

APPLICATIONS BY HERO TELECOMS (PTY) LTD FOR THE TRANSFER OF CONTROL OF AN INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICE ("I-ECS"), INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICE ("I-ECNS") AND RADIO FREQUENCY SPECTRUM ("RFS") LICENCES TO VUMATEL (PTY) LTD

REASONS FOR DECISION

MAY 2026

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa (“the Authority”) in relation to applications for the transfer of control of the I-ECS, I-ECNS and RFS licences from Hero Telecoms (Pty) Ltd (“the Applicant”) to Vumatel (Pty) Ltd (“the Transferee”).

2. BACKGROUND

2.1. On 11 April 2025, the Applicant submitted the following applications to the Authority:

2.1.1. Application for the transfer of control of its I-ECNS and I-ECS licences, which are hereinafter collectively referred to as the “Service Licences”, to the Transferee in terms of section 13(2) of the Electronic Communications Act, 36 of 2005 (“ECA”) (“Service Licence Transfer Application”); and

2.1.2. an application for the transfer of control of its RFS licences (“RFS Licences”) to the Transferee (“RFS Transfer Application”) in terms of section 31(2A) of the ECA.

2.2. The abovementioned applications are hereinafter referred to collectively as “the Applications”.

2.3. The details of the Service Licences and RFS Licences which formed the subject of the Applications, respectively, are as set out in the table below:

Service Licences	RFS Licences
I-ECNS: 0395/IECNS/MAY/2009	5536986
I-ECS: 0395/IECS/MAY/2009	5571069
	5571085
	5575923

	5575931
	5598644
	5598651
	5535148
	5571108

2.4. The Applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“the ICASA Act”) on the following information:

- 2.4.1. Personal information of the Applicant’s board of directors and senior management;
- 2.4.2. Personal information of the Transferee’s board of directors and senior management;
- 2.4.3. the Applicant’s 5-year business plan;
- 2.4.4. the Transferee’s audited financial statements for the financial years ended 2022, 2023 and 2024;
- 2.4.5. detailed network architecture layout and roll out plans;
- 2.4.6. the Applicant’s commercial arrangements; and
- 2.4.7. extracts of the independent competition and consumer interest analysis reports.

2.5. The Authority granted the confidentiality request on the basis that the information falls within the ambit of section 4D(4)(b) of the ICASA Act, and the Protection of Personal Information Act, 2013.

2.6. On 13 June 2025, the Authority published General Notice No. 3309 (Government Gazette No. 52869) inviting 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.

2.7. The Notice further stated that the Applicant would be entitled to submit responses to the written representations submitted by interested parties within 28 working days from the date of publication thereof (effectively 14

working days after the deadline stipulated for the submission of written representations).

2.8. By the closing date of 4 July 2025, the Authority had received one (1) written representation from the following stakeholder:

(a) Mobile Telephone Networks (Pty) Ltd (“MTN”).

2.9. Upon consideration of the above representation, the response from the Applicant and the information contained in the Applications, the Authority elected not to hold public hearings.

2.10. The Authority, acting in accordance with its statutory mandate, considered the information contained in the Applications, the written representation received and the response thereto. Following this process as well as the outcome of its own analysis of the Applications, the Authority took a decision to approve the Applications.

2.11. The amended licences reflecting the details of the Transferee were issued by the Authority on 8 April 2026.

2.12. This Reasons Document sets out the Authority’s rationale for approving the Applications.

3. PARTICULARS OF THE APPLICANT AND THE TRANSFEEE

3.1. The full name of the Applicant is Hero Telecoms (Pty) Ltd. The Applicant’s principal place of business is 98 Dorp Street, Stellenbosch, Western Cape, 7600.

3.2. The Applicant is a private company registered in terms of the Companies Act 2008 (Act No. 71 of 2008), as amended, with the following registration number: 2013/014376/07.

- 3.3. The full name of the Transferee is Vumatel (Pty) Ltd. The Transferee's principal place of business is 31 Georgian Crescent East, Bryanston, Gauteng, 2191.
- 3.4. The Transferee is a private company registered in terms of the Companies Act 2008 (Act No. 71 of 2008), as amended, with the following registration number: 2014/138808/07.

4. APPLICABLE LEGISLATIVE FRAMEWORK

4.1. The following legislative and regulatory provisions are applicable when dealing with transfer of control applications:

- (a) section 9(2) to (5) of the ECA¹;
- (b) section 13 (1), (2) and (6) of the ECA;
- (c) regulation 11 (Form G) of the Regulations²;
- (d) regulation 12 of the Regulations³;
- (e) clause 9 of Form G of the Regulations⁴; and
- (f) schedule 1 (Administrative Fees) of the General Licence Fees Regulations, 2012 as published in Government Gazette No. 36323 of 28 March 2013 ("Fees Regulations")⁵;
- (g) section 31(2A) of ECA; and
- (h) Regulations 15 of the Radio Frequency Spectrum Regulations, 2015⁶

¹ 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.

