



World on Wireless Limited Change in Control

Public Consultation

Consultation Document

Matter: 20220304

Date: 4 March 2022

Responses Due: 11 March 2022

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	CONSULTATION PROCEDURE	4
III.	LEGAL CONTEXT	7
IV.	PRELIMINARY ASSESSMENT OF PROPOSED TRANSACTION.....	8
V.	PRELIMINARY ASSESSMENT OF TBI.....	10
VI.	URGENCY OF MATTER	11
VII.	CONSULTATION QUESTIONS.....	12

I. INTRODUCTION

1. The purpose of this Public Consultation Document is for the Regulatory Authority of Bermuda (**RA**) to seek public input regarding the Change of Control request (**Proposed Transaction**) submitted with respect to World on Wireless Limited (**WOW**) which is currently in provisional liquidation.
2. WOW is the holder of an Integrated Communications Operating Licence (**ICOL**), # ICOL201321Rev1-770, issued on 29 April 2013.
3. The RA has received an application on behalf of TeleBermuda International Limited (**TBI**) who seeks to obtain control of WOW through the purchase of the wireless subscription-based television business of WOW and related assets (**Business**)
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 (**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 11 March 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 (ie, 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

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10. Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.
11. All comments should be clearly marked "Comments on WOW 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 (eg, 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 WOW 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 the end of March or beginning of April 2022. 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. LEGAL CONTEXT

19. Any sectoral participant who holds an 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 WOW 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. PRELIMINARY ASSESSMENT OF PROPOSED TRANSACTION

23. WOW operates a wireless subscription-based television service. It holds an ICOL, number ICOL201321Rev1-700, and a Spectrum Licence Wireless Cable Service (500 & 600 MHz Band), number 021-WCS-06.
24. TBI provides long-distance voice, data, internet, television, and co-location hosting services. It holds an ICOL, number ICOL201317Rev1-766.
25. Following the presentation of a winding up petition on 10 December 2021, Michael Morrison and Charles Thresh, both of KPMG Advisory Limited in Bermuda, were appointed as Joint Provisional Liquidators (**JPLs**) of WOW by Order of the Supreme Court of Bermuda. WOW is insolvent because of accumulated trading losses and accrued liabilities.
26. Since then, WOW has remained open for trading while the JPLs explored whether a sale of all or part of the business as a going concern would be possible.
27. The JPLs subsequently conducted an accelerated marketing campaign and identified TBI as a preferred bidder for WOW's business and assets. Based on representations made to the RA, TBI's bid was assessed and evaluated as the offer best aimed at allowing WOW's business to continue and facilitating continuity of services to its customers.
28. The Proposed Transaction would see TBI acquire the Business and certain assets of WOW (including WOW's ICOL and associated spectrum licence). Completion of TBI's purchase of the Business is conditional on the RA granting its consent to the Change in Control.
29. TBI's acquisition of the Business will provide it with access to WOW's subscriber base which will provide what it regards as critical mass to TBI's subscription television services business and allow it to invest in this line of business. Furthermore, TBI intends to market its internet services to WOW's customers and to promote WOW's subscription television offering to its existing telephone and internet customers.
30. TBI will gain access to WOW's content providers, thereby preserving the breadth of the latter's television offering and complementing the limited size of TBI's own subscription television offering. This would in turn allow TBI in its estimation to compete more effectively with Digicel and One Communication. Those companies are currently deemed to hold significant market power and are estimated to account for at least 95% of the internet, telephone and television services markets in Bermuda.²
31. TBI states that it will endeavour to preserve and increase the customer base it will acquire from WOW. Right now, WOW has a customer base of approximately 1,200 subscribers. Should the Proposed Transaction be approved, this would prevent interruption to such services.

