Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009

Statement of Results to Public Consultation and Final Determination

ECS 13/2013

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UTILITIES REGULATION & COMPETITION AUTHORITY

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1 Introduction

This document constitutes the Utilities Regulation and Competition Authority's (URCA) Statement of Results and Final Determination on URCA's assessment of Significant Market Power (SMP) in Call Termination markets in The Bahamas. Termination describes the service whereby one operator (the terminating party) accepts traffic that has originated on another network but which is destined for customers on its own network, and carries that traffic to those customers. Based on this description, the demand for termination services is derived from retail markets for off-net calls and messaging services to fixed and mobile numbers. Operators incur costs for providing call termination services. These costs can be recovered in different ways, according to the retail pricing model applied in the market.

The consultation focused exclusively on call termination services provided on public networks in The Bahamas. This means that URCA has not given consideration to other access and interconnection markets. In this regard, URCA's previous 2010 SMP decision (including remedies) in relation to other access and interconnection markets for BTC[1] are unaffected by the outcome of this consultation and continue to remain in effect going forward until otherwise determined by URCA**.**

The concept of SMP is equivalent to the concept of a dominant position established in general competition law.[2] SMP[3] is a necessary condition that must be fulfilled in order for URCA to impose certain *ex ante* regulatory measures on a licensee.[4] On 17 May 2013, pursuant to sections 39(1) and 100 of the Communications Act, 2009 ("Comms Act") URCA released for public comment ECS 06/2013 *"Preliminary Determination on Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Comms Act."*[5]

Within the consultation paper, URCA outlined its preliminary analysis and proposed Preliminary Determination on relevant economic markets for call termination services in The Bahamas. Preliminarily, URCA identified six (6) SMP call termination markets on public networks in The Bahamas.[6]

Subsequent to the release of the consultation paper for comment, URCA was made to understand that Last Mile Communications Ltd. (LMCL) is neither buying nor selling fixed call termination services at this time. In view of this new information, URCA considered that it would no longer be necessary to assess whether LMCL has SMP in call termination over its network in The Bahamas. Thus, the analysis and final

[1]Examples call transit, termination to directory enquiries and ancillary services and termination to freephone and emergency numbers and operators assistance facilities.

[2]"Dominance and Significant Market Power under EC Competition Law" by Nicolas Petit, Institute for European Legal Studies, University of Liege.

[3] Throughout this document SMP and dominance are used interchangeably.

[4]Section 40(2)(a) of the Comms Act.

[5] http://www.urcabahamas.bs/download/016543700.pdf.

[6]See Section 5.6 of ECS 06/2013

determination set forth in this document would not apply to LMCL but would apply to the other licensees identified in the consultation document, namely:

- Bahamas Telecommunication Company Ltd.;
- Cable Bahamas Ltd. (CBL); and
- IP Solutions International Ltd. (iPSi).

1.1 Regulatory Framework of the Consultation

URCA is the governing body of the regulatory regime for electronic communications in The Bahamas established under the Comms Act. Under that statutory framework, URCA is responsible for licensing undertakings that establish, operate or maintain an electronic communications network or provide an electronic communications service, including by the use of any radio spectrum. Sections 4 and 5 of the Comms Act also provide guidelines that URCA must adhere to when issuing a determination on regulatory measures. The Comms Act gives URCA wide-ranging powers which are to be exercised in full compliance with principles of good regulation.

URCA has a statutory mandate to introduce regulatory measures which are efficient and proportionate to their purpose and to introduce them in a manner that is transparent, fair and non-discriminatory. This means that where URCA believes 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.[7]

The regulatory framework applicable to electronic communications networks and services in The Bahamas requires URCA to define relevant 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, a process otherwise known as market review. In ECS 06/2013 and pursuant to section 39(1) of the Comms Act, URCA put forward its preliminary views and proposals on assessing Significant Market Power (SMP) in the supply of call termination services in The Bahamas.

Under section 39(1) of the Comms Act, 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."* Section 39(2) of the Comms Act requires URCA to establish and publish criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed. URCA fulfilled this requirement in 2011 when it published ECS 20/2011[8] setting out the criteria it will employ when defining markets in the electronic communications sector, and against which market power may be assessed.

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

[8] "Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009" dated 13 October 2011 available at www.urcabahamas.bs.

1.2 Procedures for Making a Determination

The procedures for making a determination, as contained in the Comms Act at section 99(1)(a) and (b), 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):

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

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA must comply with section 11 of the Comms Act, which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on regulatory or other measures which in URCA's opinion are of public significance. A person whose rights or interests may be materially adversely affected or prejudiced by the proposed regulatory or other measure shall be considered as having sufficient interest. Section 13 of the Comms Act establishes that a regulatory and other measure is of public significance if it can lead to, *inter alia*, a significant impact on persons carrying on activities in those areas where URCA has functions under the Comms Act. URCA is of the opinion that the regulatory and other measures consequential to this consultation are of public significance and therefore has afforded persons with sufficient interest the opportunity to comment on URCA's preliminary views and proposals.

1.3 Overview of Market Review Process

As previously stated in Section 1.1 above, one of URCA's statutory duties is to define 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, a process otherwise known as market review.

To determine whether a licensee operating a public network is dominant in the markets identified, URCA employed the following three stages of analysis:[9]

- Stage 1 - definition of the relevant market (product and geographical dimension);
- Stage 2 - identification of SMP operators, if any; and
- Stage 3 - where market power is identified, consideration of the appropriate SMP obligations in relation to each market.

The Comms Act stipulates that the initial starting point for any SMP assessment in a relevant market is "*the licensee's market share*"[10]followed by consideration of the other criteria listed in section 39(3)(b), (c), (d) and (e) of the Comms Act, namely:

[9] See Section 4.1 of ECS 06/2013 for a full discussion.
[10] Section 39(3)(a) 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".

The market review process deployed in this proceeding is prospectively applied by identifying all relevant competitive constraints operating in a market within a foreseeable time period (i.e., until the next market review takes place). This enables URCA to consider the dynamic nature of the marketplace resulting from rapid technological change and possibilities to overcome structural and/or behavioural obstacles to entry and sustainable competition within the relevant time horizon.

Throughout this market review process, URCA applied the analytical framework (i.e., procedures and criteria) set forth in URCA's SMP guidelines, ECS 20/2011.These guidelines relied upon well-established economic principles to define markets, such as the SSNIP test[11] to identify demand/supply-side substitutability at the retail and wholesale level. The guidelines are compatible with the Comms Act and the tools and principles deployed by reputable regulators and competition authorities, including the European Commission and jurisdictions with market profiles that are smaller than or comparable with The Bahamas.

The full text of the analytical framework deployed in this proceeding is described in Section 4 of the preliminary determination document, ECS 06/2013.

1.4 Responses to this Consultation

Three (3) companies submitted responses to the consultation, namely:

- Cable Bahamas Ltd., for and on behalf of Caribbean Crossings Ltd. (CCL) and Systems Resources Group Ltd. (SRG) (hereinafter collectively referred to as, "CBL");
- Bahamas Telecommunications Company Ltd. (BTC); and
- Digicel, a pan-Caribbean mobile service provider.

CBL and BTC made further submissions as part of the second round, commenting on the initial submissions URCA has received from respondents to URCA's Preliminary Determination. No second round response was received from Digicel.

The full text of all admissible submissions can be found at http://www.urcabahamas.bs.

[11]The 'Small but Significant Non-transitory Increase in Price' (SSNIP) test, otherwise known as the Hypothetical Monopolist Test (HMT) assesses customer (demand-side substitution) and supplier (supply-side substitution) behaviour in response to a hypothetical price increases 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 (of 5-10%). If they can, the market definition is widened to include the alternative products.

URCA thanks the respondents for their written submissions and participation in the consultation process. The participation by the companies was insightful and constructive.

In Annexes B, C and D to this Statement of Results and Final Determination document, URCA summarizes and responds to all submissions received from respondents. URCA's lack of response to a particular comment should not be taken to mean that URCA agrees with the comment, has not considered the comment or that it considers the comment is unimportant or without merit.

1.5 Structure of the Remainder of this Document

The remainder of this document is structured as follows:

Section 2- URCA's Final SMP Determination
Section 3- Market Definitions (Stage 1)
Section 4- SMP Assessment (Stage 2)
Section 5- SMP Remedies (Stage 3)
Section 6 - Conclusion and Next Steps

Annex A: Regulatory Impact Assessment of New SMP Remedies
Annex B: BTC's Responses and URCA's Views on those Responses
Annex C: CBL's Responses and URCA's Views on those Responses
Annex D: Digicel's Response and URCA's Views on those Responses

2 URCA's Final Determination on SMP in Call Termination Services

WHEREAS,

(i) section 39(1) of the Communications Act, 2009 empowers URCA to determine that a Licensee has Significant Market Power (SMP) in a market where 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."*; and;

(ii) pursuant to section 39(2) of the Communications Act 2009 URCA issued ECS 20/2011, the *"Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009"* (the "SMP Methodology"[12]), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed; and,

(iii) URCA having conducted a review of call termination markets in The Bahamas in accordance with the Communications Act, 2009 and the SMP Methodology considers that it is appropriate to make certain determinations regarding the definition of markets, the existence of licensees with SMP in those markets, and the extent to which ex-ante regulation is appropriate and necessary in those markets; and,

(iv) URCA having reviewed all evidence and the submissions made by Bahamas Telecommunications Company Ltd. (BTC), Cable Bahamas Ltd. (CBL) and Digicel;

URCA hereby makes the following determination:

1. Determination of Relevant Market – "Wholesale Call Termination"

Separate markets shall be defined for termination of voice and mobile messaging termination on fixed and mobile networks as follows:

a) The termination of voice calls on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Call Termination on BTC's Mobile Network").

b) The termination of MMS and SMS services on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Message Termination on BTC's Mobile Network").

[12] Also referred to as URCA's SMP Guidelines.

c) The termination of voice calls on BTC's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on BTC's Fixed Network").

d) The termination of voice calls on CBL's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to CBL by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on CBL's Fixed Network").

e) The termination of voice calls on IPSI's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to IPSI by URCA pursuant to the Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on IPSI's Fixed Network").

For the avoidance of doubt, in respect of fixed call termination, reference to a customer's exchange line includes any connection provided at a fixed location, regardless of technology. URCA reserves the right to review market definitions for call termination services in keeping with changes in technology.

2. Determination of Significant Market Power

Pursuant to section 39(1) of the Communications Act, URCA has determined that:

a) BTC holds SMP in the termination of voice calls on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Call Termination on BTC's Mobile Network").

b) BTC holds SMP in the termination of MMS and SMS services on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Message Termination on BTC's Mobile Network").

c) BTC holds SMP in the termination of voice calls on BTC's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on BTC's Fixed Network").

d) CBL holds SMP in the termination of voice calls on CBL's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to CBL by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on CBL's Fixed Network").

e) ISPI holds SMP in the termination of voice calls on IPSI's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer's exchange lines) which have been allocated to IPSI by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on IPSI's Fixed Network").

3. Obligations Imposed on SMP Licensees:

a) The five SMP call termination markets identified in Clause 2 above are susceptible to SMP regulation.

b) Given the position of strength held by the SMP licensees identified in Clause 2 above, and in light of the potential challenges to competition which URCA's review has indicated may arise, the following obligations are imposed on each SMP licensee, namely:

i. All SMP licensees shall comply with the SMP obligations specified in section 40(4) of the Communications Act and Condition 34 of the standard Individual Operating Licence (IOL).

ii. Where a SMP licensee was not, prior to the date of this determination, subject to an obligation to publish a Reference Access and Interconnection Offer (RAIO) inclusive of call termination services, it shall, within five (5) weeks from the issue date of this final determination, publish on its website (and make available upon request through other means on a non-discriminatory basis) the tariff and non-price terms and conditions prevailing for all services it provides within the Wholesale Call Termination market. This should include at a minimum, the following information:

- price list; and
- the main non-price terms and conditions including:
  - advance notification of price changes;
  - billing and payment requirements;
  - detailed description of the termination service;
  - quality of service standards;

- dispute resolution scheme with referral to URCA where either party is unable to negotiate interconnection based on the proposed terms and conditions; and
- operations and maintenance procedures.

iii. The fixed termination rates charged by CBL and iPSi to terminate traffic on their respective networks are subject to wholesale price control (to be determined by URCA upon further consultation with stakeholders). Once the regulated charges have been determined by URCA, SMP licensees need to update the published tariffs with immediate effect.

iv. During the transitional period, CBL and iPSi are prohibited from increasing the fixed termination charges from their current levels.

The licensee is responsible for ensuring that published terms and conditions are compatible with the statutory framework of the Communications Act, relevant licence conditions, the prevailing Electronic Communications Sector Policy and all relevant regulatory and other measures issued by URCA from time to time.

v. The remedies applicable to BTC's call termination services pursuant to URCA's previous 2010 final SMP decision (ECS 11/2010) and other subsequent regulatory measures or decisions issued by URCA have been maintained.

For the avoidance of doubt, pre-existing obligations on BTC to publish a RAIO shall be maintained.

URCA's 2010 final SMP decision (including remedies) in relation to other access and interconnection markets for BTC are unaffected by the outcome of this final determination and continue to remain in effect going forward until otherwise determined by URCA**.**

For the avoidance of doubt, any reference above to a licensee shall, in accordance with section 21(1) of the Communications Act, include 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 Communications Act.

3 Market Review Stage 1 - Market Definitions

3.1 Product Market definition

In Section 5.1 of ECS 06/2013 URCA identified the reference products, against which demand/supply-side substitutability (SSNIP) tests have been applied, as:

a) Fixed voice call termination;
b) Mobile voice call termination; and
c) Mobile messaging service termination (i.e., MMS and SMS).

URCA then identified key characteristics of these reference products and any implications for the product market definition exercise. For example, URCA considered that the product market definition should not distinguish between where the call originates and the technology employed by the terminating operator to provide call termination on its network.[13]

URCA then considered whether competitive constraints at the retail and wholesale level could sufficiently influence the price-setting behaviour of the hypothetical monopolist when setting the rates for wholesale call termination (see Section 5.3 of ECS 06/2013).

URCA notes that respondents have not expressed any objections to URCA's description of the reference products identified and that all respondents broadly accepted URCA's framework for assessing the extent of demand and supply side substitution between products. As such, URCA believes it is appropriate to largely maintain the definitions set out in its consultation.

In particular, URCA recognises that due to the technical nature of the termination services, it is not possible for a consumer of wholesale termination services to switch to terminating calls on another network in response to a price increase. This is because a call to a particular customer call can only be delivered to and terminated on the network to which that customer is connected. For the same reason, it is not possible for another operator to offer to terminate calls to a particular customer if that customer is not connected to their network. That is, neither demand-nor supply-side substitution appears possible.

URCA has further considered whether it is possible that a price increase for wholesale termination services could be unprofitable if it led to price increases at the retail level resulting in retail customers switching to different services, thus meaning that the call termination service of the hypothetical monopolist was bypassed. This is important because as a wholesale service, the demand for call termination is derived from the retail demand for off-net communication. Thus, if the off-net call leads to a change in the demand for retail services, this could render the SSNIP unprofitable.

[13] URCA does though note that any regulated termination services should only be available to other operators licensed to provide telecommunications networks in The Bahamas. That is, this market review covers the delivery of calls from points of interconnection between licensed operators in The Bahamas.

URCA, having examined the scope of the proposed product market for each termination service, based on the characteristics of the retail product markets and the evidence available to URCA, concludes that retail customers would not switch in sufficient numbers to render such increases in the price of termination services unprofitable. This is because where Calling Party Pays (CPP) exists; consumers are likely to focus primarily on the cost of making rather than receiving calls. URCA therefore concluded that fixed call termination on an individual network forms a relevant economic market.

However, BTC and CBL emphasised the need for clear market definitions with CBL stressing that market definitions should reflect local circumstances. In its response (Annex B - Consultation Question 1), BTC referred URCA to market definitions adopted by OFCOM and suggested that market definitions in The Bahamas should align with OFCOM's definitions and should include references to numbers allocated to the operator in The Bahamas National Numbering Plan. BTC further stated that URCA should also consider domestic mobile to mobile and fixed to mobile calls in its analysis, whereas the initial consultation focused its analysis of pricing constraints on incoming international calls terminating on BTC's mobile network, as a result of the charging arrangements in The Bahamas meaning that only these calls to mobile networks faced a non-zero call termination charge.

