



## Independent Communications Authority of South Africa

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### COUNCIL DECISIONS – 07 May 2019

ITEM NO.	AGENDA ITEM	DECISION
<p><b>1.</b></p>	<p><b>Recommendation by Complaints and Compliance Committee to Council in the matter between Consumer and Complaints Affairs and Sybaweb (Pty) Ltd.</b></p> <p>The purpose of the submission was to table the recommendation of the Complaints and Compliance Committee in the matter between the Consumer and Compliance Affairs and Sybaweb (Pty) Ltd.</p> <p>1.1 On 22 October 2018, the CCA filed a complaint with the CCC for investigation in terms of Section 17B (a) (i) of the Independent Communications Act of South Africa (ICASA) Act 13 of 200, which provides that the CCC must investigate, and hear if appropriate, and make a finding on all matters referred to it by the Authority.</p> <p>1.2 In a letter dated 08 November 2019, the Office of the CCC addressed a PAJA letter which contained allegations of contravention against Sybaweb and requested the licensee to respond to the allegations within fifteen days in accordance with the 2010 Regulations Governing the aspects of the CCC.</p>	<p><b>The recommendation to Council was approved.</b></p>

	<p>1.3 The CCA alleged that Sybaweb contravened section 13 (1) of the Electronic Communications Act no .36 of 2005 (ECA) by transferring the control of its ECS and ECNS Licences to Siyafunda Family Trust without the requisite prior written permission of the Authority to transfer the control of its licences.</p> <p>1.4 Section 13(1) of the ECA provides as follows: <i>“an individual licence may not be let, sublet, assigned, ceded or in any way transferred, and the control of an individual licence may not be assigned, ceded or in any way transferred to any other person without prior written permission of the Authority”</i>.</p> <p><b>Recommendation to Council.</b></p> <p>1.5 That it finds the transfer of a controlling share of Sybaweb according to its Form O dated 21 November 2016 to be a nullity from the outset.</p> <p>1.6 Direct Sybaweb to do the following:</p> <p>(a) Immediately cancel the registration following the transfer of control with the Companies and Intellectual Property Commission and copy ICASA with such cancellation and the de-registration thereof with the CIPC.</p> <p>(b) Re-apply to ICASA for the transfer of control of Sybaweb; and</p> <p>(c) Await the resolution of ICASA on that regard.</p>	
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<p><b>2.</b></p>	<p><b>Recommendation by Complaints and Compliance Committee to Council in the matter between Democratic Alliance and the South African Broadcasting Corporation</b></p> <p>The purpose of the submission was to table the recommendation of the Complaints and Compliance Committee in the matter between the Democratic Alliance (“DA”) and the South African Broadcasting Corporation(“SABC”)</p> <p>2.1 On 27 August 2018, DA through its leader in KwaZulu-Natal, Mr Zakhele Mcwango lodged a complaint with the CCC for investigation in terms of section 17B of the Independent Communications Authority of South Africa (ICASA) Act No.13 of 2000.</p> <p>2.2 The complaint was not properly formulated, and it lacked detail. The allegations against the SABC were based on a broadcast by Ukhozi FM which took place on 10 June 2018.</p> <p>2.3 During the broadcast ,Siya Mhlongo, a presenter at Ukhozi FM asked a question to the KwaZulu -Natal MEC for Corporate Governance and Traditional Affairs and the question related to the political issue which involved the DA.DA alleged that the MEC used a paid slot which was meant to communicate the government’s work in the province 9and such slot was paid for by the government) to criticize the DA and without the SABC affording</p>	<p><b>The recommendation was noted</b></p>

	<p>DA an opportunity to responds Mhlongo posed a question to the KZN MEC pertaining to a political debate in which a question was raised whether she had influenced state contracts which were granted to her husband and the MEC denied such allegations.</p> <p><b>For Noting by Council</b></p> <p>The CCC's finding was that the complaint was dismissed, therefore no order was advised to Council.</p>	
<b>3.</b>	<p><b>Submission of report on Limpopo and Consolidated 2018-2019 Consumer Education Activations</b></p> <p>The purpose of the submission was to request the Council of ICASA to note the report on the three Consumer Education Events that took place in Limpopo on the 29<sup>th</sup> and 30<sup>th</sup> March 2019, and further note the full year performance of the campaign.</p>	<b>The report was noted</b>
<b>4.</b>	<p><b>Q4 2018/2019 Spectrum Monitoring Report for International Mobile Telecommunications (IMT) and Public Protection and Disaster Relief (PPDR) Bands</b></p> <p>The purpose of the memorandum was to request Council to review and note the IMT and PPDR Spectrum Measurement Report for monitoring conducted in the Northern Cape Province (SKA Area), for Q4, 2018/19.</p> <p>4.1 ICASA was mandated according to Chapter 5 of the Electronic Communications Act 2005 (Control of Radio Frequency Spectrum), to ensure efficient usage and effective management of the radio frequency spectrum.</p>	<b>The recommendation was approved.</b>

