



**Fixed Services Price Regulation Review
Consultation Document**

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Telecommunications Commission**

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1 Introduction

1.1 Background

In February 2009, the Turks & Caicos Islands ("TCI") Telecommunications Commission ("Commission") established the Second Price Cap Regime ("Second PC Regime") which presently regulates the prices of fixed services¹ offered by Cable & Wireless (TCI) Limited (referred to herein as "LIME").² The Second PC Regime was put in place for a four-year term and called for a review of the regime prior to its scheduled expiry on 31 March 2013.

In February 2012, LIME asked the Commission to review its dominance designation set out in LIME's January 2006 Licence which applies to its fixed network and services (the "LIME Application").³ A series of *ex ante* regulatory provisions are set out in the *Telecommunications Ordinance 2004* (the "Ordinance") to constrain the potential exercise of such dominance. The regulatory provisions include *ex ante* price regulation.

In the LIME Application, LIME claimed that given the current and growing extent of competition in fixed services markets and increasing fixed-to-mobile substitution in TCI, it is no longer reasonable to assume LIME is dominant in these markets. LIME requested that the Commission review its dominance designations with the objective that LIME should no longer be subject to the dominance-related *ex ante* regulatory provisions, thus permitting LIME to "compete on an equal footing with other licensees in the market."⁴

LIME subsequently clarified that the LIME Application applies only to its retail services for which it is designated as dominant. Wholesale services offered under the *Interconnection and Access to Telecommunications Facilities Regulations 2005* (the "Interconnection Regulations") are not covered by the LIME Application.

The Commission has conducted a comprehensive assessment of the LIME Application, which has included the collection and analysis of extensive information and data relating to the fixed service markets in question. As set out in this Consultation Document, the Commission is of the preliminary view that the available evidence supports the substantial lifting of the *ex ante* regulatory provisions currently placed on LIME with respect to the provision of fixed services in TCI.

Accordingly, the Commission is of the preliminary view that there is no longer a continued need for a comprehensive price cap regime to be maintained for LIME's fixed services as is currently the case under the Second PC Regime. In this Consultation Document, therefore, the Commission has set out the details of and supporting rationale for a proposal to forgo from the

¹ Note that "fixed" services refer to services provided to a fixed location whether provided using wireline or wireless technology. In broad terms, the fixed services under consideration include residential and business fixed access services, domestic calling services from a fixed location, value added services (such as caller ID and voice mail), international calling services from a fixed location, and domestic and international private leased circuit services.

² Telecommunications Decision 2009-4, *Decision on the Second Price Cap Regime*, 18 February 2009.

³ The dominance designations set out in Annexes A and B of LIME's 26 January 2006 Licence.

⁴ As quoted from the February 2012 LIME Application.

regulation of most of LIME's fixed services (the "Forbearance Proposal"). The Forbearance Proposal is conditional in nature in that LIME would be required to continue to provide several narrowly-targeted basic fixed services at prices no greater than those currently in or soon scheduled to come into effect. The proposed conditional targeted price constraints would be subject to review no later than four years from the date of the decision resulting from this consultation process.

The purpose of this Consultation Document is to invite interested parties to provide their views on the Forbearance Proposal and, as may be the case, provide any alternative proposals considered justifiable based on current and projected market conditions in TCI.

1.2 Consultation Process

Pursuant to the *Telecommunications (Administrative Procedure) Regulations 2008* (the "Administrative Regulations"), the Commission is initiating the present consultation process to seek comment on the Forbearance Proposal, including a series of specific related questions.

The Commission notes that it has engaged the services of Consultants to assist it with this consultation process, including the market analysis conducted to date which has been used to develop the Forbearance Proposal included in this Consultation Document.

This 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 input and comments on this Consultation Document are invited to submit their Responses in writing to the Commission. Responses shall also be submitted in electronic form to facilitate further distribution and posting on the Commission's website.

The filing deadline for interested parties' ("Respondents") comments on (i.e., "Responses" to) this Consultation Document is:

- no later than 4:30 p.m. local time on **Monday, February 11, 2013**.

Responses filed in relation to this Consultation Document must 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. John Williams,
Director General
Turks and Caicos Islands Telecommunications Commission
Business Solutions Complex, Leeward Highway
Providenciales,
Turks and Caicos Islands

The Commission welcomes all Responses on this Consultation Document. The Commission invites Respondents to provide responses to the specific numbered questions (the “Consultation Questions”) and any other issues Respondents consider relevant.

The Commission encourages Respondents to support all Responses with relevant data, analysis, and information based on the TCI market conditions and/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 views or proposals of any Respondent.

Copies of all submissions filed by Respondents in relation to this Consultation Document will be published on the Commission’s website at <http://www.telecommission.tc>. 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 necessary, Respondents may submit Responses that include claimed confidential information in the form of two Responses:

- **Redacted Responses** in which any claimed confidential information would be excluded or blacked out. The other comments and information, not claimed as confidential, would be included in this version. This is the public version Response that would be posted on the Commission website.
- **Confidential Responses** would be identical to the Redacted Response except that it would include the claimed confidential information for the use of the Commission. The Confidential Response would be retained in strict confidence by the Commission and, therefore, not be posted on the Commission website or otherwise shared with the public in any way.

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.

1.3 Overall Timeline

Table 1 summarizes the expected timeline for this consultation process and the related Commission decision.

Event	Date
Commission issues Consultation Document	January 14, 2013
Responses from Respondents	February 11, 2013
Commission Decision	Mid-March, 2013
Expiry of the Second PC Regime	March 31, 2013

2 Legal and Regulatory Framework

Regulatory theory generally suggests that *ex ante* price regulation be limited to markets where there is insufficient competition to protect the interests of consumers and that it be applied only to dominant service providers in such markets. This has been a guiding principle underlying the Commission's ongoing regulation of LIME's fixed services to date.

2.1 Legal and Policy Context

Section 2 of the Ordinance defines a “dominant” licensee as one that “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 services”. Annexes A and B of LIME's 25 January 2006 Licence designate LIME as dominant in the provision of fixed network services (including domestic and international telephone as well as leased line services).