² 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.

³ The Authority may refuse to renew or transfer a Licence if the Licensee has not complied with conditions stipulated in regulation 12 of the Regulations.

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

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

⁵ Includes notices published by the Authority pursuant to the provisions of the Regulations.

⁶ published on 30 March 2015 in Government Gazette No.38641 ("RFSR"), as amended; Regulation 15(2), (6), (8) and (9).

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 ownership interest held in the Applicant is as follows:

(a)	Herotel Communities (RF) (Pty) Ltd	49.93%
(b)	Vumatel (Pty) Ltd	49.96%
(c)	Other Shareholders	0.11%

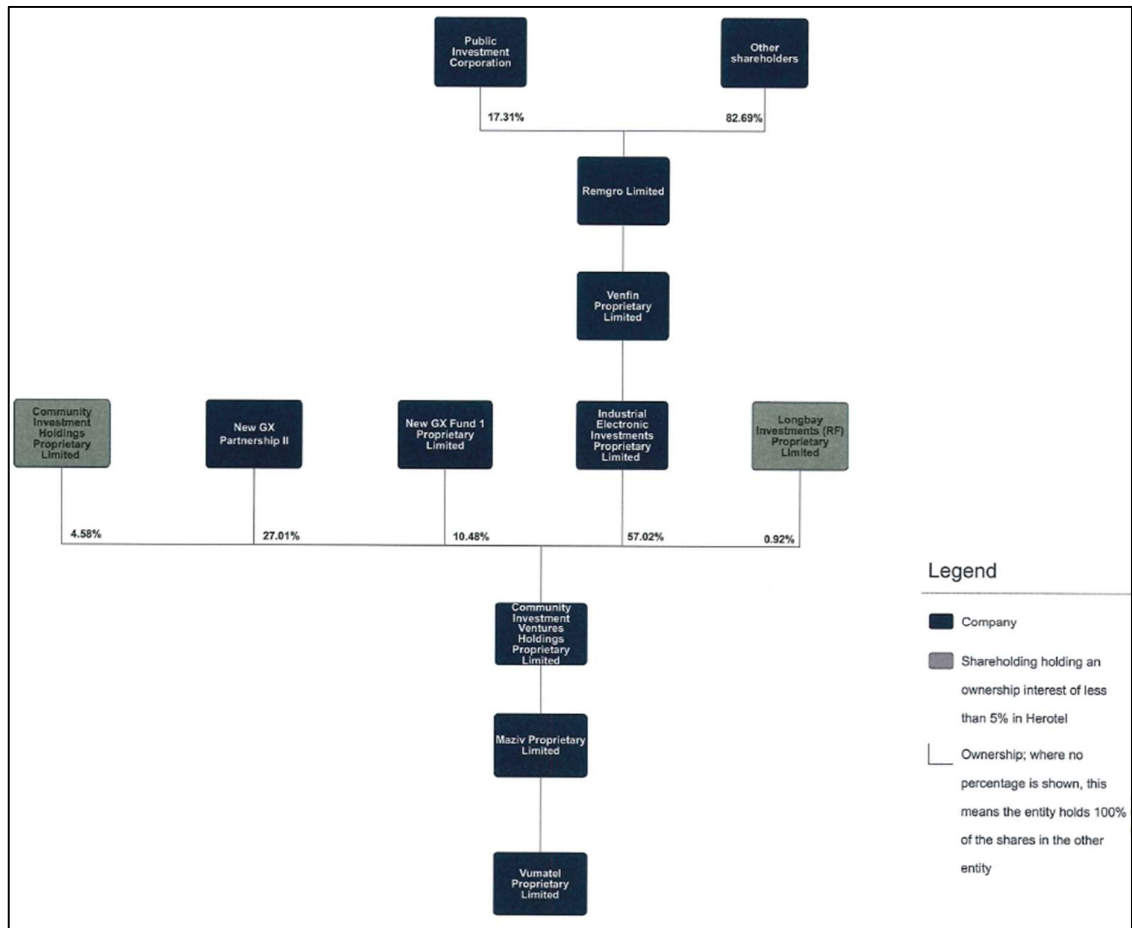
5.1.3. The Applicant submitted that it is 18.84% owned by Black people, as defined in the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003 (“B-BBEE Act”).

5.1.4. The Transferee currently holds 49.96% of the shares in the Applicant and intends to acquire a further 49.93% from Herotel Communities (RF) (Pty) Ltd, the remaining 0,11% will continue to be held by minority shareholders.

