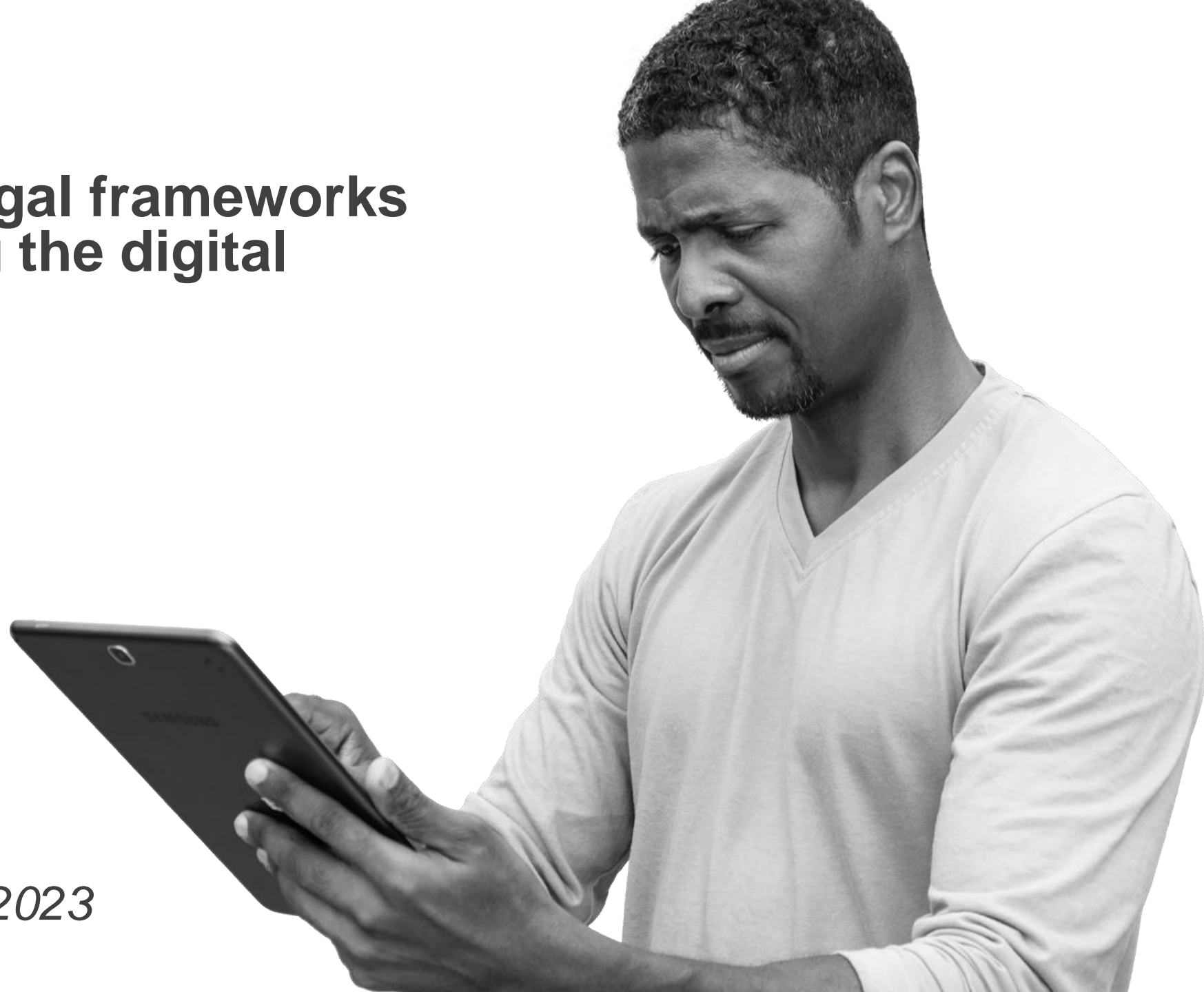


Effective legal frameworks for building the digital economy

David Geary

Digicel

14th February 2023



Where do we want to go?

A digital step change – opportunity to leapfrog?

“Missing the Industrial Revolution Was the Best Thing That Ever Happened to Ireland.”
-- Irish Development Authority

What are the Caribbean’s priorities?

- Amato – democratic society must never permit unlegitimated private power.
- Protect Democracy, media freedom, democratic political processes, free markets, free media, citizens fundamental rights, culture.
- Different priorities are legitimate: participation in the digital economy: networks, skills, access, fund public services through taxation.

