REGULATION OF RETAIL PRICES FOR SMP OPERATORS - RULES

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UTILITIES REGULATION & COMPETITION AUTHORITY

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Retail Price Regulation

This document constitutes URCA's Rules for the Regulation of Retail Prices for SMP Operators and is designed to foster and promote the overall objectives of the Comms Act, the Electronic Communications Sector Policy and relevant licence conditions.

1. The SMP operator shall act according to the Rules set out below in order to be and remain compliant with any Retail Price Regulation obligation.

2. The detailed Rules are specified in the following Sections.

Part A: Investigations

3. In exercise of its powers to conduct inquiries or investigations under section 8(1)(j) of the Comms Act, URCA may conduct an investigation into an SMP operator's prices and terms and conditions for a Price Regulated Service on its own motion, without receiving a complaint from another party. This includes the right to conduct investigations into the prices and terms and conditions for Price Regulated Services in existence at the time when URCA issues the SMP operator with the Final Decision on its obligations.

4. Under the terms of section 9 of the Comms Act, URCA may request the SMP operator to provide information to URCA during such investigations. URCA shall state the purpose of the request, specify the information required and specify the time period within which the information is to be provided. Failure to provide timely and accurate information to URCA may lead to the imposition of a fine under section 109 of the Comms Act.

5. For the avoidance of doubt, any prices for Price Regulated Services approved under these Rules remain subject to the *ex-post* anti-competitive conduct regime set out in the Comms Act. The approvals granted pursuant to these Rules are conditional on the supporting information submitted, assumptions and prevailing circumstances at the time the application is made. In this respect, URCA may carry out an investigation under the *ex-post* enforcement provisions (Part XI) of the Comms Act, if the actual outcome in the market differs from that assumed at the time the relevant approval was granted.[1]

Part B: Information to be submitted as part of an Application

6. With the exception of Short Term Promotions, all changes in the price of a Price Regulated Service require prior approval by URCA. As part of this approval process, SMP operators subject to these Rules are required to submit a range of information to URCA. The exact information requirements for each

[1] This may include, but is not limited to, instances where: (i) URCA has received a formal complaint by a Licensee; (ii) new information becomes available subsequent to the introduction of a price change; (iii) errors that come to light in any of the information previously provided to URCA either by way of another regulatory measure, an application or a notification; and (iv) evidence arising of the actual or expected impact that the price or non-price terms and conditions have on the market.

application are set out in the relevant section of these Rules. However, any application will require, amongst others, qualitative information on the product or service, the current price and proposed price changes, the commercial rationale for making the proposed changes and (monthly) data on the current and expected demand, actual and projected revenues and costs associated with the Price Regulated Service.

7. Where possible and applicable, cost data should be provided by the SMP operator that satisfies the Accounting Separation and Cost Accounting Guidelines issued by URCA[2] and should reflect the latest available Accounting Separation data available to the SMP operator, subject to the data having been approved by URCA.

8. In the absence of costing information that satisfies the Accounting Separation and Cost Accounting Guidelines, the SMP operator may provide URCA with other information to support its proposed price change including:

   8.1 Benchmarking study of prices in comparable jurisdictions along with supporting information covering amongst others: a detailed overview of the data sources, the approach underlying the analysis, and the justification for adopting the approach; and

   8.2 Verifiable financial management information in respect of providing the service.

9. Any quantitative information needs to be provided to URCA in electronic format (i.e., in the form of a clearly labelled Microsoft Excel spreadsheet setting out the information and/or analysis, including any assumptions made during the analysis).

10. URCA may, by notice, require additional information from the SMP operator relating to the proposed price change, including, for the avoidance of doubt, information relating to any proposed changes in non-price terms and conditions for Price Regulated Services.

Part C: Approval Process

11. The SMP operator must first obtain URCA's written approval before:

    11.1 introducing any changes to the prices of Price Regulated Services, including changes of a temporary nature ("Promotions")[3];

    11.2 introducing any changes to non-price terms and conditions for Price Regulated Services that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator;

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[2] ECS 12/2010 and ECS 13/2010 or any updates thereof.

[3] Promotions are to be distinguished from "permanent price changes" in Part E.

11.3 introducing any new services; or

11.4 withdrawing or discontinuing existing Price Regulated Services.

12. In all cases, the SMP operator must not advertise or announce publicly in any way its proposed price for a Price Regulated Service until it has received URCA's approval for that price, consistent with the procedure set out below.

13. The minimum required elements of the SMP operator's application, and the time period over which URCA will conduct its review and either grant or withhold its approval is dependent upon the type of price or service change sought by the SMP operator, as set out in the remainder of these Rules.

14. With the exception of Promotions for Price Regulated Services, to which Paragraph 14.1and 14.3 shall not apply, URCA will follow the procedure laid out below in the remainder of Paragraph 14, for reviewing price or service change applications for Price Regulated Services.

14.1 Within ***five (5) business days*** of receiving an application made under this Rule, URCA shall contact the SMP operator in writing to acknowledge receipt of the application and either:

14.1.1 Confirm that the application is complete (i.e., that it contains the minimum information required according to the requirements of the relevant section of these Rules), the date upon which it was received by URCA, and that URCA shall review the application according to the procedures set out in these Rules ; or

14.1.2 Advise that the application is incomplete (i.e., that it does not contain the minimum information required). In that case, the application will be deemed not to have been submitted.

14.2 Within the timeframes set out in the remainder of these Rules for each form of price or service change application, URCA shall respond to the SMP operator in writing with one of the following:

14.2.1 A statement of no objection to the price or service change application;

14.2.2 A rejection of the application, including URCA's reasons for rejecting the application; or

14.2.3 In the case of proposed price increases, withdrawals and discontinuations of Price Regulated Services only, a notice that the application will go to public consultation and that therefore a final decision is withheld for the time being. URCA will consider whether there would be a need for public consultation based on factors such as the expected impact of the application (in terms of number of customers affected), possible alternative products available to customers, revenue impact on the operator, and expected impact on competition in the market place.

14.3 If a notice that the application must go to public consultation is issued URCA will, as soon as practicable, allow the public a minimum of ***thirty (30) calendar days*** to respond to the consultation, unless otherwise stated by URCA.

14.4 At any stage during the period of reviewing an application, URCA may give written notice to the SMP operator that it is suspending the review period, in order to request additional information or clarification from the SMP operator on the proposed price or service change. Following receipt by URCA of the requested additional information, the review period will resume from the point at which it was suspended.

14.5 If URCA does not respond in writing to the SMP operator within the timeframes described in these Rules, the price or service change application is deemed approved.

