



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 PRO DYNAMIC
DATA CONSULTING CC TO MUBVUMELA CORPORATION (PTY) LTD T/A
MBV IT**

REASONS DOCUMENT

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 an Individual Electronic Communications Service ("I-ECS") and an Individual Electronic Communications Network Service ("I-ECNS") licence from Pro Dynamic Data Consulting CC ("the Applicant") to Mubvumela Corporation (Pty) Ltd t/a MBV IT ("the Transferee").

2. BACKGROUND

- 2.1. On 02 July 2019, the Authority received applications from the Applicant for the transfer 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. The Applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act").
- 2.4. The request for confidentiality was related to the following:
 - 2.4.1. Identity Number and residential address of the shareholder of the Applicant;
 - 2.4.2. Identity Number and residential address of the shareholder of the Transferee;
 - 2.4.3. Projected financial plan section of the business plan; and

¹ Published in Government Gazette No. 33293 of 14 June 2010 as amended by Government Gazette No. 39871 of 30 March 2016 and the Licensing Processes and Procedures for Individual Licences Amendment Regulations, 2018 ("Amendment Regulations, 2018") published under General Notice 767 in Government Gazette No. 42087 of 5 December 2018. The Amendment Regulations, 2018 apply to all pending individual licence transfers and renewals received by the Authority before the effective date of the Regulations. Notably, the Amendment Regulations, 2018 apply to this Transfer Application.

- 2.4.4. The Transferee's annual financial statements for the financial year ended 28 February 2016 and February 2018.
- 2.5. On 25 October 2019, the Authority published the applications in Government Notice No. 571(Government Gazette No. 42788) 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.
- 2.6. No written representations were received by the closing date of 14 November 2019.
- 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 23 September 2020, the Authority approved the Applicant's transfer applications.

3. PARTICULARS OF THE APPLICANT AND TRANSFeree

- 3.1. The full name of the Applicant is Pro Dynamic Data Consulting CC. The Applicant's principal place of business is 14 Witteberg Street, Helderkruijn, Roodepoort, 1724.
- 3.2. The Applicant is a close corporation registered in terms of the Close Corporation Act, 1984 (Act No. 69 of 1984) with the following registration number: 2000/049647/23.
- 3.3. The full name of the Transferee is Mubvumela Corporation (Pty) Ltd t/a MBV IT. The Transferee's principal place of business is: Building 01, Office S1, Prism Business Park, Fourways, 2068.
- 3.4. The Transferee is a private company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008) with the following registration number: 2013/076147/07.

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;
- (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 ("Licensing Processes and Procedures Regulations");
- (d) Regulation 12 of the Processes and Procedures Regulations;
- (e) Clause 9 of Form G of the Licensing Processes and Procedures Regulations; 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 ("HDGs") Ownership

5.1.1. 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."

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.

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

- Kumsheila Reddy: 100%

5.1.3. Kumsheila Reddy is an Indian South African Citizen from a historically disadvantaged group. The Applicant is thus 100% owned by a person from an HDG.

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

- Mikovhe Mulaudzi: 100%

5.1.5. Mikovhe Mulaudzi is a Black South African citizen who is from a HDGs.

5.1.6. The Authority is satisfied that the Transferee is 100% owned by an HDG. This equity stake meets the 30% HDGs minimum requirement contemplated in section 9(2) (b) of the EC Act.

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

5.1.7. Section 9(2)(b) of the EC Act 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."

5.1.8. On 25 October 2019, the Authority gave notice of the applications in Government Gazette No. 42788.

5.2. **Approval of Authority**

5.2.1. 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."

5.2.2. On 02 July 2019, 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 EC Act 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. The applications were submitted by the Transferor³.

³ The Applicant.

5.2. Section 13(6) of the EC Act provides that:

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

5.3. The Authority followed the process outlined in section 9 (2) to (6) of the EC Act by complying with the following requirements:

- (a) Section 9 (2) (a) of the ECA requires the Authority to invite interested persons to apply and submit written representations in relation to the applications within a period mentioned in the notice⁴. On 25 October 2019, the Authority gave notice of the applications in Government Gazette No. 42788.
- (b) In terms of section 9 (2) (b) of the ECA, the application must include the percentage of equity ownership to be held by persons from HDGs, which must not be less than 30% or such other conditions or higher percentage. The applications included the percentage of equity ownership to be held by persons from HDGs. The Transferee is 100% owned by persons from HDGs.
- (c) 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 it⁵. 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) Section 9 (2) (d) of the ECA requires the Authority to give interested persons an opportunity to submit written responses to any representations submitted in terms of section 9 (2) (a). The

⁴ Government Gazette No. 42788 of 25 October 2019

⁵ The Applicant.

Authority did not receive any written representation in relation to the applications.

