

DIMENSION DATA MIDDLE EAST AND AFRICA PROPRIETARY LIMITED
SUBMISSION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF
SOUTH AFRICA

ON THE GENERAL NOTICE RELATING TO THE APPLICATION FOR
APPROVAL OF THE ACQUISITION OF NEOTEL PROPRIETARY LIMITED BY
VODACOM PROPRIETARY LIMITED (AS PUBLISHED IN GOVERNMENT
GAZETTE NO 37998, ON 15 SEPTEMBER 2014, UNDER NOTICE 799 OF 2014)

FILING SHEET

Presented for filing by Internet Solutions (a division of Dimension Data Middle East and Africa Proprietary Limited) c/o Webber Wentzel.

Dated at Johannesburg on 15 October 2014.



WEBBER WENTZEL

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Tel : (011) 530 5218
Ref : Peter Grealy / Nozipho
Mngomezulu
2507833

To:

Godfree Maulana
ECS/ECNS Manager
Independent Communications Authority of South Africa
Block D
Pinmill Farm
164 Katherine Street
Sandton

Received written response hereof
this.....day of

.....2014.

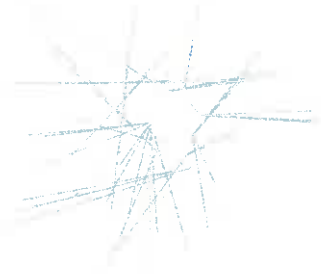
Time.....

And to:

Tracy Cohen
Neotel (Proprietary) Limited
(Fax): 011 566 3216
(Email): tracy.cohen@neotel.co.za

WEBBER WENTZEL

in alliance with > Linklaters



Attention: Dr Tracy Cohen
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Your reference

Dr Tracy Cohen

Our reference

Mr P Grealy / Ms N Mngomezulu
2507833

Date

15 October 2014

Dear Sirs

Submissions: Vodacom / Neotel Transaction

1. We act for Internet Solutions (a division of Dimension Data Middle East and Africa Proprietary Limited) ("IS").
2. On 15 September 2014, the Independent Communications Authority of South Africa ("the Authority") published, in General Notice 799 of 2014 under Government Gazette No. 37998 ("the General Notice"), a notice inviting interested parties to lodge representations to the application submitted by Neotel Proprietary Limited ("Neotel") requesting the Authority's prior approval in respect of the acquisition by Vodacom Proprietary Limited ("Vodacom") of 100% of the issued shares in Neotel ("the Neotel Application").
3. IS is an interested party under the General Notice and hereby, in accordance with section 4 of the General Notice, submits its written representations on the Neotel Application ("the IS Submission").

Letter To Tracy Cohen

Senior Partner: DM Lancaster **Partners:** SM Adcock RB Africa NG Aip RL Appelbaum BA Beilie JM Bellow AE Bennett HJ Bester DHL Booysen AR Bowley PG Bradshaw EG Brandt JL Brink JL Suckland MS Burger RS Coelho KL Collier KM Colman KE Coster K Couzyn JH Davies ME Davis PM Daya JHB de Lange BEC Dickinson MA Diemont DA Dingley NF Dlamini KZ Dloti BJ du Toit SK Edmundson JC Els AE Esterhuizen MJR Evans GA Fichardt JB Forman BL Galle CI Gouws JF Gouws PD Grealy SN Gumede VW Harrison JM Harvey MH Hathorn JS Henning KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway MGH Honibal SJ Rutton KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PR Kingston J Lamb PSG Leon PG Leyden L Marais T Masingsi S McCafferty MC McIntosh S Meitner SM Methuli CS Meyer AJ Mills JA Miner D Milo NP Mngomezulu VS Moodaley LA Mophet VM Movshovich M Mtshali RA Nelson BP Ngoepe ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel GR Penfold SE Phajane C Pillay HK Potgieter D Ramjattan NJA Robb DC Rudman JW Scholtz KE Shepherd DMJ Simaan AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine ER Swanepeel Z Swarepoel A Thakor A Toefy D Vallebb PZ VanGa JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk A van Niekerk MM van Schaardenburgh JE Veeran D Venter HM Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson JW Westgate KL Williams RH Wilson M Yuடன் **Chief Operating Officer:** SA Boyd

Webber Wentzel is associated with ALN

4. Please do not hesitate to communicate with Peter Grealy or Nozipho Mngomezulu should you have any queries regarding the above.

