11.1 Who are you?

Please identify yourself. Are you a regulator, a Stakeholder, interested party or other operator?

Green Dot is an 11 year old telecoms operators, it started in Trinidad. It offers two main services of broadband and subscription TV. In the last 2 years it has expanded into Grenada and Suriname.

Green Dot has applied for concessions in all ECTEL countries and has been awarded the concessions in all. It is also in Green Dots roadmap to enter the voice market.

Green Dot is a growing company, increasing investment and opening new markets, over 95% is owned by regional individuals who have strong ties in the caribbean. Green Dot is a small operator compared to Digicel and CW, but it has potential to become the much needed third player. Our long term strategy is being reviewed due to the recent aggressive growth and scaling up strategies by the two large operators, the aggressive purchasing of smaller businesses in the region, purchase of SportsMax, introduction of FLOW sports, merger of CW and Columbus, acquisition of CW by Liberty and entrance of Digicel into the TV/fiber market.

Mergers and acquisitions is part of the business, it happens in all markets globally, however, the problem in the caribbean region is that it has created monopolistic/oligopolistic opportunities and behaviour. Due the nature of the local markets Green Dot is increasingly worried about the future of the telecoms industry and if left to the market forces we see a future with only two operators, where there is restricted options and hence minimal innovations, minimal startups, undeveloped ICT cottage industry and where our future young entrepreneurs will need to look at external markets for opportunities.

This consultation comes at the right time, the regulators have recognised the problem and are attempting to deal with it in the most effective manner. We believe that Green Dot is in a very unique position as we are NOT an SMP we are a much smaller organisation, looking to invest into the member states, we believe we are the typical type of investor that these regulations are looking to attract and protect against unfair practice and as such will be able to share deeper insight into some of the challenges.

Being an actual active player in the market and facing these challenges of competing with SMPs on a daily basis and over a span of a decade, we can share with you first hand actual practical feedback rather than theoretical analysis of how this may affect smaller players. We can share with you what will work and what may not work or not.

11.2 Questions relating to all the draft Regulations

1. Having reviewed the draft Regulations, what are your overall views concerning set of regulatory obligations that may be imposed on operators under certain conditions (for example, but not limited to, after determination that an operator has SMP)? What do you see as the main advantages and benefits? What are your key concerns or misgivings?

As a quick overview, we think that ECTEL has done a comprehensive job of highlighting most of the areas where the problems exist and also areas where issues could arise in the future. The Bill and Regulations seem to be crafted with wide powers which the commission can use to deal with developments in the future.

The main advantages are that it has given the regulator power to regulate and protect the market which includes consumers, small players and investors to name a few. The benefits are that as a potential investor in these markets, we feel more confident that once we highlight an issue, the ECA will have the powers to investigate. Hopefully the deterrent to of the powers will be sufficient to avoid some of the issues.

Concerns are that the regulator has got too much power, normal free market economics could be limited. Power could be abused (with the correct intentions), to much red tape could develop, however we believe it is better than the current situation. We hope and also believe based on our dealings with the commissions that powers will not be abused, and the correct balance of intervention will take place.

There is risk that the SMPs would frustrate processes and cause delays, this is a very powerful and often used tool. Using their legal resources paperwork is created and extensions after extensions are requested to get more and more extensions.

2. Having reviewed the draft Regulations, do you feel that the regulations properly and completely reflect the intentions of the Act (including both the current Act and the anticipated EC Bill)?

In all honesty, Green Dot is still a small organisation with limited resources, we only have one person looking at regulation/policy and is not a specialist. I must admit that I did not read the current Act but I did read the anticipated Bill.

In our limited capacity, the regulations seemed to cover most of important elements, infact all except the one on transfer of control. I have responded on this in depth, I apologise if this is dealt with in the current Act which I did not read.

We are also assuming that items that we may not have picked up or misunderstood the impact of some of the powers, the other more experienced operators will highlight, giving us the opportunity to investigate further and comment on how much of an issue we see it to us.

3. Having reviewed the draft Regulations, do you consider any of the clauses redundant or conflicting? If yes, please provide examples and possible resolutions or suggestions.