CBL suggested (Annex C - Consultation Question 1), that URCA should amend its proposed market definitions to:

- make explicit reference to the "any-to-any" principle of interconnection; and
- make explicit that the termination of calls apply to "all" phone numbers (fixed and mobile) regardless of technology. This includes calls termination to roaming customers on BTC's mobile network and to BTC's ViBe (VoIP) customers.

In its second round responses, CBL objected to BTC's proposal to also consider domestic mobile calls in this market analysis, as it believed this was not covered in the consultation document and should be left for future consideration.

URCA accepts the need for clear definitions of markets to avoid later debates and disputes between operators and ensure regulatory predictability. URCA considers that the market definitions applied by OFCOM are compatible with URCA's intent or proposed definition of the relevant product markets.

On the issue of terminating calls to roaming customers on BTC's mobile network, URCA considers that from a market definition point of view all calls to be terminated on BTC's mobile network should form part of the market for the termination of calls on BTC's mobile network.

In reaching this conclusion, URCA notes BTC's concern that URCA should not be regulating international roaming agreements between it and foreign carriers. URCA does not believe that its determination is inconsistent with this conclusion. International roaming agreements with foreign carriers set out the terms and conditions on which BTC will allow customers of foreign carriers to use its network whilst in

The Bahamas. In contrast, regulation of termination services is designed to ensure that network operators licensed in The Bahamas have access to bottleneck facilities of dominant operators.

URCA also notes the opposing views of BTC and CBL on the merits of including domestic mobile calls in the current market review process. URCA recognises that the wording in the consultation document suggests that, in reflection of the current market environment, its preliminary analysis predominantly focused on international call termination. URCA further remains of the view that there is a link between the retail charging regime (CPP vs. Receiving Party Pays - RPP) and wholesale termination charges, whereby wholesale termination charges are not required in a RPP regime, since the costs of termination are recovered from the retail customer receiving the call. However, it does not consider this to impact the product market definition for termination services as again under RPP an originating network operator will still require access to the termination service of the recipient network. (For example, call termination on BTC's mobile network from domestically originated calls is still included in BTC's RAIO, even though the service is zero-rated.) URCA further considers it important to remain consistent in its approach adopted for mobile messaging termination services, which was reviewed predominantly on a forward looking basis. As such, URCA does include domestic mobile calls in the market definition. This is in line with URCA's 2010 final SMP decision where URCA designated BTC as having SMP in mobile call termination irrespective of whether the call originated overseas or within The Bahamas.

URCA notes, however, that this decision does not imply that URCA has formed any view on the preferred (if any) charging regime on the retail level now or going forward. Further, as set out elsewhere, URCA will not make presumptions of SMP against new entrant operators before they begin operating in the market.

3.2 Geographic Market Definition

In ECS 06/2013, URCA described the geographic market as a defined region or territory within which competitive conditions are sufficiently homogenous or similar. 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.

URCA is satisfied that the approach is a sufficient application of standard market analysis principles applied in the EU framework on which the legislative framework in The Bahamas is based and notes that none of the respondents raised any objection to URCA's proposed definition.

URCA, on the basis of the non-objection responses received, its analysis of the industry and consideration of relevant factors, found sufficient evidence to justify a national market definition for the provision of wholesale call termination on individual fixed and mobile networks. Each individual fixed and mobile operator is considered to represent a separate and distinct economic market for the provision of wholesale call termination services.

Given that each of the named entities (i.e., BTC, CBL, iPSi) is licensed to operate on a national basis and offers geographically uniform termination rates, URCA concludes that each market identified in this review shall be considered as a national market.

3.3 Relevant Market Definitions

The relevant markets are as described in URCA's final decision below.

URCA's final decision

The Wholesale Call Termination market shall include voice call and mobile messaging termination on fixed and mobile networks as follows:

a) The termination of voice calls on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Call Termination on BTC's Mobile Network").

b) The termination of MMS and SMS services on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Message Termination on BTC's Mobile Network").

c) The termination of voice calls on BTC's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on BTC's Fixed Network").

d) The termination of voice calls on CBL's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to CBL by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on CBL's Fixed Network").

e) The termination of voice calls on IPSI's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer's exchange lines) which have been allocated to IPSI by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on IPSI's Fixed Network").

For the avoidance of doubt, in respect of fixed call termination, reference to a customer's exchange line includes any connection provided at a fixed location, regardless of technology. URCA reserves the right to review market definitions for call termination services in keeping with changes in technology.

4 Market Review Stage 2 – SMP Assessment

Having defined the relevant economic markets for call termination on public networks in The Bahamas, URCA in this Section provides an overview of its assessment of SMP, in accordance with the criteria listed in section 39(3) of the Comms Act and ECS 20/2011 (SMP guidelines), taking into consideration any substantive comments received from respondents and the revised market definitions discussed in the previous Section of this document. URCA is satisfied that the criteria considered are wide ranging and ensures that the analysis captures the dynamic factors that shape the markets identified.

4.1 Licensee's market share

URCA considers that each of the named licensees identified has market shares greater than the minimum 40% threshold URCA has established for presumptive SMP, in ECS 20/2011. URCA's position is premised on the defining characteristics of the market in which the calling party's service provider must utilize the terminating facilities operated by the called party's service provider. Therefore, the called party's network has 100% market share in respect of terminating traffic on that particular network. Thus, any licensee supplying a call termination service enjoys a monopoly position in respect of termination of all traffic to relevant numbers assigned to subscribers on its network. The above is independent of the prevailing pricing regime for the relevant retail services (i.e., CPP vs. RPP).

URCA notes that no respondent to the consultation raised any objection to URCA's preliminary view that the called party's network has 100% market share in respect of terminating traffic to telephone numbers assigned to customers on that particular network.

4.2 Licensee's ability to influence market conditions

Due to inherent structural characteristics, the termination markets identified are characterised by monopolistic conditions. These markets are devoid of effective competitive constraints and providers of this essential input are in a position of strength to behave to an appreciable extent independently of other licensees, consumers or subscribers.[14] This is arguably the same under an RPP regime, in that the terminating operator remains in control of the essential facility, as all operators benefit from being able to provide call services to customers on all networks. In this case however, termination rates will be set at zero and therefore there is no link between the termination rate and the price paid by the calling party to make an off-net call.

[14] In that, an operator providing termination is conceivably in an extremely strong position to influence entry and competition in the marketplace by denying requests to supply termination (an essential input) to other licensees in a timely manner, thereby inhibiting the competitive structure in retail markets to the detriment of customers and competition. For this reason, absent regulatory intervention, individual suppliers of termination effectively have the capacity to influence market conditions at both the wholesale and retail level. A supplier of termination services has complete and exclusive control over the infrastructure and systems required to complete calls and messaging services to telephone numbers assigned to customers on its network.

This means therefore that, absent SMP regulation, a supplier of termination services has the ability to exert an appreciable influence on the conditions under which competition will develop in the ECS markets in The Bahamas.

URCA notes that no respondent to the consultation raised an objection to URCA's preliminary view that the called party's network is in a position of strength to behave to an appreciable extent independently of other licensees, consumers or subscribers.

4.3 Barriers to Entry and Expansion

URCA confirms its proposition that the infrastructure employed by each of the licensees identified to terminate traffic to relevant numbers assigned to their respective networks cannot be duplicated or replicated by other licensees providing a substitutable termination product or service (i.e., there are high barriers to entry and expansion in these markets). The above is independent of the prevailing pricing regime for the relevant retail services (i.e., CPP vs. RPP).

URCA notes that no respondent to the consultation raised an objection to URCA's preliminary view that termination on the individual public networks identified is characterised by absolute barrier to entry and expansion and is therefore an enduring a "bottleneck facility" that is incapable of being duplicated on other public networks.

4.4 Countervailing Buyer Power (CBP)

URCA is aware that the presence of demand-side bargaining power could potentially limit the ability of providers of termination services to engage in monopolistic pricing and to behave independently of buyers and ultimately of consumers. In ECS 06/2013 URCA stated the possible conditions conducive to CBP.[15]

Within its response (Annex B - Consultation Question 1), BTC asserted that evidence exists to support the lack of demand-side bargaining power at the wholesale level in the setting of prices charged for call termination on CBL's network in The Bahamas. CBL rebutted BTC's assertions[16] by recapping its experience in negotiating interconnection arrangements with BTC in 2011 and reiterated that CBL's most recent inability to reach an agreement with BTC to terminate mobile roaming traffic on BTC's mobile network demonstrated that BTC has CBP (Annex C - Consultation Question 1).

[15] These conditions are:

- the buyer has alternative sources of supply;
- the buyer is well-informed, especially about alternative sources of supply;
- the buyer could switch to alternative sources of supply without incurring significant costs;
- the buyer could produce the service itself or could sponsor new entry by another supplier; and
- the buyer is an important outlet for the seller.

[16] Comments on Responses to ECS 06/2013 submitted by CBL dated July 17, 2013 available at www.urcabahamas.bs.

Given the structural characteristics of the termination markets identified, URCA notes that the conditions conducive to CBP generally do not exist in call termination markets. This holds true regardless of size/scale or the licensee's access to financial resources or experience and is certainly not restricted to incumbents only.

URCA considers that a buyer of termination might not always be able to exert a sufficiently strong influence on the seller preventing the latter from behaving independently of competitors and consumers to an appreciable extent. URCA has no independently verifiable evidence suggesting that, at the present time, BTC or any other licensee identified is able to exert CBP in respect of termination of calls to other public networks in The Bahamas.

URCA generally considers that the obligation to interconnect as per Condition 11.1 of the standard IOL prevents the calling party's network exercising CBP. This is because, in order to exert CBP, the access seeker must, *inter alia*, have an alternative source of access to which it could switch. As set out above, such an alternative source of access does not exist for call termination on a given network.

4.5 Control of Infrastructure not Easily Duplicated

URCA considers that control of an infrastructure which is not easily duplicated makes it feasible for a licensee with control of that infrastructure to behave independently of other licensees, customers and subscribers. In that regard, calls and mobile message termination can only be provided using the terminating infrastructure of the called party's network provider. Based on this understanding, URCA remains of the view that the termination markets identified in Section 3 above are characterised by high non-transitory barriers to entry. Further, a supplier of call or mobile messaging termination has absolute control over the underlying infrastructure to which competitors in downstream (retail) markets will need to provide off-net communications services. This exclusive control of an essential facility is, in URCA's view, reinforced by the fact that termination rates can be a principal revenue stream for some service providers and a key cost component of the tariffs (under a CPP regime) that other licensees charge retail customers for off-net communications services. However, the exclusive control of essential infrastructure also holds under a RPP regime.

4.6 Number of Active Competitors

Given the characteristics of the call termination markets, URCA maintains that there is no correlation between the number of active providers of termination services and the ability of an individual licensee to exert market power. URCA's concerns about the potential for excessive charging for termination services hold regardless of the number of active operators in the market, their size/scale or experience. To URCA's knowledge, the termination service of a new provider has no impact on the termination markets of existing providers. In fact, the new provider termination market constitutes a new market. In this regard, the licensees identified have the ability to exert absolute and complete control over terminating facilities on their networks, and no other licensees can duplicate such facilities on a separate or distinct network. Thus, the termination services offered on each network is not susceptible to competitive pressure. In URCA's view, this would mean that, absent SMP regulation, a licensee has unrestricted freedom when negotiating termination arrangements with other licensees.

Having regard to the above, URCA confirms its preliminary view that an increase in the number of active providers of termination is not a limiting factor on the price setting behaviour of existing operators in the relevant markets identified.

4.7 Other Factors considered

URCA also considered the other established factors against which market power may be assessed:

- o a licensee's access to financial resources;
- o the overall size/scale of the licensees; and
- o their experience in providing service in the relevant market.

URCA notes that in the consultation CBL alleged that URCA has not given sufficient consideration to these factors in its SMP assessment for Other Licenced Operators (OLOs), including CBL. URCA disagrees with CBL assertion and directs CBL to Section 6.7 of ECS 06/2013 where it is stated that having considered these criteria URCA notes that *"Regardless of a licensee's access to financial resources, its overall size or experience, URCA considers that the economic and technical characteristics of termination services remain and effectively mean that each of the licensees identified is able to act, to an appreciable extent, independently of competitors, customers and ultimately, consumers"*. URCA reminds CBL that throughout the consultation paper, URCA carefully explained that the technical and economic characteristics of termination services are critical when assessing SMP in call termination markets.

4.8 Conclusion of SMP Assessment

URCA, having assessed the extent of competition within the defined wholesale termination markets against a range of structural factors, concludes that the wholesale markets defined will not become effectively competitive within the timeframe of this market review. URCA finds that market power exists irrespective of the overall size/scale of the licensee; access to financial resources and their experience in providing services to the market.

In view of URCA's analysis of the criteria listed in section 39(3) of the Comms Act and ECS 20/2011 (SMP guidelines), URCA has concluded that the wholesale markets in question are characterized by (i) high and non-transitory barriers to entry/expansion, and (ii) there are no current or emerging substitution possibilities to overcome such barriers within the timeframe of this market review. URCA considers that this would mean that the markets in question do not tend towards effective competition within the relevant time horizon.

URCA is unaware of any new economic thinking or technological advancement in existence or on the horizon that would, within the review period, allow existing and/or aspirant licensees to circumvent or bypass the called party's service provider to terminate a call or mobile message to a subscriber's telephone number on a different network.

URCA's final decision
Pursuant to section 39(1) of the Comms Act, URCA has determined that:

a) *BTC holds SMP in the termination of voice calls on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Call Termination on BTC's Mobile Network").*

b) BTC holds SMP in the termination of MMS and SMS services on BTC's mobile network in The Bahamas to numbers which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Message Termination on BTC's Mobile Network").

c) BTC holds SMP in the termination of voice calls on BTC's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to BTC by URCA pursuant to The Bahamas National Numbering Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on BTC's Fixed Network").

d) CBL holds SMP in the termination of voice calls on CBL's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer exchange lines) which have been allocated to CBL by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on CBL's Fixed Network").

e) ISPI holds SMP in the termination of voice calls on IPSI's fixed networks in The Bahamas, including conveyance of all signals (including relevant control signals) required to terminate calls to numbers (i.e., customer's exchange lines) which have been allocated to IPSI by URCA pursuant to The Bahamas National Number Plan from the first point in the networks where those signals can be accessed by another communications provider ("Fixed Call Termination on IPSI's Fixed Network").

URCA reserves the right to review market definitions for call termination services in keeping with changes in technology.

For the avoidance of doubt, 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.*

5 Market Review Stage 3 – SMP Remedies

5.1 Competition Problems

Within ECS 06/2013, URCA did not present an exhaustive list of competition-related problems that could arise from SMP in call termination. Instead, URCA identified the two ***main*** competition problems as: (i) excessive charging; and (ii) refusal to supply or denial of access.[17]

URCA continues to be concerned that an SMP operator of termination has an incentive to engage in behaviour that exploits its position of market power. In URCA's view, were an SMP operator to decide to exercise its market power, this would have 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. Given URCA's remit under the Comms Act, URCA has considered whether to impose obligations on SMP operators with a view to enable fair and effective competition in the communications sectorand to further the interests of consumers through the promotion of sustainable competition presently and in the future. In addition to seeking to prevent market foreclosure through the imposition of regulatory obligations, URCA is concerned with the ability of an SMP operator to abuse its position of dominance to the detriment of consumers. URCA considers this as particularly relevant in termination markets in which an SMP operator has exclusivity or absolute control over the terminating facilities on its network and is therefore not subject to constraints caused by competition or potential new market entry. As stated in ECS 06/2013, URCA is proposing to prevent the (actual or potential) ability of an SMP operator to engage in behaviour that constitutes an abuse of its market power position.

Below URCA sets forth URCA's regulatory approach to address the identified competition concerns.

