



## **NOTICE OF PROPOSED CHANGE IN CONTROL OF BTC**

**pursuant to SECTION 75(2)(a) of the COMMUNICATIONS ACT, 2009**

1. The Utilities Regulation and Competition Authority (URCA) hereby gives notice that on February 8, 2011, it received from Bahamas Telecommunications Company Limited (BTC) and Cable and Wireless Communications Plc. (CWC) jointly, a Full Notification of a transaction between CWC and the Government of The Bahamas (the "Government") which will result in the acquisition by CWC from the Government of a majority of the issued share capital of BTC (the "Transaction") for approval in accordance with section 70(3) of the Communications Act, 2009.

### **DETAILS OF THE TRANSACTION**

2. On February 8, 2011 the Government and CWC entered into a Share Purchase Agreement under which, CWC Bahamas Holdings Limited, a company incorporated in the Commonwealth of The Bahamas whose ultimate parent company is CWC, will acquire fifty-one per cent (51%) of the issued share capital of BTC from the Government, thereby becoming the voting controller of a majority of the shares of BTC. As voting control of BTC will be transferred to CWC, the Transaction will constitute a "*change in control*" of BTC within the meaning of section 71 of the Communications Act, 2009, and requires URCA's approval before it can be implemented.
3. BTC is currently 100% owned by the Government and operates networks and provides carriage services in the markets for fixed voice, fixed data, mobile voice and mobile data services in The Bahamas. BTC has been determined to have Significant Market Power in the markets for fixed voice, mobile voice and mobile data services.
4. CWC is a multinational provider of electronic communications services, headquartered in London, with presence in 38 countries worldwide. As of September 2009, CWC provided services to 1.8 million fixed, 8.3 million mobile and 600,000 broadband customers worldwide. CWC operates as "LIME" in the Caribbean, providing services to

1,279,000 mobile, 645,000 fixed and 204,000 broadband customers in 13 countries. During the year ended 31 March 2010, LIME produced revenues of US\$873 million, as against total CWC revenues of US\$2.346 billion. CWC currently has no operations in the electronic communications sector in The Bahamas

#### **ISSUES TO BE DETERMINED BY URCA**

5. The questions to be determined by URCA in relation to a change in control are set out in section 72 of the Communications Act, 2009. As neither of the parties to the Transaction nor BTC is involved in broadcasting or publishing newspapers, the question to be determined by URCA is whether the Transaction would have or is likely to have the effect of a substantial lessening of competition in a market in The Bahamas. For a further explanation of the approach to be used by URCA, respondents should be guided by URCA's *Competition Guidance: Merger Control – Substantive* (ECS COMP.2) which can be downloaded from its website ([www.urbahamas.bs](http://www.urbahamas.bs)).
6. In assessing the competition effects of the Transaction, URCA's assessment will include the review of issues such as the definition of the relevant market, what would happen in the absence of this transaction (known as the "counterfactual"), the potential efficiencies and consumer benefits. In that regard, URCA notes that the Government has publicly disclosed a number of considerations that assist with the analysis of consumer and economic benefits including price reductions, network investment, efficiencies improvements, new product offerings. The Transaction also includes an agreement by the Government to extend the period of BTC's cellular exclusivity period and amendments to the Communications Act, 2009 and the Electronic Communications Sector Policy to that effect have been tabled in the House of Representatives. Interested parties should take note of these factors in submitting responses to URCA.
7. Interested parties should note that URCA was not a party to the negotiations nor the transaction itself. Decisions made to extend the cellular exclusivity period are the responsibility of Government as policy maker for the sector and emanate from commercial negotiations between the Government and CWC. The processes for engagement between URCA and the Government on the Sector Policy, as envisaged under section 6 of the Communications Act 2009, are now addressed in the aforementioned amendments to the Sector Policy and legislation tabled.

## INVITATION FOR COMMENTS

8. Under section 75(2) of the Communications Act, 2009, before forming any opinion or issuing its adjudication on the proposed change in control, URCA is required to give any interested persons a reasonable opportunity to make representations, and shall consider any such representations made.
9. URCA notes that there has been considerable public interest in various matters relating to the proposed change of control of BTC, and in that regard considers it necessary to clearly define the scope of URCA's jurisdiction in relation to the Transaction. As stated above URCA's power to consider and approve a change in control of BTC relates **solely** to the question of whether or not the Transaction would or is likely to result in a substantial lessening of competition in a market within the electronic communications sector in The Bahamas. URCA therefore advises that in its review of the Transaction *URCA will only consider* representations which are relevant to this aspect of the Transaction.
10. Pursuant to section 78 of the Communications Act, 2009, URCA is required within thirty (30) calendar days of its receipt of the notification, to either issue its adjudication, or open an in-depth investigation of the change in control (in which case extended timeframes would apply to URCA's consideration of the Transaction). It is therefore necessary that representations from interested persons are received by URCA well within the thirty (30) day timeline in order to ensure that such representations can be considered, analysed and incorporated into URCA's deliberations. Therefore, **URCA will only consider representations on the proposed change in control which are received by 5:00pm on February 24, 2011** (i.e. midway through the thirty (30) day period).
11. URCA invites interested parties to submit written representations regarding the proposed change in control for consideration, to the Director of Policy and Regulation, either:
  - a. by hand, to the office of the Utilities Regulation and Competition Authority (URCA) situated at the UBS Annex Building, East Bay Street, Nassau, Bahamas; or
  - b. by mail, to URCA at P.O. Box N-4860 Nassau, Bahamas; or
  - c. by fax, to (242) 393-0153; or
  - d. by email, to [info@urcabahamas.bs](mailto:info@urcabahamas.bs).