

2 November 2021

The Independent Communications Authority of South Africa

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

Attention:

Mr Davis Kgosimolao Moshweunyane
By e-mail: IMTLicensing@icasa.org.za

RE: CIVH written representation - Independent Communications Authority of South Africa General Notice 587 of 2021 (as published item 45455 in the Government Gazette on 01 October 2021)

Dear Mr. Moshweunyane,

CIVH would like to thank the authority for the opportunity to make written representation with respect to the information memorandum which was published for public consultation on 01 October 2021, and which was also presented during the workshop held with all interested stakeholders on 15 October 2021.

At the outset, CIVH would like to state it's support to the authority, for the proposed truncated timetable and roadmap for the expedited licensing of the International Mobile Telecommunications ("IMT") spectrum, also known as high-demand spectrum, and the Wireless Open Access Network ("WOAN"). CIVH firmly believes that the expedited licensing of IMT spectrum and the WOAN is a critical structural reform measure, necessary to stimulate private sector investment, grow the economy, create jobs and accelerate competition to reduce the price of mobile data services in South Africa. All of the aforementioned is especially important in light of the ongoing COVID-19 pandemic challenging the country.

With respect to the information memorandum which was published for consultation on 01 October 2021, CIVH would like to make the following written representations to the authority for consideration.

Information memorandum published on 01 October 2021:

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.

CIVH supports the initial option proposed, whereby the authority intends to auction the IMT700 and IMT800 while the digital migration process is underway.

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The IMT700 and IMT800 frequency bands (also known as the digital dividend bands), are crucial in ensuring the cost-effective expansion of coverage for mobile broadband services (for both rural and under-served areas, as well as for better indoor penetration in urban and suburban areas alike).

In addition, the temporary spectrum in these bands which the authority has licensed to incumbent mobile network operators during the COVID-19 pandemic, has been successfully deployed by these mobile network operators, without causing interference or disruption to the analogue broadcasters who are the incumbent licensees in the band.

Proceeding with auctioning of the IMT700 and IMT800 bands, while the digital migration process is underway, will significantly help in closing the digital divide in South Africa, and in providing all citizens with affordable access to mobile broadband services, thereby enabling meaningful participation by all in the digital economy.

CIVH is also of the view that television services can remain protected, through effective co-ordination between the MNO's and analogue broadcasters, in accordance with the transitional arrangements during the digital migration period. Furthermore:

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.

CIVH is of the view that should the authority not auction the IMT700 and IMT800 up until such time that the migration process is concluded, that the implications on the licensing process of the WOAN would be extremely detrimental.

In the original IM regarding the licensing of IMT spectrum , published by the authority on 02 October 2020 (as published item No. 43768 in the Government Gazette on 02 October 2020), the authority states the following:

2.3. The IMT700, IMT800, IMT2600 and IMT3500 bands have been identified worldwide for IMT services. These bands complement each other in the sense that they fulfil the requirements for capacity and coverage which make them suitable for rural and urban areas and for bridging the digital divide.

2.4. It is for these reasons that the Authority has decided on the simultaneous licensing of the IMT700, IMT800, IMT2600 and IMT3500 bands, in order to enhance competition and to increase broadband coverage, and in so doing bridge the digital divide and the disparities between urban and rural access to broadband networks

Furthermore, the authority states in 6.2 and 7.2 of the same document:

6.2. Portfolio 1 and portfolio 2 are spectrum floors designed to ensure that South Africa is left with at least five (5) credible wholesale national operators after the spectrum assignment process (including the WOAN). This is to ensure that the third and fourth national wholesale operators have enough spectrum to be credible competitors.

7.2. The sub-1GHz cap will allow all current holders of 2x11MHz of spectrum in the 900MHz band to acquire at most 2x10MHz of spectrum, and the cap will also allow licensees that have no sub-1GHz spectrum to acquire up to 2x20MHz.

