



Independent Communications Authority of South Africa

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**APPLICATION FOR THE TRANSFER OF CONTROL OF AN INDIVIDUAL
ELECTRONIC COMMUNICATIONS SERVICE AND AN INDIVIDUAL
ELECTRONIC COMMUNICATIONS NETWORK SERVICE LICENCES
FROM LPD CONSULTING (PTY) LTD
TO PARATUS TELECOMMUNICATIONS (PTY) LTD.**

REASONS FOR DECISION

JUNE 2021

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa ("the Authority") in relation to the applications for the transfer of control of an Individual Electronic Communications Service ("I-ECS") and an Individual Electronic Communications Network Service ("I-ECNS") licences from LPD Consulting (Pty) Ltd ("the Applicant") to Paratus Telecommunications (Pty) Ltd ("the Transferee").

2. BACKGROUND

- 2.1. On 20 September 2019, the Authority¹ received applications from the Applicant to transfer control of its I-ECS and I-ECNS licences to the Transferee.
- 2.2. The applications were submitted using Regulation 11 (Form G) of the Individual Licensing Processes and Procedures Regulations, 2010¹ ("the Regulations").
- 2.3. Included in the applications was a request for confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("the ICASA Act"). On 13 February 2020, the Authority granted confidentiality to the Applicant in line with the provisions of section 4D of the ICASA Act.
- 2.4. On 06 March 2020, the Authority published General Notice 140 in Government Gazette No. 43073 inviting all interested persons to make written representations in relation to the applications within fourteen (14) working days of the date of the publication of the notice in the Government Gazette.

¹ as amended by Government Gazette No. 39871 of 30 March 2016

- 2.5. No written representations were received by the closing date of 26 March 2020.
- 2.6. The Authority elected not to hold public hearings as it was of the view that the applications were clear, and it did not receive any written representations from the public with respect to the applications.
- 2.7. On 01 December 2020, the Authority approved the Applicant's transfer applications.

3. APPLICABLE LEGISLATIVE FRAMEWORK

- 3.1. Legislative and regulatory provisions applicable to the transfer applications are as follows:
- (a) Section 9(2)(b) of the Electronic Communications Act 36 of 2005 ("ECA");
 - (b) Section 13 (1), (2) and (6) of the ECA;
 - (c) Regulation 11 (Form G) of the Regulations;
 - (d) Clause 9 of regulation 11 (Form G) of the Regulations²;
 - (e) Schedule 2 of the General Licence Fees Regulations as published in Government Gazette No. 42370 of 01 April 2019 ("Fees Regulations").

4. THE TRANSFER APPLICATIONS

- 4.1. The full name of the Applicant is LPD Consulting (Pty) Ltd. The Applicant's principal place of business is Plot 70, Goedehoop Road, Doornkloof East, Pretoria.

² Clause 9.2 requires an independent competition analysis report regarding the impact of this transaction on the relevant market clearly marked Appendix 9.2 of Form G.
Clause 9.3 requires a consumer interest analysis report post the transaction clearly marked Appendix 9.3 Form G

4.2. The Applicant is a private company incorporated in terms of the Companies Act 71 of 1973 ("Companies Act"), as amended, with the following registration number: 2007/023842/07.

4.3. The full name of the Transferee is Paratus Telecommunications (Pty) Ltd. The Transferee's principal place of business is Plot 70, Goedehoop Road, Doornkloof East, Pretoria.

4.4. The Transferee is a private company incorporated in terms of the Companies Act, with the following registration number: 2009/016960/07.

5. DISCUSSION AND ANALYSIS

Historically Disadvantaged Groups Ownership

5.1. Section 13(6) of the ECA provides that section 9(2) to (6) of the ECA applies to transfer applications.

5.2. Section 9(2)(b) of the ECA requires the Authority to give notice of the application in the Government Gazette and:

"include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30%, or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the ICASA Act."

5.2.1. The Applicant has indicated that its ownership interests are as follows:

- Maxwell Technology (Pty) Ltd: 100%

The shareholder of Maxwell Technology is as follows:

- Paratus Telecommunication (Pty) Ltd 100%

The Applicant is 30% owned by persons from historically disadvantaged background. Ms Mogani Naidoo is an Indian South African woman.

The Applicant is 100% owned by Maxwell Technology, which, in turn, is 100% owned by the Transferee; Paratus Telecommunication (Pty) Ltd.

