



October 31, 2012

Ministry of Environment, Planning and Infrastructure Strategy,  
2<sup>nd</sup> Floor,  
F B Perry Building,  
40 Church Street,  
Hamilton HM 12.

Email: [reform@gov.bm](mailto:reform@gov.bm)

Dear Sirs,

**INITIAL RESPONSE TO PRE-CONSULTATION DOCUMENT PC12/03: COMMENTS ON  
MARKET REVIEW PROCESS**

Cable Co. Ltd. ("Cable Co.") provides Carrier's Carrier telecommunications services using subsea cable. We accordingly operate an "*electronic communications service... between Bermuda and another country*" and require pursuant to section 12 of the Electronic Communications Act 2011 (the "ECA") a Communications Operating License ("COL") to continue providing this service.

The Subsea Cable Market

There are three providers of subsea cable electronic communications services connecting Bermuda to other countries via subsea cable, namely (1) Cable Co.; (2) GlobeNet; and (3) Cable & Wireless (who are not on the Regulatory Authority's ("RA") list for an ICOL). These three companies therefore compete in the Carrier's Carrier market for international data transmission (the "Subsea Cable Market").

Although the Subsea Cable Market may be unimportant in the US or EU markets, it is a pivotal market in Bermuda.

First, Bermuda as an island jurisdiction, would not be able to communicate effectively or at all with the outside world without the Subsea Cable Market.

Second, the wholesale prices charged in the Subsea Cable Market are a significant cost component of retail data and voice products.

The importance of international electronic communications is indeed recognized by section 12 of the ECA which, as quoted above, refers expressly to services between Bermuda and other countries.

## Reform

We have reviewed the pre-consultation consultation papers provided by the Bermuda Government's ("Government") Advisory Team. We refer in particular to the Market Review Process (Part A) which deals with Market Definitions (the "Analysis").

### Candidate Markets

Appendix G of the Analysis sets out the parameters which have been applied by the Government's Advisory Team. Part 2 of Appendix G notes that the RA is required by the ECA to identify candidate markets and it is explained, in Part 3, section 3.1, of Appendix G, that:

*"From a regulatory standpoint a relevant market is a market concerning which a participant, a consumer, or a regulatory authority has expressed doubts as to the fairness and/or competitive nature of its function." (emphasis added)*

### Is the Subsea Cable Market a relevant market?

The Government's Advisory Team is best placed to define the parameters of the Subsea Cable Market and whether, for example, it should include international transmission services via satellite. However, while the parameters may be debated, the Subsea Cable Market clearly meets the definition of a relevant market set out in Part 3 of Appendix G quoted above. This is due to real doubts about the ability of the Subsea Cable Market to function competitively without ex ante regulation. For this reason, we are disappointed that the Analysis fails to identify, or even mention, the Subsea Cable Market.

Prior to the arrival of Cable Co., the Subsea Cable Market was an effective duopoly. The Government's concern about the Subsea Cable Market and the existence of a duopoly (where both carriers were foreign companies and where there was concern about the prices which were being levied) led to the Government's tender process for an additional Class A Public Telecommunication Service License and ultimately led to the creation of Cable Co. In short, Cable Co. came into existence to address concerns about the uncompetitive nature of the Subsea Cable Market.

The Subsea Cable Market is now, following the creation of Cable Co., much more competitive than it was. As a participant in the Subsea Cable Market, Cable Co. believes that there remain real doubts as to the competitive nature of the market's function;

- The barriers to entry are enormous.
- There was, before the introduction of Cable Co., a history of high prices.
- GlobeNet has a continuing ability to dominate the Subsea Cable Market as it has the ability to meet demands for virtually unlimited capacity for the next five to ten years. Cable Co., the only Bermuda company operating in this market, has on the other hand, much less available capacity and cannot increase capacity without significant further investment in addition to not having the benefit of GlobeNet's economies of scale.

The Commission and/or the Minister, as regulator, shares and/or shared these concerns. GlobeNet's current license is highly restrictive because of its ability to dominate the Subsea Cable Market and eliminate competition.

We believe customers of the Subsea Cable Market are also concerned about the market and especially about the risk of a return of a duopoly if the number of suppliers reduced from three to two.

For the above reasons, Cable Co. believes that the RA should, and indeed is obliged to, consider the Subsea Cable Market as a relevant market and conduct an analysis pursuant to the ECA. We are accordingly disappointed that the Analysis has omitted the Subsea Cable Market but hope and expect the RA will include it in the next stage of consultation. We believe that the Subsea Cable Market is not just a relevant market but, in addition, would benefit greatly from regulatory scrutiny.

We have taken the liberty of creating the table below which sets out the current structure of the Subsea Cable Market. The table is not complete as much of the information is not publicly available but we hope it assists in the future analysis.

Having invested heavily in establishing a subsea cable network, we are naturally concerned that the failure to identify the Subsea Cable Market may lead to the removal of the current regulatory safeguards and leave the public, and Cable Co., exposed to anti-competitive practices. It may be that all three participants in the Subsea Cable Market have SMP for the purposes of the ECA. What is clear however is that the Subsea Cable Market should be included in the Analysis and properly regulated.

Providers	License	Operates Subsea Cable	Company Ownership	Markets Served	Markets Served
Cable Co. Ltd.	Class A	Yes	Bermuda	Bermuda	Other Carriers
Brazil Telecom	Modified Class A	Yes	Brazil	Brazil, South America, USA, Bermuda	Other Carriers (Class A only in Bermuda)
TBI	Class A	No	Bermuda/USA	Bermuda	Other Carriers/Retail
Link Bermuda	Class A	No	Canada	Bermuda	Other Carriers/Retail
C&W(Vodafone)	None	Yes	UK	Global	Other Carriers
Verizon	None	No	US	Global	Retail – based on local clients claiming that Verizon represents that they have a retail presence in Bermuda

Sincerely,

Lloyd Fray  
 Director and Vice-President  
 Cable Co. Ltd.