



Independent Communications Authority of South Africa

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**APPLICATIONS FOR THE TRANSFER OF SHAREHOLDING IN THE INDIVIDUAL
ELECTRONIC COMMUNICATIONS SERVICE ("I-ECS") AND INDIVIDUAL
ELECTRONIC COMMUNICATIONS NETWORK SERVICE ("I-ECNS") LICENCES
OF METRO FIBRE NETWORK (PTY) LTD TO DIGITAL INFRASTRUCTURE
INVESTMENT HOLDINGS (PTY) LTD**

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 the transfer of shareholding in the Individual Electronic Communications Service ('I-ECS') and Individual Electronic Communications Network Service ('I-ECNS') licences of Metro Fibre Networx (Pty) Ltd ("the Applicant") to Digital Infrastructure Investment Holdings (Pty) Ltd ("the Transferee").

2. BACKGROUND

- 2.1. On 30 June 2021, the Authority received applications for transfer of shareholding/ownership of the I-ECS and I-ECNS licences from the Applicant's current shareholders to the Transferee in terms of section 13 (1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA").
- 2.2. The applications were submitted using regulation 11 (Form G) of the Licensing Processes and Procedures Regulations, 2010 for Individual Licences¹ ("the Regulations").
- 2.3. The Applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended ("the ICASA Act").
- 2.4. The Authority granted the confidentiality request on the basis that the documents in respect of which confidentiality was requested fell within the ambit of section 4D (4)(b), (c) and (e) of the ICASA Act and section 9(4)(c)(i)(bb) of the ECA.
- 2.5. On 21 September 2021, the Authority published General Notice No. 572 of 2021 (Government Gazette No. 45196) inviting interested persons to make

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

written representations in relation to the application within fourteen (14) working days of the date of the publication of the notice.

- 2.6. No written representations were received by the Authority on the closing date of 11 October 2021.
- 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 shareholding licence applications.

3. PARTICULARS OF THE APPLICANT AND THE TRANSFEREE

- 3.1. The full name of the Applicant is Metro Fibre Networx (Pty) Ltd. The Applicant's principal place of business is Eco Square, 298 Witch-Hazel Street, Highveld Ext 71, Centurion, Gauteng, 0157.
- 3.2. The Applicant is a private company registered in terms of the Companies Act, 1973 (Act No 61 of 1973), as amended, with the following registration number: 2007/024366/07.
- 3.3. The full name of the Transferee is Digital Infrastructure Investment Holdings (Pty) Ltd. The Transferee's principal place of business is Ground Floor, Colinton House, The Oval, 1 Oakdale Street, Newlands, Cape Town, 7700.
- 3.4. The Transferee is a private company registered in terms of the Companies Act 71 of 2008 (Act No. 71 of 2008), as amended, with the following registration number: 2020/229810/07.

4. APPLICABLE LEGISLATIVE FRAMEWORK

The following legislative and regulatory provisions are applicable when dealing with transfer applications:

- (a) section 9(2)(b) of the ECA²;
- (b) section 13 (1), (2) and (6) of the ECA;
- (c) regulation 11 (Form G) of the Regulations³;
- (d) regulation 12 of the Regulations⁴;
- (e) clause 9 of Form G of the Regulations;⁵ 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")⁶.

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 an 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 (only shareholdings (or equivalent) of more than 5% are indicated):

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 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.

⁵ 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.

⁶ Includes notices published by the Authority pursuant to the provisions of the Regulations.

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|------------------------------------|---------------------------|
| a) Tim du Toit & Company Inc. | 37.49%; |
| b) Sanlam Life Insurance (Pty) Ltd | 17.06%. |
| c) Domacorp (Pty) Ltd | 7.57%. |
| d) UBI General Partner (Pty) Ltd | 8.65%; |
| e) STOA SA | 14.4% (can vote 22.055%); |
| f) DIIH (Pty) Ltd | 3.8% (can vote 24.808%); |
| g) Levoca 805 (RF) Pty Ltd | 1.352% (can vote 9.946%). |

5.1.3. Once the transfer of control process is complete, shareholding in the applicant will be as follows:

- | | |
|-------------------------------|---------------------------------------|
| a) Tim du Toit & Company Inc. | 37.49%; |
| b) STOA SA | 16.20 % (can vote 23.854 %); |
| c) DIIH (Pty) Ltd | 16.07 % (can vote 37.076%); |
| d) Levoca 805 (RF) Pty Ltd | 13.27% (can vote 21.69). ⁷ |

5.1.4. The ownership interest held by the HDGs in the Applicant is 30.46%.⁸

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

- a) African Infrastructure Investment Fund 3 GP (Pty) Ltd: 24.93%.
- b) Old Mutual Life Assurance Company (South Africa) Ltd (In respect of the pooled portfolio of assets in the IDEAS fund): 75.07%.⁹

5.1.6. The ownership interest held by the HDGs in the Transferee, if the application is approved, will be as follows:

- a) The Ideas Managed Fund will hold a 70.05% share in DIIH (Pty) Ltd. DIIH (Pty) Ltd will hold 37.076% in the Applicant. The Ideas Managed

⁷ Appendix 6.1. p163 of the application.

⁸ Appendix 6.4, p167 of the application.

⁹ Appendix 7.1, p171 of the application.