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[17] Competition problems may have their origin in structural and/or behavioral factors operating in call termination markets. URCA notes that other potential competition-related concerns could arise from excessive termination charges for off-net calls, namely:

- induce an increase in retail tariffs paid by subscribers on other networks to make off-net calls as the originating operator would most likely seek to recover the termination rate increase from its own retail customers.
- result in a large differential in retail tariffs for off-net and on-net calls which in turn may encourage customers to make more on-net calls and reduce their consumption of off-net calls.
- cause customers to take subscription from more than one licensee, which may likely be an inconvenience for some customers and additional retail charges may have to be incurred.
- allow the SMP operator to generate sufficient funds to potentially cross-subsidise its retail tariffs, and discriminate in favour of on-net calls to safeguard or enhance its market position.

These potential outcomes hold true regardless of size/scale or access to financial resources or experience in the market.

5.2 Susceptibility of the Defined Markets to SMP Regulation

URCA has maintained its preliminary view that the SMP call termination markets identified are susceptible to *ex ante* regulation. This is informed by URCA's analysis using the methodology detailed in ECS 20/2011 (including EU three criteria test). It is URCA's general understanding, supported by evidentiary information from other jurisdictions, that a finding of SMP in termination markets generally indicates the potential for market failure. The evidence further provides justification for the imposition of preventative regulation on SMP licensees. Indeed, in most, if not all the case studies reviewed by URCA, regulators have concluded that, without regulatory oversight (including price control), an SMP provider of call termination would have the motivation and capacity to behave to an appreciable extent independently of its competitors, consumers and subscribers by engaging in exploitative and/or exclusionary conduct.

Under the standard framework for SMP analysis[18] markets susceptible to *ex-ante* regulation:

a) are characterised by high non-transitory barriers to entry;
b) do not tend towards effective competition during the time horizon; and
c) are ones where, by itself, competition law would be insufficient to remedy, mitigate and/or overcome the competition challenges (or market failure) identified.

URCA has noted that the defined wholesale termination markets are characterized by imperfect competition, thereby warranting regulatory intervention to facilitate the efficient functioning of the market.

The imperfections in the termination markets identified above (Section 3) are due primarily to structural factors which render it infeasible (absent any regulatory intervention) for sustainable competition to emerge and develop on a going forward basis. The implication of this to URCA is that the defined wholesale termination markets are devoid of effective competition within the relevant time horizon, the main reason being, in URCA's view, the wholesale markets under consideration are found to have:

(i) high and non-transitory barriers to entry/expansion; and
(ii) there are no current or emerging demand/supply-side substitution possibilities to overcome the barriers identified.

URCA has considered that the use of *ex post* competition law powers in the Comms Act in combination with the section 40(4) obligations would still be insufficient to tackle abuse of an SMP position. Further the absence of CBP coupled with the presence of absolute barriers to entry and expansion render it infeasible for existing or new entrants to replicate wholesale termination services on other fixed or mobile networks. Based on these reasons, URCA concludes that *ex post* competition law power is unlikely to be sufficient to remedy, mitigate or overcome the market failures identified in a timely and efficient manner.

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

As all three criteria have been cumulatively met, URCA concludes that the wholesale markets defined in this document are susceptible to SMP regulation. That is absent SMP regulation, the market failures identified may result in an abuse of dominance by licensees, thereby limiting the development of competitive markets, which will have negative effects on competitors and ultimately harm consumers.

5.3 SMP Conditions

Under the statutory framework of the Comms Act, URCA is obliged to impose on SMP operators a range of appropriate and proportionate regulatory obligations permitted under section 40 of the Comms Act or may maintain or amend such obligations where they exist.

URCA has considered regulatory measures to remedy, mitigate or prevent any adverse effect on competition, and ultimately to safeguard the interest of customers, arising from the licensees identified as having SMP in the wholesale termination markets above. The measures can be broadly categorized into:

- the section 40(4) obligations; and
- any other obligations URCA may impose pursuant to section 40(1) and section 5 of the Comms Act.

5.3.1 Section 40(4) Obligations

In respect of the section 40(4) obligations, URCA notes that these are mandatory obligations required by the Comms Act where an operator is designated as having SMP on a relevant market, either individually or jointly with others. In such cases, the licensee so designated shall–

> *"(a) not unduly discriminate against particular persons or a particular description of persons in relation to the electronic communications services offered;*
>
> *(b) provide technical specifications, or other relevant information about any interconnection essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and*
>
> *(c) not adopt technical specifications for a network that prevents interconnection or interoperability with a network of a competitor."*

Under Condition 34 of the IOL an SMP licensee shall not unduly discriminate. These requirements (including Condition 34) provide for the minimum deterrence against anti-competitive conduct by an SMP licensee and are already applicable to BTC's RAIO services (including call and mobile message termination) by virtue of URCA's April 2010 market review process. Pursuant to this current determination, the section 40(4) obligations will continue to apply to BTC on a going forward basis until URCA otherwise determines. It is URCA's view that these minimal level requirements also be applicable to the other named licensees that are determined to have SMP in the call termination markets.

URCA's final decision

The SMP licensees identified (i.e., BTC, CBL, and iPSi) shall at all times comply with the SMP obligations in section 40(4) of the Comms Act and Condition 34 of the Individual Operating Licence.

5.3.2 Section 40(1) Obligations

URCA is obliged to impose on SMP operators such other regulatory obligations as specified in section 40 (1) of the Comms Act as URCA deems necessary [19] and appropriate pursuant to the legal principles set forth in section 5 of the Comms Act. In that regard, URCA now considers the imposition of one or more of the SMP conditions listed under section 40(1) of the Comms Act.

BTC

By virtue of URCA’s 2009-2010 market review process, the additional obligations imposed on BTC include amongst others:

- publication of a RAIO;
- wholesale price control of fixed and mobile termination rates (i.e., cost orientation);
- annual submission of regulatory/separated accounts to URCA; and
- publication of cost accounting information relating to BTC's RAIO services.

The justification for imposing these SMP conditions is discussed in URCA's final SMP decision (ECS 10/2010). URCA notes the respondents to the consultation, including BTC raised no objection to URCA’s proposal to maintain the obligations to publish a RAIO and wholesale price control of fixed and mobile termination rates. The findings of this current consultation reconfirmed URCA’s 2010 decision that BTC held an SMP position in the wholesale call termination over their fixed and mobile networks and these markets are susceptible to *ex ante* regulation. URCA is satisfied that obligations imposed on BTC pursuant to URCA’s 2010 market review process continue to remain sufficient to counteract the incentive BTC has to charge excessive termination rates, and to strengthen the obligations of non-discrimination and transparency. Therefore, these obligations shall continue to apply to BTC. For the avoidance of any doubt, all previous URCA decisions applicable to BTC's RAIO services including changes in BTC’s termination rates are maintained going forward until URCA otherwise determines.

CBL and iPSi

Given the structural characteristics of termination markets, URCA has considered that the section 40(4) obligations by themselves, would be insufficient to achieve the overall objectives of the Comms Act. As stated previously, the section 40(4) obligations provide the minimum, but not a sufficient, level of protection against a SMP operator behaving anti-competitively. In the context of call termination markets, URCA is of the view that the section 40(4) obligations would not be sufficient in promoting the objectives of the Comms Act given that these obligations do not guard against excessive charging for an essential “bottleneck facility”. Further, visibility of the proposed price and non-price terms for

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[19]Under section 40(1)(j) of the Comms Act), URCA may impose *“such other obligations as URCA may consider necessary in pursuance of the electronic communications policy objectives and the sector policy.”*

termination cannot be assured hence there can be no guarantee to the wider market that the non-discrimination obligation is complied with. To this end, URCA has considered whether it would be appropriate and proportionate to impose additional SMP conditions on OLOs, including CBL.

URCA, taking into account all admissible submissions to the consultation and the statutory framework of the Comms Act, including the legal principles specified in section 5 of the Comms Act, intends to impose the following obligations on the other named licensees:

- Publication of tariffs and non-price terms for wholesale call termination; and
- Wholesale price control of call termination.

In Annex A below, URCA has set forth the process and analysis it has deployed in assessing the appropriateness and reasonableness of its determination on SMP conditions for CBL and iPSi.

Publication of tariffs and non-price terms
The obligation to publish tariffs and non-price terms are designed to promote efficiency, transparency and non-discrimination in interconnection negotiations to ensure that all current and potential licensees will have timely access to essential inputs on transparent and non-discriminatory terms, thereby fostering competition and optimizing benefits for customers. The obligation further supports the mandatory section 40(4) obligations in Section 5.3.1 above.

Wholesale price control remedy
URCA remains firmly of the view that the structural factors operating in the markets are such that, absent regulation, SMP licensees have weak incentives to set a tariff for termination on their respective networks at a level which could prevail in a competitive market. This is independent of the relative size of the SMP licensee. Given the risk of excessive pricing being applied by an SMP licensee in the wholesale termination market, URCA has considered that a price control obligation should be imposed on such licensees to efficiently and effectively address concerns on the pricing of termination services. From URCA's perspective cost based termination rates reflect the economic costs of termination and is the method most compatible with competitive markets. Cost based rates provide operators with sound 'make or buy' investment signals, allow economically efficient pricing, which can be fair to both the seller and buyer of termination, encourage competitive entry and promote the overall objectives of the Comms Act.

URCA remains of the view that termination rates should be set reciprocally. This is in line with international precedence from Europe (and elsewhere). However, URCA recognises that there may be instances where reciprocal termination rates may not be appropriate. For example, in light of one or more of the SMP licensees facing justifiable, exogenous cost differences to the other licensees in the market. Further, where there are now substantial differences in termination rates, there may be a need to gradually introduce reciprocal termination rates over a period of time (i.e., via a multi-year glide path) to allow all licensees to adjust to the new levels of termination charges.

As stated in Section 8 of the consultation document, URCA considers that under a reciprocal charging regime, and in the absence of industry bottom-up cost models to estimate the costs incurred by hypothetical operators in providing termination services, BTC's regulated (and approved) termination charges, set on the basis of its cost accounting data and benchmark information (where deemed appropriate by URCA), should form the basis for such reciprocal rates. This is because BTC's near-ubiquitous fixed line network is likely to provide the most reasonable basis for estimating the costs of fixed line services in The Bahamas, in the absence of an URCA-led exercise to estimate the costs of a hypothetical network operator.

As such, under this regime, all SMP licensees will be required to set their termination rates to be equal to the tariffs set out and approved by URCA in BTC's RAIO. However, URCA accepts that there are other approaches and factors to consider before determining the appropriate level of termination charges for OLOs in the Bahamian sector, including the alternative approaches set out in CBL's response to the consultation. Therefore, URCA has deferred its final decision on the price setting mechanism for OLOs pending further consultation with market participants.

Prior to determining these rates, as competitive safeguard during the transitional period, OLOs shall not be allowed to increase their termination rates charged to other SMP licensees from their current level.

<u>URCA's final decision</u>
URCA requires the other named SMP licensees identified (CBL and iPSi) to:

- *Publish, within five (5) weeks from the issue date of this final determination, the tariff and non-price terms on which termination services are provided (i.e., by publishing such details prominently on its website and additionally making such information otherwise available in other formats upon request on a non-discriminatory basis). This should include at a minimum, the following information*
  - *price list; and*
  - *the main non-price terms and conditions including:*
    - *advance notification of price changes;*
    - *billing and payment requirements;*
    - *detailed description of the termination service;*
    - *quality of service standards; and*
    - *dispute resolution scheme with appropriate reference to URCA where either party is unable to negotiate interconnection based on the proposed terms and conditions; and operations and maintenance procedures.*
- *The fixed termination rates charged by CBL and iPSi to terminate traffic on their respective networks are subject to wholesale price control (to be determined by URCA upon further consultation with stakeholders). Once the regulated charges have been determined by URCA, SMP licensees need to update the published tariffs with immediate effect.*
- *During the transitional period, CBL and iPSi are prohibited from increasing the fixed termination charges from their current levels. .*

The licensee is responsible for ensuring that published terms and conditions are compatible with the statutory framework of the Comms Act, relevant licence conditions, the Electronic Communications Sector Policy and all relevant regulatory and other measures issued by URCA from time to time.

6 Conclusion and Proposed Next Steps

URCA's framework for SMP analysis embodies well-established economic principles and relevant tests to define markets. It considers relevant factors to determine the level of competition, such as market share, the presence of barriers to entry and expansion, and examines whether countervailing buyer power is present. Overall, the tools and principles employed by URCA are similar to those utilized by regulators and competition authorities in the EU and other jurisdictions with market profiles similar or comparable to The Bahamas.

In this Statement of Results to the Public Consultation and Final Determination, URCA has summarized the general comments and answers to the consultation questions and URCA's views to those responses. Taking into account the comments received, URCA has also set out its Final Determination on its Review of the market for call termination services. These can be summarised as follows:

- BTC, CBL and iPSi have SMP in call termination over their respective public networks.
- All the SMP licensees identified shall at all times comply with the SMP obligations in section 40 (4) of the Comms Act and Condition 34 of the IOL.
- The SMP market identified are susceptible to ex ante regulation.
- The remedies applicable to BTC's call termination services pursuant to URCA's 2010 final decision (ECS 11 /2010) have been maintained.
- URCA requires the other SMP licensees identified (CBL and iPSi) to:
  - publish the tariff and non-price terms on which termination services are provided (i.e., by publishing such details prominently on its website and additionally making such information otherwise available in other formats upon request on a non-discriminatory basis); and
  - the fixed termination rates charged by CBL and iPSi to terminate traffic on their respective networks are subject to a wholesale price control (to be determined by URCA upon further consultation with stakeholders).
  - During the transitional period, CBL and iPSi are prohibited from increasing the fixed termination charges from their current levels.

The full scope of URCA's final determination is set out in Section 2 above.

Annex A: Regulatory Impact Assessment of New SMP Remedies

URCA's previous 2010 SMP decision led to a set of SMP obligations for BTC in relation to its access and interconnection services. In line with section 5 of the Comms Act URCA, at the time, conducted an impact assessment on the appropriateness and proportionality of its proposed SMP obligations.

The current market review only focused on call termination services. Whilst confirming the SMP obligations for BTC, this market review also led to new SMP obligations for CBL and IPSI; namely the obligation to publish tariffs and non-price terms and a charge control for termination services. As such, to guide its selection of the appropriate SMP remedies for CBL and IPSI, URCA again conducted an impact assessment of the available options. This is set out below.

<u>Overview</u>

URCA has considered the following steps before applying the SMP remedies to OLOs:

1. defining the objective – market failure identification;
2. identifying options to address each market failure identified;
3. conducting an impact analysis of possible options to remedy each market failure– costs, benefits and risks; and
4. then identifying a preferred remedy set for each market failure.

<u>Define the objective – market failure identification</u>

URCA is seeking to promote the primary objective of the Comms Act which is to *"Further the interests of consumers by promoting competition … in particular ... to encourage, promote and enforce sustainable competition"*.[20]

In the context of call termination services, URCA's overarching objective is to prevent any SMP licensee from abusing its dominant position by setting excessive termination rates. This would stifle growth and development of the broader market and be harmful to customers.

URCA has identified the following market failures in this proceeding:

1. Excessive pricing; and
2. Refusal to supply or denial of access.

[20]See Section 1.1 of ECS 06/2013: "Preliminary Determination on the Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009" dated May 17, 2013.

URCA has considered that other market failures could arise but has focused on the two most germane market failures as identified above. A comprehensive description of the main potential market failures URCA has identified is set out in Section 7 of ECS 06/2013 and summarised in Section 5 above.

Market failure 1 - Excessive charging

Excessive charging occurs when the SMP licensee is able to earn greater profits than would otherwise be possible in a competitive market. As stated previously, operators having SMP in call termination (including OLOs) have an incentive to exploit their market power by setting excessive rates for terminating calls over their networks. Such excessive prices could harm consumers and reduce call volumes below an efficient level. In view of the risk of excessive pricing being applied by any SMP licensee in the wholesale termination markets, URCA has considered that a price control remedy is required for all SMP licensees to efficiently and effectively address concerns on the pricing of termination. Whereas BTC already faces a price control on termination services, URCA now also imposes a charge control on CBL and iPSi.

