Preliminary Determination on the Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009

Consultation Document

ECS 10/2014

Issued: 22 May 2014

Initial Response Date: 11 July 2014

Comments on Responses Date: 8 August 2014

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1 Introduction

1.1 Regulatory Framework of this Consultation

The Utilities Regulation and Competition Authority (URCA) is the governing body of the regulatory regime for electronic communications in The Bahamas established under the Communications Act, 2009 ("Comms Act"). URCA is responsible under the Comms Act for licensing undertakings that provide, operate or maintain an electronic communications network or provide an electronic communications service, including by the use of any radio spectrum. The Comms Act also provides, in sections 4 and 5, guidelines that URCA must follow for issuing regulatory and other measures (including Determination). The Comms Act gives URCA wide-ranging powers which are to be exercised in full compliance with principles of good regulation.

URCA is required to introduce regulatory and other measures which are efficient and proportionate to their purpose and must introduce them in a manner that is transparent, fair and non-discriminatory. This means that where URCA believes that market forces alone are unlikely to achieve a policy objective within the required timeframe, URCA may introduce regulatory requirements, having due regard to the costs and implications for affected parties.[1] However, as a general principle, market forces should be relied upon as much as possible and regulatory measures should be introduced by URCA only when necessary. In general, this means that the more prescriptive regulatory measures are only imposed on operators who have a position in a market such that they can act independently of competitors, consumers and subscribers (i.e., a position of significant market power (SMP)).

Section 116 and Schedule 4 of the Comms Act set out a presumption that Bahamas Telecommunications Company Ltd. (BTC) has SMP in the markets for fixed voice and data services[2], and mobile voice and mobile data services; and that Cable Bahamas Ltd. (CBL) has SMP in the markets for high-speed data services and connectivity, and pay TV services. The Comms Act then imposes a duty on URCA to determine which specific, if any, *ex-ante* obligations should be imposed on these two operators.

Section 39(1) of the Comms Act further provides a high-level definition of a SMP operator: *"A licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which*

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[1] See Section 5(b)(i), 5(b)(ii) and 5(c) of the Comms Act.

[2] URCA notes that footnote 3 on page 14 of the Sector Policy (available at: http://www.urcabahamas.bs/download/028537000.pdf) states that the market for fixed voice *"…is intended to include the full product set delivered over BTC's fixed network including both voice **and** data services*." [emphasis added]

enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of competitors, consumers and subscribers."

As part of its 2010 Final SMP Determination[3], URCA thus provided further details on the products contained in each of the high-level SMP markets and set out the specific ex-ante obligations for both SMP operators. These obligations remain in place to date.[4]

It is, however, good practice to review such measures on a regular basis to ensure that *ex-ante* regulations remain fit for purpose and focused on licensees with SMP. Indeed, the regulatory framework applicable to electronic communications sector in The Bahamas requires URCA to regularly define relevant economic markets for the purposes of SMP regulation and to analyse these markets to ensure that regulatory measures remain appropriate in light of changing market conditions. This is a process otherwise known as a market review.

In this consultation paper, URCA sets out its preliminary views and proposals arising from its market reviews of the provisioning of key retail communications services in The Bahamas under section 39(1) of the Comms Act and any resulting *ex-ante* regulatory obligations for SMP operators. The services considered in this market review are as follows:

- Fixed voice telephony service;
- Pay TV services (including cable television services); and
- High-speed data services and connectivity (i.e., broadband and connectivity services).

Given that BTC retains a statutory exclusivity on the provisioning of mobile services in The Bahamas which expired on 7 April 2014, URCA considers that a review of competition in mobile voice and data services is not warranted at this time.

1.2 Procedures for making a Determination

Under section 99(2) of the Comms Act, in making any determination, URCA must first issue the determinations which it proposes to make as a preliminary determination, and afford parties with sufficient interest under section 11 of the Comms Act an opportunity to make comments and representations on those preliminary determinations. URCA must then consider those comments and

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[3] ECS 11/2010 available at: http://www.urcabahamas.bs/download/065539400.pdf
[4]http://www.urcabahamas.bs/publications.php?cmd=view&id=41&pre=y

representations in making its final determination and provide written reasons for its determination. Section 11(2) of the Comms Act prescribes that regulatory instruments referred to in section 13(2) of the Comms Act such as regulations, shall be considered regulatory measures of public significance and under section 11(1), URCA shall afford persons with sufficient interest a reasonable opportunity to comment on URCA's proposals.

URCA is therefore issuing this Preliminary Determination under section 100 of the Comms Act. This document constitutes URCA's formal notice to those licensees issued by URCA with Individual Operating Licences (IOLs) of URCA's *"Preliminary Determination on the Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Comms Act."* Specifically, this document contains URCA's analysis and proposals relating to relevant economic markets for retail fixed voice telephony, pay TV, broadband internet and business connectivity services in The Bahamas and identifies the licensees that URCA believes have SMP in the defined markets. Where URCA considers that the defined markets should be susceptible to *ex-ante* or SMP regulation, appropriate remedies will be established to support the further emergence of competition or to result in outcomes which replicate competition.

Section 99(1)(a) and (b) of the Comms Act collectively prescribe that if, on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (amongst other things):

(i) any obligations on a licensee regarding the terms or conditions of any licence, including obligations in licence conditions and regulations, and
(ii) any activity set out in the Comms Act, and
(iii) where the Comms Act provides for URCA to "determine" or "to make determinations" as is the case under section 39(1).

This consultation on SMP in key retail markets requires URCA to make a final determination pursuant to section 39(1) of the Comms Act.

1.3 How to respond to this Consultation

URCA invites comments on this Preliminary Determination from all interested parties. Given the importance of this consultation, the timetable for this consultation is extended beyond the statutory minimum period of no less than one (1) month commencing on the day after which notice of the preliminary determination is issued for responses. Initial responses on this Preliminary Determination should therefore be submitted to URCA by 5 p.m. on **11 July 2014**. Interested parties will then have the opportunity to further comment on responses made by other respondents by **8 August 2014**.

Written responses or comments on this Preliminary Determination should be sent to URCA's Chief Executive Officer, either:

- by hand, to URCA's office at UBS Annex Building, East Bay Street, Nassau; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 393-0153; or
- by email, to info@urcabahamas.bs.

Where a respondent believes that URCA's approach and/or proposals are contrary to relevant principles and objectives or are outside the international mainstream, the respondent should clearly set out their reasoning for such objections, together with evidence to substantiate their position. Persons may obtain copies of this document by downloading it from the URCA website at www.urcabahamas.bs.

URCA reserves the right to make all responses available to the public by posting such responses on its website. If a response is marked "Confidential", reasons should be given to facilitate URCA's evaluation of the request for confidentiality. URCA may publish or refrain from publishing any document or submission, in its sole discretion.

URCA will review responses and comments received on this Preliminary Determination and responses made to initial responses before publishing a Statement of Results and Final Determination.

1.4 Structure of the remainder of this document

The remainder of this document is structured as follows:

- Section 2 sets out URCA's Preliminary Determination on the relevant markets under consideration.
- Section 3 describes the background to this market review, by setting out URCA's Initial 2010 SMP Assessment and the approach adopted under the current market review.
- Section 4 presents URCA's preliminary SMP assessment of the market(s) for the provisioning of retail fixed voice services in The Bahamas;
- Section 5 sets out URCA's preliminary SMP assessment of the market(s) for the provisioning of retail high-speed data and connectivity services in The Bahamas;
- Section 6 presents URCA's preliminary SMP assessment of the market(s) for the provisioning of retail pay TV services in The Bahamas;
- Section 7 sets out URCA's preliminary views on the SMP obligations for each of the markets covered within this market review; and
- Section 8 concludes and sets out next steps.

2 URCA's Preliminary Determination

For the reasons explained in Sections 4 to 7 below, URCA intends to make the determinations set out in the remainder of this Section.

2.1 Proposed Market Definition

Based on its review of the available evidence and in line with the approach set out in Section 3.2 below, URCA has defined the following relevant product and geographic markets for each of the services under consideration within this market review.

Retail Fixed Voice Services

URCA has preliminarily determined that the relevant market for voice services provided at a fixed location includes the following products:

- Fixed access and call services delivered via a Public Switched Telephone Network (PSTN) (i.e., currently BTC's Basic Home Phone, HomePhone Plus and Business Landline services); and
- Fixed access and call services delivered via a cable network (i.e., currently CBL's REVOICE, Small/Medium Business and Enterprise Business services).

The market is defined to be national in scope.

Retail Broadband Services

URCA has preliminarily determined that the relevant market for broadband services provided at a fixed location includes the following products:

- DSL broadband (currently offered by BTC); and
- Cable-based broadband services (currently offered by CBL)

There are two separate geographic markets to be considered:

- Geographic market 1 -The islands where CBL and BTC are both offering broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera); and
- Geographic market 2 - All remaining islands (i.e., where only BTC offers broadband services).

Business connectivity services

URCA has preliminarily determined that the relevant market for national and international business connectivity services includes the following products:

- Traditional leased line products: These are business connectivity services provided over PSTN and Coaxial networks, thereby currently including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and
- Fiber-based leased line products: These are business connectivity services provided over a fiber network, thereby currently including BTC's MPLS[5] (leased circuits over fiber) and CBL's REVON Ethernet Circuits.

There are two separate geographic markets to be considered:

- Geographic market 1 -The islands where CBL and BTC both have infrastructure and are offering national and international business connectivity services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera); and
- Geographic market 2 - All remaining islands (i.e., where only BTC has a network infrastructure to offer these services).

Retail Pay TV Services

URCA has preliminarily determined that the relevant market for access to pay TV content includes content provided over cable TV and terrestrial network infrastructure (currently offered by CBL).

The market is defined to be national in scope.

2.2 Preliminary SMP Findings in each Defined Market

Based on its review of the available evidence and in line with the approach set out in Section 3.2 below, URCA has assessed the competitive dynamics in each of the relevant markets (as identified above).

Given this, URCA has preliminarily determined that:

- BTC has SMP in the market for retail fixed voice services (covering access, local call, national[6] and international call services from a fixed location).

[5] Multi-protocol Label Switching.

[6] This includes all fixed voice calls which are not terminating on-island or at an international destination (such as, amongst others, off-island calls, fixed-to-mobile calls, calls to emergency services, calls to directory enquiry services, calls to automated ancillary services, and operator assisted services).

- CBL has SMP in the market for broadband services in Geographic Market 1.
- BTC has SMP in the market for broadband services in all areas where CBL does not currently offer retail broadband services (i.e., Geographic Market 2).
- BTC has SMP in the market for national and international business connectivity services in all areas where CBL does not currently offer these services (i.e., Geographic Market 2).
- CBL has SMP in the market for pay TV services in The Bahamas.

Any reference above to a licensee shall, in accordance with section 21(1) of the Comms Act, be taken to include both the licensee and any subsidiary undertaking of the licensee listed in the application for a licence or notified to URCA from time to time in accordance with section 21(2) of the Comms Act.

2.3 Proposed Regulatory Obligations to be imposed on SMP Licensees

Based on its review of the main potential competitive concerns and resulting consumer harm in each defined market, URCA has considered a range of regulatory options to remedy these concerns. As a result, URCA proposes to impose the following SMP obligations on the licensees found to have SMP:

- BTC's retail fixed voice services will be subject to *ex-ante* price cap regulation going forward;
- BTC's retail prices for on-net and off-net fixed call services may only differ in case of justifiable cost differences in delivering these call services;
- Neither CBL nor BTC shall introduce any new retail product bundled offering which contains a retail service in which it has been found to have SMP , unless that bundle can be replicated by other providers[7];
- CBL's retail broadband services will be subject to ex-ante price cap regulation going forward;
- CBL is required to offer stand-alone (unbundled) retail broadband offers;
- BTC is required to offer geographic uniform prices for retail broadband services; and

[7] Replicability will be assessed in line with requirements set out in the Retail Pricing Rules (i.e., ECS 06/2014, issued 16 April 2014) and available at http://www.urcabahamas.bs/download/016423900.pdf.

- CBL's access and content pay TV packages (i.e., currently those packages labelled as PRIME, PRIME Select, Prime Plus and PRIME Extra) will be subject to an *ex-ante* price cap regulation going forward.

URCA does not propose to impose any additional *ex-ante* obligations on SMP licensees in the business connectivity services markets.

URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published**.**

Further, for the avoidance of doubt, any non-discretionary obligations on SMP operators as set out in Conditions 34, 35 and 36 of the Individual Operator Licences (IOL) and section 40(4) of the Comms Act and specific SMP obligations on wholesale services and accounting separation and cost accounting as set out in determinations, decisions, regulations issued by URCA will remain in place until such time as determined by URCA.

3 Background to this SMP Assessment

Below URCA provides the context to this SMP assessment by first presenting an overview of its previous SMP determination in 2010 (Section 3.1) followed by an outline of URCA's approach to conducting SMP assessments.

3.1 URCA's Initial 2010 SMP Assessment

In 2009, pursuant to section 116(2) and (3) of the Comms Act, URCA initiated a public proceeding under section 116 and Schedule 4 of the Comms Act on *ex-ante* remedies to be imposed on specified licensees presumed to have SMP in the provision of the following services:

- BTC in the provision of fixed voice services;
- BTC in the provision of mobile voice and mobile data services;
- CBL in the provision of high-speed data services and connectivity; and
- CBL in the provision of pay TV services.

That public proceeding culminated in the publication of URCA's *"Final Decision on Obligations Imposed on SMP Operators"* (ECS 11/2010), dated 22 April 2010, in which URCA determined that the retail and wholesale markets as detailed in **Table 1** below fall within the high level SMP markets applicable to BTC and CBL.

Table 1: BTC's and CBL's SMP Markets - Retail and Wholesale

BTC - Retail Products	**BTC - Wholesale Products**
(1) Fixed telephony access and local calling	(1) Fixed intra-island call termination
(2) Domestic long distance calling (DLD)	(2) Fixed inter-island call termination
(3) Domestic fixed calls to rated numbers	(3) Mobile call termination
(4) International long distance international calling	(4) SMS termination[8]
(5) Broadband internet access in specified areas	(5) Termination to directory inquiries
(6) Retail National leased lines	(6) Termination to ancillary services
(7) Mobile access	(7) Termination to local emergency numbers or services
(8) Local mobile calling	(8) Call transit
(9) Domestic long distance mobile calling	(9) Termination to freephone numbers
(10) International long distance mobile calling	(10) Termination to operator assistance facilities
(11) Mobile data (internet, SMS and MMS)	(11) Access to the broadband and transmission networks
	(12) Wholesale national leased lines
CBL - Retail Products	**CBL - Wholesale Products**

[8] BTC does not presently provide SMS termination. However, when mobile competition is introduced, BTC will be required to provide SMS termination within its RAIO.

(1) SuperBasic TV package (2) Digital TV packages (3) Retail national leased lines (4) Broadband internet access	(1) Access to the broadband and transmission networks (2) Wholesale national leased lines

As part of ECS 11/2010, URCA also set out the specific *ex-ante* obligations imposed on both SMP operators. These obligations, which are summarised in **Table 2** below, remain in place to date. These SMP obligations are in addition to the standard/non-discretionary obligations specified in Part G (i.e., Conditions 34, 35 and 36) of the Individual Operator Licence (IOL).

Table 2: Current Regulatory Obligations Imposed on BTC and CBL

SMP operator	Relevant products	SMP obligations
BTC		
	Retail – Fixed access and calling services	Ex- ante retail price regulation, based on Retail Pricing Rules (RPR)[9]
	Retail – Mobile access and calling services	
	Retail - Broadband internet	Geographic averaging of prices
	Retail – Incoming international calls to mobile numbers	Removal of charges for incoming international calls to mobile customers
	Wholesale - Call transit, call termination, entry into directory enquiries database & ancillary services, and enabling products (e.g., joining circuits and point of interconnection)	Publication of Reference Access and Interconnection Offer (RAIO) with cost-based charges
	Wholesale - Network access	Offer (end-to-end) broadband product to allow for resale of BTC's broadband products
	All SMP products	Develop separated accounts in accordance with URCA's Accounting Separation Guidelines
CBL		
	Retail – Super Basic TV	Ex- ante retail price regulation, based on Retail Pricing Rules
	Retail - Broadband internet	Untying of broadband packages from pay TV packages
	Wholesale - Network access	Offer (end-to-end) broadband product to allow for resale of CBL's broadband products

[9] URCA (ECS 15/2010), "Regulation of retail prices for SMP operators – Rules". Note that ECS 15/2010 was recently revised and is now ECS 06/2014.

All SMP products	Develop separated accounts in accordance with URCA's Accounting Separation Guidelines

The SMP markets identified under section 116 and Schedule 4 of the Comms Act are interim therefore URCA is required to undertake a full market review pursuant to section 116(8). Given this requirement in addition to the time elapsed since the imposition of the current obligations and having regard to market developments in the intervening period, URCA considers it appropriate at this time to carry out a further review of retail communications markets to determine which, if any, licensees have SMP in the relevant markets.

The outcome of this market review will form the basis for any *ex-ante* regulation of those retail services offered by SMP operators going forward. In particular, the assessment will help identify whether the SMP presumptions for BTC and CBL under section 116 and Schedule 4 of the Comms Act remain valid in the current retail market environment. It will further allow URCA to reaffirm the *ex-ante* regulatory obligations currently imposed on both SMP Licensees and/or the need to design alternative measures to remedy any competition concerns identified in each relevant market.

Recent review of wholesale call termination markets

URCA has also recently conducted a review of the market for wholesale call termination services in The Bahamas.[10] The review found that BTC, CBL and IP Solutions International Ltd. (iPSi) hold SMP in the market for terminating calls (and mobile voice messages) on their respective networks. While the review reaffirmed the remedies applicable to BTC's call termination pursuant to URCA's 2010 SMP Assessment[11], it imposes SMP obligations on CBL and iPSi. In particular, the fixed termination rates charged by CBL and iPSi to terminate traffic on their respective fixed networks are now also subject to a wholesale price control, to be determined by URCA upon further consultation with stakeholders.[12]

3.2 URCA's Approach to conducting SMP Assessments

The main purpose of a market review is to identify the competitive conditions prevailing in a market by systematically assessing the competitive constraints faced by licensees in the relevant market. A market review commences by defining a market, which is then analyzed to assess the degree of effective

[10] ECS 13/2013, available at http://www.urcabahamas.bs/download/084131300.pdf
[11] ECS 11/2010 – discussed further in Section 3.1 above.
[12] See ECS 01/2014 available at http://www.urcabahamas.bs/download/085570800.pdf.

competition in that market. Defining markets and assessing competition within those markets involve a degree of judgment, with the overarching objective being to ensure that all relevant competitive constraints operating in a market are identified and analyzed. This principle is also enshrined within the electronic communications regulatory framework applicable to The Bahamas.

In conducting market reviews, URCA must take account of specified procedures in the Comms Act[13] and the analytical framework (i.e., procedures and criteria) set forth in URCA document reference ECS 20/2011 on "*Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009.*"[14]

These procedures and criteria are for the sole purpose of making determinations under section 39(1) of the Comms Act, which provides that:

> "*URCA may at any time determine that a licensee is an SMP licensee if the licensee, individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers.*"

3.2.1 Description of Analytical Framework for Market Reviews

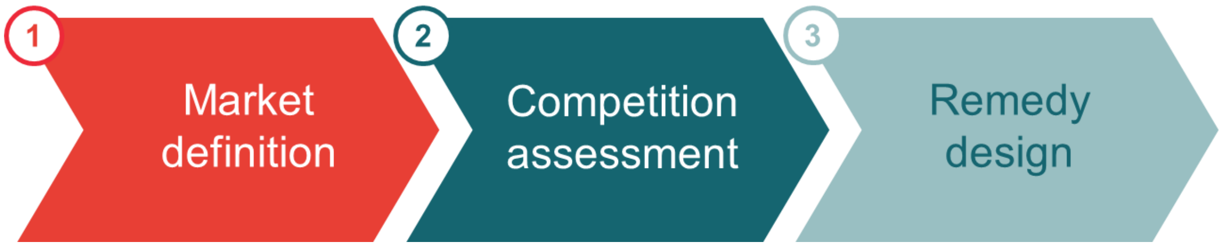
As illustrated in

Figure 1 below and referred to in ECS20/2011, there are three main stages to market reviews:

- defining relevant product and geographic markets;
- identifying operator(s) with SMP in each defined market(s), if any; and
- where market power is identified, consideration of the appropriate SMP obligations in relation to that market.

[13] Including sections 39(1) and (2).
[14] Issued 13 October 2011 and available at http://www.urcabahamas.bs/download/063526500.pdf

Figure 1: Three Stages of Market Review Process



Stage 1: Defining Relevant Markets

Market definition focuses on the substitutability of differentiated products or services. There are two main dimensions to market definition: (i) relevant product market; and (ii) relevant geographic market. Under standard market analysis, a relevant product market comprises all those differentiated products or services that are regarded as sufficiently interchangeable or substitutable by customers or suppliers by reason of product characteristics and intended use and pricing, such that providers of the products may compete to offer services to consumers.

Product Market Definition

In defining the relevant economic markets, URCA shall follow the principles of the SSNIP (Small but Significant Non-transitory Increase in Price) test, otherwise known as the Hypothetical Monopolist Test (HMT). The SSNIP test assesses customer (demand-side substitution) and supplier (supply-side substitution) behaviour in response to a hypothetical increase in the price of a product above the competitive level (taken to be in the range of 5-10%). This is to determine whether customers have the ability and incentive to switch to an alternate product in response to a SSNIP (5-10%). If they can, these alternative products are included in the same market as the product under consideration.

When assessing demand-side substitutability, the question is whether the price increases provoke a sufficient number of customers to switch to alternative products offered by any existing supplier such that it would make the hypothetical price increase unprofitable. If sufficient subscribers would switch to the alternate product thereby making the price increase unprofitable, then the alternative product is included in the relevant product market.

For supply-side substitutability, the SSNIP test assesses whether the price increase could provoke an existing operator to switch production capacity and start supplying the service or lead a new entrant to do so. Such supply-side substitution would only constitute an effective constraint were it to make the price increase unprofitable for the hypothetical monopolist. In this case, the product offered by the other supplier is included in the relevant product market.

The SSNIP test is carried out for any given number of alternative products, which by their characteristics, prices and intended use, may constitute an effective substitute to the product in question. If switching to these alternative products is sufficient to also render the SSNIP unprofitable, then these are also included in the definition of the relevant product market.

While such economic tests can usefully be employed to examine demand-side and supply-side substitution possibilities, it is also important to ensure that the approach to market definition is pragmatic and exhibits commercial common-sense. Given that conducting a SSNIP test formally is often not possible (including in this instance, given the lack of quantitative information on potential switching), URCA has examined in this event the likely response of consumers and producers to a price increase by examining the four factors listed in Section 3.1 of ECS 20/2011 for product market definition analysis, namely:

- evidence of previous substitution;
- consumer preferences;
- barriers and switching costs; and
- quantitative studies (including surveys, studies of other markets).

When determining the relevant product market, it is also important to assess the relevant customer market dimension. In the context of retail communications services, this commonly requires assessing the need to define separate markets for residential and business offerings. This, again, is undertaken based on a review of the product characteristics and the demand and supply side substitutability. For example, if a business customer could purchase either the residential or business product and, given their specifications, would consider them as substitutes, these two customer segments could be considered as part of the same product market. Similarly, the two products are likely to be supply-side substitutes, if a provider of residential services could quickly switch, following a SNIPP, to also provide business services and vice versa (for example, since both products are delivered based on similar infrastructures and distribution channels).

Geographic Market Definition

The geographic market is defined with respect to the scope of service within a defined region or territory, within which competitive conditions are sufficiently homogenous. The relevant geographic market considers the degree to which demand/supply-side substitutes for products vary by geography.

The geographic boundaries are considered within the SSNIP test and the reach of any demand and/or supply-side substitutes identified. The test is applied on a product-by-product basis, meaning if particular products are offered in different geographic areas, the product market definition may vary by geography.

There are also instances where the geographic market coincides with the territory that the licensees are licensed to operate their networks or provide their service.

In delineating the geographic boundary of the relevant market, URCA has supplemented the SSNIP tests (demand/supply-side substitution) with the listed criteria below to further inform and refine the geographic market definition analysis:

- past evidence of consumers diverting orders to suppliers in other areas;
- basic demand characteristics;
- barriers to switching; and
- views of third parties.

Stage 2: Competition Assessment

Stage 2 of the framework seeks to identify licensees that have SMP in the defined market(s), if any. Under section 39(1) of the Comms Act, a licensee is an SMP licensee if the licensee,

> *"... individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers."*

The initial starting point for SMP assessment in a defined market would therefore be "*the licensee's market share.*"[15] Although the Comms Act does not specify a market share threshold for SMP, URCA in ECS 20/2011 (Section 3.2, p.6) has established presumptions of dominance, wherein:

> *"1. a licensee with less than 40% market share will not generally be presumed to have SMP; and*
> *2. a licensee with a market share of 40% and above may be presumed to be an SMP licensee."*

[15] Section 39(3)(a) of the Comms Act.

As market share is an imperfect proxy for SMP, the Comms Act dictates that in addition to *"the licensee's market share"*, URCA must also consider the criteria listed in sections 39(3)(b), (c), (d) and (e) of the Comms Act:

> *"(b) the licensee's ability to influence market conditions;*
> *(c) the licensee's access to financial resources;*
> *(d) the licensee's experience in providing products to the market; and*
> *(e) any other criteria considered relevant by URCA".*

A list of the other factors or criteria URCA may consider when assessing market power can be found in Section 3.2 (p.6 and 7) of ECS 20/2011. Given the characteristics of the markets under consideration and their evolution since 2009, the most important factors for this assessment are listed below with a brief description:[16]

- **Barriers to Entry**
  The ease with which potential competitors may enter the relevant market and compete effectively against established operators may prevent licensees from raising prices above competitive levels. In electronic communications, entry is very frequently restricted by the availability of licenses to potential entrants to facilitate these entrants competing against the incumbent. But even in markets in which entry is not barred by legal restrictive arrangements, there may be economic and strategic barriers which deter entry or make entry unfeasible. Economic barriers to entry may be derived from incumbency advantage, for example customer inertia, the large sunk cost to establish electronic communications networks, cost of switching from the incumbent operator to a competing operator, uncertainty of a new entrant's service quality, and unfair access by competitors to the electronic communications networks operated by an incumbent operator. Incumbency advantages also arise through control over essential network components. In some countries the finite nature of the radio frequency spectrum imposes a restriction on the number of operators in the cellular mobile telephony market and other wireless technologies. Strategic barriers of existing market players, as manifested through unfair pricing behaviors (e.g., predatory pricing, price squeezing, cross-subsidization and price discrimination) or through non-price behaviors (increased investment, promotion and distribution) can deter market entry.

[16] The full list of criteria is set out in Table 3 (Competition Assessment (Step 2)) in Section 3.2.2 below. URCA notes that most of the factors listed in Table 3 which are not set out above, result in barriers to entry and expansion. For example, if an operator controls Infrastructure which is not easily duplicated, this is likely to represent a barrier to entry for potential new entrants. Furthermore, if there are only a limited number of active competitors within a market, this could be driven by existing barriers to entry or expansion.

- **Barriers and Switching Costs**
  These refer to the extent to which there are barriers or costs associated with diverting demand to companies located in other areas or which prevent similar products/services from being considered effective substitutes. These may include regulatory (e.g., licensing for particular territories or absence of measures, such as number portability or indirect access), technical barriers (such as the reach or footprint of particular networks) and physical barriers (such as between islands). Consumers may also incur switching costs associated with changing from one network supplier to another (for example, additional equipment or upgrade costs). This can also reduce switching.

- **Barriers to Expansion**
  Active competition is often greater where there are lower barriers to growth and expansion. While growth and expansion is easier to be achieved by licensees in embryonic or growth markets, it might be inhibited in mature, saturated markets, where customer are locked into an existing licensee and have to be induced to switch. The higher the barriers to entry the more significant barriers to expansion will be in assessing potential competition as higher entry barriers largely limit competition to existing market participants.

Within ECS 20/2011, it is stated that where URCA makes "... *a presumption of SMP in respect of a licensee in a market, the licensee may by way of representations to URCA's consultation rebut the presumption by demonstrating that it is not in a position of economic strength to behave to an appreciable extent independently of other licensees, consumers or subscribers*."

Stage 3: Remedy Design

The third and final stage involves deciding on the SMP measures, if any, that should be imposed on SMP licensees to remedy any potential effects of SMP where there is a strong likelihood of an abuse by the SMP operator of its dominant position, absent *ex-ante* regulation.[17] URCA notes that best practice, including in the EU regulatory framework[18], suggests that the need for *ex-ante* intervention should be

[17] Absent a determination that one or more operators have SMP in any of the defined markets, URCA would not employ the procedures and criteria set out in the third stage.

