# Response to public consultation on the Retail Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009 (ECS 04/2024)

Submitted to

The Utilities Regulation & Competition Authority

**29 April 2024**

# Table of contents

# 1 General comments

**Please note all figures presented on CBL's financial performance and customer statistics should be treated as confidential.**

CBL and Aliv welcome the opportunity to comment on URCA's Retail Fixed Market Review and Assessment under Section 39(1) and (2) of the Communications Act, 2009 (ECS 04/2024) (from now on referred to as the Consultation Document or the Market Review). CBL has a number of serious concerns about the preliminary conclusions reached by URCA. Fixed retail markets in The Bahamas are competitive with customers receiving value for money and with providers investing significantly in the rollout of high-capacity broadband networks. URCA should be considering deregulatory approaches in these circumstances in order to stimulate investment and incentivise innovation in the sector. Instead URCA appears intent on maintaining ex-ante regulation of retail voice, broadband and pay TV services. As CBL will show, this proposal is based on incorrect factual assumptions and a flawed market review methodology.

## 1.1 Recent market developments

Since the last fixed market review in 2014, the fixed services sector has seen substantial changes in the intensity of competition, the mix of deployed and converging technologies and consumer behaviour. In 2014, CBL was the only provider of pay TV services and the majority of customers subscribed to linear TV services. The Bahamas now has two well established operators providing the full range of fixed telephony, broadband and pay TV services. Both operators have made substantial investments in building fibre to the premises (FTTP) broadband networks and upgrading their existing cable and DSL networks, offering much higher broadband speeds than previously experienced. This, in turn, has allowed over-the-top (OTT) providers like Netflix, Amazon, HBO and Disney to go 'direct' to customers, bypassing their traditional distribution partners like CBL and BTC. OTT services fulfil the customer's need for access to content in an increasingly effective manner, with access offered via multiple platforms and with content available on demand, offering flexibility to customers on how and when to enjoy the content they value. The streaming or OTT market is therefore an evolutionary change in the content market and there is no doubt that the traditional market for linear TV will eventually be replaced entirely by these more modern alternatives. CBL believes that this market structure has resulted in strong competition between the operators, providing considerable benefits for consumers. Moreover, the entry of new non-domestic competitors offers additional and effective market constraints on the existing operators, making ex-ante regulation unnecessary and costly.

While consumers have benefitted hugely from the increased range of services now available over broadband networks, operators have seen a steady erosion of their revenues, particularly from fixed telephony and pay TV services. In this context it is worth noting that 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. In addition to legitimate OTT offers there is also a proliferation of illegal and/or unauthorised alternatives available across The Bahamas [redacted]

**CBL believes that URCA has not given sufficient weight to these dramatic market evolutions in its market review. As we show in this response, URCA is at risk of missing an opportunity for significant regulatory reform in the fixed services markets by focusing on small and declining customer groups taking standalone fixed services. In doing so, URCA ignores strong evidence of competition in all fixed markets under review.**

**In the TV market, there has been a consistent decline in customers [redacted] a decline of 21%. There is no other reasonable explanation than the substitution**

**of TV services by OTT alternatives and URCA offers no alternative explanation for this trend, while rejecting the notion that substitution exists.** OTT viewership hours have now overtaken TV viewership hours in The Bahamas. [redacted] In addition, standalone TV customers may have access to standalone TV, telephone and broadband services from other providers, further reducing the significance of standalone TV services for the market review. Most will also have mobile phones, which provide mobile telephony and broadband services. URCA's notes on page 148 of the market review:

> *'Table 25 presents the current monthly prices of selected standalone and multi-product bundle offerings, available on the operator's websites as well as internet-based streaming monthly subscription fees. If an end user subscribed to a multi-product bundle including pay TV were to switch to separate standalone fixed broadband services in order to switch away from pay TV to streaming services, it would cost at least $50.98 (combined price of Apple TV monthly subscription fee and BTC's "Basic 50 Mbps" fixed broadband standalone plan) or $65.98 if BTC's "Basic Landline" fixed voice plan is included. These prices are considerably lower than the monthly subscription charges for the cheapest double-play ($77.99) or triple play bundles including pay TV services ($92.98). As such, purely based on relative prices, these services may be considered demand-side substitutes.'*

Given the prevalence of customers taking TV as part of a bundle, this is therefore the central observation to assess in this market. CBL believes, based on the evidence presented in this submission, that demand-side substitution between TV and OTT services exists and consequently, that CBL's position in this content market is fast receding. **As explained below, CBL rejects URCA's supply side analysis and its conclusion that there is no supply side substitution between pay TV and OTT services. Hence there is no SMP in this content market.** It is entirely possible that there is a declining group of customers that value pay TV services but these customers should not be viewed as a separate market, rather as late adopters in a wider content market that is transitioning to new technologies. They may need protections against the discontinuation of the service and to ensure its affordability, but these are more effectively achieved through universal service measures.

The broadband market differs from the TV market because URCA has found CBL to have SMP in upstream markets for wholesale broadband services, and CBL currently offers two regulated wholesale broadband services, BRO and WDIA. Current best international practice requires URCA to assess if concerns in the retail market for broadband services may be addressed through regulation of upstream wholesale markets (starting with the most upstream market available and working down towards the retail market). URCA has not presented such an analysis and CBL is of the view that URCA should include such an assessment in its final determination. If, as URCA appears to suggest in this market review, wholesale regulation is deemed ineffective to address competition issues in this retail market, then CBL's regulatory obligations in the wholesale markets may be removed before a further assessment of the retail market is conducted. Alternatively, if wholesale regulation is deemed effective, there is no need for further assessment of retail markets.

**In the broadband market, subscribers may take broadband services from two infrastructure-based providers, with BTC offering wider coverage than CBL. Both providers are investing heavily in next-generation fibre-based infrastructure and recently Starlink has entered the market, offering services across The Bahamas in competition with both BTC and CBL. As we show below (Figures 3 and 9), entry level fixed broadband prices in The Bahamas are amongst the lowest and most affordable in the Caribbean region. Like the TV market, the broadband market is therefore effectively competitive and there is no SMP.**

CBL also notes that URCA no longer appears to have concerns about predatory pricing in any market, no concerns about undue bundling in any market, no concerns about undue price discrimination in any market and no margin squeeze concerns[1] that require ex ante regulation. URCA appears to be primarily concerned with consumer protection issues facing standalone customers. CBL agrees with URCA that there are likely to be small and declining user groups in the market that rely on standalone TV and fixed telephony services in particular. With younger segments of the market opting to use streaming and mobile services, these customer groups are likely to be older and they continue to make use of services they trust and value. This is not to say that they are all vulnerable customers and that these customers have affordability issues in relation to the services they purchase. These matters should be examined by URCA as part of its universal service review.

## 1.2 Strategy for fixed market regulation

However, there is no need to address these concerns through SMP regulation as proposed by URCA. Following the lead of national regulatory authorities in other countries, particularly those (such as URCA) that follow the EU model for market regulation, URCA needs to move away from ex-ante regulation, where it sets out its rules in advance, to ex-post regulation, where it reacts to activities which pose specific harm to competition and consumers. Indeed, URCA has recently consulted stakeholders on an update to its Competition Guidelines, which provide the basis for effective ex-post regulation.

URCA's noted concerns on availability, affordability and transparency can and should be addressed through targeted universal service and consumer protection regulations to ensure regulation is proportionate to the problems identified. URCA revised its Consumer Protection Regulations in 2024, and is due to complete its review of Universal Service in 2025. URCA will then be in a position to roll back ex-ante regulation on retail services, and CBL considers that the Fixed Market Review is the ideal opportunity to spell out such a strategy. By opting for continued retail SMP regulation in this market, URCA is isolating itself from a strong international trend where ex ante regulation is focussed on wholesale services and retail regulation is removed from markets to ensure operators can serve customers unimpeded by regulatory constraints. **CBL urges URCA to align itself with international best practice and deregulate these fixed retail markets, as URCA has previously done in the mobile retail markets. This would reduce the regulatory burden on the market, improve innovation, stimulate investments and further enhance competition.**

The Communications Act 2009 included some detailed provisions for universal service, the establishment of a universal service fund, and an interim determination on universal service obligations imposed on the operators. This determination has been updated in the Government's Sector Policy for Electronic Communications Services 2020-23, and repeated in the draft Sector Policy for 2023-26[2]. URCA announced its intention to carry out projects reviewing Universal Service in 2020, but they have not yet materialised. CBL urges URCA to give more urgency to this review as we believe that an appropriate universal service scheme will address URCA's concerns about affordability and the exclusion of vulnerable groups much more effectively than the remedies proposed in this market review. Market reviews are designed to identify market failures arising from the lack of a competitive market. The issues of affordability and the provision of electronic services to vulnerable groups do not arise as a result of market failures, as they exist in fully competitive markets. Properly designed universal service policies enable resources to be targeted at the appropriate groups, thus avoiding the

---

[1] URCA states that there is a concern for margin squeeze in the market for retail fixed broadband services – but: "As stated above, the margin squeeze concerns are addressed by means of ex-ante regulation in the wholesale broadband access market", see page 170 of the consultation document.

[2] URCA. Electronic Communications Sector Policy Consultation Document. ECS 11/2023. 22 September 2023. Pages 20-22

cross-subsidies of people who can afford to pay for services, and allowing the design of schemes that are not limited to the structures of anti-competitive remedies. URCA should therefore give the utmost consideration to achieving its objectives through universal service schemes rather than through the ex-ante remedies proposed in this market review.

## 1.3 CBL's summary comments on the fixed market reviews

### 1.3.1 Standalone and bundled services as the basis for market review

In its 2014 review of the fixed market, URCA analysed three markets, retail fixed voice, high speed data and connectivity, and pay TV services. It has taken a very different approach in this market review, with an analysis based on whether voice, broadband or pay TV services are offered on a standalone basis or as part of a bundle of services. This approach drives the market definition process, and hence the findings of dominance and the imposition of remedies. However URCA offers no discussion or justification for this novel approach,

CBL considers this approach to be mistaken. It confuses a method of marketing an electronic communications service with the service itself. 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) which they can use and gain economic or social benefit from its consumption. It is these services that should form the basis of URCA's market definition. To illustrate the weakness of URCA's approach; it was the operators that decided to bundle services as part of their commercial strategy to offer additional convenience by simplifying and streamlining the product purchasing process. Customers no longer need to purchase multiple products separately, and can benefit from targeted discounts and a more convenient billing process. This saves the customer time, money and effort, ensures that the different products can work together, and enhances the overall customer experience. However customers could change the values they place on these factors, and the operators could easily decide to market their services in a different way altogether. URCA's approach would then fall apart.

