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

Statement of Results to Public Consultation and Final Determination

ECS 33/2016

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1 Introduction

This document constitutes the Utilities Regulation and Competition Authority ("URCA") Statement of Results to Public Consultation and Final Determination on URCA's assessment of Significant Market Power (SMP)[1]inmobilecall termination services (voice and mobile messaging) on NewCo2015 Limited (or "NewCo") cellular mobile network in The Bahamas.[2]

URCA issued the Preliminary Determination for this consultation on 15 July 2016 and it contained URCA's preliminary findings that NewCo has SMP in mobile call and short messaging termination services on its cellular mobile network in The Bahamas.[3]In summary, the consultation consisted of the following:

- Background to the consultation including an overview of URCA's previous determination on SMP in call termination services and the resulting remedies.
- URCA's analytical framework for conducting this market review.
- URCA's SMP assessment for call and messaging termination services on NewCo's cellular mobile network and the proposed remedies.

In addition to seeking general comments and/or views to URCA's analysis, URCA's consultation paper sought respondents' views on a number of questions in order to assist respondents in preparing their written comments on the consultation. The first round of responses to the consultation was due 15 August 2016 and the second round responses due by 19 September 2016.

Two companies submitted initial responses to the consultation, namely:

- BTC; and
- NewCo2015 Limited.

BTC and NewCo made additional submissions as part of the second round which entailed commenting on the initial responses.

[1]The concept of SMP is equivalent to the concept of a dominant position established in general competition law. SMP is a necessary condition that must be fulfilled in order for URCA to impose certain *ex-ante* regulatory measures on a licensee as stated in section 40(2)(a) of the Communications Act, 2009.

[2]Termination describes the service whereby one operator (the terminating party) accepts traffic that has originated on another network and carries this traffic to customers on its own network. As such, the demand for termination services is derived from retail markets for off-net calls and messaging services to fixed and mobile numbers. In the Bahamian context, call termination is an essential wholesale service which all holders of Individual Operating Licences (IOLs), that provide retail fixed and/or mobile voice and messaging services, need to purchase from each other in order to allow their customers to call customers on other public networks (i.e., it ensures any-to-any connectivity from and to all retail customers, irrespective of which network the consumer is connected to).

[3]http://www.urcabahamas.bs/download/054114100.pdf

URCA thanks respondents for their written submissions and participation in the consultation process. Copies of all submissions may be downloaded from URCA's website at www.urcabahamas.bs.

1.1 Consultation Process

The procedures for making a determination, as contained in the Communications Act, 2009 (otherwise known as the "Comms Act" or the "Act) at section 99(1)(a) and (b), collectively prescribe that if URCA has reason to believe that a determination is necessary it may, on its own motion,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 CommsAct which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on regulatory or other measures that 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 CommsAct 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 considers the regulatory and other measures consequential to this consultation are of public significance therefore URCA has afforded anyone with sufficient interest the opportunity to comment on URCA's preliminary views and proposals contained therein.

1.2 Structure of the Remainder of this Document

The remainder of this document is structured the following way:

- Section 2 - URCA's Final Determinationon SMP in mobile termination services on NewCo's cellular mobile network;
- Section 3- URCA's analytical framework for market reviews;
- Section 4–Responses to the consultation; and
- Section 5 - Conclusion and next steps.

2 URCA's Final Determination on SMP in Mobile Termination Services on NewCo's Cellular Mobile Network

"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"[4]), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed

On 30 June 2016, URCA granted to NewCo2015 Limited ("NewCo") an Individual Operating Licence (IOL) authorising the operation of an electronic communications network and provision of carriage services, and an Individual Spectrum Licence (ISL) authorising the use of specific blocks of radio frequency spectrum, suitable for the operation of a cellular mobile network and provision of cellular mobile services.

URCA, having conducted a review of mobile termination services (voice and messaging service) on NewCo's cellular mobile network in The Bahamas in accordance with the Comms Act and the SMP Methodology (or SMP Guidelines), considered that it is appropriate to make certain determinations regarding the definition of markets, the existence of NewCo having SMP in those markets, and the extent to which *ex-ante* regulation is appropriate and necessary in those markets.

URCA makes the following determination:

1. Determination of Relevant Market – Wholesale Mobile Termination Services

Separate product markets shall be defined for termination of voice and messaging services on NewCo's cellular mobile numbers as follows:

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

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

b) The termination of multimedia messaging services (MMS) and short messaging services (SMS)services to numbers which have been allocated to NewCo by URCA pursuant to The Bahamas National Numbering Plan ("Mobile Message Termination on NewCo's Cellular Mobile Network").

Both relevant markets are national in scope (i.e., the geographic scope of these markets is in line with the area in which NewCo is authorised and obligated to provide these services).

2. SMP Determination

a) NewCo holds SMP in the market for Mobile Call Termination on NewCo's Cellular Mobile Network.

b) NewCo holds SMP in the market for Mobile Message Termination on NewCo's Cellular Mobile Network.

3. Obligations Imposed on NewCo

a) Given the SMP held by NewCo and in light of the potential challenges to competition which URCA's review has indicated may arise, the following obligations are imposed on NewCo, namely:

   i. NewCo shall comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act and Condition 34 of NewCo's IOL.

   ii. NewCo shall be subject to a price controlremedy in respect of all the services it provides within its defined Wholesale Mobile Termination service markets.

   iii. NewCo's mobile termination rates will be set based on BTC's interim mobile termination rates contained in BTC's RAIO, plus a 25% mark-up. That is, NewCo shall not charge a termination rate any greater than:
      a. 3.10 cents per minute for any incoming domestic calls to NewCo's mobile network;
      b. 5.76 cents per minute for any incoming international calls to NewCo's mobile network; and
      c. 1.75 cents per SMS termination on NewCo's mobile network.

   iv. NewCo shall, within six (6) 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 Mobile Termination Service markets. This must cover, 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 appropriate reference to URCA where either party is unable to negotiate interconnection based on the proposed terms and conditions; and
  - operations and maintenance procedures.

v. NewCo must ensure that published terms and conditions are compatible with this Final Determination, 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.

