



ADJUDICATION

***APPLICATION FOR APPROVAL OF A CHANGE IN CONTROL OF
THE BAHAMAS TELECOMMUNICATIONS COMPANY LTD. AND
COLUMBUS COMMUNICATIONS LTD.***

ECS 11/2016

Issue Date: April 4, 2016

1 Background

- 1.1 This Adjudication is issued by the Utilities Regulation and Competition Authority (URCA) pursuant to section 75 of the Communications Act, 2009 (Comms Act) in the matter of an application by Liberty Global plc (Liberty Global) and Cable and Wireless Communications plc (CWC), for URCA's approval of the change of control of CWC Bahamas Holdings Limited, the holder of 49% of the outstanding and issued shares of BTC. Liberty Global will also acquire 100% of the issued and outstanding share capital of CWC, thereby becoming the voting controller of all of the shares of Columbus Communications Limited (CCL), an URCA Licensee. CCL is a wholly-owned subsidiary of Columbus Communications Inc. (CCI). CWC became the ultimate parent company of the Columbus group of companies when CWC acquired 100% of the shares of CCI.¹
- 1.2 Part XI of the Comms Act sets out the competition provisions that apply to the electronic communications sector. Under section 70 of the Comms Act, no change in control of a licensee can be implemented without obtaining the prior written approval of URCA. Under section 71(a), a "change in control" shall occur in relation to a licensee when a person, either alone or with any affiliated company acquires control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with the wishes of that person.
- 1.3 On November 16, 2015, Liberty Global and CWC (collectively referred to as "the Parties") a Recommended Acquisition Announcement under which Liberty Global plans to purchase the entire issued and to be issued ordinary share capital of CWC.
- 1.4 On November 23, 2015, the Parties submitted to URCA a Full Notification Form (with accompanying documents) in compliance with the Comms Act and URCA's "Competition Guidance: Merger Control – Procedure" (ECS COMP. 1) seeking regulatory approval of the proposed change in control of BTC. The accompanying documents in support of the Full Notification Form included the following:
- a) Announcement document "Recommended Acquisition of Cable & Wireless Communications Plc by Liberty Global Plc" dated November 16, 2015;
 - b) Chart depicting corporate structure of Liberty Global/CWC post-Transaction;
 - c) Chart depicting current group structure of CWC;
 - d) Liberty Global Annual Reports for 2013 to 2015;
 - e) Liberty Global Quarterly Reports for 2013 to 2015;
 - f) CWC Annual Reports for 2012 to 2015;
 - g) CWC Semi-annual Reports for 2012 to 2015; and

¹ URCA granted its consent to the indirect change in control of CCL on July 28, 2015.

h) CWC Quarterly Updates for 2013 to 2015.

- 1.5 On December 15, 2015 URCA wrote to the Parties advising that the proposed change in control would also result in an indirect change of another URCA Licensee, CCL, and advised the Parties that an additional application would need to be made for URCA's consideration of this change of control. Further, pursuant to its power to request information pursuant to section 77 of the Comms Act, URCA also required the Parties to submit additional information for URCA's consideration. URCA advised the Parties that, in accordance with section 78(4) of the Comms Act, the timetable to issue its adjudication in the matter would be paused and would restart from the date when URCA received a complete response to its request.
- 1.6 On January 19, 2016 URCA received a response to its request from the Parties as well as an amended Full Notification Form which included reference to the proposed change in control of CCL for URCA's consideration and approval.

2 The Parties

The Acquirer – Liberty Global plc. (Liberty Global)

2.1 Liberty Global is a publicly-listed company incorporated under the laws of England and Wales. Liberty Global's shares are divided into the following two tracking stock groups:

- (1) Liberty Global Group, which trades on the NASDAQ Global Select Market; and
- (2) Liberty Latin America and Caribbean Group, which trades on the NASDAQ Global Select Market and the OTC link.

2.2 Liberty Global is an international provider of video, broadband internet, fixed-line telephony and mobile services with operations in 14 countries. Through its subsidiaries Virgin Media Inc., Unitymedia KabelBW GmbH and Telenet Group Holding N.V., Liberty Global provides video, broadband internet, fixed-line telephony and mobile services in the United Kingdom, Germany and Belgium, respectively. In the Netherlands, Liberty Global provides video, broadband internet, fixed-line telephony and mobile services through its subsidiaries Ziggo Holding B.V. and UPC Nederland B.V. Liberty Global also provides video, broadband internet and fixed-line telephony services in eight other European countries and mobile services in four other European countries. In Latin America, subsidiaries of Liberty Global provide video, broadband internet, fixed-line telephony and mobile services in Chile, and video and broadband communications services in Puerto Rico. Liberty Global provides its services through next-generation networks and innovative technology platforms that connect 27 million customers subscribing to 57 million television, broadband internet and telephony services at September 30, 2015. Neither Liberty Global nor any of its subsidiaries operates in The Bahamas.

Cable & Wireless Communications Plc. (CWC)

2.3 CWC is a publicly owned telecommunications service provider incorporated in the United Kingdom with shares traded on the London Stock Exchange. CWC is a full service communications provider, operating in the Caribbean and Latin America. It operates both fixed and mobile networks supported by submarine and terrestrial optical fibre backhaul capacity. CWC also offers high-speed mobile data, broadband and video services to its customers. CWC owns a 49% stake in The Bahamas Telecommunications Company Ltd. (BTC), which it acquired in 2011. BTC provides mobile and fixed line voice telephony and data services to customers across The Bahamas. CWC is also the ultimate owner of 100% of the shares in CCL.

