

**DELIVERED BY EMAIL**

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3 February 2021

Dear Sirs

**TELKOM SA SOC LTD // THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
& 12 OTHERS [CASE NUMBER: 66778/2020]**

- 1 We refer to the above matter and the Rule 53 Record electronically delivered on 27 January 2021.
- 2 We have considered the Record, and have noted that various documents have not been included therein. The Record is therefore incomplete.
- 3 We urgently request that all documents and audio recordings (and/or transcripts of such recordings) listed in Annexure "A" hereto be included in the Record and copies thereof be provided to ourselves.
- 4 Kindly provide the complete Record on or before close of business on Friday, 5 February 2021.
- 5 Our client's rights are reserved.



Yours faithfully

Mr C Manaka

**WERKSMANS ATTORNEYS**

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITHOUT SIGNATURE.

## **ANNEXURE A: RULE 53 RECORD DOCUMENT REQUEST**

### **1 IMT SPECTRUM AUCTION**

- 1.1 The IMT Committee project plan, program and schedule of all meetings;
- 1.2 Agenda and minutes of any and all IMT Committee meetings;
- 1.3 Transcripts or recordings of any and all IMT Committee meetings;
- 1.4 Records (including electronic records) of any and all information made available to IMT Committee members and considered during its deliberations;
- 1.5 Procedures and operational rules of the IMT Committee as approved by the IMT Committee Chairperson;
- 1.6 Any and all documentation and electronic records pertaining to the appointment of Acacia Economics, Cenerva and Real Wireless (“Service providers”) including final contracts;
- 1.7 Any and all correspondence between the IMT Committee and the Service providers;
- 1.8 Any and all documents and electronic records pertaining to the appointment of other consultants or service providers;

- 1.9 Any and All recommendations, reports and presentations from the IMT Committee to Council, including those pertaining to:
  - 1.9.1 the Information Memorandum (“IM”);
  - 1.9.2 IM assessment and findings;
  - 1.9.3 Invitation to Apply (“ITA”);
  - 1.9.4 ICASA responses to the industry questions;
  - 1.9.5 Reasons document;
  - 1.9.6 Competition Assessment;
  - 1.9.7 Assessment of reserve prices;
  - 1.9.8 Summary analysis of the Policy Directions presented at the Special Council meeting held on 28 September 2020;
- 1.10 Any and all documentation and electronic records including assessments and recommendations, pertaining to the market structure and competition;

- 1.11 Any and all documentation and electronic records pertaining to the Authority's assessment, meetings with the Department of Communications and Digital Technologies ("the DCDT") , industry, and all relevant stakeholders pertaining to the use of the 700 MHz and 800 MHz as well as the completion of the digital migration process;
  
- 1.12 Minutes of any and all Council meetings where matters pertaining to the IMT spectrum licensing process were discussed (including IM, ITA, ICASA Responses, Reasons Document, appointment of service providers, correspondence from industry stakeholders as well as Ministers and the Competition Commission), including, but not limited to:
  - 1.12.1 The minutes of the Council meeting held on 3 December 2019;
  
  - 1.12.2 The minutes of the Council Meeting held on 18 June 2020;
  
  - 1.12.3 The minutes of the Council meeting held on 2 July 2020;
  
  - 1.12.4 The minutes of the Council meeting held on 28 July 2020.
  
- 1.13 Any and all documentation and electronic records pertaining to the competition assessment by the IMT Committee and Council pertaining to the licensing of IMT spectrum through the auction;