Section 17 of the Ordinance provides the Commission with the authority to establish a series of licence conditions for a dominant licensee (including regulating the operations and service prices of the licensee). Further, Section 27(2) sets out the general conditions under which the Commission may establish “rates regulation regimes”, and Section 27(3) sets out specifically that the Commission shall design an “incentive-based rates setting mechanism” in instances where the Commission finds that a provider is dominant in the provision of a service. Section 27(4) sets out that the Commission shall establish, monitor and ensure compliance with the regime set out in Section 27(3). Sections 27(5) to 27(12) set out further provisions relating to the details of any price regulation regime established by the Commission.

Sections 3 to 7 inclusive of the *Telecommunications Pricing Regulations 2005* (the “Pricing Regulations”) provide further direction on the specific form and details of any incentive-based rates-setting mechanism, as referred to in Section 27(4) of the Ordinance, that may be established by the Commission. More specifically, the Pricing Regulations set out the details of a price cap-based rates-setting mechanism.

While the Ordinance provides the Commission the power and authority to impose a price cap-based rates-setting mechanism on a dominant licensee, it also provides the Commission with the ability to relax or entirely lift such constraints where warranted. Specifically, Section 28 of the Ordinance provides the Commission with the authority to forbear from the imposition of such *ex ante* regulation where it finds “as a question of fact” that such forbearance would be consistent with the TCI telecommunications policy objectives and that the service(s) in question “is or will be subject to competition sufficient to protect the interests of users”.

It should be noted as well that Section 16 of the Ordinance sets out the process for the Commission to make a “dominance” determination for a particular licensee. The Commission has not, however, to date made such a determination. LIME was simply designated dominant with respect to its fixed network and services by the Government at the time its current Licence was issued in 2006. Section 16(3) of the Ordinance provides the Commission with the authority

to review a licensee's dominance designation for a service or group of services and, if found appropriate, reverse the designation to non-dominant.

2.2 Price Cap Regulation

LIME was subject to an initial price cap regime (the "Initial PC Regime") as part of its 25 January 2006 Telecommunications Agreement with the Government. The details of that Initial PC Regime were set out in the Schedule 1 of the 2006 Telecommunications Agreement. The term of the Initial PC Regime was three years.

Prior to the expiry of the Initial PC Regime, the Commission conducted a comprehensive price caps consultation process in the second half of 2008. The Commission issued its decision resulting from this process in February 2009 which established the Second PC Regime which presently regulates LIME fixed services prices. Under the Second PC Regime, two Price Control Baskets and an Uncapped Services category were established:

- **Price Control Basket #1** includes domestic fixed services such as residential and business fixed access, domestic calling to LIME fixed subscribers, value-added services ("VAS") including caller ID and voice mail and domestic private leased services ("DPLC"). This Price Control Basket is subject to 0% overall price cap (as long as inflation is less than 5%).⁵
- **Price Control Basket #2** includes a single service: domestic fixed-to-mobile ("FTM") calling. Under the Second PC Regime, LIME was required to gradually reduce the FTM rate from the going in rate of 50¢ to 37¢ per minute as April 1, 2012.⁶ With the Commission's Mobile Termination Rate ("MTR") Decision in 2011,⁷ further reductions to LIME's FTM rate resulted from the flow-through of the MTR reductions mandated in the MTR Decision. Consequently, LIME's FTM rate is currently 31.75¢ per minute and is scheduled to decline to 30.5¢ per minute as of 31 March 2013.
- The **Uncapped Services Category** includes international calling services (from a fixed location), international private leased services ("IPLC") and payphone services. In view of the increasingly competitive markets for these services, the Commission considered at the time that prices for these services would likely decline over time with or without a price cap. In this case, the services in this basket were capped at going-in rate levels. LIME was also required to ensure that its fixed international direct dial ("IDD") calling rates were less than or equal to its mobile IDD rates (throughout the term of the Second PC Regime).

⁵ More specifically, the price cap index ("PCI") – i.e., $PCI = X - I$, where X = the productivity offset and I = inflation – was set at: $X = I$ when $I \leq 5\%$ and $X = 5\%$ when $I > 5\%$ for this Price Control Basket.

⁶ More specifically, the PCI was set at $X = 14.1\%$ for the FTM Price Control Basket.

⁷ Telecommunications Decision 2011 – 2, *Decision on the Mobile Termination Rate Review*, January 24, 2011.

The Second PC Regime is scheduled to expire on 31 March 2013. A review of the Second PC Regime is required before its expiry to determine if it should be maintained, modified or eliminated in whole or part.

2.3 Dominance versus Forbearance Review

As noted, the LIME Application requests that pursuant to Section 16(3) of the Ordinance, LIME's dominance designation as set out in its January 2006 Licence be reviewed. In the LIME Application, LIME asserted that it should be designated as non-dominant with respect to the provision of all fixed services and, therefore, its fixed services should no longer be subject to any dominance-related *ex ante* regulatory provisions, including price regulation.

Since receiving the request LIME Application, the Commission has collected extensive market data and information to assist with the assessment of the LIME Application. This process is ongoing and forms a central part of this consultation process. However, the key policy consideration to address at the outset is to determine the most appropriate mechanism to follow under the Ordinance to review and render a ruling on the LIME Application. There are two approaches under the Ordinance that can be followed in this respect:

- Section 16(3) or dominance review approach or
- Section 28 or forbearance review approach.

With respect to a determination of dominance or non-dominance, Section 16 of the Ordinance states:

16. (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*
 - (c) *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.*

Section 28 of the Ordinance sets out the conditions under which the Commission can forbear from the regulation of a service or set of services in whole or in part and conditionally or unconditionally. That section of the Ordinance states:

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28. *(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 Island.*
- (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.*
- (4) The Commission shall declare that any provision of this Part does not apply to a licensee to the extent that the provision is inconsistent with a determination of the Commission under this section.*

Regardless of which approach is followed, the Ordinance provides no guidance on the specific test criteria that should be used for a either dominance or forbearance review. Nevertheless, the Commission notes that there are well established dominance and forbearance tests in the regulatory economics literature which have been used by regulators in other jurisdictions and which can readily be applied in the case at hand.

