GENERAL NOTICE

NOTICE XXXX OF 2020

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

RESPONSES TO THE ENQUIRY IN RELATION TO THE INVITATION TO APPLY PUBLISHED ON THE GOVERNMENT GAZETTE NUMBER 43768 (NOTICE NUMBER 535) ON 02 OCTOBER 2020

1. The Independent Communications Authority of South Africa (the Authority) published the Invitation to Apply (ITA) on 02 October 2020[1] on the licensing process for International Mobile Telecommunications (IMT) in respect of the provision of wireless mobile broadband access services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2600 and IMT3500.

2. The Authority hereby publishes the notice responding to the clarity seeking questions raised by stakeholders only insofar as they relate to the contents of the ITA.

3. The Authority advices stakeholders to refer to its Reasons Document for further information which will be availed in due course.



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DR. KEABETSWE MODIMOENG
CHAIRPERSON (ICASA)

[1] Government Gazette No. 43768 (Notice 535 of 2020)

OVERVIEW

The ITA requested the public to submit enquiries in relation to the ITA by 22 October 2020, 16h30 and the table below is the list of the stakeholders who submitted their enquiries within the stipulated period. Two queries will not be considered in this document as they were submitted after the closing date for submission of enquiries. .

Sn	Date received	Entity
1	05/10/2020	China telecom
2	12/10/2020	David Sjoe
3	12/10/2020	MTN SA
4	16/10/2020	Convergence Partners & inq.inq
5	16/10/2020	Paul Hjul
6	19/10/2020	MzansiWoan
7	19/10/2020	etv
8	22/10/2020	Telkom SA
9	22/10/2020	NAB
10	22/10/2020	SABC
11	22/10/2020	RAIN
12	22/10/2020	MTN SA
13	22/10/2020	MzanziWoan
14	22/10/2020	Vodacom
15	22/10/2020	Black Business Council
16	22 10 2020	Liquid
17	22 10 2020	SACF

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CLARIFICATION TO THE QUESTIONS RAISED

1. Facilities sharing: Does ICASA intend placing an obligation on existing operators and successful bidders for the high demand spectrum to make available on a cost or similar basis, facilities to the WOAN?[2]

   The Authority addresses all the facility leasing issues through obligations to lease electronic communication facilities in terms of the Facility Leasing Regulations published on 31 May 2010 in the Government Gazette No. 33252.

2. Spectrum trading/sharing: Will ICASA allow for spectrum trading and sharing by the WOAN and other wholesale operators (as defined in the ITA)?[3]

   Spectrum trading is not provided for in terms of the Electronic Communications Act and related regulations. Spectrum Sharing will be dealt with in accordance with regulation 18 of the Radio Frequency Spectrum Regulations, 2015 as amended (the Regulations).

   The information in relation to the licensing of the WOAN is provided on the Composite Invitation to Apply for an Individual Electronic Communications Network Service Licence and Radio Frequency Spectrum Licence for the Wireless Open Access Network published on 02 October 2020, in the Government Gazette No. 43767 (Notice No. 534 of 2020).

3. Additional spectrum allocations: Will the WOAN be eligible for additional spectrum allocations in the IMT band as per the outcome of WRC-19 and expected at WRC-23? In addition, could the WOAN apply for spectrum in other bands including mmWave bands?[4]

   The Authority is licensing the IMT Spectrum Bands identified in line with the rules and channel arrangements set out in the Radio Frequency Assignment Plans. The IMT Spectrum identified at WRC-19 will be made available for licensing in future.
   The information in relation to the licensing of the WOAN is provided on the Composite Invitation to Apply for an Individual Electronic Communications Network Service Licence and Radio Frequency Spectrum Licence for the Wireless Open Access Network published on 02 October 2020, in the Government Gazette No. 43767 (Notice No. 534 of 2020).

[2] Convergence Partners
[3] Convergence Partners, and Telkom
[4] Convergence Partners

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4. Open access obligations: The WOAN is required to provide access to wholesale services on open access principles. What happens if terms and conditions cannot be reached between the WOAN and potential other party? Will there be a process (e.g. arbitration) and/or will ICASA look to determine the pricing?[5]

The Obligations as set-out in the ITA will form part of the licence terms and conditions of the successful bidders. The Authority will monitor the compliance to the licence terms and conditions, should there be non-compliance the matter will then be referred to the Complaints and Compliance Committee for adjudication. The Authority will not determine any pricing for spectrum procured from the WOAN.

5. Eligibility criteria: What are the factors and weightings applicable thereto that will be applied in assessing the quality of the bids submitted?[6]

The Eligibility Criteria is described with the factors and weightings under section 17.5 (from page number 36 of 76) of the ITA.

6. Para 22.1. seems to contradict the provisions in para 12.4.1. in the invitation to apply for the radio frequency spectrum licences for IMT spectrum bands which stipulates that the 30% uptake for a period of 5 years not 7 years. Could ICASA clarify which obligation in terms of uptake is correct?[7]

5 years is the prescribed period for the 30% uptake as stipulated in the ITA on 02 October 2020[8] on the licensing process for International Mobile Telecommunications (IMT) in respect of the provision of wireless mobile broadband access services for urban and rural areas using the complimentary bands, IMT700, IMT800, IMT2600 and IMT3500.

The WOAN ITA does not make provisions for how long the obligation to procure a minimum of 30% national capacity, from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process should be. It simply says that an obligation to procure will be placed on the IMT licensees. Such obligation is placed in the IMT ITA for a period of 5 years.

The WOAN ITA states the WOAN must make available 30% of its national capacity for 7 years, this does not send a contradictory message it just only guarantees the WOAN business for 5 years leaving the additional 2 years optional for the IMT licensees.

[5] Convergence Partners and Vodacom
[6] Convergence Partners
[7] Convergence Partners, SACF, Telkom and Vodacom
[8] Government Gazette No. 43768 (Notice 535 of 2020)

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7. The ITA does not provide any timeline for the completion of the licencing process to be completed. We request that the Authority provides us with an indicative outline of the contemplated timelines.[9]

Stakeholders are kindly referred to section 18.3 (Timeframe for the award process) of the ITA.

8. In terms of the eligibility requirements, is the Authority requiring that applicants have both the 30% HDP and, at minimum, a B-BBEE Level 1 status at the time of application, or would meeting one of the two measures render an applicant eligible to apply?[10]

Stakeholders are kindly referred to paragraph 15.3.6.3 of the ITA which stipulates the disqualification criterion for applicants.

An applicant shall be disqualified from the application process where such an applicant has less than 30% (thirty percent) equity ownership by Historically-Disadvantaged Persons (HDP) <u>OR</u> is below a level 4 contributor (BBBEE status) in terms of the Codes of Good Practice published in terms of section 9(1) of the BBBEE Act.

The empowerment provisions as set out in section 14 of the ITA will be included as licence terms and conditions for the successful bidders.

9. In the event of any conflict between the BBBEE Act and other law, the BBBEE Act will prevail if the conflict relates to a matter dealt with in the BBBEE Act. While the Spectrum Regulations appear clear that the 30% HDP and Level 4 B-BBEE status requirements are alternative requirements and not conjunctive, this is not clear in the ITA. We request the Authority to confirm the intended interpretation and application of the aforesaid requirements.[11]

The HDP and BBBEEE status requirements prescribed in the Regulations apply equally in the ITA.

10. Finally, we request the Authority to provide clarity on what is contemplated in so far as the computation of the 30% HDP ownership requirement. In particular, would applicants in terms of the ITA be correct in applying the B-BBEEA rules in this regard, and incorporate, *inter alia*, the modified flow-through principle, exclusion of mandated investments,

[9] Liquid Telecom
[10] Liquid Telecom, Telkom, SACF and Vodacom
[11] Liquid Telecom

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exclusion of foreign business, exclusion of government ownership and sale of assets wherein prior ownership would be considered in terms of the "once empowered always empowered principle"?[12]

The published ITA is clear that applicants must either have 30% HDP or level 4 and above[13] BBBEEE status.

11. It is not clear whether 12 months period for the empowerment provision on the ITA, would be calculated from the date of awarding of the spectrum to a successful licensee or upon the spectrum actually becoming available for use by such licensee following the digital migration process. It is requested that the Authority provides clarity in this regard. It is further requested that the Authority provides clarity on the commencement of the Term of the spectrum license. In particular, would the terms of the license be calculated from the date of awarding of the license or upon the awarded spectrum actually becoming available to the licensee upon conclusion of the digital migration process?[14]

The empowerment provision will be effective as licence terms and conditions from the date of award of the radio frequency spectrum licences. The licence duration is provided for in section 8 of the ITA and will be effective from the date of the award of the radio frequency spectrum licences.

12. During April 2020, the Authority issued temporary spectrum licences in terms of the Covid-19 State of Disaster Regulations. We request an indication from the Authority, given the integration of the temporary spectrum in various operator's networks. We request the Authority to confirm whether it intends to make provision for, and/or consider allocating the specific spectrum already held by such operators, factoring in practical configuration considerations and with a view to ensuring minimal impact and consistency on deployed networks.[15]

The ITA is specific to the radio frequency spectrum bands available for licensing, in accordance with regulation 6 and 7 of the Regulations and to the extent that some of the spectrum that was assigned on the temporary basis shall be returned in terms of the ICT COVID-19 Regulations.

13. It is requested that the Authority should advise of its intentions in respect of matters where there are historic pending spectrum alignment issues, to the extent that such may be impacted by the current ITA process. This is particularly

[12] Liquid Telecom, Telkom, SACF and Vodacom
[13] Level 1,2 and 3 BBBEE Status
[14] Liquid Telecom
[15] Liquid Telecom

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relevant to Liquid Telecom in the context of its existing assignment of 850 MHz and the provisions in the Radio Frequency Spectrum Assignment Plan ("RFSAP") for the Frequency Band 825 to 830 MHz and 870 to 875 MHz dated 29 March 2019 and published in Government Gazette No 42337.[16]

Radio Frequency Spectrum Assignment Plan ("RFSAP") for the Frequency Band 825 to 830 MHz and 870 to 875 MHz dated 29 March 2019 and published in Government Gazette No 42337 is not the subject of this licensing process. The RFSAP address the matters of the historic nature in relation to spectrum alignment in the IMT800.

14. How will the opt in rounds work.[17] Please explain in detail the nature of the Opt-in round - is this a single bid round or a multi-round process? What are the pricing rules, etc?[18]

Stakeholders are kindly referred to section 6 of the ITA which covers the Opt-In Rounds. During the bidding process, the Authority will calculate the spectrum holdings of the bidders and determine those who qualify for Opt-In rounds so that they could acquire enough spectrum from the auction to be credible national wholesale operators. The Opt-In is a single round and the prescribed reserve prices will apply.

15. It is requested that the Authority provides more clarity on the order and/or sequence of bidding to be followed in respect of tier 1 and tier 2 licensees.[19]

The Authority advises that it will hold a mock auction which will address the process to be followed during the auction as indicated in section 18.3 (Timeframe for the award process) of the ITA.

16. With reference to the spectrum caps, it is requested that the Authority clarify whether an applicant can apply for more than 1 Lot in one Lot category? If the answer is 'yes', and if the applicant is successful, would consideration be given to awarding them a consecutive lot (to ensure continuous frequency)?[20]

Yes. The assignment round rules are described in section 17.18 of the ITA.

[16] Liquid Telecom
[17] Liquid Telecom
[18] MTN, Rain, Telkom, SACF and Vodacom
[19] Liquid Telecoms and SACF
[20] Liquid Telecoms

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17. How and at what point in time is market share defined (e.g. is it based on subscribers, in which case how is a subscriber defined, or revenue in which case what is the definition for revenue, or what other basis is market share defined and at what point in time is this measured)? Please confirm which operators are to be designated as Tier-1 operators?[21]

The Authority conducted a competition assessment prior to the publication of the ITA. The competition assessment assessed the status pre-auction and post-auction of the ICT Sector. The details are contained in the Reasons Document to be published.

A number of licensees have significant market power in various municipalities, as measured using the dominance threshold applied in the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA") (a 45% market share). Vodacom is dominant in 110 municipalities, MTN is dominant in 78 municipalities. MTN and Vodacom both have a share of 45% or more in 4 municipalities. Cell C has a market share of 45% in one local municipality, and 41 municipalities do not have a dominant operator.

18. The definitions of "tier-1 operator" and 'tier-2 operator" refer to "retail market share" in ten municipalities. In this regard[22]:

a. Does ICASA intend an applicant to calculate its retail market share in a municipality by using a fraction in which the numerator is the retail market share of the operator in that municipality and the denominator is the total size of the retail market in that municipality?

b. If the answer is "yes":
Must retail market share be computed with reference to revenue, to the number of subscribers or to something else?
On what date must the calculation be done?
How should an applicant set about getting access to data in order to ascertain the value of the denominator?

c. If the answer is "no", what does ICASA intend?

d. On what basis does ICASA take the view that the market share of an operator in ten municipalities is relevant to the allocation of spectrum under the ITA?

[21] MTN
[22] Liquid Telecoms and Vodacom

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e. On what basis does ICASA take the view that the comparative size of the ten municipalities is irrelevant when it comes to determining whether an operator qualifies as a "Tier-1 operator"?

The Authority is to publish a Reasons Document which addresses issues raised here above.

19. The definition of a Tier-2 operator seems to overlap with that of a Tier-1 operator i.e. if a Tier-2 operators "has a retail market share below 45% in less than 10 municipalities", then this implies the operator will have a retail market share above 45% in more than 10 municipalities => the operator is also a Tier-1 operator. Can the regulator please clarify the definitions for Sub-National Operator, Tier-1 operator, Tier-2 operator and Wholesale national operator?[23]

In calculating the retail market share of Tier 1 and Tier 2 Operations, the Authority uses the reference point of ten (10) Municipalities. The definitions in the ITA provide clarity.

