

## **Appendix I: Decisions on Recommendations (DORs) Matrix from the First of Two Rounds of Public Consultation on the Framework on Net Neutrality in Trinidad and Tobago (March 2022)**

The following summarises the comments and recommendations received from stakeholders during the first round of consultation on the *Framework on Net Neutrality in Trinidad and Tobago* (the Framework), held in March 2022, and the decisions made by the Telecommunications Authority of Trinidad and Tobago (the Authority) as incorporated in the revised document.

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

1. Telecommunications Services of Trinidad and Tobago Limited (TSTT)
2. Digicel (Trinidad & Tobago) Limited
3. Columbus Communications Trinidad Limited (CCTL)
4. CANTO
5. Meta Platforms, Inc
6. Trinidad and Tobago Computer Society (TTCS)

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
1.		General Comment/ Introduction	TSTT	<p>TSTT welcomes the opportunity given by the Telecommunications Authority of Trinidad and Tobago (“TATT”) to stakeholders including Concessionaires to comment on the Net Neutrality Policy Framework, (“Net Neutrality Framework”). It should be noted that the comments expressed by TSTT in this document, should not be regarded as TSTT’s final position on any aspect of the Policy nor should it pre-empt TSTT from making further comments in the future.</p> <p>Despite the outdated theoretical underpinnings associated with the introduction of regulation in support of net neutrality, the consultation document is devoid of a scintilla of evidence of market failure, market distortion, harm to consumers or detriment to the public interest in Trinidad and Tobago that justifies this intrusive regulatory intervention.</p>	TSTT recommends that all recommendations made in the Net Neutrality Framework should be reconsidered. Accordingly, TATT should either withdraw this document.	<p>The Authority thanks TSTT for its participation in the consultation on the <i>Framework on Net Neutrality in Trinidad and Tobago</i> (the Framework), and welcomes all future comments, in accordance with its consultation process.</p> <p>The Authority notes TSTT’s comments on the theory associated with the regulation of net neutrality and the need for evidence of market failure, market distortion and consumer harm in the justification of the Framework.</p> <p>Section 2 and other relevant sections of the Framework have been amended to include updated references on the definition of net neutrality and traffic management practices.</p> <p>With respect to the justification of net neutrality regulation, the Authority underscores the important role that net neutrality plays in preserving</p>

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						<p>competition and promoting consumer interests with respect to quality of service and experience. The Authority disagrees with the notion that it should only intervene after a market failure has occurred. Recognising the significant impact that breaches of net neutrality can have on both competition and consumer rights, the Authority promotes proactive engagement to pre-empt potential issues, through a carefully considered policy.</p> <p>In the formulation of its policy on net neutrality, the Authority has taken into account the competitive dynamics in the telecommunications sector to gauge the likelihood and risks of market failure, and the repercussions on consumers and the broader public if net neutrality is compromised. The Authority's assessments have incorporated evidence from industry trends via its annual and quarterly market reports; consumer experiences and expectations through its complaint procedures and surveys; past ISP infringements of net neutrality; and competition metrics, such as the Herfindahl-Hirschman Index (HHI) and price movements.</p>

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				<p>Given the absence of any evidence that practices of ISPs in Trinidad and Tobago prevent free, open and non-discriminatory access to the Internet, TSTT recommends that all recommendations made herein should</p>		<p>Based on its observations<sup>1</sup>, the Authority has not been able to ascertain, at this point, whether the market is sufficiently competitive to rely solely on self-regulation, to guard against market failure, or to dispense with the protection from net neutrality regulation. Consequently, the Authority is proposing a policy on net neutrality to ensure ISPs adhere to fair and transparent network practices.</p> <p>The Authority has also considered stakeholders' comments and recommendations for a more evidence-based regulatory approach to addressing net neutrality violations in Trinidad and Tobago. While the Authority maintains that it is important, as a more proactive approach, to outline its monitoring and assessment process for detecting violations, it has, where suitable, updated the Framework to also include ex post strategies in its approach to the regulation of net neutrality.</p> <p>Specifically, sections 5 to 9 of the Framework have been amended to detail the Authority's process for detecting and remedying acts of unfair competition in ISPs' traffic management practices and related commercial practices. The Framework also</p>

<sup>1</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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				<p>be reconsidered. Indeed, the Authority's own data as it relates to fixed internet and mobile internet penetration set out at page 14 underscores, the significant progress made in Trinidad and Tobago by policy approaches that have encouraged investment in telecommunications infrastructure. Any perceived unserved or underserved areas in the country has NO bearing whatsoever on net neutrality and TSTT fails to understand why the Authority seeks to advance a proposition that net neutrality is a policy tool that can be utilized to further telecommunications infrastructure build.</p> <p>It should be noted that in December 2017, the FCC in the USA withdrew the 2015 Open Internet Order, thereby repealing the Net Neutrality Rules.</p> <p>From a policy perspective it is difficult to understand in the absence of evidence of ANY market failure why the Authority would consider implementing such a retrograde regulatory tool. Notwithstanding this, TSTT has provided comments on the various sections of the consultative document.</p>		<p>provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and concession (section 7).</p> <p>The Authority notes the progress made in infrastructure investment and industry efforts towards closing the digital divide in Trinidad and Tobago. The Framework carefully considers the implications of net neutrality rules for this important policy goal. The Authority is aware that there is ongoing debate about the impact of net neutrality on broadband investment and rollout. One of the main issues in the debate is how net neutrality affects the incentives for ISPs and content providers to invest in broadband networks. Section 3 of the Framework addresses the need to balance the role of net neutrality in driving innovation and competition with ensuring that the industry remains sustainable, attracts investment, and fosters a digitally inclusive environment. Through increased infrastructure investment, coupled with the presence of net neutrality rules (e.g., no blocking), consumers have more access to broadband services and better quality of Internet</p>

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						<p>service and experience. This, in turn, reduces the size of the underserved and unserved areas and population groups.</p> <p>The recommendations in the Framework are consistent with the Authority's statutory mandates under section 3 of the Telecommunications Act, Chap. 47:31 (the Act), which include, inter alia, the facilitation of the orderly development of a telecommunications system. The recommendations are also based on the concession obligations which prevent anti-competitive behaviour and ensure QoS standards are met.</p>
2.		General Comment/ Introduction	CCTL	Columbus Communications Trinidad Limited (dba "FLOW") appreciates the opportunity provided by the Telecommunications Authority of Trinidad and Tobago ("TATT") to provide comments in this process. The views expressed herein are not exhaustive. Failure to address any issue in our response, does not in any way indicate acceptance, agreement or relinquishing of FLOW's rights.		The Authority thanks CCTL for its participation in the consultation on the Framework and welcomes all future comments, in accordance with its consultation process.

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3.		Introductory Remarks	CANTO	<p>This document provides the CANTO response to the Telecommunications Authority of Trinidad and Tobago (TATT) Consultation Document Framework on Net Neutrality, March 2022.</p> <p>The Telecommunications Authority of Trinidad and Tobago (TATT) has proposed the adoption of a high-level regulatory approach to net neutrality in Trinidad and Tobago. Its recommendations embody three core principles of net neutrality: reasonable traffic management, no unreasonable discrimination, and transparency .</p> <p>These principles are generally consistent with the CANTO Code of Practice for Safeguarding the Open Internet that has been accepted by most Internet Service Providers (ISPs) in the Caribbean region. The CANTO Code of Practice on Safeguarding the Open Internet was developed in response to concerns brought forward by operators about consumer rights in accessing content over the internet. The Code seeks to balance consumer rights and responsibilities with the availability of flexible network management tools for operators. The wider objective of</p>		<p>The Authority thanks CANTO for its participation in the consultation on the Framework.</p> <p>The Authority acknowledges CANTO's statement on its Code of Practice (the Code) being consistent with the net neutrality principles embodied in the Framework's recommendations. The Authority views the Code as a positive step in demonstrating network operators' commitment to safeguarding an open Internet. It should be noted, however, that not every ISP in Trinidad and Tobago is a member of CANTO and/or is a signatory to the Code. Further, the Authority has concerns over the enforceability of CANTO's Code should it be breached.</p> <p>Moreover, while the Authority recognises the increasing role that industry self-regulation plays in addressing net neutrality concerns, it is also mindful of regulatory gaps that may occur with this approach. To ensure the principles of competition and consumer protection are upheld, both currently and in the future, the Authority recommends that the principle of net neutrality be enshrined in the regulatory framework.</p> <p>The Authority's recommendations on reasonable traffic management, unreasonable discrimination,</p>

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				<p>the Code is to provide a framework for operators across the Caribbean Region to collectively address the issue of Net Neutrality. Operators adopting this Code agree to abide by the commitments which are designed to ensure that their customers can access legal content on the internet on terms that are transparent and reasonable and that Operators do not target specific applications or content providers in an unfair way.</p> <p>CANTO and its members support the concept of the open internet and the general principle that legal content, applications and services, should not be blocked. To give effect to this position Signatories to the CANTO Code have committed that:</p> <ol style="list-style-type: none"> <li>1. within the terms, bandwidth limits and quality of service of their individual service plan, customers should have access to their choice of legal Internet content, services and applications;</li> <li>2. any restrictions on use attached to a particular service plan are effectively communicated to customers;</li> </ol>	<p>CANTO believes that for each of the ex ante measures mentioned as well as the measures that involve a potential breach of privacy laws, TATT should properly demonstrate how these measure comply with existing law.</p> <p>CANTO continues to be pleased with the voluntary adoption of its Code of Practice for Safeguarding the Open Internet by most ISP's in the region. In Trinidad and Tobago, where it has been adopted by major operators, there is no evidence that it has not been a success. There is no market failure or evidence of consumer issues that would</p>	<p>and transparency are in keeping with its legislative and regulatory remit and do not violate privacy laws in Trinidad and Tobago.</p> <p>The Authority has noted stakeholders' concern with the extent of ex ante measures proposed in the Framework and has revised the document to reflect a more ex post approach, where suitable. Specifically, sections 8 and 9 of the Framework have been amended to detail the Authority's process for detecting and remedying acts of unfair competition in ISPs' traffic management and related commercial practices. The Framework also provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and the concession (section 7). As before, these recommendations are based on the following legislative provisions.</p> <p>Section 3 states the objects of the Act, which include, inter alia, establishing conditions for fair competition at the national and international levels; facilitating the orderly development of a telecommunications system; protecting the</p>



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				<p>3. save for objective and transparent reasons traffic management will not selectively target the content or application(s) of specific providers within a class of content, service or application;</p> <p>4. they will make available a range of service plans that provide customers with viable choices for accessing legal content, applications and services.</p> <p>While the TATT Framework has proposed a flexible policy approach to zero rating and paid prioritization, the CANTO Code does not directly speak to these nor to reporting and enforcement policy, which are significant aspects of the TATT Framework.</p> <p>It is recognized and appreciated that national regulatory authorities may have the authority to impose such measures.</p>	<p>point to the need for such onerous regulations.</p> <p>In accordance with the principles of good regulatory practice, CANTO believes that TATT should refrain from proceeding with the measures proposed here until it shows the industry why it believes this type of intervention is needed and how what is being proposed does not contravene the law.</p>	<p>interests of the public; promoting universal access to telecommunications services; and encouraging investment in, and the use of, telecommunications infrastructure to provide telecommunications services. This aids the Authority's interpretation of the rights and obligations contained in the relevant legislative and regulatory provisions.</p> <p>Section 18 (1) outlines the functions and powers of the Authority, which include, inter alia, monitoring and ensuring compliance with the concession conditions; the establishment of national telecommunications industry standards; advising the Minister on policies governing the telecommunications industry; and ensuring the orderly and systematic development of telecommunications throughout Trinidad and Tobago.</p> <p>Pursuant to section 18 (3), the Authority is required to consider the interests of consumers, particularly in relation to the quality and reliability of the service provided; the fair treatment of consumers and service providers similarly situated; and non-discrimination regarding access, pricing and quality of service.</p>

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				<p>However it is imperative that:</p> <ul style="list-style-type: none"> <li>a. A cost benefit analysis of the proposed regulatory interventions be conducted to ensure that they are justifiable</li> <li>b. The measures are in conformance with the laws and regulations of the country.</li> </ul> <p>In this regard, CANTO is very concerned that that the TATT Framework requirements are</p>		<p>The concession document also addresses anti-competitive behaviour. Concession condition A21 states: “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”.</p> <p>Concession A22 elaborates: “The concessionaire shall not enter into any agreement, arrangement or understanding which has or is likely to have the purpose or effect of preventing or substantially restricting or distorting competition in any market for the provision or acquisition of any networks, services or equipment”.</p> <p>C15 states: “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”.</p> <p>These identified provisions and concession conditions have formed the legislative basis for the Authority’s recommendations on no unreasonable</p>

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				<p>extremely onerous and there is no evidence of market failure or any local market conditions that justifies such a burden. There appears to be very little information provided by TATT supporting the case for intervention. in fact there is more information showing how competitive the market is.</p> <p>CANTO is also concerned that the measures being proposed are outside of the ambit of the Constitution and the Telecommunications Act. The legal provisions cited in the document do not support or justify what is being proposed.</p> <p>CANTO believes it is the obligation of the regulator to validate any form of regulation placed on operators to demonstrate that the resources that operators will have to redirect towards compliance are justifiable in order to correct some form of market failure.</p> <p>CANTO also believes the regulator has an obligation to act within the requirements of the law. CANTO understands that TATT is not legally empowered to impose ex ante regulation but instead can only act when there has been a breach of existing laws. As such</p>		<p>discrimination and commercial practices such as zero-rating discussed in section 6 in the Framework. Those recommendations follow from the Authority's commitment to addressing anti-competitive pricing, acts of unfair competition and the protection of consumer rights.</p> <p>The Authority's recommendations on transparency call for ISPs to publicly disclose relevant information on their Internet access service to customers. This is consistent with ISPs obligation under concession condition A53 which states "the concessionaire shall publish and make available at all times such information as reasonably determined from time to time by the Authority as necessary to inform the public of the operation of its networks and/or the provision of all of its services provided in relation to the Authorisations contained in this Concession."</p> <p>With respect to calls for a cost-benefit analysis and evidence of market failure, the Authority notes that the effects of net neutrality on many unmeasurable factors such as competition, innovation, and consumer choice. Given the challenge of quantifying these elements (i.e., attaching numerical values), a method like cost-benefit</p>

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				CANTO is concerned that the measures being proposed are not within its legal framework.		<p>analysis may not be appropriate in this context. The Authority also does not agree that actual market failure should occur before it intervenes. Given the immense impact that violations of net neutrality have on competition and on consumer rights, the Authority recommends a proactive approach be taken to prevent potential issues, in the form of a carefully considered policy.</p> <p>As part of its policy research, the Authority has examined the competitive landscape within the telecommunications sector, to assess the probability and risks of market failure and its impact on consumers and the wider public if the principle of net neutrality is breached. The Authority has reviewed evidence on industry trends via its annual and quarterly market reports; customer experiences and expectations reported through its consumer complaints procedure and surveys; previous violations of net neutrality by ISPs; and competition measurement indices such as HHI and price movements. Based on its observations<sup>2</sup>, at this stage, the Authority has been unable to confirm that the market is sufficiently competitive to adequately protect against market</p>

<sup>2</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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						<p>failure or to forgo the safeguards of net neutrality regulation. Therefore, the Authority proposes policy directions on net neutrality to ensure ISPs engage in fair and transparent network practices.</p> <p>The Authority has also considered stakeholders' comments and suggestions for a more evidence-based approach to addressing net neutrality violations in Trinidad and Tobago. While the Authority continues to stress the importance of detailing its evaluation process for potential violations, it has, where appropriate, revised the Framework to incorporate a more ex post approach in the regulation of net neutrality. The modified approach reduces some of the costs attached to ex ante regulations.</p> <p>With respect to concerns that the Framework's requirements are onerous, the Authority advises that the Framework has been developed in accordance with the Authority's <i>Guiding Principles for Regulatory Decision Making</i>. One of those principles is to facilitate market development through proportionate regulation. Adherence to this principle ensures that regulation is designed to deliver desired outcomes in the least burdensome way.</p>

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						<p>To minimise ISPs reporting requirements, the Authority shall, as far as practical, monitor and collect data through independent assessments and, where required, request information that is readily available from ISPs. The Framework (section 8) has been amended to detail the Authority's monitoring and data collection process.</p> <p>Regarding the power to impose ex ante regulation, the Authority disagrees with CANTO's assertion that it is not empowered to do so. The Act states, in section 3, that one of its objects is "to establish conditions for an open market for telecommunications services, including conditions for fair competition".</p> <p>Furthermore, section 18 (1) of the Act states that the Authority is empowered to monitor and ensure compliance with its concession obligations. The concession itself sets out in advance the obligations that need to be met. For instance, concession clauses A21 and A22 list the behaviours that concessionaires should not engage in for those conditions to be met.</p>

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						Ex ante regulation aims to identify problems beforehand and shape stakeholder behaviours and responses through intervention. By establishing the conditions, stating the prohibitions in advance, and empowering the Authority to monitor and ensure those conditions are met, the Act takes an ex ante approach. The Framework elaborates on the Authority's methods of monitoring and ensuring compliance with respect to net neutrality-related practices that are anticompetitive or infringe on consumer rights, pursuant to concession conditions A21, A22 and C15.
4.		General Comment/ Introduction	Meta Platforms Inc.	<p>Meta appreciates that the Telecommunications Authority of Trinidad and Tobago (the "Authority") has proposed a strong framework to protect net neutrality and welcomes this opportunity to provide feedback.</p> <p>Meta is a strong supporter of net neutrality and believes it is critical for keeping the internet open for everyone. Meta works closely with partners and supports the use of innovative, new technologies and use cases to benefit consumers and connectivity. It is</p>		<p>The Authority thanks Meta for its participation in the consultation on the Framework.</p> <p>The Authority agrees on the importance of adopting an approach to net neutrality that balances strong protection of net neutrality with facilitating innovative solutions and technologies. To achieve this, the Framework proposes a mix of both prescriptive policy directions, such as the transparency requirements in section 7, and evidence-driven strategies, like the approach to zero-rating and paid prioritisation.</p>

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				<p>important, however, to explore innovative solutions while maintaining and working within a framework of strong net neutrality protections. Maintaining strong net neutrality principles ensures consumer choice while preserving the ability of the entire internet ecosystem to innovate.</p> <p>As discussed in more detail in the sections below, Meta encourages the Authority to (1) implement a framework of strong net neutrality protections while ensuring any innovative technologies or use cases are supported within the parameters of that framework, and (2) continue to provide flexibility for zero-rating offers with any review on an <i>ex post</i>, case-by-case approach rather than adopting <i>ex ante</i> restrictions.</p> <p>Adopting this approach will help to advance the Authority's public interest objectives under the net neutrality framework.<sup>3</sup></p>		

<sup>3</sup> See, e.g., Framework on Net Neutrality in Trinidad and Tobago (“Framework”), page 13 (“Some of the objectives identified under Section 3 of the Act include but are not limited to: promoting investment in, and the use of, infrastructure; establishing conditions for fair competition; promoting and protecting consumer interests; and promoting universal service.”).



