



## **ADJUDICATION:**

**IN THE MATTER OF AN APPLICATION FOR APPROVAL  
OF CHANGE IN CONTROL OF SPEEDCAST CARIBBEAN  
LIMITED**

**ECS - COMP 01/2021**

**21 January 2021**

**This Adjudication is made pursuant to Section 75 of the Communications Act, 2009 (Comms Act) in the matter of a request for approval of a change in control of Speedcast Caribbean Limited.**

**WHEREAS** on 15 December 2020, the Utilities Regulation and Competition Authority ("URCA") having received from Speedcast Caribbean Limited (the "Licensee") a Basic Notification Form (the BNF), in which the Licensee requested URCA's consent to a transaction under which the Acquirer will purchase 100% equity of the Licensee (the "Transaction"), URCA having duly deliberated upon the information provided and matters set out in the BNF;

**AND WHEREAS** pursuant to section 103(6) of the Comms Act, URCA having given members of the public in The Bahamas reasonable notice and the opportunity to submit representations regarding the Transaction and has not received any such representations.

**NOW** pursuant to section 75(1)(a), URCA makes the following Adjudication:

Impact of the Transaction on Competition in the Relevant Markets –that the proposed change in control between the Licensee and Acquirer would not have, or likely to have the effect of substantially lessening competition in a market in The Bahamas and therefore would not have the adverse effects as set out in Section 72(a) of the Comms Act; and

Impact of the Transaction on Media Public Interest in The Bahamas – that the Licensee is not a media enterprise and the Transaction between the Parties does not involve a media public interest, therefore the issue whether the Change in Control would have an effect contrary to the public interest is not germane to the instant application, and Section 72(b) of the Comms Act does not apply to the Transaction.

## **1 Introduction**

- 1.1 The Utilities Regulation and Competition Authority (URCA) is an independent regulator established under the Utilities Regulation and Competition Authority Act, 2009 (the "URCA Act"). 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.
- 1.2 This Adjudication sets out URCA's analysis of the effect of the notified Transaction on competition in the relevant market in The Bahamas, pursuant to section 75(1)(a) and 75(1)(b) of the Comms Act, and in accordance with section 103 of the Comms Act. In accordance with section 66 of the Comms Act, URCA has undertaken its analysis in a manner that is consistent with international best practice.

## **2. The Parties**

### **The Licensee – Speedcast Caribbean Limited**

- 2.1 Speedcast Caribbean Limited (the "Licensee") is a privately owned limited liability company duly incorporated in The Bahamas. It is primarily active in remote communications and information technology service provider focused on delivering communication solutions through multi-access technology, multi-band and multi-orbit network.
- 2.2 On 16 May 2019, the Licensee was issued an Individual Spectrum Licence (ISL), Licence No. IS-19-0004, by URCA in accordance with the Communications Act, 2009 (Comms Act). The ISL granted the Licensee approval to use Assigned Radio Spectrum to establish a point-to-point microwave communication link between Coco Cay and Great Harbor Cay in the Berry Islands, The Bahamas.
- 2.3 The Licensee is wholly owned by Speedcast International Limited, which along with other subsidiaries form the Speedcast Group. The Speedcast Group provides managed information services with differentiated technology offerings including cybersecurity, crew welfare, content solutions data and voice applications, Internet of Things solutions and network systems integration services.
- 2.4 The Licensee does not hold an interest in any other Comms Act licensee.

### **The Acquirer – Centerbridge Partners, LP**

- 2.5 Centerbridge Partners, LP (the "Acquirer") is a private investment management firm registered in the United States as a limited partnership. It is primarily active in providing investment management services inclusive of private equity, credit and related strategies

and real estate. As of 31 December 2019, the Acquirer manages approximately [REDACTED] [REDACTED] in capital and has experience investing in telecommunications firms.

2.6 Centerbridge Partners, LP operates from offices in New York and London.

2.7 The Acquirer does not hold an interest in any Comms Act licensee.

### **3. Background**

3.1 On the 16 May 2019, the Licensee was issued an ISL under the Comms Act and is subject to the Change in Control provisions outlined in Part XI of the Comms Act.

3.2 On the 23 April 2020, the Licensee by virtue of the Speedcast Group filed voluntary internal restructuring under Chapter 11 of the United States Bankruptcy Code (the "Restructuring").

