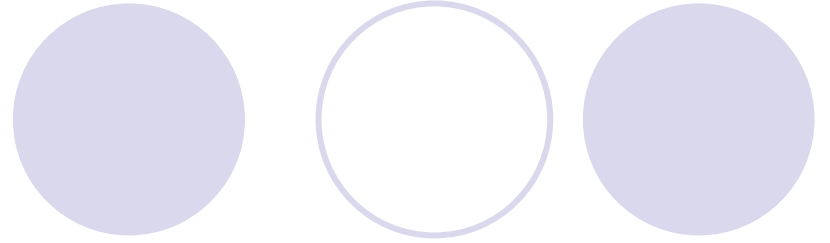
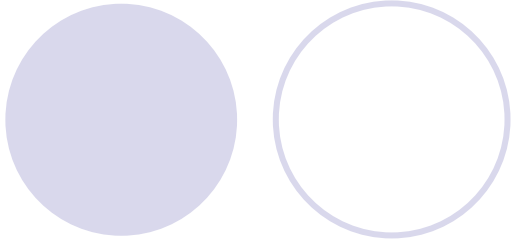




TOWARDS HARMONIZATION OF TELECOMMUNICATIONS LEGISLATION IN THE CARIBBEAN

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Harmonization



- The dictionary define harmonization to mean:
- To harmonize is to bring things together or into harmony or to make things compatible.
- In telecommunications, harmonization could be achieved at various levels on a continuum

Benefits of Harmonization



- Some of the reasons advanced for harmonization by the ICT toolkit are “Competition, transparency, efficiency, regulatory certainty and balance of the interests of individual member states with that of the region, information sharing and commitment for decisive action”.



Challenges to Harmonization

- Varied legal and regulatory frameworks
- Varied stages of liberalization
- Varied levels of development
- Politically independent state
- Independent legal and judicial systems

Never the less the European Union and ECTEL
have both achieved a great degree of
harmonization

EU/EC and Harmonization

- The European Union legal system operates alongside the laws of its member states and is effective within its member states and in some cases it overrides member state laws.
- The European Union Directive on a Common Regulatory Framework for Electronic Communications Networks and Services is aimed at establishing a harmonized regulatory framework across the European Union, providing for independent national regulatory authorities (NRAs), and setting out principles for them to follow.

EU/EC and Harmonization



- The EU Framework provides for a considerable degree of harmonization, requiring the alignment of legal processes for authorizing networks and services coupled with detailed instructions for national regulators on when, how and where to regulate.

ECTEL and Harmonization

- Five countries of the Organization of the Eastern Caribbean States (OECS) Dominica, Grenada, St. Kitts & Nevis, St. Lucia and St. Vincent & The Grenadines (the Contracting States) in 2000 established by Treaty the Eastern Caribbean Telecommunications Authority (ECTEL) to facilitate the harmonization of the telecommunications regulatory regime of these countries.



- The Contracting States further undertook to put in their respective jurisdiction a telecommunications regulatory body to be known as the National Telecommunications Regulatory Commission which will co-ordinate and liaise with ECTEL.
- The National Telecommunications Regulatory Commission (NTRC) of Saint Lucia was established under the Telecommunications Act 2000 of the Laws of St. Lucia based on model legislation for the Contracting States
- Under the Telecommunications Act establishing the NTRC, the NTRC is under the general direction and control of the Minister.



- ECTEL is the regulatory advisory body to the NTRCs on almost all matters of telecommunications regulations and ECTEL and the NTRC liaise and work together to effect harmonized and efficient telecommunications regulation for the members states of the ECTEL Treaty