That said, the Commission has carefully considered the advantages and disadvantages of adopting dominance versus forbearance review approach in the case of the LIME Application and generally considers that a forbearance approach is preferable. It reached this conclusion based on the following considerations:

- i) *Flexibility:* Section 28 of the Ordinance allows the Commission to take into account both sector policy considerations and market conditions when considering whether to forbear from the imposition of *ex ante* regulatory provisions on a service. Section 28 also allows the Commission to forbear in whole or part and/or 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 for the service in question. If non-dominant, no *ex ante* regulatory provisions would apply. Consequently, the Commission considers that the forbearance approach provides flexibility in terms of residual regulatory remedies where found necessary.
- ii) *Threshold Considerations:* Following from the previous consideration, 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 may well be applied under a Section 16 relative to a Section 28 approach.

- iii) *Single Approach Preferable*: Relying on both approaches to consider the LIME Application (i.e. one approach for some services and another approach for other services) would potentially require the establishment of two separate standards or tests with, as noted, a higher test threshold in the case of the Section 16 approach. In the Commission's view this would unnecessarily complicate the consultation and decision-making process. In addition, given that a full and unconditional forbearance ruling would largely be equivalent to a non-dominance ruling, nothing significant is lost by proceeding under Section 28 alone.
- iv) *Ex post Safeguards*: Under an ideal best-practice scenario, regulatory authorities would rely on the existence of *ex post* regulatory provisions to ensure that there remained a clear legal recourse for any potential anti-competitive practices after the lifting of *ex-ante* obligations via a non-dominance determination.⁸ The Commission is concerned that this scenario would not hold in TCI due to the absence of any economy-wide competition legislation in TCI. Due to this concern, the Commission considers that threshold test for non-dominance may, as a practical matter, be even higher than otherwise. In contrast, under the Section 28 approach, the Commission would have greater flexibility to deal with any such concerns.

For these reasons, the Commission proposes to consider solely whether forbearance in whole or part and/or on a conditional or unconditional basis is warranted for the fixed services covered by the LIME Application. Note that while LIME has expressed a preference for the application of the non-dominance provisions in Section 16, as it applied for a non-dominance determination in its Application, it is also agreeable to the Commission proceeding under the forbearance provisions in Section 28.

With respect to the Commission's above-noted proposal, parties are invited to respond to the following question:

QUESTION 1: Forbearance Review: Do you agree with the Commission's proposal to adopt a Section 28 Forbearance Review approach for the purpose of assessing and rendering a decision on the LIME Application? If not, explain why not and provide your preferred alternative approach with supporting rationale.

⁸ The Commission notes that there are provisions in this regard included in operators' licences (e.g., section 13.5 of LIME's Licence). However, the licence conditions in this respect refer to yet to be issued Commission guidelines. Preparation and approval of such guidelines would take considerable time and effort and are not part of the Commission's work plan at this point in time. Without approved guidelines, the Commission is of the view that enforcement of these licence conditions as presently constituted would inevitably raise enforcement challenges.

3 Forbearance Framework and Assessment

The Commission notes that Section 28 provides two routes for forbearance. Under Section 28(1), the Commission may order forbearance where the Commission finds as a question of fact that to do so would be consistent with the telecommunications policy objectives of TCI. Under section 28(2), the Commission shall order forbearance where it determines that a telecommunications service is or will be subject to competition sufficient to protect the interests of users.

Section 28(2) sets forth a competition-based test for forbearance. Section 28(1) potentially allows for a wider scope for forbearance based on telecommunications policy objectives. In this consultation, the Commission focusses primarily on the competition-based test, recognizing that a competition-based test is also consistent with telecommunications policy objectives in the TCI. In this regard, the Commission notes that the 2000 Telecommunications Policy for the Turks and Caicos Islands refers to a competition-based policy objective as follows (page 5):

“Telecommunications is to be regulated by an independent regulatory authority that will operate in a transparent, accountable and non-discriminatory manner. The regulator will be mandated to facilitate effective competition.” (underlining added)

Section 28(3) includes a potential limitation on the Commission’s forbearance power. The Commission shall not make a forbearance determination where to do so would be likely to impair the establishment or continuation of a competitive market. As a practical matter, a competition-based forbearance determination takes into account the interests of users as contemplated by Section 28(2) and the impact on the competitive market as contemplated by Section 28(3).

A competition-based forbearance review typically involves several elements. The first is the definition of the relevant market or markets in question. The second involves the establishment of a set of forbearance test criteria. The third and final element involves the collection and analysis of the market data and information relating to the established test criteria for each of the defined relevant markets under consideration. Each of these factors is considered in the following sections.

3.1 Relevant Markets

Defining a relevant market involves consideration of both the product and geographic dimensions of the market in question.⁹

- A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by consumers due to the products' characteristics, prices and intended use.

⁹ The definitions provided are based on European competition law practice; see http://europa.eu/legislation_summaries/competition/firms/126073_en.htm.

- A relevant geographic market comprises the area in which the firms concerned are involved in the supply of the products or services and in which the conditions of competition are sufficiently homogeneous.

The LIME Application covers all of LIME's retail fixed services. Within this group of services there are potentially a considerable number of separate relevant markets, each of which would be considered independently of one another for forbearance review purposes. Rather than conducting a full bottom-up analysis of all potential relevant markets in the case at hand, which would be an onerous exercise, the Commission considers that it can rely on general experience from other jurisdictions. In this way, a manageable number of relevant service markets applicable in the case of the LIME Application can be readily defined. In addition, given the nature of the services covered by the LIME Application, the geographic scope of the markets in question can readily be defined as TCI-wide (national) in scale.

Accordingly, the Commission considers that the retail fixed services covered by the LIME Application can be grouped into six separate relevant markets for forbearance review purposes. Table 2 lists the Commission's proposed defined relevant markets and also provides a description of the main services covered in each case, which includes related vertical and/or ancillary services in some cases.

