



LIME's Response to the TRC's Consultation on the Market Analysis of International Connectivity

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January 18, 2013

INTRODUCTION

Cable and Wireless (BVI) Limited, trading as LIME (“**LIME BVI**”) hereby responds to the Telecommunications Regulatory Commission’s (TRC) “Consultation On Market Analysis Of International Connectivity (Confidential Version)”. LIME BVI’s response is made without prejudice to its right to further engage the TRC as it considers appropriate.

RESPONSES TO QUESTIONS

Question 1: Are there other managed data services that should be included in the IMDS market?

By the TRC’s own market definition, the International Managed Data Services (“**IMDS**”) product market must necessarily include ATM, DIA, Frame Relay, IP-VPN, MPLS and other similar type services (i.e. services having functional similarities). LIME BVI is concerned that the TRC’s comments give the impression that LIME BVI’s MPLS service is the sole product of note in the IMDS market. The TRC has carefully omitted to mention comparable services that are being or could be easily offered in the market by LIME BVI’s competitors. This approach has no doubt contributed to the TRC’s premature conclusion that LIME BVI is dominant in the IMDS market.

Question 2: Do you agree that IPLC and IMDS (including MPLS) are the relevant market to analyse? Should any other market be included in the analysis?

Whereas the product market for IPLC as defined by the TRC may be acceptable. The TRC’s actual analysis of the IPLC market is flawed. The TRC’s statement, that “[t]he supply of international connectivity via IPLC’s comes from LIME. There is currently no alternative supplier in the VI.” is incorrect and has led to an inadequate analysis of the market by the TRC.

The market reality is that there are several capacity rights holders in respect to fibre-optic submarine cables landing in the VI and over which IPLC services are offered. For example France Telecom has significant ownership on CBUS cable system which has a

terminating point in BVI. Other consortium members are LIME BVI and LIME affiliates. In the case of ECFS, this system is a consortium system and has a number of owners including LIME BVI, LIME affiliates, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. In the case of

Taino Carib, this system is a consortium system and has a number of owners including [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

While LIME BVI has an ownership interest in each of these cable systems, a large number of other telecom operators also have ownership interests that are in many instances much larger than LIME BVI's. Furthermore, a number of these companies sell international voice and data capacity to entities in the VI or to their affiliates. In fact, quite recently LIME BVI has failed to secure IPLC business from a potential wholesale due to another entity offering this entity a more competitive proposition than LIME BVI. In the VI, the capacity rights holders are able to compete with LIME BVI for international capacity sales to and from the VI. In only one case is the system owned entirely by affiliated companies (the East West Cable system, which goes to Jamaica and Dominican Republic) but LIME BVI's ownership on this system is minimal and the use of this system is

infrequently demanded by any entities within BVI because of its termination points.

The facts demonstrate that LIME BVI is by no objective measure a monopolist in the market(s) for International Interconnectivity in the VI and is subject to competition from a broad consortium of multinational telecoms operators. LIME BVI considers it inappropriate to define the product market narrowly, by arbitrarily limiting it to locally owned international voice and data capacity, instead of considering the actual competitive options in the market and their real effect of constraining prices in the short term, as well as lowering them appreciably over the medium and long term.

It follows that since the market for IPLCs is competitive, and (as explained by the TRC IPLC's are required to offer IMDS services, the market for IMDS is also competitive. At the very least, the evidence indicates there is no barrier to market entry should prices be set at a high level. Once an IPLC service is acquired, any Service Provider either in the Virgin Islands or overseas can add the necessary technology and equipment to offer an IMDS service. In fact, multi-national customers with operations in many countries can easily source IMDS services from suppliers in the United States or elsewhere and "bring them in" over IPLC services. Therefore, the extent to which other entities enter the IMDS market is by choice as there are no barriers to entry given the options to obtain an IPLC.

Question 3: Do you agree that LIME BVI is dominant in the market for the provision of IPLCS? If not, please explain why.

No. LIME BVI does not agree with this conclusion of the TRC. The TRC has mistakenly presumed that the market for IPLCs is a monopoly market presided over by LIME BVI. The TRC erroneously considers that the public suppliers in the relevant IPLC market are limited to Cable and Wireless (BVI) Ltd, BVI Cable TV and Caribbean Cellular Telephone Ltd. (CCT). The TRC has failed to acknowledge that all the holders of capacity rights (extensively listed in response to question 2) are also a part of the market for IPLCs (and IMDS) in the VI. Where there are existing consortium members

or upon the sale of the IRUs, LIME BVI does not have the ability to charge high rates to its wholesale or retail customers in the VI without reference to the prices set by these other consortium operators in the market. As discussed in the response to the previous question LIME BVI faces price competition and has been forced to lower its rates to effectively compete in this market. Further, since LIME BVI owns a relatively small percentage of the capacity on these cable systems, it cannot possibly be dominant. For example, should the domestic VI IPLC rate be set at a supracompetitive level to yield excessive profit, then any cable owner or rights holder could make additional capacity available by switching capacity allocated to low margin international transit rates to competitively priced IPLCs or simply allocate available wet capacity for this purpose. This demonstrates that there are supply –side substitutes for IPLCs (and IMDS) in the BVI and the TRC’s application of the SSNIP test is flawed.