20. Please provide clarification as to how the Authority has arrived at the definition of Tier 1 and Tier 2 Operators and the computation thereof?[24]

The Authority is to publish a Reasons Document which addresses issues raised here above.

21. Are Tier 1 and Tier 2 Operators mutually exclusive or may a single operator be both a Tier 1 and Tier 2 operator?[25]

Tier-1 Operator cannot also be categorised as a Tier 2 Operator.

22. Is it correct that the definition of a Tier 2 Operator refers to a "Wholesale National Operator" instead of a "Sub-national Operator"? A "Sub-national Operator" is defined by the ITA to mean "a licensee that controls access to its RAN and is capable of providing IMT services on a wholesale basis to roaming and MVNO customers, where the licensee's RAN is capable of serving less than 50% of the population in South Africa." We note that the definition of "sub-national operator" is not used in the ITA."[26]

The definitions of Tier-1 and Tier-2 Operators are based on the factual status of the retail market share of mobile operators in South Africa.

[23] MTN, Paul Hjul and Vodacom
[24] MTN and Vodacom
[25] MTN
[26] MTN

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23. How is 30% of industry capacity to be measured based on the speed orientated definition of capacity?[27]

24. What happens if the licensee's choice cannot be accommodated?[28]

The Authority is of the considered view that the definitions of the Wholesale National Operator and National Capacity are clearly provided for in the ITA.

25. Please can the Authority clarify exactly which spectrum is considered high-demand spectrum in order to reach the total of 609 MHz currently assigned. This is important for operators to understand in relation to the impact of the spectrum caps. MTN assumes IMT bands in WRC Region 1 which South Africa falls under would form part of the IMT spectrum holding caps. Recommendation on MHz stop is 3.8GHz for the C band. What is the IMT Spectrum band (start and end MHz) considered part of the spectrum cap per operator?[29]

The Authority refers the operators to the table below.

Band	**Operator**	**Total Bandwidth (MHz)**	**Available for auction**
700 MHz	Available		2 x 20
800 MHz	Available		2 x 30
850 MHz	Liquid Telecom	10 (2x5)	
900MHz	Cell C	22 (2x 11)	
	Vodacom	22 (2x 11)	
	MTN	22 (2x 11)	
1800 MHz	Cell C	24 (2x 12)	
	Vodacom	24 (2x 12)	
	MTN	24 (2x 12)	
	Liquid Telecom	24 (2x 12)	
	Telkom	24 (2x 12)	
	Rain	34 (2x 12) + (1x 10)	
2100 MHz	Cell C	30 (2x 15)	
	Vodacom	35 (2x 15) + (1x 5)	
	MTN	40 (2x 15) + (1x 10)	
	Telkom	30 (2x 15)	
2300 MHz	Telkom	60 (1 x 60)	
2600 MHz	Rain	20 (1x 20)	140 (1 x 140)
3500 MHz	Liquid Telecom	56 (1x 56)	86 (1 x 86)
	Rain (3600-3800)	80 (1x 80)	
	Telkom	28 (1x 28)[30]	
Total		609	326[31]

[27] MTN
[28] MTN
[29] MTN, Telkom and Vodacom
[30] Regional assignment
[31] The total available IMT spectrum is 406 MHz. However, 80 MHz has been set aside for the licensing of the WOAN.

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26. It is unclear from both the WOAN ITA and the IMT ITA how applicants, under the IMT ITA, are required to procure spectrum from the WOAN. In particular, it is unclear whether a successful applicant under the IMT ITA, in respect of a particular frequency band, is required to obtain spectrum in that same band from the WOAN or if the applicant must procure any available spectrum from the WOAN (which may be in a different frequency band). This uncertainty is compounded by the fact that the WOAN will be granted spectrum in the 700MHz, 2.6GHz and 3.5GHz spectrum under the WOAN ITA, but applicants under the IMT ITA may apply for spectrum under the same frequency bands but also the 800MHz frequency band, which is not available to the WOAN. Please clarify the manner in which applicants under the IMT ITA will be required to procure capacity from the WOAN in this context?[32]

The 30 percent of the total capacity of the 80 MHz of IMT Spectrum to be licensed for the WOAN will be procured collectively by the successful bidders. The procurement of the total capacity is imposed irrespective of the spectrum holding of the successful bidders.

27. Although it can largely be inferred from the information provided, there is some ambiguity in the Lots. For example, in section 5 "Spectrum for the award" the table indicates 14 lots available for the 2600MHz band with lot numbers "10-24", but this range of lot numbers implies 15 lots available; in addition the spectrum blocks available for the 2600 MHz band (2530 – 2575MHz and 2595 – 2690MHz) are not aligned to 10MHz so it appears there may be two lots of 5MHz, or a 10MHz lot may consist of two non-contiguous 5MHz blocks. Please can the Authority clarify the ambiguities in the Lots as described in this commentary section? Is it the intention of the Authority to license contiguous spectrum Lots to successful Applicant? Please provide clarity on the size of all Spectrum Lots in the 2600 MHz band especially in relation to the position of existing assigned spectrum?[33]

The total IMT spectrum available in the IMT2600 is 140 MHz excluding the 30 MHz which is set aside for the WOAN's licensing process. The Authority has noted non-contiguous 5MHz blocks in the IMT2600 band and will implement section 17.18 of the ITA to ensure that successful bidders acquire contiguous spectrum.

28. Some Lots appear to be specific (the "coverage lot") and others, generic. Please indicate which Lots are specific and which lots are generic?[34]

[32] MTN
[33] MTN and Vodacom
[34] MTN

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LOT nine (9) is referred to in the ITA as a Coverage LOT the remaining LOTS are generic as they are not specifically defined.

29. Please define which operators are designated as the third and fourth national wholesale (Tier-2) operators and the basis of ranking and defining these operators? What happens if these envisaged operators have 45% market share in more than 10 municipalities?[35]

The Authority is to publish a Reasons Document which addresses issues raised here above.

30. Table under 6.1 identifies two portfolios and specifies quantities of spectrum above and below 1 GHz. Please confirm that following the opt-in auction that up to 2 x 25 MHz of sub 1 GHz spectrum could be assigned to non-Tier-1 operators leaving 2 x 25 MHz of remaining sub 1 GHz spectrum for auction in the second auction stage? Please confirm that following the opt-in auction that up to 100 MHz of 2600 MHz spectrum could be assigned to non-Tier 1 operators leaving 40 MHz of 2600 MHz spectrum available for later stages of the auction? Please confirm which specific frequencies will be included in the Opt-in auctions for both above and below 1 GHz spectrum?[36]

Stakeholders are kindly referred to section 6 of the ITA which covers the Opt-In Rounds. During the bidding process, the Authority will calculate the spectrum holdings of the bidders and determine those who qualify for Opt-In rounds so that they could acquire enough spectrum from the auction to be credible national wholesale operators. Following the Opt-in round, the spectrum cap for the sub- 1 GHz spectrum is 2x21 MHz and the overall spectrum is 184 MHz for all the bidders will apply for the remainder of the spectrum.

31. In paragraph 6.2. Portfolio 1 and portfolio 2 are spectrum floors designed to ensure that South Africa is left with at least five (5) credible wholesale national operators after the spectrum assignment process (including the WOAN).This is to ensure that the third and fourth national wholesale operators must have enough spectrum to be credible competitors. Does this mean that ICASA has already formed the view that MTN is a "tier-1 competitor"?[37]
    a. If the answer is "yes":
    b. When did ICASA form this view?
    c. On what basis did ICASA form this view?
    d. ICASA is requested to furnish MTN with all documentations and calculations on which it relied upon when it formed the view that MTN is a "tier-1 operator".
    e. If the answer is "no": what does para 6.2 of the ITA mean?

[35] MTN
[36] MTN and Vodacom
[37] MTN, SACF, Telkom and Vodacom

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MTN and Vodacom are Tier- 1 Wholesale National Operators and Tier-2 (regarded as third and fourth national wholesale operators) are Cell C and Telkom Mobile as per the competition assessment that the Authority has conducted. The Sub-national RAN operators who own RANs but operate only in limited parts of South Africa include RAIN and Liquid Telecom. The Reasons Document will contain the competition assessment which will provide guidance as to how the Authority concluded in categorising the "mobile operators".

32. When the third operator entered the market in 2001, the 900MHz spectrum band had to be re-assigned to ensure that the third operator obtained access to 900MHz spectrum, where each operator would have 11 MHz of contiguous spectrum.

There is a relationship between the availability of IMT700/IMT800 low band spectrum and the feasibility to implement the IMT900 Harmonisation due to the 900MHz spectrum allocation reduction included as part of the harmonisation.
The 900MHz band harmonization project is yet to be completed, where operators are expected to return 2x1MHz of spectrum reducing their respective holdings in the 900MHz band to 2 x 10MHz. This can penalise MTN in the auction assuming 900MHz will be reduced to 10MHz. Please confirm if the 1MHz that is to be returned to the Authority will be included in the spectrum cap determination. Should the Authority allow MTN to retain a total of 2x11MHz in the 900MHz band then it is fair to consider this as part of the allocation for the spectrum cap, however should the Authority intend to reduce MTN's allocation to 2x10MHz then MTN requests only 2x10MHz counts towards the spectrum cap. Should an operator wish to relinquish (a portion of) currently licensed IMT spectrum in order to be able to acquire additional spectrum in the auction while complying to the spectrum caps imposed by the Authority, what process needs to be followed?[38]

The Authority has considered the current spectrum holdings of the operators in determining the spectrum caps, including that of 2x21 MHz of sub-1 GHz spectrum. The Authority is to publish a Reasons Document which will provide further details.

33. The ITA states that the licences issued under the ITA will "take into account" the ongoing migration of television broadcasting services from analogue to digital (the "DTT Migration") It is not clear whether this means that the license duration will be extended should the television broadcasting service migration be delayed. Please confirm whether:[39]

[38] MTN and Vodacom
[39] MTN

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a. The date of issue of the licence may be delayed as a consequence of the DTT Migration, or the duration of the licence may be extended beyond 20 years as a consequence of the DTT Migration.[40]

The Authority extended the licence period of the Radio Frequency Spectrum Licence (RFSL) from fifteen (15) years, as it was stipulated on the IM, to twenty (20) years, in order to effectively facilitate the availability of the spectrum in IMT700 and IMT800 bands which are subject to the digital migration process underway. To this end, licensees may apply to the Authority in accordance with Section 11 of the ECA should they seek to align the period of the service licence to that of the radio frequency spectrum licence.

b. Please clarify assumed timelines for television broadcasting migration. Please clarify policies for license duration should the television broadcasting migration be delayed.[41][42]

The Authority published the Radio Frequency Spectrum Assignment Plan for the band 470 to 694 MHz on 22 May 2020 in an effort to expedite the Analogue Switch-Off. The obligations set for IMT700 and IMT800 are synchronized with the Analogue Switch-Off.
The date for the final switch-off of the analogue signal will be announced by the Minister of Communications and Digital Technologies. This will be the final step in clearing the frequency bands 703 – 790 MHz and 790 – 862 MHz.

34. Under Section 12.1 (Uplink and Throughput Obligations) A minimum downlink single user throughput of 5Mbps at the edge of the cell (particularly in Batch 3 classified municipalities) for all national wholesalers who are awarded radio frequency spectrum licenses on spectrum band(s) IMT700 and/or IMT800 within five (5) years of licence issue. This obligation must be achieved with other bands (i.e. IMT2600, and IMT3500) assigned through this licensing process. Should this condition be interpreted to imply that any national wholesaler acquiring spectrum in any of the bands made available in the award process must meet the coverage obligation?[43]

The obligation prescribed on paragraph 12.1.1 should be achieved by all national wholesale operators who acquire any spectrum from the auction.

[40] MTN, RAIN, Telkom, Vodacom and SACF
[41] MTN and Telkom
[42] RAIN
[43] MTN and Vodacom

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35. The timelines to reach coverage and throughput obligations for IMT700/IMT800 low-band spectrum are indicated to be "within five (5) years of licence issue". However, this spectrum is not yet available for use nationally due to current use for TV broadcast services. Analogue to Digital Migration timeframes are not clear and as such an obligation should take this into account. Please confirm throughput and coverage obligations considering sub 1GHz 700/800 migration timeframes and coverage exclusion areas. Please clarify how this will be handled if the IMT700/800 spectrum is not available for an operator's use when the licence is issued? Will the obligation timeline be relative to the availability of the spectrum for deployment?[44]

This obligation will be enforced when the IMT700 and IMT800 spectrum is available for use.

36. Please confirm that currently assigned spectrum should also be used to achieve rollout obligation? Customer throughput experience will inherently be impacted by all bands activated in the network e.g. through carrier aggregation of both existing and newly licensed spectrum.[45]

The obligations in the ITA are related to the spectrum assigned in this licensing process.

37. Are operator's awarded new spectrum in the ITA permitted to achieve their coverage and throughput obligations in some areas through roaming agreements with other operators?[46]

The roaming agreements are commercial arrangements. The operators should be aware of section 2 (e) of the electronic communications Act No. 36 of 2005 and section 12.6 of the ITA.

38. 12.2.2.1 The winner of this coverage lot would comply by an outside in approach to achieve 95% of all Batch 2 and Batch 3... 12.2.2.2 Also, the outside in approach applies, to achieve 92% across all Batch 2 and Batch 3… Please confirm if the Batch 2 and 3 obligation is the average population covered across the municipalities within these Batches.[47]

The percentages prescribed in paragraphs 12.2.2.1 and 12.2.2.2 of the ITA should be achieved in both Batch 2 and Batch 3, and not averaged.