Moreover, this approach has made URCA's analysis over-dependent on the analysis of current prices of bundles, which operators can change (subject to the Retail Pricing Rules for BTC and CBL). On page 89 of the Consultation Document, URCA quotes Starlink's retail prices, but these have been significantly reduced since URCA completed its analysis[3]. If URCA's proposals to reduce its price controls on bundles (which CBL welcomes) go ahead, the price of bundles may well change, potentially undermining URCA's analysis of substitution between standalone and bundled services.

CBL notes that, as far as it is aware, no other national regulatory authority has taken a similar approach, and considers that it does not provide a proper basis for market analysis.

### 1.3.2 Over-reliance on SSNIP and market shares as an indication of SMP

The dynamism of the fixed TV and broadband markets poses challenges for market analysis that would not have been as profound in the previous market review of 2014. Convergence between different technologies can result in greater substitution between services (such as OTT over broadband and TV). In particular, the ubiquity of free services at the point of consumption limits the value of tests such as the Hypothetical Monopolist Test (or SSNIP test), which uses price increases as the basis of its analysis. In the content markets in particular many business models are emerging where customers are offered free access to content services, with the business model relying on advertising revenues. Examples of such content providers include YouTube and providers of FAST (free advertising-supported television)

[3]See:https://www.starlink.com/bs/residential?utm_source=google&utm_medium=paid&utm_campaign=160792372004&utm_content=691634788994&utm_term=starlink%20internet&utm_id=

channels. Customers make decisions on value for money, rather than simply on price, which is used as a defining criterion for identifying product markets under the Hypothetical Monopolist Test. Customers may decide to substitute OTT services for pay TV because it provides better value to them, with access possible on demand over multiple platforms including mobile phones and laptops. **The Hypothetical Monopolist Test is an inadequate methodology to capture such dynamic market evolutions.**

The EU Commission[4], has recently advocated a downgrading of the Hypothetical Monopolist Test (or SSNIP test), noting that 'in highly innovative industries, especially where there are zero priced products, it is difficult to apply the test and "… in many cases the SSNIP test serves only as a conceptual framework for the interpretation of available qualitative evidence" (page 15, paragraph 33). The Commission points out the need to consider other aspects that determine whether, **from a customer's perspective**, other products are, or are not, substitutes for the focal product. The Commission mentions value, level of innovation, quality and distribution channels as factors that may be relevant (paragraphs 50 and 51, page 20). In markets with multi-sided platforms (which are common in OTT services), the Commission concludes that "in practice, the presence of indirect network effects may render the assessment of demand substitution and, in particular, the application of the SSNIP test more challenging than in situations where no such demand interdependence between user groups exists" (paragraph 96, pages 34-35).

In addition, the Commission notes that, 'in markets where product differentiation is important (the Commission quotes the telecommunications industry as an example), market shares are regarded as "…a less reliable indicator of market power …", and an analysis of how closely the undertaking and other suppliers compete overall is important (paragraph 85, page 31).

**CBL agrees that a broader assessment of fixed markets is needed. A narrow approach as advocated by URCA is rereferred to in business literature as 'marketing myopia'[5]. Marketing myopia applies to situations where markets are too narrowly defined by products or services rather than an understanding and catering to the needs and desires of customers.** History is full of examples where products were replaced with new alternatives with substantially different product features and pricing models. Horses were replaced with cars, telegrams with phones, steamboats with planes, video recorders by on-demand streaming services. More recently marketing myopia caused Blockbuster Video to believe it was in the market for video tapes. What all these events have in common is that the new products or services were better at fulfilling the fundamental customer needs served by that particular market than the original service or product. These substitution events might have failed a narrowly defined Hypothetical Monopolist Test, but customers recognised the value of these new propositions and business models and were willing to adapt. URCA could consider doing the same.

**In our responses to URCA's questions below, we set out a number of cases where we consider that URCA has misunderstood the basis of the SSNIP or hypothetical monopolist test.** It uses the results of its consumer surveys to show that only a minority of users would switch to a substitute, and uses this as evidence that the SSNIP test has failed and that substitution is not a constraint on the monopolist's market power. However 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[6]. If it does, the market analysis then concludes that the substitute products should be included in the same market as the focal product. However URCA does not

---

[4] European Commission. Commission Notice on the definition of the relevant market for the purposes of Union competition law. 8 November 2022. Available at: https://competition-policy.ec.europa.eu/public-consultations/2022-market-definition-notice_en#view-the-consultation-document.

[5] Originally defined in Harvard Business Review article, "Marketing Myopia" by Theodore Levitt, published in 1960.

6 https://en.wikipedia.org/wiki/Small_but_significant_and_non-transitory_increase_in_price

recognise that it needs only a small proportion of users to switch to render the price increase unprofitable. Other things being equal, if more than only 10% of customers move to a substitute product following a price increase of 10% in the focal product, the SSNIP is not successful. As a result of this misunderstanding, some of URCA's analysis is incorrect, and we draw attention to these cases below.

CBL now sets out its more detailed observations on URCA's review of the various fixed markets.

### 1.3.3 Fixed Telephony market

CBL will leave this section for BTC to comment on. CBL's overall observations on the error of taking standalone products as the starting point for this market review apply to this section, too.

### 1.3.4 The Fixed TV Market

CBL is of the view that, by taking standalone TV services as the starting point for this market review, URCA has made a fundamental mistake because the focal product should be the pay TV service, not whether it is sold on a standalone basis or as part of a wider bundle. URCA has focussed its attention on a small and declining user group, while fundamentally missing the main shift in consumer behaviour since the last market review. [redacted] CBL does not have data on the proportion of those customers that may take BTC services including broadband and, given the approach taken by URCA, this would require further investigation. The standalone TV subscriptions are also declining rapidly, [redacted] While these remaining standalone TV customers may be late adopters of other content services like OTT, they are still increasingly discarding traditional linear TV services, as is the case across The Bahamas.

[redacted] CBL believes that these customers view 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. So the question for the vast majority of customers is not whether OTT services substitute for *standalone* TV services, the question is whether OTT services substitute for an incremental TV service for a customer that already has a broadband service. This matter should be given its required weight in any SSNIP test applied to this market. From this alternative vantage point, substitution of TV by OTT services can be clearly observed in this market, OTT viewership hours have overtaken TV viewership and, while TV subscriber numbers are in decline, OTT subscriber numbers are increasing at around the same pace.

**CBL is also surprised to see that URCA does not rely on the results of the separated accounts in its assessment of dominance in the pay TV market.** URCA points out that 'given that CBL is subject to tariff approval requirements for its pay TV services, the analysis of pricing and profitability is not relevant in the assessment of dominance in this market'. However, CBL is subject to tariff approval requirements *for both pay TV and fixed broadband services.* **URCA has included an assessment of CBL's profitability in the broadband market in its review and the decision to exclude it for pay TV is therefore not consistent, valid or relevant. By contrary, the separated accounts for pay TV services are highly relevant to URCA's assessment of dominance in the pay TV market as can be seen in the below Figure.**

[redacted]

| [redacted] | | [redacted] | [redacted] | [redacted] |
|---|---|---|---|---|
| [redacted] | | [redacted] | [redacted] | [redacted] |
| [redacted] | | [redacted] | [redacted] | [redacted] |
| [redacted] | | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

[redacted]

Based on CBL's calculations on the separated accounts for the period 2014-2023, [redacted] (based on the regulated WACC of 10.86%). These financial results do not offer any support for an SMP finding by URCA in the pay TV market and also do not provide any support for URCA's views that excessive price levels should be a primary concern. CBL is free to request price increases for its pay TV services under the retail pricing rules, including for its standalone services and the above figures suggest that CBL would have a strong case to do so. This would be a reasonable response by CBL in response to the price increases imposed by programmers and content owners for the rights to broadcast TV channels. However, CBL has not requested a price increase for its Prime TV services since 2014, [redacted] This is a strong indication that CBL is constrained by market forces, including OTT substitution, and that continued ex ante regulation is not needed to protect consumers. These results are offering evidence that any observed issues with pay TV are not market failures, but rather that they are consumer protection issues that should be addressed through universal service regulation and consumer protection regulations. [redacted]

**Finally, while, as pointed out, CBL fundamentally disagrees with URCA's approach to this market review, it is important to note that even in URCA's methodology, standalone TV services and bundles including fixed voice and fixed broadband services do not form part of the same service market.** The similarity in prices observed by URCA is not an indication of substitution, if this was the case there would not be any customers taking standalone TV subscribers, given that they can acquire fixed telephony services at no or small incremental costs. The fact that they do not do so is providing evidence that fixed telephony services are of limited value or utility to such customers (who may well use mobile phones for calls); it should not be confused with substitution. If URCA persists with its approach to market definitions these bundles should be removed from this standalone product market and be added to the market for multi-product bundles.

### 1.3.5 The fixed broadband market

As noted in the introduction, broadband customers in The Bahamas benefit from two parallel fixed networks in most of the country, with substantial recent upgrades in capacity and download speeds. Broadband customers get good value for money demonstrated by our regional benchmark and, as noted by URCA, [redacted] In addition, a strong international broadband supplier has entered the market in the form of Starlink, offering services not just in the more remote areas of The Bahamas, but across the most populated areas as well.

In addition, this market has been made accessible through the introduction of broadband resale and Wholesale Dedicated Internet Access (WDIA), both services designed to address the barriers to entry posed by the requirement to roll out fixed access networks to offer broadband services. In the footnote on page 87 of the consultation document, URCA makes the point that 'neither of these wholesale services are likely to support a larger scale entry'. CBL notes that, in other markets around the world, intrusive ex ante retail regulation has been replaced by a focus on targeted and fit-for-purpose wholesale services and regulation. URCA should give more attention to such a strategy, and not deal with potential wholesale regulation in the broadband market with a comment in a mere footnote. Broadband resale and WDIA were specifically designed by URCA to offer access opportunities in the broadband market and lower the barriers to entry and as far as CBL is aware they were not designed to provide access opportunities on a small scale only. Further improvements may be made to these wholesale services, but the lowering of the barrier to entry in the retail broadband market through the introduction of regulated wholesale services is fundamental to this market review and one of the reasons why ex ante retail regulation is no longer required in the fixed broadband market.

**In summary, the fixed retail broadband market in The Bahamas is effectively competitive, international market entry has occurred and barriers to entry have been lowered. There is no retail SMP in this market.**

## 1.4 URCA's proposed remedies

### 1.4.1 Market for retail fixed broadband services

In the market for retail fixed broadband services URCA is proposing the following remedies. CBL offers its summary comments below, with more detail offered in our responses to URCA's consultation questions.

