



13 August 2014

Mr. Alee Fa'amoe
Managing Director
Information and Communications Technology Authority
PO Box 2502
3rd Floor Alissta Towers
Grand Cayman, KY1-1104

Dear Mr. Fa'amoe,

Re: Transfer of WestStar TV Limited from BOTCAT Holdings Ltd. to WestTel Limited

Cable and Wireless (Cayman Islands) Limited, trading as LIME ("**LIME**") is writing in response to the section 25(1) Notice published on 30 July 2014 in the Cayman Islands Gazette (the "**Notice**") regarding the proposed transfer of ownership of WestStar TV Limited ("**WestStar**") from BOTCAT Holdings Ltd. to WestTel Limited, trading as Logic ("**Logic**"). LIME does not object to the transfer *per se*, but notes that this transaction will raise a number of significant issues that must be addressed first, if sustainable competition is to continue to develop in this country.

Dominance in Video Distribution Services Market

First and foremost, the Authority must address the fact that the combined entity will dominate the market for video distribution services (a.k.a. "cable TV" or "subscription television distribution services"). While WestStar is already dominant on a stand-alone basis (as we have noted in our correspondence of 27 November 2013 and 9 November 2013 to the Authority), the combined entity will be even more clearly so, controlling an estimated 70% of the market, if unlicensed service providers such as Dish Direct TV Limited are included, and a whopping estimated 90% of the market, if only duly licensed and authorized ICT service providers are considered.

The combined entity is particularly dominant in the highly-profitable "condo" subset of the market for video distribution services. LIME estimates that virtually all condos in

the Seven Mile Beach corridor are served by Logic or WestStar (given that C3's network does not extend there and given that LIME has not been able to break into that segment of the market in any meaningful way). Further, competitors will be locked out of that market for the next couple of years until contracts start to expire.

In this context, the potential for abuse of dominance, and therefore harm to consumers and to sustainable competition, is high. LIME recommends, therefore, that the Authority determine that the combined entity will be in fact dominant in the market for video distribution services, prior to consenting to the transfer of WestStar to Logic under section 25(1) of the *Information and Communications Technology Authority Law* (2011 Revision) (the "**Law**"). Given the requirement for the Authority to ensure fair competition in all ICT markets in the Cayman Islands, withholding consent prior to making this determination would be patently reasonable.

A number of reasonable and proportionate regulatory measures to control abuse of that dominance would follow from that determination of dominance. One would be regulation of the bundles and prices offered by the combined entity, to ensure all services are provided above cost and are not being anti-competitively cross-subsidized. Another reasonable measure would be a condition of licence requiring the combined entity to pay television content owners for the television channels and content they distribute or broadcast. LIME believes Logic does so today for its video distribution services, and there is no reason for the combined entity not to do so in the future for all of its services. LIME notes that this will enhance the international reputation of the Cayman Islands as a place where the rule of law applies, and reduce the level of scrutiny that presently applies from overseas entities such as the office of the US Trade Representative.

Dominance in the Television Broadcasting Market

As LIME has advised the Authority in its letters of 27 November 2013 and 9 November 2013, WestStar is presently dominant in the market for broadcast television services (a.k.a. "public service television broadcasting" services). No other broadcast TV provider comes close to WestStar's share of the market, whether measured by audience size or advertising revenues. The proposed transfer of WestStar to Logic will not alleviate this situation and will in fact exacerbate it by combining Logic's broadcast television operation with WestStar's two channels. Again, the potential for abuse of dominance is high, and LIME has already been on the receiving end of instances of abuse of dominance.

LIME recommends, therefore, that the Authority determine that the combined entity will be in fact dominant in the market for broadcast television services, prior to consenting to the transfer of WestStar to Logic under section 25(1) of the Law. Given the requirement for the Authority to ensure fair competition in all ICT markets in the Cayman Islands, withholding consent prior to making this determination would be patently reasonable.

LIME recommends that the Authority then impose reasonable and proportionate regulatory measures to control abuse of that dominance, for example, a prohibition on WestStar and/or Logic on refusals to sell advertising to their competitors such as LIME. Given that they are the dominant broadcast TV provider, a refusal to sell advertising services to competitors, while they continue to advertise their own services, is anticompetitive.

LIME also recommends that the Authority impose explicit local television content obligations on WestStar, as a condition of its consent to the transaction. As LIME has noted in its 7 May 2014 submission to the Authority in response to the Authority's Call of Inputs on the Future of Local Television, WestStar is the only video distribution service provider in the Cayman Islands which does not have a local television content requirement imposed upon its broadcast TV service. LIME submits that this is unacceptable and results in higher costs and obligations being imposed on the new entrants like itself and C3.

