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30 November 2021

Mr Davis Kgosimolao Moshweunyane

The Independent Communications Authority of South Africa

Centurion

By email: imtlicensing@icasa.org.za

Our references: Mr Gudani Luvhani / Mr Kennedy Memani

Our e-mail: gudani@sonketelecoms.com / kennedy@sonketelecoms.com /

Dear Sirs,

**INFORMATION MEMORANDUM – LICENSING PROCESS FOR INTERNATIONAL
MOBILE TELECOMMUNICATIONS – IMT700, IMT800, IMT2600 AND IMT3500: SONKE
TELECOMMUNICATIONS – WRITTEN REPRESENTATIONS**

Introduction

1. We refer to the Information Memorandum published in Notice No.668, in Government Gazette No. 45496, dated 16 November 2021 regarding the International Mobile Telecommunications licensing process (“**the IMT Information Memorandum**”).
2. Sonke Telecommunications Proprietary Limited (“**Sonke Telecoms**”) hereby submits its representations in response to the Independent Communications Authority of South



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Africa's ("**the Authority**") invitation to make representations regarding the IMT Information Memorandum. Sonke Telecoms' representations are detailed below.

3. Sonke Telecoms is not a prospective bidder in the International Mobile Telecommunications licensing process contemplated in the IMT Information Memorandum. Sonke Telecoms is, however, a prospective applicant in the Wireless Open Access Network licensing process publicised in the Authority's Information Memorandum published in Notice No. 587 in Government Gazette No. 45255 dated 1 October 2021 ("**the WOAN Information Memorandum**").
4. Sonke Telecoms' representations in response to the IMT Information Memorandum have been precipitated by the Authority's Notice No. 677 published in Government Gazette No. 45509 dated 19 November 2021 ("**the WOAN Process Suspension Notice**").¹
5. The WOAN Process Suspension Notice states that "*ICASA has resolved to temporarily suspend the timetable relating to the licensing of the WOAN to allow for the conclusion of the consultation process relating to the permanent licensing of the IMT spectrum that is currently underway and give the Authority an opportunity to interrogate the impact of the outcomes of the consultation on the licensing of the WOAN.*"
6. As a prospective applicant in the Wireless Open Access Network licensing process publicised in the WOAN Information Memorandum, Sonke Telecoms is extremely concerned by the Authority's decision to suspend the WOAN licensing process. It is Sonke Telecoms' view that, given the manner in which the formation and objectives of the WOAN are intertwined with the International Mobile Telecommunications licensing process, suspending the Wireless Open Access Network licensing renders many aspects of the International Mobile Telecommunications licensing process defunct.

¹ <https://www.icasa.org.za/uploads/files/Notice-of-Consultation-on-the-Composite-ITA-for-the-WOAN.pdf>



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7. Aspects of the International Mobile Telecommunications licensing process, such as the Incentives to the WOAN², and the objectives such incentives assist to achieve³, will be rendered meaningless.
8. In essence, it is Sonke Telecoms' view that suspending the WOAN licensing process runs contrary to, amongst others, the Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network ("**the WOAN Policy Direction**")⁴ and the objectives of the Electronic Communications Act, 25 of 2002 ("**the EC Act**").

Why the suspension is contrary to the WOAN Policy Direction

9. On 1 October 2021, the Authority published the procedure it planned to undertake to "*licence the I-ECNS and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN):...*" ("**the WOAN Licensing Process**").⁵
10. The dates contemplated for the WOAN Licensing Process ran from 1 October 2021 to 13 May 2022. The timelines for the WOAN Licensing Process were almost identical for the International Mobile Telecommunications licensing process ("**the IMT Auction Process**") which started on 1 October 2021 and ends around March 2021.
11. The fact that the WOAN Licensing Process and IMT Auction Process run almost in parallel is not coincidental. It is a requirement of the WOAN Policy Direction. In this regard, the WOAN Policy Direction directs that:

*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.*⁶

² See paragraph 11.4 of the IMT Information Memorandum.

³ See paragraph 3.1 of the IMT Information Memorandum.

