



# **Retail Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009**

## **Statement of Results and Final Determination**

**ECS 71/2024**

**Issue Date: 1 August 2024**

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# 1 Introduction

In this document, the Utilities Regulation and Competition Authority (“URCA”) issues the Statement of Results and Final Determination regarding URCA’s Public Consultation on the Retail Fixed Market Review 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.

URCA published its Consultation Document on the preliminary Retail Fixed Market Review on 28 February 2024 (“Consultation Document”, or “Preliminary Determination”).<sup>1</sup> The Consultation Document set out, *inter alia*, the following:

- URCA’s preliminary views on the competitive dynamics in the retail fixed services markets in The Bahamas, in terms of the proposed market definitions for the retail services considered in this market review, and the preliminary results of URCA’s dominance assessment in each defined market;
- the proposed ex-ante remedies to be imposed on operators with significant market power (SMP), including the underlying market failures these seek to address; and
- invite comments from stakeholders on the matters set out in the Consultation Document.

The closing date for the submission to URCA of initial responses to the Preliminary Determination ended on 29 May 2024, and the comments on initial responses ended on 10 June 2024. By the 10 June 2024 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’).

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<sup>1</sup> URCA 04/2024 available at <https://www.urbahamas.bs/wp-content/uploads/2024/03/Preliminary-Determination-Retail-Fixed-Market-Review-28Feb2024-Redacted-Version-2.pdf>

Copies of all responses and opening written submissions may be downloaded from URCA's website at [www.urcabahamas.bs](http://www.urcabahamas.bs).

## 1.1 Background to the Preliminary Determination

The retail fixed telecommunications market under review is characterized by infrastructure-based competition between BTC and CBL. The two fixed operators use their fixed networks and infrastructure to provide a range of retail fixed services and products, such as retail fixed voice, fixed broadband and pay TV services across The Bahamas. These products are offered on a standalone basis or as well as multi-product bundles.

Both BTC and CBL operate under Individual Operating Licences (IOLs) with a 15-year duration and commenced their licences in 2009<sup>2</sup>.

The 28 February 2024 Preliminary Determination stems from URCA's commitment to assess the evolution of competition in the marketplace, given the time that has elapsed since the establishment of the current regime in 2014. URCA considers it appropriate to conduct another review of retail fixed telecommunications services (excluding business data connectivity services) to determine which, if any, licensees have SMP in the relevant markets.

This current exercise is URCA's third competition assessment of the retail fixed telecommunications market since 2010.

The requirements and guidance concerning this review of retail fixed services are provided in URCA's SMP Methodology document and the Comms Act. URCA also reviewed fixed market assessments and merger cases in jurisdictions overseas to allow consideration of current economic theory and regulatory best practices.

## 1.2 Responses to the Consultation

In addition to seeking general comments and/or views on the Consultation Document, URCA also sought respondents' views on the following thirteen (13) questions ("Consultation Questions"):

- **Consultation Question 1 - Market definition for Retail Fixed Voice Services:** Do you agree with URCA's proposed definition of the market for retail fixed voice services in The Bahamas? If not, why?
- **Consultation Question 2 - Dominance Assessment in Retail Fixed Voice Market:** Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed voice service market? If not, please set out your alternative views and provide evidence to substantiate your position.
- **Consultation Question 3 - Market definitions for Retail Fixed Broadband Services:** Do you agree with URCA's proposed definitions of the markets for retail fixed broadband services in The Bahamas? If not, why?

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<sup>2</sup> A licensee may apply to URCA for its license to be renewed by submitting a renewal notice to URCA no later than one year before the license is due to expire.

- **Consultation Question 4 - Dominance Assessment in Retail Fixed Broadband Markets:** Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed broadband service markets? If not, please set out your alternative views and provide evidence to substantiate your position.
- **Consultation Question 5 - Market definition for Retail pay TV services:** Do you agree with URCA's proposed definition of the market for retail pay TV services in The Bahamas? If not, why?
- **Consultation Question 6 - Dominance Assessment in Retail pay TV Service Market:** Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.
- **Consultation Question 7 - Market definition for Retail Multi-product Bundles including pay TV:** Do you agree with URCA's proposed definition of the market for multi-product bundles including pay TV service in The Bahamas? If not, why?
- **Consultation Question 8 - Dominance Assessment in Retail Multi-product Bundles including pay TV Services Market:** Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail multi-product bundles including pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.
- **Consultation question 9 – Proposed SMP remedies for retail fixed telephony services:** Do you agree with URCA's proposed SMP remedies for retail fixed telephony services? If not, why?
- **Consultation question 10 – Proposed SMP remedies for retail fixed broadband services:** Do you agree with URCA's proposed SMP remedies for retail fixed broadband services? If not, why?
- **Consultation question 11 - Proposed SMP remedies for retail pay TV services:** Do you agree with URCA's proposed SMP remedies for retail pay TV services? If not, why?
- **Consultation question 12 - Proposed SMP remedies for multi-product bundles:** Do you agree with URCA's proposal not to impose specific SMP remedies on CBL for multi-product bundles? If not, why?
- **Consultation question 13 - Proposed non-market specific SMP remedies:** Do you agree with URCA's proposed non-market specific SMP? If not, why?

URCA thanks BTC and CBL for their written responses and participation in the consultation process. URCA notes that all comments received have been carefully considered by URCA in formulating its final position.

In this document, URCA replies to the main comments it has received from BTC and CBL within their respective consultation responses and sets out its Final Determination on all matters consulted on. In doing so, URCA expressly states that the absence on its part of a response in this document to any comment made by any of the respondents does not necessarily signify URCA's

agreement in whole or in part with such comment, that URCA has not considered such comment, or that URCA considers the comment immaterial or without merit.

The publication of this document ends URCA's public engagement on competition in the retail fixed market in The Bahamas.

### **1.3 Structure of the Remainder of this Document**

The remainder of this document is structured as follows:

- Section 2 contains URCA's Final Determination.
- Section 3 presents the comments and responses received from BTC and CBL on the Consultation Document, any other matter relevant to the Public Consultation, and URCA's responses to such comments.
- Section 4 sets out URCA's conclusions and next steps after considering the comments received in the consultation responses.

## 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’), 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 Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009” (ECS 04/2024)<sup>3</sup> on the competitive conditions in the provisioning of retail fixed telecommunications services in The Bahamas per section 39(1) and (2) of the Communications Act, 2009 and the SMP Methodology considers that it is appropriate to make final 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 Ltd. (‘BTC’) and Cable Bahamas Ltd./Be Aliv Limited (‘CBL’).

URCA hereby makes the following final determination on its SMP/dominance assessment for the provision of retail fixed services in The Bahamas, as set out in **Table 1** below.

**Table 1: Summary of URCA’s final determination**

Service	Market definition	SMP findings	Ex-ante remedies
<b>Retail fixed voice services</b>	<b>Product market</b> Standalone fixed access, local, domestic, and international call services, across all relevant customer segments (i.e., both residential and	BTC has SMP	• BTC is required to continue offering its current standalone fixed voice tariff plans to residential and business customers. Any modifications to the

<sup>3</sup> Available at <https://www.urbahamas.bs/wp-content/uploads/2024/03/Preliminary-Determination-Retail-Fixed-Market-Review-28Feb2024-Redacted-Version-2.pdf>

	business customers), irrespective of the underlying technology used to deliver these services. <sup>4</sup>		current plans need to be notified to URCA before being implemented.
	<b><u>Geographic market</u></b>		
	National market		<ul style="list-style-type: none"> <li>• BTC shall not increase its prices of entry-level standalone fixed voice plans<sup>5</sup> above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</li> </ul>
<b>Retail fixed broadband services</b>	<b><u>Product market</u></b> <ul style="list-style-type: none"> <li>▪ Retail standalone fixed broadband services, across all relevant customers segments (i.e., both residential and business customers), irrespective of the network technology<sup>6</sup> used and the advertised download speed at which the service is offered.</li> <li>▪ Multi-product bundles excluding pay TV (i.e., double-play bundles including fixed broadband and fixed voice), across all relevant customers segments (i.e., both residential and business customers), irrespective of the network technology<sup>7</sup> used, and the advertised download speed at which the service is offered.</li> </ul>	<ul style="list-style-type: none"> <li>• CBL has SMP in Geographic Market 1</li> <li>• BTC has SMP in Geographic Market 2</li> </ul>	<ul style="list-style-type: none"> <li>• BTC and CBL are required to continue offering their current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.</li> <li>• BTC and CBL shall not increase their prices of entry-level standalone fixed broadband plans<sup>10</sup> above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</li> <li>• BTC is required to offer geographic uniform prices for all its retail broadband services.</li> </ul>
	<b><u>Geographic market</u></b>		
	<ul style="list-style-type: none"> <li>▪ Geographic Market 1 - The islands where both CBL and BTC are offering broadband services.<sup>8</sup></li> <li>▪ Geographic Market 2 - All remaining islands where only BTC has deployed network infrastructure to offer fixed broadband services.<sup>9</sup></li> </ul>		
<b>Retail pay TV services</b>	<b><u>Product market</u></b> Retail standalone pay TV services, across all the relevant customers segments (i.e., both residential and business customers), and irrespective	CBL has SMP	<ul style="list-style-type: none"> <li>• CBL is required to continue offering its current standalone pay TV tariff plans to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.</li> </ul>

<sup>4</sup> This currently includes PSTN technology and Voice over Internet Protocol (VoIP) via FTTx or HFC networks.

<sup>5</sup> Currently "Basic Landline" and "Business Voice Starter" for residential and business customers respectively.

<sup>6</sup> In The Bahamas these services are predominantly offered based on wired technologies, via copper (DSL), HFC and FTTx, and recently LEO satellite technology.

<sup>7</sup> Ibid.

<sup>8</sup> This currently includes New Providence, Abaco, Grand Bahama and Eleuthera.

<sup>9</sup> This currently includes Exuma, Andros, Bimini, and all remaining islands.

<sup>10</sup> Currently BTC's "Basic 8Mbps" and "Fiber 300Mbps" for residential and customers and "Internet 30 for business customers"; and CBL's "RevNetPrime" for residential customers.



	of the network technology used to deliver these services. <sup>11, 12</sup>		<ul style="list-style-type: none"> <li>• CBL shall not increase its prices of entry-level standalone pay TV plans<sup>13</sup> above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</li> </ul>
	<b><u>Geographic market</u></b>		
	National market		
<b>Multi-product bundles including pay TV services</b>	<b><u>Product market</u></b>	CBL has SMP	No market-specific remedies are required, as the combined effect of the ex-ante remedies imposed in the other defined markets will address the anti-competitive concerns identified in this market.
	All multi-product bundles including retail pay TV services <sup>14</sup> , across all the relevant customers segments (i.e., both residential and business customers) and irrespective of the technology used to deliver these services. <sup>15</sup>		
	<b><u>Geographic market</u></b>		
	National market		

### Overarching (non-market specific) remedies for both SMP operators

Further to the market-specific remedies set out above, both BTC and CBL are subject to the following, non-market specific remedies:

- Both SMP operators are required to develop separated accounts in accordance with URCA's Accounting Separation Guidelines and submit these to URCA on an annual basis. The new reporting format should already be adopted for the 2024 Accounting Separation submission and SMP operators should notify URCA as soon as possible, if this is not feasible.
- Both SMP operators are required to notify URCA of any amendments, introductions or withdrawals<sup>16</sup> of their retail tariff plans. This obligation requires the notification to URCA of any changes in an existing or new retail tariff plan, set out, at the minimum, the price and non-price terms of the tariff plan and the current/expected take-up of the plan.
- Both SMP operators are subject to a publication requirement to ensure that end users have access to all tariff plans currently available to them and the price and non-price terms of each tariff plan offered by BTC and CBL, thus facilitating their ability to compare retail tariff plans and select the most appropriate tariff for them. SMP operators are required to publish all tariff plans offered to residential and business customers on their websites.

Any reference above to a Licensee shall, in accordance with section 21(1) of the Comms Act, be taken to include both the Licensee and any subsidiary undertaking of the Licensee listed in the application for a licence or notified to URCA from time to time in accordance with section 21(2) of the Comms Act.

<sup>11</sup> This currently includes HFC technology, satellite (DTH) technology, and Internet Protocol Television (IPTV) via fiber (FTTx) networks.

<sup>12</sup> Whilst standalone IPTV services are currently not actively marketed by Licensees, this is based on commercial, rather than technical considerations. Given this, URCA considers it prudent to include these services within this defined market.

<sup>13</sup> Currently "Prime Local" and "RevTV Prime" for residential customers and "DTH Bronze" for business customers.

<sup>14</sup> This currently includes double-play including fixed voice and pay TV, double-play including fixed broadband and pay TV services, and triple-play including fixed voice, fixed broadband and pay TV services.

<sup>15</sup> In The Bahamas these services are currently delivered via HFC, FTTx (IPTV), and satellite (DTH) technology.

<sup>16</sup> Considering the new ex-ante remedies imposed by URCA in the markets for retail fixed voice services, retail broadband services and retail pay TV services set out above, withdrawal of existing retail tariff plans are only permitted for multi-product bundles.

These changes become effective on 16 August 2024, i.e., fifteen (15) calendar days from the 1 August 2024 publication of this Final Determination. In the interim, the existing SMP obligations will remain in place. Any price changes or price introductions will be subject to the 2014 Retail Pricing Rules until URCA has fully implemented the new remedies regarding the inflation-based cap on annual price increases and the annual tariff notification process.

For the avoidance of doubt, BTC and CBL shall also comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act, Conditions 34 and 35 of the IOLs and specific SMP obligations on wholesale services, accounting separation and cost accounting as set out in the current and any future determinations, decisions, and regulations issued by URCA, and which will remain in place until such time as determined by URCA.

### 3 Responses to the Consultation

In this Section, URCA summarizes and responds to the key comments received from BTC and CBL regarding the Consultation Questions and any other matter relevant to the Public Consultation.

The Section is structured as follows:

- Section 3.1 sets out the general comments contained in BTC's and CBL Group's submissions and URCA's responses to them.
- Sections 3.2 to 3.14 contain BTC's and CBL-specific responses to consultation questions 1 to 13.

To ensure that this document provides a useful and succinct assessment of the respondents' comments, URCA only discusses in this Section those responses that provide comments on matters relevant to the issues under consultation. If, within their responses, the respondents refer to matters outside the scope of the Consultation Document, URCA has not provided a summary of those comments and reasons supporting such a position.

#### 3.1 General comments

##### BTC's initial comments

BTC appreciates URCA's Fixed Market Review Preliminary Determination as an opportunity to assess the current structure and competitive dynamics of the fixed services segment in The Bahamas, especially considering developments since 2014.

In general, BTC questions whether ex-ante price regulation remains necessary and advocates for an ex-post competition law approach like in the mobile market. As such, BTC encourages URCA to assess the retail fixed markets similarly to how it did with the Mobile Market Review. This is based on several factors, which are outlined below.

- BTC believes the fixed and mobile sectors in The Bahamas share similar market structures and competitive dynamics and are closely related, with many services being substitutable. Therefore, URCA should take a similar approach to assess the retail fixed markets as it did with the Mobile Market Review. According to BTC:
  - Most retail fixed voice services are consumed as a bundle of services. This is similar to retail mobile services, where BTC and CBL compete vigorously for consumers.
  - Standalone fixed voice and pay TV are services in decline, while standalone fixed broadband services are not a declining service. Moreover, *"..., unlike mobile, there are numerous Other Local Operators ("OLOs") in the fixed market using terrestrial and satellite-based wireless technologies to provide fixed broadband services"*<sup>17</sup>.
  - BTC and CBL are mandated to provide wholesale broadband services, which facilitates entry into the retail market.

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<sup>17</sup> Page 2 of BTC's Initial Response to the Preliminary Determination.

- One major difference between the mobile and fixed markets is that the network footprint differs in scope. However, BTC's and CBL's fixed networks overlap in areas where most of the population in The Bahamas resides, such as New Providence, Abaco, Grand Bahama, and Eleuthera, which cover roughly 95% of the population. In other areas where they do not overlap, consumers' interests can be protected through a national uniform pricing obligation.
- BTC is further of the view that retail fixed services and mobile services are substitutes due to LTE and the upcoming 5G technology. In support of this, BTC refers to the fact that Aliv's entry into the mobile market increased mobile penetration levels while fixed penetration declined during the same time.

According to BTC, the fixed market has experienced massive technological change and innovation since the last fixed market review undertaken in 2014. However, URCA considers these technological changes to be limited. In BTC's opinion:

- The fixed voice market has undergone a disruptive technological change. Many end users nowadays rely on mobile services for their voice communication. And, OTT applications such as Zoom, Teams, WhatsApp, and Google Meet are widespread today.
- BTC and CBL have invested extensively in next-generation network (NGN) upgrades to offer enhanced internet access to end users. Other novel technologies, such as FWA, LEO-satellite-based broadband services, and numerous broadband services, are also present in the wider Internet services market.
- The same applies to pay TV services, where BTC started offering IPTV services over FTTH network facilities. Also, the explosive popularity of online streaming services has had an important effect on the legacy pay TV market.

BTC also criticizes the subjective nature of the SSNIP tests, as applied by URCA in the Preliminary Determination. According to BTC, this is evidenced by the wide variations and inconsistencies in URCA's preliminary conclusions. In particular:

- URCA relied heavily on a Consumer Survey that was not shared, which could be of questionable reliability.
- The answers to the SSNIP test's questions within the Consumer Survey are highly subjective. Two equally reasonable people may come to different conclusions regarding the likely reactions of consumers and alternative suppliers in such hypothetical situations.
- The SSNIP test is overly rigid, and in many cases, URCA's preliminary conclusions contradict the results of the Consumer Survey.