Table 2 – Proposed Defined Relevant Markets		
No.	Relevant Market	Service Inclusions
1.	Residential Access at a Fixed Location	<ul style="list-style-type: none"> • Standalone or basic local access (i.e. a Residential Direct Exchange Line (“DEL”)) • Residential value added services (“VAS”), including services such as caller ID and voice mail (“VM”) • Bundled local access services (including bundled basic local access, VAS and/or domestic and/or international calling services, etc.) • All related services such as installation, activation or re-connection
2.	Business Access at a Fixed Location	<ul style="list-style-type: none"> • Standalone or basic single-line local access (e.g., a Business DEL) • Multiline local access (including PBX and Government) • Business VAS. • Bundled local access services (e.g., including single-line or multiline local access, VAS and/or domestic and/or international calling services, etc.)
3.	Domestic Calling from a Fixed Location	<ul style="list-style-type: none"> • On-Island and Inter-Island Fixed-to-Fixed (“FTF”) calling • Domestic Fixed-to-Mobile (“FTM”) calling • Includes domestic "on-net" calling (i.e., to LIME fixed and mobile subscribers) and "off-net" calling (i.e., to other local operators' networks)
4.	International Calling from a Fixed Location	<ul style="list-style-type: none"> • International calling – all destinations • Includes international calling card services
5.	Domestic Private Leased Circuits	<ul style="list-style-type: none"> • All DPLC services (i.e., all transmissions speeds and technologies) • All related services such as installation, activation or re-connection
6.	International Private Leased Circuits	<ul style="list-style-type: none"> • All IPLC services (i.e., all transmissions speeds and technologies) • All related services such as installation, activation or re-connection

The Commission notes that each of the fixed services covered by the LIME Application fall into one of the six relevant markets listed in Table 2. In all cases, LIME's fixed services are currently provided to a "fixed" location using wireline technology. The Commission recognizes however that wireless technology can also be used to provide telecommunications services to fixed locations and, indeed, Digicel is currently using fixed wireless technology to provide non-mobile local access, domestic and international calling and leased circuit services to business and Government customers in TCI. Consequently, the Commission considers such services to be directly interchangeable or substitutable with those provided by LIME and, therefore, part of the applicable relevant markets.

A more complex issue of market definition arises in the case of the treatment of mobile services. LIME, for instance, has argued in the LIME Application and subsequent submissions to the Commission that fixed and mobile access and calling are substitutable services and, therefore, should be included in the same relevant markets.

The Commission, however, considers the evidence on this question to be inconclusive at this time. While the number of mobile subscribers in TCI has increased very rapidly in recent years to the point where TCI has a mobile density (defined as the number of mobile subscriptions as a percentage of the population) of over 200%, the number of fixed line subscribers has only declined relatively slowly. As well, the TCI fixed density (defined as the number of fixed subscriptions as a percentage of the population) appears to have remained relatively constant at just over 20%.¹⁰ For residential subscriptions some of the decline may be due to the mobile adoption and some may be due to the economic downturn in TCI, among other factors. Another relevant factor is absence of number portability between fixed and mobile subscribers in TCI, which acts as a deterrent to subscribers switching between fixed and mobile services. In any event, a large number of households in TCI have retained their fixed line service subscriptions.¹¹ Consequently, for many households, mobile access appears to be considered as more of a complement rather than a substitute for fixed access service. With respect to business and Government customers, the evidence is stronger still that mobile access is complementary to fixed access services. Very few, if any, business and government customers would consider substituting their fixed access services exclusively with mobile services.¹²

Given the growth in mobile relative to fixed densities, it is not surprising to see a shift in domestic and international calling originating from fixed to mobile networks. To some degree this shift in calling may in part reflect fixed-to-mobile call substitution. However, it should also be recognized that, as in other Calling Party Pays jurisdictions, TCI's very high mobile density level of over 200% is in part due to the fact that many customers subscribe to two or even three

¹⁰ The mobile density estimate includes mobile subscribers for all three licensed public mobile operators in TCI. The TCI fixed density estimate includes residential and business fixed (wireline and wireless) access lines. Note that the TCI fixed density rate appears to have changed little in the last few years since while the total number of fixed lines has declined slightly, so too has the population of TCI. According to recent Government estimates, the population of TCI was about 31,500 last year. See: <http://turksandcaicosislands.fco.gov.uk/en/news/?view=News&id=796072382>.

¹¹ As supported by LIME's TCI Market Research, Confidential Survey, 12 December 2012.

¹² Ibid.

mobile networks to avoid high off-net calling relative to on-net calling rates.¹³ Similarly, some fixed subscribers also likely retain their fixed line to take advantage of lower on-net calling rates rather than use their mobile for the same purpose (assuming the subscriber in the location where his/her fixed service is provided).

Therefore, for the purposes of the present forbearance review, the Commission is of the preliminary view that mobile services should not be included in the same relevant markets as the access and calling services included in Relevant Markets 1 to 4 as listed in Table 2. At the same time, however, the Commission appreciates that mobile services can provide a degree of pricing discipline in certain fixed markets as discussed further below.

With respect to the Commission's above-noted relevant market definition proposals, parties are invited to respond to the following questions:

QUESTION 2: Relevant Markets: Do you agree with the Commission's proposed set of six defined relevant fixed services markets for forbearance review purposes? If not, explain why not and provide any suggested modifications you consider appropriate with supporting rationale.

QUESTION 3: Treatment of Mobile Services: Do you agree with the Commission's proposal not to include fixed and mobile access and calling in the same relevant markets (i.e., in the case of Relevant Markets 1 through 4)? If not, explain why not and provide your preferred alternative approach with supporting rationale.

3.2 Forbearance Test Criteria

The range of potential forbearance test criteria can be extensive and can vary depending on the relevant market in question. The Commission's objective in the case in hand is to adopt a set of forbearance test criteria which will provide an efficient and effective means to determine whether any or all of the fixed services covered by the LIME Application should be forborne. Based on experience in other jurisdictions and the Commission's evaluation of the LIME Application to date, the Commission proposes to rely on the forbearance test criteria set out in Table 3 below in the case of the fixed services covered by the LIME Application.