No, I think all the regulations were relevant. I do think that some could be conflicting or damaging to the overall objective if they are not implemented correctly, the one we are extremely concerned about is the sharing of the passive infrastructure, in regards to the towers, not only are you forcing the current providers to share their current towers but you are also forcing the new players to have to co-locate, we don't think this is the best policy, we have provided a comprehensive case listing obstacles and challenges, we are available to discuss in person.

4. Are there any other key provisions, which in your opinion should be included in the Regulations? If yes, please provide examples and possible provisions

1. Change of control
2. National interest infrastructure support like IXP
3. MVNO unless the "white label" clause adequately deals with this

5. What alternative suggestions if any do you have for addressing issues of competitive growth, fairness, and consumer protection?

1. The regulators should focus on introducing new competition, providing protection for new players and investments, give incentives, as with more competition many of the provisions will not be needed. Also if it is seen that the industry is too regulated then it can also act as a deterrent for investors, the approach should be for the regulators to act, introduce competition and then exit.
2. I do not recall reading anything on length of contracts, consumers should be able to get out contracts. Apologise if this was dealt with.
3. We have listed a number of additional suggestions in our main document.

11.3 Questions relating to the Market Analysis Guidelines

1. What is your view of the three cumulative criteria to be used to identify markets likely to be subject to ex ante regulation (section 1.3(5))? These criteria are based on the EU framework for regulation of the electronic communications sector.

This seems fine, it's general enough to capture any area that may need addressing.

2. The Guidelines also describe factors that the ECTEL and NTRCs should consider in defining relevant markets, including substitutability of supply and demand (section 2.2). What is your view on this method, and do you have any suggestions as to how the description in the Guidelines can be strengthened?

We are happy with this.

3. What is your view of the criteria listed for assessment of SMP? (section 3.2)

If you have SMP in one market (service) like internet, then if you are to offer another service on the same infrastructure then you potentially are a SMP in that market even if you do not have the sufficient market share. E.g if you are an SMP in broadband service and you are about to offer fixed voice or IPTV, then you may be able to act/behave unilaterally, regardless of the competition. The bar for SMP should be much lower in that case or there should not be any minimum threshold, and measured on a case by case basis.

If through horizontal and vertical integration you have an advantage then you should be treated like an SMP. You should not wait till significant market share/volume has been obtained, as this would be unfair competition.

4. The Market Analysis Guidelines recognize that a Licensee may enjoy significant market
power either individually or jointly with others. What is your opinion regarding the approach stated in the Market Analysis Regulations to assess the potential existence of collective dominance by more than one operator and the impact this may have on the market? (section 3.4)

All the co-ordinated areas I can think off seem to be covered here
E.g

1. Setting high prices for colocation on towers, ducts, etc..
2. Setting high prices on backbone internet
3. Setting high prices on key content (sports) for the TV business
4. Controlling 90%+ of the internet consumption, they have exclusivity on the caching servers from Akami, Google and Netflix, as the remaining small players cannot generate sufficient demand
5. IXP peering is pointless unless the main two players are willing to join

5. What are your views concerning the provisions authorizing the NTRCs or the ECTEL to

collect all information they consider necessary to assess market power in a given market? (section 5)

Financial information on costs will be the biggest issue for ECTEL, it may require special forensic accountants to decipher some of it. Especially when dealing with group companies and where transactions are often conducted with affiliated companies, although there is an “arms length transaction” standard that acts as guideline for transactions between affiliated companies, it still leaves huge amount of room for abuse, as is seen time and time again in corporate tax incidents with organisations like Google, Starbucks, Apple etc….

Inflating or deflating a price by 10%-20% is very difficult to detect or categorise as unfair or not normal, but it is more than sufficient to create an unfair playing field.

6. What alternative suggestions if any do you have?

Look at strengthening the time it takes to get information
Possibility of frustrating a process by legal back and forth to create delays
Create a framework that allows you to challenge complex financial transactions

Work on the premise that operators will be determined to keep their advantage will invest a lot of time and effort into creating smoke screens or/and delaying.

