

ICASA Hearing Transfer of Control Cell C Spectrum Licences

19 September 2024

Vodacom presentation



Why is ICASA's permission required before control of a spectrum licence is transferred?

- Section 31(2A) of the Electronic Communications Act (“ECA”) :

“2A ... the control of a radio frequency spectrum licence may not be assigned, ceded or in any way transferred, to another person without the prior written permission of the Authority.”

- Section 31(1) identifies the licensed activity:

“No person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence granted by the Authority to such person in terms of this Act.”

- Control of the license implies and requires control of the licensed activity.
- ICASA cannot condone non-compliance with section 31(1). All that ICASA can do is issue a license to a person who applies, to enable that person to use spectrum lawfully.
- ICASA needs to know who is controlling the spectrum now, who will be controlling it after the transaction and whether it is and will be controlled in accordance with the ECA.



Cell C and MTN Spectrum Licences

- Cell C has two spectrum licences in issue: for frequency assignments in the 900, 1800 and 2100 MHz bands. MTN also has licences for frequency assignments in each of the 900, 1800 and 2100 MHz bands
- The right to use specific spectrum is confirmed in clause 5 of schedule B, read with schedule C:
 - “B5. Right to use the 2100 MHz spectrum
The licensee is authorised to utilise the frequencies in accordance with the technical parameters set out in schedule C which forms part of this Licence.”
- Example: Cell C 2100 MHz licence Schedule C identifies authorised activity:
 - “1. Technical specification
 - 1.1 The licensee must conform to all applicable standards relevant to the portion of the frequency spectrum authorised herein...
 - Frequency spectrum allocation 2100 MHz
 - Frequency 1960.0 – 1965.0 MHz & 2150.0 – 2155.0 MHz [range specified]
 - Bandwidth 2 x 10 MHz Blocks



The application process

- RFS Regulation 15 sets out the procedure and information to be considered for transfers of control. **Annexure E reflects the information relevant to ICASA's decision.**
- Regulation 15(5) records additional the criteria for assessing the application, including criteria as provided for in the ECA. This would include compliance with the ECA, including section 31.
- Regulation 15(7) requires both the transferor and transferee to ensure that:
 - (b) the transferee is capable of complying with the terms and conditions contained in the radio frequency spectrum licence; and that
 - (c) a duly completed application form is submitted by the transferor
- Reg 15(8) does not reflect a closed list of reasons why a transfer of control application can be refused. It only reflects additional peremptory requirements.



Vodacom's concerns were raised

- Vodacom wrote to ICASA and raised its concerns in October 2023
- The Authority is required in section 4 (b), (d) (n) of the ICASA Act and section 31(7) of the ECA to ensure compliance with the legislation and license conditions.
- Section 17C of the ICASA Act provides for complaints to be addressed to the Authority and for the Authority to refer the complaint to the CCC.
- If a licensee is in breach of its license or of the relevant legislation, this is a material and relevant consideration when deciding whether to permit the exercise of rights under the legislation in relation the license.
- The Authority may not grant rights in respect of the license where the evidence indicates that the breach will continue after the transfer.



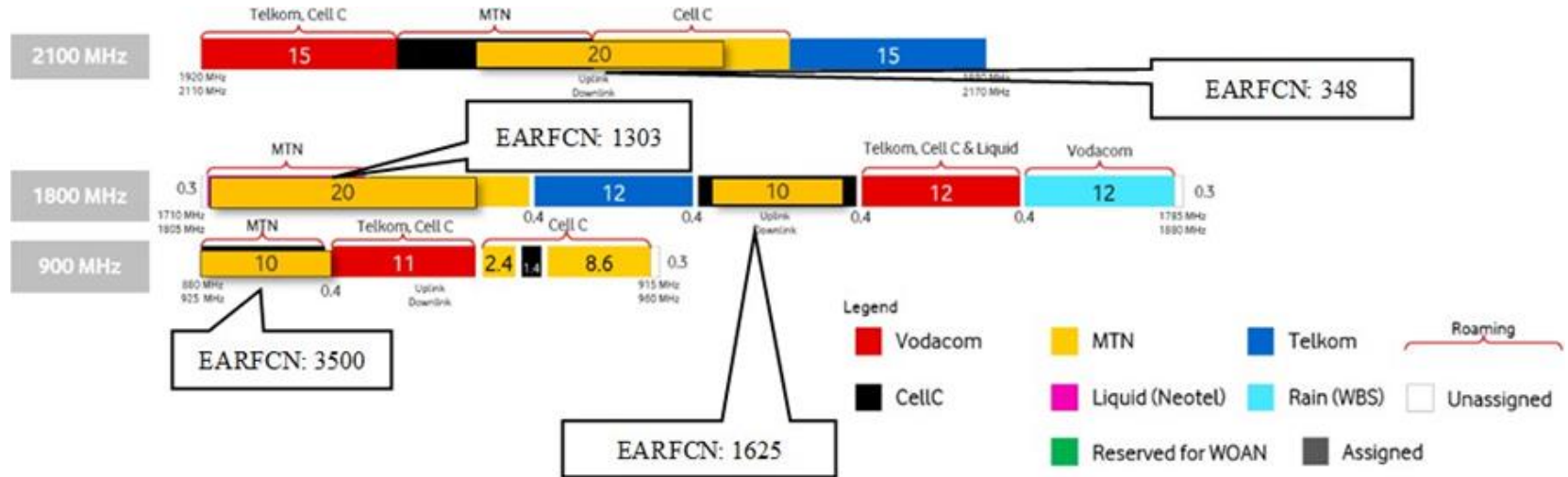
Annexure E to Cell C's application shows MTN controls the Cell C spectrum

