



Retail Cellular Mobile Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009

Statement of Results and Final Determination

ECS 15/2022

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1 Introduction

This document comprises a Statement of Results and Final Determination, setting out the conclusions of the Utilities Regulation and Competition Authority's ("URCA") competition assessment (also known as market review) of the retail cellular mobile market in The Bahamas.

URCA is the designated body for regulation and competition in the electronic communications sector ("ECS") in The Bahamas. In the Bahamian electronic communications' regulatory framework, the main purpose of a market review is to identify the competitive conditions prevailing in a market by systematically assessing the competitive dynamics in the relevant economic market and consumer outcomes. A market review commences by defining a market, which is then analysed to ascertain the degree of competition in that market and any resulting need for ex ante regulation on dominant operators within that market. Defining markets and assessing competition within those markets involve a degree of judgment, with the overarching objective being to ensure that all relevant competitive constraints in that market are appropriately identified and addressed.¹

Within URCA's document reference number ECS 01/2022, URCA set out:

- Procedures for Making a Determination;
- Legislative Framework for Market Analysis; and
- Analytical Approach to Market Reviews.

On 25 March 2022, URCA released for public consultation the Preliminary Determination titled "**Retail Cellular Mobile Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009**" (ECS 01/2022).² The Preliminary Determination outlined URCA's initial conclusions arising from its assessment of competition in the mobile retail market in The Bahamas and any resulting change in ex-ante regulatory obligations for dominant operators.

The Preliminary Determination had as its aim:

- To identify the proposed scope (product/geographic) of the market for retail mobile services;
- To identify whether there are Licensees considered to be singly or jointly dominant in that market;
- To assess whether or not to impose, amend, or withdraw regulatory obligations relating to retail mobile services; and
- To invite written comments on URCA's review and provisional findings.

¹ECS 20/2011 Methodology for Assessment of Significant Market Power (SMP) under Section 39(2) of the Communications Act, 2009 at <https://www.urbahamas.bs/wp-content/uploads/2017/02/ECS-20-2011-Final-Decision-Methodology-for-Assessment-of-SMP.pdf>

²<https://www.urbahamas.bs/wp-content/uploads/2022/03/Cellular-Mobile-Market-Review-and-Assessment-Under-S.39-of-the-Comms-Act-2009-Final.pdf>

1.1 Background to the Preliminary Determination

The mobile market under review is characterized by competition through infrastructure between The Bahamas Telecommunications Company Limited³ and Be Aliv Limited.⁴ The two mobile network operators (“MNOs”) use their own mobile network and infrastructure to provide a range of retail mobile bundles, services and products across all the relevant contract types (prepaid/postpaid) and customer segments (commercial/non-commercial). There is currently no mobile virtual network operator (“MVNO”) or reseller of the mobile services to retail customers in The Bahamas. Both self-supply mobile access and call origination (“MACO”) services and self-supply/sell termination services, in order to compete in the downstream (retail) mobile service market. As well, both operate under 15-year licenses, and are assigned Bahamian mobile numbers and Mobile Network Codes. There is also symmetry in the current holdings of key premium spectrum bands used by both MNOs.⁵

The 25 March 2022 Preliminary Determination (or “the consultation”) stems from URCA’s commitment to assess the evolution of competition in the marketplace once the second cellular mobile network (i.e., Be Aliv Limited formerly NewCo2015 Limited) has fully established itself. Having determined that this condition has been met, URCA thus embarked on this consultation setting out its provisional conclusions on competition in the retail cellular mobile market. Indeed, this current exercise is URCA’s first competition assessment of the retail mobile market since its 2010 declaration that The Bahamas Telecommunications Company Limited has SMP in the provisioning of mobile retail services in The Bahamas.⁶ In addition, URCA concluded a consultation on wholesale markets for termination services (including mobile) followed by its 2016 consultations on wholesale national roaming services⁷ and wholesale mobile termination services⁸. The range of SMP obligations resulting from these consultations and final decisions are summarized in Table 1 of the Preliminary Determination document.

The requirements and guidance concerning this review of retail mobile services in The Bahamas are provided in URCA’s SMP methodology document and the Comms Act. URCA also reviewed mobile market assessments and merger cases in jurisdictions overseas to allow taking into account current economic theory and regulatory best practice.

1.2 Responses to the Consultation

The consultation sought respondents’ views on four (4) questions:

Consultation Question 1: Do you agree with URCA’s proposed definition of the market for retail mobile access, calls and messaging and mobile data services in The Bahamas? If not, why?

³ <https://www.btcbahamas.com/>

⁴ <https://www.bealiv.com/>

⁵ Table 2, ECS 01/2022

⁶ECS 11/2010 at <https://www.urbahamas.bs/wp-content/uploads/2017/02/ECS-11-2010-Final-Decision-Obligations-Imposed-on-Operators-with-Significant-Market-Power.pdf>

⁷ ECS 18/2016 at <https://www.urbahamas.bs/wp-content/uploads/2017/01/Final-Determination-and-Order-National-Roaming.pdf>

⁸ECS 33/2016 at <https://www.urbahamas.bs/wp-content/uploads/2017/11/Final-Determination-SMP-in-Call-Termination-on-NewCo-Cellular-Mobile-Network-.pdf>

Consultation Question 2: Do you agree with URCA’s preliminary conclusion from its single dominance assessment in the retail mobile market? If not, please set out your alternative views and provide evidence to substantiate your position.

Consultation Question 3: Does the industry agree with URCA’s preliminary conclusion from its joint dominance assessment in the retail mobile market? If not, please set out your alternative views and provide evidence to substantiate your position.

Consultation Question 4: Do you agree with URCA’s proposed timeframes for removal of the ex ante obligations as explained above in relation to BTC’s retail mobile services? If not, please set out your alternative timeframes with reasons.

The closing date for the submission to URCA of initial responses to the consultation ended 25 April 2022 and the comments on initial responses ended 26 May 2022. By the 26 May 2022 closing date, URCA had received first and second round comments from two parties:

- Bahamas Telecommunications Company Limited (“BTC”); and
- Cable Bahamas Limited/Be Aliv Limited (“CBL/ALIV”, hereafter “ALIV”).

URCA wishes to express its appreciation to BTC and ALIV for their written submissions and participation in the consultation exercise. The participation by both parties was useful and constructive. Copies of all written responses received may be downloaded from URCA’s website at www.urcabahamas.bs.

Having reviewed and considered the feedback from BTC and ALIV, URCA provides in this Statement of Results and Final Determination its responses on the feedback received and final decision on:

- Retail Product/Geographic Market Definitions;
- Single and Joint/Collective Dominance Assessment in the defined Retail Market; and
- Ex-ante remedies imposed on dominant operators in the Retail Market.

The publication of this document brings to an end URCA’s public engagement on competition in the mobile retail market in The Bahamas.

1.3 Structure of the remainder of this document

URCA has structured the remainder of this document as follows:

- Section 2 - URCA’s Final Determination;
- Section 3 - BTC and ALIV’s Responses to the Preliminary Determination; and
- Section 4 - Conclusion and Next Steps.

2 URCA’s Final 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” or “SMP Guidelines”),⁹ containing criteria relating to the definition of product and geographic markets in the electronic communications sector, and against which individual and joint/collective dominance may be assessed;
- (iii) URCA having conducted a review and issued a Preliminary Determination titled “**Retail Cellular Mobile Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009**” (ECS 01/2022)¹⁰ on the competitive conditions in the provisioning of retail mobile services in The Bahamas in accordance with section 39(1) and (2) of the Communications Act, 2009 and the SMP Methodology considers that it is appropriate to make determinations regarding the definition of markets, the existence of licensees with SMP in those markets, and the extent to which ex-ante Regulation is still appropriate and necessary in those markets; and
- (iv) URCA having studied all evidence and the submissions (in Section 3 below) made by The Bahamas Telecommunications Company Limited (“BTC”) and Be Aliv Limited (“ALIV”);

URCA hereby makes the following final determination on its SMP/dominance assessment for the provision of mobile retail services in The Bahamas, as set out below:

1. Determination of Relevant Mobile Market at Retail Level

- (a) **Product Scope.** There is a single, national market covering all mobile products, across all the relevant contract types and customer segments. In particular, the relevant retail market for mobile services includes the following products/services:
 - Mobile access services;
 - Domestic mobile and international outgoing mobile call services;
 - Domestic and international outgoing mobile messaging services;
 - Mobile data services;¹¹

⁹ <https://www.urbahamas.bs/wp-content/uploads/2017/02/ECS-20-2011-Final-Decision-Methodology-for-Assessment-of-SMP.pdf>

¹⁰ <https://www.urbahamas.bs/wp-content/uploads/2022/03/Cellular-Mobile-Market-Review-and-Assessment-Under-S.39-of-the-Comms-Act-2009-Final.pdf>

¹¹ Includes bonus or zero-rated inclusions of data for social media.

- Access to ancillary services such as calling features and Bahamian emergency numbers; and
- Outbound international mobile roaming services.

Fixed access and call services, Over-the-Top ('OTT') communications services and fixed broadband services are not part of this market.

The scope of the product market is defined on a technology neutral basis and thus includes retail mobile services delivered over GSM, HSPA and LTE/4G technologies and any other mobile network technology deployed by Licensees or that may, in the future (e.g., 5G), be deployed by Licensees for the purpose of operating/providing cellular mobile services in The Bahamas.

(b) Geographic Scope. URCA has defined a single national market for retail mobile services in The Bahamas.

2. SMP/Dominance Determination

URCA has not identified any Licensees as holding a dominant position in this market.

3. Revocation of Ex ante Remedies

In line with the above, the ex ante Retail Pricing Rules shall no longer apply to BTC's retail mobile only bundles and standalone mobile calls, messaging or data services. This means that the notification/approval procedures and bi-annual margin squeeze test reporting obligations set out in ECS 35/2016¹² shall no longer apply to these services.¹³

These changes become effective on 30 July 2022 i.e., fifteen (15) calendar days from the publication of this Statement of Results and Final Determination.

Beginning in the 2022 financial period, BTC is no longer required to submit Accounting Separation and Cost Accounting results in relation to its retail mobile activities.

Should URCA identify, in future, reasons to believe that the market is no longer exhibiting effective competition to the ultimate benefit of Bahamian consumers, it may conduct another market analysis, with a view to considering whether it is necessary to reimpose some form of ex ante measures.