- (e) Section 9 (2)(e) of the ECA provides that the Authority may conduct public hearings with respect to the applications received. As already indicated in clause 2.7 above, the Authority decided not to hold public hearings.
- (f) Section 9 (4)(a) of the ECA provides that applications, representations, responses, and other documents relating to an application which are submitted to the Authority must be open to public inspection during the normal office hours of the Authority. Due to the implementation of the National State of Disaster in relation to Covid-19 and the applicable regulations at the time, the Authority was only able to make the applications available for public scrutiny on its website.
- (g) In terms of section 9 (5) of the EC Act, the Authority must notify the Applicant of its decision, the reasons for its decision and any licence conditions applicable after the consideration of the applications and any representations received. The Authority has notified the Applicant of its decision. The reasons for the Authority's decision are contained in this Notice. The Transferee will be subject to the same licence terms and conditions as were applicable to the Applicant.

5.4. **Competition Analysis Report**

- 5.4.1. Clause 9.2 of Form G⁶ requires the Applicant to provide an independent competition analysis report post the transaction to assess the impact of the transaction on competition after the transfer of the licences.
- 5.4.2. The Applicant procured the services of Dave Gale Busdev Solutions, an Independent ICT Consultancy with the goal of conducting an independent

⁶ Licensing Processes and Procedures Regulations

competition assessment and preparing a report on the competition impact of the transaction.

- 5.4.3. In the *Obiter Dicta (par 68 - 74)* provided by DS Fourie, in the ICASA High Court Review Judgement concerning the Vodacom acquisition of Neotel⁷, the Court 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 Transferee currently provides IT Services and resells internet and connectivity services of other licensed providers. It also services ten (10) small, micro, and medium enterprises ("SMME") customers consisting of small businesses and local government offices located respectively in Randwest Municipality, Gauteng Provincial Government and Phumelela Municipality.
- 5.4.5. The Transferee expressly wishes to build and operate its own national telecoms network to better serve their existing customers and expand their business. The proposed services offering ranges from Layer 2⁸ and Layer 3⁹ services to business. Layer 2 services to State Information Technology Agency (SITA) provide for the connectivity to rural government offices and residential internet access via wireless technologies and fibre to the home.¹⁰
- 5.4.6. The proposed Transferee is not exiting its current market or consolidating in its current operating market – the proposed Transferee is acquiring the ICASA issued licence to expand its current product and services portfolio; and expand beyond its current market.

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)

⁸ Layer 2 is the Data Link Layer in the Open System Interconnection (OSI) Model. Layer 2 is where data packets are encoded and decoded into bits. The MAC (Media Access Control) sub layer controls how a computer on the network gains access to the data and permission to transmit it and the LLC (Logical Link control) layer controls frame synchronization, flow control and error checking. Customers can share a common switching infrastructure and are assigned virtual circuits.

⁹ Layer 3 is the Network Layer in the OSI Model. It provides switching and routing technologies, creating logical paths, known as virtual circuits, for transmitting data from node to node.

¹⁰ Competition Analysis – Transferee Services and Products submitted.

5.4.7. The competition analysis does not find patent reasons not to grant the transfer based on its impact on competition. The transferred licences will enable to expand its current product and services portfolio beyond its current market. Therefore, the transaction will not adversely affect competition in the sector.

5.4.8. The Authority is satisfied that the transaction will not adversely affect competition in the sector.

5.5. **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 to assess the impact of the transaction on consumer welfare after the transfer of the licenses.

5.5.2. The Applicant procured the services of Dave Gale Busdey Solutions to undertake a consumer interest analysis and prepare a report regarding the impact of the transaction on consumers post the transfer of the licenses.

5.5.3. According to the Consumer Analysis report, the Transferee currently provides IT services and resells internet and connectivity services of other licensed providers as well as servicing 10 (ten) SMME customers consisting of small businesses and local government offices (Randwest Municipality, Gauteng Provincial Government and Phumelela Municipality) – with an expressed wish to serve consumers. Furthermore, the SMME customers using the ICT services are across Limpopo, Gauteng, North West, and the Free State.

5.5.4. Should the transfer application be approved, the Authority is of the view that the deployment by the Transferee of wireline and wireless networks across South Africa, specifically focusing on under-serviced rural and semi-rural areas, will positively impact the consumers.

5.5.5. The Authority is thus satisfied that the consumer welfare is catered for post the transaction. The projected services described in the business plan will increase access to communications services and diversity of choice, better quality of service and satisfaction for consumers.

6. AUTHORITY'S DECISION

In the light of the above, on 23 September 2020, the Authority approved the transfer of the Applicant's I-ECS and I-ECNS licences to the Transferee.



DR KEABETSWE MODIMOENG

CHAIRPERSON

DATE: 18 / 06 / 2021