



---

**Report on Public Consultation on the Price Caps to be Applied to the Cable Consortium of Liberia.**

**Liberia Telecommunications Authority**

**October 1, 2012**

# 1 REPORT ON CCL PRICE CAP PUBLIC CONSULTATION

## 1.1 EXECUTIVE SUMMARY

### 1.1.1 Introduction

As noted in earlier LTA consultation documents with respect to licensing of the Cable Consortium of Liberia (CCL), it is LTA's responsibility under the Telecommunications Act of 2007 (the Act) to determine which operators in different markets in Liberia do or may hold a position of dominance<sup>1</sup> in those markets, and if so, whether they are or they may in future abuse that position by acting in a way that could substantially prevent or lessen competition in the relevant market. In particular, it is LTA's responsibility to give effect to the principle of open access by determining which market CCL will operate in and determining if it may or will be dominant in that market, and if so, imposing appropriate remedies on CCL, whether by license conditions or otherwise.

Following an earlier public consultation, LTA determined that CCL is in a position of dominance in the market for wholesale capacity on, and access to, international fibre-optic submarine cables. To avoid any potential abuse of its dominant position, LTA will impose a number of remedies on CCL. One of the remedies that LTA decided to impose is to incorporate in the CCL license a clause that requires CCL to set prices for wholesale capacity on the basis of actual or predicted costs using a methodology developed by LTA.

LTA, with the assistance of international consultants, developed a price cap methodology which included a price cap formula and financial model (the "Price Cap Model") which the LTA has used to assist in the determination of price caps to be applied to CCL's wholesale prices. An earlier public consultation completed in December 2011 addressed the price cap formula and several major assumptions with respect to the Price Cap Model. Another public consultation completed in January 2012 made available the full Price Cap Model for review and comment by those requesting the model. This report summarizes all the public consultations conducted with respect to the Price Cap Model.

### 1.1.2 Report Purpose

The purpose of this report is to summarize responses to the public consultation conducted on the Price Cap Model and identify next steps to impose price caps applicable to CCL.

---

<sup>1</sup>In this report the term "dominance" and "dominant" are used in preference to Significant Market Power (SMP), but the terms may be seen as synonymous. A dominant service provider is defined in the Interconnection Regulations, 2009, as a service provider that has been designated as having SMP. SMP means a position of economic strength, acting either individually or jointly with others, permitting a service provider to act to an appreciable extent independently of customers or competitors, or otherwise constituting a position of dominance in one or more identified telecommunications service markets.

### 1.1.3 Consultation process

In accordance with the LTA's Guidelines for Consultation Process to develop Regulations of 2009 (Consultation Guidelines) the LTA formed a Consultation Group which included international advisors, who have been advising the LTA on the process for licensing CCL and determining whether or not CCL is or will be in a position of market dominance. LTA has determined CCL and the cable landing point to be operated by CCL to be matters of priority for regulation consistent with the recent work of WATRA on developing regulatory guidelines for access to submarine cables in West Africa.

The LTA released a public consultation document dated January 11, 2012 and sought the informed views of stakeholders and other interested parties on the Price Cap Model. The period for comments ran from 11 January to 26 January 2012. The LTA undertook only to take account of written comments received within this period.

## 1.2 LEGAL AND REGULATORY CONTEXT

### 1.2.1 Determination of CCL as Dominant Service Provider

LTA's analysis of the relevant market in which CCL will operate has determined that:

- a. CCL has a market share of 100%, which is well in excess of the threshold for a rebuttable presumption of dominance.
- b. The two key factors specified in the Interconnection Regulations as indicators of dominance (control of essential facilities and price trends/ pricing behaviour) are both relevant and significant factors, thus strongly supporting the hypothesis of dominance.
- c. Most of the other factors usually indicative of dominance are considered to be relevant and significant to CCL.

The LTA concluded that CCL is (or will be once it has launched service) dominant in the market for wholesale capacity on, and access to, international fibre-optic submarine cables. As mentioned above, LTA will keep under review this determination of dominance and the market in which dominance is determined.

### 1.2.2 Remedies Imposed on CCL to Address Dominance

The LTA has established an obligation on CCL to provide a Reference Interconnection Offer for the ACE landing station in terms of sections 34 to 38 of the Act. In addition, the LTA has proposed to incorporate clauses in the CCL license that require it to:

- Offer wholesale capacity and access to any licensed service provider in Liberia on non-discriminatory terms
- Publish the terms on which it will receive, consider and accept requests for facilities leasing including physical or virtual co-location at the landing station

- Establish standard terms and conditions for the supply of capacity, including prices, that are offered to all service providers on an equal basis
- Set prices for capacity on a wholesale basis, on the basis of actual or predicted costs using a methodology developed by the LTA.

With these requirements in place, the LTA sees no immediate need for regulation of individual shareholders. However, the LTA will monitor how the market develops, in particular the supply of backhaul services from the international landing station to the points of presence of service providers within Liberia.

