



Review of the Resale Broadband Obligation imposed on BTC and CBL under Section 116 and Schedule 4 of the Communications Act, 2009

Preliminary Determination

ECS 09/2017

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1. Introduction

In this document, the Utilities Regulation and Competition Authority (“URCA”) sets out its preliminary views on the requirement for The Bahamas Telecommunications Company Ltd. (“BTC”) and Cable Bahamas Ltd. (“CBL”) to continue to offer a resale fixed broadband product and the need for both operators to revise their current product offerings to ensure these are fit-for-purpose and in-line with market developments. In particular, this document has the following core objectives:

- to set forth URCA’s preliminary findings of its SMP assessment of the market(s) for the provisioning of wholesale broadband services in The Bahamas;
- to set forth URCA’s proposed SMP obligations for each of these markets (i.e., the resale fixed broadband obligation), and the rationale for this proposed ex-ante regulatory remedy;
- to set forth the need for both SMP operators to review and revise their current resale fixed broadband products; and
- to invite comments from stakeholders on URCA’s proposals.

URCA recognizes that in case the revised resale broadband offers do not address the prevailing competitive bottlenecks in the wholesale fixed broadband market and/or URCA notices other impediments for alternative operators to enter and actively compete in the retail (downstream) fixed broadband markets, URCA will embark on a wider review of the markets for wholesale fixed access, broadband and leased lines/dedicated connectivity markets to ensure that any prevailing bottlenecks are addressed appropriately, considering in particular whether other regulated wholesale access products should also be introduced. URCA, however, would need inputs from other licensees to inform its position on the alternative wholesale services that would facilitate competition in the downstream fixed broadband market. In particular, the nature and scope of the wholesale service or services required by ISPs to compete in the retail (downstream) fixed broadband markets.

1.1 Background to the Consultation

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

URCA is required to introduce regulatory and other measures which are efficient and proportionate to its purpose and must introduce them in a manner that is transparent, fair and non-discriminatory. This means that where URCA believes that market forces alone are unlikely to achieve a policy objective within a

reasonable timeframe, URCA may introduce regulatory requirements, having due regard to the costs and implications for affected parties.¹ However, as a general principle, market forces should be relied upon as much as possible and regulatory measures should be introduced by URCA only when necessary. In general, this means that more prescriptive regulatory measures are only imposed on operators who have a position in a market such that they can act to an appreciable extent independently of competitors, consumers and subscribers (i.e., a position of significant market power (SMP)).

Section 116 and Schedule 4 of the Comms Act set out interim SMP designations for BTC and CBL. In particular, Schedule 4 designates BTC as having SMP in the markets for fixed voice and data services,² and mobile voice and mobile data services; and CBL as having SMP in the markets for high-speed data services and connectivity, and pay TV services. The Act then imposes a duty on URCA to determine which specific, if any, ex-ante obligations should be imposed on these two operators.

As part of its 2010 Final Decision (ECS11/2010)³, URCA provided further details on the products contained in each of the high-level SMP markets and set out the specific ex-ante obligations for both SMP operators.⁴ This included, amongst others, an obligation for both SMP operators to offer a resale fixed broadband product in the respective geographic markets where they were considered to have SMP.⁵ This SMP obligation, which remains in place to date, aims to provide a low-cost option for alternative providers to enter the fixed broadband market without having to deploy their own network infrastructure and so to offer retail services in direct competition to BTC and CBL. There are currently no other SMP obligations imposed on either operator which require them to provide any other forms of wholesale broadband service.⁶

Both SMP operators have since then developed their resale broadband offers and made them available to interested parties.⁷ In 2010, pursuant to Section 5.1.3 of ECS 11/2010, URCA conducted a high-level compliance check of both resale broadband offers to ensure that these were complete and compliant

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

²URCA notes that footnote 3 on page 14 of the 2009 Sector Policy (available at: <http://www.urbahamas.bs/download/028537000.pdf>) states that the market for fixed voice “...is intended to include the full product set delivered over BTC’s fixed network including both voice **and** data services.” [emphasis added]

³Obligations imposed on Operators with Significant Market Power (SMP) available at: <http://www.urbahamas.bs/download/065539400.pdf>

⁴For CBL, the market review led to ex-ante obligations in the markets for high speed data and connectivity, and the pay TV market. For BTC, URCA imposed ex-ante obligations in the markets for fixed telephony, fixed broadband and mobile voice and data services.

⁵CBL was considered to have SMP in the four (4) islands where it had network coverage, including New Providence, Grand Bahama, Abaco and Eleuthera, with BTC being considered to have SMP in all remaining islands.

⁶In particular, there are currently no regulated active or passive wholesale network access services in The Bahamas (such as, bitstream or local loop unbundling, sub-loop unbundling, line sharing or virtual unbundling services).

⁷ BTC’s resale offer is available on its website (<http://files.btcbahamas.com/2013/12/20/BTC-Broadband-Resale-Offer.pdf>). CBL’s resale offer is available on its website (https://www.cablebahamas.com/media/files/Broadband_Resale_Offer_20Dec10.pdf).

with the relevant SMP obligation. URCA, however, did not review or approve the terms and conditions or pricing of these offers.

In 2014, URCA conducted a full market review of the key retail communications services in The Bahamas, including retail broadband services (ECS 14/2014).⁸ This confirmed, amongst others, BTC's and CBL's SMP designations in retail broadband services. Given the focus on retail services, URCA at the time did not review the competitive dynamics in the relevant wholesale markets and hence, URCA only imposed resale broadband obligations.

URCA understands that there has been no take-up of the resale broadband services to date. However, several industry players have informally raised concerns about the nature of the current offers. Given this, URCA has reviewed the fixed broadband resale SMP obligations in order to: (i) reconfirm the SMP designations of BTC and CBL in wholesale fixed broadband services; and (ii) review the price and non-price terms and conditions of BTC's and CBL's resale offers.

1.2 Procedures for Making a Determination

URCA has wide-ranging powers under the Comms Act, especially as it relates to SMP licensees. URCA's power to impose resale broadband obligations on BTC and CBL is derived from sections 40, and 5(b) of the Comms Act, which allows URCA to introduce regulatory measures where in its view, *"... market forces are unlikely to achieve the electronic communications policy objectives within a reasonable timeframe"*.

In doing so, URCA must adhere to all relevant principles of the Comms Act, in particular:

- the objectives of the electronic communications sector policy as specified under section 4 of the Comms Act; and
- guidelines for regulation and other measures as per section 5(a), (b), (c) and (d) of the said Act.

The procedures for making a determination, as contained in the Comms Act at section 99 (1) (a) and (b), collectively prescribe that if, on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (amongst other things):

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

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA must comply with section 11 of the Comms Act which requires URCA to afford persons with sufficient interest a reasonable opportunity to comment on regulatory or other measures 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 have sufficient interest. Section 13 of the Comms Act establishes that a regulatory and other measure is of public significance if it can lead to, inter alia, a significant impact on

⁸ Available at <http://www.urcabahamas.bs/download/094452600.pdf>

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 affords anyone with sufficient interest the opportunity to comment on URCA's preliminary views and proposals contained herein.

1.3 How to respond to this Consultation

URCA invites responses on this Preliminary Decision from all interested parties. Initial responses on this Preliminary Decision should be submitted to URCA **by 5 p.m. on 15 January 2018**. Interested parties will then have the opportunity to further comment on submissions made by other respondents **by 14 February 2018**.

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

- By hand, to URCA's office at Frederick House, Frederick Street, Nassau; or
- By mail to P.O. Box N-4860, Nassau, Bahamas; or
- By fax, to (242) 393-0153; or
- By email, to info@urcabahamas.bs.

Where a respondent believes that URCA's approach and/or proposals are contrary to relevant principles and objectives or outside the international mainstream, the respondent should state his or her position and clearly set out the reasoning for such position, together with evidential information to substantiate their position.

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

Persons may obtain copies of this document by downloading it from the URCA website at www.urbahamas.bs.

1.4 Structure of the Remainder of this Document

The remainder of the document is structured the following way:

- Section 2 sets out URCA's Preliminary Determination.
- Section 3 provides the context for this Preliminary Determination.
- Section 4 sets out URCA's preliminary review of wholesale fixed broadband services provided in The Bahamas, confirming the continued need for ex-ante regulation in the form of resale fixed broadband obligation.

- Section 5 provides an overview of the review process of the current resale broadband offers from BTC and CBL.
- Section 6 presents next steps.

2. URCA's Preliminary Determination

This Section sets out the Determination which URCA proposes to make, subject to URCA's consideration and review of any representations and objections made by interested parties. URCA's Determination will be addressed to, and will be binding upon, the Licensees referred to in the Determination:

"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.*";
- (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"⁹), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed; and
- (iii) URCA, having conducted a review of wholesale fixed broadband services in The Bahamas in accordance with the Communications Act, 2009 and the SMP Methodology (SMP Guidelines) considered that it is appropriate to make certain determinations regarding the definition of markets, the existence of licensees having SMP in those markets, and the extent to which ex ante regulation is appropriate and necessary in those markets.

