelines as they converged towards a regulatory solution to OTTs.</p> <p>The Authority believes that feedback from stakeholders is of paramount importance to developing a strategy that is effective and beneficial to stakeholders within the local market. The Authority intends to complement its consultation of the Framework in the 2022/2023 financial year.</p>
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4.	1	Introduction	Meta	<p>Meta Platforms, Inc. (“Meta”) is pleased to submit comments in response to the consultation by the Telecommunications Authority of Trinidad and Tobago (TATT) on the Framework on Over-the-Top (OTT) Services in Trinidad and Tobago (August 2022). We appreciate the opportunity to engage constructively on these issues. Meta’s mission is to give people the power to build community and bring the world closer together. As part of this mission, we drive the delivery and adoption of abundant, affordable, high quality Internet for everyone. This includes the Meta services - available through the Facebook app, WhatsApp app and Instagram app - that businesses and users in Trinidad and Tobago choose to enjoy.</p> <p>When considering a regulatory framework for OTTs, we encourage an evidence-based, proportionate approach that promotes innovation, and protects the interests of users and communities without creating hurdles that would stifle the digital economy. In particular, we recommend that TATT refrain from imposing burdensome requirements, such as classifying OTTs as telecommunications or broadcasting services or requiring authorization for the provision of such services. These requirements would fragment, stymie, and disincentivize the</p>		<p>The Authority thanks Meta for its participation in the consultation of the Framework on Net Over-the-top Services (OTT) in Trinidad and Tobago (the Framework).</p> <p>The Authority recognises the role OTTs play in driving and creating social and economic value within the digital economy. The Authority also acknowledges the importance of adopting a regulatory approach that encourages investment and innovation within the digital economy while protecting and promoting the interest of the public. These objectives are consistent with the Authority’s statutory mandates of the Act and the recommendations contained within the Framework.</p> <p>Another mandate of the Authority contained within Section 3 of the Act is to establish conditions for fair</p>
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			<p>provision of communications and online media services whose nature is cross-border, and whose utility lies in enabling Trinidadian businesses and creators to reach customers around the world.</p> <p>OTT services drive the digital economy, provide tremendous value to individual consumers, and empower small and medium sized businesses. This is of paramount importance as the World Bank estimates that “the digital economy is equivalent to 15.5% of global GDP, growing two and a half times faster than global GDP over the past 15 years.” Furthermore, the World Economic Forum predicts that “An estimated 70% of new value created in the economy over the next decade will be based on digitally enabled platform business models.” In short, the digital economy is driving global growth and OTTs are at the heart of that growth. In addition to economic growth, OTT communications services allow people to connect with families, friends, businesses, and others more quickly, meaningfully, and affordably than ever before. OTTs also level the playing field for small and medium sized Trinidadian businesses by giving them tools to easily reach and communicate with customers, improving their bottom line.</p>		<p>competition for all market players including traditional and OTT providers.</p> <p>The Framework recognises that some OTTs may be classified as a public telecommunications or broadcasting service as defined in the Act.</p> <p>Section 21 of the Act requires a person who provides a public telecommunications or broadcasting service to apply for approval in a manner prescribed by the Authority. Currently, the provisions of a public telecommunications service and a public broadcasting service require a service-based concession.</p> <p>The Authorisation Framework addresses a class concession regime for classes of concessionaires that warrant a lighter regulatory framework. The Authority shall consider the principle of proportionate regulation and the extent to which OTT services classified as a telecommunications and broadcasting services, based on the criteria contained in the Act, can pragmatically be regulated under a general authorisation regime. This may entail the adaptation of the Authorisation Framework to specify new classifications for OTT communications and media services.</p>
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				Trinidad and Tobago is making prudent investments in its digital economy, including in partnership with the Inter-American Development Bank and CAF - Development Bank of Latin America. We encourage TATT to consider how light touch regulatory policy can support the goals outlined in Trinidad and Tobago's Vision 2030 National Development Strategy, namely digital transformation, economic growth, and the use of digital tools to improve educational outcomes and digital skills development.		
5.	1	Introduction	ALAI	<p>The Asociación Latinoamericana de Internet (ALAI and known as the Latin American Internet Association in English) is pleased to submit comments in response to the consultation by the Telecommunications Authority of Trinidad and Tobago (TATT) on the Framework on Over-the-Top (OTT) Services in Trinidad and Tobago (August 2022). We appreciate the opportunity to engage constructively on these issues.</p> <p>When considering a regulatory framework for OTTs, we encourage an evidence-based, proportionate approach that promotes innovation, and protects the interests of users and communities without creating hurdles that would stifle the digital economy. In particular, we recommend</p>		<p>The Authority thanks ALAI for its participation in the consultation of the Framework on Net Over-the-top Services (OTT) in Trinidad and Tobago (the Framework).</p> <p>The Authority recognises the role OTTs play in driving and creating social and economic value within the digital economy. The Authority also acknowledges the importance of adopting a regulatory approach that encourages investment and innovation within the digital economy while protecting and promoting the interest of the public. These objectives are consistent with the Authority's statutory mandates of the Act and the recommendations contained within the Framework.</p> <p>Another mandate of the Authority contained within Section 3 of the Act is to establish conditions for fair competition at the national and international level.</p>

			<p>that TATT refrains from imposing burdensome requirements, such as classifying OTTs as telecommunications or broadcasting services or requiring authorization for the provision of such services. These requirements would fragment, stymie, and disincentivize the provision of communications and online media services whose nature is cross-border, and whose very utility lies in enabling Trinidadian businesses and creators to reach customers around the world.</p> <p>OTT services drive the digital economy, provide tremendous value to individual consumers, and empower small and medium sized businesses. This is of paramount importance as the World Bank estimates that “the digital economy is equivalent to 15.5% of global GDP, growing two and a half times faster than global GDP over the past 15 years.” Furthermore, the World Economic Forum predicts that “An estimated 70% of new value created in the economy over the next decade will be based on digitally enabled platform business models.” In short, the digital economy is driving global growth and OTTs are at the heart of that growth. In addition to economic growth, OTT communications services allow people to connect with families, friends, businesses,</p>		<p>Further, Section 21 of the Act requires a person who provides a public telecommunications or broadcasting service to apply for approval in a manner prescribed by the Authority. Currently, the provision of a public telecommunications service and a public broadcasting service requires a service-based concession. The Authorisation Framework addresses a class concession regime for classes of concessionaires that warrant a lighter regulatory framework. The Authority shall consider the principle of proportionate regulation and the extent to which OTT services classified as a telecommunications and broadcasting services, based on the criteria contained in the Act, can pragmatically be regulated under a general authorisation regime. This may entail the adaptation of the Authorisation Framework to specify new classifications for OTT communications and media services.</p>
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			<p>and others more quickly, meaningfully, and affordably than ever before. OTTs also level the playing field for small and medium sized Trinidadian businesses by giving them tools to easily reach and communicate with customers, improving their bottom line.</p> <p>Trinidad and Tobago is making prudent investments in its digital economy, including in partnership with the Inter-American Development Bank and CAF - Development Bank of Latin America. We encourage TATT to consider how light touch regulatory policy can support the goals outlined in Trinidad and Tobago's Vision 2030 National Development Strategy, namely digital transformation, economic growth, and expanding the use of digital tools to improve educational outcomes and digital skills development.</p>		
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6.	1.2	Purpose	Digicel	<p>Digicel is disappointed that the Draft Framework is not more ambitious in its scope or proposed outcomes. Despite more than four years having elapsed since the Authority began public stakeholder discussions on the topic of OTT regulation through its consultative document <i>Discussion Paper on Net Neutrality and OTT Services in Trinidad and Tobago</i> (the Discussion Paper), little tangible progress appears to have been made on this most pressing issue.</p> <p>As a result, we are concerned that Trinidad and Tobago risks falling behind internationally and the ongoing losses to society that continue to accrue from inadequate regulation will be unable to be recovered.</p>		<p>Digicel’s concerns on the scope, proposed outcomes and associated risks of OTTs in Trinidad and Tobago are noted.</p> <p>The Authority recognises the impact of OTTs both globally and locally and remains committed to developing best-practice policies and regulatory frameworks for their inclusion. The Authority first addressed OTTs in its consultative document, <i>Towards the Treatment of OTT Services in 2015</i>. Over the years as the issue evolved, the Authority has refined its focus on OTTs through various consultative initiatives and documents, including its the Discussion paper on Net Neutrality and OTTs (2018). Throughout each stage of the consultation process, stakeholders’ feedback has been considered and incorporated, ultimately informing the development of the Authority’s Framework on OTTs.</p> <p>The Authority notes that there is no established universal approach to this complex issue and other countries, such as India, have similar timelines as they converged towards a regulatory solution to OTTs.</p> <p>The Authority believes that feedback from stakeholders is of paramount importance to developing a strategy that is effective and beneficial to stakeholders within the local market. The Authority intends to complete its consultation of the Framework in the 2022/2023 financial year.</p>
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					<p>Rather than leaving fundamental matters to be determined through a future investigation, it is recommended that the Authority act now to use the Draft Framework as an opportunity to determine that:</p> <ul style="list-style-type: none"> a. OTT voice and messaging services should be declared to be public telecommunications services under the Act; and b. OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act. 	<p>Given the wide variety of OTTs that exist, the Authority deems it imperative to assess on a case-by-case basis, whether an OTT service, or class of OTT services (that is, OTT services with similar service features and business models) can be classified as a telecommunications or broadcasting service. This assessment will be made based on the criteria contained in the Act's definitions of the terms telecommunications services and broadcasting services, and on the applicability of the relevant provisions in the Act.</p> <p>In the long run, to effectively regulate the full spectrum of communications and audio-visual media services, the Framework recommends that the relevant legislation be broadened to explicitly provide for these OTTs. The codification of these services would establish greater specificity and provide legal clarifications, where applicable, within the legislative and regulatory frameworks.</p>
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7.	1.3	Objectives	Digicel	<p>Digicel submits that the Framework’s objectives should expressly include a reference to make a declaration in respect of which known OTT services fit within the existing definitions of public telecommunications service and broadcasting service as those terms are defined in the Telecommunications Act (the Act).</p>	<p>Digicel submits that the Framework’s objectives should expressly include a reference to make a declaration in respect of which known OTT services fit within the existing definitions of public telecommunications service and broadcasting service as those terms are defined in the Telecommunications Act (the Act).</p>	<p>The Authority notes Digicel’s submission that the Framework include an express declaration of which OTT services qualify under the Act as telecommunications and broadcasting services.</p> <p>Given the vast number and types of OTTs, the Framework may not adequately capture all OTTs existing within the local market. Section 5.4 Framework recommends a case-by-case approach, whereby an OTT service or classes of OTT services are assessed against the criteria of a telecommunications or broadcasting service contained in the Act. Following this assessment and authorisation, where applicable, the Authority may publish a list of authorised OTT service providers on its website. Section 5.4.1 and 5.4.2 have been amended to state this.</p>
8.	1.3	Objectives	CCTL	<p>In formulating strategies and recommendations to address OTT services in Trinidad and Tobago, the Authority identifies its objectives as follows:</p> <ol style="list-style-type: none"> 1. present the definition of OTTs adopted by the Authority 2. outline the policy considerations for OTTs, including challenges and opportunities 3. examine approaches adopted internationally and their relevance within the local context 	<p>CCTL recommends that the Authority employ a collaborative approach to develop a specific and actionable plan with a defined timeframe within which to make appropriate policy and regulations to ensure fair competition between traditional telecommunications service providers (TSPs) and OTTs. Reforms done in other markets should be used to inform actions in the local market.</p>	<p>The Authority notes CCTL’s recommendations to employ a collaborative approach for the development of an actionable plan and timeframe for policies and regulations on OTTs.</p> <p>The Authority also notes CCTL’s reference to reforms in other markets and its recommendations for such reforms to inform actions in the local market.</p> <p>Section 5 of the Framework presents the Authority’s proposed plan for the authorisation and regulation of OTTs in Trinidad and Tobago, including short and long-term strategies. In the short-term, the Authority recommends an examination of specific OTT</p>

