

**CABLE AND WIRELESS (BVI) LTD.
RESPONSE TO
REPORT ON THE CONSULTATION ON THE
BROADBAND MARKET ANALYSIS
And
PART II OF THE BROADBAND MARKET ANALYSIS:
REGULATORY REMEDIES
(Reference Number: P/02/2015)**

**** PUBLIC COPY ****

22 January 2016



1. Introduction

- 1.1. This document presents Cable and Wireless (BVI) Ltd.'s ("LIME BVI") response to the **Report on the Consultation on the Broadband Market Analysis and Part II of the Broadband Market Analysis: Regulatory Remedies** ("the Consultation Report") issued by Telecommunications Regulatory Commission of the Virgin Islands ("TRC" or "Commission"), dated 17 December 2015, reference number: P/02/2015.
- 1.2. This document is the public version. Confidential information has been removed and where such information has been removed the symbol ## is used.
- 1.3. Cable & Wireless (BVI) Ltd. expressly states that failure to address any issue raised in the Consultation Report does not necessarily signify its agreement in whole or in part with any position taken on the matter by the TRC or respondents. Cable & Wireless (BVI) Ltd. reserves the right to comment on any issue raised in the Consultation Documents at a later date.
- 1.4. All responses to this document should be sent to the Mr. Tim Ringsdore tim.ringsdore@lime.com and copied to Ms. Melesia Sutherland at melesia.campbell@cw.com .

PUBLIC COPY

- 1.5. The TRC has determined LIME BVI to be dominant in what it calls the “fixed retail broadband” market and “fixed wholesale broadband” market in the British Virgin Islands (“**the BVI**”). Having reached this determination, the TRC now initiates Part II of the proceeding, and seeks comment on the appropriate method of regulating price and/or quality of service in the retail market. The TRC is specifically seeking comment on the type of regulatory remedy, if any, to apply to the fixed retail broadband market in the BVI.
- 1.6. LIME BVI disagrees with the TRC’s dominance determination with regard to LIME BVI’s fixed wireline broadband services. In particular, LIME BVI takes issue with the interpretations and conclusions made by the TRC in the Consultation Report in defining the relevant market. In the following section, Section 2, we present our concerns with the TRC’s market definition analysis. In the final section of our comments, Section 3, we respond to Part II questions presented in the Consultation Report regarding the appropriate regulatory remedy for fixed retail broadband services in the BVI.
- 1.7. As articulated in comments by both Digicel and LIME BVI in this proceeding, and discussed further below, the market for broadband Internet services in the BVI is undergoing a fundamental transformation. Now is not the time to impose static rules on pricing or terms and conditions of service. Applying regulation to a dynamic market undergoing significant change is inappropriate and likely harmful; it would distort operators’ decisions to

PUBLIC COPY

invest in their fixed and mobile broadband networks and thereby interfere with further development of broadband competition in the BVI.

- 1.8. LIME BVI believes an appropriate response is to forbear from regulating broadband services, and to instead monitor the performance of the market. The TRC already collects a set of metrics on performance of broadband Internet services in the BVI. As the market transforms and competition further develops, we believe these metrics will show improvement as a matter of competitive necessity. ##

2. Comments on the TRC's Broadband Market Analysis

- 2.1. The TRC's determination to declare LIME BVI dominant in the provision of fixed wireline broadband services is founded on a conclusion that alternative technologies, such as fixed wireless and mobile wireless, are not "complete substitutes"¹ and therefore outside the relevant economic market, which the TRC defines to be fixed broadband services. In particular, the TRC finds that the differences between these alternative technologies and LIME BVI's fixed wireline technology, in terms of speed, portability and availability, preclude them from competing against one another.

¹ The Consultation Report, p. 9.

PUBLIC COPY

2.2. In this section, we address the TRC's assertion that because these different technologies are not what the TRC calls "complete" substitutes, they do not compete against each other.

