



**APPLICATION FOR TRANSFER OF CONTROL OF AN INDIVIDUAL  
COMMERCIAL SOUND BROADCASTING SERVICE LICENCE BY CLASSIC FM  
SOUTH AFRICA (PTY) LTD IN TERMS OF SECTION 13 OF THE ELECTRONIC  
COMMUNICATIONS ACT 36 OF 2005**

**REASONS FOR DECISION**

---

**SEPTEMBER 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 application for transfer of control of the Individual Commercial Sound Broadcasting Service (“I-CSBS”) licence of Classic FM South Africa (Pty) Ltd (“the Applicant”) from its current shareholders to the new shareholders (“the Transferee”)

## **2. BACKGROUND**

- 2.1. On 09 April 2020, the Authority received an application for transfer of control of the I-CSBS licence from the Applicant’s current shareholders to the new shareholders in terms of section 13 (1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the ECA”).
- 2.2. The application was submitted using regulation 11 (Form G) of the Individual Licensing Processes and Procedures Regulations 2010 (“the Regulations”).
- 2.3. The Applicant submitted a request for confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000 (“the ICASA Act”) in respect of its business plan and three-year audited financial statements.
- 2.4. The Authority granted the confidentiality request on the basis that the information in respect of which confidentiality was requested relates to financial, commercial, scientific or technical information, trade secrets the disclosure of which will likely cause commercial or financial harm to the Applicant.
- 2.5. On 25 August 2020, the Authority published the application in General Notice No. 451 (Government Gazette No.43649) 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.

**2.6. The Authority received written responses from the following entities:**

- (i) Kagiso Media;
- (ii) Kaya FM; and
- (iii) Luthuli Media Corporation.

2.7. The written submissions of Kaya FM and Luthuli Media Corporation were received outside the closing date and were accordingly not considered by the Authority.

2.8. The Authority elected not to hold public hearings as it was of the view that the Applicant's transfer of control application was clear, and it did not receive any opposing written representations from the public with respect to the application.

2.9. On 10 February 2021, the Authority approved the Applicant's transfer application.

**3. PARTICULARS OF THE APPLICANT AND TRANSFEREE**

3.1. The full name of the Applicant is Classic FM South Africa (Pty) Ltd. The Applicant's principal place of business is 6<sup>th</sup> Floor Jorissen Place, 66 Morison Street, Braamfontein, Johannesburg, 2001.

3.2. The Applicant is a private company registered in terms of the Companies Act of 1973, as amended, with the following registration number: 1996/008632/07.

3.3. The Transferees are private companies registered in terms of the Companies Act of 2008.

**4. APPLICABLE LEGISLATIVE FRAMEWORK**

4.1. The following legislative and regulatory provisions are applicable when processing an application to transfer control of an individual licence:

- (a) Section 9(2)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA")<sup>1</sup>;

---

<sup>1</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%,

- (b) Section 13 (1), (2) and (6) of the ECA;
- (c) Section 65 (1) of the ECA;
- (d) Section 66 of the ECA;
- (e) Regulation 11 (Form G) of the Processes and Procedures Regulations for Individual Licensees, 2010 as amended ("Process and Procedures Regulations")<sup>2</sup>;
- (f) Regulation 12 of the Processes and Procedures Regulations;
- (g) Clause 9 of Form G of the Processes and Procedures Regulations<sup>3</sup>; and
- (h) 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 (HDG) 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 of the ICASA Act<sup>4</sup>.

5.1.2. The Applicant has indicated that its shareholders are:

- Huntrex 144 (Pty) Ltd – 51.91%;
- Golden Pond Trading 183 (Pty) Ltd – 25. 25%;
- Ingoma Trust – 15.09%; and
- African Media Entertainment (Pty) Ltd ("AME") – 7.85%.

---

or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the ICASA Act.

<sup>2</sup> An application to 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.

<sup>3</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

<sup>4</sup> Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000)

5.1.3. The Authority verified the ownership held by historically disadvantaged individuals prior to the transfer application and it was at 49.59%, made up of the following:

- AME – 10.54%, and
- Phikelela Investment Trust – 39.05%.

