
GENERAL NOTICE

NOTICE 684 OF 2015



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

APPLICATION FOR APPROVAL OF THE PROPOSED ACQUISITION BY VODACOM (PTY) LTD OF THE ENTIRE ISSUED SHARE CAPITAL OF NEOTEL (PTY) LTD MADE IN TERMS OF SECTIONS 13(1) AND 31(2A) OF ELECTRONIC COMMUNICATIONS ACT, NO. 36 OF 2005

1. On 17 June 2014 Neotel Proprietary Limited (together with all its shareholders) ("**Neotel**") and Vodacom Proprietary Limited ("**Vodacom**") (hereinafter "**the Applicants**") submitted an application to the Independent Communications Authority of South Africa ("**the Authority**") for approval in respect of the proposed acquisition by Vodacom of the entire issued share capital of Neotel ("**the Application**").
2. The Application was made in terms of sections 13(1) and 31(2A) of the Electronic Communications Act, 36 of 2005, as amended by the Electronic Communications Amendment Act, 1 of 2014 ("**the EC Act**").
3. On 15 September 2014, the Authority published a notice of the Application in Government Gazette No. 37998, inviting written representations from interested parties regarding the Application. The Authority subsequently conducted public hearings on 15 and 16 January 2015.
4. Having considered the Application, the Authority has approved the Application, subject to the following:
 - a. First, the Applicants are required to comply with the requirement for 30% (thirty percent) of the equity ownership of the individual licence that is the

subject of the transfer of control application being held by persons from historically disadvantaged groups (**"the BEE Requirement"**), as contemplated in section 13(6) read with section 9(2)(b) of the EC Act. The Authority, however, recognises that it may not be practicable for Applicants to comply with the BEE Requirement from the onset. Therefore the Authority wishes to determine the reasonable period within which the Applicants should be permitted to ensure compliance with the BEE Requirement; and

- b. Second, the Authority has established that the implementation of the proposed transaction will result in consolidation of spectrum. The Authority recognises that broadband access across the country remains a challenge that needs to be addressed with due speed. The Authority views the implementation of transactions such as the present to offer an opportunity, amongst other initiatives, for the Authority to utilise the regulatory instruments at its disposal to facilitate the attainment of universal service and access to broadband services by all South Africans, with priority being given to rural and under serviced areas (as defined in the Under Serviced Area Regulations, 2011). Accordingly, in accordance with the provisions of section 13(6) read with section 9(2)(c) of the EC Act, and in order to ensure the utilisation of spectrum (which is a scarce resource) to achieve the developmental goals of the Republic of South Africa in relation to broadband, the Authority is considering the imposition of the condition that at least 25% (twenty five percent) of any broadband roll out to be undertaken by Neotel following the implementation of the transaction (with the specification of a minimum of 5Mbps), be undertaken in under serviced areas (hereinafter **"the USA Roll - Out Condition"**).
5. During evaluation of the Application, the Authority has considered the potential impact that the consolidation of valuable and substantial spectrum under the control of Vodacom may have on the various markets. The Authority recognises that it cannot regulate the effects of such consolidation on competition in the various markets until it has undertaken an in-depth enquiry in terms of Chapter 10 of the EC Act read with section 4B of the Independent Communications Authority of South Africa Act No. 13 of 2000. The Authority will consider to undertake such an inquiry in due course.

6. The Authority, therefore, hereby invites the Applicants and other interested parties to lodge written representations in relation to the following:
 - a. The reasonable period that the Authority should determine for compliance with the BEE Requirement; and
 - b. The reasonable target and timelines that the Authority may impose for fulfilment of the USA Roll-Out Condition.
7. Insofar as the imposition of the BEE Requirement and the Roll-out Condition may necessitate the amendment of the individual licence/s that is the subject of the transfer of control application, this notice shall also be deemed to constitute notice in terms of section 10(1)(f) and (2) of the EC Act.
8. Persons submitting written representations must indicate in those representations whether or not they require an opportunity to make oral representations in the event the Authority may hold a public hearing.
9. The written representations are to be submitted within 14 (fourteen) business days of publication of this notice in the Government Gazette (**“the Closing Date”**). The Applicants shall be entitled to respond to all written representations submitted by other interested parties within 14 (fourteen) business days of the Closing Date.
10. All written representations and related correspondence in terms hereof must be delivered to:

The Independent Communications Authority of South Africa (ICASA)

FOR ATTENTION: Ms Refiloe Motsoeneng

Project Manager: Market Consolidations

Block A, Pinmill Farm

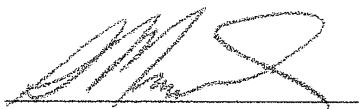
164 Katherine Street

Sandton

Or sent by fax to no: 011 566 3214

Or sent by e-mail to: RMotsoeneng@icasa.org.za and
MarketConsolidations@icasa.org.za

11. The Authority will not consider representations received after the Closing Date.

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

DR STEPHEN MNCUBE
CHAIRPERSON
