



Independent Communications Authority of South Africa

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Centurion

COUNCIL DECISIONS– 24 June 2020

ITEM NO.	AGENDA ITEM	DECISION
<p>1.</p>	<p>The analysis report of the relevant directions of the Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network (WOAN).</p> <p>The purpose of the submission was to recommend to Council to consider and approve:</p> <p>1.1 the analysis report on the licensing of the International Mobile Telecommunications Spectrum;</p> <p>1.2 the analysis report in response to the submission received on the Information Memorandum;</p> <p>1.3 the Reasons Document outlining the basis and reasons for the various reports and recommendations to Council;</p> <p>1.4 the analysis report on the Economic aspect of the process;</p> <p>1.5 the Competition Assessment report;</p> <p>1.6 the Spectrum Valuation report;</p>	<p>The analysis report was noted.</p>

	<p>1.7 note the project risks; and</p> <p>1.8 approve the Invitation to Apply (ITA).</p> <p>The Independent Communications Authority of South Africa's (ICASA/ the Authority) Five Year (5) Strategic Objectives of the planning cycle 2014 to 2020 was "to increase access to broadband spectrum from 566 MHz to 958 MHz by 2019/2020"</p> <p>1.9 In an effort to achieve the set objective, the Authority published a notice inviting applications for the Radio Frequency Spectrum licences within the designated range, 2500 – 2690MHz (the 2.6GHz band) and 790 – 862 MHz (the 800 MHz band) and 694 – 790 MHz (the 700MHz band) for the purposes of providing national broadband wireless access services.</p> <p>1.10 On 26 July 2019, the Minister of Communications and Digital Technologies published a Policy Direction for the licensing of the International Mobile Telecommunications (IMT) Spectrum.</p> <p>1.11 The Policy has three sections covering the Introduction, Policy On High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network (WOAN).</p> <p>1.12 The Committee had to consider and recommend the analysis report of the relevant directions of the Policy on High Demand Spectrum and Policy Direction on the Licensing of a WOAN).</p> <p>1.13 Approve the positions drawn from</p>	
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the analysis of the Information Memorandum's written representations that was published on 01 November 2019.

1.14 The IMT Committee was delegated with the powers to draft an Invitation To Apply (ITA), conduct public hearings, and where necessary, provide a recommendation to Council on applications for the available IMT spectrum.

1.15 The Council of the Authority considered the Analysis of the Policy and the IMT Committee focused on the second section of the Policy and any other relevant policy direction which has been tasked to consider.

Consideration of the Policy Direction

1.16 With regard to paragraph 2.1.2 of the Policy Direction, the Committee recommended for the WOAN to be allocated the High Demand Spectrum to make the WOAN a credible competitor in the market.

1.17 The WOAN be allocated 80MHz, which is more than what any current wholesaler is allocated in the market.

1.18 The Authority understands the provisions of paragraph 2.1.3 of the Policy Direction with regards to the concept of Preferential Treatment, and will assign the WOAN the necessary amount of spectrum in order for it to be sustainable and a credible 5th National Wholesale Player.

1.19 The Authority aimed to ensure that efficient use of spectrum by allocating such appropriately. A case study showed that the concept of a WOAN has not been viable in other parts of the world, and therefore, there is a risk that the South African market can be exposed to similar conditions, hence the decision to award the WOAN an adequate portion on the spectrum.

1.20 The Authority has developed Facilities Leasing Regulations in terms of section 44 of the ECA and the WOAN just like any other licensee will be subjected to the Facilities Leasing Regulations. However, the ECA is silent on licensees providing wholesale capacity when requested to do by other licensees and therefore, the Authority cannot implement this provision of the policy.

30% Offtake in Policy consideration

1.21 On the 30% offtake proposed in the Policy Direction, the IMT Committee indicated that it did not agree with the obligation for the procurement of capacity in the WOAN for the reason that the ECA is silent on any procurement/provision of wholesale capacity in/by any licensee.

1.22 Therefore, any procurement of capacity in the WOAN will have to be voluntarily by way of an undertaking. Further that the Authority does not get involved in commercial activities of licensees with the exception of imposing appropriate and pro-competitive licensing conditions where there is insufficient competition.

1.23 The Authority does not view the proposed 30% uptake as a sufficient pro-competitive license conditions as it is limited to the WOAN whose current definition does not set it apart from the other license holders, and therefore, imposing this condition will result in an unfair treatment of other licensees.

1.24 The portfolio/set-aside for the WOAN will provide enough capacity, and coverage spectrum (80MHz in total) in order to enable the WOAN to be a credible new wholesale national entrant into the mobile market, alongside the existing four national wholesalers.