The Applicant indicated that as a public listed company, HDI shareholding in AME comprises the following number of individuals and companies: Black females-15; Black males-74; White females-155; Black Nominees and Trusts-2; White Females: Nominees and Trusts-5; Black private companies-2; White Female: private company-1; Black Endowment Funds-1; White Females: Endowment Funds-1, Black other Corporations-1; White females: Other corporations-1; Black Close Corporations-2; White females: Close Corporations-1; Investment Companies-2; Banks/Brokers-5; Mutual Funds-9 and Retirement Funds-54.

The beneficiaries of Phikela Investment Trust are Mr Domic Buti Ntsele, Black, Male, South African citizen and Ms Refiloe Patience Ntsele, Black, Female, South African citizen.

5.1.4. The Applicant has indicated that the Transferees have 100% equity shareholding in the Applicant. The shareholders consist of:

- Indigo House Group Holdings (Pty) Ltd - 51%, a private company registered in terms of the Companies Act of 2008 with the following registration number: 2015/294200/07.
- IQ Group Holdings (Pty) Ltd - 24.1%, a private company registered with the CIPC with the following registration number:2011/137106/07.
- AME - 19.9%, a public company registered with the registration number 1926/008797/06.; and
- Kelthar House Holdings (Pty) Ltd - 5%, a private company with registration number: 2015/141534/07.

5.1.5. The Transferees are 32.56% owned by historically disadvantaged people made up as follows:

- Indigo House Group Holdings (Pty) Ltd – 30.09%
- AME at the time of submitting the application – 2.45%
- Kelthar House Trust – 0.02%.

The individuals making up the HDI equity in Indigo House Group Holdings (Pty) Ltd are Mr Lloyd Madurai who holds 51.03% and Ms Lorna Madurai who holds 48.7%. Mr Lloyd Madurai is an Indian male South African citizen and Ms Lorna Madurai is an Indian female South African citizen.

AME equity stake was calculated using the submitted BEE certificates.

The beneficiaries under the Kelthar House Trust are as follows:

Ms Hildegard Margarate Barnard-Bender, a white South African female citizen;

Mr Richard Leo Bender, a white male South African citizen;

Mr Louis Armand Barnard, a white male South African citizen;

Mr Gerhardus Barnard, a white male South African citizen, and

Ms Carin Elsa Barnard, a white South African female citizen.

- 5.1.6. The Authority is satisfied that the Transferee's overall HDI equity stake exceeds the minimum legislative requirements of 30% equity ownership as contemplated in section 9 (2)(b) of the ECA.

## 5.2. **Approval of Authority**

- 5.2.1. Section 13(1) of the ECA states that:

*"..... 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 08 April 2020, the Applicant applied to the Authority seeking approval for the transfer of control of its ICSBS licence.

### 5.3. **Prescribed Format**

5.3.1. 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."*

5.3.2. 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<sup>5</sup>.

5.3.3. 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 R63 804.00 for the transfer of control of its I-CSBS licence and provided the proof of payment.

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

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

5.3.5. 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 applications within a period mentioned in the notice<sup>6</sup>. On 25 August 2020,

---

<sup>5</sup> In the case of change of control in a licence, the prospective transferor will be the Licensee.

<sup>6</sup> Government Gazette No. 43518 of 20 July 2020

the Authority gave notice of the applications in Government Gazette No. 43649.

- (b) In terms of section 9 (2) (b) of the ECA, the application must include the percentage of equity ownership to be held by persons from HDG, 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 HDG. The Transferees will be 32.56% owned by HDGs.
- (c) Section 9 (2) (d) of the ECA requires the Authority to give interested persons an opportunity to submit written responses to any representations submitted in terms of section 9 (2) (a). The Authority received written submissions from Kagiso Media. In their representation, Kagiso Media indicated that they have no specific objection to the implementation of the shareholding changes by the Applicant.
- (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 2.4 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 notified the Applicant of its decision, on 08 March 2021. The reasons for the Authority's decision is contained in this Reasons Document.



