



REGULATION OF RETAIL PRICES FOR SMP OPERATORS OF NON PRICE-CAPPED SERVICES - RULES

UTILITIES REGULATION & COMPETITION AUTHORITY

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Table of Contents

Retail Price Regulation	3
Part A: Investigations	3
Part B: Information to be submitted as part of an Application	4
Part C: Approval and Notification Process.....	5
Part D: Implementation process following approval and receipt of notification.....	8
Part E: Permanent Price Changes for “Single Non Price Capped Services”	9
Part F: Introduction of New Single Non Price Capped Services.....	11
Part G: Introducing or Permanently Changing the Price of Bundles of Price Regulated Services	12
Part H: Special Offers or Discounts (“Promotions”).....	16
Part I: Changes to non-price terms and conditions for Price Regulated Services and Price Regulated Bundles.....	18
Part J: Withdrawal and Discontinuation of Price Regulated Services and Price Regulated Bundles	20
Annex 1 - Details of the test for the assessment of predatory/margin squeeze prices.....	22
Hypothetical example: Assessment of margin squeeze in the provision of broadband services	25
Annex 2 - Assessment of undue discrimination.....	27
Annex 3 – Assessment of bundled offers including Price Regulated Services	30
Annex 4 - Bi-annual submission on anti-competitive price tests for Price Regulated Services	33

Retail Price Regulation

1. This document constitutes the Utilities Regulatory and Competition Authority's ("URCA") Rules for the Regulation of Retail Prices for Non Price Capped Services offered by operators with Significant Market Power ("SMP"). It is designed to foster and promote the overall objectives of the Communications Act, 2009 (the "Comms Act"), the Electronic Communications Sector Policy and relevant licence conditions.
2. For the purposes of these Rules, the following definitions will apply:
 - 2.1 **Non Price Regulated Services** – all retail communication services which are not subject to ex-ante regulation.
 - 2.2 **Price Regulated Services** – all retail communications services which are subject to retail price regulation.
 - 2.3 **Price Regulated Bundle** - any bundle, tied product or package that includes at least one Price Regulated Service.
 - 2.4 **Price- Capped Services** – all retail communications services subject to price cap regulation in addition to the Retail Pricing Rules for Price Capped Services.
 - 2.5 **Non Price Capped Services** –all Price Regulated Services that are not Price-capped Services.
 - 2.6 **Single Non Price Capped Service** – A Non Price Capped Service which is not a bundle.
 - 2.7 **Multi-product Bundle** – any bundle, tied product or package comprising at least one Non Price Capped Service and one or more other services belonging to one or more unrelated markets.¹
 - 2.8 **Mobile-only Bundle** – a Bundle consisting of only mobile phone services (i.e., mobile voice, mobile data, and/or SMS)..
3. 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.
4. The detailed Rules are specified in the following Sections.

Part A: Investigations

5. 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 or Price Regulated Bundle on its own motion, without receiving a complaint from

¹ An example of a Multi-Product Bundle is a bundle which contains at least one of BTC's mobile services and at least one service from an adjacent market such as fixed voice telephony, Pay TV and/or broadband internet.

another party.² This includes the right to conduct investigations into the prices and terms and conditions for Price Regulated Services and Price Regulated Bundles in existence at the time when URCA issues the SMP operator with the Final Decision on its obligations.

6. 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.
7. For the avoidance of doubt, any prices or terms and conditions for existing Price Regulated Services and Bundles, as well as the introduction of New Price Regulated Services and Bundles, approved under these Rules or notified to URCA as per 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.

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

8. Under these Rules, the introduction of and all price changes for Price Regulated Services as well as changes to terms and conditions and the withdrawal and discontinuation of all Price Regulated Services and Bundles, require either prior approval by URCA, or prior notification by the SMP operator to URCA. As part of the approval and notification process, SMP operators subject to these Rules are required to submit a range of information to URCA. The exact information requirements for each application are set out in the relevant section of these Rules.
9. URCA may, by written notice, require the SMP operator to provide additional information in relation to any Approval Application or Notification it has submitted.

Information Requirements under Approval Process

10. Where approval by URCA is required, any application will require, amongst others, qualitative information on the Price Regulated Service or Bundle subject to the application, the current price and terms and conditions, the proposed price changes or changes in terms and conditions, 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 or Bundle.

10.1 Where possible and applicable, cost data should be provided by the SMP operator that satisfies

² 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.

the Accounting Separation and Cost Accounting Guidelines issued by URCA³ and should reflect the latest available Accounting Separation data available to the SMP operator, subject to the data having been approved by URCA.

10.2 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 application including:

10.3 Benchmarking study of prices / costs 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

10.4 Verifiable financial management information in respect of providing the Price Regulated Service or Bundle subject to the application.

11. 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).

