



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notices

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 438

2015

**NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) AND REGULATION 19(1) REGARDING LICENSING PROCEDURES  
FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND  
SPECTRUM USE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of section 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 19(1) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Community Broadcasting Service Licence and Spectrum Use Licence for **Shalo’m Messenger Ministries** (hereinafter referred to as “Shalo’m”) has been declined.

**THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

**1. INTRODUCTION**

Shalo’m Messenger Ministries (hereinafter referred to as “the Applicant”) submitted applications for a community broadcasting service licence and spectrum use licence on 15 August 2014 in accordance with sections 85 and 101 of the Communications Act (Act No 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government *Gazette* No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority. All licence application fees in respect of the application were paid.

**1.1 BACKGROUND TO APPLICATION**

As per documentation submitted with the application for a community broadcasting service licence, the Applicant is a 100% Namibian owned Section 21 company with registration number 21/2013/0256. There are no foreign ownership interests in the Applicant’s board or ownership level as indicated below-

Name of Owner	ID. Number	Nationality of Owner
Tuyeimo David	63111510018	Namibian
Paulus David	73091500691	Namibian
Board of Directors	ID. Number	Nationality of Owner
Tuyeimo David	63111510018	Namibian
Paulus David	73091500691	Namibian
Valentine James Nel	67071500045	Namibian
Albertine Tjitombo	69010401324	Namibian
Hileni Nembanga Nghipunya	77013100099	Namibian
William Innus Louw	56021200810	Namibian

In terms of Section 101 (7) of the Communications Act (Act 8 of 2009), “*where a person applies for a licence to operate a network or provide telecommunications services or*

*broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.”*

Consequently, the Applicant submitted an application for spectrum use for FM broadcasting frequency between 87 MHz and 108 MHz dated 15 August 2014 in the geographical area of Oshakati and a transmitter output power of 500W.

The Applicant is intending to provide their own signal distribution service in terms of Regulation 5(2) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License, although it will enter into a site sharing agreement with the Namibian Broadcasting Corporation to attach its antenna and transmitter to the existing infrastructure owned by the Namibian Broadcasting Corporation in Oshakati, as per documentation and coverage plot submitted to the Authority.

As required by regulation 5(2)(j) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, the Applicant submitted a proposed program schedule indicating its intention to provide broadcasting services focusing on gospel information on a 24-hour basis from Mondays to Sundays.

## **1.2 REQUEST FOR INFORMATION**

### **1.2.1 Oral Submissions**

The Authority requested the Applicant to make oral submissions in respect of its application on 9 April 2015.

At the oral hearing, the Applicant gave a brief overview of their financial resources and intended program schedule. The Authority posed various questions to the applicant on the forecasted market growth, the community it will serve, programme content, financial resources, technical expertise and envisaged site sharing with the Namibian Broadcasting Corporation.

After the oral submission made by the Applicant, the Authority requested the Applicant on 15 April 2015 to provide-

- (i) Five (5) year financial projections inclusive of the licence fees to be paid to the Authority;
- (ii) Capital outlay and source of funding to finance the envisaged radio station;
- (iii) Information to clarify and define the community the Applicant intends to serve;
- (iv) Proof of technical expertise; and
- (v) The site sharing agreement with the Namibian Broadcasting Corporation and related fees.

The Applicant requested an extension of the time period to submit the requested information on 27 April 2015 until 20 May 2015. The Authority granted the requested extension on 6 May 2015. The Applicant submitted all outstanding information on 19 May 2015.

## **1.3 PROCEDURAL COMPLIANCE**

Following due process in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5659, Notice No. 29, dated 30 January 2015, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 14 February 2014, and no comments were received.

The last day for the decision is 21 July 2015 following the last correspondence and documentation submitted by the Applicant on 19 May 2015.

## 2. ANALYSIS OF SUBSTANTIVE ISSUES

### 1.1 Application for community broadcasting service licence

The Oshakati area is serviced by seven (7) commercial broadcasters (Omulunga Radio, Radio 100, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia, Fresh FM), three (3) community broadcasters (Media for Christ, Ohangwena Community Radio, Maroela Trust) and the Namibia Broadcasting Corporation (NBC). Please note that NBC is broadcasting services in nine (9) languages as well as offering a National Radio channel.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the provisions of section 85(8) of the Communications Act, which provides as follows:

*“When considering an application for the issue of a broadcasting licence the Authority must have regard to-*

(a) *the character of the applicant or, if the applicant is a body corporate, the character of its directors”;*

The Authority has no reservations of the character of the applicant or its directors and has also not received any information that suggests that they have a bad character or that they would not be fit to run a radio station.

*“(b) the adequacy of the expertise, experience and financial resources available to the applicant”;*

Based on the facts presented, the Applicant intends to finance its broadcasting operations *via* donations from listeners, sponsors and members, fundraising functions, subscription fees for business calendars and the sale of tapes, CD’s and promotional items as well as advertising revenue.

No proof of any investment funds or financing were submitted, though it is stated that the cost of technical equipment will be provided for by a private loan.

The repayment of the 21.3% loan can be also highlighted as one of the big omissions in the Income & Expenditure statement and could provide a valid reason why Applicant has a high projected Income after Tax and Depreciation (IATD) over a period of five (5) years.

When compared to Media for Christ, also a Section 21 Company broadcaster with a focus on preaching the Gospel, it is clear that the Applicant over stated their income and understated their expenditure. Their growth projections of 16% in the first year are over ambitious. Media for Christ, a national broadcaster, is making a loss and has to find other means to subsidise the radio station.

*“(c) the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-*

(i) *more than one broadcasting service;*

(ii) *more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas”;*

There is no evidence presented before the Authority that Applicant has a controlling or substantial interest in any broadcasting service licensee or a registered newspaper with a common coverage and distribution area.

**“(d) whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe”;**

The initial application submitted by the Applicant was supported by an application for site sharing of the Oshakati transmitter tower owned by the Namibian Broadcasting Corporation (NBC).

However the Applicant informed the Authority on 19 May 2015 that it will acquire site sharing via SatCom (Pty) Ltd on the NBC tower and that SatCom (Pty) Ltd will be responsible for the payment to NBC. No proof was submitted as to the existence of a site sharing agreement between NBC and SatCom (Pty) Ltd to support the aforementioned statement.

The Applicant submitted an agreement with Satcom (Pty) Ltd for the maintenance of the transmitter equipment.

The Authority is therefore, not convinced that the Applicant has secured access to infrastructure to install its technical equipment and commence broadcasting services utilising assigned spectrum given the discrepancy between the initial application and the documentation submitted on 19 May 2015. The Authority is of the view that the Applicant will not be able to comply with section 86(2)(q) of the Act nor provide broadcasting services within six (6) months from the date of the award of the service licence as required by the Regulations regarding Licence Conditions for Broadcasting Service Licensees.

**“(e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another”;**

There is no indication that if awarded a licence the conditions imposed would unjustly benefit applicant above another licensee.

**“(f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day”;**

The Applicant has applied for a community broadcasting service licence and intends to broadcast gospel content to a specific community comprising of all age groups, all gender groups in towns, settlements, villages and farming areas within a 150 km radius from the tower on a 24-hour basis.

Further thereto section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

However, it should be noted that an Applicant must have the ability to install the relevant technical equipment to facilitate the use of spectrum assigned. The Applicant has failed to provide proof of access to infrastructure to install technical equipment so as to utilise spectrum to provide broadcasting services or proof of available funding to acquire the necessary technical equipment.

The Authority is therefore of the view that the Applicant will not be able to comply with the broadcasting service licence conditions and spectrum use licence conditions requiring

licensees to commence services and utilisation of spectrum within a period of six (6) months from the date of award of said licences should approval be granted by the CRAN Board of Directors.

**“(g) *the reservation of radio wave spectrum resources for future use; and*”**

The FM broadcasting frequency applied for is not reserved for future use, however spectrum in the Oshakati area is in short supply given the high number of existing broadcasting licensees and is further compounded by the high volume of applications pending before the Authority for the area.

**“(h) *the desirability of giving priority to community based broadcasts.*”**

Given that the Applicant does not meet the criteria as set out in points (b), (d) and (f) above, it is not desirable to give priority to the Applicant’s application for a community broadcasting service licence and spectrum use licence.

In light of the above analysis, the Authority is of the opinion:-

- i) That the Applicant will encounter sustainability challenges given the fact the Applicant did not provide proof of sufficient funding resources as required by section 85 (b);
- ii) That based on the analysis of the current projections, the Applicant will not have adequate financial resources, to sustain the station as required by section 85(8)(b) of the Communications Act;
- iii) The Applicant failed to provide proof of access to the broadcasting tower owned by the Namibian Broadcasting Corporation to install broadcasting equipment to provide services, despite numerous requests from the Authority to submit proof in the regard. The Applicant will therefore not be able to adhere to technical requirements as set out in section 85 (8)(b), (d) and (f); and

After consideration of the information submitted with the application and evaluation thereof in terms of the criteria as set out in Section 85(8) (b), (d) and (f) of the Communications Act, the Authority declined the service licence application for a community broadcasting service licence submitted by the Applicant.

## **2.2 Application for spectrum use licence**

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves.