URCA proposes to make the following determination:

1. Determination of SMP in Wholesale Fixed Broadband Services

For the reasons explained in Section 4 below, URCA sets out below its preliminary findings from its market review of wholesale fixed broadband services in The Bahamas.

Determination of Relevant Market

Based on its review of the available evidence and in line with the approach set out in Section 3 below, URCA has preliminarily defined the following relevant product and geographic markets for the provisioning of wholesale fixed broadband services in The Bahamas:

- a. Product Scope. The relevant wholesale market for broadband services provided at a fixed location includes the following products: copper and fibre-based broadband services (currently offered by BTC); and cable-based broadband services (currently offered by CBL);

⁹ Also referred to as URCA's SMP Guidelines.

- b. Geographic Scope. There are two separate geographic markets to be considered:
- Geographic Market 1 -The islands where BTC and CBL both have network infrastructure enabling them to offer wholesale broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera); and
 - Geographic Market 2 - All remaining islands (i.e., where only BTC has a network infrastructure enabling it to offer wholesale broadband services).

SMP Determination

Based on its review of the available evidence and in-line with the approach set out in Section 3 below, URCA has assessed the competitive dynamics in each of the relevant geographic markets (as identified above).

Given this, URCA has preliminarily determined that:

1. CBL holds SMP in the market for wholesale broadband services in Geographic Market 1.
2. BTC holds SMP in the market for wholesale broadband services in Geographic Market 2.

Obligations Imposed on SMP Licensees

Given the position of economic strength held by BTC and CBL in each relevant market and in light of the potential challenges to competition which URCA's review has indicated may arise, the following obligations are still applicable to both SMP Licensees, namely:

- i. BTC and CBL shall comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act, Conditions 34 and 35 of the Individual Operating Licences (IOL) and specific SMP obligations on wholesale services, accounting separation and cost accounting as set out in the current and also any future determinations, decisions, regulations issued by URCA and which will remain in place until such time as determined by URCA;
- ii. BTC and CBL shall continue to offer resale fixed broadband products. However, both SMP Licensees are required to review and regularly update their current resale fixed broadband products to ensure these are adequate and up-to-date. The revised resale broadband offers will then be submitted to URCA for approval; and
- iii. BTC and CBL shall continue to publish the tariff and non-price terms and conditions on which their resale broadband offers are provided (i.e., by publishing such details prominently on their websites and additionally making such information available in other formats upon request).

- iv. The published information should include, at the minimum, the following:
- the pricing of the resale broadband services including:
 - an overview of the basis for setting the prices (i.e. the ‘retail minus’ approach);
 - a table setting out for each retail fixed broadband service, the relevant retail price(s) and corresponding resale broadband prices, set in-line with the described ‘retail minus’ approach; and
 - a statement setting out the date when these prices were set and that they will be automatically updated based on the ‘retail minus’ approach and the relevant current retail prices.
 - the main non-price terms and conditions including:
 - detailed description of the resale broadband service offerings;
 - service ordering and delivery process and timings for provisioning of the service;
 - quality of service standards (incl. key performance indicators and financial compensation for missing these);
 - billing and payment requirements;
 - details of a dispute resolution scheme; and
 - operations and maintenance procedures.

For the avoidance of doubt, BTC and CBL will be responsible for ensuring that published terms and conditions are compatible with the statutory framework of the Comms Act, relevant license conditions, the Electronic Communications Sector Policy and all relevant regulatory and other measures issued by URCA from time to time.

- v. The resale broadband prices shall be determined based on a ‘retail minus’ approach. As part of this review process of the resale broadband offers, BTC and CBL will have to validate/revise their proposed prices (including any supporting evidence for setting them) and submit their overall revised resale broadband offers to URCA for approval.
- vi. To ensure that the resale fixed broadband offers remain up-to-date and in-line with the SMP operators’ retail fixed broadband service offerings, BTC and CBL will be required to undertake the following regular review processes:
- a. When informing URCA about any proposed changes to the price terms of their retail fixed broadband services, BTC and CBL will need to provide to URCA a revised resale broadband offer (in-line with the proposed changes to their retail fixed broadband price). The revised resale broadband offer will then have to be published on BTC’s and CBL’s websites no later than the date the new/amended retail fixed broadband prices come into effect.

- b. Further, every six (6) months, both SMP operators will need to review the overall price and non-price terms of their resale fixed broadband offers to ensure these are up-to-date and in-line with their retail fixed broadband service offerings. The revised resale broadband offers need to be submitted to URCA for notification, including a link to where these documents can be found on BTC's and CBL's websites.

URCA notes that the above review and approval process will repeal and replace the current review process set out in Section 5.1.3 of ECS 11/2010.

3. Context for this Preliminary Determination

In this Section, URCA firstly sets out the current extent of ex-ante regulation of wholesale fixed broadband services in The Bahamas. This is followed by an outline of URCA’s approach to conducting SMP assessments.

3.1 Previous Decisions on Wholesale Fixed Broadband Services in The Bahamas

Relevant to this review are URCA’s 2010 and 2014 SMP findings in respect of the relevant retail and wholesale fixed broadband markets. In 2009, pursuant to section 116(2) and (3) of the Comms Act, URCA initiated a public consultation under section 116 and Schedule 4 of the Comms Act on ex-ante remedies to be imposed on specified licensees presumed to have SMP in the provision of the following services:

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

That public consultation culminated in the publication of URCA’s Final Decision on *Obligations imposed on Operators with Significant Market Power(SMP)*” (ECS 11/2010) dated 22 April 2010, in which URCA determined that the retail and wholesale markets as detailed in **Table 1** below fall within the high level SMP markets applicable to BTC and CBL, including the relevant markets for wholesale access to broadband and transmission networks.

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

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

URCA’s finding that wholesale access to broadband and transmission networks were in the SMP markets applicable to BTC and CBL triggered the standard regulatory obligations on BTC and CBL under section 40(4) of the Comms Act, in respect of which SMP Licensees shall –

- a) *not unduly discriminate against particular persons or a particular description of persons in relation to the electronic communications services offered by them;*
- b) *provide technical specifications, or other relevant information about any interconnection essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, amongst others; and*
- c) *not adopt technical specifications for a network that prevents interconnection and interoperability with a network of a competitor.*

As part of its 2010 Final Decision, URCA also placed the following additional SMP obligations on BTC and CBL, as summarized in Table 2 below. This included, amongst others, for both BTC and CBL to offer (end-to-end) broadband products to allow for resale of BTC’s/CBL’s retail broadband products (i.e., resale offers). This fixed broadband resale SMP obligation remains in place to date. Moreover, a market review was done in 2014 and although some of the new obligations imposed are yet to be implemented, they replaced the 2010 obligations. These new obligations (e.g., price cap) will be implemented in the near future.

Table 2: Current Regulatory Obligations imposed on BTC and CBL

SMP operator	Relevant products	SMP obligations
BTC		
	Retail – Fixed access and calling services	Retail price cap regulation, plus Retail Pricing Rules (RPR)
	Retail – Mobile access and calling services	Ex- ante retail price regulation, based on Retail Pricing Rules for Non Price Capped Services (RPR)
	Retail - Broadband services	Geographic averaging of prices
	Wholesale - Call transit, call and SMS termination, entry into directory enquiries database & ancillary services, and enabling products (e.g., joining circuits and point of interconnection)	Publication of Reference Access and Interconnection Offer (RAIO) with cost-based charges
	Wholesale fixed broadband - Network access	Offer (end-to-end) broadband product to allow for resale of BTC’s broadband products
	All SMP products	Develop separated accounts in accordance with URCA’s Accounting Separation Guidelines
CBL		

Retail – Pay TV services	Retail price cap regulation, plus Retail Pricing Rules (RPR)
Retail - Broadband services	Retail price cap regulation
Wholesale - Fixed call termination	Regulated fixed call termination charges, in-line with those set for BTC ¹⁰
Wholesale fixed broadband - Network access	Offer (end-to-end) broadband product to allow for resale of CBL's broadband products
All SMP products	Develop separated accounts in accordance with URCA's Accounting Separation Guidelines

3.2 Approach to Conducting SMP Assessments

In conducting market reviews, URCA must take account of specified procedures in the Comms Act¹¹, and the analytical framework (i.e., procedures and criteria) set forth in URCA document reference ECS 20/2011 (*“Methodology for Assessment of Significant Market Power [SMP] under Section 39(2) of the Communications Act, 2009”*).¹² 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.”

3.2.1 Description of Analytical Framework for Market Reviews

As illustrated in Figure 1 below and referred to in URCA's SMP Methodology, there are three main stages to market reviews:

- i. defining relevant product and geographic markets (Stage 1);
- ii. identifying operator(s) with SMP in each defined market(s), if any (Stage 2); and
- iii. remedy design where a licensee is found to have SMP in a market (Stage 3).

¹⁰ECS 13/2013 available at: <http://www.urcabahamas.bs/download/067809100.pdf> and ECS 12/2014, available at; <http://www.urcabahamas.bs/download/085881400.pdf>

¹¹ Section 39(1) and (2).