¹²<https://www.urbahamas.bs/wp-content/uploads/2017/02/ECS-35-2016-Regulation-of-Retail-Prices-for-SMP-Operators-of-Non-Price-Capped-Services-V1.0.1.pdf>

¹³The current requirements of the ex ante Retail Pricing Rules, Part G of BTC's IOL, section 40 of the Act and the Consumer Protection Regulations shall still apply to any bundle, tied product or package containing non-mobile services which are subject to retail price regulation, as a result of BTC's dominance in other retail markets.

3 Response to the Consultation

In this Section, URCA summarizes BTC and ALIV's comments and provides URCA's responses on the substantive points raised by the two respondents. The Section is structured as follows:

- Section 3.1 - URCA addresses BTC and ALIV's general comments to the consultation;
- Section 3.2 – provides URCA's responses to BTC and ALIV's specific comments on key recent market developments; and
- Section 3.3 – provides URCA's responses to BTC and ALIV's specific responses to the four questions in the document.

While URCA has sought to respond directly to comments and representations received during the consultation exercise, URCA expressly states that any failure by URCA to respond in this document to any issue raised by any respondent does not necessarily signify agreement in whole or in part with the comment, that it has not considered the comment or that it considers the comment unimportant or without merit.

3.1 General Comments Received

ALIV's initial comments

ALIV agreed with and supported the overall conclusions of the market review, even though it disagreed with some of the processes and information used by URCA to come to its conclusion. ALIV's detailed comments are below.

Writing on the *effects of mobile competition* in The Bahamas, ALIV said since it joined the market prices have fallen, customers have a wide range of mobile bundles, products and services to choose from, and mobile data usage has expanded. Competition between ALIV and BTC remains fierce and effective and the overall conclusions of the market review meant that ALIV and BTC can compete without the cost of unnecessary regulation. Besides this there would be no additional benefits to consumers from a third mobile entrant. Rather, such an entrant would only dilute the revenues ALIV and BTC need to fund investment in network and services (e.g., 5G). Indeed, the data from the Caribbean suggest that small markets like The Bahamas are unable to sustain more than two operators.

ALIV put forward the following comments in relation to *URCA's market definition exercise*:

- (i) The market definition exercise set forth in Section 4 of the Preliminary Determination illustrates that market definition is not an exact science. In particular, the hypothetical monopolist or SSNIP (small or marginal but significant non-transitory price increase) test requires a forecast of a marketplace which does not exist. As well as an understanding of how consumers will react to a SSNIP, sometimes with little or no real-world data in support. Accordingly, it is hardly surprising that URCA has come to subjective judgements on the likely outcomes of these tests.

- (ii) The standard SSNIP tests applied in the Section require that both demand and supply-side SSNIP tests are satisfied before a service can be added to the market definition. URCA, however, has identified only a single case in which both demand and supply-side SSNIP tests were satisfied (i.e., prepaid and postpaid subscriptions). Despite this, URCA has added other mobile services to its market definition even though they have not satisfied both the demand and supply-side SSNIP tests. In particular, outbound international mobile roaming is part of URCA’s market definition despite URCA’s conclusion was that neither demand nor supply-side substitution is likely to take place.

Table 1: Results of URCA’s SSNIP tests

Retail Service	Demand-side substitute	Supply-side substitute	Included in mobile market definition
Domestic call and messaging service	No	Yes	Yes
Outbound international call and messaging services	Limited	Yes	Yes
Outbound international mobile roaming services	No	Unlikely	Yes
Mobile data services	no conclusion	Yes	Yes
Prepaid and postpaid subscriptions	Yes	Yes	Yes
Residential and business subscriptions	Limited	Yes	Yes
Retail fixed access and call	No	No	No
Retail fixed broadband	No	No	No
OTT call and OTT messaging	No	No	No

Source: Figure 1 of ALIV’s first-round submission, 25 April 2022

- (iii) OTT call and messaging services are complementary to mobile access services in the same way as domestic mobile call and messaging services, outbound mobile roaming and other services added to URCA’s market definition. This means that OTT call and messaging services form part of the same retail market as mobile services. ALIV would like URCA to *“make explicit the criteria it uses to assess whether a service is complementary or not, and apply these to OTT services.”*¹⁴
- (iv) URCA continues to define the markets in silos and fails to recognize the gradual replacement of traditional services (TV, messaging and voice) by OTT data services with customers accessing OTTs across multiple devices and platforms. Noting that, based on its view, the Preliminary Determination contained compelling evidence of substitution from mobile services to OTT services and, hence OTTs form part of URCA’s market definition.
- (v) URCA’s use of customer surveys to inform its market definition is to be commended. ALIV urged URCA to use similar surveys in its upcoming fixed services market review. URCA, however, should release the survey findings at the same time as its Preliminary Determination so that consultees can understand the evidence that URCA uses to come to its conclusion.

¹⁴ Page 3, ALIV’s Initial Response, 25 April 2022

ALIV noted too that the findings reached in the consultation meant that URCA can move ahead with 5G spectrum and related matters without being concerned about implications for market regulation. Arguing that 5G will bring new mobile services and applications to market and spur mobile competition in The Bahamas. URCA's approach must be to enable all parts of The Bahamas to benefit from this technology.

BTC's initial comments

BTC commended URCA on its thorough investigation of competition in the provisioning of retail mobile market in The Bahamas. Expressing that it agrees with URCA's overall assessment of the market (including those relating to the four consultation questions). BTC commented that the removal of ex ante price regulation that applies to BTC's mobile retail services and products is long overdue.

BTC would like URCA to conduct a similar competition review of the fixed voice market as soon as possible, claiming that fixed voice consumers can also benefit from the increased competition that would flow from removal of ex ante price regulations. Should URCA find that price regulation is still relevant in the retail fixed voice market, a more efficient and narrowly targeted price cap regime should be implemented.

ALIV and BTC's second round comments

In responding to BTC's initial comments, **ALIV** stated that the television/content landscape is undergoing transformation both in scope and market dynamics and this aligned with CBL's experience (i.e., the pay TV market is very competitive). ALIV advised that CBL is looking forward to the fixed services market review (including pay-TV) and engagement on same with URCA. However, URCA should finalize its position on OTTs ahead of this market review. ALIV was pleased that URCA was planning on releasing the results of a recent survey into consumer preferences for pay TV/FM radio (On the likely assumption that the survey will identify substitution for OTTs as the primary driver behind the observed decline in traditional linear TV services).

In responding to ALIV's initial comments, **BTC** shared that only one or both tests must be satisfied for a product to be included in a market definition. This contradicts ALIV's view that a product must satisfy both demand and supply-side SSNIP tests in order to be included in URCA's market definition.

BTC, however, agreed with ALIV on the importance of URCA releasing the survey results used in URCA's market reviews. Urging URCA to release the consumer survey used for the mobile market review when it releases its final determination. Similarly, URCA should release any consumer survey it may rely on in upcoming fixed market review together with its preliminary determination.

URCA's response to the general comments received/final determination

URCA's detailed responses to the comments received are set forth below.

As for comments about the ***effects of mobile competition*** on key consumer outcomes including pricing and service offerings, these appear to be in line with URCA's own understanding on how the market has developed in recent years and are compatible with results from the URCA-PD survey. In particular, the persons surveyed said ALIV's market entry has resulted in lower pricing and greater data allowance (45%/43%) and greater call and SMS allowance within bundles (23%). Although URCA has come to the

conclusion that competition in the market has developed to a point where certain ex-ante measures applicable to BTC's retail mobile activities are no longer appropriate, its concerns for potential lessening of competition in the market in future remains. It is critical, therefore, for URCA to keep a close watch on the progress and developments in the market.

Relating to the issue of a third mobile licence, URCA advises that it is moving ahead with the feasibility assessment as it is required to do by virtue of the Comms Act and other relevant documents. The expected completion date for the study is end of November 2022. This timeline, however, is contingent on the operators' timely and expeditious submission of critical information to URCA. URCA further wishes to remind all parties that its advice on the feasibility of a third mobile entrant is to the Government of The Bahamas only.

As for comments about **URCA's market definition exercise** in Section 4 of the consultation, URCA responds as follows:

- (i) URCA agrees with ALIV that market definition is not a precise or scientific exercise and, hence the need for a balanced approach that takes into consideration various types of evidence and the exercise of judgement. This means that the approach to market definition must be pragmatic and exhibit market realities. In recognition of this URCA has, in this review, examined the *likely response* of consumers to a hypothetical price increase by analysing a range of factors and evidence available to it.
- (ii) URCA agrees with BTC that ALIV's comment on how the standard hypothetical monopolist or SSNIP test is used in market definition exercises is incorrect. As stated by BTC the "*SSNIP test does not require that a product must satisfy both demand side and supply side substitution tests to be included in a market definition, but rather one or both tests ...*"¹⁵ This is in line with the SSNIP analysis set out in Section 4 of the consultation and how SSNIP tests are used by national authorities universally. Having said this, URCA notes that it would still be reasonable to add a service to a market definition even though neither demand nor supply-side SSNIP test is satisfied. The inclusion of outbound mobile roaming service in URCA's market definition is a case in point, as explained below.
- (iii) As ALIV commented, outbound roaming service is part of URCA's market definition whilst OTT services are not. Notably, outbound international roaming service and domestic mobile services are complementary and, hence form part of the cluster or bundle of mobile services that are jointly consumed. Bahamians have the same choice of mobile operators for all retail mobile services. As such, the same SIM card/phone number is used to access all retail mobile services including outbound international roaming service and Bahamians have a reasonable expectation that they can access other mobile services when overseas using the mobile infrastructure of a visited network (i.e., consumers make a single purchasing decision across domestic mobile and outbound international roaming services). URCA notes too that

¹⁵ BTC's Response to ALIV's first round comments, 25 May 2020

BTC and ALIV utilize the same sales and distribution channels to provide outbound international mobile roaming as they do for other retail mobile services.

On the other hand, OTT services and mobile access services are not complementary in the same way as mobile access and outbound international roaming service. OTT services and mobile services provide the option to make/receive calls or send/receive messages to and from locations in country and overseas. A customer choosing to use OTTs would normally already purchase a mobile bundle with voice calls, messages and data services (including international roaming services). So, when making an OTT voice call or sending an OTT message the customer will be using the data element of the mobile plan. Whilst the retail product offered by BTC and ALIV represents a single subscription with a cluster of mobile services covering voice calls, messaging and data services. As such, OTTs represent an additional product or application that is accessed over mobile data and are therefore not complementary to mobile access in the same way as the call and messaging services included in URCA's definition.