Information Requirements under Notification Process

12. Where an SMP operator is only required to notify URCA of a price or service change, it will be required to provide qualitative information on the relevant Price Regulated Service or Bundle, the current price and terms and conditions, and the proposed price changes or changes to terms and conditions as applicable. Quantitative information, such as data on the demand, revenues, and costs for the Price Regulated Service or Bundle, will not be required.

Part C: Approval and Notification Process

Approval Process:

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

13.1 introducing any permanent changes to the prices of Multi-product Bundles;;

13.2 introducing new Multi-product Bundles;

13.3 introducing any changes to non-price terms and conditions for Price Regulated Services and Bundles containing at least one Price Regulated Service, that could be expected to affect either the effective price paid by consumers or the costs incurred by the SMP operator; or

13.4 withdrawing and/or discontinuing existing Price Regulated Services, or existing Bundles

³ ECS 12/2010 and ECS 13/2010 or any updates thereof.

containing at least one Price Regulated Service.

14. The SMP operator must not advertise or announce publicly in any way its proposed price or terms and conditions for the Service or Bundle, or the introduction, withdrawal and/or discontinuation of the Service or Bundle, until it has received URCA's approval, consistent with the procedure set out below.
15. 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.
16. However, without prejudice to Paragraph 15, URCA will follow the procedure laid out in the remainder of Paragraph 16 for reviewing approval applications.

16.1 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:

16.1.1 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

16.1.2 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.

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

16.2.1 A statement of no objection to the application;

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

16.2.3 In the case of proposed price increases for Multi-product Bundles, as well as the withdrawal and/or discontinuation of Price Regulated Services and Bundles containing at least one Price Regulated Service, 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.

16.3 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.

16.4 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 submitted application. Following receipt by URCA of the requested additional information, the review period will resume from the point at which it was suspended.

16.5 If URCA does not respond in writing to the SMP operator within the timeframes described in these Rules, the application is deemed approved.

Notification Process:

17. The SMP operator must notify URCA before:

17.1 introducing any permanent changes to the prices of Single Non Price Capped Services and Mobile-only Bundles;

17.2 introducing Short Term and Full Length Promotions on Price Regulated Services and Bundles containing at least one Price Regulated Service; or

17.3 introducing new Single Non Price Capped Services and new Mobile-only Bundles.

18. In all cases, the SMP operator must not advertise or announce publicly in any way its proposed price or terms and conditions for the Service or Bundle, or the introduction, withdrawal or discontinuation of the Service or Bundle, until it has submitted notification of the same to URCA, in line with the procedures set out in these Rules.

19. An SMP operator proposing a price or service change subject to notification shall notify URCA in writing of the proposal at least **five (5) business days** before implementing the price or service change or notifying the relevant customers about the price or service change in line with Paragraph 23. The precise form of the notification will depend on the nature of the intended price or service change being sought by the SMP operator, as set out in the remainder of these Rules.

20. URCA will follow the procedure laid out in the remainder of Paragraph 20 when processing any notification.

20.1 URCA may, at any time, contact the SMP operator for additional information if the notification is incomplete (i.e., that it does not contain the minimum required information according to the requirements of the relevant section of these Rules). Unless URCA has directed the SMP operator to suspend its proposed price or service change, the SMP operator may proceed with its proposed launch while it submits the notification's outstanding information to URCA. The SMP operator will have a maximum of **five (5) business days** from URCA's initial request to submit the outstanding information to URCA. Any contravention of URCA's request may result

in the suspension of the price or service change.

20.2 If URCA does not respond in writing to the SMP operator's notification, the SMP operator may proceed with the price or service change exactly as set out in the notification.

21. For the avoidance of doubt, if the SMP operator launches a new service or changes the price of an existing service covered by these Rules, but fails to notify URCA within the specified timeframe, or advertises a price change or new Price Regulated Service before notifying URCA, then URCA will undertake enforcement action. Furthermore, nothing in these Rules prevents URCA from directing the SMP operator not to proceed or to withdraw a new service or price change as set out in the notification, if, in URCA's view, the new service or price change runs counter to the Licensee's obligations in the Comms Act, its Operating Licence or what is required of the SMP operator in the Rules.

Part D: Implementation process following approval and receipt of notification

Implementation following approval

22. Upon receipt of URCA's written approval (or upon deemed approval) of a Price application, the SMP operator may implement its proposal as follows:

22.1 In the event of a price increase (for a Multi-product Bundle, or the change in the non-price terms and conditions of a relevant Single Price Regulated Service or Price Regulated Bundle 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 and on its website 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, as 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 (or change in non-price terms and conditions, as applicable).

22.2 For all other price or service changes requiring approval (including the introduction of new Multi-product Bundles or withdrawals/discontinuation of any Price Regulated Service or Price Regulated Bundle), 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.

22.3 When advertising a Price Regulated Service or Bundle that requires approval, 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.

