



## **BOTSWANA TELECOMMUNICATIONS AUTHORITY**

### **GUIDELINES ON TARIFFS FOR TELECOMMUNICATION SERVICES**

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## 1. OVERVIEW

### 1.1 Citation

This document may be cited as 'Tariff Guidelines'.

### 1.2 Order of Precedence

The tariff guidelines are not exhaustive and are not meant to replace relevant provisions of the applicable legal and regulatory framework. Reference should also be made to the Telecommunications Act and other appropriate legislation. In the event of conflict or ambiguity between the terms defined herein and the terms defined in the Licence or in the Telecommunications Act then the following order of precedence shall apply:

- a) The Act;
- b) The Telecommunications Regulations;
- c) The Licence; and
- d) The Guidelines.

### 1.3 Key terms

For the purposes of these guidelines, unless the context otherwise requires, the terms below shall be defined as follows:

**Act** – means the Telecommunications Act [Cap 72:03]

**Authority** – the Botswana Telecommunications Authority (BTA) or another body with the designated powers of the BTA.

**Bundle** – an offer of two or more telecommunication services provided as a single offer (with a single price).

**Notifying Operator** – the telecommunications operator that is making the application to introduce a new tariff, or change or withdraw an existing tariff.

**Supporting Analysis** – qualitative or quantitative analysis to demonstrate that the new or changed tariff reflects the key principles in setting tariffs.

**Tariff Filing Form** – the form to be submitted by the Notifying Operator when making an application to introduce a new tariff, or to change or withdraw an existing tariff.

**Tie** – a Bundle where one or more services in the Bundle are not available on a standalone basis.

**Wholesale** – a product or service offering by an operator to other Licensed Operators for purposes of resale or own use.

## **2. INTRODUCTION**

These guidelines provide general information about the setting and filing of telecommunication tariffs and the approval process to be followed before implementing a new tariff to any service or product. The Notifying Operator shall fill in the form, attached herein, while submitting a proposed tariff to the Authority.

Tariffs have to be closely monitored and, where necessary, regulated to ensure that majority of consumers are able to benefit from communication services.

## **3. PURPOSE**

The purpose of these tariff guidelines is to assist Notifying Operators to meet their obligations concerning tariffs, specifically to satisfy the requirements concerning tariff filing and approval process in accordance with the Telecommunications Act. More generally, the tariff guidelines are aimed at preventing anti-competitive pricing and protecting consumers.

## **4. LEGAL PROVISION**

Section 18(1) of the Telecommunications Act provides that the Authority shall publish the principles established by it and to be applied in the setting of tariffs by the telecommunication system operators and telecommunication service providers. In terms of Section 18(2) of the Telecommunications Act, a licensed service provider of a telecommunication system for local, national or cellular telephony must submit a proposal in writing, to the Authority, in respect of the tariff which he intends to apply for the use of the system. The Authority is also empowered by Section 26 of the Telecommunications Act to make regulations providing for any matter which may be prescribed or provided under the Telecommunications Act.

These guidelines are subject to review and may be amended following consultation with interested parties in the light of experience, developments in the telecommunications market and/or changes to the telecommunication regulations or Botswana laws.

## **5. KEY PRINCIPLES IN SETTING TARIFFS**

The Authority shall in line with international trends and technology advancements, prescribe to the Telecommunication operators a harmonised model to be applied to determine costs of providing services.

An operator is required to ensure that the following key principles are taken into consideration when setting tariffs:

### **5.1 Cost-based**

The tariffs offered to the public should reflect the underlying costs of providing the services. Operators should not offer tariff rates or charges that are below the true cost of providing service.

### **5.2 Unbundling**

The tariffs offered by the operators have to be sufficiently unbundled, so that the customers do not have to pay for facilities which are not part of the service package.

### **5.3 Transparency**

To discourage anti-competitive practices, operators should publish details of tariffs and fees and any other terms and conditions on which its services are provided by making them available to the public.

### **5.4 Non-discrimination**

An operator should not offer different conditions to different customers for the same service provided. An operator, therefore, has to offer the customers the same tariff for identical services. An operator may, however, give discounts to customers based on volumes.