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5.		General Comment/ Introduction	TTCS	<p>Formatting discrepancies from original document</p> <ul style="list-style-type: none"> <li>• numbering on the original document goes from 19 to 21.</li> <li>• numbering on the original document goes from 36 to 38</li> </ul>		The Authority notes the formatting discrepancies. The document has been amended to reflect the relevant corrections in the numbering of the policy statements.
6.	1	Background	Digicel	<p>This submission is provided in the context of the letter dated 25 March 2022 (“<b>Industry Letter</b>”) that was sent by a number of industry participants to the Authority and the Authority’s response dated 13 April 2022 (received by Digicel of 19 April 2022) in which it was confirmed that the Framework has been issued for two rounds of consultation.</p> <p>It is important to state out the outset that Digicel is very concerned by the way this proceeding appears to have evolved over the course of the past year.</p>	<p>Rather than focusing on something that isn’t actually an issue, Digicel submits that the Authority should give further attention to the issues arising from unregulated international OTT service providers who continue to profit from consumers in Trinidad and Tobago but without contributing fairly to, or being subject to the existing</p>	<p>The Authority thanks Digicel for its participation in the consultation on the Framework.</p> <p>The Authority confirms its statements, made in correspondence dated 13<sup>th</sup> April 2022, that the Framework shall be issued for two rounds of consultation.</p> <p>Regarding the Authority’s treatment of over-the-top (OTT) services, in August 2023, the Authority issued for its second round of consultation the <i>Framework on Over-the-Top Services (OTTs) in Trinidad and Tobago</i> (Framework on OTTs). While previously, net neutrality and OTTs were addressed within a single discussion paper, the Authority, in recognising the magnitude of both topics and, in responding to feedback from the consultation process, indicated in that discussion paper that future consultations on the topics would continue in separate frameworks. Notwithstanding</p>

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				<p>What started out as a theoretical “policy framework” discussion about Net Neutrality and OTT services and the interrelationship between the two has now, without the benefit of any actual market data, been transformed into a suite of policies and regulations relating to Net Neutrality. These regulations are intended to be applied to concessionaires despite there being no empirical evidence of any actual problems in Trinidad and Tobago</p>	<p>regulatory safeguards that already apply to concessionaires.</p> <p>Digicel submits that, as a matter of priority, the Authority should first complete its investigation of the currently unregulated OTT service providers and only then consider resuming its work on Net Neutrality.</p> <p>Digicel submits that, as part of any further analysis of Net Neutrality, a detailed cost benefit analysis is undertaken in respect of any proposed interventions.</p>	<p>this, both topics (OTTs and net neutrality) are being considered by the Authority simultaneously.</p> <p>The Framework on OTTs presents the Authority’s short-term and long-term strategies for addressing OTTs in Trinidad and Tobago. Recommendations on OTT authorisation, investment and regulation are included in that framework.</p> <p>The Authority acknowledges the progression of its approach to the topic of net neutrality from a discussion paper to a framework. While the discussion paper examined the net neutrality debate and garnered stakeholders’ feedback on key discussion points, the Framework finalised the Authority’s policy positions on net neutrality.</p>

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				<p>and appear to be designed to apply “in case” a problem might be identified in the future.</p> <p>Moreover, the approach that seems to have been adopted is inconsistent with the Authority’s functions and powers under the Telecommunications Act (“Act”) and, if pursued, would amount to an unlawful intervention in the legitimate operations of concessionaires.</p> <p>In Digicel’s submission, such a lop sided and heavy-handed approach is unwarranted and inconsistent with the objectives and scheme of the Act.</p>		<p>With respect to calls for a cost-benefit analysis and evidence of market failure, the Authority notes that the effects of net neutrality encompass many immeasurable aspects such as competition, innovation, and consumer choice. Given the difficulty in assigning numerical values to these principles, a quantifiable method such as a cost-benefit analysis, might not be suitable in this context. The Authority also does not agree that actual market failure should occur before it intervenes. Given the immense impact that violations of net neutrality have on competition and on consumer rights, to prevent potential issues, the Authority advocates for proactive involvement, in the form of a carefully considered policy.</p> <p>As part of its policy evaluation, the Authority has examined the competitive landscape within the telecommunications sector, to assess the probability and risks of market failure and its impact on consumers and the wider public if the principle of net neutrality is breached. In its assessments, the Authority has reviewed evidence on industry trends through its annual and quarterly market reports; customer experiences and expectations through its consumer complaints procedure and surveys; previous violations of net</p>

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						<p>neutrality by ISPs; and competition measurement indices such as HHI and price movements. Based on the Authority's observations<sup>4</sup>, at this stage, it has been unable to confirm that the market is sufficiently competitive to adequately protect against market failure or to forgo the safeguards of net neutrality regulation. Therefore, the Authority proposes policy directions on net neutrality to ensure ISPs engage in fair and transparent network practices.</p> <p>Notwithstanding the need for a net neutrality policy, the Authority has also reviewed stakeholders' input and their recommendations that the Authority pursue a more flexible route in overseeing net neutrality violations in Trinidad and Tobago. Consequently, the Authority has, where fitting, embedded more ex post strategies in its policy recommendations on net neutrality. Specifically, sections 6 to 8 of the Framework have been amended to detail the Authority's process for detecting and remedying acts of unfair competition in ISPs' traffic management practices and related commercial practices. The Framework also provides guidance on the Authority's definitions</p>

<sup>4</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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						<p>and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and concession (section 7).</p> <p>The recommendations contained in the Framework are consistent with the Authority's statutory functions and powers under the Act and with ISPs' obligations under the relevant concession conditions. The relevant legislative provisions include the Authority's function under 18 (1) of the Act to monitor and ensure compliance with the concession. Concession conditions A21, A22 and C15 have formed the basis for the Authority's recommendations on no unreasonable discrimination and commercial practices such as zero-rating contained in sections 6 to 8 of the Framework. Those recommendations follow from the Authority's commitment to addressing anti-competition and discrimination among similarly situated<sup>5</sup> consumers.</p> <p>The Authority's recommendations on transparency call for ISPs to publicly disclose relevant</p>

<sup>5</sup> Similarly situated refers to one class of persons being alike in all relevant ways to another class for purposes of a particular decision or issue.

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				<p>In particular, it will add cost and complexity at a time when the industry is least able to afford it and undermine ongoing investment in infrastructure and services.</p> <p>It is Digicel's view that the only beneficiaries of this regulatory initiative will be overseas OTT service providers who will have the competitive playing field tilted even further in their favour.</p> <p>While Digicel had understood that the Authority intended to "split" its analysis of Net Neutrality and OTT services into two "frameworks", we are very concerned that the matters are no longer being considered concurrently.</p>		<p>information on their Internet access service to customers. This is consistent with ISPs' obligation under concession condition A53 which states "the concessionaire shall publish and make available at all times such information as reasonably determined from time to time by the Authority as necessary to inform the public of the operation of its networks and/or provision of all of its services provided in relation to the Authorisations contained in this Concession."</p> <p>Section 1.5 of the Framework has been amended to further highlight the connection between the net neutrality principles and the legislative framework.</p> <p>Regarding the cost and complexity of administration, it is the Authority's intention to minimise, as far as practical, additional data requests, by using information already collected on an ISP's network policies, practices, and measures, and conducting its own independent assessments. The Authority shall, therefore, where applicable, align its monitoring and compliance process, including the information it requests, to ISPs' established methods of upholding net neutrality principles, or their measures pursuant to the CANTO Code, which many ISPs in Trinidad and</p>

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				<p>In our view this is a grave error and has meant the Authority is effectively prioritising and facilitating the growth of OTT service providers over concessionaires despite those OTT service providers:</p> <ul style="list-style-type: none"> <li>b. operating from outside of Trinidad and Tobago;</li> <li>c. not being subject to Trinidad and Tobago's laws and regulatory frameworks; and</li> <li>c. not contributing to the ongoing development of the networks on which their services are provided.</li> </ul> <p>This is despite the size, market power and influence of international OTT service providers being well understood and subject to investigation (and regulatory interventions in some cases) in many countries around the world.</p>		<p>Tobago are signatories to. Section 8 of the Framework has been amended to detail the Authority's monitoring and data collection process. The Authority has also revised its policy recommendations to rely on more ex post strategies for regulating net neutrality. This would minimise the extent of data collected proactively. Section 5 of the Framework has been amended to reflect this.</p>
7.	1.1	Background	TSTT	<p>TSTT notes TATT's statement in this section which states:</p> <p><i>"In October 2021, the Authority published the decisions on recommendations (DORs) and version 0.2 of the Discussion Paper. Based on feedback received within the first</i></p>	<p>TATT to confirm that the Framework on Net Neutrality will be issued for two rounds of public consultation given the important and far-reaching consequences and per TATT's</p>	<p>The Authority confirms that the Framework shall be issued for two rounds of public consultation.</p> <p>The website has been updated to accurately indicate the status of the Framework, which is in the first of two rounds of consultation.</p>

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				<p><i>round of consultation on the Discussion Paper, and considering the dynamism of the industry, the Authority indicated in the Discussion Paper, that future consultations on the topics would continue within separate frameworks on both net neutrality and OTTs, along with any attendant regulations.</i></p> <p><b><i>This document marks the Authority's framework on net neutrality</i></b></p> <p>Given that this is the first framework document issued by TATT on Net Neutrality, the importance, and far-reaching consequences of the matter, and in keeping with the Procedures for Consultation, it is TSTT's reasonable expectation that this framework document will be issued for at least two rounds of public consultation.</p> <p>Further, while TSTT notes that TATT previously issued two "discussion papers" on Net Neutrality and Over-the-Top (OTT) services in Trinidad and Tobago, neither of these documents included proposals for obligations of concessionaires or details on</p>	<p>Procedures for Consultation, as well as well as the indication in this regard given by the Authority in its communication of 13<sup>th</sup> April 2022.</p> <p>TSTT also urges the Authority to clean up its website and remove all of the conflicting information on the status of consultation on the Net Neutrality Framework.</p>	



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				<p>TATT's proposed interventions into our operations as are set out in the instant Framework document. As such, concessionaires have never seen these proposals for regulatory intervention prior to the publication of the instant Framework. This failure is exacerbated by the fact that the proposed regulatory interventions are not mere extensions of existing obligations in the Concession; they are considerable in breadth and stand to have a direct and significant impact on the operations of Concessionaires.</p> <p>It is patently clear that a "discussion paper" is not a framework, guideline, or methodology within the definition of the term "regulatory document" as set out in TATT's Procedures for Consultation. Conversely, the instant Framework document, which came into existence in March 2022, is clearly a regulatory document and as such, in line with Section 3.2 of TATT's Consultation Procedures, this document should be subject to a minimum of two rounds of consultation from this point forward.</p>		

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				<p>Any attempt therefore to combine two distinct consultation exercises with the objective of limiting stakeholder engagement is not only misconceived but undermines the integrity of the consultative process.</p> <p>Notwithstanding the fact that the Authority indicated to some members of the Industry in a letter dated 13<sup>th</sup> April 2022 that the existing consultation will be subject to two rounds that position remains opaque when one reviews the Authority's website and the conflicting and confusing information contained therein as to the status of various "Policy" documents on net neutrality. Under "Current Consultations" there is reference to the Framework on Net Neutrality being in <b>FINAL ROUND</b>. In the Schedule of Documents for Consultation (Tentative Schedule for Oct 2021 to September 2022,) it speaks to a Net Neutrality Policy Framework <b>FIRST ROUND</b>, March 2022. However, when looks at the Table of Consultative Documents at tab 13, there is reference to a number of documents dealing with Net Neutrality and OTT services as being <b>FINAL ROUND</b> documents.</p>		

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8.	1.1	Background	CCTL	In outlining the background to this consultation Framework on Net Neutrality in Trinidad and Tobago, TATT sets out previous consultation documents and discussion papers on the topic, as well as on the related topic of Over the Top (OTT) services. Following the 2015 publication of the first-round consultation Towards the Treatment of Over-the Top (OTT) Services, in July 2018 Discussion Paper on Net Neutrality and OTT Services in Trinidad and Tobago was published as a first-round consultation. In October 2021 TATT published a second document titled Discussion Paper on Net Neutrality and OTT Services in Trinidad and Tobago, which it described as the final publication of the Discussion Paper. In Section 1.1 the document was described as providing a discussion on guiding principles and regulatory approaches on OTT and net neutrality. It was also noted that TATT would continue with second round consultations of the two topics, OTT and net neutrality, in separate publications. This was followed by the publication of the March 2022,		The Authority confirms that the Framework shall be issued for two rounds of public consultation.

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				<p>consultation document, Framework on Net Neutrality in Trinidad and Tobago.</p> <p>In the face of the various pressing issues impacting the local market (e.g. exponential proliferation of OTT services; its growing economic and social impact on the sector and wider economy; protecting the data and privacy of local consumers) TATT's rationale for focusing on, and prioritizing the development of ex-ante net neutrality rules, demonstrates a lack of understanding of the current market dynamics, and the regulatory interventions needed to promote the robust and sustained development of the telecommunications sector.</p> <p>Net neutrality, defined by TATT as the neutral, unfettered ISP transmission of OTT services to consumers, is a single component of the much-wider universe of OTT services. To be clear, net neutrality applies to one input of production in the overall marketplace for OTT services and is concerned exclusively with ISP conduct, namely, that ISPs treat and transmit all Internet traffic equally.</p>	<p>FLOW recommends that TATT reassess the entire premise of the need for this framework of net neutrality rules based on a singular assessment of ISP</p>	<p>The Authority highlights that the definition of net neutrality in subsection 1.1 refers to the equal treatment of lawful data by ISPs. This entails all lawful data and is not restricted to OTT content.</p> <p>The Authority emphasises the importance of developing a framework on net neutrality that facilitates fair competition in the provision of Internet access. The Framework is not based on unsubstantiated transmission practices but, rather, on both expert reports and empirical evidence that</p>

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				TATT offers no empirical evidence or actual examples of detrimental behavior by ISPs in Trinidad and Tobago that requires implementing rules to correct these behaviours.	transmission practices that have not been substantiated, and give focus to issues that could retard the sustained development of the sector. TATT should focus developing a regulatory framework where there is a level playing field for all market players, and they all contribute to the development of the local market.	<p>assess the need for a net neutrality policy in Trinidad and Tobago. In its assessments, the Authority has reviewed evidence on industry trends through its annual and quarterly market reports; customer experiences and expectations through its consumer complaints procedure and surveys; previous violations of net neutrality by ISPs; and competition measurement indices such as HHI and price movements. Based on the Authority's observations<sup>6</sup>, at this stage, it has been unable to confirm that the market is sufficiently competitive to adequately protect against market failure or to forgo the safeguards. of net neutrality regulation. Therefore, the Authority proposes policy directions on net neutrality to ensure ISPs engage in fair and transparent network practices.</p> <p>While the Authority maintains that there is a need for a net neutrality policy, it has considered stakeholders' calls for a more evidence-based approach and has revised some sections to adopt more ex post measures for monitoring and remedying instances of net neutrality violations. Sections 4 to 9 of the Framework have been amended to reflect this. The Framework also</p>

<sup>6</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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						<p>provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and concession (section 7).</p> <p>Additionally, the Authority acknowledges the impact of OTT services on the telecommunications and broadcasting sectors and the wider economy of Trinidad and Tobago. It also recognises that the prevalence of OTTs within the industry has resulted in significant challenges but also opportunities to be addressed.</p> <p>The Authority's recommendations on the treatment of OTTs are in the Framework on OTTs. The recommendations include areas for collaborative initiatives between traditional service providers (TSPs) and OTT providers.</p> <p>The Framework on OTTs was published for the second of two rounds of consultation in August 2023.</p>
9.	1.2	Rationale	TSTT	TSTT notes TATT's statements regarding the Code of Practice of the Caribbean	TATT to expand on the statement related to the	Section 8 of the Framework has been updated to include a reference to the CANTO Code.

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				<p>Association of National Telecommunications Organisation (CANTO) and thinks that TATT's summary of the Code does not adequately communicate to a reader the intention of the code.</p> <p>To be abundantly clear, the CANTO Code, which has thus far been successfully administered, was intended to <i>“provide a framework for operators across the Caribbean Region to collectively address the issue of Net Neutrality”</i>.</p> <p>Therefore, the purpose of the CANTO Code was to advocate for a system of Self-Regulation of and by operators, which does not align with the proposed approach articulated by TATT in this framework document.</p>	<p>CANTO Code to ensure that the purpose of the code is made clear to readers.</p> <p>In furtherance of the above, TATT is to elaborate transparently on why it intends to disregard the CANTO Code and its principle of self-regulation, given that it has provided no evidence of actual or risk of market failure, market distortion, harm to customers or detriment to the public interest.</p>	<p>The Authority recognises the consistency between the Framework and CANTO's Code. It also acknowledges the increasing role that industry self-regulation plays in addressing net neutrality concerns. The Authority is, however, mindful of regulatory gaps that may occur with this approach. These include the lack of enforceability should a member deviate from the Code, and the concern that not every ISP in Trinidad and Tobago is a member of CANTO and/or is a signatory to the Code.</p> <p>To ensure that the conditions enabling competition, innovation and consumer protection are safeguarded, the Authority recommends that the principle of net neutrality be enshrined in the regulatory framework. The Authority has also considered stakeholders' calls for a more evidence-based approach and has revised some sections to adopt a more ex post approach for monitoring and remedying instances of net neutrality violations. Specifically, sections 5 to 9 of the Framework have</p>

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						<p>been amended to reflect this. The Framework also provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and concession (section 7).</p>
10	1.2	Rationale	CCTL	<p>Here TATT speaks to balancing the views of proponents of network neutrality, who advocate for ex-ante network neutrality rules against discrimination for particular content and applications and to protect consumer rights and innovation, with the other school of thought which seeks to promote sustainable infrastructure development, through incentives for network operators to invest, including allowing freedom in employing traffic management measures for optimal network operations.</p> <p>To strike an appropriate balance requires much more than an academic discussion of the issues. TATT needs first to establish that a problem exists. We note that TATT's approach is informed of the Body of European Regulators for Electronic</p>	<p>Before considering the establishment of net neutrality rules TATT must establish that a problem exists – i.e. ISPs are blocking or slowing down traffic or applying any</p>	<p>The Framework presents a proactive approach to net neutrality, consistent with the Authority's statutory mandate under section 3 of the Act and other legislative provisions identified in section 1.5 of the Framework.</p> <p>With respect to establishing that a problem exists, the Authority does not agree that actual market failure should occur before it intervenes. Given the immense impact that violations of net neutrality have on competition and on consumer rights, the Authority advocates for proactive involvement to</p>



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				<p>communications (“BEREC”). In examining this approach, Article 3 of BEREC Guidelines on the Implementation of Open Internet Regulation clearly states that<sup>7</sup> “...a significant number of end-users are affected by traffic management practices which block or slow down specific applications or services.”</p> <p>TATT has not established that ISPs are blocking or slowing down specific traffic or applications and that end users in the Trinidad and Tobago market are negatively affected.</p>	<p>kind traffic discriminatory traffic management practices and unfairly impacting end users.</p>	<p>prevent potential issues, in the form of a carefully considered policy.</p> <p>As part of its policy evaluation, the Authority has considered the competitive landscape within the telecommunications sector to assess the probability and risks of market failure and its impact on consumers and the wider public if the principle of net neutrality is breached. In its assessments, the Authority has reviewed evidence on industry trends through its annual and quarterly market reports; customer experiences and expectations through its consumer complaints procedure and surveys; previous violations of net neutrality by ISPs; and competition measurement indices such as HHI and price movements. Based on the Authority’s observations<sup>8</sup>, at this stage, it has been unable to confirm that the market is sufficiently competitive to adequately protect against market failure or to forgo the safeguards. of net neutrality regulation. Therefore, the Authority proposes policy directions on net neutrality to ensure ISPs engage in fair and transparent network practices.</p>

<sup>7</sup> Accessed April 30 2022, [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/regulatory\\_best\\_practices/guidelines/9277-berec-guidelines-on-the-implementation-of-the-open-internet-regulation](https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/9277-berec-guidelines-on-the-implementation-of-the-open-internet-regulation)

<sup>8</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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						<p>The Authority has also considered stakeholders' comments and suggestions for a more evidence-based approach to regulating net neutrality violations in Trinidad and Tobago. While the Authority continues to stress the importance of detailing its evaluation process for potential violations, it has, where appropriate, revised the Framework to incorporate a more ex-post approach to the regulation of net neutrality. Specifically, sections 6 to 8 of the Framework have been amended to detail the Authority's process for detecting and remedying acts of unfair competition in ISPs' traffic management practices and related commercial practices. The Framework also provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on ISPs' regulatory obligations contained in the Act and concession (section 7).</p> <p>It should be noted that section 1.2 Rationale has been subsumed under section 1.1 Background.</p>
11.	1.3	Purpose	Digicel	The stated purpose of the Framework is as follows:	It is clear that the Authority's approach to the Framework is fundamentally and legally	The Authority maintains that the Framework's stated purpose is within the ambit of its statutory mandate. The Authority points to the use of the

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				<p><i>“This Framework specifies the Authority’s policy positions on net neutrality. The outputs of the Framework shall help guide the Authority’s future regulations on ISPs’ treatment of traffic in the provision of Internet access services.”<sup>9</sup></i></p> <p>In Digicel’s submission such an intervention is beyond the power of the Authority. This is for two reasons:</p> <ol style="list-style-type: none"> <li>a. Firstly, the Authority has no power to set policy and is only authorised under Section 18(1)(e) of the telecommunications Act to <i>“advise the Minister on policies governing the telecommunications industry”</i> and is not entitled to unilaterally set policy itself.</li> <li>b. Secondly, the Authority does not have the power to make Regulations and may only make recommendations to the Minister. Such Regulation making power rests with the Minister, subject to negative resolution of Parliament.</li> </ol>	<p>flawed and for that reason alone it should be withdrawn until such time as the current legal issues have been addressed.</p>	<p>words “help guide”, which does not indicate an intention to set government policies or make regulations. The intention of the development of this Framework, as with those prior, is to help guide future regulations. The Authority plays a key role in this process via the drafting of regulations and undertaking the consultation process towards finalisation of policy documents. The regulations are subsequently submitted to the Ministry for the requisite approval process.</p> <p>Furthermore, this process is very much in accordance with the Authority’s mandate to make recommendations to the Minister, under section 78 (1) of the Act, which in part states: “The Minister, on the recommendation of the Authority, shall make such Regulations, subject to negative resolution of Parliament, as may be required for the purposes of this Act....”</p> <p>The Authority advises that, under section 78 (1), formulating its own policy positions is part of the process of providing recommendations to the Minister.</p>

<sup>9</sup> Framework at page 5.

