

CONSULTATION DOCUMENT

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

Adoption in ECTEL States of Regulations Addressing Guidelines for Market Analysis, Access to Network Infrastructure and Wholesale Services, Infrastructure Sharing, Submarine Cable Access, Retail Pricing and Consumer Protection Regulation (Specific Rules for Consumer Protection in the Electronic Communications Sector)

Consultation Document [N0.2 of 2016]

[Date: February 1, 2015]

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's recommendation for the following regulatory instruments in Member States (the "Regulatory Instruments"):
 - a. Regulation on "Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services"
 - b. Regulations on Access to Network Infrastructure and Wholesale Services
 - c. Infrastructure Sharing Regulations
 - d. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations
 - e. Retail Pricing Regulations
 - f. Consumer Protection Regulations - Specific Rules on Consumer Protection in the Electronic Communications Sector
2. A copy of the draft Regulatory Instruments is attached to this Consultative Document.
3. The initial comments period will run from **February 2 to March 11, 2016**.
4. The Comment on Comments period will run from **March 14 to March 25, 2016**.
5. Following the Reply Comments period, ECTEL's Directorate will revise and submit the Regulations to the ECTEL Council of Ministers for its recommendations 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: -
Managing Director
ECTEL
P.O. Box 1886
Vide Boutielle
CASTRIES
St. Lucia
Fax: 1-758-458-1698
Email: consultation@ectel.int

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 CONSULTATION

In order to reduce administrative lags in ECTEL's public consultation processes and to enable a reasonable degree of transparency by sharing of views submitted, ECTEL hereby recommends that parties desirous of making contributions to the attached consultation follow the procedures outlined below.

- 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 the document. This information will enable ECTEL to clarify any comments where necessary, or to facilitate follow-up dialog by ECTEL where required.
- 3) Where specific recommendations require it, commenting parties should indicate clearly via a "Yes" or "No" response, whether they concur or disagree with the recommendation and provide explanations/reasons for each response.
- 4) Where parties have no view or interest in expressing a view on a specific recommendation, parties should indicate "no comment" and number appropriately.
- 5) Responses/comments to specific recommendations should be double spaced and numbered in sequence with the recommendation. Where comments are extensive, paragraphs should be numbered. Pages should be numbered.
- 6) Commenting parties should avoid making comments in the form of tracked changes to consultation documents.
- 7) Where possible, comment documents should be submitted in PDF format.
- 8) 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.
- 9) If relevant, parties commenting on specific provisions of legal language should propose alternative language where possible. Such language should be appropriately highlighted and double spaced. Parties should avoid proposing alternative language in tracked changes to the consultation document.
- 10) Comments may be submitted via letter, e-mail or fax, but should be submitted via one method only. Only comments submitted via e-mail may be acknowledged.

- 11) Commenting parties should expressly indicate or highlight which parts of comment documents contain commercially sensitive or confidential information that should not be published.

ECTEL reserves the right to publish all the responses received to the consultation and provides no undertakings to refuse to publish such comments where requested, on its website or otherwise.

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

EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY (ECTEL)

Consultation on

New Regulations Addressing Guidelines for Market Analysis, Access to Network Infrastructure and Wholesale Services, Infrastructure Sharing, Submarine Cable Access, Retail Pricing and Consumer Protection Regulation (Specific Rules for Consumer Protection in the Electronic Communications Sector)

In ECTEL MEMBER STATES

Table of Contents

1. Introduction	4
1.1 Eastern Caribbean Telecommunications Authority	4
1.2. Background to the Development of the Regulations	4
2. New Regulations	5
3. Regulation on Guidelines on Market Analysis and Assessment of Significant Market Power	6
4. Regulations on Access to Network Infrastructure and Wholesale Services.....	7
4.1 Wholesale Access Provided at a Fixed Location	8
4.2 Special Wholesale Service.....	8
4.3 Passive Backhaul Infrastructure	9
4.4 Dedicated Connections and Capacity (Wholesale Leased Lines)	9
5. Infrastructure Sharing Regulations	9
6. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations	10
7. Retail Pricing Regulations.....	12
8. Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector	13
9. Attachments	14
10. How ECTEL Proposes to Proceed.....	14
11.1 Who are you?	15
11.2 Questions relating to all the draft Regulations	15
11.3 Questions relating to the Market Analysis Guidelines.....	15
11.4 Questions relating to Wholesale Access Regulations.....	16
11.5 Questions relating to the Infrastructure Sharing Regulations.....	18
11.6 Questions relating to the Submarine Cable Access Regulations	18
11.7 Questions relating to the Retail Pricing Regulations	19
11.8 Questions relating to the Consumer Protection Regulation	20

