



**Independent Communications Authority of South Africa**

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**APPLICATION TO TRANSFER THE INDIVIDUAL COMMERCIAL SOUND  
BROADCASTING SERVICE LICENCE IN RESPECT OF EAST COAST RADIO  
FROM KAGISO BROADCASTING (PTY) LTD TO KTH MEDIA INVESTMENTS  
(PTY) LTD**

**REASONS FOR DECISION**

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**APRIL**

**2015**

## **A. BACKGROUND**

1. On 11 September 2013, Kagiso Broadcasting (Pty) Ltd (“the applicant”) submitted an application (“the application”) to the Authority, for transfer of its individual commercial sound commercial broadcasting service licence to Kagiso Tiso Holdings (KTH) Media Investments (Pty) Ltd (“the transferee”).
2. On 14 October 2013, the Authority published a Notice in the Government Gazette No. 36932 of 14 October 2013, inviting interested persons to submit written representations in relation to the application within twenty-one (21) days.<sup>1</sup> No written representations were received.

## **B. ANALYSIS**

3. The applicant, which is the transferor, is Kagiso Broadcasting (Pty) Ltd and the transferee is KTH Media Investments (Pty) Ltd where East Coast Radio as a broadcaster will be housed. It is important to note that Kagiso Tiso Holdings (Pty) Ltd is a holding company which has created a subsidiary KTH Media Investments (Pty) Ltd. The applicant states that 60.07% shares in the transferee are held by historically disadvantaged individuals. It has to be noted that at this particular time of filling this application the transferee was not listed in the Johannesburg Stock Exchange.

### **Applicable Legislative Framework**

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

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<sup>1</sup> Published under General Notice 1021 in Gazette No. 36932 of 14 October 2013.

5. In terms of regulation 12 of Processes and Procedures Regulations for Individual Licences, 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%.

6. 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."*

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. The applicant has submitted the application in terms of Form G, which details has been analysed below.

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.

9. As indicated above, the application has been submitted in terms of Form G. The applicant has made the required payment of R52 000, 00 for the transfer of the individual commercial sound broadcasting service licence.

**10. Details of all ownership interest in the transferee**

The applicant has indicated that the ownership interest in KTH Media Investment (Pty) Ltd are 100% held by KTH Holdings (Pty) Ltd, which is an investment holding company.

**11. The extent to which Transferee's ownership is held by historically disadvantaged individuals**

The applicant indicates that the transferee is wholly owned by Kagiso Tiso Holdings (Pty) Ltd and 60.07% of the Kagiso Tiso Holdings is owned by a range of BBBEE entities including the Kagiso Charitable Trust and the Tiso Foundation. The applicant states that 60.07% of the shares in Kagiso Tiso Holdings (Pty) Ltd is owned by a range of BBBEE entities including the Kagiso Charitable Trust and the Tiso Foundation (on the flow-through basis).

**12. Whether any person holding an ownership interest in the transferee holds a licence issued in terms of the Act or holds an ownership interest in any other licensee licensed to provide a service similar to that to which this application relates**

The transferee's holding company together with the transferor hold indirectly shareholding to the following licensees:

- iGagasi 99.5 - 20%,
- Heart FM - 20%,
- Jacaranda FM - 80%,
- OFM - 24.9%,<sup>2</sup>
- An indirect non-controlling 47.4% economic interest in Kaya FM, and

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<sup>2</sup> East Coast transfer application; paragraph 6.6.

- A 50.1% shareholding in Urban Brew, a local independent television production company which has entered into management agreements with three community television licensees, namely Bay Community Television, Soweto Community Television and Bold 852 (a one year Nelson Mandela Bay Community Television 'NMBTV' which has since expired). The Authority is of the view that the above does not contravene section 65 of the EC Act since the shareholding was lawfully acquired in terms of the now repealed Independent Broadcasting Authority Act.<sup>3</sup>

### **13. Details of transferee's directors and senior management**

The applicant provided the Authority with the Curriculum Vitae's of the transferee's Board of Directors. The original Board is made up of three (3) individuals and proposed additional five (5) individuals, three (3) females and five (5) males. The applicant has also provided the Curriculum Vitae's of the transferee's Senior Management. The original Senior Management is made up of three (3) individuals and proposed additional six (6) people.<sup>4</sup>

The Authority is satisfied with the information submitted. The individuals concerned have various business expertise. It has to be noted that the radio stations internal operation staff has not changed; East Coast Radio still retains the staff to manage the daily operations.

### **14. The details of the transferee's business plan in respect of a licensed service**

The transferee has provided the business plan.<sup>5</sup> The Authority was satisfied with the transferee's business plan as the approach talks to a re-invention of the marketing strategies as to enable it to capture audiences in a congested and fragmented market. The business strategy also proposes to deliver in terms of return of investment and to re-invent audience experience in order to further capture it as it continues to compete with new media.

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<sup>3</sup> East Coast transfer application; paragraph 7.7.

<sup>4</sup> Appendix 7.8.1 of East Coast transfer application.

<sup>5</sup> The transferee attached East Coast Radio's business plan.

**15. Transferee's audited annual financial statements for the previous years**

The applicant states that since the transferee is a new entity and its subsidiary, and further on its ultimate shareholder Kagiso Tiso Holdings ("KTH") is itself a relatively new entity, therefore the only audited financial statements are that of KTH, namely the 2012 audited statement which were also attached. <sup>6</sup>

**16. Reasons for the proposed transfer**

The applicant stated that this transfer is essentially "a technical internal group" transfer. The applicant stated that Kagiso Media Ltd is undergoing a restructuring exercise driven by its proposed de-listing from the JSE Limited. It also stated that in the current financial climate, this restructuring is not only desirable but necessary as it will enable them to achieve economies of scale while at the same time returning value to shareholders. The applicant states that this will significantly benefit its ability to run its broadcast businesses more efficiently and effectively. <sup>7</sup>

**17. Ability to satisfy obligations under the licence and comply with the Act and the regulations**

The applicant indicates that upon granting of this application, the transferee shall assume and discharge all requisite obligations set out in the licence and applicable Regulations. The applicant has provided a signed written undertaking by the transferee to the effect that it will comply with the applicant's licence obligations in the event of the transfer application being approved by the Authority. <sup>8</sup>

**18. Procedural Matters**

In terms of regulation 11 (2) of Processes and Procedures Regulations for Individual Licences, the Authority, has the discretion to –

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<sup>6</sup> Appendix 8.6 of East Coast transfer application.

<sup>7</sup> East Coast transfer application; paragraph 10.

<sup>8</sup> Appendix 11.2 of East Coast transfer application.

- a) publish a notice in the Gazette of the application to transfer the licence;
- b) invite interested persons to submit written representations in relation to the application within the period specified in the notice;
- c) allow the applicant an opportunity to submit written responses to representations received in relation to the application within the period specified by the Authority; and
- d) conduct a public hearing in relation to the application.

19. As indicated above, the Authority published the application in the Government Gazette for public comments. However, no representations were received.
20. The Authority considered that there were no material issues on the application which warranted a public hearing.
21. The Authority was satisfied that the applicant has submitted all required information and satisfied the requirements prescribed in terms of regulation 11 (Form G) of Processes and Procedures Regulations for Individual Licences read with the EC Act.

### **C. AUTHORITY'S DECISION**

22. After considering the above information and analysis, the Authority has decided to approve the application for transfer of an individual commercial sound broadcast service licence from Kagiso Broadcasting (Pty) Ltd to KTH Media Investments (Pty) Ltd.



**DR STEPHEN MNCUBE**  
**CHAIRPERSON**

**DATE:** 17/06/2015