[44] MTN, Telkom and Vodacom
[45] MTN and SACF
[46] MTN, SACF and Vodacom
[47] MTN

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39. The requirements under paragraph 5.2 of the ITA are unclear and appear to be in conflict with other provisions in the ITA. In particular, paragraph 5.2 states that the spectrum awarded under the ITA will be awarded on a national basis covering the entire territory of the Republic of South Africa, while paragraph 12.2.2.1 refers to coverage in specific batches of municipalities. Coverage obligations of 99.8% require additional site deployment. In view of the delays of the 700/800 band deployments until digital migration is concluded in sub 1GHz this obligation seems unattainable.[48]

a. Please confirm that the obligation of providing coverage of "up to" 99.8% means that the coverage obligation is to provide 99.8% coverage?[49]

A Minimum of 99.8% percent of the population has to be covered with this obligation.

b. Does the obligation of 99.8% coverage relate to the entire population of South Africa or a subset of the entire population? (population excluding those living in the SKA).[50]

The entire population of South Africa should be covered with this coverage Lot. Section 13 of the ITA should be considered with its prescribed related regulations and legislation.

c. Can the 99.8% requirement be satisfied regionally?

No.

d. Please provide a definition of the basis for the population which requires 99.8% coverage?

The population is where people reside within Local Municipalities of South Africa.

e. Please confirm that this obligation relates only to Lot 9 spectrum in the ITA?

The coverage Lot is Lot 9 in the ITA.

f. Can you please explain what will happen in the event that there are no bids for Lot 9 and it is unsold at the end of the opt-in and following auction stages?

Section 17.18 of the ITA will apply.

[48] MTN
[49] MTN and Telkom
[50] MTN and Telkom

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g. If Lot 9 is unsold, and consequently included in the unsold Lots round of the auction process, will this coverage obligation be altered prior to the Unsold Lots round?

No.

h. Can you confirm that a bidder acquiring 2 x 10 MHz of 800 MHz from Lots 5 to 8 would not be required to meet this coverage obligation?

Obligation 12.2.2.1 applies to Lot 9 only.

40. Any other tier-1 player who wins ANY further sub-1GHz spectrum would be obliged to expand coverage to at least 97% of the population. Also, the outside in approach applies, to achieve 92% across all Batch 2 and Batch 3 underserviced areas first for the 2x10MHz Coverage Lot across all 234 local and metropolitan municipalities in South Africa within 5 years of issuance of the licence.

a. Does the reference to "further" in this obligation only relate to a Tier 1 operator who acquires Lot 9 and then seeks to acquire additional sub 1 GHz spectrum (which would result in exceeding the cap) or any Tier-1 operator which acquires sub 1 GHz spectrum other than Lot 9 (the "coverage lot")?

No. This obligation applies to Tier-1 Operators should they acquire additional sub-1GHz spectrum to their existing spectrum holdings of sub-1GHz spectrum.

b. Does the reference to 97% population relate to the entire population of South Africa or only to the population defined as underserviced - please define the population to which the 97% relates?

The 97% of the population where people reside within Local Municipalities of South Africa.

c. Please explain the meaning of referencing the Coverage Lot in relation to 92% coverage obligation?

If one tier-1 player wins the Coverage Lot (Lot 9), the obligation in paragraph 12.2.2.1 in the ITA will apply, and if tier-2 player wins two Lots of 2x5MHz (equalling to 2x10 MHz of the Coverage) then obligation 12.2.2.2 will apply.

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41. Outside-In: First build broadband coverage in the first batch of least covered of "underserviced areas" and/or municipalities (Batch 2 and 3 Municipalities), before proceeding to roll out finally to major cities and towns of South Africa. There are numerous areas within Batch 2 and 3 wherein applicants have had historical difficulties in deploying network infrastructure (viz. Square Kilometre Array, Kruger National Park, etc.). The coverage obligation in these areas may not be possible to be achieved without enablement or support from the regulator and/or ministry.[51]

a. Please provide clarity on the extent to which a licensee is required to provide broadband coverage in "underserviced areas" and/or municipalities (Batch 2 and 3 Municipalities) before providing broadband coverage to major cities and towns of South Africa (Batch 1)?

There are percentages attached to the coverage obligations under section 12.2 in the ITA.

b. When will coverage be deemed to have been provided in Batch 2 and 3 Municipalities? Does this obligation remain in circumstances where there is already sufficient coverage in a Batch 2 or 3 Municipality?

There are percentages and timelines attached to the coverage obligations in the ITA which should be achieved together with the uplink and throughput obligations in section 12.1 of the ITA.

42. In respect of 700MHz or 800MHz licenses awarded to applicants categorised as Tier-2: applicants that cover less than 80% of the population with IMT services must expand such coverage to at least 80% of the population.

a. Are Tier-2 applicants also obligated to adhere to 12.2.2 or does 12.2.3 super cede this.

Obligation 12.2.2.1 applies to every operator who acquired Lot 9 from the Auction, whereas 12.2.2.2 only applies to Tier-1 operators and 12.2.2.3 applies to Tier-1 operators and any operator who acquired Lot 9 from the Auction. Obligation 12.2.3 applies to only Tier-2 players and sub-national operators who participated in the opt-in round.

43. Prospective applicants that have been categorised as Tier-1 must:
12.3.1.1 Produce a reference offer for site access to be offered to any licensee requesting site access and guidelines, including pricing, timeframes and policies for reserving space on masts. The ITA provides that a "reference offer" set out in paragraph 12.3.1.2 of the ITA shall become licence conditions for licences to "two tier-1 operators" issued in this auction process. This suggests that at least two tier-1 operators will be issued spectrum under this ITA. The ITA

[51] MTN

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seems to suggest that ICASA has already pre-identified two tier-1 one licensees, although the definitions themselves do not identify any particular licensees as being tier-1 licensees.

a. What happens if there is a third tier-1 operator and whether it would be subject to the same reference offer condition.

The Authority has already decided which operators are categorised as tier-1 operators. All tier-1 operators will be subjected to the obligation in paragraph 12.3.1 of the ITA.

b. Should this be interpreted to mean that only two tier-1 operators will be issued spectrum under the ITA?

All the Licensees that would be qualified as per paragraph 15.3.6.3 of the ITA to the Auction may acquire the spectrum through bidding in the Auction.

44. What will occur where a licensee does not own the sites from which it transmits signals?[52] Please confirm that such masts access will only apply to access requests for space on the masts i.e. passive sharing?[53]

The obligation will apply to the licensee (i.e. Tier 1 operator) who are site owners and the anchor tenant at the site. If the licensee does not own the site, then the obligation will apply in case the licensee decides to build the site(s).
The reference offer is in relation to the passive infrastructure.

45. Is a licensee required to prepare standard sub-leasing terms or do these obligations only apply in instances where a licensee own its own sites?

A licensee is required to prepare standard sub-leasing terms and the obligation will still be applicable.

46. What process is to be followed in the event that an identified site owned by the operator cannot support additional infrastructure of the other party.[54]

[52] MTN, SACF and Vodacom
[53] Vodacom
[54] MTN

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The provisions of the ECA and Facility leasing Regulations will apply in determining the technical feasibility.

47. Please confirm that the same reference offer will be valid for both the WOAN licences and the other licences in the auction process?[55]

The obligation 12.3.1 applies to Tier-1 operators.

48. Please confirm any specific price setting requirements of the reference offer?[56]
The Tier-1 operators will determine the price setting requirements on the reference offer.

49. Please confirm why the need to provide a reference offer is not applied to all operators including Tier-2 operators.[57]

The decision to oblige the Tier-1 operators on the reference offer was guided by the competition assessment contained within the Reasons Document to be published in due course.

50. Is a licensee assigned spectrum required to provide wholesale access to an operational MVNO meeting the conditions or only to be prepared to make access available?[58]

The obligation as stated in paragraph 12.3.2 of the ITA shall apply to the licensee who acquires the spectrum from the auction.

51. If an operator is required to provide access to an operational MVNO what will happen if no MVNO meeting the criteria is established?[59]

The obligation as stated in paragraph 12.3.2 shall apply to the licensee who acquire the spectrum from the auction.

[55] MTN
[56] MTN
[57] MTN
[58] MTN
[59] MTN

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52. Is the licensee required to produce a business plan from the perspective of an MVNO?[60] Does that involve the pricing strategies of the MVNO, their cost base, go to market, etc?[61]

53.

Correct. However, the accountability lies with the licensee to ensure that the MVNOs are sustainable for the period of 3 years.

54. Should the business plan relate to a theoretical MVNO or an actual business?[62]

See paragraph 12.3.2 of the ITA. The business plan is for an existing registered actual business.

55. If the business plan must relate to an actual business, what happens if no such business exists?

See paragraph 12.3.2 of the ITA which should be met by the licensee who acquire spectrum from the Auction. It is the responsibility and accountability of the licensee to source the MVNOs in order to comply with the obligation.

56. If a business does exist, then the business may not be willing to share its business plans with the licensee - how should this issue be addressed?[63]

See paragraph 12.3.2 of the ITA which should be met by the licensee who acquire spectrum from the Auction. It is the responsibility and accountability of the licensee to source the MVNOs in order to comply with the obligation.

57. What defines an MVNO? More clarity on "open access" - what capacity and what cost in which regions on what technology?[64]

[60] MTN and SACF
[61] MTN
[62] MTN
[63] MTN
[64] MTN and SACF

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See the definition of the MVNO in the ITA.

58. Can the 49% shareholding be by a licence?[65]

This is regarded as commercial arrangement. However, the obligation will be expected to be met.

59. Does this mean that the MVNO is prohibited from providing access to an operator that does not have 51% ownership held by historically disadvantaged groups?[66]

This is regarded as commercial arrangement. However, the obligation will be expected to be met.

60. Please explain how the capacity of WOAN should be interpreted?[67]

See the definition of the capacity on table of definitions in the ITA.

61. Please define what is meant by a "Public Benefit Organisation"? Does this include educational and NGOs?[68]

A public benefit organisation (PBO) can be a trust, a not-for-profit company in terms of the Companies Act or an association registered with the South African Revenue Service (SARS) in terms of Section 30(1) of the Income Tax Act, No 58 of 1962.

62. Will ICASA allow the current criteria set out in the Directions on Zero -Rating of Websites for Education and Health Issued Under Regulation 4(10) of the Regulations Made Under the Disaster Management Act, 2002 (Act No. 57 Of 2002) to be applied to applicants who seek to have content zero rated?

The Authority has indicated in terms of section 12.5 of the ITA that all licensees assigned spectrum shall zero rate all mobile content provided by PBO. To the extent that there is a need for further details in relation to this obligation, same will be outlined in the licence terms and conditions of the radio frequency spectrum licences to be issued.

[65] MTN, SACF and Vodacom
[66] MTN
[67] MTN
[68] MTN, Telkom and Vodacom

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63. Please clarify if this requirement is only applicable to the spectrum assigned through the ITA and excludes existing spectrum holdings.

Yes.

64. How was the duration of 5 years determined, when the RFS regulations allow for spectrum sharing today?

The five years was determined with consideration of the network deployment of the licensee who does not have.

65. Does this time limitation prevent holders of ITA spectrum from entering into sharing agreements prior to lapse of 5 years on a voluntary basis?

No.

66. Please clarify how spectrum utilisation will be measured?

By monitoring the use of the spectrum in all the areas in South Africa.

67. Please clarify what will determine whether the spectrum is not fully utilised?[69]
Does "fully utilised" relate to the coverage obligations of 99.8%, 97% and 80%? If not, how will the Authority apply the "fully utilise" criteria?[70]

No, spectrum occupancy in other parts of the country will indicate that the spectrum is not fully utilised, therefore fully utilised does not necessarily mean meeting the coverage obligations.

68. Karoo Central Astronomy Advantage Areas. Please confirm that this area will not be subject to the throughput and coverage obligations detailed in the ITA. Can the Authority confirm that areas in which operators are prohibited from providing coverage or infrastructure can be excluded from the population coverage and throughput obligations e.g. the SKA and National Parks.[71]

The obligations will apply in all areas where the network is deployed to cover the population.

[69] MTN, SACF, Telkom and Vodacom
[70] Telkom
[71] MTN

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69. Regulation 7(3) of the Radio Frequency Spectrum Regulations provides that an applicant for radio frequency spectrum, pursuant to an ITA, will be disqualified where that applicant has less than 30% (thirty percent) equity ownership by Historically Disadvantaged Persons (HDP) or is below a level 4 contributor (B-BBEE status) in terms of the Codes of Good Practice published in terms of section 9(1) of the B-BBEE Act. Existing holders of radio frequency spectrum licences (including those that currently hold high demand spectrum) are not required to achieve a Level 1 contributor (B-BBEE Status).[72]

a. Please clarify why a licensee under the ITA will be required to achieve Level 1 B-BBEE contributor status whereas existing licensees (some of which hold high demand spectrum) are not required to achieve this status?

This obligation applies to the licensee who may acquire spectrum through this licensing process. This process is independent from any spectrum licencing process previously embarked on by the Authority.

b. What are the Implications if Level 1 is not attained or is attained but lost (for whatsoever reason) during the licence period?

A licensee will be subjected to a non-compliance process.

c. Will there be an alignment on how the spend on the spectrum and the WOAN etc will be treated in terms of BBBEE and ICT sector codes (This includes any other obligation/spend/offering) that is regulated.

All set obligations in the ITA should be met by the licensee that will acquire the spectrum.

70. The application must include the following documents: a detailed, clear and exhaustive description of the ownership structure of the Applicant. What level of detail is required where applicants are owned by a listed entity?

The level of details of the ownership structure of the applicant must be in sufficient detail to allow the Authority to verify BBBEE and HDP compliance.