List of Abbreviations

[

EU	European Union
NGA	New Generation Access
NGN	Next Generation Networks
ICT	Information and Communication Technology
FBO	Facilities-Based Operators
SBO	Service Based Operators
NFPs	Network Facility Providers
NSPs	Network Service Providers
IP	Internet Protocol
NTRC	National Telecommunications Regulatory Commission
ECTEL	Eastern Caribbean Telecommunications Authority
VULA	Virtual Unbundled Local Access

1. Introduction

1.1 Eastern Caribbean Telecommunications Authority

The Eastern Caribbean Telecommunications Authority (ECTEL) was established by Treaty signed by five Eastern Caribbean States, the Commonwealth of Dominica, Grenada, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines on 4th May 2000. This Treaty established ECTEL as a regional body with legal personality to promote open entry market liberalization and competition in telecommunications of the Contracting States.

In furtherance of this objective and by virtue of the purposes of ECTEL under Article 4, the functions of ECTEL under Article 5 of the Treaty, section 40, and the Second Schedule, Parts 1 and Part 2 of the Telecommunications Act 2000, ECTEL released for consultation a revision of the draft Electronic Communications Bill (the EC Bill) in October 2015. ECTEL and the NTRCs conducted a consultation upon a revision of the EC Bill, revision of its licencing regime as well as a revision of its licence application forms. Revised Draft Electronic Communications Bill (EC Bill). The comments period ran from Monday 12th October 2015 to Wednesday 11th November 2015. Comment on Comments period ran from Monday 16th November to Friday 27th November 2015.

In furtherance of the above objective and by virtue of the purposes of ECTEL under the above mentioned provisions of the Treaty and the Telecommunications Act 2000, ECTEL has also embarked upon the development of guidelines addressing market analysis, and regulations addressing wholesale access to electronic communications infrastructure and services, pricing of retail electronic communications services, submarine cable access, and protection of consumers within the electronic communications sector.

1.2. Background to the Development of the Regulations

Electronic communications markets in ECTEL Member States were liberalized around 2001 and competition commenced in 2003, first in St. Lucia. In the past several years, the electronic communications markets and market dynamics in ECTEL Member States have experienced substantial change, which has impacted the level and type of competition in each of the Member States. International developments in technology – including, for example, advances in network architecture, wireless applications requiring spectrum – have also impacted markets in ECTEL Member States. The increasing use of high capacity fiber optic networks to provide a broad array of services – such as triple play and quadruple play services – requires substantial investment by electronic communications service providers, with resulting potentially lower marginal costs than earlier networks for provision of an array of services.

Despite the changes, the number of electronic communications service providers in a number of key markets remains limited.

Members States have also been impacted by other recent developments specific to the Caribbean region, including among others:

- The acquisition by Cable & Wireless (LIME) of Columbus Communications (including FLOW and a substantial position in the ECFS submarine cable consortium)
- The acquisition by Digicel of Global Caribbean Network submarine cable network
- Recent upgrades of submarine cables in the region, such as the ECFS and Antilles Crossing cables, which have increased the international capacity available to the region
- Increased concentration in various electronic communications markets, combined with existing vertical integration.

In addition, various recent activities and decisions by service providers have further impacted the markets in ECTEL Member States, including for example service price increases; blocking of “Over The Top” (OTT) services and other restrictions on usage or access by customers to certain services; significant differential pricing between on-net vs. off-net mobile telephone calls, and other concerns. Consumer groups have expressed a range of concerns regarding service pricing and quality, and the level and type of information made available by service providers, which is needed for customers to make informed decisions.

The above trends and prevailing market conditions in the region, with only one or two operators providing nearly all electronic communications services, and meaningful capital costs for fully competitive new entry with relatively small returns, raises key regulatory concerns about the viability of competition in these markets. ECTEL therefore proposes to adopt these new Regulations to facilitate ECTEL and the NTRCs both in reinforcing competitive forces wherever possible, and in protecting consumers from the consequences of non-competitive conditions where they may exist.

2. New Regulations

The Telecommunications Act 2000 (the Act) and the EC Bill, upon enactment, provide the necessary legislative basis for the revision of certain existing regulations and the adoption of new regulations consistent with international best practice, to respond to developments in market conditions and market dynamics within the electronic communications sector in ECTEL Member States.