[18] Dated 17 December 2007 (2007/879/EC)

based on three criteria. Where at least one of these criteria is not met, regulatory authorities should not impose *ex-ante* regulation. The three criteria are that:

1. the market is characterized by significant and non-transitory barrier to entry;
2. the market does not tend towards effective competition; and
3. *ex-post* competition law would be unsuitable for dealing with any problems that emerge (for example, because it may require frequent intervention).

Whilst the three criteria test provides a helpful framework to ensure that *ex-ante* remedies are targeted URCA notes that, in practice, the first two criteria are commonly covered in the competition assessment (i.e., Stage 2). In particular, as set out in Section 3.2.1 above, the existence of barriers to entry constitutes one of the market characteristics assessed as part of competition. Further, a best practice implementation of a market review requires not only assessing the competition dynamics at the time of the review, but to also take into account any expected changes to the level of competition within the market in the foreseeable future (i.e., commonly interpreted as within the next 12-24 months). Given this, in URCA's view, once a licensee has been found to have SMP, the three criteria test primarily requires an assessment on whether *ex-post* competition law would be sufficient.

Once the need for *ex-ante* regulation is confirmed, any regulatory obligations must be:

- <u>targeted and efficient</u> (i.e., they should represent the least intrusive way of addressing a competitive concern identified);
- <u>proportionate</u> (i.e., the resulting regulatory burden on the SMP operator should not outweigh the benefits from remedying the competition concern); and
- <u>transparent</u>, <u>fair</u> and <u>non-discriminatory</u>.

This means that where URCA believes that market forces alone are unlikely to achieve its policy objectives within the referenced timeframe, URCA may introduce regulatory requirements, having due regard to the costs and implications for affected parties.

Prior to imposing remedies under section 40(1) of the Comms Act, URCA must follow the procedures specified in section 5 of the Comms Act.

3.2.2 Summary Overview

Table 3 below summarizes the criteria URCA has applied in each of the three stages of the market review process discussed above.

Table 3: Overview of Market Review Process

Stages of Market Review Process	Criteria assessed in each Stage of the Market Review Process
	Relevant Criteria for Product Market Definition:

Market Definition (Step 1)	• Evidence of (demand-side and/or supply side) substitution between products • Consumer preferences • Barriers and switching costs • Quantitative studies (including surveys, studies of other markets)
	Relevant Criteria for Geographic Market Definition: • Past evidence of consumers diverting orders to suppliers in other areas; • Basic demand characteristics; • Network coverage; • Barriers to switching; and • Views of third parties.
Competition Assessment (Step 2)	**Criteria for Assessing (single) SMP in each defined market**: • The licensee's market share • The licensee's ability to influence market conditions • The licensee's access to financial resources • The licensee's experience in providing products to the market • Barriers to entry and expansion • Number of active competitors • Countervailing buyer power (CBP) • Prices and profitability • Vertical relationships • Economies of scale • Overall size of the undertaking • Control of infrastructure not easily duplicated • Technology advantages or superiority • Highly developed distribution and sales network • Product/services diversification •
Remedy design (Step 3)	*Ex-ante* regulatory measures must be appropriate, efficient and proportionate to their purpose, introduce in a transparent, fair and non-discriminatory manner and URCA must have due regard to the costs and implications for affected parties.

The Framework for Market Review and Assessment as summarized above and used in this Preliminary Determination is consistent with section 39 of the Comms Act and international best practice as utilized by regulators and competition authorities elsewhere, including the European Commission and national regulatory authorities of the EU and regional jurisdictions.[19]

[19] Jamaica (OUR), Trinidad & Tobago (TATT), and British Virgin Islands (TRC).

4 Retail Fixed Voice Services

This Section sets out URCA's reviews of retail voice services provided at a fixed location ("fixed voice services" hereafter) in The Bahamas, covering the first two stages of a market review discussed in Section 3.2 (i.e., market definition and competition assessment), with the third stage (i.e., SMP remedies) being discussed in Section 7. .

4.1 Market Review Stage 1 - Market Definition

Fixed voice services can be delivered via several network technologies. In The Bahamas there are currently four main network technologies that have been deployed:

- a copper (PSTN) and/or fiber-optic (NGN) based network operated by BTC;[20]
- a coaxial cable network operated by CBL;[21] and
- a fixed-wireless network operated by SRG/CBL.

Fixed voice services include both access (i.e., the fixed line installed in a premise that allows the customer to make and receive calls) and call services (i.e., the outgoing calls from a fixed line). The latter can further be differentiated by call destination (i.e., local calls, domestic long distance calls to other fixed and mobile lines and international calls). Fixed voice services may further be differentiated by customer segments, in particular between residential and business customers. **Table 4** below sets out selected fixed voice offerings currently available to residential customers in The Bahamas.

[20] BTC operates a copper access network and a NGN (fibre-optic) transmission network in The Bahamas. URCA understands that BTC has also deployed some fibre within its access network.

[21] CBL operates a coaxial cable access network and fibre-optic core transmission network in The Bahamas.

Table 4: Selected Residential Fixed Voice Offerings

	BTC – Home Phone[22]		CBL – REVOICE			SRG/CBL - OnePhone		
	Basic	Plus	Clear	Crystal	Roar	Basic	Value	Complete
Product features								
Fixed access	Included	n/a	Included	Included	Included	Included	Included	Included
Local calls	Unmetered	n/a	Unmetered	Unmetered	Unmetered	Option for unlimited local calls to BTC lines for $9.95/month		
Long distance calls	$0.18/min	300mins anytime / Unlimited off-peak calls /unlimited calls[23]	$0.17/min	600mins anytime[24]	3000mins anytime[25]	Option to add 500mins to Family Islands for $29.95/month		250mins to Family Islands, USA, Canada & selected Caribbean countries
International calls	$0.47 - $0.85/min		$0.17 - $0.99/min			500mins to USA, Canada & Europe	Unlimited calls to USA, Canada & Europe	
Other calls	Free calls to emergency services and automated ancillary services (weather by phone & time of day); 3 free calls per month to directory enquiry (DQ) services; operator-assisted calls		Free calls to emergency services; DQ calls charged at $0.50/min for the 1st minute and $0.25/min thereafter; Calls to BTC's automated ancillary services (weather by phone & time of day) charged			Free calls to emergency services; DQ calls charged at $0.50 for 1st minute and $0.25/min thereafter		
Other features	Calling features $2.00 - $5.00/month	Choice of 2 calling feature under the "Unlimited Nights & Weekends" and "Unlimited Anytime"	18 calling features included	18 calling features included	18 calling features included	Several calling features included	Several calling features included	Several calling features included
Monthly charge	$16.25[26]	$5.74 / $12.74 / $18.74	$16.99	$26.99	$34.99	$19.95	$34.95	$29.95

[22] BTC further offers a 20% discount on its BASIC monthly rental charge to senior citizens.
[23] Bundled international calls to USA, UK and Canada only.
[24] Bundled international calls to USA, Canada and Europe only.
[25] Bundled international calls to USA, Canada and Europe only.
[26] Includes a $1.25/month rental charge for a handset.

Source: Operator websites

In addition to delivering fixed voice services via their own network infrastructure, service providers can provide retail voice services by gaining access to one of the existing fixed networks discussed above (either on commercial or regulated terms). The service provider could then offer fixed access and call services or fixed call services only (for example, based on two-stage dialing services offered via pre-paid calling cards). In The Bahamas there is currently no regulated access to fixed networks. As such, any potential entrant would have to negotiate a commercial agreement with an existing fixed network operator in order to offer fixed voice services.

URCA notes that there are also alternative means of providing retail voice services from a fixed location based on voice over IP (VOIP) technology. These services may constitute a substitute to traditional fixed voice services and are considered as such within the market definition process. There are also other potential substitutes to consider in the context of defining the market for fixed voice services, in particular: call services from payphones and mobile voice services.

Given the above, there are several considerations to be made when defining the relevant market and assessing the competitive dynamics of the market for retail fixed voice services. These are as follows:

- The extent to which individual fixed voice services may constitute separate markets;
- The extent to which services provided to residential and business customers form distinct markets;
- The available substitutes for fixed voice services (i.e., the scope of the product market); and
- The relevant geographic market (i.e., the need to consider sub-national markets).

URCA considers each of these issues in turn below.

4.1.1 Are individual Fixed Voice Services in the same market?

In theory, each fixed voice service could be considered separately. Whilst these services may constitute supply-side substitutes (i.e., a fixed network operator offering local call services for example, will typically also be able to provide, at relatively low cost, long distance calls, as both services can be delivered over the same network infrastructure), they are not demand-side substitutes for one another. That is, in the event of a SSNIP for a long distance call, a customer cannot substitute that for a local call and still reach the same customer).

However, there are practical considerations which may support a less granular product market definition. In particular, it is important to consider the fixed voice providers, the current service offerings and the resulting competitive dynamics within the market. If, for example, all fixed voice service providers offer the same range of fixed voice services at similar prices, there may be limited differences in the competitive dynamics on the individual service level vis-à-vis the overall fixed voice service level. Further, the presence and take-up of bundled product offerings (for example, a retail product offer containing fixed access and local call services) may justify a more aggregate product market definition and subsequent competition assessment. As such, URCA proposes to define a single product market for all fixed voice services, unless the available evidence on switching, relative pricing etc. suggests that there is a very clear difference in the breadth of substitutes between two or more different products and defining a more granular market would affect the SMP assessment.

Having reviewed the current service offerings and dynamics in the market for retail fixed voice services in The Bahamas, URCA has come to the preliminary view that it could be appropriate to consider all fixed voice services jointly within a single product market. This is due to the following considerations.

- Analyzing local call services jointly with fixed access services (rather than as separate products markets) is motivated by both services continuing to be offered as a product bundle.[27]
- Analyzing national (i.e. long distance and other calls[28]) and international call services jointly (rather than as separate products markets) is in line with the previous market review and the current degree of competition within both services. This is further in line with current product offerings, as both BTC and CBL are now offering domestic long distance and selected international calls as part of a product bundle.[29]
- With the exception of two-stage dialing services and payphone services, fixed access and call services are offered jointly (i.e., BTC's long distance and international call service bundles are only available to BTC's fixed line customers. Further, most of CBL's REVOICE packages include long distance and international call minutes). This lack of indirect access services means that competition tends to focus on the entire customer relationship, rather than on offering individual call services to a customer. Indeed, URCA understands from previous submissions made by BTC and CBL that pre-pay calling cards (i.e., two-stage dialing services) and payphones are predominantly used by customers who do not have a fixed access line at home.

[27] For example, both BTC and CBL offer unmetered local calls as part of their retail fixed access products.
[28] This includes all fixed voice calls which are not terminating on-island or at an international destination (such as, off-island calls, fixed-to-mobile calls, calls to emergency services, calls to directory enquiry services, calls to automated ancillary services, and operator assisted services).
[29] BTCs has recently launched its HomePhone product bundle which offers a number of domestic long distance and international call minutes for a monthly charge. Within CBL's REVOICE product range, users can choose between fixed access and local call bundles only and offerings within also include domestic long distance and international calls.

- All fixed voice services are delivered via the same network infrastructure. As such, they are **supply side substitutes** (i.e., in the event of a SSNIP by a hypothetical monopolist of local call services, a supplier of long distance call services could switch to the supply of local call services and vice versa).

Thus, in conclusion, while URCA recognizes that these services are different products and not demand-side substitutes for each other, it believes that the market structure and competitive dynamics for these services are sufficiently similar in The Bahamas to consider them as part of the same product market. In particular, all services are offered by the same service providers and, based on URCA's analysis to date, their relative share of each market is comparable across the services. Also, given URCA's findings in 2010 and the limited market developments since then, URCA considers it unlikely that a more granular product market definition would lead to different results. As such, it has assessed all fixed voice services as part of a single product market.

4.1.2 Do services offered to Residential and Business Customers form part of the same Market?

As part of the market definition exercise, it is also important to assess the extent to which services offered to different customer groups form part of the same economic market. For the fixed access and call market, the main customer segments to consider are business and residential customers. Within the business customer segment, further segmentation may be possible into small, medium and large businesses. This is because the demand for fixed access and call services is likely to vary by size of the business. In particular:

- Large corporations tend to rely on leased lines and/or private circuits for their voice and data solutions. These services are covered separately in URCA's consideration of the business connectivity services market (see Section 5.2 below).

- Small businesses (i.e., small offices and home offices) may have needs that are similar to a residential customer and could potentially be able to buy residential products, but may be constrained by the service provider's terms and conditions for residential services.

- Other sized businesses may have to rely on products that are classified as business products as residential products may not meet their requirements (such as reliability, demand for conference bridges, automated caller greetings and/or power-back up), whilst there overall demand is too small for leased lines or private circuits.

Both BTC and CBL currently offer separate fixed voice packages to residential and business customers. For example:

- BTC's Business LandLine is charged at $36.00 per month (plus $1.25 per month for renting a handset) and URCA understands that this product offers similar call rates as for BTC's BASIC residential packages (i.e., unmetered local calls and the same (out of bundle) rates for long distance and international calls). This compares a monthly charge of $16.25 for BTC's BASIC residential package (see **Table 4** above).

- CBL's REVOICE Small line product is charged at $29.99 per month with unlimited local calling and unlimited on-net long distance calling. CBL further offers web based call feature management, 24/7 support service backed by a dedicated, local account team, power backup, reliable service and high call quality.[30] This compares a monthly charge of $16.99 for CBL's REVOICE Clear residential package (see **Table 4** above).

URCA understands that both products above are targeted at small and medium sized businesses, with more tailor-made voice and data solutions being offered to larger businesses.

However, these differences do not necessarily mean that it is appropriate to define separate markets for business and residential services. Rather, markets can be defined separately if there is no demand or supply-side substitution between these segments.

- URCA currently does not hold any information on customer switching behaviour for these services. In the absence of switching data, it is not clear if **demand-side substitutability** exists. It could be argued that the features of the two types of product are not distinctive enough to inhibit switching should there be a price increase, especially for small businesses. However, business customer may struggle to get residential contracts because providers have visibility of whether the customer is a business or a residential subscriber when installing the line. Indeed, the fact that licensees have been able to maintain price differences, suggests that such substitution (business customers switching to a residential package) is not occurring.

- The two products are likely to be **supply-side substitutes**, as similar inputs are used to deliver both business and residential services. So, in the event of a SSNIP by a hypothetical monopolist of residential access services, a supplier of business services could switch to the supply of residential services and vice versa. For example, this was the reasoning followed by the European Commission within its 2007 Recommendation to define a single product market for residential and business customers.[31]

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[30] http://www.cablebahamas.com/?p=n&sectid=2&catid=70

[31] See page 22 at: https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sec_2007_1483_2_0.pdf

Given the limited data available and the existence of supply-side substitutability between the business and residential products, URCA preliminarily concludes it is reasonable to define a single market for business and residential fixed voice services.

As part of its review, URCA has analysed the impact of defining separate product markets for residential and business fixed access services on its competition assessment for this market. This has revealed that the decision on whether to define separate or a single product market for these customer segments has no bearing on URCA's SMP findings set out in Section 4.2 below.

4.1.3 Defining the Product Market for Fixed Voice Services

At the time of the 2009/10 market review, fixed voice services were found to have no effective substitutes. Below, URCA assesses if there has been a change in the potential substitutability of the products considered in the previous review. This is undertaken, in turn, for mobile voice service, Voice over IP (VOIP) services, two-stage dialing services and payphones.

Substitution between Fixed Voice and Mobile Voice Services

When assessing the potential substitutability between fixed voice and mobile voice services, URCA has started from its previous findings in 2009/10 that these services were not in the same product market and then assessed whether there has been any significant change in the services since then which would require it to change its position on these services. When doing so, URCA has taken into account demand side and supply side factors.

- **Product characteristics**. While mobile voice services allow customers to make and receive calls in a similar way as fixed voice services, at the time, URCA found that there were significant differences in the product offerings. In particular, there were no unmetered local calls offered as part of mobile voice services in The Bahamas, mobile calls had, on average, a lower quality of service, mobile voice customers do not get a geographic number, and are not entered automatically to the directory enquiries database. URCA understands that all of these differences in product characteristics remain in place to date.

- **Availability and take-up**. Both fixed and mobile voice services are available throughout The Bahamas. Making a call from a mobile requires a customer to incur some upfront cost to acquire the handset and potential further one-off charges from BTC (For example, as set out in **Table 5** below, the installation charges for mobile post-paid plans are $115-$225 with mobile handsets costing $15-$700. This compares to an installation charge of $50 for residential customers and a $1.25/month rental charge for a fixed handset). Whilst this could theoretically constrain the ability for users to substitute to mobile voice services in response to a SNIPP by BTC on its fixed call services, URCA considers this constraint to be limited given the high take-up of mobile services in The Bahamas. In particular, a significant share of total mobile connections in The

Bahamas remain pre-paid connections (i.e., URCA understands that in 2012 pre-paid connections represented approximately **[●confidential]** of total mobile connections), for which only a $15.00 set-up charge and the cost of a mobile handset applies. Further, as the mobile penetration rate is estimated to be around 86% of total population in 2012, URCA considers it reasonable to assume that a significant share of the population would already have a mobile handset and thus, would not necessarily face all the upfront costs in order make a call from a mobile. This further increases their ability to switch between fixed and mobile voice services.

- **Prices**. When reviewing the prices of mobile and fixed voices, it is important to differentiate between access and call related charges.

  - **Access prices**. When considering mobile access services as a potential alternative to fixed access services, it is important to evaluate the prices for both pre-paid and post-paid mobile voice offers.

    - BTC's pre-paid (Pay Per Use) offer represents a lower cost option to obtain the ability to make or receive calls than fixed line services. In particular, there is a $15.00 set-up charge and prepaid users need to top-up their account every 90 days to avoid deactivation of the account (with the minimum pre-paid card value being $5.00). This compares to a monthly line rental charge of $15.00 and an activation charge of up to $50 for BTC's fixed access service. Also, BTC offers pre-paid mobile handsets from $29, compared to a monthly rental charge of $1.25 for fixed phones. This is illustrated in **Table 5** below.

    - Taking into account set-up costs and monthly charges (but ignoring handset costs), mobile post-paid services are similarly priced to fixed line services. For example, given the set-up costs ($115), monthly subscription charges ($10), the average charge for BTC's lowest cost post-paid plan (i.e., Postpaid Talk PAYG) is approximately $20 per month over the 12 month contract length. This compares to a monthly cost of fixed access services of $16.40, based on a line rental charge of $15.00 per month and amortising the activation charge of $50 over a three year period (see **Table 5** below).

  As such, purely based on the relative prices, it could be reasonable for fixed access customers to switch to mobile access services in the event of a 5-10% SSNIP in fixed access services. However, the other factors discussed below (i.e., the unmetered local calls from fixed services and limited switching evidence) suggest that any substitutability is likely to be limited.

- **Call prices**. In 2009/10, URCA concluded that the prevailing differences in call prices for mobile services, relative to fixed call services, limited the substitutability between the two services. Since then, there have been the following main price developments:

  - The prices for national calls from mobiles have been reduced and are now more in line with those charged for long distance calls from a BTC fixed line.[32] However, the prices for international calls from a mobile remain significantly higher than the equivalent charge faced by BTC's fixed line customers.[33]

  - The prices of residential fixed calls have also implicitly fallen. This is due to CBL entering the market and offering access and call bundles and BTC's recent launch of its long-distance and international call bundles (HomePhone Plus). Subject to the relevant plan and actual monthly usage, these bundles may effectively reduce the per-minute charge for long distance and international calls to less than those available to mobile customers. For example, BTC's cheapest HomePhone bundle 'Talk 300' offers 300 anytime minutes for national calls or calls to the USA, UK and Canada at a monthly price of $5.74 (implying an effective price per minute of as low as $0.05 – subject to half the bundled minutes being used[34]). A similar unit price can be obtained under CBL's REVOICE Crystal offer which includes 600 minutes to national and selected international destinations for an incremental price of $10 relative to the REVOICE Clear package (which does not include any bundled national or international calls). This is illustrated in **Table 5** below.

  Given the prevailing price differential between fixed call services and mobile, URCA considers in unlikely that customers will, going forward, switch in sufficient numbers to make a SSNIP unprofitable, to mobile call services in the event of a 5-10% SSNIP in fixed call services from BTC.

[32] Previously, national calls from a mobile attracted an airtime charge ($0.10 - $0.33 per min, depending on the time of the call the call plan) plus a long distance call charge ($0.18 per minute - i.e., equivalent to the long distance call charge from a fixed line). In late 2011, the latter charge was dropped.

[33] When making an international call from a mobile, users are charged an airtime charge (see previous footnote) plus the international call rate charged to BTC's fixed line customers.

[34] URCA does not hold information on the average usage of BTC and/or CBL fixed voice customers. However, URCA notes that its assumption of customers using, on average, half of the bundled minutes per month is consistent with information provided by BTC as part of its recent submissions under the Retail Pricing Rules.

Table 5: High-level Comparison of Fixed and Mobile Voice Prices

	Fixed voice services		Mobile voice services	
	BTC - Home Phone	CBL – REVOICE	Postpaid	Prepaid
One-off set-up cost	**$50.00**	**$40.00**	**$114.99-$215.00**	**$15.00**
Handset	**$1.25/month**	n/a	**$14.00 - $699.99**	**$29.00 - $899.00**
Monthly line rental	**$15.00**	**$16.99**	**$10.00 - $139.99**	Free
Local calls	**Unmetered**	**Unmetered**	**$0.10 - $0.20/min**, depending on the time of the call and the call plan	**$0.15 - $0.33/min**, depending on the time of the call
Long distance calls	**$0.18/min** or less than **$0.05/min** as part of the Home Phone Plus bundles*	**$0.17/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles*	**$0.10 - $0.20/min**, depending on the time of the call and the call plan	**$0.15 - $0.33/min**, depending on the time of the call
International calls	**$0.47 - $0.85/min** or less than **$0.05/min** for selected destinations as part of the Home Phone Plus bundles*	**$0.17 - $0.99/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles*	Airtime charge (**$0.10 - $0.20/min** – see above), plus the international call rate charged to BTC's fixed line customers (**$0.47 - $0.85/min**)	Airtime charge (**$0.15 - $0.33/min** – see above), plus the international call rate charged to BTC's fixed line customers (**$0.47 - $0.85/min**)

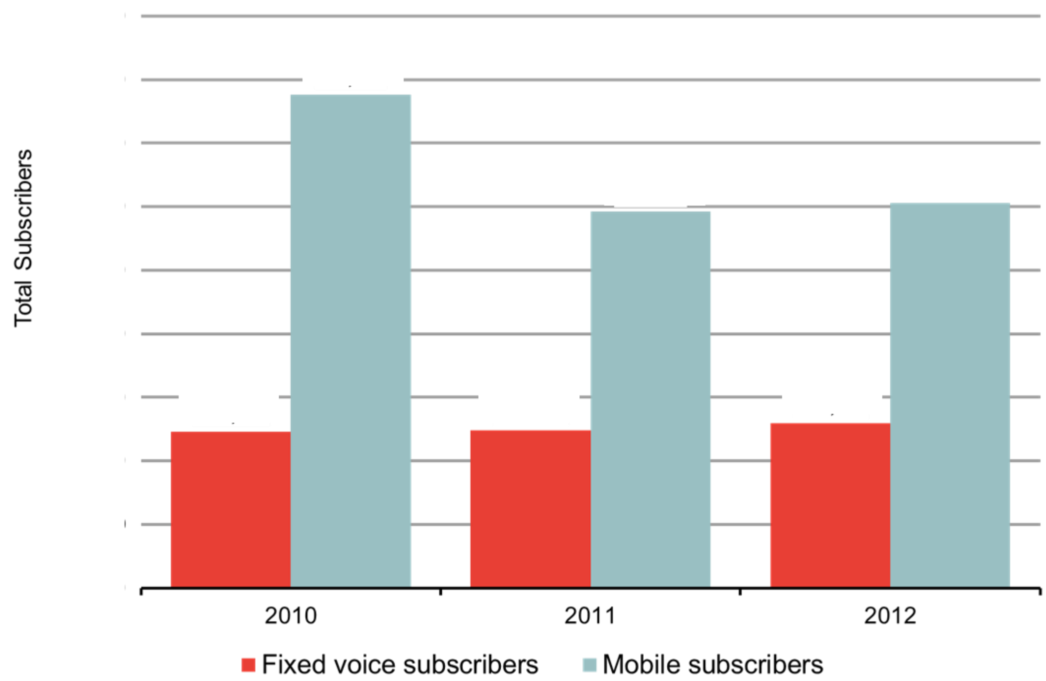
Source: Operator websites and URCA analysis
* Assumes that customers use half of the bundled call minutes each month.

- **Switching evidence - Access.** Mobile services are now widely available in The Bahamas, with mobile penetration standing at 86% of total population in 2012. Further, whilst the total numbers of fixed line subscribers have continued to increase between 2010 and 012, the total number of mobile connections have fallen (with a compound average growth rate of

[●confidential] and **[●confidential]** [35], respectively – see **Figure 2** below). URCA considers this as further evidence that Bahamian consumers currently do not consider fixed and mobile voice services as substitutes, but more as complementary services. This is partly linked to the unmetered local calls which are associated with fixed lines services and the demand for customers to keep fixed line access services in order to access broadband services. Whilst BTC's DSL products allow a user to purchase a DSL services from BTC without having to also purchase a fixed voice service, its pricing of naked DSL vis-a-vis its DSL plus fixed line services (i.e., $29.99 or $39.99 for naked DSL vs. $29.99 or $34.99 for standard DSL), means there is limited incentive for consumers to switch to a naked DSL service. This is particularly the case given the additional benefits of unmetered local call associated with the fixed voice service. As such, any customers who wish to subscribe to BTC's DSL services are also likely to obtain their fixed line services from BTC.

[35] URCA notes that the downward trend in total mobile connections is driven by prepaid connections. Postpaid connections have continued to increase by a compound average growth rate of **[●Confidential]** between 2010 and 2011. URCA notes that the reduction on prepaid connections could be caused by various 'definitional' factors. However, as it does not affect its conclusions on this matter, URCA has not investigated this further in this context.

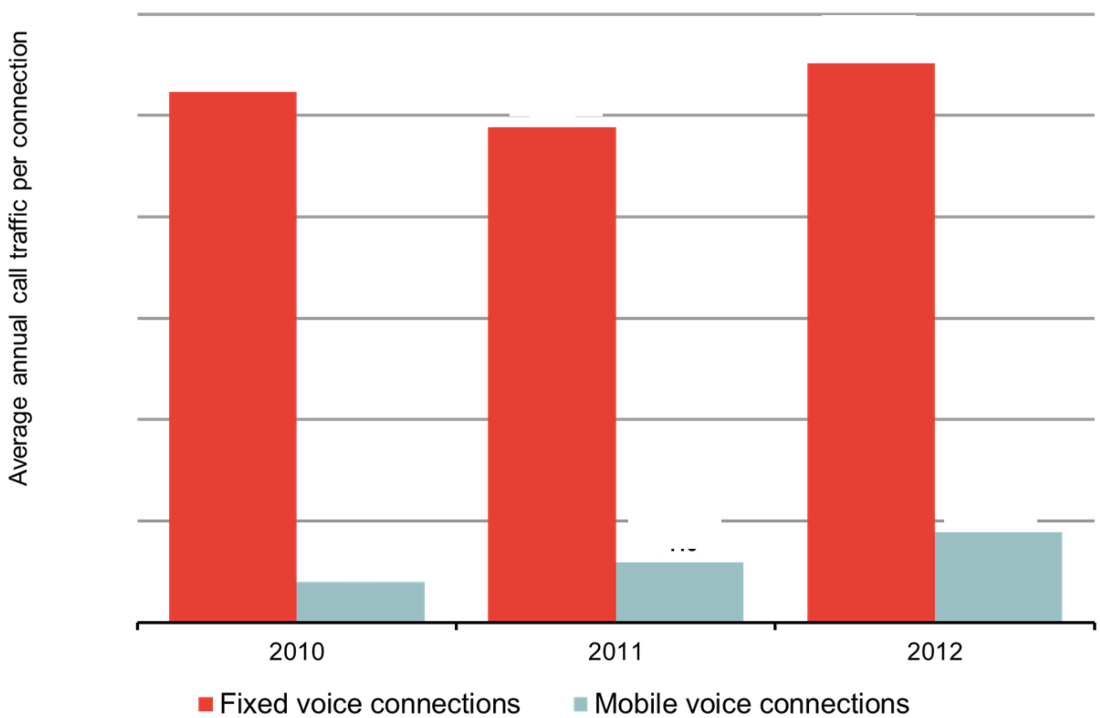
Figure 2: Fixed Voice and Mobile Subscriber Trends, 2010-12



Source: URCA analysis based on operator data

- **Switching evidence – Calls.** The above also holds for domestic long distance and international call traffic from fixed and mobile phones. Both the average annual long distance and international call traffic per fixed voice and mobile subscriber have continued to increase between 2010 and 2012 (with a compound average growth rate of 2.7% and 49.1%, respectively – see **Figure 3** below). URCA considers this as further evidence that Bahamian consumers currently do not consider these call service as substitutes.

