



**Decision on
Telecommunications (Competition) Regulations**

&

**Follow-up Consultation on
Telecommunications Competition Guidelines 2017**

issued by the

**Turks and Caicos Islands
Telecommunications Commission**

August 14, 2017

1 Introduction

On 19 April 2017, the Turks and Caicos Islands Telecommunications Commission (the “Commission”) initiated a consultation process to solicit input and comments on proposed *Telecommunications (Competition) Regulations* (the “Proposed Competition Regulations”).¹ The Commission herein issues this Decision to conclude the consultation process initiated by the April 19th Consultation Document (the “April Consultation Document”) and initiates a new follow-up consultation process via which it solicits input and comments on the proposed Telecommunications Competition Guidelines 2017 (the “Proposed Competition Guidelines”) included in the Annex to this document.

The Commission received three Responses to the April Consultation Document, all of which are available to the public on the Commission's website:²

- Cable & Wireless (Turks & Caicos Islands) Limited (trading as and referred to herein as “Flow”) submitted its Response on 31 May 2017
- Digicel TCI Ltd. (“Digicel”) submitted its Response on 31 May 2017.
- Andrew's Communications Ltd (“ACL”) filed a “private & confidential” Response on 28 June 2017. The Commission had two concerns with ACL's Response. First, ACL's Response was filed on a confidential basis without explanation or supporting justification. In the Commission's view, nothing in the Response appeared to be commercially sensitive or potentially confidential in nature. Consequently, the Commission informed ACL that its Response could only be accepted if it was filed publicly or, if not, supporting justification was provided for its treatment in whole or part as confidential. As a result, ACL re-submitted its Response on a fully non-confidential basis on 5 July 2017. Second, ACL's initial and re-submitted Responses were filed after the specified Response deadlines. Despite this late filing, the Commission has nevertheless decided to include ACL's 5 July 2017 Response as part of the record of the proceeding.

None of the three Respondents submitted Reply Responses.

The April Consultation Document set out the legal basis and rationale for the proposed introduction of the Proposed Competition Regulations. As an alternative second-best option, the Commission also explained that the introduction of telecommunications-sector competition guidelines could serve a similar role. For the reasons explained below, the Commission has decided not to proceed with the finalization and request to Government for the approval of the

¹ The Commission notes that on 16 May 2017 it extended the submission deadlines for parties Responses and Reply Responses to the Consultation Document. Initially Responses and Reply Responses were due by 19 May 2017 and 2 June 2017, respectively. With the extensions, Responses and Reply Responses were due by 31 May 2017 and 14 June 2017, respectively.

² <http://www.telecommission.tc/Completed-Consultations.html>

Proposed Competition Regulations, and instead the Commission intends to issue the Proposed Competition Guidelines. The Commission has the authority to issue the Proposed Competition Guidelines of its own motion and further approval of these Guidelines by Government is not required. Therefore, the purpose of this Follow-up Consultation is to seek input and comments on the Proposed Competition Guidelines. Based on this input and comments, the Commission intends to review and issue the final Competition Guidelines in October, 2017.

The balance of this Decision and Follow-up Consultation Document is structured as follows: **Chapter 2** summarizes parties' Responses to the April Consultation Document and the Proposed Competition Regulations, and also provides the Commission's responses to and, as necessary, conclusions in relation to the Responses. **Chapter 3** describes the Proposed Competition Guidelines and includes several related Consultation Questions for interested parties to respond to if they so wish. Lastly, **Chapter 4** describes the process for this follow-up consultation on the Proposed Competition Guidelines.

2 Consultation on Proposed Competition Regulations

The April Consultation Document requested input and comments to eight specific Consultation Questions relating to the rationale and other matters related to the Proposed Competition Regulations. What follows is a summary of comments by the three Respondents, together with the Commission's determinations on the matters at issue.

2.1 Q#1 – Need for a Unified/Comprehensive Competition Framework

As set out in the April Consultation Document, the *Telecommunications Ordinance 2009* (the "Ordinance") together with the *Telecommunications (Interconnection and Access to Telecommunications Facilities) Regulations* ("Interconnection Regulations") include a number of competition-related provisions, focussed primarily on the determination of dominance and the application of and forbearance from ex-ante remedies. In contrast, the competition-related provisions in the Telecommunications and Spectrum Licences (the "Licences") issued under the Ordinance³ include provisions that focus on anti-competitive practices that are the subject of ex-post analysis and remedy. The Licences also indicate that the "Commission will issue Guidelines describing, or may otherwise determine, what constitutes a substantial lessening of competition and the procedures for assessing it".⁴ Notably, the competition-related sections of the Ordinance, Regulations and Licences are broadly worded and do not include provisions on the conceptual framework or criteria that the Commission would use in a decision-making process relating to such matters.

The two main objectives of the Proposed Competition Regulations, therefore, were to develop the conceptual framework and criteria that the Commission would use in any future application of the existing competition-related provisions **and** to expand the Commission's authority in

³ For instance, see Sections 13.4 and 13.5 of Cable & Wireless (TCI) Ltd.'s 2006 Telecommunications and Spectrum License.

⁴ E.g., Cable & Wireless (TCI) Ltd., 2006 Telecommunications and Spectrum license, Section 13.5.

specific competition-related areas that the Commission considered to be incommensurate relative to other existing provisions or insufficient for a complete competition framework.⁵ The Commission prepared the Proposed Competition Regulations to reflect current internationally-accepted competition principles in a manner that is appropriate to the existing legal and administrative framework and proportionate to TCI's relatively modest size. The Commission considered that the adoption of the Proposed Competition Regulations would serve to fill the above-noted gaps and, in doing so, would provide the Commission with additional tools to better promote competition and the interests of consumers. In this respect, the Commission asked interested parties the following specific questions.

Consultation Question 1: Please provide your views on the need for a more comprehensive and unified competition framework in the telecommunications sector in TCI, with supporting rationale.

In its Response, Flow noted that "the Commission already has the legal framework for a comprehensive and unified competition framework in the TCI" and, in this regard, cited sections 4, 14, 16 and 17 of the Ordinance. It also noted that this framework is "sufficiently broad in scope to provide flexibility and allow adaption over time". It further acknowledged that the Licences also provide the Commission with the authority to police anti-competitive conduct, including "both ex ante and ex post competition safeguards". Flow also argued that there is "no urgent or economic basis for the enactment" of telecommunications-specific competition regulations. It further suggested that any such regulations would constitute a "massive and substantial expansion of the responsibilities" of the Commission, which would require a "significant influx of financial resources". Flow further suggested that "competition law rules should never be the responsibility of a telecoms regulator." In this regard, Flow suggested that if a competition authority were established in TCI in the future, it should cover the entire economy, including telecommunications.

In its Response, Digicel suggested that sector-specific competition provisions are generally not suitable or practical in small economies where regulatory authorities have limited resources. That said, Digicel also suggested that if measures to address competition issues are required, they should be addressed through legislation of general applicability rather than on a sector-specific basis.

ACL indicated in its Response that it does not support the introduction of the Proposed Competition Regulations. In reviewing the ACL Response, the Commission was not able to unambiguously identify a rationale for ACL's position in this regard, but it appears to be related to TCI's relatively small market size.

In response to these comments, the Commission notes that no party contested the fact that the Ordinance, Regulations and Licences give the Commission the authority to and, indeed, the responsibility for dealing with competition matters in the telecommunications sector on both an ex-ante and ex-post bases. Indeed, Flow quoted many of the relevant provisions of the Ordinance

⁵ As discussed below, these included matters relating to misleading representations, mergers, and sanctions for anti-competitive conduct.

in this respect, while also acknowledging that the Commission's powers with respect to competition issues are "broad in scope".

With the exception of certain specific competition-related areas that the Commission considers are relatively incommensurate or insufficient (see discussion below), the Commission generally concurs that the existing competition-related provisions do constitute a relatively comprehensive competition-related framework. However, the fact that such provisions are located in various legal instruments (not unified), and do not include complementary provisions related to the conceptual framework or criteria that the Commission would use in a decision-making process relating to such matters was one of the main motivations for the Commission to prepare and consult on the Proposed Competition Regulations. Such a conceptual framework and criteria would help to provide clarity, certainty and transparency as to how the existing broadly-specified competition-related provisions would be applied in practice. In addition, they were also intended to satisfy the Commission's mandate to provide guidance on anti-competitive conduct, as contemplated in the Licences.⁶

In addition, the Commission considers Flow's position on the need for a telecommunications competition framework to be contradictory. Flow acknowledges that the Commission's authority and responsibilities under the Ordinance and Licences already include monitoring and overseeing competition matters in the sector. It suggests, however, that any attempt to set out a conceptual framework and criteria as to how that authority and responsibility would be implemented would entail a "massive and substantial" expansion of the Commission's responsibilities. This second claim is inconsistent with the first point. In the Commission view, providing the conceptual framework and criteria that the Commission would use in implementing the existing competition-related provisions in the Ordinance, Regulations and Licences does not equate to an expansion of its responsibilities, but rather a clarification of how the Commission would apply these provisions in the future as may be necessary.

Furthermore, with regard to Flow's position that a sector-regulator should never be responsible to addressing competition matters, the Commission notes that the Ordinance, Regulations and Licences already assign this responsibility to the Commission. The issuance of Competition Regulations or Guidelines would not change that fact. The Commission therefore remains of the view that the specification of the conceptual framework and criteria explaining how the Commission will enforce the existing competition-related powers granted to it under the Ordinance, Regulations and Licences is appropriate and would be beneficial to the sector and consumers.

