

# Public Utilities Commission of Anguilla

## Telecom Decision PUC 2011-101

Telecom Decision PUC 2011-101 (Abridged Version)<sup>1</sup>

The Valley, Anguilla – 1 April 2011

In the matter of a complaint dated 5 May 2010 from Weblinks regarding Lime's wholesale and retail pricing for international outgoing calling services and domestic interconnection services

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<sup>1</sup> Portions redacted in the abridged version.

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### I Background

#### Scope of Proceeding

1. **Weblinks Limited (Weblinks or the Company)** is a licensed telecommunications network operator and mobile service provider in Anguilla. The company received a license on 10 September 2004.
2. **Cable and Wireless (Anguilla) Limited (C&W or Lime)** is a licensed telecommunications network operator in Anguilla. C&W is the incumbent operator and received a license on 14 December 2004.
3. The national regulatory framework provides for an ‘integrated’ public telecommunications service which requires that all public networks be interconnected. Section 5(1) of the **Telecommunications Interconnection and Access to Facilities Regulations R.R.A. c. T6-4 (IAF Regulations)** stipulates that every operator or service provider has a duty to interconnect with other service providers.

#### The Proceeding

4. Weblinks filed with the Commission a letter dated 5 May 2010 with the caption *‘Complaint Regarding C&W/LIME Wholesale Pricing to Weblinks and Related Request to Investigate Said Pricing and to Drastically Reduce Mobile Termination Rates’*.
5. Attached to Weblinks’ letter of 5 May 2010 were five blank pages entitled *‘Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E’*
6. Exhibits A, B and C were filed as an electronic file with the Commission and contained emails and letters exchanged between Lime and Weblinks regarding the wholesale prices.
7. Exhibit D was also filed electronically with the Commission and is a copy of Lime’s revised wholesale tariffs effective 24 February 2009. Also filed electronically with the Commission was Exhibit E which Weblinks stated contained copies of all C&W/LIME interconnect invoices to Weblinks since December 2006. On reviewing the file it was determined that the first invoice is related to January 2007 and the invoice is dated 7 February 2007. The last invoice on the file is for August 2008 and is dated 8 September 2008.
8. Reference is made in Weblinks’ letter of 5 May to a previous letter dated 27 April 2010 addressed to Lime and copied to the Commission. Weblinks makes the following statement with respect to their letter of 27 April:

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*'Accordingly, we have formally notified C&W/Lime, in our letter to C&W Anguilla dated 27 April 2010 and copied to the PUC, that Weblinks is disputing their invoicing and is further seeking the above-mentioned action by the PUC.'*<sup>2</sup>

9. The Commission referred Weblink's letter of 5 May to Lime under a covering letter dated 26 May 2010 and granted Lime until 4 June 2010 to file a response.
10. Lime filed a response to Weblinks' complaint by way of a letter to the Commission dated 4 June 2010. Included in the response was an attachment consisting of a spreadsheet entitled '*Lime Anguilla – Retail/Wholesale/Settlement Rate Comparison 4 June 2010*' and filed in confidence with the Commission.
11. The 'attachment' to Lime's letter of 4 June 2010 included a list of twelve 'destination countries' in the Caribbean region served by Lime and the Settlement, Wholesale and Retail prices to those destinations for calls from Lime (Anguilla) (Settlement and Retail Rates) and Weblinks (Wholesale Rates). In addition, the weighted prices were determined based on various assumptions on the distribution of traffic between fixed, Lime mobile and other mobile and on traffic distribution by time-of-day and day-of – the-week. Based on the 'average' Settlement Rates, Wholesale Rates and Retail Rates, the margins of Wholesale over Settlement, Retail over Settlement and Retail over Wholesale were determined.

### **Confidentiality**

12. The Commission by way of a letter to Lime dated 10 June 2010 requested Lime to provide the attachment to Lime's letter of 4 June 2010 to Weblinks.
13. Lime's reply dated 16 June 2010 to the Commission's request for full disclosure of the attachment, proposed that a redacted version of the attachment be provided to Weblinks.
14. Lime's submission of 16 June 2010 on the matter of confidentiality reads, in part, as follows:

*'LIME reiterates the basis of the request as set out in that letter, namely that the attachment contains information whose disclosure "would give LIME's competitors a very precise and clear picture of the company's cost base, and would give these competitors the opportunity to prepare specific competitive responses, to LIME's specific financial and competitive detriment". On this basis, LIME objects to the disclosure of the attachment in its current form to Weblinks'*

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<sup>2</sup> Weblinks' letter dated 5 May 2010, page 2.

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15. By way of a letter dated 24 June 2010, the Commission accepted Lime's proposal to provide a redacted version of the attachment to their letter of 4 June 2010. The Commission directed Lime to provide Weblinks with a copy of their letter of 16 June 2010 and the redacted version of the attachment to their letter of 4 June 2010.
16. Lime's letter to Weblinks of 25 June 2010 provided a copy of their letter of 16 June, a redacted version of the spreadsheet attachment to their letter of 4 June, and a copy of their letter of 4 June which is Lime's response to Weblinks' complaint dated 5 May 2010.

### **Proceeding – Weblinks' Initial Reply Comments**

17. The Commission's letter of 24 June 2010 to Lime and copied to Weblinks, advised that a response from Weblinks was due within twenty-one days from the date that Lime provides Weblinks with copies of their letters of 4 and 16 June and a redacted version of the spreadsheet attached to their letter of 4 June 2010. As a result of Lime's letter of 25 June 2010, the due date for Weblinks response was 16 July 2010.
18. By way of an email to the Commission dated 23 July 2010, Weblinks requested an extension to the time for filing a response and proposed a revised date of 30 July 2010. Subsequently, Weblinks requested that the time period for a reply be extended to 3 August 2010. The Commission granted Weblinks the additional time to file a response.
19. Weblinks requested an additional extension to 9 August by way of an email to the Commission dated 3 August 2010. The matter of a further extension was referred to Lime by way of an email from the Commission dated 4 August 2010. Lime accepted Weblinks' proposal to revise the due date for filing their reply to 9 August 2010.
20. Weblinks reply comments dated 9 August were received by the Commission on 11 August 2010. Weblinks did not file a copy of their letter dated 9 August with Lime and provided the following explanation:

*'Finally, on principle, Weblinks shall not be copying this letter to C&W/LIME's Anguilla Retail Business Unit which as a direct competitor should not be involved in Weblinks' affairs. We leave it up to the APUC to determine which C&W/LIME entity is legitimately entitled to have this knowledge of Weblinks' affairs on an arms-length basis and to respond to the Weblinks complaint.'*

21. Under a covering letter dated 12 August 2010, the Commission complied with Weblinks' request and forwarded a copy of their letter of 9 August to Lime's legal department; namely, Mr. Frans Vandendries, Vice President Legal and Regulatory Affairs, CWWI.

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22. The Commission informed the parties to the proceeding, in their letter of 12 August 2010, that clarification of certain matters was required and that a request for further information would be issued on or before 27 August 2010.

### **Proceeding - Interrogatories**

23. In order to clarify certain matters raised in the proceeding, the Commission issued interrogatories to both Lime and Weblinks by way of a letter dated 24 August 2010. Replies to the interrogatories were requested to be filed on or before 14 September 2010.

### **Proceeding – Weblinks letter of 27 August**

24. Weblinks filed a letter with the Commission dated 27 August 2010 and raised two additional matters; namely, the pricing of Internet Bandwidth and access to purchasing capacity in the Eastern Caribbean Fibre System (ECFS).
25. The Commission responded to Weblinks' letter of 27 August by way of a letter dated 6 September 2010. The Commission's letter reads, in part, as follows:

*'The Commission notes that in Weblinks most recent letter of 27 August 2010, the company lists four 'situations' where alleged discriminatory and cross-subsidization by Lime may exist. Two of the four situations, item 2, Incoming International Termination Charges and item 3, Outpayment of International Termination Fees' are both matters raised in your initial complaint and currently being reviewed by the Commission. The other two matters identified in the company's letter of 27 August 2010, item 1, Internet Bandwidth, and item 4, Purchasing Capacity in the Eastern Caribbean Fibre System, were not matters raised in Weblinks complaint of 5 May 2010.'*

26. In their letter dated 6 September 2010, the Commission proposed two procedural options in terms of addressing the two additional matters raised in Weblinks letter of 27 August 2010. The Commission's procedural options were described as follows:

*'Therefore, Weblinks is directed to provide a copy of their letter to the Commission of 27 August 2010 to Lime. On receipt of Lime's initial reply to Weblinks letter of 27 August 2010 on the matter of Internet capacity and access to Eastern Fibre cable capacity, the Commission will determine whether further interrogatories to Weblinks and/or Lime are required to clarify certain matters. Alternatively, the two new matters identified in your letter of 27 August 2010 – internet capacity and fibre capacity - could be addressed as a separate complaint and we would proceed with the interrogatory process and replies already underway with respect to your complaint of 5 May 2010.'*

27. Lime filed their response to the Commission's interrogatories under a covering letter dated 14 September 2010. Weblinks requested and was granted an extension to the

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date for filing their replies. Their responses were filed under a covering letter dated 24 September 2010.

28. Weblinks reply, dated 28 September 2010, to the Commission's letter of 6 September 2010 reads, in part, as follows:

*'Weblinks considers that the issues of Internet Bandwidth Pricing and Access to Purchase Capacity in the Eastern Caribbean Fibre System (ECFS) should be included in the current complaint and procedure and not deferred to form a separate complaint.'*

29. In view of the procedural implications of adding new issues to Weblinks' complaint of 5 May 2010, that is, the initial response from Lime dated 16 June 2010 and the replies to the Commission's interrogatories dated 14 September 2010, were already on file, the Commission referred the procedural matter to Lime for comments by way of an email dated 27 September 2010.
30. Lime's reply by way of an email dated 19 October 2010, advised the Commission that the company preferred to address the issues of Internet Bandwidth and the Eastern Caribbean Cable System as part of a separate proceeding.
31. The Commission's letter of 20 October 2010 to Weblinks and Lime informed the companies of the dates by which final submissions and replies are to be filed regarding Weblinks initial complaint of 5 May 2010.
32. The Commission also informed the parties that the two additional matters – Internet capacity and Cable capacity – would be addressed in a separate proceeding and that Lime should file their initial response on the two additional matters on or before 17 November 2010.
33. In addition, the parties were advised that Lime should file their final reply comments on the matters raised in Weblinks' initial complaint of 5 May 2010 on or before 10 November, and Weblinks should file their final comments on or before 24 November 2010.
34. In an email dated 17 November Lime requested and was granted an extension to the date for filing final comments on the initial Weblinks complaint. The revised date was 19 November 2010 and Weblinks was advised that the date for filing their final comments was on or before 3 December 2010.
35. In addition, Lime requested and was granted an extension for filing comments on the two additional matters with the revised date being set as 30 November 2010.
36. Lime filed their final comments with the Commission on 19 November 2010. Weblinks filed their final comments on 3 March 2011 following a number of deferments to the filing date requested by Weblinks.

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### II Weblinks' Complaint and Lime's Response

#### Weblinks' Complaint

37. As previously noted, Weblinks filed a complaint with the Commission by way of a letter dated 5 May 2010.

38. The general complaint raised by Weblinks is described as follows:

*'Weblinks therefore contends that C&W/Lime's Interconnection invoicing to Weblinks from the inception of the Interconnection Facility is in contravention of the Act, hence is invalid.'*<sup>3</sup>

39. Weblinks alleges that Lime is charging lower retail prices for certain international calls than the wholesale price Lime is charging Weblinks for calls to the same destinations.

40. In addition, with respect to domestic interconnection and calling, Weblinks makes the following submission:

*'From the evidence, as outlined below, either C&W/Lime is charging Weblinks a higher price than it is charging its own business units for elements of interconnection and far higher than its cost-basis, in contravention of Anguilla's Telecommunications Act (the Act), or C&W/Lime is cross-subsidising its retail operation in Anguilla by operations elsewhere, in contravention of the Act.'*<sup>4</sup>

41. In particular, Weblinks makes reference to Section 17(2) of the Telecommunications Act and submits as follows:

*'Section 17(2) of the Act requires that C&W/Lime charges Weblinks for elements of interconnection at rates no higher than it charges its own business units, as follows:*

***'Interconnection***

*17.(2)In respect of the obligations pursuant to subsection (1), every operator or service provider shall - ....*

*.....(c) provide the elements of interconnection, to other operators and service providers, in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated or to any other party to which the operator or service provider provides interconnection and without regard to the types of users to be served, or the types of services to be provided, by such other operator or service provider;'*<sup>5</sup>

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<sup>3</sup>Ibid, page 1.

