



Wave Bermuda Ltd. trading as Horizon Communications, Change of Control

Public Consultation

Consultation Document Matter:

20210205

Date: 05 February 2021 Responses

Due: 16 February 2021

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	CONSULTATION PROCEDURE	4
III.	LEGISLATIVE CONTEXT	7
IV.	DESCRIPTION OF PROPOSED TRANSACTION.....	8
V.	CONSULTATION QUESTIONS.....	9

I. INTRODUCTION

1. The purpose of this Public Consultation Document is for the Regulatory Authority of Bermuda (the “RA”) to seek public input regarding the Change of Control request (“the Proposed Transaction”) submitted by Wave Bermuda Ltd, trading as Horizon (“Horizon”).
2. Horizon is the holder of an Integrated Communications Operating Licence (“ICOL”), # ICOL202023Rev1-772, issued on 1 September 2020.
3. The RA has received a notification from Wave requesting its authorization of a change in control of Horizon to Fortress Bermuda H Investor LLC (“FBH”) through the subscription by FBH for newly issued shares such that FBH would obtain a controlling interest in Horizon. This is part of a financing arrangement whereby the proceeds of FBH’s investment would be utilized by Wave to fund the implementation of its business plan and budget.
4. At the conclusion of the consultation process, the RA will issue a Final Decision.

II. CONSULTATION PROCEDURE

5. This consultation is being undertaken in accordance with sections 49 and 87 of the Regulatory Authority Act 2011 (“RAA”) and section 18 of the Electronic Communications Act 2011 (the “ECA”). The procedure and accompanying timelines (as set out in section 70 of the RAA), under which this consultation is taking place has been set out below.
6. Written comments should be submitted before 11:59 PM (Bermuda time) on 16 February 2021.
7. The RA invites comments from members of the public, electronic communications sectoral participants and sectoral providers, and other interested parties. The RA requests that commenting parties, in their responses, reference the numbers of the relevant questions, as set forth in this Consultation Document, to which they are responding. A complete list of questions presented by this Consultation Document appears in Section V.
8. All submissions will require a ‘declaration of interest’. Any submission must include the name, address and occupation of the commenting party. It must be signed by the individual, in the case of a personal submission, or by an authorised representative of any business. Personal submissions must declare any relevant link to a licensed or government body, whether commercial or personal (i.e. family, etc). Where a business is not a licensed carrier, any business’s submission must declare commercial relationships to any licensed operator. Failure to declare an interest that is subsequently identified will lead to the rejection of the submission.
9. Responses to this Consultation should be filed electronically in MS Word or Adobe Acrobat format. Parties wishing to file comments should go to the RA’s website www.ra.bm and follow this link:

RA
REGULATORY AUTHORITY
OF BERMUDA

HOME ABOUT US CONSUMERS SECTORS CONTACT US

Submit a Response Form

HOME ► SUBMIT A RESPONSE FORM

Submit Your Response

We welcome your input on Consultations that are currently open for comment.

Name *

First Last

Email *

Company Name (if applicable)

Subscribe for Updates:

Receive email updates on RA News, Consumer Protection, Public Consultations and more!

[CLICK HERE TO SUBSCRIBE](#)

10. Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.
11. All comments should be clearly marked "Comments on Horizon Change of Control Public Consultation" and should otherwise comply with Rules 18 and 30 of the RA's Interim Administrative Rules.

12. The RA intends to make responses to this Consultation Document available on its website. If a commenting party's response contains any information that is confidential in nature, a clearly marked "Non-Confidential Version", redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version." Redactions should be strictly limited to "confidential information," meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA's Interim Administrative Rules.
13. Individuals making personal submissions may request that personally sensitive information (e.g. their name, address) is redacted from the publication of their statements. Any individual claiming that other information submitted is confidential must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA's Interim Administrative Rules.
14. In accordance with section 73 of the RAA, any interested person may make an ex parte communication during this consultation process, subject to the requirements set forth in this paragraph 13. An ex parte communication is defined as any communication to a Commissioner or member of staff of the RA regarding the matter being consulted on in this Consultation Document, other than a written submission made pursuant to this Section 2. Within two business days after making an ex parte communication, the person who made the ex parte communication shall submit the following to the RA:
- (i) a written description of the issues discussed, and positions espoused; and
 - (ii) a copy of any written materials provided.
15. The principal point of contact at the RA for interested persons for this Consultation Document is Richard Ambrosio, who may be contacted by email, referencing "Comments on Horizon Change of Control Public Consultation" at consultation@ra.bm or by mail at:
- Richard Ambrosio
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda
16. The RA is tentatively plans to issue a final order in this matter by early to mid-March 2021. This timeline will ultimately depend on a number of factors beyond the RA's control, such as the nature of any public comments submitted. However, reasonable efforts will be made to attempt to adhere to this.