Implementation following receipt of notification

23. Upon receipt of the SMP operators' notification from URCA (or if URCA does not respond in writing to the SMP operator regarding the notification within the timescales set out in these Rules), the SMP operator may implement the proposed price or service change set out in the notification as follows:

23.1 In the event of a price increase (for either a relevant Single Price Regulated Service or Price Regulated Bundle), the SMP operator must, within **thirty (30) calendar days** of the date of URCA's written (or deemed) receipt of the notification, 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 receipt of notification will be deemed to have lapsed and the SMP operator must submit a new notification if it wishes to proceed with the price change (or change in non-price terms and conditions, as applicable).

23.2 For all other price or service changes requiring notification (including the introduction of new services deemed by URCA to be relevant Price Regulated Services or Bundles), if the implementation date differs from that set out in the corresponding notification, 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) receipt of notification, URCA's receipt of notification will be deemed to have lapsed and the SMP operator must submit a new notification if it wishes to proceed with the price or service change.

23.3 When advertising a Price Regulated Service or Bundle that requires notification, including Promotions, the SMP operator shall ensure, consistent with Paragraph 22.3, 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 Non Price Capped Services"

24. The following Rules shall apply to both permanent price increases and decreases for **Single Non Price Capped Services**.⁴ The Rules applicable to permanent price changes for bundled or tied products, where one or more elements of the bundle or tied product is a Non Price Capped Service, are detailed in Part G: Introducing or Permanently Changing the Price of Bundles of Price Regulated Services of these Rules.

⁴ A permanent price change is an application for a price change which does not fall within the definition of a Promotion.

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25. The SMP operator must notify URCA in writing before introducing any permanent changes to the price of a Single Non Price Capped Service.
 26. The process for the submission of the notification, and the response of URCA to the notification thereafter, shall follow the notification process set out in Part C: Approval and Notification Process of these Rules.
 27. The notification submitted by the SMP operator must include, at a minimum, the following information:
 - 27.1 A description (commercial and technical) of the service(s) for which the price change is being notified, including a description of the customer segment that the service(s) is targeting;
 - 27.2 The proposed effective date for commencing the price change;
 - 27.3 A detailed description of current prices for the service(s) in question (specifying recurrent and non-recurrent price components);
 - 27.4 A detailed description of the proposed prices for the service(s) in question (specifying recurrent and non-recurrent price components); and
 - 27.5 Any proposed changes to the applicable terms and conditions for the service(s) that will result from the proposed price change.
 28. The SMP operator must also submit as part of the notification a declaration, signed by an authorised officer, confirming that its notification complies with these Rules, the Comms Act, its operating licence, the Sector Policy and any other documents relevant to the notification. This signed declaration must further state that the proposed price change is not anticompetitive and, in particular, that it:
 - 28.1 does not result in margin squeeze (if at least one alternative operator could or does provide a competing service 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
 - 28.2 will not result in undue discrimination.
 29. The declaration in Paragraph 28.1 is not required when the notification relates to 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 instead confirm within its notification that the relevant wholesale prices have remained unchanged.
 30. The declaration in Paragraph 28.1 is also not required when the notification relates to a price increase for a Non Price Capped Service where the proposed price is below the cost the SMP operator incurs in providing that service.
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Part F: Introduction of New Single Non Price Capped Services

31. For the purposes of these Rules, a New Single Non Price Capped Service consists of a Non Price Capped Service which is materially different in features, quality and/or attributes to any existing service of the SMP operator. That is to say, a New Single Non Price Capped Service is a service which:
- 31.1 has not been previously commercialized by the SMP licensee; or
 - 31.2 significantly amends any of the terms and conditions of an existing service.
32. The SMP operator must notify URCA in writing before offering a New Non Price Capped Service within a market where the operator has SMP.
33. The process for the submission of the notification, and the response of URCA to the notification thereafter, shall follow the notification process set out in Part C: Approval and Notification Process of these Rules.
34. The notification submitted by the SMP operator proposing to offer a New Non Price Capped Service shall include, at a minimum, the following information.
- 34.1 The proposed effective date for the introduction of the New Non Price Capped Service;
 - 34.2 A description (commercial and technical) and name of the New Non Price Capped Service, including the prices, terms and conditions applicable thereto, and the customer segment that the New Non Price Capped Service is targeting;
 - 34.3 A description of the relevant product market to which the SMP operator believes the New Non Price Capped Service belongs; and
 - 34.4 A declaration, signed by an authorised officer, confirming that the New Non Price Capped Service complies with these Rules, the Comms Act, its operating licence, the Sector Policy, and any other documents relevant to the notification. This signed declaration must further state that:
 - 34.4.1 the New Non Price Capped Service is not a repackage of an existing service;
 - 34.4.2 if the New Non Price Capped Service is similar to an existing service, the rationale for the launch of the service; and
 - 34.4.3 the New Non Price Capped 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 28.

