

# ITU-EC HIPCAR Project

## Assessment Report on Licensing

### Regional and International Trends and Best Practices

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# Part I. Introduction



# Introduction

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- Historically, state-owned operators provided telecommunication services on a monopoly basis
- Since the 1980s, the trend has been towards liberalisation, which has been magnified by technological convergence
- Licensing is a relatively recent development in many telecommunications markets - there is no one preferred model but various solutions, and each country chooses what fits best into its own market reality as well as political and administrative tradition



# Introduction

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- Most of the key policy decisions relating to the development of the market structure ultimately determine the form of the licensing and authorisation regime chosen to implement the policy
- Licensing frameworks are generally designed with a specific vision of the structure of the market in mind and to cater for specific competition and consumer protection issues
- The right balance between ease of market entry, competition between different access technologies, technical efficiency and customer protection must be struck



# Introduction

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- In addition to the introduction of liberalisation, convergence of technologies and services, including advanced services, provides a challenge in terms of licensing
- There is no universal definition of convergence, although it has been defined as
  - “the ability of different networks to carry similar services,”
  - the ability of one network to carry different services.”
  - Good examples of convergence are the provision of Internet access and television to mobile handsets and the “triple play” services offered by cable television networks and ISPs.

# Introduction

## What is Convergence?

### Multiple service provision under different network infrastructures

Infrastructure	Voice	Data	Video
Copper line	PSTN	DSL, FTTP	VOD, IPTV
Cable (coaxial and optic fiber)	Some (analogue and VoIP)	Cable modem	Analogue, DTV
Mobile	Analogue, 2G, 3G	2.5 G, 3G	DVB-H, others
Fixed Wireless	Some (VoIP)	3G, WiMax, LMDS, MMDS	DVB
Power lines	VoIP	BPL	VOD, DVB, IPTV

DSL=Digital Subscriber Line, FTTP=Fiber to the premise, VOD=Video on Demand, IPTV=Internet Protocol TV, DVB=Digital Video Broadcasting, 2G = Second generation mobile service, 3G=Third generation mobile service, BPL=Broadband over Power Line.

Source: Telecommunications Management Group, Inc., 2006



# Introduction

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- Convergence impacts on the traditional view of service and technology specific licensing and regulation
- The real challenge for countries is to ensure that market-opening objectives, regulations and international commitments can be implemented in practice and are not frustrated by domestic approval or other regulatory requirements
- Licensing is a key element in this respect



# Introduction

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- In 2007, the ITU issued the report *Trends in Telecommunication Reform: The Road to Next-Generation Networks*
  - The report highlighted the opportunities and challenges in shifting from circuit-switched, voice-based, single service networks to packet-based, broadband, multi-service networks – or next generation networks (NGN).
  - This change means that “*policy-makers and regulators must update licensing, interconnection and consumer protection measures that were designed for yesterday’s technology and market conditions.*”





# Introduction

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- Regulators and policymakers responses to the challenges of liberalisation and convergence have not been uniform, but have consistently focused on a number of key elements, including the introduction of:
  - Transparent licensing criteria;
  - Technology and service neutrality;
  - Simplification of administrative procedures;
  - Greater flexibility in the existing regulatory frameworks; and
  - A level playing field for all operators.



# Part II. International and Regional Trends and Best Practices




# Overview of Licensing IBPs

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1. Introduction to trends and key licensing issues
2. Transparency in licensing requirements and process
3. Licensing framework embraces technology neutrality and service convergence facilitation
4. Simplification of licensing process
5. Uniformity of licence conditions
6. Transparency in licence administration
7. Clear articulation of penalties and methods of enforcement




# Transparency of Licensing Criteria



# Transparency of Licensing Criteria : Issues

- All stakeholders involved benefit in multiple ways from a transparent and efficient licensing process
  - Regulators use transparency to safeguard their legitimacy and efficiency
  - Regulators also obtain information from the regulated industry and other interested parties that they need in order to base their decisions on all relevant facts and diverse views
  - Operators, service suppliers, consumers and other stakeholders depend on transparency to ensure that their concerns are heard and that they play a role in shaping important decisions
  - *For Operators: “transparency of regulatory processes and responsiveness of regulators are extremely important factors in their willingness to enter and stay in markets”*




# Transparency of Licensing Criteria : Issues

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In accordance with the WTO:


- *Licensing Criteria must be publicly available, meaning:*
  - *All the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence, and*
  - *The terms and conditions of individual licenses*
- *The reasons for the denial of a licence must be made known to the applicant upon request*



# Transparency of Licensing Criteria: Key Questions

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- Are all licensing criteria and the terms/conditions of licenses published and publicly available, *e.g.*, on the regulators website? Are all parties aware of the obligations and rights of other parties?
- Are all applicants subject to the same procedures, unless there is an objective reason for differentiation? Are the reasons for differentiation defined?
- Does the law provide that any entity that fulfills the conditions adopted and published by the regulatory authority is entitled to receive a licence?