5.2.2. The Applicant (Paratus Telecommunication (Pty) Ltd) has indicated that the Transferee's ownership interests are as follows:

- Paratus Group Holdings: 55%
- Albertus Johannes Carlsen: 15%
- Mogani Naidoo: 30%

5.2.3. The percentage of equity ownership to be held by persons from Historically Disadvantaged Groups ("HDG's") in the Transferee is 30%, made up as follows:

- Mogani Naidoo, Indian woman: 30%

5.2.4. In order to substantiate the ownership interest in the Transferee, the Applicant submitted the following supporting documents:

- The registration document containing the names of the new shareholders in the Transferee; and
- Copies of identity documents of the respective shareholders.

5.2.5. The Authority is satisfied that the Transferee complies with the 30% minimum equity ownership by HDG's as contemplated in section 9(2) (b) of the ECA.

Approval of Authority

5.3. Section 13(1) of the ECA states that:

"... the control of an individual licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of the Authority."

5.3.1. On 20 September 2019, the Applicant applied to the Authority seeking approval for the transfer of control of its individual licences.

Prescribed Format

5.3.2. Section 13(2) of the ECA states that:

"An application for permission to let, sub-let, assign, cede or in any way transfer an individual licence, or assign, cede or transfer control of an individual licence may be made to the Authority in the prescribed manner."

5.3.3. Regulation 11 (Form G) of the Regulations, states that an application to transfer a licence must be:

- (a) in the format set out in Form G;
- (b) accompanied by the applicable fee; and
- (c) submitted by the prospective transferor.

5.3.4. The transfer applications were submitted in terms of regulation 11 (Form G) of the Regulations. The Applicant has made the required payment of R127.608.00 for the transfer of control of its I-ECS and I-ECNS licences and provided the proof of payment.

5.3.5. Section 13(6) of the ECA provides that:

"The provisions of section 9(2) to (6) apply, with the necessary changes, to this section."

5.3.6. The Authority followed the process outlined in section 9 (2) to (6) read with section 13(6) of the ECA by complying with the following requirements:

- (a) Inviting interested persons to apply and submit written representations in relation to the applications within a period mentioned in the notice³. On 06 March 2020, the Authority published General Notice 140 in Government Gazette No. 43073 inviting all interested persons to make written representations in relation to the applications.
- (b) Include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30% or such other conditions or higher percentage. The notice included the percentage of equity ownership to be held by persons from historically disadvantaged groups. The Transferee will be 30% owned by HDPs.
- (c) Set out the proposed licence conditions that will apply to the licence. The Applicant has indicated that the Transferee will assume and continue to discharge those obligations imposed to the Licensee. The Applicant submitted a written undertaking given by the Transferee, through its duly authorised representative, that it will comply with the Applicant's Licence obligations.

³ Government Gazette No. 42545 of 28 June 2019

- (d) Give interested persons an opportunity to submit written responses to any representations submitted in terms of (a). The Authority did not receive any written representation in relation to the applications.

5.3.7. The Authority is satisfied that the Applicant submitted all the required information and that the requirements prescribed in terms of regulation 11 (Form G) of the Regulations read with the ECA were met by the Applicant.

5.4. **Competition Analysis Report**

5.4.1. The Applicant procured the services of Lisa Thornton Consulting LC to undertake an independent competition analysis and prepare a report regarding the competition impact of the transaction as per Clause 9.2 requirement of Form G of the Regulations. The purpose of this requirement is to evaluate the impact the transaction will have on competition in the ICT Sector post the conclusion of the transaction.

5.4.2. In *paragraph 68 – 74*, of the High Court Review Judgement concerning the Vodacom acquisition of Neotel, the Court guides the Authority in respect of competition matters in that the its role is to *promote competition with the ICT Sector*⁴[own emphasis].

5.3.3 The applications before the Authority fall under the definition of a merger as defined in section 12 of the Competition Act no. 89 of 1998; as amended ("Competition Act"). Further, the Competition Act provides the for the determination of merger thresholds by the Minister of the Trade and Industry ("DTI") in consultation with the Competition Commission ("CompCom"). On 06 March 2009, the Minister (DTI) published a notice in

⁴ Telkom SA Soc Limited v Mncube NO and Others; Mobile Telephone Networks (Pty) Ltd v Pillay NO and Others; Cell C (Pty) Limited v The Chairperson of ICASA and Others; Dimension Data Middle East & Africa (Pty) Ltd t/a Internet Solutions v ICASA and Others (55311/2015; 77029/2015; 82287/2015) [2016] ZAGPPHC 93 (26 February 2016)

the Government Gazette No. 31957 about said threshold guidelines⁵. Further, on the 15 September 2017, the Minister (DTI) published a notice in the Government Gazette No. 41124 amending said guidelines⁶.

