



Independent Communications Authority of South Africa

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

COUNCIL DECISIONS– 13 July 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Report on agreements concluded between VODACOM (PTY) LTD AND RAIN (PTY) LTD</p> <p>The purpose of the submission was for Council to note the response to the Competition Commission (the Commission), regarding its investigation relating to the Vodacom and Rain 2019 agreements.</p> <p>1.1 On 13 October 2020, Telkom filed an application to the Competition Tribunal (the Tribunal). Telkom sought an order to the effect that a suite of agreements concluded between Vodacom and Rain constitute a notifiable merger in terms of section 12(2)(g) of the Competition Act, 1998 (Act No 89 of 1998), as amended.</p> <p>1.2 On 13 September 2016, Vodacom and Rain entered into the following three (3) agreements:</p> <p>1.2.1 A facilities leasing agreement;</p> <p>1.2.2 A roaming agreement; and</p> <p>1.2.3 A services agreement.</p> <p>1.3 On 2 December 2019, Vodacom and Rain amended the 2016 agreements by concluding a set of the following four (4) amendments / restatements and addenda:</p>	<p>The recommendation was noted.</p>

	<p>1.3.1 The New Managed Network Services Agreement;</p> <p>1.3.2 The Facilities Leasing Agreement Addendum;</p> <p>1.3.3 The Services Agreement Addendum; and</p> <p>1.3.4 The Amended and Restated Roaming Agreement.</p>	
	<p>1.4 The Commission investigated the 2016 agreements in order to determine whether the agreements amounted to a notifiable merger in terms of section 12(1) of the Competition Act.</p> <p>1.5 Following the analysis of the 2016 agreements, the Commission concluded that the 2016 agreements did not constitute a merger as contemplated in section 12(1) of the Competition Act.</p> <p>1.6 On 29 March 2021, the Tribunal, on the request of the Commission, remitted the matter back to the Commission for the Commission to conduct a similar investigation into the 2019 agreements.</p> <p>1.7 On 7 May 2021, the Commission requested assistance from the Authority regarding its investigation of the 2019 agreements. To this end, the Commission posed several questions to the Authority to assist the Commission in its assessment of whether the 2019 agreements constitute a notifiable merger.</p> <p>1.8 On 27 May 2021, the Authority was invited to a site visit by the Commission, to conduct tests at two sites selected by Vodacom and Rain.</p> <p>1.9 On 23 June 2021, the Authority conducted drive tests using a high-end mobile device</p>	

	<p>(SAMSUNG S20 5G) on the two sites, and the surrounding areas.</p> <p>1.10 Whilst assisting the Commission, Authority subsequently found that there was non-compliance with the Electronic Communications Act (ECA), and the applicable Regulations. The Authority resolved to institute its own investigation, would afford Vodacom and Rain an opportunity to comment on its findings.</p> <p>Recommendation to Council</p> <p>It is recommended that the Council note the report on agreements concluded between VODACOM (PTY) LTD AND RAIN (PTY) LTD, before submitting same to the Commission.</p>	
2.	<p>Close-out report on Sports Broadcasting Services Regulations Amendment, 2020</p> <p>The purpose of the submission was for Council to note the close-out report on Sports Broadcasting Services Regulations Amendment, 2020.</p> <p>2.1 The National Sporting Broadcasting Services Regulations, Amendment 2020 is a project which reviewed the “National Sporting Events Regulations, 2010”.</p> <p>2.2 These regulations were meant to list sporting events that are deemed to be of national interest, and to ensure that such events are accessible to the majority of South Africans.</p> <p>2.3 The project scope involved one-on-one meetings with the sports fraternity and the broadcasters. The organisations engaged were SAFA, SARU, CSA, ASA, Boxing SA, Netball, and PSL.</p>	<p>The recommendation was noted.</p>

	<p>2.4 With regards to broadcasters, the Authority engaged with SABC, MultiChoice, and eMedia. In addition to this, the Authority engaged with the officials from the Department of Sports and Recreation and the Department of Communications and Digital Technologies.</p> <p>2.5 The draft regulations were published in October 2018, with the closing date of 13 December 2018 for written submissions.</p> <p>2.6 Public hearings were held in May 2019, during which stakeholders were requested to provide additional information.</p> <p>2.7 The regulations were finalised for publication in the Government Gazette in March 2021.</p> <p>Recommendation to Council:</p> <p>It was recommended that:</p> <p>2.8 The Authority engages with the Parliamentary Portfolio Committee on Communications (PPCC) more often, rather than engaging with the Committee only when it presents its Annual Plan; and</p> <p>2.9 The Authority, through public awareness, shares its work in relation to the different projects on which the Authority embarks, and be the leading voice in positioning its intentions.</p>	
3.	<p>Cybersecurity newsletter to be published on the Cybersecurity Hub's website</p> <p>The purpose of the submission was to request Council to approve the proposed Cybersecurity Awareness Newsletter, to be published on the Cybersecurity Hub's website as per the approved Internal Position Paper on the Authority's Responsibility on Cybersecurity.</p>	<p>The recommendation was approved.</p>

