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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**GENERAL NOTICE 587 OF 2021**

PURSUANT TO A COURT ORDER ISSUED BY THE NORTH GAUTENG HIGH COURT ON 15 SEPTEMBER 2021 UNDER CASE NUMBER: 2020/66778, THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY PUBLISHES A NOTICE REGARDING THE INFORMATION MEMORANDUM TO ADVISE THE PUBLIC ON THE PROCESS THAT IT INTENDS TO FOLLOW AND CONSULTATION IN RESPECT OF THE LICENSING OF INTERNATIONAL MOBILE TELECOMMUNICATIONS FOR THE PROVISION OF MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND RURAL AREAS USING THE COMPLIMENTARY BANDS, IMT700, IMT800, IMT2600 AND IMT3500, AND INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES (I-ECNS) AND RADIO FREQUENCY SPECTRUM LICENCE FOR THE PURPOSE OF OPERATING A WIRELESS OPEN ACCESS NETWORK (WOAN)

1. On 02 October 2020, the Independent Communications Authority of South Africa ("the Authority") published an Invitation to Apply on the licensing process for International Mobile Telecommunications ("IMT") in respect of the provision of the mobile broadband wireless access services for urban and rural areas using complimentary bands IMT700, IMT800, IMT2600 and IMT3500 published in the Government Gazette 43768 ("ITA").
2. On 28 December 2020, the Authority received six (06) applications responding to the ITA. Whilst in the process of considering the applications received, on 22 December 2020 and 12 January 2021 Telkom and e.tv filed a court application respectively, against the Authority, which culminated in an interdict being issued against the Authority on 08 March 2021, interdicting the Authority from proceeding with the spectrum auction process.
3. On 27 January 2021, MTN filed a court application against the Authority's ITA. In the main, MTN's submission was that certain aspects of the auction ITA were legally flawed, *inter alia*, the provisions relating to the classification of Tier 1 and Tier 2 operators and the inclusion of an Opt-In Scheme.
4. Subsequently, on 23 February 2021, Vodacom submitted its counter application to have the Court confirm the correct interpretation of the Opt-In Scheme. Vodacom also submitted that it would abide by the relief sought by MTN on the Operator Categorization.
5. Pursuant to settlement negotiations amongst the litigants, on 15 September 2021, the Court granted an order, amongst others, reviewing and setting aside the ITA and referring the matter back to ICASA for consideration.
6. In light of the Court Order, the Authority hereby publishes this Information Memorandum ("IM") for public consultation which includes, amongst others, matters related to competition aspects, IMT700 and IMT800 bands and matters stipulated in **Annexure A** on how it impacts on the reconsideration of the ITA.

7. Interested persons are hereby invited to submit written representations, including an electronic version of the representations in Microsoft Word by no later than 12h00 (midday) on **1 November 2021**.
8. Written representations may be directed to:

The Independent Communications Authority of South Africa
350 Witch-Hazel Avenue,
Eco Point Office Park,
Eco Park, Centurion, Gauteng.
Attention:
Mr Davis Kgosimolao Moshweunyane
Tel: +27 (0) 12 568 3497
E-mail: IMTLicensing@icasa.org.za
9. All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons from 16h00 on 05 November 2021 at the ICASA Library or website (www.icasa.org.za) and copies of such representations and documents will be obtainable on payment of a fee.
10. Where persons making representations require that their representations, or part thereof, be treated confidentially, then an application in terms of section 4D of the ICASA Act, 2000 (Act No. 13 of 2000) must be lodged with the Authority. Such an application must be submitted simultaneously with the representations. Respondents are requested to separate any confidential material into a clearly marked confidential annexure. If, however, the request for confidentiality is refused, the person making the request will be allowed to withdraw the representations or document in question.
11. The guidelines for requesting confidentiality are contained in *Government Gazette* No. 41839 (Notice 849 of 2018).

12. An outline of the process that the Authority intends to embark on is as follows:

Key Activities	Envisaged Dates
1 Publication of the IM for Consultation	01 October 2021
2 Workshop on the IM	15 October 2021
3 Closing date for receiving public representations to the IM	01 November 2021
4 Publication of 2 nd IM for consultation	15 November 2021
5 Closing date for Comments	29 November 2021
6 Publication of the ITA as amended	10 December 2021
7 Closing date for receiving new and revised applications to the ITA	31 January 2022
8 Announcement of qualified bidders	21 February 2022
9 Start of the Auction process	01 March 2022

13. The Authority shall not grant extensions on the above-mentioned key activities and timelines.
14. **Annexure B** provides the process to be followed in relation to the licensing of the individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN).