1. The Wholesale Access Regulations identify the following Wholesale Network Infrastructure and Services, the provision of which may be imposed on a SMP Licensee. under ex ante regulation:

a) Wholesale Access provided at a fixed location;
b) Passive Backhaul Infrastructure;
c) Special Wholesale Service
d) Dedicated Connections and Capacity (wholesale leased lines)

What is your view of the type of infrastructure and services subject to potential access obligations noted in the draft regulation? In your view, are there any other components of infrastructure and/or services that should also be subject to wholesale access obligations where SMP is found?

1. Access to power (Generators/ATS/UPS) should be considered. Metering can be used for fair costing of power consumed

2. The two cellular operators have a large database of customers, not only do they have access to these and may have lots of information (age, sex, number of people in household, income levels,) they can also datamine the cell phone usage for further information. When it comes to strategic selling and targeted marketing they have an advantage as they have higher quality of information.
In addition to that they have the ability to send SMS or call these customers at zero 3rd party costs. They can send bulk SMS to their customers notifying them off new products, services and promotions on broadband or TV.

2. The main goal of this regulation is to provide that Licensees can obtain effective access to the infrastructure and services specified, where such obligations are imposed on a SMP Licensee. In your view, will the regulation provide sufficient clear and concrete obligations to make effective such access?

For example:

a) With regard to Wholesale Access provided at a fixed location

i. What is your view of the relevance of imposing VULA instead of or in addition to traditional LLU, taking into account the evolution of networks toward NGA architecture?

Yes this is great, it removes barriers and makes it much easier to enter the market. However, the challenge will be effective pricing/costs for the access.

ii. The draft regulations provide that, the NTRCs on ECTEL Recommendation may mandate access to ancillary infrastructure (for example, dark fibre or ducts) in

order to promote effective competition. Do you think this provision is useful? Insufficient? Do you have any suggestions to clarify these obligations?

An operator in the business of rolling out fiber would be in a better position to answer the question on specific details. However, we think access to dark fiber is a very good thing, it definitely does and will introduce competition and encourage investment. Green Dot may be interested in this.
In addition to accessing the dark fiber, access to the surrounding facilities (racks, cabinets, power, etc) would also assist.

b) The Wholesale Access Regulations provide that NTRCs may require an SMP Licensee to make available Special Wholesale Services (sometimes more commonly referred to as "White Label" services), provided at a discounted price from the retail prices at which the SMP Licensee offers such retail service. What is your view of this provision? Should the Regulations add further detail or specificity, for example as to how the price discount should be calculated?

This is very good, this to me seems like an MVNO type of model. Understanding what platforms will be shared or white labelled will be beneficial (subscriber management system, provisioning system, online self service portal, billing platform, payment platform, help desk etc…)

Key will be pricing, all the regulations in the world will make no impact unless the price is right, unless the MVNO can effectively compete in the market they will not enter.

If the SMP is about to make a change to their retail offering, then it is not sufficient just to adjust the price for the MVNO, but you also need to inform them of their pending change so they can also prepare if they decide to make a change to their retail market.

c) With regard to access to Passive Infrastructure:

i. The draft regulations provide the option to impose access to Underground Facilities such as ducts and dark fiber, or any other passive infrastructure belonging to an SMP operator and needed by other Licensees to provide broadband services. What is your view on these obligations? Which elements of such passive infrastructure should be included in these mandates, and how should they be specified?

All those already highlighted and others to consider are pole sharing, power, geo data for planning and design purposes.

ii. What is your view of the proposed measures to ensure compliance and prevent undue refusal of access requests by SMP Licensees Are the required justifications and technical details that SMP Licensees must provide in support of such refusal appropriate and sufficient?

It is always dangerous to create an exhaustive list, a framework is always better, at the end of the day common sense decisions will need to be made, the SMP will always make it difficult and delay as much as possible.

iii. More generally, do you have any suggestions to improve the effectiveness of the proposed access obligations to passive backhaul infrastructure?

d) With regard to the provision of Dedicated Connections and Capacity (wholesale leased lines) ECTEL considers that this type of access obligation is required to ensure competitive market development and encourage new entrants to the market, by making available affordable wholesale transmission capacity. What is your view of these obligations? Are they appropriate and necessary to support effective new competition? Are the provisions sufficiently detailed and specific to achieve the intended goal?

This is key in building out infrastructure and service. They are absolutely necessary.