Lastly, all parties appear to suggest that given TCI's relatively small scale, the establishment of framework to address competition issues is not necessary. The Commission disagrees. As noted, the Ordinance, Regulations and Licences already include provisions to address such matters. The objective of a conceptual framework and criteria – whether set out in regulations or guidelines – is to provide clarity, certainty and transparency as to how competition issues will be addressed

⁶ That is, section 13 of Flow's Licence and Section 15 of Digicel's and ACL's Licences.

and enforced by the Commission in a proportionate and appropriate manner reflecting TCI's market size.

Consequently, the Commission maintains its position that the establishment of the conceptual framework and criteria describing how the Commission will apply the existing competition-related provisions of the Ordinance, Regulations and Licences is necessary and would be beneficial. As explained in the following section, however, the Commission now intends to issue the Proposed Competition Guidelines rather than Proposed Competition Regulations as initially proposed in the April Consultation Document.

2.2 Q#2 – Implementation Options

As described in the April Consultation Document, the Commission considered four options for further developing a unified and comprehensive competition framework for TCI, based on experience in other jurisdictions, both in the Caribbean region and further afield. These included:

- 1) enacting new comprehensive competition legislation that only applies to regulated sectors of the economy (including telecommunications);
- 2) amending and rewriting the telecommunications legislation to provide a comprehensive competition framework;
- 3) issuing telecommunications-specific regulations that more fully develop the competition framework; or
- 4) issuing telecommunication-specific guidelines that address competition issues.

As explained in the April Consultation Document, the first two options were not seen as feasible or practical in TCI at his time. Of the remaining two options, the Commission preferred Option 3, namely the introduction of telecommunications-specific competition regulations that would more fully develop the existing competition framework. Alternatively, the Commission's second preferred option was Option 4, namely the introduction of telecommunications competition guidelines that would address competition issues. In this respect, the Commission asked interested parties the following:

Consultation Question 2: Please provide your views on the manner in which a more comprehensive and unified competition framework in the telecommunications sector should be implemented in the TCI. Specially, please provide your views of the advantages and disadvantages of each of the four options discussed above and whether you agree with the Commission's preferred option of Competition Regulations and the Commission's second preferred option of Competition Guidelines.

In its Response, Flow largely focussed its comments on Options 3 and 4. It argued that the Commission is not legally permitted at this time to issue either Competition Regulations or Guidelines that would "give the Commission substantive anti-trust/competition law competencies and powers which the Ordinance does not envisage." Of the two options, Flow appeared to prefer the introduction of Competition Guidelines as opposed to Regulations – though it maintained that neither is necessary. In the event Competition Guidelines were issued

by the Commission, Flow argued that they could cover the Commission's exercise of ex-ante powers, but was sceptical on whether ex-post powers were covered. Flow stated that it believed that the Commission's exercise of ex-post powers to address anti-competitive conduct "is not expressly provided for in the Ordinance", although Flow acknowledged that it is contemplated in its Licence.

For its part, Digicel preferred the enactment of new comprehensive competition legislation (i.e., Option 1). Otherwise, given a choice between Option 3 and 4, Digicel considered the issuance of Competition Guidelines (i.e., Option 4) would be the best approach for TCI.

ACL did not comment on the four options described in the April Consultation Document.

The Commission has taken interested parties' comments into account on this question and has also deliberated further internally regarding its preferred choice between Option 3 and 4. As a result, the Commission has concluded that Option 4 (Competition Guidelines) rather than Option 3 (Competition Regulations) is, at this time, the preferred approach for a number of reasons. First, the issuance of Competition Guidelines is less complicated procedurally because they can be issued directly by the Commission (i.e., they do not require a further Government review process and Government approval to be enacted). Second, Competition Guidelines provide a more flexible approach framework in that they can also be more easily modified over time as market conditions and communications technologies evolve. Third, the Commission notes that both Flow and Digicel preferred the adoption of Competition Guidelines over Competition Regulations.

In this latter respect, Flow raised concerns that the Proposed Competition Regulations would have expanded the Commission's authority in specific competition-related areas (e.g., mergers, sanctions and misleading representations) and that any such expansion of the Commission's authority could lead to an expansion of the Commission's resource requirements and budget. While the Commission disagrees that the limited expansion of the Commission's authority in competition-related areas contemplated in the Proposed Competition Regulations would have placed any significant pressure on the Commission resource requirements or budget, it nonetheless notes that any such expansion of the Commission's authority would be subject to Government approval in any event.

Given all this, the Commission has re-evaluated its position and now considers that a more incremental approach is appropriate at this time. Consequently, the Commission's Proposed Competition Guidelines set out a conceptual framework and criteria that the Commission would be used in any future application of the existing competition-related provisions that are found in the Ordinance, Regulations and Licences. However, unlike the Proposed Competition Regulations, the Proposed Competition Guidelines do not expand the Commission's authority in competition-related areas. Rather, they comply with the existing legal and administrative framework in TCI and are narrower in scope compared to the Proposed Competition Regulations. Specifically, as summarized above and discussed in further detail below, a number of sections included in the Proposed Competition Regulations are not included in the Proposed Competition Guidelines.

With regard to the general scope of the Proposed Competition Guidelines, Flow maintains that they should address the exercise of ex-ante powers, but not ex-post powers. The Commission disagrees with Flow in this regard. The Ordinance, Regulations and Licences clearly contemplate that the Commission has authority to review a licensee's conduct after the fact and, if warranted, invoke remedies for anti-competitive conduct. As such, the Commission considers that issuing Guidelines that relate to these ex-post powers is within the Commission's authority, and will be helpful to licensees, competitors and the general public.

Sections 4 and 28(2) of the Ordinance specifically reference the Commission's authority to investigate and address a licensee's anti-competitive behavior. At no point do these sections suggest that the Commission's authority is restricted to ex-ante review. Indeed, the expected time when anti-competitive conduct will most often be addressed is after that conduct has occurred, and some party has filed a complaint to the Commission. It is simply incorrect to suggest that the Commission does not have authority to investigate and deal with such a complaint on an ex-post basis.

Section 14(b) of the Ordinance contemplates a Licence can include conditions to prevent anti-competitive behavior. Many Licences include such provisions, including Sections 13.4 and 13.5 of Flow's Licence:

13.4 The Licensee shall not engage in anti-competitive pricing and other similar practices or any other activities, whether by act or omission, which have; or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services, as may be further specified in Regulations and, in particular, the Licensee shall refrain from using revenues or resources from a Licensed Network or Licensed Service in respect of which the Licensee is dominant to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission.

13.5 Without limiting the generality of Clause 13.4 above, any act or omission which leads, or is likely to lead, to a substantial lessening of competition in the market for any telecommunications network or telecommunications service is prohibited. The Commission will issue Guidelines describing, or may otherwise determine, what constitutes a substantial lessening of competition and the procedures for assessing it.

The Licence prohibits “anti-competitive pricing and other similar practices or any other activities, whether by act or omission, which have; or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services” and “any act or omission which leads, or is likely to lead, to a substantial lessening of competition in the market for any telecommunications network or telecommunications service”. Where the Commission finds a violation of these Licence conditions by a licensee engaging in prohibited anti-competitive conduct, it may invoke the remedies in Section 52 or 53 of the Ordinance. It can be seen that the Commission's approach in such cases is that of an ex-post

review. Indeed, Flow specifically acknowledges that its Licence contains both ex-ante and ex-post competition safeguards.⁷

As noted above, these Proposed Competition Guidelines are intended to increase certainty and transparency by setting out the conceptual framework and criteria that the Commission would use in future competition-related matters in exercising its current powers under the Ordinance, Regulations and Licences, but without expanding those powers. While the Commission considers that guidelines can be helpful to licensees, competitors and members of the public, this is especially so in the case of the Commission’s approach to dealing ex-post with anti-competitive conduct by licensees – conduct that potentially can have serious implications for the proper development of a rivalrous telecommunications sector. Indeed, Section 13.5 of Flow’s licence specifically calls on the Commission to issue “guidelines describing what constitutes a substantial lessening of competition and the procedures for assessing it”. It can therefore be no surprise that, with the issuance of these Proposed Competition Guidelines, the Commission will be moving forward to satisfy the mandate that is expressly contemplated by this Licence provision (and similar provisions in other Licences).

2.3 Questions on the Parts of the Proposed Competition Regulations

Consultation Questions 3 to 7 sought input and comments on Parts I to V of the Proposed Competition Regulations,⁸ respectively, and Consultation Question 8 welcomed any comments on any additional matters that should be included in the Proposed Competition Regulations.

Given the Commission has decided to issue Proposed Competition Guidelines, rather than to seek approval for the former Proposed Competition Guidelines, some of the specific responses provided are no longer relevant. In any event, the Commission will address the comments and suggestions received from each interested party below and, where relevant, indicate how these have been addressed in the Proposed Competition Guidelines.

2.3.1 Flow's Comments

In response to Consultation Questions 3 to 8, Flow provided a number comments and suggestions. In summary, they include:

- i) **General Comments:** Flow reiterated its opinion that the Commission does not have authority to issue Regulations or Guidelines that would give the Commission substantive competition law competencies and powers which the Ordinance does not envisage.
- ii) **Part I:** Flow noted that any provisions included in this Part of the Proposed Competition Regulations should be consistent with the Ordinance.
- iii) **Part II:** In relation to section 16 of the Ordinance, Flow raised procedural concerns with the dominance provisions included in section 4(2) of the Proposed Competition

⁷ Flow Response, Section 2.8

⁸ Part I: Preliminary Provisions. Part II: Dominance Determination. Part III: Ex-Ante Remedies. Part IV: Anti-Competitive Practices and Agreements. Part V: Mergers.

