



BERMUDA
**REGULATORY
AUTHORITY**

Amalgamation of North Rock Communications Ltd. and Logic Communications Ltd.

Emergency General Determination and Order
Matter: E13/04 – 856
29 April 2013

The Regulatory Authority hereby issues this Emergency General Determination pursuant to Sections 63 and 66(2) of the Regulatory Authority Act 2011 (“RAA”).

BACKGROUND

1. The Regulatory Authority’s decision to issue this Emergency General Determination follows the announcement on 26 April 2013 by KeyTech Limited (“KeyTech”) that its subsidiary, Logic Communication Ltd. (“Logic”), and North Rock Communications Ltd. (“North Rock”) have agreed to amalgamate their businesses. The announcement of the amalgamation was made by KeyTech one business day before 29 April 2013, the date scheduled for the conversion of the licences held by Logic and North Rock (“the Parties”) and 19 other licensees into Integrated Communications Operating Licences (“ICOLs”) pursuant to the new regulatory framework established by the Electronic Communications Act 2011 (“ECA”).

2. The Regulatory Authority was not informed in advance of the intention of KeyTech or the Parties to amalgamate their businesses.

EMERGENCY DETERMINATION

3. In accordance with Regulation 8 of the Public Telecommunications Services (Licence) Regulations 1998, which continue to apply to the Parties pursuant to ECA Section 79, no transfer of North Rock’s Class B public telecommunications service licence could be effectuated without the prior approval of the Minister of Economic Development.

4. In light of the fact that the amalgamation has been completed, North Rock no longer exists as a legal entity and the status of North Rock’s Class B public telecommunications licence is unclear. Logic, as a Class C licensee, has no authority to offer Class B services or to utilise North Rock’s former spectrum licences. If the Regulatory Authority were to convert Logic’s Class C licence into an ICOL on the prescribed date, as was originally intended pursuant to the ECA framework, similar complications would arise. Logic would be constrained to provide only the services that it was authorised to provide under its Class C licence as at the date of commencement of the ECA (that is, on 28 January 2013), pending further consideration of the emergency and interim general determination pursuant to which we have deemed Logic to have significant market power in all of the relevant markets in which it operates, as discussed in paragraph 8 below.

5. The amalgamation of the Parties’ businesses has generated a number of issues relating to the status of the public telecommunications service and spectrum licences previously held by the now defunct North Rock. The amalgamation also raises potentially serious competition concerns, including as regards the accumulation of spectrum by the KeyTech Group. The Regulatory Authority has had no opportunity to develop an evidentiary record regarding these complex issues and no time to consider their implications.

6. The Parties have committed that they will provide all relevant documentation and information concerning the transaction to the Regulatory Authority without delay. We will review and consider these materials in due course.

7. However, in light of the licensing issues that have been raised by the Parties’ amalgamation prior to issuance of the ICOLs, and the material competition concerns that are raised by the transaction, the Regulatory Authority has determined that this Emergency General

Determination is required to maintain the status quo and prevent customer disruption pending consideration of the licensing issues and investigation of competition concerns.

8. In separate but related actions, the Regulatory Authority has been directed by the Minister to suspend the date for conversion of the licences of Logic and (if applicable) the former North Rock into ICOLs pending review of these issues. In light of the exceptional circumstances described above, the Minister has also waived the statutory deadline set forth in Section 73(4)(c) of the ECA pursuant to RAA Section 5(6). The Regulatory Authority has made an emergency and interim determination that both Logic and the former business operated by North Rock shall be deemed to have significant market power in all relevant markets in which they operate, pending a full examination of the impact of the amalgamation on the market assessment that was completed by the Regulatory Authority prior to learning of the transaction.

9. The Regulatory Authority plans to conduct an investigation into the actions of the Parties to determine whether there has been a violation of Section 84 of the RAA. In particular, we will consider whether the Parties' amalgamation constitutes an action by KeyTech or Logic that preserves or enhances a dominant position in any relevant electronic communications markets in violation of Section 85(4)(b) of the RAA. As part of this investigation, the Regulatory Authority will invite the views of market participants and all interested parties. We expect to commence a consultation on this matter within fourteen days of the date of publication of this Emergency General Determination.

EMERGENCY ORDERS

10. In accordance with Section 63 of the RAA, the Regulatory Authority hereby determines and orders that:

- (a) This Emergency General Determination is adopted;
- (b) In order to prevent the disruption of service to former North Rock customers as a result of the probable lapse of North Rock's Class B licence following the amalgamation, the amalgamated company may, on an interim basis, continue to provide the services that were previously provided by North Rock as at 28 January 2013 pursuant to the former Class B public telecommunications services licence held by North Rock;
- (c) The amalgamated company may not utilise the radio frequency spectrum that North Rock was previously authorised to use in accordance with its Class B licence for any use other than that for which said spectrum was utilised by North Rock as at 28 January 2013;
- (d) Logic and the operatives of what was previously North Rock shall comply with the Hold Separate Order that is appended as Annex 1 to this Emergency General Determination until further notice, following the completion of proceedings pursuant to RAA Section 84(2), unless specifically authorised by the Regulatory Authority in advance and in writing to derogate from a particular provision or provisions for good cause shown by the requesting party;
- (e) The Chief Executive of the Regulatory Authority shall forward this Emergency General Determination to the Cabinet Secretary; and

- (f) This Emergency General Determination shall become effective on the earlier of the date on which Logic and North Rock have actual notice of this Emergency General Determination or the date on which this Emergency General Determination is published in two newspapers of general circulation, one of which is the Gazette.

