

April 20, 2026

Mr. David Cox
Managing Director
ECTEL
P. O. Box BW395,
Gros Islet, LC01 601
Saint Lucia

Dear Mr. Cox,

Re: Flow's Response to Consultation Paper on Recommendation for Market Competition Assessment Methodology

Cable & Wireless St Kitts and Nevis Limited, Cable & Wireless Dominica Limited, Cable & Wireless St Lucia Limited, Cable & Wireless St Vincent and the Grenadines Limited, Cable & Wireless Grenada Limited (collectively as "Cable & Wireless" or "C&W"), each doing business as Flow, submit comments to ECTEL's Consultation Paper on the Recommendation for Market Competition Assessment Methodology.


The establishment of a competition enforcement framework is in keeping with industry developments with respect to the remediation of unilateral conduct and other types of anticompetitive behaviour. However, while Section 93 (1) of EC Bill states that ECTEL shall in consultation with the Commission assess whether one or more licensee has significant market power (SMP), an SMP designation must be used carefully to avoid undue regulatory obligations on any provider without critical considerations of the future state of market regarding emerging technologies and practices. The designation of a licensee as having SMP within its licence runs the risk of negating the very purpose of a competition assessment methodology in a sector that has been liberalised for decades. This is not to say that a competition enforcement authority should not have the right to make such designation, but due consideration has to be given to current and future conditions of sector development so as to not impose prescriptive, sector-specific regulations that bear little semblance to the actual competitive landscape. In essence, Flow believes that *ex post* competition assessments may give competition authorities flexibility and more importantly accuracy in determining the relevant market definition because the market is and will remain in a constant state of flux.

Also, *ex ante* regulations were established where it was likely that competition in wholesale and access markets would create barriers to entry in downstream markets. The current reality of the telecommunications sector in the Eastern Caribbean is one where the sector has advanced with significant competition at the retail level due to competition in the upstream markets. In fact, ECTEL cited the ITU article titled "ICT Market Analysis and Determination of

Dominance Guidelines” in relation to the three-criteria test to determine whether *ex ante* regulations are necessary. However, the article also stated that National Regulatory Authorities (NRAs) need to recognise that their *ex ante* intervention can distort and may adversely affect the development of the wider market. The article further stated that such distortions to competition may be particularly a concern where markets are embryonic and the patterns of demand have yet to be established.

In its submission, attached hereto, Flow provides responses to each Consultation question. While each response addresses the specific question posed, they are framed by a broader concern that the application of sector-specific regulation alongside *ex post* competition enforcement may, in certain circumstances, lead to an erroneous inference of SMP through joint dominance. Notwithstanding this concern, Flow supports the modernisation of the regulatory framework and appreciates the opportunity to participate in this Consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "K Swift", written in a cursive style.

Kevon Swift
Senior Manager, Regulatory and Government Affairs



Flow's Response to Recommendation for Market Competition Assessment Methodology Consultation

1. INTRODUCTION

- 1.1 Cable & Wireless St Kitts and Nevis Limited, Cable & Wireless Dominica Limited, Cable & Wireless St Lucia Limited, Cable & Wireless St Vincent and the Grenadines Limited, Cable & Wireless Grenada Limited (collectively as "Cable & Wireless" or "C&W"), each doing business as Flow, are pleased to respond to the Consultation Paper on the Recommendation for Market Competition Assessment Methodology (the "Consultation").
- 1.2 Flow expressly states that failure to address any issue raised in the Consultation does not necessarily signify its agreement in whole or in part with any position taken on the matter by ECTEL or respondents, and in that regard, reserves the right to comment on any issue raised in the Consultation at a later date.
- 1.3 Flow also asserts that ECTEL's decision to implement a competition framework is in keeping with global developments as it is a departure from traditional regulatory oversight to a modernisation of the way in which authorities view market competition. The proposed framework also strikes a balance vis-à-vis enforcement by avoiding strict *ex ante* regulations that influence licence conditions where enforcement agencies have the authority through *ex post* provisions in the law to remedy competition issues. It is understood that *ex ante* regulation provides the ability to remedy a competition issue beforehand, but one must also consider that it can also rigidify the relevant market definition to the extent that it may even require an amendment to a licence to accurately address allegations of anticompetitive conduct. Flow believes that such rigidity will not augur well for a sector as fast-paced as telecommunications. This is particularly evident in ECTEL's concurring Consultation on Non-terrestrial Networks, whereby a special licence for operators such as satellite providers is still under consideration.
- 1.4 Similarly, if market conditions during an investigation clearly suggest that the actual state of competition does not reflect what the *ex ante* regulations prescribed prior to the review, what should be the course of action? Should authorities disregard evidence of

contestability in the market in favour of the regulations? These are but a few questions that require careful consideration as the competition framework is developed and established.