1.25 The minimum 80 MHz of total spectrum is similar to the amount of spectrum each of the top three wholesalers currently hold prior to this licensing process.

1.26 The minimum 80MHz for the WOAN is also consistent with all the options in the IM. There could be greater benefits to consumers and citizens through increased competitive intensity if there are at least five national wholesalers. However, this would also carry a greater risk of inefficiency given the large number of customers served by the two largest wholesale national operators/licensees.

Universal Access and Universal Service Obligations

The Committee has noted that section 8 (2) (g) read with section (4) of the ECA makes reference to universal access and service obligations and therefore accepts

the obligations as contained in the Policy Direction.

Single entity may not control spectrum

The Committee noted and agrees with the provisions of the Policy Direction on the basis that a single entity cannot be in control of spectrum as this will not promote competition.

Compliance with empowerment provisions

1.27 The Authority concurs with the empowerment requirements as outlined in the Policy Direction to the extent that regulation 7 (3) of the Radio Frequency Spectrum Regulations sets out the empowerment requirements to be adhered to.

1.28 Further to the consideration of the Policy Direction, the Committee resolved to obtain a legal opinion to address the following:

Positions drawn from the analysis Information Memorandum's written Representations on the Information Memorandum

1.29 On 01 November 2019, the Authority published a notice, the Information Memorandum (IM) on the Licensing Process for IMT Spectrum inviting comments in respect of the provisioning of Mobile Broadband Wireless Open Access Services for urban and rural areas using the complimentary bands IMT700, IMT800, IMT2300, IMT2600 and IMT3500.

1.30 The IM provided guidance to prospective applicants on among

	<p>other things, the process and criteria to be applied in terms of the related legal and regulatory frameworks. In addition, the IM invited interested persons to submit written representations by no later than 16h00 on Friday, 31 January 2020.</p> <p>1.31 The Committee received fifty-three (53) written representations within the set deadline. An additional four (4) written representations were received after the deadline.</p> <p>1.32 The Committee resolved that the four (4) written representations received after the deadline would not be considered and the Committee provided responses to the relevant interested parties.</p> <p>1.33 The Committee was of the view that consideration of the late written representations will prejudice the submitters who adhered to the timeline stipulated on the IM and not set precedence.</p> <p>1.34 The Committee received three hundred and fifty-four (354) email petitions through the Dear SA Parliamentary platform regarding the 5G Bill.</p> <p>1.35 The IM was listed on <u>Dear SA Parliamentary platform</u> as a 5G Bill requesting the public to have their say, two hundred and forty-seven (247) email partitions were against the 5G Bill and the remainder were in support, the committee resolved that the email petitions would only be noted because the petitions were not in response to the IM that was published by the Authority.</p>	
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	<p>1.36 The Committee considered and summarised the written representations received and took into account same in the development of the following:</p> <p>1.36.1 Competition Assessment Report;</p> <p>1.36.2 Spectrum Valuation Report;</p> <p>1.36.3 ICASA - Project Risks; and</p> <p>1.36.4 Spectrum set-aside for industry.</p> <p>1.37 The Committee indicated that at high level, there were several requests that were raised on the IM captured as follows:</p> <p>1.37.1 The Committee received submissions to the extent that the objectives raised in the IM were not feasible and will work against one another, or that the stated primary objectives contained in the IM will not work.</p> <p>1.37.2 Under the legal framework, the submissions made were that the Authority should aggressively regulate competition in the ICT sector, having noted the National Development Plan, the SA Connect, and the White Paper and the Minister's policy of 2019.</p> <p>1.37.3 The Committee indicated that there was a submission that raised concerns about the inclusion of the IMT2300 and IMT 3500 in the ITA.</p> <p>1.37.4 The Committee also indicated that certain submissions made a request for a Special</p>	
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	<p>Spectrum to be set aside for the WOAN and that certain aspects of the Spectrum to be unbundled.</p> <p>1.37.5 The Committee received submissions recommending Spectrum caps and that the reserve price be discounted in certain areas.</p> <p>1.37.6 There were also submissions that requested the Authority not to use the Spectrum in the IMT700, IMT2300, IMT2800.</p> <p>1.37.7 There were interference issues that were raised by Denel on the strategic operations of the Department of Defence within the range of IMT 2200 to IMT 2400.</p> <p>1.37.8 There was a submission to the extent that there was no clear migration process to avail the IMT700 and IMT 800 and that this Spectrum should not be licensed.</p> <p>1.37.9 There was also support for the Authority's public policy objectives which are shaped by the new growth-path and Strategic Integrated Project which prioritise rural and underserviced areas in order to stimulate economic growth.</p> <p>1.37.10 There was a submission that Spectrum award should be conditional upon the roll-up of network of</p>	
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infrastructure in the rural areas and capacity in the urban areas be procured from the WOAN, and failure to meet the empowerment obligation should result in the withdrawal of Spectrum licenses.