# Transparency of Licensing Criteria: Key Questions

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- Is it clear which activities fall into each category of licence? Who determines the categories of licenses?
- Does the regulatory framework establish the mechanisms to be used in case of limitation in number of licenses such as beauty contests, auctions?
- Should operators be permitted to obtain exemptions to use spectrum in bands which have licenses on an unlicensed basis?



# Transparency of Licensing Criteria : International Standards

## ECOWAS

When a Member State intends to grant individual licenses:

- It shall grant the licenses according to open, non-discriminatory and transparent procedures, and, for this purpose, all candidates shall be subject to the same procedures unless there is an objective reason for subjecting them to different treatment;
- It shall establish reasonable time frames; *inter alia*, it shall inform the applicant of its decision as soon as possible, and at the latest six weeks following receipt of request.”
  - Supplementary Act A/SA.3/01/07 on the Legal Regime Applicable to Network Operators and Service Providers

# Transparency of Licensing Criteria : Implementation in the Caribbean

- 12 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 2 countries include some of the key elements, but miss substantial points.
- 1 country's laws are yet to include the IBPs on transparency of licensing criteria or only nominally address these elements.


GOOD	FAIR	NONE
Antigua & Barbuda; Bahamas; Barbados; Belize; Dominica; Dominican Rep.; Grenada; Jamaica; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; Trinidad & Tobago	Guyana; Suriname	Haiti



# Transparency of Licensing Criteria: Belize

## **Telecommunications (Licensing Classification, Authorisation and Fee Structure) Regulations, 2002**

- (5) Before granting an Individual Licence, the PUC shall give notice-
- a) stating that it proposes to grant an Individual Licence;
  - b) stating the reasons why it proposes to grant the Individual Licence; and
  - c) specifying the time(not being less than fourteen days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made; and shall consider any representations or objections which are duly made and not withdrawn.
- (6) A notice under paragraph (4) above shall be given by publishing same in such manner as the PUC considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.



# Competitive, Convergent and Technology Neutral Licensing Framework



# Licensing Framework: Issues

- The introduction of new and advanced technologies coupled with the liberalization of markets and the introduction of competition has created new requirements for the regulation of the information and communication markets
- Where telecommunications regulation was traditionally aimed at limiting market entry and at regulating the activities of the incumbent monopolist, more emphasis is now being placed on effective ways to *facilitate* the development of and access to a national information infrastructure



# Licensing Framework: Issues

- Recent trends show that many countries have modified their licensing regimes, which typically involves changing from a technology or service specific structure to a technology neutral, simplified set of licensing categories, and in some cases, a unified (single/global) licence and/or multi-service authorizations for all technologies and services
- With service- and technology-specific licensing, operators may have to reapply for a license or authorization for every new service or application added to the network. In addition, there may be restrictions that impede them from offering new services, e.g., telephony operators cannot offer cable service; mobile operators cannot provide broadcasting (mobile) services; or joint ownership or cross ownership restrictions. This could result in a situation where an operator may be hindered from offering new services