1.5 Lastly, there is also the potential that one licensee can be designated as having SMP within their licence while the other does not, which can result in a disproportionate application of the law where regulatory obligations fail to facilitate vibrant competition by encouraging freeriding.

1.6 In the sections below, Flow responds to these questions and observations as it seeks to work with ECTEL in the development of a framework that is fit-for-purpose. For any questions or queries arising from this submission, please contact Neda Brown at neda.brown@libertycaribbean.com or Kevon Swift at kevon.swift@libertycaribbean.com.

RESPONSES TO CONSULTATION QUESTIONS

2. Question 1

Are the steps in the process for the market competition framework clear and comprehensive or should additional / different components be included in the high-level overview?

Flow's Response

- 2.1. The steps in the process for the market competition framework are clear. However, the consultation should specify how often relevant markets and findings of market power will be reviewed to ensure they continue to reflect actual competitive conditions. Without defined review intervals, there is a risk that ex-ante regulation could persist long after changes in supply- or demand-side dynamics warrant reassessment.
- 2.2. Flow adds that while the framework is generally clear, further clarity is required on each element of the three-test criteria to better ascertain how they will be satisfied.
- 2.3. With respect to SMP assessment, clarification is required on the process to be followed where an entity designated as having SMP alleges anticompetitive conduct by an undertaking that has not been so designated. Clarification is also needed where allegations are made against another undertaking designated as having joint SMP in the same relevant market. In this context, it is important to understand the basis on which joint SMP determinations are made, and how such determinations interact with the assessment and remediation of concerns relating to unilateral conduct.
- 2.4. Lastly, there is also the issue of SMP designation being assigned within a licensee's licence. Clarification is needed on licence amendments where such licensee subsequently demonstrates that the SMP designation was not entirely accurate or is no longer applicable.

3. Question 2

Are there any market features which are not reflected in the framework for defining the relevant market?

Flow's Response

3.1. ECTEL's proposed framework reflects sound regulatory practice, including the application of substitution analysis, SSNIP testing, and a structured approach to defining product and geographic markets, providing a strong and credible foundation for *ex ante* market assessment. Notwithstanding these practices, several other market features should be considered. The framework does not sufficiently incorporate Over-the-Top (OTT) services as direct competitive constraints in retail voice and messaging markets, despite their clear role as functional substitutes. Increasingly, communications markets operate as multi-sided platforms, yet this is not fully captured, limiting the ability to assess interactions between end users, application providers, and other ecosystem participants. The continued reliance on national geographic boundaries does not fully reflect the global nature of OTT service provision, and traditional SSNIP testing may be less effective in zero-priced or bundled service environments. Additionally, the framework does not adequately recognise data services as the primary enabler of downstream communications services. We therefore recommend that ECTEL:

- expressly include OTT services within relevant market definitions;
- adopt technology-neutral and forward-looking analytical approaches;
- consider alternative tools such as SSNDQ where price-based tests are insufficient;
- reassess geographic market boundaries considering global service provision; and
- recognise the central role of data markets.

4. Question 3

Are there any alternative approaches which may be easier to apply in practice?

Flow's Response

4.1. ECTEL sets out the main approaches to defining the relevant market; however insufficient weight appears to be given to the substitutability of OTT services. As noted in our response to Question 2, these services—which are typically offered to consumers at no direct monetary cost can exert a significant competitive constraint and risk being systematically

undervalued or excluded in the application of the hypothetical monopolist test. Such constraints should be properly reflected in market definition exercises.

5. Question 4

Are the steps involved in this test clear or is more detail required?

Flow's Response

The framework is adequately structured in outline but requires some specific improvements:

- a decision rule for choosing between the conceptual SSNIP and the critical loss analysis (the latter is typically unworkable in Caribbean markets given data constraints);
- structured progression logic and worked examples for common market configurations;
- recalibrated supply-side entry timeframe that accounts for Caribbean regulatory and logistical lead times; and
- substantially denser wholesale analysis guidance in the Steps 11-12, and provisions for NTN/technology-triggered review cycles.¹²

6. Question 5

Are all relevant SMP indicators included in the framework and / or would any amendments be beneficial?

