



Revision of the Competition Guidelines

Statement of Results and Final Decision

URCA 04/2024

Issue Date: 3 May 2024

Table of Content

1	Introduction	3
1.1	Background	4
1.2	Legal Framework.....	5
1.3	Structure of the Remained of this Document	7
2	Responses to the Consultation.....	8
2.1	General comments	8
2.2	Response to the Consultation Question 1	11
2.3	Response to the Consultation Question 2	12
2.4	Response to the Consultation Question 3	14
2.5	Response to the Consultation Question 4	14
2.6	Response to the Consultation Question 5	15
2.7	Response to the Consultation Question 6	15
2.8	Response to the Consultation Question 7	16
2.9	Response to the Consultation Question 8	17
3	URCA’s Next Steps	21

1 Introduction

In this document, the Utilities Regulation and Competition Authority (“URCA”) issues its Statement of Results and Next Steps with respect to URCA’s Public Consultation on the revision of the existing Competition Guidelines.

URCA published its Consultation Document on the proposed revisions to the Competition Guidelines on 21 December 2023 (“Consultation Document”).¹ The Consultation Document set out, *inter alia*, the following:

- the objectives and the approach adopted by URCA with respect to the revision of the Competition Guidelines;
- a summary overview of the key proposed amendments to the Competition Guidelines;
- to invite comments from stakeholders on the matters set out in the Consultation Document.

URCA also conducted on 18 January 2024 a half-day seminar at its offices in addition to being streamed by zoom. The seminar was attended to by licensees and members of the general public.

The responses to the Consultation Document were due on 21 February 2024.

In addition to seeking general comments and/or views on the Consultation Document, URCA also sought respondents’ views on the following questions (“Consultation Questions”):

- **Consultation Question 1:** Do you have any comments on the inclusion of the Electricity Sector in the Competition Guidelines?
- **Consultation Question 2:** Are there any situations you are currently facing, or are expected to be facing, that the revised version is not addressing, and for which there is an uncertainty on how they would be treated, under the Competition Guidelines? If so, can you explain the situation?
- **Consultation Question 3:** Do you have any comments regarding the proposed Electricity Sector Public Interest test?
- **Consultation Question 4:** Do you have any comments regarding the new structure of the Competition Guidelines?
- **Consultation Question 5:** Are there any aspects of URCA’s procedures and assessments that you believe are missing, and for which you think a process map or figure would be helpful?

¹ URCA 03/2023 available at <https://www.urcabahamas.bs/wp-content/uploads/2023/12/URCA-Draft-Competition-Guidelines-Consultation-Document-032023-1.pdf>

- **Consultation Question 6:** Are there any aspects of the two notification forms (see Annexes I and V) that you do not understand? Is there any information missing in your view? Please specify the Annex you are commenting on when replying to this question.
- **Consultation Question 7:** Do you have any comments on the changes mentioned above? Please provide a detailed response for each suggested change, including supporting evidence.
- **Consultation Question 8:** Are there aspects that you believe would be helpful in having in the Competition Guidelines and which are currently missing?

URCA received written responses to the Consultation Document from two parties, namely:

- The Bahamas Telecommunication Company Limited (“BTC”); and
- Cable Bahamas Limited and Be Aliv Limited (hereinafter collectively referred to as “the CBL Group”).

URCA thanks the said respondents for their written responses and participation in the consultation process and encourages the full participation by all stakeholders going forward. URCA notes that all comments received have been carefully considered by URCA.

In this document, URCA replies to the main comments it has received from BTC and the CBL Group and sets out its next steps. In doing so, URCA expressly states that the absence on its part of a response in this document to any comment made by any of the respondents does not necessarily signify URCA’s agreement in whole or in part with such comment, that URCA has not considered such comment, or that URCA considers the comment immaterial or without merit.

1.1 Background

URCA is the independent regulator and competition authority for the Electronic Communications Sector (ECS) and the Electricity Sector (ES) in the Commonwealth of The Bahamas.

URCA began regulating the ECS upon its establishment in 2009 which coincided with the enactment of the Utilities Regulation and Competition Act, 2009 (URCA Act) and the Communications Act, 2009 (Comms Act). URCA subsequently gained remit in relation to the ES in 2015 in accordance with the promulgation of the Electricity Act, 2015 (Electricity Act).

