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**BY HAND AND BY EMAIL**

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Dear Fikile

**Application to transfer control of the licences held by Orbicom - response to written representations**

**Introduction**

- 1 We refer to the application by Orbicom (Pty) Ltd ("Orbicom"), dated 27 November 2024<sup>1</sup>, for the approval of the Independent Communications Authority of South Africa (the "Authority") to transfer indirect control of the licences held by Orbicom to Groupe Canal+ SAS ("Canal+") (the "Application"), on the basis that Canal+ will be acquiring an indirect control interest in Orbicom.
- 2 Pursuant to the invitation for written representations in respect of the Application published by the Authority on 18 March 2025,<sup>2</sup> on 8 April 2025, Orbicom received written representations on the Application from six parties, namely Kagiso Capital (Pty) Ltd ("Kagiso"), PN Corevision (RF) (Pty) Ltd, PN Corevision 2 (RF) (Pty) Ltd, PN 109 Investments (RF) (Pty) Ltd, PN 111 Investments (Pty) Ltd, and Zazi Capital (Pty) Ltd (collectively, the "six PN investors").

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<sup>1</sup> As updated on 28 February 2025.

<sup>2</sup> Notice of applications for the transfer of control of the I-ECNS, I-ECS and radio frequency spectrum licences held by Orbicom to Canal+ published by the Authority under General Notice Number 6001, Government Gazette Number 52336, 18 March 2025 (the "Notice").

- 3 The six PN investors are all investors in Phuthuma Nathi Investments RF Limited ("Phuthuma Nathi") and made substantially the same representations on the Application. We accordingly address them collectively in this response.<sup>3</sup>
- 4 Orbicom thanks the Authority for the opportunity to respond to the representations made by the six PN investors.
- 5 Before turning to deal with the approach of the six PN investors, we emphasise the following:
  - 5.1 Following the transfer of control of its licences, Orbicom must have a minimum of 30% equity ownership by persons from historically disadvantaged groups ("HDGs").<sup>4</sup>
  - 5.2 As demonstrated in the Application, Orbicom will amply exceed this requirement.
  - 5.3 This is as result of the fact that, following the transfer of control, Phuthuma Nathi's effective shareholding in Orbicom will increase to 40%.
  - 5.4 In addition to complying with the HDG equity requirement, the Application also complies with the consumer impact and competition criteria (which the six PN investors do not dispute).
- 6 In the circumstances, Orbicom respectfully submits that the Application satisfies all the relevant criteria in the Applicable Regulations and ought to be approved on this basis.

### **The approach of the six PN investors**

- 7 As indicated in the Application, Phuthuma Nathi is the MultiChoice Group's broad-based black economic empowerment ("B-BBEE") partner, with over 80 000 Black shareholders from all walks of life. These include numerous individual investors and numerous corporate

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<sup>3</sup> For ease of reference and to avoid duplication, all references to passages in the representations made by the six PN investors reference the paragraph in the representations submitted by Kagiso Capital (Pty) Ltd ("Kagiso's submission"). Unless indicated otherwise, the same submission appears in all of the representations made by all the six PN investors.

<sup>4</sup> Section 9(2)(b) read with section 13(6) of the Electronic Communications Act 36 of 2005 (the "ECA"), regulation 12(1)(d) of the Processes and Procedures Regulations for Individual Licences, 2010 ("Processes and Procedures Regulations") and regulations 15(5)(b) and 15(8)c) of the Radio Frequency Spectrum Regulations, 2015 ("Radio Frequency Spectrum Regulations") read with regulations 1.19 and 3(8) of 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, 2021, published under Notice Number 170, Government Gazette Number 44382, 31 March 2021 (as amended) ("HDG Regulations") (collectively the "Applicable Regulations").

investors. Phuthuma Nathi shareholders have received dividends since the inception of the scheme, with total dividends paid to date of R17.8 billion.<sup>5</sup>

- 8 Six of these investors have made submissions to the Authority.
- 9 As the six PN investors recognise, *"Appendix 9.1 to the Transfer Application, specifically addresses compliance with the 30% ownership and control interest by [HDGs] applicable to [...] I-ECS and I-ECNS licences upon the completion of the transaction and states, inter alia, that:*