	<p>3.1 ICASA gave notice of its intention to conduct an inquiry into the role and responsibilities of the Authority in Cybersecurity in terms of section 4B of the ICASA Act, 2000, as indicated in a Discussion Document published in Government Gazette No 41944 of 28 September 2018.</p> <p>3.2 The Authority received 10 responses to the said Discussion Document on 30 November 2018, and held public hearings from 17 to 18 January 2019.</p> <p>3.3 On 17 March 2020, Council approved the internal position paper on the roles and responsibilities of the Authority on cybersecurity as follows:</p> <p>3.3.1 The Authority to engage with the Cybersecurity Hub with the intention of collaborating with it. The Cybersecurity Hub is South Africa's National Computer Security Incident Response Team (CSIRT) and strives to make cyberspace an environment where all residents of South Africa can safely communicate, socialise, and transact in confidence.</p> <p>3.3.2 ICASA and the Cybersecurity Hub have agreed on the participation of ICASA in the Cybersecurity Hub's monthly newsletter programme.</p> <p>3.3.3 The publication of the newsletter that contains the advisories that can assist citizens will Take place on the Cybersecurity Hub website, with the Authority's logo prominently displayed on the Portal, which will link to the ICASA website.</p> <p>3.3.4 The Authority will craft awareness messages that meet the Authority's Cybersecurity mandate.</p>	
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	<p>3.3.5 The Authority will collaborate with the Hub, in a month to be communicated by the Hub, in order to contribute content for the newsletter.</p> <p>Recommendation to Council</p> <p>It was recommended that Council approves the Cybersecurity Awareness Newsletter for publication on the Cybersecurity Hub's Website.</p>	
4.	<p>ICASA MOU register as of Quarter 1 of 2021/22 financial year</p> <p>The purpose of the submission was to update Council with regards to the Memoranda of Understanding (MOUs) entered into by ICASA, including those in the process of being concluded with other entities as of Quarter 1 of the 2021/22 financial year.</p> <p>4.1 In terms of section 4(3A) (b) of the ICASA Act, ICASA is empowered to enter into concurrent jurisdiction agreements with other relevant authorities or institutions.</p> <p>4.2 The MOUs that are currently in effect between ICASA and other entities include the following –</p> <p>4.2.1 ICASA and the Council for Scientific and Industrial Research (CSIR);</p> <p>4.2.2 ICASA and the South African Civil Aviation Authority (SACAA);</p> <p>4.2.3 ICASA and the National Consumer Commission (NCC);</p> <p>4.2.4 ICASA and the Lesotho Communications Authority;</p> <p>4.2.5 ICASA and the South African Maritime Authority (SAMSA);</p>	<p>The recommendation was noted.</p>

	<p>4.2.6 ICASA and the Competition Commission;</p> <p>4.2.7 ICASA and the South Africa Bureau of Standards (SABS);</p> <p>4.2.8 ICASA and the Directorate for Priority Crime Investigation (DPCI) Judge;</p> <p>4.2.9 ICASA and the Universal Service and Access Agency of South Africa (USAASA);</p> <p>4.2.10 ICASA and the Film and Publications Board (FPB);</p> <p>4.2.11 ICASA and the Swedish Programme for ICT in Developing Regions (Spider) at the Department of Computer and System Sciences, Stockholm University, Stockholm, Sweden;</p> <p>4.2.12 ICASA and the National Telecommunication Agency of Brazil;</p> <p>4.2.13 ICASA and the National Metrology Institute of South Africa (NMISA);</p> <p>4.2.14 ICASA and the South African Radio League;</p> <p>4.2.15 ICASA and the Autoridade Reguladora Das Comunicacoes (INCM) of Mozambique.</p> <p>4.2.16 ICASA and the Advertising Regulatory Board (ARB); and</p> <p>4.2.17 ICASA and the Federal Communications Commission (FCC).</p>	
	<p>4.3 The most recent updates to the MOU register are the conclusion of the following MOUs between ICASA and -</p> <p>4.3.1 ARB concluded on 31 March 2021;</p>	

	<p>4.3.2 FCC concluded on 8 April 2021; and</p> <p>4.3.3 SACAA concluded on 17 May 2021 (constituting a new version of a previous MOU between ICASA SACAA).</p> <p>Recommendation to Council</p> <p>It is recommended that Council note the attached updated ICASA MOU register as of Quarter 1 of 2021/22 financial year.</p>	
5.	<p>Establishment of the Council Committee on the review the CCC Regulations</p> <p>The purpose of the submission was to request Council to approve the establishment of a special Council Committee on the review of the Regulations Governing the Aspects of the Procedures of the Complaints and Compliance Committee, 2010 ("CCC Regulations").</p> <p>5.1 In terms of section 17 (1) of the ICASA Act, the Authority may establish standing or special committees for purposes that Council may deem necessary, with a view to assisting it in the effective exercise and performance of its powers and duties.</p> <p>5.2 The CCC Regulations are aimed at providing details of the procedures to be followed when the CCC executes its mandate in accordance with section 17B of the ICASA Act, which is to investigate, to hear if appropriate, and make findings on:</p> <p>5.2.1 All matters referred to it by the Authority;</p> <p>5.2.2 Complaints received by it; and</p> <p>5.2.3 Allegations of non-compliance with this Act or the underlying statutes received by it.</p>	<p>The recommendation was approved.</p>

	<p>Recommendations to Council</p> <p>5.3 It was recommended that Council:</p> <p>5.5.1 Establishes a special Council Committee on the review of the CCC Regulations;</p> <p>5.5.2 Nominates Councillors who will form part of the Committee; and</p> <p>5.5.3 Approves the resolution.</p>	
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ISSUED BY: Secretariat Office
on behalf of Council