

TELECOMMUNICATIONS LIBERALISATION IN THE BRITISH VIRGIN ISLANDS

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1. INTRODUCTION

1.1 The British Virgin Islands Government (BVI) has decided that it wishes to introduce competition in telecommunications in the BVI as soon as possible. This will involve the ending of current telecommunications monopolies. New legislation has been passed to establish the new regulatory regime. This paper explains the objectives of these changes and sets out the BVI's plans for detailed implementation.

2. OBJECTIVES

2.1. The objective of the liberalisation policy is to create the circumstances for a fully effective and successful telecommunications sector in the BVI, delivering excellent value for money to users and maximising the contribution of the sector to the economy. Across the world, and increasingly in the Caribbean Region, administrations that have introduced competition in telecommunications have reaped important benefits in greater efficiency, lower prices, better services and greater responsiveness to the needs of customers. The BVI wishes to create the opportunity for the BVI to share in such benefits.

2.2. Modern information communications technologies (ICTs) have widely been identified as a key element in competitive economies. As a centre for tourism and financial services, the BVI would stand to benefit strongly from enjoying similar levels of ICT services as are available in other regional and international tourism and financial centres that compete with it. The BVI considers that a competitive telecommunications sector is likely to provide the best basis for the efficient provision and development of such services in the BVI.

3. CURRENT SITUATION

3.1. At present, telecommunications services in the BVI are provided by three networks, each of which has a monopoly in its own field.

3.2. Cable and Wireless (C&W) operates the fixed voice and data network and international services.

3.3. Caribbean Cellular Telephone Limited (CCT Boatphone) operates the mobile network.

3.4. BVI Cable TV Ltd (BVI Cable), a subsidiary of Innovative Communications Corporation (ICC), operates the television cable network.

3.5. The BVI recognises the long term investment commitment of these companies to the provision of services in the BVI. However, it considers that the level and range of services, and the overall value for money they would represent, would be significantly

improved if there was a measure of competition in each sector of the market so that users could exercise choice. The market is expected to grow, with added benefits to the BVI economy.

4. NETWORK COMPETITION

4.1. The BVIG has considered a number of alternative means of introducing competition between networks in the BVI. The central consideration is the comparatively small size of the BVI telecommunications market. With an estimated population of 27,000 there is likely to be a strictly limited number of networks that the Territory can support on a sustainable basis. Networks are expensive to construct and need to be reasonably heavily used to be economic. There is a possibility that, if too many entities enter the market at the same time, with parallel infrastructure facilities, the costs of competition will exceed the economic benefits.

4.2. These considerations have led to the suggestion that the maximum number of networks that the BVIG should consider licensing on a competitive basis in the fixed and mobile voice telephony markets, at least initially, is two. These might most appropriately be the existing fixed and mobile monopoly networks, C&W and CCT Boatphone, who would be allowed to compete in each other's markets. Together they would form a duopoly which, it is suggested, might be the most efficient form of competition in such a small market. Over time, additional market entrants may be permitted if it does not cause undue turmoil in the market and undue inconvenience to consumers.

4.3. The BVIG, while noting the economic arguments for limited network competition, at least initially, is concerned that the duopoly form of competition in telecommunications suffers from the disadvantage that the protagonists only have each other to contend with. Experience elsewhere suggests that however strongly they may seek to compete, there is a tendency for the two network operators to concentrate on responding to each other's market initiatives. This tends to lead to a large measure of parallelism in pricing, service offerings and approach to the market, which limits user choice and limits the benefits of competition. While this is a limited concern in basic voice telephony offerings, it is of increased concern in information rich services such as the Internet.

4.4. The BVIG would therefore prefer to see initial network competition in the BVI more broadly based. In this context, it recognises, as noted at paragraph 3 above, that there are in fact already three telecommunications networks established in the BVI, including the BVI Cable network. All three network operators have expressed an interest in entering each other's markets. Since all three operators already have extensive network facilities in place, the cost of extended entry by these operators into additional services should be minimal.

COST STUDY

4.5. The BVIG retained telecommunications economist, Dr. Chris Doyle of Warwick Business School in the United Kingdom, to inform the Government's decision making in relation to the optimal number of firms that should be operating after the liberalization process is complete. In a detailed analysis using information supplied by operators in the British Virgin Islands, as well as information from other sources in the telecommunications industry, Dr. Doyle concluded that there is scope for multi-operator competition.

