

RESPONSE
TO
**CONSULTATION ON THE MARKET ANALYSIS OF WHOLESALE
CALL AND SMS TERMINATION ON INDIVIDUAL FIXED AND
MOBILE NETWORKS:**

PART II: ASSESSMENT OF REGULATORY REMEDIES

Reference Number: C/02/2011

LIME

Landline | Internet | Mobile | Entertainment

By E-mail to: consultations@trc.vg

31 December 2011

I. Introduction

1. Cable and Wireless (BVI) Limited, trading as LIME BVI, is pleased to provide the following response to the Commission's Public Notice in the matter of '*Consultation on the Market Analysis of Wholesale call and SMS Termination on Individual Fixed and Mobile Networks: Part II: Assessment of Regulatory Remedies*' (the consultation document) published 30 September 2011.

2. LIME expressly states that failure to address any issue raised in this consultative document does not necessarily signify its agreement in whole or in part with the Commission's position. LIME reserves the right to comment on any issue raised in the consultation at a later date.

3. The issues that LIME addresses in this response are the:

- a. appropriateness of the selected benchmark rates;
- b. the requirement to follow due process and;
- c. the wholesale market for fixed termination on CCT -FiWi

II. APPROPRIATENESS OF BENCHMARK RATES

Methodology

4. LIME had recommended that a LRIC cost modeling exercise should be done for the VI. In the consultation document the TRC states that '*...it is not minded to carry out a LRIC modeling exercise for the VI given the time and resources such an exercise would require...*' The TRC takes the position that benchmarking is the best approach to establishing termination rates for BVI given that it is not costly and would still deliver rates '*... in line with international best practice and with regional benchmarks...*' Accordingly the TRC '*...will benchmark the FTR against*

comparable low FTRs in the region... The TRC acknowledges that *'...the choice of benchmarks is crucial for determining the appropriate rate for VI...'*

5. The TRC states that *'..the ECTEL benchmarks and the ARCEP benchmarks for French Guiana, Guadeloupe and Martinique represent the most relevant set of benchmarks...'* LIME disagrees that the French overseas territories of French Guiana, Guadeloupe and Martinique are a relevant benchmark.

6. Although located in the Caribbean, the French Overseas Departments do not determine their own termination rates. Both the MTRs and FTRs of these countries are determined by metropolitan France and the termination rates established by ARCEP for mainland France and its overseas territories all conform to European Directives. The inclusion of these territories is a direct approach by the TRC to include European benchmarks while at the same time giving the impression that it is using regional benchmarks. Termination rates are not 'regional rates' simply because a country is located in the region. In particular, ARCEP expressly takes the position that the French mainland and the overseas departments constitute a single market. Given this regulatory treatment and the fundamental differences between the geopolitical and operating environments in the French Overseas Departments and the Virgin Islands, the comparison between them is irrelevant and of no value for the purpose of benchmarking. The use of European benchmarks in arriving at an FTR for BVI is inappropriate.

7. Indeed in its Decision on the new FTRs,¹ Arcep made it clear that it makes no distinction between Metropolitan France and its Overseas Departments for the purposes of defining the geographic market for fixed call termination services. That is, the metropolitan

¹ ARCEP, Decision No. 2011-0926, 7 July 2011, at page 25, available at http://www.arcep.fr/uploads/tx_gsavis/11-0926.pdf. France Telecom in particular operates in metropolitan and overseas France, and the geographic market in which it offers fixed call termination is, therefore, all of metropolitan and overseas France.

France, French Guiana, Guadeloupe and Martinique are all part and parcel of the same French market.

