



**PRINCIPLE 1—Promoting fair and effective Competition**

# Guidelines on the Regulatory Assessment Of Tariffs

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

*These comments provide the Authority's general approach to assessing tariffs and do **not** have binding legal effect. The Authority will consider each case on its merit and will apply the guidelines where it is appropriate to do so. The Authority reserves the right to depart from the guidelines when the circumstance of the case so requires.*



# Regulatory Assessments Of Tariffs

The Authority assesses tariffs based on the legislative mandates to do so, which include the following:

- The Telecommunications Act Chap 47:31
- Relevant Regulations made pursuant to the Act
- Concession Agreement
- Relevant guidelines and methodologies made pursuant to the Act.

Specifically, the following citations inform the Authority’s intervention in the market-place on general tariff matters:

**The Telecommunications Act Section 29(2) (c)**  
*The Authority may establish price regulation regimes, which may include setting, reviewing and approving prices, in any case where the Authority detects anti-competitive pricing or acts of unfair competition.*

**The Telecommunications Act Section 24(1) (c)**  
*Requires the concessionaire to adhere, where applicable, to conditions requiring the concessionaire to—  
 refrain from using revenues or resources, from a telecommunications network or service to cross-subsidise any other telecommunications network or service, without the prior written approval of the Authority.*

**Concession Condition C6**  
*The concessionaire shall not use revenues or resources from a public telecommunications network or public telecommunications service to cross-subsidise any other public telecommunications network or public telecommunications service, without the prior written consent of the Authority.*

**Concession Condition A21**

*The concessionaire shall not engage in conduct which has the purpose or effect of preventing or substantially restricting or distorting competition in any telecommunications or broadcasting markets, or interfering with the operation of networks or the provision of services by any of its competitors.*

**Concession Condition C2**

*The concessionaire shall publish and make available at all times its tariffs for the provision of all of its Public Telecommunications Services provided in relation to the Authorisations contained in this Concession.*

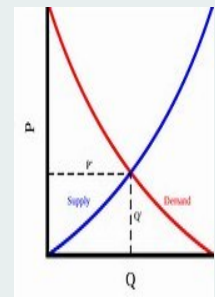
**Concession C3**

*The publication of tariffs shall include the terms and conditions, details of fault repair provisions, and other technical and commercial conditions of the services. Where directed by the Authority, the concessionaire shall file copies of its tariffs, and related terms and conditions, with the Authority.*

**Concession C4**

*Publication shall be effected by as a minimum:*

- placing a copy in a publicly accessible part of the principal place of business in Trinidad and Tobago of the concessionaire, and all other business places of the concessionaire where business with the public is transacted;*
- making the tariffs available, and easily accessible, on any public website maintained by the concessionaire; and,*



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The assessment of tariffs and the application of costing principles in regulatory decision making are in line with the Authority's guiding principle of **Promoting fair and effective competition in telecommunications and broadcasting markets.**

## LEGISLATIVE MANDATE CONTINUED

### **Concession Condition C4 (c) Cont'd**

*c. providing a copy to any person who requests it. The concessionaire may levy a charge of no more than the reasonable cost of printing and sending the copy to the person requesting. The concessionaire shall also include a copy of any information published in accordance with this condition in any directory published by, or on behalf of, the concessionaire; this requirement shall apply to tariffs where such tariffs are for public telecommunications services.*

### **Concession Condition C5**

*The concessionaire shall not without the prior approval of the Authority in writing, bundle any Public Telecommunications Services into a single tariff without also offering each of the constituent services under separate tariffs. Where the concessionaire provides customer equipment integral to the provision of a service to its customers, the tariff shall clearly state the price of the equipment separately from the charges for the service.*

### **Concession Condition C8**

*Prior to a revision of tariffs under Condition C7, the concessionaire shall give to the Authority no less than thirty (30) days prior notice in writing containing details of the proposed revision.*

### **Concession Condition C9**

*Revised tariffs shall take effect for new customers upon publication. In relation to existing customers, revised tariffs, to the extent of increase, shall only take effect upon the giving of notice by the concessionaire to the customer in accordance with the terms and conditions published for such tariffs, the period of which notice must not be less than thirty (30) days.*

### **Concession Condition C15**

*The concessionaire shall not discriminate among similarly situated consumers, and shall comply with any regulations and directions lawfully made by the Authority in relation to the rights of consumers.*

