



**Independent Communications Authority of South Africa**

<b>MINUTES OF AN ORDINARY MEETING OF COUNCIL</b>		
<b>Date</b>	<b>05 April 2022</b>	
<b>Time:</b>	<b>08:00</b>	
<b>Venue:</b>	<b>Microsoft Teams</b>	
<b>Present</b>	[REDACTED]	Chairperson
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	
<b>By Invitation</b>	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
	[REDACTED]	
	[REDACTED]	
<b>Partial Attendees</b>	[REDACTED]	Executive: Licensing and Compliance
	[REDACTED]	Executive: Human Resources
	[REDACTED]	Executive: Legal, Risk and CCC
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
<b>Apologies</b>	None	



<b>No.</b>	<b>Action Item</b>	<b>Person Responsible</b>
1.	<p><b>Opening and apologies</b></p> <p>1.1. The Chairperson opened the meeting at 08:00 and welcomed all present.</p> <p>1.2. There were no apologies noted.</p> <p><b>The opening and apologies were noted.</b></p>	<b>Chairperson</b>
2.	<p><b>Declaration of interest</b></p> <p>No conflict of interest was noted.</p>	<b>Council</b>
3.	<p><b>Ratification of the Agenda</b></p> <p>3.1 Item D1.1 was deferred in order for the submission to be revised and aligned with the ending of the National State of Disaster.</p> <p>3.2 The following items were included under General;</p> <p>3.2.1 Telkom; and</p> <p>3.2.2 ITU invitations.</p> <p><b>The agenda was adopted with the above amendments.</b></p>	<b>All</b>
4.	<p><b>Previous minutes of Council</b></p>	<b>Council</b>
4.1	<p><b>Minutes of Council: 28 January 2022</b></p> <p><b>The minutes were adopted as presented.</b></p>	<b>Council</b>
4.2	<p><b>Minutes of Council: 8 February 2022</b></p>	<b>Council</b>



No.	Action Item	Person Responsible
	<p><b>The minutes were adopted as presented.</b></p>	
<p><b>4.3</b></p>	<p><b>Minutes of Council: 18 February 2022</b></p> <p><u>The following inputs were made:</u></p> <p>4.3.1 Paragraphs 5.4 and 5.6 – the ‘ke’ between the brackets were capitalised.</p> <p>4.3.2 Item 8.5 the third line was rephrased to include “which has to reflect the amendments”.</p> <p>4.3.3 Item 8.6 DTCD was corrected to DCDT.</p> <p><b>The minutes were approved subject to the amendments made.</b></p>	<p><b>Council</b></p>
<p><b>5.</b></p>	<p><b>Matters Arising</b></p> <p><b>The Matters Arising was deferred to the next meeting.</b></p>	<p><b>CEO</b></p>
<p><b>6.</b></p>	<p><b>International Engagements</b></p> <p><b>There was no update on International Engagements.</b></p>	<p><b>CEO</b></p>
<p><b>7.</b></p>	<p><b>Licensing of IMT (Standing Item)</b></p> <p>7.1. The Committee will meet with the Department of Communications and Digital Technologies pursuant to a consultation in relation to the social obligations that form part of the licensing process.</p> <p>7.2. The licenses are ready to be issued and the WOAN obligations will be suspended until further consultation.</p>	<p><b>Cllr</b> <span style="background-color: black; color: black;">██████</span></p>



