

31 January 2020

**Independent Communications Authority of South Africa**

**Attention:** Mr Davis Kgosimolao Moshweunyane

E-mail: [DMoshweunyane@icasa.org.za](mailto:DMoshweunyane@icasa.org.za)

Dear Mr Moshweunyane

**SUBMISSION ON THE INFORMATION MEMORANDUM ON IMT SPECTRUM ASSIGNMENT**

1. We refer to the Authority's "Notice on the Licensing Process for International Mobile Telecommunications Spectrum, inviting comments in respect of the provisioning of mobile broadband wireless open access services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2300, IMT 2600 and IMT3500<sup>1</sup> ("**the Information Memorandum**").
2. ISPA has consulted with its membership and sets out its submissions below.

**Interest in the Information Memorandum**

3. ISPA's members are competitors in the provision of electronic communications services (ECS) such as Internet access over their own- or third-party networks.
4. As such they will not be direct participants in the assignment process.
5. It is inarguable that the market for Internet access services provided over fixed networks in South Africa is characterized by high levels of competition and low levels of market concentration.
6. In contrast, the Competition Commission's final report in its Data Services Market Inquiry ("**the Commission report**") and the Authority's Discussion Document on its Mobile Broadband Services Inquiry ("**the MBS Discussion Document**") have confirmed competitive failures in the retail market for Internet access services provided over mobile networks.
7. ISPA's members have a direct interest in the Information Memorandum to the extent that it seeks to remedy competitive failures in the retail mobile broadband market through the imposition of obligations on successful participants in the assignment process.
8. It bears stating that the opportunity cost to South Africa of not assigning available spectrum is incalculable and that this process represents a watershed moment as the country effectively tries to negotiate a better deal with those awarded rights to use high-demand spectrum.
9. ISPA pledges its support to facilitate the speedy conclusion of this process in whatever manner it can.

---

<sup>1</sup> Notice 597, GG 42820, published 1 November 2019.

## **Submissions on questions raised in the Information Memorandum**

### 10. Assignment of IMT700, IMT800, IMT2600 spectrum:

10.1. ISPA has no submissions regarding the lots proposed.

### 11. Assignment of IMT2300, IMT3500 spectrum:

11.1. ISPA submits that there is insufficient detail in the Information Memorandum on these bands to make any meaningful response.

11.2. Notwithstanding earlier comments about the need to put spectrum to work, it appears that the initiative to include these bands may be premature.

11.3. Most importantly, the inclusion of these bands at this time will complicate a process that needs to be kept as simple as possible.

### 12. Reserve price and spectrum caps

12.1. ISPA supports provision for varying reserve prices per lot and spectrum caps but has no specific submissions in this regard.

12.2. In considering the principles informing the setting of reserve prices there is a concern about auction design and whether – given the challenges experienced in the local MNO industry – there will be demand for all of the lots proposed in the Information Memorandum.

12.3. This would in turn bring into question the characterization of this spectrum as being “high-demand”.

12.4. Sharing agreements such as that between Vodacom and Rain, the availability of wholesale services from Liquid Telecom and question marks over the future of Cell C and its substantial spectrum holdings have already alleviated spectrum constraints to some extent.

12.5. Pent-up demand for spectrum that exists is – accurately – the result of policy and implementation failures.

12.6. As such, ISPA submits that notions of scarcity do not justify the imposition of a high reserve price.

12.7. ISPA supports the setting of low reserve prices which recognize that broader socio-economic benefits to be realized must be prioritized over short-term windfall gains to the fiscus. Policy objectives relating to the cost to communicate, transformation, universal access and competition will self-evidently not be realized if high reserve prices are set.

12.8. There is a likelihood under the current auction design that successful participants will end up paying the reserve price (i.e. in conditions where there the number of participants is equal to or less than

the number of lots). If this reserve price is high this will set a precedent for what is to be paid for equivalent assignments in future.

### **Obligations**

13. In finalizing an ITA, the Authority will need to take into account the Commission report and the MBS Discussion Document, with specific references to pro-competitive measures proposed in both.
14. These processes are strongly inter-related and must be treated as such.
15. The co-existence of these processes also represents a potential complicating factor in that there must be a consistent approach between them. ISPA urges the Authority to work closely with the Commission to ensure that any overlap is managed and also to ensure that the obligations to be imposed through the assignment process are aligned with potential outcome of the MBS Inquiry.
16. Uplink, throughput and coverage obligations for the Industry
  - 16.1. ISPA submits that these obligations appear highly aspirational.
  - 16.2. It is important that we learn from previous failures in designing, imposing and enforcing obligations of this nature.
  - 16.3. ISPA is concerned that a process for determining underserved areas has the potential to significantly delay the finalization of the licenses to be issued to successful participants. The Under-Served Area Regulations 2012 have not been updated as required and will have to be revised, taking into account concepts such as “meaningful connectivity”<sup>2</sup> in a South African context.
17. Open access obligations for the Industry
  - 17.1. The term “Mobile Virtual Network Operator” or “MVNOs” is generic, covering a variety of commercial and technical models. These range from “brand resellers” to “full MVNOs” depending on the extent to which the MVNO operator gains access to the network of the host MNO.
  - 17.2. There is a vast difference between these models. The Authority should be specific in framing the obligation and it is likely that a regulatory framework will need to be emplaced.
  - 17.3. ISPA notes that amendments similar to those contemplated by the now withdrawn Electronic Communications Amendment Bill<sup>3</sup> (“EC Amendment Bill”) would provide a framework for meaningful engagement by MVNOs (and existing SMME licensees) with and increased competition within the mobile data services market. Amendments such as those contemplated by the EC Amendment Bill would furthermore allow for the imposition of broader wireless open

---

<sup>2</sup> [https://www.itu.int/dms\\_pub/itu-s/opb/pol/S-POL-BROADBAND.20-2019-PDF-E.pdf](https://www.itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.20-2019-PDF-E.pdf)

<sup>3</sup> Bill 31 of 2018, published 31 August 2018.

access conditions on licensees assigned spectrum in Lots B, C, D and E by the current licensing process.

18. Wireless open access network obligations

- 18.1. ISPA supports of the obligations set out in paragraph 6.4 of the Information Memorandum, particularly those pertaining to wholesale access to passive and active infrastructure and the provision of seamless national roaming.
- 18.2. However, the reasons for the underwhelming success of the current access regime must be understood and incorporated.
- 18.3. ISPA encourages the Authority to take all reasonable measures to ensure that the process detailed in paragraph 6.4.9 unfolds smoothly and that the resources needed for the resolution of disputes and/or performance of investigations are in place.

19. Social obligations for the Industry

- 19.1. ISPA notes the Authority's ongoing engagement with the Competition Commission and encourages the Authority to seize the opportunity and move to implement and/or reinforce the various recommendations made within the Competition Commission's final report.

**Conclusion**

20. ISPA would welcome the opportunity to engage further with the Authority and notes its interest in participating in any public hearings which may be conducted in respect of the current licensing process.

Regards,