In addition to its general obligations under the Comms Act and the Electricity Act, URCA is tasked with as the competition authority for the ECS and ES having remit in relation to the regulation of competition in the ECS and the ES. In this regard, URCA has previously, between September 2009 to March 2010, issued its ‘Competition Guidelines’ (ECS COMP. 1 to ECS COMP. 9)² which contained a series of guidance notes covering various competition law issues in relation to the ECS, which at the time was the only sector under URCA’s regulatory remit.

² Available here: <https://www.urcabahamas.bs/regulated-sectors/electron-communication-sectors/competition/>

Since the establishment of URCA's regulatory remit for the ES in 2015 with the enactment of the Electricity Act, URCA has undergone the process of building the regulatory framework in the ES in relation to required areas under the Electricity Act such as licensing, consumer protection and alternative dispute resolution. As part of this process, URCA is developing Competition Guidelines for the sector.

The Competition Guidelines set out URCA's Competition Policy and are intended to assist Licensees, and other interested persons, in understanding how the competition provisions would apply in practice with regards to procedural and substantives aspects, and to determine if their conduct are complying with these rules. They also provide guidance on how a competition complaint may be submitted.

The main rationale for the revision of the current guidelines is for URCA to expand the scope of the sector-specific applications of the Competition Guidelines to cover all sectors regulated by URCA. However, given the time that has passed since this first publication, the changes that have occurred in the sectors, and URCA's experience in applying the Guidelines, URCA's proposed revisions also seek:

- to structure the Competition Guidelines in a comprehensive, clear, and accessible manner;
- to clarify procedural aspects and information requirements from relevant stakeholders to mitigate any inefficiencies in URCA's investigations and assessments; and
- to make the Competition Guidelines up-to-date and fit for purpose considering expected future market developments and international best practices.

As part of its review, URCA has taken into account, amongst others, its experience from the application of the Competition Guidelines to date, as the current state and foreseeable developments in both sectors, and competition guidelines adopted elsewhere. This is to ensure that any insights gained from the practical applications of the Guidelines are taken into account and that the converged Guidelines remain fit for purpose. Additionally, by reviewing competition guidelines in other jurisdictions that share similar characteristics or with a well-established Competition Law doctrine, URCA aims to align its Competition Guidelines with international best practices.

As part of this exercise, URCA engaged with all relevant members of the public, Licensees, and other interested persons within The Bahamas through the publication of the Consultation Document to invite comments from interested persons on the matters contained therein and/or relevant to the revision of the Competition Guidelines.

1.2 Legal Framework

URCA is empowered as the regulator of the ECS and the ES by virtue of the Comms Act and the Electricity Act, respectively. As a public body, URCA must exercise its regulatory function within the remit of and consistent with its statutory authority. This Section of the consultation

document therefore sets out in detail the pertinent legislative provisions under which URCA conducted this consultation proposes and implements the Competition Guidelines.

URCA's Jurisdiction to take Regulatory Action

Section 9 of the URCA Act, 2009 ('URCA Act') requires URCA to allow persons with sufficient interest a reasonable opportunity to comment on a proposed regulatory measure which, in the opinion of URCA is of public significance. URCA must also give due consideration to those comments prior to introducing the regulatory measure.

Similar considerations are also included in the section 11 of the Comms Act and the section 41 of the Electricity Act.

Section 9(3) of the URCA Act establishes that a regulatory measure is likely to be of public significance³ if it relates to a regulated sector and can lead to:

- (i) a major change in the activities carried on by URCA under the URCA Act or any other enactment;
- (ii) a significant impact on persons carrying on activities in a regulated sector; and/or
- (iii) a significant impact on the general public in The Bahamas or in a part of The Bahamas.

URCA's Competition Law Jurisdiction

The Comms Act sets out in section 4(a) that the ECS as its main objective to further the interests of consumers by promoting competition and in particular section 4(a)(iii) dictates that this the ECS policy should "encourage, promote and enforce sustainable competition." In a similar manner, the Electricity Act at section 6(2)(d) outlines that the principles an objective of the ES policy and electricity supply regime includes the encouragement of competition in the generation of renewable electricity.

