

Establishment of Harmonized Policies for the ICT Market in the ACP countries

Interconnection and Access: Assessment Report

HIPCAR

Harmonization of ICT Policies,
Legislation and Regulatory
Procedures in the Caribbean



Establishment of Harmonized Policies for the ICT Market in the ACP Countries

Interconnection and Access:

Assessment Report

HIPCAR

Harmonization of ICT Policies,
Legislation and Regulatory
Procedures in the Caribbean



Disclaimer

This document has been produced with the financial assistance of the European Union. The views expressed herein do not necessarily reflect the views of the European Union.

The designations employed and the presentation of material, including maps, do not imply the expression of any opinion whatsoever on the part of ITU concerning the legal status of any country, territory, city or area, or concerning the delimitations of its frontiers or boundaries. The mention of specific companies or of certain products does not imply that they are endorsed or recommended by ITU in preference to others of a similar nature that are not mentioned. This Report has not been through editorial revision.



Please consider the environment before printing this report.

© ITU 2013

All rights reserved. No part of this publication may be reproduced, by any means whatsoever, without the prior written permission of ITU.

Foreword

Information and communication technologies (ICTs) are shaping the process of globalisation. Recognising their potential to accelerate the Caribbean region's economic integration and thereby its greater prosperity and social transformation, the Caribbean Community (CARICOM) Single Market and Economy has developed an ICT strategy focusing on strengthened connectivity and development.

Liberalisation of the telecommunication sector is one of the key elements of this strategy. Coordination across the region is essential if the policies, legislation, and practices resulting from each country's liberalisation are not to be so various as to constitute an impediment to the development of a regional market.

The project 'Enhancing Competitiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures' (HIPCAR) has sought to address this potential impediment by bringing together and accompanying all 15 Caribbean countries in the Group of African, Caribbean and Pacific States (ACP) as they formulate and adopt harmonised ICT policies, legislation, and regulatory frameworks. Executed by the International Telecommunication Union (ITU), the project has been undertaken in close cooperation with the Caribbean Telecommunications Union (CTU), which is the chair of the HIPCAR Steering Committee. A global steering committee composed of the representatives of the ACP Secretariat and the Development and Cooperation - EuropeAid (DEVCO, European Commission) oversees the overall implementation of the project.

This project is taking place within the framework of the ACP Information and Telecommunication Technologies (@CP-ICT) programme and is funded under the 9th European Development Fund (EDF), which is the main instrument for providing European aid for development cooperation in the ACP States, and co-financed by the ITU. The @CP-ICT aims to support ACP governments and institutions in the harmonization of their ICT policies in the sector by providing high-quality, globally-benchmarked but locally-relevant policy advice, training and related capacity building.

All projects that bring together multiple stakeholders face the dual challenge of creating a sense of shared ownership and ensuring optimum outcomes for all parties. HIPCAR has given special consideration to this issue from the very beginning of the project in December 2008. Having agreed upon shared priorities, stakeholder working groups were set up to address them. The specific needs of the region were then identified and likewise potentially successful regional practices, which were then benchmarked against practices and standards established elsewhere.

These detailed assessments, which reflect country-specific particularities, served as the basis for the model policies and legislative texts that offer the prospect of a legislative landscape for which the whole region can be proud. The project is certain to become an example for other regions to follow as they too seek to harness the catalytic force of ICTs to accelerate economic integration and social and economic development.

I take this opportunity to thank the European Commission and ACP Secretariat for their financial contribution. I also thank the Caribbean Community (CARICOM) Secretariat and the Caribbean Telecommunication Union (CTU) Secretariat for their contribution to this work. Without political will on the part of beneficiary countries, not much would have been achieved. For that, I express my profound thanks to all the ACP governments for their political will which has made this project a resounding success.



Brahima Sanou
BDT, Director

Acknowledgements

The present document represents an achievement of the regional activities carried out under the HIPCAR project “Enhancing Competiveness in the Caribbean through the Harmonization of ICT Policies, Legislation and Regulatory Procedures”, officially launched in Grenada in December 2008. It is a companion document to the Model Policy Guidelines and Legislative Texts on this HIPCAR area of work¹.

In response to both the challenges and the opportunities from information and communication technologies’ (ICTs) contribution to political, social, economic and environmental development, the International Telecommunication Union (ITU) and the European Commission (EC) joined forces and signed an agreement aimed at providing “*Support for the Establishment of Harmonized Policies for the ICT market in the ACP*”, as a component of the programme “ACP-Information and Communication Technologies (@CP-ICT)” within the framework of the 9th European Development Fund (EDF), i.e., ITU-EC-ACP project.

This global ITU-EC-ACP project is being implemented through three separate sub-projects customized to the specific needs of each region: the Caribbean (HIPCAR), sub-Saharan Africa (HIPSSA) and the Pacific Island Countries (ICB4PAC).

The HIPCAR Steering Committee – chaired by the Caribbean Telecommunications Union (CTU) – provided guidance and support to a team of consultants led by Ms. Sofie Maddens Toscano and including Mr. J Paul Morgan and Mr. Kwesi Prescod, who prepared the initial draft documents. The documents were then reviewed, finalized and adopted by broad consensus by the participants at the First Consultation Workshop for HIPCAR’s Working Group on ICT Policy and Legislative Framework on Telecommunications matters, held in Trinidad and Tobago on 26-29 October 2009. Based on the assessment report, Model Policy Guidelines and Legislative Texts were developed, reviewed and adopted by broad consensus by the participants at the Second Consultation Workshop held in Suriname on 12-15 April 2010.

ITU would like to especially thank the workshop delegates from the Caribbean ICT and telecommunications ministries and regulators as well as their counterparts in the ministries of justice and legal affairs, academia, civil society, operators, and regional organizations, for their hard work and commitment in producing the contents of the HIPCAR model texts. The contributions from the Caribbean Community Secretariat (CARICOM) and the Caribbean Telecommunications Union (CTU) are also gratefully acknowledged.

Without the active involvement of all of these stakeholders, it would have been impossible to produce a document such as this, reflecting the overall requirements and conditions of the Caribbean region while also representing international best practice.

The activities have been implemented by Ms Kerstin Ludwig, responsible for the coordination of activities in the Caribbean (HIPCAR Project Coordinator), and Mr Sandro Bazzanella, responsible for the management of the whole project covering sub-Saharan Africa, the Caribbean and the Pacific (ITU-EC-ACP Project Manager) with the overall support of Ms Nicole Darmanie, HIPCAR Project Assistant, and of Ms Silvia Villar, ITU-EC-ACP Project Assistant. The work was carried under the overall direction of Mr Cosmas Zavazava, Chief, Project Support and Knowledge Management (PKM) Department. The document has further benefited from comments of the ITU Telecommunication Development Bureau’s (BDT) Regulatory and Market Environment Division (RME). Support was provided by Mr. Philip Cross, ITU Area Representative for the Caribbean. The team at ITU’s Publication Composition Service was responsible for its publication.

¹ HIPCAR Model Policy Guidelines and Legislative Texts, including implementation methodology, are available at www.itu.int/ITU-D/projects/ITU_EC_ACP/hipcar/index.html

Table of Contents

	<i>Page</i>
Foreword	i
Acknowledgements	iii
Table of Contents	v
Section I: Summary and Introduction	1
Section II: Trends in Access and Interconnection Legislation and Regulation	3
2.1 Introduction	3
2.2 WTO Framework	3
2.3 Case Studies of Interest.....	6
2.4 Impact of Convergence	10
Section III: Key Factors	13
Section IV: Methodology for Analysis	15
4.1 Obligation of cost-oriented, transparent and non-discriminatory interconnection.....	17
4.2 Definition and method for determining dominant operator or SMP status.....	24
4.3 Regulated process for interconnection negotiation	30
4.4 Reference Interconnection Offer and approved interconnection agreements	38
4.5 Obligation to share infrastructure.....	44
4.6 Unbundling of the local loop.....	49
4.7 Regulatory intervention on Mobile Termination Rates (MTR)	53
4.8 Dispute Resolution	55
4.9 International gateways access	64
Section V: Legal Texts Consulted	67
5.1 Regional Texts	67
5.2 International and Harmonized Texts Consulted	70
Annex 1 Participants of the First Consultation Workshop for HIPCAR Project Working Groups dealing with Telecommunications Acts – Universal Access & Service; Access & Interconnection; and Licensing.	73

Section I: Summary and Introduction

This first paper has been prepared in accordance with the Phase I Workplan for the Working Group on Access and Interconnection under the HIPCAR project which provides for a critical assessment report of existing Telecoms Acts in the region covering the work area. This report was discussed and adopted by the HIPCAR Working Group on Licensing and Interconnection which met in Port-of-Spain, Trinidad and Tobago, from 26 to 29 October 2009.

The aim of this first paper is to provide a common reference document that can be used to assess consistently the framework in the various countries, thus giving an overview of the key factors in relation to Access and Interconnection as distilled from international best practices and illustrating how they are reflected in the different Caribbean legal and regulatory telecommunications frameworks. Such an assessment will also provide the basis for policy guidelines and model regulatory texts provided for under Phases 2 and 3. In addition, this discussion paper identifies some of the best practices from around the world related to the key factors to determine the direction that regulatory trends are moving. This section also provides a comparison between target language from other countries around the world and regional texts. The aim of including this target language is to illustrate how other comparable countries or regions have dealt with such key issues. Another aim is to provide the basis for work to define the Policy Guidelines and Model Regulation on Access and Interconnection.

The *Summary Chart of Key Elements and Status* included at the start of Section III, presents a quick overview of the status in the different countries. Section II also provides a detailed overview of best practices from around the world and identifies key factors and regulatory trends relating to Access and Interconnection. The report provides trends and identifies key issues, and provides some background to the importance of these concerns to the efficacy of telecommunications sector liberalization.. The report also takes account of changes that have been introduced in legal and frameworks to accommodate convergence and competition. It thereafter focused on a variety of principles which were found to be common in the administration of these concerns on review of International Trends and Best Practices in the EU, US, and the Far East.

These principles include:

- Obligation of cost-oriented, transparent, and non-discriminatory interconnection
- Definition and method for determining dominant operator or SMP status
- Regulated process for interconnection negotiation
- Reference Interconnection Offer and approved interconnection agreements
- Obligation to share infrastructure
- Unbundling of the local loop
- Determination of (M)TR's
- Dispute Resolution

Section I

Section III of this paper presents a snapshot of how the principles are reflected (or not) in legal and regulatory texts from the beneficiary countries under the HIPCAR Project (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago), thereby classifying the situation in the beneficiary countries as related to regulation on Access and Interconnection in categories ranging from poor (texts do not make reference at all to key issues) to fair (there is some mention of the issue but it is not detailed or not at an appropriate level, e.g. in some form of consultation document or draft regulation or even in a regulation which is not in line with primary legislation) to good (the texts reflect all elements categorized under a key issue). This section also provides a comparison with target language from other countries around the world. The aim of including this target language is to illustrate how other comparable countries or regions have dealt with such key issues. Another aim is to provide the basis for future work to define Policy Guidelines and model regulation on Access and Interconnection.

The first four principles are found to be commonly adhered to among CARICOM states, including the obligation for cost-orientation, non-discrimination and transparency and well as the Regulatory Authorities having roles in both determining the dominant operator in that market, and in overseeing the process of negotiation. Similarly, it is also common to find the use of Reference Offers as a critical tool to achieving the above stated objectives. It is however noted that the second four principles, considered sub-ordinate or more contemporary frameworks, were largely absent across the region. These aspects of best practice which needed more elaboration included the need for a clear framework that allowed for the provision of the unbundled the local loop to the entrant, and ensuring regulatory oversight and intervention in both the cases of timely dispute resolution as well as the determination of Mobile Termination Rates (MTR's).

Section II:

Trends in Access and Interconnection Legislation and Regulation

2.1 Introduction

Interconnection is essential for the development of competition in telecommunications. Interconnection enables consumers of one network to successfully complete a call to another consumer irrespective of whether the originator of the call and the call recipient are connected to the same network. Without interconnection, new operators would be obliged to duplicate expensive infrastructure and consumers would have to subscribe to the different operators' networks to be able to call each other. Interconnection enables consumers to contract with the supplier of their choice and still be able to receive all incoming calls, regardless of where they originate.

Regulators play a critical role in overseeing interconnection. In most cases, they must review relevant economic principles regarding interconnection pricing, analyze and propose interconnection costing approaches, develop common cost models to be utilized by all operators, and develop interconnection guidelines and regulations. To facilitate competition, regulators must ensure that the interconnection framework is clearly defined and that interconnection charges between networks are based on objective, economically sound, and solidly substantiated costs.

Before the market is fully competitive, interconnection regulation is generally applied asymmetrically on dominant versus non-dominant operators to ensure that non-dominant operators have access to interconnection services controlled by dominant operators. Generally, dominant operators are required to publish reference interconnection offers and interconnection agreements, which serve to inform and facilitate interconnection by new entrants and other non-dominant operators, and to discourage discriminatory behaviour by dominant operators in providing interconnection.

Given its fundamental impact on the overall operation of competing telecommunications networks, interconnection is often the most contentious regulatory issue facing a regulator when a market becomes more competitive. Interconnection is also one of the most crucial issues for operators as it allows their customers to have ubiquitous access to all other customers – whether on the same network or a different one. It is therefore one of the most important regulations to put in place before competition can be successful. Usually, the role of the regulator is to review relevant economic principles regarding pricing; analyze and propose interconnection costing approaches; develop common cost models to be utilized by all operators; and develop guidelines and regulations.

2.2 WTO Framework

The World Trade Organization (WTO) *Agreement on Basic Telecommunications* (BTA) which came into force in 1998 includes obligations relating to interconnection which are applicable to WTO Members, or countries seeking to join the WTO. The BTA established the basis for structural reform of the telecommunications sector aimed at removing barriers to entry and competition, and the adoption by the majority of members of certain pro-competitive regulatory principles that are set out in the "*Reference Paper on Regulatory Principles*."

Section II

If a Member country fails to comply with its WTO obligations, other Members may take a dispute to the WTO. That is because WTO commitments constitute legally binding obligations on members, enforceable through the WTO's binding dispute settlement process. As a result, the impact of WTO commitments on a country's regulatory framework can be seen through voluntary compliance of a member's commitments or as a result of enforcement through the WTO's dispute settlement mechanism.

Key WTO obligations for interconnection are as follows:

- Interconnection with "Major Suppliers" must be assured:
 - At any technically feasible point in the network;
 - In a timely fashion;
 - On non-discriminatory and transparent terms (including quality and rates);
 - Sufficiently unbundled to avoid charges for unnecessary components; and
 - At non-traditional interconnection points if the requestor pays charges.
- Procedures for interconnection to major suppliers must be made public.
- Agreements or the model interconnection offer of major suppliers must be made public.

The WTO Reference Paper influenced how many countries have defined their access and interconnection regime². Section 2 of the WTO Reference Paper contains extensive requirements relating to interconnection. Interconnection is defined very broadly to cover all types of telecommunications services that are included in a WTO Member's Schedule.

The Reference Paper provides that a WTO Member must ensure that a major supplier provides interconnection:

- At any technically feasible network point,
- On non-discriminatory terms, conditions,
- At non-discriminatory and cost-oriented rates,
- Of a quality no less favorable than provided for its own like services, those of non-affiliated suppliers or subsidiaries or other affiliates,
- In a timely fashion,
- Sufficiently unbundled so that the supplier need not pay for network components it does not need, and
- Upon request, at network termination points other than those offered most users, subject to reasonable charges.

In addition, the Reference Paper contains transparency requirement respecting interconnection. Procedures applicable to obtaining interconnection to the major supplier's network must be publicly available and the major supplier also must publish a reference interconnection offer or make public all its interconnection agreements.

² Commitments in telecommunications services were first made during the Uruguay Round (1986-1994), mostly in value-added services. In extended negotiations thereafter (1994-1997), Members negotiated on basic telecommunications services. In February 1997, at the close of the three-year negotiations, the commitments of 69 governments were annexed to the Fourth Protocol of the General Agreement on Trade in Services as the Agreement on Basic Telecommunications Services (BTA). As part of their Schedules, certain WTO Members made "additional" commitments by agreeing, either in whole or in part, to the "Telecommunications Reference Paper." The Reference Paper provides for six regulatory principles: i) competitive safeguards; ii) interconnection; iii) universal service; iv) public availability of licensing criteria; v) independent regulators; and vi) allocation and use of scarce resources.

Finally, Section 2 of the Reference Paper requires that there be an independent body to resolve disputes between the major supplier and its competitors regarding the appropriate terms, conditions and rates for interconnection. This interconnection dispute settlement mechanism must be available upon request and must make decisions “within a reasonable period of time.”

IMPACT OF WTO ON NATIONAL LEGISLATION

The impact of WTO commitments in the shaping of national legislation also can be seen in the context of the dispute settlement mechanism provided in GATS. WTO Dispute Settlement Body (DSB) rulings are binding for the members upon which judgment has been passed, and are automatically adopted unless there is a consensus to the contrary. In this sense, dispute settlement constitutes a coercive mechanism for enforcing members’ WTO commitments in such cases where voluntary compliance is not forthcoming. Hence, such disputes may arise, for example, when one member takes, or omits to take, certain actions that another member state deems a breach of pre-existing WTO commitments. WTO rules exclude individual service providers from directly seeking relief, but the service provider may seek its country of origin government to put pressure on another country’s government to comply with its GATS obligations, and ultimately activate the dispute settlement procedure.

To date, only one telecommunications case has been submitted to the DSB: a case involving trade of services between the United States and Mexico, which resulted in the Report of the Panel on Mexico’s Measures Affecting Telecommunications Services (the Panel Report). In 2000, after failed bilateral talks, the United States initiated a WTO consultation proceeding claiming Mexico’s failure to comply with its commitments under the GATS Annex on Telecommunications and the Reference Paper with respect to basic and value-added services. Mexico’s schedule of commitments (adherence to the Reference Paper, market access, and national treatment) required it to:

- ensure cost-orientated interconnection;
- prevent anticompetitive practices; and
- ensure that foreign service suppliers have access to Mexican public telecommunications networks.

The United States claimed that Mexico:

- Failed to ensure that local operator, Telmex, provide interconnection to U.S. suppliers on cost-orientated, reasonable rates, terms and conditions (i.e., inconsistency with interconnection principles under the Reference Paper).
- Maintained legislation that failed to prevent anticompetitive practices by Telmex, allowing it to establish international interconnection rates on behalf of all of the suppliers in the market (i.e., inconsistency with the competitive safeguards principles under the Reference Paper).
- Failed to comply with the Annex on Telecommunications, as U.S. suppliers were unable to access Mexico’s public telecommunications network for the provision of certain international services (i.e., non-facilities based services through Mexican commercial agencies, “comercializadoras,” and international simple resale through cross-border leased circuits).

As a result of the failed consultation proceedings, in 2002, a Panel was constituted, concluding with the DSB Panel Report in June 2004 which found that Mexico had breached several of its WTO telecommunications obligations. As a result, the United States and Mexico agreed on an implementation timetable addressing the compliance issues laid out in the Panel Report. According to such compliance agreement, Mexico was required to:

- Revise its International Long Distance Rules (the ILD Rules), eliminating those aspects of the existing ILD Rules that implemented the “uniform settlement rate” system, the “proportional return” system, and the requirement that the carrier with the greatest proportion of outgoing traffic to a country negotiate the settlement rate on behalf of all Mexican carriers for that country. All such practices were deemed by the Panel Report to be a breach of Section 1.1 of the Reference Paper.⁴⁶ Thus, the new ILD Rules had to allow the competitive commercial negotiation of international settlement rates.

