TELECOMMUNICATIONS ORDER, 2001

CODE OF PRACTICE FOR TARIFFS IN THE TELECOMMUNICATIONS SECTOR (TARIFF CODE)

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TELECOMMUNICATIONS ORDER 2001

CODE OF PRACTICE TO REGULATE TARIFFS IN THE TELECOMMUNICATIONS SECTOR

In exercise of the powers conferred by Section 26(1) of the Telecommunications Order 2001, the Authority for Info-communications Technology Industry of Brunei Darussalam (“Authority”) hereby issues the following Code of Practice to Regulate Tariffs in the Telecommunications Sector **effective 20 April 2020**:

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1 PRELIMINARY

1.1 Citation and Commencement

The Code of Practice to Regulate Tariffs in the Telecommunications Sectors may be cited as the (the "Tariff Code"). The Tariff Code shall commence on a date to be appointed by the Authority.

1.2 Goals of the Tariff Code

The purpose of the Tariff Code is to identify the telecommunications' Infrastructure or Services that is subject to ex ante tariff regulation and to specify the methodologies that will be used to regulate telecommunications tariffs in Brunei Darussalam.

1.3 Definitions

As used in the Tariff Code:

(a) ***"ADSL"*** means asymmetric digital subscriber line.

(b) ***"AITI Order, 2001"*** means the Authority for Info-communications Technology Industry of Brunei Darussalam Order 2001.

(c) ***"Authority"*** means the Authority for Info-communications Technology Industry of Brunei Darussalam.

(d) ***"Customer"*** means the definition given in the Competition Code.

(e) ***"Competing* Market Players"** means the definition given in the Competition Code.

(f) ***"Competition Code"*** means the Code of Practice For Competition in the Telecommunications Sector.

(g) ***"End User"*** means the definition given in the Competition Code.

(h) ***"Ex ante tariff regulation"*** means that tariffs submitted to the Authority have to be calculated according to methodologies specified by the Authority before approval is granted.

(i) ***"Ex post tariff regulation"*** is where tariffs are subject to investigation after implementation.

(j) ***"Infrastructure"*** means the definition given in the Competition Code.

(k) ***"Infrastructure That Must Be Shared"*** means the types of Infrastructure that must be shared as listed pursuant to Section 7.5 of the Competition Code.

(l) ***"Interconnection Agreement"*** means the definition given in the Competition Code.

(m) ***"Licensee"*** means the definition given in the Competition Code.

(n) ***"Mandated Wholesale Services"*** means the definition given in the Competition Code.

(o) ***"Market Player"*** means the definition given in the Competition Code.

(p) ***"Permanent Tariff"*** means the Tariff whereby the Market Player has set for the product or service.

(q) ***"Physical co-location"*** means the provision of space at operator's premises to enable the wholesale customer to install and maintain equipment.

(r) ***"Price Cap"*** means the ex-ante measure described in Schedule A to this Tariff Code.

(s) ***"Promotional Tariff"*** means Tariff that is offered for a specified period of time, the conclusion of which will result in the product or service being raised back to the normal (Permanent) Tariff filed.

(t) ***"Retail Minus"*** means the ex-ante measure described in Schedule A to this Tariff Code.

(u) ***"RIO"*** means a Reference Interconnection Offer.

(v) ***"Services"*** means the definition given in the Competition Code.

(w) ***"Sharing Agreement"*** means the definition given in the Competition Code

(x) ***"Significant Market Power"*** means the definition given in the Competition Code. A Market Player will be determined as having Significant Market Power in accordance with the terms of the Competition Code.

(y) ***"SKA"*** means Sender Keeps All, an interconnection arrangement in which there are no interconnection charges.

(z) ***"Tariff"*** means the definition given in the Competition Code.

(aa) ***"Tariff Rebalancing"*** means the ex-ante measure described in Schedule A to this Tariff Code.

(bb) ***"Top Down Cost Model"*** means the ex-ante measure described in Schedule A to this Tariff Code.

(cc) ***"Working Day"*** These are the days between and including Monday through Friday, and do not include public holidays and weekends.

1.4 Legal Basis

1.4.1 The functions of the Authority to regulate tariffs and require information with regard to tariffs are laid out in *Section 6(1)(l) in the AITI Order, 2001*. The powers of the Authority to require information are contained in *Section 18 of the AITI Order*, 2001 and *Section 62 of the Telecommunications Order, 2001*. The powers of the Authority to issue Codes of Practice are contained in *Section 26 of the Telecommunications Order*, 2001.