#### 5.4. CONTROL IN TERMS OF SECTIONS 65 AND 66 OF THE ECA

- 5.4.1. Section 65 (2)(a) of the ECA prohibits any person from exercising control, over more than two commercial broadcasting service licences in the FM sound broadcasting services.
- 5.4.2. The Applicant confirmed that AME, a shareholder in the Transferee with 19.9% ownership interest holds 80% ownership interest in Algoa FM (Pty) Ltd and 73.77% in OFM, two I-CSBS licensees providing commercial sound broadcasting services in the Eastern Cape Province and Northwest, Northern Cape and parts of Free State Provinces. AME is not deemed to control the applicant through its 19.9% shareholding. The Authority is satisfied on the basis of the information that has been submitted to it in the context of the Applicant's application for a transfer that AME will not be in a position to exert any other control over the applicant.
- 5.4.3. Section 65(2)(b) of the ECA prohibits any person from being a director of a company which is, or of two or more companies which between them are, in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting.
- 5.4.4. Further, section 65(2)(c ) provides that: " no person may be in a position to exercise control over two commercial broadcasting service licences in the FM sound broadcasting service and be a director of any company which is in a position to exercise control over any other commercial broadcasting licence in the FM sound."
- 5.4.5. The Applicant submitted the details of its directors, namely: Advocate Hildegard Barnard-Bender, Mr Lloyd Madurai and Aneska Ramtahal. Each of these directors is indicated to be a South African citizen. None of these directors was indicated to be a director of any other FM commercial sound broadcasting service. As such, it appears that none of the directors in this regard is a director of another commercial broadcasting service licensee in contravention of sections 65(2) (b)and (c) of ECA.
- 5.4.6. Section 66 (2) of the ECA provides that" *no person who controls a newspaper, may acquire, or retain financial control of a commercial broadcasting service*

*licence, in both the television broadcasting service and sound broadcasting service”*

5.4.7. Section 66 (3) of the ECA provides that *“no person who is in a position to control a newspaper may be in a position to control a commercial broadcasting service licence, either in the television broadcasting service or sound broadcasting service in an area where the newspaper has an average of ABC circulation of twenty (20%) percent of the total newspaper readership in the area, if the licence area of the commercial broadcasting service overlaps substantially with the said area of the newspaper.”*

5.5. The Applicant stated that none of the members of the Transferee have any market shares in any newspapers including holdings in a group having substantial control over one or more newspapers. On this basis, Authority was satisfied that the Transferee is compliant with section 66 (2) and (3) of the ECA.

## 5.6. **Competition Analysis Report**

5.6.1. Clause 9.2 of Form G requires the Applicant to provide an independent competition analysis report regarding the impact of this transaction.

5.6.2. The Applicant submitted a competition analysis report which was conducted by Bowmans (“the Report”).

5.6.3. The Report provided information on competition on the landscape and market shares of key players based on publicly available data. The report indicated that the Applicant’s radio station is the least significant in terms of revenue and listenership. The Applicant’s audiences have moved to other commercial radio stations such as Jacaranda FM and Highveld 94.7 who are currently leading in revenue and listenership in the Gauteng Province.

5.6.4. The Applicant’s new shareholders believe that their turnaround strategy and capital injection to the operations will attract more listeners and advertisers. Accordingly, this will improve competition within the individual broadcasters based in Johannesburg.

5.6.5. In the Authority's assessment, the transfer will not adversely lessen or prevent competition in the sector.

## 5.7. **Consumer Interest Analysis Report**

5.7.1. Paragraph 9.3 of Form G requires the Applicant to provide a consumer interest analysis report post the transaction.

5.7.2. The Applicant submitted a Consumer Analysis Report which is aimed to evaluate the impact the transaction will have on consumers' welfare post the conclusion of the transaction. The Consumer Analysis Report illustrated that consumer welfare is adequately catered for post the transaction, and as such consumers would be positively impacted by the transaction. According to information submitted by SAARF Rams 2008 – 2015 and BRC Rams 2016 – 2019, the Applicant's listeners have decreased compared to other individual broadcasters who have a vast share in the market.

5.7.3. The Applicant indicated that its current listeners who are loyal to classic music would be provided with classic music on an online platform. These listeners are in the upper LSM and would therefore be able to access classic music online.

5.7.4. According to the Applicant, the Transferee's proposed solution and strategy will be attractive to advertisers as they intend providing appealing content to listeners and as such the spectrum would be used efficiently in reaching a wider audience.

5.7.5. The Authority is therefore satisfied with the content of the Consumer Analysis Report and is further satisfied that the transfer will cater to the interest of consumers post the transfer.

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

In the light of the above, on 10 February 2021, the Authority approved the transfer of control of the Applicant's I-CSBS licence to the Transferees.



---

**DR. KEABETSWE MODIMOENG**  
**CHAIRPERSON**

**DATE: 17 / 09 / 2021**