The new proposed Regulations implement key provisions of the EC Bill with respect to competitive market conditions and related issues, and address certain existing weaknesses identified in the regulatory frameworks of ECTEL Member States.

ECTEL has developed the following new draft regulations for consultation (collectively, the “Regulations”):

1. Regulation on “Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services”
2. Regulations on Access to Network Infrastructure and Wholesale Services
3. Infrastructure Sharing Regulations
4. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations
5. Retail Pricing Regulations
6. Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector

The Market Analysis Guidelines are intended to provide a roadmap with respect to process, procedures and criteria for ECTEL and the NTRCs to apply when assessing electronic communications markets to determine whether to impose specific regulatory obligations, if any, on operators designated as having Significant Market Power (“**SMP**”). The latter four Regulations are intended to provide ECTEL and the NTRCs with a “toolkit” or set of potential obligations from which they may select to impose on licensees, in order to remedy market failures and facilitate residents in accessing Information Society services at transparent conditions and affordable prices. These Regulations address certain types of obligations that may be imposed by the NTRCs and are not exhaustive.

ECTEL and the NTRCs conducted a Stakeholder Meeting on October 22, 2015 to present and discuss regulatory needs and options regarding key issues facing the electronic communications sector, including with respect to key issues addressed in the Draft Regulations. The Stakeholder Meeting followed two days of training for stakeholders in related regulatory areas.

3. Regulation on Guidelines on Market Analysis and Assessment of Significant Market Power

Upon enactment, the EC Bill will provide that the NTRCs shall perform regular market analysis in order to determine if one or more Licensees have significant market power in identified relevant markets. Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, specific

obligations. The EC Bill also provides that the NTRCs shall develop and revise guidelines regarding the manner in which a relevant market will be identified and how a determination of SMP will be made.

The draft “Regulation on ‘Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services’ ” (the “Market Analysis Guidelines”) set out the principles to be adopted and used by the NTRCs in the analysis of markets and effective competition under the EC Bill upon enactment. The Market Analysis Guidelines provide ECTEL and the NTRCs with the principles to follow in order to conduct market analyses. These principles are compatible with the best practices of regulators elsewhere in the world, while taking into account the specificities of the ECTEL electronic communications markets, such as the high level of operator concentration and the average standard of living of citizens. They concern in particular:

- market definition and relevant market determination;
- criteria for assessing Significant Market Power (Dominance); and
- imposition, maintenance, amendment or withdrawal of obligations under the regulatory framework.

4. Regulations on Access to Network Infrastructure and Wholesale Services

The objective of the Regulations on Access to Network Infrastructure and Wholesale Services (the “**Wholesale Access Regulations**”) is to promote competition in retail electronic communications services by defining Wholesale Network Infrastructure and Services, access to which may be imposed on Licensees holding SMP in the associated markets.

Based on the EC Bill and the Market Analysis Guidelines, the NTRCs are authorized to identify those product and service markets within the electronic communications sector whose characteristics may justify the imposition of regulatory obligations. The Wholesale Access Regulations address only relevant markets at the wholesale level – retail issues are addressed in the Retail Pricing Regulations and the Consumer Protection Rules

The NTRCs, upon the recommendation of the ECTEL, may impose on SMP Licensees the provision of following categories of access to Wholesale Network Infrastructure and Services under ex ante regulation:

- Wholesale access provided at a fixed location
- Passive backhaul infrastructure;
- Special wholesale service
- Dedicated connections and capacity (wholesale leased lines)

NTRCs may impose obligations on operators found to hold SMP in these markets including, among others, publication of a Reference Access Offer, non-discrimination, accounting separation, specific access obligations, price controls and other terms the NTRC may determine.

- (a) obligations relating to price controls, including obligations for cost-oriented prices or rates;
- (b) any other terms that the Commission upon ECTEL's recommendation determines.

Licensees must submit access agreements negotiated with other Licensees to the NTRC, which shall, on the recommendation of ECTEL, approve, or decline to approve, an access agreement or require any modification or amendment.

4.1 Wholesale Access Provided at a Fixed Location

The Wholesale Access Regulations authorize the NTRCs to impose wholesale access provided at a fixed location (including shared or fully unbundled access). Such obligations may include requirements that SMP Licensees provide access via the following means:

- physical or passive access enabling transmission of internet and related data services to end user premises such as copper local loop unbundling (“**LLU**”) and copper sub-loop unbundling (“**SLU**”). This also includes all access services available at the physical layer in a point-to-point FTTH architecture, in a point-to-multipoint FTTH architecture or in FTTC/VDSL scenarios;
- Virtual unbundling of local access (“**VULA**”);
- Wholesale broadband access, consisting of non-physical or virtual network access such as bitstream access provided at a fixed location downstream from the access covered by wholesale (physical) network infrastructure access and VULA.