### **Concession Condition A28**

*The concessionaire shall furnish to the Authority, in such manner and at such times as the Authority may reasonably direct, either in writing or by a general notice published by the Authority, such information related to the activities of the concessionaire under this Concession, including but not limited to network or service development plans, financial, technical and statistical information, accounts, service performance metrics and other records, as the Authority may reasonably require in order to perform its functions.*

## REGULATORY-COSTING APPROACH IN TRINIDAD AND TOBAGO

A firm's pricing and costing decisions vary according to short run and long run time horizons. The ability for a firm's products to facilitate cost recoverability within these periods would determine the firm's survival or market exit decisions and also impacts other firms in the relevant market.

For sustainability of markets, telecommunications regulators regionally and internationally have established costing principles for the determination of costs for specific services which allow for the setting of cost-based pricing structures, where determined necessary.

Pursuant to a consultative process on a "Costing Methodology for the Telecommunications Sector", it was established that a long run average incremental cost (LRAIC) approach is an adequate approximation of the costs in the provision of the respective service (for example interconnection services). The Authority further clarified therein, that the costing principles may be used, *inter alia*, to inform any exercise by the Authority to, "*detect unfair cross-subsidies or any act of anti-competitive pricing.*" This is further reinforced in Section 1.1 of the LRAIC Specification Paper.

The Authority's LRAIC principles require that the incremental cost calculation should include both costs that may vary in the short-run (for example, operational expenditure) and costs which vary in the long run (such as capital costs). As provided in the LRAIC Specification Paper, costs that are fixed or common across increments may be added, through a mark-up, to ensure investors receive a reasonable return overall.

### ASSESSING TARIFFS IN ORDER TO PROMOTE AND PROTECT COMPETITION

The Authority considers that the following practices would constitute anti-competitive pricing and acts of unfair competition when practiced by authorised providers, *inter alia*:

- Unauthorised Cross Subsidization
- Price and non-price discrimination
- Below-Cost Pricing/ Predatory Pricing
- Margin/Price Squeezing
- Unauthorised Tied Selling
- Anti-Competitive price-fixing agreements
- Retail price and quantity restrictions
- Price gouging

## ASSESSING TARIFFS FOR BELOW-COST PRICING

With respect to below-cost pricing or predatory pricing, services and bundled packages are required, at the very least, to recover long-run average incremental cost (LRAIC).

However, the assessment process can also be carried out if regulatory costs have not been determined pursuant to the Costing Methodology. In such a scenario, the Authority would rely on assessing “critical costs” which would reflect the minimum cost that revenue should recoup to make the service offering, to be at least non-burdensome to overall revenue.

Cognizant of the provisions of Section 25 (2) (m) and Interconnections Regulations (5), “critical costs” refer to specific wholesale costs which include termination and origination costs as these are unavoidable by the authorised provider, for example, in the provision of voice and SMS services. Where, in analysing a tariff structure, there is no evidence of the recovery of these “critical costs”, the Authority is signalled that the respective pricing structure may be unsustainable.

The use of critical cost as the hurdle rate reflects the minimum cost that should be considered when deciding to offer any service and hence, forms an effective lower bound estimate for cost recovery in the short run only.

The above approach may not necessarily hold in situations of a dominant operator or where an operator has significant market power .

*Whilst call origination and termination form the critical threshold in wholesale analysis, retail costs on the other hand would include additional critical costs and therefore, at the very least, retail prices should not be structured in a manner whereby there is non-recovery of the wholesale critical costs threshold.*

## LEGISLATIVE BASIS FOR BUNDLE ASSESSMENTS

Bundles are reviewed by the Authority within the boundaries of prevailing legislation and with the interest of the development of the wider telecommunications sector.

The Authority's bundle cost-recovery assessment utilizes the aforementioned critical cost hurdle rate (in the absence of LRAIC) applied to the variety of services included in the bundle. This allows the Authority to execute its functions pursuant to Section 29(2) (c) of the Act and enshrined in Concession Conditions C5 and C6.