On remedies, BTC considers that URCA's proposed price cap remedies for standalone fixed broadband services in Geographic Market 2 are flawed, unfair and discriminatory. This is because:

1. The national uniform prices as URCA proposed are intended to apply to Geographic Market 1 and Geographic Market 2. However, BTC is not found to be dominant in Geographic Market 1, where only CBL is deemed dominant.
2. BTC's standalone basic broadband prices are lower than those of CBL. Consequently, URCA's price cap proposal would have the effect of locking in this price differential for the life of the price cap regime. CBL would have greater price cap headroom than BTC because CBL's going-in prices are higher than BTC's, which is unfair to and discriminates against BTC.
3. The uniform price obligation on BTC would leave BTC in a vulnerable position as CBL would have the option to charge differently across Geographic Market 1. BTC would not be able to actively respond to any targeted price initiatives by CBL.

Hence, BTC proposes that a price cap should only apply to CBL's standalone residential basic (entry-level) broadband services (i.e., CBL's *RevNet Prime 30 Mbps* plan), and that the national uniform pricing obligation should apply equally to both CBL and BTC.

In general, BTC believes that competition is not only emerging in the retail fixed services market but is vigorous and will continue to be so in the foreseeable future.

#### **CBL Group's initial comments**

CBL welcomes the opportunity to comment on URCA's Retail Fixed Market Review results. In general, CBL believes the Preliminary Determination of the market review is based on incorrect assumptions and a flawed methodology. Overall, CBL sees merit in stepping away from ex-ante regulation in the retail fixed markets to align with international best practices, as URCA has previously done in the mobile retail markets. CBL's arguments on why they disagree with URCA's defined markets and remedies can be grouped, on a high level, on two different reasons. First, the market trends favour a more hands-off approach, and second, the methodology used in the market review is flawed. These reasons are described below.

First, CBL considers that URCA has not given sufficient weight to recent **market developments** in this market review. According to CBL, these are as follows:

1. There are two well-established operators active in the market, offering a range of fixed voice, broadband, and pay TV services.
2. OTT voice and streaming services are widely available and used in the Bahamian market in part due to the investment in fiber networks undertaken by CBL and BTC. The streaming or OTT market is, therefore, an evolutionary change in the content market, and to CBL, there is no doubt that the traditional market for linear TV will eventually be replaced entirely by this more modern alternative. The OTT providers offering services in The Bahamas do not contribute to the development of the sector through investments in access networks or through license payments to regulate the sector. At the same time, CBL is substantially increasing its economic and accounting losses on its TV services.

3. In the broadband market, both CBL and BTC are investing in next-generation fiber network infrastructure. Non-domestic players have entered the market, such as Starlink, using low earth orbiting (LEO) satellite technology. Also, retail fixed broadband tariffs in The Bahamas are amongst the lowest and most affordable in the Caribbean region.

Second, in CBL's view, URCA's **market review approach** was mostly based on whether voice, broadband, or pay TV services are offered on a standalone basis or as part of a bundle of services. However, this approach is mistaken, as it confuses a method of marketing services with the service itself. CBL stated that consumers do not buy a bundle because a bundle has any utility but because it gives them access to a combination of services (voice, broadband, and television) that they can use and gain economic or social benefit from its consumption. However, customers could change the values they place on bundles, and the operators could easily decide to market their services differently, in which case, URCA's approach would then fall apart.

CBL further considers the SSNIP test to be an inadequate methodology for capturing market evolution. This is because it uses price increases as the basis of their analysis. In a context where many emerging services are offered to customers for free, it is not appropriate to use price as a criterion to identify product markets, as is being done in the case of the SSNIP test.

In CBL's view, URCA has also misinterpreted the basis of the SSNIP test as it uses the results of the Consumer Survey to show that only a minority of users would switch to a substitute and uses this evidence that the SSNIP has failed, and that substitution is no constraint on the monopolist market power. However, according to CBL, the SSNIP test is designed to show whether the monopolist would make more profits from the price increase or whether the existence of substitutes would render the price increase unprofitable. In case it does, the market analysis concludes that the substitute products should be included in the same market as the focal product. But URCA doesn't analyze that it only needs a small proportion of users to switch to render the price increase unprofitable. Given this, some of URCA's analysis is incorrect.

CBL also made more **detailed observations** on URCA's reviews of the pay TV and fixed broadband markets, which are summarized below:

#### Pay TV market

- CBL considers that the starting point for this market definition exercise should be pay TV service, not whether this is sold on a standalone basis or as part of a wider bundle. The standalone pay TV market segment is composed of a small and declining group of customers. It is CBL's view that the remaining standalone users may be late adopters of other content services like OTT.
- [REDACTED] of CBL's pay TV customers are also broadband customers and over [REDACTED] of CBL's fixed services customers are also broadband customers. CBL believes that these customers see their broadband connection as an essential service and will make service acquisition decisions on other services on an incremental basis relative

to this starting point. Hence, the question to be asked is whether OTT services can substitute for an incremental TV service for a customer who already has broadband service, not whether OTT services substitute for standalone TV services. According to CBL, the substitution of TV by OTT services can be clearly observed in this market as [REDACTED], and while the number of TV subscribers is declining, the number of OTT subscribers is increasing at a similar rate.

- Lastly, CBL is surprised that URCA does not rely on the results of the separated accounts in assessing its dominance in the pay TV market. CBL argues that URCA did consider the separated accounts in the fixed broadband services market definition, where CBL is also subject to tariff pre-approvals. Hence, according to CBL, this is not consistent. CBL considers that the separated accounts for pay TV services are highly relevant to URCA's assessment of dominance in the pay TV market, given the [REDACTED]. CBL believes that its pay TV service's poor financial performance does not support any SMP finding by URCA. CBL considers it implausible how [REDACTED] can coexist with the proposed dominance finding on CBL.

#### Fixed broadband markets

According to CBL, the fixed broadband market in The Bahamas is sufficiently competitive, given that barriers to entry have been lowered. CBL's arguments are described below.

- Fixed broadband customers in The Bahamas benefit from two parallel fixed networks in most of the country: BTC's and CBL's respective networks. In addition, Starlink has entered the market, offering satellite-based broadband services not only in the more remote areas, but also in the most populated areas.
- Further, to reduce the barrier to entry, this market has been made accessible by the introduction of Broadband Resale and Wholesale Dedicated Internet Access (WDIA). These wholesale services and regulations were specifically designed by URCA to offer access opportunities to the retail broadband market, and CBL disagrees with URCA that WDIA services are targeted at small-scale operators only.

Regarding URCA's proposed remedies, CBL is of the view that they are disproportionate.

- CBL believed that obligations related to continuing to offer current standalone fixed broadband plans and bundles, including fixed voice and fixed broadband services, could be addressed through a Universal Service Obligation.
- With respect to the obligation not to increase entry-level standalone fixed broadband and entry-level standalone pay TV plans over last year's inflation capped at 5%, CBL's view is that URCA offers no evidence to support such an obligation, such as definitions of vulnerable user groups the obligation is trying to protect. Also, available regional benchmarks in the Caribbean region show that prices in The Bahamas are amongst the cheapest and most affordable in the region. CBL believes a more proportionate

remedy would be to include price increases below inflation in the notification regime, with above-inflation price increases subject to pre-approval by URCA.

- Concerning the *overarching ex-ante remedies*, CBL has made several specific comments which are summarized below:
  - CBL considers replacing the existing tariff pre-approval requirements with a notification requirement a potentially positive step if such a regime is designed efficiently. However, CBL did not specify how an efficient notification process would need to look.
  - CBL questions the continued need for the accounting separation requirement if URCA's concern is more related to consumer protection than issues central to separated accounts, such as undue discrimination, margin squeeze, predation, and cross-subsidization. Given this, CBL urges URCA to reconsider this obligation.
  - CBL disagrees with URCA's proposed publication requirement obligation for SMP operators to publish the necessary information to ensure that customers and competitors have access to the relevant information when making their choices. However, CBL is willing to work with URCA in any perceived information gaps.
  - CBL objects to the proposed requirement for SMP operators to submit to URCA, on an annual basis, an overview of their retail tariff offerings within the markets they are deemed to hold SMP as this remedy is inefficient and disproportionate. URCA already has access to an overview of CBL's SMP service portfolio, and URCA's proposed notification regime would provide URCA with the information it needs to update the SMP service portfolio.
  - CBL urges URCA to specify its concerns about anti-competitive lock-in and examine whether they are already addressed in other regulatory controls.
- Also, in CBL's view, URCA's concerns about availability, affordability, and transparency can and should be addressed through targeted universal service and consumer protection regulations, not SMP regulation.

### **CBL and BTC's second round of comments**

CBL and BTC had the opportunity to comment on each party's initial response. Their second round of comments are summarized below.

Both operators agree that, at a high level, their responses complement each other. Both disagree with URCA's market definition preliminary findings and with the proposed ex-ante price regulations set out in the Preliminary Determination. They agree on the following points:

- The results of the SSNIP tests presented by URCA are questionable, and that analysis should result in broader market definitions, which include both mobile services and



OTT services within the product market.

- Ex-ante price regulation is no longer necessary given that all the reviewed fixed retail markets are sufficiently competitive.
- There are no service providers with SMP in any of these fixed retail markets, and ex-post regulation is sufficient to address any potential competition issues.
- Ex-ante price regulation is no longer necessary given that all the reviewed fixed retail markets are sufficiently competitive.
- URCA's main concern in these markets is affordability issues. These concerns are more adequately addressed in the context of URCA's forthcoming Universal Service Obligation consultation, rather than using SMP remedies. BTC and CBL came to the same conclusion that addressing these concerns through SMP findings in the retail fixed market would be disproportionate and ineffective.

Concerning BTC's position that a national uniform pricing obligation for broadband services should either not apply at all, or should apply equally to both CBL and BTC, CBL's view is that:

- This obligation historically applied to BTC only as it was the sole provider in geographic areas without CBL coverage, ensuring that customers in less competitive regions benefited from prices set in more competitive ones.
- The opposite does not apply, as there are no geographic areas where CBL is the sole broadband provider, making a uniform pricing obligation for CBL unnecessary.

However, CBL considers that the emergence of alternatives like Starlink's broadband service reduces the need for such regulatory remedies for BTC in this market.

### **URCA's Response**

URCA appreciated BTC's and CBL's efforts in preparing their detailed responses to its Preliminary Determination. URCA's responses to the general comments received from both licensees are set below. However, where any of these general comments are mostly related to a specific market or consultation question, URCA has included its response in the subsection below relevant to that consultation question.

### **Market definitions**

Concerning BTC and CBL arguing that URCA's methodology to define the market is flawed and is based on incorrect assumptions, URCA would like to remind the operators that, as explained in Section 3.3.1 of the Preliminary Determination, the market definition exercise focuses on the substitutability of differentiated products or services that customers or suppliers regard as sufficiently interchangeable. Due to the product characteristics, intended use, and pricing, a hypothetical monopolist in the provision of one product could not profitably increase the price of that product from the competitive level. If the customer or producer switches to an alternative product, then this alternative product is considered part of the same market as the focal product.

URCA notes both licensees' concerns about the limitations of the SSNIP test. However, the SSNIP test forms part of the approach to market definitions set out in URCA's SMP Methodology and is widely recognized as an essential part of defining markets in the telecommunications sector, both in the context of ex-ante or ex-post competition assessments.<sup>18</sup>

The starting point for any market definition exercise is to identify the scope of the economic market, in terms of the product's scope, geographic scope and customer segments.

- The standard approach is to start the SSNIP test with the narrowest possible product scope and then ask whether a hypothetical monopolist could profitably impose a SSNIP given that narrow product scope.
- If not, the product market will progressively be broadened by adding the nearest substitute products until such a price increase is profitable for the first time.
- The narrowest product set is the standalone service. The product market would only be widened to include other substitutes such as bundles if the SSNIP test evidence suggests demand-side substitution.
- As a result, some product markets within the Fixed Market Review were defined to consider only standalone products, bundles of services, or a combination of both.
- The application of the SSNIP test methodology then determines if there are merits to broadening the initial product market scope.

For this market review, URCA's focal products were the product markets defined in the Retail Fixed Market Review of 2014, as explained in the Preliminary Determination. This is no novel approach, as CBL claims. In previous market definition exercises, URCA has followed this approach and, at the time, neither BTC nor CBL have objected to the SSNIP methodology approach used. The fact that the market definition and SMP findings have differed compared to other market reviews is the result of applying the same methodology to a market with different characteristics.

- As an example, in the 2022 Mobile Review<sup>19</sup>, the market definition exercise resulted in the conclusion that retail mobile services in The Bahamas are nowadays offered and purchased mostly as 'smartphone' bundles, rather than on a standalone basis.<sup>20</sup> Hence, a single market for all retail mobile services was defined.

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<sup>18</sup> As defined by the OECD (2014) Defining the Relevant Market in Telecommunications, whose regulation applies to 38 countries, and the European Commission's Significant Market Power (SMP) Guidelines for the telecommunications sector, whose regulation applies to 28 countries.

<sup>19</sup> ECS 01/2022 Preliminary Determination Retail Cellular Mobile Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009

<sup>20</sup> As defined in the 2022 Mobile Market Review, the joint purchase of mobile broadband with other mobile services is known as smartphone bundles. This relates to mobile bundles with allowances for calls, messaging, and data. BTC and Aliv offer a range of smartphone bundles, as shown in Tables 3 and 4 above.

- Concerning the dominance findings, the retail mobile market was considered prospectively competitive. The evidence assessed by URCA at the time supported this conclusion as, for example, BTC's and Aliv's market share had converged over time.

However, the evidence assessed and market dynamics observed in this Retail Fixed Market Review do not support a broader market definition, including all retail fixed services, nor is there evidence of prospective competition in the defined markets.

URCA recognizes that a share of customers access their retail fixed services through multi-product bundles, as shown in Figure 4 of the Preliminary Determination. However, there is a non-trivial share of users that still value access to these services on a standalone basis: [REDACTED] of fixed voice subscribers, [REDACTED] of fixed broadband subscribers, and [REDACTED] of pay TV subscribers. These customers do not necessarily consider multi-product bundles as a suitable alternative to their standalone plan as shown in the Preliminary Determination. Hence, there is a distinct group of customers purchasing standalone products that need to be recognized and properly defined. Consumers who purchase their retail fixed services on a standalone basis do so because they see no value in accessing them through a bundle. This is because those customers who value all services within the bundles are most likely to already subscribe to such a bundle, considering the price differential one would have to pay to use multiple services on a standalone basis with respect to a bundle. All remaining customers on standalone products, are not likely to value these services or at least not value the opportunity to purchase them from the same provider despite this resulting in cost savings to them.

To BTC's argument that the Customer Survey that URCA uses as supporting evidence to derive the SSNIP test conclusions can be of questionable reliability, neither BTC nor CBL submitted additional quantitative or qualitative evidence that could be used to do the assessment. The Customer Survey is URCA's most reliable information source and is consistent with the information URCA used in other market reviews, and by regulatory authorities elsewhere.

### **SMP findings and ex-ante remedies**

Concerning the market dynamics in the fixed services markets, **market shares** in the retail fixed markets are still highly concentrated compared to those in the retail mobile market.<sup>21</sup> This is despite the introduction of wholesale regulation (Wholesale DIA), the presence of OLOs, and Starlink entering the market. While in four islands, BTC's and CBL's coverage overlap, in the remaining islands, only BTC is present. In particular:

- For the standalone retail fixed voice market, BTC's market share has remained high (significantly above the 40% SMP threshold), and constant since 2019.
- In the retail broadband market, CBL's market share has continued to grow in recent years. This indicates that the competitive dynamics have not changed substantially since URCA's

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<sup>21</sup> URCA reminds the operators that the conclusions of the 2022 Mobile Market Review will hold if the competitive conditions remain the same, otherwise, URCA may conduct another market analysis to assess whether it is necessary to reimpose some form of ex-ante measures.

last market review, where CBL was found to have SMP in retail fixed broadband services within a similar geographic market.

- In the standalone pay TV services market, CBL is currently the sole provider. Hence market shares become irrelevant.
- CBL is the main provider of multi-product bundles including pay TV services, retaining market shares significantly above the 40% SMP threshold.

As mentioned in the Preliminary Determination, URCA has clearly set out that several of the 2014 Retail Fixed Market Review concerns are no longer relevant; however, some concerns remain that require a lighter touch regulatory oversight.

URCA's main competition concern is around the ability of the dominant operators to raise their retail prices to the extent that would result in affordability concerns for these services. Given this, URCA has significantly reduced the regulatory remedies imposed on SMP operators in these markets.

Despite this transition to a lighter touch regulatory oversight, URCA considers it too early to fully remove all ex-ante oversight. Notwithstanding, URCA is willing to commit with the parties to perform another fixed market review in three (3) years to assess whether the market conditions merit a more hands-free regulatory oversight.

### **Fixed to mobile substitution**

Concerning BTC and CBL's view that the retail fixed voice and broadband market should be wider to include retail mobile voice and data services, as explained in Section 4.1.1.3, and Section 5.1.1.2 of the Preliminary Determination, retail mobile services are not part of the same product market. This is because of demand-side and supply-side factors.

