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No: 21/2020

Memorandum for Economic Development Committee

SUBJECT

Draft Policy For Communication Networks And Services

Memorandum by the Chief Economist

ADVICE SOUGHT Economic Development Committee (EDC) are requested to:

- 1) Endorse the Final Draft Policy For Communication Networks and Services for agreement by Executive Council**

BACKGROUND & CONSIDERATIONS

- 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 EDF'11 funding, and the ongoing costs will be paid for by revenues from customer subscriptions via public electronic communications providers.
- 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.
- Naturally, the Telecommunications Ordinance needs to be refreshed to get the most out of St Helena's transformational digital modernisation. In doing that, a Draft Policy For Communication Networks and Services has been developed to set the framework by which to update the Telecommunications Ordinance.
- 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.
- The writing of the draft 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 until 31 December 2022. The draft Policy reflects that because the customer base in St Helena is very small, it is likely that St Helena will not have more than one company willing to provide communications services and networks at any one time. However, the draft Policy leaves it open in the case that more than one public electronic communications network and services licence is feasibly issued from 2023.
- It is important to set out the draft 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.

7. The draft Policy was subject to public consultation from 14 July to 7 September 2020.
8. As with other consultations undertaken recently, feedback was requested:
 - Through one on one meetings, where these were requested.
 - By online ‘survey monkey’ questionnaire, administered by the Statistics Office.
 - At a public meeting arranged during the consultation period.
 - Through the Chamber of Commerce
9. Alongside the feedback received through the survey, public meetings and one on one feedback a total of six written responses were received.
10. In summary the Policy recommends the:
 - Inclusion of a **Universal Service Obligation** in public electronic communication service licenses. SHG must ensure that people and businesses in St Helena have access to services irrespective of their geographical location on St Helena 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.
 - 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 obligated to provide services that meet stated minimum quality/reliability standards.
 - 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.
 - Introduction of a **Cable Landing Licence**. The Cable 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.

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- 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.
11. 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 Helenians 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.
 12. 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.
 13. All responses to the consultation have been analysed. As a result of consultation amendments have been made to the Draft Policy. The recommended changes are:
 - 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 authorization allowing certain individuals to disclose electronic communications data.
 - 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.
 - 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.
 - Insertion of a section on regulating market structure (3.3.4.1). Where there is more than one public service supplier in St Helena licence provisions will include ‘anti-competitive safeguards’ to control restrictive business practices.
 - 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.
 - Greater flexibility in licence length for the provision of public electronic communication networks and services. This recognises that in an environment where there will be

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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 incentivize infrastructure investment with sufficient time for the return on investment.

- 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.
- Insertion of the principle of neutrality and conditions around network traffic management to further protect end users
- 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.
- 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.
- To mirror the flexible framework for electronic communications the section on licensing broadcasting services has been amended to recognize 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.
- 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.

14. The EDC are being asked whether the final draft Policy can now be taken for approval by the Executive Council. The final draft Policy is provided as Annex A to this memo.

15. Full details of the consultation comments, amendments made and the rationale for each amendment can be found in Annex B to this memo.

FINANCIAL IMPLICATIONS

16. There are financial implications as follows:

- There will need to be recruitment of a Regulator – this can be developed as part of the SHG restructure (Fit for the Future).
- 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

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Obligations which would present a cost to the provider to satisfy but these have been assessed to be proportionate.

- 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 in St Helena and are consistent with similar sized jurisdictions.
- There is not expected to be any financial implications for the general public.

ECONOMIC IMPLICATIONS

17. 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.

18. 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.

19. 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.

20. 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

21. 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

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

ENVIRONMENTAL IMPACT

23. There are no direct environmental impacts from this decision.

PREVIOUS CONSULTATION / COMMITTEE INPUT

24. EDC approved the draft Policy prior to consultation.

PUBLIC REACTION

25. The potential of awarding another exclusive licence is unpopular, although a potential necessity. This is why the Policy is open to both

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structures, and the outcome will depend on a process of procurement/negotiation with Communication Providers.

PUBLICITY

26. Once approved the final Policy will be published on the SHG website. A press release will accompany this.

SUPPORT TO STRATEGIC OBJECTIVES

27. 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

28. 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.

OPEN /CLOSED AGENDA ITEM

29. Recommended for the Open Session.

NS

Corporate Services
14 October 2020

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