[72] MTN

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71. An applicant shall be disqualified from the application process where such applicant: (c) has submitted more than 1 (one) application to the Authority for the grant of a radio spectrum licence within the designated range. What is meant by the term "designated range" in this context?

Designated range refers to the frequency range within the spectrum band.

72. The term "designated range" is not defined in the ITA and it is not clear what the "maximum bandwidth made available in line with these regulations" is for the purposes of this ITA. Consequently, it is unclear whether existing licensees may, as a consequence of this restriction, be precluded on the basis of existing spectrum held by those licensees. The ITA also refers to spectrum caps (in paragraph 7), but these are specified in the context of the amount of spectrum that a particular applicant may be awarded under this ITA, not the maximum spectrum that may be held by a licensee generally. Please define the terms "designated range" and "maximum bandwidth.

The designated range is the start and the end of the particular spectrum band. The difference between the start and the end of the spectrum on that particular spectrum band is the maximum bandwidth available. E.g. IMT3500: Designated range is 3458 – 3544MHz therefore Maximum Bandwidth is 86 MHz.

73. The term "Historically-Disadvantaged Persons (HDP)" is defined in the Individual Licensing Processes and Procedures Regulations (as amended) 2010 (the "Process Regulations") to mean "South African citizens who are Black people, women or people with disabilities and that Black people are defined to include Africans, Indians and Coloureds". It is important to note that the shareholding of listed entities may change on a daily basis and accordingly, it is difficult for any listed entity to state with any certainty what its equity ownership by HDPs is. How does ICASA propose dealing with applicants that are owned by listed entities? In particular, what information will an applicant that is owned by a listed entity be required to submit to demonstrate compliance with the 30% equity ownership threshold prescribed in this paragraph?

All applicants must provide verification certificates confirming HDG (i.e. black people, women and persons with disabilities owning equity in the applicant). The Authority expects the applicants to further provide supporting information for it to verify HDG.

74. The term "confidential information" is not defined in ITA. On the face of it, paragraph 15.3.6.3(g) is particularly broad as it disqualifies an applicant that "has obtained or acquired confidential information relating to another applicant". The manner in which this provision is drafted suggests that this could impact (i) a prospective applicant that obtained or acquired confidential information "relating to" another applicant even before the publication of the ITA, and (ii) any

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applicant that is aware of any commercially sensitive or non-public information concerning another applicant, which information may have been disclosed to the applicant by the other applicant outside the ITA process. Please define the term "confidential information" in the context of this provision.

Confidential information is information in terms of which confidentiality is sought and subsequently granted by the Authority in accordance with section 4D of the Independent Communications Authority of South Africa Act No.13 of 2000 (ICASA Act).

75. Economic efficiency defines the monetary gain in terms of revenue, profit and value which the licensee derives from that portion of spectrum. Providing a valuation at a band and Lot level is not possible as it is impossible to allocate revenues and hence value to individual bands and Lots in any meaningful manner. Economic analysis should be provided only in relation to the total amount of spectrum for which the applicant has applied.

a. Does this requirement relate to all spectrum in total for which the bidder has indicated a desire to bid or for each individual band and each lot within the band?

Yes.

b. In the case of the latter, please advise how incremental revenues, costs and capex should be defined and then how these should be allocated to individual bands and lots?

It is the discretion of the Applicant as to how it presents its valuation for the Authority's consideration and to analyse.

76. Technical (spectral efficiency) - defined in terms of maximum volume of traffic (voice/ data) within a given spectrum resource (erlangs/MHz/km2 or Mbits/MHz/km2) for voice and data respectively. Technical efficiency indicators include the following: Economic efficiency defines the monetary gain in terms of revenue, profit and value which the licensee derives from that portion of spectrum.[73]

a. Can you please provide more details of the computation of the technical efficiency factors?[74]

The details are as provided in the table in page 33 of the ITA.

[73] MTN
[74] MTN, Telkom and Vodacom

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b. Does this requirement relate to all spectrum in total for which the bidder has indicated a desire to bid or for each individual band and each Lot within the band?

Yes.

c. In the case of the latter, please advise how incremental revenues, costs and capex should be defined and then how these should be allocated to individual bands and Lots?

It is the discretion of the Applicant as to how it presents its valuation for the Authority's consideration and to analyse.

77. Any unsold lots will be auctioned during an unsold lots round if necessary[75].

a. What is the Reserve Price for the unsold lots round and the assignment stage is required?[76]

The Reserve Prices of the unsold Lots will be the same to those prescribed in the ITA.

b. In the event of an unsold Lots round, will the spectrum caps be changed?[77]

Spectrum Caps will not be changed as they have been placed to address competition considerations.

78. The Authority will arrange the channels in the licences so as to ensure that they are contiguous and following a consultation process". Will the frequency allocation of currently licensed spectrum of incumbent operators be adjusted in order to ensure newly licensed spectrum is contiguous? i.e. for the incumbent operator's with spectrum in the 2600MHz and 3500MHz bands.[78]

The Authority will endeavour to assign contiguous spectrum after the auction.

79. The rules for the assignment round and the unsold lots round will be the same as for the bid rounds described above in section 17.3-17.17, save for the fact that the eligibility and activity rules (section 17.5) and corresponding waivers

[75] MTN
[76] MTN, Telkom and Vodacom
[77] MTN and Vodacom
[78] MTN

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(section 17.6) will not apply. In the event of an auction for assignment, can you please explain how the Lots will be defined and the detailed workings of the auction?[79]

The Authority will provide the detailed workings during the assignment round in consultation with the affected bidders.

80. Will the Authority announce the results of the Opt-in stage in terms of successful bidders and the amount of spectrum and type acquired so that bidders in the later stages of the auction know how much spectrum and what type is available so they can adopt their bidding strategy accordingly?

Yes. See paragraph 17.20.2 of the ITA.

81. How will the Standing High Bidders be determined in the first round?[80]

The highest bidder will be determined at the end of the first round.

82. The term "Eligibility" is not defined in the ITA and is used inconsistently as both a capitalised and lower-case term. The term "Eligibility" is capitalised in this paragraph (and in a number of places in this ITA), however, it is not defined in the ITA. Please confirm whether Eligibility has been ascribed a particular definition for the purposes of the ITA?[81]

See paragraph 17.5.2 where Eligibility is defined. Eligibility is used in without case sensitive. Capital or Lower case to Eligibility does not make any difference to the definition.

83. The payment of the Auction Fee must be paid into the Authority's bank account within 30 days after the public announcement of the award process result by the Authority. Payment plan may be required to allow for financial governance protocols to be adhered to and investor requirements. Also, 30 days may be too short for administrative requirements, such as issuance of invoices by the Authority for payment purposes[82].

a. Will the Authority be amenable to payment plan arrangements?

No.

[79] MTN
[80] MTN
[81] MTN
[82] MTN

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b. Would payment for the lots also be deferred to when the frequency is freed up and becomes available rather than based on award of auction?[83]
No. The payment should be made as prescribed in paragraph 18.1.4 of the ITA.

c. Would the timelines of coverage obligations also be deferred to when the frequency is freed up and becomes available rather than based on the award of Auction?[84]
No. The Authority extended the licence period of the Radio Frequency Spectrum Licence (RFSL) from fifteen (15) years, as it was stipulated on the IM, to twenty (20) years, in order to effectively facilitate the availability of the spectrum in IMT700 and IMT800 bands which are subject to the digital migration process underway.

84. The ITA was published by ICASA in the Government Gazette on Friday, 2 October 2020. Please confirm that Day X is Friday, 2 October 2020 and that the timeline in paragraph 18.3.2 runs from 2 October 2020.
Day X is 05 October 2020. However, the closing date for receiving of applications remains to be 28 December 2020. The Authority is to update the schedule.

85. Presentation of network planning data in the form of schedules, diagrams, tables and maps for the initial phase and two subsequent phases. Can ICASA please clarify what the Phases relate to?[85]
Phases of network deployment.

86. a(i) Bandwidth efficiency (expressed in bits / Hz) defined as the amount of information contained in a finite spectrum. Spectral efficiency varies across the country depending on the demand distribution. This also varies with time.(ii) Re-use which dictates to what extent spectrum can be simultaneously used at multiple locations (re-use factor of 1 is the highest): For 3G and LTE technologies re-used [sic] factor is 1 (by default)(iii) Time - since applications do not typically use information on a continuous basis and can share resources by time multiplexing. This is an intrinsic feature of current mobile technologies.[86]

a. Please clarify how the 40 points will be awarded for the three items above?[87]

[83] MTN and Vodacom
[84] MTN and Vodacom
[85] MTN
[86] MTN and Vodacom
[87] MTN and Telkom

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40 Points is spread across the Bandwidth efficiency amounting to 30 points, Re-use and Time amounting to 10 points respectively.

b. Is the calculation of points based on a comparison of efficiency measures between applicants?
No.

c. If this is the case, how is the comparison translated into points?
N/A

d. If a comparison is made between applicants, how will ICASA ensure that the comparison is based on a like-for-like comparison?
N/A

e. How will ICASA address the possibility that a bidder makes an unrealistically high claim regarding efficiency in order to "game" the process and achieve a higher score and potentially seek to have other bidders disqualified for not meeting the minimum points? 6) How would an applicant achieve the maximum score of 40 points?
The Authority is to analyse the submission of each applicant relative to the total spectrum of the spectrum Lots it will bid for in the Auction.

87. Functional efficiency defined in terms of the extent to which the use of spectrum meets the user's needs. Meeting the coverage and speed obligations: 30 points.[88]

a. Please confirm that if an applicant demonstrates that it will meet the coverage and speed obligations that it will be awarded the full 30 points?

Correct, within the prescribed period.

b. Under what circumstances will an applicant receive a score of less than 30 points and how will the score be calculated?

It will be determined relative to the period it takes to meet the coverage and speed obligations.

c. If two applicants submit applications and one meets the coverage obligation and QoS obligation and another exceeds it, please confirm that both applicants will receive the same maximum number of points?

[88] MTN

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Confirmed.

88. Please confirm that if an Applicant demonstrates that it expects to generate a positive NPV from the deployment of the spectrum then it will receive the full 30 points?[89]

Confirmed.

a. Over how many years should the NPV be calculated?

The Authority cannot prescribe the period as this depends on each applicant's business model.

b. Should the NPV include a terminal value?

It is your discretion.

c. The NPV of the spectrum will depend partly on how much is assumed for the price paid for the spectrum – what price should the applicant assume for the price of the spectrum when calculating the NPV. Please confirm that the points for economic efficiency is not based on a comparison of the NPVs of different applicants?

The price of the spectrum will be determined at the auction. Each bidder should be able to determine its ceiling price for the spectrum it intends to bid for in the Auction.

d. If the points are awarded based on a comparison of applicants, please clarify how that comparison would be made?

It is not the case.

e. If points are awarded based on a comparison of applicants, how will ICASA address the possibility that an Applicant seeks to "game" the process by artificially inflating its NPV by selecting a low cost of capital or a high terminal value growth rate or forecasting unrealistically high cash flows?

The Authority is to analyse the submission of each applicant relative to the total spectrum of the spectrum Lots it will bid for in the Auction.

89. As the applicant cannot know in advance what spectrum it will win in the auction and may apply for bands which are substitutes for each other, what spectrum assets should the applicant assume when responding to the application requirements for such items as the Critical Efficiency Factors, the business plan, etc?

The spectrum assets should be based on the spectrum the applicant intends to bid for and acquire from the auction. The bidders will be to switch to different substitutable bands based on the auction rules.

90. As the applicant cannot know in advance what coverage obligations the business must meet, what coverage obligations should the applicant assume when responding to the application requirements for such items as the Critical Efficiency Factors, the business plan, etc?

[89] MTN and Vodacom

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The coverage obligations are stipulated in the ITA.

91. In developing the response to the application requirements in relation to the Critical Efficiency Factors, the business plan, etc, what assumptions should the applicant make in relation to the coverage, capacity and rates that the WOAN will charge to existing operators that are required to acquire capacity from the WOAN as these important considerations will impact the Critical Efficiency Factors and business plan, etc?
It is the applicant's discretions to make assumptions.

92. In developing the response to the application requirements in relation to the Critical Efficiency Factors, the business plan, etc, what assumptions should the applicant make in relation to the spectrum acquired by other operators as this will impact the applicant's business performance and hence the Critical Efficiency Factors and business plan, etc which they must provide in their application?

See the response above.

93. When determining retail market share, did the Authority consider the mobile market only or the broader converged market including fixed that provides telecommunication services?

The Authority has provided the Reasons Document which addresses the questions raised above here. The stakeholders are kindly requested to refer thereto.

94. Will auction bid payments for these bands only be due once the spectrum is available?[90]
No.

95. Can winners in the auction also bid for the WOAN?[91]
These are different processes. The rules in both ITAs should be considered and complied to.

96. Can existing spectrum license holders combine their spectrum with the WOAN?[92]

Spectrum sharing is allowed in the regulations which has to be approved by the Authority.

[90] RAIN
[91] RAIN
[92] RAIN

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97. Are auction winners allowed to select where they buy capacity from the WOAN, on the condition that aggregated it still meets their percentage of the 30% minimum? As it is not feasible on a per site basis.

The procurement of the capacity is to be discussed and agreed to by the bid winners and WOAN. This is the commercial agreement between two parties.

98. SACF seek clarification from the Authority in respect of what measures the Authority has in place to prevent the potential noncompliance of licensees who may hold a Level 1 contributor status at the point of spectrum licensing but may change as a result of changes to the Code? In addition, licensees are given 12 months to attain a Level 1 status. Changes to the Code may have an even more grave impact on licensees who may not already have achieved a Level 1status at the point of licensing. SACF therefore seek clarification from the Authority in respect of what measures the Authority has in place in this instance?[93]

The Obligations as set-out in the ITA will be part of the licence terms and conditions of the successful bidders. The Authority will monitor the compliance to the licence terms and conditions, should there be non-compliance the matter will then be referred to the Complaints and Compliance Committee for adjudication.