Regulations and, in this respect, suggested that section 4(2)(b) on dominance determinations be removed. In addition, Flow also suggested several sections of the Proposed Competition Regulations be merged or removed – i.e., (i) that section 6 on market definition be merged with section 7 on dominance assessment criteria; (ii) that the section 7(1)(g) dominance assessment criterion be removed given that in Flow's view it would give the Commission too much discretion; and (iv) section 8(1) on dominance review process be removed, given that in Flow's view that no other party other than the Commission or a dominant licensee should be permitted to trigger a dominance review.

- iv) Part III: Flow noted that it considers that there is no conflict between the dominance and forbearance provisions in the Ordinance and, as a result, provided no specific comments on provisions on forbearance versus dominance provisions included the Proposed Competition Regulations.
- v) Part IV: Flow raised concerns with the inclusion of provisions in the Proposed Competition Regulations providing the Commission with the authority to potentially impose penalties where anti-competitive conduct was found to have occurred. It argued that this section was not compliant with the Ordinance. Flow also questioned the Commission's authority to order the "divestiture of assets or shares" as contemplated under section 23(5)(b) of the Proposed Competition Regulations. As well, Flow considered section 20 of the Proposed Competition Regulations, which addresses Misleading Representations, to be out of scope and, therefore, suggested that it be removed.
- vi) Part V: Flow argued that the Ordinance addresses Transfers of Licences but not Mergers and, therefore, it considered Part V of the Proposed Competition Regulations, which addresses Mergers, to be out of scope and, therefore, suggested that it be removed.

In response to these comments and suggestions, the Commission reiterates that it has decided to issue Competition Guidelines rather than Competition Regulations and, as a result, a number of Flow's concerns are now moot or, in other cases, have been addressed in the Proposed Competition Guidelines. Further, as discussed above, the Proposed Competition Guidelines are narrower in scope compared to the Proposed Competition Regulations. Specifically, a number of sections included in the Proposed Competition Regulations are not included in the Proposed Competition Guidelines, including those related with proposed expanded Commission authority (e.g. section 20 (Misleading Representations) and Part V (Mergers), etc.). Consequently, the Commission believes that Flow's concerns regarding these sections of the Proposed Competition Regulations no longer apply in the context of the Proposed Competition Guidelines.

Otherwise, the Commission disagrees with Flow's suggestions regarding the merger of sections 6 and 7 (market definition and dominance assessment criteria). It is standard economic practice to treat these considerations as separate steps in a dominance review and, therefore, they remain as separate sections in the Proposed Competition Guidelines. Similarly, providing leeway to consider other relevant factors (as contemplated in section 7(1)(g) of the Proposed Competition Regulations) is also common practice and, indeed, is necessary to provide flexibility to take into account any unique market considerations that may be relevant to a specific dominance review. Therefore this provision is retained in the Proposed Competition Guidelines (paragraph 26(vii)).

Lastly, the Commission disagrees with Flow's position that a third-party should not be permitted to request a dominance review. As indicated in the Proposed Competition Regulations and now the Proposed Competition Guidelines, if a third party is able to make a reasonable case, supported by appropriate market data, that a dominance review in a relevant market(s) should be undertaken, then the Commission would be prepared to initiate such a dominance review. The Proposed Competition Guidelines allow for such an option and, in the Commission's view, such an option is fully consistent with the regulatory framework encompassed by the Ordinance, the Regulations and the Licences.

2.3.2 Digicel's Comments

In response to Consultation Questions 3 to 8, Digicel provided a number comments and suggestions. In summary, they include:

- i) General Comments: Digicel noted that "the structure of the proposed regulations is clear" and that the "compartmentalising of the different aspects is a prudent approach".
- ii) Part I: In respect of section 2(3), Digicel noted that if the Proposed Competition Regulations are issued, all other rules governing competition law issues should be repealed to avoid double jeopardy and inconsistencies. In addition, it suggested that the definition of dominance be revised to cover both "products and services", not just the "products".
- iii) Part II: No comments.
- iv) Part III: Digicel argued that the ex-ante regulatory approach contemplated in the Proposed Competition Regulations is not suitable for a market at the stage of development in TCI. It believes that an ex-post approach to competition law supervision would be preferable and sufficient to deal with any market failures or anti-competitive harms that might arise. Consequently, it suggested that the applicable ex-ante sections be removed (i.e., presumably sections 9-12 of the Proposed Competition Regulations). If the sections are retained, then according to Digicel any ex-ante remedies should be narrowly focussed to deal with specific market failures. As well, Digicel considered that such an approach would automatically deal with the issue of forbearance, as no remedies would be imposed if they are not necessary (where full forbearance is warranted). Digicel also suggested that reviews of ex ante remedies should take place at intervals of no longer than 3 years.
- v) Part IV: Digicel noted a number of concerns with respect to the inclusion or wording of certain provisions in this Part, including: (i) the potential for double jeopardy risk to arise under section 17(2)(a)⁹ relative to similar provisions included in the Interconnection Regulations; (ii) potentially overly-broad wording of the anti-competitive margin squeeze provision under section 17(2)(b); (iii) the absence of the word "substantially" in section 17(2)(e); (iv) the inclusion of 17(2)(f), which in Digicel's view relates to administrative

⁹ On this issue, in its Response (page 4), Digicel seemingly incorrectly referenced as section 17(1) of the Proposed Competition Regulations.

rather than abuse of dominance issues and, therefore, in its view should be removed; (v) the inclusion of section 20 on Misleading Representations, which Digicel notes relates to consumer protection rather than competition matters and, therefore, in its view should be removed; and (vi) the inclusion of sections 23(5)(d) and 24,¹⁰ which in Digicel's view would improperly give the Commission quasi-judicial powers to impose penalties.

vi) Part V: No comments.

vii) Other: Digicel noted that there are there is no provision for appeal of decisions made under the Proposed Competition Regulations.

In response to these comments and suggestions, the Commission reiterates once again that it has decided to issue Competition Guidelines rather than Competition Regulations. In preparing the Proposed Competition Guidelines, the Commission has taken into account a number of Digicel's comments. For instance, several modifications have been made in the Proposed Competition Guidelines relating to the former sections 17(2) of the Proposed Competition Regulations (i.e., now paragraph 64 of the Proposed Competition Guidelines) that should address the concerns raised by Digicel in this regard. In addition, section 20 (Misleading Representations) of the Proposed Competition Regulations has been eliminated. The contents of sections 23(5) (Orders by the Commission) and 24 (Financial Penalties) in the Proposed Competition Regulations have been revised and narrowed in scope (see paragraphs 75-76 of Proposed Competition Guidelines). The revised description of any actions by the Commission's to remedy anti-competitive conduct, including imposing penalties, now directly reflects the Commission's existing powers under section 52 of the Ordinance.

On the question of the reliance on ex-post versus ex-ante remedies in the case of dominant licensees raised by Digicel, the Commission notes that the objective of ex-ante remedies section of the Proposed Competition Regulations – which is largely replicated in Chapter 3 of the Proposed Competition Guidelines– is to provide a framework for evaluating the need for and, as necessary, nature of any ex-ante remedies imposed on a dominant licensee. There is nothing preventing the Commission from relying on ex-post rather than ex-ante remedies, where appropriate. Therefore, the Commission does not agree that the section of the Proposed Competition Guidelines should be removed or otherwise artificially limited in scope as seemingly suggested by Digicel.

Lastly, the Commission also considers the inclusion of decision appeal provisions in the Proposed Competition Regulations – or for that matter in the Proposed Competition Guidelines – as suggested by Digicel to be unnecessary. Procedures to review or appeal a Commission decision are already set out in Part VII of the Ordinance. In any event, this matter is moot in the context of the Proposed Competition Guidelines since they intended to provide indicative guidance as to how such matters would be addressed in the future and, therefore, are not legally binding on the Commission or licensees.

¹⁰ On this issue, in its Response (page 4), Digicel seemingly incorrectly referenced as section 23(5)(c) of the Proposed Competition Regulations.

2.3.3 ACL's Comments

The Commission notes that ACL provided no specific comments on the Proposed Competition Regulations, but rather suggested various metrics that the Commission could consider when considering competition-related matters (e.g., market size, market growth, international benchmarks, etc.). The Commission welcomes ACL's suggestions, however, since they are not directly relevant to the Proposed Competition Regulations or for that matter the Proposed Competition Guidelines, the Commission is not providing any response to them at this time.

3 Proposed Competition Guidelines

As explained, the Commission has decided to issue Competition Guidelines as a result of this consultation process. The Commission's Proposed Competition Guidelines are included in the Annex to this document.

The Commission notes that the Proposed Competition Guidelines closely reflect the content of the Proposed Competition Regulations, but are somewhat more narrowly focussed in scope. The purpose of the Proposed Competition Guidelines is to describe the Commission's general approach to exercising its jurisdiction over competition-related matters. They are intended to complement existing competition-related provisions set out in the Ordinance, Regulations and Licences by developing the conceptual framework and criteria that the Commission will use in applying such provisions. As Guidelines, however, they are intended to provide indicative guidance as to how such matters would be addressed in the future and, therefore, are not legally binding on the Commission or licensees.

