The Bahamas Telecommunications Company Limited

Response To

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

Legal, Regulatory and
Interconnection Division
29 June, 2011

TABLE OF CONTENTS

Executive Summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to respond to this Public Consultation on the Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009.

The framework used by URCA in developing the methodology for the assessment of Significant Market Power pursuant to Section 39 (2) of the Communications Act, 2009 is broadly in line with the EU framework used in assessing SMP. BTC has no difficulty with the use of the broader framework.

BTC notes URCA's comments in the Public Consultation that intervention should take place where the regulator believes that market forces alone are unlikely to achieve the objectives of the Communications Act within the required timeframe. Further, in imposing regulatory requirements, due consideration should be taken of cost and the need to ensure that the cost to the regulator and affected parties is proportionate to the problem identified for remedying.

BTC notes that URCA will give consideration to a one to two year period as the appropriate non transitory period. BTC is of the view that a non transitory period given the stage of liberalization of the communications sector in The Bahamas should be two (2) years. The two (2) years is an appropriate time frame for a forward looking approach in the analysis of the market.

In defining the relevant product market, BTC is of the view that previous or past substitution should only be used to the extent that it provides an assessment of substitution on a forward looking basis. Historical evidence should only be used if it is considered to be a reliable indication of future consumer behavior.

In assessing the markets where there is a need for ex ante regulation, URCA should consider the inclusion of the EU three (3) criteria tests. Firstly, determining whether there is the presence of high and non transitory barriers to entry; whether the market structure tend towards effective competition during the timeframe of the review; and if one or both of the conditions listed are met, whether the application of ex post competition alone would not adequately address market failures that may arise.

The geographical definition in the Public Consultation Paper here should take into consideration the unique circumstances of The Bahamas compared to that of the EU. The Bahamas is an archipelago, with a large number of islands where demand and supply conditions varies significantly. Differences in population sizes and concentration, average income and coverage by the two main providers, i.e. Cable Bahamas and BTC impacts the demand and supply conditions across the various islands. To ensure that regulatory intervention is targeted and proportionate, geographical markets should be defined as: competitive, prospectively competitive and uncompetitive.

In reviewing Proposal No. 3: Statement on the Mandatory Criteria for Assessing Market Power, URCA has given a lot of prominence to the first four (4) criteria listed in Section 39 of the Communications Act. BTC is of the view that the criteria barriers to entry should be placed prominently depending on the market being analyzed, particularly in the context of a forward looking analysis.

Again, in reviewing the Mandatory Criteria for Assessing Market Power, BTC takes the position that URCA's assessment of access to financial resources is overly simplistic. It is difficult to assess the ease to which organizations are able to access funding. Large multinational organizations may impose strict controls and processes on capital spending of which the regulator may be unaware. Smaller companies may have access to 'soft loans' that are not available to larger firms.

BTC has noted the relative importance attached to the licensee's experience in providing products to markets. There are significant countervailing costs associated with being an incumbent such as outdated labor practices, inappropriate staffing levels, out dated assets and government policies that can offset any potential savings from experience with product offering. The perceived benefits of this factor, i.e. experience in providing products to markets, should be examined in the context of the benefits that new entrants would have by way of innovation, ability to create fresh images and lower costs.

BTC is concerned that there is not in this consultation document any timetable or commitment to carry out the program of market analysis. BTC considers that this is an urgent task for URCA in order to establish a forward looking regulatory regime, and that URCA should publish its plans to carry out a program of market analysis once it has concluded its public consultations. The aim of this program should be to provide clarity on the definition of markets that will be subject to ex ante regulation over the review period of each market. This would allow URCA to revisit any remedies imposed on the current SMP players in the market on the basis of a market review that is consistent with the stated principles in this consultation process. This, in turn, will ensure that market participants will benefit from increased transparency and predictability of (if needed) any regulatory intervention.

BTC notes from URCA's Annual Plan for 2011, that one of the planned projects for the second quarter (Q2) of 2011, is identifying operators with SMP in Call Termination. While this Public Consultation specifically addresses the Methodology for Assessing SMP, BTC considers the Public Consultation on SMP in Call Termination to be of great importance to the business at this time. In the absence of Other Licensed Operators (OLO) having SMP in call termination, these operators will be at liberty to charge termination rates in excess of economic cost without the regulator's intervention. This will have a direct impact on consumers who will be affected by off net termination charges to these OLOs network.

