

CONSULTATION DOCUMENT

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

**Consultation Document
/N0.
August 2010**

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's Draft Retail Tariff Regulations.
2. A copy of the Draft Retail Tariff Regulations is attached to this Consultative Document.
3. The initial comments period will run from 5th August to 6th September 2010.
4. The Comment on Comments period will run from 9th September to 30th September 2010.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the draft Retail Tariff Regulations to the 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 e-mail 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.

Suggested Guidelines for Responses to Consultations

In order to promote faster processing of views expressed and to reduce administrative lags in ECTEL's public consultation processes, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below. ECTEL would therefore be grateful if commenting parties could please observe these guidelines where possible.

- 1) Responses to consultations should be clearly labeled as a response to the particular ECTEL consultation and correctly referenced by title.
- 2) Documents should contain; the Name of Party/Licensee/NTRC commenting, address and telephone, fax number and email contacts of commentary author or corporate officer(s) responsible for document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 4) Where possible, comment documents should be submitted in PDF format.
- 5) Where possible, parties should make explicit reference to academic articles, legislative provisions in other jurisdictions, or other sources relied on, and should provide copies of these together with comments. Accurate citations of resources relied on will suffice if copies cannot be provided.
- 6) Where parties are commenting on specific provisions of legal language, alternative language should be proposed where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.

ECTEL is grateful to those parties adopting the recommended guidelines for submitting comments.

EXPLANATORY MEMORANDUM

DRAFT TELECOMMUNICATIONS RETAIL TARIFF REGULATIONS

These Explanatory Notes relate to the Telecommunications Retail Tariff Regulations. These notes have been prepared to assist the reader and do not constitute part of the Regulations. Additionally, the notes are not nor are they meant to be a comprehensive description of the Regulations and where a clause does not appear to require comment none will be supplied.

PART I – Regulations 1-3: “Interpretation”

1. The definitions in section 3 have been expanded from the previous version. Some important additions are the definitions of the various economic methods for regulating retail prices, (e.g. “rate of return regulation,” “price floors”) and “dominant provider.” Other terms in the regulations have the same meanings assigned to them under the Act. As before, the Commission can regulate prices (“rates”), as well as the terms and conditions by which they are imposed.

PART 11 – Regulation 4: “Scope”

2. In light of the existence of Wholesale Regulations, the draft regulations will apply to retail prices only. The scope of the regulations remains essentially the same as from the existing regulations, with a minor exception – the regulations permit the Commission to consider wholesale prices to the extent that they affect or are related to the retail pricing conduct of the provider. It should be noted that the provisions relating to the “objectives” of the regulations have been deleted, as they are unnecessary.

PART III – Regulation 5: “Powers of the Commission”

3. This section provides the Commission with the discretion to regulate retail prices where it becomes necessary and outlines in details the powers of the Commission. It should be noted that the discretion is however limited by placing a restriction on the Commission to exercise these powers in accordance with recommendations from ECTEL.

PART IV – Regulations 6-10: “Rules applicable to all tariffs”

4. The current version of the regulations provided no rules over “unregulated services,” the new regulations establishes some basic minimum standards for all tariffs. These minimum standards include an obligation to ensure tariffs are published, transparent, and disclosed to the Commission, whether or not they are regulated. The major provision is regulation 7, which imposes some minimum standards on every tariff in the market, even though the general principle is that providers are allowed to supply services on the basis of supply and demand. These minimum standards include, among other things, obligations for tariffs to be reasonable, to be supplied above cost, to be easily understandable, to not cross-subsidize services without Commission approval, and to impose charges only for actual usage.
5. The current regulations give no guidance to the Commissions or ECTEL on the meaning of “just and reasonable” or “anti-competitive” tariffs, although tariffs breaching these rules are prohibited. Regulations 8-9 provide guidance to Commissions and ECTEL on the factors they can take into account when assessing whether a tariff breaches either of those rules. The regulations also provide guidance to providers on the kinds of pricing policies to avoid. Regulation 10 deals with contracts between providers and consumers.

PART V – Regulations 11-13: “Rules relating to the treatment of consumers by providers”

6. These provisions relate to the manner in which telecommunication providers impose charges for services or treat their customers of telecommunications services they provide.

PART VI – Regulations 14-30: “Regulating tariffs for telecommunications services”

7. These regulations establish the grounds, procedures and rules for the Commission to regulate tariffs by telecommunications providers. The regulations provide that the Commission should impose price regulation regimes (i.e. price caps, rate of return, price floors, cost-based pricing, etc) in certain specified circumstances, which might be summarized as where a provider is dominant and is abusing or has the potential to abuse its position.
8. Regulation 14 empowers the Commission to, e.g. impose a price cap on a provider where it is “dominant” in a relevant market. In

order to impose the cap, ECTEL and the Commission must declare the provider to be dominant. Where the telecommunications provider is a monopoly or possesses a high level of market share the regulations deem that provider to be dominant. Once a telecommunications provider is declared dominant, ECTEL can proceed with the imposition of a method of regulation.

9. In order to do this, ECTEL will recommend a scheme for regulating the provider's services and will follow the procedure outlined in regulation 23. Therefore, before making the recommendation, ECTEL may, negotiate with the provider about the type of scheme (e.g. cap versus rate of return) or about its terms, (e.g. what services should be included in which baskets, etc.). While ECTEL is negotiating, it is obligated to "liaise and consult," with Commissions. If ECTEL and the provider agree on the terms of the scheme, the Commission carries out a short public consultation and once ECTEL makes a final recommendation, the Commission is mandated to approve it. If ECTEL and the provider don't agree, the Commission carries out a longer public consultation and once ECTEL makes a final recommendation, the Commission can either approve or disapprove the recommendation, but cannot make any changes to it. Further, a provider's licence can be amended to reflect its dominant status. The Minister can impose special conditions on a dominant licensee for providing certain services.
10. Regulation 27 deals with "special services" like directory enquiries, emergency services or operator assistance. The idea is to put beyond doubt that these services are subject to the Commission's oversight without any consideration of market share, etc, as they are important for the general public.
11. Regulation 30 states that the Commission can refrain from regulating services if it chooses, or can regulate a rate for something even though a provider has not been declared dominant, where circumstances require the Commission to step in to protect the public.