**Proposed obligation**: continue offering current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services.

As noted previously, CBL does not believe any bundle should form part of this service market as defined by URCA. CBL's understanding of the obligation is that it is aimed at protecting the interest of customers that only want this service. CBL does not have an issue with this obligation per se, but, as noted, CBL believes that these requirements should be addressed through universal service regulation.

**Proposed obligation**: Not increase prices of *entry-level* standalone fixed broadband plans over last year's inflation (capped at 5%).

CBL notes that URCA's main concern is the risk that CBL, as the SMP operator, increases the prices of its standalone fixed broadband plans in a way that would result in affordability concerns for those customers who only want this service. CBL notes that URCA offers no evidence in the market review of the definition of any vulnerable user groups it is trying to protect, no working definition of affordability and no evidence on how existing price levels for fixed broadband plans compare with this definition of affordability. Indeed, readily available regional benchmarks show that fixed broadband prices are amongst the cheapest and most affordable in the Caribbean region (see Figures 3 and 9 below). If URCA intends to impose price caps on any of CBL's services, this should be done through the development of detailed business cases setting out the expected evolution of and investments in the service, and allowing CBL to earn a reasonable rate of return within the cap (this also applies to the cap on entry-level standalone TV services). No such evidence has been presented by URCA and it is therefore hard to see how the proposed remedy, which bars CBL from raising prices above inflation, can be proportionate, targeted and efficient in these circumstances. **CBL also believes this approach presents an infringement of CBL's right to due process because the cap of 5% is proposed without any analysis or justification, making it an arbitrary number. A more proportionate remedy in the current circumstances would be to include price increases below inflation in the notification regime, with above-inflation price increases subject to pre-approval by URCA.**

### 1.4.2 The market for Retail Pay TV services

**Proposed obligation**: to continue offering current standalone pay TV tariff plans.

CBL does not have an objection to this obligation, but CBL believes this obligation should be further defined through targeted universal service regulation.

**Proposed obligation**: not increase prices of entry level standalone pay TV plans over last year's inflation (capped at 5%).

CBL again notes that URCA offers no evidence in the market review of the definition of any vulnerable user groups it is trying to protect, no working definition of affordability and no evidence on how existing price levels for fixed pay TV plans compare with this definition of affordability. URCA also includes CBL's Prime TV services in its definition of 'entry-level' services. The traditional definition of entry-level is the lowest priced services which in this case is CBL's Prime Local service. In addition, as shown in our earlier section on the separated accounts, [redacted] In these circumstances it is unlikely that a reasonably designed pricing restriction based on the development of regulatory business cases, would result in identical caps for both services, as proposed by URCA. The proposed remedy, which bars CBL from raising prices above inflation, is therefore not proportionate, targeted and efficient in these circumstances. CBL also believes this approach presents an infringement of CBL's right to due process.

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. This would allow CBL to make the case for above-inflation price increases should it want to, and for URCA to assess such an application on its merits.

### 1.4.3 Multi-product bundles including pay TV services (CBL SMP)

**Proposed obligation**: No ex ante remedies specific to the service.

CBL agrees that multi-product bundles should not be subject to specific ex ante remedies and, as noted, CBL believes this applies to all bundles, including bundles of broadband and telephony services.

### 1.4.4 Over-arching remedies

#### Notification system

CBL considers the replacement of the existing pre-approval requirements (the retail pricing rules) with a notification system as a potentially positive step, provided the notification system is efficiently designed. An efficient notification system, in CBL's view, has the following characteristics:

- **Purpose**: It is important that the national regulatory authority and operators are clear about the purpose of any scheme, so that there is no doubt about its scope and boundaries. CBL understands that URCA's purpose is to be informed about price changes that the operators are making for services in which they have SMP.
- **Transparency** - any notification requirements should be transparent to a degree that would allow CBL to self-assess whether a notification is complete and compliant. Any ambiguity would introduce the risk of confusion or delays. One of the primary advantages of a notification system is that it improves time to market for the regulated operator and potential delays are therefore to be avoided at all times.
- **Proportionality** – a notice under this regime should only include information on the proposed product changes. In this context CBL is concerned that URCA may require information on 'expected take-up of the plan' as part of a notification of the plan. This serves no obvious purpose under a notification regime and CBL would provide data on actual take-up of services in any event under existing transparency requirements.
- **Timing of the notification** – an efficient notification regime defined on the above principles would have no need for notifications ahead of proposed changes to products. Rather, URCA should be notified at the same time as the change is being implemented.

#### Obligation to develop separated accounts

CBL would kindly ask URCA to reconsider the obligation to continue to develop separated accounts in accordance with URCA's Accounting Separation Guidelines. In markets where URCA is now mostly concerned about consumer protection issues and not with issues central to the separated accounts like undue discrimination, margin squeeze, predation and cross-subsidisation, there does not appear to be a valid and proportionate reason to continue with the obligation to prepare these accounts. Also, URCA has not, historically or in this preliminary determination, relied on the outcomes and findings of the separated accounts and their continued preparation do not serve a clearly defined purpose. The preparation and auditing of these accounts poses a significant regulatory burden on CBL in terms of costs and human resources. The proposed remedy is therefore neither targeted nor efficient and should be removed.

#### Publication requirement

URCA is considering an obligation to publish the necessary information so customers and competitors have access to the relevant information when making their choices. CBL does not have any obligations to this requirement and is willing to work with URCA on any perceived gaps.

#### Annual submission of overview of SMP service portfolio

CBL objects to this obligation. 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 this SMP service portfolio. An additional obligation for an annual submission is therefore inefficient and disproportionate.

#### Concerns on anti-competitive lock-in

CBL notes that URCA has listed concerns on anti-competitive lock-in without providing insight into the specific issues that concern it or its proposed remedies to address this 'market failure'. CBL is of the view that customers in The Bahamas are generally well aware of alternatives to their TV and broadband services and certainly the availability of BTC's services is universally known. It is possible there are pockets of the market where awareness is limited, and CBL is willing to work with URCA to ensure these customers groups are offered suitable protection in relation to the affordability of their services. CBL urges URCA to specify its concerns on anti-competitive lock-in to see whether they are already addressed in other regulatory controls. For example, the Individual Operating Licence already requires operators to offer contracts that have a maximum duration of 12 months (clause 17.2.5). This would ensure this market review is not delayed any further and market participants can provide a comprehensive and holistic response on URCA's proposals.

In summary, CBL proposes the following on appropriate remedies in the fixed markets.

| Service Market | Proposed remedy | CBL’s main comments |
|---|---|---|
| Retail fixed broadband services (CBL SMP Market 1, BTC SMP Market 2) | Continue offering current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services.<br><br>Not increase prices of entry-level standalone fixed broadband plans over last year’s inflation (capped at 5%). | There is no SMP in this market. Consumer protection of small and declining customer groups should be addressed through universal service regulation.<br><br>There is no objective analysis presented to support a cap at inflation. Instead, price increases above inflation should be subject to URCA’s approval. Any price increases below inflation should be included in the notification regime. |
| Retail Pay TV services (CBL SMP) | Continue offering current standalone pay TV tariff plans.<br><br>Not increase prices of entry level standalone pay TV plans over last year’s inflation (capped at 5%). | There is no SMP in this market. Consumer protection of small and declining customer groups should be addressed through universal service regulation.<br><br>There is no objective analysis presented to support a cap at inflation. Instead, price increases above inflation should be subject to URCA’s approval. Any price increases below inflation should be included in the notification regime. Finally, CBL’s REVTV Prime service is not an entry-level (lowest price) service and this service should be removed from the price cap. |
| Multi-product bundles including pay TV services (CBL SMP) | No ex ante remedies specific to the service | There is no SMP in this market. CBL agrees no ex ante remedies are required for bundled services and would suggest to extend this approach to standalone services. |

| | | |
|---|---|---|
| Over-arching remedies | Retail Pricing Rules (pre-approval requirements) replaced with notification system of price changes, withdrawals and changes in T&Cs. | This is potentially a positive step provided the notification regime is fit-for-purpose. |
| | Development of Separated Accounts. | The concerns that give rise to this requirement are no longer present based on URCA's analysis and this obligation may now be removed. |
| | Publication requirement - publish the necessary information so customers and competitors have access to the relevant information when making their choices. | This should be addressed through universal service regulation. |
| | Annual submission of overview of SMP service portfolio. | URCA would already have access to all information required through the notification regime and an additional requirement for an annual submission is disproportionate and should be removed. |
| | For stand-alone services only, pre-approval is required for price increases. | Price increases below inflation should be included in the notification regime, price increases beyond this level may be subject to pre-approval. |

### 1.5 The value of regular market reviews

Finally, CBL agrees with URCA's stated observation that it is good practice to review markets on a regular basis to ensure that ex-ante regulations remain fit for purpose and focused on Licensees with market power or SMP. **CBL trusts that URCA agrees that the timing of this market review of fixed retail services, a full ten years after the previous market review of fixed retail services, is out of step with such best practice. As a consequence, CBL has been subject to pre-approval requirements that are, in URCA's words, a 'non-trivial regulatory burden' for many years, and a more regular review of these markets would likely have resulted in a substantial lessening of this burden at a much earlier stage. In light of the fast and dynamic development of these fixed retail markets, CBL proposes that URCA should conduct a market review every 3 years.**

**Replies to URCA's questions**

## 1.6 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?

As noted, CBL does not agree with URCA's approach to define markets as standalone services. This is such a fundamental issue that comments on URCA's questions may only be made at a high level at this stage, because the detailed analysis presented by URCA takes this flawed starting point as the basis before taking the detailed assessment in a largely irrelevant direction. URCA's justification for dividing fixed telephony into standalone and bundled services (page 36) confuses market developments with marketing, and ignores the fact that fixed telephony is the same service, whether bought individually or as part of a wider bundle. CBL will elaborate on this issue in the below sections on fixed TV and broadband services.

In Section 4.1.1.2, which asks whether standalone fixed broadband services are in the same market as standalone voice services, URCA has conflated two questions:

- Are broadband services in the same market as fixed telephony services?
- Are fixed voice services sold on a standalone basis in the same market as fixed voice services sold as part of a bundle?

URCA's analysis focusses on the first issue, and therefore draws erroneous conclusions on the second issue. In particular URCA's SSNIP test concludes that a bundled service is not a substitute for standalone services, but this is because the bundle also includes other services. Instead URCA should compare like with like, that is, the focal product bought as a standalone service with the other services purchased in a bundle, as against all services in a bundle. Of course, this is the choice faced by customers, most of whom take a fixed broadband service from BTC or CBL.