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12	1.3	Objectives	CCTL	<p>TATT states that the Framework outlines:</p> <p><i>“1. the balanced regulatory approach on net neutrality <b>that aligns with the Government’s broader policies on broadband development.</b></i></p> <p><i>2. policy directions to guide the regulation of net neutrality practices in Trinidad and Tobago.</i></p> <p><i>3. high-level descriptions of the Authority’s process of assessing and remedying net neutrality violations in Trinidad and Tobago.”</i></p>	<p>Priority and focus should be placed on legislative and regulatory changes needed to update the current framework. FLOW reiterates that TATT should focus developing a regulatory framework where there is a level playing field for all market players, and they all contribute to the</p>	<p>The Authority notes CCTL’s recommendation that priority should be given to the legislative and regulatory changes needed to update the Framework.</p> <p>Amendments to the Act have been proposed. The Authority is working with, and supporting, the Ministry of Digital Transformation on the promulgation of these critical pieces of legislation. Amendments will incorporate current market trends and the changes that have taken place since 2004. In the interim, the Authority continues its work to achieve its statutory mandates and to fulfil its functions and duties under the Act.</p> <p>With respect to OTTs, the Authority acknowledges the impact of OTT services on the telecommunications and broadcasting sectors and the wider economy of Trinidad and Tobago. The Authority also recognises that the prevalence of OTTs within the industry has resulted in significant challenges but also opportunities to be addressed.</p> <p>The Authority’s recommendations towards the treatment of OTTs are in its Framework on OTTs. Such recommendations include areas for collaborative initiatives between TSPs and OTT</p>

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				<p>With respect to objective 1, to assess the alignment of these proposed net neutrality rules the Government's broader policy on broadband development, Flow refers to the policies as outlined in the Trinidad and Tobago's National ICT Plan ICT Blueprint 2018<sup>10</sup> – 2022. In articulating the vision, the</p>	<p>development of the local market.</p>	<p>providers. Among its other objectives, that document provides the regulatory framework that creates an enabling environment for fair commercial interactions between OTTs and ISPs. This is aligned to ITU's recommendations on the collaborative framework for OTTs and TSPs, one of them being that Member States should "ensure a competitive landscape is assured for the benefit of consumers and innovation"<sup>11</sup>.</p> <p>The Framework on OTTs was published for its second of two rounds of consultation in August 2023. Comments and recommendations received are being reviewed by the Authority.</p> <p>CCTL's reference to the National ICT Plan: ICT Blueprint 2018–2022 (the Plan) is noted. The Authority emphasises its commitment to helping with the achievement of the Plan's policy objectives, which include the continued development of broadband infrastructure in Trinidad and Tobago.</p>

<sup>10</sup> Accessed April 30, 2022 at [https://mpa.gov.tt/sites/default/files/file\\_upload/publications/NICT%20Plan%202018-2022%20-%20August%202018.pdf](https://mpa.gov.tt/sites/default/files/file_upload/publications/NICT%20Plan%202018-2022%20-%20August%202018.pdf)

<sup>11</sup> ITU 2020 Recommendations for international telecommunication/ICT economic and policy issues-Economic and regulatory impact of the Internet

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				<p>plan speaks to the citizens of Trinidad and Tobago having “<i>pervasive access to ICT</i>”; “<i>broadband infrastructure which provides a variety of services that are affordable, of high quality, safe, and secure</i>”; and “<i>deriving high value from the use of ICT, benefiting themselves and society.</i>”</p> <p>The plan also envisages that the development of a robust, advanced, and secure infrastructure would be enabled by the requisite legislative and regulatory framework.</p> <p>In pursuing the objectives of Trinidad and Tobago National ICT Plan, Flow considers that there are a range of policy and regulatory priorities that need to be addressed to promote these objectives. For example, the current regulatory framework was largely put in place in the early 2000s to facilitate the introduction of competition and does not reflect the current market realities. Urgent changes are required to promote the achievement of the national ICT goals.</p>		<p>A key programme identified in the Plan, under Strategic Thrust 1, is “Improving Connectivity”, which includes the “Treatment of Net Neutrality”. The Authority has been identified as one of the driving agencies of this initiative. Work, inclusive of the development of this Framework, is being implemented by the Authority consistent with the Plan.</p>

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				<p>With the growth of global online providers competing with local service providers needed changes include (i) same rules for online service providers as apply for local licensed providers(ii)ensuring that the privacy and data protection rights of over the top (OTT) service users are sufficiently protected and (iii) strengthening the competition powers in the Telecommunications Act.</p> <p>We do not believe that net neutrality rules raise to the level of priority as the matters identified. Further, as discussed in 1.2 TATT has not established that problems exist, where ISP's traffic management strategies are negatively impacting customers and other end users. If there are no problems, there are no reasons to put in place an elaborate and potentially costly regulatory investigation, reporting and monitoring mechanism to remedy a non-existent problem, while ignoring the impact other players and market developments impacting the telecommunications landscape and economic and social development of Trinidad and Tobago</p>		<p>With respect to establishing that a problem exists, the Authority disagrees with the notion that it should only intervene after a market failure has occurred. Recognising the significant impact that breaches of net neutrality can have on both competition and consumer rights, the Authority promotes proactive engagement to pre-empt potential issues through a well-thought-out policy.</p> <p>In its policy evaluation, the Authority has taken into account the competitive dynamics in the telecommunications sector, to gauge the likelihood and risks of market failure, and the repercussions on consumers and the broader public if net neutrality is compromised. The Authority's assessments have incorporated evidence from industry trends via its annual and quarterly market</p>

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						<p>reports; consumer experiences and expectations through its complaint procedures and surveys; past infringements of net neutrality by ISPs; and competition metrics such as the HHI and price movements.</p> <p>Based on the Authority's observations<sup>12</sup>, it has not been able to ascertain, at this point, that the state of competition in the market is sufficient to guard against market failure or to dispense with the protections of net neutrality regulation. Consequently, the authority is proposing policy guidelines on net neutrality to ensure ISPs adhere to equitable and transparent network practices.</p>
13	1.5	Legal and Regulatory Framework	TSTT	The Authority attempts with great difficulty to frame net neutrality in the context of the Telecommunications Act and Concession. While the cited sections of the Act (S.18(1) and (3)) do outline the general functions of the Authority, the scope of the Act limits the applicability of the general functions and authorities, Indeed This is a trite principle of statutory interpretation. In that regard,	TATT to either: <ul style="list-style-type: none"> <li>- clarify which provision of the legal and regulatory framework that expressly empowers the regulatory interventions and obligations proposed; or</li> <li>- modify the document to remove obligations that</li> </ul>	The Authority notes that the Act is a framework legislation that was drafted to adapt to evolving conditions. The drafters used the principles-based approach, as opposed to a highly prescriptive rules-based approach. The principles-based approach has the advantage of being more adaptable to changes in technology, therefore allowing for expeditious resolutions to the ever-evolving challenges within the sectors.

<sup>12</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).



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				<p>(a) although S 18(1) provides for the establishment of national telecommunications standards, it is noteworthy that S. 45 (2) of the Act, which elaborates on that function, and as such it is manifest that the power is not coercive;</p> <p>(b) despite S.18(3) providing for the consideration of the interests of consumers, in terms of fair treatment and non-discrimination, only S. 29(2) of the Act establishes a specific authority as it relates to TATT's ability to establish price regulation regimes, in specified circumstances. It is abundantly clear that TATT's powers are limited to the application of price regulatory controls and do not afford TATT the power to intervene, monitor, or in any other way interfere with the technical network settings of concessionaires.</p>	<p>are not specifically provided for under the Concession or Regulations promulgated under the Telecommunications Act, Chap 47:31.</p> <ul style="list-style-type: none"> <li>- seek to amend the Telecommunications Act to confer the required power to act as envisaged.</li> </ul>	<p>While the concept of net neutrality is not explicitly mentioned in the Act, the Authority's recommendations on net neutrality are based on three main principles that are consistent with the spirit and requirements of the Act. These are fair competition, consumer protection, and acceptable quality of service. These are expressly identified in the Act and concession document.</p> <p>Section 5 of the Framework has been amended to highlight the connection between the net neutrality principles and the legislative framework.</p> <p>The Authority also highlights amendments made to the Framework to align policy recommendations directly to the concessionaires' obligations identified in the Act and concession conditions. Specifically, previous obligations under reasonable traffic management have been removed and have been replaced with guidance on the Authority's definitions and principles of reasonable traffic management. Sections 4 to 9 have been amended to detail the Authority's process for detecting and remedying acts of unfair competition and discrimination in ISPs' traffic management practices and related commercial practices.</p>

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				<p>Similarly, while conditions A21 and A22 of the concession do speak to anti-competitive behavior, this is clearly in the context of the enabling powers of S.29(2) of the Act. This is underscored by the fact that the only empowering provisions of the Concession to treat with anti-competitive conduct follows in Condition A23, and it is noteworthy that those provisions are limited to price regulatory controls. Consequently, all analyses therein – which focus on the determination of market dominance and the oversight of prices in the market by dominant providers only – are not relevant to the matter under consideration ie net neutrality. The Net</p>		<p>With respect to points (a) and (b) in TSTT's comments:</p> <ul style="list-style-type: none"> <li>(a) The Authority clarifies that section 45 (2) of the Act states that, notwithstanding the implementation of technical standards by concessionaires and licensees, of their own accord, the Authority can still identify, adopt or establish its preferred standards. This supports rather than precludes the formulation of national telecommunications industry standards on net neutrality.</li> <li>(b) The Authority's powers to regulate competition issues is not limited to the application of price regulatory control in section 29. It is empowered in section 18 (1) (a) of the Act to monitor and ensure compliance by all concessionaires with their concession obligations including anti-competitive prohibitions in A21 and A22.</li> </ul> <p>It is also inaccurate to state that the empowering provision of anti-competitive conduct, identified in A21 and A22, follows in condition A23. Similarly, the prohibitions in A21 and A22 are not limited to</p>

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				<p>Neutrality Framework does not consider market dominance and is not appropriately aligned to the provisions of the Concession Condition. This is made more evident when one considers the matters in which TATT may assess a market pursuant to A23(b) – where notably, the technical settings of routers and servers are not included as matters under TATT's purview.</p> <p>In short, TATT's attempt to anchor the Net Neutrality Framework and in particular the envisaged interventions, to the Legal/Regulatory construct in Trinidad and Tobago fails as it is clear that TATT does not have the necessary power to undertake the interventions proposed in the Net Neutrality Framework.</p> <p>Accordingly, TSTT is concerned that from section 4.3 of the Net Neutrality Framework onward, TATT attempts to impose obligations on concessionaires for which no legal authorisation exists. TATT is reminded that it does not have the authority to impose obligations on concessionaires unless those obligations are incorporated in legally enforceable instruments, either in law or</p>		<p>section 29 (2) of the Act. Conditions A21 and A22 are general prohibitions against anti-competitive behaviour applicable to all concessionaires, whereas A23 is specific to a dominant concessionaire, and this condition is what must be read in conjunction with section 29.</p> <p>The Framework considers the types of conduct referred to in conditions A21 and A22 and proposes recommendations aimed at achieving the requirements of those provisions. The mechanisms proposed in the Framework are to ensure concessionaires comply with their obligations, in keeping with the Authority's mandate under section 18 (1) (a).</p> <p>The Authority underscores that the concession agreement is a legally binding instrument executed by concessionaires, which means that conditions A21 and A22 are legal obligations.</p>

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				regulations or binding contractual commitments.		
14	1.5	Legal and Regulatory Framework	Digicel	<p>The Framework goes well beyond a statement of “policy” and a stated intention to make regulations in the future. This is because it purports to establish a range of industry rules and sanctions and thereby directly regulate the activities of Concessionaires.</p> <p>In doing so the Authority has sought to rely upon Sections 3, 18(1), 18(3), 24(h) and 29 of the Act and Concession conditions A21 and A22 as being the legal basis for such interventions.</p> <p>However, when each of these Sections is examined, it becomes apparent that they do not provide any proper basis for any of the interventions that the Authority proposes to impose through the application of the Framework.</p> <p>a. Section 3 of the Act sets out the Act’s objectives and a statement of the conditions the Act is intended to establish. They are designed to guide the Authority in the exercise of its</p>	<p>It is clear that the Authority’s approach to the Framework is fundamentally and legally flawed and for that reason alone it should be withdrawn until such time as the current legal issues have been addressed.</p> <p>In this regard we stand behind the concerns set out in the Industry Letter and the request for the Authority to undertake:</p> <p>a. a review of TATT’s proposed regulatory interventions on net neutrality to ensure same are proportional and not in contradiction of the rights of persons as enshrined In the Laws of Trinidad and Tobago; and</p> <p>b. a review of TATT’s statutory capacity to</p>	<p>The Framework, as amended, outlines the Authority’s strategy for advancing the principle of net neutrality in Trinidad and Tobago and provides guidance on assessing and addressing discriminatory practices by ISPs that may infringe on consumer rights and restrict competition.. The Framework is not based “solely on academic considerations” but on the government’s overall policy objects, as well as the various policy considerations for achieving the objects of the Act and pursuant to the Authority’s functions and power as identified in statements a through i below.</p> <p>The Authority also highlights amendments to the Framework in sections 4 to 9 that focus on evidenced-based strategies for net neutrality.</p> <p>With respect to Digicel’s comments in a through i, the Authority responses are as follows:</p> <p>a. The recommendations on net neutrality are based on three main principles that are consistent with the spirit and requirement of the Act. These are fair competition,</p>

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				<p>functions and powers imposed by the Act. The objectives in Section 3 do not in and of themselves provide any additional powers for the Authority to intervene.</p> <p>b. Section 18(1) of the Act sets out the functions and powers of the Authority. However, none of those functions and powers appears to be relevant to the interventions described in the Framework. In particular, the Authority's reference to "<i>the establishment of national telecommunications standards; and ensuring the orderly and systematic development of telecommunications throughout Trinidad and Tobago</i>"<sup>13</sup> does not seem to apply to what has been proposed in the Framework.</p> <p>c. Section 18(3) of the Act provides:</p>	<p>undertake competition regulation powers within the current ambit of the Telecommunications Act</p> <p>Any investigation that is undertaken in the future must be evidence based and take into account the actual circumstances that exist in Trinidad and Tobago. Importantly, it should not be based solely on academic considerations, which appears to be the case at present.</p>	<p>consumer protection, and acceptable quality of service. These principles are identified in section 3 of the Act. The Authority refers to this section in interpreting the relevant provisions within the Act.</p> <p>b. Section 18 (1) outlines the functions and powers of the Authority, which include, inter alia, monitoring and ensuring compliance with the concession conditions (including A21, A22 and C15); the establishment of national telecommunications industry standards; advising the Minister on policies governing the telecommunications industry; and ensuring the orderly and systematic development of telecommunications throughout Trinidad and Tobago. Pursuant to these functions, and in accordance with the elaborative directions in section 18 (3) of the Act, the Framework presents recommendations on standards for reasonable traffic management (section 5) and fair competition in an operator's</p>

<sup>13</sup> Ibid at page 6.

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				<p><i>“(3) In the performance of its functions, the Authority shall have regard to the interests of consumers and in particular—</i></p> <p><i>(a) to the quality and reliability of the service provided at the lowest possible cost;</i></p> <p><i>(b) to fair treatment of consumers and service providers similarly situated;</i></p> <p><i>(c) in respect of consumers similarly placed, to non-discrimination in relation to access, pricing and quality of service; and</i></p> <p><i>(d) current national environmental policy.”</i></p> <p>d. Importantly, the term “<i>have regard to</i>” does not confer any express powers on the Authority with the provisions, like the Act’s objectives, also designed to guide the Authority in its exercise of its</p>		<p>network and commercial practices (sections 6, 7 and 8).</p> <p>c. Response to b. applies</p> <p>d. Response to b. applies</p> <p>e. The Authority notes the typographical error and clarifies that the correct reference is section 24 (1) (a) (which is concerned with the submission of plans to the Authority regarding quality of service and other related matters as the Authority may require). Section 9 of the document has been amended to reflect this clarification.</p> <p>f. The Authority’s powers to regulate competition issues are not limited to the application of price regulatory control referred to in section 29. The Authority is empowered under section 18 (1) (a) of the Act to monitor and ensure all concessionaires comply with their obligations, including the anti-competitive prohibitions in A21 and A22.</p> <p>g. Response to h. applies</p>

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				<p>powers rather than create additional powers.</p> <p>e. Digicel does not understand the Authority's reference to Section 24(h) of the Act which refers to "... <i>keeping books of accounts in accordance with ... regulations</i>". Further explanation is needed as to why this Section of the Act is relevant in the context of the Framework.</p> <p>f. The Authority also seeks to rely upon Section 29 of the Act to justify intervention in cases where it considers its proposed principle of "no unreasonable discrimination" has been offended. However, Section 29 applies only to the establishment of "price regulation regimes" and only in circumstances where dominance is an issue or where cross subsidies or anti-competitive pricing or acts of unfair competition occurs. However, no dominance or actual anti-competitive conduct has been found to exist. Even if</p>		<p>h. The Framework considers the types of conduct referred to in conditions A21 and A22 and proposes recommendations consistent with these provisions. The mechanisms proposed in the Framework are to monitor and ensure concessionaires comply with their obligations, in keeping with the Authority's mandate under section 18 (1) (a). This authorises an ex ante approach to regulation. The Authority's recommendations in the Framework illustrate forms of anti-competitive network and commercial practices that may constitute violations to A21 and A22.</p> <p>The Authority also underscores that the concession document is a legally binding instrument, and the concessionaire accepts the terms and conditions in it, including conditions A21 and A22, which are legal obligations.</p> <p>i. The Authority advises that, at this time, there is no formal declaration on the state of competition in the broadband market. Until evidence of sufficient competition in that</p>

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				<p>dominance was proven and anti-competitive conduct did become an issue, it is not clear how the price regulation regimes contemplated by Section 29 would be relevant to the issue of Net Neutrality.</p> <p>g. Finally, the Authority has sought to rely upon Concession conditions A21 and A22 which provide as follows:</p> <p><i>“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.</i></p> <p><i>A22. In particular, but without prejudice to the generality of</i></p>		<p>market is established so as to effectively prevent anti-competitive practices, the Authority considers it prudent to adopt a mix of both ex ante and ex post forms of regulation. This allows for strong safeguards in areas such as transparency, while giving ISPs the flexibility to implement commercial practices such as zero-rating and conditional paid prioritisation.</p>



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				<p><i>the foregoing, the concessionaire shall not:</i></p> <p><i>a. enter into any agreement, arrangement or understanding which has or is likely to have the purpose or effect of preventing or substantially restricting or distorting competition in any market for the provision or acquisition of any networks, services or equipment;</i></p> <p><i>b. without the authorisation of the Authority, make it a condition of the provision or connection of telecommunications network facilities, services or equipment that the person also acquires or does not acquire any other network facilities, service or equipment either from the concessionaire or any other entity; or,</i></p>		

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				<p>c. <i>give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a material competitive disadvantage, or competition would be prevented or substantially restricted.”</i></p> <p>h. Whilst these Concession conditions that have been relied upon by the Authority provide clear obligations with respect to the conduct of Concessionaires, they do not confer any powers on the Authority to impose any <i>ex ante</i> regulations on them. Instead, the Authority's role is that of enforcement in cases of suspected breach. However, in this case, not even a <i>prima facie</i> case of misconduct has been established and there is therefore no basis for any enforcement action to be undertaken.</p>		

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				<p>i. The competitive state of the market even seems to be recognised by the Authority as it acknowledges the following broadband statistics<sup>14</sup>:</p> <p><i>“A preliminary assessment of broadband development and uptake in Trinidad and Tobago, using data from the Authority’s statistical repository, reveals the following statistics as at September 2021:</i></p> <ol style="list-style-type: none"> <li><i>1. Fixed broadband Internet was provided by 11 operational service providers.</i></li> <li><i>2. The fixed Internet penetration per 100 household stood at 87.2.</i></li> <li><i>3. Approximately 27 out of every 100 inhabitants subscribed to fixed broadband Internet.</i></li> </ol>		

<sup>14</sup> Framework at page 14.

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				<p>4. <i>Active [1] mobile Internet penetration stood at 58.5% of the population.</i></p> <p>5. <i>100% and 75% of the population were covered by 3G and LTE/WiMAX mobile network respectively.</i></p> <p>There is clearly nothing in these statistics that would indicate competitive failure or serve as a reason for intervention.</p>		
15	1.7	Consultation Process	TSTT	<p>Further to TSTT's earlier comments in response to Section 1.1 above, TSTT notes TATT's statement that "<i>the Framework on Net Neutrality in Trinidad and Tobago is being issued for a second round of consultation, following consultation at the <b>Discussion Paper level.</b></i>" TATT also stated in the Maintenance History that "<i>Discussion Paper transformed into a framework on net neutrality and published for final round of consultation</i>".</p> <p>TSTT is concerned with TATT's logic, as a discussion paper cannot be transformed into the <b>second round</b> of consultation on a framework. This document should be</p>	TATT to remedy its position and issue this Framework on Net Neutrality for two rounds of public consultation given the important and far-reaching consequences and as per TATT's Procedures for Consultation, as well as well as the indication in this regard given by the Authority in its communication of 13 <sup>th</sup> April 2022	The Authority confirms that the Framework shall be issued for two rounds of consultation. The Maintenance History and subsection 1.8 have been amended accordingly to reflect this.