### **5.6 Discount Schemes**

The Authority should be informed of all discount schemes available to customers so as to ensure that they are transparent and non-discriminatory.

## **6. REQUIREMENT TO FILE TARIFFS**

If the tariff is only for wholesale markets, then the tariff filing does not need to include benchmarking data or supporting analysis. However, the Authority may request further information and analysis upon reviewing the submitted Tariff Filing Form.

If the tariff is for a retail market in which the Notifying Operator is designated as having significant market power (SMP), the tariff filing must include the supporting Analysis as defined in Figure 1 below.

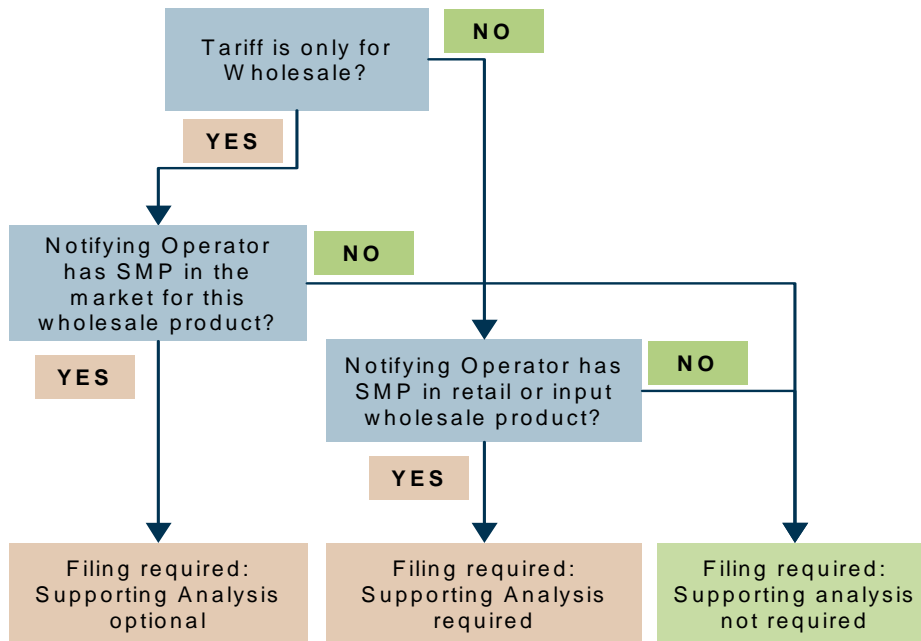


Figure 1: Requirement to file tariffs

In addition to these rules on requirement to file tariffs, the Notifying Operator is required to file tariffs for all products and services which it is obliged to submit to the Authority under the terms of its licence, or under any relevant regulation or legislation<sup>1</sup>. In such cases, unless the tariff is also required to be filed under the process depicted in Figure 1, the Authority shall immediately, upon submission, approve the tariff without further scrutiny.

For the avoidance of doubt, operators other than Value Added Network Service (VANS) providers are required to file tariffs only if they are a “licensed service provider of a telecommunication system for local, national or cellular telephony”. PTOs are required to file tariffs for all Licensed Services.

## 6.1 Required information

The Tariff Filing Form (see Annex A) consists of the following sections:

- A.1 Basic information
- A.2 Tariff information

<sup>1</sup> From the Telecommunications Act [Cap 72:03]: “18(2) A licensed service provider of a telecommunication system for local, national or cellular telephony shall submit a proposal in writing, to the Authority, in respect of the tariff which he intends to apply for the use of his system.” From the PTO licence (clause 9.1): “The Licensee shall submit to the Authority, in writing, a proposal in respect of tariffs it intends to apply for the Licensed Services.”

- A.3 Benchmark information
- A.4 Required analysis
- A.5 Supporting documentation
- A.6 Certification of filing

Where there is a requirement to file, but Supporting Analysis is not required, only sections A.1, A.2 and the certification section of the Tariff Filing Form are required. The Notifying Operator may choose to use the remaining sections of the form to provide additional data, but is not compelled to do so. Section A.5 is required if any supporting documentation is included in the submission.