11. So ordered this 29th day of April 2013.

Annex 1

HOLD SEPARATE ORDER

Notwithstanding the amalgamation of Logic Communications Ltd. (“Logic”) and North Rock Communications Ltd. (“North Rock”) (collectively “the Parties”) announced by KeyTech Limited (“KeyTech”) on 26 April 2013, the Parties shall conduct their operations in accordance with the requirements set out below until and unless this Order is rescinded or modified in writing by the Regulatory Authority. For the purposes of this Hold Separate Order, all obligations and limitations applicable to Logic shall be construed as applying to KeyTech’s affiliates other than North Rock.

Management of the Parties’ respective businesses

1. For so long as the Regulatory Authority is investigating the amalgamation of Logic and North Rock and is considering whether to take enforcement action under the Regulatory Authority Act 2011 (“RAA”) with respect to that transaction, except with the prior written consent of the Regulatory Authority, Logic and North Rock will not take any action which might:
 - (a) lead to the integration of the Logic business with all or any part of the North Rock business;
 - (b) otherwise impair the ability of the Logic business or the North Rock business to compete independently in any markets affected by the amalgamation; or
 - (c) otherwise prejudice or impede the taking of any action under the RAA in relation to the amalgamation of Logic and North Rock.

2. Without prejudice to the generality of paragraph 1, except with the prior written consent of the Regulatory Authority, each of Logic and North Rock shall at all times ensure and procure that the North Rock business as it was immediately prior to the amalgamation is ring-fenced from Logic’s business and operated on a stand-alone basis, and in particular, that:
 - (a) the Logic business is carried on separately and under a separate brand identity from the North Rock business and separate sales of the Logic and North Rock businesses are maintained;
 - (b) the Logic business and the North Rock business are each maintained as a going concern and sufficient resources are made available for the development of the Logic business and the North Rock business on the basis of their respective pre-amalgamation plans;
 - (c) no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within, the Logic business or the North Rock business;
 - (d) in relation to the assets of each of the Logic business and the North Rock business, and otherwise than in the ordinary course of business:
 - (i) the assets are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets is disposed of; and

- (iii) no interest in the assets is created or disposed of;
- (e) the nature, description, range and standard of goods and/or services supplied in Bermuda by the Logic business and the North Rock business at 26 April 2013 are in all material respects maintained and preserved;
- (f) there is no integration of the information technology of the Logic business with the information technology of the North Rock business and the respective software and hardware platforms of the Logic business and the North Rock business shall remain unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of each of the Logic business and the North Rock business shall be operated and updated separately and any negotiations with the customers and suppliers in relation to the Logic business will be carried out by the Logic business alone and any negotiations with the customers and suppliers in relation to the North Rock business will be carried out by the North Rock business alone, and for the avoidance of doubt neither of the Parties will negotiate on behalf of the other or enter into any joint agreements with customers and suppliers;
- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) all reasonable steps are taken to encourage all key staff of the Logic business and the North Rock business to remain with the business in relation to which they were employed prior to the amalgamation;
- (j) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the Logic business or the North Rock business ("Confidential Information") shall pass, directly or indirectly from the Logic business (or any of its employees, directors, agents or affiliates) to the North Rock business (or any of its employees, directors, agents or affiliates) or vice versa, except:
 - (i) where strictly necessary in the ordinary course of business and on the basis that, should the amalgamation be the subject of enforcement action and pursuant to such action unravelled in whole or in part, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
 - (ii) the flow of Confidential Information from the Logic business (or any of its employees, directors, agents or affiliates) to the North Rock business (or any of its employees, directors, agents or affiliates) or vice versa is permitted to the extent that such disclosure of information is strictly necessary for compliance with external regulatory and/or accounting obligations.

Compliance

3. Logic and North Rock shall ensure and procure that each of their affiliates or subsidiaries complies with this Hold Separate Order as if each of them was an addressee.
4. Logic and North Rock shall forthwith provide to the Regulatory Authority such information as the Regulatory Authority may from time to time require for the purposes of monitoring compliance by Logic and North Rock and their affiliates or subsidiaries with this Hold Separate Order.
5. At all times, Logic and North Rock will actively keep the Regulatory Authority informed of any material developments relating to the Parties' businesses, which includes, but is not limited to:
 - (a) details of key staff who leave or join the Logic business or the North Rock business (that is, staff in positions of executive or managerial responsibility and/or whose performance could materially affect the viability of the business);
 - (b) all substantial customer volumes won or lost by the Logic business or the North Rock business including any substantial changes in customers' demand; and
 - (c) substantial changes in the Logic business' or North Rock business' contractual arrangements or relationships with key suppliers.
6. Logic and North Rock shall comply with such written directions as the Regulatory Authority may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Hold Separate Order.