In line with this policy standpoint, both the Comms Act and the Electricity Act contain in Part XI provisions that prohibit anti-competitive behavior. Specifically, sections 67, 69, and 70 respectively of the Comms Act contains a prohibition against anti-competitive agreements, abuse of dominant positions in addition to controls in relation to merger of licensees. Similarly, sections 55, 56 and 57 of the Electricity Act respectively contains identical provisions that prohibit anti-competitive agreements, abuse of dominant positions and likewise contains controls in relation to change in control in relation to licensees.

URCA therefore considers that the cumulative effect of the revisions to the Competition Guidelines required URCA to publish the Consultation Document for public consultation to

³ Similar considerations are also introduced in the Comms Act (see Article 13) and the Electricity Act (see Article 42).

provide an opportunity all interest persons to submit written comments to URCA on the Consultation Questions and/or any other matter contained in or relevant to this Public Consultation. URCA also considers that it is empowered under the provisions of its legislative framework to issue these Competition Guidelines.

1.3 Structure of the Remainder of this Document

The remainder of this document is structured as follows:

- Section 2 sets out the comments and responses received from BTC and the CBL Group on the Consultation Document, any other matter relevant to the Public Consultation, and URCA's responses to such comments.
- Section 3 sets out URCA's Next Steps having considered the comments received in the consultation responses.

2 Responses to the Consultation

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

In order to ensure that this document provides a useful and succinct assessment of the respondents' comments, URCA only discusses in this section those responses which provide comments to matters relevant to the issues under consultation. Where the respondents have within their responses referred to matters that are outside of the scope of the Consultation Document, URCA has not provided a summary of those comments along with reasons supporting such position.

2.1 General comments

BTC's Comments

BTC welcomes the proposed restructuring of the Competition Guidelines and the expansion to the ES. BTC understands that the content of the Revised Competition Guidelines remains unchanged, with the exception of the proposed addition of an ex-ante review and approval process for passive infrastructure sales. BTC considers that this proposed expansion is not supported under the Comms Act and, therefore, should be removed.

CBL Group Comments

The CBL Group welcomes this revision and believes it improves transparency and greater confidence to the commercial sector. This revision is not controversial in general and largely similar to the previous Competition Guidelines. The CBL Group welcomes this development as part of a wider process to promote greater reliance on ex post regulation and less reliance on ex ante regulation in the ECS sector.

However, the CBL Group is concerned by the following points:

1. URCA may not pay attention to the significant differences (like market structure, supply chains, level of innovation, etc) between the ECS and ES when applying these converged guidelines in future and there is therefore a risk that competition decisions in the ES are applied in the ECS.
2. The market definition proposed in the revised version of the Competition Guidelines may not reflect the particularities of the ECS (like the development of OTT services⁴,

⁴ An « Over-the-top » (OTT) service refers to a type of content, communication, or media service that is delivered directly over the internet, bypassing traditional distribution channels such as cable or satellite television providers. These services leverage the internet infrastructure to reach users, providing content or communication

innovative industries) and latest international best practices (with reference to the European Commission, in particular).

3. The revised version of the Competition Guidelines may not reflect international best practices with reference to the Body of European Regulators for Electronic Communications (BEREC) regarding joint dominance.
4. The inclusion of passive infrastructure sales in URCA's review is not legally grounded and economically sound. If URCA were to keep such inclusion, it would need to provide a definition of passive infrastructure and seek to avoid the situation where an operator would need to notify URCA if it plans to dispose of a very small share of a network element.
5. The absence of a definition of Network Sharing Agreements and the uncertainty surrounding the competitive concerns that URCA seeks to address by including these types of agreements.

URCA's Response

URCA will address the CBL Group's comments on point 1 to 3 in Section 2.2 and Section 2.3.

Regarding **passive infrastructure sales**, URCA notes that both BTC and the CBL Group contest the capacity of URCA to intervene in such type of transaction. URCA wishes to remind both parties that pursuant to section 8(1)(k) of the Comms Act and Condition 5.1.2 of the Individual Operating Licence (IOL), URCA has the power to request a Licensee to provide URCA with any information relevant to the Licensee's operations as deemed necessary by URCA.

In particular, Section 8(1)(k) of the Comms Act states that "*for the purposes of carrying into effect the electronic communications policy objectives [such as the promotion of competition] URCA shall have the power to issue any regulatory and other measures and in particular shall [...] require any licensee or licensees to furnish such information and submit such returns in relation to its operations at such intervals as it may require*".

Based on the above, URCA considers that it has the power to request a Licensee to submit a copy of a commercial agreement relative to the sale of its passive infrastructure to another party to URCA.

