



COMPETITION GUIDANCE: *MERGER CONTROL - PROCEDURE*

ECS COMP. 1
18 SEPTEMBER 2009

UTILITIES REGULATION & COMPETITION AUTHORITY

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ECS COMP. 1 Merger Control – Procedural Guidance

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EXPLANATORY NOTE

The Communications Act 2009 (the “**Comms Act**” or “**CA**”), which came into force on 1 September 2009, includes competition provisions that will apply to the electronic communications sector. The Utilities Regulation and Competition Authority (URCA) will publish a series of guidance notes to assist licensees, consumers and other interested stakeholders understand how it is intended that these competition provisions will apply in practice.

The initial series of guidance notes will cover the following subjects:

- ECS COMP. 1. Merger control – procedural guidance
- ECS COMP. 2. Merger control – substantive guidance
- ECS COMP. 3. Merger Control – Regulation on Fees
- ECS COMP. 4. Who is affected by the rules? The concept of “undertaking”
- ECS COMP. 5. Market definition – its role in competition and in regulation (for the determination of operators with significant market power)
- ECS COMP. 6. Anticompetitive agreements and practices – substantive guidance
- ECS COMP. 7. Abuse of a dominant position – substantive guidance
- ECS COMP. 8. Guidance on the level of fines

This guidance note, ECS COMP. 1, addresses the procedural aspects of merger control. **It is illegal to complete a relevant merger prior to obtaining URCA’s approval** (see section 70 of the Comms Act). The guidance indicates URCA’s current thinking but should not be taken as a statement of law. Persons should always consult the relevant legislation and seek legal and professional advice where appropriate.

URCA will update this guidance from time to time to take account of best practice and to reflect developments in legal interpretation and economic thinking. Although this guidance sets out the approach URCA expects to take, it does not have binding legal effect. If URCA decides to depart from this guidance, URCA will inform the public of its reasons for doing so.

Please e-mail us at info@urcabahamas.bs any comments on how we can improve this guidance. Alternatively, comments may be delivered, posted or faxed to the address below:

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GENERAL BACKGROUND

1. The competition provisions set out in Part XI of the Comms Act deal with three substantive situations:
 - (i) Anticompetitive agreements and practices (sections 67-68 CA 2009);
 - (ii) Merger control (sections 70-78 CA 2009); and
 - (iii) Abuse of a dominant position (section 69 CA 2009).
2. Openness to trade is particularly important in relatively small jurisdictions and competition law and policy facilitates trade. It does so by lowering barriers to entry.
3. Small economies may support firms of suboptimal size, due to relatively limited demand for goods and services from a relatively small population. In these circumstances, prices could be higher than in economies characterised by economies of scale and scope, and the quality of service can be lower. When a sector, such as the communications sector underpins other areas of the economy, it becomes very important to ensure that the economy as a whole benefits from the best available services at the lowest possible prices. This can be done, amongst other things, by proper competition law enforcement, striking the right balance between ensuring that competition is operating properly in those areas where competition is feasible (thereby allowing competitive market forces to secure the best available deal for consumers) and imposing limits on the conduct of firms operating in those areas which may not support full competition (limiting the possibility for these firms to abuse their market position).

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4. Figure 1 below illustrates how these three situations correlate with market concentration. The arrow highlights the potential competition concerns as the market becomes more concentrated.

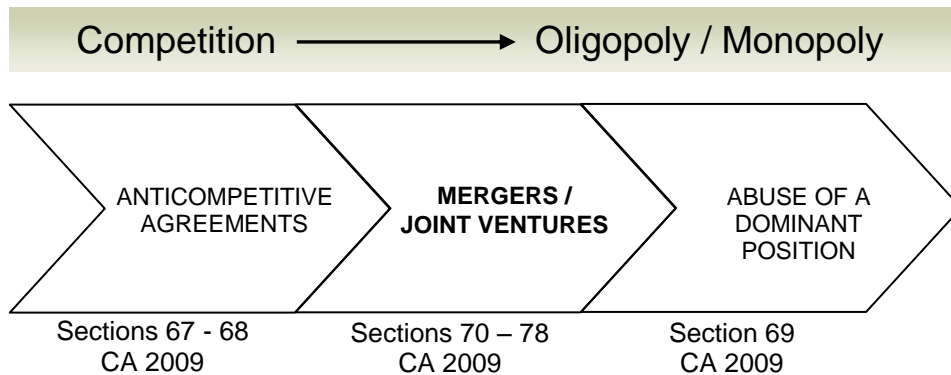


Figure 1: Competition concerns with market concentration

5. These substantive elements and their relation to market concentration are set out below. They are addressed in more detail in separate substantive guidance notes.

1. Anticompetitive agreements (ECS COMP. 6)

6. The left hand side of the arrow in Figure 1 represents a situation of near-perfect competition. In a situation of near-perfect competition, it is expected that there would be numerous suppliers competing to provide services or goods to purchasers. Due to the market being less concentrated and consumers' ability to switch providers, no single supplier acting on its own would be able to distort competition.
7. In the first substantive situation (anticompetitive agreements and practices), no single undertaking will have sufficient market power to be able to operate without restraints from its competitors or customers. Competition may still be distorted, however, if undertakings act in a coordinated manner, rather than competing with each other. Agreements to coordinate decisions between undertakings and concerted practices, whether express or tacit, are prohibited under section 67 of the Comms Act. For ease of reference, agreements, decisions between undertakings and concerted practices are referred to as "agreements" in these guidance notes.
8. Agreements that may initially appear to fall within the prohibition in section 67 of the Comms Act may be exempted under section 68 of the Comms Act. An exemption will only apply if the agreement:
- (i) shows some benefit in the production or distribution of services or promotes technical or economic process;

- (ii) consumers get a fair share of that benefit;
 - (iii) does not impose indispensable restrictions on the relevant undertakings; and
 - (iv) does not give the undertakings the possibility of eliminating competition in a substantial part of the relevant market.
9. ECS COMP. 6 provides details of the situations affected by sections 67 and 68 of the Comms Act.