¹² Issued 13 October 2011 and available at <http://www.urcabahamas.bs/download/059384700.pdf>.

Figure 1: Three stages of market review process



Stage 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 sufficiently interchangeable or substitutable by customers or suppliers by reason of product characteristics, intended use and pricing, such that a hypothetical monopolist in the provision of one product could not profitably increase the price of that product from the competitive level.

Product Market Definition

In defining the relevant economic markets, URCA utilizes, *inter alia*, the ‘Small but Significant Non-transitory Increase in Price’ (SSNIP) test, otherwise known as the Hypothetical Monopolist Test (HMT). The SSNIP test assesses customer (demand-side substitution) and supplier (supply-side substitution) behavior in response to a hypothetical price increase above the competitive level (taken to be in the range of 5-10%) for a focal product. This is to determine whether customers (producers) have the ability and incentive to switch in sufficient numbers to (from) an alternate product in response to a SSNIP (of 5-10%). If they can and do, the market definition is widened to include the alternative products.

- When assessing demand-side substitutability, the question is whether the price increases provoke a sufficient number of customers to switch to alternative products offered by any existing supplier such that it would make the hypothetical price increase unprofitable. If sufficient subscribers would switch to the alternate product thereby making the price increase unprofitable, then the alternative product is included in the relevant product market.
- For supply-side substitutability, the SSNIP test assesses whether the price increase could provoke an existing operator, 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 common-sense. Given that conducting a SSNIP test formally is often not possible (including in this instance, given the lack of quantitative information on potential switching), URCA has examined in this event the likely response of consumers and producers to a price increase by examining the four factors listed in Section 3.1 of ECS 20/2011 for product market definition analysis, namely:

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

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.

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

Stage 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"*.¹³ 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:

¹³ Section 39(3)(a) of the Comms Act.

- "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 may consider when assessing market power can be found in Section 3.2 (p.6 to 7) of ECS 20/2011.

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

Stage 3: Remedy Design

The third and final stage involves determining the regulatory obligations, if any, that should be imposed on SMP licensees to remedy the competition concerns/potential market failures that could arise given the position of SMP.¹⁴ 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.

¹⁴ 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. Competition Assessment of Wholesale Fixed Broadband Market

This Section sets out URCA’s preliminary review of wholesale fixed broadband services provided in The Bahamas, covering the three stages of the market review framework discussed above. As part of this, URCA sets out its preliminary views and consultation questions.

As a first step, URCA notes that given the prevailing structure of the market for broadband services in The Bahamas, any competition assessment on the wholesale level is strongly linked to its 2014 competition assessment and SMP findings in the relevant retail broadband markets. This is because BTC and CBL, the two vertically integrated network providers, also remain the principal providers of retail broadband services in The Bahamas. While there are independent Internet Service Providers (ISP) in the market, they together serve less than 5% of the total market.¹⁵ In addition, BTC and CBL also own and operate the key network infrastructure to supply wholesale broadband services. Given this, the relevant wholesale market will remain characterized by both operators self-supplying these services (i.e., there is currently limited take-up of wholesale broadband services offered by both operators). As such, in assessing this wholesale market, URCA has considered both volumes provided to third parties and those supplied to BTC’s and CBL’s own downstream operations (i.e., self-supply). This is because of the above and due to the fact that market power at the wholesale level is linked to the level of competition in the relevant retail markets (to which the wholesale products form an input to). In particular, vertically integrated operators (i.e., BTC and CBL) would only have an incentive to increase the price of the self-supply input if this is reflected in higher retail prices, with retail consumers not switching away from that service in sufficient numbers to render the higher prices unprofitable (commonly referred to as indirect constraints). Taking into account any direct and indirect constraints to vertically integrated operators, it is relevant to consider the total available volumes of that wholesale service (i.e. volumes supplied to third parties and self-supply).

Further, by including self-supply, this provides a better indication of the scope that each operator may have to provide the wholesale service to third parties. This is particularly relevant in markets where there are limited third party buyers and the incumbent network operators are the only parties that can provide a potential wholesale.¹⁶

In wholesale service markets which are predominantly characterized by self-supply, the wholesale (upstream) market share of each service provider will be similar to that in the relevant retail (downstream) retail service market. As such, any SMP findings on the retail level are also likely to hold on the wholesale level. For example, if CBL has a prevailing high market share of total retail broadband connections in the geographic market it is present in, it will have a similar market share in the relevant wholesale market, as both operators only self-supply in that market. One would also not expect the barriers to entry to be any

¹⁵URCA does not hold information on the total number of broadband subscribers of all ISP. Instead, their market share is estimated based on wholesale connection information provided by BTC and CBL.

¹⁶ For example, the European Commission refers to the third party “merchant market” and concludes that “*where there is no merchant market and where there is consumer harm at retail level, it is justifiable to construct a notional market when potential demand exists. Here the implicit self-supply of this input by the incumbent to itself should be taken into account*”.

lower for wholesale service market than the relevant retail service markets. This is reflected in URCA's preliminary findings set out below.

4.1 Market Review Stage 1 – Market Definitions

URCA now defines the relevant market for fixed broadband services, both in terms of the relevant product and geographic scope.

4.1.1 Product Markets

Broadband services can be delivered via several network technologies. In The Bahamas, the following main broadband networks technologies are currently deployed:

- a DSL network (including both copper and fiber based access network) operated by BTC;
- 4G/LTE mobile networks operated by BTC and Aliv; and
- a coaxial cable network operated by CBL.¹⁷

Further to delivering broadband services via their own network infrastructure, service providers can provide retail broadband services by gaining access to one of the existing networks (either on commercial or regulated terms). The service provider could then offer broadband retail services to end users. Wholesale fixed broadband services generally include direct internet access, line sharing services, bitstream services, virtual unbundling (VULA), access to physical network infrastructure (e.g., ducts and dark fiber) and self-supply of broadband services over copper, fiber or coaxial cable technology. It further includes wholesale broadband resale services. As mentioned above, both BTC and CBL are currently required, as part of their SMP obligations, to offer a resale broadband product. There are currently no other regulated wholesale fixed broadband or access services in The Bahamas.

Relevant retail markets

Wholesale services form the inputs for delivering retail services. As such, when defining wholesale service markets, it is important to ensure consistency in the market definitions between the relevant retail and wholesale service markets.

Given the above, the starting point for URCA's review of the market in question is its 2010 and 2014 SMP assessments, where the relevant product market for retail broadband services provided at a fixed location was determined to include both fixed (DSL) broadband services¹⁸ (offered by BTC) and cable-based

¹⁷ There are further network infrastructures deployed by alternative operators in The Bahamas. These networks are mostly fixed wireless networks with a limited geographic coverage.

¹⁸ URCA notes that while having deployed both copper and fiber lines in its access network, BTC does not differentiate its retail DSL services accordingly. Given this, URCA considers that copper and fiber based fixed broadband services form part of the same product market.

broadband services (currently offered by CBL). This market covered both residential and business customers.

URCA has assessed whether there has been any significant change in the potential substitutability of the products considered in the 2014 review which would require it to change its position on the relevant product market for fixed broadband services. When doing so, URCA has come to the preliminary conclusion that the 2014 product market definition remains relevant for retail broadband services. This is based on a review of the following:

- **Substitution between DSL/fiber and Cable based Broadband Services.** When assessing the potential substitutability between DSL and cable based broadband services, URCA has started from its previous findings in 2014 that both services were found to be in the same product market, and then assessed whether there has been any significant change in the market since then which would require it to change its position on these services. When doing so, URCA has taken into account demand side and supply side factors.
- Demand-side substitutability - Product characteristics. Both BTC's and CBL's broadband offerings are comparable, offering unlimited high-speed internet connectivity for a monthly charge (plus initial set-up charges). A key parameter of broadband offerings is the advertised download speeds. Since the 2014 review, both operators have increased their advertised speeds – BTC now offers broadband speeds between 8 Mbps and 150 Mbps, and CBL between 20 Mbps and 70 Mbps.
 - Demand-side substitutability - Prices. While the prices for CBL's unbundled broadband products are higher than those for BTC's products (especially for the higher speed products), the difference in prices reduces significantly for CBL's bundled broadband and pay TV products. In particular the lowest speed offering (i.e., \$39.99 for CBL's bundled 20Mbps product vs. \$29.99 for BTC's 8Mbps product and \$34.99 for its 16Mbps product). Given that most of CBL's customers currently subscribed to bundled offers (i.e., 87% of CBL's total broadband customers subscribed to a pay TV and broadband bundle, 46% of which also subscribed to a fixed voice service) and CBL's 20Mbps product being the most popular offering (i.e., 89% of CBL's total broadband customers were subscribed to the entry-level offer), URCA considers the effective prices of these services to be sufficiently similar to support substitution, were the price of BTC's fixed broadband services to increase by 5-10%.
 - Supply-side substitutability. There is unlikely to be supply-side substitution between fixed broadband access services provided using different technologies. This is because of the costs and time required to roll out a network with new technology in the event of a SSNIP, and in the absence of regulated wholesale access services to other network technologies.