<sup>4</sup> Ibid, page 1.

<sup>5</sup> Ibid, page 2.

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42. Weblinks also makes reference to Section 7(1)(d) of the Act and makes the following submission:

*“Section 7 (1)(d) of the Act prohibits C&W/LIME from engaging in anti-competitive pricing and from unfairly cross-subsidising telecommunications networks and services, as follows:*

***‘Obligations of Licensees***

*7. (1) Every operator or service provider shall—.....*

*‘.....(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications service, without the prior written approval of the Commission;’*

*The Act also requires that Interconnection charges to other service providers be cost based.*

*Yet, since as far back as 2006/7, for a number of destinations C&W/LIME has been charging its customers in Anguilla retail rates that are lower than LIME’s wholesale interconnection rates to Weblinks for traffic to the same destinations.”<sup>6</sup>*

43. In their letter of complaint Weblinks refers to certain retail and wholesale international prices charged by Lime. One such example is described as follows:

*‘For example, according to LIME’s own submission to the PUC and published rates, since 2006/7 LIME’s **standard retail charge per minute** for subscribers of its Anguilla mobile network to call some destinations such as St. Kitts and British Virgin Islands (BVI) mobile numbers has been 60 EC cents weekday full/peak rate, 50 EC cents evening/night rate, and 40 EC cents weekend/holiday rate. In comparison, from inception of the Interconnection Facility up until the beginning of October 2008, LIME’s **wholesale rate to Weblinks** for calls to St. Kitts and BVI mobile numbers was a minimum of ### US cents per minute, which is equivalent to ### **EC cents per minute** at the exchange rate of US\$1 = EC\$2.70 used by C&W/LIME in its invoicing.*

*Hence, up until the beginning of October 2008, **ALL of C&W/LIME’s standard retail rates to St. Kitts and BVI**, even its maximum retail peak rate of 60 EC cents per minute, were lower than C&W/LIME’s wholesale rate to Weblinks of at least ### EC cents per minute for the same calls.*

*C&W/LIME was thus invoicing Weblinks more per minute for wholesale interconnection traffic to these destinations than it was invoicing any of own its (its own) retail customers for calls to the same destinations: at least ### more than its standard retail full/peak rate, ### more than its standard retail evening/night rate, and a staggering ### more than its standard retail weekend/holiday rate.’<sup>7</sup>*

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<sup>6</sup> Ibid, page 2.

<sup>7</sup> Ibid, pages 2 and 3.



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44. Weblinks describes the timeline in terms of when they became aware of the relationship between Lime's retail and wholesale pricing for international calls which they describe, in part, as follows:

*'Weblinks did not become aware of this C&W/LIME retail pricing until September 2008, at which time Weblinks objected directly to C&W/LIME about the situation and pointed out to them that such tariffing was discriminatory in favour of C&W/LIME's retail business and was therefore illegal under the Act.'*<sup>8</sup>

45. The response from Lime to Weblinks' initial complaint in September 2008 is described, in part, as follows in Weblinks letter of 5 May 2010:

*'However, in view of Weblinks' complaint, they would conduct a more in-depth review of the pricing situation and respond to Weblinks in a short time. They agreed in the interim to reduce their wholesale rate to Weblinks for **some of these destinations** by 2 US cents per minute to ### US cents per minute (equivalent to ### EC cents per minute at the C&W/LIME invoice exchange rate of US\$1 = EC\$2.70), with effect from October 1, 2008.'*<sup>9</sup>

46. A further development in the matter of wholesale versus retail prices is described, in part, by Weblinks as follows:

*'Weblinks did not hear back from C&W/LIME regarding any plans or action to reduce or eliminate the discriminatory pricing. Instead, around two months later, in around November 2008, the discrimination increased by orders of magnitude. C&W/LIME introduced its AllTalk service, which offered 6,000 minutes to, in the main, these same destinations, for a flat monthly charge of EC\$135. This meant that C&W/LIME was now offering its customers calls to these same destinations at a rate as low as 2.25 EC cents per minute, while continuing to charge Weblinks a wholesale rate of ### EC cents per minute for the same traffic to the same destinations. This C&W/LIME AllTalk pricing was hugely discriminatory against Weblinks, to the point where C&W/LIME's wholesale charge to Weblinks for traffic to these destinations was up to ### % higher than its retail charge to its own customers'*<sup>10</sup>.

47. Weblinks describes a 'negligible' reduction by Lime in some of their international wholesale rates that were effective on 24 February 2009 and submits the following comments on the adjustment:

*'In February 2009, while C&W/LIME's retail unit was actively publicly marketing a retail tariff of as low as 2.25 EC cents per minute to these destinations, C&W/LIME responded to Weblinks with a negligible reduction of ### US cents per minute on the wholesale rate to some of these destinations, dropping the wholesale rate from ### US*

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<sup>8</sup> Ibid, page 3.

<sup>9</sup> Ibid, page 4.

<sup>10</sup> Ibid, page 4.

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*cents per minute to ### US cent per minute with effect from February 24, 2009. The new reduced rate equates to ## EC cents per minute at the C&W/LIME invoice exchange rate of US\$1 = EC\$2.70. The wholesale rate charged to Weblinks on other of these destinations continued unchanged at ### US cents per minute.*

*A copy of this tariff is attached as Exhibit D.*

*Even with this further, though minimal, reduction in the wholesale rate, which has applied from February 24, 2009 to the present, the C&W/LIME wholesale rate to Weblinks of ## US cents (## EC cents) per minute for calls to, say, St. Kitts mobile numbers is still % higher than C&W/LIME's standard retail evening/night rate of 50 EC cents per minute, and ##% higher than its standard retail weekend/holiday rate of 40 EC cents per minute, to the same destination. And even C&W/LIME's highest retail rate to St. Kitts, the standard retail full/peak rate of 60 EC cents per minute, is only ###% higher than this reduced wholesale rate to Weblinks.'*<sup>11</sup>

48. Weblinks submits that Lime is discriminating against them and submits as follows:

*'Weblinks contends that the wholesale rate payable to LIME should be lower than LIME's lowest standard retail rate to the same destination, and that C&W/LIME is clearly discriminating against Weblinks in favour of its own retail business units in contravention of the Act.'*<sup>12</sup>

49. Weblinks makes further reference to Lime's 'AllTalk' service and comments, in part, as follows:

*'Yet, as egregious as C&W/LIME's discrimination against Weblinks has been with regard to standard retail tariffs versus wholesale tariffs to particular destinations, the introduction by C&W/LIME of its AllTalk service offering in around November 2008 has taken the levels of discrimination against Weblinks to entirely new heights.*

*Although C&W/LIME claims that the AllTalk service it launched in around November 2008, offering 6,000 minutes to, in the main, these same destinations, for a flat monthly charge of EC\$135, was only a promotion, it is clear from C&W/LIME's actions and statements that it was their intention all along to maintain AllTalk as a permanent service offering. As you are aware, the PUC had to order C&W/LIME in a written ruling to desist from offering AllTalk by March/April 2009, and C&W/LIME subsequently did not cease its efforts until it obtained authorisation to resume the offering, in around January 2010, albeit at a higher monthly rate of EC\$175.'*<sup>13</sup>

50. Weblinks submits further that with the introduction by Lime of their 'AllTalk' service that the alleged wholesale/retail price discrimination being practiced by Lime was related to both international calling prices as well as domestic calling prices and describes their view on the matter as follows:

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<sup>11</sup> Ibid, page 5.

<sup>12</sup> Ibid, page 5.

<sup>13</sup> Ibid, pages 5 and 6.

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*'These destinations include not just international destinations such as Antigua & Barbuda, Barbados, British Virgin Islands, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, and Turks and Caicos Islands, but also domestic terminations within Anguilla itself. Hence, the discrimination by C&W/LIME against Weblinks and in favour of its own retail units applies not just to the C&W/LIME Outgoing International Service, but also to the C&W/LIME Domestic Interconnection Service.'*<sup>14</sup> (Emphasis added)

51. In summing up their complaint and identifying the relief being sought, Weblinks comments, in part, as follows:

*'It is abundantly clear that the wholesale rates being charged to Weblinks by C&W/LIME for these destinations are heavily discriminatory in favour of C&W/LIME's own retail business, and it is equally clear that this is illegal under the Act.*

*Either C&W/LIME's standard retail and AllTalk tariffs are cost-based and generating a viable profit, in which case its wholesale rates to Weblinks are way above any reasonably profitable cost-basis and the domestic mobile termination rate is way too high, or the standard retail and AllTalk tariffs are below cost in which case C&W/LIME's Anguilla retail business unit is engaging in anti-competitive behaviour and is being cross-subsidised by operations elsewhere. And in both of these cases, C&W/LIME is discriminating against Weblinks in its Interconnect pricing. All of which is contrary to the Act.*

*Under the circumstances, Weblinks cannot accept the C&W/LIME invoicing, going back to the inception of the Interconnection Facility, as legal, fair or valid, and is seeking the revision and substantial reduction of the said invoices.*

*Further, Weblinks is suffering serious financial harm from the egregiously discriminatory pricing being employed by C&W/LIME. The harm is obvious: how can anyone expect Weblinks to fairly and effectively compete and develop in a market where the dominant former incumbent monopoly is retailing service at rates up to over 20 times cheaper than it is wholesaling the same service to other service providers?'*<sup>15</sup> (Emphasis added)

52. Weblinks identified four actions that they requested the Commission to take with respect to their complaint and described them as follows:

*'Weblinks is therefore hereby formally requesting the PUC to do the following:*

*1. Investigate C&W/LIME's invoicing to its own business units vis-a-vis its invoicing to Weblinks to determine whether or not C&W/LIME has been, and/or is, discriminating against Weblinks and in favour of its own business units and affiliated bodies in its pricing, in contravention of the Act. This investigation should also include pricing elsewhere in C&W/LIME's Caribbean network to determine if there is any cross-subsidisation in contravention of the Act. To facilitate this process, Weblinks is attaching copies of all C&W/LIME interconnect invoices to Weblinks since December 2006 (Exhibit E).(see paragraphs 7 regarding dates of invoices provided in Exhibit E)*

<sup>14</sup> Ibid, page 6.

<sup>15</sup> Ibid, pages 6 and 7.

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2. Direct, in the event that C&W/LIME does not amicably agree to reduce its wholesale tariffing to Weblinks retroactively to the inception of the Interconnection Facility to a level mutually acceptable to Weblinks and C&W/LIME, that C&W/LIME retroactively reduce its invoicing to Weblinks to reflect tariff levels that are cost-based and proven to be not cross-subsidised.

3. Immediately commence proceedings to drastically reduce or even eliminate terminating rates at an effective date in the very near future.

4. Enforce strict arms-length separation between all C&W/LIME retail units and affiliated bodies in Anguilla and the C&W/LIME unit responsible for providing carrier services to C&W/LIME retail business units and other such telecommunications networks and service providers who may opt to use such C&W/LIME carrier services.

### Lime's Response

53. Lime's initial reply to the Weblinks' complaint was filed with the Commission by way of a letter dated 4 June 2010 and included an attachment entitled '*Lime Anguilla Retail/Wholesale/Settlement Rate Comparison – 4 June 2010*'. The attachment was filed in confidence with the Commission. As previously noted, a redacted version of the attachment to their letter of 4 June 2010 was subsequently provided to Weblinks.

54. Lime's response of 4 June 2010 reads, in part, as follows:

*'Cable and Wireless (Anguilla) Limited, trading as "LIME" ("LIME"), writes as regards Weblinks Limited's letter to the Commission dated 5 May 2010. We refer to Weblinks' allegations that LIME has breached the Telecommunications Act (the "Act"), and state that LIME has not contravened the Act.'*<sup>16</sup>

55. Lime challenges Weblinks assertion that the international service provided by Lime to Weblinks is an interconnection service. Lime's submission on this matter reads, in part, as follows:

*'Weblinks alleges that LIME has been in breach of its obligation to charge Weblinks for elements of interconnection at rates no higher than it charges its own business.*

*However, the outgoing international service that LIME is providing to Weblinks is a wholesale service, not an interconnection service.*

*In this regard, LIME notes that the Act defines "interconnection" as the linking of public telecommunications networks and services to allow the users of one public telecommunications service to communicate with users of another public telecommunications service, and to access the services of that provider*

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<sup>16</sup> Lime's letter to the Commission dated 4 June 2010, page 1.

