



Independent Communications Authority of South Africa

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**APPLICATION FOR THE TRANSFER OF AN ELECTRONIC COMMUNICATIONS
SERVICE (I-ECS) AND AN INDIVIDUAL ELECTRONIC COMMUNICATIONS
NETWORK SERVICE (I-ECNS) LICENCE FROM GIJIMA HOLDINGS (PTY) LTD
TO GIJIMA GROUP LIMITED**

REASONS FOR DECISION

MARCH 2022

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa (“the Authority”) in relation to an application for the transfer of an Individual Electronic Communications Service (I-ECS) licence and an Individual Electronic Communications Network Service (“I-ECNS”) licence from Gijima Holdings (Pty) Ltd (“the Applicant”) to Gijima Group Limited (“the Transferee”).

2. BACKGROUND

- 2.1. On 28 June 2021, the Authority received an application from the Applicant to transfer its I-ECS and I-ECNS licences to the Transferee.
- 2.2. The application was submitted using regulation 11 (Form G) of the Individual Licensing Processes and Procedures Regulations 2010¹ (“the Regulations”).
- 2.3. The Applicant did not request confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 (“the ICASA Act”).
- 2.4. On 15 July 2021, the Authority published General Notice 673 (Government Gazette No. 44503) inviting interested persons to make written representations in relation to the application within fourteen (14) working days of the date of the publication of the notice.
- 2.5. No written representations were received by the closing date of 04 August 2021.
- 2.6. On 19 November 2021, the Applicant submitted a Complimented version of Form G stating that in the initial Form the Applicant and the Transferee details were transposed.

¹ As amended by Government Gazette No. 39871 of 30 March 2016.

- 2.7. The Authority elected not to hold public hearings as it was of the view that the application was clear, and the Authority did not receive any written representations from the public with respect to the application.
- 2.8. On 09 March 2022, the Authority approved the Applicant's transfer of I-ECS and I-ECNS Licences applications.

3. PARTICULARS OF THE APPLICANT AND THE TRANSFEREE

- 3.1. The full name of the Applicant is Gijima Holdings (Pty) Ltd. The Applicant's principal place of business is Midrand International Business Gateway, No. 1 Pioneer Avenue, South Wing, Midrand 1682.
- 3.2. The Applicant is a private company incorporated in terms of the Companies Act, 1973 (Act 61 of 1973), with the following registration number: 1998/021835/07.
- 3.3. The full name of the Transferee is Gijima Group Limited. The Transferee's principal place of business is Midrand IBG (International Business Gateway), Midrand Gate Building, 1 Pioneer Avenue, South Wing, Midrand 1682.
- 3.4. The Transferee is a public company registered in terms of the Companies Act, 1973 (Act 61 of 1973), with the following registration number: 1998/021790/06.

4. APPLICABLE LEGISLATIVE FRAMEWORK

- 4.1. 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")²;
- (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 ("Process and Procedures Regulations")³;
- (d) Regulation 12 of the Processes and Procedures Regulations;
- (e) Clause 9 of Form G of the Processes and Procedures Regulations⁴; and;
- (f) Schedule 2 of the General Licence Fees Regulations as published in Government Gazette No 43129 of 23 March 2020 (Fees Regulations).

5. DISCUSSION AND ANALYSIS

5.1. Historically Disadvantaged Groups (HDGs) Ownership

- 5.1.1. Section 9(2)(b) of the ECA requires the Authority to give notice of the application in the Government 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."

- 5.1.2. The Applicant indicated that ownership interests in the Transferee, if the application is approved, will be as follows:

² 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.

³ An application for the transfer of control of 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.

⁴ 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

(a) Yebo Guma Investments (Pty) Ltd:	75.85%.
(b) Guma Tech (Pty) Ltd:	0.93%
(c) Guma Tech Group (Pty) Ltd:	0.08%
(d) Guma Investments Holdings (Pty) Ltd:	0.23%
(e) Guma Support (Pty) Ltd:	0.65%
(f) Guma ICT (Pty) Ltd:	22.26%

5.1.3. The Applicant indicated that it is 100% black owned, black managed and locally funded entity and its black ownership exceeds the compliance target as determined by both ICT Sector Charter of 2016 and DTI code of practice of 2013⁵.

5.1.4. The Applicant indicated that the Transferee is 100% owned by historically disadvantaged persons.

5.1.5. The Authority is satisfied that the Transferee complies with the 30% minimum equity ownership by HDG's as contemplated in section 9(2) (b) of the ECA.

5.2. **Approval by the Authority**

5.2.1. Section 13(1) of the ECA 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."

5.2.2. On 28 June 2021, the Applicant applied to the Authority seeking approval for the transfer of its I-ECS and I-ECNS Licences.

⁵ Appendix 9.1 of Form G

5.3. Prescribed Format

5.1.1. Section 13(2) of the ECA states that:

"An application for permission to transfer control of an individual licence may be made to the Authority in the prescribed manner."

5.1.2. The prescribed format is contained in regulation 11 (Form G) of the Processes and Procedures Regulations, which 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.

5.1.3. The transfer application was submitted in terms of regulation 11 (Form G) of the Processes and Procedures Regulations. The Applicant has made the required payment of R137 224,00 (One Hundred thirty-seven thousand two hundred twenty-four) for the transfer of its I-ECS and I-ECNS Licences to the Transferee and provided the Authority with the proof of payment.

5.1.4. Section 13(6) of the ECA provides that:

"The provisions of section 9(2) to (6) apply, with the necessary changes, to this section."

