



Independent Communications Authority of South Africa

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**APPLICATIONS FOR THE TRANSFER OF AN INDIVIDUAL ELECTRONIC
COMMUNICATIONS SERVICE AND AN INDIVIDUAL ELECTRONIC
COMMUNICATIONS NETWORK SERVICE LICENCES FROM
RAYV PRODUCT DEVELOPMENT (PTY) LTD TO
MOBILE OUTSOURCING SOLUTIONS (PTY) LTD**

REASONS FOR DECISION

MARCH 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 an Individual Electronic Communications Service ("I-ECS") and an Individual Electronic Communications Network Service ("I-ECNS") licences from Rayv Product Development (Pty) Ltd ("the Applicant") to Mobile Outsourcing Solutions (Pty) Ltd ("the Transferee").

2. BACKGROUND

- 2.1. On 09 March 2020, the Authority received applications from the Applicant to transfer 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. The Applicant did not request confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended ("the ICASA Act").
- 2.4. On 10 July 2020, the Authority published the applications in Government Notice No. 382 (Government Gazette No. 43518), inviting 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.
- 2.5. No written representations were received by the closing date of 31 July 2020.

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

- 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 23 March 2021, the Authority approved the Applicant's transfer applications.

3. THE TRANSFER APPLICATIONS

- 3.1. The full name of the Applicant is Rayv Product Development (Pty) Ltd. The Applicant's principal place of business is 926 Tonetti Street, Faerie Glen, Pretoria, 0081.
- 3.2. The Applicant is a private company registered in terms of the Companies Act of 1973, as amended, with the following registration number: 1998/001366/07.
- 3.3. The full name of the Transferee is Mobile Outsourcing Solutions Group (Pty) Ltd. The Transferee's principal place of business is 109 Sunny Road, Benoni, 1501.
- 3.4. The Transferee is a private company registered in terms of the Companies Act of 1973 with the following registration number: 2007/003161/07.

4. APPLICABLE LEGISLATIVE FRAMEWORK

- 4.1. The following legislative and regulatory provisions are applicable when dealing with transfer applications:
- (a) Section 9(2)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("EC Act")²;

² The Authority must give notice of the application in the 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.

- (b) Section 13 (1), (2) and (6) of the EC Act;
- (c) Regulation 11 (Form G) of the Processes and Procedures Regulations for Individual Licences, 2010 as amended ("Process and Procedures Regulations")³;
- (d) Regulation 12 of the Processes and Procedures Regulations;
- (e) Clause 9 of Form G of the Processes and Procedures Regulations⁴; and
- (f) Schedule 2 of the General Licence Fees Regulations as published in Government Gazette No 42370 of 01 April 2019 (Fees Regulations).

5. DISCUSSION AND ANALYSIS

5.1. Historically Disadvantaged Groups Ownership

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

5.1.2. 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."

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

- Raymond Leon Venter: 100%

Raymond Leon Venter is a White male South African Citizen.

³ 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.

⁴ 9.2 Provide an independent competition analysis report regarding the impact of this transaction on the relevant market clearly marked Appendix 9.2 of Form G.

9.3 Provide a consumer interest analysis report post the transaction clearly marked Appendix 9.3 Form G

The Applicant is not owned by persons from historically disadvantaged background.

5.1.3. The Applicant indicated that the ownership interests in the Transferee if approved, will be as follows:

- Morvest Group (Pty) Ltd: 100%

Morvest Group (Pty) Ltd is comprised of the following:

- Varachia Investment Group (Pty) Ltd: 99.62%
- Fava Investments (Pty) Ltd: 0.38%

MS Varachia Family Trust owns 100% of Varachia Investment Group (Pty) Ltd. Fava Investments (Pty) Ltd is owned 100% by Faheem Mohammed Varachia.

The beneficiaries of the MS Varachia Family Trust are as follows:

- Mr Mohammed Suliman Varachia: 50.81%;
- Mrs Rashida Varachia: 11.95%;
- Mrs Fatima Bibi Varachia: 11.95%;
- Mr Faheem Mohammed Varachia: 4.98%;
- Mr Fayyaadh Mohammed Varachia: 4.98%;
- Mr Farhaan Mohammed Varachia: 4.98%;
- Mr Fudhail Mohammed Varachia: 4.98%; and
- Mr Zayan Mohammed Varachia: 4.98%.

All beneficiaries are South African Citizens of Indian descent from previously disadvantaged background.

5.1.4. 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.

5.2. **Approval of Authority**

Section 13(1) of the ECA states that:

"An individual licence may not be let, sub-let, assigned, ceded or in any way transferred, and 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."

On 09 March 2020, the Applicant applied to the Authority seeking approval for the transfer of its I-ECS and I-ECNS licences.

5.3. **Prescribed Format**

5.3.1. 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."

5.3.2. The prescribed format is contained in regulation 11 (Form G) of the Processes and Procedures Regulations, which 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.

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

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

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

5.3.5. 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) In line with section 9 (2) (a) of the ECA, the Authority invited interested persons to apply and submit written representations in relation to the applications within a period mentioned in the notice⁵. On 10 July 2020, the Authority gave notice of the applications in Government Gazette No. 43518.
- (b) However due to the implementation of the National State of Disaster in relation to Covid-19 and the applicable regulations at the time, the Authority made the applications available for public scrutiny on its website.
- (c) In line with section 9 (2) (b) of the ECA, the application must 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 100% owned by HDPs.
- (d) In terms of section 9 (2) (c) of the ECA, when the Authority publishes applications received, such applications must 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

⁵ Government Gazette No. 43518 of 20 July 2020

Transferee, through its duly authorised representative, that it will comply with the Applicant's Licence obligations.

