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FAO Mr. Peter Mailula
Independent Communications Authority of South Africa
350 Witch-Hazel Road, Eco-Park
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South Africa

Subject: Avanti Communications Response to ICASA Inquiry Into Individual Electronic Communications Network Service and Individual Electronic Communications Service Licences

Dear Mr. Peter Mailula,

I am pleased to send you the Avanti Communications response to the ICASA Inquiry regarding I-ECN/S licences.

The Avanti Communications Group comprises multiple companies providing a flexible GEO service that delivers Ka-Band capacity where and when required globally. Avanti is strongly committed to South Africa and contributes to its national development. Specifically, Avanti operates a gateway, has an office in Johannesburg, and supports several clients in South Africa that provide important electronic communication services. Avanti is also proud to have supported the Youth Charter '30' for sport inclusion and the Mi-Desk Initiative for rural schools.

The group includes two companies registered in South Africa: Cyberdine Secure Internet (Pty) Limited and Avanti Communications South Africa (Pty) Limited. Cyberdine holds an Individual Electronic Communications Network Licence (0020/IECNS/JAN/2009) and an Individual Electronic Communications Service Licence (0020/IECS/JAN/2009).

These licences enable Avanti to sell services to local entities in South Africa that provide important benefits, such as resilience for banks and connectivity in rural areas.

As set out in the responses, Avanti considers that the current framework for electronic communications licensing is functional and supports the policy objectives of ICASA and successive South African governments. Current regulations require electronic communications network service providers in South Africa, such as Avanti, to make significant financial and operational commitments that benefit the local economy. Such requirements and benefits to South Africa might be eroded by relaxing existing regulations. Avanti is therefore unclear as to the specific problem that would be addressed by introducing a new assignment process for I-ECNS and I-ECNS licences.

Should ICASA nevertheless decide to amend the existing regulations, Avanti considers that any relaxation of the regulatory framework should be applied on a universal basis, in line with regulatory best practice and the principles of consistency and non-discrimination. In particular, if market entry is permitted for entities that





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do not meet the Historically Disadvantaged Persons ownership requirements, those requirements should be suspended for all existing licensees.

Kind Regards,

A handwritten signature in blue ink, appearing to read "Asbjorn Christoffersen".

Asbjorn Christoffersen
Head of Regulatory Affairs





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Name and surname	Asbjorn Christoffersen
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Question 1.1: What are your views on the current licensing framework in relation to the sale and transfer of I-ECNS and I-ECS licences (section 13 of the ECA)? In particular, does the current licensing framework hinder or promote competition? In providing your response, please provide reasons supported by evidence or case studies, where applicable.

Avanti believes the current framework provides a constructive and pragmatic balance between supporting competition, protecting consumers, and working towards South Africa’s policy objectives.

Key advantages to the current system include:

- *Providing the Authority a regulatory tool to promote the South African electronic communications industry and expertise, including with regard to cutting-edge satellite networks.*
- *Requiring firms demonstrate their commitment to South Africa by investing in local firms.*
- *Enabling competition by providing a flexible route to market entry for new domestic and foreign competitors. The Authority’s public list of licensees shows there are 501 I-ECN/S licence holders. Further, from evidence presented in the Authority in this inquiry, it appears the marketplace for licences is relatively liquid, with over 170 transfers that have been executed since 2008.¹*
- *Providing the Authority a regulatory tool to protect South African consumers from potential monopolistic market behaviour (i.e. Section 13(3) of the ECA).*

Question 1.2: In your view, should the Authority intervene in the current sale and transfer market to facilitate the purchase of existing licences? If yes, to what extent should the Authority intervene? Please motivate your response by providing reasons and any supporting evidence or data.

In Avanti’s view, the Authority should continue to facilitate purchase of existing licences and/or licensees.

It is not clear if there is any regulatory failure that needs to be solved and it is not clear if there is anything more the Authority should do to facilitate the purchase of existing licences.

¹ See <https://www.icasa.org.za/legislation-and-regulations/notice-of-intention-to-conduct-an-inquiry-into-new-individual-electronic-communications-network-service-licences> page 13





If the Authority considers intervening in the current market by relaxing requirements set out in Section 9 (2)(b) of the Electronic Communications Act, then should a relaxation should be applied for all stakeholders, new and incumbent, in a transparent and non-discriminatory basis.

Question 1.3: What other considerations or interventions would be useful for the Authority to consider regarding the effectiveness and efficiency of the current sale and transfer licensing framework so as to promote competition?

The most recent articulation of government policy regarding electronic communications is set out in the National Integrated ICT Policy White Paper 2016.² The White Paper establishes the goal of ensuring that “everyone in South Africa, regardless of who they are, where they live or their socio-economic status can improve the quality of their lives through accessing the benefits of participating in the digital society”.

Avanti believes the Authority should reserve its right to intervene in the sale and transfer market of I-ECN/ECNS licences to the extent that such an intervention would reasonably aid these goals.