- (iv) URCA takes issue with the assertion that it continues to define markets in silos, etc. The economic principles and procedure used in this market definition exercise are compatible with best practice regulation and provide a conceptual framework within which evidence on market definition can be organized and assessed. As such, in arriving at the boundaries or scope of the relevant product market, URCA has given utmost consideration to all relevant factors and evidence before it at this time. This includes consideration of not just the current status and recent trends of mobile, but also likely future developments which could impact on the boundaries of the relevant product market. In particular, the survey evidence before URCA in relation to substitution away from mobile services to OTT services was carefully reviewed and considered.

While the evidence before URCA appears to show that some demand-side substitutability exists between OTTs and mobile services (especially mobile messaging), it is not conclusive that OTTs are direct substitutes for mobile services at this time. URCA refers to its responses to ALIV's similar points raised on market definition in sub-section 3.3 (question 1) below.

- (v) Comments on URCA's use of customer surveys in this mobile market review, these have been noted. URCA acknowledges the respondents' suggestion that it release the results of its surveys so that the consultees can understand the basis for its conclusions. URCA further confirms its intention to use consumer surveys to inform its upcoming reviews of other retail markets. This is to ensure that the boundaries of these product markets are appropriately identified and considered especially in the context of OTTs. URCA looks forward to engaging with CBL, BTC and the wider Bahamian public on the results of its fixed services market review and proposals.

Lastly, URCA advises that it is moving ahead with **5G spectrum and related matters** in full recognition of the strong interlinkages between 5G and other initiatives being carried out by URCA and the statutory provisions of the Comms Act.

3.2 Specific Comments Received on Key Recent Market Developments

The respondents’ comments on recently observed trends in the market are below.

ALIV’s Initial comments

Concerning the observed decline in mobile connections and penetration levels in The Bahamas, ALIV attributed this to (i) the economic impact of the pandemic, and (ii) implementation of number portability.¹⁶ Further noting that some Caribbean nations have experienced declines in their mobile connections and penetration levels as well.

Regarding URCA’s analysis of usage trends, ALIV attributed the increase in domestic calling rates since 2017¹⁷ to (i) the result of price elasticity effect, and (ii) ALIV’s implementation of Calling Party Pays in 2016 for call charging and subsequent removal of Mobile Party Pays (“MPP”) by BTC. Arguing that because MPP incentivized mobile users to keep their phone turned off, its removal naturally improves call completion rates between mobile subscribers. While the declining trend in mobile messaging per customer is strong evidence of substitution away from mobile messaging/SMS to OTT messaging services.

On URCA’s analysis of pricing trends, ALIV explained that average revenue per user (“ARPU”) from mobile retail services is not an ideal measure of the effects of competition on mobile prices.¹⁸ As ARPU reflects changes in a mix of non-price factors,¹⁹ it seriously underestimates the true extent of price reduction in recent years. Notably, the explosion in usage of mobile data is not captured in ARPU due to the use of bundles for charging. ALIV noted too that the evolution of data usage per customer is missing from URCA’s analysis while this is where the most significant growth in service volumes has taken place. Thus, URCA cannot draw any useful conclusions about pricing trends from an analysis of ARPU, including whether the prevailing level of prices are consistent with a competitive market.

Further, ALIV noted that price baskets provide clearer insights into the effect of competition on retail mobile prices than ARPU. ALIV then stated that on the basis of ITU price baskets, the cost of mobile services to the retail subscribers in The Bahamas has fallen significantly between 2018 and 2021 compared to ARPU (Table 2).

Table 2: ITU’s price baskets in The Bahamas (US\$)

ITU basket	2018	2021	Real price change*
Data-only mobile broadband basket	14.55	15.70	2%
Mobile-cellular low-usage basket	19.94	19.94	-6%

¹⁶ MNP reduced requirement to carry multiple SIMs
¹⁷ Figure 2, sub-section 3.2, Preliminary Determination
¹⁸ Figure 3, Preliminary Determination
¹⁹ Such as service volumes, product mix, price elasticity and income levels

Mobile data and voice low-consumption basket	39.96	29.12	-33%
Mobile data and voice high-consumption basket	39.96	31.92	-26%

Source: Figure 2 of ALIV’s Initial Response, 25 April 2022

*Includes the effect of nominal price inflation of 5.5% between 2018 and 2021

Source of inflation data: Government of The Bahamas Department of Statistics

ALIV encouraged URCA to use price baskets if it wishes to track prices in the future but given URCA’s conclusion, they may be of little value in monitoring prices.

The results from the URCA-PD survey confirmed ALIV’s experience of *OTT call and messaging*. That is, these services are clear demand-side substitutes for ALIV’s mobile call and messaging services and eat into its revenues.

BTC’s initial comments

BTC offered no specific comments on URCA’s analysis of key recent market developments in the Bahamian mobile retail market.

BTC’s second-round comments

Responding to ALIV’s first-round submission, BTC was in agreement with ALIV that ARPU is not an appropriate price measure to track pricing trends in retail mobile services.

URCA’s response to the general comments received/final determination

Below, URCA sets out its detailed responses to the comments received.

URCA notes and acknowledges the reasons put forward by ALIV for the observed decline in *mobile connection and penetration levels* in The Bahamas. Most importantly, despite the recent decline, mobile penetration levels in The Bahamas remain above 100% (as shown in the figure below).

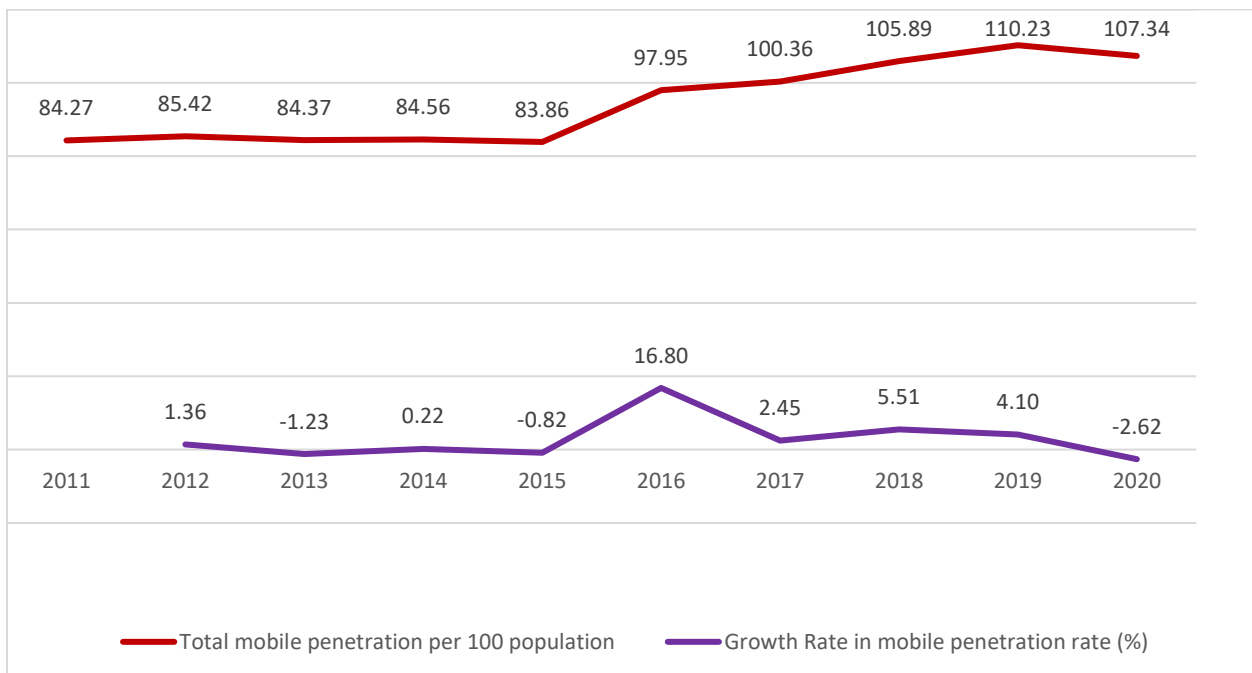


Figure 1: Mobile Penetration per 100 Population and Growth Rate

Source: URCA Analysis based on MNOs data

Concerning **usage trends**, URCA notes that average total mobile (domestic) call minutes per user have increased since 2017, in particular, on-net and off-net mobile to mobile call volumes. Whilst URCA notes the decline in ARPU during the period, it is not able to fully validate whether this was driven by reduction in prices or other changes in demand (e.g., changes in monthly allowances). However, URCA notes ALIV’s references to the positive demand effect from the switch to Calling Party Pays and an alleged price elasticity effect.

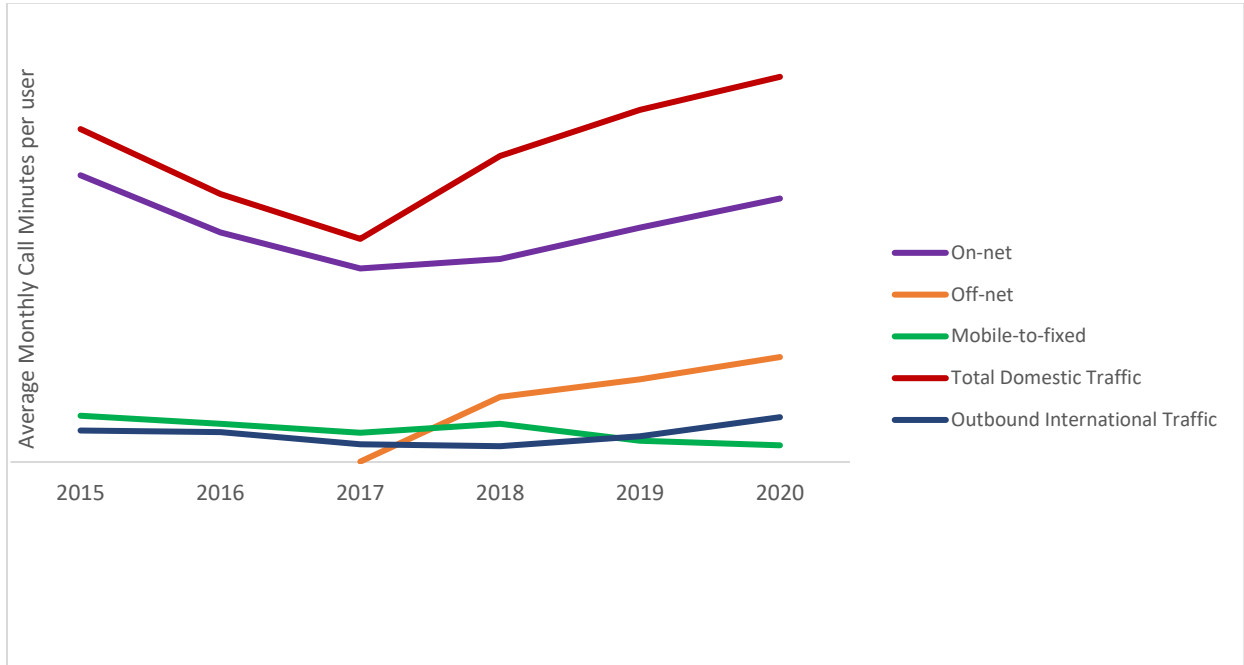


Figure 2: Average Monthly Call Minutes per user
Source: URCA’s Analysis based on MNOs Data

As for the declining trends in mobile messaging per customer, URCA accepts that some substitutability exists between OTT messaging services and traditional mobile messaging services. However, it is not clear to URCA that the evidence is sufficiently strong to conclude that OTT messaging services are clear demand-side substitutes for mobile messaging. URCA refers to its responses to ALIV’s similar points raised (i.e., sub-section 3.3/question 1) below (i.e., OTT messaging services and mobile messaging form part of the same retail market for mobile services and eats into ALIV’s revenue.