DR KEABETSWE MODIMOENG
ICASA CHAIRPERSON
DATE: 30 / 9 / 2021

ANNEXURE A: IM REGARDING THE LICENSING OF IMT SPECTRUM

1. Competition Matters

The Authority has assessed the state of the competition in the mobile sector, as contained in the published Reasons document¹, with the information at its disposal in formulating the ITA.

1.1. SUB-1 GHz (IMT700 AND IMT800) RADIO FREQUENCY SPECTRUM

1.1.1. The Authority intends to license IMT700 and IMT800 bands having considered the Policy on High Demand Spectrum and Policy Direction on the Licensing of Wireless Open Access Network published on 26 July 2019 in the Government Gazette No. 42597 ("the Policy").

1.1.2. The broadcasting digital migration process and restacking of the broadcasting assignments in the 700 MHz and 800 MHz frequency bands, to operate within the 470 to 694 MHz frequency band and to ensure that these bands (700 MHz and 800 MHz) are commercially available in areas for use by mobile operators, is currently underway.

1.1.3. The Authority will consider the terms and conditions, in particular payment terms, on which the Radio Frequency Spectrum in the IMT700 and IMT800 will be used by successful bidders in this licensing process. This will be done in the event that the auction process is concluded before all the digital terrestrial television transmitters have been migrated from the 694 to 862 MHz frequency bands, to operate within the frequency band 470 to 694 MHz frequency bands and all Self-Help Terrestrial Television Broadcasting analogue broadcasting transmitters, operating in the 694 to 862 MHz frequency bands have been switched-off.

¹ Published under notice number 697 of 2020, Government Gazette number 43970 on 4 December 2020. The competition assessment commences on page 78 of the reasons document.

- 1.1.4. Television broadcasting licensees licensed in the in the 694 to 862 MHz band will not be required to vacate any portion of their analogue spectrum assignments during their relevant licence period, other than as shall be determined by the Minister, in concurrence with ICASA, in the analogue switch-off in the digital migration process.
- 1.1.5. Due to the digital migration process that is currently underway, the Authority provided for the conditions of use in the RFSAP IMT 2015², in order to minimise the radio frequency interference, to ensure the efficient use of the radio frequency spectrum and to further ensure that value can be earned by the prospective winners of the bands.
- 1.1.6. The prospective winners of the bands shall coordinate with the television broadcasting services licensees before utilising the spectrum, to ensure that television broadcasting services are protected in accordance with transitional arrangements during the digital migration period.
- 1.1.7. The above considerations take a view that the Authority intends to auction the IMT700 and IMT800 whilst the digital migration process is underway. The Authority is also inclined as the second option, to not auction the IMT700 and IMT800 up until such time that the migration process is concluded.
- 1.1.8. In considering paragraph 1.1.7, it is important to note the implications that it would have on the licensing process of the WOAN.

1.2. OPT-IN ROUND

- 1.2.1. The portfolios set out in the table under section 6.1 of the ITA, will be used when taking into account what must be considered to constitute Minimum Spectrum Portfolios ("MSP's").
- 1.2.2. What will be offered in the opt-in round is any of the lots on offer that will make up the MSPs in the table. The Authority may, at its discretion, decide

² Radio Frequency Spectrum Assignment Plans for IMT - *Government Gazette* No. 38640 (Notice 271 and 273 of 2015)

to include only certain lots of certain spectrum bands in the Opt-In round as Opt-In lots.