Identify options

Given the competition related concern identified, URCA has considered the following two main potential obligations:

i) "do nothing" or "no ex-ante regulation" approach

This is the least intrusive approach to regulation and is akin to the principle of "light-touch" regulation. Under the option of "no regulation", termination rates for OLOs would be established through a process of bilateral negotiations between the parties. With this option URCA would rely on the section 40(4) obligations to promote the primary objectives of the Comms Act. This also means that URCA would rely on its ex-post competition powers to address any actual competition related concerns that may arise. This could severely constrain URCA's ability to timeously respond to any competition concern raised by licensees in relation to call termination services provided by CBL and/or iPSi.

ii) price control remedy

Under this option, termination rates for OLOs would be subject to regulatory oversight and would be set *ex-ante* based on parameters established by URCA. Although this option is more intrusive than the previous, it reduces the risk of anti-competitive behaviour by SMP licensees and provides greater certainty on the charges for call termination services provided by CBL and/or iPSi to the market (and the OLOs themselves). This remedy is currently imposed on BTC (amongst other remedies).

Evaluate available options

Next, URCA evaluates the available options discussed above in order to identify the approach which best meets URCA's statutory objectives and represents the most efficient and proportionate option to effectively address the market failure identified.

URCA considers that the section 40(4) obligations and relevant licence conditions by themselves would not address the concerns regarding excessive charging for termination. While there is an obligation for an SMP licensee not to unduly discriminate, URCA's ability to address concerns about the level of charging in an efficient and timely manner is limited by the steps it must undertake when assessing an alleged abuse of dominant position. This could in turn expose competitors and customers to monopolistic pricing on the part of the SMP licensees. This risk exists regardless of size/scale or licensee's access to financial resources or experience.

Further, international experience suggests that leaving termination rates to bilateral negotiations rarely results in optimal benefits for customers. This is because in the absence of a price control remedy, SMP operators may not negotiate bilaterally termination rates at an efficient (cost oriented) level.

In view of the problem identified and URCA's conclusion that the section 40(4) obligations by themselves would be insufficient to promote URCA's objectives, URCA has considered that it would be appropriate to impose a price control remedy on CBL and iPSi to ensure termination rates are appropriate and reasonable for the benefit of customers. A formal system of price control would ensure compliance with the Comms Act and further support the non-discrimination obligations and safeguard the interest of customers making off-net calls.

<u>Impact analysis of price control remedy</u>

Table 1 below provides a high-level overview of the main impacts expected from imposing a wholesale price control on OLOs.

Table 1: Impact assessment of wholesale price control

Implementation costs	***SMP licensees*** • CBL and iPSi would incur time and resource costs to comply with information requests and to participate in consultation (note, these compliance costs will vary by price control option – discussed below). • Both licensees would be restricted in its ability to change their termination charges beyond the levels set by URCA. ***Regulator*** • URCA would incur time and resource costs in designing and setting-up the price control and further, but limited on-going compliance monitoring costs.
On-going compliance costs	***SMP licensees*** CBL and iPSi may be required to provide data to URCA to inform periodic review of termination rates.(Note, these compliance costs will vary by price control option – discussed below). ***The regulator*** URCA may be required to undertake periodic review of termination rates. (Note, these compliance costs will vary by price control option – discussed below).
Distributional impact	**SMP licensees** • CBL and iPSi would forgo any revenues and profits associated with termination rates being set above the costs of providing these services. Net financial impact will depend on whether the price effect is partly/fully offset by any resulting increase in traffic volumes and on the extent to which reductions in termination rates are offset through other charging elements. • Reduced ability to cross-subsidise other services from returns earned from termination services. ***Other market players and potential new entrants*** • Lower (unit) costs for terminating calls on OLOs' networks – may result in greater flexibility on retail pricing (in particular off-net call prices).

	• Regulatory certainty on termination rates for other operators. ***Consumers*** • Consumers benefit from any reductions in retail prices which may result from lowering termination rates (assuming a CPP regime).
Impact on competition	***SMP licensees*** • CBL and iPSi will still be enabled to earn a fair return on call termination services. • Likely to limit the ability of CBL to cross-subsidize its other services. • May further incentivise the operator to compete on factors such as quality of service, service and pricing innovation, among others. • (Cost oriented) termination rates would provide the "right" price signal for operators. ***Existing market players and potential new entrants*** • Existing operators would benefit from any level playing field from less cross-subsidisation. • Potential new licensees may view this as evidence that a level playing exist for them to enter and compete. • (Cost oriented) termination rates would provide the right price signal for operators. ***Consumers*** • Consumers are likely to benefit from a market in which players are protected from anti-competitive pricing and thus can compete on factors such as choice, quality of service and innovation.
International precedent	There is a growing trend around the world to apply wholesale price regulation to termination rates charge by OLOs, with termination rates ultimately being set at a symmetric level for all operators. This is also the practice in jurisdictions with market profiles that are smaller than or comparable with The Bahamas. Ultimately, the cost of implementation will depend on the method of price control adopted.

<u>Implementation options for price control remedy</u>

Wholesale price controls could be set in a number of different ways. Broadly, URCA has considered that the main options available are:

- cost orientation based on the operators' own call termination costs (i.e., asymmetric rates);
- benchmarking based on suitable comparators (symmetric/asymmetric rates);
- symmetric to the BTC URCA-approved rates for equivalent termination services however derived (i.e., cost orientation based on BTC's cost accounting information, benchmarking); or
- symmetric rates based on a separate URCA-led exercise to derive the costs a reasonably efficient operator would incur in providing call termination services in The Bahamas.

URCA will hold further consultation with market participants and other market participants on an appropriate and proportionate mechanism for establishing call termination rates for OLOs. There are several outstanding issues relating to each of the options identified that would need to be investigated and consulted upon before URCA can come to a final decision on call termination rates for CBL and iPSi. For example, URCA must ensure that the price control mechanism mandated is consistent with section 40(3) of the Comms Act:

> *"(a) …pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits;*

(b) shall take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital efficiently employed, taking into account the risks involved;"

Conclusion

URCA's overarching objective is to foster sustainable competition and safeguard the interest of users in The Bahamas by encouraging efficiency and non-discrimination in interconnection negotiations and agreements. Based on the analysis presented, URCA considers that imposing a price control for CBL and iPSi represents the most appropriate and efficient obligation for the call termination market in order to address URCA's objectives and remedy the market failure identified.

Based on the impact analysis set out above, URCA concludes that its price control obligation on CBL and iPSi represents a proportionate remedy given the high importance of pricing to the development of sustainable competition in The Bahamas and the fact that the option of "no regulation" was considered to be an ineffective tool to address the market failure identified.

The other options considered were either viewed as not meeting URCA's objectives or as not effectively addressing the market failure identified.

Market failure 2 - Refusal to supply or denial of access

The concept of refusal to supply covers a wide range of practices, including a refusal to supply products to existing or new customers, and a refusal to provide critical information such as tariffs and non-price terms governing "essential bottleneck" facilities on a given network. In this case, URCA's primary concern is whether an operator with SMP in call termination is likely to withhold critical information thereby adversely impacting the development of competition in the broader market. In particular, URCA's concern is whether information asymmetry constitutes a barrier to effective and efficient interconnection negotiations and agreements.

Identify options

Given the competition related concern identified, URCA has considered the following main obligations:

i) "do nothing" or "no ex ante regulation" approach

As stated previously, this is the least intrusive approach to regulation and is akin to the principle of "light-touch" regulation. It involves deciding not to apply any obligations in addition to those that are statutorily required under section 40(4) of the Comms Act and Condition 34of the standard IOL.

URCA recognizes that the section 40 (4) obligations do not include provisions that would enable URCA to expeditiously and efficiently address instances of refusal to deal/denial of access in its various forms. International regulatory experience has proven that the lack of up-to-date and relevant information relating to access and interconnection to competitors' networks can result in delay access to "essential bottleneck". This holds true regardless of experience or size/scale or the licensee's access to financial resources or position in the broader market.URCA has also considered that even if there is no evidential support for this in The Bahamas, at this time there is a very strong likelihood that the situation may change going forward as the sector evolves with new operators entering the market and existing ones expanding their scale of operation and product offerings.

URCA does not consider that the section 40(4) obligations and Condition 34of the standard IOL to be sufficient in relation to the SMP markets identified, as call termination is critical to the development of any competition in the voice market. Hence, the “do nothing” option would not be appropriate.

ii) Publication of Reference Access and Interconnection Offer (RAIO)

An obligation to publish a RAIO setting out tariffs and non-price terms for termination is one of the most intrusive measures available to a regulator. URCA has considered that the imposition of such an obligation on OLOs would be heavy handed, inefficient use of resources and disproportionate relative to the problem identified and URCA's objectives. URCA notes that BTC's obligation to publish a RAIO is warranted given BTC's position in the broader market covering a range of wholesale services. Hence, in the current consultation URCA did not consider this as an appropriate obligation for OLOs. This is because URCA believes its objective can be effectively and efficiently met through a less intrusive and appropriate obligation.

iii) Publish tariffs and non-price terms

URCA has considered that an obligation requiring OLOs to publish tariffs and non-price terms is the most appropriate remedy to address URCA's objectives. Under this option, OLOs will be required to publish such details prominently on their websites and additionally make such information otherwise available in other formats upon request (on a non-discriminatory basis). URCA will specify the minimum information to be published which will form the basis of interconnection negotiations between interconnecting parties. URCA may be required to assist where negotiations between operators breakdown or where agreements cannot be reached.

In light of the problem identified, URCA's objectives are to promote efficiency, transparency and non-discrimination in interconnection negotiations and agreements. Ultimately this will ensure that existing and potential licensees will have critical information in a timely and transparent manner. This obligation will further support the section 40(4) obligations and Condition 34thereby fostering competition and optimizing benefits for customers.

Evaluate available options

Below URCA evaluates the available options discussed above in order to identify the approach which best meets URCA’s objectives and represents the most efficient and proportionate option to effectively address the market failure identified.

International experience suggests that market participants generally need accurate and timely information about essential "bottleneck facilities" situated on their competitors' networks. Information relating to technical interfaces and general terms and conditions, including pricing, are essential to the planning process and facilitates timely interconnection negotiations and agreements.

Above, URCA acknowledged that the "do nothing" option which is akin to a pure market/commercial-based approach to interconnection is not appropriate. Information asymmetry can be a major hindrance to effective interconnection negotiations and agreements. This holds true even where the seller of termination is a new entrant. URCA therefore considers that, given that efficient interconnection negotiations could not be conducted without relevant information, it is unlikely that the "do nothing" option would meet URCA's objectives or would effectively address the market failures identified.

URCA further considers the option to require the publication of a RAIO as disproportionate for OLOs.

Given this, URCA considers the requirement for OLOs to publish tariffs and non-price terms for termination services to represent the most appropriate regulatory option to address the market failure identified in this market.

Impact analysis of the requirement to publish tariffs and non-price terms

Table 2 below provides a high-level overview of the main impacts expected from requiring OLOs to publishing tariffs and non-price terms for termination services.

Table 2: Impact assessment of Publishing Tariffs and Non-price Terms

Implementation costs	***SMP licensees*** • The one-off implementation costs of publishing the tariff and non-price terms are minimal. ***The regulator*** • URCA will face (minimal) time and resource costs to check compliance with the obligation by OLOs.
On-going compliance costs	***SMP licensees*** • The on-going costs of complying with the obligation are minimal (i.e. they only occur in case of changes to the tariffs or terms). ***The regulator*** • There will be on-going cost to URCA for monitoring the behaviour of the SMP operator to ensure the interconnection process is transparent and non-discrimination obligation is adhere to.
Distributional impact	***SMP licensees*** • SMP operators lose any ability to withhold critical information and/or to make the interconnection process less efficient and transparent. ***Existing market players and potential new entrants*** • New and existing competitors can be assured that the non-discrimination condition is complied with and would be able to conclude interconnection agreements in a timely and efficient manner.
Impact on competition	• ***SMP licensees*** The SMP operator's ability to engage in discriminatory behaviour by withholding critical information and/or to make the interconnection process less efficient and transparent is constrained. ***Existing market players and new entrants*** • Allowing for a more transparent and efficient interconnection rate negotiation and thereby promoting entry and competition. ***Consumers*** • If interconnection negotiations between operators were to fail or be delayed, this would limit the ability for users to benefit from calling (or being called by) users on other domestic networks.
International precedent	There are precedents in other jurisdictions for imposing this obligation on OLOs.

Conclusion

URCA's overarching objective is to foster sustainable competition and safeguard the interest of users in the Bahamas by encouraging efficient and non-discrimination in interconnection negotiations and agreements. Based on the analysis presented, URCA considers that the requiring OLOs to publish their termination charges and non-price terms to represent the most appropriate and efficient regulatory obligation to help achieve URCA's objectives and remedy the market failure identified.

URCA considers this to be a proportionate obligation given the importance of information in the interconnection negotiations. This obligation further supports the obligation of non-discrimination by bringing visibility to the market and transparency. The other options considered were either viewed as not meeting URCA's objectives or as not effectively addressing the market failure identified.

Annex B: BTC's Response to the Consultation

Overview of BTC's Response

BTC welcomed the opportunity to comment on the consultation, stating that it has long advocated intervention in the market for the provision of call termination services and noted that the consultation is an important step in preventing an SMP operator from abusing its absolute control over essential terminating facilities on its network.

Below, URCA summarizes BTC's positions on key issues arising from the consultation, namely:

- URCA's preliminary views on call termination markets;
- Differentiation between CBL and smaller telephony operators;
- Wholesale market for SMS and MMS; and
- Greater detail about the transparency obligation

URCA's preliminary views on call termination markets

BTC agrees with URCA's preliminary views, expressed in the consultation document:

- that the operators identified have SMP in the provision of call termination services on their own network; and
- wholesale termination rates on other fixed networks should be set at the same rate as BTC's wholesale call termination charges.

BTC notes that symmetrical termination rates facilitate predictability, foster allocative and productive efficiencies, promote effective sustainable competition and efficient market entry, prevent market distortions and are in the interest of customers.

URCA's response to BTC's comments

URCA notes BTC's support for symmetrical termination rates. URCA recognises however that there are other factors beyond the scope of this consultation that would need to be investigated before symmetrical rates or any other mechanism for establishing call termination rates for CBL and iPSi. URCA is of the view that further engagement with the industry is warranted in respect of URCA's proposal. URCA clearly stated this in the consultation paper.

Differentiation between CBL and smaller telephony operators

BTC states that URCA has not differentiated between CBL and smaller operators (e.g., iPSi) in the telephony market although CBL enjoys both economies of scale and scope due to network size and wide ranging product offerings.

URCA's response to BTC's comments
URCA advises BTC that URCA is aware of CBL's position in the market relative to smaller operators. URCA further reminds BTC that the Comms Act does not permit URCA to deploy the framework for market analysis discriminately.

While URCA accepts that remedies that may be appropriate and proportionate for BTC may be disproportionate for other licensees, URCA in its deliberations on an appropriate remedy to impose on SMP licensee is guided ultimately by section 5 of the Comms Act. In that regard URCA's consideration of additional remedies that are necessary beyond the required section 40(4) obligations will be mindful of URCA's remit under section 5 of the Comms Act.

Furthermore, in the context of call termination markets, it is URCA's view that the relative size of licensees has no bearing on their SMP position in the relevant market (i.e., the provision of termination services on their own network). URCA, however, recognises that any SMP remedies need to be proportionate to the regulatory issue identified and take into account the overall burden on the SMP licensee. URCA is satisfied that the final set of remedies for OLOs fulfil these criteria.

URCA reminds BTC that CBL, similar to BTC, faces additional regulatory obligations with respect to the other markets in which CBL holds SMP.

Wholesale market for SMS and MMS

BTC commented that URCA has reviewed the wholesale market for mobile message termination on BTC's mobile network although the mobile market is closed to competition and hence that competition-related concerns would not arise in respect of wholesale termination for mobile message termination. BTC believes that a wholesale market for mobile message termination would become more relevant when the second mobile operator enters the market and added that URCA, pursuant to section 39(2) of the Comms Act, should declare the second mobile operator as having SMP and impose the relevant obligations per section 40(1) of the Comms Act on that operator. BTC suggested that URCA should establish a process whereby a market review is automatically triggered by the entry of a new operator.

