



**Independent Communications Authority of South Africa**

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**APPLICATION FOR THE TRANSFER OF CONTROL OF AN INDIVIDUAL  
ELECTRONIC COMMUNICATIONS NETWORK SERVICE LICENCE FROM  
TELEMEDIA (PTY) LTD'S CURRENT SHAREHOLDERS TO TELEMEDIA  
(PTY) LTD'S PROPOSED NEW SHAREHOLDERS**

**REASONS FOR DECISION**

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**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 the transfer of control of an Individual Electronic Communications Network Service (“I-ECNS”) licence from Telemedia (Pty) Ltd.’s current shareholders (“the Applicant”) to Telemedia (Pty) Ltd.’s proposed new shareholders (“the Transferee”).

## **2. BACKGROUND**

- 2.1. On 4 December 2020, the Authority received an application from the Applicant to transfer the control of its I-ECNS licence to the Transferee.
- 2.2. The application was submitted using regulation 11 (Form G) of the Individual Licensing Processes and Procedures Regulations 2010<sup>1</sup> (“the Regulations”).
- 2.3. The Applicant did not request 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. On 22 January 2021, the Authority published the application in Government Notice No. 667 (*Government Gazette* No. 44095) 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 11 February 2021.
- 2.6. The Authority elected not to hold public hearings as it was of the view that the applications were clear, and it did not receive any written representations from the public with respect to the applications.

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<sup>1</sup> As amended by Government Gazette No. 39871 of 30 March 2016

2.7. On 31 August 2021, the Authority approved the Applicant's transfer of control application.

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

3.1. The full name of the Applicant is Telemedia (Pty) Ltd. The Applicant's principal place of business is 17 9<sup>th</sup> Avenue, Rivonia 2128.

3.2. The Applicant is a private company registered in terms of the Companies Act of 1973, as amended, with the following registration number: 1983/007892/07.

3.3. The Transferee comprises 2 companies listed on the JSE and 7 natural persons listed below:

- Rex Trueform Group Ltd with Registration number: 1937/009839/06. The principal place of business is: 263 Victoria Road, Salt River, 7925
- African and Overseas Enterprises Ltd with Registration number: 1947/027461/06. The principal place of business is: 263 Victoria Road, Salt River, 7925
- Stephen Bretherick, White male South African;
- Ryan Bretherick, White male South African;
- Andrew Louis, White male South African;
- Deewesh Maharaj, South African male of Indian descent;
- Beverly Siliwathu, South African Black woman;
- Quentin Barkhuizen, White male South African; and
- John-Paul Meeser, White male South African.

## 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")<sup>2</sup>;
- (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")<sup>3</sup>;
- (d) Regulation 12 of the Processes and Procedures Regulations;
- (e) Clause 9 of Form G of the Processes and Procedures Regulations<sup>4</sup>; 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 (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 ICASA Act."*

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<sup>2</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%, or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the ICASA Act.

<sup>3</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>4</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

The Applicant has indicated that its ownership interests are as follows:

- Peter Fairbank Bretherick: 62%
- Bretherick Family Trust: 38%

The Applicant is not owned by persons from historically disadvantaged background.

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

Rex Trueform Group Ltd:	63.71%
African and Overseas Enterprises Ltd:	11.29%
Stephen Bretherick:	10.48%
Ryan Bretherick:	10.48%
Andrew Louis:	0.81%
Deewesh Maharaj:	0.81%
Beverly Siliwathu:	0.81%
Quentin Barkhuizen:	0.81%
John-Paul Meeser:	0.81%

The Applicant has declared that Rex Trueform Group Ltd and African and Overseas Enterprises Ltd are companies listed on the JSE, and their shareholding register is extensive. However, the Applicant has submitted their current BEE certificates indicating their shareholding structure. The Transferee is 36.18% owned by individuals from historically disadvantaged groups, broken down below:

- Rex Trueform Group Ltd: 30.41%;
- African and Overseas Enterprises Ltd: 4.15%;
- Deewesh Maharaj: 0.81%; and
- Beverly Siliwathu: 0.81%.

5.1.3. 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 of Authority**

5.2.1. Section 13(1) 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."*

5.2.2. On 04 December 2020, the Applicant applied to the Authority seeking approval for the transfer of control of its I-ECNS licence.

## 5.3. **Prescribed Format**

5.3.1. 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. 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

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

required payment of R66.420.00 for the transfer of control of its I-ECNS 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 22 January 2021, the Authority gave notice of the applications in Government Gazette No. 44095.
- (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 Transferee will be 36.18% owned by HDPs.
- (c) 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 2.6 above, the Authority decided not to hold public hearings.
- (d) 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.

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

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.

- (e) 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. 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<sup>7</sup> requires the Applicant to provide an independent competition analysis report regarding the impact of this transaction.

5.4.2. In the *Obiter Dicta (par 68 - 74)* provided by DS Fourie, J in the ICASA High Court Review Judgement concerning the Vodacom acquisition of Neotel<sup>8</sup> guides the Authority in respect of competition matters. In that its role is to *promote competition with the ICT Sector.*

5.4.3. The Applicant procured the services of Werksmans Attorneys to prepare a report regarding the impact of the transaction on competition. The report evaluated whether the transaction will have an adverse or positive impact on competition in the ICT Sector post the conclusion of the transaction.