- Maintain regulations authorizing the issuance of permits for the resale of international long distance public switched telecommunications services. Such regulations would have to regulate commercial agencies (comercializadoras) established in Mexico and permit them to purchase and resell these telecommunications services through the use of capacity of concessionaires. The absence of such regulations was deemed by the Panel Report to be a breach of Article 5 (a) and (b) of the Annex on Telecommunications.

In light of this compliance schedule, Mexico has undertaken the following reforms:

- New international long distance telecommunications rules⁴⁷ were approved providing for the competitive negotiation of settlement accounting rates or international interconnection rates, including prices for incoming and outgoing traffic.⁴⁸ In addition, foreign operators now are free to decide which Mexican operator they wish to use to terminate their traffic in Mexico.⁴⁹
- With regards to the rules for licensing of “comercializadoras,” Mexico issued Regulations for the Resale of Long distance and International Long distance Telecommunications Services, allowing the commercial resale of long distance and international long distance services originating in Mexico. This regulation authorizes the issuance of licences for the resale of international long distance public switched telecommunications services.

Source: *ICT Regulation Toolkit, Module 6: Legal and Institutional Framework, Section 3.2.1 Role of the World Trade Organization*, available at: www.ictregulationtoolkit.org/en/Section.1651.html

2.3 Case Studies of Interest

2.3.1 EU Framework

The European Union approach to Access and Interconnection is also interesting to analyze since many countries around the world, including in the Caribbean, Latin America, Africa, the Middle East and the Asia Pacific region have looked to these procedures as a model.

Directive 2002/19/EC (Access Directive) recognizes that in markets where there continue to be large differences in negotiating power between undertakings, and where some undertakings rely on infrastructure provided by others for delivery of their services, it is appropriate to establish a framework to ensure that the market functions effectively. The Access Directive also provided that National Regulatory Authorities should have the power to secure, where commercial negotiation fails, adequate access and interconnection and interoperability of services in the interest of end-users. In particular, the Access Directive provided that they may ensure end-to-end connectivity by imposing proportionate obligations on undertakings that control access to end-users. Control of means of access may entail ownership or control of the physical link to the end-user (either fixed or mobile), and/or the ability to change or withdraw the national number or numbers needed to access an end-user's network termination point.

Directive 97/33/EC had already laid down a range of obligations to be imposed on undertakings with significant market power, namely transparency, non-discrimination, accounting separation, access, and price control including cost orientation.

The concept of Significant Market Power was maintained in the 2002 Framework. Indeed, Directive 2002/21/EC (the Framework Directive) states in its preamble that it is essential that ex ante regulatory obligations should only be imposed where there is not effective competition, i.e. in markets where there are one or more undertakings with significant market power, and where national and Community competition law remedies are not sufficient to address the problem.

Section II

The Framework Directive called upon the Commission to draw up guidelines at Community level in accordance with the principles of competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. The Framework Directive also called for the Guidelines to address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. It also provided that National Regulatory authorities should analyze whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighboring parts of territories of Member States considered together. The Framework Directive also provided that an analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable.

Article 14 of the Framework Directive defines that an undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. The Article also provides though that where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

The Framework Directive provides for specific procedures for determination of significant market power, and calls upon the Commission to adopt Recommendations on relevant product and service markets, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Access Directive. In its first Recommendation (Commission Recommendation of 11/02/2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services) the Commission identifies that here are in the electronic communications sector at least two main types of relevant markets to consider: markets for services or products provided to end users (retail markets), and markets for the inputs which are necessary for operators to provide services and products to end users (wholesale markets). Within these two types of markets, further market distinctions may be made depending on demand and supply side characteristics.

The Recommendation recognizes though that in identifying markets in accordance with competition law principles, recourse should be had to the following three criteria.

- The first criterion is the presence of high and non-transitory entry barriers whether of structural, legal or regulatory nature³
- The second criterion admits only those markets the structure of which does not tend towards effective competition within the relevant time horizon. The application of this criterion involves examining the state of competition behind the barriers of entry
- The third criterion is that application of competition law alone would not adequately address the market failure(s) concerned⁴.

³ Given the dynamic character and functioning of electronic communications markets, possibilities to overcome barriers within a relevant time horizon have also to be taken into consideration when carrying out a prospective analysis to identify the relevant markets for possible ex ante regulation

⁴ Commission Recommendation of 11/02/2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, Preamble 9

However, there are two key concepts within this framework:

- First of all, the markets need to be identified where dominant positions need different intervention than under competition law – for that, Member States apply the “3 criteria test”, which identifies markets which are susceptible to ex ante regulation
- Once the markets have been identified, then the “SMP test” needs to be carried out – this identifies operators on which remedies need to be imposed.

The Framework Directive provided that where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations below. Furthermore, in cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market. An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations⁵.

Under the Access Directive, the most important obligation that may be imposed on a network operator designated with SMP is that the operator may be enforced to meet “requests for access to, and use of, specific network elements and associated facilities”, i.e. to give third parties access to its infrastructure⁶. Other obligations that may be imposed under the Directive are obligations to make information public, for example prices or technical information facilitating access, obligations of non-discrimination, whereby the operator is obliged to apply equivalent conditions in equivalent circumstances⁷. In order to ensure the enforcement of the two obligations above, an obligation of accounting separation may be imposed, whereby the undertaking is forced to separate the total revenues into different accounts to facilitate the estimation of fair prices of services at different levels of production⁸. Measures of cost recovery and price controls (in order to prohibit excessive or predatory prices, and/or price squeezes) may be imposed under certain conditions⁹, as well as obligations other than those mentioned above in exceptional circumstances¹⁰.

The selection of obligations in a specific case shall be based on the nature of the problem identified in the market analysis¹¹. Furthermore the imposition of an obligation has to be proportionate and justified in the light of the objectives of sector specific regulation; (i) promotion of competition, (ii) the development of the internal market, as well as it has to be (iii) in the interest of the EU citizens¹².

2.3.2 Singapore

The 2005 Competition Code¹³ provides that market forces are generally far more effective than regulation in promoting consumer welfare and that markets are most likely to provide consumers with a wide choice of services at just and reasonable prices. Therefore, to the extent that markets or market segments are competitive, IDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct. The Code also provides that to the extent that a given market is not yet competitive, significant *ex ante* regulatory intervention is likely to remain necessary. Where this is the case, IDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IDA’s stated goals.

⁵ Directive 2002/21/EC, Article 16 (3)

⁶ Directive 2002/19/EC, Article 12

⁷ Directive 2002/19/EC, Articles 9 and 10

⁸ Directive 2002/19/EC, Art. 11

⁹ Directive 2002/19/EC, Art. 13

¹⁰ Directive 2002/19/EC, Art. 8 (3)

¹¹ Directive 2002/19/EC, Art. 8 (4)

¹² Directive 2002/21/EC, Article 8

¹³ 2005 Singapore Competition Code, available at: www.ida.gov.sg/doc/Policies%20and%20Regulation/Policies_and_Regulation_Level2/TCC_2005.pdf

Section II

IDA's regulatory framework on interconnection is found in Sections 5 and 6 of the Telecom Competition Code 2005. It defines interconnection as the linking of communications networks to ensure that users of one communications network can access the communications networks and services of other telecommunications operators. Interconnection is necessary to promote effective competition in a multi-network, multi-operator environment. Under the Code, all licensees are required to interconnect with each other, whether directly or indirectly, to ensure seamless any-to-any communications throughout Singapore¹⁴. IDA may grant exemptions from specific provisions of the Telecom Competition Code 2005 where good cause is shown.

IDA strongly encourages its licensees to enter into Interconnection Agreements through commercial negotiations. IDA, however, has taken a more active role in ensuring the adoption of just, reasonable and non-discriminatory Interconnection Agreements involving dominant licensees.¹⁵ IDA requires a dominant licensee to provide Interconnection Related Services to facilities-based and service-based licensees under its Reference Interconnection Offer (RIO).

The Code also provides that licensees who seek to interconnect with a dominant licensee may do so via three options:

- (a) Interconnection pursuant to an approved RIO;
- (b) Interconnection pursuant to an existing Interconnection Agreement;
- (c) Interconnection pursuant to an Individualised Interconnection Agreement¹⁶.

Section 7.2 of the Code contains specific provisions relating to infrastructure sharing, which it defines as an arrangement under which a Licensee that controls infrastructure used to support the provision of telecommunication services allows other Licensees to jointly use the same infrastructure, at cost-based prices, and on non-discriminatory terms and conditions. The same section also provides that in general, a Licensee is not required to "share" the use of any infrastructure that it controls with its competitors since each Licensee is expected to build or lease the use of the infrastructure that it requires.

However, where IDA finds that specific infrastructure constitutes Critical Support Infrastructure, or where IDA concludes that it is in the public interest¹⁷, IDA may mandate that a Licensee share the use of the infrastructure with other Licensees. According to the Code, IDA will only deem the infrastructure to constitute CSI if it concludes that:

- a. the infrastructure is required to provide telecommunication services;
- b. an efficient new entrant would neither be able to replicate the infrastructure within the foreseeable future, nor obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
- c. the Licensee that controls the infrastructure has sufficient current capacity to share with other Licensees;
- d. the Licensee that controls the infrastructure has no legitimate justification for refusing to share the infrastructure with other Licensees; and
- e. failure to share the infrastructure would unreasonably restrict competition in any telecommunication market in Singapore¹⁸.

¹⁴ Competition Code 2005, Section 5.1

¹⁵ Competition Code 2005, Section 6.1.2

¹⁶ Competition Code, Section 6.2

¹⁷ In certain cases, IDA may determine that the public interest requires that infrastructure to be shared. Therefore, even if such infrastructure does not constitute CSI, IDA may, in consultation with other government agencies where appropriate, require the sharing of such infrastructure.

¹⁸ 200 Singapore Competition Code, Section 7.3.1

IDA will resolve disputes between licensees arising out of the failure of licensees to enter into Individualised Interconnection Agreements or Infrastructure Sharing Agreements. IDA may also resolve disputes regarding implementation of an interconnection agreement entered into with a dominant licensee or a Sharing Agreement entered into pursuant to IDA's dispute resolution procedures.

Except as otherwise specified, IDA will not intervene in other disputes relating to matters provided for in the Telecom Competition Code 2005. Instead, licensees are required to resolve their disputes in accordance with the dispute resolution provisions of their respective agreements, or in the absence of any agreement, through good-faith commercial negotiations.

Where any dispute has been validly raised to IDA for resolution, IDA will adopt the dispute resolution process set out in the Dispute Resolution Guidelines issued by IDA.

IDA may require the sharing of any licensee's infrastructure. IDA will deem these infrastructures as Critical Support Infrastructure (CSI) according to the standards defined in Sub-section 7.3.1 of the Telecom Competition Code 2005.

2.4 Impact of Convergence

In this era of convergence, regulators are facing new issues such as how to transition different rights of individual groups of licensees under a specific interconnection regime to a unified licensing regime. Regulators are also facing the challenge of how to address the complexities created by a multiplicity of operators interconnecting among themselves.

The telecoms sector is still largely dominated by incumbent operators, in most cases former monopolies. In markets recently opened to competition, they inevitably dominate the sector, and so regulators need to ensure that they do not use their position unfairly to squeeze out new competitors. Granted access, many new entrants have demonstrated that they can compete strongly in recent years, raising standards in the sector to the benefit of consumers.

However, traditional interconnection regulation was established for switched voice services, where rates were generally based on time (i.e., per minute). New advanced services, most notably those based on the Internet protocol, require interconnection rights and new interconnection schemes with different types of access and charges. These changes are necessary to permit, in a converged environment, the fundamental principle that any network operator be able to interconnect to any other operator regardless of the network type.

The changes generally follow three broad trends:

- The first trend has been for regulators and policymakers to introduce symmetrical interconnection regimes, where any operator, regardless of network type, is obliged to interconnect with any other operator. This is the case in Argentina and in the countries of the European Union. In other countries, interconnection rights have been expanded to specific operators, such as ISPs or SMS service providers. The introduction of a symmetrical interconnection regime is essential to establish a level playing field for inter-modal competition. In a converged environment, where any network or technology is able to provide any kind of services, the restriction of interconnection rights unfairly discriminates against operators and reduces the benefits of inter-modal competition.

Section II

- A second trend has been the introduction of new kinds of interconnection, such as access to parts of the infrastructure (e.g., the local loop or directory services databases), or to allow the provision of wholesale services (e.g., wholesale Internet access service or mobile roaming). This has been the case in the European Union, which has introduced the concept of “access” for these new types of interconnection as a right and obligation for all electronic communications service operators.¹⁹
- Finally, some countries have introduced a technology neutral interconnection charging system based on capacity, instead of the traditional metrics of time and distance. An example of capacity-based interconnection is one where operators may request a specific capacity for interconnection and pay a flat-rate charge that reflects the fixed-cost nature of the interconnection capacity. (ITU has commissioned two GSR 09 discussion papers on interconnection: one dealing with traditional and IP interconnection as well as one on VoIP interconnection)

¹⁹ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive).

Section III: Key Factors

Based on an analysis of International Best Practices and trends around the world and within the region, the following key factors regarding access and interconnection have been identified as shown below.

1. Cost-oriented, transparent and non-discriminatory: At least dominant operators, and perhaps all operators, must offer interconnection to their networks on a cost-oriented, transparent and non-discriminatory basis.
 - Is there an obligation to interconnect networks? If so, what category of operator does it apply to – all or just dominant operators?
 - Is interconnection mandated for fixed and mobile voice services?
 - Is interconnection mandated for other services (*e.g.*, data transmission services)?
 - Must interconnection be cost-oriented, transparent and offered on a non-discriminatory basis?
2. Regulated process for interconnection: There is a regulated process for interconnection negotiation, which includes specific timeframes in which negotiations must be completed and permits the regulator to intervene if the parties do not reach an agreement.
 - Is there an obligation to make interconnection agreements publicly available? If so, what category of operator does it apply to (all)?
 - Are interconnection agreements approved by the regulator?
 - Are interconnection prices approved by the regulator?
 - Is the interconnection negotiation process regulated?
 - What is the regulated timeframe to negotiate interconnection?
 - Can the regulator impose interconnection if the parties do not reach an agreement? What is the timeframe?
3. Method of determining dominance: Where obligations for dominant operators or operators with significant market power (SMP) differ from obligations for non-dominant operators, the law and/or regulation should define how dominant or SMP status is determined and such determination should be decided on a fair and transparent basis.
 - Do regulations differentiate between dominant operators and operators with SMP? If so, how are these terms defined?
 - Who may initiate the market analysis procedure and how often does a determination of dominance or SMP occur?
 - What criteria are used to determine dominance?
 - What types of obligations are placed on dominant operators relating to access and interconnection?
 - Is a determination of dominance or SMP or imposition of obligations subject to public consultation?
 - Is the determination and imposition of obligations related to dominance reviewed regularly?
4. Reference Interconnection Offer (RIO): Dominant operators or those having significant market power must publish a Standard/Reference Interconnection Offer that is approved by the regulator. All interconnection agreements must be approved by the regulator and made publicly available.

- Is there an obligation to publish a standard interconnection offer (Reference Interconnection Offer, RIO)? If so, what category of operator does it apply to (all)?
 - Must the RIO be approved by the regulator?
 - What interconnection services are included in the RIO?
5. Infrastructure sharing: Infrastructure sharing is allowed and required in some cases, especially with regard to mobile networks towers.
- Is infrastructure (poles, ducts, etc.) sharing mandated? If not, is it allowed?
 - Is there an infrastructure sharing standard offer? If so, what category of operator does it apply to (all)?
 - Are mobile towers included in infrastructure sharing provisions/offer?
6. Local Loop Unbundling (LLU): Unbundling of the local loop is required while bitstream and broadband resale of services may also be mandated.
- Is there an obligation to offer access to local loop unbundling? Does this obligation apply only to the “major supplier” or to other operators?
 - Is there an obligation to provide bitstream-like services and resale wholesale broadband services? Does this obligation apply only to the “major supplier” or to other operators?
 - Are unbundling of the local loop and bitstream/resale services cost-based and/or is their price regulated?
 - Is there an obligation to publish a standard unbundling offer (Reference Unbundling Offer, RUO)? Does this obligation apply only to the “major supplier” or to other operators?
 - Is there an obligation to make unbundling agreements public?
 - Are unbundling agreements approved by the regulator?
7. Mobile Termination Rates (MTRs): There is regulatory intervention on Mobile Termination Rates (MTR) in which mobile operators must offer cost-oriented fixed-to-mobile or mobile-to-mobile termination rates. (a GSR discussion paper is being drafted on this topic, to be available end of October)
- What methodology is used to set the MTRs (e.g., benchmarking or cost modeling)?
 - Are the rates symmetrical or asymmetrical for fixed-to-mobile and mobile-to-mobile?
 - What factors should be included in costs to calculate MTRs – should the factors include non-network related costs or fixed costs?
 - Is there regulatory intervention in determining termination rates?
8. Dispute resolution: Interconnection/access disputes have a specific and expedited process. However, parties may request the regulator adjudication at any time.
- Is there a specific dispute resolution process and timeframe for these disputes?
 - Does the regulator have the authority to resolve these disputes?
9. International gateway access: Dominant operators (fixed and mobile?) are required to offer access and collocation in international gateways, particularly for submarine cable landing stations.
- Is access to international gateways (including submarine cable landing stations) included in the standard interconnection offer/agreements?
 - Do international gateways (including submarine cable landing stations) have specific collocation offer/provisions?

Section IV: Methodology for Analysis

This section presents a snapshot of how the key issues are reflected (or not) in legal and regulatory texts from the beneficiary countries under the HIPCAR Project (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago), thereby classifying the situation in the beneficiary countries as related to regulation on access and interconnection in categories ranging from none (texts do not make reference at all to key issues) to fair (there is some mention of the issue but it is not detailed or not at an appropriate level, e.g. in some form of consultation document or draft regulation or even in a regulation which is not in line with primary legislation) to good (the texts reflect all elements categorized under a key issue).

The *Summary Chart of Key Elements and Status* presents a quick overview of the status in the different countries. The aim of this first discussion paper is to provide not only an analysis of the key factors that exist in the different Caribbean legal and regulatory telecommunications frameworks in relation to access and interconnection, but also to provide a common reference document that can be used to assess consistently the framework in the various countries.

In addition, this discussion paper identifies some of the best practices from around the world related to the key factors to determine the direction that regulatory trends are moving. This section also provides a comparison between target language from other countries around the world and regional texts. The aim of including this target language is to illustrate how other comparable countries or regions have dealt with such key issues. Another aim is to provide the basis for work to define the Policy Guidelines and Model Regulation on access and interconnection.

