



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

COUNCIL DECISION- 09 MARCH 2022

ITEM NO.	AGENDA ITEM	COUNCIL DECISION
1.	<p>Metro Fibre Networx transfer application</p> <p>1.1. The purpose of this memorandum is to recommend that Council approves the transfer of shareholding in the Individual Electronic Communications Service ('I-ECS') and Individual Electronic Communications Network Service ('I-ECNS') licences of Metro Fibre Networx Pty Ltd ("the Applicant") to Digital Infrastructure Investment Holdings Pty Ltd ("the Transferee").</p> <p>1.2. On 30 June 2021, the Independent Communications Authority of South Africa ("the Authority") received applications from the Applicant to transfer shareholding in its I-ECS and I-ECNS licences to the Transferee.</p> <p>1.3. The Applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("the ICASA Act") with respect to documents which were submitted in support of its application.</p> <p>1.4. On 24 August 2021, the Authority granted confidentiality as requested, on the basis that the documents in respect of which confidentiality was requested fall within the ambit of section 4D (4)(b), (c), and (e) of the ICASA Act and section 9(4)(c)(i) (bb) of the ECA.</p> <p>1.5. Frequency Spectrum issued to the Applicant:</p>	<p>THE RECOMMENDATION WAS APPROVED</p>



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	<p>1.5.1 Applications for the transfer of RFS licences are submitted in terms of a different legislative and regulatory framework from that which governs the transfer of service licences.</p> <p>1.5.2 Where the provision of an electronic communication service or electronic communication network service licence entails the use of radio frequency spectrum, approval in relation to the service licence needs to be granted first to enable the processing of the transfer relating to the RFS licence, as the service licence is a pre-requisite to the RFS licence.</p> <p>1.5.3 The approval of the service licence transfer is not contingent upon the approval of the RFS licence transfer. It has to be noted that in regard to this transfer application, the Applicant confirmed that the applications for the transfer of RFS licences will be done separately.</p> <p>1.6. The Applicant has not been found guilty of any contravention by the CCC and is financially compliant. Ownership and control by historically disadvantaged persons once the transaction is complete will be 30.16%.The Licensing and Compliance Division is satisfied that this transaction meets the requirements of regulation 12 of the Processes and Procedures regulations.</p> <p><u>Recommendation to Council</u></p>	



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	<p>1.7. It was recommended that Council approves the licence transfer applications for I-ECS and I-ECNS licences for the following reasons:</p> <p>1.7.1 The Applicant has not been found guilty of any contravention by the CCC;</p> <p>1.7.2 The Applicant has paid the licence fees due and payable at the date of the applications; and</p> <p>1.7.3. The transaction meets the requirements for HDI ownership interest.</p> <p>The recommendation was approved.</p>	
2.	<p>Application for the transfer of shareholding in the Individual Electronic Communications Network Service licence of Purple Pebble Productions (Pty) to proposed new shareholders</p> <p>2.1. The purpose of this submission was to recommend that Council approves the transfer of shareholding in the Individual Electronic Communications Network Service ('I-ECNS') licence of Purple Pebble Productions Pty Ltd ("the Applicant") to new shareholders ("the Transferee"), as well as the attached vetted Reasons Document in respect of the transfer.</p> <p>2.2. On 11 August 2021, the Authority received an application from the Applicant to transfer control of its I-ECNS licence to the Transferee.</p>	<p>THE RECOMMENDATION WAS APPROVED</p>



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	<p>2.3. On 17 August 2021, the Licensing and Compliance Division forwarded an e-mail to the Compliance and Consumer Affairs (CCA) Division; Finance Division and Complaints and Compliance Committee (“CCC”) to ascertain whether the Applicant was financially compliant with regards to its payments of the annual licence fees and Universal Service and Access Fund (USAF) contributions and whether the CCC did not have any issues raised against the Applicant brought before it.</p> <p>2.4. On even date, CCC confirmed that there are no compliance issues raised against the Applicant, while the Financial Division confirmed that the Applicant is financially compliant.</p> <p>2.5. The Applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 (“the ICASA Act”). The request for confidentiality was on all the personal information in the application as well as certain aspects of the Annual Financial Statements.</p> <p>2.6. On 15 September 2021, the Authority granted confidentiality as requested on the basis that the documents in respect of which confidentiality was requested fall within the ambit of section 4D (4)(b), (c), and (e) of the ICASA Act and section 9(4)(c)(i) (bb) of the ECA.</p> <p>2.7. On 19 October 2021, the Authority published General Notice 614 in Government Gazette No 45343 inviting all interested persons to make written representations</p>	