Yours faithfully

WEBBER WENTZEL

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DIMENSION DATA MIDDLE EAST AND AFRICA PROPRIETARY LIMITED

SUBMISSION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

ON THE GENERAL NOTICE RELATING TO THE APPLICATION FOR APPROVAL OF THE ACQUISITION OF NEOTEL PROPRIETARY LIMITED BY VODACOM PROPRIETARY LIMITED (AS PUBLISHED IN GOVERNMENT GAZETTE NO 37998, ON 15 SEPTEMBER 2014, UNDER NOTICE 799 OF 2014)

1. PART A: INTRODUCTION

- 1.1 Internet Solutions (a division of Dimension Data Middle East and Africa Proprietary Limited) ("**IS**") is a South African company specialising in the provision of information technology and electronic communications related services.
- 1.2 These submissions relate to General Notice 799 of 2014 issued by the Independent Communications Authority of South Africa ("**ICASA**") on 15 September 2014 under Government Gazette No. 37998 ("**the General Notice**"), in terms of which ICASA invited interested parties to lodge representations to the application submitted by Neotel Proprietary Limited ("**Neotel**") requesting ICASA's prior approval in respect of the acquisition by Vodacom Proprietary Limited ("**Vodacom**") of 100% of the issued shares in Neotel ("**the Neotel Application**").
- 1.3 IS is an interested person under the General Notice and welcomes the opportunity to make these representations relating to the Neotel Application.
- 1.4 The General Notice also requires interested persons to indicate, in their representations, whether they require an opportunity to make oral representations in the event that ICASA elects to hold public hearings in respect of the Neotel Application. It is the view of IS that the Neotel Application warrants a public hearing as the matters to be dealt with in this submission, and presumably in other submissions lodged by other interested parties, cannot be adequately dealt with by ICASA in the absence of a public hearing. IS accordingly requests that (i) ICASA hold public hearings on the Neotel Application, and (ii) IS be provided with an opportunity to make oral presentations on these submissions at the public hearings.

2. PART B: THE TRANSACTION AS SET OUT IN THE NEOTEL APPLICATION

- 2.1 The Neotel Application states that the current shareholders of Neotel (namely, SepCo Communications Proprietary Limited ("**SepCo**"), VSNL SNOSPV Pte Limited ("**VSNL**"), and Nexus Connexion SA Proprietary Limited ("**Nexus**") (collectively, "**the Sellers**") have entered into a sale agreement with Vodacom in terms of which Vodacom will acquire the entire issued share capital of, and all of the Sellers' loan claims against, Neotel ("**the Proposed Transaction**").
- 2.2 Neotel's current shareholding is as follows:
- 2.2.1 VSNL - 30%
- 2.2.2 Nexus - 19%
- 2.2.3 SepCo - 51%
- 2.3 In terms of the Individual Electronic Communications Network Service ("**IECNS**") licence and the Individual Electronic Communications Service ("**IECS**") licence issued to Neotel on 21 December 2010, the ownership in Neotel held by historically disadvantaged groups is currently 19% (held through Nexus).
- 2.4 Vodacom' shareholding is, in turn, as follows:
- 2.4.1 Vodacom Group Limited ("**Vodacom Group**") - 93.75%
- 2.4.2 Royal Bafokeng Holdings - 1.97%
- 2.4.3 Thebe Investments Corporation - 0.84%
- 2.4.4 Yebo Yethu Proprietary Limited - 3.44%
- 2.5 IS understands, from the Neotel Application, that Vodacom Group is owned as follows:
- 2.5.1 Vodafone Investments SA Propreitary Limited - 65%
- 2.5.2 Government of the Republic of South Africa - 13.91%
- 2.5.3 The public - 21.09%
- 2.6 In terms of the Broad Based Black Economic Empowerment Verification Certificate issued to Vodacom on 23 May 2014 for the period between 23 May 2014 and 22 May 2015 ("**BBBEE Certificate**"), the ownership in Vodacom held by black

people is 9.22% (with black women holding an ownership interest of 4.21%). A copy of the BBBEE Certificate is attached to these submissions as Annexure "DD1".