Dans la mesure où le marché de produits a été défini comme étant la terminaison d'appel à destination des numéros fixes ouverts à l'interconnexion sur le réseau individuel de chaque opérateur, la dimension géographique du marché de la terminaison d'appel sur ce réseau coïncide avec la couverture géographique du réseau de l'opérateur considéré.²

8. However, as LIME BVI's sister company noted in response to a consultation in Anguilla: *'[a] suitable benchmark should reflect as much as possible the 'efficient' level of cost to provide the related termination service in the national environment in which it is provided. Incongruent networks due to significant differences in network topology and irrelevant comparisons due to wide variations in exchange rates should be avoided when setting a suitable benchmark'*. Given that there is no distinction made between France and its Overseas Departments in the determination of an FTR, the FTR set for telecommunication companies in France is a poor comparator for BVI and makes it an inappropriate benchmark.

8. In addition, the ARCEP explicitly developed a single, all-encompassing cost model which modeled the costs of operators in both metropolitan and overseas France.

L'Autorité a fait le choix de construire un modèle de coûts unique incluant la métropole et les DOM, produisant des résultats de coûts uniques pour l'ensemble du territoire national.³

9. In its consultation document, the ARCEP notes that less than 3% of French fixed voice traffic originates in the Overseas Departments. Similarly, less than 3% of the French population lives in the Overseas Departments.⁴ In other words, while the FTR adopted by the ARCEP and used as a benchmark by the TRC might be a LRIC-based rate, it represents

² LIME's Response to Public Notice in the Matter of Review of the Fixed and Mobile Termination Prices and the Transit Prices in Current Interconnection Agreements, Anguilla, June 6, 2011.

³ ARCEP, "Modèle technico-économique des coûts de la terminaison d'appel fixe en France", Public Consultation, 7 January 2011, at page 7, available at http://www.arcep.fr/uploads/tx_gspublication/consult-modele-ta-fixe-070111.pdf

⁴ Cf. the data available at http://www.insee.fr/fr/themes/detail.asp?reg_id=0&ref_id=bilan-demo.

almost exclusively the costs of an operator in metropolitan France. It is patently obvious that the market environment and operating conditions of Paris are quite different from those in the Caribbean, and it is manifestly unreasonable to argue that the costs of providing fixed voice call termination in Paris is in any way representative of providing fixed voice call termination in the VI. LIME BVI submits, therefore, that it is inappropriate to use the ARCEP FTR as a benchmark for determining the VI FTR.

10. There is the appearance that low benchmark rates are best practice. Best practice, however, is within a context. LIME therefore anticipates that the benchmark FTR rates used for BVI will be within the context of regional best practice, which disqualifies the use of European FTRs.

Glidepath

11. The TRC ought not simply to pluck the rates out of the ARCEP Decision while ignoring the rest of the Decision which establishes a glide path towards the implementation of the determined rate, whatever the rate will eventually be. It makes the TRC's arguments seem self serving and inconsistent.

12. LIME notes, and without prejudice to the inappropriateness of European benchmarks, that it is the practice of ARCEP to transition operators to new termination rates, using a glide path. And while the TRC has embraced a benchmark approach to setting rates, it has not proposed a benchmark approach to implementing the final rate, whatever that rate will eventually be.

13. The use of a glide path prevents revenue shock to operators. It is unreasonable for the TRC to propose a reduction of the magnitude of approximately 70% for FTRs without adopting a glide path over a period of time.

III. Requirement to Follow Due Process

14. LIME notes that at this point the consultation process is still active. Yet the TRC has declared that **‘The new regulated rates will apply from 1 November 2011 and the licences of the operators declared dominantamended accordingly’**. The consultation provides for interested parties to respond by October 31, 2011. Given the right to natural justice, each party has to be heard by the TRC and the TRC must keep an open mind while considering all the relevant information prior to making a determination. However, the process envisaged by the TRC does not include an opportunity for reply comments, and would allow a few hours in the evening between the receipt of comments from interested parties and the implementation of the new rates that are ostensibly the subject of this consultation. This is insufficient time for the Commission to properly consider all the evidence. It is therefore virtually impossible for the TRC to implement new rates by 1 November 2011 in a lawful manner, unless it is that the TRC has already made a determination on this matter and the appearance of consultation is a pretence.

