



# **Draft Telecommunications (Pricing) Regulations**

<b>Maintenance History</b>		
<b>Date</b>	<b>Change Details</b>	<b>Version</b>
December 6, 2006	First Consultative Draft	0.1
June 27, 2008	Revised Consultative Draft based on comments and recommendations received in the 1 <sup>st</sup> round of consultation (See Decisions on Recommendation (DOR) Matrix at Annex II)	0.2
March 4, 2009	Final Draft based on comments and recommendations received in the 2nd round of consultation (See Decisions on Recommendation (DOR) Matrix at Annex I)	1.0



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# 1 Introduction

## 1.1 Requirements for Pricing Regulations

Section 29 of The Telecommunications Act ("The Act") grants the Telecommunications Authority of Trinidad and Tobago ("the Authority") the power to regulate the prices of telecommunications services under certain market conditions. In particular, as outlined in Section 29 (2) of the Act, the Authority may "...establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where-

- (a) there is only one concessionaire operating a public telecommunications network or providing a public telecommunications service, or where one concessionaire has a dominant position in the relevant market;
- (b) a concessionaire operating a public telecommunications network or providing a public telecommunications service cross-subsidizes another telecommunications service provided by such concessionaire; or
- (c) the Authority detects anti-competitive pricing or acts of unfair competition.”

Most markets in the telecommunications sector are either currently serviced by one telecommunication provider or in the early stages of competition. Therefore the determination of market prices through the principles of supply and demand may not hold. Even in situations where there may be a number of providers in a particular market for an extended period, effective competition may not exist where market prices are determined purely on the basis of supply and demand. As a result, the Authority may be required to develop alternative means of facilitating an environment where prices in the market will maximize society's welfare.

The Authority's policy considerations in respect of pricing regulation are contained in the Price Regulation Framework. The approach followed is based on the requirements of Sections 29 of the Act, for the Authority to define relevant telecommunications services markets, assess whether there is dominance or exclusivity of supply within those markets, and impose price regulation only so justified. The presumption, as indicated in Section 29(1) of the Act, is that in the absence of dominance (jointly or otherwise) or proven anti-competitive behaviour, prices

will be determined by providers in accordance with the principles of supply and demand in the market.

The purpose of the draft Telecommunications (Pricing) Regulations is to provide the legal provisions to implement the Price Regulation Framework.

## **1.2 Review Cycle**

As the telecommunications sector grows and develops into more competitive markets the need will arise to revise and update the type of price regulation regime that is employed by the Authority. As such, this document will be modified in consultation with concessionaires, stakeholders, interested parties and the public, as the Authority deems appropriate. The maintenance history will be modified accordingly.

## **1.3 Consultation Process**

On December 4<sup>th</sup> 2006, the Authority published the first draft of this document and invited the comments and recommendations from all interested parties. The first consultation period ended on January 29<sup>th</sup> 2007. The Authority revised the draft document taking into consideration the comments and recommendations received in the first consultation round and published a further version of the document on 27<sup>th</sup> June 2008 for a second round of consultation. A “Decisions on Recommendations” (DOR) Matrix detailing the changes that were made to the first draft of the document is included at Annex II, and provides all the comments and recommendations received in the first round of consultation, and summarises the Authority’s decisions in respect of those.

A second round of consultation commenced with publication of the document on 27<sup>th</sup> June 2008 and ended on 19<sup>th</sup> September 2008, in which the Authority received several comments from the following parties:

- Telecommunications Services of Trinidad and Tobago (TSTT)
- Digicel (Trinidad) Limited

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- The Ministry of Public Administration and Information
- Windward Telecom
- Columbus Communications (Trinidad) Limited
- Independent Cable Networks of Trinidad and Tobago Limited (ICNTT).

The Authority has also held discussions with the parties that have submitted comments, in order to ensure that the comments have been properly interpreted and understood, and where appropriate, addressed. The Authority has now completed its final revision of the document, taking into consideration the comments received. A DOR Matrix detailing the changes that had been made to the document has been included at Annex I, which provides all the comments and recommendations received in the second round of consultation, and summarises the Authority's decisions in respect of those.

The completed document has now been forwarded to the Minister of Public Administration for his approval and laying in Parliament in accordance with section 78 of the Telecommunications Act 2001.

## 2 Draft Telecommunications (Pricing) Regulations

### REPUBLIC OF TRINIDAD AND TOBAGO

### THE TELECOMMUNICATIONS ACT (ACT NO: 4 OF 2001)

### REGULATIONS

Made by the Minister under section 78 (1) of the Telecommunications Act

DRAFT TELECOMMUNICATIONS (PRICING) REGULATIONS, [ ]

#### PART I PRELIMINARY

- Citation
1. These Regulations may be cited as the Telecommunications (Pricing) Regulations, [ ], hereinafter referred to as "**the Regulations**".
  2. These Regulations address the pricing of public telecommunications networks and public telecommunications services in the Republic of Trinidad and Tobago, and are made pursuant to section 29 of the Act.
- Interpretation
3. (1) In these Regulations:  
  
**“Bundling”** means the provision of more than one telecommunications or broadcasting service to a customer as a package, where the price covers all services within the package;  
  
**“Competitive market”** means a market in which none of the concessionaires is dominant;  
  
**“Concessionaire”** means a person or an entity authorized to operate a public telecommunications network or provide a public telecommunications service under section 21 of the Act;  
  
**“Consultation Procedures”** means the Procedures for Consultations in the Telecommunications and Broadcasting Sectors in Trinidad and Tobago, established by the Authority from time to time;  
  
**“Contested market”** means a market in which two or more



concessionaires provide services and at least one is dominant;

**“Dominance criteria”** means the criteria referred to in Regulation 9, and set out in Schedule B, pursuant to which the Authority will assess the dominance of any concessionaire in any market;

**“Dominant concessionaire”** means a concessionaire that has, in accordance with the process set out in Regulation 12, been declared by the Authority to be in a position of dominance in a market;

**“Essential facility”** means a facility that has been designated as such by the Authority under Regulation 6;

**“HHI”** means the Hirschmann Herfindahl Index, a measure of concentration in a market calculated using the market shares of all concessionaires operating in that market;

**“Market”** means an identified group of telecommunications services as set out in Schedule A, or defined by the Authority in accordance with Regulation 4;

**“Price cap”** means a price control regime within a market or group of markets in which a concessionaire is required to reduce prices for a basket of services by a pre-determined amount, or is allowed to raise prices for a basket of services by no more than a pre-determined amount, on an annual basis;

**“Price Cap Principles”** means the principles to which the Authority shall have regard when imposing price caps, as set out in Schedule C;

**“Price floor”** means a price control regime within a market or group of markets in which a concessionaire is prohibited from pricing a service or services for less than a prescribed amount;

**“Price Floor Principles”** means the principles to which the Authority shall have regard when imposing price floors, as set out in Schedule E;

**“Price review”** means a process for the review of an existing or proposed price for services;

**“Price Review Panel”** means a panel established under Regulation 38 to conduct a price review;

**“Rate of return regulation”** means a price control regime

whereby a price is set so as to enable the concessionaire to achieve a particular rate of return;

**“Rate of Return Principles”** means the principles to which the Authority shall have regard when imposing rate of return regulation, as set out in Schedule F;

**“Relevant market”** means the market or markets within which the Authority proposes to introduce a price control regime;

**“Retail-minus price control”** means a price control regime whereby the price for a wholesale service is set by reference to a retail price that uses the wholesale service as an input;

**“Retail-Minus Principles”** means the principles to which the Authority shall have regard when imposing retail-minus price controls, as set out in Schedule D;

**“Retail price”** means a price charged by the provider of a service to end users of that service;

**“Uncontested market”** means a market in which only one concessionaire provides services; and,

**“Wholesale price”** means a price charged by a provider of a service to resellers of the service, or persons who use the service as an input in the provision of other services.