URCA's Response to BTC's Comments
URCA, in this consultation, reconfirms URCA's 2010 final SMP decision that BTC has SMP in mobile message termination. URCA agrees with BTC that without a second mobile operator in The Bahamas competition concerns are less likely to arise in this market. However, the advent of a second mobile licensee would create an immediate need for the service. At this time BTC will therefore be required to introduce this service into its RAIO.

URCA considers that the market review process laid down in URCA's SMP guidelines, ECS 20/2011, constitute the statutory framework for market reviews in The Bahamas for existing and future licensees. URCA reminds BTC that pursuant to section 39 (1) of the Comms Act URCA *"may at any time* ***[emphasis added]****determine that a licensee is an SMP licensee …".* For this reason, URCA concludes that there would be no need for a process whereby a market review is automatically triggered by the entry of a new operator.

Greater detail about the transparency obligation

BTC referenced section 40(1)(b) of the Comms Act stating that when a licensee is determined to have SMP, URCA may impose an obligation requiring publication of a RAIO ensuring the equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP at tariffs based on the licensee's costs. BTC believes that URCA should be more specific about the information that SMP operators must publish.

<u>URCA's Response to BTC's Comments</u>

BTC is correct in its response that it was not URCA's intention to impose a RAIO obligation on the other SMP licensees identified. In the consultation paper, URCA was of the view that extending the BTC RAIO obligation to the other SMP licensees identified (CBL and iPSi) would be disproportionate and that the competition problem identified can be overcome by employing a light-touch or less intrusive remedy.

Regarding BTC's comment for URCA to be more specific about the information to be published pursuant to the required section 40(4)(b) obligation, URCA refers to its response to Question 7.

BTC's Response to Consultation Questions

BTC's Comments on Consultation Question 1: Please provide comments on URCA's preliminary views on the relevant product market definitions for fixed and mobile termination services.

URCA summarizes BTC's submission on this Question and provides URCA's comments on each issue raised:

i) URCA's approach and analysis

BTC has acknowledged that URCA's explanation of the concept of call termination markets and market analysis is a fair summary of international best practice but added that the countries mentioned (pages 18 and 19 of the consultation paper) *"...are random and some of the references have been overtaken by more recent decisions."*

<u>URCA's Response to BTC's Comments</u>

URCA thanks BTC for its feedback on URCA's approach to market analysis and notes BTC's comment regarding references to SMP determinations in call termination on pages 18 and 19 of the consultation paper.

The list of references was presented by URCA for the purposes of identifying the range of experiences and approaches taken by regulators around the world in respect of SMP in call termination markets. URCA maintains that the references cited satisfy this purpose and were not intended for any other use.

URCA further advises that where some the reference documents have been superseded by more recent decisions, URCA is not aware of any of those decisions that have rendered the referenced SMP determination inappropriate.

ii) Proposed market definitions

BTC strongly favours the use of benchmarks from countries with operational, demographic and circumstances that are similar to The Bahamas and noted that market definition and the absence of competitive dynamics are not influenced by local market circumstances. BTC argues that in the Bahamian context, EU benchmarks are the most relevant and appropriate because the regulatory framework in The Bahamas is modelled on EU best practice. BTC then added that a closer definition of call termination markets is necessary to reduce confusion later and referred URCA to the definitions adopted by OFCOM:

> *Wholesale fixed geographic call termination on each individual network. Call termination in this context includes conveyance of all signals (including relevant control signals) required to terminate calls on a customers' exchange line from the first point in the network where those signals can be accessed by another communications provider.*
>
> *Termination services that are provided by [named mobile communications provider] (MCP) to another communications provider, for the termination of voice calls to UK mobile numbers which that MCP has been allocated by OFCOM in the area served by that MCP and for which that MCP is able to set the termination rate.*

BTC suggested that should URCA align its proposed market definitions with these detailed definitions by making suitable changes of word and include references to numbers allocated to the operator in the National Numbering Plan to avoid later debates about whether call termination should include calls to IP addresses.

<u>URCA's Response to BTC's Comments</u>

URCA accepts the need for clear definitions of markets to avoid later debates and inter-operator disputes. URCA considers that the market definitions applied by OFCOM are compatible with URCA's intent or proposed definition of the relevant product markets. URCA has reviewed its proposals to ensure that market definitions are unambiguous and minimize scope for later debates and inter-operator disputes.

iii) Individual networks

BTC agrees with URCA's proposal that call termination markets should be defined by operators as each operator's market is distinct from those of other operators because its customers are allocated unique numbers from the National Number Plan and this makes switching to an alternative operator impractical.

URCA's Response to BTC's Comments
URCA notes BTC's support for URCA's proposal. URCA notes that its proposal to define call termination markets by operator is well within the international mainstream and is considered best practice.

iv) Mobile call termination market definition

BTC believes that the analysis should include mobile-to-mobile domestic calls and fixed-to-mobile domestic calls. BTC noted that the method used to pay for call termination should not prevent the market analysis being carried out for fixed-to-mobile calls and noted that mobile-to-mobile calls are billed on a CPP basis.

URCA's Response to BTC's Comments
URCA agrees with BTC that the method used to pay for call termination should not prevent the market analysis being carried out and URCA notes it did not adopted this approach in the consultation paper.

In the consultation, URCA reconfirmed its 2010 final SMP decision that BTC has SMP in termination over BTC's mobile networks. In that SMP decision URCA designated BTC as having SMP in mobile call termination irrespective of whether the call originated overseas or within The Bahamas. In the current proceeding URCA has taken the same approach to product definition. In Section 5.1 of the consultation paper, URCA stated that the product definition of call termination:

> *"should not distinguish where the call originates. This is because, for example terminating a call on a fixed network involves essentially the same functional elements irrespective of whether the call originated on another fixed network, mobile network of from abroad (i.e., where the call is made by a subscriber in another country). This also holds for calls terminating on a mobile network."*

This statement meant that the mobile termination market proposed for BTC is the same regardless of whether the call originates within The Bahamas (from a second mobile network or another fixed domestic network) or from outside The Bahamas and independent of the charging method applied at the retail level. On page 12 of the consultation paper URCA only referenced BTC's regulated termination rate for mobile traffic originating from outside The Bahamas because calls originating on all domestic fixed networks, inclusive of BTC's to BTC's mobile networks are charged on a RPP basis hence no termination rate applies and hence focused its description of demand-side substitution for incoming international calls to BTC's mobile network. However, independent of the current charging mechanism, URCA's position is that there is one mobile voice termination market on BTC's mobile networks which is applicable to calls originating from within and outside The Bahamas to mobile numbers issued to BTC pursuant to The Bahamas National Numbering Plan.[21]

URCA has adopted this approach because the retail pricing method used to pay for off-net calls does not affect the market definition or the fact that termination on a given network is a "bottleneck facility". With the entry of a second mobile operator BTC would still have SMP in call termination over BTC's mobile networks. Even if off-net mobile calls are priced on a RPP basis the second mobile operator

[21] Inclusive of calls from a second domestic mobile network to BTC's mobile networks.

would still need to have access to an essential "bottleneck facility" on BTC's mobile network. The non-price terms governing that arrangement must satisfy principles of non-discrimination and transparency.

v) Termination of calls on mobile networks from international originations

BTC argues that the downstream retail markets for the termination of international originated calls are not relevant for regulation in The Bahamas and stated thereafter that it believes URCA is now in agreement with that view. BTC then quoted extensively from a previous URCA decision[22] wherein URCA expressed concerns about the potential impact of mobile termination rates on the international transit market. BTC opined that URCA's concern regarding a potential margin squeeze is possible with or without cost-oriented mobile termination rates and can be easily prevented by URCA ensuring:

- BTC does not charge the transit component of the price to foreign operators below cost;
- Coupled with a transparent and non-discriminatory mobile termination rate but noted that this obligation already exists under URCA's ex-post competition guidelines.

BTC stated that in relation to the international transit market, the obligations on BTC should therefore be to offer the:

- termination element on a non-discriminatory basis to other licensed operators in the Bahamas as this would ensure that a level playing field exist for all operators including BTC;

- termination element on a transparent basis to other licensed operators in The Bahamas as this would ensure all operators are aware of the mobile termination rates charged by BTC to OLOs and itself; and

- for BTC to set a reasonable mobile termination charge.

BTC states that a wholesale mobile termination charge for incoming calls not based on cost is justified because the surplus can be used to fund universal service obligations in areas where the cost of supply exceeds revenues.

URCA's Response to BTC's Comments

URCA does not agree with BTC's interpretation of its position on this matter. As set out above, URCA considers that all calls terminating on BTC's mobile network constitute part of the relevant market. As such, BTC is required in its RAIO to offer call termination on its network regardless of the origin of the call, with charges for calls originating internationally set at cost oriented levels.

Further, URCA considers that the above proposals put forward by BTC are not pertinent to the market review of termination services and that they have wider regulatory ramifications beyond this proceeding. URCA notes that these issues are subject to other regulatory proceedings that are on-going and fall outside the scope of this proceeding.

[22] ECS 25/2013: "Statement of Results and to Public Consultation and Final Decision: Setting Interconnection Charges for BTC Going Forward" available at www.urcabahamas.bs.

vi) Emails and Smartphones

In reference to Section 5.3.1(iii) and Section 5.3.3 (vi) of the consultation paper, BTC explained that retail customers need not have a smartphone and subscribe to a data plan to receive emails from the fixed network. BTC argued that many customers will have some form of computer equipment and an internet connection thus making an email a practical, if imperfect, substitute for a fixed voice call. However, BTC noted that its comment does not invalidate in any way URCA's preliminary definition of the fixed voice call termination market.

URCA's Response to BTC's Comments

URCA agrees with BTC's clarification.

vii) Transit and Roaming Traffic

BTC rejected CBL's arguments (Annex C - Consultation Question 1) that transit and roaming customers should be included in the definition of the mobile call termination market. BTC stated that it is quite common at the start of competition to use the fixed network to transit calls to mobile numbers. BTC commented that its RAIO sets out a process for the introduction of new points of interconnection and stated that there have been discussions between BTC and CBL regarding direct connectivity to BTC's mobile network. BTC also stated that transit is a separate and distinct market from call termination and cited the European Commission's 2002 recommendations on market definition in support of its position.

BTC put forward various arguments in support of BTC's view that roaming traffic is not included in BTC's RAIO services. BTC referenced the regulation of roaming in the EU and added that outside the EU roaming is not a regulated market at present, whereas mobile call termination in a regulated market in most countries.

URCA's Response to BTC's Comments

URCA confirms that the BTC URCA-approved RAIO contains a process for the introduction of new points of interconnection.

URCA agrees with BTC that call transit is a separate and distinct market from the mobile call termination market identified for BTC.

Without prejudice to the on-going discussions between the licensees and how URCA may approach any formal dispute which may be tabled, URCA considers that call termination to all numbers on BTC's mobile network are in the same product market, and has reflected this in its market definition. As part of this market review, BTC was found to hold SMP in this market.

BTC's Comments on Consultation Question 2: Please provide comments on URCA's preliminary view on the relevant geographic market definition in relation to fixed and mobile call termination services.

BTC considers that for call termination markets a single market covering the entire Commonwealth of The Bahamas is adequate.

URCA's Response to BTC's Comments

URCA agrees with BTC's understanding of URCA's proposal.

BTC's Comments on Consultation Question 3: Please provide comments on URCA's preliminary views that the licensees identified have SMP in relation to the wholesale supply of call and/or mobile message termination services on their respective networks.

BTC agreed with URCA's preliminary view that individual operators have SMP in the termination markets on their networks and reiterated that this is compatible with decisions made by regulatory authorities in the Caribbean, Europe and elsewhere.

BTC states that there is evidence for the absence of CBP in The Bahamas. BTC explained that CBL's termination rates are unregulated while BTC's rates are regulated and stressed the refusal of CBL to reduce its termination rates in tandem with BTC's with the result that CBL's termination rates are now twice that of BTC's. BTC further stated that because of the regulatory requirement for BTC to interconnect with other licensees, BTC has no choice but to accept CBL's termination rates and BTC is unable to vary price and non-price terms and conditions governing its termination services.

BTC proposes an automatic presumption of SMP in termination so that when a newcomer to the market starts providing services to the public using the National Numbering Plan, it is presumed to possess SMP in call termination market. BTC noted that this is the approach adopted by the telecommunications regulator in BVI adding that an automatic presumption of SMP would eliminate the need to repeat the process of market analysis and public consultation each time a new public operator is licensed.

Within its second round response, BTC noted that many of the points raised by CBL in its initial response to Question 3 are self-serving and wrong. BTC stated the following:

- CBL's comments about relative factors (including market share) are not relevant.
- BTC's RAIO permits IP interconnection.
- Termination rates on BTC's network are not dictated by BTC. These rates are set by URCA. On the other hand OLOs have unrestricted freedom to decide their own termination rates and BTC lacks countervailing buyer power.
- CBL has no right to provide termination services to international customers roaming on BTC's mobile network under the RAIO.

URCA's Response to BTC's Comments

URCA welcomes BTC's general acknowledgement that the analysis and preliminary conclusions made by URCA are compatible with decisions made by regulatory authorities elsewhere.

URCA reminds all service providers that CBP exists if other licensees have a sufficiently strong negotiating position to influence and effectively prevent an attempt by the supplier to increase termination rates above the competitive level. However, given the structural characteristics of termination markets, URCA does not believe the conditions conducive to CBP generally do not exist.

Further, the interconnection obligation as per Condition 11.1 of the IOL prevents the calling party network from exercising any possible CBP. URCA considers that both characteristics of the market hold regardless of size/scale or experience or the licensee's access to financial resources.

URCA refers BTC to section 116(2) and (3) of the Comms Act wherein URCA was obliged to consult extensively with BTC and CBL under the interim SMP presumptions of the Comms Act before issuing a final determination on products in the relevant high level SMP markets and relevant ex-ante obligations.

URCA considers it questionable whether the Comms Act permits URCA to issue a presumption of SMP or dominance in call termination in respect of an unknown or unnamed licensee. Section 39(1) of the Comms Act clearly states that *"URCA may at any time determine that a licensee* ***[emphasis added]****is an SMP licensee …"* whilst a *"licensee" is* defined in section 2 of the Comms Act as-

"(a) in respect of an individual licence, the named licensee and any of its subsidiary undertakings notified to URCA in accordance with section 21(1); or otherwise

(b) the named licensee"

and a *"named licensee"* is defined as *"... a person granted or issued a licence under Part IV*" of the Comms Act.

Given the statutory framework of the Comms Act, URCA would be hard pressed to identify a process that would be consistent with BTC's proposal (i.e., avoid the need to repeat the process of market analysis and public consultation) while satisfying the statutory framework of the Comms Act.

URCA notes BTC's second round comments on CBL's initial response to Question 3. URCA is in general agreement with many of the points raised by BTC.

Regarding the termination of roaming traffic on BTC's mobile network, URCA without prejudice to the on-going discussions between the licensees and how URCA may approach any formal dispute which may be tabled, considers that call termination to all numbers on BTC's mobile network are in the same product market, and has reflected this in its market definition. As part of this market review, BTC was found to hold SMP in this market.

BTC's Comments on Consultation Question 4: Please provide comments on URCA's preliminary views on the main competition problems or market failures that could arise from a licensee having SMP in the provisioning of wholesale call and/or mobile message termination services on its own network.

BTC stated that URCA has presented a fair summary of the competition problems that can arise from unregulated termination rates but added that the FTC (Fair Trading Commission) in Jamaica has provided a more detailed literature review. It is BTC's supposition that CBL's refusal to reduce termination rates in line with BTC's reductions provide a practical example of unfair competition as it results in a subsidy from BTC to CBL, allowing CBL to use this subsidy to reduce its retail prices.

In its second round response, BTC stated that URCA's conclusion that market failures can and do exist in call termination markets on individual operators' networks is justifiable.