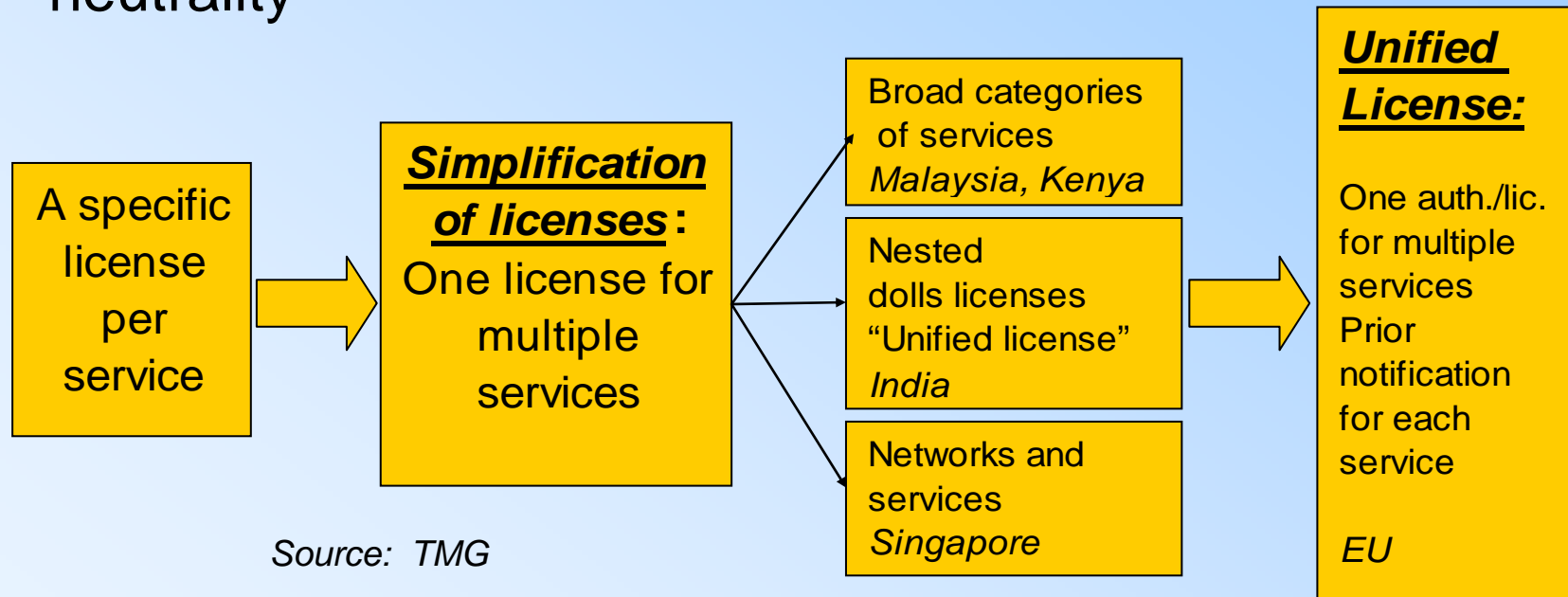
# Licensing Framework: Issues

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- Multiservice authorizations are defined as those authorizations which allow service providers to offer multiple services under the umbrella of a single authorization, using any type of communications infrastructure and technology capable of delivering the services in question
  - multi-service authorizations are technology neutral
  - multi-service authorizations are more limited than unified authorizations; licensees are permitted to provide any of a designated set of services, but not any and all services


# Licensing Framework: Issues

- Simplification of licensing categories + technology neutrality\*



\* For the purpose of this diagram, "licence" means the regulatory authorizations necessary to provide telecommunication services.





# Licensing Framework: Key Questions

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- Is the licensing framework based on a general authorization regime or are there specific categories of licensing for facilities and services? What are the categories of licensing (e.g., individual, class, declaration, registration, open entry)?
- What are the reasons given for individual licensing (e.g., public order, use of scarce resources)?
- Are licences service-specific or has there been a move to a system of unified licensing in which large categories of facilities and/or services fall within each category?



# Licensing Framework: Key Questions

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- For a framework based on individual and class licences, are the licences hierarchical whereby an individual licence replaces a class licence and allows the individual licence holder to offer all types of facilities and services in both licence categories?
- Does the law provide for exceptions for certain activities?
- Are licences or authorizations technology-neutral?
- Do any of the licences provide for exclusivity? If so, what are the conditions and timing?
- Do any quantitative restrictions exist on the number of licences?



# Licensing Framework: International Standards

## **European Union – Unified Licensing Framework**

- Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorisation system covering all comparable services in a similar way regardless of the technologies used.
- The objective of this Directive is to create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46(1) of the Treaty, in particular measures regarding public policy, public security and public health.
  - Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002



# Licensing Framework: International Standards

## Singapore – Two Categories (Networks/Services)

- Adopted a two-pronged licensing approach that differentiates between licensees based on the nature of their operations, *i.e.*, whether facilities-based or services-based type of operations...
- It should be noted that the licensing framework is formulated on a hierarchical basis with Facilities-Based Operators (FBO) being at the higher hierarchical level.
  - Thus, licensees who are licensed as FBO would be able to offer the services that Services-Based Operators (SBO) can offer, but not vice versa.
  - Also, the intention is that an entity should be issued a single licence for all the networks/services it intends to operate/offer.
  - Hence, if a SBO decides to build its own network after building up its market share, it can apply to be licensed as a FBO.
  - The FBO licence will then replace its SBO licence
    - Guidelines on Submission of Application or Facilities-Based Operator Licence

# Licensing Framework: Implementation in the Caribbean

- 8 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements related to licensing framework requirements and processes.
- The legal texts in 4 countries include some of the key elements, but miss substantial points.
- 3 country's laws are yet to include the IBPs on licensing frameworks or only nominally address these elements.

GOOD	FAIR	NONE
Bahamas; Barbados; Dominica; Dominican Rep.; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; Trinidad & Tobago	Antigua & Barbuda; Grenada; Guyana; Jamaica;	Belize; Haiti; Suriname



# Licensing Framework: Bahamas

## Communications Bill of 2009

20(1) URCA shall publish the conditions of a standard network and carriage services individual licence to comprise substantially the same conditions for all licensees, subject to the provisions of Part VI and Part VII.