Considering the above, CIVH is of the view that the following detrimental implications will result on competition in the mobile broadband services market in general (in addition to the licensing process of the WOAN):

- The existing 3 operators who are the only ones currently with access to sub 1 GHz spectrum, will benefit from enjoying an extension to their current, superior positions in respect of network coverage.
- The third and fourth wholesale operator, and also the WOAN, will not have access to any sub 1 GHz spectrum to be credible competitors.
- The intention of the authority to stimulate competition will therefore no longer be immediately realised.

In addition to the above, due to not being able to have access to sub 1GHz, the WOAN in particular will not be able to meet the proposed coverage obligations contained in the original IM relating to the licensing of the WOAN , published by the authority on 02 October 2020 (as published item No. 43767 in the Government Gazette on 02 October 2020) and restated as below:

4.1.1 A minimum downlink single user throughput of 5Mbps at the edge of the cell for all national wholesalers who are awarded radio frequency spectrum licences on spectrum band IMT700 within five (5) years of licence issue. This obligation must be achieved with other bands (i.e. IMT3500, IMT2600) assigned through this licencing process.

CIVH is of the view that the coverage obligations above, can only be reasonably be met within 5 years of the IMT700 both being licensed but also being interference free, and usable on a national basis.

Most importantly, CIVH is of the view that the authority will not achieve it's aim of ensuring that the WOAN is a viable entity, if less spectrum is assigned to the WOAN in comparison to any MNO, by considering the possible spectrum assignments of all MNOs after the auction (and not at the current point in time for Tier 1 operators only) as outlined by the authority in 4.4 – 4.7 and restated below:

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.

CIVH would like to humbly request that the authority reconsider the amount of spectrum which has been set aside for the WOAN. CIVH proposes that the authority considers the ffg principles in determining the amount of spectrum which is set aside for the WOAN:

- That the WOAN has at least as much spectrum as any single national wholesale operator, by considering the maximum amount of of total spectrum which any single national wholesale operator will have after the auction (and not the current amount of spectrum assigned to the Tier 1 operators)
- That the amount of spectrum proposed for each of the minimum spectrum portfolios (MSPs) and intended for the third and fourth national wholesale (Tier-2) operators, combined with the ability of these same Tier 2 operators to also bid for additional spectrum over and above the MSPs proposed for the opt in round, results in an outcome which does not result in any Tier 2 operator obtaining more spectrum than the WOAN (both below and above sub 1 GHz).

To highlight the ineffective competitive outcome of the current IMT ITA for the WOAN, consider the current spectrum cap proposal as follows:

7.1. A spectrum cap is a limit placed on the amount of spectrum a Bidder can bid for in an auction. An Applicant will be allowed to bid up to the following spectrum caps:

7.1.1. Sub-1GHz safeguard cap of 2x21 MHz (including existing sub 1-GHz spectrum holdings); and

7.1.2. An overall spectrum cap of 184MHz (including existing assigned spectrum holdings).

7.2. The sub-1GHz cap will allow all current holders of 2x11MHz of spectrum in the 900MHz band to acquire at most 2x10MHz of spectrum, and the cap will also allow licensees that have no sub-1GHz spectrum to acquire up to 2x20MHz.

7.3. The overall spectrum cap of 184 MHz is to ensure that any individual licensee must not acquire more than approximately 18% of the 1,015 MHz of High demand spectrum that will be assigned at the auction stage.

CIVH is of the view, that all Tier 1 and Tier 2 operators can therefore acquire spectrum which is more than double what has been proposed for the WOAN (184 MHz vs 80 MHz). This effectively means any Tier 1 or Tier 2 operator stands to acquire 230% more spectrum than the WOAN.

This is of particular concern to CIVH, as it will not result in the WOAN being a viable entity. The cost of production for the WOAN will be directly related to the amount of spectrum which is set aside for the WOAN. A disproportionate amount of spectrum allocated to Tier 1 and Tier 2 operators will result in an unfair economic bias against the WOAN, in order for it to be a viable entity. The WOAN also has no other mechanism to gain access to additional spectrum, other than what the authority has proposed for the set aside.

Furthermore, CIVH believes that the current disproportionate allocation of spectrum against the WOAN, where Tier 1 and Tier 2 operators are allocated 230% more spectrum, is not in line with the the Minister's Policy on High Demand Spectrum and Policy Direction on the Licensing of Wireless Open Access Network ("the Policy Direction") published in *Government Gazette* No. 42597 (Notice No. 1013 on 26 July 2019).