	<p>4.2 The International Telecommunications Union (ITU) identified spectrum bands for IMT applications. An outcome of the 2015 World Radio-communications Conference (WRC-15) was the proposal for a globally harmonised Public Protection and Disaster Relief (PPDR) band, co-existing with IMT in the 694-894 MHz frequency range.</p> <p>4.3 The monitoring was conducted from 10 to 16 February 2019, and nine planned points were monitored.</p> <p>4.4 The focus of the monitoring was to derive baseline data of spectrum occupancy in the frequency range of 380 to 3599 MHz. The measurements were performed with the mobile stations only. At each monitoring point, the appropriate level of signal (thresholds) that would be a potentially interfering signal, was stated. Signals measured were then classified as either interfering or not, based on this signal level being exceeded or not.</p> <p>4.5 The 694-894 MHz band includes the IMT700 and IMT800 band frequency ranges and measurements were compared against the TV broadcasting database as the band was still predominantly occupied by analogue TV services.</p> <p>4.6 The measurement results contained in the report serve as a baseline guide for any migration decisions in the spectrum bands that were identified for IMT allocation. This spectrum occupancy results will be shared with the licencing division to</p>	
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	<p>support the licensing of IMT spectrum. Licensee information and TV broadcasting transmitter information were geo-coded, and the coordinates were mapped to assist with the selection of monitoring points</p> <p>It was recommended that Council review and note the spectrum measurement report for monitoring performed in the Northern Cape Province for Q4 of 2018/2019.</p>	
<p><b>5.</b></p>	<p><b>Smart Africa Terms of Reference: Study on the Impact of OTT's on Telecommunications Sector in Africa</b></p> <p>The purpose of the submission was to request Council to approve the comments on the Terms of Reference (ToR) for a study on the Impact of OTTs on the Telecommunications Sector in Africa that was to be conducted on behalf of Smart Africa.</p> <p>5.1 In October 2013, seven African Heads of State adopted the Smart Africa Manifesto in which they committed to provide leadership that facilitated socio economic development through Information Communication Technologies.</p> <p>5.2 The Manifesto was subsequently endorsed by all Heads of State at the African Union 's 22<sup>nd</sup> Ordinary Session Assembly held in Addis Ababa on 30-31 January 2014.</p> <p>5.3 The Council of African Regulators (CAR) was created on 09<sup>th</sup> May 2017, on the side line of the 3<sup>rd</sup> Transform Africa Summit in Kigali, Rwanda. The CAR is a consultative continental body that brings together all ICT Regulatory Authorities with a view to stimulating technological</p>	<p><b>The recommendation was approved.</b></p>

	<p>development in Africa and the creation of a single digital market. It is also used as a platform to strengthen collaboration between African Regulators in the furtherance of the continent 's digital transformation agenda.</p> <p>5.4 On 15 April 2019, the Authority received correspondence from Smart Africa Secretary General requesting comments and observations on the draft ToR relating to the study on the impact of OTTs on the telecommunications sector in Africa.</p> <p>5.5 The request was made in line with the resolutions of both the 6<sup>th</sup> and 7<sup>th</sup> meetings of CAR.</p> <p>5.6 In line with call for Smart Africa to conduct studies and propose recommendations in several areas, such as impact of the OTT's on the Telecommunications sector and the wholesale broadband prices, the Secretary General send a draft ToRs for the Authority 's review and input.</p> <p>5.7 However, in principle, the team was concerned by the:</p> <p>5.7.1 Limited scope of the ToRs as it only focused on the impact of the OTTs on voice and ignores instant messaging. The division recommended that the scope should be broadened to include this element to reflect the true impact of OTTs on the telecommunications sector over the years.</p> <p>5.7.2 Limited time planned for the study. The study was planned to take only four months. Given</p>	
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	<p>the experience with similar studies, the timeframe may not be practical and will hamper the process of collating and analyzing data from operators in different jurisdictions; and</p> <p>5.7.3 Non-inclusion of a bid evaluation criteria. The TORs have not included objective criteria to be used to evaluate the functional capacity of bidders</p> <p><b>Recommendation</b></p> <p>It was recommended that Council approves the editorials and commentary on the draft ToRs relating to the study on the impact of the OTTs on the telecommunications sector in Africa to be conducted on behalf of Smart Africa.</p>	
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**ISSUED BY: Secretariat Office on behalf of Council**