Table 3 – Proposed Forbearance Test Criteria		
No.	Test Criterion	Description & Relevance
1.	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • Consideration of historical (five-year) volume, price and revenue data for LIME's fixed services included in the relevant market in question. • Consideration of historical service-specific profitability for LIME's fixed services included in the relevant market in question (using LIME's cost separations model). • Consideration of forward-looking (two-year) trends for same. • <i>Relevance: Evidence of declining trends for one or more of these</i>

¹³ Ibid.

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Table 3 – Proposed Forbearance Test Criteria		
No.	Test Criterion	Description & Relevance
		<i>factors would be supportive of forbearance.</i>
2.	Competitive Alternatives (including evidence of rivalrous behaviour)	<ul style="list-style-type: none"> • Identification of all existing and potential substitutes or alternatives by technology: wireline, fixed wireless and mobile wireless (as may be applicable). • Including in each case, service coverage, supply capacity and alternative pricing information (as may be applicable). • Evidence of falling prices, vigorous marketing activities and an expanding scope of activities by existing or potential competitors. • <i>Relevance: Significant evidence of competitive alternatives and rivalrous behaviour would be supportive of forbearance.</i>
3.	Market Shares	<ul style="list-style-type: none"> • Estimation of LIME's market share (where possible). • <i>Relevance: Low or declining market share would be supportive of forbearance; however, high market share in and of itself would not preclude forbearance.</i>
4.	Market/Sector Trends	<ul style="list-style-type: none"> • Considerations of innovations and technological changes affecting the nature and scope of existing and potential competition. • <i>Relevance: Evidence of market and technology trends in favour of increased competition would be supportive of forbearance.</i>
5.	Barriers to Entry	<ul style="list-style-type: none"> • Identification of any financial, technical or regulatory barriers to market entry or expansion or, more generally, competition. • <i>Relevance: Absence of any significant barriers to entry would be supportive of forbearance.</i>

The Commission notes that in establishing the above-noted set of forbearance test criteria, it has taken into account the likelihood that the necessary market data and information would in fact be readily available for each defined relevant market. To date, the Commission has collected extensive market data and information from LIME as well as other service providers in TCI pertinent to the proposed set of forbearance test criteria and for each of the relevant markets in question. However, the Commission is seeking to collect additional market data and information through this consultation process.

With respect to the Commission's above-noted proposed forbearance test criteria, parties are invited to respond to the following question:

QUESTION 4: Forbearance Criteria: Do you agree with the Commission's proposed set of forbearance test criteria? If not, explain why not and provide any suggested modifications you consider appropriate with supporting rationale. As well, to the extent any additional criteria are suggested, please provide any market data and information available that would be pertinent to those suggested additional test criteria.

3.3 Preliminary Forbearance Test Results

As noted, the Commission has undertaken a preliminary assessment of the merits of the LIME Application. This involved the collection of considerable fixed services market data and information from LIME,¹⁴ for each of the proposed six defined relevant markets:

- LIME service-specific historical volume and revenue data;
- listing of all existing or potential alternative licensees and other operators offering what LIME considers to be closely substitutable services with its own fixed services;
- relative pricing and functionality for each substitute service identified;
- supply capacity and market coverage of the identified alternative licensees and other operators;
- estimated market share of the identified alternative licensees and other operators (individually or as a group);
- any barriers to entry that may exist; and
- any evidence of market rivalry that may exist (e.g., promotions, price reductions or other marketing activities, etc.).

In addition, the Commission sought market data and information relevant to the LIME Application from other licensees including Digicel, Islandcom, Andrew's Communications and TCT. For the fixed service markets under consideration, these licensees were asked to confirm and, where applicable, provide the following information for each of the proposed six defined relevant markets:¹⁵

- a description of any fixed location service(s) they offered and how they were delivered (i.e., technology);
- the date when the above-noted fixed location service(s) was launched;
- the current total number of customers for the above-noted fixed location service(s);
- the total revenues for the above-noted service(s) for the most recently available fiscal year period (disaggregated by key service features or service speed where applicable and possible); and
- additional information of service plan features (e.g., international calling plans that are available with a fixed access service, etc.).

¹⁴ Based on the request of information sent to LIME by the Commission on 20 April 2012.

¹⁵ Based on the request for information sent to Digicel, Islandcom, Andrew's and TCT by the Commission on 9 October 2012.

The Commission followed up with LIME and other licensees to clarify and supplement the market data and information collected through this process. In LIME's case, the Commission asked LIME to provide an updated version of its Enhanced Allocation Model ("EAM") which is a cost separations model that calculates LIME's service-specific unit costs and profitability. LIME also provided projected service-specific revenue, cost and profitability for a two-year period.

Based on the market data and information provided by LIME, Digicel, Islandcom, Andrew's Communications and TCT, and including its own research, the Commission has reached a preliminary conclusion on appropriateness of forbearing from regulating LIME's fixed services in each of the six defined relevant markets. The Commission has provided a summary of its findings and conclusions in Annex 1 for each defined relevant market. The Commission notes that the majority of the detailed market data and information collected from LIME and other licensees is competitively sensitive in nature and, therefore, the Commission considers that its public disclosure could cause specific direct harm to the parties involved. As a result, the detailed data is considered confidential and hence the summary information provided in Annex 1 is necessarily high-level in nature.

The Commission's preliminary conclusions by defined relevant market are as follows:

- **Residential Access at a Fixed Location:** While there is no direct competition in this relevant market as of yet, potential competition from fixed wireless service may emerge and considerable competitive pressure already exists from mobile service. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.
- **Business Access at a Fixed Location:** Direct competition exists (using fixed wireless technology) in this relevant market, although it currently appears to be focussed on multiline business customers. Competitive pressure from mobile service is relatively very limited in this market. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.
- **Domestic Calling from a Fixed Location:** Direct competition exists (using fixed wireless technology) in this relevant market, although it currently appears to be focussed on multiline business customers. Potential competition from fixed wireless service may emerge on a broader basis. Otherwise, there is some competitive pressure from mobile service in the case of residential and single-line business subscribers. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.
- **International Calling from a Fixed Location:** Direct competition exists in this relevant market, although it currently appears to be on multiline business customers. There is also significant competitive pressure directly from VoIP services and international calling cards and from mobile services. Based on currently available market data and

information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.