On the demand-side, the evidence set out in the Preliminary Determination supported that mobile voice and data services were not part of the fixed market. In particular, fixed voice customers do not consider mobile voice services to be a substitute for the following reasons:

- Users of fixed voice services on average make more billed calls than the average mobile service subscribers. Figure 13 of the Preliminary Determination, it is illustrated that on average, the monthly minutes billed for fixed voice services are higher than the average billed minutes for mobile voice services. URCA recognizes that the gap between average monthly usage has been narrowing between fixed and mobile voice services, but it is important to consider that URCA does not have information on unmetered/free local calls.
- Fixed voice plans represent a lower cost option than mobile prepaid, as illustrated in Table 9 of the Preliminary Determination. This is because fixed landline local calls in The Bahamas are offered as unmetered or free, while mobile call services have a monthly call

allowance. This is also reflected in the URCA Consumer Survey since most of the fixed voice users mentioned that a key advantage of their fixed voice service is the price.

- In terms of switching behaviour, the evidence presented by URCA shows that only 9% of the fixed voice subscribers would switch to using mobile calls in the event of a SSNIP in the price of their fixed voice services.<sup>22</sup>

Fixed broadband service users are not likely to consider retail mobile data services as substitutes since there are significant differences in the product characteristics of fixed broadband and mobile data services, in terms of the available download speeds, data cap limits, prices and user experience, that potentially limit the extent to which these services will be effective substitutes.

- Retail mobile data services are provided at lower average speeds. As shown in Section 5.1.1.2 in the Preliminary Determination, there is a nontrivial difference in actual observed download speeds, with average mobile download speeds of around 36.54 Mbps compared to fixed download speeds of around 58.49 Mbps which might constrain fixed-to-mobile broadband substitutability.
- Users of fixed broadband and mobile data use it for different purposes. This is reflected in the monthly average usage of fixed broadband and mobile data services. On average, [REDACTED] of data per month is downloaded per fixed broadband connection, whereas the average monthly usage on mobile broadband is [REDACTED].
- Mobile network operators cannot guarantee download/upload speeds given that network capacity depends on the congestion of the cell site where the user is located.
- The caps on mobile data usage are likely to be a constraining factor for end users switching between fixed and mobile broadband services. Table 13 of the Preliminary Determination shows that from all the selected fixed broadband (standalone and double-play) and pre-paid/post-paid mobile offerings tariffs, only two of the mobile data plans would be sufficient to cover the average monthly data usage on fixed broadband service in The Bahamas [REDACTED].
- In terms of relative prices, given the average monthly data traffic per fixed broadband connection in The Bahamas is [REDACTED] if a fixed broadband user with this average monthly data consumption profile were to buy a mobile data plan to satisfy their Internet connectivity needs, it would cost at least \$126.00 (“ALIV liberty140”).<sup>23</sup> Instead, the cheapest fixed broadband plan with unlimited data allowance price is \$30.99 (BTC’s “Basic 8 Mbps”).

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<sup>22</sup> URCA’s Consumer Survey. Figure 16 of the Preliminary Determination.

<sup>23</sup> The names of entry-level standalone tariff plans stated in this document reflect the current tariff offerings by Licensees. However, the obligations imposed on SMP Licensees apply to all relevant services in the market where the Licensees is found to be dominant, irrespective of possible changes in the tariff plans or names thereof. This principle applies to any obligation set out in this document.

From the supply side, in the Preliminary Determination, URCA showed that the available evidence supported that mobile voice and data services were not part of the fixed market for the following reasons:

- URCA considers it highly unlikely that a mobile service provider who is not currently offering fixed voice and/or broadband services would be willing and able to deploy a fixed network following a SSNIP in these fixed services.
- Mobile operators would need to heavily invest to deploy a fixed network given that they use a different network infrastructure. Given that most of the investment is sunk, this is a market with high barriers to entry.
- Regulated access to existing fixed networks is available in The Bahamas but does not target mass market entry and take-up has remained low to date.

Given the evidence presented above, URCA's position remains that retail mobile voice and data services do not form part of the same relevant markets as retail fixed voice and/or broadband services, sold on a standalone or multiproduct basis.

### **Treatment of OTT services**

URCA disagrees with BTC and CBL's view that the OTT calling, and message apps and OTT streaming apps should be considered in the fixed voice market and the pay TV market, respectively. As explained in Section 4.1.1.4, and Section 6.1.1.4 of the Preliminary Determination, OTT-based services are not part of the same product market. This is again due to demand and supply-side factors.

From the demand side, OTT-based services are similar to retail fixed voice and pay TV services. For example, pay TV and internet-based streaming services offer access to TV and media content based on a monthly subscription fee. However, there are also significant differences:

- In terms of the standalone fixed voice market, there are some product and relative pricing differences that might deter switching in the event of a SSNIP:
  - First, users can only make and receive calls or messages from other users who have access to the same OTT application. As reflected in the Consumer Survey 38% of the survey respondents mentioned that they use OTT services to make voice or video calls to other users of the same application and only 8% of the respondents use it to make calls to landlines in The Bahamas.<sup>24</sup> This characteristic restricts OTT users' ability to switch entirely away from fixed services to OTT services.
  - Second, OTT services require users to have a fixed broadband connection or mobile data plan to use the OTT. Consequently, having to subscribe to a

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<sup>24</sup> Figure 17 of the Preliminary Determination

broadband connection may limit the migration of standalone fixed landline users to OTT apps in the event of a SSNIP in their standalone fixed voice plan.

- i. In terms of the pay TV market, OTT streaming apps are not considered to be substitutes because:
  - a. To use OTT streaming apps, the user needs an internet connection. This can significantly reduce the demand-side substitutability of internet streaming for standalone pay TV customers, as these users may not have and/or value internet connectivity because of the incremental price of internet access services. In terms of relative pricing, a user must add the price of having a broadband connection to their OTT monthly subscription fee to have the total cost of having OTT access.
  - b. The media content offered on pay TV and internet-based streaming services differs. Standalone pay TV services offer both linear TV and on-demand content, while OTT streaming apps only offer content on demand.

From the supply-side, in the Preliminary Determination, URCA showed that the available evidence supported that OTT-based services were not part of the fixed market for the following reasons:

- URCA considers that it is unlikely that an OTT-based provider, who currently does not offer fixed voice or traditional pay TV services, would be willing and able to deploy a fixed network following a SSNIP in these fixed services.
- OTT-based providers would need to heavily invest to deploy a fixed network given that they use a different network infrastructure. Given that most of the investment is sunk, this is a market with high barriers to entry.
- Regulated access to existing fixed networks is available in The Bahamas but does not target mass market entry and take-up has remained low to date.

Given the evidence presented above, URCA's position is that OTT-based calling and messaging and internet streaming services are not part of the same relevant market as retail fixed voice, broadband and or pay TV services, sold on a standalone or multiproduct basis.

### **Barriers to entry**

URCA disagrees with CBL and BTC's comments that barriers to entry have been lowered in the fixed retail market and hence further entry and more competition are present in the market.

- Neither Starlink nor the OLOs have gained a significant market share to date as a competitive constraint for BTC and CBL.

- i. Starlink had a market entry using LEO satellite technology (and thus has been able to overcome the barriers associated with deploying fixed networks). However, it has yet to gain a significant market share in retail broadband services. Further, deploying the necessary satellite infrastructure requires significant investment which would result in possible barriers to entry for additional LEO satellite providers.
- ii. As set out in the Preliminary Determination, the WDIA and broadband resale (BRO) offerings are not targeted to support large-scale entry but seek to support existing OLOs in meeting their wholesale inputs. However, OLO's market shares continue to be small and there is no evidence of any potential entry in the upcoming 18 to 24 months, as mentioned in the Preliminary Determination.

### **Ex-ante remedies**

Regarding BTC's and CBL'S view that the competition concern identified by URCA could be addressed by Consumer Protection Regulation (CPR) and Universal Service Obligations (USO), URCA's position is that the operators are misunderstanding the purpose of the SMP remedies.

Ex-ante Regulation, CPR, and USO are distinct regulatory and legal concepts used to ensure fair competition, service quality, and universal access. However, the main difference relies on the objective desired when implementing these regulatory tools.

As explained in the Preliminary Determination, one of the main competition concerns in this market is the affordability of entry-level, standalone services. Hence, the key regulatory focus in this market is to prevent undue price increases.

- Given the analysis presented in the Preliminary Determination, URCA considers it is still not supported to step away from ex-ante regulation. However, URCA adopted a lighter touch approach that can be considered a step away from ex-ante regulation. URCA removed the tariff approval requirements and replaced them with a more targeted set of remedies.
- Moreover, URCA is in the process of undertaking a review of the universal service regulation, with a consultation on its preliminary findings expected to be launched at the end of the year. Given this, the future scope of the universal service remains uncertain and as such cannot be taken into account when determining the required ex-ante regulatory remedies in this Market Review.

Given this, URCA remains of the view that ex-ante remedies are still necessary for the retail fixed markets.

Throughout the remainder of this Statement of Results document, URCA will address specific questions and responses raised by BTC and CBL.



## 3.2 Response to the Consultation Question 1

### **Consultation Question 1 – Market Definition for Retail Fixed Voice Services**

Do you agree with URCA's proposed definition of the market for retail fixed voice services in The Bahamas? If not, why?

#### **BTC's Comments**

BTC disagrees with URCA's proposed market definition of retail fixed voice services for several reasons.

On the demand side, BTC believes URCA's application of the SSNIP test was overly rigid and unrealistic. According to BTC, end users in The Bahamas have been consistently abandoning their fixed voice lines even without any nominal price increase in BTC's residential standalone basic fixed voice access and calling service.

BTC further argues that the relevant question should not be whether fixed voice subscribers would switch to another service (mobile service plan or OTT services) in response to SSNIP. Instead, the focus should be on whether consumers would still choose fixed voice services given their existing mobile subscriptions and/or OTT usage. BTC points out that even without a price increase, consumers are steadily dropping fixed voice access and calling services. An actual SSNIP would only accelerate this trend.

According to BTC, current take-up levels of mobile and OTT services are evidence of them being considered demand-side substitutes for fixed voice services. With a mobile penetration of 100% in The Bahamas, virtually all end users already have access to and use mobile voice services and OTT calling apps on their mobile smartphones. Therefore, to BTC, the real question is whether consumers would remain subscribed to their fixed voice services in case of a price increase when they already have a mobile voice plan and one or more OTT apps installed.

Further, BTC considers mobile wireless connectivity and fixed connectivity to be supply-side substitutes since mobile wireless connectivity is available throughout The Bahamas and is offered by both BTC and CBL.

Given the above, BTC's view is that there should be a single, technology-neutral market for voice communications in The Bahamas. This market would include connectivity via wireline technologies (analogue PSTN and VoIP), mobile wireless technologies, and OTT voice technologies.

BTC also acknowledges that whilst residential and business segments could be considered separate markets, differentiating these segments does not serve any regulatory purpose. BTC

also agrees that the geographic market is national in scope.

### **CBL Group's Comments**

CBL considers URCA's approach to defining standalone fixed voice services as a focal product to be flawed. According to CBL, URCA confuses market developments with marketing tactics and overlooks the fact that fixed voice services remain the same service, irrespective whether these are provided on a standalone basis or as multi-product bundle. URCA concludes that a bundled service is not a substitute for a standalone fixed voice service because the bundled product includes additional services. However, CBL argues that URCA should instead compare like-for-like offerings—that is, comparing standalone services to standalone services and bundles to bundles, rather than comparing a standalone service to all services in a multi-product bundle.

CBL also disagrees with URCA's preliminary conclusion that there is no demand-side substitution between standalone fixed voice services and mobile voice services. CBL highlights that the Consumer Survey shows that 9% of users would switch to mobile services if there were a 10% price increase in their fixed voice service. CBL asserts that such a price increase would not be profitable, given these users are likely to be those with high usage. This, CBL suggests, is evidence that fixed and mobile voice services belong to the same product market.

Moreover, while URCA suggests that 23% of Consumer Survey respondents reported that they cannot rely on mobile voice services—citing this as evidence of quality differences between fixed and mobile services—CBL notes that 77% of respondents did not report such issues.

Additionally, CBL disagrees with URCA's analysis that there is no supply-side substitution between standalone fixed voice services and mobile voice services in The Bahamas. CBL points out that fixed voice can be provided over a mobile network on a fixed-wireless basis, indicating substantial supply-side substitution with two competing mobile networks. The same logic applies to fixed broadband services over a 5G mobile network. Therefore, CBL concludes that there is substantial supply-side substitution in the market, with two competing mobile networks significantly constraining the providers of fixed voice (and broadband) services.

### **URCA's Response**

URCA notes that BTC and CBL disagree with the proposed market definitions for retail fixed voice services. URCA responds to those comments below.

Concerning BTC and CBL's comments on the limitations of the **SSNIP test** in capturing all market developments, as mentioned in Section 3.1 above, the SSNIP test is an international best practice for defining markets in the context of market reviews and competition investigations. The test aims to narrow down the market to the point where a hypothetical monopolist in that particular market has the ability to set high prices without any direct constraints. As such, it remains the appropriate analytical tool to define markets.

Regarding BTC's concern that the SSNIP test fails to capture whether a customer who already has

a potential substitute would abandon their fixed voice subscription in the event of a non-trivial price increase, URCA replies as follows. URCA recognizes BTC's point about the reduced usage of fixed voice services in The Bahamas, but this decline alone does not prove that a market for standalone fixed voice services does not exist. Evidence from the Consumer Survey shows that only 4% of fixed voice users would switch to a multi-product bundle in response to a SSNIP.<sup>25</sup>

There are also the non-trivial price differences between standalone fixed voice plans and multiproduct bundles with fixed voice services (presented in Table 8 of the Preliminary Determination), which are likely to reduce standalone fixed voice customers' willingness to switch to a multiproduct bundle in case of a SSNIP in standalone fixed voices services. This suggests that there is still a market for standalone fixed voice services.

Concerning BTC and CBL's view that **OTT and retail mobile voice services** form part of the same market as retail fixed voice services, URCA explains below why it remains of the view that neither of these services is part of the market for standalone fixed voice services.

- Concerning retail mobile services, neither respondent has provided compelling evidence as part of their consultation responses to either disprove URCA's arguments and evidence set out in the Preliminary Determination, or in support of their position. In particular:
  - i. On the demand side, URCA set out in Table 9 of the Preliminary Determination that the prevailing price differences between standalone fixed voice services and mobile services were such that in case of SSNIP on standalone fixed voice prices<sup>26</sup>, fixed voice users with an average monthly usage observed in The Bahamas would still pay significantly less<sup>27</sup> than for comparable prepaid<sup>28</sup> and postpaid<sup>29</sup> mobile services. URCA remains of the view that this would reduce standalone fixed voice customers' willingness to switch to a mobile service in case of a SSNIP in standalone fixed voice services. Neither BTC nor CBL has provided any evidence to the contrary.
    - a. Concerning BTC's questions on whether consumers would remain subscribed to their fixed voice services in case of a price increase when they already have a mobile voice plan, only 16% of the respondents of the Consumer Survey mentioned that they would stop using their fixed landline services in the event of a price increase.
    - b. Neither CBL nor BTC presented evidence to challenge the fact that consumers

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<sup>25</sup> The remaining respondents stated they would do nothing (34%), stop making calls (16%), switch to another fixed landline service provider (14%), make fewer calls, but use mobile calls instead (9%), make fewer calls (7%), make fewer calls but use OTT calls (6%). 11% of the respondents answered, "Don't know" or "NA".

<sup>26</sup> Average fixed voice usage is 172 minutes of fixed calls per month.

<sup>27</sup> A 10% increase in the BTC Talk 300 plan would mean the product would be priced at \$24.20 per month.

<sup>28</sup> BTC's prepaid Combo plan offers unlimited All net calls (on-net mobile/off-net mobile to mobile/fixed) for \$35.45 per month, or Aliv's prepaid Liberty 30 plan priced at \$27.27 per month with 330 off-net mobile to mobile/fixed minutes plus unlimited on-net mobile minutes.

<sup>29</sup> BTC's cheapest post-paid plan for \$64.99 per month could meet the monthly call needs of the average user and comes with unlimited on-net mobile minutes and 300 off-net mobile-to-mobile/mobile-to-fixed minutes, as could Aliv's cheapest post-paid plan of \$59.99.

in The Bahamas acknowledge that fixed landlines have key advantages compared to a mobile access plan. As shown in Figure 15 of the Preliminary Determination, respondents of the Consumer Survey appreciate the cheaper price (26%) and service availability (26%) that a fixed voice plan offers compared to mobile services.

- ii. In terms of supply-side substitution, URCA has established in the Preliminary Determination that both fixed voice services and mobile services use different network infrastructures. In the event of a price increase in fixed voice services, URCA considers it unlikely that a mobile operator would deploy fixed infrastructure to offer fixed services given the high fixed costs for deploying such a network.
  - With respect to BTC and CBL's comments that supply-side substitution exists in this market because mobile networks are available, neither party submitted compelling evidence to support that fixed voice services can be provided over a mobile wireless network. The operator's response assumes that from the demand-side, consumers are indifferent between fixed voice services and mobile services; hence, these services are in the same market. However, as explained in the paragraph above, mobile services and fixed voice are not part of the same relevant market.
  - Concerning OTT services, again neither respondent has provided compelling evidence as part of their consultation responses to either disprove URCA's arguments and evidence set out in the Preliminary Determination or in support of their position. In particular:
    - a. From a demand-side perspective, URCA's position is that while some OTT apps can be used to make calls, they do not serve as substitutes for traditional fixed voice calls for several reasons. First, the user must have internet access to make a call through an OTT app. Second, the user must have a subscription to the OTT service, and while some services are free, others incur costs. Also, the cost of the OTT service already assumes the end user already has access to an internet connection. And third, OTT apps do not interoperate with each other. This means that a user would only be able to call another user who has access to the same OTT calling app.
      - i. Regarding BTC's comments that in the event of a price increase in the fixed voice services, customers would not continue to subscribe to this service as all consumers have access to and use OTT communications<sup>30</sup>, URCA responds as follows. As acknowledged in the Preliminary Determination, URCA acknowledges that there are some similarities between traditional fixed voice and OTT voice and messaging services. However, Consumer Survey evidence shows that these services are not substitutes. Respondents of the survey

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<sup>30</sup> BTC mentions that the mobile penetration rate is 100%, and of the mobile users, 89% use OTT services; hence virtually all consumers already have access to OTT applications.

