



**Independent Communications Authority of South Africa**  
 350 Witch-Hazel Avenue,  
 Eco-Point Office Park  
 Centurion

**COUNCIL DECISIONS– 31 AUGUST 2021**

ITEM NO.	AGENDA ITEM	COUNCIL DECISION
1.	<p><b>Telemedia licence transfer and Reasons Document</b></p> <p>The purpose of the submission was for Council to approve the transfer of control of an I-ECNS licence, as well as the vetted Reasons Document from Telemedia (Pty) Ltd’s current shareholders (“the Applicant”) to Telemedia (Pty) Ltd’s proposed new shareholders (“the Transferee”).</p> <p>1.1. On 04 December 2020, the Independent Communications Authority of South Africa (“the Authority”) received an application from the Applicant to transfer the control of its I-ECNS licence to the Transferee. The application was not fully completed.</p> <p>1.2. The Applicant was requested to complete and re-submit the application form in an e-mail dated 07 December 2020. A new application for the transfer of control was subsequently submitted on 11 December 2020.</p> <p>1.3. The Authority sent the Applicant another e-mail requesting the Business Plan, the Independent Competition Analysis Report, and the Consumer Analysis Report.</p> <p>1.4. On 11 March 2021, the Applicant submitted the Business Plan, the Independent Competition Analysis Report and the Consumer Analysis Report.</p> <p>1.5. The Reasons Document was sent to Legal, Risk and CCC (“LRCCC”) Division for vetting on 11 May 2021. The vetted Reasons Document was, however, received by the Licensing Unit on 21 June 2021.</p>	<p><b>The recommendation was approved by Council.</b></p>



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	<p>1.6. The LRCCC Division advised the Licensing Division to consider and address the comments on the draft Reasons Document. The Licensing Division has duly addressed the comments from LRCCC Division.</p> <p>1.7. According to the Authority's analysis, the acquisition of the ECNS Licence by AOE and REX will not have any adverse or significant impact on competition in the relevant markets. The proposed transaction provides Telemedia with an ability to diversify its shareholders' assets, and further boost its B-BBEE standing in order to comply with South Africa's transformation imperatives.</p> <p>1.8. The proposed change in control is negligible. Telemedia will continue to operate in its current form, with no significant changes to its organisational structure, operating model, product and service offering, or pricing structures.</p> <p>1.9. The Authority is of the view that the proposed transfer would not affect customers in the applicable markets. Furthermore, a revitalised Telemedia ownership structure can improve the quality of the products, and services offered, while maintaining comparable pricing structure and choice.</p> <p>1.10. The Applicant has not been found guilty of any contravention by the CCC. Further, the Applicant has paid the licence fees due and payable at the date of the applications. Furthermore, the Transferee has 36.18% ownership interest held by HDIs.</p> <p><b>Recommendation to Council</b></p>	



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	<p>1.11. It was recommended that Council approves the application for the transfer of control of the I-ECNS licence for the following reasons:</p> <p style="padding-left: 40px;">1.11.1 The Applicant has not been found guilty of any contravention by the CCC;</p> <p style="padding-left: 40px;">1.11.2 The Applicant has paid the licence fees due and payable at the date of the applications; and</p> <p style="padding-left: 40px;">1.11.3 The Transferee has 36.18% ownership interest held by HDIs.</p> <p>1.12. It was further recommended that Council approves the vetted Reasons Document.</p> <p><b>The following comments were made:</b></p> <p>1.13. Council enquired whether the spectrum licence transfer would be a separate process.</p> <p>1.14. Council raised a concern of whether AOE and REX has the necessary expertise to offer consumer services as a result of the transfer of the ECNS Licence.</p> <p>1.15. When the submission for the spectrum licence transfer is tabled to Council, it needs to indicate which bands are being transferred.</p> <p>1.16. Council sought clarity on whether the 36.18% ownership interest held by HDIs, will be transferred to AOE and REX.</p>	
<b>2.</b>	<b>Recommendation CCC in the matter between CCA Broadcasting Compliance and Forte Community Radio.</b>	<b>The recommendation was approved by Council</b>