BTC's comments to the various proposals are provided below:

Proposal No. 1: Statement on Defining Relevant Service/Product Markets

Generally, BTC has found that the criteria listed by URCA in Proposal 1 as part of its definition of the relevant service/product market are consistent with the criteria used by the European Union (EU) in defining the relevant product/service market and BTC's comments aim to provide some further elaboration on the points raised. However BTC has the following comments on URCA's commentary and proposals:

1.1 SSNIP or hypothetical monopoly test

The conceptual framework presented by URCA is widely accepted and BTC agrees that the SSNIP test should be central to defining relevant service/product markets. BTC notes that URCA will consider a one to two year period as an appropriate 'non-transitory' period. The period for forward looking market analysis is key, given the likely development of competition in The Bahamas over this period. URCA should put considerable effort into analysing how competition will develop, and should take a two year time frame, rather than one year, because operators will factor in the likelihood of competition developing in their plans and strategies. Of course the starting point for such analysis should be that regulatory intervention is not needed, i.e. the case needs to be made for regulatory intervention to ensure its cost is proportionate to the problems identified.

1.2 Evidence when Defining Relevant Product Markets

In this section we provide some further comments on the criteria proposed by URCA.

1.2.1 Evidence of previous substitution

BTC appreciates that any evidence of previous substitution should be included in a market definition exercise. However, BTC believes that it is important to ensure that such evidence would only be used to inform an assessment of substitution on a forward-looking basis, i.e. historical evidence should only be used if it is considered to be a reliable indication of future consumer behavior and quite often this is not the case in telecommunications due to for example technological changes (e.g. BTC and CBL network upgrades) and changes in customer buying behavior and user behavior (for example adoption of broadband and personal computers).

1.2.2 Barriers and Switching Costs

URCA mentions the location of customers as a potential barrier to switching. This is an interesting point, particularly in light of the geographical dimension addressed later in the document. In telecommunications, a call to any one location is rarely a substitute to a call to any other location, but this does not justify defining separate markets for each and every call. For example, even though switching costs between a New Providence – Grand Bahama call and say a New Providence – Abaco call are relatively high (the Grand Bahama party would have to travel to Abaco to receive the call), markets are not generally defined on a call-by-call basis. This implies that in telecommunications other forces are at play including whether various call types are provided by the same provider(s) and whether there is variation in demand and supply substitution between various geographical areas. We address this point further in the section on the geographical dimension to market definition. In addition, ensuring homogeneity of demand and supply may result in market definitions being determined by networks of providers – for example in call termination markets where the relevant market is typically determined by the networks of individual operators, irrespective of their size and coverage.

As URCA mentions, the existence of legal instruments that can prevent entry into a market can define the geographic boundaries for the provision of a product/service. On the island of Grand Bahama for example, a telecoms provider wishing to conduct business in Freeport would require a business licence from the Grand Bahama Port Authority under the Hawksbill Creek Agreement. This can be viewed as a potential barrier affecting the geographic reach in the provision of a service.

1.2.3 Quantitative Studies

BTC notes URCA's comments relative to the use of quantitative studies to estimate own price and cross price elasticities of demand. As the Authority has correctly pointed out, these studies require large data sets that may not be readily available. BTC is also of the opinion that URCA should use international experience to inform itself of likely consumer behaviour, as well as surveys and data from the Bahamian market, which is still adjusting to the new competitive environment.

1.3 Ex ante markets and the three criteria test

Finally, BTC believes that the transparency of the market definition process in The Bahamas would be aided if URCA would start with a list of preliminary markets, as with the EU's list of markets subject to ex ante regulation. Schedule 4 of the 2009 Communications Act identifies four markets (voice, high speed data, mobile voice and data, and Pay TV) which should form the starting point for such analysis and the methodology applied in this paper should be applied to identify any ex ante regulation. URCA could use the EU 3-criteria test on whether there is the presence of high and non-transitory barriers to entry, whether the market the structure does not tend towards effective competition during the timeframe of the review; and, if either one or both of the preceding criteria are met, then ask whether the application of ex post competition law alone would not adequately address market failures that may arise. This would provide clarity on the markets where ex ante regulation is likely to be needed, in addition to providing clarity on the market definitions process in general. BTC suggests that URCA should include tests, such as the EU's three criteria tests, to establish whether regulation is necessary. This would be consistent with the Government's desire to see "light touch regulation".