- mentioned that in the event of a SSNIP in the price of their fixed voice services, only 6% would make fewer calls but use OTT calls.
- ii. In terms of usage, only 9% of the respondents to the Consumer Survey mentioned they use OTT apps to call other landlines in The Bahamas.
  - iii. As mentioned in the paragraph before, a barrier with OTT call applications is that the OTT user can only connect with another user using the same application. This is reflected in the consumer survey, as 38% of the respondents mentioned that they use OTT apps to have video or voice calls with members of the same OTT app. Hence, OTTs have this constraint compared to fixed landlines in which you can call other landlines from different operators or mobile operators.
- b. Regarding supply-side substitution, URCA maintains that there is no supply-side substitution between OTT and standalone fixed voice services in The Bahamas. This is due to the high barriers to entry to the fixed services market, such as the need to deploy fixed network infrastructure and develop a retail distribution network.
- i. As mentioned in the Preliminary Determination, OTT call services are delivered through a different technology than fixed voice services. In the event of a SSNIP on fixed voice services, it is unlikely an OTT provider would develop its own fixed network or buy the wholesale services of a fixed service provider.

Given the discussion above, URCA concludes that there is a single market for retail standalone fixed voice services, covering both residential and business customers. This is mainly driven by the lack of supply-side substitutability in the market. In particular, the limited growth prospects in terms of customer base and profitability and the overall decline in the adoption of fixed voice services restrict the likelihood of new competition emerging that could significantly change the current market dynamics.

### **3.3 Response to the Consultation Question 2**

#### **Consultation Question 2 - Dominance Assessment in Retail Fixed Voice Market**

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed voice service market? If not, please set out your alternative views and provide evidence to substantiate your position.

#### **BTC's Comments**

BTC disagrees with URCA's preliminary determination that BTC holds SMP in the retail standalone fixed voice service market, arguing that URCA's market definition is flawed. BTC maintains that URCA's exclusion of retail mobile and OTT voice services from the defined market does not reflect

the current market dynamics in The Bahamas. BTC also refers to the Consumer Survey results which indicate that only 34% of fixed voice service subscribers would not change their use of fixed voice services in response to a SSNIP. In comparison, 66% would either reduce or terminate their fixed voice service and/or switch to retail mobile services and OTT apps. This, in BTC's view, suggests that fixed voice customers are highly price sensitive therefore making it unlikely that any price increase would be profitable, as these would instead further accelerate end users' general shift away from legacy fixed voice services.

BTC also notes that fixed service bundles are now standard in The Bahamas, with most fixed voice users subscribed to such bundles rather than standalone fixed voice services. CBL is found to be dominant in that market. Further, CBL/Aliv and BTC are comparable in scale and capability in the fixed and mobile markets. Given these conditions, BTC argues that CBL/Aliv could effectively counter any attempt by BTC to exert market power in the standalone fixed voice service market, which undermines the argument that BTC possesses SMP in standalone fixed voice service.

Whilst BTC agrees with URCA that it is unlikely for a new fixed network operator to enter, URCA's assumption is that any such new entry would involve the construction of a new fixed network in addition to BTC's and CBL's fixed networks. However, there has already been a new entry. Aliv has built a second mobile wireless network, adding to BTC's existing wireless network. Consequently, there are currently four competing voice networks. Consequently, with four competing (fixed and mobile) networks, BTC asserts there is no SMP concern for standalone fixed voice services. BTC further advocates that standalone fixed voice services should be considered part of the broader retail market for fixed service bundles, where, according to BTC, there is no evidence of any dominance or SMP.

### **CBL Group's Comments**

CBL's main comment is that URCA's preliminary SMP finding is a direct result of how narrowly URCA has defined this market (i.e., only to include standalone fixed voice services). Hence, ex-ante retail regulation is likely to persist in The Bahamas until customers no longer purchase these services. CBL considers this to be a wider issue applicable to other market definitions as well and has accordingly raised this in the context of other consultation questions.

### **URCA's Response**

URCA notes that CBL and BTC disagree with the conclusions of URCA's dominance assessment in the standalone fixed voice market.

Regarding CBL and BTC's comments on URCA defining the market in a way that guarantees a dominance finding, URCA responds that the dominance finding is the result of the market definition exercise, which is explained in Section 3.2 of this document. It is true that the probability of dominance findings is higher if the market is narrowly defined. However, the narrowly defined market is a result of the definition assessment, not the result of defining a

market to find SMP.

Concerning BTC's argument that **Aliv's mobile network** deployment is evidence of no barrier to entry into the market. URCA disagrees with this assertion, as it is based on the false premise that the product market should be wider to include all voice services, including mobile services and OTT calling apps. As explained in the Preliminary Determination and in Section 3.2 of this document, the market definition assessment for the fixed voice product market ruled out the inclusion of these services in the market of standalone fixed voice.

URCA disagrees with BTC's assertion that there are no **barriers to entry** into this market. As explained in Section 4.2.1 of the Preliminary Determination, the fixed network used to offer standalone fixed voice services is hard to replicate due to prevailing high and non-transitory barriers to entering this market. In particular, there are two ways for a potential competitor to enter this market (i) by deploying its own fixed access (and core) network infrastructure, or (ii) by gaining wholesale access to existing fixed networks either on commercial or regulated terms.

- With respect to deploying its own fixed network, high barriers relate to the high fixed and sunk costs required to build a fixed voice network with national coverage. The likely sunk costs relate to the costs of developing, building, and establishing networks and infrastructure for retail fixed voice services. Additionally, the entrant would need a business license and an operating license.
- Regarding the second way to enter the market, in The Bahamas, currently, there is no regulated access to the fixed access networks of BTC or CBL. This means that any potential new entrant to the market would need to secure a commercial agreement with BTC or CBL to offer call services via the existing networks. While this reseller-based entry strategy is less capital-intensive, it still requires reaching a commercial agreement with the existing operators. URCA has not observed any alternative providers successfully negotiating such agreements.

Considering BTC's comment that CBL/ALIV is similar in scale and could easily respond to any attempt by BTC to exercise SMP in the standalone fixed voice services market, URCA remains in the position that CBL is not a competitor in this market.

BTC's argument on why CBL is a potential competitor is based on their assumption of a broader market definition that includes other voice services, such as mobile services and OTT calling apps, and multiproduct bundles. However, as explained in Section 3.2, the market definition includes fixed voice services offered on a standalone basis.

- Also, while BTC and CBL overlap coverage on four islands, CBL will not be able to compete with BTC in the rest of the Bahamas, giving BTC an advantageous position.
- In the islands that overlap, CBL relies on VoIP technology to provide fixed voice services. This implies that CBL relies on a broadband connection to offer this service, which, as a result, and as evidence shows, does not provide fixed voice services on a standalone

basis. If BTC were to increase the tariff of its standalone fixed voice plans by 5-10%, neither Aliv nor CBL would be able to offer standalone fixed voice services profitably.

Finally, URCA has detailed the analysis and evidence in the Preliminary Determination of why BTC holds a dominant position in the standalone fixed voice market. Neither BTC nor CBL provided any additional compelling evidence to refute URCA's analysis. Given the above, URCA remains in the view that BTC is dominant in the retail standalone fixed voice service market.

### **3.4 Response to the Consultation Question 3**

#### **Consultation Question 3 – Market Definitions for Retail Fixed Broadband Services**

Do you agree with URCA's proposed definitions of the markets for retail fixed broadband services in The Bahamas? If not, why?

#### **BTC's Comments**

BTC disagrees with URCA's proposed definition of the market for retail fixed broadband services in The Bahamas. BTC considers that a single market for "fixed services", including standalone and bundled fixed services, is appropriate, given that close to 90% of fixed broadband services are purchased as multi-product bundles. BTC argues that this is similar to the approach taken by URCA in its recent retail mobile market review.

BTC further believes that there is a single nationwide market for both standalone and bundled fixed services due to the lack of significant differences in how these services are marketed and used across the country. However, for regulatory purposes, BTC agrees to divide the market into two geographic areas, Geographic Markets 1 and 2, based on CBL's smaller fixed network footprint, compared to BTC. However, BTC notes that Geographic Market 1 covers most of the end users in The Bahamas (i.e., 95% of the population), whereas Geographic Market 2 only covers a wide range of islands but only a small percentage of the population.

#### **CBL Group's Comments**

CBL disagrees with URCA's decision to focus on standalone fixed broadband services sold to residential consumers as the starting point for reviewing this market. However, for the purpose of its consultation response, CBL has followed URCA's approach to answer the consultation questions. Given this, CBL has two main observations in which they disagree with URCA's proposed market definition:

1. Whether standalone fixed broadband and bundles that include fixed broadband and fixed voice should be in the same product market; and,
2. Whether retail mobile data services should be in the same product market.



Concerning the **first observation**, CBL's disagrees with URCA's assessment that standalone fixed broadband and double-play bundles that include fixed broadband and fixed voice should be in the same product market.

- URCA's analysis demonstrates that fixed broadband services are not in the same product market as fixed voice and pay TV services. From this, URCA concludes that standalone and bundled services are also in different markets. However, the analysis of demand-side substitution compares the prices of the standalone fixed broadband service with the prices of a bundle, which includes fixed voice and/or television services (i.e., assumes that the customer does not consume the other services yet). But, according to CBL, this is not comparing like-for-like offers. Instead, URCA should analyze the impact of a SSNIP on the standalone broadband service on a customer who also has a bundle of voice and TV services (i.e., consumes all three services, but not as part of a single bundle).
- CBL agrees that some standalone fixed broadband customers may not value fixed voice and pay TV services and customers may not view multi-product fixed bundles as alternatives. However, CBL argues that fixed broadband is fundamental to consumers' electronic communication services, whether purchased alone or jointly with other services and that dividing the product market into standalone and bundled services does therefore not reflect the reality in The Bahamas.
  - i. For example, CBL's "*REVNetPrestige Fiber*" standalone plan is priced at BSD \$124.74 per month, whilst also offering the possibility to combine this plan with "*REVTalkUnlimited*" for around the same price (i.e., \$124.00 per month). The fact that customers of standalone fixed broadband services could add fixed voice "for free" suggests these customers do not value fixed voice services, and they may rely on mobile calling, messaging, and VOIP services instead.
  - ii. CBL argues that [REDACTED] of its standalone fixed broadband customers are on the entry-level product "*RevNetPrime*", the focus of URCA's proposed remedies, and therefore, it represents a more suitable candidate for a SSNIP test. For this entry-level service, a 10% price increase (the upper end of the SSNIP range presented by URCA) would raise the price for this tariff plan from \$49.50 per month to \$54.45 per month. The relevant double-play bundle of *REVNETPrime* plus *REVTALKPrime* is offered at \$54.98 per month and, in response to a SSNIP, it would not be expected that a significant number of customers would switch to this bundle. Within URCA's methodology, therefore, these bundles should not be included in the standalone fixed broadband market.
- CBL concludes that fixed broadband is the building block for many consumers of electronic communication services in The Bahamas. Whether consumers decide to access these services on a standalone basis or through bundles depends on their specific needs. Hence, separating the market on a standalone or bundle basis does not reflect the reality of the market.

Concerning CBL's **second observation**, CBL considers that retail mobile data services should form part of the same product market as fixed broadband services.

- From the demand side, CBL argues that the Consumer Survey results in Figure 25 of the Preliminary Determination show that in case of a SSNIP in fixed broadband services, 14% of the users would either move to MiFi or mobile data services, which makes a 10% increase in the price of standalone broadband unprofitable. In CBL's view, this suggests that mobile data services are part of the same product market as fixed broadband services.
- From the supply side, the barriers to entry for mobile operators are lower than presented by URCA. As a response to a SSNIP, a mobile operator would not need to deploy a new fixed access network. Instead, such a provider would use its mobile network to offer fixed wireless broadband services.

Lastly, CBL agrees with URCA's preliminary conclusion in three aspects.

- First, to include LEO satellite-based broadband services within the product market of fixed broadband services.
- Second, even though there are significant differences between the product offerings of residential and business customers, these differences do not require the definition of a separate service market.
- Third, CBL agrees with URCA's proposed geographic market definition.

### **URCA's Response**

In the Preliminary Determination, URCA considered if bundles including broadband and standalone broadband were part of the same product market.

As acknowledged by URCA, 85% of the fixed broadband subscriptions were through multi-product bundles. With the prevailing high take-up of multi-product bundles (in particular, double-play bundles including fixed broadband and fixed voice, and triple-play bundles), URCA considers it reasonable to assume that end users have made a rational decision to meet their demand for fixed services based on the least cost option available to them. Hence, the remaining 15% of fixed broadband customers see no value in accessing broadband through a multi-product bundle, as rightly agreed by CBL.

Given the critical responses from both BTC and CBL on the scope of the product market, URCA sets out below how the SSNIP test is conducted to assess whether a product could be a potential substitute of the narrowest possible focal product, and hence, broaden the market. This is illustrated in the context of standalone fixed broadband service, in line with this consultation question.

- The starting point for the SSNIP is the narrowest possible product scope in this market, i.e., standalone broadband service. At this stage of the analysis, the relevant question is if a 5-10% increase in a standalone broadband plan, the user could switch to other options, hence a broader product market is justified.
  - i. Considering the entry-level “RevNetPrime” tariff plan (in line with CBL’s suggestion above), URCA agrees with CBL’s analysis that a 10% price increase would raise the price for this service from BSD \$49.50 per month to BSD \$54.45 per month. As such, the new price of the *RevNetPrime* plan would be similar to that of a double-play plan including fixed broadband and fixed voice services with a monthly cost of BSD \$54.98. This suggests that based on relative prices, end users would be indifferent between both tariff plans. Hence, the market of standalone broadband is widened to include the double-play bundle with fixed voice. As this is a theoretical analysis, the conclusion is independent of actual switching behaviour by end users in the Bahamas.
  - ii. The next step is to assess whether the double-play bundle including fixed broadband and basic pay TV would also be part of the same product market as standalone fixed broadband and double play broadband and fixed voice services (i.e., the revised product scope). Given that the price of the pay TV double-play plan is BSD \$59.50 per month, a 10% increase in the price of the standalone “RevNetPrime” service would not induce switching from standalone or double play broadband customers to this plan, hence is not included in the same product market.
- The reasoning above shows that the objective of the SSNIP is to assess whether a market that starts at the narrowest possible product scope can be broadened to include substitutable products.

URCA also disagrees with CBL’s conclusion that mobile data services should be included in the same product market as fixed broadband services. CBL argues URCA’s Consumer Survey reveals a SSNIP in fixed broadband services would be unprofitable, therefore, implying mobile data services and MiFi should be in the same product market. URCA remains of the view that most fixed broadband users do not consider mobile data services or MiFi as substitutes for their fixed broadband tariff plan. This is also likely to hold for fixed broadband users who may already be subscribed to mobile data services and consider these as complementary services. As mentioned in the Preliminary Determination, there are non-trivial differences in the product characteristics of these services.

- From the demand side, fixed broadband services are differentiated in terms of the available download speeds, data cap limits, prices, and user experience.
  - i. Fixed broadband services usually have an unlimited usage allowance, subject to a fair user policy and are differentiated by download/upload speeds. Mobile data

services commonly have a usage allowance (which, if exceeded, would require an end user to pay extra or experience slower speeds), and the download/upload speed is commonly not advertised. These characteristics are the main advantages of fixed broadband service compared to mobile data plans as shown in Figure 24 of the Preliminary Determination.

- ii. Fixed broadband plans offer higher (download/upload) speeds than mobile data services. BTC and CBL offer fixed broadband plans with up to 1 Gbps of advertised download speed, which is considerably higher than the 50 Mbps maximum speed commonly marketed for mobile data services (i.e., LTE mobile data speeds which could vary depending on the customer's location and data consumption).<sup>31</sup> Similarly, there is a non-trivial difference in actual observed download speeds, with average mobile download speeds of around 36.54 Mbps compared to fixed download speeds of around 58.49 Mbps<sup>32</sup> which might constrain fixed-to-mobile broadband substitutability.<sup>33,34</sup>
  - iii. In terms of relative prices, to meet the average connection consumption profile of fixed broadband users [REDACTED] of data per month<sup>35</sup>), a fixed broadband user would pay a price of \$30.99 (BTC's "Basic 8 Mbps") for unlimited data. To meet the same consumption needs through mobile data services, the user would pay at least \$126.00 ("ALIV liberty140").
  - iv. MiFi services is less expensive than the cheapest standalone plan. However, the monthly data allowance of these services are 3GB, which is significantly lower than the average monthly fixed broadband consumption per connection.
  - v. The consumer survey evidence presented by URCA in the Preliminary Determination suggests that end users in The Bahamas currently do not consider mobile data and fixed broadband services as demand-side substitutes.
- From the supply-side, URCA remains of the view that following a SSNIP in fixed broadband services, it would be unlikely for a mobile operator who is not currently offering standalone fixed broadband services would be willing and able to deploy a fixed network following a SSNIP in standalone fixed voice services.<sup>36</sup>

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<sup>31</sup> See for example: <https://www.verizon.com/articles/internet-essentials/4g-lte-speeds-vs-your-home-network>

<sup>32</sup> <https://www.speedtest.net/global-index/> (accessed December 2023)

<sup>33</sup> A 58 Mbps download speed offers increased performance for data-intensive tasks such as streaming, online gaming with lower latency, and simultaneous high-definition video conferencing. In comparison, a 36 Mbps connection is suitable for HD streaming, regular online gaming, and standard video calls, making it sufficient for typical internet activities, but may fall short to serve multiple users.