- 1.14 Any and all correspondence between ICASA and the Competition Commission pertaining to the auctioning process as well as the DSMI and MBSI processes;
- 1.15 Any and all correspondence between ICASA and Ministers including Ministers of DCDT, Treasury and Trade and Industry pertaining to the spectrum licensing process and the formulation of the Policy of High Demand Spectrum and the Policy Directions pertaining to the licensing of the WOAN;
- 1.16 Any and all information, reports and recommendations pertaining to *inter alia* international benchmark studies or assessments, study tours, case studies, and the like undertaken by the Authority pertaining to the licensing of IMT high demand spectrum;
- 1.17 Any and all correspondence including letters between industry and the Authority and/or the Council pertaining to the auction process as well as minutes of Council meetings were such have been discussed;
- 1.18 Any and all Council resolutions pertaining to the auctioning process;
- 1.19 Any and all documentation including electronic records pertaining to the appointment of an auctioneer for the auction, including, but not limited to, minutes of Council meetings and resolutions;

- 1.20 Any and all documentation including electronic records pertaining to any joint sessions between IMT Committee and the WOAN Committee.

## 2 **WOAN LICENSING**

- 2.1 The Council resolution pertaining to the establishment of the WOAN Special Committee (WOAN Committee);
- 2.2 Report from the WOAN Committee pertaining to its analysis of the technical, legal and economic aspects of the WOAN (dated 23 August 2019);
- 2.3 Any and all documentation and electronic records pertaining to assessments, recommendations and reports pertaining to the determination of the amount of spectrum to be awarded to the WOAN;
- 2.4 WOAN Committee project plan, program and schedule of all meetings;
- 2.5 The Agenda and minutes of all WOAN Committee meetings;
- 2.6 Any and all transcripts or recordings of all WOAN Committee meetings;
- 2.7 Any and all records of all information and/or documentation made available to WOAN Committee members and considered during its deliberations;

- 2.8 Procedures and operational rules of the WOAN Committee as approved by the WOAN Committee Chairperson;
- 2.9 Documentation including electronic records pertaining to the appointment of any service provider including the final contracts concluded between the Authority and such service providers;
- 2.10 Any and all correspondence exchanged between the WOAN Committee and service providers;
- 2.11 Any and all correspondence exchanged between the Council and the WOAN Committee including reports, recommendations and presentations;
- 2.12 Any and all recommendations, reports and presentations from the WOAN Committee to Council including, but not limited to, those pertaining to:
  - 2.12.1 the Information Memorandum ("IM");
  - 2.12.2 IM assessment and findings;
  - 2.12.3 WOAN Invitation to Apply ("ITA");
  - 2.12.4 Reasons document;



- 2.12.5 Competition Assessment; and
- 2.12.6 Industry Workshop;
- 2.13 Any and all documentation including electronic records pertaining to the assessment and recommendations on the market structure, consideration of the 5-player market (including WOAN) construct, etc;
- 2.14 Any and all minutes of Council meetings where matters pertaining to the WOAN Licensing process were discussed (including IM, ITA, ICASA Responses, Reasons Document, WOAN Workshops, appointment of service providers, correspondence from industry stakeholders as well as Ministers and the Competition Commission);
- 2.15 Any and all documentation including electronic records pertaining to any competition assessment by the WOAN Committee and Council on the licensing of the WOAN;
- 2.16 Any and all correspondence between ICASA and the Competition Commission pertaining to the WOAN licensing;
- 2.17 Any and all correspondence between ICASA and Ministers including Ministers of DCDT, Treasury and Trade and Industry pertaining to the WOAN licensing;

- 2.18 Any and all correspondence including presentations and reports between ICASA and Government including, but not limited to, Nedlac and the Portfolio Committee;
- 2.19 Any and all information, reports and recommendations pertaining to international benchmark studies or assessments, study tours, case studies, and the like undertaken by the Authority pertaining to the assessment and licensing of the WOAN;
- 2.20 Any and all correspondence between industry stakeholders and Council pertaining to the WOAN licensing process as well as minutes of Council meetings where such have been discussed;
- 2.21 Any and all Council resolutions pertaining to the WOAN licensing process;
- 2.22 Any and all documentation including electronic records pertaining to any joint sessions between IMT Committee and the WOAN Committee.