PART VII – Regulations 31-41: "Tariff applications"

12. These regulations all relate to the procedures for reviewing tariffs, once certain services are regulated or where any provider wants to introduce new services into the market. The provisions require permission for approval essentially where new tariffs are to be introduced, changes are to be made to regulated prices, or where a provider wants to discontinue a regulated service. This Part permits market trials for new services or short term promotions for

existing regulated services without approval subject to conditions, and spells out special rules for bundle applications. The regulations place the burden of proof on a provider when it makes an application.

13. Regulation 37 deals with “tariff reviews” and empowers the Commission to review the tariff for any service, whether it is regulated or unregulated. The purpose of this regulation is to give the Commission the power to determine whether an unregulated service should be regulated, or whether the tariff for a service complies with the minimum standards of the regulations. It should be noted that the Commission must not approve, amend, or disapprove a tariff unless ECTEL makes a recommendation to that effect.

PART VIII – Regulations 42-45: “Compliance”

14. The failure to provide information to the Commission is a criminal offence (under the Act) and a breach of the regulations is to be deemed a breach of a provider’s licence.

PART IX– Regulations 46-56: “Administration”

15. This section of the regulations deals with provisions relating to the administration of the regulations by the Commission and ECTEL, and contains several savings clauses, which essentially ensure that old price caps or regulated services under the previous regulations are saved by the new regulations.
16. Regulations 46-56 deal with the administration of the regulations by the Commission and ECTEL. Regulation 46 mandates the Commission to publish orders, decisions and directions. Regulations 47-48 require ECTEL to publish its recommendations whenever it is required under these new regulations to make a recommendation, and mandate the Commission to publish and explain its reasons whenever it does not adopt a recommendation from ECTEL.
17. Regulation 49 allows the Commission to extend the period of time for doing anything permitted to be done pursuant to the regulations and in Regulation 50 the Commission after consultation with ECTEL may publish guidelines on the regulations.

18. Regulation 51- 55 are intended to save price regulation regimes filed or approved before the coming into existence of the new regulations and Regulation 56 revokes the previous Regulations.

**TELECOMMUNICATIONS (RETAIL TARIFF)
REGULATIONS, [-]**

ECTEL Member State

No. XX of 20XX

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TELECOMMUNICATIONS (RETAIL TARIFF) REGULATIONS, [20XX]

[ECTEL Member State]

STATUTORY RULES AND ORDERS No.[[•]] of 200X

[xx Day of [Month] 20xx]

IN EXERCISE of the powers conferred by Section [-] of the Telecommunications Act No. X of 20XX the Minister responsible for telecommunications, makes the following Regulations:

PART I

INTERPRETATION

Citation

1. These regulations may be cited as the – TELECOMMUNICATIONS (RETAIL TARIFF) REGULATIONS, 20XX

Commencement

2. These regulations shall come into force on the date of publication in the Gazette.

Definitions

3. (1) In these regulations:
“bill” means the information issued by a telecommunications provider to a customer of the charges levied and due for payment or the information retained by a telecommunications provider for the purpose of recording and enabling debits and credits to be applied to a customer’s account.

“bundle” means a combination of telecommunications services, whether regulated or unregulated, provided by a telecommunications provider under a combined rate or rate formula where the offering of one or more services within the combination is contingent on acceptance of the entire combination.

“consumer” means, in relation to a telecommunications provider, a person who uses or requests a telecommunications service from a telecommunications provider including any person who uses or intends to use the service for the purposes of, or in connection with, a business.

“directory” means a printed document containing the names, numbers and addresses of consumers of telecommunications services which is made available to members of the public.

“directory enquiry facility” means a facility for providing directory information supplied by a telecommunications provider by means of a telecommunications network.

“dominant provider” means a telecommunications provider that is declared to be dominant under regulation 15.

“emergency service” means the police, fire, ambulance, coast guard or other organizations providing a vital service relating to the safety of life in emergencies.

“new telecommunications service” means a telecommunications service or a bundled service which a telecommunications provider does not provide or offer to provide at the time of making an application under regulation 34.

“price cap” means an incentive-based method for regulation of the rates, terms and conditions charged by a telecommunications provider for one or more regulated services, and may include other provisions as to the rates, terms and conditions or the maximum or minimum rates, terms and conditions for any such regulated service.

“price floor” means a price regulation regime for a market or a group of markets in which a telecommunications provider is prohibited from pricing a service or services at less than the prescribed amount;

“price regulation regime” means any method for regulating the services provided by a telecommunications provider;

“rate of return regulation” means a price regulation regime whereby a price is set so as to enable a telecommunications provider to achieve a particular rate of return;

“regulated service” means a telecommunications service that is designated by the Commission as a regulated service under these regulations.

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

“retail prices” means a rate charged by a provider of a telecommunications service to a consumer of that service.

“tariff” means the rates, terms and conditions applicable to a telecommunications service.

“unregulated service” means a telecommunications service that is not a regulated service.

“wholesale prices” means a rate charged by a provider of a service to resellers of that service, or persons who use that service as an input in the provision of other services.

(2) Unless otherwise specified, terms used in these regulations have the meanings assigned to the terms under the Act.

PART II

GENERAL

Scope

4. (1) These regulations apply to telecommunications services that a telecommunications provider provides or offers to provide to one or more customers that are members of the general public.
- (2) Unless the contrary intention appears, these regulations do not apply to interconnection services or wholesale telecommunications services that a telecommunications provider provides or offers to provide to another telecommunications provider as contemplated by the Telecommunications (Interconnection) Regulations, 200x, or by any amendments or revisions of the same.