Figure 3: Average Annual long Distance and International Call Traffic per Fixed Voice and Mobile Subscriber, 2010-12



Source: URCA analysis based on operator data

Despite similar availability and pricing of the access part of fixed and mobile voice services, URCA remains of the view that the prevailing price differential for making a local call from a mobile and a fixed line limits the potential substitutability of mobile voices services for fixed voice services. Fixed voice customers are unlikely to be willing to give up their fixed line service as they want to continue to be able to make local calls for free. URCA further notes the prevailing difference in the prices for other call services, illustrated in the table above. As such, URCA considers it not likely that customers would switch to mobile voice services in the event of a 5-10% SSNIP in fixed voice services. URCA, thus, continues to believe that mobile voice services are unlikely to present an effective substitute for fixed voice services, and so, will not constrain BTC's ability to profitably raise its prices by 5-10%. Given this, URCA is of the preliminary view that fixed and mobile voice services do not constitute the same product market.

Substitution between Fixed Voice and VoIP Services

There are generally two types of VoIP services currently available in The Bahamas: [36]

- **"Unmanaged" VoIP services**. These VoIP services are offered by international providers (such as Skype or Viber). Users require an internet connection and a personal computer, laptop, tablet or mobile smart phone in order to access the VoIP service which is provided via an over-the-top software solution from the service provider.

- **"Managed" VoIP services.** These VoIP services are offered by licensed operators in The Bahamas (i.e., BTC and CBL/SRG). Within managed VoIP, there are two categories of products. The first category is CBL's voice service (REVOICE) which is provided over its cable network. The user does not require a separate broadband connection or software application. Indeed, this service offers a very similar user experience as PSTN services. This category also includes the VoIP services offered by BTC (ViBe) and by SRG (IndiGO's Onephone) via their respective DSL and fixed wireless networks. These VoIP products also require no software application; however, a pre-existing broadband connection is needed. BTC's ViBe is also available from a mobile phone (i.e., ViBe on da go).

When assessing the potential substitutability between fixed voice and VoIP services, URCA has started from its previous findings in 2009/10 that both services were not found to be in the same product market and then assessed whether there has been any significant change in the market since then which would require it to change its position on these services. When doing so, URCA has again taken into account demand side and supply side factors.

URCA considers unmanaged and the two types of managed VoIP services to have very distinct product characteristics which impact their substitutability for fixed access and local call services. Given this, URCA has reviewed each group separately.

- **Unmanaged VoIP services**. While unmanaged VoIP services have certain **features** that are similar to fixed voice services (such as the ability to make and receive calls at comparable prices

[36] URCA notes that there are also 'hybrid' VoIP services (such as those offered by Vonage), which do not require the use of a laptop or smartphone (similar to REVOICE), but still require a separate broadband connections (similar to unmanaged VOIP services and OnePhone or ViBe). These services do not offer geographic number (since being provided by an international service provider), but may require an annual/monthly subscription.

or lower than those offered by fixed voice services), certain distinguishing features may mean that unmanaged VoIP is not an effective substitute for fixed voice. For instance, these services commonly need a PC or smartphone (which is switched on) to make or receive calls, they commonly have lower quality of service[37] and offer limited customer service or support. Further, unmanaged VoIP services do not provide a personal geographic number and some of the other call features offered by managed VoIP and fixed voice services, such as being able to contact emergency services, call blocking, custom call waiting, etc.

Whilst the **access** software is commonly provided free of charge and without a monthly subscription fee, the user requires a broadband connection. This implies that for those users who do not already have a broadband connection, there is an incremental cost of at least $30 per month (plus further set-up costs) for a basic broadband package from BTC or CBL. Given that BTC's residential fixed voice access product is priced at $16.25 per month (excluding any set-up charges), URCA sees price as being a barrier to switching should the price of BTC's fixed voice service increase by 5-10% (assuming that BTC's current price is at a competitive level). When excluding the broadband connection costs, unmanaged VoIP is currently cheaper than BTC's fixed access and local call product. Yet, no significant proportion of users has switched away from BTC's product. Whilst URCA has no information on current take-up or usage levels of unmanaged VoIP services, it notices that BTC's total fixed voice connections have not declined in recent years (see **Figure 2** above) and takes this as an indication that consumers do not consider these products as suitable substitutes to providing access to voice services from a fixed location. URCA sees this as an indication that consumers do not regard these services as good substitutes (but, potentially, as compliments). As such, URCA does not consider unmanaged VoIP services would render a SNIPP by BTC on its fixed access services unprofitable.

URCA has limited information on **call prices** for unmanaged VoIP services. However, comparing the calling cost from Skype (being a prominent unmanaged VoIP service provider) to those of BTC and CBL reveals similar prices for calls within The Bahamas but lower prices for most international call destinations (see **Table 6** below), especially for out-of bundle minutes. When taking into account the effective call prices for bundled minutes, BTC's and CBL's long distance call prices are lower than those of Skype, whilst international call prices being comparable, as illustrated in **Table 6**. Whilst this may increase the potential substitutability between

[37] As discussed in the 2009/10 SMP Assessment, URCA considers the main technical issues for VoIP services to be: (i) Latency (i.e., delays in packet delivery), (ii) jitter caused by variations in the delay of packet delivery (i.e., variations in the latency) and (iii) Packet loss (i.e., packets are lost during transmission or simply arrive too late to be used. Alternatively, the network actually 'drops' packets during periods of network congestion.).

unmanaged VoIP and fixed voice services, URCA considers the observed growth in average annual long distance and international call traffic per fixed voice subscriber in recent years (as set out in Figure 3 above) as an indication that Bahamian users do not regard these call services as good substitutes.

- **CBL's REVOICE service.** This service is designed to allow CBL to offer voice services and thus enable it to compete with standard (PSTN or NGN) fixed voice services. For instance, it is offered as an end-to-end voice service, with no extra broadband connection being required and there is no need for a PC, laptop or smart phone. Users are assigned a Bahamian geographic number and can contact emergency services. As such, this service offers a very similar user experience as BTC's PSTN services. Indeed, CBL markets this product as a fixed voice service.[38]

  Also, REVOICE is priced similarly ($14.99/month - $16.99/month) to BTC's fixed access product ($16.25/month) and has similar calling features (see **Table 4** above). Whilst the service requires electricity (i.e., it does work during power failures) and is only available within CBL's network coverage area (i.e., on Eleuthera, New Providence, Grand Bahama and Abaco), the similarity in user experience and price leads URCA to conclude that a hypothetical monopolist of a PSTN / NGN fixed voice service would not be able to profitably sustain a 5-10% SSNIP in a PSTN service without customers switching to CBL's REVOICE service. Thus, REVOICE and any similar service offerings should be included in the relevant market for fixed voice services.

- **SRG's Onephone and BTC's ViBe.** Both OnePhone and ViBe require a separate broadband connection. Thus, for those users who already have a broadband connection, the incremental cost of acquiring these services are comparable to those of BTC's fixed line service (i.e., both services are available from $19.95 per month which includes 500 minutes of selected international calls or unlimited calls to on-island BTC subscribers). However, in the absence of broadband, users face an additional cost of at least $30 per month for a basic broadband package. As for unmanaged VoIP services, URCA regards this as a constraint to switching should the price of BTC's product increase by 5-10%. However, given the prevailing broadband penetration rate in The Bahamas (i.e., 62% of households in 2012), only a minority of potential users would face these additional costs.

  Further, while ViBe is provided across The Bahamas, the coverage from SRG's services is limited to Grand Bahama and New Providence.

[38] http://www.cablebahamas.com/?p=n&sectid=2&catid=68

Finally, URCA understands that both BTC and CBL/SRG have recently removed their managed VoIP service offerings from their website (i.e., no new customers can acquire these services) and BTC has made statements that it is hoping that all ViBe customers will be migrating to its recently launched HomePhone fixed voice offerings.[39] Given this, and the limited number of ViBe and OnePhone subscribers (i.e., at the end of 2012, there were less than **[●confidential]** ViBe subscribers and **[●confidential]** OnePhone subscribers, which compares to circa **[●confidential]** BTC fixed voice customers), URCA does not consider these services to represent adequate substitutes should the prices of BTC's fixed voice services increase by 5-10%.

As such, URCA is of the preliminary view that these services do not form part of the same product market as BTC's fixed voice services.

[39] http://www.tribune242.com/news/2013/oct/11/btc-offers-50-price-cut-for-vibe-migration/

Table 6: High-level Comparison of Call Prices for Skype, BTC's Fixed Voice and CBL's REVOICE Service

Destination	Skype*	BTC - Home Phone	CBL - REVOICE
Bahamas	$0.17/min	**$0.18/min** or less than **$0.05/min** as part of the Home Phone Plus bundles**	**$0.17/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles**
USA	$0.04/min	**$0.47/min** or less than **$0.05/min** as part of the Home Phone Plus bundles**	**$0.17/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles**
Canada	$0.04/min	**$0.50/min** or less than **$0.05/min** as part of the Home Phone Plus bundles**	**$0.17/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles**
UK	$0.04/min	**$0.85/min** or less than **$0.05/min** as part of the Home Phone Plus bundles**	**$0.17/min** or less than **$0.03/min** for selected destinations as part of the REVOICE Crystal or Roar bundles**
Jamaica	$0.18/min	$0.66/min	$0.19-$0.29/min
Haiti	$0.34/min	$0.66/min	$0.29/min
Cuba	$0.95/min	$0.85/min	$0.99/min

Source: Operator websites and URCA analysis
* Average cost per minute based on a 3 minute call (inclusive of one-off connections charge)
** This assumes that customers use half of the bundled call minutes each month.

Consequently, URCA only considers PSTN and managed VOIP services (which do not require a separate broadband connection) to represent effective substitutes for one another and thus to form part of the relevant product market for fixed voice services**.**

<u>Substitution between Fixed Voice and Two-stage Dialing Services</u>

When assessing the potential substitutability between two-stage dialing services (i.e., commonly provided via pre-paid calling cards) and fixed voice services, URCA has taken into account demand side and supply side factors.

- **Product characteristics**. Both SRG and BTC provide pre-paid calling cards, which can then be used on any payphone, fixed line and/or mobile to make national or international calls based on a two-stage dialing process (i.e., the customer has to dial a particular telephone number or PIN code to access the service and then dial the number the customer wishes to call). However, additional charges may apply.[40] Two-stage dialing services have most of the same characteristics as BTC's fixed calling services. However, they cannot provide direct dialing, meaning that the user must use two-stage dialing by entering a PIN code before dialing the number they wish to reach. This is likely to reduce the convenience of using this service.

- **Availability/take-up**. As two-stage dialing services can be used to make calls from any fixed line, payphones or mobile phones in The Bahamas, this implies a national coverage for these services. Further, URCA understands that pre-paid calling cards (i.e., the means to two-stage dialing services) are sold throughout The Bahamas.

- **Price**. The cost of calls made using two-stage dialing services are in general lower than BTC's (out of bundle) fixed call prices by between 50% and 75%. For example, BTC's 'Talk it up' calls offer calls within The Bahamas for $0.08 per minute and calls to the UK for $0.19 per minute. This compares to a (out of bundle) charge of $0.18 and $0.85 per minute for BTC's Home Phone customers. SRG's calling cards offer call charges up to 50% lower than those for BTC's fixed line customers. However, given the recent trend towards offering access and call and long-distance and international call bundles for fixed voice services (and the resulting reduction in the effective per minute charge for long distance and international calls – as discussed above), URCA considers it less likely that customers will, going forward, switch to two-stage dialing services in the event of a 5-10% SSNIP in fixed call services from BTC.

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[40] URCA understands that when making a call from a BTC payphone with a SRG calling cards, the user incurs a $0.25 connection charge. There may also be airtime charges when using a calling card to make calls from a mobile phone.

Given the above, URCA is of the view that two-stage dialing services are not likely to present an effective substitute for BTC fixed voice services, and so, they will not constrain BTC's ability to profitably raise its prices by 5-10%. Given this, URCA is of the preliminary view that two-stage dialing services and (direct dial) fixed voice services do not constitute the same product market.

As part of its review, URCA has analysed the impact of including two-stage dialing services (in form of calling pre-paid calling cards) in the product market for fixed voice services on its competition assessment for this market. This has revealed that the decision on whether to include or exclude these services from the fixed voice product market has no bearing on URCA's SMP findings set out in Section 4.2 below.

<u>Substitution between Fixed Voice and Payphones Service</u>

Payphones services are currently provided by BTC and CBL/SRG throughout The Bahamas, with CBL/SRG having limited coverage.[41] Although payphones are available in most parts of The Bahamas, they are unlikely to be seen as conveniently located for a majority of consumers. For example, URCA understands that CBL/SRG's payphones are mainly targeted at non-residents at a few select locations such as hotels, airports, marinas, public parks, docks and shopping centres.

Payphones were not found to be an effective substitute in the previous review. At the time URCA concluded that:

- These services are impractical for business customers;
- They are inconvenient for residential customers;[42]
- They are missing important features of fixed access services (in particular, the unmetered local calls); and
- It is not easy or cheap to make DLD or ILD calls from a payphone without using a two-stage dialing services (i.e., a pre-paid calling card).[43]

[41]In 2012, BTC had 1,089 payphones installed through The Bahamas. This compares to 10 payphones installed by SRG/CBL. SRG's payhone also only operate on pre-paid calling cards (i.e., they are not operational using coins or credit cards).
[42]For example, SRG's payphones are mainly targeted at non-residents at a few select locations such as hotels, airports, marinas, docks and shopping centres.

URCA has seen no evidence to date that any of these factors have changed since its last review. As such, URCA does not repeat the analysis of substitutability in this review and finds that payphones are not an effective substitute for fixed voice services as the availability of these services are unlikely to constrain a hypothetical monopolist's ability to profitably raise its prices for fixed voice services by 5-10%.

4.1.4 The Relevant Geographic Market

The relevant geographic market considers the degree to which demand and/or supply-side substitutes for the fixed voice services varies by geography. In the absence of any such evidence on sub-national differences in product substitutability, the relevant geographic market should be defined as national.

The starting point for URCA's assessment is its previous SMP assessment in 2009/10 where the markets for fixed voice services were defined as areas where BTC has coverage, which is effectively a national market. URCA has then assessed whether there has been any significant change in the markets since the last review which would require changing its position on these services. When doing so, URCA has come to the preliminary conclusion that a national geographic market remains relevant for these services. This is based on a review of the following:

- **Demand factors**. URCA has not seen any evidence that the nature of demand for fixed voice services varies significantly at a sub-national level. While demand for fixed voice products is local in nature (i.e., a subscriber cannot move to another island if they need a residential fixed access line), BTC operates a ubiquitous fixed network nationally and therefore has the capacity to provide retail fixed voice services throughout The Bahamas.

- **Supply factors**. BTC and CBL offer fixed voice services at a uniform price and product specifications across The Bahamas. While CBL has coverage only on four islands, its market share is currently low even controlling for its geographic coverage[44], indicating that localized competition for fixed voice services has not emerged, and that competitive conditions are likely to remain relatively uniform across the country – especially as BTC is the primary provider of fixed voice services.

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[43] However, URCA recognised for low usage consumers, price is unlikely to be a significant barrier to switching as the money saved from not paying the access charge could be used to purchase a limited number of calls from a payphone.

[44] URCA understands that, in 2012, approximately **[●confidential]** of all BTC fixed line subscribers are based on the four islands where CBL also offers fixed voice services. Given this, BTC market share of total fixed access lines on those four islands is expected to be very similar to that on a national level, set out above.

Given the similarity in the competitive dynamics across different islands, URCA sees no reason for defining sub-national markets. As such, URCA has come to the preliminary view that the geographic reach of the relevant product should not be narrower than the area in which BTC has facilities to provide fixed voice services.

4.1.5 Preliminary Conclusion on Market Definition

Having regard to the analysis presented above on product and geographic market definition, URCA now put forward its preliminary position on the relevant market:

<u>Preliminary Determination</u>

URCA has preliminarily determined that the relevant market for voice services provided at a fixed location includes the following products:

- *Fixed access and call services delivered via a fixed network (i.e., currently BTC's Basic Home Phone, HomePhone Plus and Business Landline services)*
- *Fixed access and call services delivered via a cable network (i.e., currently CBL's REVOICE, Small/Medium Business and Enterprise Business services)*

The market is defined to be national in scope.

<u>Consultation questions – Market definition for fixed voice services</u>

Q1. Do you agree with URCA's approach to and definition of the product market? If not, why?

Q2. Do you agree with URCA's approach to and definition of the geographic market? If not, why?

4.2 Market Review Stage 2 – Competition Assessment

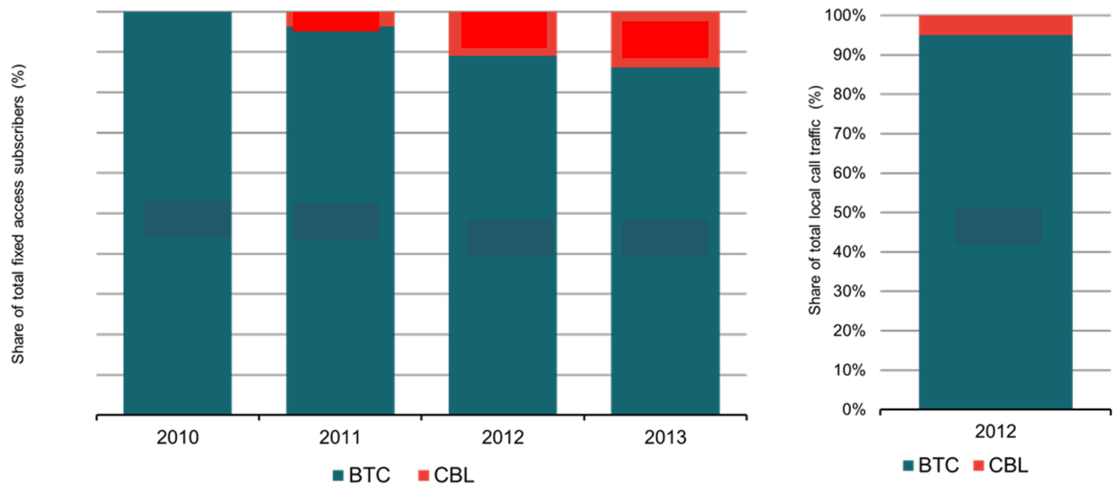
Having defined the relevant product and geographical market for retail fixed voice services, URCA now carries out the competition assessment, as outlined in Section 3.2.1 above.

<u>Licensee's Market Share</u>

As a key indicator, URCA has reviewed recent trends in market shares in the fixed voice market (as defined in the previous Section), both in terms of revenues, subscribers and call volumes.

Figure 4 below sets out BTC's and CBL's share of total fixed voice subscribers over the period 2010 to 2013 and local call traffic in 2012.[45] In 2012, BTC's subscriber market share was **[●confidential]** and its local call traffic share was **[●confidential]**.

Figure 4: Market Shares for Total Fixed Voice Subscriber and Local Call Traffic

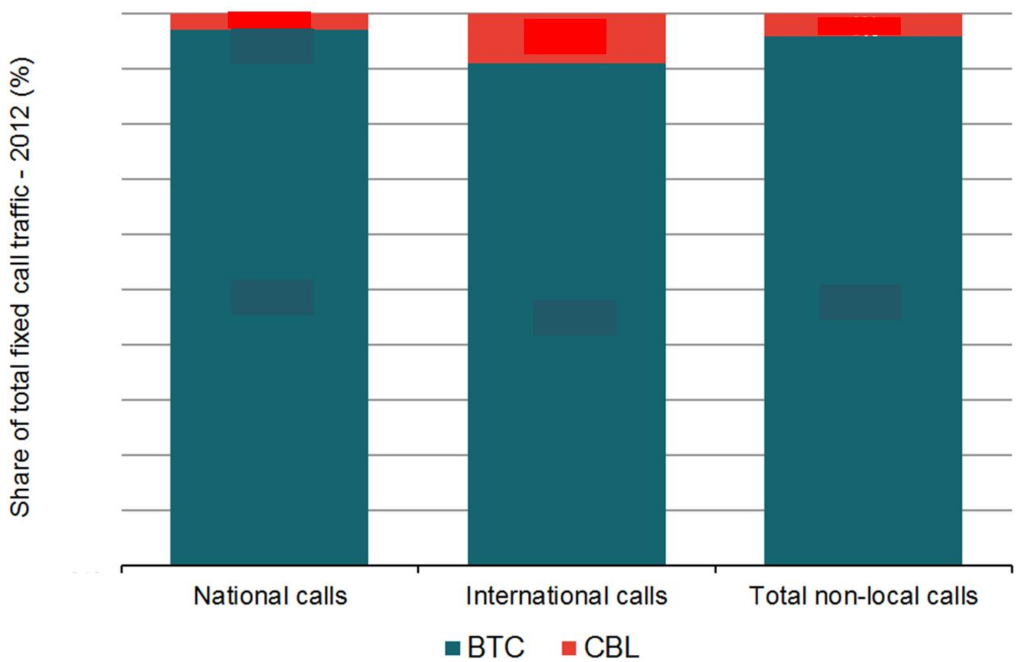


Source: URCA analysis based on operator data

The graph below sets out BTC's and CBL's share of total long distance and international call traffic for 2012.[46] In 2012, BTC's market share was **[●confidential]** and **[●confidential]**, respectively.[47]

[45] URCA does not hold traffic data for CBL pre 2012.
[46] URCA does not hold traffic data for CBL pre 2012.
[47] The CBL traffic data includes both call traffic originating from its REVOICE customers and SRG's pre-paid calling cards. As such, BTC's market share represents a conservative estimate of its position in the fixed call service market.

Figure 5: Market Shares for Total Long Distance and International Call Traffic, 2012

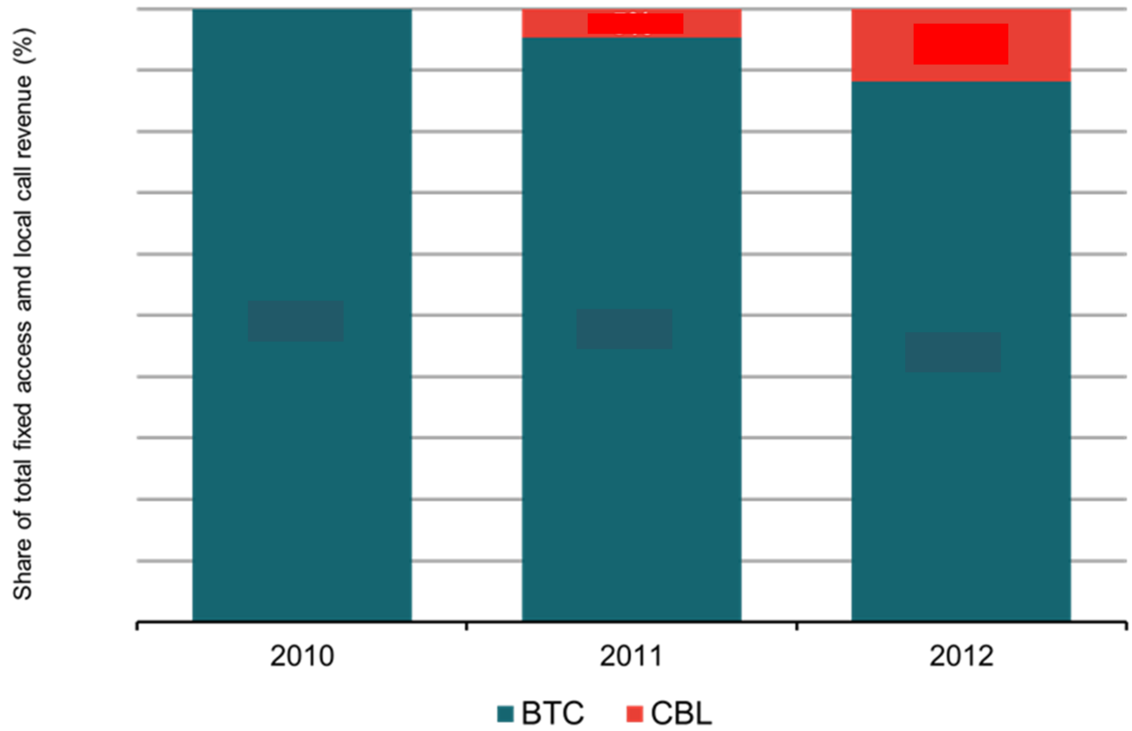


Source: URCA analysis based on operator data

The above also holds for revenue market shares, as illustrated in **Figure 6** and **Figure 7** below. BTC's share of total revenue for fixed access and local call services has fallen from 100% in 2010 to around **[●confidential]** in 2012.[48]

[48]Note, the revenue data for CBL contains total revenues for all fixed voice services. As such, BTC's market share represents a conservative estimate of its revenue share of the fixed access and local calls market.

Figure 6: Market shares for total fixed access and local call revenues, 2010-12

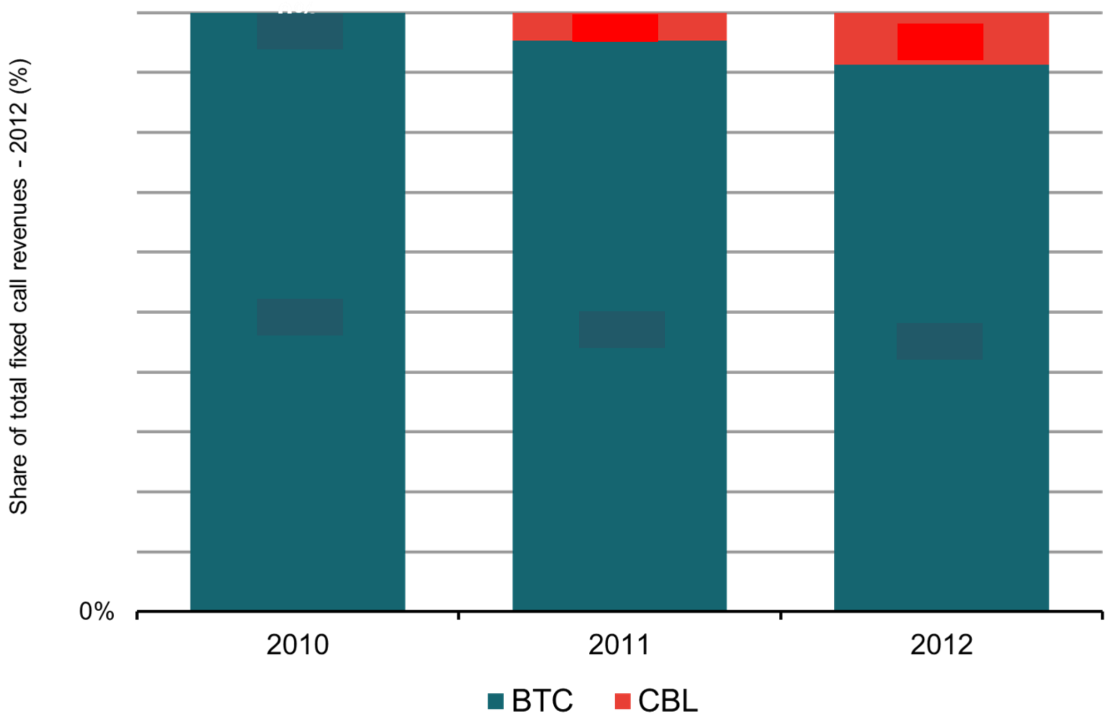


Source: URCA analysis based on operator data

BTC's share of total revenue for fixed call services has fallen from 100% in 2010 to around **[●confidential]** in 2012.[49]

[49] Note the revenue data for CBL contains total revenues for all fixed voice services. As such, BTC's market share represents a conservative estimate of its revenue share of the fixed call market.

Figure 7: Market Shares for Total Fixed Voice Long Distance and International Call Revenues, 2010-12



Source: URCA analysis based on operator data

The analysis of recent market share trends suggests that there has been a limited reduction in BTC's market share since 2009/10, indicating that market competition has not changed significantly since URCA's 2009/10 market review. Further, BTC's market share remains significantly above the 40% threshold at which a presumption of SMP is made.[50]

Barriers to Entry and Expansion

There are two common ways to provide retail fixed access and local call services: either a new entrant deploys its own fixed access (and core) network infrastructure or, where available, gains access to the fixed access network of existing operators (either on commercial or regulated terms).

[50]The Comms Act does not specify a market share threshold for dominance. However, within its framework for SMP assessment (ECS 20/2011), URCA established a presumption of dominance where an operator has a market share in excess of 40%.