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

35. Any bundle, tied product or package that includes at least one Price Regulated Service (“**Price Regulated Bundle**”) shall be subject to price regulation by URCA.
36. For the purposes of these Rules, two types of Price Regulated Bundles involving Non Price Capped Services are distinguished:
- 36.1 ‘**Multi-product Bundle**
- 36.2 ‘**Mobile-only Bundle**
37. The definitions of a New Multi-Product Bundle and a New Non Mobile-only Bundle are consistent with Paragraphs 2.7 and 2.8 of these Rules.
38. For the avoidance of doubt, 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.

Multi-product Bundles

39. The SMP operator must not, without the prior written approval of URCA, either permanently change the price of an existing Multi-product Bundle, or introduce a new Multi-product Bundle.
40. For the avoidance of doubt, the SMP operator is not required to ensure that each service included in a Multi-product Bundle existing at the date these Rules came 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.
41. 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 Multi-product Bundle, or an application to launch a new Multi-product Bundle, as appropriate. URCA will review such an application according to Paragraph 16 above and will respond to the SMP operator with its decision on the 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 16.
42. Following approval by URCA of the application, the SMP operator may proceed with the price change or service launch as appropriate according to Paragraph 22 of these Rules.
43. The SMP operator’s application must demonstrate that the proposals for the Multi-product Bundle are not anti-competitive. For this purpose, the SMP operator must provide URCA with the following

information:

- 43.1 A description (commercial and technical) of the Multi-product Bundle, including the customer segment that the Multi-product Bundle is targeting;
- 43.2 In the case of an introduction of a New Multi-product Bundle, the name of the New Multi-product Bundle;
- 43.3 The proposed effective date for the price change/launch of the Bundle offering;
- 43.4 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;
- 43.5 A detailed description of the proposed prices for the Bundled offer (specifying recurrent and non-recurrent price components);
- 43.6 A detailed description of the proposed terms and conditions applicable to the Bundled offer;
- 43.7 The pricing principle applied in developing the proposed price (cost-based, market pricing, etc.);
- 43.8 A description of the commercial rationale for making the proposed change/introduction of the Bundled offer;
- 43.9 Data relevant to quantitatively assess the offer, on a monthly basis, including the following:
 - 43.9.1 The 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**;
 - 43.9.2 The number of existing subscribers or users that would be affected by the proposed Bundled offer and projected customers in the following **two (2) years**;
 - 43.9.3 The current and projected revenues for the Bundled offer and its standalone services over the following **two (2) years**; and
 - 43.9.4 Data on the total cost of providing the Bundled offer 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.⁵

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

- 44.1 First, whether the Multi-product Bundle is replicable from a **technical viewpoint**. That is to say,

⁵ 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.

whether other licensed operators could offer a similar Bundle. In order to demonstrate the **technical replicability** of a Multi-product 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.

44.2 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.

44.3 Second, whether the Multi-Product Bundle is replicable from an **economic viewpoint** (or “**economically replicable**”). In this case, two scenarios must be distinguished:

44.3.1 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.

44.3.2 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 **Error! Reference source not found.** to 11 and Paragraph 92.9 of these Rules.

Where an SMP operator has demonstrated that the proposed Bundle can be replicated by another operator, it must also 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.

45. 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 for the Bundle is not anticompetitive and, in particular, that it:

45.1 does not result in margin squeeze (if at least one alternative operator does or could provide 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);

45.2 will not result in undue discrimination; and

45.3 complies with the terms set out in Paragraph 44 above.

46. The declaration in Paragraph 45 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 Paragraphs 45.1 and 45.3, and (ii) the key elements to consider in the assessment of the requirement in Paragraph 45.2.
47. The declaration in Paragraph 45.1 is not required when the application is for a price increase for a Multi-product Bundle where there is no simultaneous proposed change in the price of any associated wholesale inputs. However, in these circumstances, the SMP operator needs to instead confirm within its application that the relevant wholesale prices have remained unchanged.
48. URCA notes that the current prices of existing Multi-product Bundles, and the proposed prices for New Multi-product Bundles, may be below the cost of providing these Bundles. Where this is the case, proposed price increases for the existing Bundles, and proposed prices for New Bundles, which still do not pass the predation/margin squeeze test will not necessarily lead to a rejection of the application.
49. More generally, where the cost and revenue information provided by the SMP operator shows that the proposed price for the existing or New Bundle is below the cost the SMP operator incurs in providing the Bundle, 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. URCA will then consider this information as part of its decision making process.