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	<p>The purpose of the submission was to table the recommendation of the Complaints and Compliance Committee (“CCC”) in the matter between CCA Broadcasting Compliance (“Complainant”) and Forte Community Radio (“Respondent”).</p> <p>2.1. On 08 June 2021, the Broadcasting Compliance Unit of the Compliance &amp; Consumer Affairs (“CCA”) lodged a complaint with the CCC (CCA applied to the CCC to adjudicate the complaint on urgent basis and the request was granted) against Forte Community Radio for the following allegations of contravention.</p> <p>2.2. That on 07 October 2020, Broadcasting Compliance sent a letter to the Chairperson of Forte FM, requesting him to respond to allegations of non-adherence to Regulation 9 of the Community Broadcasting Services Regulations which provides a list of persons who may not hold a position of responsibility, in any radio station.</p> <p>2.3. The following persons are prohibited from holding a position of responsibility in any radio station:</p> <p>2.3.1 Members of the Local Executive Committees of political parties, the youth affiliates and women affiliates of political parties, and any organisation that is in an alliance with a political party;</p> <p>2.3.2 Members of the Regional Executive Committees of political parties, the youth affiliates and women’s affiliates of political parties and any organisation that is in an alliance with a political party;</p> <p>2.3.3 Members of the Provincial Executive Committees of political parties, the youth</p>	



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	<p>wings, women's wings of political parties and any organisation that is in alliance with a political party;</p> <p>2.3.4 Members of the National Executive Committee of political parties, the youth wings and women's wings of political parties and any organisation that is an alliance with a political party;</p> <p>2.3.5 Councillors;</p> <p>2.3.6 Mayors;</p> <p>2.3.7 Members of the Provincial Legislatures; and</p> <p>2.3.8 Members of Parliament.</p> <p>2.4 The hearing of the CCC to hear oral arguments from the parties was held on 23 July 2021.</p> <p>2.5 Having regard to all the information presented and the submissions made, the CCC makes the following finding:</p> <p>2.5.1 The complaint against Forte FM is upheld.</p> <p>2.5.2 Forte FM Community Radio is found to have contravened Regulation 9 of the Community Broadcasting Services Regulation 2019, in that Mr Nhanha, then Chairperson of Forte FM, was a prohibited person in terms of Regulation 9, at the time he was in office.</p> <p><b>Recommendation to Council</b></p>	



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	<p>2.6 The CCC recommended the following order to the Authority:</p> <p>2.6.1 That the Respondent desists from any further contravention of Regulation 9 by not appointing anyone prohibited to participate in the affairs of the Broadcaster in terms of the Regulation.</p> <p>2.6.2 Forte FM must take the following remedial steps:</p> <p>2.6.2.1 That within 21 days after ICASA has published its findings and order, the Respondent convenes a special AGM at which meeting members of an interim structure shall be elected.</p> <p>2.6.2.2 That the interim structure is to prepare for an AGM at which members of the Board shall be elected and the interim structure shall be disbanded.</p> <p>2.6.2.3 That the CCA urgently intervenes by assisting Forte FM to comply so that similar complaints are not lodged in the future.</p> <p>2.6.2.4 That the Respondent cooperates with the CCA in its efforts to restore order and stability to the station.</p>	
3.	<b>Notice of intention to conduct market inquiry into signal distribution services in South Africa to be published in the Gazette</b>	<b>The recommendation</b>



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	<p>The purpose of the submission was to request Council to approve the Notice of intention to conduct market inquiry into signal distribution services in South Africa to be published in the Gazette, and a questionnaire on the signal distribution services market to be published on the Authority's website.</p> <p>3.1 In September 2010, the Authority initiated a Section 4B Inquiry into the Broadcasting Transmissions Market in South Africa, which was concluded when the Authority published in the Gazette the Findings Document regarding the Wholesale Broadcasting Transmission Services Discussion Document published in Government Gazette No 36537 of 2013.</p> <p>3.2 However, the Authority published General Notice 851 of 2014 on the "Withdrawal of the Findings Document regarding the Wholesale Broadcasting Transmission Services Discussion Document published in Government Gazette No 36537 of 2013", which nullified the section 4B Inquiry initiated in September 2010.</p> <p>3.3 At the meeting between the Authority, the SABC and the Ministry of Communications and Digital Technologies held at the DCDDT offices on 15 October</p>	<p><b>was approved by Council.</b></p>