URCA reserves the right to revisit NewCo's interim mobile termination rates determined at section 3(a)(iii) at any time, if URCA, in its sole discretion considers it appropriate to do so.

URCA will review the rates as part of its upcoming termination rate review, anticipated to be commenced within twelve (12) to eighteen (18) months of this determination. URCA may also, no earlier than six (6) months after NewCo's launch of commercial services, review the rates upon request by BTC in the event that BTC demonstrates to URCA's satisfaction that the circumstances which justified asymmetry as described in this Final Determination and Statement of Results, no longer pertain and that therefore the asymmetry determined herein is not fit for purpose.

3 URCA's Approach to Conducting This Review

In conducting market reviews, URCA must take account of specified procedures in the Comms Act[5] and the analytical framework (i.e., procedures and criteria) set forth in URCA's document *"Methodology for Assessment of Significant Market Power [SMP] under Section 39(2) of the Communications Act, 2009"* (ECS 20/2011).[6]This document sets forth the procedures and criteria URCA will employ when undertaking market reviews for *ex-ante* regulatory purposes.

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

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

3.1 Description of the Market Review Process

The review is presented in three stages:

i. defining relevant product and geographic market or markets (Stage 1);
ii. identifying operator(s) with SMP in each defined market(s), if any (Stage 2); and
iii. where market power is identified, consideration of the appropriate SMP obligations in relation to that market (Stage 3).

3.1.1 Defining Relevant Markets

Market definition (Stage 1) focuses on the substitutability of differentiated products or services. There are two dimensions to market definition: (i) relevant product market; and (ii) relevant geographic market. Under standard market analysis, a relevant product market comprises all those differentiated products or services that are regarded as interchangeable or substitutable by customers or suppliers by reason of product characteristics, intended use and pricing, such that providers of the products may compete to offer services to consumers.

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[5]Section 39(1) and (2).
[6]Issued 13 October 2011 and available at http://www.urcabahamas.bs/download/059384700.pdf.

Product Market Definition

In defining the relevant economic markets, URCA shall follow the principles of the SSNIP (Small but Significant Non-transitory Increase in Price) test, otherwise known as the Hypothetical Monopolist Test (HMT). The SSNIP test assesses customer (demand-side substitution) and supplier (supply-side substitution) behaviour in response to a hypothetical price increase 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, these alternative products are included in the same market as the product under consideration.

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

- For ***supply-side substitutability***, the SSNIP test assesses whether the price increase could provoke anexistingoperator, which is not the hypothetical monopolist, to switch production capacity and start supplying the service or lead a new entrant to do so. Such supply-side substitution would only constitute an effective constraint were it to make the price increase unprofitable for the hypothetical monopolist. In this case, the product offered by the other supplier is included in the relevant product market.

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

While such economic tests can be usefully employed to examine demand- and supply-side substitution possibilities, it is also important to ensure that the approach to market definition is pragmatic and exhibits commercial commonsense.

Geographic Market Definition

The geographic market is defined with respect to the scope of service within a defined region or territory within which competitive conditions are sufficiently homogenous or similar. The relevant geographic market considers the degree to which demand/supply-side substitutes for products vary by geography. The geographic boundaries are considered within the SSNIP test and the reach of any demand and/or supply-side substitutes identified. The test is applied on a product-by-product basis, meaning if particular products are offered in different geographic areas, the product market definition may vary by geography.

3.1.2 SMP Assessment

Stage 2 of the framework seeks to identify licensees that have SMP in the defined market(s), if any.

Under section 39(1) of the Comms Act, a licensee is an SMP licensee if the licensee,

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

The initial starting point for any SMP assessment in a defined market would be "*the licensee's market share*".[7]Although the Comms Act does not specify a market share threshold for SMP, URCA in ECS 20/2011 (Section 3.2, p.6) has established presumptions of SMP, wherein:

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

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

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

A list of the other factors or criteria URCA shall consider can be found in Section 3.2 (p.6 to 7) of ECS 20/2011 and reflect the approach taken in URCA's 2013 SMP assessment of the wholesale termination markets for BTC, Cable Bahamas Ltd. ("CBL" including SRG) and IP Solutions International Ltd. ("iPSi").[8]

3.1.3 SMP Obligations

The third and final stage involves determining the regulatory obligations, if any, that should be imposed on SMP licensees to remedy any SMP.[9] Based on the Comms Act, such obligations must be efficient and proportionate to their purpose and introduced in a transparent, fair and non-discriminatory manner. This means that where URCA believes that market forces alone are unlikely to achieve the policy objectives within the referenced timeframe, URCA may introduce regulatory requirements, having due regard to the costs and implications for affected parties.

Prior to imposing remedies under section 40(1) of the Comms Act, URCA must follow the procedures specified in section 5 and section 40(2) of the Comms Act.

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

[8] On 22 August 2013, URCA published *"Assessment of Significant Market Power in Call Termination Services in The Bahamas under Section 39(1) of the Communications Act, 2009"* (ECS 13/2013).

[9] Absent a determination that a licensee has SMP in any of the defined markets, URCA would not employ the procedures and criteria set out in the third stage.

4 Responses to the Consultation

In this Section, URCA summarises and responds to the comments received on the consultation, as follows:

- Section 4.1 - General commentson the consultation; and
- Section 4.2 - Specific responses to the consultation questions.

For the avoidance of doubt, respondents should not take URCA's decision not to respond explicitly to any issue raised by respondents as signifying agreement in whole or in part with the comment, that it has not considered the comment or that URCA considers the comment to be unimportant or without merit.

4.1 General Comments Received

NewCo's Comments

NewCo acknowledged that it was awarded the second cellular mobile licence in The Bahamas under the terms of section 114 of the CommsAct (as amended) on 30 June 2016. NewCo complimented URCA on its speedy decision-making while noting that URCA's public consultations on key regulatory measures have brought clarity to the regulatory framework.[10]

NewCo noted that it fully supported URCA's initial finding on the need for ex-ante regulation of termination markets in general and further stated that cost-oriented price controls are necessary to eliminate the risk of excessive charging by operators. In line with its submissions on other public consultations, NewCo emphasised that termination rates in The Bahamas should be set on a pure long-run incremental cost (also known as pure-LRIC) basis. After acknowledging URCA's plan to conduct a comprehensive review of termination rates, NewCo urged URCA to initiate the review process as soon as possible, including the development of a pure-LRIC model.