			<p>4. present the Authority's short-term and long-term strategies for addressing OTTs within its legislative framework.</p> <p>5. propose recommendations for the harmonisation of OTT- based policies and regulations at the regional level &</p> <p>6. explore options for OTT providers' investment within the industry, inclusive of infrastructure and local content development.</p> <p>These market changes have been taking place since the early 2000s. The Authority has conducted several consultations on the subject dating back to 2015. Given the significant impact that OTTs are having on the local market, a specific and actionable plan, with a defined timeframe within which to make appropriate policies and overall the regulatory framework to bring it in line with the current market realities is urgently needed.</p> <p>The stated objectives seem very academic in the face of the need for urgent reforms and actions to bring about regulatory balance. Additionally, there are developments on the issue in other markets across the globe that can be used to inform measures to be taken in the local market.</p>		<p>services against the existing legislative framework, to determine whether the OTT service legally falls within the scope of the Act. This entails an assessment of the definitions of the terms “telecommunications services” and “broadcasting services”, and the Act’s applicability to the OTT service in question.</p> <p>The Authority recognises there may be pragmatic issues in the authorisation and regulation of OTTs. Long-term solutions such as amendments to the legislative frameworks and regional collaborative initiatives may be required. These are presented in sections 5.7 and 6 of the Framework respectively.</p> <p>With respect to global reforms, the Authority continues to monitor international developments in OTT regulation with the aim of adopting a pragmatic approach customized for Trinidad and Tobago. In its efforts to promote fair competition, the Authority remains committed to engaging both local and foreign-based providers through various consultative initiatives.</p>
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9.	1.4	Legal and Regulatory Framework	TSTT	<p>TSTT believes that the Authority’s major dependence on Section 3 of the Telecommunications Act Chap. 47:31 (the “Act”) is troubling.</p> <p>Section 3 of the Act provides the Objects of the Act and confers no statutory authority or power to the Regulator.</p> <p>TSTT would have expected the Authority to develop further what it treats as a passing consideration: the requirements under Section 21, which, by its definition means the provision of public OTT voice services or OTT Broadcasting services in particular are subject to the Authority’s oversight.</p> <p>The question the Authority fails to answer throughout this consultation document is whether all, and if not all which, OTT Services are seen as “bypass” services, and thus unlawful under the Act, unless that provider receives a Concession from the Authority.</p> <p>In this regard, the comments on Sections 3 and 3.1 of the consultation document are instructive, a clearly the Authority must be guided by definitions under the Telecommunications Act.</p>	<p>The Authority should focus this section on the provisions of Section 21 of the Act, and the implications of this provision on the OTT Sector in Trinidad and Tobago.</p>	<p>Section 3 establishes the objects of the Act, which include, inter alia, establishing conditions for fair competition at the national and international levels; facilitating the orderly development of a telecommunications system; protecting the interests of the public; promoting universal access to telecommunications services; and encouraging investment in, and the use of, telecommunications infrastructure to provide telecommunications services. The Authority, in the development of its Framework on OTTs, is guided by these objects and therefore proposes recommendations and strategies that are consistent with their achievement.</p> <p>Section 1.4 of the Framework identifies section 21 of the Act, as the legislative basis for the authorisation of OTTs which qualify as a public telecommunications service or broadcasting service. Section 1.4 has been amended to make the significance of section 21 of the Act clearer.</p> <p>The Framework recognises that some OTTs may be classified as a telecommunications or broadcasting service and gives the criteria which would apply in making this determination.</p>
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10.	1.4	Legal and Regulatory Framework	Digicel	<p>Digicel is concerned that insufficient analysis has been undertaken of the options that are available within the existing legal and regulatory framework.</p> <p>While we acknowledge that the existing legal and regulatory framework is not perfectly suited to the regulation of OTTs nevertheless can be used to require OTT service providers to become concessionaires and to comply with the laws of Trinidad and Tobago.</p> <p>It is also disappointing that further consideration was apparently not given to following a cross agency approach to dealing with the OTTs, including potential for inclusion within the Trinidad and Tobago taxation framework.</p> <p>This is now becoming relatively common internationally, e.g. New Zealand and Australia require foreign service providers to register and for consumption tax (GST/VAT) to be paid on services provided. Further details on this are provided below.</p> <p>Such a collaborative approach is important for three reasons:</p> <p>(i) Firstly, it ensures regulatory consistency;</p>		<p>The Authority recognises that while there are challenges associated with the regulation of OTTs within the existing legal and regulatory framework, there are also avenues that can be pursued. Section 5.2 of the Framework presents the Authority’s approach for the authorisation and regulation of OTTs in Trinidad and Tobago. In the short-term, the Authority recommends an examination of specific OTT services against the existing legislative framework, to determine whether the OTT service legally falls within the scope of the Act. This entails an assessment of the definitions of the terms, “telecommunications services” and “broadcasting services”, and the Act’s applicability to the OTT service in question. The Authority’s interim approach to the classification of these services is addressed in section 5.4.</p> <p>The Authority acknowledges the importance of regulatory collaboration with relevant agencies in formulating and implementing policies for digital services such as OTTs. Where applicable, the Authority shall establish collaborative initiatives with other local regulatory bodies to pursue mutual interests with respect to OTT authorisation and regulation, and offer support where required. Section 6 has been amended to include this elaboration.</p>
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				(ii) Secondly, it will help to identify areas where a collaborative approach will deliver greater public benefits, including from increasing the country's taxation basis; and (iii) Thirdly, it will help to resolve the competitive distortions that arise between traditional suppliers of telecommunications services who are subject to corporation tax, VAT and a range of other taxes and levies.		
11.	1.4	Legal and Regulatory Framework	CCTL	<p>The Authority refers to section 3 of the Telecommunications Act Chap 47: 31 (the Act), which sets out the objects of the Act, and section 21(1) requiring a concession granted by the Minister, for persons to operate public telecommunications networks and provide public telecommunications or broadcasting services, as the legislative basis for regulating OTTs.</p> <p>CCTL considers that these objects of the current Act are broad enough to cover OTTs. The examination and discussion need to be extended to focus on the changes needed to overall other areas of the Act and supporting regulations, to bring these in line with the existing market realities and create a level playfield for TSPs and OTTs.</p>	<p>The existing legal and regulatory framework should be examined to identify all aspects that needs to be addressed, to create a level playing field for TSPs and OTTs.</p> <p>The Authority should enforce the provisions of the Act against persons or entities advertising and providing subscription television services in Trinidad and Tobago without a concession.</p>	<p>The Authority notes CCTL's recommendation to examine the legal and regulatory framework to identify all aspects that needs to be addressed, to create a level playing field for TSPs and OTTs. Section 5.4.2 recommends that in the Authority's classifications of an OTT service as a telecommunications or broadcasting service, the relevance of provisions in the existing legislative framework be considered. This entails an assessment on the extent to which the rights and obligations contained in the Act and detailed in section A and section C of the Concession, can reasonably apply to the OTT or class of OTTs in question. Considerations include, but are not limited to, areas such as anti-competitive conducts, QoS, consumer rights, interconnection, access to facilities and universal service obligations assess.</p> <p>The Authority recognises that the legal and regulatory framework may need to be expanded to address specific issues related to OTTs, not previously considered. Amendments to the</p>

			<p>TSPs operate on the basis of concessions granted by the Minister, while OTTs provide competing telecommunications and media services without the requisite concession. The various product markets are highly competitive, and TSPs continue to face various regulatory restrictions, e.g. rules relating to notifications for price changes, notifications for new products and product changes and quality of service regulations that were put in place to facilitate market liberalization, OTTs are not encumbered by these market rules. Additionally, TSPs face cost such as concession fees and universal service fees as well as other economy wide taxes, while OTTs do not face these costs. These are just some of the areas of regulatory imbalance that needs to be addressed.</p> <p>Given that the legal and regulatory framework lags technology and markets developments, a useful way forward would be to identify all aspects of the framework that needs to be addressed to create a level playing field for TSPs and OTTs.</p> <p>With respect to section 21(I) of the Act, CCTL considers that the Authority should take actions to enforce this provision against persons/ entities who are not holders of a concession but advertise the</p>		<p>legislative framework to incorporate OTT-related considerations are addressed in section 5.5 of the Framework.</p> <p>Section 1.4 of the Framework identifies sections 3 and 21 of the Act, as the legislative basis for the regulation of OTTs and makes recommendations consistent with these provisions. The Framework recognises that some OTTs may be classified as a telecommunications or broadcasting service,</p>
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				provision of cable TV services including monthly recurring subscription fees.		subsequent to which, section 21 and other relevant areas of the Act, including, where applicable, enforcement, shall apply. Section 5.4.3 of the Framework elaborates the Authority's proposed process for the authorisation of OTTs classified as a public telecommunications or broadcasting service.
12.	1.7	Other Relevant Documents	TSTT	TSTT is concerned that the Authority lists as related readings documents which have not been finalised. In that regard, the Framework on Net Neutrality in Trinidad and Tobago which is not completed should not be listed as related reading, as the policy proposals therein could be subject to change. Otherwise, it can be construed that the Authority does not intend to treat with the myriad concerns raised during the consultation phase – which would be evidence of gross negligence on the part of the regulator.	The Authority should remove all references to incomplete documents, or documents which are still subject to consultation.	Other relevant documents refer to documents recommended by the Authority to be read along the Framework for further information on related topics. Section 1.7 of the Framework has been amended to indicate which documents are in their draft phases at the time of publication of the Framework.
13.	2	Internet Trends and Perspectives	Digicel	Digicel notes the analysis undertaken by the Authority. It is clear from the information provided that the issue of OTTs needs to be addressed as a matter of urgency. It is Digicel's hope that this urgency is reflected in the		The Authority notes Digicel statement of the urgency of OTTs. The Authority through the work of its Framework on OTTs and other initiatives maintain its commitment to finding an appropriate regulatory solution for this issue.

14.	3	Definition of an OTT service	TSTT	<p>TSTT notes that the Authority suggests that “messaging” is a public telecommunications service. In this regard, TSTT points the Authority to the definition of “telecommunications services” means “a service using telecommunications whereby one user can communicate with any other user in real time, regardless of the technology used to provide such a service and includes a public telecommunications service, a private telecommunications service, a closed user group service and a radio communication service”</p> <p>Messaging services do not provide real time communication between users. Accordingly, messaging services do not meet the legal test outlined in the Act for a telecommunications service. As messaging services are not telecommunications services, they cannot fall under the suite of public telecommunications services regulated by the Authority. As such, any claim that the Authority has oversight of any type of messaging service is an example of regulatory overreach.</p> <p>Accordingly, policy statement 2 should be amended to limit OTT Communications under the consideration to voice only, or voice and broadcast (audio & video) only.</p>	<p>Policy statement 2 should be amended to limit the OTT Communications under consideration to voice only, or voice and broadcast (audio & video) only.</p>	<p>The Authority disagrees with the statement that OTT communications should be limited “to voice only, or voice and broadcast (audio & video) only”.</p> <p>The Authority directs TSTT to the arbitration panel’s decision dated 16th August 2006 in the matter between Digicel and TSTT. In that decision the panel found that as far as the user is concerned, for all intents and purposes, SMS services are instantaneous and can be used for real time communication; therefore meeting the definition of a telecommunication service. The decision of the panel as set out in pages 97-98, paragraph 5.1 states:</p> <p style="text-align: center;"><i>“For these reasons, the panel finds that SMS services can be used – even if they are not always so used – for real time communication and so are “telecommunications services”. As they are offered to the public, they are “public telecommunications services”, making them services to which the interconnection provisions of the Act and Concessions apply.”</i></p> <p>Accordingly, the Authority maintains the position that SMS messaging is a telecommunications service, and a similar consideration should be given to OTT messaging, where applicable.</p>
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15.	3	Definition of an OTT service	Digicel	<p>Digicel is broadly supportive of the definitions that have been adopted but disagrees that the proposed Framework should be limited to only OTT communications and OTT media services that “<i>may be a direct substitute for, and/or may compete with, a public telecommunications and/or broadcasting service</i>”.</p> <p>In our view, the Authority should not constrain itself in this way as it will inevitably confine the Authority to looking at future needs through a lens that has been focussed on past experience.</p>	<p>The proposed Framework should NOT be limited to only OTT communications and OTT media services that “<i>may be a direct substitute for, and/or may compete with, a public telecommunications and/or broadcasting service</i>”.</p> <p>This definition and the overall scope of the document should be revised.</p>	<p>At this time, the Framework’s scope of OTTs is closely aligned to that of the ITU’s, which focuses on “an application accessed and delivered over the public Internet that may be a direct technical/functional substitute for traditional international telecommunication services”. The Authority has extended its definition to cover, in addition to telecommunications services, broadcasting services.</p> <p>This allows for the application of the existing legislative and regulatory framework to cover OTTs that the Authority classifies as telecommunications and broadcasting services. Notwithstanding this, the Framework recommends amendments to the legislative framework to cover a wider array of services existing in and impacting the local market. The Authority may at a later date expand its scope to cover these future services.</p>
16.	3	Definitions	CCTL	<p>The Authority examined the definition of OTT by various organizations including the International Telecommunication Union (ITU) to support the following statements.</p> <p>Statement 1. <i>For the purposes of this Framework, and considering the definitions above, and ITU's in particular. the Authority shall adopt the following definition of an OTT service:</i></p>		<p>The Authority notes CCTL statement of having no issues with policy statements 1 and 2.</p>

				<p><i>Content, service, or application, accessed by the public via the Internet, that may be a direct substitute for, and/or may compete with a public telecommunications and/or broadcasting service</i></p> <p>Statement 2. <i>The scope of this Framework shall be limited to OTT communications (voice and messaging) and OTT media services.</i> CCTL has no issues with the above statements.</p>		
17.	3.1.1	OTT Voice Services	Digicel	<p>It should be noted that many app-to-app OTT Voice Services including WhatsApp still rely upon mobile numbering and messaging services for identity verification purposes.</p> <p>It is also the case that OTTs’ “networks” are much larger than traditional telecommunications service providers and can serve more customers.</p> <p>As such, Digicel disagrees that that seeking to distinguish between OTT VoIP services on the basis of whether or not they “<i>enable app-to-public switched telephone network (PSTN) connectivity</i>” is no longer meaningful and understates both the ubiquitous nature of OTT voice and messaging services and the extent to which they compete with traditional telecommunications services.</p>	<p>The distinguishing of OTT VoIP services, which enable app-to-app connectivity and those enabling app-to-public switched telephone network (PSTN) connectivity is archaic and should be removed.</p>	<p>Section 3.1.1 describes OTT voice services giving examples of its two main forms. The distinction has relevance in that it differentiates those OTTs with features more closely aligned to traditional telecommunications services through their connection to the PSTN.</p> <p>The Authority acknowledges that there are OTTs that rely on numbering and messaging services for purposes including identity verification. These apps and their use of the numbering resource shall be considered by the Authority, particularly in its assessment of an OTT as a telecommunications service.</p>

18.	3.1	Types of OTT Services	TSTT	<p>RE: 3.1.2 OTT Messaging Services As discussed above, OTT Messaging cannot be under the regulatory remit of the Authority as messaging is not deemed a telecommunications service under the Act.</p> <p>RE: 3.1.3 OTT Media Services OTT Media Services includes media products which are not broadcasting services.</p> <p>For example:</p> <p>(i) Video on Demand services are not considered broadcast services but are instead considered an alternative delivery mechanism for the entertainment industry. In that regard, the Authority should clarify which aspects of OTT Media are legitimately under its rubric of broadcasting services.</p> <p>(ii) Social media platforms such as Facebook, Twitter and Instagram facilitate the transmission of text and videos broadly. Is it the Authority's intention to seek to regulate such social media platforms? If so, this seems to be in direct opposition to the Government's published policies on telecommunications sector regulation and the Act.</p> <p>Generally, the Authority should avoid being so focused on the technology of</p>	<p>The Authority to clarify which types of OTT Media would be subject to regulation pursuant to the Act and identify for each aspect of OTT Media so deemed, under which provisions of the Act.</p> <p>Such would strengthen Section 1.4 of the document.</p>	<p>The purpose of OTT 3.1 is to describe the types of OTTs operational in Trinidad and Tobago which are may potentially fall within the scope for regulation.</p> <p>The criteria that the Authority would use to determine if an OTT media service is a public broadcasting service is presented in section 5.4.2 based on the Act's definition. Section 1.4 has been amended to include this legislative basis.</p> <p>On OTT Messaging, the Authority directs TSTT to its response in comment 18.</p> <p>With respect to social media platforms, the Authority advises that the scope of the Framework shall be limited to OTT communications (voice and messaging) and OTT media services. At this time, the regulation of social media platforms is beyond the scope of the Framework.</p>
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				delivery (with the references to IP packets) in this section of the document. TSTT reminds the Authority of the principle of technology neutrality which is a foundation of its regulatory approach since 2005.		
19.	4	Policy Considerations for OTT Services: Challenges and Considerations	Digicel	<p>Digicel supports the Authority’s concerns regarding OTT’s and that <i>“that their disruptive effects and unregulated presence may result in diminished consumer protection.”</i></p> <p>However, we are concerned that the Authority appears to be taking the position that, absent a change to the law, it is powerless to implement measures to protect to the interests of consumers to <i>“safeguard privacy, security and safety”</i>. In Digicel’s view that is not the case.</p> <p>Provided that OTTs are brought into the regulatory framework through the existing concession requirements, the Authority will be able to use its existing powers to afford consumers a much greater level of protection than exists at the present time. While we agree that future legislative amendment may be necessary or desirable to update the regulatory framework, we are of the view that the Act already provides a basis for the Authority to regulate OTTs now.</p>	<p>The Authority must act now and uphold the existing law by virtue of which</p> <p>(i) OTT voice and messaging services should be declared to be public telecommunications services under the Act; and</p> <p>(ii) OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act.</p>	<p>The Authority notes Digicel’s recommendation that OTT voice and messaging services be declared a public telecommunications services and subject to the requirements of section 21 of the Act.</p> <p>Section 5.4 of the Framework gives the Authority’s interim approach to the authorisation of OTTs. Given the wide variety of OTTs that exist, the Authority deems it imperative to assess on a case-by-case basis, whether an OTT service, or class of OTT services (that is, OTT services with similar service features and business models) can be classified as a telecommunications or broadcasting service. This assessment will be made based on the criteria contained in the Act’s definitions of the terms telecommunications services and broadcasting services, and on the applicability of the relevant provisions in the Act.</p> <p>The Framework further addresses the authorisation of OTT communications and media services following the assessment. Section 5.4.3 states the relevance of section 21 of the Act and the use of the Authorisation Framework to specify new classifications, where applicable for OTT communications and media services.</p>