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	<p>2020, the Authority committed to initiate an Inquiry into Signal Distribution Services in the 2021/2022 financial year.</p> <p>3.4 The purpose of the Inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the signal distribution services value chain which may warrant regulation in the context of a market review in terms of section 67(4) of the ECA.</p> <p>3.5 The Signal Distribution Council Committee intend to conduct the inquiry in terms of the following phases:</p> <p style="padding-left: 40px;">3.5.1 Phase 1 (commencement of the market inquiry).</p> <p style="padding-left: 40px;">3.5.2 Phase 2 (Discussion Document).</p> <p style="padding-left: 40px;">3.5.3 Phase 3 (Public Hearings on the Discussion Document).</p> <p style="padding-left: 40px;">3.5.4 Phase 4 (Findings Document).</p> <p>3.6 Depending on the outcome of the Inquiry, the Authority may “prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition” in the signal distribution services markets in terms of section 67(4) of the ECA.</p>	





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	<p><b>Recommendation to Council</b></p> <p>3.7 The Committee recommends that Council approve the following documents:</p> <p style="padding-left: 40px;">3.7.1 Notice of intention to conduct market inquiry into signal distribution services in South Africa to be published in the Gazette.</p> <p style="padding-left: 40px;">3.7.2 A questionnaire on the signal distribution services market inquiry to be published on the Authority's website.</p>	
<p><b>4.</b></p>	<p><b>Amendment of Price Cap Regulations and Reasons Document</b></p> <p>The purpose of the submission was to request Council to approve the publication of amendments to the Price Cap Regulations for Reserved Postal Service, 2013, and the accompanying Reasons Document, in the Government Gazette and on the Authority's website.</p> <p>4.1. The purpose of the review is to impose effective price controls in the reserved postal services market, and to ensure that regulation of the reserved services space remains appropriate and sufficient to secure the efficient and financially sustainable provision of such reserved postal services.</p>	<p><b>The recommendation was approved by Council</b></p>



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	<p>4.2. On 23 August 2019 the Authority published a notice of its intention to review the Price Cap Regulations in the Government Gazette. The closing date for submissions was Monday 07 October 2019.</p> <p>4.3. On 13 March 2020, the Authority published its Findings Report on the Review of the Price Cap Regulations (“The Findings Report”), in which it concluded that the Price Cap Regulations should be amended. It also released a media statement with regards to this.</p> <p>4.4. Pursuant to the Findings Report, the Authority published the gazetted Draft Price Cap Amendment Regulations, and Explanatory Note (GG 44332) on 26 March 2021 for public comment. The deadline for comments was 31 May 2021. No comments were received, except for SAPO, which indicated that it was in agreement with the proposed amendments.</p> <p>4.5. The Authority is now at Phase 5 of the review process, which entails the publication in the Gazette of the Final Price Cap Amendment Regulations and the accompanying Reasons Document.</p> <p>4.6. Since embarking on its mandated review of the Regulations, the Authority has determined that the general price control formula is no longer effective nor proportionate as a regulatory tool in ensuring that SAPO can recover prudently and efficiently incurred costs to maintain the long term financially sustainable provision of reserved postal services.</p> <p>4.7. Given the regulatory shortcomings associated with the price/revenue cap approach to date, the Authority has therefore decided to:</p> <p>4.7.1 Replace Regulation 3 of the Regulations concerning the General Price Control formula,</p>	



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	<p style="text-align: center;">which deals with setting an inflationary price cap and efficiency control/productivity factor; and</p> <p>4.7.2 Set the prices of reserved postal services in such a way that such prices are:</p> <p style="padding-left: 40px;">4.7.2.1 Affordable;</p> <p style="padding-left: 40px;">4.7.2.2 Cost-oriented (i.e. reflective of the costs of providing the postal service concerned);</p> <p style="padding-left: 40px;">4.7.2.3 Uniform throughout the Republic (unless ICASA, with the prior consent of the Minister, decides otherwise); and</p> <p style="padding-left: 40px;">4.7.2.4 Transparent and non-discriminatory.</p> <p>4.8 Following the legal vetting of the Reasons document, the LRCCC division indicated that it was comfortable with the updated Reasons document, which provides reasons regarding the decision of the Authority to have the commencement date of the Regulations to be 1 April 2022.</p> <p><b>Recommendation</b></p> <p>It was recommended that Council approve the publication of amendments to the Price Cap Regulations for Reserved Postal Service, 2013, and accompanying Reasons Document in the Government Gazette and on the Authority's website.</p>	

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**ISSUED BY: Secretariat Office**

**on behalf of Council**