



Bermuda Telephone Co. Limited
ICOL201305Rev1-754 and
Telecommunications (Bermuda
& West Indies) Limited
ICOL201318Rev1-767

Change of Control

Public Consultation

Consultation Document

Matter: 20231218

Date: 18 December 2023

Responses Due: 2 January 2024

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I. INTRODUCTION

1. The purpose of this Bermuda Telephone Co. Limited ICOL201305Rev1-754 and Telecommunications (Bermuda & West Indies) Limited ICOL201318Rev1-767 (together **Digicel Bermuda**) Change of Control Public Consultation Document is for the Regulatory Authority of Bermuda (**RA**) to seek public input regarding Digicel Bermuda's Change of Control notification request. Both entities are 100% subsidiaries of Wireless Holdings (Bermuda) Limited.
2. At the conclusion of the consultation process, the RA will issue a Final Decision.
3. Presently, Digicel Bermuda is classified as a specified sectoral provider under section 87 of the Regulatory Authority Act 2011 (**RAA**). Additionally, Digicel Bermuda occupies a significant position in the Electronic Communications sector (**EC sector**) in Bermuda with approximately 39 per cent of the market and possesses significant market power in the following relevant markets:
 - (a) Retail broadband;
 - (b) Wholesale broadband;
 - (c) Retail mobile;
 - (d) Wholesale mobile;
 - (e) Fixed voice; and
 - (f) Business connectivity.
4. The RA has received a notification pursuant to section 87 of the RAA of a proposed transaction (**Proposed Transaction**), within the meaning of section 87(4)(a)(ii) of the RAA, which will result in the new investor/debt holders having indirect control of Digicel Bermuda at the very least.
5. The Proposed Transaction does not involve the sale of any assets. However, as detailed below, there will be a change in beneficial ownership of Digicel Bermuda.

II. CONSULTATION PROCEDURE

6. This consultation is being undertaken in accordance with sections 49 and 87 of the 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 in paragraphs 7-18 below.
7. Written comments should be submitted before 11:59 PM (Bermuda time) on 2 January 2024.
8. 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.
9. 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.
10. Responses to this Consultation Document should be filed electronically in PDF format. Parties wishing to file comments should follow this link: <https://www.ra.bm/consultations/consultations-directory> and click on the relevant consultation title.
11. All comments should be clearly marked "Comments on Digicel Bermuda Change of Control Public Consultation". Comments should comply with Rules 18 and 30 of the RA's Interim Administrative Rules.¹
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

¹ <https://www.ra.bm/legal-documents/interim-administrative-rules-2013>

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:

- (a) a written description of the issues discussed, and positions espoused; and
- (b) a copy of any written materials provided.

15. The principal point of contact at the RA for interested persons for this Consultation Document is Érika Thomas, who may be contacted by email, referencing "Comments on Digicel Bermuda Change of Control Public Consultation" at consultation@ra.bm or by mail at:

Érika Thomas
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda

16. The RA tentatively plans to issue a Final Report, Decision and Order and General Determination (**Final Report**) on this matter by the end of January 2024.

17. In this Consultation Document, 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.

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 it, nor does it necessarily set out the RA's final or definitive position on matters. If there is any inconsistency between the contents of this Consultation Document and the RA's due exercise of its statutory duties and powers, such contents are without prejudice to the legal position of the RA.

III. LEGISLATIVE CONTEXT

19. 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.
20. Section 87(3) of the RAA states that "[N]o specified sectoral provider, and no person seeking to enter into a concentration that would provide it with control of a specified sectoral provider, shall close any transaction that would constitute a concentration without notifying the Authority and obtaining the Authority's prior written approval."
21. Section 87(4) of the RAA states a transaction is deemed to constitute a concentration if it results in—
 - (a) a lasting change in control of a sectoral provider as a result of—
 - (i) a merger involving one or more previously independent sectoral providers; or
 - (ii) the acquisition of direct or indirect control of one or more sectoral providers;or
 - (b) the creation of a joint venture involving one or more sectoral providers performing on a lasting basis all of the functions of an autonomous economic entity.
22. Upon examination of the proposed Change of Control, the RA finds that the Proposed Transaction falls within the meaning of a concentration as set out at section 87(4) of the RAA.
23. Under section 87(6) of the RAA, the RA must issue a standard form to be completed by any specified sectoral provider and any person specified in subsection 87(3) to complete the notification process.
24. The RA has received the completed notification form from Digicel Bermuda and conducted the necessary assessments.
25. Under section 87(10) of the RAA, the RA must not approve a concentration if the RA determines that the proposed concentration is likely to have one or more of the following effects:
 - (a) create an entity with a dominant position or enhance an existing dominant position in any relevant market;
 - (b) substantially lessen competition in any relevant market; or
 - (c) harm the public interest.
26. The criteria set out in section 87(10) of the RAA sets the basis for the assessment of the Digicel Bermuda Change of Control notification.
27. According to section 87(11) of the RAA, if necessary to prevent a concentration from having the any of the effects specified in section 87(10) the RA may approve the concentration subject to one or more of the following conditions:
 - (a) compliance with any of the ex ante remedies specified in sectoral legislation;
 - (b) partial divestiture to a purchaser approved by the Authority; or
 - (c) any other condition that the RA, with the approval of the Minister, may adopt.