3.3 On the 12 August 2020, the Licensee and Acquirer entered into an Equity Commitment Agreement (the "Original Equity Commitment Agreement"). The Licensee and Acquirer on the 10 October 2020 entered into an Amended and Restated Equity Commitment Agreement, which effectively repealed and replaced the Original Equity Commitment Agreement.

3.4 On the 15 December 2020, the Licensee applied for a Change in Control pursuant to section 70(1) of the Comms Act by submitting a Basic Notification Form (with accompanying document which will be referred to where appropriate) to URCA.

3.5 Part XI of the Comms Act sets out the competition provisions applicable to the electronic communication sector. Pursuant to section 70 of the Comms Act, no Change in Control of a licence can be implemented without obtaining prior written approval from URCA.

3.6 On 21 December 2020, URCA published a Notice of its receipt of a Change in Control Notification on its website inviting representations from interested parties to the proposed Change in Control. URCA has received no comments or representations from interested parties or the public concerning the proposed Change in Control.

3.7 On 21 December 2020 URCA requested additional information pursuant to section 77(1) of the Comms Act, needed to assist URCA in deciding the specific issue of whether the proposed Change in Control will or is likely to have the impact of substantially lessening competition in the relevant market.

3.8 On 23 December 2020, the Licensee provided the additional information requested by URCA. The additional information submitted by the Licensee was duly considered by URCA.

#### **4. The Transaction**

- 4.1 In April 2002 Speedcast International Limited and its affiliates filed for bankruptcy pursuant to Chapter 11 of the US Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas. Speedcast filed a second amended plan of reorganisation for the Bankruptcy Court on the 25 November 2020 ("The Plan"). This Plan was supported by Speedcast Board of Directors, the Special Restructuring Committee of the Board of Directors, the Official Committee of Unsecured Creditors. A hearing to consider confirmation of the Plan was scheduled to begin 17 December 2020 before the Bankruptcy Court.
- 4.2 The Licensee and the Acquirer executed an Equity Commitment Agreement and an Amended and Restated Equity Commitment Agreement on the 12 August 2020 and 10 October 2020 respectively. The agreement is subject to obtaining the necessary regulatory approvals, including any required approvals from telecommunications regulatory authorities in jurisdictions in which the Licensee operates.
- 4.3 Under the Amended and Restated Equity Commitment Agreement, the Acquirer will acquire 100% equity of the Licensee. Consequential to the proposed Transaction an indirect change of control will occur pursuant to which, inter alia, the Acquirer and its affiliates make a new money equity investment for 100% of the equity interests in a newly formed parent entity of Speedcast International Limited and its debtor affiliates. The Acquirer will invest new equity interest for an aggregate purchase price of [REDACTED]
- 4.4 The Plan incorporates the Transaction contemplated by the Equity Commitment Agreement between the Licensee and Acquirer. At the time of closing the Acquirer will acquire New Speedcast Parent through its newly formed entity, CB Hermes Holdings LP ("CB Hermes"). Consummation of the Transaction is contingent on confirmation by the Bankruptcy Court and other customary conditions including the approval of the Bankruptcy Court.
- 4.5 CB Hermes is an entity that is affiliated with and ultimately managed by investment professional at the Acquirer. CB Hermes is wholly held directly by two of the Acquirer affiliated Delaware registered Limited Partnership namely Centerbridge Capital Partners III (now CCP IIIAIV V, LP, "CCP III") and Centerbridge Capital Partners SBS III LP ("CCP SBS III"). CPP III will hold 90% or greater interest in CB Hermes and CCP SBS III will hold 10% or less interest in CB Hermes. CCP III and CCP SBS III are owned directly and indirectly by various partners, none of which will have 10% or greater direct or indirect equity interest in CB Hermes or New Speedcast parent. CPP III and CCP SBS III are managed and controlled by investment professional of the Acquirer.
- 4.6 It is envisaged that post-transaction, the Licensee "*will be a wholly-owned subsidiary or a division of the Acquirer*". The Acquirer and its affiliates will finance the investment using

their own funds. The parties intend to close the Transaction as soon as all conditions are met, which is anticipated to be sometime in or about March 2021.

- 4.7 The Restructuring will allow the Licensee to remain a valuable competitor and provider of telecommunication services. Further to continue to provide the same leading products and services to customers who would experience no interruption or degradation of their services or any changes in the way they interact with the company. The Existing management of the Licensee will continue to operate the business as it always has with additional oversight and support from the Acquirer, which is an experienced investor in telecom assets.