15. LIME acknowledges receipt of an e-mail dated October 27, 2011, from the TRC, advising that *‘...the deadline for the consultation on the Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks Part II: Assessment of Regulatory Remedies has been extended until 31 December 2011. The regulated rates, if adopted, will take effect from 8 January 2012. The substance of the proposed amendment to the licence was set out in the consultation document of 30 September 2011.’*

16. LIME disagrees that *‘...The substance of the proposed amendment to the licence was set out in the consultation document of 30 September 2011.’* Any proposal which seeks to amend a licence must state the exact language by which the licence is to be amended and this is not set out in the captioned consultation document of 30 September 2011.

17. Accordingly the TRC must propose the specific language to amend the licences and follow the procedure set out by the Telecommunications Act and the referenced licences for amendments.

18. Article 8.1 of LIME's 'Licence for the Operation of a Telecommunications Network Providing Telecommunications Services in the British Virgin Islands' (LIME's Licence) states that:

Prices for telecommunications services shall be determined by providers in accordance with the principles of supply and demand in the market. Should the licensee be designated a Dominant Public Supplier in accordance with Section 26.(4) of the Telecommunications Act, 2006, the procedures for this article 8 shall then apply.

19. Section 26.(4) of the Telecommunications Act 2006 (the Act) states that:

Where the Commission determines that a public supplier is dominant in any market, the Commission shall include in the licence of the public supplier, upon issuing or by amending the licence, such additional terms and conditions to the licence for the purpose of regulating tariffs.....

20. Section 17(b) of the Act states that:

A licence shall contain terms and conditions regarding the circumstances under which the licence may be amended.....

21. Article 18.1 of LIME's Licence states that:

(i) The Commission and the Licensee may agree in writing to modify or amend this Licence at any time subject to all relevant laws and regulations and (ii) pursuant to Section 23 of the Telecommunications Act, 2006, the Commission may modify or amend this License in accordance with the Telecommunications Act, 2006, if the Commission determines that such a modification or amendment is necessary to achieve the objectives of the Telecommunications Act, 2006, or is in the

public interest, taking into account the reasonable interest and contractual rights of the Licensee and the principles of fair competition and equality of treatment provided, however, that for a period of not less than thirty (30) days prior to the giving of any notice pursuant to Article 18.5(b) with respect to any modification or amendment under this clause (ii), the Commission shall negotiate in good faith with the Licensee with the goal of reaching an agreement with respect to such modification or amendment acceptable to both the Commission and the Licensee. The Commission shall compensate the Licensee for any expense incurred or damage caused as a result of an amendment or modification made under Clause (ii) above. Any modification or amendments to this Licence pursuant to this Article 18.1 shall be made in accordance with the procedures set forth in Article 18.5.

22. Article 18.5 of LIME's Licence establishes the procedural rules for amending the Licence which are as follows:

(a) Scope of Applicability. *Amendments or modifications under Articles 18.1 above and suspensions and terminations under Article 18.3 above shall be made by directive of the Commission, as applicable, on the basis of the procedure set forth in the following subparagraphs.*

(b) Notice. *Before adopting a directive under subparagraph (a) above, the Commission shall publish a notice in the Gazette and at least one (1) other newspaper of general circulation in the British Virgin Islands and send a copy of the notice to the Licensee:*

- i** stating that it proposes to adopt a directive and setting out its scope and its effect;*
- ii** stating the reasons why the Commission proposes to adopt such directive;*
- iii** in the case of a proposed directive to terminate this Licence due to a default under clauses (i) through (iii) of Article 18.3, specifying the directions and reasonable time period for the rectification of the defaults;*
- iv** specifying the time within which comments or objections with respect to the proposed directive can be made in writing by the Licensee or by any third party with a legitimate interest, such time not being less than thirty (30) days from the date of publication of the notice.*

v specifying the time within which the Commission shall submit to the Licensee a report and opinion on the proposed directive, such time not being less than sixty (60) days from the date of publication of the notice;

vi setting forth the date and the place for a hearing during which the Licensee and any third party with a legitimate interest can make comments and objections, such date not being prior to ten (10) days from the date at which written comments or objections must be made; and

vii setting forth the date on which the directive shall take effect, which, absent exigent circumstances, shall not be less than ninety (90) days from the date of publication of the notice.