As indicated above, section 101(7) of the Communications Act stipulates as follows:

*“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”*

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

Read jointly, these sections suggest that if an applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Subsequently a recommendation to decline the award of a broadcasting service licence, would naturally be accompanied by a decline of a spectrum use licence, because frequencies for FM broadcasting may only be utilised with a broadcasting service licence.

The Authority therefore declined the application for a spectrum use licence submitted by the Applicant.

### **3. DECISION**

In light of the above, and in terms of sections 85 and 101 of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the application for a community broadcasting service licence and spectrum use licence in the geographical area of Oshakati as submitted by Shalo'm Messenger Ministries are declined, effective from date of publication in the Government Gazette.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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### **COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 439

2015

#### **NOTICE IN TERMS OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of regulation 11 of the "Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences", in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that the persons referred to in the table below have submitted the following applications to the Authority:

## Spectrum Use Licence Applications

Applicant's Name;	Applicant's citizenship or place of incorporation;	Percentage of Stock owned by Namibian Citizens or Namibian Companies controlled by Namibian Citizens;	List of radio frequencies or groups of radio frequencies applied for;	List of radio frequencies or groups of radio frequencies being considered for assignment by the Authority;	Description of geographic coverage area(s);	License Fees Outstanding;	Service to be provided using frequency applied for;
Mobile Telecommunications Limited	Namibia	66% owned by Namibia Posts and Holdings Limited.	900 MHz Band (2 x 5 MHz) 2100 MHz Band (2 x 5 MHz)	880-885 MHz (Uplink) 925-930 MHz (Downlink) 1935-1940 MHz (Uplink) 2125-2130 MHz (Downlink)	Within the Border of the Republic of Namibia or any part thereof.	YES	FIXED MOBILE except aeronautical mobile 5.317A  FIXED MOBILE 5.391  FIXED MOBILE 5.384A 5.388A 5.388B 5.149 5.341 5.385 5.388
			1800 MHz Band (2 x 10 MHz)	There is no spectrum available in this band.			

The public may submit comments in writing to the Authority within a period of fourteen (14) days from the date of publication of this notice in the Government Gazette.

The applicant may submit written reply comments within fourteen (14) days from the due date of the written public comments.

All written submissions must contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different and be clear and concise.

All written submissions and reply comments must be made either physically or electronically –

- (1) By hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) By post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- (3) By electronic mail to the following address: legal@cran.na;
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 088642748.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 440

2015

**NOTICE IN TERMS OF SECTIONS 31 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) AND REGULATION 19(1) REGARDING LICENSING  
PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE  
LICENCES AND SPECTRUM USE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of section 31 of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 19(1) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for reconsideration for **Paratus Telecommunications Limited** (hereinafter referred to as “Paratus”) has been declined.

**THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

Paratus Telecommunications (Pty) (hereinafter referred to as “the Applicant” or “Paratus”) Ltd submitted spectrum use licence applications for 20 MHz in the 1800 MHz spectrum band and 20 MHz in the 2100 MHz spectrum band with the Authority on 13 November 2013. The essence of the applications was to expand their current service portfolio by providing LTE (Long Term Evolution i.e. 4G) telecommunication services in Namibia for consideration in terms of section 101 of the Communications Act of 2009 (hereinafter referred to as “the Act”) and in accordance with Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended).

The Authority published its final decision awarding spectrum use licences to the Applicant as indicated below-

- a. 1840.2 – 1860 MHz paired with 1745.2 – 1765 MHz
- b. 2130 – 2150 MHz paired with 1940 – 1960 MHz

in Government Gazette No. 5745, Notice No. 191 dated 29 May 2015.

The Applicant submitted an application for reconsideration to the Authority on 5 May 2015 in terms of section 31 of the Communications Act.

### **SUBSTANTIVE ISSUES DURING THE INITIAL APPLICATION**

During the initial consideration of the application, the Authority took into account technical requirements as well as the objectives of the Communications Act as shown below.

#### **Technical Analysis of the application**

Technical requirements for the implementation of a LTE network as contained in ETSI TR 136 913 v10.0.0 (2011-04) and 3GPP TR 36.913 version 10.0.0 release 10 prescribe a minimum spectrum allocation of 20 MHz uplink and 20 MHz downlink. The spectrum band plan of Namibia further requires that spectrum assignments for the 1800 MHz and 2100 MHz spectrum bands are done in the following manner -

- i) Assignments of spectrum in the 1800 MHz band (1805 – 1880) must be paired with spectrum in the 1700 MHz band (1710-1785); and
- ii) Assignments of spectrum in the 2100 MHz band (2110-2170) must be paired with spectrum in the 1900 MHz band (1920-1980) to allow for the uplink and downlink of radio communications to provide LTE (4G) services.

The Authority has already awarded spectrum use licences to other licensees in the aforementioned spectrum bands and should therefore, address any interference issues and future capacity needs of the industry. Thus the Authority can only consider the assignment of spectrum in the 1800 MHz band from 1840.2 – 1860 MHz paired with 1745.2 – 1765 MHz as spectrum use licences for adjacent spectrum has already been awarded to Mobile Telecommunications Limited (hereinafter referred to as “MTC”). The existing licensees have implemented LTE (4G) services in the 1800 MHz band and UMTS (3G) services in the 2100 MHz spectrum band, respectively.

No frequency separation is required to prevent interference between a LTE (4G) network and a UMTS (3G) network or a LTE (4G) network and another LTE (4G) network as set out in the EC decisions 2011/251/UE and 3009/766/EC respectively. Furthermore an assignment of a continuous block of spectrum will allow for more efficient use of spectrum by the licensee than assigning two different blocks of spectrum within the same band at different frequency spacing.

However, the Authority considers it prudent to leave limited spacing between spectrum assignments to different licensees to allow for assignment to new applicants or should an existing licensee apply for additional spectrum to meet capacity requirements and customer demand with the exception of the 1800 MHz spectrum band in which Mobile Telecommunications Limited already holds spectrum use licences for 35 MHz, which is deemed sufficient.

The Authority also considered spectrum requirements in two layers to address the possible coverage reach to be obtained from a specific geographical location, indoor penetration for in-building coverage and future spectrum aggregation to support higher data speeds. The Applicant confirmed

that it intends to implement software Rel.10 for the provisioning of LTE (4G) services. This software release makes provision for future spectrum aggregation to increase data speed. All equipment to be implemented is technically capable to provide voice of the LTE (4G) network at a future date although the emphasis for initial network rollout will be focused on data services.

### **Substantive Considerations**

Section 2 of the Act states as follows-

- “(2) *The objects of this Act are-*
- (c) *to promote the availability of a wide range of high quality, reliable and efficient telecommunications services to all users in the country;*
  - (d) *to promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the social and economic growth of Namibia;*
  - (e) *to encourage local participation in the communications sector in Namibia; and*
    - (i) *to encourage private investment in the telecommunications sector.”*

The application submitted by the Applicant constitutes a huge investment in broadband capable infrastructure to provide data services on a national basis.

It should be further noted that the Applicant is currently 100% privately owned by Namibian citizens and has an existing market share of 6% based on revenue figures as submitted to the Authority on 2 March 2015.

The Authority is of the opinion that a favourable consideration of this application will support the further expansion of high quality telecommunications services utilizing the latest technology available. In addition thereto, it will provide on par competition in a market already dominated by MTC and Telecom Namibia Limited as per the dominance study published in Government Gazette No. 4905, Notice No. 62 dated 20 March 2012, providing the consumer with a wider choice of providers. This application is thus considered to be aligned with the objects of the Act as referred to above.

However, it is important that the Authority considers the issuance of spectrum in a manner that will allow fair competition in the market. It is therefore necessary to have a holistic approach to the amount of spectrum assigned to each of the licensees to ensure that these licensees can compete effectively but also ensuring the efficient use of spectrum. To this end the Authority indicates the proposed amount of spectrum in Table 2 that will be held by each of the three (3) licensees in question that facilitate the implementation of IMT (2G,3G and 4G) services should the applied for spectrum use licences be awarded to the Applicant. The table shows spectrum assignments in the 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz spectrum bands.

Table 2 below indicates the spectrum distribution between Mobile Telecommunications Limited, Telecom Namibia Limited (hereinafter referred to as “Telecom Namibia” and Paratus should additional spectrum use licences be awarded to the latter:

Table 2: Spectrum assigned to Mobile Telecommunications Limited , Telecom Namibia Limited and the Applicant:

Licensee Name	Spectrum Use Licences	IMT Services Offered
<b>Telecom Namibia Limited</b>	2x 5MHz 800 MHz band	CDMA*
	2x 10 MHz 900 MHz band	GSM (2G)
	2x 20 MHz 1800 MHz band	LTE (4G)
	2x 10 MHz 2100 MHz band	UMTS (3G)
	2x 48 MHz 2600 MHz band	Wimax*
Total	<b>2x 93 MHz</b>	
<b>Mobile Telecommunications Limited</b>	2x 13 MHz 900 MHz band	GSM (2G)
	2x 15 MHz 1800 MHz band	GSM (2G)
	2x 20 MHz 1800 MHz band	LTE (4G)
	2x 15 MHz 2100 MHz band	UMTS (3G)
Total	<b>2x 63 MHz</b>	
<b>Paratus Telecommunications (Pty) Ltd</b>	2x 20 MHz 1800 MHz band	LTE (4G)
	2x 20 MHz 2100 MHz band	LTE (4G)
	2x 20 MHz 2600 MHz band	Wimax*
Total	<b>2x 60 MHz</b>	

- Wimax and CDMA spectrum were historically assigned by the Namibian Communications Commission and are not considered as IMT technologies by ITU. The 2600 MHz band is identified for IMT services in terms of WRC-07 whilst the 800 MHz band is identified for IMT services on conclusion of migration of analogue to digital terrestrial television services.

