

The Bahamas Telecommunications Company Ltd.

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Listening.
Improving.
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Everyday

September 22, 2016

Mr. Stephen Bereaux
Acting Chief Executive Officer
Utilities Regulation and Competition Authority
Frederick House
Frederick Street
Nassau, The Bahamas

Dear Mr. Bereaux:

Re: Response to Responses to URCA's Preliminary Determination on Assessment of Significant Market Power (SMP) in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network.

The Bahamas Telecommunications Company (BTC) Limited hereby attach its response to the captioned Preliminary Determination.

Should the need arise, please feel free to contact the undersigned.

Sincerely yours,
THE BAHAMAS TELECOMMUNICATIONS CO. LTD.



Nicole M. Watkins
Vice President of Legal, Regulatory and Carrier Services
& Company Secretary

/rp

Attach.



BTC
Everyday.



The Bahamas Telecommunications Company Limited:

Response To:

Responses to Preliminary Determination on Assessment
of Significant Market Power (SMP) in Mobile Call and
Short Messaging Termination Services on NewCo2015
Limited's Cellular Mobile Network.

Consultation Document
ECS 17/2016

Legal, Regulatory and
Carrier Services Division
September 19, 2016

Executive Summary

The Bahamas Telecommunications Company Limited (BTC) welcomes the opportunity to provide its comments to the first round responses received to the Utilities Regulation and Competition Authority's (URCA) Consultation Document on its Preliminary Determination on the Assessment of Significant Market Power in Mobile Call and Short Messaging Termination Services on NewCo2015 Limited's Cellular Mobile Network in The Bahamas under Section 39(1) of the Communications Act, 2009.

Consistent with the argument that BTC has advanced in its initial response to URCA's Preliminary Determination on the Assessment of Significant Market Power (SMP) in Call and Short Messaging Termination Services on NewCo's Cellular Mobile Network, that, there should be symmetry of call and messaging termination charges, i.e. where operators should set their call and messaging termination rates at the same level as BTC's call termination charges. BTC reiterates that the setting of symmetric call termination charges provides predictability and promotes competition. Conversely, asymmetrical rates lead to distortions in the market and suboptimal outcomes. Reciprocal termination rates will ensure both allocative and productive efficiencies in the market and prevent distortions like excessive wholesale charging, high or inefficiently structured retail rates and inefficient market entry. BTC has provided ample evidence in this submission from the EU Commission, the European Regulators Group (BEREC), Ofcom and various regional regulators in support of this position.¹

BTC notes that NewCo in its initial response has advanced a position that the level of asymmetry in favour of NewCo should be in the order of 25% above the termination charges of BTC for voice and messaging services. However, NewCo has not advanced any economic arguments that would support asymmetric termination rates. As URCA would have pointed out this Preliminary Determination (ECS 17/2016) and its Preliminary Determination in relation to fixed networks (ECS 12/2014), the imposition of asymmetry in mobile termination rates must be justified by reference to a number of factors in the local market. URCA has set out three (3) conditions, of which at least one (1) is needed to be fulfilled to support some form of asymmetry:

- i. Exogenous and objective cost differences in the cost of termination. URCA has acknowledged that while there may be objective cost differences that would influence a higher unit cost of termination services in the case of NewCo, these cost differences are likely to be within the control of NewCo. URCA in its Preliminary Determination has pointed to factors such as network topology/technology, geographic footprint and access to sites as likely factors that could give rise to objective cost differences but in the case of NewCo is unlikely to warrant the imposition of asymmetric termination rates.
- ii. Significant traffic imbalances
- iii. Barriers to entry and expansion. While URCA based on its Preliminary Determination seemed minded to look at this factor in considering the imposition of asymmetric termination rates on an interim basis, NewCo's own public pronouncements as outlined in BTC's initial response to this Preliminary Determination suggests that the company does not foresee any impediments to expansion.

NewCo in its initial response to this Preliminary Determination, while advancing its interest for a 25% level of asymmetry to that of BTC's termination charges has not presented arguments to support asymmetrical termination rates. In reviewing Table 2 of the Annex to NewCo's response, the company has presented a list of European countries that have implemented asymmetric termination rates, where asymmetric rates were implemented from as far back as 1999, the most recent implementation date from the table is 2003. NewCo in its comments has admitted that there are not many examples of asymmetric termination rates today and the rationale provided by the company is that most new mobile competitors entered the market in the early 2000s and the time period for any asymmetric termination rates has expired. As BTC would have provided as part of its initial response to this Preliminary Determination, there are a number of examples within the Caribbean and Europe that supports symmetric termination rates. The current thinking in Europe and elsewhere including the Caribbean is the support of symmetric termination rates as the basis for stability and predictability and providing for efficient outcomes when compared to the alternative, i.e. asymmetric termination rates that leads to distortions and sub optimal outcomes.

General comments

On Net/Off Net Price Differential should be based on commercial decision

BTC has noted that NewCo in its initial response to the Preliminary Determination has stated that BTC should not be permitted to have any on net/off net differential in excess of the difference in any temporary asymmetric rates imposed by URCA for call or messaging services terminated to NewCo's network.

