



30 November 2021

Independent Communications Authority of South Africa

350 Witch-Hazel Avenue

Eco Point Office Park

Eco Park, Centurion, Gauteng

Attention: Mr. Davis Kgosimolao Moshweunyane

Per email: imtlicensing@icasa.org.za

SUBMISSION: SECOND INFORMATION MEMORANDUM ON LICENSING OF SPECTRUM IN THE IMT700, IMT800, IMT2600 AND IMT3500 BANDS

1. Liquid Intelligent Technologies ("**Liquid**") refers to the Second Information Memorandum in relation to the radio frequency spectrum licences for International Mobile Telecommunication (IMT) Spectrum bands in the ranges of 703 – 790 MHz ("IMT700"), 790 – 862 MHz ("IMT800"), 2500 – 2690MHz ("IMT2600"), and 3400 – 3600 MHz ("IMT3500") ("**the Second IM**"), published by the Authority as General Notice 668 in Government Gazette No. 45496 of 16 November 2021 and to the Authority's invitation to comment thereon.
2. Liquid has set out its submissions on the Second IM below.
3. Spectrum to be auctioned: Liquid has no specific comments and supports the process proceeding based on the Lots identified.
4. Spectrum caps: Liquid supports the spectrum caps proposed in the Second IM.
5. Dependency on broadcasting digital migration (BDM) process: Liquid supports the Authority's position on proceeding with the assignment process notwithstanding that the BDM process has not been completed
6. Opt-in lots:
 - 6.1. Liquid has noted the clarification that Lots in the IMT3500 range will not be made available during the Opt-in round.

6.2. Liquid submits that the Authority should give due consideration to allowing Liquid to participate in the Opt-in round in respect of Lot 33 (4 MHz in IMT3500 - contiguous with LIT's existing assignment) taking into account the following:

- 6.2.1. Lot 33 is a natural fit with Liquid's existing 56 MHz IMT3500 assignment. As the Authority is aware, LIT currently makes use of a 50MHz channel for the provision of its services and is unable reap the full benefit of its existing assignment in IMT3500 due to the limitations of the technologies being employed.
- 6.2.2. An assignment of 4MHz of contiguous spectrum allowing utilisation of a 60 MHz carrier would - in practical terms - result in the unlocking of 10MHz for use in Liquid's existing deployments and those of its roaming partners, resulting in significant improvements to downlink capacity.
- 6.2.3. Liquid accepts that it has no entitlement to this spectrum and that demand for IMT3500 spectrum in general at auction is likely to be greater than can be accommodated with the proposed Lots.
- 6.2.4. Nevertheless, an assignment of Lot 33 to Liquid represents an optimal outcome in terms of spectrum efficiency and, in particular, efficient use of spectrum of mid-band IMT3500 spectrum.
- 6.2.5. Liquid submits further that this would also represent a partial remedy to the finding made by the Authority in its Findings Document in respect of the Inquiry into Competition in the Provision of Mobile Broadband Services that there is ineffective competition in the upstream market for the provision of wholesale roaming services. Liquid as a non-vertically integrated pure wholesaler offering non-discriminatory access to its services would be placed in a vastly improved position to compete in this market.
- 6.2.6. Liquid is unable to determine that Lot 33 would be attractive to any other bidder but is aware that there may be a strategic interest on the part of other auction participants to bid up the price of this Lot. Liquid submits that this would be an inefficient outcome of the auction process which can be addressed by allowing Liquid to participate in the Opt-in round for Lot 33.

6.3. Liquid notes that the accommodation of this submission would fall outside of the existing minimum spectrum portfolio (MSP) structure for the Opt-in round but is of the view that ICASA has rational and lawful grounds to exercise a discretion to include Lot 33 in the Opt-in Round and allow Liquid to participate therein.

7. Open access obligations:

7.1. Liquid refers to paragraph 11.3.3 of the Second IM, reproduced below for ease of reference:

11.3.3 A Licensee assigned spectrum through the auction process will be required to provide open access to MVNOs which must have 51% ownership held by persons from Historically Disadvantaged Persons. This provision shall become licence conditions for licences issued in this auction process. The Licensee assigned spectrum through the auction process shall be required to submit to the Authority within a period of between 3 – 6 months the business plans to ensure that the MVNOs are sustainable for the period of 3 years.