A. Substitution

2.3. Before addressing the components of the TRC's substitution analysis (speed, portability and availability), we want to briefly address the TRC's use of the term "complete substitutes." This term is not defined in the TRC's report or commonly used in the economics literature, but from its use in the report we believe it is implied to mean "perfect substitutes." In the economics literature, two products that are perfect substitutes are considered to be identical in the eyes of the consumer.² As we discussed in our previous comments, however, perfect substitution is not and should not be a requirement to determining whether products or services effectively compete against one another and are in the same economic market. What is relevant and sufficient is only that an alternative service serve a comparable function to the service under investigation and thereby act as a competitive constraint. As is evident from the discussion that follows, differences in the

² See, for example, Hal R. Varian, *Intermediate Microeconomics*, 3rd edition (1993), p. 38 ("Two goods are perfect substitutes if the consumer is willing to substitute one good for the other at a constant rate...on a one-for-one basis.").

PUBLIC COPY

quality of service are often a fundamental aspect of how companies compete.

B. Speed

- 2.4. The TRC acknowledges CCT's GoFastLTE broadband services are a substitute for LIME BVI's wireline broadband services at lower speeds (up to 12 Mbps), but asserts that the absence of a broadband service offered by competitors at very high speeds (exceeding 12 Mbps) defeats competitors' ability to compete effectively against LIME BVI. That is, according to the TRC, LIME BVI's dominance derives in part from being the only operator currently capable of offering a service in the BVI exceeding 12 Mbps.
- 2.5. We disagree with this conclusion. Competition for broadband services today is for these lower-speed services. Almost all of LIME BVI's broadband customers ## are on plans that offer maximum download speeds of 12 Mbps or less, and as a general matter, across operators, the lower-speed services on offer are the most demanded, most popular offers. It is true that some of our customers are moving to and are attracted by our "SuperFast" broadband services at speeds exceeding 12 Mbps, and we anticipate at some point this to become an important segment of market growth, but today these very high-speed services are only a very small niche of the market. Competition is in fact driven by how operators serve and provision their mass-market lower-speed broadband offers. The TRC's decision to exclude competing services because a competitor matches only a subset of

PUBLIC COPY

LIME BVI's services is misguided, and is especially so when those services that the competitor does in fact match are practically the entirety of the market.

C. Portability

2.6. The TRC explains that CCT's GofastLTE broadband services have "an element of portability" that LIME BVI's broadband services do not match:

Whilst customers cannot use the GOFASTLTE product to access data on the go as they might through a mobile phone, a GOFASTLTE box is portable. [In contrast] a customer cannot unplug a fixed wireline connection and take it with them to access the internet at another location. Fixed wireline internet is not portable. Therefore whilst some consumers may see fixed wireless products such as CCT's GOFASTLTE product as a substitute to fixed line internet, there are limits to the extent of substitutability due to connection speed and portability.³

2.7. To be clear, CCT's services matches LIME BVI's services in this QoS dimension in that both can be used at a fixed location. However, because CCT's service can also be made portable, while LIME BVI's cannot, the TRC concludes that this added quality somehow diminishes the substitutability of CCT's services or ability to effectively compete against LIME BVI's fixed broadband services.

³ The Consultation Report, pp. 7-8.

PUBLIC COPY

- 2.8. We disagree with this conclusion. Adding a QoS dimension to your service that your competitor does not yet offer does not diminish your own service's ability to compete, as the TRC's reasoning implies. The portability of CCT's services distinguishes them from LIME BVI's fixed services, but portability does not diminish the former's ability to substitute for the latter. To the contrary, portability enhances CCT's ability to compete.
- 2.9. The two QoS distinctions that we have discussed—speed and portability—highlight the very nature of competition. Competition is rarely if ever observed for services that are perfect substitutes, or “complete” substitutes in every aspect to each other. CCT and LIME BVI both hold different QoS advantages, and they use these QoS distinctions to compete with each other. This is how competition works, and is supposed to work, in practice.

C. Availability

- 2.10. The third dimension the TRC considers in defining the market is geography, i.e., the geographic reach of competing services relative to LIME BVI's wireline broadband services. The TRC concludes that competition between CCT and LIME BVI is diminished by “the fact that the CCT GOFASLTLE product and LIME's fixed broadband products are not available for use in all the same areas.”⁴

⁴ The Consultation Report, p. 8.