4.2 Special Wholesale Service

In order to enhance competitive opportunities in certain key retail service markets, the Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available Special Wholesale Services, sometimes referred to as a “White Label” service. These services consist of the components and functions of a total retail service offered by an SMP Licensee, and any ancillary services, necessary for another Licensee to efficiently provide an equivalent retail service to end-users that is competitive with the total retail service of the SMP operator and which the other Licensee cannot economically supply by itself or obtain from a public network operator other than the SMP Licensee.

If such a requirement is imposed, the Special Wholesale Service must be provided at a discount price from retail prices at which the SMP Licensee offers such retail service.

4.3 Passive Backhaul Infrastructure

The expected growth in data traffic and required data speeds will significantly increase the need for high speed backhaul solutions in ECTEL Member States. Typically, only vertically integrated operators in the fixed and mobile markets will be able to economically provide backhaul solutions. The Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available passive backhaul infrastructure including to underground facilities such as ducts as well as to dark fiber.

4.4 Dedicated Connections and Capacity (Wholesale Leased Lines)

The Wholesale Access Regulations authorize the NTRCs, acting on the recommendation of ECTEL, to require an SMP Licensee to make available leased lines provided at the wholesale level in two distinct segments - terminal segments and trunk segments. These dedicated connections and capacity services consist of both leased lines for use in the development of an operator's own networks (for example, for use in the connections between elements of the mobile access network) and for support to offers of leased lines or other services in the wholesale and retail markets. Where such provision is imposed, the leased lines must:

- Provide end-to-end transparent and dedicated connections;
- Ensure no speed limitation (and ensure symmetrical and constant transmission speeds); and
- Ensure high levels of service quality.

5. Infrastructure Sharing Regulations

Existing Licensees have invested in electronic communications infrastructure, including fiber optic networks, towers and other facilities. The Infrastructure Sharing Regulations provide that existing and new Licensees may obtain access and use of this infrastructure, in order (among other reasons) to avoid unnecessary duplication of infrastructure that could increase the cost of services within the country and to encourage new entrants into the electronic communications market to promote competition and the introduction of new services.

The Infrastructure Sharing Regulations provide that every Licensee must provide access on a non-discriminatory and equitable basis to all towers, sites and underground facilities of any electronic communication network owned or controlled by the Licensee. A Licensee may deny access only where it can demonstrate that there is insufficient capacity available (taking into account its anticipated requirements) or there are reasonable technical grounds to deny access.

Prices for access to and use of infrastructure must be just, reasonable and based on the costs of the owner of the facilities. The regulations provide that the NTRCs may regulate the rates, terms and conditions for sharing access to any such infrastructure, which must be just and reasonable. The prices for access to and use of different facilities may vary according to the facilities involved, but again must be just, reasonable and based on the costs of the owner of the facilities. The Infrastructure Sharing Regulations are based largely on the draft Access to Facilities Regulation, recommended for adoption by ECTEL in 2008, which were subsequently adopted in Dominica as the Telecommunications (Access to Facilities) Regulations 2010. ECTEL conducted earlier consultations on those draft regulations. However, the Infrastructure Sharing Regulations that form part of this consultation incorporate substantive revisions and updates to those earlier regulations, in order to ensure their effectiveness, address developments in electronic communications markets, take into account the draft Wholesale Access Regulations (which provide for the imposition of access obligations on SMP Licensees) and ensure consistency with the other regulations that are a part of this current consultation process.¹

The following briefly summarizes the substantive additions and revisions compared to the 2008 Access to Facilities Regulations [Dominica Access to Facilities Regulation 2010]:

- Dispute resolution provision consistent with the other draft regulations
- Provisions regarding establishment of a forward deployment scheme, coordination of deployment plans, and implementation of obligations
- Provisions requiring new BTS to meet certain requirements in terms of availability of capacity and other features;
- Provision regarding Information disclosure with respect to existing networks to enable the NTRCs to ensure sharing obligations are fulfilled
- Final and transitional provisions

6. International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations

¹ Note that ECTEL recommends that the Telecommunications (Access to Facilities) Regulations, 2010, adopted in Dominica be revoked upon adoption of these Infrastructure Sharing Regulations and the other regulations that form part of this consultation process.