Mobile-only Bundles

50. The SMP operator must notify URCA in writing before permanently changing the price of an existing Mobile-only Bundle, or introducing a New Mobile-only Bundle.
51. The process for the submission of the notification, and the response of URCA to the notification thereafter, shall follow the notification process set out in Part C of these Rules.
52. For the avoidance of doubt, the SMP operator is not required to ensure that each service included in a Mobile-only Bundle existing at the date these Rules came 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.
53. The notification submitted by the SMP operator must include, at a minimum, the following information:
- 53.1 A description (commercial and technical) of the Mobile-only Bundle, including a description of the customer segment that the Mobile-only Bundle is targeting;

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- 53.2 In the case of an introduction of a New Mobile-only Bundle, the name of the New Mobile-only Bundle;
- 53.3 The proposed effective date for the price change/launch of the Bundle offering;
- 53.4 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;
- 53.5 A detailed description of the proposed prices for the Bundled offer (specifying recurrent and non-recurrent price components); and
- 53.6 A detailed description of the proposed terms and conditions applicable to the Bundled offer.
54. The SMP operator must also submit a declaration signed by an authorised officer confirming that its notification complies with these Rules, the Comms Act, its operating licence, the Sector Policy, and any other documents relevant to the notification. This signed declaration must further state that the proposed price for the Bundle is not anticompetitive and, in particular, that it:
- 54.1 does not result in margin squeeze (if at least one alternative operator does or could provide 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);
 - 54.2 will not result in undue discrimination; and
 - 54.3 complies with the terms set out in Paragraph 44 above.
55. The declaration in Paragraph 54.1 is not required when the notification relates to a price increase for a Mobile-only Bundle where there is no simultaneous proposed change in the price of any associated wholesale inputs. However, in these circumstances, the SMP operator needs to instead confirm within its notification that the relevant wholesale prices have remained unchanged.
56. The declaration in Paragraph 54.1 is also not required when the notification relates to a price increase for a Mobile-only Bundle, or the introduction of a New Mobile-only Bundle, where the proposed price is below the cost the SMP operator incurs in providing that Bundle.

Part H: Special Offers or Discounts (“Promotions”)

57. A promotion is defined as a temporary change in the price and/or non-price terms of existing services in the market. For the purposes of these Rules, two types of promotions are distinguished:
- 57.1 **‘Short Term Promotion’:** A special offer or discount applied to a Price Regulated Service or Price Regulated Bundle 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.

57.2 **‘Full Length Promotion’**: A special offer or discount applied to a Price Regulated Service or Price Regulated Bundle which is in place for a duration of more than one calendar week or more than seven (7) non-consecutive calendar days within a period of fourteen (14) calendar days, but for no more than 90 calendar days.

58. The Rules for Short Term Promotions specified below relate to temporary changes in both prices and non-price terms and conditions for Price Regulated Services and Price Regulated Bundles. The Rules for Full Length Promotions relate specifically to temporary changes in prices for these Services and Bundles.⁶

Short Term Promotions

59. The SMP operator must notify URCA before introducing a Short Term Promotion for a Price Regulated Service or Price Regulated Bundle.

60. The process for the submission of the notification, and the response of URCA to the notification thereafter, shall follow the notification process set out in Part C of these Rules.

61. The notification submitted by the SMP operator proposing the Short Term Promotion must include, at a minimum, the following information:

61.1 a description of the Short Term Promotion, including a description of the customer segment that the Short Term Promotion is targeting;

61.2 the intended dates on which the Short Term Promotion will apply;

61.3 the normal rates for the Price Regulated Service or Price Regulated Bundle subject to the Short Term Promotion;

61.4 the rates applicable to the Short Term Promotion;

61.5 the terms and conditions applicable thereto; and

61.6 a declaration, signed by an authorised officer, 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.

⁶ Rules regarding applications for changes to the non-price terms and conditions for Full Length Promotions on Price Regulated Services and Price Regulated Bundles are covered in Part I: Changes to non-price terms and conditions for Price Regulated Services and Price Regulated Bundles of these Rules.

Full Length Promotions

62. The SMP operator must notify URCA in writing before introducing a Full Length Promotion for a Price Regulated Service or Price Regulated Bundle.
63. The process for the submission of the notification, and the response of URCA to the notification thereafter, shall follow the notification process set out in Part C of these Rules.
64. The notification submitted by the SMP operator must include, at a minimum, the following information:
- 64.1 a description of the Full Length Promotion, including the customer segment that the Full Length Promotion is targeting;
 - 64.2 the proposed launch date and duration of the Full Length Promotion;
 - 64.3 the price applicable to the Full Length Promotion, together with the current price for the Price Regulated Service or Bundle which is subject to the Full Length Promotion;
 - 64.4 any proposed changes to the applicable terms and conditions for the service(s) in question, that will result from the proposed Full Length Promotion; and
 - 64.5 the terms and conditions applicable to the Full Length Promotion.
65. As part of the notification, the SMP operator must also submit a declaration, signed by an authorised officer, confirming that its notification complies with these Rules, the Comms Act, its operating licence, the Sector Policy, and any other documents relevant to the notification, including a declaration that the Full Length Promotion is not similar to any other Full Length Promotion on a Price Regulated Service or Bundle that was available from the SMP operator at any time within the previous ***Ninety (90) calendar days***. This signed declaration must further state that the proposed Full Length Promotion for the Price Regulated Service or Bundle is not anticompetitive and, in particular, that it:
- 65.1 does not result in margin squeeze (if at least one alternative operator does or could provide 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);
 - 65.2 will not result in undue discrimination; and
 - 65.3 complies with the terms set out in Paragraph 44 above.