PUBLIC COPY

2.11. We disagree with this conclusion. It is important to understand that CCT only introduced its GofastLTE services this past July 2015, and as of November it had already announced plans to expand the quality and availability of the services.⁵ Likewise, LIME BVI recently introduced its VDSL/SuperFast broadband services in March 2015, and it is already in the process of expanding their availability on a phased basis over time. Also, while the TRC does not mention this in its report, Digicel has apparently constructed a fibre network and recently announced plans begin offering fibre-based broadband services in the BVI this calendar year.⁶ All of these activities, not to mention the near term deployment of 4G LTE broadband services this year in the BVI, underscore the dynamic nature of this market and suggest that the TRC's evaluation is not accurate or appropriate.

3. Response to Part II questions on price and QoS regulation

3.1. In this section we respond to TRC questions 1 and 2. LIME BVI's responses to these questions are set forth throughout this section. At the outset, however, we identify the questions, and provide a summary of our response, as follows:

⁵ CCT press release, November 3, 2015 (<http://www.cctbvi.com/more-network-improvements-as-cct-expands-data-capacity/>).

⁶ "Fibre optic network a priority for 2016 – Looney," *BVI News*, January 7, 2016 (<http://bvinews.com/new/fibre-optic-network-a-priority-for-2016-looney/>).

PUBLIC COPY

- Questions 1 and 2 ask if the TRC should consider retail price regulation or retail QoS regulation, respectively, and if so what form(s) of price or QoS regulation should the TRC consider.

LIME BVI response: We do not believe applying regulatory controls to LIME BVI's prices, terms of service, or quality of service is appropriate. As explained above and in our previously submitted comments, we believe the market for broadband services in the BVI is competitive and undergoing significant transformation. We disagree with the TRC's conclusion that LIME BVI is a dominant provider in that market. Furthermore, we believe the application of explicit price or QoS controls on a single operator in a competitive and dynamic market is discriminatory, counterproductive and will impede investment in and development of broadband competition.

- 3.2. Before responding to the TRC's questions, we would like to note that LIME BVI is in agreement with both the TRC and other commenters in this proceeding on several important issues. First, we agree with the TRC's conclusion that retail regulations are "regulatory intervention of the highest form and should only be adopted as a measure of last resort." Second, we agree with both the TRC and Digicel that wholesale regulations are unnecessary and will not assist in the development of competition. Third, we agree with Digicel that retail regulations are unnecessary at this time. And fourth, we also agree with Digicel that its imminent deployment of a full

PUBLIC COPY

fibre network in the BVI underscores the absence of significant entry barriers or the need at this time for regulatory intervention.

- 3.3. Now is not the time to introduce static regulation of the retail broadband market in the BVI. The market for broadband in the BVI is highly dynamic, evolving rapidly, and ill-suited for regulatory intervention. In the past six months alone, several very large investments in fixed broadband have been made by all three operators:
- GofastLTE broadband was introduced by CCT in July of last year, with expansion ongoing;
 - VDSL/SuperFast broadband was introduced by LIME BVI in March of last year, with phased rollout ongoing; and
 - Construction of a full-service fibre network by Digicel is underway, with a service deployment date that is imminent.
- 3.4. In addition to these investments in fixed broadband networks, operators also have plans to make significant additional investments in their mobile broadband networks, as soon as the TRC completes its LTE spectrum assignments. In fact, LIME BVI anticipates introducing 4G LTE services in the BVI in short order if it is awarded LTE spectrum by the TRC.
- 3.5. Given these recent, transformative and ongoing developments, an appropriate initial step is not to apply regulations on a single operator or

PUBLIC COPY

any operator at this stage in the market's development. Instead, we believe that a proportionate response is to monitor the market and the performance of operators in the market as entry and investments occur over the subsequent 12-month period. ##

[end of document]

PUBLIC COPY