4.6. A key part of Dr. Doyle's analysis focussed on the question of how many operators could potentially be commercially viable in the BVI following liberalisation. After completing detailed financial modelling, it was concluded that the market in the BVI could support four licensed operators – offering services in both telecommunications and related broadcasting markets. The BVIG has decided to implement a policy that allows three operators in the fixed and cellular mobile voice markets, but eventually may admit up to four operators in these markets. To ensure that competition in the cellular sector is effective, the BVIG will ensure that radio spectrum is assigned in an efficient manner so as to eventually accommodate four operators.

OPENING THE MARKET

4.7. The BVIG accordingly intends to offer revised licences, on appropriate terms, to the three existing network operators in the BVI. It is the intent to allow each licensee to fully participate in all business areas of the telecommunications industry, including voice, data, wireless video programming, and Internet services, subject to such limitations that as may be necessary for the effective management of the telecommunications industry.

4.8. The BVIG also intends to review the market to determine if and when a new operator may enter the market. The Minister responsible for telecommunications shall conduct a market analysis after thirty six months to determine whether an additional entrant shall be licenced. This new entrant will be whoever has, in the opinion of the BVIG, demonstrated that it best matches the criteria for market entry and has made the best case for entering the BVI telecommunications market.

4.9. The BVIG recognises that the resulting market will be a commercially demanding one. But it considers that the benefits for users, in terms of keener prices and high quality services, will be considerable. And it considers that the ability of the BVI to attract advanced ICTs, to the benefit of the BVI economy, will be significantly enhanced.

5. SERVICES COMPETITION

5.1. In addition to network competition, the BVIG is also concerned to encourage the development of competition at the level of telecommunications services, including Internet services.

5.2. The BVIG recognises that in the market of the size of the BVI there is likely to be only limited scope for the provision of telecommunications services separately from network services. However, it considers that some scope for such services undoubtedly exists and the judgement of when there is a viable market opportunity should primarily be left to those wishing to enter the market.

5.3. Advanced ICT services are likely to be of particular value to more sophisticated users, especially those in the financial services and tourism sectors. The availability of a full range of such services is likely to enhance significantly the BVI's international competitiveness and to stimulate employment in the BVI, as well as adding to traffic levels on the networks. This has certainly been the experience elsewhere.

5.4. The BVIG accordingly proposes to make provision for the licensing of suitably qualified persons or companies to provide telecommunications services over the publicly licensed networks. The network operators would be required to provide facilities on wholesale terms equivalent to the terms on which the operators make their network facilities available to the service operations in their own businesses. Such arrangements would apply across the full range of advanced services, including Internet services and, in due course, voice over Internet (VOIP) services.

6. OTHER MARKET ISSUES

6.1. The BVIG has given consideration to a number of other issues that will arise with the introduction of competition in the telecommunications market.

CUSTOMER PREMISE EQUIPMENT

6.2. Users have been critical of the lack of effective competition in the provision of customer premise equipment, such as telephone handsets, private branch exchanges, and so on, which is currently left to the network operators to provide. The BVIG considers that there are no good grounds for excluding other local businesses from this market, provided that the necessary technical standards are met. It accordingly proposes to make provision for such competitive supply, subject to appropriate safeguards to protect consumers and network integrity.

UNIVERSAL SERVICE

6.3.1. The present position with regard to the provision of fixed network services is that C&W provides service in all the islands that it serves within the territory at a single price, regardless of the cost differences that arise from the remoteness of some of the locations concerned. This means that some users are receiving significant financial support, or cross subsidy, at the expense of other users.

6.3.2. The BVIG considers that it is an important public policy objective that affordable basic telecommunications services should be available, so far as possible, throughout the

BVI. It expects that, in a fully competitive environment, the basic telecommunications needs of most of the territory will in practice be met, at ruling prices, by one or more of the network operators using wire line or radio links delivering equivalent functionality.

6.3.3. However, in order to ensure that such service continues to be available at ruling prices, the BVIG has vested responsibility for the supervision and administration of universal service in the BVI in the Telecommunications Regulatory Commission. The Commission will be required, if necessary, to establish a universal service fund, financed by a levy on all network operators, to meet the net cost of providing service where this is uneconomic, taking account of the revenue contribution from the users concerned.

7. LEGISLATION

7.1. New legislation has been passed which allows for the establishment of the competitive regime and provides for its regulation. The legislation is cited as the Telecommunications Act, 2006, (Act No. 10 of 2006).

7.2. The legislation provides for the establishment of the regulatory authority and defines its functions, together with those of the Minister, and creates the necessary powers.