2.7 The facts set forth in this Part B are relevant to the further analysis in Part C below.

3. PART C: OBJECTIONS

3.1 The objects of the ECA

3.1.1 It is trite that ICASA is obliged to seek to achieve the objectives set out in section 2 of the Electronic Communications Act, 2005 ("the ECA") in its regulation of the electronic communications industry, including its regulation of ownership and control of licensees in the electronic communications industry. These objectives include:

3.1.1.1 encouraging investment, including strategic infrastructure investment, and innovation in the communications sector (subsection (d));

3.1.1.2 promoting competition within the ICT sector (subsection (f));

3.1.1.3 promoting the empowerment of historically disadvantaged persons, including Black people, with particular attention to the needs of women, opportunities for youth and challenges for people with disabilities (subsection (h));

3.1.1.4 ensuring that broadcasting services and electronic communications services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in the Republic (subsection (k));

3.1.1.5 promoting the interests of consumers with regard to the price, quality and the variety of electronic communications services (subsection (n)); and

3.1.1.6 developing and promoting SMMEs and cooperatives (subsection (p)).

3.1.2 IS respectfully submits that the Proposed Transaction is inconsistent with the objects of the ECA and cannot, alternatively should not, be approved by ICASA. In summary, and as set out in further detail below, IS' reasons for this submission include, but are not limited to the following:

3.1.2.1 the Proposed Transaction will result in the reduction of Neotel's shareholding by persons from historically disadvantaged groups;

- 3.1.2.2 the Proposed Transaction does not promote competition within the ICT sector and will, instead, have an adverse effect on competition in the sector;
- 3.1.2.3 Vodacom, as a consequence of the Proposed Transaction, will control a significant portion of the available radio frequency spectrum, which is a scarce resource; and
- 3.1.2.4 the Proposed Transaction may result in re-emergence of Telkom SA's monopoly in respect of fixed line services.

3.1.3 Each of these points are discussed in turn below.

3.2 Ownership by historically disadvantaged persons

3.2.1 The ECA (and the Regulations thereto) places particular emphasis on the empowerment of historically disadvantaged persons, including black people.

3.2.2 As stated above, section 2(h) of the ECA states that the primary object of the ECA is to provide for the regulation of electronic communications in South Africa and for that purpose, *inter alia*, to promote the empowerment of historically disadvantaged persons, including black people, with particular attention to the needs of women, opportunities for youth and challenges for people with disabilities.

3.2.3 Section 9 of the ECA - Application for and granting of individual licences - states further that:-

"(1) Any person may, upon invitation by the Authority, subject to the provisions of [the ECA], apply for an individual licence in the prescribed manner.

(2) The Authority must give notice of the application in the Gazette and...

(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"

3.2.4 Furthermore, Regulation 12 of the Licensing Processes and Procedures Regulations, 2010 (published on 14 June 2010 under Government Gazette No. 33293) ("**the Procedure Regulations**") (as amended) - Restrictions on transfer and renewal of an individual licence provides that:-

"The Authority may refuse to renew or transfer a licence the licensee has not complied with one or more of the following:

- (a)
- (b)
- (c) Where the licensee or transferee's ownership and control by historically disadvantaged persons is less than 30%

- 3.2.5 In addition to the requirements in the ECA, the Information and Communication Technology Sector Charter published on 1 April 2012 in terms of section 9(5) of the Broad-Based Black Economic Empowerment ("BEE") Act, 2003 ("the BEE Act") ("the ICT Charter") sets an overall black shareholding target of 30% for entities within the ICT sector (which includes both Vodacom and Neotel).
- 3.2.6 While Neotel's ownership by historically disadvantaged persons currently falls below the 30% threshold set out in section 9 of the ECA, Regulation 12 of the Procedure Regulations and the ICT Charter, it is IS' submission that the 30% threshold referred to in these provisions ought to be relied on by ICASA, in all current and future transactions that are presented to it for its consideration, as a benchmark for determining whether the transaction which requires its approval will promote the empowerment of historically disadvantaged persons, including black people. IS
- 3.2.7 Applying this threshold will not only reinforce the importance of the empowerment of historically disadvantaged persons in the ICT sector and ICASA's commitment to the realisation of this objective, it will also create certainty within the sector in regard to the threshold that will need to be met in order for a transaction to be deemed to be promoting the empowerment of historically disadvantaged persons. As it stands, ICASA is able, other than in cases of the granting, transfer and renewal of IECNS and IECS licences (where the 30% threshold is peremptory), to exercise a discretion on the issue of whether a transaction that requires its approval promotes the empowerment of historically disadvantaged persons. If it is accepted that ICASA has no discretion in matters relating to the granting, transfer and renewal of IECNS and IECS licences, it must follow that the same threshold should apply in matters relating to transfers or changes in control - more especially where 100% of the shares in a licensee are being transferred (which is the case in this instance). To suggest otherwise would, in IS' view, render the 30% threshold for the granting, transfer and renewal of IECNS and IECS licences nugatory in these circumstances.
- 3.2.8 It is important to note that Vodacom's current shareholding by historically disadvantaged persons is reflected in the BBBEE Certificate as being 9.22%,