Part D: Implementing the proposed price or service change

15. Upon receipt of URCA's written approval (or upon deemed approval) of its application, the SMP operator may implement the proposed price or service change as follows:

15.1 In the event of a price increase (for either a Single Price Regulated Service, or a Price Regulated Bundle, or the change in the non-price terms and conditions of a Price Regulated Service which could lead to an increase in the effective price paid by the SMP operator's customers), the SMP operator must, within ***thirty (30) calendar days*** of the date of URCA's written (or deemed) approval, advertise a notice in at least one newspaper with national circulation of the operator's decision to implement the price increase, giving subscribers at least ***fourteen (14) calendar days'*** notice of the price change (and/or the change in the non-price terms and conditions for the service, if applicable). If this notice is not advertised within the specified period, URCA's approval will be deemed to have lapsed and the SMP operator must submit a new application if it wishes to proceed with the price change.

15.2 For all other price or service changes (including the introduction of new services deemed by URCA to be Price Regulated Services), if the implementation date differs from that set out in the corresponding application, the SMP operator shall notify URCA at least ***five (5) calendar days*** before the price or service change takes effect. If the price or service change does not take effect within ***thirty (30) calendar days*** of the date of URCA's written (or deemed) approval, URCA's approval will be deemed to have lapsed and the SMP operator must submit a new application if it wishes to proceed with the price or service change.

15.3 When advertising Price Regulated Services, including Special Promotions, the SMP operator shall ensure that such advertising (in whatever form it takes) sets out the terms and conditions for the service, including any eligibility criteria for subscribing to the service.

Part E: Permanent Price Changes for "Single Price Regulated Services"[4]

16. The following terms shall apply to both price increases and decreases for single Price Regulated Services.[5] The treatment of bundled or tied products, where one or more elements of the bundle or tied products is a Price Regulated Service, is detailed in Paragraphs 31 to 38 of these Rules.

17. The SMP operator must obtain URCA's approval before introducing any permanent changes to the prices of Price Regulated Services.

18. The SMP operator shall submit to URCA an application for a permanent change in the price of a Price Regulated Service.

19. Such application shall include, at a minimum, the following:

    19.1 A description of the product or service for which the price change is being requested;

    19.2 A description of the targeted customer segment;

    19.3 Proposed effective date for commencing the price change;

    19.4 A detailed description of current prices for the service(s) in question (specifying recurrent and non-recurrent price components);

    19.5 A detailed description of the proposed prices for the service(s) in question (specifying recurrent and non-recurrent price components);

    19.6 Any proposed changes to the applicable terms and conditions for the service(s) that will result from the proposed price change;

    19.7 A description of the commercial rationale for making the proposed change;

    19.8 Pricing principle applied in developing the proposed price (cost-based, market pricing, etc.);

    19.9 Data relevant to the proposed change, on a monthly basis, including the following:

        19.9.1 Volume of current and projected demand for the Price Regulated Service, where the projected demand should provide the SMP operator's forecast of demand over the following two (2)years;

[4] That is to say, a single service is a Price Regulated Service which is not provided as part of a bundle.

[5] A permanent price change is an application for a price change which does not fall within the definition of a Promotion (refer to Para. 23).

19.9.2 Number of existing subscribers or users that would be affected by the proposed price change and projections (number of users) for the following two (2) years;

19.9.3 Actual and relevant projected revenues for the service over the following two (2) years;

19.9.4 Data for the current year and with forecasts for the next two (2) years on the total cost of providing the service in question (showing separately network (wholesale) and downstream costs, and inclusive of the SMP operator's cost of capital).[6]

19.9.5 A description of the relevant wholesale services and associated prices (currently applied and two (2) year forecasts) required by alternative operators to offer a similar retail service.

19.10 The SMP operator must submit a declaration signed by an authorised officer confirming that its application complies with these rules, the Comms Act, its operating licence, the Sector Policy and any other documents relevant to the application. This signed declaration must further state that the proposed price change is not anticompetitive and, in particular, that it:

19.10.1 does not result in margin squeeze (if at least one alternative operator provides competing services using a wholesale input provided by the SMP operator) or predatory pricing (if the SMP operator does not provide a wholesale service that an alternative operator uses to provide a competing retail service to that which is under consideration);[7] and

19.10.2 will not result in undue discrimination.

19.11 The declaration in Paragraph 19.10 should be supported with evidence that satisfies the requirements set out in these Rules. Annexes 1 and 2 of these Rules specify: (i) the details of the tests that should be followed in order to assess the requirements in Paragraph 19.10.1; and (ii) the key elements to consider in the assessment of the requirement in Paragraph 19.10.2.

19.12 The declaration in Paragraph 19.10.1 is not required in case the application is for a price increase for a service where there is no simultaneous proposed change in the price of an associated wholesale input. However, in these circumstances, the SMP operator needs to

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[6] All references to cost of capital in this document refer to the cost of capital for SMP operators, as determined by URCA in ECS 23/2009, or as may be updated by URCA from time to time.

[7] URCA notes that there may be a need to test for both a potential margin squeeze and predation in case the relevant wholesale service is priced below the cost of providing that service.

instead confirm within its application that the relevant wholesale prices have remained unchanged.

20. URCA notes that not all Price Regulated Services are currently priced above the cost of providing these services. Proposed price increases for these services which still do not pass the predation/margin squeeze test will not necessarily lead to a rejection of the application.

21. More generally, where the cost and revenue information provided by the SMP operator shows that the proposed price is below the cost the SMP operator incurs in providing the service, the SMP operator must provide a detailed justification to URCA for the proposed price. That is, the SMP operator must demonstrate that the proposed price is objectively justified, taking into account the benefits to consumers and showing that these outweigh any adverse effect of the price on competition in the relevant market.[8] URCA will then consider this information as part of its decision making process.

22. Consistent with the procedure set out in Paragraph 14, URCA will respond to the SMP operator with its decision on the price application within **twenty (20) business days** of the date on which URCA received the application and which is notified by URCA to the SMP operator according to Paragraph 14. If an application must go to public consultation, the time allotted for URCA to respond with its decision on the price application will be suspended in accordance with Paragraph 14.3 until URCA has issued its final decision on the public consultation.

Part F: Special Offers or Discounts ("Promotions")

23. A promotion is defined as a temporary change in the price and/or non-price terms[9] of existing services in the market. For the purposes of these Rules, two types of promotions are distinguished:

    23.1 **'Short Term Promotion':** A special offer or discount applied to a Price Regulated Service and which is in place either for a duration of no more than seven (7) consecutive calendar days or for seven (7) non-consecutive calendar days within a period of fourteen (14) calendar days. For the avoidance of doubt, a Promotion will not be classified as a Short Term Promotion if consumers signing up to the Promotion can benefit from its discounted prices, or other temporary terms and conditions, for longer than 7 consecutive days, or longer than 7 non-consecutive days within a 14 day period.