20.	4.1	OTTs and Competition Concerns	TSTT	<p>TSTT notes and agrees with the Authority’s statement that different regulatory obligations have resulted in debates as to whether the differences foster unfair competition in the marketplace.</p> <p>However, it is our position that the issues go beyond differences in regulatory obligations and are also rooted in the differences in regulatory restrictions. As an example, traditional service providers may be subject to market reviews and ultimately, declarations of dominance which lead to restrictions in commercial operations brought about as a result of Pricing Regulations. OTT Service providers suffer no such risk.</p> <p>Indeed, the CANTO Report goes at length to discuss the asymmetric bargaining power of these OTT Providers compared to concessionaires, where the latter also contends with eroded local currencies, higher cost of capital, and eroded incoming international minutes and revenues.</p> <p>TSTT posits that these issues should not be isolated in analysis: For example, TSTT has long argued that:</p> <p>(i) the erosion of international revenues is directly related to OTT’s substituting the national international incoming market.</p>	<p>The Authority to expand on the statement to include differences in regulatory obligations and the restrictions brought about from the differences in the degree of regulation of both entities, so that the implications of regulating or not of OTTs in like manner to the Telephony Service Providers (“TSPs”) are not minimised.</p> <p>The Authority should outline its positions and strategies with respect to the long term market stability the context of its competition powers. Further, the Authority should elaborate on its proposals to treat with key areas of policy, associated with targeted sub market interventions, with a view to mitigating the risk of market failure.</p>	<p>The Authority notes TSTT’s recommendation to include “differences in regulatory obligations and the restrictions brought about from the differences in the degree of regulation of both entities”. Section 4.1 of the Framework has been amended to elaborate on these differences and its effects.</p> <p>The Authority notes TSTT’s comments on:</p> <ol style="list-style-type: none"> 1. OTT substitution, the erosion of international revenues and the increased cost of capital for concessionaires; and 2. the effects of 1 on the bargaining power of TSP with OTT provider. <p>The Authority also notes TSTT’s recommendations for the Framework to include the Authority’s approaches to long-term market stability, the context of its competition powers and its proposals to treat with market interventions and market failure.</p> <p>These are important issues that have guided the Authority’s considerations on the treatment of OTTs. The Framework provides strategies for OTT regulation through authorisation, where applicable, in the short term and legislative reform in the long term (section 5). The Framework also recommends regulatory collaborations with other regulators including competition authorities (section 6). Recommendations on OTT investment in broadband infrastructure in Trinidad and Tobago and the fostering of a collaboration framework for OTTs and</p>
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			<p>This erodes the forex earning capacity of the sector. This is a matter that can be treated with through policy action of the Authority.</p> <p>(ii) the erosion of earning capacity outlined in (i) above, increases their shortfall in forex to maintain operations, and increases the operational risk of concessionaires. These cumulatively contribute to the increased cost of capital for financing required by concessionaires to maintain their operations. Without treating with (i) above, this is a matter that cannot be directly treated with through policy action by the Authority.</p> <p>(iii) With reduced earning capacity and increased cost of capital, concessionaires are no longer capable of bargaining with unregulated OTT Providers who are entering domestic markets without fetter or oversight. Indeed, concessionaires have little or no recourse to treat with OTT Providers who seek to leverage their bargaining power unfairly. Without treating with (i) and (ii) above, this is outside the direct policy oversight of the Authority.</p> <p>Given the above, the Authority should introduce and consider in its Framework its concerns on treating with long term market</p>		<p>traditional service providers (TSPs) (section 7) are also included within the Framework.</p>
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				<p>stability and the context of its competition powers. Further, the Authority should elaborate on its proposals to treat with key areas of policy, associated with targeted sub market interventions, with a view to mitigating the risk of market failure. Indeed, there should be discussion of the limits of the Authority’s commitment to an “Open Internet” in the context of unfettered market entry by parties with no obligation, incentive or apparent inclination to invest in the overall market.</p> <p>Further, traditional service providers contribute to national development through the remittance of taxes, licence fees, submissions of subscriber numbers, etc. OTT service providers have none of these obligations, especially where they are not registered business entities in Trinidad and Tobago.</p>		
21.	4.1.1	OTTs and Competition Concerns	CCTL	<p>The arguments presented by the Authority suggest that there is an open debate as to whether the services provided by OTTs are functionally similar to those provided by licensed operators.</p> <p>In this same document, (pg. 12), in describing customer impacts it states, "<i>For example, with respect to voice calls, OTT substitutions are often associated with</i></p>	<p>The Authority has been consulting on the impact of OTTs in the local market since 2015 and should now make a clear statement on whether OTT services, in particular, the popular services such as WhatsApp, Facebook Messenger, Netflix and You Tube are substitutes to TSPs voice and TV services.</p>	<p>The Authority notes CCTL’s recommendation to make a “clear statement” on whether OTT services are substitutes to ‘TSPs’ voice and TV services.</p> <p>The Authority acknowledges that OTTs with similar features and functions of traditional services may be substitutable to these services, particularly in the view of the end-users. The Authority also acknowledges that there may be perceived differences in the nature and function of some OTTs so that they are not deemed as functional equivalent to</p>

			<p><i>savings 011 local and long-distance calls and roaming charges."</i> Substitution implies functionally similar services.</p> <p>The document refers to findings in the National Digital Inclusion Survey 2021 ("NDIS"), that 83% of the local population uses OTTs. The NDIS was a survey commissioned by TATT. The results of the survey found that the popular applications are WhatsApp, Facebook, Zoom and Instagram. With respect to TV viewing preferences, online streaming ranked third to STY and local TV.</p> <p>An examination of the Annual Market Reports for the period 2015 (the year TATT did the initial consultation of OTTs) compared to 2021 shows the following local market trends:</p> <table border="1" data-bbox="849 959 1400 1409"> <thead> <tr> <th></th> <th>2015</th> <th>2021</th> <th>% Change</th> </tr> </thead> <tbody> <tr> <td>Revenue from Tck.-coms & Broadcasting Sector, (M billion)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td>5.59</td> <td>5.04</td> <td>-100/4</td> </tr> <tr> <td>fixed Voice</td> <td>0.75</td> <td>0.34</td> <td>-54%</td> </tr> <tr> <td>Mobile Voice</td> <td>1.99</td> <td>0.95</td> <td>-52%</td> </tr> <tr> <td>Fixed Broadband</td> <td>0.76</td> <td>1.2</td> <td>600/4</td> </tr> <tr> <td>Mobile Broadband</td> <td>0.57</td> <td>0.93</td> <td>61%</td> </tr> <tr> <td>Average Revenue Per User(ARPU)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Fixed Voice</td> <td>1652</td> <td>1011</td> <td>-39%</td> </tr> <tr> <td>Mobile Voice</td> <td>938</td> <td>480</td> <td>-49%</td> </tr> </tbody> </table>		2015	2021	% Change	Revenue from Tck.-coms & Broadcasting Sector, (M billion)				Total	5.59	5.04	-100/4	fixed Voice	0.75	0.34	-54%	Mobile Voice	1.99	0.95	-52%	Fixed Broadband	0.76	1.2	600/4	Mobile Broadband	0.57	0.93	61%	Average Revenue Per User(ARPU)				Fixed Voice	1652	1011	-39%	Mobile Voice	938	480	-49%		<p>traditional services. Given the wide variety of OTTs in the market, the Authority stands by its statement that there is “merit in assessing the nature and function of these services to determine whether they are in the same relevant markets as traditional telecommunications services.”</p> <p>The Authority recommends this assessment be conducted on a case-by-case basis.</p>
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22.	4.2	OTTs and Consumer Impact	TSTT	In this section, the Authority seems to conflate OTT services and general online activity. This is dangerous, as it seems to reiterate the position that the Authority is seeking to regulate social media and e-commerce platforms – yet these are content-based/ value-added services which	The Authority should review this section, in conjunction with Section 3, to ensure that it is clear that the Authority is not seeking to regulate content services – something which is outside its remit according to the Act.	The Authority notes that the purpose of section 4.2 is to highlight both the positive and challenging impacts of OTTs on consumers. Examples of OTTs given within the section include OTT-VoIP and online video-on demand sites. The section does not indicate any intention by the Authority to regulate “social media and e-commerce platforms”. Those												

				<p>are wholly outside of the Authority’s regulatory remit pursuant to the provision of the Act.</p> <p>Further the CANTO Report suggests that OTT-driven annual costs to the Trinidad and Tobago market is estimated at approximately US\$39M (TT\$265.3M) – which estimates to 7% of retail revenues – without concomitant reinvestment into Trinidad and Tobago by these OTT providers.</p> <p>This reflects a two-fold drain on the economy – the cost of operators to upkeep and maintain networks for which they see minimal return, and the forex outflows associated with subscriptions services, advertising and other consumer costs that these services extract from the consumer populace of Trinidad and Tobago.</p>		<p>are outside the scope and definitions of OTTs focused on within the Framework. The Framework has been amended to reflect this.</p>
23.	4.2	OTTs and Consumer Impact	CCTL	<p>TSPs are subject to industry specific regulations as well as other economy wide regulation. Because OTT services are unregulated, consumer safeguards in areas such as consumer privacy and data protection are a concern. It underscores our position that the functional similar/ substitute services should be regulated by the same rules.</p>		<p>The Authority notes CCTL support for Statement 3. The Authority highlights that the Framework has been amended to include the term “where applicable” to the policy statement. This provides the added context that such policies and regulations shall apply to those OTTs determined to be under the ambit of the Act and the remit of the Authority.</p>

				<p>Statement 3 On OTTs and Consumer Impact:</p> <p>Pursuant to the Authority’s statutory mandate in section (c) of the Act, the relevant policies and regulations will be applied in areas pertinent to OTTs, to promote and protect the interests of consumers.</p> <p>CCTL supports Statement 3.</p>		
24.	4.3	Collaborative Opportunities between OTTs and TSPs and 7.5 Collaborative Framework for OTTs and TSPs	TSTT	<p>The Authority’s suggestions regarding collaborative opportunities are noted however, we do not consider these to be easily achieved and are not nearly realistic given the sheer magnitude of the OTTs when compared to telecommunications providers and the resultant massively unbalanced negotiating power which exists in favour of the OTTs.</p> <p>To simply state that collaborative opportunities exist between OTT providers and TSPs is to understate this reality; if this was truly the case, the parasitic existence of the OTTs on providers’ networks would not be a topic of discussion today.</p> <p>In this regard, we point TATT to the discussions above about asymmetric bargaining power that is a reality in treating with the larger OTT providers (whose market capitalization dwarfs that of</p>	<p>The Authority to reframe the sections identified in a way which does not minimise the barriers which exist to the so-called collaborative opportunities between OTTs and TSPs, particularly for TSPs who do not have a regional/international presence and are therefore national operators only, often at the mercy of the OTTs in the unbalanced regulatory environment.</p>	<p>The Authority notes TSTT’s comments on the challenges in establishing collaborative initiatives between OTTs and TSPs. Section 4.3 of the Framework has been amended to include a discussion on these challenges, including concerns on bargaining power between OTTs and TSPs in forming commercial arrangements.</p>

				domestic concessionaires). Again, it seems that the Authority's analysis is not based on consideration of actual data available to discuss the scale of the matters being discussed.		
25.	4.3	Collaborative Opportunities Between OTTs and TSPs	CCTL	<p>The Authority acknowledges that "OTT services, in particular, multimedia applications, are highly data intensive and require significant network resource for their optimal delivery. "</p> <p>Faced with this reality, and coupled with the revenue declines and margin squeeze, TSPs like CCTL have to evolve their business models and seek commercial opportunities to grow their revenues. The potential for collaborative opportunities between OTTs and TSPs does not absolve, regulators, in this case the Authority, of its responsibility, as provided for in the Act, to "advise the Minister on policies governing the telecommunications industry and issues arising at international, regional and national levels" and "... ensure the orderly and systematic development of telecommunications throughout Trinidad and Tobago. Urgent actions are needed at the policy and regulatory levels to support TSPs who invest in networks on which the various services ride.</p>	Given the global nature of the issue and the developments in other markets aimed at addressing the regulatory imbalance between TSPs and OTTs, CCTL recommends that developments in other markets are assessed with a view to adopt in the local market where appropriate.	CCTL's recommendations to assess and where appropriate adopt developments in other markets are noted. The Authority shall continue to monitor international developments in OTT regulation, including those identified in sections 5.1 and 7.1 of the Framework as well as closely examine the local telecommunications environment, with the aim of developing a pragmatic approach customised for Trinidad and Tobago.

				<p>This is a global issue, and there are developments in other markets that can offer some guidance to actions that can be taken to address the regulatory imbalance between TSPs and OTTs.</p> <p>Developments in South Korea, Australia and the United States of America are discussed in section 5.1.</p>		
26.	4.4	OTTs and Industry Investment	CCTL	<p>Here, the consultation document mentions studies done on the size of the global OTT media services market, estimated to reach US\$1,039.03 billion by 2027, and the resulting increase in data traffic. There is also mention of the growing call globally, for OTT providers to contribute to infrastructure investment in a more structured way. Reference is also made to legislative changes in Australia and Canada that would require OTTs to invest in local content.</p> <p>However, the section is silent on the realities in the local market. This, despite the fact that there have been previous consultations on the subject by the Authority.</p> <p>It is notable that the Authority did not include a specific statement on the issue of OTTs supporting the development of the network infrastructure over which their services are provided. CCTL considers that the issue of how to sustain continued</p>	CCTL recommends that a statement be included to cover the issue of OTTs contributing to network development.	<p>The Authority will continue to monitor global trends in OTT investment, with the aim of developing a strategy to capture OTT contributions to local telecommunications infrastructure.</p> <p>The Authority proposes a study on OTTs that explores models for their contribution to infrastructure investment. Such a study may include data gathering exercises on prominent OTTs' uptake and bandwidth utilisation in Trinidad and Tobago. The study may also consider the feasibility of extending universal service or other obligations to OTT providers, as in the case of the US.</p> <p>The Authority looks forward to the support and engagement of relevant stakeholders in the implementation of the study.</p>

				investments within the context of decreasing revenues and margin squeeze on TSPs is an issue that requires urgent action and attention at the policy, legislative and regulatory levels.		
27.	5	Recommendations on OTT Regulation: Strategy 1 – A Legislative Approach	Digicel	<p>Digicel notes the Authority’s reference to the regulatory objectives in section 3 of the Act which it states are “<i>pertinent to newer forms of communications and media services, such as OTTs</i>”. Digicel agrees.</p> <p>However, the Act also provides definitions for “telecommunications” and “public telecommunications service”. In Digicel’s view, the characteristics of OTT voice and messaging services fall squarely within those definitions. That is, OTT voice and messaging services constitute a “<i>telecommunications service ... offered to members of the general public, whereby one user can communicate with any other user in real time, regardless of the technology used to provide such service</i>”.</p> <p>The consequence of this is that providers of such services fall squarely within the ambit of section 21 of the Act which provides that “<i>no person shall ... provide a public telecommunications service ... without a concession granted by the Minister</i>”.</p>	<p>Digicel recommends that Statement 5 in the Draft Framework should be amended to clearly state that:</p> <p style="padding-left: 40px;">c. OTT voice and messaging services should be declared to be public telecommunications services under the Act; and</p> <p>OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act.</p>	<p>The Authority notes Digicel recommendation that OTT voice and messaging services be declared a public telecommunications services and subject to the requirements of section 21 of the Act.</p> <p>Section 5.4 of the Framework outlines the Authority’s interim approach to the authorisation of OTTs. Given the wide variety of OTTs that exist, the Authority deems it imperative to assess on a case-by-case basis, whether an OTT service, or class of OTT services (that is, OTT services with similar service features and business models) can be classified as a telecommunications or broadcasting service. This assessment will be done based on the criteria contained in the Act’s definitions of the terms telecommunications services and broadcasting services, and on the applicability of the relevant provisions in the Act.</p> <p>The Framework further addresses the authorisation of OTT communications and media services following the assessment. Section 5.4.3 states the relevance of section 21 of the Act and the use of the Authorisation Framework to specify new classifications, where applicable for OTT communications and media services.</p>