The Licensees

Columbus Communications Limited (CCL)

- 2.4 CCL is a limited liability company incorporated in The Bahamas. CCL holds an Individual Operating Licence (IOL) in The Bahamas, issued by URCA on March 17, 2011. CCL provides IWC services to [REDACTED].

The Bahamas Telecommunications Company Limited (BTC)

- 2.5 CWC owns 49% of the shares of BTC, which it acquired in 2011. The remaining 51% of BTC is owned by the Government of The Bahamas (49%) and the BTC Foundation (2%). BTC is the holder of an IOL and an Individual Spectrum Licence (ISL), both issued by URCA on November 23, 2009. BTC provides mobile and fixed line voice telephony and data services to customers across The Bahamas. It has also recently launched an IPTV service on the Islands of Bimini and Inagua. BTC also provides sub-sea cable capacity through ownership in three cables (BDSNi, Bahamas-II and ARCOS) which connect to The Bahamas.

3 The Transaction

- 3.1 As previously mentioned, on November 16, 2015 the Acquirer and CWC announced a recommended offer (the “Offer”) by Liberty Global for all outstanding and to be issued shares of CWC.
- 3.2 Pursuant to the terms of the Offer, Liberty Global would acquire CWC for Liberty Global shares which had a market value of approximately £3.6 billion (\$5.3 billion), an implied price of 81.04 pence per CWC share, based on closing share prices as of November 13, 2015. Further, CWC shareholders would be entitled to receive a special dividend in the amount of 3.00 pence per share at the close of the transaction.
- 3.3 As indicated in the Full Notification Form, the Parties expect that the Transaction will facilitate important benefits for consumers and business customers throughout Latin America, the Caribbean and The Bahamas, details of which are included in the analysis below.

4 Change in Control

- 4.1 Under section 70 of the Comms Act, a change in control of a Licensee shall not be implemented without URCA's prior written approval.
- 4.2 Under section 71 of the Comms Act, a "change in control" occurs when a person, either alone or with an affiliated company:
- (a) *"acquires control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with the wishes of that person;*
 - (b) *becomes the beneficial owner or voting controller of more than thirty percent (30%) of the voting shares in the licensee; or*
 - (c) *becomes the beneficial owner or voting controller of more than fifteen percent (15%) of the voting shares but not more than thirty percent (30%) of the voting shares in the licensee concerned unless that person either alone or with any affiliated company –*
 - (i) *is not, or does not concurrently become, the beneficial owner or voting controller of more than five percent (5%) of the voting shares in any other licensee; and*
 - (ii) *does not have the power (including by the holding of voting shares), or does not concurrently acquire control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other licensee or any other corporation or otherwise, to ensure that the affairs of such other licensee are conducted in accordance with the wishes of that person."*
- 4.3 The requirements of the share threshold test in section 71(b) are satisfied in that Liberty Global will become the beneficial owner and voting controller of 100% of the voting shares in CWC and therefore will indirectly become the beneficial owner of 49% of the voting shares of BTC, and the beneficial owner of 100% of the voting shares of CCL.
- 4.4 As stated above, both CCL and BTC are holders of Individual Licences granted by URCA under the Comms Act. Accordingly, the Transaction is a "change in control" of two URCA licensees which, pursuant to section 70(1) of the Comms Act, may not be implemented without having obtained the prior written approval of URCA.

- 4.5 Pursuant to section 75 of the Comms Act, URCA's decision regarding a request for approval of a change in control of a licensee is to be made by issuance of an adjudication. URCA has followed the procedures established for the issuing of adjudications under section 75 which are set out in the Competition Guidelines: Merger Control, issued by URCA (ECS COMP. 1 to ECS COMP. 3).

5 Questions to be Determined, the Review Process and URCA's Approach

- 5.1 Section 72 of the Comms Act provides that URCA, on receiving notification of a change in control of a licensee under section 70(3) shall form an opinion on whether “*a proposed change of control of a licensee –*
- (a) would have, or be likely to have, the effect of substantially lessening competition in a market in The Bahamas; and*
 - (b) in the case of a change in control involving a media public interest, whether the change in control would have an effect, or would be likely to have an effect contrary to the public interest.”*
- 5.2 Pursuant to section 78(1) of the Comms Act, upon receiving the notification, URCA must within thirty (30) days either:
- a) issue its adjudication; or,
 - b) inform the acquirer and the licensee that URCA is opening an in-depth investigation into the change in control.
- 5.3 Prior to issuing its adjudication, section 75(2) of the Comms Act requires URCA, in determining whether or not to give its consent to the change in control, to give the Acquirer, the Licensee and any interested persons a reasonable opportunity to make representations and to consider the representations made. Detailed representations were made by the Parties in the Notification.
- 5.4 On February 1, 2016, URCA issued a Notice to the public advising of the proposed change in control and inviting comments from the public regarding the same. The closing date for comments was February 12, 2016. URCA received one (1) response to its invitation for comments from Cable Bahamas Limited, together with its affiliate System Resource Group (collectively referred to as “CBL”).
- 5.5 On February 15, 2016, CBL submitted comments on the proposed change in control to URCA under confidential cover. URCA however is of the view that the comments submitted by CBL do not contain commercially sensitive information and are therefore summarised in this Adjudication. URCA has considered the comments in detail within the appropriate sections of this document.
- 5.6 No other comments or representations on the proposed change of control of the licensees were submitted to URCA.