With respect to **pricing trends**, URCA appreciates the point that an analysis of ARPU is an imperfect price measure because it does not fully account for underlying changes in non-price factors. While URCA did not illustrate, in the form of a graph, the increase in mobile data usage per customer, URCA acknowledged that:

*“mobile usage in terms of average call minutes and **mobile data usage ... increased during that period**. With call and data usage increasing during the period, arguably the **declining monthly***

ARPU trends are underestimating the extent of the drop in effective unit prices to end-users [emphasis added].”²⁰

In the particular sub-section of the Preliminary Determination, URCA never sought to draw from an analysis of ARPU any conclusion on whether mobile retail prices in The Bahamas are at the level expected in a market characterized by effective competition. Rather, URCA’s central argument is that mobile prices have, on average, fallen since ALIV joined the market from an ARPU perspective. In URCA’s view, the declining monthly ARPU trends point to a market that is characterized by fierce price competition. URCA’s view, however, must be taken in the context of URCA’s own acknowledgement that an analysis of ARPU trends underestimates the extent of price reduction experienced by Bahamians. In other words, the effective unit prices to end-users are lower than depicted in the monthly ARPU. In reinforcing this point, URCA went on to state that:

“While monthly ARPU is not a pure measure of prices as it includes usage, it does provide an indication on the average cost to end-users and the average revenues to MNOs. This approach is especially important in markets where there is not a single price and where promotions are common, as being the current case.”

In further recognition of ALIV’s comments, URCA has reviewed four ITU price baskets showing how the costs for mobile services in The Bahamas have moved over time. Each basket comes with different combination of mobile service and usage level. In particular, the costs for three of the four usage baskets have fallen over time, as shown in Figure 3.

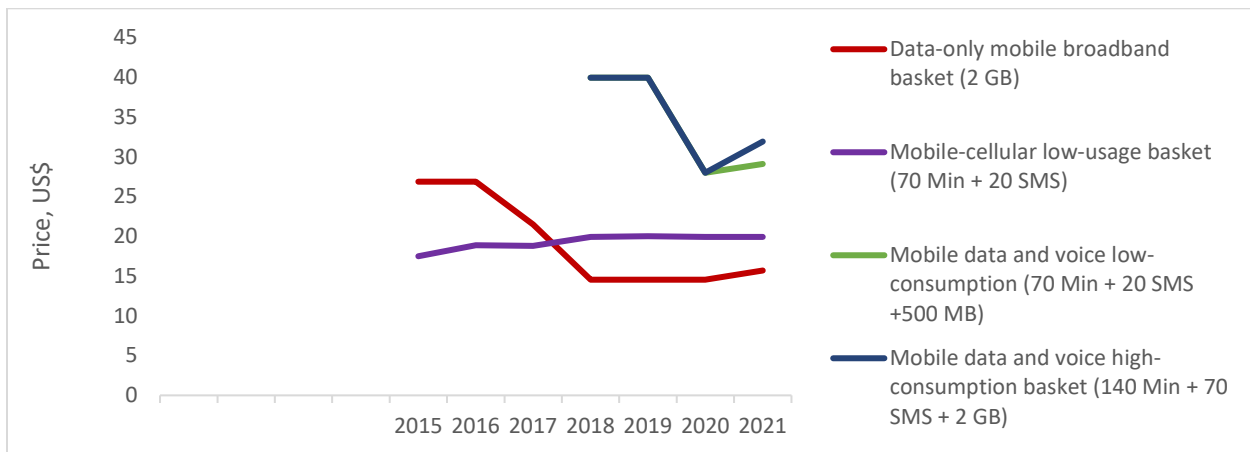


Figure 3: ITU Price Baskets, US\$

Source: <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/IPB.aspx>

URCA accepts that price baskets can provide valuable insights on the monthly costs likely to be incurred to meet a certain level of usage. However, there are several caveats to price baskets, e.g., the usage levels may not be representative of those in The Bahamas (especially those adopted by the ITU as these are based on global average usage levels, rather than Bahamian usage levels). It also depends on the tariffs

²⁰ Sub-section 3.2 (Price Trends), Preliminary Determination

considered in the basket as this can have a big impact on the results themselves and how representative they are for the market overall. And in the context of monthly call allowances the basket prices may be identical for different levels of usage. Based on the average mobile usage per month²¹ none of the ITU price baskets appear relevant to The Bahamas.

URCA cannot rule out the need to track retail prices in the future. Although competition has developed to the point where ex ante price and accounting separation regulations are no longer warranted, the risk of future coordination remains. For this reason, it is important to closely monitor the progress and developments in the market. URCA is minded to developing bespoke tariff baskets for Bahamian customers and then run a quarterly price comparison which is published on URCA's website. This would provide timely and up-to-date price information to customers and help them to make informed pricing decisions.

URCA accepts that some substitutability exists between traditional call and messaging services and **OTT call and OTT messaging**, as acknowledged in the previous sub-section. However, it is not clear to URCA that OTTs are sufficiently close demand-side substitutes for traditional mobile services and eat into the mobile operators' revenues, as suggested. Amongst other things, URCA in the next sub-section looks into whether OTTs exert a significant constraint on pricing power in retail mobile services to form part of the same retail market as mobile services.

3.3 Comments Received to Consultation Questions

Consultation Question 1: Do you agree with URCA's proposed definition of the market for retail mobile access, calls and messaging and mobile data services in The Bahamas? If not, why?

ALIV's initial comments

ALIV agreed with and supported most of URCA's market definition except for the exclusion of OTTs from the market. Below, URCA summarises the key arguments made by ALIV on each of the services included in URCA's market definition followed by the reasons why OTTs should form part of URCA's market definition.

Mobile access and domestic call and messaging services - ALIV agreed with URCA's conclusion that these services are complementary and hence form part of the same retail market. This is because domestic call and messaging would not be possible without mobile access. Indeed, mobile access constitutes the connectivity customers require to use both mobile call and messaging services and OTT call and messaging services. It stands to reason, therefore, that OTT call and messaging services and mobile access are complementary in the same way as mobile access and domestic call and messaging services and hence form part of URCA's market definition. ALIV said it was surprised to see that 29% of persons surveyed do not use mobile access for call and messaging and inquired whether these persons do not have any mobile services or use mobile data to access OTTs for their voice and messaging services.

²¹In terms of minutes, SMS and data

Outbound international call and messaging services - ALIV was doubtful that a provider of outbound international mobile services could offer mobile access and domestic call and messaging services in response to a supply-side SSNIP. Pointing out that, for a long-time, international operators have provided outbound international services through carrier selection, call-back or OTT apps without having any network infrastructure in-country to provide domestic mobile services. ALIV was of the view that the supply-side SSNIP test applied in the particular sub-section “...can be over-rigid in the mobile market, where a set of linked products are complementary to providing the customer with a full range of services”²²; noting that this point is relevant to its submissions on OTTs later. Nonetheless, ALIV agreed with and supported URCA’s conclusion that outbound international call and messaging services form part of its mobile market definition.

Outbound mobile roaming services – ALIV agreed with and supported URCA’s conclusion that these services are complementary to mobile access, domestic call and messaging and outbound international call and messaging services. In so doing, ALIV acknowledged that outbound mobile roaming services are an integral part of a modern mobile package and, hence form part of URCA’s mobile market definition. ALIV advised that URCA’s conclusion highlights the need to use the SSNIP test “to inform, but not determine the conclusions about the extent of the market, and is relevant to the discussion about OTTs later.”²³

Mobile data services - ALIV did not understand why URCA conducted a demand-side SSNIP test on whether smartphone data usage is in the same market as mobile data only service. Arguing that the correct question is whether a demand-side SSNIP on the focal product (i.e., mobile access, calls, etc) would be profitable for the hypothetical monopolist due to substitution from mobile data. URCA’s conclusion to include mobile data services in its market definition should be the same because customers would make greater use of OTT apps available on mobile data packages.

Prepaid and postpaid subscriptions - ALIV felt that the demand-side SSNIP test on prepaid should cover the range of usage and expenditure rather than just the average. By focusing on the average user, URCA might have come to the wrong conclusion on substitution from prepaid to postpaid services. ALIV commented that prepaid customers with above average usage and expenditure are more likely to move to postpaid in the event of a demand-side SSNIP. Aliv suggested that there may be sufficient number of these customers willing to switch thus rendering the marginal price increase nonviable for the hypothetical monopolist. ALIV, however, agreed with and supported URCA’s conclusion that prepaid and postpaid subscriptions are part of the same market.

Fixed access and calls – While these services are neither demand nor supply-side substitutes for mobile access and services, URCA may find that mobile services impose a restraint on pricing power in the fixed services market. Such a finding would not contradict URCA’s conclusion in the particular sub-section of the consultation.

²² Page 5, ALIV’s Initial Response, 25 April 2022

²³ Page 5, ALIV’s initial Response, 25 April 2022

Fixed and mobile broadband services – ALIV agreed with and supported URCA’s conclusion that due to a lack of supply-side substitution, these data services are not part of the same product market. ALIV appeared to believe that mobile-to-fixed broadband substitutability is likely. Advising that its own calculation shows a hypothetical monopolist making a 10% increase in the price of mobile broadband would be worse off if 14% of customers moved to fixed broadband. This contradicts URCA’s conclusion in the particular sub-section of the consultation.