1.4.2 The Code of Practice for Competition in the Telecommunications Sector ("Competition Code") identifies the regulatory obligations of all market players and the more specific obligations of Market Players who have Significant Market Power (SMP) in a particular market.

1.5 Legal Effect of the Tariff Code

1.5.1 All Market Players duly licensed in Brunei Darussalam must comply with the applicable provisions of the Tariff Code.

1.5.2 The obligations contained in this Tariff Code are in addition to those contained in the *Telecommunications Order 2001,* the Competition Code as well as any other regulations, licences or codes of practice issued by the Authority.

1.6 Modification of Provisions

1.6.1 The Authority, where appropriate, will modify the provisions of this Tariff Code to reflect changing market conditions. The Tariff Code may be modified in the following manner:

(a) The Authority will review the Tariff Code at regular intervals after the issuance of the Tariff Code. If such a review is conducted, the Authority may amend or modify relevant sections of the Tariff Code. The Authority will also make any other changes it deems fit and necessary to achieve the goals of the Tariff Code; or

(b) The Authority may modify the Tariff Code on its own initiative at any time.

1.6.2 In each case, the Authority may seek public comments prior to adopting modification.

2 APPLICABLE METHODOLOGIES

The applicable methodologies are in Schedule A to this Tariff Code.

3 RETAIL INFRASTRUCTURE OR SERVICES SUBJECT TO EX ANTE REGULATION

3.1 Retail Domestic Fixed Line Voice Services

3.1.1 The prescribed tariff regulation methodology for retail domestic fixed line voice services is Tariff Rebalancing.

3.1.2 Market Players who have been determined to have Significant Market Power in the retail domestic fixed line voice service market must develop and submit to the Authority a plan for rebalancing its domestic tariffs based on a methodology, procedure and time table to be specified by the Authority.

3.2 Retail Fixed Broadband Services

3.2.1 The prescribed tariff regulation methodologies for retail fixed broadband is a soft Price Cap, to be replaced, at the discretion of the Authority, by a Top Down Cost Model if the Price Cap proves to be inadequate.

3.2.2 Market Players who have been determined to have Significant Market Power in the retail fixed broadband market shall when submitting its tariffs for retail fixed broadband services ensure that no tariff is increased by a percentage that is more than the result derived from the following formula:

$$\Delta \leq CPI - X$$

Where:

Δ = percentage change in tariff

CPI = Consumer Price Index (latest published CPI on the date of submission of the tariff)

X = 0

3.2.3 Further to this, Market Players determined to have Significant Market Power in the retail fixed broadband market must, when directed to do so by the Authority, submit information for a top down cost model according to a methodology, procedure and time table specified by the Authority and submit tariffs for approval that are in accordance with this cost model.

3.3 Retail Mobile Services

3.3.1 The prescribed tariff regulation methodologies for retail mobile services is a soft Price Cap, to be replaced, at the discretion of the Authority, by a Top Down Cost Model if the Price Cap proves to be inadequate.

3.3.2 Market Players who have been determined to have Significant Market Power in the retail mobile services market shall when submitting its tariffs for retail mobile services ensure that no tariff is increased by a percentage that is more than the result derived from the following formula:

$\Delta \leq CPI - X$

Where:
Δ = percentage change in tariff
CPI = Consumer Price Index (latest published CPI on the date of submission of the tariff)
X = 0

3.3.3 Further to this, Market Players determined to have Significant Market Power in the retail mobile services market must, when directed to do so by the Authority, submit information for a top down cost model according to a methodology, procedure and time table specified by the Authority and submit tariffs for approval that are in accordance with this cost model.

4 WHOLESALE INFRASTRUCTURE OR SERVICES SUBJECT TO EX ANTE REGULATION

4.1 Interconnection

4.1.1 Interconnection services for the purposes of this Tariff Code consists of the termination of voice calls and/or short messages services (SMS) on fixed or mobile networks.

4.1.2 The tariff for interconnection services is the fee paid by the originating network to the terminating network for the termination of a voice call and/or a SMS.

4.1.3 The prescribed tariff regulation methodology for interconnection is based on a Top Down Cost Model, except for services where no interconnection fee is paid, for example in a Sender Keeps All (SKA) arrangement.

4.1.4 Market Players who have been determined to have Significant Market Power for the termination of voice and/or SMS on their own network must offer its tariffs calculated on the basis of a Top Down Cost Model according to a methodology, procedure and time table specified by the Authority and submit tariffs for approval that are in accordance with this cost model.