    23.2 **'Full Length Promotion':** A special offer or discount applied to a Price Regulated Service and which is in place for a duration of more than one calendar week or more than seven (7) non-

[8] For example, and without prejudice to individual price change applications, an objective justification could include the price change being part of a longer term price rebalancing plan agreed with URCA.

[9] See Part I of these Rules regarding applications for changes to the non-price terms and conditions for Price Regulated Services.

consecutive calendar days within a period of fourteen (14) calendar days, but for no more than 90 calendar days.

Short Term Promotions

24. At least ***five (5) business days*** before the Short Term Promotion is due to be launched, the SMP operator must notify URCA in writing of the proposed Short Term Promotion and provide the following information to URCA:

24.1 a description of the Short Term Promotion, including a declaration that the Short Term Promotion is not similar to any other Short Term Promotion that was available from the SMP operator at any time within the previous 30 calendar days;

24.2 the intended date on which the Short Term Promotion will apply;

24.3 the normal rates for the Price Regulated Service subject to the Short Term Promotion;

24.4 the rates applicable to the Short Term Promotion; and

24.5 the terms and conditions applicable thereto.

25. URCA shall confirm receipt of the SMP operator's notification at least three (3) business days before the planned launch date of the Short Term Promotion, and if URCA does not respond in writing to the SMP operator within this timescale, the SMP operator may proceed with the Short Term Promotion exactly as set out in the notification. For the avoidance of doubt, nothing in these Rules prevents URCA from directing the SMP operator not to proceed with the Short Term Promotion as set out in the notification, if, in URCA's view, the Short Term Promotion would run counter to the Licensee's obligations in the Comms Act or its Operating Licence.

Full Length Promotions

26. Full Length Promotions for Price Regulated Services shall only be offered with the prior written consent or approval of URCA, and such consent or approval shall be granted under Paragraph 14 of these Rules (with the exception of Paragraphs 14.1 and 14.3).

27. No Full Length Promotion shall be introduced if it is similar in price and/or non-price terms to another Full Length Promotion that was available from the SMP operator at any time within the previous ***Ninety (90)calendar days*** calculated from the expected end-date of any previous similar Full Length Promotion(as set out in the relevant application) or calculated from any revised actual end-date for the previous relevant Full Length Promotion as communicated by the SMP operator to URCA at the time such previous Full Length Promotion was discontinued.

28. The SMP operator shall submit an application to URCA for consent or approval to any Full Length Promotion. An application for a Full Length Promotion must be submitted to URCA at least ***ten (10) business days*** before its proposed launch date. The application shall include the following:

28.1 a description of the Full Length Promotion, including a declaration that it is not similar to any other Full Length Promotion that was available from the SMP operator at any time within the previous ***Ninety (90) calendar days***;

28.2 the price applicable to the Full Length Promotion, together with the current price for the Price Regulated Service;

28.3 the proposed launch date and duration of the Full Length Promotion;

28.4 a description of the commercial rationale for the proposed Full Length Promotion;

28.5 the volume of current demand for the Price Regulated Service which is the subject of the Full Length Promotion and an estimate of the impact of the promotion on demand in the forthcoming year (on a monthly basis);

28.6 actual and relevant projected revenues for the Price Regulated Service the subject of the proposed Full Length Promotion over the following year (on a monthly basis);

28.7 data on the total cost of providing the Price Regulated Service in question, showing separately network (wholesale) and downstream costs, and inclusive of the SMP operator's cost of capital (on a monthly basis);

28.8 A description of the relevant wholesale services and associated prices (for the current and following year) required by alternative operators to offer a similar retail service;

28.9 the terms and conditions applicable to the Full Length Promotion; and

28.10 a declaration consistent with the requirements set out in Paragraphs 19.10 and 19.11 of these Rules.

29. Within ***ten (10) business days*** of receiving an application for a Full Length Promotion, and consistent with the procedure set out in Paragraph 14 of these Rules, URCA will respond to the SMP operator with its decision on the application.

30. If URCA does not respond in writing to the SMP operator within the timeframes set out in Paragraph 29 of these Rules, the price application is deemed approved. Following approval (or upon deemed approval) by URCA of the price application, the SMP operator may proceed with the Full Length Promotion according to Paragraph 15 of these Rules.

Part G: Introducing or Changing the Price of Bundles of Price Regulated Services

31. The SMP operator may bundle, tie or offer new packages that include Price Regulated Services as long as each service included in such a bundle, tied purchase or package is also available on an individual basis on reasonable terms and conditions.

32. Any bundle, tied product or package that includes at least one Price Regulated Service shall be subject to price regulation by URCA ("**Price Regulated Bundle" or "Bundle**"). This means that the SMP operator must not, without the prior written consent or approval of URCA, either change the price and/or terms and conditions of an existing Price Regulated Bundle, or introduce a new Price Regulated Bundle. For the avoidance of doubt, the SMP operator is not required to ensure that each service included in a Price Regulated Bundle existing at the date these Rules come into force is available on a stand-alone basis unless otherwise directed to do so by URCA as part of other specific SMP obligations imposed on that operator.

33. At least ***thirty (30) business days*** before the proposed effective date, the SMP operator shall submit an application to URCA for a price change to an existing Price Regulated Bundle, or an application to launch a new Price Regulated Bundle, as appropriate.

34. URCA will review such an application according to Paragraph 14 above and will respond to the SMP operator with its decision on the price application within ***thirty (30) business days*** of the date on which it received the application and which is notified by URCA to the SMP operator under Paragraph 14.

35. The SMP operator's application must demonstrate that the terms and conditions of the Price Regulated Bundle are not anti-competitive. For this purpose, the SMP operator must provide URCA with the following information:

    35.1 A description of the products or services included in the Price Regulated Bundle;

    35.2 A description of the targeted customer segment;

    35.3 Proposed effective date for the price change/launch of the Bundle offering;

    35.4 In the case of a price change, a detailed description of the current prices for the services in question (specifying recurrent and non-recurrent price components) – both as a bundle and on a standalone basis;

    35.5 A detailed description of the proposed prices for the service(s) in question (specifying recurrent and non-recurrent price components);

    35.6 A detailed description of the proposed terms and conditions applicable to the offer;

35.7 A description of the commercial rationale for making the proposed change/introducing the Bundled offer;

35.8 Pricing principle applied in developing the proposed price (cost-based, market pricing, etc.);

35.9 Data relevant to quantitatively assess the offer, on a monthly basis, including the following:

35.9.1 Volume of current and projected demand for, and the services within, the Bundled offer, where the projected demand should provide the SMP operator's forecast of demand over the following two (2) years.