NewCo commented that it fully supports the principle of asymmetric termination rates for a limited period of time (i.e., while NewCo's market position is being established). NewCothen recommended that termination rates on its network should be set in the order of 25% above the BTC URCA-approved interim mobile termination rates, as determined in its Final Determination on the required changes to BTC's Reference Access and Interconnection Offer (RAIO) due to mobile liberalization (ECS 19/2016). NewCo explained that the 25% uplift is reflective of the average asymmetric termination ratesin Europe. Under this proposal, NewCo's termination rates would be set at:

[10]Including National Roaming, BTC's Reference Access and Interconnection Offer (RAIO),and the Retail Pricing Rules (also referred to as the "Rules" or RPR).

- 3.1 cents/minute for calls from domestic fixed and mobile networks;
- 5.76 cents/minute for calls from international numbers; and
- 1.75 cents/message for SMS.

NewCo was opposed to any change in the pre-approval process of the current Retail Pricing Rules (RPR) for on-net/off-net retail pricing and arguedthat current obligations should remain in place pending a full market review. NewCo asserted that maintaining the status quo is necessary to prevent BTC from introducing discriminatory pricing that is based on non-objective factors. NewCofurther asserted that under an asymmetric termination rate regime the risk of abusive on-net/off-net retail pricing by BTC would be significant. It also noted that BTC is highly incentivised to behave anti-competitively in order to limit NewCo's ability to compete for market share.Given these assertions, NewCothen recommended that on-net/off-net retail pricing should only reflect differences between BTC's and NewCo's mobile termination rates.

Upon reviewing BTC's first response, NewCo acknowledged that both companies (BTC and NewCo) have come to a similar conclusion on URCA's consultation questions, *"but differ substantially on the issue of asymmetric termination rates."*NewCowas of the view that most of BTC's supporting information for symmetric termination rates relate to matters that are outside the scope of URCA's proposals. NewCo admitted that there are economic and regulatory arguments on both sides of the debate, and these arguments were fairly summarised in URCA's Preliminary Determination. NewCo, however, maintained its position that asymmetric mobile termination rates are justified in The Bahamas as an interim measure.

BTC's Comments

BTC appreciated the opportunity to comment on URCA's market review and preliminary findings regarding call and messaging termination services on NewCo's cellular mobile network. BTC indicated that it has long held the view that URCA should intervene in the market for termination services on the networks of any licensee. Noting that intervention in the form of cost-oriented price controls would promote efficient competition and maximise consumer welfare.

BTC further stated that it fully endorsed URCA's analysis and initial findings, as per the consultation document. Notably, on Stage 1 of URCA's market review, BTC commented that it had no objections to the proposed definitions for the two (2) product and geographic markets in question. Equally, BTC did not raise any objections to URCA's proposal (Stage 2) to designate NewCoas a SMP provider of call and messaging termination services on its cellular mobile network. Lastly, BTC affirmed its support for URCA's initial findings (Stage 3) that the two mobile termination service markets identified are susceptible to ex-ante intervention and reiterated that the imposition of price controls and other measures on these markets is warranted.

BTC did not agree with the arguments historically put forward by proponents of asymmetry termination rates. BTC proposed that NewCo's mobile termination rates should be symmetrical to BTC's. BTC submitted that the principle of symmetric termination rates is supported by economic theory and best practice regulation and would be in keeping with the URCA's previous determination on fixed termination rates.

In its second response, BTC maintained that NewCo's mobile termination rates should be set at the same level as BTC's. BTC asserted that NewCo's urging for asymmetric mobile termination rates was unsubstantiated both in terms of economic analysis and international precedent. BTC further stressed that it should have total commercial flexibility in terms of on-net/off-net price differentials while noting that it is typically the new entrants that are the first movers in on-net/off-net price differentials.

URCA's responses to the comments received/Final Determination

The respondents' general feedback on the consultation has been noted. URCA acknowledges NewCo's comment that termination rates should beset on a pure-LRIC basis. As URCA explained in the BTC RAIO consultation and Final Determination (ECS 19/2016), setting termination rates on pure-LRIC is infeasible at this time but URCA may consider this approach subject to further consultation.[11]

URCA recognises the opposing views of the respondents on how the principles of cost orientation and symmetry should be applied in determining NewCo's mobile termination rates. URCA appreciates that the views expressed are similar to BTC's and NewCo's submissions on Section 7.4of the consultation document *("Principles of setting Mobile Termination Rates for NewCo")*. In light of this, URCA will not present its assessment of the opposing views noted above here. Instead, URCA refers to its evaluation of the responses received on the consultation questions 7, 8 and 9 below. In this assessment, URCA sets forth its finalposition on how the principle of cost orientation and symmetry should be applied in the determination of NewCo's mobile termination rates.

URCA is cognisant of NewCo's concerns about anti-competitive retail pricing by BTC and the suggestion for URCA to keep in place the current RPR for Non Price Capped Services pending a full market review for mobile communications services. URCA, however, will not address this issue here. Instead, URCA refers to its revised and final position on the Retail Pricing Rules for Non PriceCapped Services (predominantly mobile services) as outlined in its Final Determination ECS 34/2016[12] and the associated RPR for Non Price Capped Services (ECS 35/2016).[13] As regards, the timeline for a full market review for mobile services, URCA refers to its response on consultation question 1 below.

[11] http://www.urcabahamas.bs/download/030674000.pdf
[12] http://www.urcabahamas.bs/consultations.php?cmd=library
[13] http://www.urcabahamas.bs/consultations.php?cmd=libraryAdd

4.2 Responses to Consultation Questions

4.2.1 Market Review Stage 1- Market Definitions

Consultation Question 1: Please provide comments on URCA's preliminary view on the relevant product market definition for mobile termination services on NewCo's cellular mobile network.