⁴ https://www.gov.za/sites/default/files/gcis_document/201912/42597gon1013.pdf

⁵ https://www.gov.za/sites/default/files/gcis_document/202110/45255gen587.pdf

⁶ See 2.1.2 of the WOAN Policy Direction



12. It is our view therefore that, not only must the WOAN Licensing and IMT Auction Processes commence simultaneously, but they must also progress in tandem. It is our submission that the genesis and primary purpose of the WOAN Policy Direction is the licensing of the WOAN. The IMT Auction Process is ancillary to the licensing of the WOAN and stems from the policy decision to deviate from the National Integrated ICT Policy White Paper, 2016 (**“the White Paper”**). In this regard, the WOAN Policy Direction records that the *“White Paper provides that all currently unassigned high demand spectrum will be set aside for assignment to the WOAN”*⁷ and excess high demand spectrum be assigned to other electronic communications network service (**“ECNS”**) licensees.⁸
13. The Authority’s decision to suspend the WOAN Licensing Process effectively suspends the primary purpose of the WOAN Policy Direction, while allowing the ancillary IMT Auction Process to proceed. This puts the cart before the horse. By adopting this approach, the Authority effectively sounds the death knell for the WOAN.
14. We set out below, why we believe that the suspension of the WOAN Licensing Process is the WOAN’s death knell.

The WOAN’s death knell

15. In coming to the decision to set aside some spectrum for the WOAN and allocate the balance to other ECNS licensees, the WOAN Policy Direction records that the Minister considered the public interest and policy objectives including to:
 - 15.1. ensure the WOAN’s sustainability and future capability including incentivising it; and
 - 15.2. promote competition within the ICT sector with the emphasis on service-based competition through the WOAN.⁹

⁷ See paragraph 1.4 of the WOAN Policy Direction.

⁸ See paragraph 1.5 of the WOAN Policy Direction.

⁹ See paragraph 1.6 of the WOAN Policy Direction.



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16. Insofar as the WOAN's sustainability and future capability are concerned, even if the WOAN Licensing Process is resumed in March 2022, the WOAN's ability to pursue a licence is likely to be considerably weakened because:
- 16.1. those ECNS licensees who would have been successful in the IMT Auction Process ("**Successful ECNS Licensees**") would immediately capitalise on the newly acquired spectrum by using it to capture more market share in anticipation of the WOAN's formation;
 - 16.2. the nimbler mobile virtual network operators would align themselves with and take advantage of the licence obligations placed on Successful ECNS Licensees, thus reducing the WOAN's prospects of securing them as customers once it is operational; and
 - 16.3. funders are likely to be even more risk averse in instances where prospective WOAN consortia seek funding for their operations, given the head start Successful ECNS Licensees would have had in entrenching themselves and securing market share.
17. Insofar as one of the EC Act's main objectives is to "*promote competition within the ICT sector*",¹⁰ it is our view that suspending the WOAN Licensing Process, even if the process were to resume in March 2022, would have the opposite effect. In this regard the incumbent Successful ECNS Licensees would be able to exploit their first mover advantage to entrench and advance their market power, making it even more difficult for the WOAN to establish itself and gain market share.¹¹ For example, the Competition Commission in its *Data Services Market Inquiry Final Report* makes the point that incumbents have many benefits of being first-movers. It says:
- The stickiness of more valuable contract customers, more favourable site locations and spectrum assignments are also factors that have played into the hands of first-*

¹⁰ See section 2(f) of the EC Act.

¹¹ For more in-depth views on the first-mover advantage that incumbents like Vodacom and MTN have, see the Competition Commission's *Data Services Market Inquiry Final Report* dated 2 December 2019, particularly pages: 22 at para 23.4; 23 at para 24; page 26 at para 33; and page 82 at paras 201.3 and 201.4. The report can be found here: <https://www.compcom.co.za/wp-content/uploads/2019/12/DSMI-Non-Confidential-Report-002.pdf>



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mover networks historically, albeit that their role or effect may have reduced over time.¹²

18. The simple conclusion is that any delays in licensing the WOAN only serve to radically reduce its ability to become a viable, profitable and effective competitor to the incumbent Successful ECNS Licensees. This runs contrary to the public interest and policy objectives that the WOAN Licensing and IMT Licensing Processes are intended to achieve.

Conclusion

19. For the reasons set out above, it is our view that the Authority's decision to suspend the WOAN Licensing Process runs contrary to the WOAN Policy Direction and the objectives of the EC Act.
20. We therefore urge the Authority to urgently reconsider and rescind its decision to suspend the WOAN Licensing Process.
21. We look forward to receiving the Authority's favourable response.

Yours faithfully,

Gudani Luvhani

SONKE TELECOMS

¹² See paragraph 201.4 on page 82.