PART III

POWERS OF THE COMMISSION

Commission to have power to regulate

5. (1) Subject to these Regulations, the Commission shall have the authority to regulate the rates, terms and conditions of telecommunications services offered by a telecommunications provider.
- (2) Without limiting the generality of subsection (1), the Commission shall have the authority to:
 - (a) set, review and approve tariffs for any telecommunications services;
 - (b) require the publication of all tariffs for telecommunications services, whether regulated or unregulated;

- (c) declare a telecommunications provider dominant in a relevant market;
 - (d) designate services as regulated or unregulated;
 - (e) impose price regulation regimes where it deems appropriate;
 - (f) substitute or amend tariffs or any part of a tariff for telecommunications services;
 - (g) investigate and resolve complaints about tariffs by consumers or other providers;
 - (h) order compensation to be paid by a telecommunications provider to a consumer or other provider;
 - (i) request information from a provider relating to the cost of services or other financial information relating to the revenues or operations of a provider;
 - (j) monitor prices for telecommunications services;
 - (k) make such orders and issue such directions to a telecommunications provider in respect of tariffs as it deems appropriate; and
 - (l) do all things reasonable and necessary in respect of regulating tariffs to promote the purpose and objectives of the Act and ensure compliance with any licence.
- (3) In the exercise of the powers of the Commission under sub-regulation (2), the Commission shall act in accordance with a recommendation from ECTEL.

PART IV RULES APPLICABLE TO ALL TARIFFS

Disclosure and publication of information

6. (1) A telecommunications provider shall notify the Commission, of the rates, terms and conditions for its telecommunications services at such times and in such manner as the Commission shall specify and such rates, terms and conditions shall thereafter, subject to these Regulations and the conditions of any licence, be the lawful rates, terms and conditions of such services.
- (2) Except where the Commission otherwise permits in writing, a telecommunications provider shall publish the rates, terms and conditions for its telecommunications services by either:
- (a) publishing in its directory, if any, tariffs for telecommunications services that it currently provides at the time of publication;

- (b) publishing its current tariffs on its website;
 - (c) sending or providing a copy of its tariffs or any part of a tariff to any consumer or group of consumers who may reasonably request such a copy; or
 - (d) placing a copy of its tariffs in every registered office and place of business owned or controlled by the telecommunications provider or body corporate with which it is affiliated, provided that such body corporate provides or offers to provide such services to the public.
- (3) The Commission may in its sole discretion, direct a telecommunications provider to:
- (a) publish tariffs by one or all of the means specified in sub-regulation 2; and
 - (b) publish a tariff for a particular service in a newspaper of wide circulation in [Member State], notwithstanding publication by any other means.
- (4) A telecommunications provider shall ensure that tariffs published for telecommunications services includes information relating to:
- (a) the name and address of the registered office of the provider;
 - (b) a clear description of the services offered;
 - (c) where any subscription or periodic rental charge is applicable, details of which services are included within such charges;
 - (d) standard rates,
 - (e) details of standard discounts and special and targeted tariff schemes in respect of:
 - (i) access;
 - (ii) all types of usage charges; and
 - (iii) any maintenance services.
 - (f) details on any compensation and or refund policy;
 - (g) any types of maintenance offered;
 - (h) standard contract conditions offered, including any relevant minimum contractual period;
 - (i) a means for resolving disputes.

Tariffs to meet minimum conditions

7. (1) Subject to sub-regulation (2), a telecommunications provider shall ensure that prices for telecommunications services, except where regulated by the Commission in accordance with these regulations, shall be determined in accordance with the principles of supply and demand in the market.
- (2) A telecommunications provider shall provide tariffs for telecommunications services that:
 - (a) are fair and reasonable;
 - (b) do not discriminate unduly among similarly situated persons, including the provider and anybody corporate with which it is affiliated;
 - (c) are not anti-competitive;
 - (d) are not priced below long run average incremental cost;
 - (e) except with the written authorization of the Commission, utilize revenues or the allocation of costs from one telecommunications service to cross-subsidize another telecommunications service;
 - (f) are clear, up to date and easily accessible by the general public; and
 - (g) impose charges based on actual usage by a consumer or service provision by a provider.

8. Unreasonable tariffs

- (1) Without prejudice to the right of the Commission to determine that a tariff for a telecommunications service is not fair and reasonable for any reason, the Commission may determine that a tariff is not fair and reasonable where a telecommunications provider proposes any or all of the following:
 - (a) an increase for a rate notwithstanding a reduction in the underlying costs for providing the service;
 - (b) a rate for a service which significantly exceeds costs;
 - (c) more than one rate increase for the same service within a 12 month period;
 - (d) a single rate increase of such a magnitude that it appears unconscionable or contrary to the public interest;
 - (e) terms and conditions which, having regard to the nature of the service, the relative bargaining power of the consumer and the provider involved, and the availability of a substitute service from another provider, are unduly onerous; or

- (f) a tariff that departs materially from accepted industry standards for providing that service to the general public, to the detriment of consumers.

Anti-competitive conduct

- 9. (1) For the purposes of these Regulations, the Commission shall consider any of the following acts by a provider to constitute anti-competitive conduct or acts of unfair competition:
 - (a) bundling services together in such a manner that a consumer is required when purchasing one service to purchase another service that the consumer does not require;
 - (b) providing to a group of consumers more favourable tariffs that are not justified by differences in cost, if that consumer acquires another service that it does not require;
 - (c) attempting to leverage a dominant position in one market so as to increase market share in a market where it is not the dominant provider, in order to gain an unfair advantage in the second market;
 - (d) deliberately reducing retail prices for a service without making corresponding reductions in the wholesale prices for that service, where it also provides that service at wholesale prices to a competing provider, in order to gain an unfair advantage in the retail market;
 - (e) agreeing with other providers on prices, by fixing or otherwise agreeing to manipulate prices for services with other providers;
 - (f) attempting to impose restrictions on the prices charged by another service provider, where the first provider supplies the other with products or services;
 - (g) entering into an exclusive agreement with any person on certain terms and conditions, such that the exclusivity has or may have the effect of substantially lessening competition in a related market; or
 - (h) doing anything or taking any action which has or is likely to have the effect of preventing, substantially restricting, or distorting competition in any market.