3. Do you have any other comments on the proposed Wholesale Access Regulations, for example, but not limited to:

a) The mandatory content of Reference Access Offer which SMP operators may be obliged to published (section 10 of the draft regulations);

b) The other obligations that may be imposed on SMP operators such as non-discrimination, accounting separation obligations, tariff control;

c) The mechanism of dispute resolution, in order to improve the effectiveness of this process.

11.5 Questions relating to the Infrastructure Sharing Regulations

1. What is your view of the necessity and the applicability of a regulation requiring sharing of electronic communications infrastructure, recognizing that these obligations apply to all Licensees, not only SMP Licensees?

We have no issue in the sharing obligation, I think that is fine. The issue we have is:

1. Forcing us to use the infrastructure of others and not allowing us to build our own (towers) where we think we can do it cheaper than co-locating costs.
2. When rolling out fiber, you can consider giving other operators options in purchasing/installing fiber at the same time. If one operator is pulling 12 strand fiber, then another operator should be able to say, install 24 strand I will pay for the extra fiber and also contribute to the installation costs.
3. If there is sufficient extra fiber that is not being used and will not be used, an option for another provider to purchase it can be considered (terrestrial or international)

2. What infrastructure should be subject to such an obligation?

3. What is your view of sections 6, 7 and 8 of the Infrastructure Sharing Regulations, which provide that the Commission may require the establishment by Licensees of forward deployment plans and may require coordination of such deployment plans (including identification by the Commission of geographic areas where systematic sharing of new BTSs must be implemented by Licensees through measures including framework sharing agreements)?

Sounds good in principal, however it may not be feasible for smaller operators to plan 12 months in advance and definitely not for a new entrant for a few years. We would be interested in the views of other operators on this.

4. What is your view of Section 9, which specifies features required of any new BTS, in order to make possible the sharing of a new BTS with at least one third party operator.

For areas where density is low and business case is difficult this makes sense, but we do not have experience or knowledge of the practicality of this. The challenge with this and some other stuff is that there is an “early mover advantage” that encourages companies to invest, if you regulate in a manner that neutralises that advantage then you may see delay in new services and investment. A model should consider this and ensure the incentive to move first is not completely lost.

11.6 Questions relating to the Submarine Cable Access Regulations

1. What is your view of the necessity and the applicability of a regulation mandating access and co-location to any submarine cable landing station?

This is absolutely critical.

2. What is your view of the obligation imposed on a CLS Licensee to provide operators seeking access the option to access capacity on an IRU basis and on a lease basis?

It has the potential to be very beneficial to the market, in creating competition and introducing new players, inward investment. However, the price has to be right and fair.

Wavelengths should also be considered they have the potential to have much more impact than IRUs

ECTEL should also consider selling of unused dark fibers on the submarine cables.

3. Regarding the proposed CLS Reference Access Offer:

a) Do you have any comments on the time frame for submission of a draft CLS Reference Access Offer to the NTRC within sixty (60) days from the date of commencement of the Submarine Cable Access Regulations?

Should be quicker, they would already have all the information. They will most likely delay it anyway and frustrate the process so I suggest shorter time frame.

b) Do you have any comments on the content of the CLS Reference Access Offer, as described in Schedule 1 of the Submarine Cable Access Regulations?

Different protocols should be considered, I have listed them in the attached further information.

Regarding IRU - how long is the term (3,5,10,15 year options ?)

Wavelengths should be considered.

4. Provision of Backhaul Circuits

a. What is your view of imposing on a CLS Licensee the obligation to provide backhaul facilities and, where another service provider has requested provision of a backhaul circuit, the obligation to facilitate the interconnection between the operator seeking access and the said service provider at the CLS?

If this can happen, it will remove major barriers, as the last mile can sometimes be used as a major barrier. We are currently experiencing this issue.

If two operators have backhaul circuits going to the the CLS (same service provider) then these two operators should be allowed to interconnect with each other at the CLS.

b. Do you have any suggestions in order to improve the effectiveness of this obligation?

5. Co-location: do you have any comments on the obligation imposed on CLS Licensees to provide co-location services as described in clause 17 to 22 of the Submarine Cable Access Regulations draft?

