



Globenet Bermuda Ltd. Change of Control

Public Consultation

Preliminary Report and Decision

Matter: 20211214

Date: 14 Dec 2021

Responses Due: 28 Dec 2021

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I. INTRODUCTION

1. The purpose of this Preliminary Report and Proposed Decision (“Preliminary Report”) is for the Regulatory Authority of Bermuda (the “RA”) to seek public input regarding the Change of Control request (“the Proposed Transaction”) submitted by Globenet Cabos Submarinos Bermuda Ltd. (“Globenet Bermuda” or the “Licensee”).
2. Globenet Bermuda is the holder of an Integrated Communications Operating Licence (“ICOL”) ICOL201306Rev1-755 issued on 04/29/2013.
3. The RA has received notification from Gobenet Bermuda requesting its authorization of a change of control of Globenet Bermuda through the proposed transaction which involves the acquisition by Globenet Cabos Submarinos S.A. (“Globenet Parent”), the parent of the Licensee, of shares representing 57.90% of the total and voting share capital of Brasil Telecom Comunicação Multimedia S.A. (“InfraCo”), which is owned by Oi S.A. – In Judicial Recovery (“Oi”) and Oi Móvel S.A. – In Judicial Recovery (“Oi Mobile” and, together with Oi, “Oi Group”) (collectively the “Proposed Transaction”).
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 28th December 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:

10. Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.
11. All comments should be clearly marked "Comments on Globenet Bermuda Ltd. 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

Submit Your Response

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First Last

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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 Tristy Smith who may be contacted by email, referencing “Comments on Globenet Bermuda Ltd. Change of Control Public Consultation” at “tsmith@ra.bm” or by mail at:

Tristy Smith
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda

16. The RA tentatively plans to issue a final order in this matter by 30th December 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 Globenet Bermuda 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.

IV. DESCRIPTION OF PROPOSED TRANSACTION

23. The Proposed Transaction involves the acquisition by Globenet Parent, the parent of the Licensee, of shares representing 57.90% of the total and voting share capital of InfraCo, which is owned by Oi S.A. – In Judicial Recovery ("Oi") and Oi Móvel S.A. – In Judicial Recovery ("Oi Mobile" and, together with Oi, "Oi Group").
24. As a step prior to the implementation of the Proposed Transaction, a change will be made to the investment fund, BTG Pactual Infraestrutura II Fundo De Investimento Em Participações Multiestratégia, that currently owns Globenet Parent ("BTG Pactual Group"), whereby Globenet Parent will be transferred from one fund managed by the BTG Pactual Group to another fund managed by the BTG Pactual Group ("New BTG Fund").

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

25. Once the Proposed Transaction is complete, Globenet Parent will be reverse-merged into InfraCo. It is important to note that this will have no material effect on the operations of the Licensee. This new merged company will have the same majority ownership, but the Oi Group will have a new minority ownership of 42.1%.
26. The Licensee has been operating telecommunications services in Bermuda for over twenty years and will continue to provide such services upon completion of the Proposed Transaction.
27. The Licensee will ultimately continue to have the same majority owned parent company structure. However, as a result of the proposed transaction, the Oi Group will indirectly hold 42.1% ownership interest in the Licensee.
28. An Organizational Chart representing the organizational structure before and after the Proposed Transaction are attached at Annex A and B respectively below.

V. SUMMARY AND DISCUSSION OF RESPONSES TO INITIAL CONSULTATION DOCUMENT

29. No comments were received on the Globenet Bermuda Ltd. Consultation Document.

VI. FINAL DECISION

30. The RA proposes to approve the Proposed Transaction, subject to receipt of the Minister's written consent in accordance with sections 18(6) of the ECA and condition 20 of the ICOL.