Contracts to Contain Minimum Terms

- 10. (1) A telecommunications provider shall ensure that a contract between a provider and a consumer for providing telecommunications services, contains at least all of the following:
 - a) the identity and address of the telecommunications provider;

- b) details of the services provided, the quality of service levels offered and the time for initial connection;
 - c) details of maintenance services offered;
 - d) particulars of tariffs, and the means by which up-to-date information on applicable tariffs and maintenance charges may be obtained;
 - e) the duration of the contract, the conditions of renewal and termination of services and of the contract;
 - f) any applicable compensation or refund arrangements applicable where quality of service levels are not met; and
 - g) the method for initiating procedures for dispute settlement under the contract.
- (2) Where a telecommunications provider intends to modify a condition in a contract with a consumer, which in the opinion of the Commission is likely to be of material detriment to the consumer, the provider shall:
- (a) provide the consumer with at least thirty day's notice of its intention, detailing the proposed modification; and
 - (b) inform the consumer of the right to terminate the contract without penalty if the proposed modification is not acceptable to the consumer.

PART V
RULES RELATING TO THE TREATMENT OF CONSUMERS
BY PROVIDERS

Billing

11. (1) A telecommunications provider shall ensure that a bill to a consumer in respect of the provision of any telecommunications service represents and does not exceed the true extent of any such service actually provided to such consumer.
- (2) Where for any reason, a bill to a consumer contains charges for services which were not actually supplied by a provider, the provider shall:
- (a) reimburse the consumer where the consumer has paid the charges to the extent of any overpayment; and
 - (b) offer compensation to the consumer having regard to any inconvenience caused to that consumer.

Itemized Bills

12. (1) A telecommunications provider shall ensure that, in respect of every bill for telecommunications services, itemized bills are provided upon request and at no extra cost to consumers.
- (2) A telecommunications provider shall ensure that bills are itemized to a sufficient level of detail to enable a customer to:
 - (a) verify the charges itemized in the bill; and
 - (b) monitor and control the consumer's usage and expenditure for the services concerned.
- (3) A telecommunications provider shall not be required to provide an itemized bill where:
 - (a) it provides the relevant service on a pre-paid basis;
 - (b) the consumer has an alternative means, free of charge, of adequately monitoring the consumers' usage and expenditure; or
 - (c) the consumer does not request an itemized bill.
- (4) The Commission may issue directions in order to specify the level of itemization a telecommunications provider is required to provide.

Disconnection

13. (1) A telecommunications provider shall ensure that any measures taken to secure payment by a consumer or to effect disconnection of a service to a consumer:
 - (a) is proportionate and not unduly discriminatory;
 - (b) provides adequate notice in advance of a consequent service disruption or disconnection; and
 - (c) confines any service disruption or disconnection to the service concerned, as far as technically feasible.
- (2) A telecommunications provider shall ensure that it provides at least 30 days notice to a consumer of its intention to effect a service disruption or disconnection of any service as a result of non-payment.
- (3) Except with the written authorization of the Commission, a telecommunications provider shall not disconnect, refuse to supply or refuse to reconnect a service to a consumer, due to non-payment of another telecommunications service by such consumer.

- (4) Notwithstanding sub-regulation 3, a telecommunications provider shall not be required to supply or to reconnect a telecommunications service to a consumer where:
 - (a) it is not technically feasible to provide such a service independently of another service; and
 - (b) the consumer has not paid any outstanding bills and or any applicable reconnection fees, in respect of the other service.
- (5) Except with the written authorization of the Commission, a telecommunications provider shall ensure that reconnection to a telecommunications service is not conditional upon the payment of charges in respect of any period during which such service was not provided, pursuant to a disconnection.

PART VI

REGULATING TARIFFS FOR TELECOMMUNICATIONS SERVICES

Tariffs to be regulated

- 14. (1) The Commission may impose price regulation regimes to regulate tariffs for telecommunication services, in any case where –
 - (a) there is only one telecommunications provider operating a public telecommunications network or providing a public telecommunications service;
 - (b) a telecommunications provider has a dominant position in the relevant market;
 - (c) a sole or dominant telecommunications provider operating a public telecommunications network or providing a public telecommunications service cross-subsidizes another telecommunications service provided by such licensee;
 - (d) the Commission detects anti-competitive pricing or acts of unfair competition;
 - (e) the Commission deems it necessary to ensure a telecommunications provider complies with the requirements of its licence; or
 - (f) such regulation is required in the public interest.

Dominance

- 15. (1) Acting on a recommendation of ECTEL, the Commission may declare that a telecommunications provider is dominant with respect to a

telecommunications network or a telecommunications service where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and consumers.

- (2) In making a determination as to dominance, the Commission shall take account of the following:
 - (a) the relevant market;
 - (b) the market share of the telecommunications provider;
 - (c) the power of the telecommunications provider to introduce and sustain a material price increase independently of competitors;
 - (d) the degree of differentiation among networks and services in the market;
 - (e) technology and market trends; and
 - (f) any other matters the Commission deems relevant

Procedure for Declaration of Dominance

16. (1) ECTEL may recommend that a telecommunication provider be declared dominant in a relevant market by the Commission.
- (2) Where ECTEL recommends a declaration of dominance:
 - (a) The Commission shall initiate a public consultation by publishing a notice in the Gazette, a local newspaper of wide circulation in [Member State], and on the Commission's website, declaring the provider to be dominant and setting out the reasons for making the declaration, and allow a period of not less than 30 but not more than 90 days for the submission of comments by interested persons.
 - (b) Any person likely to be affected by a designation of dominance shall be entitled to make representations to the Commission on any matter relevant to the assessment.
 - (c) ECTEL may recommend the adoption of procedures by the Commission for assessing dominance, including but not limited to identifying information to be requested from the provider and the timeframes for the receipt of submissions, relevant to the determination of dominance, by interested persons.
 - (d) The Commission and ECTEL shall be entitled to draw adverse inferences from the failure of the provider to supply any requested information in respect of an application.

- (e) The Commission shall issue its final determination of market dominance no later than 30 days after receipt of a final recommendation by ECTEL.
- (3) Notwithstanding sub-regulations (1) – (2), a telecommunications provider may consent in writing to being declared dominant for providing services in a relevant market, and where such provider consents, the Commission shall not be required to undertake a public consultation to make a declaration.
- (4) The Commission’s final declaration of dominance pursuant to sub-regulations (1)–(2), or based on a consent to being declared dominant under sub-regulation (3), shall be published in the Gazette, at least one local newspaper of wide circulation in [Member State], and on the Commission’s website, and any designation of dominance made therein shall take effect 14 days after publication.
- (5) The Commission shall not declare a provider as dominant unless ECTEL recommends accordingly.

