



Independent Communications Authority of South Africa

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**APPLICATIONS FOR THE TRANSFER OF INDIVIDUAL ELECTRONIC
COMMUNICATIONS SERVICES AND INDIVIDUAL ELECTRONIC
COMMUNICATIONS NETWORK LICENCES FROM CONEKT BUSINESS (PTY)
LTD TO KGATONTLE SATELLITE OPERATIONS (PTY) LTD**

REASONS FOR DECISION

MARCH 2020

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa (“the Authority”) to approve the transfer of the individual electronic communications service (“I-ECS”) and individual electronic communications network service (“I-ECNS”) licences (“the Transfer Applications”) from the Conekt Business Group (Pty) Ltd (“the Applicant”) to Kgatontle Satellite Operations (Pty) Ltd (“the Transferee”).

2. BACKGROUND

- 2.1 On 08 March 2019, the Authority received applications from the Applicant for the transfer of control of its I-ECS and I-ECNS licenses to the Transferee.
- 2.2 The applications were lodged in terms of clause 12 of the Processes and Procedures Regulations for Individual Licenses, 2010 published in Government Gazette No.33293 of June 14 2010 as amended by the Amendment Individual Processes and Procedures Regulations, 2016 published in Government Gazette No.39871 of 30 March 2016, read with sections 13(1), (2) and (6) of the Electronic Communications Act 2005 (Act No. 36 of 2005), as amended (“the Processes and Procedures Regulations”).¹
- 2.3 On 10 May 2019, the Authority published a notice in the Government Gazette indicating that it has received the Transfer Applications and invited interested persons to make written representations to the Authority in relation to the Transfer Applications within fourteen (14) working days of the date of the publication of the notice in the Government Gazette.²

¹ The Processes and Procedures Regulations have been amended by the Licensing Processes and Procedures for Individual Licences Amendment Regulations, 2018 (“Amendment Regulations, 2018”) published under General Notice 767 in Government Gazette No. 42087 of 5 December 2018. The effective date of the Amendment Regulations, 2018 is 5 December 2018. The Amendment Regulations, 2018 apply to all pending individual licence transfers and renewals received by the Authority before the effective date of the Regulations. Notably, the Amendment Regulations, 2018 apply to this Transfer Application.

² Government Notice No. 623 in Government Gazette No. 08 of October 2018.

- 2.4 By the closing date of 29 May 2019, the Authority had not received any written representations in relation to the Transfer Applications.
- 2.5 On 03 September 2019, the Authority took a decision to approve the Applicant's Transfer Applications. The licenses were transferred to the Transferee on 11 September 2019.

3. THE TRANSFER APPLICATIONS

- 3.1. The full name of the Applicant is Conekt Business Group (Pty) Ltd with contact number: 011 388 1674. The Applicant's principal place of business is Suites 8 & 9, 1st Floor, Waterfall View, Mahai close, Waterfall Park, Midrand.
- 3.2. The Applicant applied for the transfer of control of its I-ECS license and I-ECNS license numbers: 0345/IECS/APRIL/09 and 0345/IECNS/APRIL/09 issued on 28 April 2009.
- 3.3. The full name of the Transferee is Kgatontle Satellite Operations (Pty) Ltd. The Transferee's principal place of business is 7 Minerva Ave, Cresta, Randburg, 2194. It is a private company incorporated in terms of the Companies Act of 2008 with the following registration number: 2016/515780/07.

4. APPLICABLE LEGISLATIVE FRAMEWORK

- 4.1 The following legislative and regulatory provisions are applicable when considering transfer applications, *inter alia*:
- (a) Section 9(2)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA") requires that when applying for and granting of individual licenses, the Authority must give notice of the application in the *Gazette* and 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 as may be prescribed;

- (b) Section 13 of the ECA restricts the transfer of individual licenses without the prior written permission of the Authority, and regulates the transfer and/or change of ownership of an individual license;
- (c) Regulation 11 (Form G) of the Processes and Procedures Regulations governs the application to transfer ownership and/or control of an individual license; and
- (d) Clause 9 of Form G regulates the ownership and control by HDGs and prescribes that all parties must comply with a 30% ownership and control interest by HDGs and must provide an independent competition analysis report regarding the impact of the proposed transaction and must provide a consumer interest analysis report post the transaction.

5. DISCUSSION AND ANALYSIS

Compliance with section 9 (2) of the ECA

- 5.1 Section 9(2)(b) of the ECA states that the Authority must give notice of the application in the *Gazette* and -

(b) include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30%, or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the ICASA Act.

- 5.2 On 10 May 2019, the Authority gave notice of the transfer applications in the Government Gazette. The percentage of equity ownership to be held by persons from historically disadvantaged groups in the Transferee is 100%.

- 5.2.1 The Applicant indicated that it is 51% owned by historically disadvantaged groups ("HDGs").