Deploying alternative infrastructure to provide fixed call (and presumably access) services to end users requires substantial capital investment. Given BTC's and CBL's existing end-to-end fixed networks and the overall size of the Bahamian market, URCA considers the need to deploy alternative infrastructure to constitute a high barrier to entry in the fixed voice market. Alongside substantial capital investment, a new entrant would need to seek permission from the relevant authorities for the civil works required to lay a wireline network. The resulting time and resource requirements to obtain such permits are likely to constitute a potentially significant barrier to a firm rolling out a competing network in a short space and time.

In The Bahamas, there is currently no regulated access to BTC's or CBL's fixed access network. Thus to enter the market, this would require any potential new entrant to reach a commercial agreement with BTC or CBL to be able to offer call services via the existing network. Whilst this form of (reseller-based) entry is a less capital intensive entry strategy, it requires the entrant to reach a commercial agreement with BTC or CBL. As URCA is not aware of any alternative provider having reached a commercial agreement with either operator to provide fixed voice services in The Bahamas, URCA considers this as strong indication that barriers to entry remain high in the fixed call market.

Countervailing Buyer Power (CBP)

CBP (or demand-side bargaining power) refers to the relative strength of the buyer in negotiations with prospective sellers. For example, in markets where there are a few customers which purchase large volumes of the services, they may be able to influence the price charged by the service provider. CBP could therefore limit the ability of BTC to set prices for fixed voice services above the competitive level and hence to behave independently of buyers and ultimately of consumers.

However, in the context of retail fixed voice services (in particular, for residential customers), the above is unlikely to hold. In particular, URCA has not seen any evidence in support of market conditions, commonly supportive of CBP. These include, amongst others:

- Any one buyer's share of purchases constituting a sizeable proportion of BTC's total output;
- A single or a few buyers' shares of purchases constituting a sizeable proportion of BTC's total cost; and
- A buyer who can switch between suppliers (i.e., BTC and CBL) easily, despite the supplier having invested in assets specific to that buyer.

Although BTC has suggested that CBP could exist in the form of volume discounts for large customers, in light of the factors discussed above, URCA preliminarily concludes that CBP is not likely to exist in the market for fixed voice access in The Bahamas.

Other factors

Where available, URCA has also considered whether there is any evidence that the other factors outlined in the analytical framework, might impact URCA's finding that BTC has SMP in the fixed voice market.[51] In doing so, URCA has concluded that these factors support URCA's preliminary finding; in particular, as many of these factors increase the level of barriers to entry and/or expansion within the fixed voice market. For example, BTC's control over essential infrastructure, its existing distribution and sales network, its vertical integration are likely to increase the barriers for other providers to enter the market, which is partly reflected in the limited number of active competitors currently within the market. However, the strength of evidence on the factors considered above make these factors determinant. The other factors have therefore not been outlined in greater detail in this Section.

4.2.1.1 Preliminary Conclusion on Competition Assessment

Having regard to the analysis presented above on the competition assessment, URCA now put forward its preliminary position on the relevant market:

Preliminary Determination

URCA has preliminarily determined that:

- *BTC has SMP in the market for retail fixed voice services (covering access, local call, long distance and international call services from a fixed location[52]).*

Consultation questions – Competition assessment for fixed voice services

Q3. Do you agree with URCA's SMP findings in the market for fixed voice services? If not, why?

[51]These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

[52]This includes all fixed voice call services- including, amongst others, off-island calls, fixed-to-mobile calls, calls to emergency services, calls to directory enquiry services, calls to automated ancillary services, and operator assisted services).

5 Retail High-speed Data and Connectivity Services

This Section sets out URCA's reviews of retail high-speed data ("broadband" hereafter) services and business connectivity services provided at a fixed location in The Bahamas, covering the first two stages of a market review discussed in Section 3.2 (i.e., market definition and competition assessment), with the third stage (i.e., SMP remedies) being discussed in Section 7. As part of this, URCA sets out its preliminary views and consultation questions.

In line with URCA's 2010 SMP Assessment, this is undertaken separately for broadband services (Section 5.1) and business data connectivity services (Section 5.2).

5.1 Market for Broadband Services

In this Section URCA considers the breadth of the product market for broadband service. When doing so, it has used DSL as a focal product. That is, it examines whether, based on the evidence available to it, consumers of DSL broadband services would switch to an alternative service, in the event of a SSNIP for the service. When doing so, URCA has reviewed three potential substitutes to DSL broadband services: cable based broadband services, narrowband (dial-up) services and mobile data services.

5.1.1 Market Review Stage 1 - Market Definitions

Similar to fixed voice services discussed in the previous Section, retail broadband services can be delivered via several network technologies. In The Bahamas, the following broadband networks technologies are currently deployed:

- a DSL network (including both a copper and fiber based access network) operated by BTC;
- a 4G/LTE mobile network operated by BTC; and
- a coaxial cable network operated by CBL.

Both BTC and CBL offer a range of retail broadband services, as set out in the table below for residential offers.[53] [54] [55]

[53] BTC also offers narrowband (dial-up) internet services via its fixed network.

[54] Whilst SRG/CBL could also offer retail broadband services via its fixed wireless network, URCA is not aware that this is currently the case.

Table 7: Selected Residential Broadband Offerings

	BTC – Connect		CBL – REVON		
	8 Mbps	16Mbps	Charge	Boost	Velocity
Advertised download speed	Up to 8 Mbps	Up to 16 Mbps	15 Mbps	30 Mbps	50 Mbps
Monthly charge					
Unbundled	$29.99[56]	$39.99[57]	$49.50	$71.50	$90.50
Bundled	$29.99	$34.99	$38.70	$55.70	$70.70

Source: Operator websites

Further to delivering broadband services via their own network infrastructure, service providers can provide retail broadband services by gaining access to one of the existing networks (either on commercial or regulated terms). The service provider could then offer broadband services. In The Bahamas, both BTC and CBL are required as part of their SMP obligations to offer an (end-to-end) broadband resell product to enable alternative operators to resell their broadband products. While this obligation is aimed to facilitate further entry to the broadband market, URCA is not aware of any provider using this route at this point in time.

Given the above, there are several considerations to be made when defining the relevant market for retail broadband services and assessing the competitive dynamics within that market. These are undertaking in the three steps discussed in Section 3 above, namely:

- Section 5.1.1.1 discusses the relevant 'product market' dimension.
- This is followed by a discussion on the relevant customer market (Section 5.1.1.2).
- The relevant 'geographic market' dimension is then set out in Section 5.1.1.3.

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[55] URCA notes that there are also several internet service providers (ISPs) active in The Bahamas. However, these ISPs target niche markets only and as such, have a very small customer base. Whilst they have not been considered in this review, URCA considers this to have no impact on its analysis or conclusions.
[56] BTC's naked DSL AutoSpeed offer.
[57] BTC's naked DSL CruiseSpeed offer.

5.1.1.1 Relevant Product Market

In defining the relevant market, URCA has taken as a starting point the market definition in the previous review in 2009/10, with BTC's DSL broadband services being the reference product for the market definition exercise. At the time, CBL's cable based broadband products were found to be a substitute for BTC's broadband services, but only in areas where CBL was providing its services. There was also potential for the reverse to hold, if CBL would untie its retail pay TV and broadband offerings. The latter then formed an SMP obligation for CBL, which CBL has since implemented.

Below, URCA assesses if there has been a change in the potential substitutability of the products considered in the previous review. This is undertaken, firstly, for CBL's broadband offerings, followed by narrowband (dial-up) offerings.[58] URCA also considers alternative potential substitutes, in the form of BTC's mobile data (LTE) service.

URCA notes that whilst having deployed both copper and fiber lines in its access network, BTC does not differentiate its retail DSL services accordingly. Given this, URCA considers both copper and fiber based DSL services to constitute the same market.

Substitution between DSL and Cable based Broadband Services

When assessing the potential substitutability between DSL and cable based broadband services, URCA has started from its previous findings in 2009/10 that, with some exceptions, both services were found to be in the same product market, and then assessed whether there has been any significant change in the market since then which would require it to change its position on these services. When doing so, URCA has taken into account demand side and supply side factors.

- **Product characteristics**. Both BTC's and CBL's broadband offerings are comparable, offering unlimited high-speed internet connectivity for a monthly charge (plus initial set-up charges). A key parameter of broadband offerings is the advertised download speeds. Since the last review in 2009/10, both operators have increased their advertised speeds – BTC now offers broadband speeds of 8Mbps and 16Mbps and CBL offers broadband speeds of 15Mbps, 30Mbps and 50Mbps.

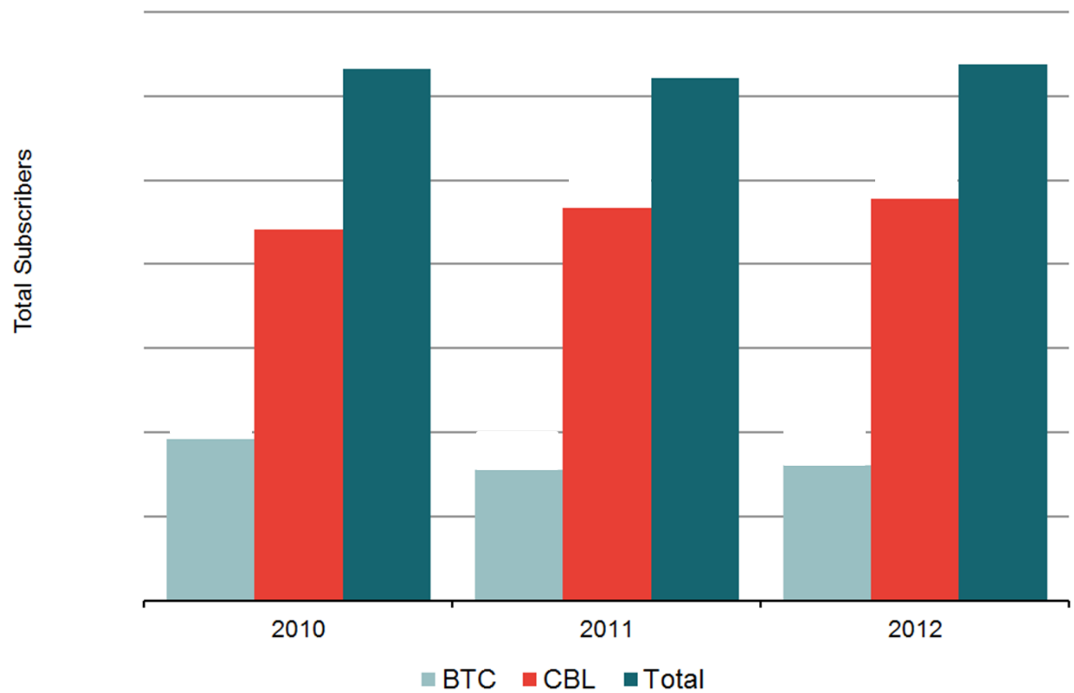
[58] URCA notes that there were two further potential substitutes considered back in 2009/10 (i.e., the internet offerings from Satellite Bahamas and other ISPs). However, it understands that these services offerings are no longer available to Bahamian users.

- **Prices**. Whilst the prices for CBL's unbundled broadband products are higher than those for BTC's products (especially for the higher speed products – see **Table 7** above), the difference in prices reduces significantly for CBL's bundled broadband and pay TV products, in particular the lowest speed offering (i.e., $38.70 for CBL's bundled 15Mbps product vs. $29.99 for BTC's 8Mbps product and $34.99 for its 16Mbps product – see **Table 7** above). Given that most of CBL's customers are currently subscribed to bundled offers (i.e., in 2012, **[●confidential]** of CBL's total broadband customers were subscribed to a pay TV and broadband bundle, with a further **[●confidential]** being subscribed to a broadband and fixed voice bundle) and CBL's 15Mbps product being the most popular offering (i.e., in 2012, **[●confidential]** of CBL's total broadband customers were subscribed to the 15Mbps offer), URCA considers the effective prices of these services to be sufficiently similar to support substitution, were the price of DSL services to increase by 5-10%.

- **Coverage/Availability**. Whereas BTC's DSL broadband services are available throughout The Bahamas, CBL's broadband offerings are only available within CBL's digital network coverage area (i.e., on Eleuthera, New Providence, Grand Bahama and Abaco).

- **Switching evidence.** URCA has not seen any quantitative evidence on switching behavior of broadband users in The Bahamas. However, both licensees have stated qualitatively in recent submissions that their broadband offerings are competing against each other, with subscribers switching between them (in particular, in case of price reductions). This is in line with recent trends in broadband subscriber numbers (see graph below). Whilst total broadband subscribers have remained broadly constant between 2010 and 2012 (i.e., average growth rate of **[●confidential]**), the number of subscribers of BTC and CBL have changed each year by more (i.e., average growth rates of **[●confidential]** and**[●confidential]**).

Figure 8: Trends in Broadband Subscribers, 2010-12



Source: URCA analysis based on operator data

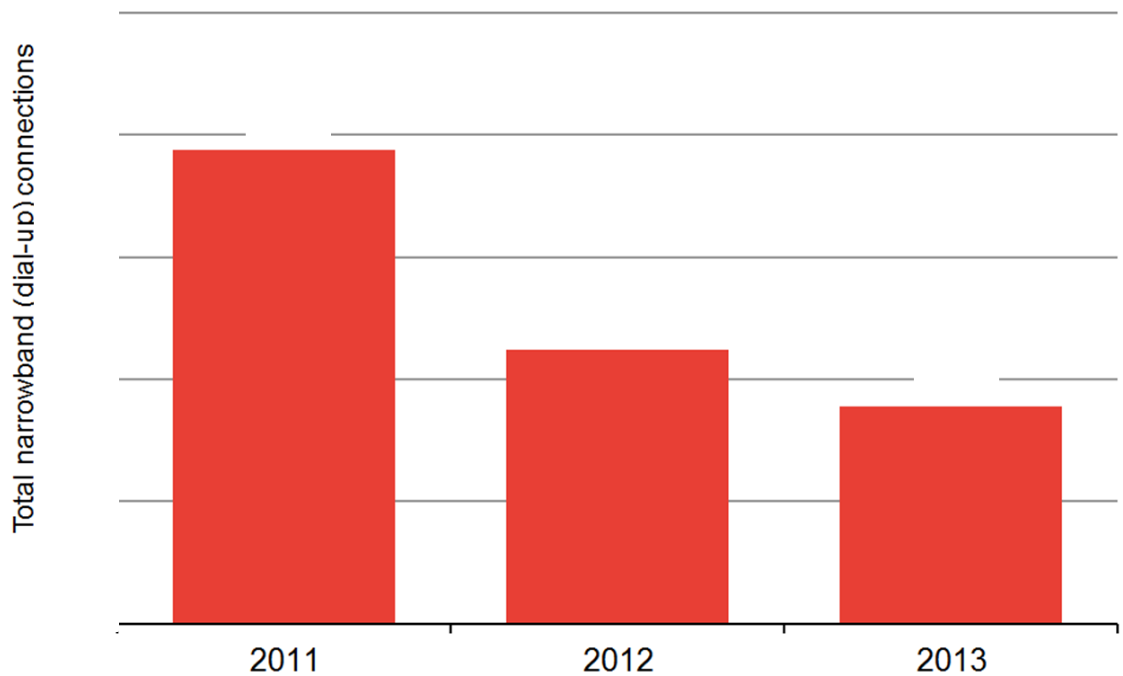
Based on the evidence available, URCA believes that cable based broadband represents an effective substitute for DSL broadband, where it is available. This conclusion is limited to those areas where CBL provides broadband. URCA further considers DSL broadband to represent an effective substitute for cable based broadband offering, especially BTC's low speed product.

<u>Substitution between Narrowband (dial-up) and Broadband Services</u>

During its initial SMP Assessment in 2009/10, URCA concluded that narrowband dial-up services did not form part of the same product market as broadband services. This was due to the significantly lower download speeds of dial-up services (which is accessed over a 56k modem). Given this, URCA was of the view that broadband services provide a considerably better user experience and functionality than dial-up internet and are therefore likely to be more attractive to consumers.

Having reviewed the key market developments since 2009/10, URCA has not found any reason to amend its views on the substitutability of dial-up and broadband services. Given the increase in advertised speeds of broadband offerings in recent years, dial-up services are arguably now even less of a potential substitute for broadband services. This is further evidenced in the decline in take-up of dial-up services since 2009/10. As illustrated in Figure 9 below, BTC's dial-up connections have declined by **[●confidential]** since 2011 and now represent less than **[●confidential]** of total (narrowband and broadband) internet connections in The Bahamas.

Figure 9: Recent Trends in BTC's Dial-up Connections



Source: BTC

As such, URCA remains of the view that dial-up (narrowband) services do not constitute an effective substitute to DSL and cable-based broadband services.

Substitution between Fixed Broadband and Mobile Data Services

BTC has recently launched mobile data services based on its newly deployed long-term evolution (LTE) mobile network infrastructure. Similar to voice services, mobile data services could form a potential substitute to fixed broadband services. As such, URCA has reviewed BTC's current mobile data offerings to assess whether they could form an effective substitute for fixed broadband in the near future (i.e., over the next year or two).

- **Product characteristics**. URCA understands that BTC's LTE mobile data package will offer download speeds between 4 and 15Mbps.[59] Whilst this would offer comparable download speeds to those currently available on fixed broadband, URCA has currently no information on the actual speeds delivered on mobile data services. URCA further understands that BTC only offers mobile data services for smart phones and tablets and BTC has not stated any intention to offer "dongle-based" mobile broadband services to date. This could limit the user experience of mobile data services vis-à-vis fixed broadband; however, tethering[60] could increase substitutability going forward. Further, BTC's mobile data plans all contain a monthly data allowance of 3GB to 5GB (after which an additional overage charge applies, plus an overall monthly usage cap of 6GB to 8GB). This may limit the degree of substitutability with fixed broadband services which do not have such usage caps.

- **Prices**. In order to get mobile data services, a prepaid user needs to either purchase a standalone mobile data package of at least 3GB ($35 per month) or subscribe to the $99.99 or $139.99 mobile postpaid plans (the former providing the user with 3GB per month and the latter with 5GB). This compares to monthly charges for DSL services of $29.99 and $39.99 (see **Table 7** above).

- **Coverage/Availability**. Whereas BTC's DSL broadband services and 3G mobile data services are available throughout The Bahamas, its LTE mobile data services are currently still in test phase. URCA understands that once being launched, LTE mobile data services will initially only be available in New Providence and will then be made available in Grand Bahama and select Family Islands thereafter. Further, according to BTC's website mobile data services will not become available throughout The Bahamas in the foreseeable future. As such, mobile data services will be available in fewer areas than DSL services in the foreseeable future.

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[59] http://www.btcbahamas.com/support/category/35-additional-information/faqs?open=50#faq-50

[60] Tethering allows using your smartphone (and mobile data plan) to access the internet on a computer or laptop.

Consequently, URCA does not consider that LTE mobile data services will represent an effective substitute to fixed broadband services in the near future and thus, they do not form part of the relevant product market for fixed broadband services**.** Instead, end-users are more likely to use LTE mobile data services as a compliment to fixed broadband services, allowing them to access the internet (at high-speeds) on the move as well as at home.

Preliminary Conclusion on the Relevant Product Market for Broadband Services

URCA preliminarily determines that the relevant market for broadband services includes DSL broadband offerings and cable-based broadband offerings.

5.1.1.2 Relevant Customer Market

As part of the product market definition exercise, it is also important to assess the need to define separate markets for different customer segments. For broadband services, the main customer segments to consider are business and residential customers. Within the business customers, further segmentation is possible into small, medium and large businesses.

As for voice services, the demand for broadband is likely to vary by size of the business. In particular:

- Large corporations tend to rely on leased lines and/or private circuits for their voice and data solutions. As such, they are less relevant for this product market and are covered as part of the business connectivity service market review (see Section 5.2 below).

- Small businesses (i.e., small offices and home offices) may have needs that are similar to a residential customer and could potentially be able to buy residential products, but may be constrained by the service provider's terms and conditions for residential services.

- Other sized businesses may have to rely on products that are classified as business products as residential products may not meet their business needs (such as reliability, conference bridges, automated caller greetings and/or power-back up) and their overall demand is too small for leased lines or private circuits.

Both BTC and CBL currently offer separate broadband packages to residential and business customers.

Table 8 below sets out the current broadband offerings targeted at small and medium sized businesses (both operators also offer more tailor-made voice and data solutions being offered to larger businesses which are discussed as part of the business connectivity service review). With the exception of naked DSL offerings which are priced the same as residential products, business broadband products offer lower advertised speeds at higher monthly charges, relative to residential packages (set out in **Table 7** above). However, URCA understands that the business products offer static IP addresses, 24hour technical support and multiple email addresses.

Table 8: BTC's and CBL's (small)Business Broadband Offerings

	BTC – iConnect		CBL - REVON		
	BizSpeed	CruiseSpeed	Pro 1.0	Pro 2.0	Pro 3.0
Advertised download speed	8 Mbps	16 Mbps	10 Mbps	14 Mbps	18 Mbps
Monthly charge					
Unbundled	$29.99	$39.99	$139.95	$235.00	$335.00
Bundled	$59.99	$79.99	$109.95	$205.00	$305.00

Source: Operator websites

Markets can then be defined separately if there is no demand or supply-side substitution between these segments.

- URCA currently does not hold any information on customer switching behaviour for these services. In the absence of switching data, it is not clear if **demand-side substitutability** exists. It could be argued that the features of the two types of product are not distinctive enough to inhibit switching should there be a price increase, especially for small businesses. However, business customers may struggle to get residential contracts because providers have visibility of whether the customer is a business or a residential subscriber when installing the broadband connection.

- The two products are likely to be **supply-side substitutes**, as similar products are used to deliver both business and residential services. So, in the event of a SSNIP by a hypothetical monopolist of residential broadband services, a supplier of business services could switch to the supply of residential services and vice versa.

Given the limited data available and the existence of supply-side substitutability of the business and residential products, URCA preliminarily defines a single market for business and residential broadband services. This is further due to the limited data availability on the number of connections and associated revenues for residential and business broadband subscribers. This is further consistent with URCA's approach taken for fixed voice services, set out in Section 4.1.2 above.

5.1.1.3 Geographic Market

The starting point for URCA's assessment is its previous SMP assessment in 2009/10 where two geographic markets were defined for broadband services: (i) all areas where CBL had coverage and (ii) all remaining areas, where effectively BTC was the sole provider. URCA has then assessed whether there has been any significant change in the market since the last review which would require it to change its position on the geographic market for broadband services. When doing so, URCA has come to the preliminary conclusion that two geographic markets remain relevant for broadband services. This is based on a review of the following:

- **Demand factors**. URCA has not seen any evidence that the nature of demand for broadband services varies significantly at a sub-national level. While demand for broadband products is local in nature (i.e., a subscriber cannot move to another island if they need a residential broadband connection), BTC operates a ubiquitous fixed network nationally and therefore has the capacity to provide retail broadband services throughout The Bahamas.

- **Supply factors**. BTC and CBL offer broadband services at a uniform price and product specifications across The Bahamas. However, whilst CBL has coverage only on four islands, its market share is currently very high within its footprint indicating that sub-national competition for broadband services remains prominent, and that competitive conditions are likely to be very different in areas where both licensees are present relative to the areas outside of CBL's current network coverage.

Given the prevailing differences in the competitive conditions in the areas where both CBL and BTC are present to the areas where only BTC is present, URCA considers it necessary to retain sub-national markets for broadband services. URCA notes that it would not be appropriate to adopt a similar approach as taken in case of fixed voice service as in broadband services, the market shares of both operators and thus the SMP findings vary significantly across both sub-national markets.

<u>Preliminary Conclusions on Geographic Market</u>

Given the analysis presented above, URCA has come to the preliminary view that there are two separate geographic markets to be considered:

- The islands where CBL and BTC both offer broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).
- All remaining islands (i.e., where only BTC offers broadband services).

However, URCA recognizes that there could be other factors and information accessible to existing and potential licensees that may have a bearing on the boundaries of the relevant geographic market. URCA notes and accepts its obligation to consult with interested parties on matters of public significance. As such, URCA reiterates its desire to receive written submissions from interested parties on all aspects of this Preliminary Determination for URCA's review and consideration.

5.1.1.4 Preliminary Conclusion on Market Definition

Having regard to the analysis presented above on product and geographic market definition, URCA now puts forward its preliminary position on the relevant market:

<u>Preliminary Determination</u>

URCA has preliminarily determined that the relevant market for broadband services provided at a fixed location includes the following products:

- *Fixed (DSL) broadband (currently offered by BTC); and*
- *Cable-based broadband services (currently offered by CBL)*

There are two separate geographic markets to be considered:

- *Geographic market 1 -The islands where CBL and BTC both offer broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).*
- *Geographic market 2 - All remaining islands (i.e., where only BTC offers broadband services).*

<u>Consultation questions – Market definition for broadband services</u>

Q4. Do you agree with URCA's definition of the product market? If not, why?

Q5. Do you agree with URCA's definition of the geographic market? If not, why?

5.1.2 Market Review Stage 2 – Competition Assessment

Having defined the relevant product and geographical market for retail broadband services, URCA now carries out the competition assessment, as outlined in Section 3.2.1.

<u>Licensee's Market Share</u>

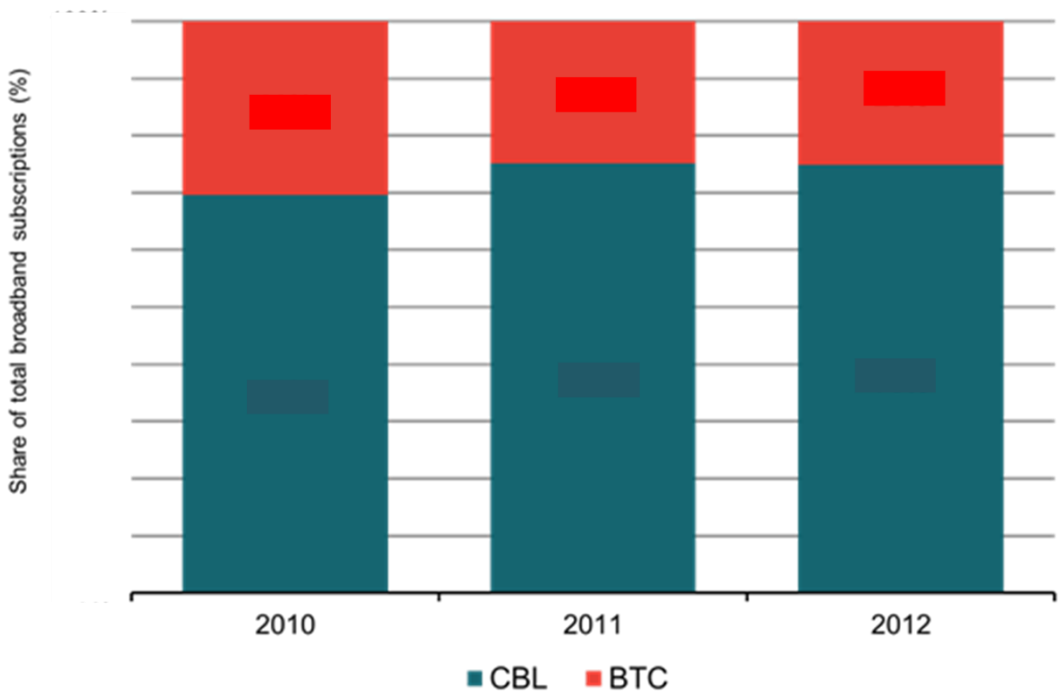
As a key indicator, URCA has reviewed recent trends in market shares in the retail broadband market (as defined in the previous Section), both operationally and financially.

Geographic market 1 - The islands where CBL and BTC are both offering broadband services

The graph below sets out BTC's and CBL's share of total broadband connections over the period 2010 to 2012.[61] In 2012, CBL's market share was **[●confidential]**. URCA further notes that there has been limited change in market shares in recent years.

[61] URCA has not been provided with sub-national broadband connection data from BTC. As such, the market shares analysis presented in the graph is based on BTC's total broadband connections. This leads to a conservative estimate of CBL's share of total broadband connections in the geographic market 1. URCA has further undertaken a sensitivity check on the above, by estimating BTC's potential broadband connections in the geographic market 1 based on sub-national household and internet access data from the Department of Statistics. This has resulted in a market share estimate for CBL of **[●confidential]** in 2012.

