



## Independent Communications Authority of South Africa

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Centurion

### COUNCIL DECISIONS– 09 June 2020

ITEM NO.	AGENDA ITEM	DECISION
1.	<p><b>Analysis of External Wholesale National Roaming Agreement between Mobile Telecommunications Network(MTN) (Pty) Ltd and Cell C (Pty) Ltd.</b></p> <p>The purpose of the submission was to advise Council of the outcome of the analysis of the extended wholesale national roaming agreement between MTN and Cell C.</p> <p>1.1 On 18 November 2019, ICASA received correspondence from MTN advising that it had extended a wholesale roaming agreement with Cell C.</p> <p>1.2 On 11 February 2020, the Authority received correspondence from Telkom (Pty) Ltd in which Telkom raised a concern about the Authority's approach to the Licensing of Spectrum as set out in the Information Memorandum published on 01 November 20219.</p> <p>1.3 Telkom also expressed concern about the impact of the spectrum deals entered into between Vodacom SA (Pty) Ltd and Liquid Telecom South Africa, Vodacom and Rain (Pty) Ltd, MTN and Cell C, and Liquid Telecom and MTN within the telecommunications sector, and the Authority's processes as outlined in the Information Memorandum of the licensing of High Demand</p>	<p>The recommendation was approved.</p>

	<p>Spectrum.</p> <p>1.4 Telkom requested confirmation from the Authority whether the spectrum transactions mentioned above will be assessed by the Authority and if so, what process would be followed in assessing the above-mentioned transactions and inquired whether it would be afforded an opportunity to participate and provide input to the process of assessing the agreements.</p> <p>In its response to Telkom and its letter dated 19 February 2020, the Authority advised that:</p> <p>1.5 it has only been notified of the Roaming Agreement concluded by MTN and Cell C, and Vodacom and Liquid.</p> <p>1.6 It noted that although there was no legislative or regulatory requirement for the Authority to approve roaming agreements, it has resolved to assess the regulatory impact of the said transactions and was in communication with all the parties in that regard.</p> <p>1.7 It noted that the contents of paragraph 12 of Telkom letter constituted a complaint against the licences involved in the stated transaction.</p> <p>1.8 In addition to the two transactions, which the Authority had been notified, it will further consider the veracity of Telkom's complaint and advise Telkom in that regard.</p> <p>1.9 Telkom representations relating to the IM published on 01 November 2019 and the Discussion Document on the Data Market Inquiry published on 29 November 2019 should be submitted to the Authority in the channels</p>	
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	<p>prescribed.</p> <p><b>Process Undertaken</b></p> <p>1.10 Upon receipt of the agreements, the Authority established a Task Team to analyse the regulatory impact of the transaction if any.</p> <p>1.11 Additional information was requested from the parties. The Authority reviewed the received information and requested more information and clarity from the parties in letters dated 17 Feb 2020 (Cell C) and 19 Feb 2020(MTN).</p> <p><b>The following additional information was requested:</b></p> <p>1.12 The confidential version of any economic report or analysis prepared by economic expert in respect of the roaming agreement.</p> <p>1.13 Internal documents relating to Cell C/ MTN roaming agreement, that should include but not limited to:</p> <p>1.13.1 Documents prepared for board meeting relating to the agreements. Relevant minutes from a board meeting where the possible deal structures were discussed and or approved.</p> <p>1.13.2 Any internal briefing documents prepared on the subject and any due diligence reports carried out. Any calculations which have been carried out by or for the parties including business cases (including supporting documents and briefing notes) for cost savings arising from Multi - Operator Core Network</p>	
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	<p>(MOCN) infrastructure sharing;</p> <p>1.14 With Cell C roaming on MTN, the following was requested:</p> <p>1.14.1 Annual forecasts of the following data by product segment (prepaid, post-paid and hybrid or top up) and service type (voice, data and SMS) for the duration of the agreement,) number of subscribers, service usage volumes and revenues).</p> <p><b>In a letter to the Authority dated 10 March 202, MTN responded as follows:</b></p> <p>1.15 MTN advised that the Roaming Agreement was submitted as a courtesy to the Authority and expressed a concern with respect to the level of detail requested by the Authority in light of the fact that it is of the view that there was no obligation in the ECA for the parties to submit the requested information and that the Authority had no jurisdiction over the submitted agreements.</p> <p>1.16 With respect to some of the information, advised that it was not aware that ICASA had announced a Market/Industry Study into agreements like that between the parties.</p> <p>1.17 It was MTN's view that a regulatory impact assessment cannot be done on a transaction but can be concluded on an industry wide basis in terms of Chapter 10 of the ECA.</p> <p><b>The Task Team considered the received response and responded to MTN as follows in correspondence dated 31</b></p>	
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	<p><b>March 2020.</b></p> <p>1.18 Although there was no specific requirement for licensees to submit roaming agreements in terms of the ECA, the Authority was enjoined in Chapter 5 of the ECA to amongst others manage the use of the radio frequency spectrum (including sharing, and or transfer of control of radio frequency spectrum),</p> <p>1.19 In terms of section 31(7) of the ECA, the Authority may on its own initiative, take appropriate steps to ensure compliance with the provisions of Chapter 5 of the ECA.</p> <p>1.20 MTN provided the requisite information on 29 April 2020.</p> <p>1.21 All documentation and responses received were reviewed by the Task Team to establish whether the agreement entered into by the parties contravene the provisions of section 13 of the ECA/and or whether any regulatory approvals were required in respect of the transactions.</p> <p>1.22 Council noted that the Council Committee on the Mobile Broadband Inquiry was currently looking into the impact of these agreements and other similar roaming agreements, and that a letter be sent to the Competition Commission in line with the Memorandum of Agreement between ICASA and the Commission, to notify the about these agreements.</p> <p>1.23 Council noted that there was a challenge with the confidential information that was sitting with the Commission as the redacted versions of the reports are hard to read and to make sense.</p> <p>1.24 It was noted that the challenge the</p>	
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	<p>Commission is facing with sharing the non-redacted versions of the reports is a slow response with regards to the consent that must be given by the third parties that own such information.</p> <p>1.25 A review of the submitted agreements as well as the analysis carried out by the Authority's technical team taking into account the European Telecommunications Standards Institute and 3GPP technical specifications, indicated that the National Wholesale Roaming Agreements entered into by the parties were not in breach of the provisions of section 31(1) and 2A of the ECA and associated regulations and do not amount to spectrum sharing.</p> <p>1.26 The agreement between the parties amounted to MOCN wherein:</p> <p>1.26.1 A single radio site can host multiple operators and same radio equipment can enable the broadcast of separate frequencies and technologies by separate parties;</p> <p>1.26.2 Signals emitted over a common radio infrastructure will be done through logically separate RANS; and</p> <p>1.26.3 MTN and Cell C will each retain control over their core networks the intelligent part of the network, which inter alia controls spectrum emission.</p> <p><b>Recommendation to Council</b></p>	
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	<p>2. It was recommended that Council note the report in respect of the analysis of the extended wholesale national roaming agreement between MTN and Cell Con 15 November 2019;</p> <p>3. That the Engineering and Technology division will conduct a technical measurement and arrange a site visit once the transaction was implemented and the Transition Plan has been completed, to measure and verify that agreements were being implemented as filed with the Authority;</p> <p>4. It was further recommended that a letter to be send to the Competition Commission in line with the provision of the Memorandum of Understanding with the Authority advising the Commission about the Agreement; and</p> <p>5. Letters be send to the Parties and Telkom advising of the outcome of the Authority's analysis.</p> <p><b>The recommendation was approved.</b></p>	
<p>2.</p>	<p><b>Lekker FM: Application for a Trial Radio Frequency Spectrum License in the FM Band.</b></p> <p>The purpose of the submission was to request Council to approve the application for a Trial Radio Frequency Spectrum License in the FM band for a period of 30days.</p> <p>2.1 ICASA received an application for Trial Radio Frequency Spectrum license from Lekker FM on 05 November 2019.</p> <p>2.2 The applicant was requesting to test the signal quality within the licensed area by gradually, increasing the ERP from 1-4 kW at the licensed Sentech's Pretoria1 transmitter for a period of 30 days.</p>	<p><b>The submission was approved for a trial licence to be granted for a period of 30 days are applied for.</b></p>