The Commission notes that the issuance of competition guidelines is a common practice followed by regulatory authorities and competition agencies worldwide.¹¹ They help to provide regulatory clarity, certainty and transparency.

¹¹ A non-exhaustive sample of these include:

- **Utilities Regulation and Competition Authority (URCA) of Bahamas**
 - All Competition Guidelines available at: <http://www.urcabahamas.bs/download/037906000.pdf>
 - ECS COMP. 5. Market definition – its role in competition law
 - ECS COMP. 6. Anticompetitive agreements – substantive guidance
 - ECS COMP. 7. Abuse of a dominant position – substantive guidance
 - ECS COMP. 8. Guidance on the level of fines for breaches of Part XI of the Communications Act
 - ECS COMP. 9. How to make a competition complaint – guidance on URCA's investigation procedure
- **Eastern Caribbean Telecommunications Authority (ECTEL)**
 - Proposed October 2016; pending approval
 - Guidelines on market analysis and the assessment of significant market power for networks and services (proposed October 2016; pending approval) (<https://www.ectel.int/wp-content/uploads/2016/12/guidelines-market-analysis.pdf>)
- **Telecommunications Regulatory Authority (TRA) of Bahrain**
 - Competition Guidelines (<http://www.tra.org.bh/media/document/CompetitionGuidelines1.pdf>)
- **Telecommunications and Radiocommunications Regulator (TRR) of Vanuatu:**
 - Competition Guideline (http://www.trr.vu/attachments/category/95/competition_guideline.pdf)
- **Communications Authority (CA) of Hong Kong**
 - (Jointly issued with the Competition Commission of Hong Kong)

The Commission also notes that it developed the Proposed Competition Guidelines so that they comply with the legal and administrative framework in TCI generally and existing competition-related provisions specifically, are proportionate to TCI's relatively modest size, and are consistent with current internationally-accepted competition principles. The Commission therefore expects that they will be generally applicable to the majority of competition-related matters in TCI. However, given the wide variety of factual circumstances that may be encountered in the future, the Commission will deal with each specific competition-related matter on a case-by-case basis, and may substitute or complement some of the concepts and criteria included in the Proposed Competition Guidelines, as necessary. As well, it should be noted that the Commission may review and amend the Guidelines in the future as appropriate. The Commission has the authority to issue these Guidelines of its own motion and further approval of the Guidelines by Government is not required.

To allow interested parties an opportunity to provide input on the Proposed Competition Guidelines, the Commission has initiated this Follow-up Consultation process. The Commission encourages interested parties to provide responses to the following questions:

Consultation Question 1: Please provide your views on the structure of the Proposed Competition Guidelines, indicating whether any elements or sections could be deleted or added. Please support any suggested structural changes with supporting rationale and, as relevant, evidence.

Consultation Question 2: Please provide your any suggested specific changes to wording of the Proposed Competition Guidelines. This could be done either by reference to the paragraph(s) in question or by providing an edited version (showing any amendments) of the Proposed Competition Guidelines. Please support any suggested significant changes or edits with supporting rationale and, as relevant, evidence.

Consultation Question 3: Please provide your comments or suggestions on any other aspect of the content and/or application of the Proposed Competition Guidelines that you consider relevant to this consultation. Please support any such comments or suggestions with supporting rationale and, as relevant, evidence.

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- “Guideline on the First Conduct Rule” (anti-competitive agreements, etc.) (http://www.coms-auth.hk/filemanager/en/content_923/comp_guide1_en.pdf)
 - “Guideline on the Second Conduct Rule” (market analysis, abuse of dominance, etc.) (http://www.coms-auth.hk/filemanager/en/content_923/comp_guide2_en.pdf)
 - **Malaysian Communications and Multimedia Commission (MCMC):**
 - “Guideline on Dominant Position” <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Commission-Guideline-on-Dominance-in-a-Communications-Market-Final.pdf>
 - “Guideline on Substantial Lessening of Competition” https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Guidelines_MSQoS-Public-Cellular-Service.pdf

4 Follow-up Consultation Process

The Commission is initiating a follow-up consultation process to seek public input and comments on the Proposed Competition Guidelines included in the Annex. The Commission invites interested parties (“Respondents”) to provide their input and comments (the “Responses”) with respect to the questions raised in this Further Consultation Document and the attached Proposed Competition Guidelines.

The Commission notes that it has engaged the services of Consultants to assist it with the consultation process and the preparation of the Proposed Competition Guidelines.

4.1 Process for Responses

This Follow-up Consultation Document, along with all referenced Government and Commission documents, is available on the Commission’s website at <http://www.telecommission.tc/>. Respondents who wish to provide their views with, as may be required, supporting rationale and information in response to this Follow-up Consultation Document are invited to submit their Responses in writing to the Commission. Responses should also be submitted in electronic form to facilitate further distribution and posting on the Commission’s website.

The filing deadline for Responses is **4:00 PM, September 14, 2017**.

Responses filed in relation to this Follow-up Consultation Document may be submitted to one or more of the following addresses:

- a) E-mail to: consultations@tcitelecommission.tc
- b) Delivery (paper and electronic copy) by hand or by courier to:

Mr. Kenva Williams,
Acting Director General
Turks and Caicos Islands Telecommunications Commission
Business Solutions Complex, Leeward Highway
Providenciales,
Turks and Caicos Islands

The Commission welcomes all Responses to this Follow-up Consultation Document. The Commission invites Respondents to provide responses to the specific numbered questions set out in this Follow-up Consultation Document (the “Consultation Questions”) and any other issues Respondents consider relevant. As noted, Respondents are encouraged to provide specific proposed edits or revisions to the Proposed Competition Guidelines in the Annex hereto.

The Commission encourages Respondents to support all Responses with relevant information and analyses based on the national situation or on the experience of other countries to support their comments. The Commission may give greater weight to Responses supported by appropriate evidence. In providing their comments, Respondents are requested to indicate the number of the Consultation Question(s) to which each comment relates. Respondents are not

required to comment on all Consultation Questions. The Commission is under no obligation to adopt the comments or proposals of any Respondent.

Copies of all Responses submitted by Respondents in relation to this Follow-up Consultation Document will be published on the Commission’s website. With a view to having as open a public consultation process as practical, the Commission encourages Respondents to structure their Responses not to include any confidential information.

If a Respondent includes claimed confidential information in its Responses, then supporting rationale for any such claim(s) should be submitted with the Response. In such cases, Respondents may submit Responses that include such information in the form of two Responses:

- **Redacted Response** – In this document any claimed confidential information would be excluded. The other comments and information, not claimed as confidential, would be included in this version. This is the public version document that would be posted on the Commission website.
- **Confidential Response** – This document would be identical to the Redacted Response except that this version would also include the claimed confidential information for the use of the Commission. This document would not be posted on the Commission website and, subject to section 19 of the Administrative Regulations, all confidential information in the document would be held in strict confidence by the Commission and its Consultants.

Claims of confidentiality will be determined by the Commission on a case-by-case basis, and in compliance with the requirements set out in section 19 of the Administrative Regulations.

4.2 Process Timeline

Once the Commission has reviewed Responses submitted by interested parties, it plans to issue a Decision, which will include the final Competition Guidelines. As noted above, the Commission has the authority to issue these Guidelines of its own motion and further approval of the Guidelines by Government is not required. Table 1 provides the expected timeline for this process.

Event	Date
1. Follow-up Consultation Document issued	August 14, 2017
2. Initial Responses submitted (4 weeks)	September 14, 2017
3. Decision & Final Competition Guidelines	October, 2017

Annex:

**Proposed
Telecommunications Competition Guidelines 2017**

Telecommunications Competition Guidelines 2017

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Competition Telecommunications Guidelines 2017

1 Introduction

1.1 Objective and Purpose of the Guidelines

1. Pursuant to the *Telecommunications Policy 2013* (the "Policy") and the *Telecommunications Ordinance 2009* (the "Ordinance"), the Turks and Caicos Islands ("TCI") Telecommunications Commission (the "Commission") hereby issues the following Telecommunications Competition Guidelines 2017 (the "Guidelines"). With the issuance of these Guidelines, the Commission is furthering the overall objective of the Policy, namely to "ensure that all consumers and businesses in TCI have access to quality telecommunication services at reasonable rates, in a fully competitive marketplace".¹
2. The purpose of these Guidelines is to describe the Commission's general approach to exercising its jurisdiction over competition-related matters in telecommunications markets in TCI. They complement existing competition-related provisions set out in the Ordinance, associated Regulations as well as the Telecommunications and Spectrum Licences ("Licences") issued pursuant to the Ordinance. These Guidelines develop the conceptual framework and criteria that the Commission will use in any future application of the above-noted competition-related provisions. As Guidelines, however, they are intended to provide indicative guidance as to how such matters would be addressed in the future and, therefore, are not legally binding on the Commission or licensees.
3. The Commission notes that the issuance of competition guidelines is a common practice followed by regulatory authorities and competition agencies worldwide. They are intended to provide regulatory clarity, certainty and transparency.
4. The Commission developed these Guidelines so that they comply with the legal and administrative framework in TCI generally and existing competition-related provisions specifically, are proportionate to TCI's relatively modest size, and are consistent with current internationally-accepted competition principles. The Commission therefore expects that they will be generally applicable to the majority of competition-related matters in TCI. However, given the wide variety of factual circumstances that may be encountered in the future, the Commission will deal with each specific competition-related matter on a case-by-case basis, and may substitute or complement some of the concepts and criteria included in these Guidelines, as necessary. Lastly, the Commission may review and amend the Guidelines in the future as appropriate.

