



**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  
DESMOND BAYLEY RAMSAY TO BLUE SHADOW  
INVESTMENTS (PTY) LTD**

**REASONS FOR DECISION**

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**APRIL 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 Desmond Bayley Ramsay (“the Applicant”) to Blue Shadow Investments (Pty) Ltd (“the Transferee”).

## **2. BACKGROUND**

- 2.1. On 31 January 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 2010<sup>1</sup> (“the Regulations”).
- 2.3. The Applicant requested confidentiality, which was granted on 26 March 2020 by the Authority, in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended (“the ICASA Act”) for the following information:
  - 2.3.1. Identity Number and residential address of the shareholder of the Applicant;
  - 2.3.2. Identity Number and residential address of the shareholder of the Transferee;
  - 2.3.3. Projected financial plan section of the business plan; and
  - 2.3.4. The Transferee’s annual financial statements for the financial year ended 28 February 2016 and February 2018.
- 2.4. On 26 March 2020, the letter of approval was sent to the Applicant.

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<sup>1</sup> As amended by Government Gazette No. 39871 of 30 March 2016

- 2.5. On 18 June 2020, the Authority published notice 339 in the Government Gazette No. 43449 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.
- 2.6. No written representations were received by the closing date of 08 July 2020.
- 2.7. 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.
- 2.8. On 01 December 2020, the Authority approved the Applicant's transfer application. The licence reflecting the name of the Transferee was issued on 01 December 2020.

### **3. THE TRANSFER APPLICATIONS**

The full name of the Applicant, who is a natural person, is Desmond Bayley Ramsay. The Applicant's principal place of business is 202 Gateway, 3 Sugar Close, Umhlanga, 4320.

- 3.1. The full name of the Transferee is Blue Shadow Investments (Pty) Ltd. The Transferee's principal place of business is: Unit 27, Norma Jean Square, 244 Jean Avenue, Centurion, 0157.
- 3.2. The Transferee is a private company registered in terms of the Companies Act of 2008 with the following registration number: 2018/492482/07.

### **4. APPLICABLE LEGISLATIVE FRAMEWORK**

- 4.1. Legislative and regulatory provisions applicable to the transfer application 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 Processes and Procedures Regulations;
- (d) Regulation 12 of the Process and Procedure Regulations
- (e) Clause 9 of regulation 11 (Form G) of the Regulations<sup>2</sup>;
- (f) Schedule 2 of the General Licence Fees Regulations as published in Government Gazette (“Fees Regulations<sup>3</sup>

## **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 <sup>4</sup>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:

- Desmond Bayley Ramsay: 100%

Desmond Bayley Ramsay is a White male South African Citizen. The Applicant is not owned by persons from historically disadvantaged background.

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<sup>3</sup> Government Gazette No. 42370 of 01 April 2019

<sup>4</sup> Government Gazette No.43449 of 18 June 2020

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

- Charl Coetzee: 50%
- Suzanne Coetzee: 50%

The Applicant indicated that the Transferee is 50% owned by a person from historically disadvantaged group. Suzanne Coetzee is a White South African female from previously disadvantaged group.

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 31 January 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. 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.

5.3.3. 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 notice<sup>5</sup>. On 18 June 2020, the Authority gave notice of the applications in Government Gazette No. 43449 to allow interested parties to access the applications at the Authority’s library during working hours.
- (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

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<sup>5</sup> Government Gazette No. 43449 of 18 June 2020

from historically disadvantaged groups. The Transferee will be 50% 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.
- (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.
- (e) The Authority notified the Applicant of the decision to approve the transfer application and is now publishing the reasons for the approval of the application as well as the licence conditions applicable.
- (f) The transferred licences to the Transferee are issued on the same terms and conditions applicable to individual licences.

5.4. Regulation 12 of the Processes and Procedures Regulations states that the Authority may refuse to renew or transfer a Licence if the Licensee has not complied with one or more of the following:

- (a) where the Licensee has been found guilty of a contravention by the CCC and has not complied with the order by the Authority in terms of section 17 of ICASA Act; or
- (b) where the Licensee has not paid the Licence fees due and payable at the date of the application; or

(c) where the Transferee's ownership and control by historically disadvantaged persons is less than 30%.

- 5.4.1. The Applicant has not been found guilty of any contravention by the CCC. On 31 January 2020, the CCC informed the Licensing Division that there were no compliance issues raised against the Applicant.
- 5.4.2. Further, the Applicant has paid the licence fees due and payable at the date of the applications.
- 5.4.3. The Transferee is 50% owned by historically disadvantaged individuals.
- 5.4.4. The Authority is satisfied that the Applicant is now up to date with all licence fees due and payable to the Authority at the time of the transfer application.

## 5.5. **Competition Analysis Report**

- 5.4.1. Clause 9.2 of Form G<sup>6</sup> requires the Applicant to provide an independent competition analysis report regarding the impact of this transaction.
- 5.4.2. The Applicant procured the services of Dave Gale Busdev Solutions, an Independent ICT Consultancy 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. To that effect, the report has sourced the information from the landscape and market shares of key players based on publicly available data.
- 5.4.3. In the *Obiter Dicta (par 68 - 74)* provided by DS Fourie, J in the ICASA High Court Review Judgement concerning the Vodacom acquisition of Neotel<sup>7</sup>

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<sup>6</sup> Licensing Processes and Procedures Regulations

<sup>7</sup> “ 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)”



guides the Authority in respect of competition matters. In that its role is to promote competition with the ICT Sector [own emphasis].

5.4.4. According to the report, the Applicant had run a medium-sized regional ISP, with limited geographic focus and a small number of competitors in KwaZulu Natal. They had no significant market dominance.

5.4.5. Through the acquisition of the individual licences, the Transferee expressly wishes to deploy network by laying fibre network in office parks, developments and suburbs and renting fibre capacity on existing backhaul and distribution networks as and when the business cases dictate<sup>8</sup>.

In the Authority's assessment, the transfer will not adversely lessen or prevent competition in the sector.

## 5.6. **Consumer Interest Analysis Report**

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

5.5.2. The Applicant procured the services of Dave Gale Busdev Solutions, an Independent ICT Consultancy to undertake an independent consumer interest analysis and prepare a report regarding the impact of the transaction as per Form G of the Process and Procedures Regulations requirement.

The report evaluates the impact the transaction will have on consumers welfare post transfer.

5.5.3. The business plan of the Transferee provides that the Transferee offers robust voice and data products and services locally in terms of its class electronic communications service licence. The plan with the acquisition of an I-ECS is to expand the service offering nationally.

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<sup>8</sup> Competition Analysis – Transferee Geographic Coverage was submitted.

5.5.4. The value proposition to the consumer is the Transferee's tailor-made provision of a combination of key offerings including telecommunications and data services as well as office automation products.<sup>9</sup> This will have the benefit of expanding the services, thus increasing the element of choice and diversity for the consumer.

5.5.5. The analysis does not find patent reason as to why the Application should be declined on a post transaction customer impact basis. The Authority is satisfied from the consumer analysis report provided that the transfer will provide a consumer interest post the transfer.

## **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.



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**DR. KEABETSWE MODIMOENG**  
**CHAIRPERSON**

**DATE: 19/05/2021**

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<sup>9</sup> Submitted in the consumer analysis report.