2. Mergers/ joint ventures (ECS COMP. 2)

10. Merger control sits between the position of competition on the left-hand side of the arrow in Figure 1 and the position of oligopoly or monopoly on the right-hand side of the arrow. Merger control occurs at the point where undertakings merge and markets become more concentrated.
11. Pre-screening of mergers is considered to be essential to maintain and promote competitive markets. Merger control, which is the focus of this guidance note, is a way in which markets can be monitored and controlled before they become more concentrated and susceptible to either abuse by dominant operators or coordinated anticompetitive conduct.
12. ECS COMP. 2 provides guidance on the substantive rules relating to merger control under ss. 70 to 78 of the Comms Act and should be read in conjunction with this guidance note, ECS COMP. 1.

3. Abuse of a dominant position (ECS COMP. 7)

13. The right-hand side of the arrow in Figure 1 shows a concentrated market place that has moved from a situation of perfect competition (on the left) towards a situation of “dominance” and, on the extreme right, monopoly.
14. In the third substantive situation (abuse of a dominant position), undertakings that have sufficient market power so as to be able to act independently of their competitors or customers are in a position where they could abuse that market power. Section 69 of the Comms Act sets out a non-exhaustive list of the types of conduct that would be considered abusive, and therefore would be prohibited.
15. ECS COMP. 6 provides details of the situations affected by s. 69 of the Comms Act.

PART 1: INTRODUCTION

1. Purpose of Guidance Note

16. This guidance note provides practical guidance on the application of the Merger Control rules under ss. 70 to 78 of the Comms Act. This includes guidance on:
- (i) when the merger control provisions apply;
 - (ii) how parties should notify relevant mergers to URCA;
 - (iii) the basic principles of URCA’s analysis (more detailed guidance is provided in Guidance Note ECS COMP. 2);
 - (iv) the timetable for URCA’s review of the merger notification; and
 - (v) the fees payable by notifying parties. These fees will be published separately in an URCA regulation as required under s. 76 of the Comms Act.

17. ***Under s.70 of the Comms Act merger control is mandatory. This means that the merger must be notified to URCA and approved by URCA before it is completed. If after reading this guidance note you are not sure whether you are required to notify URCA under s.70 of the Comms Act, please contact URCA for informal advice.***

18. ***Informal pre-notification discussions would be kept confidential by URCA. However the transaction will be made public following submission of a formal notification to URCA. This is necessary to ensure that URCA receives comments from affected third parties, including customers, competitors and suppliers.***

19. Parties that complete a merger without URCA’s prior approval may be ordered to de-merge and/or pay a fine. If ordered to de-merge, the acquirer would have to sell its stake in the licensee or reverse the agreement that gave rise to the change in control. Selling a business pursuant to an order of a regulator is likely to depress the value of the shares (or assets). If it is necessary to sign a sale agreement prior to obtaining URCA’s approval, the parties must include a condition precedent stating that completion of the sale is dependent on obtaining the necessary regulators’ approvals.¹

20. This guidance note provides clarity and transparency for licensees and prospective investors to ensure that they are in a position to comply with this mandatory regime. It explains URCA’s current thinking on how ss. 70 to 78 of the Comms Act are intended to operate. It does not substitute or replace any law and, accordingly, must be read in

¹ Note that approval of a change in control by URCA does not constitute an approval by any other authority. Parties would have to submit notifications to the Registrar of Companies and the Securities Commission (and/or any other organisation).

conjunction with the Comms Act. Stakeholders are advised to seek legal and professional advice where appropriate.

21. This guidance note does not legally bind URCA. Whilst it is anticipated that URCA will follow the principles and approach outlined in the guidance note, URCA reserves the right to consider other factors not listed in the guidance note when necessary. It is URCA's intention to review the guidance note from time to time in order to ensure it is in line with developments in legal interpretation and changing market circumstances.

2. Merger Control

22. Companies may expand organically, through gradually developing their business or by combining forces with other companies. The latter form of expansion (the combining of forces or "merger") can lead to benefits to consumers. The merged entity may be able to offer products and services more efficiently to consumers. The wider expertise of the new company may enable it to develop innovative services or offer existing services to consumers more cheaply.
23. Some mergers may, however, result in a lessening of competition. This could be, for example, through the creation or strengthening of a dominant position. The creation or strengthening of a dominant position is likely to harm consumers through the imposition of higher prices, reducing customer choice or reducing the incentive for operators to innovate.
24. If a merger involving a change in control of a licensee is likely to substantially lessen competition in a market, it will be prohibited by URCA under s.75(1)(b)(i) of the Comms Act unless there are substantiated efficiencies that would outweigh any consumer harm or appropriate conditions can be put in place to resolve URCA's concerns.
25. Similarly, mergers will be prohibited if there is a media public interest and the merger is likely to have an effect contrary to the public interest under s.72(b) of the Comms Act (unless that effect is outweighed by substantiated efficiencies or appropriate conditions can be put in place).
26. Guidance note ECS COMP. 2 provides further information on the substantive analysis of mergers and when it is likely that a merger would be denied due to a substantial lessening of competition or for being contrary to the public interest.
27. Merger control aims to prevent the accumulation and exercise of market power to the detriment of competitors and consumers. All proposed mergers involving a change in control of a licensee must therefore be notified to URCA and analysed to consider whether they would significantly impede effective competition in The Bahamas or have adverse public interest effects.