				<p>In Digicel’s submission and questions around the legal applicability of the existing provisions of the Act should be dealt with now so that they are embedded in the Framework from the outset rather than be the subject of some future investigation. Once this critical issue is determined the Authority will then be able to work to enforce the existing “pertinent” provisions of the Act while giving further consideration to future enhancements that may be needed.</p> <p>Otherwise, Trinidad & Tobago will inevitably fall further behind international jurisdictions in their management of OTTs. This is particularly relevant in the context of the Authority’s references to a range of international jurisdictions where Governments and regulators have moved beyond the discussion phase and have taken concrete actions to bring OTT’s within the ambit of national regulatory frameworks.</p>		
28.	5.2	Short-Term and Long-Term Strategies for OTT Regulation in Trinidad and Tobago	Digicel	<p>Digicel agrees that it is appropriate to consider both short-term and long-term strategies for OTT Regulation. However, we disagree that the short-term and long-term strategies proposed by the Authority go far enough in dealing with the immediate issues that are faced by existing</p>	<p>While recognising that pragmatic compliance and other challenges may indicate that legislative changes will be required, it is our view that such challenges should not prevent the Authority from taking action under the existing legislation. The Authority’s continued failure to</p>	<p>The Authority notes Digicel’s statements on the proposed short-term and long-term strategies for OTT regulation.</p> <p>Section 5.4 of the Framework gives the Authority’s interim approach to the authorisation of OTTs. Given the wide variety of OTTs that exist, the Authority deems it imperative to assess on a case-</p>

			<p>concessionaires and consumers in Trinidad & Tobago.</p> <p>As noted above, Digicel considers that, as part of this Framework, the Authority should make a declaration that OTT voice and messaging services should be declared to be public telecommunications services under the Act and that OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act.</p> <p>Following such a declaration, we submit that the Authority should, in the short-term undertake an examination of how other OTT services may be regulated under the existing legislative framework, including by cooperating with other agencies to take a whole of Government approach to regulation of OTTs.</p> <p>Such an examination may then yield short-term and long-term strategies to deal with the issues that are well understood internationally, including making a fair contribution to infrastructure costs, competition issues, tax compliance, consumer protection, disinformation and national security issues.</p>	<p>uphold the existing law is unacceptable.</p>	<p>by-case basis, whether an OTT service, or class of OTT services (that is, OTT services with similar service features and business models) can be classified as a telecommunications or broadcasting service. This assessment will be made based on the criteria contained in the Act's definitions of the terms telecommunications services and broadcasting services, and on the applicability of the relevant provisions in the Act.</p> <p>The Framework further addresses the authorisation of OTT communications and media services following the assessment. Section 5.4.3 states the relevance of section 21 of the Act and the use of the Authorisation Framework to specify new classifications, where applicable for OTT communications and media services.</p> <p>The Authority notes Digicel's recommendation on cross-agency cooperation and the New Zealand case study presented. The Authority agrees on the importance of such cooperation with agencies aligned to OTT issues such as tax compliance, consumer protection and privacy and national security. Section 6 of the Framework has been amended to include a detailed discussion on cross-agency collaboration to support consistent and effective policies for digital services.</p>
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			<p>Finally, notwithstanding the “pragmatic issues in the authorisation and regulation of OTTs” that have been alluded to by the Authority, regulatory compliance is not impossible to achieve and concerns about potential issues should not be used as a basis for deferring action.</p> <p>Importantly, it may well be the case that achieving substantial regulatory compliance will not be as difficult as the Authority may think. For example, tax authorities in many jurisdictions have imposed requirements for foreign companies to register and collect VAT/GST on OTT services they provide to consumers in their jurisdiction. A specific example of this is New Zealand where overseas businesses that supply remote services valued in aggregate at more than NZ\$60,000 (US\$35,000) per year to New Zealand consumers are expected to register for GST charge and return GST on those services, including online services, they supply to New Zealand resident customers. Such “remote services” can include digital content such as e-books, movies, TV shows, music and online newspaper subscriptions; games, apps, software and software maintenance; online gambling services; website design or web publishing services; and legal, accounting, insurance</p>		
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				<p>or consultancy services (see https://www.ird.govt.nz/gst/gst-for-overseas-businesses/supplying-remote-services-into-new-zealand).</p> <p>Despite the obvious potential challenges associated with enforcing such measures on foreign companies, a good level of compliance has nevertheless been achieved, especially with large corporate companies. In line New Zealand is now looking to extend the scope of the arrangements to other parts of the gig and sharing economy by implementing the Organisation for Economic Co-operation and Development’s information reporting and exchange framework for activities being facilitated by digital platforms in the sharing and gig economy and collecting GST on certain accommodation and transportation services provided through electronic marketplaces.</p> <p>In our submission there is no good reason to choose not to take action on the basis of a belief that there might be compliance issues.</p>		
29.	5.3	OTT Classifications under the Existing	Digicel	<p>Consistent with our views above, Digicel notes but is disappointed that the Authority is still only “in the process of assessing the relevance of existing legislation to OTT providers”. While we accept that the</p>	<p>In Digicel’s submission, Statement 7 in the Draft Framework is superfluous and should be removed.</p>	<p>The Authority disagrees that policy statement 7 is superfluous and should be deleted. In classifying OTT as a telecommunications service, a key consideration is the identification of the primary and additional features of the service. Policy statement 7</p>

		Telecommunications Act		<p>interpretation and application of the provisions or the Act to different services may be complex, we do not consider there can be any reasonable doubt as to whether OTT voice and messaging services are public telecommunications services for the purposes of the Act.</p> <p>Nor do we consider the Authority's observation that "<i>OTT services may offer a number of integrated features</i>" complicates the issue of whether a voice or messaging service provided is a public telecommunications service. In our view, OTT services are no different from traditional telecommunications services in this regard as even a cursory review of existing concessionaires' websites will reveal. The fact is that all suppliers will seek to integrate different features and services to differentiate themselves from other suppliers and give them a competitive edge.</p>		<p>relates to the Authority's consideration of international precedents in determining how these features may affect classification.</p> <p>On Digicel's assertion on no reasonable doubt on whether OTT voice are public telecommunications services for the purposes of the Act, the Authority reiterates its approach in section 5.4 to making such a determination. This entails an assessment based on the criteria contained in the Act's definitions of the terms telecommunications services and broadcasting services, and on the applicability of the relevant provisions in the Act.</p>
30.	5.4	The Authority's Interim Approach to OTT Classification	Digicel	<p>Digicel notes the Authority's reference to section 18(1)(b) of the Act.</p> <p>However, rather than deferring its consideration of which OTT services may be a telecommunications or broadcasting service until some future time, we submit that declarations should be made (or at</p>	Digicel submits that the Authority's "Statements on OTT Classifications" should be amended to include actual classifications rather than being an indication of future intent.	<p>Digicel's recommendation to include actual classifications of OTT services as telecommunications and broadcasting services is noted.</p> <p>The Authority refers to its responses in comments 19 and 27 of this DoRs which outline the approaches for OTT classifications.</p>

				least proposed) now as a part of the proposed Framework.		
31.	5.4.1	Criteria for Determining an OTT Communication Service as a Telecommunications Service	TSTT	<p>TSTT notes the three (3) criteria explicitly stated to assess if an OTT meets the definition of a Public Telecommunications Service and we have no immediate concerns in this regard.</p> <p>TSTT is however deeply concerned when the Authority goes on to say that “The Authority shall also assess the overall relevance to OTTs of provisions in the existing legislative framework. This entails an assessment on the extent to which the rights and obligations contained in the Act, and detailed in section A and section C of the Concession, can reasonably apply to the OTT or class of OTTs in question. ...Based on its assessment, the Authority may make a determination on whether the OTT service, or class of services, in question can be classified as a telecommunications service requiring authorisation, in accordance with section 21 of the Act.”</p> <p>We strongly object to this approach and considers this an attempt to modify the rules to allow OTT providers the benefit of advantageous treatment.</p>	<p>The Authority should abandon all suggestions of ad hoc assessment towards categorisation of OTT services as Public Telecommunications Services. All assessments should be based on the definitions as provided for in the Act, and should be no different from assessment mechanics associated with traditional telcos and concessionaires.</p>	<p>The Authority notes TSTT non-objection to the criteria identified in 5.4.1. The Authority also notes TSTT’s recommendation to the Authority to “abandon all suggestions of ad hoc assessment towards categorisation of OTT services as Public Telecommunications Services.” The Authority does not consider the assessments described in section 5.4.1 as ad-hoc. They are essential exercises that aid the Authority’s interpretation of the Act’s definition of “telecommunications service” and its application to OTT communications services.</p> <p>The Authority’s assessment of OTT services will be made based on the criteria contained in the Act’s definitions of the terms telecommunications and broadcasting services and the applicability of the relevant provisions contained in the Act.</p> <p>The Authority notes TSTT’s request for clarification on the “overall relevance criteria”. Section 5.4.1 has been amended to provide further clarification on whether an OTT service (or class of OTTs, that is OTTs with similar features) meets the following three criteria listed in the Act’s definition of a telecommunications service:</p> <ol style="list-style-type: none"> 1. The service must use telecommunications.

			<p>The definition of Public Telecommunications Service according to the Act is pellucid, and states as follows:</p> <p>“public telecommunications service” means a telecommunications service, including a public telephone service, offered to members of the general public, whereby one user can communicate with any other user in real time, regardless of the technology used to provide such service</p> <p>As a result, it is TSTT’s considered view that any service, which meets the definition in the Act, must be identified as a Public Telecommunications Service and must therefore be treated with the same measure as all other existing Public Telecommunications Services. Thus, all rights and obligations arising out of the Act, Regulations and relevant Concession must be applied in treating with the service whether the provider is a TSP or OTT, and the Authority should not further assess the service for categorisation. To do otherwise can be considered discriminatory at the outset and is strongly condemned.</p> <p>TSTT is also concerned about an assessment process if proposed to determine whether provisions “can reasonably be applied” where:</p>		<ol style="list-style-type: none"> 2. The mode of telecommunications used must allow users to communicate with any other user in real time. 3. The service must be offered to members of the general public. <p>Based on this assessment, the Authority may make a determination on whether the OTT service, or class of services, in question can be classified as a telecommunications service requiring authorisation, in accordance with section 21 of the Act.</p>
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				<p>(i) The “overall relevance” assessment criteria are not outlined; and</p> <p>(ii) A major aspect of such “overall relevance” assessment could be whether the firms in question are even registered in Trinidad and Tobago – which is not the case for the major OTT providers that have caused this debate.</p> <p>Without such clarification, this formulation seems to be structured to put too much arbitrary discretion in the hands of the Authority outside of public scrutiny, transparency or predictability. Such frameworks have a penchant for encouraging malfeasance.</p>		
32.	5.4.2	Criteria for Determining an OTT Service as a Broadcasting Service	TSTT	<p>TSTT notes the three (3) criteria explicitly stated to assess if an OTT meets the definition of a Broadcasting Service and we have no immediate concerns in this regard.</p> <p>TSTT is however deeply concerned when the Authority goes on to say that “The Authority shall also assess the overall relevance to OTTs of provisions in the existing legislative framework. This entails an assessment on the extent to which the rights and obligations contained in the Act, and detailed in section A and section D of the Concession, can reasonably apply to the OTT or class of OTTs in question.</p>	<p>The Authority should abandon all suggestions of ad hoc assessment towards categorisation of OTT services as Broadcasting Services. All assessments should be based on the definitions as provided for in the Act, and should be no different from assessment mechanics associated with traditional broadcasters and concessionaires.</p>	<p>The Authority notes TSTT non-objection to the criteria identified in 5.4.2. The Authority also notes TSTT’s recommendation to the Authority to “abandon all suggestions of ad hoc assessment towards categorisation of OTT services as Broadcasting Services.”</p> <p>In this regard, the Authority shall assess whether an OTT service (or class of OTTs, that is OTTs with similar features) meets the following three criteria listed in the Act’s definition of a broadcasting service:</p> <ol style="list-style-type: none"> 1. The service must offer the transmission of programmes.