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*In this case, LIME is selling to Weblinks an end-to-end calling service, identical to its retail calling services, but for the price. In our view, this is not interconnection and the interconnection provisions of the Act would not be applicable’<sup>17</sup>. (Emphasis added)*

56. With respect to Weblinks submission that Lime is contravening section 7 (1) (d) of the Act, Lime makes the following submission:

*‘Further, LIME submits that it has not in any way contravened section 7 (1) (d) of the Act. That section provides:*

*“Every operator or service provider shall  
(d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues, or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or telecommunications services, without the prior written approval of the Commission.*

*The clause has two branches, (1) a general prohibition on anti-competitive pricing and (2) a more specific prohibition on unfair cross-subsidies. The second branch is not applicable, as it addresses cross subsidies from a “dominant” service to other, presumably competitive, services – which is not the allegation here. The remaining question, then, is whether LIME’s pricing practices might be anti-competitive.’<sup>18</sup>*

57. In terms of Weblinks allegation of ‘anti-competitive’ pricing practices, Lime’s response challenges the basis of Weblinks’ comparison between international outgoing retail prices and the wholesale prices charged by Lime and makes the following submission:

*‘Weblinks focuses its complaint on the relationship between LIME’s retail rate for calls to the BVI and St Kitts and Nevis, and LIME’s wholesale rate for calls to mobile handsets in those same countries. LIME submits that this comparison is both simplistic and misleading.*

*LIME’s retail rate applies to calls from Anguilla to both mobiles and landlines in BVI and St Kitts & Nevis, not just mobiles. However, as Weblinks would be aware, LIME’s wholesale rate for calls to landlines in the BVI and St Kitts & Nevis is almost half of that for calls to mobiles in those countries. A more appropriate comparison, therefore, would be between the average retail rate and the average of the two wholesale charges, a comparison which shows LIME’s retail rates are indeed higher than LIME’s wholesale rates.’<sup>19</sup> (Emphasis added)*

58. As previously noted, Lime filed in confidence with the Commission an analysis of their retail, wholesale, settlement rates and the respective margins for calls from Anguilla to twelve destinations in the Caribbean region.

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<sup>17</sup> Ibid, page 1.

<sup>18</sup> Ibid page 2.

<sup>19</sup> Ibid page 2.

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59. Lime concludes based on their analysis that ‘Lime’s retail rates are ‘indeed greater than Lime’s wholesale rates’.<sup>20</sup>

60. With respect to Weblinks’ complaint as it relates to Lime’s ‘AllTalk’ service, Lime makes the following submission:

*‘Weblinks also complains about LIME’s AllTalk Plan, alleging that LIME is charging its retail customers today as little as EC\$0.0292 per minute for the same destinations as LIME is charging Weblinks as high as EC\$0.54 per minute. This comparison is sensationalistic and, as above, misleading. LIME is in fact not charging its customers EC\$0.0292 per minute for calls to LIME networks in the Caribbean. Rather, LIME charges EC\$ 175.00 for up to 6000 minutes to those destinations. However, as the Commission is aware from LIME’s 28 October 2009 correspondence on the subject, not all customers use all 6000 minute each and every month. The actual average usage of LIME’s AllTalk customers is in fact a fraction of the 6000 minutes, and the actual charges incurred by customers fully cover all the costs associated with the Plan.’<sup>21</sup>(Emphasis added)*

61. Lime makes the following comments on the matter of their retail versus their wholesale prices:

*‘Lime refutes, therefore, the allegation that it is charging below-cost retail prices, or that its prices are discriminatory against Weblinks or in favour of LIME. LIME submits that charging higher retail prices than wholesale rates is not evidence of anti-competitive pricing, and that it is, therefore, not in breach of section 7(1)(d) of the Act.’<sup>22</sup>*

62. In conclusion, Lime makes the following submission:

*‘We note that Weblinks has asked the Commission to require LIME to lower its wholesale charges to “cost-based” levels. As the Commission can see from the attached spreadsheet (provided in confidence), the wholesale rates charged by LIME to Weblinks are only marginally higher than the settlement rates paid by LIME to the overseas*

*destinations. LIME is aware that Weblinks has alternatives for carrying its traffic out of Anguilla (other operators inside and outside of Anguilla) and in the interest of maintaining its relationship with Weblinks agreed to lower some of its wholesale rates in February 2009. However, any further reductions in wholesale prices could result in LIME paying out more than it receives, and thereby subsidizing Weblinks. This would not be appropriate.*

*In conclusion, LIME reiterates that its pricing practices are not anti-competitive and not in contravention of the Act.’<sup>23</sup>*

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<sup>20</sup> Ibid, page 2.

<sup>21</sup> Ibid, page 2.

<sup>22</sup> Ibid, page 2

<sup>23</sup> Ibid, page 3

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### Replies to Commission Interrogatories

63. Weblinks confirmed the existence of a 'wholesale agreement' with Lime in response to Commission interrogatory PUC24Aug10-01 dated 24 September 2010. In Lime's response to PUC24Aug10-01, they also confirm the existence of a 'wholesale agreement', and referred to the document as the 'Weblinks provider Agreement'.
64. The 'Weblinks provider Agreement' relates to the arrangements between Weblinks and Lime for the handling of Weblinks outgoing international traffic by Lime.
65. Both Weblinks and Lime confirm in response to Commission interrogatory (PUC24Aug10-05-Lime and PUC24Aug10-02-Weblinks) that the international outgoing calling market was liberalized in Anguilla effective 19 January 2005.
66. Commission interrogatory PUC24Aug10-03 to Weblinks, requested the company to identify the destinations, month and year since January 2005 during which Weblinks routed outgoing international traffic calls via a service provider other than Lime.
67. Weblinks indicated in their response to PUC24Aug10-03 that up until September 2009 that they had to rely on Lime to handle their international traffic to Lime's networks in the Caribbean and stated as follows:

*'Up until September 2009 Weblinks had to rely on using C&W/LIME's international access facilities to deliver traffic to other C&W/LIME networks in the Caribbean. Although we could have used the alternative international facilities available to us from the commencement of the liberalisation of Anguilla's international telecommunications market to carry this traffic with other Caribbean territories where C&W/LIME previously held monopolies, this was in essence the same as using C&W/LIME's facilities since these alternative international carriers simply handed the traffic off to C&W/LIME to deliver to their Business Units anyway, and as far as Weblinks is aware these alternative international carriers still incurred the same termination fee as Weblinks incurred in using C&W/LIME's international facilities directly. Hence, the rates charged to Weblinks by these alternative international carriers were even more expensive than the C&W/LIME rates as they had to pay the same termination fees to C&W/LIME plus they added on a fee for their own network usage.'*

68. Weblinks also stated in their reply to PUC24Aug10-03 that they were able to establish relations with other carriers in September 2009 and comment as follows:

*'In September 2009 Weblinks was able to establish relations with and facilities to a different carrier which offers Weblinks lower rates than C&W/LIME does to most international destinations. However, although this service provider offers Weblinks somewhat lower rates to the Caribbean territories where C&W/LIME operates than C&W/LIME does, they are not so much lower as to enable Weblinks to match*

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C&W/LIME's discriminatorily-based standard retail pricing to these territories...  
(Page 2) (Emphasis added)

69. However, Weblinks expresses the view in their reply to PUC24Aug10-03 that the availability of alternative carriers does not have any bearing on their complaint and comment as follows:

*'Again, this has no bearing on the instant complaint that C&W/LIME is illegally engaging in discriminatory pricing against Weblinks in the provision of access to its own facilities and is engaging in anti-competitive behaviour against Weblinks through such discrimination.'* (Page 3)

70. Commission interrogatory PUC24Aug10-05 requested Weblinks to identify the specific international destinations to which their complaint of 5 May 2010 applies. In response Weblinks comments as follows:

*'Weblinks' complaint applies to all international destinations except the USA, Canada and the UK.*

*Weblinks only became aware of discriminatory pricing by C&W/LIME to some international destinations because of an egregious disparity between the retail rates charged by C&W/LIME for calls to these destinations and the wholesale rates charged to Weblinks by C&W/LIME for calls to the same destinations. It was only because of certain advertising by C&W/LIME of their retail rates to certain destinations (and later their advertising of their AllTalk programme) that Weblinks was alerted to the possibility that price discrimination was taking place. Prior to this advertising Weblinks had no inkling that price discrimination to these particular destinations was occurring.* (Emphasis added)

71. Lime's reply to PUC24Aug10-02 provides descriptions of the network components covered by the following wholesale and retail prices: (a) Settlement Rate; (b) Wholesale Rate; and (c) Retail Rate. These network functions are presented below in Table 1, paragraph 151, page 29.

72. The matter of the amounts owed by Weblinks to Lime for international outgoing service and domestic termination and transit services is raised in Commission interrogatory PUC24Aug10-04 to Lime.

73. In response Lime provided a document entitled '*Weblinks Invoices and payments*'. The documents filed in confidence with the Commission identifies the monthly amounts from December 2007 to August 2010 and the related payments by Weblinks.

74. The issue of the separation between Lime's retail and wholesale operations was raised by Weblinks in their letter of 5 May 2010. As a result, Commission interrogatory PUC24Aug10-07 to Lime requested the company to provide a description of Lime's current corporate policies and structure for maintaining separation between their retail and wholesale functions.



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75. Lime's response to PUC24Aug10-07 reads, in part, as follows:

*'The Retail division of the LIME business is headed by a General Manager in each geographic market, who reports directly to a commercial Managing Director. It is necessary to point out that there is a 'Chinese Wall' between the Carrier and Retail services divisions which prohibit the provision of commercially sensitive information by Carrier Services to Retail Services. Out of necessity from the need to ensure that all discussions with other Service Providers remain confidential, many aspects of the operations of Carrier Services and Retail Services remain separate. For instance, the billing of Interconnection services is wholly managed by interconnection billing teams. However wholesale services, which can be distinguished from a retail service by its pricing and Quality of Service (Qos) levels, are managed via the same Customer Information Service platform (CIS).'*  
(Emphasis added)

## Final Reply Comments

### Lime's Submission

76. Lime filed their final reply comments with the Commission by way of a letter dated 19 November 2010 and provided a copy to Weblinks.

77. Lime submits the following comments in their reply of 19 November:

*'On many occasions Weblinks has made much of the supposed fact that until September 2009 it 'had to rely' on LIME for termination of calls in other jurisdictions where LIME affiliates operate. This is clearly not the case. With the exception of Antigua & Barbuda and of Montserrat, LIME's sister companies have no monopoly in international incoming services in any of the markets in which they operate, or indeed any other monopoly. There is in all cases at least one other licensed operator, and in many cases, several licensed operators, competing with the LIME affiliate for the business of bringing traffic into that country.'*<sup>24</sup>

78. In concluding their final reply comments, Lime raises the matter of the amounts outstanding from Weblinks for international outgoing services provided by Lime to Weblinks and comments as follows:

*'Finally, the Commission should recall that the trigger of this complaint was in fact LIME's efforts to collect monies owned by Weblinks to LIME for the provision of telecommunications services.'*<sup>25</sup>

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<sup>24</sup> LIME's letter to the Commission dated 19 November 2010, page 1.

<sup>25</sup> Ibid. page 2.

