



Decommissioning of Electronic Communications Price Comparison Website

Preliminary Report Preliminary Decision and Order

Matter: 20190329

Date: 30th April 2021

Responses Due: 14th May 2021

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I. INTRODUCTION

1. The purpose of this Preliminary Report, Preliminary Decision and Order (the “Preliminary Report”) is for the Regulatory Authority of Bermuda (the “RA”) to: (i) present the RA’s assessment of the responses to the Decommissioning of Electronic Communications Price Comparison Website (the “Consultation Document”) and to seek public comment on the Preliminary General Determination (“GD”) set forth at Appendix B.
2. This Preliminary Report is structured as follows:
 - a. section II outlines procedural history;
 - b. section III sets out the legislative context and framework;
 - c. section IV outlines the background;
 - d. section V summarises the response to the Consultation Department;
 - e. section VI provides the proposed decision;
 - a. Appendix A sets forth the Preliminary Order;
 - b. Appendix B sets forth the Preliminary GD.

II. CONSULTATION PROCEDURE

3. This RA initiated the consultation by publishing a Consultation Document on 29th March 2019 that invited responses from members of the public, including electronic communications sectoral participants and sectoral providers, as well as other interested parties.
4. The purpose of the RA's Consultation Document was to consult with the public on the Authority's proposed decision regarding the decommissioning of the electronic communication comparison website ("the Website") and to determine whether such a tool is necessary to promote transparency in the electronic communications sector.
5. The Consultation Document asked the following questions:
 - (i) Question 1: On a scale from 1 to 5 (1 being the lowest, 5 being the highest), how easily are you able to access information from sectoral providers regarding service tariff rates?
 - (ii) Question 2: What suggestions would you recommend are implemented to ensure that information regarding service tariffs is clearer and more easily accessible on sectoral provider websites?
 - (iii) Question 3: In addition to the type of service provided and the associated tariff rate, what other information would you like disclosed to aid in your decision-making process prior to purchasing electronic communications services (e.g. roaming charges, extra charges, etc.)?
 - (iv) Question 4: In your opinion, do you feel it is necessary that an independent price comparison tool is made available to aid in your decision-making process prior to acquiring an electronic communications service?
 - (v) Question 5: In the event that the existing price comparison website is decommissioned, what other methods or ideas would help consumers make better-informed decisions about the telecommunications services?
6. Responses to the Consultation Document were solicited from the public electronically through the RA's website at www.rab.bm.
7. The response period commenced on 29th March 2019 and concluded on 12th April 2019.
8. The RA received one written response to the Consultation Document from Telecommunications (Bermuda & West Indies) Limited, Bermuda Telephone Company Limited and Transact Limited (collectively, "Digicel").
9. This invitation to provide responses to the Preliminary Report is being undertaken in accordance with sections 69 to 73 of the Regulatory Authority Act 2011 ("RAA") and sections 9(2)(c)(ii) and 26 of the Electronic Communications Act 2011 ("ECA"). The procedure and accompanying timelines

(as set out in section 72 of the RAA), under which this consultation is taking place, are outlined in paragraphs 10-17 below.

10. Written responses should be submitted before 11:59 P.M. (AST) on 14th May 2021.
11. The RA invites comments from members of the public, electronic communications sectoral participants and sectoral providers, and other interested parties.
12. 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 licenced or government body, whether commercial or personal (i.e. family, etc). Where a business is not a licenced carrier, any business' submission must declare commercial relationships to any licenced operator. Failure to declare an interest that is subsequently identified will lead to the rejection of the submission.
13. Responses to this Preliminary Report should be filed electronically in MS Word or Adobe Acrobat format. Parties wishing to file comments should follow this link: <https://ra.bm/submit-a-response-form/>

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)

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14. All comments should be clearly marked "**Comments on Decommissioning of Electronic Communications Price Comparison Website Preliminary Report and Preliminary General Determination**" and should otherwise comply with Rules 18 and 30 of the RA's Interim Administrative Rules, which are posted on the RA's website.
15. The RA intends to make responses to this Preliminary Report 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.