Where there is a requirement to file, and Supporting Analysis is required, Sections A.1, A.2, A.4 and A.5 of the Tariff Filing Form are required. Section A.5 is required if any supporting documentation is used only and supporting documents are included. Section A.3 is not mandatory, but may be used by the Notifying Operator if it wishes to submit benchmark data. (Section 6.2 below provides guidance on what Supporting Analysis is required for different tariffs.)

The Authority may wish to seek input from stakeholders on whether the key parameters of the supporting analysis are reasonable, and may therefore make parts of the Notifying Operator's submission public. If the Notifying Operator considers any element of the filing to be confidential, these should be marked as such. If it wishes to make such information public, the Authority will consult the Notifying Operator on how to proceed.

## **6.2 Required analysis**

The tariff filing process aims to ensure that tariffs are not subject to the following practices:

- undue discrimination
- excessive pricing
- margin squeezing
- predatory pricing
- abusive bundling (or tying).

Where required in accordance with the guidelines in Sections 6.2.2 to 6.2.6, the Notifying Operator's Tariff Filing Form should include:

- undue discrimination analysis – when requested by the Authority
- excessive pricing analysis – when requested by the Authority

- margin squeeze analysis – when the submitted retail tariff is based on wholesale elements for which the Notifying Operator has SMP, or when requested by the Authority
- predatory pricing analysis – when the submitted tariff is for a retail product in which the Notifying Operator has SMP, but the Notifying Operator does not have SMP in any wholesale products on which the retail product is based
- anti-competitive bundling analysis – when the submitted retail tariff is a Bundle or Tie that is based on any wholesale or retail elements in which the Notifying Operator has SMP, or when requested by the Authority.

As part of the review of the tariff filing, the Authority may request further information and analysis. The items noted above represent the minimum information required and have been set so as to minimise the regulatory burden on operators.

### **6.2.1 Treatment of cost**

When conducting the analysis, the following conventions on cost are to be followed:

- all costs must be verified by appropriate supporting evidence
- the cost assumed is the end-to-end cost of a reasonably efficient operator (i.e. the costs should include those that a third-party non-integrated operator would face). In estimating costs, the Notifying Operator may use its own costs as a proxy
- the costs will be fully allocated costs
- where they are available, historical costs will be used; otherwise, forecast costs will be used
- costs for all elements of the retail offer must be included in the analysis
- future cashflows should be valued by discounting them to the present using an appropriate weighted average cost of capital (WACC) as the discount rate. In the case where cashflows are identical in each period (e.g. no up-front costs or short-term discounts), this can be simplified by considering the cashflow in one period.



## **6.2.2 Undue discrimination analysis**

This analysis is not always required, but may be requested by the Authority. In order to demonstrate that undue discrimination is not an outcome of the proposed tariff, the analysis should show one or more of several possible scenarios:

- that the cost of supplying the market segment served by the tariff is significantly different from the cost of supplying a similar service to the rest of the market; and that the difference between the tariffs is proportional to the difference in costs between those segments
- that the tariff will stimulate demand to the extent that it will bring a net benefit
- that the tariff supports wider social and policy goals which outweigh the harm to competition.

## **6.2.3 Excessive pricing analysis**

This analysis is not always required, but may be requested by the Authority. In order to demonstrate that excessive pricing is not an outcome of the proposed tariff, the analysis should show:

- a comparison between the unit cost of supplying the service and the tariff, as evidence that the margin is not excessive
- that suitable benchmark tariffs from similar services in Botswana, or regions thereof, have similar or higher pricing
- that suitable benchmark tariffs from similar services in comparable international markets have similar or higher pricing.

## **6.2.4 Margin squeeze analysis**

This analysis is required when the submitted retail tariff is based on wholesale elements in which the Notifying Operator has SMP.

In order to demonstrate that margin squeeze is not an outcome of the proposed tariff, the analysis should show that a reasonably efficient competitor would, under the filed retail tariff, be able to earn a reasonable margin on its retail service.

The margin is calculated as the difference between the tariff and the end-to-end costs incurred in offering the service. These costs include the wholesale price of the necessary inputs plus the other costs that are incurred in providing the retail service, including operating costs, interconnection costs, depreciation and a

required return on capital. When determining the margin for a product which requires capital expenditure or where a discount is offered for part of the contract term, it may be most appropriate to consider the present value of all cashflows (by discounting all future cashflows to their present value).