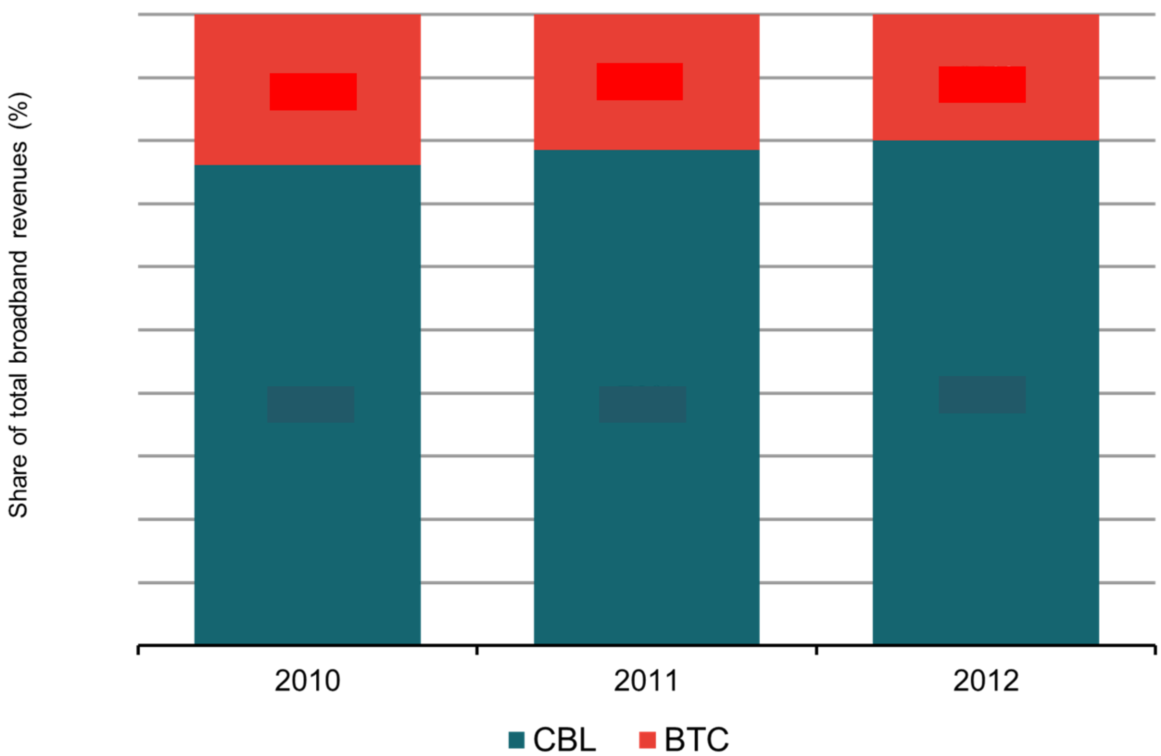
Figure 10: Market shares for total broadband connections, 2010-12



Source: URCA analysis based on operator data

This also holds for revenue market shares, as illustrated in the graph below. CBL's share of total revenue for broadband services in this geographic market has remained around **[●confidential]** between 2010 and 2012.

Figure 11: Market shares for total revenues for retail broadband services, 2010-12



Source: URCA analysis based on operator data

The analysis of recent market share trends suggests that there has been no fall in CBL's market share since 2009/10 thus indicating that competition has not changed substantially since URCA's last market review. Further, CBL's market share remains significantly above the 40% threshold at which a presumption of SMP is made.

Geographic market 2 - All remaining islands (i.e., where only BTC offers broadband services)

As BTC is the only broadband operator within this geographic market and URCA is not aware of any alternative operator providing retail broadband services based on BTC's wholesale offerings, BTC by default holds a 100% market share in this geographic market.

Barriers to Entry and Expansion

As for fixed voice services discussed in Section 4 above, there are two common ways to provide retail broadband services: either a new entrant deploys its own fixed access (and core) network infrastructure or, where available, gains access to the fixed access network of existing operators (either on commercial or regulated terms).

Deploying alternative infrastructure to provide broadband services to end users requires substantial capital investment. Given BTC's and CBL's existing end-to-end networks and the overall size of the Bahamian market, URCA considers the need to deploy alternative infrastructure to constitute a high barrier to entry in the fixed voice market.

As part of their current SMP obligations, both BTC and CBL need to offer an (end-to-end) broadband product which would allow for an alternative provider to resell their broadband products to end-users. Whilst this form of (reseller-based) entry is a less capital intensive entry strategy, URCA is not aware that to date any alternative provider has launched broadband services based on this option. URCA considers this a strong indication that barriers to entry remain high in the broadband market.

Where available, URCA has also considered the evidence on the other factors outlined in the analytical framework, potentially increasing the likelihood of barriers to entry and/or expansion.[62] These also support URCA's SMP findings in the broadband market (in particular, the existence of economies of scale and scope, BTC's control over essential infrastructure and the number of active competitors). However, the strength of evidence on the factors considered here make these factors determinant. They have therefore not been outlined in greater detail in this Section.

As such, URCA considers there to be high barriers to entry and expansion in the market for broadband services.

Countervailing Buyer Power (CBP)

CBP could limit the ability of CBL or BTC to set broadband prices above the competitive level and hence to behave independently of buyers and ultimately of consumers. However, in the context of retail broadband services (in particular, for residential customers), this is unlikely to hold. In particular, URCA has not seen any evidence in support of market conditions, commonly supportive of CBP. These include, amongst others:

[62]These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

- Any one buyer's share of purchases constituting a sizeable proportion of CBL's total output;[63]
- A single or a few buyers' shares of purchases constituting a sizeable proportion of CBL's total cost; and
- a buyer who is able to switch between suppliers (i.e., BTC and CBL) easily, where the supplier has invested in assets specific to that buyer.

URCA notes BTC's recent reference to the existence of CBP for its top tier business customers. However, BTC did not provide further evidence to substantiate this statement. Given the limited share these customers are likely to have in the overall broadband market and associated revenues, URCA considers any potential CBP for these customer segment to not constrain BTC (or CBL) from pricing above the competitive level for the remaining customer segments (especially, for residential customers which represent the largest share of the market).

5.1.2.1 Preliminary Conclusion on Competition Assessment

Having regard to the analysis presented above on the competition assessment, URCA now puts forward its preliminary position on the relevant market:

Preliminary Determination

URCA has preliminarily determined that:
- *CBL has SMP in the market for broadband services in the areas where it offers these services; and*
- *BTC has SMP in the market for broadband services in all remaining areas.*

Consultation questions – Competition assessment for broadband services
Q6. Do you agree with URCA's SMP findings in the markets for broadband services? If not, why?

[63] For example, in 2012, **[●confidential]** of CBL's broadband customers were residential, contributing **[●confidential]** of its total broadband related revenues.

5.2 Market for business connectivity services

In this Section URCA considers the breadth of the product market for retail business connectivity services. That is, it examines whether, based on the evidence available to it, consumers of retail business connectivity services would switch to an alternative service, in the event of a SSNIP for the service. This is followed by an assessment of the competitive dynamics in each defined market.

The market for business connectivity services comprises both national and international connectivity services. As in the fixed voice services section (i.e. Section 4.1 above), URCA has assessed the need to consider these markets separately or jointly. For this, it is necessary to analyze the demand and supply-side substitutability of the two services.

- National and international connectivity services are not **demand-side substitutes**. If the price of a national business connectivity service were to increase by any amount, it would not be feasible for a business to switch to an international business connectivity service and vice versa. Thus, the two services meet very different kinds of demand.

- However, there is potential for **supply-side substitutability** between national and international business connectivity services. This is because the provision of international services requires the deployment of both a national and international network. Consequently, if the price of national services were to increase, it is plausible that a provider of international services could profitably switch to the provision of national services, assuming that the international provider also has its own domestic network in the Bahamas. If wholesale capacity is available for the international leg, a provider of national services could, in theory, switch to the provision of international services.

Thus, national and international business connectivity services could be considered jointly. However, in the previous market review in 2009/10 URCA found that the competitive dynamics in the market for these services were different. URCA has not found evidence to suggest that this has changed since 2010. Consequently, for the purpose of this review, the markets for national and international connectivity services are analyzed separately and in turn below.

5.2.1 National business connectivity services

5.2.1.1 Market Review Stage 1 - Market Definition

National business connectivity services can be delivered via several network technologies. In The Bahamas there are currently three main network technologies that have been deployed:

- a copper (PSTN) based network operated by BTC;
- a coaxial cable network operated by CBL; and
- fiber-based networks operated by both BTC and CBL.[64]

BTC and CBL are currently the only providers of national business connectivity service in The Bahamas, offered through leased lines/circuits (leased lines hereafter). Their services are outlined in Table 9 below.

[64] URCA understands that further to its NGN (fibre-optic) transmission network, BTC has also deployed some fibre within its access network.

Table 9: Comparing BTC and CBL's National Business Connectivity Offerings

	BTC		CBL	
	Regular Leased Circuits	MPLS	REVON Dedicated Circuits	REVON Ethernet Circuits
Network technology used	Traditional (copper based) leased lines	Fiber-based leased lines	Traditional (coaxial cable based) leased lines	Fiber based-leased lines
Speeds offered	56 Kbps – 45 Mbps (intra-island) 56 Kbps – 45 Mbps, and 155 Mbps STM1/OC3 (inter-island)	Speeds offered across all plans: 1 Mbps – 100 Mbps	1.5 Mbps 45 Mbps	10 Mbps 50 Mbps 100 Mbps 200 Mbps
Price (monthly subscription) for a 1 year contract[65]	**[●confidential]**	**[●confidential]**	**[●confidential]**	**[●confidential]**
Coverage	Throughout The Bahamas		Eleuthera, Grand Bahama, Abaco and New Providence	
	Other features (as covered in the previous market review)			
More than one service possible on one line	Yes	Yes	Yes	Yes
Dedicated, end-to-end capacity	Yes	Yes	Yes	Yes
Symmetric bi-directional bandwidth[66]	Yes	Yes	Yes	Yes

Source: Data provided by CBL and BTC in response to an information request from URCA

Alternative operators could also offer retail leased line services based on wholesale services from either BTC or CBL. Wholesale services are currently not regulated in The Bahamas and any commercial agreements would have to be negotiated between the third party and CBL or BTC. URCA is not aware of any third party, outside of BTC and CBL, offering retail leased line services based on BTC's or CBL's wholesale services. However, it understands CBL offers retail leased services to selected customers outside its current network coverage (i.e., in the Family Islands) based on BTC's wholesale services.

Based on the features seen in the table above, the speeds of the resulting leased line products used to deliver business connectivity services depend on the platform used. As a result, these products can be grouped into the following two categories:

1. Traditional leased line products: These services consist of regular (copper-based) leased circuits from BTC and REVON (coaxial cable based) dedicated circuits from CBL. Speeds on these products vary from 56 Kbps to 45 Mbps.
2. Fiber-based leased line product: BTC provides leased circuits over fiber (MPLS) while CBL offers Ethernet circuits. The speed on these products varies from 1 Mbps to 200 Mbps.

Thus, in defining the boundaries of the market or markets, URCA considers the following:

- The extent to which traditional and fiber-based leased line products would fall into separate markets for national business connectivity services (i.e., URCA assesses whether the differences in characteristics between services on these two sets of products are enough to warrant defining a separate market for each);

- The substitutes available for national business connectivity services (i.e., the breadth of the product market), specifically, if broadband services are substitutes for international business connectivity; and

- The relevant geographic market (i.e., the need to consider sub-national markets).

URCA considers each of these issues in turn below.

5.2.1.1.1 Are the types of products used to provide business connectivity services in the same market?

As discussed above, for this review, URCA considers there to be two product groups used to provide national business connectivity services: traditional and fiber-based leased lines. URCA now considers the degree of demand and supply-side substitutability between these products in order to come to a conclusion on whether or not they should be in the same market.

URCA focuses this assessment on demand-side substitutability. This is because URCA does not consider traditional and fiber-based leased lines to be **supply-side substitutes,** as they are provided over different platforms (i.e., PSTN/coaxial and fiber based networks, respectively). Thus, it would not be possible for a provider of one service to switch quickly and at a low cost to the other in the event of a SSNIP.

In contrast, URCA considers that there is potential for **demand-side substitutability**. This is because a customer's demand for a business connectivity service is based on speed, price and other characteristics, rather than the infrastructure based on which these services are delivered. While traditional and fiber-based leased lines differ in this regard, the products based on the two platforms are comparable when it comes to product features. As was seen in **Table 9**, both traditional and fiber-based leased lines offer a similar range of speeds. Furthermore, the prices on traditional and fiber-based leased line products that have the same speed are comparable., as is illustrated in **Table 10** below. Moreover, as was seen in **Table 9**, these services have similar characteristics (other than speed), and this was also found to be the case in URCA's previous review.

Table 10: Comparing Traditional and Fiber-based Leased Lines

Speed (Mbps)	BTC		CBL	
	Regular Leased Circuits (intra-island) Traditional leased line	**MPLS** Fiber-based leased line	**REVON Dedicated Circuits** Traditional leased line	**REVON Ethernet Circuits** Fiber-based leased line
[●confidential]	**[●confidential]**	**[●confidential]**	**[●confidential]**	NA
[●confidential]	**[●confidential]**	**[●confidential]**	NA	NA
[●confidential]	**[●confidential]**	**[●confidential]**	NA	**[●confidential]**
[●confidential] **[●confidential]**	**[●confidential]** **[●confidential]**	NA	**[●confidential]**	$NA

Source: URCA analysis of operator data

NA: Product is not available for that speed

BTC prices for MPLS are based on the Metro-E plan, which is presumably BTC's basic plan.

URCA had requested for information on the distribution of BTC and CBL's leased line subscribers by speed on each product type in order to understand the extent to which the two types of products are substitutes for one another. Both BTC and CBL were unable to provide this data. In the absence of this information, it would not be possible to carry out a competitive assessment of separate markets for traditional and fiber-based leased line products used to provide national business connectivity services.

In conclusion, given the potential for demand-side substitutability and practical considerations, URCA defines a single market for national business connectivity services, which includes both traditional and fiber-based leased line services.

5.2.1.1.2 Are retail national business connectivity services and broadband services in the same market?

URCA considers the evidence on product characteristics and prices to inform this decision. Whilst network coverage of both services is similar, as described below, for a number of reasons, URCA does not believe these form part of the same market.

Broadband services (over DSL and fiber) generally provide different levels of contention between end users, with the result that the bandwidth actually supplied to an end user cannot be guaranteed. Business data connectivity services, on the other hand, provide guaranteed symmetric capacity to the end user. They also provide symmetric bandwidth to customers, whereas broadband services are usually asymmetric, with higher download speeds but lower upload speeds. For instance, as per their response to URCA's information request, BTC's fastest broadband product has an upload speed of 4 Mbps and a download speed of just over 7 Mbps. CBL's fastest broadband product has an upload speed of 1 Mbps and a download speed of 50 Mbps. This asymmetry does not exist in both operators' leased line products.

Business connectivity services, as provided over leased lines, offer higher levels of security than broadband services. This is because broadband provides connectivity through the internet which is less secure. In contrast, leased lines provide connectivity over closed circuits thereby increasing the level of security and allowing the customer greater control over traffic routing.

Leased line products provide guaranteed speed, irrespective of the quantum of data downloaded/uploaded. Broadband products tend to have data caps, exceeding which the speed offered is throttled or excess use charges apply.

Leased line products are more expensive than broadband products. For instance, for a product with a speed of 15 Mbps, the cheapest leased line product is 15 times more expensive than the cheapest broadband product available on the Bahamian market. For a speed of 50 Mbps, the cheapest leased line product is 6 times more expensive than the cheapest available broadband product.

In conclusion, business connectivity services, because of the symmetric bandwidth, higher security, speeds and prices, are likely to cater best to large businesses whereas broadband services are more likely to meet the needs of small to medium-sized businesses.

In light of these differences in product characteristics and prices, URCA does not find broadband services to be substitutes for retail national business connectivity services as they are likely to meet different types of demand.

5.2.1.1.3 Geographic Market

The relevant geographic market considers the degree to which demand and/or supply-side substitutes for national leased line services varies by geography. In absence of any such evidence on sub-national differences in product substitutability, the relevant geographic market should be defined as national.

The starting point for URCA's assessment is its previous SMP assessment in 2009/10 where two geographic markets were defined for retail national business connectivity services: (i) all areas where CBL had coverage and (ii) all remaining areas, where effectively BTC was the sole provider. URCA has then assessed whether there has been any significant change in the market since the last review which would require changing this position. When doing so, URCA has come to the preliminary conclusion that two geographic markets remain relevant in this case. This is based on a review of the following:

- **Demand factors**. URCA has not seen any evidence that the nature of demand for business connectivity services varies significantly at a sub-national level. While demand for these products is local in nature (i.e., it is unlikely that a business utilizing a leased line service would move to another island in order to benefit from a better leased line service available on that island), BTC operates a ubiquitous network nationally and therefore has the capacity to provide business connectivity services throughout The Bahamas.

- **Supply factors**. BTC and CBL offer similar product specifications across The Bahamas (as evidenced in **Table 9** above). However, whilst CBL has coverage only on four islands, its market share is currently high within its footprint indicating that sub-national competition remains prominent, and that competitive conditions are likely to be very different in areas where both licensees are present relative to the areas outside of CBL's current network coverage (i.e. for leased lines between two areas where CBL does not have coverage). Whilst CBL can (and does) provide its services in areas where it does not have network coverage, it is dependent on BTC's (commercial) wholesale services.

Given the prevailing differences in the competitive conditions in the areas where both CBL and BTC are present to the areas where only BTC is present, URCA considers it necessary to retain sub-national markets for the retail market for national business connectivity services.

Preliminary Conclusions on Geographic Market

Given the analysis presented above, URCA has come to the preliminary view that there are two separate geographic markets to be considered:

- **Geographic market 1**: The islands where CBL and BTC both have infrastructure and offer retail national business connectivity services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).
- **Geographic market 2:** All remaining islands (i.e., where only BTC has a network infrastructure to offer these services).

5.2.1.1.4 Preliminary Conclusion on Market Definition

Having regard to the analysis presented above on product and geographic market definition, URCA now puts forward its preliminary position on the relevant market:

Preliminary Determination

URCA has preliminarily determined that the relevant market for retail national business connectivity services includes the following products:

- *Traditional leased line products: These are national business connectivity services provided over PSTN and Coaxial networks, thereby currently including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and*
- *Fiber-based leased line products: These are national business connectivity services provided over a fiber network, thereby currently including BTC's MPLS (leased circuits over fiber) and CBL's REVON Ethernet Circuits.*

There are two separate geographic markets to be considered:

- *Geographic market 1 -The islands where CBL and BTC both have infrastructure and offer national business connectivity services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).*
- *Geographic market 2 - All remaining islands (i.e., where only BTC has a network infrastructure to offer these services).*

Consultation questions – Market definition for retail national business connectivity services

Q7. Do you agree with URCA's definition of the product market? If not, why?

Q8. Do you agree with URCA's definition of the geographic market? If not, why?

5.2.1.2 Market Review Stage 2 – Competition Assessment

Having defined the relevant product and geographical market for retail national business connectivity services, URCA now carries out the competition assessment, as outlined in Section 3.2.1.

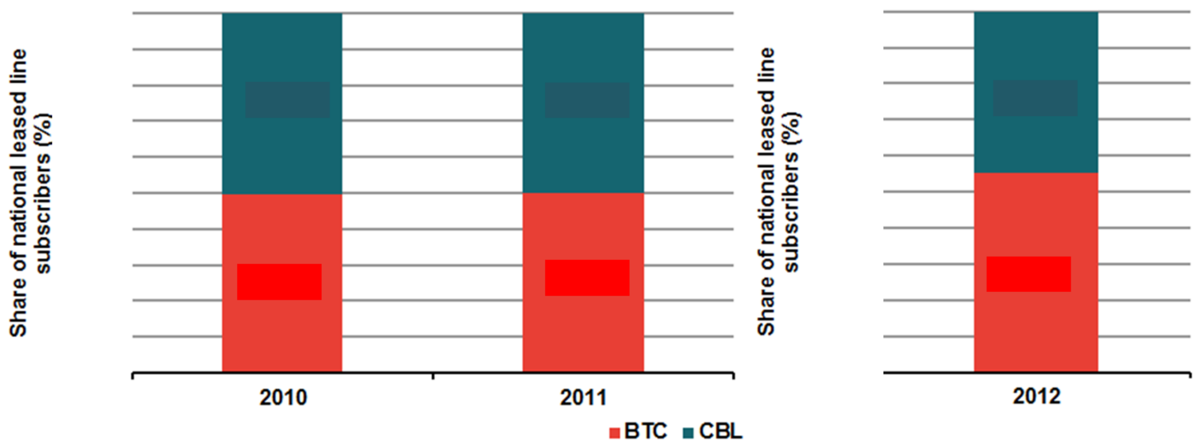
Licensee's Market Share

As a key indicator, URCA has reviewed recent trends in market shares in the retail market for national business connectivity services (as defined in the previous Section), examining both market shares based on customers and revenues.

Geographic market 1 - The islands where CBL and BTC both have infrastructure and are offering national business connectivity services

An analysis of the market shares in the last 3 years reveals that BTC and CBL have had similar and stable shares in terms of both revenue and subscriber numbers.

Figure 12: Evolution of Subscriber Market Shares

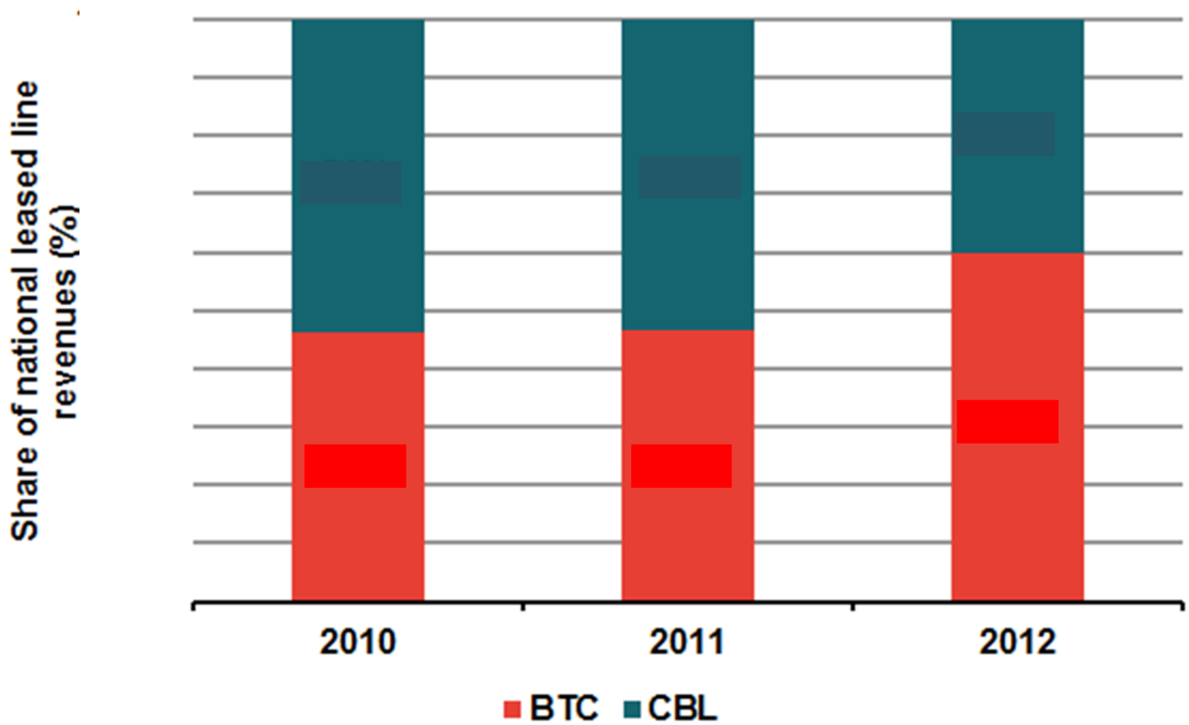


Source: URCA's analysis of operator data

Note: BTC's 2012 share is calculated based on its subscribers on Eleuthera, Abaco, Grand Bahama and New Providence only (Geographic market 1)

The market shares for 2010 and 2011 represented in **Figure 12** are based on BTC's subscriber numbers across geographic markets 1 and 2 because BTC was unable to provide a split by geographic markets for those years. Thus, it is possible that BTC's market share for 2010 and 2012 are slightly overstated. The 2012 market shares are representative of the competitive situation in geographic market 1. As can be seen, the shares are fairly equal. Furthermore, there is limited evidence of any one operator's share increasing consistently over time, as the shares have remain fairly stable in the last 3 years. This also holds true for market shares by revenue, as seen in **Figure 13**.

Figure 13: Evolution of Revenue Market Shares



Source: URCA's analysis of operator data

Note that the revenues shares represented are based on revenues for geographic markets 1 and 2 because BTC and CBL could not provide revenue data split by geographic markets.

There is further evidence of stability in the fact that the market has only grown by **[●confidential]** in the last 3 years.

Whilst there has not been much change in the traditional leased line offerings from BTC and CBL, there has been an expansion in the range of fiber-based leased line offerings and a fall in prices.

The MPLS-based range of leased line products from BTC appears to have been introduced after 2009 - there are 4 plans (Metro-E, Standard, Enhanced and Premium) available for 18 speeds (ranging from 1 Mbps to 100 Mbps).

CBL has improved the speeds on its REVON Ethernet circuits, as seen in **Table 11** below.

Table 11: CBL's REVON Ethernet Circuits

Monthly subscription	Bandwidth in 2010 (Mbps)	Bandwidth in 2013 (Mbps)
[●confidential]	[●confidential]	[●confidential]
[●confidential]	[●confidential]	[●confidential]
[●confidential]	[●confidential]	[●confidential]
[●confidential]	[●confidential]	[●confidential]

Source: CBL

Thus, evidence available shows that market shares are largely equal and stable, and there have been new products and falling prices in the market. URCA finds this suggestive of a prospectively competitive market.

Geographic market 2 - The islands where only BTC has a network infrastructure

As was discussed in the Section on geographic market definition, only BTC has network infrastructure to provide retail business connectivity services on the family islands. Given the absence of significant take-up of BTC's wholesale access services (as discussed in Section 5.2.1.1) and the fact that operators have not provided data in response to URCA's information requests to provide evidence to the contrary, URCA expects that BTC's market share would, by default, be well above the threshold 40% necessary for a presumptive finding of SMP.

Barriers to Entry and Expansion

There are two ways to provide retail national leased line services: either a new entrant deploys its own fixed network infrastructure or, where available, gains access to the network facilities of existing operators (either on commercial or regulated terms).

Deploying alternative infrastructure to provide national business connectivity services in The Bahamas requires substantial capital investment. Given BTC's and CBL's existing end-to-end fixed networks and the overall size of the Bahamian market, URCA considers the need to deploy alternative infrastructure to constitute a high barrier for further potential entrants into the retail national business connectivity services market. Alongside substantial capital investment, a new entrant would need to seek permission from the relevant authorities for the civil works required to lay a wireline network.

Unlike the market for international leased lines where there exists a third party seller of wholesale international leased lines (Columbus Communications Ltd., see Section 5.2.2.3), only BTC and CBL have the ability to offer wholesale national leased lines. As there is currently no regulated access to BTC's or

CBL's fixed access network, any potential new entrant would have to reach a commercial agreement with BTC or CBL to be able to offer services via the existing network. Whilst this form of (reseller-based) entry is a less capital intensive entry strategy, it requires the entrant to reach a commercial agreement with BTC or CBL. As URCA is not aware of any alternative provider having reached a commercial agreement with either operator to provide national business connectivity services in The Bahamas[67], URCA considers this as an indication that barriers to entry remain high in both geographic markets for national business connectivity services.

Countervailing Buyer Power (CBP)

CBP (or demand-side bargaining power) refers to the relative strength of the buyer in negotiations with prospective sellers. For example, in markets where there are a few very large customers, they may be able to influence the price charged by the service provider. CBP could therefore limit the ability of BTC and CBL to set prices for national leased lines services above the competitive level and hence to behave independently of buyers and ultimately of consumers.

BTC has suggested that CBP could exist because it is constrained in its pricing by the relative buying power of large entities such a government departments and corporations. It is possible that CBL faces similar constraints, although URCA does not have evidence from CBL on this matter.

Thus, while CBP could be a relevant factor in this market, there needs to be evidence of the following in order to prove that CBP imposes a significant constraint on the operators in the market:

- Any one buyer's share of purchases constitutes a sizeable proportion of either operator's total output;
- A single or a few buyers' shares of purchases constitutes a sizeable proportion of BTC or CBL's total cost; and
- a buyer can switch between suppliers (i.e., BTC and CBL) easily but the supplier has invested in assets specific to that buyer.

Neither BTC nor CBL have provided evidence in support of the above. Consequently, URCA preliminarily concludes that CBP is not likely to exist in either geographic market for national business connectivity services in the Bahamas.

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[67] URCA notes, however, that CBL is currently providing national leased line to selected customers which are based outside of its network coverage by purchasing wholesale leased line services from BTC.