Sole Provider to be Deemed Dominant

- 17. (1) For the purposes of these regulations, a sole telecommunications provider operating a public telecommunications network or providing a public telecommunications service is to be deemed a dominant provider.
- (2) Subject to the procedures outlined in regulation 23, where a provider is deemed to be dominant in a relevant market, the Commission shall have the authority to regulate the tariffs for telecommunications services provided by such a provider without undertaking a public consultation to declare the provider as dominant.
- (3) The Commission shall publish a notice in the Gazette, a newspaper of wide circulation in [Member State], and on the Commission’s website, the names of all telecommunications providers deemed dominant by virtue of these regulations.

Presumed Dominance

- 18. (1) For the purposes of these regulations, a telecommunications provider with [X]% of market share in a relevant market is presumed to be a dominant provider for providing services in that market.
- (2) Except that the Commission shall only be required to establish the level of a provider’s market share under regulation 16 for a presumption of dominance to arise, where a provider is presumed dominant, the Commission shall be entitled to impose a price regulation regime on the services provided by such a provider, unless the provider is able to prove

to the satisfaction of the Commission, in the course of a public consultation under regulation 16, that it is not actually dominant in a relevant market.

Provider to apply for tariff approval pending final declaration of dominance

19. Notwithstanding regulation 32, the Commission may direct a telecommunications provider to apply for approval of a proposed change to an existing tariff, where a notice under regulation 16(2)(a) has been published by the Commission.

Commission to Review Designation of Dominance

20. (1) Where a telecommunications provider, designated dominant by the Commission under regulation 16, or deemed dominant under regulation 17, considers that it has lost its dominance with respect to a telecommunications network or a telecommunications service, it may apply to the Commission to have its status as a dominant provider reviewed, on such terms and according to such procedures as the Commission may determine, acting on a recommendation from ECTEL.
- (2) A telecommunications provider seeking a review of its status as a dominant provider shall furnish the Commission with any supporting information and data the Commission may regard as relevant to the review, and the Commission shall not consider an application to review a designation of dominance, where such information or data has not been supplied by the provider.
- (3) Where the Commission after conducting a review is satisfied that a provider has lost its dominance in respect of a relevant market, the Commission shall publish a notice in the Gazette, at least one local newspaper of wide circulation in [Member State] and on the Commission's website, designating the provider as non-dominant in a particular market and the designation shall take effect as from the date of publication.
- (4) The Commission shall not designate a provider as non-dominant unless ECTEL recommends accordingly.

Power of the Minister to amend a licence after declaration by Commission

21. (1) For the purpose of imposing any special restrictions or obligations on a dominant provider, ECTEL may, after a declaration of dominance or non-dominance, or a consent to designation of dominance as the case may be, recommend to the Minister responsible for telecommunications, that a dominant telecommunications provider's licence be amended to reflect its status as a dominant or non-dominant provider in a relevant market, and where the Minister accepts the recommendation, the Minister may amend the licence as if the provider had consented to the modification of the

licence under section [provision in the Act relating to modification to be inserted] of the Act.

- (2) Prior to making any recommendation to the Minister under sub-regulation (1), ECTEL shall liaise and consult with the Commission.
- (3) Nothing in sub-section (1) is intended to limit, diminish or prejudice the right of the Commission, acting on a recommendation of ECTEL, to regulate the services of a dominant telecommunications provider in accordance with these regulations, where a final declaration of dominance has been made by the Commission.

Price Regulation Regimes

22. (1) Subject to Regulation 14, the Commission may impose such of the following methods for regulating the tariffs of a dominant telecommunications provider as it deems appropriate:
 - (a) Price Caps;
 - (b) Retail-Minus Pricing;
 - (c) Price Floors;
 - (d) Rate of Return Regulation;
 - (c) Cost-based Pricing;
 - (d) Any other method it deems appropriate.
- (2) The Commission shall not impose a price regulation regime on any telecommunications provider unless ECTEL recommends accordingly.

Procedures for Adoption of Price Regulation Regime

23. (1) ECTEL may recommend a draft price regulation regime applicable to a dominant telecommunications provider, for adoption by the Commission.
- (2) Prior to recommending the adoption of a draft price regulation regime, ECTEL shall provide at least 30 days notice to the dominant telecommunications provider by publishing a notice on its website and providing the dominant telecommunications provider with a copy of the proposed draft price regulation regime.
- (3) At its sole discretion, and for [a period of at least/not more than] 90 days from the date of the notice in sub-regulation (2), ECTEL may make reasonable efforts to reach agreement with the dominant telecommunications provider on the terms of any price regulation regime to be recommended to the Commission.
- (4) During any period where ECTEL makes reasonable efforts to reach agreement with the dominant telecommunications provider under sub-

regulation (3), ECTEL shall liaise and consult with the Commission on the details of the price regulation regime.

- (5) Where ECTEL and the dominant telecommunications provider are able to agree on the terms of the draft price regulation regime:
 - (a) The Commission shall, within 14 days of receipt of a recommendation from ECTEL for adoption of the price regulation regime, initiate a public consultation by publishing a notice in the Gazette, at least one local newspaper of wide circulation in [Member State] and on its website, setting out the details of the price regulation regime, and allow not more than 30 days for the submission of comments by interested persons;
 - (b) The Commission shall adopt any recommendations by ECTEL for the procedures to be followed in the conduct of the consultations;
 - (c) Any person likely to be affected by the price regulation regime shall be entitled to make representations to the Commission on any matters relevant to ECTEL's and the Commission's determinations.
 - (d) Upon expiration of the 30 day period referred to in sub-regulation 5(a), ECTEL may revise the price regulation regime, taking account of any relevant representations made under sub-regulation 5(c), and submit a final price regulation regime for adoption by the Commission, provided that, at any time after the conclusion of the 30 day period, ECTEL may recommend the adoption of the price regulation regime, with or without amendment, and the Commission shall approve it, without modification, within 14 days of receipt of such recommendation.

