




Independent Communications Authority of South Africa

MINUTES OF A SPECIAL COUNCIL MEETING		
Date	15 November 2021	
Time:	08:00	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
By Invitation	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	Acting Executive Engineering and Technology
	[REDACTED]	Acting Executive Legal Risk and CCC
	[REDACTED]	Manager: Broadcasting Frequency Coordination
	[REDACTED]	External Legal Counsel
	[REDACTED]	External Legal Counsel
Apologies	None	

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No.	Action Item	Person Responsible
1.	<p>Opening and apologies</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>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 ratified without changes.</p>	All
4.	<p>Minutes of Council: 05 October 2021</p> <p>The tabling of the minutes was deferred to the next meeting of Council.</p>	Council
5.	<p>Licensing of IMT (Publication of the 2nd Information Memorandum)</p> <p>5.1. The purpose of this submission was to recommend that Council:</p> <p>5.1.1 Approves the Reasons Document notice that informed the formulation of the second IM having considered the written submissions received on 02 November 2021 against the second IM that was published on 01 October 2021 and amended on 29 October 2021;</p>	Cllr 

Kim



No.	Action Item	Person Responsible
	<p>5.1.2 Approves the notice for publication regarding the second Information Memorandum (IM) to consult the public on the process that the Authority intends to follow in licensing the radio frequency spectrum identified for International Mobile Communications (IMT) to provide mobile broadband wireless services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2600 and IMT3500; and</p> <p>5.1.3 To publish the Reasons Document and second IM by 15 November 2021.</p> <p>5.2. On 02 October 2020, 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 published in the Government Gazette 43768 (“ITA”).</p> <p>5.3. On 22 December 2020, Telkom instituted litigation proceedings against ICASA and 12 others. On 09 March 2021, MTN filed the court application against the Authority’s ITA. Subsequently, on 23 March 2021, Vodacom submitted its counter application to have the Court confirm the correct interpretation of the Opt-In Scheme.</p> <p>5.4. 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 ITA and referring the matter back to ICASA for consideration. This led to the withdrawal of the application filed by MTN.</p> <p>5.5. 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>5.6. The Authority received 10 written submissions within the set deadline of receiving the representations, and 08 written</p>	

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	<p>representations were not considered since they were received late.</p> <p>5.7. The Licensing of IMT Spectrum Council Committee (“the Committee”) has analysed the received written representations from the public and has recommended preliminary positions and reasons that led to the formulation of the second IM.</p> <p>5.8. The analysis of the written representations in the Reasons Document covered the following themes:</p> <p>5.8.1 The objectives that the Authority aims to achieve with this licensing process;</p> <p>5.8.2 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 Service Market Inquiry, Inclusion of sub-1GHz spectrum, and Timetable for consultation;</p> <p>5.8.3 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>5.8.4 Spectrum for the award - Inclusion of sub-1GHz spectrum, and Spectrum set-aside for the WOAN;</p> <p>5.8.5 Opt-in Lots and Spectrum Floors – covering the Opt-In Round, and Opt-in LOTs;</p> <p>5.8.6 Spectrum Caps – Broadband Fixed Wireless Access Spectrum;</p> <p>5.8.7 Obligations – Effective date of the obligation on IMT700 and IMT800,</p>	

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	<p>5.8.8 exclusion of the Tier 2 operators from the Coverage Lot;</p> <p>5.8.9 Coverage Obligation – Spectrum Required to meet obligations;</p> <p>5.8.10 Open Access obligation;</p> <p>5.8.11 Spectrum Sharing;</p> <p>5.8.12 Protection of the Karoo Central Astronomy Advantage Areas;</p> <p>5.8.13 Qualification Stage – Submission of applications;</p> <p>5.8.14 Bank Guarantee;</p> <p>5.8.15 Eligibility and Activity; and</p> <p>5.8.16 3.2.15 Spectrum Valuation.</p> <p>5.9. Having considered the written representations and formulated the preliminary positions and reasons, the Committee formulated the second IM using the previous ITA as the base document.</p> <p>5.10. The Authority has received questions inquiring if the Authority will publish a draft ITA.</p> <p><u>Recommendation to Council</u></p> <p>5.11. It was recommended that Council to approve:</p> <p>5.10.1 the Reasons Document notice that informed the formulation of the second IM having considered the written submissions received on 02 November 2021 against the IM that was published on 01 October 2021 and amended on 29 October 2021;</p>	

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No.	Action Item	Person Responsible
	<p>5.10.2 the notice for publication regarding the second IM to consult the public on the process that the Authority intends to follow in licensing the radio frequency spectrum identified for IMT to provide mobile broadband wireless services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2600 and IMT3500; and</p> <p>5.10.3 To publish the second IM and Reasons Document by 15 November 2021</p> <p><u>The following comments were made:</u></p> <p>5.12. Council requested clarity over Paragraphs 6.2 and 6.3 as Council was of the view that there was a contradiction between the two paragraphs. Council further expressed that the section should be clear about what would constitute eligibility.</p> <p>5.13. Council further raised concern over paragraph 10.2.1, with regards to underserved areas. Council was of the view that the data being used is outdated, and Council requested that the Authority address the outdated data.</p> <p>5.14. Council requested clarity on whether the Committee has ensured that most of the critical issues raised during the litigation process have been addressed to avoid further litigation.</p> <p>5.15. The Committee informed Council that there will be a mini auction where the contiguous blocks are selected, the auction will be governed by the auction rules.</p> <p>5.16. The Committee informed Council the Regulations on the under-served areas should be amended. The Committee expressed to Council that it agrees that the data being used is outdated.</p> <p>5.17. The Committee further informed Council that paragraph 6.2 will be rephrased to avoid confusion.</p>	

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	<p>5.18. The Committee informed Council that the Authority has a discretion to assign obligation in terms of spectrum to the Operators. The Committee further informed Council that the obligations can be amended once the Regulations have been updated.</p> <p>5.19. Council cautioned that the preliminary position that the Authority will take, should minimise drastic turns in the future as this is what lead to the previous interdict applications against the Authority.</p> <p>5.20. Council resolved that the second IM be Gazetted on the 16th of November 2021. Council further resolved that one (1) day should be included to extend the closing date for submissions, and further amend the timetable to include one (1) day.</p> <p>The submission was approved by Council.</p>	
6.	<p>Appointment of Executive: Engineering and Technology within the Engineering and Technology Division The Executive Human Resources presented the item.</p> <p>6.1. The purpose of this memorandum was to request approval for the appointment of [REDACTED] to the advertised position of Executive: Engineering and Technology within the Engineering and Technology Division, for a period of five (5) years, effective from the date of assumption of duty.</p> <p>6.2. The position of Executive: Engineering and Technology was advertised externally on 15 May 2021, with a closing date of 03 June 2021. A total number of 38 applications were received and ten (10) screened applications were submitted to the relevant line manager on 04 August 2021.</p> <p>6.3. The shortlisting meeting was held on 24 August 2021. The panel deliberated and selected candidates to be shortlisted for the interviews. No panel member declared a conflict of interest in the position of Executive: Engineering and Technology or in relation to any of the candidates.</p>	CEO / Exec: HR

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	<p>6.4. Five (5) candidates were shortlisted for the position, but three (3) candidates were interviewed. Two (2) candidates withdrew their candidature prior to the interviews being conducted due to failure to submit their case study presentations.</p> <p>6.5. [REDACTED]</p> <p>6.6. [REDACTED]</p> <p><u>The recommended candidate:</u></p> <p>6.7. [REDACTED] Telecommunications in 2004, and a graduate Diploma in Engineering –Telecommunications in 2002, both from the University of Witwatersrand. He also holds a Bachelor of Science in Engineering (Electronics) completed in 1989 from the University of Natal. He is registered as a Professional Engineer with the Engineering Council of South Africa.</p> <p>6.8. [REDACTED] Engineering and Technology.</p> <p>6.9. [REDACTED]</p> <p>6.10. [REDACTED]</p>	

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	<p>[Redacted]</p> <p>6.11. [Redacted]</p> <p>The submission was approved by Council.</p>	
7.	General	All
8.	Date of next meeting: TBA	Secretariat
9.	<p>Closure</p> <p>The Chairperson thanked all who were present at the meeting and closed it at 09:00am.</p>	Council

Signed: 

Date: 26/04/2022

(Chairperson)