Section IV

Country/Region	1. Cost-oriented, transparent, non-discriminatory	2. Method of determining dominance	3. Regulated process for negotiation	4. RIO	5. Infrastructure sharing	6. Local loop unbundling	7. MTR	8. Dispute resolution	9. International gateway access
Antigua and Barbuda	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Bahamas	FAIR	GOOD	GOOD	GOOD	NONE	NONE	NONE	GOOD	NONE
Barbados	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	NONE	GOOD	FAIR
Belize	GOOD	GOOD	GOOD	NONE	GOOD	FAIR	NONE	FAIR	NONE
Dominica	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	GOOD	FAIR
Dominican Republic	GOOD	NONE	FAIR	GOOD	GOOD	FAIR	NONE	GOOD	NONE
Grenada	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	GOOD	FAIR
Guyana	NONE	GOOD	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Haiti	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
Jamaica	GOOD	GOOD	GOOD	GOOD	FAIR	FAIR	NONE	FAIR	NONE
St. Kitts and Nevis	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	GOOD	FAIR
St. Lucia	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	GOOD	FAIR
St. Vincent and the Grenadines	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	GOOD	FAIR
Suriname	GOOD	NONE	FAIR	GOOD	FAIR	FAIR	GOOD	FAIR	NONE
Trinidad and Tobago	GOOD	GOOD	GOOD	GOOD	GOOD	GOOD	NONE	GOOD	FAIR

Source: Telecommunications Management Group

NOTE: Legal texts are assessed as:

“GOOD” if they provide for all, nearly all or the most substantive portions of the key elements;

“FAIR” if they include some key elements, but are missing substantial points; and

“LIMITED”, if they only nominally address the key elements

“NONE” if they do not include the provisions

4.1 Obligation of cost-oriented, transparent and non-discriminatory interconnection

International Best Practices and Regional Trends:

- At least dominant operators, and perhaps all operators, must offer interconnection to their networks on cost-oriented, transparent and non-discriminatory conditions.²⁰

Regional Examples

Antigua and Barbuda – NONE – the draft Telecommunications Act of 2007 contains such provisions but has not been approved

Bahamas – FAIR: the obligation is clearly reflected in the proposed guidelines but not in the 2009 Act

“Rights of interconnection for public telecommunications systems: All licensed operators of public telecommunications systems (including BTC) will have the right to connect their systems to all other public telecommunications systems, for the purposes of providing licensed services (provided that this is consistent with the relevant license conditions). Purely private systems, or operators of public telecommunications systems intending to provide new and unlicensed services, will not have a right to interconnect.

“Obligation to interconnect: All operators of public telecommunications systems (including BTC) will be obliged to respond to all and any requests for interconnection from a licensed operator intending to provide licensed services (provided that this is consistent with the relevant license conditions).

“Transparency: Operators that are dominant should ensure that their procedures for interconnection, and terms, conditions and charges for interconnection are transparent.

“Cost-oriented charges: Unless otherwise provided in this document, interconnection charges offered by a Dominant Operator should be based on the cost of providing the interconnection services concerned, including a reasonable return on capital invested.

“Non-discrimination: The terms, conditions and charges for interconnection incorporated in any RIO must be no less favorable than those the Dominant Operator offers its own retail unit, its Affiliates (if any), or any Other Licensed Operator.”

[Statement of Results on Proposed Interconnection Guidelines for the Bahamas, Annex 1, Section 3.2]

Barbados – GOOD: the obligation is clearly reflected in the Policy, which is specified in accordance with the Telecommunications Act

“Interconnection will be undertaken on the following basis:

- The terms of interconnection will be agreed between operators on a commercial basis;
- Interconnection agreements will be non-discriminatory and provide equal access;
- Interconnection rates will be transparent and reasonable with regard to economic feasibility and must be cost-based”

[Interconnection Policy of 2003, Section 1.3]

²⁰ Note that if mobile operators are considered dominant or if this obligation is imposed on all operators (not only to dominant operators), all interconnection cost would need to be cost-oriented (including fixed to mobile and mobile to mobile termination rates).

“25. (1) A carrier shall provide, on request from any other carrier, interconnection services to its public telecommunications network for the purpose of supplying telecommunications services in accordance with the provisions of subsection (2).

(2) Interconnection services referred to in subsection (1) shall

- (a) be offered at points, in addition to network termination points offered to the end-users, subject to the payment of charges that reflect the cost of construction of any additional facilities necessary for interconnection;
- (b) be on terms that are transparent and non-discriminatory;
- (c) in respect of the interconnection charges and service quality of the interconnection services, be no less favourable than similar services provided by the interconnection provider for
 - (i) its own purposes;
 - (ii) any non-affiliate service supplier of the carrier;
 - (iii) a subsidiary of the carrier; or
 - (iv) for similar facilities so provided;
- (d) be made available in a timely fashion;
- (e) be offered at charges that are cost-oriented;
- (f) be offered in such a way as to allow the requesting carrier to select the services required and not require the carrier to stand the cost of network components, facilities or services that are not required or have not been requested by that carrier; or
- (g) allow for end-users of public telecommunications services to exchange telecommunications with other users of similar services regardless of the carrier to which the end-user is connected.

(3) A carrier shall provide interconnection to its network

- (a) on such reasonable terms and conditions as the interconnecting parties agree through commercial negotiations;
- (b) consistent with an approved Reference Interconnection Offer;
- or
- (c) where there is no agreement between the parties, on such terms and conditions as the Commission determines in accordance with section 29 applying the principles established under this Act, and under any approved Reference Interconnection Offer.”

[Barbados Telecommunications Act, 2001, Section 25]

Belize – GOOD: the obligation is clearly reflected in the Act

21. (1) When required, all licensees shall furnish telecommunication services upon reasonable request, and all practices and charges with respect thereto shall be reasonable and non-discriminatory.

(2) The PUC may require any licensee, after affording the licensee an opportunity to be heard, to provide adequate telecommunication facilities to enable the efficient performance of the licensee's duties under this Act.

(3) Where required by the PUC, all public telecommunication service licensees shall -

- (a) establish physical connections with other public telecommunication services providers;
- (b) share networking signaling and database with other licensed providers for the transport and termination of telecommunication and information;
- (c) establish and provide the facilities and arrangements, including collocation, or provide access to any of the facilities in respect of paragraphs (a) and (b);
- (d) establish reasonable charges, as approved by the PUC, for rates of service and division of charges for the facilities and arrangements referred to in paragraphs (a) and (b).

[Belize Telecommunications Act 2002]

Dominican Republic – GOOD – The principles are embodied in the law

41. 1 Interconnection charges shall be agreed to freely between the concessionaire companies which operate in the national territory.
2. The regulatory entity will see that the charges are not discriminatory and that they ensure effective and sustainable competition. In the event of a disagreement between the parties, it may intervene in the setting of same by means of a motivated resolution, taking as parameters the costs, including a reasonable remuneration for the investment, calculated according to what is established in the “Regulation of rates and costs of services.”
51. The interconnection of networks of different parties rendering public telecommunications services is of public and social interest, and therefore is obligatory, in the terms of the present law and its regulation.
54. The concessionaires whose networks are interconnected must provide the interconnection facilities necessary to satisfy the demand and its growth, in a non-discriminatory manner and in accordance with its availability. In the event that the party to whom is requested an interconnection lacks sufficient availability, the requesting party may provide the facilities necessary so that it exist, which shall be discounted from the future payments which it must make pursuant to what the parties agree upon.

[Dominican Republic Law 153-98 and Resolución No. 42-02, del Consejo Directivo]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD – all have implemented ECTEL texts

- 3. h** A public network operator -
- (a) shall act in a manner that enables interconnection to be established as soon as reasonably practicable.
 - (b) is required to promptly provide interconnection at cost-oriented rates to any other public network operator that requests it.
 - (c) is entitled to promptly receive interconnection at cost-oriented rates from any other public network operator.
 - (d) shall provide timely forecasts of usage to the interconnection provider and shall be required to cover the costs that the interconnection provider incurs to meet forecasted needs even if the forecasted traffic fails to materialize.
 - (e) shall configure its network to enable -
 - (i) transmission; and
 - (ii) switching or routing, of voice, data and images over its networks.
 - (f) shall exchange signaling information using standard signaling systems.
 - (g) is required to provide call-termination services to any other public network operator that requests them.
 - (h) who is a party to an interconnection agreement shall provide written notice of any breach of the interconnection agreement and a reasonable period of time to cure the breach before terminating the interconnection agreement in accordance with the procedure set out in regulation 24.
 - (i) shall make it possible for its customers to complete international calls using public network operators of their choice, and such choice shall be available on a call-by-call basis, with the call being completed without the requirement either of second dial tone or manual intervention.
- 4. (1)** In addition to the obligations placed on all public network operators in regulation 3, a dominant fixed public network operator shall -
- (a) provide joining services to any other public network operator that requests them;

- (b) provide usage-based transit services to other public network operators that request them; or
- (c) where it provides broadband Internet access as a retail service, arrange to carry the broadband information to unaffiliated Internet service providers of the end user customer's choice.

5. A public network operator shall configure its network to facilitate number portability between similar networks as and when directed by the Commission, acting on the recommendation of ECTEL.

6. (1) When providing interconnection, a public network operator shall act in accordance with the following principles -

- (a) interconnection shall be provided to interconnecting operators under no less favourable terms and of no less favourable quality as the interconnection provider provides similar services for itself or its affiliates;
- (b) interconnection shall be provided without regard to the types of users to be served or the types of services to be provided by the public network operator requesting interconnection;
- (c) a public network operator shall provide on request information reasonably necessary to interconnecting operators considering interconnection, in order to facilitate the conclusion of any agreements.

(2) The information provided pursuant to sub-regulation (1) (c) shall include planned charges for implementation within the next six months following a request, unless otherwise agreed by the Commission.

[Telecommunications (Interconnection) Regulations, 2009, Dominica, Sections 3 – 6]

[Telecommunications (Interconnection) Regulations, 2009, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, Sections 4 – 7]

Guyana – NONE – the 2001 consultation encompassed principles but not translated into law.

Haiti – NONE

Jamaica – GOOD

“Without prejudice to section 29 [regarding the obligation for all carriers to interconnect], a dominant public voice carrier shall provide interconnection in relation to a public voice network in accordance with the following principles -

- (a) the terms and conditions under which it is provided shall be -
 - (i) on a non-discriminatory basis;
 - (ii) reasonable and transparent , including such terms and conditions as relate to technical specifications and the number and location of points of interconnection; and
 - (iii) charges shall be cost oriented and guided by on the principles specified in section 33 [regarding principles to determine prices].”

[The Telecommunications Act of 2000, Section 30(1)]

St. Kitts and Nevis – GOOD

“28. (1) Subject to subsection (5), a telecommunications provider who operates a public telecommunications network shall not refuse, obstruct, or in any way impede another telecommunications provider from making an interconnection with his telecommunications network, and shall, in accordance with the provisions of this section, ensure that the interconnection service provided is made at technically feasible physical points.

Section IV

- (2) Any telecommunications provider who wishes to make any interconnection to the telecommunications network of another telecommunications provider shall do so in accordance with the provisions of this section....
- (6) “Any interconnection service provided by a telecommunications provider pursuant to the provisions of subsection (x) above shall be on terms which are not less favorable than:
- (a) those of the provider of the interconnection service;
 - (b) the services of non-affiliated suppliers; or
 - (c) the services of the subsidiaries or affiliates of the provider of the interconnection service.
- (7) Without prejudice of the generality of the provisions of subsection 6 of this section, the Commission may, upon recommendation of the Authority, prescribe the cost and pricing standards and other guidelines upon which the reasonableness of the rates, terms and conditions of the interconnection will be determined.
- (8) No telecommunications provider shall, in respect to any rates charged by him for interconnection services provided by him to another telecommunications provider, vary the rates on the basis of the type of customers to be served, or on the type of services that the telecommunications provider requesting the interconnection services intends to provide.”

[The Telecommunications Act of 2000, Section 28]

Suriname (see translation in italic for principles) – **GOOD**

- “4. Bij het verlenen van interconnectie draagt elke concessiehouder er zorg voor dat:
- a. de voorwaarden voor koppeling non-discriminatoir zijn; (*non-discrimination*)
 - b. de voorwaarden voor koppeling transparant zijn en de tarieven voor koppeling niet gebundeld worden; (*transparency*)
 - c. de vergoedingen voor koppeling, als onderdeel van de voorwaarden, kostengeoriënteerd zijn.” (*cost-orientation*)

[Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), Artikel 11]

Trinidad and Tobago – **GOOD**

“A concessionaire shall provide interconnection under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners, or the networks and services of any other concessionaire to which it provides interconnection.”

“A concessionaire shall set interconnection rates based on costs determined in accordance with such costing methodologies, models or formulae as the Authority may, from time to time, establish.”

“Every interconnection agreement or modification thereto shall be submitted to the Authority in such format as the Authority shall reasonably require, within fourteen days of signature by the parties.

- (2) The Authority shall—
- (a) publish every interconnection agreement by posting on its website within fourteen days of its receipt by the Authority; and
 - (b) provide copies of interconnection agreements to any concessionaire upon request, except that such publication and provision shall not disclose commercially sensitive information.”

[Telecommunications Interconnection Regulations of 2006, Sections 5(1), 15(1) and 18(1)]

International Examples and Regional Harmonization

European Union

“Organizations authorized to provide public telecommunications networks and publicly available telecommunications services as set out in Annex I which have significant market power shall meet all reasonable requests for access to the network including access at points other than the network termination points offered to the majority of end-users.”

[EU Directive 97/33/EC, Article 4.2]

“For interconnection to public telecommunications networks and publicly available telecommunications services as set out in Annex I provided by organizations which have been notified by national regulatory authorities as having significant market power [dominant operators], Member States shall ensure that:

- (a) the organizations concerned adhere to the principle of non-discrimination with regard to interconnection offered to others. They shall apply similar conditions in similar circumstances to interconnected organizations providing similar services, and shall provide interconnection facilities and information to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners;
- (b) all necessary information and specifications are made available on request to organizations considering interconnection, in order to facilitate conclusion of an agreement; the information provided should include changes planned for implementation within the next six months, unless agreed otherwise by the national regulatory authority;”

[EU Directive 97/33/EC, Article 6]

“Charges for interconnection shall follow the principles of transparency and cost orientation.”

[EU Directive 97/33/EC, Article 7.2]

“Operators of public communications networks shall have a right and, when requested by other undertakings so authorized, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services”

[EU Directive 2002/19/EC, article 4.1]

ECOWAS

“Dominant operators shall respect the principle of relevant cost orientation, i.e. the costs of network components or the management structures of the operator effectively involved in the provision of interconnection.

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Harmonization of Cost Calculation Methods, Article 23.1]

“National regulatory authorities shall cooperate and coordinate their activities for the purpose of establishing and regularly updating a complete and harmonized methodology for calculating interconnection costs.

The aforementioned methodology shall establish in detail:

- a) relevant costs to be taken into account;
- b) structure of cost calculation model;
- c) basic data to be incorporated in the model;
- d) cost of capital return assessment method;
- e) interpretation of results of model.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Harmonization of Cost Calculation Methods, Article 6.1 and 6.2]

“According to the non-discrimination obligations, operators shall, *inter alia*, apply equivalent conditions in equivalent areas, and shall provide services and information to other parties under the same conditions and with the same quality as for their own services or those of their subsidiaries or partners.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Harmonization of Cost Calculation Methods, Non-Discriminatory Principle, Article 3]

COMESA

“The principle that the dominant must provide any method of technically feasible interconnection requested by the new entrant must be laid down in law”

[COMESA – Regulatory Guidelines on Interconnection, Obligation to Interconnect, Appendix IV.1.]

“The basic principle is that the incumbent operator should not discriminate between different operators in term of quality and type of service (points of interconnection, time for implementation etc) or in terms of price. The main concern is that the incumbent should not discriminate between affiliated companies and other operators.”

[COMESA – Regulatory Guidelines on Interconnection, Principle of Non- discriminatory Interconnection Agreements, Appendix IV.3]

“Pricing strategy in interconnection is critical given the situation in a historically monopolistic market where an established dominant supplier who owns most of the essential network facilities is competing with a new entrant. Since the goal of establishing open networks is to promote competition, pricing should be consistent with what prevails in a competitive market where prices are as close to costs as possible. By providing that interconnection rates should be forward-looking and cost based, legislation would promote the establishment of a pro-competitive framework. There are several methods of calculation of cost-based charges and this should be implemented by the regulator. As all historical accounting data may not be available for a rapid formulation of a cost-based policy, legislation should allow for a phased in implementation of cost-based charges.”

[COMESA – Regulatory Guidelines on Interconnection, Cost-based Charges, Appendix IV.9]

France

“Public network operators shall satisfy requests for interconnection from operators licensed in accordance with articles L. 33-1 and L. 34-1 in an objective, transparent and non-discriminatory manner”

“Interconnection tariffs shall be cost-oriented and shall cover the effective cost of using the network”

[France, Telecommunications Act, Article 4]

Saudi Arabia

“The principles that apply to Dominant Service Providers are:

All reasonable requests for interconnection services by other Service Providers shall be met. The terms of interconnection shall not discriminate between Service Providers or between a Dominant Service Provider’s own operations and those of other service providers. Interconnection charges shall be transparent, reasonable and cost-based.”

[Saudi Arabia, CITC, Decision 25/1424, Article 2.2]

4.2 Definition and method for determining dominant operator or SMP status

International Best Practices and Regional Trends:

- Where obligations for dominant operators or operators with significant market power (SMP) differ from obligations for non-dominant operators, the law and/or regulation should define how dominant or SMP status is determined.
- The method for determining dominant or SMP status should be decided on a fair and transparent basis and may include a public consultation.
- The determination and imposition of obligations related to dominance are reviewed regularly

Regional Examples

Antigua and Barbuda – NONE – the draft Telecommunications Act of 2007 does contain such provisions (Section 6), but has not yet been approved

Bahamas – GOOD – provides clear definition and method

39.

- (1) URCA may at any time determine that a licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers.
- (2) URCA shall establish and publish criteria–
- relating to the definition of markets in the electronic communications sector; and
 - against which market power may be assessed, for the purpose of making a determination under subsection (1).
- (3) URCA's criteria referred to in subsection (2) shall include references to–
- the licensee's market share;
 - the licensee's ability to influence market conditions;
 - the licensee's access to financial resources;
 - the licensee's experience in providing products to the market; and
 - any other criteria considered relevant by URCA.

40....

- (2) Without prejudice to section 116(2), prior to imposing any obligations under subsection 40(1), URCA shall–
- review the market or markets in which the licensee has SMP; and
 - consider the regulatory burden and the benefits to consumers of imposing any such obligation on a licensee.

[Communications Act of 2009, Sections 39, 40]

Barbados – GOOD – there is the principle in the law and the detail in the 2005 Regulation

26. ...

- (3) In this Part "dominant carrier" means a carrier that the Minister determines to be dominant based on that carrier not being effectively constrained by competitive forces in a particular telecommunications market and such other criteria as the Minister prescribes.

[Telecommunications Act of 2002, Section 26(3)]

3. The Minister hereby determines, pursuant to section 26(3) of the Act, the following criteria to be used in addition to the criteria specified in that section in determining the dominant carrier for the purposes of these Regulations:
- (a) the presence of competitors;
 - (b) whether a competitor has a sizable share of the relevant market;
 - (c) whether a competitor has the capacity in place to expand its operations to attract a significant number of the customers of its competitors.
5. (1) A dominant carrier that is desirous of becoming a nondominant carrier may make an application to the Minister in writing.
- (2) Where an application referred to in paragraph (1), has been made, the Minister shall determine whether the carrier is no longer a dominant carrier for the purposes of the Act and these Regulations.
- (3) The Minister shall inform the applicant in writing of the decision in respect of an application under paragraph (1) within 30 days of the making of the decision.
6. The Minister may review the determination of dominance made under regulation 4 in respect of the provision of telecommunications services in any sector of the telecommunications market in Barbados
- (a) to ensure that the criteria referred to in section 26(3) and in regulation 3 are consistently met; or
 - (b) to determine whether the criteria should be altered.

