

# ICT SMME Chamber

## Response to ICASAs SECOND INFORMATION MEMORANDUM (IM)

(GENERAL NOTICE 668 OF 2021)

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### FOR ATTENTION

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## 1. BACKGROUND

- 1.1. The ICT SMME Chamber (the Chamber) is a Chamber of business catering for small business ICT entrepreneurs that operate at varying levels of entrepreneurship, in the full spectrum of the information and communication technologies. Whilst the Chamber mainly takes its cue from the Policies, Laws and Regulations lead by the Ministry of Communications and Digital Technologies, our members individually qualify in terms of the National Small Enterprise Act definitions and collectively aspire to contribute to the transformation of South Africa's ICTs through collaborative means applying Policy-based and economically sound interventions. The Chamber is an established stakeholder in the ICT and the telecommunications sectors.
- 1.2. According to Notice No. 42597 in the Government Gazette dated 26 July 2019, the then Minister of Communications issued a Policy and Policy Directive in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005) stating:
- “The Minister recognises that there are over four hundred players that hold electronic communications network service licenses but cannot access spectrum, due to its scarcity. This has an **adverse effect competition**, contributes to the high costs to communicate and serves as a **barrier to entry for new entrants and SMMEs...**”
  - “High demand spectrum may be assigned to a WOAN and the remaining high demand spectrum may be assigned to other electronic communications network service licensees, which spectrum assignment processes must **commence simultaneously.**”
  - “The WOAN is an important policy instrument to lower barriers to entry for smaller players. improve the ownership of the ICT sector by historically disadvantaged individuals and to promote service -based competition.”

## 2. CHAMBER RESPONSE TO ICASA'S SECOND INFORMATION MEMORANDUM

The Chamber will focus on four key areas in response to ICASA's Second Information Memorandum, namely:

- Broad-Based Black Empowerment (B-BBEE)
- SMME Development and Engagement
- Legal and Regulatory
- Spectrum Allocation and Licensing

### 2.1. **Broad-Based Black Empowerment (B-BBEE)**

The Chamber acknowledges the Objectives stated in 3.1 including:

- Promotion of broad-based black economic empowerment, with particular attention to the needs of women, opportunities for youth and for persons with disabilities.

In addition, Section 13.2 of the Information Memorandum refers to a licensee needing to reach within 12 months a Level 1 contributor (BBBEE status) in terms of the Codes of Good Practice

2.1.1. Considering the pre-requisites for the setup of a WOAN consortium including ownership with voting rights of the above mentioned HDGs, the Chamber would appreciate ICASA's feedback on response on the specific criteria that applicants for the IMT Spectrum Auction would need to meet to fulfil this objective.

2.1.2. Licensees can achieve a Level 1 contributor status without needing to fulfil on the 30% ownership by HDGs in the organization. This level can be reached by overachieving on other pillars / requirements of the Codes of Good Practice in the BBBEE Act.

- 2.1.3. ICASA needs to publicise how this will be measured, what will be the consequences of not meeting these criteria within the specified time considering the monetary investment, the Licensees have committed to during the auction process and in subsequent licence fees.

## **2.2. SMME Development and Engagement**

The Chamber acknowledges the Objectives stated in 3.1 including:

- Develop and promote SMMEs and cooperatives
- Promote competition within the ICT sector

- 2.2.1. Considering the suspension of the WOAN ITA and the subsequent delaying of the WOAN process, the Chamber would appreciate ICASA sharing its plan on how the regulator will fulfil against the above-mentioned objectives. Currently, the large MNOs who will be the only players in the Telecommunications market with the financial means and backing to participate in the IMT Spectrum auction, have no incentive to develop and promote SMME's.
- 2.2.2. Further to this, while the IM refer to discounted reserve prices, no SMME nor a SMME consortium can meet the financial requirements to enter the auction. To meet any of the reserve prices, potential bidders would be categorized as generic organisations with high value investors. The proposed auction process is a barrier to entry for all SMMEs.
- 2.2.3. It is the opinion of the Chamber that the auction does not promote increased competition in the market but instead increases the capacity and capability of the current operators that monopolize the industry.
- 2.2.4. The Chamber is concerned about the method ICASA will employ in its ITA's to enable SMME's to gain access to infrastructure to compete at a retail level. More clarity needs to be provided by the Authority on how it intends on fulfilling its goals with regards to access to infrastructure and competition

## 2.3. Legal and Regulatory

### 2.3.1. Paragraph 2.1.2 of the Notice No. 42597 in the Government

Gazette dated 26 July 2019, the Policy and Policy Directive in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005) states the following, namely:

*“High demand spectrum may be assigned to a WOAN and the remaining high demand spectrum may be assigned to other electronic communications network service licensees, which spectrum assignment processes must commence simultaneously.”*

2.3.2. While acknowledging the various processes that have occurred on the ITAs, the WOAN ITA has always been linked with the IMT Spectrum Auction ITA during this process. ICASA has now chosen to separate the ITA processes, choosing to go ahead with the IMT Spectrum Auction ITA in December 2021 while suspending the timetable for the ITA and only outlining plans, if any, in March 2022. This contradicts the Ministerial Directive noted above. It is imperative that ICASA shares the reasons for the suspension of the WOAN ITA to the market.

2.3.3. ICASA is a product of statute and a chapter 9 institution in terms of the Constitution of South Africa. It is our submission that the Authority cannot elect to ignore a clear directive from the Minister and embark on its own process. To this end the Chamber requests an explanation from ICASA on how this decision was made and how it will rectify the same.

## 2.4. Spectrum Allocation and Licensing

- 2.4.1. The Chamber is of the view that the IMT Spectrum Auction will further increase the gap on spectrum capacity between the haves and have nots. According to calculations done by members of the Chamber, the two largest operators in South Africa have approximately 38 MHz of spectrum. Post the auction process, it is estimated that each operator will be licensed for a potential additional 67 MHz resulting in each of the largest operators having approximately 105 MHz of spectrum or more.
- 2.4.2. To ensure a competitive industry, to level the playing field and to ensure the industry has access to competitively priced capacity, the Chamber recommends that the WOAN is allocated, at minimum, an equal amount of capacity as one of the largest operators, i.e. If the largest accrual of current and auctioned is 105MHz, the WOAN should be allocated nothing less than this amount of High demand spectrum. It should also have access to other spectrum at no less favourable terms to what will be allocated.

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