(2) Terms not otherwise defined in these Regulations shall have the meanings defined in the Act.

(3) A reference to a Regulation or subsection is a reference to the relevant Regulation or subsection of these Regulations.

(4) A reference to a Schedule is a reference to the relevant Schedule to these Regulations.

## **PART II MARKETS FOR TELECOMMUNICATIONS SERVICES**

- Definition of markets
4. The Authority shall in accordance with the following procedure, define the markets which will be used for the purpose of price regulation in Trinidad and Tobago:
- a) The markets set out in Schedule A shall take effect upon the coming into effect of these Regulations. The Authority may modify those markets using the process

set out in this Regulation 4.

- b) The Authority shall identify groups of telecommunications services that should be combined into markets for the purpose of price regulation, based on economic principles, applying tests and analyses as the Authority considers appropriate based on international best practice and the extent of telecommunications development and liberalisation in Trinidad and Tobago.
- c) The Authority shall determine the appropriate scope of the markets, both in terms of products and services offered to consumers and geographical limits where appropriate.
- d) The Authority shall publish details of the proposed markets on its website and shall conduct a consultation on such market definitions with interested parties in accordance with the Authority's consultation procedures, and shall take into account the representations made in that consultation.
- e) The market definitions as determined by the Authority in accordance with the foregoing process, shall be published by the Authority in the Gazette and at least one daily newspaper with circulation in Trinidad and Tobago, and shall take effect fourteen (14) days after publication.
- f) Market definitions shall include at a minimum:
  - i. A description of the services comprised in the markets, such description being adequate to differentiate the service from other similar services; and,
  - ii. A statement of the geographical limits of the market.

Review of  
defined markets

- 5. The Authority shall review the markets defined in accordance with Regulation 4:
  - a. Periodically as determined by the Authority, but not less than once every three (3) years;
  - b. In response to any substantial change in market conditions;

- c. At its discretion, in response to a request from a concessionaire to conduct such a review.

Designation of essential facilities

- 6. The Authority may designate any facility in Trinidad and Tobago as an essential facility, where in the reasonable opinion of the Authority the following criteria are satisfied:
  - i. The facility is exclusively or predominantly provided in a market by a single or limited number of concessionaires;
  - ii. The facility is required by other concessionaires in order to compete in that market; and,
  - iii. The facility cannot practically be duplicated or substituted by the other concessionaires for technical or economic reasons.
- 7. The process for designation of an essential facility shall comprise, at a minimum, the following steps :
  - a) The Authority shall identify the facility, the concessionaire who owns or controls the facility, the service or services for which the facility is utilised (the “relevant services”), the market or markets within which those services are provided (the “relevant markets”), and all concessionaires providing the relevant services.
  - b) The Authority shall publish in the Gazette and one daily newspaper with circulation in Trinidad and Tobago, a notice advising that it is considering designating the facility as essential, the service or services for which the facility is utilised, the market or markets within which those services are provided, and all concessionaires providing the relevant services.
  - c) Any concessionaire providing the relevant services in the relevant market or markets may make representations to the Authority on any matter relevant to the designation of the facility as an essential facility (having regard to the criteria set out in Regulation 6) such representations to be made no later than twenty-eight (28) days after the date of the notice published under sub-regulation 7.b).
  - d) The Authority shall provide a copy of all representations

made by concessionaires to the concessionaire which owns or controls the facility, and shall afford such concessionaire a further period of no less than twenty-one (21) days to give further comments on such additional information, and shall take into account any comments received.

- e) The Authority shall publish the draft of its assessment on its website, and invite interested parties to provide any comments on the decisions made therein. Such comments must be submitted to the Authority within twenty one (21) days of publication (or any longer timeframe indicated in the publication) and the Authority shall consider any comments received before producing its final assessment. The publication shall contain at a minimum, the following information:
  - i. The details of the facility;
  - ii. The details of the concessionaire which owns or controls the facility;
  - iii. A list of concessionaires providing the relevant services;
  - iv. Its decision as to whether or not the facility is essential, giving reasons for its decision.
- f) The final decision shall be published by the Authority in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago, and on the website of the Authority, and any designation made therein shall take effect fourteen (14) days after publication.

Declaration of dominance 8. The Authority may declare a concessionaire to be dominant if in the opinion of the Authority that concessionaire operates in a market where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

Criteria for assessment of dominance 9. The Authority will assess whether or not a concessionaire is dominant in any market, using the dominance criteria set out in Section 1 of Schedule B. The Authority may declare two or more concessionaires as jointly dominant where together they satisfy the joint-dominance criteria set out in Section 2 of Schedule B.

10. The Authority may from time to time by publication amend

the dominance criteria to take account of any factors which the Authority considers appropriate, save that such criteria shall as a minimum provide for the consideration of the following factors by the Authority:

- a. The relevant market;
- b. The market share of the concessionaires operating in the market;
- c. Technology and market trends relevant to the market;
- d. The power of the concessionaires operating in the market to set prices; and,
- e. The degree of differentiation among services in the market.

Presumption of dominance to be made in certain circumstances

11. In any assessment of dominance, the following presumptions may be applied by the Authority:

- a) A presumption that a concessionaire which has for a continuous period of six (6) months (or more) maintained a market share of 40% or more of gross revenues in one or more markets, is dominant in those markets, which presumption may be rebutted by the concessionaire demonstrating to the Authority that it is not in fact dominant based on the criteria identified in the dominance criteria.
- b) A presumption that a concessionaire having control of an essential facility is dominant in markets for which that essential facility is required, which presumption may be rebutted by the concessionaire demonstrating to the Authority that it is not in fact dominant based on the dominance criteria.

Procedure for assessment of dominance

12. An assessment of dominance shall comprise, at a minimum, the following steps :

- (a) The Authority shall identify the market being assessed (the “relevant market”) and all concessionaires providing services in that market.
- (b) The Authority shall consider whether the circumstances in the market are such that any of the presumptions set out in regulation 11 apply.