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28. URCA's adjudications on proposed mergers issued under s.75 of the Comms Act may be appealed to the Utilities Appeal Tribunal under section 111(1)(b) of the Comms Act.

PART 2: PROCEDURE

3. Notification of Relevant Mergers

29. Under s.70 of the Comms Act, no change in control of a licensee may be implemented without URCA's prior written approval.

What is a licensee?

The change in control of a licensee must be notified to URCA (s.70 CA 2009). The term "licensee" includes:

- *the holder of an individual or class (registrable or non-registrable) operating licence;*
- *the holder of an individual or class (registrable or non-registrable) spectrum licence;*
- *any company that is notified to URCA under s. 21 of the Comms Act as being a subsidiary undertaking of a licensee with an individual licence.*

It does not cover persons who operate under a Comms Act exemption.

30. The relevant licensee or acquirer must therefore notify URCA of any proposed change in control.
31. Although many jurisdictions require the acquiring party to prepare and submit the notification to the regulatory authority, s.70(3) of the Comms Act enables either the acquirer or the licensee to notify the merger to URCA. This ensures that the licensee is in control of its ability to comply with the legal requirement to notify URCA and is not dependent on the acquirer to follow the appropriate process. A corollary of this is that both the acquirer and the licensee are equally responsible for notification.
32. If the parties do not notify their merger but instead go ahead and merge without notification, URCA may order that the parties de-merge, and/or fine either or both parties.

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33. Figure 2 below provides an overview of when parties should notify a change in control to URCA. Figure 2 is then explained in section 4 below.