Flow's Response

6.1. While ECTEL included relevant SMP indicators, further recommendations include:

- an explicit multimarket contact indicator reflecting the Flow/Digicel multi-jurisdiction presence across all five Contracting States;

¹ **European Commission**, *Communication from the Commission: Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services* (7 January 2019) C(2018) 2374 final <<https://digital-strategy.ec.europa.eu/en/library/guidelines-market-analysis-and-assessment-significant-market-power>> accessed 20 April 2026.

² **Martin Cave**, *Identifying and remedying market power in telecommunications* (presentation, Foro CRC, December 2007) <https://www.crcom.gov.co/system/files/Proyectos%20Comentarios/2000-8-56/Propuestas/martincave_foro-dic10.pdf> accessed 20 April 2026.

- a margin squeeze indicator in the behaviour and performance exhibit;
- calibration of the infrastructure barrier indicator to reflect whether ECTEL's infrastructure-sharing obligations are actually in force and complied with;
- a structured NTN/LEO disruption sub-assessment using ECTEL Digital Inclusion Survey data; and
- explicit inclusion of number portability and churn rates as contestability proxies.³⁴

7. Question 6

Should there be a specified market share threshold, above which a licensee may be assumed to have SMP without the need for further market analysis? If so, what value should be used for that threshold?

Flow's Response

- 7.1. While market share is sometimes used as an SMP or even dominance indicator in some jurisdictions, said threshold is but a gauge, and not definitive evidence. Most jurisdictions, if not all, only consider high market share as a presumption of SMP or dominance. Therefore, ECTEL must use caution in deciding SMP on market share alone.
- 7.2. In fact, Section 1 of the Consultation Document proposed a framework that included an entire step-by-step process, which speaks to the relevant market, the three criteria test and the SMP assessment as the basis of the proposed competition framework. It is therefore our considered view that a market share determination without further analysis would negate the relevance of the framework and possibly create undue regulatory burden without concrete evidence.

8. Question 7

³ **Megan Emfosi Meena and Jiaying Geng**, 'Dynamic competition in telecommunications: A systematic literature review' (2022) **12** *SAGE Open* 1 <<https://doi.org/10.1177/21582440221094609>> accessed 20 April 2026.

⁴ **International Telecommunication Union**, *Recommendation ITU-T D.261: Principles for market definition and identification of operators with significant market power* (25 October 2016) ITU-T D.261 <https://www.itu.int/rec/dologin_pub.asp?lang=e&id=T-REC-D.261-201610-!!!PDF-E&type=items> accessed 20 April 2026.

Are there examples of potential joint SMP in the absence of individual SMP in a relevant electronic communications market of any of the Contracting States?

Flow's Response

8.1. ECTEL fairly recognises the potential for joint SMP and the relevance of structural indicators such as market concentration and barriers to entry—characteristic of small markets with limited operators and high entry barriers, even in the absence of individual SMP. While each Member State typically has a limited number of service providers, this market structure is broadly consistent with telecommunications markets worldwide. Accordingly, the assessment of joint SMP should consider the actual degree of market contestability, and it is our view that electronic communications markets across the Contracting States are highly contestable.

9. Question 8

Is the assessment framework for joint SMP workable or are there alternative approaches which should be considered?

9.1. The framework is aligned with international best practice and provides a structured basis for assessing collective dominance. Nevertheless, certain limitations may affect its practical application. Data constraints in small markets may limit the robustness of quantitative analysis, and reliance on structural indicators may not fully capture the presence or risk of coordinated behaviour. The framework should also better reflect evolving market dynamics with a forward-looking perspective.

9.2. We recommend that ECTEL complement structural indicators with behavioural evidence, including analysis of pricing patterns, service innovation, and market conduct, adopt a more forward-looking and dynamic approach, and allow flexibility in the use of qualitative evidence where data is limited to ensure assessments remain practical and contextually relevant.

9.3. We also believe market definitions that do not include the alternative services such as OTTs can also result incorrect SMP designations. For example, consider the Telecommunications

Authority of Trinidad and Tobago's (TATT) OTT framework and its applicability to this ECTEL Consultation.⁵

