



**PRINCIPLE 6—Providing open, fair and transparent processes**

## Open, Fair and Transparent Processes

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

*These comments provide the Authority's general view of providing open, fair and transparent processes and do not have binding legal effect.*

## Legislative Mandate

The Authority has been mandated to adopt procedures for the purpose of providing opportunities for interested parties and affected persons to participate in the regulatory decision making process.

Specifically, Section 18 parts (4) and (5) provide the legislative basis upon which the Authority acts in a transparent and non-discriminatory manner.

### **Section 18(4) of the Telecommunications Act Chap 47:31**

*In the performance of its functions under subsection (1)(c), (d), (e), (m) and (p), sections 28, 78 and 79 and any other provisions of the Act as the Authority deems appropriate, the Authority shall adopt procedures by which it will—*

- (a) afford interested parties and the public opportunities for consultation;*
- (b) permit affected persons and the public to make appropriate submissions to the Authority.”*

### **Section 18(5) of the Telecommunications Act Chap 47:31**

*At all times the Authority shall, in the performance of its functions and exercise of its powers, act in an objective, transparent and non-discriminatory manner.*

*“Transparency enhances the confidence of interested parties in the effectiveness and independence of the regulator and strengthens the legitimacy of the regulator. Importantly, transparency reduces the probability that interested parties, especially those adversely affected by a regulatory decision, will believe that decisions are biased, arbitrary or discriminatory. The reasoning behind regulatory decisions, including the principles and evidence that guided them, will be apparent when they are clearly presented in the public record.”*

**ICT Regulation Toolkit , subtitle “The Regulator”**



### TATT’s listing of Regulations, Frameworks and Policies

#### Regulations

- Dispute Resolution Procedures
- Procedures for Public Consultation
- Authorisation Framework

## Consultations

Participation by interested parties and affected persons in the Authority's regulatory decision making process can take place through varying procedures:-

- Formal invitations for written submissions;
- Individual meetings with one or more affected stakeholders;
- Group meetings, seminars, and workshops with representative groups and other interested parties;
- Public hearings;
- Discussions with other regulatory professionals or advisors in the industry.

### Policy Documents

The Authority shall, as far as possible, conduct at least two rounds or phases for the consideration of new draft policy framework documents.

Where a policy framework which was previously consulted on is being modified, the Authority may conduct a single round of consultation. However where significant changes have been made to the document based on comments received from the consultation, the Authority reserves the right to conduct a second consultation round.

### Regulations

The Authority shall, as far as practicable, conduct at least one round of consultation on proposed regulations in accordance with the 'Procedures for Public Consultation.'

## Authorisation Process

Where the Authority determines that there shall be no limit on the number of authorised providers in a particular market category, or where the available spectrum resources exceed demand, a First-Come First Served award method will be adopted, subject to the applicant meeting the evaluation criteria set out by the Authority in respect of the relevant concession/ licence.

Where the Authority determines that there should be a limit to the number of authorised providers in the market, or where it determines that based on its spectrum plans, the spectrum resources for the provision of those services are limited, the Authority will adopt a competitive selection process such as comparative evaluation, auction or any other method or combination of methods for recommending the award of concessions or the granting of licences.

The Authority shall develop appropriate evaluation criteria and associated weightings in a transparent and open manner, and shall ensure that

applications are evaluated in a fair and objective manner and in accordance with the applicable criteria and weightings.

Operators providing public telecommunications networks/services and/or broadcasting services only shall be authorised following application in accordance with the requirements prescribed by the Authority.

The Authority will put in place fair and transparent procedures for dealing with appeals to any authorisation process.

The Authority may alter the authorisation methods for licences and concessions based on changing market forces that affect the demand for services and resources, and the resulting impact on socio-economic behaviour. Where the Authority has altered an authorisation method for a particular concession/ licence category, it will give due notice to the industry prior to the implementation of the new authorisation method.

## Investigations

In order to ensure that all of the Authority’s interventions are evidence - based, where there are reasonable grounds for suspecting that an authorised provider or licensee is in breach of its obligations, the Authority will first investigate any suspected contravention it has been made aware of either as a result of its internal monitoring activities or arising from a consumer or stakeholder’s complaint. By investigating first, the Authority places itself in the best position to take into account all of the relevant facts before determining whether action should be taken, and if so, when and what level of intervention should occur.