5.1.5. Therefore, the Transferee’s ownership interest in the Applicant, if the application for transfer of control is approved, will be as follows:

(a)	Vumatel (Pty) Ltd	99.89%
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5.1.6. The complete indirect shareholding in the Transferee is represented in the diagram as follows:



- 5.1.7. The Applicant submitted that the 39.09% ownership interests in the Transferee are held by historically disadvantaged groups, determined on a flow-through basis.
- 5.1.8. The Applicant submitted Maziv (Pty) Ltd’s B-BBEE certificate confirming 39.09% Black ownership using the flow-through principle.
- 5.1.9. Therefore, the ownership interests in the Applicant held by historically disadvantaged groups, determined on a flow-through basis, will be as follows:

	Name of shareholder	Company where indirect ownership is held	Percentage of indirect ownership
1.	Maziv (Pty) Ltd	Vumatel (Pty) Ltd	39.09% X 99.89%
	Total HDG shareholding:		39.05%

5.1.10. The Authority is satisfied that the information submitted by the Applicant confirms that the Transferee meets the minimum requirement of 30% equity ownership held by historically disadvantaged individuals as prescribed in terms of section 9(2) (b) of the ECA.

5.2. Approval by the Authority –

5.2.1. Sections 13(1) and 31(2A) of the ECA respectively state 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."

and

"a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, and the control of a radio frequency 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 11 April 2025, the Applicant applied to the Authority seeking approval for the transfer of control of its I-ECS, I-ECNS and RFS licences.

5.3. Prescribed Format: Service and RFS Licences

5.3.1. With respect to individual service licences, section 13(2) of the ECA 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."

5.3.2. Regulation 11(1) of the Licensing Regulations provides that an application to transfer a licence (which must be read to include applications to transfer control of a licence) must be:

5.3.2.1. in the format as set out in Form G (Service Licences);

5.3.2.2. accompanied by the applicable fee; and

5.3.2.3. submitted by the prospective transferor.

5.3.3. Regulation 15(2) of the Spectrum Regulations provides that an application to cede, assign or transfer control of a licence must be:

(a) in the format as set out in Form B;

(b) accompanied by the prescribed fee; and

(c) submitted by the prospective transferor.

5.3.4. Both the Service Licence and RFS Licence Transfer Applications were submitted by the Applicant, being the prospective transferor, in terms of Form G and Form B, respectively. The Applicant also paid the prescribed fee in the amount of **R164,222.00** for the Service licences transfer applications and provided proof of payment.

5.3.5. The Applicant provided all the information required in terms of Form G and Form B, respectively.

5.4. **Application of section 9 (2) to (5) of the ECA -**

5.4.1 Section 13(6) of the ECA provides that *“The provisions of section 9(2) to (5) apply, with the necessary changes, to this section.”*

5.4.2 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) Section 9(2)(a) of the ECA requires the Authority to invite interested persons to apply and submit written representations in relation to the application within the period mentioned in the notice. On 13 June 2025, the Authority gave notice of the application in Government Gazette No. 52869.

(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 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 HDGs.

(c) In terms of section 9(2)(c) of the ECA, when the Authority publishes applications received, such applications must set out the proposed licence conditions that will apply to the licence. Since the application received relates to the transfer of control of existing individual licences, and not an amendment thereof, there were no proposed licence conditions published by the Authority.

(d) 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). On 13 June 2025, the Authority gave notice of the application in Government Gazette No. 52869. MTN subsequently submitted written representations in response to the notice, to which the Applicant duly responded.

- (e) 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 2.9 above, the Authority decided not to hold public hearings.
- (f) 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. The Applications, representations and response were made available for public inspection at the Authority's library.
- (g) In terms of section 9(5) of the ECA, the Authority must notify the Applicant of the Authority 's decision, the reasons for the decision and any licence conditions applicable after the consideration of the application(s) and any representations received. The Authority has notified the Applicant of its decision, on 8 May 2026. The reasons for the Authority 's decision are contained in this Notice. The Transferee will be subject to the same licence terms and conditions as were applicable to the Applicant.

5.5 **Competition Analysis Report**

- 5.5.1 Clause 9.2 of Form G of the Regulations requires the Applicant to provide an independent competition analysis report assessing the

impact of the transaction on competition following the transfer of control of the licence.

5.5.2 The Applicant and Transferee procured the services of an independent consultant, namely Compass Lexecon, to undertake an independent competition analysis and prepare a report regarding the impact on competition post the transfer of the licences.

5.5.3 **Defining the relevant markets affected by the transaction**

5.5.3.1 **Relevant Markets for the Applicant**

5.5.3.1.1 The Applicant submits that it operates as an Internet Service Provider (“ISP”) and supplies retail residential fixed internet access over fibre (the vast majority of which is supplied on its own Fibre-To-The-Home (“FTTH”) access and over fixed wireless using unlicensed spectrum (which is exclusively provided on its own infrastructure). The Applicant also supplies Voice over Internet Protocol (“VoIP”) and Fibre-To-The-Building (“FTTB”) services to business customers.

5.5.3.1.2 In addition, the Applicant provides a small number of wholesale FTTB and Fixed Wireless Access (“FWA”) connections to enterprise partners who on-sell the services as part of broader bundles of services supplied to enterprises. The Applicant submits that it provides these services in areas where no other providers are available.