### **3 MBSI**

- 3.1 The Council resolution pertaining to the appointment of the Committee dealing with the MBSI ("MBSI Committee");

- 3.2 The MBSI Committee project plan, program and schedule of all meetings;
- 3.3 Agenda and minutes of all MBSI Committee meetings;
- 3.4 Any and all transcripts or recordings of MBSI Committee meetings;
- 3.5 Any and all records of all information made available to MBSI Committee members and considered during its deliberations;
- 3.6 The procedures and operational rules of the MBSI Committee as approved by the MBSI Committee Chairperson;
- 3.7 Any and all documentation including electronic records pertaining to the appointment of any service provider including the final contracts concluded between the Authority and such service providers;
- 3.8 Any and all correspondence between the MBSI Committee and service providers;
- 3.9 Minutes of all meetings held between the MBSI Committee and industry players pertaining to spectrum;

- 3.10 Any and all correspondences between the Authority and/or the Council and the MBSI Committee including reports, recommendations and presentations;
- 3.11 Any and all recommendations, reports and presentations from the MBSI Committee to Council;
- 3.12 Any and all documentation including electronic records pertaining to consideration by the MBSI Committee of the spectrum sharing arrangements involving Vodacom and MTN on the one hand and other licensees namely Liquid, Cell C and Rain;
- 3.13 Any and all recommendations, reports and presentations by MBSI Committee to Council pertaining to Spectrum Arrangements;
- 3.14 Any and all minutes of Council meetings where Spectrum Arrangements were discussed;
- 3.15 Any and all minutes of Council meetings where matters pertaining to the MBSI were discussed;
- 3.16 Any and all correspondence between the Authority and the Competition Commission pertaining to the MBSI and the DSMI;

- 3.17 Any and all minutes of any meetings held between ICASA and the Competition Commission pertaining to the MBSI and DSMI;
- 3.18 Any and all information, reports, recommendations, etc. pertaining to international benchmark studies or assessments, study tours, case studies, and the like undertaken by the Authority pertaining to the MBSI and spectrum arrangements;
- 3.19 Any and all correspondence between industry and the Authority pertaining to the MBSI as well as minutes of Council meetings where such have been discussed;
- 3.20 Any and all Council resolutions pertaining to the MBSI and the spectrum arrangements.

#### **4 SPECTRUM ARRANGEMENTS**

- 4.1 Any and all correspondence between industry stakeholders and the Authority regarding the spectrum arrangements;
- 4.2 Any and all reports, presentations, measurements, analysis and submissions to Council by management, Committees or staff regarding the spectrum arrangements;

- 4.3 Any and all correspondence between the Authority and the Competition Commission pertaining to the spectrum arrangements;
  - 4.4 Minutes of all Council meetings where spectrum arrangements were discussed;
  - 4.5 Any and all Council resolutions pertaining to spectrum arrangements;
  - 4.6 Any and all correspondence pertaining to any Council Committee established to investigate the spectrum arrangements;
  - 4.7 Any and all documents including electronic records pertaining to the Council Committee work program, meetings, minutes, reports, recommendations, procedures, etc.
- 5 5G REPORT FOR THE MINISTER (AS PER GOVERNMENT GAZETTE 42597, NOTICE NO. 1013 OF 2019)**
- 5.1 Any and all correspondence between the Minister DCDT and the Authority and/or the Council regarding the 5G study;
  - 5.2 Any and all reports, presentations and submissions to Council by management, Council Committees or staff regarding the 5G Report;
  - 5.3 Minutes of all Council meetings where the 5G report was discussed and/or approved;

- 5.4 Any and all Council resolutions pertaining to the 5G report to the Minister;
- 5.5 Any and all correspondence pertaining to any Council Committee established to prepare the 5G report, if any;
- 5.6 Any and all documents including electronic records pertaining to the Council Committee work program, meetings, minutes, reports, recommendations, procedures, etc;
- 5.7 Any and all documentation including electronic records pertaining to the consideration and approval by Council of the 5G Report submitted to the Minister;