CBL does not agree with URCA's analysis that there is no supply-side substitution between standalone fixed voice services and mobile voice services in The Bahamas. URCA argues that 'both services use different network infrastructures, and the fixed investment cost of deploying a fixed network is considerable, with it taking a significant amount of time to deploy such a network.' However, fixed telephony can be readily provided over a mobile network on a fixed-wireless basis. The same applies to fixed broadband services over a 5G mobile network. There is therefore substantial supply side substitution in this market with two competing mobile networks and this supply side substitution offers a significant constraint on the providers of fixed telephone and fixed broadband services. We note that the analysis of the perceived differences between fixed and mobile telephony (page 49) relies on the views of the minority of customers in URCA's Customer Survey, not the majority. For example, the text states that 23% of users say that they cannot rely on mobile services as evidence of a different quality of service. However it is fair to conclude that the rest (77%) found no such problem, and hence URCA's conclusions here do not stand up.

URCA's conclusion that there is limited demand side substitution for fixed and mobile services (page 53) is based on a misunderstanding of the SSNIP test. The purpose of the SSNIP test is not to show whether most fixed voice users would move to mobile services, but whether a hypothetical monopolist would lose money following a small price increase. URCA's own survey results (Figure 15, page 52) show that 9% of users would move to mobile, making the price increase probably unprofitable given that these users are likely to have higher calling rates. This would then provide evidence that fixed and mobile calls are in the same market.

[redacted]

## 1.7 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.**

The market definition presented by URCA, including standalone fixed telephony services and excluding all bundled services including fixed telephony services, almost guarantees a dominance finding and ex ante retail regulation is likely to persist in The Bahamas until customers no longer take these services on standalone basis or until URCA changes this approach. The same issue applies in the market definition and dominance assessment in the fixed broadband and pay TV markets and CBL will set out its detailed position in those sections of the consultation response.

## 1.8 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?**

### 1.8.1 Are standalone and bundled fixed broadband products in the same product market?

CBL disagrees with URCA's approach to the definition of this market and its focal product as a standalone fixed broadband service sold to residential customers. For the purpose of this consultation however, CBL has followed URCA's approach in order to answer the questions.

CBL considers that URCA has again conflated two separate questions in Section 5.1.1.1:

- Are broadband services in the same market as fixed telephony services and pay TV services?
- Are fixed broadband services sold on a standalone basis in the same market as fixed broadband services sold as part of a bundle?

URCA's analysis demonstrates that broadband services are not in the same market as telephony and pay TV services, but URCA concludes from it that standalone and bundled services are also in a different market. The analysis of demand side substitution compares the prices of the standalone broadband service with the prices of a bundle, which includes voice and television services. This does not compare like with like. In order to answer the second question, URCA should analyse the impact of a SSNIP in the standalone broadband service on a customer who also has a bundle of voice and TV services. As an example using CBL's entry level prices:

- The customer pays a total of $89.50 per month ($49.50 for the standalone broadband service, plus $40 for the combined Prime Local and RevTalkUnlimited)
- A SSNIP of 10% on the standalone broadband price would bring the price up to $54.45
- The total package would then cost $94.45
- The customer would then be better off with a triple play bundle (REVPrime at $92.98)
- The hypothetical monopolist would lose money on the SSNIP, and hence broadband available on a standalone basis is in the same market as broadband in a bundle.

URCA may wish to make a similar analysis for BTC's products and for different broadband speeds, but CBL considers that its conclusion above will be replicated in these tests.

### 1.8.2 Demand-side substitution

CBL agrees with URCA's observation that there are likely standalone broadband customers in the market that do not value fixed telephony and pay TV services. In fact, fixed broadband is the only standalone service with a growing customer base in CBL's service portfolio. This is likely because, increasingly, these customers combine their fixed broadband service with other services including OTT and mobile services. These customers are therefore more likely to be standalone customers of multiple services from multiple providers.

CBL also agrees with URCA's assessment that standalone broadband customers would not likely view multi-product fixed bundles as alternatives (i.e. in their entirety, see our earlier comments on the correct application of the SSNIP test) for their standalone broadband service, but in CBL's view this would extend to multi-product bundles that include fixed telephony services. URCA notes that there is a small price differential between standalone fixed broadband and fixed voice offerings purchased separately, and double-play bundles. For example, in the example provided by URCA, 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 at $124.00. The first thing to note is that, given that these standalone broadband customers can essentially add telephony for free, the fact that they do not do so is very much suggesting they do not value fixed telephony services, and may well rely on mobile calling and messaging, and voice over IP services This is providing some evidence on the earlier observations on this customer group.

CBL's second observation, and again staying within URCA's flawed approach, is that [redacted] The entry-level product is also the focus of URCA's proposed remedies and therefore a much better 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 service from $49.50 to $54.45. The relevant double play bundle of REVNETPrime + REVTALKPrime is offered at $54.98 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 fundamental building block for many consumers' electronic communications services, and whether they use this in isolation (as a standalone service) or in combination with other fixed and mobile services depends on the range of services that suit their specific needs. Hence to see the fixed broadband market as divided into separate standalone and bundled services does not reflect the realities of the market in The Bahamas.

### 1.8.3 Are retail mobile data services in the same product market?

#### Demand-side substitution

Again, URCA misunderstands the SSNIP test. On page 86 URCA notes from its customer survey that the majority of fixed broadband customers are unlikely to move to mobile data services in the event of a SSNIP, and concludes that there is no demand substitution between the two services. The SSNIP test investigates whether a hypothetical monopolist would lose money following a small price increase. URCA's own survey results (Figure 25, page 87) show that 14% of users would either move to MiFi services or mobile data services. This makes the price increase of 10% unprofitable and provides evidence that fixed broadband and mobile data services are in the same market.

CBL accepts that there are differences between fixed broadband services and mobile data services, and that in reality they are both substitutes and complements for different customer groups and in different areas. This balance is likely to change as fibre to the premises is rolled out and as 5G networks are introduced to The Bahamas. We therefore conclude that from the demand aspect, mobile data services do act as a constraint on fixed broadband services, albeit not a strong one, but that this is likely to become stronger over the coming years.

#### Supply-side substitution

URCA considers mobile data/broadband services are not supply-side substitutes to retail fixed broadband services. This is because, according to URCA, 'both services are delivered over separate network infrastructure and technologies and require different service licences. Further, it is extremely costly and time intensive to deploy a fixed (access) network'. CBL does not agree with this assessment by URCA. A hypothetical provider of mobile broadband services would, in response to a SSNIP, not deploy a fixed (access) network, such a provider would use its mobile broadband network to offer fixed wireless broadband services. The barrier to do so would be substantially lower than presented by URCA and this provides a constraint on the behaviour of fixed broadband providers, even if URCA does not consider retail mobile data services to form part of the same product market. The same dynamic applies in the fixed broadband market.

### 1.8.4 Are fixed broadband services provided via LEO satellites part of the same product market?

CBL agrees with URCA's preliminary conclusion to include LEO satellite-based broadband services within the product market of fixed broadband services.

As noted previously, the vast majority of CBL's standalone broadband customers take the entry level 30 Mbps service at $49.50 per month. In response to a SSNIP, some of these may well move to Starlink, whose residential package now costs $55 per month[7]. CBL notes that evidence of Starlink's services can be seen around the country, including Grand Bahama and New Providence.

### 1.8.5 Are retail broadband services for residential and business customers in the same product market?

There are significant differences in service propositions, pricing, sales and marketing and customer care between residential and business customers. Specifically for the SME segment of the business market addressed by URCA in this consultation, CBL agrees that these differences do not require the definition of a separate service market at this stage.

### 1.8.6 Geographic market definition

CBL agrees with URCA's proposed geographic market definition.

### 1.8.7 CBL's answer to consultation question 3:

CBL does not agree with URCA's approach to take standalone services as the starting point for its review of all these fixed service markets. Standalone service, particularly those for fixed telephony and fixed TV services have a fast-declining relevance in this market. If there are consumer protection concerns in relation to these services these should be addressed through consumer protection and universal service regulations.

[7]https://www.starlink.com/bs/residential?utm_source=google&utm_medium=paid&utm_campaign=160792372004&utm_content=691634788994&utm_term=starlink%20internet&utm_id=

## 1.9 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.

CBL sets out its detailed observations below, focusing on URCA's assessment of Geographic Market 1 and assessing dominance across all broadband services.

### 1.9.1 Current and historic market outcomes

As CBL has noted, URCA puts too much emphasis on market shares in its assessment of dominance. This is an inadequate measure in a market of this nature where competition is offered over multiple platforms and where barriers to entry have been lowered by targeted wholesale services, designed by URCA with the express aim of promoting competition. CBL believes that this market fails at least two of the three tests for ex ante regulation; the market for retail fixed broadband services in The Bahamas is effectively competitive and barriers to entry have been lowered through regulatory intervention.

### 1.9.2 Economies of scale and scope

CBL agrees with URCA's assessment that both Licensees benefit from economies of scale and scope but does not agree that there is no relative advantage for either of them. BTC is part of the Liberty Global Group, the largest cable operator in the world. In areas like product development, procurement, research and development and many others, BTC would therefore benefit from scale advantages not available to a relatively small and independent provider like CBL. CBL also does not agree that this market structure is likely to result in high and non-transient barriers to entry into this market. We will address this issue in the sections below.

### 1.9.3 Barriers and switching costs

CBL considers that, with the introduction of fixed number portability in The Bahamas that are free to the customer, barriers to switch have been lowered substantially and customers have reasonable options to switch between providers.