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				<p>considered the <b>first round</b> of consultation on the Net Neutrality Framework.</p> <p>TSTT again calls upon TATT to adhere to its own Consultation Procedures and issue this framework for a minimum of two rounds of written consultation.</p>		
16	1.7	Consultation Process	CCTL	<p><u>In Section 1.1 Flow sets out in In October 2021 TATT published a second document titled Discussion Paper on Net Neutrality and OTT Services in Trinidad and Tobago, which it described as the final publication of the discussion paper.</u> In Section 1.1 the document was described as providing a discussion on guiding principles and regulatory approached on OTT and net neutrality. It was also noted that TATT would continue with second round consultations of the two topics, OTT and net neutrality, in separate publications.</p> <p>The <u>Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago</u> provides for two rounds of consultation for regulatory documents. We note however that the Framework for Net Neutrality in Trinidad</p>	Flow recommends that as a regulatory document intending to set regulatory rules on net neutrality, this consultation should allow for at least two rounds, in line with established procedures.	<p>The Authority confirms that the Framework shall be issued for two rounds of consultation. The Maintenance History and subsection 1.8 have been amended accordingly to reflect this.</p> <p>The Framework on OTTs was published for its second of two rounds of consultation in August 2023.</p>

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				<p>and Tobago is issued as a final round of consultation. While we recognize that the topic of net neutrality was included as a subject discussion papers on net neutrality and OTT published in July 2018 and October 2021, we do not believe that can be considered regulatory documents. Section 1.1 the document was described as providing a discussion on guiding principles and regulatory approached on OTT and net neutrality.</p>		
17	2	Net Neutrality Definition, Traffic Management and Net Neutrality Interferences	Digicel	<p>Aside from the legal questions raised above, Digicel is concerned that the Authority is seeking to impose regulation to address a problem that, in practical terms, does not currently exist in Trinidad and Tobago.</p> <p>While we may do so in future to manage mobile network congestion in areas where capacity is limited, the simple fact is that, currently, Digicel neither “blocks” nor “throttles” any OTT apps or lawful content on its network. Nor does Digicel engage in “paid prioritisation practices”.</p>	<p>The Authority should refrain from market intervention unless and until it has established a prima facie case of anti-competitive conduct. Even then it must only act within the ambit of its existing powers under the Act.</p>	<p>The Framework presents recommendations consistent with the Authority’s statutory mandate and pursuant to its functions and powers under the Act. The Authority has also considered stakeholders’ calls for a more evidence-based approach and has revised some sections in order to adopt an ex post approach for monitoring and remedying instances of net neutrality violations. Sections 4 to 9 of the Framework have been amended to reflect this.</p> <p>The Authority acknowledges CANTO’s Code and its consistency with the principles of net neutrality expounded in the Framework. The Authority views</p>

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				<p>This despite the material and growing impact that OTT apps and services, are having on traditional revenue streams.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Digicel's approach is driven by its adherence to the CANTO Code of Practice on Safeguarding the Open Internet ("<b>Code of Conduct</b>") and what is now a highly competitive market in Trinidad and Tobago.</p> <p>In order to maintain and grow our business we need to continue to deliver improved value and provide innovative service offerings to our customers. This can be seen by Digicel's Prime Bundles which include substantial amounts of "any use" rollover LTE data and access to a variety of services including traditional voice services, music and video streaming and messaging apps.</p>		<p>this initiative as a positive step in demonstrating network operators' commitment to safeguarding an open Internet. It should be noted, however, that not every ISP in Trinidad and Tobago is a member of CANTO, and/or has acceded to the Code.</p> <p>Moreover, while the Authority recognises the increasing role that industry self-regulation plays in addressing net neutrality concerns, it is also mindful of regulatory gaps that may occur with this approach. To ensure the principles of competition, innovation and consumer protection are upheld the Authority recommends that the principle of net neutrality be enshrined within the regulatory framework. Notwithstanding this, the Authority has noted stakeholders' comments and recommendations for the adoption of a more flexible approach to regulating net neutrality violations in Trinidad and Tobago. Consequently, the Authority has, where appropriate, incorporated more ex post strategies in its policy recommendations on net neutrality.</p> <p>The Authority's recommendations on net neutrality, including recommendations on reasonable traffic management, unreasonable discrimination and transparency, are in keeping</p>

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				<p>The Prime Bundles were introduced to reflect changing technologies and customer needs. They continue to evolve over time to ensure that services are designed to encourage demand and increase accessibility so that we can continue to grow our business and reinvest in the market.</p> <p>Any intervention will have long term effects and, if it is ill-considered, will damage the competitive market environment that has developed.</p> <p>It is therefore disappointing that the Authority has omitted to undertake any empirical analysis of its own and appears to have dismissed the self-regulation that already exists through the Code of Conduct. Instead, it is seeking to intervene solely on the basis of academic theory when even a cursory review of the current market would show that competition is already effectively “regulating” conduct and there is simply no basis for intervention on the market approach to Net Neutrality at this time.</p>		with the Authority’s legislative remit under the Act.
18	2.1	Definition of Net Neutrality	CCTL	TATT references the work of Professor Tim Wu and other academics who posit that net	We recommend that TATT prioritizes efforts to overhaul	The Authority notes CCTL’s recommendation on prioritising the updating of the legal and regulatory



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				<p>neutrality extends beyond network design and “touches on policy and regulatory strategies aimed at preventing negative spill overs of ISPs’ conduct in other industries, and in the wider economy. Primarily, net neutrality corroborates the open nature of the Internet to ensure competition is preserved, innovation can flourish, and consumers have unprecedented access to information.”</p> <p>The discussion and application to the development of regulatory strategies that follows are purely academic, and has no bearing on the current market context, the realities of the market in Trinidad and Tobago, or the path to promote expansion of broadband services and achieve the government’s goal of digital transformation of the economy.</p>	<p>the outdated legal and regulatory framework to reflect current market realities, including strengthening of competition-based regulatory approaches.</p>	<p>framework. The Authority is working with, and supporting, the Ministry of Digital Transformation on the promulgation of these critical pieces of legislation. Amendments will incorporate current market trends and the changes that have taken place since 2004. In the interim, the Authority continues its work to achieve its statutory mandates and to fulfil its functions and duties under the Act.</p> <p>The Authority has considered both theoretical research and empirical evidence in arriving at its policy recommendations on net neutrality. In addition to expert reports and global best practices, the impetus for, and development of, the Framework were also informed by empirical tools and the Authority’s assessment of harm to the market if it is left unregulated. Additionally, the Framework has been amended to reflect a more flexible approach to regulating net neutrality violations in Trinidad and Tobago. Consequently, the Authority has, where appropriate, incorporated more ex post strategies in its policy recommendations on net neutrality.</p> <p>The Framework presents recommendations on net neutrality that have been carefully tailored for</p>

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				<p>Net neutrality applies to one input of production in the overall marketplace for OTT services, and is concerned exclusively with ISP conduct, namely, that ISPs treat and transmit all Internet traffic equally. In terms of policy and regulatory strategies to preserve competition and innovation and extend access to ICTs, there are many other players and market developments driving the exponential proliferation OTT services, its growing impact on the telecommunications landscape and economic and social development of Trinidad and Tobago.</p> <p>Regulatory strategies must be framed within the market context and to facilitate the achievement of policy objectives. It is our considered view that issues such as the upgrading of the outdated legal and regulatory framework to reflect current market realities, including strengthening of</p>		<p>Trinidad and Tobago and designed as pre-emptive measures against any practice that may harm consumers or restrict competition within the industry/industries. The recommendations are also consistent with the Authority's statutory mandates under section 3 of the Act, which include, inter alia, the facilitation of the orderly development of a telecommunications system.</p> <p>The Authority acknowledges the impact of OTT services on the telecommunications and broadcasting sector and the wider economy of Trinidad and Tobago. The Authority also recognises that the prevalence of OTTs within the industry has resulted in significant challenges but also opportunities to be addressed.</p> <p>The Authority's recommendations towards the treatment of OTTs are in its Framework on OTTs. These recommendations include areas for collaborative initiatives between TSPs and OTT providers. The Framework on OTTs was published for its second of two rounds of consultation in August 2023.</p>

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				competition-based regulations deserve priority and greater attention at this time.		
19	2.2	Traffic Management and Net Neutrality Interferences	CCTL	<p>TATT acknowledges that traffic management activities are required to manage networks to ensure efficiency, including sharing network resources across diverse end user services. It further states, <i>“Some traffic management mechanisms may entail the use of traffic management technologies, such as deep packet inspection (DPI) 2 which can be used for innocuous purposes, such as identifying malware, or for anti-competitive traffic discrimination activities. The latter represents a violation of the net neutrality principle, as it exceeds what is reasonably required to manage the efficiency of a network. Such actions are referred to in this document as “net neutrality interferences”.</i></p> <p>The Authority identifies four net neutrality interferences - blocking, throttling, paid prioritisation and zero rating that are potentially problematic. TATT acknowledges that firstly, these net neutrality interferences are problematic only to the</p>	We believe that before any framework or regulations are put up for consideration, it is fundamental and incumbent upon the regulator to first clearly specify the market failure or public harm that necessitates implementing regulations. Therefore, we recommend TATT first specify its concerns with ISPs transmission practices in Trinidad and Tobago, and that this specification be based upon facts and not founded on theory and speculation.	<p>The Authority recognises the role of competition in safeguarding against any negative effects of net neutrality interferences, such as blocking, throttling, paid prioritisation and zero-rating.</p> <p>The recommendations in the Framework are intended as preventative measures against specific practices known to be harmful against competition and consumer rights, and to increase transparency on practices affecting consumers' use of the Internet. The Authority considers these measures to be imperative in promoting competition within industries, fostering innovation, and achieving national broadband goals.</p> <p>Practices such as blocking and throttling of lawful content inherently impede competition in downstream markets and adversely affect consumers' use of the Internet. These should therefore be prohibited in clearly defined rules. This position is similar to that adopted in</p>

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				<p>extent these practices are anticompetitive traffic discrimination practices, and secondly, that these traffic management practices can be used to beneficial market effect.</p> <p>With regards to anticompetitive practices, a finding of anticompetitive conduct must be preceded by a definition of a relevant market. In an earlier round of this consultation process TATT admitted that any regulatory framework to address net neutrality requires a determination of the effects of net neutrality interferences on competition to see if rules are required. TATT states<sup>15</sup>,</p> <p><i>“The first step, therefore, is to examine if the market is sufficiently competitive to self-regulate against any potentially adverse effects of practices such as blocking, throttling, paid prioritisation and zero-rating. Theories on self-regulation suggest that where the market is sufficiently competitive, market forces would correct any anti-competitive conduct adopted by</i></p>		<p>jurisdictions such as Brazil, Canada and the EU who have applied stricter forms of regulation to resolve both anticipated and actual net neutrality violations.</p> <p>Furthermore, the Authority highlights amendments to the Framework in sections 4 to 9 that focus on evidenced-based strategies for net neutrality.</p>

<sup>15</sup> Discussion Paper on Net Neutrality and OTT Services (First Round), Section 6.2, Page 20, July 2018, TATT

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				<p><i>providers. Where it is determined that conditions within the local broadband market are sufficiently competitive, corrective policy actions may not be required. Currently, broadband providers in Trinidad and Tobago operate primarily within a facilities-based competition.”</i></p> <p>Further, in discussing the commercial practices of zero rating and paid prioritization, TATT references benefits such as zero rating of content driving demand for broadband services, thus promoting investment in broadband infrastructure, thereby acting as a catalyst to bridge the digital divide. Paid prioritization allows ISPs who are at a commercial disadvantage competing with OTT service providers, the flexibility of extending their business model to offer differentiated services at higher prices. Services such as e-learning and telemedicine are mentioned. Such services would be beneficial to end customers and service providers.</p> <p>Flow considers that such opportunities are precisely the kinds of initiatives and commercial activities envisaged when the</p>		<p>The Authority further recognises that other net neutrality-related practices such as zero-rating and paid prioritisation may offer pro-competitive benefits. As such, the Framework proposes a mix of both ex ante and ex post forms of regulation. This allows for strong safeguards in areas like blocking and throttling of access to lawful content over the Internet, while allowing ISPs the flexibility to implement commercial practices such as zero-rating.</p> <p>At this time, the Authority has not made a formal declaration on the state of competition in the broadband market. To protect the core values of the net neutrality, such as competition, innovation, and freedom of expression, the Authority has deemed it suitable to implement measures that ensure key net neutrality principles are upheld. The Authority shall continue to monitor market conditions, with the aim of adopting the most appropriate form of</p>

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				<p>national ICT plan speaks to citizens of Trinidad and Tobago having,</p> <p><i>“pervasive access to ICT”; “broadband infrastructure which provides a variety of services that are affordable, of high quality, safe, and secure”; and “deriving high value from the use of ICT, benefiting themselves and society.”</i></p> <p>In the face of the foregoing TATT's focus and prioritization of net neutrality rules is not supported by market realities and do not promote the achievement on the national ICT goals. The framework of rules is purely theoretical as there is no reference to the relevant market, in this case the market for internet access services.</p>		<p>regulation to accomplish the policy objectives of the National ICT Plan and its wider statutory mandates.</p>
20	2.2	Traffic Management and Net Neutrality Interferences	TTCS	<p>Data captured by DPI can be used for non-innocuous purposes such as censorship, surveillance and the tracking and recording of what Internet users do on the Internet. As such, it is an invasion of privacy.</p> <p>There are challenges with DPI which increase the costs of ISPs operations, the costs of which are typically passed onto</p>		<p>The Authority notes TTCS's statements on the concerns and challenges with DPI regarding privacy. Where applicable, the use of these or similar technologies shall comply with the Authority's recommendations on transparency and privacy protections detailed in section 7 of the Framework.</p>

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				<p>consumers, thereby increasing the cost for users to access the Internet.</p> <p>Also with the rising use of encryption (using https and VPNs) by users, DPI is less effective and potentially raises the issue of DPI breaking the encryption of the users' data as they use the Internet for whatever reason be it banking, shopping, entertainment or teleconferences. Such use of DPI is extremely intrusive on users' privacy.</p>		
21	2.2.4	Zero-Rated Pricing	TTCS	<p>We note that typically a content provider does not house all of its content under its domain.</p> <p>Many content provider's websites serve data (video, images, scripts) from outside its servers and domain, resulting in users accessing such "zero rated" content to PAY to view/access the provider's content or be blocked from accessing parts of the content provider's websites.</p> <p>Also, with even more users possibly attracted to "free" access to a "zero rated" service than otherwise, the ISPs still benefit from the data</p>		<p>While the Authority acknowledges the benefits of zero-rating, it also notes TTCS's statements on the avenues through which consumers may incur costs, both directly and indirectly. Sections 6 and 7 address transparency in an ISP's zero-rated plan, including informing customers of the terms and conditions associated with the plan.</p>

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				<p>charges incurred by users accessing the “non zero rated” content from zero rated providers.</p> <p>So zero rating is not 100% free to users.</p> <p>Also, content providers that pay the ISP's data charges for users accessing their service incurs an additional cost to run their business. Typically, such costs are passed to consumers such as increased transaction fees or increased prices for their services.</p> <p>Consumers ultimately pay for “zero rated” content.</p>		
22	3.1.1	The Promotion of Broadband Development and Uptake	CCTL	<p>In this section TATT seeks to establish a link between net neutrality rules and the creation of an enabling environment that promotes investment for the sustainable development of broadband infrastructure, increased levels of connectivity and adoption of digital services.</p> <p>TATT states “<i>Despite the presence of 11 ISPs operating in Trinidad and Tobago, there may still be some pockets of the population that remain unserved or underserved. The</i></p>	Flow refers TATT to the recommendations provided above. We also recommend that TATT completes regulatory assessments provided for in the current framework e.g. the access gap study. This would help in informing strategies to close this gap.	A key objective in the Framework is to align the Authority's recommendations on net neutrality to the country's wider policy objectives, specifically regarding the development and functioning of the telecommunications sector. The statements referenced by CCTL provide a brief preliminary assessment of broadband development and uptake in Trinidad and Tobago at the time of publication. Since then, the Authority has conducted an in-depth study on broadband rollout in Trinidad and Tobago, namely, the National Digital Inclusion Survey (DIS 2021).



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				<p><i>recommendations presented in this document are prompted by the drive for further rollout of infrastructure and to ensure the presence of conditions apt for increasing consumer uptake of broadband services.”</i></p> <p>The existence pockets of the population that remain unserved or underserved does not necessarily mean that there is a limitation on the supply side. The rate of consumer adoption is a function of at least two factors: first, the service must be available to consumers (i.e., there must be sufficient network roll-out), but second, there must also be a demand for the service. Without assessing the impact of these two factors, it not possible to lay blame on one factor (supply) and not the other (demand). Low rate of adoption could be due to affordability issues and or low consumer interest.</p> <p>The fact that there are 11 ISPs operating in a market this size with an estimated<sup>16</sup> 401, 382 households, and fixed internet penetration of</p>		<p>The results of DIS 2021 indicate that, despite the presence of service providers operational in Trinidad and Tobago, there are pockets of underserved communities, both in urban and rural areas, where the demand for broadband services is not met due to lack of infrastructure. The Authority also receives/has received numerous complaints of unmet demand for broadband services due to lack of access.</p> <p>The Authority therefore maintains that the referenced statements are credible.</p>

<sup>16</sup> Quarterly market update, October to December 2021, TATT

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				<p>87.5%<sup>17</sup>, do not support the conclusion that limited supply or the limited geographic reach of supply may be an explanation for the rate of customer adoption.</p> <p>The statement that <i>“The recommendations presented in this document are prompted by the drive for further rollout of infrastructure and to ensure the presence of conditions apt for increasing consumer uptake of broadband services”</i> is therefore not credible.</p>		
23	3.1.2	Fostering Effective Competition within Trinidad and Tobago	CCTL	<p>TATT states that <i>“Proposed net neutrality rules in Trinidad and Tobago are chiefly motivated to prevent anti-competitive behaviour.”</i> This is followed by a discussion of arguments made by supporters of net neutrality rules and arguments against the imposition of such rules. Mention is made that where a market (in this case the market for internet access services) is sufficiently competitive, market forces would correct any anti-competitive behavior of ISPs.</p>	<p>Flow recommends that TATT focus its efforts on getting the Act amended to widen its powers to address and enforce competition issues.</p> <p>This change has been outstanding for several years. Based on the current market realities Flow considers level of competition in the different market segments effective. As such competition based</p>	<p>The Authority notes CCTL’s recommendation on prioritising the legislative and regulatory changes needed to update the current framework.</p> <p>Currently, the Authority is working with, and supporting, the Ministry of Digital Transformation on the promulgation of these critical pieces of legislation. Amendments will incorporate market trends and the changes that have taken place since 2004. In the interim, the Authority continues its work to achieve its statutory mandates and to fulfil its functions and duties under the Act. Amongst</p>

<sup>17</sup> Quarterly market update, October to December 2021, TATT

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				<p>As discussed earlier, TATT offers no empirical evidence or actual examples of detrimental behavior by ISPs in Trinidad and Tobago that requires implementing rules to correct these behaviours. However, TATT is proceeding to establish intrusive ex-ante net neutrality rules.</p> <p>If there is a need to correct ISP's behaviour, TATT is aware that the appropriate regulatory tool in such instances is competition analysis as mention is made of planned amendments to the Telecommunications Act to grant wider powers to the regulator to deal with competition issues. However, TATT has decided that instead of focusing on pressing</p>	<p>regulatory approaches are more appropriate.</p>	<p>other developments, the outcome of this initiative shall widen the Authority's powers to more comprehensively address and enforce competition issues and incorporate current market developments.</p> <p>This Framework proposes recommendations on net neutrality consistent with the existing legislative framework and the powers contained therein.</p> <p>The Authority reiterates that empirical tools were used in the formulation of the Framework. These include market reports, observations and trends; competition analysis; customer complaints; and consumer surveys such as DIS 2021.</p> <p>The Authority notes CCTL's reservation on the use of ex ante net neutrality regulations in Trinidad and Tobago. The recommendations in the Framework are intended as preventative measures against specific practices known to be harmful to the competition, and to increase transparency on practices affecting consumers' use of the Internet. The Authority considers these measures to be imperative in promoting competition within industries, fostering innovation, and achieving national broadband goals.</p>