## 6 **COVID-19**

- 6.1 Any and all correspondence between industry and ICASA regarding the application, approval and use of the temporary spectrum assigned under the COVID-19 regulations;
- 6.2 Minutes of all Council meetings where the COVID-19 regulations and its amendments, temporary spectrum applications and approval and use of temporary spectrum were discussed including the extension of the use of the temporary spectrum;

- 6.3 Any and all Council resolutions pertaining to the formulation of the COVID-19 regulations and its amendments, spectrum applications and licensing and use thereof;
- 6.4 Copies of any and all reports from industry regarding the use of the temporary assigned spectrum including spectrum sharing arrangements;
- 6.5 Any and all reports, recommendations and inputs to Council from the Authority management or staff pertaining to the calculation of fees pertaining to the use of the temporary spectrum including the occupancy and availability of the 700 MHz and 800 MHz frequency bands.

## **7 SUBMISSIONS TO COUNCIL**

In addition to the above, and to the extent that same have not already been requested above, the following specific submissions and or reports considered by Council are requested:

- 7.1 The submission on an ITA tabled by the IMT Committee at the Council meeting held on 18 June 2020 referred to in paragraph 5.2 of the minutes of the Special Council meeting held on 28 September 2020, together with the:
- 7.1.1 Policy Considerations;



- 7.1.2 Analysis of the IM;
  - 7.1.3 Written representations;
  - 7.1.4 Legal opinion on 30% uptake;
  - 7.1.5 Draft Reasons Document;
  - 7.1.6 Competition Assessment Report;
  - 7.1.7 Derivation of Reserve Price Report;
  - 7.1.8 Project Risks;
  - 7.1.9 Legal vetting on truncated timelines; and
  - 7.1.10 The Authority's draft Media Statement.
- 7.2 Any and all submissions tabled and considered at the Council meeting held on 2 July 2020, including, but not limited to;
- 7.2.1 the draft ITA considered and approved at the aforementioned meeting, referred to in paragraph 5.3 of the minutes of the Special Council meeting held on 28 September 2020; and

- 7.2.2 senior council's opinion regarding the 30% offtake.
- 7.3 Any and all submissions tabled and considered at the Council meeting held on 28 July 2020.
- 7.4 Any and all submissions tabled and considered at the Special Council meeting held on 28 September 2020 including, but not limited to:
- 7.4.1 The Analysis Report of the relevant directions of the Policy on the Licensing of a Wireless Open Access Network;
- 7.4.2 The presentation presented to the Council by Councillor Semane;
- 7.4.3 The representations received from potential applicants on the impact of Covid-19 to business operations discussed at the meeting;
- 7.4.4 The IMT Committee submission on the ITA with supporting documentation presented and discussed at the Special Council meeting held on 28 September 2020;
- 7.4.5 The revised draft ITA and Reasons document considered at the Special Council meeting held on 28 September 2020;

- 7.4.6 The Legal Opinion on Procurement of Capacity from proposed WOAN;
- 7.4.7 The presentation on the consideration of the Policy Direction presented by the Senior Manager: Legal & Regulatory Affairs;
- 7.4.8 The presentations referred to in paragraph 5.39 of the minutes of the Special Council meeting held on 28 September 2020 (to the extent that same are not requested above);
- 7.5 Any and all submissions tabled and considered at the Special Council meeting held on 29 September 2020 including, but not limited to:
  - 7.5.1 The draft ITA tabled and considered by Council; and
  - 7.5.2 The reasons advanced by Councillor Semane referred to in paragraph 6.10 of the minutes of the Special Council meeting held on 29 September 2020.
- 7.6 Any and all submissions tabled and considered at the Special Council meeting held on 30 September 2020, including, but not limited to:
  - 7.6.1 The draft ITA for the WOAN considered and approved for publication; and

7.6.2

The revised IMT ITA considered and approved for publication.