<sup>34</sup> URCA notes that the actual speeds experienced on mobile data services is commonly more variable than on fixed broadband services, as the former depends on the congestion of the mobile site a user is connected to.

<sup>35</sup> Calculated based on operators' quantitative submissions.

<sup>36</sup> BTC and CBL/Aliv provide both fixed and mobile retail services in The Bahamas. However, the substitutability test concerns the ability of a provider that currently does not already offer the focal product (in this case, retail fixed

- i. Both services use different network infrastructures and require different service licences. The fixed investment cost of deploying a fixed network is considerable, with it taking a significant amount of time to deploy such a network. Moreover, most costs would be sunk (i.e., they cannot be recovered if the entrant later decides to leave the market) and this creates additional barriers to entry. Whilst adopting a fixed wireless access (FWA) technology may reduce the overall investment needs, compared to a fixed wired access network, there is still non-trivial costs involved in deploying a standalone FWA network. URCA further notes that, as FWA services are currently not offered widely in The Bahamas (i.e., they are only offered by OLOs in their niche markets), URCA has not formally assessed whether FWA and fixed (wired) broadband services form part of the same economic market.
- ii. Additionally, whilst regulated access to existing fixed networks is currently available in The Bahamas, these services are not geared towards mass-market entry and take-up has remained low to date. In particular, the Broadband Resale Obligation (BRO) is a resale broadband offering with no take-up to date. There is also Wholesale Dedicated Internet Access (DIA) which is mostly used as an input used by OLOs to supply small geographic areas. Neither of these wholesale services are likely to support a larger scale entry.

### 3.5 Response to the Consultation Question 4

#### **Consultation Question 4 - Dominance Assessment in Retail Fixed Broadband Markets**

Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail fixed broadband service markets? If not, please set out your alternative views and provide evidence to substantiate your position.

#### **BTC's Comments**

BTC disagrees with URCA's preliminary view that CBL is dominant in the provision of fixed broadband services in Geographic Market 1 and BTC dominant in Geographic Market 2. In BTC's view, reliance on market shares alone to determine market dominance is inappropriate. BTC and CBL are competing vigorously to attract new customers to their respective new and far higher-speed fibre-based broadband services and bundles, including VoIP and IPTV services.

BTC argues that URCA wrongly suggests that there is no prospect of new entry or expansion in

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broadband services), nor own any inputs which would only be required to offer the focal products, such as a fixed service license or fixed network infrastructure, to start offering that product in the case of a SSNIP of the focal product.

the market. BTC and CBL have both invested extensively into new fibre networks and replacing legacy copper (DSL) and older cable network facilities. Also, Starlink has entered the market, having the biggest impact in Geographic Market 2. According to BTC, FWA and 4G mobile wireless technologies have and will provide further alternatives for consumers. This makes for a highly dynamic competitive market characterized by new entry and expansion of existing capacity (in terms of speed and reach).

BTC further refers to the range of smaller OLOs offering either fixed wireline or FWA broadband alternatives to Bahamian end users.

In light of the above, BTC concludes that neither BTC nor CBL are dominant.

### **CBL Group's Comments**

CBL has significant concerns with the analysis presented by URCA and the conclusions it has drawn from it. Instead, CBL considers the market for retail fixed broadband services in The Bahamas to be highly competitive, with lowered entry barriers due to regulatory intervention.

**CBL disagrees with URCA's focus on market shares**, as market shares are an inadequate indicator of competition in a multi-platform competition environment with reduced entry barriers from targeted wholesale services.

**CBL agrees with URCA that both BTC and CBL benefit from scale and scope economies.** However, BTC, as one of the largest cable operators in the world, Liberty Global Group, would benefit from scale advantages that are not available to a relatively small and independent provider like CBL. CBL also considered that with the introduction of fixed number portability in The Bahamas, barriers to switching have been lowered substantially.

CBL believes **URCA is underestimating Starlink** as an important operator in the fixed broadband market and URCA should view this market as prospectively competitive. Particularly:

- Starlink technology, LEO, can not only reach users in areas where it is difficult or too expensive to deploy broadband services over terrestrial networks but there is evidence, that they provide services across the densely populated areas in New Providence and Grand Bahama.
- Starlink's prices signal that they wish to compete with BTC and CBL's broadband offerings.

CBL also suggests that **URCA should not consider the analysis of ARPU** (average revenue per user) to be an indication of pricing. The prices for broadband services have largely remained flat. CBL argues that the higher prices it charges in the retail broadband market, compared to BTC, are not a result of its ability to price independently of the market since CBL is subject to retail pricing rules for its broadband services. As a challenger in the broadband and pay TV market, BTC's most likely strategy is to lower prices to entice standalone consumers to switch between providers, which is an example of competition at work.

CBL notes that URCA's assessment of CBL's sustained level of profitability does not reflect current market realities, given that the regulated WACC of 10.86% URCA uses was set back in 2014. CBL estimated that the ROCE for fixed broadband services has fallen from [REDACTED] in 2015 to [REDACTED] in 2022. [REDACTED]

CBL disagrees with URCA that there has not been much **innovation in the tariff offerings** of broadband services. Both CBL and BTC have started to offer services with speeds up to 1 Gbps over newly rolled-out fiber infrastructure.

According to CBL, **barriers to entry are low** in this market.

- The market entry of Starlink opens a new frontier of competition in The Bahamas. As for now, Starlink is not the only satellite broadband provider and potential entry should be considered as part of the market review.
- The introduction of regulated WDIA services in 2020. To CBL, this means that the lack of market entry does not mean that there are no opportunities to enter, but that the market is not attractive given the strong competition resulting in lower prices, high levels of innovation and [REDACTED]

Finally, CBL mentioned that it is at a **competitive disadvantage compared with BTC and Starlink**. This is because BTC, through Liberty Global, and Starlink have global operations, which puts them in a better position to access finance and scale. CBL, as a small provider, is not in the same position to create scale and scope economies in other areas, such as branding and procurement.

### URCA's Response

URCA notes that both BTC and CBL disagree with the dominant findings in this retail market.

However, **URCA does not agree with BTC and CBL that they compete vigorously in this market**, for the following reasons:

- First, URCA **disagrees with CBL's assertion that market shares are not relevant for the dominance assessment**.
  - The market shares indicate how competitive a market is. In the case of The Bahamas, URCA has analysed the market share trends of all the operators, including BTC and Starlink. Market share trends from 2018 to 2023 of retail fixed broadband services, in terms of subscribers and revenues, show that CBL's shares have been growing over time, as discussed in Section 5.2 of the Preliminary Determination.
- Second, **URCA disagrees with CBL's claim that since CBL is under retail tariff rules they cannot exercise dominance** and cannot price independently from the market.
  - The retail price tariff rules do not prevent CBL from increasing prices, but for URCA

to assess the tariff proposals. Under this regime, URCA does not have the ability to push CBL's prices down.

- CBL has been able to sustain higher prices without losing customers to BTC, with this potentially being indicative of CBL having market power. CBL's prices are between 38% and 52% higher than BTC's for comparable products.

URCA is not in a strong position to comment on the drivers of CBL's current financial performance. This may be a result of, amongst others, ongoing investments into fibre deployment, the need to pre-approve price increases under the Retail Tariff Rules, and concerns around consumers' willingness to pay price increases. However, URCA disagrees with CBL's claim that the fact that [REDACTED] **is evidence of it not having SMP** in this market. Being profitable is not a binding criterion to determine if an operator has SMP but could be a result of being an SMP operator. The main criteria to determine if a licensee enjoys a position of economic strength in a relevant market is when the licensee behaves to an appreciable extent independently of its competitors, consumers, and subscribers.<sup>37</sup> Hence, [REDACTED] it might be that they have been constrained to exploit it, for example by URCA taking this into account as part of the remedy design. However, URCA is aware of the financial losses evidence and has updated the remedies by adopting a lighter touch compared to the current set of obligations.

Concerning the claim that **barriers to entry** are lower given the market entry of Starlink and prevailing wholesale regulation, within its Preliminary Determination URCA has recognised both points and set out why, in URCA's view, CBL and BTC still hold a dominant position in their respective geographic markets. Neither BTC nor CBL have demonstrated in their consultation responses that the perceived lower barriers to entry may have resulted in a lessening of CBL's position of market power in Geographic Market 1 or BTC's position in Geographic Market 2. As such, URCA considers its arguments set out in the Preliminary Determination to remain valid. In particular:

- While Starlink has indeed entered the market using LEO satellite technology (and thus has been able to overcome the barriers associated with deploying fixed networks), it has yet to gain a significant market share in retail broadband services. Further, deploying the necessary satellite infrastructure requires significant investment which would result in possible barriers to entry for additional LEO satellite providers.
- The WDIA and Broadband Resale Obligations, which are two forms of regulated wholesale access in The Bahamas, have not resulted in further market entry. At the time, the WDIA service was not designed to facilitate further (mass market) entry, but to ensure that existing OLOs could procure, on reasonable terms, the wholesale inputs required to serve their customers. As stated in the Preliminary Determination, the OLOs are small

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<sup>37</sup> <https://www.urcabahamas.bs/wp-content/uploads/2017/01/Final-Decision-on-SMP-methodology-ECS-20-2011.pdf>



providers serving niche markets, often in particular geographic areas only. As such, URCA does not expect the OLOs to become a competitive constraint on BTC or CBL in the near future.

Concerning BTC and CBL's arguments to support their view that this is a **highly innovative and dynamic market**, URCA does not agree that these points necessarily support such a claim.

- BTC refers to vigorous competition between itself and CBL but provides no supporting evidence for this (in terms of price reductions, examples of promotional activity, and/or product innovation, etc.).
- Mobile broadband does not form part of this product market, for the reasons set out in the Preliminary Determination as well as Section 3.4 above. In The Bahamas, Fixed Wireless Access (FWA) technology is currently only deployed by OLOs which are not considered a competitive constraint, for the reasons set out above.
- URCA is not aware of much innovation in the tariff offering in recent years, with most changes relating to increases in the advertised speeds as a result of the ongoing migration to fibre networks from both Licensees.

Lastly, URCA disagrees with CBL that it is at a disadvantage compared with BTC and Starlink. CBL is a well-established market player and brand in The Bahamas, similar to BTC and more so than Starlink (which has only entered The Bahamas recently). CBL has extensive fixed network coverage and thus presence in Geographic Market 1, offering fixed voice, broadband and pay TV services over its network. CBL Group also owns and operates Aliv, the second mobile operator in The Bahamas. This puts CBL in a similar position to BTC within The Bahamas.

### 3.6 Response to the Consultation Question 5

**Question 5: Market definition for Retail Pay TV services**

*Do you agree with URCA's proposed definition of the market for retail pay TV services in The Bahamas? If not, why?*

#### **BTC's Comments**

BTC disagrees with URCA's proposed definition of the pay TV services market in The Bahamas. In BTC's opinion, the rise of online streaming services (both free and subscription-based) is the primary reason for the steep decline of legacy pay TV services and thus these services should form part of this market (since being seen as a substitute to pay TV services).

BTC argues that since mobile wireless services offer easy access to online streaming services and

mobile penetration exceeds 100% in The Bahamas, virtually all Bahamians have access to streaming services. Moreover, with over 70% of households having broadband connections, fixed broadband access to online streaming services is also widespread. Therefore, BTC disagrees with URCA's preliminary conclusion that online streaming services should not be considered part of the same market as pay TV services.

BTC also disagrees with URCA's preliminary finding that IPTV should not be considered part of the same market as legacy pay TV (HFC and DTH). URCA's premise is that IPTV services are only available as part of multi-product bundles from CBL and BTC. However, according to BTC, CBL as part of its current ex-ante regulatory obligations is obligated to provide (IP)TV on a standalone basis under existing Price Regulation Rules. Therefore, IPTV should be considered part of the same market as HFC and DTH pay TV services since it can be unbundled, as required by Price Regulation Rules.

### **CBL Group's Comments**

As raised within its general comments (see Section 3.1 above), CBL does not agree with URCA's general approach to taking standalone services as the starting point for its review of the fixed service markets considered in this market review. According to CBL, standalone services, particularly those for fixed voice and fixed TV services, have a fast-declining relevance in this market. By considering standalone services as a starting point, URCA fails to recognise the wider competitive dynamics of the market.

CBL suggests that URCA examines the impact of a SSNIP on the price of a standalone pay TV subscription for a customer who also has a bundle of voice and broadband services. CBL points out that the fact that BTC does not offer standalone pay TV services, having the technology to do so, is evidence of the limited commercial attractiveness of this segment of the market.

CBL disagrees with URCA's conclusion on whether satellite-based pay TV should be in the same product market as standalone pay TV. It is CBL's opinion that if CBL's satellite TV services are sufficiently different from its cable TV services and BTC's IPTV services are a closer substitute, this would give rise to a market definition based on CBL's coverage area in a similar way to the approach taken in the fixed broadband market, i.e., with markets defined as Geographic Market 1 and 2.

CBL believes that streaming and TV services are part of the same product market. The take-up of TV services has declined in The Bahamas, [REDACTED]

[REDACTED] While OTT subscribers making use of its broadband network have grown by around 8% over the past two years and OTT viewing hours exceed TV viewing hours. OTT providers have also evolved their products to include "Live TV" along with the On Demand options, which allow viewing programs that air in real-time, just like linear TV. Additionally, CBL claims that in the TV and OTT content market, tech-savvy and younger subscribers are likely innovators or early adopters. Despite subscriber losses and reduced TV viewership, many customers still value pay TV services.

However, according to CBL, there is no inherent value in the linear TV model, and as content becomes available online, a full migration to online alternatives is expected. According to CBL, this indicates significant evidence of substitution in the market.

In terms of supply-side substitution for pay TV, CBL believes that OTT providers do not face high barriers of entry, given that they are present to most consumers in The Bahamas. OTT services are available over broadband connections, so they do not need any form of regulated access to fixed networks.

CBL agrees with URCA's proposed definition of a single market for residential and business customers.

### **URCA's Response**

URCA notes that both BTC and CBL disagree with the definition of a single market for standalone pay TV.

Concerning BTC's claims that URCA's preliminary determination excludes IPTV from this product market, URCA wishes to clarify that the Preliminary Determination did not exclude IPTV from this market. URCA simply found no standalone IPTV plan being currently offered in the Bahamian market, but URCA specifically explained in the document that a standalone plan provided via IPTV would be considered part of this market. *"If a provider were to launch a standalone IPTV plan, it should be considered within this market. Therefore, URCA considers that the commercial decision not to provide IPTV on a standalone basis should not drive its product market definition and instead URCA maintains a technology neutral approach."* If either BTC or CBL started providing a standalone IPTV plan it would be considered in the market for retail pay TV services.

On BTC's claims that CBL is obligated to provide IPTV on a standalone basis under existing Price Regulation Rules, URCA notes that CBL is only required to offer standalone TV plans, irrespective of the underlying technology. Further, at the time of imposing this obligation in 2010, CBL was not offering IPTV services and had not advanced its plans to transition its HFC network to a FTTx network. URCA understands that CBL complied with this SMP obligation within its HFC network, but CBL is to date not offering standalone IPTV tariff plans.

Concerning CBL's claim that standalone pay TV services should not be considered the starting point of this market review, URCA refers CBL to the general discussion in Section 3.1. above on URCA's approach to market definitions and the treatment of standalone services within that. Further, URCA considers that, contrary to CBL's view, the low take-up levels of standalone pay TV services are not a relevant criterium not to define a market for these services. Despite declining take-up of these services in The Bahamas<sup>38</sup>, there are still some users in The Bahamas subscribed to standalone pay TV plans, either because they do not value other fixed services included in multi-product bundles or because they want to subscribe to these other services from

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<sup>38</sup> As recognized in the Preliminary Determination, take-up of standalone pay TV services fell considerably from 65% of total households in 2017 to 44% in mid-2023.

a different provider or a different plan.

Moreover, concerning CBL's push back on URCA's application of the SSNIP test, in line with URCA's previous response to CBL about declining relevance of standalone plans, URCA remains of the view that not all pay TV customers value additional fixed services. This is likely to hold for standalone pay TV users who may not be subscribed to fixed voice or broadband and this has to be recognized by the SSNIP test. As set out in Section 3.1 above, a SSNIP test starts by defining a narrow focal product and then considering additional services that could be included in a wider product market. To URCA's understanding, a SSNIP test does not take into account that a customer may already be subscribed to additional services (on a standalone basis and/or from another provider)<sup>39</sup>. URCA, in line with common practice, has decided to start with standalone services as focal products in all markets, as these services represent the narrowest version of retail pay TV services, and the same focal product was considered in the previous market review. Whether fixed voice, fixed broadband or other services should be considered in this product market was then considered by applying the SSNIP test. However, in doing so, URCA came to the conclusion these services should not be included in the same market as standalone pay TV services (for the reasons set out in the Preliminary Determination).