35.9.2 Number of existing subscribers or users that would be affected by the proposed offer and projected customers in the following two (2) years;

35.9.3 Current and projected revenues for the Bundled offer and its standalone services over the following two (2)years; and

35.9.4 Data on the total cost of providing the service in question for the current year and two (2) year forecasts. The SMP operator should show separately its network (wholesale) and downstream costs, and should include the SMP operator's cost of capital.[10]

36. In addition, the SMP operator must demonstrate the following to URCA:

36.1 First, whether the Price Regulated Bundle is replicable from a technical viewpoint. That is to say, whether other licensed operators could offer a similar Bundle. In order to demonstrate the technical replicability of a Price Regulated Bundle, SMP operators should provide to URCA a description of how other licensed operators could replicate the Bundle, by showing how each component part of the proposed Bundle can be provided by another operator (so that at least one other licensed operator can offer all the component parts of the proposed Bundle), using either its own network or wholesale products currently provided, or proposed, by the SMP operator.

36.2 Where an SMP operator is unable to demonstrate that the proposed Bundle can be technically replicated, it must instead demonstrate that the proposed Bundle can be objectively justified, in that the benefits to Bahamian consumers from it offering the Bundle will significantly outweigh any potential consumer harm that the proposed Bundle could create.

[10] All references to cost of capital in this document refer to the cost of capital for SMP operators, as determined by URCA in ECS 23/2009, or as may be updated by URCA from time to time.

36.3 Second, whether the Price Regulated Bundle is replicable from an economic viewpoint. In this case, two scenarios must be distinguished:

36.3.1 Where an SMP operator is unable to demonstrate that a proposed Bundle can be replicated, it must demonstrate that the 'incremental' price of each service in the Bundle is at least equal to the incremental cost of that service, including the SMP operator's downstream costs of providing the retail services and the cost of the wholesale service that an alternative licensed operator must purchase in order to provide the relevant retail services.

36.3.2 For these purposes, the SMP operator must provide cost information for the proposed Bundle and the individual services in the Bundle, consistent with the requirements of Paragraphs 7 to 9 and Paragraph 35.9 of these Rules.

36.3.3 Where an SMP operator has demonstrated that the proposed Bundle can be replicated by another operator, it must demonstrate that the price of the Bundle as a whole is at least equal to the cost of providing the bundle, including the SMP operator's downstream costs of providing the retail services and the cost of the wholesale services that an alternative licensed operator must purchase in order to provide the relevant retail services.

37. As part of its application, the SMP operator must also submit a declaration signed by an authorised officer confirming that its application complies with these Rules, the Comms Act, its operating licence, the Sector Policy and any other documents relevant to the application. This signed declaration must further state that the proposed price change is not anticompetitive and, in particular, that it:

37.1 does not result in margin squeeze (if at least one alternative operator provides competing services using a wholesale input provided by the SMP operator) or predatory pricing (if the SMP operator does not provide a wholesale service that an alternative operator uses to provide a competing retail service to that which is under consideration); and

37.2 will not result in undue discrimination.

38. The declaration in Paragraph 37 above should be supported with evidence that satisfies the requirements set out in these Rules. Annexes 1, 2 and 3 of these Rules specify: (i) the details of the tests that should be followed in order to assess the requirements in Paragraph 37.1 (ii) the key elements to consider in the assessment of the requirement in Paragraph 37.2; and (iii) the approach to assess Bundled offers.

Part H: Introduction of New Services

39. For the purposes of these Rules, a New Service consists of a service provided by an SMP operator in a Price Regulated Market which is materially different in features, quality and/or attributes to any existing service of the SMP operator resulting from the addition of a service offering or changes in the

service concept that allow for the New Service offering to be made available. That is to say, a New Service is a service which:

39.1 has not been previously commercialized by the SMP licensee; or

39.2 significantly amends any of the terms and conditions of an existing service.

40. An SMP operator proposing to offer a New Service (as described in Paragraph 39 above) within a market where the operator has SMP shall submit to URCA at least ***thirty (30) business days*** before providing the New Service:

40.1 The proposed effective date for the introduction of the New Service;

40.2 A description (commercial and technical) and name of the New Service, including the prices, terms and conditions applicable thereto;

40.3 A description of the relevant product market to which the SMP operator believes the New Service belongs; and

40.4 Forecasted cost and revenue data, on a monthly basis, (as listed in Paragraph 19 above) for the New Service, based, as applicable, on the SMP operator's business plan, regulatory accounts and benchmarking data (consistent with the requirements in Paragraphs 7 to 9 of these Rules), demonstrating that the price of the New Service is transparent and non-discriminatory and would not have the effect of lessening competition in the relevant market, following the requirements set out in Paragraph 19.10 in the case of Single Services and in Paragraph 37 in the case of Price Regulated Bundled Services.

41. The SMP operator shall not repackage an existing service as a New Service. If the New Service is similar to an existing service, the SMP operator must explain the rationale for the launch of the service.

42. For the avoidance of doubt, URCA shall also apply the procedures set out in Paragraph 14 of these Rules to the review of New Services.

Part I: Changes to non-price terms and conditions for Price Regulated Services

43. The SMP operator must obtain URCA's written consent or approval before introducing any changes to the non-price terms and conditions of Price Regulated Services that that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator. This approval must be sought for both permanent changes to the relevant non-price terms and conditions and temporary changes to non-price terms and conditions which are in place for longer than Seven (7)

calendar days or longer than seven (7) non-consecutive days within a fourteen (14) calendar day period (i.e., which fall within the definition of Full Length Promotions set out in Paragraph 23.2 above). [11]

44. Such application should include, at the minimum, the following:

44.1 A description of the proposed non-price terms and conditions;

44.2 A description of the current or previous non-price terms and conditions;

44.3 The proposed effective date for introducing the change;

44.4 A rationale or justification for the proposed change;

44.5 The projected impact of the proposed change, if any, on the effective price of the service or Bundles; and

44.6 A description of the actual or potential competitive effects of the change on the SMP operator's competitors, including an assessment of the replicability of the proposed changes by alternative operators.[12]

44.7 The SMP operator must also submit a declaration signed by an authorised officer confirming that the application complies with these Rules, the Comms Act, its operating licence, the Sector Policy and any other documents relevant to the application. This signed declaration must further state that the proposed changes to the non-price terms and conditions are not anticompetitive and, in particular, that it:

44.7.1 does not result in other licensed operators not being able to (economically or technically) replicate the SMP operators' Regulated Retail Service; and

44.7.2 will not result in undue discrimination between customer groups.