5.5.3.2 **Relevant Markets for the Transferee**

5.5.3.2.1 The Transferee is an open-access fibre provider of wholesale FTTH and limited FTTB access services to ISPs. In relation to the FTTH, the Transferee also offers products (such as the Reach product) that are specifically designed to support take-up in lower Living Standards Measure ("LSM") areas.

5.5.3.2.2 The Transferee is also involved in the provision of the following activities through its subsidiaries:

- (a) DFA is involved in the provision of wholesale, open access passive (dark) fibre infrastructure and managed network services connectivity in metropolitan, long-haul and FTTB telecommunications markets. DFA's primary activity is deploying metro fibre networks and providing wholesale access to this infrastructure to Fibre Network Operators ("FNOs") and Mobile Network Operators ("MNOs").
- (b) AEX is active in the development of specialized software for the management of fibre networks. It also supplies physical network components/services that connect ISPs with one or more networks.
- (c) VumaCam offers a citywide video camera network ("CCTV") offering ultrahigh-definition video feeds to security companies and law enforcement agencies.
- (d) VumaCam Infrastructure is an infrastructure company facilitating Wi-Fi, mobile network operator opportunities, branding and advertising space.

5.5.3.3 **Relevant Geographic Markets for the Applicant and Transferee**

5.5.3.3.1 The parties have defined the relevant geographic markets as follows:

- (a) The market for wholesale FTTH services is defined as local (e.g., gated estate, business park and residential suburb).
- (b) The market for retail residential fixed internet access as national.
- (c) The market for metro fibre has been left open as the parties are of the view that a definitive delineation is not necessary for the purposes of this assessment, i.e. whether the market is defined narrowly or broadly, the proposed transaction does not materially alter the competitive landscape or raise competition concerns.

5.5.3.4 **Rationale for the transaction**

5.5.3.4.1 According to the parties, the transaction would combine two fibre providers with complementary expertise: the Transferee has expertise in pioneering deployment in lower LSM areas and the Applicant in secondary towns. The combined strength of the entity is also likely to support better access to capital than if the entities remain separate. This, in the view of the parties, would help bring further fibre deployment to unserved secondary towns and adjacent areas including lower LSM areas.

5.5.4 **Overlaps in the activities of the Applicant and Transferee**⁷

(i) **Horizontal and Potential Horizontal Overlaps**

5.5.4.1.1 According to the parties, the Applicant does not supply FTTH at the wholesale level while the Transferee provides wholesale access to its FTTH network to ISPs. Accordingly, there is no existing horizontal overlap between the parties in respect of the provision of wholesale FTTH services. However, the proposed transaction gives rise to a potential overlap in wholesale FTTH infrastructure, as both parties own and operate FTTH networks.

5.5.4.1.2 The Applicant and Transferee further indicate that they both offer retail residential fixed internet access services (including services supplied to SMEs which are identical to those supplied to residential customers). Accordingly, there is a direct horizontal overlap between their activities in this regard. In their competitive assessment of this market, the parties have also included services supplied over both FTTH and 4G/5G FWA as well as services which are ancillary to retail residential fixed internet access (such as VoIP to residential customers).

5.5.4.1.3 In relation to FTTB services, as already indicated above, the Applicant provides these services in geographical areas where no other providers are

⁷ The parties have based the definitions of the relevant product and geographic markets on case precedent specifically the Vodacom/Maziv merger as the most recent relevant South African case (Competition Commission case number - 2021Dec0018) and Competition Tribunal case number - LM148Dec21) as well as on international case precedents.

available. Therefore, there is no overlap in the activities of the parties in respect of FTTB services.

(ii) **Vertical Overlaps**

5.5.4.1.4 The Applicant and Transferee submit that there are vertical overlaps in their respective activities as follows:

5.5.4.1.5 Upstream: the Transferee (through DFA) provides wholesale access to metro fibre and downstream: the Applicant owns FTTH access infrastructure but does not provide wholesale access to its network. The theories of harm are that the Transaction could lead to input foreclosure of rival wholesale FTTH providers and/or customer foreclosure of metro fibre providers.

5.5.4.1.6 Upstream: the Transferee provides wholesale access to its FTTH network to ISPs and downstream: both parties provide retail fixed internet access on FTTH. The theories of harm are that the Transaction could lead to input foreclosure of rival retail suppliers and/or customer foreclosure of wholesale FTTH providers.

5.5.4.1.7 The assessment on the impact of these vertical overlaps is discussed further below in the document under vertical integration.