4.2 **Wholesale Leased Lines**

4.2.1 Wholesale leased lines are leased lines that are provided by a Market Player to other licensed Market Players who use these leased lines to provide services to End Users or Customers.

4.2.2 The prescribed tariff regulation methodology for Wholesale leased lines is based on a Top Down Cost Model.

4.2.3 Market Players who have been determined to have Significant Market Power in the provision of wholesale leased lines must offer its tariffs calculated on the basis of a Top Down Cost Model according to a methodology, procedure and time table specified by the Authority and submit tariffs for approval that are in accordance with this cost model.

4.3 **Wholesale Broadband Access**

4.3.1 Wholesale broadband access is the service by which a Market Player provides other licensed market players with access to its network to provide retail broadband service to End Users or Customers.

4.3.2 The prescribed tariff regulation methodology for Wholesale Broadband Access is based on a Top Down Cost Model.

4.3.3 Market Players who have been determined to have Significant Market Power in the provision of wholesale broadband access must offer its tariffs calculated on the basis of a Top Down Cost Model according to a methodology, procedure and time table specified by the Authority and submit tariffs for approval that are in accordance with this cost model.

4.4 **Infrastructure Sharing**

4.4.1 The prescribed tariff regulation methodology for infrastructure sharing services is the cost of providing the service (project basis).

4.4.2 The Authority may designate Infrastructure as Infrastructure that must be shared under Section 7.5 of the Competition Code.

4.4.3 The tariffs for the provision of infrastructure sharing services should in the first place be agreed by voluntary negotiation between the Market Players concerned as specified in Section 7.6.1 of the Competition Code.

4.4.4 If the Market Players are not able to reach agreement regarding compensation for Infrastructure Sharing services, then under Section 7.6.3 of the Competition Code, the Authority may direct the Market Player providing the infrastructure sharing services to calculate and submit its tariffs for approval based on the costs of providing the service (project basis) and may specify the calculation methodology.

5 TARIFF FILING, REVIEW, APPROVAL AND DUTY TO PUBLISH

5.1 Tariff Filing

5.1.1 A Market Player will file tariffs with the Authority when:

(a) The Market Player is proposing new tariffs for Infrastructure or Services. New tariffs shall be taken to mean any tariffs that have not been previously submitted to the Authority and include, amongst others, a modification of a permanent tariff, a new product, a temporary change or a promotional tariff; and

(b) The Market Player is directed by the Authority to file new (including modified) tariffs based on a methodology specified in this Tariff Code for Infrastructure or Services in which it has Significant Market Power.

5.1.2 Information to be included in tariff filing by a Market Player must:

(a) Fully and clearly describe the Infrastructure or Services to be offered;

(b) Contain a clear statement of the prices, terms and conditions (including any eligibility requirements) on which the Market Player offers to provide the Infrastructure or Services;

(c) List any discounts or special considerations that the Market Player will offer and the requirements that must be satisfied (such as minimum volume or term requirements) to obtain those discounts;

(d) List the minimum period of time during which the Infrastructure or Services will be available and the minimum period of time, if any, during which the Market Player will not increase the filed rates; and

(e) Be self-contained and must include charges for any Infrastructure or Services not generally subject to tariff regulation when offered as part of a package.

5.1.3 In addition to the information specified in sub-section 5.1.2, a Market Player with Significant Market Power must also:

(a) Comply, to the satisfaction of the Authority, with the requirements of any methodology specified pursuant to this Tariff Code by the Authority with respect to tariffs for Infrastructure or Services offered in markets for which the Market Player is determined to have Significant Market Power; and

(b) Clearly demonstrate in the filing that any requirements have been met.

5.1.4 Tariff filing time frames are set to allow the Authority time to effectively review the submissions and provide a timely response. Therefore, tariff filings received after 3:00pm on a working day will be deemed as received and to be processed on the next working day.

5.1.5 The Authority will not be responsible for any delays in its decision making due to failure to submit the notification and/or application for approval in a timely manner or for delays caused by a failure to submit a complete tariff filing.

5.2 **Tariff Review**

5.2.1 For tariffs filed by Market Players for Infrastructure or Services in markets where the Market Player does not have Significant Market Power, the Authority may review the tariffs and consequently request amendments if there are evident breaches of the legislation and/or regulations (including Codes of Practice). These tariffs may also be subject to investigation at a later date whether or not the Authority has given approval.