- 5.7 In the event that URCA determines that a change in control of a licensee would have the adverse effects listed in sections 72(a), and with respect to a media public interest and 72(b) of the Comms Act, section 75(1)(b) provides that URCA shall take one of the following actions –
- a) deny its consent to the change in control;
 - b) give consent subject to an order that the acquirer or the licensee concerned takes the action that URCA considers necessary to eliminate or avoid any adverse effect; or,
 - c) give consent without requiring any action to eliminate the adverse effects where URCA is satisfied that any substantiated and likely efficiencies put forward by the acquirer or the licensee are necessary and outweigh any potential harm to consumers and citizens.
- 5.8 When applying the media public interest test pursuant to section 72(b) of the Comms Act, URCA adopts the approach laid out in ECS COMP.2. “Competition Guidance on Merger Control – Substantive” (the “Substantive Merger Control Guidance”). The Substantive Merger Control Guidance provides that in general, when applying the media public interest test, URCA will seek to ensure a minimum level of plurality, with the control of media enterprises spread across a sufficient number of people to ensure that a variety of different media voices and opinions continue to be heard. URCA’s analysis of media public interest will be outline further below.
- 5.9 Moreover, in order to satisfy the requirements of section 72(a), it is not enough to find that there might be a substantial lessening in competition; in order for an event to be “likely”, it must reasonably be expected to happen.
- 5.10 In determining whether the change in control of the Licensee would have, or would be likely to have the effect of substantially lessening competition in a market for electronic communications services in The Bahamas, URCA adopts the following approach set out in the Substantive Merger Control Guidance:
- a. Identification of the relevant markets: URCA must first identify the relevant market(s) for electronic communications services in The Bahamas to which the change in control is relevant².
 - b. Assessment of impact on competition in the relevant markets: Once the relevant market(s) have been identified, URCA shall assess the impact that

² See Section 4.1 of ECS COMP. 2.

the change in control would have on competition in those markets, considering the horizontal, vertical and conglomerate effects, as well as any other possible effects. In that regard:

- i. For the identified markets, URCA will consider any change to the parties' market shares caused by the Transaction, and any change in market concentration (using the Herfindahl-Hirschmann Index (HHI) as appropriate). Significant market shares or significant increases in market concentration are indicators of possible harmful effects of the Transaction on competition, although they are not of themselves conclusive. URCA will also consider other possible "theories of harm", features of the Transaction which might harm competition in the relevant market(s).
 - ii. In order to determine whether a change in control would harm competition in a relevant market, URCA will consider the "counterfactual", that is, what would happen if the Transaction were not approved by URCA, as compared to the position if the Transaction were allowed to proceed. URCA's intent in each case is to determine whether competition would be substantially lessened if the change in control were approved.
 - iii. URCA will assess the presence or absence of barriers to entry in the relevant market(s). This will assist URCA in assessing whether any short term impact on competition will or is likely to have lasting effects.
 - iv. URCA may also look at the countervailing buying power of customers in the relevant market(s), if this is considered relevant. A finding that customers are able to significantly influence the terms on which they acquire services from the parties to the Transaction reduces the likelihood of a substantial lessening of competition.
- c. Efficiencies brought on by the Change in Control: In the event that URCA identifies that the change in control would result in a substantial lessening of competition in a market for electronic communications services in The Bahamas, URCA will then consider whether any substantiated or likely efficiencies have been identified by the parties which would outweigh the potential harm to consumers and citizens, as contemplated by section 75(2)(iii) of the Comms Act.
- d. Possible Steps to Mitigate Harm: Where URCA considers that a substantial lessening of competition is or would be likely, which is not outweighed by substantiated or likely efficiencies identified by the parties, URCA will

consider any proposals put forward by the parties setting out actions that they could take which would satisfactorily address URCA's concerns, as contemplated by section 75(2)(ii) of the Comms Act.

6 Media Public Interest

- 6.1 Under section 74 of the Comms Act, a change in control of a licensee is deemed to involve a media public interest if at least one of the persons involved in the Transaction is a media enterprise (i.e. an enterprise involving either or both of (a) broadcasting and (b) newspaper publishing).
- 6.2 Section 2 of the Comms Act defines “broadcasting” as a service which consists in the provision of television programmes, radio programmes or teletext services. In its comments to URCA, CBL submitted that BTC’s IPTV service, Flow TV, constitutes a media enterprise, and that URCA’s assessment in its Public Notice that BTC was not involved in broadcasting was incorrect. URCA notes that at the time of issuing its Notice, Flow TV was fully in its beta testing phase. While BTC has since officially launched Flow TV, beta testing continues in Long Island, Andros, Cat Island, Grand Bahama and New Providence.
- 6.3 Moreover, URCA notes that while the “media public interest” is not defined in the Comms Act, the Substantive Merger Control Guidance stipulates that, as a concept, the media public interest is expected to evolve as trends in consumers’ use of media change. The Substantive Merger Control Guidance further notes that URCA will consider each change of control on a case by case basis, and that URCA will be concerned to maintain a diversity of high quality programming and to protect the interests of viewers and listeners. Further, URCA may have regard to the previous track record of the acquirer in providing content services, including the historic level of investment in those services and the quality and range of programming involved.
- 6.4 In determining whether the case of a change in control involving a media public interest would be contrary to the public interest, section 74(3) of the Comms Act provides that URCA shall consider the following:
- (a) the need for the accurate presentation of news and the free expression of opinion in media;
 - (b) the need, in relation to every different audience in The Bahamas, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;
 - (c) the need for the availability throughout The Bahamas of a wide range of content services, which (taken as a whole) are both of high quality and calculated to appeal to a wide variety of tastes and interests; and
 - (d) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment of the electronic communications policy objectives.
- 6.5 In its comments submitted to URCA, CBL argued that the Transaction raises serious public interest concerns due to exclusive rights to popular audio visual content that will