Question 2.1: In your view, are there sufficient market opportunities to justify issuing new I-ECNS and I-ECS licences? Please motivate your response.

In principle, South Africa is fortunate to have a relatively competitive marketplace for electronic communications services. As noted in the Inquiry,³ electronic communications networks naturally tend to be dominated by a relatively small number of competitors. Nonetheless, the marketplace in South Africa is competitive by international standards.

It is not clear if sufficient evidence has been presented to suggest the regulatory framework regarding the issuance of new IECN/S licences is the principle barrier to further improving competition.

*Indeed, it is reasonable to regard applications for transfers of I-ECN/S licences as a proxy for demand for new licences. The evidence presented by the Authority in this Inquiry indicates that demand for new licences is gradually but steadily **decreasing** over time. For example, while the Authority always authorized more than 10 transfers annually in the period 2010/11 – 2014/15, in the last 10 years there have usually been less than 8 transfers.⁴ This raises questions about the demand for new I-ECN/S licences.*

Question 2.2: Have you, or are you aware of any licensee or interested party who has, considered or is considering launching or expanding network infrastructure or providing services in South Africa? What

² See https://www.gov.za/sites/default/files/gcis_document/201610/40325gon1212.pdf

³ See <https://www.icasa.org.za/legislation-and-regulations/notice-of-intention-to-conduct-an-inquiry-into-new-individual-electronic-communications-network-service-licences> page 16

⁴ See <https://www.icasa.org.za/legislation-and-regulations/notice-of-intention-to-conduct-an-inquiry-into-new-individual-electronic-communications-network-service-licences> page 14



technologies, network architecture and/or spectrum frequencies do you think would be appropriate for any new I-ECNS licensees? Please provide examples or evidence where possible.

Avanti is currently expanding its provision of satellite capacity in South Africa to its partners. This expansion is facilitated by the I-ECN/S licences held by Cyberdine, and ICASA's current 'Open Skies' policy with regard to satellite capacity.

Question 2.3: If you are an existing licensee, did you acquire your I-ECNS and or I-ECS licences through the sale and transfer market (i.e. bought from another licensee) or did you obtain them directly from the Authority (not through transfer or change of ownership)? If acquired from the secondary market, please provide details on your experience.

Avanti procured a majority stake in Cyberdine in 2019. As a part of this process, Avanti received permission from the Authority, in line with the regulatory framework and in pursuance of South Africa's policy goals.

Question 2.4: If you have/had I-ECNS and/or I-ECS licences, have you been approached or have you received unsolicited or solicited interest from an interested buyer to acquire your licence? Please elaborate and provide as much information as possible, if applicable.

No

Question 2.5: If you have I-ECNS and/or I-ECS licences and are not intending to sell your licence(s) in the next 3 - 5 years, please describe the infrastructure used (mobile, fixed, satellite or combination). Provide a list of services that you currently provide and whether those are provided to private consumers and/or businesses/organisations (or both where appropriate)?

Cyberdine provides wholesale satellite capacity to other holders of I-ECN/S licences in South Africa. In this scenario, the partner uses the satellite capacity as part of a wider communications service. The partner is responsible for procuring and maintaining the relevant spectrum licence to authorize operation of remote terminals. A list of use cases is provided below:

- *Satellite backhaul for a mobile operator's macro towers delivering 2G/3G/4G services to South African citizens and consumers, primarily in rural communities*
- *Satellite connectivity for retail stores across South Africa for resiliency via SD-WAN (e.g. CCTV systems, payments, store internal systems etc.)*
- *Primary and back-up data links for enterprise clients (e.g. agriculture, safari camps, petrol stations, ATMs, game lodges and hospitality)*
- *Primary and back-up satellite connectivity for financial institutions, including during load shedding or fibre breaks*
- *Satellite connectivity for financial institutions requiring communication between South Africa and Europe*



Cyberdine also operates gateway earth stations, located in Gauteng at Mnandi and Hartebeesthoek. These earth stations are used for our partners to land traffic to enable connectivity to the public internet from their remote terminals.

Question 2.6: Are there any additional points that you think would be useful for the Authority to consider regarding the demand for I-ECNS and I-ECS licences?

NA

Question 3.1: In your view, do you believe that new I-ECNS licences will promote or improve competition in the market? Please substantiate your answer.

It is not clear to Avanti that a case has been demonstrated to the Authority regarding the requirement for new I-ECN/S licences to promote competition in the electronic communications market in South Africa. In other words, there are likely to be several barriers to a perfectly competitive market in electronic communication services in South Africa. It is not clear if the current regulatory framework for I-ECN/S licences is one of these barriers, especially given the relatively liquid market in transfers of I-ECN/S licences.