### 1.2.3 Price Cap Remedy

As noted above, one of the remedies which LTA has imposed on CCL is to incorporate in the CCL license a clause that requires CCL to set prices for wholesale capacity on the basis of actual or predicted costs using a methodology developed by LTA. With the assistance of international consultants, LTA developed a price cap methodology and a financial model that the LTA has used to assist in the determination of the price caps to be applied to CCL. This methodology and several major assumptions used in the model were the subject of the consultation conducted from 9 December to 22 December 2011. The LTA subsequently completed an additional public consultation from 11 January to 26 January 2012 with respect to the full Price Cap Model, which is the subject of this report

## 1.3 RESPONSE TO THE PUBLIC CONSULTATION DOCUMENT AND NEXT STEPS

Only one operator, Cellcom, submitted written responses to the Consultation Report dated 11 January 2012 which was accompanied by the release of the Price Cap Model. Although Cellcom's comments addressed the questions posed in LTA's public consultation document dated 7 December 2011, a number of the comments related to assumptions used in the consultation on the Price Cap Model. LTA has considered and addressed Cellcom's comments below, to the extent that the comments addressed the Price Cap Model.

The LTA will now proceed on the basis of the proposals set out in that document, after adjusting the Price Cap Model in response to Cellcom's comments. The LTA is concurrently publishing with this report:

- A price cap Decision specifying price caps that CCL will be permitted to charge for the first three years after Ready For Commercial Service (RFCS) date, which is expected to be in December 2012. The LTA also intends to conduct its first review of the price cap level six (6) months after RFCS and thereafter, annually at the end of each of the succeeding three years after RFCS date, with respect only to assumed capacity usage level, not costs incurred by CCL. At the end of the first three years after RFCS date, the LTA will assess whether to conduct a more thorough review of the price cap levels (for example to include an evaluation of actual and expected costs at that time); and

- The final Price Cap Model used to inform the decision by the LTA to establish price caps.

In the interests of transparency, the following table identifies changes that LTA has made to the Price Cap Model to address comments made by Cellcom with respect to model assumptions.

Cellcom Comment	Impact on Price Cap Model
<p><b>Q1 Amortization Period:</b> Cellcom views that the lifespan of ACE cable is 25 years not the 15 year term (equal to the CCL license period) used in the Price Cap Model. .</p>	<p>LTA agrees with Cellcom that the lifespan of Ace cable can realistically be expected to be substantially longer than the 15 year term of CCL’s license. The ACE Construction and Maintenance Agreement states that the term of the agreement is a minimum of 15 years, with automatic renewal in periods of 5 years thereafter unless there are objections. A conservative but realistic assumption regarding life of the ACE cable is 20 years. Therefore, in calculating the price caps, LTA will use a period of 20 years. As a result, the Price Cap Model has been revised to amortize the license cost and capital costs over a longer period than originally, which reduces the annual cost for these inputs to the price cap formula.</p>
<p><b>Q2 Capacity Usage:</b> Cellcom provided a range of capacity usages for the ACE landing point, providing a low, medium and high forecast based on their assessment of demand in Liberia from 2011 to 2015. Cellcom’s Medium Scenario forecast capacity usage lower than the capacity usage assumed in the Price Cap Model while Cellcom’s High Scenario forecast capacity usage far above the capacity usage assumed in the Model.</p>	<p>LTA believes that the forecast used in the model is reasonable, given international experience with the rapid growth in broadband capacity usage in developing countries. Many forecasts of broadband capacity usage used internationally have been repeatedly exceeded over time. Nonetheless, in the interests of conservatism, LTA intends to reduce somewhat the capacity usage assumed in the original Price Cap Model for each year.</p>
<p><b>Q3 CCL Capital Structure and Cost of Capital:</b> Cellcom advised that cost of capital of CCL should take into consideration the existing financing sources for CCL, which include funding from World Bank for 80% of project costs.</p>	<p>A substantial proportion of the original funding for CCL was obtained from the World Bank at below market interest rates. If the cost of capital assumed for CCL in the Price Cap Model were based even in part on the actual cost of capital</p>

<p>Q4 <b>Funding of Additional CCL Requirements:</b> Cellcom confirms that it is reasonable to assume a negative Weighted Average Cost of Capital for CCL in the first years of CCL’s life. Cellcom did not provide a view on whether this funding for losses should be financed using debt or other sources, but rather confirmed that decisions must be made regarding where financing will be obtained if CCL has negative cash flow.</p> <p>Q5 <b>Comparable Price Levels:</b> Cellcom stated that prices, if based on cost, will remain high, and provided indicative prices based on life span of 15 years and 25 years. Cellcom further noted that the current price of an E1 in Accra or Lagos is “as low as US\$400 per month for a capacity commitment of STM1.”</p>	<p>for CCL funding provided indirectly by the World Bank, CCL’s cost of capital would be far lower than that assumed in the Price Cap Model. The impact would be to substantially reduce price caps applicable to CCL. LTA understands that CCL’s shareholders intend CCL to be a for-profit entity. As such, it is appropriate to assume a reasonable market-based cost of capital in the Price Cap Model.</p> <p>The model assumes that if additional cash is required by CCL, debt will be introduced to meet these needs. However, based on assumptions used in the Price Cap Model, it does not appear that CCL will have negative cash flow during early years based on the price caps imposed, though CCL is expected to have negative income (from a financial accounting perspective) in the first several years due to the impact of depreciation, a non cash item. CCL may however require additional funding to finance upgrades. If additional capital is required by CCL, the use of debt to finance these needs will result in a lower cost than use of equity.</p> <p>LTA intends to regulate CCL over the long term to ensure that Liberia benefits from prices for international capacity that are regionally competitive.</p>
--	--