

Telecommunications Regulatory Commission

Investigation Notice Concerning Mobile Voice Calls to Specific Caribbean Destinations

[Gazetted 6 January 2011]

TAKE NOTICE THAT:

The Telecommunications Regulatory Commission, (the “Commission”) is responsible for ensuring fair competition in the telecommunications sector in the Virgin Islands (“VI”). Under the Telecommunications Act, 2006, (the “Act”) the Commission is required to carry out, on its own initiative or at the request of any person, investigations concerning conduct which may be contrary to the provisions of the Act. The Commission is now notifying the general public that it is investigating a possible breach of fair competition in the VI.

A complaint has been raised by Caribbean Cellular Telephone Ltd (“CCT”), (the “Complainant”) against Cable and Wireless (BVI) Ltd¹ (“LIME”), (the “Defendant”) concerning CCT’s ability to replicate the retail price that LIME charge to their customers for calls to networks of LIME’s affiliates in the Caribbean due to the wholesale price LIME charge CCT to terminate calls on networks of LIME’s affiliates in the Caribbean. After reviewing the complaint and conducting a preliminary review of the issues involved, based on the arguments and evidence presented by CCT as well as information submitted by LIME, the Commission considers it appropriate to investigate the practices of LIME in relation to wholesale and retail tariffs for calling certain Caribbean destinations – i.e., networks operated by LIME’s affiliates.

The Complainant has stated that the wholesale rate that CCT pays to LIME to terminate a call on Caribbean networks of its affiliates² does not allow CCT to replicate LIME’s All Talk plans³ and offer calls to these specific Caribbean destinations at the same price to its customers as LIME can to their customers. A key competitive concern in the VI telecoms market would be that LIME through its relationship with its affiliates in other Caribbean countries and territories could benefit from wholesale costs which are far below those available to CCT. Such a situation may have an effect of creating uneven competitive conditions in the VI market by restricting ability of CCT to compete for certain user segments and thereby undermine operation of fair competition and user interests.

The purpose of this investigation is to establish whether it is appropriate for the Commission to take action on the grounds that:

¹ Cable and Wireless (BVI) trades as LIME

² Anguilla, Antigua and Barbuda, Barbados, British Virgin Islands, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks & Caicos Islands.

³ http://www.time4lime.com/vg/personal/mobile/plans_postpaid.jsp
http://www.time4lime.com/vg/personal/mobile/plans_prepaid.jsp

- 1) LIME is carrying on or likely to carry on business in a manner that is detrimental to the public interest, including in an anti-competitive manner, or detrimental to the interest of clients (pursuant to section 75(1)(a)(iii) of the Act); and/or
- 2) LIME's practices constitute anti-competitive pricing or acts of unfair competition (pursuant to section 29(2)(c) of the Act); and/or
- 3) LIME's practices constitute an infringement of articles 10.1(e) and/or 10.2 of LIME's Licence (pursuant to section 75(1)(a)(vi) of the Act).

In the course of the investigation, the Commission may also consider whether it is appropriate to take any other action pursuant to sections 6 (d) and 77 (2) of the Act.

Under section 70 of the Act, the Commission has the power to request information from a licensee where it appears that the licensee may have contravened the Act or any term or condition of the licence or it is reasonably required for the purpose of discharging functions of the Commission or ensuring compliance with the Act or any term or condition of a licence. The Commission is therefore requesting the information set out in annex 1 from LIME⁴ - the information shall be provided within 30 days from publishing this Notice in the Gazette. Separately the Commission will also be seeking information from CCT. Furthermore, the Commission has a right to obtain information from other persons as required. The Commission reserves the right to make use of information available to it prior to the commencement of an investigation provided the Defendant is afforded an opportunity to get access to such information and comment on it.

In addition to supplying the information requested, the Commission invites both LIME and CCT as well as any party with a legitimate interest to deliver written submissions clearly outlining their position in this case and why they believe there may be or may not be issues of competition to be addressed in this case. The Commission shall provisionally adopt this timetable:

- | | |
|--------------------------|---|
| Day 0: | Publication of the Notice |
| Working Day 5: | Investigation formally commences |
| Day 30: | Deadline for the completed information requests and written submissions (objections/comments) from Digicel, CCT and by any third party with a legitimate interest |
| Day 31 – Working Day 90: | Commission may propose to apply a Directive, in which case time will be allowed for written objections to such Directive and a Hearing |
| Working Day 90 | Commission Decision |

The very fact that the Commission is conducting an investigation will not prejudice the outcome. The collation and assessment of information from the licensees concerned is part of the process of the investigation. The investigation itself does not mean that any party has breached its obligations pursuant to the Act and/or its license and the investigation may conclude that there has been no anti-competitive behaviour. The Commission will make a report on the investigation at the close of it.

⁴ Copies of the information request in annex 1 are also available upon request from the Commission

Any comments or objections with respect to this notice may be submitting in writing by any interested party by Day 30 of the investigation:

The Chief Executive Officer
The Telecommunications Regulatory Commission
27 Fish Lock Road
LM Business Centre 3rd Floor
P.O. Box 4401
Road Town
Tortola VG1110
British Virgin Islands
consultations@trc.vg

All responses containing confidential information should be clearly identified. Any person claiming confidentiality is required to clearly mark any information included in a response that is claimed to be confidential (including personal or proprietary information), and to provide reasons why that information should be considered confidential. Whenever confidential information is included in a response, the respondent is required to provide both a confidential and a non-confidential version of the response. Such confidential information should be kept to a minimum. The Commission will evaluate such a request to consider such information confidential in the light of the relevant legal provisions and principles and make a final decision in this regard.

