



**Independent Communications Authority of South Africa**

<b>MINUTES OF A SPECIAL COUNCIL MEETING</b>		
<b>Date</b>	<b>09 December 2021</b>	
<b>Time:</b>	<b>10:15</b>	
<b>Venue:</b>	<b>Microsoft Teams</b>	
<b>Present</b>	[REDACTED]	Chairperson
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
<b>By Invitation</b>	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
<b>Partial Attendees</b>	[REDACTED]	Executive: Policy Research and Analysis
	[REDACTED]	Executive: Licencing and Compliance
	[REDACTED]	Acting Executive: LRCCC
	[REDACTED]	Acting Executive: Engineering and Technology
	[REDACTED]	Manager: Broadcasting Frequency Coordination
	[REDACTED]	Senior Manager: Market Regulation
	[REDACTED]	Specialist: Legislative and Regulatory Drafting
	[REDACTED]	External Legal Counsel
	[REDACTED]	External Legal Counsel
	[REDACTED]	Radio Frequency Specialist
<b>Apologies</b>		

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No.	Action Item	Person Responsible
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. Cllr ██████████ requested to be excused from the meeting at 11:00 as she had a prior engagement.</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><b>The agenda was ratified.</b></p> <p>Note: The Council meeting was held in two (2) sessions.</p>	<b>All</b>
4.	<p><b>Licensing of IMT</b></p> <p><b>The Project Manager presented the item.</b></p> <p>4.1. The purpose of the submission was to recommend that Council approves the vetted Reasons Document, and Invitation to Apply on the licensing process for the International Mobile Telecommunications in respect of the provision of Mobile Broadband Wireless Access Services for Urban and Rural Areas using the complimentary Bands, IMT700, IMT800, IMT2600 and IMT3500 for publication in the Government Gazette.</p>	<b>Cllr ██████████</b>

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No.	Action Item	Person Responsible
	<p>4.2. On 02 October 2020, the Independent Communications Authority of South Africa (“the Authority”) published the Invitation to Apply on the licensing process for International Mobile Telecommunications (“IMT”) in respect of the provision of the mobile broadband wireless access services for urban and rural areas using complimentary bands IMT700, IMT800, IMT2600 and IMT3500.</p> <p>4.3. On 28 December 2020, the Authority received six (06) applications responding to the ITA. Whilst in the process of considering the applications received, on 08 March 2021, the Authority was interdicted by Telkom and e.tv from proceeding with the spectrum auction process published in the Government Gazette 43768 (“ITA”).</p> <p>4.4. On 22 December 2020, Telkom instituted litigation proceedings against ICASA and 12 others in which it sought substituted service (Part A), an order to interdict ICASA from assessing or adjudicating any applications received by it pursuant to the Invitation to Apply (Part B) and an order to review and set-aside ICASA’s decision to publish the ITAs (Part C) (‘Telkom Litigation’).</p> <p>4.5. On 09 March 2021, MTN filed a court application against the Authority’s ITA. In the main, MTN’s submission is that certain aspects of the Auction ITA are legally flawed, inter alia, the provisions relating to the classification of Tier 1 and Tier 2 operators and the inclusion of an Opt-In Scheme (‘MTN Application’).</p> <p>4.6. Subsequently, on 23 March 2021, Vodacom submitted its counter application to have the Court confirm the correct interpretation of the Opt-In Scheme. Vodacom also submitted that it would abide in the relief sought by MTN on the Operator Categorization.</p> <p>4.7. Pursuant to settlement negotiations amongst the litigants in the Telkom Application, on 15 September 2021, the Court granted an order, amongst other things, reviewing and setting aside the</p>	

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	<p>ITA and referring the matter back to ICASA for consideration. This led to the withdrawal of the application filed by MTN.</p> <p>4.8. On 01 October 2021, in light of the court order the Authority published the second IM consulting the public on the competition assessment, and the ITA.</p> <p>4.9. The consultation process was to consider the views of the public in the formulation of the second IM towards the development of the ITA. The IM was subsequently amended on 29 October 2021 by changing the date of receiving the written comments from 01 November 2021 to 02 November 2021 due to the public holiday declared for voting.</p> <p>4.10. On 2 November 2021, the Authority received 10 written representations which the Authority analysed to formulate the second information memorandum (2<sup>nd</sup> IM) together with the Reasons Document.</p> <p>4.11. The Authority received 17 written representations to the 2<sup>nd</sup> IM within the stipulated deadline and analysed the submissions and formulated the Invitation to Apply and Reasons Document.</p> <p>4.12. The Licensing of IMT Spectrum Council Committee (“the Committee”) has analysed the received written representations from the public and has recommended positions and reasons that led to the formulation of the 2021 ITA.</p> <p>4.13. The analysis of the written representations in the Reasons Document covered the following themes:</p> <p>4.13.1 Objectives – The objectives that the Authority aims to achieve with this licensing process;</p> <p>4.13.2 Legal Framework – Covering the legal status of the ITA, publication of the draft ITA, Auction as method to licence the spectrum, categorisations of Tier 1 and Tier 2, Findings of Mobile Broadband Service Inquiry and Data</p>	

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	<p>Service Market Inquiry, Inclusion of sub-1GHz spectrum, and Timetable for consultation;</p> <p>4.13.3 Competition Matters – Findings of Mobile Broadband Service Inquiry and Data Service Market Inquiry, Market Developments, Spectrum constraints, Tier 1 and Tier 2 Operators, Roaming Agreements, Five National Wholesale Operators, and Minimum Spectrum Holding for a credible player;</p> <p>4.13.4 Spectrum for the award - Inclusion of sub-1GHz spectrum, and Spectrum set-aside for the WOAN;</p> <p>4.13.5 Opt-in Lots and Spectrum Floors – covering the Opt-In Round, and Opt-in LOTs;</p> <p>4.13.6 Spectrum Caps – Broadband Fixed Wireless Access Spectrum;</p> <p>4.13.7 Obligations – Effective date of the obligation IMT700 and IMT800, exclusion of the Tier 2 operators from the Coverage Lot;</p> <p>4.13.8 Coverage Obligation – Spectrum Required to meet obligations;</p> <p>4.13.9 Open Access obligation;</p> <p>4.13.10 Spectrum Sharing;</p> <p>4.13.11 Protection of the Karoo Central Astronomy Advantage Areas;</p> <p>4.13.12 Qualification Stage – Submission of applications;</p> <p>4.13.13 Bank Guarantee;</p> <p>4.13.14 Eligibility and Activity; and</p>	

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	<p>4.13.15 Spectrum Valuation.</p> <p>4.14. Having considered the written representations and formulated the positions and reasons, the Committee formulated the 2021 ITA.</p> <p>4.15. The third IM contains the substantial information that is aimed to be contained in the ITA that will be formulated and published after the public consultation on 10 December 2021.</p> <p>4.16. The Definition of Tier 1 and Tier 2 operators:</p> <p>4.13.1 The definition of Tier 1 and Tier 2 Operators has been revised in accordance with the findings in MBSI;</p> <p>4.13.2 A Tier 1 operator is a Wholesale National Operator that has a retail market share in excess of 45% in at least 1 Region; and</p> <p>4.13.3 A Tier 2 operator is a Wholesale National Operator that is not classified as a Tier-1 operator.</p> <p>4.17. It was noted that the Minister has committed to completing the digital migration process by 31 March 2022. If this deadline is met, the Authority will include the IMT700 and IMT800 bands in the licensing process. However, should this deadline not be met, the Authority will continue to license the IMT700, IMT800, IMT2600 and IMT3500 bands but the Authority will consider the proportional payments on the IMT700 and IMT800 based on the availability of these two bands.</p> <p>4.18. Before the auction commences, the Authority will avail the status of the coverage maps on the IMT700 and IMT800 in collaboration with the DCDT.</p> <p>4.19. Taking into consideration submission in relation to the Opt-in lots and opt-in rounds, particularly the issues relating to the MSP2. The Authority has removed the MSP 2 and is left only</p>	

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	<p>with MSP 1 taking into consideration that the objectives for the opt-in round can be met.</p> <p>4.20. Provided there is demand, the Opt-in Round will result in two bidders ending up with MSP as close as possible to the MSP. The Authority has decided to set aside two Lots of 2x5 MHz on both IMT700 and IMT800 and two Lots of IMT2600. In an event that there is an I-ECNS licensee(s) without spectrum holding, the Authority will increase the spectrum set aside to six Lots on IMT2600.</p> <p>4.21. Opt-in Round Rules:</p> <p>4.21.1 After the bidding round closes, the Authority will proceed to determine the winning bids and their associated prices based on the bids submitted during the Opt-in Round. There can be at most two winning bids.</p> <p>4.21.2 The Authority will rank all bids received for MSP from highest to lowest for IMT700, IMT800 and IMT2600. To this extent, the two highest winning bidders will be based on the highest bids to meet the MSP as provided in the table above.</p> <p>4.21.3 To ensure that the Lots from both the IMT700 and IMT800 spectrum are split between the two opt-in successful bidders, the Authority has included the second elimination relating to sub-1 GHz in the ITA, as follows:</p> <p>4.21.3.1 the two successful bidders will end up with the MSP wherein one will acquire the spectrum on the IMT700 and the other in the IMT800;</p> <p>4.21.3.2 the Authority will then rank all bids received on the IMT700 and IMT800 to establish the highest winning bidders on both bands, respectively; and</p>	

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	<p>4.21.3.3 In case there is one highest bidder on the MSP for both IMT700 and IMT800, the highest bidder will be afforded the opportunity to choose the Lots in a preferred band. The second highest bidder will acquire the Lots in a spectrum band which was not chosen by the highest bidder.</p> <p>4.22. Spectrum Caps:</p> <p>4.22.1 The Authority reiterated that it has designed the auction with pro-competitive outcomes in mind. In particular, it is focused on limiting the amount of sub 1GHz spectrum available to large operators when providing overall caps.</p> <p>4.22.2 Conditions that result in an asymmetric allocation of sub-1GHz spectrum (the valuable spectrum that Telkom currently does not have access to) have been explicitly built into the spectrum auction design.</p> <p><u>Recommendation to Council</u></p> <p>4.23. The Committee recommended that Council approves the vetted Reasons Document and Invitation to Apply relating to the licensing process for international mobile telecommunications in respect of the provision of mobile broadband wireless access services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2600 and IMT3500 for publication in the Government Gazette.</p> <p><u>The following comments were made:</u></p> <p>4.24. Council expressed gratitude and commended the Committee on the work done. Council further commended the Committee on ensuring that areas that were raised by stakeholders were addressed.</p>	

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	<p>4.25. Council inquired about paragraph 13.2 regarding the “use it or share it” spectrum for a period of five years. Council enquired if there was any consideration to make the period shorter.</p> <p>4.26. Council requested that the Document be put through another round of review before it is submitted for publication in the Government Gazette. Council expressed that corrections from its side would be shared with the Committee.</p> <p>4.27. The Committee informed Council that the corrections will be effected on the documents before it is submitted for publication.</p> <p>4.28. The Committee informed Council that the principle of “use it or share it” was extensively considered. The period given before sharing will be allowed was made with the caution of allowing operators to establish their networks.</p> <p>4.29. Council enquired about the assignment phase dealing with contagious spectrum, whether there will be fees, and if there will be a financial component or if the process is intended to be administrative.</p> <p>4.30. The Committee informed Council that when the Auction commences, the operators do not bid for the actual location of the lots. The auction has been designed in a manner that the finalisation of the auction, will then give the operators an opportunity to indicate their preferred location within the band itself. The above will be an administrative process.</p> <p>4.31. Council requested that the Committee outline the upcoming process following an approval.</p> <p>4.32. Council expressed that the issues of spectrum sharing, should be handled with care and caution. Council expressed that the aspect of spectrum sharing is not heavily regulated, and that the Authority should try to establish a way forward.</p> <p>4.33. The Committee informed Council that proof reading will be completed at 13:00 on even date, and further that the</p>	

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	<p>documents would be submitted to the printers latest at 10 am on 10 December 2021, for them to be published by the 10<sup>th</sup> of December 2021.</p> <p>4.34. Council requested that the Communication Manager prepare a media statement and share same with Council by 5pm on even date for inputs from Council.</p> <p><b>Council resolved to approve the submission.</b></p>	
5.	General	
6.	Date of next meeting: TBA	Secretariat
7.	<p>Closure</p> <p><b>The Chairperson thanked all who were present at the meeting and closed it at 11:29 pm.</b></p>	Council

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

Date: 26/04/2022

**Dr Keabetswe Modimoeng**

**Chairperson**