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### Weblinks' Submission

79. Weblinks filed their final comments via an email to the Commission and Lime dated 3 March 2011.

80. In their comments Weblinks described a timeline related to their efforts to secure an alternative routing for their international traffic so that they could move off of Lime's facilities in Anguilla. Weblinks comment, in part, as follows:

*'19. After extensive effort in the first half of 2009, Weblinks was finally able to implement alternative international access using Voice-over-Internet Protocol (VoIP) technology, in September 2009. This was the first genuine competitively-viable alternative international access open to Weblinks since its inception ,'*<sup>26</sup>

81. Weblinks commented further on the development of alternative international access and their decision to move their traffic off of Lime's international outgoing facilities in Anguilla to another provider in September 2009:

*'It was this series of reductions in late 2008 and 2009 that enabled meaningful penetration of the incoming international call market to the jurisdictions where C&W/LIME operates, and enabled the development in the region of the alternative operator with whom Weblinks was able to implement a traffic relationship in September 2009. Weblinks could not have practicably and viably switched to an alternative international access provider before it did in September 2009.'*<sup>27</sup>

82. Regarding the reasons for, and the timing of, their complaint, Weblinks comments as follows:

*'43. Finally, the trigger of the Weblinks 5 May 2010 Complaint was not in fact LIME's efforts to collect monies owed by Weblinks to LIME. The trigger was the fact that C&W/LIME's discriminatory pricing and anti-competitive behavior, in blatant contravention of the Act and standard regulatory principles, caused serious financial harm to Weblinks and caused Weblinks to seek regulatory protection from the damage being done to Weblinks' business by C&W/LIME's behaviour. C&W/LIME's behavior seriously impaired Weblinks' financial ability to meet its costs and to employ legal*

*counsel to fight this behavior. Weblinks had to research and prepare its case on its own, and accordingly was not in a position to formally submit its complaint until when it did so on 5 May 2010.*

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<sup>26</sup> Weblinks Final Reply, 3 March 2011, paragraph 19, pages 6 and 7.

<sup>27</sup> Ibid, paragraph 23, page 8.

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### III Commission Findings

#### Components of the Complaint

83. A broad description of Weblinks' complaint is provided in the first three paragraphs of their letter of 5 May 2010 and reads as follows:

*'There is overwhelming evidence that since as far back as the inception of the Interconnection Facility between Cable & Wireless/LIME (C&W/LIME) and Weblinks in around December 2006, for a number of destinations C&W/LIME has been charging its retail customers in Anguilla retail rates that are lower than LIME's wholesale interconnection rates to Weblinks for traffic to the same destinations.*

*From the evidence, as outlined below, either C&W/LIME is charging Weblinks a higher price than it is charging its own business units for elements of interconnection and far higher than its cost-basis, in contravention of Anguilla's Telecommunications Act (the Act), or C&W/LIME is cross-subsidising its retail operation in Anguilla by operations elsewhere, in contravention of the Act. In Weblinks' opinion, the situation does not admit of any other possibility.*

*Weblinks therefore contends that C&W/LIME's Interconnection invoicing to Weblinks from the inception of the Interconnection Facility is in contravention of the Act, and hence is invalid.'<sup>28</sup> (Emphasis added)*

84. In addition, Weblinks submits that Lime is also employing discriminatory pricing with respect to their 'AllTalk' service<sup>29</sup> which is a domestic and international (regional) calling package and provides service to some of the same destinations to which Lime offers wholesale international outgoing services. The domestic aspect of the AllTalk service raises the matter of both domestic interconnection prices in Anguilla as well as in other jurisdictions versus the internal prices charged by Lime in support of the overall retail price for the package.

85. Further comments on the matter of the complaint as it applies to Lime's 'AllTalk' service are contained in section III (Other Matters).

86. A further matter raised by Weblinks was the need to ensure that Lime operated at 'arms-length' with respect to their retail and wholesale operating entities. This matter is also addressed in the section III (Other Matters).

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<sup>28</sup> Weblinks' letter dated 5 May 2010, page 1.

<sup>29</sup> Ibid. page 5.

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### Regulatory Framework

87. There are a number of provisions in the **Telecommunications Act R.S.A. c. T6 (the Act)**, and in **Lime's license** to be considered in reviewing and considering the validity of Weblinks' complaint with respect to Lime's pricing of their retail and wholesale services.
88. In order to place the complaint in context, a review of certain provisions in the Act and in Lime's license and the identification of the relevant services and their related prices and defining the relevant markets in question will assist in providing a framework within which to investigate the complaint and determine whether to uphold or dismiss each component of the complaint.
89. Weblinks' complaint alleges that Lime is either discriminating in the pricing of certain retail and wholesale services or that Lime is cross-subsidising their retail operations in Anguilla. Weblinks makes the following statement in their complain of 5 May 2010:

*'From the evidence, as outlined below, either C&W/Lime is charging Weblinks a higher price than it is charging its own business units for elements of interconnection and far higher than its cost-basis, in contravention of Anguilla's Telecommunications Act (the Act), or C&W/Lime is cross-subsidising its retail operation in Anguilla by operations elsewhere, in contravention of the Act.'<sup>30</sup> (Emphasis added)*

90. Weblinks cites both sections 17(2) (c) of the Act (Interconnection) and section 7 (1) (d) (anti-competitive pricing and cross-subsidisation) to support their complaint.

### Section 7(1)(d)

91. In response to the section 7 (1) (d) aspect of the complaint, Lime replies, in part, as follows:

*'Further, LIME submits that it has not in any way contravened section 7 (1) (d) of the Act. That section provides:*

*"Every operator or service provider shall (d) not, in a manner that might lessen, or might have the effect of lessening, competition, engage in anti-competitive pricing and other related practices and, in particular, shall refrain from using revenues or resources, from a telecommunications network or a telecommunications service in respect of which the operator or service provider is dominant, to cross-subsidise unfairly any other telecommunications network or*

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<sup>30</sup> Ibid, (Weblinks) page 1.

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*telecommunications services, without the prior written approval of the Commission.*

*The clause (Section 7 (1) (d)) has two branches, (1) a general prohibition on anti-competitive pricing and (2) a more specific prohibition on unfair cross-subsidies. The second branch is not applicable, as it addresses cross subsidies from a “dominant” service to other, presumably competitive, services – which is not the allegation here. The remaining question, then, is whether LIME’s pricing practices might be anti-competitive.’<sup>31</sup>*

92. In the matter of Weblinks’ reference to section 7(1)(d), Lime concurs, in part, with the relevance of the provision, in particular, with the provision that pertains to anti-competitive pricing. However, Lime submits that it is not in breach of section 7(1)(d) of the Act .(Lime’s letter 4 June 2010, page 2)

### **Section 17(2)(c)**

93. Weblinks’ complaint, page 1, describes Lime’s wholesale rates for their international outgoing service as ‘*wholesale interconnection rates*. Reference is also made to ‘*Interconnection Invoicing*’ and ‘*Interconnection Facility*’. In addition, Weblinks alleges on page two of their complaint that Lime is in breach of Section 17(2) (Interconnection) of the Act.

94. However, Lime submits that the Section 17 provisions of the Act, which apply to ‘interconnection arrangements’, do not apply in the case of their wholesale international outgoing service as the service is ‘*a wholesale service, not an interconnection service.*’

95. Weblinks’ reference to Section 17(2) is in the context of the following statement:

*‘Section 17(2) of the Act requires that C&W/Lime charges Weblinks for elements of interconnection at rates no higher than it charges its own business units, as follows:*

#### ***‘Interconnection***

*17. (2) In respect of the obligations pursuant to subsection (1), every operator or service provider shall - ....*

*.....(c) provide the elements of interconnection, to other operators and service providers, in a manner that is at least equal in both quality and rates to that provided by the operator or service provider to its own business units or to any body corporate with which it is affiliated.....’<sup>32</sup>*

96. Domestic (interconnection) termination prices and related payments are covered by a separate agreement (Interconnection Agreement) whereas the wholesale international

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<sup>31</sup> Op.cit. (Lime) page 2.

<sup>32</sup> Op. cit. (Weblinks), page 2.

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outgoing service is covered by the ‘Weblinks Provider Agreement’ as noted in Lime’s reply dated 14 September 2010 to Commission interrogatory PUC24Aug10-01.

97. The Commission notes Lime’s comments in their reply of 4 June 2010 that the ‘wholesale’ service being provided to Weblinks is not an ‘interconnection’ service but is ‘an end-to-end calling service’. Lime’s submission on this matter reads, in part, as follows:

*“Weblinks alleges that LIME has been in breach of its obligation to charge Weblinks for elements of interconnection at rates no higher than it charges its own business. However, the outgoing international service that LIME is providing to Weblinks is a wholesale service, not an interconnection service.*

*In this regard, LIME notes that the Act defines “interconnection” as ‘the linking of public telecommunications networks and services to allow the users of one public telecommunications service to communicate with users of another public telecommunications service, and to access the services of that provider’*

*In this case, LIME is selling to Weblinks an end-to-end calling service, identical to its retail calling services, but for the price. In our view, this is not interconnection and the interconnection provisions of the Act would not be applicable”<sup>33</sup>. (Emphasis added)*

98. Lime’s assertion that the international outgoing service they are selling to Weblinks is an ‘end-to-end’ service is somewhat inconsistent with the definitions provided by Lime in their response to interrogatory PUC24Aug10-02. The ‘wholesale’ service provided to Weblinks by Lime does not include the local access and local switching components at the originating end of the call as these network components are provided by Weblinks.
99. The definition provided by Lime in response to PUC24Aug10-02(c) for the network components covered by the retail rate describes the ‘end-to-end’ service Lime provides to their own customers. However, as noted above, the network components covered by Lime’s wholesale service such as billing, local access and local switching are provided by Weblinks. Therefore, the wholesale service provided to Weblinks is not the equivalent of Lime’s retail ‘end-to-end’ service.
100. The claim of price discrimination raised by Weblinks in their complaint is related to both the international outgoing wholesale service being provided by Lime versus their retail rates for international outgoing service, as well as to the pricing of Lime’s ‘AllTalk’ service versus the domestic termination rates and settlement rates charged by Lime.
101. As noted above, the matter of domestic interconnection prices is raised in the Weblinks’ complaint and the provisions in Section 17(2) of **the Act** provide a portion of the framework within which to consider that aspect of the allegations as they pertain to Lime’s ‘AllTalk’ service.

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<sup>33</sup> Lime letter 4 June, 2010, page 1.

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102. In addition, the matters of fair trading and discriminatory practices are also addressed in section 14 of Lime's license which reads, in part, as follows:

*'The Licensed Networks shall be operated, and the Licensed Services shall be provided, by the Licensee on an arm's length commercial basis with respect to the Licensee and any and all of the bodies corporate with which it is affiliated. This Clause 14 shall not prevent the Licensee from negotiating favorable accounting and settlement rates for public telephone services with any body corporate with which it is affiliated in any other jurisdiction, for the benefit of users in Anguilla, provided that, Licensee must make wholesale rates based on such favorable rates available to other providers of telecommunications services in Anguilla on a non-discriminatory basis.'* (Emphasis added)

103. The provision in Section 14.1 of Lime's license with respect to 'wholesale pricing' is similar to that in Section 17(c) which relates to interconnection rates and retail prices in general. Section 14.1 specifically relates to wholesale and settlement rates. Both provisions address the issue of price discrimination.

### Other Provisions

104. Section 3(d) in **the Act** requires the Commission to ensure '*fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services*'.

105. Section 3(1) of **the Act** provides for the conducting of investigations either at the request of a person or on the Commission's own initiative to determine whether and to what extent a person is engaging in conduct in contravention of the Act.

106. Section 20(3) of **the Act** also provides another portion of the regulatory framework in which to consider Weblinks complaint as it pertains to the pricing of retail and wholesale services provided by Lime. Section 20(3) reads, in part, as follows:

#### **Prices**

*20. (3)A service provider shall provide rates that are fair and reasonable and shall not discriminate unduly among similarly situated persons, including the service provider and any body corporate with which it is affiliated'*

107. Further provision in section 14.5 (*anti-competitive pricing – restricting or distorting competition*) of **Lime's license** are also relevant to the nature of Weblinks' complaint.

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108. The provisions in sections 3(d), 3(1), 7(1) (d), and 20(3) of **the Act** and sections 14.1, and 14.5 of **Lime's license** are sufficient to provide a framework within which to investigate Weblinks' complaint regarding Lime's international outgoing retail and wholesale pricing.