- 9.4. TATT has published the Framework on Over-The-Top (OTT) Services in Trinidad and Tobago (October 2024), which defines OTT services and outlines the Authority's regulatory approach. The framework defines OTT services as content, services, or applications accessed via the Internet that may serve as a full or partial substitute for, and/or compete with, public telecommunications and broadcasting services (TATT, 2024, p.7). It further identifies subcategories including OTT voice, messaging, and broadcasting services (p.7).
- 9.5. While the framework provides important definitional clarity and policy context, there are several limitations in its applicability as a primary basis for competitive market analysis, particularly in the context of the ECTEL consultation on market definition and SMP assessment. Although TATT acknowledges that OTT services may substitute for traditional telecommunications services, this recognition is not extended into a formal market definition exercise. References to substitution are largely descriptive and are not operationalised through structured analytical tools such as demand-side substitution analysis or cross-elasticity assessment (pp.18). While the framework discusses potential market impacts, it does not define relevant markets or establish competitive boundaries, which limits its utility in determining SMP and may risk overstating the market power of traditional operators.
- 9.6. In addition, the framework adopts a largely descriptive and policy-oriented approach, focusing on the characteristics of OTT services and associated regulatory considerations rather than undertaking a comprehensive analysis of competitive dynamics. The discussion of OTT services is primarily single-sided, with limited examination of how these services function within multi-sided market structures involving interactions between end users, developers, advertisers, and other ecosystem participants (pp.17–20). This limits the ability to fully capture the competitive constraints imposed by OTT platforms, particularly in digital environments where value is created across multiple user groups.

⁵ **Telecommunications Authority of Trinidad and Tobago**, *Framework on Over-the-Top Services (OTTs) in Trinidad and Tobago* (October 2024) <<https://tatt.org.tt/wp-content/uploads/2024/10/Framework-on-OverTheTop-services-October-2024.pdf>> accessed 20 April 2026.

- 9.7. The framework is also limited in its treatment of the temporal dimension of competition. It is largely forward-looking and descriptive, outlining global trends and regulatory considerations without assessing the timing of substitution effects or the extent to which consumers may have already migrated to OTT services (pp.22–32). This is significant because traditional analytical tools such as the SSNIP test are designed to assess hypothetical future substitution in response to price changes. Where substitution has already occurred, reliance on such tools without adjustment may lead to an underestimation of existing competitive pressures. The absence of retrospective or timing-based analysis reduces the framework’s effectiveness in capturing actual market dynamics.
- 9.8. Furthermore, while the framework identifies OTT categories and discusses usage trends (pp.15–16, 22–32), it does not provide detailed empirical analysis of non-price competitive factors. Key elements such as service quality, functionality, innovation, user experience, and ecosystem integration are not systematically assessed or quantified. As a result, the framework does not fully capture the dimensions of competition that are most relevant in OTT-driven markets, where differentiation is often based on features and performance rather than price alone.
- 9.9. Another limitation is the geographic scope of the analysis. The framework is explicitly focused on Trinidad and Tobago, including local market observations, adoption patterns, and regulatory considerations (pp.22–32, 41–46). It does not incorporate comparative or regional analysis across other Caribbean jurisdictions or ECTEL Member States. Given that OTT adoption, infrastructure, and consumer behaviour may vary significantly across the region, reliance on TATT’s findings without appropriate adjustment may lead to an incomplete or inaccurate assessment of competitive conditions in the broader ECTEL context.
- 9.10. Considering these factors, TATT’s OTT framework should be regarded as a useful source of definitional guidance and policy context, but not as a standalone basis for market definition or SMP conclusions within the ECTEL consultation. Its descriptive treatment of OTT services (pp.7, 15–16), single-sided analytical focus (pp.17–20), absence of temporal analysis (pp.22–32), limited treatment of non-price competition (pp.15–16, 22–32), and jurisdiction-specific scope (pp.22–32, 41–46) necessitate supplementation with more robust analytical tools and regionally relevant data.

- 9.11. Accordingly, ECTEL should expressly incorporate OTT services into its market definition and substitution analysis, building on TATT's definitional framework (p.7) but extending it through formal competitive assessment methodologies. This should include the adoption of multi-sided market analysis to better reflect platform-based competition, the use of both forward-looking and retrospective approaches to account for substitution that may have already occurred, and the integration of non-price competitive metrics such as quality, functionality, and ecosystem effects. In addition, incorporating regional data on OTT adoption and usage across Member States will ensure that market definitions and SMP assessments accurately reflect prevailing competitive conditions rather than relying solely on jurisdiction-specific findings.
- 9.12. Overall, while TATT's OTT framework provides a valuable foundation for understanding the role and characteristics of OTT services, a more comprehensive, data-driven, and regionally grounded analytical approach is required to support effective market definition and regulatory decision-making within the context of SMP in the ECTEL Consultation.

10. **Question 9**

How effective would light-handed remedies be in incentivising competitive behaviour in electronic communications markets of the Contracting States? Please give reasons.