be attained as a result of the relationship with Liberty Global and CWC. CBL also contended that the Transaction raises concerns regarding sufficient plurality of persons with control of media enterprises serving Bahamian audiences. This is due, CBL argued, to the advertising revenues that are likely to be generated by the types of content that would likely be subject to these exclusive rights, and the loss of such revenues to other licensed operators, which would undermine their ability to provide less remunerative content such as news and public interest programmes. CBL further noted that the Transaction would be incompatible with the electronic communications policy objectives, specifically section 4(a)(iii) and b(vi) of the Comms Act. CBL argued that the effects of the Transaction would be to discourage sustainable competition in the upstream markets for audio visual content as well as downstream distribution markets, and thereby impede the availability of a wide range of content services which are of a high quality.

6.6 While URCA notes CBL's submissions in this regard, URCA does not agree with CBL's analysis, which in its view is highly speculative. URCA further notes that CBL did not provide any evidence to support its assertions for URCA's consideration. Further, URCA does not follow CBL's argument that loss of revenues to other licenses operators is relevant to URCA's assessment of plurality. The Substantive Merger Control Guidance notes that in considering plurality, URCA may consider any relevant audience in The Bahamas and may therefore consider the effect of a change in control on a particular social group or type of viewer or listener. Further, URCA is likely to be concerned by a transaction that would give one person control over two (or more) major providers of news for The Bahamas, for example, a TV station providing news and a newspaper. URCA notes that while BTC has recently launched its IPTV service, it had no prior involvement in broadcasting as defined in the Comms Act.

6.7 Nevertheless, URCA considers that the Content Regulation provisions under Part IX of the Comms Act and the Code of Practice (ECS 6/2012) provide the necessary mechanisms through which accurate representation of news and free expression of opinion in media can be fostered and the electronic communications sector policy objectives are achieved. Therefore, URCA considers that the Transaction is not likely to have an effect contrary to the public interest.

7 Identification of the Relevant Markets

Process for Identifying Markets

- 7.1 In determining whether the change of control of BTC and CCL would have or likely to have the effect of substantially lessening competition in a market in The Bahamas, URCA must first define the relevant market.³ As set out in URCA's Substantive Merger Control Guidance, a relevant market will normally have two dimensions: a relevant product market and a relevant geographic market.
- 7.2 A relevant product market comprises those products that are regarded as interchangeable or sufficiently substitutable for each other. As set out in ECS COMP. 5 (the Market Definition Guidelines), it may be sufficient to identify several possible 'markets' without settling on a final market definition if the substantive competition assessment would be the same whichever of the possible descriptions of the market is adopted.

The Parties' Submission on the Relevant Markets

- 7.3 The Parties have noted in the Notification that Liberty Global is an international provider of video, broadband internet, fixed-line telephony and mobile services. However, Liberty Global does not operate in The Bahamas, or in any upstream or downstream business related to CWC's business in The Bahamas. Therefore, Liberty Global does not overlap with CWC in the provision of any product or service on any level of the market in The Bahamas.
- 7.4 The Parties have also submitted that as Liberty Global does not operate in The Bahamas, the proposed transaction will have no effect on the market position of BTC and CCL or their competitors currently operating in the telecommunications markets in The Bahamas. Therefore, the Acquirer does not overlap with BTC in the provision of any product or service on any level of the market in The Bahamas. Furthermore, the Acquirer, in contrast to CCL, does not provide IWC services in The Bahamas. Therefore, it is highly unlikely that the proposed Transaction will have an effect on the market share of the URCA licensees that operate in The Bahamas' electronic communications sector.

CBL's Submission on the Relevant Markets

- 7.5 In its response to the invitation for comments, CBL submitted that the Transaction would be likely to have the effect of substantially lessening of competition in the following markets:

³ See URCA's Competition Guidance: Merger Control – Substantive ECS COMP. 2, section 4.1.

- a) The market for international capacity to and from The Bahamas as well as the markets for wholesale international leased line services, retail business connectivity services and retail international long distance services; and
- b) The market for popular television programming and audio visual content (to the extent that the Acquirer and its affiliate have established exclusive arrangements with providers of film, television series, sports and other audio visual content that will be added to the exclusive arrangements that BTC has already secured under the ownership of CWC, including the 2016 Olympics.)

URCA’s Identification of Product Markets

7.6 URCA’s starting point in identifying the relevant product market is to identify those markets for electronic communications services in The Bahamas in which the Licensee currently operates and then to consider the effects of the change in control on these markets. As set out in ECS COMP.5 (the Market Definition Guidelines), a relevant market comprises all products or services which are sufficiently substitutable for each other. URCA notes that it would be only in highly unusual circumstances that a merger between a company which does not operate at all in The Bahamas and a company which operates in The Bahamas will be found to have the effect of lessening competition in a market for electronic communications services in The Bahamas. The Market Definition Guidelines note that it may be sufficient to identify several possible ‘markets’ without settling on a final market definition, if the substantive competition assessment would be the same whichever of the possible descriptions of the market is adopted. In identifying the relevant market, URCA will ascertain the relevant products and the relevant geographic area.