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[11] Non-price terms and conditions refer to any and all terms and conditions other than the price for the service. This may include, but is not limited to: (i) contract length (which could be used as the period over which any fixed price is annualised in order to determine the overall effective price); (ii) quality of service (which would affect the SMP operator's cost of providing the service); (iii) the value of ancillary services (such as, for example CLASS features, a handset, or a modem) or goods provided with the service; (iv) the time taken to provide the service, including the time taken by the service provider's technician or customer service representative to install the service on the customer's premises and/or activate the service (which would affect the SMP operator's cost of providing the service); (v) maintenance terms (which would affect the SMP operator's cost of providing the service); and (vi) minimum call periods for which callers are charged (which would influence the effective price of usage and hence the overall effective price).

[12] Note that the information on the competitive effects is not required in the case of applications for Short Term Promotions.

45. The declaration in Paragraph 44.7 above should be supported with evidence that satisfies the requirements set out in these Rules. Annexes 1 and 2 of these Rules provide further information on the key elements and economic tests to consider in the assessment of the requirements in Paragraph 44.7.

46. URCA notes that discrimination in non-price terms and conditions can at times be welfare enhancing. Proposed changes in non-price terms and conditions which are not fully justifiable based on the underlying cost differences incurred by the SMP operator will not necessarily lead to a rejection of the application. However, in all cases, the SMP operator will be expected to provide an objective justification for the proposed changes leading to discrimination.

47. Consistent with the procedure set out in Paragraph 14 of these Rules, URCA will respond to the SMP operator applying for a permanent change in particular non-price terms and conditions for Price Regulated Services with its decision on the price application within ***twenty (20) business days*** of the date on which it received the application and which is notified by URCA to the SMP operator according to Paragraph 14. If an application must go to public consultation, the time allotted for URCA to respond with its decision on the price application will be suspended in accordance with Paragraph 14.3 until URCA has issued its final decision on the public consultation.

48. For changes in the non-price terms and conditions of Price Regulated Services which fall within the definition of Full Length Promotions, URCA will, consistent with the procedure set out in Paragraph 29 of these Rules, respond to the SMP operator within ***ten (10) business days*** of receiving the application with its decision on the application.

49. As part of the notice provided by URCA to the SMP operator approving any changes in the non-price terms and conditions for a Price Regulated Service, URCA shall specify to the SMP operator as to which of Paragraphs 15.1 or 15.2 of these Rules shall apply in the implementation of the approved terms and conditions.

Part J:Withdrawal and Discontinuation of Price Regulated Services

50. The SMP operator shall not withdraw (to existing customers) and/or discontinue (to new customers) the provision of a Price Regulated Service without the prior written consent or approval of URCA.[13]

51. Not less than ***ninety (90) calendar*** days prior to the proposed effective date, the SMP operator shall submit to URCA its proposal to withdraw and/or discontinue the provision of a Price Regulated Service.

52. The proposal shall include information such as:

52.1 number and profile of current customers/users,

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[13] For clarity, "withdraw" means to cease providing the service to all existing or new customers; "discontinue" means to cease offering the service to new customers only whilst still providing it to existing customers.

52.2 sales revenue,

52.3 volume of demand and costs,

52.4 the proposed process to notify affected customers; and

52.5 any proposed substitutes for the service.

53. Where appropriate, this data should be provided for the last three (3) years, or, if less, such period for which the service was provided, to allow URCA to assess the likely impact on consumers of the withdrawal/discontinuation of the service.

54. URCA shall review an application to withdraw and/or discontinue a Price Regulated Service consistent with the procedure described above in Paragraph 14 and shall respond in writing to the SMP operator with its response, as per Paragraph 14.2, within ***twenty (20) business days*** of the date on which it received the application and which is notified by URCA to the SMP operator according to Paragraph 14.

55. Following the receipt of URCA's written consent or approval for the withdrawal or discontinuation of the Price Regulated Service, the SMP operator shall give its current users at least ***sixty (60) calendar days'*** notice of its decision to withdraw or discontinue the provision of a Price Regulated Service. No less than ***thirty (30) calendar days*** from the effective date of the withdrawal or discontinuation, the SMP operator shall also publish a notice of its decision to withdraw or discontinue the provision of a Price Regulated Service in one or more newspapers with national circulation.

Part K: Price changes for Price Regulated Services which form part of the Universal Service Obligation (USO)

<u>Permanent Price Increases</u>

56. In the case of permanent price increases for Price Regulated USO services, including those situations where a Universal Service Provider (USP) is seeking to introduce a pricing plan or price for a Price Regulated Service for the first time, the USP must follow the requirements in Paragraphs 6 to 22, particularly Paragraphs 6 to 10, 11, 15.1 and 15.3 of these Rules.

57. In addition to the requirements specified in Paragraph 49 above, for URCA to accept the application, the SMP operator must, within its application, demonstrate that the proposed new price remains affordable to consumers in The Bahamas, with such an assessment carried out in accordance with any regulatory or other measure that URCA may publish from time to time as to how such assessments should be conducted. Where the financial information provided by the USP shows that the proposed price is above the cost the USP incurs in provisioning the service, the USP must also provide a detailed justification to URCA for the proposed price change.

58. Following the submission of an application for a permanent price increase on a service forming part of an SMP operator's USO, URCA will assess the application in accordance with Paragraphs 11 to 14 and

Paragraph 57 of these Rules. As part of the application process, URCA may hold a public consultation on the price application and afford affected parties a reasonable opportunity to comment on the application (in accordance with Paragraph 14.3 above).

59. In the case of Price Regulated USO services, URCA recognises that there may be situations where USPs may not pass the margin squeeze or predation test as a consequence of the USO (as not all of these services are currently priced above the cost of providing these services). In this case, URCA may still consider favourably applications for proposed price increases which do meet the USO affordability requirements for these services (see also Paragraphs 20 and 21 above).

Permanent Price Decreases

60. In the case of permanent price decreases for Price Regulated USO services, the USP must follow the requirements in Paragraphs 6 to 22, particularly Paragraphs 6 to 10, 11, 15.2, and 15.3 of these Rules.

61. For Bundles of Price Regulated Services which include at least one USO Price Regulated Service, the USP must follow the requirements in Paragraphs 31 to 38 of these Rules.

Annex 1 - Details of the test for the assessment of predatory/margin squeeze prices

Predation

62. Predation occurs where a dominant licensee deliberately incurs short-term losses or foregoes profits in the short term so as to foreclose (or be likely to foreclose) a competitor (or a potential competitor) with a view to strengthening or maintaining its market power, thereby causing consumer harm.