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

66. The SMP operator must obtain URCA's written approval before introducing any changes to the non-price terms and conditions of Price Regulated Services or Price Regulated Bundles that could be
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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 as set out in Paragraph 57.2 above).⁷

67. An SMP operator proposing to introduce a permanent change to the non-price terms and conditions of Price Regulated Services or Price Regulated Bundles, or changes to non-price terms and conditions which fall within the definition of Full Length Promotions, shall submit to URCA an application which includes, at a minimum, the following information:

67.1 A description of the proposed non-price terms and conditions, including a description of the customer segment that the Price Regulated Service or Bundle subject the proposed non-price terms and conditions is targeting;

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

67.3 The proposed effective date for introducing the change;

67.4 A rationale or justification for the proposed change;

67.5 The projected impact of the proposed change, if any, on the effective price of the Price Regulated Service or Bundle; and

67.6 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.

68. 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:

68.1 does not result in other licensed operators not being able to (economically or technically) replicate the SMP operators' relevant Price Regulated Service (or Bundle), consistent with the

⁷ 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).

requirements set out in Paragraph 44 above; and

68.2 will not result in undue discrimination between customer groups.

69. The declaration in Paragraph 68 above should be supported with evidence that satisfies the requirements set out in these Rules. Annexes 1, 2 and 3 of these Rules provide further information on the key elements and economic tests to consider in the assessment of the requirements in Paragraph 68.
70. 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.
71. Consistent with the procedure set out in Paragraph 16 of these Rules, URCA will respond to the SMP operator applying for a permanent change in non-price terms and conditions for Price Regulated Services and Bundles 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 16. 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 16.3 until URCA has issued its final decision on the public consultation.
72. For changes in the non-price terms and conditions of Price Regulated Services and Price Regulated Bundles which fall within the definition of Full Length Promotions, URCA will, consistent with the procedure set out in Paragraph 16 these Rules, respond to the SMP operator within **ten (10) business days** of receiving the application with its decision on the application.
73. If URCA does not respond in writing to the SMP operator within the timeframes set out in Paragraph 71 or 72 as applicable, the application is deemed approved.
74. 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 or Price Regulated Bundle, URCA shall specify to the SMP operator as to which of Paragraphs 22.1 or 22.2 of these Rules shall apply in the implementation of the approved terms and conditions.

Part J: Withdrawal and Discontinuation of Price Regulated Services and Price Regulated Bundles

75. The SMP operator shall not withdraw (to existing customers) and/or discontinue (to new customers) the provision of a Price Regulated Service or Price Regulated Bundle without the prior written approval of URCA.⁸

⁸ 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.

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76. The SMP operator shall submit to URCA an application to withdraw and/or discontinue the provision of a Price Regulated Service or Price Regulated Bundle, which includes, at a minimum, the following information:
- 76.1 A description of the Price Regulated Service or Price Regulated Bundle to be withdrawn and/or discontinued;
 - 76.2 The number and profile of current customers/users of the Price Regulated Service or Price Regulated Bundle;
 - 76.3 The proposed date on which the Price Regulated Service or Price Regulated Bundle will be withdrawn and/or discontinued;
 - 76.4 sales revenue for the Price Regulated Service or Price Regulated Bundle;
 - 76.5 volume of demand and costs for the Price Regulated Service or Price Regulated Bundle;
 - 76.6 the proposed process to notify affected customers of the withdrawal and/or discontinuation of the Price Regulated Service or Price Regulated Bundle; and
 - 76.7 any proposed substitutes for the Price Regulated Service or Price Regulated Bundle that is proposed to be withdrawn and/or discontinued.
77. Where appropriate, the information set out in Paragraph 76 should be provided for the last **three (3) years**, or, if less, such period for which the Price Regulated Service or Bundle was provided, to allow URCA to assess the likely impact on consumers of the withdrawal/discontinuation of the Service or Bundle.
78. URCA shall review an application to withdraw and/or discontinue a Price Regulated Service or Price Regulated Bundle consistent with the procedure described above in Paragraph 16, and shall respond in writing to the SMP operator with its response, as per Paragraph 16.2, 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 16.
79. Following the receipt of URCA's written approval for the withdrawal or discontinuation of the Price Regulated Service or Price Regulated Bundle, 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 or Price Regulated Bundle. 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 or Price Regulated Bundle in one or more newspapers with national circulation.

