



Provision of National Roaming Services on the Cellular Mobile Networks of the Bahamas Telecommunications Company Ltd. in The Bahamas to the Second Cellular Mobile Operator for an Interim Period

Preliminary Determination and Draft Order

ECS 10/2016

Issued: 30 March 2016

Initial Response Date: 6 May 2016

Comments on Responses Date: 10 June 2016

Table of Contents

1	INTRODUCTION.....	1
1.1	PURPOSE OF THIS CONSULTATION.....	1
1.2	CONSULTATION PROCESS.....	2
1.3	RESPONDING TO THIS PRELIMINARY DETERMINATION.....	2
1.4	STRUCTURE OF THE REMAINDER OF THIS DOCUMENT	3
2	LEGISLATIVE FRAMEWORK.....	4
3	RATIONALE FOR THIS PRELIMINARY DETERMINATION – BACKGROUND AND SUPPORTING ARGUMENTS	6
3.1	MOBILE LIBERALISATION PROCESS.....	6
3.2	ARGUMENTS IN SUPPORT OF NATIONAL ROAMING	7
4	RATIONALE FOR THIS PRELIMINARY DETERMINATION - URCA'S REVIEW OF THE MARKET FOR NATIONAL ROAMING	10
4.1	MARKET REVIEW STAGE 1 – PRODUCT/GEOGRAPHIC MARKET DEFINITIONS	10
4.2	MARKET REVIEW STAGE 2 - COMPETITION ASSESSMENT	14
4.3	MARKET REVIEW STAGE 3 – REMEDY DESIGN	16
4.3.1	Expected Competition Problems and Consumer Harm.....	16
4.3.2	Susceptibility of the Defined Market to SMP Regulation.....	17
4.3.3	Assessment of Regulatory Options Considered.....	18
4.3.4	Proposed SMP Regulations/Obligations.....	19
5	CONCLUSION AND NEXT STEPS.....	22
	ANNEX 1: URCA’S PRELIMINARY DETERMINATION AND DRAFT ORDER ON NATIONAL ROAMING	23

1 Introduction

On 13 November 2014, the Government of The Bahamas commenced public activities to introduce competition in the cellular mobile market through selection of a second cellular mobile operator, with the issuance of its *“Request for Proposals To Operate a Cellular Mobile Network and To Provide Cellular Mobile Services in The Bahamas (RFP).”* The selection and licensing process conducted in accordance with the RFP is nearing completion, and the Utilities Regulation and Competition Authority (URCA) is seeking to ensure that the introduction of cellular mobile competition is effectively regulated and achieves the aims of the Government, as expressed in the Electronic Communications Sector Policy (“ECS Policy”)¹ and the RFP.

In this Preliminary Determination and Draft Order, URCA sets out its proposal to impose an SMP² obligation on the Bahamas Telecommunications Company Ltd. (BTC) to provide national roaming services to the second cellular mobile operator for an interim period of time. This temporary obligation is intended to enable the second cellular mobile operator to offer its customers the ability to make and receive calls, send and receive Short Message Service (SMS) and Multimedia Messaging Service (MMS) and access data services in areas of The Bahamas where it has not yet built its cellular mobile network. In the context of section 5(d)(i) of the Communications Act, 2009 (“Comms Act”), this proposal is designed to further *“the interests of consumers by promoting competition”* and *“the interests of persons in The Bahamas in relation to the electronic communications sector.”*

URCA is now issuing this Preliminary Determination and Draft Order which is intended to require the incumbent to provide access to national roaming services on its cellular mobile networks in The Bahamas for an interim period.

Details on how to respond to this Preliminary Determination and Draft Order are set out in Section 1.3.

1.1 Purpose of this Consultation

In issuing this Preliminary Determination URCA is:

- outlining its rationale for the interim measure it proposes to introduce;
- defining the scope of the proposed interim measure and the type of regulation that might be appropriate; and
- inviting comments from the affected licensees and the public on this Preliminary Determination and Draft Order.

¹Extraordinary Official Gazette published on 23 April 2014.

²Significant Market Power

URCA is issuing this Preliminary Determination and Draft Order without prejudice to the outcome of any on-going negotiations between the Government of The Bahamas and Cable Bahamas Limited (CBL) as envisaged by Section 8.2.1 of the RFP.

1.2 Consultation Process

Section 99 of the Comms Act sets out the procedures for issuing this Preliminary Determination. In particular, sections 99(1)(a) and (b) of the Comms Act collectively prescribe that if, on its own motion, URCA has reason to believe that a determination is necessary, it may make determinations relating to (among other matters):

- any obligations on a Licensee regarding the terms or conditions of any licence, including obligations in licence conditions and regulations;
- any activity set out in the Comms Act; and
- where the Comms Act provides for URCA to “determine” or “to make determinations” as is the case under sections 39(1) and 116(2).

Pursuant to section 99(2) of the Comms Act, in making any determination, URCA has to consult persons with sufficient interest under section 11 of the Comms Act and provide written reasons for its determination. Section 11(2) of the Comms Act prescribes that regulatory instruments referred to in section 13(2) of the Comms Act, shall be considered regulatory measures of public significance and under section 11(1), URCA shall afford persons with sufficient interest a reasonable opportunity to comment on URCA’s proposals. Under section 13(1) of the Comms Act:

“A regulatory and other measure is likely to be of public significance if it relates to electronic communications services or networks and can lead to one or more of the following —

- (a) involve a major change in the activities carried on by URCA under this Act;*
- (b) a significant impact on persons carrying on activities in those areas where URCA has functions under this Act; and*
- (c) a significant impact on the general public in The Bahamas.*

In URCA’s view, the proposed interim measure is likely to have a significant impact upon the activities carried on by cellular mobile operators in The Bahamas.

As URCA considers the interim measure contemplated to be a matter of public significance, in addition to issuing this Preliminary Determination to the affected licensees as required by section 100 of the Comms Act, URCA is issuing it to the public in The Bahamas for comment.

1.3 Responding to this Preliminary Determination

Written comments from the affected licensees and the public are invited on the matters contained in this Preliminary Determination and Draft Order. The document contains a number of questions to assist respondents in preparing their written submissions on this Preliminary Determination and Draft Order, which must be submitted to URCA by 5 p.m. on 6 May 2016. Interested parties will then have the opportunity to further comment on responses made by other respondents by 5 p.m. on 10 June 2016.

Persons may send their written responses or comments to the Director of Policy and Regulation, either:

- by hand, to URCA's office at Frederick House, Frederick Street, Nassau; or
- by mail to P.O. Box N-4860, Nassau, Bahamas; or
- by fax, to (242) 323-7288; or
- by email, to info@urcabahamas.bs.

URCA is encouraging respondents to adhere to the deadlines for making written submissions on this Preliminary Determination and Draft Order. Having regard to the strict statutory timeframes imposed upon URCA in section 100(5) of the Comms Act, only in extreme circumstances will URCA consider accommodating any request for an extension to the deadlines for responding to this consultation.

URCA retains the right to make all responses available to the public by posting responses on its website at www.urcabahamas.bs. If a response is marked confidential, reasons should be given to facilitate evaluation by URCA of the request for confidentiality. URCA may publish or refrain from publishing any document or submission, at its sole discretion.

1.4 Structure of the Remainder of this Document

The remainder of the document is structured in the following way:

- Section 2 sets out the legislative framework for this Preliminary Determination.
- Section 3 provides background to the Preliminary Determination.
- Section 4 presents URCA's review of the market for national roaming in The Bahamas.
- Section 5 presents conclusions and next step.

Annex 1 sets out the Determination and Draft Order URCA proposes to make.

2 Legislative Framework

URCA issues this Preliminary Determination and Draft Order in accordance with the relevant provisions of the Comms Act.

Section 5 of the Comms Act sets out a number of principles that should underlie regulation:

“All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives and shall comply with the following guidelines –

- (a) market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives*
- (b) regulatory and other measures shall be introduced –*
 - (i) where in the view of URCA market forces are unlikely to achieve the electronic communications policy objective within a reasonable time frame, and*
 - (ii) having due regard to the costs and implications of those regulatory and other measures on affected parties;*
- (c) regulatory and other measures shall be efficient and proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory; and*
- (d) regulatory and other measures that introduce or amend a significant ... regulatory measure ... –*
 - (i) shall specify the electronic communications policy objective that is advanced by the policy or measure; and*
 - (ii) shall demonstrate compliance with the guidelines set out in paragraphs (a), (b), and (c).*

Under the terms of section 39(1) of the Comms Act, URCA may at any time determine that a licensee has significant market power (SMP) 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.”* SMP can be assessed using a number of criteria, as described in URCA's own methodology for SMP assessments.³

In respect of section 40 of the Comms Act, URCA may, among other things, choose to impose on SMP licensees:

- cost recovery and price control obligations, including obligations for cost orientation of prices;
- a requirement to publish a reference offer or offers ensuring equivalence of access and/or interconnection to any of those services and/or facilities in which the licensee has SMP, at tariffs based on the licensee's costs; and

³ECS 20/2011 available at <http://www.urcabahamas.bs/download/059384700.pdf>

- a requirement to share infrastructure, facilities and systems used for the provision of electronic communications services.

