



Independent Communications Authority of South Africa

MINUTES OF A SPECIAL MEETING OF COUNCIL		
Date	21 October 2022	
Time:	09:00	
Venue:	Microsoft Teams	
Present	██████████	Acting Chairperson
	██████████	Councillor
	██████████	Councillor
	████████████████████	Councillor
By Invitation	██████████	Acting CEO
	██████████	o.b.o. CFO
	██████████████	o.b.o. CAE
	██████████████	Corporate Secretary
	██████████████	Secretariat Officer
	██████████████	Secretariat Officer
Partial Attendees	██████████	Executive: Licensing and Compliance
	██████████	Manager: Service ECS/ECNS
	██████████	Executive Licensing and Compliance
	██████████████	SM: Type Approval and Numbering
	██████████████	Specialist: Network Systems
	██████████	Executive: Legal and CCC
Apologies		
	████████████████████	CAE
	██████████	CFO



No.		Person Responsible
1.	<p>Opening and apologies</p> <p>1.1. The Chairperson opened the meeting at 09:00 and welcomed all present.</p> <p>The following apology was noted:</p> <p>1.2. The [REDACTED].</p> <p>1.3. CFO was on leave.</p> <p>The opening and apologies were noted.</p>	Chairperson
2.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
3.	<p>Ratification of the Agenda</p> <p>This was a Special Council Meeting and only one item was considered.</p> <p>The agenda was ratified.</p>	All
4.	<p>Applications by Dark Fibre Africa (Pty) Ltd (DFA) for the transfer of its Individual Electronic Communications Service (I-ECS) and Individual Electronic Communications Network Service (I-ECNS) Licences to Business Venture Investments NO. 2213 Proprietary Limited (NEWCO); the transfer of Control of the Service Licences to Vodacom (Pty) Ltd ,the surrender of the I-ECS and I-ECS Licences held by South African Digital Villages (Pty) Ltd and the surrender of a Radio Frequency Spectrum Licence held by DFA.</p> <p>The Executive: Licensing and Compliance presented the submission.</p> <p>4.1 The purpose of this memorandum was to recommend that Council approves the following applications lodged by DFA</p> <p>4.1.1 application in terms of section 13 of the Electronic Communications Act, 36 of 2005 (“ECA”) read with Regulation 11 of the Licensing Processes and Procedures Regulations¹ for the transfer of ownership of the Individual Electronic Communications service (“I-ECS”) and the</p>	Dark Fibre Africa Committee



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	<p>Individual Electronic Communications Network Service (“I-ECNS”) licences held by Dark Fibre Africa (Pty) Ltd (“DFA” or “the Applicant”) to Business Venture Investments No. 2213 (Pty) Ltd (“NEWCO” or “the Transferee”);</p> <p>4.1.2 application in terms of section 13 of the ECA read with Regulation 11 of the Licensing Processes and Procedures Regulations² for the transfer of control of the Service Licences of DFA to Vodacom (Pty) Ltd pursuant to the acquisition of an indirect control interest in NEWCO by Vodacom³</p> <p>4.1.3 application in terms of Regulation 13 of the Radio Frequency Spectrum Regulations⁴ for the surrender of the Radio Frequency Spectrum licence held by DFA (“RFS Surrender Application”); and</p> <p>4.1.4 the application in terms of section 12 of the ECA read with Regulation 13 of the Licensing Regulations for the surrender of South African Digital Villages (Pty) Ltd.’s (“SADV”) Service Licences.</p> <p>5. It was further recommended that the above approvals be effective from 1 December 2022, which corresponded with the date on which the surrender of the Services Licences of SADV will become effective. This was done to ensure that, by the time the approvals become effective, there was no transfer of control of such Service Licences of SADV in respect of which no approval is applied for and obtained from the Authority in contravention of section 13(1) of the ECA.</p> <p>6. In addition to the above approvals, Council was requested to note the withdrawal by DFA of its application for the transfer to Vodacom of control of the RFS Licence (“RFS Control Application”) which it had previously lodged with the Authority.</p> <p>6. Discussion</p> <p>6.1 On 04 August 2022, 16 August 2022 and 31 August 2022, the Dark Fibre Committee tabled the applications for Council consideration. Council resolved to defer its decision pending clarification by the Committee on certain aspects related to competition matters and a workshop conducted for Council regarding the transfer application.</p>	