- 2) URCA may make such modifications, variations or restrictions to any of the standard individual operating licence conditions as it requires for reasons justified by reference to the communications policy objectives.
- 3) URCA may grant a licence for the use of radio spectrum subject to such conditions as it considers appropriate under the communications policy objectives.
- 4) Conditions of licences that relate to the same or similar networks or carriage services shall not unfairly discriminate between licensees

# Licensing Framework: Trinidad and Tobago

- Sections 21 and 36 of the Act prescribe two types of instruments for authorising telecommunications and broadcasting operators to provide networks and/ or services under the new regime in Trinidad and Tobago:
  - *A concession is granted by the Minister to authorise the operation of a public telecommunications network (Section 21) and/or the provision of any public telecommunications service or broadcasting service*
  - *A licence is granted by the Authority to authorise the operation or use of any radiocommunication service or any radiotransmitting equipment, including that on board any ship, aircraft or other vessel in the territorial waters or airspace of Trinidad and Tobago, (Section 36)*


# Licensing Framework: Trinidad and Tobago

- ***Where the operation of a public telecommunications network or the provision of a public telecommunications or broadcasting service requires use of spectrum, the required licence applications will be processed as part of the concession application.***
- ***Where radio transmitting equipment is used for a private or “closed-user group”<sup>2</sup> communication service, licences are required for the radio transmitting equipment employed. A concession however is not required.***






# Scarce Resource (Frequency) Licensing



# Scarce Resource Licensing: Issues

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- New advanced technologies and converged services that use spectrum are demanding more flexibility and service/technology neutral frameworks
- Without the introduction of these essential principles, fully converged services and new advanced applications, such as mobile television or IMT-2000 data services, cannot fully realize their advantages, such as a more efficient use of spectrum, reduction of prices and a variety of new applications for business and consumers
- The focus of the more flexible approach to allocating and assigning spectrum is on efficiency, equity, in-band migration, and technical neutrality



# Scarce Resource Licensing: Issues

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- Regulators are granting the right to use spectrum without regard to the type of technology being used (i.e., technology-neutral approach)
  - The premise of a technology-neutral approach is that any service may be provided through any kind of technology in any frequency band, and the use of spectrum can be altered at any time
  - A second response to convergence has been the introduction of spectrum trading and in-band migration



# Scarce Resource Licensing: Issues


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- Because operators make significant investments in their spectrum-dependent operations, they must have the assurance that
  - spectrum licenses will be issued in a timely, transparent, and fair manner
  - timeliness is a key factor in the issuance of spectrum licenses as undue delays can have serious effects on operations
  - spectrum licenses will be renewable and for a length of time that gives operators the ability to recover investments to the best degree possible
  - operators must also be assured that spectrum will not be taken away for arbitrary reasons and without due compensation



# Scarce Resource Licensing: Key Questions

- Is there a separate frequency licensing requirement?
- Are frequency licences issued concurrently by the same regulator?
- Are frequency licences renewable and for the same period as the service licence/authorization?
- Can spectrum licences be transferred by the licensee without pre-approval of the regulator? If not, is the process fair and transparent?
- Are mechanisms for awarding spectrum licences (beauty contest, first-come first-served and auction) transparent and timely?
- Has technology neutrality been incorporated?
- Is there provision for flexibility in spectrum management (e.g., in-band migration, spectrum trading, etc.)?
- Is the right of the regulator to withdraw spectrum for inefficient use limited?
- Does the mandate of the regulator require that they ensure efficient use of the scarce resource?



# Scarce Resource Licensing: International Standards

## ECOWAS

- In the interests of having a management regime that embraces the principle of technological neutrality, Member States shall ensure that radio spectrum management powers are vested in the national regulatory authority overseeing telecommunications by giving that entity a mandate covering ICT in the broadest sense.
- Where demand is greater than supply, Member States shall make preferential use of auctions as a means of assigning major spectrum licenses to competing applicants, in the interests of ensuring transparency, objectivity and impartiality in the transfer (or assignment) process.
- Member States shall ensure that all classes of users are encouraged to make optimum use of the spectrum they occupy.
- Member States shall manage spectrum in ways that promote flexibility while respecting the ITU international allocations.
  - Supplementary Act A/SA.5/01/07 on the Management of the Radio-Frequency Spectrum

# Scarce Resource Licensing: Implementation in the Caribbean

- 5 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements related to scarce resource licensing requirements and processes.
- The legal texts in 8 countries include some of the key elements, but miss substantial points.
- 3 country's laws are yet to include the IBPs on scarce resource licensing or only nominally address these elements.