Indeed, there is evidence to suggest issuing new I-ECN/S licences could pose new risks with respect to competition in electronic communications services in South Africa. Specifically, a new communications provider that is subsidized by a foreign government, could undercut incumbent national service providers. In the short-term, this risks making the South Africa market less attractive to communication providers, resulting in market exit by some competitors, hence reducing competition. In the medium- and long-term, the use of predatory pricing could enable the new providers to procure a disproportionately large market share, hence reducing competition yet further.

Finally with regard to Section 3 of the Inquiry, Avanti questions what are the legitimate business reasons for stakeholders to prefer to acquire new licences rather than existing licences, and if these reasons are in line with the policy objectives of South Africa.

Question 3.2: If you answered yes to Question 3.1 above, are there any competition issues or concerns that may hinder the effectiveness of such new I-ECNS licences in promoting or improve competition? Please provide evidence or examples.

NA

Question 3.3: What regulatory measures, if any, should the Authority consider to remedy the competition concerns you have identified in Question 3.2 above, or to ensure that any new IECNS licences compete effectively with the incumbents? Provide examples of the kinds of remedies you would expect to see.



With regard to satellite communications, a minimum remedy / consumer safeguard would be a requirement to land traffic within South African territory.

There are further remedies that the Authority could consider, particularly in the event that a new competitor is found to have gained Significant Market Power, there. These include, but are not limited to:

- *Requirement to provide wholesale capacity to competitors at a regulated rate*
- *Requirements to only offer transparent contracts to consumers.*
- *Anti-trust measures, such as fines for uncompetitive or abusive market activities*

The Authority should reserve the right to fine licensees or revoke licences in the event of non-compliance with the measures above.

Question 4.1: In your view, will new I-ECNS and I-ECS licences contribute to universal access and service within the current electronic communications network and services market?

Please explain the mechanisms through which such contribution may occur. Provide any supporting data, case studies, or examples.

Given commercial imperatives, a new I-ECN/S licensee would only directly contribute to universal access and service if required to do so by the Authority through the pro-competitive remedies referred to in the answer to 3.3.

If a new market entrant insists on entering the market through new I-ECN/S licences, rather than transferring licences, the Authority should seriously consider imposing relevant regulatory measures.

Question 4.2: In your view, how should the Authority incorporate universal access and service obligations into the terms and conditions of new I-ECNS and I-ECS licences to ensure equitable access to communications services across South Africa?

Avanti notes that the Authority already have USAF contribution conditions associated with I-ECN/S licences. At a minimum, in the interests of non-discriminate regulation, any new I-ECN/S licence must also be subject to payment of appropriate levies on relevant income.

If a licensee bypasses current routes to market entry, the Authority may consider rollout obligations associated with clear and measurable milestones relating to functional service availability such as minimum downlink/uplink speeds to a % of the population with appropriate Quality of Service and latency requirements.

Given South Africa's policy objectives, the Authority may also consider obligations associated with protecting specific groups that suffer from the Digital Divide. For example, a licensee that has been found to hold



Significant Market Power could be obliged to provide subsidized services to low-income or Historically Disadvantaged Groups.

Question 5.1: Are there any potential negative consequences associated with the rollout of infrastructure by the new I-ECNS licensees that the Authority should consider?

Avanti believes the Authority should consider unintended consequences of bypassing its established processes to give any stakeholder special treatment. For example, as a matter of national sovereignty, it is important to consider the dangers of becoming too dependent on one stakeholder for the accomplishment of national connectivity goals, particularly if it is controlled by an overseas stakeholder not subject to South African regulation. Any decision by the Authority that would allow a single company to dominate the electronic communications marketplace would be associated with various risks, including:

- *Loss-making pricing in the short-term, facilitated by private wealth and/or financial support from a foreign government, allowing for a monopolistic position to be procured by one stakeholder in the medium- and long-term*
- *Increase in prices and decreasing network availability in the medium- and long-term.*
- *Loss of national industrial capacity*
- *Loss of data sovereignty*
- *Loss of protections for Historically Disadvantaged Groups.*
- *Loss of control of backbone of modern data-driven economy*

Given the above, Avanti advises the Authority proceeds with extreme caution.

Question 5.2 What new or additional benefits, if any, could new I-ECNS licences provide compared to existing licensees? Please provide examples or evidence of potential improvements such as service coverage, infrastructure rollout, technological innovation, competition, or other market and social benefits.

Avanti has no relevant evidence to provide on this point. But as a general matter, stakeholders should have the opportunity to scrutinize any evidence provided by other stakeholders to this question.

Question 6.1: Do you have any additional comments regarding this Inquiry process that you would like the Authority to consider?

As stated before, it is important that the Authority to continues to operate in line with international best practice in a transparent, consistent, and non-discriminatory manner.

As such, if the result of this inquiry is the issuance of new I-ECN/S licences that do not comply with Section 9 (2)(b) of the Electronic Communications Act, then current licensees should equally no longer be obliged to comply with these requirements too.