



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue,
Eco-Point Office Park
Centurion

COUNCIL DECISIONS– 24 April 2020

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Council Resolution relating to the decision of Council to refer matters back to the Complaints and Compliance Committee (CCC) for clarity. The Following matters were referred to the CCC:</p> <p>The purpose of the submission was to table the CCC's response in relation to Council's resolution of 21 February 2020 to refer back the CCC recommendations relating to Motheo FM as well as Avoxi (Pty) Ltd for clarity with regards to the CCC findings and recommendations.</p> <p>1.1 Council, on 21 February 2020 resolved to refer the following recommendations of the CCC:</p> <p>1.1.1 In the Realtime Communications versus Avoxi (Pty) Ltd matter, Council approved the recommendations of the CCC, subject to the fine being a minimum set in terms of the applicable Regulations (i.e. R300 000.00 of which 50% must be payable instead of R100 000.00 recommended by CCC).</p> <p>1.1.2 In the Motheo FM matter, Council resolved to refer the matter back to CCC for clarity as regards how the order (as regards sanctions) relates to the</p>	<p>It was resolved that the decisions of the CCC must align with the regulations.</p>

	<p>CCC findings.</p>	
1.2	<p>The CCC's Response in relation to Realtime Communications versus Avoxi (Pty) Ltd was as follows:</p>	
1.2.1	<p>The legal question was whether the CCC was legally permitted to amend or withdraw its decisions when the Council of ICASA refers a matter back to it. The response by the CCC was that it is not legally permissible.</p>	
1.2.2	<p>Council indicated that despite the Regulations been patently clear on the minimum sanction to be imposed, the CCC went against Regulations.</p>	
1.3	<p>Council further resolved on the <i>Avoxi</i> matter that the fine imposed by the CCC be amended to a minimum fine as set out in the Regulations which is an amount of R300 000. The CCC incorrectly imposed a fine of R100 000 of which R50 000 was suspended for three years' subject to the respondent not found guilty of the same offence.</p>	
1.4	<p>The period of suspension of the fine remains the same.</p>	
1.5	<p>CCC's Response in relation to <i>Motheo</i> FM.</p>	
1.6	<p>On <i>Motheo</i> the CCC indicated there was a substantial breakdown of a relationship between the station and the Community.</p>	
1.7	<p>There was no evidence of meetings with the community and the CCC advised Council to</p>	

	<p>order the Board to ensure that meetings should be organised in a satisfactory manner, properly advertised on air, at readily accessible places and duly recorded.</p>	
<p>2.</p>	<p>Mobile Telephone Networks (Pty) Ltd (MTN) and Liquid Telecom SA (Pty) Ltd (Liquid): Application for Spectrum Pooling in terms of Section 6 of the ICT Covid-19 National Disaster Regulations.</p> <p>The purpose of the submission was to request Council to:</p> <p>2.1 Approve the applications submitted by Mobile Telephone Networks (Pty) Ltd (MTN) and Liquid Telecom SA (Pty) LTD (Liquid Telecom) in response to COVID-19 outbreak for Radio Frequency Spectrum sharing in the form of pooling; and</p> <p>2.2 Council to further approve MTN's request for confidentiality in terms of Section 4D of the Independent Communications Authority of South Africa Act No.13 of 2000 (ICASA Act). The reasons advanced was that the agreement was confidential between MTN and Liquid and the disclosure of which will cause harm to the commercial interest of the parties to the agreement.</p> <p>2.3 On 6 April 2020, the Authority published the Information and Communications Technology (ICT) COVID-19 National Disaster Regulations Wherein Radio Frequency Spectrum (RFS) in the 700 MHz, 800 MHz, 2300 MHz, 2600 MHz and 3500 MHz band were made available for licensing on a temporary basis, including use of TVWS.</p>	<p>Application for Spectrum Pooling in terms of Section 6 of the ICT Covid-19 National Disaster Regulations was approved.</p>

2.4 The objective of the COVID-19 Regulations was, amongst others to enable licensees to deal with the anticipated rise in demand for network capacity or data services and enhance their current services.

2.5 Further, Annexure A of the Regulations stipulated the criteria that can be used in the licensing of RFS on a temporary basis. Regulations 6(10) provided that two or more licensees may share RFS assigned to alleviate the challenges of network capacity.

Analysis of the Applications

2.6 On 17 April 2020, the Authority received applications from MTN and Liquid Telecoms for pooling of their assigned 2 x 12 MHz Frequency Division Duplex (FDD) radio frequency spectrum in the IMT1800 band in response to the published Regulations.

2.7 MTN and Liquid Telecom have also submitted a signed agreement on the pooling of their adjacent radio frequency channels in the IMT1800 MHz band for consideration as prescribed by regulation 6(12) of the COVID-19 Regulations.

2.8 MTN and Liquid Telecoms indicated that they have identified radio frequency pooling, amongst others, as means to achieve additional network efficiencies in their efforts to deal with anticipated increase in demand, including changing traffic patterns on

	<p>their networks during the National State Disaster period.</p> <p>2.9 Further, that spectrum pooling will assist to maintain good quality of services to their subscribers.</p> <p>2.10 Additionally, that the pooling of spectrum of MTN and Liquid Telecom in the International Mobile Telecommunications in the 1800 MHz frequency band (IMT1800) will facilitate the handling of the increased radio network load due to COVID-19 shutdown.</p> <p>Technical Analysis</p> <p>2.11 It was indicated that pooling of MTN and Liquid Telecoms assigned RFS will result in a 2 x 24 MHz FDD block in the IMT1800, effectively 2 x 24.4 MHz FDD block including the 2x 200 kHz (0.4 MHz) guard bands for contiguous, spectrum usage. Implementation of a single LTE carrier with higher bandwidth can be easily achieved.</p> <p>2.12 Furthermore, spectrum pooling would allow both MTN and Liquid Telecoms to share (pool) spectrum or aggregated carrier and Radio Access Network (RAN), including the passive network elements, However, the Core network (backhaul and switches/gateways might be independently operated by MTN and Liquid Telecom, and a single carrier can be configured across the pooled spectrum.</p>	
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