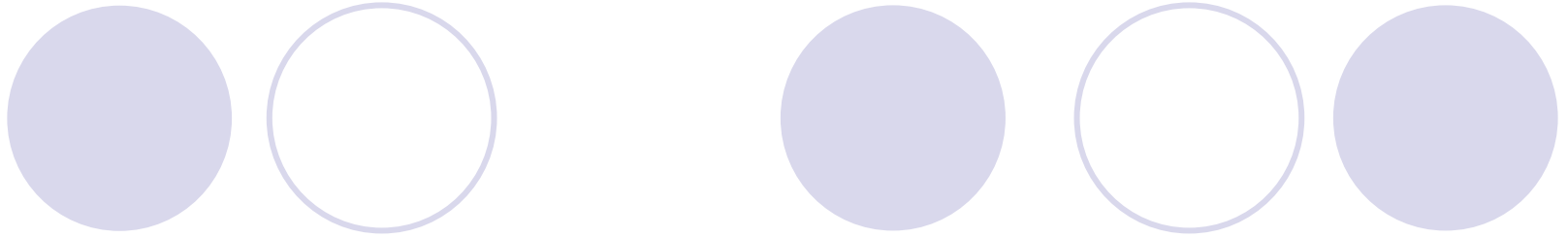
Telecommunications legislation



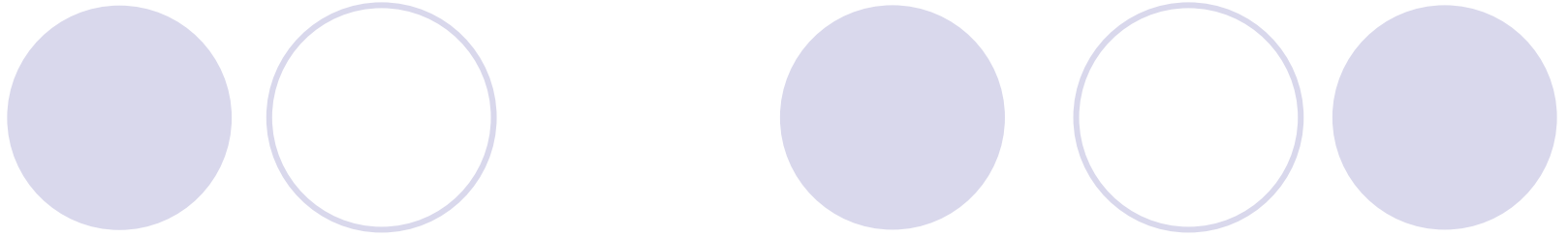
- Telecommunication legislation is law passed by the Parliament of a country which reflects at the date of coming into effect of the law, the Government's Policy on Telecommunications.
- Telecommunications in the Caribbean is regulated under:
 - Telecommunications Act 2004 Anguilla
 - Telecommunications Act 2000 Bahamas
 - Telecommunications Act 2000 Barbados
 - Telecommunications Act, 2002 Belize
 - Telecommunications Act, 2000 Jamaica
 - Telecommunications Act, 1990 Guyana
 - Telecommunications Act 2001 Trinidad & Tobago

Telecommunications Policy

- **Telecommunications Policy**
- The reasons why we regulate the telecommunications sector are stated in all the above referred telecommunications Act under the heading “Objects of the Act” and with the exception of the Guyana Telecommunications Act they all state very similar objectives.
- The purpose of the above referred to Telecommunications Acts may be summarized as the management and regulation of telecommunications to:
 - -provide for telecommunications services on a competitive basis allowing the widest possible access at an affordable rate,
 - -protect the interest of telecommunications users, service providers and consumers,
 - -promote reliable and affordable telecommunication services of high quality to all,



- -promote the provision of telecommunication services that meet the economic and social requirements of users including disabled persons,
- -promote the telecommunications industry by encouraging investments in the telecommunication sector,
- -promote universal access to telecommunications services for all,
- -open market for telecommunications services, including conditions for fair competition,
- facilitate the achievement of these objects consistent with international commitments in relation to liberalization of telecommunications.
- The Trinidad and Tobago Telecommunications Act has the added objective to regulate broadcasting services consistently with the existing constitutional rights and freedoms contained in the Constitution of the Republic of Trinidad and Tobago.