- (c) The Authority shall publish in the Gazette and one daily newspaper with circulation in Trinidad and Tobago, a notice advising that it is conducting an assessment of dominance, and identifying the relevant market and the concessionaires providing services in that market. Where the Authority has identified that a presumption is appropriate in accordance with Regulation 11, the notice shall identify the presumption and any concessionaire to which the presumption applies.
- (d) A concessionaire, in respect of which a presumption of dominance has been identified in the notice, shall be entitled to make representations to the Authority seeking to rebut the presumption. Such representations shall be made within six (6) weeks of the date on which the notice was published.
- (e) Any concessionaire providing services in the relevant market or any person likely to be affected by an assessment of dominance in the relevant market may make representations to the Authority on any matter relevant to the assessment (having regard to the dominance criteria) such representations to be made no later than twenty-eight (28) days after the date of the notice published under sub-regulation 12.c) above.
- (f) A concessionaire shall provide to the Authority on request any information relevant to any of the dominance criteria in respect of any assessment. Such information shall be provided to the Authority forthwith.
- (g) The Authority shall provide a copy of all representations made by concessionaires or other parties as well as any other relevant information being considered by the Authority to the concessionaires providing services in the relevant market, and shall afford such concessionaires a further period of no less than twenty-one (21) days to give further comments on such additional information, and shall take into account any comments received.
- (h) The Authority may, in its sole discretion, hold hearings to invite and obtain representations from the public or any sector of the public which the Authority considers appropriate having regard to the dominance criteria.
- (i) The Authority shall publish the draft of its assessment on its website, and invite interested parties to provide any

comments on the decisions made therein. Such comments must be submitted to the Authority within twenty one (21) days of publication (or any longer timeframe indicated in the publication) and the Authority shall consider any comments received before producing its final assessment. The publication shall contain at a minimum, the following information:

- i. The definition of the relevant market;
  - ii. A statement of concessionaires operating in the relevant market with their market share used for the purpose of the assessment;
  - iii. A declaration of dominance in respect of any concessionaires operating in the relevant market which the Authority has determined to be dominant in the relevant market;
  - iv. A classification of the relevant market as either contested, or competitive.
- (j) The final assessment of dominance in the relevant market shall be published by the Authority in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago, and on the website of the Authority, and any declaration of dominance made therein shall take effect fourteen (14) days after publication.

Establishment  
of procedures  
where necessary

13. The Authority may, if it in its sole discretion considers it necessary or appropriate to do so, establish by publication procedures which expand on any aspect of the process for assessment of dominance including the identification of information to be submitted by concessionaires or other interested parties, applicable data formats and times for submission of information.

Review of  
dominant status

14. A dominant concessionaire may apply to the Authority to have its dominant status reviewed. Such an application must be in writing and must contain supporting evidence based on the dominance criteria, as well as any other information which the concessionaire wishes the Authority to consider in its deliberations. The Authority shall in connection with such review, be entitled to seek from any concessionaire such further information as it may reasonably require in connection with the review, and shall complete its review in a reasonable timeframe, not exceeding six months from the date on which it receives all required information. The process for a review



of dominant status shall be consistent with the process set out in Regulation 12.

15. Where the Authority, having conducted a review under Regulation 14, determines that the concessionaire under review is not in a position of dominance in the relevant market, it shall within fourteen (14) days of the completion of the review publish a notice to that effect in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago, and on the website of the Authority, and the concessionaire shall cease from the date of publication to be a dominant concessionaire in the relevant market.

Authority to maintain list of market classifications

16. The Authority shall maintain on its website a list of markets that have been classified by the Authority which list shall identify any concessionaires who have been declared dominant in those markets.

### **PART III PRICE CONTROLS FOR TELECOMMUNICATIONS SERVICES**

Notification of Price Changes

17. No concessionaire shall change its price for any telecommunications service, save in accordance with the following:
- i. For services offered to the public, in respect of any price increase, the concessionaire shall give notice to customers no less than thirty (30) days prior to the change taking effect.
  - ii. For services offered to other concessionaires, the concessionaire shall give notice to such concessionaires no less than ninety (90) days prior to the proposed change taking effect.
  - iii. The concessionaire shall submit to the Authority a written notification of the proposed price change no later than thirty (30) days prior to giving notice in accordance with sub-regulations 17 i, ii, or iii above. The Authority may, in its sole discretion, waive this requirement by the giving of a notice which notice may be of general or individual applicability.
  - iv. In each case, the notice shall identify the services for which the price is being changed, the new price, the date on which the change is to take effect, and the

period (in the case of promotional or temporary price changes) for which the price will be effective.

- v. Where a concessionaire is subject to a price control regime which applies to the relevant price, the concessionaire must, in addition to giving notification under this Regulation, comply with the requirements of the price control regime.

Price Control  
Regimes

18. The Authority may in any case where there is only one concessionaire operating a public telecommunications network or providing a public telecommunications service in a particular market, or where a concessionaire has a dominant position in a market, or where a concessionaire cross subsidizes one telecommunications service provided by it with revenues from another telecommunications service provided by such concessionaire, or where it detects anti-competitive pricing or acts of unfair competition, implement such of the following price control regimes as it considers appropriate upon concessionaires in the relevant market:

- a. Price caps;
- b. Retail-Minus Pricing;
- c. Price Floors;
- d. Rate of Return Regulation;
- e. Cost-based pricing.

Anti-  
competitive  
behaviour

19. The Authority shall consider any act by a concessionaire or any affiliate of a concessionaire, which has the likely or intended effect of preventing, substantially restricting, or distorting competition in any market or markets, or interfering with the operation of networks or the provision of services by any competitor of that concessionaire, to be an anti-competitive by that concessionaire. Without prejudice to the generality of the foregoing, the following acts shall, in the absence of proof to the contrary satisfactory to the Authority, be considered to be anti-competitive:

- a. bundling services, so that a concessionaire is required when purchasing one service to purchase another service that it does not require;
- b. offering a select group of customers or a competing concessionaire more favourable prices or related terms or conditions that are not justified by cost differences, if it

- acquires another service that it does not require;
- c. supplying services at prices below long run average incremental costs;
  - d. using revenues or the allocation of costs from one public telecommunications service to cross-subsidize another public telecommunications service, except where such cross subsidy is specifically approved by the Authority in writing;
  - e. deliberately reducing the margin of profit available to a competing concessionaire, by increasing the prices for the wholesale telecommunications services required by that competing concessionaire, or decreasing the prices of services in retail markets where they compete, or both, to the extent that it creates an unfair disadvantage to the competing concessionaire;
  - f. entering into anti-competitive pricing agreements, including:
    - (i) price-fixing agreements, pursuant to which competing concessionaires agree on or otherwise manipulate retail prices;
    - (ii) bid-rigging, pursuant to which competing concessionaires manipulate the prices or conditions in what should otherwise be a competitive tender process;
    - (iii) resale price maintenance, pursuant to which a concessionaire that supplies a competing service provider with products or services attempts to impose restrictions on the prices charged by that service provider to consumers; and
    - (iv) exclusive dealing agreements, pursuant to which a concessionaire enters into an agreement with another party for the supply of products or services on an exclusive basis and with related pricing incentives, and where that exclusivity has or may have the effect of substantially lessening competition in related markets;
  - g. supplying to competing concessionaires essential network elements at prices above the prices offered by the supplying concessionaire for providing the retail services utilizing such essential network elements.