which is well below Neotel's current 19% ownership by historically disadvantaged persons. IS also notes that Neotel does not state anywhere in the Neotel Application whether any steps will be undertaken, as part of the Proposed Transaction, to maintain or improve the current levels of ownership by historically disadvantaged persons. One can therefore only assume that no such steps have been contemplated by the parties to the Proposed Transaction. This means that, after the implementation of the Proposed Transaction, Neotel's shareholding by historically disadvantaged persons will be reduced.

3.2.9 Even if ICASA takes the view that it is, as yet, not empowered to apply the threshold suggested in paragraph 3.2.7 to the Proposed Transaction, in IS's view, it can, in any event, not be said that the Proposed Transaction will promote the empowerment of historically disadvantaged persons in circumstances where the shareholding by such persons will reduce as a consequence of the Proposed Transaction. This is particularly important if one considers the undertaking provided by Neotel, in Annexure A of the Neotel Application, to continue satisfying its obligations under the ECA and the licences issued to it. In IS's view, this undertaking must extend to the empowerment of historically disadvantaged persons, as contemplated in section 2 of the ECA. Put differently, if it is indeed correct that there will be a reduction of Neotel's shareholding by historically disadvantaged persons, it can then not be said that this undertaking holds true insofar as the promotion of historically disadvantaged persons is concerned.

3.2.10 In the absence of any express undertaking from Neotel regarding maintenance or improvement the current levels of ownership by historically disadvantaged persons, it is IS's submission that ICASA cannot find that the Proposed Transaction will promote the empowerment of historically disadvantaged persons.

3.3 **Competition**

3.3.1 Due to the nature of the Proposed Transaction, the Competition Act 89 of 1998 (the "**Competition Act**") also applies to the Proposed Transaction.

3.3.2 IS notes that, in terms of the Memorandum of Agreement between ICASA and the Competition Commission ("**the Commission**") published in *Government Gazette* 23857 of 20 September 2002 ("**MOA**"), ICASA and the Commission have concurrent jurisdiction in respect of certain matters. The MOA was

concluded to establish the manner in which ICASA and the Commission will interact with each other in respect of the investigation, evaluation and analysis of mergers and acquisition transactions and complaints involving telecommunications and broadcasting matters. Clause 2.4 of the MOA provides as follows:

"2.1 Where a transaction requires the approval of both the Commission and [ICASA], parties shall submit separate and concurrent applications to the Commission (in accordance the Competition Act) and to [ICASA] (in accordance the IBA Act, the Broadcasting Act and the Telecommunications Act) for their respective consideration.

2.2 The Commission and [ICASA] shall thereafter make independent determinations on the basis of the criteria and mandates of their respective legislation. In arriving at these determinations the Commission and [ICASA] may consult with each other.

2.4 Where a transaction requires the approval of either the Commission or [ICASA], but not of both, the following procedure shall apply:

2.4.1 The applicant seeking approval shall lodge the application with the regulator with jurisdiction;

2.4.2 If [ICASA] is the regulator whose approval is required, it shall, if it is legally competent under its legislation to take into account considerations of competition, be entitled to liaise and consult with the Commission so as to ensure the consistent application of competition principles to the transaction in question;

2.4.3 The Commission shall be entitled to do likewise when its approval is required, and be entitled to consult with [ICASA] on the regulatory aspects subject to the jurisdiction of [ICASA], in order to obtain the input of [ICASA] on regulatory issues pertaining to the transaction."

