

## ENSafrica telecoms and media in brief

Below, please find issue 21 of the **ENSafrica** telecoms and media in brief, a snapshot of the latest telecoms and media developments in South Africa.

### Telecommunications and Broadcasting

- **GG44180: Notice to defer IMT Timelines**
  - On 23 February 2021, the Independent Communications Authority of South Africa ("**ICASA**") published a notice in terms of the International Mobile Telecommunications ("**IMT**") Invitation to Apply ("**ITA**") of 2 October 2020 to move out the dates regarding the announcement of qualified bidders to 23 March 2021.
  - This, therefore, means that the auction phase, which comprises the bidder seminar, the mock auction and the actual auction, will commence by 31 March 2021.
  - ICASA Chairperson, Dr Keabetswe Modimoeng has stated that "one of the critical milestones in this regard is the conclusion of a contract with the external and independent Auctioneer who will be overseeing and managing the entire auction process. The conclusion of a contract and appointment of the service provider for the auction remains a key factor, and we remain confident that we are not off the track but in a better position to complete the licensing of high demand spectrum."
- **GG44175: Invitation to Apply for Individual Commercial Free to Air Sound Broadcasting Service (Secondary Markets) and Radio Frequency Spectrum Licences**
  - On 22 February 2021, ICASA published an ITA for Individual Broadcasting Licence and Radio Frequency Spectrum Licence for the provisioning of commercial sound broadcasting services in the geographical market of Northern Cape Province (Secondary Market).
  - Applications will be considered based on the requirements of the ITA which is accessible [here](#).
- **GG 44167: Notice of Moratorium on Applications in Respect of Radio Frequency Spectrum Assignments in Radio Frequency Bands Identified for Implementation of IMT Systems and the 3600-3800 MHz Radio Frequency Spectrum Band**
  - On 17 February 2021, ICASA published a notice of a moratorium on applications for radio frequency spectrum assignments in radio frequency spectrum bands identified for the implementation of the IMT systems and the 3600-3800 MHz radio frequency spectrum band.

- ICASA will therefore not consider any new applications for these radio frequency spectrum bands, however, any applications which have already been submitted will still be considered.
- ICASA has not provided a date for the lifting of the moratorium, and will instead make any such announcement by notice in the *Government Gazette*.

## In the news

- **Constitutional Court has returned its judgment on the RICA “Spying Case”**
  - The Constitutional Court has confirmed the High Court’s declaration of invalidity of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 2002 (“RICA”) to the extent that it fails to:
    - provide for safeguards to ensure that the independence of a designated judge in terms of RICA;
    - make provision for notifying a subject of surveillance that he or she was under surveillance after the surveillance activities have been concluded;
    - provide adequate safeguards in light of the fact that surveillance applications are sought and obtained on an *ex parte* basis;
    - provide for the safeguarding of the information obtained during surveillance activities with regard to preventing the unlawful interference with such information; and
    - ensure that safeguards are in place with respect to the surveillance of a practising lawyer or journalist.
  - The declaration of invalidity is suspended for 36 months in order for parliament to amend the legislation and to cure the defects causing the invalidity. In the interim, the Constitutional Court has read in a section which will be deemed to be incorporated into RICA, these sections deal with the requirement that the applicant for a surveillance order disclose to the judge that the subject of surveillance is either a practising lawyer or a journalist and the requirement to notify a subject of surveillance within 90 days of the expiry of the surveillance direction that he or she was the subject of surveillance.
  - In addition, the Minister of State Security had sought to appeal the High Court’s ruling that the state’s practice of bulk interception of communications is not authorised by law. The Constitutional Court dismissed this application.

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