We acknowledge that this matter is presently the subject of a consultation, and recommend that this obligation be amended in due course, once that consultation is completed and the Authority has articulated a clear and coherent policy on local television. In the meantime, though, WestStar should not be permitted to reduce the amount of local television content that it currently provides. Consumers in the Cayman Islands should not experience a reduction in the quantity or quality of the television they receive merely because the combined entity needs to "pay" for the transaction by cutting costs.

Fibre Network Roll Out Commitments

LIME notes that both WestStar and Logic presently have conditions of licence specifying that they are to deploy fibre networks within prescribed time frames. As presently drafted, Logic would cover 100% of the population of Grand Cayman by 8 February 2017, and WestStar would do so by 8 October 2018. LIME submits that these conditions of licence are important and one of the reasons why the Cayman Islands are enjoying one of the most advanced ICT networks in the Caribbean, if not the world. It would be significantly detrimental to the country if those rollout conditions were to be watered down as a result of the transaction.

LIME recommends, therefore, that the Authority impose revised conditions of licence on the combined entity, requiring both WestStar and Logic to complete their roll out of their fibre access networks to 100% of the resident population of Grand Cayman by 8 February 2017. If Logic can do so for itself, it clearly can do so for the combined entity.

Further, LIME submits that the combined entity should be required to roll out a fibre network to cover the resident population of the Sister Islands by the end of December 2017. LIME believes that the residents of the Sister Islands will and should benefit

from the roll out of superfast broadband services as much as the residents of Grand Cayman.

Finally, LIME submits that the obligation of the combined entity to roll out its fibre network needs to be strengthened. As drafted, the current “obligation” is a rather weak commitment to make “every effort to deploy and offer” a fibre network. By contrast, the obligation imposed on LIME and Digicel when they were deploying their respective LTE networks was a straightforward and enforceable “shall deploy and offer”. LIME submits that the same language must be used with respect to the Logic and WestStar fibre network deployments. Otherwise, the deployments are likely to be further delayed, if completed at all, to the significant detriment of people living outside of George Town, West Bay and the Seven Mile Beach corridor.

Return of Spectrum

Logic and WestStar presently control a significant amount of spectrum in the 2100 and 2500 MHz bands, for various purposes. LIME has combined and summarized these in the table below.

Assignment	Operator	Use
2150 - 2162	Logic	Internet
2500 - 2554	Logic	Internet and Internet telephony
2554 - 2560	WestStar	Cable television
2560 – 2566	Logic	Internet and Internet telephony
2566 – 2572	WestStar	Cable television
2572 – 2578	Logic	Internet and Internet telephony
2578 – 2584	WestStar	Cable television
2584 – 2590	Logic	Internet and Internet telephony
2590 – 2598	WestStar	Cable television

LIME submits that, with the aggressive fibre network deployments of the two entities and the improved services available over fibre compared to wireless networks, the combined entity will no longer require all of that spectrum. This spectrum could and should be returned to the Authority for future reassignment to other ICT licensees who would make better use of it. The first assignment that should be returned is that at 2150 – 2162 MHz, as it could also be used by mobile operators, not just fixed wireless operators.

Other Matters

Finally, the proposed transfer of WestStar to Logic highlights the need for the Authority to ensure fair competition on a level playing field. In addition to the measures proposed above, the Authority needs to take this opportunity to ensure Dish Direct TV Limited is duly licensed under the Law (for the reasons set out in our letters of 7 November 2013 and 18 February 2014 to the Authority). The Authority also ought to relax or lift the economic regulation of LIME’s services under Annex 5 of LIME’s ICT

Licence, as competition in the Cayman Islands is strong in all sectors of the ICT market, and is likely to get even stronger once the combined WestStar/Logic entity is fully operational. Finally, the Authority should issue a determination in the Local Loop Unbundling (“**LLU**”) proceeding that mandated LLU is not required. As we noted in our submissions of 15 July 2013 and 29 July 2013, competition and normal market forces are already leading to the roll out of advanced fibre-based access networks across the country, and regulatory action in this regard is not necessary. Imposing LLU where it is not required will distort the market and would be harmful to investment in the Cayman Islands. Further, the regulatory uncertainty created as the industry waits for a decision also acts to stifle investment incentives and concomitant benefits to Cayman residents.

Conclusion

LIME does not object to the proposed transfer of WestStar to Logic *per se*. However, this approval of this transfer must be subject to a number of conditions and regulatory measures, to ensure fair competition and to control abuses of dominant positions. If the Authority does not do this, we risk losing many of the benefits that liberalisation and competition have brought to the country and consumers over the last decade.

Yours faithfully,
Cable and Wireless (Cayman Islands) Limited, trading as LIME

[signed]

Frans Vandendries
VP Legal Regulatory & Corporate Affairs

c.c. Bill McCabe, Chief Executive Officer, LIME
David A. Cox, Head of Regulatory Affairs, LIME