

Chairperson, Dr Stephen Mncube
Independent Communications Authority of South Africa
Block D, Pinmill Farm
164 Katherine Street
Sandton

Copy to: Chief Executive Officer, Mr Pakamile Pongwana, PPongwana@icasa.org.za
General Manager: Licensing and Compliance, Mr Sipho Tsotetsi, STsotetsi@icasa.org.za
Councillor Miki Ndhlovu
Councillor Marcia Socikwa
Councillor Willie Currie
Councillor Joseph Lebooa
Councillor William Stucke
Councillor Nomvuyiso Batyi
Councillor Katharina Pillay
Councillor Rubben Mohlaloga

17 June 2014

BY HAND AND BY EMAIL

Dear Dr. Mncube,

APPLICATION FOR APPROVAL IN RESPECT OF THE ACQUISITION OF NEOTEL PROPRIETARY LIMITED

1. We refer to the proposed transaction between the various shareholders of Neotel Proprietary Limited ("Neotel") and Vodacom Proprietary Limited ("Vodacom") for the acquisition, by Vodacom, of the entire issued share capital (100%) of, and all of the Neotel shareholders' loan claims against, Neotel ("the proposed Acquisition"), as described in further detail below.

www.neotel.co.za

Neotel (Pty) Ltd

Reg No. 2004/004619/07

44 Old Pretoria Main Road, Halfway House, Midrand, 1685, Gauteng South Africa

Telephone number +27 (0)11 585 0000 Facsimile number +27 (0)11 585 0001

DIRECTORS: N Srinath* (Non-Executive Chairman) S Joshi**** (Managing Director & Chief Executive Officer) VA Kumar* K Memani

FJP Ndoroma** S Baweja* R Dhawan* SG Ranade*

Alternate Directors S Nisaluba R O'fner**

(*Indian, **Namibian, ****New Zealander)

2. The Share and Claims Sale Agreement ("**Sale Agreement**") giving effect to the proposed Acquisition was signed by the various parties on or about 18 May 2014. As discussed in more detail below, the Sale Agreement is subject to a number of conditions precedent and will not take effect until such time as each of these conditions precedent has been fulfilled or waived by the parties in accordance with the provisions of the Sale Agreement.
3. Neotel, SepCo Communications Proprietary Limited ("**SepCo**"), VSNL SNOSPV Pte Limited ("**VSNL**") and Nexus Connexion SA Proprietary Limited ("**Nexus**") (SepCo, VSNL and Nexus, collectively referred to as "**the Sellers**") and Vodacom (collectively, "**the Parties**") hereby make application:
 - 3.1 in terms of section 13(1) of the Electronic Communications Act 36 of 2005, as amended by the Electronic Communications Amendment Act 1 of 2014 ("**ECA**"), for the prior written permission of the Independent Communications Authority of South Africa (the "**Authority**") for control held by the Sellers of the individual electronic communications network service ("**IECNS**") licence issued to Neotel to be transferred from the Sellers to Vodacom;
 - 3.2 in terms of section 13(1) of the ECA, for the prior written permission of the Authority for control held by the Sellers of the individual electronic communications service ("**IECS**") licence issued to Neotel to be transferred from the Sellers to Vodacom; and
 - 3.3 in terms of section 31(2A) of the ECA, for the prior written permission of the Authority for control held by the Sellers of the radio frequency spectrum licences issued to Neotel to be transferred from the Sellers to Vodacom.
4. Details of the IECNS and IECS licences and radio frequency spectrum licences issued to Neotel are set out below.
5. For the purpose of the applications described in paragraphs 3.1 and 3.2 above, the parties have provided the information which is required in terms of the Regulations in Respect of the Limitation of Ownership and Control of Telecommunication Services (published under Government Notice R105, *Government Gazette* 24288 of 16 January 2003) published in terms of the Telecommunications Act 103

of 1996 (“the **Ownership and Control Regulations**”) which remain in effect under the ECA. These Ownership and Control Regulations prescribe the process to be followed in respect of an application for the transfer of control of an individual licence as provided for in section 13(2) of the ECA.

