



**Combined response by Batelco Telecommunications Company BSC,  
Cable & Wireless Guernsey Ltd and Cable & Wireless Jersey Ltd to  
CICRA consultation 13/1 "Approach to change of control  
notifications under telecommunications licences"**

**24<sup>th</sup> January 2013**

## **Executive Summary**

The attached is the combined response to the CICRA consultation by Cable & Wireless Guernsey Limited ("CWG"), Cable & Wireless Jersey Limited ("CWJ"), and Bahrain Telecommunications Company BSC ("Batelco"), referred to below as the Parties. In summary:

- CICRA must establish and apply transparent, fair and appropriate tests for change of control notifications, to ensure it makes objective decisions;
- These tests should be consistent with CICRA's statutory duties as set out in the relevant Guernsey and Jersey statutes;
- The change of control will not affect the ability of CWG to continue to provide high quality sustainable telecoms services in Guernsey, or to comply with licensing and regulatory obligations, including continuing to meet its universal service obligations;
- Commercial and financial management of CWG and CWJ will remain with the current management teams, fully supported by Batelco;
- Batelco has extensive experience in the telecommunications industry, a proven track record of innovation and investment, and a strong record of regulatory compliance;
- CWG and CWJ will continue to support the strategic objectives of the States of Guernsey and the States of Jersey post acquisition.

Cable & Wireless Guernsey Limited (“CWG”), Cable & Wireless Jersey Limited (“CWJ”), and Bahrain Telecommunications Company BSC (“Batelco”), collectively referred to as The Parties, are submitting this document as their combined response to the CICRA Consultation Document “Approach to change of control notifications under telecommunications licences”. This Consultation, which was issued as document CICRA 13/1 on the 11th January 2013, was prompted by the announcement made by Batelco on 3<sup>rd</sup> December 2012 that it had signed an agreement to acquire the Monaco & Islands division of Cable & Wireless Communications PLC (“CWC”), including CWG and CWJ.

On completion of the acquisition there will be an indirect change of control in relation to CWG and CWJ. The reason for this is that Batelco through its subsidiary, Batelco International Group Holding Limited will acquire the entire issued share capital of CWC Islands Limited, the company which holds CWC’s 100% interest in CWG and CWJ.

We note that the aim of the Consultation is to solicit views on the application of the change of control provisions contained in Guernsey and Jersey licences including those licences held by CWG and CWJ. The Parties understand the level of public interest in the change of control of CWG and CWJ, and particularly in relation to CWG given its position as the incumbent operator in Guernsey. We therefore appreciate why CICRA feels it is an opportune moment to clarify how the change of control provisions should be interpreted and are pleased to have the opportunity to provide comments on this.

In this Response, the Parties will address in turn the two main questions posed on page 11 of the Consultation document.

**(1) What factors do respondents consider to be relevant to an assessment of a change of control under the relevant provisions in the licences?**

In our view, the lack of clarity available to CICRA from previous decisions relating to change of control, reinforces the need for CICRA to ensure transparent, fair and appropriate tests are established and applied. This will mean that the decision as to whether to approve the Parties’ applications will be reached as objectively as possible. Further, CICRA can ensure that any future change of control requests made by other Licensees in the Channel Islands will be considered using the same, consistent criteria.

We welcome CICRA stating its provisional view that the assessment of change of control notifications should be framed in terms of CICRA’s statutory duties as set out in the relevant Guernsey and Jersey statutes. In particular, Section 2 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and Article 7 of the Jersey Telecoms Law. We believe that this is the appropriate approach for CICRA to take to change of control considerations. Indeed, we do not see how any other approach could be contemplated without the risk of compromising the objectivity and independence of CICRA’s decision making, to the possible detriment of its international reputation.