- 1.2.3. The MSPs for the Opt-In round are divided into two categories: sub-1GHz and above 1GHz, the former in the left column of the table and the latter in the right column.
- 1.2.4. No Tier-1 licensee is eligible to participate in the Opt-In round.
- 1.2.5. The opt-in round will take place before the main auction.
- 1.2.6. All IMT spectrum held by any licensee will be used to determine the eligibility of that licensee to qualify for the Opt-In round.
- 1.2.7. All IMT spectrum bands and those provided in the table, that are included in each category, are included both for the purpose of calculating total IMT spectrum holdings of a licensee in that category (which *inter alia* determines eligibility) and for the purpose of identifying what IMT spectrum bands of lots are available for auction for ICASA to include as Opt-In lots in the Opt-In round.
- 1.2.8. A licensee eligible to participate in the opt-in round in respect of any particular category of one of MSPs may bid for such lots on offer in that category and will, if acquired by that licensee, remove that licensee's eligibility to bid for such category. Since lots cannot be split, the licensee may acquire only the smallest lot that would "make good" that licensee's MSP.
- 1.2.9. No licensee can end up with more than one MSP as a result of the opt-in round.
- 1.2.10. The opt-in round will result in two licensees ending up with MSP as close as possible to the MSPs set out in the table as the principles set out above allow. This means that no licensee can acquire a sub 1 GHz lot from MSP 1 and above 1 GHz lots from MSP 2 in the opt-in round.
- 1.2.11. In addition to the MSP limit resulting in paragraph 1.2.10 above, no licensee can acquire any lot in the opt-in round if the acquisition by a

licensee of a lot in a category in which it is eligible would result in that licensee exceeding its spectrum cap.

- 1.2.12. Taking into account the IMT spectrum existing holdings, qualifying opt-in bidders must bid for the MSP with lowest total (i.e., considering both Sub-1GHz and greater than 1GHz) spectrum top-up requirement.
- 1.2.13. Notwithstanding the above, the Authority is also inclined to completely discard the Opt-In round and allow successful bidders to compete in the auction for their spectrum needs whilst the Authority is safeguarding the spectrum caps.

1.3. Spectrum Consideration for calculating the spectrum caps

- 1.3.1. The ITA, in addressing the competition issues, considered the IMT spectrum holdings of all the operators. The ITA enables any other operator who does not have the MSP, and deemed not to be a national credible player, to have an opportunity to compete in the Opt-In round to acquire the additional spectrum. The Opt-In round excludes Vodacom and MTN, who are defined in this process as Tier 1 operators. This means that other operators, who are defined as a Tier 2 operators may acquire the sub-1GHz spectrum for it to be a credible player before the commencement of the subsequent auction rounds.
- 1.3.2. All IMT spectrum currently assigned to the operators will be considered for calculating the MSP to determine the successful applicants who will be allowed to participate in the Opt-In round, to competitively acquire the additional spectrum to reach an adequate level of credibility. The bands such as 3600 – 3800 MHz that is currently not allocated to Mobile Service on a primary basis and not identified as an IMT band in South Africa will not be used in the calculations of the spectrum caps.
- 1.3.3. The Authority is also inclined to consider including the spectrum assigned for the broadband fixed wireless access in the calculation of the spectrum caps.

1.4 Roaming arrangements

1.4.1. Roaming is considered as a commercial arrangement between operators which are filed with the Authority from time-to-time. Generally, a roaming arrangement is not permanent and may be revised or terminated by the concerned operators and should not exclusively be entered into amongst operators. These roaming arrangements can be offered to multiple operators.

1.4.2. The spectrum caps, therefore, were considered on the existing IMT spectrum holdings of the respective operators and IMT spectrum that will be acquired through this licensing process.

1.5. Categorisation of Tier 1 and Tier 2

1.5.1. Vodacom and MTN are classified as Tier 1 operators. The methodology is used in the competition assessment for the classification of the Tier 1 and Tier 2 operators. The definitions of Tier 1 and Tier 2 will be used consistent with the ITA.

1.5.2. The Authority has provided mechanisms in the ITA to support Tier 2 operators. Spectrum will be set aside for the sub-national wholesale Tier 2 operators to compete in order to become credible with the exclusion of Tier 1 operators.

1.6. Rollout Obligations

1.6.1. The roll-out obligations will be imposed consistently with the provisions of the ITA and must be met with spectrum acquired through this process and any other IMT Spectrum currently assigned to the licensees.

2. IMT3500 Band

- 2.1. The Authority arranged the Spectrum Lots in IMT3500 (3400 – 3600 MHz) considering the limited amount of spectrum in the band. It is the bidder's prerogative to bid for any number of lots in the IMT3500 to cater to their technology deployment requirements considering the spectrum caps imposed.
- 2.2. The public is further advised that the Authority will Licence IMT3500 band on a technology neutral basis and in accordance with the technical conditions in the Radio Regulations and related Radio Frequency Spectrum Assignment Plans.