- 3.3.3 In terms of clause 2.2 of the MOA, where the approval of the Commission is required, the Commission and ICASA may liaise with one another during an investigation into whether to approve a transaction.
- 3.3.4 Detailed competition related arguments have also been submitted by IS to the Commission in opposition of the Proposed Transaction ("**the Competition Submission**"). ICASA will, of course, also have access to the Commission Submission should it elect to consult with the Commission, as contemplated in the MOA.
- 3.3.5 Notwithstanding that IS's competition arguments have been more fully ventilated in the Competition Submission, in view of the fact that one of the objects of the ECA is the promotion of competition within the ICT sector, IS wishes to highlight certain of these arguments in this submission to illustrate that the Proposed Transaction militates against competition in the ICT sector.

- 3.3.6 The ECA makes provision for the grant of two types of individual licences, namely IECNS and IECS licences. Holders of IECNS licences are able to provide network related services through electronic communications facilities, including satellite systems, fixed systems (circuit and packet switched), mobile systems, fibre optic cables, electricity cable systems and other transmission systems used for the conveyance of electronic communications. Holders of IECS licences are, in turn, authorised to provide electronic communications services over networks operated by IECNS licensees. Unlike in the previous regime under the old Telecommunications Act, 1996, licensees can now hold both an IECS and IECNS licence. As IS understands it, this structure was constructed to increase competition at both the IECNS level and the IECS level by not limiting the type of services that can be provided by licensees. However, while there are more than 400 operational ECNS/ECS licensees, the market is nevertheless still dominated by a handful of large players that established their dominance under the old telecommunications regime ("**the Dominant Players**").
- 3.3.7 In recent months, certain of the Dominant Players have sought to acquire and/or enter into arrangements with some of the smaller players that have traditionally focused on the provision of value added and/or other focussed infrastructure services. Some of these acquisitions are currently being considered by the Commission. IS submits that the Proposed Transaction is illustrative of the fact that the Dominant Players - of which Vodacom is one - are seeking to strengthen their position by exploring consolidation opportunities with the traditionally smaller players. This, in IS's view, is primarily driven by the fact that large consumers are increasingly demanding all-inclusive service bundles from a single provider as opposed to seeking different providers (i.e. both a Dominant Player and a smaller player) for different types of services. Access to the majority of the technologies required in order to provide these bundled services therefore becomes of paramount importance if one were to compete effectively in the market.
- 3.3.8 While convergence in technologies can, at times, be to the benefit of the sector, IS's concern is that this move to consolidate poses additional concerns for the remaining smaller players who have typically relied on the Dominant Players for certain infrastructure and/or technological capacity and who currently provide important competition to the Dominant Players. In particular, the merged entities (controlled by Dominant Players), in circumstances where they are now able to provide a broader spectrum of services to consumers,

are likely to look at ways of reducing the infrastructure and/or technological capacity currently provided to the smaller players. This will, of course, increase the risk of anti-competitive foreclosure and bundling, and also raise barriers to entry. If allowed to continue, this will ultimately result in the South African electronic communications market being dominated by a few merged entities that are able to provide services at all layers of the market and that have little incentive to competitively supply any form of support to the smaller players. This not only goes against the objective in the ECA to promote competition, it also undermines the very reason for opening up the market under the ECA.

3.3.9 In regard to the Proposed Transaction in particular, Vodacom will, following the conclusion of the Proposed Transaction, be able to utilise its mobile infrastructure and Neotel's fixed infrastructure to offer a broader spectrum of services to both corporate and household customers. In other words, while Neotel and Vodacom have traditionally operated in the fixed and mobile space, the merged entity (controlled by Vodacom) will now be transplanted into the services markets - which have traditionally been serviced by the smaller players. In IS's view, it is this leverage that creates competition concerns, as Vodacom will be able to displace smaller players by foreclosing such players from its superior infrastructure. In addition, Vodacom will gain access to Neotel's comprehensive fibre network and will have little incentive to provide access to this fibre network, on a wholesale basis, and on terms that are competitive, to smaller players, including IS's Internet Solutions division. This is particularly important if one considers that IS currently procures access to the NeoLink, NeoMetro and NeoCarrier fixed line infrastructure from Neotel.

3.3.10 In this context, IS submits that it cannot be said that the Proposed Transaction will facilitate or promote competition in the ICT sector.

3.4 Concentration of spectrum

3.4.1 It is common cause within the electronic communications industry that radio frequency spectrum in South Africa is a scarce resource. At present, ICASA controls, plans, administers and manages the use and licensing of radio frequency spectrum. IS is concerned that the Proposed Transaction will result in Vodacom gaining access to the radio frequency spectrum that is currently allocated to Neotel, which will inevitably prejudice, and be to the disadvantage of, Vodacom's competitors (including IS).