As an operator who will most likely try to take benefit of this, we fully support this. Question over the cost still remains.

6. Tariffs: The EC Bill and the Submarine Cable Access Regulations provide that the CLS Licensees shall determine charges on the basis of cost oriented principles. Under this regulation, the NTRC has the authority to impose on offers by CLS Licensees the rates which it has determined by its own cost calculations on the basis of information at its disposal or, in a transitional manner, on the basis of international benchmarks.

c) Do you have any comment on these principles, or how they should be applied by the NTRCs?

We are worried that the CLS Licensee will justify a higher cost, through use of complex financial transaction structures, and even if the commission/ECA impose rates, they will still be higher than what can be achieved in a true competitive market.

It is a very difficult position for the ECA/commission to be in, where it needs to set the rates. A suggestion could be to give the operator who is requesting access the ability to demonstrate what the costs should be or challenge the cost justifications being provided by the CLS.

E.g List price of a line card may be $300,000USD, if I am big customer, my vendor will say whatever I want him to say. However, an operator like Green Dot would look for options and look for best prices/solutions and not list prices.

d) Do you have any suggestions on the key issues that should be addressed in the Regulations with respect to the cost accounting methods to be established by the NTRC?

Look out for affiliated party transactions
Look out for increased costs.

11.7 Questions relating to the Retail Pricing Regulations

1. What is your view of the provisions relating to identification of services that may be subject to retail pricing regulation, due to lack of competition or SMP (sections 6, 7, 8)?

Do these provisions adequately reflect the intent of the EC Bill? Please suggest any specific changes or improvements.

2. What is your view of the proposed establishment of Basic Affordable Service Packages (section 9)? Will this be an appropriate and effective means to ensure access to affordable service by low-income consumers? How should the prices for such basic services be determined?

3. Do the provisions on anti-competitive pricing, including Price Squeeze (sections 10 and 12) adequately identify and define the range of potentially anti-competitive pricing behaviour that may require intervention? What are your views on the extent or risk of such practices? Should some provisions or practices be strengthened, and how?

4. Under what circumstances should the NTRCs impose Price Cap regulation rather than direct pricing controls, as outlined in this regulation (sections 11, 16, 17)? What are the advantages and disadvantages of each approach? What guidance should this regulation provide as to their implementation?

5. What are your views on the provisions relating to prohibition on undue price discrimination, particularly the option for the ECTEL and NTRCs to prohibit or control differential pricing between on-net and off-net calls? What would be the impact of such limitations on the market?

6. What are your views on the procedures for implementing price controls (section 17)?

Will this be an appropriate and effective mechanism for addressing prices of non-competitive services? What are the advantages and disadvantages? What alternatives should be considered?

7. What are your views on the provisions relating to promotions and market trials? Are the time limitations on such trials sufficient? Will the provisions ensure that competitive pricing prevails? Please suggest alternative language, if any.

11.8 Questions relating to the Consumer Protection Regulation

1. Do the provisions addressing Licensee obligations with respect to provision of information to consumers (sections 4, 5, 6) adequately define these responsibilities?

Are these provisions reasonable and sufficient? What further detail or specifics, if any, should be included?

2. In particular, are the requirements in section 5 for publication of tariffs for services by Licensees sufficient?

3. Do the requirements in section 12 for specific billing information provide sufficient information to customers so that they may fully understand their bill?

4. The Rules contain several key provisions regarding advertising by Licensees, and the types of information and promotional methods that may or may not be employed, to protect consumers from unfair or misleading practices (sections 14 to 21). In your view, will adoption and enforcement of these provisions adequately prevent such inappropriate marketing tactics? Are there any important “unfair commercial practices” currently used in ECTEL markets that are not addressed? Are any of the provisions too burdensome for Licensees? Please suggest any improvements or additional options.

5. In your view, do the requirements for net neutrality (section 29) appropriately balance consumer and operator needs and concerns?

6. What are you views on the process for complaints handling by the Licenses as described Part IV of the draft regulations. Are the provisions of the aforementioned Part IV likely to ensure that customers who make a complaint to a Licensee shall be treated with fairness and courtesy, and their complaint shall be dealt with objectively and efficiently by the Licensee?