Case M954/13

Proposed acquisition of Cable & Wireless Guernsey Limited and Cable & Wireless Jersey Limited

by Batelco International Group Holding Limited

Decision

Document No: CICRA 13/09 **March 2013**

Jersey Competition Regulatory Authority
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<u>The Notified Transaction</u>

1. On 29 January 2013, the Jersey Competition Regulatory Authority (**JCRA**) received an application (the **Application**) for approval under Articles 20 and 21 of the *Competition (Jersey) Law* 2005 (the **Law**) of the proposed acquisition (the **Acquisition**) by Batelco International Group Holding Limited (**Batelco**) (the **Buyer**) of the entire issued share capital of CWC Islands Limited from Sable Holding Limited (the **Seller**), a wholly owned subsidiary of Cable & Wireless Communications plc (**CWC**). CWC Islands Limited is a company incorporated in England and Wales and holds the entire issued share capital of Cable & Wireless Guernsey Limited (**CWG**) and Cable & Wireless Jersey Limited (**CWJ**) (together, the **Target**).

2. The Acquisition also involves certain ancillary arrangements being put in place between the Buyer and the Seller, which the parties submit are directly related and necessary for the implementation of the Acquisition (**Arrangements**).

3. The JCRA registered a notice of its receipt of the Application on its website on 29 January 2013. One party provided comments in respect of the Acquisition, although the party has requested that the terms of that response remain confidential.

<u>The Parties</u>

(a) The Target and CWC

4. CWC operates in the Channel Islands through the CWC and "Sure" brands. The Target provides mobile, fixed line and broadband telecommunication services to consumers and businesses located in Guernsey and Jersey. CWJ is the main CWC subsidiary operating in Jersey; CWG provides only limited services in Jersey, while its main activities are conducted in Guernsey.

5. CWJ holds a Class II telecommunications licence in Jersey. CWG holds a Class I telecommunications licence in Jersey, in order to be able to provide Jersey corporate customers with pan-Channel Island solutions, parts of which need to be supplied by CWG. Such customers are typically billed for services by CWJ, such that all the revenue is captured within CWJ's accounts. Where those services include services provided by

CWG, these have been charged to CWJ at the appropriate wholesale or retail rates, as relevant, for onward billing to the end customer.

6. Both CWG and CWJ have notified their respective telecommunications regulators in the Channel Islands (including the JCRA), under the relevant provisions in their telecommunications licences, of the proposed change of control occurring through the Acquisition. The examination of the change of control has been conducted separately to the assessment of the Acquisition from a competition standpoint under the Law.

7. The turnover for CWJ in Jersey for the year ending 31 March 2012 was £[REDACTED]. According to the Application, the turnover for CWG in Jersey is insignificant and so is not reported separately.

(b) Batelco

8. Batelco is the leading integrated communications provider in the Kingdom of Bahrain. It also delivers fixed and wireless telecommunications services to customers in Kuwait, Saudi Arabia, Jordan, Yemen and Egypt. Batelco offers end-to-end telecommunications solutions for residential, business and government customers on fixed and wireless networks. Batelco currently has no operations in the Channel Islands.

9. The worldwide turnover for Batelco for the year ending 31 December 2011 was estimated at £[REDACTED].

<u>The Arrangements</u>

10. On completion of the Acquisition, certain of the companies being acquired by the Buyer (including the Target) will enter into:

    a. a licence to use the name “Cable & Wireless” and certain other trademarks for a period of 12 months from completion of the Acquisition; and
    b. a licence and maintenance services agreement to use certain key software for an initial period of two years from completion of the Acquisition (with options for extension).

11. In addition, subject to certain customary exceptions, the Seller has agreed that it will not, and will procure that no other member of the CWC group will, for a period of 36 months:
    a. compete with the business of any of the acquired companies in their respective territories (including the Target in Jersey and Guernsey); or
    b. solicit customers to whom goods or services have been sold by any of the acquired companies in the course of their business during the 24 months before the completion date, other than with the prior written consent of the Buyer. The Seller and the Buyer have also given each other customary undertakings not to solicit certain employees of the other pending completion of the Acquisition and for a period of 12 months thereafter.

Requirement for JCRA Approval

12. The parties applied for JCRA approval of the Acquisition on the basis that certain services provided by CWJ may fall within the conditions stipulated in Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order* 2010 (the **Order**).

13. The parties consider that the Acquisition falls within the threshold specified in Article 4 of the Order because CWJ holds a 100% share of supply of the provision of mobile call termination on its own mobile network. The JCRA has previously identified termination of mobile calls on an individual operator's network as a relevant market in which significant market power is held by each of the mobile operators active in Jersey[1].

14. In addition, the parties have assessed whether there are any other categories of goods or services in Jersey in respect of which the Target's activities may meet the 40% threshold, and have therefore drawn on the latest publicly available industry statistics published by the JCRA. Those statistics show that CWJ had a 39% share of off-island private circuits of 10 megabits per second or above in 2009, and the parties accept that it is possible that CWJ's present share exceeds 40%. However, CWJ does not believe that there are any other categories of goods or services in respect of which the threshold specified in Article 4 of the Order may be met.

[1] *Response to the Consultation Paper 2009 – T3 "Review of the Telecommunication Market in Jersey" and Decision on the Holding of Significant Market Power in Various Telecommunications Markets, 19 April 2010*.

15. The JCRA has informed the parties that, in its view, the extent of CWJ’s activities in Jersey may mean that the threshold specified in Article 4 of the Order is exceeded in a number of categories of goods and services other than those identified in the Application. Nevertheless, the JCRA is satisfied that the Acquisition clearly falls within Article 4 of the Order on the basis of CWJ’s 100% share of supply in the provision of mobile call termination on its own mobile network. Therefore, pursuant to the Order and Article 20(1) of the Law, the JCRA’s approval is required before the Acquisition is executed.

Assessment

16. Under Article 22(4) of the Law, the JCRA must determine if the Acquisition would substantially lessen competition in Jersey or any part thereof.

17. Batelco’s operations are currently centred in the Middle East and it has no existing business activities in the Channel Islands. The Buyer and the Target are therefore active in very distinct jurisdictions and there is no existing or potential overlap of their activities in any markets for goods and services traded in Jersey. In the absence of any business activities on the part of the Buyer in the Channel Islands, the JCRA is satisfied that the Acquisition will not lead to a substantial lessening of competition in any markets within Jersey.

18. Under EU competition law, so-called 'ancillary restraints' - agreements that do not form an integral part of the asset or share transfer but are considered to be 'directly related and necessary to the implementation of the concentration' - are subject to analysis in the merger review. Applicable EC guidance[2] states that non-competition and non-solicitation clauses for periods of up to two years are justified when the proposed acquisition includes the transfer of goodwill, and for periods of up to three years when the proposed acquisition includes the transfer of both goodwill and know-how.

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[2] See *Commission Notice on restrictions directly related and necessary to concentrations*, O.J. C 56/03 ¶¶ 1, 10 (5 March 2005). Article 60 of the Law requires that, so far as possible, matters arising under competition law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the EU.

19. The JCRA has considered whether the Arrangements discussed at paragraphs 10-11 above fall within the terms of the applicable EU guidance. It is satisfied that the non-compete and non-solicitation clauses are ancillary to the Acquisition and justified for the relevant periods.

Conclusion

20. Based on the preceding analysis, the JCRA hereby approves the Acquisition under Article 22(1) of the Law.

8 March 2013 **By Order of the JCRA Board**