¹ Turks and Caicos Islands, Telecommunication & Broadcasting Policy, Update April 9, 2013, page 5.

1.2 Legal and Regulatory Background

5. The existing competition-related provisions, including the Commission's authority to issue these Guidelines, are included in the Ordinance, Regulations and Licences.
6. Section 4 of the Ordinance describes the functions of the Commission in supervising the provision of telecommunications services in TCI. As part of its supervisory role, the Commission is mandated to address the competitive environment for telecommunications services:
 - (d) to facilitate, maintain and promote effective and sustainable competition in telecommunications;*
 - (f) to promote the interests of consumers and to encourage licensees to operate efficiently;*
 - (g) to publish information, reports or other documents;*
 - (h) to carry out investigations and hold enquiries with respect to any matter in relation to its functions or duties under this Ordinance;*
 - (i) to give advice and directions to a licensee with respect to anti-competitive practice or behaviour;*
 - (k) to instruct the Director General to conduct research into the quality and standard of service of a licensee, and into tariffs or any anti-competitive behaviour; and*
 - (m) to carry out such other functions as may be necessary for the purpose of discharging its functions under this Ordinance.*
7. The Ordinance includes a number of competition-related provisions, including with respect to dominance (section 16), ex-ante remedies² applied to dominant licensees (sections 17 generally, sections 22-25 in relation to interconnection and section 28 on retail prices), and forbearance from such ex-ante remedies (section 29).
8. The interconnection and retail price-related competition provisions are further developed in the *Telecommunications (Interconnection and Access to Telecommunications Facilities) Regulations* (the "Interconnection Regulations") and the *Telecommunications (Pricing) Regulations* (the "Pricing Regulations"), respectively.

² "Ex-ante" remedies refer to regulatory measures that the Commission applies to a licensee "before the fact". They are intended to counter, prevent or neutralize the impact of dominance and thereby deter possible anti-competitive practices that might occur in the future. Ex-ante remedies can originate in conditions of license or they can be imposed by the Commission pursuant to the Ordinance or Regulations.

9. Additional competition-related provisions that generally relate ex-post matters³ are also included in the Licences. By way of example, Cable & Wireless (TCI) Ltd.'s ("C&W")⁴ 2006 Licence includes the following conditions:⁵

13.4 The Licensee shall not engage in anti-competitive pricing and other similar practices or any other activities, whether by act or omission, which have; or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services, as may be further specified in Regulations and, in particular, the Licensee shall refrain from using revenues or resources from a Licensed Network or Licensed Service in respect of which the Licensee is dominant to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission.

13.5 Without limiting the generality of Clause 13.4 above, any act or omission which leads, or is likely to lead, to a substantial lessening of competition in the market for any telecommunications network or telecommunications service is prohibited. The Commission will issue Guidelines describing, or may otherwise determine, what constitutes a substantial lessening of competition and the procedures for assessing it.

10. In summary, the competition-related provisions in the Ordinance tend to focus on the determination of dominance and the application of and forbearance from ex-ante remedies. The Interconnection and Pricing Regulations further develop these provisions. In contrast, the competition-related provisions in the Licences tend to focus on anti-competitive practices that are the subject of ex-post analysis and remedy.
11. Notably, the competition-related sections of the Ordinance, Regulations and Licences do not include provisions on the conceptual framework or criteria that the Commission would use in a decision-making process relating to such matters.
12. Taking the foregoing into account, therefore, these Guidelines provide the conceptual framework and criteria that the Commission will use in assessing the following competition-related matters:
- Making a determination that a licensee is dominant or non-dominant in a relevant market (addressed in **Chapter 2**).
 - Imposing or forbearing from applying ex-ante remedies on a dominant licensee (addressed in **Chapter 3**).

³ "Ex-post" measures arise "after the fact". Ex-post measures are intended to address and punish anti-competitive conduct that a licensee is found to have actually engaged in.

⁴ C&W currently operates under the trade name Flow in TCI; however, for the purpose of these Guidelines it is referred to as C&W.

⁵ Similar provisions are included in the Licences of certain other licensed operators, including the other two large operators: Digicel (Turks & Caicos) Limited and Andrews Communications Ltd.

- Identifying and addressing anti-competitive practices and agreements that prevent or substantially lessen competition (addressed in **Chapter 4**).

2 Dominance Determination

2.1 Legal and Regulatory Background

13. The term dominance⁶ or, more specifically, “dominant” licensee is defined in section 2(d) of the Ordinance:

“dominant” means that a licensee enjoys, either individually or jointly with others, a position of economic strength that enables it to behave independently of competitors and customers in any relevant market for telecommunications products.

14. Where a licensee is designated as dominant, the Ordinance and the Interconnection Regulations set out a number of possible ex-ante remedies the Commission may implement to protect consumers and competitors from the potential abuse of that dominance.
15. Section 16 of the Ordinance sets out the Commission’s authority to make or to review a dominance determination and includes some related procedural matters:

(1) The Commission may make a determination that a licensee is dominant in relation to the establishment, operation or maintenance of a telecommunications network or service.

(2) Before making a determination under subsection (1), the Commission shall

–

(a) hold a meeting to consider the status of the licensee under this section;

(b) provide reasonable notice of the meeting to the licensee;

(c) provide the licensee with the opportunity to make submissions to the Commission regarding its status under this section; and

(d) provide the licensee with the reasons for any determination made with respect to that licensee under subsection (1).

(3) Where a licensee has been declared dominant by the Commission under subsection (1), the licensee may subsequently apply to the Commission to be classified as not dominant.

16. Past Government actions have led to two sets of dominance designations. First, C&W was designated as dominant in the provision of domestic and international fixed telephone and leased line services and, more generally, with respect to its domestic fixed public telephone network in 2006 when C&W’s conditions of licence were issued. Those dominance

⁶ It should be noted that the economic terms “market dominance” and “market power” can be used interchangeably; however, for the purpose of these Guidelines, the term “market dominance” (and the related term “dominant”) will be employed.

designations were given legal effect via the C&W Licence.⁷ Second, the Interconnection Regulations initially designated all mobile network operators as dominant with respect to wholesale mobile network call termination services. The Interconnection Regulations were subsequently amended so that all licensed fixed network operators were also designated as dominant with respect to wholesale fixed network call termination and, in Cable & Wireless' case, also wholesale fixed/mobile network call transit. Schedule 1 provides a listing of all these current dominance designations.

17. As noted, the dominance provisions included in the Ordinance, the Licenses and the Interconnection Regulations do not provide a conceptual framework or criteria for the Commission to use in making a new dominance determination or revoking an existing designation.⁸ The Commission has, however, addressed dominance issues in two recent proceedings. The first relates to C&W's 2012 application, filed pursuant to section 16(3) of the Ordinance, requesting that the Commission re-classify C&W as non-dominant with respect to its fixed network and services. C&W's application led to a public consultation to review the pricing regulations applicable to C&W's fixed network services and resulted in Telecommunications Decision 2013-3 ("Decision 2013-3").⁹ In that case, the consultation process considered issues relating to dominance assessment, but ultimately the Commission decided not review or revise C&W's dominance designations. Instead, the Commission considered the application under the forbearance provisions in section 29 of the Ordinance and, based on its analysis of the evidence at the time, it decided to revise the pricing regulations applied to C&W's fixed services. Second, in Telecommunications Decision 2014-4 ("Decision 2014-4"),¹⁰ the Commission determined that all fixed network operators were dominant with respect to the provision of wholesale fixed call termination services and that C&W is also dominant in wholesale fixed/mobile network call transit. Both of these precedents provide useful guidance as to an appropriate dominance assessment framework.
18. Taking the foregoing into account, the Commission sets out the following Guidelines on the conceptual framework and criteria that the Commission will use in making a new dominance determination or revoking an existing designation.

2.2 Dominance

2.2.1 Initiation of a Dominance Review

19. There are two avenues by which the Commission could initiate a dominance review:

⁷ Cable & Wireless (TCI) Ltd. Telecommunications and Spectrum Licence 2006, Annexes A and B.

⁸ See C&W License section 9.2 for the Commission's authority to revoke a Licensed-imposed dominance determination for C&W. See section 19(1) of the Interconnection Regulations for the Commission's authority to revoke the dominance presumption for mobile operators.

⁹ Telecommunications Decision 2013-3, *Fixed Services Price Regulation Review Decision*, May 27, 2013.

¹⁰ Telecommunications Decision 2014-4, *Decision on the Review of Interconnection Rates*, June 20, 2014.

- i) *Commission Initiated*: Under section 16(1) of the Ordinance, the Commission is authorized to make a dominance determination. The Commission could initiate the review process on the Commission's own motion if market developments and trends suggests that one or more licensees may be dominant in a relevant market. Or, the Commission could initiate the process in response to concerns raised by a third-party, where the concerns are adequately supported by appropriate evidence. The Commission could also initiate a review to revoke a dominance designation.
- ii) *Dominant Licensee Initiated*: Under section 16(3) of the Ordinance, section 19(1) of the Interconnection Regulations, or the applicable Licence clause,¹¹ a dominant licensee may request that its dominance designation be reviewed. Any such application should be supported with appropriate market evidence.