### Market Structure

109. The international public telephone service market in Anguilla was liberalized as of 19 January 2005. As noted in the Government of Anguilla's press release dated 15 February 2005, *'This means that any licensed operator can now provide international traffic off-island without the need to use the Cable and Wireless network.'*
110. The press release of 15 February 2005 also made the following statement:
- 'The Ministry would also like to advise the general public that in addition to Cable and Wireless, two other companies namely Weblinks and Cingular have been licenced to provide public mobile service in Anguilla. Caribbean Cable Communications has also been licenced to provide fixed line services over its Cable TV network. As of 19<sup>th</sup> January 2005 these three new companies can now also provide international access.'*
111. In addition, the press release indicated that the new companies had not launched a full range of services they had been licensed to provide and that 'interconnection' between the operators had not been finalized.
112. Physical interconnection between Digicel and Lime occurred in December 2005 whereas interconnection between Lime and Weblinks occurred in December 2006 with actual traffic being billed in January 2007 according to the billing statements provided by Weblinks as Attachment E to their letter of complaint dated 5 May 2010.
113. All three new service providers, Digicel, Caribbean Cable and Weblinks have frequency authorizations to operate radio facilities between Anguilla and St. Martin giving them the capacity to send and receive international traffic via their own facilities and thereby not be dependent on Lime for international access.
114. Overall as the liberalized international market has evolved, the general level of prices has declined and consumers have more choice when selecting a service provider. However, the market remains highly concentrated and therefore requires continuing regulatory oversight.
115. Presently this oversight consists of the service providers being required to file with the Commission on an annual basis their prices for international outgoing service. The prices filed are published in the Commission's annual report which is distributed to each service provider.



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### Relevant Market

116. One component of Weblinks' complaint questions certain prices assessed by Lime for wholesale and retail international outgoing services to certain destinations.
117. Annex A of Lime's license defines their international public telephone service market as follows:  
*'1.1.1 Domestic and international public telephone services, including analogue and digital fixed and mobile telephone service (regardless of payment mechanism, including pay phones, credit cards and calling cards) and regardless of the type of customer premises equipment that may be attached thereto.'*
118. In addition, Annex A of Lime's license describes the services in which Lime is dominant as follows:  
*'1.3 For purposes of this Licence, the Licensee is dominant with respect to the following telecommunications services in Anguilla:*  
*1.3.1 Domestic public telephone services provided over the Licensee's fixed network.*  
*1.3.2 International public telephone services provided over the Licensee's fixed network.*  
*1.3.3 Services of terminating mobile telephone calls on Licensee's own mobile or fixed network.'*
119. Lime's price structure for their retail international outgoing service consists of three price zones: (1) Saba, St. Eustace, St. Martin, St. Maarten, St. Kitts and Nevis, Antigua & Barbuda, BVI, Montserrat & Guadeloupe; (2) USA, Canada, UK, Ireland and the rest of the Caribbean; and (3) Rest of the World.<sup>34</sup>
120. Lime's letter of complaint, 5 May 2010, identifies certain prices for Lime's wholesale and retail international outgoing services to St. Kitts and Nevis and also to BVI and makes reference to changes in some of these wholesale prices in October 2007, July and September 2008 and February 2009.
121. In their letter of 5 May, Weblinks identified a document as Exhibit E and stated they were *'attaching copies of all C&W/Lime interconnected invoices to Weblinks since December 2006 (Exhibit E).'*
122. The above-mentioned invoices were not attached to Weblinks letter of 5 May, however, a electronic 'WinZip' package of files was forwarded by Weblinks to the Commission and contained some forty-two separate files including an invoice from Lime for an 'optical in-span Joining service dated November 2006, the electronic file for that invoice was dated 2 July 2007.

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<sup>34</sup> Public Utilities Commission Annual Report 2009, Table 6, page 27 (Data submitted by Lime 11 June 2010).

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123. Most of the remaining files contained in the electronic package were copies of the monthly statements from Lime to Weblinks for the months from January 2007 to August 2008 and were sent from 'CWJ Carrier services' to Weblinks Limited.
124. In response to the Weblinks complaint, Lime provided an attachment to their reply of 4 June entitled '*Lime Anguilla – Retail/Wholesale/Settlement Rate Comparison*'. The document was filed in confidence with the Commission and contained certain wholesale and retail prices, settlement rates and respective margins as well as certain traffic distribution assumptions. The information was in relation to twelve<sup>35</sup> of Lime's international destinations in the Caribbean region.
125. The matter of '*certain destinations*' also requires clarification as Weblinks' letter of complaint of May 5 refers to '*a number of destinations*' (page 1), more specifically to '*St. Kitts and BVI*' (pages 2, 3, 4 and 5), and also to '*some of these destinations*' (pages 4 and 5).
126. The Commission sought clarification from Weblinks as to the specific international destinations to which their complaint applied and requested such clarification from Weblinks by way of interrogatory PUC24Aug10-05.
127. Commission interrogatory PUC24Aug10-05 and Weblinks' reply read as follows:
- PUC24Aug10-05:** *Please identify the specific international destinations to which your complaint applies and the historic and current retail price per minute charged by Weblinks for calls to each of these destinations.*  
*'Weblinks believes that price discrimination may be occurring to practically all international destinations excepting the USA, Canada and the UK, and our complaint applies to all international destinations with exceptions mentioned.'*
128. The Commission notes that Weblinks did not fully respond to the request for additional information to assist in the investigation of their complaint. The company did not provide either their historic or current international outgoing retail prices in their response to interrogatory PUC24Aug10-05.
129. In addition, Weblinks has not provided their retail prices or their annual audited financial statements in response to the Commission's annual request for such data since the initial request for the year 2006 and subsequent requests for such data related to the years 2007, 2008 and 2009.
130. In the process of investigating Weblinks complaint, the Commission reviewed Lime's international retail prices and did not find reason to conclude that Weblinks' allegation of price discrimination on all international destinations except the USA,

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<sup>35</sup> Antigua, Barbados, BVI, Cayman, Dominica, Grenada, Jamaica, Montserrat, St. Kitts, St. Lucia, St. Vincent and Turks.

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Canada and the UK merited further investigation except for the specific occurrences identified in the Caribbean region.

131. The matter of relevant markets and the question of dominance were addressed by the Commission in a previous proceeding. On the matter of the IDD (International Direct-Dialed) market, the Commission commented, in part, as follows:

*'86. The second relevant market, fixed/mobile IDD market, is only partially classified in their (Lime's) license, that is, the fixed segment, as being dominated by Lime. However, the IDD market, when considered as a merged (fixed/mobile) market for the purpose of determining dominance, remains highly concentrated. (see also paragraph 108)'*

And further at paragraph 108,

*'108. In terms of the fixed/mobile IDD market, based on year-end 2008 data filed with the Commission by service providers, Lime continues to be the dominant provider of IDD minutes originating from fixed and mobile numbers in Anguilla.'*<sup>36</sup>

132. Based on data available to the Commission for year-end 2009 it is evident that IDD (International Direct Dialed) calling market continues to be highly concentrated and Lime continues to be the dominant provider in the international outgoing calling market in Anguilla based on the data filed by Lime, Digicel and Caribbean Cable regarding the number of originating international calling minutes.

## Relevant Services

133. One component of the Weblinks' complaint is that Lime is employing anti-competitive practices in their pricing of international outgoing retail services to certain destinations relative to their pricing of wholesale services provided to Weblinks to those same destinations.
134. Weblinks contends that Lime is either discriminating when pricing their wholesale service and settlement rates for international outgoing services to the same destination (charging Weblinks more for wholesale service than Lime charges itself for the same service –settlement rate) or cross-subsidising their retail service price for outgoing international service.

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<sup>36</sup> **Telecom Decision PUC 2009-103, 28 August 2009** -In the matter of an application to offer a service with the brand name 'Simplicity' provided by Lime (formerly Cable & Wireless, Anguilla, Limited), pages 15 and 19.

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135. In addition, Weblinks submits that Lime is also employing discriminatory pricing with respect to their 'AllTalk' service which is a domestic and international (regional) calling package. The domestic aspect of the AllTalk service raises the matter of domestic interconnection prices versus the internal prices charged by Lime in support of the overall retail price for the package as well as the related settlement prices for each of Lime's regional destinations included on the AllTalk calling package.
136. The three relevant services regarding the Weblinks' complaint are Lime's International outgoing calling service (IDD), both retail and wholesale segments, Lime's AllTalk service and Limes domestic termination and transit service. In particular, Lime's pricing of their retail and wholesale international outgoing service to certain destinations and their internal cost attribution for their AllTalk service.

### **Retail, Settlement and Wholesale Prices**

137. Based on the evidence filed by Weblinks, the responses from Lime and a review of the evidence by the Commission, four specific occurrences of potentially anti-competitive pricing have been identified and investigated.
138. These occurrences are: (1) Lime's retail prices for international calling to St. Kitts and BVI compared to the related prices for wholesale service provided to Weblinks to these same destinations during the period January 2007 to September 2008 (retail prices lower than wholesale prices); (2) Lime's retail prices to St. Kitts and BVI compared to the related settlement and originating costs from January 2007 to current prices (retail prices lower than attributed cost); (3) Settlement price versus wholesale price discrimination to twelve Caribbean destinations; and (4) Settlement prices versus wholesale prices to twelve Caribbean destinations for fixed termination.

### **Retail Price below Wholesale Price**

139. The first occurrence relates to the relationship between the wholesale and retail prices charged by Lime from the inception of the international wholesale service provided to Weblinks in January 2007 to a reduction in the wholesale price in September 2008. The wholesale price appears to have been further adjusted to their current levels for destinations such as St. Kitts and B.V.I. in February 2009. These two destinations are specifically identified by Weblinks in their complaint, however, in some cases Weblinks refers to 'some of these destinations' in the case of the reduction of US\$ 0.02 in the wholesale rate effective 1 October 2008.
140. In addition, these particular destinations had, and continue to have, the lowest retail prices combined with the highest wholesale prices of the twelve Lime Caribbean destinations identified in the attachment to Lime's letter of 4 June 2010.

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141. Weblinks claims that Lime's retail prices to at least St. Kitts and B.V.I. were less than the wholesale price charged by Lime to these same destinations from January 2007 to September 2008.
142. Limes' international retail calling prices to St. Kitts and B.V.I. filed with the Commission on an annual basis since 2005 reflect no changes between the beginning of 2006 and the latest filing for year-end 2009. In Lime's filing of 4 June 2010 in response to Weblinks complaint, the company confirms that these same retail prices were in effect as of 4 June 2010 (Attachment to Lime's letter of 4 June 2010 to the Commission).
143. As previously noted, Lime's price structure for their retail international outgoing calling service has three zones. Both St. Kitts and BVI are in zone 1. The prices for calls from Anguilla to these destinations are 60, 50 and 40 EC cents per minute, for day, evening and weekend periods respectively, or about 22.22, 18.52 and 14.81 US cents per minute.
144. Based on the wholesale price for mobile termination to St, Kitts and B.V.I. of ### US cents from January 2007 to September 2008 and accepting Lime's weighting for the mix of fixed and mobile calls, as stated in the attachment to their letter of 4 June, the weighted wholesale price to Weblinks would have been between ### to ### US cents per minute.
145. The weighted wholesale price varied as the fixed termination price was initially ### US cents and increased to ### cents in August 2007.
146. During the same period Lime's average retail price was 20 US cents per minute compared to the average wholesale price charged to Weblinks of from ### to ### cents per minute.
147. Weblinks describes the situation in their evidence as follows:

*‘For example, according to LIME's own submission to the PUC and published rates, since 2006/7 LIME's **standard retail charge per minute** for subscribers of its Anguilla mobile network to call some destinations such as St. Kitts and British Virgin Islands (BVI) mobile numbers has been 60 EC cents weekday full/peak rate, 50 EC cents evening/night rate, and 40 EC cents weekend/holiday rate. In comparison, from inception of the Interconnection Facility up until the beginning of October 2008, LIME's **wholesale rate to Weblinks** for calls to St. Kitts and BVI mobile numbers was a minimum of ### US cents per minute, which is equivalent to ### **EC cents per minute** at the exchange rate of US\$1 = EC\$2.70 used by C&W/LIME in its invoicing. Hence, up until the beginning of October 2008, **ALL of C&W/LIME's standard retail rates to St. Kitts and BVI**, even its maximum retail peak rate of 60 EC cents per minute, were*

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*lower than C&W/LIME's wholesale rate to Weblinks of at least ### EC cents per minute for the same calls.*<sup>37</sup>

148. One of the underlying issues raised in this component of the complaint is the 'relevant' price comparison between Lime's retail and settlement prices and the wholesale prices charged to Lime for calls terminating on their fixed and mobile networks in for example, St. Kitts and BVI.
149. In the above submission from Weblinks, the comparison is between Lime's retail prices and the wholesale price charged to Weblinks for calls to Lime's mobile network in St. Kitts and BVI.
150. Lime submits that such a comparison is misleading and makes the following submission on the matter:

*'Weblinks focuses its complaint on the relationship between LIME's retail rate for calls to the BVI and St Kitts and Nevis, and LIME's wholesale rate for calls to mobile handsets in those same countries. LIME submits that this comparison is both simplistic and misleading.*

*LIME's retail rate applies to calls from Anguilla to both mobiles and landlines in BVI and St Kitts & Nevis, not just mobiles. However, as Weblinks would be aware, LIME's wholesale rate for calls to landlines in the BVI and St Kitts & Nevis is almost half of that for calls to mobiles in those countries. A more appropriate comparison, therefore, would be between the average retail rate and the average of the two wholesale charges, a comparison which shows LIME's retail rates are indeed higher than LIME's wholesale rates.'*<sup>38</sup>

151. The traffic weighting employed by Lime in their attachment to the letter of 4 June i.e. mobile versus fixed and/or time of day and weekend distributions may not be similar to that experienced by Weblinks. However, the Commission based their assessment on the traffic weightings submitted by Lime in the attachment to their letter of 4 June 2010 but acknowledges that if Weblinks traffic was more heavily weighted to mobile to mobile calls and less to mobile to fixed calls the difference between the average wholesale price and Lime's retail price would be higher.
152. Commission interrogatory PUC24Aug10-02 to Lime requested a description of the network components associated with each of the prices (Retail, Settlement and Wholesale) listed in the attachment to Lime's letter of 4 June 2010.
153. The following descriptions were provided by Lime in their response dated 14 September 2010 (response to Interrogatory PUC24Aug10-02):

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<sup>37</sup> Weblinks' letter dated 5 May 2010, page 2.