The margin calculated on the basis described above should not be negative over the timeframe of the Notifying Operator's business case for the service.

### **6.2.5 Predatory pricing analysis**

This analysis is required when the submitted retail tariff, for a product in which the Notifying Operator has SMP, is not based on wholesale elements in which the Notifying Operator has SMP. In order to demonstrate that predatory pricing is not an outcome of the proposed tariff, the analysis should show that:

- the unit cost of supplying the service, with reasonable margin added, is less than the tariff. It is recognised that in order to stimulate demand, services may be initially set at a price which is below cost. However, if this is the case, the analysis must demonstrate that a reasonable margin is achieved within the timeframe of the Notifying Operator's business case for the service
- the Notifying Operator may also submit:
  - suitable benchmark tariffs from similar services in Botswana, or regions thereof, showing similar or lower pricing
  - suitable benchmark tariffs from similar services in comparable international markets showing similar or lower pricing.

### **6.2.6 Anti-competitive bundling analysis**

This analysis is required when the submitted retail tariff is a Bundle or Tie that is based on any wholesale or retail elements in which the Notifying Operator has SMP.

In order to demonstrate that the Bundle is not abusive, the analysis should show that a reasonably efficient competitor would, under the filed retail tariff, be able to earn a reasonable margin on its retail service.

The margin is calculated as the difference between the tariff and the total end-to-end costs incurred in offering the Bundle. These costs include the wholesale price of the necessary inputs plus the other costs that are incurred in providing the retail

service, including up-front costs, operating costs, interconnection costs, depreciation and a required return on capital.

The margin calculated on the basis described above should not be negative over the timeframe of the Notifying Operator's business case for the service.

### 6.3 Approval process

The approval process is depicted in Figure 2 and in turn described below.

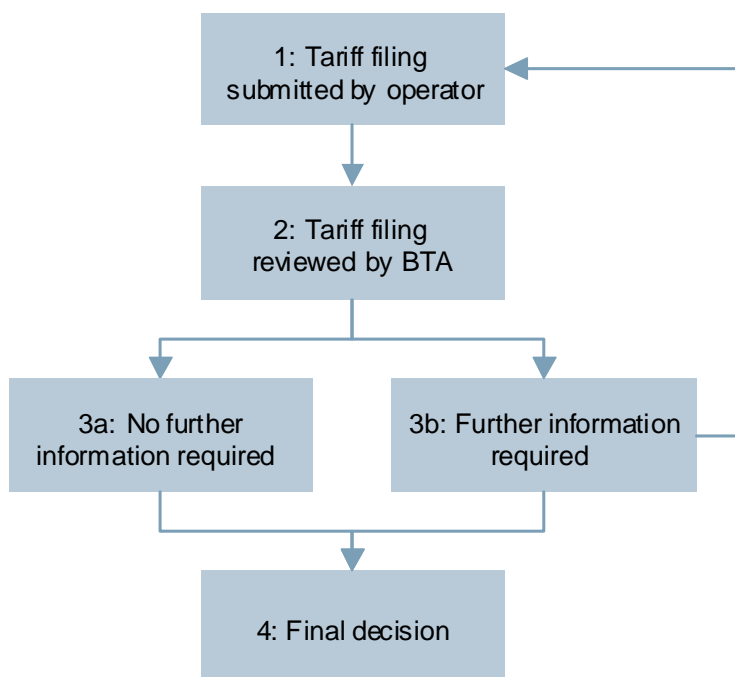


Figure 2: Tariff filing process

The Tariff Filing Form and any supporting documentation is completed and submitted by the Notifying Operator. The submission shall be in hard copy and soft copy<sup>2</sup>. The Tariff Filing Form should be emailed to an address specified by the Authority.

The Authority reviews the submitted Tariff Filing Form and the supporting documentation. In the first instance, the Authority establishes whether any further information is required.

<sup>2</sup> Soft copy means that data provided should be in an accessible digital format. Scanned images should not be submitted unless the underlying data is unavailable in digital format.

If further information is required, the Authority contacts the Notifying Operator within ten working days of submission to indicate what further information is needed. The means of contact will be based on the contact details provided by the Notifying Operator on the Tariff Filing Form. The Notifying Operator must provide such further information within a timeframe specified by the Authority.

