

GENERAL NOTICE

NOTICE [] OF 2015



ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)

**APPLICATIONS FOR TRANSFER OF LICENCES FROM TIG TELECOM CC TO
ITAKANE TRADING 50 (PTY) LTD**

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice in terms of section 9(5) of the Electronic Communications Act, Act No.36 of 2005, as amended, that after considering applications for transfer of individual electronic communications service licence and individual electronic communications network service licence from TIG Telecom cc to Itakane Trading 50 (Pty) Ltd, it has decided to approve transfer applications.
2. The Authority further gives notice that the reasons for decision in respect of the above-mentioned applications are available during the Authority's normal office hours at Block D, ICASA Library, 164 Katherine Street, Pinmill Farm, Sandton, Gauteng and also on ICASA website www.icasa.org.za

A handwritten signature in black ink, appearing to read 'Katharina Pillay', written over a horizontal line.

**KATHARINA PILLAY
ACTING CHAIRPERSON**



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

**APPLICATIONS FOR TRANSFER OF LICENCES FROM TIG TELECOM CC TO
ITAKANE TRADING 50 (PTY) LTD**

REASONS FOR DECISION

OCTOBER 2015

A. BACKGROUND

1. On 27 October 2014, the Authority received applications from Tig Telecom cc ("the applicant") for the transfer of its I-ECNS and I-ECS licences to Itakane Trading 50 (Pty) Ltd ("the transferee"). The applications were submitted using Form G of the Processes and Procedures Regulations for Individual Licences published on 14 June 2010 in Government Gazette No.33293.
2. The Authority published General Notice 1092 in Government Gazette 38276 of 02 December 2014, inviting all interested persons to make written representations to the Authority in relation to the applications within twenty one (21) working days of the date of the publication of the notice in the Government Gazette.
3. On 05 January 2015 (i.e. the closing date), the Authority did not receive any written representations in relation to the applications.

B. APPLICABLE LEGISLATIVE FRAMEWORK

4. The applicable legislative and regulatory provisions on these transfer applications are the following:
 - a. Section 13 and 9(2) of the Electronic Communications Act, Act No. 36 of 2005 ("EC Act");and
 - b. Regulation 11 and 12 of the Processes and Procedures Regulations for Individual Licences published on 14 June 2010 in Government Gazette No.33293.

Section 13 of the EC Act

5. Section 13(1) of the EC Act states that:

"An individual licence may not be assigned, ceded or transferred to any other person without the prior written permission of the Authority."

6. The applicant submitted an application for transfer of the individual licences as stated in section 31(1) of the EC Act.
7. Section 13(2) of the EC Act further states that:
"An application for permission to assign, cede or transfer an individual licence may be made to the Authority in the prescribed manner."
8. Section 13(6) the EC Act provides that *"The provisions of section 9(2) to (6) apply with the necessary changes, to this section."*
9. Section 9 (2) of the EC Act provides that the Authority must give notice of the application in the *Gazette* and—
 - (a) *invite interested persons to apply and submit written representations in relation to the application within the period mentioned in the notice;*
 - (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 higher percentage as may be prescribed;*
 - (c) *set out the proposed licence conditions that will apply to the licence; and*
 - (d) *give interested persons an opportunity to submit written responses to any representations submitted in terms of paragraph (a);*
 - (e) *may conduct a public hearing in relation to any application for an individual licence;*
 - (3) *The Authority may require an applicant or an interested party who has submitted written representations in terms of subsection (2)(a) to furnish the Authority, within the period specified by the Authority, with such further information as may be reasonably necessary in order to consider the application.*
 - (4) (a) *Applications, representations, responses and other documents relating to an application which are submitted to the Authority are, subject to this subsection, open to public inspection during the normal office hours of the Authority.*
 - (b) *The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with copies of documents requested by such person.*

(c) (i) The Authority may, at the request of an applicant or person who has submitted representations or responses, decide that—

- (aa) any document or information that is commercially sensitive; or*
- (bb) any other matter reasonably justifying confidentiality, is not open to public inspection, if such document or information can be separated from the application, representations or other documents in question.*

(ii) for the purposes of this subsection, commercially sensitive document, information or other matter reasonably justifying confidentiality, excludes documents or information that should, as a matter of law be generally available to the public.