99. Clarity is sought from the Authority in respect of when the empowerment obligation comes into effect, is it from the licence date or is it from the date that the licence becomes effective, i.e. when the licensee acquires the spectrum nationally and may begin rolling out the spectrum?[94]

The Obligations as set-out in the ITA will be part of the licence terms and conditions of the successful bidders and the timelines of each of obligation will be effective from the date of radio frequency spectrum licence issuance.

100. When the licence term begins?[95]

The licence term begins from the date of issuance with the radio frequency spectrum licences.

101. When the licence fees become payable?[96]

[93] SACF
[94] SACF
[95] SACF
[96] SACF

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Annual Radio Frequency Spectrum Licence fees over an above the auction fee will be payable before the licence is issued in accordance with Radio Frequency Spectrum Fees Regulations, 2010 as amended and Radio Frequency Spectrum Regulations, 2015 as amended.

102. Clarity and certainty is sought on which licensee categories that these obligations (i.e. 12.2.3 in the ITA) apply and do not apply to, applicability of the exclusions of the outside in approach confirmation that these obligations do not apply to Batch 3 areas and that there are no timelines associated with these obligations.[97]

Tier-2 national wholesale operators.

103. What constitutes sustainability of an MVNO?[98]

See paragraph 12.3.2. The accountability lies with the licensee to ensure that the MVNOs are sustainable for the period of 3 years.

104. How many MVNOs are envisaged in this obligation?[99]

Commercial decision of the licensee who has acquired spectrum from the auction.

105. Ownership structure of MVNOs as envisaged in the obligation, in order to enable licensees to contribute to the sustainability of the MVNO?[100]

See paragraph 12.3.2.

106. Does the Authority envisage that all licensed spectrum must be fully used within five years? How does this take into consideration the longer-term planning by licensees in respect of network expansion and increases in traffic beyond the five-year period?[101]

[97] SACF
[98] SACF
[99] SACF
[100] SACF
[101] SACF

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The Authority must ensure that spectrum is used efficiently hence it has set the rules provided in section 12.6 of the ITA.

107. In instances where a licensee may not have fully used spectrum in a given area within the five year period and is obliged to share the spectrum, what then happens should the licensee require the spectrum in year 7?

The projections of the use of the spectrum is required as part of the application. However, the rules of how the unused spectrum should be dealt with by year 5 are provided for in section 12.6 of the ITA.

108. Are the other licensees required to vacate the band to allow the licensee to use its licensed spectrum?
The incumbent required to vacate certain bands will be migrated in accordance with relevant provisions of the regulations and legislation.

109. The Authority seeks to publish level of HDI equity of successful bidders on the Authority's website.
Following the assessment of all applications, the Authority will publish a list of all applicants qualified as Bidders on its website.

At the end of each bidding day, the Authority will publish the current Standing High Bidders and Standing High Bids.

After the Opt-in Round, the Authority may publish on its website the number of Bidders that submitted valid Opt-in Bids.

110. Did the Authority consider the impact of spectrum owned by other licensees, but controlled or accessed by Tier-1 operators (for example, Vodacom's access to Rain's spectrum), when calculating the Tier-1 current spectrum holdings or determining spectrum caps?[102]

The Authority has considered the spectrum that has been issued through the radio frequency spectrum licences.

111. How did the Authority determine the split between the spectrum for the auction and that reserved for the WOAN?[103]

[102] Telkom
[103] Telkom

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The Authority believes that the portfolio for the WOAN provides enough capacity and coverage spectrum (80MHz in total) for the WOAN to be a credible new wholesale national entrant into the mobile market alongside the existing four national wholesalers. 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 to be followed by projected 2021 auction. The minimum of 80MHz for the WOAN is also consistent with all the options in the IM published on 01 of November 2019.

112. The Authority is requested to explain how it arrived at the five-player market?

The Authority took consideration of the four existing national wholesalers and the WOAN as new entrant into the market. The competition assessment contains further clarity in the Reasons Document.

113. Based on the maximum spectrum cap of 184 MHz per licensee and a view that no licensee should hold more than 18% of all assigned spectrum after the auction, is this market structure expected to be static?

The Authority does not expect the market structure to be static as it encourages the sub-national wholesale operators to participate in the auction to acquire spectrum that will enable them to be credible in the market post the auction. The competition assessment contains further clarity in the Reasons Document.

114. What is the relationship between the contemplated spectrum equilibrium and competition in the mobile sector?

The Authority has imposed the spectrum floors and caps in the ITA to ensure that all operators are credible to compete fairly in market.

115. Rain provides IMT (5G) services in the 3.7 GHz frequency band through a RAN network. Tier-1 and Tier-2 operators are classified based on retail market share on a municipality level. Is Rain's 5G network in the 3.7 GHz band considered when determining the 50% population threshold for national/sub-national operators? If not taken into account, what are the reasons for excluding Rain's IMT 5G network operating in the 3.7 GHz band?[104]

Spectrum assigned to RAIN in 3.7 GHz is not identified as IMT Spectrum.

116. What technical parameters did the Authority use to calculate population coverage (per technology)?[105]

The coverage obligations set in the ITA are imposed for the spectrum that is to be auctioned through this licensing process.

[104] Telkom
[105] Telkom

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117. National wholesalers obtaining 700 MHz/800 MHz must provide 5 Mbps at the edge of the cell within 5 years of licence issue. The ITA states that this obligation must be achieved with 2600 MHz and 3500 MHz assigned through this licensing process. What are the reasons for requiring licensees to use mid-band spectrum to achieve coverage obligations (especially in rural areas such as Batch 2 and 3 municipalities)?

The obligation is imposed in such a way to ensure that all consumers are serviced with quality throughput irrespective of where they reside in the Republic of South Africa and also to ensure that spectrum is used efficiently. Furthermore, to ensure that the prescribed throughput is achieved with spectrum that is acquired in 700/800 MHz.

118. What if this mid-band spectrum is not obtained through this process due to, for example, spectrum cap restrictions?[106]

The Authority has prescribed the spectrum caps noting the current spectrum holdings of the incumbents. The Authority does not envisage a scenario whereby a prospective applicant may be restricted by spectrum cap to obtain the mid-band frequencies. The throughput obligations are applicable to all the spectrum bands acquired from the auction.

119. What is the expectation of delivering this obligation with the limitation of the spectrum caps and potential cost constraints?[107]

The quality of the service and experience provided to consumers is realised by all citizens throughout the country.

120. What role, if any, is played by existing frequency bands in reaching the throughput obligations? What role, if any, is played by existing frequency bands in reaching the coverage obligations?[108]

The Authority only prescribed the obligations on the spectrum bands currently under consideration for the auction. However, licensees are at liberty to improve the quality of service and experience to its customers to the benefit of the whole society.

121. Could carrier aggregation (CA) be used to achieve the cell edge coverage throughput?

[106] Telkom
[107] Telkom
[108] Telkom

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Carrier aggregation can be used to achieve cell edge coverage throughput. However, the Authority expect the throughput obligations must be maintained throughout with the spectrum that is acquired from the auction.

122. Is the 5 Mbps throughput obligation associated with 2x5 MHz or 2x10 MHz?[109]

The throughput obligation should be achieved with all the spectrum bands in this licensing process irrespective of the Lot size.

123. National Tier-2 operators obtaining sub 1 GHz spectrum must obtain at least 80% population coverage.

a. What coverage obligation is required for sub-national operators obtaining access to sub 1 GHz spectrum? What obligation, if any, will be attached to sub-national operators obtaining sub 1 GHz spectrum through the opt-in process?[110]

The obligation prescribed in paragraph 12.2.3 apply to the sub-national wholesaler that have acquired the spectrum through the opt-in round.

124. Licensees obtaining spectrum in this licensing process must provide open access to MVNO's having 51% ownership from HDGs and submit business plans to ensure that MVNOs are sustainable.

a. Why should licensees submit 3rd party MVNO business plans and how is it expected that licensees ensure that MVNOs are sustainable?[111]

The accountability lies with the licensee to ensure that the MVNOs are sustainable for the period of 3 years**. This obligation is created in order to ensure that MVNO's are empowered. It is thus important for the licensee to partner and mentor MVNO's and play an active role in ensuring that they are sustainable through actively sharing skills as well as assisting with viable business plans.**

b. How does the ownership requirement co-exist with facilities leasing regulations, which do not have any ownership criteria in making facilities available?

[109] Telkom
[110] Telkom
[111] Telkom

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In terms of section 43 of the ECA, any person that is an electronic communications licensee is obliged to lease the electronic communications network they use, upon request and subject to conditions in sub-section (4), to provide services envisaged in chapter 3 of the ECA.

c. What obligation is there on the MVNO to share their business plans with the licensee? Telkom is of the view that this may result in possible violations of competition legislation (sharing of business plans between competitors) and how does the Authority propose to deal with this?

The ITA did not prescribe the obligations to the MVNOs. The business plan forms part of the obligation for the licensee to provide it to the Authority in demonstrating that the MVNO is going to be sustainable.

d. What should be contained in the business plans?[112]

The normal business plan that can convince the Authority that the MVNO is going to be sustainable.

e. How should MNOs treat MVNOs who do not have 51% HDG ownership? As this will result in potential disputes and litigation, how does the Authority propose licensees should deal with this? What should MNOs do regarding existing MVNOs who may or may not have 51% HDG ownership? How would MNOs know about percentage HDG ownership in MVNOs? What happens if there is a change in percentage HDG ownership in MVNOs after the conclusion of the agreements?[113]

The MNOs are at liberty to choose what is best way to deal with non-compliance of 51% HDG ownership. The accountability lies with the licensee to ensure that the MVNOs are sustainable for the period of 3 years

f. When does the period "3-6 months" start with regards to 'submit business plans'?

From the issuance date of the radio frequency spectrum licence.

g. Considering the experience of smaller MNOs and existing MVNOs, how will the Authority ensure the sustainability of the proposed new MVNOs?[114]

[112] Telkom and Vodacom
[113] Telkom
[114] Telkom

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The sustainability of the MVNOs is to be accounted for by a licensee who will be assigned the spectrum through this process.

125. Can ICASA please clarify when the 20-year period of exclusive use of a licence will be granted from and until, and how will this practically work if the spectrum is not available for exclusive use the day the licence is issued? Does the 20-year period start when the spectrum migration has been completed?[115]

The 20-years of the licence period start from the issuance date of the radio frequency spectrum licence.

126. Calculation of WOAN national capacity is not clear and therefore also the determination of the 30% off-take obligation.[116]

a. Why is the capacity specified as a speed (Mbps) and not as capacity (GB)?
The Authority has provided the following definition on the ITA: Capacity = average data traffic speed (measured in megabits per second (Mbps)) per cell/base station at any given time offered by the WOAN using the high demand spectrum assigned to the WOAN.
National Capacity = Total capacity offered nationally irrespective of technology used.

b. Where will the 30% available capacity be measured (core, RAN, etc.)?
The measurement will be from Radio Access Network.

c. Considering that the WOAN will expand it network over time, how will the 30% capacity be calculated?[117]
The capacity of the network will start from the day of the operation of the WOAN's network and its availability at that point in time.

d. How will the Authority ensure that the 30% capacity of the WOAN is made available at a reasonable/market related price?
The Authority regard procurement of the 30% capacity as a commercial agreement.

e. Will the capacity be calculated nationally, regionally, per base station or per sector?

The capacity will be measure per base station as defined in the ITA.

f. Will the capacity be calculated daily, weekly, monthly, quarterly or annually? What model will be used to calculate the WOANs total national capacity and to determine the 30% off-take?

[115] Telkom
[116] Telkom
[117] Telkom and Vodacom

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This will be governed by the agreement between the WOAN and the MNOs.

127. Licensees must zero-rate all mobile content provided by Public Benefit Organisations (PBO) including .gov.za websites.[118]

a. Will this obligation be limited to the use of the frequency bands obtained in this process?

The obligations as prescribed in the ITA are for the frequency spectrum acquired through the auction.

b. How will operators differentiate between mobile content to PBO through existing frequency bands and those bands obtained through this process?

It will be at the liberty of the licensee to differentiate between mobile content to PBO through existing frequency bands and those bands obtained through this process without contravening other obligations as set out in the ITA.

128. Which three classifications were used by the Authority to determine the batches? What informed the decision to deviate from the regulation (using three rather than 4 classifications)?

The Averages of the following Variables (Internet, Computer, and Cell phones) were used to categorise the batches. The Telephones variable was not used since these services are gradually being discontinued, especially in Rural Areas due to infrastructure erosion and non-availability of networks.

129. What criteria was used to classify a municipality as either Batch 3, Batch 2 or Batch 1?

<u>Methodology Used in classifying the Batches</u>

The classification was done using STATSA 2011 Data as published within the Under-Service Area Definition Regulations of 2011.

The Averages of the following Variables (Internet, Computer, and Cell phones) were used. The Telephones variable was not used since these services are gradually being discontinued, especially in Rural Areas due to infrastructure erosion and non-availability of networks.

[118] Telkom

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Classification Technique Used

The Jenks optimization method, also called the Jenks natural breaks classification method, was used. It is a data classification method designed to optimize the arrangement of a set of values into "natural" classes.

A natural class is the most optimal class range found "naturally" in a data set. A class range is composed of items with similar characteristics that form a "natural" group within a data set.

This classification method seeks to minimize the average deviation from the class meanwhile maximizing the deviation from the means of the other groups. The method reduces the variance within classes and maximizes the variance between classes.

It is also known as the goodness of variance fit (GVF), which equals the subtraction of SDCM (sum of squared deviations for class means) from SDAM (sum of squared deviations for array mean).