BTC is firmly of the view that any decision in relation to on net/off net price differential by operators ought to be purely a commercial based decision and not the subject of regulatory intervention. In looking at the experience in Europe, operators have the flexibility in the absence of regulatory intervention to pursue on net/off net price differential pricing strategies. Gabrielson and Vagstad (2008) who formulated what is referred to as the so called 'clubbing effect', where customers are grouped in social networks, i.e. family and friends or 'calling clubs' are more likely to respond by way of calling patterns not so much based on the degree of on net/off net differential but rather the extent to which members of a particular social network uses a particular mobile network.² Birke and Swan (2006) found that the choice of operator and by extension traffic patterns is influenced more by the choices of others in the same household rather than the gradient between on net versus off net rates.³ I. BTC ought to have the pricing flexibility to respond the demands of its consumers.

It is useful to point out that based on the experience in a number of European markets, it is usually the small or new entrants that are more likely to be first movers in on net/off net price differential. Frontier Economics (2004), found that in the United Kingdom (U.K.), on net/off net differentials were introduced in late 1993 by One2One and in early 1994 by Orange when the two (2) new entrants launched their services. In this particular case, the two (2) incumbents introduced on net/off net differentials as late as 1999 in the case of BT Cellnet and in 1998 in the case of Vodafone.⁴ In all, BTC wish to point out that the case of on net/off net differential should be a commercial decision and it is usually the new entrants

² Consumer Behavior towards On Net/Off Net Price Differentiation, Justus Haucap, Ulrich Heimeshoff,, Jan. 2011., pg. 2

³ Ibid. pg. 2

⁴ Consumer Behavior towards On Net/Off Net Price Differentiation, Justus Haucap, Ulrich Heimeshoff,, Jan. 2011.

http://www.dice.hhu.de/fileadmin/redaktion/Fakultaeten/Wirtschaftswissenschaftliche_Fakultaet/DICE/Discussion_Paper/016_Haucap_Heimeshoff.pdf

that are the first to move. BTC should not be harnessed in its approach to adopt a pricing strategy to allow it to compete effectively with the new entrant.

Countervailing buying power and BTC's influence on the negotiating the terms and conditions for call and message termination services on NewCo's network

NewCo in its response to URCA's Preliminary Determination has stated that the regulator has underestimated the countervailing buying power of BTC. NewCo goes on to say that the extent to which BTC will provide, most if not all, of the traffic terminating to NewCo's network in can exercise some control on the terms and conditions for calls and messaging services terminated to NewCo's network. As URCA would have pointed out in its Preliminary Determination, NewCo has control over a 'bottleneck facility' that cannot be duplicated. If the subscribers of BTC wish to communicate with the subscribers of NewCo, there is no alternative to reach the subscribers from NewCo, other than to buy termination services from NewCo.

Given the absence of any constraints on NewCo's ability to excessively charge for the purchase of terminating services to its network, it is imperative that there is regulatory intervention on the part of URCA in the form of price controls for termination services provided by URCA. Further, to ensure effective competition and efficient outcomes, it is important that URCA imposes symmetrical termination rates, where the charges for services terminating to NewCo's network would be set equal to the termination charges set by BTC for call and messaging services terminated to the latter's network.

URCA's proposed changes to the retail pricing rules enhances consumer's welfare

NewCo in its response to URCA'S Preliminary Determination has stated that the existing Retail Pricing Rules governing BTC's pricing behaviour should be kept in place to prevent anti-competitive behaviour on the part of BTC in the downstream retail markets. BTC objects to the position taken by NewCo that really advances the interest of that company at the expense of a more sustainable position that advances the welfare of consumers. BTC has long been an advocate for the relaxation of the Rulers as it relates to the provision on non capped services, i.e. cellular mobile services. The relaxation of the Rules would serve to enhance the welfare of consumers by allowing BTC to respond more quickly to the demands of consumers and the behaviour of its competitor in the provision of mobile services and provide more attractive offerings to our customers.

Conclusion

In conclusion, BTC welcomes the opportunity to provide a second round of responses to NewCo's initial responses to URCA's Preliminary Determination on call termination markets. Further, BTC:

- Considers that URCA has identified the main problems that may occur in these markets without regulation, and that ex-ante regulation is necessary in the form of price controls for NewCo's termination services.
- Fully supports URCA in regulating the charges for call termination services and in proposing that they should be the same as BTC's charges on the grounds of economic efficiency, benefit to consumers, reduction of regulatory burdens, and international precedents.
- Agrees with URCA that asymmetrical termination rates for NewCo has the potential to introduce price distortions where NewCo charges an excessive price for wholesale termination services. This can lead to higher prices for downstream retail services which certainly will not be in the interest of consumers in the electronic communications sector.
- Insert a summary about the deferential point

Reservation of rights

BTC has addressed the issues but reserves the right to comment at any time on all issues and states categorically that the decision not to respond to any issue raised in this Consultation in whole or in part does not necessarily represent 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 reserve all its rights.