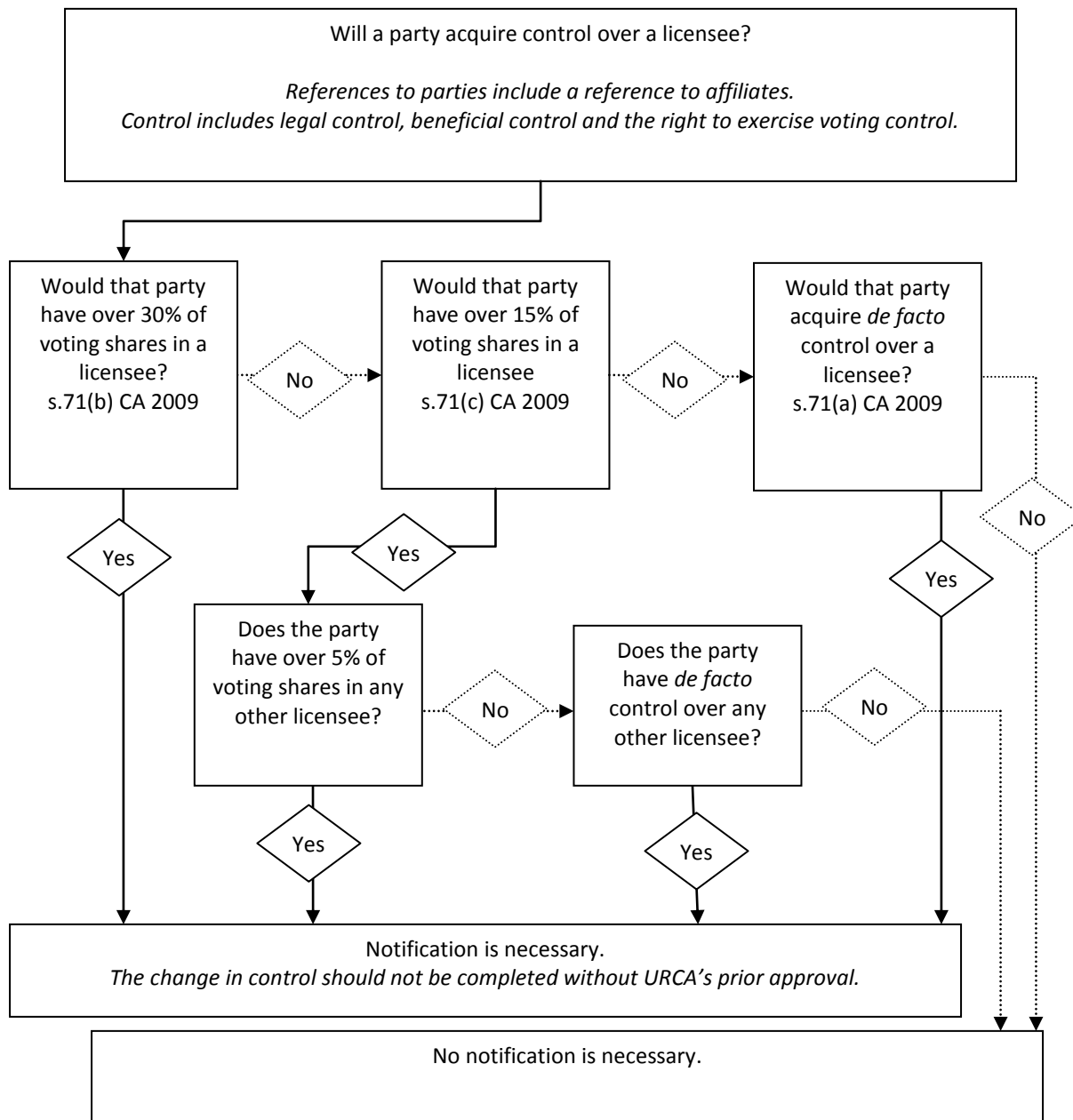


Figure 2: Notification of change of control

4. What constitutes a change in control?

34. Section 71 of the Comms Act sets out three situations which constitute a change in control. These occur when a party, either alone, or in conjunction with an affiliated company:
- (i) acquires a voting share in a licensee over 30% (or increases its voting share to above 30%) (s.71(b) CA 2009);
 - (ii) acquires a voting share in a licensee over 15% (or increases its voting share to above 15%) and either it has *de facto* control over another licensee or it has a voting share of over 5% in another licensee (s.71(c) CA 2009);
 - (iii) acquires control over a licensee, whether through the acquisition of voting rights or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with that party's wishes (referred to as *de facto* control) (s.71(a) CA 2009).
35. As shown in the list above and in Figure 2 in Section 3 above, URCA will apply the share threshold tests before applying the *de facto* test. The first two situations provide clear triggers of notification to URCA so that there can be no doubt that notification is required when voting control is transferred. The third situation is wider and therefore a more detailed analysis as to whether notification is required may be necessary. For the avoidance of doubt, the first two situations do not limit the application of s.71(a) of the Comms Act.
36. Typically, but not always, there will be documentary evidence of a change in control. This could be through a share transfer, through an agreement for the purchase of assets or through a shareholders' agreement, such as articles of association relating to a licensee, which would set out the voting procedures as between shareholders.
37. The nature of control and when there may be a change in control is discussed in further detail below. Licensees and other relevant parties are reminded that it is their obligation to notify URCA of a change in control where necessary. Therefore, relevant parties may wish to contact URCA for a preliminary, non-binding discussion on the facts specific to their case.

4.1 "Share threshold test": Transfer of voting rights

38. Sections 71(b) and 71(c) of the Comms Act deal exclusively with the transfer of voting rights, whether through the sale and purchase of shares or the exercise of voting rights arising through beneficial arrangements.²

² The share thresholds are set out in s. 71 of the Comms Act.

39. Under s. 71(b) of the Comms Act, any transfer of voting rights that would give the acquirer more than 30% of such rights will amount to a change in control.
40. Section 71(c) drops the threshold even further, to 15%. However, given the low percentage of this share threshold, certain other preconditions have to be met for notification of a change in control to be required. Specifically, the acquirer must either have *de facto* control over another licensee or have more than 5% of the voting shares in another licensee.

4.2 The concept of “de facto control”

41. It follows that, for example, an increase in voting control from 10% to 15% or more or from 25% to 30% or more would be considered under ss. 71(b) and 71(c) of the Comms Act (see section 4.1 above). These are voting control thresholds which lead to automatic merger control scrutiny. An increase in voting control which does not trigger these thresholds, for example from 20% to 25%, or from 35% to 40%, would not be considered under these sections but under s. 71(a) of the Comms Act.
42. Section 71(a) of the Comms Act contemplates a broad range of events that would amount to a change in control. Essentially, if a party acting by itself or with its affiliates is able to exercise decisive influence over the licensee’s strategic decisions, then it will have *de facto* control over that licensee. It would not be necessary for the acquiring party to actually exercise *de facto* control over the licensee; the merger control provisions would be triggered if the relevant party acquired the ability to exercise *de facto* control over the licensee.
43. At its simplest, an acquisition of *de facto* control is likely to occur where a party acquires more than 50% of the voting shares in a licensee, whether directly or through its affiliates, and as a result has the power to determine the strategic commercial decisions of the licensee.
44. However, an acquisition of *de facto* control can arise on the acquisition of a smaller proportion of shares. One such situation would occur when the acquirer will be the controller of the licensee, for example, because in practice it will have control over more than half of the votes actually cast at shareholder meetings. Another situation would be where the acquirer would have the right to veto strategic decisions. This latter situation is often referred to as “negative control”.

Generally, 30% is considered to be an appropriate threshold for notification under s. 71(b) of the Comms Act as shareholders often have the power to block important resolutions once they have this degree of voting control.

There can, however, be a change in control on the acquisition of a lower shareholding. In 2008 the UK authorities considered that BSkyB acquired control over ITV when it increased its shareholding to 17.9%.

Some jurisdictions mandate a basic notification if a company gains more than 5% of a licensee’s shares. This notification is typically for information purposes only.

45. It may be necessary for URCA to consider facts in greater detail where, for example, no shares are transferred but a licensee enters into an agreement with a third party which inhibits the autonomy of the third party. For example, an agreement with an infrastructure provider to roll out a new network is unlikely to constitute a change in control. However, an agreement between a licensee and an infrastructure provider which allows that provider to make strategic decisions regarding where to roll out a new network or technology may amount to a change in control of the licensee if this constitutes a significant proportion of the licensee's business.
46. Where there is a change in decision-making power other than through the transfer of voting shares, it is necessary for URCA to consider whether this change takes place on a lasting basis. If the transfer of power only relates to a specific decision then it is unlikely to constitute a change in control. Therefore, the outsourcing of a specific network construction project is unlikely to constitute a change in control, whereas the delegation of authority for all future network construction projects is likely to amount to a change in control.