² See, for example, the RA's assessment at paragraphs 4 to 7 of "Market Review of the Electronic Communications Sector: Final Report, Decision & Order", 1 September 2020. < https://www.ra.bm/documents/2020-09-01_market-review-of-the-electronic-communications-sector-final-report-decision-and-order/?wpdmdl=15146&refresh=6218d03b8684e1645793339 >

32. It will further offer employment to certain of WOW's employees thereby limiting redundancies which may otherwise occur if WOW were to cease trading. Completion of the transaction will result in an increase in the number of TBI's employees and no redundancies are expected by the buyer.
33. Certain benefits would result to consumers should the RA authorize the Proposed Transactions. There appears to be little overlap between services offered by WOW and TBI, suggesting synergies and the possibility for economies of scale. In addition to avoiding any customer disruptions, it is envisaged that TBI would have the opportunity to cross sell its electronic communications services to WOW's customers while also increasing the quality of TBI's existing television offering to its currently limited number of television customers. TBI expects to be able to provide more "bundled" TV, internet, and telephone services. Until now, neither TBI nor WOW has been able to take advantage of such bundling. Furthermore, TBI expects to acquire critical mass sufficient to engage with content providers in expanding its offering of television services.
34. Completing the Proposed Transaction is said to provide the opportunity for further investment in TBI's services, allowing it to increase its profile and television offering. The expectation is that this would provide further competition against the more established sectoral providers, Digicel and One Communications. Accordingly, it is envisaged to promote sustainable competition in the Bermuda television subscription market and, indirectly, the internet services marketplace.
35. Finally, it should be noted that TBI is 100% owned by Bermudians as its ultimate beneficial owners are all Bermudians. In addition to expected preservation of some (though admittedly not all) jobs at WOW, the Proposed Transaction is expected to promote Bermudian ownership in the electronic communications market and preserve employment in Bermuda.

V. PRELIMINARY ASSESSMENT OF TBI

36. As part of the notification of a change of control process, both WOW and TBI submitted information to the RA regarding their financial positions.
37. TBI was purchased in 2017 by Bermudian companies the East End Group (**EEG**) and Celeritas Limited (**Celeritas**). Based on review of the organizational structure information provided, TBI is 75% owned by Celeritas and 25% owned by EEG. EEG is a diversified holding company with business interest spread among different lines of business, including IT solutions and public safety communication. Celeritas is a local telecommunication investment firm and a subsidiary of the Mayfair Group (**Mayfair**).
38. As part of the notification of a change of control process, both WOW and TBI submitted information to the RA regarding their financial positions. As a focus in this review, the RA is investigating whether TBI has the financial capacity in place to (1) acquire the business and assets of WOW, and (2) make the investments in TBI's services, allowing it to increase its profile and television offering.
39. Celeritas have provide commitments of funding to TBI to assist and enable the company to secure, safeguard and grow the business of WOW. Celeritas is a wholly owned subsidiary of Mayfair. Upon reviewing further material supplied by TBI, the financial position of Mayfair does provide some assurance over the funding of the purchase of WOW and the potential for support in terms of future capital investment.

VI. URGENCY OF MATTER

40. Representations were made to the RA as to the urgency of the matter. This section is based primarily on representations made as part of the Application for a Change in Control submitted to the RA.
41. Based on the financial records provided to the RA, the Business has not made any profit for some time and is generally considered to be unsustainable in its current form. This was confirmed by the Business entering provisional liquidation. If no purchaser is found or no transaction is approved, the Business will cease. Since December 2021, TBI has provided significant funding to WOW to maintain the Business as a going concern. Under the APA, TBI has the option (but may not be obliged) to extend the closing date for sale from 1 March 2022 to 8 April 2022 on the condition that it provides significant additional funding to support the Business. Without TBI's funding, the Business would cease. This would harm the customers of the Business, result in WoW's employees being made redundant, and severely impact any recovery by WOW's creditors.
42. TBI notes that it cannot be expected to finance the Business for a significant further period without any degree of certainty that it will acquire the Business.
43. As the Business is known to be in provisional liquidation, any delay increases the risk of customers terminating their subscriptions and content providers withdrawing their television content.
44. The failure of the Business would significantly damage consumers by diminishing the competitive nature of the electronic communications sector by increasing the share held by those holding significant market power relative to other sectoral providers.
45. A number of jobs would be lost if TBI's purchase of the Business does not proceed, and no other option is found to continue the Business.
46. In accordance with these representations, the RA will proceed with all due diligence in advancing the matter through the required public consultation. We regard the one-week period within which comments should be submitted on this Consultation Document as reasonable. Should the volume of comments and/or the complexity of the issues raised warrant it, the RA reserves the right to set an appropriately longer response period for any resulting Preliminary Report, Decision and Order that might follow this Consultation Document.

VII. CONSULTATION QUESTIONS

47. 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 focus on 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?