63. In order to address whether a retail offer by an SMP operator leads to predation, URCA will consider whether the proposed price of the Regulated Service is below the costs of providing the service. This assessment will be based on the following profitability criteria:

$$P \geq C_{end\text{-}to\text{-}end}$$

Where:

63.1 P is the effective retail price of the relevant service(s); and

63.2 $C_{end\text{-}to\text{-}end}$ is the end-to-end cost of providing the relevant service(s), including: OPEX, depreciation and the cost of capital.

63.3 The relevant service(s) considered in the predation test shall be determined by the way in which the Regulated service is commercialized and acquired by customers. Any proposed extension of the predation test beyond the Regulated Service must be fully evidenced and justified within the SMP Operator's application and in reviewing an application URCA is entitled to dismiss any such adjustments if it considers such adjustments to be inappropriate or insufficiently justified.

64. The test shall be based on the cost information from the SMP operator. This is to ensure that the offer allows an equally efficient operator (EEO)[14] to obtain a reasonable margin. In line with international precedence, URCA considers the use of Long Run Incremental Costs (LRIC) to be the most appropriate cost measure for this test (see also the discussion on the appropriate cost measures set out in URCA's Competition Guidelines).[15]However, URCA recognises that LRIC costing information is currently not available in The Bahamas. Whilst this remains the case, the tests shall be based on Fully Allocated Cost (FAC) data. However, in so doing, the SMP Operator should ensure that its cost data reflects as closely as

[14] Applying an EEO standard implies evaluating whether the SMP Operator could profitably provide the set of services under consideration at the stated prices taking into account its own downstream costs, the wholesale prices that alternative operators would have to pay to the SMP operator in order to provide these retail services and any other relevant network costs incurred by the SMP Operator. If none of the SMP Operator's wholesale services is required to provide the retail services, the test takes into consideration the SMP Operator's end-to-end cost for providing the relevant services. This contrasts to the reasonably efficient operator (REO) standard where the competition test is performed based on a (reasonably efficient) alternative operator's costs.

[15] Section 5.2 of ECS COMP. 7

possible the economic costs of providing the service in question, with any adjustments applied to Accounting Separation data to meet this objective being fully evidenced and justified within the application. In reviewing an application, URCA is entitled to dismiss any such adjustments if it considers such adjustments to be inappropriate or insufficiently justified.

65. The profitability of the Price Regulated Service shall be assessed through a discounted cash flow (DCF) approach. That is to say, by estimating the Net Present Value (NPV) associated to the provision of the Price Regulated Service, as follows:

$$NPV = \sum_{t=0}^{T} \frac{Revenue_t - Cost_t}{(1+r)^t}$$

Where:

65.1 T is the period considered in the analysis (i.e., 24 months covering the following two (2)years as set out in Paragraph 19 of these Rules)[16];

65.2 r is the monthly weighted average cost of capital faced by the SMP operator;

65.3 $Revenue_t$ and $Cost_t$ are the revenues and costs generated by the Price Regulated Service in month t.

66. In the absence of the required monthly data to undertake a DCF analysis, the SMP operator may assess the profitability of the service on a less granular basis (for example, based on quarterly or annual data). This decision would have to be fully justified and evidenced within the application.

67. If the SMP operator wishes to apply the analysis over a period more or less than two (2) years, this would need to be fully evidenced and justified based on, for example, average lifetime information of the relevant customers.

[16] For example, if an application is submitted in October 2013, the test would have to cover the period October 2013 to October 2015.

Hypothetical example: Assessment of possible predation in a price reduction for fixed line rental services

Consider an SMP operator who wishes to introduce the following price change to its fixed line rental service: Offer a 100% discount (i.e., zero charge) for the first 6 months followed by a monthly fee of $10 thereafter.

Let us assume that the monthly cost of providing the fixed line rental service is $9/month and that 100 customers are expected to acquire the service.

Further assume an annual WACC of 10.29%[17], implying a monthly WACC of 0.82%[18] (to be used as the discount rate for the net present value (NPV) calculations).

Given the above, the proposed price reduction implies a negative cash flow of -$900 during the first 6 months and a cash flow of $100 for each month thereafter. Considering a time horizon of 24 months, the net present value (NPV) would equal -$3,661 (see below). Hence, the proposed price reduction would fail the predation test.

	1	2	3	4	5	6	7	8	9	10	11	12
Total revenues	$0	$0	$0	$0	$0	$0	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Total costs	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900
Monthly cash flow	-$900	-$900	-$900	-$900	-$900	-$900	$100	$100	$100	$100	$100	$100

	13	14	15	16	17	18	19	20	21	22	23	24
Total revenues	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Total costs	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900	$900
Monthly cash flow	$100	$100	$100	$100	$100	$100	$100	$100	$100	$100	$100	$100

Discount rate (monthly WACC)	0.82%
NPV (24 months)	-$3,661

Margin Squeeze

68. Margin squeeze may occur when a vertically integrated licensee is dominant in the supply of an input to a downstream market in which it also operates. The vertically integrated licensee could harm competition by setting a low or negative margin between the price it charges for the input in the upstream market and the price it charges in the downstream market. If an efficient downstream competitor who purchases the input is forced to exit the market or is unable to compete effectively, then margin squeeze may have occurred.

69. In the case of a margin squeeze, the end-to-end costs included in the test shall include the wholesale prices of the necessary inputs for alternative operators in addition to any other costs necessary to

[17] i.e., in line with the WACC for fixed voice services in The Bahamas, as determined by URCA (ECS 23/2009)

[18] Monthly WACC = [1+ WACC]^[(1/12)-1)].

provide the retail service (including OPEX, depreciation and the cost of capital). As such, the profitability test becomes:

$$P \geq W + C_{other}$$

Where,

- W is the wholesale price that alternative operators must pay to the SMP operator in order to provide the relevant retail service(s)
- C_{other} refers to the rest of the costs that have to be incurred for the provision of the relevant retail service(s)
- The relevant service(s) considered in the margin squeeze test shall be determined by the way in which the Regulated Service is commercialized and acquired by customers. Any proposed extension of the margin squeeze test beyond the Regulated Service must be fully evidenced and justified within the SMP Operator's application and in reviewing an application URCA is entitled to dismiss any such adjustments if it considers such adjustments to be inappropriate or insufficiently justified.

70. For the avoidance of doubt, paragraphs 64 to 67 of these Rules apply equally to margin squeeze and predation tests.

Hypothetical example: Assessment of margin squeeze in the provision of broadband services

Consider a broadband offer by an SMP operator with a monthly price of $40 for up to 25 Mbps.

Assume there is a resale service available to alternative broadband providers (the "reseller") which allows the provision of the same service at a wholesale price of $30/customer/month. The reseller also incurs a downstream cost (i.e., the cost of selling the service on a retail level). Assume this cost to equal $3 customer/month.