## **5. Third-Party Representations**

- 5.1 On the 21 December 2020, URCA issued a Public Notice of Proposed Change in Control of the Licensee and sought comments and representations on the proposed Change in Control application from interested parties and the public, including competitors and customers of the Parties.
- 5.2 Consequential to the public notice, URCA has not received any comments and or representations (written or otherwise) on the proposed Change in Control from interested parties and the public, including competitors or customers of the Parties up to the close of submissions on 31 December 2020.

## **6. Change in Control**

- 6.1 Under Section 70 of the Comms Act, no Change in Control of a Licensee may be implemented without URCA's prior written approval.
- 6.2 Under Section 71 of the Comms Act, a "Change in Control" occurs when a person, either alone or with any affiliated company:
- 6.2.1 *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;*
  - 6.2.2 *becomes the beneficial owner or voting controller of more than thirty percent of the voting shares in the Licensee; or*
  - 6.2.3 *becomes the beneficial owner or voting controller of more than fifteen percent of the voting shares but not more than thirty percent of the voting shares in the Licensee concerned unless that person either alone or with any affiliated company-*

6.2.3.1 *is not, or does not concurrently become, the beneficial owner or voting controller of more than five percent of the voting shares in any other licensee; and*

6.2.3.2 *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."*

6.3 The BNF submitted to URCA provides at paragraph 6.1 that the proposed Transaction is an indirect Change in Control pursuant to which, amongst other things, the Acquirer and its affiliates make a new money investment for 100% of the equity interest in the newly formed parent entity of Speedcast International Limited.

6.4 Taking Clause 6.3 into consideration and the requirement of the "share threshold test" in section 71 (b) as cited above, URCA is satisfied in that the Acquirer will become the beneficial owner (and voting controller) of more than thirty percent of the voting shares in the Licence. Accordingly, Change in Control may not be implemented without URCA's written approval.

6.5 Section 75 of the Comms Act provides that URCA's decision with respect to a request for Change in Control of a licence is to be given by way of Adjudication.

## **7. Questions to be determined, the Review and URCA's Approach**

7.1 Under Section 72 of the Comms Act, on receiving a notification, URCA is required to 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."*

7.2 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.

- 7.3 URCA may open an in-depth investigation where it considers that there is a significant prospect that the Change in Control is likely to have one or both of the adverse effects set out in section 72 of the Comms Act, and the parties have not volunteered any proposals to address URCA's concerns. In the event that URCA opens an in-depth investigation, URCA must issue its Adjudication within ninety (90) days.
- 7.4 In the event that URCA determines that a Change in Control of a licensee would not have the adverse effects listed in sections 72(a) and 72(b) of the Comms Act, section 75(a) provides that URCA shall issue an adjudication giving consent to the Change in Control.
- 7.5 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(b) provides that URCA shall take one of the following actions –
- 7.5.1 Deny its consent to the Change in Control;
  - 7.5.2 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
  - 7.5.3 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.
- 7.6 Section 74 of the Comms Act provides that a Change in Control shall be deemed to involve a media public interest if at least one of the persons involved in the Transaction is an enterprise involving either or both of broadcasting and/or publishing newspapers. **Neither the Licensee nor the Acquirer are involved in broadcasting and or publishing newspapers in The Bahamas. Therefore, the provisions of Section 72(b) do not apply to the Transaction.**
- 7.7 Accordingly, the only question to be determined by URCA in relation to the BNF is whether the proposed Change in Control of the Licensee would have, or would be likely to have, the effect of substantially lessening competition in a market in The Bahamas. In order to satisfy the requirements of subsection 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.