28. The RA is conducting this Digicel Bermuda Change of Control Public Consultation in fulfillment of section 49(2) of the RAA, which requires that when an application is filed in connection with an individual licence or permit, 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.*

29. Under section 50(1) of the RAA, the RA may include, as a condition of a licence that the authorization holder:

- (a) pay any fees or penalties that may be imposed by the RA;*
- (b) comply with all duties specified in Part 7;*
- (c) comply with applicable sectoral legislation;*
- (d) comply with any regulations made by a Minister;*
- (e) comply with any administrative determinations made by the RA;*
- (f) meet any consumer protection requirement specified by the RA;*
- (g) if found to have significant market power in any relevant market, comply with any remedy imposed by the RA;*
- (h) comply with any information request issued by the RA; and*
- (i) participate in industry self-regulatory or co-regulatory bodies, when directed to do so by the RA.*

IV. DESCRIPTION OF PROPOSED TRANSACTION

30. Digicel Bermuda has stated in their Change of Control Notification that the Proposed Transaction results from the restructuring agreement of the Digicel Limited, Digicel Intermediate Holdings Limited, and Digicel International Finance Limited (together with their subsidiaries, the **Digicel Group**) which was announced on 27 June 2023.
31. The Digicel Group, which operates in the Caribbean and Central America,² entered into a restructuring agreement where certain existing debt holders will convert some of the Digicel Group's existing Debt into equity. Certain of the Digicel Group's existing credit arrangements will be amended and replaced with a restructured set of debt facilities. The following debt holders, among others, are joining Mr Denis O'Brien, Digicel Group's previous majority owner, as the equity holders in the Digicel Group:
- (a) PGIM, formerly Prudential Investment Management
 - (b) Contrarian Capital Management L.L.C.
 - (c) GoldenTree Asset Management
32. PGIM is the investment management business of Prudential Financial, Inc. (**PFI**). PFI is the 11th largest investment manager (out of 434 firms surveyed) in terms of worldwide institutional assets under management based on Pensions & Investments' Top Money Managers list published in June 2023.³ PGIM is the asset management business of PFI. PFI has a history that dates back over 145 years and through more than 30 market cycles. With 46 offices in 18 different countries and jurisdictions, their more than 1,400+ investment professionals are in key financial centres around the world.
33. PGIM is considered as a leading global asset manager. Having \$1.27 trillion in assets under management, it is said that PGIM is built on a foundation of strength, stability and disciplined risk management. It is also said that the PGIM strives to deliver industry-leading strategies and solutions to clients. The firm is comprised of autonomous asset management businesses, each specializing in a particular asset class with a focused investment approach.
34. Contrarian Capital Management, L.L.C. (**Contrarian**) operates as an investment management company. Contrarian offers portfolio management, financial planning, and investment advisory services assisting customers worldwide.⁴
35. GoldenTree Asset Management (**GoldenTree**) is an employee-owned, global asset management firm. GoldenTree specializes in opportunities across the credit universe in sectors such as high yield bonds, leveraged loans, private credit, distressed debt, structured products, emerging markets, private equity and credit-themed equities.⁵ Founded in 2000, it is one of the largest independent asset managers with a focus on credit. GoldenTree manages over \$51 billion for institutional investors including leading public and corporate pensions, endowments,

² Anguilla, Antigua & Barbuda, Aruba, Barbados, Bermuda, Bonaire, British Virgin Islands, Cayman, Curacao, Dominica, El Salvador, French Guiana, Grenada, Guadeloupe, Guyana, Haiti, Jamaica, Martinique, Montserrat, St. Kitts & Nevis, St. Martin & St. Barth, St. Lucia, St. Vincent & the Grenadines, Suriname, Trinidad & Tobago, Turks & Caicos

³ <https://www.pgim.com/overview>

⁴ <https://www.contrariancapital.com>

⁵ <https://www.goldentree.com/>

foundations, insurance companies and sovereign wealth funds.

36. All three new equity holders stated that they do not hold or control any entity that possesses any telecommunications licence in Bermuda's EC sector.
37. The Digicel Group advised the RA that the Proposed Transaction will improve Digicel's financial stability allowing investment in network, infrastructure, technology upgrades, and expansion of services.
38. The Digicel Group also advised the RA that with the restructuring transaction Digicel Bermuda will be in a better position to compete, innovate, and offer more competitive pricing and services.
39. The Digicel Group stated that Digicel Bermuda will continue to operate according to its licence obligations placed on it by its current Integrated Communications Operating Licence.
40. The Digicel Group stated that the restructuring transaction will underpin their viability in the Bermuda sector. They further stated that the transaction will assist Digicel Bermuda in retaining and growing as a critical competitor in the market.
41. The Digicel Group also stated that there is no planned reduction of staff due to the restructuring transaction. They further stated that management will retain control of decisions related to employees. Moreover, they stated that they are committed to the retention of critical staff by means of appropriate incentives.
42. Digicel Bermuda has been operating telecommunications services in Bermuda since 2012. Digicel Bermuda will continue to provide such services upon completion of the Proposed Transaction.
43. An Organizational Chart representing the organizational structure before and after the Proposed Transaction is attached at Annex A below.