No.	Action Item	Person Responsible
	<p><u>Telkom correspondence</u></p> <p>7.3. The Authority had a meeting with Telkom, with the delegation comprising of the Telkom CEO, their Executive: Legal and Regulatory Affairs and their colleagues from the technical side.</p> <p>7.4. In general, the meeting was robust and constructive.</p> <p>7.5. There were two areas of contention that Telkom requested the Authority to address, being:</p> <p style="padding-left: 40px;">7.5.1 The fate of the unsold Spectrum in the Auction.</p> <p style="padding-left: 40px;">7.5.2 The general view of the Authority and what it intends to do with respect to all the Spectrum roaming and sharing agreements that are out there.</p> <p>7.6. Following the meeting with Telkom, the Authority sent a letter to Telkom outlining what the Authority will do to address Telkom's issues of concern.</p> <p>7.7. Paragraph 2.1 of the aforementioned letter sent to Telkom, states that "the Authority will commence a consultation process by no later than 30 June 2022, on the future licensing of the unsold Lot from the Auction and other IMT Spectrum that is available for licensing except Spectrum that is set aside for the WOAN. The consultation will explore how the Authority can license the Spectrum expeditiously in a pro-competitive manner, in particular the Authority is mindful of the Spectrum holdings emanating from the recently concluded Auction and existing holdings in the sub-one bands".</p> <p>7.8. Paragraph 2.2 states as follows "Following from the findings of the MBSI, the Authority will further put in place the relevant internal structures to commence with the implementations of the findings in relation to the Wholesale National Roaming Service market".</p> <p>7.9. The Authority in a sense committed to a process to achieve that.</p>	



No.	Action Item	Person Responsible
	<p>7.10.1 In its response to the Authority, Telkom reiterated that the meeting between the Authority and Telkom was cordial. The letter expressed that the application could be settled by mutual understanding.</p> <p>7.10.2 Telkom proposed the following changes to the first paragraph of the letter sent to Telkom by the Authority:</p> <p>“By no later than 30 June 2022, the Authority will issue a draft ITA for licensing on an expedited basis, the unsold sub-one from the Auction and whatever Spectrum is available, except for the WOAN Spectrum. In the licensing process in terms of the aforesaid ITA, the Authority will take into account the spectrum holdings emanating from the recently concluded auction, including imbalances in the sub-one Gig bands and the impact of the outcome of the Auction on competition in the mobile bracket. The Authority intends to conclude the envisaged licensing process by end of November 2022”.</p> <p>7.10.3 Telkom also proposed the following wording for paragraph 2.2 of the letter:</p> <p>“The Authority undertakes to conduct a Chapter 10 Market inquiry into the existence and/or desirability and the competition effect on a secondary market for spectrum and any spectrum arrangement between licensees. The inquiry will need an assessment of whether there is a need to prescribe an enabling regulatory framework to regulate any of the activities identified during the inquiry and/or to impose pro-competitive remedies or conditions on any licenses”.</p> <p>7.10.4 Telkom proposed the following wording for the conclusion of the letter:</p> <p>“Once the language on the services above has been finalised the parties can proceed to deal with the logistics regarding the winding down and the conclusion of the litigation”.</p>	



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	<p>7.10. Should agreement with regards to settlement be reached, Telkom made an undertaking to withdraw the case / litigation.</p> <p>7.11. The responding letter by the Authority to Telkom will indicate that by no later than Thursday, Telkom should indicate if they agree to settlement.</p> <p><u>The following comments were made:</u></p> <p>7.12. Council expressed discomfort with the proposed paragraph 2.1 from Telkom which will require that the Authority commit to publishing a draft ITA by 30 June 2022. Council resolved that the 'Draft ITA' be replace with 'Information Memorandum'.</p> <p>7.13. Council was of the view that the date proposed for the auction, cannot be end of November 2022, but rather that it be at the end of the current financial year.</p> <p>7.14. Council inquired if the agreement was that all the spectrum available should be auctioned during this financial year, or will the Authority allow a situation where there will be spectrum that will be auctioned at a later time.</p> <p>7.15. Council was informed that the Authority will not hoard spectrum, and further if there is available spectrum ripe for auctioning, it will be auctioned in the proposed auction.</p> <p>7.16. The response letter to Telkom was amended by Council:</p> <p><u>Paragraph 2.1</u></p> <p>7.19.1 All reference to draft ITA was replaced by Information Memorandum.</p> <p>7.19.2 The date was reflected as "by the end of March 2023".</p> <p>7.19.3 The wording in the first paragraph was amended to read "Except for the spectrum currently set aside for the WOAN".</p>	



