

# Analytical Framework for Market Reviews in The Bahamas

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# Utilities Regulation and Competition Authority (URCA)

- Converged national regulator and competition authority for the electronic communications sector in The Bahamas.
- URCA regulates all forms of electronic communications, including pay TV (cable TV) and broadcasting services (radio and free-to-air television).
- Manages and assigns the use of state assets (radio frequency spectrum, numbering).
- Has *ex-ante* regulatory and *ex-post* competition powers.



# SMP Framework

- The Communications Act, 2009 introduced an SMP based framework for the purposes of *ex-ante* regulation.
- Therefore, before imposing *ex-ante* obligations on a licensee, URCA must assess the competitive dynamics in defined economic markets (otherwise known as a market review).
- The SMP requirements of the Communications Act are supplemented by SMP Guidelines issued by URCA, setting out the approach to market reviews. See ECS 20/2011 “Methodology for Assessment of Significant Market Power” <http://www.urbahamas.bs/download/059384700.pdf>.
- URCA’s approach is consistent with the European Commission’s recommendations and as applied by NRAs across Europe. As such, in conducting market reviews URCA can be guided by EU and other precedent.



# SMP Methodology

- Three stage approach to market reviews:
  - Stage 1: Market Definition
    - Product scope
    - Geographic scope
  - Stage 2: Competition Assessment
    - Single and/or Joint (Collusive) Dominance assessment
    - 40% presumed dominance threshold
    - Further factors (e.g., barriers to entry) are also considered
  - Stage 3: Remedy design
    - *Ex ante* remedies for SMP licensees to address competition concerns



# Criteria considered in each stage

- Market definition:
  - Hypothetical Monopolist Test (HMT);
  - Evidence of previous substitution;
  - Barriers and switching costs; and
  - Qualitative studies on consumer switching behavior.
- Competition assessment:
  - Market share;
  - Licensee's access to financial resources;
  - Licensee's ability to influence market conditions;
  - Licensee's experience in providing products to the market;
  - Barriers to entry and expansion;
  - Control of infrastructure not easily duplicated;
  - Countervailing Buyer Power (CBP); and
  - Any other criteria considered relevant by URCA.



# Cont'd

- Remedies design:
  - Market forces shall be relied upon as much as possible as the means of achieving the electronic communications policy objectives.
  - *Ex-ante* measures shall be introduced where in the view of URCA market forces are unlikely to achieve the communications policy objective within a reasonable timeframe.
  - Must be efficient and proportionate and introduced in a transparent, fair and non-discriminatory manner.
  - URCA must have due regard to the costs and implications on licensee (quantifying benefits and costs not required).



# Application

- URCA has applied the framework in key retail markets and wholesale markets:
  - Mobile voice/data, fixed voice telephony, internet, connectivity services (leased circuits/lines), and pay TV.  
See ECS 14/2014 *“Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas”*  
<http://www.urcabahamas.bs/download/094452600.pdf>.
  - Fixed and mobile call termination - Fixed and Mobile Termination for BTC, and Fixed Termination for other fixed networks (CBL and iPSi).  
See ECS 13/2013 *“Assessment of Significant Market Power in Call Termination Services in The Bahamas”*  
<http://www.urcabahamas.bs/download/067809100.pdf>.



# Case study: Pay TV Services

- The Bahamas is in a unique position in relation to *ex-ante* economic regulation of the pay TV market.
- URCA has determined that Cable Bahamas Ltd. has SMP in the pay TV market and is susceptible to *ex-ante* regulation.
- Not much experience in the international arena on *ex-ante* economic regulation in pay TV (Belgium, Malta).





# Cont'd

- *Ex-ante* Obligations in Pay TV:
  - Retail Price Regulation
    - Currently pre-approval of permanent and short-term price changes and need to demonstrate that the price change is not predatory.
    - Transition to retail price cap within this year (currently being designed).
  - Accounting Separation and Cost Accounting requirements.
  - Non-discrimination requirements.
  - Replicability requirements for new retail bundles which include Pay TV services (e.g., pay TV and broadband internet).



# Lessons

- Regulators should establish guidelines for market review. This will allow for a structured, timely and efficient review process.
- The frequency of market reviews should be determined by market dynamics.
- Regulators should not discount local factors when conducting market reviews.
- The review exercise should be forward-looking (12-24 months).
- The market review process is both information and resource intensive. Nevertheless, it is best practice and the cornerstone of sound regulatory decisions.