- (6) Where ECTEL and the dominant telecommunications provider are unable to agree on the terms of the draft price regulation regime:
 - (a) The Commission shall, within 14 days of receipt of such recommendation, initiate a public consultation by publishing a notice in the Gazette, at least one local newspaper of wide circulation in [Member State] and on its website, setting out the details of the price regulation regime, and allow not more than 60 days for comments by interested persons;
 - (b) The Commission shall adopt any recommendations by ECTEL for the procedures to be followed in the conduct of the consultations;
 - (c) Any person likely to be affected by the price regulation regime shall be entitled to make representations to the Commission on any matters relevant to the Commission's determination.

- (d) Upon completion of the 60 day period referred to in sub-regulation 6(a), ECTEL may revise the price regulation regime, taking account of any relevant representations made under sub-regulation 6(c), and submit a final price regulation regime for adoption by the Commission.
 - (e) Within 14 days of receipt of a final recommendation from ECTEL, the Commission shall either approve or disapprove of the price regulation regime as submitted.
- (7) Where approved, the final price regulation regime shall be published by the Commission in the Gazette, a local newspaper of wide circulation in [Member State], and on the website of the Commission, and:
- (a) where approved under sub-regulation 5, shall take effect on the date established in the price regulation regime; or
 - (b) where approved under sub-regulation 6, shall take effect 30 days from the date of publication.
- (8) The Commission shall not amend an approved price regulation regime unless ECTEL recommends accordingly.

Previous regime to continue in force

24. Notwithstanding anything contained in a price regulation regime, the Commission shall be entitled, at its sole discretion, and after consultation with ECTEL, to extend the effective date of an existing price regulation regime, until such time as a new or revised price regulation regime has been adopted.

Provider to be bound by price regulation regime

25. (1) A telecommunications provider shall be bound by the terms of any price regulation regime applicable to such provider for the duration of the regime.
- (2) Without prejudice to the right of the Commission to impose any sanctions under these regulations, and notwithstanding anything contained in any other law, a breach of the terms of a price regulation regime in effect for a provider, is deemed to be a breach of that provider's licence.

Commission to designate services in a price regulation regime as regulated

26. Unless a contrary intention appears from the price regulation regime, the Commission shall designate all services subject to a price regulation regime as regulated services.

Special Services

27. (1) Notwithstanding regulations 15–26, the Commission shall have the authority to regulate the tariffs, if applicable, for special services.

- (2) Special services include calls to -
 - (a) emergency services;
 - (b) operator assistance;
 - (c) directory enquiry facilities; and
 - (d) other services designated by the Commission as special services.
- (3) The Commission may, acting on a recommendation of ECTEL, designate additional services as special services by publishing a notice in the Gazette, a local newspaper of wide circulation in [Member State], and on its website, designating a service to be a special service, and allow not more than 30 days for comments by interested persons.
- (4) The Commission shall not designate an additional service as a special service for the purposes of these regulations unless ECTEL recommends accordingly, and where ECTEL so recommends, a designation of a special service shall take effect 30 days after approval of the recommendation by the Commission.
- (5) Acting on a recommendation of ECTEL, the Commission may adopt special rules in respect of the provision of special services, by providing at least 30 days notice to providers and consumers by publication of such rules on its website, and a telecommunications provider shall comply with such rules, once adopted.

Services to be deemed regulated

28. For the avoidance of doubt, and for the purposes of these regulations –
 - (a) services subject to a price regulation regime;
 - (b) services provided by a sole telecommunications provider; and
 - (c) special servicesare deemed to be regulated services.

Commission to publish and maintain lists

29. (1) The Commission shall publish and maintain an up to date list of all regulated services on its website.
- (2) The Commission may publish a list of markets for services on its website

Commission to have power to regulate where it appears just and reasonable

30. Nothing in regulations 15-29, is intended to limit, diminish or otherwise prejudice the authority of the Commission, acting on a recommendation from ECTEL, to –
 - (a) regulate the tariff for a telecommunications service, in the absence of a declaration of dominance, or the imposition of a price regulation regime, or the designation of a service as a regulated service; or

- (b) forego or forebear from regulating a tariff or a service or group of services, or doing anything under these regulations;

where it appears to the Commission to be just and reasonable to do so.

PART VII TARIFF APPLICATIONS

Services to be Provided in Accordance with Approval

- 31. (1) No telecommunications provider shall provide a regulated service except in accordance with a tariff filed with and approved by the Commission.

- (2) Without limiting the generality of sub-regulation (1), a telecommunications provider shall file an application for approval by the Commission in any case where it proposes –
 - (a) to introduce a new telecommunications service, whether or not it has been declared to be a dominant provider;
 - (b) to change the tariff for a service regulated in accordance with a price regulation regime;
 - (c) to change the tariff for a special service;
 - (d) to change the tariff for a service where it is the sole provider of that service; and
 - (e) to discontinue a regulated service.

Procedures for approval of tariff application

- 32. (1) Except that sub-regulations (1)(c) and 2-3 shall not apply in respect of an application under 31(2)(a), and at least 60 days prior to the date the tariff or the proposed discontinuation of service is to take effect, a provider applying for approval under regulation 31, shall –
 - (a) file an application with the Commission:
 - (i) clearly setting out how the tariff complies with regulations 7-10 and any price regulation regime applicable to the provider;
 - (ii) supported by sufficient, relevant documentary evidence to enable the Commission to assess the application; or
 - (iii) in the case of a discontinuation, clearly setting out its reasons for discontinuing the service;
 - (b) simultaneously provide a copy of the entire application to ECTEL; and