3. REPORT TO THE MINISTER ON SPECTRUM REQUIREMENTS FOR 5G IN THE FREQUENCY BANDS LOWER THAN 6 GHz AND MILLIMETRE WAVE (MMW) BANDS WHICH WERE UNDER STUDY AT THE WORLD RADIOCOMMUNICATIONS CONFERENCE 2019 (WRC-19)

- 3.1. In line with the Policy issued by the Minister of Communications and Digital Technologies dated 26 July 2019, and after due consideration of the said Policy, the Authority has submitted a report on the spectrum requirements of IMT2020 capabilities for the deployment of the fifth generation 5G network technologies in bands lower than 6 GHz and the millimeter wave bands to the Minister. These frequency bands were identified for IMT at WRC-19.
- 3.2. The Authority subsequently published an IM on 1 November 2019 outlining its intentions in respect of the licensing process for the International Mobile Telecommunication spectrum.

4. Spectrum Requirements for the WOAN

- 4.1. In accordance with the Policy, the Minister directed the Authority to consider the assignment of IMT Spectrum to the WOAN and the remaining IMT spectrum to electronic communications network service licensees.
- 4.2. The Authority has set aside an 80 MHz assignment in total for the spectrum requirements for the WOAN in order for interested parties and all licensees to meaningfully participate in the licensing of thereof.
- 4.3. The 700 MHz, 800 MHz, 2600 MHz and 3500 MHz spectrum bands are allocated to the Mobile Services on a primary basis and are already identified for IMT in the ITU Radio Regulations. The Radio Frequency Spectrum Assignment Plans for these spectrum bands are in place and effective, which makes the bands ready to be licensed.
- 4.4. The Authority has set aside spectrum for the WOAN on the IMT700 (2x10 MHz), IMT2600 (1x30 MHz) and IMT3500 (1x30 MHz) which is comparable to what the current credible Mobile Network Operators ("MNOs") are assigned, to ensure its viability. All the spectrum lots are unbundled, and the other spectrum is to be licensed in accordance with Radio Frequency Spectrum Regulations, 2015 (as amended).
- 4.5. The importance of a set-aside spectrum to be licensed to the WOAN, will ensure it to be a credible national wholesale operator in the market. However, assigning too much spectrum to the WOAN may result in stranded spectrum which will go against the other set objectives, and may result in anti-competitive behaviour.
- 4.6. The spectrum set-aside for the WOAN is empirically supported by the spectrum that is currently assigned to the Tier 1 operators that meet the credibility test. The viability of the WOAN and it being an independent wholesale national operator is of importance to the Authority, as per the Policy issued by the Minister, which the public and the industry was consulted on. In this regard, the ITA in section 12.4 provides incentives to the WOAN

for its viability balanced with the efficient use of spectrum provision as mandated by the ECA. The viability of the WOAN means that the WOAN has adequate spectrum to provide its intended service and may partake in the upcoming licensing processes of the Authority to accommodate its needs.

- 4.7. The Authority had given due consideration to spectrum requirements for the WOAN in its competition assessment, hence it is of the view that any additional spectrum requirements to any operators can further be assessed following the successful completion of the Licensing of the WOAN and post the Auction.

ANNEXURE B: IM REGARDING THE LICENSING OF INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICE LICENCE (THE WOAN)

1. On 02 October 2020, the Independent Communications Authority of South Africa (“the Authority”) published a Composite Invitation to Apply (“ITA”) for an individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN) published in the Government Gazette 43767³ (“WOAN ITA”).
2. On 08 March 2021, the Authority was interdicted by Telkom and e.tv from receiving the applications in relation to the WOAN ITA.
3. The Authority informs the public on the following summarised procedure that it plans to undertake on the process to licence the I-ECNS and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN):

³ Notice No. 534 of 2020

Key Activities	Envisaged Dates
Commencement of Process to reconsider the Composite Invitation to Apply ("ITA") for an individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN)	01 October 2021
Publication of a consultation document in respect of the Draft Amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	19 November 2021
Closing date for receiving written representations on the consultation document in respect of the composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	10 January 2022
Publication of amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	14 February 2022
Public Workshops on the amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	15 March 2022
Closing date for receipt of applications in response to the composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	13 May 2022

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