*c. **Hearing and Resolution.** On the date set forth in the notice, the Commission shall call a public hearing during which the Licensee and those third parties with a legitimate interest that have duly filed comments or objections which the Commission deems substantial and relevant, shall have a right to be heard. The Commission's directive shall be adopted no later than twenty (20) days after the public hearing and shall be in writing and shall state the reasons why it has been adopted. Any directive terminating this License shall specify which of the defaults set forth in the notice delivered to Licensee under Article 18.5(b), if applicable, were not cured within the time period specified in such notice. Upon the Commission's adoption of a directive under this subparagraph (c), the Commission shall publish a notice in the Gazette and at least one (1) other newspaper of general circulation in the British Virgin Islands; provided, however, that the Commission shall not publish a notice under this subparagraph (c) in the event an objection or appeal has been filed with the Commission or the Court or has been submitted to arbitration with respect to such resolution.*

*(d) **Appeals.** The Licensee shall be entitled to appeal any resolution of the Commission adopted pursuant to subparagraph (c) above to the Court.*

23. The provisions of LIME's Licence are consistent with:

24. Section 23(1) of the Act which states that:

23(1) *Subject to sections 17(b) and 21(b), a licence or a frequency authorization may be amended by the written agreement of the licensee or the authorization holder or by the Commission where*

25. Section 23 (3) of the Act states that:

Before amending a licence or a frequency authorization , the Commission shall give the licensee or authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety (90) days, giving reasons for the amendment and the date by which the amendment shall take effect, and shall give the licensee or the authorization holder the opportunity

(a) to present its views, and

(b) To submit to the Commission within such time as the Commission may specify a written statement of objections to the amendment of the licence or the frequency authorisation, which may include proposed alternatives to the amendment,

which the Commission shall take into account before reaching a decision on the amendment.

26. The Act requires a minimum of 90 days for amending licences, and in fact contemplates a longer period of time as the Commission is expected to consider any submissions made by the licensee prior to issuing a final determination. However, while the Commission has signaled its intent to modify the Unitary Licences following its Determination, it has not in fact given LIME BVI notice of the specific amendments that it proposes to make, given that it has not yet set out in writing those proposed amendments. As such, the amendment process cannot be said to have started.

IV. Wholesale Market for Fixed Termination on CCT -FiWi

27. The TRC states in this Consultation that ‘...*the current level of FTR may prevent the development of mobile to fixed (M2F) retail offers which creates a competitive advantage for LIME which owns both a fixed network and a mobile network, **which cannot be enjoyed by CCT and Digicel.***’ (emphasis added). LIME disputes that CCT does not enjoy the same benefits as LIME with regards to having both a fixed and mobile network.

28. Further to its response to Part I of this consultation, LIME submitted further information to the TRC by way of letter dated 6th October 2011, the text of which is reproduced below:

Cable and Wireless (BVI) Limited, trading as LIME (“**LIME BVI**”) references the captioned Determination Notice dated 8 September 2011 and published in the Gazette on 22 September 2011 (the “**Determination**”), as well as the “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” also published on 22 September 2011 (the “**Report**”). In this letter, LIME BVI requests that the Commission reconsider its Determination, and include as a relevant market “the wholesale market for fixed call termination on CCT”, and determine that CCT is the dominant provider of fixed call termination services in that market.

The Determination

In the Determination, the Commission sets out in some detail the rationale for its determinations in respect of definitions of the relevant markets, and concludes at paragraph 20 that the relevant markets are:

- i) The wholesale market for fixed-line call termination on LIME
- ii) The wholesale market for mobile call termination on CCT
- iii) The wholesale market for mobile call termination on Digicel
- iv) The wholesale market for mobile call termination on LIME
- v) The wholesale market for SMS termination on CCT
- vi) The wholesale market for SMS termination on Digicel
- vii) The wholesale market for SMS termination on LIME

Following an analysis of the characteristics of these markets, the Commission goes on at paragraph 30 to make the following determinations of dominance in those markets:

- oCable and Wireless (BVI) Ltd (“LIME”) is dominant in the wholesale market for voice call termination on its fixed network
- oCable and Wireless (BVI) Ltd (“LIME”) is dominant in the wholesale market for voice call termination on its mobile network
- oCaribbean Cellular Telephone Ltd (“CCT”) is dominant in the wholesale market for voice call termination on its mobile network
- oDigicel (BVI) Ltd (“Digicel”) is dominant in the wholesale market for voice call termination on its mobile network
- eCaribbean Cellular Telephone Ltd (“CCT”) is dominant in the wholesale market for SMS termination on its mobile network
- oDigicel (BVI) Ltd (“Digicel”) is dominant in the wholesale market for SMS termination on its mobile network

Without limitation to other possible errors in the Commission’s findings and determinations, LIME BVI submits that the Commission erred in not finding “the wholesale market for fixed call termination on CCT” to be a relevant market, and in not finding “CCT dominant in the wholesale market for voice call termination on its fixed network”. In so doing, the Commission failed to consider relevant evidence presented and available to it regarding the existence of this market, failed to take into account LIME BVI’s submissions regarding this market, and mischaracterized LIME BVI’s submissions as being in agreement with the Commission’s market definitions.

CCT’s Wholesale Market for Fixed Voice Call Termination

As the Commission is well aware, CCT provides a retail fixed voice telephony service in the VI. LIME BVI notes that the Commission has issued CCT a number range (284-446) specifically for fixed telephony services.⁵ Again, as the Commission is aware, CCT markets their fixed voice telephony service under the “FiWi” brand, and specifically targets the fixed voice market with their pricing plans.⁶ LIME BVI notes that it receives traffic from and sends traffic to this number range. Because the TRC communicated this number range to the ITU, who published it as a “fixed” number range in Operational Bulletin 887 of 1 July 2007, LIME BVI believes that CCT is likely receiving traffic from around the world to that number range and terminating it as fixed traffic.

Using the same analysis that the Commission sets out at paragraphs 11 through 19 of the Determination:

1. Wholesale termination on CCT’s fixed network is a derived demand from CCT’s retail fixed voice telephony services;
2. CCT’s fixed voice call termination service is a wholesale service provided to other operators, including LIME BVI;

⁵ See the Numbering Plan on the TRC’s website at http://www.trc.vg/index.php?option=com_content&view=article&id=11&Itemid=23

⁶ See <http://www.ctwireless.com/plans/postpaid/>. See also the attached newspaper advertising.

3. There are no effective demand-side wholesale or retail substitution services for termination on CCT's fixed network. Calling to other networks is not a substitute for calling to CCT's fixed network;
4. There are no effective supply-side substitutes either. No person other than CCT can provide fixed call termination on CCT's fixed voice network

The inescapable conclusion is that "the wholesale market for fixed call termination on CCT" is a relevant market that the Commission should have taken into account in its Determination. By not including this market in the Determination, the Commission failed to consider its own relevant information.

Further, the analysis set out in paragraphs 23 to 29 of the Determination is also applicable to an analysis of the wholesale market for fixed voice call termination on CCT. The results of that analysis would have been similar to those that the Commission found with respect to the other relevant markets – namely, that CCT is dominant in the wholesale market for voice call termination on its fixed network.

LIME BVI Submissions

In addition to failing to properly consider its own evidence, the Commission also failed to properly consider LIME BVI's 1 July 2011 submissions. At page 2 of the Report, the Commission states that "[b]oth LIME and CCT agreed with the market definitions and the designation of dominance".