Concerning CBL's point on its satellite TV services, as the product scope of this market only includes standalone TV services, BTC's IPTV services do not form part of this market (as BTC currently does not offer standalone IPTV services). This renders CBL's point irrelevant.

Finally, on the inclusion of streaming services within the same market as standalone pay TV services, URCA recognizes the arguments brought forward by CBL on the similarities in content between traditional pay TV services and streaming platforms. Nevertheless, URCA's decision to exclude OTT services from this market is supported by two main factors. These points were already set out in the Preliminary Determination and neither respondent has provided any compelling or alternative evidence to challenge these points.

- Firstly, streaming services require a (fixed) broadband subscription, whilst standalone pay TV services do not. Therefore, unless subscribed to fixed broadband services separately, standalone pay TV users will lack a (fixed) broadband connection which would stop them from switching to streaming services in case of a SSNIP in standalone pay TV services.
- Secondly, URCA's Consumer Survey shows that most customers consider pay TV and streaming services as complements, rather than substitutes. According to this survey, 54% of pay TV users are also subscribed to streaming services (and similarly 54% of OTT streaming service users are subscribed to pay TV). Moreover, when asked what they would do if faced with an increase in prices of pay TV services, only 13% of pay TV users said they would drop this service and rely exclusively on streaming services.

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<sup>39</sup> UCRA notes that, as part of its submission, CBL did not provide any evidence of regulatory authorities applying a SSNIP test the way it suggested. URCA has reviewed the evidence of multiple regulatory authorities and European Commission guidelines and they all support URCA's approach to the SSNIP test.

Therefore, URCA remains of the view that the market for Retail Pay TV service, as defined in the Preliminary Determination, remains valid. In particular, this market includes standalone pay TV services, irrespective of the technology used to deliver them. Online streaming services or other retail fixed services do not form part of this market. Further, this market is national in scope.

### 3.7 Response to the Consultation Question 6

#### **Question 6: Dominance Assessment in Retail pay TV Service Market**

*Do you agree with URCA's preliminary conclusion from its single dominance assessment in the retail pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.*

#### **BTC's Comments**

BTC disagrees with URCA's preliminary finding that CBL is dominant in the provision of (standalone) pay TV services in The Bahamas. BTC submits that there are no SMP concerns in relation to standalone pay TV services at this stage of the development of the ECS in The Bahamas.

#### **CBL Group's Comments**

CBL does not agree with URCA's dominance findings in the (standalone) pay TV service market. CBL considers there to be no SMP in this market, as it sees OTT streaming services to form part of this market. Within its submission, CBL compared its performance against OTT streaming services in terms of viewership and [REDACTED]

CBL mentions that its countervailing bargaining power (CBP) with content providers has declined. Content creators and programmers (Disney, Warner, NBA, etc.) can now offer services directly to consumers instead of using linear pay TV services. CBL argues that while OTT streaming providers are large multinational companies with superior access to resources and finances, CBL has incurred significant losses in pay TV services. To CBL, the fact that it has not increased its retail prices is an indicator that CBL is constrained by market forces. In particular, CBL points out that it has not asked for a price increase for its Prime TV services since 2014, arguing there should be no concern about price increases.

Going forward, CBL claims it is faced by competition from both BTC and OTT streaming providers. CBL also refers to its separated accounts and the losses incurred in pay TV services in the period 2021-22, [REDACTED]

Finally, according to CBL, consumer protection concerns regarding standalone TV services should

be addressed through universal service and consumer protection regulations.

### **URCA's Response**

URCA notes that both BTC and CBL disagree with the dominance findings in the market for retail (standalone) pay TV services.

URCA considers CBL failed to provide arguments that support their disagreement with URCA's dominance findings in this market as defined in the Preliminary Determination. Instead, all evidence provided in response to Consultation Question 6 revolve around the role of OTT streaming services. However, OTT streaming services were already excluded from this market as part of URCA's proposed market definition set out in the Preliminary Determination. For the reasons explained in URCA's response to Consultation Question 5 above, URCA remains of the view that OTT streaming services do not form part of this product market definition, rendering CBL's points irrelevant to the dominance assessment in this market.

When reviewing CBP, CBL fails to recognize that the relevant CBP analysis to assess dominance in this market is CBP of end users. CBL explains its loss of negotiation powers with large content providers. However, CBP is only used in dominance assessment to understand whether end users might have bargaining power when negotiating with the SMP operator, which would limit the SMP operator's ability to increase prices above the competitive level. Therefore, CBL's analysis does not provide additional information about end users' bargaining power in this market. Given this, URCA sees no reason to reconsider its preliminary findings that CBP is not present in this retail market.

When considering the control over infrastructure that is not easily duplicated, CBL focuses on OTT streaming providers, which were and remain excluded from this product market. Nevertheless, URCA briefly comment on the CBL's comments. CBL argues OTT providers do not need to control a fixed broadband infrastructure since the [REDACTED]

[REDACTED] However, CBL fails to recognize that this percentage is considering all TV subscribers, i.e., also multi-product bundle subscribers. If the same analysis was undertaken considering only standalone TV users, URCA would expect a significantly lower share of those users being subscribed to fixed broadband services also (as a rationale consumer valuing both these services would purchase them via a multiproduct bundle as these offer the lower price for these services). Moreover, the data provided by CBL implies that despite the increasing take-up of fixed broadband services, there are still pay TV users who do not value fixed broadband services, strengthening the choice of standalone pay TV as focal product for this market.

Instead of comparing its infrastructure with that of streaming services, CBL should have, if at all, compared its infrastructure with that of BTC being the only other provider of pay TV services in The Bahamas (although not standalone pay TV to date, so any of this comparison would only be relevant to the market of multi-product bundles including pay TV). CBL currently provides standalone pay TV via HFC and DTH, while BTC has not deployed the necessary technology to

provide (standalone) pay TV services. Considering the high financial and non-financial costs of deploying the relevant infrastructure for supplying cable or satellite TV services, URCA remains of the view that this criterion supports CBL's dominance in this market.

Finally, in its analysis of market outlook and prospects of competition, CBL argues it faces competition from both BTC and OTT providers. BTC does not currently offer any standalone pay TV plans neither does it own the necessary infrastructure to provide pay TV via cable or satellite. Also, there is currently no regulated wholesale access that BTC or potential entrants could use to overcome the high barriers of entry from setting up their own network. OTT providers are not considered within this market following the arguments presented in Consultation Question 5 and are not expected to start providing pay TV services. Therefore, URCA considers that prospects of competition in the standalone pay TV service market are low.

Concerning CBL's profitability levels, URCA reviewed CBL's separated accounts when preparing the Preliminary Determination and this information was used as evidence when analysing profitability in other defined markets. However, in the case of the standalone pay TV services market, CBL's separated accounts do not provide the necessary level of granularity. As one can observe in CBL's responses, separated accounts differentiate between "Basic TV" and "Digital TV". Both "Basic TV" and "Digital TV" include both standalone TV plans and bundled service offerings. Therefore, the financial performance of CBL's standalone pay TV services cannot be isolated from that of bundles including pay TV.

URCA notes that [REDACTED]

[REDACTED] Whilst this supports the case of CBL not pricing excessively, it is important to consider that CBL has been subject to tariff approval requirements for its pay TV services and hence it cannot set the price for these services without URCA's pre-approval. As such, the analysis of pricing and profitability is not a key factor in the assessment of dominance in this market. Further, an operator can still be dominant in a relevant market, even if the operator is not earning positive returns in that market. This is due to its pricing decisions being a result of both its market position and its ability to price freely. The latter being driven by end users' willingness to pay for these services and potential ex ante price regulation faced by the operator.

URCA notes CBL's comments on the proposed ex-ante remedies in this market but will address these in the context of Section 3.12 below.

### 3.8 Response to the Consultation Question 7

**Question 7: Market definition for Retail Multi-product Bundles including pay TV**

*Do you agree with URCA's proposed definition of the market for multi-product bundles including pay TV service in The Bahamas? If not, why?*

### **BTC's Comments**

As stated in the context of other Consultation Questions, BTC considers that the market definition for retail fixed communications services in The Bahamas should include both standalone and bundled fixed communication services. As such, BTC is not aware of any reason not to also include double-play bundles of fixed voice and fixed broadband in the market for retail multi-product bundles including pay TV.

### **CBL Group's Comments**

CBL does not accept the distinction between standalone and bundled services as the basis of the regulatory review. URCA defines a single market for all fixed electronic communication services by defining a multi-product bundles market.

Additionally, CBL claims URCA's application of the SSNIP test has drawn incorrect conclusions. Considering the Consumer Survey evidence, CBL insists that all pay TV services irrespective of whether they are offered on a standalone basis or as part of a bundles should be considered in the same product market. This market, according to CBL, should also include other multi-product bundles and OTT internet streaming services.

Lastly, CBL rejects URCA's analysis of supply-side substitution since, according to CBL, substitution does take place between internet streaming services and multi-product bundles.

### **URCA's Response**

URCA notes that both BTC and CBL consider all fixed voice, broadband and pay TV services provided on a standalone basis or bundled should be considered in the same product market, therefore rejecting the market definitions set out in the Preliminary Determination.

Concerning BTC's objection to URCA's decision to **treat double-play bundles including fixed voice and fixed broadband services** separately from the remaining multi-product bundles, as already explained in Section 5.1.1.1 of the Preliminary Determination, when defining the product market for fixed broadband services, URCA considered the (minimal) price differential<sup>40</sup> between standalone fixed broadband plans and double-play bundles including fixed broadband and fixed voice a key factor to consider both to be in the same market. Fixed broadband services, with the highest take-up of all fixed communication services<sup>41</sup>, were considered the anchor product in this market, with customers willing to switch to a plan including an additional fixed voice service in case of dropping their standalone broadband plan. Multi-product bundles including pay TV services are instead considerably more expensive than standalone broadband plans. According to URCA's Preliminary Determination: *"Price differentials are larger between standalone fixed*

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<sup>40</sup> "There is a small price differential between standalone fixed broadband and fixed voice offerings purchased separately, and double-play bundles. For example, CBL provides its "REVNetPrestige Fiber" standalone plan at BSD\$124.74, whilst also offering the possibility to combine this plan with "REVTalkUnlimited" for around the same price." (URCA's Preliminary Determination)

<sup>41</sup> 72% of all Bahamian households were subscribed to fixed broadband services as of Q2 2023.



broadband plans and multi-product bundles including pay TV, than with those bundles that do not include pay TV. For example, BTC's "Fiber Internet 100" standalone plan costs \$48.99. The price of the double-play bundle with pay TV and fixed broadband with similar advertised download speed is \$84.99 while triple-play bundles start at \$94.99." This price differential was the main factor for URCA's decision to define separate markets for standalone products and bundles including pay TV.

URCA's decision to exclude **OTT streaming services** from this market is supported by two main arguments.

- Firstly, as URCA explained in the Preliminary Determination, the evidence suggests customers of multi-product bundles including pay TV services consider streaming services as complements rather than substitutes. 67% of survey respondents subscribed to multi-product bundles including pay TV indicated that they view or stream videos and TV content using OTTs entertainment applications such as Netflix. Additionally, 62% of those subscribed to pay TV services as part of a bundle are also subscribed to internet streaming services. As concluded in the Preliminary Determination, *"this suggests that multi-product bundles including pay TV and internet-based streaming services are valued jointly by many end users, who do not see them as substitutes"*. URCA provided this evidence in the Preliminary Determination and neither CBL nor BTC provided evidence or arguments that would suggest consumers consider streaming services as substitutes rather than complements. Therefore, URCA considers the original arguments provided in the Preliminary Determination remain valid.
- Secondly, take-up of multi-product bundles is considerably high [REDACTED], with the total number of multi-product bundles remaining stable from 2020 to 2023<sup>42</sup> despite the availability of OTT streaming services in The Bahamas. If two goods or services, such as multi-product bundles and OTT streaming, are substitutable goods, cross-price elasticity of demand will be positive, i.e., when the price of good A increases, demand for good B will increase as consumers who were previously buying A will switch to B. Considering the significant price differential between streaming services and multi-product bundles<sup>43</sup>, one would expect the demand of bundles to be low, or to observe a considerable decrease in take-up of these services since streaming services became more popular in The Bahamas. However, this is not observed in the evidence already provided in the Preliminary Determination and neither of the operators provided evidence in support of such market trends. Given that demand for multi-product bundles including pay TV remains high despite the price differential, substitutability between the two services must be low. This may be due to different factors, such as perceived quality, consumer preferences or switching costs, as already analysed in the Preliminary

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<sup>42</sup> 47,600 multi-product bundle customers in 2020, compared to 45,500 by 2023.

<sup>43</sup> With some of these platforms offering monthly plans below BSD\$10 (such as Netflix BSD\$8.99), while multi-product bundles starting at around BSD\$80 (such as CBL's "REVTVPrime" plus "REVNETPrime" for BSD\$77.99).

Determination.

Still, URCA recognizes that streaming services are a growing trend at a global level and also in The Bahamas, and although not being included in the same market as multi-product bundles, they are likely to pose an indirect constraint on BTC and CBL in this market.

URCA notes that its conclusions on the treatment of streaming services is in line with decisions taken by regulatory authorities elsewhere. For example, in Perú, OSIPTEL considered whether OTT streaming services should be considered in the same market as standalone or bundled pay TV and came to the conclusion that consumers consider streaming services and pay TV to be complementary products rather than substitutes, therefore, OSIPTEL ruled OTTs out of the market definition, mentioning that these may play an indirect constraint.<sup>44</sup> Similarly, CADE in Brazil acknowledged how OTTs may imply some additional competitive pressure, but still ruled them out of the market definition.<sup>45</sup>

Given the above and in line with international precedent, URCA remains of the view that streaming services should be excluded from this product market. However, as part of the next market review, URCA will revisit this decision and reassess the role that streaming services may have by that time.

Regarding the **SSNIP test**, CBL considers URCA's application of the SSNIP test should lead to the inclusion of both streaming services and standalone plans in the same market as bundles. URCA wishes to clarify that the Consumer Survey is one way to inform a SSNIP test based on stated consumer preferences, but it does not represent a quantitative SSNIP test. URCA always used consumer survey evidence in a qualitative way, without trying to estimate the price increase that a hypothetical monopolist could find profitable in the market. When CBL argues that the Consumer Survey reveals streaming services and multi-product bundles should be considered to be substitutes, it relies on the Consumer Survey results to the question "*What would you do with your pay TV plan in case of an increase in prices?*". What CBL fails to recognize is that the most frequented response to this question was for end users to *do nothing* in case of the price increase (36% and 39% of total respondents in case of CBL and BTC, respectively). Moreover, when asked why they would *do nothing*, 84% (90%) of CBL (BTC) users respond they are okay with paying a higher price for their current plan. In URCA's view, this evidence reveals that, some customers may be price sensitive, but there is also a non-trivial share of them who are less.<sup>46</sup>

Finally, in response to CBL's comments on **supply-side substitution between multi-product**

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<sup>44</sup> DETERMINACIÓN DE PROVEEDORES IMPORTANTES EN EL MERCADO N° 35: ACCESO MAYORISTA AL SERVICIO DE TELEVISIÓN DE PAGA, OSIPTEL (<https://www.osiptel.gob.pe/media/bbkhiu40/informe091-dprc-2021.pdf>)

<sup>45</sup> Cadernos do Cade: Mercado de TV Abierta y de Pago: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Mercado-de-tv-aberta-e-paga-2020.pdf>

<sup>46</sup> Note that CBL included their responses to the SSNIP application in Question 7, and therefore we include this analysis in the same section. However, CBL's evidence (unlike BTC's) combines subscribers to both standalone and bundled pay TV plans. Considering barriers to switch from a bundle may be larger than those to switch from a standalone plan, we can expect the share of CBL bundles users accepting the price increase will be, at least, 36% as mentioned.

**bundles and internet streaming services**, URCA considers neither CBL nor BTC provided additional evidence to rebut URCA’s arguments provided in the Preliminary Determination, thus URCA’s preliminary findings that these services are not supply-side substitutes still hold.

In light of the above, URCA remains of the view that the market for retail multi-product bundles including pay TV service, as defined in the Preliminary Determination, remains valid. In particular, this market includes all bundled service offerings that include pay TV services, irrespective of the technology used to deliver them. Standalone pay TV service, online streaming services or other retail fixed services do not form part of this market. Further, this market is national in scope.

### **3.9 Response to the Consultation Question 8**

**Question 8: Dominance Assessment in Retail Multi-product Bundles including pay TV Services Market**

*Do you agree with URCA’s preliminary conclusion from its single dominance assessment in the retail multi-product bundles including pay TV service market? If not, please set out your alternative views and provide evidence to substantiate your position.*

#### **BTC’s Comments**

As already stated in the context of other consultation questions, BTC does not agree that either BTC or CBL is dominant in the markets for standalone or bundled fixed communications services at this stage of the development of the ECS in The Bahamas.

#### **CBL Group’s Comments**

CBL also does not believe that it is dominant in fixed broadband or pay TV services, whether these are standalone product offers or form part of a multi-product bundle.

CBL is of the view that URCA is not sufficiently factoring in the competitive threat of entry, such as Starlink, on the behaviour of the incumbent operators. While Starlink does not provide the full range of fixed communications services that BTC and CBL offer, by offering fast broadband connections to Bahamian end users, Starlink enables those users to gain access to voice over IP (VOIP) and OTT streaming services. CBL also considers if Starlink can enter the Bahamian market, so can other satellite operators offering similar services, and this threat acts as a forceful constraint on CBL.