			<p>...Based on its assessment, the Authority may make a determination on whether the OTT service, or class of services, in question can be classified as a broadcasting service requiring authorisation, in accordance with section 21 of the Act.”</p> <p>We strongly object to this approach and considers this an attempt to modify the rules to allow OTT providers the benefit of advantageous treatment.</p> <p>The definition of a Broadcasting Service according to the Act is pellucid, and states as follows: “Broadcasting service means the offering of the transmission of programmes whether or not encrypted, by any means of telecommunications, for reception by the general public, including sound, radio, television and other types of transmissions, such as those on a point to multipoint basis.”</p> <p>As a result, it is TSTT’s considered view that any service, which meets the definition in the Act, must be identified as a Broadcasting Service and must therefore be treated with the same measure as all other existing Broadcasting Services. Thus, all rights and obligations arising out of the Act, Regulations and relevant Concession must be applied in treating with the service whether the provider is a</p>		<ol style="list-style-type: none"> 2. The service must be delivered via the use of telecommunications. 3. The service must be offered for reception by the general public. <p>The Authority does not consider the assessments described in section 5.4.2 as ad-hoc. They are essential exercises that aid the Authority’s interpretation of the Act’s definition of “broadcasting service” and its application to OTT media services.</p> <p>For clarification purposes, section 5.4.2 has been amended to include an extended discussion on the “overall relevance” assessment criteria.</p> <p>The Authority shall also adapt its Authorisation Framework to specify new classifications for OTT communications and media services, where applicable.</p>
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				<p>BSP or OTT, and the Authority should not further assess the service for categorisation. To do otherwise can be considered discriminatory at the outset and is strongly condemned.</p> <p>TSTT is also concerned about an assessment process if proposed to determine whether provisions “can reasonably be applied” where:</p> <p>(i) The “overall relevance” assessment criteria are not outlined; and</p> <p>(ii) A major aspect of such “overall relevance” assessment is whether the firms in question are even registered in Trinidad and Tobago – which is not the case for the major OTT providers that have caused this debate.</p>		
33.	5.4.3	Authorisation of OTT Communications and Media Services	TSTT	<p>The Authority proposes an ad hoc approach to classification which should be rejected as improper, not transparent and subject to gaming.</p> <p>Statement 8 says:</p> <p>“The Authority shall assess, on a case-by-case bases, whether an OTT service, or class of OTT services, can be classified...”</p> <p>The highlighted section is offensive, as it creates a broad discretion for the Authority to game the system and classify parties in an unbalanced way based on preferences and biases that are not documented. Any</p>	<p>Statement 8 should read:</p> <p>“the Authority shall assess whether classes of OTT Services can be classified as a telecommunications or broadcasting service”.</p>	<p>TSTT’s recommendations to amend policy statements 8 and 10 are noted.</p> <p>With respect to Statement 8, the Authority disagrees that the assessment is ad hoc and allows for broad discretion in its classifications of OTTs. Sections 5.4.1 and 5.4.2 document the Authority’s criteria for classifying an OTT communications service as a telecommunications service and an OTT media service as a broadcasting service respectively. These criteria are identical to those contained within the Act’s definitions of both telecommunications and broadcasting services. The Authority notes there is a wide variety of OTTs services, with varying features</p>

				<p>classification regime should not allow for specific providers to gain benefits or exemptions in a singular fashion.</p> <p>Accordingly, the offensive sections should be amended. Further, Statement 10 says: “The Authority may consider adapting its Authorisation Framework...”</p> <p>Considering the broad discretion created by statement 8, this further discretion is wholly improper. There should be no discretion in this regard: if the Authority presumes to include a classification process, with or without “overall relevance” conditionalities, it is a necessary requirement that the Authorisation Framework should be adjusted accordingly. If not, under what rubric would the Authority be classifying services in Statement 8? Will it be all arbitrary, ad hoc, non-transparent and secretive? Such an approach is a breach of the Act, and Trinidad and Tobago’s obligations under the General Agreement on Trade in Services and its Economic Partnership Agreements with the European Union, Canada, and others.</p> <p>The word “may consider” must be deleted and replaced with the word “shall”.</p>	<p>Statement 10 should read: “the Authority shall adapt its Authorization Framework to specify new classification for communications and media services.”</p>	<p>which will require specific assessments against its identified criteria. Based on the assessment, the Authority is proposing those services or services with similar features or in a similar class, be classified where applicable, as a telecommunications or broadcasting service. Section 5.4.3 of the Framework has been amended to make this clearer. It states: “The Authority shall assess whether an OTT service, or class of OTT services (that is, OTT services with similar service features and business models) can be classified as a telecommunications or broadcasting service.” This is also reflected in policy statement 8.</p> <p>On Statement 10 the Authority has amended section 5.4.2 to speak more definitively on its recommendations to amend its Authorisation Framework to accommodate, where applicable, the authorisation of OTTs. Policy statement 10 has also been amended as follows: “The Authority shall adapt its Authorisation Framework to specify new classifications for OTT communications and media services, where applicable.”</p>
34.	5.4.3	Authorisation of OTT Communicati	Meta	When considering OTT regulation, it is important to understand the fundamental	We encourage TATT to refrain from classifying OTT services as telecommunications or broadcasting	The Authority notes Meta’s comments on the fundamental differences between telecommunications operators and OTTs. Meta’s

		<p>ons and Media Services”</p>		<p>differences between telecommunications operators and OTTs.</p> <p>Telecommunications operators typically own and control the underlying Internet access infrastructure and have been allocated valuable spectrum, preferential access to rights of way, and numbering resources. Consumers must first purchase Internet access from these telecommunications operators in order to use online communications applications. In addition, consumers may have limited choices in their network provider and may incur costs when switching. This gives the telecommunications operator significant market power which serves as one rationale for government regulation.</p> <p>By contrast, OTTs do not own or control the underlying Internet access infrastructure and do not control what network is chosen by consumers.</p> <p>Furthermore, OTTs operate in a highly competitive market in which it is easy for consumers to switch between competing communications applications. Consumers can and do “multi-home,” (i.e., use multiple communications applications on a single device), and easily switch between those communications applications at little or no cost.</p>	<p>services given that there are fundamental differences in network ownership between OTTs and telecommunications operators, that the vast majority of regulators have chosen not to regulate OTT communication services, and lastly, that OTT services are not telecommunications or broadcasting services nor a substitute for them.</p>	<p>case studies of Colombia’s and the EU’s approaches to OTT regulations are noted.</p> <p>While the Authority notes these and other developments occurring internationally with respect to OTT classifications and regulation, it must conduct an assessment based on the requirements of its legislative framework.</p> <p>In its assessment, the Authority shall consider the differentiating factors identified by Meta such as ownership and control of the underlying infrastructure, the extent and nature of competition within the relevant market, and the level of substitutability between TSPs and OTTs. These shall aid the Authority’s interpretation and application of its legislative framework to the different types of OTT services.</p> <p>Section 5.4 has been amended to identify consideration factors more clearly in the Authority’s determination of OTTs as a telecommunications and broadcasting service.</p>
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			<p>Regulation, however, can serve as a barrier to entry for new entrants to the OTT marketplace as it increases costs of compliance. The current light touch regulatory scheme encourages continuous innovation, improves consumer choice, and allows the consumer to maximize their benefit by choosing the OTT communications services that best match their needs.</p> <p>Hence, regulatory “parity” between OTT services, telecommunications and broadcasting is not an appropriate objective. Finally, OTTs and telecommunications are complementary, symbiotic businesses, with each creating value for the other. For example, consumers want to use OTTs, which generates demand for telecommunications services.</p> <p>OTT services are not telecommunications services nor are they direct substitutes for them, and they do not compete directly with public telecommunications or public broadcasting services. After careful analysis, other governments have reached this conclusion. For example, in 2018, the Government of Colombia’s Comisión de Regulación de Comunicaciones found that “[...] despite the presence and spread of</p>		
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			<p>OTT content consumption by users, for now there is no evidence of a phenomenon of substitution between traditional communications services and OTT services.”</p> <p>Given these facts, many governments have decided not to regulate OTT services. For example, Colombia’s Comisión de Regulación de Comunicaciones concluded in its 2019 report that “Thus, in light of the previous [referring to the quote from its 2018 report referenced above], the Commission did not consider a general review of the communications markets associated with the spread of OTT services to be necessary.”</p> <p>If TATT deems regulation of OTTs necessary, the European Union (EU) provides a relevant regulatory framework for considering electronic communication services. The EU incorporates distinctions based on control of and interconnection to the public telephone network in its telecommunications legislative framework, the European Electronic Communications Code (EECC). The EECC applies a lighter-touch regulatory regime to OTT communications services that do not interconnect with the public telephone network (known as “number-independent interpersonal communications</p>		
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				services”). For example, the EECC does not require number-independent interpersonal communications services to obtain a general authorization or provide access to emergency numbers, which number-based services must do. The EU reasoned that this differential treatment is “justified” because number-based services - unlike number-independent OTT communications services - “participate in, and hence also benefit from, a publicly assured interoperable ecosystem.”		
35.	5.4.3	Authorisation of OTT Communications and Media Services	ALAI	<p>When considering regulation, it is important to understand the fundamental differences between telecommunications operators and OTTs.</p> <p>Telecommunications operators typically own and control the underlying Internet access infrastructure and have been allocated valuable spectrum, preferential access to rights of way, and numbering resources. Consumers must first purchase Internet access from these telecommunications operators in order to use online communications applications. In addition, consumers may have limited choices in their network provider and may incur costs when switching. This gives the telecommunications operator significant market power which serves as one rationale for government regulation. By</p>	<p>In summary, we encourage TATT to refrain from classifying OTT services as telecommunications or broadcasting services given that there are fundamental differences in network ownership between OTTs and telecommunications operators, that the vast majority of regulators have chosen not to regulate OTT communication services, and lastly, that OTT services are not telecommunications or broadcasting services nor a substitute for them.</p>	<p>The Authority notes ALAI’s comments on the fundamental differences between telecommunications operators and OTTs. ALAI’s case studies of Colombia’s and the EU’s approach to OTT regulations are noted.</p> <p>While the Authority notes these and developments occurring internationally with respect to OTT classifications and regulation, it proposes its own assessment based on the requirements of its legislative framework.</p> <p>In its assessment, the Authority shall consider the differentiating factors identified by ALAI such as ownership and control of the underlying infrastructure, the extent and nature of competition within the relevant market, and the level of substitutability between telecommunications and broadcasting services and OTTs. These shall aid the Authority’s interpretation and application of its</p>

			<p>contrast, OTTs do not own or control the underlying Internet access infrastructure and do not control what network is chosen by consumers.</p> <p>Furthermore, OTTs operate in a highly competitive market in which it is easy for consumers to switch between competing communications applications. Consumers can and do “multi-home,” (i.e., use multiple communications applications on a single device), and easily switch between those communications applications at little or no cost. Similarly, regulation can serve as a barrier to entry for new entrants to the OTT marketplace as it increases costs of compliance. The current light touch regulatory scheme encourages continuous innovation, improves consumer choice, and allows the consumer to maximize their benefit by choosing the OTT communications service that best matches their needs. Hence, regulatory parity between OTT services, telecommunications and broadcasting is not an appropriate objective. Finally, OTTs and telecommunications are complementary, symbiotic businesses, with each creating value for the other. For example, consumers want to use OTTs, which generates demand for telecommunications services.</p>		<p>legislative framework to the different types of OTT services.</p> <p>Section 5.4 has been amended to identify consideration factors more clearly in the Authority’s determination of OTTs as a telecommunications and broadcasting service.</p>
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			<p>As such, OTT services should not be regulated as telecommunications services as they are not telecommunications services or direct substitutes, and they do not compete directly with public telecommunications or public broadcasting services.</p> <p>If TATT deems regulation of OTTs necessary, the European Union (EU) provides a relevant regulatory framework for consideration. The EU incorporates distinctions based on control and interconnection to the public telephone network in its telecommunications legislative framework, the European Electronic Communications Code (EECC). The EECC applies a lighter-touch regulatory regime to OTT communications services that do not interconnect with the public telephone network (known as “number-independent interpersonal communications services”). For example, the EECC does not require number-independent interpersonal communications services to obtain a general authorization or provide access to emergency numbers, which number-based services must do. The EU reasoned that this differential treatment is “justified” because number-based services - unlike number-independent OTT communications services - “participate in,</p>		
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				and hence also benefit from, a publicly assured interoperable ecosystem.”		
36.	5.5	Amendments to the Legislative Framework to Incorporate OTTs	TSTT	TSTT disagrees with the proposed amendments to the Act. “Public telephone service” as defined in the Act is already technology neutral. The proposed renaming of the service to “voice communications service” seems to seek to broaden the Authority’s regulatory remit to non-public services (the dropping of the word public is noteworthy). It is noteworthy that the Authority has not provided any justification as to why its role should be expanded beyond public	All of these recommendations, in this section, should be removed from the document.	The Authority notes TSTT’s objection to the examples listed in section 5.5 of possible new terms for ‘public telephone service’ and ‘broadcasting service’ and its allegation of an attempt to broaden the regulatory remit to non-public services. For the sake of clarity, the examples listed are not actual proposals for amendment by the Authority but illustrations of updated terminologies currently being utilized in the sector. Notwithstanding same, TSTT is reminded that according to section 18 of the Telecommunications Act, the Authority is already empowered to classify public telecommunications

			<p>telecommunications in contravention of Government policy.</p> <p>Similarly, “broadcasting service” as defined in the Act is already technology neutral. The proposed renaming of the service to “audio/ visual media service” seems to seek to broaden the Authority’s regulatory remit to non-public, non-broadcast services, such as streaming services which are currently not under the Authority’s oversight. It is noteworthy that the Authority has not provided any justification as to why its role should be expanded beyond public broadcasting in contravention of Government policy.</p> <p>TSTT also questions the legitimacy of the recommendation that the Authority should have remit over entities “irrespective of their place of establishment or residence.” This recommendation seeks to extend the applicability of the Laws of Trinidad and Tobago beyond our jurisdiction so that they would apply to service providers who are domiciled here, not registered here, and did not seek to register here. This seems unrealistic, improper and unfeasible.</p> <p>TSTT also disagrees with the recommendation to broaden the Authority’s discretions further, where in the current scenario the Authority does not provide sufficient reporting or</p>		<p>services and private telecommunications services as defined under the Act.</p> <p>The Authority notes that its recommendations to amend its legislative framework to incorporate OTTs are consistent with best practice approaches considered globally. Periodic amendments ensure that the legislative framework remains current.</p> <p>The ITU recognising the increasing prevalence of digital services, noted that “regulators are finding that they must address a host of new issues and potentially new areas of responsibility. Many of these focus on online services, such as online Voice over Internet Protocol (VoIP) or online video, and other digital platforms, as well as navigating the IoT, AI, data privacy, competition, cybersecurity, and other technological challenges.”¹</p> <p>Similar to Trinidad and Tobago, the ITU further noted that “governments are taking different approaches to ensure that regulators hold jurisdictional authority” which include reforming their legislative frameworks to clearly accommodate new digital services.</p> <p>The phrase “irrespective of their place of establishment or residence.” is used within the context of the current transnational nature of OTTs who provide services locally but are registered externally. It does not seek to “extend the applicability of the Laws of Trinidad and Tobago</p>
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¹ [Digital Regulation Handbook \(itu.int\)](https://www.itu.int/ITU-T/terrestrial/digital-regulation-handbook/)

			<p>explanations on its forbearance and other discretions. Indeed, it is noteworthy that nowhere in this document does the Authority make the case for such expanded discretion where such is not coupled with ad hoc approaches to administration.</p> <p>TSTT disagrees that there need to be explicit references to data protection provisions in the Act, as the Data Protection Act provides the general covering obligations to all parties who are data controllers. Further, that Act already provides for a role for sector regulators and their interaction with the Office of the Information Commissioner.</p> <p>In short, TSTT believes the recommendations in this section are attempts to expand the scope of the powers without the associated, appropriate checks and balances. All these recommendations should be removed from this document.</p>		<p>beyond our jurisdiction” but recognises the need for clarity that applicable laws may apply to these services operating in Trinidad and Tobago. This may include, as TSTT has submitted, requirements for a registered presence in Trinidad and Tobago.</p> <p>With respect to data protection, notwithstanding the general provisions contained in the partially proclaimed Data Protection Act, it is the Authority’s belief that the obligations for the protection of users’ privacy should be explicitly referenced within the legislative framework. A jurisdictional review of the legal frameworks and licence obligations of other sector regulators identified that such references are included even in territories with data protection legislation. This approach is therefore consistent with other jurisdictions.</p> <p>This proposal also bolsters the consumer protection mandate of the Authority and would be consistent with the eventually updated Data Protection Act.</p>
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37.	5.5	Amendments to the Legislative Framework to Incorporate OTTs	Digicel	<p>While Digicel agrees that future amendments may be required to either fine tune existing legislation or enact new legislation, we do not believe that should be taken to mean that nothing can be done under the existing legislative framework.</p> <p>On the contrary, we submit that the existing legislative framework is relevant and applicable to OTT services and so should be applied by the Authority to the extent it is possible to do so.</p>	<p>The Authority must act now and uphold the existing law by virtue of which</p> <p>(i) OTT voice and messaging services should be declared to be public telecommunications services under the Act; and</p> <p>(ii) OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act.</p> <p>As stated above the Authority's continued failure to uphold the existing law is unacceptable. The Authority by its inaction is allowing OTT's to gain an unfair advantage over concessionaires who abide by the law, pay exorbitant regulatory fees and contribute to the economic development of Trinidad and Tobago.</p>	<p>The Authority reiterates its short-term strategy to OTT regulation for OTTs that can be classified as a telecommunications and broadcasting service under existing legislative framework. This is contained in section 5.2 of the Framework.</p> <p>In addition to its short-term strategy, the Authority recognises the importance of legislative reform to accommodate the expansive issues with digital services. This is consistent with global best practices as highlighted by the ITU in the ITU Digital Regulation Handbook 2020.</p> <p>With respect to a declaration of OTTs as public telecommunications services, the Authority notes that given the vast number and types of OTTs, the Framework may not adequately capture all OTTs existing within the local market. Section 5.4 of the Framework recommends an approach, whereby an OTT service or classes of OTT services are assessed against the criteria of a telecommunications or broadcasting service contained in the Act. Following this assessment and authorisation, where applicable, the Authority may publish a list of authorised OTT service providers on its website.</p>
38.	5.6	OTT Media Content Regulation	TSTT	The Authority does not have the legislative authority to regulate content. A review of the Act demonstrates that while the Authority may regulate broadcasters'	All of these recommendations, in this section, should be removed from the document.	TSTT's position on the Authority's scope for regulating broadcasters is noted. The Authority, however, disagrees with TSTT's position and is of the view that the recommendations within the framework should be maintained.