4.3 Joint control

47. It is possible for more than one party to have, or to acquire, control of a licensee. For example, one party may acquire *de facto* control of a licensee under section 71(a) whilst another party acquires control of that licensee under section 71(b). Both acquisitions of control would need to be notified to URCA under s. 70 of the Comms Act.

4.4 Merger between previously independent undertakings

48. A change in control may also arise where, although there is no formalised merger, two previously independent undertakings combine their activities so that they in effect form a single economic unit. This may occur when companies have contractual arrangements together that establish a common economic management, such as in some joint venture arrangements. Other factors that may indicate a change in control are the internal profit and loss compensation between various undertakings within a group company, and their joint liability externally. It is important to note that the creation of a joint venture may also be considered as a change in control under section 73(2) of the Comms Act.

4.5 Passive changes of control

49. There may be a change in control even if it is not the declared intention of the parties or if the acquirer is only passive and the acquisition of control is triggered by the action of third parties. An example of this would be where the change in control results from the inheritance by a shareholder, or where the exit of a shareholder triggers a change in control.

50. For example, a situation might arise where a licensee has four shareholders with 50%, 20%, 20% and 10% of the voting rights in the licensee. If the largest shareholder sold its shares *pro rata* to the remaining three shareholders, the remaining shareholders would now have 40%, 40% and 20%. The two new largest shareholders would have increased their voting shares above 30% and so the licensee and relevant shareholders would have to notify these changes of control to URCA (under s.71(b) CA 2009). The 20% shareholder would have increased its voting share above 15% and so it would be necessary for URCA to assess whether that shareholder has *de facto* control of another licensee or more than 5% of the voting shares of another licensee. That change in control would also have to be notified to URCA, under s.71(c) of the Comms Act.

4.6 Beneficial interests and affiliates

51. Control is normally acquired by the persons or undertakings that are the holders of the rights or are entitled to the rights conferring control under the contract or transaction concerned. In situations where the formal holder of the controlling interest differs from the person or entity having the actual power to exercise the rights, control is acquired by the undertaking that has power over the licensee. The formal holder merely constitutes a vehicle for the rights. It is important, therefore, to note that the acquirer will be the person or company who exerts control over the licensee, notwithstanding any different legal owner (i.e. a beneficial owner).
52. A controlling shareholding which is held by different entities in a group (affiliated companies) will be attributed to the person exercising control over the different formal holders of the rights. Therefore, if a company, GroupCo, has three subsidiaries, which each acquire an 11% interest in a licensee, GroupCo will exercise control of 33% of the voting shares in the licensee and would be required to submit a notification of change of control to URCA under s.71(b) of the Comms Act.

5. When and how to notify

53. The acquirer or licensee (or both; URCA expects that the acquirer and the licensee will submit a joint notification) must notify URCA within seven calendar days of signing an agreement or announcing a public bid that would result in a change in control of a licensee (s.70(3) of the Comms Act).
54. URCA strongly advises the parties to a merger to contact URCA in advance of signing an agreement or announcing a public bid. This is particularly important where the parties are not certain whether there will be a change in control requiring notification. Additionally, early discussions of proposed mergers allow URCA and the parties to explore potential issues and to discuss the type of information that would likely be

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- required by URCA. URCA will publish a notice of the merger following submission of a formal notification form but all pre-notification meetings with URCA are confidential.
55. The applicant must complete and submit the Basic Notification Form, the Simplified Notification Form or the Full Notification Form, as required. The criteria for determining which is the relevant form are set out in paragraphs 56 to 58 below. The template forms are attached in the annexes to this guidance and can be downloaded from the URCA website. Applicants should provide as much information as possible and ensure the information is accurate, in order to avoid delays in the notification procedure and the imposition of fines by URCA.
 56. Parties should submit a *Basic Notification Form*, attached at **Annex A**, if the acquirer is not active in the electronic communications sector, whether inside or outside of The Bahamas. If the acquirer is active in the electronic communications sector, including the provision of services, operation or maintenance of a network or the manufacture of electronic communications equipment, then the parties should submit a Simplified Notification Form or Full Notification Form, as appropriate.
 57. When the parties are active in the electronic communications sector and the combined turnover in The Bahamas of all parties concerned in the transaction is less than five million dollars (B\$5,000,000), the parties should complete a *Simplified Notification Form*, attached at **Annex B**.
 58. URCA will require a *Full Notification Form*, attached at **Annex C**, in all other situations.
 59. URCA may, at any time, make a request for further information to either or all of the parties involved. When making such a request, URCA shall specify the legal basis and purpose of the request, specify what information is required and fix a time limit by which the further information must be supplied. If the parties do not comply with the specified deadline, or if misleading or inaccurate information is provided, URCA may impose a fine.

6. URCA's Analysis

60. On receiving a completed Notification Form, URCA will consider whether or not to approve the change in control, according to whether it:
 - (i) would have or be likely to have the effect of substantially lessening competition in an electronic communications market in The Bahamas; and
 - (ii) if the change in control involves 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.