All the above-mentioned licensees hold service and technology neutral telecommunications service licences and are therefore, capable of re-farming the assigned spectrum for IMT services by implementing the latest available technologies going forward. For this reason the Authority included spectrum use licences for all the above spectrum bands to illustrate that each licensee will hold an equivalent amount of spectrum for the implementation of IMT services. It should be noted that Telecom Namibia still holds more spectrum than the other two licensees. In addition thereto MTC does not hold spectrum use licences in the 2600 MHz band whilst the Applicant will not hold spectrum use licences in the 900 MHz spectrum band.

In comparison to Namibia, licensees in South Africa hold spectrum use licences for far less than their Namibian counterparts to provide services on a national basis. Spectrum assignments in South Africa are shown in Table 3 herein below.

Table 3: Spectrum assigned to South African licensees

Licensee	Spectrum Use Licences
<b>Vodacom</b>	2x 11 MHz 900 MHz band
	2x 12 MHz 1800 MHz band
	1x 5 & 2x 15 MHz 2100 MHz band
Total	<b>2x 38 MHz &amp; 1x 5MHz</b>
<b>MTN South Africa</b>	2x 11 MHz 900 MHz band
	2x 12 MHz 1800 MHz band
	1x 10 & 2x 15 MHz 2100 MHz band
Total	<b>2x 38 MHz &amp; 1x 10MHz</b>
<b>Cell C</b>	2x 11 MHz 900 MHz band
	2x 12 MHz 1800 MHz band
	1x 5 & 2x 15 MHz 2100 MHz band
Total	<b>2x 38 MHz &amp; 1x 5 MHz</b>

<b>Telkom</b>	2x 12 MHz 1800 MHz band
	2x 10 MHz 2100 MHz band
Total	<b>2x 22 MHz</b>
<b>Wireless Broadband Systems (WBS)</b>	2x 12 MHz & 1x 10 MHz 1800 MHz band
Total	<b>2x 24 MHz &amp; 1x 10 MHz</b>

The Authority also notes that ICASA recently assigned Vodacom and Mobile Telephone Networks (MTN) additional spectrum to facilitate the testing of LTE (4G) services utilizing 2 x 20 MHz spectrum assignments.

### **DECISION ON INITIAL APPLICATION**

The Authority was of the view that the approval of the Applicant's application for 2x 19.8 MHz in the 1800 MHz spectrum band and 2x 20 MHz in the 2100 MHz spectrum band -

- i) Will allow the Applicant to expand its current service offering and compete on par with Telecom Namibia and MTC;
- ii) Support local investment in the industry;
- iii) Will promote technological innovation and the deployment of advanced facilities and services;
- iv) Encourage local participation in the communications market; and
- v) Provide the consumer with a wider choice of service providers of data services taking into account an ever increasing demand for high speed data services.

Secondly, the Authority is of the view that the frequencies to be assigned to the Applicant be done in such a manner that it still reserve an amount of spectrum for future assignment in response to applications for spectrum use licences from licensees going forward.

Thirdly, management recommends the assignment of the spectrum in the 1800 MHz and 2100 MHz spectrum bands in a continuous block of 20 MHz to promote the efficient use of spectrum by the licensee.

### **APPLICATION FOR RECONSIDERATION**

#### **Background**

The Authority published its final decision awarding spectrum use licences to the Applicant as indicated below-

- a. 1840.2 – 1860 MHz paired with 1745.2 – 1765 MHz
- b. 2130 – 2150 MHz paired with 1940 – 1960 MHz

in Government Gazette No. 5745, Notice No. 191 dated 29 May 2015.

The Applicant submitted an application for reconsideration to the Authority on 5 May 2015 in terms of section 31 of the Communications Act, 2009 in respect of the spectrum use licence for 20 MHz in the 2100 MHz spectrum band.

## **GROUNDS FOR RECONSIDERATION**

The Applicant did not provide any grounds to the Authority in support of its application for reconsideration other than submitting a letter indicating the amount of spectrum applied for, the amount of vacant spectrum available and the amount of spectrum assigned on award of the aforementioned spectrum use licences as well as a request to re-consider the award of an additional 10 MHz in the 2100 MHz spectrum band.

For the purpose of evaluation of the merits for reconsideration the Authority will only consider the spectrum use licence awarded for 20 MHz in the 2100 MHz spectrum band.

## **PROCEDURAL COMPLIANCE**

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette No. 5611, General Notice No 400, dated 10 November 2014 allowing fourteen (14) days for public comments. The notice indicated the frequencies being considered by the Authority and does not constitute any assignment or award of a spectrum use licence for the published frequencies.

The Applicant can thus not assume that the spectrum use licence will be awarded as per the frequencies published in the first publication for comments as the Authority was yet to consider any comments submitted or pronounce itself on its decision in respect of the application for spectrum use licences.

## **SUBSTANTIVE ISSUES ON RECONSIDERATION**

The Authority indicated the availability of 30 MHz vacant spectrum in the 2100 MHz spectrum band. The Applicant submitted an application form for 20 MHz in the 2100 MHz spectrum on 13 November 2013. At no point in time did the Applicant submit an application form for an additional 10 MHz spectrum in the 2100 spectrum band.

The Applicant in its submission for reconsideration states that the Authority has not requested the Applicant to submit an application form for 30 MHz. The Authority wishes to make it clear that it does not request any entity to apply for spectrum. The onus rests solely with the Applicant to apply for spectrum which is necessary and sufficient for its envisaged business case, and the Authority will consider such an application. In the matter at hand, the Authority only considered applications for additional spectrum as contained in Applicants application form submitted on 13 November 2013 requesting 20 MHz in the 2100 MHz spectrum band. It should be noted that the Authority has not received any subsequent applications for spectrum in the same spectrum band from the Applicant other than that submitted on 13 November 2013.

The Applicant further states in its submission that *“For Paratus Telecom to have the ability to compete with the already established & dominantly declared networks such as MTC and TN Mobile, it is crucial that sufficient spectrum must be made available in order to provide competitive products to the end user.”*

The Authority is of the opinion that with the award as referred to above, Applicant has sufficient spectrum available for the implementation of LTE services. As indicated in our consideration of the initial application, the Authority considered the technical requirements as set forth by ETSI and 3GPP and subsequently awarded 20 MHz spectrum in the 2100 MHz spectrum band in addition to 19.8 MHz in the 1800 spectrum band, whilst the aforementioned competitors only holds spectrum use licences for 20 MHz in the 1800 MHz spectrum band to provide LTE services.

Therefore, as per the technical standards, 20 MHz in the 2100 MHz spectrum band is sufficient for the effective roll out of the business case set forth by Applicant in that-

- i. the Applicant is yet to establish a customer base for LTE services;
- ii. that the business case presented is based not only on spectrum assigned in the 2100 MHz spectrum band but also the 19.8 MHz spectrum award concurrently in the 1800 MHz spectrum band;
- iii. that the Applicant will therefore, hold a total of 39.8 MHz in spectrum to commence offering of LTE service exceeding the spectrum assigned to its competitors for the same service;
- iv. that the Applicant is not hampered by lack of capacity due to the fact that the Applicant is not offering any existing services in this band that have to be migrated to another band prior to the launch of LTE services; and
- v. that spectrum is a limited resource and thus the Applicant is required to use spectrum efficiently in terms of its spectrum use licence conditions

Further thereto, the Applicant also has the opportunity to re-farm its spectrum use licences awarded in 2012 for WiMax services to provide LTE services should the need for additional capacity arise in terms of customer base or service utilization, thus providing the Applicant with a total amount of 59.8 MHz compared to 63 MHz assigned to Mobile Telecommunications and 93 MHz assigned to Telecom Namibia Limited respectively for similar services.

The Authority is therefore, of the opinion that the Applicant has been awarded sufficient spectrum to be used efficiently to implement a LTE network and establish a customer base.

The Authority cannot consider the request for reconsideration of 10 MHz of spectrum for which the Applicant never submitted an application to the Authority.

The Authority is mindful of the fact that after fully implementing the business case and re-farming some of the frequencies as indicated above, the Applicant may need additional spectrum to serve capacity needs, we will therefore consider that once an application has been submitted and a case has been made out by the Applicant and not at this stage as no full implementation of the business case has been done based on the availability of spectrum at that time.

## **DECISION**

In terms of section 31 of the Act and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences it is herewith decided that:

- i) That the request for the Authority to reconsider its decision and award an additional 10MHz in the 2100 spectrum band to applicant is declined for the above mentioned reasons; and
- ii) That the Applicant is directed to implement LTE services in accordance with the spectrum use licences awarded and published in Government *Gazette* No. 5745, Notice No. 191 dated 29 May 2015.