<u>NewCo's Comments</u>

NewCo stated that the product markets which URCA proposes to define are in keeping with international norms and the termination markets defined for other licensees in The Bahamas. However, NewCo commented that:

- the statement on page 15 of the consultation that *"… the product definition for call termination should not distinguish where the call originates"*, does not apply at the remedy level in The Bahamas given that URCA has determined <u>*differential termination rates*</u> for BTC's mobile network. NewCo submitted that, in many overseas jurisdictions, the mobile termination rate is the same irrespective of whether the call originates on a fixed network, entrant's mobile network, or on an international network. NewCo asked whether the practice of differential charging endorsed by URCA counts as discrimination between different types of customers. Despite this, NewCostated that it fully supported URCA's decision to permit a higher termination rate for incoming international calls terminating on a mobile network than for domestically originating calls.

- URCA has not considered the implications of over-the-top (OTT) applications such as Skype and WhatsApp on the relevant product market definitions. NewCo recommended that URCA undertake a full market review of the mobile retail market as an input to the process of determining retail remedies (RPR) and as a starting point for the analysis of upstream call termination markets. NewCo added that the outcome of such a review would ensure that remedies are proportionate to the problems identified and in the context of call termination markets, would allow for the analysis of indirect constraints stemming from OTT alternatives to mobile voice and messaging services. Absent a full market review, it would be premature for URCA to remove the ex-ante approval process governing on-net/off-net retail pricing.

<u>BTC's Comments</u>

BTC expressed its full support for URCA's preliminary position on the two product markets which URCA proposes to define.

<u>**URCA's responses to the comments received/Final Determination**</u>

URCA, in principle, would not consider that differential termination rates, which are based on objective factors, would count as undue discrimination between different types of customers. In any event, as part of its plan to conduct a comprehensive review of termination rates, URCA will in light of market developments, address the issue of differential termination rates for international and domestically originating calls and SMS.

URCA appreciates NewCo's positive feedback on the two product markets which URCA proposes to define. Further to NewCo's comment about OTT applications and services, URCA notes that its preliminary position on the product market definitions in question was based on:

- the statutory framework for SMP assessments;
- URCA's own methodology for SMP assessments (include guidance on market definition, assessment of SMP and SMP designation);
- market definitions adopted by established and competent regulatory bodies elsewhere; and
- URCA's previous determination on product market definitions for call and messaging services on BTC's mobile network.

URCA agrees that for ex-ante purposes, market reviews must be forward-looking and the scope of the relevant product market should take account of current and future market developments (including the potential impact of alternative communications services, such as OTT-based services).

In the context of this exercise, URCA reviewed the scope of the product markets defined for mobile termination services in several European countries. URCA notes that in the majority of the countries surveyed, the emergence of OTT services and applications have not materially impacted the scope of the relevant product markets for call and messaging termination services on mobile networks.[14] [15] In the case of the United Kingdom, OFCOM found that OTT applications did not sufficiently constrain market power in mobile termination markets. Indeed, in its 2014 consultation on *"Mobile call termination market review 2015-18"*,[16] OFCOM proposed that the product market definitions for call and messaging termination services should remain unchanged from its previous decision in 2011.

URCA further notes that this is in line with its previous market definition. In particular, in its 2013/14 assessment of call and messaging termination services for BTC, URCA did consider whether OTT services and applications exert a material impact on the relevant product markets for retail mobile calls and/or mobile messaging services. It was URCA's conclusion at the time that the emergence of OTT applications

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[14] Report on OTT Services by BEREC January 2016 BoR (16)35 athttp://berec.europa.eu/eng/document_register/subject_matter/berec/reports/5751-berec-report-on-ott-services.

[15] Impact of OTT Services on regulatory market definitions in Europe, Presentation by Omar Bouhali Analysys Mason, 19 July 2016 at http://www.nca.org.gh/downloads/symposium/workshop/Omar%20Bouhali%20-Impact%20of%20OTT%20services%20on%20regulatory%20market%20definitions%20-%207%207%202016.pdf

[16] Mobile Termination Market Review 2015-18 at http://stakeholders.ofcom.org.uk/binaries/consultations/mobile-call-termination-14/statement/MCT_final_statement.pdf

and services did not sufficiently constrain market power in mobile termination markets. While URCA recognises that this decision is now several years old, it is equally not aware of any significant development in the local environment since then that would render the results of this assessment invalid on this occasion.

In summary, URCA is satisfied that the two product markets it proposes to define for NewCo are in line with the statutory framework of the Comms Act and supported by best practice regulation. As such, URCA does not see the need to adopt a broader definition of the product markets under review. URCA, however, will continue to monitor the potential constraints posed by OTT applications and services on the markets in question. However, for the reasons further explained in the context of consultation question 2 below, URCA has decided to define the relevant markets around the mobile numbers assigned to NewCo pursuant to the National Number Plan of The Bahamas. This is in line with international practice and aims to ensure that NewCo customers roaming on BTC's network are included in the market definition.

Regarding a full market review, URCA advises that it would be premature to conduct such an exercise prior to NewCo's commercial launch. URCA admits that the liberalisation of the cellular mobile market could have a significant pro-competition development in the sector. At the moment, it is unclear how the market will evolve and how the licensees will compete with each other. URCA notes NewCo's view that the timing for a full market review should be around 12 months after NewCo's commercial launch. From URCA's standpoint, any timeline stated at this time would not preclude URCA from carrying out a full market review for mobile services sooner. However, in the absence of unforeseen developments, URCA believes that it would be reasonable to initiate the review process around 12-18 months after NewCo's commercial launch. URCA will therefore schedule work to commence at the beginning of 2018. In the meantime, URCA, in keeping with its statutory mandate, will continue to monitor market developments to ensure that remedies remain proportionate and fit for purpose.

URCA's Final Determination – Market Review Stage 1 – Product Market Definition

It is URCA's Final Determination to define the following two product markets for mobile termination services:

(i) mobile call termination on mobile numbers assigned to NewCo pursuant to the National Number Plan of The Bahamas; and

(ii) mobile message termination on mobile numbers assigned to NewCo pursuant to the National Number Plan of The Bahamas.

Consultation Question 2: Please provide comments on URCA's preliminary view on the relevant geographic market definition in relation to mobile termination services on NewCo's cellular mobile network.

