



Independent Communications Authority of South Africa

MINUTES OF A SPECIAL COUNCIL MEETING		
Date	06 September 2021	
Time:	09:30	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
By Invitation	[REDACTED]	CEO
	[REDACTED]	CAE
	[REDACTED]	Acting Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	External Senior Counsel
	[REDACTED]	External Attorney
	[REDACTED]	External Attorney
	[REDACTED]	Acting Executive LR&CCC
	[REDACTED]	SM: Litigation and Contracts
Apologies	[REDACTED]	Member
	[REDACTED]	Member

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No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>The Chairperson opened the meeting at 09:35 and welcomed all present.</p> <p>The following apologies were noted:</p> <p>1.1. Cllr [REDACTED] was attending a CCC hearing.</p> <p>1.2. Cllr [REDACTED] was on leave.</p> <p>1.3. The Acting Corporate Secretary was having connection troubles and joined the meeting after it had begun.</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>The agenda was adopted as presented.</p>	All
4.	<p>Licensing of IMT (standing Item)</p> <p>The Executive LRCCC presented the item.</p> <p>The purpose of the submission was for Council to consider and approve the proposed draft Court order. The Legal Task Team met on even date and made inputs on the draft Court Order that served before Council.</p> <p>The parties to the litigation have not agreed on a settlement. The only option now available to the Authority is to consent to the relief that is</p>	Acting Executive LR&CCC

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	<p>sought by Telkom in its Notion of Motion. The consent to the relief sought will allow for the Auction process to proceed.</p> <p><u>The draft Court order</u></p> <p>4.1. The draft sets out the terms that Senior Counsel and the legal team advise the Authority to consent to.</p> <p>4.2. The 1st and 2nd paragraph of the draft have previously been presented to Council. These paragraphs agree to the reviewing and setting aside the decision to publish the WOAN ITA and the Auction ITA, and for the two decisions to be referred back to the Authority for reconsideration.</p> <p>4.3. The effect of the paragraph 1 and 2 is that, once the decision is made an order of Court, then the matter will be referred back to the Authority for further consideration.</p> <p>4.4. The 3rd paragraph deals with the terms under which the reconsideration should take place. The terms stipulate that the Authority agrees to a consultation process on competition issues which the litigants have raised concern about.</p> <p>4.5. Paragraph 3.1 makes provision for the publication of the Competition Assessment Document which will then underpin the consultation process.</p> <p>4.6. Paragraph 3.2 makes provision for the time frame in which interested parties can submit their written comments on both the Auction and WOAN ITAs. Two different period lines are reflected as follows:</p> <p>4.6.1 The first is a 30-day period for the interested parties to submit their written comments for the Auction ITA.</p> <p>4.6.2 The second is the 90-day period for interested parties to submit their written comments in respect of the reconsideration for the WOAN ITA.</p>	

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	<p>4.7. The above provision will allow the two ITAs to run separately from each other and to be concluded at different times.</p> <p>4.8. Paragraph 3.3 makes provision for issues which the Authority must take into account in reconsidering the two decisions. The provision will address the issues raised by the parties, and, once the Authority has considered the issues, provision will be made to publish an Information Memorandum in which the Authority will set out its intentions on how it will continue with the licensing process.</p> <p>4.9. Once the Information Memorandum is published, interested parties will be given 14 (fourteen) days to make written representations, which the Authority must consider. Following the consideration, the Authority will then publish a final ITA for both the WOAN and Auction ITA.</p> <p>4.10. Paragraph 4 deals with what the Minister must do, which is:</p> <p style="padding-left: 40px;">4.10.1 To complete the Digital Migration Process (the Minister has indicated that the process will be concluded within 5 (five) months from the date on which the order is made) the Minister's Counsel has confirmed that the Minister is prepared to be bound to the said time period;</p> <p style="padding-left: 40px;">4.10.2 Paragraph 4.2 makes provision for the Minister to consider the Authority's report on the spectrum requirements for 5G report, which was submitted to the Minister in May of 2020. The Minister has indicated that she is pleased with the wording of paragraph 4.2 in the draft Court order.</p> <p>4.11. Paragraph 5 deals with the issue of broadcasters being forced to share their platforms with mobile operators. Provision is made that the broadcasters are not going to be forced to vacate any portion of their analogue spectrum assignments, other than as shall be determined by the Minister, which will happen at the completion on the Broadcasting Digital Migration process.</p>	



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	<p>4.12. The above will address the complaints of e.tv, which has filed papers stating that the auctioning of the spectrum, without their having properly been migrated from the spectrum, infringes their rights. The paragraph addresses the situation where they will not be removed from the platforms, and are not going to be required to share their platforms, until such time that the Broadcasting Digital Migration has been concluded.</p> <p>4.13. Once the draft Court order is approved by Council, the Authority's external attorneys will then file it in the Court electronic platform, called 'Case Lines'. All the parties that have access to the platform will see that the Authority formally concedes to the terms set out in the draft Court order.</p> <p>4.14. The parties will then wait for 15 September 2021, for it to be made an order of Court, and, if any party wants to motivate for a different Court order, they will file their papers and the Authority will respond to such papers should a need so arise.</p> <p>4.15. The Minister is amenable to the draft Court order, and the Authority now has Ministerial support in the draft Court order.</p> <p><u>Comments by Council</u></p> <p>4.16. Council requested that under paragraph three, it be specified if the days referred to are calendar or working days.</p> <p>4.17. The legal team explained to Council that the days being referred to are calendar days as the consultations are not a regulation-making process.</p> <p>4.18. The legal team further informed Council that, if there are no counter papers that are filed before the 15 September 2021, then the draft order will be the order that is made. If there are counter papers filed, before the 15th of September, there will be argument on the terms of the consent order and Council will be informed.</p>	

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	<p>4.19. Vodacom and MTN have not agreed to the terms of the draft Court Order. The draft order is fashioned along the lines of what Telkom is asking for in their Notice of Motion, and what e.tv supports in its papers.</p> <p>4.20. If Telkom files opposing papers to the draft Court Order, it will have to amend its Notice of Motion, and motivate for a different relief. The manner in which the order has been drafted is to come as close as possible to what Telkom sought in its Notice of Motion. So far, the parties have not indicated if they object to the draft Court order.</p> <p>4.21. Council resolved that the Authority will issue a media statement to update the public on the stance of the Authority and the draft Court order.</p> <p>The draft Court order was adopted by Council.</p>	
<p>5.</p>	<p>General</p> <p><u>Municipal Elections 2021</u></p> <p>5.1. The Constitutional Court has made a pronouncement that the Municipal Elections should proceed, which decision has serious implications for the Authority. It means that all the preparations must be concluded urgently.</p> <p>5.2. The recruitment process for election monitors should be concluded as soon as possible. The Authority can only start to perform its duties once the IEC sends the final list of participants to the Authority.</p> <p>5.3. The Election issue will be properly discussed by Council in the near future.</p> <p>5.4. The Election Committee is on stand-by and will get the green light from how the IEC moves after the presentation by the IEC on even date.</p>	<p>Council</p>

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	<p><u>Public Hearings on the National Frequency Plan</u></p> <p>5.5. The Public Hearings will begin on the 07 September 2021, in the afternoon, until 09 September 2021. Council requested that a media statement be published on even date to notify the public on the Hearings.</p> <p><u>Parliament Appearance</u></p> <p>5.6. The Council of the Authority will appear before the Parliament Portfolio Committee on 08 September 2021, to give an update on the status of the litigation.</p>	
6.	<p>Closure</p> <p>The Chairperson thanked all who were present at the meeting and closed the meeting at 10:08 am.</p>	Council
7.	Date of next meeting: TBA	Secretariat

Signed: 
(Chairperson)

Date: 12 October 2021