#### **URCA’s Response**

In the Preliminary Determination, URCA considered multiple factors that led to the preliminary dominance finding of CBL, including market structure and trends, economies of scale and scope, CBP, switching costs, etc. Whilst BTC and CBL reject URCA’s decision of CBL’s single dominance in this market, they both do not provide any evidence that undermines URCA assessment. As

such, all the arguments initially presented in the Preliminary Determination still hold.

Regarding the role that **Starlink** may play in this market in the foreseeable future, URCA used all available evidence to assess Starlink’s presence in The Bahamas.

- As CBL noted itself, Starlink currently only offers fixed broadband services in The Bahamas. As such, URCA mainly considered Starlink’s role in the market for retail fixed broadband services. As set out in Section 3.1 Starlink currently services less than [REDACTED] of all broadband connections.
- URCA considers unlikely that Starlink will enter the market for multi-product bundles including pay TV services, as it would have to launch IPTV services in The Bahamas, which is not to be expected, as this has not been its strategy in any of the other markets where its present.
- CBL’s analysis can be considered misleading, as it tries to present Starlink as a competitor in the market for multi-product bundles arguing that its customers can rely on its broadband service to access VOIP and streaming services. The use that Starlink customers make of their fixed broadband service is not a reason to consider Starlink a relevant competitor in the market of multi-product bundles considering it does not offer such plans. More importantly, this argument goes back to previous product market definitions of both fixed voice and pay TV services, where in both cases, the decision was to exclude OTT services from the market.

### 3.10 Response to the Consultation Question 9

**Question 9: Proposed SMP remedies for retail fixed voice services**

*Do you agree with URCA’s proposed SMP remedies for retail fixed voice services? If not, why?*

#### **BTC’s Comments**

BTC submits that standalone fixed voice services are part of a broader market in which no dominant service provider exists. Therefore, no ex-ante regulation is necessary or justified. BTC considers that ex-post competition law is the appropriate tool to use in the fixed markets at this stage of the development of the ECS in The Bahamas.

In BTC’s view, the issues raised by URCA related to affordability should be addressed by social policy or universal service regulation.

BTC mentions that the proposed inflation-based price cap should only apply to residential fixed voice services, but not tariff plans for business customers. BTC suggests that the rate of inflation used in the proposed “Price Cap Index” (PCI) should be the previous year’s “All Items Consumer

Price Index” (CPI) as calculated by the Government of The Bahamas, Department of Statistics. In addition, the PCI should incorporate the carryover of any unused headroom from one price cap year to the next.<sup>47</sup> Lastly, the term of the price cap regime should be no longer than four years and an automatic review of its continued need should be conducted at that time.

### **CBL Group’s Comments**

CBL reiterates its disagreement with URCA’s analysis and conclusion in the market for retail fixed voice services, claiming URCA has underestimated the constraints on the existing operators.

CBL believes that universal service regulation, consumer protection regulation, and the use of ex-post competition law would better address the issues identified by URCA.

Finally, CBL raises the deterrence effect that large fines have on operators, giving them an incentive to adhere to competition guidelines. This, in CBL’s view, would be sufficient to prevent BTC from acting anti-competitively in this market.

### **URCA’s Response**

URCA notes that both BTC and CBL disagree with URCA’s decision that ex-ante regulation is necessary in the market for standalone fixed voice services. However, both fail to provide any evidence against the remedies proposed in URCA’s Preliminary Determination.

Concerning BTC’s and CBL’s claim that **universal service (USO) regulation and consumer protection regulation (CPR)** represent the appropriate tools to address the market failures identified by URCA, as explained in Section 3.1, the remedies imposed by URCA in this Preliminary Determination fall out of the scope of the current USO regulation and the CPR in The Bahamas. Ex-ante regulation is URCA’s tool to ensure that the markets function in a competitive way to the benefit of the final consumers. As part of its scope, ex-ante SMP regulation addresses concerns related to possible market failures due to the presence of a dominant licensee exhorting market power in the market. Therefore, ex-ante SMP regulation is only targeted at SMP operators in a particular market. In the case of standalone fixed voice services, SMP remedies are necessary to mitigate the market failure given that the market is almost solely provided by BTC, and due to its significant market power in this market, BTC might have the ability to profitably increase the prices on this service as has been explained in Section 3.3 of this document.

Concerning BTC’s views on URCA’s **proposed cap on the allowable price increases**, below URCA addresses these two aspects in detail.

- URCA remains of the view that its revised regulatory obligations should cover entry-level

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<sup>47</sup> For example, if in year 1 of the price cap regime, the price cap is 2.5% (i.e., the previous year’s CPI was 2.5%), but no increase in the price of fixed voice services is implemented that year, then the unused headroom of 2.5% would carry forward to the second year of the regime. If the CPI was 3.0% in year 2 of the price cap regime, then the price cap would increase to 5.5% (2.5% + 3.0%) for year 2. However, the 5% maximum increase limit in any given year, would restrict any price increase implemented in year 2 to 5%.

standalone fixed voice plans for both residential and business customers. Whilst the concept of vulnerability is commonly related to residential users, the cost of communications services can also weigh heavily on small businesses, which may merit regulatory intervention. In the case of fixed voice services, URCA notes that a non-trivial and stable amount of business customers are subscribed to standalone fixed voice plans.<sup>48</sup> This suggests to URCA that these customers do not consider bundles including fixed voice to be suitable alternatives for them, which reinforces the need for protecting them from possible significant price increases.

- URCA agrees with BTC that the price cap should be the CPI of the previous year as calculated by The Bahamas National Statistical Institute (formerly Department of Statistics).
- URCA does not consider it appropriate to allow for carryover provision of price increases from one year to the next. URCA considers allowing for such carryover goes against the main objective of this price cap. Adopting this remedy seeks to avoid any disproportionate price increases that could affect vulnerable customers. If the cap was to incorporate the carryover allowance, this could result in significant price increases in later years (in case BTC decides not to increase its prices in early years).

URCA's proposed caps on annual price increases are aimed at avoiding price jumps that could affect vulnerable customers, especially in moments of uncertain economic conditions such as periods of high general inflation. Taking into consideration CBL's comments regarding the equivalent remedy in the market for fixed broadband and standalone pay TV services, URCA sees merits in adopting an even more flexible ex-ante pricing remedy in this market.

Given that URCA's overarching objective is to monitor retail prices and prevent adverse impacts of price increases on vulnerable customers, URCA agrees that price increases above-inflation should not be ruled out per se on an ex-ante basis, but instead, any price increase above last year's inflation will be subject to pre-approval by URCA.<sup>49</sup> This will allow URCA to assess such decisions on an individual basis, taking into accounts the justification provided by BTC as part of its pricing application to URCA, and therefore allowing price increases above inflation, if these are found to be reasonable.

In summary, URCA considers last year's inflation rate to represent a reasonable and transparent price cap, therefore, considering dispensable the originally proposed fixed cap of 5%, irrespective of the inflation rate in a year. This implies that:

- All price increases below last year's inflation are allowed and only require notification to URCA.

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<sup>48</sup> Standalone fixed voice Business customers represent ██████████ of standalone fixed voice subscribers in The Bahamas during the last five years.

<sup>49</sup> The allowable price increase is set in advance, since it is based on last year's inflation. Therefore, BTC can set its prices freely during the year and just needs to demonstrate compliance with the upper limits on these price changes as part of its annual tariff filings.

- Any proposed price increase above last year's inflation needs to be submitted to URCA for pre-approval, including a justification on why such price increase is required and would not result in consumer harm. URCA will in due course prepare further guidance for SMP operators on the potential circumstances and conditions that may justify such price increases.

Further, any modifications to standalone fixed voice tariff plans need to be notified to URCA before being implemented (but no pre-approval of these modifications is required).

Finally, regarding CBL's claim that large fines have a deterrence effect on operators, URCA remains of the view that ex-ante regulation is more appropriate and effective in retail fixed markets. Unlike fines to operators resulting from an ex-post competition investigation, the remedies URCA is proposing in this Market Review are oriented to avoiding market failures, rather than correcting them. Therefore, URCA remains of the view that ex-ante regulation is necessary and appropriate in this market.

### 3.11 Response to the Consultation Question 10

**Question 10: – Proposed SMP remedies for retail fixed broadband services**

*Do you agree with URCA's proposed SMP remedies for retail fixed broadband services? If not, why?*

#### **BTC's Comments**

BTC is of the view that ex-ante regulation of standalone broadband prices is not necessary or justified and considers ex-post competition law to be the appropriate tool to use in the market.

BTC considers that the remedies proposal from URCA in Geographic Market 1 and 2 to be flawed, unfair, and discriminatory for the following reasons:

- With the national uniform pricing obligation, BTC would have an implicit price cap in Geographic Market 1 as well, even though only CBL was found to be dominant in this geographic market.
- Given that BTC's standalone basic broadband service prices are currently lower than those of CBL, URCA's price cap proposal would lock this price differential in for the life of the price cap regime. Hence, according to BTC, CBL would have greater price cap headroom than BTC because CBL's going-in prices are higher than BTC's.
- By only imposing the national uniform pricing obligation on BTC, CBL would be able to price differently in different locations within Geographic Market 1, while BTC would be restricted to a single nationwide pricing obligation. This would leave BTC at a competitive disadvantage compared with CBL.

Given the above, BTC proposes the following amendments to the price cap applied to this market:

- A price cap should only apply to CBL's standalone residential basic (entry-level) broadband services (currently CBL's "RevNet Prime 30 Mbps" tariff plan); and
- A national uniform pricing obligation should apply equally to both CBL and BTC to account for the differences in network footprint.

BTC is not opposed to the continuation of the existing obligation to offer standalone fixed broadband services to residential and business customers.

### **CBL Group's Comments**

CBL makes the following comments on the proposed remedies in the fixed broadband market:

- *Obligation to continue offering their current standalone fixed broadband plans and bundles, including fixed voice and fixed broadband.* CBL does not have an issue with this obligation. However, CBL considers this requirement should be addressed through universal service regulation. Also, the regulation should be flexible enough to adapt to market changes, which might result in the potential removal of standalone offers from the market in future.
- *SMP operators shall not increase prices of entry-level standalone fixed broadband plans over last year's inflation or 5% a year in case inflation exceeds 5% during that year.* CBL considers this obligation unjustified. In its view, a more proportionate remedy would be to include a price increase below inflation in the notification regime. Any price increase above inflation should be subject to URCA's pre-approval. CBL also claims that there are no affordability issues considering fixed broadband entry plans in The Bahamas since these are among the most affordable in the Caribbean region. Therefore, there should be no price cap on these services, and if such a price cap was to be implemented, it should be set to inflation rates and allow to carry over the difference to the following year.

### **URCA's Response**

Concerning BTC's comments on the **national uniform pricing obligation** proposed for Geographic Market 2, URCA notes that this obligation is a continuation of an existing obligation on BTC as part of the previous market review after considering it had SMP in Geographic Market 2. URCA is not aware of this having had an adverse impact on BTC's ability to compete in Geographic Market 1 and has not seen any submission from BTC to that effect.

Further, URCA does not share BTC's concern that the uniform pricing obligation in combination with its retail prices currently being lower than CBL's prices unduly constrains BTC in its pricing strategy for these services. The uniform pricing obligation only requires BTC to set the same prices across Geographic Markets 1 and 2. BTC does not face any direct constraints on increasing



its retail prices, as CBL does. As such, any prevailing price differentials between its prices and those of CBL would only allow it further pricing flexibility (i.e., BTC could increase its prices to those of CBL, as long as these are offered across both geographic markets).

Regarding BTC's comments that the price cap should only apply to residential plans (but not **business customers**), URCA's position is that its revised regulatory obligations should cover entry-level standalone fixed broadband plans (and bundles including fixed broadband and fixed voice) for both residential and business customers. As already explained in Section 3.10, the cost of communications services can also weigh heavily on small businesses, which may merit regulatory intervention. In the case of the market for fixed broadband services, URCA notes that a non-trivial and stable amount of business customers are subscribed to standalone fixed broadband plans or double-play bundles.<sup>50</sup> This suggests to URCA that these customers do not consider multi-product bundles including broadband to be suitable alternatives for them, which reinforces the need to ensure that this market is not affected by possible significant price increases.

Concerning CBL's comments on the **level of the price cap** proposed by URCA, in line with its response to a similar comment by CBL in the context of standalone fixed voice services:

- URCA considers last year's inflation rate to represent a reasonable and sufficient price cap for these services. All price increases below last year's inflation will be allowed and only require notification to URCA.
- As explained in Section 3.10 above, URCA agrees that price increases above inflation should not be ruled out per se on an ex-ante basis. Any price increase above inflation will instead be subject to pre-approval by URCA. This will allow URCA to assess such decisions on an individual basis, allowing price increases above inflation if these are justified and found to be reasonable.

For the avoidance of doubt, in line with the obligations imposed in the other retail fixed markets, any modifications to standalone fixed broadband plans need to be notified to URCA before being implemented (but no pre-approval of these modifications is required).

Lastly, URCA notes that neither operator has commented in the requirement to provide standalone broadband plans and bundles including fixed voice and fixed broadband.

### 3.12 Response to the Consultation Question 11

**Question 11: – Proposed SMP remedies for retail pay TV services**

*Do you agree with URCA's proposed SMP remedies for retail pay TV services? If not, why?*

<sup>50</sup> Business customers represent [REDACTED] of customers subscribed to standalone fixed broadband plans or double-play bundles including fixed voice and fixed broadband in The Bahamas during the last five years.

## **BTC's Comments**

BTC is of the view that ex-ante regulation of standalone pay TV prices in The Bahamas is not necessary or justified. According to BTC, no material competition or consumer harm concerns exist in this market. BTC therefore considers that ex-post competition law is the appropriate tool to use in the market for retail pay TV services.

If URCA nonetheless decides that a price cap should apply to standalone basic pay TV services, then such price cap should only apply to CBL's "Prime Local" pay TV service. There is no need or justification for price regulating any additional pay TV product (including pay TV services for business customers), since no material competition or consumer harms concerns were identified for these other pay TV services and customer segments in the Preliminary Determination.

## **CBL Group's Comments**

CBL's feedback on the proposed ex-ante remedies for the standalone pay TV market is summarised below:

- *Obligation to continue offering their current standalone pay TV tariff plan.* CBL again has no issue with this regulatory obligation. However, CBL considers this obligation should be addressed through universal service regulation, instead of ex-ante SMP remedies.
- *SMP operators shall not increase prices of entry-level standalone pay TV plans over last year's inflation or 5% a year in case inflation exceeds 5% during that year.* CBL considers that URCA has not provided any justification for the 5% cap on price increases irrespective of inflation in the previous year. As explained in CBL's response to the Consultation Question 5, its pay TV service business has incurred substantial losses in recent years. Considering CBL is incurring losses under current price levels, in CBL's view, above-inflation price increases should not simply be ruled out going forward. In CBL's view, a more proportionate remedy would be to allow price increases below inflation under the notification regime, with only above-inflation price increases being subject to pre-approval by URCA.

To illustrate its concerns and alternative proposal, CBL included a simplified 'strawman' price cap calculations for Basic TV and fixed broadband services within its consultation response. The analysis projects its revenues, depreciation, costs, and mean capital employed (MCE) based on 2015-2023 Separated Accounts results, using these projections to forecast a 5-year price cap starting in July 2024. The revenue deficit in the fifth year is calculated with a target WACC of 10.86%, and the price cap is adjusted annually over five years, considering a price elasticity of -0.5, while keeping MCE and costs constant. According to CBL, the resulting required price increases to reach the defined reasonable rate of return are above 30% per annum for Basic TV services and they are above inflation for broadband.

## URCA's Response

URCA is aware of CBL not having requested any price increases for standalone pay TV services for several years, and this has already been taken into account when relaxing the price regulation rules, as set out in the Preliminary Determination.

Under the new ex-ante remedies proposed in the Preliminary Determination for this market, CBL would no longer be subject to tariff approval requirements under the Retail Tariff Rules. Instead, URCA proposed a cap on any allowable price increases of entry-level, standalone pay TV plans equal to last year's inflation (or 5% per year in case inflation exceeded 5% during that year) and an information requirement to share all standalone pay TV tariffs with URCA on an annual basis.

At the time, URCA recognised in its Preliminary Determination that there was no evidence suggesting CBL would necessarily engage in excessive pricing in this market and consequently, URCA proposed reducing the regulatory burden on CBL that was imposed by the existing tariff approval requirements. URCA's new remedies are targeted at URCA's prevailing concerns in this market, i.e., to ensure that all standalone pay TV customers can obtain these services under similar terms and conditions as they currently do and protecting vulnerable customers of undue price increases in these services. CBL suggests addressing these concerns through universal service and consumer protection regulations. However, as explained in Section 3.1, the remedies imposed by URCA in this Preliminary Determination fall out of the scope of the regulation addressed in USO and consumer protection regulations in The Bahamas. Additionally, as explained in Section 3.9 above, URCA is in the process of reviewing the USO regulation. The potential scope and form of the USO is yet to be determined and as such cannot be taken into account in this Market Review.

On CBL's concerns around URCA imposing ex-ante caps on annual allowable price increases, having reviewed the arguments and evidence presented by CBL, URCA sees merits in adopting an even more flexible ex-ante pricing remedy in this market. In particular, as set out in the context of the remedies discussed in previous Sections, URCA agrees that price increases above-inflation should not be ruled out on an ex-ante basis, but instead, any such price increases will be subject to pre-approval by URCA.