NewCo's Comments

While NewCo did not object to the geographic markets that URCA proposes to define, it was concerned that traffic carried on BTC's mobile network pursuant to a National Roaming Agreement would be excluded from that market definition. Instead, NewCo was of the view that all traffic terminating on mobile numbers allocated to NewCo from the National Numbering Plan of The Bahamas should form part of the termination markets for NewCo (including traffic terminated through the national roaming service provided by BTC). This was in line with the fact that the underlying economic bottleneck is the access to the NewCo customer, irrespective of the network it was conveyed over.

BTC's Comments

In its response on the consultation question, BTC commented that it fully supported URCA's analysis and initial finding that the relevant geographic markets for call and messaging services on NewCo's cellular mobile networks is national in scope. In its second round response, BTC did not address NewCo's point about call termination under a National Roaming Agreement.

URCA's responses to the comments received/Final Determination

URCA acknowledges NewCo's thinking that under the circumstances, NewCo owns the relationship with its customers and therefore exercises some control over providing access to them. URCA agrees that this principle also holds for a NewCo subscriber roaming on BTC's network. As such, this should be reflected in the market definition for termination services. URCA understands that this is in line with, for example, Ofcom's market definition for mobile termination services adopted in 2014.[17]

Further to the above and taking into consideration the arguments presented in Section 5.5 of the consultation document, URCA affirms its initial position that the geographic boundary of the termination markets under consideration is national in scope (i.e., the geographic scope of these markets is in line with the area in which NewCo is authorised and obligated to provide these services).

URCA's Final Determination – Market Review Stage 1 – Geographic Market Definition

URCA has determined that the geographic boundary of the relevant product markets for call, and messaging termination services on mobile numbers assigned to NewCo pursuant to the Bahamas National Number Plan is national in scope.

[17] Mobile Termination Market Review 2015-18 at http://stakeholders.ofcom.org.uk/binaries/consultations/mobile-call-termination-14/statement/MCT_final_statement.pdf

4.2.2 Market Review Stage 2 – SMP Assessment

Consultation Question 3: Please provide comments on URCA's preliminary views that NewCo has SMP in relation to the wholesale supply of mobile voice call and/or mobile message termination services on its cellular mobile network.

NewCo's Comments

NewCoadmitted that a finding of SMP was highly likely given that:

- it has a 100% market share in the prospective markets for termination on its cellular mobile network;
- barriers to entry and expansion on this market areextensive; and
- in providing the termination service, NewCo controls infrastructure which cannot be easily duplicated.

NewCo, however, did not agree with URCA's conclusions on:

- Countervailing Buyer Power (CBP); and
- NewCo's ability to influence market conditions.

In particular, NewCo felt that URCA has underestimated BTC's ability to exert *countervailing buying power* in negotiating the terms and conditions of termination services on NewCo's network. This is because at the wholesale level, BTC will provide most, if not all, of the traffic for termination on NewCo's network. Furthermore, at the retail level, BTC can constrain NewCo's ability to engage in monopolistic pricing behaviour on termination markets through the threat of abusive on-net/off-net pricing in mobile retail markets where BTC enjoys a position of SMP. URCA also notes NewCo's response on consultation question 5 that it is very unlikely that NewCo would refuse to supply interconnection to its parent (Cable Bahamas Limited). URCA wishes to remind all parties that any refusal to interconnect would constitute a breach of the Individual Operating Licence conditions and other pertinent measures or obligations.

NewCo maintained that URCA's proposed changes to the RPR posed significant risk to competition as it will allow BTC to introduce on-net/off-net retail price differentials for mobile calls. NewCo added that price regulation on its termination markets removes one of the few tools available to an entrant to counter such abusive on-net/off-net pricing behaviour.Again, NewCostressed the importance of maintaining the pre-approval process of the current RPR to prevent BTC from introducing discriminatory pricing practices at the retail level.

NewCo further argued that, given market circumstances, it does not have the economic incentive and/or the *ability to influence market conditions* by denying requests to supply termination services to other licensees. Indeed, from a commercial standpoint NewCo is highly incentivised to promote *any-to-any* communication by ensuring that all existing subscribers to fixed and mobile services can make and receive calls to and from NewCo's subscribers.

BTC's Comments

BTC was in agreement with URCA's analysis and preliminary finding that NewCo has SMP in the two termination markets identified.

Upon its review of NewCo's initial response, BTC rejected the claim that it has countervailing buying power. BTC commented that termination on NewCo's network constitutes a 'bottleneck facility' incapable of duplication. In view of this, ex-ante regulatory intervention by URCA in the form of price controls and other measure would be warranted. Again, BTC stated that NewCo's termination rates should be set equal to BTC's.

URCA's responses to the comments received/Final Determination

Further to the above, URCA responds to the two points raised by NewCo as follows:

- ***Countervailing Buyer Power***: URCA notes NewCo's comments. From URCA's standpoint, NewCo will exercise absolute control of the terminating facilities on its network. This will limit the degree of countervailing buyer power that any access seekers (include BTC) may have. Further, due to the requirement for all licensees to interconnect with each other, this gives NewCo market power. This, in turn, could lead to excessive pricing for termination services, in absence of ex-ante regulation. Further, URCA considers that BTC's ability to engage in abusive on-net/off-net retail pricing would be constrained by the revised RPR on undue discrimination.On balance, URCA is not assured that potential buyers of termination services will be in a position to exert sufficient CBP to counter NewCo's ability to act to an appreciable extent independently of its competitors, customers and ultimately consumers.

- ***Ability to influence market conditions***: As acknowledged by NewCo, the markets URCA proposes to define are characterised by, among other things, high barriers to entry and expansion, and monopoly control of termination facilities that cannot be easily duplicated. In view of this, URCA affirms that NewCo has the ability to influence market conditions during the life of this review. URCA recognises that NewCo could exert market influence through various mechanisms, including a refusal to supply interconnection.

In light of the above and taking into account the arguments presented at Section 6 of the consultation paper, URCA affirms its preliminary findings that NewCo holds SMP in the relevant markets identified as it is in a position to behave to an appreciable extent independently of its competitors, customers and ultimately subscribers.

