



**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  
LEVIN GLOBAL COMMODITIES CC TO  
AABA TELCO (PTY) LTD**

**REASONS DOCUMENT**

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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 Levin Global Commodities cc ("the Applicant") to AABA Telco (Pty) Ltd ("the Transferee").

## 2. BACKGROUND

- 2.1 On 01 August 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 **Form G** of the **Amendment Individual Processes and Procedures Regulations 2015**<sup>1</sup> ("the Processes and Procedures Regulations").
- 2.3 The Applicant did not request confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended ("ICASA Act").
- 2.4 On 20 September 2019, the Authority published General Notice 503 in Government Gazette No. 42712 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 in the Government Gazette. No written representations were received by the closing date of 14 October 2019.
- 2.5 The Authority elected not to hold public hearings as it was of the view that the applications were clear, and it had not received any written representations from the public with respect to the applications.

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

2.6 On 25 May 2020, the Authority approved the Applicant's transfer applications. The licences were issued to AABA Telco (Pty) Ltd on **(To insert the date)**.

### **3. APPLICABLE LEGISLATIVE FRAMEWORK**

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")<sup>2</sup>;
- (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 Process and Procedures Regulations")<sup>3</sup>;
- (d) Regulation 12 of the Processes and Procedures Regulations;
- (e) Clause 9 of Form G of the Licensing Processes and Procedures Regulations<sup>4</sup>; and
- (f) Schedule 2 of the General Licence Fees Regulations as published in Government Gazette No 42370 of 01 April 2019 (Fees Regulations).

### **4. THE APPLICATIONS**

4.1 The full name of the Applicant is Levin Global Commodities cc. The Applicant's principal place of business is 217 Kassia Avenue, Newlands, 0075. The Applicant is a close corporation registered in terms of the Close Corporation Act of 1984, as amended with the following registration number: 2001/017584/23.

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 9.2 Provide an independent competition analysis report regarding the impact of this transaction on the relevant market clearly marked Appendix 9.2 of Form G.

9.3 Provide a consumer interest analysis report post the transaction clearly marked Appendix 9.3 Form G

4.2 The full name of the Transferee is AABA Telco (Pty) Ltd. The Transferee's principal place of business is 36 Holland Avenue, Blairgowrie, 2194. The Transferee is a private company incorporated in terms of the Companies Act of 2008, as amended, with the following registration number: 2019/345703/07.

## **5. DECISION AND REASONS**

5.1 Section 9(2)(b) of the EC Act states that:

*"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."*

5.1.1 On 20 September 2019, the Authority gave notice of the applications in Government Gazette No. 42712.

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

- |                           |     |
|---------------------------|-----|
| • Richard Rauff:          | 24% |
| • Joey de Jager:          | 23% |
| • John Phlippus Robinson: | 24% |
| • Pierre Levin:           | 12% |
| • Thinus Vosloo:          | 5%  |
| • Stephanus van Wyk:      | 12% |

The Applicant is not owned by historically disadvantaged individuals.

5.1.3 The percentage of equity ownership in the Transferee, to be held by persons from historically disadvantaged groups ("HDGs"), is 100% made up as follows:

- Anthea Mc Cloed: 100%

Anthea Mc Cloed is a South African Coloured woman.

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

5.2 Section 13(1) of the EC Act 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 01 August 2019, the Applicant applied to the Authority seeking approval for the transfer of its individual licences.

5.3 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."*

5.3.1 Regulation 11 of the Licensing Processes and Procedures Regulations for Individual Licences, 2010, as amended by Government Gazette No. No.39871 of 30 March 2016, 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.

5.3.2 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.

5.4 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."*

5.4.1 The Authority followed the process outlined in section 9 (2) to (6) read with section 13(6) of the EC Act by complying with the following requirements:

- (a) Inviting interested persons to apply and submit written representations in relation to the applications within a period mentioned in the notice<sup>5</sup>. On 20 September 2019, the Authority gave notice of the applications in Government Gazette No. 42712.
- (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 from historically disadvantaged groups. The Transferee will be 100% 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.

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<sup>5</sup> Government Gazette No. 42712 of 20 September 2019

- (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.

5.5 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;
- (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%.

The Authority is satisfied that the Applicant submitted all the required information and that the requirements prescribed in terms of Regulation 11 (Form G) of the Processes and Procedures Regulations read with the ECA were met by the Applicant.

5.6 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

The Applicant procured the services of Letaba Investments Holding (Pty) Ltd to undertake an independent competition analysis and prepare a report regarding the competition impact of the transaction as per Form G of the Processes and Procedures Regulations. The purpose of this requirement is to evaluate the impact the transaction will have on competition in the ICT Sector post the conclusion of the transaction.

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

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

The prospective Transferee is a newly registered entity with the sole purpose of pursuing opportunities in the ICT Sector – with an expressed wish to serve consumers nationwide, particularly in underservices areas. The Transferee intends to connect government departments, municipalities and schools, fibre and satellite, internet access to schools in the remote areas, and Voice over Internet Protocol (VOIP) at a very low cost. Therefore, the acquisition of the Applicant 's licences will not adversely impact competition in the market segment the Transferee intends operating in.

Further, the Transferee states that it intends to use the licences for the deployment of wireline and wireless networks across South Africa. Specifically focusing on under-serviced rural and semi-rural areas. With an emphasis on providing affordable solutions to various communities to communicate.

On a reasonable and adequate basis, the transfer application is not found to substantially lessen or prevent competition.

5.7 Clause 9.3 of Form G<sup>7</sup> requires the Applicant to provide a consumer interest analysis report post the transaction

The Applicant procured the services of Letaba Investments Holding (Pty) Ltd to undertake an independent consumer interest analysis and prepare a report regarding the impact of the transaction as per Form G of the Processes and Procedures Regulations. The purpose of this requirement is to evaluate the impact the transaction will have on consumer's welfare post the conclusion of the transaction.

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<sup>7</sup> Licensing Processes and Procedures Regulations

The Authority exercises primary authority to ensure universal and affordable access to high quality electronic communications services, broadcasting services and postal services to consumers, in line with section 2(m) and (n) of the ECA.

The Transferee is a newly registered entity intending to use the licences for the deployment of wireline and wireless networks across South Africa. Specifically focusing on under-serviced rural and semi-rural areas. With an emphasis on providing affordable solutions to various communities to communicate. The Transferee intends also on targeting consumers, small businesses and government offices, using wireless and fibre networks<sup>8</sup>.

In the Authority's view, consumer welfare will be enhanced should the Transferee's network deployment be successful. Further, in South Africa where the price to communicate is still high, any new entrance in the sector will increase diversity of services and choice for the consumer. In the event the price is low in a highly competitive market, the underserviced areas are likely to embrace the service offering.

## **6. AUTHORITY'S DECISION**

In the light of the above, on 25 May 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:** 08 / 06 / **2021**

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<sup>8</sup> Business Plan. Submitted