				<p>behaviour, the Authority is not a content regulator.</p> <p>Accordingly, the Authority is ill-positioned to regulate the content of OTT Service providers.</p> <p>This entire section is another example of the Authority improperly seeking to grab further authority which is not provided under the Act and should be deleted.</p>		<p>The Authority is charged with the statutory responsibility to regulate broadcasting services consistent with the Constitution. Given the emergence of new ways of providing broadcasting services, the Authority believes that the recommendations in 5.6 are appropriate to treat with OTT media providers classified as providing a broadcasting service. The objective of 5.6 is to ensure that, at minimum, these providers adhere to the Broadcasting Code, when promulgated.</p>
39.	5.6	OTT Media Content Regulation	Digicel	<p>Digicel agrees strongly with the Authority’s recommendation to expand the <i>Draft Broadcasting Code for the Republic of Trinidad and Tobago</i> (the Code) to include OTT media services.</p> <p>We believe this to be critical to safeguard consumer interests and the public interest more generally. We believe it also to be essential to safeguard the production of local content and journalism and help to prevent the proliferation of misinformation and the use of social media platforms to inappropriately influence beliefs and actions.</p>	<p>We suggest the Authority gives consideration to the work undertaken under the umbrella of the “Christchurch Call” (https://www.christchurchcall.com/) an international initiative which has recently announced funding for new research into how algorithms affect people’s online experiences.</p>	<p>The Authority notes Digicel’s support for the expansion of the <i>Draft Broadcasting Code for the Republic of Trinidad and Tobago</i> (the Code) to OTT media services.</p> <p>The Authority also thanks Digicel its research presented on the “Christchurch Call” initiative. The Authority shall consider the reference of this initiative in the development of the Framework.</p>
40.	5.6	OTT Media Content Regulation	Meta	<p>When considering regulations for online video and content services, TATT should clarify the intended problem that the regulation is aimed to address. In addition, TATT should consider that online video</p>	<p>To the extent that regulation of online video and content services is considered necessary by TATT, we respectfully urge TATT to take these fundamental differences into account</p>	<p>The Authority notes Meta’s recommendation to consider the fundamental differences between traditional services and user-generated content (UGC).</p>

			<p>and content apps, by their online nature, resolve some of the bottlenecks traditional regulation in the audiovisual markets addressed.</p> <p>Traditional audiovisual providers, such as broadcast and on-demand providers, own and control significant network infrastructure for content delivery, including the last mile bottleneck. Broadcasters deliver service to customers using spectrum, a valuable and regulated public resource. Because spectrum is limited, the number of broadcasters that can operate in any given area is also necessarily limited. By contrast, the high capacity of broadband networks and global nature of the Internet means that a virtually unlimited number of competing providers can deliver digital content and applications to customers. Given the natural entry barriers to the infrastructure market, characterized by high sunk investment costs, occupation of the public domain or limited access to scarce resources such as radio spectrum, competition and consumer choice has historically been more limited, forming the basis of public intervention. Broadcasting and cable regulations were designed with these bottleneck considerations in mind.</p>	<p>in the design and explicitly exclude UGC platforms from the scope of any new regulatory requirement</p>	<p>At this time, UGC is outside the scope of the Framework. Section 3 has been amended to reflect this.</p> <p>The differences identified by Meta shall be considered in the Authority's determination on whether the OTT content service in question can be classified as a broadcasting service in accordance with the criteria listed in 5.4.2 of the Framework.</p>
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			<p>In a consolidated audiovisual market, regulation has also been historically imposed with the aim of ensuring media pluralism. In contrast, the high capacity of broadband networks and global nature of the internet means that a virtually unlimited number of competing online video and content providers can deliver digital content and applications to customers without relying on additional limited resources like spectrum or public rights of way.</p> <p>Unlike broadcast and cable providers, online video and content providers operate in a highly competitive market where it is easy and often free for consumers to switch between competing apps. OTT apps, by their very nature, therefore increase the level of competition and pluralism in the market, making regulatory intervention aimed at controlling or increasing the number of market players, such as licensing, unnecessary. Another difference is the degree of editorial control exerted by the provider, which determines the level of effective responsibility and control over the content viewed by users. Beyond ensuring compliance with community standards, video sharing platforms for User-Generated Content (UGC) do not exert editorial control over the content that is made available on the platform, as the</p>		
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				<p>content is user generated. It is therefore the user, and not the service provider, which is producing content, and the one making decisions about which content is uploaded onto the platform.</p> <p>It is worth noting that Latin American regulators have assessed evidence and concluded that OTTs are not substitutes, but rather complementary to Paid TV Services. The CRC in Colombia stressed that households in the country still have a higher preference for Pay TV, and minimized the events of cord-cutters given that, on average across all clusters, only 3% relies on subscription video on-demand services as the exclusive path to access audiovisual content. The Mexican Telecommunications Authority (IFT) reached a similar conclusion in the proceedings for evaluating the existence of a dominant operator in the paid TV market, after assessing the market and regulatory condition of both services regarding user experience, technical conditions for the delivery of the services and licensing regimes.</p>		
41.	5.6	OTT Media Content Regulation	ALAI	<p>When considering regulations for online video and content services, TATT should clarify the intended harm that the regulation is aimed to address. In addition, TATT should consider that online video</p>	<p>To the extent that regulation of online video and content services is considered necessary by TATT, we respectfully urge TATT to take these fundamental differences into account</p>	<p>The Authority notes ALAI's recommendation to consider the fundamental differences between traditional services and UGC.</p>

			<p>and content apps, by their online nature, resolve some of the bottlenecks traditional regulation in the audiovisual markets addressed.</p> <p>Traditional audiovisual providers, such as broadcast and on-demand providers, own and control significant network infrastructure for content delivery, including the last mile bottleneck. Broadcasters deliver service to customers using spectrum, a valuable and regulated public resource. Because spectrum is limited, the number of broadcasters that can operate in any given area is also necessarily limited. By contrast, the high capacity of broadband networks and global nature of the internet means that a virtually unlimited number of competing providers can deliver digital content and applications to customers. Given the natural entry barriers to the infrastructure market, characterized by high sunk investment costs, occupation of the public domain or limited access to scarce resources such as radio spectrum, competition and consumer choice has historically been more limited, forming the basis of public intervention. Broadcasting and cable regulations were designed with these bottleneck considerations in mind.</p>	<p>in the design of the specific obligations to be imposed on UGC platforms.</p>	<p>At this time, UGC is outside the scope of the Framework. Section 3 has been amended to reflect this.</p> <p>The Authority shall consider these differences identified by ALAI in its determination on whether the OTT content service in question can be classified as a broadcasting service in accordance with the criteria listed in 5.4.2 of the Framework.</p>
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			<p>In a consolidated audiovisual market, regulation has also been historically imposed with the aim of ensuring media pluralism. In contrast, the high capacity of broadband networks and global nature of the internet means that a virtually unlimited number of competing online video and content providers can deliver digital content and applications to customers without relying on additional limited resources like spectrum or public rights of way.</p> <p>Unlike broadcast and cable providers, online video and content providers operate in a highly competitive market where it is easy and often free for consumers to switch between competing apps. OTT apps, by their very nature, therefore increase the level of competition and pluralism in the market, making regulatory intervention aimed at controlling or increasing the number of market players, such as licensing, unnecessary. Another difference is the degree of editorial control exerted by the provider, which determines the level of effective responsibility and control over the content viewed by users. Beyond ensuring compliance with community standards, video sharing platforms for User-Generated Content (UGC) do not exert editorial control over the content that is made available on the platform, as the</p>		
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				<p>content is user generated. It is therefore the user and not the service provider, which is producing content, and the one making decisions about which content is uploaded onto the platform.</p> <p>For example, the Mexican Telecommunications Authority (IFT), in the proceedings for evaluating the existence of a dominant operator in the paid TV market, ruled OTTs and Paid TV Services are not substitutes, but rather complementary services. IFT based its assessment in a market and regulatory condition analysis of both services regarding user experience, technical conditions for the delivery of the services and licensing regimes.</p>		
42.	6.	Recommendations on Jurisdictional Challenges: Strategy 2 – Regional Harmonisation	Digicel	<p>Digicel agrees that, wherever practicable, regulation of OTTs should be harmonised regionally and internationally. However, we do not consider that the desirability for harmonisation should prevent or delay actions by the Authority within the context of the existing legislative framework.</p>	<p>The Authority must act now and uphold the existing law by virtue of which</p> <p>(i) OTT voice and messaging services should be declared to be public telecommunications services under the Act; and</p> <p>(ii) OTT service providers that provide voice and messaging services to consumers in Trinidad & Tobago should be required to hold a concession granted by the Minister in accordance with the requirements of section 21 of the Act.</p>	<p>Digicel’s support for a regional and international harmonised approaches to OTT regulation is noted.</p> <p>The Authority’s recommendations on regional harmonization are proposed strategies to be implemented alongside and not as a replacement to its short-term strategies to OTT regulation identified in section 5.4.</p> <p>With respect to a declaration of OTTs as public telecommunications services, given the vast number and types of OTTs, the Framework may not adequately capture all OTTs existing within the local market. Section 5.4 Framework recommends a case-</p>

						by-case approach, whereby an OTT service or classes of OTT services are assessed against the criteria of a telecommunications or broadcasting service contained in the Act. Following this assessment and authorisation, where applicable, the Authority may publish a list of authorised OTT service providers on its website.
43.	7	Recommendations on OTT Contributions: Strategy 3 – Fostering OTT Investment Towards the Development of Digital Infrastructure in Trinidad and Tobago	Digicel	<p>Digicel also supports any initiatives to encourage fair contributions and investment by OTTs in Trinidad and Tobago.</p> <p>This is particularly important as OTTs gain a substantial competitive advantage as they do not pay licence or concession fees, contribute to the Universal Service Fund or pay corporation tax or VAT on the services they provide in Trinidad and Tobago.</p> <p>However, we submit that the Authority needs to go further than “monitoring trends” or “proposing a study” to address this competitive imbalance.</p> <p>There is already more than adequate data to allow the Authority to conceptualise the extent of the problem. The report entitled “Impact of OTTs on Caribbean Networks and Implications of their Fair Share Contribution to Countries’ Development” which was commissioned by CANTO in September 2022 from Axon Partners</p>	<p>As stated above the Authority’s continued failure to uphold the existing law is unacceptable. OTT companies must be compelled to engage commercially with local operators whose infrastructure are vital to their continued profitability.</p> <p>The Authority should also work with other</p>	<p>The Authority notes Digicel’s support for initiatives to encourage fair contributions and investment by OTTs in Trinidad and Tobago. The Authority also notes Digicel’s submission that the Authority goes further than “monitoring trends” or “proposing a study” to address competitive imbalance.</p> <p>The Authority acknowledges the importance of investment in broadband infrastructure and is keen to explore initiatives on the fair contribution of digital players to local infrastructure. Similar to other jurisdictions such as the EU and the US, the Authority believes that a consultative study, engaging both digital players and local network operators, is the most effective starting place towards a regulatory solution on this issue.</p> <p>In addition to the information presented by Digicel from the Axon report, the study shall look at traffic causation, OTT contributions to network costs and their historical and planned investment towards local infrastructure. The study shall also explore various models for increased OTT investment such as a direct contribution from the platforms to the network</p>

				<p>Group states that over 60% of data traffic on Caribbean networks is generated by 6 OTT companies and they pay nothing towards the cost of the networks needed to deliver this traffic. OTT traffic alone in 2021 exceeded TOTAL traffic in 2019. At the same time, the regional telecoms market has remained flat over the last few years. Increases in subscriber numbers are being offset by declining ARPU levels. OTT driven traffic generates annual costs of approx. USD\$250 million for Caribbean network operators. This equates to approx. 7.3% of their revenues. The case for continued network investment by operators is no longer feasible.</p> <p>This is why it is critical that OTTs are brought into the regulatory framework as a matter of urgency so that OTT service providers are required to at least become concessionaires and to commence contributing to the industry sector that provides the platform for their very substantial revenues and profits.</p>		operators and a digital levy or fund at the national level.
44.	7.1	Global Trends in OTT Investment in Infrastructure	Meta	<p>While there are discussions on network usage fees in South Korea and the European Union, it is important to recognize that no legislation mandating that OTTs pay interconnection fees to telecommunications operators has been passed.</p>		The Authority notes Meta’s statement on the case studies for the EU, South Korea and US. The Authority shall continue to monitor these and other developments regarding OTT providers’ investment in local infrastructure.