On the rationale motivating such a review, URCA would like to clarify that it is not the divestment of a Licensee's or Undertaking's assets that is of potential concern to URCA, but rather the concentration of these assets under the control of another Undertaking or Licensee, which could lead to a substantial lessening of competition at the passive infrastructure layer. Indeed, if another Undertaking or Licensee were to control a significant share of the passive infrastructure in The Bahamas, a substantial lessening of competition could occur, as the proposed Transaction

without the need for a dedicated network infrastructure. The CBL Group is referring to services like TikTok, Zoom, Teams, Netflix, Apple TV, etc.

would allow the Undertaking or Licensee to benefit from market power and therefore, to control prices, limit output, or engage in other anti-competitive behaviour without effective constraints from rivals. This substantial lessening of competition could occur even in the case where the Undertaking would be an independent tower company without any particular activities downstream, and if this independent tower company were to gain significant market power following the proposed Transaction.

However, URCA agrees that only transactions which may result in a structural change of the Acquiring or divesting party should be notified by relevant Licensees and Undertakings. Following this, and to avoid the unnecessary burden of notifying all possible sales of passive infrastructure, URCA considers that only sales of passive infrastructure: (i) equal to or above BSD one (1) million; (ii) or representing at least 10% of the divesting Licensee's total number of the relevant assets should be notified by the parties.

Following BTC's and the CBL Group's comments, URCA notes that the revised Competition Guidelines have been updated to clarify URCA's concerns on such sales of passive infrastructure (see Section 4.1.1.2.5 of the Guidelines). However, as noted in Section 4.1.1.1 of the Guidelines, whilst it is the Acquiring Person's position in the market that is the primary concern to URCA, both the Acquiring Person and the Acquired Person are equally responsible for notification of the transaction to URCA. The changes implemented by URCA also address both respondents concerns around a materiality threshold for such transactions (see paragraph 260 and paragraph 266 of the Guidelines).

Regarding **Network Sharing Agreements**, URCA notes the CBL Group's overall assessment of the opportunities and risks posed by such agreements. These agreements allow relevant parties to collaborate and jointly utilize infrastructure, resources, or networks to optimize efficiency, reduce costs, and enhance overall service delivery. However, as noted by the CBL Group, they can also reduce incentives to invest and compete, increase the incentive to collude, and reduce network resilience through less redundancy and dependence on fewer networks. For these reasons, highlighted by the CBL Group in its response to the public consultation, URCA considers that such transactions need to be notified to URCA.

The CBL Group should also note that, when revising the Competition Guidelines, URCA does not intend to investigate existing Network Sharing Agreements between Licensees within the ex-ante merger review framework.⁵ However, contrary to what the CBL Group seems to understand, BEREK is not compiling a list of Network Sharing Agreements that can be *a priori* excluded from having anti-competitive effects, nor is there any type of Network Sharing Agreement that URCA a priori excludes from having anti-competitive effects. Therefore, any future Network Sharing Agreements that Licensees may wish to conclude should be notified to URCA, even if they seem similar to other agreements concluded before these revised Competition Guidelines.

In conclusion, URCA agrees on the need to include a definition of Network Sharing Agreements

⁵ If deemed necessary, URCA may conduct ex-post competition investigations of existing Network Sharing Agreements between Licensees.

and accordingly has revised the Competition Guidelines to include such definition (see Section 2 of the Guidelines). Regarding URCA's concerns about Network Sharing Agreements, these are clear and largely consistent with concerns related to any transaction between Licensees. URCA notes that these concerns are already outlined in Section 4.2.3 of the Guidelines, listing the Competition Concerns stemming from a transaction, and the CBL Group had already listed some of the unilateral effects that Network Sharing Agreements may lead to in its consultation response. Therefore, URCA considers that the revised Competition Guidelines are sufficiently clear on the concerns it seeks to address.

2.2 Response to the Consultation Question 1

Question 1: *Do you have any comments on the inclusion of the ES in the Competition Guidelines?*

BTC's Comments

BTC is not opposed to including the ES in the Competition Guidelines.

CBL Group's Comments

The CBL Group is concerned by the underlying differences that exist between the ES and ECS and considers the ECS sector to be characterised by a deep network competition, an extended supply chain and a high level of service innovation which should be considered in any market analysis and acknowledged in URCA's Competition Guidelines.