6. For the purpose of the application described in paragraph 3.3 above, the parties have provided the same information as must be provided in terms of the Ownership and Control Regulations. This is on the basis that, as yet, no regulations have been prescribed in terms of section 31(3)(c) of the ECA. The fact that no regulations have been prescribed for the purposes of section 31(3)(c) of the ECA, does not impede the Authority’s ability to consider and decide on the Parties’ application given that, while the Authority has the power to make such regulations, there is no obligation placed on the Authority to do so.
7. As discussed in further detail below, while control of Neotel will transfer as a result of the proposed Acquisition, the proposed Acquisition will not result in the transfer of any of the licences held by Neotel to Vodacom or to any other person. As such, Neotel will remain the licence holder in respect of each of those licences. The proposed Acquisition will result only in the beneficial control of the licence holder, Neotel, being transferred from the Sellers to Vodacom.

8. Background

8.1 Neotel holds the following service licences issued by the Authority in terms of the ECA:

- 8.1.1 an IECNS licence under licence number 004/IECNS/JAN/2009 reissued on 25 January 2011;
- 8.1.2 an IECS licence under licence number 004/IECS/JAN/09 reissued on 21 December 2010;
- 8.1.3 an IECNS licence under licence number 0471/IECNS/DEC/2010 on issued 21 December 2010; and

- 8.1.4 an IECS licence under licence number 0471/IECS/DEC/10 issued on 21 December 2010.
- 8.1 Neotel also holds the following radio frequency spectrum licences issued in terms of the ECA:
- 8.1.1 a radio frequency spectrum licence under licence number 00-523-655-6 issued for the use of an assignment of 2 x 12 MHz in the 1800 MHz radio frequency spectrum band between 1710.3 MHz to 1722.3 MHz paired with 1805.3 MHz to 1817.3 MHz;
- 8.1.2 a radio frequency spectrum licence under licence number 00-516-419-2 issued for the use of national and continental VSAT services in the C Band and the Ku Band;
- 8.1.3 a bulk radio frequency spectrum licence under licence number 00-501-279-1 issued for the use of a national 2 x 28 MHz assignment in the 3.5 GHz radio frequency spectrum band, a single 2 x 28 MHz assignment in the 7 GHz radio frequency spectrum band on channel 7121 GHz paired with 7317 GHz and for the use of certain frequency assignments in the 3.5 GHz, 10.5 GHz, 15 GHz, 26 GHz and 38 GHz bands;
- 8.1.4 a radio frequency spectrum licence under licence number 00-525-955-7 issued for the use of national and regional radio frequency spectrum assignments in the 26 GHz band;
- 8.1.5 a radio frequency spectrum licence under licence number 00-506-083-1 issued for the use of certain national radio frequency spectrum assignments in the 800 MHz band;
- 8.1.6 a radio frequency spectrum licence under licence number 00-540-027-7 issued for the use of radio frequency spectrum in the 7 GHz band;
- 8.1.7 a radio frequency spectrum licence under licence number 00-540-031-5 issued for the use of radio frequency spectrum in the 15 GHz band;
- 8.1.8 a radio frequency spectrum licence under licence number 00-540-035-6 issued for the use of national radio frequency spectrum in the 10.5 GHz band; and

- 8.1.9 a radio frequency spectrum licence under licence number 00-540-036-4 issued for the use of national radio frequency spectrum in the 38 GHz band.
- 8.2 In addition, Neotel holds a Radio Dealer Certificate under licence number 00-527-609-6 issued to supply, install and repair electronic communications equipment/apparatus.
- 8.3 As the Authority is aware, Neotel provides voice and data services to South African businesses and consumers in terms of its IECNS and IECS licences, together with the radio frequency spectrum licences identified above.

9. The required details

9.1 *The transfer that is the subject of the application for approval: the proposed Acquisition*

9.1.1 The Sellers have entered into the Sale Agreement in terms of which Vodacom will acquire the entire issued share capital (100%) of, and all of the Sellers' loan claims against, Neotel. A copy of the Sale Agreement is enclosed with the letter, as submitted to the Authority's Chairperson, and is provided to the Authority subject to the request for confidentiality detailed in paragraph 11 below.

