



ANALYSIS

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 1991, No. 13

An Act to provide for the termination of an Agreement entered into between the Government of the Cook Islands and Cable and Wireless plc and to acquire certain assets and to provide for payment of adequate compensation in relation thereto

(13 June 1991)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by authority of the same as follows:

WHEREAS on the 9th day of July 1979 Her Majesty the Queen acting by and through the Postmaster-General on behalf of the Government of the Cook Islands entered into an Agreement with Cable and Wireless plc for the provision of external telecommunications services in the Cook Islands.

AND WHEREAS by clause (19) the Agreement is specified to be for a period of 15 years commencing from the date that the Company's Satellite Earth Station first carried international telephone and telegraph traffic for payment, that date (called the effective date) to be recorded in an exchange of letters between the Government and the Company.

AND WHEREAS by an exchange of letters it was agreed between the Government and the Company that the effective date would be the 1st day of March 1980.

AND WHEREAS an efficient telecommunications service has a vital role in the socio-economic development of the Cook Islands, especially given the substantial distances between the Northern and Southern Group Islands of the Cook Islands and foreign countries.

AND WHEREAS after extensive investigations, consultations and independent assessment the Government has determined that the most advantageous arrangement for improving the Cook Islands telecommunications service requires that the Agreement be brought to an end.

AND WHEREAS for the foregoing reasons of State policy, the Government is satisfied that it is no longer in the public interest for the Agreement to remain in force, and has sought in good faith to reach agreement with the Company to terminate the Agreement on mutually acceptable terms, but the Company has not agreed to the termination of the Agreement.

AND WHEREAS the Government is desirous of terminating the Agreement and acquiring such of the Company's assets as it shall require effectively to continue and improve the services provided by the Company under the Agreement, paying appropriate compensation to the Company for the assets.

NOW THEREFORE BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Cable and Wireless plc (External Telecommunications Agreement) Termination and Compulsory Acquisition Act 1991.

(2) This Act shall come into force on the 30th day of June 1991.

2. Interpretation - In this Act, unless the context otherwise requires: -

"**Agreement**" means the external telecommunications franchise agreement dated 9 July 1979 entered into between the Government and Cable and Wireless plc.

"**Assets**" means the buildings (including staff quarters), plant, equipment, spares, stores and other articles or rights in the Cook Islands belonging to and necessarily used by the Company in the provision or operation of the telecommunication services the subject of the Agreement and which are necessary to continue those services and includes the rights, if any, which may accrue from the unexpired term of the Agreement.

"**Government**" means Her Majesty the Queen in Right of the Cook Islands as represented by the Prime Minister of the Cook Islands.

"**Company**" means Cable and Wireless plc a company incorporated under the laws of the United Kingdom having

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its registered office at Mercury House, Theobalds Road, London WC1X 8RX, England.

"Minister" means the Minister of Telecommunications.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Provision of telecommunications declared to be public purpose - It is hereby declared that the provision of an efficient telecommunications service constitutes a public purpose for the purposes of section 25(a)(ii) of the Development Investment Act 1977.

5. Agreement to be terminated - The Agreement shall terminate on the expiry of the 30th day of June 1991 and as and from that date all rights conferred upon the Company by the Agreement shall cease to exist and shall be extinguished.

6. Acquisition of Assets of the Company - (1) On the expiry of the 30th day of June 1991, the assets of the Company shall vest in the Government free of all encumbrances.

(2) Notwithstanding subsection (1) of this section the Company shall not by virtue of this Act be relieved of any liability in respect of royalties, taxes, duties or other payments payable by the Company to the Government in respect of the performance of its obligations under or arising from the Agreement prior to the 1st day of July 1991.

7. Government to pay adequate compensation - (1) The Government shall within a reasonable time and in compliance with Article 40 of the Cook Islands Constitution adequately compensate:

(a) the Company for the acquisition by the Government of the assets referred to in section 6(1) of this Act.

(b) any other person able to establish a valid claim within Article 40 of the Constitution arising out of the vesting effected by section 6(1) of this Act.

(2) The Government or the Company shall have the right at any time to apply to the High Court of the Cook Islands for an order determining the interest of the Company in the assets acquired and the amount of adequate compensation payable by the Government in respect of the acquisition of those assets and, in relation to such proceedings the parties shall have the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(3) Any person claiming under subsection (1)(b) of this section shall have the right at any time to apply to the High Court of the Cook Islands for an order determining whether such claim is valid and if so, the amount of adequate compensation payable by the Government and, in relation to such proceedings the parties shall have the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(4) In relation to any applications made under subsections (2) or (3) of this section the Court shall have all the jurisdiction and powers that it ordinarily exercises in civil proceedings as a court of original jurisdiction including the powers conferred by sections 14 and 15 of the Arbitration Act 1908 of the New Zealand Parliament as applicable in the Cook Islands.

8. Documents of title to be noted as to change of ownership
- (1) Any person required by any Act or Order-in-Council to keep or maintain any record of title or ownership in respect of any assets to which section 6 of this Act applies shall, upon request made in writing by the Minister, make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this Act.

(2) In any other case this Act shall be sufficient proof of ownership by the Government of any asset to which section 6 of this Act applies.

This Act is administered by Crown Law Office