5.2.2 Tariffs filed by Market Players for Infrastructure or Services in markets where the Market Player has Significant Market Power will be reviewed, with the purpose, amongst others, to ensure that the tariffs have been determined in line with any applicable methodology specified by the Authority pursuant to this Tariff Code. These tariffs will require approval from the Authority before they take effect.

5.2.3 The review clock will commence upon the receipt of a complete submission of tariff filing and all information required has been properly provided to the Authority.

5.3 **Tariff Approval**

5.3.1 Tariff Filings with regard to **Permanent Tariffs**

5.3.1.1 A Market Player which <u>does not have Significant Market Power</u> must submit a tariff filing for the Authority's written approval on its prices, terms and conditions <u>at least ten (10) working days</u> prior to offering, or modifying the prices, terms and conditions on which it offers any Infrastructure or Services (including any offer on a trial basis).

5.3.1.2 A Market Player <u>with Significant Market Power</u> must submit a tariff filing for the Authority's written approval on its prices, terms and conditions <u>at least thirty (30) working days</u> prior to offering, or modifying the prices, terms and conditions on which it offers any Infrastructure or Services (including any offer on a trial basis).

5.3.1.3 <u>All</u> Market Player shall not modify the prices, terms and conditions on which it offers any Infrastructure or Services (including any offer on a trial basis) within three (3) months after obtaining the Authority's written approval.

5.3.2 Tariff Filings with regard to **Temporary or Promotional Tariffs**

5.3.2.1 A Market Player which <u>does not have Significant Market Power</u> must submit a complete tariff filing to the Authority for notification <u>at least five (5) working days</u> prior to offering, or modifying the prices, terms and conditions on which it offers any Infrastructure or Services. If the Authority does not respond with any request for amendments to the tariffs <u>at least two (2) working days</u> prior to offering, the tariffs filed are deemed approved unless and until a subsequent review is undertaken.

5.3.2.2 A Market Player with Significant Market Power must submit a complete application for the Authority's written approval on its prices, terms and conditions at least ten (10) working days prior to offering, or modifying the prices, terms and conditions on which it offers any Infrastructure or Services (including any offer on a trial basis).

5.3.3 Once the Authority allows a tariff to go into effect, the Authority will presume that the prices, terms and conditions are reasonable, competitive and non-discriminatory.

5.3.4 The Authority however, may review the effective tariff periodically in accordance with the Tariff Code to determine whether the prices, terms and conditions remain reasonable, competitive and non-discriminatory, and may direct any Market Player to make appropriate modifications.

5.3.5 In addition, any person that believes that the prices, terms and conditions on which a Market Player is providing Infrastructure or Services pursuant to an effective tariff, are unreasonable or discriminatory may petition the Authority to review those provisions. The petitioner must provide the basis for its belief by providing such objective information, documentation and data as evidence.

5.3.6 The Authority may take enforcement action if it concludes that an effective tariff, or the Market Player's implementation of an effective tariff, contravenes any provision of the legislation and/or regulations (including Codes of Practice). This includes enforcement action under *Section 8 of the Telecommunications Order, 2001*.

5.4 **Duty to Publish Tariffs**

5.4.1 Market Players must disclose, by publishing on its website or any other means permitted by the Authority, the effective tariffs for all Infrastructure or Services, including any Infrastructure or Services provided on a free trial basis.

5.4.2 Publication must be done in a manner that is readily available, current and easy to understand, following any instructions issued by the Authority and made available no later than the date on which the Market Player begins to provide such Infrastructure or Services.

5.4.3 The information must at the minimum, include:

(a) Descriptions of the Infrastructure or Services.
(b) Prices (including any discount structures).
(c) Service suspension and termination provisions (including any early termination charges.
(d) Availability and eligibility requirements for the Infrastructure or Services.
(e) Any related Service Usage Policy such as Fair Usage Policy.
(f) End User Service Level Agreement.

5.4.4 No publication of intended launch, public communication or teasers of any tariffs or any of the related terms and conditions for Infrastructure and Services may be made until the Authority's approval has been obtained.

5.4.5 The published tariffs must be identical to the tariffs filed and approved by the Authority under the provisions of this Tariff Code.

SCHEDULE A

Tariff Regulation Methodologies that may be Applied

This schedule explains the methodologies that may be applied under the Tariff Code with respect to Infrastructure or Services.

1 Ex Ante Regulation Methodologies

1.1 Price Cap

A price cap is an upper limit of tariff increases or lower limit for tariff decreases for a bundle of regulated Infrastructure and/or Services. It may take into account productivity gains achieved by the Market Player

The base price cap formula is:

$$\text{Percentage change in the weighted Price of the Basket } (\Delta P) = CPI - X$$

where:

CPI (Consumer Price Index) is a measure of the rate of inflation based on a basket of consumer goods.