- **Domestic Private Leased Lines:** Direct competition exists for this relevant market, although it currently appears to be focussed on multiline fixed access business customers, which includes business customers purchasing DPLC services. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.
- **International Private Leased Lines:** There appear to be a number of retail and wholesale options available to business and Government customers seeking IPLC services. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.

The Commission notes that the proposed forbearance is conditional on compliance with a number of ongoing requirements that the Commission considers to be necessary in the public interest with respect to the residential and business fixed access and domestic fixed calling markets. The specific forbearance conditions for each of these relevant markets are provided in the following section.

With respect to the Commission's findings and conclusions described in Annex 1 and summarized above, parties are invited to respond to the following question:

QUESTION 5: Forbearance Test Findings & Conclusions: Do you agree with the Commission's preliminary findings and conclusions regarding each of the six defined relevant markets described in Annex 1? If not, please explain why not. In addition, please provide any additional data and/or information that you believe the Commission should take into account when assessing the extent of competition in each of the defined relevant markets.

4 Forbearance Proposal

Based on the its preliminary market analysis for the six relevant markets under consideration, the Commission considers that forbearance is appropriate for all the fixed services that are included in the LIME Application, subject to certain conditional requirements for some of the relevant markets.

4.1 Overview

Table 4 below provides a summary of the Commission's Forbearance Proposal, including the corresponding conditional requirements for relevant markets 1, 2 and 3 (together, the "Forbearance Conditions"). As discussed in the following Chapter, the Commission is of the preliminary view that the Forbearance Proposal would be in effect for a period of four years.

Table 4 – Forbearance Proposal			
No.	Relevant Market	Forbearance	Forbearance Conditions
1.	Residential Access at a Fixed Location	Conditional price deregulation	LIME required to continue to provide stand-alone (basic) residential fixed access at a price no higher than (current rate of) \$20 per month, with the associated installation fee also capped at the current rate level
2.	Business Access at a Fixed Location	Conditional price deregulation	LIME required to continue to provide stand-alone (basic) business fixed access at a price no higher than (current rate of) \$45 per month, with the associated installation fee also capped at the current rate level
3.	Domestic Calling from a Fixed Location	Conditional price deregulation	LIME required to continue to provide a stand-alone (basic) fixed calling service at prices no higher than (the current rate of) 15¢/minute for FTF calls and (as of 31 March 2013) 30.75¢/minute for FTM calls
4.	International Calling from a Fixed Location	Unconditional price deregulation	None
5.	Domestic Private Leased Circuits	Unconditional price deregulation	None
6.	International Private Leased Circuits	Unconditional price deregulation	None

The Forbearance Proposal has two key implications. First, it would eliminate the need to continue the Second PC Regime when it expires 31 March 2013. Second, as of 1 April 2013, it would have the effect of price deregulating the prices most of the retail fixed services included in

the LIME Application, with the exception of a limited number of basic services for which incentive-based Forbearance Conditions would apply.

4.2 Scope of Forbearance

The regulatory provisions in the Ordinance which currently apply to LIME's fixed services for which it is designated as dominant can be grouped into three categories: (i) *ex ante* price-related, (ii) *ex ante* non-price-related and (iii) *ex post* price-related regulatory provisions. The Forbearance Proposal would apply solely to the first group of *ex ante* price-related regulatory provisions.

Accordingly, under the Forbearance Proposal, the Commission would forbear from the application of all *ex ante* price-related regulatory provisions for all of LIME's fixed services included under the LIME Application, conditional on continued compliance with the Forbearance Conditions. The specific *ex ante* price-related regulatory provisions with respect to which the Commission would forbear under the Forbearance Proposal include Sections 17(b), 27(2)(a), 27(2)(b) and 27(3) to 27(11) of the Ordinance and Sections 4 to 7 of the Pricing Regulations. All of these provisions apply to the price regulation of services provided by a licensee with respect to which it has been designated as dominant.

On the other hand, under the Forbearance Proposal, the Commission would not forbear with respect to *ex ante* non-price related regulatory provisions including Sections 17(a), 17 (c), 17 (e) and 27(12) of the Ordinance and Section 8 of the Pricing Regulations.

Further, under the Forbearance Proposal, the Commission would not forbear with respect to *ex post* price related regulatory provisions – notably, Sections 17(d) and 27(2)(c) of the Ordinance. These provisions relate to pricing practices that are considered unjustly discriminatory or anti-competitive in nature and/or, more generally, any acts of unfair competition. The Commission notes that similar provisions are stipulated in Section 13 of LIME's Licence and similarly would not be affected or otherwise altered under the Forbearance Proposal.

Lastly, the Commission notes that the Forbearance Proposal pertains strictly to LIME's retail fixed services and would not in any way apply to its wholesale services offered under the Interconnection Regulations.

4.3 Compliance with Ordinance

The Commission is of the preliminary view that its Forbearance Proposal is fully consistent with the forbearance provisions set out in Section 28 of the Ordinance, namely:

- subject to compliance with the Forbearance Conditions, the proposed scope and extent of forbearance would be consistent with the telecommunications policy objectives for TCI;

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- subject to compliance with the Forbearance Conditions, the fixed services provided by LIME in the defined relevant markets are currently or will be subject to sufficient competition to protect the interests of users; and
- refraining from regulating the fixed services provided by LIME in the defined relevant markets would not unduly impair the establishment or continuance of competitive markets for the services in question.

With respect to the Forbearance Proposal, parties are invited to respond to the following question:

QUESTION 6: Forbearance Proposal: Do you agree with the Forbearance Proposal for each of the six defined relevant market? If not, please explain why not. In addition, please provide any modifications you consider warranted along with the supporting rationale.

