

# ENSafrica Technology, Media and Telecommunications in brief

Welcome to the ENSafrica Technology, Media and Telecommunications in Brief. This is the first edition of our new publication focussing on topics, news and analysis of new and interesting developments in the technology, media and telecommunications space. In this edition :

- Our feature article focusses on Technology in the New Era and is the first of a three part series focussing on legal perspectives emanating from new and emerging technologies
- Back to Basics: this is the first of a new series focussing on breaking down commonly encountered issues in technology transactions, technology contracting, social media and e-commerce. In this edition we feature Service Level Agreements.
- Telecommunications: a roundup of recent developments in the Telecoms sector, including news of the much talked-about spectrum debacle
- Broadcasting and Media: we feature recent developments taking place within this space
- In the News: a roundup of topical events

## feature article: technology: the new era

### A legal perspective on emerging technologies

*Rakhee Dullabh and Jessica Steele*

ENSafrica recently hosted a webinar on a legal perspective on emerging technologies, in case you missed it, here's our roundup.

As we are all too aware, COVID-19 expedited a number of changes that were already starting to take place, and nowhere is this more evident than in the ICT space. The 4th Industrial Revolution ("**4IR**") is a fusion of advances in artificial intelligence ("**AI**"), robotics, the Internet of Things ("**IoT**"), genetic engineering, quantum computing, and more.

[Read more](#)

## back to basics

### Back to basics: Service level agreements

*Ridwaan Boda*

One of the most commonly misused terms in the Information Technology ("IT") industry, even amongst IT professionals and even sometimes lawyers, is that of "SLA" or "Service Level Agreement". Not all IT contracts are service level agreements even though the term is used loosely and incorrectly to describe almost any type of IT contract.

[Read more.](#)

## telecommunications

- **GG45255: IMT Spectrum Auction Update Pursuant to Court Order**
  - On 1 October 2021, the Independent Communications Authority of South Africa ("ICASA"), pursuant to the court order issued by the North Gauteng High Court on 15 September 2021 (the consent order that ended the litigation instituted against ICASA by Telkom and e.tv.), published a notice regarding the information memorandum to advise the public on the process that ICASA intends to follow and consultation in respect of licensing of the International Mobile Telecommunications ("IMT") spectrum, also known as high-demand spectrum, and the Wireless Open Access Network ("WOAN").
  - The Court had granted an Order to review and set aside ICASA's decision to publish the Invitations to Apply ("ITA") for both the high demand spectrum and WOAN.
  - In light of the court order, ICASA has published its information memorandum setting out its expedited licensing process. According to the ICASA Chairperson, Dr Keabetswe Modimoeng, "ICASA is embarking on a process to consult stakeholders on key aspects pertaining to the expedited licensing process for high demand spectrum and the WOAN including, amongst others, implications of the release of high demand spectrum (and licensing of the WOAN) on competition in the market, the radio frequency bands to be licensed, in view of the yet to be completed digital migration process, and the nature and extent of obligations to be imposed, etc. Pursuant to the consultation process, the Authority may amend and/or re-issue the ITAs with a view to conducting an auction by the end of the current financial year."
  - ICASA has indicated the following key activities and associated dates and has also indicated that no extensions will be permitted:
  - Schedule for the expedited licensing of the WOAN

Key Activities	Envisaged dates
Publication of the Information Memorandum ("IM") for Consultation	01 October 2021
Workshop on the IM	15 October 2021

Closing date for receiving public representations to the IM	01 November 2021
Publication of 2nd IM for consultation	15 November 2021
Closing date for Comments	29 November 2021
Publication of the ITA	10 December 2021
Closing date for receiving new and revised applications to the ITA	31 January 2022
Announcement of qualified bidders	21 February 2022
Start of the Auction process	01 March 2022

- Schedule for the expedited licensing of IMT spectrum

<b>Key activities</b>	<b>Envisaged dates</b>
Commencement of Process to reconsider the Composite Invitation to Apply (“ITA”) for an individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN)	01 October 2021
Publication of a consultation document in respect of the Draft Amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	19 November 2021
Closing date for receiving written representations on the consultation document in respect of the composite ITA for IECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	10 January 2022
Publication of amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	14 February 2022
Public Workshops on the amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	15 March 2022

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Closing date for receipt of applications in response to the composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN. 13 May 2022

- **GG45247: Notice Regarding the Inquiry for the Implementation of the Radio Frequency Spectrum Plan and the IMT Road Map**
  - On 30 September 2021, ICASA published a notice on the inquiry for the implementation of the Radio Frequency Migration Plan and of the International Mobile Telecommunications (IMT) Roadmap for consultation.
  - The purpose of the inquiry is to determine the current usage of the frequency bands as mandated by the Radio Frequency Migration Regulations, 2013 in order to develop an implementation plan regarding the Radio Frequency Migration Plans, IMT Roadmap and the frequencies identified for migration during the development of the National Radio Frequency Plan of 2018, as well as the implementation plan thereof, through the development and amendment of new and existing Radio Frequency Assignment Plans to achieve global harmonisation of the Standards and Systems.
  - Interested persons are invited to submit written representations of their views on the inquiry. Submissions must be made by 16h00 on Friday, 3 December 2021.
  - Written representations or enquiries may be directed to:
    - The Independent Communications Authority of South Africa,  
  
350 Witch-Hazel Avenue, Eco Point Office Park  
Dr Ivy Matsepe-Casaburri Building,  
Eco Park, Centurion  
South Africa  
Private Bag X10,  
Highveld Park 0169  
Centurion, Pretoria
  
    - Attention: Mr. Manyapelolo Richard Makgotlho
    - e-mail : [rmakgotlho@icasa.org.za](mailto:rmakgotlho@icasa.org.za)
    - cc : [jdikgale@icasa.org.za](mailto:jdikgale@icasa.org.za)
  - A copy of the notice and questionnaire is accessible [here](#).
  