Based on the evidence available, URCA believes that cable based broadband represents an effective substitute for copper/fiber-based broadband services, where it is available. This conclusion is limited to those areas where CBL provides broadband. URCA further considers BTC's fixed broadband to represent an effective substitute for a cable based broadband offering.

- **Substitution between Fixed Broadband and Mobile Data Services.** Both Aliv and BTC offer mobile broadband (data) services based on their long-term evolution (LTE) mobile network infrastructure. These mobile data services could form a potential substitute to fixed broadband services. As such, URCA has reviewed the current mobile data offerings to assess whether they could form an effective substitute for fixed broadband services in the near future.
 - Demand-side substitutability - Product characteristics. LTE mobile data services offer comparable download speeds to those currently available on fixed broadband. However, URCA further understands that both service providers only offer mobile data services for smart phones and tablets and URCA is not aware that either service provider having stated any intention to offer “dongle-based” mobile broadband services to date. This is likely to limit the user experience of mobile data services vis-à-vis fixed broadband; however, tethering¹⁹ could increase substitutability going forward. Most mobile data plans also have a monthly data limit (after which extra usage charges will apply), which may further limit the substitutability with fixed broadband services which provide ‘unlimited’ Internet access. Moreover, mobile and fixed broadband services are used differently. While fixed broadband access services are shared in a household, mobile broadband services are commonly used for personal broadband access. These services may be complements as a result of this, with mobile broadband services primarily being used outside the home and “on the go”, but with customers often “offloading” to fixed (Wi-Fi) broadband services at home, even if using a mobile device.
 - Demand-side substitutability - Prices. In order to get mobile data services, a prepaid user needs to either purchase a mobile data package from BTC worth at least \$20.00 per month (with a data allowance of 1 GB)²⁰ or subscribe to mobile postpaid plans costing at least \$20.00 per month (with a data allowance of 1GB).²¹ For mobile plans with monthly data allowances of 10 GB or more, users have to pay at least \$35.00 per month. This compares to monthly charges from \$39.99 for BTC’s and CBL’s fixed broadband services (which provide ‘unlimited Internet access).
 - Demand-side substitutability - Switching evidence. Opposing trends in total fixed and mobile broadband connections could be evidence of substitution. However, in The Bahamas total fixed broadband connections have increased over recent years, despite the growth of mobile services. URCA considers this as evidence that Bahamian customers do not use fixed and mobile broadband services as substitutes, but more as

¹⁹Tethering allows using a smartphone (and mobile data plan) to access the internet on a computer or laptop.

²⁰ BTC offers a number of prepaid data plans ranging from \$2.49 per day for 500MB to \$35 per month for 15 GB (<https://www.btcbahamas.com/explore/mobile/prepaid>). Based on the current offerings a customer would have to spend at least \$20 per month for mobile prepaid services (i.e., buying two 2GB plans which are valid for 20 days each).

²¹ <https://www.btcbahamas.com/explore/mobile/postpaid>

complementary services. Indeed, the roll-out of fiber networks and increasing demand for (higher speed) fiber-based broadband services could make complementarity of fixed and mobile broadband services stronger going forward.

- Supply side substitutability. There is no supply-side substitution between fixed and mobile broadband services. These services are delivered based on different access network technologies.

Consequently, based on information received to date, URCA does not consider that LTE mobile data services represent an effective demand side substitute to fixed broadband services and thus, they do not form part of the relevant product market for fixed broadband services. Instead, end-users are more likely to use LTE mobile data services as a compliment to fixed broadband services, allowing them to access the Internet (at high-speeds) on the move as well as at home. **However, URCA welcomes, as part of the consultation responses, information on the current average monthly usage/traffic of fixed and mobile broadband users to further inform its analysis.**²²

Relevant wholesale markets

URCA has reviewed the scope for demand-side and supply-side substitution for wholesale fixed broadband services in The Bahamas. In doing so, it has focused on the demand-side and supply-side substitutability of resale fixed broadband services.

- Demand-side substitutability. In-line with the relevant product scope of the retail broadband services, resale fixed broadband services delivered over copper, fiber or coaxial network infrastructure appear to be demand side substitutes. An alternative service provider offering downstream retail services based on a copper/fiber-based resale fixed broadband service is likely to switch to a coaxial-based resale fixed broadband service in the event of a SSNIP on copper/fiber-based resale fixed broadband service (and vice versa). Any such substitution would allow the service provider to continue to offer its retail customer the same level of network quality of service and would not need to undertake significant additional network investment.

However, URCA considers there to be limited scope for demand-side substitution from a resale fixed broadband services to a wholesale mobile broadband service. This is due to: (i) there being no direct constraint at the wholesale level (i.e., due to the prevailing differences in network quality and prevailing cost differences, it appears unlikely that alternative service providers would switch to providing resale fixed broadband services based on wholesale mobile services in the event of a SSNIP on resale fixed broadband services); and (ii) there being no indirect constraint from mobile services (i.e., as there is not sufficient substitution at the retail level to include both services in the same product market, a SSNIP in the wholesale price of fixed which led to a (smaller) increase in price of retail fixed broadband

²² Alternatively, if this information is not available, licensees may provide the total retail broadband related traffic for 2016, plus the total fixed broadband subscribers for 2016.

services would not lead to consumers switching to mobile broadband services - for the reasons set out in the retail market Section above) and so would not lead to wholesale customers switching to mobile.

- Supply-side substitutability. As discussed in the context of retail service markets above, there is unlikely to be supply-side substitution between resale broadband services provided using different fixed or mobile technologies. This is because of the costs and time required to roll out a network with new technology in the event of a SSNIP, and in the absence of regulated wholesale access services to other network technologies. There is further need for separate service licenses to deliver fixed and mobile services.

Based on the evidence available, URCA considers that cable based resale fixed broadband services represent an effective substitute for copper/fiber-based resale fixed broadband services, where it is available (and vice versa).

Preliminary Conclusion on Wholesale Product Markets

Having regard to the arguments presented above, URCA preliminarily determines that the relevant market for wholesale fixed broadband services includes broadband services delivered via copper, fiber and coaxial cable networks.

Consultation question – Product market definition

Q1. Please provide comments on URCA’s preliminary view on the relevant product market definition in relation to wholesale fixed broadband services.

4.1.2 Geographic Markets

The starting point for URCA’s assessment is again its 2010 and 2014 SMP assessments where two geographic markets were defined for retail and wholesale broadband services: (i) all areas where both BTC and CBL had network coverage; and (ii) all remaining areas, where effectively BTC was the sole provider. URCA then assessed whether there has been any significant change in the market since the 2014 review which would require it to change its position on the geographic market for wholesale fixed broadband services. When doing so, URCA has come to the preliminary conclusion that two (2) geographic markets remain relevant for wholesale fixed broadband services. This is based on a review of the following:

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

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

URCA is not aware of any changes in the market since 2014. Given the prevailing differences in the competitive conditions in the areas where both BTC and CBL are present to the areas where only BTC is present, URCA considers it necessary to retain sub-national markets for wholesale broadband services.

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

Preliminary Conclusion on Geographic Markets

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

- a) *The islands where BTC and CBL have network infrastructure enabling them to offer wholesale broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).*
- b) *The islands where only BTC has network infrastructure enabling it to offer wholesale broadband services (i.e., all remaining Family Islands).*

Consultation question – Geographic market definitions

Q2. Please provide comments on URCA’s preliminary view on the relevant geographic market definitions in relation to wholesale fixed broadband services.

4.2 Market Review Stage 2 – SMP Assessment

Having defined the relevant product and geographical market for wholesale broadband services, URCA now carries out the competition assessment, as outlined in Section 3.

Current market structure and control of bottleneck/essential infrastructure

BTC and CBL own and operate the two key network infrastructures able to deliver fixed broadband services in The Bahamas. BTC has national network coverage, while CBL covers the four main islands (i.e., geographic market 1). While there are other independent ISPs which have partly deployed their own infrastructure, their network coverage and overall size remain very limited.

Barriers to Entry and Expansion

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

Due to the limited existing alternative fixed network infrastructures beyond those of BTC and CBL and the high costs of deploying such infrastructure, URCA considers there are non-trivial barriers to expansion for other parties in this market.

Where available, URCA has also considered evidence on the other factors outlined in the analytical framework which could potentially increase the likelihood of barriers to entry and/or expansion.²³ These also support URCA's SMP findings in the broadband market (in particular, the existence of economies of scale and scope, BTC's and CBL's control over bottleneck/essential infrastructure and the number of active competitors). However, the strength of evidence on the factors considered here make these factors less essential. They have therefore not been outlined in greater detail in this Section.

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

Licensee's Market Share

As a key indicator, URCA has reviewed recent trends in market shares, using both operational and financial data. In ECS 20/2011, URCA established a presumption of SMP where a licensee has a market share in excess of 40%.²⁴

As these markets are predominantly characterized by self-supply, the wholesale (upstream) market share of each licensee is similar to that in the retail (downstream) market for fixed broadband services (as defined in the previous Section). As such, URCA has reviewed recent trends in market shares in retail fixed broadband services, separately for geographic markets 1 and 2.