Other factors

Where available, URCA has also considered whether there is any evidence that the other factors outlined in the analytical framework, might impact URCA's finding that BTC has SMP in the national leased lines market in areas where CBL has no network coverage.[68] In doing so, URCA has concluded that these factors support URCA's preliminary finding; in particular, as many of these factors increase the level of barriers to entry and/or expansion within the national leased lines market. For example, BTC's control over essential infrastructure, its existing distribution and sales network and its vertical integration are likely to increase the barriers for other providers to enter the market, which is partly reflected in the limited number of active competitors currently within the market.

5.2.1.3 Preliminary conclusion on Competition Assessment

Having regard to the analysis presented above on the competition assessment, URCA now puts forward its preliminary position on the relevant market:

Preliminary Determination

URCA has preliminarily determined that:

- *BTC has SMP in the market for retail national business connectivity services in geographic market 2, i.e., all areas where CBL has no network coverage.*

URCA notes that whilst it has not determined any licensee to have SMP in the other geographic market (i.e., in areas where both BTC and CBL offer these services), it deems this market to be prospectively competitive only and will monitor any developments in that market closely going forward to ensure that it delivers the outcomes expected in a competitive market environment.

Consultation questions – Competition assessment for retail national business connectivity services

Q9. Do you agree with URCA's SMP findings in the retail national business connectivity services? If not, why?

[68] These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

5.2.2 International business connectivity services

In the previous market review, the market for international business connectivity services was defined as covering just the international leg of the end-to-end international business connectivity service. Having reviewed the nature of the products offered by operators in the market and the demand for these services, URCA proposes to cover in its assessment of this market the end-to-end service, from the network termination point at the Bahamian customer end to the handover point to the international operator, rather than just the international leg.

In order to understand the difference between the two definitions, consider a simplistic scenario where the infrastructure necessary to provide international connectivity to The Bahamas originates only in New Providence. Suppose an office in Abaco wanted a business connectivity product to Miami. The products being offered currently would provide end-to-end connectivity from the office building in Abaco all the way to Miami. In order to achieve this, the operator would first have a leased line from Abaco to New Providence and then another leased line from New Providence to Miami. Under the definition in the previous market review, only the leg connecting New Providence to Miami would fall into this market. But since the products available provide end-to-end connectivity, URCA thinks it appropriate to change the definition to include the end-to-end business connectivity service rather than just the international connectivity leg.

5.2.2.1 Market Review Stage 1 - Market Definition

Like national business connectivity services, international business connectivity services are delivered in The Bahamas via the same three network technologies:

- a copper (PSTN)based network operated by BTC;
- a coaxial cable network operated by CBL; and
- fiber-based networks operated by both BTC and CBL.[69]

BTC and CBL are currently the only providers of international retail business connectivity service in The Bahamas. The services they offer are outlined in **Table 12** below.

[69]See footnote 64

Table 12: Comparing BTC and CBL's International Business Connectivity Offerings

	BTC		CBL	
	Regular Leased Circuits	MPLS	REVON Dedicated Circuits	REVON Ethernet Circuits
Network technology used	Traditional (copper based) leased Lines	Fiber-based leased lines	Traditional (coaxial cable based) leased lines	Fiber-based leased lines
Speeds offered	64 Kbps – 45 Mbps, and 155 Mbps	256 Kbps – 100 Mbps	1.5 Mbps 45 Mbps	2 Mbps 5 Mbps 10 Mbps 20 Mbps 50 Mbps
Price (monthly subscription) for a 1 year contract[70]	**[●confidential]**	**[●confidential]**	**[●confidential]**	**[●confidential]**
Coverage	Throughout The Bahamas		Eleuthera, Grand Bahama, Abaco and New Providence	
Other features (as covered in the previous market review)				
More than one service possible on one line	Yes	Yes	Yes	Yes
Dedicated, end-to-end capacity	Yes	Yes	Yes	Yes
Symmetric bi-directional bandwidth	Yes	Yes	Yes	Yes

Source: Data provided by CBL and BTC in response to an information request from URCA

Alternative operators could also offer retail international business connectivity service based on wholesale services from BTC, CBL or Columbus Communications (the latter only offering international connectivity though since it currently does not have any network infrastructure or license to operate in

The Bahamas). In The Bahamas there is currently no regulated access. As such, any potential entrant would have to reach a commercial agreement with either BTC or CBL in order to offer end-to-end retail international business connectivity services.

Based on the features seen in the table above and as was the case for national business connectivity services, the speeds of the resulting leased line products used to deliver business connectivity services depends on the platform used. As result, these products can be grouped into the following two categories:

1. Traditional leased line products: These services consist of regular (copper-based) leased circuits from BTC and REVON (coaxial cable based) dedicated circuits from CBL. Speeds on these products vary from 64 Kbps to 45 Mbps. BTC also has a product with a speed of 155 Mbps.
2. Fiber-based leased line product: BTC provides leased circuits over fiber (MPLS) while CBL offers Ethernet circuits. The speed on these products varies from 2 Mbps to 50 Mbps.

URCA thus considers the following in defining the market:

- The extent to which traditional and fiber-based leased line products constitute separate markets (i.e., URCA assesses whether the differences in characteristics between services on these two sets of products are enough to warrant defining a separate market for each);

- The substitutes available for international business connectivity services (i.e., the breadth of the product market), specifically, if broadband services are substitutes for international business connectivity; and

- The relevant geographic market (i.e., the need to consider sub-national markets).

URCA considers each of these issues in turn below.

5.2.2.1.1 Are the types of products used to provide international business connectivity services in the same market?

The analysis for international business connectivity services is the same as that for national business connectivity services set out in Section 5.2.1.1.1 above and is thus not repeated in the same level of detail.

In summary, URCA believes there is no supply-side substitutability between traditional and fiber-based leased line products because they operate over different platforms. However, there is potential for demand-side substitutability given the overlap in the range of speeds offered and the similarity in other product characteristics, as outlined in **Error! Reference source not found.** above. Furthermore, the bsence of data on the distribution of subscribers by speed or by product implies that URCA would not be able to carry out a competitive assessment for separate product markets. Consequently, URCA has defined a single market for international business connectivity services that includes both traditional and fiber-based leased line products.

5.2.2.1.2 Are retail international business connectivity services and broadband services in the same market?

The analysis of substitutability between broadband services and international business connectivity services is the same as that carried out for national business connectivity services in Section 5.2.1.1.2, and is not repeated here.

In summary, international business connectivity services, because of the symmetric bandwidth, higher security, speeds and prices, are likely to cater best to large businesses whereas broadband services are more likely to meet the needs of small to medium-sized businesses.

In light of these differences in product characteristics and prices, URCA does not find broadband services to be substitutes for retail international business connectivity services as they are likely to meet different types of demand.

5.2.2.1.3 Geographic Market

The starting point for URCA's assessment is again its previous SMP assessment in 2009/10 where two geographic markets were defined for retail international business connectivity services: (i) all areas where CBL had coverage and (ii) all remaining areas, where BTC was effectively the sole provider. URCA has then assessed whether there has been any significant change in the market since the last review which would require changing this position. This review has been based on demand and supply factors. The evidence and analysis on this point is the same as that for national business connectivity services, and so, is not repeated here. URCA has thus come to the preliminary conclusion that two geographic markets remain relevant, as was the case for national business connectivity services.

Preliminary Conclusions on Geographic Market

URCA has come to the preliminary view that there are two separate geographic markets to be considered:

- **Geographic market 1**: The islands where CBL and BTC both have infrastructure and offer retail international business connectivity services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).
- **Geographic market 2:** All remaining islands (i.e. where only BTC has a network infrastructure to offer these services).

5.2.2.2 Preliminary Conclusion on Market Definition

Having regard to the analysis presented above on product and geographic market definition, URCA now put forward its preliminary position on the relevant market:

<u>Preliminary Determination</u>

URCA has preliminarily determined that the relevant market for retail international business connectivity services includes the following products:

- *Traditional leased line products: These are international business connectivity services provided over PSTN and Coaxial networks, thereby including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and*
- *Fiber-based leased line products: These are international business connectivity services provided over a fiber network, thereby including BTC's MPLS (leased circuits over fiber) and CBL's REVON Ethernet Circuits.*

There are two separate geographic markets to be considered:

- *Geographic market 1 -The islands where CBL and BTC both have infrastructure and offer international business connectivity services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).*
- *Geographic market 2 - All remaining islands (i.e., where only BTC has a network infrastructure to offer these services)*

<u>Consultation questions – Market definition for retail international business connectivity services</u>

Q10. Do you agree with URCA's definition of the product market? If not, why?

Q11. Do you agree with URCA's definition of the geographic market? If not, why?

5.2.2.3 Market Review Stage 2 – Competition Assessment

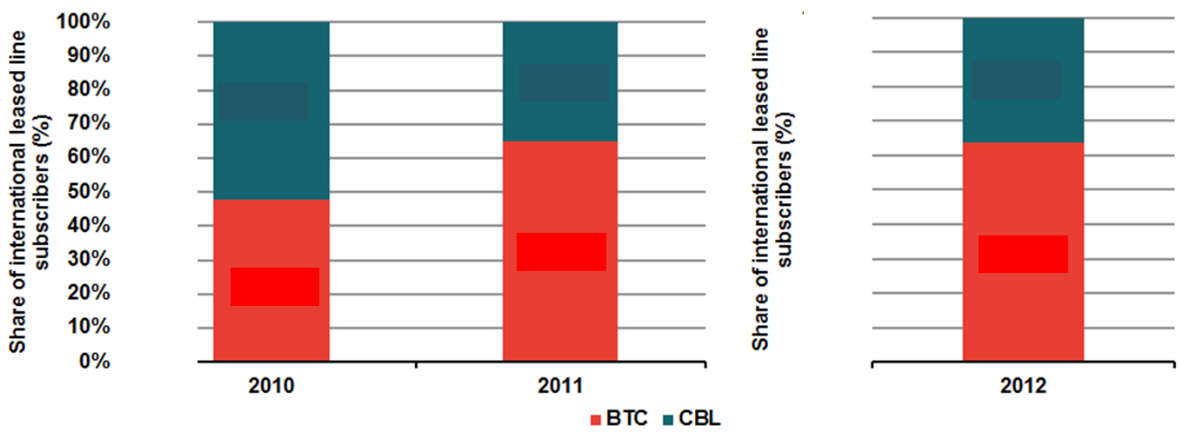
Having defined the relevant product and geographical market for retail international business connectivity services, URCA now carries out the competition assessment, as outlined in Section 3.2.1.

<u>Licensee's Market Share</u>

Geographic market 1 - The islands where CBL and BTC both have infrastructure and are offering international business connectivity services

An analysis of the market shares in the last 3 years reveal that BTC and CBL have had largely similar and stable market shares in terms of both revenue and subscriber numbers.

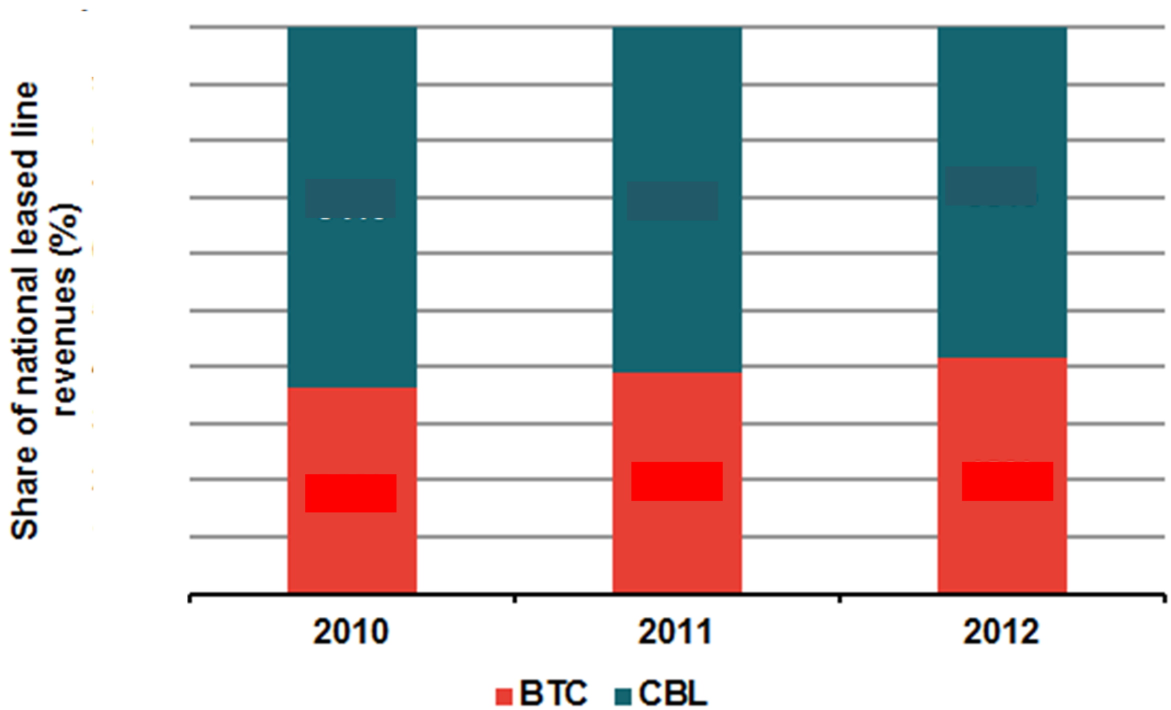
Figure 14: Evolution of Subscriber Market Shares



Source: URCA analysis of operator data

As was the case in the retail national business connectivity market, the market shares represented in **Figure 14** are based on BTC's subscriber numbers across geographic markets 1 and 2 for 2010 and 2011 because BTC was unable to provide a split by geographic markets for those years. It is therefore possible that BTC's market shares for 2010 and 2011 are slightly overstated. The 2012 market share is representative of the competitive situation in geographic market 1. As can be seen, the market shares were almost equal in 2010 but BTC's share has increased since then. Since this market has not been subject to ex-ante regulation and there have been no competition complaints since the review in 2009, this increase in market share is likely to be a manifestation of competition. Revenue shares, as seen in **Figure 15**, have remained stable over time.

Figure 15: Evolution of Revenue Shares over time



Source: URCA's analysis of operator data

URCA notes that while BTC has a greater proportion of the subscriber market share, CBL has a higher revenue share over the same time period. This could be indicative of CBL having a different customer mix than BTC, wherein more of their subscribers are on higher speeds.

As was the case in the market for retail national business connectivity services, there has been an expansion in the range of leased line offerings and a fall in prices.

The MPLS-based international leased lines from BTC appear to have been introduced after 2009 with 19 options for speeds (256 Kbps to 100 Mbps). CBL has reduced the prices on its REVON Dedicated circuits, as seen in **Table 13**, and introduced international REVON Ethernet circuits.

Table 13: CBL's International REVON Dedicated Circuits

Bandwidth (Mbps)	Price in 2010	Price in 2013
[●confidential]	**[●confidential]**	**[●confidential]**
[●confidential]	**[●confidential]**	**[●confidential]**

Source: CBL

Thus, although there has been no ex-ante regulation of this market, there have been no competition complaints since the last review, market shares have been largely equal, and there have been new products and falling prices in the market. URCA finds this suggestive of a prospectively competitive market.

Thus, URCA finds the available evidence suggestive of a prospectively competitive market.

Geographic market 2 - The islands where only BTC has a network infrastructure

As was the case in geographic market 2 for national business connectivity services, only BTC has network infrastructure to provide retail international business connectivity services for customers on the family islands. Given the absence of significant take-up of BTC's wholesale access services (as discussed in Section 5.2.1.1) and the fact that operators have not provided data in response to URCA's information requests to provide evidence to the contrary, URCA expects that BTC's market share would, by default, be well above the threshold 40% necessary for a presumptive finding of SMP.

<u>Barriers to Entry and Expansion</u>

As was the case for the retail national leased line services (discussed in Section 5.2.1.2), there are two ways to provide retail international leased line services: either a new entrant deploys its own end-to-end fixed network infrastructure or, where available, gains access to the end-to-end fixed network facilities of existing operators (either on commercial or regulated terms).

Deploying alternative infrastructure to provide international business connectivity services in The Bahamas requires substantial capital investment. Given BTC's and CBL's existing end-to-end fixed network infrastructures and the overall size of the Bahamian market, URCA considers the need to deploy alternative infrastructure to constitute a high barrier to entry in the retail international leased lines market. Alongside substantial capital investment, a new entrant would need to seek permission from the relevant authorities for the civil works required to lay a fixed network. In addition, an operator would also need to have access to international capacity in order to offer international business connectivity services.

Alternatively a new entrant could offer retail international leased line services by gaining access to an existing network, such as CBL's cable network or BTC's fixed network. As there is currently no regulated access to BTC's or CBL's fixed access network, any potential new entrant would need to reach a commercial agreement with BTC or CBL to be able to offer international leased line services. URCA is not aware of any alternative provider having reached a commercial agreement with either operator to provide international leased line services in The Bahamas. However, as was found in the 2009/10 review, the existence of Columbus Communications Ltd, a third party provider of international connectivity on a wholesale level, allows alternative operators to acquire international capacity from Columbus Communications, rather than BTC or CBL. Whilst this reduces the potential barriers to entry on the international connectivity part of the service, URCA considers the dependency on access to BTC's or CBL's network for the national connectivity part of the service (as discussed for retail national business connectivity services) to remain. As such, URCA remains of the view that barriers to entry remain high in the international business connectivity market.

In light of this evidence, URCA preliminarily finds that the barriers to entry in the retail market for international business connectivity services are high in both geographic markets.

Countervailing Buyer Power (CBP)

The analysis of the existence of CBP in the market for international business connectivity services is the same as that in the market for national business connectivity services (see Section 5.2.1.2 above) and is not repeated here.

In summary, URCA finds that CBP could be a relevant factor in this market. However, BTC and CBL have both failed to provide evidence that market conditions that could support CBP exist (as outlined in Section 5.2.1.2).

URCA preliminarily concludes, therefore, that CBP is not likely to exist in both geographic markets for international business connectivity services in the Bahamas.

Other factors

Where available, URCA has also considered whether there is any evidence that the other factors outlined in the analytical framework, might impact URCA's finding that BTC has SMP in the market for international business connectivity services in areas where CBL has no network coverage.[71] In doing so, URCA has concluded that these factors support URCA's preliminary finding; in particular, as many of these factors increase the level of barriers to entry and/or expansion within the international business connectivity market. For example, BTC's control over essential infrastructure for the national connectivity part of the service, its existing distribution and sales network, its vertical integration are likely to increase the barriers for other providers to enter the market, which is partly reflected in the limited number of active competitors currently within the market.

5.2.2.4 Preliminary conclusion on Competition Assessment

Having regard to the analysis presented above on the competition assessment, URCA now puts forward its preliminary position on the relevant market:

Preliminary Determination

URCA has preliminarily determined that:

- *BTC has SMP in the market for retail international business connectivity services in all areas where CBL has no network coverage.*

URCA notes that whilst it has not determined any licensee to have SMP in the other geographic market (i.e., in areas where both BTC and CBL are offering these services), it deems this market to be prospectively competitive only and will monitor any developments in that market closely going forward to ensure that it delivers the outcomes expected in a competitive market environment.

Consultation questions – Competition assessment for retail international business connectivity services

Q12. Do you agree with URCA's SMP findings in the retail international business connectivity services? If not, why?

[71]These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

6 Pay TV Services

This Section sets out URCA's preliminary assessment of pay TV services in The Bahamas, in terms of the relevant market definitions and competition assessments within each relevant market (i.e., the first and second stage of a market review process discussed in Section 3.2). As part of this, URCA sets out its preliminary views and consultation questions.

Any proposed SMP remedies are then discussed in Section 7.

6.1 Market Review Stage 1 - Market Definition

Retail pay TV services can be delivered via several technologies including, for example:

- Terrestrial TV networks;
- Cable TV networks;
- Satellite TV networks; and
- Broadband networks.

Further to delivering pay TV services via their own infrastructure, there are two alternative ways for service providers to provide retail pay TV services:

- Reselling. Service providers can provide retail pay TV services by gaining access to one of the existing networks (either on commercial or regulated terms). In The Bahamas there is currently no regulated access. As such, any potential entrant would have to reach a commercial agreement with an existing network operator in order to offer pay TV services in The Bahamas. URCA is not aware of any provider using this route at this point in time.
- Internet streaming. Similar to (unmanaged) VOIP services (discussed in Section 4.1.3 above), service providers can offer pay TV services which end-users can access via the internet. As for (unmanaged) VOIP services, there is a full separation between the TV content provider and the network operator and end users will commonly be required to purchase internet access separately. This differs to IPTV services where a broadband network operator offers pay TV services in addition to broadband services (i.e., similar to managed VOIP services discussed in Section 4.1.3 above).

From the above, the following options to access pay TV services are currently available to end-users in The Bahamas:

- Pay TV services provided by CBL via its cable and terrestrial network;
- Satellite TV services offered by several unlicensed service providers; and

- Internet streaming.[72]

Pay TV offerings may further differ in their characteristics. In particular, end-users may have the choice between:

- a subscription to multiple TV channels on a regular basis (with a number of different subscription packages available); and

- access to individual content such as movies, programs or sports events.

This is also the case in The Bahamas where, for example, CBL currently offers a range of pay TV offerings under its “REVTV Prime” brand. In particular:

- Five access and content bundles (PRIME- formerly SuperBasic, PRIME Select, PRIME Plus, PRIME Extra and PRIME Ultimate), containing between 80 and 300 (local and international) TV channels, at least 20 radio channels, up to 50 music channels and access to up to 100 high definition (HD) TV channels;[73]
- A range of ‘add-on’ TV channel packages providing REVTV Prime customers access to additional movie, sports or international TV channels (although URCA notes that the movies and sports add-ons are included as part of the PRIME Ultimate bundle); and
- Pay-per-view and video on demand services, which allow REVTV Prime customers to view and pay for individual TV content and/or to catch-up on TV programs.

[72] As discussed further below, URCA is not aware of any IPTV offerings (i.e., TV services offered by BTC and/or CBL via their broadband network) in The Bahamas.
[73] Customers incur and additional monthly charge for HDTV channels of $9.95/month. HD TV is currently only available on four islands (Abaco, Eleuthera, Grand Bahama and New Providence).

Table 13 – CBL Pay TV Packages

	Access & content package					'Add-on' packages			'On demand' services	
	PRIME	PRIME Select	PRIME Plus	PRIME Extra	Prime Ultimate	PRIME Movies	PRIME Sports	PRIME International	Pay-per-view	500 REVTV on demand
Product features										
Access	Access to digital and HD TV channels					Requires one of the PRIME packages, Included in PRIME Ultimate.		Requires on of the PRIME packages		
TV content/channels	80 TV channels	145 TV channels	220 TV channels	260 TV channels	300 TV channels (including PRIME Movies & Sports)	1-2 additional movie channels	3 additional sports channels	Additional foreign channel	Individual movie	TV content on demand
Radio & music channels	20 radio and 50 music channels	20 radio and 50 music channels	20 radio and 50 music channels	20 radio and 50 music channels	20 radio and 50 music channels	n/a	n/a	n/a	n/a	n/a
Monthly charge	$30.00	$35.95	$44.95	$54.95	$97.50	$5.95 - $25.00	$9.95	$2.95 - $14.99	$3.95	$2.99 - $34.99

URCA understands that satellite TV providers in The Bahamas also predominantly provide access and TV content bundles, with only limited pay-per-view offers. Selected Satellite TV offers are set out in **Table 14** below.

Table 14: Selected Satellite TV Packages for Residential Customers

	Provider A		Provider B	Provider C
	Package 1	Package 2		
TV channels	210 TV channels	285 TV channels	n/a	n/a
Installation charges	$100 activation charge plus $199 for satellite dish		$450 set-up charge ($650 for HDTV) – incl. one month of subscription	$375 set-up charge incl. one month of subscription
Monthly charge	$69	$99	$60	$60

Source: URCA based on discussions with satellite TV providers

Given the above, there are several considerations to be made when defining the relevant market and assessing the competitive dynamics of the market for pay TV services. These are as follows.

- The extent to which sub-products within the pay TV market may constitute separate product markets;
- The available substitutes for (cable-based) pay TV services; and
- The relevant geographic market (i.e., the need to consider sub-national markets).

URCA considers each of these issues in turn below.

To facilitate its understanding of the retail market for pay TV services and consumer demand for pay TV services in The Bahamas, URCA has commissioned a consumer survey of pay TV services.[74] The results of this survey, which are presented in the relevant Sections below, have informed URCA's preliminary analysis set out below.

[74] The consumer survey was conducted by an independent Bahamian marketing and research company, Public Domain Research & Strategy. Based on a telephone survey of 600 (randomly selected) Bahamian households the survey collected information on the current demand for and take-up of pay TV services, customers' actual switching behaviour and their willingness to switch in case of a price increase.

6.1.1 Are sub-products within the same market?

URCA recognises that there are potential sub-products within the TV content market (such as movies, sports, documentaries, international and local news and local content). These sub-products are not demand-side substitutes but are arguably supply-side substitute (i.e., if a service provider has the network infrastructure to provide sports channels, it should not be too costly to switch to the provision of movie channels, as both products are offered via the same physical infrastructure – subject to being able to gain access to both content).

Further, these channels are provided as packages (i.e., customers can not subscribe to individual channels, but rather have the choice of several pre-packaged TV channels) with the prices for these packages ranging from $30 to $97 per month. While the disparity in prices may appear to be a barrier to switching between packages, and therefore suggest separate markets for each package, this is not the case on account of chain of demand-side-substitutability. For example, consider PRIME Select which is priced at $35.95 per month and PRIME Plus which is priced at $44.95 per month. If the price of PRIME Select were to increase by 10%, it is plausible that enough subscribers would switch to PRIME Plus and render the price increase unprofitable for the following reasons:

- The price differential between the two packages is now far lower.
- PRIME Plus offers more channels than PRIME Select, and so, with a smaller price difference between the two packages, may be perceived as a suitable alternative.
- Upgrading from Prime Select to Prime Plus allows savings in the monthly charge of 2.1%[75], further reducing the price difference between the packages.

Thus, price would not be a barrier to switching, and this holds true for CBL's other pay TV offerings as well.

In light of the potential for supply-side substitutability, URCA has defined a single market for PayTV content services which includes all pay TV services (i.e., access and content packages as well as the add-on packages).

URCA recognises that CBL's on demand TV services differ in their product characteristics to the pay TV packages and add-on packages, as they allow access to individual programs or movies. However, given that these these services are only available to CBL's pay TV customers (i.e., a user requires a REVTV PRIME subscription of some form in order to access CBL's pay per view or video on demand offerings)

[75] http://www.cablebahamas.com/?p=n&sectid=1&catid=1

and the limited demand for these services (i.e., URCA understands that total revenues for pay-per view and video on demand services have constituted less than 5% of total revenues for pay TV services for residential customers in recent years), URCA considers it appropriate to define a single product market for pay TV services. This is further evidenced by URCA's consumer survey which suggests that 6% of all respondents which were CBL costumers currently use its pay-per-view service and the corresponding share for video on demand services is 7%).URCA has come to the preliminary view to consider these services within the same product market as the other pay TV services.

6.1.2 Are Residential and Business Customers in the same Market?

As part of the product market definition exercise, it is also important to assess the need to define separate markets for different customer segments. As for the other retail communications services considered in the previous Sections, the main customer segments to consider in the context of pay TV services are business and residential customers.

CBL currently offers separate broadband packages to residential and business customers (i.e., REVTV Business). Its business product is targeted at small and medium sized business, such as bars, shops, restaurants and hotels.[76] URCA further understands that business products have some distinctive features such as providing marketing resources, access to special promotions for businesses and their customers.

As discussed previously, markets can then be defined separately if there is no demand or supply-side substitution between these segments.

- URCA currently does not hold any information on customer switching behaviour for these services. In the absence of switching data, it is not clear if **demand-side substitutability** exists. It could be argued that the features of the two types of product are not distinctive enough to inhibit switching should there be a price increase especially for small businesses. However, business customers may struggle to get residential contracts because providers have visibility of whether the customer is a business or a residential subscriber when installing the cable TV connection. There is further a legal restriction on content rights, which are commonly more expensive for business customers wishing to show the content to third parties (i.e., their customers), relative to residential customers. The ability for CBL to maintain a different price for both customer segments indicates that demand-side substitutability is limited.

[76] http://www.cablebahamas.com/?p=n&sectid=1&catid=56

- The two products are likely to be **supply-side substitutes**, as the same infrastructure is used to deliver both business and residential services. So, in the event of a SSNIP by a hypothetical monopolist of residential pay TV services, a supplier of business services could switch to the supply of residential services and vice versa. However, URCA is not aware of any alternative provider for residential and/or business pay TV services in The Bahamas.