### 1.9.4 Absence of potential competition

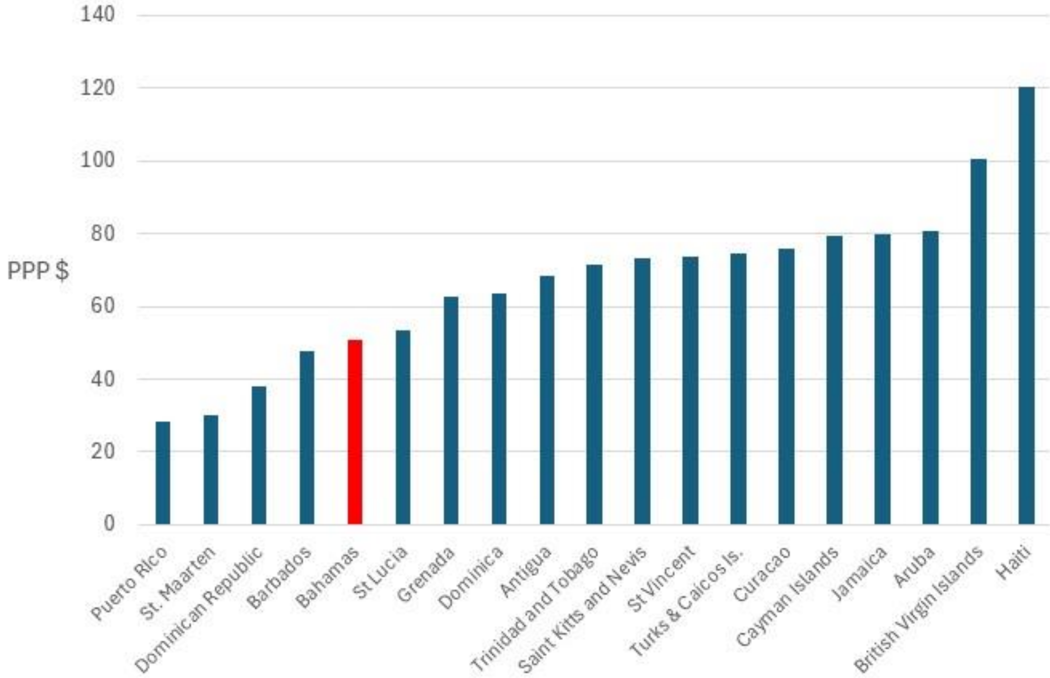
CBL believes URCA underplays the significance of the market entry by Starlink in the fixed broadband market. Low earth orbit (LEO) technology allows Starlink to provide fixed broadband services in areas where it is difficult (or too expensive) to deploy broadband services over terrestrial networks and this is a useful feature in The Bahamas. However, Starlink's presence is not limited to such areas and there is evidence of Starlink's services across The Bahamas including densely populated areas in New Providence and Grand Bahama. Starlink's recent price reductions show that it wishes to compete with CBL's and BTC's broadband offerings, and so URCA must now view this market as being (at least) prospectively competitive.

### 1.9.5 Excessive pricing and profitability

URCA appears to put great reliance on this section in its assessment of SMP in the market for fixed broadband services. CBL believes this analysis to be fundamentally flawed.

CBL would suggest URCA puts no value on an analysis of ARPU as an indication of pricing. As mentioned by URCA, ARPU is affected by many non-price factors including the mix of services taken by customers and where ARPU is observed to increase, the value obtained by customers is also likely to have risen this should not be confused with price increases. The reality is that prices for broadband services have largely remained flat in The Bahamas and broadband prices are also low when compared to other countries in the region, as shown in Figure 3 below. This Figure shows the ITU's retail price benchmark for entry-level broadband services for 5 Gbps (or above) fixed broadband services for the Caribbean region, at purchasing power prices.

**Figure 3 – Regional entry-level broadband prices (PPP $, 2023)**




Source: ITU Retail price benchmark 2023, available at https://www.itu.int/en/ITU-D/Statistics/Pages/ICTprices/default.aspx

This figure shows that fixed broadband prices in The Bahamas are well below those charged in most other Caribbean countries, and CBL is disappointed that URCA did not reference any regional benchmarks in its discussion of excessive pricing (pages 104-106 of the market review). Indeed, in its discussion of potential remedies (pages 168 – 170 and 174), URCA alleges that excessive pricing occurs in fixed broadband markets, when the evidence of the regional benchmark above points to the opposite conclusion.

CBL refers to Table 16 of the consultation document where URCA presents a comparison of retail prices at which BTC and CBL offer comparable retail broadband tariff plans. URCA observes that for the three price points considered, CBL is consistently charging a higher retail price than BTC (ranging from 38% to 52% higher). URCA makes the point that the observed differences in retail prices could suggest that CBL 'is able to price independently of the market' and that 'this may explain CBL's increasing market share over time'. This analysis is fundamentally flawed. CBL has been subject to the retail pricing rules for its broadband services since 2014 and any broadband prices would therefore have been approved by URCA or by its predecessor the Public Utilities Commission (PUC). CBL is therefore not in a position to price independently of the market. It is more likely that the table is indicative of BTC's commercial strategy relative to CBL. Where CBL, as the market leader, offers significant discounts for its bundles relative to its standalone services, BTC as the challenger in the broadband and TV markets would logically deploy a market penetration strategy with lower prices to entice standalone customers to switch between providers. This is not an indication of independent pricing, but an example of competition at work.

URCA then presents a timeseries analysis of CBL's separated accounts and observes that CBL has sustained a level of profitability on its broadband activities beyond its regulated cost of capital

(10.86%) between 2015 and 2021. 2022 was the only year when its ROCE (return on capital employed) was marginally below the regulated WACC. CBL's first observation on this assessment is that the regulated WACC of 10.86% was set in 2014 and should be updated to reflect current market circumstances. In all likelihood, given increases in inflation and interest rates during this period, an updated regulated WACC would be higher than 10.86%. [redacted]

[redacted]

[redacted]

[redacted]

CBL notes that significant investments in broadband infrastructure have been made during this period and that [redacted] supports a finding that SMP does not exist in this market. URCA appears to come to the opposite conclusion.

[redacted] has had a second significant impact on CBL by removing a potential source of cross-subsidisation for its loss-making TV business. The returns on fixed broadband services and TV services in combination are therefore quite informative. [redacted]

[redacted]

### 1.9.6 Characteristics of service providers

**Control over infrastructure that is not easily duplicated**

URCA does not consider that this criterion supports any dominance findings in Geographic Market 1. CBL agrees and notes that, relative to other markets, the relevant observation here is that fixed infrastructure in The Bahamas *has* been fully duplicated and that BTC's infrastructure coverage is more extensive than CBL's.

### 1.9.7 Market outlook or prospect of competition

**Barriers to entry**

URCA reviewed the wholesale broadband access market in 2020 and imposed the obligation on BTC and CBL to offer wholesale Dedicated Internet Access (WDIA) services on regulated terms. These regulatory measures were specifically designed by URCA to lower the barrier to entry in the fixed broadband market with new entrants no longer having to deploy alternative fixed access infrastructure to enter the market. URCA makes the observation that it is 'not aware that these wholesale services have resulted in further market entry per se and that given the elapsed time since these regulatory obligations are in place, URCA considers this as strong indication that barriers to entry prevail in Geographic Market 1'. CBL disagrees with this observation. CBL is of the view that barriers to entry have been lowered by the introduction of wholesale DIA in particular. This service allows new entrants to offer fixed broadband services across The Bahamas without the need to roll out fixed access infrastructure, and it is the threat of market entry that imposes a real constraint on the ability of operators to act independently of the market. The service also allows new entrants to cherry pick and focus on high margin customers in the market, whereas existing providers offer services across all of The Bahamas. Rather than considering a lack of further market entry as evidence that barriers to entry prevail, URCA may consider the alternative explanation that this market is not that attractive to enter because of strong competition resulting in low prices, high levels of innovation and, [redacted] If URCA is of the view that the regulated WDIA product is not fit-for-purpose, CBL would recommend a review to ensure the services lowers barriers to market entry as it should do, and not to continue to rely on ex ante retail regulation in a market that does not require it. URCA would join the ranks of the vast majority of regulators around the world when doing so. The European Commission, for example had removed all retail markets from its published list of markets susceptible to ex ante regulation by the time of URCA's previous market review in 2014, and no retail markets are currently considered susceptible to ex ante regulation in the EU[8].

Finally, CBL notes that market entry by Starlink is significant as this opens up a new frontier of competition in all of The Bahamas. Starlink is not the only satellite provider of broadband services and further potential entry by its competitors like Viasat and HughesNet should be considered as part of this market review.

#### Innovation and diversity of plans

CBL does not agree that there has not been much innovation in the tariff offerings of broadband services over the last few years. Both CBL and BTC have started to offer services with speeds up to 1 Gbps over newly rolled out fibre infrastructure. This change offers many opportunities and benefits to customers in The Bahamas, including high quality access to content and streaming services that compete with CBL's traditional linear TV services. Customers in The Bahamas therefore enjoy access to high quality services at attractive prices, particularly when compared to other countries in the Caribbean (see Figure 3). CBL would invite URCA to describe the kind of innovation that it believes is missing from this market or alternatively remove this criterium from its assessment.

#### Barriers to expansion

CBLs agrees with URCA's consideration that no Licensee enjoys a commanding advantage over the other based on this criterion and that barriers to expansion are low.

#### Other factors considered

CBL notes that relative to the main competitors in this market – BTC and Starlink, its overall size puts CBL at a strong disadvantage. Both BTC (through Liberty Global) and Starlink have global operations, hence expertise, scale and access to finance that puts them in a superior competitive position to a small independent local operator like CBL. Being part of an international group also allows BTC and Starlink to utilise their international experience with the introduction of new services to the market, improvements to distribution and sales networks, and to create scale and scope economies in other areas like branding and procurement. As a small provider with a national footprint, CBL is not in a position to do so. These other factors therefore provide additional evidence that CBL is faced with strong and effective competition in this market that offer an effective constraint on CBL's behaviour in the fixed broadband market.

### 1.9.8 CBL's answer to consultation question 4:

CBL has significant concerns about the analysis presented by URCA and URCA's preliminary conclusions. CBL competes in the market for fixed broadband services with BTC, a subsidiary of Liberty Global, one of the largest cable operators in the world. Services are also offered by smaller providers like Bahamas WiMax, Paradise Connections, Coakster Wireless and Global Nexus. The market for fixed

[8] See: EU Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2014/710/EU).

broadband services has seen recent market entry in the form of global service provider Starlink and barriers to entry have been lowered through the introduction of WDIA services in 2020. In addition, there is supply side substitution from mobile networks in the market. [redacted] and regional benchmarks strongly suggest customers in The Bahamas have access to high-quality and reasonably priced broadband services increasingly offered over modern fibre-based high-speed infrastructure, with both BTC and CBL investing heavily in such infrastructure. Taken together, there is strong evidence that SMP does not exist in this retail market.

## 1.10 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?**

### 1.10.1 Are standalone pay TV and bundles including pay TV services in the same product market?

As with its analysis of fixed voice and broadband services, URCA conflates two questions here:

- Are pay TV services in the same market as fixed voice and broadband services?
- Are pay TV services sold as standalone in the same market as pay TV services in a bundle?