1.4 BTC Proposal

BTC proposes that Proposal 1 should be reworded as:

"URCA proposes to utilise the SSNIP test to define the relevant service/product market. In doing so, URCA proposes to have regard to the following criteria inter alia:

- Demand side substitution
- Supply side substitution
- Evidence of previous substitution
- Consumer preferences
- Barriers and switching costs
- Quantitative studies.

URCA proposes to establish the need to regulate the service/product markets by assessing the presence or absence of high and non-transitory barriers to entry, whether the market is tending towards effective competition, and whether competition law is sufficient to address market failures".

Proposal No. 2: Statement of Defining Relevant Geographic Markets

BTC has the following comments on URCA's commentary and proposals:

2.1 Emphasis on geographical analysis

BTC believes that URCA understates the importance of geographical analysis in The Bahamas, which is unique in terms of its geographical complexity for market analysis. Based on recognized international best practice, markets definitions should be appropriate to national circumstances and national circumstances in The Bahamas include a large number of islands where the conditions of both supply and demand for services differ substantially. This is a function of, for example, differences in population sizes and concentration and average income. In addition, there is variation between the islands in terms of coverage by the main providers of services i.e. BTC and CBL. There is little infrastructure based competition and little prospect of infrastructure based competition in many of the more remote areas, which is of interest not only for the purpose of market definition, but also, for example, as the starting point for further articulation of a universal service policy for The Bahamas.

The consequence of taking account of these national circumstances should be a simple classification of the islands based on the existence of network infrastructure and competition:

- Competitive
- Prospectively competitive, and;
- Uncompetitive.

This would provide homogenous markets from the perspective of supply and demand substitution and this would in turn result in proportionate and targeted regulatory intervention, but only where this is needed. This is particularly important now that the telecommunications sector is at the starting point of a new investment cycle in next generation infrastructure. There is significant international experience with regulation of legacy infrastructure (largely in PSTN) and significant international experience with regulatory forbearance in growth markets subject to significant investments (for example mobile markets). However, significant investment combined with stringent regulation is a new combination of factors requiring a policy discussion on development of competition while ensuring that vulnerable user groups are also provided with services through this upgraded infrastructure. BTC notes that investments in next generation infrastructure are made with significant uncertainties as to future returns, with uncertain factors including:

1. Technological uncertainty: Which technology or technologies will succeed? FTTC, FFTH, WiMax, 3G/4G, Ethernet etc.
2. Uncertainty about demand: It is not clear what consumers will be willing to pay for more advanced services, or for improvements in speed and/or quality.
3. Uncertainty about the regulatory treatment of new investments: the lack of certainty about the framework that will apply to new investments adds to the premium required on investments by investors.

Unlike regulation of PSTN, this new situation requires regulators to be transparent and predictable in their intervention and to ensure that regulation is proportionate to the problems identified and to ensure that it is adequately justified. In The Bahamas, we believe a geographical angle to market definitions will lie at the foundation of this approach. A failure to do so would result in over-regulation of competitive or prospectively competitive geographical markets, which would provide an unnecessary burden for the telecommunications industry on The Bahamas.

2.2 BTC proposal

BTC proposes that Proposal 2 should be reworded as:

"URCA proposes to have regard to the following criteria when defining the relevant Geographic market, inter alia:

- Past evidence of customers diverting orders to suppliers in other areas
- Basic demand characteristics
- Views of third parties
- Barriers and switching costs.

URCA proposes to use the following classification in its geographic analysis:

- Competitive
- Prospectively competitive
- Uncompetitive".