OTT services - ALIV reasoned that URCA’s market definition should be widened to include OTT call and OTT messaging services. Arguing the following points:

(i)(a) OTTs and mobile access services complement each other in the same way as domestic call and messaging, outbound international call and messaging etc and hence form part of the same retail market. Also, OTT call and messaging are comparable in functionality to the call and messaging services included in URCA’s market definition.

(b) The *order* in which a SSNIP test is applied is important to the outcome of the market definition process. *“If URCA accepts that OTTs like WhatsApp are substitutes for call and messaging services because customers would move to such services in sufficient number to make a SSNIP unprofitable (as strongly suggested by the evidence presented by URCA), then they form part of the same market.”*²⁴ Meanwhile, *“if the focal product includes access, voice and messaging and then a SSNIP is applied in relation to OTT services, OTT services would not form part of the same market because OTT providers do not offer mobile access. Given that access and voice and messaging services are considered complementary, the latter approach would not be reasonable and would result in a significant part of the mobile market being excluded from the analysis.”*

(c) OTTs impose a restraint on MNOs’ pricing power in retail mobile services through demand-side substitution. ALIV reasoned that a demand-side SSNIP in call and messaging bundles is likely to induce switching to mobile data only plans and use OTTs for call and messaging instead, thereby reducing ALIV’s revenues and rendering the SSNIP nonviable.

ALIV referenced the URCA-PD survey results to show that 30% of survey respondents would make fewer mobile calls and switch to OTT call and messaging when faced with a SSNIP in mobile call and messaging services. Claiming this results in lower revenues for the hypothetical monopolist due to reduced call volumes or moves to data bundles without calls. ALIV said the hypothetical monopolist would be worse off, and OTT services are direct demand-side substitutes for mobile call and messaging services.

(ii) ALIV dismissed URCA’s concerns that differences in product characteristics especially the requirement for OTT downloads and unreliable Internet do not limit substitution in a big way. Noting in reference to the URCA-PD survey that 93% of respondents use WhatsApp for call or

²⁴ Page 6, ALIV’s initial response, 25 April 2020

messaging purposes and, hence WhatsApp is the main alternative platform for voice and messaging services.

(iii) Although URCA finds that supply-side substitution between mobile access and OTT services is unlikely, in assessing whether outbound mobile roaming is part of the mobile market, URCA comes to the same view on supply-side substitution, but still added these services to its mobile market definition. ALIV wanted URCA to come to the same balanced conclusion on OTT as it did with outbound mobile roaming. Stressing that OTTs:

- are complementary to mobile access in the same way as mobile call and messaging services; and
- are direct substitutes of mobile call and messaging services.

(iv) ALIV noted that the TRC (“Telecommunications Regulatory Commission”) in Jordan concluded that:

“... OTTs voice and messaging services do fulfill some functions that are similar to those available through some regulated services (such as mobile voice and SMS), and this is a factor that needs to be considered in the “three criteria test” and any competition assessment.”²⁵

ALIV mentioned that since publication (2019) of the TRC document, the popularity and take-up of OTTs have grown worldwide and urged URCA to give greater consideration of OTTs in its assessments of mobile markets and the issue of additional mobile licences.

BTC’s initial comments

BTC agreed with URCA’s market definition.

BTC’s second-round comments

In commenting on ALIV’s first-round submission, BTC said there are many good reasons that OTT call and messaging services could be part of URCA’s retail mobile services market definition, including those set out in ALIV’s initial submission but BTC felt that the inclusion or exclusion of OTTs in the mobile market definition is inconsequential to the outcome of URCA’s market review and assessment. BTC also agreed with ALIV that while fixed access and calls may not be substitutes for mobile access and call services at this time, there are good reasons to suggest that they could be considered substitutes in the opposite direction.

URCA’s responses to the comments received/final determination

URCA’s detailed responses to the comments received are set out below.

Mobile access and domestic call and messaging services – As discussed in the Preliminary Determination these services are not demand-side substitutes but complement each other. This is because domestic call

²⁵Page 7, ALIV’s initial response, 25 April 2022.

and messaging services would not be possible without mobile access and Bahamians commonly consume these services as part of a mobile bundle or cluster of services with predetermined allowances for calls and messages and data. On the other hand, there exists supply-side substitution between mobile access and domestic mobile call and messaging services. So, when confronted by a SSNIP in mobile access, a provider of domestic mobile call and messaging services could begin to offer mobile access services without incurring any additional capex (and vice versa). To this end, URCA remains of the view that these services form part of the same retail market. URCA acknowledges BTC and ALIV's agreement with its preliminary conclusion.

It is not URCA's assessment, however, that OTT call and messaging and mobile access services are complementary services in the same way as mobile access and domestic mobile services. OTT services and mobile services serve similar purposes with both providing the option to make/receive calls or send/receive messages to and from locations in country and overseas. Most importantly, a customer choosing to use OTTs would normally already purchase a mobile bundle with voice calls, messages and data services. So, when making an OTT voice call or sending an OTT message the customer will be using the data element of the mobile plan. Whilst the retail product offered by BTC and ALIV represents a single subscription with a cluster of mobile services covering telephony, messaging and data services. In this context, URCA holds the view that on the demand-side OTTs represent an additional product or application that is accessed over mobile data and are therefore not complementary in the same way as domestic call and messaging and any of the other calling and messaging services added to its market definition.

Turning to the clarification sought by ALIV on the group of survey respondents not using mobile access for call and messaging services, these could be persons that purchase mobile data plans for dedicated purposes, for example to access online classes, etc. URCA, however, cannot rule out the possibility that some may be using OTT platforms for call and messaging purposes as well.

Outbound international call and messaging services – ALIV's feedback that an international operator would not offer domestic mobile services in the event of a supply-side SSNIP is highly subjective. Hypothetically a provider of international mobile services wishing to start offering domestic mobile services would mostly likely already have the relevant infrastructure in place to deliver domestic mobile services. For example, BTC and ALIV provide domestic and outbound international mobile services under the terms of their operating licenses and utilize the same sales and distribution channels to provide these two sets of services. Furthermore, domestic and outbound international mobile services are delivered using the same domestic network and infrastructure. Accordingly, supply-side substitution exists between domestic mobile services and outbound international mobile services.

Although there is limited scope for demand-side substitution between international and domestic mobile services they form part of the same mobile bundle and, hence complement each other in the same way as the range of services added to URCA's market definition.²⁶ In view of demand and supply-side

²⁶ Bahamians typically consume outbound international services as part of a mobile bundle, inclusive of domestic mobile services and international calls and messaging to specified destinations. A key point to note consumers can purchase these services without having to buy a new SIM card. That is, the same SIM card is used to access domestic mobile services is also used to make/send outbound international calls and text messages.

considerations, URCA remains of the view that international mobile services form part of the same retail market for mobile access and domestic mobile services. URCA acknowledges BTC and ALIV's agreement with its preliminary conclusion.

Outbound international mobile roaming services – As explained in the consultation, neither demand nor supply-side substitution exists for these services. These services are offered as part of a mobile bundle and, hence complement mobile access and the other call and messaging services included in URCA's market definition. The two existing MNOs sell bundles with outbound international mobile roaming within USA and Canada. In essence, Bahamians consume outbound international mobile roaming in the same way as they do for domestic mobile services and outbound international mobile services. Consumers have the same choice of mobile operators for all retail mobile services including outbound international mobile roaming and consume these services without having to buy a new SIM card. That is, the same SIM card/telephone number is used to access domestic and outbound international mobile services is also used to make/receive voice calls or access other mobile services when travelling abroad by means of using the mobile infrastructure of a visited network.²⁷ Although neither demand nor supply-side substitution exists for outbound international mobile roaming, URCA thus considers it reasonable to include these services in its market definition. URCA acknowledges BTC and ALIV's agreement with its preliminary conclusion.

Mobile data services –URCA notes ALIV's comment that a demand-side SSNIP test on smartphone data usage is not the correct question. As noted in the Preliminary Determination, Bahamians consume mobile data services as part of a smartphone mobile bundle (inclusive of calls, SMS and data) or as a standalone (mobile data only) product. From the end-customer's perspective, mobile data usage via smartphones and mobile data only usage serve the same purposes (access to the Internet). Consumers, however, may switch between buying a smartphone bundle with data, and buying mobile data only plans, and it is also the case that mobile voice and data serve different functions. In particular, mobile voice calls and messaging are used to communicate instantly with mobile or fixed numbers within and outside The Bahamas, data is use for Internet purposes. Hence, it is unlikely that end-customers view voice and messaging and mobile data as substitutable. In this regard, URCA considers a demand-side SNNIP analysis with smartphone services being the focal point is the appropriate test. URCA acknowledges ALIV's agreement with its conclusion that mobile data services are part of its retail market for mobile services.

Prepaid and postpaid subscriptions – URCA understands that demand-side SSNIP test on prepaid is often based on the average usage and expenditure. While a prepaid SSNIP analysis on the range of usage and expenditure, as suggested by ALIV, would make its analysis more robust, the data currently before URCA is not sufficiently granular to do so. As substitution exists from postpaid to prepaid, both services are part of the same market. Substitution the other way around (i.e., postpaid to prepaid) is not necessary for prepaid and postpaid subscriptions to be in the same economic market. URCA thus retains its preliminary conclusion that prepaid/postpaid subscriptions belong to the same retail market. URCA acknowledges BTC and ALIV's agreement with its preliminary conclusion.

²⁷Sub-section 4.1.3, Preliminary Determination

Fixed access and call – With reference to the submissions received, URCA retains its preliminary conclusion that these services are not part of its mobile market definition. URCA acknowledges BTC and ALIV’s agreement with its assessment and preliminary conclusion. Regarding the point that mobile access and calls may constrain market power in fixed market, URCA views this as a relevant consideration in the upcoming fixed services market analysis.

Fixed and mobile broadband services – While URCA would require further details on ALIV’s calculation to be able to validate and comment on it, URCA recognizes the need to balance this with other evidence available. Notably, the URCA-PD survey revealed that a key deterrent to mobile-to-fixed broadband substitutability is the difference in mobility offered by both services. Fixed broadband services do not offer mobility, thus significantly limiting when it can be used as a substitute for mobile broadband. On top of this, supply-side substitution does not exist between fixed and mobile broadband. This is because fixed and mobile broadband services are delivered through different networks and technologies and hence are not supply-side substitutes. URCA retains its preliminary conclusion that due to a lack of demand and supply-side substitution, fixed and mobile broadband services are not in the same retail market. URCA acknowledges BTC and ALIV’s agreement with its preliminary conclusion.