URCA’s Response to BTC’s Comments
URCA notes BTC's comment in respect of competition problems that may arise from an SMP in call termination. While acknowledging BTC's reference to a more detailed literature review by the FTC in Jamaica, URCA is satisfied that its analysis of the competition problems identified is adequate and supported by empirical evidence from elsewhere including the Caribbean and supported by the Comms Act.

URCA could not validate BTC’s claim that CBL’s fixed termination charge is excessive and result in a subsidy from BTC to CBL. URCA reminds BTC that CBL's termination rates have been so far unregulated and CBL's cost of provisioning termination on its network is not known to URCA at this time.

It remains URCA’s view that the main competition problems or market failures that could arise from a licensee having SMP in call termination services are excessive charging and refusal to supply.

BTC’s Comments on Consultation Question 5: Please provide comments on URCA’s preliminary view that the wholesale termination markets identified are susceptible to SMP regulation.

BTC agrees with URCA’s preliminary view that the wholesale termination markets identified are susceptible to ex-ante regulation.

As part of BTC's second round response, BTC stated that URCA's conclusion that the markets identified are susceptible to ex ante regulation is in line with the EU three criteria test for ex ante regulation.

URCA’s Response to BTC’s Comments
URCA notes and welcomes BTC’s comments.

BTC’s Comments on Consultation Question 6: Please provide comments on URCA’s preliminary view that the SMP licensees identified should, at a minimum, be obligated to comply with the SMP obligations specified in section 40(4) of the Comms Act.

BTC stated that operators having SMP in the call termination markets identified have no option but to comply with the obligations specified in section 40(2) of the Comms Act, noting that the obligations are legally required once a SMP designation has been made by URCA.

BTC reiterated this point in its second round response to CBL's initial submission on Question 5.

URCA’s Response to BTC’s Comments
URCA agrees with BTC.

BTC's Comments on Consultation Question 7: Please provide comments on URCA's preliminary view regarding publication of tariff and non-price terms and conditions governing supply of wholesale termination services.

BTC:

a) takes issue with URCA's statement on pages 44 and 45 of the consultation paper that commercial negotiations "have almost invariably failed" claiming that it has had successful commercial negotiations with OLOs on terms and conditions of termination services but these were disrupted when URCA directed BTC to reduce its termination rates and OLOs refused to follow suit.

b) states that publication of terms and conditions relating to call termination is inadequate to address the competition related problem identified since the operator can still abuse its position of economic strength by imposing unreasonable terms and conditions. BTC suggested that URCA should propose a remedy to militate against this happening or at least enable the resolution of such a problem.

BTC believes any of the options presented below would adequately address BTC's concern raised under b) above:

i) Outline terms and conditions to be published as URCA did for BTC's RAIO with URCA maintaining regulatory oversight of the proposed terms and conditions;

ii) An ex-post solution whereby an operator who is dissatisfied with the published terms and conditions could initiate a dispute process which would result in a reference to URCA;

iii) Use BTC's RAIO as the model which would be adopted by other operators as their model terms and conditions. BTC believes this would have the advantage of standardising interconnection arrangements between operators in The Bahamas.

BTC expressed further support for URCA's proposal that OLOs should publish price and non-price terms governing supply of termination services. BTC believed this would encourage and promote transparency, efficiency and guard against undue discrimination. BTC noted that the cost of publication is minimal.

URCA's Response to BTC's Comments

URCA stands by its statement that commercial negotiations "have almost invariably failed". URCA considers that its statement is consistent with the regional and international experience. In its submission on Question 9 below, BTC presented a local example that supports URCA's view that commercial arrangements do not always work to the benefit of the sector and may even result in "inefficient" gaming of the system. It is URCA's understanding that commercial arrangements are most likely to succeed where the commercial interests of the parties converge. This is rarely the case with interconnection arrangements. Furthermore, there is the likelihood that commercial negotiations might not always be beneficial to customers and the arrangement tends to breakdown when the commercial self-interests of the parties diverge.

URCA considers that BTC's urging for URCA to specify the information to be publish is a reasonable proposal as this would further support the required section 40(4) obligations of the Comms Act without imposing additional regulatory cost or burden on CBL and iPSi. URCA has therefore given consideration to BTC's proposal in URCA's review of remedies.

URCA has no objection should CBL and/or iPSi adopt elements of the BTC RAIO as their model terms and condition to be publish but believes it would be up to the operators to make this determination.

BTC's Comments on Consultation Question 8: Please provide comments on URCA's preliminary view regarding price regulation of call termination services.

BTC expressed strong support for URCA's proposal that termination rates on other domestic fixed networks should be subject to a price control remedy. BTC stressed that the present situation where CBL's termination rates are twice that of BTC illustrate the urgent need for price regulation.

Within BTC's second round response to CBL, BTC commented that URCA's analysis and conclusions that call termination rates should be regulated is correct.

<u>URCA's Response to BTC's Comments</u>
URCA remains of the view expressed in the consultation paper that absent ex-ante price control, operators having SMP in the call termination markets identified are likely to abuse their market power. URCA stresses however that in keeping with good regulation, the price control remedy should not be disproportionate or violate key regulatory principles.

URCA has no information on CBL's cost of providing termination relative to BTC's costs and URCA is therefore not in a position to make an informed response to BTC.

BTC's Comments on Consultation Question 9: Please provide comments on URCA's preliminary proposal to set wholesale call termination charges equal to BTC's regulated wholesale termination charges for all SMP operators. If respondents consider that reciprocal charging is not appropriate, respondent should describe their preferred alternative approach, with supporting rationale.

BTC commented that:

- Bill and Keep is not desirable, noting that under a previous agreement with SRG Bill and Keep resulted in "inefficient" gaming of the system;
- Section 8.3.2 of the consultation paper does not reflect the fact that BTC's existing termination are based on benchmarks; and
- call termination rates for each operator's market should be symmetrical to the rates specified in BTC's RAIO, and as approved by URCA.

BTC added that the argument put forward by most operators to justify asymmetrical termination rates is weak. BTC argued that the cost per minute for new networks should be lower than for incumbent networks because newcomers to the market:

- employ the latest technologies and processes, thus resulting in significantly lower capital cost;
- do not have an obligation to provide universal service;
- focus on urban areas and business customers; and
- recognise that in the early years their traffic levels are low while they establish their networks, and take full account of this in their decisions to enter the market.

BTC presented excerpts from an ERG document on the economic rationale for symmetrical termination rates on public networks (fixed and mobile) and bolstered this with reference to an OPTA consultation paper highlighting the distortions that are likely to result from asymmetrical termination rates. BTC also quoted extensively from the EU Commission's Recommendation on Fixed and Mobile Termination rate wherein it is stated, among others, that

> *"… any deviation from a single cost level should be based on objective differences outside the control of operators. In fixed networks, no such objective cost differences outside the control of the operator have been identified."*

BTC notes that symmetrical termination rates are best international practice, and other regional[23] and international regulatory authorities[24] have used this approach.

BTC proposes that symmetrical termination rates should be backdated to 1 January 2013 as this would ensure the "inequities and distortions" produced by asymmetric termination rates will be removed and BTC would be compensated for the losses it is incurring by having to pay excessive charges to the other operators.

Within its second round submission, BTC has maintained support for URCA's proposal to set wholesale call termination charges for OLOs equal to BTC's regulated wholesale termination charges. BTC also commented on various aspects of CBL's initial submission on Question 9. It is BTC's view that CBL's submission on Question 9 is designed to perpetuate CBL's current high termination rates.

BTC also commented that Digicel's response (Annex D - Consultation Question 9) is not relevant to the question posed and out of scope.

<u>URCA's Response to BTC's Comments</u>

URCA notes the arguments proffered by BTC against Bill and Keep arrangements.

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[23] Public Utilities Commission (Anguilla), Telecommunications Regulatory Commission (British Virgin Island), Office of Utilities Regulation (Jamaica), Telecommunications Authority of Trinidad & Tobago (Trinidad & Tobago), and Telecommunications Commission (Turks and Caicos).

[24] OFCOM (UK)

URCA confirms that the current termination rates applicable to BTC are derived from international benchmarks. These rates represent an interim measure until more robust costing information become available.

URCA notes BTC's general support for URCA's proposal, i.e., termination rates for each operator's market should be symmetrical to the rates specified in the BTC URCA-approved RAIO.URCA is familiar with the arguments put forward by BTC against asymmetrical termination rates. However, URCA is not in a position at this time to validate the appropriateness of these factors in the Bahamian context.

URCA concurs with BTC that an increasing number of regulators elsewhere and in the Caribbean have imposed symmetrical termination rates. While symmetrical termination rates are still URCA's preferred option, URCA considers that further investigation and consultation would be necessary in respect of its proposal. URCA proposes to hold further consultation with the industry on its proposal.

URCA is opposed to retrospective charging. In previous consultations,[25]URCA rejected repeated requests from major licensees to impose retrospective charging for termination rates. URCA stands by its previous statements in this regard.

URCA agrees with BTC that Digicel's response to the question posed is out of scope.

[25]ECS 01/2011 at http://www.urcabahamas.bs/download/079346400.pdf and ECS 25/2012 at http://www.urcabahamas.bs/download/068311100.pdf.

Annex C: CBL's Response to the Consultation

Overview of CBL's Responses

Throughout its submissions CBL encouraged URCA not to adopt what CBL considered to be a “broad brush” approach in URCA’s SMP assessment of OLOs in the absence of any evidence of actual abuse of market power. CBL repeatedly stated that URCA has not applied the SMP assessment methodology contained in ECS 20/2011 properly to OLOs. CBL asserts that the SMP analysis and findings presented in the consultation paper are suitable to BTC but not to OLOs.

CBL fully agrees with URCA’s SMP conclusions regarding BTC, noting that the SMP obligations for BTC were already established through URCA’s 2009-2010 market review process. On the other hand, CBL claims that URCA simply extrapolated its SMP conclusions with respect to BTC and for the first time, have now applied them to all OLOs, including CBL.

CBL concludes that the OLOs, including CBL, do not possess SMP in call termination. CBL stated that if URCA decides to maintain its preliminary determination designating OLOs as having SMP, URCA should consider OLOs as having a significantly lower degree of SMP relative to BTC because of market differences CBL identified. CBL suggested that URCA should consider the differing degrees of SMP between BTC and OLOs when deciding the SMP obligations to be imposed on BTC versus OLOs in stage 3 of the market review process.

URCA’s Response

In assessing SMP in the markets identified, URCA has remained in compliance with the statutory framework of the Comms Act and URCA's own SMP guidelines. The methodology and principles deployed throughout the consultation paper are compatible with EU best practice and have been used by regulators and competition authorities in jurisdictions with market profiles smaller than or comparable with The Bahamas. In Section 4.2 of the consultation paper, URCA also presented references on the approach taken to SMP in call termination markets around the world and the EC recommendations and directives on SMP assessment.

As URCA understands CBL's submissions CBL is not contending or asserting that the approach employed by URCA is outside the international mainstream. Instead, CBL appears to be of the view that URCA should deploy the SMP methodology such that it reaches different conclusions for BTC and OLOs. URCA does not believe that the markets concerned would lend themselves to reaching differing conclusions on the SMP analysis for each operator, given the underlying characteristics of termination markets and indeed, notes that this is the conclusion that has generally been reached by other regulatory authorities. However, URCA does consider that there is scope to ensure that remedies imposed on individual SMP licensees do reflect their positions in the broader sector and are not disproportionate to any licensee. In this regard, URCA believes it has given utmost consideration to the legal principles set forth in Section 5 of the Comms Act. It is URCA's considered view that the section 5 principles ensure that adequate weighting is given to a licensee's position in the broader market when specifying remedies.

CBL's Responses to Consultation Questions

CBL's Comments on Consultation Question 1: Please provide comments on URCA's preliminary views on the relevant product market definitions for fixed and mobile termination services.

CBL generally agreed with URCA's proposed definition of fixed and mobile termination service product markets but sought clarification from URCA in respect of: i) BTC's transit service; and ii) BTC's roaming service.

BTC Transit Services

CBL stated that URCA did not indicate whether BTC's transit service is included in the relevant product market for call termination services to BTC's mobile customers. CBL believes that BTC's transit service is essential for OLOs to terminate calls on BTC's mobile network. CBL stated that BTC has not established any points of interconnection ("PoIs") with its mobile network hence an OLO is unable to bypass BTC's transit service. CBL is of the view that an SSNIP/HMT test would corroborate the inclusion of the transit service in the mobile termination market defined for BTC.

With its second round response, CBL maintained the position that call transit should be added to BTC's SMP market for mobile termination. CBL stated that direct connectivity to BTC's mobile network is not currently available and might not be readily available in the future as the service is subject to a feasibility assessment under the BTC URCA-approved RAIO.

URCA's Response to CBL's Comments

URCA confirms that call transit is not included in the mobile call termination market identified for BTC. As the focus of this consultation is on call termination markets, URCA has not given consideration to other wholesale markets or services. URCA considers it worth reminding CBL that in 2010 URCA published a final SMP decision setting out, amongst other things, the wholesale SMP markets for BTC and subsequently issued ECS 01/2011[26]on pricing and non-price terms for those markets. URCA also reminds CBL that within ECS 11/2010 call transit is specified as a separate and distinct economic market from call termination. This is consistent with the definitions for call transit and call termination elsewhere including the EU and the Caribbean. URCA has maintained this distinction in the current consultation. Further URCA's previous decisions (including remedies) in respect of BTC's call transit markets defined for BTC are unaffected by the outcome of this consultation and shall continue to apply going forward. In keeping with the statutory framework of the Comms Act, going forward, BTC's other wholesale markets will be subject to the market review process but a timeframe for this exercise is yet to be determined.

[26]http://www.urcabahamas.bs/download/079346400.pdf.

URCA, however, recognises that the charges for transit services have not been reviewed since BTC's initial RAIO was approved in 2011. As such, going forward, there may be merits to review the charges to ensure that they remain in line with the latest available estimates of costs.

Regarding the comment on direct connectivity to BTC's mobile network, URCA acknowledges that there already exist within the BTC URCA-approved RAIO procedures for OLOs to obtain additional wholesale services from BTC. The framework was established after extensive consultation with CBL and other licensees. URCA considers it advisable that OLOs follow the established process which allow for a reference to URCA in the event of a dispute.

BTC roaming service

CBL stated that URCA did not indicate whether call termination to roaming mobile customers on BTC's mobile network is included in the relevant product market for call termination services. CBL referred to its unresolved dispute with BTC regarding the termination of calls to roaming mobile customers on BTC's mobile network and maintains that BTC has refused to supply call termination services to roaming customers despite BTC being required to do so under its wholesale interconnection service obligations. CBL requests URCA to confirm that mobile termination services do include calls to all mobile numbers, including roaming mobile customers on BTC's mobile network, and direct BTC to provide the service on an economic, cost oriented basis.

CBL agreed with BTC's comment (Annex B -Consultation Question 1) on the need for clear definitions of relevant market is necessary. While noting that OFCOM's definitions might provide a starting point, CBL believes it would be necessary that the definitions reflect circumstances in The Bahamas. CBL believes that URCA's market definitions should:

- make explicit reference to the "any-to-any" principle of interconnection; and
- make explicit that the termination of calls apply to "all" phone numbers (fixed and mobile) regardless of technology. This includes calls termination to roaming customers and to BTC's ViBe customers.

CBL opposes BTC's proposal that any surplus revenue generated from the termination of incoming calls to BTC's mobile numbers should be used to fund universal service.

URCA's Response to CBL's Comments

Without prejudice to the on-going discussions between the licensees and how URCA may approach any formal dispute which may be tabled, URCA considers that call termination to all numbers on BTC's mobile network are in the same product market, and has reflected this in its market definition. As part of this market review, BTC was found to hold SMP in this market.

URCA accepts the need for clear definitions of markets to avoid later debates and disputes going forward. URCA considers that the market definitions applied by OFCOM are not incompatible with URCA's intent or proposed definition of the relevant product markets. URCA has reviewed and updated its market definitions to ensure that these are unambiguous and minimize the scope for later debates and disagreements.