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61. In accordance with s.66 of the Comms Act, URCA will follow international best practice when conducting its merger analysis. To assess whether or not the proposed merger would give rise to a substantial lessening of competition, URCA will define the relevant market and analyse the effect which the merger will have in that market. In media public interest cases, URCA will also consider whether the merger would be contrary to the public interest.
62. URCA is likely to refuse to approve mergers, or impose conditions on them, if the merging parties are significant and close competitors or if the merger would otherwise significantly weaken effective competition in the market, in particular by creating or strengthening a dominant player, or, in a media public interest case, if the merger is considered to be contrary to the public interest. Further details on how URCA intends to apply these two tests are set out in the **Merger Control - Substantive Guidance Note (ECS COMP. 2)**.

7. Timetable

63. URCA will promptly review a Notification Form within thirty (30) calendar days after URCA has received the completed Notification Form. URCA will do one of the following within this initial time period (“Phase 1” of the merger appraisal):
 - (i) issue an adjudication giving URCA’s consent to the merger if there are no competition or media public interest concerns (s.75(1)(a) CA 2009); or
 - (ii) issue an adjudication giving URCA’s consent to the merger if there are competition concerns but these are outweighed by substantiated efficiencies (s.75(1)(b)(iii) CA 2009); or
 - (iii) issue an adjudication giving URCA’s consent, subject to certain structural or behavioural changes or conditions on the merger to address competition or media public interest concerns (s.75(1)(b)(ii) CA 2009); or
 - (iv) open an in-depth investigation (s.78(2) CA 2009).
64. URCA will open an in-depth investigation (i.e. “Phase 2” investigation) where it considers that there is a significant prospect that the change in control is likely to have adverse effects which will substantially lessen competition in the market and (i) the parties have not suggested any proposals to eliminate URCA’s concerns and (ii) URCA is not satisfied at that stage that the competition concerns are outweighed by substantiated

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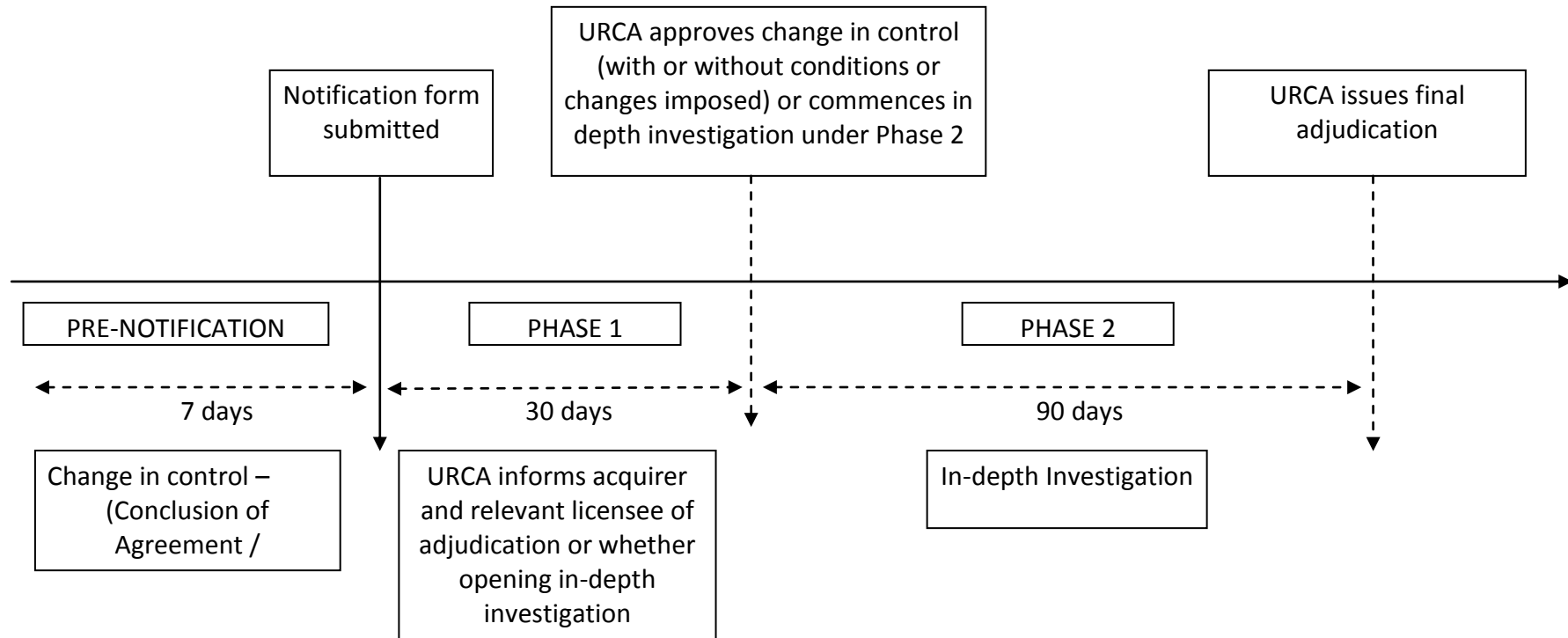
efficiencies. Within ninety (90) calendar days of opening the investigation, URCA will issue its final determination, approving or rejecting the merger, or approving it subject to structural or behavioural changes (subject to the timetable being paused in accordance with paragraph 66).