17. In this Consultation Document, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the EA, the RAA and the Interpretation Act 1951.
18. This Consultation Document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The RA is not bound by this Consultation Document, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Consultation Document and the due exercise by the RA of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the RA.

III. LEGISLATIVE CONTEXT

19. Any sectoral participant who holds an Integrated Communications Operating Licence ("ICOL") is prohibited from completing any proposed change in control of the ICOL Holder without first obtaining the prior written authorization of the RA, acting with the written consent of the Minister, in accordance with sections 18(6) of the ECA and condition 20 of the relevant ICOL.
20. "Control" for the purposes of the Proposed Transaction, according to section 18(7) of the ECA—
 - (a) means the power, whether held directly or indirectly, to exercise decisive influence over an ICOL holder, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
 - (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stocks or other securities or voting rights, including through an agreement or arrangement of any type.
21. Section 49(2) of the RAA that where an application is filed in connection with, *inter alia*, the transfer of control of an ICOL, the RA must—
 - (a) conduct a public consultation;
 - (b) if requested by the applicant, conduct an investigative hearing; and
 - (c) issue a decision and order.
22. As Horizon is not a specified sectoral provider in accordance with section 87(2) of the RAA,¹ the RA is not required to consider whether the Proposed Transaction constitutes a concentration pursuant to that Act.

¹ See GN0838/2019, "Notification of Specified Sectoral Providers," <https://www.gov.bm/theofficialgazette/notices/gn08382019>

IV. DESCRIPTION OF PROPOSED TRANSACTION

23. Upon approval of the Proposed Transaction, FBH would obtain a controlling interest in Horizon. This is part of a financing arrangement whereby the proceeds of FBH's investment would be utilized by Wave to fund the implementation of its business plan and budget.
24. FBH is entirely owned by an investment funded by Fortress Investment Group, LLC, via Fortress Holding Bermuda Limited – a company licensed on 21 December 2016 to carry on business as a local company in Bermuda in accordance with section 114B of the Companies Act 1981.
25. Details of the Proposed Transaction were previously disclosed to the RA as part of the Consultation, "Grant of New Integrated Communications Operating Licences and Other Types of Communications Operating Licences".² A redacted copy of Horizon's Master Application Form for an ICOL can also be found online.³
26. In providing a summary description of its financial plan for the first three years, Horizon stated in its Master Application Form as follows:

"Horizon and the Bermuda Infrastructure Fund will act quickly upon receipt of the ICOL to deliver the plan outlined above.

This operational plan is supported by Fortress who have signed a term sheet with Horizon for up to [REDACTED] which underpins the financial plan summarized below. The funding required for this project is significant, it recognizes that fulfillment of the services of the ICOL will take time in addition to investment and Fortress is prepared to support that delivery over a five-year + timescale to ensure that Horizon provides a first-class service for the people of Bermuda." (Page 17)

27. A Redacted Organizational Chart and copy of the term sheet agreed between Horizon and Fortress Investment Group respectively at pages 39 and 40.
28. The RA has already conducted due diligence with respect to the Proposed Transaction insofar as it relates to whether Horizon meets the prescribed Basic Eligibility Requirements for the award of an ICOL and the requirements of the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination 2019 (BR 90/2019). Having determined that it did meet the Requirements, the RA issued an Order dated 21 August 2020 granting an ICOL to Horizon.

² Regulatory Authority. *Grant of New Integrated Communications Operating Licences and Other Types of Communications Operating Licences: Final Report & Final Decisions and Orders*. 21 August 2020, <https://www.ra.bm/documents/final-report-decision-and-order-grant-of-new-integrated-communications-operating-licences-and-other-types-of-communications-operating-licences/?wpdmdl=15139&refresh=6015974b667591612027723>.

³ *Communications Operating Licence: Master Application Form Wave Bermuda Ltd. trading as Horizon Communications*. 19 June 2020, <https://www.ra.bm/documents/non-confidential-icol-application-horizon/?wpdmdl=14803&refresh=6015974b6985b1612027723>.

V. CONSULTATION QUESTIONS

29. The RA invites interested third parties to submit their comments on the Proposed Transaction to the RA. The comments to be considered by the RA will be limited to whether the Proposed Transaction is likely to:
1. Have an effect(s) on the residents of Bermuda with particular interest in, but not limited to, the provision of electronic communication services in Bermuda?
 2. Have an effect on innovation within Bermuda's electronic communications sector?