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	<p>in relation to the application within fourteen (14) working days of the date of the publication of the notice.</p> <p>2.8. No written representations were received by the closing date of 09 November 2021.</p> <p>2.9. The Reasons Document was sent to Legal, Risk and CCC (“LRCCC”) Division for vetting on 27 January 2022.</p> <p>2.10. The Licensing and Compliance Division has addressed all the LRCCC comments, and, therefore, submitted both the memo and the Reasons Documents for EXCO’s approval for tabling at Council.</p> <p>2.11. It was recommended that Council should approve the transfer of control of I-ECNS licence for the following reasons:</p> <p style="padding-left: 40px;">2.9.1 The Applicant has not been found guilty of any contravention by the CCC;</p> <p style="padding-left: 40px;">2.9.2 The Applicant has paid the licence fees due and payable at the date of the application; and</p> <p style="padding-left: 40px;">2.9.3 The transaction meets the requirements for HDI ownership interest.</p> <p>2.12. It was further recommended that Council approves the vetted Reasons Document.</p>	



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	<p>The recommendation was approved.</p>	
<p>3.</p>	<p>Applications for the transfer of an Individual Electronic Communications Service and an Individual Electronic Communications Network Service Licences from Gijima Holdings (Pty) Ltd to Gijima Group Limited</p> <p>3.1 The purpose of this submission was to recommend that Council approves the transfer of I-ECS and I-ECNS licences from Gijima Holdings (Pty) Ltd (“the Applicant”) to Gijima Group Limited (“the Transferee”), as well as the attached vetted Reasons Document.</p> <p>3.2 On 28 June 2021, the Authority received applications from the Applicant to transfer its I-ECS and I-ECNS licences to the Transferee.</p> <p>3.3 The Finance Division confirmed that the Applicant was compliant with payment of its Annual Licence fees as required by the General Licence Fees Regulations, and the CCC confirmed that there are no issues raised against the Applicant before it.</p> <p>3.4 On 15 July 2021, the Authority published General Notice 673 in Government Gazette No 44503, inviting all 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.</p> <p>3.5 No written representations were received by the closing date of 04 August 2021.</p>	<p>THE RECOMMENDATION WAS APPROVED</p>



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	<p>3.6 The Applicant was requested to submit its Independent Competition and Consumer Interest Reports on 27 August 2021.</p> <p>3.7 On 19 November 2021, the Applicant submitted the two reports and a completed Form G, stating that in the initial Form the Applicant and the Transferee details were transposed.</p> <p>3.8 On 20 January 2022, the Licensing and Compliance Division requested the Applicant to provide the details of its shareholding in the Applicant and the Transferee.</p> <p>3.9 The Applicant provided the information on 28 January 2022.</p> <p>3.10 The Licensing and Compliance Division has addressed all the LRCCC comments and therefore submitted both the memo and the Reasons Document for EXCO's approval for tabling at Council.</p> <p>3.11 In terms of Regulation 12 of the Processes and Procedures Regulations, the Authority may refuse to transfer a licence if the Licensee has not complied with one or more of the following:</p> <p>(a) Where the Licensee has been found guilty of a contravention by the Complaints and Compliance Committee ("the CCC") of the Authority and has not complied with the order by the Authority in terms of section 17 of ICASA Act; or</p>	