URCA's Final Determination – Market Review Stage 2 – SMP Assessment
URCA has determined that:

a) NewCo has SMP in the wholesale market for mobile call termination on its cellular mobile network in The Bahamas.

b) NewCo has SMP in the wholesale market for mobile message termination on its cellular mobile network in The Bahamas.

4.2.3 Market Review Stage 3 – Ex Ante Regulatory Remedies

Consultation Question 4: Please provide comments on URCA's preliminary view that the wholesale termination markets identified are susceptible to ex-ante regulation.

<u>NewCo's Comments</u>

NewCo agreed with URCA thattermination markets in general are susceptible to ex-ante regulation. NewCo maintained that ex-ante regulation of its termination rates should be supported by ex-ante regulation of BTC's mobile offering to prevent the latter from introducing abusive on-net/off-net retail pricing.

<u>BTC's Comments</u>

BTC fully supported URCA's initial views that ex-ante regulation of the termination markets in question is warranted. BTC stressed the need for regulatory intervention to prevent NewCo from charging excessively for its termination services. Similar views were expressed by BTC in its response to NewCo's initial response.

<u>URCA's responses to the comments received/Final Determination</u>

URCA appreciates BTC's and NewCo's agreement in regard to URCA's initial view that the termination markets in question are susceptible to ex-ante regulation. Regarding the concern about abusive on-net/off-net retail pricing, URCA addressed this issue in its consultation ECS 34/2016[18] and associated document (ECS 35/2016)[19] on RPR for Non Price Capped Services.

Having regard to the above and taking into account the arguments at Section 6 of the consultation, URCA affirms its initial view that ex-ante regulation in warranted in the two termination markets identified.

[18] http://www.urcabahamas.bs/consultations.php?cmd=library
[19] http://www.urcabahamas.bs/consultations.php?cmd=library

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies
It is URCA's determination that the wholesale markets identified are *susceptible to ex-ante regulation*.

Consultation Question 5: Please provide comments on URCA's preliminary views on the main competition problems or market failures that could arise from NewCohaving SMP in respect to the provisioning of wholesale call and/or mobile message termination services on its own cellular mobile network.

NewCo's Comments

NewCo cross-referenced its response on consultation question 3 above. In order to reinforce its position, NewCo repeated that, as a new entrant to the mobile market, it is highly incentivised to ensure *any-to-any* communication is achieved. As such, refusal to supply termination services to BTC would make NewCo's commercial proposition unmarketable. A refusal to supply interconnection to Cable Bahamas Limited, NewCo's parent is also unlikely. NewCo would be happy to offer interconnection terms on a non-discriminatory basis to any other operators.

BTC's Comments

BTC was in agreement with URCA's finding that the main anti-competitive concerns that are likely to arise in the markets identified are excessive charging and/or refusal supply.

URCA's responses to the comments received/Final Determination

URCA has addressed the points raised by NewCo in its response on consultation question 3 above.Due to the requirement to provide any-to-any interconnection, no licensee can refuse to take termination services from NewCo (or any other licensee). As such, that licensee would have to potentially accept excessive termination charges, if NewCo is not regulated.

Further to the above, URCA affirms that the main competition concerns that may arise in the markets identified are excessive charging and refusal to supply.

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies
URCA has determined that the main *competition problems or market failures* that could arise from NewCo having SMP in call and mobile message termination services on its own cellular mobile network are excessive charging and refusal to supply.

Consultation Question 6: Please provide comments on URCA's preliminary view regarding NewCo's publication of tariff and non-price terms and conditions governing supply of wholesale termination services.

NewCo's Comments

NewCo commented that it has no objection to URCA's proposal that NewCo publish the price and non-price terms and conditions governing supply of the wholesale termination services.

BTC's Comments

BTC also agreed with URCA that NewCo should be under an obligation to publish terms and conditions for its mobile termination services, as this would promote transparency in price and non-price terms and conditions.

URCA's responses to the comments received/Final Determination

Given the responses above, URCA affirms its preliminary view about NewCo's publication of tariff and non-price terms and conditions governing supply of termination services.

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies URCA has determined that NewCo shall be under an obligation to *publish its terms and condition*s governing supply of wholesale termination services. The information shall be published within six (6) weeks of the issue date of this Final Determination. See Section 2 (item 3(iv)) above on the minimum information NewCo is required to publish

Question 7: Please provide comments on URCA's preliminary view regarding price regulation of termination services on NewCo's cellular mobile network.

BTC's Comments

BTC was firmly of the view that NewCo's mobile termination services should be subject to ex-ante price regulation as they constitute essential services in which NewCo exercises a monopoly position. Absent regulation, this could result in a material risk of excessive pricing and ultimately consumer harm.

NewCo's Comments

NewCo did not object to the introduction of ex-ante price control of its mobile termination rates, as long as current ex-ante price regulation for BTC's retail mobile services also remained in place. NewCo considered this would be required to prevent anti-competitive pricing in those retail markets.

NewCo concurred that excessive pricing is generally a risk in termination markets and hence NewCo sees a need for BTC's (and NewCo's, under symmetric rates) termination rates to be set based on pure LRIC.

It further noted that URCA should allow for the option to use a "bill and keep" regime for mobile message termination services, as long as both licensees agreed on it.

URCA's responses to the comments received/Final Determination

URCA notes both operators' support for imposing ex-ante price regulation on NewCo's mobile termination services. Whilst URCA notes NewCo's reference to the continuous need for ex-ante price control of BTC's retail mobile services, it does not consider this to be relevant in determining the need for regulating NewCo's mobile termination rates. Further, the need for regulating BTC's retail mobile services has been assessed as part of a separate consultation (ECS 34/2016).

Concerning the reference to introducing bill and keep for mobile messaging termination services, URCA invites both licensees to make a joint submission on this matter, in case they wish to do so. URCA would then assess any such submission on its merits.

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies **URCA has determined that NewCo's charges for wholesale termination services on its network will be subject to ex-ante regulation.**

Question 8: Please comment on URCA's preliminary proposal to apply the principle of cost orientation to NewCo's mobile termination rates. If respondents consider that cost-oriented mobile termination rates are not appropriate for NewCo, the relevant respondent should describe its preferred alternative approach, with supporting rationale.