8. REGULATION

8.1. International experience has shown that regulation is an indispensable element of telecommunications liberalisation. Detailed and expert action is required to ensure that competition in the sector develops satisfactorily and is not frustrated by the market power and anti-competitive behaviour of established network operators.

8.2. Experience has also shown that such regulation is best conducted as independently of government as possible. Regulatory bodies operating separately from ministries are able to be more open and transparent in their activities than central government is normally able to be. In the complex and often commercially controversial decisions that economic regulators are called upon to make, the decision making process needs to be as open as possible if it is to be fully credible and to command respect.

8.3. The BVIG accordingly has set up an independent telecommunications regulatory authority, exercising powers separately from those of Ministers, but publicly accountable, operating in support of Government policy and with its functions defined by law.

ROLE OF THE MINISTER

8.4. Under the new arrangements the Minister will remain responsible for Government policy towards the telecommunications sector and for international telecommunications matters. The Minister will not be involved in the day to day regulatory decisions of the independent regulatory authority. But the Minister will continue to keep developments in the sector under policy review and he will have power to make general policy directions to the regulatory authority. Any such directions will be published, as will policy advice to the Minister by the regulatory authority.

ROLE OF THE REGULATOR

8.5.1. The role of the new regulatory authority will be to implement the Government's telecommunications liberalisation policy and to ensure that competition develops satisfactorily. The regulatory authority will be responsible for issuing, supervising and enforcing licences authorising network and services operation. It will oversee the standards for the connection of customer premise equipment. It will also be empowered to make regulations to govern issues such as interconnection that will apply to all licensees.

8.5.2. In addition to administering the regulatory regime, the regulatory authority will be responsible for keeping the development of the telecommunications sector in the BVI under review and will be empowered to provide advice to the Minister upon his request, or on matters that the regulatory authority determines should be brought to the attention of the Minister.

STRUCTURE

8.6.1. The BVIG has determined that the new telecommunications regulatory authority should take the form, which is now widely adopted internationally, of a public authority governed by a commission. It will be known as the Telecommunications Regulatory Commission (TRC) for the BVI.

8.6.2. There will be four part time Commissioners and one full time Chief Executive Officer, who will be responsible for the day to day running of the Commission and will be a member of the Commission. All the Commissioners will be appointed by the Governor in Council. The Commissioners, and the staff of the Commission, will be subject to strict conflict of interest requirements.

8.6.3. Decisions by the TRC on interpretation and enforcement of the regulatory regime will be final, except that there will be the normal option to seek judicial review where the TRC is alleged to have exceeded its powers, failed to follow due process or acted unreasonably.

8.6.4. The TRC will be financed by annual licence renewal fees for network operators, called the “industry levy,” which will be set at a level to cover the TRC’s budgeted expenditure. These fees will be subject to a maximum of 2% of the licensees’ turnover. This will mean that the full time staff of the TRC will be very few. For more complex issues, the TRC will be able to call on the advice of outside experts as necessary.

8.6.5. The cost to the BVIG and to the TRC of establishing the new regulatory regime will be met from the initial licence issue fees for the network licensees.

LICENSING

8.7.1. The basic regulatory documents authorising network and service provider operations in the BVI will continue to be licences. These will be issued by the TRC with the approval of the Executive Council in respect of network licences and subsequently administered and enforced by the TRC. The TRC will have the necessary powers of enforcement and powers to obtain information on which to base its decisions.

8.7.2. The TRC will have the power to initiate amendments of the licences, with the consent of the licensee.

8.7.3. The licences will define the obligations of the licensees concerned, including the provision of services to final users and other networks and service providers, planning consents and environmental issues (see also paragraph 8.11.4. below), the provision of information to users and to the TRC, and obligations to prevent anti-competitive behaviour (see also paragraph 8.9. below).

8.7.4. The BVIG considers that in a low tax environment such as the BVI it is appropriate that a competitive, prosperous and expanding sector such as telecommunications should make a direct contribution to the public finances, comparable to that made in other administrations by direct taxation. Such contributions have hitherto taken the form of royalty payments from monopoly franchisees. The BVIG now considers that a more appropriate arrangement following telecommunications liberalisation would be an obligation on the part of network licensees to make annual payments to the BVIG in proportion to the annual turnover of the business concerned. These payments would be set at a level that broadly reflected the current level of Government income derived from the sector.

8.7.5. The BVIG is reviewing the practice of waiving import duties in respect of capital expenditure on network facilities, in order to ensure that any future arrangements operate in a competitively neutral manner.