GOOD	FAIR	NONE
Antigua & Barbuda; Bahamas (Fair-Good); Barbados; Dominican Rep.; Trinidad & Tobago	Bahamas (Fair- Good); Belize; ECTEL Members; Jamaica;	Guyana; Haiti; Suriname



# Scarce Resource Licensing: Antigua & Barbuda


## **Telecommunications Act of 2007**

(4) The Telecommunications Commission shall make a decision whether or not to approve a transaction referred to in subsection (2) or (3) [to transfer a spectrum licence] as soon as is practicable and communicate the decision to the person, but if the Telecommunications Commission has not communicated a decision to the person 90 days after the person applies for approval, the transaction is deemed to have been approved.

(5) The Telecommunications Commission shall approve a transaction referred to in subsection (2) or (3) unless

- a. it is convinced that, had the person to whom the interest is proposed to be sold been the original applicant for the frequency authorisation, the Telecommunications Commission would not have granted the frequency authorisation; or
- b. to grant it would be contrary to the public interest.





# Simplified Licence Application Procedures

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# Simplified Application Procedures: Issues

- Heavy administrative procedures and individual licensing for market entry are more costly and require more resources and longer timeframes from the operator to apply for market entry. The inability to determine when a license will be granted – how long it will take – may hamper business and operational plans
- In general, the licensing regime with the fewest administrative requirements will be the most effective in addressing convergence and successfully fostering new advanced services




# Simplified Application Procedures: Issues

- If the regulator adopts more restrictive requirements for certain types of networks and/or services that, in addition are unduly burdensome or opaque, these procedures may slow or prevent the entrance of, for example, ISPs into a nation's market
- Some countries have streamlined their licensing regimes by establishing a single market entry requirement for all telecommunications services
  - These countries have established different administrative procedures, from requiring a licence, such as in Argentina, to a notification regime, such as in the European Union



# Simplified Application Procedures: Key Questions

- Does the framework keep licence conditions and filing requirements to a minimum?
- Are licence application procedures for activities falling under the class licence regime kept to a minimum? Are they different from applications for individual licences in terms of the amount of detail applicants must provide?
- Can applicants apply for large categories of facilities and/or services in the same application, which may involve a “check the box” style of notification or allow the applicant to list the types of facilities and/or services it plans to offer?
- What are the procedures in case of expansion of activities at a later stage – is there a simple information requirement (e.g., Singapore)?

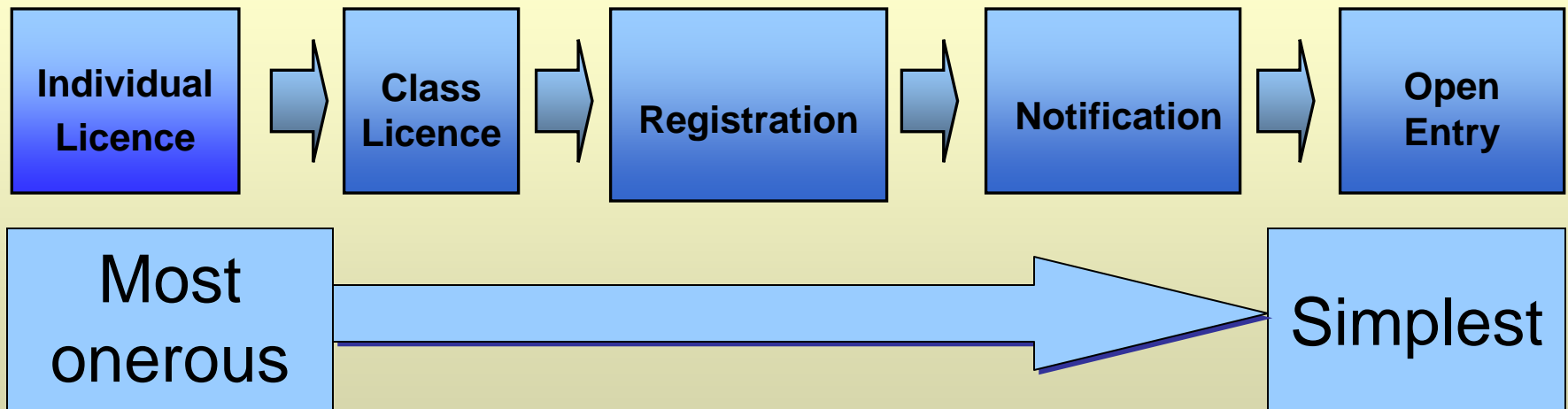


# Simplified Application Procedures: Key Questions

- Where there is a system of individual and class licensing rather than a general authorisation regime, are the filing requirements for the class licence treated as if it is a general authorisation?
- Are activities, such as value-added services or Internet cafes, which fall under an open entry regime still subject to declaration or registration in which they must wait for approval to begin activities? Or may they begin offering such services prior to approval? Does administrative silence constitute approval?
  - What are the time limits for acting upon licence requests?
  - Is the reason to refuse to issue a licence reasoned and transparent and is it communicated formally to the applicant – is this automatic or upon request?
- Are the terms of a licence fixed at the time the licence is officially delivered?