However, LIME BVI's 1 July 2011 response to the consultation⁷ was as follows:

Question 1 a): Do you have any objections to the above definitions?

The definition the TRC refers to is the definition of the markets, as contained on page 10 of the consultation document which are :

Conclusion 1: The TRC intend to define seven separate markets for termination:

- i) The wholesale market for fixed-line call termination on LIME
- ii) The wholesale market for mobile call termination on CCT
- iii) The wholesale market for mobile call termination on Digicel
- iv) The wholesale market for mobile call termination on LIME
- v) The wholesale market for SMS termination on CCT
- vi) The wholesale market for SMS termination on Digicel
- vii) The wholesale market for SMS termination on LIME

6. LIME objects to the market definitions because the TRC has erred in not including the wholesale markets for fixed call termination on CCT's and Digicel's fixed voice networks.

⁷ 'Consultation on the Market Analysis of Wholesale Call and SMS Termination on Individual Fixed and Mobile Networks', 1 June 2011 (Reference Number C/02/2011).

7. The TRC is inconsistent in applying the methodology in its classification of the service of CCT. Under the section determining the product market, specifically at paragraph 3.5 of the consultation document the TRC states:

3.5 In our initial request for information to the operators, CCT and LIME responded that they considered that each market; fixed, mobile and SMS termination constituted a separate market for termination. Digicel responded that it was not possible to draw conclusions on market definition at this stage. CCT suggested that a distinction should be drawn not between fixed and mobile termination but between wired and wireless termination with reference to their FiWi product which is a fixed wireless service using CDMA technology. The product in question is a wireless product which offers voice calls via a desk phone. The product itself uses mobile technology to originate and terminate calls and can be used to make and receive calls wherever the CCT CDMA network reaches in the VI. Therefore it offers the same level of mobility (albeit with a different type of handset) as a mobile voice product offered with GSM technology (or, for that matter, CDMA technology). As CCT's FiWi product exists as an alternative to its GSM prepaid and postpaid calling product using a mobile technology, the TRC considers that the termination of calls to FiWi should be treated as mobile call termination.

8. CCT markets its FiWi service as a fixed line service and fixed line numbers are assigned to the service. The FiWi service is a fixed service provided over CCT's wireless network. The service does not have the mobility of mobile service. The fixed wireless service is confined to a few cell sites and a customer cannot travel with the instrument outside of the cellsites to which the service is locked and still receive service. It is abundantly clear that this is a fixed service, and that it is not a mobile service merely because it is provisioned using wireless technology.

9. The call charges too for fixed and mobile service are different. And the FiWi service is intended to compete with fixed line service, not mobile. In this regard, LIME notes that treating CCT's fixed network as if it were a mobile network would introduce distortions into the retail market. First, it would make fixed calls from LIME to CCT's fixed network artificially more expensive than fixed calls from CCT to LIME's fixed network – even though they compete with each other. This will lead to customers choosing the CCT service over LIMEs, not because of better quality or service but because of a decision by the regulator. Second, it would send a perverse signal to the market that investment in the lowest cost

technology (i.e. fixed-line network technology) will not be rewarded by competitive success. LIME does not believe this is in the best interest of the Virgin Islands.

10. In LIME's considered assessment of this product market CCT's FiWi's service is a fixed line service and fixed termination charges ought to be applicable, not mobile termination charges.

The foregoing is explicit that LIME BVI did not agree with the TRC that the list of relevant markets proposed in the June 2011 consultation document was complete. LIME BVI continues to submit that the TRC must include "the wholesale market for fixed call termination on CCT" among the list of relevant markets. By failing to address LIME BVI's submissions in July 2011, the Commission failed to consider relevant evidence properly and squarely in front of it.

LIME BVI submits that the TRC has also failed to take into account another important regulatory principle in this matter, specifically, technology neutrality. This means that services ought to be treated the same regardless of the underlying technology used to provision the service.