5.4.4. According to the report, Telemedia Proprietary Limited ("Telemedia") is a multi-faceted media broadcast and teleport facility manufacturer and supplier with a sophisticated and diverse business and product portfolio. It specializes in satellite broadcasting, radio and television signal distribution, microwave and satellite news gathering, and studio production. Telemedia

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<sup>7</sup> Licensing Processes and Procedures Regulations

<sup>8</sup> "Telkom SA Soc Limited v Mncube NO and Others; Mobile Telephone Networks (Pty) Ltd v Pillay NO and Others; Cell C (Pty) Limited v The Chairperson of ICASA and Others; Dimension Data Middle East & Africa (Pty) Ltd t./a Internet Solutions v ICASA and Others (55311/2015; 77029/2015; 82287/2015) [2016] ZAGPPHC 93 (26 February 2016)"



also offers transmission and distribution equipment repair and servicing facilities.

5.4.5. African and Overseas Enterprises Limited ("AOE") and REX Trueform Group Limited ("REX") aim to acquire 75 % of Telemedia's equity. AOE and REX do not sell products or services that are substitutes for those provided by Telemedia. As a result, the planned acquisition marks a new entrance by AOE and REX into the sectors presently occupied by Telemedia. Therefore, there is no service or product overlap, as well as any potential competition issues that might occur, whether in the form of horizontal overlap or vertical integration.

5.4.6. On December 8, 2020, the Competition Commission unanimously approved AOE and REX's acquisition of Telemedia. Following the transaction, the competitive environment in the identified relevant product market(s) will remain unchanged.

5.4.7. According to the Authority's analysis, the acquisition of the ECNS Licence by AOE and REX will not have any adverse or significant impact on competition in the relevant markets. The proposed transaction provides Telemedia with an ability to diversify its shareholders' assets and further boost its B-BBEE standing to comply with South Africa's transformation imperatives.

5.4.8. Telemedia has a market share of roughly 10% in the market for satellite communications, and is part of the Broadcast Services Sector, it holds 5% in the Broadcast Product Business and 2% in the Studio Services Business. The proposed transaction would not contribute to the creation of additional barriers to entry or the intensifying of existing barriers. As a result, the proposed acquisition would have no significant impact on entry barriers within the identified relevant markets.

5.4.9. The number of rivals, their size and resources, as well as the highly competitive nature of the markets and their low to medium entry barriers,

contribute to the fact that the proposed deal is unlikely to cause significant concerns. Based on the above analysis, the Authority believe that this transaction would have no business effect.

5.4.10. The planned transaction and change of control of the ECNS Licence raises no competition issues in the relevant markets. The Authority is of the view that, the transfer of control of the I-ECNS licence to the proposed Transferee will result in no lateral concentration and, as a result, no detrimental consequences or significant lessening of competition in the relevant markets.

5.4.11. The related market shares will be unchanged because the company will not cease to exist but will now continue to operate under the control of AOE and REX is compliant with Clause 9.2 of Form G.

## 5.5 **Consumer Interest Analysis Report**

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

5.5.2. The Applicant procured the services of the Werksmans Attorneys to undertake an independent consumer interest analysis and prepare a report regarding the impact of the transaction as per Form G of the Processes and Procedures Regulations requirement.

5.5.3. AOE and REX are seeking to acquire a majority stake in Telemedia. The proposed transaction has already received unconditional competition commission approval.

5.5.4. According to the report, an assessment of consumer considerations shows that the change of control would not have a negative impact on consumer interest. There is no major adjustment or adverse change in the price, quality, or variety of Telemedia's products and services in the relevant markets.

- 5.5.5. The consumers/customers of companies providing products and services in the ICT industry are typically medium-to-large businesses. Multichoice (Supersport), Tellytrack/Phumelela, Soweto TV, Prophet Shepherd Bushiri Ministries, and Stellenbosch University are only a few of the clients Telemedia currently serves.
- 5.5.6. These clients, as well as other related companies that are Telemedia's competitors' customers, are medium-to-large commercial entities that are well-established in their respective industries. These competitors still have a unilateral power due to their access to financial resources and market knowledge, which helps them to bargain with and gain access to the various stakeholders.
- 5.5.7. From the perspective of the consumer, the proposed change in control is negligible. Telemedia will continue to operate in its current form, with no significant changes to its organizational structure, operating model, product and service offering, or pricing structures.
- 5.5.8. The proposed transaction and change of control will have no effect on market prices or the availability of products and/or services to customers. It is also worth noting that under these conditions, Telemedia has no reason to raise its prices. If the proposed transaction results in a price increase, consumers will be enticed to switch to alternative suppliers. A change of this magnitude will inevitably be counterproductive to Telemedia's business.
- 5.5.9. The primary distinction would be that Telemedia will soon be controlled by new entities (AOE and REX). The quality of the products and services offered should increase under a rejuvenated ownership structure, attributed to the fact that Telemedia will be controlled by larger companies with larger balance sheets, which will help its company grow and strengthen the quality its products and services.

5.5.10. Telemedia has no plans to reduce or streamline the products/services it provides. As a result, consumers should have the same, if not more and/or greater, access to the same products and services.

5.5.11. In light of the above consideration, the Authority is of the view that the proposed deal would not affect customers in the applicable markets. Furthermore, a revitalized Telemedia ownership structure can improve the quality of the products and services offered while maintaining comparable pricing structure and choice.

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

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

In the light of the above, on 31 August 2021, the Authority approved the transfer of control of the Applicant's I-ECNS licence to the Transferee.



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**DR. KEABETSWE MODIMOENG  
CHAIRPERSON**

**DATE: 17 / 09 / 2021**