<sup>38</sup> Lime's submission, 4 June 2010, page 2.

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(a) the “Settlement Rate” is the rate charged by third party international operators to LIME for the termination of LIME’s international calls to the network of third party carriers. This rate covers the cost of international transmission, international switching, domestic switching and local access on the third party international operator’s own network and that of a third party overseas carrier.

(b) The “Wholesale Rate” is the rate charged by LIME to other operators in Anguilla for international calls from Anguilla to overseas destinations. The wholesale rate to a particular destination is derived from the Settlement Rate for termination of international calls to that destination and, by extension, covers all of the cost components highlighted in (a) above, as well as the cost of the billing system, the international switching and international transmission facilities of LIME.

(c) The “Retail Rate” is the price charged by LIME to its own retail customers for international calls to overseas destinations. The retail rate for calls to a particular destination is derived from the Settlement Rate for termination of international calls to that destination and by extension covers all of the cost components highlighted in (a) above, as well as the cost of the local access, the billing system, local switching switching, international switching and international transmission facilities of LIME (Anguilla). (Emphasis added)

154. Table 1 presents the above descriptions of the network functions and the network components covered by each price - retail, wholesale and settlement.

| Table 1: Network Functions/Settlement/Wholesale/Retail Prices |                  |         |                  |                         |                  |                    |                  |              |
|---|------------------|---------|------------------|-------------------------|------------------|--------------------|------------------|--------------|
| Lime Anguilla   |                  |         |                  | <b>Settlement Price</b> |                  |                    |                  |              |
|   |                  |         |                  | Intern’l Transm.        | Interntl Switchg | Domestic Switching | Local Access     |              |
|   |                  |         |                  |                         |                  |                    |                  |              |
| <b>Wholesale Price</b>  |                  |         |                  |                         |                  |                    |                  |              |
|   |                  | Billing | Intern’l Switchg | Internt’l Transm.       | Intern’l Transm. | Interntl Switchg   | Domestic Switchg | Local Access |
|   |                  |         |                  |                         |                  |                    |                  |              |
| <b>Retail Price</b>   |                  |         |                  |                         |                  |                    |                  |              |
| Local Access  | Domestic Switchg | Billing | Intern’l Switchg | Internt’l Transm.       | Intern’l Transm. | Interntl Switchg   | Domestic Switchg | Local Access |
|   |                  |         |                  |                         |                  |                    |                  |              |

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155. Given such a price structure during the period from January 2007 to September 2008, Weblinks would be disadvantaged when attempting to compete with Lime. In addition to the wholesale price (Weblinks' cost) of ### cents per minute, Weblinks would also have to recover their cost to originate such calls through their local access network and their local switch.
156. As Weblinks noted in their complaint, Lime reduced their wholesale price from ### to ### effective October 2008. And while this would reduce Weblinks cost of carrying such calls by some ### US cents per minute, it would still be insufficient to permit Weblinks to effectively compete having regard to the additional cost of local distribution and switching costs incurred by Weblinks to generate such calls.
157. Even with the reduction in the wholesale price to US ### cents from October 2008 to the present, Weblinks could not compete effectively with Lime's 'weighted' retail price of ### US cents as their weighted wholesale price (cost) of ### US cents would require the company to charge substantially more than US ## cents per minute to recover their local distribution and local switching costs.
158. The Commission notes that while Lime offered their international retail prices to such destinations as St. Kitts and B.V.I. with evening and weekend discounts, they did not offer discount periods for either wholesale or settlement prices. And if Weblinks calling pattern was such that there were more calls to mobile numbers or more calls during the discount periods they would be further disadvantaged.
159. The pricing by Lime of their retail and wholesale services to at least St. Kitts and B.V.I. for the period January 2007 to September 2008 results in Lime's 'average' retail price being less than the 'average' wholesale price being charged to Weblinks during this period.
160. The Commission finds that Lime acted in an anti-competitive manner when pricing their retail and wholesale international services being provided to Weblinks for calls to St. Kitts and BVI during the period from January 2007 through to September 2008.
161. In particular, based on a review of the invoice statements (Exhibit E) provided by Weblinks that include the monthly charges from Lime for domestic interconnection fees and international wholesale fees, the 'average' wholesale rate charged to Weblinks for this period for calls to St. Kitts was in a range of ### to ### US cents whereas the average retail price was 20.0 US cents. In July 2007 the wholesale price for fixed termination was increased from ### to ### US cents per minute for St. Kitts.



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162. In the case of calls to BVI, the 'average' wholesale price was also ### to ### US cents versus a retail price of US 20 cents during the period from January 2007 to September 2008.
163. Given the origination and termination costs attributed to local access and switching and the current interconnection prices as a surrogate for such costs, Weblinks would be unable to effectively compete on price for calls on these routes given Lime's pricing of their retail and wholesale services. If Weblinks was to match Lime's retail prices to St. Kitts and BVI during this period, they would incur a loss per minute for each call which would be increased if more calls went to mobile numbers and/or more calls were in the off-peak periods.
164. Assessing average wholesale prices that are in excess of average retail prices is contrary to sections 7(1) (d) (general prohibition on anti-competitive pricing) and 20(3) (unfair, unreasonable and discriminatory prices) of **the Act**.

### **Retail Price below Cost**

165. The second occurrence of potentially anti-competitive pricing by Lime that could impact Weblinks covers the entire period from the inception of interconnection with Weblinks in January 2007 to September 2009 at which time Weblinks appears to commence routing their international outgoing traffic to other international service providers.
166. While Lime retains the same level and structure for their retail international outgoing prices to St. Kitts and BVI from January 2007 to the present day, the Commission notes that Weblinks commenced routing their international outgoing traffic via other means in September 2009 based on the information provided by Lime in response to the following Commission interrogatory:

*'PUC24Aug10-04: Please file a schedule showing the effective date for each of the traffic agreements and the amounts outstanding from Weblinks at each year-end since the respective agreements took effect and the current balances as of the most recent month-end statement including the date and amounts of any payments received from Weblinks for (a) domestic interconnection; and (b) international outgoing service'.*

167. The Commission notes from the billing information submitted by Lime in response to the above-mentioned interrogatory that the amounts billed to Weblinks for wholesale international outgoing service declined significantly in October 2009. Presumably this decline was due to Weblinks making a decision to route their international outgoing traffic via their own facilities to St. Martin and then to other service providers.

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168. Prior to Weblinks routing their international outgoing traffic via their own facilities to St. Martin, Weblinks had advised Lime on a number of occasions of their concerns regarding the wholesale prices to both St. Kitts and BVI.
169. These two destinations, St. Kitts and BVI, are the ones to which Lime maintains the lowest retail prices and the highest wholesale and settlement prices.
170. The international retail prices charged by Lime Anguilla for calls to St. Kitts and B.V.I. are insufficient to cover the attributed cost based on the data provided by Lime in the attachment to their letter of 4 June 2010 in response to Weblinks' complaint and the current prices for call termination in Anguilla.
171. Lime submits that the average retail price per minute for a call from Lime Anguilla to Antigua, B.V.I., Montserrat and St. Kitts is 20 US cents. The average settlement price paid by Lime Anguilla for these calls to BVI is ### cents and to St. Kitts is ### cents. (Lime's attachment, 4 June 2010)
172. In the attachment of 4 June 2010, Lime reports that the resulting average margin for Lime Anguilla is ### cents per minute for calls to BVI and ### cents for calls to St. Kitts. This amount of margin is the amount remaining after payment of the settlement price and what is available to cover Lime Anguilla's international transmission, international switching, domestic switching, domestic access and billing costs based on Lime's description of the network elements covered by the settlement price.
173. Given that Anguilla's domestic interconnection termination charges for the termination of calls is currently 11.11 for mobile and 1.67 for fixed US cents per minute, and applying Lime's attributed mix of mobile and fixed calls proposed in the attachment to their letter of 4 June 2010, the resulting weighted attributed cost per minute for local access and switching to originate an outgoing call would be in the order of 8.56 US cents per minute. This attributed cost does not include either the Anguilla international switching or the Anguilla international transmission costs which are not covered by the settlement payment.
174. The margins of ### and ### US cents per minute for calls to B.V.I. and St. Kitts respectively would be insufficient to cover Lime Anguilla's attributed cost of 8.56 cents for originating such calls. Consequently, Lime has and is subsidizing the international calls to these destinations at least since the inception of interconnection with Weblinks in January 2007.
175. Another illustration of the questionable level of the retail rates to these destinations when compared to the settlement and wholesale rates, is with respect to the comparison with the retail, wholesale and settlement rates to Barbados. While the retail day rate from Anguilla to Barbados is EC\$ 0.90, fifty percent higher than the

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day rate to the St. Kitts and BVI, the average wholesale and settlement rates to Barbados are lower than that to BVI and St. Kitts.

176. The Commission also notes that Lime's retail price per minute for calls from a Lime mobile to 'Other' mobile domestic call in Anguilla is EC\$ 0.90 (US\$ 0.33) whereas Lime's average retail price to St. Kitts from a mobile in Anguilla is only US\$ 0.20.
177. The Commission notes that pursuant to the section 7(1) (d) of the Act, a subsidy 'within' a service category such as the international direct dialed service may not be considered a 'cross-subsidy and thereby 'anti-competitive' from that standpoint. However, pursuant to section 20 of the Act such pricing may be considered unfair and unreasonable given the level of prices for certain domestic calls and calls to other destinations as well as Lime's dominant position in these markets.
178. The Commission did not find evidence to support the notion that Lime's retail international outgoing prices to destinations other than to St. Kitts and B.V.I. were subsidized during that period or that the total service category, international outgoing calling service provided by Lime, is being cross-subsidized by another of Lime's network or service categories.
179. While Lime's retail prices for mobile to mobile calls from Anguilla to St. Kitts and BVI may be unfair and unreasonable, the situation is not a case of cross-subsidisation from one network or service to another. It is not evident that a subsidy is flowing 'between' two services i.e. domestic fixed-line service and international service as defined by Lime's license.

### Settlement versus Wholesale Price Discrimination

180. In addressing the issue of Lime's wholesale versus settlement rates, Lime comments, in part, as follows:

*'We note that Weblinks has asked the Commission to require LIME to lower its wholesale charges to "cost-based" levels. As the Commission can see from the attached spreadsheet (provided in confidence), the wholesale rates charged by LIME to Weblinks are only marginally higher than the settlement rates paid by LIME to the overseas destinations. LIME is aware that Weblinks has alternatives for carrying its traffic out of Anguilla (other operators inside and outside of Anguilla) and in the interest of maintaining its relationship with Weblinks agreed to lower some of its wholesale rates in February 2009. However, any further reductions in wholesale prices could result in LIME paying out more than it receives, and thereby subsidizing Weblinks. This would not be appropriate.'*

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*In conclusion, LIME reiterates that its pricing practices are not anti-competitive and not in contravention of the Act.*<sup>39</sup> (Emphasis added)

181. The Commission acknowledges that based on the prices as of 4 June 2010 presented in the confidential version of the attached spreadsheet to Lime's letter of 4 June 2010, the 'average settlement rate' is 'marginally lower' than the 'average wholesale rate' paid by Weblinks for each of the twelve Caribbean destinations included in the analysis.