The reseller estimates that customers attached to this offer will grow at a monthly rate of 2%, from an initial customer base of 20 customers.

The above implies the following monthly revenues and costs for the reseller:

- The unit revenues are given by the monthly price of $40/customer.
- The unit costs are given by the resale price that alternative providers have to pay to the SMP operator for the provision of the wholesale service ($30/customer/month) and their own downstream costs ($3/customer/month). In total, the reseller therefore incurs a cost of $33/customer/month.
- The above implies a constant margin per customer equal to $7/month.

Taking into consideration the expected take-up of these services and applying (again) a monthly WACC of 0.82%, this would result in a positive NPV of $3,822 over a 24 month period (see below). Given these factors, this offer would not raise concerns in terms of margin squeeze.

	1	2	3	4	5	6	7	8	9	10	11	12
Customers	20	20	21	21	22	22	23	23	23	24	24	25
Total revenues	$800	$816	$832	$849	$866	$883	$901	$919	$937	$956	$975	$995
Total costs	$660	$673	$687	$700	$714	$729	$743	$758	$773	$789	$805	$821
Monthly cash flow	$140	$143	$146	$149	$152	$155	$158	$161	$164	$167	$171	$174

	13	14	15	16	17	18	19	20	21	22	23	24
Customers	25	26	26	27	27	28	29	29	30	30	31	32
Total revenues	$1,015	$1,035	$1,056	$1,077	$1,098	$1,120	$1,143	$1,165	$1,189	$1,213	$1,237	$1,262
Total costs	$837	$854	$871	$888	$906	$924	$943	$961	$981	$1,000	$1,020	$1,041
Monthly cash flow	$178	$181	$185	$188	$192	$196	$200	$204	$208	$212	$216	$221

Discount rate (monthly WACC)	0.82%
NPV (24 months)	$3,822

Annex 2 - Assessment of undue discrimination

Price discrimination

71. In the context of the Competition Guidelines[19] and section 69 of the Comms Act on abuse of a dominant position, price discrimination arises when a dominant licensee applies dissimilar prices to similar retail or wholesale customers for the same product. Price discrimination may be exclusionary when a dominant licensee uses discriminatory pricing structures which have the effect of foreclosing the market.

72. Price discrimination can take two basic forms:

    72.1 charging different prices to different customers for the same products; or

    72.2 charging different customers the same price even though the costs of supplying the product are in fact very different.

73. In communication markets with a vertically integrated SMP operator, there is further a risk that the vertically integrated SMP operator fails to supply the wholesale services to alternative operators under the same conditions with which it provides the service to its own retail arm. This may lead to a competitive disadvantage for alternative operators by not allowing them to replicate the SMP operator's retail offering with a similar retail margin as available to the SMP operator. The existence of undue discrimination in this context can be tested by undertaking a margin squeeze test, as detailed above (see Paragraphs 68 to 69).[20]

74. An SMP operator must demonstrate that its proposed price change does not lead to any potential anti-competitive pricing behaviours including, for example, any form of margin squeezing and the setting of anti-competitive on-net and off-net prices. The text box below illustrates this by means of a hypothetical example.

<u>Hypothetical example</u>: Analysis of on/ off-net price differentials in the fixed sector

Consider a fixed telephony market with two operators:

- Operator A is an SMP operator with an 80% market share of all fixed customers.
- Operator B is a competitor with a market share of 20%.

Both operators compete by offering only national fixed voice services and their customers' calling pattern is uniform. This means that any call is directed to any other customer with the same probability.

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[19] Section 5.4 of ECS COMP. 7

[20] URCA notes, however, that a margin squeeze test will not allow testing for all forms of potential undue discrimination by an SMP operator.

The implication is that customers of network A will make 80% of their calls on-net, while for customers of network B on-net calls will represent only 20% of their traffic. Let us also assume that each call lasts for 1 minute.

The SMP operator (Operator A) sets a lower price for on-net calls compared with off-net calls:

- $P_{on\text{-}net} = 3$
- $P_{off\text{-}net} = 6$

The cost of an on-net call is equal to the cost of origination ($1.00) plus the cost of terminating the call ($1.00), hence $2.00. The cost of an off-net call is equal to the cost of origination ($1.00) plus the fixed termination rate (FTR) that has to be paid to the operator that terminates the call. We assume a reciprocal FTR of $2.00. This results in a cost of $3.00 for off-net calls.

An off-net/on-net price differential set by Operator A may result in an average price for Operator A which cannot be replicated by Operator B, given its lower customer base (which leads to a higher proportion of off-net calls).

In the current example, Operator A offers an average price per call to their customers equal to $3.60 (i.e., [$3.00*0.8] + [$6.00*0.2]). The average cost per call faced by Operator B is equal to $2.80 (i.e., [$3.00*0.8] + [$2.00*0.2]). Hence, the retail price set by Operator A, despite discriminating between on-net and off-net calls, can be profitably replicated by Operator B.

If, instead, the on-net price set by Operator A were$0.00 (free on-net calls), this would imply an average price per call of $1.20 (i.e., [$0.00*0.8] + [$6.00*0.2]), below the average cost faced by Operator B ($2.80). In this case, the retail price offered by Operator A would not be replicable.

75. Notwithstanding the above, an analysis of potential undue discrimination requires an assessment on a case-by-case basis, taking due account of the objective justifications provided by the SMP operator to set different prices for similar customers.

<u>Undue discrimination in relation to non-price terms and conditions</u>

76. Potential undue discrimination can also occur in relation to non-price terms and conditions. Therefore, the SMP operator is required to obtain URCA's written approval before introducing changes to non-price terms and conditions for Price Regulated Services that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator. Non-price terms and conditions which may be unduly discriminatory include, amongst others, differences in:

- the functionality of the product offered (such, as download or upload speeds) to different customer groups;
- the contract terms offered (such as, different minimum contract lengths offered) to different customer groups;
- the timing required to provision the product for different customer groups and

- the quality of service levels offered (such as, differences in lead times or the time taken to repair faults) to different customer groups.