The Parties also agree it is relevant for CICRA to consider the extent to which it would have awarded the Licences to the respective Licensees had the Change of Control taken effect prior to the award. We note that this test is set out in Condition 2.6 of CWG’s fixed licence and in equivalent conditions in CWG’s and CWJ’s other licences. We have no difficulty with the proposal to apply this test in

terms of the present day, rather than at the relevant dates when the respective Licences were originally awarded.

The Parties understand that this test relates to the importance of the assets and services to the overall telecoms market and indeed, to the wider economy. In that sense, we appreciate why this Consultation is placing more emphasis on the extent to which the Parties will be able to satisfy CICRA that the indirect change of control from Cable & Wireless Communications PLC to Batelco will not affect the ability or willingness of CWG to continue to provide high quality, sustainable telecoms services in Guernsey, or to comply with its licence conditions or other regulatory requirements.

We would therefore like to address in more detail the potential regulatory risks arising from the change of control to Batelco, by considering each of points a) to e) identified on page 11 of the Consultation. In doing so, we hope that our responses will reassure CICRA that the Guernsey Competition and Regulatory Authority (GCRA) will continue to be able to meet and promote the objectives for regulation as set out in The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. Further, whilst of less significance for this transaction given CWJ's market positions in Jersey, the Jersey Competition and Regulatory Authority (JCRA) will continue to be able to satisfy the requirements of the Jersey Telecoms Law.

The potential regulatory risks identified by CICRA are:

- a) *The new controller is unwilling or unable to provide sufficient finance to the licensee (including retained earnings) to allow it to undertake capital expenditure:*
  - i. *to fulfil universal service obligations;*
  - ii. *to meet increased demand for services;*
  - iii. *to improve the quality and coverage of telecommunications services, and*
  - iv. *to facilitate the availability of new telecommunications services*

In its letter to CICRA dated 18<sup>th</sup> January 2013, the Parties have explained how neither CWG nor CWJ will rely on Batelco, as its ultimate parent company, for the financing of its capital expenditure. Instead, and as is currently the case under the current ultimate ownership by CWC, all capital expenditure is self-funded by the relevant business unit.

The Parties have provided CICRA with details of the capital expenditure plans for CWG and CWJ for the next five financial years. These plans show a genuine continued commitment to capital investment that will not only ensure that CWG continues to fulfil its universal service obligations but will also enable it to continue to improve the quality and range of services offered to customers.

For example, CWG will continue to roll out its MSAN deployment to increase broadband services and coverage and will continue to improve its mobile network coverage. CWG and CWJ will continue to introduce new telecommunication services to meet new customer demands, including where appropriate, investment in new 4G/LTE services.

- b) *An assessment of the materiality of risks to the financial and commercial independence of the licensee;*

The Parties have provided in confidence to CICRA details of the five year business plans for both CWG and CWJ. These plans were compiled by CWG and CWJ in advance of the approach by Batelco

and were shared with Batelco prior to the signing of the Share Purchase Agreement for the acquisition. The plans show that CWG and CWJ have the financial resources to continue to operate on a self-funding basis. Batelco will seek the implementation of such business plans following the successful completion of the acquisition.

The commercial management of CWG and CWJ will also remain in the hands of the current CWG and CWJ management teams, and such teams will be fully supported by Batelco.

- c) *The new controller does not have the operational or managerial expertise to operate the licensee's network;*

Following completion of the acquisition, the operation and management of the fixed and mobile networks of CWG and CWJ will not change. It will be business as usual in that the current operational and management teams of CWG and CWJ will remain in place.

Additionally, CWG and CWJ will be supported by Batelco, in particular its senior executives at a group level. Batelco has extensive experience in the telecommunications industry, with a 30 year presence in Bahrain. Indeed, it is the leading provider in Bahrain and currently has 7.8 million customers across its various international operations. It continually innovates in order to provide customers with the latest advances in technology. For example, it recently successfully trialled in Bahrain LTE (Long Term Evolution) mobile technology for the provision of 4G services. The above information is taken from the 2011 Annual Report for Batelco<sup>1</sup>, which has been provided to CICRA and is available from Batelco's website, and from the announcement made on 22nd January 2013 regarding Batelco's 2012 Financial Results<sup>2</sup>, which is also available on Batelco's website.