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 441

2015

**NOTICE OF AWARD OF TEMPORARY SPECTRUM USE LICENCE IN TERMS OF SECTION 101 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)**

The Communications Regulatory Authority of Namibia, in terms of Sections 101 and 42(2) of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 13 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that in order to address the assignment of same frequencies to two licensees, the Authority has awarded the **Namibian Broadcasting Corporation** “NBC” with a temporary frequency pending the finalization of the modification of a spectrum use licence issued to the Namibian Broadcasting Corporation as published in Government Gazette 5557, Notice No. 310, dated 9 September 2015.

**BACKGROUND**

On 12 September 2013, the Namibian Broadcasting Corporation submitted to the Authority four (4) spectrum use licences applications to provide FM broadcasting services in Swakopmund, Walvis Bay and surrounding rural areas (from Rössing Mountain) for consideration in terms of section 101 of the Communications Act of 2009 (hereinafter referred to as “the Act”) and in accordance with the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended).

As per section 93 of the Act, chapter IV on Broadcasting Services is not applicable to the Namibian Broadcasting Corporation until a date to be determined by the Minister. As such, the Authority has not issued a broadcasting service licence to the Namibian Broadcasting Corporation till date. The spectrum applied for by the Namibian Broadcasting Corporation is not deemed to be licence exempt and therefore require spectrum use licences to be issued by the Authority after due consideration of the applications submitted.

The Namibian Broadcasting Corporation submitted the spectrum use applications to FM broadcasting services in Swakopmund, Walvis Bay and surrounding areas for the following languages in addition to radio services already provided –

- i. Kavango
- ii. Lozi
- iii. Tswana
- iv. San

The Namibian Broadcasting Corporation submitted technical documentation as required by Section G of the spectrum use licence application form together with the complete application forms. Technical equipment specifications provided by the Namibian Broadcasting Corporation indicate the use of Constant Impedance Broadband (CIB) combiners requiring a minimum channel spacing of 0.8 MHz. It was further requested that the Authority consider assignment of frequencies between 88 MHz to 108 MHz. The additional services will be implemented on the existing NBC tower located on Rössing Mountain with a power output of 5 KW.

The Authority proposed for the following frequencies to be awarded to NBC:

- i. Kavango            93.3 MHz
- ii. Lozi                105.0 MHz

- |      |        |           |
|------|--------|-----------|
| iii. | Tswana | 95.5 MHz  |
| iv.  | San    | 106.9 MHz |

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences the Authority published a notice in the Government Gazette 5460, Notice No 103, dated 8 May 2014 allowing fourteen (14) days for public comment. No comments were received within the stated timeframe and therefore no reply comments were requested from the Namibian Broadcasting Corporation.

In terms of section 101(2) of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, by means of Circulated Board Resolution (CBR No. 44/2014, it was recommended that the Board of Directors approve -

- i) The award of spectrum use licences to the Namibian Broadcasting Corporation for the implementation of FM Broadcasting services located on Rössing mountain to provide services in the Swakopmund, Walvis bay and surrounding rural geographical areas as follows-
- |    |         |           |     |
|----|---------|-----------|-----|
| a. | Kavango | 93.3 MHz  | 5kW |
| b. | Lozi    | 105.0 MHz | 5kW |
| c. | Tswana  | 95.5 MHz  | 5kW |
| d. | San     | 106.9 MHz | 5kW |

The Board, after consideration, accordingly approved the recommendation and the Notice for Spectrum Use licence in respect of NBC was published in Government Gazette 5557, Notice No 310, dated 9 September 2014, which came into force and effect from date of the said publication.

#### **MODIFICATION OF LICENCE**

On 4 June 2015, the Authority received an email from Clinton Lang, Managing Partner at West Coast FM, indicating that they have identified that they were receiving interference on their awarded FM frequency 106.9 which was awarded to West Coast FM on 13 September 2012, as published in Government Gazette 5037, Notice no 306 dated 13 September 2012.

Based on this information and investigations conducted by the Electronic Communications Department on even date, it transpired that the Authority awarded the Spectrum to the NBC erroneously as that frequency has been awarded to West Coast FM previously.

In order to address the assignment of the same frequency on two transmitters it is therefore requested to modify the spectrum use licence issued to the Namibian Broadcasting Corporation for the purpose of broadcasting San services on 09 September 2014 as published in published in Government Gazette 5557, Notice No 310, dated 2 March 2015, to 104.2 MHz.

#### **LICENCE MODIFICATION PROCEDURES**

Section 42 (2) of the Communications Act of 2009 provides that;

“...a licence may be modified upon the finding by the Authority that such modification would serve the objects of this Act: Provided that the Authority has given the licensee adequate advance notice of such modification and the grounds for such modification and has given the licensee an opportunity to object to such modification.”

The procedure to be followed in respect of a modification of licence is outlined in Regulation 13 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.

## TEMPORARY AWARD OF LICENCE

The Namibian Broadcasting Corporation has completed the installation of its transmitters at Rössing Mountain in preparation for the launch of applied for language services on 1 August 2015. Any delay in launching these will result in financial loss for the public broadcaster based on cost already incurred during the configuration of the transmitters.

The Authority therefore resolved that the Namibian Broadcasting Corporation is granted permission to utilise the frequencies as proposed in subsection 6.2 above whilst the modification process is concluded in order to prevent any delay in launching new services resulting in financial losses on the side of Namibian Broadcasting Corporation and also mitigate the risk to the Authority for any legal action in this regard.

## DECISION

It is herewith decided that Namibian Broadcasting Corporation utilises 104.2 MHz frequency on Rössing mountain to provide services in the Swakopmund, Walvis bay and surrounding rural geographical areas to provide public broadcasting services pending the modification of their spectrum use licence, in term of section 42 (2) of the Communication Act.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 442

2015

### NOTICE IN TERMS OF SECTIONS 101 AND 42(2) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of Sections 101 and 42(2) of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 13 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that in order to address the assignment of same frequencies to two licensees, the Authority has awarded the **Namibian Broadcasting Corporation** “NBC” with a temporary frequency pending the finalization of the modification of a spectrum use licence issued to the Namibian Broadcasting Corporation as published in Government Gazette 5683, Notice No. 98, dated 2 March 2015.

## BACKGROUND

On 12 September 2013, the Namibian Broadcasting Corporation submitted to the Authority four (4) spectrum use licences applications to provide FM broadcasting services in Omaruru and surrounding rural areas (From Erongo Mountain) for consideration in terms of section 101 of the Communications Act of 2009 (hereinafter referred to as “the Act”) and in accordance with the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended).

As per section 93 of the Act, chapter IV on Broadcasting Services is not applicable to the Namibian Broadcasting Corporation until a date to be determined by the Minister. As such, the Authority has not yet issued a broadcasting service licence to the Namibian Broadcasting Corporation.. The spectrum applied for by the Namibian Broadcasting Corporation is not deemed to be spectrum licence exempt and therefore requires spectrum use licences to be issued by the Authority after due consideration of the applications submitted.

Namibian Broadcasting Corporation submitted the spectrum use applications to FM broadcasting services in Omaruru and surrounding areas for the following languages in addition to radio services already provided –

- i. Rukavango
- ii. Silozi
- iii. Setswana
- iv. San

The Namibian Broadcasting Corporation submitted technical documentation as required by Section G of the spectrum use licence application form together with the complete application forms. Technical equipment specifications provided by the Namibian Broadcasting Corporation indicate the use of Constant Impedance Broadband (CIB) combiners requiring a minimum channel spacing of 0.8 MHz. It was further requested that the Authority consider assignment of frequencies between 88 MHz to 108 MHz. The additional services are to be implemented on the existing Namibian Broadcasting Corporation tower located on Erongo Mountain with a power output of 100W

The Authority proposed the following frequencies to be awarded to NBC –

- |      |           |          |
|------|-----------|----------|
| i.   | Rukavango | 89.1 MHz |
| ii.  | Silozi    | 92.2 MHz |
| iii. | Setswana  | 95.4 MHz |
| iv.  | San       | 98.7 MHz |

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette No. 5611, General Notice No 401, dated 10 November 2014 allowing fourteen (14) days for public comments. No comments were received and therefore, no reply comments were requested from the Namibian Broadcasting Corporation.

In terms of section 101(2) of the Communications Act and regulation 6 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses, by means of Circulated Board Resolution (CBR No. 01/2015), it was recommended that the Board of Directors approve –

- i) The award of spectrum use licences to the Namibian Broadcasting Corporation for the implementation of FM Broadcasting services located on Erongo mountain to provide services in Omaruru and surrounding rural geographical areas as follows-
 

a.	Rukavango	89.1 MHz	100W
b.	Silozi	92.2 MHz	100W
c.	Setswana	95.4 MHz	100W
d.	San	98.7 MHz	100W

The Board, after consideration, accordingly approved the recommendation and the Notice for Spectrum Use licence in respect of NBC was published in Government Gazette 5683, Notice No 98, dated 2 March 2015, which came into force and effect from date of the said publication.

## **MODIFICATION OF LICENCE**

On the 23rd of March 2015, the Authority received an email from the NBC indicating that they have identified that the assigned frequency of 98.7 MHz is already assigned to Media for Christ as published in Government Gazette 5037, Notice No 306 dated 13 September 2012.