5.5.5 **Section 67(5) of the ECA, as amended, provides that:**

"A licensee has significant market power in a market or market segment if that licensee:

(a) is dominant;

*(b) has control of an essential facility; or
(c) has a vertical relationship that the Authority determines could harm competition”.*

5.5.5.1.1 Actual and potential existence of competitors

(i) Wholesale FTTH Services

5.5.5.1.2 The parties submit that there are several competitors who are significant deployers of FTTH, particularly Openserve, Frogfoot and Octotel as well as a number of small FNOs. The parties also submit that these competitors are active across the country, including in secondary towns, and are particularly focused on lower income areas. In particular, the parties note the following in relation to the key FTTH deployers:

- (a) Openserve is an open-access wholesale division of Telkom, the largest telecommunications infrastructure provider in South Africa, active in deploying fibre (i.e., both FTTH and FTTB) infrastructure across the country.
- (b) MetroFibre Networx (“MFN”) is a major open-access FTTH provider and a “high-growth player in South Africa’s FTTH and FTTB markets.”⁸
- (c) Frogfoot has an open-access FTTH infrastructure across South Africa and is also one of the leaders in deploying to secondary towns.⁹
- (d) Octotel is the leading network in the Western Cape which was sold to a consortium of investors led by

⁸ MFN, “AIIM, SAHIF and STOA sign follow-on acquisition in MetroFibre Networx, consolidating their position in South Africa’s fibre landscape”, 15 June 2021.

⁹ ITWeb, “Frogfoot accelerates fibre-to-the-community drive”, 26 June 2023.

- African Infrastructure Investment Managers (“AIIM”), who is the largest shareholder of MFN.¹⁰
- (e) Zoom Fibre is a relatively new, but rapidly expanding, operator with a network of 192,000 homes passed as of June 2024 and plans to expand to 350,000 homes passed.¹¹
 - (f) Vodacom is an MNO primarily active in the provision of mobile services but that is also currently an open-access supplier of wholesale FTTH and a supplier of retail services to residential and business customers.
 - (g) Evotel is an FTTH network which has extended FTTH to smaller towns that are not covered by the major FNOs.¹²
 - (h) TTConnect is a fibre provider in eastern Johannesburg that states that its network passes more than 300,000 homes.¹³
 - (i) Supersonic is an FTTH provider owned by MTN.¹⁴

5.5.5.1.3 In addition to the above FTTH competitors, the parties submit that there are a large number of FNOs are active in South Africa¹⁵, including smaller players

¹⁰ TechPoint, “South African Competition Commission okays Octotel deal”, 14 August 2024.

¹¹ Zoom Fibre, “About Zoom Fibre”.

¹² Evotel, “Fibre for everyone and more...”, 12 November 2020.

¹³ TT Connect, Home page.

¹⁴ Who Owns Whom.

¹⁵ Africa Analysis estimated that there were over 70 operational FNOs active in South Africa in June 2024 – Africa Analysis, 2024 June FTTH Tracking Programme, 30 September 2024, page 18.

who have entered the market with a focus on deployment to townships.¹⁶

(ii) Metro Fibre (Input to Wholesale FTTH Services)

5.5.5.1.4 According to the parties, there are other metro fibre providers such as OpenServe, MFN, Octotel, Frogfoot, among others, are present which rival FTTH providers could switch to should the parties attempt a foreclosure strategy post -transaction (which is highly unlikely).

5.5.5.1.5 The parties also submit that market evidence shows that switching between metro fibre providers occurs – as an example in FY24, out-of-contract customers did not renew a significant portion of monthly links across all of the Transferee’s products.

(iii) Retail residential fixed internet access services

5.5.5.1.6 According to the parties, the retail supply of FTTH is highly fragmented with the two largest ISPs being WebAfrica and Afrihost (as of June 2024). Other competitors in this market include Vox, Telkom retail, Supersonic, Vodacom, RSAWeb, MWeb and many others.

5.5.6 The overall size of each of the market participants and Impact on Competition

(i) Wholesale FTTH activities

¹⁶ An example of such a FTTH is Zing Fibre (formerly eKasi Fibre) launched prepaid fibre in Umlazi, KwaZulu-Natal.

- 5.5.6.1.1 As indicated in paragraph 5.5.4.1.1 above, although both the Applicant and Transferee own and operate FTTH networks, there is no existing horizontal overlap between the parties in respect of the provision of wholesale FTTH services. The parties, however, provided an assessment of the likely impact of the proposed transaction on competition in the provision of FTTH services due to the potential overlaps in respect of FTTH services.
- 5.5.6.1.2 In the assessment, the parties submit that the transaction may be regarded as potentially giving rise to adverse effects on future wholesale FTTH competition based on these scenarios: if (i) Herotel would likely have entered the wholesale FTTH market absent the transaction; and (ii) such entry would have resulted in materially stronger competition than would exist post-transaction, taking into account other competitive constraints and potential entrants.
- 5.5.6.1.3 The parties, however, submit that none of these scenarios are likely to hold as the Applicant will remain a closed-access provider absent from the transaction due to strong economic and commercial reasons. The parties also state that even if hypothetically it was to be assumed that the Applicant would offer wholesale access absent the transaction, the transaction would not materially impact competition.
- 5.5.6.1.4 On the point about the economic and commercial reasons, the Applicant states that it originated from the consolidation of traditional FWA providers and

expanded into FTTH primarily within its existing coverage areas, leveraging its established retail presence, local infrastructure, and migrating FWA customer base.