*'Following completion of the proposed transaction, Phuthuma Nathi's effective shareholding in Orbicom will increase to 40%, comprising (i) an indirect shareholding of 20% via MCSAH (i.e. 25% x 80%) and (ii) a direct shareholding of 20% in Orbicom.'*<sup>6</sup>

- 10 The gist of the representations made by the six PN investors is related to only one issue, namely that, although Phuthuma Nathi's shareholding in Orbicom *"may well increase to 40%",* they do not know this for a fact, and they are unable to assess the impact of this change on their investment in Phuthuma Nathi.<sup>7</sup>
- 11 Of course, shareholders in Phuthuma Nathi will want to assess the commercial impact that the proposed acquisition by Canal+ of MultiChoice Group Limited ("MCG") and, by extension, Orbicom (the "Transaction") will have on them. However, given the extent of the Authority's regulatory powers and jurisdiction, the application process before the Authority is not the appropriate route to obtain this information. This is because the commercial impact of the Transaction on specific shareholders is not a relevant consideration that the Authority may take into account in deciding whether or not to approve the Application.
- 12 Notwithstanding this, Orbicom welcomes the opportunity to respond to the representations made by the six PN investors and sets out below additional information and clarification regarding:

12.1 Phuthuma Nathi's current shareholding in Orbicom; and

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<sup>5</sup> Phuthuma Nathi is listed on the Equity Express Securities Exchange and its shares may only be traded between Black people (who are historically disadvantaged persons under the Applicable Regulations).

<sup>6</sup> Para 2.2 of Kagiso's submission.

<sup>7</sup> The six PN investors submit that they -

- are unable to confirm or deny whether this will in fact be the position in respect of Orbicom's B-BBEE shareholding on the completion of the Transaction;
- do not know whether in fact there will be an increase in Phuthuma Nathi's current shareholding in Orbicom to 40%;
- are not in a position to assess the implications that the change of control of Orbicom will have on their current (indirect) investment in MultiChoice South Africa Holdings (Pty) Ltd; and
- are not in a position to evaluate how the Application, if approved, would impact their shareholding in Phuthuma Nathi (Paras 2.3 and 2.4 of Kagiso's submission).

- 12.2 Phuthuma Nathi's proposed shareholding in Orbicom and how this will increase if control of Orbicom's licences is transferred to Canal+.
- 13 In addition, and for the sake of completeness, we emphasise that:
  - 13.1 MCG, Orbicom and Canal+ have engaged with Phuthuma Nathi's board in relation to the Transaction.
  - 13.2 In addition, prior to the conclusion of the Transaction, it will be necessary for appropriate resolutions related to the Transaction to be approved by Phuthuma Nathi shareholders. This will involve the provision of substantial information regarding the corporate elements of the Transaction, as well as a report by an independent expert.
  - 13.3 In the circumstances, the interests of Phuthuma Nathi shareholders are amply protected.

### **Phuthuma Nathi's shareholding in Orbicom will increase from 25% to 40%**

#### Phuthuma Nathi's current shareholding interest in Orbicom

- 14 Phuthuma Nathi currently has an indirect 25% shareholding in Orbicom by virtue of its shareholding in MultiChoice South Africa Holdings (Pty) Ltd ("MCSAH").
- 15 Phuthuma Nathi owns 25% of the shares in MCSAH which, in turn, owns 100% of the shares in MultiChoice South Africa (Pty) Ltd ("MCSA"), which, in turn, owns 100% of the shares in Orbicom. This simplified shareholding is depicted in **Annexure A**.

#### Phuthuma Nathi's proposed shareholding interest in Orbicom

- 16 Following the proposed transfer of control of Orbicom's licences to Canal+, the position will be as follows:
  - 16.1 Phuthuma Nathi will continue to hold all its shares in MCSAH.
  - 16.2 MCSAH will continue to hold all its shares in MCSA.
  - 16.3 Phuthuma Nathi will, at no cost, be issued 20% of the shares in Orbicom which are currently held by MCSA, such that Phuthuma Nathi will gain an additional direct 20% shareholding in Orbicom. This will increase Phuthuma Nathi's total effective shareholding in Orbicom from 25% to 40%.
  - 16.4 Phuthuma Nathi will hold this 40% shareholding in Orbicom in two ways, namely (i) an indirect shareholding of 20% via MCSAH, and (ii) a new direct shareholding in Orbicom of 20%, as follows:

<b>Phuthuma Nathi shareholding in Orbicom post-Transaction</b>	<b>Direct / indirect</b>	<b>Explanation</b>
20%	Direct	Phuthuma Nathi will, at no cost, be issued 20% of the shares in Orbicom currently held by MCSA.
20%	Indirect	<p>Phuthuma Nathi will continue to own <b>25%</b> of the shares in MCSAH.</p> <p>MCSAH will continue to own 100% of the shares in MCSA.</p> <p>MCSA will continue to own the remaining <b>80%</b> of the shares in Orbicom.</p> <p>As such, Phuthuma Nathi will indirectly own 20% of the shares in Orbicom through MCSA (25% x 80% = 20%)</p>
<b>40%</b>	<b>TOTAL</b>	<b>20% direct + 20% indirect</b>

#### The impact on individual PN shareholders

17 While we do not believe that the impact on individual PN shareholders is a matter for the Authority to concern itself with when considering the transfer of control of Orbicom's licences, we note the following for the sake of completeness:

17.1 Every Phuthuma Nathi shareholder – including the six PN investors – currently has an indirect interest in Orbicom via their investment in Phuthuma Nathi. These interests will increase by virtue of the proposed Transaction.

17.2 For example, Kagiso, one of the largest investors in Phuthuma Nathi, currently has an effective 1.5% indirect shareholding in Orbicom.<sup>8</sup> Kagiso's effective interest in Orbicom will increase following the proposed transfer of control of Orbicom's licences to Canal+, by virtue of the fact that Phuthuma Nathi's shareholding in Orbicom will increase from 25% to 40%.

17.3 The impact of this will be twofold:

17.3.1 First, Orbicom will comply with - and, in fact, exceed - the 30% HDG ownership requirement, as required by the Applicable Regulations.

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<sup>8</sup> 6% of 25%.

- 17.3.2 Second, there will be no impact on the six PN investors' shareholding in Phuthuma Nathi. Phuthuma Nathi's increased shareholding in Orbicom will be as a result of the issue of additional shares to Phuthuma Nathi directly in Orbicom, and not because Phuthuma Nathi's own shareholding needs to change.

**Phuthuma Nathi's stake in Orbicom will increase with no downside to Phuthuma Nathi or its investors**

- 18 Phuthuma Nathi's increased shareholding in Orbicom:
- 18.1 will be as a result of Phuthuma Nathi acquiring a 20% direct shareholding in Orbicom (which shareholding is currently held by MCSA);
  - 18.2 will only occur if the Authority approves the Application and upon the transfer of control of Orbicom's licences; and
  - 18.3 will be at no cost whatsoever to Phuthuma Nathi or its investors.
- 19 There will be no downside to Phuthuma Nathi or its investors. On the contrary, the transfer of control of Orbicom's licences will result in Phuthuma Nathi (and, indirectly, its investors) receiving a benefit at no cost to them.

**Commitment to increase Phuthuma Nathi's shareholding in Orbicom to 40%**

- 20 Although it is not a requirement for the Application, for the avoidance of any doubt:
- 20.1 It is recorded that MCSA currently holds 100% of the shares in Orbicom;
  - 20.2 MCSA hereby undertakes that if (i) the Authority approves the Application and (ii) the control of the licences held by Orbicom is transferred to Canal+, MCSA will ensure that Phuthuma Nathi Investments RF Limited will hold a total 40% shareholding in Orbicom (20% direct shareholding and 20% indirect shareholding); and
  - 20.3 A supporting letter from MCSA to this effect is attached marked **Annexure B**.

**All relevant criteria in the Applicable Regulations met**

- 21 The Application which is currently before the Authority concerns the transfer of control of the I-ECNS, I-ECS and radio frequency spectrum licences held by Orbicom to Canal+.

