

## OPEN AGENDA

Copy No

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### Memorandum for Executive Council

**SUBJECT**

Policy for Communication Networks And Services

Memorandum by the Chairman of Economic Development Committee

**ADVICE SOUGHT**

1. **Executive Council is requested to consider and advise whether the Final Policy for Communication Networks should be endorsed.**

**BACKGROUND & CONSIDERATIONS**

2. Members will be aware that in December 2019 SHG signed a contract with Google to secure a Branch in Phase 1 of the Equiano Cable. The capital costs of the branch have been paid for by EDF11 funding, and the ongoing costs will be paid for by revenues from customer subscriptions via public electronic communications providers.
3. The broadband service provided from the Branch will be a transformational improvement for St Helena. By switching from a service provided by a geostationary satellite to a service provided by a fibre optic cable, we will move completely away from the need to restrict access by use of data allowances. The economics of the new electronic communications network would predominately be about covering costs through maximising the number of users subscribing to the service.
4. Naturally, the Telecommunications Ordinance needs to be refreshed to get the most out of St Helena's transformational digital modernisation. In doing that, a Policy for Communication Networks and Services has been developed to set the framework by which to update the Telecommunications Ordinance.
5. Note that the Policy has not been named the 'Telecommunications Policy' because Communications includes both telecommunications and electronic communications i.e. both telephones, internet and other data transfer.
6. The writing of the Policy also comes at a good time as it will help to guide the process of allocating public electronic communications network and service licences to one or more providers. Currently the telecommunications licence is an exclusive licence issued to Sure South Atlantic Ltd until 31 December 2022. The Policy leaves the question of exclusivity open in the case that more than one public electronic communications network and services licence is feasibly issued from 2023, and should exclusivity be required it would be subject to Executive Council agreement.
7. It is important to set out the Policy for Communication Networks

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and Services prior to moving into the procurement and negotiation stage with regards to the public communications licensee from 2023. This is because SHG needs to be clear under what parameters they expect public communications providers to work from.

8. The Policy was subject to public consultation from 14 July to 7 September 2020.
9. As with other consultations undertaken recently, feedback was requested:
  - a. Through one -to-one meetings, where these were requested
  - b. By online ‘survey monkey’ questionnaire, administered by the Statistics Office.
  - c. At a public meeting arranged during the consultation period
  - d. Through the Chamber of Commerce.
10. Alongside the feedback received through the survey, public meetings and one -to - one feedback a total of six written responses were received.
11. In summary the Policy recommends the:
  - a. Inclusion of a **Universal Service Obligation** in public electronic communication service licences. SHG must ensure that people and businesses on St Helena have access to services irrespective of their geographical location on the Island and at a price that does not prohibit access. It is anticipated that this can only be achieved on St Helena through mandatory service obligations placed on licensed providers of public electronic communication services.
  - b. Introduction of **Consumer Safeguards and Quality of Service Standards** within licence agreements. Communications licensees will be obliged to establish consumer complaints-handling procedures, with the Regulator investigating unresolved complaints; not engage in misleading or deceptive conduct; protect the privacy of users’ communications, subject to lawful interception and warrant; protect the confidentiality of users’ personal information and publish a Consumer Code that is approved by the Regulator. Furthermore, quality measures will be set that draw on SMART principles and Licensees will be obliged to provide services that meet stated minimum quality/reliability standards.
  - c. Introduction of **Price Controls**. Price controls will represent good value for consumers, allow the licensee to earn returns that are fair, properly reflect the risks faced in operating communication services on St Helena and remain simple by focusing on items of greatest value to consumers.
  - d. Introduction of a **Cable Landing Licence**. The Cable

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Landing Licence will be granted based upon certain licence terms and conditions including payment of the requisite licence fee and the necessary safety and security considerations having been met.

- e. Introduction of a **Communications Regulator** who will be regulating, supervising and enforcing compliance with conditions placed on licensees. They will investigate breaches and take targeted action.
12. Through provision of Universal Service Obligations, Consumer Safeguards and Quality of Service Standards and Price Controls, SHG can ensure best value for money for St Helena residents whether or not the public communications sector attracts enough private sector players willing to share a small customer base or it continues to be a monopoly from 2023.
  13. The Cable Landing Licence will ensure companies connecting their cables to St Helena, albeit not necessarily using the on-Island network, will contribute to St Helena by paying a licence fee.
  14. As a result of consultation, amendments were made to the Policy. The changes were:
    - a. Amendment to the provisions in section 3.3.11 on interception and surveillance. A Surveillance Commissioner will be designated as the person with responsibility to approve and issue notices for the retention of Electronic Communications Data, along with disclosure, interception and surveillance of electronic communications. The Surveillance Commissioner will also be responsible for granting authorisation allowing certain individuals to disclose electronic communications data.
    - b. Ensuring that the legal and regulatory framework more explicitly provides for more than one licensee for the provision of public electronic communication networks and services.
    - c. Amendment to the provision in section 3.3.3.3 on wholesale access on the Equiano branch. SHG will be responsible for the sale of wholesale capacity to licensed providers of public electronic communications networks and, where necessary, to Permanent Earth Station operators. The Regulator will have the powers to review wholesale pricing and recommend changes to regulations, where necessary.
    - d. Insertion of a section on regulating market structure (3.3.4.1). Where there is more than one public service supplier on St Helena licence provisions will include ‘anti-competitive safeguards’ to control restrictive business practices.
    - e. Assurances that a decision on whether to issue an exclusive licence would only be taken once a full, comprehensive and transparent assessment has been undertaken as to the impacts of a monopoly on St Helena; with the positive impacts proven to outweigh the negative.
    - f. Greater flexibility in licence length for the provision of public

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electronic communication networks and services. This recognises that in an environment where there will be significant change, with the arrival of the cable, licence length needs to be responsive. The section also reinforces the commitment to potential licensees that licence length needs to incentivise infrastructure investment with sufficient time for the return on investment.