- In the case of Guyana the Telecommunications Act provides for the regulation of telecommunications but makes no provision for encouraging telecommunications services on a competitive basis. While interconnection is possible because under the Telecommunications Act the Minister may grant a licence authorizing a licensee to connect to any other telecommunications system, the Act is silent on specific provisions for interconnection in a competitive environment.
- By virtue of the Guyana Telecommunications Act the Regulators are the Minister and the Director of Telecommunications who reports to the Minister and the Telecommunication service provider GT&T is a monopoly.
- Guyana would fall in the group of regulating monopoly and the regulators goal here is to supervise the monopoly, licensing for interconnection is not necessary but regulating price is therefore a necessary and important function and this task in Guyana has been given to the Public Utilities Commission under the Guyana Public Utilities Commission Act. It should be noted though that at the time of the passing of the Telecommunications Act 1990 the WTO was not in existence.

Telecommunications Institutional Framework



- The decision of how to regulate is similar in the above mentioned telecommunications Acts and Public Utilities Commission Act in that all the Regulators are established as bodies corporate constituted by Commissions or Boards with similar provisions as to appointments and removal of Commissioners, the way they meet and conduct their business as a Commission with or without boards are all very similar. They all grapple with the concepts of regulatory independence because of the Minister's role to a greater or lesser degree under their respective legislation.
- The Telecommunications regulator's decision making process under the various telecommunications legislation is different as the requirement for hearings and consultations range from the very rules based due process regulation by the FTC Barbados to the flexible consultations by TATT in Trinidad and Tobago.

Telecommunications regulation

- The decision of what to regulate is substantially the same in the above telecommunications Acts and they are:
- Licensing and Authorization- Concessions in the case of Trinidad and Tobago
- Spectrum Management,
- Interconnection,
- Numbering,
- Universal Service and
- Rate Setting

Licence and Authorization



- While all the above Telecommunications Acts provide for the requirement of licenses in respect of telecommunications network and service and the requirement for carriers and service providers to obtain licence in order that they could provide a service, the licences regime in these countries differ though not significantly.
- However the licences that have been developed by ECTEL are technology neutral. ECTEL classifies licences based on the service that will be provided without regard to the type of technology being used.

Numbering



- All the above Telecommunications Acts provide for the PUC, Anguilla, the PUC Bahamas, the PUC Belize, OUR and TATT to develop numbering of telecommunications services and would administer and manage the numbers and make numbers available on an equitable and non-discriminatory basis.
- The Minister in Barbados develops the numbering plan.
- All these regulators have the power under their respective Acts to support number portability and to require licensee to the extent technically feasible and to impose rules on licensees to offer number portability. So far regulators in the Caribbean have not yet imposed such number portability requirements on licensees

Spectrum



- Spectrum licences are required by all the above referred to telecommunications Acts to establish or use spectrum for the purpose of operating any telecommunications network or services and for the recovery of cost incurred in the management of spectrum.
- The respective Telecommunications Act provide for the PUC Anguilla, the PUC Bahamas and the PUC Belize and TATT to regulate the use of spectrum.
- The Telecommunications Act of Barbados provides for the Minister to be responsible for developing the National Spectrum Management Policy.
- Jamaica and Guyana have established separate Spectrum Management bodies.

Universal Service



- All the Telecommunications Act referred to above provides for the establishment of a Universal Service Fund.
- The obligation to contribute to the universal service fund would apply on a nondiscriminatory basis as between similarly situated telecommunications service providers and users in Trinidad and Tobago.
- In Barbados the Universal service obligation is on telecommunications carriers designated by the Minister.
- The Telecommunications Act of Belize provides that the PUC would establish a universal service fund to which both the public and private telecommunications providers would pay a fee and a licensee who pays the fee shall be entitled to compensation in relation to the actual costs in meeting the obligation.
- The Telecommunications Act of Jamaica provides that the Minister on the recommendation of the OUR may impose universal service obligation by agreement with the licensee and that a licensee with the universal service obligation shall be entitled to compensation in relation to the net costs incurred in meeting that requirement.

Interconnection



- All the above referred to telecommunications Act provide for licensees obligation to permit interconnection on terms and conditions that are non-discriminatory, for the licensee procedure for interconnection, the standard interconnection agreement and the Reference Interconnection Offer (RIO) to be available to the public and for the respective regulators to approve the interconnection and the RIO.
- The Telecommunications Act of Belize also provides that where a public telecommunications service provider fails to agree on terms and conditions the parties may request the PUC to establish such terms and conditions.