URCA's analysis points to a negative answer to the first question, but its demand side analysis does not adequately address the second. By analysing the price of standalone television with the prices of a bundle, URCA is not comparing like with like. Instead it should examine the impact of a SSNIP in the price of a standalone pay TV subscription on a customer who also has a bundle of voice and broadband services. Using CBL's entry level products, the analysis would be:

- The customer pays a total of $74.99 per month ($10 for the standalone payTV service[9], plus $64.99 for the combined RevNETPrime and RevTalkUnlimited)
- A SSNIP of 10% on the standalone pay TV price would bring the price up to $11
- The total package would then cost $75.99
- The customer would then be better off with a triple play bundle at $74.99
- The hypothetical monopolist would lose money on the SSNIP, and hence pay TV available on a standalone basis is in the same market as pay TV in a bundle.

Hence CBL considers that URCA's conclusion that the pay TV market is separated into standalone and bundled services is not supported by a proper economic analysis.

Moreover, as has been pointed out in the introduction of this document, CBL believes that URCA is focussing its attention on a small and declining customer group taking standalone TV services and, in doing so, fails to recognise the wider competitive dynamics relevant to this market segment. [redacted] While these remaining standalone TV customers may be late adopters of other content services like OTT, they still increasingly discarding traditional linear TV services, as is the case across The Bahamas.

As noted by URCA, internet streaming services are available to any end user with a broadband connection. [redacted] Broadband customers make decisions on TV, OTT and other content services on an incremental basis. As CBL will demonstrate, this strongly implies that OTT services form part of the wider TV market that CBL is active in.

If URCA has concerns in relation to a small and declining group of standalone TV customers then CBL would propose to address those concerns through targeted universal service regulation, not through SMP regulation. CBL notes that all of URCA's proposed remedies may be addressed in this way.

### 1.10.2 Are IPTV and cable-based pay TV services in the same product market?

CBL agrees with URCA's preliminarily conclusion that IPTV services should form part of the same product market as cable-based (standalone) pay TV services. CBL would question the relevance of some of the analysis presented, including the comparison of standalone and bundled TV prices. As noted by URCA, BTC is in a position to offer standalone TV services and could do so with services of similar prices and of similar quality to CBL's offers, standalone or otherwise. The fact that BTC has not done so is likely related to the small and declining significance, and therefore limited commercial attractiveness, of this segment of the market.

### 1.10.3 Are satellite-based pay TV services in the same product market as standalone pay TV services?

URCA notes that from a practical point of view there is no need to define separate product markets for both services because their inclusion would not alter the finding that CBL has SMP. CBL would disagree because any finding of dominance should follow the market definition, not drive it. The market definition process should pay no attention to whether operators are dominant or not, CBL offers cable-based services on its digital islands and BTC offers IPTV services on the remaining Family Islands. If URCA considers that CBL's satellite 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.

### 1.10.4 Are Internet-based streaming services in the same product market as standalone pay TV services?

CBL notes that it is not clear from URCA's analysis if standalone customers are in fact 'single play' customers or if they take, for example, TV services from CBL and broadband and telephony services from BTC. CBL would invite URCA to investigate this issue further.

CBL does not consider the analysis presented on substitution between streaming services and *standalone* pay TV services to be particularly relevant or appropriate. CBL considers OTT / streaming services and TV services to be substitutes and for these services to form part of the same service market.

There is overwhelming evidence of substitution of pay TV services by OTT services in The Bahamas:

- Take-up of TV services has steadily declined in The Bahamas as noted by URCA [redacted], a reduction of 21%. The penetration rate for this service fell considerably from 65% of total households in 2017 to 44% in Q2 2023.
- [redacted]

- [redacted]
- [redacted]
- URCA makes the point that pay TV and streaming services differ in that 'most internet streaming services offer a wide catalogue of on demand content, but limited linear TV'. Rather than putting these services in different product markets, this is actually what drives the substitution – customers increasingly want access to content at a time that suits them and across multiple devices, not necessarily a TV. Streaming services fulfil this need in a better way than traditional TV services. CBL notes that most youth segments in the market do not make use of pay TV services at all and use streaming for all their content needs. For the segment of the market that is still interested in linear services OTT providers have also evolved their products to include "Live TV" along with the On Demand options, which allows viewing to what programs air in real time just like linear TV.

[redacted] As noted by URCA, the vast majority of customers buy services in bundles. CBL notes URCA's analysis on page 148 of the market review where URCA states that:

> *'Table 25 presents the current monthly prices of selected standalone and multi-product bundle offerings, available on the operator's websites as well as internet-based streaming monthly subscription fees. If an end user subscribed to a multi-product bundle including pay TV were to switch to separate standalone fixed broadband services in order to switch away from pay TV to streaming services, it would cost at least $50.98 (combined price of Apple TV monthly subscription fee and BTC's "Basic 50 Mbps" fixed broadband standalone plan) or $65.98 if BTC's "Basic Landline" fixed voice plan is included. These prices are considerably lower than the monthly subscription charges for the cheapest double-play ($77.99) or triple play bundles including pay TV services ($92.98). As such, purely based on relative prices, these services may be considered demand-side substitutes.'*

CBL agrees with this assessment. In the wider content market that includes TV and OTT services, there are likely to be subscribers that may be slightly more technology savvy and/or customer groups that are young enough not to have grown up with linear TV. These customer groups are likely to be innovators or early adapters of the new way of accessing content, but this should not place them outside of the content market defined by URCA. Also, as shown in our assessment of the TV market, subscriber losses and reductions in TV viewership hours continue unabated and the TV market is expected to follow the standard pattern in a market confronted with a disruptive technology with innovators taking up the new service first followed by early adopters, the early majority, the late majority and finally laggards in the market. Customers taking TV services may increasingly represent the latter categories of this adoption curve and it is to be expected that such customers value the pay TV services offered by Bahamian operators as URCA has found through its market survey. If they did not currently value pay TV services, these customers would not purchase them. However, also for these customers groups, the fact remains that there is no inherent value associated with the linear TV model, with content offered on set times of the day and not on demand. The linear model is a function of the technology used, not of any underlying need by customers and, when all content valued by customers gradually becomes available online, the expectation is that all TV customers will eventually migrate to online alternatives. Taking account therefore of the behaviour of customers that have already switched to OTT alternatives together with customers that have remained, for now, on TV services, there is substantial evidence of substitution in this market.

CBL rejects URCA’s analysis of supply side substitution for pay TV. The analysis that OTT providers cannot enter the market in The Bahamas due to high barriers ignores the fact that these services are readily available to most consumers today. URCA assumes that OTT providers have to provide their own networks, when they use existing broadband networks provided by other operators, Contrary to the statements on page 129, OTT providers do not utilise HFC technology, and do not need any form of regulated access to fixed networks. Their services are available over broadband without the need for any special network provision. Hence the barriers to entry are extremely low. URCA’s conclusion on page 129 that:

*‘URCA is of the preliminary view that internet-based streaming TV services are not in the same product market as standalone pay TV services. This is mostly due to the lack of supply-side substitution between both services.’*

Is completely erroneous because it is based on a supply side analysis that is incorrect. Instead a realistic supply side analysis strongly supports the conclusion that OTT services and pay TV services are in the same market.

### 1.10.5 Are retail pay TV services for residential and business customers in the same product market as standalone pay TV services?

There are significant differences in service propositions, pricing, sales and marketing and customer care between residential and business customers. Specifically for the SME segment of the business market addressed by URCA in this consultation, CBL would agree that these differences do not require the definition of a separate service market.

### 1.10.6 Geographic Market Definition

See our earlier comment on whether satellite-based pay TV services in the same product market as standalone pay TV services.

### 1.10.7 CBL’s answer to consultation question 5:

CBL does not agree with URCA’s approach to take standalone services as the starting point for its review of all these fixed service markets. Standalone service, particularly those for fixed telephony and fixed TV services have a fast-declining relevance in this market. CBL believes that streaming and TV services form part of the same service market. If there are consumer protection concerns in relation to standalone TV services these should be addressed through universal service and consumer protection regulations.

## 1.11 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.

CBL does not agree with URCA’s dominance assessment in the retail pay TV service market for the reasons below. CBL believes that streaming and TV services form part of the same service market and sets out the implications of this alternative market definition below.

### 1.11.1 Market Structure and Market Share Trends

CBL does not have access to subscribers and revenue information of BTC in the pay TV market. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

### 1.11.2 Countervailing Bargaining Power ('CBP')

**The relevant bargaining power in the supply chain for content services is that between CBL and the owners and providers of content, i.e. the programmers. These programmers include Disney, Warner, HBO, NBA, NFL and other owners of content. For the provisioning of linear TV services, these**

programmers needed local distribution partners to ensure their content reached customers, including in The Bahamas. With the emergence of fixed broadband services and streaming, increasingly programmers can offer services directly to customers – examples in The Bahamas include Netflix, Disney+, Hulu etc. This development significantly reduces CBL's bargaining power in relation to linear TV.

CBL also suffers from the fact that it is a small independent provider of content services. [redacted] CBL has tried to address this through cooperation with other providers, for example through the regional COOP. Even then, the COOP [redacted] For comparison, Liberty Global (owner of BTC) has more than 10 million cable subscribers worldwide.

These two dynamics conspire to limit CBL's bargaining or negotiating power with the programmers significantly. This impacts on CBL's TV business model in the following main ways:

- **Price increases** - [redacted] Why can programmers increase prices for a TV service in decline? Because of their position in the streaming market. URCA may not believe in substitution between TV and streaming services, but the international owners of content certainly do.
- **Bundles** – programmers offer TV channels in bundles. Bundling of channels by programmers limits CBL's flexibility to remove unwanted and expensive content from the TV line-up. Because bundles of channels are offered at a flat monthly rate, they also result in increasing costs per subscribers if, as is the case for CBL, TV subscriber numbers are in decline.
- **Tier requirements** – for channels where CBL pays on a per channel basis, programmers typically impose tier requirements, for example requirements to ensure a channel is offered on CBL's Prime TV service, again limiting CBL's options to reduce content costs by offering channels only to customers that are interested in watching them.

URCA should have an appreciation of the above pricing approach, because by going 'direct' with retail services to customers and by increasing the prices of their wholesale linear TV services, programmers engage in a margin squeeze on their traditional distribution partners, including CBL.

These factors, in combination with the declining ARPUs for TV services (prices of pay TV services do not generally change but customers increasingly get rid of premium TV services or get rid of TV altogether), [redacted]

### 1.11.3 Characteristics of service providers - control over infrastructure that is not easily duplicated

[redacted] For OTT / streaming providers therefore, there is no need to have control over infrastructure that is not easily duplicated to reach the vast majority of pay TV customers in The Bahamas. Barriers to entry are also low for further OTT / streaming providers to enter the market in The Bahamas.