[Telecommunications (Determination of Dominance) Regulations, 2005]

Belize – GOOD

42. (1) A dominant operator shall not take advantage of his power in a market for the supply of a telecommunication service with a view to -
- (a) eliminating or substantially damaging another licensee in the market in which he operates or in any other market;
 - (b) preventing the entry of any other person into that market or any other market;
 - (c) deterring any other licensee from engaging in competitive conduct in that or in any other market.
- (2) (a) A dominant operator shall not discriminate between persons who acquire or make use of a telecommunications service in the market in which he operates in relation to -
- (i) any fee or charge for the service provided;
 - (ii) the performance characteristics of the service provided;
 - (iii) any other term or condition on which the service is provided.
- (b) Nothing in paragraph (a) shall prevent a dominant operator from making a reasonable allowance, subject to the approval by the PUC, for the cost of providing a telecommunication service where the difference results from-
- (i) different quantities in which the service is supplied;
 - (ii) different transmission capacities needed for the supply of the service;
 - (iii) different places from or to which the service is provided;
 - (iv) different periods for which the service is provided;
 - (v) different performance characteristics of the service provided; or
 - (vi) doing an act in good faith to meet a price or benefit offered by a competitor.
- (3) For the purposes of this Act, the PUC may determine that a service provider is dominant 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, customers and ultimately consumers and, for such determination the PUC shall take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the provider;
- (d) the power of the provider to influence prices;
- (e) the degree of differentiation amongst services in the market;
- (f) any other matter that the PUC deems relevant.

[Belize Telecommunicaitons Act, 2002, Section 42]

Dominican Republic – NONE: the concept of dominance is mentioned in the regulation but not the process.

21.2. El INDOTEL velará por que el control de instalaciones o facilidades esenciales o de la existencia de una posición dominante, por parte de la Prestadora Requerida; así como, los términos y condiciones de los contratos de Interconexión, no conduzcan a prácticas restrictivas a la competencia, sancionadas por los acuerdos ratificados en el artículo 118 de la Ley, por las previsiones de los artículos 1 y 8 de la Ley y su reglamentación. [*INDOTEL shall oversee the market to identify dominance*]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD – complete process which is transparent

9. (1) The Commission, acting on the recommendation of ECTEL, and by notice or order published in the Gazette, shall designate a public network operator as a dominant interconnection provider in a particular market or markets for telecommunications services if the Commission has determined, after a public consultation process, that a public network operator -
- (a) enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers in a market or markets for telecommunications services; and
 - (b) it is in the long-term interests of consumers of telecommunications services that the public network operator be so designated.
- (2) The Commission shall undertake a consultation process which will commence with a preliminary determination of market dominance and the designation of one or more dominant interconnection providers.
- (3) The Commission shall issue its final determination of market dominance no later than 90 days after its preliminary determination of dominance under subregulation (2).
- (4) Notwithstanding the sub-regualtions (1), (2) and (3), a public network operator may consent to being treated as a dominant interconnection provider solely for the purpose of providing interconnection and filing a reference interconnection offer at the time it files a reference interconnection offer.

[Telecommunications (Interconnection) Regulations, 2009, Dominica, Section 9]

[Telecommunications (Interconnection) Regulations, 2009, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, Sections 10]

Guyana – GOOD

Sections 23-27 of the Competition and Fair Trading Bill of 2004 contains a clear definition of dominant position, mechanisms to determine dominance, measures to be imposed on dominant operators as well as reasons for exemptions and mechanisms for removal of obligations.

Haiti – NONE

Jamaica – GOOD

“In this Part -"dominant public voice carrier" means a public voice carrier that holds a dominant position in the telecommunications market in Jamaica within the meaning of section 19 of the Fair Competition Act”

“(1) Subject to subsection (2), the Office shall determine which public voice carriers are to be classified as dominant public voice carriers for the purposes of this Act.

(2) Before making a determination under subsection (1), the Office shall -

- (a) invite submissions from members of the public on the matter; and
- (b) consult with the Fair Trading Commission and take account of any recommendations made by that Commission.

(3) A dominant public voice carrier may at any time apply to the Office to be classified as non dominant and the Office shall not make a determination in respect of that application unless it has invited submissions from members of the public on the matter and has taken account of any such submissions.

[The Telecommunications Act of 2000, Sections 27 and 28]

Suriname – NONE

Trinidad and Tobago – GOOD

“(8) For the purposes of this Part and wherever the issue of dominance otherwise arises in the Act, the Authority may determine that an operator or provider is dominant 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, customers and ultimately consumers and, for such determination, the Authority shall take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the provider;
- (d) the power of the provider to set prices;
- (e) the degree of differentiation among services in the market;
- (f) any other matters that the Authority deems relevant.

(9) Where a concessionaire, deemed dominant by the Authority pursuant to subsection (8), considers that it has lost its dominance, it may apply to the Authority to be classified as non-dominant and should the Authority so classify, the relevant concession shall be amended to reflect such classification.”

[Telecommunications (Amendment) of 2004, Sections 8-9]

International Examples and Regional Harmonization

ECTEL

“(a) The Commission may, in accordance with section 10 of the Interconnection Regulations [regarding interconnection charges], determine when, to what extent and in which markets an operator or service provider is dominant.

- (b) Without limiting the generality of (a) above, the Commission, when and as it deems appropriate, and subject to section 10 of the Interconnection Regulations, may conclude that an operator is dominant in the relevant termination services market and, accordingly:
- (i) require an amendment to the operator's licence to reflect the designation;
 - (ii) periodically review the rates charged for interconnection services by the operator to ensure compliance with the Act, the Regulations, its licence, this Code or any determinations by the Commission on the matter;
 - (iii) impose different rates to those contained in an agreement at any time pursuant to its powers and in accordance with the provisions of section 12 of the Interconnection Regulations; and
 - (iv) request the provision of information from the operator periodically."

[Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) Draft Interconnection Code of 2009, Section 9]

ECOWAS

"1 Member States shall ensure that the national regulatory authorities determine the relevant markets by:

- a) collecting information about each identified market so as to measure the extent of dominance;
- b) consulting the concerned telecommunication market players regarding market relevance for the purpose of analyzing those markets;
- c) seeking the advice of the competition authority, where one exists;
- d) defining the criteria to measure the dominance;
- e) consulting with the concerned telecommunication market players about obligations to be imposed on dominant operators for each relevant market.

2 Member States shall ensure that the ECOWAS Secretariat publishes:

- a) decisions adapted to the individual cases of the countries in question;
- b) guidelines for market analysis and assessment of market power;
- c) a recommendation on relevant markets in products and services in the telecommunication sector that can be regulated *ex ante*.

3. The authority shall analyze the markets in order to determine whether they are competitive or not and then draw the necessary conclusions in terms of regulatory obligations: if the analysis shows the market to be competitive, the authority shall abolish any existing obligations; otherwise, it shall identify the dominant operator(s) as defined by competition law and impose appropriate regulatory obligations."

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Identification of relevant markets and of significant market power on a relevant market, Article 19]

Malta

"2. "significant market power" means a position equivalent to dominance enjoyed by an undertaking either individually or jointly with others that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers"

[MALTA – Electronic Communications Act, Section 9]

"9. (1) The Authority shall, subject to any procedures as may be prescribed under this Act and in accordance with the principles of competition law, define relevant markets appropriate to national circumstances, in particular relevant geographic markets and it shall carry out an

analysis of such relevant markets. In doing so the Authority shall take the utmost account of any relevant recommendations and guidelines that the European Commission may issue from time to time.

(2) Where the Authority concludes that a market is effectively competitive, it shall then not impose or maintain such regulatory obligations and controls as may be specified in regulations made under this Act.

(3) Where the Authority determines that a relevant market is not effectively competitive, it shall identify and designate undertakings with significant market power in that market and it shall impose upon such undertakings appropriate regulatory obligations and controls identified in subarticle (2) in accordance with any regulations made under this Act.”

[MALTA – Electronic Communications Act, Section 9]

Norway

“A provider has significant market power when the provider individually or jointly with others has economic strength in a relevant market affording the provider the power to behave to an appreciable extent independently of competitors, customers and consumers. Significant market power in one market may result in a provider having significant market power in a closely related market.

The Authority may issue regulations on significant market power.”

“The Authority shall define relevant product and services markets and geographic markets in regard to the EFTA Surveillance Authority’s recommendations on relevant product and services markets within the electronic communications area.

When in accordance with the first paragraph the Authority defines markets that deviate from previously defined common European markets, the consultation procedure in § 9-3 shall be followed.

“The Authority shall carry out market analyses in accordance with the EFTA Surveillance Authority’s guidelines for market analyses and assessment of significant market power in the electronic communications area. The Authority will designate, maintain or withdraw designation of a provider with significant market power on the basis of market analyses.

The Authority may issue regulations on market analyses.

“A provider who has significant market power shall be subject to one or more specific obligations that follow from §§ 4-1, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9 and 4-10.

In exceptional circumstances the Authority may impose obligations on a provider who has significant market power beyond those that follow from §§ 4-1, 4-4, 4-5, 4-6, 4-7, 4-8, 4-9 and 4-10. In such cases the consultation procedure in § 9-3 shall be followed.

Obligations in accordance with the first and second paragraphs that are imposed in the individual case shall be appropriate to promote sustainable competition, as well as facilitating national and international development in the market. The Authority may amend obligations imposed.

The Authority may issue regulations on obligations imposed on a provider with significant market power.”

[Norway – The Electronic Communications Act – ACT 2003-07-04-83, Sections 3-1 to 3-4]

4.3 Regulated process for interconnection negotiation

International Best Practices and Regional Trends:

- There is a regulated process for interconnection negotiation, which includes:
 - Specific timeframes in which negotiations must be completed
 - Permits the regulator to intervene if the parties do not reach an agreement

Regional Examples

Antigua and Barbuda – NONE

Bahamas – GOOD

“7.1 Interconnection agreements should be submitted to the PUC at least two (2) weeks before they come into effect. The PUC will review each interconnection agreement for consistency with:

- The Act;
- The TSP;
- Conditions of relevant Licence(s);
- Any guidelines or instructions issued by the PUC, including these Guidelines; and
- Court decisions that necessitate amendments to an interconnection agreement.”

“7.4 “Under Section 7(1) of the Act, a decision by the PUC to issue an instruction as discussed above is final, other than any decision on a point of law and questions of law. Either party to the agreement, or any other person aggrieved by the PUC’s decision, has a right to appeal decisions on points of law and questions of law to the Supreme Court, but solely on the ground that the decision was unreasonable in the light of the information available to the PUC at the time it made its decision, or on the ground that it was unreasonable for the PUC to make a decision without ascertaining further information.

“9.1 The PUC may determine pre-agreement interconnection disputes (i.e. disputes that may arise between parties in the course of negotiations between an interconnection provider and an interconnection seeker)”

[Interconnection Guidelines for the Bahamas, Sections 7.1, 7.4 and 9.1]

Barbados – GOOD – complete provisions and timeframes

“25.3.(c) where there is no agreement between the parties, on such terms and conditions as the Commission determines in accordance with section 29 applying the principles established under this Act, and under any approved Reference Interconnection Offer.”

“ 27. (2) Where the Commission considers that the RIO or any part of the RIO is inconsistent with the principles of interconnection as set out in section 25(2), the Commission may refuse to approve the RIO or a part of the RIO outlining the inconsistency and giving reasons for its decisions.

(3) In deciding whether to approve or refuse an RIO the Commission shall

(a) consult with the carrier providing the RIO and any other carriers likely to seek interconnection to that carrier's network;

and

(b) have regard to

(i) the interconnection principles set out in section 25;

- (ii) the interconnection policy specified by the Minister under paragraph (i) of subsection (2) of section 4;
- (iii) the need to promote competition;
- (iv) the long-term interests of end-users; and
- (v) the submissions, whether oral or written, of the carriers providing and seeking interconnection.

(4) Where the Commission approves an RIO of a carrier or part of that RIO then it shall make a declaration as to the approval specifying the date on which the approval takes effect.

(5) Where the Commission refuses the RIO of a carrier or part of that RIO, the Commission shall consult with the carrier in order to resolve the inconsistency with the interconnection principles referred to in section 25; and the carrier may amend the RIO to remedy the inconsistency.

(6) Where the Commission is satisfied that an amendment of an RIO by a carrier pursuant to subsection (5) satisfies the interconnection principles referred to in section 25, it shall approve the amended RIO and the carrier shall file the amended RIO with the Commission.”

29. (1) Where pursuant to subsection (3) of section 28 a person who requests interconnection and an interconnection provider agree on the terms and conditions of interconnection, that agreement shall be filed with the Commission within 30 days of the date of the agreement for the Commission's approval.

2) The Commission may in respect of any agreement filed with it under subsection (1)

- (a) approve the agreement in writing; or
- (b) require parties to the agreement to vary the filed agreement
 - (i) to comply with interconnection principles set out in section 25; or
 - (ii) if it considers that the interconnection agreement unfairly discriminates against other carriers or is otherwise unlawful.

(3) Any direction for variation under subsection (2) shall be issued within 30 days of an interconnection agreement having been filed with the Commission.”

“The dominant carrier will be required to file a RIO with the FTC within 52 calendar days of being notified to do so by Order from the Fair Trading Commission, setting forth the terms and conditions under which other licensed carriers will be permitted to interconnect with the supplying carrier’s telecommunications network...

“The FTC will either approve or require amendment of the RIO, applying the interconnection principles stated in Section 3 and established in the Telecommunications Act.

[Interconnection Policy of 2003, Sections 4.2, 4.4]

Belize – GOOD

22. (1) Public telecommunication service providers shall enter into agreements governing the interconnection of their facilities, sharing of infrastructure, local number facilities, and other inter-networking and other facilities which the PUC may deem to be in the public interest, as well as with providers of value added services, on reasonable and non-discriminatory terms.

(2) Copies of such agreements together with a summary of their principal terms shall be submitted to the PUC for final approval and such approval shall not be unreasonably withheld. The PUC shall cause the approved agreements or a summary thereof to be published in the Gazette.

- (3) Where public telecommunication service providers fail to agree on the terms and conditions of interconnection within a reasonable time (which may be prescribed) one or both may request that the PUC establish binding tariffs and the terms and conditions of the interconnection.
- (4) Interconnection with providers shall be assured:
- (a) at any technically feasible point in the network;
 - (b) in a timeframe that is reasonable and as may be prescribed by the PUC;
 - (c) on non-discriminatory and transparent terms;
 - (d) with fully unbundled components so as to avoid unnecessary charges;
 - (e) at non-traditional interconnection points if the requestor agrees to pay the cost on interconnection;
 - (f) at charges that are cost-oriented and calculated using evolving best practices or a costing methodology prescribed by the PUC.

[Belize Telecommunications Act, 2002]

Dominica – GOOD

“46. ...

- (2) A telecommunications provider who wishes to interconnect with the telecommunications network of another telecommunications provider shall so request that provider in writing.
- (3) A telecommunications provider to whom a request for interconnection is made shall, in writing, respond to the request within a period of four weeks from the date it is made to him.
- (4) A telecommunications provider in acceding within four weeks to the request for interconnection shall nominate the time as agreed to by both parties in which the interconnection shall be effected.
- (5) A telecommunications provider to whom a request for interconnection is made may in his response refuse that request in writing on reasonable technical grounds only.
- (6) A telecommunications provider on receipt of a refusal for interconnection may refer that refusal to the Commission for review and possible dispute resolution....”

“47. (1) No person shall enter into any interconnection agreement, implement or provide interconnection service without first submitting the proposed agreement to the Commission for its approval, which approval shall be in writing.

- (2) Interconnection agreements between telecommunications providers shall be in writing, and copies of the agreements shall be kept in a public registry maintained by the Commission for that purpose and open to public inspection during normal working hours.
- (3) The Commission shall, after consulting ECTEL, prepare, publish, and make available copies of the procedures to be followed by the telecommunications providers when negotiating interconnection agreements.

[Telecommunications Act of 2000, Articles 46 and 47]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD – complete and based on ECTEL

12. (1) Each dominant interconnection provider requested to provide a reference interconnection offer shall provide such an offer within 60 days of its receipt of such request by the Commission.

- 13.** Within 7 days of approval of a reference interconnection offer by the Commission, a dominant interconnection provider shall publish its offer by -
- (a) posting the offer on its website; and
 - (b) making printed and electronic copies of the offer available to any public network operator upon request.
- 16.** (1) All interconnection agreements and reference interconnection offers shall be in writing and the following matters shall be specified in those agreements except where a particular matter is irrelevant to the specific form of the interconnection requested-
- (a) access to ancillary, supplementary and advanced services;
 - (b) adequate service levels including the remedies for any failure to meet those service levels;
 - (c) a provision that deals with regulatory change, including determinations by the Commission;
 - (d) duration and renegotiation of interconnection agreements;
 - (e) forecasting, ordering, provisioning and testing procedures;
 - (f) dispute resolution procedures, including identification of points of contact, time frames and an escalation process;
 - (g) geographical and technical characteristics and locations of the points of interconnection;
 - (h) information handling and confidentiality provisions;
 - (i) intellectual property rights;
 - (j) measures anticipated for avoiding interference or damage to the networks of the parties involved or third parties;
 - (k) national and international appropriate indexes for service quality;
 - (l) procedures in the event of alterations being proposed to the network or service offerings of one of the parties;
 - (m) provisions for the formation of appropriate working groups to discuss matters relating to interconnection and to resolve any disputes;
 - (n) provision of network information;
 - (o) technical specifications and standards;
 - (p) terms of payment, including billing and settlement procedures;
 - (q) the procedures to detect and repair faults, as well as an estimate of acceptable average indexes for detection and repair times;
 - (r) the scope and description of the interconnection services to be provided;
 - (s) the technical characteristics of all the main and auxiliary signals to be transmitted by the system and the technical conditions of the interfaces;
 - (t) transmission of Calling Line Identity, where available to be transmitted;
 - (u) provisions for call termination;
 - (v) provisions for transit facilities;
 - (w) provisions for joining links;
 - (x) ways and procedures for the supply of other services that the parties agree to supply to each other, such as operation, administration, maintenance, emergency calls, operator assistance, automated information for use, information on directories, calling cards and intelligent network services;
 - (y) the obligations and responsibilities of each party in the event that inadequate or defective equipment is connected to their respective networks;
 - (z) provisions for notice and for remedying any breach that may arise from the agreement; and
 - (aa) any other relevant issue.
- (2) Public network operators shall make available to interested parties, any reference interconnection offers and the portions of approved interconnection agreements that have not been designated as confidential by the Commission pursuant to regulation 27.

22. (1) The parties to an interconnection agreement may amend or modify an agreement which has been approved by the Commission by-
- (a) giving not less than 30 days written notice prior to the effective date of the amendment or modification; and
 - (b) submitting a copy of the proposed amendment or modification to the Commission.
- (2) An amendment or modification to an interconnection agreement does take effect unless approved by the Commission within 30 days of the submission, or such longer period as the Commission may in any case determine.

[Telecommunications (Interconnection) Regulations, 2009, Dominica, Sections 12, 13, 16, 22]

[Telecommunications (Interconnection) Regulations, 2009, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, Sections 13, 14, 17, 23]

Dominican Republic – FAIR: defines the minimum elements to be included in an interconnection agreement, provides for regulator intervention but does not specify timeframe in which negotiations must be completed.