130. The ITA refers to 234 municipalities whereas the Regulations refer to 252 municipalities. The Authority is requested to clarify this discrepancy.

The Authority took into account the demarcation process undertaken since 2011. Licensees should thus follow the ITA references.

131. How will the Authority calculate the 95% and 92% coverage obligation in Batch 2 and Batch 3 municipalities?[119]

The calculation of the percentages of the coverage obligation will consider the population where people reside within Local Municipalities of South Africa as prescribed in the respective batches. It is the incumbents' responsibility to ensure that the obligations are met.

132. Is the 95% and 92% target an overall objective across both Batch 2 and 3 municipalities or is it applied to each category separately?[120]

The coverage obligations must be met on each respective batch as prescribed in the ITA.

[119] Telkom and Vodacom
[120] Telkom

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133. In section 12.2.3, should the reference to "95% or more of the population" refer to "80% or more of the population" in line with the obligation for a Tier-2 operator? (own emphasis).[121]

The coverage obligations on 12.2.3 is correctly prescribed.

134. The intention and objective of section 12.3.3.2 is not clear.[122]

a. Which interventions is the Authority referring to? Do these interventions include the open access obligations as per section 12.3 or also others?

The interventions are related to the obligations imposed as set out in paragraph 12.3.1 and 12.3.2.

b. When must licensees propose these interventions?

The Authority is referring to the obligations as set out in paragraph 12.3.1 and 12.3.2. The reference offer for site access should be part application.

c. How and when will the Authority consider these interventions?

See paragraph 12.3.1 and 12.3.2 of the ITA

135. The coverage lot of 2x10 MHz is seemingly reserved for a Tier-1 operator because of the high coverage target. This seems to be the case noting that the 97% population coverage is applicable to "any other Tier-1 player".[123]

a. Will other applicants be allowed to bid on the coverage Lot or is this Lot "reserved" for Tier-1 operators?[124]

Any operator can bid for the coverage Lot.

b. For the "other Tier-1 player", 92% population coverage must be obtained in underserved areas for the "2x10 MHz coverage Lot". Why does the Authority refer to "coverage Lot", which seems to be associated with the 2x10 MHz lot in 800 MHz (Lot 9)?

[121] Telkom
[122] Telkom
[123] Telkom
[124] Telkom and Vodacom

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This obligation applies to Tier-1 Operators should they acquire additional sub-1GHz spectrum to their existing spectrum holdings of sub-1GHz spectrum.

c. What coverage obligation will apply if the "other" Tier-1 player obtains only 2x5 MHz in the sub 1 GHz bands?

Obligation prescribed in paragraph 12.2.2.2 of the ITA.

136. The Authority proposes opt-in Lots and spectrum floors. The two portfolios are proposed to ensure that the "third and fourth national wholesale (Tier-2) operators" meet the minimum spectrum portfolios.[125]

a. Are 1st and 2nd Tier-2 operators excluded from this process? If so, why are they excluded?

No

b. Will a sub-national operator be excluded from the opt-in lots (Authority refers to national wholesale operators but also states that opt-in lots are open for any bidder other than Tier-1)?

No.

c. Do the portfolios come as a package of sub 1 GHz and mid-band spectrum?[126]

No.

d. Will an operator have to obtain, for example, 2600 MHz in the opt-in Lots with the sub 1 GHz spectrum?

The spectrum floors should be met by any operator to ensure that each and every player is credible to compete in the market having met one of spectrum portfolios as set out below paragraph 6.1 in the ITA.

e. Will the opt-in Lots form part of the spectrum caps?

[125] Telkom
[126] Telkom and Vodacom

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Yes.

137. What frequencies will be awarded in the 800 MHz frequency band (i.e. 791-821 MHz // 832-862 MHz and not 831-862 MHz)?

The frequency arrangement in the IMT800 band is 791-821 MHz // 832-862 MHz.

138. Per the ITA, 86 MHz in the 3500 MHz band (3458-3544 MHz) will be auctioned. Telkom is assigned the band 3400-3428 MHz. If Telkom opt for Lot 25 (2 MHz) it may take its 28 MHz to a contiguous 30 MHz.[127]

a. Is the sub-band 3428-3458 MHz (30 MHz) reserved for the WOAN?

The range of 3428-3458 MHz of the IMT3500 is set-aside for the WOAN.

b. Will the 2 MHz (Lot 25) be assigned at 3428-3430 MHz if obtained by Telkom to obtain 30 MHz contiguous spectrum? If Telkom wants to obtain additional spectrum in the 3500 MHz band, will it be possible to obtain contiguous spectrum with its existing assignment and will the WOAN set aside therefore be changed accordingly?

The Authority has noted non-contiguous that may arise in the IMT3500 band and will implement section 17.18 of the ITA to ensure that successful bidders acquire contiguous spectrum.

139. Prequalification will be assessed based on efficiency factors. Licensees must be able to fully understand the assessment criteria and process to allow self-scoring prior to submission of the application.[128]

a. How will submissions be scored to determine a final score?

The final score will be a sum of the three efficiencies. The total score for the efficiencies is 100.

b. How will the Authority judge applicants on their pricing strategies?

The Authority will make a determination based on the business plan provided.

[127] Telkom
[128] Telkom

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140. The Authority will assess the applicants to determine if the bidder has qualified to participate in the auction stage based on the criteria as set out in the table in section 15.3.8 (critical efficiency factors). A score of 80/100 is needed to meet this requirement and proceed to the auction stage.[129]

a. What information will be used by the Authority to assess an application (section 15.3.1.2)?

The information provided by the applicant to demonstrate technical, functional and economic efficiencies.

b. What criteria will the Authority use in scoring an application for technical, function and economic efficiency (section 15.3.8.1.1)?

The criteria is as set out in the ITA on the table below section 15.3.8.1.1**.**

141. What is the purpose and role of the information provided as part of the application form (Appendix B information such as licensee planning experience, business plan, market analysis, description of products and services, pricing strategy, etc.) in the application process?[130]

The information is required in terms of Regulation 6 of the Regulations which is titled "Extended Application Procedure" which requires all applications which follow an extended application procedure to include the application form in question. The ITA does not specify the of the purpose and role of the information requested in the form specifically for this process, it merely ensured that this process is aligned with the Regulatory and statutory requirements.

142. Critical efficiency factors are also contained in Appendix B (point 20). Why is that only this point (efficiency factors) contains scoring criteria?

a. How will the information contained in Appendix B be used in the pre-qualification stage and how will such information be evaluated and scored? How does the Appendix B information relate to the efficiency factors, for which 80/100 must be scored?[131]

[129] Telkom
[130] Telkom
[131] Telkom

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The requirement is in accordance with Regulation 6 of the Regulations which is titled "Extended Application Procedure", include the applicable application form contained in Annexure E of the Regulations. The criterion is required in terms of item 20 on "Technical information (radio system design)" in Annexure E. The critical efficiencies required in the form relates to those in the table setting the pre-qualification criteria below paragraph 15.3.8.1.1.

143. How can the maximum scores of 40, 30 and 30 points for technical, functional and economic efficiency respectively be achieved? Bandwidth efficiency is expressed as bits/Hz, which is function of the technology. How does this vary across the country depending on demand distribution?[132]

As provided in the ITA in the table setting the pre-qualification criteria below paragraph 15.3.8.1.1.

144. How should applicants treat application information that depends on the amount of spectrum to be obtained in the auction (e.g. financial forecasts, business plan, details of radio stations to be deployed, etc.)?[133]

This will be based on the number of Lots the applicant intends to acquire from the auction.

145. What is the reason for existing MNOs to provide detailed RAN design information (technical designs, planning guidelines, detailed rollout plans, etc. as listed in the Appendix B, section III)? Should established operators not be excluded from this requirement?[134]

No applicant is excluded as it relates to the new spectrum to be licensed.

146. Assuming licensees may adjust their bid strategy during the auction, which Lots should the licensee use in its respective technical and business plans?

The spectrum Lots that should be used by the applicant are those that the applicant intends to bid for the auction.

[132] Telkom and Vodacom
[133] Telkom and Vodacom
[134] Telkom

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147. What Chinese walls and similar secure non-disclosure mechanisms will the Authority put in place to ensure the auctioneer is not privy to the business plans (with associated presumed winning Lots and bid prices) which the licensees submit in the qualification phase?[135]

The Authority will ensure that there is non-disclosure agreement signed by the service providers appointed as auctioneers.

148. The process pertaining to the "*assignment round and unsold lots round*" is stipulated in section 17.18 of the ITA[136].

149. If a bidder who was a standing high bidder withdraws from the auction, will the price revert to the reserve price for that Lot?[137]

See paragraph 17.7.3 of the ITA.

150. What is meant by "specific channels" in section 17.18.2[138]?

The specific channels are the actual spectrum ranges that the bidders have acquired from the auction.

151. Is ICASA's presuming that incumbents are movable anywhere within a band?[139]

The Authority will not be moving the incumbents.

152. Network synchronisation is essential in all TDD bands. Both 2600 MHz and 3500 MHz have existing licensees. What frame structures are used by the incumbents in the 2600 MHz and 3500 MHz frequency bands? What TDD synchronisation parameters should applicants use in preparing their applications for the 2600 MHz and 3500 MHz frequency bands?[140]

Network synchronisation will be implemented as per the Radio Frequency Spectrum Assignment Plans in force.

[135] Telkom
[136] Telkom
[137] Telkom
[138] Telkom and Vodacom
[139] Telkom and Vodacom
[140] Telkom and Vodacom

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153. The Authority states in section 16.2 of the ITA that it may utilise the pre-qualification process in the ITA to extend and/or assign temporary assigned spectrum to the applicants. Temporary spectrum licences expire on 30 November 2020 whereas applications to participate in the auction are only due on 28 December 2020.

a. Will a licensee be required to return the temporary spectrum assigned to it and currently being used to address the COVID-19 if it has applied to participate in the auction?
b. How will the Authority regard those who did not utilize the temporary spectrum that was assigned to them?
c. Will the extension of the use of temporary spectrum be aligned with the timing of the conclusion of the auction?

The Authority will amend the ICT COVID-19 National State Disaster Regulations and all the above question will be addressed through that process.

154. "National Capacity" is defined with reference to the definition of "Capacity", being an average data speed achieved by the WOAN using the high demand spectrum assigned to the WOAN. We understand that this definition is relevant only for purposes of determining a successful bidder's commitment to the WOAN in terms of s12.4. When determining this National Capacity, we understand that the Authority will take account of only the WOAN's own network capacity enabled via its spectrum assignment and not WOAN capacity enabled via wholesale services provided by other licensees to the WOAN such as National Roaming. Is this understanding correct?[141]

Correct.

155. Since broad-based black economic empowerment is intended to benefit black people, should the references in Section 3.1.1 to women, youth and people with disabilities be read as references to black women, black youth and black persons with disabilities?

The objectives of the ITA are aligned to the object of the ECA (Section 2).

156. Section 4.1 provides that the ITA is guided by various statues and regulations. To the extent that the conditions and obligations imposed in the ITA differ from that contained in the legislation mentioned in Section 4, upon which empowering legislation does the Authority rely for such departure?[142]

[141] Vodacom
[142] Vodacom

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The Authority is not of the view that it has imposed obligations without observing the relevant legislation and regulations. The legal principles that establish which legislation and regulation takes precedent over specific issues will be applied should any conflict be identified.

157. Section 5.3 provides that Applicants are eligible to bid for any of the Lots set out in Section 5.4. In contrast, Section 6.1 provides for attractive portfolios for the third and fourth national wholesale Tier-2 operators and that these opt-in lots are not available to Tier-1 operators. Further, it is not clear whether the Lots listed in section 5 include the spectrum reserved for the WOAN.

a. Will Tier-1 operators be eligible to, and be afforded an opportunity to bid for all the Lots set out in Section 5.4? If not, which Lots will not be available for Tier-1 operators to bid on and why will these Lots not available?

Yes, noting the spectrum caps and floors prescribed in the ITA. The provision prescribed in section 6 of the ITA is to ensure that all operators have enough spectrum to be credible competitors in the market.

b. If bands are currently unavailable, do they count towards the spectrum cap?[143]

All the spectrum to be auctioned has been considered in the calculation of the spectrum cap.

158. With regard to the current 3500 MHz bands, are there any "legacy" FWA technologies and/or equipment still deployed and in operation within that band? If so, then what are the plans and timelines to migrate the legacy equipment out of the band so that it does not interfere with the services of new spectrum licensees operating in either the same or adjacent bands?

The Authority is of the view that there are no legacy systems in the spectrum to be auctioned on the IMT3500.

159. Section sets out the reserve prices and spectrum Lots. How were the interference constraints and associated delays with the 700 MHz and 800 MHz bands factored into the associated Reserve Prices?[144]

[143] Vodacom
[144] Vodacom

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The Authority has factored the DTT migration process on the setting of the reserve price by adding the discounts on the reserve prices provided by the avoided cost model.

160. The 3500MHz frequencies available for assignment as set out in S5.1.4 suggest that either Telkom or the WOAN will be migrated to accommodate contiguity of any spectrum that Telkom acquires through this award process. As a result, the WOAN assignment that sits between Telkom's 1x28 MHz and the 1x2 MHz would only be usable by Telkom.

a. Is the 1 x 2MHz Lot created for Telkom? Is the 1x4MHz Lot created for Liquid?

No. The spectrum is part of the auction.

b. Was a simulation performed to identify the Lots/bands which it expects each Operator to acquire? If so, please provide details of the analysis and assumptions.

The Authority did the competition assessment and fair valuation of the spectrum. No simulation was performed to identify the Lots/bands which it expects each Operator to acquire.

c. Will MNOs have the opportunity for in-band migration before the final band layout is decided post the auction?