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				for the needed legislative changes it will codify net neutrality rules.		<p>Practices such as blocking and throttling of lawful content inherently impede competition in downstream markets and adversely affect consumers' use of the Internet. These practices should therefore be prohibited in clearly defined rules, in accordance with concession conditions A21, A22 and C15.</p> <p>Notwithstanding the importance of ex ante rules on net neutrality, the Authority acknowledges the role of competition-based regulatory approaches and highlights amendments to the Framework in sections 4 to 9 that focus on evidenced-based strategies for net neutrality.</p>
24	3.1.4	Promoting Local Innovation	TTCS	The comments re: 2.2.4 apply		Noted. The Authority's response to comment 21 applies.
25	4	Reasonable Traffic Management	Digicel	As well as being (in Digicel's view) unlawful and unwarranted, Digicel submits that the Framework, if implemented, would impose material compliance costs on concessionaires and raise legitimate questions about how	Any proposed intervention should be subject to a rigorous cost benefit analysis.	The Authority notes Digicel's recommendation for a rigorous cost-benefit analysis. The Authority notes that the effects of net neutrality encompass many immeasurable aspects such as competition, innovation, and consumer choice. Given the difficulty in assigning numerical values to these principles, a quantifiable method such as a cost-

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				<p>such sensitive confidential information might be stored and used by the Authority.</p> <p>It is perhaps telling that the Authority has not undertaken any regulatory impact assessment or cost benefit analysis of its proposed interventions. In Digicel's submission it is unlikely that there will be any net benefits to consumers from what has been proposed or that they would satisfy the objectives set out in Section 3 of the Act. On the contrary, Digicel believes that the proposed interventions will be very costly, dampen incentives for further infrastructure investment and put at risk the interests of the consumers that the Authority is expected to protect.</p> <p>The imposition of Net Neutrality rules that limit experimentation with new business models and network management practices will also reduce the incentive of network operators to enhance functionality of their networks and thereby undermine the business case for investing in higher capacity broadband networks.</p>		<p>benefit analysis might not be suitable in this context. Additionally, the Authority does not agree that actual market failure should occur before its intervention and notes the limitations of self-regulation in protecting key principles such as competition and consumer choice. Given the immense impact that violations of net neutrality have on these principles, the Authority advocates for proactive involvement to prevent potential issues in the form of a carefully considered policy.</p> <p>As part of its policy evaluation, the Authority has considered the competitive landscape within the telecommunications sector to assess the probability and risks of market failure and its impact on consumers and the wider public if the principle of net neutrality is breached. In its assessments, the Authority has reviewed evidence on industry trends through its annual and quarterly market reports; customer experiences and expectations through its consumer complaints procedure and surveys; previous ISP violations of net neutrality; and competition measurement indices such as HHI and price movements. Based on the Authority's</p>

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						<p>observations<sup>18</sup>, at this stage, it has been unable to confirm that the market is sufficiently competitive to adequately protect against market failure or to forgo the safeguards. of net neutrality regulation. Therefore, the Authority proposes policy directions on net neutrality to ensure ISPs engage in fair and transparent network practices. this leads to significant advantages that benefit consumers.</p> <p>The Authority has also extensively considered the advantages and drawbacks of its proposed method of intervention. In particular, the Framework considers the importance of investment in ensuring the orderly development and sustainability of the telecommunications sector. As section 1.1 states, it is imperative that network operators have incentives to invest and the freedom to employ traffic management measures for the optimal operations of their networks.</p> <p>A carefully considered regulatory framework is required to achieve the delicate balance of protected end users' rights with respect to the quality of broadband service and experience, and</p>

<sup>18</sup> For trends in Internet service prices, see [fixed broadband](#) and [mobile service](#). For industry trends and competition metrics, including the HHI, see [annual market reports](#) and [quarterly market reports](#). For consumer complaints statistics, see [consumer and broadcasting content complaints statistics](#).

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						<p>ISP's ability to innovate both technically and commercially. The recommendations in the Framework aim to strike this balance by allowing for network and commercial practices that are pro-competitive in nature, for example, paid prioritisation and zero-rating.</p> <p>The Authority acknowledges that, as part of its monitoring and compliance efforts towards ensuring that net neutrality principles are upheld, it may require relevant information from service providers. Submitted information shall not be overly onerous to the providers and shall be proportionate to determining reasonable traffic management practices. Where applicable, the Authority may align its monitoring and compliance process, including the information it requests, to an ISP's established methods of ensuring adherence to the CANTO Code, which many ISPs in Trinidad and Tobago are signatories.</p> <p>Submitted information shall be treated in accordance with concession condition A29 which, in part, states that "the Authority shall keep confidential any information furnished to it by a concessionaire, which the concessionaire has specifically expressed to be confidential at the time</p>

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						<p>of submission to the Authority, and which is of a confidential nature". The proposed process shall be similar to that of the Authority's existing procedures on collecting and processing market data.</p> <p>Additionally, the Authority has also revised its policy recommendations to rely on a more ex post approach for regulating net neutrality. This would minimise the extent of data collected proactively. Sections 4 to 9 of the Framework have been amended to reflect this. The Authority has also introduced Section 8 and 9, as well as Appendix II, of the Framework to outline its monitoring process which aims to minimise onerous data requirements from ISPs.</p>
26	4	Reasonable Traffic Management	CCTL	As discussed in the previous sections, the proposed net neutrality rules are premised on the misguided notion that these rules are necessary to provide for reasonable traffic management. These rules are based on the principles of transparency, non-discrimination, proportionality, transiency and fair competition.	Flow reiterates its recommendation that TATT reassess the entire premise of the need for this framework of net neutrality rules based on a singular assessment of ISP transmission practices that have not been substantiated and give focus to regulatory changes that are necessary to	<p>CCTL's reservations on the use of ex ante net neutrality regulations are noted.</p> <p>The Authority underscores the importance of the principle of net neutrality in protecting consumers' rights and promoting competition. The recommendations in the Framework are intended as preventative measures against specific practices known to be harmful to competition, and to increase transparency on practices affecting</p>



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				<p>TATT argues that deviations from strict principles of net neutrality maybe considered reasonable where such measures are necessary to achieve technical network management objectives including preserving network security; mitigating congestion; meet QoS standards, prioritise emergency services; or enforce court ordered or legal provisions or requirements.</p> <p>What follows is a series of 19 statements in sections 4.1 to 4.6, purporting to address:</p> <ul style="list-style-type: none"> <li>- Definition of Reasonable Traffic Management</li> <li>- Principles of Reasonable Traffic Management</li> <li>- Transparency</li> <li>- Non-discrimination</li> <li>- Proportionality</li> <li>- Transiency</li> <li>- Fair Competition</li> <li>- Notification of Changes to Traffic Management Policies and Practices</li> </ul>	<p>support the sustained development of the sector.</p>	<p>consumers' use of the Internet. The Authority considers these measures to be imperative in promoting competition within industries, fostering innovation, and achieving national broadband goals.</p> <p>Practices such as the blocking and throttling of lawful content inherently impede competition within downstream markets and adversely affect consumers' use of the Internet. These practices should therefore be prohibited in clearly defined rules and are consistent with ISPs' obligations under concession condition A22.</p> <p>The Authority also highlights reports that have called into question the extent to which competition tools can protect non-monetary values such as the openness of the Internet, democratic participation, viewpoint diversity, and free speech<sup>19</sup>. These reports strengthen the case for net neutrality regulation.</p>

<sup>19</sup> Protecting and Promoting the Open Internet, GN. Dkt. No. 14-28, Report & Order on Remand, Declaratory Ruling, 30 FCC Rcd. 5601, 5743, para. 331 (2015) [hereinafter 2015 Open Internet Order]

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				<ul style="list-style-type: none"> <li>- Assessment of Traffic Management Policies, Practices and Measures</li> <li>- Monitoring Strategies, Guidelines and Procedures</li> <li>- Determination of Unreasonable Traffic Management.</li> </ul> <p>As indicated before we do not believe it is appropriate or necessary to prescribe any traffic management practices by ISPs on an ex ante basis. The market for Internet access in Trinidad and Tobago is competitive and highly dynamic. ISPs are tasked with transmitting a multitude of services with a diverse set of requirements that are growing increasingly diverse and data intensive over time.</p> <p>There is a growing heterogeneity of the demands that end users are placing on ISPs networks that is enabling ISPs to create consumer value in ways that are difficult to predict. We should not presume to know what these practices are or declare certain of them appropriate and others inappropriate. We should instead acknowledge that the default solution is competition, not</p>		<p>Notwithstanding the above, the Authority has noted stakeholders' comments and recommendations for the adoption of a more flexible approach to regulating net neutrality violations in Trinidad and Tobago. Consequently, the Authority has, where appropriate, incorporated an ex post approach in its policy recommendations on net neutrality. Specifically, sections 4 to 9 of the Framework have been amended to detail the Authority's process for detecting and remedying acts of unfair competition in ISPs' traffic management practices and related commercial practice.</p>

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				<p>regulation, and allow the market to make this determination.</p> <p>In the context of a competitive market we believe that the decision regarding disclosure of ISP practices should be left up to the ISPs and their customers. This is normally done in customers terms and conditions of service. We once again remind TATT that its default form of market discipline should be and must be provided by competition, with protection provided by regulation only in special cases. After all, when competition is effective, the market is superior to regulators in producing outcomes that are responsive to consumers' needs and demands in light of the variety of technological choices available and providing incentives to invest in technologies according to their relative merits.</p> <p>A compliance framework involving the regulator's periodic assessments of ISPs traffic management practices, making determinations, and requiring notification and reporting from ISPs would prove to be administratively burdensome and potentially costly.</p>		<p>Furthermore, the Authority advises that the competitive state of the broadband market in Trinidad and Tobago is still under assessment. The Authority shall therefore continue to monitor market conditions, with the aim of adopting the most appropriate form of regulation.</p> <p>Regarding the administrative burden, the Framework minimises, as far as practical, additional data requests, by using independent assessments and readily available information collected by ISPs. The Authority shall, where applicable, align its monitoring and compliance process, including the information it requests, to ISPs' established methods of upholding net neutrality principles, or their measures adopted to ensure adherence to the CANTO Code, which many ISPs in Trinidad and Tobago are signatories to. Additionally, the Authority has also revised its policy recommendations to rely on more ex post strategies for regulating net neutrality. This would minimise the extent of data collected proactively. The Framework has been amended to reflect this.</p>

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				Further, TATT's does not have a good track record of ensuring compliance with established market rules. A noted example is the continued unavailability of fixed number portability services six years after it should have been available to customers based on TATT's decision.		On fixed number portability (FNP) compliance, the Authority has issued several determinations to the relevant service providers, following consultations with all relevant stakeholders regarding the requirements for implementing FNP. Subsequent to those consultations, the Authority developed an implementation plan as well as customer procedures to facilitate the implementation of same. The Authority is currently pursuing legal options, through the Court of Appeal and other actions, to ensure compliance with these determinations.
27	4	Reasonable Traffic Management	Meta Platforms Inc.	Meta agrees with the Authority that there are a number of principles related to reasonable traffic management that are critical to preserving an open internet. In particular, Meta agrees with the Authority that any network management practices should be based on objective technical and non-discriminatory considerations, and should be tailored to achieving a legitimate network		The Authority notes Meta's agreement on the importance of net neutrality principles in preserving an open Internet. The Authority also notes Meta's agreement with the principles of reasonable traffic management, including non-discrimination and transparency.

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				<p>management purpose.<sup>20</sup> Any such practices should not result in preferential treatment of the internet access provider's affiliated content or services, or the blocking or throttling of specific classes of content, applications or services.</p> <p>Additionally, providers of internet access should be transparent about their network practices (including the provider's approach to traffic management) and the speed of the traffic that flows over their networks.</p>		
28	4	Reasonable Traffic Management	TTCS	<p>Statements on Reasonable Traffic Management Definition and Principles (1-4):</p> <p>In principle, we agree. However, it is our opinion that whenever an ISP wishes to deviate from the principles of net neutrality, they should make an application to the regulator, justifying the deviation. In cases of emergency, the ISPs can act unilaterally, but must inform the regulator within 24-48 hours and specify when the deviation would cease.</p>		The Authority notes TTCS's agreement, in principle, with the reasonable traffic management recommendation. The Authority advises that amendments have been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management. To allow for flexibility in network operations and reduce the administrative burden, the Authority has amended the Framework to adopt a more ex post approach to net neutrality. The Authority shall continue to monitor practices for discrimination

<sup>20</sup> Framework, page 19 ("Traffic management practices must, as far as is practical, be non-discriminatory. In other words, all data packets should be transmitted according to the same rules, unless differentiation is objectively justified for a technical network management purpose.").

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				We believe that this framework / methodology would prevent opportunistic and abusive behaviour, while allowing for “beneficial” deviations from net neutrality.		and transparency, as outlined in sections 4 to 9 of the Framework. As the need arises, the Authority, in its assessment, may request that an ISP provide justifications for discriminatory practices that deviate from reasonable discriminatory practices. This process is captured in sections 5 to 8 of the Framework.
29	4.2.1	Transparency	Digicel	Digicel's service offerings and their associated terms and conditions are already set out in clear simple terms on the Digicel website. If customers are unhappy with the services that are provided by Digicel they are free to move to a different provider. This customer mobility has been made even easier through the availability of number portability in Trinidad & Tobago.		The Authority notes the availability of Digicel's offerings and associated terms and conditions on its website. This information aids in transparency of network practices to consumers and is consistent with net neutrality principles.  Digicel is also asked to note the additional transparency requirements beyond the terms and conditions, which include traffic management policies and the required disclosures to consumers identified in section 7.
30	4.2.2	Non-discrimination	Digicel	Aside from the legal questions raised above, Digicel is concerned that the Authority is seeking to impose regulation to address a problem that, in practical terms, does not currently exist in Trinidad and Tobago.		The Framework presents measures for guarding against net neutrality violations. The Authority considers these measures to be imperative in upholding net neutrality principles, promoting competition within industries, fostering innovation, and achieving national broadband goals.

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				While we may do so in future to manage mobile network congestion in areas where capacity is limited, the simple fact is that, currently, Digicel neither “blocks” nor “throttles” any OTT apps or lawful content on its network. Nor does Digicel engage in “paid prioritisation practices”.	The Authority should refrain from market intervention unless and until it has established a prima facie case of anti-competitive conduct. Even then it must only act within the ambit of its existing powers under the Act.	<p>Practices such as blocking and throttling of lawful content inherently impede competition within downstream markets and adversely affect consumer’s use of the Internet. These should therefore be prohibited in clearly defined rules as outlined in concession condition A22.</p> <p>Furthermore, the Authority highlights amendments to the Framework in sections 4 to 9 that focus on evidenced-based strategies for net neutrality.</p> <p>Recommendations made are in accordance with the Authority’s legislative framework, as illustrated in the Authority’s decision in item 14 of these decisions on recommendations.</p>
31	4.2.4	Transiency	TSTT	Section 4.2.4 refers to a proportionality principle detailed in section 3.2.3, however, there is no section 3.2.3 to be found in the document.	TATT to clarify where section 3.2.3 is in the document.	The Authority clarifies that proportionality is now contained in section 4.
32	4.2.5	Fair Competition	Digicel	Digicel’s approach is driven by its adherence to the CANTO Code of Practice on		In its drive to encourage broadband development and uptake, the Authority continues to support

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				<p>Safeguarding the Open Internet (“<b>Code of Conduct</b>”) and what is now a highly competitive market in Trinidad and Tobago.</p> <p>In order to maintain and grow our business we need to continue to deliver improved value and provide innovative service offerings to our customers. This can be seen by Digicel’s Prime Bundles which include substantial amounts of “any use” rollover LTE data and access to a variety of services including traditional voice services, music and video streaming and messaging apps.</p> <p>The Prime Bundles were introduced to reflect changing technologies and customer needs. They continue to evolve over time to ensure that services are designed to encourage demand and increase accessibility so that we can continue to grow our business and reinvest in the market.</p> <p>Any intervention will have long term effects and, if it is ill-considered, will damage the competitive market environment that has developed.</p> <p>It is therefore disappointing that the Authority has omitted to undertake any</p>	<p>The Authority should refrain from market intervention unless and until it has established a prima facie case of anti-competitive conduct. Even then it must only act within the ambit of its existing powers under the Act.</p>	<p>initiatives that deliver improved value and provide innovative service offerings to customers. The Authority shall only intervene where network practices constitute anti-competitive behaviour or equate to violations of the Act and the concession document.</p> <p>The Authority recognises and welcomes the increasing role that industry self-regulation plays in addressing net neutrality concerns. However, the Authority is mindful of regulatory gaps that may occur with this approach, notably, the lack of enforcement avenues should net neutrality violations take place. To ensure the principles of competition, innovation and consumer protection are upheld, the Authority recommends that the principle of net neutrality be enshrined within the regulatory framework. Notwithstanding this, the Authority has noted stakeholders’ comments and recommendations for the adoption of a more flexible approach to regulating net neutrality. Consequently, the Authority has, where appropriate, incorporated more ex post strategies in its policy recommendations on net neutrality.</p>



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				empirical analysis of its own and appears to have dismissed the self-regulation that already exists through the Code of Conduct. Instead, it is seeking to intervene solely on the basis of academic theory when even a cursory review of the current market would show that competition is already effectively “regulating” conduct and there is simply no basis for intervention on the market approach to Net Neutrality at this time.		The Authority reiterates that the Framework is not based solely on academic theory; empirical tools were also used in its formulation, namely, market reports, observations and trends; competition analysis; customer complaints; and consumer surveys such as DIS 2021.
33	4.3	Notification of Changes to Traffic Management Policies and Practices	TSTT	<p>TATT defines reasonable traffic management as “a set of practices and measures, ... primarily for technical network management purposes”. In statement 7, in this section, TATT proposes that customers be notified of changes in an operator’s traffic management policies.</p> <p>This requirement seems to underscore TATT’s lack of understanding of network management practices. Such information would be incomprehensible to the average consumer as they will by necessity be very technical if developed. Further such policies are part of the competitive intellectual property of an ISP, and broad publication of</p>	<p>TATT to address questions of IPR of the concessionaire ISP and matters associated with cyber-crime mitigation given the publication of sensitive information about the ISP’s networks.</p> <p>TATT to expand on this section clarifying:</p> <ul style="list-style-type: none"> <li>a) its intentions in this regard;</li> <li>b) the details of what it considers would be</li> </ul>	<p>The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority’s definitions and principles of reasonable traffic management and no longer includes the subsection “Notification of Changes to Traffic Management Policies and Practices”. As such, the notification of changes to traffic management policies and practices in this context is no longer a requirement in the Framework.</p> <p>On the general topic of transparency requirements, the Authority clarifies that they do not include the publication of commercially sensitive information or violations to intellectual property rights (IPR). Section 7 contains further details on the Authority’s recommendations on transparency.</p>

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				<p>such information provides a security risk to ISPs as they would be alerting potential hackers about the internal workings of their networks.</p> <p>So, while TSTT is unclear how details regarding technical policies can serve any useful purpose to consumers, TSTT also seeks clarification on how TATT seeks to mitigate the other commercial and operational risks that will emerge from this ill-conceived approach particularly in these times of hyper cyber-criminal activity.</p> <p>In this regard, TSTT requests that TATT expands on this section, clarifying:</p> <ul style="list-style-type: none"> <li>a) its intentions in this regard;</li> <li>b) the details of what it considers would be relevant and useful to customers;</li> <li>c) the measures it intends to implement to mitigate the risk of such publication to the commercial and technical operations of ISPs;</li> <li>d) the measures it intends to implement to compensate operators where malfeasance (particularly from cyber</li> </ul>	<ul style="list-style-type: none"> <li>relevant and useful to customers;</li> <li>c) the measures it intends to implement to mitigate the risk of such publication to the commercial and technical operations of ISPs;</li> <li>d) . the measures it intends to implement to compensate operators where malfeasance (particularly from cyber criminals) occurs due to the publications proposed by the Net Neutrality Framework</li> </ul> <p>Otherwise, TATT should remove this obligation as it is unworkable.</p>	

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				criminals) occurs due to the publications proposed by the Net Neutrality Framework.		
34	4.3	Notification of Changes to Traffic Management Policies and Practices	CANTO	<p>Policy Statement 5: <i>An ISP shall notify the Authority of any changes to be made to its traffic management policies, practices and measures, 30 days prior to its implementation, or as required by the Authority</i></p> <p>The requirement of notification to the Authority addresses the objective of protecting the consumer. However the 30 day period is considered excessive especially in a competitive telecommunications environment.</p> <p>The framework, does not speak to review and approval so it is unclear why this long notification period is required.</p>	The notification timeframe should be changed to 7 days	The Authority advises that an amendment has been made to section 4 which provides guidance on the Authority's definitions and principles of reasonable traffic management and no longer include the subsection "Notification of Changes to Traffic Management Policies and Practices". As such, the 30-day notification timeframe is no longer a requirement in the Framework.
35	4.3	Notification of Changes to Traffic Management Policies and Practices	TTCS	<p>Statements on Reasonable Traffic Management Notifications (5-7):</p> <ul style="list-style-type: none"> <li>- We believe that where an ISP wants to make a deviation from net neutrality principles, the ISP needs to apply to the Authority, justifying the deviation. The</li> </ul>		The Authority notes TTCS's recommendations for an ISP's notification to the Authority where there has been a deviation from the principles of net neutrality. The Authority advises that amendments have been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management. To