It further considers that any decision taken by URCA in a given sector should not be taken as a precedent for the other sector, given these differences between both sectors.

URCA's Response

URCA notes BTC's general support on the decision to include the ES in the Competition Guidelines.

URCA notes the CBL Group's comments, but reminds it that the 2009 Competition Guidelines were originally drafted for the ECS and thus already account for the specifics of that sector. The current revisions are building extensively on the previous version and are therefore equally well suited to take account of the specificities of ECS.

Moreover, the objective of this revision is to establish URCA's Competition Policy for the ES and ECS. In order to do so, the revised Competition Guidelines must be generic enough in the rules it sets while allowing URCA to account for the particularities of each sector.

Such an objective seems reasonable given international best practices, and, in particular, the

European Commission's practice, on which the CBL Group heavily relies for its response to this public consultation. Indeed, the CBL Group is well aware that Competition Rules in the European Union are cross-sectoral and, therefore, inclusive of all possible market activities occurring in the European Union. Following the above, URCA believes it is reasonable to propose a revision of the Competition Guidelines inclusive of the ECS and ES.

While it is prudent to consider the potential inclusion of sector-specific characteristics in these Competition Guidelines, URCA also aims to formulate guidelines that stand the test of time, steering clear of overly detailed specifications that may swiftly become outdated due to the rapid innovation within the ECS sector, as noted by the CBL Group. URCA sought to address this trade-off by alternatively adding specific examples related to the ES or the ECS. Importantly, these examples would not affect the general rules set in the Competition Guidelines. Therefore, the proposed revision should allow URCA to account for any specificities to the ECS or ES.

The same principle applies to the comments made by the CBL Group regarding market definitions. The principles set out in the Competition Guidelines are mostly aimed at enabling interested parties to understand how URCA would assess the situation and the considerations it may take into account. This does not imply that the principles outlined in these Competition Guidelines are exhaustive of the economic concepts and evidence that URCA may consider, or that Licensees or other relevant parties may bring to URCA in the course of a particular competition investigation or merger review. In particular, URCA's market definition exercise does not rely on a single criterion (like the SSNIP test) but rather on a broader set of evidence (product characteristics, consumer surveys, views of other relevant parties, evidence of substitution, etc.) from which URCA will form a view on the relevant market definition for the specific case under consideration.

Finally, and most importantly, it should be noted that URCA's assessment will always take into account the specific circumstances of the case it needs to investigate. Therefore, URCA will continue to conduct each investigation on a case-by-case basis. URCA has clarified this in the revised Competition Guidelines (see paragraph 17 and paragraph 246 of the Guidelines).

2.3 Response to the Consultation Question 2

Question 2: *Are there any situations you are currently facing, or are expected to be facing, that the revised version is not addressing, and for which there is an uncertainty on how they would be treated, under the Competition Guidelines? If so, can you explain the situation?*

BTC's Comments

BTC is not aware of any particular matters that it is currently facing, or is expected to be facing, that the revised version of the Guidelines is not addressing.

CBL Group's Comments

The CBL Group is concerned that it could be accused of joint dominance with the revised version of the Competition Guidelines. Referring to statements by BEREC on oligopolies in telecoms markets, the CBL Group is therefore referring to the following points that it believes should be included in the Competition Guidelines to clarify URCA's approach to joint dominance.

- The Guidelines should include a statement that oligopolies in the ECS result from the basic structure of the market, namely high fixed costs of providing a network, economies of scale and scope, the use of scarce resources, and (in the Caribbean region) a limited market size.
- They should also recognise that an oligopoly, in itself, is not a matter of concern for URCA unless there is evidence of significant harm to consumers or economic welfare.
- The Guidelines should further set out the principles that URCA would use to establish the existence of joint dominance, based on current international best practice.

The CBL Group also reiterates its comments regarding the sale of passive infrastructure and Network Sharing Agreements.

URCA's Response

URCA notes BTC's confirmation that the revised Guidelines cover all concerns it might be facing.