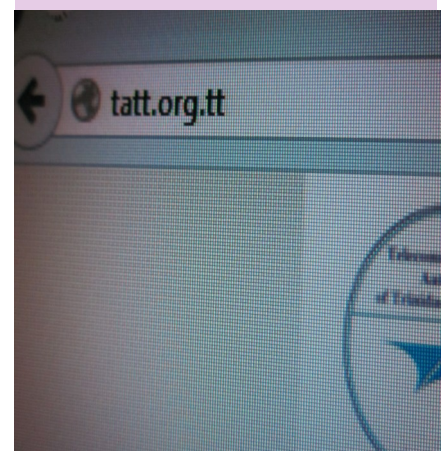
## Forbearance

There are circumstances when the Authority, in the exercise of its discretion, may make a decision not to exercise its power against a person who may have failed to comply with a particular provision. In such cases, section 81 of the Act provides that:

*“The Authority shall refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty in relation to a telecommunications network, telecommunications service, broadcasting service, radio communication service or a class of service provided by a concessionaire or licensee, where the Authority finds that to refrain would be consistent with the agreed telecommunications policy objectives”.*

## Publication of Decisions

Where a number of stakeholders may be affected, or where there are issues likely to directly affect consumers, and the Authority finds that it will be useful to explain its decisions in order to provide guidance on compliance, it may publish its decisions. Such publication will exclude any information deemed commercially sensitive or confidential by the Authority in accordance with Section 80 of the Telecommunications Act.



## Reconsideration and Appeal

Any person who is aggrieved by a decision of the Authority and in possession of new information or evidence not previously considered, may request the reconsideration of said decision.

Section 83 of the Act states that:

*“A person aggrieved by a decision of the Minister or Authority may request that such decision be reconsidered based upon information not previously considered, and the Minister or the Authority, as the case may be, shall consider the new information submitted and decide accordingly.”*



*Hall of Justice in Trinidad and Tobago*

## Judicial Review

The Authority seeks to adhere to the principles of natural justice and the general duty to act fairly in all of its processes. The Authority therefore accepts that where these principles are not adhered to, it becomes subject to judicial review of its decisions by the court.

In addition Sections 73(4) and 76(3) of the Telecommunications Act Chap 47:31, specifies the review by the court of a direction by the Authority to cease operating a telecommunications network, providing a telecommunications or radio communications service or using any facility or terminal equipment.

Section 73(4) of the Act states:

*“A person aggrieved by a direction of the Minister given under subsection (2) may apply to the High Court for judicial review.”*

Section 76(3) of the Act states:

*“A person aggrieved by the decision of the Board made pursuant to subsection (2) may apply to the High Court for judicial review.”*

## Dispute Resolution

Pursuant to Section 82 of the Telecommunications Act Chap 47:31, the Authority is mandated to establish a dispute resolution process in the event of a complaint or dispute arising. The following outlines this process which is considered open, fair and transparent.

### **Section 82 states:**

- (1) The Authority shall establish a dispute resolution process to be utilised in the event of a complaint or dispute arising between parties in respect of any matter to which section 18(1)(m) or 25(2)(h) applies, or where a negotiated settlement, as required under section 26, cannot be achieved, or in respect of any other matter that the Authority considers appropriate for dispute resolution.*
- (2) The Authority shall not be a party to any dispute resolution process.*
- (3) Such dispute resolution process shall be funded by the parties to the dispute and shall be conducted in an open, non-discriminatory and unbiased fashion, within thirty days after the filing of the dispute.*

Featured principles of the Authority's dispute resolution procedure shall include, *inter alia* :

- Timelines for each stage in the process;
- Publication of the process, determinations or recommendations, to provide certainty and transparency;
- Independence and objectivity of persons appointed to the dispute resolution panel;
- Confidentiality of sensitive information.

The Authority shall endeavour to incorporate the above principles in its dispute resolution procedure by:

- Notifying the parties of its decision within seven (7) days of receipt of the Notice of Dispute or representation regarding same.
- Issuing a Notice of Confirmation of Dispute where the Authority decides to commence dispute resolution proceedings.
- Making available the terms, conditions and time frames, where applicable, for the submission of information and service of those submissions by the parties to the dispute resolution proceedings.
- Issuing to the parties notice of the Authority's choice of persons to be appointed to the dispute resolution panel; draft directions for the conduct of the proceedings and the proposed date and time of the first hearing.
- Giving parties an opportunity to make representations regarding the appointment of a specific person to the dispute resolution panel and any aspect of the draft directions given and responding to the representations made.
- Providing parties, upon request, information regarding the qualification of any or all members of the dispute resolution panel.
- Serving a copy of the Terms of Reference of the dispute resolution panel on each party to the dispute.
- Submitting to the parties the estimated total cost of the proceedings to be paid to the Authority in equal parties before commencement of the proceedings.
- Publishing the Decision if, and in such manner as it may, deem appropriate.

## **Telecommunications Authority of Trinidad and Tobago**

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Please also see  
“Guiding Principles  
on Regulatory Decision Making”

The Telecommunications Authority of Trinidad and Tobago

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