16. 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.
17. 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 paragraph 13. An ex parte communication is defined as any communication to a Commissioner or member of staff of the Authority regarding the matter being consulted on in this Preliminary Report, other than a written submission made pursuant to section 73(2) of the RAA. Within two (2) 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.
18. The principal point of contact at the RA for interested persons for this Preliminary Report is Érika Thomas, who may be contacted by email, referencing **"Comments on Decommissioning of the Electronic Communications Price Comparison Website Preliminary Report and Preliminary General Determination"** at consultation@ra.bm or by mail at:

Érika Thomas
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda
19. In this Preliminary Report, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the ECA, the RAA and the Interpretation Act 1951.
20. This Preliminary Report is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The RA is not bound by this Preliminary Report, 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 Preliminary Report 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

21. The RAA established a cross-sectoral independent and accountable regulatory body “to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda’s position in the global market”.
22. The ECA is the applicable sectoral legislation governing the electronic communications sector and received royal assent on 18th December 2011 and commenced on 28th January 2013.
23. Section 9(2)(c)(ii) of the ECA states that:

(2) The functions of the Authority shall include –

(c) the making of administrative determinations to provide for the control and conduct of public electronic communications, including –

(ii) transparency measures and notice requirements relating to the rates, charges and other terms and conditions for the provision of public electronic communications services for the benefit of consumers.
24. To enable the Authority the ability to carry out its regulatory functions specified under section 9(2)(c)(ii) of the ECA, section 26 of the ECA authorizes the Authority to make general determinations:

(i) Governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the Authority to protect the rights of customers, subscribers, users and consumers, having due regard for the vulnerability of certain categories of consumers; and

(ii) Issuing or approving codes of practice relating to such practices.
25. In summary, section 9(2)(c)(ii) and section 26 of the ECA empower the Authority to make administrative determinations to impose statutory obligations on sectoral providers to provide consumers of electronic communications services with a degree of transparency regarding the rates, charges and other terms and conditions that are associated with any services made available by electronic communications services providers.
26. The Authority issued the Regulatory Authority (Electronic Communications Price Comparison Website) General Determination 2015 (the “Website General Determination”) on 18th February 2015.
27. Upon completing the Sectoral Review of the Electronic Communications Sector on 30th November 2018, the Authority identified that the Website General Determination may require further review or revocation due to sectoral developments that had occurred since 18th February 2015.
28. Section 62(2)(d) of the RAA states:

(2) Any general determination –

(d) may be revoked or modified by the Authority through the adoption of a subsequent general determination.

IV. BACKGROUND

29. The introduction of the Website was first discussed in the Authority's 2014-2015 Work Plan (the "Work Plan") in light of the electronic communications sector having ten (10) service providers offering different pricing plans at that time. In September 2014, the Authority issued an initial consultation document. The public comment period for the initial consultation document began 4th September 2014 and concluded 22nd September 2014.
30. After considering the public comments provided by sectoral providers and consumers during the consultation period, the Authority arrived at the decision that it would be in the public interest to establish and develop a price comparison website that would ensure consumers were afforded transparent information regarding the rates, charges and other conditions associated with the services provided by licensed sectoral providers.
31. However, market developments have resulted in a reduction in the number of sectoral providers currently offering electronic communications services. Since 2015, some sectoral providers have actively undertaken corporate restructuring activities. Subsequently, these mergers and acquisitions have led to the emergence of two large groups of companies:
 - i. BDB Ltd., Bermuda Digital Communications Ltd., Logic Communications Ltd. (formerly Bermuda Cablevision Limited), and Cable Co. Ltd are now operating under the brand name of One Communications Ltd.) (collectively "OneComm"); and
 - ii. Telecommunications (Bermuda & West Indies) Limited ("Digicel"), Transact Limited, and Bermuda Telephone Company Ltd) (collectively part of the "Digicel Group").
32. Given the market developments that have occurred since 2015, Consumers now have fewer options to choose from when canvassing the electronic communications sector for services. The mobile, television and broadband market share is now primarily serviced by two sectoral providers (OneComm and Digicel Group) who maintain comparable rates and plans. Subsequently, there has been a concentration of available service and tariff information as Consumers have fewer sectoral provider websites to visit when gathering service and tariff information, prior to purchasing electronic communications services. The services and tariff information are easily accessible on the service provider's website.
33. During the first year of launch, the Website experienced 256 visits from 31st March 2015 to 31st December 2015. The number of visits to the Website increased significantly in 2016, with 4,437 consumers visiting the Website between 1st January 2016 and 31st December 2016. Utilization of the Website peaked during the 2017 fiscal year, where it was observed that the Website experienced 5,014 visits between 1st January 2017 and 31st December 2017. However, Consumer utilization of the Website decreased significantly in 2018. The Website only had 2,018 views between 1st January 2018 to 31st December 2018, a decrease in utilization of approximately 50% when compared against the prior calendar year.
34. Based on the number of complaints received by Consumers between 2015 and 2018, and the limited number of complaints received regarding service and tariff information, it was observed that most complaints received were specifically related to lack of transparency and clarity