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	<p>6.2 The Committee has duly conducted the workshop on 13 October 2022, and request Council to approve the Committee’s recommendations in respect of the Applications as follows:</p> <ul style="list-style-type: none"> • the transfer of ownership of the Service Licences (i.e., I-ECS and IECNS licences) of DFA to NEWCO; • the transfer of control of the Service Licences (i.e., I-ECS and IECNS licences) of DFA to Vodacom. Further that a condition be set as a promise of performance regarding open access to mitigate potential input foreclosure arising from Vodacom’s “significant” minority stake in Newco. <p>6.3 That should be incorporated into the licences post engagement with the Transferee. It was the Committee’s view that if approved the Authority can use its powers as provided for in section 4 (3)(g) of the ICASA Act read with the standard terms and conditions 2010 amongst others, to request access to the information from the Transferee.</p> <p>6.4 That will ensure transparency and non-discriminatory pricing by parties and further limit the possibility of coordination by parties.</p> <p>6.5. the surrender of the RFS Licence of DFA; and</p> <p>6.6. the surrender of the Service Licences (i.e., I-ECS and IECNS licences) of SADV.</p> <p>6.7 approval of the proposed transfers of ownership and control of the Services Licences of DFA be with effect from 1 December 2022, which corresponds to the date on which the surrender of the Services Licences of SADV will become effective.</p> <p>8. The Committee makes the recommendations above for the reasons outlined below.</p> <p>8.1 HDG -B-BBEE</p> <p>8.1.1 Compliant with the minimum 30% HDI requirement in that the Applicant’s overall HDI equity stake post the transaction will be 43.39%.</p> <p>8.1.2. Transferee compliant with a minimum B-BBEE level 4 provided for in regulation 4(4) of HDG Regulations.</p>	



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	<p>8.2 Fees Payable</p> <p>8.2.1 The applicant has paid all fees payable and due at the time of lodging application.</p> <p>8.3 Compliance with CCC ruling</p> <p>8.3.1 The applicant has never appeared at the CCC.</p> <p>8.4 Competition and Consumer issues</p> <p>8.4.1 The Committee was of the view that the transfers, if approved, are unlikely to negatively impact the market and would in fact make NEWCO a more effective player in the market.</p> <p>8.4.2 The approval of the Proposed Transaction would be in the best interests of consumers and promote competition in the ICT sector.</p> <p>8.5 Surrender of RFS Licence</p> <p>8.5.1 DFA has met all the substantive requirements of Regulation 13 of the RFS Regulations in relation to the surrender of its RFS Licence.</p> <p>8.6 Surrender of SADV Licences</p> <p>8.6.1 SADV has met all the relevant requirements of section 12 of the ECA and Regulation 13 of the Processes and Procedures Regulations relating to the surrender of its Services Licences.</p> <p>The following was noted:</p> <ul style="list-style-type: none"> • Council was concerned that issues that were supposed to be ventilated at the Workshop were still being discussed at the meeting. • Furthermore, Council wanted to know whether the Authority had legal powers to prescribe Vodacom 's 40% shareholding. • In addition, Council wanted to know whether the approval of the proposed transaction will affect employment at the affected companies. 	



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	<ul style="list-style-type: none"> • And lastly council enquired about the spectrum sequencing and open access <p><u>The Committee's response</u></p> <p>Post approval effect on employment</p> <ul style="list-style-type: none"> • The Committee indicated the authority had no powers to impose a condition of retention of staff. • 40% Shareholding by Vodacom. • The committee indicated that through regulation it has the power to impose a cap on shareholding and it can impose such condition. Vodacom have also stated in their submission their shareholding will not exceed 40%. <p>Spectrum sequencing</p> <p>The Committee indicated that the surrender of licenses will be effective post approval by the authority.</p> <p><u>Resolution</u></p> <p>Council resolved to approve the Committee's recommendations subject to the conditions that have been agreed upon.</p> <p>A press statement should be issued only after affected parties were informed of Council decision.</p>	
6.	<p>Closure</p> <p>The Chairperson thanked all who were present at the meeting and closed it at 11:34 am.</p>	Acting Chairperson

Signed: 

Date: 2023-03-16

Dr Charles Lewis
(Acting Chairperson)