# Simplified Application Procedures: International Standards

The international trend is towards simplification of administrative requirements, as below



Source: TMG



# Simplified Application Procedures: International Standards

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## European Union

- The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.
- Those aims can be best achieved by general authorisation of all electronic communications networks and services without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only.
  - Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002

# Simplified Application Procedures: Implementation in the Caribbean

- 3 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 10 countries include some of the key elements, but miss substantial points.
- 2 country's laws are yet to include the IBPs on simplified application procedures or only nominally address these elements.

GOOD	FAIR	NONE
Bahamas; Barbados; Dominican Rep.	Antigua & Barbuda; Belize; ECTEL Members; Guyana; Jamaica; Trinidad & Tobago	Haiti; Suriname





# Simplified Application Procedures: Barbados

## **Barbados Unregulated Services Policy of 2003**

The Telecommunications (Regulated Services) Order, 2003 S.I. No.108 has been published and lists the following services as services to be regulated by the Fair Trading Commission.


- a. international telecommunications services,
- b. domestic voice telecommunication services,
- c. services in respect to interconnection charges,
- d. leased circuits, and
- e. international simple resale.

### Unregulated Services

- All other telecommunication services in Barbados will be unregulated.
- All service providers are required to submit a list of all the services they provide and the prices charged for each service.
- When a Service Provider wishes to introduce a new service, the Minister responsible for Telecommunications shall be informed at least one (1) working day prior to the introduction of such service.”




# Licence Conditions



# Licence Conditions: Issues


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- In the old regime, the regulatory approach was to regulate the delivery of telecommunications services through concessions (usually very detailed long-term contracts) or detailed regulation - licenses were very service and sector specific and restrictive
- Flexibility is reduced when licenses are overly detailed, requiring negotiations for changes to all terms and conditions. By keeping language streamlined and incorporating provisions that are adaptable to changes in the law, operators can obtain parity with other market players



# Licence Conditions: Issues


- With the move towards using general authorizations, it means that licenses are no longer specifically tailored, and licensees are regulated through general regulations issued by the regulator
- International examples show that many countries have indeed moved away from detailed licenses and towards a regime using generally applicable rules that apply to all market participants and a licensing structure that merely grants the licensee an authorization to provide service and obligates the licensee to abide by the rules issued by the regulator



# Licence Conditions: Key Questions


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- Is the detail of the legal and regulatory texts copied verbatim in the licences or do the licences refer to the relevant legal provisions without copying text of regulations?
- Are licence conditions justified, proportionate, non-discriminatory, cost efficient and transparent?
- Are there objectives to minimise all costs imposed on licensees?
- Does the legal framework reflect a gradation of rights and obligations according to specific situation (e.g., obligations just applicable for dominant operators/ operators with SMP, specific obligations linked to use of numbers or spectrum)?



# Licence Conditions: Issues


- Rules that govern operators are included in telecommunications laws, sector policies, regulations, decrees, orders, decisions, guidelines, directions and other such determinations. Instead of regulating through company-specific concessions or licenses, regulatory authorities adopt broad-ranging regulations and *ex ante* rules that apply to the entire industry or to certain similarly situated groups of operators
- Such rules generally include all the relevant terms and conditions formerly included in licenses and which are equally applicable to all relevant licensees. Future terms and conditions included in such rules are then determined and amended, if necessary, through regulation according to a predictable, transparent process, thus creating more transparency, fairness and openness



# Licence Conditions: Issues

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- There should be a *general set of terms and conditions* that are applicable to all – irrelevant of where they are – be it in the license or as general rules applicable to the operation of a network or the provision of a service
- Certain terms and conditions may only be applicable to certain situations
  - The use of scarce resources (e.g. numbers, spectrum, rights of way)
  - Being in a position of dominance



# Licence Conditions: Key Questions

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- Are there any provisions in the licences to allow an operator to apply to the regulator for forbearance from regulation?
- Over time a build-up of dated regulation has the potential to hinder sector development. Are the licensing objectives to minimise the regulatory burden imposed on licensees?
- It should be possible and indeed a duty on the regulator for licence conditions to be reviewed periodically and if necessary removed or modified. Are there periodic reviews of regulation either initiated by the regulator or on application by licensees?