No.	Action Item	Person Responsible
	<p><u>Paragraph 2.2</u></p> <p>7.19.4 The following wording was inserted: “this Inquiry will have to consider the findings of the MBSI as well as the outcome of the recently concluded spectrum and any spectrum agreements emanating there from”.</p> <p>7.19.5 The second line was amended to reflect “conduct market inquiry into the existence of secondary market for spectrum”.</p> <p>7.19.6 “The assessment on whether there is a need for regulatory intervention” was inserted and concluded the paragraph.</p> <p><u>Final paragraph</u></p> <p>7.19.7The Authority believes that the amendments above would suffice to dispense off with the litigation. We would appreciate confirmation thereof by no later than end of business Thursday the 07<sup>th</sup> April 2022.</p> <p><b>The update was noted.</b></p>	
8.	<p><b>Application for the transfer of control of an Individual Electronic Communications Network Service licence from Zomerlust Systems Design Cc to Work online Communications ZA Operations (Pty) Ltd</b></p> <p>Management requested that the submission be withdrawn to allow for a reflection on the HDI holdings and engagement with the LRCCC Division.</p> <p><b>The submission was deferred.</b></p>	<p><b>CEO / Executive: Licensing and compliance</b></p>
9.	<p><b>Approval Of Covid-19 Work Guidelines</b></p> <p>The submission was deferred to be aligned with recent developments (i.e. the ending of the National State of Disaster).</p>	<p><b>CEO / Exec: Corporate Services</b></p>
10.	<p><b>Cell C Payment Plan – Spectrum Licence Fees</b></p>	<p><b>CEO / CFO</b></p>



No.	Action Item	Person Responsible
	<p>10.1. The purpose of this submission was to request Council to approve the request by Cell C Limited (Cell C) for a payment plan of Spectrum licence fees for 2022/2023.</p> <p>10.2. On 11 March 2021, the Authority received correspondence from Cell C requesting the Authority to approve a payment plan arrangement for in respect of Cell C's spectrum licence fees for the 2022/23 financial year.</p> <p>10.3. Cell C avers that the request is necessitated by the unforeseen circumstances beyond its control and the negative impact of COVID-19 pandemic and the persistent severe liquidity constraints.</p> <p>10.4. In the 2021/22 financial year, Cell C was allowed to pay the R61,029,000 licence fees in six (6) equal tranches commencing 31 March 2021, 30 April 2021, 30 June 2021, 31 July 2021, 31 August 2021 and 30 September 2021. The agreement was adhered to including payment of interest.</p> <p>10.5. On the basis of the reasons advanced by Cell C, for the request of the payment plan it is the Finance Division's view that Cell C should be allowed to pay the R63,635,098 in six (6) equal tranches commencing 31 March 2022 (R10,605,850), 30 April 2022 (R10,605,850), 31 May 2022 (R10,605,850), 30 June 2022 (R10,605,850) 31 July 2022 (R10,605,850) and 31 August 2022 (R10,605,850). It must be noted that Cell has made their first instalment on 31 March 2022 of R10,605,850.</p> <p>10.6. The indicative interest payable by Cell C totalling R995 933 30 April 2022 (R326 893), 31 May 2022 (R270 231), 30 June 2022 (R196 136) 31 July 2022 (R135 116) and 31 August 2022 (R67 558).</p> <p><u>It was recommended that Council:</u></p> <p>10.7. It was recommended that Council should approve Cell C's request as recommended by EXCO/OPCO.</p>	





No.	Action Item	Person Responsible
	<p><u>The following comments were made:</u></p> <p>10.8. Council expressed that, there has been discussions and debates in the past regarding payment plans which were ultimately approved.</p> <p>10.9. Council resolved that the draft response letter to Cell C should indicate the following with regard to the interest rate: “using the applicable prime rate”.</p> <p>10.10. Council amended paragraph 3 to state as follows: “Cell C is however encouraged to meet its other license fees obligations when they are due to avoid late payment and interest. This approval should be seen as an exception rather than a norm”.</p> <p><b>The submission was approved.</b></p>	
11.	<p><b>Liquid Telecom Payment Plan – Spectrum Licence Fees 2022/2023</b></p> <p>The Chief Financial Officer presented the item.</p> <p>11.1. The purpose of this submission was to request Council to approve the request by Liquid Telecommunications SA Limited (Liquid Telecom) for a payment plan of Spectrum licence fees for 2022/2023 and request the Chairperson to sign the letter to Liquid Telecom regarding the subject above.</p> <p>11.2. On 17 March 2021, the Authority received correspondence from Liquid Telecom requesting the Authority to approve a payment plan arrangement for in respect of Liquid Telecom’s spectrum licence fees for the 2022/23 financial year.</p> <p>11.3. Liquid Telecom avers that the request is necessitated by the cash flow constraints subsequent from participating in the spectrum auction bid which was incremental and above their budget, however Liquid Telecom is pleased with the outcome of the auction and look forward to utilising the acquired spectrum.</p> <p>11.4. In the 2021/22 financial year, Liquid Telecom was allowed to pay the R81, 575 million in three (3) equal tranches</p>	CEO / CFO



No.	Action Item	Person Responsible
	<p>commencing 31 March 2021, 30 June 2021 and 30 September 2021. The agreement was adhered to including payment of interest.</p> <p>11.5. On the basis of the reason advanced by Liquid Telecom, for the request of the payment plan it is the Finance Division's view that Liquid Telecom should be allowed to pay the R85,228,672 in three (3) equal tranches commencing 31 March 2022 (R28,409,557), 30 June 2022 (R28,409,557) and 30 September 2022 (R28,409,557). It must be noted that Liquid Telecom made their first instalment on 31 March 2022 of R28,409,557.</p> <p>11.6. The indicative interest payable by Liquid Telecom totalling R1,618,413, on 30 June 2022 (R1,059,537) and 30 September (R535 590) subject to interest rate changes as announced by National Treasury.</p> <p><u>Recommendation to Council:</u></p> <p>11.7. It was recommended that Council should approve the Liquid Telecom's request as recommended by EXCO/OPCO and request the Chairperson to sign the letter to Liquid Telecom regarding the subject above.</p> <p><u>The following comments were made:</u></p> <p>11.1. Council resolved that the letter indicate the following "using the applicable prime rate".</p> <p>11.2. Council amended paragraph 3 to reflect "Liquid Telecom is however encouraged to meet its other license fees obligations when they are due to avoid late payment and interest. This approval should be seen as an exception rather than a norm".</p> <p><b>The submission was approved.</b></p>	
12.	<p><b>Request for the extension of the contracts for the existing Consumer Advisory Panel members and to commence the recruitment process to fill the positions of the Consumer Advisory Panel</b></p>	<p><b>CEO / Exec: HR</b></p>



No.	Action Item	Person Responsible
	<p>The Executive: Human Resources presented the item.</p> <p>12.1. The purpose of this submission was to request Council to approve:</p> <p>12.1.1 the extension of contracts for the ten (10) existing Consumer Advisory Panel (CAP) members for a period of six (6) months starting from 06 May 2022 to 05 November 2022;</p> <p>12.1.2 the commencement of the recruitment process to fill the positions of the CAP members; and</p> <p>12.1.3 the nomination of shortlisting and interview committee comprising of three (3) Council members and two (2) Executives to observe the recruitment process.</p> <p>12.2. In a meeting held on 22 March 2022, Council were requested to approve the initiation of the recruitment process to fill the eleven (11) positions of the Consumer Advisory Panel (CAP) for a period of two (2) years as well as to nominate the shortlisting and interview committee due to the impending expiry of the contracts for CAP members.</p> <p>12.3. Council resolved that the CAP regulations should be reviewed in 2022/23FY given the gaps and challenges that were identified by Council. This was further supported by the request to extend the contracts of the existing CAP members until such time the regulations have been reviewed and commence with the recruitment of the CAP Members.</p> <p>12.4. Following the engagement between the Human Resources Division and Complaints and Consumer Business Unit pertaining to reviewing the Regulations, it was established that the process will approximately take six (6) months to complete. Since the contracts of current members are due to expire on 05 May 2022, consideration should be given to retaining the existing members by extending their contracts for a period of six (6) months for continual support in the Consumer Advisory function.</p>	



No.	Action Item	Person Responsible
	<p>12.5. While the process of revising the Regulations is underway, Council is requested to consider giving HR permission to commence the recruitment process given that the proposed review would not affect the appointment of new members. Council is further requested to nominate the shortlisting and interview committee for the recruitment process of the new CAP members.</p> <p>12.6. It was recommended that Council should approve:</p> <p>12.5.1 the extension of contracts for the ten (10) existing Consumer Advisory Panel (CAP) members for a period of six (6) months starting from 06 May 2022 to 05 November 2022;</p> <p>12.5.2 the commencement of the recruitment process to fill the positions of the CAP members; and</p> <p>12.5.3 the nomination of shortlisting and interview committee comprising of three (3) Council members and two (2) Executives to observe the recruitment process.</p> <p><u>The following comments were made:</u></p> <p>12.7. Council asked for an explanation regarding the request for extension.</p> <p>12.8. Management informed Council that the extension would allow for the recruitment process of the CAP members, and the current term is ending in May 2022. The extension will also allow the amendment of the Regulations to be concluded.</p> <p>12.9. Council resolved the next steps regarding CAP and the Regulations, and what needs to be amended should be presented under Matters Arising.</p> <p>12.10. Council raised concern regarding the extension of six months and inquired if the extension could not be aligned to a quarterly basis.</p> <p>12.11. Council resolved that by end of September 2022, the conclusion of the CAP recruitment process should be concluded.</p>	



No.	Action Item	Person Responsible
	<b>The submission was approved.</b>	
13.	<p><b>Reasons for the Court Order in the Interlocutory Application in the matter Between MTN And ICASA (Case No 2019/89542)</b></p> <p>The Executive: Legal Risk and CCC presented the item.</p> <p>13.1 On 21 January 2022, the Legal, Risk and CCC Division (the “LRCCC/ Division”) received reasons in relation to the court order (the “Court Order”) granted on 21 January 2021 by the Gauteng Division of High Court of South Africa, Pretoria in an interlocutory application in the matter between Mobile Telephone Networks (Pty) Ltd (“MTN”) and the Authority Case No. 89542/19.</p> <p>13.2 The purpose of this Council Submission is to apprise Council of the reasons of the Court Order, Counsel’s legal opinion on same and to recommend that the Authority abide by the Court Order as there are no reasonable prospects of success in the matter.</p> <p>13.3 On 2 December 2019, the Authority received a review application from MTN (Pty) Ltd (MTN”) in terms of which MTN sought an order from the High Court in the following terms:</p> <p>13.3.1 reviewing and setting aside a decision of the Authority delivered on 3 September 2019 that MTN contravened Regulation 9(1)(b) of Schedule 3 of the Standard Terms and Conditions for Individual Electronic Communications Services Regulations, and that MTN should pay a fine of R5 million within 90 working days, of which R2 million was suspended for 3 years and an order that MTN should desist from committing the same contravention within three (3) years; and</p> <p>13.3.2 Dismissal of the claim of the CCA.</p> <p>13.4 On 3 December 2019, MTN requested the Authority to suspend the fine pending the outcome of the review proceedings. On 5 December 2019, the Authority advised MTN that its decision was effective and binding on MTN unless reversed by a court of</p>	<b>CEO / Exec: Legal Risk and CCC</b>



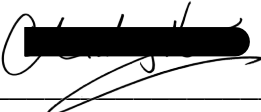
No.	Action Item	Person Responsible
	<p>competent jurisdiction. In light thereof, MTN paid the fine into the Authority's bank account on 13 January 2020.</p> <p>13.5 On 27 January 2020, the Authority filed the Record in terms of Rule 53. Upon receipt of the Rule 53 Record, on 4 February 2020 MTN requested the Authority to furnish it with the audio recordings of the meeting held by Council on 3 September 2019.</p> <p>13.6 On 13 July 2020, MTN filed an application to compel the Authority to release the audio recordings and provide an unredacted transcript of the deliberations of Council. The Authority opposed the application and on 14 April 2021, the matter was heard before the Honourable Justice Thlapi, who delivered a Draft Order on 16 April 2021.</p> <p>13.7 The Authority further obtained a legal opinion from Senior Counsel on the reasonable prospects of success of leave to appeal against the Court Order.</p> <p>13.8 Senior Counsel spotlights that the Constitutional Court in HSF, appreciated the considerations and concerns around the confidentiality of the deliberations of the Judicial Service Commission (JSC). It, however, was not persuaded that the necessary protection of confidentiality could not be adequately provided through a suitable confidentiality regime in relation to the production of the transcripts and audio recordings of the record of the proceedings.</p> <p>13.9 On the interpretation of the case law, Senior Counsel reasons that it will be difficult for the Authority to justify why a confidentiality agreement will not provide adequate protection to the participants of the deliberations as it has given MTN and the Authority the discretion on how to conclude the necessary confidentiality agreement.</p> <p>13.10 Senior Counsel also advises the Authority to reconsider other pending matters in which it is pursuing the same and/or similar legal arguments. As has been previously stated, Senior Counsel concluded that there are no reasonable prospects of success for leave to appeal.</p> <p>13.11 It was recommended that Council:</p>	



No.	Action Item	Person Responsible
	<p>13.11.1 notes the Reasons of the Court Order;</p> <p>13.11.2 abide by the Court Order; and</p> <p>13.11.3 note Senior Counsel’s advice to reconsider matters of a similar nature which are still pending.</p> <p><u>The following comments were made:</u></p> <p>13.12 Council expressed concern that the current judgement could result in Council not being able to express opinions freely without fear or favour.</p> <p>13.13 Council was of the view that a transcript of the original recording, that only redacted the names of who said what should be able to suffice. Council expressed that the problem is when licensees what to individualise Councillors and specific comments made by an individual Councillor.</p> <p>13.14 Council expressed that it should crystalise its principle going forward. Council further expressed that the legal team should be strengthened to address the matter.</p> <p>13.15 Council expressed that the case is a very important case, and judgement. Council expressed concern about the precedence that will result from this judgment, Council further shared that the judgment could end up prejudicing Councillors.</p> <p>13.16 Council requested that the matter be looked into, to explore other avenues that could be taken.</p> <p>13.17 Council resolved to suspend taking a decision, to allow for an urgent consultation between Management and the legal representative team. The results from the consultation will be shared with Council in the coming day, to allow Council to take a formal decision.</p> <p><b>The decision of Council was deferred.</b></p>	



No.	Action Item	Person Responsible
14.	<b>General</b> <b>Telkom Litigation</b> <b>The letters were discussed under item 7.</b>	
15.	<b>Invitation to ITU, Geneva</b> The ITU invited the Chairperson of Council, the invitation was noted by Council. <b>The invitation was to be circulated and approved via a Round Robin Resolution.</b>	<b>Chairperson</b>
16.	<b>Spectrum Outlook Discussion Document</b> The date of the Public Hearing will be discussed by the Committee, and a Round Robin Resolution will be circulated for approval.	
17.	<b>Closure</b> The Chairperson thanked all who were present at the meeting and declared the meeting adjourned at 10:54am.	<b>Council</b>

Signed:  \_\_\_\_\_

**Dr. Charley Lewis**  
**(Acting Chairperson)**

Date: 2022-08-18 \_\_\_\_\_