Geographic Market 1 - The islands where CBL and BTC are both offering retail fixed broadband services

The graph below sets out BTC's and CBL's share of total retail broadband connections over the period 2014 to 2016.²⁵ During this period, CBL's market share has declined from [●confidential] to

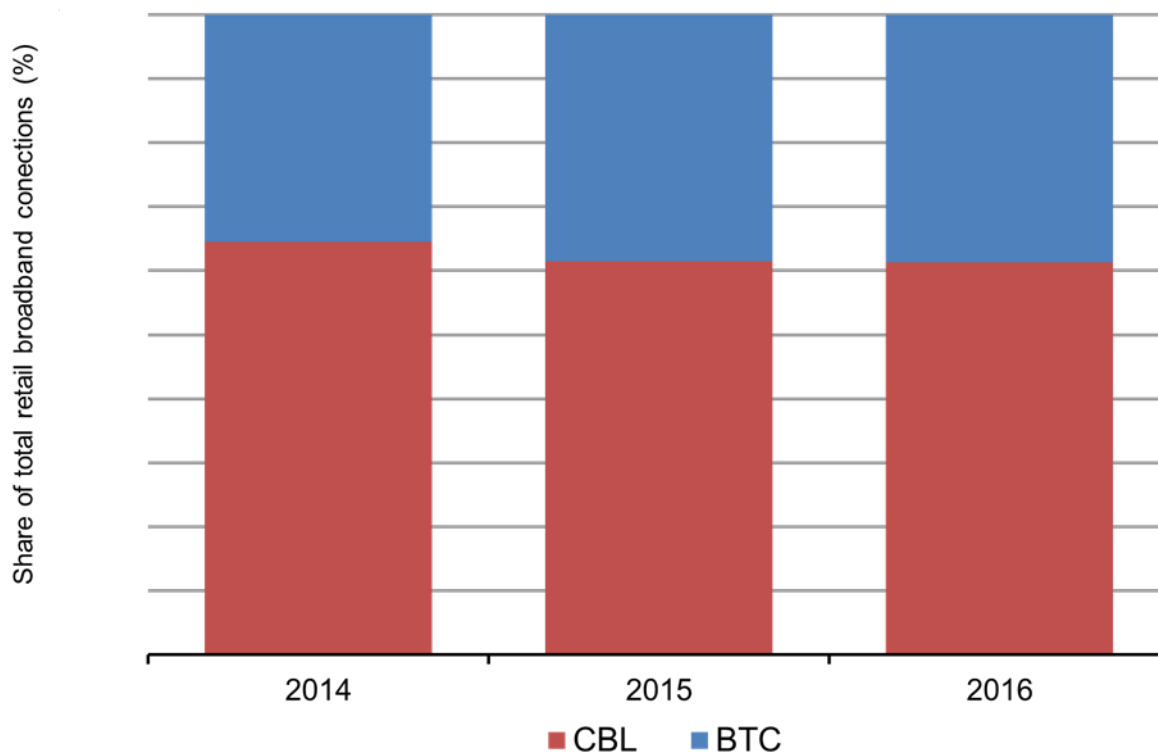
²³These include: the control of Infrastructure not easily duplicated, a licensee's ability to influence market conditions, the number of active competitors, a licensee's access to financial resources; the overall size of the licensees; and their experience in providing services to the market.

²⁴See ECS 20/2011 (Section 3.2, p.6). URCA may adopt one or more measures of market share, including Total gross revenues, total subscribers, total traffic volumes (bulk or otherwise) and/or total capacity.

²⁵URCA has not been provided with sub-national broadband connection data from BTC. As such, the market

[●confidential]. However, it remains significantly above URCA’s 40% market share threshold for SMP.²⁶ URCA further notes that there has been limited change in market shares in recent years.

Figure 2: Market shares for total retail broadband connections, 2014-16



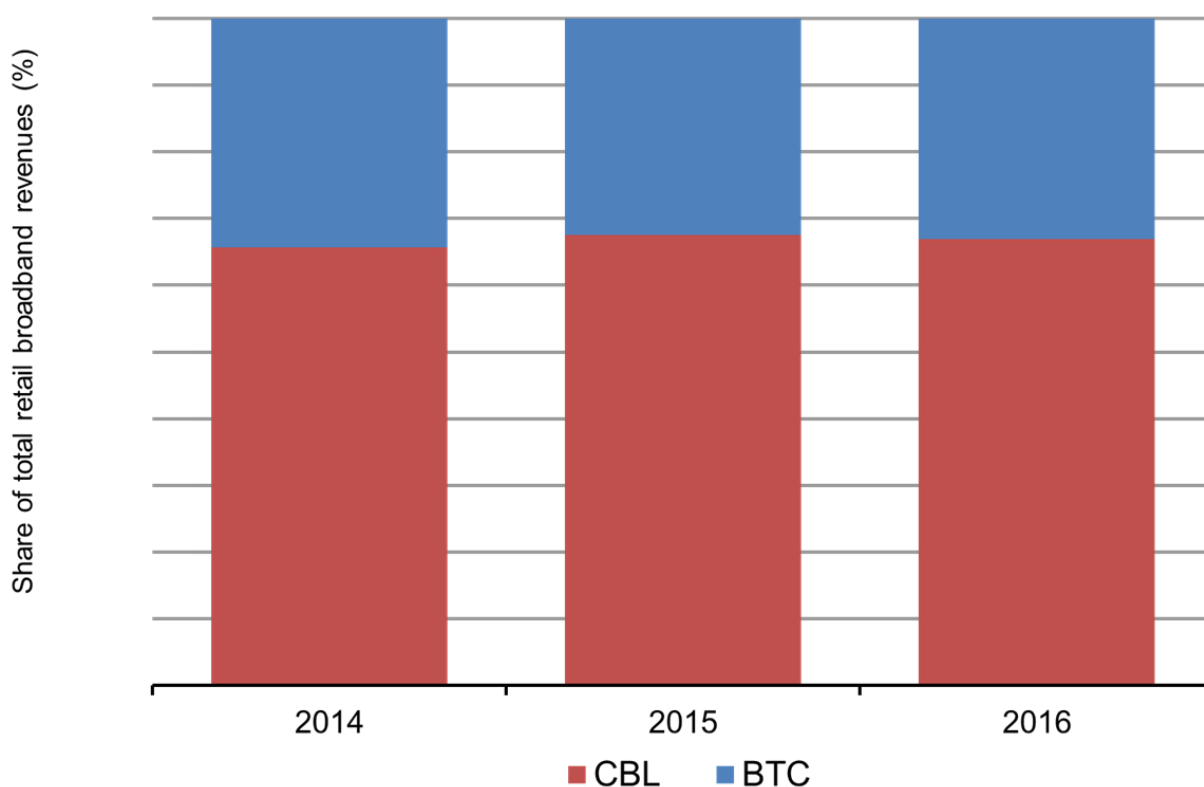
Source: URCA analysis based on operator data

This also holds for revenue market shares, as illustrated in the graph below. CBL’s share of total revenue for retail broadband services in this geographic market has remained around [●confidential] between 2014 and 2016.

shares analysis presented in the graph is based on BTC’s total broadband connections. This leads to a conservative estimate of CBL’s share of total broadband connections in the geographic market 1.

²⁶See ECS 20/2011 (Section 3.2, p.6)

Figure 3: Market shares for total revenues for retail broadband services, 2014-16



Source: URCA analysis based on operator data

The analysis of recent market share trends suggests that there has been no significant fall in CBL’s market share since 2014, thus indicating that competition has not changed substantially since URCA’s last market review in 2014. Further, CBL’s market share remains significantly above the 40% threshold at which a presumption of SMP is made.

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

As BTC is the major broadband operator within this geographic market and URCA is not aware of any alternative operator providing retail broadband services based on BTC’s wholesale offerings, BTC would hold close to 100% market share in this geographic market.

Countervailing Buyer Power (CBP)

CBP could limit the ability of CBL or BTC to set wholesale broadband prices above the competitive level and hence to behave to an appreciable extent independently of buyers and ultimately of consumers. However, in the context of fixed wholesale broadband services, this is unlikely to hold. In particular, URCA

has not seen any evidence in support of market conditions, commonly supportive of CBP. These include, amongst others:

- Any one buyer's share of wholesale purchases constituting a sizeable proportion of BTC's or CBL's total output. For example, the wholesale market remains characterized by self-supply. Further, in 2016, [●confidential] of CBL's retail broadband customers were residential, contributing [●confidential] of its total broadband related revenues.²⁷
- A single or a few buyers' shares of purchases constituting a sizeable proportion of BTC's or CBL's total cost; and
- A buyer who is able to switch between suppliers (i.e., BTC and CBL) easily, where the supplier has invested in assets specific to that buyer.

Given the above, URCA considers that any potential CBP does not constrain BTC or CBL from pricing above the competitive level.