URCA considers that BEREC's reports are highly informative of the functioning of ECS markets and their regulation in the European Union. However, URCA notes that the report that the CBL Group is relying on, while being dated (2015), is primarily discussing oligopolies (and joint dominance) in the context of ex-ante regulation⁶ while this consultation sets out URCA's Competition Policy and is therefore about ex-post competition investigations. URCA believes this represents an important difference as ex-ante regulation aims to prevent market failures and to intervene before any damage occurs, while ex-post competition assessments seek to restore competitive equilibrium following an infringement. Following the above, URCA understands that that European regulatory and competition authorities have had challenges to sustain joint dominance findings in telecommunications markets in the context of ex-ante regulation and as it is not relying on a complaint related to a particular infringement, but on developing a case that the market is conducive to a collusive outcome. In contrast, in the context of an ex-post competition complaint, URCA will rely on material evidence demonstrating a particular type of abuse (a list of possible abuses is provided in Section 3.2.3.2 of the Guidelines) and how this relates to joint or single dominance.

However, URCA agrees that it is not the dominance (or collective dominance) that is problematic, *per se*, but the abuse of that dominance (or collective dominance). URCA has clarified this point

⁶ See BEREC, BoR (15) 195, p. 5 "The document can be considered as a starting point to structure BEREC discussion on the future regulatory treatment of oligopolies in the context of ex ante regulation."

in the revised version of the Competition Guidelines (see paragraph 157 of the Guidelines).

Regarding Network Sharing Agreements and passive infrastructure, URCA has already replied to the CBL Group's concerns in Section 2.1 above.

2.4 Response to the Consultation Question 3

Question 3: Do you have any comments regarding the proposed Electricity Sector Public Interest test?

BTC's Comments

BTC has no particular comments on this matter as it is not ECS related.

CBL Group's Comments

The CBL Group has no particular comments on this matter as it is not ECS related.

URCA's Response

URCA notes that both BTC and the CBL Group have no comments on the proposed ES Public Interest test that require any particular response from URCA.

2.5 Response to the Consultation Question 4

Question 4: Do you have any comments regarding the new structure of the Competition Guidelines?

BTC's Comments

BTC considers this new structure as an improvement compared to the previous version of the Competition Guidelines.

CBL Group's Comments

The CBL Group welcomes this new structure. However, it considers the content page is too short and would consider an index useful. The CBL Group also thinks the revised version of the Competition Guidelines could be improved by breaking sections 3 and 4 into separate chapters.

URCA's Response

URCA notes BTC's and the CBL Group's general support of the revised structure of the Guidelines.

Concerning the CBL Group's suggested amendments to the content page and structure, URCA has the following view.

- URCA will add a more comprehensive content page to address the CBL Group's concern.
- However, URCA considers that dividing sections 3 and 4 into separate chapters might undermine the benefits of the revision, as it could disrupt the logic of the current structure.

2.6 Response to the Consultation Question 5

Question 5: *Are there any aspects of URCA's procedures and assessments that you believe are missing, and for which you think a process map or figure would be helpful?*

BTC's Comments

BTC has no suggestion regarding process maps or figures that could clarify the revised Competition Guidelines other than as discussed in Section 2.8.

CBL Group's Comments

The CBL Group reiterates its concerns regarding the current treatment of joint dominance (where the CBL Group thinks a process diagram could clarify) and the lack of details regarding passive infrastructure and Network Sharing Agreements.

URCA's Response

URCA notes BTC's position on the process maps in the Competition Guidelines.

URCA has already responded to the CBL Group's stated concerns in Section 2.1 and 2.3 a. The process diagram would be the same as for any other ex-post competition investigation (See Figure 1 of the revised version of the Competition Guidelines).

2.7 Response to the Consultation Question 6

Question 6: *Are there any aspects of the two notification forms (see Annexes I and V) that you do not understand? Is there any information missing in your view? Please specify the Annex you are commenting on when replying to this question.*

BTC's Comments

BTC considers the relevant Annexes to the revised version of the Competition Guidelines as adequate for Licensees to submit necessary information.

CBL Group's Comments

The CBL Group considers the two annexes as comprehensive and comprehensible but believes that question 4 of Annex I is unnecessary given that URCA should be aware of the markets where a Licensee is active.

URCA's Response

URCA notes BTC's and the CBL Group's general support for the Annexes in the revised Competition Guidelines.

Concerning the CBL Group's comment on Annex I, it should be noted that while an ex-post competition investigation would always concern a Licensee, it may also involve another Undertaking for which URCA may not have a complete overview of the market in which it operates. In such instance, this overview would be informative to the case while saving time and resources for URCA. In light of the above, URCA believes that Question 4 of Annex I remains necessary.

