



# **Globenet Bermuda Ltd., Change of Control**

## **Public Consultation**

### **Final Report**

Matter: 20211214

Date: 21 January 2022

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## I. INTRODUCTION

1. The purpose of this Preliminary Report and Proposed Decision (“Preliminary Report”) is for the Regulatory Authority of Bermuda (the “RA”) to seek public input regarding the Change of Control request (“the Proposed Transaction”) submitted by Globenet Cabos Submarinos Bermuda Ltd. (“Globenet Bermuda” or the “Licensee”).
2. Globenet Bermuda is the holder of an Integrated Communications Operating Licence (“ICOL”) ICOL201306Rev1-755 issued on 04/29/2013.
3. The RA has received notification from Gobenet Bermuda requesting its authorization of a change of control of Globenet Bermuda through the proposed transaction which involves the acquisition by Globenet Cabos Submarinos S.A. (“Globenet Parent”), the parent of the Licensee, of shares representing 57.90% of the total and voting share capital of Brasil Telecom Comunicação Multimedia S.A. (“InfraCo”), which is owned by Oi S.A. – In Judicial Recovery (“Oi”) and Oi Móvel S.A. – In Judicial Recovery (“Oi Mobile” and, together with Oi, “Oi Group”) (collectively the “Proposed Transaction”).
4. At the conclusion of the consultation process, the RA will issue a Final Decision.

## II. CONSULTATION PROCEDURE

5. This Final Report follows a consultation which was undertaken in accordance with section 49 of the Regulatory Authority Act 2011 (“RAA”) and section 18 of the Electronic Communications Act 2011 (the “ECA”).
6. The RA initiated the consultation by publishing a Consultation Document on 15 November 2021 that invited responses from members of the public, including electronic communications and electricity sectoral participants and sectoral providers, as well as other interested parties. The purpose of the RA’s Consultation Document was to provide initial details on the Proposed Transaction and to solicit further comment on it.
7. The RA issued its Preliminary Report and Decision on 14 December 2021, which set out the RA’s preliminary decision on the matter, summarized the comments received on the Consultation Document and similarly invited responses from members of the public on the preliminary decision.
8. The Consultation Document invited comments on whether the Proposed Transaction is likely to:
  - (a) 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?
  - (b) Have an effect on innovation within Bermuda’s electronic communications sector?
9. 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](http://www.ra.bm) and follow

this link: Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.

10. The response period for the Preliminary Report and Decision commenced on 23 March 2021 and concluded on 28<sup>th</sup> December 2021. No responses were received.
11. In this Final Report, 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.

### III. LEGISLATIVE CONTEXT

12. Any sectoral participant who holds an Integrated Communications Operating Licence ("ICOL") is prohibited from completing any proposed change in control of the ICOL Holder without first obtaining the prior written authorization of the RA, acting with the written consent of the Minister, in accordance with sections 18(6) of the ECA and condition 20 of the relevant ICOL.
13. "Control" for the purposes of the Proposed Transaction, according to section 18(7) of the ECA—
  - (a) means the power, whether held directly or indirectly, to exercise decisive influence over an ICOL holder, including by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and
  - (b) shall, in any event, be deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stocks or other securities or voting rights, including through an agreement or arrangement of any type.
14. Section 49(2) of the RAA that where an application is filed in connection with, *inter alia*, the transfer of control of an ICOL, the RA must—
  - (a) conduct a public consultation;
  - (b) if requested by the applicant, conduct an investigative hearing; and
  - (c) issue a decision and order.
15. As Globenet Bermuda is not a specified sectoral provider in accordance with section 87(2) of the RAA,<sup>1</sup> the RA is not required to consider whether the Proposed Transaction constitutes a concentration pursuant to that Act.

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<sup>1</sup> See GN0838/2019, "Notification of Specified Sectoral Providers," <https://www.gov.bm/theofficialgazette/notices/gn08382019>

#### **IV. DESCRIPTION OF PROPOSED TRANSACTION**

16. The Proposed Transaction involves the acquisition by Globenet Parent, the parent of the Licensee, of shares representing 57.90% of the total and voting share capital of InfraCo, which is owned by Oi S.A. – In Judicial Recovery ("Oi") and Oi Móvel S.A. – In Judicial Recovery ("Oi Mobile" and, together with Oi, "Oi Group").
17. As a step prior to the implementation of the Proposed Transaction, a change will be made to the investment fund, BTG Pactual Infraestrutura II Fundo De Investimento Em Participações Multiestratégia, that currently owns Globenet Parent ("BTG Pactual Group"), whereby Globenet Parent will be transferred from one fund managed by the BTG Pactual Group to another fund managed by the BTG Pactual Group ("New BTG Fund").
18. Once the Proposed Transaction is complete, Globenet Parent will be reverse-merged into InfraCo. It is important to note that this will have no material effect on the operations of the Licensee. This new merged company will have the same majority ownership, but the Oi Group will have a new minority ownership of 42.1%.
19. The Licensee has been operating telecommunications services in Bermuda for over twenty years and will continue to provide such services upon completion of the Proposed Transaction.
20. The Licensee will ultimately continue to have the same majority owned parent company structure. However, as a result of the proposed transaction, the Oi Group will indirectly hold 42.1% ownership interest in the Licensee.
21. An Organizational Chart representing the organizational structure before and after the Proposed Transaction are attached at Annex A and B respectively below.