Fund is 26.65% owned by HDIs. Consequently, HDIs will hold 7.14% in the Applicant through the Ideas Managed Fund.

b) African Infrastructure Investment Fund 3 Partnership (AIIF3) will hold a 24.93% share in DIIH (Pty) Ltd. DIIH (Pty) Ltd will hold 37.076% in the Applicant. AIIF3 is 14.35% owned by HDIs. Consequently, HDIs hold 1.33% in the Applicant through AIIF3.

c) Levoca 805 (RF) Pty Ltd is 100% owned by HDIs and will hold a 21.69% share in the Applicant. Consequently, HDIs will hold 21.69% of the Applicant through Levoca 805 (RF) Pty Ltd.

5.1.7. Therefore, in total, HDIs will hold 30.16% of the shares in the licences once the transfer of shareholding has taken place.¹⁰

5.1.8. The Authority is satisfied that the transaction complies with the 30% minimum equity ownership to be held 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 30 June 2021, the Applicant applied to the Authority seeking approval for the transfer of shareholding in its I-ECNS and I-ECS licences.

5.3. Prescribed Format

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

¹⁰ Appendix 9.1, p 234 of the application

"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. The prescribed format is contained in regulation 11 (Form G) of the 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.

5.3.3. The transfer application was submitted in terms of regulation 11 (Form G) of the Regulations. The Applicant has made the required payment of R137,224.00 (one hundred and thirty-seven thousand, two hundred and twenty-four Rand), as prescribed in the Fees Regulations, for the transfer of control of its I-ECNS and I-ECS licences to the Transferee (new shareholder) and has accordingly provided the Authority with the proof of payment.

5.4. Application of section 9 (2) to (6) of the ECA

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

5.4.2 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 21 September 2021, the Authority gave notice of the application in Government Gazette No. 45196.

- (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 in 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). The Authority did not receive written representations in relation to the application.
- (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 2.7 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. 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.
- (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. The reasons for the Authority 's decisions are contained in this Notice.

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 post the transaction to assess the impact of the transaction on competition after the transfer of the licence.
- 5.5.2. The Applicant procured the services of Bowmans Gilfillan to undertake an independent competition analysis and prepared a report regarding the competition impact post the transfer of control of the licences.¹¹
- 5.5.3. The Applicant submits that the new shareholder acquiring control of interest in the Applicant is an investment vehicle which does not have any customer groups and it does not provide services in the ICT market. The Applicant will continue to be the licence holder following the implementation of the proposed transaction.
- 5.5.4. The report indicates that the proposed transaction will not raise competition concerns in any plausible market that may be found to exist in South Africa¹². The Applicant is a provider of Fibre-To-The-Home (FTTH) Fibre-To-The-Business (FTTB) and has during the years expanded its service offering to both residential and corporate customers in line with its strategic objective of being a diversified operator. The Applicant owns and manages its core network which is a globally compliant Carrier Ethernet 2.0 open access.

¹¹ Appendix 9.2, p247 of the application.

¹² Appendix 9.2. of Form G, Report on competition for the Independent Communications Authority of South Africa, Application document, File 2 of 3, page 247

- 5.5.5. The Applicant's various services and offerings include enterprise, FTTH, FTTB, Fibre to SMMEs and Metro-I. Metro-I is CCTV monitoring over fibre.
- 5.5.6. The Applicant has indicated that the proposed transaction will not result in a substantial lessening or prevention of competition in any way market in South Africa as there are no horizontal or vertical overlaps in its current services.
- 5.5.7. The report also indicates that the proposed transaction will not result in any market share accretion or change in market structure in South Africa. The proposed transaction will not result in the removal of effective competitors in any market that may be found to exist in South Africa. The Applicant will continue to face competition from a few competitors that are active in South Africa. As a result, the status quo in relation to competition will remain unchanged post the transaction.
- 5.5.8. Consequently, the proposed transaction will not impact negatively on competition in any market in South Africa. The proposed transaction does not raise competition concerns and will not prevent or lessen competition in any market in South Africa.
- 5.5.9. The Applicant respectfully submits that the proposed transaction does not give rise to or lessen competition in any market.
- 5.5.10. 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.
- 5.5.11. The Authority is satisfied that the transaction will not lessen competition in the ICT Sector post the conclusion of the transaction.

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 the licence.
- 5.6.2. The Applicant asserts that the new shareholder acquiring control of the Applicant is an investment vehicle with no consumers and no services in the ICT market. The Applicant will continue to provide enterprise, FTTH, FTTB, Fibre to SMMEs, and Metro-I (CCTV monitoring over fibre optic cables) services to its existing customers as before once the proposed transaction has been completed.
- 5.6.3. The Applicant maintains that, instead, the new company through which a further investment in the Applicant would be made under the proposed transaction will expand the Applicant's current customer base and service offerings.
- 5.6.4. It is the Authority's view that the proposed acquisition of a control interest by the new shareholder, will not affect the operation of the Applicant's licences.
- 5.6.5. The Authority is satisfied that the consumer welfare is catered for post the transaction.

6. AUTHORITY'S DECISION

In the light of the above, on 9 March 2022, the Authority decided to approve the licence transfer of the Applicant's I-ECNS licence to the Transferee.



DR KEABETSWWE MODIMOENG

CHAIRPERSON

DATE: 22/03/2022