- 5.5.6.1.5 Given its focus on smaller towns with limited demand, it adopted a direct retail model as more commercially viable than a wholesale open-access approach. Absent the transaction, the Applicant considers it unlikely that it would establish a wholesale FTTH business due to the additional costs, lack of wholesale systems and expertise, and limited incremental benefit from third-party ISPs. Accordingly, the transaction does not result in any loss of potential competition in wholesale FTTH services.
- 5.5.6.1.6 On the point about hypothetical entry, the Applicant submits that the transaction would not have any material impact on competition as there is limited overlap between the parties' respective FTTH networks as of 2024.
- 5.5.6.1.7 In addition, the parties considered the likelihood of coordinated effects arising from the transaction and are of the view that coordination is unlikely to occur as *inter alia*, the Applicant does not offer wholesale FTTH, current market outcomes do not show evidence of coordination between FTTH providers (including with respect to current offers or deployment) and coordination with respect to deployment would require operators to reach and sustain a tacitly coordinated understanding to restrict

their rate of deployment which is conceptually implausible.

(ii) Retail Fixed Internet Access Services

5.5.6.1.8 The parties indicate that their combined estimated market share in respect of the retail supply of FTTH is small at less than 10%. The parties further submit that the transaction is highly unlikely to result in any negative effects, whether unilateral or coordinated effects, on competition in the retail fixed internet access services for the following reasons:

- (a) There is a large number of retail residential ISP competitors who will continue to provide a competitive constraint on the merged entity post the transaction.
- (b) Barriers to entry are low as evidenced by the rapid expansion of the FTTH services with the entry of approximately more than 150 ISPs between the period December 2016 and December 2021.¹⁷
- (c) A substantial number of Herotel's FTTH homes passed are in areas where Vumatel's FTTH network is not present and hence the transaction would not change the competitive constraint on Herotel's network. Further, there is a third party FNO in areas where the parties' networks overlap.

5.5.7 Control of essential facilities

5.5.7.1.1 Prior to the proposed transaction, the parties each own and operate fibre infrastructure, albeit under

¹⁷ Africa Analysis, "FTTH Market Tracking Programme for the Quarter ending December 2021", prepared for Herotel, 05 March 2022.

different business models, i.e. open-access basis for the Transferee and closed-access for the Applicant and no wholesale access to third parties. The Transaction does not alter these underlying characteristics, nor does it result in the withdrawal of existing third-party access.

5.5.7.1.2 In these circumstances and given the availability of alternative fibre and wireless infrastructure in the market, the parties do not control infrastructure that could be regarded as an essential facility.

5.5.8 **Technological advantages and superiority**

5.5.8.1.1 According to the parties, while significant investment in fibre deployment has taken place, there remain many areas that are yet to be covered by fibre in particular, in low-income areas. The parties state that although other FNOs are deploying, they can be expected to prioritize the areas with higher expected profitability first and the rate of market deployment means that it would take years to bring fibre to all the homes which are currently underserved.

5.5.8.1.2 The parties further state that the transaction combines two fibre providers with complementary expertise, i.e. the Transferee has expertise in pioneering deployment in lower LSM areas while the Applicant has expertise in secondary towns. In the parties' view, their combined expertise in fibre deployment, together with their combined financial position to raise funds for the best deployment opportunities, can be expected to support wider and

earlier FTTH deployment and bring the significant benefits of fibre earlier to customers and consumers.

5.5.9 **The nature and extent of vertical integration**

5.5.9.1.1 As explained in paragraph 5.5.4.1.4 above, there are vertical overlaps in the activities of the parties as follows:

(a) Upstream in relation to the provision of wholesale access to metro fibre (Transferee) and downstream ownership of FTTH access infrastructure (Applicant). The theories of harm are that the transaction could lead to input foreclosure of rival wholesale FTTH providers and/or customer foreclosure of metro fibre providers.

(b) Upstream in the provision of wholesale access to FTTH networks to ISPs (Transferee) and downstream provision of retail fixed internet access on FTTH by both parties. The theories of harm are that the Transaction could lead to input foreclosure of rival retail suppliers and/or customer foreclosure of wholesale FTTH providers.

5.5.9.1.2 In relation to the input foreclosure of wholesale FTTH providers, the parties indicate that Herotel only owns one metro fibre link in Orkney and does not make its metro fibre available to others as the infrastructure is deployed primarily to support its own retail operations rather than to supply wholesale access. Accordingly, the transaction would not lead to the Transferee gaining metro fibre supplied to third

parties and therefore does not give rise to foreclosure concerns.

5.5.9.1.3 The parties also submit that market evidence shows that switching between metro fibre providers occurs – as an example according to the Transferee, in FY24, out-of-contract customers did not renew a significant portion of monthly links across all of the Transferee’s products.