X-factor is the adjustment to the CPI and the result is the maximum by which tariffs are allowed to increase in a year. This X factor may reflect the difference in Total Factor Productivity experienced by the market player and Total Factor Productivity experienced by the economy as a whole. It may also reflect other exogenous factors. Where no such factors are calculated, the X is set at 0 (soft price cap).

1.2 Cost Model Approaches

1.2.1 The cost modelling approaches are:

(a) **Fully Distributed Cost (FDC):** An accounting method in which all costs have to be taken into account and are distributed among a firm's various Infrastructure and/or Services.

(b) **Incremental Cost (IC):** An accounting method to calculate the costs caused by the provisioning of a significant number of additional units or by an extension of the service portfolio. IC measures the costs of adding another service or a significant amount of units of an existing product/service to the production portfolio.

1.2.2 The alternative costing approaches when implementing a cost model are:

(a) **Top-Down Costing Approach:** This bases the cost calculation on existing financial and accounting documents and reports. The process involves the breaking down of three main cost groups namely Operational Expenditures (OPEX), Costs of Capital (CoC), and Depreciation charges into cost pools. Further cost allocations are performed in proceeding steps until all relevant cost pools are broken down into the service cost.

(b) **Bottom-Up Costing Approach:** This consists of modelling a theoretically efficient network to meet a determined demand profile based on engineering design rules. It starts with the demand for the service/product included in the increment and builds an efficient network that can address this demand. It then assesses the use of each network element and processes the costs to the different services of the increment.

1.3 Retail Minus

Retail minus is an approach in setting wholesale tariffs in relation to the retail tariff, rather than calculating the tariff based on cost. The wholesale tariff is calculated by deducting from the retail tariff such costs that are not relevant for a wholesale customer.

1.4 Cost Plus

The cost plus method uses cost models to determine the unit cost of providing the Infrastructure and/or Services and adding on a target margin. It is a cost based approach with a mark-up pricing.

1.5 Benchmarking

Comparable countries offering the same services are used as benchmarks and the prices submitted should be in line with the identified benchmarks.

2 Ex post Regulation Methodologies

Ex post tariff regulation is where the tariffs are subject to investigation after implementation including for reasons of suspected anti-competitive behaviour.

2.1 Price Squeeze/Margin Squeeze Test

2.1.1 A price squeeze/margin squeeze test is applied when it is considered that a Market Player with Significant Market Power in a defined wholesale market sells Infrastructure or Services to a retailer at a price too high for the retailer to make any significant profit if the retailer is forced to purchase the wholesale services in order to be able to operate their business.

2.1.2 There are two (2) tests to determine price squeeze/margin squeeze.

(c) By comparing the wholesale and retail prices on the upstream and downstream markets, respectively, and seeing whether the wholesaler’s own downstream concern could operate competitively with a similar margin.

(d) The price squeeze formula based on an equally efficient operator (EEO) indicates whether an operator is experiencing a price squeeze/margin squeeze. The formula is defined as follows,

$$P - r - uSMP \geq dSMP$$

Where,

P = retail price of the downstream service of the licensed operator with SMP;

r = regulated price of the regulated wholesale service needed by alternative operators to provide such downstream service;

uSMP = other upstream cost of the licensed operator with SMP; and

dSMP = downstream cost of the licensed operator with SMP.

2.2 **Predatory Pricing**

Predatory pricing is where it is established that a Market Player with Significant Market Power has lowered its tariffs to a level which will ultimately force its rivals out of the market and makes a loss with regard to that specific Infrastructure and/or Services.

2.3 **Cross Subsidization**

Cross-subsidization it is established that a Market Player with Significant Market Power is selling its Infrastructure and/or Services at a high price to a group of customers and another at a lower price to another group of customers.

3 Project Basis Cost Calculation

Project basis means that the Market Player providing the Infrastructure and/or Services must demonstrate all the costs associated and these costs are calculated by treating the investment like a 'project'.

The assumption for a project basis calculation is the treatment of the Infrastructure and/or Services costs similar to that of a 'project budget'. The costs in this case can be assumed to be the total investment in required assets and related operational costs for the provisioning of the analyzed Infrastructure and/or Services.

4 Tariff Rebalancing

Tariff rebalancing means that a Market Player is adjusting its tariffs on a differential basis to bring the tariffs in line with costs and to reduce cross-subsidization between services.

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