Apart from the section 40(1)(a) to (i) SMP conditions of the Comms Act, URCA may also introduce other measures as it *“may consider necessary in pursuance of the electronic communications policy objectives and the sector policy”*.⁴

Under the terms of section 40(4) of the Comms Act, SMP licensees shall -

- “(a) not unduly discriminate against particular persons or a particular description of persons in relation to the electronic communications services offered by them;*
- (b) provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale electronic communications services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and*
- (c) not adopt technical specifications for a network that prevents interconnection or interoperability with a network of a competitor.”*

These non-market specific obligations are supplemented by Condition 34 of BTC’s Individual Operating Licence (IOL).

⁴Section 40(1)(i) of the Comms Act.

3 Rationale for this Preliminary Determination – Background and Supporting Arguments

URCA provides the context to this Preliminary Determination and Draft Order in both Sections 3 and 4 below.

In this Section, URCA sets out the background on the cellular mobile liberalisation process in The Bahamas followed by an outline of URCA's arguments in support of the temporary SMP obligation it proposes to impose on BTC.

3.1 Mobile Liberalisation Process

Further to the expiration of BTC's cellular mobile market exclusivity on 7 April 2014, the Minister, with responsibility for the ECS appointed a Task Force (the "Cellular Liberalization Task Force") to consider and make recommendations regarding the selection process that would result in the authorisation of a second cellular mobile provider in The Bahamas. On 13 November 2014, the Government issued the RFP setting out a competitive selection process to identify a competent entity that would be best suited to meet the Government's objectives. On 18 October 2015 the Government advised the public that CBL had been determined to be the successful bidder in the award process.

National roaming refers to an agreement between cellular mobile operators to use each other's network to provide retail mobile services in geographic areas where their respective networks are inaccessible. That is, a national roaming agreement is between cellular mobile providers licensed to provide services in the same country (and so using the same country code) and who are therefore competing against each other in downstream (retail) mobile markets. Such agreements can either be reciprocal (where both operators provide access to their networks) or unidirectional (where one operator, often a later entrant) is granted access to the other operator's network, in light of that other operator's greater network coverage.⁵

URCA believes that national roaming is an important mechanism in the early stages of competition where the new entrant is not in a position to offer nationwide coverage using its own network. URCA notes that the Government's policy envisages Bahamas-wide facilities-based competition and therefore, for the reasons stated below and in Section 4, considers national roaming is suitable as an interim measure only. URCA notes that at Section 5.3.23 of the Government's RFP to operate a second cellular mobile network in The Bahamas, it was stated:

"To date, URCA has not made any regulatory decisions requiring national roaming. However, URCA has advised the Government that proposals which contemplate national roaming coverage using roaming on the incumbent's network as an interim measure only prior to achievement of

⁵In contrast, international roaming refers to the situation where cellular mobile operators have agreements with cellular mobile operators in other countries to host their customers when they are abroad.

the roll out requirements ..., may be considered. In the event that URCA decides that the implementation of national roaming is appropriate, URCA would conduct any appropriate regulatory process (including consultation)."

In general, a new entrant's ability to engage customers depends on its ability to provide domestic network coverage comparable to established operators. For this reason, several countries are using (or have used) national roaming services to allow new entrants to offer network coverage comparable to established cellular mobile operators. This enables the new entrant to build a nationwide subscriber base while constructing its own cellular mobile network and infrastructure.⁶ Examples of countries that are using (or have used) national roaming to support entrants to the cellular market are New Zealand, India, UK, Denmark, Spain, Slovakia, Turkey and Canada.

URCA considers that nothing prevents the second cellular mobile operator from signing a national roaming agreement with the incumbent (BTC) so long as the second cellular mobile operator meets its roll-out obligations as per its licence. Similarly, there is nothing in the Comms Act, the ECS Policy, the RFP or BTC's licences that would prevent BTC from agreeing to provide access to national roaming services to a downstream competitor.

In its preparation for the introduction of competition in the cellular mobile services markets, URCA has engaged with both BTC and CBL to assist URCA in determining the key regulatory issues pertaining to the introduction of mobile competition that URCA would need to address. Among other issues, CBL (in its capacity as the winner of the auction) has identified that the second cellular mobile provider would require national roaming services from BTC during its network roll-out period. CBL has identified that the services would be required for a period of approximately thirty-six (36) months after service launch which is the period during which the second cellular mobile operator must complete roll-out of its own cellular mobile network throughout The Bahamas.

URCA accepts that roaming could come about through commercial negotiation. However, in the event that URCA does not consider that outcome to be likely, or likely in the timeframe available to the second cellular mobile network operator, URCA could require an SMP provider in the relevant market to offer national roaming services to a direct downstream mobile competitor. URCA's preliminary findings in Section 4 validate and support its preliminary view that this approach is necessary during the second cellular mobile network operator's roll-out period.

3.2 Arguments in Support of National Roaming

The draft Individual Spectrum Licence (ISL) that accompanied the RFP contains specific obligations for the second cellular mobile operator to roll-out a cellular mobile network within specific timeframes, and

⁶National roaming has been used in France, UAE, Bhutan and Australia as an instrument of Universal Access and Service. That is, to bring service to underserved areas. Elsewhere, including the USA and UK, national roaming is used to ensure coverage of emergency communications in all geographic areas. Further, national roaming was one of the options contemplated by the UK Government for addressing the problem of partial not-spots in the UK.

to offer services on that network to the public. It also contains key indicators against which the operator's compliance can be assessed. Specifically, the second cellular mobile operator is required:

- To launch cellular mobile services within six (6) months from the issuance date of its licences.
- To offer geographical coverage on its network to at least 75% of the total population of the Group 1 islands⁷ at the time of mobile service launch.
- To complete construction of its network within 36 months of it being issued with its cellular mobile services licence.

URCA considers the above relevant to the interim obligation it proposes to introduce. In particular, URCA considers that at the time of commercial launch the second cellular mobile operator is not expected to have completed the construction of its own cellular mobile network and infrastructure. As a result, the second cellular mobile operator would not, at launch, have the ability to provide national coverage using its own cellular mobile network and infrastructure. At the same time limited geographical coverage on the second cellular mobile operator's network could have negative impacts on consumers of mobile communications services, as follows:

- Residents in certain geographical areas would have no alternative choice of service provider beyond BTC. This means that the benefits of competition would not accrue to residents in all areas of The Bahamas simultaneously and expeditiously.
- Subscribers on the second cellular mobile operator's network would be inconvenienced when travelling outside its coverage area. This is because they would be disconnected from the national telecommunications system and would lose the ability to make and receive calls (including calls to emergency numbers), send and receive SMS and MMS messages, or access data services outside the second cellular mobile operator's coverage footprint.
- Subscribers on the second cellular mobile operator's network would be inconvenienced by having to purchase a second subscriber identification module (SIM) card from BTC in order to otherwise access nationwide mobile services. This in turn is likely to have a number of negative consequences, including:
 - missing calls on the second cellular mobile operator's network because the calling party is unaware that the called party is travelling outside its service provider's coverage footprint; and
 - splitting airtime (and costs, contact lists, etc.) between two SIM cards.

URCA thus considers that national roaming brings with it substantial benefits to consumers and is committed to ensuring that the benefits of competition accrue to residents and visitors in all

⁷These are the islands of New Providence (including Paradise Island), Grand Bahama, Abaco (including Gorda Cay, Grand Cay, Great Guana Cay, Scotland Cay, Green Turtle Cay, Man-O-War Cay, Moores Island, Parrots Cay, Lubbers Cay, Tillo Cay, Cornish Cay, Bridges Cay Wood Cay), Eleuthera (including Harbour Island, Spanish Wells, Russell Island, Current Island), Exuma (including Black Point, Little Farmers Cay, Staniel Cay and Stocking Island), Andros, Bimini (including Cat Cay and Ocean Cay).

geographical areas of The Bahamas simultaneously. However, given the importance of national roaming and the differing interests of both parties, URCA is concerned that it may not be possible for a national roaming agreement to be concluded expeditiously by them. URCA recognises that BTC controls the only national cellular mobile infrastructure for now. In the circumstances, URCA perceives that BTC might have a strong economic incentive to not facilitate national roaming to a direct cellular mobile competitor or to only do so on terms which are unfavourable to the entrant and not reflective of those which may materialise in a competitive market. As such, URCA is inclined to require BTC to provide a national roaming service to the second cellular mobile operator, on regulated terms and conditions.

