

A CASE FOR LIGHT TOUCH REGULATION

BACK TO BASICS

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OBJECTIVES

What makes the Caribbean region distinctive?

Why is there a lacunae?

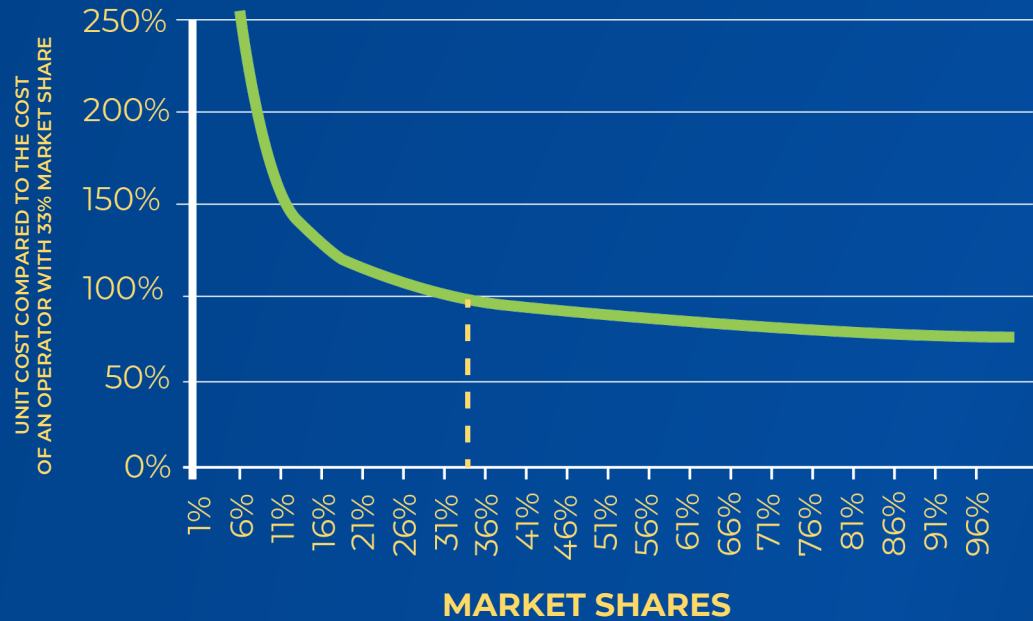
What has been the global approach and how has that been represented in the Caribbean?
For better or for worse?

What needs to be true for light touch regulation to be present in the Caribbean?

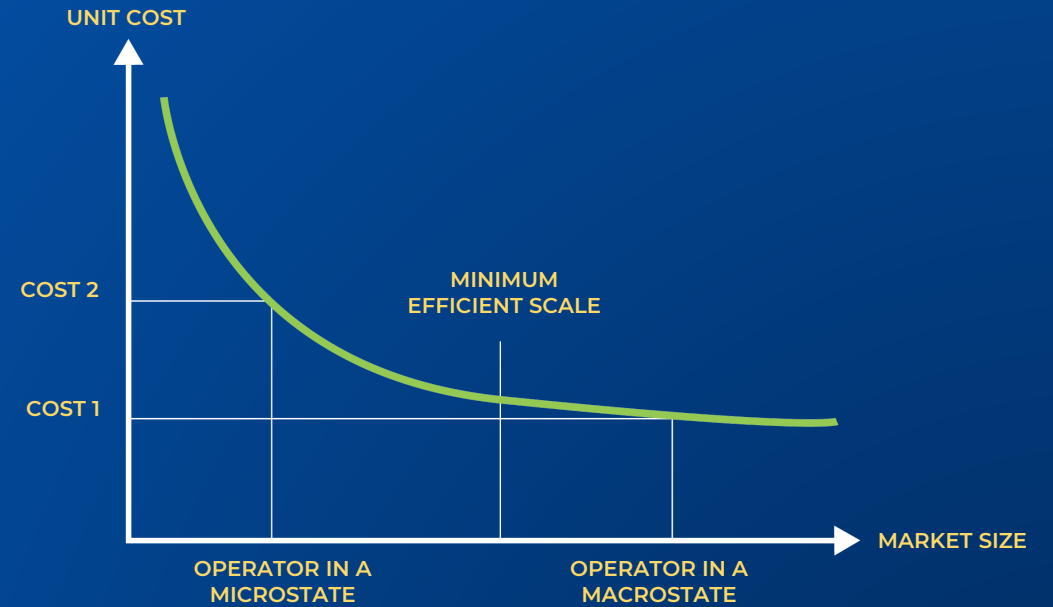
CORE DIFFERENCES BETWEEN MACROSTATES AND MICROSTATES

- Geography, Teledensity and Market Penetration Considerations.
- Economic Flexibility/ Appetite of Risk in a Market.
- Levels of Investment in Infrastructure and NGN Technology.
- Regulatory Independence among Governing Bodies.
- Strength of Auxiliary Legislation.