Given the limited data available and the existence of supply-side substitutability of the business and residential pay TV products, URCA preliminarily defines a single market for business and residential pay TV services.

URCA notes that, given the competitive dynamics in the pay TV market and the business customer segment in particular (i.e., URCA is not aware of any alternative provider of business pay TV service providers in The Bahamas), it is unlikely that adopting a more granular product market definition would lead to a different outcome of the competition assessment and SMP determination for pay TV services, set out below.

6.1.3 Are there any Substitutes available for cable based Pay TV Services

URCA has also considered the extent to which the different delivery mechanisms form part of the same product market. For this, it has taken the 2009/10 market review as a starting point with CBL's pay TV services being the reference product for the market definition exercise.[77] At the time, URCA concluded that there were no effective substitutes to CBL's SuperBasic (now PRIME) and digital TV services package; however, CBL's HDTV services had a demand-side substitute in the form of Satellite Bahamas' service offerings. Below, URCA assesses if there has been a change in the potential substitutability of the products considered in the previous review. This is undertaken, in turn, for satellite TV services, internet streaming and IPTV services.

Substitution between Cable TV packages and Satellite TV Services

When assessing the potential substitutability between CBL's pay TV packages and satellite TV services, URCA has started from its previous findings in 2009/10 that (with the exception of CBL's HDTV offerings) due to prevailing price differences these services were not found to be in the same product market. URCA then assessed whether there has been any significant change in the market since then which would require changing its position on these services. When doing so, URCA has taken into account demand side and supply side factors.

[77] Note, while in 2009/10 URCA considered CBL's SuperBasic package, Digital TV offerings, and HDTV offerings separately, URCA now considers them jointly within the market for regular access to Pay TV content.

- **Coverage/Availability/Take-up**. URCA understands that satellite TV services remain available for purchase and usage anywhere in The Bahamas. In 2009/10, the main satellite TV provider in The Bahamas was Satellite Bahamas. However, URCA understands that Satellite Bahamas no longer offers satellite TV services and is in legal dispute with Direct TV.[78] URCA understands that there are still other providers of satellite TV services in The Bahamas. URCA has no subscriber data for any of these providers; however, URCA's consumer evidence suggests that only a small share of Bahamian households currently subscribe to satellite TV services (i.e., 7% of survey respondents which are currently subscribed to pay TV services).

- **Product characteristics and prices**. URCA understands that the prices for satellite TV services are generally characterized by high start-up/hardware costs plus monthly charges for access to TV content (see **Table 14** above). For example, one of the current satellite TV providers currently charges $199 for the satellite dish and a $100 activation charge. Customers can then choose between two TV packages offering 210 TV channels for $69 per month and 285 TV channels for $99 per month. As such, even when ignoring the set-up costs, this makes this provider's pay TV offerings more comparable to CBL's mid to upper range packages (i.e., REV TV PRIME Plus, Extra and Ultimate – see **Error! Reference source not found.** above). This may limit the ubstitutability of these products with CBL's PRIME and PRIME Select offerings – which remain the most popular pay TV packages.[79] Two other satellite TV providers charge even higher set-up fees, as set out in **Table 14** above. Hence, while there are some similarities in product characteristics such as access to international channels and content, real time and multi-channel broadcasting and no need for a high-speed broadband connection, the current pricing levels may limit the substitutability of satellite and cable TV services. In addition, URCA understands that satellite TV services provide limited to no access to local content and exhibit lower resilience to weather disruptions, both of which may again reduce substitutability.

- **Switching evidence.** The results of URCA's consumer survey show that there would be limited switching from CBL's services to satellite TV services if prices for the CBL package increased by 5-10%. For example, as part of the consumer survey, 8% of CBL's pay TV customers stated that they would consider switching to a satellite TV provider given a 5%-10% increase in CBL's price. The probability of switching is further reduced given that approximately 20% of CBL's pay TV

[78] See for example: http://www.tribune242.com/news/2013/jul/17/directv-blasts-satellite-bahamas-on-signal-piracy/

[79] In 2012, 49% of CBL's residential pay TV customers were subscribed to CBL's PRIME/SuperBasic and 24% to its PRIME Select package.

customers subscribed to pay TV and broadband bundles (with the latter service commonly not provided by satellite TV providers).

Based on the evidence available, URCA believes that satellite TV services do not represent an effective substitute for CBL's pay TV services and therefore do not form part of the same relevant product market. URCA notes that, given the low take-up of satellite TV services in The Bahamas, this exclusion has limited bearing on URCA's preliminary competitive assessment of the pay TV service market, set out below.

Substitution between Cable TV packages and Internet Streaming

When assessing the potential substitutability between CBL's Pay TV packages and internet streaming services, URCA has started from its previous findings in 2009/10 that both services were not found to be in the same product market and then assessed whether there has been any significant change in the market since then which would require it to change its position on these services. When doing so, URCA has taken into account demand side and supply side factors.

- **Product characteristics**. Internet streaming allows access to TV content via the internet on request of the user.[80] In principle, this content can relate to both, live TV content (such as, news, entertainment shows and sports) and recorded content (such as movies and documentaries).[81] A user requires a high-speed internet connection and commonly a subscription to internet streaming provider to access the content (the latter can, in principle, allow access to a single event or be based on a monthly subscription to regular access to TV content). Some TV content is also provided without any subscription (either by the relevant TV station or a third party provider). Internet streaming is more likely to be used for specific programming such as movies or sports events as opposed to the general programming that is expected on a network channel. Further, as internet streaming providers are commonly international service providers, the content is commonly tailored towards international TV content rather than local content, with their being limited local content on services such as Netflix.[82] However, URCA understands that Bahamian consumers consider access to local content an important element of their TV

[80] As such, It differs from IPTV (discussed further below) in that IPTV involves the broadcast (or multicast) of programming that has been arranged by the person that propagates the programmes. Typically, IPTV provides a higher quality service and picture, rendering it more suitable to being viewed on a television set than internet streaming (where users select the programmes on demand and the programmes are of variable quality).

[81] Internet stream providers include, for example, Netflix and YouTube.

[82] URCA notes that the national broadcaster ZNS Bahamas provides internet streaming on its website (http://www.znsbahamas.com/); however, the available content is very limited and not comparable to the local content available via CBL's pay TV packages.

package. For example, when asked about the three most important factors for choosing a TV service provider, 54% of all respondents stated, 'availability of local content' as one of the factors. Only 'price' (74%) and 'quality of content' (68%) were referred to more often than local content. Lastly, for a user to experience a high quality of service from internet streaming a broadband access with speeds above 1.5Mbps (ideally above 3Mbps)[83] is required. Internet speeds below this can result in delaying, buffering and viewing interruptions.

- **Prices**. URCA understands that internet streaming services are generally free or available at low prices; however, this is only if the user has a pre-existing high-speed internet (broadband) connection. Absent a pre-existing broadband connection, this could result in an incremental cost of at least $30 per month (plus further set-up costs). As for unmanaged VoIP services discussed in Section 4.1 above, URCA regards this as a constraint to switching should the price of CBL's pay TV packages increase by 5-10%. However, given the prevailing broadband penetration rate in The Bahamas (i.e., 62% of households in 2012), only a limited number of potential users would face these additional costs.

- **Coverage/Availability/Take-up**. Internet streaming is available to any user with a broadband connection. As such, these services have, in principle, a wider (i.e., national) coverage relative to CBL's pay TV offerings (which is not available in some Family Islands where CBL only offers a free of charge, over-the-air, six channel TV service). Despite the general availability of internet streaming services in The Bahamas, URCA understands that the current take-up of these services remains limited, with many US based services being technically barred to persons in the Bahamas and services anyway having limited local content (a key product feature for Bahamian consumers, as described above). For example, whilst 20% of all respondents to the consumer survey stated an awareness of internet based TV services, only 3% stated that they were currently subscribed to these services. Furthermore, URCA understands that to access subscription-based internet services, consumers must have a credit card. In practice, given the penetration of credit cards in the Bahamas, this is likely to limit the addressable market for these services in the Bahamas.

- **Switching evidence.** The results of URCA's consumer survey show that there would be limited to no switching from CBL's pay TV services to internet streaming if prices for the CBL package increased by 5-10%. In particular, when asked about their potential response to a 5% or 10% increase in the monthly charge for their current CBL package, none of the consumer survey respondents stated a potential switch to an internet based TV provider (such as Netflix). This

[83] See for example: https://help.netflix.com/article/en/node/306

also holds for CBL's video on demand services, for which URCA's consumer survey revealed limited willingness to switch to an internet based TV services if prices for CBL's on demand services increased by 5-10%. In particular, when asked about their potential response to a 5% or 10% increase in CBL's price for video on demand services, only 3-5% of the consumer survey respondents stated a potential switch to an internet based TV provider. Given the limited availability of local content online and the barriers to consumers subscribing to a US based service, this lack of switching is not surprising.

URCA remains of the view that internet streaming is not likely to render a 5-10% SSNIP on CBL's pay TV packages unprofitable given the differences in product characteristics and the consumer survey evidence discussed above. URCA, thus, continues to believe that these services are unlikely to present an effective substitute for CBL's pay TV services, and so, will not constrain CBL's ability to profitably raise its prices by 5-10%.

Substitution between Cable TV packages and IPTV Services

There are currently no IPTV service offerings from licensees in The Bahamas and URCA is not aware of any concrete plans for BTC or other licensees to launch these services in the near future.[84]

While IPTV services may have similar product characteristics to CBL's current pay TV offerings, URCA is unable to verify the potential substitutability of IPTV service offerings at this point in time. As such, URCA preliminarily determines that IPTV does not form part of the relevant product market.

Preliminary Conclusion on the Relevant Product Market for pay TV Services

URCA preliminarily determines that the relevant market for regular access to pay TV content provided over cable TV and terrestrial networks.

URCA further considers there to be a separate market for access to pay TV content provided over satellite TV networks. URCA has not addressed this market here due to other regulatory concerns. However, URCA is currently considering the issue to determine the most appropriate regulatory response to that market.

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[84] URCA notes that Last Mile Communications has recently stated its intent to launch IPTV services in The Bahamas, without it providing further details on the intended timings of the service launch, the products to be offered and the geographic availability of these services.

6.1.3.1 Geographic Market

The starting point for the geographic market definition is again URCA's 2009/10 review where the market was defined as areas where CBL has coverage.[85] URCA has then assessed whether there has been any significant change in the market since the last review which would require changing its position on these services. When doing so, URCA has come to the preliminary conclusion that a national geographic market remains relevant for these services. This is based on a review of the following:

- **Demand factors**. URCA has not seen any evidence that the nature of demand for pay TV services varies significantly at a sub-national level. While demand for these products is local in nature (i.e., a subscriber cannot subscribe to a service offered only on another island), CBL operates a ubiquitous cable network and therefore has the capacity to provide pay TV services throughout its current network coverage. However, URCA notes that the range of channels may vary across CBL's current footprint, with digital and HDTV channels only being available on four islands.[86]

- **Supply factors**. Where available, CBL offers its pay TV packages at a uniform price across The Bahamas, which is partially related to its regulatory obligations. Given the lack of substitutes for CBL's pay TV products, URCA considers it likely that the competitive conditions have remained uniform across the country.

Given that there is no past evidence of customers diverting orders to suppliers in other areas, a difference in basic demand characteristics or any major difference in market shares across different islands, URCA sees no reason for defining sub-national markets.

As such, URCA has come to the preliminary view that the geographic reach of the relevant product should not be narrower than the area in which CBL has facilities to provide pay TV services.

6.1.1.1 Preliminary Conclusion on Market Definition

Having regard to the analysis presented above on product and geographic market definition, URCA now put forward its preliminary position on the relevant market:

Preliminary Determination

[85] URCA understands that CBL currently has network coverage – via its cable TV or terrestrial TV network – on the following eleven islands: Abaco, Andros, Berry Islands, Bimini, Eleuthera, Exuma, Grand Bahama, Inagua, Long Island, New Providence and San Salvador.
[86] Abaco, Eleuthera, Grand Bahama and New Providence.

URCA has preliminarily determined that the relevant market for access to pay TV content provided over a cable TV network infrastructure.

The market is defined to be national in scope.

Consultation questions – Market definition for pay TV services

Q13. Do you agree with URCA's definition of the product market? If not, why?

Q14. Do you agree with URCA's definition of the geographic market? If not, why*?*

6.1.2 Market Review Stage 2 – Competition Assessment

Having defined the relevant product and geographical market for pay TV services, URCA now carries out the competition assessment, as outlined in Section 3.2.1 above.

Licensee's Market Share

As a first step, URCA has reviewed the available evidence in market shares in the market for pay TV services (as defined in the previous Section). Given that URCA has defined the relevant market to only include access to pay TV services provided by cable TV and terrestrial networks, CBL by default holds a 100% market share in the relevant product market.

As noted previously, URCA is of the preliminary view that its narrow product market has limited impact on the market share analysis. This is based on URCA's understanding of the very low take-up of alternative pay TV services in The Bahamas. In particular, as stated further above, the consumer survey revealed that only 7% of respondents with a pay TV subscription are currently subscribed to a satellite TV offer. The corresponding share of internet based TV offerings is 3%. As such, even under a wider product market definition which includes these alternative services, CBL's market share would be expected to be high and significantly above the 40% market share threshold.

Barriers to Entry and Expansion

Providing pay TV services to end-users in the Bahamas requires deploying a network infrastructure and obtaining the distribution rights for TV content.

Deploying alternative infrastructure to provide pay TV services to end users requires substantial capital investment. Given the existing end-to-end networks and the overall size of the Bahamian market, URCA considers the need to deploy alternative infrastructure to constitute a high barrier to entry in the market for pay TV services. Alternatively, a new entrant could also offer pay TV services by gaining access to an existing network, such as CBL's cable network or BTC's fixed network. However, as wholesale access for pay TV services is currently not regulated in The Bahamas, the access would need to be based on commercial negotiations. URCA is not aware of any such arrangements currently being in place.

URCA further understands that a significant barrier to the provisioning of pay TV services might be the commercial negotiation of rights to provide TV content. Negotiating local and US network content may be time consuming, but should not be impossible for an alternative provider wishing to create a package comparable to CBL's PRIME/SuperBasic packages. However, there may be greater barriers to obtaining premium sports and movie content due to the exclusivity of those rights.

Given this, URCA is of the preliminary view that access to infrastructure and content constitute significant barriers to entry in the pay TV service market.

As such, URCA considers there to be high barriers to entry and expansion in the market for pay TV services.

Countervailing Buyer Power (CBP)

CBP could limit the ability of CBL to set pay TV package prices above the competitive level and hence to behave independently of buyers and ultimately of consumers. However, in the context of retail pay TV services (in particular, for residential customers[87]), this is unlikely to hold. This is particularly because CBL is the sole provider within the relevant market given URCA's preliminary product market definition.

As such, URCA preliminarily concludes that countervailing buyer power is not likely to exist in the market pay TV services in The Bahamas.

Other factors

Where available, URCA has also considered the evidence on the other factors outlined in the analytical framework, potentially increasing the likelihood of barriers to entry and/or expansion.[88] These also support URCA's finding that CBL has SMP in the pay TV market (in particular, the existence of economies of scale and scope, BTC's control over essential infrastructure and the number of active competitors).

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[87] Whilst CBP may be more prominent for business customers, URCA understands that the majority of CBL's business customers are restaurants, bars, shops, offices and hotels. Neither of these customers appear sufficiently large to be able to exert CBP when purchasing pay TV services. This is particular the case given CBL position in the pay TV market.

[88] These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

However, the strength of evidence on the factors considered here make these factors determinant. They have therefore not been outlined in greater detail in this Section.

6.1.3.2 Preliminary Conclusion on Competition Assessment

Having regard to the analysis presented above on the competition assessment, URCA now put forward its preliminary position on the relevant market:

<u>Preliminary Determination</u>

URCA has preliminarily determined that:

- *CBL has SMP in the market for pay TV services in The Bahamas.*

<u>Consultation questions – Competition assessment for pay TV services</u>

Q15. Do you agree with URCA's SMP findings in the markets for pay TV services in The Bahamas? If not, why?

7 Market Review Stage 3 – Ex-Ante Regulatory Remedies

In this Section, URCA reviews possible remedies that it considers appropriate in the light of the findings contained in this Preliminary Determination.

The overall objective of regulation is to mimic competition in those markets in which competition has not yet emerged and to put remedies in place where there is the potential for SMP operators to abuse their market position ("market failures"). As such, in Section 7.2 below, URCA identifies the specific competition concerns to be addressed and the potential consumer harm which may result absent any ex-ante regulatory intervention. URCA then sets out its review of the regulatory options available to address these market failures (Section 7.3), followed by an overview of the proposed SMP obligation in each relevant market considered within this review (Section 7.4).

Prior to this, URCA briefly confirms the need for ex-ante regulation in the context of the markets under consideration.

7.1 The need for ex-ante regulation

As discussed in Section 3.2.1, establishing the need for ex-ante regulation should be based on the (EU) three criteria test. This states that ex-ante obligations can be necessary if the relevant market is found to have the following three characteristics:

1. High and non-transitory barrier to entry and expansion;
2. No emerging competition; and
3. If ex-post competition law is unlikely to be sufficient to resolve any abuses of a dominant position.

As discussed above, whilst the three criteria test provides a helpful framework to ensure that ex-ante remedies are targeted, URCA notes that, in practice, the first two criteria are covered in the competition assessment. In particular, as set out in the relevant competitive assessment Sections (i.e., Sections 4.2, 5.1.2, 5.2.1.2, 5.2.2.3 and 6.1.2 above), all relevant markets under consideration within this review are characterized by high barriers to entry and expansion. Further, when assessing the competition dynamics within each of the relevant markets, URCA has considered both, the current level of competition and any expected changes to the level of competition within that market in the foreseeable future. Given this, in URCA's view, once a licensee has been found to have SMP, the three criteria test primarily requires an assessment on whether ex-post competition law would be sufficient to remedy any abuses.

When considering the question of **sufficiency of ex-post competition law,** it is important to understand the nature of the market and products in question. Electronic communications services are provided through electronic communications networks, all of which require substantial investment. In general, the local access infrastructure is considered the most difficult component for potential competitors to replicate. Therefore, if an SMP operator of services based on the local access infrastructure were to abuse its market power in the provision of these products it could cause long-term damage to the prospect of competitive provision of the products as well as short-term damage to consumers, businesses and the overall Bahamian economy through imposition of anti-competitive trading conditions. Thus, URCA finds ex-post competition law to be insufficient to address the competition concerns that exist in the markets under consideration. This is because ex post regulation can only remedy an abuse after it has taken place. The process of identify potentially abusive behavior, verifying whether it constitutes an abuse and then remedying the abuse is a time and resource intensive exercise. This may lead to considerable harm to those who have been affected by the abusive behavior, which in case of alternative (smaller) operators may affect their ability to provide the relevant services going forward. In the context of retail markets, due to the fragmented customer base, there is further a heightened possibility that any abusive behavior (such as excessive pricing) is not detected or reported. As such, URCA is of the view that it is important to prevent any abusive behavior by SMP operators from taking place in the first instance.

Given the above, URCA preliminary concludes that the relevant markets for fixed voice services, retail broadband services and pay TV services are susceptible to *ex-ante* regulation. In other words, absent ex-ante regulation, the market failures identified will result in an abuse of dominance by SMP operators, thereby limiting the development of competitive markets, with negative effects on competitors and ultimately consumers.

7.2 Expected Competition Problems and Consumer Harm

The key objective of any ex-ante obligation is to remedy the particular market failures that occur in each market, in absence of any ex-ante intervention, in order to prevent any SMP operator from abusing its market power to the detriment of consumers and the Bahamian economy more widely. In the below, URCA identifies the specific market failures that could arise within the context of the retail electronic communications services considered as part of this market review.

7.2.1 Market failures and potential abuse of market power

URCA is concerned with the ability of an SMP operator to abuse its position of dominance to the detriment of consumers. This is particularly relevant in retail markets in which an SMP operator has exclusivity or a very strong market position and is therefore not subject to constraints arising from competition or potential new market entry. In these circumstances, an SMP operator may have an incentive to engage in behaviour that exploits its position of market power by either extracting economic rent directly from consumers (i.e., by charging higher prices than those expected under competitive market conditions – referred to as **excessive pricing**) or by aiming to harm or prevent competition from emerging within the market (i.e. either by making it more difficult for existing alternative operators to compete fairly and/or by preventing any potential new operators to enter the market – referred to as **market foreclosure**).

Market foreclosure refers to the situation where an SMP operator engages in a variety of exclusionary practices aimed at deterring entrants. An SMP operator may attempt to drive competitors out of the market in which it has been deemed to have SMP or a related market. The result of such behaviour, and other attempts to remove or prevent entry of competitors, is known as market foreclosure. There are two common forms of market foreclosure:

- **Horizontal leveraging** applies where an SMP operator seeks to extend its power from one retail (wholesale) market to another retail (wholesale) market. A common form of horizontal leveraging is abusive bundling or tying of products where the SMP operator has no market power with products where it does hold market power, in a way such that alternative operators cannot replicate the SMP operator's product bundles.

- **Vertical leveraging** occurs where a SMP operator seeks to extend its market power from a wholesale market to a vertically related retail market. This can occur through pricing (for example, pricing a critical input for the provisioning of retail services in a way that prevents other operators from providing the retail service at a competitive price) and non-pricing practices (for example, by denying access to a critical input for the provisioning of retail services).

Behaviour that leads to market foreclosure has a detrimental effect on the development of competition which, in turn, impacts on the interests of consumers who may face (among other things) higher prices, lower quality products and less product differentiation.

URCA notes that there are further forms of market foreclosure by SMP operators which rather than aiming to force other operators to exit the market, primarily aim to weaken alterative operators or prevent them from gaining a stronger market position. In the context of retail markets these (competitive) distortionary practices commonly take similar forms as those discussed above (i.e., anti-competitive bundling or price discrimination). For example, a SMP operator may set higher retail prices for calls to customers on other networks than for calls to customers on its own network. If these price differentials are not based on justifiable cost differences in delivering these call services, they may be deemed as being anti-competitive, since they can make it more attractive to join (or stay) on the SMP operators' network, relative to any alternative operator's network.

Market foreclosure (in particular vertical leveraging) is commonly addressed in the context of wholesale markets (i.e., by requiring SMP operators in wholesale markets to provide non-discriminatory access to critical wholesale services at a charge which is reflective of the (efficient) cost of providing these services).

As such, URCA considers the following potential anti-competitive practices are of key concern for the retail electronic communications services considered as part of this market review.

Table 15: Key (potential) Anti-competitive Practices of Relevance for each Retail Service[89]

	Fixed voice services	Broadband services	Business connectivity services	Pay TV services
Excessive pricing	✓	✓	✓	✓
Predatory pricing[90]	✓	✓	✓	✓
Margin Squeeze[91]	✓			
Undue bundling / tying	✓ (fixed voice & mobile services)	✓ (broadband & pay TV services)		✓ (broadband & pay TV services)
Undue price discrimination	✓ (on-net/off-net call price differentials)			

7.3 Review of regulatory options

A key objective of any SMP obligation is to address the market failure(s) and/or to prevent the (potential) anti-competitive practice(s) an SMP operator may engage in. As such, URCA has identified a range of regulatory options which may help achieve this objective for the markets under consideration.

When selecting appropriate SMP remedies, URCA has taken into account its overall policy objectives and the requirements under the Comms Act. In particular, section 4 of the Comms Act requires any imposed

[89] URCA notes that there may be further anti-competitive practices to those set out in this table (such as, for example, low quality of service).

[90] Predatory pricing relates to below cost pricing of a retail services by a SMP operator where no essential wholesale product is required to deliver the retail product.

[91] Margin squeeze refers to a situation where the SMP operator has control over an essential wholesale product required to deliver a retail service and then either (i) increases the wholesale price or (ii) lowers the retail price such that an efficient alternative retail provider cannot compete with the SMP operator.

regulatory obligation to "*further the interests of consumers by promoting competition […] in particular […] to encourage, promote and enforce sustainable competition.*"

URCA's selection of regulatory remedies was also guided by section 5 of the Comms Act, which requires URCA to, amongst others:

- Consider whether market forces may be relied upon to achieve policy objectives;
- Have due regard to the costs and implications of regulatory measures on affected parties; and
- Ensure that regulatory measures are:
    - efficient (i.e., they should represent the least intrusive way of addressing a competitive concern identified);
    - proportionate (i.e., the resulting regulatory burden on the SMP operator should not outweigh the benefits from remedying the competition concern); and
    - introduced in a manner that is transparent, fair and non-discriminatory.

Regulatory options considered

Given the (potential) anti-competitive practices of relevance to the retail markets considered in this market review set out in **Table 15** above, URCA has reviewed the following regulatory options.

- **Rely on standard/non-discrimination obligations only.** Under this option, no additional obligations on SMP operators would be imposed. Instead, URCA would rely on:
    - the standard (i.e., non-market specific) obligations on SMP operators as set out in Conditions 34, 35 and 36 of the Individual Operator Licences (IOL) and section 40(4) of the Comms Act; and
    - any standard and wholesale service related SMP obligations currently in place (such as, accounting separation, the provision of re-sale broadband products, publication of reference offer and cost-based wholesale charges).

  As URCA would not impose any additional SMP obligations on retail markets as defined in this document, URCA considers this option to represent a 'light touch' regulatory approach.

- **Rules based approach to price regulation (i.e., status quo).** For selected retail services, BTC and CBL are currently required to seek URCA's approval for pricing new products or services, or when proposing to change prices for existing products and services.[92] This process is governed by the Retail Pricing Rules (RPR).[93] The RPR are in addition to the standard/non-discretionary obligations under conditions 34, 35, and 36 of the IOL and section 40(40) of the Comms Act. As such, one option considered by URCA is to continue applying the RPR to the services forming part of the relevant SMP markets set out within this document.

- **Incentive based price regulation.** Instead of the pre-approval process under the RPR, URCA could impose incentive based retail price regulation.[94] There are several forms of incentive regulation, including amongst others price caps, revenue caps, rate of return and yardstick regulation. Whilst all regimes aim to prevent excessive prices/returns by the SMP operator, each of these options vary, amongst others, in the financial matric they target (i.e., prices, revenues or return on capital employed) and their incentive power (i.e., the incentives provided to the SMP operator to reduce costs to an efficient level). As part of its 2009 consultation on retail pricing regulation[95], URCA reviewed the merits of different incentive based regimes (i.e., price cap vs. rate of return regulation) and concluded that price cap regulation was the most appropriate approach in the context of The Bahamas. At the time, there was a broad consensus amongst interested parties for the adoption of a price cap regulation for retail communications services (whilst also recognising a need for further discussion of detailed implementation issues before any price cap regime could be imposed).[96] URCA further notes that price cap regulation could be introduced alongside rules to limit below cost pricing and anticompetitive bundling, if this is deemed to be a significant concern in a particular market.