			<p>In the European Union, the European Commission has decided to hold a public consultation on network usage fees following concerns raised by Members of European Parliament, member states, and groups such as the Mobile Virtual Network Operators. It should also be noted that the study cited by Frontier Economics was commissioned by Deutsche Telekom, Orange, Telefonica and Vodafone, European telecommunications operators who have a vested interest in financial transfers from OTTs to telecommunications operators. Additional papers have since been written on the topic that challenge the findings and assumptions in the Frontier Economics paper. In short, several groups have raised fundamental concerns about the proposal and the potential for unwarranted government intervention in a functioning market to distort existing market incentives for network investments, raise prices for consumers, and threaten net neutrality. In this regard, an example can be found in the Government of Benin’s tax on OTT services “for the purpose of protecting investment in network infrastructure”, which was withdrawn because of “the negative impact on consumption; collusion between operators on pricing; technical</p>		<p>The Authority also proposes conducting its own study on the feasibility of various initiatives on the fair contribution of digital players to local investment. The study shall consider, among other things, traffic causation, OTT contributions to network costs and OTT providers’ historical and planned investment towards local infrastructure. The study shall also explore models for increased OTT investment such as a direct contribution from the platforms to the network operators and a digital levy or fund at the national level.</p>
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			<p>difficulties in implementing the tax; and insufficient warning to consumers”</p> <p>In South Korea in 2016, the Ministry of Science, ICT and Future Planning (the predecessor of the Ministry of Science and ICT) began enforcing the revised Interconnection Standards for Telecommunication Facilities, requiring Internet Service Providers to charge for the traffic they receive from each other. Third party research has identified negative effects from these policies. For example, an Internet Society “[.] analysis finds that the existing rules create unnecessary costs and bottlenecks in South Korea's digital ecosystem. They also risk increasing market concentration and dominance by a few large service providers. The proposed provisions [to the TBA] will only make this worse.” Similarly, a report from the Carnegie Foundation found that “Because the Korean government explicitly favors just three telecoms companies, there has been less vigorous competition and less investment. There are serious adverse consequences to these Korean efforts to impose interconnection fees.” As such, South Korea serves as a case study in how government intervention in a functioning network interconnection market can create unintended effects such as reduced</p>		
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				<p>competition, network investment, and quality of service.</p> <p>Lastly, regarding the United States, while the consultation cites the Funding Affordable Internet with Reliable Contributions Act (FAIR Contributions Act), that bill, which would merely require the US Federal Communications Commission to conduct a study regarding edge provider contributions to the Universal Service Fund, is still in the legislative process and has only six cosponsors out of the one hundred member Senate. Furthermore, the FCC has already concluded that it likely does not have the required statutory authority to require contributions from edge providers and did not include a recommendation to require such contributions in its report to Congress on the future of the Universal Service Fund program.</p>		
45.	7.1	Global Trends in OTT Investment in Infrastructure	ALAI	<p>While there are discussions on network usage fees in South Korea and the European Union, it is important to recognize that no legislation mandating that OTTs pay interconnection fees to telecommunications operators has been passed. It is also noteworthy that the introduction of mandated paid peering between ISPs in South Korea had negative impacts on service quality and innovation.</p>		<p>The Authority notes ALAI's statement on the case studies for the EU, South Korea and US. The Authority shall continue to monitor these and other developments regarding OTTs investment in local infrastructure.</p> <p>The Authority also proposes conducting its own study on the feasibility of various initiatives on the fair contribution of digital players to local</p>

			<p>In the European Union, the European Commission has decided to hold a public consultation on network usage fees following concerns raised by Members of European Parliament, member states, and groups such as the Mobile Virtual Network Operators., It should also be noted that the study cited by Frontier Economics was commissioned by Deutsche Telekom, Orange, Telefonica and Vodafone, European telecommunications operators who have a vested interest in financial transfers from OTTs to telecommunications operators. Additional papers have since been written on the topic that challenge the findings and assumptions in the Frontier Economics paper. In short, several groups have raised fundamental concerns about the proposal and the potential for unwarranted government intervention in a functioning market to distort existing market incentives for network investments, raise prices for consumers, and threaten net neutrality.</p> <p>In South Korea in 2016, the Ministry of Science, ICT and Future Planning (the predecessor of the Ministry of Science and ICT) began enforcing the revised Interconnection Standards for Telecommunication Facilities, requiring Internet Service Providers to charge for the</p>		<p>investment. The study shall consider among other things, traffic causation, OTT contributions to network costs and OTT providers' historical and planned investment towards local infrastructure The study shall also explore models for increased OTT investment such as a direct contribution from the platforms to the network operators and a digital levy or fund at the national level.</p>
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			<p>traffic they receive from each other. Third party research has identified negative effects from these policies. For example, an Internet Society “[.] analysis finds that the existing rules create unnecessary costs and bottlenecks in South Korea's digital ecosystem. They also risk increasing market concentration and dominance by a few large service providers. The proposed provisions [to the TBA] will only make this worse.” Similarly, a report from the Carnegie Foundation found that “Because the Korean government explicitly favors just three telecoms companies, there has been less vigorous competition and less investment. There are serious adverse consequences to these Korean efforts to impose interconnection fees.” As such, South Korea serves as a case study in how government interference in a functioning network interconnection market can create unintended effects such as reduced competition, network investment, and quality of service.</p> <p>Lastly, regarding the United States, while the consultation cites the Funding Affordable Internet with Reliable Contributions Act (FAIR Contributions Act), it is still in the legislative process and is not expected to pass. Furthermore, the FCC has already concluded that it likely does not have the required statutory</p>		
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				authority to require contributions from edge providers and did not include a recommendation to require such contributions in its report to Congress on the future of the Universal Service Fund program.		
46.	7.2	Recommendations on OTT Investment in Infrastructure in Trinidad and Tobago	TSTT	<p>Statement 16: TSTT is unsure how the Authority intends to propose a model where parties who are not registered in Trinidad and Tobago as businesses, and not Concessionaires under the Telecommunications Act will be subject to any legal obligation in Trinidad and Tobago generally, and pursuant to the Authority’s directions specifically.</p> <p>TSTT posits that there should be consideration of approaches where OTT providers would be required to compensate service providers for the “fair and proportionate” use of licensed public networks. Given the bargaining asymmetry discussed above, it is recommended that the Authority seek to pilot concrete policy directions which would seek to remedy this imbalance to facilitate a level playing field between concessionaires and relevant OTT service providers seeking market entry.</p>	This statement is unrealistic and should be deleted given the framework outlined above.	<p>The Authority notes that policy statement 16 relates to the proposal of a study on OTTs that explores models for their contribution to infrastructure investment. Issues relating to OTT registration within Trinidad and Tobago do not preclude the Authority from conducting such study. The Authority therefore does not agree policy statement 16 should be deleted from the Framework.</p> <p>For the Authority’s approach to classifying and authorizing OTT providers, (currently resident or not) in Trinidad and Tobago, the Authority refers to its interim approach to OTT classifications under section 5.4 of the Framework.</p> <p>The Authority notes TSTT’s statement on the consideration of approaches where OTT providers would be required to compensate service providers for the “fair and proportionate” use of licensed public networks. These considerations are addressed in section 7.2 of the Framework. Amongst other things, section 7.2 proposes a study on the feasibility of various initiatives on the fair contribution of digital players to local investment. The study shall consider OTT contributions to network costs and</p>

						<p>OTT providers historical and planned investment towards local infrastructure The study shall also explore models for increased OTT investment such as a direct contribution from the platforms to the network operators and a digital levy or fund at the national level.</p> <p>The Authority also notes TSTT’s concerns on bargaining asymmetry between OTTs and TSPs. Section 4.3 of the Framework has been amended to include a discussion on the concerns regarding bargaining power between OTTs and TSPs in forming commercial arrangements. The Authority shall consider this factor in its study.</p>
47.	7.2	Recommendations on OTT Investment in Infrastructure in Trinidad and Tobago	Meta	<p>Proposals to force OTT contributions to network infrastructure fundamentally misunderstand the complementary relationship between OTTs and telecommunications operators, would not remedy the claimed problems, and ignore the substantial investments that OTTs currently make in network infrastructure.</p> <p>There is no credible evidence of a telecom market failure in need of fixing by mandating OTTs to subsidize telecom infrastructure. Many of the telcos pushing for network usage fees are financially healthy companies that can afford to invest in their core business offering - connectivity. Any lack of connectivity is not due to the telcos being unprofitable or</p>	<p>Meta welcomes productive and voluntary engagement with TATT, telecommunications operators, and other stakeholders on strengthening network infrastructure and connectivity in the Caribbean. We, however, discourage TATT from pursuing proposals to institute a network usage fee, interconnection fees, or other form of payment that would distort existing incentives for network investment.</p>	<p>The Authority notes Meta’s statements on mandatory contributions to network infrastructure and its discouraging of network usage fee, interconnection fees, or other forms of payments.</p> <p>The Authority emphasises the importance of broadband investment by key beneficiaries of the infrastructure.</p> <p>Similar to other countries such as the EU and the US, the Authority believes that a consultative study, engaging both digital players and local network operators, is an effective starting place towards a regulatory solution on this issue. Such study shall take into account the arguments presented by Meta, including the direct and indirect contributions by</p>

			<p>unable to invest in infrastructure, and as such mandating contributions by OTTs would not close the connectivity gap.</p> <p>Furthermore, proposals to force OTT service providers to compensate telecommunications operators fundamentally misunderstand the relationship between OTTs, telecommunications operators, and consumers. Consumers pay telecommunications operators to access the Internet in large part because of their desire to use over-the-top services that they value. As such, OTTs drive demand for telecommunications services and increase telecommunications revenue and profits. The associated increase in revenues for telecommunications operators enables them to invest in expanding network capacity and coverage. This is a virtuous cycle.</p> <p>According to the ITU, “The exponential increase in data traffic and use of OTTs results both in new subscribers for broadband services and existing subscribers upgrading their subscriptions for greater speed and bandwidth.” Moreover, there is evidence that this growth in demand for data more than compensates for any losses from reduced demand for more traditional voice and SMS services. A study of the impact of</p>		<p>OTT providers towards broadband infrastructure and the closing of the connectivity gap.</p>
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			<p>OTT applications on mobile operator revenues in Africa found that, based on data from 2016 to 2017, “operator revenues are typically not declining as a result of OTT adoption,” and “most operators in Africa have experienced strong revenue growth due to an OTT-induced increase in data demand and consequent revenues that outpace potential decreases in voice and SMS revenues.”</p> <p>Allowing telecommunications operators to double bill for the same service would lead to higher prices for consumers and distort market incentives. Carriers already receive compensation from their end users to provide access to the Internet, including OTT services. It follows therefore, that the users should be able to reach the apps of their choosing using the Internet access service they have already purchased. A network usage fee would likely raise prices for online services such as cloud services, online streaming, and the myriad of other services that users value.</p> <p>Finally, regulators should take into account the fact that OTT providers already make substantial market-driven network investments to improve service delivery and quality for end-users and reduce costs for telecom operators.</p>		
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			<p>According to research by Analysys Mason, online service providers (OSPs) invest over \$75 billion USD globally every year in network infrastructure including subsea cables and caching that improve service quality and reduce burden on telcos, leading to savings for telcos. Furthermore, the study found that “It is clear that OSPs are not simply providing content and services using third-party networks and facilities, but are making a large and growing contribution to the infrastructure that underpins the Internet.”</p> <p>Meta is making significant investments in network infrastructure around the world to make Internet access more affordable and increase connectivity. For example, Meta, in partnership with GlobeNet, launched the Malbec cable in 2021. Malbec is a 2,500 km subsea cable between Brazil and Argentina that will enhance connectivity between the two countries, the South American region, and the United States. This cable system will double the current international capacity to Argentina. The study by NERA Economic Consulting found that the Malbec cable will increase Internet penetration in Argentina by six percent and in Brazil by three percent and help reduce costs, which could translate into savings for users. In addition, Meta installs cache storage facilities collocated</p>		
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			<p>with Latin American ISP networks in order to improve user experience and reduce their international connectivity costs. Together, Meta's investments in caches and points of presence in LATAM can reduce international connectivity costs for operators by 440 million USD per year, a reduction that could well translate into lower prices for users.</p> <p>In Africa, together with regional and global partners like MTN, Orange, and Vodafone, Meta is building the longest subsea cable system in the world: 2Africa. 2Africa will be over 45,000 kilometers long and connect 33 countries across three continents (Africa, Europe, and Asia). RTI International, an independent nonprofit research institute, reports that 2Africa will improve Africa's GDP by up to 0.58 percent, equivalent to about 36.9 billion USD at PPP within the first two to three years of operations.</p> <p>This is a very conservative estimate since more countries have been added to the cable design since the study was published. As displayed in Table 1, 2Africa will lower fixed and mobile broadband prices by 5-7 percent and increase fixed broadband penetration by 1.1-1.6 percent and mobile broadband by 1.6-2.2 percent.</p>	
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Table 1: Impact of 2Africa on Broadband Penetration and GDP per Capita

Evaluation Only. Created with Aspose.Imaging. Copyright 2010- 2021 Aspose Pty Ltd.		FIXED BROADBAND
		Lower-bound
Price change due to 2Africa ^a		-5.0%
Price elasticity of demand ^b		-0.2288
Change in penetration due to 2Africa (%) ^c		1.1%
Effect of penetration on GDP per capita PPP ^b		0.0303
Impact on GDP per capita due to 2Africa (%) ^c		0.03%

^a Source: Expert consensus conducted by RTI International, September, 2020. ^b

In addition, we have invested in two subsea cables in Asia-Pacific (APAC) that are already in service, and we are building and developing several more across the region. According to Analysys Mason, these investments are expected to add approximately \$422 billion in gross domestic product (GDP) and create up to 3.7 million jobs in APAC between 2021 and 2025. In Europe, we invested in Marea, one of the highest capacity transoceanic cables in the world. According to RTI International, our investment has been contributing about \$18 billion each year to Europe’s GDP since 2019. Over the next five years, we plan to land two new cables in Europe. By 2027, these new cables will be contributing about \$65 billion annually to the European economy.

48.	7.1	Recommendations on OTT Investment in Infrastructure in Trinidad and Tobago	ALAI	<p>Proposals to force OTT contributions to network infrastructure fundamentally misunderstand the complementary relationship between OTTs and telecommunications operators, would not remedy the claimed problems, and ignore the substantial investments that OTTs currently make in network infrastructure.</p> <p>According to the ITU, “The exponential increase in data traffic and use of OTTs results both in new subscribers for broadband services and existing subscribers upgrading their subscriptions for greater speed and bandwidth.” A content tax on OTTs is not the way to remedy the claimed problems in the telecommunications sector as there is no credible evidence of a telecommunications market failure in need of fixing by mandating a content tax on OTTs.</p> <p>Proposals to force OTT service providers to compensate telecommunications operators fundamentally misunderstand the relationship between OTTs, telecommunications operators, and consumers. Consumers pay telecommunications operators to access the Internet in large part because of their desire to use over-the-top services that they value. As such, OTTs drive demand for telecommunications services and increase</p>	<p>ALAI welcomes productive and voluntary engagement with TATT, telecommunications operators, and other stakeholders on strengthening network infrastructure and connectivity in the Caribbean. We, however, discourage TATT from pursuing further study on unwarranted and likely harmful governmental interference to institute a network usage tax, interconnection fees, or other form of payment that would distort existing incentives for network investment.</p>	<p>The Authority notes ALAI’s statements on mandatory contributions to network infrastructure and its discouraging of network usage fee, interconnection fees, or other forms of payment.</p> <p>The Authority emphasises the importance of investment in broadband infrastructure and its commitment to explore strategies on the fair contribution of digital players who benefit significantly from local infrastructure.</p> <p>Similar to other countries such as the EU and the US, the Authority believes that a consultative study, engaging both digital players and local network operators, is an effective starting place towards a regulatory solution on this issue. Such study shall take into account the arguments presented by ALAI, including the direct and indirect contributions by OTT providers towards broadband infrastructure and the closing of the connectivity gap.</p>
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			<p>telecommunications revenue and profits. The associated increase in revenues for telecommunications operators enables them to invest in expanding network capacity and coverage. This is a virtuous cycle. Without new and innovative online content applications, the value of Internet access to users would be severely reduced.</p> <p>Allowing telecommunications operators to double bill for the same service would lead to higher prices for consumers and distort market incentives. Carriers already receive compensation from their end users to provide access to the Internet, including OTT services. It follows therefore, that the users should be able to reach the apps of their choosing using the internet access service they have already purchased. A study of the impact of OTT applications on mobile operator revenues in Africa found that, based on data from 2016 to 2017, “operator revenues are typically not declining as a result of OTT adoption,” and “most operators in Africa have experienced strong revenue growth due to an OTT-induced increase in data demand and consequent revenues that outpace potential decreases in voice and SMS revenues.” A content tax would likely raise prices for online services such as cloud services, online streaming, and the myriad of other services that users value.</p>	
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				<p>Finally, regulators should take into account the fact that OTT providers already make substantial market-driven network investments to improve service delivery and quality for end-users and reduce costs for telecom operators. According to research by Analysys Mason, online service providers (OSPs) invest over \$75 billion dollars annually in network infrastructure including subsea cables and caching that improve service quality and reduce burden on telcos, leading to savings for telcos. Furthermore, the study found that “It is clear that OSPs are not simply providing content and services using third-party networks and facilities, but are making a large and growing contribution to the infrastructure that underpins the Internet.”</p>		
49.	7.4	Recommendations on Local Content Development	TSTT	<p>Statement 19: TSTT is unsure how the Authority intends to propose a model where parties who are not registered in Trinidad and Tobago as businesses, and not Concessionaires under the Telecommunications Act will be subject to any legal obligation in Trinidad and Tobago generally, and pursuant to the Authority’s directions specifically, in relation to any matter including:</p> <ul style="list-style-type: none"> - Content quotas; - Requirements for direct investment; and 	<p>This statement, and section, are unrealistic and should be deleted given the framework outlined above.</p>	<p>The Authority notes that policy statement 19 relates to collaboration between the Authority and relevant agencies responsible for the oversight of local content creation and promotion in Trinidad and Tobago, inclusive of the Ministry of Tourism and Culture. The Authority therefore disagrees that such collaboration, in addition to the proposed study on local content promotion, is ultra vires of the Act and should be deleted from the Framework.</p>