- Section I clause 3 (2nd paragraph) “... Cell C's assigned spectrum is deployed nation-wide through its MOCN arrangement with MTN...”
- Section II provides a description of service. [claimed confidential] It should confirm that MTN, not Cell C is the firm transmitting and receiving radio signals on Cell C's spectrum.
- Section III (1) (second bullet): “Cell C **deactivated all of its own RAN by end June 2023** and now uses both of the leading MNOs RAN networks.”
- Section IV clause 17 - “Regulatory Requirements (ITU and Act)”, (last paragraph) Cell C shall ensure compliance by specifying such requirements through contractual arrangement with its roaming partners and that there is provision for remedial action when necessary.”

This all confirms that others have actual control and Cell C can only impose restrictions through contractual means.



MTN controls the licensed activity



900 MHz spectrum – MTN and Cell C

Comparing MTN's user traffic to Cell C user traffic in the 900 MHz band:

- MTN 900MHz spectrum is used to primarily service its own and Cell C 3G traffic.
- MTN uses CellC's 900MHz spectrum to provide low band LTE for its own and Cell C 4G traffic.

This is strong evidence that MTN has taken control of the Cell C spectrum and is allocating MTN and Cell C traffic on MTN and Cell C spectrum to meet its own needs.



Spectrum Sharing

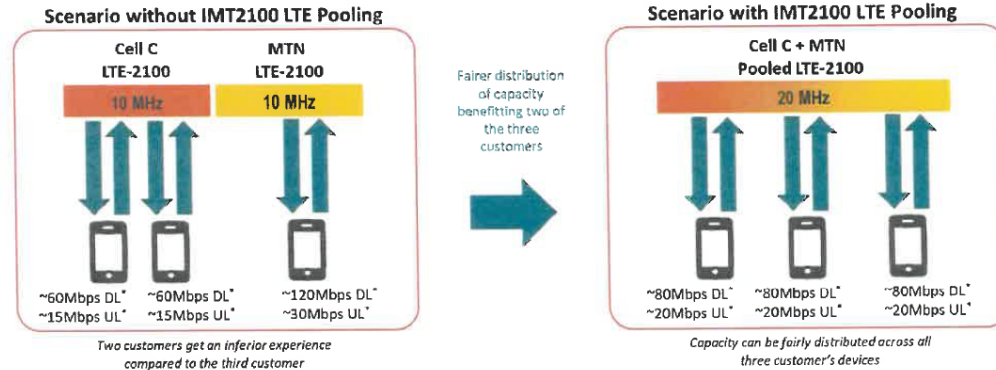
- Cell C and MTN applied under Regulation 18
 - “(1) Radio frequency spectrum sharing is where two or more licensees have been granted radio frequency spectrum licences for all or part of the same frequency assignment.
 - (3) Two or more persons may apply to the Authority for radio frequency spectrum licences for spectrum assignments on a shared basis in terms of Form D of Annexure A.”
- Basis of Application for Sharing
 - ICASA’s consent was sought to “apply **bilateral / symmetrical sharing** in respect of spectrum licence to MTN and Cell C respectively in the 900 MHz, 1800 MHz and 2100 MHz bands for purposes of achieving the benefits set out in paragraph 5.”
- When presenting the benefits, diagrams were used including those reflecting multiple users on the 2100 LTE band.



The example showed Cell C and MTN users would receive equivalent service

Cell C & MTN spectrum pooling for IMT2100 LTE – Customer Benefit (3/3)

Three Devices Scenario



- If there are three active devices in the sector then they can't be perfectly load balanced between the two separate LTE-2100 carriers.
- With the single pooled LTE-2100 carrier, two of the Cell C or MTN customers can benefit significantly as the capacity can be evenly distributed between the three devices in a fairer manner.