Artículo 7. Contenido del Contrato de Interconexión

El Contrato de Interconexión suscrito entre Prestadoras deberá sujetarse a las disposiciones establecidas en la Ley y contemplar, como mínimo, lo siguiente:

- a) Los parámetros que se acuerden respecto a la calidad, confiabilidad y/o disponibilidad de las interconexiones; así como, las medidas a adoptarse para la operación y el mantenimiento de las mismas.
- b) La identificación de los Puntos de Interconexión.
- c) Las fechas o períodos en los cuales las partes se obligan a cumplir los compromisos de Interconexión.
- d) La capacidad necesaria inicial y la capacidad estimada futura comprometida para períodos no mayores de cinco (5) años.
- e) Los formatos o estándares a los que deberán ajustarse las señales para ser transmitidas o recibidas en los Puntos de Interconexión, enrutamientos físicos y lógicos, y los métodos de señalización a utilizar.
- f) Las funciones o elementos de red contratados en forma individualizada en su caso y sus respectivos precios, forma de pago, plazos de provisión, plazo de vigencia del contrato, y toda otra obligación convenida entre las partes.
- g) La identificación de los servicios que sean materia del contrato y la definición de sus modalidades de prestación.
- h) Los precios de Interconexión y demás condiciones económicas.
- i) Los plazos de revisión de los contratos, que no podrán ser mayores de dos (2) años.
- j) Los anexos técnicos, operativos o de otra índole que resulten necesarios y de manera especial, los planos y diagramas, así como la descripción básica de equipos e instalaciones asociadas a la Interconexión.

3.3. El INDOTEL intervendrá en el establecimiento de términos y condiciones de Interconexión y en la supervisión del cumplimiento de las obligaciones pertinentes, en caso de ser necesario y de conformidad a las disposiciones establecidas en la Ley y este

Reglamento. [*Indotel will intervene where required to ensure conformity with the legal and regulatory framework*]

5. Se establecen los siguientes principios generales en materia de Interconexión:

- a) Acuerdos entre partes: Las Prestadoras estarán en libertad de convenir los precios, términos y condiciones de Interconexión, de acuerdo a las pautas establecidas por la Ley, este Reglamento y las demás regulaciones aplicables. Los contratos deberán ser negociados

en tiempo oportuno y no podrán ser discriminatorios ni establecer condiciones que limiten la existencia de una competencia leal, efectiva y sostenible o que impidan o dificulten otras interconexiones.[contracts are negotiated freely but in a given timeframe and according to the law

22. El INDOTEL intervendrá:

- a) A requerimiento de alguna de las partes o de oficio:
 - a.1. Cuando, con posterioridad a la solicitud formal de Interconexión, en cualquiera de las etapas de la negociación, hubiera dilaciones injustificadas o falta de acuerdo en relación a los precios, términos y cualquier otra condición de la Interconexión .
 - a.2. Ante la negativa de una Prestadora Requerida a otorgar la Interconexión solicitada por la Prestadora Requirente.
 - a.3. Cuando fundadas razones de interés público lo requieran o considere que puedan existir prácticas restrictivas de la competencia o prácticas discriminatorias.
- b) Ante la impugnación de un tercero con interés legítimo, conforme a lo dispuesto por el artículo 25 de este Reglamento.
- c) El INDOTEL resolverá los conflictos que pudieran surgir entre las Prestadoras respecto de la aplicación del contrato de Interconexión conforme al procedimiento establecido en el artículo 23 del presente Reglamento.

[Interconnection Regulations approved through Resolución No. 42-02, of the Consejo Directivo of Indotel]

Jamaica – GOOD

“The Office may, either on its own initiative in assessing an interconnection agreement, or in resolving a dispute between operators, make a determination of the terms and conditions of call termination, including charges.”

“Every dominant carrier shall, and any other carrier may, lodge with the by dominant Office a proposed reference interconnection offer setting out the terms and conditions upon which other carriers may interconnect with the public voice network of that carrier, for the provision of voice services.

Each dominant public voice carrier who is required under this Part to provide interconnection in relation to voice services shall submit a reference inter-connection offer to the Office -

- (a) within ninety days after the date of determination of dominance pursuant to section 28; or
- (b) at least ninety days before the date of expiry of an existing reference inter-connection offer, and the existing telecommunications carrier shall submit its initial reference inter-connection offer within thirty days after the appointed day.”

[The Telecommunications Act of 2000, Sections 29(4) and 32(1)-(2)]

Suriname – FAIR

“1. Iedere concessiehouder is verplicht met aanvragers van interconnectie in onderhandeling te treden om te komen tot overeenkomsten op basis waarvan de interconnectie tot stand komt; de TAS kan bij het uitblijven van een overeenkomst een termijn stellen waarbinnen deze tot stand moet zijn gekomen. (TAS may determine term in which agreement must be reached)...”

[Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), Artikel 12]

Trinidad and Tobago – GOOD

“(1) Every interconnection agreement shall stipulate a period not exceeding twenty-eight days within which interconnection shall be effected.

(2) Notwithstanding subregulation (1), the Authority may, upon written application of a concessionaire, extend the period referred to in subregulation (1).”

“A concessionaire shall use all reasonable endeavours to effect operational interconnection within twenty-eight days of concluding a relevant interconnection agreement or such longer period as may be approved by the Authority in accordance with regulation 24.”

“Where a dispute arises between concessionaires with respect to interconnection, the matter may be referred to the Authority for consultation and guidance, on the agreement of both parties, prior to either party submitting the matter to the Authority as a dispute.”

[Telecommunications Interconnection Regulations of 2006, Sections 24, 25 and 31]

International Examples and Regional Harmonization**ECTEL**

“The dispute settlement provisions create a system to resolve disputes where one arises in the course of negotiations. After a dispute is referred/notified to the Commission, the complainant has two weeks within which to make a case that a dispute exists and the respondent has two weeks to submit a response. Once both parties have made their case, the Commission has more or less thirty days maximum to make a decision.

“Where the Commission, after receiving all arguments quickly discerns a resolution but requires additional time to outline its reasons, the Code permits the Commission to issue a “Preliminary Order” or “PO.” This order enables the Commission to notify the parties of how it intends to decide the matter, and to give its reasons at a later date. Further, the Commission can impose an interim interconnection agreement (IIA) requiring the parties to temporarily provide interconnection and direct them to go back to the negotiating table. In the alternative, the Commission can impose an IIA and still proceed to determine the main dispute. A party forced to provide interconnection under an IIA can apply to vary or modify it however, the Commission may vary the IIA in exceptional circumstances”

[Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) Draft Interconnection Code of 2009, Section 6]

European Union

“...[N]ational regulatory authorities may intervene on their own initiative at any time, and shall do so if requested by either party, in order to specify issues which must be covered in an interconnection agreement, or to lay down specific conditions to be observed by one or more parties to such an agreement. National regulatory authorities may, in exceptional cases, require changes to be made to interconnection agreements already concluded, where justified to ensure effective competition and/or interoperability of services for users.

Conditions set by the national regulatory authority may include inter alia conditions designed to ensure effective competition, technical conditions, tariffs, supply and usage conditions, conditions as to compliance with relevant standards, compliance with essential requirements, protection of the environment, and/or the maintenance of end-to-end quality of service.

Section IV

The national regulatory authority may, on its own initiative at any time or if requested by either party, also set time limits within which negotiations on interconnection are to be completed. If agreement is not reached within the time allowed, the national regulatory authority shall take steps to bring about an agreement under procedures laid down by that authority. The procedures shall be open to the public in accordance with Article 14 (2).”

[EU Directive 97/33/EC, Article 9.3]

ECOWAS

“The national regulatory authority may, either automatically or at the request of one of the parties, set a deadline for signature of the agreement, after which they must intervene to bring the negotiations to a conclusion so that negotiations do not become a barrier to the entry of new operators.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services,, Legal Regime of Interconnection Agreement, Article 16.4]

COMESA

“Negotiations on interconnection may be difficult and protracted. It is desirable that the legislation provides for a time frame by which negotiations must have been completed failing which the regulator will arbitrate the issues between the parties and eventually determine the basic issues that have not been completed: points of interconnection, price or other modalities of the agreement. The rationale is that there may be a tendency for the incumbent operator to indefinitely delay entry of a potential competitor by extending the negotiations. A time frame of 90 days, extendable, is considered to be reasonable. In order to maximise the likelihood of companies reaching agreement, it is desirable that the regulator should have a reference document which sets for example the minimum points of interconnection as well as proxy interconnection rates if negotiations and arbitration fail.

[COMESA – Regulatory Guidelines on Interconnection, Time frame, Appendix IV.6]

4.4 Reference Interconnection Offer and approved interconnection agreements²¹**International Best Practices and Regional Trends:**

- Dominant operators or those having significant market power must publish a Standard/Reference Interconnection Offer
- The Standard/Reference Interconnection Offer is approved by the regulator and made publicly available.
- Interconnection agreements must be approved by the regulator who checks compliance with the law.

Regional Examples

Antigua and Barbuda – NONE the Draft ICT Policy includes this language but not the draft Act

Bahamas – GOOD

40. Conditions on SMP licensees.

(1) Notwithstanding the special responsibility of every dominant licensee under section 69, URCA may impose specific conditions on licensees determined to have SMP in the relevant market or relevant markets, including obligations relating to–

...

(b) the publication of a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP at tariffs based on the licensee's costs;

...

(j) such other obligations as URCA may consider necessary in pursuance of the electronic communications policy objectives and the sector policy.

[Communications Act, 2009, Section 40]

“The RIO should make it clear that:

Any interconnection agreement based on the RIO will be subject to review by the PUC.

The PUC may issue an instruction to the parties to modify the interconnection agreement where the PUC believes that any term, condition or charge contained within the agreement is incompatible with:

- The Act;
- The TSP (Telecommunications Sector Policy);
- Any instruction or guideline issued by the PUC (including this Framework); or
- The licences of the parties to the agreement.”

[Interconnection Guidelines for the Bahamas, Section 4.36]

²¹ ITU is compiling a table of RIO and RUO offers with links, it is available on the ICT Eye website at: www.itu.int/ITU-D/ICTEYE/Regulators/Regulators.aspx

Barbados – GOOD

27. (1) The RIO shall not take effect unless approved in writing by the Commission.
- (2) Where the Commission considers that the RIO or any part of the RIO is inconsistent with the principles of interconnection as set out in section 25(2), the Commission may refuse to approve the RIO or a part of the RIO outlining the inconsistency and giving reasons for its decisions.
- (3) In deciding whether to approve or refuse an RIO the Commission shall
- (a) consult with the carrier providing the RIO and any other carriers likely to seek interconnection to that carrier's network;
 - and
 - (b) have regard to
 - (i) the interconnection principles set out in section 25;
 - (ii) the interconnection policy specified by the Minister under paragraph (i) of subsection (2) of section 4;
 - (iii) the need to promote competition;
 - (iv) the long-term interests of end-users; and
 - (v) the submissions, whether oral or written, of the carriers providing and seeking interconnection.
- (4) Where the Commission approves an RIO of a carrier or part of that RIO then it shall make a declaration as to the approval specifying the date on which the approval takes effect.
- (5) Where the Commission refuses the RIO of a carrier or part of that RIO, the Commission shall consult with the carrier in order to resolve the inconsistency with the interconnection principles referred to in section 25; and the carrier may amend the RIO to remedy the inconsistency.
- (6) Where the Commission is satisfied that an amendment of an RIO by a carrier pursuant to subsection (5) satisfies the interconnection principles referred to in section 25, it shall approve the amended RIO and the carrier shall file the amended RIO with the Commission.

[Barbados Telecommunications Act, 2002]

“The approved RIO will be made available for public inspection in such a manner and for such a fee as the Commission determines.”

[Interconnection Policy of 2003, Section 4.5]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD – complete

12. (1) Each dominant interconnection provider requested to provide a reference interconnection offer shall provide such an offer within 60 days of its receipt of such request by the Commission.
- (2) A reference interconnection offer shall make available to public network operators those services and network elements necessary for the provision of competing retail services.
- (3) The reference interconnection offer provider may set different rates, terms and conditions for different interconnection services, where such differences can be objectively justified and do not result in the unfair distortion of competition.
- (4) The reference interconnection offer provider shall apply the appropriate interconnection tariffs, terms and conditions when providing interconnection for its own services or those of its affiliates, subsidiaries or partners.

- (5) The charges of the reference interconnection offer shall be sufficiently unbundled to ensure that the interconnecting operator requesting interconnection is not required to pay for services not related to the service requested.
- (6) Interconnection rates set out in the reference interconnection offer shall be cost-oriented.
- (7) The reference interconnection offer shall contain specific provisions for dispute resolution procedures including the appropriate contact persons whose names and other contact information shall be updated at least quarterly, precise time frames for resolution of complaints, clear and concise escalation procedures that allow for prompt resolution of disputed issues and rules that shall be used for arbitrating any unresolved issues.
- (8) The Commission has the authority to ensure that a reference interconnection offer is compliant with the Act and Regulations and contains rates that are cost-oriented.
13. Within 7 days of approval of a reference interconnection offer by the Commission, a dominant interconnection provider shall publish its offer by -
- (a) posting the offer on its website; and
 - (b) making printed and electronic copies of the offer available to any public network operator upon request.

[Telecommunications (Interconnection) Regulations, Dominica, 2009, Sections 12-13]

[Telecommunications (Interconnection) Regulations, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, 2009]

Dominican Republic – GOOD: all operators are required to make a RIO to requesting interconnecting operators

- Artículo 6 La Prestadora Requerida, a solicitud de una Prestadora Requirente, le brindará una Oferta de Referencia que contenga la siguiente información, en la medida en que la misma sea de relevancia para la referida solicitud de interconexión:
- a) La localización y descripción de los Puntos de Interconexión y los niveles de jerarquía de red ofrecidos, incluyendo la numeración asociada a cada uno de ellos.
 - b) Las modalidades de Interconexión, en un inmueble de la Prestadora que realiza la oferta, en uno de la Prestadora Requirente o en otro de un tercero utilizado por la Prestadora Requerida, señalándose las particularidades de índole técnica o económica que sean aplicables en cada caso.
 - c) La descripción de las características técnicas de los diferentes tipos de enlace de Interconexión, indicando los plazos de suministro de los enlaces, sus precios en función de la capacidad, la concentración de tramas, la distancia y el plazo del alquiler, tanto para su contratación inicial como para la modificación posterior de sus características.
 - d) Las capacidades de Interconexión ofertadas a otras Prestadoras en cada Punto de Interconexión. Se especificarán los servicios de originación y terminación de comunicaciones, de tránsito conmutado hacia otras redes, los servicios de acceso para comunicaciones de larga distancia, nacionales e internacionales y los de acceso a otras Prestadoras.
 - e) Las especificaciones técnicas de las interfaces ofertadas en los Puntos de Interconexión, incluyendo, entre otras, las características físicas y eléctricas del interfaz, el sistema de señalización empleado, los servicios y las capacidades
 - f) Los tipos de comunicaciones a ser transmitidas, según enrutamientos, redes de destino y demás características, así como, la calidad del servicio. Se señalará, en particular, la información relativa a las capacidades y facilidades asociadas, a los aspectos de calidad del servicio y a la disponibilidad de sistemas redundantes orientados a una mejora de la calidad del mismo.

- g) La información sobre los procedimientos de provisión de servicios avanzados proporcionados por la Prestadora a sus clientes finales y que requieran de interoperabilidad en los Puntos de Interconexión.
- h) Las características y las condiciones para la selección de Prestadora, incluyendo, limitaciones o peculiaridades que afecten a determinados orígenes o destinos de las comunicaciones.
- i) La descripción de los procedimientos y condiciones ofrecidos de acceso a la información para la explotación de los servicios, como los servicios de guía, de tratamiento de llamadas de emergencia y de asistencia a las Prestadoras a los que se ofrezca la Interconexión.
- j) La descripción de las condiciones necesarias para la realización y el mantenimiento de la Interconexión, en especial los métodos y fases de las pruebas para la verificación de la Interconexión y para las actualizaciones o modificaciones en los Puntos de Interconexión.
- k) La descripción de los precios máximos aplicables a cada uno de los componentes de las interconexiones en que se base la Oferta de Referencia, de acuerdo con los principios establecidos en el artículo 18 del presente Reglamento.
- l) Cualquier otra información cuya inclusión sea procedente, conforme lo establezca la normativa vigente.

[Interconnection Regulations approved through Resolución No. 42-02, of the Consejo Directivo of Indotel]

Guyana – NONE

Haiti – NONE

Jamaica – GOOD

“Every dominant carrier shall, and any other carrier may, lodge with the Office a proposed reference interconnection offer setting out the terms and conditions upon which other carriers may interconnect with the public voice network of that dominant or other carrier, for the provision of voice services.”

[The Telecommunications Act of 2000, Section 32(1)]

Suriname – GOOD

“(1) Elke concessiehouder is, in het belang van een doelmatige verzorging van de telecommunicatie, verplicht interconnectie te verlenen, wanneer daartoe een verzoek wordt gedaan door aanbieders van telecommunicatiediensten. (*obligation for concession holders to provide interconnection upon request*)

2. Elke concessiehouder is verplicht een interconnectie-aanbod vast te stellen aan de hand van een door de TAS aangegeven modelovereenkomst die gepubliceerd dient te worden in het Advertentieblad van de Republiek Suriname. (*concession holders are obliged to use model interconnection agreement (minimum elements?) published by TAS*)...

3. Van overeenkomsten als bedoeld in lid 1 van dit artikel (artikel 12) wordt zo spoedig mogelijk een afschrift gezonden aan de TAS; bedoelde overeenkomsten dienen overeenkomstig het staatsbesluit, genoemd in lid 5 van artikel 11, te worden gesloten. (*copies of interconnection agreements of concession holders must be sent to TAS as soon as possible*)

4. Indien de TAS van oordeel is dat een overeenkomst strijdig is met het bepaalde bij of krachtens deze wet, stelt deze de partijen daarvan in kennis onder mededeling van de bepalingen van de overeenkomst die naar haar oordeel wijziging behoeven; zolang die wijzigingen niet zijn aangebracht, is door betrokken concessiehouders niet voldaan aan de verplichtingen in verband met interconnectie. (*TAS may control interconnection agreements to check compliance with the law and oblige parties to make modifications to the agreement*)

[Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), Artikel 12]

Trinidad and Tobago – GOOD

“(19)(1) Upon a request by the Authority, a concessionaire shall prepare, publish and maintain a RIO substantially in the form published by the Authority on its website or in such other manner as the Authority may determine.

(2) The basis for a request by the Authority shall be—

- (a) the extent to which the concessionaire will be required by other concessionaires to provide interconnection;
- (b) the concessionaire’s control over essential inter-connection resources; and
- (c) the extent to which the concessionaire has failed to promptly negotiate interconnection or has unjustifiably denied interconnection in the past.”

“20. (1) A concessionaire who is required to prepare a RIO under regulation shall within sixty days of notice to that effect by the Authority and annually thereafter until such time as the requirement is withdrawn by the Authority, submit its RIO to the Authority for approval.

(2) The Authority may with reasons, require the concessionaire to effect changes to the RIO prior to the Authority’s grant of approval, except that the changes shall not be in respect of any matter which the concessionaire is entitled to negotiate or determine under section 25 of the Act.

(3) Changes shall be effected by the concessionaire and the RIO resubmitted to the Authority for approval within twenty-one days of the concessionaire’s receipt of the Authority’s request under subregulation (2).”

[Telecommunications Interconnection Regulations of 2006, Section 19(1) and 20]

International Examples and Regional Harmonization**ECTEL**

“The Commission will review and approve, or decline to approve, an interconnection agreement or any modification or amendment thereof that is submitted to it pursuant to the Regulations, within thirty (30) days of such submission, which period may be extended for good cause.”

[Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) Draft Interconnection Code of 2009, Section 5(b)]

European Union

“For interconnection to public telecommunications networks and publicly available telecommunications services as set out in Annex I provided by organizations which have been notified by national regulatory authorities as having significant market power, Member States shall ensure that:

- (c) interconnection agreements are communicated to the relevant national regulatory authorities, and made available on request to interested parties, in accordance with Article 14 (2), with the exception of those parts which deal with the commercial strategy of the parties. The national regulatory authority shall determine which parts deal with the commercial strategy of the parties. In every case, details of interconnection charges, terms and conditions and any contributions to universal service obligations shall be made available on request to interested parties;”

[EU Directive 97/33/EC, Article 6]

France

“The public network operators mentioned in the list established under section 7) of article L. 36.7 [i.e., dominant operators] shall be required to publish the technical and pricing terms of their interconnection offering, with the prior approval of the telecommunications regulatory authority and according to the conditions set out in the schedule of conditions.”

[France, Telecommunications Act, Article 4]

Singapore

“A Requesting Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee on the terms specified in a Reference Interconnection Offer (“RIO”) developed by the Dominant Licensee and approved by IDA [Singapore’s Regulator]”.

[Singapore, Telecommunications Act (Chapter 3.2.3), Article 6.2.1]

Saudi Arabia

“The RIO [Reference Interconnection Offer] is a document prepared by the Dominant Service Provider which defines and provides details of a set of standard terms and conditions for interconnection with other Service Providers”

[Saudi Arabia, CITC, Interconnection Guidelines, Article 3.1]

ECOWAS

“National regulatory authorities shall publish a clear and transparent procedure governing approval of the reference interconnect offer (RIO) of operators possessing significant market power”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Reference Interconnect Offer, Article 21.1]

“The operator with significant market power is required to publish annually an RIO, reflecting its price list and the technical services offered. The offer must contain at least the following services: a) services for the routing of switched traffic (call termination and origination); b) leased lines; c) interconnection links; d) supplementary services and implementation arrangements therefore; e) description of all points of interconnection and conditions of access thereto, for the purposes of physical co-location; f) comprehensive description of proposed interconnection interfaces, including the signaling protocol and possibly the encryption methods used for the interfaces; g) technical and tariff conditions governing the selection of carrier and portability.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services,, Reference Interconnect Offer, Article 21.4]

COMESA

“In performing its missions in regard to interconnection, the regulatory authority has to elaborate and publish a model Reference Interconnection Offer (RIO) that must be followed by all operators. This RIO shall be detailed enough to cover all commercial and technical aspects in order to facilitate its use during the negotiation sessions as well as in the event of need to update some items in the interconnection agreement.”

[COMESA – Regulatory Guidelines on Interconnection, General Responsibility of a Regulator Authority, Article 3.a]

4.5 Obligation to share infrastructure

International Best Practices and Regional Trends:

- Infrastructure sharing is allowed and, in some cases is required, especially regarding mobile networks

Regional Examples

Antigua and Barbuda – NONE

Bahamas – NONE

Barbados – GOOD – the provisions are clear

“24. Whenever the Commission, on an application made to it by a service provider or on its own initiative, finds that public convenience or necessity requires the use by a service provider of the conduits subways, poles, wires, antennae masts or other equipment belonging to another service provider, and that such use will not prevent the owner or other users thereof from performing their duties, or result in any substantial detriment to the utility service and if the other service provider fails to agree with the first mentioned service provider upon such use or conditions or compensation therefor, the Commission may make such order as it deems reasonable directing that the use or joint use of the conduits, subways, poles, wires, antennae masts or other equipment be permitted and prescribing the conditions to be observed and the compensation to be paid in respect of the use so permitted.”

[Barbados Utilities Regulation Act, 2002]

40. Conditions on SMP licensees.

- (1) Notwithstanding the special responsibility of every dominant licensee under section 69, URCA may impose specific conditions on licensees determined to have SMP in the relevant market or relevant markets, including obligations relating to–
- (e) sharing of infrastructure, facilities and systems used for the provision of electronic communications services;

[Barbados Communicaitons Act, 2009, Section 40 (1) e]

Belize – GOOD

22. (1) Public telecommunication service providers shall enter into agreements governing the interconnection of their facilities, sharing of infrastructure, local number facilities, and other inter-networking and other facilities which the PUC may deem to be in the public interest, as well as with providers of value added services, on reasonable and non-discriminatory terms.

[Belize Telecommunications Act, 2002, Section 22]

Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines – GOOD

48. Sections 45, 46 and 47 shall apply to Infrastructure sharing infrastructure sharing, *mutates mutandis*

49. (1) Where access to telecommunications towers, sites and facilities is technically feasible, a telecommunications provider (the first provider) must, upon request, give another telecommunications provider (the second provider) access to a telecommunications tower owned or operated by the first provider, or to a site owned, occupied or controlled by the first provider, or to an eligible underground facility owned or operated by the first carrier, for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

(2) A telecommunications provider, in planning the provision of future telecommunications services, must co-operate with other telecommunications providers to share sites and eligible underground facilities.

(3) Access to sites, towers or eligible underground facilities pursuant to this section shall, *mutatis mutandis*, be on such terms as set out in sections 45 to 47 above, and otherwise on such terms and conditions as are agreed between providers or, failing agreement as determined by the Commission.

[Dominica Telecommunications Act, 2000, Sections 49, 50]

[Grenada Telecommunications Act, 2000, Sections 48, 49]

[St. Lucia Telecommunications Act, 2000, Sections 49, 50]

[St. Vincent and the Grenadines Telecommunications Act, 2001, Sections 47, 48]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD

“50. (1) Where access to telecommunications towers, sites and underground facilities is technically feasible, a telecommunications provider (the first provider) must, upon request, give another telecommunications provider (the second provider) access to a telecommunications tower owned or operated by the first provider, or to a site owned, occupied or controlled by the first provider, or to an eligible underground facility owned or operated by the first provider, for the sole purpose of enabling the second provider to install a facility for use in connection with the supply of a telecommunications service.

(2) A telecommunications provider, in planning the provision of future telecommunications services, must cooperate with other telecommunications providers to share sites and eligible underground facilities.

(3) Access to sites, towers or eligible underground facilities pursuant to this section shall, *mutatis mutandis*, be on such terms as set out in sections 46 to 48 above [cost oriented, transparent, and non-discriminatory with a regulated process for negotiation – see point s1 and 4 above], and otherwise on such terms and conditions as are agreed between providers or, failing agreement as determined by the Commission.

[Telecommunications Act of 2000, Article 50]

8. (1) Where access to any facilities is required to effect interconnection such access shall be provided on a nondiscriminatory and equitable basis, including with respect to charges, location and other commercial matters, together with the interconnection.

(2) Pending the conclusion of any agreement between parties to a negotiation for access to facilities, and subject to regulation 30, the Commission may, acting on the recommendation of ECTEL, issue such orders or directions for the sharing of any facilities or with respect to providing access to such facilities on an interim basis.

[Telecommunications (Interconnection) Regulations, Dominica, 2009, Sections 8]

[Telecommunications (Interconnection) Regulations, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, 2009, Section 9]

Dominican Republic – GOOD

Artículo 11. Coubicación Los equipos para la Interconexión podrán estar localizados en las instalaciones de cualquiera de las Prestadoras, de conformidad a lo que acuerden las partes. A estos efectos, las Prestadoras deberán poner a disposición de otras Prestadoras el espacio físico y todos los servicios auxiliares en sus propias instalaciones que sean facilidades esenciales, en la medida que sea técnicamente factible, a título oneroso y en condiciones no discriminatorias. En caso de desacuerdo, el INDOTEL resolverá de conformidad con lo dispuesto por la Ley, tomando en consideración la disponibilidad y razonabilidad técnica y económica del caso particular.

[Interconnection Regulations approved through Resolución No. 42-02, of the Consejo Directivo of Indotel]

Guyana – NONE: only a consultation paper rather than regulation or directive

Haiti – NONE

Jamaica – FAIR: only a draft Telecom Policy paper with no changes as of yet to the Telecom Act

Suriname – FAIR

There are some provisions regarding collocation and infrastructure sharing in the Interconnection Regulation (Staatsbesluit Interconnectie #25, 2001) of 2001, Article 5.

Trinidad and Tobago – GOOD

“A holder of a concession for the provision of a public telecommunications network or broadcasting service shall—

- (a) upon written request, provide access to its facilities and such access shall not be unreasonably withheld;
- (b) negotiate in good faith on matters concerning access to facilities; and
- (c) neither withdraw nor impair access once already granted, except—
 - (i) where authorized by the Authority; or
 - (ii) in accordance with—
 - A. a dispute resolution process under section 82 of the Act; or
 - B. an Order made by a court.”

[The Telecommunications (Access to Facilities) Regulations of 2006, Article 3]

International Examples and Regional Harmonization**ECTEL**

“(1) A public network operator may at any time, make an application to another operator for access to facilities that it owns or controls.

(2) Upon receipt of a request, an operator must promptly provide the terms and conditions for such access.

(3) The party offering access and the party requesting access shall promptly upon receipt of the request, commence negotiations in good faith with the objective of concluding an infrastructure sharing agreement.

(4) Where the parties to a proposed infrastructure sharing agreement are unable to agree on the terms thereof within sixty (60) days from the date of the application under subsection (1) either party may request the Commission to resolve the matter, in accordance with such procedures as the Commission, acting on ECTEL’s recommendation, may adopt.

(5) Any decision by the Commission pursuant to sub-regulation (4) shall be binding on the parties.

(6) A decision by the Commission on the matter shall be made within sixty (60) days from the date of the referral to the Commission.

(7) Notwithstanding subsections (1) – (6), a party offering access and a party requesting access may conclude such arrangements at the time of negotiating interconnection.”

“(1) The Commission may direct an operator to provide co-location or other forms of infrastructure sharing on the basis of commercially negotiated rates and other terms and conditions.

(2) Where operators are unable to reach an agreement regarding compensation for co-location or other forms of infrastructure sharing, the Commission shall impose rates based on costs, where appropriate.”

[Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) Draft Interconnection Code of 2009, Sections 8 and 9]

European Union

“Where an organization providing public telecommunications networks and/or publicly available telecommunications services has the right under national legislation to install facilities on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities and/or property with other organizations providing telecommunications networks and publicly available services, in particular where essential requirements deprive other organizations of access to viable alternatives. Agreements for collocation or facility sharing shall normally be a matter for commercial and technical agreement between the parties concerned. The national regulatory authority may intervene to resolve disputes, as provided for in Article 9. Member States may impose facility and/or property sharing arrangements (including physical collocation) only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such arrangements may include rules for apportioning the costs of facility and/or property sharing.”

[EU Directive 97/33/EC, Article 11]

ECOWAS

“Member States shall ensure that the national regulatory authorities encourage infrastructure sharing. The authorities must ensure that sharing between the operators of public telecommunication networks takes place under conditions of fairness, non-discrimination and equality of access. Thus, the regulatory authority, in consultation with other players, must be encouraged to elaborate a procedure for handling relations between the operators of public networks in the matter of the conditions and the sharing of infrastructure, in particular lead-times and access to the information needed to put it into place.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services,, Infrastructure Sharing, Article 10.1]

“National Regulatory Authorities shall encourage infrastructure sharing between incumbents and new entrants concerning in particular posts, ducts and elevated points to be made available mutually on a commercial basis, in particular where there is limited access to such resources through natural or structural obstacles.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services,, Infrastructure Sharing, Article 10.2]

“National regulatory authorities shall encourage access to alternative infrastructure on the basis of commercial negotiations, in order to foster and entrench competition as rapidly as possible. They must ensure that such access is provided under conditions of fairness, non-discrimination and equality of access. The revision of ICT regulations within the Community must foresee provisions on access to alternative infrastructure. Accordingly, the status of companies providing access to alternative infrastructure should be changed to include this service.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Infrastructure Sharing, Article 10.3]

COMESA

“Operators are often reluctant to permit their competitors access to their facilities. The provisions in regulations should mandate all players to provide reciprocal access to infrastructure so as to avoid unnecessary duplication. Without being exhaustive, the parts of infrastructure to be shared should include: towers, underground ducting, cables, buildings and land on which facilities are located.

[COMESA – Regulatory Guidelines on Interconnection, Network Access, Article 4] *TMG Note: This language from COMESA is at odds with the best practices as it states that regulations should mandate that all players provide reciprocal access to infrastructure.*

4.6 Unbundling of the local loop

International Best Practices and Regional Trends:

- Unbundling of the local loop is mandated
- Bitstream and broadband resale services are also mandated in some occasions

Regional Examples

Antigua and Barbuda – NONE

Bahamas – NONE

Barbados – NONE: initiated consultation on LLU in March 2007, but no follow up available on regulator website)

“In order to ensure the successful implementation of LLU a number of steps have to take place as outlined below:

- The first step requires that the competing provider conduct market research in order to determine the likely take up of unbundled services by his potential customers. This is essential as equipment required to achieve unbundling of the local loop and connection to the competing provider’s network is intricate and expensive. The incumbent should not be required to commit to expensive preparation of sites without stringent guarantees of competing provider’s requirements.
- In step two, the incumbent is required to survey sites, determine access technology and type, physical access (e.g. co-location) and present to the competing provider an estimate of the costs based on the estimates of customer numbers provided by the competing operator. These costs are extremely complex and are often determined by reference to models such as Long Run Incremental Costs (LRIC) or variations on this as determined by the Fair Trading Commission.
- Step three will be based on a Reference Unbundling Offer which will be published by the incumbent and will be in the hands of the Fair Trading Commission. This determines the manner in which ordering, provisioning etc are carried out amongst other things.
- Step four is the physical connection of the access seeker to the incumbent’s network.”

[Consultative Document, Local Loop Unbundling for Cable & Wireless (Barbados) Limited of 2007, Section 4]

Belize – FAIR

22. (1) Public telecommunication service providers shall enter into agreements governing the interconnection of their facilities, sharing of infrastructure, local number facilities, and other inter-networking and other facilities which the PUC may deem to be in the public interest, as well as with providers of value added services, on reasonable and non-discriminatory terms.

[Belize Telecommunicaitons Act, 2002, Section 22]

Dominica – NONE

Dominican Republic – FAIR: some mention in regulations – need for more detail

12.3. Las Prestadoras requeridas deberán permitir el uso compartido del bucle o subbucle de cliente para servicios públicos de telecomunicaciones, distintos del servicio fijo.

[Interconnection Regulations approved through Resolución No. 42-02, of the Consejo Directivo of Indotel]

Grenada – NONE**Guyana – NONE: consultation in 2001, but no final determination**

Jamaica – FAIR – The Telecom Law permits the regulator to require LLU. The Office of Utilities Regulation (OUR) issued its initial consultative document on Local Loop Unbundling on January 20, 2006, but postponed any decision on the consultation.

“(1) The power to make rules under sections 35 (3) or 37 or in relation to the local of rules. local loop referred to in section 30(1)(c) shall not be exercised before the commencement of Phase III.

(2) The Office shall make rules in relation to the local loop referred to in subsection (1) only if it is satisfied on reasonable grounds that such rules are necessary in the interest of customers and that –

- (a) the benefits likely to arise from the rules outweigh the likely cost of implementing them; and
- (b) the requirement to comply with the rules will not impose an unfair burden on any carrier or service provider.”

[The Telecommunications Act of 2000, Section 83]

St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – NONE**Suriname – FAIR**

There are some provisions regarding unbundling in the Interconnection Regulation (Staatsbesluit Interconnectie #25, 2001) of 2001,

Trinidad and Tobago – GOOD

“ Without prejudice to the generality of the foregoing, a concessionaire shall provide access to the following facilities including where applicable, their functional equivalents:

- (a) local access loop...”

[The Telecommunications (Access to Facilities) Regulations of 2006, Article 4]

International Examples and Regional Harmonization**European Union**

“Notified operators [dominant operators] shall from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity.”

[EU Regulation 2887/2000, Article 3.2]

“...notified operators [dominant operators] shall charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation”

[EU Regulation 2887/2000, Article 3.3]

Ireland

“The Regulator may in accordance with Regulation 9 impose on an operator obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities inter alia in situations where the Regulator considers that the denial of such access or the imposition by operators of unreasonable terms and conditions having a similar effect

-
- (a) would hinder the emergence of a sustainable competitive market at the retail level,
- (b) would not be in the interests of end-users, or
- (c) would otherwise hinder the achievement of the objectives set out in section 12 of the Act of 2002.”

[Ireland, S.I., No 305 of 2003 (Access Regulations) Article 13]

“*eircom Ltd* [dominant fixed operator] shall have an obligation to meet reasonable requests for access to, and use of, wholesale bitstream access products, features or additional associated facilities by undertakings requesting access or use of such wholesale bitstream access products, features or additional associated facilities, as provided for by Regulation 13 of the Access Regulations.”

[Comreg, Decision 03/05, Article 5.1]

ECOWAS

“Member States shall ensure that, in the regulatory text: a) new entrants are authorized to access the local loop on the basis of a pre-established schedule; b) new entrants commit, in their respective proposals, to install some minimum infrastructure capacity, whereas dominant operators commit to provide access to copper pairs to the new entrant as well as the possibility of co-location on its premises in order to facilitate unbundling; c) the unbundling offer including the list of services offered at the request of the national regulatory authority shall be approved by the latter; d) the national regulatory authority shall be obliged to ensure, on one hand, that the new entrant has access to the information needed for unbundling purposes and, on the other, that information related to unbundling is exchanged electronically between dominant operators and competitors; a schedule for unbundling shall be established with a view e) recommendations shall be provided on use of the “scissors test” in order to compare retail prices and unbundling prices in order to eliminate any anticompetitive practices by the dominant operators.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Local loop unbundling, Article 26]

“Member States must ensure that: a) through unbundling, alternative operators are able to offer “triple play” type services (high-speed internet, voice and television); b) all the alternative operators' equipment necessary for the implementation of local loop access can be co-located; c) national regulatory authorities encourage activities which will promote development of the wholesale market and hence rapid expansion of the internet in Member States; d) prior to the liberalization of fixed services, the national regulatory authorities negotiate with the incumbent operators on the inclusion of standard offers, namely: flat-rate access, access via non-geographical free phone numbers, access via non-geographical paying numbers.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Evolution of the regulatory framework to promote the development of the internet, Article 15]

“As soon as the fixed network services have been opened up to competition, the RIOs of operators with significant market power must also include the following services; a) third-party billing services; b) at the request of the national regulatory authority, an alternative co-location offer if physical co-location is proven to be technically unfeasible; c) as needed, the technical and financial conditions governing access to the operator's resources, in particular those relating to unbundling of the local loop, with a view to offering telecommunication services.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Reference Interconnect Offer, Article 21.6]

“Member States shall ensure that there is an obligation for dominant operators to provide co-location and that a co-location offer, presenting no barrier to the entry of competitors, is included in the reference interconnect offer for network interconnection and in the unbundling offer for unbundling.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Co-location, Article 27.1]

4.7 Regulatory intervention on Mobile Termination Rates (MTR)²²**International Best Practices and Regional Trends:**

- There is regulatory intervention on Mobile Termination Rates (MTR) in which mobile operators must offer cost-oriented fixed-to-mobile or mobile-to-mobile termination rates
- A methodology is defined whereby MTRs are defined
- Termination rates should be symmetric and be based on cost incurred by efficient operators

Regional Examples**ECTEL (applies to Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines) – GOOD**

“The Council of Ministers approved a three year phased reduction in the rates for mobile termination. The recommended rates will result in an up to 40 per cent reduction in the wholesale rate for mobile termination in the first year and up to 60 percent reduction over the three year period. The impact of this is expected to be significant reductions in rates for fixed to mobile and mobile to mobile calls over the next three years.”