3.4.2 It is important to note that the ECA deals extensively with the issue of radio frequency spectrum management in South Africa. IS understands that these provisions are aimed at, *inter alia*, ensuring that the awarding of radio frequency spectrum - a scarce resource - is done in a just and equitable manner. In this regard, IS also points out that section 31 (2A) of the ECA, as amended in terms of the ECA Amendment Act, 2014, states that a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, and the control of a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, to any other person without the prior written permission of ICASA. Section 31(2A) of the ECA now makes it clear that a licence holder will need to obtain ICASA's prior approval in circumstances where the control of a radio frequency spectrum licence issued to it is assigned, ceded or transferred. In IS' view, this amendment was intended to reinforce ICASA's oversight role in relation to the allocation of spectrum, and the prevention of over-concentration of spectrum.

3.4.3 Vodacom and Neotel, as network operators, each currently hold a significant amount of radio frequency spectrum within the 900 and 1200 frequency bands. ICASA has gone to great lengths to allocate substantially the same amount of radio frequency spectrum to Vodacom and Neotel's competitors so as to ensure parity amongst operators insofar as frequency spectrum allocation is concerned and to consequently, ensure that all parties are able to compete effectively in the market. If the Proposed Transaction is approved by ICASA:

3.4.3.1 Neotel's frequency spectrum will provide Vodacom with the execution capabilities necessary to roll-out LTE/4G technology almost immediately. In IS's view, Vodacom's ability to accelerate the roll-out of LTE services will give it an unfair advantage in the building of a national LTE network, as its competitors will remain in the position where they are unable to properly progress their roll-out of LTE/4G technology in the absence of access to additional frequency spectrum. It would therefore be unfair and inequitable for Vodacom to be allowed to gain access to such additional spectrum in circumstances where its competitors are unable to access anymore radio frequency spectrum within the same frequency bands. Moreover, IS submits that the over-concentration of spectrum - which is an inevitable consequence of the implementation of the Proposed Transaction - circumvents that which is envisaged in section 31 (2A) of the ECA; and

3.4.3.2 this will negatively impact the need to ensure equity amongst operators in the allocation and use of frequency spectrum. This is of particular concern given the increased demand for data and data services amongst consumers in the market.

3.4.4 It is IS's firm view that the Proposed Transaction will result in Vodacom being able to unfairly compete with its competitors insofar as the use of radio frequency spectrum is concerned. In the circumstances, IS urges ICASA to adopt a more forward-looking approach in its analysis of the Proposed Transaction and to carefully consider the long term impact that the Proposed Transaction will have on access to, and the provision of data, in South Africa.

3.5 **Re-emergence of Telkom SA's monopoly**

3.5.1 IS is also concerned that Neotel, after the completion of the Vodacom Transaction, may be required by Vodacom to no longer continue with the provision of fixed line telephone services to consumers and to focus primarily on the provision of data services. If this is the case, this will result in the re-emergence of Telkom's monopoly with regard to fixed line telephone services - more especially because the licences which have been issued to Neotel are, for the most part, technology neutral and do not compel it to continue providing fixed line telephone services. This is particularly important if one considers the fact that the original intention for ICASA issuing a licence to Neotel was to eliminate Telkom's monopoly - a fact that was even expressly recorded in the Telecommunications Act. Accordingly, Neotel's abandonment of its fixed line business could therefore be seen to defeat the very reason why Neotel was established in the first instance. This is particularly worrisome if one considers the fact that certain infrastructure was made available to Neotel, at the commencement of its operations, to assist it in its initial phases.

3.5.2 Furthermore, Neotel is a shareholder in Number Portability Company, a company formed by Vodacom (Proprietary) Limited, Mobile Telephone networks (Proprietary) Limited, Cell C (Proprietary) Limited, Telkom SA Limited and Neotel, in which they all hold shares, in order to implement mobile number portability and geographic number portability. The company was established pursuant to the promulgation of the Number Portability Regulations published by ICASA to facilitate number portability in South Africa. The introduction by ICASA of number portability was a competition enabling tool in terms of which a subscriber has the freedom to choose a network operator whilst retaining his/her telephone number. The objective of

this process was to promote consumer choice and thereby increase competition within the ICT sector.