- Imposition of price caps
20. The Authority may impose price caps on a concessionaire operating in an uncontested market and on any dominant concessionaire in a contested market. Price caps may be imposed in respect of retail prices or wholesale prices.
21. (1) Where applicable, the Authority shall apply the Price Cap Principles, set out in Schedule C when establishing price caps in accordance with these Regulations.
- (2) The Minister, acting on the advice and recommendation of the Authority, may by order amend the Price Cap Principles.
- Procedure for imposition of price caps
22. Where the Authority considers imposing a price cap:
- (a) The Authority shall identify the market or markets in which it is proposing to introduce a price cap (the “relevant markets”), all concessionaires providing services, and all services included in the relevant markets.
- (b) The Authority shall publish a notice advising that it is introducing price caps, identifying the relevant markets, the concessionaires providing services, and the services included in the relevant markets. The notice shall also identify all concessionaires which, based on their position in the relevant markets, would be subject to the price cap.
- (c) Any concessionaire providing services in the relevant markets or any person likely to be affected by price caps regime in the relevant markets may make representations to the Authority on any matter relevant to the introduction of price caps in the relevant markets, such representations to be made within four (4) weeks of publication of the notice under sub-regulation 22(b) above.
- (d) The Authority may request from any concessionaire operating in the relevant markets any further information which it reasonably requires for the formulation of price caps in the relevant markets, and such information shall be provided by the concessionaire to the Authority within twenty-one (21) days of the Authority’s written request to do so.
- (e) The Authority shall provide a copy of all representations made by concessionaires or other parties as well as any other relevant information being considered by the Authority to the concessionaires providing services in the

relevant markets, and shall afford such concessionaires a further period of no less than twenty-one (21) days to give further comments on such representations and additional information, and shall take into account any comments received.

- (f) The Authority shall, taking account of any representations made under sub-regulations (c) and (e), and information provided under sub-regulation (d), and in accordance with the Price Cap Principles:
- i. define the basket(s) of services within the relevant markets which the Authority proposes to make subject to price caps and, where applicable, any sub-baskets;
  - ii. determine the elements of the price cap, which may include but are not limited to:
    - a. Initial prices for each service within the price cap;
    - b. The formula for a Price Cap Index to be used to measure the maximum allowable average price for each service basket;
    - c. The formula for an Actual Price Index to be used to measure actual average price changes for each service basket;
    - d. The criteria which will be used to measure compliance by the concessionaire with the price cap, which will include requirements to submit information to the Authority and any other matter which the Authority considers appropriate;
    - e. Such adjustment factors as the Authority considers appropriate for inclusion in the price cap formulae;
    - f. Carry-over headroom features where the Authority considers it appropriate to enable annual carry forward of a concessionaire's rights under the price cap; and,
    - g. determine the appropriate duration of the price cap.

- (g) The Authority shall publish the draft of the proposed price cap on its website and shall invite interested parties to provide any comments thereon. Such comments must be submitted to the Authority within four (4) weeks of publication and the Authority shall consider any comments received before making its final decision on the price cap. The publication shall contain at a minimum, the following information:
  - i. The relevant markets;
  - ii. The defined service baskets, and sub-baskets;
  - iii. The names of all concessionaires subject to the price cap;
  - iv. The elements of the price cap as determined under sub-regulation 22(f)ii above;
  - v. Compliance requirements, including and reporting requirements or obligations;
  - vi. The date on which the price cap shall take effect; and,
  - vii. Any other matter which the Authority considers appropriate or necessary.
- (h) The final price cap shall be published by the Authority in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago, and on the website of the Authority, and shall take effect as stated within the publication.

Imposition of Retail-Minus Price Controls

- 23. The Authority may impose retail-minus price control on any wholesale price of any concessionaire operating in an uncontested market, or of any dominant concessionaire in a contested market.
- 24. (1) The Authority shall, in the imposition of retail-minus price controls, take into account the Retail-Minus Principles set out in Schedule D.  
  
(2) The Minister, acting on the advice and recommendation of the Authority, may by order amend the Retail-Minus Principles.

Imposition of

- 25. (1) The Authority may impose a price floor on any retail price

- Price Floors
- of any concessionaire operating in an uncontested market, or of any dominant concessionaire in a contested market.
- (2) The Authority may impose a price floor on the price for a service which is subject to a price cap regime.
26. (1) The Authority shall, in the imposition of price floors, take into account the Price Floor Principles set out in Schedule E.
- (2) The Minister, acting on the advice and recommendation of the Authority, may by order amend the Price Floor Principles.
- Imposition of Rate of Return Regulation
27. The Authority may impose rate of return regulation on any concessionaire operating in an uncontested market, or any dominant concessionaire in a contested market.
28. (1) The Authority shall, in the imposition of rate of return regulation, take into account the Rate of Return Principles set out in Schedule F.
- (2) The Minister, acting on the advice and recommendation of the Authority, may by order amend the Rate of Return Principles.
- Imposition of Cost-based Pricing
29. The Authority may impose cost-based pricing on the price for any interconnection service provided in an uncontested market or by a dominant concessionaire in a contested market, or on the price for the use of or access to any essential facility, and where the Authority detects that the price being charged is not based on costs as defined in Regulation 30.
30. Cost based pricing shall be based on the concessionaire having the same costs as those of an efficient operator in the relevant market, unless the concessionaire provides evidence acceptable to the Authority that different rates are appropriate.
- Procedure for imposition of price controls
31. Where the Authority considers imposing a price control under Regulation 23, 25, 27 or 29:
- (a) The Authority shall identify the market or markets in which it is proposing to introduce the price control (the “relevant markets”), all concessionaires providing services in the relevant markets, and all services included in the relevant markets.
- (b) The Authority shall publish a notice advising that it proposes to introduce the price control, identifying the type of price control, the relevant markets, the concessionaires providing services in the relevant markets,

and the services included in the relevant markets. The notice shall also identify the concessionaires which, based on their position in the relevant markets, would be subject to the price control.

- (c) Any concessionaire providing services in the relevant markets or any person likely to be affected by price control in the relevant markets may make representations to the Authority on any matter relevant to the introduction of price controls in the relevant markets, such representations to be made within four (4) weeks of publication of the notice under sub-regulation 31(b) above.
- (d) The Authority may request from any concessionaire operating in the relevant markets any further information which it reasonably requires for the formulation of the price control, and such information shall be provided by the concessionaire to the Authority within twenty-one (21) days of the Authority's written request to do so.
- (e) The Authority shall provide a copy of all representations made by concessionaires or other parties as well as any other relevant information being considered by the Authority to the concessionaires providing services in the relevant markets, and shall afford such concessionaires a further period of no less than twenty-one (21) days to give further comments on such additional information, and shall take into account any comments received.
- (f) The Authority shall, taking account of any representations made under sub-regulations (c) and (e) and information provided under sub-regulation (d), determine the price control which it considers would be appropriate within the relevant markets.
- (g) The Authority shall publish the draft of the proposed price control on its website and shall invite interested parties to make representations thereon. Such comments must be submitted to the Authority within four (4) weeks of publication and the Authority shall consider any comments received before making its final determination on the price control. The publication shall contain at a minimum, the following information:
  - i. The relevant markets;
  - ii. The services to which the price control shall be applied;



- iii. The names of all concessionaires subject to the price control;
- iv. The details of the price control;
- v. Compliance requirements, including and reporting requirements or obligations;
- vi. The date on which the price control shall take effect;
- vii. The duration of the price control; and,
- viii. Any other matter which the Authority considers appropriate or necessary.