- 22 As the Authority is aware, regulation 11(4) of the Processes and Procedures Regulations and regulation 15(5) of the Radio Frequency Spectrum Regulations provide that a transfer of control application will be evaluated on the basis of three criteria, namely (i) promotion of competition in the ICT sector; (ii) interests of consumers;<sup>9</sup> and (iii) equity ownership by HDGs.
- 23 The Authority has correctly emphasised in paragraph 3 of the Notice that the Application will be evaluated on the basis of whether the abovementioned criteria are met.
- 24 As we have demonstrated, the Application satisfies all the relevant criteria in the Applicable Regulations, including compliance with the 30% HDG equity requirement.
- 25 Orbicom is confident that the six PN investors now have ample information to have certainty regarding the only regulatory issue raised – namely that Orbicom will meet (and exceed) the 30% HDG equity requirement.
- 26 Moreover, it would not be appropriate to widen the scope of this process by considering any other licences held by any other entities beyond those held by Orbicom that are the subject of the Application. To extend the application process beyond the scope of the Application would be improper, and would exceed the Authority's powers in respect of this Application.
- 27 In the circumstances, it is unnecessary to provide for a further round of comments on the Application. To do so would unduly delay the consideration of the Application and prolong the Authority's processes unnecessarily, in circumstances where all the relevant criteria specified in the Applicable Regulations have been met and there can be no conceivable adverse impact on the six PN investors.

## Conclusion

- 28 Orbicom thanks the Authority for the opportunity to respond to the representations made by the six PN investors and to provide additional information and clarification regarding the increase in Phuthuma Nathi's shareholding in Orbicom that will take place upon the transfer of control of the licences held by Orbicom if the Authority approves the Application.
- 29 The representations made to the Authority relate solely to the HDG ownership of Orbicom, and, more specifically, to the proposed increase in the shareholding held by Phuthuma Nathi. No other concerns were raised about the Application.
- 30 As we have demonstrated above, the transfer of control of Orbicom, if approved, will benefit Phuthuma Nathi and, indirectly, the six PN investors.

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<sup>9</sup> The six PN investors do not suggest that the Application fails to satisfy the criteria in the Applicable Regulations pertaining to the promotion of competition and the interests of consumers. Indeed, the information included in the Application demonstrates clearly that the Application satisfies these criteria, and this is not disputed by the six PN investors. Nor do they dispute that the Application satisfies the 30% HDG equity requirement.



- 31 Following the transfer of control of Orbicom's licences, if approved by the Authority, the HDG equity in Orbicom will amply exceed the minimum 30% HDG equity requirement, thereby promoting (i) the ownership of electronic communications services by HDGs and (ii) the statutory objective to promote B-BBEE.
- 32 In the circumstances, Orbicom respectfully submits that:
- 32.1 it has addressed the limited concerns which might be said to relate to the Application; and
- 32.2 the Application satisfies all the relevant criteria in the Applicable Regulations and ought to be approved on this basis.
- 33 On the question of a public hearing, Orbicom does not believe a hearing will yield any further outcomes or perspectives on the issue raised by the six PN investors, and we therefore respectfully do not consider a hearing is necessary in this instance. However, we will of course participate, should the Authority decide otherwise.
- 34 Orbicom trusts that the Authority has all the information which it requires in order to complete its consideration of, and approve, the Application and we respectfully urge the Authority to do so expeditiously.

Yours sincerely,



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**CC:**

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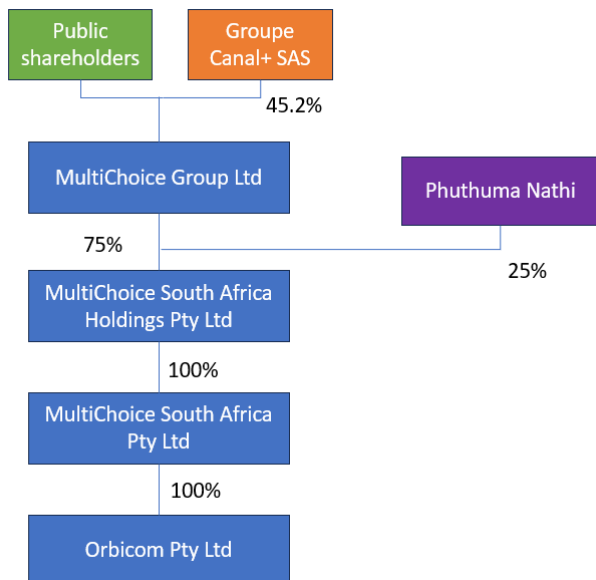
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## ANNEXURE A: PHUTHUMA NATHI SHAREHOLDING IN ORBICOM BEFORE AND AFTER THE TRANSFER OF CONTROL OF ORBICOM'S LICENCES TO CANAL+

### Current Orbicom structure



### Post-Transaction Orbicom structure