INTERCONNECTION

8.8.1. Effective interconnection between networks, at fair prices, will be an essential element in ensuring that competition can develop satisfactorily and that users receive good service in calling between networks. All network operators will be required to

provide interconnection facilities to other operators and network services to service providers.

8.8.2. Where the network operator has a dominant position in the market it will be required to publish a reference interconnection offer (RIO), in accordance with international best practice. Under this form of wholesale tariff, the network will be required to provide facilities to other networks at cost oriented rates. It will also be required to provide network services to service providers on the same terms as those on which it provides services to the equivalent part of its own business.

8.8.3. The TRC will be empowered to make regulations governing general interconnection terms and conditions and to issue guidelines to guide operators on how such provisions will be interpreted. But, subject to these requirements, interconnection agreements will normally be left to the operators to negotiate. The TRC will only intervene to determine interconnection agreements at the request of the parties where they have failed to agree. Interconnection agreements will, however, be made publicly available and will be subject to the agreement of the TRC.

COMPETITION

8.9. The TRC will exercise powers to ensure that the development of competition is not prevented or distorted by entities with a powerful position in the market. As the market develops, the promotion and maintenance of competition can be expected to become a major focus of the TRC's activities. In the absence of a general competition law, the TRC will be expected to take a strongly pro-active approach to the encouragement of effective competition and in applying the lessons learned elsewhere in the region and internationally in competition regulation as it relates to telecommunications.

PRICE CONTROL

8.10.1. The BVIG expects that competition will provide the best form of regulating prices and exercising a long term downward pressure on price levels. However, until competition has become effective in all segments of the market, the TRC will be mandated to keep the level of prices and the associated quality of the services concerned under review and will have reserve powers, should it be necessary, to impose incentive based price cap price control in any segment where there is judged to be insufficient price competition.

8.10.2. Under this form of price control the regulated company, or companies, is required to reduce its average prices by a specified amount each year, after taking account of inflation. Once the target is achieved, the company can retain any further profit generated. This creates strong incentives to improve efficiency (including commercial pricing to encourage the take up of services) and to share the benefits with users mainly in the form of lower prices.

SCARCE RESOURCES

8.11.1. The TRC will have a role in the regulation of scarce resources in respect of the telecommunications sector. In the past, regulation of the radio spectrum was carried out by the Ministry of Communications and Works. This responsibility has passed to the TRC under the new legislation.

8.11.2. The TRC intends to review the radio regulatory arrangements and the fees charged for radio spectrum licences. It will, first, wish to ensure that these fees cover the administrative cost of spectrum management and monitoring. Secondly, the BVIG will wish to consider the case for the introduction of further spectrum pricing with the aim of increasing the efficiency of frequency usage and securing that use of this national resource contributes directly to the public finances.

8.11.3. Numbering is another aspect of telecommunications where, unless carefully administered, the resources may be misused. Access to numbers for a range of purposes is essential for the development of effective competition. Number portability is an important element in ensuring that users can change networks unhampered by having to change their telephone numbers and needs to be given due priority. The BVIG accordingly has assigned the numbering function to the TRC on its formation.

8.11.4. The TRC will also play a role in ensuring that the requirements of public networks and the protection of the environment are reflected in the decisions of the planning authorities. The BVIG is particularly concerned that environmental disruption from the potential proliferation of radio towers should be minimised. The TRC will accordingly be tasked to require licensees, so far as practicable, to share radio tower facilities and share the costs incurred in accordance with international best practice.

CONSUMER PROTECTION

8.12. Finally, the TRC will have responsibility for consumer protection in respect of telecommunications services. It will have powers to investigate complaints where the user and supplier are unable to resolve a matter of dispute, to approve codes of practice for the treatment of customers by network operators and to require network operators regularly to publish quality of service statistics so that consumers may make informed choices about services on offer.

9. REGIONAL CO-OPERATION

9.1 The BVIG intends to make as much use as possible of experience gained in the telecommunications liberalisation process by other countries. BVIG will continue to seek to make the most of useful opportunities for policy and regulatory co-operation, including co-operation with the East Caribbean Telecommunications Authority (ECTEL) in the OECS.

10. TIMETABLE FOR IMPLEMENTATION

10.1. The BVIG wishes to implement the telecommunications liberalisation policy outlined above as quickly as practicable.

10.2. Passage of the new Telecommunications Act will be followed by moves to establish the TRC, issue new licences to the network operators, and the drafting of regulations.

10.3. The BVIG's intention is that the dates for coming into effect of these new arrangements should ensure that telecommunications users start to experience the benefits of competition immediately thereafter.