- **GG45250: List of Class Licensees Published**
  - On 1 October 2021, ICASA published the list of class licensees. A copy of the notice and list can be accessed [here](#).

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## **broadcasting and media**

- **GG445172: Notice of Intention to Conduct Market Inquiry into Signal Distribution Services in South Africa**
    - On 17 September 2021, ICASA published a notice of its intention to conduct a market inquiry into signal distribution services in South Africa.
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- In the notice, ICASA indicates that a part of the legal basis of the inquiry is to meet one of the primary objectives of the Electronic Communications Act, 2005 ("ECA") being to "provide access to broadcasting signal distribution for broadcasting and encourage the development of multi-channel distribution systems in the broadcasting framework." The stated purpose of the inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the distribution services value chain which may warrant regulation.
  - The inquiry will be held in four phases, the first phase consisting of obtaining responses to ICASA's questionnaire (which can be accessed [here](#)). Stakeholders will have until 2 November 2021 (45 working days from the date of publication of this notice) to submit responses to the questionnaire. Thereafter, ICASA will publish a discussion document and invite written representations. Phase 3 will consist of public hearings and phase 4 will culminate in ICASA publishing a findings document, the findings document will be published within 90 days of the conclusion of the inquiry.
  - All communications relating to this Inquiry must be directed to Chairperson: Signal Distribution Inquiry Council Committee at [signaldistribution@icasa.org.za](mailto:signaldistribution@icasa.org.za).
  - **Analogue Television Transmitter Switch Off Plan**
    - On 5 October 2021, the Department of Communications and Digital Technologies published the Broadcasting Digital Migration and Analogue Switch-off Plan ("**Switch Off Plan**").
    - South Africa had initially planned on completing the migration process in 2011 and this deadline was extended to 1 June 2015 which the Department of Communications and Digital Technologies also did not meet.
    - During the State of the Nation Address 2021, President Ramaphosa announced that the new deadline for completing the migration from analogue to digital would be 31 March 2022 and the Department of Communications and Digital Technologies believes that it will meet this deadline.
    - The Switch Off Plan relies on a national approach over the provincial approach that was previously used so that the migration occurs simultaneously across all nine South African provinces.
    - To ensure that the Switch Off Plan is implemented and for the Department of Communications and Digital Technologies to meet its deadline, Minister Khumbudzo Ntshavheni has appointed a Project Steering Committee that comprises of CEOs and Technology Executives of the affected stakeholders.
    - The Project Steering Committee will meet fortnightly to track and discuss the progress of the digital migration project.

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## in the news

- **Department of Justice and Constitutional Development Ransomware Attack**
    - On 7 September 2021, the Department of Justice and Constitutional Development ("**DoJCD**") confirmed that it had suffered a ransomware attack,
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leaving its ICT systems compromised, both from a system administration and end-user perspective.

- In the DoJCD's latest media statement of 21 September (accessible [here](#)) it has indicated that the DoJCD is working as quickly as possible to restore services, mostly those which impact directly on the public (for example the child maintenance beneficiary system, MojaPay, became operational again on 15 September). The Information Regulator, which falls under the banner of the DoJCD has also been affected by the ransomware attack and has issued a notification of the security compromise as required in terms of the Protection of Personal Information Act, 2013, a copy of the notification is accessible [here](#).
- It seems that cybercriminals are continuing to attack key institutions and Kaspersky research has shown that there is a continuous surge in cyberattacks across Africa.
- The prevalence and possibly disastrous damage which can be caused by these attacks underscores the need to bring the Cybercrimes Act (ransomware attacks being only one of the cybercrimes created in the Cybercrimes Act) into force, and along with that to ensure that the proper capabilities are in place to properly enforce its provisions.
- **ICASA Facing Pushback Against its Decision to Withdraw Temporary Spectrum**
  - On 30 August 2021, ICASA issued a media statement indicating that it had extended the temporary spectrum allocation by a further three months, until 30 November 2021, but that this would be the last time it would do so. Operators that had applied for and were using the additional spectrum during the pandemic will now have to hand it back by the end of November.
  - Business Leadership South Africa has gone so far as to refer to the withdrawal as “digital loadshedding”, while Telkom has approached the courts in an effort to stop ICASA's withdrawal of the temporary spectrum.
  - ICASA, on the other hand, has said it is worried that extending the granting of the spectrum indefinitely would distort the market and was unfair to licensees that chose not to apply for it in 2020. It also suggested it was no longer needed as many people had returned to their offices and were therefore no longer placing extra demands on mobile networks.

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