regarding the contractual terms and conditions associated with various electronic communications services, as opposed to lack of information on tariffs.

35. There are maintenance costs of approximately \$26,000.00 per annum to maintain a price comparison website and associated database.
36. Given the above, the Authority is of the view that with the available information on sectoral providers' websites, Consumers can access tariff information for various electronic communications services and that maintenance costs for the price comparison website are disproportionate to any "transparency" benefits that are achieved for Consumers.

V. SUMMARY AND DISCUSSION OF RESPONSE[S] TO THE INITIAL CONSULTATION DOCUMENT

37. The Consultation Document invited the public, sectoral participants and sectoral providers, as well as other interested parties to submit responses commenting on the Decommissioning of Electronic Communications Price Comparison Website (the “Consultation Document”) and to respond to the consultation questions. One written response to the Consultation Document was received from Digicel.

38. Digicel’s response has been carefully considered and is summarised below.

“We fully support the Authority’s proposal to decommission the Website, as underutilisation of the Website and easily available service and tariff information on sectoral providers websites....do not justify the annual maintenance costs (\$26,000.00 p.a.) of the Website”.

“Digicel have no comments in relation to questions 40 (i)-(iii)”.

“Questions (iv)-(v)

We do not believe another independent price comparison tool is necessary in Bermuda as customers can make an informed decision based on sectoral provider’s websites.”

RA’s Response

39. RA thanks Digicel for their response. The Authority agrees that the obligation to maintain the Website is not proportionate with respect to the minimal consumer utilisation historically observed and subsequent administrative costs incurred. The Authority also agrees that consumers can now easily obtain tariff information on sectoral providers websites.

VI. PROPOSED DECISION

40. The RA proposes to adopt the Preliminary Order set forth in Appendix A to this Preliminary Report and the Preliminary GD set forth in Appendix B.

APPENDIX A

PRELIMINARY ORDER

- I. The Regulatory Authority of Bermuda, pursuant to sections 12, 13, 62 and 69 to 73 of the Regulatory Authority Act 2011 and sections 9 (2) (ii) and 26 of the Electronic Communication Act 2011, hereby:
- (a) Adopts the General Determination attached hereto;
 - (b) Directs the Chief Executive of the RA to forward the General Determination to the Cabinet Secretary; and
 - (c) Authorises the General Determination to be effected on the date of its publication in the Official Gazette.
- II. So Ordered this 30th day of April, 2021.

APPENDIX B

PRELIMINARY GENERAL DETERMINATION

[DRAFT]

BERMUDA

**Regulatory Authority (Decommissioning of Electronic Communication Price Comparison Website)
General Determination 2021**

BR ____/2021

The Regulatory Authority, in the exercise of the power conferred by section 62 of the Regulatory Authority Act 2011 (the “RAA”), as read with sections 12 and 13 of that Act and sections 9(2)(c)(ii) and 26 of the Electronic Communications Act 2011 (“ECA”), makes the following General Determination (“GD”):

Citation

1 This GD may be cited as the Regulatory Authority (Decommissioning of Electronic Communication Price Comparison Website) General Determination 2021.

Determination

2 This GD is made pursuant to the Consultation Document entitled “Decommissioning of Electronic Communication Price Comparison Website”, which commenced on 29th March 2019 and the Regulatory Authority’s Decision on it.

Revoke 2015 General Determination

3 The Regulatory Authority (Electronic Communications Price Comparison Website) General Determination 2015 is revoked.

Effective Date of General Determination

4 This General Determination shall become effective on the day it is published in the Official Gazette.

Signed this __, __ 2021