URCA considers that it would be necessary, appropriate and proportionate to impose this interim obligation on BTC as the SMP provider in the relevant wholesale market for mobile access and call origination. The obligation would require BTC to enter into an agreement with the second cellular mobile operator which would provide access for subscribers to the second cellular mobile provider's services to roam on BTC's cellular mobile networks in The Bahamas. The proposed measure is for a restricted period consistent with the second cellular mobile operator's rollout obligations under its licence, and the obligation would end once its network roll-out is complete. BTC would be required to offer roaming only in those areas where BTC's cellular mobile network is available, but the second cellular mobile network has not yet been constructed and is not yet required to have been constructed as per the licence obligations. As set out in the next Section, URCA believes it has the legal capacity to impose this temporary obligation on BTC as it is the SMP provider in the relevant wholesale market. It is therefore consulting now on the principle of implementing such an interim obligation, as well as on the scope and terms and conditions of any obligation.

Consultation Question – Justification for National Roaming

Q1. Do you agree with URCA's proposal that national roaming should be used to support nationwide access to mobile communications services for an interim period? If not, why?

4 Rationale for this Preliminary Determination - URCA's Review of the Market for National Roaming

In this Section, URCA continues the rationale for its Preliminary Determination and Draft Order by setting out the results of its market analysis, which shows that BTC has SMP in the relevant wholesale market. The analysis is presented in three stages:

- Definition of the relevant product and geographic market or markets (Stage 1);
- Assessment of competition in the relevant market, in particular whether any licensee has SMP in the identifiable market or markets (Stage 2); and
- Remedy design where a licensee is found to have SMP in a market (Stage 3).

The approach taken follows URCA's own methodology for SMP assessments⁸ and is consistent with approaches employed elsewhere, including the European Union (EU).

4.1 Market Review Stage 1 – Product/Geographic Market Definitions

Wholesale markets are ones in which wholesale services or inputs are purchased and sold by service providers rather than retail customers. Service providers then use these inputs to provide services to customers in downstream (retail) markets. Given the link between retail and wholesale markets, it is necessary that the product dimension of wholesale markets is in alignment or consistent with the corresponding retail markets. This is important from a market analysis standpoint because competitive dynamics at the retail level are critical to identifying the breadth or scope of the wholesale products that service providers must have in order to compete in downstream (retail) markets.

Further to the above, URCA as a first step, has identified the scope of the relevant retail market in which existing and new cellular mobile operators will compete for customers.

In its 2010 Final SMP Decision,⁹ URCA determined that the relevant retail market:

- is national in scope; and
- consists of mobile access and call origination services for all outbound mobile calls regardless of their destination, Short Message Service (SMS) and (Multimedia Messaging Service (MMS) and access to data/Internet.

In support of its determination, URCA concluded that customers would not switch to using retail access and call origination services on fixed networks in the case of a 5-10% small but significant and non-transitory increase in price (SSNIP) of a hypothetical monopolist offering mobile services. URCA cited several reasons for its findings but the most significant was that retail access and call origination services on other communications networks, such as fixed networks, do not provide mobility (including cell-to-

⁸ECS 20/2011 available at <http://www.urcabahamas.bs/download/059384700.pdf>

cell handover), which is a critical factor for a customer's decision to subscribe to cellular mobile services. Therefore, at the retail level, fixed access and call services, and mobile access and call services, form separate economic markets.

Given the dynamic nature of communications markets and the lapse in time since the 2010 findings URCA has considered, as part of this current exercise, whether the boundaries of its 2010 market definition for mobile retail services is still relevant and appropriate. URCA, however, is of the view that it has no reason to change its 2010 position on the market definition for retail mobile services. That is, URCA still considers that cellular mobile retail services form a distinct economic market from other communications services, such as those offered via fixed networks, primarily because of the seamless cell-to-cell handover offered by cellular mobile networks. Furthermore, URCA also considers that all mobile services (i.e., mobile voice calls, mobile messaging services and mobile data services) also form part of the same retail market. This is because supply-side substitution is likely to be readily possible between these services, because they are offered over a common network infrastructure. For example, faced with a small but significant non-transitory increase in the price of cellular mobile voice calls, a provider of cellular mobile messaging services would be likely to be unable to quickly switch to also offering cellular mobile voice calls.

In the context of this document and given its views on the retail market, URCA's objective is to identify the **product dimension** of the wholesale market in question. That is, the group of wholesale services or inputs that existing and new cellular mobile operators in The Bahamas would need in order to provide customers with a complete suite of mobile services. This suite would enable customers to make and receive calls, send and receive SMS and MMS messages, or access mobile data/Internet and other services.

URCA's starting position is that a wholesale Mobile Access and Call Origination (MACO) service is essential for both existing and new cellular mobile operators who wish to provide services to their customers in downstream (retail) markets. Further, a cellular mobile operator can either self-provide these inputs (i.e., by constructing their own cellular mobile networks and infrastructure) or acquire the inputs from alternative operators, where available. Wholesale services acquired from a third party typically cover two service types: national roaming and Mobile Virtual Network Operator (MVNO) access. Both these service types form part of the same wholesale market, along with self-supply of mobile access and call origination. This is because the services are provided over the same cellular mobile network infrastructure, such that faced with a 5-10% increase in the price of one service (e.g., a national roaming service), a provider of MVNO access could begin to also offer national roaming services with little difficulty.

Therefore, URCA considers that from a product dimension perspective, the relevant wholesale market for mobile services includes self-supply, national roaming services as well as wholesale access and origination services provided to MVNOs. URCA notes that BTC currently self-supplies these wholesale products to its own downstream (retail) cellular mobile business and customers. However, the second

⁹ECS 11/2010 available at <http://www.urcabahamas.bs/download/013376800.pdf>

cellular mobile operator will need to purchase these same wholesale inputs to BTC's cellular mobile network to enable it to offer its own customers the ability to use cellular mobile services throughout The Bahamas¹⁰ and where it has not yet built its cellular mobile network and infrastructure.

Additionally, URCA considers that the relevant product market in general should be technology-neutral. It therefore proposes to define the scope of the product market on a technology neutral basis and thus includes wholesale services delivered over GSM¹¹, HSPA¹², LTE¹³ and any other cellular mobile technology deployed by licensees. This approach is appropriate because retail customers are generally not aware of the network technology used to deliver their services (although they may be aware when using mobile data services), while the same underlying infrastructure is typically used to deliver all mobile services. URCA also notes that this is consistent with the approach taken by other regulators when defining the boundaries of the product market for national roaming.

Applying the SSNIP test to the wholesale inputs identified, URCA finds that there are no further effective demand and/or supply-side substitutes to wholesale mobile access and call origination services such that the market should be widened.

As for **demand-side substitutability**¹⁴, URCA does not consider it likely that cellular mobile operators would switch to using wholesale access and call origination services on fixed networks in case of a 5-10% SSNIP of a hypothetical monopolist offering mobile access and call origination (MACO) services. As previously stated, at the retail level fixed access and call origination services are not demand-side substitutes for retail mobile access and calls. Thus, wholesale access and call origination services on fixed networks cannot be substitutes for wholesale access and call origination services on cellular mobile networks.

Similarly, there is also no **supply-side substitutability**¹⁵ for wholesale access and call origination services on cellular mobile networks. This is because there are high barriers to entering the market as only licensed operators would have an allocation of premium spectrum to build a nationwide cellular mobile network and thereby provide wholesale access and call origination services, while even once a service provider has been granted a licence and premium spectrum, rolling out a comprehensive cellular mobile network is also costly and time consuming. This means that faced with a SSNIP in mobile access and call

¹⁰That is, in areas where BTC provides cellular mobile coverage.

¹¹ Acronym for "Global System for Mobile Communications", an open, digital cellular technology used for transmitting mobile voice and data services.

¹² Acronym for "High Speed Packet Access."

¹³ Acronym for "Long Tem Evolution", a global standard for wireless communication of high-speed data for mobile phones and data terminals.

¹⁴The demand-side SSNIP test asks what would happen to demand over a 12-24 month period were the Hypothetical Monopolist to increase its wholesale price for mobile access and call origination by 5-10% for a non-transitory period of time. Would the price increase be profitable to the HM or not?

¹⁵The supply-side SSNIP test asks what would happen to supply over a 12-24 month period were the Hypothetical Monopolist to increase its wholesale price for mobile access and call origination by 5-10% for a non-transitory period of time. Would other suppliers enter the market and provide new substitutes and whether the resulting demand-side substitution would mean that the price increase was unprofitable for the HM.

origination, a provider of other communications services such as those offered on fixed networks, would be unlikely to enter the market.

Based on the above, URCA preliminarily considers that the product dimension of the wholesale market in question includes mobile access and call origination services. These are the wholesale inputs or products that existing and new cellular mobile operators must have in order to provide retail mobile services to customers. A cellular mobile operator may either self-supply these inputs or, where available, acquire them from alternative operators (i.e., national roaming).