### 1.11.4 Market outlook or prospect of competition

CBL has a declining market share in the market for content offered to subscribers in The Bahamas. CBL is faced with competition from BTC in the pay TV segment of the market and with OTT/streaming providers for customers that value the enhanced flexibility offered through those services. OTT/streaming providers in particular are large multinational companies with superior access to resources and finances to CBL. In addition, through their ownership of valued content, it is the programmers that dictate terms in the supply chain for content services, not CBL.

As mentioned, CBL is surprised to see that URCA does not rely on the results of the separated accounts in its assessment of dominance in the pay TV market. URCA points out that 'given that CBL is subject to tariff approval requirements for its pay TV services, the analysis of pricing and profitability is not relevant in the assessment of dominance in this market'. However, CBL is subject to tariff approval requirements *for both pay TV and fixed broadband services* and this argument is therefore not valid or relevant. [redacted]

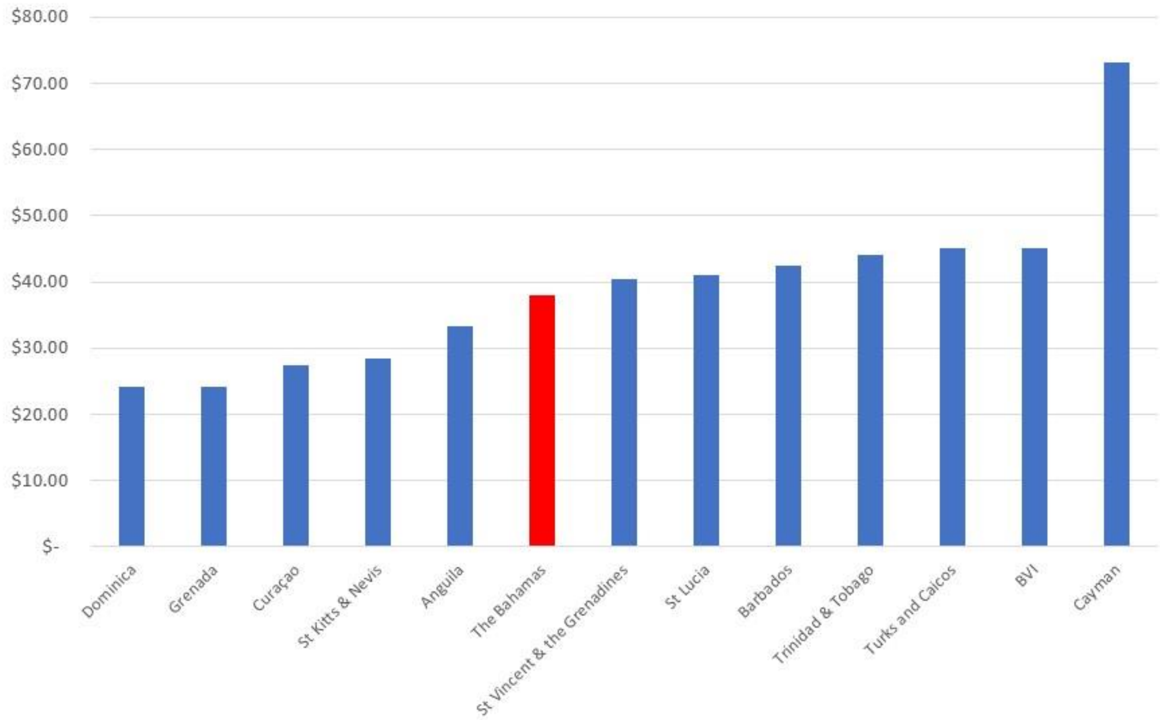
[redacted]

[redacted]

[redacted]

These financial results do not offer any support for an SMP finding by URCA in the pay TV market and also do not provide any support for URCA's views that excessive price levels should be a primary concern to inform its remedies. The below Figure compares CBL's monthly fee for its standalone Prime TV service with regional standalone alternatives with a similar number of channels included (around 70). The Figure shows that, even on this comparison (i.e. without adjustments for purchasing power parity) CBL's offer provides very good value for money. In summary, CBL's TV service is reasonably priced [redacted], not at all a picture to be expected in an SMP market.

### Figure 8 – Regional standalone pay TV prices offers




**Source: Flow 2024**

CBL is and has been free to request price increases for its pay TV services under the retail pricing rules, including for its standalone services and the above figures suggest that CBL would have a strong case to do so. This would be a reasonable response by CBL in response to the price increases imposed by programmers for the rights to broadcast TV channels. However, CBL has not requested a price increase for its Prime TV services since 2014 [redacted] This is a strong indication that CBL is constraint by market forces, including OTT substitution, and that continued ex ante regulation is not needed to protect consumers. These results are offering evidence that any observed issues with pay TV are not market failures, but rather that they should be addressed through universal service regulation.

### 1.11.5 CBL's answer to consultation question 6:

In its replies above, CBL provides information on the [redacted] as reported in the separated accounts developed based on URCA's guidelines. A market review that does not offer an explanation [redacted] is fundamentally flawed and incomplete. TV services are in substantial decline due to the emergence of online OTT and streaming alternatives and CBL is faced with cost increases imposed by international programmers that cannot be recovered through a retail service with declining utility to customers. CBL's fees for TV services are reasonable and in line with regional benchmarks. URCA's primary concern in this market should be [redacted] [redacted] and the implications of this poor financial performance on investment incentives. There most certainly is no SMP in this market and any consumer protection issues may be addressed through targeted universal service regulation.

## 1.12 Consultation Question 5 – 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?

As will be clear from our comments on URCA's definition of the standalone fixed voice, broadband and pay tv markets, we do not accept the distinction between standalone and bundled services as the basis for a regulatory market review. In attempting to define a market for multi-product bundles, URCA is in effect defining a single market for all fixed electronic communications services. Viewed in this light, URCA's approach is too general to identify specific market failures or appropriate remedies, which is why other national regulatory authorities have not adopted it.

We note on page 144 that URCA states:

*'According to URCA's Retail Customer Survey, 78% of respondents subscribed to multi-product bundles including pay TV would not consider switching to separate services after a SSNIP in the bundle.'*

Unfortunately URCA, as before, has not drawn the correct conclusion from this analysis. A SSNIP for a bundle would persuade 22% of users to consider switching to standalone services, and even if only half of those actually did so, they would render a 10% increase in price unprofitable for the hypothetical monopolist. URCA then has to conclude that bundled and standalone products are in the same market, undermining the whole approach taken in this market review, which separates standalone and bundled services.

This misunderstanding of the SSNIP test also results in URCA drawing the wrong conclusion about the substitutability of multi-product bundles and internet streaming services (pages 147 – 150). URCA states that, based on its customer surveys, 14% of those with multi-product bundles would switch to internet streaming services. This proportion is quite sufficient to render a SSNIP of 10% unprofitable for the hypothetical monopolist, and URCA has to conclude from this that streaming services are in the same market as multi-product bundles.

In our comments on the (first) Question 5, we rejected URCA's analysis of supply side substitution. URCA's analysis here is very similar, and our earlier comments apply. We consider that supply side substitution does take place between internet streaming services and multi-product bundles, and our earlier comments should be seen as part of CBL's response to the (second) Question 5.

## 1.13 Consultation Question 7- 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.

CBL refers URCA to its earlier analysis. CBL does not believe it has SMP in either fixed broadband or pay TV services, on a standalone basis or offered in bundles.

We consider that URCA's analysis does not give sufficient weight to the threat of competitive entry on the behaviour of incumbent operators. In its analysis of current competition, URCA discounts the impact of Starlink. While Starlink does not provide the full range of services that BTC and CBL offer, by providing a fast broadband connection, Starlink gives its customers access to voice over IP, streaming services and internet access. These are quite sufficient for many customers, who would switch to them if a dominant operator abused its market power through excessive pricing. 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. Hence we consider that URCA should see this market as (at least) prospectively competitive, and so does not need ex-ante regulation.

## 1.14 Consultation question 8 – 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?

### 1.14.1 The need for ex-ante regulation

It will be clear from our earlier comments that we do not agree with URCA's analysis and conclusion on pages 166-170. We consider that URCA's approach to the fixed market review (based on standalone and bundled services) has led it to underestimate the constraints on the existing operators from streaming services, new entrants, and the threat of entry. The issues identified by URCA of affordability of basic services would be better met by universal service regulation, consumer protection regulation, and the use of ex-post competition cases where necessary. We do not believe that further ex-ante retail regulation is in the interests of consumers or operators, and its removal will lead to greater market dynamism and more investment in the sector.

We note that URCA's comments on the adequacy of ex-post competition law makes no reference to the recent updating of the Competition Guidelines undertaken by URCA. We consider that the final version, no doubt improved following the comments made by CBL and other stakeholders, will provide a sound basis for ex-post regulation. The example quoted in URCA's analysis (provision of local access infrastructure) is not relevant to The Bahamas and in any case is a matter for wholesale regulation, where some ex-ante regulation may be necessary. URCA also underestimates the deterrence effect of large fines on operators, giving them a substantial incentive to keep to the competition guidelines.

CBL will leave BTC to comment on the rest of this section.

## 1.15 Consultation question 9 – 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?

In the market for retail fixed broadband services URCA is proposing the following remedies. Notwithstanding CBL's position on URCA's market definitions and SMP findings, CBL offers its summary comments below.

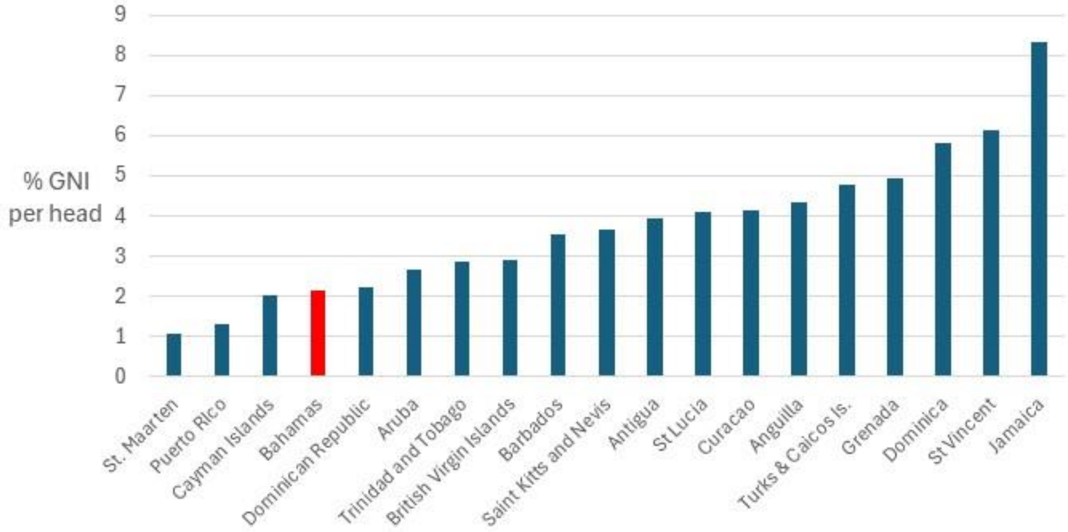
**Proposed obligation**: continue offering current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services.