Proposal No. 3: Statement on Mandatory Criteria for Assessing Market Power

BTC has the following comments on URCA's commentary and proposals:

3.1 Importance of forward looking analysis

As with market analysis, it is important that the analysis of SMP is forward looking. Many of the criteria listed, such as market share, experience in providing products to the market and prices and profitability, depend on historic data for analysis. However with liberalisation, market conditions in The Bahamas are likely to change significantly over the coming months and years, and the analysis of SMP should consider a two to three year timescale in order to avoid the need for frequent reviews of SMP designations.

3.2 Relative importance of SMP criteria

In its layout, URCA has distinguished between the first four criteria listed in s.39 of the Communications Act, and the additional criteria listed under para 4.5. BTC is concerned that this will lead to URCA giving more prominence to the Communications Act criteria over the others. BTC considers that some of the other criteria (especially of barriers to entry) should, depending on the market being analysed, be given greater importance, especially in forward looking analyses. URCA may wish to rank the criteria before it starts work on individual markets.

BTC therefore suggests that the lists in proposal 3 and proposal 4 should, for practical purposes, be combined.

3.3 Page 12, para 4.1: Market shares and SMP

3.3.1 Presumption and determination

The difference between "presumption" and "determination" is unclear, and in the opinion of BTC they come to the same outcome – an SMP designation if a market share is over 25%. This figure is too low, and contrasts with the European Union position that a 40% market share leads to a presumption of SMP. For electronic communications markets in The Bahamas, BTC considers that URCA is correct to propose a higher figure than in the EU to reflect the smaller number of players likely in the smaller market, and proposes that:

- Under 25% there should be a presumption against SMP
- Over 75% there should be a presumption of SMP
- Between 25% and 75% the existence or absence of SMP should be judged against the criteria listed in proposals 3 and 4 (as amended following public comments).

3.3.2 Market share changes
Changes in market share should also be analysed, as rapid changes in market shares are indicative of a competitive market. If an undertaking with a significant position in the market is losing market share, this would be an indication that the market is becoming more competitive.

3.3.3 Market share metrics
The European Regulators Group (ERG) recommends in the calculation of market shares the use of volume for bulk products (e.g. wholesale conveyance minutes), and value for differentiated (branded) products[1]. URCA may wish to adopt this recommendation in its market share analysis.

3.3.4 Importance of actual conduct
BTC welcomes the commitment in the penultimate sentence of this paragraph to concentrate on the actual conduct on a possible SMP licensee rather than on the theoretical analysis of economic factors and influences. This should ensure that regulation of the electronic communications sector in The Bahamas is rooted in reality and addresses real problems in the market.

3.4 Page 13, para 4.3: Access to financial resources
It is difficult to assess the ease with which organisations have access to finance. For example, multi-national organisations may impose strict controls and processes on capital spending of which URCA will not be aware. In contrast, small organisations may have access to "soft loans" from families and friends. The key issue is the hurdle rate used by shareholders, parent companies or lenders for investment, and as this is likely to be confidential information, BTC considers that URCA should not rely on overly simplistic assessments of access to financial resources, as they may well be misleading.

3.5 Page 13, para 4.4: Licensee's experience in providing products to the market
While experience in product markets can lead to lower costs, URCA should recognise that there are significant countervailing costs of incumbency (such as out-dated labour practices, inappropriate staffing levels and skills due to government policies, and out-dated assets). The ability of new entrants to gain

---

[1] European Regulators' Group. Revised working paper on the SMP concept for the new regulatory framework. ERG (03) 09rev3 September 2005

access to human resources, print and other media is a matter for the market – they can bid for these resources at the market rate - and in other jurisdictions there has not been any reluctance from staff in established operators to move to new entrants or any inability for new entrants to use advertising channels etc.

There is a danger that reliance on this factor will result in operators that have historically worked in The Bahamas becoming perpetual SMP operators. Moreover, the benefits of experience should be weighed against the benefits of new entrants, such as ability to innovate, have lower cost basis, create fresh images, etc. BTC therefore suggests that this factor is, on balance, less important than URCA supposes.

3.6 BTC Proposal

BTC proposes that Proposal 3 should be reworded as:

"URCA shall use the following mandatory criteria for assessing market power:

- Licensee's market share
- Licensee's ability to influence market conditions
- Access to financial resources
- Licensee's experience in providing products to the market.