However, in respect of the "any-to-any" principle, URCA considers that its inclusion in the definition would not bring predictability to the definition and has the potential to be a source of dispute going forward. URCA also understands that it is not standard industry practice to make explicit reference in market definitions to the *any-to-any* principle. URCA does however consider that its definitions are technologically neutral, such that call termination at a fixed location on a given network would fall within the relevant market, regardless of the technology used to deliver that service.

URCA agrees with CBL that BTC's proposal to apply surplus profits from overseas calls to BTC's mobile numbers to universal service funding raises other regulatory issues. URCA considers that these issues are not germane to the current consultation and cannot be considered. URCA does not, however, consider that its current regulation of these calls allows BTC to earn an excess return on this service.

CBL's Comments on Consultation Question 2: Please provide comments on URCA's preliminary view on the relevant geographic market definition in relation to fixed and mobile call termination services.

CBL agreed with URCA's proposal.

<u>URCA's Response to CBL's Comments</u>
URCA welcomes this comment from CBL.[27]

CBL's Comments on Consultation Question 3: Please provide comments on URCA's preliminary views that the licensees identified have SMP in relation to the wholesale supply of call and/or mobile message termination services on their respective networks.

CBL considers that URCA's assessment of SMP for the OLOs is flawed for the reasons stated below:

i) Differentiation between BTC and OLOs
URCA gave little consideration to the OLOs' relative scale, market shares in the fixed and mobile voice markets, financial resources, experience in the markets and their respective stages of service deployment.

<u>URCA's Response to CBL's Comments</u>

[27] While the geographic market covers the entire Commonwealth of The Bahamas, each of the markets identified reflects the extent of physical coverage that characterises the respective network operator. BTC has the capacity to provide fixed call termination throughout the entire Bahamas. However, it could be some time before OLOs will be able to provide call termination on the scale and ubiquity as BTC. As these operators expand their network coverage their ability to provide call termination on a wider scale will be greatly enhanced.

URCA denies CBL's claim that URCA has glossed over or has given little or no consideration to OLOs position in the broader market. In Section 6 (page 32) of the consultation, URCA deployed the statutory criteria in the Comms Act against which market power will be assessed and supplemented this with others factors. URCA stated the criteria used *"… are the most important contributors to SMP in the electronic communications sector and notes that regulators and competition authorities in overseas markets have relied on these factors when assessing SMP at the wholesale level."*

One or more of the criteria employed enabled URCA to give adequate consideration to OLOs position in the market. URCA refutes CBL's allegations that URCA did not give adequate consideration to the relative differences between BTC and OLOs.[28] URCA reminds CBL that throughout the consultation paper, URCA carefully explained that the technical and economic characteristics of termination services are critical when assessing SMP in call termination markets. More specifically, within Section 6.7 of the consultation paper URCA stated that: *"Regardless of a licensee's access to financial resources, its overall size or experience, URCA considers that the economic and technical characteristics of termination services remain and effectively mean that each of the licensees identified is able to act, to an appreciably extent, independently of competitors, customers and ultimately, consumers."* URCA notes that CBL has not advanced any argument to rebut URCA's statement of fact.

It is URCA's observation that CBL has given insufficient consideration to the structural factors operating in call termination markets. URCA considers that CBL might be unaware that a finding of SMP in call termination is not predicated on the operator in question also having SMP at the retail level. In this respect, BTC's current SMP in retail (i.e., fixed and mobile markets) and wholesale markets does not preclude other incumbents and new entrant operators from having market power in call termination on their own public networks. It has been established around the world that termination is a bottleneck facility that is not capable of duplication by other licensees and all operators (incumbent or otherwise) regardless of market position must buy from new and existing licensees in order to compete. Accordingly, termination markets are characterised by monopolistic conditions as the calling party's service provider has no choice but to terminate the call on the public network where the called party's telephone number resides. The above holds true even in markets where the OLOs has a small share of retail markets and there exist established incumbents operators with SMP at both the retail and wholesale level.[29]

ii) Countervailing Buyer Power

BTC's incumbency provides BTC with a unique ability to influence market conditions and exert CBP in addition to already possessing significant market advantages and market power. CBL stated that due to BTC's inherent market power, OLOs must interconnect with BTC in order to compete in the market but in contrast, CBL considers that BTC has limited interest in interconnecting with an OLO.

[28] Including OLO's scale, market shares financial resources, experience and their respective stages of service deployment.
[29] http://www.catribunal.org.uk/files/Jdg_CAT11_1083_H3G_200508.pdf.

CBL continued that BTC's incumbency allows it to dictate technological arrangements in the market since OLOs must comply with BTC's network architecture and technology in order to interconnect with BTC. CBL argued that CBL must convert voice traffic on its Internet Protocol ("IP") based network to Time Division Multiplex ("TDM") circuit switched protocol in order to exchange traffic with BTC. CBL considers this to be a significant additional interconnection cost that BTC can readily impose on new entrants by virtue of its incumbency.

CBL considers URCA's proposition that BTC is unable to exercise CBP to be unfounded and not reflective of actual market experience to date. CBL stated that OLOs must pay the wholesale termination rates as dictated by BTC and are generally forced to adopt BTC's call termination rates for calls terminating on BTC's own networks. CBL mentioned that in its negotiations with BTC regarding call termination, BTC has sought to force CBL to reduce its fixed call termination rates as a pre-condition to allowing CBL to terminate calls to roaming customers on BTC's mobile network. CBL considers this to be an example of BTC's CBP.

CBL maintains its position that BTC has CBP in termination.

URCA's Response to CBL's Comments

URCA notes CBL's arguments that BTC derives CBP from its incumbency position in the market without recognising CBL's own incumbency position in the telephony market via SRG (its affiliate) and its historic position in broadband internet and pay TV. It is URCA's considered opinion that an operator's ability to derive maximum benefits from its incumbency position to the detriment of competition can be constrained by the regulatory framework. URCA believes that this is the case in The Bahamas in respect of BTC's ability to exert unfettered CBP in interconnection markets.

As a case in point, while BTC might have little or no commercial interest in interconnecting with an OLO, there is a mandatory requirement under the access and interconnection regime in The Bahamas, as noted by CBL in this and other public proceeding, for BTC to interconnect with other incumbent operators and new entrants. BTC's refusal to supply or to delay access would run counter to the access and interconnection framework and attract regulatory enforcement by URCA. This also means that BTC's ability to exercise CBP is restricted.

URCA disagrees with CBL's comment that BTC's wholesale offerings are subject to the dictates of BTC. URCA notes charging for call termination and other wholesale offerings within BTC's RAIO are determined by URCA after consultation with stakeholders including CBL/SRG. As a case in point, in December 2012 URCA directed BTC to reduce its termination rates against strong opposition by BTC. In January 2013 the new reduced rates were introduced despite BTC's opposition.

URCA notes CBL assertion regarding technological arrangements in the market requiring new entrants to comply with BTC's network architecture and technology. URCA reminds CBL that this issue was consulted upon as part of URCA's review of BTC's RAIO which culminated in URCA issuing ECS 01/2011setting out the parameters and protocols governing interconnection with BTC's networks.

Subsequently CBL/SRG of its own free will executed an interconnection agreement with BTC covering SS7 interconnection. It is URCA's understanding that CBL could have requested SIP interconnection under the BTC URCA-approved RAIO but opted for SS7 instead.

iii) OLOs higher termination costs

OLOs bear higher termination costs due to their lack of economies of scale, and European experience is not a suitable model for URCA to emulate.

<u>URCA's Response to CBL's Comments</u>

URCA is unable to validate CBL's comment that OLOs including CBL bear higher termination costs due to lack of economies of scale.

iv) Mobile Voice call termination

CBL is also of the view that domestic mobile voice call termination was not covered in the consultation and therefore is outside the scope of the defined market.

<u>URCA's Response to CBL's Comments</u>

Please refer to URCA's responseto CBL's comments on consultation Question 1 above (BTC roaming service) for URCA's position on call termination to domestic and roaming customers on BTC's mobile network.

CBL's Comments on Consultation Question 4: Please provide comments on URCA's preliminary views on the main competition problems or market failures that could arise from a licensee having SMP in the provisioning of wholesale call and/or mobile message termination services on its own network.

CBL stated that incumbent operators have a strong incentive to refuse supply of essential wholesale service in order to protect its dominant market position whereas there is no incentive for an OLO to do the same because the vast majority of customers are on the incumbent's network, therefore making it essential for OLOs to interconnect with the incumbent.

CBL considers its on-going disagreement with BTC over call termination rates to be an example of BTC's refusal to supply. CBL stated that BTC has blocked call traffic from CBL to roaming mobile customers on BTC's network and/or proposed excessive rates to terminate such traffic. CBL is not aware of any refusals to supply in the case of OLOs. CBL also deems its negotiations with BTC to be an example of excessive pricing as OLOs are forced to adopt termination rates at or below the prevailing rates of the incumbent regardless of the OLOs' actual costs.

<u>URCA's Response to CBL's Comments</u>

URCA disagrees with CBL that new entrants in The Bahamas might not always have the incentive to delay or to out rightly refuse access to termination facilities on their networks. Experience from the Caribbean and elsewhere (e.g., Jamaica) has proven that OLOs have the incentive to charge excessively for call termination on their networks. This holds regardless of size, experience and/or access to financial resources, amongst others and is derived from the technical and economic characteristics of call termination markets. URCA reminds CBL of the defining characteristics of the termination market and the obligation to interconnect as per the IOL.

Within the consultation paper, URCA did not present an exhaustive list of potential competition-related problems that could arise from SMP in call termination. Instead, URCA identified the two ***main*** competition problems as: excessive charging; and/or refusal to supply and noted that other potential competition concerns could arise.

Regarding the on-going disagreement between BTC and CBL/SRG in relation to the termination of roaming traffic on BTC's mobile network and related concerns, URCA refers CBL to URCA's response under Question 3 above.

CBL's Comments on Consultation Question 5: Please provide comments on URCA's preliminary view that the wholesale termination markets identified are susceptible to SMP regulation.

CBL referred to URCA's statement that *"…it bears repeating that the purpose of ex-ante regulatory measures is to address **predictable (actual or potential) competition problems**"*. CBL stated that there is clear evidence of "actual" competition problems (e.g., refusal to supply and competitive pricing), with respect to BTC but the competition concerns raised by URCA regarding OLOs were entirely hypothetical. CBL perceives that URCA failed to explain why ex-ante SMP regulation of OLOs is now necessary given that there have been no identifiable competition problems in the absence of regulation.

CBL quoted section 5 of the Comms Act that states *"market forces shall be relied upon as much as possible to achieve the electronic communications policy objectives"*. CBL stated that URCA has not shown current market forces, including reliance on ex-post competition law powers, are not achieving such objectives therefore CBL does not see any evidence or legal basis for URCA to introduce new ex-ante regulations on OLOs.

<u>URCA's Response to CBL's Comments</u>

URCA reminds CBL that ECS 20/2011 requires URCA to determine whether the SMP licensee identified has and/or is likely to abuse its market power. URCA is satisfied that given the defining characteristics of termination markets, the potential exists for the SMP licensees identified to abuse their SMP in termination, absent ex ante regulation. In this regard, URCA considers that the required remedies in section 40(4) of the Comms Act by themselves would not overcome the market failures identified and URCA proposed additional remedies. In proposing remedies URCA has given utmost consideration to the legal principles set forth in section 5 of the Comms Act.

URCA is satisfied that it has adequately demonstrated that the SMP market identified are susceptible to ex ante regulation and URCA's ex post powers are insufficient to militate against the concerns identified in an efficient and effective manner. As stated in the consultation, call termination facilities operated by the licensees identified are characterised by monopolistic structures, as evidenced by:

- high and non-transitory barriers to entry/expansion; and
- no current or emerging demand/supply-side substitution possibilities to overcome the barriers identified.

This holds regardless of the licensee's access to financial resources or size/scale or experience.

URCA has however, in light of CBL's response, reviewed the proposed remedies to confirm that there are proportionate and fit for purpose and would not result in an undue regulatory burden on OLOs. This is set out in Annex A above.

CBL's Comments on Consultation Question 6: Please provide comments on URCA's preliminary view that the SMP licensees identified should, at a minimum, be obligated to comply with the SMP obligations specified in section 40(4) of the Comms Act.

CBL commented that:

i) it would not raise any objection to the required section 40(4) obligations being applied to OLOs as imposed on BTC and added that these obligations can be incorporated as required conditions for all local network operators holding a license regardless of URCA's SMP determinations.

ii) the required section 40(4)(c) obligation is clearly aimed at BTC because, as CBL explained, no OLO would adopt technical specifications for a network that prevents interconnection or interoperability with the network of a competitor since doing so would hinder an OLO's ability to enter and compete in the market.

iii) BTC's refusal to provide interconnection on a Session Initiation Protocol ("SIP") basis could be a potential violation of the section 40(4)(c) obligation and this results in CBL incurring additional costs to convert voice traffic on its Internet Protocol based network to BTC's TDM network technology.

<u>URCA's Response to CBL's Comments</u>

URCA notes that the section 40(4) obligations are only applicable to licensee with SMP. In this regard, URCA concludes that CBL's proposal under i) above would require amendments to both the Comms Act and the standard IOL and would be outside the scope of this proceeding.

Regarding ii) above, URCA is unaware of any breach of section 40(4)(c) by BTC and notes that CBL has not made a formal representation to URCA alleging either a perceived or actual breach of this obligation by BTC.

In respect of iii) above, URCA is of the view that the required section 40(4)(c) obligation is a preventative measure that is mandatory for licensees designated SMP in an essential "bottleneck facility" such as call termination.

CBL's Comments on Consultation Question 7: Please provide comments on URCA's preliminary view regarding publication of tariff and non-price terms and conditions governing supply of wholesale termination services.

CBL notes that section 5(c)[30] of the Comms Act does not require equal or symmetric regulatory measures to be applied to different operators nor does the term "non-discriminatory" imply any regulatory measures adopted must be symmetric.

CBL considers an extension of the regulatory measures, which currently only apply to BTC, to apply to all OLOs to be unwarranted and inappropriate. CBL stated that imposing these measures is also inconsistent with the objectives outlined in section 5 of the Comms Act specifically those that relate to promoting efficiency, proportionality and reliance on market forces to the greatest extent possible to achieve the electronic communications policy objectives. CBL repeated that URCA failed to identify any actual competition problems in the case of OLOs based on actual experience in the market to date hence CBL maintains there is no basis for extending the existing regulations, which are currently applicable to BTC, to OLOs.

CBL referred to URCA's rejection of allowing new entrants to parlay their own call termination agreements through commercial negotiations due to URCA's claims that such negotiations tend to be unsuccessful resulting in the unsettled matter being referring to the regulator for resolution. CBL is unaware of which negotiations URCA referenced but considers the current regime to be effective in allowing OLOs to negotiate their own call termination rates and related terms and conditions. CBL stated that obliging OLOs to publish their tariff and non-price terms and conditions is inappropriate and it precludes any possibility of commercial negotiations of interconnection arrangements by OLOs. CBL is satisfied with the current regime whereby if parties are unable to reach a mutually satisfactory agreement, they have the option to file a dispute with URCA.

<u>URCA's Response to CBL's Comments</u>
CBL/SRG has characterised URCA's proposed remedies as" *extending existing regulations applicable to BTC to OLOs."* URCA contends that CBL's characterisation of the proposed remedies is not borne out by a fair and balance review of the proposals. Within the consultation paper, URCA has only proposed two obligations on OLOs: (i) an obligation to publish tariffs and non-price terms, and (ii) wholesale price regulation, in respect of call termination over their respective networks and considers that both proposals would further support the required obligations under section 40(4) of the Comms Act.

Firstly, unlike BTC, URCA has no intention to require CBL and iPSi to prepare and publish cost accounting information in respect of charging for wholesale call termination over their networks. Secondly, the obligation to publish tariffs and non-price terms is not equal or symmetric to the obligation on BTC to

[30] States that any regulatory other measures applied to SMP *operators "shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory."*[30]

prepare and publish a RAIO. In this respect, URCA refers CBL/SRG to ECS 11/2010 *"Obligations imposed on Operators with Significant Market Power, Final Decision",* especially Section 5.3.3 (p.38-40) which confirms that the procedures and processes governing the BTC RAIO are vastly different from the publication requirement proposed for CBL and others.