ICASA approval of sharing

ICASA communicated its decision

- “to approve the application submitted by the parties to share their respective assigned radio frequency spectrum in the IMT900 MHz, IMT1800 MHz and IMT2100 MHz bands. In terms of the application, the sharing shall be in the form of spectrum pooling.”
- This approval restricted the manner in which the sharing should be done to the manner presented in the application, including requiring pooling of the full spectrum so that the parties could share equally and symmetrically
- ICASA also required that:
 - The sharing arrangement shall not result in either of the parties surrendering its operational independence and or autonomy to the other.
- This restraint could only refer to operational independence and autonomy in relation to the control and use of the spectrum – as it was an approval dealing only with spectrum

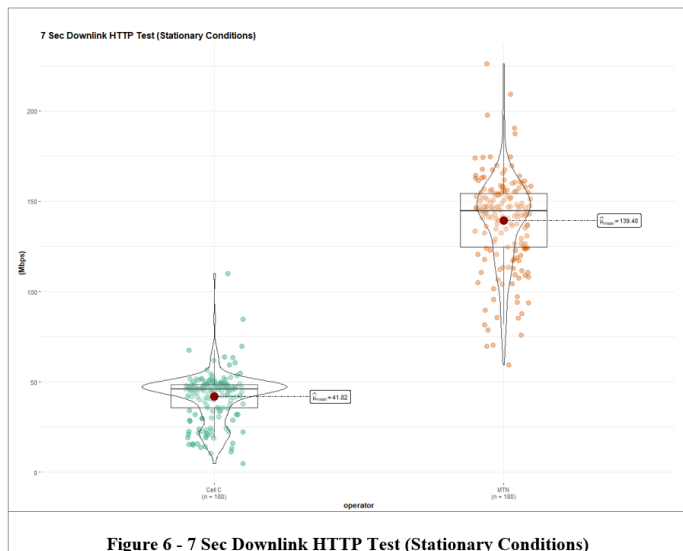
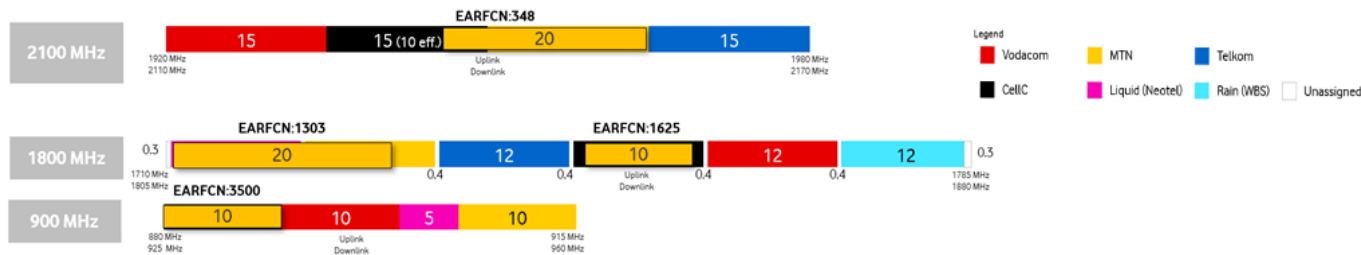


MTN and Cell C have not implemented the approval in accordance with the Authority's decision

- MTN has not imposed symmetrical and balanced services to Cell C but, per Vodacom's tests on 22 April 2024 (next slide) –
 - Average download throughput for MTN on the 2100 carrier is 139.4 mbps
 - Average download through Cell C on the same 2100 carrier is 41.82 mbps.
- MTN is providing its customers speeds more than 3 times faster than Cell C customers on the same pooled spectrum.
- MTN and Cell C have not implemented the approval in accordance with the Authority's decision.
- The Authority's conditions have not been complied with.



MTN Control of Cell C Spectrum - Test Results for 2100MHz band



Test Summary

Test Date: 22 April 2024.

Location: Gauteng

Carrier: 2100MHz EARFCN 348

Sample Size: 180 samples for each of MTN & Cell C

Avg. DL throughput for MTN: 139.4 Mbps

Avg. DL throughput for Cell C: 41.82 Mbps

Conclusion: Resources on the pooled block of spectrum are skewed in MTN's favour



Conclusion and Relief

- If the applicants (transferor and transferee) do not comply with the requirements of the application process and criteria, the application cannot be granted.
- The criteria include the requirement that the transferor is complying with the Act and the license conditions, and that the transferee will do so after transfer.
- The evidence shows non-compliance that will persist.
- The application should be refused, or the process should be suspended and Cell C given an opportunity to remedy the non-compliance. Once the non-compliance is remedied, Cell C can supplement its application, and a further public participation process can be held.





Together we can