CIVH would like to humbly submit to the authority, that a reasonable outcome would be for the WOAN to receive at least as much spectrum as any Tier 1 or Tier 2 operator would possess in total after the auction (and which also considers any of their existing spectrum holdings).

In order to achieve this outcome, CIVH strongly support the proposal made by the authority to completely discard the opt in round as proposed below:

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.

In addition to discarding the opt in round, CIVH also proposes that an equal allocation between Tier 1 operators, Tier 2 operators and the WOAN, can be achieved through the ffg:

- Revisiting the spectrum caps (both for sub 1 GHz and also the total), to enable sufficient spectrum to be set aside for the WOAN to promote viability and effective competition
- Allocating contiguous high band spectrum to prevent fragmentation (e.g: the WOAN should receive a single, large contiguous allocation of either 2.6 GHz spectrum or a contiguous allocation of 3.5 GHz spectrum, instead of smaller allocations in each band). This will enable the WOAN to further achieve competitive costs of production by not having to access multiple high band radios to deploy its spectrum.

CIVH also make the following representations on the Information memorandum published on 01 October 2021:

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.

The authority is kindly requested to clarify if the 24.25 GHz – 27.5 GHz bands held by licensees, will be considered in calculating the spectrum caps. Also, could the authority also please clarify the same for the 27.5 GHz – 29.5 GHz bands.

Neither of these bands have been designated as IMT spectrum in the Radio Frequency Assignment plans from 2015, however both are proposed for IMT use in the Draft Radio Frequency Assignment plans from 2021.

According to the draft 2021 ICASA Radio Frequency Spectrum Assignment Plan, both the 26 GHz and 28 GHz band have been allocated to mobile use on a co-primary basis together with fixed, inter-satellite, fixed-satellite and space research services.

However, only the 24.25 GHz – 27.5 GHz is proposed for IMT use. While 27.5 GHz – 29.5 GHz has been allocated on a co-primary basis for mobile use, it is not clear if IMT use is permitted unlike the 24.25 – 27.5 GHz band.

CIVH proposes that the current spectrum caps exclude any allocations beyond 3800 MHz, and recommends that the authority clarify this criteria, to avoid being challenged on the current spectrum cap proposal and implementation thereof.

Also, the following is proposed in the same information memorandum published on 01 October 2021:

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.

CIVH humbly submits to the authority that it should consider including the spectrum assigned for the Broadband Fixed Wireless Access (BFWA) services in the bands 3600-3800 MHz, in calculating spectrum caps.

In not doing, the eventual spectrum allocations of all Tier 1 and Tier 2 operators will be distorted by considering the end state after the proposed auction.

Also, the reality is that there are various licensees who are already using the 3600-3800 MHz bands to offer nationwide, commercial 5G fixed wireless services with significant uptake already today.

CIVH would also like to highlight that although the 3600 - 3800 MHz bands can only currently be used for BFWA services in South Africa, it is widely anticipated that the expected allowance will be granted for IMT use after the World Radiocommunication Conference which takes place in November 2023.

Therefore, by including the spectrum assigned for BFWA in calculating the spectrum caps, the authority can avoid distorting competition in the market, by also considering the upcoming developments around technology evolution and the associated use of spectrum bands to deliver on this evolution in technology.

CIVH would also like to make the following representations on the following:

The IM's published in 2020, relating to the IMT spectrum and also the licensing of the WOAN have conflicting requirements for offtake requirements from the WOAN:

2020 IMT ITA states the ffg:

12.4. Incentives to the WOAN

12.4.1. The applicants that are to be assigned the radio frequency spectrum through this process shall procure a minimum of 30% national capacity from the WOAN collectively as soon as the WOAN is operational for a period of five years.

12.4.2. The 30% national capacity to be procured from the WOAN will be shared proportionally to the amount of the spectrum acquired from the Auction amongst the successful licensees.