While the TRC did not address this issue in the Determination or the Report, the TRC has erred in the June 2011 consultation document by mischaracterizing CCT's service as being in the mobile market based solely on the underlying technology.

CCT clearly states on its website that:

'with a CCT FiWi phone you can have all the benefits of a landline phone without the wires, installation charges , and lengthy wait times. CCT has a variety of FiWi plans that make residential calling a breeze.'

By its own admission CCT has positioned the FiWi service as competing with LIME's fixed LIME service and uses the feature of LIME's fixed line as the reference for its service. In the attached advertisement for the FiWi service, the ad addresses the market for fixed residential and business service and compares FiWi's International Long Distance to LIME's fixed line International long Distance rates and the instrument in the ad performs the function of a fixed, cordless phone.

It is clear that CCT's FiWi service is intended to be a substitute for LIME's fixed landline service. That is the FiWi service is intended to provide services similar to LIME's fixed line service and is intended to satisfy those customer needs satisfied by LIME's fixed landline service. Accordingly the TRC has erred in not properly defining the FiWi service as a fixed line service and this fundamental error has resulted in the TRC omitting to declare that CCT is dominant in the wholesale market for fixed line call termination.

CCT's fixed wireless service is in the fixed market, irrespective of the underlying technology used to deliver the service. As demonstrated:

1. CCT offers a fixed service to its customers. Contrary to the TRC's assertion, the FiWi service does not '*...offer the same level of mobility (albeit with a different type of handset) as a mobile voice product offered with GSM technology(or, for that matter, CDMA technology)*'
2. CCT's fixed wireless FiWi service is offered as an alternative to LIME's fixed line service. Contrary to the TRC's assertion that '*....CCT's FiWi product exists as an alternative to its GSM prepaid and postpaid calling product using a mobile technology.*' (emphasis added).
3. The TRC's position that '*...the termination of calls to FiWi should be treated as mobile call termination*' is contrary to FiWi's positioning in the market as a fixed line service.

LIME BVI's Request

All the evidence available to LIME BVI and to the TRC suggests that "the wholesale market for fixed call termination on CCT" is a relevant market, and that CCT is the dominant provider of fixed call termination services in that market. As the TRC itself suggested in the Determination, in the absence of regulation there is little to prevent the terminating fixed operator from behaving independently of its competitors, subscribers and ultimately of users such that prices are constrained. This would be to the ultimate detriment of competitors and subscribers in the Virgin Islands.

LIME BVI calls on the Commission, therefore, to reconsider this aspect of its Determination, and to find that:

1. "the wholesale market for fixed call termination on CCT" is a relevant market
2. CCT is dominant in the wholesale market for voice call termination on its fixed network

29. LIME BVI notes that the Commission has not yet responded to the above request for reconsideration of the Determination, and submits that it should rectify this aspect of the Determination prior to issuing a determination in this proceeding.

30. If it does not, the result will be asymmetric rates, whereby CCT would be able to charge more for the same service (fixed call termination) than LIME BVI or any other party operating a fixed line network. Or, put another way, if it is in fact more expensive for CCT

to provide fixed call termination than LIME BVI because of their choice of wireless network technology, the TRC would be rewarding CCT for its inefficient market entry and distorting the market. The TRC would also be sending a clear signal to the market and any potential investors that efficiency is not valued in the VI.

V. Closing Remarks

31. LIME anticipates that the Commission will reconsider the use of European benchmarks in arriving at a benchmark FTR for BVI. These are inappropriate.

32. The Commission must bring itself into compliance with the established legal provisions for amending licences.

33. LIME continues to encourage the TRC to recognize that the Wholesale market for Fixed Termination on CCT is a relevant market and that any other decision is contrary. LIME awaits a further decision from the TRC on its appeal for review.

34. LIME thanks the Commission for the opportunity to participate in the consultation. Kindly send any communication in relation to this consultation to:

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