# Licence Conditions: International Standards

## European Union

- The objective of this Directive is to create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46(1) of the Treaty...
- This Directive covers authorisation of all electronic communications networks and services whether they are provided to the public or not. This is important to ensure that both categories of providers may benefit from objective, transparent, non-discriminatory and proportionate rights, conditions and procedures.
  - Common regulatory framework for electronic communications networks and services (Framework Directive) of 2002

# Licence Conditions: Implementation in the Caribbean

- 9 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 5 countries include some of the key elements, but miss substantial points.
- 1 country's laws are yet to include the IBPs on licence conditions or only nominally address these elements.

GOOD	FAIR	NONE
Antigua & Barbuda; Bahamas; Barbados; Dominica; Dominican Rep.; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; Trinidad & Tobago	Belize; Grenada; Guyana; Jamaica; Suriname	Haiti



# Licence Conditions: Bahamas

## **20. Power to grant individual licences with conditions.**

(1)URCA shall publish the conditions of a standard network and carriage services individual licence (the “individual operating licence”) to comprise substantially the same conditions for all licensees, subject to the provisions of Part VI (SMP) and Part VII (UAS)

(2)URCA may make such modifications, variations or restrictions to any of the standard individual operating licence conditions as it requires for reasons justified by reference to the communications policy objectives.

(3)URCA may grant a licence for the use of radio spectrum subject to such conditions as it considers appropriate under the communications policy objectives

(4)Conditions of licences that relate to the same or similar networks or carriage services shall not unfairly discriminate between licensees

[Bahamas Communications Act, 2009]




# Transparent Licence Administration

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# Transparent Licence Administration: Issues

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- When procedures to withdraw, amend or suspend licenses are not clear, operators could be subject to political intervention and/or arbitrary attempts to protect state-owned incumbents
- In addition, where there is no established and objective appeals procedure, operators can be subject to the whim of regulatory decisions without recourse



# Transparent Licence Administration: Key Questions

- What happens when the legal framework changes – are there any provisions in licenses to accommodate this?
- Are licenses transferrable to third parties? If so, does the transfer of the licence to a third party require prior consent from the regulatory authority? Is there an exception for a licence obtained through competition or tender procedures?
- Are there specific procedures to amend a licence?
- What are the timeframes for modifications?
- Does the licence provide termination rights and renewal that are appropriate to each party?
- Is there an effective dispute resolution process? Are there clear, specific time periods for resolution? Are all parties clear on the process



# Transparent Licence Administration: International Standards

## Singapore

7(2) Before making modifications to the conditions of a licence of a public telecommunication licensee under this section, the Authority shall give notice to the licensee —

- Stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any damage caused thereby; and
- Specifying the time (not being less than 28 days from the date of service of notice on such licensee) within which written representations with respect to the proposed modifications may be made.

7(3) Upon receipt of any written representation referred to in subsection (2), the Authority shall consider such representation and may

- Reject the representation; or
- Amend the proposed modifications or compensation payable in accordance with the representation or... it shall thereupon issue a direction in writing to such licensee requiring that effect be given to the proposed modifications...within a reasonable time.

- Telecommunications Act of 1999, Part II

# Transparent Licence Administration: Implementation in the Caribbean

- 11 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 3 countries include some of the key elements, but miss substantial points.
- 1 country's laws are yet to include the IBPs on transparent licence administration or only nominally address these elements.

GOOD	FAIR	NONE
Antigua & Barbuda; Bahamas; Barbados; Dominica; Dominican Rep.; Guyana; Jamaica; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; Trinidad & Tobago	Belize; Grenada; Suriname	Haiti





# Transparent Licence Administration: Dominican Republic

## **Telecommunications Act of 1998**

- 27.2. Requests for renewal must be made within a term no greater than one (1) year prior to the end of the period of effectiveness, and the regulatory entity must make a pronouncement in a maximum term of six (6) months, from date of receipt of the request. Once said term has expired without any express negative ruling from the regulatory body, the renewal shall be deemed to have been granted.
- 27.3. The only causes for non-renewal of the concession shall be those provided for its revocation.
- 27.4. The regulatory body may, every five (5) years, review the conditions of rendering of service. Said review shall be performed after consultation with the parties, and observing the respect for acquired rights, economic equilibrium of the contract, and investments made by the concessionaire companies.
- 27.5. The licenses which may be granted linked to a concession of public telecommunications services shall have the same duration as said concession, including its renewals.



# Transparent Licence Administration: Jamaica

## **Telecommunications Act of 2000**

- 17(2) A licensee may, with the prior approval of the Minister assign its licence or any rights thereunder or transfer control of its operations.
- 17(3) An application for approval of an assignment or transfer under this section shall be made in writing to the Minister who shall grant such approval if he is satisfied that the assignee satisfies the requirements of section 11(1) (a) to (d) as regards the obligations imposed on a licensee by this Act or the licence.