	<p>2.3 The applicant has submitted the feasibility study done by the signal distributor Sentech to support the application.</p> <p>2.4 The applicant has been experiencing coverage and signal quality challenges within the licences area of Tshwane Metropolitan Municipality since it was licensed.</p> <p>2.5 The request was in line with regulation 40(7) of the Radio Frequency Spectrum regulations 2015.</p> <p><b>Recommendations to Council:</b></p> <p>2.6 It was recommended that Council approve the applicant's trial radio Frequency Spectrum licence for a period of 30 days to test the signal quality within the licenced area.</p> <p>2.7 The gradual increase in ERP from 1-3kW would not cause the applicant to exceed the licensed area of the City of Tshwane Metropolitan Municipality.</p> <p>2.8 The gradual increase in ERP would be defined in technical specifications as a footnote</p> <p>2.9 The interference experienced by the applicant from Radio 2000 Middleburg transmitter did not increase with the increased ERP, the interference was not harmful.</p> <p>2.10 The signal strength would increase, improving the signal quality where the Pretoria 1 transmitter was based.</p> <p>2.11 Previously the Authority declined</p>	
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	<p>the relocation of the transmitter Pretoria 1 to Sunnyside due to harmful interference.</p>	
2.12	<p>Authority's personnel would also participate in the trial according to the mutually agreed timelines.</p>	
2.13	<p>Council inquired if there was sufficient spectrum to conduct trials without raising expectations that the spectrum will be granted in future. Management indicated that the trial is not an application for additional spectrum but to increase more transmission power.</p>	

**ISSUED BY: Secretariat Office**  
**on behalf of Council**