- 3.5.3 It is IS's submission that the effects of the Proposed Transaction will be anti-competitive as Neotel will, in all likelihood, cease to prioritise the provision of fixed line telephone services. In particular, because Neotel is a considerable competitor to Telkom in the provision of fixed line telephone services, ending Neotel's provision of fixed lines services will have a considerable and negative impact on competition in the ICT sector with regard to fixed line telephone services. Moreover, while it has been said that Neotel will, after the implementation of the Proposed Transaction, remain a standalone entity, IS is nevertheless concerned that Neotel (as controlled by Vodacom) will be more inclined to self-deal rather than continue to competitively supply other independent firms (such as IS) with wholesale services, including infrastructure and/or technological capacity. This will of course have an adverse effect on competition generally as it will mean that Neotel will be less of an alternative to Telkom.
- 3.5.4 While Neotel has, from the time that it commenced operations in or around 2006, made great strides in asserting its footprint in the electronic communications landscape, it has faced a number of obstacles in its eight year lifespan. In particular, building both a client base and a sustainable fixed line network has been particularly challenging for Neotel. The fact that Neotel, notwithstanding these obstacles, has managed to achieve what it has achieved in its relatively short lifetime reaffirms IS' position that it is essential for there to always be a viable competitor to Telkom. The removal of Neotel as Telkom's competitor in fixed line services will, in IS' view, negate the positive strides which have been achieved, from a competition point of view, through Neotel's establishment.
- 3.5.5 The issue of Telkom's monopoly is particularly important if one considers the fact that one of the objects of the ECA is to promote competition within the ICT sector.
- 3.5.6 If it is the intention that Neotel will cease to provide fixed line services after the implementation of the Proposed Transaction, it is IS' submission that it can, again, not be said that the Proposed Transaction promotes competition within the ICT sector.

4. PART D: CONCLUSION

- 4.1 Given the seriousness of the matters raised above, IS submits that ICASA should refuse the Neotel Application and not allow Vodacom to acquire all of the shares in Neotel.

- 4.2 Approving the Proposed Transaction will, in IS's view, undermine the objects of the ECA (and the Regulations thereto) as it is apparent that the Proposed Transaction militates against the achievement of certain pertinent objects in the ECA.



Broad Based Black Economic Empowerment Verification Certificate

A Consolidated Verification Certificate Issued to

Vodacom SA

Level 2 Contributor

Measured Entity (Full List of Entities Listed on Page 2 of Certificate)

Company Name Vodacom SA
Registration Number Refer to page 2 of Certificate
VAT Number Refer to page 2 of Certificate
Address Vodacom Corporate Park
 082 Vodacom Boulevard
 Vodavalley
 Midrand - 1685

BEE Status

BBBEE Status Level Level 2

Element Points Obtained	EO: 12.55 points; MC: 10.48 points; EE: 6.27 points; SD: 13.29 points; PP: 22.52 points; ED: 11 points; SED: 12 points
Black Ownership	9.22% Black Ownership; 4.21% Black Women Ownership
Value Adding Vendor	Yes
BEE Procurement Recognition	156%

Issue Date 23/05/2014
Expiry Date 22/05/2015
Certificate Number ELC4780GENBBICT
Version Final
Applicable Scorecard ICT - Generic
Applicable BBBEE Codes ICT Code Gazetted on 6 June 2012

BEE Procurement Recognition Levels

Level	Qualification	%
1	≥ 100 Points	135%
2	≥ 85 but < 100	125%
3	≥ 75 but < 85	110%
4	≥ 65 but < 75	100%
5	≥ 55 but < 65	80%
6	≥ 45 but < 55	60%
7	≥ 40 but < 45	50%
8	≥ 30 but < 40	10%
Non-Compliant	<30	0%



EmpowerLogic (Pty) Ltd

Reg. No. : 1995/000523/07

BBBEE Verification Agency

Per T Lombard

Member - Verification Committee

SANAS Accredited



BVA018

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This certificate is the result of an independent and impartial verification of the BBBEE status of the measured entity measured against the Codes of Good Practice on Broad Based Black Economic Empowerment. The objective of our verification is to verify the validity and accuracy of the BBBEE status represented by the measured entity. EmpowerLogic is not responsible for ensuring completeness of information provided to support the BBBEE status.