9.1.2 The proposed Acquisition is subject to a number of conditions precedent, as set out in clause 3 of the Sale Agreement, which includes obtaining any confirmation or approval in writing from the Authority which might be required in terms of the ECA. These conditions precedent must be fulfilled or waived by the parties before all the provisions of the Sale Agreement will take effect. The conditions precedent must be fulfilled or waived by 19 May 2015 failing which the Sale Agreement will not come into effect.

9.2 *The ownership and control interests in the licensee as at the date of the application for approval*

9.2.1 At the present time, Neotel's shareholding structure is as follows:

9.2.1.1 VSNL : 30.00%

9.2.1.2 Nexus: 19.00%

9.2.1.3 SepCo: 51.00%

9.2.2 The details of all parties which hold indirect ownership interests in Neotel above 5%, as defined in the Ownership and Control Regulations, are as follows:

9.2.3 Shareholders in VSNL

No relevant indirect ownership interests above 5% in Neotel.

9.2.4 Shareholders in Nexus

No relevant indirect ownership interests above 5% in Neotel.

9.2.5 Shareholders in SepCo

9.2.5.1 VSNL: 73.17%
(Effective interest in Neotel through SepCo: 37.32%)

9.2.5.2 CommuniTel Telecommunications Proprietary Limited: 20.6%
(Effective interest in Neotel: 10.51%)

9.2.5.3 Tata Africa Holdings Limited: 6.23%
(Effective interest in Neotel: 3.17%)

9.3 *The ownership and control interests in the licensee after completion of the proposed transfer pursuant to the proposed Acquisition*

9.3.1 In terms of the Sale Agreement, the Sellers have agreed to sell their respective shareholding interests in Neotel, which together constitute all of the shares in the issued share capital of Neotel, to Vodacom. As such, pursuant to the proposed Acquisition, Vodacom will hold 100% of the shares in the issued share capital of Neotel.

9.3.2 As the Authority is aware, the shareholding structure of Vodacom is as follows:

- 9.3.2.1 Vodacom Group Limited: 93.75%
- 9.3.2.2 Royal Bafokeng Holdings: 1.97%
- 9.3.2.3 Thebe Investments Corporation: 0.84%
- 9.3.2.4 Yebo Yethu Proprietary Limited: 3.44%

9.3.3 The details of all parties which hold indirect ownership interests in Vodacom above 5% are as follows:

6.3.3.1 Shareholders in Vodacom Group Limited

- 9.3.3.1 Vodafone Investments SA Proprietary Limited (Vodafone Group): 65%
(Effective interest in Vodacom: 60.93%)
- 9.3.3.2 Government of the Republic of South Africa: 13.91%
(Effective interest in Vodacom: 13.03%)

- 9.3.3.3 For the sake of completeness, Public: 21.09%
(Effective interest is not relevant here as none of the individual shareholders comprising this category of investors, including the Public Investment Commission have an effective interest in excess of 5% in Vodacom).

9.4 *Undertaking by Neotel*

The proposed Acquisition by Vodacom will not affect compliance by Neotel with any of its regulatory obligations in terms of the ECA and regulations published under the ECA or any conditions of licence which have been imposed on Neotel in terms of the IECS, IECNS and radio frequency spectrum licences. In this regard, Neotel undertakes to comply with all such obligations and conditions of licence as reflected in the attached undertaking, marked Annexure "A".

10. Notification in terms of the Standard Terms and Conditions

- 10.1 Neotel will, in due course, submit a formal notification of the change of information in respect of Neotel after the proposed Acquisition has been completed (once all conditions precedent have been fulfilled or waived) in accordance with the requirements of clause 2(1)(c) of Schedule 2 and clause 2(1)(c) of Schedule 3 of the Standard Terms and Conditions for Individual Electronic Communications Network Services and Electronic Communications Network Services, 2010 (the "Standard Terms and Conditions") read with regulation 14(A) of the Individual Licensing Processes and Procedures Regulations, 2010 (the "Processes and Procedures Regulations") published in terms of the ECA.
- 10.2 The notification referred to in paragraph 10.1 will be provided within 7 (seven) days of the change in Neotel's shareholding as required by regulation 14(A) of the Processes and Procedures Regulations read with clause 2(1)(c) of Schedule 2 and clause 2(1)(c) of Schedule 3 of the Standard Terms and Conditions.