5 Other Matters

The Commission notes that under its Forbearance Proposal, most of the existing price cap regulation requirements would be eliminated. However, several ongoing reporting requirements would be retained. These include the continued filing of LIME's annual audited statutory financial statements (which is a condition of licence in any event).¹⁶ In addition, LIME would be required to provide confirmation annually (on April 1st each year) as to its full compliance during the past year, and on an ongoing basis, with the Forbearance Conditions, including all service and pricing requirements applicable to stand-alone (basic) residential and business fixed access services and domestic fixed calling services that are covered by the Forbearance Conditions.

The Commission also proposes to conduct a review within four years of the forbearance decision resulting from this proceeding to, among other things, assess the continued need for the Forbearance Conditions. At that time, the Commission may also assess whether LIME should continue to be designated non-dominant with respect to the provision of any or all of its fixed services.

The Commission notes, however, that prior to conducting any such dominance review, it plans to promulgate sector-wide competition guidelines that would apply to all services provided under the Ordinance. The objective of such competition guidelines would be to fill the legal gap in the telecommunications sector due to the absence of any economy-wide competition legislation in TCI.

With respect to these and any other matters deemed relevant to this consultation, parties are invited to respond to the following question:

QUESTION 7: Other Matters: Do you agree with the Commission's reporting requirement and forbearance review timing proposals? If not, please explain why not. In addition, please provide your comments on any other issues you consider relevant to the Commission's decision in this consultation.

¹⁶ On the other hand, LIME would no longer be required by the Commission maintain the EAM for regulatory purposes.

Annex 1 – Market Analysis Summaries

Table A1		
Relevant Market #1: Residential Access at a Fixed Location		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME residential fixed access prices constant over last four years • LIME residential fixed access volumes generally declining (excluding stand-alone fixed access subscribers) over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • No direct residential fixed access service competitive alternative at this time • Fixed wireless may become competitive alternative for residential subscribers in the future (given it is currently available for business subscribers) • Voice over Internet Protocol (VoIP) application together with a broadband connection provides a weak competitive alternative (e.g., excludes ability to have a local telephone number) • Mobile access rivalry is significant and likely provides a degree of fixed access pricing discipline for residential fixed access service
3	Market Shares	<ul style="list-style-type: none"> • LIME fixed access market near 100% (excluding any consideration of mobile access services)
4	Market/Sector Trends	<ul style="list-style-type: none"> • Residential fixed access lines generally decreasing gradually in most countries, while mobile access increasing
5	Barriers to Entry	<ul style="list-style-type: none"> • Financial: relatively high cost of entry (although wireless technology provides a means to mitigate such costs; cable TV operators have successfully entered this market in other countries) • Technical: absence of local number portability and availability of unbundled local loops
	Preliminary Conclusion	While there is no direct competition in this relevant market as of yet, potential competition from fixed wireless service may emerge and considerable indirect competitive pressure already exists from mobile service. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.

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Table A2 Relevant Market #2: Business Access at a Fixed Location		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME headline business fixed access prices constant over last four years • LIME single-line fixed access volumes relatively steady, whereas multiline volumes declining over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • Direct competition from Digicel who provides a fixed wireless single-line and multiline alternative • Competition from other wireless service providers possible in the future • VoIP application together with a broadband connection provides a weak competitive alternative (e.g., excludes ability to have a local telephone number) • Mobile not considered an effective substitute in the business fixed access market, but may provide some degree of competitive pricing discipline in single-line business fixed access segment • Evidence of discounted pricing offers and promotions, especially for multiline customers • Larger businesses and government customers may have a degree of countervailing buying power, especially those who purchase a variety of telecom services (such a fixed access, Internet access, leased circuits and/or mobile services)
3	Market Shares	<ul style="list-style-type: none"> • LIME business fixed access market declining from former monopoly position (especially in multiline segment)
4	Market/Sector Trends	<ul style="list-style-type: none"> • Business fixed access line growth generally flat in most countries
5	Barriers to Entry	<ul style="list-style-type: none"> • Financial: relatively high cost of entry (although wireless provides a means to mitigate such costs as demonstrated by Digicel's entry) • Technical: absence of local number portability and availability of unbundled local loops
	Preliminary Conclusion	Direct competition exists (using fixed wireless technology) in this relevant market, although it currently appears to be focussed on multiline business customers. Competitive pressure from mobile service is relatively very limited in this market. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.

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Table A3 Relevant Market #3: Domestic Calling from a Fixed Location		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME fixed-to-fixed (FTF) calling rates constant at 15¢ per minute over last four years • LIME fixed-to-mobile (FTM) calling rates reduced from 50¢ to 31.75¢ per minute over last four years as a result of the price cap regime and MTR decision. Further reduction to 30.50¢ per minute required as of 31 March 2013. • LIME FTF and FTM call minute volumes generally declining over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • No direct residential fixed calling competitive alternative at this time • Digicel provides a competitive alternative for business customers, although focused more so on multiline rather than single-line subscribers at this time • Fixed wireless may become competitive alternative residential customers in the future • VoIP provides at best a weak alternative for domestic calling purposes • Mobile access provides an indirect competitive alternative (more so for residential than business customers) • Mobile calling rates to fixed, on-net mobile and off-net mobile subscribers can vary widely (depending on the mobile plan involved and a mobile user's calling volumes), and often exceed LIME's current FTF rate and in some cases also exceed its current FTM rate. • Otherwise, mobile access rivalry very high and likely provides a degree of fixed domestic call pricing discipline
3	Market Shares	<ul style="list-style-type: none"> • LIME residential domestic calling from a fixed location market share near 100%, while its market share in the business segment is declining (excluding consideration of mobile calling)
4	Market/Sector Trends	<ul style="list-style-type: none"> • Fixed access calling volumes generally decreasing in most countries
5	Barriers to Entry	<ul style="list-style-type: none"> • Financial: relatively high cost of entry (although wireless provides a means to mitigate such costs) • Technical: absence of local carrier pre-selection and availability of unbundled local loops • Other Factors: relatively high inter-carrier call termination charges create significant differences in on-net and off-net calling charges which appears to incent some customers to subscribe to access services from multiple service providers
	Preliminary Conclusion	<p>Direct competition exists (using fixed wireless technology) in this relevant market, although it currently appears to be focussed on multiline business customers. Potential competition from fixed wireless service may emerge on a broader basis. Otherwise, there is some indirect competitive pressure from mobile service in the case of residential and single-line business subscribers. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on a conditional basis for this relevant market.</p>