The structure of the market for wholesale international connectivity in the Member States is characterized by a “vertical” duopoly of Cable & Wireless (ECFS) and Digicel (South Caribbean Fiber – formerly GCN - and Antilles Crossing)², the lack of transparent offer of international capacity and the fact that ECFS and GCN may not exert sufficient competitive pressure on each other

This situation could be viewed as creating barriers to entry for new operators and may reinforce C&W and Digicel market power in potentially competitive retail markets while the landing of a new submarine cable system connecting ECTEL Member States to international markets appears unlikely in ECTEL countries given the small size of markets.

In this context, the EC Bill draft provides that:

1. any owner or person operating a cable landing station in [Name of ECTEL Contracting State] shall —
 - provide, on fair and non-discriminatory terms and conditions, at its cable landing station, access services including physical or virtual co-location services to an Eligible Operator in the [ECTEL Contracting State] requesting access to international submarine cable capacity on a submarine cable system;
 - provide to any Licensee in [Name of Contracting State] that makes the request, access to its landing station of submarine cable or co-location services including virtual co-location;
 - provide to any Licensee in [Name of ECTEL Contracting State] that makes the request, access to international capacity that it holds on a submarine cable connected to its landing station and with the capacity held by third persons on all submarine cables connected to the cable landing station; and
 - publish a reference interconnection and access offer, in the time and manner prescribed, on access to international submarine capacity, and
2. The cost of the services referred to in subsection (1) must be based on cost-oriented rates.

The International Electronic Communications Access to Essential Facilities at Cable Landing Stations Regulations (the “Submarine Cable Regulations”) implement the access obligations in the EC Bill in order to enhance competition in the international connectivity segment and ensure significant reductions in international communication charges in ECTEL Member States.

² Cable & Wireless (ECFS) and Digicel (South Caribbean Fiber – formerly GCN - and Antilles Crossing) enjoy a duopoly in the International Connectivity Capacity Market and respectively provide services in retail markets. Market power in submarine cable markets could potentially be extended to impact related competitive markets in ECTEL Member States.

7. Retail Pricing Regulations

The objective of the Retail Pricing Regulations is to establish the scope and mechanisms for ECTEL and the NTRCs to control the tariffs and related terms and conditions of public retail electronic communications services in the Member States, where a Licensee is found to enjoy SMP in the provision of any such retail services. The Regulations identify NTRC authority, among other matters, to do the following (section 4):

- a) set, review and approve tariffs for any licensed electronic communication services;
- b) declare a Licensee as holding Significant Market Power in a relevant retail service market;
- c) designate services as Regulated or Unregulated;
- d) impose price regulation regimes upon Regulated Services where it deems appropriate;
- e) substitute or amend tariffs or any part of a tariff for Regulated Services;
- f) request information from a Licensee relating to the cost of services or other financial information relating to the revenues or operations of a Licensee;
- g) monitor prices for all electronic communication services;
- h) make such orders and issue such directions to a Licensee in respect of tariffs as it deems appropriate; and
- i) 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 license.

The Regulations further describe the rationale for identifying tariffs to be subject to regulation (section 6), and the process for identifying Regulated Services, including services not subject to competition (section 7), and those provided by a Licensee with SMP (section 8).

The Regulations provide for establishment by the ECTEL and NTRCs of a set of Basic Affordable Service packages (section 9), to ensure the availability of a low-priced minimum service option, for mobile voice service and both mobile and fixed Internet/data services, in the mobile and fixed markets, for those who cannot afford more expensive choices. The Commissions shall be empowered to mandate the terms, conditions, and pricing for such Basic Affordable Services.

The Regulations also include specific provisions defining a range of potential anti-competitive pricing practices (section 10).

Part IV of the Regulations defines the various Obligations that the NTRCs may impose with respect to the retail services of SMP Licensees and the other conditions identified. These include:

- Price Caps regime (section 11)
- Restrictions on Price Squeeze (section 12)
- Cost-orientation of prices (section 13)
- Prohibition on Price Discrimination (section 14)
- Compliance with Relevant Benchmarks (section 15)

The Regulations further set forth the procedures for implementing price regulation, particularly where it is determined that direct tariff control is required (section 17). These procedures include specific steps required for Commission approval of new tariffs and changes to existing tariffs that are subject to such regulation. Separate provision address limitations on promotional or trial tariffs (section 19).

8. Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector

- The Consumer Protection Regulation - Specific Rules on Consumer Protection in the Electronic Communications Sector (the “Consumer Protection Regulation”) address a range of concerns impacting consumers in the electronic communications sector, with the objectives of ensuring that residents have reasonable quality of service, access to all relevant information on the services, that customer contracts are fair, that advertising and sales practices are not misleading, that customer data and privacy are protected, and that consumers may access all services and applications that they choose.

To achieve these objectives, the Consumer Protection Regulation include provisions addressing the following key issues:

- Disclosure and publication of information by Licensees, including tariff information, to ensure that consumers are fully informed regarding their choices, costs, and other service conditions. (sections 5, 6, 7, 8)
- Content and provisions of customer contracts with Licensees, which are subject to Commission approval, and must be clear as to all relevant details, while prohibiting anti-competitive customer lock-in, and allowing cancellation under fair terms and conditions. (sections 9, 10, 11, 12, 13)
- Billing and invoicing practices, which ensure that customers receive all appropriate information concerning their service charges, including notification to prevent unwanted usage overages. (sections 14, 15)
- Restrictions on unfair commercial practices, including provisions relating to misleading advertising claims, clarity and limitations on promotional offers, appropriate disclaimers, and fair sales practices (sections 17, 18, 19, 20, 21, 22, 23).
- Access to emergency services and for persons with special needs. (sections 24, 25)

- Principles and requirements relating to protection of customer data and privacy. (sections 26, 27)
- Provisions on Net Neutrality, to ensure customer access to unaffiliated applications and services without discrimination or blocking by Licensees. (section 28)
- The obligation imposed on Licensees to implement a complaint handling process that-is consumer focused and easy to use (sections 29, 30, 31, 32 and 33)

9. Attachments

A copy of the proposed draft new Regulations is attached hereto as Annex A to this consultation.

10. How ECTEL Proposes to Proceed

- (a) In keeping with best practices ECTEL proposes to engage first with the NTRCs for comments and contributions to this consultation.
- (b) ECTEL will share the draft Regulations with interested parties, Licensees and Stakeholders.
- (c) ECTEL will hold public discussions to engage Licensees, interested parties, and other stakeholders.
- (d) ECTEL will provide opportunities and material to discuss the new Regulations to explain the new regulatory framework.
- (e) Based on the responses received to the current consultation, ECTEL will submit a final recommendation to its Board of Directors and Council of Ministers for approval before onward submission to NTRCs for adoption.
- (f) Upon adoption of Regulations after consultations are completed, ECTEL will encourage NTRCs to conduct the market analysis contemplated by the Market Analysis Guidelines and, if appropriate, impose relevant regulatory obligations.

11. Questions as to Structure and Content of New Regulations ECTEL

Below is a list of questions to be considered by the NTRCs, and stakeholders, which may assist ECTEL in revising and implementing the new Regulations. Interested parties are encouraged to

make suggestions and to contribute to achieving the objective of establishing an effective regulatory regime that encourages competition and addresses the recent developments in technology and market dynamics in the electronic communications sector.

This consultation puts forward ECTEL's suggestions and seeks feedback or contributions. Contributors may suggest different approaches from those suggested. Whatever is recommended ECTEL would appreciate the justification in support of the approach taken.

ECTEL has prepared questions for stakeholders regarding the Regulations, which are provided later in this section. Stakeholders are also welcome to provide their comments not addressed in the questions below.

11.1 Who are you?

Please identify yourself. Are you a regulator, a Stakeholder, interested party or other operator?

11.2 Questions relating to all the draft Regulations

1. Having reviewed the draft Regulations, what are your overall views concerning set of regulatory obligations that may be imposed on operators under certain conditions (for example, but not limited to, after determination that an operator has SMP)? What do you see as the main advantages and benefits? What are your key concerns or misgivings?
2. Having reviewed the draft Regulations, do you feel that the regulations properly and completely reflect the intentions of the Act (including both the current Act and the anticipated EC Bill)?
3. Having reviewed the draft Regulations, do you consider any of the clauses redundant or conflicting? If yes, please provide examples and possible resolutions or suggestions.
4. Are there any other key provisions, which in your opinion should be included in the Regulations? If yes, please provide examples and possible provisions
5. What alternative suggestions if any do you have for addressing issues of competitive growth, fairness, and consumer protection?