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	<p>b) Where the Licensee has not paid the licence fees due and payable at the date of the application; or</p> <p>c) Where the Transferee's ownership and control by historically disadvantaged persons is less than 30%.</p> <p>3.12 The Applicant has not been found guilty of any contravention by the CCC. The Transferee is 100% owned by persons from historically disadvantaged groups.</p> <p>3.13 It was recommended that Council approves the licence transfer applications for I-ECS and I-ECNS licences for the following reasons:</p> <p>3.13.1 The Applicant has not been found guilty of any contravention by the CCC;</p> <p>3.13.2 The Applicant has paid the licence fees due and payable at the date of the applications; and</p> <p>3.13.3 The Transferee has 100% ownership interest held by HDIs.</p> <p>3.14 It was further recommended that Council approves the vetted Reasons Document</p> <p>The recommendation was approved.</p>	
4.	Amendment Regulations on Equity Ownership by Historically Disadvantaged Groups and the application	THE RECOMMENDATION WAS APPROVED



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	<p>4.1. The purpose of this submission was to request Council to approve the draft amendment regulation on the published Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDGs) and the application of the ICT Sector Code, for publication in Government Gazette.</p> <p>4.2. On 31 March 2021, the Authority published the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDGS) and the application of the ICT Sector Code in Government Notice 170, Gazette No 44382.</p> <p>4.3. The Committee has since identified an error in respect of regulation 6(1) of the regulations in the published regulations which reads as follows:</p> <p style="padding-left: 40px;">6 (1) Contraventions and Penalties</p> <p style="padding-left: 40px;"><i>“A person that submits false, misleading or inaccurate information to the Authority is guilty of an offence and subject, on conviction to a fine of less than R50 000 but not exceed R5 million”</i></p> <p>4.4. The Committee and Fasken have corrected the above error, and a few additional errors in the Regulations. Amendments have been made to the following sections:</p> <p style="padding-left: 40px;">4.4.1 Regulation (1) of the Regulations “Definition”. “B-BBEE Contributor Status Leve, and ICT Sector Code”;</p>	



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	<p>4.4.2 Amendment of regulation 3 of the Regulations; 4.4.3 Amendment of regulation 4 of the Regulations; 4.4.4 Amendment of Regulation 5; 4.4.5 Amendment of Regulation 7; and 4.4.6 Short title and Commencement.</p> <p>4.5. Council inquired if the public would have an opportunity to make comments or representations once the submission is approved by Council.</p> <p>4.6. Management informed Council that the public will not make comments, and that the amendments will be final.</p> <p>4.7. Council expressed concern as to how regulations go to publications with this many errors, and further resolved that regulations should be fine combed in the future to avoid instances of a similar nature.</p> <p>The recommendation was approved.</p>	
5.	<p>Draft Amendment Regulations on Processes and Procedures in respect of Applications</p> <p>5.1. The purpose of this submission was to request Council to approve the vetted Explanatory Memorandum and the Draft Amendment Regulations on the Processes and Procedures in respect of Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and applications for Special Temporary Authorisations in terms of the Electronic Communications Act No 36 of 2005 (“the EC Act”), as amended.</p>	<p>THE RECOMMENDATION WAS APPROVED</p>



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	<p>5.2. The documents will be published in the Government Gazette, inviting interested parties to submit written representations.</p> <p>5.3. The Authority is empowered in terms of section 4 (1) and 5(7) of the EC Act “to make Regulations regarding any matter which in terms of the EC Act or the related legislation must or may be prescribed, governed or determined by regulation”.</p> <p>5.4. The Authority has established a Committee of Council (“the Committee”) to review the Processes and Procedures Regulations for Individual Licences, promulgated in 2010 and 2016, respectively.</p> <p>5.5. The Committee has amended the Processes and Procedures Regulations for Individual Licences. The purpose for amending the regulations is to provide clarity on the Authority’s processes and procedures with regards to individual licences.</p> <p>5.6. The Committee has, on 29 September 2021, requested Legal, Risk and CCC (LRCCC) Division to vet the Draft Regulations and the accompanying explanatory memorandum before Council submission and publication in the Gazette.</p> <p>5.7. The vetted Draft Regulations and Explanatory Memorandum were received by the Committee on 10 October 2021. The LRCCC Division advised the Committee to consider and address the comments on</p>	