65. The parties may propose structural (e.g. offer to divest part of the acquired business) or behavioural (e.g. offer to abide by certain rules) “remedies” as a condition to obtain clearance. Remedies can be imposed at any time during the merger review process. However, the parties are advised to submit such proposed remedies with sufficient time before the statutory deadlines for URCA completing its Phase 1 appraisal and Phase 2 investigation to allow URCA to properly consider the proposed remedies. If URCA does not have sufficient time to consider the proposed remedies, it will not be able to accept them within the required time limit.
66. The above timetable may be paused by URCA under s.78(4) CA 2009 if either of the parties to the merger fail to provide information requested by URCA under s.77 of the Comms Act within the time specified. The timetable will be restarted when URCA is satisfied that the requested information has been provided in full. The timetable will restart (i.e., resume) from the point that it stopped (i.e. the timetable will not be reset to Day 1).
67. If there are any significant time limitations or considerations involved in the proposed transaction, these should be detailed by the notifying party in the Notification Form.
68. Figure 3 overleaf sets out the timetable visually.

8. Fees

69. The current fees is published in a regulation (ECS COMP 3), available at www.urbahamas.bs.

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“Days” refers to calendar days.

The timetable can be paused at any time if URCA requests further information from the acquirer or relevant licensee and a complete response is not provided to URCA within the time limit URCA specifies. From the date when URCA receives a complete response to its request, the timetable will re-start from the position it was paused.

Figure 3: Merger review timetable

ANNEX A: Basic Merger Notification Form

Basic Notification Form

This form should be used when the party subject to the change in control is the only party active in the electronic communications sector and the transaction is not part of a chain of transactions in the electronic communications sector. URCA may require a Simplified Notification Form or a Full Notification Form to be used where it appears that these conditions are not met, or, where they are met, URCA determines nonetheless that a Simplified Notification Form or a Full Notification Form is necessary for an adequate investigation of possible competition concerns.

Please provide the following information, using the paragraph numbers of this form, and supply a copy of all documents requested. Applicants are reminded that supplying misleading or inaccurate information may result in a fine being imposed by URCA.

A. Contact Information

- 1 State the name and contact address of each of the parties involved in the transaction.
- 2 Provide the following details of the person to whom URCA should send all correspondence relating to this application, stating their relationship to the parties (e.g. legal representative):
 - 2.1 Name;
 - 2.2 Address (street and mailing address);
 - 2.3 Telephone number;
 - 2.4 Fax number;
 - 2.5 Email address;

B. Information about the companies

- 3 Provide company information about each of the parties involved in the transaction, such as:

Basic Notification Form

- 3.1 Type of company;
- 3.2 Registered office address (if different to the business address listed at 1 above);
- 3.3 Group structure, including all parent companies and subsidiaries); and
- 3.4 List of shareholders.
- 4 List any beneficial owners or shareholders that hold more than 15% of the voting shares of any one or more of the parties.
- 5 List any other licensees in which the acquiring party(ies) and any of its affiliates cumulatively hold more than 5% of the voting shares, whether directly or indirectly.

C. Specifics of the transaction

- 6 Provide details of the transaction, such as:
 - 6.1 The type and purpose of the transaction;
 - 6.2 Status of transaction;
 - 6.3 How it is funded;
 - 6.4 The terms of the transaction;
 - 6.5 Details of the ownership and control of the acquiring company and the licensee before and after the proposed merger;
 - 6.6 Any potential advantages of the transaction to customers;
 - 6.7 Any potential advantages of the transaction to the electronic communications sector;
and
 - 6.8 Any other details or particular circumstances which you would like URCA to consider.

Basic Notification Form

D. Financial information

- 7 Provide details and supporting documentation of the turnover for each of the parties to the transaction.

E. Other

- 8 State the expected time scale for the transaction, including: (i) the exchange of contracts, (ii) completion of the merger and (iii) any other relevant deadlines or dates of which URCA should be aware.
- 9 If the applicant believes that the interests of any of the parties involved in the transaction would be harmed if any of the information URCA asks to be supplied is published or otherwise divulged to other parties, please submit this information separately with each page clearly marked "Confidential". Reasons should also be provided as to why this information should not be divulged or made public by URCA.

F. Declaration

The Notification Form must conclude with the following declaration which is to be signed by the Chief Executive Officer or other principal officer of the notifying party:

The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required to be submitted with this Form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.

ANNEX B: Simplified Merger Notification Form

Simplified Notification Form

This form should be used when at least two of the parties are active in the electronic communications sector and the turnover in The Bahamas of all parties involved in the transaction is **less than five million dollars**. URCA may require a Full Notification Form to be used where it appears that this condition is not met, or, where it is met, URCA determines nonetheless that a Full Notification Form is necessary for an adequate investigation of possible competition concerns.

Please provide the following information, using the paragraph numbers of this form, and supply a copy of all documents requested. Applicants are reminded that supplying misleading or inaccurate information may result in a fine imposed by URCA.

A. Contact Information

- 1 State the name and contact address of each of the parties involved in the transaction.
- 2 Provide the following details of the person to whom URCA should send all correspondence relating to this application, stating their relationship to the parties (e.g. legal representative):
 - 2.1 Name;
 - 2.2 Address (street and mailing address);
 - 2.3 Telephone number;
 - 2.4 Fax number; and
 - 2.5 Email address.

B. Information about the companies

- 3 Provide company information about each of the parties involved in the transaction, such as:
 - 3.1 Type of company;

Simplified Notification Form

- 3.2 Registered office address (if different to the business address listed at 1 above);
- 3.3 Group structure, including all parent companies and subsidiaries); and
- 3.4 List of shareholders.
- 4 List any beneficial owners or shareholders that hold more than 15% of the voting shares of any one or more of the parties.
- 5 List any other licensees in which the acquiring party(ies) and any of its affiliates cumulatively hold more than 5% of the voting shares, whether directly or indirectly.