URCA's proposal that CBL and other licensees publish tariffs and non-price terms is an *ex-ante* regulatory measure and as with all such measures it is ***preventative*** [**emphasis added**] in purpose and scope. It further ensures that technical specifications and/or other relevant information relating to call termination on OLOs networks are publicly available on a non-discriminatory basis to other licensees.

Mindful of the need to minimize the regulatory burden on operators, URCA does not propose to consult with stakeholders on proposed terms and conditions as is the case with BTC's RAIO. The OLOs published tariffs and non-price terms would form the basis of interconnection negotiations between interconnecting parties with referral to URCA in the event of a dispute.

URCA finds this proposal attractive because it imposes zero or minimal regulatory costs and is sufficient to militate against the market failure identified. This is because CBL/SRG and iPSi have existing arrangements in place governing access to call termination on their respective networks that could be used as a model with suitable changes of wording.

Contrary to CBL's assertion, an obligation to publish tariffs and non-price terms is also compatible with the statutory framework of the Comms Act, including the legal guidance set forth in section 5. URCA deems the proposal proportionate to its purpose (i.e., fostering transparency in interconnection markets and interconnection negotiations) and is underscored by URCA's acknowledgement of the relative differences between BTC and OLOs including CBL/SRG. Transparency in interconnection markets is a key enabler of sustainable competition and promotes efficiency in interconnection negotiations and agreements and efficient entry, thereby promoting the overall objectives of the Comms Act.

Regarding the point that URCA failed to identify any actual competition problems in the case of OLOs, URCA reiterates that *ex ante* remedies may be necessary where actual and/or potential competition related concerns exist. CBL has ignored URCA's concern that absent *ex ante* regulation in the form of a price control remedy there is a risk that OLOs may abuse their market power. URCA remains of this view.

CBL's Comments on Consultation Question 8: Please provide comments on URCA's preliminary view regarding price regulation of call termination services.

URCA has grouped CBL's response to Question 8 as follows:

i) Selection of remedies

CBL agrees that wholesale price controls are fully justified for BTC because of the incumbent's market position and influence but perceives that URCA has failed to justify the controls for OLOs. CBL deduced that the current absence of wholesale price controls on OLOs has not raised any actual competition concerns and therefore is a clear indicator that extending price control regulations to OLOs is unnecessary and inappropriate.

CBL stated that URCA did not follow its own established regulatory impact assessment before determining the proposed ex-ante regulatory measures. CBL referred to URCA's 2010 SMP determination in which URCA took into account the following factors before applying SMP remedies to BTC:

- defining the objective – market failure identification;
- identifying options to address the objective;
- conducting an impact analysis – costs, benefits and risks; and
- assessing impacts and identifying a preferred solution(s).

CBL continued that while URCA has identified actual evidence of market failure regarding BTC's call termination services, URCA has only referred to hypothetical competition concerns with respect to OLOs hence CBL perceives that the first criterion is not applicable in the case of OLOs.

CBL stated that URCA adopted an "all or nothing" approach, whereby price controls would apply to all operators versus no operators, instead of adequately investigating the present situation in which price controls only apply to BTC. CBL also stated that URCA should have considered more "light-handed" regulatory options instead of adopting what CBL perceives as "heavy-handed" regulation.

CBL wrote that no impact analysis of the costs, benefits and risks of extending price regulations to OLOs was conducted or, at least, presented in URCA's Consultation Document. CBL indicated that if URCA had conducted such an analysis, URCA would have found the proposed application of wholesale price controls to OLOs to be unwarranted and disproportionate to the limited concern at issue.

URCA's Response to CBL's Comments

URCA remains of the view that it has demonstrated the need for ex-ante remedies beyond the required section 40(4) obligations. As mentioned above, URCA proposed the following additional measures applicable to OLOs including CBL and iPSi: (i) obligation to publish tariffs and non-price terms, and (ii) wholesale price regulation. The obligation to publish tariffs and non-price terms has the objectives of promoting efficiency, transparency and non-discrimination in interconnection.[31] Whilst wholesale price control has the objective of weakening the incentive SMP operators have to set termination rates above the efficient and competitive level and to guard against potential collusion, i.e., SMP operators mutually

[31] ECS 06/2013, first paragraph (p.44)

increasing termination rates to inflate consumer prices to excessive levels. Additionally, wholesale price control reinforces transparency and non-discrimination in interconnection.

URCA reminds CBL that in the consultation, URCA stated its rationale for SMP assessment in call termination, noting that URCA is to ***"Further the interests of consumers by promoting competition … in particular … to encourage, promote and enforce sustainable competition"***. In pursuance of those objectives, URCA stated that it would be necessary to *"... propose regulatory measures to remedy, mitigate or prevent any adverse effect on competition, and ultimately to safeguard the interest of customers, arising from the licensees identified as having SMP in the proposed wholesale market identified ..."*[32] In proposing the above additional measures contrary to CBL's assertions, URCA gave utmost consideration to the legal principles established in section 5 of the Comms Act. URCA notes that the principles or criteria in section 5 of the Comms Act, individually or collectively, do not require URCA to conduct a quantitative assessment of cost, benefits, etc. of the proposed measures.

Consistent with best practice considerations and URCA's previous market review process, URCA provided reasoning for its proposals. URCA did not present an exhaustive list of competition-related problems that could arise from SMP in call termination. Instead, URCA identified the two ***main*** competition problems as: excessive charging; and/or refusal to supply and noted that other potential competition concerns could arise. For example, excessive termination charges for off-net calls would allow the SMP operator to generate sufficient funds to potentially cross-subsidise its retail tariffs, and discriminate in favour of on-net calls to safeguard or enhance its market position.

URCA believes that the way it is approaching regulatory intervention is proportionate in the circumstances and justified in the light of the objectives.

However, in view of CBL's point, URCA set out its approach to selection of SMP conditions in more detail above in Annex A.

ii) Method of Wholesale Price Control

CBL commented on the various methods of wholesale price control discussed by URCA and stated that while URCA did ask a specific question on the wholesale price control methods, CBL offered comments on the matter as a subsection to Question 8.

While CBL considers wholesale price controls on OLOs to be unwarranted, CBL agrees with URCA that the price control method should be cost oriented. CBL recommends that price controls should be set based on each OLO's actual call termination costs, not BTC's, due to OLOs having smaller economies of scale and incurring additional IP conversion costs to exchange voice traffic with BTC. CBL suggested that URCA provide OLOs the option, where feasible, to develop their own call termination cost estimates which will be consistent with URCA's established guidelines.

[32] Page 42 of ECS 06/2013

CBL stated that it had already implemented accounting separation as one of its regulatory obligations therefore CBL would bear a lower regulatory burden than other OLOs in determining a cost-based fixed call termination rate. CBL wrote that it reserves the right to produce its own call termination cost study, on an optional basis, should URCA adopt a price control obligation for OLOs.

CBL added that a benchmarking approach could be adopted as an alternative on an interim basis provided that the benchmarks are comparable to the OLOs' operations in terms of scale, among other things. CBL deems it inappropriate to apply a benchmark to OLOs that was developed for BTC.

CBL further elaborated that an imposition of price controls on OLOs based either on BTC's HCA-FDC results or the BTC benchmark conducted by URCA would be an arbitrary rate setting exercise in violation of section 40(3)(b) of the Comms Act.[33] CBL considers such an imposition based on BTC data would encompass an unlawful confiscation of CBL's revenues and return on investment by potentially reducing CBL's wholesale call termination revenues by roughly 50% resulting in a significant and unjustified negative impact on CBL's financial position.

<u>URCA's Response to CBL's Comments</u>
URCA notes the wide ranging nature of CBL's response and reiterates URCA's concern that in order to counteract the incentive of SMP operators to charge excessive termination rates, URCA considers its necessary to impose a price control remedy on OLOs. URCA reiterates that the imposition of a price control remedy would further strengthen the obligations of non-discrimination and transparency.

Although URCA remains firmly of the view that OLOs should be subject to wholesale price control, URCA believes that the points raised by CBL are very critical. URCA considers that it would be necessary for URCA to hold further engagement with interested parties before URCA could establish wholesale price control parameters for OLOs. In this regard, URCA is minded to defer a final decision on the method of wholesale price control for OLOs pending further consultation with the industry.

iii) BTC's Transit Service Charges
CBL reiterates its previous response to Question 1 above that BTC's transit service should be included within the call termination market due to it being essential for termination of calls to BTC's mobile customers. CBL also suggested that URCA review and reduce BTC's current transit charges to ensure they care consistent with BTC's other call termination charges.

<u>URCA's Response to CBL's Comments</u>

[33]The section requires that URCA, before imposing obligations, *"take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital efficiently employed, taking into account the risks involved."*

URCA notes that charging for call transit has not been reviewed since the rates were introduced in 2011. URCA considers that a review would be outside the scope of this consultation. As such, going forward, there may be merits to review the charges to ensure that they remain in line with the latest available estimates of costs.

CBL's Comments on Consultation Question 9: Please provide comments on URCA's preliminary proposal to set wholesale call termination charges equal to BTC's regulated wholesale termination charges for all SMP operators. If respondents consider that reciprocal charging is not appropriate, respondent should describe their preferred alternative approach, with supporting rationale.

CBL is strongly opposed to the extension of price controls to OLOs, whether they are symmetric or asymmetric; however regarding the issue of symmetry, CBL considers URCA's rationale in support of symmetric rates to be flawed.

CBL criticized URCA's reliance on the European Union experience as a model for symmetric rates. CBL stated that the European Commission's recommendation for symmetric rates was based on the adoption of a pure bottom-up long run incremental cost ("BU-LRIC") methodology and was expected to be implemented over a period of four to five years, in contrast to URCA's proposed flash cut basis.

CBL highlighted elements of the 2009 EC Recommendation that it believes undermine URCA's proposals on symmetrical termination rates.

With respect to URCA's reference to experience outside of Europe, CBL stated that URCA did not identify any specific countries to support URCA's conclusion that an "increasing number of regulators have imposed reciprocal or symmetric termination rates" and that URCA did not provide any evidence to support whether regulators outside of Europe have implemented symmetric rates in greater or lesser numbers than those that have not.

On the other hand, CBL is aware of a number of regulators that maintain a policy of asymmetry. CBL cited the most recent example of the Nigeria Communications Commission ("NCC") who, in March 2013, continued its asymmetry policy first established in 2009. The NCC established that rates for New Entrants and Small Operators would be 30.6% higher than for other operators in addition to continuing a transition mechanism towards symmetry over a period of six years (from 2009 and ending April 2015).

CBL also referenced countries along with Nigeria that symmetric termination rates are not standard industry practice and other approaches have been followed and should be considered by URCA.

CBL then presented what it considered to be economic evidence supporting the adoption of asymmetric rates in call termination. CBL referred to a recent impact assessment study[34] of ex-ante asymmetric mobile termination rate regulation in the EU from 2002 to 2006 that concluded that "asymmetric regulation plays a positive role on entrant penetration as well as the competitiveness of Europe's mobile markets".

CBL summarized its position on symmetry by stating that OLOs should not be subject to a price control but if URCA does impose a symmetric price control on BTC and OLOs, CBL recommends that it should be phased in over the course of four to five years consistent with the practice in other jurisdictions including Europe.

While CBL in principle supported Digicel's argument that the interconnection regime for mobile-to-mobile and fixed originated calls to BTC's mobile numbers should be in line with the existing CPP charging regime for fixed-to-fixed and mobile-to-fixed calls, CBL was of the view that it would be premature in the context of the present proceeding to adopt any specific charging regime for mobile-to-mobile and fixed-to-mobile calls and contends that at the appropriate time URCA will need to determine the appropriate method for setting cost oriented domestic mobile termination rates.

CBL also expressed opposition to BTC's proposal (Annex A - Consultation Question 9) in its initial response that symmetrical termination rates for OLOs should be backdated to 1 January 2013.

<u>URCA's Response to CBL's Comments</u>

Within the consultation URCA broadly outlined its preliminary views in respect of symmetrical termination rates for OLOs and urged market participants to let their views be known, including possible alternative methods of wholesale price control.

URCA remains of the view that termination rates should be set reciprocally. This is in line with international precedence from Europe (and elsewhere). However, URCA recognises that there may be instances where reciprocal terminations rates may not be appropriate. For example, in light of one or more of the SMP licensees facing justifiable, exogenous cost differences to the other licensees in the market. Further, where there are now substantial differences in termination rates, there may be a need to gradually introduce reciprocal termination rates over a period of time (i.e., via a multi-year glide path) to allow all licensees to adjust to the new levels of termination charges.

However, URCA accepts that there are a number of approaches and factors to consider before determining the appropriate level of termination charges for OLOs in the Bahamian sector, including the alternative approaches set out in CBL's response to the consultation. As such, URCA has deferred its final decision on the price setting mechanism for OLOs pending further consultation with market participants.

[34]Edmon Baranes and Cuong Hung Vuong, *Ex-Ante Asymmetric Regulation and Retail Market Competition: Evidence from Europe's Mobile Industry*, Technology and Investment, 2011, 2, 301-310.

URCA also maintains its position that symmetrical termination rates have been introduced in jurisdictions with market profiles comparable or smaller than The Bahamas, including regional ones. URCA is also aware of studies highlighting the economic distortions and abuse that frequently result from SMP in call termination and the need for a price control remedy to safeguard the interest of customers. Symmetrical termination rates are often proffered as a feasible solution to overcome this problem.

URCA accepts CBL's reasoning that it would be premature in the context of this proceeding to give consideration to the specific charging regime for mobile-to-mobile and fixed-to-mobile calls and agrees that at the appropriate time URCA will need to determine the method for setting cost oriented domestic mobile termination rates.

URCA supports CBL's opposition to retrospective charging.In previous consultations,[35] URCA rejected repeated requests from major licensees to impose retrospective charging for termination rates. URCA stands by its previous statements in this regard.

[35]ECS 01/2011 at http://www.urcabahamas.bs/download/079346400.pdf and ECS 25/2012 at http://www.urcabahamas.bs/download/068311100.pdf.

Annex D: Digicel's Response to the Consultation

Overview of Digicel's Response

Digicel thanked URCA for affording it the opportunity to comment on the consultation, and indicated that Digicel is very keen to invest in the provision of telecommunications networks and services in The Bahamas. Digicel noted that its response was not meant to be exhaustive and Digicel reserved its rights in relation to the matters under consultation.

URCA’s Response to Comments Received

URCA notes Digicel’s statement that it is keen to enter and invest in the Bahamian telecommunications industry.

Digicel’s Comment on Consultation Question 9: Please provide comments on URCA’s preliminary proposal to set wholesale call termination charges equal to BTC’s regulated wholesale termination charges for all SMP operators. If respondents consider that reciprocal charging is not appropriate, respondent should describe their preferred alternative approach, with supporting rationale.

Digicel’s Comments

Digicel is of the view that the interconnection regime for fixed originated calls to BTC’s mobile numbers should be in line with the existing interconnection regime in The Bahamas for fixed-to-fixed and mobile-to-fixed calls. Digicel believes that there are benefits in adopting this approach and notes that maintaining a zero mobile termination rate for fixed originated calls to BTC’s mobile numbers conflicts with URCA’s view of what is optimal for The Bahamas. Digicel argues that maintaining a zero mobile termination rate for fixed originated calls to mobile numbers would result in a Bill and Keep arrangement although the policy and competitive benefits justify a non-zero mobile termination rate with the rest of the interconnection regime in The Bahamas. Digicel considers that the simplest approach at this time is to equalise the domestic and international termination rates which would enable a second mobile operator from levying a retail charge on customers to receive calls.

No second round response was received from Digicel.

URCA’s Response to Digicel’s Comment

URCA welcomes and has noted the comments and issues raised by Digicel. URCA accepts that there exists RPP and CPP retail charging regime in The Bahamas but a comprehensive discussion of Digicel's proposals fall outside the scope of this market review process.