A stylized globe graphic composed of a network of light blue lines, positioned on the left side of the slide. The globe is partially obscured by the title text.

# Sanctions and Enforcement



# Sanctions and Enforcement: Issues


- Regulators must have the ability to monitor telecommunications companies to
  - ensure compliance with telecommunications laws, regulations and license conditions
  - investigate alleged misconduct by operators and enforce compliance with its rules and regulations
- In order to conduct both ex ante and ex post actions, it is necessary to constantly monitor the operators' behavior
- *Note: adequate confidentiality clauses should be in place to ensure that the information that companies submit is protected and used solely for the purpose for which it is requested*



# Sanctions and Enforcement: Issues

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- Clear and published enforcement procedures are needed to ensure transparency and accountability, for example, that sanctions are issued after adequate investigation, and that the accused party is provided with proper notice of the alleged violation and an opportunity for defense
- Transparency also facilitates and encourages voluntary compliance with rules and regulations, minimizing the need for intervention by the regulator and reducing regulatory costs for the government and industry players



# Sanctions and Enforcement: Key Questions

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- Are there procedures when a licensee fails to comply with licence conditions (e.g., withdrawal, amendment, or suspension of the licence)?
- Does the licence or legal framework include specific enforcement provisions?
- Does the regulatory authority have to give the licensee notice of any suspected or alleged licence violations that come to the attention of the regulatory authority? If so, what is the timeframe for the licensee to investigate and take corrective action?
- Does the licensee have to be provided with an opportunity to present his views before the enforcement action?



# Sanctions and Enforcement: Key Questions

- Can the licensee appeal any decision by the regulatory authority regarding licensing to an independent institution?
- Can Licensees appeal against all fines imposed by the regulator and to a body independent of the regulator?
- Some regulators in the Caribbean are considering the introducing of fines up to 10% of revenues, although 10% of revenue could be 100% of profit. Are exorbitant fines the way forward for enforcement?
- Would a lower fine (no more than 2% of turnover) subject to consultation on how to arrive at any decision be a more practical and equitable way forward?



# Sanctions and Enforcement: International Standards

## European Union

(27) The penalties for non-compliance with conditions under the general authorisation should be commensurate with the infringement. Save in exceptional circumstances, it would not be proportionate to suspend or withdraw the right to provide electronic communications services or the right to use radio frequencies or numbers where an undertaking did not comply with one or more of the conditions under the general authorisation. This is without prejudice to urgent measures which the relevant authorities of the Member States may need to take in case of serious threats to public safety, security or health or to economic and operational interests of other undertakings. This Directive should also be without prejudice to any claims between undertakings for compensation for damages under national law.



# Sanctions and Enforcement: Implementation in the Caribbean

- 12 of the legal texts in the targeted Caribbean countries provide for all, nearly all or the most substantive portions of the key elements.
- The legal texts in 2 countries include some of the key elements, but miss substantial points.
- 1 country's laws are yet to include the IBPs on sanctions and enforcement or only nominally address these elements.

GOOD	FAIR	NONE
Antigua & Barbuda; Bahamas; Barbados; Dominica; Dominican Rep.; Grenada; Guyana; Jamaica; St. Kitts & Nevis; St. Lucia; St. Vincent & the Grenadines; Trinidad & Tobago	Belize; Suriname	Haiti



# Sanctions and Enforcement: ECTEL Members

## **Telecommunications (Licensing and Authorisation) Regulations**

Where the Minister proposes to vary or revoke or suspend a licence or authorisation, he shall notify the licensee or authorisation holder -

- a. of the reasons for the proposed variation, revocation or suspension; and
- b. specifying a period of not less than two months from the date of the notice within which representation with respect to the proposal may be made.

Where the proposal is the result of a breach of a term, provision or limitation of the licence or authorisation –

- a. the notice given to the licensee or authorization holder shall state that the proposal will be withdrawn or modified if the breach is not remedied within the period of 30 days commencing with the date of the notice; and
- b. the Minister shall within the period of 30 days following the period referred to in subparagraph (a), confirm, modify or withdraw the proposal.



# Sanctions and Enforcement: Guyana

## **Telecommunications Act of 1998**

16(1) If a telecommunications operator is aggrieved by a final or provisional order under section 13 or an order revoking a licence under section 15 and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 13 or 15 or that any of the requirements of section 14 or 15 have not been complied with in relation to it, he may within forty-two days from the date of service on him of a copy of the order make an application to the Court under this section.

16(2) On any such application the Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the telecommunications operator have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.”



# Thank You!

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