



Transact Ltd. Change of Control Public Consultation

Consultation Document
Matter: 20200923
Date: 12th October 2020
Responses Due: 26th October 2020

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I. INTRODUCTION

1. The purpose of this Transact Ltd. (“Transact”) Change of Control Public Consultation Document is for the Regulatory Authority of Bermuda (the “RA”) to seek public input regarding the Transact’s Change of Control notification request.
2. At the conclusion of the consultation process, the RA will issue a Final Decision.
3. The RA has received a notification pursuant to section 87 of the Regulatory Authority Act 2011 (the “RAA”) of a proposed transaction, within the meaning of section 87(4)(a)(ii) of the RAA, whereby:
 - Transact proposes to shift 100% of its shares within the Digicel Bermuda structure (Telecommunications (Bermuda & West Indies) Limited (“TBWI”).
 - Digicel is proposing to transfer the ownership of Transact from Wireless Holdings Limited (“Wireless”) to TBWI”. (the “Proposed Transaction”)
 - The Proposed Transaction does not involve the sale of any assets or the change in beneficial ownership of any of the members of the Bermuda group of Digicel Companies.

II. CONSULTATION PROCEDURE

4. This consultation is being undertaken in accordance with sections 49 and 87 of the 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 in paragraphs 5-16below.
5. Written comments should be submitted before 11:59 PM (Bermuda time) on 26th October 2020.
6. 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.
7. 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.
8. 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:
9. Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.

The screenshot shows the RA website's 'Submit a Response Form' page. At the top left is the RA logo (Regulatory Authority of Bermuda). To the right is a navigation menu with links: HOME, ABOUT US, CONSUMERS, SECTORS, and CONTACT US. Below the navigation is a banner with the text 'Submit a Response Form' and a breadcrumb trail 'HOME > SUBMIT A RESPONSE FORM'. The main content area is titled 'Submit Your Response' and includes the text 'We welcome your input on Consultations that are currently open for comment.' Below this are four input fields: 'Name *' (split into 'First' and 'Last'), 'Email *', and 'Company Name (if applicable)'. On the right side, there is a 'Subscribe for Updates' section with the text 'Receive email updates on RA News, Consumer Protection, Public Consultations and more!' and a 'CLICK HERE TO SUBSCRIBE' button.

10. All comments should be clearly marked "Comments on Transact Change of Control Public Consultation" and should otherwise comply with Rules 18 and 30 of the RA's Interim Administrative Rules.
11. 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.
12. 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.
13. 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.
14. 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 Transact Change of Control Public Consultation" at consultation@ra.bm or by mail at:

Tristy Smith
Regulatory Authority
1st Floor, Craig Appin House
8 Wesley Street
Hamilton, Bermuda
15. The indicative timing for the conclusion of this consultation process is [XXX] 2020.
16. 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.

17. 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

18. 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”*.
19. 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.”
20. Section 87(4) of the RAA states that “[A] transaction shall be 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.”
21. 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.
22. Section 87(6) of the RAA states that “[T]he Authority shall issue a standard form to be completed by any specified sectoral provider and any person specified in subsection (3) in order to complete the notification process.” Duly, the RA has received the completed notification form from Transact and has duly conducted the necessary assessments.
23. Section 87(10) of the RAA states that “[T]he Authority shall not approve a concentration where the Authority 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.
24. Duly, the criteria set out in section 87(10) of the RAA will set the basis for the assessment of the Transact Change of Control notification.
25. The RA is conducting this Transact Change of Control Public Consultation in fulfillment of section 49(2) of the RAA, which states that “[I]n any case in which an application is filed in connection with an individual licence or permit, the Authority shall—

- (a) conduct a public consultation;
- (b) if requested by the applicant, conduct an investigative hearing; and
- (c) issue a decision and order.”

IV. DESCRIPTION OF PROPOSED TRANSACTION

26. Digicel has stated in their Change of Control Notification that the Proposed Transaction is an internal company reorganization designed to allow Transact to benefit from the 114B licence currently held by TBWI by transferring the ownership of Transact from Wireless to TBWI. This is because Transact is 100% non-Bermudian owned and therefore in order to trade in Bermuda Transact is required to have the benefit of a 114B licence issued by the Minister of Finance.
27. Digicel have stated that the purpose of the Proposed Transaction is to enable Transact to benefit from the 114B exemption licence currently held by TBWI.
28. Digicel have also stated that there will be no change in operations, offerings or strategy within the Digicel Group as a result of the Proposed Transaction.
29. Digicel has gone on to explain that the purpose of the Proposed Transaction is not connected with any commercial or business strategy. They have stated that no additional synergies and/or efficiencies are sought or expected as a result of the Proposed Transaction apart from the ability to rely on the 114B licence in future renewal process.
30. Digicel has also stated that Transact will continue to operate in accordance with its licence obligations placed on it by its current Integrated Communications Operating Licence.
31. Digicel explained that Transact will remain an entity ultimately owned and controlled by Denis O'Brien.

V. CONSULTATION QUESTIONS

32. 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 competition within Bermuda's electronic communications sector?
 2. 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?
 3. Have an effect on innovation within Bermuda's electronic communications sector?