- As explained in Section 3.10 above, URCA's proposed caps on annual price increases aimed at avoiding price jumps that could affect vulnerable customers, especially in moments of uncertain economic conditions such as periods of high general inflation. As recognised above, CBL has not sought to increase its prices for standalone pay TV services for several years. Whilst this may not necessarily mean that CBL, will not do so going forward, URCA considers it unnecessarily prohibiting to rule such price increases out entirely. This is particularly the case, once taking into account of the current financial performance of CBL's pay TV business. Given that URCA's overarching objective is to monitor retail prices and prevent adverse impacts of price increases on vulnerable customers, this, in URCA's view, can be achieved by imposing a requirement on CBL to seek URCA's pre-approval before introducing price increases above (last year's) inflation.

This will allow URCA to assess such decisions on an individual basis, taking into accounts the justification provided by CBL as part of its pricing application to URCA, and therefore allowing price increases above inflation, if these are found to be reasonable.

- Further, URCA considers last year’s inflation rate to represent a reasonable and transparent differentiator between price increases that are allowed without any ex-ante approval and those that require ex-ante approval. This implies all price increases below last year’s inflation only require notification to URCA, without URCA’s pre-approval.

For the avoidance of doubt, in line with the obligations imposed in the other retail fixed markets, any modifications to standalone pay TV tariff plans need to be notified to URCA before being implemented (but no pre-approval of these modifications is required).

Finally, despite BTC’s call for regulation to only apply to CBL’s “*Prime Local*” pay TV plan, URCA remains of the view that its revised regulatory obligations should cover entry-level standalone pay TV plans for both residential and business customers. As already explained in the context of Sections 3.10 and 3.11 above, the cost of communications services can also weigh heavily on small businesses, which may merit regulatory intervention. In the case of standalone pay TV services, URCA notes that a non-trivial and stable amount of business customers are subscribed to standalone pay TV plans.<sup>51</sup> This suggests to URCA that these do not consider multi-product bundles including pay TV to be suitable alternatives for them, which reinforces the need for protecting them from possible significant price increases.

As concluded in the Preliminary Determination, URCA considers “*RevTV Prime*” to also constitute an entry-level plan for residential customers, together with “*Prime Local*”. There are two main reasons for this. On the one hand, “*Prime Local*” is a six-channel plan, which makes it a very limited offer with respect to the rest of pay TV plans in The Bahamian market, with the following being “*RevTVPrime*” with 69 channels. Furthermore, its advertised separately from the rest of CBL’s pay TV plans and is the only plan that cannot be bundled together with additional services.<sup>52</sup> On the other hand, CBL is already obliged to provide “*Prime Local*” following USO. Considering these differences between “*Prime Local*” and the remaining pay TV plans and that CBL is obliged to provide “*Prime Local*” regardless of the Preliminary Determination, URCA concluded the entry-level product for standalone pay TV residential customers should not be limited to “*Prime Local*”.

### 3.13 Response to the Consultation Question 12

**Question 12: – Proposed SMP remedies for multi-product bundles**

<sup>51</sup> Business customers represent ██████████ of standalone pay TV customers in the Bahamas during the last five years.

<sup>52</sup> <https://www.rev.bs/tv/>

*Do you agree with URCA's proposal not to impose specific SMP remedies on CBL for multi-product bundles? If not, why?*

#### **BTC's Comments**

BTC agrees that there is no need or reason to impose ex-ante price regulation on multi-product bundled fixed services.

#### **CBL Group's Comments**

CBL agrees that multi-product bundles should not be subject to specific ex ante remedies.

#### **URCA's Response**

URCA notes that both operators agree that the ex-ante SMP obligations imposed in the other three retail fixed services markets is sufficient to limit CBL's ability to unduly increase its prices of multi-product bundles.

### **3.14 Response to the Consultation Question 13**

#### **Question 13: – Proposed non-market specific SMP remedies**

*Do you agree with URCA's proposed non-market specific SMP? If not, why?*

#### **BTC's Comments**

BTC is not opposed to the continuation of the existing Accounting Separation (AS) obligation. However, BTC asks URCA to reassess the level of detail that needs to be included in BTC's AS model and annual submission to URCA. As the AS obligation involves significant costs and resources to BTC, BTC sees it as important that URCA ensures that any required effort remains fit for purpose, while also minimizing any resulting regulatory burden on licensees.

BTC considers the notification requirement proposed in the Preliminary Determination to be excessive, unnecessary and unjustified. Having to file to URCA notices for every single fixed tariff plan introduction, amendment, or withdrawal constitutes, in BTC's view, an excessive regulatory burden with no clear purpose or benefit.

Lastly, BTC argues that there is no need to impose the publication requirement on all currently available retail fixed tariff plans as this obligation already exists in the CPR.

#### **CBL Group's Comments**

CBL considers the replacement of the existing pre-approval requirements with a notification system as a potentially positive step.

CBL kindly asks URCA to reconsider the obligation to develop and submit to URCA Separated Accounts. CBL argues that URCA has not, historically or in this Preliminary Determination, relied on the outcomes and findings of the Separated Accounts, and preparing and auditing these accounts poses a significant burden on CBL.

Further, CBL disagrees with URCA's justification that the obligation to develop Separated Accounts and notify URCA of its retail prices is a way to reduce information asymmetries between URCA and the SMP operators. CBL argues that the information a SMP operator must share with the regulator should be aimed at enabling the regulator to fulfil its statutory duties, oversee the market. Regulators should not, however, have access to all the information that an operator has to fulfil its resources efficiently.

CBL does not have any objection to URCA's proposed obligation for SMP operators to publish all their retail tariffs on their websites in a clear and transparent manner, so customers and competitors have access to the relevant information when making their choices.

Finally, CBL objects to the obligation to submit to URCA an overview of its SMP service portfolio each year, as in CBL's view, URCA already holds this information.

### **URCA's Response**

URCA notes that both BTC and CBL have some reservations about the obligation to produce Separated Accounts. The **Accounting Separation** requirement was imposed on all SMP operators in 2010 and maintained as part of the 2014 market review. It is a common regulatory obligation imposed on vertically and/or horizontally integrated SMP operators. Despite the views expressed by both operators, URCA considers this obligation remains important to reduce the information asymmetries between SMP operators and URCA. Both URCA when drafting the Preliminary Determination and the operators when submitting their comments have relied on the information provided in their separated accounts. However, their accounting separation model and annual submission to URCA needs to be adjusted to reflect the product scopes of the retail fixed markets as defined in this market review (for example, by splitting out the financial information for standalone and multi-product bundles). This is to allow for an effective monitoring of both operators' financial performance in each of the markets they have been found to have SMP in.

Concerning the **notification requirement** on all changes to existing or new tariff plans, in line with CBL's comments, URCA considers the replacement of pre-approval requirements with a notification system a step towards deregulation. The benefits of a notification system include increased efficiency as tariff modifications can be introduced faster without the need for pre-approval and a decreased regulatory burden as the cost for the operators of notifying about these updates to URCA should be minimal. URCA considers maintaining a notification requirement necessary to monitor price developments and compliance with the rest of ex-ante remedies imposed on SMP operators.

Finally, regarding the **publication requirement**, URCA is requesting SMP operators to publish all retail tariff plans on their websites clearly and transparently to ensure end users can access all the relevant information when choosing their tariff plan. Whilst this obligation has been in place for a while, as already mentioned in the Preliminary Determination, URCA has noticed that operators are not fully compliant with this requirement. In particular, whilst both SMP operators currently publish retail tariff plan information on their websites, this is not always clear and transparent. Some tariffs seem more accessible than others on the operators' websites. For example, when URCA checked both operators' websites in the context of preparing the Preliminary Determination, it noticed the following:

- CBL's tariff plans for business customers were not consistently available online.
- BTC's standalone broadband plans ("*Fiber Internet*" 300 Mbps and "*Fiber Internet 1 Gbps*") and CBL's DTH TV plans were not easily accessible.
- BTC's standalone fixed voice tariff plans for residential customers were only accessible via a small icon positioned in the top right corner, rather than where its other residential fixed service plans are presented.
- Further, CBL's decision to publish its "*ALIVFiber*" and "*REVON*" tariff plans on separate websites does not facilitate end users' review of tariff plans.

Going forward, URCA asks both operators to review the tariff plan information provided on their respective websites to ensure it is complete and transparent to end users. URCA will conduct occasional reviews of both operators' website to check compliance with this obligation and may issue fines in case of ongoing compliance issues.

## 4 URCA’s Next Steps

Within the previous Sections, URCA has set out its findings on the recent and current competitive dynamics in the retail fixed service markets in The Bahamas, and any resulting need to impose ex-ante regulatory obligations on SMP operators within these markets. This builds on its preliminary findings as set out in ECS 04/2024, and the consultation responses received to this document.

Having considered the responses to the Consultation Document as expressed within this Statement of Results and Final Determination, URCA has published in ECS 71/2024 the Final Determination of the Retail Fixed Market.

Table 2, below, summarizes URCA’s position on its revised assessment of key retail electronic communications services in The Bahamas. These changes become effective on 16 August 2024, i.e., fifteen (15) calendar days from the 1 August 2024 publication of this Final Determination.

**Table 2: Summary of URCA’s final determination**

Service	Market definition	SMP findings	Ex-ante remedies
<b>Retail fixed voice services</b>	<p><u>Product market</u></p> <p>Standalone fixed access, local, domestic, and international call services, across all relevant customer segments (i.e., both residential and business customers), irrespective of the underlying technology used to deliver these services.<sup>53</sup></p> <p><u>Geographic market</u></p> <p>National market</p>	BTC has SMP	<ul style="list-style-type: none"> <li>• BTC is required to continue offering its current standalone fixed voice tariff plans to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.</li> <li>• BTC shall not increase its prices of entry-level standalone fixed voice plans<sup>54</sup> above last year’s inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</li> </ul>
<b>Retail fixed broadband services</b>	<p><u>Product market</u></p> <ul style="list-style-type: none"> <li>▪ Retail standalone fixed broadband services, across all relevant customer segments (i.e., both residential and business customers), irrespective of the network technology<sup>55</sup> used and the advertised download speed at which the service is offered.</li> <li>▪ Multi-product bundles excluding pay TV (i.e., double-play bundles including fixed broadband and</li> </ul>	<ul style="list-style-type: none"> <li>• CBL has SMP in Geographic Market 1</li> <li>• BTC has SMP in Geographic Market 2</li> </ul>	<ul style="list-style-type: none"> <li>• BTC and CBL are required to continue offering their current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.</li> <li>• BTC and CBL shall not increase their prices of entry-level standalone fixed</li> </ul>

<sup>53</sup> This currently includes PSTN technology and Voice over Internet Protocol (VoIP) via FTTx or HFC networks.

<sup>54</sup> Currently “Basic Landline” and “Business Voice Starter” for residential and business customers respectively.

<sup>55</sup> In The Bahamas these services are predominantly offered based on wired technologies, via copper (DSL), HFC and FTTx, and recently LEO satellite technology.



	<p>fixed voice), across all relevant customers segments (i.e., both residential and business customers), irrespective of the network technology<sup>56</sup> used, and the advertised download speed at which the service is offered.</p> <p><b><u>Geographic market</u></b></p> <ul style="list-style-type: none"> <li>▪ Geographic Market 1 - The islands where both CBL and BTC are offering broadband services.<sup>57</sup></li> <li>▪ Geographic Market 2 - All remaining islands where only BTC has deployed network infrastructure to offer fixed broadband services.<sup>58</sup></li> </ul>		<p>broadband plans<sup>59</sup> above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</p> <ul style="list-style-type: none"> <li>• BTC is required to offer geographic uniform prices for all its retail broadband services.</li> </ul>
<b>Retail pay TV services</b>	<p><b><u>Product market</u></b></p> <p>Retail standalone pay TV services, across all the relevant customers segments (i.e., both residential and business customers), and irrespective of the network technology used to deliver these services.<sup>60,61</sup></p> <p><b><u>Geographic market</u></b></p> <p>National market</p>	CBL has SMP	<ul style="list-style-type: none"> <li>• CBL is required to continue offering its current standalone pay TV tariff plans to residential and business customers. Any modifications to the current plans need to be notified to URCA before being implemented.</li> <li>• CBL shall not increase its prices of entry-level standalone pay TV plans<sup>62</sup> above last year's inflation, without seeking prior approval from URCA (including detailed justification for the proposed price increase).</li> </ul>
<b>Multi-product bundles including pay TV services</b>	<p><b><u>Product market</u></b></p> <p>All multi-product bundles including retail pay TV services<sup>63</sup>, across all the relevant customers segments (i.e., both residential and business customers) and irrespective of the technology used to deliver these services.<sup>64</sup></p>	CBL has SMP	<p>No market-specific remedies are required, as the combined effect of the ex-ante remedies imposed in the other defined markets will address the anti-competitive concerns identified in this market.</p>

<sup>56</sup> Ibid.

<sup>57</sup> This currently includes New Providence, Abaco, Grand Bahama and Eleuthera.

<sup>58</sup> This currently includes Exuma, Andros, Bimini, and all remaining islands.

<sup>59</sup> Currently BTC's "Basic 8Mbps" and "Fiber 300Mbps" for residential and customers and "Internet 30 for business customers"; and CBL's "RevNetPrime" for residential customers.

<sup>60</sup> This currently includes HFC technology, satellite (DTH) technology, and Internet Protocol Television (IPTV) via fiber (FTTx) networks.

<sup>61</sup> Whilst standalone IPTV services are currently not actively marketed by Licensees, this is based on commercial, rather than technical considerations. Given this, URCA considers it prudent to include these services within this defined market.

<sup>62</sup> Currently "Prime Local" and "RevTV Prime" for residential customers and "DTH Bronze" for business customers.

<sup>63</sup> This currently includes double-play including fixed voice and pay TV, double-play including fixed broadband and pay TV services, and triple-play including fixed voice, fixed broadband and pay TV services.

<sup>64</sup> In The Bahamas these services are currently delivered via HFC, FTTx (IPTV), and satellite (DTH) technology.

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### **Geographic market**

National market

#### **Overarching (non-market specific) remedies for both SMP operators**

Further to the market-specific remedies set out above, both BTC and CBL are subject to the following, non-market specific remedies:

- Both SMP operators are required to develop separated accounts in accordance with URCA's Accounting Separation Guidelines and submit these to URCA on an annual basis. The new reporting format should already be adopted for the 2024 Accounting Separation submission and SMP operators should notify URCA as soon as possible, if this is not feasible.
- Both SMP operators are required to notify URCA of any amendments, introductions or withdrawals<sup>65</sup> of their retail tariff plans. This obligation requires the notification to URCA of any changes in an existing or new retail tariff plan, set out, at the minimum, the price and non-price terms of the tariff plan and the current/expected take-up of the plan.
- Both SMP operators are subject to a publication requirement to ensure that end users have access to all tariff plans currently available to them and the price and non-price terms of each tariff plan offered by BTC and CBL, thus facilitating their ability to compare retail tariff plans and select the most appropriate tariff for them. SMP operators are required to publish all tariff plans offered to residential and business customers on their websites.

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Going forward, URCA will undertake further analysis to determine the detailed design and implementation of the new remedies imposed on both SMP operators, in particular, the inflation-based cap on annual price increases and the annual tariff notification process.

These changes become effective on 16 August 2024, i.e., fifteen (15) calendar days from the 1 August 2024 publication of this Final Determination. In the interim, the existing SMP obligations will remain in place. Any price changes or price introductions will be subject to the 2014 Retail Pricing Rules until URCA has fully implemented the new remedies regarding the inflation-based cap on annual price increases and the annual tariff notification process.

### **4.1 Next Steps**

As discussed in Section 8 of the Preliminary Determination, with the completion of this market review process, a key next step for URCA is to conduct additional research into potential barriers to consumer switching in retail fixed electronic communications services in The Bahamas. In all four retail services markets considered in this market review, URCA has found that barriers to switching remain an issue limiting competition. The Retail Customer Survey conducted by URCA for this market review was not specifically targeting barriers to switching, but it provides evidence to motivate further research into this matter (as discussed in more detail in Section 8.2.2.5 of the Preliminary Determination). URCA is concerned that while consumer switching remains an issue, market power is expected to prevail in the retail fixed services markets. Therefore, URCA will further investigate whether there are prevailing barriers to consumer

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<sup>65</sup> Considering the new ex-ante remedies imposed by URCA in the markets for retail fixed voice services, retail broadband services and retail pay TV services set out above, withdrawal of existing retail tariff plans are only permitted for multi-product bundles.

switching and then conclude on the most valuable information that should be provided to consumers to facilitate their choices of retail tariff plans and/or provider. To inform this, URCA will initially conduct a survey targeting end customers to gather insights on their switching behaviour and any potential perceived barriers to switching. This survey aims to address questions such as what the one-off costs from switching are or what contract terms do customers agree to. This in turn will allow URCA to determine the need for and best form of possible further regulatory measures aimed at increasing transparency and reducing information asymmetries between SMP operators and end users.

Separately, as stated in Section 3.1 above, URCA plans to commence the next market review of retail fixed services in three (3) years. This is to (re)assess the ongoing market developments (such as the current transition to fibre networks, presence of Starlink, etc.) on the competitive dynamics in these markets. It will further allow evaluating the current set of ex-ante remedies in these markets and any required change to them (including a possible removal of them).

In the meantime, URCA will continue to closely monitor developments in the market to ensure the market is exhibiting effective competition to the ultimate benefit of Bahamian consumers.