182. However, a review of the individual mobile and fixed settlement and wholesale prices to ten of the twelve destinations in the attachment to their reply dated 4 June 2010 suggest that certain wholesale fixed termination prices may be discriminatory.

### **Settlement versus Wholesale Prices for Fixed Termination**

183. The matter of discriminatory pricing with respect to settlement versus wholesale prices was raised in the Weblinks complaint. In response, the Commission reviewed certain wholesale prices provided by Weblinks in their complaint of 5 May 2010 including the billing statements provided in Exhibit D, a electronic file, as an attachment to their complaint and also reviewed the settlement, wholesale and retail prices provided by Lime in the attachment to their letter of 4 June 2010 in reply to the complaint.

184. Table 2 below provides a summary of the Lime's settlement rate, wholesale prices and the ratio of the mobile to fixed rates for the settlement and wholesale prices to the twelve destinations identified in the attachment to Lime's letter to the Commission of 4 June 2010 in reply to Weblinks letter of complaint dated 5 May 2010.

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<sup>39</sup> Ibid page 3.

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| Table 2: Settlement v s. Wholesale Prices for Fixed Termination (US cents) |                            |       |       |                          |       |       |
|--|----------------------------|-------|-------|--------------------------|-------|-------|
| Destination  | Settlement Prices & Ratios |       |       | Wholesale Prices & Ratio |       |       |
|  | Mobile                     | Fixed | Ratio | Mobile                   | Fixed | Ratio |
| 1. Antigua   | ###                        | ###   | 1     | ###                      | ###   | 1     |
| 2. Barbados  | ###                        | ###   | 2.97  | ###                      | ###   | 1.70  |
| Revised Wholesale Fixed Price for Barbados using Settlement Ratio          |                            |       |       |                          | ###   | 2.97  |
| 3. BVI   | ###                        | ###   | 2.24  | ###                      | ###   | 1.90  |
| Revised Wholesale Fixed Price for BVI using Settlement Ratio               |                            |       |       |                          | ###   | 2.24  |
| 4. Cayman  | ###                        | ###   | 2.25  | ###                      | ###   | 1.50  |
| Revised Wholesale Fixed Price for Cayman using Settlement Ratio            |                            |       |       |                          | ###   | 2.25  |
| 5. Dominica  | ###                        | ###   | 1.98  | ###                      | ###   | 1.38  |
| Revised Wholesale Fixed Price for Dominica using Settlement Ratio          |                            |       |       |                          | ###   | 1.98  |
| 6. Grenada   | ###                        | ###   | 2.37  | ###                      | ###   | 1.38  |
| Revised Wholesale Fixed Price for Dominica using Settlement Ratio          |                            |       |       |                          | ###   | 2.37  |
| 7. Jamaica   | ###                        | ###   | 2.93  | ###                      | ###   | 1.42  |
| Revised Wholesale Fixed Price for Jamaica using Settlement Ratio           |                            |       |       |                          | ###   | 2.93  |
| 8. Montserrat  | ###                        | ###   | 1     | ###                      | ###   | 1     |
| 9. St. Kitts   | ###                        | ###   | 2.11  | ###                      | ###   | 1.38  |
| Revised Wholesale Fixed Price for St. Kitts using Settlement Ratio         |                            |       |       |                          | ###   | 2.11  |
| 10. St. Lucia  | ###                        | ###   | 1.79  | ###                      | ###   | 1.38  |
| Revised Wholesale Fixed Price for St. Lucia using Settlement Ratio         |                            |       |       |                          | ###   | 1.79  |
| 11. St. Vincent  | ###                        | ###   | 2.19  | ###                      | ###   | 1.38  |
| Revised Wholesale Fixed Price for St. Vincent using Settlement Ratio       |                            |       |       |                          | ###   | 2.19  |
| 12. Turks  | ###                        | ###   | 2.0   | ###                      | ###   | 1.57  |
| Revised Wholesale Fixed price for Turks using Settlement Ratio             |                            |       |       |                          | ###   | 2.0   |

185. Section 7(1)(c) of **the Act** requires a service provider to ‘*not discriminate unduly among similarly situated users*’.

186. Section 14.1 of Lime’s license also requires the company to not discriminate in the case of wholesale and settlement prices and reads, in part, as follows:

*‘This Clause 14 shall not prevent the Licensee from negotiating favorable accounting and settlement rates for public telephone services with any body corporate with which it is affiliated in any other jurisdiction, for the benefit of users in Anguilla, provided that, Licensee must make wholesale rates based on such favorable rates available to other providers of telecommunications services in Anguilla on a non-discriminatory basis.’*  
(Emphasis added)

187. In addition, section 14. 5 of Lime’s license reads, in part, as follows:

*‘The Licensee shall not engage in anti-competitive pricing and other related practices or any other activities, whether by act or omission, which have, or are*

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*intended to or likely to have, the effect of unfairly preventing, restricting or distorting competition in any market for the Licensed Services,....'*

188. In ten of the twelve destinations listed in Table 1, Lime does not apply the same price ratio between the mobile and fixed prices for wholesale services as they apply for their internal settlement prices. The difference in the wholesale versus the settlement price per minute is, in some cases, greater than seven cents per minute.
189. Given the magnitude of the differences and the number of destinations, the Commission finds that the wholesale prices compared to the settlement prices for fixed termination are unduly discriminatory contrary to section 20(3) of **the Act** and section 14.1 of **Lime's license** and thereby hampers the development of a competitive market contrary to section 14.5 of **Lime's license**.

## Summary of Findings

190. The Commission finds that of the four specific occurrences of potential anti-competitive pricing identified for investigation that in two of the four cases prices were found to be anti-competitive: (1) Occurrence one - retail prices less than the wholesale prices to St. Kitts and BVI from January 2007 to September 2008 and (2) Occurrence four – settlement versus wholesale prices for fixed termination from January 2007 to the current date for ten of the twelve Lime destinations in the Caribbean. These specific retail and wholesale prices were found to be discriminatory and anti-competitive contrary to sections 7(1) (d) (anti-competitive) and 20(3) (discriminatory) of **the Act** and sections 14.1 (discriminatory) and 14.5 (restricting and/or distorting competition) of **Lime's license**.
191. Consequently, pursuant to section 3 (d) of **the Act**, the Commission directs Lime to re-issue the related invoices for the wholesale international outgoing service provided to Weblinks and make an overall adjustment to reduce the amount currently claimed to be outstanding from Weblinks.
192. In making an adjustment to the international billing invoices in order to resolve the dispute between Lime and Weblinks, Lime should take into account the following factors:
- (a) Violations of section 7(1)(d) of **the Act**;
  - (b) Violations of section 20(3) of **the Act**;
  - (c) Violations of sections 14.1 and 14.5 of **Lime's license**; and
  - (d) The overall negative impact of the above-mentioned violations on the competitive conditions in the Anguilla international outgoing calling market.

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### Domestic service – Amount in Dispute

193. The Commission notes in reviewing the invoices provided by Weblinks that the domestic interconnection charges being assessed to Weblinks by Lime reflect the prices approved by the Commission and are the appropriate charges for domestic interconnection services. Therefore, Lime's invoices for these amounts are due and payable by Weblinks subject to the adjustment outlined in paragraph 193.
194. The Commission also notes that based on the information provided by Lime in response to PUC24Aug10-04, in particular, a document entitled 'Weblinks – Invoices and Payments' filed in confidence with the Commission, that Weblinks has made a number of payments to Lime for the handling of traffic.
195. The Lime invoices combine the domestic interconnection charges with the charges for the wholesale international outgoing service and past payments from Weblinks are credited as a lump sum against the combined total of the domestic and the wholesale international amount.
196. In determining the current amount due for domestic termination and transit services, the percentage of the domestic amount (EC\$ ### ) to the total amount (EC\$ #### ) (### %) should be applied to the amount of payments as of 10 August 2010 (EC\$ #### ) to determine domestic amount outstanding as of August 2010. The resulting domestic amount outstanding should be totaled with the subsequent monthly totals from September 2010 to the current month (March 2011) to determine the total domestic amount currently outstanding.

### Wholesale Service – Amount in Dispute

197. The international amount outstanding as of August 2010 should be determined employing the same method as was employed to determine the domestic amount (paragraph 196).
198. The adjustment to the international amount due should reflect the factors listed in paragraph 189.

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### III Other Matters

#### Lime's AllTalk Service

199. The Weblinks' complaint of 5 May not only raises the matter of Lime's individual international outgoing retail, wholesale and settlement rates but also Lime's retail calling service packaged as 'AllTalk' that provides both domestic and regional (IDD) calling as one service package.
200. Lime's AllTalk service competes with other service providers both in the domestic calling market and in the regional international calling market.
201. In their complaint of 5 May Weblinks comments on Lime's Alltalk service, in part, as follows:

*'Yet, as egregious as C&W/LIME's discrimination against Weblinks has been with regard to standard retail tariffs versus wholesale tariffs to particular destinations, the introduction by C&W/LIME of its AllTalk service offering in around November 2008 has taken the levels of discrimination against Weblinks to entirely new heights. Although C&W/LIME claims that the AllTalk service it launched in around November 2008, offering 6,000 minutes to, in the main, these same destinations, for a flat monthly charge of EC\$135, was only a promotion, it is clear from C&W/LIME's actions and statements that it was their intention all along to maintain AllTalk as a permanent service offering. As you are aware, the PUC had to order C&W/LIME in a written ruling to desist from offering AllTalk by March/April 2009, and C&W/LIME subsequently did not cease its efforts until it obtained authorisation to resume the offering, in around January 2010, albeit at a higher monthly rate of EC\$175.'*<sup>40</sup>

202. Weblinks identifies both the international and domestic aspects of their complaint and comments as follows on Lime's AllTalk service in their letter of 5 May 2010:

*'These destinations include not just international destinations such as Antigua & Barbuda, Barbados, British Virgin Islands, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines, and Turks and Caicos Islands, but also domestic terminations within Anguilla itself. Hence, the discrimination by C&W/LIME against Weblinks and in favour of its own retail units applies not just to the C&W/LIME Outgoing International Service, but also to the C&W/LIME Domestic Interconnection Service.'*<sup>41</sup> (Emphasis added)

203. In summing up their complaint with respect to Lime's AllTalk service, Weblinks comments as follows:

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<sup>40</sup> Ibid, pages 5 and 6.

<sup>41</sup> Ibid, page 6.



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*'Either C&W/LIME's standard retail and AllTalk tariffs are cost-based and generating a viable profit, in which case its wholesale rates to Weblinks are way above any reasonably profitable cost-basis and the domestic mobile termination rate is way too high, or the standard retail and AllTalk tariffs are below cost in which case C&W/LIME's Anguilla retail business unit is engaging in anti-competitive behaviour and is being cross-subsidised by operations elsewhere.'*<sup>42</sup>(Emphasis added)

204. As noted by Weblinks regarding their complaint related to Lime's AllTalk service, the Commission has addressed the matter of the AllTalk service package in two previous proceedings.

205. The initial AllTalk proceeding related to a complaint received from Digicel, a licensed mobile operator in Anguilla. This proceeding resulted in Commission decision PUC 2009-101 dated 10 March 2009.

206. The Commission commented as follows in Decision 2009-101:

*'31 The non-compensatory nature of the 'AllTalk' service may undermine the effective development of a competitive mobile market in Anguilla. In order for the service to be compensatory C&W would have to assume a mobile termination and origination cost that is less than that in the current interconnection agreement. Such an assumption would be prejudicial to other market participants and indeed anti-competitive. (Emphasis added)*

207. In the case of the above-mentioned Digicel complaint regarding Lime's AllTalk service, the Commission directed Lime to suspend the service and concluded as follows:

*'36. The Commission hereby directs C&W to immediately suspend the service offering 'AllTalk' as it is in breach of s. 17(2) (c) and s.7 (l) (c) and (d) of the Act.'*<sup>43</sup>

208. In response to the Commission's AllTalk decision of 9 March 2009, Lime filed an application with the Commission dated 20 March 2009 requesting the Commission to review and rescind their AllTalk decision (Decision 2009-101).