5.5.9.1.4 Further, the Transferee already provides wholesale access to its FTTH network (i.e. pre-transaction) and it is further prevented from restricting access to its wholesale FTTH services as per the conditions imposed by the Competition Appeal Court and the Authority in the CIVH/Vumatel merger to ensure open access.¹⁸ In particular, these conditions require the Transferee to provide open access to its network to ISPs on transparency and non-discrimination terms.

5.5.9.1.5 In addition, the parties submit that there is no incentive for the Transferee to engage in an input foreclosure strategy as the open-access model for FTTH access has been a success to its business even prior to the proposed transaction.

5.5.9.1.6 In relation to customer foreclosure of metro fibre providers, Herotel obtains metro fibre from Openserve in towns it covers with FTTH. There is therefore no risk of customer foreclosure with respect to Openserve given its own large demand for metro fibre for its own FTTH and Telkom mobile

¹⁸ Refer to the attached conditions.

operations, as well as supply to third parties. Herotel is also not an important customer for any other metro fibre supplier. The parties also indicate that where the Applicant takes existing metro fibre in areas where the Transferee is not present, it would be economic for the Applicant to continue to use the existing metro fibre rather than seek the Transferee to deploy new metro fibre that duplicates existing metro fibre.

5.5.9.1.7 In relation to the input foreclosure of retail ISPs, the parties indicate that the transaction does not increase any ability of the Transferee to engage in anti-competitive input foreclosure as the Transferee already provides wholesale access to its FTTH network (i.e. pre-transaction) and is prevented from restricting access to its wholesale FTTH services as per the conditions imposed in the CIVH/Vumatel merger to ensure open access.

5.5.9.1.8 Further, the parties submit that their combined modest shares of retail internet access and the fact that they do not account for material retail connections to rival FNOs' network shows that there is no risk of anticompetitive customer foreclosure.

5.5.9.1.9 In addition, other significant FNOs which have local monopoly positions in some areas also operate open-access models including Openserve/Telkom, MFN, Frogfoot/Vox, Octotel/RSA Web.

5.5.10 **Ease of entry into the market**

5.5.10.1.1 The Transferee indicates that the change in the control of Applicant's licences would allow the merged entity to realise the envisaged efficiencies,

i.e. mainly the further deployment of FTTH in lower income areas.

5.5.11 **Written Submission by MTN**

5.5.11.1.1 MTN submitted a written submission in relation to the proposed transaction. In that submission¹⁹, MTN raised concerns regarding the potential impact of the transaction on competition. In particular, MTN's submission is that the transaction could result in (i) input foreclosure due to the fact that the Applicant's fibre assets will be in the control of the Transferee post-transaction and (ii) unilateral price increases.

5.5.11.1.2 According to MTN, the input foreclosure strategy that the merged entity could employ is a total foreclosure strategy (i.e., outright refusal to deal with other market participants) or a partial foreclosure strategy (i.e., worsening of the terms on which the merged entity deals with other market participants). In either case, MTN's submission is that such a strategy would adversely affect competition.

5.5.11.1.3 MTN submits that, to address its concerns, it engaged in the Competition Commission's merger investigation process and, following detailed discussions, reached an agreement with the Applicant and Transferee on certain conditions, including open-access obligations on non-discriminatory terms.

¹⁹ Apart from MTN, there is no other third party (including customers /competitors of the parties who raised concerns regarding the transaction.

5.5.11.1.4 MTN therefore submits that it is satisfied that these conditions adequately mitigate the potential competition risks arising from the proposed transaction.

5.5.12 **Conclusion on the Competition Assessment**

5.5.12.1 After evaluating the impact of the proposed licence transfer on competition, the independent competition report prepared by Compass Lexecon concludes that the transaction is unlikely to have any adverse effect on competition in the relevant markets, for the reasons set out above.

5.5.12.2 The Authority's views on the proposed transaction are as follows:

5.5.12.2.1 The Authority has assessed the proposed transaction based on the information submitted and is of the view that the transaction is unlikely to have any adverse effect on competition in the relevant markets. In the wholesale FTTH market, there is minimal overlap between the parties' networks. Other competitors, such as Openserve and Frogfoot, have a greater degree of overbuild and would therefore likely exert a stronger competitive pressure on network-wide pricing than the Applicant would if it entered the wholesale FTTH market.

5.5.12.2.2 In the retail fixed internet access services market, the combined market share of the parties is small, at less than 10%. A large number of retail ISPs continue to provide competitive constraints, and low barriers to entry support ongoing competition, as evidenced by the rapid expansion of FTTH services.

5.5.12.2.3 Further, in relation to potential vertical concerns, the Authority notes the submission made by MTN, and records that MTN has indicated that it is satisfied that the conditions imposed by the Competition Commission adequately mitigate any potential competition risks arising from the proposed transaction.

5.5.12.2.4 The Authority further notes that the existing conditions imposed by the Authority in the Vodacom/Maziv transaction remain applicable. Accordingly, no additional sector-specific conditions are necessary.