[Implementation of Cost Oriented Interconnecting Rates of 2009]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD

11. (1) The Commission shall, acting on the recommendation of ECTEL, determine upon its own motion or upon an application by any person, the interconnection rate of any person who provides or offers to provide interconnection.
- (2) Interconnection rates shall be cost-oriented and imposed in a transparent manner and shall identify clearly -
- (a) charges for interconnection services; and
 - (b) any contribution to the access deficit of the interconnection provider, where applicable.
- (3) Where an interconnection agreement is negotiated before the Commission has determined any rates, or where, after the conclusion of any interconnection agreement, the Commission establishes new rates for interconnection for any reasons, the agreement shall be amended by the parties to comply with such rates as may subsequently be determined.
- (4) Notwithstanding sub-regulation (2), the Commission may impose cost-oriented rates in a phased manner and on such terms and conditions as may be determined by the Commission, acting on the recommendation of ECTEL.

[Telecommunications (Interconnection) Regulations, Dominica, 2009, Sections 11]

[Telecommunications (Interconnection) Regulations, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, 2009, Section 12]

Suriname – GOOD

The “Richtlijn Interconnectie en Telefonie of 30 December 2008” (TAS Guidelines) as well as its annexes came into force on 1 January 2009 and remain in force on 15 January 2010. These Guidelines provide clarification and provide that in accordance with Article 11 #4 of the Law, tariffs for interconnection must be cost-oriented. TAS also clarifies Article 17 of the State Determination on Interconnection which provides that the interconnection tariff includes the cost price and a “reasonable profit”.

²² A GSR09 discussion paper is being drafted on MTR: to regulate or not to regulate?

In terms of tariffs, the Guidelines clearly define what is meant by **Terminating Access** (Artikel 3 lid 1 sub b Besluit Interconnectie S.B. 2004 no. 151), **Originating Access** (Artikel 3 lid 1 sub c Besluit Interconnectie S.B. 2004 no. 151), and **Transit traffic** (Artikel 3 lid 1 sub d Besluit Interconnectie S.B. 2004 no. 151).

International Examples and Regional Harmonization

European Union

“(1) When imposing price control and cost-accounting obligations in accordance with Article 13 of Directive 2002/19/EC on the operators designated by National Regulatory Authorities (NRAs) as having significant market power on the markets for wholesale voice call termination on individual public telephone networks (hereinafter referred to as “fixed and mobile termination markets”) as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC, NRAs should set termination rates based on the costs incurred by an efficient operator. This implies that they would also be symmetric. In doing so, NRAs should proceed in the way set out below.

(2) It is recommended that the evaluation of efficient costs is based on current cost and the use of a bottom-up modelling approach using long-run incremental costs (LRIC) as the relevant cost methodology.

(3) NRAs may compare the results of the bottom-up modelling approach with those of a top-down model which uses audited data with a view to verifying and improving the robustness of the results and may make adjustments accordingly.

(4) The cost model should be based on efficient technologies available in the timeframe considered by the model. Therefore the core part of both fixed and mobile networks could in principle be Next-Generation-Network (NGN)-based. The access part of mobile networks should also be based on a combination of 2G and 3G telephony.

(5) The different cost categories referred to herein should be defined as follows:

- (a) “Incremental costs” are those costs that can be avoided if a specific increment is no longer provided (also known as avoidable costs);
- (b) “Traffic-related costs” are all those fixed and variable costs which rise with increased levels of traffic.”

[Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, Articles 1-5]

ECOWAS

“Member States shall ensure that the national regulatory authorities examine: a) interconnection and call termination charges on mobile and fixed networks; b) charges and tariff structures, retail and interconnection prices and the sharing of revenues between originating and terminating operators for fixed-to-mobile calls; c) possible adjustments to the tariff structures of retail and interconnection prices; d) the relevance of the interconnection market; e) the relevance of the mobile termination market; f) the identification of dominant operators in these markets and implementation of the necessary measures to promote smooth development of the telecommunication market and the process of liberalization of the fixed network in particular.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services,, Fixed-to-Mobile Call Termination, Article 14]

4.8 Dispute Resolution

International Best Practices and Regional Trends:

- Interconnection/access disputes have a specific and expedited process
- Parties can request regulator adjudication at any moment.

Regional Examples

Antigua and Barbuda – NONE – the Draft Act of 2007 does include such language (Section 22), but has not yet been approved.

Bahamas – GOOD

“9.1 The PUC may determine:

- Pre-agreement interconnection disputes (i.e. disputes that may arise between parties in the course of negotiations between an interconnection provider and an interconnection seeker); and
- Post-agreement interconnection disputes (i.e. disputes relating to the terms and conditions of an existing interconnection contract).

Post-agreement disputes can relate to either:

- A request to add new services and/or POIs; or
- The provision of existing interconnection services.

9.2 Post-agreement disputes may be referred to the PUC for resolution unless this route is specifically excluded by the terms of the interconnection agreement (for example, where the parties to an interconnection agreement have elected under the contract to refer post-agreement disputes to an alternative dispute resolution (ADR) mechanism. Where the interconnection agreement specifies an alternative dispute resolution procedure, this procedure should apply to any post-agreement disputes that may arise).

9.3 Disputes referred to the PUC may relate to the interconnection agreement (or proposed interconnection agreement) in its entirety, or to a particular provision or provisions of the agreement. For example, an interconnection dispute may relate to the technical specifications for interconnection at a particular POI, or to charges for specific services such as international and national long distance calls.

9.4 Disputes referred to the PUC will be subject to any dispute procedures already in place or new procedures issued by the PUC.”

[Interconnection Guidelines for the Bahamas, Section 9]

Barbados – GOOD

31. (1) Any dispute that arises between parties in respect of the negotiating of an interconnection agreement may be referred to the Commission in writing for resolution by either party to the negotiations where

- (a) all reasonable efforts have been made by the parties to resolve the dispute; and
- (b) the parties have negotiated in good faith.

(2) In determining a dispute pursuant to subsection (1), the Commission shall have regard to

- (a) what is a fair balance between the legitimate interests of the parties;

- (b) the interconnection principles established under section 25;
- (c) any regulatory obligations or constraints imposed under this Act, the *Fair Trading Commission Act* and the *Utilities Regulation Act* on any of the parties pursuant to this Act;
- (d) the desirability of stimulating innovative offers in the market;
- (e) the desirability of providing consumers with a wide range of telecommunications services;
- (f) the availability of technically and commercially available alternatives to the interconnection requested;
- (g) the need to maintain the integrity of the public telecommunications network and the interoperability of telecommunications services;
- (h) the nature of the request in relation to the resources available to meet the request;
- (i) the relative market positions of the parties;
- (j) the promotion of competition in Barbados;
- (k) the Reference Interconnection Offer of the interconnection provider; and
- (l) the interconnection policy specified by the Minister in accordance with paragraph (i) of section 4(2).

(3) The Commission shall conduct any proceedings in respect of dispute resolution referred to it under subsection (1) *in camera* unless the parties otherwise agree; but the decision taken by the Commission shall be published subject to any requirement for confidentiality under this Act or any other enactment.

(4) The decision of the Commission under subsection (3) in respect of the terms and conditions of an interconnection agreement that are the subject of the dispute shall be consistent with

- (a) those terms and conditions which have been agreed on by the parties and are not in dispute; and
- (b) the terms of any RIO that is in effect with respect to that interconnection provider.

(5) The provisions of this section in respect of dispute resolution apply in respect of

- (a) pre-contract interconnection disputes; and
- (b) disputes referred to the Commission under the terms of an interconnection agreement.

[Telecommunications Act of 2002]

Belize – FAIR: the principles are included but no detail as to process

23. (1) Any disagreements or disputes over interconnection charges, terms and practices of public telecommunication service providers shall be submitted to the PUC for resolution.

(2) In resolving such disputes or disagreements the PUC shall be guided by the following principles:

- (a) the terms and practices for interconnection arrangements shall not discriminate unjustifiably between users of interconnection arrangements and similarly situated users;
- (b) charges for interconnection services and facilities shall reflect the public telecommunication service licensee's costs defined as the incremental cost, and may include allowance for a reasonable return on capital investment;
- (c) differences in charges between different users may only be justified based on cost differences directly attributable to providing interconnection for those users.

[Belize Telecommunications Act, 2002, Section 23]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – GOOD

12. (7) The reference interconnection offer shall contain specific provisions for dispute resolution procedures including the appropriate contact persons whose names and other contact information shall be updated at least quarterly, precise time frames for resolution of complaints, clear and concise escalation procedures that allow for prompt resolution of disputed issues and rules that shall be used for arbitrating any unresolved issues.

16. (1) All interconnection agreements and reference interconnection offers shall be in writing and the following matters shall be specified in those agreements except where a particular matter is irrelevant to the specific form of the interconnection requested-
- ...
- (f) dispute resolution procedures, including identification of points of contact, time frames and an escalation process;
- ...
- 30.** (1) Notwithstanding anything to the contrary contained in other law, where the parties to any proposed interconnection agreement are unable to agree on the terms thereof within 60 days from the date of a request for interconnection under regulation 19, either party may submit the matter to the Commission for resolution in accordance with such procedures as the Commission may adopt, acting on the recommendation of ECTEL.
- (2) Where no request has been received by the Commission after 60 days pursuant to sub-regulation (1), the Commission may, acting on its own motion, direct the parties to submit the matter for resolution.
- (3) Notwithstanding sub-regulation (2), the Commission may withhold from directing the parties for an additional 30 days where it is reasonably satisfied by both parties that an interconnection agreement is likely to be concluded within that time.
- (4) Any decision made by the Commission pursuant to sub-regulations (1) and (2) shall be binding on the parties pending agreement between them on the terms of any proposed interconnection agreement.
- (5) The decision by the Commission shall -
- (a) be made within 60 days from the date of a request under sub-regulation (1) or a direction by the Commission under sub-regulation (2), or such longer period as the Commission may in any case determine; and
 - (b) specify -
 - (i) the facilities and the network covered by the decision;
 - (ii) the extent of any network over which one party is required to carry information and communication messages including telecommunication message to enable another party to supply services;
 - (iii) the points of, and the technical standards for, interconnection;
 - (iv) the rates of interconnection;
 - (v) the effective date of the decision; and
 - (vi) any other matters it deems appropriate.
- (6) The parties to the decision under sub-regulation (5) shall submit to the Commission a copy of an interim interconnection agreement implementing the terms and conditions of the decision, together with any other information the Commission may require.
- (7) An interim interconnection agreement shall cease to have effect on the date a proposed interconnection agreement agreed between the parties is approved by the Commission.
- (8) The existence of an interim interconnection agreement shall in no way prejudice, vary, or diminish the right of the Commission to review, approve or reject any proposed interconnection agreement between the parties.
- (9) The Commission may, acting on the recommendation of ECTEL, make the terms and conditions of an interim interconnection agreement final where the parties are unable to conclude any agreement prior to the expiration of one year from the effective date of the Commission's decision under subregulation (5).

(10) In the exercise of any of the functions conferred upon it by virtue of sub-regulations (1) to (9), the Commission shall have the authority, acting on the recommendation of ECTEL, to make such orders and issue such directions to the parties as it deems appropriate.

31. (1) In any dispute involving an approved interconnection agreement between parties thereto, and notwithstanding the terms of any dispute resolution procedures described in the agreement, the parties may agree to refer the dispute to the Commission for a binding resolution in accordance with such procedures and upon such terms and conditions as the Commission, acting on the recommendation of ECTEL, may determine.

(2) In referring any dispute under sub-regulation (1), the parties may request the Commission to issue an interim decision on providing interconnection, and the interim decision may address prices and any other terms or conditions for interconnection which the Commission, acting on the recommendation of ECTEL, may determine.

(3) A decision by the Commission under sub-regulation (1) or (2) shall be final and binding on the parties with respect to the matters being the subject of the dispute, but shall not replace, vary or otherwise amend the provisions relating to dispute resolution contained in the interconnection agreement.

32. Where a decision arising from a dispute resolution process modifies the terms and conditions on which interconnection is provided, the Commission may require a public network operator to amend a relevant agreement in order to comply with the decision and submit the amended agreement to the Commission for approval.

[Telecommunications (Interconnection) Regulations, 2009, Dominica, Sections 29-32]

[Telecommunications (Interconnection) Regulations, 2009, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines, Sections 30-33]

Dominican Republic – GOOD: complete and clear

22. El INDOTEL intervendrá:

- a) A requerimiento de alguna de las partes o de oficio:
 - a.1. Cuando, con posterioridad a la solicitud formal de Interconexión, en cualquiera de las etapas de la negociación, hubiera dilaciones injustificadas o falta de acuerdo en relación a los precios, términos y cualquier otra condición de la Interconexión .
 - a.2. Ante la negativa de una Prestadora Requerida a otorgar la Interconexión solicitada por la Prestadora Requirente.
 - a.3. Cuando fundadas razones de interés público lo requieran o considere que puedan existir prácticas restrictivas de la competencia o prácticas discriminatorias.
- b) Ante la impugnación de un tercero con interés legítimo, conforme a lo dispuesto por el artículo 25 de este Reglamento.
- c) El INDOTEL resolverá los conflictos que pudieran surgir entre las Prestadoras respecto de la aplicación del contrato de interconexión conforme al procedimiento establecido en el artículo 23 del presente Reglamento.

Artículo 23. Procedimiento 23.1. La Prestadora que solicite la intervención del INDOTEL deberá detallar las características y los antecedentes de su oferta de Interconexión, especificando los puntos controvertidos o hechos que se denuncian. En esta instancia deberá aportar además todas las pruebas y antecedentes que sustenten su posición, incluyendo los fundamentos legales, técnicos y económicos de la misma.

Section IV

- 23.2. La instancia a que se refiere el artículo 23.1 y toda su documentación anexa deberá, simultáneamente a su presentación ante el INDOTEL, ser notificada, íntegramente, por medio fehaciente, a la otra parte.
- 23.3. La Prestadora que recibe la notificación establecida en el artículo 23.2 que antecede, dispondrá de ocho (8) días calendario contados a partir del día siguiente a dicha recepción, para presentar su correspondiente escrito de réplica ante el INDOTEL así como, a la prestadora solicitante. Dicho escrito deberá detallar las características y los antecedentes de su oferta de Interconexión, especificando los puntos controvertidos o hechos relevantes y aportar además todas las pruebas y antecedentes que sustenten su posición, incluyendo los fundamentos legales, técnicos y económicos.
- 23.4. El INDOTEL procederá, dentro de los tres (3) días siguientes a la recepción de la solicitud de intervención, a fijar la fecha y la hora en que será celebrada la audiencia en que serán escuchados los argumentos de las partes y convocará a las partes para dicha audiencia.
- 23.4.1. La celebración de la audiencia indicada anteriormente deberá llevarse a cabo dentro de los cinco (5) días calendario siguientes al término del plazo fijado para el depósito de los escritos de réplica ante el INDOTEL. La audiencia se celebrará independientemente de que hubiese sido depositado el escrito de réplica establecido en el artículo 23.3 de este Reglamento.
- 23.4.2. La convocatoria para la audiencia deberá detallar la fecha, hora y lugar en que será celebrada la misma, así como el método que será utilizado por el Consejo Directivo para conducirla, a fin de que las partes se encuentren debidamente informadas al momento de realizar sus exposiciones durante la audiencia.
- 23.5 El día de la audiencia las partes podrán depositar cualquier información adicional que sirva de sustento a sus argumentos. Copia de dicha documentación deberá ser suministrada en la misma fecha a la otra parte. Transcurrida la audiencia, no será recibida nueva documentación ni podrán ser propuestos nuevos argumentos.
- 23.6. El INDOTEL arribará a una determinación preliminar con la información que posea, en un plazo no mayor a treinta (30) días calendario, mediante resolución del Consejo Directivo.
- 23.7. A partir de la determinación preliminar, el INDOTEL iniciará una investigación de la cuestión, pudiendo solicitar a las partes información adicional o citar a nuevas audiencias complementarias, y decidirá dentro de un plazo razonable, que no podrá exceder los sesenta (60) días calendario, dictando una resolución que establezca los precios, términos y condiciones de la Interconexión definitiva.
- 23.8 En caso de que la disputa tuviese su origen en los valores a regir para los precios de Interconexión, la decisión final adoptada por el Consejo Directivo del INDOTEL, igualmente dispondrá que la parte que resulte responsable en virtud de dicha decisión final deberá garantizar, en las condiciones que establezca el INDOTEL, la devolución o pago de las sumas que correspondan, según sea el caso, así como los intereses de ley que se hubieren generado, a la otra parte, si los valores consignados por el INDOTEL en dicha decisión fueron diferentes a los determinados preliminarmente, de conformidad con lo establecido en el artículo 23.6 de este Reglamento.
- 23.9. En cualquier momento antes de la decisión definitiva, las partes podrán llegar a un acuerdo, el cual deberá ser notificado al INDOTEL conjuntamente con la solicitud de desistimiento de la intervención.

[Interconnection Regulations approved through Resolución No. 42-02, of the Consejo Directivo of Indotel]

Guyana – NONE: consultation in 2001 only w/no decision**Jamaica – FAIR: law only specifically addresses pre-contractual disputes and disputes on call termination charges)**

“(1) Where, during negotiations for the provision of interconnection disputes. there is any dispute between the interconnection provider and the interconnection seeker (hereinafter in this section referred to as a pre-contract dispute) as to the terms and conditions of such provision, either of them may refer the dispute to the Office for resolution.

(2) The Office shall make rules applicable to the arbitration of such disputes.

(3) A decision of the Office in relation to any pre-contract dispute shall be consistent with -

- (a) any agreement reached between the parties as to matters that are not in dispute;
- (b) the terms and conditions set out in a reference interconnection offer or any part thereof that is in effect with respect to the interconnection provider;
- (c) the principles specified in sections 29(2) and 30(1).

(4) Where neither party to the dispute is a dominant public voice carrier, the Office may decline to act as an arbitrator in relation to the dispute.”

“(4) The Office may, either on its own initiative in assessing an interconnection agreement, or in resolving a dispute between operators, make a determination of the terms and conditions of call termination, including charges.

(5) When making a determination of an operator’s call termination charges, the Office shall have regard to the principle of cost orientation, so, however, that if the operator is nondominant then the Office may also consider reciprocity and other approaches.”

[The Telecommunications Act of 2000, Section 34 and 29]

Suriname – FAIR: lack of details

“5. Indien partijen die verplicht zijn een interconnectie-overeenkomst te sluiten deze niet tot stand kunnen brengen, kan de TAS op aanvraag van één of meer van hen de regels vaststellen die tussen hen zullen gelden. (*TAS may intervene upon the request of one or both parties*)

6. Indien één der partijen een rechterlijke uitspraak wenst zullen de door de TAS vastgestelde regels geldend zijn totdat de rechter een uitspraak terzake heeft gedaan. (*where at least one fo the parties wants a judicial ruling, the decision of TAS will b evalid until a ruling has been made*)

[Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), Artikel 12]

Trinidad and Tobago – GOOD

“31. Where a dispute arises between concessionaires with respect to interconnection, the matter may be referred to the Authority for consultation and guidance, on the agreement of both parties, prior to either party submitting the matter to the Authority as a dispute.

32. Save as provided in regulation 31, every dispute regarding interconnection shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.

33. (1) The Authority may, in relation to any dispute referred to under these Regulations, direct that the parties implement such interim arrangement for interconnection as the Authority considers appropriate having regard to the nature of the dispute.

(2) An interim arrangement may speak to prices and include any other terms or conditions for interconnection, whether or not the

Authority considers submissions made by the parties, subject to such times for submissions as the Authority shall, in its sole discretion determine.

(3) An interim arrangement shall be instituted by the parties within a period determined by the Authority and shall remain in force until the dispute has been resolved.”

[Telecommunications (Interconnection) Regulations of 2006]

International Examples and Regional Harmonization

France

“The telecommunications regulatory authority may be called on to settle disputes relating to the refusal of interconnection, interconnection arrangements or access conditions...”