Similarly, the TRC suggested that since there are four submarine cables landed in the VI then it was unlikely that any new entrant would construct a cable and ultimately that there are no supply side substitutes to IPLC connections in the face of a 5 to 10% increase in prices. This has been demonstrated to be incorrect. In arriving at that conclusion the TRC failed to acknowledge the market influence of the myriad of consortium members to the cables landed in the VI (as elaborated on in question 2). Further, a fifth submarine cable is being planned for landing in the VI called Pan Caribbean Cable System (PCCS).¹ This cable system is another consortium system with multiple owners. This is imminent and will increase the supply of international voice and data capacity via IPLC and IMDS services to the VI. With type investments continuing to be made in the VI, it should become clear that the current legal and regulatory framework is appropriate and there is no need for regulation in the market for

¹ See for example “The PCCS operators to boost fast broadband access in the Caribbean, Central and South America”, Alcatel-Lucent press release, 30 November 2012, available at http://www.alcatel-lucent.com/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4w3MfQFSYGYRq6m-pEoYgbxjgiRIH1vfV-P_NxU_QD9gtzQiHJHR0UAAD_zXg!/delta/base64xml/L0lJayEvUUd3QndJQSEvNEIVRkNBISvNI9BX0U4QS9lb193dw!!?LMSG_CABINET=Docs_and_Resource_Ctr&LMSG_CONTENT_FILE=News_Releases_2012/News_Article_002755.xml

international connectivity. New investments and falling prices are compelling evidence of a contestable market. See response to question four on evidence of falling rates.

Question 4: Do you agree that BVI is dominant in the market for the provision of IMDS? If not, please explain why?

No. LIME BVI does not agree with this conclusion of the TRC. LIME BVI now has effective competitors in the IMDS market. Among the large number of entities that have IRUs on the cables there is no barrier to entry into the IMDS market. Further LIME BVI is not in a position of economic strength in the IMDS market to act independently of its competitors or customers. The continued reduction of LIME BVI's rates for IMDS services is proof of this. A comparison of the current rates in Table 1 with the rates earlier submitted in Table 2 is evidence of this.

Table 1: Products: IPLCs, MPLS and IP Transit structure (January 2013)

Speed	MPLS MRC	IPLC MRC	IP Transit MRC
512Kbps	█	█	█
1024Kbps	█	█	█
1544Kbps	█	█	█
2 Mbps	█	█	█

Table 2: Products: IPLCs, MPLS and IP Transit structure (June 2011)

Speed	MPLS MRC	IPLC MRC	IP Transit MRC
512Kbps	█	█	█
1024Kbps	█	█	█
1544Kbps	█	█	█
2 Mbps	█	█	█

The above price trends are not consistent with the assertion that LIME BVI can charge prices significantly above competitive levels for a sustained period of time. In short, LIME BVI does not have the economic strength to act independently of its competitors and hence is not dominant in the IMDS market.

Question 5: Do you agree that the opportunity cost is zero? If not explain why.

No, LIME BVI does not agree. Whereas the opportunity cost of LIME BVI's use of the cables for its own international traffic relative to the use of the cables for international transit traffic is low, it is still material for LIME BVI. Further, LIME BVI requirements for international capacity on the cables for its own use, as well as for resale within the VI (as well as such use in the future) would have been taken into account when planning each cable. In other words, the use of the cable for its own international traffic was not incidental, but planned. Also, given that consortium members and IRU holders can compete with LIME BVI in both the wholesale and retail markets in the VI, present business risks for LIME BVI. The opportunity costs cannot therefore be zero.

Question 6: Do you agree that the investment cost of VI use of the submarine cable is zero? If not, please explain why.

No. LIME BVI does not agree. The investment cost of a submarine cable used in the VI is small relative to the total investment in the entire cable, however, given the size of LIME BVI's business, this amount is still material. This means that LIME BVI should be allowed to recover this portion of the investment (plus a reasonable return) via its IPLC and IMDS rates. Its ability to do so should not be stymied by an imposed cap through regulation. The market should be allowed to decide, which it is in fact doing. See also LIME BVI's response to question 4. Furthermore, as shared in its response to question 5, of the TRC's International Connectivity Market Analysis – Request For Information, LIME BVI's annual operating and maintenance costs incurred by the use of the cables to supply IPLC and IMDS services in the VI are material. LIME BVI should be allowed the flexibility to recover these costs, subject to market competition.