5.1.5. The Authority followed the process outlined in section 9 (2) to (6) read with section 13(6) of the ECA by complying with the following requirements:

- (a) In line with section 9 (2) (a) of the ECA, the Authority invited interested persons to apply and submit written representations in

relation to the application within the period mentioned in the notice⁶. On 29 April 2021, the Authority gave notice of the application in Government Gazette No. 44503.

- (b) In line with section 9 (2) (b) of the ECA, the application must include the percentage of equity ownership to be held by persons from HDGs, which must not be less than 30% or such other conditions or higher percentage. The application included the percentage of equity ownership to be held by persons from historically disadvantaged groups. The Transferee will be 100% owned by HDPs.
- (c) Section 9 (2) (d) of the ECA requires that the Authority gives interested persons an opportunity to submit written responses to any representations submitted in terms of section 9 (2) (a). The Authority did not receive any written representation in relation to the application.
- (d) Section 9 (2)(e) of the ECA provides that the Authority may conduct public hearings with respect to the applications received. As already indicated in clause 2.7 above, the Authority decided not to hold public hearings.
- (e) Section 9 (4)(a) of the ECA provides that applications, representations, responses, and other documents relating to an application which are submitted to the Authority must be open to public inspection during the normal office hours of the Authority. Due to the implementation of the National State of Disaster in relation to Covid-19 and the applicable regulations at the time, the Authority was only able to make the applications available for public scrutiny on its website.
- (f) In terms of section 9 (5) of the ECA, the Authority must notify the Applicant of its decision and the reasons thereof. The Authority has

⁶ Government Gazette No. 44503 of 673 15 July 2021

notified the Applicant of its decision. The reasons for the Authority 's decision are contained in this Reasons Document.

5.4 Competition Analysis Report

- 5.4.1. Clause 9.2 of Form G of the Regulations requires the Applicant to provide an independent competition analysis report post the transaction to assess the impact of the transaction on competition after the transfer of the licence.
- 5.4.2. The Applicant procured the services of BMIT to undertake an independent competition analysis and prepared a report regarding the competition impact post the transfer of control of the licences.⁷
- 5.4.3. The Applicant states its licences are being transferred within its own group structure and that its market share is less than 0.1% in total.
- 5.4.4. The Transferee's market share will remain unchanged after the transfer since the Transferee owns the Applicant and will have no immediate impact on the Applicant's market share.
- 5.4.5. According to the Applicant, there would be no immediate influence on market dynamics in general. In other words, because the Applicant and Transferee are part of the same group company structure and have the same ownership before and after the licence transfers, the licence transfers itself is effectively market share neutral.
- 5.4.6. The Transferee, on the other hand, will be in a stronger position to develop its business because of the licence transfer. As a result, it will be able to gain market share in the provision of telecommunications services in the future and compete more effectively for market share. Any market benefits would have an impact on a variety of industrial segments.

⁷ Appendix 9.2, competition analysis report of the application.

- 5.4.7. According to BMIT, this licence transfer has the potential to provide value to the market by investing in new products and services and bringing new technologies. By increasing market share, the Transferee may provide both choice and competition.
- 5.4.8. Following the transfer, the Transferee will be better positioned to invest in and expand its telecommunications service offerings, positioning each of them strategically within the group structure's relevant operating businesses. The Transferee will be better able to manage licensing and compliance as a centralized function.
- 5.4.9. It is the Authority's view that the proposed transaction does not give rise to or lessen competition in any market. The proposed acquisition of a control interest by the new shareholder, will not affect the operation of the Applicant's licences.
- 5.4.10. The Authority is satisfied that the transaction will not lessen competition in the ICT Sector post the conclusion of the transaction.

5.5 Consumer Interest Analysis Report

- 5.5.1. Clause 9.3 of Form G of the Regulations requires the Applicant to provide a consumer interest analysis report post the transaction to assess the impact of the transaction on consumer welfare after the transfer of the licence.
- 5.5.2. The Applicant procured the services of BMIT to undertake a consumer interest analysis and prepared a report regarding the impact of the consumers post the transfer of control of the licences.⁸
- 5.5.3. According to the Applicant, its customer segments include organizations from a variety of industries, including the public sector (and state-

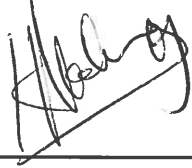
⁸ Appendix 9.3, consumer interest report of the application.

owned companies), transportation, financial services, professional services, and petrochemicals.

- 5.5.4. Customers are already served by the Applicant since the Transferee is a group holding company. Customers across all subsidiaries can now be provided with licensed services following the transfer.
- 5.5.5. The Applicant argues that following the Transfer, it would be able to provide improved service to its existing consumers while also growing its client base and service offerings.
- 5.5.6. The transfer will have no detrimental impact on the Applicant's present consumers but will have a positive impact in the long run since consumers can be better targeted and new products, services, and value portfolios may now be offered.
- 5.5.7. Following the transfer, the Transferee will be better positioned to invest in and expand its telecommunications service offerings, ideally positioning each of these within the relevant operating entities within the group structure. The Transferee will be better equipped to handle licensing and compliance as a centralized operation.
- 5.5.8. The Authority believes that existing customers will potentially benefit from access to additional services over time, while new customers will also potentially be targeted as the product offering is expanded and optimized.
- 5.5.9. The Authority is satisfied that consumer welfare is catered for post the transaction.

6. AUTHORITY'S DECISION

In the light of the above, on 09 March 2022, the Authority approved the transfer of the Applicant's I-ECNS licence to the Transferee.



DR. KEABETSWE MODIMOENG
CHAIRPERSON

DATE: 22/03/2022