See section 17.18 of the ITA to ensure that successful bidders acquire contiguous spectrum

161. In making this allocation of classifying Tier-2 operators, did the Authority take into account the extent to which and efficiency with which the Tier-2 operators employ the spectrum currently assigned to them?[145]

The Authority was more concerned about the competition post the auction and has also prescribed the obligation that will ensure that spectrum is used efficiently.

162. With reference to the objectives of the ITA and the relevant legislation, what study was relied upon to conclude that these Tier-2 operators:[146]

a. Are best placed to use this spectrum to achieve universal provision of ECN and ECS and connectivity for all;
b. Can best serve interests of consumers;
c. Are best placed to use this spectrum to provide quality and the variety of electronic communications services;
d. Are in a position to and would invest and innovate using this spectrum;
e. Would deliver the most competitive outcomes for the sector using this spectrum; and

[145] Vodacom
[146] Vodacom

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f. Would use this spectrum most efficiently or more efficiently than those licensees excluded from the Opt-in lots?

The Authority did the competition assessment and fair valuation of the spectrum.

163. Have the spectrum floors been considered in the 30% WOAN offtake, since there will be additional capacity available from the WOAN?[147]

The spectrum floors were considered for the new entrants to enable them to be credible in the market. The spectrum floors were not considered in the 30% WOAN offtake.

164. Has the Authority assessed how the Tier 2 operators would efficiently make use of their own acquired spectrum and their portion of the 30% from the WOAN offtake? What data was used in this assessment and is this report of such assessment available for bidders to consider?[148]

There are regulatory and legislative frameworks that govern the efficient utilisation of radio frequency spectrum for example the Regulations read with section 2(e) of the ECA. Spectrum Sharing provisions which are covered by regulation 18 of the Regulations can be implemented wherein the spectrum is not used.

165. Opt-in round benefits – Section 6.1 provides for opt-in lots and attractive minimum spectrum portfolios (MSPs) for Tier-2 operators and Section 17.2 provides for an opt-in round.[149]

a. How would the MSPs and opt-in rules for Tier-2 operators ensure that the stated objectives in section 3.1.9 of efficient use of radio spectrum is achieved and competition is promoted? What analysis was carried out to provide assurance that the MSPs and opt-in rules for Tier-2 operators will ensure that the stated objectives of efficient use of radio spectrum is achieved and not reducing competition?

b. How would a bidder that is not able to meet or has a preferred demand of less than the pre-defined Portfolios be accommodated?

c. What analysis was carried out to ensure that the MSPs will not result in bidders having to bid for additional spectrum that they can't afford or do not need?

[147] Vodacom
[148] Vodacom
[149] Vodacom

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d. Will the opt-in rounds be held before the auction of the non-opt-in rounds to achieve the purpose of the opt-in rounds, having regard to the spectrum cap limitations on all bidders?

e. Will portfolio 2's low band lot of (2x15 MHz) not potentially result in one operator left with acquiring only a usable 2x5 MHz in sub-1GHz?

The Authority conducted a competition assessment prior to the publication of the ITA. The competition assessment assessed the status pre-auction and post-auction of the ICT Sector. Section 12.6 of the ITA supports the objective of the efficient use of the radio frequency spectrum. The Authority has imposed the spectrum floors to ensure that any player that acquires the radio frequency spectrum from the auction becomes a credible player in the market. The minimum spectrum portfolios are prescribed in the ITA to enable credibility of national wholesale operators. The minimum spectrum portfolios will be facilitated through the opt-in round which do not preclude the bidders to participate in other rounds. Opt-in rounds will be first round for all the bidders to acquire one of the minimum spectrum portfolios.

166. Non – discrimination – Section 6.1 provides for minimum spectrum portfolios (MSPs) and that bidding is open to any bidders other than Tier-1 operators. If prices for opt-in MSP spectrum end up lower than prices for other equivalent frequency blocks (which is a likely outcome), how will all participants be assured that the outcome is efficient and non-discriminatory? To whom does the Authority expect the successful opt-in bidders to provide wholesale services?

The Authority will treat all applicants in a fair and non-discriminatory manner. Furthermore, the Authority will conduct a mock auction where among others the above required permutations will be demonstrated. The Opt-In bidders are expected to be applicants that do not meet the credibility requirements. Refer to the Reasons Document to be published for further clarity.

167. The header for the 3rd column in table in S6.1 reads "1800MHz / 2100MHz and/or 2600 MHz (minimum, including existing assignments)" and the column provides for 60MHz and 40MHz for Portfolio 1 and 2 respectively. In regard to this column:

a. Is Portfolio 1 and 2 intended to include 60MHz and 40MHz respectively of 2600MHz only? Or is it intended that the 60MHz and 40MHz would include all assignments above 1GHz? Please confirm that 3500MHz is excluded from the Opt-in round?

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Portfolio 1 and 2 include all the spectrum bands to be licensed in this process.

168. Section 6.1 sets out the minimum spectrum that must be held by the winners of Portfolios 1 and 2. What is the maximum spectrum available in the respective bands that will be available for acquisition during the opt-in round? Kindly confirm if there are specific lots to be reserved as opt-in lots - for bidders winning the opt-in rounds?

The qualified bidders will be advised at the auction stage of this licensing process. There are no lots reserved for specific bidders.

169. Section 6.1 provides for minimum spectrum portfolios (MSPs) and that the minimums include existing assignments in Sub-1 GHz and 1800, 2100 and 2600 MHz. [150]

a. Is it correct that the quantity of MHz that will be assigned in terms of the opt-in MSP can only be determined once the Standing High Bidders are designated the winners of the two MSPs?

b. In order to make available for auction the remaining unassigned MSP spectrum, will the SMRA for the MSPs precede the SMRA for the remaining lots?

All spectrum is to be auctioned as per the rules set out in the ITA. The Lots left after the opt-in round will be auctioned.

c. Please explain in detail how this will work in practice, and specifically indicate how the remaining unassigned lots will be determined by providing plausible examples of potential outcomes?

The qualified bidders will be advised at the auction stage of this licensing process. There are no lots reserved for specific bidders. The successful applicants who qualify to participate in the auction are to be advised through the auction rules process including MOCK auction.

170. There appears to be an inconsistency in signalling the purpose of the opt-in rounds: the first sentence identifies the Tier 2 operators as the intended beneficiaries of the section. This sentence, read with the table and section 6.2, suggests that the Authority requires two Tier-2 operators to end up with the Minimum Spectrum Portfolios reflected in the Table, to give them enough spectrum to be credible competitors. However, the remaining parts suggest that third party bidders might acquire the reserved "opt-in" assignments and prevent the Tier 2 operators from acquiring enough spectrum.

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These opt-in bidders need not have any spectrum holdings currently and so, by definition, are not Tier 2 operators. It is consequently not clear what the eligibility criteria for MSPs is. [151]

a. Will both Tier-2 operators and Sub-national operators be eligible for the opt-in round?

The bidders that have less spectrum than the minimum spectrum portfolios as stipulated in the table below paragraph 6.1 of the ITA may qualify to the opt-in round.

171. Given the existing assignments currently held by non-Tier-1 operators and the spectrum cap imposed by the ITA, has the Authority designed the Minimum Spectrum Portfolios with specific operators in mind? If so, which operators does the Authority expect to hold the MSPs after the auction?

See paragraphs 6.2 and 6.3 of the ITA.

172. Section 7.3 suggests that 1015MHz of High Demand Spectrum will be assigned at the auction stage. In contrast, S5.1 provides that 326MHz spectrum is available for assignment. Is the 1015MHz meant to refer to the sum of the 326MHz spectrum available for assignment in this ITA plus the WOAN ITA plus existing assigned spectrum holdings?

The available IMT Spectrum for the auction is 326 MHz, whereas 80 MHz is set aside for the licensing of the WOAN.

173. Section 7 sets out the spectrum caps applicable to the current assignment process, which includes existing assigned spectrum holdings.

174. Will operators have the opportunity to return existing spectrum holdings ahead of the auction in order to optimise their spectrum caps? Would the return need to be done in accordance with the RFS Regulations i.e. regulation 13?

The operator is at liberty to surrender the radio frequency spectrum licence in accordance with the Regulations. The surrender of the spectrum and the amendment as per the Regulations of the radio frequency spectrum licences should be concluded before submission of the application. It should be also noted that the turnaround for consideration to surrender is no less than 60 working days.

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175. Section 8 provides that a licence is valid for 20 years from the date of issue "taking into consideration the residual analogue and digital television broadcasting service migration below 694 MHz band timescales in South Africa".

a. Does this mean that the 20-year license term commences on the date at which the television broadcast signal migration has been completed nationally i.e. the date at which all 700MHz and 800MHz spectrum will be fully available nationally for IMT use.

The 20-year license term commences from the date of issuance of the Radio Frequency Spectrum Licence.

b. Will due payment of the Auction Fee for IMT700 and IMT800 spectrum be suspended until such time that the Digital Migration and analogue switch-off process has been completed?
The date of payment of the auction fee is prescribed in paragraph 18.1.4 of the ITA.

176. The heading to s12.1 reads "Uplink and throughput obligation… Is it supposed to be Downlink instead of Uplink?
Correct. The prescribed obligation is for a downlink speed.

177. Vodacom understands that Section 12.1.1 sets out throughput obligations that are uncoupled from the coverage obligation as detailed in Section 12.2. This allows for flexibility in the rollout of all spectrum bands, more specifically the newly acquired 2600MHz and 3500MHz bands in addressing areas currently experiencing capacity constraints i.e. major cities and towns. Is this understanding correct?

The obligation prescribed in paragraph 12.1.1 applies to the successful bidders who have acquired any spectrum from the auction, whereas the obligations prescribed in section 12.2 are prescribed with certain conditions in the ITA.

178. Section 12.1.1 sets out throughput obligations that must be achieved within 5 years. Will the minimum throughput obligation apply for the duration of the licence?[152]

All the obligations will become licence terms and conditions for the Radio Frequency Spectrum Licence to be issued and shall be in force throughout the duration of the licence. The compliance monitoring of licence terms and conditions will start from the first five year period of the licence.

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179. Section 12.2.2 and Section 12.2.3 set out the population coverage that winners of 700MHz and 800MHz lots need to achieve. It does not indicate the manner in which such coverage is to be measured. This has the potential for differences in interpretation by the various auction participants, potentially leading to different expectations as to the investment required to achieve those coverage requirements and sub-optimal outcomes in the auction. Please confirm that this obligation refers to basic data coverage available to consumers?

These obligations should be achieved to cover all the municipalities categorised into three batches to ensure that all citizens are provided with the quality mobile broadband services. The Authority is to devise means of monitoring the compliance of these obligations.

180. Outside-In - Vodacom understands that, in meeting its Batch 2 and 3 municipalities coverage obligations, a licensee will be allowed to deploy its network in Batch 2 and 3 areas using any of its current and/or newly awarded spectrum. The licensee is not precluded from, at the same time, using any currently assigned and/or newly awarded spectrum, other than 700 MHz and 800 MHz, to deploy its network in other areas immediately. The 700 MHz and 800 MHz spectrum can be deployed in areas other than Batch 2 and 3 municipalities once broadband coverage has been achieved for either 95% or 92% referred to in 12.2. Is this understanding correct?

The understanding is correct.

181. Section 12.2.2.1 sets out the coverage obligations for "One 2x10MHz (on IMT800) Coverage Lot", which means Lot number 9. The winner of this lot must comply with the coverage obligation using an "outside in approach". Section 12.2.2.2 sets out the coverage obligations for "Any other tier-1 player who wins ANY further sub-1GHz spectrum", which means any of the 2x5MHz IMT700/800 Lots, i.e. Lot numbers 1-8. In contrast, Section 12.2.2.2 further provides that "the outside in approach applies,… for the 2x10MHz Coverage Lot". Does the "outside in approach" apply to Tier-1 operators who win any of Lot numbers 1-8?[153]

The understanding is correct.

182. Section 12.2.2 sets out coverage obligations that apply to the "One 2x10MHz (on IMT800) Coverage Lot" and "any other tier-1 player who wins ANY further sub-1GHz spectrum". Section 12.2.3 sets out coverage obligations that apply to Tier-2 operators awarded with 700MHz or 800MHz licenses and notes that it does not apply to sub-national wholesalers who do not opt-in for reserved spectrum described in section 6.1.[154]

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a. Does this mean that coverage obligations will apply to Sub National Operators (in other words operators other than Tier-1 and Tier-2) in the case of spectrum obtained via the opt-in mechanism?

The understanding is correct.

b. Precisely what would be the coverage obligations for Sub National Operators?

The coverage lot obligation (paragraph 12.2.2.1 of the ITA) apply to any operator who will acquire the coverage lot at the auction. Furthermore, the coverage obligation as prescribed in paragraph 12.2.3 of the ITA may apply to the sub-national operators.

183. Section 12.2.3 requires Tier-2 operators awarded with 700MHz or 800MHz licenses and that cover less than 80% of the population with IMT services to expand such coverage to at least 80% of the population in general across South Africa. Section 12.2.3 further provides that the outside-in obligation would not apply to Tier-2 national wholesalers that do not already cover 95% or more of the population with IMT services in January 2020. Vodacom understands this means that the outside-in obligation will apply to the Tier-2 operators with less than 95% population coverage as at January 2020. Is this understanding correct?[155]

The understanding is correct.

184. Section 12.3.1.1 provides that Tier-1 Operators must produce a reference offer and Section 15.3.4.1.6 provides that the application must include the reference offers described in section 12.3. Will the content of the reference offer form part of the evaluation during the qualification stage? If so, what criteria will inform the evaluation in regard to the reference offer, and how will points be awarded on this aspect?[156]

The reference offer shall become licence conditions of the licences to be issued to the successful bidders.