11. Request for confidentiality

- 11.1 The Authority is requested, in terms of section 4D of the Independent Communications Authority of South Africa Act 13 of 2000 (the ICASA Act), to treat as confidential the Sale Agreement that has been submitted to the Authority with this application. A similar request for confidentiality will be made in due course to the Competition Commission and Competition Tribunal when notice of the proposed Acquisition is filed with those authorities in terms of the Competition Act 89 of 1998.
- 11.2 The Parties' request for confidentiality is made in terms of sections 4D(4)(b) and (c) of the ICASA Act.
- 11.2.1 The Sale Agreement contains terms and conditions (of a commercial, financial and strategic nature) relating to the proposed Acquisition which are not in the public domain.
- 11.2.2 To the extent that the conditions precedent to the implementation of the Sale Agreement were to be made publicly available, this would enable persons who have an interest in the transaction not proceeding, to take tactical steps to impede the fulfilment of those conditions.
- 11.2.3 Were the Sale Agreement to be disclosed to third parties (including competitors, suppliers or customers of Neotel and Vodacom), the Parties would be disadvantaged both prior to the completion of the proposed Acquisition and subsequent to the completion of the proposed Acquisition (if all the conditions precedent are fulfilled or waived) and competitors could be afforded an unfair competitive advantage in that they will be provided with detailed insight into the mechanics of the proposed Acquisition.
- 11.2.4 The Sale Agreement includes details of material contracts entered into by Neotel that, if disclosed, would allow competitors and contractual counter-parties insight into Neotel's internal operations and the importance of particular contracts to Neotel.

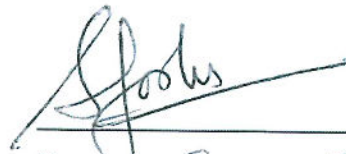
This, in turn, would allow customers or suppliers opportunities to extract concessions from the Parties. Competitors would be afforded an unfair competitive advantage in that they would be provided with detailed insight into Neotel's operations and potential areas of vulnerability which may be targeted.

- 11.2.5 The Sale Agreement relates to specific individuals (including past employees of Neotel) whose right to privacy must, by law, be protected.
- 11.2.6 The Sale Agreement also contains confidential sensitive commercial information of certain of the Sellers (being information in respect of which those Sellers have an objectively reasonable expectation will not be disclosed to third parties) in relation to, for example, their financial affairs. If disclosed to third parties, Neotel would breach its confidentiality obligations to those Sellers who would likely also suffer commercial harm if, for example, third parties were not inclined to invest on the basis of information contained in the Sale Agreement.
- 11.3 The Sale Agreement is not required to be filed with any other public or regulatory authority (other than the Competition Commission and Competition Tribunal to which, as indicated above, a similar confidentiality request will be made) and the exception in section 4D(5) of the ICASA Act is, accordingly, not applicable.
- 11.4 If the Authority determines that the Parties' request for confidentiality cannot be acceded to, the Authority is requested to notify the Parties accordingly, in accordance with the requirements of section 4D(2) of the ICASA Act.
12. Please contact Mr Nkateko Nyoka from Vodacom on 011 848 8008 or Nkateko.Nyoka@vodacom.co.za and Dr Tracy Cohen from Neotel on 011 585 0729 or tracy.cohen@neotel.co.za if any further information is required on any aspect of the proposed Acquisition or if the Authority would like to schedule a meeting with the Parties to discuss any of the issues raised in this letter.

13. The Parties thank the Authority in advance for its kind consideration of the Parties' applications for prior written permission in respect of the transfer of control of Neotel's IECNS and IECS licences and radio frequency spectrum licences pursuant to the proposed Acquisition. The Parties reiterate their willingness to engage with the Authority in relation to the proposed Acquisition should the Authority regard this as necessary.