5.6 Consumer Interest Analysis Report –

5.6.1 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 control of the licences.

5.6.2 The Applicant and Transferee procured the services of Compass Lexecon to undertake a consumer interest analysis and prepare a report regarding the impact of the transaction on consumer welfare after the transfer of control of the I-ECNS and I-ECS licences.²⁰

5.6.3 According to the parties, the take-up of the Transferee's product for the lower income areas, i.e. the Reach product, suggests that there is high demand for fibre in underserved areas, particularly

²⁰ Appendix 9.3, Consumer Interest Analysis Report.

for consumers²¹ to avoid the costs of data supplied over mobile networks and for businesses, schools and hospitals to have more reliable broadband connections.

- 5.6.4 In their submission on the likely impact of the proposed transaction on consumer interest, the parties note the objective set out by the South Africa's Connect Policy which is *"to achieve a universal average download speed of 100 mbps by 2030" so as to "underpin the development of a dynamic and connected information society and a vibrant knowledge economy that is more inclusive and prosperous"*.²²
- 5.6.5 The parties submit that the envisaged efficiencies from the transaction will support the additional FTTH deployment to currently underserved areas, and that this will assist in contributing to the achievement of South Africa's Connect Policy objective on connectivity.
- 5.6.6 Deployment of FTTH has also supported broadband connections to schools, hospitals and clinics in underserved Reach areas. In this regard, the parties state that to date Vumatel has already provided free 1 Gbps high-speed connectivity to almost 900 schools and a significant number of students and teachers nationally mostly in underserved locations with additional schools currently at various stages of being connected. The parties further indicate that these deployment initiatives will be boosted as a result of the additional deployments which the transaction will facilitate.

²¹ As an example, the parties submit that in the first four zones in Mitchells Plain, Vuma Reach achieved 60% take-up in less than a year.

²² Department Of Communication, "South Africa Connect: Creating opportunities, ensuring inclusion", 20 November 2013, page 8 and 12.

5.6.7 **Conclusion of the Consumer Interest Analysis Report**

- 5.6.7.1 After conducting an evaluation of the impact of the proposed license transfer on consumer interest, the consumer report prepared by Compass Lexecon concludes that transaction would be unlikely to have any negative impact on competition in any relevant market and as such, the parties are of the view that no material risk of adverse effects on consumers will occur.
- 5.6.7.2 Further, the parties submit that the combination of the Transferee's access to funding, scale and own experience in deploying to lower LSM areas together with the Applicant's network and expertise in secondary towns will support the wider and earlier expansion of FTTH in secondary towns and adjacent areas including underserved areas and that this can be expected to benefit consumers, increase employment opportunities, boost local economic development and overall consumer welfare.
- 5.6.7.3 Based on the above evaluation, the Authority is satisfied that the transaction is likely to benefit consumers by supporting wider and earlier FTTH expansion in secondary towns and underserved areas, enhancing service availability, stimulating local economic development and improving overall consumer welfare.

5.7 Refusal to Transfer a Licence

- 5.7.1 Regulation 12 of the 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 by the CCC and has not complied with the order of the Authority in terms of section 17 of the 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 HDGs is less than 30%.

5.7.2 Further, Regulation 15(9) states that the Authority will not approve the assignment, ceding or transfer of control of a radio frequency spectrum licence if the Licensee has not complied with one or more of the following:

5.7.3 Whereby a licensee has been found, by the Complaints and Compliance Committee ("the CCC"), to have contravened the provisions of the Act, the ICASA Act, the Regulations, the Terms and Conditions of a radio frequency spectrum licence or a licence granted in terms of Chapter 3 of the Act, and has failed to comply with an order by the Authority in terms of section 17E(4) of the ICASA Act;

5.7.4 If such transaction will not promote competition; or

5.7.5 If such transfer will result in the reduction of equity ownership held by HDP to be less than 30%, or the reduction of the BBBEE status of a licensee to a below Level 4 contributor or below the level which the transferor is already at.

5.7.6 The Applicant has not been found guilty of any contravention by the CCC.

5.7.7 The Transferee is 39.05% owned by HDGs.

5.7.8 The Authority notes that, at the time the transfer application was submitted, certain renewal fees relating to the Applicant's RFS licences were outstanding. These outstanding fees were subsequently settled on 12 March 2026. The Authority further notes that consideration of the application proceeded only after the outstanding fees had been settled and the Applicant was no longer in arrears with respect to its licence obligations.

5.7.9 The Authority is satisfied that the Applicant is up to date with licence fees due and payable to the Authority.

6 AUTHORITY'S DECISION

In the light of the above, on 8 May 2026 the Authority resolved to approve the transfer of control of the Applicant's I-ECS, I-ECNS and RFS licences.



MOTHIBI G. RAMUSI
CHAIRPERSON

DATE: 14 / 05 / **2026**