- g. Insertion of a section on interconnection. Interconnection of networks is essential to enable customers of one network to place a call to users of another network. The inclusion of a statement on interconnection recognises this as a key component to a competitive market and makes a statement that SHG is committed to developing a specific Policy on interconnection.
  - h. Insertion of the principle of neutrality and conditions around network traffic management to further protect end users.
  - i. Clarification that the power within primary legislation to impose price controls is intended to operate only where there is a persisting absence of competition and that when setting price controls the least burdensome approach will be considered in the first instance.
  - j. Inclusion of further details as to what needs to be included by licensees in a Consumer Code of Conduct with details of what the requirements will be in law for consistency across licensees.
  - k. To mirror the flexible framework for electronic communications, the section on licensing broadcasting services has been amended to recognise that broadcasting services may be subject to competition but also there may be a need for exclusive rights to ensure continuity of broadcasting services on St Helena.
  - l. Additional background information regarding the role of the Regulator, the long-list options considered and the basis upon which the Policy recommends an operationally independent Regulator.
15. The Economic Development Committee (EDC) was provided a presentation outlining the changes to the draft Policy as well as the list of consultation responses, and the draft Policy with tracked changes. After consideration, EDC endorsed the Policy.
16. Executive Council is being asked to advise whether the final Policy can be endorsed. The final Policy is provided as Annex A to this memo.
17. There are financial implications as follows:
- a. There will need to be recruitment of a Regulator – this can be developed as part of the SHG restructure (Fit for the Future).

## FINANCIAL IMPLICATIONS

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b. The Policy will set parameters for new licensees. The current public licence expires on 31 December 2022 and the licence thereafter would need to include certain provisions such as Universal Service Obligations which would present a cost to the provider to satisfy but these have been assessed to be proportionate.

c. Requirements on licensees go beyond those currently in place under the licensing framework. The Policy is cognisant of these costs, providing a flexible framework that ensures these costs can be managed within the cost-benefit of awarding public electronic communication licences on St Helena and are consistent with similar sized jurisdictions.

d. There is not expected to be any financial implications for the general public.

### ECONOMIC IMPLICATIONS

18. Further economic development on St Helena is conditional on affordable internet access and therefore the delivery of the Fibre project within a modernised Communications legal framework is crucial to economic growth.
19. Arguably the digital sector has the most potential for economic growth of any sector other than tourism, and therefore setting a new Policy framework will be a significant forward step.
20. Delivery of the fibre project is a key action in the Sustainable Economic Development Plan in order to develop the satellite ground station, work from home, academia research and conferences, film location and tourism sectors.
21. The Digital Strategy refers to St Helena having one of the most expensive internet provision in the world. This Policy is part of the bigger picture to change that. Other parts of the picture include the Equiano project, and the procurement project to secure the public licence holder from 2023 and beyond.

### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

22. This is consistent with the following principles:
  1. Make St Helena a desirable and competitive destination to do business by removing barriers to investment.
  3. Support an economy which is accessible to all potential investors and promote investments across the economy.

### PUBLIC/SOCIAL IMPACT

23. The recommended Universal Service Obligations within the Policy will ensure that there are positive social impacts arising from awarding Communications licences.

### ENVIRONMENTAL IMPACT

24. The endorsement and resulting implementation of this policy could facilitate the introduction of new telecommunications infrastructure and equipment including the landing of additional cables and the building of Cable Landing Stations and Earth Stations. This would have an impact on both the terrestrial and marine environments and these impacts will need to be identified and assessed through the relevant planning and environmental

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- processes.
- PREVIOUS CONSULTATION/ COMMITTEE INPUT** 25. EDC approved the draft Policy prior to consultation in July 2020 and the final draft Policy in October 2020 which has been submitted for Executive Council consideration and advice.
- PUBLIC REACTION** 26. The potential of awarding another exclusive licence is unpopular, although a potential necessity. This is why the Policy is open to both structures, and the outcome will depend on a process of procurement/negotiation with Communication Providers.
- PUBLICITY** 27. Executive Council's decision will be covered in the media briefing following the meeting.  
28. Once approved the final Policy will be published on the SHG website and will be accompanied by a press release.
- SUPPORT TO STRATEGIC OBJECTIVES** 29. Link to the 10 Year Plan:  
Altogether Wealthier goal and Strategic Objective 3.3 Ensure Digital Strategy and Fibre Optic Cable delivers intended benefits to the whole community
- LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS** 30. Link to goal 9: Develop the Digital Economy: Open up St Helena to new economic markets by investing in broadband services and infrastructure, work towards delivering a fibre optic cable for the island.
- IMPLEMENTATION OF POLICY/ LEGISLATION** 31. The Attorney General's Chambers has been informed of the need for legislation redrafting. The IT Section was involved in the creation of this Policy.
- OPEN/CLOSED AGENDA ITEM** 32. Recommended for the Open Session.

LAH

Corporate Services  
Corporate Support

22<sup>nd</sup> October 2020

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