(d) If the Authority refuses a request referred to in paragraph (c)(i), the applicant or

person concerned may withdraw the document or information in question.

(5) The Authority must, after considering—

- (a) any application for an individual licence made in terms of this Act; and*
- (b) any written representations made in terms of subsection (2) in relation to the application, notify the applicant of its decision, the reasons for that decision and any licence conditions applicable and publish such information in the Gazette.*

(6) Whenever the Authority grants an individual licence, the Authority—

- (a) must do so on standard terms and conditions applicable to the type of licence, as prescribed in terms of section 8; and*
- (b) may impose such additional terms and conditions as may be prescribed in terms of section 8(3).*

Regulation 11 of Processes and Procedures Regulations

1. Regulation 11 of the Processes and Procedures Regulations for Individual Licences, provides that an application to transfer a licence must be:-
 - a. In the format as set out in Form G;
 - b. accompanied by the applicable fee; and
 - c. submitted by the prospective transferor.

2. The transfer applications have been submitted in terms of Form G and the applicant has made the required payment of R104 000, 00 for the transfer of the I-ECS and I-ECNS licences and provided proof of payment.

C. DISCUSSION AND ANALYSIS

Proposed transfer of the licence

1. The applicant is a private company incorporated in terms of the Close Corporation Act 69 of 1984 with the following registration number: CK 2003/105445/23.
 2. The transfer applications sought approval from the Authority to transfer the Individual Electronic Communications Service ("I-ECS") and Individual Electronic Communications Network Service ("I-ECNS") licences from Tig Telecom cc to Itakane Trading 50 (Pty) Ltd.
 3. The applicant has indicated that the transferee is 100% owned by a person from a historically disadvantaged group¹ ("HDG"). The ownership interests in the transferee is as follows:
 - Empire Partner Trust: 100%
- The beneficiaries of the trust are the following persons from HDG:
- Mikhial Mariemuthu, ID No. 960212 5179089
 - Emile Mariemuthu, ID No. 0003316090087
4. The transferee intends to provide fast wireless internet access, telephony and VoIP services at an affordable prices. The transferee intends to utilise existing electricity grid infrastructure to provide its electronic communications services.

¹ Form G (Regulation 11): Clause 7.8 and 9 of the Application: Ownership and Management of the Transferee

HDI requirements

5. Section 9 (2) (b) EC Act states that *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 2000 (Act No. 13 of 2000) ("ICASA Act")*.

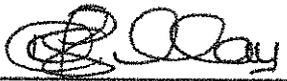
Restrictions on transfer of an individual Licence

6. In terms of regulation 12 of Processes and Procedures Regulations, the Authority may refuse to transfer a licence 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 Complaints and Compliance Committee ("the CCC") of the Authority 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 Transferee's ownership and control by historically disadvantaged persons is less than 30%.
7. The applicant has not been found guilty of any contravention by the CCC. Further, the applicant has paid the licence fees due and payable at the date of the application.
8. As indicated above, the Authority published the applications in the *Government Gazette* for public comments. However, no representations were received. The Authority considered that there were no material issues on the applications which warranted a public hearing.

9. The Authority was satisfied that the applicant has submitted all required information and satisfied the requirements prescribed in terms of regulation 11 and 12 of Processes and Procedures Regulations for Individual Licences read with the EC Act.

D. AUTHORITY'S DECISION

10. In light of the above, at the Council meeting held on 31 March 2015, the Authority decided to approve Tig Telecom cc transfer applications for its Individual Electronic Communications Service and Individual Electronic Communications Network Service licences to Itakane Trading 50 (Pty) Ltd.



KATHARINA PILLAY

ACTING CHAIRPERSON

DATE: 22 October 2015