URCA proposes to use the following thresholds when defining market share which being measure by total gross revenues in the market, total subscriber numbers, total traffic or total capacity:

- A licensee with less than 25% market share will be presumed to be a non-SMP licensee
- A licensee with at least a 75% market share will be determined to be a SMP licensee
- A licensee with a market share of between 25% - 75% will be assessed using other criteria for SMP."

Proposal No. 4: Statement on Optional Criteria for Assessing Market Power

BTC has the following comments on URCA's commentary and proposals:

4.1 List of factors

This list in para 4.3 is not exhaustive. For example, the European Commission[2] also lists as relevant criteria for assessing market power:

[2] European Commission. Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services. 2002/C 165/03. 11 July 2002.

- overall size of the undertaking
- control of infrastructure not easily duplicated
- technological advantages or superiority
- product/services diversification (e.g. bundled products or services),
- highly developed distribution and sales network.

URCA should include these in its list of relevant factors and apply them on a case-by-case basis, depending on the relative significance and effect relative to a hypothesis of SMP in a given market.

4.2 Page 13, para 4.5.1: Barriers to entry

This factor is probably the most important factor for analysis under SMP, as it will guide URCA in how to make markets more competitive, and is the fundamental driver of competition (and all the other factors listed in section 4). BTC considers that URCA should recognise the importance of this factor compared to the other factors.

4.3 Page 13, para 4.5.4: Prices and profitability

When investigating the level of profits, URCA must consider the riskiness of the investment. Especially in the broadband and content areas, the demand for new products may be unknown, and high prices and high profits may be necessary to justify investment in them. Regulatory bodies elsewhere have recognized that regulatory measures should enable operators undertaking risky investments to obtain appropriate levels of reward for their investments[3].

BTC considers that the ERG's comments on analysing the level of profits and prices are helpful:

"Factors that may explain excessive prices, such as greater innovation and efficiency, or unexpected changes in demand, should however be considered in interpreting high profit figures. Conversely, low profits may be more an indicator of the inefficiency of the firm than of effective competition. Excessive prices in principle can be detected by an analysis of Price Cost Margins (PCM) which measure directly the deviation of prices from costs.[9] However, although valuable from a theoretic perspective, in many cases necessary data to calculate PCM will not be available at a disaggregated product or market level. In addition, the fact that in communication markets usually there are multi-product undertakings with high joint and common costs that have to be attributed to certain services may make the calculation of PCM even more difficult.[4]"

4.4 Page 14, para 4.5.5: Vertical relationships

It is important that in analysing vertical integration, URCA is able to demonstrate that integration is causing problems in the market (in the spirit of URCA's

[3] For example, European Commission. Commission staff working document accompanying the draft Commission recommendation on regulated access to Next generation Access Networks. SEC(2010) 1037. Para 4.4, page 20.
[4] ERG. Op cit. para 20, page 7.

statement on page 12/13), before assuming that vertical integration is, of itself, a problem.

4.5 Page 17, para 4.5.6: The influence of other members of the licensee's group

BTC notes that URCA proposes that the analysis of the influence of other members of the operator's group should focus on the "potential" influence. BTC considers that this is contrary to the statement on page 12/13 of URCA's document which, correctly in the opinion of BTC, focuses on the actual conduct of the operator (and in this case, its group members).

4.6 Page 17, para 4.5.7: Economies of scale

The existence of economies of scale in itself is not a barrier to entry because other entrants have access to similar economies, given similar volumes of output. However sunk costs and switching costs associated with economies of scale may create barriers to entry, and in any analysis URCA should concentrate on these aspects rather than on the simple existence of economies of scale.

4.7 Page 15, para 4.5.8: Economies of scope

Economies of scope and bundling can produce benefits for consumers, such as compatible products and lower prices, and may lead to greater competition by enabling new entrants to come from other parts of the electronic communications industry (for example, by providing triple and quadruple pay packages, television providers can enter the voice market).