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				<p>Authority can then approve or deny the application within 7 days.</p> <p>The application by ISPs to the Authority should be standardised so that all ISP have to provide the same amount of information.</p> <p>Furthermore, the traffic management policies, practices and measures by ISPs need to be published by the Authority and accessible to the public.</p> <p>Applications by ISPs to make a deviation should also be published by the Authority and the decisions by the Authority to approve or reject the ISP's application.</p> <p>-The criteria for an emergency needs to be defined as it appears there was some ambiguity</p> <p>We think that in the event of an emergency (the criteria for an emergency also needs to be defined), the ISP can unilaterally deviate from net neutrality principles, but must notify the Authority within 48 hours</p>		<p>allow for flexibility in network operations and reduce the administrative burden, the Authority has amended the Framework to adopt a more ex post approach to net neutrality. The Authority shall continue to monitor practices for discrimination and transparency, as outlined in sections 6 to 9 of the Framework.</p>

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				<p>after the measure has been implemented. The notification should be standardised so that all ISPs have to provide the same amount of information and should also provide details as to the duration of the emergency deviation.</p> <p>-The ISP should notify its customers at least 14 days in advance.</p>		
36	4.4	Assessment of Traffic Management Policies, Practices and Measures	TSTT	<p>TSTT notes TATT's request that ISPs maintain a log of traffic management practices and measures and the details thereof.</p> <p>TSTT considers this to be an exercise that is both onerous and unreasonable and will add no real value for industry stakeholders, especially as the specifics in the log remain undefined. TATT is essentially asking for industry participants to provide a <i>carte blanche</i> to TATT with respect to what should be included in the log. This betrays the objective of any consultation. In this regard, the consultation is incomplete and should be withdrawn. Indeed, without such clarity, the log could be an illegal imposition on the</p>		<p>The Authority advises that an amendment has been made to section 4 which provides guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Assessment of Traffic Management Policies, Practices and Measures". As such, the requirement to keep a log is no longer specified in the Framework. The Authority shall continue to monitor practices for discrimination and transparency, as outlined in sections 8 and 9 of the Framework.</p>

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				<p>property of private persons, something not provided for in the Telecommunications Act.</p> <p>Additionally, TSTT is unclear how such a log will be utilised in the proposed assessment and requests that TATT expands on this. If as TATT claims that such a log will be used to assess compliance to some benchmarks, the following must be defined and published for ratification by the industry:</p> <ul style="list-style-type: none"> <li>- the benchmarks that will be used to assess the policies against; and</li> <li>- the tests used to evaluate log submissions against the identified benchmarks.</li> </ul> <p>Without this information outlined, there is no clarity on the process TATT is proposing to apply in this so-called “assessment” exercise. Without clarity on such a process, this consultation is moot and should be withdrawn.</p>	<p>TATT to define the specifics of what should be included in the log, otherwise the request is wholly unreasonable and illegal and should be withdrawn.</p> <p>TATT to outline the details of their proposed process for the assessment of traffic management policies, practices and measures, including where necessary, the relevant process flow chart in each scenario.</p>	

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					<p>In furtherance of the above, TATT should also provide:</p> <ul style="list-style-type: none"> <li>- the benchmarks that will be used to assess the policies against; and</li> <li>- the tests used to evaluate log submissions against the identified benchmarks.</li> </ul> <p>In the absence of the above, either the requirement should be removed, and the Framework withdrawn.</p>	
37	4.4	Statements on Assessment of Traffic Management Policies and Measures (Statement 11)	TSTT	TATT proposes to use ISP's log of its traffic management practices and measures for auditing and investigative purposes. The language suggests that logs should be provided upon request by TATT, however, there seem to be no enabling powers for such a request under the Telecommunications Act.	This Statement should be removed.	The Authority advises that amendments have been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Assessment of Traffic Management Policies, Practices and Measures". As such, the requirement to keep a log is no longer specified in the Framework. The Authority shall continue to monitor practices for discrimination and

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
						transparency, as outlined in sections 8 and 9 of the Framework.
38	4.4	Assessment of Traffic Management Policies, Practices and Measures	CANTO	<p><i>Policy Statement 8: The Authority shall conduct periodic assessments of an ISP's traffic management policies, practices and measures to detect and investigate instances of unreasonable traffic management practices</i></p> <p>The Authority has not stated whether the periodic assessments, that are to be conducted, are to be undertaken in a regular basis only ( e.g, annually) or as needed ( e.g. in response to complaints).</p> <p><i>Policy Statement 9: ISPs shall submit documents or reports on their traffic management policies, practices and measures, which may include the purpose, scope, conditions, procedures and methods for managing their network traffic</i></p>	<p>Clarity needed on whether these assessments can be undertaken by TATT based on current laws and regulations as well as on the details of how they are to be conducted.</p> <p>Clarity needed on whether these reports can be requested by TATT based on current laws and regulations as well as more details on what is required</p>	The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Assessment of Traffic Management Policies, Practices and Measures". The Authority shall continue to monitor practices for discrimination and transparency, as outlined in sections 8 and 9 of the Framework.



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				The framework should advise when the ISPs are expected to submit the referenced reports. Is it intended that ISPs can chose what to include in the reports?		
39	4.4	Assessment of Traffic Management Policies, Practices and Measures	TTCS	<p>Statements on Assessment of Traffic Management Policies, Practices and Measures (8-11):</p> <ul style="list-style-type: none"> <li>- The Authority should not collect individual's users' Internet usage in such assessments, unless such collection is directed under aspecies of the relevant acts related to interception.</li> <li>- See response to statement 5. ISP's traffic management policies should be submitted to the Authority for the Authority's approval. Only if the Authority approves the traffic management policy can the ISP implement the traffic policy.</li> <li>- ISPs should not capture users' Internet usage (the information they send and receive) in these logs.</li> </ul>		<p>The Authority advises that an amendment has been made to section 4which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Assessment of Traffic Management Policies, Practices and Measures".</p> <p>The Authority confirms that that the information collected based on the requirements contained in the Framework, does not include individual users' information and is in accordance with privacy laws in Trinidad and Tobago.</p>

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
				The Authority should specify, in accordance with good data privacy and security practices, the duration by which it will hold such logs.		
40	4.5	Monitoring Strategies, Guidelines and Procedures	TSTT	<p>TSTT believes that clarification is required regarding the methods for measuring ISPs' compliance with their submitted and stated traffic management policies, practices, and measures to ensure adherence to TATT's guidelines on reasonable traffic management practices and measures.</p> <p>TSTT notes that the regulatory interventions TATT seeks to implement would require appropriate competition powers to be enshrined in its enabling statute the Telecommunications Act, Chap 47:31. Such general and broad competition powers quite simply do not exist within the current legal and regulatory framework. Accordingly, TATT's proposed regulatory interventions are unenforceable and represent gross over-reach of TATT's statutory remit.</p>	TATT should abandon proposals that are contrary to or exceed its powers as established in the Act, Chap 47:31, and seek amendments to the same.	<p>All recommendations in the Framework are consistent with the statutory powers outlined in the Act and concession document. Subsection 1.5 provides the legislative basis for the net neutrality regulation, including the competition powers relied upon.</p> <p>The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Monitoring Strategies, Guidelines and Procedures". The Authority shall continue to monitor practices for discrimination and transparency, as outlined in sections 8 and 9 of the Framework.</p> <p>In the section relating to detecting and measuring potential net neutrality violations, the Framework, as amended, references monitoring strategies such as independent market surveys and interviews and independent technical network monitoring. These</p>

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				<p>This gross over-reach is exacerbated by TATT's proposals being overly intrusive and in fact, appears to be more demonstrative of interference by TATT in the technical operation of a concessionaire's network infrastructure. Via the proposed Net neutrality Framework, TATT demands undefined intrusion through "technical monitoring" that goes far beyond the remit of any competition regulator anywhere. This intervention seeks to – without a warrant – impose a level of intrusion by TATT into a concessionaire's network operations and infrastructure, which are without precedent, and quite frankly <b>unconstitutional</b>.</p> <p>In comparing the laws, regulations, and reports of regulators further afield, in the UK, the EU, and the wider Commonwealth, TSTT could find no evidence that the oversight sought is achieved through the violation of the constitutional rights of operators as</p>	<p>TATT to define the precedent where a regulator gains access – without a warrant – to the network of a licensed operator, in the manner proposed.</p>	<p>are best practice monitoring mechanisms adopted to ensure net neutrality principles and standards are upheld. For example, a report by BEREC identified similar approaches used by EU members to monitor the commercial and technical conditions related to the provision of Internet access services<sup>21</sup>.</p> <p>Technical monitoring involves any monitoring of quality-of-service parameters via technical means. It includes the use of tools that enable end users and national regulatory authorities (NRAs) to test the speed and quality of the Internet access service offered. These are commonly used practices in Europe to establish evidence of facts affecting Internet users' experience<sup>22</sup>. The BEREC report on NRAs' implementation of net neutrality provisions in Europe indicated that five NRAs used technical network monitoring tools or said they were in the</p>

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				<p>proposed by TATT in its Net Neutrality Framework. In all instances, there is the definition of key outcomes that can be observed by third parties (e.g., customers or market monitors), which meet pre-defined thresholds for the determination of possible concerns. When those thresholds are met, that concern is then investigated using lawful investigative methods.</p> <p>In short, there is no precedent, domestically, regionally, or internationally, for the proposed modalities proposed by TATT.</p> <p>Accordingly, the entire approach of monitoring has to be reworked and reconsidered considering the procedures of law in the context of the rights of persons in Trinidad and Tobago.</p> <p>Therefore, these aspects of the Framework must be withdrawn as offensive to the law and reworked in detail before offering same to two rounds of consultation to the industry.</p>	<p>If such cannot be provided, the proposals should be removed, as they are clearly in violation of the Constitution of Trinidad and Tobago.</p> <p>TATT is to detail and present for two rounds of consultation, the methods for measuring ISPs' compliance with, and adherence to TATT's guidelines on reasonable traffic management practices and measures.</p> <p>Where such cannot be provided in accordance with established procedures in law, such proposals should be abandoned by TATT.</p>	<p>process of developing technical tools in their monitoring and compliance strategies<sup>23</sup>.</p>

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
41	4.5	Monitoring Strategies, Guidelines and Procedures	TTCS	Such monitoring guidelines should be published on the Authority's website.		The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Monitoring Strategies, Guidelines and Procedures". Where mentioned elsewhere in the Framework, the guidelines shall be developed and published in accordance with the Authority's <i>Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago</i> , which includes publication on its website.
42	4.5, 5.4, 6.3, 7.3 and 8.4	Monitoring	Digicel	<p>The Authority has failed to explain what it describes as "technical network monitoring," which, on the face of it, appears to be intended to be some form of router-level intrusion into the hardware of an ISP if the regulator wants to confirm information about its data management.</p> <p>If that is the case then it raises important privacy questions including whether the Authority has the lawful power to monitor network traffic and content or whether doing</p>	There is no lawful basis for the Authority to engage in technical network monitoring in the way that has been proposed.	<p>Technical monitoring involves any monitoring of quality-of-service parameters via technical means. The Authority has amended the Framework to clarify that it entails quantifiable metrics, collected independently by the Authority using probes to assess network performance and quality of service parameters such as broadband speeds, streaming and web browsing performance.</p> <p>All recommendations in the Framework are consistent with the statutory powers outlined in the Act and concession document. Subsection 1.5 provides the legislative basis for net neutrality</p>

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				so would actually be a breach of individuals' rights to privacy.		regulation, including the monitoring strategies proposed.
43	4.6	Determination of Unreasonable Traffic Management	TSTT	Section 83 of the Act does not provide a general right of appeal. Section 83 provides that a person aggrieved by a decision of the Authority may request that such decision be reconsidered based on information not previously considered. The section merely provides for a reconsideration of a decision but in prescribed circumstances where there may be information not previously considered. By way of illustration this section does not provide a right of appeal on a point of law or otherwise.	This section must be revised to accurately reflect the provision set out in the Telecommunications Act.	The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Determination of Unreasonable Traffic Management".  Where mentioned elsewhere in the Framework, the Authority clarifies that the referenced section of the Framework does not indicate that there is a general right of appeal available under section 83 of the Act. The Framework explicitly states that the decision of the Authority can be appealed if there is new information not previously considered. It further states that "the Authority shall review the new information submitted and decide accordingly."
44	4.6	Determination of Unreasonable Traffic Management	TTCS	Statements on Determination of Unreasonable Traffic Management (14-19):		The Authority advises that an amendment has been made to section 4 which provide guidance on the Authority's definitions and principles of reasonable traffic management and no longer includes the subsection "Determination of Unreasonable Traffic Management". The Framework allows for the

Item	Section	Section Title	Stakeholder	Comments	Recommendations	TATT's Decisions
				The Authority should publish on its website when it has notified the ISP of a suspected unreasonable ISP traffic management policy. The website should also be updated if the ISP responds.		publication of a determination of discriminatory and non-transparent practices following a determination process, as stated in sections 9.
45	5	No Unreasonable Discrimination	Digicel	<p>While we may do so in future to manage mobile network congestion in areas where capacity is limited, the simple fact is that, currently, Digicel neither “blocks” nor “throttles” any OTT apps or lawful content on its network. Nor does Digicel engage in “paid prioritisation practices”.</p> <p>Digicel’s approach is driven by its adherence to the CANTO Code of Practice on Safeguarding the Open Internet (“<b>Code of Conduct</b>”) and what is now a highly competitive market in Trinidad and Tobago.</p> <p>The Authority also seeks to rely upon Section 29 of the Act to justify intervention in cases where it considers its proposed principle of “no unreasonable discrimination” has been offended. However, Section 29 applies only to the establishment of “price regulation regimes” and only in circumstances where dominance is an issue or where cross</p>	The Authority should refrain from market intervention unless and until it has established a prima facie case of anti-competitive conduct. Even then it must only act within the ambit of its existing powers under the Act.	<p>The Authority acknowledges Digicel’s commitment to adhering to CANTO’s Code and to upholding key net neutrality principles, such as no blocking and no throttling. The Framework aims to incorporate these principles into the regulatory framework to ensure industry-wide compliance with net neutrality.</p> <p>With respect to the Authority’s powers to regulate competition issues, the Authority is not limited to the application of price regulatory control. The Authority is empowered by section 18 (1) (a) of the Act to monitor and ensure compliance by all concessionaires with their obligations, including conditions A21 and A22 which are general prohibitions against anti-competitive behaviour applicable to all concessionaires.</p> <p>Under section 5: No Unreasonable Discrimination, the Authority considers and develops policy recommendations on the conduct referred to in</p>

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				<p>subsidies or anti-competitive pricing or acts of unfair competition occurs. However, no dominance or actual anti-competitive conduct has been found to exist. Even if dominance was proven and anti-competitive conduct did become an issue, it is not clear how the price regulation regimes contemplated by Section 29 would be relevant to the issue of Net Neutrality.</p> <p>Finally, the Authority has sought to rely upon Concession conditions A21 and A22 which provide as follows:</p> <p><i>“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.”</i></p>		<p>conditions A21 and A22, and the section is therefore adequately aligned to the legislative framework.</p> <p>Section 5 has been amended to make clearer the link between the legislative framework and the no unreasonable discrimination principle.</p>



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				<p><i>A22. In particular, but without prejudice to the generality of the foregoing, the concessionaire shall not:</i></p> <p><i>a. enter into any agreement, arrangement or understanding which has or is likely to have the purpose or effect of preventing or substantially restricting or distorting competition in any market for the provision or acquisition of any networks, services or equipment;</i></p> <p><i>b. without the authorisation of the Authority, make it a condition of the provision or connection of telecommunications network facilities, services or equipment that the person also acquires or does not acquire any other network facilities, service or equipment either from the</i></p>		

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				<p><i>concessionaire or any other entity; or,</i></p> <p><i>c. give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a material competitive disadvantage, or competition would be prevented or substantially restricted.”</i></p> <p>Whilst these Concession conditions that have been relied upon by the Authority provide clear obligations with respect to the conduct of Concessionaires, they do not confer any powers on the Authority to impose any <i>ex ante</i> regulations on them. Instead, the Authority's role is that of enforcement in cases of suspected breach. However, in this case, not even a <i>prima facie</i> case of misconduct has been established and there is</p>		<p>Regarding the power to impose <i>ex ante</i> regulation, section 18(1) of the Act states that the Authority is empowered to monitor and ensure compliance with its concession obligations. The concession itself outlines the obligations that need to be met. For instance, concession clauses A21 and A22 list the behaviours that concessionaires should not engage in for those conditions to be met. The Framework specifies what the Authority would consider as violations of these conditions vis-à-vis network practices and related commercial practices such as zero-rating and paid prioritisation.</p>

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				<p>therefore no basis for any enforcement action to be undertaken.</p> <p>The competitive state of the market even seems to be recognised by the Authority as it acknowledges the following broadband statistics<sup>24</sup>:</p> <p><i>“A preliminary assessment of broadband development and uptake in Trinidad and Tobago, using data from the Authority’s statistical repository, reveals the following statistics as at September 2021:</i></p> <ol style="list-style-type: none"> <li><i>1. Fixed broadband Internet was provided by 11 operational service providers.</i></li> <li><i>2. The fixed Internet penetration per 100 household stood at 87.2.</i></li> <li><i>3. Approximately 27 out of every 100 inhabitants subscribed to fixed broadband Internet.</i></li> </ol>		<p>The referenced statistics give a brief preliminary assessment of broadband development and uptake in Trinidad and Tobago. While the Authority recognises the advances made in the industry with respect to broadband development, the referenced statements are not designed to be a pronouncement on the competitive state of the market. The Framework provides recommendations on the Authority’s definition of unreasonable discrimination that constitutes anti-competitive conduct in accordance with concession conditions A21 and A22.</p>

<sup>24</sup> Framework at page 14.

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				<p>4. <i>Active [1] mobile Internet penetration stood at 58.5% of the population.</i></p> <p>5. <i>100% and 75% of the population were covered by 3G and LTE/WiMAX mobile network respectively.</i></p> <p>There is clearly nothing in these statistics that would indicate competitive failure or serve as a reason for intervention.</p>		
46	5	No Unreasonable Discrimination	CCTL	<p>In sections 5.1 to 5.6 TATT presents twenty (20) statements aimed at defining discriminatory traffic management practices, and setting rules around assessing, investigating, monitoring, and ISPs reporting traffic management practices.</p> <p>TATT posits these statements on the premise that <i>“Concerns for the integrity of the open Internet arise where ISPs leverage their positions to engage in discriminatory treatment of certain content over others. Such discriminatory practices do not conform to the principle of net neutrality, which calls for the equal treatment of traffic.”</i></p>	See CCTL recommendation to Section 4.	<p>One of the objectives of the Framework, established in subsection 1.3, is to outline high-level descriptions of the Authority’s process of assessing and remedying net neutrality violations in Trinidad and Tobago.</p> <p>Where it has been determined that industry clarification is required, the Authority may establish specific monitoring guidelines, policies, standards or procedures that detail its methods for measuring ISPs’ compliance with their submitted and stated traffic management policies, practices and measures, and their adherence to the Authority’s guidelines on the principle of no unreasonable discrimination. This document shall</p>

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				<p>In Section 5.5 TATT states that where it has reasons to believe that an ISP's agreement, network or commercial practice constitutes unreasonable discrimination, it will commence a process of assessment and investigation to correct this problem. The statements are very high level so the investigative approaches TATT would use are not clear. TATT needs to provide clarity around intended approaches as well as specify the basis of its remit for such approaches.</p> <p>TATT is here supplanting tried and proven competition regulatory approaches with its discretion.</p> <p>Flow reiterates that TATT's interventionist approach taken in this consultation document, and the presumption that ex-ante regulation is an appropriate default mode of market discipline, is inappropriate.</p>		<p>be developed and published in accordance with the <i>Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago</i>.</p> <p>Furthermore, the recommendations in the Framework are intended as preventative measures against specific practices known to be harmful to the competition, and to increase transparency on practices affecting consumers' use of the Internet. The Authority considers these measures to be imperative in promoting competition within industries and protecting consumers against harmful network practices and are consistent with its obligation to monitor and ensure compliance with concession conditions A21 and A22. This approach is similar to that adopted in jurisdictions such as Brazil, Canada and the EU who have</p>

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						applied stricter forms of regulation to resolve both anticipated and actual net neutrality violations.
47	5	No Unreasonable Discrimination	Meta Platforms Inc.	<p>Meta agrees that preventing unreasonable discrimination is critical to a well-functioning and open internet.<sup>25</sup></p> <p>In particular, Meta supports maintaining the following principles:</p> <p><b><u>No Blocking or Throttling:</u></b></p> <p>Providers of internet access should not be permitted to block, slow, or degrade people's ability to use, send, receive, or offer any lawful content, application, or service of their choice on the internet. Providers of internet access also should not be permitted to limit</p>		<p>The Authority notes Meta's support for maintaining the principles of "no blocking or throttling", "no paid prioritisation or fast lanes on the Internet" and "technological neutrality".</p> <p>The Authority agrees and underscores the importance of regulatory protections to safeguard the fundamental principles of an open, innovative, and fair Internet.</p> <p>The "No Unreasonable Discrimination" section was meant to outline the Authority's position to prohibit discriminatory conducts such as the intentional downgrading and blocking of lawful content. The Framework allows for exemptions of commercial practices such as zero-rating and conditional paid prioritisation which may result in benefits to consumers. Therefore, the Authority</p>

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The Authority explains that unreasonable discrimination includes when a provider "blocks, slows down, alters, restricts, interferes with, degrades or discriminates between specific content, applications or services, or specific categories of content applications or services for anti-competitive reasons." See Framework, page 26.