				<p>- Requirements for indirect investment. In short, these statements seem unrealistic and not thought out.</p> <p>Further, content and content-related matters do not fall under the statutory remit of the Authority. The Authority is not a content regulator or censor. Accordingly, the proposals of this section are ultra vires the Act and should be deleted.</p>		
50.	7.4	Recommendations on Local Content Development	Digicel	<p>Similarly, Digicel submits that the Authority should do more than to suggest it “<i>may conduct a study on the feasibility of one, or a mix of various policy models for promoting local content</i>”.</p> <p>There are already a number of good examples (as the Authority has identified) where other jurisdictions have implemented initiatives to ensure OTTs begin to contribute fairly to the local content they leverage through their social media platforms.</p> <p>It is worth noting in particular the progress that has been made in Australia through the implementation of the <i>Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021</i> (the Australian Code – see https://www.accc.gov.au/focus-areas/digital-platforms/news-media-</p>	<p>In Digicel’s submission the Authority should commit to undertaking a study with a view to making recommendations on future changes to support investment by OTTs in the production of local content.</p>	<p>Digicel’s submission that the Authority should commit to undertaking a study with a view to making recommendations on future changes to support investment by OTTs in the production of local content is noted.</p> <p>The Authority confirms its intention to commit such study and notes that the outcome of the study shall inform future decisions of the Authority in relation to local content and any role that OTTs play in its development.</p> <p>Section 7.4 of the Framework includes further discussions of the Authority’s post-study recommendations.</p>

				<p>bargaining-code). The Australian Code aims to address bargaining power imbalances to ensure digital platforms fairly remunerate news businesses for the content they generate, thereby helping to sustain public interest journalism in Australia. It does this by providing incentives for digital platforms and news businesses to reach commercial deals outside of the Code. If agreement cannot be reached, it provides a framework (following designation of a digital platform) for good faith negotiations and mediation between the parties. Where agreement cannot be reached, it sets out an arbitration process to determine remuneration payable by a digital platform. While the ACCC does not have a formal monitoring role in respect of commercial deals in late 2021 it compiled a list of 34 commercial deals that it understood to have been reached between each of Google and Meta and news businesses.</p> <p>This is a good example of how a firm Government resolve and willingness to take action has resulted in a substantial change to the way OTT providers conduct themselves.</p>		
51.	7.4	Recommendations on Local	Meta	Imposing local content quotas on OTT video platforms, especially UGC services, would create adverse effects as they restrict the ability of content creators to freely		The Authority notes Meta’s statement on local content quotas on OTT services. Similar to other countries, the Authority sees the value in local content creation and investments amidst the growing

		Content Development	<p>participate in the global media market and may also reduce consumer choice in content. A study by Raul Katz, Ph.D and Juan Jung, Ph.D found that “The empirical evidence generated in the framework of this study indicates that catalog [production] quotas have not contributed to the development of local audiovisual content.” Furthermore, the empirical study found that production quotas have specific negative effects, namely: “Reduction in the offer of contents that contain a cultural value;[...] General erosion in the quality of content, even if some local production companies generate high-level audiovisual production; Loss of cultural differences due to the fact that local production ends up assimilating foreign content in order to continue satisfying the demand for foreign products; Increase in production costs with their eventual transfer to service prices;”</p> <p>Content quotas are an inefficient mechanism to promote the creation of locally relevant content as they restrict the ability of content creators to freely participate in the global media market, and they may also reduce consumer choice in content. Allowing online video providers to transmit any lawful content encourages competition and diversification, promotes content creation—particularly of niche and independent programming and</p>		<p>popularity of OTT media services accessed locally. Section 7.4 of the Framework includes proposals for a feasibility study on adopting one or a mix of various policy models for promoting local content. The study shall consider the key points provided by Meta in its commentaries.</p>
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			<p>programming for members of marginalized communities, and benefits consumers by enabling them to access a wide variety of content. For example, a study by David Blackburn, Ph.D., Jeffrey Eisenach, Ph.D., and Bruno Soria, Ph.D. found that “Increased demand for video content is leading to an increased supply of diverse video content, including both professionally produced and user generated content (UGC).” Implementing a local content quota may invite other countries to enact reciprocal quotas, effectively raising barriers to the spread of Trinidadian video programming abroad and reducing the available market for Trinidadian content producers and hurting Trinidad and Tobago’s content creation industry.</p> <p>This could be particularly damaging to niche and independent content producers that may rely on a global audience accessed over the Internet. Further, online content and application providers may be forced to respond to content quotas by limiting the amount of international content available to Trinidadian consumers, reducing choice and diversity of content for Trinidadian consumers and resulting in those users having a different, more limited experience than users worldwide. Moreover, providers might be forced to license a</p>		
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				<p>greater amount of inexpensive, potentially lower quality Trinidadian titles to meet the quota, potentially reducing the availability of high-quality Trinidadian and other content. Others may decline to enter the market completely, depriving consumers of choice. Rather than imposing a content quota, we encourage focusing on programs to develop and support the Trinidadian content creation industry.</p> <p>Promoting and serving consumers with high quality local content is a goal that Meta shares with TATT. As such, we encourage TATT to remove barriers to creation of local content and to enhance Trinidad and Tobago’s attractiveness as an investment destination in the region.</p> <p>Policymakers should consider developing and implementing mechanisms to further enhance the attractiveness and competitiveness of its economy as an investment destination. Governments around the Caribbean - and around the world - have identified the creative sector as a powerful engine of economic recovery coming out of the COVID-19 pandemic. In fact, many countries have prioritized the creative sector, including film and TV production. TATT can be a leader in this respect and help Trinidad and Tobago reap its share of the increasing investment in audiovisual services. The most fruitful path</p>		
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			<p>to achieve this is through schemes that incentivize and cultivate investment in the target sectors and we recommend that this be the focus of these efforts. For example, the Government of the Republic of Korea has a system of progressive tax credits for OTT content production that gives more generous tax credits to smaller businesses. On September 22, 2022, the Republic of Korea announced plans to expand this tax credit to provide greater incentives for production and support smaller content producers. If passed by the National Assembly, the tax credits rates would rise to 5% for large companies, 10% for middle market enterprises and 15% for small and medium-sized enterprises from the current 3%, 7% and 10%.</p> <p>The vast majority of countries do not compel investment in local content, and in the countries that do - which are primarily in the European Union, and only some EU member countries - investment incentives are also available. No OECD member country outside of the EU has such a requirement, and the countries that have become audiovisual powerhouses provide investment incentives to local and foreign producers. Therefore, it would be detrimental for TATT to miss the opportunity to adequately consider these</p>		
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			<p>approaches - as it seeks to catalyze the sector in years to come.</p> <p>Third, different types of audiovisual services - domestic and foreign - present different value propositions to Trinidad and Tobago's producers and consumers. The boom in online content has seen a flourishing in the number and type of services provided. International online services - through their investment in local-language content, and partnerships with local talent - have proven results in building international audiences for the talent and content which flourish on domestic linear and non-linear services. As many examples have shown in recent years, local and international services complement one another while providing different - but no less important - value propositions to Trinidad and Tobago's creators and consumers.</p> <p>Fourth, in light of the complexity and dynamism that characterizes the audiovisual and creative sectors today, the risk of regulatory overreach must also be carefully considered. Establishing new - and more powerful - bureaucracies and institutions tends to be a precursor to regulatory 'creep' in the decades that follow.</p>		
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52.	7.4	Recommendations on Local Content Development	ALAI	<p>UGC services would create adverse effects as they restrict the ability of content creators to freely participate in the global media market and may also reduce consumer choice in content. Content quotas are an inefficient mechanism to promote the creation of locally relevant content as they restrict the ability of content creators to freely participate in the global media market, and they may also reduce consumer choice in content. Allowing online video providers to transmit any lawful content encourages competition and diversification, promotes content creation—particularly of niche and independent programming and programming for members of marginalized communities, and benefits consumers by enabling them to access a wide variety of content. Implementing a local content quota may invite other countries to enact reciprocal quotas, effectively raising barriers to the spread of Trinidadian video programming abroad and reducing the available market for Trinidadian content producers and hurting Trinidad and Tobago’s content creation industry.</p> <p>This could be particularly damaging to niche and independent content producers that may rely on a global audience accessed over the Internet. Further, online content and application providers may be forced to</p>		<p>The Authority notes ALAI’s statement on local content quotas on OTT services. Similar to other countries, the Authority sees the value in local content creation and investments amidst the growing popularity of OTT media services accessed locally. Section 7.4 of the Framework includes proposals for a feasibility study on adopting one or a mix of various policy models for promoting local content. The study shall consider the key points provided by ALAI in its commentaries.</p>
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			<p>respond to content quotas by limiting the amount of international content available to Trinidadian consumers, reducing choice and diversity of content for Trinidadian consumers and resulting in those users having a different, more limited experience than users worldwide. Alternatively, providers might be forced to license a greater amount of inexpensive, potentially lower quality Trinidadian titles to meet the quota, potentially reducing the availability of high-quality Trinidadian and other content. Others may decline to enter the market completely, depriving consumers of choice. Rather than imposing a content quota, we encourage focusing on programs to develop and support the Trinidadian content creation industry.</p> <p>Promoting and serving consumers with high quality local content is a goal that ALAI shares with TATT. As such, we encourage TATT to remove barriers to creation of local content and to enhance Trinidad and Tobago's attractiveness as an investment destination in the region. Policymakers should consider developing and implementing mechanisms to further enhance the attractiveness and competitiveness of its economy as an investment destination. Governments around the Caribbean - and around the world - have identified the creative sector</p>		
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			<p>as a powerful engine of economic recovery coming out of the COVID-19 pandemic. In fact, few economies have yet to prioritize the creative sector, including film and TV production. TATT can be a leader in this respect and help Trinidad and Tobago reap its share of the increasing investment in audiovisual services. The most fruitful path to achieve this is through schemes that incentivize and cultivate investment in the target sectors and we recommend that this be the focus of these efforts.</p> <p>The vast majority of countries do not compel investment in local content, and in the countries that do - which are primarily in the European Union, and only some EU member countries - investment incentives are also available. No OECD member country outside of the EU has such a requirement, and the audiovisual powerhouses around the world provide investment incentives to local and foreign producers. Therefore, it would be detrimental for TATT to miss the opportunity to adequately consider these approaches - as it seeks to catalyze the sector in years to come.</p> <p>Third, different types of audiovisual services - domestic and foreign - present different value propositions to Trinidad and Tobago's producers and consumers.</p>		
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				<p>The boom in online content has seen a flourishing in the number and type of services provided. International online services - through their investment in local-language content, and partnerships with local talent - have proven results in building international audiences for the talent and content which flourish on domestic linear and non-linear services. As many examples have shown in recent years, local and international services complement one another while providing different - but no less important - value propositions to Trinidad and Tobago's creators and consumers.</p> <p>Fourth, in light of the complexity and dynamism that characterizes the audiovisual and creative sectors today, the risk of regulatory overreach must also be carefully considered. Establishing new - and more powerful - bureaucracies and institutions tends to be a precursor to regulatory 'creep' in the decades that follow.</p>		
53.	7.5	Collaborative Framework for OTTs and TSPs	Digicel	<p>Digicel agrees with the Authority's statement that "<i>policies and regulations on OTTs, where applicable, shall ... permit telecommunications network operators to offer their own OTT applications without subjecting them to legacy telecommunications regulations...</i>".</p>	<p>Digicel submits that such an important principle be reflected in the <i>Statement on Collaborative Framework for OTTs and TSPs</i>.</p> <p>"Policies and regulations on OTTs, where applicable,</p>	<p>Digicel's recommendation that the stated principle be reflected in the Statement on Collaborative Framework for OTTs and TSPs has been incorporated in Section 7.5 of the Framework.</p>

			<p>Such an approach would be consistent with the principle of fairness mandated by section 18(3) of the Act and the Act’s objectives and help to ensure a level playing field for all market participants. Unfortunately, however, the principle set out above has not been included in the Authority’s <i>Statement on Collaborative Framework for OTTs and TSPs</i> (the Statement).</p> <p>Digicel submits that such an important principle be reflected in the Statement. Digicel also supports the Authority’s commitment to “<i>adopt a regulatory framework that ensures an enabling environment for fair commercial interactions between OTTs and TSPs</i>”.</p> <p>As a first and fundamental step in doing so, Digicel submits that the Authority should take urgent steps to declare OTT voice and messaging services to be public telecommunications services and require OTTs to become concessionaires in accordance with the requirements of the Act.</p> <p>However, Digicel is concerned at the Authority’s apparent reliance on net neutrality as its guiding principle. In Digicel’s view such an approach is “about</p>	<p>shall permit telecommunications network operators to offer their own OTT applications without subjecting them to legacy telecommunications regulations.”</p> <p>In Digicel’s submission the adoption of such a neutral approach and the “regularisation” of OTTs businesses also needs to precede any further discussion regarding net neutrality.</p> <p>As such, we propose that any reference to net neutrality be removed from the proposed Statement on Collaborative Framework for OTTs and TSPs.</p>	<p>The Authority views discussions on both net neutrality and OTTs as important, hence the consultations on each topic. A key theme of the Framework on Net Neutrality is ensuring transparency and non-discrimination in OTTs/TSPs arrangements. Reference to net neutrality is therefore relevant to any discussion on OTTs and their relationships with TSPs.</p>
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				<p>faced". Focussing on net neutrality will inevitably impose yet further regulatory requirements on existing concessionaires and tilt the competitive playing field even further towards OTTs who are not subject to the Trinidad and Tobago regulatory framework, do not pay licence or concession fees, contribute to the Universal Service Fund or pay corporation tax or VAT on the services they provide and yet compete directly with the TSPs who underpin their existence.</p>		
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