



The Bahamas Telecommunications Company  
Limited

Further submission based on comments  
received on:

**Public Consultation Paper on Methodology  
for Assessment of Significant Market Power  
(SMP) under Section 39(2) of the  
Communications Act, 2009  
(ECS 09/2011)**

Legal, Regulatory and  
Interconnection Division  
July 15, 2011

## Additional Comments

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to provide a further response to its initial submission on URCA's Public Consultation on the Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009.

From a review of the response by Cable Bahamas to the Public Consultation Paper, the substantive points made by BTC in its response were generally in alignment with those points highlighted by Cable Bahamas in that company's response to the Proposals 1-5 in the Public Consultation Paper.

Again, BTC would like to stress as Cable Bahamas has in its response that in assessing whether there is a need for ex ante regulation, URCA should consider the inclusion of the European Union (EU) three (3) criteria tests. Firstly, determining whether there is the presence of high and non transitory barriers to entry; whether the market structure tend towards effective competition during the timeframe of the review; and if one or both of the conditions listed are met, whether the application of ex post competition alone would not adequately address market failures that may arise. In the SMP Methodology Public Consultation Paper, there was no discussion of this three (3) criteria test.

In looking at the EU three (3) criteria test which was absent from URCA's SMP Methodology Public Consultation Paper, the second criterion taking account of whether the market structure tend towards effective competition should be carefully considered in applying the ex ante remedies. As Martin Cave et. al has pointed out, the second criterion requires taking a long run dynamic view of the market.<sup>1</sup> The second criterion would require taking into consideration that prospective developments can affect behavior by firms long before the event

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<sup>1</sup> A review of certain markets included in the Commission's Recommendation on Relevant Markets subject to ex ante Regulation: An independent report by Martin Cave, Ulrich Stumpf, and Tommaso Valletti, July 2006, p.7

(development) takes place. A good example is cited by Cave et. al where mobile prices tend to fall in anticipation of market entry by other firms.<sup>2</sup> Also, not to be discounted is the influence of what is referred to as *disruptive technology* that can impact the competitive landscape. The proliferation of VoIP products provides a competitive constraint to traditional PSTN services. In The Bahamas, there are a number of VoIP products offered by licensed and unlicensed providers that serve as a competitive constraint to BTC's traditional PSTN service.

In applying the second criterion of the EU three (3) criteria test, Cave et. al discussed the market for corporate control.<sup>3</sup> While in The Bahamas, there is limitation of size and development of capital markets compared to the EU, this factor (i.e. corporate control) has relevance. With the change in ownership control and hence strategy at BTC, there is the improvement in cost efficiencies that will be expected to translate into improvements in consumer welfare, in both the fixed line and mobile sectors. There is an incentive even in the absence of competition to improve efficiency ahead of what is anticipated as an aggressive entry into the cellular mobile space at the end of the mobile exclusivity period.

***Reference to BTC's Final Comments on Types of SMP Obligations of January 22, 2010***

Some of the comments BTC provided in its Final Comments on URCA's Preliminary Determination on Types of SMP Obligations of January 22, 2010 are relevant for the purpose of this Public Consultation.

The following are points that BTC highlighted in its January 22 Response to the Preliminary Determination on SMP Obligations that are relevant in the context of this Public Consultation:

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<sup>2</sup> Ibid. pg. 7

<sup>3</sup> Ibid. pg.7

- Classification of product markets into competitive, non competitive and prospectively competitive. This point was highlighted in BTC's response to URCA's Preliminary Determination on Types of SMP Obligations of January 22, 2010 and again in its initial response to this Public Consultation. Given that the assessment of SMP is forward looking, markets classified as prospectively competitive should be subject to minimal regulation.
- Technology neutrality. Again, this was a point that was raised in BTC's response to URCA's Preliminary Determination on SMP Obligations and is worth revisiting in the context of the response to this Public Consultation Paper. BTC's argument in its January 22 Final Response to URCA's Preliminary Determination is that consideration should be given to the pricing constraints imposed on BTC's PSTN products by VOIP offerings, including VoIP providers not licensed by URCA. Taking into account the constraints imposed on BTC's PSTN voice service by way of the proliferation of VoIP products presently available, should influence the need to revisit the overly prescriptive and restrictive ex ante remedies imposed on BTC's PSTN voice services.
- BTC supports the position advanced by CBL in its response to this Public Consultation that URCA should take note of 'the principles applicable to the imposition of remedies for resolving market failures, including a detailed assessment of their justification and proportionality (e.g. cost/benefit)'. BTC in its initial response to this Public Consultation drew reference to the need for proportionality in applying the ex ante rules. While there is a need to promote competition and ensure that operators do not abuse their position in the market, the rules ought to allow for predictability to enable effective planning and allow for the necessary flexibility to allow operators to be in a position to respond to market

conditions or simply put be in a position to take advantage of opportunities in the market to better serve end users.

In imposing proposed remedies, it is important that URCA weigh into the balance the need to create an environment that provides an incentive for investment in new plant and technologies and promote innovation. The overly restrictive current Retail Pricing Rules makes it difficult to effectively plan special promotions, permanently reduce prices and introduce new product launches, all of which can improve the welfare of consumers.

Reviewing the work of Cave et al in the context of URCA's Public Consultation on SMP Methodology suggests that while there is consensus for a forward looking approach in carrying out market reviews and this was highlighted in BTC's initial response. There is clearly a need for URCA to take a more holistic view and a more long run view of the markets. Where there is good reason to suggest that products markets lean towards being prospectively competitive, there is an argument that can be advanced for less regulation rather than a more heavy handed over regulation.

BTC in its initial response to this Public Consultation had noted that URCA in its Annual Plan for 2011 indicated that one of the planned projects for the second quarter (Q2) of 2011 is identifying operators with SMP in Call Termination. This planned activity is of significant interest to BTC.

### ***Reservation of Rights***

BTC has addressed the issues but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised on this Consultation in whole or in part does not necessarily indicate agreement in whole or in part with URCA's position; nor does any position taken

by BTC in this consultation mean a waiver of any of BTC's rights in any way.  
BTC expressly reserves all its rights.

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**The Bahamas Telecommunications Company Limited (BTC)**  
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