



Tuesday July 29th 2014

FOR IMMEDIATE RELEASE

NEWS RELEASE

Today, the Utilities Regulation and Competition Authority (URCA), in exercise of its powers under section 103 of The Communications Act of 2009, releases an Adjudication and Order which was issued to a major licensee in the Electronic Communications Sector which is of significant public importance.

URCA, established through an act of parliament in 2009, takes seriously its responsibility for the regulation of the electronic communications sector for the benefit of the public in The Bahamas. This includes, as mandated in sections 65-69 of the Communications Act, addressing conduct which prevents, restricts or distorts fair competition amongst Service Providers.

The Adjudication and Order issued today, has its origins in a complaint to URCA by SRG (Systems Resource Group), a subsidiary of the Cable Bahamas group of companies, alleging that BTC had engaged in business practices which contravened sections 67 and 69 of the Communications Act. In brief, the particulars of the complaint are that:-

UTILITIES REGULATION & COMPETITION AUTHORITY

UBS Annex Building, East Bay St | P.O. Box N-4860 Nassau, Bahamas | T 242. 393. 0234 | F 242. 393. 0153

www.urcabahamas.bs



- a) SRG had approached several (wholesale) businesses with a view to them displaying and selling SRG's "IndiGO" calling card";
- b) The wholesale businesses advised SRG that they had executed exclusive supply agreements with BTC prohibiting them from selling the SRG calling cards.
- c) As a result of the above, since March 2012, SRG has been unable to distribute its cards through some wholesalers as a result of the wholesalers' exclusivity agreement with BTC.

This Adjudication and Order considered the matters and followed the procedures set out in URCA's Competition Guidelines (ECS Comp.9) found on URCA's website for investigating competition related complaints. Following a detailed investigation, URCA has determined that the exclusivity agreement BTC has with its Master Distributors, infringes section 67 and/ or section 69 of the Communications Act for the following reasons:

- i) The agreement (which relates to the supply of calling cards) is the subject of electronic "communications matters" as defined by section 65 of the Communication Act, particularly when read in conjunction with section 65(c)(ii) which states that communications matters is defined as including: "the provision or making available of services or facilities which are provided or made availablefor the purpose of facilitating the use of any network or carriage service...."
- ii) The exclusivity supply terms of BTC's Master Distributor



Agreement which require buyers not to distribute products and services from any other carrier that offers phone service in The Bahamas, has the effect of preventing, restricting or distorting competition such that it appreciably affects trade within The Bahamas; and

- iii) There is no justification which satisfies the criteria as set out in section 68 of the communications Act to exempt the Master Distributor Agreement from sections 67 and /or 69 of the Communications Act.

URCA further found that:

- iv) BTC is a licensee which is dominant in the market for the upstream supply of calling cards for Long Distance (LD) two stage dialing. BTC is also dominant in the market for the retail supply of LD two stage dialing services;
- v) The conduct which is the subject of this Adjudication is conduct which amounts to an abuse of a dominant position, because it is a single branding agreement which has the effect of preventing, restricting or distorting competition.

The Order issued today requires BTC to;

- i) Immediately cease and desist from any practice conduct or behavior denying future market access to potential competitors in the relevant market for two stage LD calling cards by executing or renewing any Master Distributors Agreement or any similar Agreement which include violating provisions as contained in the Licensee's existing Master Distributors Agreement
- ii) Immediately amend the Master Distributors Agreement by deleting the violating provisions in the existing Agreement



- iii) Submit to URCA within fourteen (14) calendar days of the issuance of the Order, a draft copy of the amended Master Distributors Agreement for approval by URCA;
- iv) Upon acceptance by URCA of the approved amendment, BTC is to notify all existing Master Distributors in writing, of the amendment to the existing Master Distributors Agreement. Copy of the written notification must be submitted to URCA within fourteen (14) calendar days of URCA's approval of the proposed amendment.
 - a. The notification must clearly state that the exclusivity provisions of the existing agreement are ineffectual, void and unenforceable and
 - b. An offer to each Master Distributor to execute an amended Master Distributors Agreement
- v) BTC is to submit to URCA within thirty (30) calendar days of the issuance of the Order, a letter of compliance detailing all steps, efforts, actions and measures taken by the licensee to fully comply with the Order; and finally
- vi) BTC is to pay a fine to URCA in the amount specified in the Order, in accordance with section 109 of the Communications Act no later than thirty (30) calendar days from the issuance of this Order.

Any failure by BTC to comply with URCA's Order or any part thereof may result in a further fine not exceeding ten percent of the operator's relevant turnover or other penalty determined by URCA in accordance with section 109 of the communications Act.

Details of the complaint and of the investigation undertaken by URCA are



provided in the attached document, Adjudication and Order, and which will be available on our website by the end of the day.

URCA as the regulator of the Electronic Communications Sector, closely monitors the activities of all licensees in the sector to ensure and promote fair competition and to protect the interests and rights of consumers in the sector.

URCA is excited to unveil for you this morning, the printed version of our recent Consumer Protection Regulations in accordance with section 45 of the Communications Act. Members of the public are invited to pick up their copies from locations throughout the country. Included in the regulations is a section on customer Quality of Service Standards which sets the time frame for the completion of contractual services, and a section on consumer obligations. Service Providers had a period of six months (which expired on 30 June) to become compliant with the provisions of the regulations.

MEDIA CONTACT:

Mavis Johnson-Collie
Corporate and Consumer Relations Manager
Utilities Regulation & Competition Authority
Nassau, Bahamas,
Email: mjcollie@urcabahamas.bs
Telephone (242)396 5201
Facsimile; (242) 393 0153
www.urbahamas.bs