7.7 An initial review of the markets in which BTC operates was conducted by URCA in 2009 and culminated in the publication of URCA’s 2010 Final Decision⁴ in which URCA determined specific retail and wholesale markets fall within the high level SMP markets applicable respectively to BTC and CBL. BTC’s SMP Retail and Wholesale Markets are identified in the Table below:

BTC – Retail Products	BTC – Wholesale Products
1) Fixed telephony access and local calling	1) Fixed intra-island call termination
2) Domestic long distance calling (DLD)	2) Fixed inter-island call termination
3) Domestic fixed calls to related numbers	3) Mobile call termination
4) International long distance calling	4) SMS termination
5) Broadband internet access in specified	5) Termination to directory inquiries

⁴ “Final Decision on Obligations imposed on Operators with Significant Market Power (SMP)” (ECS 11/2010) dated 22 April 2010.

areas	
6) Retail National leased lines	6) Termination to ancillary services
7) Mobile access	7) Termination to local emergency numbers or services
8) Local mobile calling	8) Call transit
9) Domestic long distance mobile calling	9) Termination to Freephone numbers
10) International long distance mobile calling	10) Termination to operator assistance facilities
11) Mobile data (internet, SMS and MMS)	11) Access to the broadband and transmission networks
	12) Wholesale national leased lines

- 7.8 Two further market reviews were conducted by URCA in 2013 and 2014. A review of the market for wholesale call termination services in The Bahamas was conducted which found that BTC, CBL and IP Solutions International Ltd. (iPSI) hold SMP in the market for terminating calls (and mobile voice messages) on their respective networks.⁵ Further, in 2014, a review of the markets for key retail services in The Bahamas was conducted. These key services were identified as fixed voice, pay TV and high speed data and connectivity services.
- 7.9 On December 2, 2014, URCA published its Final Determination on the “*Assessment of Significant Market Power in the Electronic Communications Sector in The Bahamas under Section 39(1) of the Communications Act, 2009*”⁶ (2014 Assessment), which noted, *inter alia*, that it was appropriate for URCA to make determinations regarding the definition of markets, the existence of licensees with SMP in those markets, and the extent to which *ex-ante* regulation is appropriate and necessary in those markets. Accordingly, URCA in its Final Determination, URCA found that BTC has SMP in the retail fixed voice services market, retail broadband services (in Geographic Market 2)⁷, and business data connectivity services (national and international). Further, CBL was found to have SMP in the pay TV services market. URCA also noted that due to BTC’s statutory exclusivity at the time on the provisioning of mobile services in The Bahamas, URCA considered that a review of competition in mobile voice and data services was not warranted.
- 7.10 Therefore, for the purposes of this adjudication, URCA has identified the following high level markets as the appropriate reference point to enable URCA to conduct the competition analysis required to determine whether the Transaction will have the effects on competition relevant to URCA’s consideration of a change in control:

⁵ ECS 13/2013

⁶ ECS 14/2014

⁷ Geographic Market 2 is defined as all remaining islands, i.e. where only BTC has a network infrastructure to offer these services. Geographic Market 1 is defined as the islands where both BTC and CBL are offering broadband services (i.e., New Providence, Abaco, Grand Bahama and Eleuthera).

- a) Fixed voice services;
- b) Retail broadband services;
- c) Business data connectivity services;
- d) Mobile services; and
- e) Pay Tv Services.

7.11 URCA notes that even if the markets were defined more narrowly than these high level markets, it would not need to conduct its analysis in more detail than that conducted on the basis of the above definitions as there would be no change to the outcome of the analysis in this particular case since the Acquirer is not active in the communications sector in The Bahamas. Therefore, no overlaps arise in relation to these services. Consequently, no change in the dynamics of competition in any of these markets arise from the Transaction.

URCA's Identification of Geographic Markets

7.12 The geographic scope of a market is the area in which the firms under examination are involved in the supply and demand matrix of the relevant product and services. Both BTC and CCL have been granted national operating licences to offer services throughout The Bahamas. Given that the Acquirer is not active as a network operator or service provider in The Bahamas, the competition assessment will not change if a more narrow market definition is considered. Therefore, in this instance, it is not necessary to consider whether there is a more narrow geographic scope as it would not affect the final conclusion. Therefore, the geographic scope of each of the relevant markets is no wider than The Bahamas.

7.13 In reviewing the markets, the central fact to be emphasised in this instance, is that there are no markets for electronic communications services in The Bahamas in which both the Acquirer and the Licensees offer products and/or services. As such, the change in control is neither a horizontal nor vertical merger which would have negative effects on competition in any of the markets. Further, as the Acquirer does not operate in any closely related market for electronic communications services in The Bahamas, there are no conglomerate effects of the change in control which URCA must consider under its merger control provisions. Subsequently, URCA provides below its detailed assessment in relation to each of the markets identified above.

8 Fixed Voice Services

Market Overview

- 8.1 BTC is the largest provider of fixed voice services in The Bahamas, and has been designated as the SMP provider of these services in The Bahamas. As a result of its market position in the provision of fixed voice services, BTC is the primary provider of interconnection services to other licensed operators. In URCA's 2014 Assessment, URCA determined that the retail market for fixed voice services is national in scope, and that BTC has SMP in the national market for retail fixed voice services, covering access, local call, long distance and international call services from a fixed location.

Effect on Competition

- 8.2 URCA noted that neither the Acquirer nor any affiliate of the Acquirer currently offers any electronic communications services in the market for fixed voice services in The Bahamas, and thus have no customers in this market. Therefore, the change in control of the Licensee will not result in a change in the level of competition in this market in that neither the market share nor the market concentration (measured by the HHI) of BTC will change as a direct result of the Transaction.

Counterfactual

- 8.3 In the absence of any identified effect on competition, it is not necessary to consider the counterfactual.