- (e) Section 9 (2) (d) of the ECA requires that the Authority give interested persons an opportunity to submit written responses to any representations submitted in terms of section 9 (2) (a). The Authority did not receive any written representation in relation to the applications.
- (f) In terms of section 9 (5) of the ECA, the Authority will notify the Applicant of the decision to approve the transfer application and will publish the reasons for the approval of the application as well as the licence conditions applicable.
- (g) The transferred licences to the Transferee are issued on the same terms and conditions applicable to individual licences.

5.4. **Competition Analysis Report**

Clause 9.2 of Form G⁶ requires the Applicant to provide an independent competition analysis report regarding the impact of this transaction

The Applicant procured the services of The Office of Mqondisi Gumede ("the OMG") to prepare a report regarding the impact of the transaction on competition. The report evaluated whether the transaction will have an adverse or positive impact on competition in the ICT Sector post the conclusion of the transaction.

In the *Obiter Dicta (par 68 - 74)* provided by DS Fourie, J in the ICASA High Court Review Judgement concerning the Vodacom acquisition of Neotel⁷ guides the Authority in respect of competition matters. In that its role is to promote competition with the ICT Sector.

⁶ Licensing Processes and Procedures Regulations

⁷ " 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)"

According to the report, the Transferee has partnered with Abu Dhabi based satellite provider YahClick (owned by YahSat) to carry cost-effective, secure satellite internet services to even the most rural and remote areas of South Africa via the advanced, Hughes-powered Ka-Band Satellite technology of YahSat. It aims to offer secure satellite internet connectivity to companies and homes throughout South Africa in areas underserved by conventional internet service solutions, by partnering with a network of locally embedded distributors to build and fund internet access solutions.

Cellular providers with remote footprint as well as other Satellite Internet providers are the major competitors in this region. Also as ADSL capacity is decreasing, the substitution of ADSL links in remote cities and areas is also an opportunity. There are only two international satellite operators partnering with different South African companies to market, sell and support their technology solutions. These companies are Avanti VSAT and YahClick. Avanti VSAT partners with several South African companies, including Vox Telecoms and Internet Solutions, while YahClick is currently sold only by Vox Telecommunications and the Transferee.

With an emphasis on providing services to the underserved consumer segment, there is restricted competition at these areas. From the Altai Tele density Research study, it is clear that there are geographical locations where there is little preference and competition in internet services, and it is these areas that the transferee plans to concentrate on. In rural areas, connectivity to 4G capability is frequently sporadic, unstable and unaffordable. Comparatively, the Satellite Internet approach provides greater reliability and affordability in these areas.

Other Satellite Internet Solution resellers are often unreliable in rural areas as they do not have a robust physical presence across South Africa. The transferee has a specific plan to collaborate with several locally developed business organizations in target markets to resell, deploy and maintain solutions, thus delivering effective operation and support to remote communities. This offers a major differentiator in the competitive environment.

With respect to pricing, the Transferee also makes for more efficient pricing on the South African market with the most cost-effective satellite packages. Both services for launch are uncapped and the cheapest available on the market for both enterprise and home connections. Launch specials often provide free equipment and delivery for customers, making the service even more available to consumers while the set-up costs for competitors are usual.

The Transferee plans to concentrate on providing secure, affordable satellite internet access to underserved areas in South Africa. The Transferee would not contend directly with the bulk of telecommunications companies because of its capacity to deliver facilities where other providers do not have infrastructure capabilities. The transferee would provide a viable solution to the only existing Satellite Internet service providers and compete to provide more reliable options.

The Authority is of the view that, the transfer of the licence to the proposed Transferee will have positive competitive effects in the ICT Sector and is compliant with Clause 9.2 of Form G.

5.5. Consumer Interest Analysis Report

Clause 9.3 of Form G requires the Applicant to provide a consumer interest analysis report post the transaction.

The Applicant procured the services of the OMG to undertake an independent consumer interest analysis and prepare a report regarding the impact of the transaction as per Form G of the Processes and Procedures Regulations requirement.

According to the report, businesses and individuals in more rural areas of South Africa can now have inexpensive access to uncapped, consistent, reliable Internet across the Transferee collection of packages. This helps even remote businesses such as Game Lodges, farming companies and SMMEs to have access to the world wide web to help them do business, meet their customers and promote their business needs. Consumers will be able to use home internet anywhere in South

Africa, giving them greater security through communication mobility and access to education, entertainment and retail solutions.

The Transferee plans to concentrate on providing secure, inexpensive satellite internet access to underserved areas in South Africa. It provides a new, secure alternative for Internet access in locations where there were no alternatives in the past. This helps both customers and companies in these regions. The Authority is satisfied that the Applicant is compliant with Clause 9.3 of Form G.

6. AUTHORITY'S DECISION

In the light of the above, on 23 March 2021, the Authority approved the transfer of the Applicant's I-ECS and I-ECNS licences to the Transferee.



DR. KEABETSWE MODIMOENG
CHAIRPERSON

DATE: 08/04/2021