As for the ***geographic boundary*** of the wholesale market in question, URCA notes that there is compelling evidence to suggest it is national in scope. In fact, a national market is supported by the market definition for retail mobile services adopted as part of URCA's 2010 Final SMP Decision. In addition:

- BTC and the second cellular mobile operator will compete for customers throughout the entire Commonwealth of The Bahamas;
- the draft spectrum and operating licences that accompanied the RFP for the second cellular mobile operator are nationwide in scope; and
- at launch, the second cellular mobile operator will have limited network coverage and in order to provide service nationwide it must have the ability to offer services to its customers outside its coverage footprint.

URCA appreciates that its proposed definition is consistent with the geographic boundaries of the network specific wholesale call termination markets identified for BTC, Systems Resource Group Ltd. (SRG) and IP Solutions International Ltd. (iPSi) as part of URCA's 2013 SMP assessment of termination services. Further, URCA has no reason to think that the wholesale mobile market under consideration warrants a narrower definition than the other wholesale markets previously identified. Given the above, URCA proposes to define the geographic scope of the wholesale mobile market as a single national market.

In summary, the market in question is wholesale access and call origination on cellular mobile networks in The Bahamas. Because the relevant product market in general should be technology-neutral, URCA proposes to define the scope of the product market on a technology neutral basis and thus includes wholesale services delivered over GSM/HPSA/LTE and any other cellular mobile network technology deployed by licensees. The other main features of the market are that it:

- is national in scope;
- includes all outbound mobile calls regardless of their destination, mobile messaging, access to Internet/data services, and access to other services such as calling features and emergency numbers; and

- includes self-supply of mobile access and call origination, national roaming and Mobile Virtual Network Operators (MNVO) access.¹⁶

URCA therefore proposes to define the relevant market as follows:

A single national wholesale market for Mobile Access and Call Origination services (MACO) on cellular mobile networks in The Bahamas. It includes all outbound mobile calls independent of their destination, mobile messaging (SMS and MMS), Internet/data access services and access to other services such as calling features and emergency numbers. For the avoidance of doubt, the wholesale market also includes the Mobile Virtual Network Operator access and self-supply of wholesale mobile access and call origination. The market is defined on a technology neutral basis and thus includes any network technology, which is currently or may in the future, be deployed by licensees for the purpose of operating a cellular mobile network and providing cellular mobile services in The Bahamas.

Consultation Question –Market Review Stage 1 – Product/Geographic Market Definitions

Q2. Do you agree with URCA’s proposed definition of the market for wholesale mobile access and origination? If not, why?

4.2 Market Review Stage 2 - Competition Assessment

Based on the legal definition of an SMP licensee, URCA has found evidence that BTC has SMP in the relevant market and therefore is in a position to behave to an appreciable extent independently of its competitors, consumers and subscribers. The main factors contributing to this finding are:

- **Market Structure** - Competition at both the retail and wholesale market levels is limited to two operators, BTC and the second cellular mobile operator. BTC operates a nationwide GSM/HSPA/LTE cellular mobile platform and infrastructure and provides retail cellular mobile services to customers throughout The Bahamas. URCA accepts that the licensing of a second cellular mobile operator could be a significant pro-competition development in the sector. However, it notes that the market for wholesale mobile access and call origination is currently highly concentrated. This is because at this point in time, the market is characterised by self-supply from BTC only. Once the second cellular mobile operator launches its retail mobile services using some of its own network infrastructure (i.e., self-supplying these wholesale services), BTC’s market share will start to decline from its current 100%. However, in the absence of national roaming, the second cellular mobile operator would be restricted to those geographical areas where it has network coverage. This may represent a barrier to expansion to the second cellular mobile operator until it has full cellular mobile network coverage.
- **Control over Essential Facilities** – Control over an essential facility or infrastructure that is not easily replicable is a primary source of market power in communications markets. URCA finds that until the second cellular mobile operator completes its roll-out obligation, BTC will have control over the essential facilities necessary to deliver wholesale mobile access and call

¹⁶For the avoidance of doubt, this does not mean (and should not be interpreted as meaning) that URCA is imposing on BTC, through this regulatory measure, an obligation to offer access to MVNOs on regulated terms and conditions.

origination services nationwide. In geographic areas outside of its network coverage areas, the second cellular mobile operator will depend on wholesale access to BTC's cellular mobile network to provide nationwide access to retail mobile services.

- **Countervailing Buyer Power (CBP)** – This refers to the relative strength of the buyer in negotiations with prospective suppliers. The conditions conducive to CBP include:
 - the buyer has alternative sources of supply;
 - the buyer is well informed, especially about alternative sources of supply;
 - the buyer could switch to alternative sources of supply without incurring significant costs;
 - the buyer could produce the service itself or could sponsor new entry by another supplier; and
 - the buyer is an important outlet for the seller.

Having reviewed these factors, URCA has not found any evidence that could support the existence of CBP by the second cellular mobile operator that could counteract BTC's market power. For this reason, URCA considers that it is reasonable to affirm that in the absence of *ex-ante* intervention BTC has little or no economic incentive to provide wholesale mobile access and call origination to a direct competitor.

- **High and Non Transitory Barriers to Entry and/or Expansion** – These may be of a structural, legal, strategic or regulatory nature. Markets with high barriers to entry and/or expansion may not be effectively competitive and established operators in such markets can have an incentive to raise prices above competitive levels. Evidence from the global industry suggests that, in general, mobile communications markets are characterized by high and non transitory barriers to entry and/or expansion due to:
 - high capital outlay to construct a mobile network with national coverage;
 - high fixed and sunk costs;
 - incumbency advantage such as customer inertia, restriction on the number of firms that may enter and compete; and
 - scarcity of premium spectrum.

In the context of the Bahamian mobile communications sector, the obvious barriers to entry and/or expansion by the second cellular mobile operator are:

- BTC's control over essential network components that are not easily replicable;
- high fixed and sunk costs associated with the construction of a nationwide cellular mobile network and infrastructure; and
- BTC's incumbency advantage in terms of nationwide network coverage.

Given the barriers identified, BTC has a strong commercial incentive to deny access to essential inputs and/or to offer them on unfavourable terms. The structure of the market and the absence of CBP on the part of the second cellular mobile operator reinforced BTC's market

power. Thus, it is URCA's view that the market identified does not tend toward effective competition and is therefore susceptible to *ex-ante* regulation

In conclusion, URCA is of the preliminary view that in respect of the wholesale market it proposes to define, BTC enjoys a position of economic strength which affords it to behave to an appreciable extent independently of others.

Consultation Question – Market Review Stage 2 - Competition Assessment

Q3. Do you agree with URCA's preliminary finding that BTC has SMP in the wholesale market URCA proposes to define? If not, why?

4.3 Market Review Stage 3 – Remedy Design

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

4.3.1 Expected Competition Problems and Consumer Harm

Given BTC's position of SMP in the relevant wholesale market, URCA believes BTC could be in a position to either set excessive prices in the market and/or to refuse to supply downstream rivals:

- **Excessive pricing** occurs when the dominant operator is able to earn greater profits than would otherwise be possible in a competitive setting, by setting prices significantly in excess of the what would be seen in a competitive environment. Excessive pricing at the wholesale market level can also potentially lead to margin squeeze concerns as an alternative service provider may not then be able to replicate the SMP provider's retail pricing offers given the prevailing wholesale tariffs.
- The concept of **refusal to supply** is wide-ranging and covers, among other things, a refusal to supply essential inputs to a competing operator in downstream markets, a refusal to provide interface information, or more generally a refusal to grant access to an essential facility or network component. Refusal to supply also includes offering trading conditions so unreasonable that they amount to a constructive refusal to supply. Constructive refusal to supply could, for example, take the form of unduly delaying or degrading the supply of a product, imposing unreasonable conditions in return for the supply of the service or charging unreasonably high wholesale tariffs for the service.

Excessive pricing and refusal to supply are common problems in wholesale markets where a licensee has SMP. URCA, however, accepts that other types of market failures or anti-competitive concerns may also arise in the market under consideration. Given the importance of national coverage to the second

cellular mobile operator's ability to compete effectively in the retail (downstream) mobile markets, either of these anti-competitive behaviours would very likely impede the competitive structure in downstream (retail) mobile markets.

In addition, without access to BTC's cellular mobile network and infrastructure, customers connected to the second cellular mobile operator's network would be negatively impacted.

Consultation Question - Market Review Stage 3 – Remedy Design

Q4. Do you agree with URCA's preliminary finding that excessive pricing and/or refusal to supply are the main market failures in the wholesale market it proposes to define? If not, why?

4.3.2 Susceptibility of the Defined Market to SMP Regulation

The above concerns are, in URCA's view, indicative of communications markets that are characterised by ineffective competition and therefore susceptible to *ex-ante* regulation. URCA notes that under the EU framework (i.e., EU 3-Criteria Test)¹⁷ markets susceptible to *ex-ante* regulation:

- i) are characterised by high non-transitory barriers to entry/expansion;
- ii) do not tend towards effective competition; and
- iii) would be unable to mitigate the abuse of an SMP position using only competition law.