OTT services - URCA notes but disagrees with the reasons put forward by ALIV in support of a wider market definition that includes OTT call and OTT messaging services. URCA’s reasoning and final determination are set out below:

- (i)(a) As noted before in relation to **“mobile access and domestic call and messaging services”**, OTT call and messaging services are not complementary to mobile access in the same way as the range of retail call and messaging services (i.e., domestic and outbound international mobile services and outbound mobile roaming) included in URCA’s market definition. Amongst other things, domestic and outbound international mobile services and outbound mobile roaming form part of a mobile bundle or cluster of services commonly purchased jointly by Bahamians. In contrast, OTTs represent an additional product or application that is accessed using the data element of a mobile bundle.

Turning to the claim that OTT services offer comparable functionality, URCA accepts this point. However, as noted at item (c) below, limited demand-side substitution exists between mobile call and messaging services and OTT call and messaging services.

- (b) URCA considers that the order in which the SSNIP test is applied must be pragmatic and reflective of market realities, etc. The order in which SSNIP tests are applied in this mobile market review are in alignment with these principles and compatible with how SSNIP tests are universally applied. For example, given Bahamians’ preferences for mobile bundles a demand-side SSNIP analysis in mobile access, voice call and messaging being the focal point is the correct test.
- (c) It is unclear to URCA that OTT services limit the ability of a hypothetical monopolist offering retail mobile services to (profitably) raise its prices. The usage evidence illustrated in the figure below appears to show that OTT services have impacted Bahamians’ demand for traditional mobile services (especially mobile messaging). URCA accepts that the declining usage trends in SMS

suggest there may have been some substitution from mobile messaging to OTT messaging services. Whilst the increasing usage trends in mobile calling are likely to be the result of mobile services being relatively inexpensive and convenient. BTC and ALIV provide large or unlimited allowances of domestic calling minutes and messages within their mobile bundles, which means that the marginal cost to the consumer of making an additional call or sending SMS is often zero. In this regard, there would be no financial benefit for an end-customer to switch to making an OTT call or send a OTT message as long as (s)he is still within its monthly call or messaging allowance). This means that any switching would apply primarily to marginal calls or text messages that are not part of a mobile bundle.

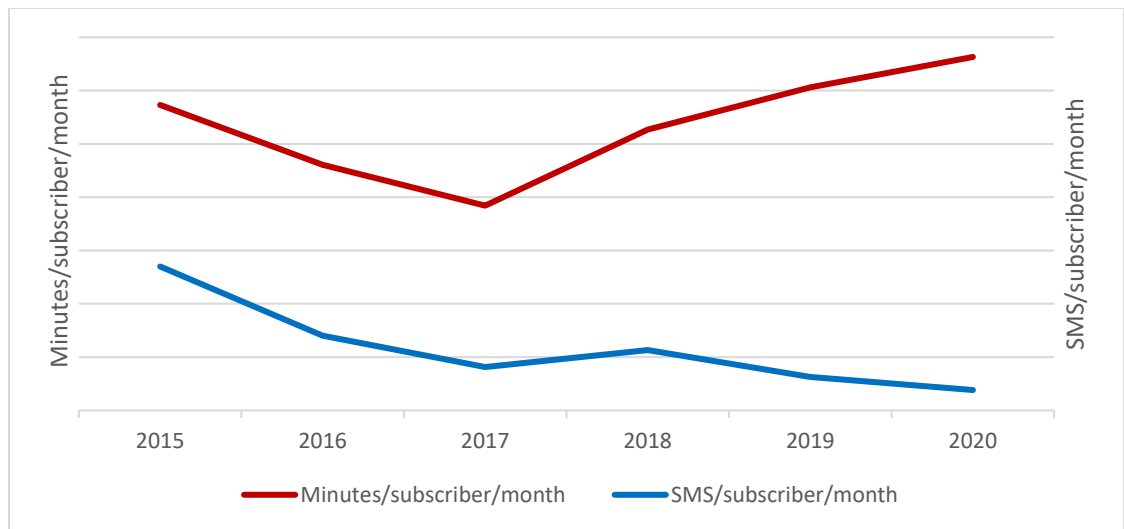


Figure 4: Average Mobile Usage (Mins/SMS) per Month
 Source: URCA Analysis based on MNOs data

The URCA-PD survey referenced by ALIV also shows that 17% of respondents would do nothing, 22% would make fewer mobile calls, and 21% would switch to another mobile plan in case of demand-side SSNIP in mobile access and call services.²⁸ The corresponding values for mobile messaging are 19%, 13% and 6%, respectively. Clearly, a non-trivial number of customers (i.e., 60% of respondents) have not indicated any desire to move to mobile data only plans and would still subscribe to bundles with calls, messages and data.

²⁸ Only 4% would stop using mobile access and call services

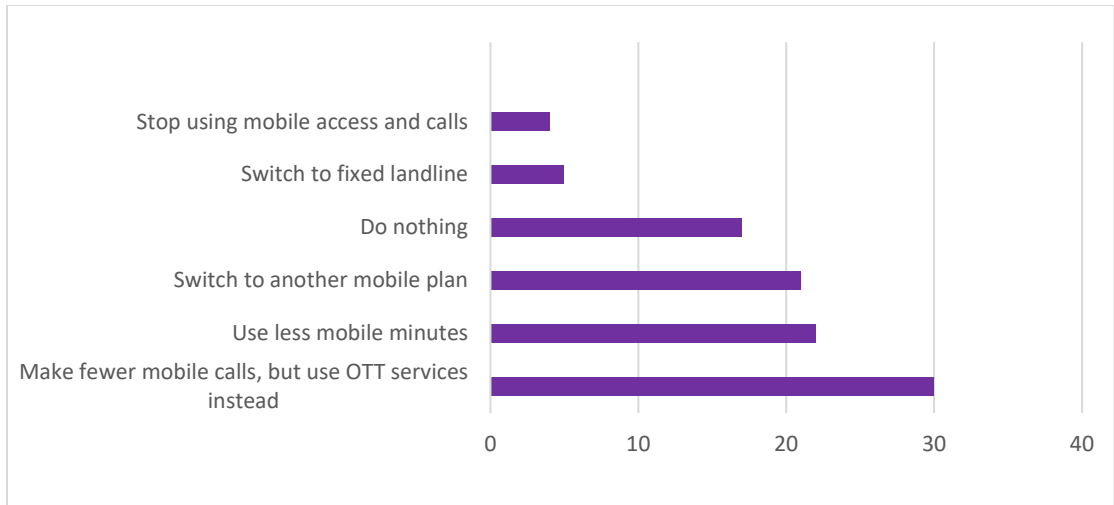


Figure 5: “If the price for your current mobile access and call services is increased by 5-10%, which of the following actions would you take? (ONE RESPONSE ONLY)”

Source: URCA-PD Survey

In total, the evidence before URCA does not support ALIV’s view that sufficient number of Bahamians would move from smartphone bundles to mobile data only plans (in order to use OTTs) to make a price increase in smartphone bundles nonviable. URCA reiterates that the increasing availability and usage of OTTs have not resulted in any decline in mobile connections in The Bahamas (see Figure 1 above). In line with international experience, Bahamians have not given up their mobile phone service entirely for OTT services as they still require a mobile connection and mobile data to be able to access and use OTT services from any location.

(ii) URCA acknowledges the similarity in product characteristics between OTT services and mobile services but still finds that OTTs are not part of the retail market for mobile services. This is for the reasons set out above.

(iii) On supply-side substitution, URCA has come to a different view on OTTs than it did with outbound mobile roaming. In summary, URCA in its Preliminary Determination said there is likely to be limited supply-side substitutability between OTT services and domestic mobile services and outbound mobile roaming and domestic mobile services. URCA affirmed this in subsection 3.1 (“**URCA’s market definition exercise**”) above. The market is subject to the presence of high and non-transitory barriers to entry which means that supply-side substitution for anyone not currently offering domestic mobile services is unfeasible in the event of a SSNIP. On the basis of both demand and supply-side considerations, however, URCA added “**Outbound international mobile roaming services**” to its market definition. The main supply-side considerations that informed URCA’s conclusion are that BTC and ALIV:

- already supply outbound international mobile roaming as part of their portfolio of all retail services;

- offered outbound roaming service utilizing the same sales and distribution channels as they do for other retail mobile services; and
- Bahamians use the same mobile providers for outbound mobile roaming services and domestic and outbound international mobile services.

In contrast, OTT service providers offered OTT call and messaging services in a manner that is distinct from how traditional mobile operators like BTC and ALIV supply mobile services to end-customers.

(iv) Again, in this market review, URCA has given utmost consideration to local and international trends. Like URCA, TRC Jordan recognized that OTTs do provide similar functions to mobile call and messaging services and concluded that OTT services are outside its mobile market definition. URCA further notes ALIV's urge for URCA to give greater consideration of the impact of OTTs on the domestic mobile market when assessing the case for a third mobile operator. However, URCA advises that this is out of scope of this document. In line with the discussion above, URCA repeats that OTT services:

- are not complementary to mobile access in the same way as mobile call and messaging services; and
- are not close direct substitutes of mobile call and messaging services.

Lastly, URCA notes that the exclusion of OTT services from URCA’s market definition is compatible with mainstream thinking as evidenced by mobile market definition exercises in its region (Trinidad & Tobago,²⁹ Bermuda,³⁰ Canada³¹), Oman,³² Saudi Arabia,³³ Jordan,³⁴ Norway, and EC merger cases.³⁵

In view of the submissions received, URCA affirms its preliminary conclusion on the relevant product scope of the market for retail mobile services as set out in sub-section 4.3 of the Preliminary Determination.

Consultation Question 2: Do you agree with URCA’s preliminary conclusion from its single dominance assessment in the retail mobile market? If not, please set out your alternative views and provide evidence to substantiate your position.

ALIV’s initial comments

ALIV endorsed URCA’s overall conclusion that single firm dominance does not exist in this market, noting that the two existing MNOs are of a similar size and are subject to the same economic factors. ALIV’s detailed comments on question 2 are below.

On *price trends*, ALIV pointed to its submissions in the previous sub-section concerning the use of monthly ARPU trends to track prices in this market. ALIV reasoned that retail prices above those expected in a competitive market harm consumers and this is evidence of market power (or ineffective competition). As to whether mobile prices in The Bahamas are higher than they should be, ALIV said this must be assessed with reference to profitability or costs, claiming that the analysis presented by URCA does not cover these aspects. Accordingly, URCA cannot draw any conclusions about dominance based on its analysis of price trends. However, Figure 2 of ALIV’s first-round submission provides good evidence of a strongly competitive market.