More details of the expertise of Batelco's team can be found in the biographies already provided to CICRA and in Batelco's Annual Report.

- d) *The new controller jeopardises the financial stability of the licensee, whether by increasing its gearing levels, allowing charges over the licensee's core assets or requiring the licensee to cross-guarantee other group businesses' liabilities; and*

Batelco does not intend to risk the financial stability of CWG and CWJ or to expose them to any form of jeopardy by seeking to charge their assets inappropriately or prejudice their licences in any adverse way.

- e) *The new controller refuses to allow the licensee to take action to comply with licence obligations or directions from the regulator. For example, the new controller's record of regulatory compliance under relevant telecommunications laws in any of the jurisdictions where the new controller holds a telecommunications licence might be relevant to this factor.*

Batelco takes regulatory compliance very seriously, which is reflected at the Board Level by a Regulatory Affairs Sub-Committee comprised of board directors that reports to the main Batelco Board on regulatory issues and developments. Additionally, it has regulatory specialists that manage regulatory affairs of various Batelco group companies.

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<sup>1</sup> [http://www.batelcogroup.com/media/23966/fr\\_g5ej0kdt\\_batelco\\_ar\\_2011\\_enlo.pdf](http://www.batelcogroup.com/media/23966/fr_g5ej0kdt_batelco_ar_2011_enlo.pdf)

<sup>2</sup> <http://www.batelcogroup.com/en/news-and-media/press-releases/2013/financial-results-2012.aspx?tab=2013>

Batelco is fully committed to ensuring that the change of control for CWG and CWJ licences will not in any way affect the licensees' compliance with their ongoing regulatory obligations. The Parties have provided CICRA details of the current regulatory compliance process for CWG and CWJ together with an assurance that this framework for compliance will continue once the acquisition is completed.

The Parties have provided CICRA with details of its regulatory compliance record with the Telecommunications Regulatory Authority (TRA) in Bahrain, and the Telecommunications Regulatory Commission (TRC) of Jordan.

**(2) Whether a commitment to support the States' strategic objectives with respect to the telecommunications sector should be regarded as a relevant factor for consideration, and if so, the best method by which to secure such a commitment.**

The Parties fully recognise the strategic importance of the telecommunications infrastructure to the economies of both the Bailiwick of Guernsey and Bailiwick of Jersey.

As Guernsey's incumbent operator, CWG has always fully supported the States' strategic objectives for the sector and provided that these objectives continue to be set in an objective, transparent and evidence-based manner, will continue to do so.

We are aware that the States of Guernsey is currently developing an overall economic development strategy for Guernsey, with an overarching objective of maintaining and improving Guernsey's competitiveness. We recognise that the telecommunications sector plays a critical role in achieving this objective. We note that the recently published Commerce & Employment Business Plans for 2013<sup>3</sup> highlight the ICT strategy as one of the highest priorities for ensuring Guernsey remains competitive and successful within the context of a challenging global economic environment.

CWG is already actively engaged, through participation in the ICT Strategy Working Group meetings, in the Commerce & Employment Department's attempts to help create the right environment for businesses to prosper, and to ensure that Guernsey can continue to attract inward investment. These goals are shared by CWG as a thriving and growing economy will ensure that CWG's own business will continue to develop and grow.

Similarly, CWJ in Jersey is fully supportive of the Economic Development Department's objective of improving the local economy and encouraging economic diversification, whilst improving job opportunities for local people.

Given the mutual interests in achieving the same objectives, it is difficult to see how any specific action is needed on the part of CICRA to secure a commitment from the Parties. It is to everyone's benefit to ensure that the Guernsey and Jersey economies remain competitive and the Parties are fully committed to supporting that objective.

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<sup>3</sup> Commerce and Employment Business Plan 2013, published 23 January 2013