2.2.2 Dominance Assessment Framework

20. To determine whether a licensee is dominant with respect to one or more relevant markets, the Commission will generally rely on a two-part dominance assessment framework:
- i) definition of the relevant market for the product¹² under consideration; and
 - ii) an assessment of the nature and extent of competition in that relevant market.

2.2.3 Relevant Market Definition

21. As noted, the first part of a dominance assessment would consist of defining the relevant market. The term “relevant market” is mentioned in the Ordinance, but is not defined or developed there or in any of the Regulations or Licences. However, the “relevant market” concept is well developed and understood in competition analysis and the Commission proposes to apply it in these Guidelines.
22. The definition of a relevant market would typically take into account:
- i) the products in the market;
 - ii) the users of the products (e.g., retail versus wholesale, residential versus business); and
 - iii) the geographic scope of the market (e.g., local, regional or national).
23. In defining a relevant market, the Commission would, as may be applicable, consider the following factors:
- i) demand-side substitutability in order to determine the extent to which users may substitute other available products for the those under specific consideration; and

¹¹ See Licence clause 9(2) in C&W's case and clause 11(2) in Digicel's and ACL's cases.

¹² Note that in what follows the terms "product(s)" and "service(s)" are used interchangeably in these Guidelines.

- ii) supply-side substitutability in order to determine the extent to which suppliers are in a position to supply products, in the immediate term or potentially in the intermediate term, that would be considered by users as potential substitutes to those under consideration.
24. In an assessment of substitutability, the Commission may also consider any factor that, in its opinion, reasonably affects market definition, including consideration of the smallest group of products and the smallest geographic area in relation to which a provider could potentially impose and profitably maintain a small but significant non-transitory increase in price (i.e., a "SSNIP" test). In most cases, a 5% price increase would be considered significant and a period of one year or more would be considered non-transitory in this respect.
25. Where appropriate, the Commission may consider telecommunications sector market analysis experience in other jurisdictions as a basis for defining relevant markets in TCI. Annex 1 provides a listing of currently defined relevant markets in TCI.

2.2.4 Dominance Assessment Criteria

26. In determining whether a licensee is dominant in a relevant market, the Commission would typically consider the following factors:
- i) market-specific data pertaining to the relevant market, including product price, volumes and revenue levels and trends, financial resources and profitability;
 - ii) availability of existing and potential competitive alternatives, including their scale of operation in terms of supply capacity and geographic coverage;
 - iii) market shares or concentration levels and trends as determined by reference to revenues, subscribers or other relevant metrics;
 - iv) evidence of rivalrous behaviour in the form of declining prices, vigorous sales and marketing promotions and expanding scope of marketing activities;
 - v) consumer and technological trends affecting the nature and scope of existing and potential competition in the relevant market;
 - vi) barriers to entry, including those of a financial, technical, regulatory nature that may have the effect of limiting entry or expansion in the relevant market; and
 - vii) any other factors that the Commission considers appropriate.
27. Where the weight of the evidence shows that a licensee holds a position of economic strength that enables it to behave independently of competitors and customers in the relevant market, then the Commission would designate the licensee as dominant in that relevant market.
28. In the case of an evaluation of where two or more operators may be dominant in the same relevant market, the Commission would take into account the same general criteria listed

above, while considering the extent to which, as a group, two or more licensees may jointly hold a position of economic strength that enables them to behave independently of competitors and customers in the relevant market. Where the weight of the evidence shows this to be the case, the Commission would designate the group of licensees as jointly dominant in the relevant market.

29. Similarly, in the case of a review of an existing dominance designation in a specific relevant market, where the weight of the evidence shows that a licensee no longer holds a position of economic strength that enables it to behave independently of competitors and customers in the relevant market, then the Commission would reclassify the licensee as non-dominant in that relevant market.

2.2.5 Dominance Review Process

30. As noted above, the Commission may initiate a review to determine if a licensee is dominant either on its own motion or at the request of another person. The Commission can also review if an existing dominance designation should be revoked, either on its own motion or at the request of the dominant licensee.
31. A request submitted to the Commission for a dominance review, whether to determine dominance or to revoke an existing designation, should include supporting evidence that addresses the relevant market definition and dominance assessment criteria described above. The Commission will determine whether such a proceeding is warranted based on the supporting evidence submitted. It will notify the licensee or other requesting party within forty-five (45) calendar days of receiving the request with an explanation of its ruling and, where warranted, issue directions on the procedures for the proceeding.
32. The Commission will follow the public consultation procedures set out in the *Telecommunications (Administrative Procedures) Regulations* (the "Administrative Procedures Regulations"), with such modifications as the Commission considers appropriate, and may include the following:
 - i) a request for information process through which the Commission collects market data relating to the products under consideration;
 - ii) issuance of a consultation document summarizing the Commission's preliminary decision on the relevant market and dominance determination;
 - iii) issuance of a final decision with supporting rationale taking into account interested parties' responses to the consultation document, including any further market data and information provided by interested parties.

3 Ex-ante Remedies

3.1 Legal and Regulatory Background

33. Where a licensee is designated as dominant in a relevant market, the Ordinance provides the Commission with the authority to apply a range of ex-ante remedies to protect consumers and competitors from potential anti-competitive conduct by that licensee.
34. For example, section 17 of the Ordinance authorizes the Commission to include in the licence conditions of a dominant licensee a series of conditions, including those pertaining to:
 - (a) *regulating the operations of the licensee;*
 - (b) *regulating the rates which may be charged by that licensee for telecommunications services or a telecommunications network in accordance with section 28;*
 - (c) *requiring the licensee to publish its rates for telecommunications services or in relation to a telecommunications network, in the market in which the licensee is dominant;*
 - (d) *that rates for services, or in relation to a telecommunications network provided, to all users shall not be discriminatory; and*
 - (e) *with respect to the provision of international services and the settling of accounts with respect to those services.*
35. Pursuant to sections 22 to 25 of the Ordinance, the Commission may direct a dominant licensee to provide interconnection services to other licensees on a timely basis and, moreover, to set the terms and conditions for interconnection services, including prices. The Interconnection Regulations provide further ex-ante remedy powers to the Commission in this regard, covering both wholesale interconnection services as well as network unbundling obligations.
36. With regard to retail services, section 28 of the Ordinance provides the Commission with the authority to, among other things, regulate the rates, terms and conditions for services offered by a dominant licensee:
 - (2) *The Commission may establish rates regulation regimes, which may be prescribed and which may include setting, reviewing and approving rates in any case where—*
 - (a) *there is only one licensee operating a telecommunications network or providing telecommunication service, or where one or more licensees have been determined to have a dominant position in the relevant market in accordance with section 16;*

(b) a sole or dominant licensee operating a telecommunications system, network or providing a telecommunications service cross-subsidises another telecommunications service provided by such licensee; or

(c) the Commission is satisfied that there is evidence of anticompetitive pricing or acts of unfair competition.

(12) A service provider shall publish the rates, terms and conditions for its telecommunications services at such times and in such manner as the Commission shall specify and such rates, terms and conditions shall thereafter, subject to this Ordinance and the conditions of any licence, be the lawful rates, terms and conditions for such services.

37. Lastly, section 29 of the Ordinance authorizes the Commission to forbear from the exercise of any regulatory power or requirement, including any ex-ante remedies, pursuant to an existing dominance designation.
38. As noted, the competition-related sections of the Ordinance do not include provisions relating to the conceptual framework or criteria that the Commission should use in deciding whether to impose and, where applicable, the nature of any such ex-ante remedies or to decide to forbear from the application of any or all such remedies. Although, the Commission addressed matters relating to the determination of ex-ante remedies and forbearance matters in the proceeding that led to Decision 2013-3, which provides useful guidance as to appropriate ex-ante remedy and forbearance assessment frameworks.
39. Taking the foregoing into account, therefore, the Commission sets out the following Guidelines on the conceptual framework and criteria that the Commission will use when addressing ex-ante remedy or forbearance matters.

3.2 Ex-Ante Remedies

3.2.1 Criteria for the Application of Ex-Ante Remedies

40. Where a licensee is determined to be dominant in a relevant market, the Commission may decide to impose ex-ante remedies on services offered by the dominant licensee. When determining whether, and the extent to which, to impose ex-ante remedies on a dominant licensee, the Commission may consider the following:
 - i) existence of high and non-transitory barriers to entry;
 - ii) whether the relevant market under consideration would naturally tend, in the short or medium term, toward sufficient competition to protect the interests of customers, even without Commission action;
 - iii) whether ex-post remedies alone would likely be sufficient to address concerns related to dominance; and
 - iv) any other factors that the Commission considers appropriate.

3.2.2 Determination of Ex-Ante Remedies to be Imposed

41. Where the Commission finds that ex-ante remedies are necessary to address competition issues, the Commission will have regard to the provisions in sections 17 and 28 of the Ordinance and sections 14 to 19 of the Interconnection Regulations, as may be relevant, to determine the appropriate ex-ante remedies to be imposed, which may include:
 - i) constraints on price levels or pricing flexibility;
 - ii) mandating terms and conditions for the service(s) under consideration;
 - iii) mandating the provision of wholesale services on fair and reasonable terms and conditions; and/or
 - iv) other requirements that the Commission considers appropriate.
42. Where ex-ante remedies are imposed on a dominant licensee, the Commission would generally undertake to review the continued need for and nature of the remedies after a fixed period of time such as three (3) to six (6) years.