209. As requested by Lime, the Commission undertook a review of the initial AllTalk decision and concluded as follows:

*'77. In light of the above, the Commission having reviewed Lime's submission of 20 March 2009 and their final reply comments dated 6 April 2009 as well as the other submissions received by the Commission in this proceeding, the Commission finds that there was no substantial doubt as to the correctness of the Commission's determinations in Decision 2009-101.*

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<sup>42</sup> Ibid, pages 6 and 7.

<sup>43</sup> Telecom Decision PUC 2009-101, 10 March 2009, paragraph 36, page 10.

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*'78. Accordingly, Lime's application to the Commission to rescind **Decision 2009-101** is hereby denied.'*<sup>44</sup>

210. Lime advised the Commission in November 2009 that the company was re-launching their AllTalk package and as stated by Weblinks in their letter of 5 May 2010, the new price was EC\$ 175.00.
211. In June of 2010, Lime informed the Commission that they intended to introduce new pricing for their AllTalk service plan and the revised price would be EC\$ 135.00, however, the number of plan minutes would be less than the 6000 minutes in the original AllTalk plan.
212. By way of a letter dated 1 July 2010, the Commission responded to Lime's letter of 25 June 2010 and requested the company to provide to the Commission certain data related to the number of AllTalk customers and their average monthly usage.
213. In addition, the Commission by way of a letter dated 20 July 2010 informed Lime as follows:

*'Having regard to Commission decisions 2009-101 dated 10 March and 2009-102 dated 28 April 2000(9), the Commission hereby directs the company to defer the proposed new AllTalk plan scheduled for introduction on 1 August 2010. The company may wish to continue to offer the current AllTalk plan until a review of the proposed plan is completed.'* (Emphasis added)

214. As the current proceeding related to the Weblinks' complaint of 5 May 2010 raises the matter of Lime's AllTalk service and coincides with the review of Lime's proposed revised AllTalk pricing, the Commission directed the following interrogatory to Lime :

*' PUC24Aug10-08: Please provide the following information regarding Lime's 'AllTalk' Service: the historic (from the initial month that the service was offered to month-end July 2010) actual average minutes of use per customer number subscribed to the AllTalk service – exclude any non-AllTalk minutes of use i.e. off-net and/or non-AllTalk international minutes. Please indicate for each period the monthly fee i.e. EC\$135.00 and maximum minutes i.e. 6000.'*

215. In response to the Commission's above-mentioned request for certain data related to their AllTalk service, Lime responded as follows:

*'LIME regrets that it has not been able to provide the information requested in this interrogatory. In collecting the data, LIME noticed some anomalous results in the*

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<sup>44</sup> Telecom Decision PUC 2009-102, 28 April 2009, paragraphs 77 and 78, page 14.

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*prepaid data and is still investigating the cause. We regret the inconvenience this will cause and will advise the Commission of the expected return date as soon as possible.’<sup>45</sup>*

216. Since Lime’s response of 14 September 2010, the company has not filed any further information in reply to the Commission’s request for customer usage information related to the AllTalk service.
217. In view of Lime’s proposal to re-price AllTalk service to EC135.00 per month and in light of Commission Decisions 2009-101 and 102 as well as the issues raised in Weblinks’ complaint, following the release of this decision the Commission intends to issue a public notice inviting interested persons to comment on the proposed change in the pricing for the AllTalk service.

## Retail and Wholesale Corporate Structure & Practices

218. The matter of whether Lime is maintaining a suitable separation between their retail and wholesale activities when doing business with Weblinks was raised in their complaint of 5 May 2010.
219. Weblinks’ initial comments in their letter of 5 May 2010 regarding the need for an ‘arms-length’ relationship between Lime’s wholesale and retail activities and their request for the Commission to address the matter read, in part, as follows:

*‘...enforce strict arms-length separation between all C&W/LIME retail units and affiliated bodies in Anguilla and the C&W/LIME unit responsible for providing carrier services.’<sup>46</sup>*

220. Weblinks commented further on the matter of an ‘arms-length’ relationship between Lime’s wholesale and retail activities in their reply comments of 9 August 2010 and make the following submission:

*‘Then there is communications from C&W/LIME’s Anguilla Retail Business Unit addressing issues regarding competing networks that it should have no dealings with. And now, we are being addressed from the standpoint of CWWI/LIME’s overall net financial position, in a letter from the C&W/LIME Anguilla Retail Business Unit. ....*

And further in the same submission –  
*...’ The parent company CWWI/LIME, the supposedly arms-length and Chinese-walled wholesale provider C&WCS/LCS, and the local retail unit C&W Anguilla are indistinguishable.’<sup>47</sup>*

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<sup>45</sup> Weblinks complaint – Lime reply dated 14 September 2010 to Commission Interrogatory PUC24Aug10-08.

<sup>46</sup> Op. cit., Weblinks’ complaint, page 1.

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221. In final reply comments dated 3 March 2011, Weblinks made the following submission:

*'The evidence is also that C&W/LIME shared Weblinks' business information with its Anguilla Retail Business Unit, in contravention of the Act and standard regulatory principles.'*<sup>48</sup>

222. In interrogatory PUC24Aug10-07, the Commission requested Lime to describe their current corporate policies and structure for maintaining separation between their retail and wholesale functions.

223. Lime's response provided an overview of how the company has addressed the matter of maintaining an arms-length relationship between their wholesale (Carrier Services Division) and their retail operations.

224. Lime's statements such as *'The Carrier Services Division is run as an entity separate from each local business unit and is headed by a regional Managing Director'*, and the comment that *'It is necessary to point out that there is a 'Chinese Wall' between the Carrier and Retail services divisions which prohibit the provision of commercially sensitive information by Carrier Services to Retail Services'* suggest that suitable measures have been taken to effectively separate the two functions.

225. However, statements such as the following give the impression that the 'arm' may not be long enough:

*'Out of necessity from the need to ensure that all discussions with other Service Providers remain confidential, many aspects of the operations of Carrier Services and Retail Services remain separate. For instance, the billing of Interconnection services is wholly managed by interconnection billing teams. However wholesale services, which can be distinguished from a retail service by its pricing and Quality of Service (Qos) levels , are managed via the same Customer Information Service platform (CIS).*(Emphasis added)

226. The above closing paragraph in Lime's response to interrogatory PUC24Aug10-07 provides a description of their wholesale and retail activities that is sufficiently ambiguous to raise concerns regarding whether the activities are sufficiently and effectively separated.

227. The Commission notes that section 14.1 of Lime's license reads, in part, as follows:

*'The Licensed Networks shall be operated, and the Licensed Services shall be provided, by the Licensee on an arm's length commercial basis with respect to the Licensee and any and all of the bodies corporate with which it is affiliated.'* (Emphasis added)

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<sup>47</sup> Weblinks reply comments, 9 August 2010, paragraph 80, Page 22.

<sup>48</sup> Op. cit., Weblinks' final reply comments, 3 March 2011, paragraph 44, page 14.

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228. These concerns are increased when reviewing a number of letters from Lime to Weblinks regarding the outstanding amounts for their wholesale international outgoing service and the domestic interconnection service. Lime's letters of 7 May 2009 from the 'Domestic Carrier Billing Manager JA/North Carrier Services' and subsequent letters of 14 September 2009 and 14 April 2010 from the 'Country Manager' and 'General Manager' of Lime Anguilla respectively, convey a mixed set of rules and/or practices for dealings between Carrier Services and their customers such as Weblinks.
229. Another example of the absence of sufficient distance between the retail and wholesale activities is with respect to the invoices which include the wholesale dollar amounts and the traffic volumes as well as the domestic interconnection traffic and dollar amounts. The approach taken in Lime's letter to Weblinks of 7 May 2009 from Carrier Services is the more appropriate one as opposed to the letter of 14 April 2010 from Lime Anguilla.
230. The Commission notes Lime's comments on the matter of confidentiality in their letter to the Commission of 16 June 2010 which reads, in part, as follows:
- 'LIME reiterates the basis of the request as set out in that letter, namely that **the attachment contains information whose disclosure "would give LIME's competitors a very precise and clear picture of the company's cost base, and would give these competitors the opportunity to prepare specific competitive responses, to LIME's specific financial and competitive detriment"**. On this basis, LIME objects to the disclosure of the attachment in its current form to Weblinks' (Emphasis added)*
231. Weblinks is entitled to a similar level of confidentiality with respect to their competitors.

## Balancing Market Forces and Regulation

232. The Commission notes the market structure due to Lime's dominance in the retail international outgoing calling market plus their dominance in the termination end of such calls to Lime destinations in the Caribbean.
233. The Commission also recognizes that with the liberalization of the international calling market in January 2005 that Weblinks had a choice in the routing of their international outgoing traffic.
234. Lime commented on this matter as follows in their final reply:

*'On many occasions Weblinks has made much of the supposed fact that until September 2009 it 'had to rely' on LIME for termination of calls in other jurisdictions where LIME affiliates operate. This is clearly not the case. With the exception of Antigua & Barbuda*

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*and of Montserrat, LIME's sister companies have no monopoly in international incoming services in any of the markets in which they operate, or indeed any other monopoly.*

*There is in all cases at least one other licensed operator, and in many cases, several licensed operators, competing with the LIME affiliate for the business of bringing traffic into that country.<sup>49</sup>*

235. However, Weblinks expressed the view in their reply to PUC24Aug10-03 that the availability of alternative carriers does not have any bearing on their complaint and comment as follows:

*'Again, this has no bearing on the instant complaint that C&W/LIME is illegally engaging in discriminatory pricing against Weblinks in the provision of access to its own facilities and is engaging in anti-competitive behaviour against Weblinks through such discrimination.'*

236. The Commission concurs with Weblinks on this matter. Although a market may be liberalised, the provisions in **the Act** and in **Lime's license** related to discriminatory and anti-competitive pricing practices do not dissolve but instead may be considered even more critical in moving from a liberalised but concentrated market to a more competitive one.

237. In this proceeding the Commission has considered both the matter of Lime's dominance as well as Weblinks having the opportunity to re-route their international traffic. In reaching conclusions the Commission has attempted to achieve the best possible balance between the inevitable imperfect regulation and the inevitable imperfect competition in resolving this dispute.<sup>50</sup>

238. The Commission prefers to reply on market forces to set prices and shape the behavior of service providers and consumers but only if and when those forces are more equitably distributed. Presently those market forces are uncomfortably concentrated in both the domestic and regional calling markets.

### III Directions on Procedure

239. LIME is hereby directed to file with the Commission and with a copy to Weblinks, within 30 days from the date of this decision, a proposal for adjusting the outstanding amount for international wholesale service provided to Weblinks as described in paragraphs 192, 197 and 198.

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<sup>49</sup> LIME's letter to the Commission dated 19 November 2010, page 1.

<sup>50</sup> *The Economics of Regulation – Principles and Institutions* by Alfred E. Khan, 2<sup>nd</sup> Edition, 1988 - Introduction, page xxxvii.

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240. Lime is also directed to file a revised invoice, within 30 days from the date of this decision, with the Commission and with a copy to Weblinks for the domestic interconnection charges which reflects the amount as described in paragraphs 193 to 196.
241. Weblinks is required to either accept one or both of LIME's proposals for the wholesale international amount and/or the domestic amount or make a counterproposal(s) and file such proposal(s) with Lime and the Commission within 30 days of receiving the proposal(s) from Lime.
242. The Commission will render a final decision on the amounts due for wholesale service and domestic interconnection charges within 30 days of receiving Weblinks response to Lime's proposals or within 90 days of receiving Lime's proposals in the absence of a counterproposal from Weblinks.
243. Lime is directed to review their current corporate practices and procedures for dealing with their wholesale customers and retail activities and file within 90 days of this decision a copy of the organization structures for the retail and wholesale activities and the business procedures to be practiced which reflect how these two business units are to be effectively separated and the confidentiality of the information related to wholesale customers is to be maintained.

Issued by the Commission at the Valley, Anguilla on this 1st day of April 2011



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Executive Chairman, Public Utilities Commission