4.8 BTC Proposal

BTC proposes that Proposal 4 should be reworded as:

"URCA proposes to use the following criteria for assessing market power, inter alia:

- Barriers to entry
- Number of active competitors
- Extent of countervailing power amongst buyers
- Prices and profitability
- Vertical relationships
- The activities of other members of the licensee's group
- Economies of scale
- Economies of scope
- Overall size of the undertaking
- Control of infrastructure not easily duplicated
- Technological advantages or superiority
- Product/services diversification (e.g. bundled products or services),
- Highly developed distribution and sales network."

Proposal No. 5: Statement on Criteria to be used for Assessing Joint SMP

BTC has the following comments on URCA's commentary and proposals:

5.1 Page 19, para 5: List of factors

URCA's list of factors for analysis is rather different from that used in one of the few findings of joint dominance (the mobile market in Ireland). We quote from the relevant document by ComReg[5], the Irish national regulatory authority:

'In this regard, ComReg's analysis is based primarily on a review of the framework outlined below, which brings together the essential elements of economic analysis, jurisprudence of the European Courts and EU Commission administrative practice, as reflected in the *SMP Guidelines*:

A. *The degree of market concentration:* In particular, whether a small number of undertakings account for a large share of the relevant market without any single undertaking being in an individual dominant position.

B. *The incentive to coordinate:* Whether O_2 and Vodafone have an incentive to align their conduct in the market in particular, in such a way as to elevate their joint profits by restricting production with a view to sustaining prices above those which would otherwise prevail.

C. *The ability to coordinate:* Whether O_2 and Vodafone have the ability to coordinate by aligning their conduct so as to establish a consensus position (focal point). Where an incentive for coordination exists and undertakings are able to establish a consensus position, the following basic conditions must be fulfilled for coordination to be sustainable over time, namely:

   a. *The ability to detect cheating:* The coordinating firms must have the means of *monitoring*, sufficiently quickly and precisely, whether the terms of coordination are being adhered to by other members of the alleged dominant oligopoly; and

   b. *Enforceability of compliance:* There must be an *incentive* not to depart from the common policy on the market, of which the notion of retaliation in respect of conduct deviating from the common policy is an integral part.

   c. *Actual and/or potential market constraints:* Whether, in any event, the foreseeable actions of outsiders, such as actual and potential competitors, as well as customers, would not be able to jeopardize

[5] Comreg. Market Analysis - Wholesale Mobile Access and Call Origination. 04/118, 9 December 2004. Para 4.27, page 36.

the results expected from the implicit coordination seen to be taking place."

We consider that this list is superior to that produced by URCA as it concentrates more on the behavior of market participants than on features of the market. Again, in the spirit of URCA's statement on page 12/13, it will be important that URCA demonstrates that joint dominance exists rather than that there is a potential for joint dominance, before imposing any remedies.

BTC also considers that the ERG's summary[6] of the three necessary conditions for a collective dominance position, based on a decision of the European Court of First Instance, is very helpful:

"1) Each member of the dominant oligopoly must have the ability to know how the other members are behaving in order to monitor whether or not they are adopting the common strategy. It is therefore necessary for sufficient transparency for all firms in the oligopoly to be aware, sufficiently precisely and quickly, of the way in which the other firms' market conduct is evolving. The most important criteria from those listed below to meet this condition are: market concentration, transparency (of prices), mature market, predictable growth on the demand side and homogeneity of products.

2) Any tacit co-ordination must be sustainable over time. Implicit in this is the view that a retaliatory mechanism of some kind is necessary, so that any firm that deviates from the co-ordinated practice would be met by competitive reactions (not necessarily only addressing the cheating firm) by other firms. The most important criterion to meet this condition is retaliatory mechanisms.

3) It is necessary that existing and future competitors, as well as customers, do not undermine the results expected from the common policy. Particularly relevant in this context is whether there are fringe competitors and, if they are able to counteract a collective dominant position. Important criteria to be considered in this context are the existence of high barriers to entry, differences in cost structures and demand elasticities".

Based on the above summaries of factors that should be taken into consideration in the analysis of joint dominance, BTC considers that the following factors should be added to URCA's list:

- incentives to coordinate
- ability to detect cheating
- market constraints
- transparency
- mature market
- growth in demand

[6] European Regulators' Group. Op cit. para 25 page 9/10.