Commenting on the *“Control over infrastructure not easily duplicated”* criterion, ALIV shared that it does not self-supply all the wholesale inputs it requires, as it uses some of BTC mast sites and BTC undersea

²⁹Determination: Retail Domestic Telephony Market Definition (2021) at <https://tatt.org.tt/Home/Announcements4/DNNArticleDetailView/tabid/350/ArticleId/586/Determination-Retail-Domestic-Mobile-Telephony-Market-Definition.aspx>

³⁰Market Review of the Electronic Communications Sector, Final Report, Decision & Order (2020) at https://www.ra.bm/documents/2020-09-01_market-review-of-the-electronic-communications-sector-final-report-decision-and-order/?wpdmdl=15146&refresh=62b352834a8991655919235

³¹Telecom Notice of Consultation CRTC 2019-57 — Further Comments of the Competition Bureau (2019) at <https://www.competitionbureau.gc.ca/eic/site/cb-c.nsf/eng/04510.html>

³²Public Consultation on Market Definition and Dominance (MDD Report, 2020) at <https://www.tra.gov.om/En/ViewPublicConsultations.jsp?code=25>

³³Market Definition, Designation and Dominance (MDDD, 2017) at <https://pdf4pro.com/amp/tag/1477a/market-definition.html>

³⁴Public Consultation: Review of Mobile Markets in Jordan (2019) at https://trc.gov.io/EchoBusV3.0/SystemAssets/PDF/AR/%D8%A7%D8%B3%D8%AA%D8%B4%D8%A7%D8%B1%D8%A7%D8%AA/a180f979-d117-4785-8d31-48dc25e46486_Mobile%20Consultation%20Document%20PUBLIC%20VERSION.pdf

³⁵ at https://ec.europa.eu/competition/mergers/cases/decisions/m6992_20140528_20600_4004267_EN.pdf

cable system to Family Islands. ALIV claimed that URCA's infrastructure sharing requirements put it at a disadvantage, but it still manages to compete successfully at the retail level.

When it comes to the "*Absence of potential competition*" criterion, ALIV felt that URCA underplays the competitive constraints mobile operators faced from OTT service providers. Repeating an earlier point that OTT service providers do constrain MNOs' ability to increase prices for mobile call and messaging services, even when these services are part of a mobile bundle. ALIV noted too that free OTT call and messaging services reduce the value mobile customers place on in-bundle allowances for calls and messages. As such, mobile operators are constrained in the prices they can charge by OTT service providers.

BTC's initial comments

BTC did not offer any specific comments but said it agreed with the conclusion reached in the Preliminary Determination against single firm dominance in the analysed market.

URCA's response to comments received/final determination

URCA's detailed responses to the comments received are set out below.

Regarding the use of ARPU to track *price trends*, URCA refers to the pricing discussion at sub-section 3.2 above. URCA acknowledges that pricing is one of URCA's indicators of the extent of effective competition or market power in the market for retail mobile services. URCA agrees with ALIV that national authorities generally look at profitability or the underlying cost data to ascertain whether retail prices for communications services are excessive and reflective of market power.³⁶ However, ALIV's assertion that URCA's analysis does not cover these aspects is incorrect. As was discussed in the particular sub-section of the consultation, on the basis of the information before URCA at the time:

"...Aliv has not earned a positive return since entering the market in 2016, despite capturing ~~✗~~ of mobile connections and retail mobile revenue.

BTC has managed to sustain a level of profitability on its retail mobile activities beyond its regulated cost of capital (11.71%) even though profits have fallen from ~~✗~~ to ~~✗~~ between 2016 and 2020. This, in line with Aliv's profitability trends, would suggest that overall the market is trending towards profitability levels more common in competitive markets. Clearly, the assessment of profitability criterion is not suggestive of single firm dominance on the part of either BTC or Aliv."³⁷

In essence, the downward trend in mobile prices discussed in sub-section 3.2 above is observed in many countries across the world when competition is introduced. This in combination with BTC's diminishing market share and declining profitability point to a market that has become increasingly competitive in recent years.

³⁶Benchmarking is a reasonable and acceptable alternative especially where relevant data on profitability or cost is not readily available or is unreliable.

³⁷ Sub-section 5.1 ("Profitability"), Preliminary Determination

Further still, IADB was of the view that broadband prices in The Bahamas are out of step with OECD and Caribbean averages:

“The monthly fees for a fixed broadband connection ... is 5 percent above the Caribbean average and 113 percent above the OECD average, while for a mobile broadband connection the fees are 54 percent and 24 percent higher, respectively.”³⁸

Additionally, Cable.co.uk found that the average cost (\$6.02) for 1GB of mobile data in The Bahamas was above the Caribbean average by 35.86%.³⁹ URCA, however, wishes it to be noted that some of these price differences are likely to be driven by higher costs of delivering mobile services in The Bahamas. In the totality of the above, it is not apparent to URCA there is no scope for further price reduction in this market.

Turning to comments about the **“Control over infrastructure not easily duplicated”** criterion, ALIV’s use of BTC’s mast sites and undersea cable system does not undermine URCA’s conclusion that both MNOs exert overwhelming control over infrastructure not easily duplicated. The infrastructure in question relates to the physical networks BTC and ALIV must have to self-supply wholesale mobile access and call origination services and self-supply/sell termination services, in order to compete in the downstream (retail) mobile service market.

It is not apparent to URCA that its infrastructure sharing requirements allow one operator to gain a competitive edge over its rival. As far as URCA can tell, the mobile market in The Bahamas is not characterized by inter-operator disputes or competition problems. Furthermore, ALIV’s success in capturing a significant share of BTC’s market power and the resulting benefits generated for customers and the wider Bahamian economy are attributable, in no small way, to the range of measures introduced by URCA in support of mobile competition. These include infrastructure sharing, obligation for BTC to provide national roaming during the build out phase of ALIV’s network; access to BTC’s fixed and mobile interconnection services at cost-based charging; and mobile number portability. In any case, URCA’s infrastructure sharing requirements will be reviewed and updated (where necessary) as part of its 5G work stream and upcoming public consultation.

Relating to the **“Absence of potential competition”** criterion, URCA does not consider it having underplayed the impact OTT service providers exert on the level of competition in the retail mobile market. URCA is satisfied that it has been reasonable and proportionate in its assessment of the evidence before it and has come to a balanced preliminary conclusion on market definition and competition assessment. In this regard, URCA has given utmost consideration to all applicable factors as it is required to do by the Comms Act and its own SMP Guidelines. In this Final Determination, it has already been established that OTTs are not part of the relevant economic market in which BTC and ALIV compete for mobile access calls, messaging and data services. This market is characterized by significant barriers to

³⁸ Page 25, Caribbean Quarterly Economic Bulletin 2021:3, Digital Infrastructure and Development in the Caribbean, January 2022, Volume 10 Issue 3 at <https://publications.iadb.org/publications/english/document/Caribbean-Quarterly-Economic-Bulletin-Volume-10-Issue-3-December-2021.pdf>

³⁹ <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>

entry and, hence outsiders (including OTT service providers) are unlikely to exert a significant influence on the dynamics of competition within the market.

Notwithstanding, URCA assesses ALIV's claim that free OTT call and OTT messaging services reduce the value Bahamians place on traditional mobile calling and messaging services. URCA holds no information on the extent to which free OTT services reduce the value Bahamians place on mobile services and ALIV, for its part, has not put forward any evidence in support of this view. From URCA's standpoint, it bears repeating that Bahamians typically purchase mobile bundles, inclusive of allowances for calls, messages and data even though they have the option of purchasing a standalone mobile data plan (no calls and messages). URCA surmises that the availability of mobile bundles with free data inclusions for social media disincentivises switching away from bundles to mobile data only subscriptions (in order to use the OTT services).

Addressing the claim that OTT service providers limit ALIV's ability to raise prices for call or messaging and eat into its revenue, URCA views this as highly subjective. As noted before, while OTTs are prevalent in The Bahamas, this does not mean OTT service providers act as a direct constraint on mobile service pricing in the market. Indeed, the survey evidence before URCA continues to show that OTT service providers exert a limited indirect constraint on BTC and ALIV and in particular, their pricing of marginal minutes and messaging services. URCA will continue to monitor progress and developments in this market and reassess the situation in any future market reviews.

With reference to the submissions received, URCA affirms its preliminary conclusion that no licensee is singly dominant in the retail market concerned. Neither of the existing mobile operators enjoys a position of economic strength which enables it to hinder the maintenance of effective competition in the defined market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers. BTC and ALIV agreed with URCA's preliminary conclusion against single firm dominance in this market.

Consultation Question 3: Does the industry agree with URCA's preliminary conclusion from its joint dominance assessment in the retail mobile market? If not, please set out your alternative views and provide evidence to substantiate your position.

ALIV's initial comments

ALIV agreed with and supported URCA's conclusion against joint/collective dominance. ALIV's detailed comments on question 3 are below.

On URCA's *assessment of joint dominance*, ALIV said an examination of the factors conducive to joint dominance is not the same as demonstrating that joint dominance is being exercised in this market. Because joint dominance is not a current concern for URCA, the analysis of potential joint dominance is inconsequential. In order for URCA to make a finding of joint dominance in the future, URCA would need to demonstrate that joint dominance is being used to damage consumers.⁴⁰ ALIV said it knows of no national authority that has been able to successfully demonstrate the existence of joint dominance in the

⁴⁰In terms of subnormal profits, unsatisfied demand or inefficient cost structures, etc.

mobile retail market, although there are examples in the wholesale mobile markets. Hence, the finding against joint dominance is consistent with international experience.

ALIV said the list of criteria URCA used for joint dominance assessment is different from the list recommended by BEREC⁴¹ for national authorities in the EU to use when assessing joint dominance in their jurisdictions.⁴² URCA may wish to update its list for future analysis to ensure The Bahamas remains in line with current economic theory and best regulation.

On the *“Similarity in market share”* criterion, ALIV said the market is not entering a more stable phase, as suggested by URCA. Instead ALIV argued that its market share, when measured by subscribers, only decreased slightly in 2020, and in terms of mobile retail revenues its position was unchanged. The stability of market shares over time is probably as important as similarity in such shares because firms come to realize that if competition in the market is not going to improve their positions, collusion may. Market shares in The Bahamas have not been stable, as show in Figures 13/14 of the consultation.

When it comes to the *“Mature market and stagnant or moderate growth on the demand-side”* criterion, ALIV said the market is not mature or stagnant. The growth in mobile data usage has stimulated new demand for mobile services and new products (e.g., service bundles). 5G is likely to boost innovation in mobile services and ensure dynamic competition going forward. Hence, URCA’s concerns that a mature and stagnant market may lead to tacit coordination takes a short-term view and ignores both current and future developments of the market. By opening up 5G spectrum, URCA will help to ensure that the mobile market is not mature or stagnant in the coming years.