Based on this information and investigations conducted by the Electronic Communications Department on even date, it transpired that the Authority assigned the frequency erroneously to the Namibian Broadcasting Corporation.

In order to address the assignment of the same frequency assigned to two licensees, the Authority resolved to modify the spectrum use licence issued to the Namibian Broadcasting Corporation as published in published in Government Gazette 5683, Notice No 98, dated 02 March 2015, to 105.9 MHz.

## **LICENCE MODIFICATION PROCEDURES**

Section 42 (2) of the Communications Act of 2009 provides that;

“...a licence may be modified upon the finding by the Authority that such modification would serve the objects of this Act: Provided that the Authority has given the licensee adequate advance notice of such modification and the grounds for such modification and has given the licensee an opportunity to object to such modification.”

The procedure to be followed in respect of a modification of licence is outlined in Regulation 13 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences.

## **TEMPORARY AWARD OF LICENCE**

The Namibian Broadcasting Corporation has completed the installation of its transmitters at Erongo Mountain in preparation for the launch of the services applied for on the 01 August 2015. Any delay in launching the broadcasting services will result in financial loss for the Namibia Broadcasting Corporation taking into consideration the costs already incurred during the preparation process for configuring the transmitter.

The Authority therefore resolved that the Namibian Broadcasting Corporation is granted permission to utilise the frequencies as proposed in subsection 6.2 above whilst the modification process is concluded in order to prevent any delay in launching new services resulting in financial losses on the side of the Namibian Broadcasting Corporation and also mitigate the risk to the Authority for any legal action in this regard.

## **DECISION**

It is herewith decided that the Namibian Broadcasting Corporation utilises 105.9 MHz frequency within the geographical area of Erongo Mountain to provide public broadcasting services pending the modification of their spectrum use licence, in term of section 42 (2) of the Communication Act.

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 443

2015

**NOTICE TO WITHDRAW SPECTRUM USE LICENCE IN TERMS OF REGULATIONS  
10 AND 11 OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR  
TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND  
SPECTRUM USE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of regulations 10(2) and 11(1) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the Licensee referred to in the table below, intends to permanently discontinue the utilisation of the spectrum use licences as indicated in the table herein below and has submitted applications for withdrawal of the licences as indicated in the column herein below to the Authority:

Licensee;	Licensee's Citizenship or place of incor- poration;	Percentage of Stock owned by Namibian Citizens or Namibian citizens or Namibian Companies controlled by Namib- ian Citi- zens;	Type of service licence;	Descrip- tion of geo- graphic coverage area(s);	District;	City/Town;	Radio Fre- quencies or group of frequencies withdrawn;	Concise Statement of the reasons for proposed withdrawal;	Proof of Licence Applica- tion Fees Paid Up to Date Submit- ted;	Date on which licensee intends to permanently discontinue pro- viding service;
Namibian Broadcasting Cooperation	Established in terms of section 2 of the Namibian Broadcasting Act (Act No. 9 of 1991)	State Owned Enterprise	Spectrum Use Licence as issued on 13 September 2012, published in Government Ga- zette 5037, Notice 306. please not only the following frequencies are being withdrawn: 202, 226, 178, 234, 226, 168 MHz	Karas	Keetmanshoop	Brukkaros NBC Tower	202 MHz	The frequen- cies were utilised for the provision of analogue broadcast- ing services. Due to the migration to digital terrestrial television, the NBC no longer requires the use of these frequencies.	Yes	11 October 2015, been 60 days from 11 <sup>th</sup> August 2015 (Date on which the application was submitted as contemplated in regulation 10(3) (e).
				Hardap	Mariental	Mariental NBC Tower	226 MHz		Yes	18 September 2015, been 60 days from 17 July 2015 (Date on which the application was submitted as contemplated in regulation 10(3)(e)



Please note that the rest of the frequencies published on Government Gazette 5037, Notice No 306, dated 13 September 2012, remain valid.

The public may submit comments in writing to the Authority within a period of fourteen (14) days from the date of publication of this notice in the Gazette. The applicant may submit written reply comments within fourteen (14) days from date of notification of the written public comments.

All written submissions must contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different, and be clear and concise.

All written submissions must be made either physically or electronically -

- (1) By hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) By post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- (3) By electronic mail to the following address: legal@cran.na;
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 0886550852.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 444

2015

**NOTICE OF APPOINTMENT OF INSPECTORS IN TERMS OF SECTION 123 (1)  
OF THE COMMUNICATIONS ACT 8 OF 2009**

The Communications Regulatory Authority of Namibia, in terms of section 123(1) of the Communications Act (Act 8 of 2009, hereinafter referred to as the “Communications Act”), herewith gives notice that it has appointed special investigators with immediate effect.

Section 123(1) of the Communications Act, 2009 (Act No. 8 of 2009) (“the Act”) provides that the Authority may appoint any of its employees as inspectors to exercise any powers conferred upon them by the Act. The Act mandates inspectors to investigate offences as contemplated in section 127 of the Act and any activities prohibited by the Act or for purposes of doing anything permitted by the Act.

The Authority receives consumer and licensee disputes for adjudication on an ongoing basis, which requires investigations in order to make decisions applicable to the nature of the complaint received. The majority of complaints received is with regard to tariff disputes or is of a technical nature and requires expert economical and/or technical knowledge in the ICT sector. The Authority also receives a lot of matters pertaining to non-compliance with the provisions of the Communications Act.

In light of the above, the Board of Directors resolved to approve the appointment of the following persons as inspectors is herewith approved in terms of section 123(1) of the Communications Act, 2009 (Act No. 8 of 2009)-

- i) Mr Kristof Itana, employed as Electronic Communications & Projects Officer;
- ii) Mr Lazarus Paulus, employed as Officer Type Approval;
- iii) Mr John Imene, employed as Spectrum & Licensing Officer;
- iv) Mr Victor Simasiku, employed as Spectrum & Licensing Officer;
- v) Ms Ronel Le Grange, employed as Head: Electronic Communications;
- vi) Mr Melvin Angula, employed as Head: Universal Access and Service Projects; and
- vii) Mr Jochen Traut, employed as Chief Operations Officer.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 445

2015

**NOTICE OF INTENTION TO DETERMINE LICENSEES HOLDING A DOMINANT  
POSITION IN THE MARKET IN TERMS OF SECTION 78(1) OF THE  
COMMUNICATIONS ACT 8 OF 2009**

The Communications Regulatory Authority of Namibia, in terms of section 78(1) of the Communications Act, 2009 (Act No. 8 of 2009).

- a) publishes the notice of intention to determine which licensees hold a dominant position in the telecommunications market in Namibia and the study document is set out in Schedule 1; and
- b) sets out the concise statement of the reasons and purpose for the proposed determination as set out in Schedule 2.

The public may also make written submissions to the Authority within thirty (30) days from the date of publication of this notice in the *Gazette*, in the manner set out below for making of written submissions.

All written submissions must -

- a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made if different; and
- b) be clear and concise.

All written submissions must be send or submitted in any of the following manners-

- a) by hand to the head office of the Authority, namely Communications House, 56 Robert Mugabe Avenue, Windhoek;
- b) by post to the head office of the Authority, namely Private Bag 13309, Windhoek, 9000;
- c) by electronic mail to the following address: legal@cran.na;
- d) by facsimile to the following facsimile number: +264 61 222790; and
- e) by fax-to-email to: 0886550852.

The public may make oral submissions on the proposed regulations to the Authority, at a time, date and place notified by the Authority.

**L.N. JACOBS  
CHAIRPERSON OF THE BOARD OF DIRECTORS  
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**

**STUDY DOCUMENT ON THE DETERMINATION OF LICENSEES HOLDING A  
DOMINANT POSITION IN THE MARKET AS CONTEMPLATED IN SECTION 78 OF  
THE COMMUNICATIONS ACT, NO 8 OF 2009**

**Introduction**

**Background**

Intra vs inter platform competition  
Fixed-Mobile - Fixed-Wireless Broadband Substitution  
Focus on Wholesale markets  
Market concentration in Namibia  
Conclusion

**Market Definition and Dominance**

Market 1- Fixed and Mobile Call Termination  
Market 2 - Wired End User Access  
Market 3 - National Data Transmission  
Market 4 Wireless End User Access

**Conclusions & Recommendations**

**References**

**Introduction**

The Communications Act No. 8 of 2009 (Act) makes provision for heightened regulation on telecommunications licensees that hold a dominant position in the market. In order to determine dominance in the market, it is necessary to define relevant markets.

CRAN needs to define markets and determine dominance based on the objectives of the Act and the converged licensing regime. The adopted approach of the 2013 CRAN Dominance Study aimed at minimising the burden on licensees and CRAN while allowing CRAN to implement the objectives of the Act. Only two markets were defined at the time; telecommunication services and broadcasting services. Dominance was only declared for the telecommunications service market and Mobile Telecommunications Limited (MTC), Powercom (Pty) Ltd t/a Leo (Leo) and Telecom Namibia Limited (Telecom Namibia) were declared dominant as published in Government Gazette No. 5201 Notice No. 167 dated 29 May 2013.

Section 78 of the Act provides that the Authority must hold a hearing every three years in order to determine which licensees hold a dominant position in the market. The purpose of this study document is therefore to form the basis for the determination of dominance in the telecommunications market in 2015.