3.2.3 Ex-Ante Remedy Review Process

43. A review of any existing ex-ante remedies may be initiated by the Commission on its own motion or based on a prescribed review timeframe set out in the decision establishing existing ex-ante remedies.
44. In addition, a dominant licensee or any other person may file an application requesting a review of the continued need for and/or nature of any existing ex-ante remedies. An application should include supporting evidence that addresses the criteria set out above. The Commission will determine whether a proceeding is warranted, based on the supporting evidence submitted, and will notify the licensee or person within forty-five (45) calendar days of receiving the request with an explanation of its ruling and, where warranted, issue directions on the procedures for the proceeding.
45. Where the Commission commences a review of existing ex-ante remedies, it may include an assessment of the licensee's dominance designation in the relevant market and/or consideration of whether or not forbearance may be appropriate for services offered by the dominant licensee in the relevant market (further discussed below).
46. For the purpose of an ex-ante remedies review proceeding, the Commission would normally follow the procedures set out in the Administrative Procedures Regulations, with such modifications as the Commission considers appropriate.

3.3 Forbearance

3.3.1 Forbearance Framework

47. Section 29 of the Ordinance authorizes the Commission to forbear from the exercise of any regulatory power or requirement, including any ex-ante remedies, pursuant to an existing dominance designation:

(1) The Commission may make a determination to refrain in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Part to a telecommunications service provided by a licensee, where the Commission finds as a question of fact that to refrain would be consistent with the telecommunications policy objectives of the Islands.

(2) Where the Commission finds as a question of fact that a telecommunications service provided by a licensee is or will be subject to competition sufficient to protect the interest of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Part in relation to the service.

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service.

48. This section of the Ordinance allows the Commission to proceed in two ways. Section 29(1) provides the Commission with a policy basis for a forbearance determination – i.e., any decision to forbear must be consistent with the objectives included in the Policy. Section 29(2) provides a market-competition basis for a forbearance determination – i.e., sufficient competition to protect the interests of users must be found to exist for the service(s) in question. In both cases, section 29(3) requires that forbearance must not be likely to impair unduly the establishment or continuance of a competitive market for the service(s) in question. Forbearance can be in whole or part and conditionally or unconditionally.
49. As noted above, the Commission has previously conducted a forbearance assessment with respect to C&W's fixed network and services. It conducted in a public consultation process and, in Decision 2013-3, the Commission decided to forbear unconditionally from regulating some of C&W's fixed services, while forbearing from others on a conditional basis. The Commission made no changes to C&W's dominance designation with respect to these same services.
50. Where forbearance is granted, whether on a full or partial basis and/or conditionally or unconditionally, the Commission may decide to undertake to review the continued need for and nature of the forbearance determination after a fixed period of time such as three (3) to six (6) years.

3.3.2 Policy-Related Forbearance Framework

51. In a proceeding under section 29(1), the Commission will assess whether forbearance would be consistent with the TCI policy objectives. The Commission will take into account the Policy and other Government or Commission policy pronouncements, international best practices and the following objectives that are referenced in section 4 of the Ordinance:
- to respect the principle of technological neutrality;
 - to facilitate, maintain and promote effective and sustainable competition; and
 - to promote the interests of consumers and to encourage licensees to operate efficiently.

3.3.3 Market Competition-Related Forbearance Framework

52. In a forbearance proceeding under section 29(2), the Commission would assess if competition is sufficient to protect the interest of users. In a proceeding under section 29(1) or (2), the Commission will assess under section 29(3) whether or not forbearance would be likely to unduly impair the establishment or continuance of a competitive market for the service(s) in question. Thus, competition issues will be examined in forbearance reviews under both section 29(1) and (2). The Commission will take into account the future prospects for competition for the service(s) under consideration, including market factors such as existing and potential near term alternative sources of supply, barriers to entry and technological trends.
53. Subject to the discussion below, the Commission expects that it would adopt a two-part assessment framework. The first part would define the relevant market under consideration. This would involve similar considerations as discussed in the “Relevant Market Definition” section above. The second part would consist of a competitive assessment of the relevant market. That assessment will consider, among other things, whether or not the licensee seeking forbearance is likely to be dominant in the future.

3.3.4 Forbearance versus Non-Dominance

54. As noted previously, the competition framework in the Ordinance includes provisions to allow for a finding that a licensee is no longer dominant, and provisions to allow for forbearance. This dual approach is not common in legislation in other countries the Commission has reviewed. The more usual approach is to include only one of these provisions, typically based on the concept of a licensee being found as no longer dominant.
55. As a practical matter therefore, a determination under section 16(3) that a licensee is no longer dominant can achieve similar results as a forbearance determination under section 29(2). Indeed, as noted above, both assessments would include the definition of relevant market(s) and an assessment of the degree of competition therein. That said, forbearance under section 29(2) offers greater flexibility, both because of the language used in the section, and because of the possibility that the Commission may decide on partial or conditional forbearance (options not available under a determination that dominance no

longer exists). Assessment of forbearance under section 29(2) versus non-dominance under section 16(3) depends on a number of factors:

- i) **Flexibility:** Section 29 allows the Commission to take into account both sector policy considerations and market conditions when considering whether to forbear. The provisions also allow the Commission to forbear in whole or part and conditionally or unconditionally depending on the circumstances at hand. In contrast, section 16 is effectively "all or nothing" – i.e., the licensee must be deemed dominant or non-dominant in the relevant market in question. If non-dominant, no ex-ante remedies would apply. Consequently, the forbearance approach provides the Commission with flexibility in terms of the nature and extent of necessary ex-ante remedies and includes the option of applying no ex-ante remedies.
- ii) **Ex-Post Safeguard Concerns:** The fact that the section 16 approach is effectively "all or nothing" in terms of outcome implies, as a practical matter, that a higher threshold test should be applied under a section 16 relative to a section 29 approach. Under an ideal best-practice scenario, a regulatory authority would rely a well-defined ex-post competitive safeguards regime (established through competition legislation) to ensure that there remained a clear legal recourse for any potential anti-competitive practices after the lifting of ex-ante remedies via a non-dominance determination. In the past, the Commission has been concerned that this scenario would not hold in TCI due to the absence of specific competition legislation in TCI *and* that the fact that neither Competition Regulations nor Guidelines existed. This risk is mitigated now with the issuance of these Guidelines, but the fact remains that there is no sector-specific or economy-wide competition legislation in TCI. Further, the Commission's powers to sanction a licensee who engages in anti-competitive conduct is relatively limited and modest under the Ordinance. Therefore, the Commission remains concerned about the efficacy and deterrence power of existing legal framework governing anti-competitive practices. Due to this residual concern, the Commission considers that the threshold test for non-dominance should be higher than that for forbearance.
- iii) **Threshold Test Matters:** The above-noted higher threshold test for non-dominance relative to forbearance determinations implies that the depth and breadth of market data required for such assessments would be higher for the former relative to the latter case. For instance, the Commission would require a comprehensive set of market data and information before a non-dominance determination could be made. Alternatively, the market data and information requirements would not generally be as comprehensive for a forbearance assessment, but would still have to be sufficient for the Commission to adequately assess state of competition in the relevant market.

3.3.5 Forbearance Review Process

56. A forbearance review proceeding may be initiated by the Commission on its own motion, or on an application by a licensee requesting a forbearance review, or based on a prescribed review timeframe set out in a previous decision.

57. Any application by a licensee should include sufficient supporting evidence. The Commission will determine whether such a proceeding is warranted, based on the supporting evidence submitted, and would notify the licensee within forty-five (45) calendar days of receiving the request with an explanation of its determination and, where warranted, issuing directions on the procedures for the proceeding.
58. Where a dominant licensee applies to be declared non-dominant in relation to one or more relevant markets, the Commission may decide to proceed by way of a proceeding under section 29 of the Ordinance. In making such a procedural determination, the Commission will take into account whether the availability of market data is sufficient for the purpose of a proceeding along with any other factors that the Commission considers appropriate.
59. For the purposes of undertaking a forbearance review, the Commission will follow the procedures set out in the Administrative Procedures Regulations, with such modifications as the Commission considers appropriate, and may include the procedures set out in the “Dominance Review Process” section above.

4 Anti-competitive Practices and Agreements

4.1 Legal and Regulatory Background

60. As noted above, all Licences contain specific prohibitions against anti-competitive practices and agreements. The relevant language in C&W’s License states:

13.4 The Licensee shall not engage in anti-competitive pricing and other similar practices or any other activities, whether by act or omission, which have; or are intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services, ...

13.5 Without limiting the generality of Clause 13.4 above, any act or omission which leads, or is likely to lead, to a substantial lessening of competition in the market for any telecommunications network or telecommunications service is prohibited. The Commission will issue Guidelines describing, or may otherwise determine, what constitutes a substantial lessening of competition and the procedures for assessing it.

61. The Ordinance authorizes the Commission to investigate and, as necessary, remedy anti-competitive conduct on an ex-post basis. Section 4 of the Ordinance authorises the Commission to undertake the functions, as necessary:

(h) to carry out investigations and hold enquiries with respect to any matter in relation to its functions or duties under this Ordinance;

(i) to give advice and directions to a licensee with respect to anticompetitive practice or behaviour;

(k) to instruct the Director General to conduct research into the quality and standard of service of a licensee, and into tariffs or any anti-competitive behaviour;

(m) to carry out such other functions as may be necessary for the purpose of discharging its functions under this Ordinance.