Preliminary Conclusion on SMP Assessment

URCA assessed the extent of competition within the defined wholesale fixed broadband markets against a range of structural and behavioral factors. Having considered amongst other criteria, operators' market shares in each defined geographic market, coupled with high barriers to entry and expansion and the absence of countervailing buyer power, URCA concludes that the wholesale broadband markets are not likely to become effectively competitive within the timeframe of this review. In particular, URCA finds that the wholesale markets in question are characterized by high and non-transitory barriers to entry/expansion, and there is no tendency towards effective competition within the relevant time horizon.

Hence, pursuant to section 39(1) of the Comms Act, URCA has reached the following positions regarding BTC and CBL in the geographic markets for wholesale fixed broadband services in The Bahamas:

URCA has preliminary determined that:

- *CBL has SMP in the market for wholesale fixed broadband services in the areas where it has network infrastructure enabling it to offer these services (i.e., geographic area 1); and*
- *BTC has SMP in the market for wholesale fixed broadband services in all remaining areas (i.e., geographic area 2).*

Consultation questions – SMP Assessment

Q3. Please provide comments on URCA's preliminary view on URCA's SMP findings in the markets for wholesale fixed broadband services.

²⁷A similar observation can be made for BTC.

4.3 Market Review Stage 3 – Ex-Ante Regulatory Remedies

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

The overall objective of regulation is to simulate competition in those markets in which competition has not yet emerged, and is unlikely to emerge and to put remedies in place where there is the potential for SMP operators to abuse their market position (“market failures”). As such, in Section 4.3.2 below, URCA identifies the specific competition concerns and the potential consumer harm which may result, absent any ex-ante regulatory intervention in the wholesale fixed broadband service markets considered in Sections 4.1 and 4.2 above. URCA then provides an overview of the SMP obligations it proposes to introduce or maintain in each relevant market considered in this review (Section 4.3.3).

Prior to this, URCA briefly confirms the need for ex-ante regulation of wholesale fixed broadband markets.

4.3.1 The need for ex-ante regulation

URCA is required to introduce regulatory measures which are efficient and proportionate to their purpose and to introduce them in a manner that is transparent, fair and non-discriminatory. This means that where URCA believes market forces alone are unlikely to achieve a policy objective within a reasonable timeframe, it may introduce regulatory requirements, having due regard to the costs and implications for affected parties. However, as a general principle, market forces should be relied upon as much as possible and regulatory measures should be introduced by URCA only when necessary. In general, this means that regulation is only imposed on an operator with the ability to abuse its SMP position in a market.

Establishing the need for ex-ante regulation should be based on the (EU) Three Criteria Test. This states that ex-ante obligations can be necessary if the defined market is found to have the following three characteristics: ²⁸

- a) high non-transitory barriers to entry/expansion;
- b) no tendency towards effective competition; and
- c) a structure such that ex post intervention by itself is unlikely to be sufficient to tackle or mitigate abuse of an SMP position.

²⁸The EU Three Criteria Test is applied cumulatively. This means that failure to meet any one of them would indicate that a market should not be identified as susceptible to *ex-ante* regulation.

While the Three Criteria Test provides a helpful framework to ensure that ex-ante regulatory remedies are targeted, URCA notes that, in practice, the first two criteria are covered in the SMP assessment. In particular, as set out in Sections 4.2 above, both relevant markets under consideration within this review are characterized by high non-transitory barriers to entry and expansion. Further, when assessing the competitive dynamics within each of the relevant markets, URCA has considered both, the current level of competition and any expected changes to the level of competition within that market in the foreseeable future. Given this, in URCA's view, once an operator has been found to have SMP, the Three Criteria Test primarily requires an assessment on whether ex-post intervention would be sufficient to remedy any abuses.

URCA is of the view that its ex-post powers under section 69 (Part XI) of the Comms Act are likely to be insufficient to investigate and remedy anti-competitive behavior in these relevant markets. Given that BTC and CBL control access to the key network infrastructure required to deliver retail fixed broadband services, ex-ante remedies are likely to be required to ensure that both licensees offer access to their facilities on reasonable terms and conditions. However, the design and implementation of such remedies – that can only be practically administered on an ex-ante basis - would be lengthy. Without such ex-ante regulation, including prices, both licensees may have the incentive to restrict access to their networks, or to only provide such access on unreasonable conditions (i.e., discriminating between providing these wholesale services to their own downstream business and third parties and/or setting wholesale prices above the competitive level). Further, ex-post investigations can only remedy an abuse after it has taken place. The process of identifying potentially abusive behavior, verifying whether it constitutes an abuse and then remedying the abuse is a time and resource intensive exercise. This may lead to considerable harm to those who have been affected by the abusive behavior, which in the case of alternative (smaller) operators may affect their ability to provide the relevant services going forward. As such, URCA is of the view that it is important to prevent any abusive behavior by BTC and CBL from taking place in the first instance.

Because all three criteria have been cumulatively met, URCA preliminarily has concluded that the wholesale markets it has defined are susceptible to ex-ante SMP regulation. In other words, absent SMP regulation, the market failures identified would be likely to result in an abuse of dominance by BTC or CBL, thereby limiting the development of competitive markets, with negative effects on competitors and ultimately consumers.

Consultation questions – The need for ex-ante regulation

Q4. Please provide comments on URCA's preliminary view that the wholesale fixed broadband service markets identified are susceptible to ex-ante regulation.

4.3.2 Expected Competition Problems and Consumer Harm

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

Given BTC's and CBL's position of SMP in the relevant wholesale fixed broadband markets (i.e., geographic markets 1 and 2, respectively), URCA believes that both licensees could be in a position to either set excessive prices in the market and/or to refuse to supply downstream rivals:

- **Excessive Charging.** Excessive charging at the wholesale level is a key concern of regulatory and competition authorities in the electronic communications sector. Excessive pricing occurs when the SMP operator is able to set its prices above the efficient cost of providing these services and thus earn greater profits (super normal profits) than would otherwise be possible in a competitive market.

Excessive wholesale charging can lead to higher retail tariffs for end users in related downstream markets. It can also potentially lead to margin squeeze concerns in related downstream markets, as alternative operators who depend on the SMP operator's wholesale services for their retail service offerings may not be able to replicate the SMP operator's retail offers, given the prevailing wholesale prices.

As such, excessive charging by BTC and/or CBL is possible given their control over essential network infrastructure facilities and the limited degree of countervailing buyer power that access seekers have. Excessive pricing would result in higher input prices for any competing network which in turn could lead to higher retail tariffs to customers on different networks.

- **Refusal to Supply.** Refusal to supply occurs where a SMP operator in a wholesale market attempts to leverage its market power from the wholesale market into the relevant (retail) downstream market by denying, either explicitly or constructively, access to its network, or refusing to deal with competitors in the downstream market. This could amount to anti-competitive behavior if, for example, the SMP operator controls a wholesale input or inputs which are essential for other players to be able to operate and/or compete in the downstream market and which are technically or economically difficult to replicate. If the ability to replicate the SMP operator's

wholesale product is limited, a refusal to supply may lead to foreclosure of the relevant downstream market.²⁹

Absent regulation of the wholesale access (and interconnection) services, the SMP operator may engage in exclusionary conduct to the detriment of competition and customers thereby hindering the growth and development of the overall ECS market. There is also the potential for discriminatory conduct to favor affiliates or a third party operator or group of operators to the detriment of other licensees. Other exclusionary conduct may include delay in the negotiation of access (and interconnection) agreements in a timely manner, and adopting technical interfaces that prevent interoperability between networks.

URCA considers that both of the competition problems identified above could have detrimental effects on the level of competition in the communications sector which, in turn, could impact on the interests of consumers who may face (among other things) higher prices, lower quality products and lower levels of innovation. In the light of this, URCA sets out in the next Section its proposed regulatory obligations for SMP operators in the wholesale fixed broadband markets.

Consultation questions – The need for ex-ante regulation

Q5. Please provide comments on URCA’s preliminary views on the main competition problems or market failures that could arise from a licensee having SMP in respect to the provisioning of wholesale fixed broadband services.

4.3.3 Proposed SMP Remedies

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

URCA has therefore considered regulatory measures to remedy, mitigate or prevent any potential anti-competitive behavior by BTC or CBL in the wholesale fixed broadband markets it proposes to impose.

As a first step, URCA notes that a determination that a licensee has SMP in a relevant market triggers the non-market specific obligations in section 40(4) of the Comms Act and Conditions 34 and 35 of its IOL. As such, these will automatically apply to BTC and CBL if the preliminary SMP findings set out in this document are confirmed in URCA’s Final Determination.

²⁹ The concept of refusal to supply covers a wide range of anti-competitive practices, including a refusal to supply essential inputs to an existing or new competitor, a refusal to provide interface information, or more generally a refusal to grant access to an essential (bottleneck) facility or network. Refusal to supply also includes offering trading conditions so unreasonable that they amount to a constructive refusal to supply. Constructive refusal could, for example, take the form of unduly delaying or degrading the supply of a product, or involve the imposition of unreasonable conditions in return for the supply or charging unreasonably high prices for the products and services.