Flow's Response

- 10.1. Light-handed remedies can be effective in incentivising competitive behaviour, provided they are well-targeted, proportionate, and supported by regulatory certainty. In small island markets such as the ECTEL Contracting States, these remedies are often more appropriate and sustainable than highly prescriptive interventions. Appropriateness in small and capacity-constrained markets.
- 10.2. Flow believes that overly intrusive remedies risk distorting commercial incentives, constraining legitimate pricing flexibility, and delaying network upgrades, particularly in capital-intensive areas such as fibre deployment, mobile network expansion, and resilience investments. Light-handed measures strike a better balance between promoting competition and preserving the ability of operators to invest and innovate.

- 10.3. That said, we caution against the expansion of regulatory oversight proposed as it appears misaligned with the principles of proportionality, regulatory certainty, and competitive neutrality.
- 10.4. Section 95 of the EC Bill notwithstanding, the Consultation does not clearly identify the specific market failures or consumer detriments that would warrant additional oversight, nor does it adequately assess whether existing regulatory powers are insufficient. Absent such analysis, further intervention risks exceeding what is reasonably required to meet the Authority's statutory objectives.
- 10.5. Moreover, increased regulatory oversight may inadvertently weaken competition by discouraging investment, delaying market entry, and constraining commercial innovation. This is particularly concerning where operators would become subject to overlapping sector-specific and competition law obligations.
- 10.6. Any consideration of enhanced oversight should therefore be preceded by a rigorous market analysis, a demonstrated inadequacy of current tools, and a clear articulation of the incremental benefits relative to the regulatory burden imposed.
- 10.7. Accordingly, a graduated regulatory approach, with light-handed remedies as the default and escalation only where clearly warranted, is strongly supported.

11. **Question 10**

Are there any specific remedies, appropriate in the context of the markets of Contracting States, which should be explored in more detail in the framework.

Flow's Response

- 11.1. Consistent with the responses above, we do not consider that the imposition of additional regulatory measures or ongoing oversight is warranted at this time. Any further intervention should be clearly justified by robust evidence of sustained competition concerns and be proportionate, targeted, and time-limited.

12. **Question 11**

Does the framework adequately capture the characteristics of anticompetitive behaviour?
If not, please give reasons.

Flow's Response

12.1. The framework adequately captures characteristics of anticompetitive behaviour.

13. **Question 12**

Are there any omissions or recommendations amendments which should be considered in relation to the assessment criteria?

Flow's Response

13.1. Flow wishes to state any proposed measures should be implemented in a manner that minimises undue regulatory burden and provides sufficient certainty to support ongoing investment and network development. Clear scope, well-defined timelines, and reliance on existing data where possible are critical to avoid unnecessary compliance costs and operational complexity. Engagement with operators during implementation would also be important to ensure that measures are practical, proportionate, and aligned with market realities.

14. **CONCLUSION**

14.1. Flow reiterates its support for the modernisation of ECTEL's regulatory framework and recognises the importance of an effective competition assessment methodology in safeguarding consumer welfare and promoting sustainable competition. As markets evolve rapidly due to technological convergence, changing consumer behaviour, and the increasing role of digital and OTT services, it is essential that any competition framework remains flexible, proportionate, and firmly grounded in current and forward-looking market realities.

14.2. In this regard, Flow emphasises that market definition and SMP assessments should be evidence-based, dynamic, and capable of accommodating emerging competitive

constraints. Overreliance on rigid *ex ante* designations or static indicators risks mischaracterising market conditions, distorting incentives for investment and innovation, and inadvertently weakening competition in small and highly contestable markets such as those of the ECTEL Contracting States. Greater emphasis on *ex post* enforcement, complemented by targeted and light-handed remedies where clearly justified, would provide regulators with the necessary flexibility to respond accurately to observed conduct and evolving market dynamics.

14.3. Flow therefore encourages ECTEL to adopt a technology-neutral, proportionate, and data-driven approach that explicitly incorporates OTT services, multi-sided market characteristics, non-price competitive factors, and regional market conditions into its analytical framework. Such an approach will better ensure that regulatory intervention is justified, effective, and aligned with international best practice, while preserving strong incentives for continued investment in network expansion, innovation, and service quality.

14.4. Flow appreciates the opportunity to contribute to this Consultation and remains committed to constructive engagement with ECTEL in the further development and implementation of a competition framework that supports robust competition, regulatory certainty, and long-term sector development across the Eastern Caribbean.

List of References

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