



Telecommunications Authority of Trinidad and Tobago

#5, Eighth Avenue Extension, off Twelfth Street, Barataria
Republic of Trinidad & Tobago

Telephone: (868) 675-8288; (868) 221-8288; (868) 222-8288
Fax: (868) 674-1055

Website: www.tatt.org.tt
E-mail: info@tatt.org.tt

Media Release

12th March 2015

Application for change of control of Columbus Networks International (Trinidad) Limited and Columbus Communications Trinidad Limited through the acquisition of Columbus International Inc. (“Columbus Inc.”) by Cable & Wireless Communications plc (“CWC”)

The Telecommunications Authority of Trinidad and Tobago (the Authority) received an application by Columbus Communications Trinidad Limited (CCTL) trading as “Flow” and Columbus Networks International (Trinidad) Limited (CNITL) on November 26th and 27th, 2014 for approval of a change of control resulting from a proposed acquisition of its parent company Columbus International Inc. by Cable and Wireless plc (CWC).

The Authority is empowered to approve a transfer of control of its concessionaires by **Section 22 (1)** of the Telecommunications Act Chap 47:31 (the Act) and by **Condition A17** of the concession issued to all concessionaires, bearing in mind that such approval should not be unreasonably withheld.

Upon receipt of the application, the Authority embarked upon a rigorous process of analysis. The Authority sought the views of the public and relevant stakeholders through a solicitation of comments and takes this opportunity to thank all those who participated in this process.

Subsequent to in-depth economic and legal analysis and consideration of all comments received during the solicitation for comments, the Board of Directors of the Authority took a decision in this matter at its Meeting held on 9th February 2015 as follows:

*Given the existing shareholding of 49% in TSTT by Cable and Wireless (West Indies) Limited (CWWI), a subsidiary company of CWC plc, the Authority found that substantial lessening of competition or adverse effects may reasonably be expected to result from the proposed acquisition of Columbus by CWC and **as such, pursuant to section 22(1) (c) of the Telecommunications Act, the application for change of control was not approved.***

This decision was conveyed to the Applicants who subsequently requested a reconsideration of the Authority’s decision and also provided further information to facilitate such reconsideration.

Directors: Mr. Selby Wilson (Chairman), Mr. Nazir Alladin (Deputy Chairman), Mr. Asif Ali, Dr. Satnarine Balkaransingh, Ms. Hazel Brown, Mr. Terrence Henry, Mr. David Lamy, Dr. Kim Mallalieu, Mr. Farouk Gerard Mohammed, Dr. Ronald Ramkissoon, Mr. Simbhoonath Sawh

The Authority informs that at its Meeting of the Board held on 11th March 2015, the Authority retained its view from its Meeting on 9th February 2015 that given CWC's possible ability to exert its influence via a 49% minority shareholding on the part of CWWI in TSTT, to affect TSTT's strategic decision making through the existing Shareholders' Agreement and the prevailing level of market concentration in the domestic telecommunications sector. As such, the proposed acquisition may be expected to result in adverse effects on competition in the markets for fixed voice, broadband, pay TV and related wholesale services in Trinidad and Tobago and the proposed acquisition would likely to lead to a significant impairment of competition in the domestic communications market in Trinidad and Tobago.

The Authority also retained its view from its decision at its previous Meeting that it is necessary and contingent upon the Authority that in any consideration or reconsideration of its decision that appropriate undertakings be taken by the Applicants and CWC to ensure the remedying, mitigating or preventing of any substantial lessening of competition or adverse effect which may be expected to result from the proposed acquisition.

The Authority further retained its view from its previous Meeting that any decision regarding a change of control granted by the Authority must ensure that the possibility of any substantial lessening of competition or adverse effect which may be expected to result from the proposed acquisition has been sufficiently mitigated so as to allow the issuance of approval by the Authority.

The Authority resolved that should the 49% shareholding by CWWI in TSTT remain unchanged, then **pursuant to section 22(1) (c) of the Act, the application for change of control is not approved.**

The Authority agreed that it shall not unreasonably withhold its approval to be granted pursuant to section 22(1)(c) of the Act provided that the following actions are executed to the satisfaction of the Authority and evidence of same is had and received on the part of the Authority prior to the issuance of its approval for change of control —

- (i) That the Applicants and CWC submit an agreement for the complete divestment of CWWI's shareholding of 49% in TSTT, in consultation with the majority shareholder NEL in accordance with the Shareholders' Agreement and to be approved in writing by the Authority, such approval to not be unreasonably withheld;
- (ii) Within the agreement to be made with NEL, as an undertaking on the part of the Applicants and CWC to ensure the mitigation of circumstances which may lead to the substantial lessening of competition or adverse effects which may reasonably be expected to result from the proposed acquisition —

- (a) there shall be an immediate stay to the exercise of shareholder rights in general by CWWI (and indirectly by CWC) and under the Shareholders' Agreement including the right to appoint directors, save and except the right to dividends and certain limited rights for statutory requirements and such amendments must be encapsulated in an amendment to the TSTT Shareholders' Agreement to be submitted upon its execution to the Authority and further, that:
- (b)
- Cognizant of the fact that statutory rights cannot be contracted out of by any party, but mindful that any approval for change of control hinges critically upon the mitigation of any anti-competitive effect which may result from a presence by CWWI in TSTT whilst CWC purchases Columbus International, the Authority requires CWC to have a limited right of inspection of books and records, sufficient only to allow a substantiation of dividends owed and to make statutory filings and declarations.
 - Prior to the actualization of the complete divestment of the CWWI shareholding in TSTT, CWWI shall have the right, at minimum, to have its 49% shareholding remain the same as its initial investment, namely, that should a future issue of shares be contemplated prior to divestment, that CWWI be issued that portion of shares in the new issue which would retain its total 49% shareholding, save and except where such future issuance of shares is for monetary consideration and to which CWWI is not a contributor.
 - CWC and CWWI to provide their written undertaking that no part of the actions hereto agreed to be undertaken in this process for approval for change of control for the so-called "suspension of rights" shall be deemed now or in the future, as oppressive, unfairly prejudicial or unfairly disregarding their interests or their representatives interests (further to the meaning of oppression under section 242 of the Companies Act).
 - The suspension of rights shall subsist until such time as CWWI shall divest its 49% shareholding.
- (c) The Applicants and CWC must provide to the Authority in writing the full details of financial investment, source of funds, projects and expansion

plans for CCTL and CNITL for the first 5 year period, detailed on an annual basis and their commitment to implementing same in good faith subsequent to communication of this reconsidered decision, such to be provided to the satisfaction of and approval by the Authority prior to issuing an approval of the change of control;

- (iii) The requirements set out in (i) and (ii) above are to be submitted by the Applicants and CWC to the satisfaction of the Authority prior to its issuing an approval for change of control; and
- (iv) The complete divestment of CWWI's shareholding of 49% in TSTT must be completed within one (1) year of the date of communication of this reconsidered decision, or such extended date as may be approved by the Authority in writing, such extension to not exceed a maximum of six (6) months, failing which the Authority shall take such steps as are available to it under law.

The Authority wishes to thank the parties involved in the proposed change of control for their submissions and cooperation in this matter.

Communications, Consumer and Information Services
Telecommunications Authority of Trinidad and Tobago