Since 2013 the market concentration has increased with Telecom Namibia taking over Leo and new trends have emerged globally. This market study is intended to provide an update to the 2013 market study and the two should be read together.

## Background

Telecommunications regulators around the world define markets and determine dominance for these markets in order to develop the appropriate ex ante regulation that promotes fair competition and thus affordable user prices and efficient investment. Arriving at general recommendations for identifying and defining markets however, which would be suitable across different jurisdictions with different broadband ecosystems and different economic conditions is difficult (ITU, 2013). A review of international practice indicates that regulatory interventions do not always lead to the desired outcomes and that the impact varies according to the market conditions present in each country. The reason for this is primarily the appropriateness of the regulatory intervention to the conditions that pertain in a particular country and the regulatory resources and experience of the country in question. This means there is no generally accepted “global best practice” regarding regulatory interventions. Even within common legal frameworks such as the European Union, their recommendations (EU 2003, EU 2007 and EU 2014a) acknowledge that member countries need the flexibility in their implementation to accommodate country specific factors (Tintor et al, 2010). Designing ex-ante regulation however, typically follows four steps (Tintor et al, 2010):

- i. defining relevant markets;
- ii. analysis of defined markets;
- iii. identifying SMP operators; and
- iv. imposing measures and remedies with the aim of preventing monopolistic behaviour.

Each of these four steps is handled differently by regulators around the world and needs to be subject to careful consideration of the local conditions including institutional arrangements, legal frameworks and sector specific circumstances. In this regard, the ITU (2013) identifies three important aspects that must be considered in any market review.

- i. Market boundaries should not be set based on those customers who cannot switch to alternatives, but those who can. Users with very specific requirements that can only be met by one technology, or users that live in areas where only one network is available do not matter for market definitions.
- ii. Convergence means that different technologies may be linked through a chain of substitution. Whether mobile and fixed broadband services are in the same market depends on the extent to which the differences in the capabilities of mobile and fixed broadband networks matter for end users. This may also change over time. Even if mobile and fixed broadband services were fairly substitutable at present, they may become less so as more bandwidth-intensive services are being developed.
- iii. Markets may be separated as a result of bundling of services even if different technologies could compete on the basis of their technical capabilities.

Defining a market is an essential step in the assessment of dominance which has to be based on a clearly delineated relevant product market (Ecorys, 2013). The use of market definitions within the context of ex-ante regulation in the telecommunications sector<sup>1</sup> started in the USA as a result of the

1996 Telecommunication Act and in the EU with the release of the 1997 Notice on the Definition of the Relevant Market which proposed the following definitions (EU, 1997):

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<sup>1</sup> Note that market definitions in other sectors pre-dated the telecommunications sector, so there was substantial precedent for implementing the process in the telecommunications sector.

- i. “a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products’ characteristics, their prices and their intended use;
- ii. a relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.”

With the purpose of ex-ante regulation being to ensure competitive outcomes in order to enhance consumer welfare, several trends are important to keep in mind when defining markets and determining dominance. These are assessed below.

### **Intra vs inter platform competition**

Inter-platform competition takes place when there are two competing infrastructures – in the Northern Hemisphere this was initially cable TV and copper ADSL. Regulation in this case is directed at supporting competition between these two platforms. Where the networks already had significant penetration and the legacy technology relatively easily upgraded to provide broadband, this proved very successful in the first round of broadband development. This has proved more of a challenge as new high cost fibre networks were rolled out to meet the high demand for high capacity bandwidth. In so far as there is inter-platform competition in developing countries this mostly takes the form of wireless competing with fixed Internet access.

Stimulating intra-modal competition (popularised by Martin Cave in 2003 with his concept of the ladder of investment) means enabling firms to enter the market using wholesale access and then, over time, being incentivised to move up the ladder of investment as they build their own infrastructure (Berkman, 2010). Competition is established by operators offering the services via the same platform. In a wide-ranging literature review of the impact of the effects of unbundling on performance and investment, the Berkman Centre for Internet and Society found that many of the papers that find no support for the ladder of investment were industry supported or using out-dated data. The majority of independent reviews found an unambiguous positive link between LLU and investment (Berkman, 2010). There is some empirical evidence to suggest that while intra network competition drove the first wave of broadband which was based on the upgrading of existing copper and cable systems, in the second phase of broadband, where new fibre networks had to be built, the benefits of intra modal competition fell away or were masked by the impact of inter platform competition (Middleton, 2008). Nevertheless, an alternative position to the intra vs. inter-platform debate has emerged that suggests that competition is less established by duplicating trenches, ducts and poles, but by sharing high-capacity basic physical infrastructure (such as fibre) and investing in electronics leading to innovation in processes and services (Berkman, 2010). This approach is manifested in Open Access projects such as Australia’s National Broadband Network (NBN) announced in 2009. Berkman (2010) notes that Open Access and unbundling are complementary efforts around a shared common set of slow-moving, extremely high cost elements: the passive infrastructure.

While Inter-platform competition (competing infrastructures) seems to be ideal to promote access and usage of ICTs, Intra-platform competition is often what small countries can reach at best. Establishing intra platform competition is even then often not possible because of market size and investments required to compete. Stuck with a single company owning the infrastructure, regulators then intervene to create a situation that leads to outcomes similar to a competitive environment. These include structural or functional separation between wholesale and retail operations of the incumbent operator, local loop unbundling in various forms and setting price caps for wholesale prices.

### **Fixed-Mobile - Fixed-Wireless Broadband Substitution**

Few markets around the world have included mobile broadband and fixed networks in the same market. This is mostly due to the fact that in these countries, fixed and mobile have significantly different utilisation by end-consumers: consumers use mobile broadband to remain in contact (the

concept of ubiquitous connectivity) and use fixed networks for high bandwidth applications (ITU 2013). Fixed provides high bandwidth, high capacity access, while mobile provides mobility. In developed economies, mobile is generally seen as a complement to fixed. Those countries where mobile is a complementary service have not included mobile broadband in the Wholesale Broadband Access (WBA) market. Examples of countries that exclude mobile broadband from WBA include Ireland, the United Kingdom (UK), Portugal and Finland. Ireland, for example, found that consumer utilisation of mobile broadband was significantly different and that consumers used fixed for bandwidth intensive applications (BEREC, 2010).

In the UK, OFCOM found that the WBA market included fixed networks (copper and fibre) and not wireless, i.e. excluding fixed wireless and mobile broadband (Ofcom, 2013). In Finland and Portugal, the regulator found that WBA market included DSL, cable and fibre. The reasons for findings excluding mobile broadband from the WBA market are (BEREC, 2010):

- i. significant price differences between mobile and fixed broadband;
- ii. differences in maximum download speed;
- iii. differences in terms of traffic limits (i.e. data caps); and
- iv. absence of mobility for fixed networks.

Within the European Union (EU), only the Austrian regulator found that mobile broadband was in the same market as DSL and that mobile broadband was effectively a substitute for fixed access (ITU, 2013). However, the regulator did distinguish between residential and business broadband. In the business market, there is a wholesale market for DSL only that excludes mobile broadband (BEREC, 2010). There were several reasons for the Austrian regulator's finding (ITU, 2013):

- i. Austria had the strongest growth in mobile broadband in the EU;
- ii. no significant difference in use between fixed broadband and mobile broadband; and
- iii. download speeds were broadly similar.

Finally, the regulator found that mobile broadband was cheaper and therefore that around 10% of consumers had moved to mobile broadband from fixed broadband, showing that there was substitution between mobile broadband and DSL taking place. The regulator found that: "After mobile operators lowered prices for mobile broadband significantly in the beginning of 2007, the growth of fixed broadband lines slowed down significantly and even went to (almost) zero."<sup>2</sup>

Looking at the Fixed Wireless Access (FWA) market, Portugal, France, Ireland and Denmark have excluded FWA from the WBA market. The reasons for doing so were (BEREC, 2010):

- a) significantly different tariffs;
- b) different download capacity and broadband coverage;
- c) different functions available; and
- d) different investment costs to build a new FWA network.

By contrast, Finland included FWA in the WBA market on the basis that FWA provided an indirect constraint in sparsely populated areas which enabled competitive retail pricing compared to DSL connections (BEREC, 2010).

In Namibia fixed mobile substitution is a unidirectional relationship. Mobiles substitute or complement fixed lines but in reverse fixed lines cannot substitute mobiles. The regulatory treatment and the inclusion or exclusion of fixed-wireless differs from country to country. For Namibia the best approach is to define fixed and mobile end user access as separate markets due to the dominance of one operator in each of these markets.

### Focus on Wholesale markets

The European Commission (EU, 2014a, b) is conducting a third review of markets that are susceptible to ex ante regulation. The findings of the third review are not yet confirmed. The proposed market definition of 2014 only includes wholesale markets, while the defined markets of the 2003 and 2007 included both retail and wholesale markets (see Table 1).