C. Specifics of the transaction

- 6 Provide details of the transaction, such as:
 - 6.1 The type and purpose of the transaction;
 - 6.2 Status of transaction;
 - 6.3 How it is funded;
 - 6.4 The terms of the transaction;
 - 6.5 Details of the ownership and control of the acquiring company and the licensee before and after the proposed merger;
 - 6.6 Any potential advantages of the transaction to customers;
 - 6.7 Any potential advantages of the transaction to the electronic communications sector;
and
 - 6.8 Any other details or particular circumstances which you would like URCA to consider.

Simplified Notification Form

D. Financial information

- 7 Provide details and supporting documentation of the turnover for each of the parties to the transaction.
- 8 Provide details of the financial information of the parties involved in the transaction including:
 - 8.1 Annual revenues from the provision of networks/carriage services/content services, identified by specific product and geographic markets;
 - 8.2 Copies of the certified accounts of each of the parties for the previous two years **OR** copies of the annual and quarterly reports and financial statements for each of the parties for the previous two years.

E. Market information

- 9 Provide a summary of the relevant market(s) affected by the transaction. The summary should include a description of each product or service of the acquiring company and the licensee, identification of any areas of overlap or any product(s) or service(s) which might be considered close substitutes, and the market shares of all relevant parties to the transaction.

F. Other

- 10 State the expected time scale for the transaction, including: (i) the exchange of contracts, (ii) completion of the merger and (iii) any other relevant deadlines or dates of which URCA should be aware.
- 11 If the applicant believes that the interests of any of the parties involved in the transaction would be harmed if any of the information URCA asks to be supplied is published or otherwise divulged to other parties, please submit this information

Simplified Notification Form

separately with each page clearly marked "Confidential". Reasons should also be provided as to why this information should not be divulged or made public by URCA.

G. Declaration

The Notification Form must conclude with the following declaration which is to be signed by the Chief Executive Officer or other principal officer of the notifying party:

The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required to be submitted with this Form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.

ANNEX C: Full Merger Notification Form

Full Notification Form

Please provide the following information, using the paragraph numbers of this form, and supply a copy of all documents requested. Applicants are reminded that supplying misleading or inaccurate information may result in a fine being imposed by URCA.

A. Contact Information

- 1 State the name and contact address of each of the parties involved in the transaction.
- 2 Provide the following details of the person to whom URCA should send all correspondence relating to this application, stating their relationship to the parties (e.g. legal representative):
 - 2.1 Name;
 - 2.2 Address (street and mailing address);
 - 2.3 Telephone number;
 - 2.4 Fax number; and
 - 2.5 Email address.

B. Information about the companies

- 3 Provide company information about each of the parties involved in the transaction, such as:
 - 3.1 Type of company;
 - 3.2 Registered office address (if different to the business address listed at 1 above);
 - 3.3 Group structure, including all parent companies and subsidiaries); and
 - 3.4 List of shareholders.

Full Notification Form

- 4 List any beneficial owners or shareholders that hold more than 15% of the voting shares of any one or more of the parties.
- 5 List any other licensees in which the acquiring party (or parties) and any of its affiliates cumulatively hold more than 5% of the voting shares, whether directly or indirectly.

C. Specifics of the transaction

- 6 Provide details of the transaction, such as:
 - 6.1 The type and purpose of the transaction;
 - 6.2 Status of transaction;
 - 6.3 How it is funded;
 - 6.4 The terms of the transaction;
 - 6.5 Details of the ownership and control of the acquiring company and the licensee before and after the proposed merger;
 - 6.6 Any potential advantages of the transaction to customers;
 - 6.7 Any potential advantages of the transaction to the electronic communications sector;
and
 - 6.8 Any other details or particular circumstances which you would like URCA to consider.

D. Financial information

- 7 Provide details and supporting documentation of the turnover for each of the parties to the transaction.
- 8 Provide details of the financial information of the parties involved in the transaction including:

Full Notification Form

- 8.1 Annual revenues from the provision of networks/carriage services/content services, identified by specific product and geographic markets; and
- 8.2 Copies of the annual and quarterly reports and financial statements for each of the parties for the previous three (3) years.

E. Market information

- 9 Describe each product or service of the acquiring company(ies) and the licensee and identify any areas where the parties overlap or where they could potentially overlap. In particular, describe each of the communications markets in which each of the parties operate.
- 10 Describe, in terms of characteristics and price difference, any product(s) or service(s) that might be considered close substitutes, on the demand or supply side.
- 11 State the market share of the acquiring company, the licensee and all affiliated companies in the electronic communications sector.
- 12 State the names and market shares (if known) of the acquiring company's/companies' and licensee's top 5 competitors for each product or service.
- 13 State the names of the acquiring company's/companies' and licensee's top 5 customers for each product or service.

F. Other

- 14 State the expected time scale for the transaction, including; (i) the exchange of contracts, (ii) completion of the merger and (iii) any other relevant deadlines or dates of which URCA should be aware.
- 15 If the applicant believes that the interests of any of the parties involved in the transaction would be harmed if any of the information URCA asks to be supplied is published or otherwise divulged to other parties, please submit this information

Full Notification Form

separately with each page clearly marked "Confidential". Reasons should also be provided as to why this information should not be divulged or made public by URCA.

G. Declaration

The Notification Form must conclude with the following declaration which is to be signed by the Chief Executive Officer or other principal officer of the notifying party:

The notifying party or parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required to be submitted with this Form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all opinions expressed are sincere.