11.3 Questions relating to the Market Analysis Guidelines

1. What is your view of the three cumulative criteria to be used to identify markets likely to be subject to *ex ante* regulation (section 1.3(5))? These criteria are based on the EU framework for regulation of the electronic communications sector.
2. The Guidelines also describe factors that the ECTEL and NTRCs should consider in defining relevant markets, including substitutability of supply and demand (section

- 2.2). What is your view on this method, and do you have any suggestions as to how the description in the Guidelines can be strengthened?
3. What is your view of the criteria listed for assessment of SMP? (section 3.2)
4. The Market Analysis Guidelines recognize that a Licensee may enjoy significant market power either individually or jointly with others. What is your opinion regarding the approach stated in the Market Analysis Regulations to assess the potential existence of collective dominance by more than one operator and the impact this may have on the market? (section 3.4)
5. What are your views concerning the provisions authorizing the NTRCs or the ECTEL to collect all information they consider necessary to assess market power in a given market? (section 5)
6. What alternative suggestions if any do you have?

11.4 Questions relating to Wholesale Access Regulations

1. The Wholesale Access Regulations identify the following Wholesale Network Infrastructure and Services, the provision of which may be imposed on a SMP Licensee. under ex ante regulation:
 - a) Wholesale Access provided at a fixed location;
 - b) Passive Backhaul Infrastructure;
 - c) Special Wholesale Service
 - d) Dedicated Connections and Capacity (wholesale leased lines)

What is your view of the type of infrastructure and services subject to potential access obligations noted in the draft regulation? In your view, are there any other components of infrastructure and/or services that should also be subject to wholesale access obligations where SMP is found?

2. The main goal of this regulation is to provide that Licensees can obtain effective access to the infrastructure and services specified, where such obligations are imposed on a SMP Licensee. In your view, will the regulation provide sufficient clear and concrete obligations to make effective such access?

For example:

- a) With regard to Wholesale Access provided at a fixed location
 - i. What is your view of the relevance of imposing VULA instead of or in addition to traditional LLU, taking into account the evolution of networks toward NGA architecture?
 - ii. The draft regulations provide that, the NTRCs on ECTEL Recommendation may mandate access to ancillary infrastructure (for example, dark fibre or

ducts) in order to promote effective competition. Do you think this provision is useful? Insufficient? Do you have any suggestions to clarify these obligations?

b) The Wholesale Access Regulations provide that NTRCs may require an SMP Licensee to make available Special Wholesale Services (sometimes more commonly referred to as “White Label” services), provided at a discounted price from the retail prices at which the SMP Licensee offers such retail service. What is your view of this provision? Should the Regulations add further detail or specificity, for example as to how the price discount should be calculated?

c) With regard to access to Passive Infrastructure:

- i. The draft regulations provide the option to impose access to Underground Facilities such as ducts and dark fiber, or any other passive infrastructure belonging to an SMP operator and needed by other Licensees to provide broadband services. What is your view on these obligations? Which elements of such passive infrastructure should be included in these mandates, and how should they be specified?
- ii. What is your view of the proposed measures to ensure compliance and prevent undue refusal of access requests by SMP Licensees? Are the required justifications and technical details that SMP Licensees must provide in support of such refusal appropriate and sufficient?
- iii. More generally, do you have any suggestions to improve the effectiveness of the proposed access obligations to passive backhaul infrastructure?

d) With regard to the provision of Dedicated Connections and Capacity (wholesale leased lines)

ECTEL considers that this type of access obligation is required to ensure competitive market development and encourage new entrants to the market, by making available affordable wholesale transmission capacity. What is your view of these obligations? Are they appropriate and necessary to support effective new competition? Are the provisions sufficiently detailed and specific to achieve the intended goal?

3. Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

- a) The mandatory content of Reference Access Offer which SMP operators may be obliged to publish (section 10 of the draft regulations);
- b) The other obligations that may be imposed on SMP operators such as non-discrimination, accounting separation obligations, tariff control;
- c) The mechanism of dispute resolution, in order to improve the effectiveness of this process.

11.5 Questions relating to the Infrastructure Sharing Regulations

1. What is your view of the necessity and the applicability of a regulation requiring sharing of electronic communications infrastructure, recognizing that these obligations apply to all Licensees, not only SMP Licensees?
2. What infrastructure should be subject to such an obligation?
3. What is your view of sections 6, 7 and 8 of the Infrastructure Sharing Regulations, which provide that the Commission may require the establishment by Licensees of forward deployment plans and may require coordination of such deployment plans (including identification by the Commission of geographic areas where systematic sharing of new BTSs must be implemented by Licensees through measures including framework sharing agreements)?
4. What is your view of Section 9, which specifies features required of any new BTS, in order to make possible the sharing of a new BTS with at least one third party operator.