(h) The final price control determined by the Authority shall be published by the Authority in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago, and on the website of the Authority, and shall take effect as stated within such publication.

Compliance  
with Price  
Control

32. (1) A concessionaire subject to a price control implemented by the Authority pursuant to these Regulations shall not provide any telecommunications service which is subject to the price control, save in accordance with the price control.

(2) A concessionaire subject to a price control shall comply with all requirements for reporting and provision of information as are set out in the price control.

(3) If, in the reasonable opinion of the Authority, it appears that a concessionaire has in any manner failed to comply with a price control to which that concessionaire is subject, the Authority may by written notice to the concessionaire direct the concessionaire to make any changes to its prices necessary to comply with the price control. Such changes shall be made by the concessionaire within the timeframes set out within the notice.

(4) If, in the opinion of the Authority, a concessionaire has exceeded the requirements of a price control or not met the limitations of the price control, the Authority may in, its sole discretion, by the giving of written notice to the concessionaire modify the requirements of the price control for any future period subject to the proviso that such modification may not act to the detriment of the concessionaire.

33. Where the Authority considers it necessary due to changes in market conditions or new information it may review a price control at any time, in the same manner provided by these Regulations for imposition of the price control, *mutatis mutandis*.
- Price review 34. Without prejudice to the Authority's power to impose price controls in respect of any service, the Authority may commence a price review in respect of any price or proposed price for which price controls have not been imposed, where:
- a) it reasonably suspects that the price has been set at a level which results in a cross-subsidy or other anti-competitive pricing or acts of unfair competition;
  - b) a price is to be introduced in an uncontested market; or,
  - c) it has reasonable grounds to believe a proposed price change may have a significant detrimental impact upon the public in Trinidad and Tobago.
- Where the Authority initiates a price review on the basis of sub-regulation (b) or (c), the Authority may introduce such additional procedures or public consultation as the Authority considers appropriate in the circumstances.
35. The Authority shall give the concessionaire whose price or proposed price is the subject of the price review written notice of its intention to commence a price review. The notice shall contain, at a minimum:
- (a) The proposed price under review;
  - (b) A concise explanation of the grounds under which the price is being reviewed;
  - (c) Any proposed additional procedures or consultations proposed under Regulation 34 (where applicable);
  - (d) Any directions under Regulation 36 (where applicable); and,
  - (e) The date by which the concessionaire must make representations under Regulation 37.
36. Where the price review concerns a proposed price change, the Authority may also direct in writing that the concessionaire postpone the price change pending the results of the price

review. The direction may contain any additional conditions that are reasonably required to ensure compliance. The concessionaire shall not take any steps to implement a price, in respect of which the Authority has made a direction under this Regulation.

37. A concessionaire who has been notified of a price review may, within twenty-one (21) days of the notice, make any written representations in respect of the decision to conduct the price review.
- Price Review Panel 38. Where, having considered any representations made under Regulation 37, the Authority determines that it should commence a price review it shall, within twenty one (21) days, inform the concessionaire of its decision and establish the Price Review Panel that will be responsible for the conduct of the price review.
39. The Price Review Panel shall comprise three (3) members, one of whom the Authority shall appoint as Chairperson. The members may include members of the staff of the Authority or external to the Authority and shall be chosen based on the circumstances and expertise which the Authority considers appropriate for the particular price review.
40. The Authority shall determine the terms of reference of the Price Review Panel, which shall include a timetable for the review which shall, save in extraordinary circumstances require that the price review be completed within three (3) months of commencement of the price review. The Authority shall deliver a copy of the terms of reference to the concessionaire and each member of the panel.
41. The Price Review Panel shall be responsible for the conduct of its own processes, and shall act in a manner that is fair, transparent, objective, non-discriminatory and consistent with the terms of reference under which it was appointed.
42. Upon appointment of the Price Review Panel the Authority shall publish in the Gazette and one daily newspaper in circulation in Trinidad and Tobago a notice advising that it is commencing a price review. The notice shall identify the Price Review Panel, the services and prices in respect of which the review is to be conducted, the market or markets in which the services are provided, and the names of all concessionaires providing those services. The date of the notice shall be the commencement date for the price review.

43. During the course of the price review the Price Review Panel may seek additional information from any source, including but not limited to the concessionaire whose price is under review. The Price Review Panel may also seek opinion from independent experts. The concessionaire shall be afforded a reasonable opportunity to make representations in response to any information or representations from any person considered by the Price Review Panel.
44. The Price Review Panel may establish and conduct such hearings involving the concessionaire and other interested parties as it deems appropriate.
45. The Price Review Panel shall seek to ensure that it conducts the price review with all due process in particular ensuring that any concessionaire who provides the services the prices for which are being reviewed are afforded a reasonable opportunity to make representations on the price review.
46. The Price Review Panel shall submit its recommendation, as well as reasons for its decision, to the Authority within the period set out in its terms of reference, unless an extension thereto has been granted by the Board of the Authority upon prior application from the Price Review Panel.
47. The Authority may either accept or reject the recommendation of the Price Review Panel. Where it accepts the recommendation, the Authority shall make its final decision based on and in all material respects consistent with the recommendation. Where the Authority rejects the recommendation of the Price Review Panel, it shall give reasons for doing so, and the price or proposed price shall be permitted to continue or be introduced.
48. The Authority may make any of the following decisions in respect of a price review:
  - (a) Determine that a price is anti-competitive or otherwise unlawful, or contrary to the public interest, and in such circumstances do any or all of the following:
    - i. Prohibit the concessionaire from introducing the price;
    - ii. Require the concessionaire to modify or withdraw the price from the market;
    - iii. Require the concessionaire to compensate any

person who has paid the price since the commencement of the price review.

- (b) Determine that the price is not anti-competitive or otherwise contrary to the public interest, and in such circumstances permit the price or proposed price to continue or be introduced into the market.
49. The Authority shall publish its final decision in the Gazette and one daily newspaper with circulation in Trinidad and Tobago, and shall send a copy to the concessionaire. The decision shall take effect as stated within the publication.
50. The Authority shall not commence a review in respect of the same price, within twelve (12) months of the completion of a price review.

**PART IV  
COMPLIANCE**

- |                                   |  |
|-----------------------------------|--|
| Penalty for breach of Regulations | 51. A concessionaire that breaches or fails to comply with any provision of these Regulations, without prejudice to any other applicable remedies under the Act or otherwise, or any compensation payable in any dispute resolution proceedings, commits an offence and shall be subject to a fine of up to fifty thousand dollars (\$50,000). |
| Inspection                        | 52. The Authority may take such steps as it considers appropriate to verify any information provided pursuant to these Regulations, including exercising its inspection powers under the Act.  |

**PART V  
GENERAL REGULATIONS**

- |                                       |  |
|---------------------------------------|--|
| Publication                           | 53. Unless otherwise specified, where the Authority is required by these Regulations to publish any matter, the requirement shall be satisfied by the publication in the Gazette and one daily newspaper with circulation in Trinidad and Tobago, a notice to that effect. |
| Issuance of guidelines and directions | 54. The Authority may issue written directions to any concessionaire for the purpose of compelling compliance with these Regulations. A concessionaire shall comply promptly with any direction made by the Authority pursuant to this                                     |

Regulation.

Variation of  
timeframes

55. The Authority may from time to time for the purpose of clarification, by publication, issue guidelines on any aspect of these Regulations. Such guidelines may either be of general application or specific to a proceeding.
56. Where these Regulations provide a timeframe for the doing of any act by a concessionaire, the Authority shall have the power to vary such timeframes. Such extension shall be in writing to the concessionaire, and may be granted upon the request of the concessionaire or otherwise as the Authority considers appropriate.

## Schedule A

### Markets (Regulation 4)

#### **I. DEFINED MARKETS**

##### **1. Retail Markets**

###### **Domestic Fixed Services**

- (a) Narrowband (voice) access: Narrowband access to a public telephone at a fixed location by an individual for the purpose of accessing voice telephony services, including the following services: Residential narrowband (voice) access and Business narrowband (voice) access.
- (b) Broadband Access: Retail broadband access to a public telecommunications network or service at a fixed location, and may include the following services: residential broadband access and business broadband access.
- (c) Voice Services: Publicly available local and/or national retail telephone services at a fixed location, and may include the following services: fixed to fixed calls, fixed to mobile calls and public payphone.
- (d) Narrowband Internet: Publicly available narrowband Internet services provided at a fixed location.
- (e) Broadband Internet: Publicly available broadband Internet services provided on a public fixed telecommunications network.

###### **International Services**

- (f) International Voice Calls: Publicly available international public telephone services provided on any network.

###### **Domestic Mobile Services**

- (g) Voice Calls: Publicly available domestic public telephone services provided on a mobile telecommunications network.
- (h) Messaging Services: Publicly available messaging services provided on a public mobile telecommunications network.
- (i) Narrowband Internet: Publicly available narrowband Internet services provided on a public mobile telecommunications network.
- (j) Broadband Internet: Publicly available broadband Internet services provided on a public mobile telecommunications network.

- (k) Roaming: Publicly available roaming services provided on a public mobile telecommunications network.

## 2. Wholesale Markets

### **Domestic Fixed Services**

- (a) Unbundled Access: Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location.
- (b) Broadband Access: Wholesale non-physical or virtual access including bit-stream access at a fixed location.
- (c) Internet Services: Wholesale Internet services offered to concessionaires for the purposes of providing Internet services at the retail level.
- (d) Interconnection Services – Origination: Traffic origination services provided on a public domestic fixed telecommunications network.
- (e) Interconnection Services – Transit: Transit services provided over a public domestic fixed telecommunications network.
- (f) Interconnection Services – Termination: Traffic termination services provided on a public domestic fixed telecommunications network.
- (g) Domestic Leased Circuits: Wholesale terminating segments of domestic leased lines and wholesale trunk segments of domestic leased lines, irrespective of the technology used to provide leased or dedicated capacity.

### **International Services**

- (h) International Leased Circuits: Wholesale terminating segments of international leased lines and wholesale trunk segments of international leased lines, irrespective of the technology used to provide leased or dedicated capacity.
- (i) International Fixed Termination: The termination of international traffic on a public domestic fixed telecommunications network.
- (j) International Mobile Termination: The termination of international traffic on a public domestic mobile telecommunications network.
- (k) International Fixed Origination: The origination of international traffic on a public domestic fixed telecommunications network.
- (l) International Mobile Origination: The origination of international traffic on a public domestic mobile telecommunications network.



**Mobile Services**

- (m) Interconnection Services – Origination: Traffic origination services provided on a public domestic mobile telecommunications network.
- (n) Interconnection Services – Termination: Traffic termination services provided over a public domestic mobile telecommunications network.

**The geographic area of all of the above markets is national.**

**II. CLASSIFICATION OF MARKETS**

HHI is calculated by the Authority as the sum of the squares of the percentage market shares (by gross revenue) of all concessionaires providing services in the market.

“Uncontested” – Only one concessionaire providing services in the market.

“Contested” – More than one concessionaire providing services in the market, but one or more concessionaires may be and HHI is greater than 1800.

“Competitive” – HHI is less than or equal to 1800.

## Schedule B

### Criteria For Assessment of Dominance (Regulation 7)

#### Section 1 – Dominance Criteria

**I. Market Share and Trends in Market Shares**

The persistent holding by a concessionaire of a substantial portion (25% or more) of the total market share in terms of (i) subscriber numbers, (ii) traffic volumes, (iii) gross revenue, and or (iv) capacity, is a factor in favour of a finding of dominance by that concessionaire in that market.

The Authority shall measure subscriber numbers based on the total number of subscriptions to all services in the relevant market.

“Persistent” means for a period of six (6) months or more.

**II. Size of Concessionaire’s Undertaking**

An advantage over competitors as a result of a concessionaire’s relative size is a factor in favour of a finding of dominance of that concessionaire.

Such advantages may exist as a result of economies of scale or scope, production capacities, distribution or other activities outside the market under consideration.

**III. Access to financial resources**

Easy or privileged access to financial resources on a scale that places a concessionaire at an advantage over its competitors or leads to barriers to entry by other concessionaires is a factor in favour of a finding of dominance of that concessionaire.

**IV. Vertical Integration**

High barriers to entry as a result of a concessionaire controlling upstream and downstream markets, or having the potential to adversely affect competition by leveraging market power in upstream and downstream markets, is a factor in favour of a finding of dominance in respect of that concessionaire.

**V. Diversification of Products or Services**

Where a concessionaire bundles the supply of a service in which it is dominant with other services even where the bundled services are supplied separately, and where the bundling has the effect of creating barriers to entry or leveraging the concessionaire’s dominance across markets, such conduct may be a factor in favour of a finding of dominance of that concessionaire.

**VI. Countervailing buying power**

An absence of, or low, countervailing buying power among customers such that that concessionaire has the ability to increase its prices without significant loss of revenue, is a factor in favour of a finding of dominance of that concessionaire.

**VII. Barriers to Entry**

Barriers to entry into the relevant market as a result of, for example, any of the following is a factor in favour of a finding of dominance:

- i. Legislative or regulatory requirements.
- ii. Government policy.
- iii. Anti-competitive pricing behaviour.
- iv. Non-price behaviour such as increased promotions
- v. The concessionaire owning or having access to resources or assets not similarly accessible by its competitors.
- vi. Sunk costs.
- vii. The concessionaire having agreements (e.g. distribution, rights, etc.) that its competitors are not privy to.

**VIII. Power of concessionaire to set prices**

The ability of a concessionaire to set prices in the relevant market independently of market conditions, competitors, customers and consumers, is indicative of dominance of that concessionaire in the relevant market.

**IX. Excess pricing and profitability**

The ability of a concessionaire to set prices in the relevant market in such a manner that its profitability in that market is consistently and significantly higher than the competitive level (where prices are based on efficient costs), is indicative of dominance of that concessionaire in the relevant market.