Yours faithfully,

For: Neotel Proprietary Limited
(Licensee)

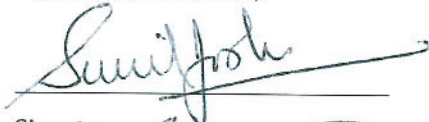


Signatory: Sunil Joshi

Capacity:

Date: 17 June 2014

For: SepCo Communications Proprietary
Limited (Transferor)



Signatory: SUNIL JOSHI

Capacity: DIRECTOR

Date: 13 JUNE 2014



For: SepCo Communications Proprietary
Limited (Transferor)

Signatory:

Capacity:

Date:

For: VSNL SNOSPV Proprietary Limited
(Transferor)

DocuSigned by:



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Signatory:

Capacity:

Date:

For: Nexus Connexion SA Proprietary
Limited (Transferor)

Signatory:

Capacity:

Date:

For: Nexus Connexion SA Proprietary
Limited (Transferor)


Signatory: X. K. MEMANI
Capacity: DIRECTOR
Date: 18-06-2014

For: Vodacom Proprietary Limited
(Transferee)



Signatory: SHAMEEL AZIZ JOOSUB

Capacity: CEO

Date: 17/06/2014

Neotel (Pty) Ltd

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DIRECTORS N Srinath* (Non-Executive Chairman) S Joshi**** (Managing Director & Chief Executive Officer) VA Kumar* K Memani

FJP Ndoroma** S Baweja* R Dhawan* SG Ranade*

Alternate Directors S Ntsaluba R Olfner**

(*Indian, **Namibian, ****New Zealander)

ANNEXURE A

Chairperson, Dr Stephen Mncube
Independent Communications Authority of South Africa
Block D, Pinmill Farm
164 Katherine Street
Sandton

17 June 2014

Dear Dr Mncube

UNDERTAKING BY NEOTEL PROPRIETARY LIMITED

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 - 2.4 an IECS licence under licence number 0471/IECS/DEC/10 issued on 21 December 2010.

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(*Indian, **Namibian, ****New Zealander)

ANNEXURE A

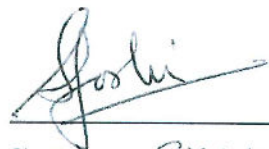
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 - 3.5 a radio frequency spectrum licence under licence number 00-506-083-1 issued for the use of certain national radio frequency spectrum assignments in the 800 MHz band;
 - 3.6 a radio frequency spectrum licence under licence number 00-540-027-7 issued for the use of radio frequency spectrum in the 7 GHz band;
 - 3.7 a radio frequency spectrum licence under licence number 00-540-031-5 issued for the use of radio frequency spectrum in the 15 GHz band;
 - 3.8 a radio frequency spectrum licence under licence number 00-540-035-6 issued for the use of national radio frequency spectrum in the 10.5 GHz band; and

ANNEXURE A

- 3.9 a radio frequency spectrum licence under licence number 00-540-036-4 issued for the use of national radio frequency spectrum in the 38 GHz band.
4. As required by regulation 5(1)(e) of the Regulations in Respect of the Limitation of Ownership and Control of Telecommunication Services (published under Government Notice R105, *Government Gazette* 24288 of 16 January 2003) published in terms of the Telecommunications Act 103 of 1996 ("the **Ownership and Control Regulations**"), Neotel undertakes that, if the transfer to Vodacom of control of the various services licences and radio frequency spectrum licences held by Neotel pursuant to the proposed Acquisition is approved by the Authority, Neotel will continue to satisfy its obligations under those licences, the Electronic Communications Act 36 of 2005 and regulations published under that Act.
5. Please contact Dr Tracy Cohen on 011 585 0729 or tracy.cohen@neotel.co.za if any further information is required.

Yours faithfully,

For: Neotel Proprietary Limited
(Licensee)



Signatory: SUNIL JOSHI

Capacity:

Date: 17 June 2014