#### **V. CONCLUSIONS**

22. The Preliminary Report invited the public to submit responses commenting on the Proposed Transaction and Preliminary Decision, and to respond to the consultation questions. No responses to the Consultation Document were received.

#### **VI. FINAL DECISION AND ORDER**

##### **WHEREAS:**

- The RA received notification pursuant to section 49 of the RAA and section 18 of the ECA of a proposed change in control of the Integrated Communications Operating Licence ("ICOL") held by Globenet Bermuda (ICOL#201306Rev1-755) through the proposed transaction which involves the acquisition by Globenet Cabos Submarinos S.A. ("Globenet Parent"), the parent of the Licensee, of shares representing 57.90% of the total and voting share capital of Brasil Telecom Comunicação Multimedia S.A. ("InfraCo"), which is owned by Oi S.A. – In Judicial Recovery ("Oi")

and Oi Móvel S.A. – In Judicial Recovery ("Oi Mobile" and, together with Oi, "Oi Group") (collectively "the Change of Control");

- Section 49 of the RAA requires the RA to conduct a public consultation (or, if requested, conduct an investigative hearing) and issue a decision and order;
- The Globenet Bermuda Change of Control Consultation Document set forth the Change of Control and asked for public input;
- The Globenet Bermuda Change of Control Preliminary Report set forth the RA's preliminary decision and also invited public input; and
- No responses were submitted on the Preliminary Report.

THE RA DECIDES AND ORDERS AS FOLLOWS:

1. The Change of Control is in the public interest and is accordingly authorized conditional upon receiving the written consent of the Minister responsible for telecommunications in accordance with section 18(6) of the ECA.

So ordered this 21<sup>st</sup> January 2022.

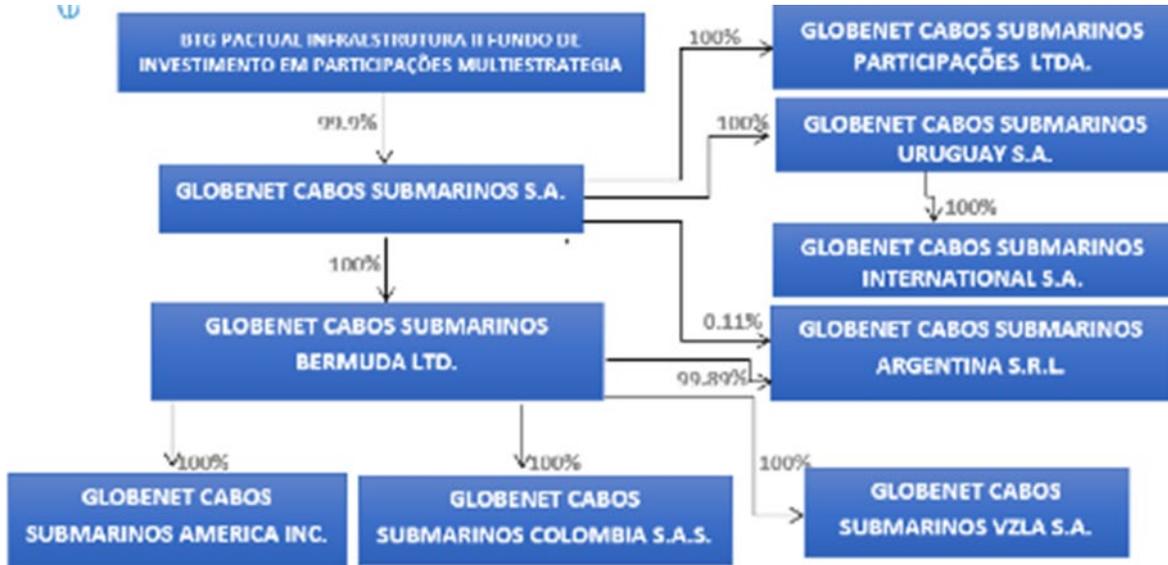


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Michael Wells, Chairman

Annex A

Organizational Structure before Proposed Transaction



Annex B

Organizational Structure after Proposed Transaction