AN ECONOMY OF SCALE CURVE FOR MOBILE USERS



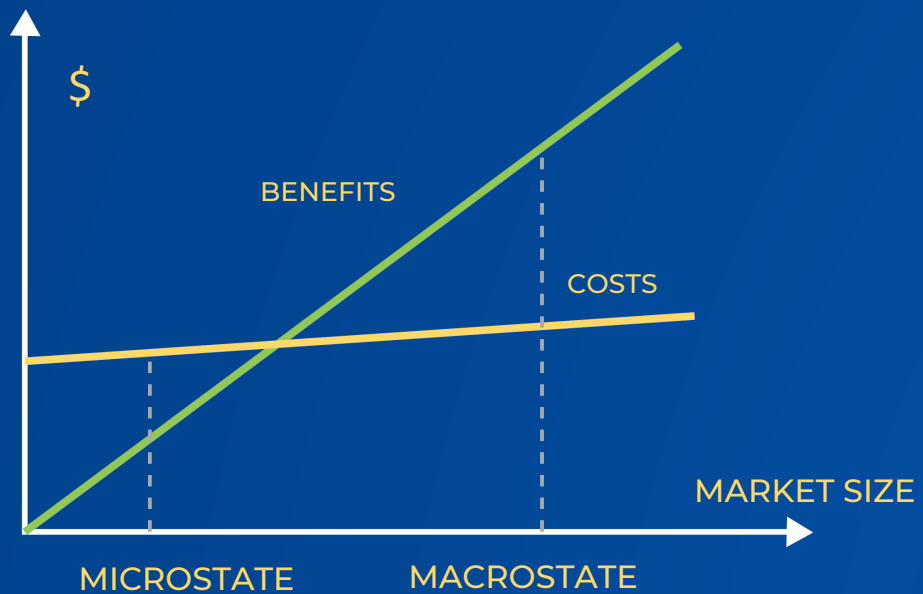
ECONOMY OF SCALE EFFECTS



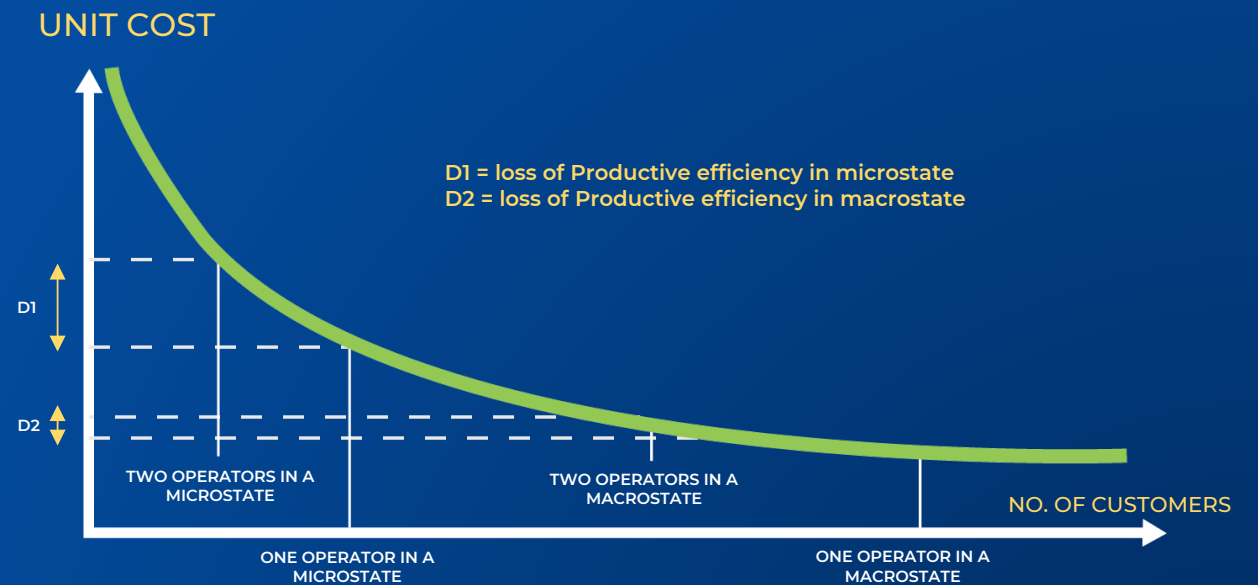
DIFFERENCES BETWEEN MACROSTATES V. MICROSTATES