Given the structural characteristics of wholesale fixed broadband service markets, URCA considers that the section 40(4) and Conditions 34 and 35 IOL obligations by themselves would be insufficient to achieve the overall policy objectives of the Comms Act. As stated previously, the section 40(4) and Conditions 34 and 35 obligations provide the minimum threshold, but not a sufficient, level of protection against a SMP operator behaving anti-competitively. In particular, these obligations do not guard against excessive charging for an essential “bottleneck facility”. Further, visibility of the proposed price and non-price terms of the resale broadband services cannot be assured hence there can be no guarantee to the wider market that the non-discrimination obligation is being complied with. To this end, URCA considers that it would be appropriate and proportionate to impose additional SMP conditions on BTC and CBL.

Given its review of the competitive dynamics and prevailing infrastructure bottlenecks in the wholesale broadband market, URCA sees a continued need to retain the existing SMP conditions on BTC and CBL. In particular:

- BTC and CBL shall remain under an obligation to:
 - offer resale fixed broadband products, enabling alternative service providers to offer retail broadband products similar to those of BTC and CBL without having to deploy their own network infrastructure; and
 - publish and regularly update the tariffs and non-price terms and conditions of their resale fixed broadband offer on their respective websites.
- The tariffs for the resale fixed broadband services shall be subject to wholesale price control, with the relevant tariffs being determined on a ‘retail minus’ approach (i.e., reflective of the relevant retail prices, minus a reasonable margin for retail costs).

Resale Fixed Broadband obligation

It is URCA’s preliminary view that BTC and CBL shall continue to offer a resale fixed broadband product enabling alternative service providers to use the bottleneck infrastructure to offer retail broadband products similar to those of BTC and CBL.

As mentioned above, this obligation represents a low cost option for alternative service providers to enter the downstream retail market for fixed broadband services, as it means they do not have to deploy their own network infrastructure. As such, it reduces the prevailing high barriers to entry to the fixed broadband market.

URCA recognizes that there has been no take-up of the resale broadband services offered by BTC and CBL. However, from an industry survey, it has conducted as part of this market review process, URCA understands that there continues to be a demand from ISPs for a resale fixed broadband product, with

the current lack of take-up being attributed by the ISPs to the prevailing terms and conditions of those offers.^{30 31}

URCA acknowledges that there are several alternative wholesale services which aim to facilitate competition in the retail (downstream) fixed broadband market. These include direct internet access (DIA), wholesale leased lines, bitstream, virtual unbundled local access (VULA), line sharing, sub-loop unbundling, and local loop unbundling. However, most of these alternative services require access seekers to deploy some form of infrastructure. There are also non-trivial design and implementation costs associated with these alternative wholesale products for both, access seeker and provider.

URCA recognizes the limitations of resale broadband services on the ability of the alternative operators to differentiate their retail broadband products from those offered by BTC or CBL. URCA, however, sees merit in facilitating competition based on this minimum investment option, in addition to other regulated wholesale access models which URCA may implement moving forward. On this occasion, therefore, URCA considers it appropriate to focus on reviewing the current resale broadband offers and updating them where necessary to ensure they are 'fit for purpose' and reflective of the current retail fixed broadband offers.

URCA will immediately following the completion of this regulatory process, embark on a wider review of the markets for wholesale fixed access, broadband and leased lines/dedicated connectivity markets to ensure that any prevailing bottlenecks are addressed appropriately, considering in particular whether other regulated wholesale access products should also be introduced.

Publication of Tariffs and Non-price Terms and Conditions

BTC and CBL shall continue to publish the tariff and non-price terms and conditions on which their resale broadband offers are provided (i.e., by publishing such details prominently on their websites and additionally making such information available in other formats upon request). This aims to promote efficiency, transparency and non-discrimination in the provision of these services, by ensuring that all current and potential licensees have access to the price and non-price terms of these services.

The published information should include, at the minimum, the following:

- the pricing of the resale broadband services including:
 - an overview of the basis for setting the prices (i.e. the 'retail minus' approach);

³⁰Both resale offers date back to 2010 and neither operator has updated their offerings since then. As such, both offers are not in line with the current retail broadband offers which have been revised since 2010. Further, the current resale broadband offers have not been subject to any review by URCA to date.

³¹For example, respondents to URCA's industry survey reported instances where the SMP operators had not responded to their request for a resale broadband product (or other wholesale broadband service) in a timely and/or constructive manner. URCA is not able to verify these statements, but notes that these were made by more than one independent respondent.

- a table setting out for each retail fixed broadband service, the relevant retail price(s) and corresponding resale broadband prices, set in-line with the described 'retail minus' approach; and
- a statement setting out the date when these prices were set and that they will be automatically updated based on the 'retail minus' approach and the relevant current retail prices.
- the main non-price terms and conditions including:
 - detailed description of the resale broadband service offerings;
 - service ordering and delivery process and timings;
 - quality of service standards (incl. key performance indicators and financial compensation for missing these);
 - billing and payment requirements;
 - details of a dispute resolution scheme; and
 - operations and maintenance procedures.

For the avoidance of doubt, BTC and CBL will be responsible for ensuring that published terms and conditions are compatible with the statutory framework of the Comms Act, relevant license conditions, the Electronic Communications Sector Policy and all relevant regulatory and other measures issued by URCA from time to time.

Further, to ensure that the resale fixed broadband offers remain up-to-date and in-line with the SMP operators' retail fixed broadband service offerings, BTC and CBL will now be required to undertake the following regular review processes:

- When informing URCA about any proposed changes to the price terms of their retail fixed broadband services, BTC and CBL will need to provide to URCA a revised resale broadband offer (in-line with the proposed changes to their retail fixed broadband price). The revised resale broadband offer will then have to be published on BTC's and CBL's websites no later than the date the new/amended retail fixed broadband prices come into effect.
- Further, every six (6) months, both SMP operators need to review the overall price and non-price terms of their resale fixed broadband offers to ensure these are up-to-date and in-line with their retail fixed broadband service offerings. The revised resale broadband offers need to be submitted to URCA for notification, including a link to where these documents can be found on BTC's and CBL's websites.

Wholesale Price Controls

URCA has considered whether BTC's and CBL's resale fixed broadband service prices should be subject to a form of price control.

After careful deliberation, URCA has preliminarily determined that a price control remains warranted. This is because URCA is firmly of the view that prevailing structural and behavioral factors operating in these markets are such that, absent regulation, the SMP operators have weak incentives to set a price for their

resale fixed broadband tariffs at a level which could be expected to prevail in a competitive market. That is, there is a concern that they could engage in excessive pricing.

Under the option of no ex-ante regulation, the resale broadband product prices would be set through a process of bilateral negotiations between BTC or CBL and other operators. URCA considers there to be a high risk that such bi-lateral negotiations may not lead to an efficient outcome, especially not within a reasonable period of time. This is due to the competing incentives of both negotiating parties, with BTC and CBL having an incentive to use their SMP in the relevant market to achieve higher prices for the resale broadband service.

In-line with the current SMP obligations, the resale broadband prices shall be determined based on a 'retail minus' approach. Under this approach, the regulated price is set in reference to the retail price charged by the SMP operator to the end-users for the associated retail services, minus the retail costs that are not incurred by the SMP operator in providing the resale product. URCA remains of the view that a 'retail minus' approach is the most appropriate form of setting resale fixed broadband prices.

URCA notes that the current resale broadband offers are also priced based on a 'retail minus' approach, with the SMP operators having determined the relevant retail minus discount be applied to their retail fixed broadband prices in order to inform the resale broadband prices. URCA has to-date not reviewed the adequacy of these retail minus discounts. However, as part of their review of the resale broadband offers, BTC and CBL are required to validate/revise their proposed prices (including any supporting evidence for setting them) and submit their overall revised resale broadband offers to URCA for approval.

Consultation questions – Proposed SMP remedies

Q6. Please provide comments on URCA's preliminary views on the proposed SMP remedies in the wholesale fixed broadband service markets.

5. Review of Current Resale Broadband Offers

As part of Section 4, URCA set out its preliminary views on the continued requirement for BTC and CBL to offer resale broadband products and to publish the price and non-price terms and conditions of these offers on their websites.

Given that this SMP obligation has been in place since 2010, URCA considers that it is also appropriate to review the current resale broadband offers of both BTC and CBL to ensure that these are adequate (in terms of allowing reasonably efficient alternative operators to offer similar retail fixed broadband services).

This review is particularly merited as at the time of imposing this obligation, URCA only conducted a high level review of the resale broadband offers, pursuant to Section 5.1.3 of ECS 11/2010, ensuring that the offers were complete. However, URCA has so far not approved the terms and conditions or pricing of these offers.

When conducting an initial review of BTC's and CBL's published resale broadband offers (i.e., as part of preparing this consultation document),³² URCA noticed that both offers are still reflective of the original terms and conditions dating back to 2010. As the electronic communications market in The Bahamas and the retail broadband market, in particular, have changed since 2010, URCA believes it is important that both of the offers are updated.