BTC's Comments

BTC supported URCA's proposal to set cost-oriented mobile termination rates for NewCo as this would remove or mitigate any potential price distortions resulting from above cost wholesale charges.

NewCo's Comments

In line with its response to consultation question 7 above, NewCo supported, in general, the principle of cost orientation to set mobile termination rates, with the appropriate cost standard being pure LRIC.

URCA's responses to the comments received/Final Determination

URCA notes both respondents support for applying the principle of cost orientation to set NewCo's mobile termination rates. Given this, URCA affirms its preliminary view about NewCo's mobile termination rates will be set based on this principle.

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies It is URCA's determination to apply the ***principle of cost orientation*** to NewCo's mobile termination rates for calls and mobile messaging services.

Question 9: Please comment on the merits of allowing NewCo to temporarily charge higher mobile termination rates than those contained in BTC's RAIO. As part of your response please further comment on the appropriate level and time period of any asymmetry in mobile termination rates.

BTC's Comments

As part of its first round submission, BTC argued for symmetry in termination rates between NewCo and itself. According to BTC, symmetry would:

- result in allocative and productive efficiency;
- remove the potential for excessive wholesale charges and thus any potential negative impact on prices in the downstream retail market; and
- provide predictability, stability and transparency and thus promote competition.

In support of its position, BTC provided quotes from several European regulators and institutions (i.e., a statement in 2008 by BEREC on fixed termination rates and productive efficiencies,a statement by the Dutch regulator OPTA in 2010 on the water-bed effect resulting from above cost fixed and mobile termination rates, and a statement by the European Commission in 2009 on the lack of objective cost differences on fixed termination rates).

BTC also made reference to selected regional precedence (i.e., in Anguilla, British Virgin Islands, Jamaica, Turks and Caicos and Trinidad and Tobago) and the UK, claiming that in all of these jurisdictions there was symmetry in rates.

Based on the above and more generally, BTC was of the view that symmetric termination rates should also be applied in The Bahamas due to the following:

- There was no objective justification for asymmetry in termination rates for NewCo.
- NewCo had made a public announcement in the context of mobile number portability (MNP)that it expects to gain significant market share quickly, which according to BTC would imply that there are no barriers to entry or expansion in the market. This was particularly the case, given the prevailing high share of prepaid customers in The Bahamas and the introduction of MNP.

BTC, however, continued that if asymmetric rates were to be introduced, then this should only be allowed on a temporary basis (i.e., until NewCo would reach a market share of 15-20%[20] or 15 months after NewCo's launch, whatever would occur first). BTC further stated that any asymmetry should not exceed 40% to 50% (i.e., NewCo's termination rates should not exceed those of BTC by more than 40% to 50%).

[20]This was the market share threshold for an efficient scale referred to by URCA in ECS 17/2016.

In its second submission, BTC confirmed its view that mobile termination rates in The Bahamas should be symmetric, reiterating the benefits thereof (as quoted previously) and stating that NewCo had failed to provide evidence in support of the proposed asymmetry (i.e., based on the three main criteria listed by URCA). BTC was further of the view that European precedent presented by NewCo in its first round submission was outdated and instead there was a general trend to symmetry in termination rates in Europe.

NewCo's Comments

As part of its first submission, NewCo agreed with URCA's preliminary position that it could be reasonable to allow NewCo to charge mobile termination rates above those of BTC on an interim basis.

According to NewCo, this would be in line with European precedent where many regulatory authorities had allowed new entrants to charge a higher termination rate than incumbent operators, due to the higher unit costs faced by new entrants (as a result of their smaller scale). NewCo therefore believed that this argument would also hold in The Bahamas. To support its position, NewCo presented evidence from selected European countries in 2005, where the asymmetry was on average 25% and granted on average for a period of nine years. NewCo suggested that these benchmarks could be used to set NewCo's interim termination rates until URCA concluded its comprehensive review of termination rates.

NewCo further reasserted the need to limit any on-net/off-net price differentials introduced by BTC to the underlying differences in mobile termination rates, with the cost justification for such price differentials disappearing under symmetric termination rates.

In its second round submission, NewCo dismissed BTC's references in support of symmetry, arguing that these mostly related to fixed termination rates and the merits of long run asymmetry (as opposed to temporary asymmetry only, as proposed by URCA in ECS 17/2016). It further dismissed BTC's suggested link between symmetry in termination rates and predictability and transparency in the market, as the latter is more a matter of having a clearly defined regulatory regime than the level or symmetry of regulated charges. NewCo also disagreed with BTC's argument that short-term losses are common for entrants and thus factored into their business plans and this would therefore not represent a justification for symmetry in termination rates.

NewCo, however, recognised the substantive regulatory and economic arguments for both sides of the debate, which it considered to be fairly summarised in ECS17/2016. According to NewCo there is a consensus that asymmetry was only justified where there are justifiable exogenous cost differences (such as unequal spectrum allocations or a need to achieve a minimum scale), which NewCo considers to be the case in The Bahamas as BTC has enjoyed a monopoly over the last 20 years and NewCo will require time roll out its network and build up traffic on its network to reach efficient scale. These circumstances were accepted as a reason for asymmetric termination rates, with NewCo providing a supporting quote thereof by BEREC (formerly the European Regulatory Group).

URCA’s responses to the comments received/Final Determination

URCA notes the operators’ opposing views on the merits of allowing NewCo to temporarily set higher mobile termination rates than BTC (i.e., asymmetry in termination rates between both operators). As noted by NewCo in its second round submission substantive arguments have been made on both sides of the debate.

In URCA’s view, the international precedent presented by both parties is mixed and thus could support either case. For example, URCA shares NewCo’s concerns on BTC’s references not being relevant to the current situation in The Bahamas. This is because URCA considers it is most appropriate to examine regimes at the time of entry, rather than the current regimes that apply some years after entry. Furthermore, BTC’s reference to the UK does not appear to consider the asymmetry which applied to Three/H3G in the UK following its entry to the market. However, it also holds, as pointed out by BTC, that NewCo’s references to asymmetry are outdated and that there is a general trend towards symmetric mobile termination rates in Europe.