- retaliatory mechanisms.

5.2 Page 19, para 5.1: Market concentration

The HHI measurements above are consistent with that used by the European Commission in assessing the degree of market concentration in European telecommunications markets. BTC has no objections to these standard measurements. However, as URCA indicates, a highly concentrated market may not necessarily give rise to a determination of joint SMP.

The HHI should not be taken in isolation of the following factors:

- penetration rates
- HHI at the moment of entry
- relative strength of the regulator and or regulatory regime

A market that is highly concentrated with relatively low penetration rates raises opportunities for market entry. The HHI at the moment of entry is also significant. A highly concentrated market, where there are very few firms alongside low penetration rates raises the potential for market entry. The relative strength of the regulator and the regulatory regime is also important in determining opportunities for market entry.

5.3 Page 20, para 5.2: Cost structures

BTC considers that in fixed networks in The Bahamas, cost symmetry is very unlikely because the main players are likely to be BTC (with a historic cost structure based on telecommunications network), CBL (with a cost structure based on a recent cable television network), and new entrants (with modern network technology or access to other existing networks).

Similarly, when competition starts in the mobile market in The Bahamas, the cost structure of BTC (historic network) is likely to be very different from the new entrants (modern network, possibly based on LTE). These differences in cost structure are likely to prevent market participants from coordinating their activities in a way that would make a joint SMP finding possible. This appears to be the suggestion made by URCA and, if this is the case, BTC agrees with this assessment.

5.4 BTC Proposal

BTC proposes that Proposal 5 should be reworded as:

"URCA proposes to use the following criteria for assessing joint SMP, inter alia:

- Market concentration
- Cost structures
- Market share
- Homogeneous services/products

- Elasticity of demand
- Potential competition
- Market entry
- Countervailing buyer power
- Incentives to coordinate
- Ability to detect cheating
- Market constraints
- Transparency
- Mature market
- Growth in demand
- Retaliatory mechanisms.

URCA proposes to use the following HHI parameters to gauge market concentration;

- Unconcentrated if the HHI is less than 1000
- Moderately concentrated is the HHI is between 1000 and 1800
- Highly concentrated if the HHI is greater than 1800."

Conclusion

BTC has noted from its review of this Public Consultation Paper on Methodology for Assessment of Significant Market Power (SMP) that the framework is generally consistent with that found in the EU in the assessment of SMP. BTC recognizes that while it is useful to follow a framework where there are well established precedents and principles, it is also important to appreciate that The Bahamas is still in the embryonic stage relative to the regulatory practices found in more developed economies.

In its response to this Public Consultation, BTC has drawn attention to the definition of geographic markets in the context of the EU framework compared to The Bahamas, given the uniqueness of the geography of The Bahamas compared to the European Union (EU). The Bahamas comprises a large number of islands where demand and supply conditions varies significantly across the islands. The variation of demand and supply conditions are largely a function of differences in population sizes and concentration, levels of income and coverage by the principal telecoms service providers, i.e. Cable Bahamas and BTC. These are not the same constraints faced among EU member states.

The market share thresholds proposed by URCA where a market share over 75% triggers a presumption of SMP was in agreement with that of BTC, given that in The Bahamas compared to the EU, there are fewer number of players in a much smaller market, the higher threshold would reflect these circumstances. A market share of between 25% and 75% should be judged alongside the criteria listed in proposals 3 and 4.

Finally, there is a need to weigh into the balance the cost of regulatory obligations, and the need to ensure that the cost to the regulator and affected parties is proportionate to the problem identified. Regulatory intervention should be necessary and least burdensome for the affected parties and hence the need to impose the minimum that is required to achieve a certain goal.

Reservation of Rights

BTC has addressed the issues but reserves the right to comment further on all issues and states categorically that the decision not to respond to any issue raised on this Consultation in whole or in part does not necessarily indicate agreement in whole or in part with URCA's position; nor does any position taken by BTC in this consultation mean a waiver of any of BTC's rights in any way. BTC expressly reserves all its rights.

Legal, Regulatory and Interconnection Division
The Bahamas Telecommunications Company Limited (BTC)
June 29, 2011