**X. Lack of active competition on non-price factors**

A lack of competition in the relevant market on non-price factors such as quality and variety of services is indicative of dominance.

**XI. Barriers to switching**

Limits on the ability of customers to switch from the concessionaire's service(s) in the relevant market to another competitor's, is a factor which favours a finding of dominance.

**XII. Customers ability to access and use information**

Limits on the information available to customers on various aspects of the services (e.g. price, quality, customer service, customer benefits) in the relevant market that empowers customers to act based on differences between providers in the relevant market, is a factor in favour of a finding of dominance.

**XIII. Technological trends**

A significant advantage by a concessionaire over its competitors as a result of its ability to provide services using the latest or more advanced technologies is a factor in favour of a finding of dominance.

**XIV. Degree of differentiation among services in the market**

The ability for a concessionaire to differentiate its services in the relevant market from that of its competitors in a manner that gives it a significant advantage over its

competitors, or discourages entry into the market, is a factor in favour of a finding of dominance.

Such differentiation may exist in terms of quality, performance, innovatory or novelty features, packaging, or by advertising subjective qualities of the service.

## Section 2 – Joint-Dominance Criteria

The Authority may declare two or more concessionaires jointly dominant if those concessionaires jointly demonstrate a position of economic strength affording them the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In making such a determination the Authority shall give consideration to the following:

- I.** The extent to which the characteristics of the relevant market enable tacit coordination and the extent to which such form of co-ordination is sustainable.
- II.** If the concessionaires in question have substantially the same position vis-a-vis their customers and competitors as a single company has if it is in a dominant position, provided that no effective competition exists between them in the relevant market.
- III.** If the concessionaires in question, individually or jointly, satisfy any of the criteria for assessing dominance, in addition to the relevant market having the following characteristics:
  - mature market;
  - stagnant or moderate growth on the demand side;
  - low elasticity of demand;
  - homogeneous product;
  - similar cost structures;
  - similar market shares by the concessionaires;
  - lack of technical innovation, mature technology;
  - absence of excess capacity;
  - high barriers to entry;
  - lack of countervailing buying power;
  - lack of potential competition;
  - various kinds of informal or other links between the concessionaires concerned;
  - retaliatory mechanisms; and,

- lack or reduced scope for price competition.

## Schedule C

### Price Cap Principles (Regulation 21)

#### I. Establishment of Price Caps

The Authority shall establish price caps for each service basket defined in accordance with these principles, that will allow annual average price changes in that basket less than or equal to the difference between the price index for that year adopted in accordance with these principles, and adjusting efficiency factors determined by the Authority in accordance with these principles.

#### II. Determination of Service Baskets

The following factors shall be considered in defining service baskets:

- i. The degree of flexibility to be accommodated by the concessionaire in setting prices.
- ii. The need to define sub-baskets where appropriate.
- iii. The need to prevent anti-competitive pricing behaviour within the price cap by setting sub-caps or floors for certain services within a basket or any other type of restriction where appropriate.
- iv. The level of competition that exists in the provision of the services to be regulated under the price cap.
- v. Design simplicity and practicability.

#### II. Determination of Initial Prices

The Authority shall determine the initial prices of the services subject to the price cap. Such determination will be based on the extent to which the concessionaire is earning a reasonable rate of return (no less than concessionaire's weighted average cost of capital ("WACC")) or an unreasonably high rate of return, in the relevant service basket based on revenues generated from services in the basket. If the concessionaire's revenues are not sufficient or the concessionaire is earning unreasonably high profits, the Authority shall determine the extent to which adjustments should be made to the price cap regime to enable the concessionaire to adjust prices within the term of the price cap such that it achieves a reasonable return, or the extent to which existing prices should be adjusted immediately to address any unreasonably high profits.

#### III. The Price Cap Index

- (a) The Authority shall adopt a price cap index ("PCI") to measure the maximum

allowable average price for each service basket, which will be calculated as follows:

$$PCI_t = PCI_{t-1} \times [1 + PI_t - X \pm Z_t \pm Q]$$

Where: PCI<sub>t</sub> is the price cap index for the Service Basket in year t  
 PCI<sub>t-1</sub> is the price cap index for the Service Basket in year t-1  
 PI<sub>t</sub> is the price index for year t  
 X is the efficiency factor  
 Z<sub>t</sub> is the exogenous factor for the Service Basket for year t  
 Q is the quality of service factor for the Service Basket

(b) The PCI shall initially be set as 100 in the base year, and will increase in subsequent years based on the values of PI, X, Z and Q.

(c) The Authority shall adopt a price index (PI) for each year, which may be the consumer price index or such other index as the Authority considers appropriate in the circumstances.

(d) The Authority shall, using financial models, productivity models or benchmarks, determine an appropriate efficiency target (the “X-factor”), which will be the basis for the maximum rate at which prices within the Service Basket are permitted to change during the control period. The X-Factor shall be calculated such as to ensure that the concessionaire obtains a reasonable rate of return within the price controls.

(e) The Authority may, where it considers it appropriate, include as an additional adjustment factor a quality of service factor (“Q-Factor”) or an exogenous factor (“Z-Factor”), which shall be determined by the Authority. Any Q-Factor shall be consistent with the quality of service obligations contained in the applicable concession or regulations.

#### IV. Assessing Compliance

(a) For any price cap, the Authority shall monitor compliance through the use of an actual price index (“API”), which will be a measure of the actual average prices charged or to be charged by the concessionaire in respect of the service basket. Where a concessionaire changes or proposes to change any price which is included in a service basket subject to a price cap, the API calculated with the change or the proposed change in price must not exceed the PCI for the period within which the price change is to take effect.

(b) The API shall be calculated for each service basket using the following formula:

$$API_t^k = API_{t-1}^k \times \left[ 1 + \sum_{i=1}^n \left[ \frac{P_{(i,t)}}{P_{(i,t-1)}} \times \frac{r_{(i,t-1)}}{R_{(t-1)}} \right] \right]$$

Where:

$API_t^k$  is the actual price index following proposed price changes

$API_{t-1}^k$  is the actual price index based on existing prices

$P_{(i,t)}$  is the proposed price of service i

$P_{(i,t-1)}$  is the existing price of service i

$r_{(i,t-1)}$  is the revenues generated from service i based on existing prices

$R_{(t-1)}$  is the total revenue from all services in the basket based on existing prices

n is the number of services within the basket

(c) The API shall initially be set as 100 (or the same value as the PCI) in the base period. The API will change depending on the ratio of the proposed price charge to its existing charge for the identified service weighted by that service's relative portion of the total revenue for all services in the service basket.

(d) The Authority may, where it in its sole discretion considers it appropriate, allow a concessionaire subject to a price cap to implement a price change that exceeds the permitted increase for a given year, where that increase is warranted as a result of the concessionaire opting not to implement an increase in a previous year (known as the carryover headroom feature). Such consideration must be requested by the concessionaire in writing, and the Authority may make its approval subject to such reasonable conditions as it considers appropriate.

## V. Duration of Price Caps

The Authority shall determine the duration of a price cap in a manner which the Authority considers will ensure stability in the relevant market and other related markets, and to allow periodic reviews to take account of changing market conditions.

Unless otherwise determined by the Authority with reasons, the minimum price cap duration shall be three (3) years.

## VI. Price Cap Rules and Procedures

When implementing price cap controls the Authority shall determine such procedural rules as it considers appropriate for the purpose of ensuring the effective administration of the price cap control in a fair, efficient, transparent and non-discriminatory manner. Without limitation to the generality of the foregoing, such rules shall include the following requirements for the concessionaire subject to the price cap:

- i. Additional requirements for notification of price changes for services subject to the price cap.
- ii. Requirements for periodic submission to the Authority of information required for assessment of compliance with the price cap;
- iii. Rules and limitations on promotional offers for services subject to the price cap.



- iv. Requirements for the submission of data required by the Authority for the purpose of assessing the relevant markets to determine the effectiveness of the price cap.

## Schedule D

### Retail-minus Principles (Regulation 24)

#### I. Application of Retail-minus

The Authority may apply retail minus regulation to a single set of services or a combination of services depending on:

- the extent to which the costs of services in a bundle are similar;
- the extent to which (if a portfolio approach were adopted) the concessionaire could price squeeze or behave anti-competitively while complying with the retail minus; or
- the extent to which there is competition in the relevant retail service market (s) between the concessionaire and his competitors to whom he is providing the wholesale service(s) under review.

#### II. The Retail-minus formula

$$P_w = P_r - c$$

Where,

$P_w$  = Retail minus derived wholesale price

$P_r$  = Retail price

$c$  = represents the incremental cost of providing the retail service ( $IC_r$ ) minus the incremental cost of providing the wholesale service ( $IC_w$ ).

#### III. Selection of Retail Price

The Authority may use promotional, special or discounted retail prices in the retail minus formula, if those prices exist within the market for more than half of the period under review. Otherwise, the Authority shall use the average price of the retail service over the period under review.

The Authority may also use a retail price even if it is not for a pure resale product of the wholesale service, but will in such circumstances subtract any exorbitant profits from the retail price before it is used in the formula. Any retail price used would ensure that the concessionaire receives a rate of return no less than its weighted average cost of capital.

In determining whose or which retail costs should be included in the retail minus formula, the Authority shall seek to use costs that are most reflective of efficient costs in accordance with the Costing Methodology established by the Authority from time to time.

#### **IV. Determining the “minus”**

The incremental retail costs that may be excluded by the Authority in determining the wholesale price include those associated with:

- Retail product management and product development;
- Sales, marketing and advertising;
- Customer care costs;
- Number services;
- General support or any other overheads that could be attributed to retail services;
- Billing and collection costs (including bad debt).

The Authority will also include the incremental costs associated with providing the wholesale service in determining the final wholesale price. Such costs may include those associated with wholesale billing or any other administrative cost and investment costs incurred in providing the wholesale service. The Authority will determine the extent to which these costs should be recovered from the concessionaire’s wholesale customers and its own retail customers depending on the extent to which retail customers would benefit from competition in the relevant retail market(s).

The Authority shall in its discretion determine the manner in which the minus is expressed (fixed monetary value, percentage of retail price or hybrid) depending on the underlying cost structures of the services under consideration such that there is minimum potential for anti-competitive behaviour while complying with the retail minus.

#### **V. Setting of the Wholesale Price**

The Authority will set the price of a wholesale access service with respect to the selected retail price. The price is reduced to take account of the costs incurred in provision of retail services that are not incurred in the provision of the wholesale access services. These “retail activities” may include:

- i. Retail product management and product development;
- ii. Sales and marketing costs;
- iii. Customer care costs; and,
- iv. Billing and collection costs.

## Schedule E

### Price Floor Principles (Regulation 26)

#### I. Imposition of Price Floors

The Authority may implement price floors only where it detects anti-competitive pricing or acts of unfair competition in any market, in respect of which it considers that price floors would be an appropriate manner in which to address distortions which deter effective competition.

#### II. Guidelines for Imposition of Price Floors

The Authority shall have regard to the following when implementing price floors:

- i. The retail price must be no less than the wholesale price plus the direct incremental cost of the concessionaire's pure retailing functions.
- ii. The retail price must be no less than the concessionaire's wholesale price, plus the direct incremental cost of the concessionaire's pure retailing functions, plus the difference between the concessionaire's direct incremental cost to provide the wholesale facility to itself and its direct incremental cost to provide that same facility to its competitors.
- iii. The retail price must be no less than the concessionaire's direct incremental cost to supply the product, plus the profit margin it could earn from selling the essential input to its competitors.
- iv. The profit margin on the concessionaire's price for the retail product must be no less than the profit margin it earns from selling the essential input to its competitors.

#### III. Price Floors for International Termination Rates

Where the Authority implements price floors for terminating international traffic, it shall set the price floor so that the international termination is no less than the cost of terminating the international call on the relevant public domestic telecommunications network, plus any other relevant cost incurred in terminating the international traffic.

## Schedule F

### Rate of Return Principles (Regulation 28)

#### I. Application of Rate of Return Regulation

The Authority shall only use rate of return regulation if, for any reason, it is not possible to use any other form of price controls, or where it considers it necessary to do so in the interests of the public.

#### II. Rate of Return Formula

Whenever the Authority determines that the application of rate of return regulation is necessary or appropriate, it shall use the following general formula:

$$R = B \times r + E + d + T$$

Where,

R = The revenue requirement.

B = The rate base or the amount of capital or assets the concessionaire uses or needs to use to provide the service(s) under consideration.

r = Allowed rate of return or the cost the concessionaire incurs to finance its rate base (includes both debt and equity) and will be no less than the concessionaires weighted average cost of capital (WACC).

E = Operating Expenses. This includes the costs of items such as supplies, labour (not used for plant under construction), and items for resale that are consumed by the concessionaire's business in a short period of time.

d = Annual depreciation expense which is the annual accounting charge for wear, tear, and obsolescence of plant.

T = Taxes. All taxes not counted as operating expenses and not directly charged to customers. These may or may not include income taxes depending on accounting rules for income taxes.

In calculating the rate base, the Authority shall:

- i. use current cost accounting in determining the cost of plant in service;
- ii. determine a test period or year that is representative of the periods over which prices will actually change while being long enough to represent normal operations;

- iii. Determine whether the plant in service over the test period should be valued based on an average monthly balance, the end of period balance or the average of beginning-of-year and end-of-year balances.

The concessionaire's operating expenditure, depreciation and WACC shall be determined in accordance with the principles of the Authority's costing methodology.

Draft Telecommunications (Pricing) Regulations V1.0

Made this            day of            2009.

Minister of Public Administration

Laid in the Senate this            day of            2009.

Clerk of the Senate

Laid in the House of Representatives this            day of  
2009.

Clerk of the House





## **ANNEX I: Decisions on Recommendations Matrix – 2<sup>nd</sup> Consultation Round**

This Annex has been published separately.

## **ANNEX II: Decisions on Recommendations Matrix – 1<sup>st</sup> Consultation Round**

This Annex has been published separately.