- **Other price-related obligations (i.e., geographic average pricing).** For some of the retail services covered within this market review (i.e. retail broadband and business connectivity services), URCA has preliminarily defined sub-national markets. Where a Licensee is active in both geographic markets, but is found to have SMP only in one of them (such as BTC for retail broadband services – see Section 5.1.2.1 above), a potential SMP remedy could be to require the SMP operator to set national uniform prices. This would aim to constrain its pricing

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[92] This applies to BTC's fixed voice and mobile voice and data services and CBL's PRIME TV package.
[93] ECS 15/2010, which is currently under review (see ECS 16/2013).
[94] As stated in the context of the other regulatory options consider here, this would not affect the standard/non-discretionary obligations under conditions 34, 35, and 36 of the IOL and section 40(40 of the Comms Act, which would remain in place.
[95] Available at: http://www.urcabahamas.bs/download/008296900.pdf
[96] ECS 16/2009

behaviour in the SMP market by the price levels set in the other geographic market where market forces may lead to prices at a competitive level. This remedy is currently applied to BTC's retail broadband prices in areas where CBL does not have network coverage. URCA considers this to constitute a 'light touch' SMP obligation since it does not impose a direct price constraint on the SMP operator, but instead to rely on the competitive dynamics in the other geographic market (or the SMP obligations imposed in this market, in case that market not being deemed to be competitive) to determine the price level in both geographic markets. [97]

The table below sets out the main advantages and disadvantages for each of the regulatory options discussed above. Further details on the cost and benefits of these options are set out in ECS 07/2010.[98]

Table 16: Main Advantages and Disadvantages of Regulatory Options Considered

	Advantages	Disadvantages	Application
Standard/non-discriminatory obligations only	• No set-up or compliance costs beyond those associated with standard/ non-discriminatory obligations • Full pricing flexibility for SMP operator(s), subject to non-discrimination requirements and ex-post competition requirements	• Insufficient to prevent excessive pricing on an ex-ante basis • No incentives for SMP operators to drive efficiency gains and pass these on to consumer via lower prices	Most suitable in markets where excessive pricing is unlikely to be a significant concern and competition is likely to emerge going forward (but is not yet sufficiently developed)
Retail Pricing Rules (in addition to standard/non-discretionary obligations)	• Price approval requirements can be focused on market failure concerns only (i.e. price increases to prevent excessive pricing, price decreases in case of margin squeeze or predation and/or bundled products in case of unfair tying), whilst SMP operator retains full pricing flexibility on all other price changes • Regulatory burden limited to price approval applications (i.e. no	• Time & resource intensive approval process of price changes • Price approval requirement restricts SMP operator's ability to respond to a change in market conditions • No incentives for SMP operators to drive efficiency gains and pass these on to consumer via lower prices	Most suitable in areas where the focus is on ensuring retail prices do not increase (rather than there being potential for further price reductions)

[97] As stated for the other regulatory options consider here, this would not affect the standard/non-discretionary obligations under conditions 34, 35, and 36 of the IOL and section 40(40 of the Comms Act, which would remain in place.
[98] See Appendix 2

	regular reporting requirements)		
Price cap (in addition to standard/non-discretionary obligations)	• Well-established approach in regulated industries, including for retail electronic communications services • No need for pre-approval of individual prices by URCA, allowing SMP operator(s) to respond to market conditions quickly • Can allow SMP operators some pricing flexibility on individual products (i.e. within a service basket). Further option to apply specific price constraints (i.e. sub-caps) on individual products, if desirable. • Incentivizes SMP operator to drive efficiencies and lower its retail prices • Provides certainty on (average) prices within price control period • Low administrative requirements within the price control period	• Data and resource intensive to set-up price control • Requires multi-year forecasts and robust costing information on SMP operator	Most suitable in markets where SMP licensee should be incentivised to reduce costs and those to be passed on to retail prices whilst retaining some flexibility on individual product prices.
Geographic average pricing (in addition to standard/non-discretionary obligations)	• No need to set prices for SMP operator in the relevant geographic sub-market (as pricing from the other sub-markets constrains the ability to set excessive prices) • Easy compliance monitoring	• Limited applicability (i.e., requires competitive pricing in at least one of the geographic sub-markets) • May lead to prices not being reflective of costs in the relevant sub-market (however, prices should be reflective of costs at a national level).	Most suitable to remedy SMP in geographic sub-markets in case the SMP operator faces price constraints in other geographic sub-markets

7.4 Proposed SMP Remedies

Based on the relative merits of each regulatory option and its preliminary views on the competitive dynamics within each relevant market as set out in Sections 4 to 6 above, URCA sets out below its proposed set of SMP remedies for each of the markets in which it considers one or more Licensees have SMP.

URCA notes that the below obligations are all supplementary to the standard SMP obligations of non-discrimination and, for retail markets only, publishing charges, terms and conditions and complying with SMP-specific consumer obligations set out in Condition 36 of the individual operating licence.

7.4.1 Fixed voice services

BTC's retail fixed voice services are currently subject to the RPR. As part of its recent consultation on the proposed changes to the RPR[99], both BTC and CBL have re-iterated their concerns with the current and draft revised RPR, recommending a transition to a price cap regime instead.[100] In particular:

- BTC stated, amongst others, that the RPR, which was always intended to represent an interim regime only, was not "*fit for purpose*"[101] since they placed significant burden on SMP operators, hindered their commercial flexibility and could delay any consumer benefits materialising from retail price reductions.
- CBL considered the RPR framework does not represent a proportionate or efficient ex-ante SMP obligation and that it was more suited for a monopolistic market structure.[102] It further considered price cap regulation as a more appropriate form of regulation in The Bahamas, in line with URCA's 2009 regulation on retail price regulation (discussed above).

As set out in **Table 15** above, URCA considers there to be five (potential) anti-competitive practices of relevance to retail fixed voice services:

- Excessive pricing;
- Margin squeeze;
- Predatory pricing;
- Undue bundling/tying; and
- Undue price discrimination.

Excessive pricing

For retail fixed voice services there is a potential for BTC to extract rent from its customer by pricing excessively.

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[99] See ECS 16/2013
[100] See http://www.urcabahamas.bs/publications.php?cmd=view&id=177
[101] Page 2 of http://www.urcabahamas.bs/download/074346000.pdf
[102] See page 2 of http://www.urcabahamas.bs/download/043425100.pdf

This concern is currently addressed based on the RPR. However, in light of the stakeholder feedback received on the RPR and the relative merits of each regulatory option set out in **Table 16** above, URCA is of the preliminary view to replace the RPR by a retail price cap regulation for BTC's fixed voice services. URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published.

Margin squeeze

BTC could also attempt to prevent further entry from occurring by conducting a margin squeeze between its wholesale fixed call termination services and its retail call prices.[103]

Again, this concern is currently addressed based on the RPR and BTC's further SMP obligations for wholesale services (i.e., cost based call termination charges). As discussed above, URCA is of the preliminary view to replace the RPR by a retail price cap regulation for BTC's fixed voice services. Whilst a price cap regulation may not necessarily prevent BTC from conducting a margin squeeze, URCA considers it unlikely that such anti-competitive pricing behaviour will occur. This is because fixed voice services in The Bahamas are currently offered as product bundles.[104] As such, URCA considers it unlikely that BTC would engage in a margin squeeze specifically on voice services only (i.e., where it currently offers wholesale services[105]). Further, the strongest competitor to BTC is currently CBL, which relies on its own network infrastructure. As such, URCA is of the preliminary view that no further SMP obligations is required to specifically prevent BTC from potentially engaging in a margin squeeze for fixed voice services. Instead, URCA is minded to rely on ex post competition powers to address such potential behaviour by BTC, if the need arises.

Predatory pricing

Instead of margin squeeze, BTC could further attempt to prevent further entry from occurring by offering its fixed voice services significantly below cost of providing these services (i.e., predatory pricing).

In general, emerging competition would provide an SMP operator with the incentive to engage in predatory pricing and effectively foreclose the market to competition (i.e., by making short-term losses for long-term gains). However, in the context of **BTC**'s retail fixed voice services, the prospect of emerging competition comes primarily from CBL, which is also well placed to engage in price competition (due to it having an existing network and thus low incremental costs), thus suggesting that predatory pricing would not be profitable in either the short or long term. Further, as CBL offers its fixed voice services as product bundles, this would make any predatory pricing from BTC more difficult. As

[103] Note, there is currently no regulated wholesale fixed access product in The Bahamas.
[104] A potential exception to this, are international call services over pre-paid calling cards.
[105] URCA notes that there is currently no (regulated) wholesale access/line rental service available in The Bahamas.

such, URCA is of the preliminary view that no further SMP obligations is required to specifically prevent BTC from potentially engaging in predatory pricing behaviour for fixed voice services. Instead, URCA is minded to rely on ex post competition powers to address such potential behaviour by BTC, if the need arises.

Undue bundling/tying

Given the preliminary SMP findings set out above, there is a potential for BTC to manifest its market power in both the retail fixed voice and mobile voice services by offering these services as retail product bundles. A similar concern applies to fixed voice and broadband bundles. A key concern for any product bundles across these retail services is that BTC may offer bundles which cannot be replicated by other providers (either by using their own networks and/or by gaining access to BTC's networks via its wholesale products).

Currently, any such proposed retail offerings by BTC require URCA's approval under the RPR. Whilst URCA is of the preliminary view to move from the RPR to a price cap regime, URCA remains of the view that there is a need for an ex-ante regulatory remedy to prevent BTC from offering such product bundles going forward. As such, URCA has reached the preliminary conclusion to retain the SMP obligation (as set out in the RPR) on BTC not to bundle its retail fixed voice services (or any other retail service for which it has SMP) with any other of its retail services (such as, mobile voice services or broadband services) unless these product bundles can be replicated by other providers. Replicability will be assessed in line with requirements set out in the RPR.[106] For the avoidance of doubt, this obligation is independent of BTC's position in the market for retail mobile voice services in The Bahamas.

Undue price discrimination

There is currently limited on-net/off-net pricing undertaken by BTC for its fixed voice services (i.e. BTC charges the same price for domestic long distance calls, independent of whether these are on-net or of-net calls. However, BTC's recently launched HomePhone Plus packages only include on-net long distance calls. This represents an implicit on-net/off-net price differentiation. Whilst URCA approved these packages at the time, URCA now considers BTC's key justification for such pricing at the time (i.e., BTC justified its application on the basis of asymmetric fixed call termination rates and a similar practice by CBL in its fixed access and call bundles) will not be hold going forward. Absent any prevailing cost differences between on-net and off-net calls, URCA considers any prevailing on-net/off-net pricing by a SMP licensee to be of potential competitive harm. As such, URCA is of the preliminary view to only allow on-net/off-net pricing of fixed voice services offered by SMP licensees (i.e., currently BTC) which are reflective of justifiable cost differences in delivering these call services.

Preliminary Determination

[106] Note that recently published Revised Retail Pricing Pricing Rules (ECS 06/2014).

Given the above, URCA has preliminarily determined that:

- *BTC's retail fixed voice services, as set out in Section 4 above, will be subject to an ex-ante price cap regulation going forward. URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published. The price cap regime will replace the (ex-ante) price approval requirements, as set out in the RPR.*

- *BTC's retail prices for on-net and off-net fixed call services may only differ in case of justifiable cost differences in delivering these call services.*

- *BTC shall not introduce any new retail product bundled offerings of fixed voice services with any other of its retail services, unless these bundles are replicable by other providers.*

Further, for the avoidance of doubt, BTC's current set of standard SMP obligations, its SMP obligations on wholesale services[107] *and the non-discrimination requirements as set out in its operating licence will further remain in place.*

Consultation question – Proposed SMP remedies for fixed voice services

Q16. Do you agree with URCA's proposed SMP remedies for fixed voice services? If not, why?

7.4.2 Broadband services

CBL's retail broadband services are currently not subject to the RPR as, at the time, URCA considered the requirement for CBL to provide stand-alone retail broadband products (i.e., by untying its pay TV and broadband offers) to be sufficient to remedy any potential abusive behaviour of CBL in the retail broadband market.

BTC is currently required to offer national uniform retail broadband prices. This obligation aims to constrain BTC's pricing behaviour in the area where CBL does not have network coverage (i.e., the Family islands, where it was found to have SMP in the market for retail broadband services). Whilst this approach constitutes a 'light-touch' approach (as discussed in Section 7.3 above), it does rely on the

[107] See, for example, **Table 2** above. For further details, please refer to ECS 11/2010 and ECS 13/2013.

retail prices in the other geographic market (i.e. the one where CBL has SMP) not to be excessive and to move towards a competitive level.

URCA notes that CBL's and BTC's prices for broadband services have remained broadly unchanged since 2010. In particular:

- The monthly subscription charges for CBL's (stand-alone) residential broadband packages (REVON Charge, REVON Boost and REVON Velocity[108]) have remained unchanged since 2010 (i.e., $49.50, $71.50 and $90.50, respectively). However, in 2013 CBL has increased the advertised download speeds for these offerings. For CBL's business broadband packages (REVON Pro1.0, REVON Pro2.0 and REVON Pro3.0) both the monthly subscription and advertised download speeds have remained unchanged since 2010.
- There have been limited changes to the monthly subscription charges for BTC's residential and business broadband packages since 2010. For example, BTC's Turbo Connect residential packages are offered at $29.99 and $34.99 per month; however, the advertised download speeds have doubled for both products in 20011-12 (i.e., from 4Mbps to 8 Mbps and from 8Mbps to 16Mbps, respectively)

This compares to a decline in average retail prices in many other jurisdictions. For example, as part of its annual review of five European and the US communications markets, the UK communications regulator Ofcom found that the weighted average price of standalone broadband prices had fallen in all six countries between 2012 and 2013.[109] A similar downward trend in broadband prices was also found in earlier versions of the reports.[110]

As set out in **Table 15** above, URCA considers there to be three (potential) anti-competitive practices of relevance to retail broadband services:

- Excessive pricing;
- Predatory pricing; and
- Undue bundling / tying.

Excessive pricing

[108] Formerly branded as Coralwave Lite, Coralwave Groove and Coralwave Rock

[109] Ofcom, 'The Communications Market Report 2013: International', available at: http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/

[110] For example, Ofcom's 2012 report found weighted average broadband prices to have fallen in four out of the six countries considered within the study.

For retail broadband services there is a potential for both CBL and BTC to extract rent from their customers by pricing excessively in the relevant markets where they have SMP.

Whilst aiming to prevent **CBL** from further manifesting its market power in the retail broadband market, the untying obligation imposed on CBL does not prevent it from potentially engaging in any excessive pricing going forward. Given the limited price reductions observed for retail broadband services (as discussed above), URCA considers this light touch approach as inadequate going forward. Instead, taking into account the relative merits of each regulatory option set out in **Table 16** above and the stakeholder feedback received on the RPR, URCA is of the preliminary view to impose a retail price cap for CBL's broadband services going forward. URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published.

Given its market power being confined to only one of the geographic markets in which it is present, **BTC** is currently required to offer national uniform retail broadband prices (i.e., its pricing behaviour in the SMP market is constrained by the prices in the area where it does not have SMP). URCA has come to the preliminary decision to continue to apply this SMP obligation going forward. This is due to the following reasons.

- Only a small share of the total population and BTC's customers are based in the geographic market in which BTC is considered to have SMP for retail broadband services. This merits a light touch approach, relative to a more involved approach, such as a price cap regulation.
- URCA expects the proposed price cap on CBL's retail broadband services will ensure that its prices are not excessive and move towards a competitive level. Given the national uniform pricing constraint on BTC this should therefore also hold for BTC's retail broadband prices (throughout The Bahamas) as it will seek to reduce its prices to match CBL's in areas where both are present.

As such, URCA has reached the preliminary conclusion (i) to impose a price cap regulation on CBL's retail broadband services and (ii) to uphold the SMP obligation of national uniform pricing on BTC's retail broadband services.

Predatory pricing

Both SMP operators could further attempt to prevent further entry from occurring by offering retail broadband services significantly below cost of providing these services (i.e., predatory pricing). There may further be a concern about margin squeeze, in case of the introduction of wholesale broadband offerings going forward.

As discussed above in the context of fixed voice services, emerging competition would provide an SMP operator with the incentive to engage in predatory pricing. However, in the context of **CBL**'s retail broadband services, the prospect of emerging competition comes primarily from BTC, which is also well placed to engage in significant price competition, thus suggesting that predatory pricing may not be profitable in either the short or long term. As such, URCA is of the preliminary view that no further SMP obligations is required to specifically prevent CBL from potentially engaging in predatory pricing behaviour for broadband services. Instead, URCA is minded to rely on ex post competition powers to address such potential behaviour by CBL.

Given its market power being confined to only one of the geographic markets in which it is present, URCA considers there to be a limited risk of **BTC** engaging in predatory pricing given the limited benefit associated with such practice. In particular, URCA understands that the majority of BTC's broadband customers are situated in the geographic market where BTC has no SMP. Given the uniform pricing obligation, BTC would have to offer below cost pricing on a national level, with the aim to prevent any further entry in the market where it has SMP (i.e., the Family Islands). URCA considers any likely costs associated with such behaviour to outweigh the potential benefits to BTC. As such, URCA is of the preliminary view that the current national uniform pricing obligation should be sufficient to prevent any predatory pricing by BTC in the retail broadband market.

Undue bundling/tying

As already discussed in the context of the 2009/10 review, given the preliminary SMP findings set out above, there is a potential for CBL to manifest its market power in both the market for retail broadband services and pay TV services by offering these services as retail product bundles. As referred to above, to prevent this potential leveraging of market power to occur, CBL is currently required to provide stand-alone retail broadband services. URCA sees merit in continuing this SMP obligations going forward.

Further, as already discussed above in the context of fixed voice service related SMP remedies, there is a potential for BTC to manifest its market power in the retail broadband, the retail fixed voice and mobile voice services by offering these services as non-replicable product bundles.

As such, URCA has reached the preliminary conclusion to uphold the SMP obligation on CBL also having to provide retail broadband products on a stand-alone basis. Further, as stated in the context of fixed voice services above, URCA has reached the preliminary conclusion to retain the SMP obligation on both SMP Licensees that any new bundles including retail fixed broadband services (or any other retail service for which the Licensee has SMP) can only be launched if these product bundles can be replicated by other providers. Replicability will be assessed in line with requirements set out in the RPR.

Preliminary Determination

Given the above, URCA has preliminarily determined that:

- *CBL's retail broadband services, as set out in Section 5.1 above, will be subject to an ex-ante price cap regulation going forward. URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published.*
- *CBL is required to offer stand-alone (unbundled) retail broadband offers.*
- *BTC is required to offer geographic uniform prices for retail broadband services.*

- *BTC or CBL shall not introduce any new retail product bundled offerings including broadband services, unless these bundles can be replicated by other providers.*

Further, for the avoidance of doubt, any standard SMP obligations, SMP obligations on wholesale services and the non-discrimination requirements as set out in the operating licence will remain in place.

Consultation question – Proposed SMP remedies for broadband services

Q17. Do you agree with URCA's proposed SMP remedies for broadband services? If not, why?

7.4.3 Business connectivity services

Business connectivity services are currently not subject to any ex-ante regulation beyond the standard SMP obligations in BTC's and CBL's licences, as in 2009/10, URCA considered the prospect of emerging competition may deter BTC from entering into excessive pricing for these services. In particular, excessive pricing may increase the likelihood of competitive market entry due to the high profit levels.

As set out in **Table 15** above, URCA considers there to be two (potential) anti-competitive practices of relevance to business connectivity services:

- Excessive pricing; and
- Predatory pricing.

Excessive pricing

As for the other retail services discussed above, there is a potential for BTC (and possibly CBL) to extract rent from customers by pricing excessively.

Whilst URCA notes that there has been no further entry since 2009/10, business connectivity prices have not increased from their 2009/10 levels. Indeed, CBL has reduced its international dedicated circuit charges and offers higher speeds for its national Ethernet services at the same prices as in 2010. BTC prices have remained unchanged since 2010. Both operators have also launched new services since 2009/10 (such as, BTC's national and international MPLS service offerings). Whilst URCA would expect competition to lead to price reductions (as price converge to the efficient cost of providing these services), given the limited information it holds on business connectivity markets, it has not seen any evidence to support either of the operators engaging in excessive pricing. As such, URCA preliminary concludes that the prospect of emerging competition for these services remains a sufficient deterrent for excessive pricing to occur.

Given the above and in line with its general commitment to light-touch regulation, URCA is of the preliminary view not to impose any additional ex-ante obligations on business connectivity services to prevent excessive pricing behaviour by BTC (and/or CBL).

However, as stated previously, it will monitor market development carefully going forward. In case the market does not deliver the outcomes expected under a competitive market environment, URCA retains the right to investigate the business connectivity market in more detail in the future.

Predatory pricing

Both SMP operators could further attempt to prevent further entry from occurring by offering retail business connectivity services significantly below cost of providing these services (i.e., predatory pricing). There may further be a concern about margin squeeze, in case of the introduction of wholesale leased line offerings going forward.

As discussed above in the context of fixed voice and broadband services, emerging competition would provide an SMP operator with the incentive to engage in predatory pricing. However, in the context of retail business connectivity services, the prospect of emerging competition comes primarily from BTC or CBL, which are both well placed to engage in significant price competition, thus suggesting that predatory pricing may not be profitable in either the short or long term. As such, URCA is of the preliminary view that no further SMP obligations is required to specifically prevent BTC and/or CBL from potentially engaging in predatory pricing behaviour for business connectivity services. Instead, URCA is minded to rely on ex post competition powers to address such potential behaviour.

Preliminary Determination

Given the above, URCA has preliminarily determined that no additional, specific SMP obligations are required in the market for the business connectivity services.

However, for the avoidance of doubt, any standard SMP obligations, SMP obligations on wholesale services and the non-discrimination requirements as set out in the operating licence will remain in place.

Going forward, URCA retains the rights to conduct a more detailed review of the business connectivity service market to assess the need for further ex-ante obligations in case the market does not deliver the outcomes expected under a competitive market environment.

Consultation question – Proposed SMP remedies for business connectivity services

Q18. Do you agree with URCA's proposed SMP remedies for business connectivity services? If not, why?

7.4.4 Pay TV services

CBL's PRIME/SuperBasic pay TV service is currently subject to the RPR. As stated above, CBL has repeatedly raised concerns about the RPR framework and favours instead a general transition to a price cap regime.[111] In response to URCA's 2009 consultation on retail price regulation, CBL stated its reservations regarding the need for any ex-ante price regulation for pay TV (and high speed data) services. If, however, any ex-ante regulation would be imposed, in its view, this should have focused on its basic pay TV service (i.e., Prime/SuperBasic), whilst allowing for more pricing flexibility on all other pay TV offerings.[112]

As set out in **Table 15** above, URCA considers there to be three (potential) anti-competitive practices of relevance to retail pay TV services:

- Excessive pricing;
- Predatory pricing; and
- Undue bundling/tying.

Excessive pricing

For retail pay TV services there is a potential for CBL to extract rent from its customer by pricing excessively.

This concern is currently addressed based on the RPR. However, in light of the stakeholder feedback received on the RPR and the relative merits of each regulatory options set out in **Table 16** above, URCA is of the preliminary view that it would be appropriate to replace the RPR with a retail price cap applied to CBL's pay TV services. URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published.

In Section 6 above, URCA has found CBL to have SMP in the provisioning of all pay TV services, including, amongst others, CBL's access and content pay TV packages, its 'add on' TV channel packages (such as, PRIME Sport, PRIME Movies, etc.) and its 'on demand' services (i.e., pay-per-view and 500 REVTV on demand). Whilst CBL has SMP in all of these sub-groups, URCA is of the view that the focus of any *ex-ante* regulatory obligation should focus on the access and content pay TV packages (i.e., PRIME and PRIME Ultimate) only, as these represent the essential means to gain access to pay TV services in The Bahamas. In URCA's view the remaining product offerings represent by products, in the sense that they offer existing pay TV customers additional channels or features.

[111] See, for example, CBL's recent response to URCA's consultation on the draft revised RPR, available at: http://www.urcabahamas.bs/publications.php?cmd=view&id=177

[112] See: http://www.urcabahamas.bs/download/013716700.pdf

Given this, URCA is of the preliminary view that it is appropriate to impose a price cap regulation on CBL's access and content pay TV packages (i.e., those packages currently marketed as PRIME, PRIME Select, PRIME Plus and PRIME Extra). URCA will consult separately on the detailed approach and implementation of the price cap regime, after the Final Determination for this market review process has been published. URCA does not consider it appropriate to price regulate PRIME Ultimate, as this consists primarily of specific 'add-ons' to the other access and content bundles and it does not believe that it is appropriate to price regulate these add-ons.

Predatory pricing

CBL could also attempt to prevent further entry from occurring by offering retail services significantly below cost of providing these services (i.e., predatory pricing).

As discussed above in the context of broadband services, whilst emerging competition would provide an SMP operator with the incentive to engage in predatory pricing, in the context of pay TV services, the prospect of emerging competition comes primarily from BTC (i.e., by BTC launching IPTV services in the future). BTC is also well placed to engage in significant price competition, thus suggesting that predatory pricing may not be profitable in either the short or long term. Further, URCA considers it likely that in case BTC launches IPTV products, these would be offered as part of a product bundle. This would make any predatory pricing from CBL more difficult. As such, URCA is of the preliminary view that no further SMP obligation is required to specifically prevent CBL from potentially engaging in predatory pricing behaviour for pay TV services. Instead, URCA is minded to rely on *ex post* competition powers to address such potential behaviour by CBL.

Undue bundling/tying

As already stated for retail broadband services above, given URCA's preliminary SMP findings, there is a potential for CBL to manifest its market power in both the market for retail broadband services and pay TV services by offering these services as retail product bundles. To prevent any potential leveraging of market power, URCA is minded to continue to impose the requirement for CBL to provide a stand-alone retail broadband service to allow CBL's pay TV customers to subscribe to an alternative providers' broadband service, if they wish to do so. Further, as stated in the context of broadband services above, URCA has reached the preliminary conclusion that it would be appropriate to retain the SMP obligation on CBL that it should only launch new retail bundles which include at least one retail service for which it has SMP, if those bundles can be replicated by other providers. Replicability will be assessed in line with requirements set out in the RPR.

Preliminary Determination

Given the above, URCA has preliminarily determined that:

- *CBL's access and content pay TV packages (i.e., those packages currently marketed as PRIME, PRIME Select, PRIME Plus and PRIME Extra) will be subject to an ex-ante price cap regulation going forward. URCA will consult separately on the detailed approach and implementation of the* *price cap regime, after the Final Determination for this market review process has been published.*

- *CBL shall not introduce any new retail product bundled offerings of pay TV services with any other of its retail services, unless these bundles are replicable by other providers.*

For the avoidance of doubt, any standard SMP obligations, SMP obligations on wholesale services and the non-discrimination requirements as set out in the operating licence will remain in place.

Consultation question – Proposed SMP remedies for pay TV services

Q19. Do you agree with URCA's proposed SMP remedies for pay TV services? If not, why?

8 Conclusion and Next Steps

Within the previous Sections URCA has set out its preliminary position on the status of competition and any resulting requirements for ex-ante regulation in the market for key retail communications services in The Bahamas, namely: retail fixed voice, retail broadband, business data connectivity and retail pay TV services. These are summarized again in Section 8.1 below.

URCA invites interested parties to comment on its preliminary position by responding to the consultation questions set out in this document. The consultation process is outlined in Section 8.2 below.

8.1 Main findings

Below provides a summary of URCA's preliminary position on its SMP assessment in the provisioning of key retail communications services in The Bahamas.

Table 17: Summary of URCA's Preliminary Position

Service	Market definition	SMP findings	Proposed ex-ante remedies
Retail fixed voice services	**Product market** Fixed voice services delivered via: • a PSTN (i.e., currently BTC's Basic Home Phone, HomePhone Plus and Business Landline services) • a cable network (i.e., currently CBL's REVOICE, Small/Medium Business and Enterprise Business services) **Geographic market** National market	BTC to have SMP	• Price cap regulation for BTC's retail fixed voice services • BTC's retail prices for on-net and off-net fixed call services may only differ in case of justifiable cost differences in delivering these call services. • BTC prevented from introducing any new retail product bundles including fixed voice services , unless these bundles can be replicated by other providers
Retail broadband services	**Product market** • Fixed (DSL) broadband services offered by BTC • Cable-based broadband services offered by CBL **Geographic market** • Geographic market 1 -The	• CBL has SMP in geographic market 1 • BTC has SMP in geographic market 2	• Price cap regulation for CBL's retail broadband services • CBL required to offer stand-alone retail broadband products • BTC is required to offer geographic uniform prices for retail broadband services. • BTC and CBL are prevented from

	islands where CBL and BTC are offering broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera). • Geographic market 2 - All remaining islands (i.e., where only BTC offers broadband services)		introducing any new retail product bundles including broadband services, unless these bundles can be replicated by other providers
Business data connectivity services (national and international)	**<u>Product market</u>** • Traditional leased line products: These are business connectivity services provided over PSTN and Coaxial networks, thereby currently including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and • Fiber-based leased line products: These are business connectivity services provided over a fiber network, thereby currently including BTC's MPLS (leased circuits over fiber) and CBL's REVON Ethernet Circuits. **<u>Geographic market</u>** • Geographic market 1 -The islands where CBL and BTC both have infrastructure and are offering national and international business connectivity services (i.e. New Providence, Abaco, Grand Bahama and Eleuthera). • Geographic market 2 - All remaining islands (i.e. where only BTC has a network infrastructure to offer these services)	Prospectively competitive	• No additional ex-ante obligations beyond the standard SMP obligations, any SMP obligations on wholesale services and the non-discrimination requirements as set out in the operating licence
Pay TV services	**<u>Product market</u>** Access to pay TV content provided over a cable TV and terrestrial network infrastructure (currently offered by CBL).	CBL to have SMP	• Price cap regulation for CBL's access and content pay TV packages (i.e., those currently marketed as PRIME, PRIME Select, PRIME Plus and PRIME Extra) • CBL is prevented from introducing any

<u>Geographic market</u> National market	new retail product bundles of pay TV services with any other of its retail services, unless these bundles can be replicated by other providers

8.2 Next steps

Given the importance of this consultation, the timetable for this consultation is extended beyond the normal one month period for responses. In particular:

- Initial responses on this Preliminary Determination should be submitted to URCA by 5 p.m. on **11 July 2014**.
- Interested parties will then have the opportunity to further comment on responses made by other respondents by **8 August 2014**.

URCA is encouraging all interested parties, including the named licensees to make written submissions on the consultation. URCA will review all responses and comments received to the consultation and issue a Statement of Results and Final Determination.