Countervailing Buying Power

- 8.4 In the absence of any effect on competition, it is not necessary to consider countervailing buying power.

Conclusion

- 8.5 On the basis of the foregoing, URCA finds that there is no likelihood of a substantial lessening of competition for fixed voice services in The Bahamas as a result of the change in control of BTC.

9 Broadband Services

Market Overview

9.1 Retail broadband services can be delivered via several network technologies. In The Bahamas, the following broadband networks technologies are currently deployed:

- A DSL network (including both a copper and fibre based access network) operated by BTC;
- A 4G/LTE mobile network operated by BTC; and
- A coaxial cable network operated by CBL.

In its 2014 Assessment, URCA defined a single product market for business and residential customers for broadband services, which included BTC's fixed DSL broadband as well as CBL's cable-based broadband services. BTC was found to have SMP in this market in Geographic Market 2.

Effect on Competition

9.2 Neither the Acquirer nor any affiliate of the Acquirer currently offers any broadband services in The Bahamas. Therefore, the change in control of BTC will not result in a change in the level of competition in this market, in that neither the market shares of the existing participants in the market, nor the market concentration will change as a direct result of the Transaction.

Counterfactual

9.3 In the absence of any effect on competition, it is not necessary to consider the counterfactual.

Barriers to Entry

9.4 As URCA has not found there to be any harmful effects on competition in this market, it is not necessary to consider how barriers to entry impact that finding.

Countervailing Buying Power

9.5 In the absence of any effect on competition, it is not necessary to consider countervailing buying power.

Conclusion

- 9.6 On the basis of the foregoing, URCA finds that there is no likelihood of a substantial lessening of competition on broadband services in The Bahamas as a result of the change in control of BTC.

10 Business Data Connectivity Services

Market Overview

10.1 In The Bahamas, the market for business connectivity services comprises both national and international connectivity services. BTC and CBL are currently the only providers of national and international business connectivity services in The Bahamas. In its 2014 Assessment of the relevant geographic market for national business data connectivity services, URCA defined the market for national business connectivity services to include the following:

- Traditional leased line products: These are national business connectivity services provided over PSTN and Coaxial networks, thereby currently including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and
- Fibre-based leased line products: These are national business connectivity services provided over a fibre network, thereby currently including BTC's MPLS (leased circuits over fibre) and CBL's REVON Ethernet Circuits.

10.2 URCA also defined the relevant product market for international business connectivity services as the following:

- Traditional leased line products: These are international business connectivity services provided over PSTN and Coaxial networks, thereby including BTC's regular leased circuits and CBL's REVON Dedicated Circuits; and
- Fibre-based leased line products: These are international business connectivity services provided over a fibre network, thereby including BTC's MPLS (leased circuits over fibre) and CBL's REVON Ethernet Circuits.

URCA determined in its 2014 Assessment that there are two separate geographic market definitions for both national and international business data connectivity services, and that BTC has SMP in both markets for national and international connectivity services in all areas where CBL has no network coverage (i.e., Geographic Market 2).

Effect on Competition

10.3 Neither the Acquirer nor any affiliate of the Acquirer currently offers any business connectivity services in The Bahamas. Therefore, the change in control of BTC will not result in a change in the level of competition in this market, in that neither the market shares of the existing participants in the market, nor the market concentration will change as a direct result of the Transaction.

Counterfactual

- 10.4 In the absence of any effect on competition, it is not necessary to consider the counterfactual.

Barriers to Entry

- 10.5 As URCA has not found there to be any harmful effects on competition in this market, it is not necessary to consider how barriers to entry impact that finding.

Countervailing Buying Power

- 10.6 In the absence of any effect on competition, it is not necessary to consider countervailing buying power.

Conclusion

- 10.7 On the basis of the foregoing, URCA finds that there is no likelihood of a substantial lessening of competition on business data connectivity services in The Bahamas as a result of the change in control of BTC.

11 Mobile Services

Market Overview

- 11.1 In URCA's 2010 Final Decision, URCA determined that mobile services remain within BTC's high level SMP markets. URCA's 2014 Assessment did not include a review of competition in mobile voice and data services, since at the time, BTC retained exclusivity in the provisioning of mobile services in The Bahamas.
- 11.2 While BTC's legal monopoly on mobile services formally expired in April 2014, BTC remains the only operator licensed to operate networks and provide services in the markets for mobile voice and data services in The Bahamas. On November 13, 2014, the Government of the Commonwealth of The Bahamas issued a Request for Proposals to Operate a Cellular Mobile Network and to Provide Cellular Mobile Services in The Bahamas (the RFP) which stipulated a two-stage competitive process to award the second cellular mobile licence. Under Phase I of the RFP, an evaluation committee appointed by the Government reviewed submitted proposals and determined those applicants that met the outlined minimum requirements in order to progress to Phase II. Phase II of the RFP consisted of an auction of spectrum blocks, administered by URCA on the Government's behalf. Virgin Mobile (Bahamas) Limited and CBL both moved forward to the auction phase of the selection process, and on October 16, 2015, CBL was announced as the winner of the auction phase.
- 11.3 In accordance with the RFP, CBL must honour its commitment to have at least 51% of the shares of NewCo (the company which will be granted the licence) owned by HoldingCo, a 100% Bahamian owned company). CBL must also comply with other provisions in the proposed shareholders agreement. Provided that CBL, in its negotiations with the Government, meets all preconditions for the issuance of licences to be granted by URCA, the Government will notify URCA in writing that it should commence the process for the issuance of the licences to NewCo.
- 11.4 As URCA has not yet been notified by the Government to issue the said licences, BTC remains the sole licensed provider of mobile services in The Bahamas.