Question 7: Do you agree that the marginal cost of VI use of the submarine cables is positive?

Yes, LIME BVI agrees that the marginal cost is positive.

Question 8: Do you agree with the principle that LIME BVI should sell IPLC's and IMDS at the cost of self provision i.e. the same price which it charges to itself? If not, please explain why?

No, LIME BVI does not agree. Regulating the prices at which LIME BVI sells IPLCs and IMDS services is predicated on the presumption that LIME BVI is dominant in these markets and can set high prices without reference to other competitors in the market. Since this is not the case, LIME BVI's prices should not be regulated at all. As such, the issue of mandating LIME BVI to sell IPLC and IMDS services at the cost of self provision should not arise. The market should continue to be the determinant of the prices at which IPLC's and IMDS are sold.

Question 9: What is the appropriate price to charge for a) IPLCs and b) IMDS?

LIME BVI is of the considered view that the current market prices that are charged by LIME and its competitors for IPLC's and IMDS services are appropriate. The market is best placed to determine the prices that are appropriate and has been doing so. LIME BVI has been forced to reduce its IMDS prices to remain competitive. See Tables 1 and 2 represented in the response to question four for examples.

Question 10: Do you agree that mandatory access and co-location is necessary?

No, LIME BVI does not consider such actions as necessary. The notion of mandating access and co-location fails to recognize that at the heart of the agreements/contracts to establish a submarine cable (given the huge costs to do so) are several different consortium members or rights holders that have agreed to share access to the cable and/or landing sites that they are collectively investing in. In exchange, they are able to sell capacity within and external to the VI, even as they compete against each other for business. The strength of this arrangement is predicated on the certainty facilitated by the binding legal contract or agreement in place.

Inherent to a consortium investing in a submarine cable system is the intention to make the capacity available but at a price that makes the investment worthwhile. What message would the TRC be sending by creating entitlements to entities that are not part of the consortium to establish a cable? Besides, as discussed throughout this response, there is no need for the introduction of this sort of remedy, given that the market is competitive and functioning well. More generally, there is a large body of empirical literature that has demonstrated mandatory access and unbundling regulations to have negative effects on investment. For instance, in a survey of the empirical literature on the impact of access unbundling regulation on investment, the authors concluded that “[t]he majority [of empirical studies] conclude[] that local loop unbundling based on forward-looking cost methodology discourages both ILECs and CLECs from investing in networks, so that the steppingstone theory is possibly not supported by the data.” (See, Carlo Cambini and Yanyan Jiang, “Broadband investment and regulation: A literature review,” *Telecommunications Policy* 33 (2009).)

Question 11: What is your view on the likely consumer effects of the proposed regulation?

LIME BVI considers that the proposed regulation is not required and will not have any positive effects on consumers. The TRC’s market analysis is methodologically flawed and has resulted in an artificial market construct for International Connectivity. The proposed regulations are accordingly baseless. Further, the regulations would only generate administrative costs and seeks to remove the needed flexibility of LIME BVI to respond to market forces, by a setting a cap on the prices that LIME BVI can set for IPLC and IMDS services to both its wholesale and retail customers. It may also have the effect of deterring future investments to submarine cables in the VI, notwithstanding its obvious comparative advantage of being an international transit hub within the Caribbean. As the TRC is aware, nearby Puerto Rico is also a hub for landing submarine cables in the region, and LIME BVI would encourage the TRC to establish a regulatory regime that encourages future consortia to invest in landing cables in the BVI instead of Puerto Rico.

Closing Remarks

LIME BVI does not agree with the TRC's conclusion that it is a monopolist in the market(s) for international connectivity. The TRC is invited to reconsider the players into this market take into account the many telecom operators that share the cables with LIME BVI and are today selling IPLCs to entities in the VI at competitive prices and thereby acts as a constraint on LIME BVI's pricing, Whereas some consortia members may not be currently active in the market, they can easily enter the market should the opportunity arise (i.e. one or more operators attempt to establish rates that are excessive and thereby further constrain prices. An investment in a new cable that will land in the BVI is imminent, which demonstrates that the market for international connectivity is robust and working effectively, and supply side substitutes will be further increased.

Given the above scenario, it is inappropriate for the TRC to seek to regulate the market for International Interconnectivity at this time. It is inappropriate for the TRC to declare LIME BVI dominant in the markets for international interconnectivity. It is also inappropriate to seek to modify LIME BVI's operating licence to impose a cap on the rates that LIME BVI can charge for IPLC and IMDS services.

End