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

Predation

80. 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.
81. In order to address whether a retail offer by an SMP operator leads to predation, URCA will consider whether the proposed price of the relevant Regulated Service or Regulated Service Bundle⁹ is below the costs of providing the service. This assessment will be based on the following profitability criteria:

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

Where:

- 81.1 P is the effective retail price of the relevant service(s); and
- 81.2 $C_{\text{end-to-end}}$ is the end-to-end cost of providing the relevant service(s), including: OPEX, depreciation and the cost of capital.
- 81.3 The relevant service(s) considered in the predation test shall be determined by the way in which the relevant Price Regulated Service or Regulated Price Service Bundle is commercialized and acquired by customers. Any proposed extension of the predation test beyond the relevant Price Regulated Service or Regulated Price Service Bundle 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.
82. 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)¹⁰ 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).¹¹ 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 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

⁹ This is defined as the Price Regulated Service or Price Regulated Service Bundle that is subject to an assessment of predation, margin squeeze, or undue discrimination.

¹⁰ 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.

¹¹ Section 5.2 of ECS COMP. 7

application. In reviewing an application, URCA is entitled to dismiss any such adjustments if it considers such adjustments to be inappropriate or insufficiently justified.

83. The profitability of the relevant Price Regulated Service or Regulated Price Service Bundle 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 relevant Regulated Service or Regulated Service Bundle, as follows:

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

Where:

- 83.1 T is the period considered in the analysis (i.e., 24 months covering the following two (2) years as set out in Paragraph 15 of these Rules)¹²;
- 83.2 r is the monthly weighted average cost of capital faced by the SMP operator;
- 83.3 Revenue_t and Cost_t are the revenues and costs generated by the relevant Regulated Service or Regulated Service Bundle in month t.
84. 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.
85. 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.

¹² For example, if an application is submitted in October 2016, the test would have to cover the period October 2016 to October 2018.

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%¹³, implying a monthly WACC of 0.82%¹⁴ (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

- 86. 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.

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

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

¹³ i.e., in line with the WACC for fixed voice services in The Bahamas, as determined by URCA (ECS 23/2009).

¹⁴ Monthly WACC = [1+ WACC]^(1/12)-1].

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 relevant Regulated Service or Regulated Service Bundle is commercialized and acquired by customers. Any proposed extension of the margin squeeze test beyond the relevant Price Regulated Service or Regulated Price Service Bundle 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.

88. For the avoidance of doubt, paragraphs 82 to 85 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

89. In the context of the Competition Guidelines¹⁵ 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.
90. Price discrimination can take two basic forms:
- 90.1 charging different prices to different customers for the same products; or
 - 90.2 charging different customers the same price even though the costs of supplying the product are in fact very different.
91. 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 87 and 88).¹⁶
92. An SMP operator must demonstrate that its proposed price change on the relevant Price Regulated Service or Regulated Price Service Bundle 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.

Hypothetical example: 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.

¹⁵ Section 5.4 of ECS COMP. 7

¹⁶ 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:

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

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 \times 0.2$]). The average cost per call faced by Operator B is equal to \$2.80 (i.e., [$\3.00×0.8] + [$\$2.00 \times 0.2$]). 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 \times 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.

93. 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.

Undue discrimination in relation to non-price terms and conditions

94. 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 a relevant Price Regulated Service or Regulated Price Service Bundle 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.

95. 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:

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

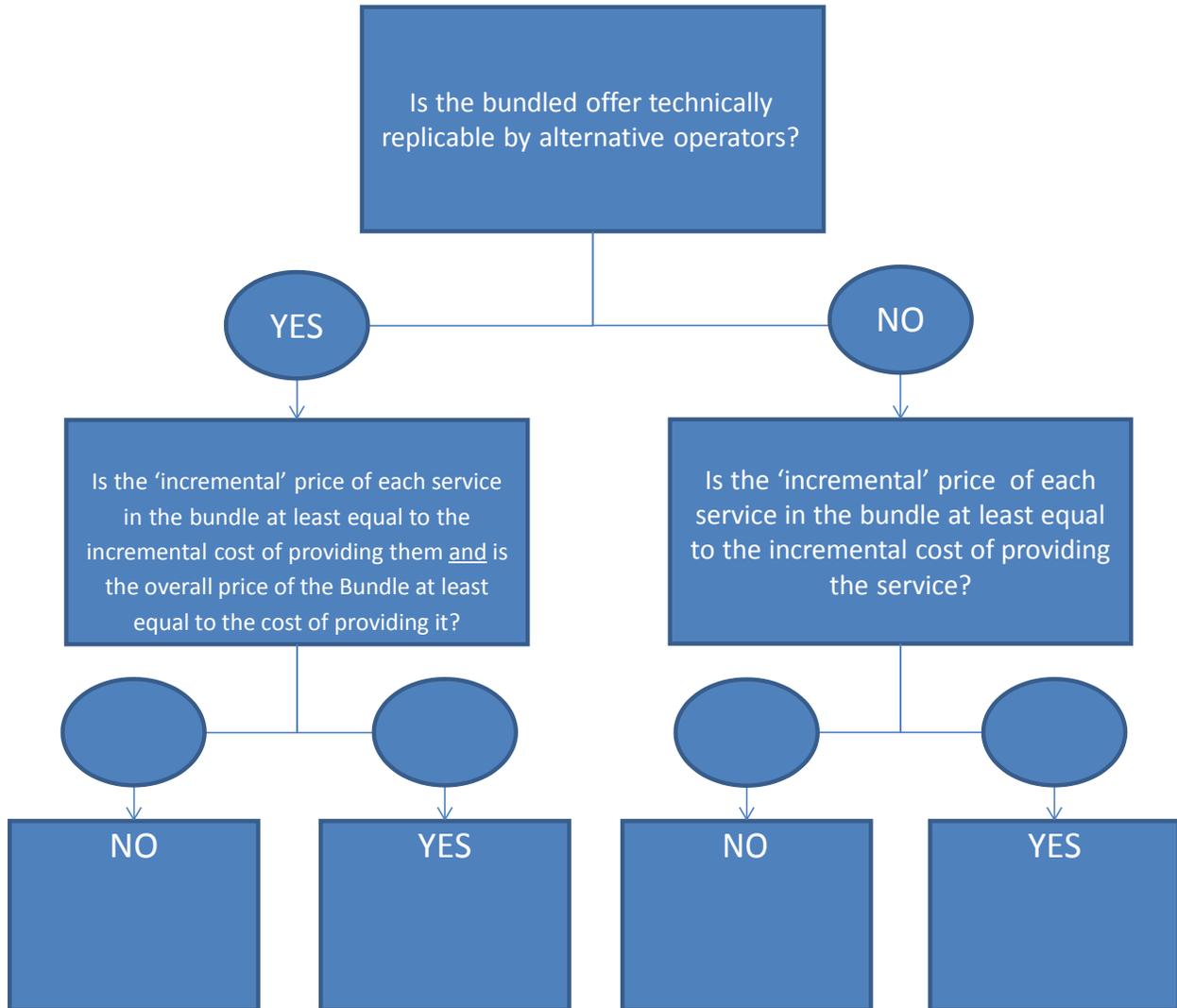
95.2 would not harm competition for providing these products.

96. 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

97. 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



98. 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.

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

Hypothetical example: 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.

Annex 4 - Bi-annual submission on anti-competitive price tests for Price Regulated Services

100. An SMP operator is required to submit to URCA, every six months, an assessment of its prices for Price Regulated Services, demonstrating that its price for each Price Regulated Service does not result in a Margin squeeze. In particular:
- 100.1 An SMP Operator must submit every six months, the data, workings and results of a Margin squeeze test for all Price Regulated Services where:
- 100.1.1 at least one alternative operator competes with the SMP operator in the provision of that retail product by using a wholesale input provided by the SMP operator; and
- 100.1.2 The SMP operator is required to offer a wholesale product which could be used by a downstream rival as an input to a competing retail product, even if there is currently no take-up for this wholesale product.
101. The Margin Squeeze should be conducted on an individual product basis, covering all products considered to be Price Regulated Services currently offered by the SMP operator.
102. The test should be performed separately for the following time periods:
- 102.1 the most recent six months period at the time of the submission (i.e., taking into account costs incurred and revenues earned over that period); and
- 102.2 a two (2) year period, including the most recent six months and a forecast over the next 18 months (i.e., taking into account actual and forecast costs and revenues over that period).
103. This test shall be conducted in line with the relevant economic tests for the assessment of Margin squeeze set out in Annex 1 above.
104. Any Short Term or Full Length Promotions which have occurred during the most recent six months period need to be reflected in the average prices of relevant Price Regulated Services or Price Regulated Bundles covered by this test.
105. Price Regulated Bundles and Multi-product Bundles need to be included both in form of the overall Bundles and all individual components forming part of the Bundle.
106. As part of the bi-annual submission, the SMP operator needs to provide the following:
- 106.1 The underlying analysis file(s) with the relevant economic tests (in Excel format) which are clearly sourced and labelled;
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- 106.2 An accompanying documentation (in WORD format) setting out the overall approach, all assumptions made and evidence and sources for all information and assumptions used within the analysis; and
- 106.3 Where any product within the submission fails the relevant economic test, a detailed explanation on why this has occurred and how (and by when) the SMP operator will rectify this anti-competitive behaviour.
107. URCA will review the submission and will confirm to the SMP operator whether the submission was complete and whether all products within the submission have passed the relevant tests.
108. Where any product within the submission fails the relevant test, the SMP operator will be required to rectify the issue by adjusting either its retail or wholesale price and then notifying URCA of its plans to do the same within one (1) week of URCA finding the SMP operator has not passed the test.
109. Furthermore, where there is evidence of a persistent or significant failure to pass the test, URCA will launch a full ex-post abuse of dominance investigation.