As noted previously, CBL does not believe any bundle should form part of this service market as defined by URCA. CBL's understanding of the obligation is that it is aimed at protecting the interest of customers that only want this service. CBL does not have an issue with this obligation per se, but, as noted, CBL believes that these requirements should be addressed through universal service regulation and not through SMP regulation. A well-designed regulatory regime should also leave scope for changes to current standalone fixed broadband services, including their potential removal from the market. Such changes may be subject to pre-approval by URCA if there is a concern about the protection of vulnerable consumer groups.

**Proposed obligation**: Not increase prices of *entry-level* standalone fixed broadband plans over last year's inflation (capped at 5%).

CBL notes that URCA's main concern is the risk that CBL, as the SMP operator, increases the prices of its standalone fixed broadband plans in a way that would result in affordability concerns for those customers who only want this service. CBL notes that URCA offers no evidence in the market review of the definition of any vulnerable user groups it is trying to protect, no working definition of affordability and no evidence on how existing price levels for fixed broadband plans compare with this definition of affordability. Indeed, fixed broadband entry prices in The Bahamas are among the most affordable in the Caribbean region. The graph below shows the ITU fixed broadband benchmark as a percentage of gross national income per head, a good guide to affordability, with The Bahamas being the fourth lowest in the benchmark of 20 countries.

**Figure 9: Fixed broadband price benchmark (% Gross National Income per head, 2023)**




Source: ITU Retail price benchmark 2023, available at https://www.itu.int/en/ITU-D/Statistics/Pages/ICTprices/default.aspx

It is therefore hard to see how the proposed remedy, which bars CBL from raising prices above inflation, can be proportionate, targeted and efficient in these circumstances. CBL also believes this arbitrary approach presents an infringement of CBL's right to due process. A more proportionate remedy in the current circumstances would be to include price increases below inflation in the notification regime, with above-inflation price increases subject to pre-approval by URCA.

CBL also considers that the 5% limitation is a crude form of price cap. While we think that a retail price cap is now no longer appropriate in a world of bundled services, some of its features may be relevant to the design of URCA's cap. In particular, operators which implement price increases below the rate of inflation should be able to carry over the difference to the following year. If this is not possible, operators will have an incentive to ensure that prices are increased by the full rate of inflation each and every year.

## 1.16 Consultation question 10 – 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?

**Proposed obligation**: to continue offering current standalone pay TV tariff plans.

CBL does not have an objection to this obligation, but CBL believes this obligation should be further defined through targeted universal service regulation.

**Proposed obligation**: not increase prices of entry level standalone pay TV plans over last year's inflation (capped at 5%).

CBL again notes that URCA offers no evidence in the market review of the definition of any vulnerable user groups it is trying to protect, no working definition of affordability and no evidence on how existing price levels for fixed pay TV plans compare with this definition of affordability. In addition, as shown in our earlier section on the separated accounts, [redacted] In these circumstances it is unlikely that a proportionally and reasonably designed regulated pricing restriction is identical for both services, as proposed by URCA. The proposed remedy, which bars CBL from raising prices above inflation, is therefore not proportionate, targeted and efficient in these circumstances. CBL also believes this arbitrary approach presents an infringement of CBL's right to due process.

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted] While it should be made clear that CBL does not plan or support price increases of this magnitude, this simple exercise demonstrates tat above-inflation price changes cannot simply be ruled out without further investigation, as appears to be suggested by URCA.

A more proportionate remedy in the current circumstances would be to include price increases below inflation in the notification regime, with above-inflation price increases subject to pre-approval by URCA. This would allow CBL to make the case for above-inflation price increases should it want to, and for URCA to assess such an application on its merits.

## 1.17 Consultation question 11 – 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?**

CBL agrees that multi-product bundles should not be subject to specific ex ante remedies and, as noted, CBL believes this applies to all bundles, including bundles of broadband and telephony services.

## 1.18 Consultation question 12 – Proposed non-market specific SMP remedies

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

### Notification system

CBL considers the replacement of the existing pre-approval requirements (the retail pricing rules) with a notification system as a potentially positive step, provided the notification system is efficiently designed. An efficient notification system, in CBL's view, has the following characteristics:

- **Purpose**: It is important that the national regulatory authority and operators are clear about the purpose of any scheme, so that there is no doubt about its scope and boundaries. CBL understands that URCA's purpose is to be informed about price changes that the operators are making for services in which they have SMP.
- **Transparency** - any notification requirements should be transparent to a degree that would allow CBL to self-assess whether a notification is complete and compliant. Any ambiguity would introduce the risk of confusion or delays. One of the primary advantages of a notification system is that it improves time to market for the regulated operator and potential delays are therefore to be avoided at all times.
- **Proportionality** – a notice under this regime should only include information on the proposed product changes. In this context CBL is concerned that URCA may require information on 'expected take-up of the plan' as part of a notification of the plan. This serves no obvious purpose under a notification regime and CBL would provide data on actual take-up of services in any event under existing transparency requirements.
- **Timing of the notification** – an efficient notification regime defined on the above principles would have no need for notifications ahead of proposed changes to products. Rather, notification to URCA after the change has been implemented should be considered.

### Obligation to develop separated accounts

CBL would kindly ask URCA to reconsider the obligation to continue to develop separated accounts in accordance with URCA's Accounting Separation Guidelines. In markets where URCA is now mostly concerned about consumer protection issues and not with issues central to the separated accounts like undue discrimination, margin squeeze, predation and cross-subsidisation, there does not appear to be a valid and proportionate reason to continue with the obligation. Also, URCA has not, historically or in this preliminary determination, relied on the outcomes and findings of the separated accounts and their continued preparation do not serve a clearly defined purpose. The preparation and auditing of these accounts poses a significant regulatory burden on CBL in terms of costs and human resources. The proposed remedy is therefore neither targeted nor efficient and should be removed.

### Publication requirement

URCA is considering an obligation to publish the necessary information so customers and competitors have access to the relevant information when making their choices. CBL does not have any objections to this requirement and is willing to work with URCA on any perceived gaps.

### Annual submission of overview of SMP service portfolio.

CBL objects to this obligation. 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 this SMP service portfolio. An additional obligation for an annual submission is therefore duplicative, inefficient and disproportionate. URCA has not indicated what use it would make of this information, and so does not justify the cost that it is seeking to impose on operators.

### Information asymmetries

URCA justifies its proposals to require operators to publish separated accounts and to notify it of prices changes by arguing that these obligations will reduce "information asymmetries between the SMP operators and URCA". CBL challenges URCA's assumption that information should be symmetrical between the operators and URCA, and rejects this rationale. The tasks of national regulatory authorities and operators are different, and have completely different information requirements. A national regulatory authority should have sufficient information to enable it to carry out its statutory duties, and no more. Any requirements over and above this place unnecessary costs on the operators (and hence on customers) and on the authority itself. Operators need information from their networks, systems and customers in order to operate their resources efficiently and to respond to the requirements of their existing and potential customers. National regulatory authorities should not have access to this information unless they can demonstrate a clear link with their statutory duties. As set out above, CBL believes that the production of separated accounts and the proposed notification scheme do not support any of the specific regulatory concerns or remedies proposed by URCA, and so cannot be justified on the grounds of "information asymmetries".

**On behalf of CBL and Aliv**

**RESERVATION OF RIGHTS**

CBL and Aliv expressly reserves all rights including the right to comment further on any and all matters herein and categorically states that CBL and Aliv's decision not to respond to any matter raised herein in whole or in part, or any position taken by Aliv herein does not constitute a waiver of CBL and Aliv's rights in any way.

## Attachment 1 – Summary of proposed changes

| Service Market | Proposed remedy | CBL's main comments |
|---|---|---|
| Retail fixed broadband services (CBL SMP Market 1, BTC SMP Market 2) | Continue offering current standalone fixed broadband plans and bundles including fixed voice and fixed broadband services.<br><br>Not increase prices of entry-level standalone fixed broadband plans over last year's inflation (capped at 5%). | There is no SMP in this market. Consumer protection of small and declining customer groups should be addressed through universal service regulation.<br><br>There is no objective analysis presented to support a cap at inflation. Instead, price increases above inflation should be subject to URCA's approval. Any price increases below inflation should be included in the notification regime. |
| Retail Pay TV services (CBL SMP) | Continue offering current standalone pay TV tariff plans.<br><br>Not increase prices of entry level standalone pay TV plans over last year's inflation (capped at 5%). | There is no SMP in this market. Consumer protection of small and declining customer groups should be addressed through universal service regulation.<br><br>There is no objective analysis presented to support a cap at inflation. Instead, price increases above inflation should be subject to URCA's approval. Any price increases below inflation should be included in the notification regime. Finally, CBL's REVTV Prime service is not an entry-level (lowest price) service and this service should be removed from the price cap. |
| Multi-product bundles including pay TV services (CBL SMP) | No ex ante remedies specific to the service | There is no SMP in this market. CBL agrees no ex ante remedies are required for bundled services and would suggest to extend this approach to standalone services. |
| Over-arching remedies | Retail Pricing Rules (pre-approval requirements) replaced with notification system of price changes, withdrawals and changes in T&Cs.<br><br>Development of Separated Accounts. | This is potentially a positive step provided the notification regime is fit-for-purpose.<br><br>The concerns that give rise to this requirement are no longer present based on URCA's analysis and this obligation may now be removed. |

| | | |
|---|---|---|
| | Publication requirement - publish the necessary information so customers and competitors have access to the relevant information when making their choices. | This should be addressed through universal service regulation. |
| | Annual submission of overview of SMP service portfolio. | URCA would already have access to all information required through the notification regime and an additional requirement for an annual submission is disproportionate and should be removed. |
| | For stand-alone services only, pre-approval is required for price increases. | Price increases below inflation should be included in the notification regime, price increases beyond this level may be subject to pre-approval. |