

**APPROACH FOR ECTEL MEMBER STATES IN RESPECT OF THE IMPLEMENTATION
OF A PRICE CAP REGIME**

BACKGROUND

ECTEL Member States are advised that in respect of implementation of a Price Cap Regime there are Regulatory and Legal aspects that arise for consideration.

The Broad strategic approach recommended is to follow the regulatory process as outlined herein and to hold a meeting with the Chairpersons and Commissioners who are lawyers to brainstorm with respect to the legal matters. This meeting will through thorough discussion provide options for the said matters.

The NTRCs need to follow the regulatory process, which is summarized as follows:

- Complete Consultation on the Consultative Process
- Conduct Consultations on Dominance and
- Conduct the Consultations on Price Caps

It needs to be emphasized the determination of Dominance is a critical prerequisite for several regulatory processes including the implementation of Price Caps.

The legal aspect requires addressing the existing Court Cases involving Cable and Wireless and the Commissions with respect to Cable and Wireless's price amendments and the implementation of the Price Cap Regime.

The legal aspect is summarized as follows:-

- A summary of the history in each case;
- NTRCs to retain their own independent Legal Counsel to advise on their legal proceedings;
- ECTEL to retain external Legal Counsel Price Cap issues and the Legal proceedings;
- ECTEL to continue to provide legal advice to NTRCs.

PRICE CAP IMPLEMENTATION PLAN

The following Price Cap Implementation Plan must also be considered.

This price cap implementation plan outlines the steps required for the establishment of a price cap regime and the required rules and procedures.

(A) Setting Tariffs

(Dominica's Regulations are used for ease of reference).

The Telecommunications (Tariff) Regulations, r.4 (b) provides:

In setting a tariff for a telecommunications service, licensees shall act in accordance with the following principles:

- (a) where there is effective competition in the market for a telecommunications service, licensees may set tariffs for that service;*

- (b) *where the Commission has determined that one or more operators are dominant in the market for a telecommunications service, licensees shall set their tariffs for that service in accordance with:*
 - (i) *if applicable, any incentive-based regulations; and*
 - (ii) *regulations imposed as a condition of that licensee's license.*

(B) Determination of Dominance

Price Cap is an incentive-based regulation and as a condition precedent to its implementation, there must be designation of dominance. The determination of dominance is provided for in regulation 5, of the Tariff Regulations, which states that:

(1) *The Commission shall, acting on the recommendation of ECTEL, by notice published in the Gazette, designate a telecommunications provider as a dominant telecommunications provider in respect of a particular telecommunications market or markets in Dominica where the Commission has determined that, after a public consultation process, with respect to that telecommunications provider:*

- a) *where there is not effective competition with respect to the market or markets for telecommunications services in Dominica; and*
- b) *it is in the long-term interests of consumers of telecommunications services in Dominica that the service be so designated.*

(2) *The Commission may designate a telecommunications provider as a dominant telecommunications provider where the provider consents in writing to such designation.*

Cable and Wireless has consented in writing to being designated a dominant telecommunications provider in respect of limited telecommunications services. It therefore follows that the Commission must undertake a public consultation process to designate Cable and Wireless as the dominant provider of any other service to be regulated.

(C) Public Consultation

1. **Consultation on Consultation.** For public consultation to be transparent and certain there is need for public consultation on the consultative process. A period of six weeks is proposed for this initial consultation.

2. **Consultation on Dominance.** The Commissions will then be in a position to carry out the public consultation on dominance and then determine the telecommunications services in which the telecommunications provider will be designated as dominant.

That designation of dominance means that those services can be included under the price cap regime. The time period proposed for public consultation on dominance is twenty-eight days.

3. **Consultation on Price Cap Regime.** Following the development of the price cap regime by ECTEL, the document will then be put out for public consultation and a period of eighty-four (84) days is proposed for this process. Upon completion of this process, the Commission will finalise the price cap regulation and forward to the Minister for publication.

St. Lucia

The Commission:

- **On 30th October 2002** initiated Price Caps Consultation with Cable and Wireless.
- **On January 28th, 2003** Cable and Wireless notified of its proposed price amendments;
- **On 3rd February 2003**, informed Cable and Wireless that it is designated dominant in the local Coop Services;
- **On 5th February, 2003** informed Cable and Wireless that it viewed the notifications as being premature.
- **On 7th February 2003** Cable and Wireless responded by letter dated disagreeing with the Commission's opinion with respect to the notification.
- **On 25th February 2003** the Commission also responded by letter indicating that there was in fact a dispute with respect to the timing of the Cable and Wireless notification such that section 10 of Annex F of the May 20th Agreement applied.
- **On 25th February 2003** the Commission advised Cable and Wireless that as the dominant provider of the local loop Services. Therefore Part IV of the Tariff Regulations applied.
- **On 27th February 2003** the Commission sent a follow-up letter expressing an expectation that in light of Cable and Wireless's consent to dominance and procedures now falling under the Tariff Regulations, the proposed rates would not be imposed on March 1st.
- **On the 28th February 2003** the Court granted leave to file a claim for Judicial review of and to state the "decisions" of the Commissions in the above stated letters of February 25th and 27th, 2003.

The inter partes hearing date is 14th April, 2003.