But while URCA recognises the importance to consider that debate and any international precedent, it also considers it important to assess the need for asymmetry in the context of NewCo’s entry into the market. This motivated the detailed discussion in the consultation document on the conditions which would need to be met to justify any temporary asymmetry in mobile termination rates in The Bahamas. While both operators have provided lengthy submissions on this matter, these have mostly focussed on the arguments set out in previous decisions elsewhere or the existence of asymmetric termination rates elsewhere. Neither party provided any substantive further supporting evidence on the conditions set out in the consultation document. This may, in part, be related to NewCo not having any traffic or costing data to support its argument at this point in time.

As set out in the consultation document, URCA preliminarily concluded that from the various potential justifications for asymmetric mobile rates, only the need to achieve an efficient scale seemed applicable to NewCo (for a further discussion on the other conditions, please see pages 37 to 43 in ECS 17/2016). URCA remains of the view that NewCo is likely to require time to establish itself and to reach the 15-20% minimum market share threshold for an efficient scale. During this interim period NewCo is likely to face higher unit (Long Run Average Incremental Cost) termination costs than its longer run efficient level of termination costs. As such, URCA sees merits in allowing NewCo to temporarily set termination rates above those of BTC.

URCA, however, also remains of the view that termination rates should generally be set reciprocally, with any asymmetry being temporary in nature. This also holds for NewCo’s mobile termination rates, as further discussed below.

Accordingly, URCA considers it justifiable to allow NewCo to temporarily set higher mobile termination rates than those currently set out in BTC’s RAIO. URCA notes that the operators’ proposals for any potential asymmetry ranged from 25% to 50%, with NewCo setting out the lower bound of 25%.[21] In the absence of any supporting evidence, URCA considers it acceptable to adopt the lowest value of this proposed range, i.e., resulting in a 25% uplift of NewCo's mobile termination rates relative to those set out in BTC's RAIO. This is also in recognition of the potential effects of asymmetric termination rates on the relevant downstream markets (i.e., leading to on-net/off-net price differentials for retail mobile services).

The resulting interim mobile termination rates for NewCo are set out in the table below:

Table 1: Interim MTRs for Termination Services on NewCo's Cellular Mobile Network

Call Termination Services	MTR (cents /min or SMS)
Incoming domestic calls to NewCo's mobile network	3.10
Incoming international calls to NewCo's mobile network	5.76
SMS termination (domestic and international) on NewCo's mobile network	1.75

URCA reserves the right to revisit this any time later than six (6) months after NewCo's launch if NewCo establishes itself in the market more quickly than anticipated, and will keep under review the development of the mobile market for this purpose. In addition to monitoring the market itself, URCA will also allow BTC to request a review of the asymmetric rate should it detect market conditions which suggest that a review is appropriate. Such a request should be by reference to the matters considered above on which URCA has made its decision to implement asymmetric rates.

URCA will then review the continued need for asymmetry in mobile termination rates as part of its upcoming termination rate review (see consultation question 3 above). As part of this review, URCA will, amongst other things, confirm the appropriate methodology for setting termination rates, the level of termination rates for each SMP licensee (including the case asymmetry in mobile termination rates) and any resulting glidepaths towards the new termination rates.

URCA's Final Determination – Market Review Stage 3 – Ex Ante Regulatory Remedies

It is URCA's determination to temporarily set NewCo's mobile termination rates above BTC's interim mobile terminations contained in BTC's RAIO. In particular, NewCo's mobile termination rates will be set based on the BTC URCA-approved mobile termination rates for calls and SMS. As such, NewCo must not charge mobile termination rates above the following amounts:

- 3.10 cents per minute for any incoming domestic calls to NewCo's mobile network

[21]While BTC stated that it is in favour of symmetry in termination rates, its first round comments contained a proposal (without prejudice to its other arguments) on the length and level of asymmetric rates, with it proposing a higher asymmetry than that proposed by NewCo (i.e., an uplift of 40-50% rather than 25%).

- 5.76 cents per minute for any incoming international calls to NewCo's mobile network; and

- 1.75 cents per SMS termination (domestic/international inbound) on NewCo's mobile network.

URCA reserves the right to revisit NewCo's interim mobile termination rates at any time, if URCA, in its sole discretion considers it appropriate to do so.

URCA will review the rates as part of its upcoming termination rate review, anticipated to be commenced in late 2017 or early 2018. URCA may also, no earlier than six (6) months after NewCo's launch of commercial services, review the rates upon request by BTC in the event that BTC demonstrates to URCA's satisfaction that the circumstances which justified asymmetry as described in this Final Determination and Statement of Results, no longer pertain and that therefore the asymmetry determined herein is not fit for purpose.

5 Conclusion

Further to its assessment of the responses to the consultation, URCA has concluded that:

- NewCo holds SMP in providing wholesale termination services on NewCo's cellular mobile network in The Bahamas.
- NewCo is subject to a price control for its wholesale termination services (including cost orientation of rates).
- NewCo shall provide wholesale termination services to OLOs on a non-discriminatory basis.
- NewCoshall publish prominently on its website (and make available upon request through other means) the tariff and non-price terms and conditions prevailing for its termination services.

Further to the above, NewCo must not charge mobile termination rates above the following amounts:

- 3.10 cents per minute for any incoming domestic calls to NewCo's mobile network
- 5.76 cents per minute for any incoming international calls to NewCo's mobile network; and
- 1.75 cents per SMS termination (domestic and international) on NewCo's mobile network.

URCA reserves the right to revisit NewCo's interim mobile termination rates at any time, if URCA, in its sole discretion considers it appropriate to do so.

URCA will review the rates as part of its upcoming termination rate review, anticipated to be commenced in late 2017 or early 2018. URCA may also, no earlier than six (6) months after NewCo's launch of commercial services, review the rates upon request by BTC in the event that BTC demonstrates to URCA's satisfaction that the circumstances which justified asymmetry as described in this Final Determination and Statement of Results, no longer pertain and that therefore the asymmetry determined herein is not fit for purpose.