2.8 Response to the Consultation Question 7

Question 7: *Do you have any comments on the changes mentioned above? Please provide a detailed response for each suggested change, including supporting evidence.*

BTC's Comments

BTC is concerned regarding the proposed expansion of the scope of transactions to be notified to the sale of passive infrastructure. BTC's questions URCA's authority to review and approve such sales and the economic rationale for doing so. If URCA confirms it has the authority, it should then consider the following modifications:

1. A definition of passive infrastructure should be added.
2. A materiality threshold should be established for this notification requirement.
3. A separate process figure should be included to illustrate how URCA would address qualifying passive infrastructure sales.

CBL Group's Comments

The CBL Group raised five specific points in relation to Question 7:

1. Regarding the definition of complainants, the CBL Group supports the extension of such complainants to the general public and consumers but considers that consumers should be guided by URCA as Competition matters are complex topics. Ideally, the first step should be for the general public and consumers to ask the operator about the resolution of the issue.
2. The CBL Group supports the inclusion of a leniency program.
3. The CBL Group reiterates its concerns regarding Network Sharing Agreements.
4. The CBL Group reiterates its concerns about passive infrastructure.

URCA's Response

URCA notes the CBL Group's support for the inclusion of the leniency program.

Regarding complaints from the general public and consumers, URCA agrees with the CBL Group that competition matters are complex for the general public and consumers. For this particular reason, URCA believes that, in such instances, it is best for the general public and consumers to approach URCA to raise possible concerns or issues. Additionally, URCA can informally engage with Licensees to attempt to resolve these issues, provided they do not involve any specific concerns regarding possible infringement of competition law.

URCA has already replied to the CBL Group's concerns around Network Sharing Agreements and BTC's and CBL Group's concerns around passive infrastructure in the Section 2.1 above.

2.9 Response to the Consultation Question 8

Question 8: *Are there aspects that you believe would be helpful in having in the Competition Guidelines and which are currently missing?*

BTC's Comments

BTC has no particular suggestion.

CBL Group's Comments

The CBL Group has made a series of specific remarks on the revised version of the Competition Guidelines. These are summarised in the table below.

URCA's Response

URCA notes BTC's response to Question 8.

Concerning CBL Group’s list of specific remarks, these are list in the table below, including URCA’s response to each of them.

Document reference, Topic	CBL Group’s Comments	URCA’s response
Page 4, paragraph 10 Provision of information to URCA	The CBL Group would like URCA to allow an extension of time when operators provide good reasons to do so.	URCA agrees with this suggestion and has to date allowed for an extension, where a reasonable justification was provided by the Licensee.
Page 7, Section 2 Definitions	A definition of Network Sharing Agreements should be added.	URCA agrees and has added a definition.
Page 9 Relevant turnover	Exclusions related to turnover should be the same across both sectors.	URCA agrees with this suggestion and has aligned the perimeter of exclusions in both sectors.
Pages 21-22 Hypothetical Monopolist Test (HMT) or SSNIP test	Less emphasis should be placed on this test compared to other aspects of market definition.	URCA reminds that the HMT / SSNIP test is mostly a conceptual framework for considering market definition, and the revised version of the Competition Guidelines relies on many types of evidence to support its market definition (see paragraph 65 and paragraph 296 of the Guidelines).
Page 27, paragraph 82 - last line:	The word “wholesale” seems unnecessary.	The word “wholesale” has been deleted from paragraphs 82 and 313.
Page 27, paragraph 86 Scope of anti-competitive agreements	This paragraph does not acknowledge one of the relevant conditions for an agreement to be prohibited which is that they may affect trade within The Bahamas.	URCA does not see the usefulness of the proposed addition.
Page 35, paragraph 122 Exemption conditions	Conditions iii) and iv) of the Section related to exemptions are alternative, not cumulative.	Paragraph 122 has been amended accordingly.
Page 39, paragraphs 143-146 Market position	URCA should recognise that many market players are located outside of The Bahamas, and therefore should be included in the market share calculations.	URCA will consider relevant Undertakings during the market definition, and depending on product and geographical market definitions. Based on this definition, URCA may (or may not) include these Undertakings in its market share calculations. This will be conducted on a case-by-case basis.
Page 40, paragraphs 146 Calculation of market shares	URCA should broaden the list of metrics to account for other metrics, in particular in the case of zero priced goods.	URCA has clarified that the list is not exhaustive and has added some examples that may be relevant for the ECS.
Page 41, paragraphs 150-151 Countervailing buyer power	URCA should also account for the ability of suppliers to restrict the market power of a dominant	URCA has amended this section following CBL Group’s comments.