- The major difference is a minimum efficient scale of production which impacts regulation in two ways:
 - Costs and prices (whether retail or wholesale) or likely to be significantly higher than those observed in macrostates.
 - the unit cost of supplying infrastructure have increased substantially as the number of competing operating increases and the
- Efficient retail prices are higher in microstates. Regulators **cannot** seek to set retail prices by benchmarking macrostate prices.
- Tradeoff for higher levels of competition against requests for low costs of production.
- Competition in microstates which creates incentives for investment and innovation, also leads to higher costs of supply and lower productive efficiency.

THE IMPACT OF REGULATORY MEASURES IN MICRO AND MACROSTATES



THE TRADE-OFF BETWEEN COMPETITION AND PRODUCTIVE EFFICIENCY



WEAKNESSES IN MICROSTATES THAT HINDER LIGHT TOUCH REGULATION

- Incorrect reference and implementation of legislation
 - Insufficient Capacity.
 - Weak Decisions that insufficiently guide the market.
 - Insufficient industry consultation prior implementation.
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CROSS JURISDICTIONAL APPROACH – THE UNITED STATES

- Light Touch Regulations began in the Clinton Administration and has various jurisdictional approaches (Goal: Market Development and Stimulation of Industry).
- Imposition of Stronger Net Neutrality Rules in the Obama Administration in Macro states created discussions and attempts in microstates (Goal: Decentralizing growth for more diverse opportunities throughout the ICT sector).
- Tapering back to Light Touch Regulation under the Trump Administration; Reducing impact of Title II regulations (Goal : Reducing impact of Title II regulations).
 - Stronger presence of market led initiatives by the players.
 - Broadband is not treated as a utility but a common good.
 - Focus on deployment and investment by players into alternative technologies to increase penetration

CROSS JURISDICTIONAL APPROACH - INDIA

- Under the predatory pricing tariff rule set by the Telecom Regulatory Authority of India on February 16, 2018 had barred telecom operators, with over 30 per cent market share, from offering services at a price which is below the average cost of service that are intended to reduce competition or eliminate the competitors.
- TRAI sought to change the definition of significant market power to identify predatory pricing, lowering competition and creating entry barriers for potential new customers, giving pricing freedom to any player with less than 30% market share in India, shifting the focus from consideration for market activities to increasing opportunities for third players without a market review.
- The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) in order dated December rejected order made by TRAI, citing lack of transparency in the guidelines over determining market share and rates of services.

INTER JURISDICTIONAL APPROACH – THE CARIBBEAN

- CARICOM taking a position to enforce EPA CARIFORUM Agreement mandates for data protection legislation throughout the region.
- URCA is cognizant of the risk and uncertainty related to the introduction of net neutrality regulation, and URCA is concerned that **ex ante regulation may adversely impact the sustainability of the ECS in The Bahamas,** URCA said in its final position. “Therefore, in the short to medium term, URCA will address breaches of the Communications Act relating to internet traffic **using its ex post regulatory measures whilst monitoring the changing dynamic in the environment,** with a view to revisiting this issue should it become appropriate.”
- ECTEL asserts that Net Neutrality is still a priority for the authority and will be advancing this position. The Electronic Communications Bill is evidence of this.
- Jamaica’s Opposition has been in support of net neutrality on the basis of innovation and small business growth.