- (c) within 7 days of filing the application for approval under sub-regulation 1(a), publish a notice of the application in accordance with sub-regulation (2).
- (2) A telecommunications provider shall ensure that a notice of an application filed with the Commission under sub-regulation 1 -
 - (a) is published on its website and in a local newspaper of wide circulation in [Member State];
 - (b) contains the name and address of the provider as well as the contact details of the provider and the Commission;
 - (c) clearly and briefly describes the nature of the application and the proposed date the tariff or discontinuation is to take effect; and
 - (d) informs interested parties that they may make submissions to the Commission at any time after the date of publication of the notice.
- (3) In any case where a provider applies to decrease the rate for a regulated service, it shall, in addition to complying with sub-regulation (1), file a declaration with the Commission to the effect that such rate is not less than the long run average incremental cost of providing the service.
 - (4) Any person likely to be affected by the outcome of the application shall be entitled to make representations to the Commission on any matter relevant to the application, and the Commission shall ensure that copies of any comments or submissions from interested parties on the application are forwarded to the provider making the application and to ECTEL within 7 days of receipt.
 - (5) The Commission or ECTEL or both may request a telecommunications provider to file additional information relating to its application.
 - (6) Without prejudice to the authority of the Commission to impose any sanctions under these regulations or the Act for a failure to provide information requested by the Commission, the Commission and ECTEL shall be entitled to draw adverse inferences from the failure of the provider to supply any requested information in respect of an application.
 - (7) Within 30 days of receipt of the application under sub-regulation (1) or of receipt of any additional information under sub-regulation (5), ECTEL shall make a recommendation to the Commission to approve or disapprove the application.
 - (8) The Commission shall not approve an application under sub-regulation (1), unless –

- (a) it has received ECTEL's recommendation;
 - (b) the tariff complies with regulations 7-10;
 - (c) in the case of a regulated service subject to a price regulation regime, the tariff also complies with such regime; and
 - (d) in the case of a special service, the tariff complies with any special rules contained in the provider's licence or adopted by the Commission, in accordance with regulation 27.
- (9) The Commission shall not unreasonably withhold approval for a provider to discontinue a regulated service.
- (10) Where the Commission approves an application to provide a tariff, it may do so with or without conditions.
- (11) Where the Commission determines that a tariff application should not be approved, it may:
- (a) order a telecommunications provider to amend or withdraw the tariff; or
 - (b) prohibit a telecommunications provider from introducing the tariff.
- (12) The Commission shall not approve or amend a tariff unless ECTEL recommends accordingly.

Provider to give notice to Commission of proposed change to unregulated tariff

33. A telecommunications provider shall ensure that it provides at least 30 days written notice to the Commission of any proposed change to a tariff for an existing unregulated service.

New telecommunications services

34. (1) Subject to regulation 32, a telecommunications provider that proposes to introduce a new telecommunications service may file an application to introduce such service on an ex parte basis, and the Commission and ECTEL shall not disclose the contents of the application until such time as the Commission has determined the categorization of the service.
- (2) Where a provider files an application under sub-regulation (1), it shall, in addition to complying with regulation 32, file with the Commission –
- (a) a clear description of the service and a justification for categorizing the service as a new service; and
 - (b) an assessment by the provider as to whether the new service should be designated as regulated or unregulated by the Commission;
- and simultaneously provide a copy to ECTEL.

- (3) The Commission may approve or reject the provider's categorization of the service as a new service in accordance with a recommendation from ECTEL.
- (4) The Commission shall designate as a regulated service, a new telecommunications service that is a bundled service comprising any regulated services.
- (5) Where the Commission has determined the designation of the service as regulated or unregulated, the Commission and ECTEL shall review the tariff for the service in accordance with regulation 32.

Market Trials

35. (1) A telecommunications provider may conduct a market trial for a new service or a short term promotion for a regulated service which may involve a rate change for the regulated service, without prior approval of the Commission, provided that –
 - (a) the market trial or promotion does not exceed 30 days in duration;
 - (b) the market trial or promotion is not similar to a market trial or promotion that concluded less than 60 days earlier; and
 - (c) the telecommunications provider files a tariff and a description of the market trial or promotion with the Commission and ECTEL, at least 30 days prior to the commencement of the market trial or promotion.
- (2) A telecommunications provider may file the information under sub-regulation (1)(c) on an ex parte basis, and the Commission and ECTEL shall not disclose such information until at least such time as the provider has commenced the market trial or short term promotion.
- (3) The Commission may, acting on a recommendation of ECTEL, order a telecommunications provider not to conduct a market trial for a new service or short term promotion for a regulated service, or may require such provider to suspend or discontinue a market trial or promotion in progress, where –
 - (a) the provider has not complied with sub-regulation (1); or
 - (b) the tariff for the market trial or short term promotion contravenes regulations 7-10.
- (4) At the expiration of the market trial or short term promotion, a telecommunications provider shall apply for approval under regulation 32 or 34 as the case may be, where it proposes to make the tariff permanent.

- (5) A telecommunications provider shall not undertake a similar market trial or a short term promotion more than twice within a 12 month period.

Special rules for bundles

36. (1) A telecommunications provider applying for approval to introduce a tariff for a new bundled service shall file additional information to satisfy the Commission that –
- (a) a bundle does not unfairly distort competition;
 - (b) consumers shall be able to obtain the individual services comprising the bundle separately where they require;
 - (c) the individual services comprising the bundle or the bundle as a whole are not provided below long run average incremental cost;
 - (d) bundles are not provided in an unduly discriminatory manner;
 - (e) consumers or providers are likely to obtain considerable benefits or efficiencies from the availability of the bundle;
 - (f) where the bundle relates to services subject to a price regulation regime, it complies with any rules contained in such regime; and
 - (g) the tariff for any bundle otherwise complies with these regulations.
- (2) A telecommunications provider shall comply with any guidelines the Commission may adopt for tariffs related to bundles, provided that such guidelines shall not take effect until the expiration of at least 30 days from the date of publication of such guidelines on the Commission’s website.

Tariff Reviews

37. (1) Without prejudice to the Commission’s powers to impose a price regulation regime in respect of any telecommunications service, the Commission may undertake a tariff review of an unregulated service, in any case where –
- (a) a consumer or a telecommunications provider requests it in writing;
 - (b) the Commission reasonably suspects that a tariff does not comply with regulations 7-10;
 - (c) the Commission has reasonable grounds to believe a proposed change to an unregulated tariff will have a significant impact on consumers in [Member State]; or
 - (d) ECTEL recommends accordingly.

- (2) Where the Commission decides to review a tariff, it shall, at least 30 days prior to the commencement of the review, publish a notice in a local newspaper of wide circulation in [Member State] and on its website:
 - (a) clearly identifying the provider of the service, the service concerned and briefly describing the tariff to be reviewed;
 - (b) concisely stating the grounds for the review;
 - (c) clearly stating the address and other contact details of the Commission; and
 - (d) informing the provider and any interested persons that they may make representations or submissions to the Commission, subject to these regulations and or such other procedures as the Commission may determine, acting on a recommendation from ECTEL.
- (3) A telecommunications provider shall not implement a change to an existing tariff where a notice under sub-regulation (2) has been published by the Commission.
- (4) Within 30 days of publication of the notice in sub-regulation (2), a telecommunications provider shall file the information required under regulation 32(1)(a)-(b), but shall not be required to publish a notice in accordance with regulation 32(1)(c).
- (5) The Commission shall review the tariff for the service in the same manner provided for by these regulations in regulation 32, and the provisions of regulation 32 shall apply, *mutatis mutandis*.
- (6) Unless requested by the provider providing the service, the Commission shall not undertake a tariff review in respect of the same tariff, within 12 months of completion of a tariff review.

Burden of proof

38. In any proceedings before the Commission under these regulations relating to tariff applications, a telecommunications provider shall be required to satisfy the Commission of the validity of any claim, declaration or assertion contained in its application and the Commission shall be entitled to disapprove the application where not so satisfied.

Disapproval of application

39. Where the Commission makes an order disapproving an application filed under these regulations, it shall –
 - (a) issue the order in writing to the provider;
 - (b) issue the reasons for the disapproval no later than 30 days after the date the order is issued; and

- (c) publish the order and reasons for the same in the Gazette, a local newspaper of wide circulation in [Member State] and on the Commission's website.

Provider to amend or withdraw tariff

40. Where the Commission does not approve an application for a tariff pursuant to these regulations, and in accordance with any terms and conditions the Commission may direct, acting on the recommendation of ECTEL, a telecommunications provider shall either –
- (a) take any necessary measures to bring the tariff into compliance with these regulations; or
 - (b) withdraw the service to which the application relates.

Prohibited tariffs

41. Notwithstanding any rule contained in these regulations, the Commission shall not approve any tariff where it is satisfied that such tariff is contrary to the Act, these regulations, the terms and conditions of a provider's licence or other provisions of law.

PART VIII COMPLIANCE

Orders

42. The Commission may issue written orders or directions to a telecommunications provider for the purposes of compelling compliance with these regulations and a telecommunications provider shall comply with any such orders or directions, once issued.

Power of referral to high court

43. Where a telecommunications provider refuses to obey any order, decision or direction by the Commission under these regulations, the Commission may apply to a judge of the High Court for an order compelling the telecommunications provider to comply with the order, decision or direction of the Commission and for such costs and other relief as the Court may allow.

Breach of regulations to be deemed a breach of licence

44. A telecommunications provider that breaches or fails to comply with the provisions of these regulations, or any order or direction of the Commission under these regulations, is deemed to be in breach of the terms and conditions of its licence.

Failure to provide information

45. A person who fails to provide any information requested by the Commission pursuant to these regulations, commits an offence under section [provision dealing with refusals to be inserted] of the Act.

PART IX ADMINISTRATION

Commission to Publish Decisions

46. Unless otherwise specified, the Commission shall ensure that any orders, decisions or directions of the Commission made under these regulations shall be published on its website.

ECTEL to publish recommendations

47. In any case where ECTEL is required, pursuant to these regulations, to make a recommendation to the Commission, ECTEL shall ensure that, within 7 days of making the recommendation to the Commission, it publishes in a local newspaper of wide circulation in [Member State] and on its website, a notice to that effect.

Commission to specify its reasons where ECTEL recommendation not adopted

48. The Commission shall ensure it specifies in a decision, its reasons for non-adoption of a recommendation from ECTEL provided –
- (a) it is empowered by these regulations to make an alternative decision;
 - (b) the decision concerns:
 - (i) a declaration of dominance;
 - (ii) adoption of a price regulation regime; or
 - (iii) approval of a tariff application; and
 - (c) it is required by these regulations to publish such decision.

Extension of Timeframes

49. The Commission may extend the period of time, whether fixed by these regulations or otherwise, for doing anything required or permitted to be done pursuant to these regulations, or in proceedings before the Commission or under its decisions.

Issuance of Guidelines

50. The Commission may from time to time, and after consultation with ECTEL, publish guidelines on any aspect of these regulations on its website, and such guidelines may be of general application or specific to a proceeding.

Services under previous price regulation regime deemed regulated

51. Where, as of the date of these regulations coming into force, a telecommunications provider and ECTEL have agreed on a price regulation regime, all services designated as regulated in that price regulation regime are deemed to be regulated services for the purposes of these regulations, and all services designated as unregulated in that price regulated regime are deemed unregulated services for the purposes of these regulations.

Services under previous price regulation regime deemed approved

52. (1) As of the date of these regulations coming into force, the regulated services referred to in regulation 52 deemed approved hereunder, shall continue as regulated services under these regulations at the rates, terms and conditions, in effect at the date that these regulations come into force.

(2) Nothing in sub-regulation (1) is intended to limit, diminish or prejudice the right of the Commission to review a tariff for an approved service in accordance with these regulations.

Approved Price regulation regime saved

53. A price regulation regime that is approved by the Commission before these regulations come into force shall continue as an approved price regulation regime under these regulations.

Price Regulation Regime Application saved

54. Where an application for approval of a price regulation regime is filed with the Commission before these regulations come into force, the Commission shall remain seized of the application under these regulations at the date that these regulations come into force and as if filed under these regulations.

Filed Price Regulation Regime saved

55. Where ECTEL and a telecommunications provider agree on the provisions of a price regulation regime that is filed with the Commission before these regulations come into force, the provisions of the price regulation regime are deemed as agreed by ECTEL and the telecommunications provider under these regulations.

Revocation

56. The Telecommunications (Tariff) Regulations [20XX] is hereby revoked.

Made this [[•]] day of [[month]], 200X.

Signed:.....
MINISTER FOR TELECOMMUNICATIONS