185. Section 12.3.1.2 provides that reference offers shall become licence conditions for two Tier-1 operators applying (we assume not merely applying but actually awarded spectrum) in this auction process. Why are only two bidders required to provide reference offers? Why are Tier 2 bidders not required to provide such offers? [157]

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[157] Vodacom

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The Authority will provide the Reasons Document which will address the questions raised above here. The stakeholders are requested to refer thereto.

186. Will the 51% HDG ownership be measurable in terms of the ICT Sector Codes and be confirmed by a valid BEE verification certificate issued by an accredited BBBEE verification agency?

51% HDG ownership will be measurable in terms of the ICT Sector Codes and the Authority will verify the compliance.

187. Section 12.3.2 provides that the licensee assigned spectrum through this 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.

a. Do both the 3-6 months and 3-year timers start from the award of the spectrum licenses?
The prescribed periods start from the date of the issuance of the spectrum licences.

b. Is the obligation to submit business plans limited to submission of those viable business plans received by the licensee or is the licensee required to host MVNOs?

The Authority expects applicants to provide the business plans of the MVNOs that it will host within the period of 3-6 months after acquiring the spectrum from the auction. The business plans shall prove that the hosted MVNOs shall be viable for the period of at least 3 years. The licensee shall host the MVNOs as prescribed in the ITA.

188. An MVNO is defined as a wireless communications service provider that does not own the wireless network infrastructure over which the MVNO provides services to its customers. We understand that this implies that all types of MVNOs, including sub-branded and/or co-owned MVNOs, and Resellers would qualify as an MVNO. Is this understanding correct? If not, please indicate exclusion(s) from the definition?[158]

The understanding is correct. The MVNO must have 51% ownership held by persons from Historically Disadvantaged Groups as contemplated section 12.3.2 of ITA.

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189. Section 12.4.1 requires minimum 30% collective capacity commitment from the time that the WOAN is operational for 5 years. We understand that this obligation ends 5 years from the date the WOAN is deemed to be operational. Is this understanding correct?

The understanding is correct.

190. Section 12.5.1 requires zero-rate of Mobile Content provided by Public Benefit Organisations including ".gov.za sites". Does this mean that is Mobile Content by Public Benefit Organisations only available on ".gov.za sites"?

No, Licensee assigned spectrum through this process shall zero-rate all the Mobile Content provided by Public Benefit Organisations <u>including</u> .gov.za websites

191. Section 12.5.1 requires zero-rate of Mobile Content provided by Public Benefit Organisations. Vodacom understands that Public Benefit Organisations in the context of this obligation include only organisations duly registered with the Department of Social Development, that is in possession of a valid Public Benefit Organisation certificate and that can be verified by the Department of Social Development. Is this understanding correct?[159]

A public benefit organisation (PBO) can be a trust, a not-for-profit company in terms of the Companies Act or an association registered with the South African Revenue Service (SARS) in terms of Section 30(1) of the Income Tax Act, No 58 of 1962.

192. Section 12.6.2 provides for processes in cases where spectrum is not fully utilised by the licensee within 5 years of issuance of the Radio Frequency Spectrum Licences.

a. Is there a minimum geographical requirement for utilisation? Is there a minimum throughput obligation for utilisation?

The Minimum utilisations is the entire territory of South Africa where people reside as per the batches provided in the ITA.

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b. Does the Authority intend to monitor utilisation during the five year period when will the assessment of utilisation be undertaken?[160]

The monitoring of the spectrum utilisation will be during the five-year period starting from the date of issuance of the spectrum licence.

193. Where unused spectrum is to be made available to be shared with any ECNS licensees.

a. Will the Spectrum Sharing Regulations apply, or will a new or alternative mechanism be introduced?

Spectrum Sharing provisions which are covered by regulation 18 of the Regulations can be implemented wherein the spectrum is not used.

b. Are the processes contemplated in section 12.6.2 reversible if the licensee is able to improve utilisation? How would such arrangements be reversed once the licensee of such spectrum has shown it could "fully utilise" its spectrum?

Provisions in section 12.6.2 of the ITA are irreversible.

194. How would such arrangements be implemented if there is excess demand for sharing, how would spectrum sharing be?

See provision 12.6.2 of the ITA stating that the Authority will initiate the process contemplated in paragraphs 12.6.2.1 to 12.2.3.

195. Section 15.3.1.1 requires applicants to state which lots they intend to place bids for during the award process.[161]

a. Is there any limit on the number of lots an applicant may apply for?
b. Is there a limit on the number of lots in each frequency band that the applicant may apply for?
c. Must the applicant identify the specific lot number or merely the number of lots in each frequency band?
d. The Authority is requested to confirm that, by identifying the lots it intends to apply for, is the applicant is not considered to be making an Initial Bid?

There is no limit on the number of lots an applicant may apply for and there is no limit on the number of lots in each frequency band that the applicant may apply for. However, the spectrum caps should be observed and be complied with when the applicant applies for the Lots. The Applicant must indicate the specific Lot numbers it intends to apply for.

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196. Section 15.3.4.1.4 of the ITA requires that the application must consist of a detailed, clear and exhaustive description of the ownership structure of the applicant. Is this requirement met by naming material shareholders, being shareholders holding 5% or more of the issued share capital? Alternatively, does the Authority require a description of each and every shareholder in the applicant together with its full name and percentage shareholding? If an applicant is a subsidiary of another firm, as defined in the Companies Act, is the shareholding in the holding company required? Will the Authority call for ownership in a shareholder or holding company, if it requires additional information regarding the shareholding structures?

The level of details of the ownership structure of the applicant must be provided in order for the Authority to verify BBBEE and HDP compliance, including any subsidiary of another firm, as defined in the Companies Act.

197. If an application is not disqualified in terms of 15.3.6.3 but the Authority requires additional information, does the Authority foresee a process by which it can call for additional information?[162]

Please refer to X+84 prescribed in the table for timeframes.

198. Vodacom note that the word "applicant" used in the table is not capitalised but understands that the definition of "Applicant" is intended to apply. Is this understanding correct?

The understanding is correct.

199. Is the reference to the "same application process" a reference to the ITA Notice? Please confirm that the Composite WOAN ITA Notice is not "the same application process"?[163]

The Authority confirms that the Composite WOAN ITA Notice is the separate application process from this one.

200. Will bidders be allowed in early rounds to bid at an activity level that is different from its eligibility, or does it plan that activity and eligibility levels remain matched throughout the auction (i.e. 100% activity throughout the auction)?[164]

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[163] Vodacom
[164] Vodacom

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See section 17.5 of the ITA. The Authority is to conduct a mock auction with the qualified bidders as prescribed in the timeframe table.

201. Section 17.5.6 provides that each Lot has an associated number of Activity Points based on the likely ability for bidders to substitute between the lots. However, the activity points in Section 17.5.6, read together with Section 17.5.9, suggests that a bidder that wishes to move their bidding from the single 2x10MHz lot in the 800MHz band, to 2 lots of 2x5MHz in the 800MHz band, would require additional activity points than which they had already accumulated through their sub-1GHz bid.[165]

a. Please clarify how the activity points chosen for the 2x5MHz and 2x10MHz lots of 800MHz are expected to allow bidders to move between alternative configurations to achieve 2x10MHz in total?

b. Will such bidders have any other option but to use activity points they had already accumulated in the 2600MHz and 3500MHz bands, thereby having to reduce their demand for the 2600MHz and 3500MHz bands?

Additional activity points in the sub-1GHz bid would be required or alternatively activity points from any IMT2600 and IMT3500 lots can be substituted for sub-1GHz in line with ratio stipulated in section 17.5.7 of the ITA.

202. Will a bidder's eligibility during the rounds be limited by the spectrum cap, taking into account the applicant's current assignments? Or can an applicant that holds 100MHz prior to the auction bid on more than 84MHz at any point during the auction?[166]

The bidder's eligibility is limited by the spectrum cap that took into consideration the current spectrum holdings of the bidder, including the sub-1GHz spectrum cap. See section 17.5.9 for determination of eligibility.

203. Will any interference with newly acquired spectrum also be considered when finalising the assignment plan, since in certain bands, the exact position of the acquired spectrum may result in harmful interference with operators' existing assignments?[167]

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[166] Vodacom
[167] Vodacom

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The Authority refers the stakeholders to Appendix D of the Radio Frequency Assignment Plans which deals with interference issues.

204. Section 17.18.2 provides that the Authority will arrange the channels in the licences so as to ensure that they are contiguous and following a consultation process. What considerations will be taken into account when ensuring that channels are "contiguous". For example will the authority only focus on the ITA spectrum or will it take into account current spectrum holdings as well?

Paragraph 17.18.2 of the ITA is in relation to the spectrum to be auctioned in this licensing process.

205. Section 17.18.2 provides that the Authority will arrange the channels in the licences so as to ensure that they are contiguous and following a consultation process. What considerations will be taken into account when ensuring that channels are "contiguous". For example will the authority only focus on the ITA spectrum or will it take into account current spectrum holdings as well?[168]

The Authority will focus on the spectrum to be auctioned as part of this licensing.

206. Section 17.18.2 provides that the Authority will arrange the channels in the licences so as to ensure that they are contiguous and following a consultation process. What "consultation process" will be undertaken over what period and with whom, when determining contiguity of the channels? Will existing assignments be migrated to achieve a contiguity with newly acquired spectrum in each band? What circumstances would render it "necessary" to hold an additional auction? What process will be followed, and criteria be applied in an additional auction?[169]

The consultation process may take place with the successful bidders that have acquired the spectrum from the auction and may take place during the licensing stage of this process. The Authority can only be certain about in-band migration after consultation with the winning bidders and affected incumbents during the licensing stage. The outcome of the consultation shall dictate the action the Authority should take in ensuring that the spectrum is contiguous.

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207. Section 18.1.6 provides that non-payment, late or incomplete payment of the Auction Fee may lead to the non-issuing of the Licence. Does this mean permanently refusing to issue any licence for non-payment or simply delay issuing of the licence until payment is received?[170]

No, issuance of the Spectrum Licence and the spectrum affected will be auctioned at the later stage as prescribed in paragraph 18.1.6 of the ITA.

208. Section 18.3 provides the timeframe for the award process. Does the column "Day" mean working days. In the response and having regard to the ITA being issued on 2 October 2020, please identify the dates on which each Task is to be expected?

See the table below read with section 18.3 of the ITA.

Activities	Start	End	Number of Workir
Publication of the ITA	02 October 20	02 October 2	X
Receiving of enquiries	05 October 20	22 October 2	X + 14
Deadline for receiving of en	22 October 2020		
Responding to enquiri	05 October 20	11 November	X + 28
Deadline to Respond to en	11 November 2020		
Receiving of Applicatio	02 October 20	28 December	X + 60
Closing date to Receive Appl	28 December 2020		
Publication of the List of Ap	05 October 20	18 January 20	X + 73
Clarification or Queries submiss Public	05 October 20	02 February 2	X + 84
Announcement of Qualified	05 October 20	22 February 2	X + 98
Bidder Seminar and Mock A	05 October 20	12 March 20	X + 112
Start of Auction	05 October 20	24 March 20	X + 119
End of Auction			

209. Section 21.1 provides for the sanctions applicable in the event that an Applicant breaches the auction rules. Is the reference to "auction rules" a reference to the General rules set out in section 19 of the ITA?[171]

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All the applicable rules in the ITA.

210. **Business plan**

a. Please provide full details of the requirement?

As prescribed in the Appendix B: Application Form.

b. What is the scope of the business plan, i.e. Profit & Loss statement and/or Balance Sheet and/or Cash Flow statement? What is the level of granularity required, e.g. detailed breakdown of revenue streams, capex and opex or high-level line items? Is each applicant required to record the sources of funding to achieve its plan?

See Appendix B of the ITA. The ITA must be read with provisions of the Regulations. As per the requirements of the ITA. The Authority aims to licence radio frequency spectrum to the operators that will fully utilise the spectrum. The ITA must be read with provisions of the Regulations.

c. Is the business plan to be prepared on an investment basis i.e. including Auction Fees and coverage obligations? What should be assumed in this regard?

As per the requirements of the ITA in particular Appendix B. The ITA must be read with provisions of the Regulations.

d. What time series should be covered?

Licence period.

e. What would be the review criteria and on what basis would points be awarded?

See the table below paragraph 15.3.8.1.1 of the ITA.

f. What would be the objective for requesting a business plan as part of the Application?

To ensure that the operator will remain sustainable during the licence period and be able to meet set obligations and ensuring that the spectrum is used efficiently.

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g. Precisely what outputs, key performance indicators and measures should be reported on and considered? For example: subscribers, traffic, etc.?

As you deem it fit as per the requirements of the ITA

h. How would points be allocated to each output, key performance indicator and measure?

See the table below paragraph 15.3.8.1.1 of the ITA.

211. In the Application Form as provided in S23, the Authority indicates that applicants should provide details of radio planning for Item 7 of Part (IV) - Technical Information. The information requested is likely to be voluminous (especially for networks with large projected site counts), and may not be related to actual site information at the time of deployment due to factors such as site acquisition, interference and spectrum acquired in the auction. In this regard:

a. Would reference information of typical site configurations for the various bands under consideration be sufficient for a complete application?

The Application Form is as prescribed by the Regulations which were consulted on.

212. Would the Authority accept that indication of site names (item 7.1), codes (item 7.2) ,co-ordinates (item 7.3), Antenna site (item 7.8), and Area and Direction of Operations (item 7.17) may not be practicable at this point in time, especially for new entrants, and that an indication of the number of sites to be deployed, together with projected coverage maps, based on one assumption of spectrum to be acquired, would be sufficient and complete for the application?

The Authority has provided description of the terms on Appendix B: Application Form under Technical Information (Radio System Design).

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