Based on URCA's preliminary findings at Section 4.2 above, the wholesale market it proposes to define is characterised by high and non-transitory barriers to entry/expansion.

As regards the second criteria, URCA also notes that the identifiable market does not tend towards effective competition due to:

- high and non-transitory barriers to entry and expansion identified at Section 4.2; and
- the limited other options for the second cellular mobile operator to gain access to mobile access and call origination (i.e., national roaming) and the time it would take for the second cellular mobile operator's entry to this market to deploy their own cellular mobile infrastructure (i.e., self-supply).

URCA also believes that there could be considerable risk in relying on *ex-post* competition law, due to the considerable time commonly required to conduct *ex-post* competition investigations and the reliance of the second mobile operator has on national roaming services in order to provide retail mobile services nationally. Although the non-market specific SMP obligations of the Comms Act and BTC's IOL offer some degree of protection against undue discrimination, these in URCA's view, would be inadequate to tackle wider concerns about excessive pricing.

Because URCA considers that all three criteria are cumulatively met, URCA is minded to conclude that the wholesale market it proposes to define is susceptible to *ex-ante* regulation. That is, absent SMP

¹⁷This is known as the EU Three Criteria Test and is applied cumulatively. This means that failure to meet any one of them would indicate that a market should not be identified as susceptible to *ex-ante* regulation.

regulation, the market failures identified may result in an abuse of an SMP position. In turn, such an abuse would have the clear potential to limit the development of competition and ultimately harm consumers.

Consultation Question - Market Review Stage 3 – Remedy Design

Q5. Do you agree with URCA’s preliminary finding that the wholesale market it proposes to define is susceptible to *ex-ante* regulation? If not, why?

4.3.3 Assessment of Regulatory Options Considered

In the context of this SMP review, URCA has reviewed the following regulatory options:

- **The ‘do nothing’ or ‘no ex-ante regulation’ approach**

This is the least intrusive approach to regulation and is akin to the principle of ‘light-touch’ regulation. Under this approach, terms or conditions for national roaming would be established through a process of bilateral negotiations between the parties, subject to *ex-post* competition law and the non-market specific SMP obligations of the Comms Act and BTC’s IOL. This means that URCA would abstain from imposing any additional measure on BTC including SMP obligations similar to those listed under section 40(1) of the Comms Act. This approach could severely constrain URCA’s ability to effectively respond to any competition concern raised by the parties.

- **Additional SMP Obligations**

URCA could impose on BTC one or more SMP obligations similar to those listed under section 40(1) of the Comms Act. Given the importance of national roaming and the need for an expedited agreement, URCA considers that the non-market specific obligations of the Comms Act and BTC’s IOL, by themselves, would be insufficient to promote the main ECS Policy objectives. As such, URCA considers that it would be appropriate and proportionate to impose an obligation that would give the second mobile operator the assurance that access to national roaming would be provided upon request. Secondly, URCA also considers it would be appropriate, given its mandate, to ensure that the terms or conditions upon which BTC would provide the service are reasonable and would not result in unfair charging or any other anti-competitive outcomes.

Table 1 below sets out the main cost and benefits for each of the regulatory options reviewed.

Table 1: Main advantages and disadvantages of regulatory options considered

Advantages	Disadvantages	Application
------------	---------------	-------------

<p>No <i>ex-ante</i> regulation (commercial negotiation in addition to standard/non-market-specific obligations)</p>	<ul style="list-style-type: none"> • Minimal or no compliance cost. • Minimal regulatory burden. • New market entrant may benefit from bilateral negotiations, if these are successfully negotiated to meet the requirements of the parties. • Regulatory burden limited to ex-post investigations. 	<ul style="list-style-type: none"> • Time and resource intensive negotiation process on both operators. • SMP operator may charge excessively for the service. • The process lacks transparency. • There would be no certainty that the service will be delivered and what the associated terms would be. • If bilateral negotiations between operators were to fail or be delayed, this would limit the ability of users to benefit from the introduction of competition. 	<p>Most suitable in markets where there is more than one cellular mobile networks to choose from and no operator has market power.</p>
<p>Additional SMP Obligations(in addition to non-market specific obligations)</p>	<ul style="list-style-type: none"> • Greater regulatory certainty on price and non-price terms. • BTC will still be enabled to earn a reasonable rate of return on the service. • Limit the ability of the SMP operator to behave opportunistically. • SMP operator loses any ability to withhold critical information or to make the negotiation process less efficient and transparent. • Ensures that customers throughout The Bahamas benefit from the introduction of competition simultaneously. • Cost oriented charging would provide the 'right' signal for operators. • Allow for more efficient and effective negotiation and thereby promoting the interests of customers in The Bahamas. 	<ul style="list-style-type: none"> • BTC would incur time and resources to comply with information requests and to participate in consultation. • URCA and the second cellular mobile operator would incur time and resource costs in reviewing BTC's proposed price and non-price terms. • The on-going cost to URCA for monitoring the behaviour of the SMP operator to ensure the parties adhere to the framework. 	<p>Most suitable in newly liberalised markets with a limited number of cellular mobile networks to choose from.</p>

4.3.4 Proposed SMP Regulations/Obligations

Based on the relative merits of the regulatory options reviewed and its summary on the competitive dynamics within the defined wholesale market as set out above, URCA is satisfied that there are strong grounds to impose on BTC one or more of the SMP obligations listed under section 40(1) of the Comms Act. As already noted, total reliance on URCA's *ex-post* investigative powers would, in URCA's opinion, be insufficient to tackle any abuse of an SMP position in the relevant market. As BTC controls the only national mobile infrastructure for now, necessary regulation includes ensuring that the second operator has access to BTC's cellular mobile network during roll-out on pro-competitive terms. In this regard, detailed remedies (such as *ex ante* price control) are likely to be necessary in this market in order to

prevent abuse of an SMP position. URCA considers that the proposed *ex-ante* remedies below fit these findings.

URCA's policy is to ensure that demand from the second operator for wholesale mobile access and call origination services in areas where it has not deployed its own network (i.e., national roaming) is met in a timely and expeditious manner, on reasonable terms or conditions. However, this is not assured given BTC's market power. To this end, URCA is minded to take regulatory action to ensure that demand for these inputs is met and therefore proposes to put in place the following remedies:

- BTC shall be placed under an obligation to meet demand for wholesale mobile access and call origination on its cellular mobile network in geographical areas where the second cellular mobile operator has not yet deployed its own cellular mobile network (i.e., national roaming);
- BTC shall be under an obligation to make available to the second cellular mobile operator the standard terms and conditions for national roaming services; and
- BTC's national roaming services shall be subject to wholesale price control.

Obligation to offer National Roaming

Pursuant to sections 39(1) and 40(1) of the Comms Act and Condition 11 of its IOL, URCA proposes that BTC should be obliged to offer, upon request and for an interim period of up to three (3) years from the date of issuance of the second cellular mobile operator's licence, wholesale mobile access and call origination to the second cellular mobile network. However, under this proposal, the second cellular mobile operator will not be able to claim (and is prohibited from claiming) coverage through national roaming as a way of meeting any coverage or roll-out targets or network development and roll-out targets specified in licences issued to the second cellular mobile operator.

The proposed national roaming service to be delivered should, in URCA's estimation, enable mobile subscribers served by the second cellular mobile operator to make or receive calls (including calls to local emergency numbers), send or receive mobile messages (SMS and MMS), and other services including access to calling features and the internet outside of the second cellular mobile operator's coverage footprint but which are within BTC's cellular mobile network footprint. For the avoidance of doubt, it is not proposed that BTC should be required to provide national roaming in any area in The Bahamas in which the second cellular mobile operator is required to have covered using its own network pursuant to its licence or in any area where the second cellular mobile operator has established, maintains and operates network coverage pursuant to roll-out targets or network development targets specified in licences issued to the second cellular mobile operator.

Consultation Question– Market Review Stage 3 – Remedy Design

Q6. Do you disagree with URCA's proposed scope of the national roaming obligation to be provided by BTC? If so, why?

Obligation to provide Terms and Conditions

These proposed obligations comprise all price and non-price terms or conditions upon which national roaming must be delivered by BTC. The information to be provided should include at a minimum, the following:

- the price list (comprising all charges associated with the service and details of those charges); and
- the main non-price terms or conditions of the wholesale electronic communications services to be delivered.

In support of section 40(4)(b) of the Comms Act, URCA proposes that BTC should be required to submit its proposed standard terms or conditions for national roaming for URCA's review and approval within thirty-five (35) days of the date of URCA's final determination. Within this timeframe, BTC shall also submit the same information to the second cellular mobile operator upon request.