Table 1: List of broadband markets susceptible to ex ante regulation				
Recommendation 2003/311/EC		Recommendation 2007/879/EC		Recommendation 2014
1	Access to the public telephone network at a fixed location for residential customers.			
2	Access to the public telephone network at a fixed location for non-residential customers	1	Access to the public telephone network at a fixed location for residential and non-residential customers.	
3	Publicly available local and/or national telephone services provided at a fixed location for residential customers.			
4	Publicly available international telephone services provided at a fixed location for residential customers.			
5	Publicly available local and/or national telephone services provided at a fixed location for non-residential customers.	2	Call origination on the public telephone network provided at a fixed location.	
6	Publicly available international telephone services provided at a fixed location for non-residential customers.	3	Call termination on individual public telephone networks provided at a fixed location.	1 Wholesale call termination on individual public telephone networks provided at a fixed location
7	Retail leased lines (up to and including 2Mb)		–	–
11	Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services.	4	Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location.	3 a) Wholesale local access provided at a fixed location b) Wholesale central access provided at a fixed location for mass-market products
12	Wholesale broadband access (bitstream at fixed location)	5	Wholesale broadband access (bitstream at fixed location)	
13	Wholesale terminating segments of leased lines.	6	Wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity.	4 Wholesale high-quality access provided at a fixed location
14	Wholesale trunk segments of leased lines.		–	–

Table 1: List of broadband markets susceptible to ex ante regulation					
Recommendation 2003/311/EC		Recommendation 2007/879/EC		Recommendation 2014	
15	Access and call origination on public mobile telephone networks, referred to (separately) in Annex I(2) of the Framework Directive in respect of Directives 97/33/EC and 98/10/EC.				
16	Voice call termination on individual mobile networks.	7	Voice call termination on individual mobile networks.	2	Wholesale voice call termination on individual mobile networks
17	The wholesale national market for international roaming on public mobile networks.				
18	Broadcasting transmission services, to deliver broadcast content to end users.				
Source: EU (2003)		Source: EU (2007)		Source: EU (2014)	

While a review of markets susceptible to ex ante regulation is required by EU legislation every few years, the reason for the review in 2014 was to assess the impact of new technologies, specifically mobile broadband including LTE, the impact of bundling by providers (Internet, mobile, TV etc.), and to increase the focus on areas where competition is not effective.<sup>3</sup>

Also, the EC is committed to a process of reducing the regulatory burden, especially on smaller states. At present, the regulatory burden of the framework directives is estimated at Euro27 million (or around N\$ 400 million) per member state (Ecorys 2013, p. 183). Based on this rationale, the EU has been reducing the number of markets that are susceptible to ex ante regulation and it seems probable that the 2014 review will reduce the number of broadband markets further to two from three, entirely focusing on fixed wholesale end user access.

A general trend is to limit regulatory interventions to the wholesale level. In the EU mobile retail markets are considered to be sufficiently competitive and a perspective is thus no longer defined for ex-ante regulation. This competitiveness has not been reached for most African countries and ex ante regulation for retail markets may still be required. Dominant operators may use predatory pricing, for example, to distort competition and discourage market entry.

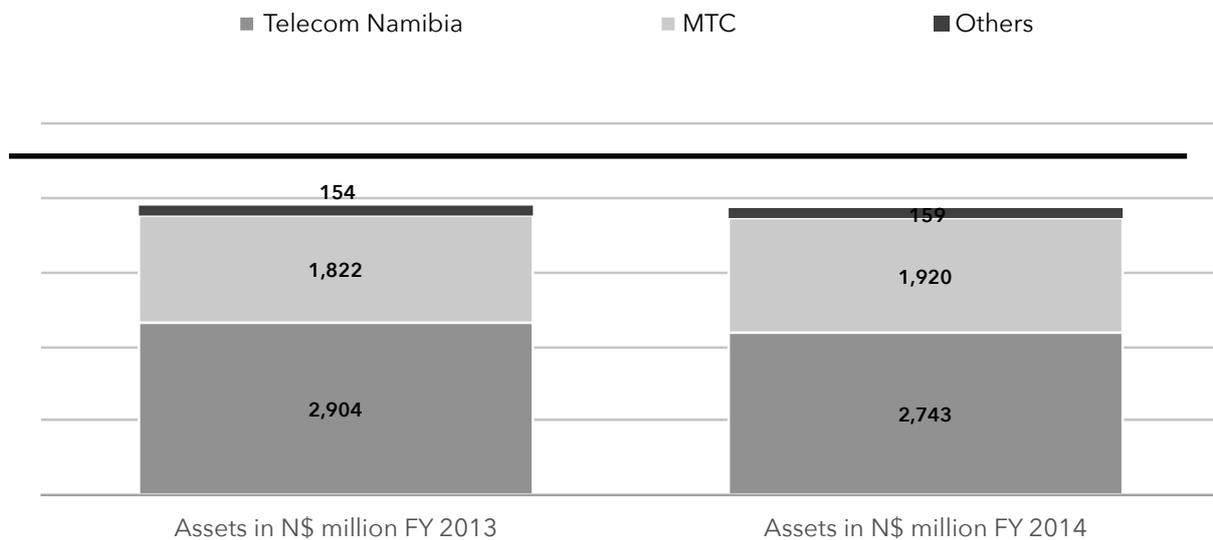
### Market concentration in Namibia

Namibia has only two operators with national networks for mobile and only one for fixed (wired) services. Fibre to the home (FTTx) is offered currently by Telecom Namibia. xDSL services lags behind technological advances in other countries such as South Africa or Europe (VDSL2 e.g.).

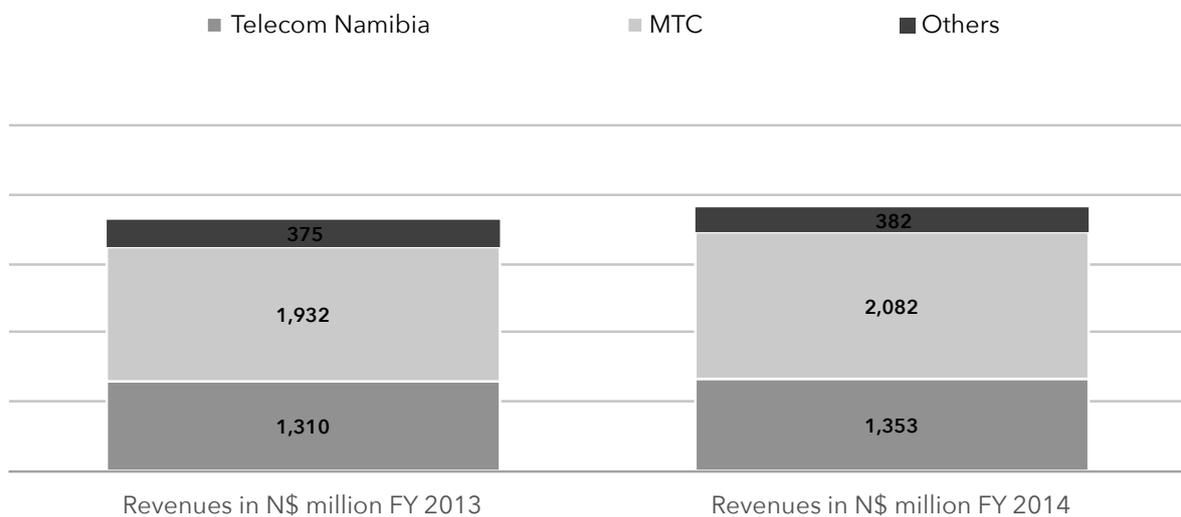
The sector is highly concentrated with the national operators (Mobile Telecommunications Limited (MTC) and Telecom Namibia Limited) making up more than 97% of the assets and 91% of revenues.<sup>4</sup>

<sup>3</sup> See Digital Agenda for Europe: Update of the 2007 Recommendations on the list of markets relevant for ex ante regulation.

<sup>4</sup> In the category "Others" in the table below, competitors are Paratus Telecommunications (Pty) Ltd., Telepassport (Pty) Ltd, Dimension Data (Pty) Ltd, MWireless (Pty) Ltd t/a AfricaOnline Namibia, SALT IT (Pty) Ltd, MTN Business Solutions (Namibia) Limited and Bidvest Namibia Information Technology (Pty) Ltd.

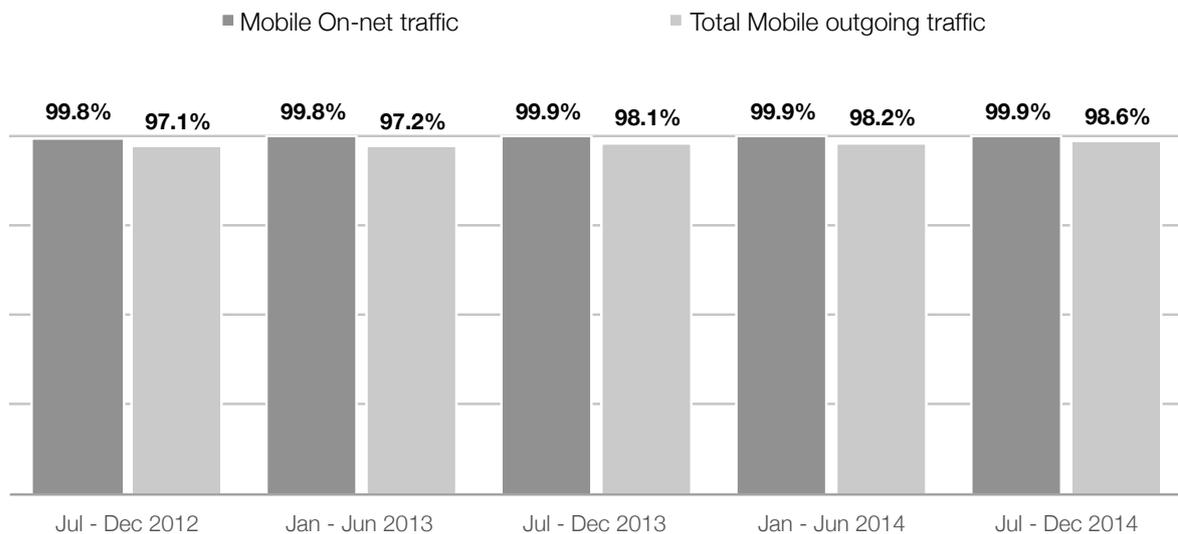


**Figure 1: Assets in N\$ million for financial year ending in 2013 and 2014 (company not group)**



**Figure 2: Revenues in N\$ million for financial year ending in 2013 and 2014 (company not group)**

Telecom Namibia and MTC clearly dominate the sector. At the same time both operators have a factual monopoly. Telecom Namibia is the only operator with a fixed (wired) end user access network and is the only operator providing national data connectivity based on own infrastructure. While both Telecom Namibia and MTC also operate a national mobile telephone network, only MTC has sizeable traffic. MTC market share of on-net traffic is above 99% and of total traffic above 98% since July 2013.