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	<p>the Draft Regulations and explanatory memorandum before submission to Council.</p> <p>5.8. The Committee convened a meeting on 17 January 2022 to consider the remarks from the LRCCC Division. The Committee approved the Draft Regulations and Explanatory Memorandum for tabling at Council.</p> <p>5.9. It was recommended that Council approves the attached submission for publication in the Government Gazette, inviting interested parties to submit written representations.</p> <p>The recommendation was approved.</p>	
6.	<p>Draft amendments to the Numbering Plan Regulations</p> <p>6.1. The purpose of this submission was to request the Council of the Authority to approve the publication of the proposed draft amendment to the Number Plan Regulations, 2016, to consult industry participants for forty-five (45) days.</p> <p>6.2. The Authority developed the Numbering Plan Regulations, 2016 (“the Regulations”) (see Annexure A), in terms of sections 4(4) and 68 of the Electronic Communications Act, 2005, as amended, after an extensive consultation process.</p> <p>6.3. The Authority has insufficient reserve capacity, only 13%, for mobile numbers, which is concerning. The Authority will not be able to meet future demands,</p>	THE RECOMMENDATION WAS APPROVED



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	<p>based on the patterns of allocations over the past 5 years (2016 to date) in which the Regulations have been in force.</p> <p>6.4. The Authority has consistently allocated over 8 million numbers annually - except for the 2020/ 2021 financial year, which saw significant decreases in allocations, especially mobile number allocations. This decrease can be attributed to several factors, such as the impact of Covid-19 pandemic which affected various ICT businesses.</p> <p>6.5. Consistent with the above-mentioned demand patterns, changes in ICT practices, developments at the ITU-T, and compliance issues that arose within the management of the numbering resources, an opportunity was presented for the amendment of the numbering regulatory framework in order to narrow the existing and anticipated future gaps.</p> <p>6.6. On 27 October 2021 the Legal, Risk and CCC Division vetted the proposed amendments of the regulations.</p> <p>6.7. On 13 January 2022 the Council Committee adopted and approved the proposed amendments to the regulations for consideration by the Council of the Authority.</p> <p>6.8. It was recommended that the Council of Authority approves the publication of the proposed draft amendment to the Number Plan Regulations, 2016,</p>	



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	<p style="text-align: center;">to consult the industry participants for forty-five (45) days.</p> <p>The recommendation was approved.</p>	
7.	<p>Approval of the Draft Amendment of the Standard Terms and Conditions Regulations for individual licences for publication in the Government Gazette</p> <p>7.1. The purpose of this submission was to request Council to approve the vetted Draft Amendment Standard Terms and Conditions Regulations for Individual Licences and the accompanying Explanatory Memo for publication in the Government Gazette and on the Authority's website.</p> <p>7.2. The Authority is empowered in terms of section 4 (1) of the Electronic Communications Act No. 36 of 2005 ("the EC Act") to make Regulations with regard to any matter which in terms of the EC Act or the related legislation must or may be prescribed, governed or determined by regulation.</p> <p>7.3. The Authority has established a Committee of Council ("the Committee") to amend the Standard Terms and Conditions Regulations for Individual Licences, promulgated in 2010 and 2016, respectively.</p> <p>7.4. Section 4 (4) of the EC Act requires the Authority to publish the regulation in the Gazette together with a notice – "a) declaring the Authority's intention to make that regulation; and</p>	<p>THE RECOMMENDATION WAS APPROVED</p>



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	<p>b) Inviting interested parties to make written representations on the regulation."</p> <p>7.5 On 17 September 2021, the Draft Amendment Standard Terms and Conditions Regulations for Individual Licences and the accompanying explanatory memo were duly vetted by Legal, Risk and CCC Division ("LRCCC").</p> <p>7.6 A request was subsequently made to the Committee by the Compliance Department to update the individual licence template format. The Committee deliberated on this and updated the Draft Regulations accordingly, by the insertion of Annexures A, B and C. On 31 January 2022, LRCCC duly vetted same.</p> <p>7.7 As part of its Annual Performance Plan (APP) for the 2021/22 financial year, the Authority is required to publish the Draft Amendment Regulations on the Standard Terms and Conditions for Individual Licences.</p> <p><u>Recommendation to Council:</u></p> <p>7.8 It was recommended that Council approves the Draft Amendment Standard Terms and Conditions Regulations for Individual Licences and the accompanying Explanatory Memo for publication in the Government Gazette and on the Authority's website.</p> <p>The recommendation was approved.</p>	