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Table A4		
Relevant Market #4: International Calling from a Fixed Location		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME fixed international call rates generally constant over last four years • LIME fixed international call volumes generally declining over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • No direct residential competitive alternative at this time • Digicel provides a competitive alternative for business customers, although focused more so on multiline rather than single-line subscribers at this time • Fixed wireless may become competitive alternative residential customers in the future • Various VoIP alternatives available to residential and business customers • International calling card options also available • Mobile international calling rates generally similar or, in some cases (e.g., through Islandcom), lower than those offered by LIME to its fixed access subscribers • Mobile access rivalry is significant and likely provides a degree of fixed international call pricing discipline
3	Market Shares	<ul style="list-style-type: none"> • LIME international calling market share declining
4	Market/Sector Trends	<ul style="list-style-type: none"> • Fixed-originated international call and minute volume trends in other countries unknown; however, an increasing number of international calling options available (including, VoIP, calling card, call-back and dial-around) and international per minute call rates generally declining
5	Barriers to Entry	<ul style="list-style-type: none"> • Technical: absence of local carrier pre-selection
	Preliminary Conclusion	Direct competition exists in this relevant market, although it currently appears to be on multiline business customers. There is also significant competitive pressure directly from VoIP services and international calling cards and from mobile services. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.

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Table A5 Relevant Market #5: Domestic Private Leased Circuits (DPLC)		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME headline DPLC prices constant over last four years • LIME DPLC volumes generally declining over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • Direct competition from Digicel who provides fixed wireless alternative • Competition from other wireless service providers possible in the future • Evidence of discounted pricing offers and promotions • Larger businesses and government customers may have a degree of countervailing buying power, especially those who purchase a variety of telecom services (such a fixed access, Internet access, leased circuits and/or mobile services)
3	Market Shares	<ul style="list-style-type: none"> • LIME DPLC market declining from former monopoly position (especially in higher transmission speed DPLC segment)
4	Market/Sector Trends	<ul style="list-style-type: none"> • DPLCs generally transitioning from lower to higher speeds, legacy to IP technologies in most countries
5	Barriers to Entry	<ul style="list-style-type: none"> • Financial: relatively high cost of entry (although wireless provides a means to mitigate such costs)
	Preliminary Conclusion	<p>Direct competition exists for this relevant market, although it currently appears to be focussed on multiline fixed access business customers, which includes business customers purchasing DPLC services. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.</p>

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Table A6 Relevant Market #6: International Private Leased Circuits (IPLC)		
No.	Forbearance Test Criteria	Assessment
1	LIME Relevant Market Specific Data	<ul style="list-style-type: none"> • LIME headline IPLC prices constant over last four years • LIME IPLC generally volumes declining over last four years • Profitability: confidential
2	Competitive Alternatives (including Rivalrous Behaviour)	<ul style="list-style-type: none"> • Apparent evidence of existing and potential competition from alternative service providers • Evidence of discounted pricing offers and promotions • Larger businesses and government customers may have a degree of countervailing buying power, especially those who purchase a variety of telecom services (such a fixed access, Internet access, leased circuits and/or mobile services)
3	Market Shares	<ul style="list-style-type: none"> • LIME IPLC market share unknown
4	Market/Sector Trends	<ul style="list-style-type: none"> • IPLCs generally transitioning from lower to higher speeds, legacy to IP technologies in most countries
5	Barriers to Entry	<ul style="list-style-type: none"> • Financial: high cost of entry, however, adequate wholesale capacity exists in TCI • Evidence of adequate alternative wholesale IPLC supply capacity (via Columbus Networks for instance)
	Preliminary Conclusion	There appear to be a number of retail and wholesale options available to business and Government customers seeking IPLC services. Based on currently available market data and information, the Commission considers on a preliminary basis that forbearance is appropriate on an unconditional basis for this relevant market.

Annex 2 – List of Consultation Questions

QUESTION 1: Forbearance Review: Do you agree with the Commission's proposal to adopt a Section 28 Forbearance Review approach for the purpose of assessing and rendering a decision on the LIME Application? If not, explain why not and provide your preferred alternative approach with supporting rationale.

QUESTION 2: Relevant Markets: Do you agree with the Commission's proposed set of six defined relevant fixed services markets for forbearance review purposes? If not, explain why not and provide any suggested modifications you consider appropriate with supporting rationale.

QUESTION 3: Treatment of Mobile Services: Do you agree with the Commission's proposal not to include fixed and mobile access and calling in the same relevant markets (i.e., in the case of Relevant Markets 1 through 4)? If not, explain why not and provide your preferred alternative approach with supporting rationale.

QUESTION 4: Forbearance Criteria: Do you agree with the Commission's proposed set of forbearance test criteria? If not, explain why not and provide any suggested modifications you consider appropriate with supporting rationale. As well, to the extent any additional criteria are suggested, please provide any market data and information available that would be pertinent to those suggested additional test criteria.

QUESTION 5: Forbearance Test Findings & Conclusions: Do you agree with the Commission's preliminary findings and conclusions regarding each of the six defined relevant markets described in Annex 1? If not, please explain why not. In addition, please provide any additional data and/or information that you believe the Commission should take into account when assessing the extent of competition in each of the defined relevant markets.

QUESTION 6: Forbearance Proposal: Do you agree with the Forbearance Proposal for each of the six defined relevant market? If not, please explain why not. In addition, please provide any modifications you consider warranted along with the supporting rationale.

QUESTION 7: Other Matters: Do you agree with the Commission's reporting requirement and forbearance review timing proposals? If not, please explain why not. In addition, please provide your comments on any other issues you consider relevant to the Commission's decision in this consultation.