- 5.2.2 The Applicant further indicated that the ownership interest in the Transferee is 100% held by Esme Thandeka Mothbe and Sephiri Phillip Seleke.

The 100% shareholding in the Transferee is constituted by the following individuals:

- Esme Thandeka Mothbe 50%
- Sephiri Phillip Seleke 50%

5.2.3 Based on the above analysis the Authority is satisfied that the Transferee is compliant with the prescribed 30% minimum percentage of equity ownership to be held by persons from HDGs, in terms of section 9 (2)(b) of the ECA.

Compliance with section 13(1) and (2) of the ECA

5.3 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" (our emphasis).

5.4 Further section 13(2) of the ECA provides 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."

5.5 On 08 March 2019, the Applicant lodged its application in the prescribed manner to the Authority for permission to transfer its individual licenses to the Transferee.

Compliance with section 13(6) of the ECA

- 5.6 Section 13(6) of the ECA provides that the provisions of section 9(2) to (6) of the ECA apply, with the necessary changes, with the necessary changes, to this section.
- 5.7 The Authority is satisfied that it gave notice of the transfer applications in the *Gazette* in the manner prescribed in sections 9(2) to (6).
- 5.8 Publication of a notice of the applications in the Government Gazette and included a percentage of ownership to be held by HDGs³
- (a) Inviting interested persons to submit their written representations in relation to the applications. No written representations were received with respect to the applications.
 - (b) Notifying the Applicant of the decision to approve the transfer application, the reasons for the approval of the application as well as the license conditions applicable.
 - (c) The licenses transferred to the Transferee were issued on the same terms and conditions applicable to individual licenses, as prescribed in terms of section 8 of the ECA.

Compliance with Regulation 11 of the Processes and Procedures Regulations

- 5.8.1 An application to transfer an individual license must be lodged in the prescribed manner contained in Regulation 11 of the Processes and Procedures Regulations, which states that an application to transfer a license must be:
- (a) in the format set out in the prescribed Form G;

³ Government Gazette No. 41624 of 10 May 2018.

- (b) accompanied by the applicable fee; and
- (c) submitted by the prospective transferor.

5.8.2 The Applicant (as the prospective transferor) lodged the Transfer Applications in terms of Regulation 11 (Form G), and the application was accompanied with the applicable fee of R115 746.00 for the transfer of its I-ECS and I-ECNS licenses.

5.8.3 The Authority is satisfied that the Applicant submitted all the required information and that the requirements prescribed in terms of regulation 11 (Form G) were met by the Applicant.

Compliance with Regulation 12 of the Processes and Procedures Regulations

5.9 Regulation 12 (1) sets the restrictions on transfer and renewal of an individual license. Regulation 12 (1) reads as follows:

“(1) The Authority may refuse to renew or transfer a License if the Licensee has not complied with one or more of the following:

- (a) Where the Licensee has been found guilty of a contravention by the CCC and has not complied with the order by the Authority in terms of section 17 of ICASA Act; or*
- (b) Where the Licensee has not paid the Licence fees due and payable at the date of the application; or*
- (c) Where the ownership and control of the Transferee (in a transfer application) or Applicant (in a renewal application), by historically disadvantaged persons is less than 30%.”*

5.10 The Authority confirms that -

5.10.1 The Applicant has not been found guilty of any contravention by the CCC;

5.10.2 The Applicant is up to date with all license fees due and payable to the Authority at the time of applications; and

5.10.3 The Authority confirms that the Applicant complies with the minimum requirement, because 89.94% of the Transferee's shareholding is held by persons from HDGs.

5.11 The Authority is of the view that there are no applicable restrictions on the transfer applications.

Compliance with Form G (Competition analysis report)

5.12 According to the Applicant the transaction does not qualify to be notified to the Competition Commission in terms of Competition Act as does not meet the thresholds set out in terms of the Competition Act. Furthermore, neither the Applicant nor the Transferee would be considered to have significant market power in a market segment, and therefore, the Authority would not impose pro-competitive license conditions on the proposed licensee in terms of the ECA. The proposed transaction will not bring about pro-competitive market conditions

Compliance with Form G (Consumer interest analysis report)

5.13 **Clause 9.3 of Form G** stipulates that the Applicant must provide a consumer interest analysis report post the transaction.

The Transferee intends to use the licences to provide connectivity services to various customers in the broadcasting segment of the market. This segment of the market is dominated by two licensees, neither of which have made significant B-BBBEE contributions. The entry into the proposed transferee will likely benefit consumers as a result of increasing competition in the segment.

The Authority is satisfied that the Applicant is compliant with Clause 9.3 of Form G.

6. AUTHORITY'S DECISION

In the light the above, on 03 September 2019, the Authority resolved to approve the transfer of control of the Applicant's I-ECS and I-ECNS licences to the Transferee.



DR KEABETSWE MODIMOENG
ACTING CHAIRPERSON

DATE: 18 / 03 / 2020