Consultation Question – Market Review Stage 3 – Remedy Design

Q7. Do you agree with URCA's proposal on the information to be provided by BTC? If not, why?

Wholesale Price Control

URCA proposes that tariffs for national roaming services should be set on the principle of cost orientation of prices. Ideally, tariffs should be based on BTC's most recent cost accounting results and any adjustment BTC deems necessary to ensure that these tariffs reflect an efficient level of costs should be properly documented. In the absence of suitable costing information from BTC, URCA would consider setting charges based on appropriate and reasonable benchmarks from comparable jurisdictions. In addition:

- Tariffs should reflect the national average cost of providing the service.
- Any additional costs reasonably incurred by BTC in providing national roaming to the second cellular mobile operator (i.e., roaming overhead cost factors) and of a material nature may be taken into account.
- Tariffs for voice services should be expressed as a 'per minute' price and may be reasonably differentiated for peak and off-peak periods.
- Tariffs for data services should be charged according to usage or "by the bit".

Consultation Question – Market Review Stage 3 – Remedy Design

Q8. Do you agree with URCA's preliminary view that wholesale tariffs for national roaming should be set on the principle of cost orientation of prices? If not, why?

5 Conclusion and Next Steps

In this Preliminary Determination and Draft Order URCA is seeking comments on its proposal to impose an SMP services obligation which would require BTC to provide national roaming to the second cellular mobile operator for an interim period of time. Given its preliminary findings in this review, URCA sets forth the SMP obligations it proposes to impose on BTC to ensure that all reasonable demand for national roaming is met on appropriate and proportionate terms or conditions during such interim period.

Absent these preventative measures, URCA considers that members of the public and interested third parties would not be assured that the regulatory tools necessary to promote competition in the cellular mobile market will be fulfilled in accordance with the planned launch date of mobile services by the second cellular mobile operator, and the benefits of competition would not accrue to the widest cross-section of the Bahamian public timeously.

URCA invites interested parties to comment on its preliminary position by responding to the consultation questions set out in this Preliminary Determination.

Upon consideration of written responses, URCA will publish a Final Determination on the results of the consultation along with next steps. URCA looks forward to constructive engagements on its proposals.

Annex 1: URCA’s Preliminary Determination and Draft Order on National Roaming

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

1.1 Preliminary Determination

This is a Preliminary Determination issued by the Utilities Regulation and Competition Authority (“URCA”) pursuant to section 99 of the Communications Act, 2009.

The Determination, which URCA proposes to make, seeks to impose obligations on the Bahamas Telecommunications Company Ltd. (BTC) and therefore this Preliminary Determination is addressed to BTC. Notwithstanding this, URCA considers the subject matter to be of sufficient interest to members of the public in The Bahamas and URCA is therefore affording the public in The Bahamas an opportunity to make comments and representations in respect of this Preliminary Determination and the annexed Draft Order.

“WHEREAS,

- i) Section 5 of the Communications Act, 2009 (“Comms Act”) mandates that *“All policy measures, decisions and laws to take effect in the electronic communications sector in The Bahamas shall be made with a view to implementing the electronic communications policy objectives ...”*;
- ii) The electronic communications sector policy objectives as specified at section 4 of the Comms Act include furthering *“the interests of consumers by promoting competition”* and furthering *“the interests of persons in The Bahamas in relation to the electronic communications sector”*;
- iii) The Government at Paragraph 89 of the Electronic Communications Sector Policy (“ECS Policy”) has urged URCA *“to ensure that all regulatory measures necessary for cellular liberalisation, are met and fulfilled in accordance with the timetable set for such liberalisation”*;
- iv) Section 99(1)(a) and (b) of the Comms Act empowers URCA to make determinations in respect of any regulatory or other measures it proposes to introduce;
- v) Section 39(1) of the Comms Act empowers URCA to determine that a Licensee has Significant Market Power (SMP) in a market where the Licensee *“... individually or with others, enjoys a position of economic strength which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors, consumers and subscribers.”*; and,

- vi) Pursuant to section 39(2) of the Comm Act URCA issued ECS 20/2011, the “*Methodology for Assessment of Significant Market Power (SMP) under section 39(2) and (3) of the Communications Act, 2009*” (the “SMP Methodology”¹⁸), containing criteria relating to the definition of markets in the electronic communications sector, and against which market power may be assessed;
- vii) By the issuance of the “*Request for Proposals To Operate a Cellular Mobile Networks and To Provide Cellular Mobile Services in The Bahamas*” (the RFP) on 13 November 2014, the Government commenced the process for the selection of a second cellular mobile operator to operate a cellular mobile network and provide cellular mobile services in The Bahamas (the “second cellular mobile operator” or “second cellular mobile provider”), and it is expected that the process will shortly be completed and the selected cellular mobile operator will be licensed in the near future;
- viii) The incumbent cellular mobile operator, BTC is currently the sole provider of those services in The Bahamas and operates a network that provides services to the majority of populated areas in The Bahamas;
- ix) URCA having conducted a review of the market for wholesale mobile access and call origination on cellular mobile networks in The Bahamas in accordance with the Comms Act and the SMP Methodology considers that the development of competition in downstream (retail) cellular mobile markets could be enhanced by the ability for the second cellular mobile operator to be able to obtain national roaming services from BTC to ensure that the second cellular mobile operator is able to, from the date of its launch of services, offer services throughout The Bahamas including in those areas where it has not yet constructed its own network facilities;
- x) URCA considers it appropriate to make certain determinations regarding the definition of wholesale mobile markets, the existence of BTC having SMP in the identifiable wholesale mobile market, the extent to which *ex-ante* regulation is appropriate and proportionate in that relevant market; and,
- xi) Having considered the wholesale markets and made the relevant determinations for the wholesale market under review, URCA considers it proportionate and appropriate for the development of competition, that URCA impose a new remedy in those markets, namely national roaming for an interim period, until such time as the second cellular mobile operator has completed the roll-out targets for network coverage of The Bahamas as set out in the RFP.

URCA HEREBY DETERMINES that:

1. Relevant Market for National Roaming – “Wholesale Mobile Access and Call Origination”

¹⁸Also referred to as URCA's SMP Guidelines.

A single national wholesale market shall be defined for Mobile Access and Call Origination services (MACO) on cellular mobile networks in The Bahamas, including all outbound mobile calls independent of their destination, mobile messaging (SMS and MMS), Internet/data access services and access to other services such as calling features and emergency numbers. For the avoidance of doubt, the wholesale market also includes the Mobile Virtual Network Operator access and self-supply of wholesale mobile access and call origination. The market is defined on a technology neutral basis and thus includes any network technology, which is currently or may in the future, be deployed by licensees for the purpose of operating a cellular mobile network and providing cellular mobile services in The Bahamas.

2. Determination of Significant Market Power

BTC has Significant Market Power in the Wholesale Mobile Access and Call Origination (MACO) Market in The Bahamas.

3. Obligations Imposed on BTC

- a) BTC shall be required to comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act and Condition 34 of BTC's Individual Operating Licence (IOL).
 - b) For a period of 36 months from the date of issuance of the licences to the second cellular mobile provider, BTC shall be subject to the following *ex-ante* obligations:
 - i) BTC shall provide wholesale mobile access and call origination services on its cellular mobile network to the second cellular mobile provider, in all geographical areas covered by BTC's cellular mobile networks but where the second cellular mobile provider has not deployed its own cellular mobile network (i.e., national roaming), PROVIDED THAT BTC shall no longer be required under this obligation to provide such services where and when the second cellular mobile operator has met all Network Coverage roll-out obligations in respect of its cellular mobile network as set out in its Individual Spectrum Licence;
 - ii) BTC shall be under an obligation to provide to the second cellular mobile operator upon request, standard terms or conditions for national roaming services; and
 - iii) All national roaming services provided by BTC which are within the scope of this obligation, shall be subject to wholesale price control.
4. BTC is required to formulate standard terms and conditions for the national roaming service, and to submit those terms and conditions for URCA's review and approval within thirty-five (35) calendar days of the date of this Determination.
 5. The national roaming service shall be provided by BTC in accordance with any Orders or other regulatory measures pertaining thereto which URCA may make from time to time.

6. Failure by any of the parties to comply with this Determination may result in URCA imposing sanctions in accordance with Part XVII of the Comms Act.

Utilities Regulation and Competition Authority

Dated: xx XXXX, 2016

2.2 DRAFT ORDER

WHEREAS by a Final Determination dated [] addressed to the Bahamas Telecommunications Company Ltd. (BTC) and to [LICENSEE NAME], URCA determined as follows:

I. Relevant Market for National Roaming – “Wholesale Mobile Access and Call Origination”

A single national wholesale market shall be defined for mobile access and call origination services on cellular mobile networks in The Bahamas, including all outbound mobile calls independent of their destination, mobile messaging (MMS and SMS), Internet/data access services and access to other services such as calling features and emergency numbers. For the avoidance of doubt, the market also comprises the wholesale MVNO access. The market is defined on a technology neutral basis and thus includes any network technology which is currently or may in future be deployed by licensees for the purpose of operating cellular mobile networks and providing cellular mobile services in The Bahamas.