	operator.	
Page 41, paragraphs 153-156 Collective dominance	The CBL Group reiterates its concerns on joint dominance.	URCA has answered to this concern in Question 2 and amended the section as discussed (see paragraph 157).
Page 58, paragraphs 212-217 Bundling and tying	URCA should also acknowledge the benefits of tying and bundling for customers such as greater choice and product differentiation, lower complexity of billing arrangements, etc.	URCA has amended paragraph 212 to set out more extensively the potential direct consumer benefits of tying and bundling (not accounting for any indirect effects of a lessening of competition from anti-competitive bundling and tying).
Page 62, paragraph 235 Policy objectives	Any consideration of policy objectives includes national policy objectives, as set by the Government or the Electronic Communications Sector Policy, as well as URCA's policy objectives.	URCA has amended paragraph 235 following these suggestions.
Page 63 Appeal to Utilities Appeal Tribunal	A reference to the right of appeal to the UAT against the level of fine calculated by URCA should be included in this section.	URCA notes that a right to appeal against a decision by URCA already exists in the legislation. However, URCA has amended the revised version of the Competition Guidelines and added a section related to the right to appeal.
Page 67, paragraphs 253-255 Subset of Licensee's assets:	URCA's legal powers to control mergers do not extend to subsets of a Licensee's assets.	URCA has replied to this concern in the relevant section.
Page 69, paragraph 261 Example	The CBL Group reiterates its concern on Network Sharing Agreement.	URCA has replied to this comment in the relevant section.
Page 70, paragraph 264 Sale of passive infrastructure	The CBL Group reiterates its concerns on the sale of passive infrastructure.	URCA has replied to this comment in the relevant section.
Page 76-83, paragraphs 287-313 Market definition and analysis	Delete paragraphs 287-313 as they are identical to paragraphs 54-82.	One of the objectives of the revision is to enable interested readers to locate all pertinent information within a specific section, eliminating the need to navigate through different sections of the document. Consequently, URCA sees no need to make any modifications in response to this comment.
Page 81, paragraph 307 Example	The example should be replaced as a roll-out obligation in a TV broadcasting licence is placed on the Licensee, but this places no barrier to switching for a consumer.	URCA assumes that the CBL Group is referring to the example on page 82, paragraph 308. Whilst URCA agrees that there are no barriers for consumers switching, there is indeed a barrier at the wholesale level. TV broadcasters cannot substitute their demand for TV broadcasting with IP-TV due to the roll-out obligation. Consequently, URCA may consider in this example, two distinct markets at the wholesale level. This does not imply that URCA would disregard any

		indirect competitive constraints stemming from customers' ability to switch between TV broadcasting and IP-TV and vice versa, at the retail level.
Page 91, paragraph 331 GUPPI Test	The CBL Group sets out the limitations of the GUPPI test, which are, in the CBL Group's view, particularly relevant for the ECS sector.	URCA agrees that the GUPPI test has some limitations (like any tools that can be used in such assessment). This is why URCA will rely on several different tests and material evidence to form its view on whether a proposed transaction would result in a substantial lessening of competition.
Page 95-97, paragraphs 351-365 Media Public Interest test	The CBL Group's considers that URCA should distinguish between broadcasters or programmers that create content and Undertakings that distribute programming and create content. The CBL Group considers that the Media Public Interest test is not relevant in this case.	URCA reminds that the current definition of a media enterprise aligns with the definition contained in the Comms Act and cannot deviate from such definition. In any case, this would not preclude URCA assessment regarding the media public interest test.

3 URCA's Next Steps

Having considered the responses to the Consultation Document as expressed within this Statement of Results and Final Decision, URCA has published in URCA 01/2024 the revised and finalised Competition Guidelines.

URCA will periodically review the Competition Guidelines as necessary to ensure that same remain effective and relevant. Where in URCA's view, amendment to these Regulations is necessary, URCA will seek comments from all relevant stakeholders in line with the provisions of the URCA Act.