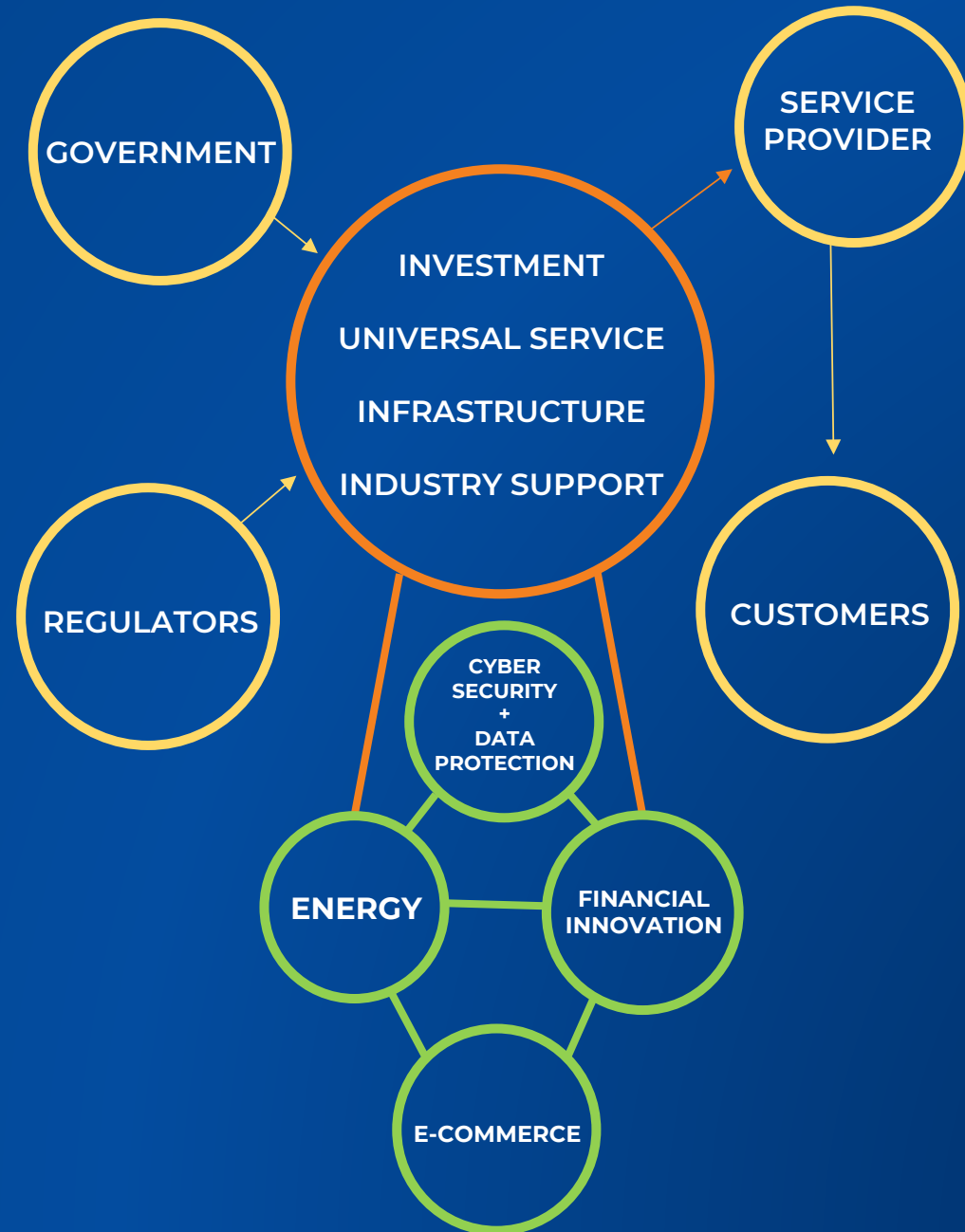
APPROACH TO MICROSTATES TO FACILITATE LIGHT TOUCH REGULATION

- Cost exercises and reviews need to be done of each state to ensure that benefit exceed the costs.
- Development of simpler and more efficient regulation to keep regulatory costs down.
- Securing allocative efficiency gains to ensure retail prices positively affect the costs.
- Maximization of dynamic efficiency by regulating to increase end user willingness to pay telcos for services.
- Ensuring regulatory decisions are of a high quality; reducing regulatory error which can lead to substantial economic losses for the player and the regulator.
- Regulate any behavior suggesting joint dominance on an ex-post rather than an ex-ante basis.
- There should be an examination of market behaviour rather than market share .

WISH LIST FOR LIGHT TOUCH REGULATION IN MICROSTATES

- Distinction between macrostate v. microstate framework of regulation.
- Primary focus on meeting the needs of the customer in terms of options, service quality, economic and social policy goals of the Government.
- Reduced focus on financial regulation of the service providers.
- Less M&A oversight.
- Incentives for the Invest in Infrastructure in aid of Deployment.
- Auxiliary Legislation to human rights (privacy, data protection, and cybersecurity).
- Tripartite and Collaborative Focus between the Regulatory (enforcement), Service Provider (execution) and the Government (legislation).

THE PERFECT ECOSYSTEM



QUESTIONS?

Let us Discuss and Find
Solutions Together!

Thank You

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