V. MARKET ASSESSMENT

43. The EC sector in Bermuda has a total of 20 Integrated Communications Operating Licences (ICOL) in place at the end of November 2023. Of these 20 ICOL holders, 5 are currently inactive or dormant. Digicel Bermuda controls 2 ICOLs (Bermuda Telephone Company Ltd. and Telecommunications (BWI) Ltd).
44. In 2022, the EC sector (including fixed, mobile, broadband, and business connectivity):
- generated \$192.9M in relevant revenue, a 4% increase from 2021.
 - contributed a total of \$16.7M in direct Government fees including Government Administration Fees, handset fees and spectrum fees.
 - contributed \$3.1M to the RA in Regulatory Administration Fees
 - employed 322 full time staff, a 10% increase from 2021.
 - made capital investments in EC infrastructure and assets of \$18.1M, a 35% increase on the \$11.7M in 2021.
45. In the RA’s most recent Market Review of the Electronic Communications Sector (September 2020), it was noted that there were “competition concerns in 7 of the 15 markets across four of the six services: broadband, mobile, fixed voice and business connectivity”. Two entities (One Communications and Digicel Bermuda) were identified as having Significant Market Power (SMP) in one or more of these categories.
46. In September 2020, two new ICOLs were issued to Horizon Communications and Paradise Mobile. As of November 2023, the impact of these two new ICOLs has been negligible. Horizon Communications did come to market with a predominantly fixed internet broadband offering but went into liquidation in January 2023 and stopped operating in June 2023. Paradise Mobile is only just starting beta trials for a mobile network as of November 2023.
47. The RA commenced an annual Market Analysis process in 2021 and has collated information for the periods 2019 through 2022. This information has shown that there has not been any significant shift in overall market share with approximately 90% of the EC market controlled by Digicel Bermuda and One Communications over the entire period.
48. Figure 1: Market Share for Digicel Bermuda and One Communications for 2019-2022 as reported in the RA’s Annual Market Analysis Reports

Entity	2019	2020	2021	2022
Digicel Bermuda	42%	40%	38%	39%
One Communications	47%	50%	50%	50%
All other Sectoral Providers combined	11%	10%	12%	11%

49. It appears that there will be no discernable market impact anticipated with this change of control process based on the submission from Digicel Bermuda. However, the RA seeks information from the public to confirm this fact.

VI. CONSULTATION QUESTIONS

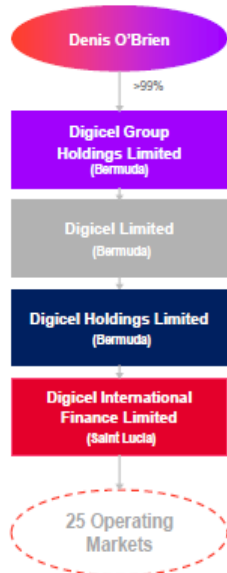
50. The RA invites interested third parties to submit their comments on the Proposed Transaction to the RA. The comments to be considered by the RA will be limited to whether the Proposed Transaction is likely to have an effect (or effects) on:
1. Competition within Bermuda's electronic communications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

ANNEX A

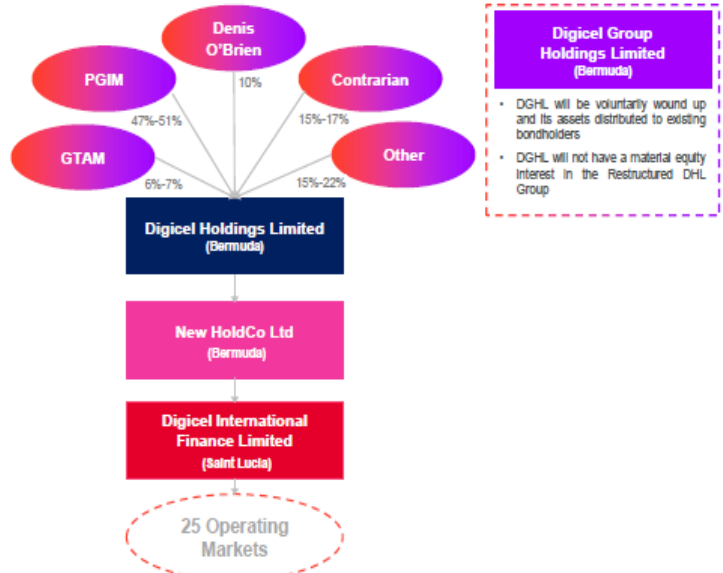


Post-Restructuring ownership structure

Pre-Restructuring



Post-Restructuring⁽¹⁾



(1) Ranges shown above for new shareholders are indicative, final shareholdings will be determined by the participation in a related bridge funding facility and rights offering