Effect on Competition

- 11.5 Neither the Acquirer, nor any of its Affiliates, currently offers any electronic communications services in the mobile services market in The Bahamas. Therefore, the change in control of BTC will not result in a change in the level of competition in mobile services, in that neither the market shares of the existing participant, nor the market concentration will change as a direct result of the Transaction.

Counterfactual

- 11.6 In the absence of any effect on competition, it is not necessary to consider the counterfactual.

Barriers to Entry

- 11.7 As URCA has not found there to be any harmful effects on competition in this market resulting from the change in control of BTC as contemplated by the Transaction, it is not necessary to consider how barriers to entry impact that finding.

Countervailing Buying Power

- 11.8 As URCA has not found there to be any harmful effects on competition in this market resulting from the change of control of BTC as contemplated by the Transaction, it is not necessary to consider countervailing buying power.

Conclusion

- 11.9 Accordingly, URCA does not consider that the change in control of BTC as contemplated by the Transaction would have or would be likely to have the effect of substantially lessening competition in mobile services in The Bahamas.

12 Pay TV Services

Market Overview

- 12.1 In its 2014 Assessment, URCA identified CBL as having SMP in pay TV services and that the pay TV market is national in scope. The pay TV product market was defined as access to pay TV content provided over a cable TV and terrestrial network infrastructure.
- 12.2 As elaborated above, BTC has recently launched IPTV services on two islands in The Bahamas. URCA noted in the 2014 Assessment that, while IPTV services may have similar product characteristics to CBL's current pay TV offerings, URCA was unable to verify their potential substitutability. Therefore, the pay TV market was defined to include only content provided over a cable network.

Effect on Competition

- 12.3 Neither the Acquirer nor any affiliate of the Acquirer currently offers any electronic communications services in the market for pay TV services in The Bahamas. Therefore, the change in control of BTC will not result in a change in the level of competition in this market.
- 12.4 In its written submissions to URCA, CBL contended that the Transaction will impede, if not preclude robust competition in the television and broadband markets in The Bahamas by effectively blocking CBL and other licensed operators in The Bahamas from accessing popular content and audio visual programming. CBL further asserted that BTC would be able to leverage the Acquirer's size and buying power in the global marketplace to negotiate exclusive rights for the dissemination of premium content and popular programming in The Bahamas. Consequently, CBL argued that this is a serious competition issue of significant public interest concern, since advertising revenues associated with content are used to subsidize public interest programmes and other, less remunerative services. CBL expressed the view that BTC, through the Acquirer, would secure exclusive rights to popular English-speaking content, thereby allowing BTC to increase its television market share as well as deprive competitors of advertising revenue needed to provide new and other broadcasts of public interest.
- 12.5 CBL therefore proposed that URCA prohibit BTC from entering into exclusive contracts or arrangements for audio visual programming to be distributed in The Bahamas. In the alternative, CBL argued that where exclusive agreements have already been agreed or cannot be avoided, URCA should impose a mandatory wholesale obligation on BTC and require it to allow other licensed operators to resell such content subject to reasonable terms and conditions that are supervised by URCA. Further, CBL contended that this should include an appropriate discount on the best rates charged by BTC to its retail customers, including any bundled rates for such programming.

12.6 URCA does not agree with CBL's views that as a result of the change in control, BTC would be able to significantly impede competition in the television or broadband market by blocking third party access to popular content and audio visual programming. URCA considers that, in the absence of any evidence that BTC intends to act in the manner as suggested by CBL, CBL's proposed scenario is highly speculative and cannot form the basis for a finding of any harmful effect on competition. In any event, URCA notes that exclusive contracts or arrangements are not uncommon practice for pay TV service providers. URCA is aware that service providers will negotiate content deals with TV shows, networks and other content owners based upon the needs and desires of the service providers. URCA particularly notes that CBL has entered into exclusive arrangements in the past with content providers, most notably its purchase of exclusive rights to the World Cup coverage in The Bahamas in June 2014.

12.7 In any event, where such agreements are found to prohibit or restrict competition, URCA is empowered under the competition provisions of the Comms Act to address anti-competitive behaviour. Furthermore, URCA notes CBL's alternative recommendation that it impose a mandatory wholesale obligation on BTC. URCA does not consider this appropriate as CBL is the dominant provider of pay TV services in The Bahamas and retains 100% market share in this market, given URCA's market definition of such services. URCA therefore considers that the imposition of such restrictions on a new entrant would be unduly restrictive of developing competition.

Counterfactual

12.8 In the absence of any effect on competition, it is not necessary to consider the counterfactual.

Barriers to Entry

12.9 As URCA has not found there to be any harmful effects on competition in this market, it is not necessary to consider how barriers to entry impact that finding. URCA notes in any event that the market is open to competition, so there is no legal barrier to a new entrant in this market.

Countervailing Buying Power

12.10 In the absence of any harmful effect on competition, it is not necessary to consider countervailing buying power.

Conclusion

12.11 URCA finds that there is no likelihood of a substantial lessening of competition in the market for pay TV services in The Bahamas as a result of the change in control of BTC.

13 International Capacity

Market Overview

- 13.1 International networks provide international connectivity through fibre optic (or other) sub-sea cables to wholesale customers in The Bahamas to provide electronic communications services. The Parties have indicated that CWC, through its ownership of the CNL Group and CCL, has [REDACTED] customers in relation to the provision of IWC in The Bahamas. These customers have been identified as [REDACTED], the latter [REDACTED] served by the ARCOS network. The Parties have also indicated that BTC has [REDACTED] customers in relation to the provision of IWC in The Bahamas. These customers include [REDACTED]. The Parties have also identified that CBL holds a very substantial amount of activated and design IWC capable of meeting the demand of existing and potential customers.