1.37.11 The Committee submitted that the Spectrum Caps are applicable to all the bands to be licensed to allow flexibility in the Auction.

Spectrum Obligations

1.38 The Authority has conducted an independent competition assessment that informed the proposed licensing process.

1.39 The Authority imposed social obligations for the zero-rating of all mobile content provided by Public Benefit Organizations.

Coverage

The Committee proposed that the winner of the Spectrum that has the most coverage obligation will be granted a reduced reserve price to ensure that they are not burdened by the deployment costs.

Auction

1.40 The Committee indicated that the format selected for the Auction is the Simultaneous Multiple Round Ascending (SMRA) method which is deemed to be the most efficient method.

1.41 The Auction will have one or more rounds including what is known as opt-in rounds, and will continue until there is a round in which no new bids are placed and waivers are used.

	<p>1.42 The Committee further indicated that bidders will be allowed to place bids at any of the available slots, and with the payment of the Auction fee will be paid into the Authority's account within 30 days from the date in which the announcement is made.</p>	
<p>2.</p>	<p>The Competition Assessment Report</p> <p>2.1 The Authority will make available a large amount of Spectrum of 446MHz for licensing for the provision of mobile broadband services in South Africa.</p> <p>2.2 The Committee indicated that an important pre-requisite for a fair economic value of the five bands and the Spectrum Auction is taking a view on the current stage of competition as well as considering competition in the mobile broadband markets.</p> <p>2.3 The Committee in its analysis, has considered the National Wholesaler which controls its own Radio Access Network (RAN) and has the capacity to provide IMT services on a wholesale scale to roaming and Mobile Virtual Network Operators (MVNO's) customers and a, Sub-National RAN operator, and other retailers including smaller Internet Service Providers (ISP's).</p> <p>2.4 The Committee indicated that some of the barriers to entry includes sites and supplementary roaming, customer switching costs, and the requirement for an I-ECNS licence.</p>	

	<p>2.5 The Committee submitted that two operators currently hold a combined market share of almost 75% and that the market is highly concentrated. MTN is currently dominant in 75 Municipalities and Vodacom is dominant in 110 municipalities.</p> <p>2.6 The Committee indicated that Retail and Wholesale markets are linked and that MTN and Vodacom are vertically integrated since they operate downstream Retail services and upstream services, have been assigned Spectrum and operate in their own high sites and offer roaming services.</p> <p>2.7 The Committee is aware that the forthcoming Auction will not resolve the current Wholesale and Retail competition matters in South Africa but will prevent worsening the competition concerns.</p> <p>2.8 The Committee noted that the Broadband penetration is extremely low and that the lack of Spectrum assignment might be a contributory factor, including pricing.</p> <p>2.9 The Committee also noted that both MTN and Vodacom have Spectrum constraints due to the number of subscribers.</p> <p>Post Auction</p> <p>2.10 The Committee indicated that the Spectrum award process will, in the short to medium term, influence competition at a Wholesale level whilst the downstream Retail competition will be affected.</p> <p>2.11 The Committee submitted that it will be concerned if, as a result of the</p>	
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Spectrum award, there will still be operators who has access to Spectrum but still unable to compete in the market.

Conclusions from various Steps

2.12 The Committee concluded that Tier 1 players' existing Spectrum holdings, site dominance and dominance in the retail markets are likely to be sufficient for it to be credible National Wholesaler, into the future even if it wins no additional Spectrum, however, if the Tier 1 National Wholesaler wins a bigger portion of the Spectrum at the Auction, this will likely limit the future credibility of Tier 2 players and the forthcoming WOAN.

2.13 The Committee indicated that the Spectrum Licence Transfers (via mergers or acquisitions), will be bound by the Spectrum floors and caps in order to continue to preserve and promote competition.

2.14 The Committee submitted that another Tier 2 National Wholesalers are unlikely to be credible without additional sub-1GHz Spectrum, additional mid-band Spectrum and access to more sites.

2.15 The Committee indicated that a successful new WOAN entrant will be a fifth National Wholesaler and will need sufficient coverage and capacity for it to be credible.

2.16 The Committee submitted that there is a risk for the third and fourth National Wholesalers for not acquiring Spectrum. However, the reserve price consideration of Tier 2 National Wholesalers was made to make sure that they remain credible post the Auction.

	The analysis report was noted.	
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**ISSUED BY: Secretariat Office
on behalf of Council**