Rate setting



- The Telecommunications Act of Trinidad and Tobago provides that prices for telecommunications services shall be determined by providers in accordance with the principles of supply and demand in the market except those prices regulated by TATT.
- TATT may regulate prices where there is only one concessionaire operating a public telecommunications network or service or where one concessionaire has a dominant position in the relevant market or where such sole or dominant provider cross-subsidies another telecommunications service provider or where there is anti-competitive pricing or acts of unfair competition. There are similar provisions in all the above telecommunications Act.

Telecommunications Competition

- Regardless of the similarities and differences in the legislation implementing the policy objective of each of these countries, Anguilla, Barbados, Belize, Jamaica, Trinidad & Tobago liberalization of their telecommunications market have been achieved, though not in each case to a fully competitive market as is anticipated by the Caribbean Single Market and Economy (CSME).
- The stage is set for regulating through competition legislation and by the Regulator in a competitive environment since the introduction of competition does not mean that regulation is unnecessary. Indeed in the early stages of transition from monopoly to effective competition the regulator's role is crucial.
- The liberalization process and competition have been driven by technological development, further digitization, multiple plays have increased competition in telecommunications and ICT broad casting, television and internet in some countries but in the Caribbean it has served to provide addition or “complementary” services by the same providers and has not added significantly to the list of competitors.

CARICOM- CSME

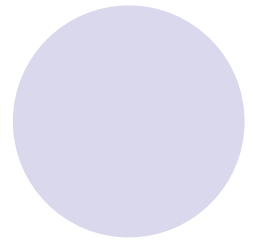
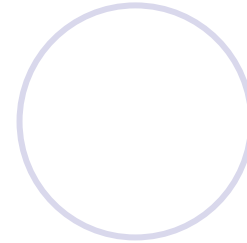
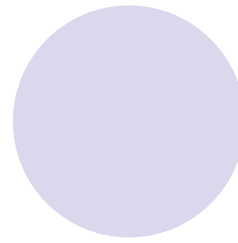
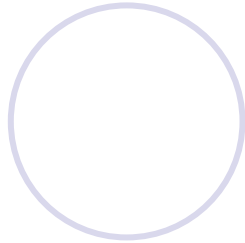
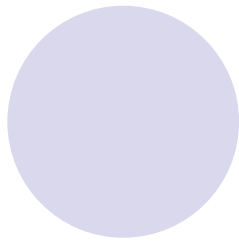


- The revised Treaty of Chaguaramas established the Caribbean Community including the CARICOM Single Market and Economy (CSME) and Article 171 also establish the Community Competition Commission.
- Four countries Barbados, Jamaica, Guyana and Trinidad and Tobago have put in place competition legislation: The Fair Competition Act 2002 of Barbados,
- The Fair Competition Act 1993 of Jamaica, Competition and Fair Trading Act 2006 of Guyana, The Fair Trading Act 2006 of Trinidad and Tobago.
- All these competition legislation have very similarly established Competition Commissions with similar institutional framework, functions and power.

CARICOM- CSME



- All the above competition legislation except Trinidad and Tobago applies to the telecommunications sector.
- Three of the above legislation Barbados, Guyana and Trinidad and Tobago has accepted the jurisdiction of the Community Competition Commission.
- Each of this legislation provides for the Competition Commission to cooperate with their counterpart in member CARICOM state to investigate anti-competitive behaviour and provide a report of their investigation.
- Each provide for matters to be referred to the Community Competition Commission which shall have power to undertake such investigation as may be necessary in CARICOM member state. The Community Competition Commission's decision is binding and enforceable in the High Court to the same extent as a decision of the national Competition Commission.



- **Conclusion**

- In the Caribbean ECTEL has shown that harmonization is possible and indeed necessary in the developments of small markets
- The broad policy objectives for telecommunications in rest of the Caribbean are the same for most countries and the legal, institutional and regulatory framework though different are sufficiently similar to be considered uniform and therefore much could be gained by Regulators in the Caribbean meeting and sharing information and experiences an objective for which the Organisation of Caribbean Utility Regulators was established.