62. Section 28(2) of the Ordinance states that the Commission may establish rate regulation of a licensee where the Commission is satisfied that there is evidence of “anti-competitive pricing” or “acts of unfair competition”. When a licensee contravenes a Licence condition, or other regulatory provision, section 52 of the Ordinance empowers the Commission to impose specific sanctions, including fines where warranted.
63. As noted, the competition-related sections of the Ordinance and Licences do not include provisions related to the conceptual framework or criteria that the Commission would use in deciding what practices or agreements may constitute a “substantial lessening of competition”. Indeed, the Licences indicate that the Commission shall issue Guidelines in this respect. Therefore, the Commission sets out the following Guidelines on the conceptual framework and criteria that the Commission will use for the purpose of identifying “anti-competitive behaviour” generally and which types of anti-competitive practices and agreements would likely “constitute a substantial lessening of competition”.

4.2 Abuse of Dominance

64. An abuse of dominant position would be considered to have occurred when a dominant licensee engages in anti-competitive conduct which has had, is having or is likely to have the effect of substantially lessening competition in one or more markets. The types of anti-competitive conduct that would trigger concerns in this regard include, but are not necessarily limited to, the following:
- i) squeezing the profit margin available to a competitor that requires a wholesale product from the dominant licensee, by increasing the price for the wholesale product in question and/or decreasing the prices of the retail product dependent on the wholesale product as an input for the purpose of impeding or preventing a competitor's entry into, or participation or expansion in, a market;
 - ii) supplying products at prices for which the licensee has been designated as dominant below long run incremental cost or such other cost standard as may be established by the Commission;
 - iii) cross-subsidizing a product in a competitive market by another product for which the licensee has been designated as dominant with the objective of lessening competition, except where such cross subsidy is specifically approved by the Commission or by approval of tariffs for relevant products;
 - iv) supplying bundled products that include one or more competitive market products together along with one or more other products for which the licensee has been designated as dominant with the objective of lessening competition;

- v) any other conduct that, in the opinion of the Commission, prevents or lessens or is likely to prevent or lessen competition substantially in a market.

65. When investigating concerns regarding potential abuse of dominance, the Commission would take into account the nature, timeframe, extent and intent of the conduct in question and also assess the likely impact of the conduct on competition in the affected market(s). In doing so, the Commission would consider the following:

- i) market definition and dominance assessment criteria considerations (as set out in Chapter 2 above);
- ii) the likely impact of the anti-competitive conduct (e.g., prices, market shares and market entry/exit); and
- iii) the extent to which the anti-competitive conduct maintains or enhances the licensee's dominance.

4.3 Other Anti-Competitive Conduct

66. There are range of other activities that if engaged in by a licensee (whether dominant or non-dominant) would likely be considered by the Commission to be anti-competitive or otherwise having the effect of preventing or substantially lessening competition. What follows is a non-exhaustive list of such practices.

4.3.1 Price Fixing

67. Price fixing among competitors can arise where a licensee conspires, colludes, agrees or arranges with a competitor (other than an affiliate¹³):

- i) to fix, maintain, increase or control the price¹⁴ for the supply of a product;
- ii) to allocate sales, territories, customers or markets for the production or supply of a product; or
- iii) to fix, maintain, control, prevent, lessen or eliminate the production or supply of a product.

68. For the avoidance of doubt, price-fixing concerns would not likely arise if, to the satisfaction of the Commission, the licensee establishes that the conduct:

¹³ "Affiliate" includes in relation to another company, a company which directly or indirectly controls, is controlled by or is under common control with, another company. See Ordinance, section 2. Further, "control" means control in any manner that results in control in fact, whether directly through ownership of shares or indirectly through an agreement, arrangement or otherwise, or indirectly through an agreement or arrangement involving next of kin.

¹⁴ "Price" means an amount of money or other consideration and includes a charge, fare, rate, rental, toll or other compensation payable to a licensee for the use of its products, and also includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the products. Also see "rate" as defined in section 2 of the Ordinance.

- i) is ancillary to a broader or separate joint venture agreement or arrangement that includes the same parties, and
- ii) is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate joint venture agreement or arrangement; and
- iii) the broader or separate joint venture agreement or arrangement, considered alone, does not raise price fixing concerns.

4.3.2 Bid-Rigging

69. Bid rigging can arise where a licensee enters an agreement or arrangement with one or more or more others parties whereby one or more of those parties agrees or undertakes (i) not to submit a bid or tender in response to a call or request for bids or tenders, or (ii) agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or (iii) the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers, and where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be. Bid-rigging concerns would not likely arise where all the parties are affiliates of each other.

4.3.3 Restrictive Agreements

70. An agreement among competitors that is not price-fixing or bid rigging may or may not be anti-competitive. The Commission may assess such an agreement to determine whether it prevents or lessens or is likely to prevent or lessen competition substantially in a market. Restrictive-agreement concerns would not likely arise where the agreement or arrangement is entered into only by parties that are affiliates of each other.
71. In determining whether or not the agreement or arrangement will prevent or lessen, or is likely to prevent or lessen, competition substantially in a market, the Commission may consider the following factors:
- i) market definition (as set out in Chapter 2 above);
 - ii) the extent to which acceptable substitutes for products supplied by the parties to the agreement or arrangement are or are likely to be available;
 - iii) the extent to which effective competition remains or would remain in a market that is or would be affected by the agreement or arrangement; and
 - iv) any other factor that is relevant to competition in a market that is or would be affected by the agreement or arrangement.

4.4 Anti-Competitive Conduct Review Process

72. The Commission has the authority to initiate an investigation or proceeding on its own motion where it considers that the conduct of a licensee(s) raises potential anti-competitive concerns.
73. In this respect, a licensee or other person may also submit a complaint to the Commission requesting that it investigate specific activities of a licensee that in the complainant's opinion raises anti-competitive concerns. The complainant must provide supporting information and rationale for its complaint. Schedule 2 sets out the nature of the information that should be provided. Where the Commission receives a complaint:
 - i) the Commission may determine that a proceeding is not warranted, whether due to the likely *de minimis* impact on competition or for any other reason – in such case, the Commission will notify that person within forty-five (45) days of receiving the request with an explanation of its ruling; or
 - ii) if the Commission determines that the complaint justifies further consideration, the Commission will initiate a proceeding to investigate the matter and the Commission will notify the complainant, and the affected licensee, within forty-five (45) days of receiving the request, and issue directions on the procedures for the proceeding.
74. If the Commission initiates a proceeding, it would normally follow the procedures set out in the Administrative Procedures Regulations, with such modifications as the Commission considers appropriate.

4.5 Remedies and/or Penalties

75. Consistent on the authority granted to the Commission under section 52 of the Ordinance, if the Commission determines that a licensee has abused its dominant position or otherwise engaged in anti-competitive conduct having the effect of substantially lessening competition, the Commission may issue one or more directions:
 - i) requiring the licensee named to cease the actions or activities specified in the direction, immediately or at such time prescribed in the direction, and subject to such conditions as may be prescribed in the direction;
 - ii) requiring the licensee named to make specific changes in its conduct to remedy the conduct in question, and to reduce the likelihood of any further incidence thereof;
 - iii) requiring the licensee to provide periodic reports to the Commission to assist in determining whether the actions or practices are continuing and to determine their impact on communications markets, competing licensees and consumers; or
 - iv) requiring any other remedial action that the Commissions considers necessary or appropriate.

76. Where a licensee fails to comply with the Commission's directions, section 52(5) of the Ordinance sets out further enforcement powers of the Commission, including the imposition of fines and enforcing remedies under the Licence, including suspension and revocation.
77. At any time in the course of a proceeding, where the Commission considers it in the public interest to do so, the Commission may issue an interim order authorizing, requiring or forbidding anything to be done that the Commission is empowered to authorize, require or forbid, and subject to such conditions as may be prescribed in the order.

Schedule 1: Existing Dominance Designations

Relevant Market	Dominant Licensee(s)	Source of Designation
Residential Access at a Fixed Location	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
Business Access at a Fixed Location	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
Domestic Calling from a Fixed Location	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
International Calling from a Fixed Location	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
Domestic Private Leased Circuits	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
International Private Leased Circuits	Cable & Wireless (TCI) Limited (dba Flow)	Licence and Telecommunications Decision 2013-3
Wholesale Mobile Network Call Termination	All licensed Mobile Network Operators	Interconnection Regulations * and Telecommunications Decision 2014-4
Wholesale Fixed Network Call Termination	All licensed Fixed Network Operators	Interconnection Regulations * and Telecommunications Decision 2014-4
Wholesale Fixed/Mobile Network Call Transit	Cable & Wireless (TCI) Limited (dba Flow)	Interconnection Regulations * and Telecommunications Decision 2014-4

* Telecommunications (Interconnection and Access to Telecommunications Facilities) Regulations

Schedule 2: Form for Anti-Competitive Conduct Complaints

1. Name of Complainant and Contact Information
2. Name of Licensee and Contact Information
3. Other Concerned Persons and Contact Information
4. Description of the Complaint
5. The Applicable Provisions in the Ordinance, Regulations or License that Relate to the Complaint
6. Facts Supporting the Complaint (attach relevant documents and correspondence)
7. If Applicable, description of any attempts to resolve the Complaint (attach relevant documents and correspondence)
8. Relief Sought (what does the Complainant want the Commission to do?)