Regarding the *“Incentive for tacit coordination”* criterion, ALIV *“refutes URCA’s suggestion that it has less incentive to compete aggressively on reaching a similar market share to BTC.”*⁴³ Arguing that it faced continual pressure from major stakeholders to return a profit and strive to improve its market position to achieve this. The use of short-term promotion is not relevant to this analysis as they are used to maintain consumer interest in a competitive marketplace.

When considering the potential for future joint dominance in this market, URCA ignored the boost that *fifth-generation technology and services (5G)* are likely to give to growth and competition.

BTC’s initial comments

While not offering any specific comments on question 3, BTC said it agreed with URCA’s conclusion against joint dominance.

URCA’s response to the comments received/final determination

⁴¹Body of European Regulators for Electronic Communications at https://berec.europa.eu/eng/about_berec/what_is_berec/

⁴²In particular: (i) existence of a clear focal point, (ii) symmetry in market shares, cost structures, vertical integration, capacity constraints and product homogeneity, (iii) no destabilizing events, and (iv) long-term focus, Page 9, ALIV’s initial response, 25 April 2022.

⁴³ Page 10, ALIV’s Initial Response, 25 April 2022

URCA welcomes the wide-ranging feedback on its preliminary conclusion against joint/collective dominance in the defined retail mobile service market. URCA's detailed responses to the comments received are set out below.

Clearly, **fifth-generation (5G) mobile technology** offers tremendous opportunities for mobile operators to exploit any comparative advantage gained by introducing new technologies.⁴⁴ 5G build out to The Bahamas is likely to impact current and future competitive dynamics in this market. This is especially if one of the existing players manages to gain a substantial lead in the provision of 5G network and services, such that it could "tip" competition in its favour. It was not apparent to URCA, however, that one player is likely to gain a substantial lead over its rival in 5G and hence alleviate concerns for potential lessening of competition in this market thereby alleviating concerns for potential coordination in the future.

Concerning the **assessment of joint dominance**, URCA notes the limited precedent on joint dominance findings elsewhere. However, this will not guide URCA's assessment and decision making when reviewing retail or wholesale service markets in The Bahamas. Instead, URCA will analyse the competitive dynamics in each defined market, based on the approach and principles set out in the SMP Guidelines and the market data available to URCA at the time.⁴⁵

URCA further notes ALIV's suggestion to review the set of criteria for assessing joint dominance to better align it with those considered elsewhere; however, the criteria considered by URCA in this market review are those set out in its SMP Guidelines. Any review and update (where necessary) to its SMP Guidelines are beyond the scope of this consultation. URCA acknowledges ALIV's statement that URCA's preliminary conclusion against joint dominance being consistent with international experience.

URCA in its Preliminary Determination wrote that **similarity in market shares** have the potential to limit competition where those market shares are stable over time. Shares that are stable over time can reflect that the market is in a stable or static equilibrium position based on market shares and this makes detecting deviations easier. On the converse, a large imbalance in share makes coordination less likely. In this scenario, the firm with the highest market share has less to gain from deviation, and more to lose from retaliation. While market shares have not been stable in the past, URCA considers that this may change going forward. As set out in its Preliminary Determination, URCA is of the view that market shares are now sufficiently symmetric for both players to reach a common understanding within the period of this review. For example, ALIV has the highest market share when measured by subscribers, and

⁴⁴For a US perspective see 2020 Communications Marketplace Report, FCC 20-188, Released: December 31, 2020, GN Docket No. 20-60. For a EU country perspective see page 32, BIPT: Impact study of 26 June 2018 regarding a fourth mobile network operator on the Belgian mobile market at <https://www.bipt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/63ee90c4cd37e68ca36bbf645908cb077dca081b/Impact%20study%20of%2026%20June%202018%20regarding%20a%20fourth%20mobile%20network%20operator%20on%20the%20Belgian%20mobile%20market.pdf.pdf>

⁴⁵Section 3.3 of the SMP Guidelines reads:

*"In keeping with best practice regulation, URCA will carefully examine relevant criteria to determine whether the licensees in question have an **incentive to converge to a coordinated market outcome and refrain from reliance on competition conduct** [added for emphasis]."*

therefore has less to gain from deviation, and more to lose from retaliation. Accordingly, there is good reason for URCA to think that the market may be entering a more stable phase in the coming years. Still, URCA recognizes that BTC may refrain from reliance on coordination in an effort to win back some of its customers lost to ALIV.

Turning to the ***“Mature market and stagnant or moderate growth ...”*** criterion, as set forth in the consultation the expansion in mobile data usage in combination with Bahamians’ strong preference for bundles are the main drivers of demand-side growth in recent years (see Figure 1 above). However, there has been a noticeable slowdown in the rate of take-up in mobile services in recent years. Population growth is unlikely to induce new demand-side growth within the relevant review period (12-24 months). For the aforementioned reasons, URCA notes too that ARPUs are unlikely to grow significantly within the period of this market review. For URCA, these are clear signs of a market that may be tending towards maturity and saturation.

As noted before, URCA does believe that 5G offers new and significant opportunities for demand-side growth⁴⁶ and competition thereby ensuring that the market is not mature or stagnant in the coming years. That said, markets in a period of rapid demand-side growth where barriers to entry are high may actually facilitate coordination. This is because it is *“easier to sustain coordination when short-term gains from a deviation are small relative to the costs of future retaliation.”*⁴⁷ Implying that for a fixed number of market participants, coordination is actually easier to sustain in growing markets since today’s profit are small compared with future profits. Also, this market is subject to the presence of high and non-transitory barriers to entry⁴⁸ which limit the potential for outsiders to enter this market in direct competition with the established networks.

In reinforcing the above, URCA notes that concentration ratios in this market are high and as ALIV argued the two mobile operators are similar in size and subject to similar economic factors. More specifically, BTC and ALIV have converging market characteristics in terms of market shares, size, vertical integration, network effects, etc.⁴⁹ The market also appears to be sufficiently transparent, as argued in the consultation. Further still, coordinated behaviors are prevalent in cellular mobile markets internationally especially where the major players have converging market characteristics as is currently the case in The Bahamas. From URCA’s perspective, these factors point to a mobile market that may be tending towards a steady phase. As such, it is too early to say whether 5G will yield durable and efficient competition between BTC and ALIV.

Relating to the ***“Incentive for coordination”*** criterion, ALIV appeared to have either misread or misunderstood URCA’s reasoning. URCA never asserted that ALIV *“...has less incentive to compete*

⁴⁶ Including development of machine type communications (M2M) and Internet of Things (IOT)

⁴⁷ <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04510.html#Sec3>

⁴⁸ See sub-section 5.1 (“Barriers to entry”), Preliminary Determination.

⁴⁹Where two or more players in a market are matched the incentives for coordination exists and are usually high. As BERC observed, Ireland’s Commission for Communications Regulation (‘ComReg’) found that there were high incentives for coordination driven, in part, by the symmetry present between the two main mobile operators.

aggressively on reaching a similar market share to BTC.” In the particular sub-section of the Preliminary Determination (“Existence of incentive for tacit coordination”) URCA reasoned that:

*“Despite the recent period of active and successful competition by Aliv, URCA considers that Aliv may have **less incentive to continue its aggressive price competition** [Emphasis added] now that it has ~~A~~ of the market and it needs to earn a reasonable return. Further, both MNOs to date appear to mostly rely on short term promotions with limited changes to permanent prices.”*

That as it may, URCA notes ALIV’s insistence that it has an incentive to compete aggressively with BTC in order to return a profit. URCA notes but disagrees with the point that short-term offers are unimportant to ALIV’s desire to work and improve its market position. To the extent that promotions are used to minimize churn and keep customers interested they are still relevant to the company’s strategic intent even if this is not acknowledged by ALIV.

With reference to the submissions received, URCA affirms its preliminary conclusion that there is insufficient evidence to find that BTC and ALIV are jointly dominant in this market at this time. While recognizing that the market may be heading towards a likely change in the competitive dynamics, it is unclear at this point whether this will indeed result in tacit coordination by both MNOs. But in light of concerns for potential lessening of competition, URCA will continue to keep the market under observation during the relevant review period and, if necessary, will initiate a fresh market review. Neither mobile operator objected to URCA’s preliminary conclusion against joint dominance.

Consultation Question 4: Do you agree with URCA’s proposed timeframes for removal of the ex ante obligations as explained above in relation to BTC’s retail mobile services? If not, please set out your alternative timeframes with reasons.

ALIV’s initial comments

ALIV did not offer any specific comments on question 4 but said it agreed with and support the overall conclusions of the market review.

BTC’s initial comments

BTC did not offer any specific comments in question 4 but said it agreed with the overall conclusions of the market review, noting that the removal of asymmetric price regulation as applies to BTC is long overdue.

URCA’s response to comments received/final determination

With reference to the submissions received the URCA affirms its preliminary conclusions in relation to ex ante obligations applicable to BTC’s mobile retail services. Given concerns for future coordination it is important for URCA to keep a close oversight on the progress and developments in this market.

4 Conclusion and Next Steps

Within the previous Section, URCA has set out its findings on the competitive dynamics and resulting need to remove ex ante regulation in the market for retail mobile services in The Bahamas.

Firstly, URCA has defined a single, national market covering all retail mobile products, across all the relevant contract types and customer segments. In particular, the relevant retail market for mobile services includes the following products/services:

- Mobile access services;
- Domestic mobile and international outgoing mobile call services;
- Domestic and international outgoing mobile messaging services;
- Mobile data services;
- Access to ancillary services such as calling features and Bahamian emergency numbers; and
- Outbound international mobile roaming services.

Second, neither of the current MNOs is holding a position of market dominance in the provisioning of retail mobile services in The Bahamas.

Given this, all current ex ante regulatory obligations on BTC related to retail mobile services will be removed. In particular, the Retail Price Regulations imposed on BTC in 2010 no longer apply to mobile only bundles and standalone mobile calls, messaging and/or data services. Beginning in the 2022 financial period BTC is also no longer required to submit Accounting Separation and Cost Accounting results in relation to its retail mobile activities.

However, URCA will continue to closely monitor developments in the market. Should URCA identify, in future, reasons to believe that the market is no longer exhibiting effective competition to the ultimate benefit of Bahamian consumers, it may conduct another market analysis, with a view to considering whether it is necessary to reimpose some form of ex ante measures.