77. Generally, any difference in the non-price terms and conditions offered for the same product to different customers that are not justifiable by underlying cost differences incurred by the SMP operator require further justification by the SMP operator. As such, within its application, the SMP operator would need to demonstrate that any differences in the terms and conditions offered to two customers:

77.1 reflect relevant differences in the customers' circumstances or the cost of serving these customers; and/or

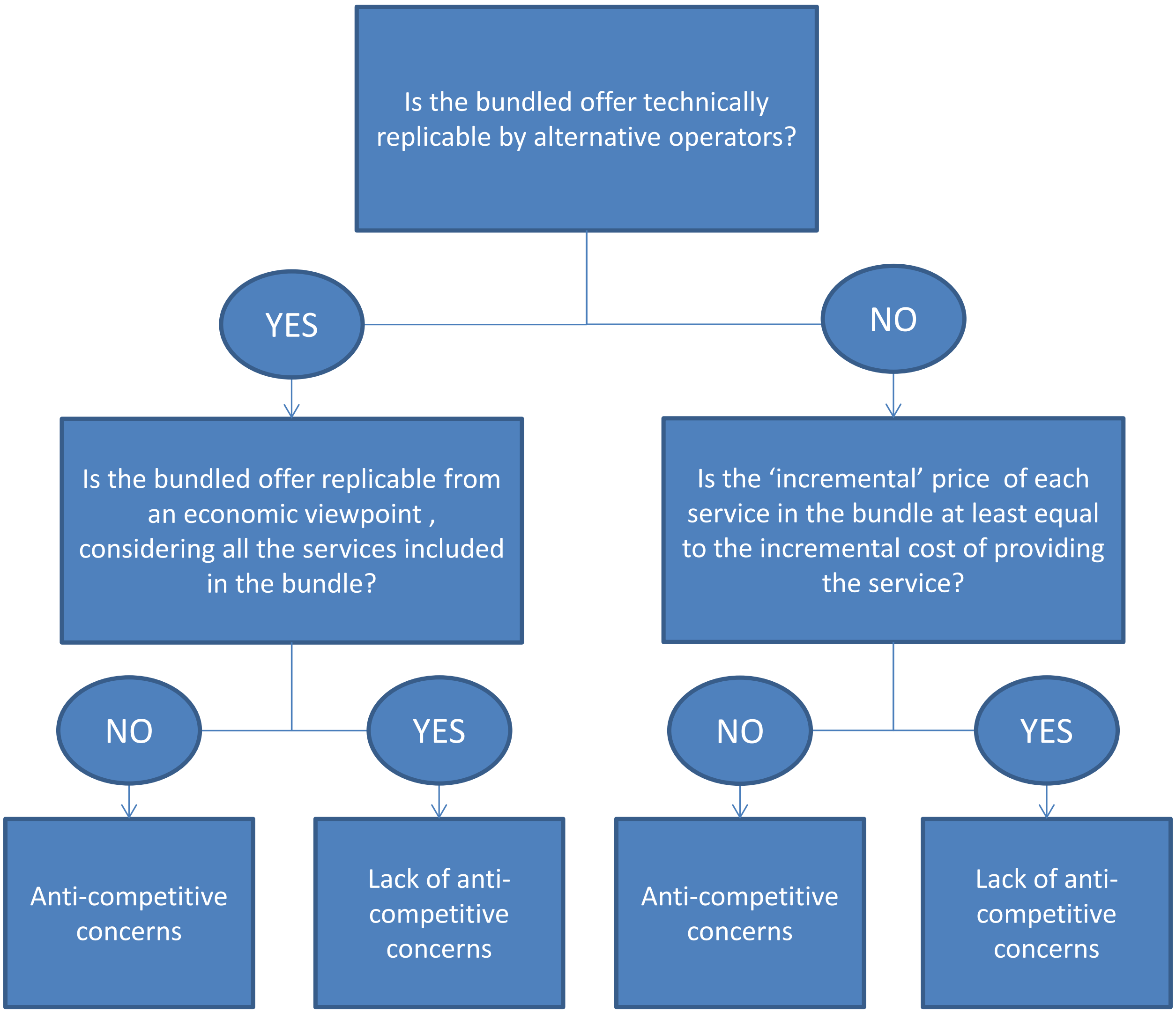
77.2 would not harm competition for providing these products.

78. However, non-price discrimination can at times be welfare enhancing (if, for example, this leads to a substantial expansion of overall demand in the market or the opening up of new market segments). As such, URCA will evaluate each application on a case-by-case basis. However, in all cases, the SMP operator will be expected to provide an objective justification for any proposed changes which may lead to differences in the terms and conditions received by different customers.

Annex 3 – Assessment of bundled offers including Price Regulated Services

79. The decision tree below summarizes the approach that should be taken to assess bundled offers which include at least one Price Regulated Service.

Decision tree to assess bundled offers which include Price Regulated Services



80. The "incremental" price of each service within a bundle is calculated as the price of the bundle minus the price that would be paid for the acquisition of the rest of the services in the bundle, excluding the service in question. For example, in the case of a bundle including two services, A and B, the incremental price of service A would be $P_{AB} – P_{B}$, where P_{AB} is the price of the bundle, while P_{B} is the price of acquiring service B on a stand-alone basis.

81. The text box below illustrates the economic replicability test by means of a hypothetical example.

<u>Hypothetical example</u>: Economic replicability of a product

Consider a combined offer by an SMP operator for a retail fixed voice and broadband service with a monthly price of $80. The SMP operator also offers the fixed voice and the broadband services on a standalone basis for a monthly price of $50 each.

Assume there is an alternative operator also offering both fixed voice and broadband services. The latter is provided via the alternative operator's network and the fixed voice services based on regulated wholesale line rental (WLR) and fixed call origination (CO) services offered by the SMP operator. As such, the SMP operator's product bundle is technically replicable.

Further assume that the WLR service charge is $15 per month and the CO service charge is $0.01 per minute. Call termination services are also charged at $0.01 per minute (which is reflective of the SMP operator's cost of providing these services).

The SMP operator incurs an average downstream cost of $10 per fixed line per month and $0.01 per call minute. The SMP operator's average cost of providing the retail broadband service is $40.

The SMP operator's fixed voice customers make on average 500 minutes of calls each month.

The above implies that:

- The end-to-end cost per customer of the fixed line rental is $25 per month (i.e., $15 for the WLR plus $10 downstream costs)
- The end-to-end cost per customer of the fixed voice calls is $15 per month (i.e., 500minutes multiplied by $0.03/min of total wholesale and downstream costs)
- Given that the end-to-end cost per customer of the broadband service is $40 per month, the overall monthly cost of the bundle is $80 per month (i.e., $25 per month for the fixed line plus $15 per month for the calls and $40 per month for broadband).

	Fixed line rental	Fixed calls	Broadband	Total bundle
Wholesale unit costs	$15.00	$0.02	n/a	
Downstream unit costs	$10.00	$0.01	n/a	
Total unit costs	**$25.00**	**$0.03**	**$40.00**	
Total units per month	1	500	1	
Total cost per month	**$25.00**	**$15.00**	**$40.00**	**$80.00**

As the proposed price of the bundle is (at least) equal to the cost of providing the bundle, this bundle offer does not raise any replicability concerns.