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				<p>the ability of consumers to use a non-harmful device of their choice to access the internet.</p> <p><b><u>No Paid Prioritization or Fast Lanes on the Internet:</u></b></p> <p>Providers of internet access should not be permitted to enter into arrangements to deliver specific content on the internet at faster speeds or require content providers to pay for prioritization or a certain quality of service to end-users on the internet.<sup>26</sup></p> <p><b><u>Technological Neutrality:</u></b></p> <p>Providers of internet access should stay consistent with these net neutrality principles regardless of how internet access is provided — i.e., via wireless or wireline.</p>		will take a case-by-case approach to regulating these practices, giving consideration to the presence of unreasonable discrimination and the actual and potential effects on consumers and competition.
48	5.1	The Authority's Definition of Unreasonable Discrimination	TSTT	Statement 21 refers to <u>lawful Internet content</u> , and it would be remiss of TSTT if we do not again call upon TATT to provide feedback on the treatment of Over-the-Top (OTT) providers and illicit streaming devices, the latter of which is used to access	Prior to the finalisation of this Net Neutrality Framework, TATT is to define what is "lawful Internet content" and outline how concessionaires may treat OTT providers and	Lawful Internet content refers to content over the Internet that does not contravene any laws of Trinidad and Tobago, or court orders. This definition shall be inserted in the document.

<sup>26</sup> We note that Section 8 of the Framework discusses "Conditional Paid Prioritization," which the Authority defines as "a commercial practice involving the offering of *specialised services other than general Internet access services*, optimised for specific content, applications or online services, where such optimisation is necessary to meet specific QoS standards." See Framework, page 40 (emphasis added). We address this separate concept below in our discussion of Section 8.

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				<p>content without the consent or authority of the owners of the Intellectual Property Rights (“IPR”), in such content.</p> <p>TATT is reminded that pursuant to Section 21(1) of the Act the legal provision of a Public Telecommunications Service can only be facilitated by holders of a Concession. OTT providers of voice or broadcasting services do not have concessions to operate in Trinidad and Tobago. As a consequence, the content they provide is illegal, and a form of bypass – which TATT is duty-bound to act against.</p>	<p>illicit streaming devices. The latter of which is used to access content without the consent or authority of the owners of the Intellectual Property Rights (“IPR”), in such content.</p> <p>Otherwise, TATT would not be operating in good faith or with transparency.</p>	<p>The Authority’s work on OTTs and illicit streaming devices is ongoing. The Authority’s recommendations on the treatment of OTTs are contained in its Framework on OTTs, which was issued for the second of two rounds of consultation in August 2023.</p> <p>The Authority’s recommendations on illicit streaming devices are contained in its <i>Framework on Illicit Media Streaming in Trinidad and Tobago</i>. Specifically, section 8 of that framework explores various enforcement strategies to address sources of illicit online content. The <i>Framework on Illicit Media Streaming in Trinidad and Tobago</i> was issued for its first of two rounds of consultation in 2023. Discussions on the issue can also be found in the Authority’s <i>Discussion Paper on Android Boxes in Trinidad and Tobago</i>, which was published for consultation in June 2018.</p>
49	5.1	The Authority’s Definition of Unreasonable Discrimination	TTCS	<p>Statements on Unreasonable Discrimination Definition (21-23):</p> <p>We agree with these statements. A question arises as to how end users themselves would detect such possible unreasonable discrimination.</p>		<p>The Authority notes TTCS’s agreement on policy statements 21 to 23. The transparency requirements in section 9, now section 7, include, inter alia, information on the commercial terms of the service, such as pricing, privacy policies, and redress options available to end users.</p>



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				Perhaps it should be a requirement that ISPs periodically notify its subscribers of its rights and responsibilities mentioning how complaints should be handled (contacting the ISP first, then the Authority if the matter is not resolved)		The Authority agrees that redress options should include disclosure of an ISP's complaints handling procedures. Additionally, ISPs are required to publish their customer charter, in the manner referred to in condition C4.  Section 7, previously section 6, of the Framework has been amended to include this elaboration.
50	5.2	Consideration Factors in Determining Unreasonable Forms of Discrimination	TTCS	Statements on Consideration Factors in Determining Unreasonable Forms of Discrimination (24-27):  As per comments on Statement 5, this type of assessment needs to be done by the Authority when ISPs submits traffic management policies and / or changes before implementing. And only when the Authority approves, then the ISP can implement the traffic management policy.		Regarding the submission of data on an ISP's traffic management policies, practices and measures, or changes to an ISP's traffic management policies, practices and measures, the Authority shall conduct assessments to detect unreasonable traffic management or discrimination. Absent any objection raised by the Authority, the ISP may implement its intended traffic management policies, practices and measures. This allows for continuity in an ISP's daily operation of its network.
51	5.3	Assessment of Discriminatory Practices	TTCS	Statements on Assessment of Discriminatory Practices (28-29):  Our previous comments on statement 25-27 apply here also.		Noted.

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52	5.4	Monitoring Strategies	TTCS	Technical network monitoring should be done in such a way to minimise Personally Identifiable Information (PII) being captured by the Authority.		The Authority agrees that technical network monitoring should be done in such a way as to minimise personally identifiable information (PII) being captured. All monitoring strategies conducted by the Authority shall be in accordance with the laws of Trinidad and Tobago.
53	5.4 and 6.3	Statement on Unreasonable Discrimination Monitoring Strategies (Statement 30)  Statement on Transparency Monitoring Strategies (Statement 48)	TSTT	<p>These sections speak to technical network monitoring. Our comments to section 4.5 above apply here as well.</p> <p>The entire approach of monitoring has to be reworked and reconsidered considering the procedures of law in the context of the constitutional rights of persons in Trinidad and Tobago. Accordingly, these aspects of the Framework must be withdrawn as offensive to the Constitution and reworked in detail before offering the same for two rounds of consultation to the industry.</p> <p>If TATT cannot provide a detailed overview of the methodologies proposed, which are in compliance with constitutional precedent for investigative procedures, these sections should be deleted.</p>	<p>TATT is to detail and present for two rounds of consultation, the methods, and procedures for measuring ISP's compliance with, and adherence to TATT's guidelines on reasonable traffic management practices and measures.</p> <p>Where such cannot be provided in accordance with established procedures in law,</p>	<p>All recommendations in the Framework are consistent with the Authority's statutory powers outlined in the Act and concession document. Section 1.5 provides the legislative basis for net neutrality regulation, including the monitoring strategies contained therein.</p> <p>As it relates to detecting and measuring net neutrality violations, the Framework states that the Authority may employ monitoring strategies such as investigating consumer complaints, conducting market surveys, and independent technical network monitoring. Technical monitoring involves any monitoring of quality of service parameters via technical means. It includes the use of tools that enable end users and regulatory bodies to test the speed and quality of the Internet access service offered.</p>

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				<p>Section 3 of the Telecommunications Act sets out the Objectives of the Act but confers NO POWER. TSTT is further perplexed by the reference to Section 24(h) of the Act. There is no section 24(h) of the Act. There is however a section 24(1)(h) of the Act which provides that in addition to the conditions stipulated in section 22, a concession for a public telecommunications network or a public telecommunications service, shall require the concessionaire to adhere to conditions requiring the concessionaire to “account for costs and keep such books of accounts and where the Authority prescribes by regulation the manner in which such books of accounts are to be kept, to keep such</p>	<p>such proposals should be abandoned by TATT.</p>	<p>These tools do not violate constitutional rights and are consistent with monitoring mechanisms established globally. For example, a report by BEREC identified similar approaches used by EU members to monitor the commercial and technical conditions related to the provision of Internet access services.</p> <p>Furthermore, all monitoring strategies shall be conducted in accordance with the laws of Trinidad and Tobago.</p> <p>Regarding the power to implement ex-ante regulation on transparency, the Authority notes the typographical error in the use of “section 24 (h)” and clarifies that the reference should be replaced with “section 24 (1) (a)”.</p> <p>Additionally, concession conditions A28 and A53 are relevant. A28 states “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</p>

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				<p>books of accounts in accordance with such regulations.”</p> <p>As the Authority is aware sections 22 and 24 basically provide for a number of Conditions that must be included in a concession but imposes <b>NO DIRECT OBLIGATION</b> on a Concessionaire.</p> <p>As such none of these provisions empowers TATT to propose recommendations on effective disclosure of network related practices that conform to transparency requirements or to call for ISPs to publicly disclose relevant information on their traffic management policies, performance characteristics, and some commercial practices.</p>	<p>This entire section must be withdrawn as TATT has no power under the Telecommunications Act to propose recommendations on effective disclosure of network related practices that conform to transparency requirements or to call for ISPs to publicly disclose relevant information on their traffic management policies, performance characteristics, and some commercial practices.</p>	<p>statistical information, accounts, service performance metrics and other records, as the Authority may reasonably require in order to perform its functions”.</p> <p>A53 states “The concessionaire shall publish and make available at all times such information as reasonably determined from time to time by the Authority as necessary to inform the public of the operation of it networks and/or provision of all of its services provided in relation to the Authorisations contained in this Concession”.</p> <p>The document has been amended to reflect this.</p> <p>Pursuant to section 18(1) of the Act, the Authority is empowered to monitor and ensure compliance with the above conditions.</p> <p>With respect to details on the Authority’s methods of ensuring compliance with reasonable traffic management rules, the Authority advises that section 4 on “Reasonable Traffic Management” has been revised to now offer guidance on the Authority’s definition and principles of reasonable traffic management. These detail the standards against which the Authority shall assess network</p>

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						<p>practices for anti-competition, as specified in section 6 of this Framework.</p> <p>The Framework has also been amended to remove references to the assessment of ISPs network practices for reasonableness.</p>
54	5.5	Determination of Unreasonable Discrimination	TTCS	<p>Statements on Determination of Unreasonable Discrimination (31-36):</p> <p>As per our comment on statement 14, the Authority should publish on its website when it has notified the ISP of a suspected unreasonable ISP traffic management policy. The website should also be updated if the ISP responds.</p>		<p>The Authority notes TTCS's recommendation for the Authority to publish its notification of, and response to, suspected discriminatory practices.</p> <p>The Authority advises that due process should be given prior to the publication of a suspected issue. This entails allowing the ISP to respond to the notification, detailing its case, including justifications for the action or measure. It also entails the Authority conducting a full investigation on the matter.</p> <p>Upon resolution of the matter, where a determination of unreasonable discrimination has been made, the Authority may publish this determination on its website. The Framework has been amended to include this statement.</p>
55	6	Transparency	Digicel	Digicel's service offerings and their associated terms and conditions are set out in	There is no basis for Digicel to provide additional	The Authority's recommendations on transparency call for ISPs to publicly disclose relevant

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				clear simple terms on the Digicel website . If customers are unhappy with the services that are provided by Digicel they are free to move to a different provider. This customer mobility has been made even easier through the availability of number portability in Trinidad & Tobago.	information to the Authority regarding Digicel's service offerings as they are already comprehensively described on the Digicel website with the information therefore being freely available to the Authority.	information beyond general terms and conditions, for example, on their traffic management policies, performance characteristics, and some commercial practices.  The main purpose of the principle of transparency is to provide consumers with the requisite information for making informed choices based on ISPs' policies and conducts. This allows for the protection of consumers in their use of Internet access services.
56	6	Transparency	CCTL	Flow supports the principle of transparency. We demonstrate this by providing customers with information they need to make informed product and service choices. This is done for example through our terms and conditions of service to our end user customers.  In an attempt to defend its position for making broad based transparency related net neutrality rules TATT states, <i>"The impact of an ISP's increased transparency in its terms and conditions</i>	Flow recommends that TATT reassess its framework and priorities in this proceeding away from a singular assessment of ISP	The Authority appreciates CCTL's support for the principle of transparency and disclosure through the terms and conditions for its customers. To provide the necessary protection to consumers, the Authority's recommendations on transparency call for ISPs to publicly disclose relevant information beyond general terms and conditions, for example, on their traffic management policies, performance characteristics, and some commercial practices.  The Authority acknowledges the impact of OTT services on the telecommunications and broadcasting sectors and the wider economy of Trinidad and Tobago. The Authority also recognises that the prevalence of OTTs in the

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				<p><i>associated with the provision of the service extends beyond the end user to providers of content, applications, services and devices (edge providers) who rely on comprehensive information to develop, market and effectively operate within the Internet ecosystem.</i></p> <p>In the current situation where, local ISPs face unfair competition from OTT service and application providers, TATT seems to be less concerned about these markets impacts and more concerned about requiring local ISPs to provide comprehensive information to facilitate OTTs operating in the ecosystem.</p> <p>TATT states that it is relying on Section I(c) and 24(h) of the Act to require ISPs to disclose net neutrality related policies practices and measures. The referenced sections do not address net neutrality. Section 3(c) deals generally with protecting the interest of the public and 24(h) relates to cost accounting regulations.</p>	<p>transmission practices and towards a more holistic assessment of the Internet OTT-universe as a whole.</p> <p>These inaccurate references should be corrected. TATT should indicate the legal basis for the proposed net neutrality measures.</p>	<p>industry has resulted in significant challenges but also opportunities to be addressed.</p> <p>The Authority's recommendations on the treatment of OTTs are in its Framework on OTTs in Trinidad and Tobago. Such recommendations include areas for collaborative initiatives between TSPs and OTT providers. The Framework on OTTs was published for its second of two rounds of consultation in August 2023.</p> <p>With respect to the legislative basis for transparency requirements, the Authority notes the typographical error in the use of "section 24 (h)" and clarifies that the reference should be replaced with "section 24 (1) (a)".</p> <p>The document has been amended to reflect this clarification.</p> <p>Concession condition A28, which addresses the submission of plans (on quality of service) and</p>

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						<p>information, is also relevant to the Authority's recommendations on transparency.</p> <p>Additionally, A53 states "The concessionaire shall publish and make available at all times such information as reasonably determined from time to time by the Authority as necessary to inform the public of the operation of it networks and/or provision of all of its services provided in relation to the Authorisations contained in this Concession."</p> <p>Pursuant to section 18(1) of the Act, the Authority is empowered to monitor and ensure compliance with the above conditions.</p>
57	6.1 to 6.4		CCTL	<p>In sections 6.1 to 6.4 TATT sets out seventeen (17) statements dealing with;</p> <ul style="list-style-type: none"> <li>- Definition and Scope of Transparent Network Practices;</li> <li>- Prescriptions on the Form and Content of Effective Disclosures;</li> <li>- Monitoring Strategies; and</li> </ul>	<p>Various of the recommendations set out above are relevant to this section.</p>	<p>The Authority notes CCTL's comments on the high-level statements under transparency requirements. One of the objectives of the Framework, set out in subsection 1.3, is to outline high-level descriptions of the Authority's process of assessing and remedying net neutrality violations in Trinidad and Tobago.</p> <p>This document shall be developed and published in accordance with the Authority's <i>Procedures for</i></p>



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				<p data-bbox="854 282 1443 358">- Determination of Failure to Meet Transparency Requirements.</p> <p data-bbox="854 451 1443 1406">The statements seek to define information disclosure parameters, the type of information to be disclosed and the format, as well as the notification monitoring investigation and procedures. Here again the statements are very high level, for example, with respect to congestion management practices TATT states <i>“The description shall include, at minimum, the triggering conditions for which the policy would be applied; possible effects of the policy on the end user’s experience; restrictions for end-user devices8; and where applicable, terms for ISPs’ use of personal data, and protocols implemented for data privacy and protection.</i> Firstly, the statements are very high level. The metrics are not defined. TATT needs to provide clarity around intended approaches as well as specify the basis of its remit for such regulatory requirements. Secondly, TATT is proposing to require local ISPs to implement and observe protocols in terms of collection and use of customer’s personal</p>		<p data-bbox="1881 282 2534 358"><i>Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago.</i></p> <p data-bbox="1881 407 2534 818">Additionally, the requirement for transparency in network practices does not relate to the collection or publication of commercially sensitive information or customers’ personal data. It relates to the disclosure of ISPs’ traffic management policies. Effective disclosure entails a high-level description of policies implemented by the ISP to ensure its network resources are used in an efficient manner, for example, for managing network congestion.</p> <p data-bbox="1881 867 2534 1024">Furthermore, all recommendations made under section 9, now section 7: Transparency are consistent with the relevant legislative provisions identified under subsection 1.5 of the Framework.</p>

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				data, in an environment where global platform service providers are not even required to have a license, much less needing to comply with similar requirements.		
58	6.1	Definition and Scope of Transparent Network Practices	CANTO	<p><i>Policy Statement 38: In the provision of Internet access service, an ISP shall publicly disclose accurate information on the technical and commercial conditions of the service, including information on its traffic management policies, performance characteristics, and commercial terms and conditions.</i></p> <p>Is this the same information referred to in Statement #9?</p>	Clarification needed	The Framework, as amended no longer contains policy statement 9 and its requirements. Section 7 presents the only policy statement on specific transparency requirements which states: "Internet service providers (ISPs) shall publicly disclose on their websites network-related practices. These include general information (e.g., pricing, fees, service offerings, and availability), traffic management policies, performance characteristics, and commercial terms and conditions."
59	6.1	Definition and Scope of Transparent Network Practices	TTCS	<p>Statements on Transparency Definition and Scope (38-39):</p> <p>The ISP's information on its technical and commercial conditions needs to be logged with the Authority and published by the Authority so that all ISPs information is in one location, as well being posted on ISP's websites.</p>		<p>The Authority notes TTCS's recommendation that the Authority publish ISPs' technical and commercial conditions. The Authority shall consider consolidating and publishing on its website hyperlinks to ISPs' published disclosures.</p> <p>While the Authority sees the merit in publishing disclosed information in a standard format, it also allows for differences in ISPs' chosen forms of</p>

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				<p>Such information disclosure should be published in a standard format for easier understanding and comparison.</p> <p>ISP's information of their current technical and commercial conditions should be periodically sent to the ISP's subscribers, especially before changes are done.</p>		disclosure, once the transparency requirements in section 7 of the Framework are met.
60	6.2	Prescriptions on the Form and Content of Effective Disclosures	CANTO	<p><i>Policy Statement 42: The disclosed information may be presented in two formats based on their level of detail.</i></p> <p>Does this mean that in some cases both priority and detailed information is required?</p> <p><i>Policy Statement 43: Descriptions of congestion management practices, security measures and device attachment rules must be disclosed, including the triggering conditions and possible effects of the policy on the end user's experience.</i></p>	<p>The disclosed information may be presented in either of the two formats, based on their level of detail.</p> <p>These provisions may be considered onerous especially if such information is required on a regular basis or in the absence of a customer complaint.</p> <p>Clarity needed.</p>	<p>The disclosed information may be presented in two formats, based on their level of detail. The first format may be high level, giving general information on the service, and referencing the second part where more details are presented.</p> <p>The second part may consist of detailed technical parameters and their values and other relevant information.</p> <p>The transparency requirements are not onerous but rather are designed to ensure that disclosures are sufficiently detailed for consumers to make informed choices regarding their use of Internet access services, and also for the providers of content, applications, services and devices to</p>

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				<p><i>Policy Statement 44: A general description of system performance and the effects, if any, of commercial practices such as conditional prioritization on available capacity, be disclosed.</i></p> <p><i>Policy Statement 45: Information on data caps, actual upload and download speeds, latency, jitter, web page load times, packet loss, DNS resolution times and other relevant quality of service parameters, must be disclosed.</i></p> <p><i>Policy Statement 46: Information on the commercial terms of the service, including pricing, privacy policies, and redress options, must be disclosed.</i></p> <p>The referenced Disclosure requirements are detailed. Clarification is need on the situations that would require the ISP to disclose such information.</p> <p>In the event that such information is not routinely captured, the ISP would need to put relevant practices in place to capture such, some cost may be incurred.</p>		<p>develop, market, and maintain Internet offerings effectively.</p> <p>The Authority therefore recommends separate disclosure statements to meet both the basic information needs of consumers and the more technical needs of content providers and sophisticated end users.</p>

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61	6.2	Prescriptions on the Form and Content of Effective Disclosures	TTCS	<p>Statements on Form and Content of Effective Disclosures (40-46):</p> <p>We agree, but such ISP's content should also be consolidated and published on the Authority's website.</p>		<p>The Authority notes TTCS's recommendation for the Authority to consolidate and publish ISPs' content on its website. This may be done via links on the Authority's website to ISPs' individual websites where the information is published.</p> <p>Section 7 of the Framework has been amended to reflect this statement.</p>
62	6.4	Determination of Failure to Meet Transparency Requirements	TTCS	<p>Statements on Determination of Failure to Meet Transparency Requirements (49-54):</p> <p>As per previous comments, if the Authority initiates a notification to an ISP regarding transparency requirements, such notifications should be published on the Authority's website.</p>		<p>The Authority notes TTCS's recommendation that the Authority publish its notification to an ISP regarding failure to meet transparency requirements. The Authority believes due process should be given prior to the publication of a suspected issue. This entails allowing the ISP to respond to the notification, giving details of its case, including justifications for the action or measure. It also involves the Authority conducting a full investigation on the matter.</p> <p>The Authority may publish on its website any final determination of an ISP's failure to meet transparency requirements.</p>
63	7	Net Neutrality Exemption: Zero Rating	CCTL	TATT acknowledges that " <i>...Zero rating is a widely used commercial practice which allows mobile subscribers to access certain</i>	FLOW recommends that TATT refrain from implementing unnecessary	While the Authority notes the decision in the US referenced by CCTL, in Trinidad and Tobago, the Authority is the agency responsible for competition

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				<p><i>online content “for free”, that is, without having the data counted against their usage Allowance.... there is evidence to suggest that the commercial practice may result in significant benefits to consumers, for example, increased Internet access and demand, digital inclusion and the promotion of competition”<sup>27</sup></i></p> <p>In the Trinidad and Tobago context one motivation for zero rating that deserves emphasis is its ability to stimulate demand. This is an especially important motivation, and is an issue highlighted by TATT as it stated that recommendations presented in the consultation document are to drive</p>	<p>rules that are much more likely to discourage ISPs from experimenting with or even attempt such innovative product offerings, to the detriment of consumers and the economy as a whole.</p>	<p>matters relating to telecommunications companies. Section 3 of Trinidad and Tobago’s Fair Trading Act, Chap. 81:30 states that “this Act shall not apply to companies which fall within the purview of the Telecommunications Authority Act”.</p> <p>The Authority acknowledges that there are potential benefits of zero-rating to consumers and competition and recommends a case-by-case approach to the commercial practice.</p>

<sup>27</sup> Framework on Net Neutrality Trinidad and Tobago, Page 35.