12.4.3. The 30% national capacity uptake in the WOAN will be imposed on all successful applicants as licence terms and conditions in accordance with regulation 7(e) of the Radio Frequency Spectrum Regulations, 2015 as amended.

2020 WOAN ITA states the ffg:

4.4. 30% Offtake

4.4.1. A licensee that will be assigned spectrum through this process (WOAN) is required to make available a minimum of 30% national capacity to be procured by successful Applicants that will be assigned Radio Frequency spectrum through the IMT auction licensing process, as soon as the WOAN is operational, for a period of 7 years.

4.4.2. The obligation to procure a minimum of 30% national capacity from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process, collectively shall be imposed on the IMT auction licensees as licence terms and conditions in accordance with regulations 7 (e) of the RFSR.

4.4.3. The WOAN will be provided details on which successful applicants assigned Radio Frequency Spectrum through the IMT auction licensing process will be obliged to procure 30% national capacity from the WOAN collectively after the IMT auction licence applicants have been assigned spectrum with a licence condition for the 30% uptake in accordance with regulation 7 (e) of the RFSR.

CIVH recommends that the authority aligns the offtake period to 7 years in both the IM and WOAN ITA's. The longer offtake period of 7 years will further help ensure viability of the WOAN.

In addition, in relation to 12.4.2. above, CIVH also proposes that instead of the 30% national capacity to be procured from the WOAN being shared proportionally to the amount of the spectrum acquired from the auction amongst the successful licensees, that is it shared in relation to the overall spectrum holdings (including current) after the auction, of all successful licenses who have acquired spectrum in the auction.

This will further ensure the viability of the WOAN, as it stands to reason that if any operator has more spectrum, their traffic share for offtake to the WOAN should be higher to encourage efficient use of spectrum.

Finally, CIVH notes that the 2020 IMT ITA, provision was made for the licensing of the spectrum on an interim basis, to help manage COVID-19 pandemic risks as follows:

16. Managing COVID-19 Pandemic Risks to this Licensing Process

- 1. 16.1. Acknowledging the COVID-19 pandemic related risks, to this licensing process, the Authority will make available the IMT spectrum in an interim basis, before the commencement of the Auction stage of this licensing process, subject to the spectrum floors, and spectrum caps as described in this ITA.*
- 2. 16.2. The Authority may, inter alia, utilise the pre-qualification process to extend and/or assign temporary assigned spectrum to the applicants in accordance with the terms and conditions as determined by the Authority in terms of the ICT COVID-19 National State Disaster Regulations.*
- 3. 16.3. The Authority does not guarantee the qualified bidders the spectrum issued on the interim basis since the guarantee of the assignment can only be solidified after the conclusion of the Auction Stage and Licensing Stage.*
- 4. 16.4. The interim spectrum issuance is to ensure that the spectrum is used in an efficient and effective manner. Furthermore, the interim issuance of the spectrum holds fair, transparent and administrative principles. The issuance of the interim spectrum will incorporate the competition assessment conducted by the Authority whilst taking a safe regard to the COVID-19 pandemic.*
- 5. 16.5. The Auction Stage shall proceed after consultation with qualified bidders, at the conclusion of the qualification stage irrespective of the COVID-19 pandemic.*

CIVH supports the ongoing use of the spectrum on an interim basis, but equally believes that the expedited licensing of both the IMT spectrum and WOAN as per the timetable proposed by the authority must proceed. CIVH does not object to the extension of the temporary spectrum licences, so long as the timetables for both processes proceeds as plans. CIVH believes this can be an incentive for all incumbent

licensees of the temporary spectrum to support the authority in delivering according to the timetable and is a fair and reasonable compromise to all stakeholders involved in the process, while minimizing business disruption to incumbent licensees of the temporary spectrum.

CIVH does not however, support an outcome where the temporary spectrum licenses are renewed indefinitely, to the detriment of circumventing or derailing the permanent licensing of both the IMT spectrum and WOAN as per the expedited timetable proposed by the authority.

CIVH remains committed to supporting the the proposed truncated timetable and roadmap for the expedited licensing of both the IMT spectrum and WOAN, and will avail itself for all ongoing stakeholder engagement and consultations on the topic.

Many thanks



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