TELECOMMUNICATIONS REGULATORY COMMISSION

VIRGIN ISLANDS

SHORT REPORT ON THE CONSULTATION ON THE MARKET ANALYSIS OF WHOLESALE CALL AND SMS TERMINATION ON INDIVIDUAL FIXED AND MOBILE NETWORKS: DETERMINATION OF DOMINANCE AND INTERCONNECTION REQUIREMENTS

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Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks

This short report collates the operators' comments in response to the Consultation on the Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks, specifically with regard to:

- Determination of Dominance
- Interconnection Requirements

The second stage of the TRC's consultation on the implementation of call termination charge controls will address the remainder of the operators' comments.

Consultation responses were received from CCT, Digicel and LIME and are attached on the TRC website.

Determination of dominance

CCT and LIME expressed no major objection to the designation of dominance with respect to each individual termination market. Both LIME and CCT agreed with the market definitions and the designation of dominance. Digicel stated that "we believe that the Commission should avoid going down a market analysis and assessment of dominance route" and instead assess whether the TRC has the jurisdiction to impose benchmarked termination rates. Digicel stated that the "Commission's document does not have a sufficient foundation for the analysis and assessment of dominance route" and that the TRC should carry out a consumer survey to establish "whether there are demand side constraints in BVI on termination pricing or not".

The TRC disagrees that a consumer survey is necessary at this point and instead has relied upon international precedent and regulatory best practice to guide the conclusion that each public supplier is dominant with respect to terminating calls on its own network. Digicel suggest that the TRC should also have considered the impact of multiple handsets and multiple SIMs on this conclusion and to this the TRC would like to point out that each public supplier is dominant with respect to the termination of calls to specific number ranges on its own network. Whether a consumer owns multiple handsets or multiple SIMs or not has no impact on this conclusion.

The TRC would like to further point out that under Section 26 of the Telecommunications Act, it is empowered to "determine that a public supplier is dominant with respect to a telecommunications network or a service… and for such determination, the Commission shall take into account the following factors:

(a) The relevant market
(b) Technology and market trends
(c) The market share of the supplier
(d) The power of the public supplier to introduce and sustain a material price increase independently of competitors;
(e) The degree of differentiation among networks and services in the market; and
(f) Any other matters that the Commission deems relevant."

The TRC has set out its approach to market definition in the TRC Market Review[1] document and in taking account of the above factors in its consultation document is able to proceed with the determination of dominance.

Based on these responses and the arguments set out in the Market Analysis[2] and the Determination of Dominance, the TRC now designates the following operators as dominant with respect to the following markets, in accordance with section 26 of the Act:

- Cable and Wireless (BVI) Ltd ("LIME") is dominant in the wholesale market for voice call termination on its fixed network
- Cable and Wireless (BVI) Ltd ("LIME") is dominant in the wholesale market for voice call termination on its mobile network
- Caribbean Cellular Telephone Ltd ("CCT") is dominant in the wholesale market for voice call termination on its mobile network
- Digicel (BVI) Ltd ("Digicel") is dominant in the wholesale market for voice call termination on its mobile network
- Caribbean Cellular Telephone Ltd ("CCT") is dominant in the wholesale market for SMS termination on its mobile network
- Digicel (BVI) Ltd ("Digicel") is dominant in the wholesale market for SMS termination on its mobile network.

Interconnection Requirements

LIME was the only operator to comment upon the Interconnection Requirements as follows:

1. LIME noted that only dominant public suppliers would be subject to interconnection rate regulation and argued that instead, the Requirements should state that all public suppliers should be subject to interconnection rate regulation. The TRC does not see that this adjustment is necessary as it is implicit in the determination of dominance that any public supplier offering call or SMS termination services is dominant with respect to the termination of calls or SMS to their own network. Any new entrants would automatically be designated as dominant in this area.
2. LIME notes that, according to the interconnection requirements, a dominant public supplier shall provide interconnection: a) at rates that are cost-oriented as per the forward looking long-run incremental cost standard; b) at rates based on appropriate international benchmarks as determined by the Commission; or c) as per arrangements where no payments are made between public suppliers. LIME suggests that this provision should be narrowed down to one of the above options, which in LIME's view should be the cost-orientation principle. Whilst the TRC agrees with LIME on the merits of the cost-orientation principle, the TRC believes that the alternative two methods are not contradictory with this principle. The purpose of setting out three options is to enable some level of flexibility in setting the charge control such that the TRC

[1] http://www.trc.vg/attachments/015_Framework%20for%20Market%20Review.pdf
[2] http://www.trc.vg/attachments/015_Market%20Analysis_01_Interconnection%20Part%201.pdf

does not limit the options at this stage and allows for future charge controls to follow different methodologies if deemed more appropriate at the time.

3. LIME sets out that Requirement 18 (10) which obliges dominant suppliers to allow another public supplier to collocate at the point of interconnection is “unduly broad and places an unfair burden on a dominant supplier without permitting similar access by that supplier to the facilities of other suppliers.” In the view of the TRC, this is a reasonable obligation to place on a dominant public supplier.
4. LIME objects to Requirement 18 (12) that where physical collocation cannot be established, a dominant public supplier “must take reasonable measures to afford the party requesting collocation alternative solutions.” Similarly the TRC does not believe that LIME’s objection is valid as the purpose of the Interconnection Requirements is to set out a reasonable approach to negotiating access to facilities, it is not to afford any dominant public supplier protection from reasonable requests for access to facilities. In the view of the TRC, it is incumbent upon a dominant public supplier to offer alternative solutions where appropriate.

Therefore the TRC is publishing the Interconnection Requirements in their final form as per the draft Interconnection Requirements.

The TRC will now proceed to the second stage consultation on the implementation of charge controls. The TRC has received input from the respondents on the appropriate method to determine the charge control and will address the points of view put forward at the next stage of the consultation and will then seek further responses on the proposed charge control.