II. Determination of Significant Market Power

BTC has Significant Market Power in the Wholesale Mobile Access and Call Origination (MACO) Market in The Bahamas.

III. Obligations Imposed on BTC

- a) BTC shall comply with the non-market specific SMP obligations specified in section 40(4) of the Comms Act and Condition 34 of BTC's Individual Operating Licence (IOL).
- b) For a period of thirty-six (36) months from the date of issuance of the licences to the second cellular mobile provider, BTC shall be subject to the following *ex-ante* obligations:
 - i) BTC shall provide wholesale mobile access and call origination services on its cellular mobile network to the second cellular mobile provider, in all geographical areas covered by BTC's cellular mobile networks but where the second cellular mobile provider has not deployed its own cellular mobile network (i.e., national roaming), PROVIDED THAT BTC shall no longer be required under this obligation to provide such services where and when the second cellular mobile operator has met all Network Coverage roll-out obligations in respect of its cellular mobile network as set out in its Individual Spectrum Licence (ISL);

- ii) BTC shall be under an obligation to provide to the second cellular mobile operator upon request, standard terms or conditions for national roaming services; and
 - iii) All national roaming services provided by BTC which are within the scope of this obligation, shall be subject to wholesale price control.
- IV. BTC is required to prepare standard terms and conditions for the national roaming service, and to submit those terms and conditions for URCA's review and approval within thirty-five (35) calendar days of the date of this Determination.
- V. The national roaming service shall be provided by BTC in accordance with any Orders or other regulatory measures pertaining thereto which URCA may make from time to time.
- VI. Failure by any of the parties to comply with this Order may result in URCA imposing sanctions in accordance with Part XVII of the Comms Act.

AND WHEREAS the Government of The Bahamas having completed the process for the selection of an entity to operate a cellular mobile network and provide cellular mobile services in The Bahamas and [SUCCESSFUL APPLICANT NAME] having emerged as the successful applicant in that process; on xx, XXXX 2016 URCA issued an Individual Operating Licence (IOL) and Individual Spectrum Licence (ISL) to [LICENSEE NAME] ("LICENSEE SHORT NAME"), which authorises LICENSEE SHORT NAME to use the assigned premium spectrum to operate a cellular mobile network and provide cellular mobile services in The Bahamas.

NOW, IT IS HEREBY ORDERED that BTC shall provide national roaming services to LICENSEE SHORT NAME, upon request by LICENSEE SHORT NAME. BTC and LICENSEE SHORT NAME shall comply with the provisions of this Order in respect of any national roaming services provided by BTC to LICENSEE SHORT NAME pursuant to this Order:

1. Definitions

In this Order the following terms shall, unless the context requires otherwise, have the following meanings:

"Access" means the right to use or make use of a cellular mobile network belonging to or controlled by BTC for the purpose of providing national roaming to customers of LICENSEE SHORT NAME.

"Access Request" means a written request made pursuant to this Order for Access to the cellular mobile network and infrastructure of BTC.

“BTC” means the Bahamas Telecommunications Company Ltd., the Licensee which has been determined by URCA to have Significant Market Power in the market for Wholesale Mobile Access and Call Origination;

“LICENSEE SHORT NAME” means LICENSEE NAME, the Licensee who has been issued an Individual Spectrum Licence to use assigned premium spectrum to operate a cellular mobile network and provide cellular mobile services in The Bahamas.

“Customer” means any subscriber to a cellular mobile network owned or controlled by and cellular mobile services provided by LICENSEE SHORT NAME.

“National Roaming” means the ability of customers of LICENSEE SHORT NAME to use, or 'roam onto', the cellular mobile networks of BTC in areas of The Bahamas where LICENSEE SHORT NAME has not yet built its own cellular mobile network and therefore does not provide coverage.

“National Roaming Period” means thirty-six (36) months from the date of issuance of the licences to LICENSEE SHORT NAME, or such other period as URCA may direct the Parties in writing.

“Parties” means LICENSEE SHORT NAME and BTC.

“URCA” means the Utilities Regulation and Competition Authority.

2. Scope of the National Roaming Obligation

- 2.1 BTC is, in accordance with this Order, under an *ex-ante* obligation to provide National Roaming on a wholesale basis to LICENSEE SHORT NAME at fair, reasonable and impartial terms or conditions.
- 2.2 BTC shall not unreasonably withhold or delay National Roaming in any part of The Bahamas.
- 2.3 BTC may only deny or delay providing National Roaming in response to a request by LICENSEE SHORT NAME where BTC can establish to URCA's satisfaction that provision of the National Roaming service is technically or economically unfeasible in any specified area or location in The Bahamas and is relieved by URCA in writing from providing the National Roaming service in such specified area or location.
- 2.4 The National Roaming obligation is not reciprocal and therefore LICENSEE SHORT NAME is not under an obligation to offer national roaming to BTC or any other cellular mobile operator, unless otherwise specifically agreed.

- 2.5 In their agreement for National Roaming, the Parties shall adhere to the provisions of this Order and any other applicable licence condition, provision or regulatory measure issued by URCA, save to the extent that such condition, provision or measure is agreed by URCA in writing to be inconsistent with this Order.
- 2.6 Neither this Order, nor the obligation to provide National Roaming relates to or affects any international roaming agreements between BTC and any person.
- 2.7 The obligation to provide National Roaming service to LICENSEE SHORT NAME shall reduce over time based on the progression of the construction of LICENSEE SHORT NAME's own cellular mobile network infrastructure in The Bahamas. BTC is only required to provide National Roaming during the National Roaming Period in areas where LICENSEE SHORT NAME has not constructed its own cellular mobile network infrastructure, and may discontinue the provision of such service in any geographical area upon notification from URCA based on LICENSEE SHORT NAME having successfully met its roll-out or coverage obligations as set out in its ISL.
- 2.8 The terms and conditions for National Roaming provided by BTC to LICENSEE SHORT NAME shall not result in any anti-competitive outcomes, including those prescribed in the Communications Act and/or BTC or LICENSEE SHORT NAME's Individual Operating Licence.
- 2.9 LICENSEE SHORT NAME shall not, in those geographical areas where it has network coverage using its own cellular mobile network infrastructure (including co-locatable towers and sites), use National Roaming on BTC's cellular mobile network to supplement its installed network capacity or as a safety net to compensate in the event that LICENSEE SHORT NAME's own cellular mobile network cannot support its subscribers or customers. Failure by LICENSEE SHORT NAME to comply with this provision may result in URCA imposing sanctions in accordance with Part XVII of the Comms Act. This provision does not restrict the use of National Roaming on a commercial basis between BTC and LICENSEE SHORT NAME to provide redundancy in the event of natural disasters or planned or unplanned network outages.
- 2.10 BTC shall not modify, suspend, revoke, interfere with or otherwise impair the National Roaming services provided to LICENSEE SHORT NAME pursuant to this Order without URCA's prior written approval.

Consultation Question - Scope of the National Roaming Obligation

Q9. Do you agree with URCA's proposed general obligations in the proposed Order for BTC to provide national roaming? If not, why?

3. Nature and Scope of the Service to be Provided

- 3.1 The purpose of the National Roaming service obligation is to enable end-Customers of LICENSEE SHORT NAME's cellular mobile network during the National Roaming Period to originate or receive communications on BTC's cellular mobile network in The Bahamas when out of range of LICENSEE SHORT NAME's own cellular mobile network, but within range of BTC's cellular mobile network.
- 3.2 The National Roaming service provided by BTC shall to the extent technically feasible enable LICENSEE SHORT NAME during the National Roaming Period to offer the same services as it offers its Customers where it has cellular mobile network coverage, including retail cellular mobile voice/messaging (including data services).
- 3.3 The National Roaming service provided by BTC shall support all Bearer Services (including General Packet Radio Service (GPRS)), Teleservices and Standard GSM Supplementary Services such as Number Identification (Calling Line Identification), Call Offering (Call Forwarding) and Call Restriction (Call Barring). LICENSEE SHORT NAME should be able to provide its own value-added services based on BTC providing access to the transmission capacity on its cellular mobile network.
- 3.4 For the avoidance of doubt, all service obligations specified in the Communications Act, regulatory measures issued by URCA and/or contained in LICENSEE SHORT NAME's licences such as emergency calling, directory assistance and directory information, legal interception, malicious call tracing and quality of service shall be supported under the National Roaming obligation and shall at all times remain an obligation of LICENSEE SHORT NAME.

Consultation Question - Nature and Scope of the Service to be Provided

Q10. Do you agree with the proposed nature and scope of the national roaming services? If not, why?