Which global center of gravity?

- Silicon Valley Open Internet? DC commercial Internet? Beijing Paternal Internet?
- EU “well ordered, self regulating, responsible... more or less open Internet” informed by its legal tradition of balancing freedom and justice with fairness... - aligns with Caribbean constitutions.

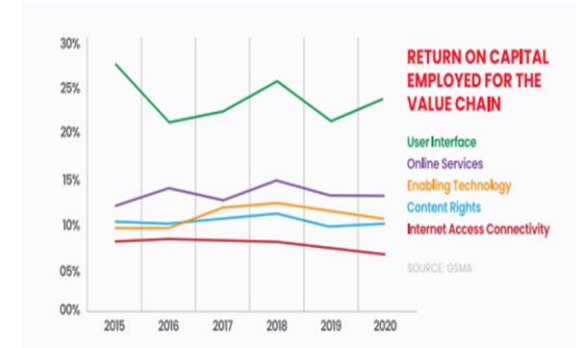
Irish directions: If you want to go there don’t start from here!

- Gilbert Morris: <http://canto.org/wp-content/uploads/2016/08/CANTO-LECTURES-SHARED-VERSION.pdf>

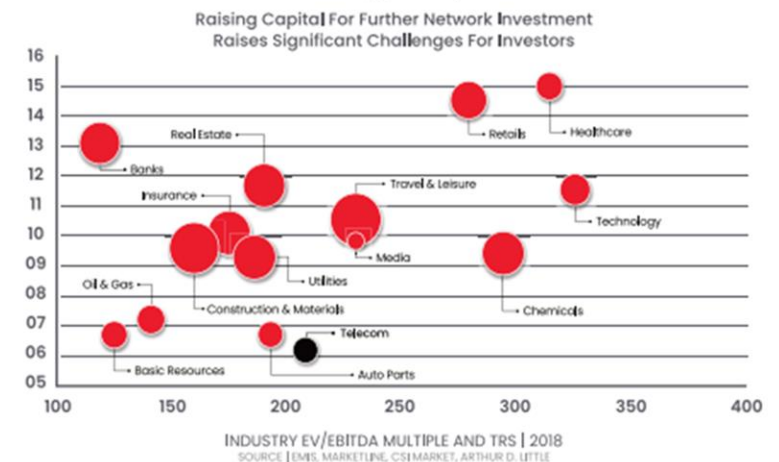
Options not on the table

No action or slow action

- Democracy: SCL/Cambridge Analytica in Trinidad & Tobago (2013)
- Tax to fund public services as economy moves online
- Media freedom: Losing advertising revenue (Australia Code)
- Caribbean culture and content
- Participation in the global digital economy
- investment in 5G & future networks
- Diverse sector specific rules across region



Raising Capital



Direct Copy/Paste of EU rules

- Examples of Telecommunications, Competition and Net Neutrality - EU approach did not reflect Caribbean priorities and realities
- “Brussels Effect” may not happen if Big Tech adopt different commercial practices in Caribbean: French West Indies v CARICOM. Same standard?

Dimensioning a harmonized framework

Move away from sector specific regulation & fees towards horizontal economy wide rules that apply to all service providers.

Components:

- Competition: Market reviews & ability to impose remedies (e.g. Australia); new antitrust approaches to market power: gateways and essential facilities
- Regulation – limits of market power and responsibilities of actors with market power
- Regulation of harmful and illegal content; Artificial Intelligence
- Fundamental rights of citizens: data protection and consumer rights
- Digital taxation framework that protects the region

Regional centers of excellence:

- CARICOM Competition Commission, Data Regulator, Digital Regulator
- Funding: Levy – e.g. Ireland levy to fund new digital regulator
- Dynamic process – central body such as CTU driving regulatory innovation

S	W
<ul style="list-style-type: none">• Resources• Region size• Constitutions	<ul style="list-style-type: none">• Replication• HarmonisationPace
O	T
<ul style="list-style-type: none">• Step-change• Global lead	<ul style="list-style-type: none">• Time's up• Digital exclusion

Innovations

A new regional framework will take time. In the interim amend existing laws to achieve an initial degree of regulation:

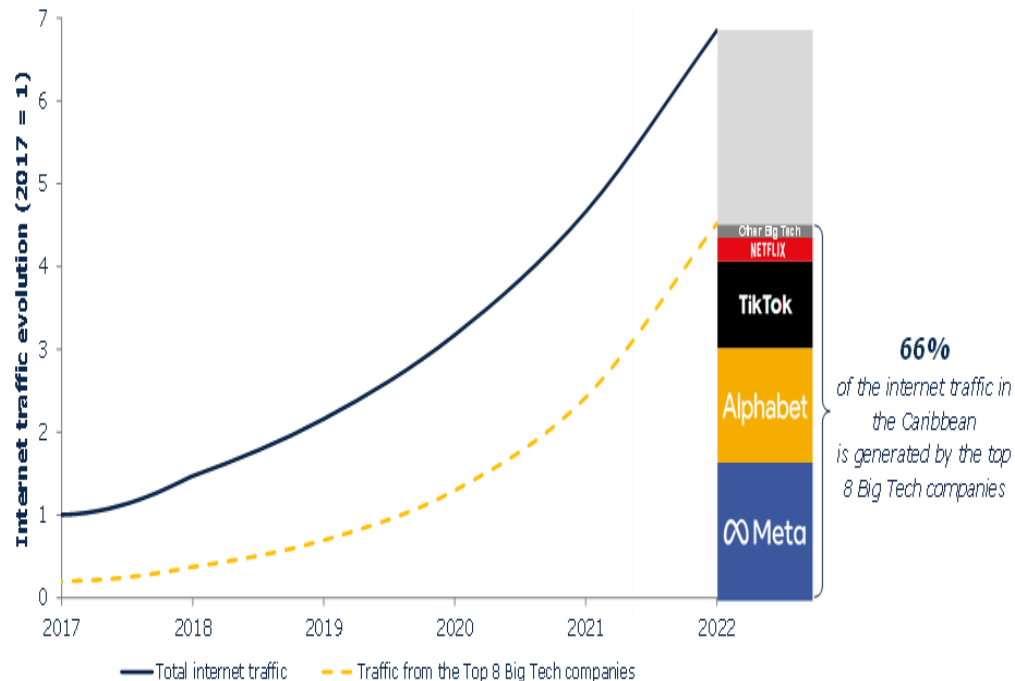
- Require digital platforms above a threshold to appoint a local representative for intake of user complaints and respond to regulatory inquiries.
- Mandatory obligations - File accounts and information with existing regulators and cooperate with legal authorities; VAT registration.
- Ensure competition law provisions in ICT laws apply to any providers of digital services regardless of their location.
- Obligation that illegal content and specified harmful material must be removed; local law applies to services.
- Lift sector specific burdens.
- A regulatory obligation to negotiate with regional media and network operators (Australia).

New Approaches

- Co-regulation or cooperation agreements with Platforms? Big Tech already follow EU rules in the French West Indies – oblige them to observe best practice in the region.
- Children’s Code & 5Rights Child Online Safety Toolkit.
- New forms of regulatory cooperation – go beyond capacity building: Enable closer cooperation between regulatory authorities and courts; enable Caribbean courts and authorities to apply theories of harm, evidence, expert opinions and conclusions, etc. from the EU or other jurisdictions.
- Observer status for Caribbean authorities at EU bodies or structures?

References

Axon Partners: Big Tech now dominate the Caribbean Internet



October 2021



Effective regulation of telecommunications in the island states of the Caribbean

Grant Forsyth and David Lewin

How should island states of the Caribbean regulate their telecommunications sectors so as to serve their best long-term interests? To answer this question policymakers need to take account of the problems raised by the small-scale of these islands nations. Many have a population of 100,000 or less and, as such, are clearly 'microstates'.

The telecommunications sector is characterised by substantial fixed costs and significant economies of scale. In a macrostate, with a population of several million or more, this usually does not matter because the main operators function at a point well above minimum economic scale. But in a microstate, such as an island state of the Caribbean, the main operators usually operate at a point well below minimum economic scale as illustrated in Figure 1. We estimate that the minimum economic scale for a mobile network is above 2 million customers and for a fixed network slightly lower. But in both cases this is well above the size of a Caribbean island market.

The problem of minimum economic scale

Efficient telecommunications regulation in microstates

These economy of scale effects impact on how a telecommunications market functions in a microstate and has important implications for how that market should be regulated. Specifically:

- **efficient** prices (both wholesale and retail) are higher in microstates. So regulators need to avoid setting prices by benchmarking macrostate prices. This would lead to prices below actual cost, few investment incentives, inefficient entry (in the case of non-competitive low wholesale prices) and

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