*The Authority's cost recovery review process gives flexibility to service providers in its supply of service offerings and combinations of same, but also mandates that authorised providers uphold Concession Condition A21 and C5 and thus ensures that the Authority is acting in accordance with Section 29 (2) (c) of the Act.*

## ASSESSING BUNDLED TARIFFS FOR ANTICOMPETITIVE PRICING

For the purpose of the Authority's analyses, a bundle may be defined as the supply of a group of services as a package, with a specified consumption volume-mix at a fixed fee. Where the bundle-specified service-volume limit is exceeded, the subscriber incurs predetermined charges for each unit of the services consumed in excess of their specified limit.

Bundles may be reviewed based on the Authority's ongoing monitoring for potential anti-competitive impacts and/or stakeholder complaints. In conducting the analysis, the Authority would request information from service providers or rely on other published information for developing comparable profiling estimates and usage patterns. The Authority would also rely on existing wholesale interconnection rates.

The bundle review process considers both in-bundle and out-of-bundle charges and volume profiles .

A bundle is required to recover the summed 'critical' cost of each service within the bundled limits in the first instance, as well as those consumed in excess of those limits.



Thus for example, it may be possible for the bundle to fail the Authority's cost recovery model (i.e. the 'critical' cost hurdle rate discussed above) within the limits of the bundle, but pass when out-of-bundle charges and traffic patterns are considered and which prove collectively non-burdensome.

Such a situation may occur where a bundle fails to recoup its anticipated or actual cost. The Authority will evaluate the traffic profile or actual usage to determine the likelihood of the out-of-bundle charges and profitability, compensating for the losses generated, if any, within the bundled terms. Authorised providers may be required to furnish the Authority with the requested relevant data during these assessments.

## ASSESSING TARIFFS FOR CROSS-SUBSIDISATION

The legal bases upon which the Authority assesses cross-subsidisation are:

- Section 24(1) (c) of the Act, which states that the Concession agreement shall require the concessionaire to “*refrain from using revenues or resources, from a telecommunications network or service to cross-subsidise any other telecommunications network or service, without the prior written approval of the Authority*” and
- Concession Condition C6, which provides the conditions which oblige concessionaires to refrain from cross-subsidisation, if authorisation is not granted by the Authority.

The Authority primarily assesses cross-subsidisation via the use of Accounting Separation outputs, supported by its Cost Model tool, operators’ authorised information submissions and with consideration of other relevant, dynamic market variables.

A service may be deemed the recipient of a cross subsidy if its price does not recover the LRAIC including an equitable share of its fixed common costs. This methodology is in accordance to the Authority’s Costing Methodology (LRAIC and equi-proportionate mark up principles) and moreover is known to limit strategic anti-competitive pricing behaviour and in so doing, produce total welfare gains for the relevant markets.

### *International Definitions of Cross-Subsidisation:*

Cross Subsidisation in Telecommunication is similarly defined by:

- International Telecommunications Union Regulatory Accounting Guide – March 2009  
“*offsetting the losses in one specific product/service with the extra benefits achieved from a profitable product/service*” and
- Competition and Cross Subsidisation in the telephone industry by Leland Johnson  
“*the support of one service priced below marginal cost by another service priced above marginal cost*”

The Telecommunications Authority of Trinidad and Tobago

Please also see

“Guiding Principles on Regulatory Decision making”

at:

[www.tatt.org.tt](http://www.tatt.org.tt)

## DATA USED IN TARIFF ASSESSMENTS

In the Authority’s assessment of tariffs, the Authority may adopt two processes for acquiring data.

The use of *ex ante* (based on historical or current trends or both) or *ex post* (requiring source/actual data) processes depends on the risk level of the pricing structure, for e.g. an "unlimited" service, existence of any complaints, or other market and regulatory requirements. In all instances, information is acquired pursuant to Concession Condition A28 or via published rates.

This process is further explained, using the example of an unlimited package:

***ex ante:***

Upon notification or launch, "unlimited" package volumes may be assessed based on infor-

mation requested from service providers including historic or existing traffic patterns. The Authority may also model market behaviour based on information existing in the market place, with a view to facilitating *ex ante* analysis and validating information pursuant to *ex post* data requests or;

***ex post***

After the package has subsisted on the market for a reasonable period as the Authority may determine, or if triggered by a complaint, the actual package subscriptions, traffic and revenue data will be requested of the relevant service-provider and used for conducting preliminary anti-competitive and in particular, cost recovery review of the package.

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Document Last Updated: 18th August 2015

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