[France, Telecommunications Act, Section 4.III]

ECTEL

“(a) Where an interconnection agreement has been concluded between the parties and approved, the general rule is that the Commission will not involve itself in the manner of its implementation.

(b) Where a dispute between the parties to an interconnection agreement arises after an agreement has been approved, the dispute resolution procedures set forth in the agreement shall apply.

(c) Notwithstanding the foregoing, if the parties to the agreement agree to refer the dispute to the Commission, the Commission may, at its discretion, accept jurisdiction over the dispute and issue a decision, direction or order with respect to the dispute in accordance with such procedures as the Commission, acting on ECTEL’s recommendation, may establish for that purpose, including the procedures set forth in paragraph 6 above, and any such decision, direction or order shall bind the parties with respect to that dispute.”

[Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL) Draft Interconnection Code of 2009, Section 7]

ECOWAS

“Member States shall ensure that the national regulatory authorities:

- (a) publish a referral procedure complying with that described in Article 29 below, enabling market players to bring disputes before the national regulatory authority in accordance with a clear and transparent procedure;
- (b) ensure that the committee responsible for taking decisions is impartial, and comprises people recognized for their competence and appointed *intuitu personae*;
- (c) set a maximum time-frame for the settlement of disputes;
- (d) provide for the possibility of the authority initiating a referral action itself, and the possibility of injunction against an operator in the event of serious problems requiring urgent solution;
- (e) cooperate as widely as possible, and establish a group for exchanging experience via the internet and a database of past disputes and their solutions.

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Settlement of Disputes, Obligations of National Regulatory Authorities, Article 28]

- “1. Disputes relating to refusal to interconnect, interconnection agreements and conditions of access are brought before the national regulatory authority.
2. The national regulatory authority shall render a decision within a period of three months, after having invited parties to present their remarks. That period may nevertheless be extended to six months when additional investigations and expert opinions are required. The decision shall be substantiated, and shall specify the equitable conditions, both technical and financial, under which the interconnection is to be effected. Matters remaining in dispute shall be brought before the competent jurisdictions.
3. In the case of serious and blatant breach of the rules governing the telecommunication sector, the national regulatory authority may, after inviting the parties to submit their remarks, order appropriate provisional measures to be taken to ensure the continued functioning of networks and services.”

[ECOWAS – Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Settlement of Disputes, Dispute Resolution Procedures, Article 29]

COMESA

“As for any commercial activity, disputes may arise sometime between interconnected ICT operators/service providers or ICT operators/service providers and consumers with regard to interconnection rates applied. When a dispute arises, the best practices recommend that the settlement be carried out in public interest. The regulatory intervention should apply the following procedures:

- (a) When an interconnection dispute arises between operators, the regulatory authority shall at the request of either party, take steps to resolve the dispute within a reasonable period of time, not exceeding six months of this request. The resolution of the dispute shall represent a fair balance between the legitimate interests of both parties.
- (b) In so doing, the national regulatory authority shall take into account, inter alia: user's interest, regulatory obligations or constraints imposed on any of the parties, the desirability of stimulating innovative market offerings, and of providing users with a wide range of telecommunications/ICT services at a national, regional and International level, the availability of technically and commercially viable alternatives to the interconnection requested, the desirability of ensuring equal access arrangements, the need to maintain the integrity of the public telecommunications/ICT network and the interoperability of services, the nature of the request in relation to the resources available to meet the request, the relative market positions of the parties, the public interest (e.g. the protection of the environment), the promotion of competition, and the need to maintain a universal service/access.
- (c) A decision on a matter by a national regulatory authority shall be made available to the public in accordance with recognized procedures. The parties concerned shall be given a full statement of the reasons on which it is based.
- (d) In cases where recognized telecommunications/ICT operators fail to reach an agreement and/or one operator refuses to enter into negotiations for interconnection, the national regulatory authority shall, as a last resort, require the organizations concerned to interconnect their facilities in order to protect essential public interests and, where appropriate, set the terms for interconnection.
- (e) The national regulatory authority shall not take more time than is necessary to determine a solution in the interest of both parties where either or both parties have appealed to him/her. Such time shall in no case exceed three (3) months.”

[COMESA – Regulatory Guidelines on Interconnection, Procedures and Disputes Resolution, Article 3]

Section IV

“The legislation should also set a procedure for dispute resolution once agreement has been reached. Disputes over the interconnection agreement may give rise to litigation as in any commercial agreement. The trend is that there should be an option for disputes to be referred to the regulator rather than Courts to favor expediency, lower costs and because the regulator is expected to have a degree of expertise. Provision should be made for appeals from the decisions of the regulator to Courts or to a specialised tribunal. The above should not preclude the right for parties to have recourse to arbitration by an external party under rules applicable to all civil litigation.”

[COMESA – Regulatory Guidelines on Interconnection, Dispute Resolution, Appendix IV.7]

4.9 International gateways access²³**International Best Practices and Regional Trends:**

- Dominant operators must offer access and collocation in international gateways, especially submarine cable landing stations.

Regional Examples**Barbados – FAIR: permits, but does not require dominant operators to offer access to international gateways**

Connection to international submarine cable landing stations has been permissible beginning in 2005 with the Transition Timetable: Phase III Order

[Telecommunications (International Submarine Cable Licence) Regulations of 2004]

Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines – FAIR: general principles on access

Access to Facilities. (1) Where access to any facilities is required to effect interconnection such access shall be provided on a non-discriminatory and equitable basis, including with respect to charges, location and other commercial matters, together with the interconnection.

(2) Pending the conclusion of any agreement between parties to a negotiation for access to facilities, and subject to the provisions of regulation 31, the Commission may, acting on the recommendation of ECTEL, issue such orders or directions for the sharing of any facilities or with respect to providing access to such facilities on an interim basis.

[Telecommunications (Interconnection) Regulations, 2009, Section 8 (Dominica), (Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines), Section 10]

Trinidad and Tobago – FAIR

11. "(1) A concessionaire shall use all reasonable endeavours to conclude an access agreement as soon as possible following the receipt by an access provider of an access request but in any event shall conclude the agreement no later than –

- a) six weeks after the receipt by an access provider of an access request to the local access loop; or
- b) forty-two days after the receipt by an access provider of an access request in all circumstances other than that specified in paragraph (a), unless such period has been expressly extended by the Authority in writing, or pursuant to regulation 9(9)."

18. (4) An access provider and an access seeker of local loop access shall negotiate in good faith on matters relating to collocation and line connection costs."

[Telecommunications Access to Facilities Regulations, 2009]

²³ the GSR 08 discussion paper on liberalizing the international gateway available at: www.itu.int/ITU-D/treg/publications/trends08.html

International Examples and Regional Harmonization**Kenya**

“The reason for the grant of the license to each of the two companies [Celtel and Safaricom] is to enable them to operate and provide international gateway telecommunications systems and services within the Republic of Kenya”

[The Kenya Communications Act of 1998, International Gateway Systems and Services (2006)]

“The grant of the two licenses will create diversity in international links, improve quality of service and lower international mobile call tariffs in Kenya.”

[CCK, Mobile Firms to Operate International Voice Gateways (2006)]

Saudi Arabia

“RIO of a Dominant Service Provider shall include: A list of locations and number of Access Points including maps to enable other Service Providers to make efficient choices on the selection of POIs for collection or delivery of traffic. The information should include, but not be limited to:

- Name location and address of exchange or other points of access
- Type and function of exchange (Local, Service Node, International Gateway, etc.) [...]

[Saudi Arabia, Decision No. (142/1427), Article 5.2]

Section V: Legal Texts Consulted

5.1 Regional Texts

Antigua and Barbuda

Draft ICT Policy, available at: www.ab.gov.ag/gov_v2/government/parliament/laws/itc_draft_policy.pdf

Telecommunications Act of 2007, available at:
www.laws.gov.ag/bills/2007/Telecommunications_2007.pdf

Bahamas

Statement of Results on Proposed Interconnection Guidelines for the Bahamas, 2007, available at:
<http://natlaw.com/interam/bh/cm/sp/spbhcm00011.pdf>

The Communications Bill, 2009, available at:
[www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/\\$FILE/TheCommunicationsBill,2009_01.tuesday%2021.pdf](http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/$FILE/TheCommunicationsBill,2009_01.tuesday%2021.pdf)

Utilities Regulation and Competition Authority Act, 2009, available at:
[www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/\\$FILE/Copy_of_URCA_ACTApril_9,2009_\(Working_Copy\)_FINALCOPYTuesdayafternoon.pdf](http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/GOV--Welcome--BILLS+PDF/$FILE/Copy_of_URCA_ACTApril_9,2009_(Working_Copy)_FINALCOPYTuesdayafternoon.pdf)

Barbados

Consultative Document, Local Loop Unbundling for Cable & Wireless (Barbados), 2007

Telecommunications Interconnection Policy, 2003, available at:
www.telecoms.gov.bb/PoliciesPlansRegisters/tabid/65/Default.aspx

Telecommunications (Interconnection) Regulations, 2003 available at:
www.telecoms.gov.bb/Documents/Regulations/2003/si103.pdf and Telecommunications (Interconnection) (Amendment) Regulations, 2004, available at:
www.telecoms.gov.bb/Documents/Regulations/2004/si17.pdf

Fair Trading Commission Decision of 1 July 2004 on Reference Interconnection Offer – Domestic Fixed Wireless, available at: www.ftc.gov.bb/library/2004-07-01_rio_domestic_fixed_decision.pdf

Fair Trading Commission Decision of June 30 2003 – Section 3 "Interconnection Guidelines", available at:
www.ftc.gov.bb/library/2003-07-01_interconnection_guidelines.pdf

Fair Trading Commission Decision of June 30 2003 – "Interconnection Dispute Resolution Procedures", available at: www.ftc.gov.bb/library/2003-07-01_decision_on_dispute_resolution_v4.pdf

Telecommunications Act of 2002, available at:
www.telecoms.gov.bb/Documents/telecommunications_act_cap282b.pdf

Belize

Telecommunications Act of 2002, available at:

www.puc.bz/publications/Belize%20Telecommunications%20Act_20-07-02.pdf

Dominica

Telecommunications (Interconnection) Regulations of 2009, available at:

www.ectel.int/Telecoms%20Regulations/Dominica/Telecommunications%20%28Interconnection%29.pdf

Telecommunications Act of 2000, available at:

www.ectel.int/Telecoms%20Regulations/Dominica/TelecommunicationsAct2000.pdf

Dominican Republic

General Telecommunications Law No. 153-98, available at:

www.indotel.gob.do/component/option,com_docman/Itemid,578/task,cat_view/gid,20/

Grenada

Telecommunications (Interconnection) Regulations of 2009, available at:

www.ectel.int/Telecoms%20Regulations/Grenada/Telecommunications%20Act%2031%20of%202000.pdf

Telecommunications Act of 2000, available at:

www.ectel.int/Telecoms%20Regulations/Grenada/Telecommunications%20Act%2031%20of%202000.pdf

Guyana

Consultation Paper, Reform of the Telecommunications Sector in Guyana of 2001, available at:

www.itpag.org.gy/downloads/telecomsreform.pdf

Competition and Fair Trading Bill of 2004, available at:

www.mintic.gov.gy/documents/Competition_and_Fair_Trading_Bill.pdf

Guyana Telecommunications Act, 1990, available at: www.gina.gov.gy/gina_pub/laws/Laws/cap4702.pdf

Haiti

Décret du 12 octobre 1977 sur les télécommunications, available at:

www.conatel.gouv.ht/legislation/loitelecom.pdf

Jamaica

Draft Jamaica Telecoms Policy of 2007, available at:

[www.mmt.gov.jm/PDF%20Files/MMT/Draft%20Telecoms%20Policy%20\(MMT\)%20-%20May%202007.pdf](http://www.mmt.gov.jm/PDF%20Files/MMT/Draft%20Telecoms%20Policy%20(MMT)%20-%20May%202007.pdf)

The Telecommunications Act of 2000, available at:

www.mct.gov.jm/telecommunications_%20act_2000.pdf

St. Kitts and Nevis

Telecommunications Act, 2000, available at: www.ectel.int/Telecoms%20Regulations/St.%20Kitts/ACT.pdf

Telecommunications (Interconnection) Regulations of 2008, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Kitts/INTERCONNECTION_44_2008%20REGS%20SKN.pdf

Section V

St. Lucia

Telecommunications Act, 2000, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Lucia/Telecommunications2000.pdf

Telecommunications (Interconnection) Regulations of 2009, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Lucia/Interconnection_72_of_2009.pdf

St. Vincent and the Grenadines

Telecommunications Act, 2001, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Vincent%20Grenadines/Telecommunications_Act_1_of_2001.pdf

Telecommunications (Interconnection) Regulations of 2009, available at:

www.ectel.int/Telecoms%20Regulations/St.%20Vincent%20Grenadines/Interconnection_60_of_2008.pdf

Suriname

Wet Telecommunicatievoorzieningen (S.B. 2004 no. 151), available at: www.mintct.sr/telecomwet.htm

Staatsbesluit Interconnectie #25, 2001

Trinidad and Tobago

Telecommunications Act of 2001, available at:

www.tradeind.gov.tt/Legislation%20Policies/Trinidad%20Legislation/The%20Telecommunications%20Act,%202001.pdf

Telecommunications (Amendment) of 2004, available at:

www.ctu.int/attachments/030_A_ACT_to_amend_the_Telecommunications%20Act_2001.pdf

Telecommunications Interconnection Regulations of 2006, available at:

www.tatt.org.tt/ddocs/Interconnection%20regs%20Legal%20Notice%20No%20%20181%20of%202006.pdf

The Telecommunications (Access to Facilities) Regulations of 2006, available at:

www.tatt.org.tt/ddocs/Access%20to%20Facilities%20Legal%20Notice%20No%20%20180%20of%202006.pdf

The Telecommunications (Access to Facilities) (Amendment) Regulations of 2009, available at:

www.tatt.org.tt/ddocs/Access_to_Facilities_Amendment_regs_2009.pdf

5.2 International and Harmonized Texts Consulted

COMESA

Regulatory Guidelines on Interconnection, available at:

http://programmes.comesa.int/index.php?option=com_content&view=article&id=42&Itemid=52&lang=fr

ECOWAS

Supplementary Act A/SA.2/_01_/07 on access and interconnection in respect of ICT sector networks and services, Harmonization of Cost Calculation Methods, available at:

www.ecowas.int/publications/en/actes_add_telecoms/Interconnection_ECOWAS_Engl.pdf

ECTEL

ECTEL Directorate's recommendation for the Long Run Incremental Cost (LRIC) models to be used to determine cost-oriented interconnection rates in the ECTEL Member States, approved by Council of Ministers at 19th Meeting of the Council, March 13, 2009, available at:

www.ectel.int/pdf/Interconnection/LRIC%20Implementation%20Cover%20Note%20to%20NTRCs.pdf

European Union

Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP), available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997L0033:EN:HTML>

Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0019:EN:HTML>

Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (Text with EEA relevance), available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2887:EN:HTML>

Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC), available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0067:0074:EN:PDF>

France

Loi n°2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000439399&dateTexte

Ireland

European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003, available at: www.irishstatutebook.ie/2003/en/si/0305.html

Kenya

Communications Commission of Kenya, Mobile Firms to Operate International Voice Gateways (2006), available at: www.cck.go.ke/html/pressreleases.asp?newsid=176&area=new&arch=1&year=2006

Section V

Malta

Electronic Communications Act, available at:

http://docs.justice.gov.mt/lom/legislation/english/leg/vol_12/chapt399.pdf

Norway

The Electronic Communications Act – ACT 2003-07-04-83, available at:

www.npt.no/ikbViewer/Content/ekom_eng.pdf?documentID=7922

Singapore

Singapore Telecommunications Act, available at:

http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-323&doctitle=TELECOMMUNICATIONS%20ACT%0a&date=latest&method=part

Saudi Arabia

CITC, Decision 25/1424, available at:

www.citc.gov.sa/citcportal/DecisionsDetails/tabid/122/cmssid/%7BDD58C151-6CFA-44C4-B040-1809DF797E99%7D/Default.aspx

Listing of Interconnection Decisions:

www.citc.gov.sa/citcportal/ServicesListing/tabid/118/cmssid/%7B4B67F636-D838-4873-B336-3F4B389AB626%7D/Default.aspx

Annex 1

Participants of the First Consultation Workshop for HIPCAR Project Working Groups dealing with Telecommunications Acts – Universal Access & Service; Access & Interconnection; and Licensing.

Port of Spain, Trinidad and Tobago, 26-29 October 2009

Officially Designated Participants and Observers

Country	Organization	Last Name	First Name
Antigua and Barbuda	Ministry of Information, Broadcasting, Telecommunications, Science and Technology	SAMUEL	Clement
Bahamas	Utilities Regulation & Competition Authority	RIVIERE-SMITH	Kathleen
Barbados	Ministry of Finance, Investment, Telecommunications and Energy	BOURNE	Reginald
Barbados	Cable & Wireless Ltd.	DOWNES-HAYNES	Claire
Barbados	Ministry of Finance, Investment, Telecommunications and Energy	EVELYN	Renee
Barbados	Cable & Wireless Ltd.	MEDFORD	Glenda
Belize	Public Utilities Commission	BARROW	Kimano
British Virgin Islands	Telecommunications Regulatory Commission	MALONE	Guy Lester
Grenada	National Telecommunications Regulatory Commission	FERGUSON	Aldwyn
Grenada	Office of the Prime Minister	ROBERTS	Vincent
Guyana	Guyana Telephone & Telegraph Co.	EVELYN	Gene
Jamaica	Office of the Prime Minister	ARCHIBALD	Jo-Anne
Jamaica	Digicel Group	GORTON	Andrew
Jamaica	Office of the Prime Minister	MURRAY	Wahkeen
Saint Lucia	Ministry of Communications, Works, Transport and Public Utilities	FLOOD	Michael R.
Saint Lucia	Ministry of Communications, Works, Transport and Public Utilities	JEAN	Allison A.
Saint Vincent and the Grenadines	Ministry of Telecommunications, Sciences, Technology and Industry	FRASER	Suenel
Suriname	Telecommunicatie Autoriteit Suriname / Telecommunication Authority Suriname	LETER	Meredith
Suriname	Ministry of Transport, Communications and Tourism	SMITH	Lygia Th. F.
Trinidad and Tobago	Ministry of Public Administration	KALLOO	Gary
Trinidad and Tobago	Ministry of Public Administration	MITCHELL	Peter
Trinidad and Tobago	Telecommunications Authority of Trinidad and Tobago	PHILIP	Corinne
Trinidad and Tobago	Ministry of Public Administration	THOMPSON	John
Trinidad and Tobago	Digicel Group	WILKINS	Julian

Regional / International Organizations’ Participants

Organization	Last Name	First Name
Caribbean Association of National Telecommunication Organizations (CANTO)	FRÄSER	Regenie
Caribbean Association of National Telecommunication Organizations (CANTO)	WANKIN	Teresa
Caribbean Community Secretariat (CARICOM)	BRITTON	Jennifer
Caribbean ICT Virtual Community (CIVIC)	HOPE	Hallam
Caribbean Telecommunications Union (CTU)	WILSON	Selby
Eastern Caribbean Telecommunications Authority (ECTEL)	CHARLES	Embert
International Telecommunication Union (ITU)	CROSS	Philip
International Telecommunication Union (ITU)	LUDWIG	Kerstin

HIPCAR Project Experts

Last Name	First Name
MADDENS-TOSCANO	Sofie
MORGAN	J Paul
PRESCOD	Kwesi