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				<p>infrastructure roll out and increase consumer uptake for broadband services.</p> <p>Notwithstanding the clear benefits of zero rating, particularly in the Trinidad and Tobago context TATT proposes to make rules to case by case investigations as it deems necessary to address what it considers unreasonable discrimination and effects on consumers and competition. The statements in these sections (statements 55 to 66) set out ex-ante rules involving a process of notification, monitoring, investigating, and reporting are unnecessary and excessive.</p> <p>In our comments to the discussion papers FLOW pointed out that in the United States, the Federal Communications Commission (“FCC”), previously evaluated Zero Rating on a case-by-case basis, but has since decided to cease investigations of Zero-Rated offers for two reasons: (1) the probability of harm is so low, it does not justify the FCC’s time and resources necessary to undertake an investigation, and (2) in the rare instances where there is a legitimate concern, there are laws and institutions already in place to</p>		

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				police such conduct, just as there are in Trinidad and Tobago—namely, the allegation can be investigated by that country's competition authority, the FTC, and resolved in the courts.		
64	7	Net Neutrality Exemption: Zero-Rating	Meta Platforms Inc.	<p>We agree with the Authority that zero-rating should continue to be permitted and that any review of particular practices should be conducted on a holistic, case-by-case basis. There is nothing inconsistent with continuing to provide flexibility for zero-rating offers that benefit consumers and connectivity while maintaining strong net neutrality protections.</p> <p>As the Authority highlights, zero-rating can provide significant benefits to consumers, such as increased Internet access and demand, digital inclusion and the promotion of competition.<sup>28</sup> Zero-rating provides an important tool for helping people stay connected with access more consistently – particularly where people have temporarily</p>	<p>To help guide any <i>ex post</i> review of zero-rating offers in the future, the Authority can holistically consider factors including whether a particular offer is:</p> <ul style="list-style-type: none"> <li>• <u>Non-exclusive</u>: Whether the zero-rating arrangement involves any exclusivity requirement between the internet access provider and content provider, or whether either provider is free to enter into the same, or similar, arrangements with others.</li> </ul>	<p>Meta's recommendation of factors to be considered in the Authority's assessment of zero-rating offers is noted. The factors listed, namely, "non-exclusive", "independent/non-affiliated", "open" and "transparent", are consistent with the Authority's consideration identified in the subsection on Zero-Rating Practices.</p> <p>This section now adopts a more flexible approach to zero-rating practices.</p>

<sup>28</sup> Framework, page 35.



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				<p>exhausted their data balance or have not yet purchased data:</p> <ul style="list-style-type: none"> <li>• <u>Supports more consistent connectivity:</u> Even among consumers who are already online, a segment remains under-connected and not able to afford data consistently all the time (<i>e.g.</i>, someone purchasing prepaid data packs while living paycheck to paycheck). Zero-rating offers can help under-connected consumers' data balance last longer so that they can stay online more consistently. Additionally, rather than dropping off the internet completely when they run out of data (or have not yet purchased data), zero-rating offers can help keep consumers connected more consistently until they are able to purchase data again.<sup>29</sup></li> </ul> <p><u>Bringing people online:</u> For consumers not yet on the internet, zero-rating programs can provide an</p>	<p><u>Independent/non-affiliated:</u> Whether the zero-rating arrangement is between an internet access provider and content provider who are non-affiliated and independent, thereby not favoring the internet access provider's own content over other content providers.</p> <p><u>Open:</u> Whether the zero-rating program is open to content providers under transparent, objective criteria.</p> <p><u>Transparent:</u> Whether the internet access provider discloses the terms of the offering</p>	

<sup>29</sup> See, e.g., "New Survey Explores Key Benefits of Zero-Rating" (Feb. 2021) (finding that key benefits of zero-rating include keeping consumers connected more consistently and helping their data packs last longer), available at: <https://www.ipsos.com/en-us/new-survey-explores-key-benefits-zero-rating>.

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				<p>important and low-cost way to “test” and experience the relevance and opportunities of connectivity. Many unconnected consumers – even in countries with robust broadband coverage – may not be on the internet because they are unaware of the benefits or relevance of being online and therefore have not chosen to buy data in the first place.<sup>30</sup> By enabling people to experience the relevance of connectivity, zero-rating programs can help transition consumers to purchasing full internet access.</p> <p><u>Providing increased access to health and other resources:</u> As demonstrated during the COVID-19 health crisis, zero-rating offers can also provide consumers with increased access to important online resources such as health and COVID-19 information, education resources, local government information, communications tools, job tools, and resources for small businesses.</p>	<p>and its scope in a clear and transparent manner.</p> <p><u>Consumer/Connectivity Benefits:</u> Whether an offer helps to advance the Authority’s goals such as benefiting consumers, decreasing the digital divide, and expanding connectivity and access to online resources.</p>	

<sup>30</sup> See, e.g., The Economist, Intelligence Unit, “The Inclusive Internet Index” (2020), <https://theinclusiveinternet.eiu.com/> (discussing various barriers to connectivity in countries around the world).

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				Given the significant consumer and connectivity benefits of zero-rating, we encourage the Authority not to adopt <i>ex ante</i> restrictions or review requirements. Instead, any concerns with particular practices should be assessed <i>ex post</i> on a holistic, case-by-case basis and only restricted with evidence of actual harm.		
65	7.1	Notification of Zero-Rating Practices	TTCS	<p>Statements on Notification of Zero-Rating Practices (55-56):</p> <p>We support this statement, but suggest that the ISP submits information related to the zero rated plan (as alluded to in statement 56) when applying to the Authority 30 days prior to implementation.</p>		<p>The Authority highlights changes made to the Framework. Subsection 6.1 now adopts a more flexible approach to zero-rating practices.</p> <p>In its assessment of zero -rating practices, the Authority may request that an ISP submit additional information on its zero-rating offer, such as the terms and conditions, contracts and agreements associated with the offer.</p>
66	7.3	Monitoring Strategies	TTCS	We note that 58 is used twice.		Noted. The Framework has been amended to correct the numbering issue.
67	8	Net Neutrality Exemption: Conditional Paid Prioritisation	CCTL	Paid prioritization refers to the commercial practice of optimizing the data transfer rates for some edge providers / applications for commercial. In this consultation document TATT acknowledges that “7 ... in the correct	Ex-post competition regulations are best suited to address fair competition issues in the ISP market in Trinidad and Tobago. As	The Authority notes CCTL's recommendation on prioritising the updating of the legal and regulatory framework. The Authority has completed its role in the revision of its legislative framework. Amendments to the Act have been proposed and

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				<p><i>context paid prioritization can result in significant pro-competitive benefits within industries and improved end-user experiences.”</i><sup>31</sup></p> <p>Although TATT does not explain what it means by the phrase “correct context”, it goes on to state that it is mindful of the potential harm of this practice to fair competition. As a consequence, TATT proposes a framework of rules in sections 6.1 to 6.4. The seventeen (17) statements dealing with –</p> <ul style="list-style-type: none"> <li>-1 Definition and Scope of Transparent Network Practices;</li> <li>- Prescriptions on the Form and Content of Effective Disclosures;</li> <li>- Monitoring Strategies; and</li> <li>- Determination of Failure to Meet Transparency Requirements</li> </ul>	<p>recommended in 3.1.2 FLOW reiterates that TATT focus its efforts on getting the Act amended to widen its powers to address and enforce competition issues.</p>	<p>the Authority has completed consultation on same. Currently, the Authority is working with, and supporting, the Ministry of Digital Transformation on the promulgation of these critical pieces of legislation. Amendments will incorporate current market trends and the changes that have taken place since 2004. In the interim, the Authority continues its work to achieve its statutory mandates and to fulfil its functions and duties under the Act.</p> <p>The Authority acknowledges that there are potential benefits of paid prioritisation to consumers and competition and recommends a case-by-case approach to the commercial practice. The Authority highlights changes made to the Framework to reflect the adoption of a more flexible approach to conditional paid prioritisation. Section 8, now section 6, has been amended to remove requirements for approval. Subsection 6.2 gives guidelines for conditional paid prioritisation.</p>

<sup>31</sup> Section 8, page 40.

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				<p>are intended to be applied on a case by case basis.</p> <p>TATT's concern is unfounded. The success as an anticompetitive strategy of paid prioritization is predicated on the perpetrator having significant market power, as well as the applicability of several additional criteria. The likelihood that all of these criteria apply, and actually cause meaningful harm is low.</p> <p>As Flow have stressed, such rules and interventionist regulations are unnecessary.</p>		
68	8	Net Neutrality Exemption: Conditional Paid Prioritization	Meta Platforms Inc.	<p>Meta supports the use of innovative technologies and business models to benefit consumers and connectivity. However, any new technologies and use cases should stay consistent with the framework of core net neutrality principles without weakening or circumventing the Authority's open internet protections.</p> <p>We note that the Authority refers to "conditional paid prioritization" as "the offering of <i>specialised services other than general Internet access services</i>, optimised</p>	<p>Consistent with the Authority's proposals, protections should ensure that specialised service offerings are not allowed if they:</p> <ul style="list-style-type: none"> <li>• Have the purpose or effect of evading net neutrality protections that apply to internet access service;</li> </ul> <p>Provide a functional equivalent or</p>	<p>The Authority agrees on the importance of strong protections that preserve net neutrality principles in the offering of commercial services such as conditional paid prioritisation.</p> <p>The Authority points to amendments made to the Framework that rely on ex post assessments of paid prioritisation for anti-competitive practices. These amendments retain guidelines that should be met prior to conditional paid prioritisation. The recommendations are consistent with the conditions identified by Meta.</p>

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				<p>for specific content, applications or online services, where such optimisation is necessary to meet specific QoS standards.”<sup>32</sup></p> <p>Specialised services (i.e, services offered separate from internet access service) are generally intended for enterprise customers and used in cases where some form of enhanced quality of service (QoS) is required that cannot be supported by regular internet access service — <i>e.g.</i>, autonomous vehicles or telemedicine.</p> <p>As discussed by the Authority, without strong protections, the offering of specialised services could undermine net neutrality principles and the availability of robust internet access service for consumers in the future.<sup>33</sup></p> <p>We support the Authority’s proposal to adopt strong protections for consumers — which are also along the lines of those that have been adopted in jurisdictions such as the</p>	<p>replacement of internet access service;</p> <p>Provide services that should function and be supported over regular internet access service; or</p> <p>Negatively affect the performance and availability of regular internet access service.</p> <p>Furthermore, we agree with the Authority that if specialised services are permitted consistent with the protections above, ISPs should be required to offer such services on a non-discriminatory basis.</p>	

<sup>32</sup> See Framework, page 41.

<sup>33</sup> See, *e.g.*, Framework, page 40 (“Underscoring the importance of established safeguards, the Authority stipulates that certain conditions must be met before an ISP can engage in the commercial practice. These safeguards ensure that the continued availability and the general quality of the ‘best effort’ Internet are upheld, as far as practical.”).

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				<p>European Union, India, and previously in the United States (in the Federal Communications Commission's (FCC's) 2015 Open Internet Order).<sup>34</sup> We discuss these protections in the recommendations section.</p>	<p>We support the Authority's views regarding the importance of review of specialised service offers and transparency.<sup>35</sup> Meta encourages the Authority to:</p> <ul style="list-style-type: none"> <li>• Require ISPs to seek prior approval for any specialised services, and to transparently disclose their specialised service offerings.</li> </ul> <p>Make clear that any specialised services are subject to review and enforcement if they fail to satisfy the protections described above or other applicable rules.</p> <p>Consider conducting a regular assessment of the internet ecosystem and</p>	

<sup>34</sup> See, e.g., FCC 15-24, Adopted February 26, 2015 and Released March 12, 2015, available at: <https://www.fcc.gov/document/fcc-releases-open-internet-order>.

<sup>35</sup> Framework, pages 41-42.

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					updating expected minimum speeds and quality of internet access service. This will help ensure improvements and investment over time, and serve as a basis to assess any negative impact of conditional paid prioritization on the relative quality of internet access service.	
69	8.2	Notification and Requirements for Conditional Paid Prioritisation	TSTT	<p>TSTT notes the proposed requirements for TATT to be notified of ISPs' intent to enter a commercial agreement regarding conditional paid prioritisation. It is also proposed that details such as justification of the conditional paid prioritisation, agreement details and evidence of capacity sufficiency be provided.</p> <p>These demands are not only onerous, but they also encroach on the right of ISPs to maintain confidential/proprietary and commercial information. Sharing this information may limit/damage the competitive advantages that these agreements provide. These requirements are also extremely burdensome</p>	TATT to review and simplify the proposed requirements to reduce the burden on ISPs to the benefit of the industry.	<p>The Authority notes TSTT's recommendation that the proposed requirements of conditional paid prioritisation be reviewed and simplified. The Authority highlights changes made to the Framework to reflect the adoption of a more flexible approach to conditional paid prioritisation. Section 8, now section 6 has been amended to remove requirements for approval. Subsection 6.2 gives guidelines for conditional paid prioritisation.</p> <p>Requests for information on conditional paid prioritisation are made in accordance with section 24(1) of the Act and concession condition A28 which states:</p>



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				<p>on ISPs while providing very little value to the industry if any.</p> <p>Finally, TSTT's review of the regulatory framework in force suggests that TATT does not have the authority under the Act or its Regulations to make such a request of operators. Indeed, none of the citations of the enabling legal framework included in the Net Neutrality Framework document demonstrates where TATT is empowered to require such submissions. Until TATT can provide citation of appropriate enabling powers in law, this requirement exceeds the legal authority of the Act.</p>	<p>TATT to provide a citation of the enabling power to affect this obligation. If no citation can be provided from the Act or its Regulations, then this requirement should be removed.</p>	<p>“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.”</p> <p>The submission of this information allows the Authority to fulfil its functions as stated in section 18 (1) of the Act.</p> <p>Submitted information shall be treated in accordance with concession condition A29 which, in part, states that “the Authority shall keep confidential any information furnished to it by a concessionaire, which the concessionaire has specifically expressed to be confidential at the time of submission to the Authority, and which is of a confidential nature”. The proposed process shall be similar to that of the Authority's existing procedures for collecting and processing market data.</p>

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70		Monitoring Strategies (Several areas)	TSTT	<p>TATT proposes to utilise, inter alia, “<i>technical network monitoring</i>”, as one of its monitoring strategies to investigate paid prioritisation. TATT, however, does not expand on what it means by technical monitoring and the methodology and associated activities involved.</p> <p>Our comments to sections 4.5 and 5.4 above apply here as well.</p> <p>The entire approach of monitoring has to be reworked and reconsidered considering the procedures of law in the context of the constitutional rights of persons in Trinidad and Tobago. Accordingly, these aspects of the Net Neutrality Framework must be withdrawn as offensive to the Constitution and reworked in detail before offering the same for two rounds of consultation to the industry.</p>	<p>TATT is to detail and present for two rounds of consultation, the methods for measuring ISP’s compliance with and adherence to TATT’s guidelines on reasonable traffic management practices and measures.</p> <p>Where such cannot be provided in accordance with established procedures in law, such proposals should be abandoned by TATT.</p>	<p>In addition to other monitoring strategies, such as investigating consumer complaints and conducting market surveys, the Framework identifies independent technical network monitoring as a tool to detect and measure net neutrality violations. The Framework, as amended, defines the term as “quantifiable metrics, collected independently by the Authority using probes to assess network performance and quality of service parameters such as broadband speeds, streaming and web browsing performance.” Independent technical network monitoring, where applicable, shall be implemented in a manner consistent with the Authority’s statutory powers outlined in the Act and concession arrangements with the ISPs.</p> <p>The Authority may establish specific monitoring guidelines, policies, standards or procedures that detail its methods for measuring ISPs’ compliance with net neutrality principles. The guidelines will be published in accordance with the Authority’s <i>Procedures for Consultation in the Telecommunications and Broadcasting Sectors of Trinidad and Tobago</i>.</p>

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				If TATT cannot provide a detailed overview of the methodologies proposed, which are in compliance with lawful constitutional precedent for investigative procedures, these sections should be deleted.		
71	8.2	Notification and Requirements for Conditional Paid Prioritisation	CANTO	The associated Statements on Notification and Requirements for Conditional Paid Prioritisation was not included		Noted. The Authority clarifies that the sections on “Notification and Requirements for Conditional Paid Prioritisation” are no longer contained in the Framework.
72		Concluding Comment	CCTL	In a competitive market, traffic management practices are viable if and only if they serve customers’ interests, and help win or retain, not harm them. Conduct that harms customers in a competitive market is ultimately self-inflicted harm by the ISP and will not succeed. Take for example the lack of consensus or progress among ISPs to pursue targeted blocking of illegal OTT content, an objective TATT has acknowledged is worthwhile, but even after several industry discussions over several years no action has been taken. Given the highly competitive nature of the ISP market,	TATT should withdraw the proposed rules set out in this consultation document.	<p>The Authority appreciates the importance of a competitive market in aligning traffic management practices to net neutrality principles. The Authority also underscores the importance of taking a proactive approach to preventing harm to consumers with regard to their unfettered access to lawful content over the Internet.</p> <p>Based on stakeholders’ feedback, Authority has revised its policy recommendations to rely on an ex post approach for regulating net neutrality. Specifically, sections 4 to 8 of the Framework have been amended to detail the Authority’s process for detecting and remedying acts of unfair competition</p>

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				<p>even this worthwhile effort to prevent the distribution of illegal content is not viable, absent a legal or regulatory requirement to do so; there is a strong commercial advantage to not block, and any individual efforts or even explicit coordinated efforts to block illegal content have been unsuccessful.</p> <p>The monitoring and reporting requirements of the proposed system of rules will only prove to be costly and burdensome to ISPs.</p>		<p>in ISPs' traffic management practices and related commercial practices. The Framework also provides guidance on the Authority's definitions and principles of reasonable traffic management (section 4) and transparency requirements on network-related practices based on the ISPs' regulatory obligations contained in the Act and concession (section 7).</p> <p>The amendments will minimise some of the reporting requirements previously proposed in the Framework.</p> <p>The Authority's work on OTTs and illicit streaming devices is ongoing. The Authority's recommendations on the treatment of OTTs are in its Framework on OTTs, which was issued for the first of two rounds of consultation. The <i>Framework on Illicit Media Streaming in Trinidad and Tobago</i> was issued for consultation in December 2023.</p>