If further information is not provided, or is not provided within the required timeframe, then the Tariff is automatically not approved. If time constraints prevent the Notifying Operator from meeting the required timeframe, then it may request an extension from the Authority. The Authority is not obliged to grant such an extension.

The Authority will not make multiple requests for information as part of its assessment of the proposed tariff. If insufficient or inappropriate information is submitted by the Notifying Operator upon request, the proposed tariff will not be approved.

If no further information is required (i.e. the initial application contained all required information, or all requests for further information have been successfully completed), the Authority will make its final decision on the validity of the tariff. The Authority will make its decision within 20 working days of receiving all required information<sup>3</sup> or else inform the Notifying Operator within this period of how much further time is required:

- If the Notifying Operator does not receive a response from the Authority after the lapse of this time period (or an extended time period, as specified by the Authority within 20 working days of receiving all required information), the tariff is deemed to have been approved.

If the tariff is not approved, it cannot be implemented. If required under legislation, the Authority will make a counter-proposal which may be based on consultation with stakeholders. If the tariff is approved, it must be implemented within six calendar months or the approval is withdrawn.

Notwithstanding the timeframe described above, the Authority may deem certain classes of product to receive automatic approval. In particular, those Tariff Filing Forms that are submitted under statutory or licensing obligations (and not as a result of the requirement to file shown in Figure 1) will be deemed approved immediately following submission.

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<sup>3</sup> If no further information is requested by the Authority within the specified timeframe, the Authority will be deemed to have received all required information on the date of submission of the Tariff Filing Form.

## Annex A: Tariff Filing Form

This annex is a form to be used by operators in submitting proposed tariffs to the BTA, under the proposed rules described previously.

### A.1 Basic information

Instruction to Notifying Operator: this section must be completed

Name of operator:	
Contact details of operator	
Name:	
Telephone number:	
Email:	

Filing type (please select (✓) from the options below)

New tariff	
Change to existing tariff	
Withdrawal of existing tariff	

### A.2 Tariff information

Instruction to Notifying Operator: this section must be completed

Name of service:	
Description: [The description should include relevant details about the quality of service, other products that need to be purchased to use this one, discounts available, principles applied in the calculation of installation charges (unless these are fixed), and other relevant information]	

Rationale for proposed tariff introduction/change/withdrawal:	
Planned implementation date:	

Tariff type (please select (✓) from the options below)

Single product or service with no wholesale inputs	
Single product or service with wholesale inputs	
Bundle with no wholesale inputs	
Bundle with wholesale inputs	
Relevant market for the tariff:	

If the filing is for a tariff change, or tariff withdrawal, or new tariff please provide:

The price terms of the existing tariff: (required for change or withdrawal)	
The non-price terms of the existing tariff	
The existing tariff may be appended as an annex to this form (tick (✓) the box to the right if an annex is provided)	
The price terms of the proposed tariff: (required for change or new tariff)	
The non-price terms of the proposed tariff:	
The proposed tariff may be appended as an annex to this form (tick (✓) the box to the right if an annex is provided)	

### A.3 Benchmark information

Instruction to Notifying Operator: this section is not mandatory and may be completed at your discretion

If appropriate, include benchmark data on the pricing of similar products and services provided domestically or internationally.

#### **A.4 Required analysis**

Instruction to Notifying Operator: refer to Tariff Guidelines for clarification on the need to complete this section. If completion is not mandatory, the Notifying Operator may, at its discretion, choose to provide analysis

Where required by the Tariff Guidelines, include any Supporting Analysis needed for the tariff filing.

#### **A.5 Supporting documentation**

Instruction to Notifying Operator: where any part of your tariff filing refers to supporting documentation this must be listed here, together with a brief description

List all supporting documentation supplied as part of the filing and provide a brief description of the contents of each.

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## **A.6 Certification of Filing**

Instruction to Notifying Operator: this section must be completed

The submission must be certified by an authorised representative of the Notifying Operator. The authorised representative must certify that the information and supporting documentation submitted by the Notifying Operator are true, accurate and not misleading as at the date of submission of this form.

Signature:

Name:

Title/role:

Date: