

E C T E L
C O N S U L T A T I O N D O C U M E N T

**Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL")
To the National Telecommunications Regulatory Commission to consult on
Draft Telecommunications (Wholesale) Regulations**

Consultation Document

2006

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation for new Telecommunications (Wholesale) Regulations for [Member State].
2. A copy of the draft Telecommunications (Wholesale) Regulations is attached to this Consultative Document.
3. The initial comments period will run from 28th July 2006 to 28th August 2006.
4. Reply comments from 4th September 2006 to 25th September 2006.
5. Following the Reply Comments period, ECTEL's Directorate will finalize and submit the draft Telecommunications (Wholesale) Regulations to the ECTEL Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or email to: -

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Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

RATIONALE

Following its recommended proposed changes to the Telecommunications (Interconnection) Regulations (“Interconnection Regulations”), ECTEL is proposing the attached Telecommunications (Wholesale) Regulations (“Wholesale Regulations”). These regulations establish a framework for all licensed telecommunications providers—not just public network operators—to purchase telecommunications services for resale.

The two sets of regulations will establish competitive market conditions and can be expected to bring substantial benefits to consumers. The Wholesale Regulations ensure that the retail services of all public network operators are available for resale to the public by other telecommunications providers. In the case of public network operators who are determined to be dominant wholesale service providers, the Wholesale Regulations provide for establishing a standard discount off retail prices and for making essential elements and functions of those retail services available to competing providers.

The following is a regulation-by-regulation summary of the proposed new regulations:

1.CITATION

Regulations 1, 2 and 3: These regulations deal with preliminary matters such as the name of the regulations, date it comes into force and the definition of terms. In particular regulation 3 adds a series of defined terms, including definitions of “dominant wholesale service provider”, “special wholesale service”, “total retail service” and “wholesale service.”

2.AVAILABILITY OF RETAIL SERVICES FOR WHOLESALE

Regulation 4: This regulation requires all public network operators to make their retail services available for resale as wholesale offerings. They must be made available on a non-discriminatory basis and without restriction, except that it is permissible to prohibit the resale of a retail service that is expressly intended for one type of customer (e.g., residential) to provide service to another type of customer (e.g., business).

3.DOMINANT WHOLESALE SERVICE PROVIDER

Regulation 5: The Commission is given the authority to designate a public network operator as a “dominant wholesale service provider” in a particular telecommunications market or markets if the Commission determines that the operator has significant market power in that market or markets and that it is the long-term best interests of consumers. ECTEL emphasizes that the finding of dominance applies only to the particular market (or markets) under consideration and does not extend to other markets. For example, a public network operator could be found to be dominant in the provision of fixed line service but not in cellular service. This regulation establishes a consultative process, including time period for comments. This regulation also allows for a public network operator to consent to being treated as a dominant wholesale service provider. A dominant wholesale service provider will be required to offer its retail services for

resale at a standard discount (regulation 6) and may be required to offer special wholesale services (regulation 7).

4. STANDARD WHOLESALE SERVICE DISCOUNT

Regulation 6: In order to facilitate competition, ECTEL contemplates that there will be a standard discount at which the retail services of a dominant wholesale service provider will be made available to other telecommunications service providers. The discount is calculated based on the costs avoided by the dominant wholesale service provider by not having to provide certain retail functions offset by any costs incurred by offering the service for resale. The price at which a competitor can buy the service for resale is the retail price less the standard discount.

5. SPECIAL WHOLESALE SERVICES

Regulation 7: ECTEL believes that, while it is important to encourage deployment of additional telecommunications infrastructure by multiple providers, there will be instances where it is clearly more efficient to require that components or functions of the network of a dominant wholesale service provider be made available to its competitors. For example, ECTEL believes it is in the interest of consumers that there is competition in the provision of broadband Internet service. This is especially true when a single firm is relied upon to provide the actual broadband Internet access. The special wholesale services must meet this need, regardless of whether the competitor simply resells Internet bandwidth or is a public network operator that transmits Internet packets on its own international facilities. A special wholesale service will contain either the essential components or functions of the retail service, and any ancillary services necessary for the efficient provision of a comparable service by competitors.

6. SPECIAL WHOLESALE SERVICE TARIFFS

Regulation 8: A dominant wholesale service provider is required to publish and file with the Commission tariffs for special wholesale services and the Commission is given the authority to ensure that the tariffs are non-discriminatory and comply with the competitive safeguard established in regulation 9.

7. COMPETITIVE SAFEGUARD

Regulation 9: Since competitors will be relying on components or functions supplied by the dominant wholesale service provider who is also competing with them in the provision of retail service, there is the risk of a price squeeze. For example, the dominant wholesale service provider could attempt to raise the special wholesale service price it charges competitors without making a corresponding increase in its own retail service. Conversely, it could attempt to lower its retail price without reducing the price for the special wholesale service. In order to prevent a price squeeze, a dominant wholesale service provider is required to demonstrate that the prices of its special wholesale services meet the imputation standard. The dominant wholesale service provider must make such a showing whenever it seeks to raise the price of a special wholesale service or reduce the price of the corresponding retail service.

Telecommunications (Wholesale) Regulations

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Commencement
3. Interpretation
4. Availability of retail services for wholesale
5. Dominant wholesale service provider
6. Standard wholesale service discount
7. Special wholesale services
8. Special wholesale service tariff
9. Competitive safeguard

(Gazette No....of 200[-]

Telecommunications (Wholesale) Regulations

SRO #-

[Member State]
STATUTORY RULES AND ORDERS No..... of 200[-]

REGULATIONS

Made by the Minister under section [-] of the Telecommunications Act, 200- (Act No.- of 200-).

**PART 1
PRELIMINARY**

Citation

1. These Regulations may be cited as the Telecommunications (Wholesale) Regulations, 200[-].

Commencement

2. These Regulations as amended shall be deemed to have come into force on [date].

Interpretation

3. In these Regulations:

“Act” means the Telecommunications Act, 2000.

“dominant wholesale service provider” means a public network operator who is designated by the Commission as dominant for the purposes of providing special wholesale services under regulation 5;

“public network operator” means a person who provides telecommunications between two parties neither of whom is affiliated with such person, accepts the rights and obligations of public network operators and is licensed to operate a public telecommunications network;

“public telecommunications network” means a telecommunications network used for the provision of telecommunications services to the public;

“special wholesale service” means a wholesale service required by the Commission pursuant to regulation 7;

“telecommunications services” means services provided by means of telecommunications facilities, the provision in whole or in part of telecommunications

facilities and any related equipment, whether by sale, lease or otherwise or such other services as may be prescribed by the Minister from time to time;

“total retail service” means the retail service that embodies the components or functions, including any ancillary services, contained in any special wholesale service as determined in regulation 7; and

“wholesale service” means any retail service that is purchased from a public network operator by a provider of telecommunications services for resale to the public.

Availability of retail services for wholesale

4. (1) A public network operator shall make available all of its retail services as wholesale services on a nondiscriminatory basis and without restriction, except that a public network operator may prohibit the use as a wholesale service of any retail service that is expressly intended for one type of customer to provide service to another type of customer.

(2) A public network operator may not discriminate in favor of its end-user customers or against other providers of telecommunications services.

Dominant wholesale service provider

5. (1) The Commission, acting on the recommendation of ECTEL, and by notice published in the Gazette, shall designate a public network operator as a dominant wholesale service provider with respect to a particular market or markets if the Commission has determined, after a public consultation process, that a public network operator:

- (a) Possesses significant market power with respect to that particular market or markets for telecommunications services in [Member State]; and
- (b) It is the long-run best interests of consumers of telecommunications services that the public network operator be so designated.

(2) The Commission shall undertake a consultation process which will commence with a preliminary determination of market dominance and the designation of one or more dominant wholesale service providers.

(3) A public network operator who is initially determined and designated by the Commission to be a dominant wholesale service provider may respond in writing within 30 days of the initial determination and designation.

(4) Interested parties may comment in writing to the Commission within 15 days of the response of the network operator(s).

(5) The affected public network operator(s) shall reply to interested parties within 15 days of such comments being filed.

(6) The Commission shall issue its final determination of market dominance no later than 30 days after all comments have been filed.

(7) Notwithstanding the foregoing sub-regulations, a public network operator may consent to being treated as a dominant wholesale service provider.

Standard wholesale service discount

6. (1) The Commission, acting on the recommendation of ECTEL and by notice published in the Gazette, shall determine, after a public consultation process, a standard wholesale discount from retail prices at which dominant wholesale service providers must offer wholesale services.

(2) The standard wholesale service discount shall be calculated to reflect the costs associated with providing retail services to end-user customers that the dominant wholesale service provider avoids when making such services available as wholesale services offset by the costs the dominant wholesale service provider may incur to make its retail services available as wholesale services.

Special wholesale services

7. (1) The Commission, acting on the recommendation of ECTEL and by notice published in the Gazette, may require, after a public consultation, a dominant wholesale service provider to make available special wholesale services.

(2) A special wholesale service shall consist of components or functions of a retail service which are determined to be essential in order for other providers of telecommunications services to offer a total retail service to end-users that is competitive with the total retail service of the dominant wholesale service provider and which the other providers of telecommunications services cannot economically supply themselves or obtain from a public network operator other than the dominant wholesale provider.

(3) A special wholesale service shall include either the essential components or functions of the total retail service, and any ancillary services necessary for other providers of telecommunications services efficiently to provide the total retail service.

Special wholesale service tariffs

8. (1) A dominant wholesale service provider shall publish and file with the Commission tariffs for special wholesale services.

(2) The tariffs will make available the special wholesale services to providers of telecommunications services on a non-discriminatory basis and will comply with the competitive safeguard contained in regulation 9.

(3) The Commission shall have the authority to ensure that the special wholesale service tariffs are compliant with the Act and regulations, including the competitive safeguard contained in regulation 9.

Competitive safeguard

9. (1) A dominant wholesale service provider shall demonstrate to the Commission that the prices of its special wholesale services satisfy the imputation standard contained in sub-regulation (2) of this regulation.

(2) The difference between the price of the total retail service and the price of the corresponding special wholesale service shall not be less than the difference between the long-run incremental cost of the total retail service and the long-run incremental cost of the corresponding special wholesale service.

(4) A dominant wholesale service provider shall demonstrate to the Commission that the imputation standard contained in sub-regulation (2) of this regulation is satisfied whenever it seeks to raise the price of a special wholesale service or reduce the price of the corresponding total retail service.

Made this [-] day of [-], 2006

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Minister for Telecommunications