11.6 Questions relating to the Submarine Cable Access Regulations

1. What is your view of the necessity and the applicability of a regulation mandating access and co-location to any submarine cable landing station?
2. What is your view of the obligation imposed on a CLS Licensee to provide operators seeking access the option to access capacity on an IRU basis and on a lease basis?
3. Regarding the proposed CLS Reference Access Offer:
 - a) Do you have any comments on the time frame for submission of a draft CLS Reference Access Offer to the NTRC within sixty (60) days from the date of commencement of the Submarine Cable Access Regulations?
 - b) Do you have any comments on the content of the CLS Reference Access Offer, as described in Schedule 1 of the Submarine Cable Access Regulations?
4. Provision of Backhaul Circuits
 - a. What is your view of imposing on a CLS Licensee the obligation to provide backhaul facilities and, where another service provider has requested provision of a backhaul circuit, the obligation to facilitate the interconnection between the operator seeking access and the said service provider at the CLS?
 - b. Do you have any suggestions in order to improve the effectiveness of this obligation?
5. Co-location: do you have any comments on the obligation imposed on CLS Licensees to provide co-location services as described in clause 17 to 22 of the Submarine Cable Access Regulations draft?

6. Tariffs: The EC Bill and the Submarine Cable Access Regulations provide that the CLS Licensees shall determine charges on the basis of cost oriented principles. Under this regulation, the NTRC has the authority to impose on offers by CLS Licensees the rates which it has determined by its own cost calculations on the basis of information at its disposal or, in a transitional manner, on the basis of international benchmarks.
- c) Do you have any comment on these principles, or how they should be applied by the NTRCs?
 - d) Do you have any suggestions on the key issues that should be addressed in the Regulations with respect to the cost accounting methods to be established by the NTRC?

11.7 Questions relating to the Retail Pricing Regulations

1. What is your view of the provisions relating to identification of services that may be subject to retail pricing regulation, due to lack of competition or SMP (sections 6, 7, 8)? Do these provisions adequately reflect the intent of the EC Bill? Please suggest any specific changes or improvements.
2. What is your view of the proposed establishment of Basic Affordable Service Packages (section 9)? Will this be an appropriate and effective means to ensure access to affordable service by low-income consumers? How should the prices for such basic services be determined?
3. Do the provisions on anti-competitive pricing, including Price Squeeze (sections 10 and 12) adequately identify and define the range of potentially anti-competitive pricing behaviour that may require intervention? What are your views on the extent or risk of such practices? Should some provisions or practices be strengthened, and how?
4. Under what circumstances should the NTRCs impose Price Cap regulation rather than direct pricing controls, as outlined in this regulation (sections 11, 16, 17)? What are the advantages and disadvantages of each approach? What guidance should this regulation provide as to their implementation?
5. What are your views on the provisions relating to prohibition on undue price discrimination, particularly the option for the ECTEL and NTRCs to prohibit or control differential pricing between on-net and off-net calls? What would be the impact of such limitations on the market?
6. What are your views on the procedures for implementing price controls (section 17)? Will this be an appropriate and effective mechanism for addressing prices of non-

competitive services? What are the advantages and disadvantages? What alternatives should be considered?

7. What are your views on the provisions relating to promotions and market trials? Are the time limitations on such trials sufficient? Will the provisions ensure that competitive pricing prevails? Please suggest alternative language, if any.

11.8 Questions relating to the Consumer Protection Regulation

1. Do the provisions addressing Licensee obligations with respect to provision of information to consumers (sections 4, 5, 6) adequately define these responsibilities? Are these provisions reasonable and sufficient? What further detail or specifics, if any, should be included?
2. In particular, are the requirements in section 5 for publication of tariffs for services by Licensees sufficient?
3. Do the requirements in section 12 for specific billing information provide sufficient information to customers so that they may fully understand their bill?
4. The Rules contain several key provisions regarding advertising by Licensees, and the types of information and promotional methods that may or may not be employed, to protect consumers from unfair or misleading practices (sections 14 to 21). In your view, will adoption and enforcement of these provisions adequately prevent such inappropriate marketing tactics? Are there any important “unfair commercial practices” currently used in ECTEL markets that are not addressed? Are any of the provisions too burdensome for Licensees? Please suggest any improvements or additional options.
5. In your view, do the requirements for net neutrality (section 29) appropriately balance consumer and operator needs and concerns?
6. What are your views on the process for complaints handling by the Licenses as described Part IV of the draft regulations. Are the provisions of the aforementioned Part IV likely to ensure that customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee?