

Independent Communications Authority of South Africa

MINUTES OF A SPECIAL COUNCIL MEETING

Date	26 February 2021	
Time:	08:00	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	
By Invitation	[REDACTED]	CEO
	[REDACTED]	CAE
	[REDACTED]	CFO
	[REDACTED]	
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	Executive: LRCCC

No.	Action Item	Person Responsible
1.	Opening and apologies	Chairperson

1 KM

No.	Action Item	Person Responsible
	<p><i>African information and communications technology (ICT) industry, concerning access to the scarce resource of spectrum; the promotion and maintenance of competition in the ICT market; and the reduction of costs and barriers to entry for new participants in the market.”</i></p> <p>4.4 The letter further indicated that, <i>“while the precise details of the mediation including the appointment of an independent mediator, and the discrete issues to be submitted to mediation would need to be agreed upon as soon as possible..., you will be in a position to signal you’re in-principle agreement to stay the review proceedings and submit the disputes arising in the Telkom/e.tv and MTN applications to mediation.”</i></p> <p>4.5 The Authority sought legal advice on the proposal by the Minister (DCDT) which amongst others, sought to clarify the nature of dispute and Council was advised to respond to the Minister in the following manner:</p> <p>4.5.1 That the main relief which Telkom sought in Part C of its application was an order in terms of which ICASA’s decision to publish the WOAN ITA and the Auction ITA was to be reviewed and set aside;</p> <p>4.5.2 The effect of that relief, if it was to be granted, was that the whole auction process and the release of high demand spectrum (which is long overdue) must be delayed for an unknown number of years and ICASA was opposed to that;</p> <p>4.5.3 That the relief which MTN sought in its application was narrow as described in paragraph 3 of the letter to the Minister under reply;</p> <p>4.5.4 Further that Vodacom has filed a counter-application in MTN’s application in which it sought an order relating to the interpretation of certain provisions of the Auction ITA. The effect of the relief which was sought by both MTN and Vodacom was not such that the whole of the WOAN ITA and the Auction ITA should be delayed for an unknown number of years.</p>	<p style="text-align: right;">KM</p>

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	Therefore, there was a big difference between what these operators sought;	
4.5.5	The effect of the relief sought by Telkom, MTN and Vodacom was such that they are so far apart that their disputes with each other and with ICASA are not capable of being resolved through a mediation process within a short period of time and without stalling and further delaying the auction process which was well under way;	
4.5.6	ICASA did not understand Telkom's position to be that there was a possibility of the whole process being saved. ICASA understood Telkom's position to be that Telkom must get what it wants (which was to set aside the whole process and literally start afresh), which was not desirable taking into account the competing interests of the operators and the public interest which ICASA must by law take into account;	
4.5.7	ICASA was mindful of the public importance and strategic significance of the release of and access to high demand spectrum which was the subject of the pending litigation. ICASA has stressed the importance of this in its answering affidavit in the Telkom application in order to impress upon the Court not to interdict the process as that would prejudice the public interest and delay the realisation of the government's strategic objectives. In view of the fact that the litigating parties are so far apart as indicated above, ICASA was not convinced that any mediation process was not going to result in a delay of the auction process, more so because Telkom wants the whole process to be set aside;	
4.5.8	That, whilst it was correct that litigants are free to enter into an out-of-court dispute resolution process, ICASA was of the view that such a process would only serve to delay the release of high demand spectrum;	
4.5.9	That the release of high demand spectrum	Km

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	<p>cannot wait until the year 2023 when, according to Telkom, the digital migration process was scheduled to be concluded. The whole of the Republic was already suffering from the delay in releasing high demand spectrum and every effort must be made to expedite the finalisation of the auction process; and</p> <p>4.5.10 That ICASA was accordingly not agreeable to submitting the issues in dispute to mediation.</p> <p>4.6 Council noted the draft response to the Minister and was in agreement with the manner in which the response was crafted.</p> <p>4.7 Council indicated that the proposed mediation came at a late stage as process were already in place to continue with the licensing of the Spectrum.</p> <p>4.8 Council indicated that it had also incurred costs in the procurement of several service providers including the appointment of the auctioneer.</p> <p>4.9 Council noted that there have been several obstacles and challenges in the process, particularly after the Information Memorandum was issued, and should Council agree with referring the litigation for mediation, that might delay the process by another five (5) years.</p> <p>Council resolved not to take part in the mediation process and would await the judgment on the matter and the Minister to be informed of that decision.</p> <p>Council further resolved that in the event that the outcome of the court matter was not in favour of ICASA, the Authority will take the matter on appeal.</p>	
6.	General	Chairperson
7.	<p>Closure</p> <p>The Chairperson thanked all present at the meeting and closed</p>	<p>Chairperson</p> <p><i>KM</i></p>



No.	Action Item	Person Responsible
	the meeting at 09h30	
8.	Date of next meeting:	Secretariat

Signed:  _____

Date: 10/03/2021

(Chairperson)