## **8. Analysis of relevant factors for Change in Control application**

### **Substantial lessening of competition in a market in The Bahamas**



- 8.1 In determining whether the Change in Control would likely to have the effect of substantially lessening competition in the market in The Bahamas, URCA must first look at the relevant market. In looking at the relevant market, URCA will consider the market definition and the level of concentration in the market.
- 8.2 Markets can be defined by the relevant product and relevant geographic area. The Licensee provides a microwave link from its premises on Coco Cay to BTC internet connection on Grand Harbour Cay in order to provide high-speed internet to Royal Caribbean Cruise Lines in the Berry Islands. This microwave link service is its primary source of revenue generation. For the purpose of this Adjudication, the question as to whether the market can be segmented or whether they are same or different product market can be left open since the Transaction assessed under these alternatives would not be expected to lead to a substantial lessening of competition.
- 8.3 The scope of the relevant geographic market for the Licensee is determined by geographic restrictions on spectrum use under the Comms Act licence. Under the ISL granted to the Licensee by URCA, the Licensee may transmit and receive on radio frequencies 6460 MHz, 6800 MHz, 6490 MHz, and 6830 MHz in the Berry Islands, Bahamas. As URCA may place geographic limitations on spectrum use to operate in the Berry Islands, this is likely a separate geographic market. However, for the purpose of the present Adjudication, the question of whether the Berry Islands is in a separate geographic market can be left open since the Transaction assessed under these alternatives would not be expected to lead to a substantial lessening of competition.

#### Barriers to entry

- 8.4 To determine whether there is likely to be a substantial lessening of competition, URCA has also considered the extent to which there may be barriers to entry that adversely affect the likelihood, timeliness and sufficiency of other operators' ability to enter or expand in the relevant market. These barriers to entry may include but are not limited to: (i) legal barriers (such as the requirement for a licence); and (ii) technical barriers (such as the availability of spectrum).
- 8.5 The licensing regime under the Comms Act effectively removes any legal barriers to entry to the relevant market. The licensing regime, when taken as a whole, encourages, promotes and enforces sustainable competition in the electronic communications sector. Additionally, the promotion of investment and innovation in electronic communications networks and services is a core policy objective under the Comms Act. URCA has published its Licensing Guidelines<sup>1</sup> which, *inter alia*, describe the licensing framework and the criteria for obtaining a Comms Act licence. Of particular note, the Licensing Guidelines expressly

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<sup>1</sup> See URCA's published document Guidance On The Licensing Regime Under the Communications Act, 2009 - 2017 Revision ECS 19/2017.

provide that URCA may not limit the number of licences it issues save when resources such as spectrum are limited or scarce.

- 8.6 URCA notes the potential technical barriers to entry consequential to availability of spectrum are addressed by the exercise of URCA's powers under Part V of the Comms Act. URCA has a statutory duty to ensure that radio spectrum is managed and used in a manner that: "*is open, objective, transparent and non-discriminatory; is economically efficient and facilitates the evolution of new technologies and electronic communications services whilst taking into account in particular investment in existing equipment configured for specific radio spectrum and the cost of migration to other radio spectrum.*" However, the question of technical barriers to entry can be left open since the Transaction assessed under this issue would not be expected to lead to a substantial lessening of competition.

### Counterfactual

- 8.7 To determine whether there is likely to be a substantial lessening of competition, URCA has also considered what would happen if it does not approve the proposed Change in Control. This is known as the "counterfactual" or "failing firm" defence. URCA begins with the presumption that the counterfactual scenario is the *status quo*. In analysing the counterfactual, URCA considers whether the firm being acquired would exit the market in the near future were it not to effect a Change in Control; that the firm is unable to reorganise its operations and there is no alternative to the Change in Control.
- 8.8 In the instant application, URCA considers the counterfactual significant to a determination of the issue of whether the proposed change in control between the Licensee and Acquirer would have or is likely to have the effect of substantially lessening competition in a relevant market in The Bahamas. The Licensee has provided evidence that if the Transaction does not proceed, it would be detrimental to the company's ongoing financial viability and its ability to provide services to customers.
- 8.9 The Licensee has provided cogent evidence to rebut the counterfactual presumption and buttress that the Chapter 11 restructuring will provide for greater financial capacity to operate and allow for a successful emergence from bankruptcy.
- 8.10 Furthermore, the Licensee provides evidence that the Transaction would afford the customer continued uninterrupted service, promote job preservation and a financially more robust service provider and competitor.
- 8.11 In the absence of evidence to the contrary, URCA accepts this evidence by the Licensee. URCA considers that the cumulative effect of the foregoing is that the Licensee may have exited the market 'but for' the Transaction. URCA's conclusion is any such lessening of competition in the relevant market in The Bahamas should therefore be avoided.

## **9 URCA's decision**

9.1 Having provided the foregoing reasons and reasoning, URCA hereby issues its opinion and decision in accordance with Section 75(1)(a) of the Comms Act, that the proposed change in control between the Acquirer and the Licensee would not be likely to have the adverse effects as set out in Section 72 of the Comms Act. Therefore URCA approves the proposed Change in Control.