4. National Roaming Period

- 4.1 BTC shall provide the National Roaming service to LICENSEE SHORT NAME pursuant to this Order for the National Roaming Period or such other period as URCA may direct following consultation with BTC and LICENSEE SHORT NAME.
- 4.2 BTC shall commence the provisioning of National Roaming on the date LICENSEE SHORT NAME begins its commercial operations as notified by LICENSEE SHORT NAME to BTC.

- 4.3 Any request for an extension of the National Roaming service beyond the National Roaming Period must be made by LICENSEE SHORT NAME in writing to URCA, with a copy to BTC, no later than three (3) months before the end date of the National Roaming Period and shall provide reasons as to why an extension should be granted and the period of the extension being requested. URCA will consider any representations received from BTC before deciding the matter.

Consultation Question - Duration of the National Roaming Obligation

Q11. Do you agree with URCA's proposed obligations regarding the duration of the national roaming obligation? If not, why?

5. National Roaming Coverage

- 5.1 The National Roaming service shall allow LICENSEE SHORT NAME to sell services to retail Customers only and in areas other than those in which LICENSEE SHORT NAME has built its own cellular mobile network and where BTC has network coverage. The terms or conditions of the service shall not be unduly discriminatory against LICENSEE SHORT NAME and its retail Customers.
- 5.2 LICENSEE SHORT NAME shall supply BTC with information in a timely manner in order to facilitate network planning, testing and provision of capacity, which shall include adequate and sufficient forecasts.
- 5.3 National Roaming coverage provided to LICENSEE SHORT NAME shall not contribute, and LICENSEE SHORT NAME is prohibited by this Order from claiming that National Roaming coverage contributes, in any way towards any network coverage or roll-out targets or similar obligations specified in any licence granted to LICENSEE SHORT NAME or any other document.

Consultation Question – National Roaming Coverage

Q12. Do you agree with URCA's proposals on national roaming coverage? If not, why?

6. Wholesale Tariffs for National Roaming Service

- 6.1 BTC's wholesale National Roaming tariffs shall be cost-based and shall not give rise to any anti-competitive conduct. In economic terms, cost-based pricing for National Roaming should permit a fair and suitable margin between BTC network's retail tariffs and its wholesale National Roaming tariffs.
- 6.2 In developing its wholesale tariffs for National Roaming, BTC must comply with this Order, relevant economic principles of the Communications Act, URCA's Final Access and Interconnection Guidelines (ECS 14/2010), as well

as all licence conditions or other regulatory measures issued by URCA that would have a bearing on the wholesale charges for National Roaming.

- 6.3 Further, cost-based tariffs should reflect the national average cost of providing the service.
- 6.4 Charges for National Roaming should allow BTC to recover the efficiently incurred costs of providing the service. In addition, tariffs should be based on BTC's most recent Accounting Separation and Cost Accounting results and any adjustment BTC deems necessary to ensure that these tariffs reflect an efficient level of costs should be properly documented and explained.
- 6.5 In the absence of suitable and verifiable costing information from BTC costing information, URCA would consider setting charges based on appropriate and reasonable benchmarks from comparable jurisdictions.
- 6.6 Any material additional costs reasonably incurred by BTC in providing National Roaming to LICENSEE SHORT NAME may be taken into account when it is proposing tariffs.
- 6.7 Tariffs for voice services should be expressed as a 'per minute' price and may be reasonably differentiated for peak and off-peak periods.
- 6.8 Tariffs for data services should be charged according to usage or "by the bit".

Consultation Question – Wholesale Tariffs for National Roaming Service

Q13. Do you agree with URCA's proposals on how tariffs should be set for national roaming services? If not, why?

7. Content of National Roaming Proposals and/or Agreements

- 7.1 Proposals and/or Agreements for wholesale National Roaming pursuant to this Order shall, at a minimum:
 - i) Include a price list (comprising all charges associated with the service and details of those charges);
 - ii) Include all applicable non-price terms or conditions including branding, the proposed start and end dates for the service, provide for dispute resolution; and,
 - iii) Comply with the provisions of URCA's Final Access and Interconnection Guidelines (ECS 14/2010) and URCA's Final Determination on Revision of the Access and Interconnection Framework (ECS08/2015) (inclusive of timeframes).

Consultation Question - National Roaming Proposals and/or Agreements

Q14. Do you agree with URCA's proposed obligations regarding the content of national roaming proposals and/or national roaming agreements? If not, why?

8. Information Requests

8.1 LICENSEE SHORT NAME shall, when making a request for National Roaming pursuant to this Order, provide BTC with technical and other information required to enable BTC to provide the service, including:

- i) the date upon which the Roaming Service is required;
- ii) all services offered to subscribers on LICENSEE SHORT NAME's cellular mobile network and in respect of which National Roaming is requested;
- iii) a coverage outline showing those areas where LICENSEE SHORT NAME's cellular mobile network is expected to have coverage as at the date upon which National Roaming is requested;
- iv) detailed monthly traffic forecasts providing estimates of the number of customers estimated to use the National Roaming service, and the volume of National Roaming voice and data traffic expected; and,
- v) all technical parameters of LICENSEE SHORT NAME's cellular mobile network that would be required to configure the National Roaming service.

8.2 BTC must respond to a written request for information by LICENSEE SHORT NAME in a timely manner, and in any event within ten (10) business days of receiving the request by providing to LICENSEE SHORT NAME:

- i) the proposed wholesale tariffs for the service;
- ii) all requested and appropriate technical information including but not limited to technical data, engineering information and network requirements; and
- iii) any other information relevant to the formulation of a National Roaming agreement.

Consultation Question - Responding to Information Requests

Q15. Do you agree with URCA's proposed obligations regarding responding to requests for information on national roaming? If not, why?

9. Implementation of National Roaming Obligation

9.1 The Parties shall use their best endeavours to conclude an agreement for, implement and test, National Roaming within ninety (90) days of BTC receiving a request for National Roaming.

9.2 Any proposals for wholesale National Roaming services must be submitted to URCA in draft form and within the timeframe specified by URCA. BTC shall

make available to LICENSEE SHORT NAME a copy of its proposals upon request.

- 9.3 URCA will consult with the parties on the draft proposals and issue a final decision or determination on the submission.
- 9.4 The final decision may require BTC to make additions or changes to the draft proposals. BTC shall implement such changes no later than twenty-one (21) calendar days after being instructed to do so by URCA. URCA may require BTC to amend its proposals to include the revised proposals for wholesale National Roaming.
- 9.5 The terms or conditions specified in the revised proposal if required by URCA would then provide the basis for the Parties to formalize an agreement for wholesale National Roaming.
- 9.6 All technical and commercial conditions for National Roaming must be included in a National Roaming Agreement between BTC and LICENSEE SHORT NAME.
- 9.7 In the event that the Parties conclude a mutually agreed commercial solution prior to URCA issuing a Final Determination on conditions for National Roaming, the Parties shall file a copy of the agreement with the URCA within seven (7) calendar days from signing the agreement. URCA will review the mutually agreed document for conformance with the Communications Act, and any relevant documents and regulatory measures issued by URCA, including this Order. URCA may, in exercise of its powers and functions under the Communications Act, regulatory and other measures and licences, require the Parties to make amendments to such commercial agreement to ensure conformity with the aforementioned documents.

Consultation Question - Implementation of National Roaming Obligation

Q16. Do you agree with URCA's proposals on the implementation of the national roaming obligation? If not, why?

10. Disputes and Complaints

- 10.1 Disputes and complaints in relation to the National Roaming service may be submitted by either Party to URCA and will be resolved pursuant to the relevant provisions of the Communications Act, and URCA's Alternative Dispute Resolution (ADR) Schemes (ECS 20/2014).¹⁹

¹⁹ Issued 31 December 2014 and available at <http://www.urbahamas.bs/download/010192200.pdf>

- 10.2 In determining disputes or complaints, URCA may issue interim orders and regulatory and other measures as it deems necessary and appropriate in the circumstances.

Consultation Question – Disputes and Complaints

Q17. Do you agree with URCA’s proposals on disputes and complaints? If not, why?

Part 11: Compatible Standards

- 11.1 LICENSEE SHORT NAME's customers should not be required to obtain an additional SIM card or to register in any way with BTC to access the National Roaming service and to roam seamlessly between the cellular mobile networks of BTC and LICENSEE SHORT NAME.
- 11.2 The National Roaming agreement between BTC and LICENSEE SHORT NAME shall take into consideration the technologies employed by cellular mobile networks operated by both BTC and LICENSEE SHORT NAME. BTC will not be required to offer National Roaming service in any area or location specified by URCA if and to the extent that BTC can demonstrate to URCA's satisfaction that incompatibility between the cellular mobile networks operated by BTC and LICENSEE SHORT NAME render National Roaming technically infeasible in the specified areas or location.

Consultation Question – Compatible Standards

Q18. Do you agree with URCA’s proposals on compatible standards for national roaming? If not, why?