As such, to ensure an efficient, timely and consultative process, URCA will conduct the review of the resale broadband offers based on the following process steps:

1. As part of their response to this public consultation process:
 - a. BTC and CBL are requested to explain and justify the current price and non-price terms and conditions set out in their published resale offers (or confirm alternative terms in a revised resale offer), taking into account URCA's initial, high-level observations on their current resale offers set out below; and
 - b. URCA will publish the revised offers on its website to allow other interested parties to submit written comments on the price and non-price terms and conditions set out in the revised resale offers prepared by BTC and CBL (i.e., including any updates to those terms made by BTC and CBL as part of Step 1a).
2. URCA will then set out any required changes to BTC's and CBL's updated resale fixed broadband offers in its Final Determination, taking into account the responses to this consultation document and revised offers.
3. Both SMP operators will then have to prepare and publish revised resale fixed broadband offers in-line with URCA's Final Determination and submit to URCA for approval.

³²Available at <http://files.btcbahamas.com/2013/12/20/BTC-Broadband-Resale-Offer.pdf> and https://www.cablebahamas.com/media/files/Broadband_Resale_Offer_20Dec10.pdf

URCA notes that the above review and approval process will replace the review process set out in Section 5.1.3 of ECS 11/2010.

To facilitate BTC’s and CBL’s revision of their current resale offers, URCA sets out below its initial, high-level observations on each document. Both SMP operators should, as part of revisions to their offers, seek to review and address these initial observations or provide detailed reasoning (including supporting evidence) in support of the current terms and conditions.

Table 3: URCA’s initial observation on current resale fixed broadband service – BTC

Document reference	Title / Section	Initial observation / comment
General	Overall resale offer	The current offer dates back to 2010. As such, BTC is required to review the overall resale offer to ensure that the technical product descriptions, references to retail products and ordering and delivering process, etc. are consistent with its current network infrastructure, current retail broadband products and the terms and conditions in its current Reference Access and Interconnection Offer (RAIO) (i.e. , where applicable, BTC should have regards to the principles and terms and conditions in its RAIO when reviewing the terms and conditions of the resale offer to ensure consistency and leverage on existing and approved terms and conditions).
Annex A	A.1 – A.6 Service schedule	BTC should review the technical service definitions to ensure these are reflective of its current network infrastructure and that the retail broadband services are reflective of its current offerings to end-user in The Bahamas.
	A.7	BTC to remove/ justify the restriction that prevents resale broadband services being used for the conveyance of voice (over broadband) services.
Annex B	Ordering Processes	BTC to review to ensure the ordering and delivery process is clear, complete, correct and, where relevant, consistent with the ordering process for other wholesale services set out in its RAIO. BTC to provide a graphical overview of the end-to-end ordering and delivery process, delivery time targets for each process step and compensation payments for missing any

		delivery times, ensuring, where relevant, consistency with its RAIO.
Annex C	<i>[Currently missing]</i>	BTC to add the currently missing Annex C or to update the number of its Annexes.
Annex D	Operations and Maintenance (O&M)	BTC to review to ensure the O&M processes are clear, complete, correct and consistent with the relevant O&M process set out in its RAIO.
Annex E	Billing	BTC to review to ensure the billing principles and processes are clear, complete, correct and consistent with the relevant principles and processes set out in its RAIO.
Annex F	Dispute Resolution	BTC to review to ensure the Dispute Resolution process is clear, complete, correct and consistent with the Dispute Resolution process set out in its RAIO.
Annex G	Price List	<p>BTC to review and update its pricing information to ensure it contains, at the minimum:</p> <ol style="list-style-type: none"> 1. an overview of the basis for setting the prices (i.e., the 'retail minus' approach) and the applicable discount factor; 2. a table setting out for each retail fixed broadband service, the relevant retail price(s) and corresponding resale broadband prices, set in-line with the described 'retail minus' approach; and 3. a statement setting out the date when these prices were set and that they will be automatically updated based on the 'retail minus' approach and the relevant current retail prices. <p>BTC to review the need for non-recurring charges (i.e., for installation and activation) currently set out in Annex G to ensure these are reflective of the efficient cost of providing these services. If non-recurring charges are maintained at some level, BTC needs to provide to URCA an overview of how these have been derived, including supporting evidence on the proposed level of these charges.</p> <p>BTC to clarify the provision of CPE/modems to end-users (i.e. whether it is the responsibility of BTC or the Customer, whether there are limitations on CPE/modems end-users can use and if supplied by BTC the price payable for the modem by the Customer).</p>

		As part of its consultation response, BTC needs to confirm its current retail minus discount value and to provide costing evidence in support of applicable discount value.
Annex H	Quality of Service Standards	<p>BTC to review to ensure the principles and standards are clear, complete, correct and, where applicable, consistent with the Quality of Service Standards set out in its RAIO.</p> <p>BTC to add penalties for missing any Quality of Service Standards, ensuring consistency with those set out in its RAIO.</p>

Table 4: URCA’s initial observation on current resale fixed broadband service – CBL

Document reference	Title / Section	Initial observation/comment
General	Overall resale offer	The current offer dates back to 2010. As such, CBL needs to review the overall resale offer to ensure that the technical product descriptions, references to retail products and ordering and delivering process, etc. are consistent with its current network infrastructure, current retail broadband products and, where relevant, the terms and conditions of its current access and interconnection agreements with other licensees. (i.e. where applicable, CBL should have regards to the principles and terms and conditions in its interconnection agreements when reviewing the terms and conditions of the resale offer to ensure consistency and leverage on existing and accepted terms and conditions).

Document reference	Title / Section	Initial observation/comment
9	Maintenance	CBL to review this section to ensure that maintenance is provided on a non-discriminatory basis and Clients are provided sufficient notice in case of technical breaches or maintenance, etc.
11.3	Retail customers of the services	CBL to review (and justify) the restriction of the resale offer to residential retail customers only.
11.4	Minimum service	CBL to review (and justify) the minimum duration of the service to one year. Any justification needs to take into account CBL’s minimum contract length of its retail broadband services.

12	Non discrimination	CBL to review this paragraph to ensure it also includes non-discrimination relative to its own retail business and customers.
13.2	Service charge review	CBL to review the frequency with which it updates its resale offer charges.
13.3 and 13.4	Invoicing and Payment	CBL to review its invoicing and payment process to ensure it is consistent with the terms and conditions of its current access and interconnection agreements with other licensees.
22	Client base	CBL to review the minimum notice period given to its Resale Broadband Clients on changes to its standard terms and conditions, to ensure that it allows the Client adequate time to give notice to its retail customers of any changes in the standard terms.
24	Limitation of liability and warranty	CBL to review the 60 days period to replace faulty modems in the case of material defect, ensuring non-discrimination between its resale offer Clients and its own retail business.
27	Liability of the Parties	CBL to review its current liability cap to its Clients, ensuring reciprocity, non-discrimination between its resale offer Clients and its own retail business.
Annex 1	Service description	CBL should review the service and network descriptions to ensure these are reflective of its current network infrastructure and retail broadband services are reflective of its current offerings to end-user in The Bahamas.
Annex 2	Service charges	<p>CBL to review and update its pricing information to ensure it contains, at the minimum:</p> <ol style="list-style-type: none"> 1. an overview of the basis for setting the prices (i.e., the 'retail minus' approach) and the applicable discount factor; 2. a table setting out for each retail fixed broadband service, the relevant retail price(s) and corresponding resale broadband prices, set in-line with the described 'retail minus' approach; and 3. a statement setting out the date when these prices were set and that they will be automatically updated based on the 'retail minus' approach and the relevant current retail prices. <p>CBL to review the need for non-recurring charges (i.e. for installation and activation) and the one-off implementation fee currently set out in Annex 2 to ensure these are reflective</p>

		<p>of the efficient cost of providing these services. If non-recurring charges are maintained at some level, CBL needs to provide to URCA an overview of how these have been derived, including supporting evidence on the proposed level of these charges.</p> <p>As part of its consultation response, CBL needs to confirm its current retail minus discount value and to provide costing evidence in support of applicable discount value.</p>
Annex 4	Processes and procedures	<p>CBL to review to ensure the ordering and delivery processes are clear, complete, correct, up-to-date and, where relevant, consistent with the terms and conditions of its current access and interconnection agreements with other licensees.</p> <p>CBL to add delivery time targets for each process step and compensation payments for missing any delivery times, ensuring, where relevant, consistency with the terms and conditions of its current access and interconnection agreements with other licensees.</p>
N/A	Quality of Service Standards	<p>CBL to include Quality of Service Standards for the resale broadband services, ensuring consistency with those applicable to its own retail services.</p> <p>CBL to add penalties for missing any Quality of Service Standards</p>

6. Next Steps

Within the previous Sections, URCA has set out its preliminary position on the continued need for ex-ante regulation of wholesale fixed broadband services, in the form of requiring BTC and CBL to both prepare and publish revised resale broadband offers.

URCA invites interested parties to comment on its preliminary position by responding to the consultation questions set out in this document **by 5 p.m. on 15 January 2018**. Interested parties will then have the opportunity to further comment on submissions made by other respondents **by 14 February 2018**.

URCA will then review all written responses to the consultation when preparing its Final Determination which will, amongst others, set out any required changes to BTC's and CBL's updated resale fixed broadband offers.