Effect on Competition

- 13.2 Neither the Acquirer nor any affiliate of the Acquirer currently offers any international capacity in The Bahamas and thus has no customers in the market.
- 13.3 CBL stated in its submissions to URCA that it relies on the ARCOS subsea cable, owned by CCL, to transport a significant amount of its traffic between The Bahamas and The United States. CBL explained that CCL lands the ARCOS cable at a landing station controlled by BTC, and CBL connects its domestic fibre network to the subsea cable at BTC's landing station. CBL asserted that it outlined a number of competition concerns that would be likely to arise over time as a result of BTC and CCL through their common ownership by CWC, following the acquisition of CCL by CWC. CBL also stated that it was not appraised of URCA's adjudication approving the change of control of CCL without any conditions and URCA's reasons for dismissing its concerns.
- 13.4 CBL further noted that the Transaction raises an even greater threat to competition in The Bahamas as there is a significantly increased likelihood of a substantial lessening of competition in the market for international capacity and related wholesale and downstream services. CBL believes that the relationship between BTC and CCL will be substantially strengthened as a result of the ownership structure of Liberty Global. CBL also asserted that following the acquisition, BTC will have an even stronger motivation to use the ARCOS-1 cable to impede effective competition from CBL and other licensed operators in The Bahamas. Therefore, CBL urged URCA to impose the following conditions prior to approving the change of control:

- (1) mandatory notification by BTC and CCL to URCA of all contracts, consortium arrangements or other agreements relating to or relying on, CCL's subsea cable capacity to and from The Bahamas; non-discriminatory treatment by

CCL of all customers, including BTC and other licensed operators; and the establishment of reference offers for the provision of IRUs, leased line services and other international wholesale arrangements involving the use of subsea cable owned or controlled by CCL; and

- (2) mandatory notification to URCA of any reductions in the existing rates for international retail business connectivity services and/or retail international long distance services on the routes covered by CCL's subsea cables, including cost justification to confirm that the proposed reductions do not constitute anticompetitive margin squeeze.

- 13.5 The changes alluded to by CBL in its response do not, in URCA's view, arise as a result of the current Transaction, but arose and were considered by URCA in 2015 in the context of the merger between CWC and CCI. URCA reminds CBL that a copy of the Adjudication in the change of control of CCL to CWC was forwarded to CBL on July 28, 2015. Further, URCA notes that CBL's proposed conditions are similar to those recommended in its response to the CCL change in control application. URCA noted in the Adjudication and reiterates here that any attempt by BTC to adopt anti-competitive behaviour could readily be addressed by URCA's ex-post competition powers. Therefore, URCA does not consider CBL's proposed conditions appropriate to implement at this time.

Counterfactual

- 13.6 In the absence of any effect on competition, URCA considers that it is not necessary to consider the counterfactual in this instance.

Barriers to Entry

- 13.7 As URCA has not found there to be any harmful effects on competition in this market, it is not necessary to consider how barriers to entry impact that finding. URCA notes in any event that this market is open to competition. Therefore, there is no legal barrier to a new entrant.

Countervailing Buying Power

- 13.8 In the absence of any harmful effect on competition, countervailing buying power is not relevant in this instance for URCA's consideration.

Conclusion

- 13.9 URCA finds that there is no likelihood of a substantial lessening of competition in the market for international capacity in The Bahamas as a result of the change in control of CCL.

14 Efficiencies

14.1 Under the Comms Act, consideration of efficiencies is relevant at two stages of URCA's analysis:

- (i) Under section 73(1)(b) of the Comms Act, in assessing whether a merger gives rise to a substantial lessening of competition, URCA is required to take into account the interests of intermediate and ultimate consumers and the development of technical and economic progress provided that it is to the advantage of consumers and does not form an obstacle to competition.
- (ii) Under section 75(1)(b)(iii) of the Comms Act, where URCA concludes that a merger would give rise to a substantial lessening of competition (or, in a media public interest case, be contrary to the public interest), URCA is required to give consent if it is satisfied that any substantiated and likely efficiencies put forward by the Acquirer or the Licensee are necessary and outweigh any potential harm to consumers and citizens.

14.2 URCA notes the Parties expectation that the Transaction will facilitate important benefits for consumers and business customers throughout Latin America and the Caribbean, including The Bahamas. URCA also notes the Parties assertion that following completion of the Transaction, the combined company expects to utilise its product knowledge and customer service expertise to offer innovative video products with superior broadband speeds and seamless connectivity. The Parties further contend that the Transaction will foster efficiencies that will facilitate continued investment in networks, products and service enhancements that will benefit consumers and business customers. Furthermore, the Parties noted that the Transaction will enable CWC to benefit from Liberty Global's product offerings and its scale through the sharing of Liberty Global's technology, innovation, best practices and financial benefits.

15 URCA's Decision

- 15.1 On the basis of the foregoing deliberations and findings, URCA has concluded that the change in control of BTC and CCL as set out in the amended Full Notification Form would not have, or be likely to have either of the adverse effects set out in section 72 of the Comms Act: substantially lessening of competition; or, for a change in control involving a media public interest, an effect contrary to the public interest. URCA therefore grants its consent in accordance with section 75(1)(a) of the Comms Act to a change in control of BTC and CCL.