- 7.2. Liquid welcomes services-based competition as a mechanism to lower the cost to communicate for South Africans as well as attached empowerment obligations which will result in real and sustainable transformation in the electronic communications service provider industry.
- 7.3. Liquid has previously raised queries with the Authority designed to elicit further information regarding this obligation, with particular reference to:
- 7.3.1. The intended definition of the term MVNO: this is an extremely broad term which covers a continuum of business models ranging from “branded resellers” to “full MVNOs”.
- 7.3.1.1. A branded reseller rebrands SIM cards and sells voice and data on the back of a wholesale volume deal entered into with the host MNO. The strength of the branded reseller is its brand and distribution network: it obtains electronic communications services from the host MNO and resells these without itself have a radio network or its own numbering resources. A local example of a branded reseller is Red Bull Mobile.
- 7.3.1.2. A full MVNO has its own core network and home location register (HLR) as well as its own numbering range. A local example is Lyca Mobile.
- 7.3.1.3. Liquid requests clarity on whether the Authority has a specific form of MVNO in mind? If not, then it should also be clarified that successful applicants at auction that attract this obligation have a substantial degree of flexibility in how they meet it.
- 7.3.2. The treatment of changes of equity in MVNO partners:
- 7.3.2.1. Will the Authority apply a “once-empowered-always-empowered” approach as is applied to mining licences? The equity ownership of an MVNO partner post agreement is not a matter under control of the host MNO.
- 7.3.2.2. Where the MVNO partner is a licensee, Liquid notes that the requirement that the MVNO partner be 51% owned by Historically Disadvantaged Persons (HDPs) exceeds the requirement set out in the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDGs) and the application of the ICT Sector Code, 2021 (“the Control and Ownership Regulations 2021”) that licensees have a minimum 30% equity ownership by HDPs.
- 7.4. Subject to the material clarifications requested above, Liquid supports the proposed obligations. As the Authority is aware, Liquid is an open-access wholesale player in the mobile broadband services value chain with a focus on providing wholesale roaming services to MNOs. Liquid’s market positioning therefore does not lend itself to the launching of MVNOs (which are retail focused).
- 7.5. Notwithstanding the foregoing, Liquid will investigate how it can comply with this obligation should it be successful in the forthcoming auction.

8. Incentives to the WOAN: Liquid has noted the Authority's decision to undertake further investigation into the implementation of the WOAN concept and the resulting delays in the commencement of the WOAN licensing process.
- 8.1. Liquid supports the delay in the WOAN licensing process.
 - 8.2. Liquid supports the continued set-aside of high-demand spectrum for the WOAN but submits that consideration should be given to defining a deadline for the launch of the WOAN which – if not met – would result in this spectrum becoming available to other operators using the extended application procedure.
 - 8.3. Liquid has previously raised specific queries to facilitate its understanding of the proposed incentives to the WOAN to be imposed as licence terms and conditions on successful applicants at auction. These have not been responded to, which Liquid believes reflects
 - 8.4. Given the delays in the WOAN licensing process and the acknowledgement by the Authority that further research is required into the concept, Liquid submits that the imposition of these obligations as part of this process is premature.
 - 8.5. In its prior submissions Liquid has objected to these proposed obligations on the basis that it is not possible for applicants to determine what they are being asked to commit to. This remains the case and it is to be hoped that this issue will become clearer through the reconsideration of the WOAN licensing process.
 - 8.6. Liquid submits that the nature and content of obligations to be imposed on successful applicants and which are intended to act as incentives for the WOAN should be revisited when the Authority is preparing to issue an ITA for the WOAN IECNS and spectrum licences.
9. Social obligations:
- 9.1. Liquid welcomes obligations of this nature and submits that learnings gained under ICASA's COVID-19 Regulations can be applied to ensure that zero-rating is continued after the expiry of the national disaster period.
 - 9.2. As the Authority is aware, Liquid does not have a retail presence in South Africa. During the national disaster period Liquid has engaged with the Authority to reach understanding of why obligations of this nature do not apply to Liquid.
 - 9.3. Notwithstanding the foregoing, Liquid is happy to commit to meeting this obligation wherever it is providing a service to which it applies.
10. Use it or share it: Liquid supports the proposed provisions.
11. Empowerment: Liquid supports the proposed provisions but – as set out above – seeks clarity from the Authority on the application of the “once-empowered-always-empowered” rule in this context.

Conclusion

12. Liquid extends its appreciation to the Authority for its consideration of these comments and trusts that these be of assistance to the Authority.
13. Should the Authority hold oral hearings or workshops, Liquid hereby gives notice of its intention to participate.

Yours faithfully



Valencia Risaba

Chief Corporate Affairs Officer