- 5.3.4 The Applicant/ Transferor ("LPD Consulting") is transferring ownership of its issued licences to the proposed transferee ("Paratus SA")⁷. According to the Authority there is no change of control in the Applicant's licence as result of the Application⁸ *[as the proposed Transferee is the ultimate equity shareholder for the purposes of this analysis] – [Own Emphasis]*.
- 5.3.5 In the submitted application the Applicant stipulates that Paratus Telecommunications plans to use the licences to invest in and expand infrastructure in South Africa, and to roll out new high throughput services to non-major metropolitan areas, giving under-serviced areas access to such services. This will benefit consumers, provide job opportunities and enhance competition in the sector.
- 5.3.6. In assessing whether the transaction will promote competition, the Authority is of the view that since Transferor is 100% owned by Maxwell Technology (Pty) Ltd which is in turn 100% owned by the proposed transferee , indicative of the fact that the application is an internal restructuring exercise, within Paratus SA- the ultimate shareholder, this commercial exercise has no consequence or impact on the current state of competition as the proposed Transferee will continue in line with section 2(y) of the objects of the ECA.
- 5.3.7. The Transferee states that it intends to expand operations. In the Authority's analysis, the transaction has no adverse impact post transaction on competition on both the Applicant's and proposed Transferee's market segments as they are one and the same. In conclusion, on a reasonable and adequate basis, the level of competition in the Applicant' market segment is not adversely impacted by the transfer

⁵ Determination of merger thresholds and method of calculation. Government Notice No. 216, Government Gazette No. 31957 of 6 March 2009.

⁶ Amendment of the determination of merger thresholds as set out in general notice 216 of 2009. Government Notice No. 1003, Government Gazette No. 41124 of 15 September 2017.

⁷ Business Plan (Section 8.6 of Form G), The Proposed Transaction. Submitted

⁸ Business Plan (Section 8.6 of Form G), The Proposed Transaction. Submitted

of the Licence and level of competition in the proposed Transferee' market segment is not adversely impacted by the transfer of the Licence.

5.4 **Consumer interest analysis report post the transaction**

- 5.4.1 The Applicant procured the services of Lisa Thornton Consulting LC to undertake a consumer interest analysis and prepare a report regarding the impact of the transaction as per 9.3 requirement of Form G of the Regulations. The premise of this requirement is to evaluate the impact the transaction will have on consumer's welfare post the conclusion of the transaction.
- 5.4.2 As contemplated in section 3 of the Consumer Protection Act No. 68 of 2008 ("**CPA**"); the Commission exercises primary authority to promote and advance the social and economic welfare of consumers in South Africa, and the Authority exercises primary authority to ensure universal and affordable access to high quality electronic communication services, broadcasting services and postal services, to consumers⁹ in line with sections 2(m) and (n) of the ECA.
- 5.4.3 The Applicant/ Transferor ("**LPD Consulting**") is transferring ownership of its ICASA issued licence to the proposed transferee ("**Paratus SA**")¹⁰.
- 5.4.4 The Applicant states in its submitted report the proposed licence transfers are from the licensee, which is ultimately owned by the transferee, and the transferee. It will allow the transferee to continue to offer quality ENCS and ECS services to customers and to integrate the services that it offers in South Africa with services offered in other parts of the world. The transaction will benefit consumers.
- 5.4.5 The Authority is of the view that since Transferor is 100% owned by Maxwell Technology (Pty) Ltd which is in turn 100% owned by the proposed transferee, indicative of the fact that the application is an internal restructuring exercise, within Paratus SA- the ultimate shareholder, this

⁹ 1.3 Memorandum of Agreement entered into between the National Consumer Commission and the Independent Communications Authority of South Africa.

¹⁰ Business Plan (Section 8.6 of Form G), The Proposed Transaction. Submitted

commercial exercise has no consequence or impact on consumers. This analysis is in accordance with the submitted consumer analysis report; compiled by Lisa Thornton Consulting LC.

- 5.4.5. The analysis does not find patent reason as to why the Application should be declined on a post transaction customer impact basis.

6. AUTHORITY'S DECISION

In the light of the above, on 01 December 2020, the Authority approved the transfer of the Applicant's I-ECS and I-ECNS licences to the Transferee.



DR KEABETSWE MODIMOENG

CHAIRPERSON

DATE: 11 / 06 / **2021**