**TOMAS LAMANAUSKAS
CHIEF EXECUTIVE OFFICER**

Annex 1: Information Request to LIME

Confidentiality:

If any information provided is considered confidential by LIME and, in LIME's opinion, should not be shared with other licensees and/or other parties, this should be clearly indicated and appropriate justification should be provided. In this case, a non-confidential version of a response should also be provided. Such confidential information should be kept to a minimum. The TRC will evaluate such a request to consider such information confidential in the light of the relevant legal provisions and principles and make a final decision in this regard.

Customers

Please supply average number of customers per month from March '09 to Sep '10 as follows

1. Total Number of LIME customers

- Postpaid
- Prepaid

2. Number of LIME customers on All Talk Plans - broken down by prepaid and postpaid.

3. All outgoing traffic to LIME Caribbean destinations from LIME - broken down by different plan as appropriate (minutes)

- All Talk Plans
- Traffic to LIME Caribbean destinations outside of the All Talk Plans

4. Are there any usage limits applied to these plans?

5. Please provide evidence of all unlimited pricing plans on offer including plans which are only national (excluding pan-Caribbean calls)

6. What is the average price offered (calculated as per the retail offer) and average price paid (calculated through revenue received) for an on-net call within the Virgin Islands (per minute)?

7. This investigation is concerned with only the All Talk Plan. Please confirm the offer made to retail LIME customers in the BVI under the All Talk Plan.

8. Please confirm the date of launch of the All Talk Plus plan in the BVI.

Traffic

9. Please provide total outgoing traffic on the All Talk Plans broken down by destination in minutes on a monthly basis from Jun '09 to Sep '10 to LIME mobiles.
10. Please provide total outgoing traffic on the All Talk Plans broken down by destination in minutes on a monthly basis from Jun '09 to Sep '10 to LIME landlines.
11. Please provide total incoming traffic from LIME All Talk destinations to LIME BVI mobile in minutes on a monthly basis from Jun'09 to Sep'10 by destination. Please include all LIME All Talk countries.
12. Please provide total incoming traffic from LIME All Talk destinations to LIME BVI landlines in minutes on a monthly basis from Jun'09 to Sep'10 by destination. Please include all LIME All Talk countries.
13. Please provide total outgoing national traffic from LIME by destination (by operator and by type (fixed/mobile)) (all plans, prepaid and postpaid) in minutes on a monthly basis from Jun'09 to Sep'10.
14. Please provide total incoming national traffic to LIME BVI in minutes on a monthly basis from Jun'09 to Sep'10 broken down by origin.
15. Please provide total outgoing and incoming international traffic (all destinations) in minutes on a monthly basis from Jun'09 to Sep'10 for LIME BVI.

Wholesale pricing

16. Please indicate the wholesale national termination charge payable to CCT.
17. Please indicate the wholesale per minute termination charge payable by LIME BVI to LIME Mobile All Talk destinations.
18. Please indicate the wholesale per minute termination charge payable by LIME BVI to LIME Landline All Talk destinations.
19. Please indicate the transit fee, if any, payable by LIME BVI to reach other LIME All Talk destinations.
20. Please indicate the wholesale per minute termination charge(s) payable by CCT to LIME for termination to LIME Mobile destinations, included in the All Talk Plans.
21. Please indicate the wholesale per minute termination charge(s) payable by CCT to LIME for termination to LIME Landline destinations, included in the All Talk Plans.
22. Please indicate the transit fee payable by CCT to LIME to reach other LIME destinations, if any.

Revenues

23. Please provide the following revenue information from Jun '09 to Sep '10.

- Total Pan-Caribbean calling revenue
 - from All Talk Plans
 - From LIME calls to LIME Caribbean outside of the All Talk plans
- National outgoing call revenue
- National termination revenue
- International termination revenue

24. Please provide information on other revenues received from customers on All Talk plans (including weekly and monthly passes) broken down as far as possible.

Network costs – Fixed and mobile

25. The following information required is an overview of the cost structure of routing a call from LIME BVI to a LIME All Talk destination.

1. Origination cost per minute in the Virgin Islands (Fixed and mobile)
2. Transit cost per minute (national and international)
3. Termination cost per minute in specific All Talk destination (Fixed and mobile)
4. Termination cost in the Virgin Islands (Fixed and mobile)

Please also provide cost information on the cost structure of routing a call received from CCT to a LIME All Talk destination. Please provide the information in the appropriate format to LIME, the TRC may request further clarification on this information. Please demonstrate how this cost calculation was arrived at.

Other information

26. Please provide information regarding the ownership and linkages between the different affiliates of Cable and Wireless (BVI) in the Caribbean (from January 2009 to present day) – i.e., all affiliates (linked directly or indirectly) of Cable and Wireless (BVI) shall be listed and ownership and/or other links clearly explained. Please provide supporting evidence.

27. Please provide information on any agreements related to control of any of the affiliates by Cable and Wireless (BVI). Please provide supporting evidence.

28. Please provide composition of the Boards of the different affiliates of Cable and Wireless (BVI) (from January 2009 to present day). Please provide supporting evidence.

29. Please provide information explaining how marketing decisions are made across the affiliates. Why were the All Talk plans originally designed and who makes the decision to implement such plans?

30. Please provide information setting out the consolidated revenues of Cable and Wireless (BVI) and its affiliates in the Caribbean for financial years 2008 and 2009. Please provide supporting evidence.

31. Please provide information on Cable and Wireless (BVI) revenues for 2008 and 2009. Please provide supporting evidence.