**Figure 8: MTC's market share of total mobile traffic**

MTC's national mobile network is further nearly five times the size of Telecom Namibia's network, 1,100 compared to 258 GSM base stations in December 2014.

Since the last market study was conducted the only fully privately owned operator, Leo, has been acquired by Telecom Namibia thus leading to the same market structure as before liberalisation in 2005. The market study of 2013 only defined 2 markets:

1. Broadcasting,
2. Telecommunication.

Three operators were dominant in the telecommunication sector (Leo, MTC and Telecom Namibia, and no dominance was declared for the Broadcasting sector.

Due to the increased market concentration, the market definition should be changed to allow nuanced ex ante regulation. Telecom Namibia and MTC being dominant for any telecommunication services, as in the existing market definition, may limit competition between the two operators.

It may also be a disincentive for a new entrant that is planning to roll out a national network, which may fear to be declared dominant from the start. This discussion paper thus proposes to define five markets and adopt a more granular approach to new proposed dominance regulation. Splitting mobile from fixed line markets, would for example, make each operator only dominant in one of the markets but not in the other.

## Conclusion

Namibia does not have Cable TV to compete with Telecom Namibia's copper and fibre network. The inter platform competition that drove broadband adoption in the USA, which covered both national transmission networks and end user access at the same time, does not exist in Namibia. Intra platform competition is thus the only objectively attainable objective. Intra platform competition can be enforced by bitstream and local loop unbundling for fixed end user access and through an open access regime for national backbone infrastructure.

It makes sense to define markets for fixed-end-user access and national data connectivity separately, given that the ideal ex-ante intervention differs for these two services.

Due to factual monopolies in Namibia's telecommunication sector, retail markets cannot not yet be excluded from possible ex ante regulation. CRAN, however, subscribes to the light touch regulatory principle and will only intervene in the retail market as a last resort.

CRAN proposes to define five markets:

- a) Market 1: Fixed and Mobile Call Termination
- b) Market 2: Wired End User Access
- c) Market 3: National Data Transmission
- d) Market 4: Wireless End User Access
- e) Market 5: Broadcasting

A description and determination of dominance is given in the sections below.

### Market Definition and Dominance

The definition for dominance of the 2013 market study based on section 78 (4) of the Act that will be applied to this study as well is:

- i. A licensee is dominant in a market if:
  - a) It has at least 35% of market share based on revenues;
  - b) It has less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question;
  - c) It has less than 35% market share but has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question; or
  - d) It has less than 35% market share but has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia.

Section 78(5) provides that CRAN must also consider the market power that may be exercised by a competitor of the licensee concerned in order to determine whether any of the matters referred to in subsection 4 will give the licensee concerned, market power. The assessment of dominance for each market will use Table 2.

<b>Table 2: Assessment of Dominance for the Telecommunications Market</b>		<b>Operator A</b>	<b>Operator B</b>
1	It has at least 35% of market share based on revenues?	(Yes/No)	(Yes/No)
2	It has less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question?	(Yes/No)	(Yes/No)
3	It has less than 35% market share but has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	(Yes/No)	(Yes/No)
4	It has less than 35% market share but has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	(Yes/No)	(Yes/No)
<b>Dominant based on section 78 (4)?</b>		<b>(Yes/No)</b>	<b>(Yes/No)</b>

<b>Table 2: Assessment of Dominance for the Telecommunications Market</b>		<b>Operator A</b>	<b>Operator B</b>
	<b>Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?</b>	<b>(Yes/No)</b>	<b>(Yes/No)</b>
	<b>Dominant (Yes/No)</b>	<b>(Yes/No)</b>	<b>(Yes/No)</b>

The table checks for the four criteria spelled out in section 78 (4) of the Act. A “Yes” in any of the four criteria would lead to the declaration of dominant for an operator if it allows the licensee to exercise market power according the section 78 (5). Two “Yes” are required for an operator to be declared dominant.

### **Market 1- Fixed and Mobile Call Termination**

The market for fixed and mobile call termination is a natural monopoly since only the operator owning the subscriber can terminate calls for that subscriber. All operators offering call termination are dominant operators.

### **Market 2 - Wired End User Access**

The market for wired end user access includes retail and wholesale/reseller services provided via fibre or copper lines. Services in this market include fixed call origination, xDSL, FTTx, local leads or tail ends for leased lines. While Wired End User Access is being offered by a few licensees other than Telecom Namibia, others are mostly reselling Telecom Namibia services. Telecom Namibia is thus the only dominant operator in this market.

### **Market 3 - National Data Transmission**

The market for National Data Transmission covers all forms of prearranged connectivity within Namibia excluding the end user access section. It covers wholesale and retail series. Services included in these markets are leased lines, Ethernet, SDH, PDH, ATM, micro wave, national IP transit and services rendered at submarine cable landing stations. While national data transmission is offered by a few licensees other than Telecom Namibia, others are mostly reselling Telecom Namibia transmission network infrastructure. Telecom Namibia is thus the only dominant operator in this market.

### **Market 4 Wireless End User Access**

The market for wireless end user access includes retail and wholesale services and excludes call termination. It includes call and SMS origination as well as Internet access provided via mobile phone, dongle, wireless modem or router and Wimax.

MTC and Telecom Namibia operate the only national mobile networks. Telecom Namibia’s market share for mobile voice and data combined with wireless less data is well below 35% market share. Additionally, Telecom Namibia’s total number of mobile sites and base stations is only a fraction of MTC’s network.<sup>5</sup> Telecom Namibia is thus not able to exercise market power in accordance with Section 78(5).

Paratus, not operating a national mobile network is equally not able to exercise market power. MTC is declared the only dominant operator for this market.

<sup>5</sup> MTC’s national mobile network is further nearly five times the size of Telecom Namibia’s network, 1100 compared to 258 GSM base stations in December 2014.

<b>Table 3: Assessment of Dominance for Wireless End User Access market</b>		<b>Telecom Namibia</b>	<b>MTC</b>	<b>Paratus</b>
1	It has at least 35% of market share based on revenues?	No	Yes	No
2	It has less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question?	Yes		No
3	It has less than 35% market share but has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question			No
4	It has less than 35% market share but has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?			No
	<b>Dominant based on section 78 (4)?</b>	Yes	Yes	No
	Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?	No	Yes	No
<b>Declared Dominant</b>		<b>No</b>	<b>Yes</b>	<b>No</b>

### Conclusions & Recommendations

All operators providing call termination are dominant, i.e. MTC, Telecom Namibia and Paratus Telecom. Telecom Namibia is dominant for the Wired End User Access and the National Data Transmission markets. MTC is dominant for the wireless End User Access market.

<b>Table 4: Dominance findings</b>		
<b>Markets</b>		<b>Dominant operators</b>
1	Fixed and Mobile Call Termination	MTC, Telecom Namibia, Paratus Telecom
2	Wired End User Access	Telecom Namibia
3	National Data Transmission	Telecom Namibia
4	Wireless End User Access	MTC

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## SCHEDULE 2

### CONCISE STATEMENT AND PURPOSE OF THE PROPOSED DETERMINATION OF DOMINANT POSITION IN THE MARKET

The purpose of the proposed determination of dominant position is to determine

- (a) which licensees hold a dominant position in the market and
- (b) to ensure adequate competition in the telecommunications market.

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### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 446

2015

#### NOTICE OF INTENTION TO MAKE REGULATIONS REGARDING SHARING OF INFRASTRUCTURE: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of section 50(9) of the Communications Act, 2009 (Act No. 8 of 2009) and regulation 4(3) of the Regulations Regarding Rule-Making Procedure published in General Notice No. 334 of 17 December 2010 –

- a) publishes this notice of intention to make Regulations Regarding Sharing of Infrastructure, as set out in the Schedule 1; and
- b) sets out the concise statement of the reasons and purpose for the proposed regulations in Schedule 2.

The public may make oral submissions on the proposed regulations to the Authority, at a time, date and place notified by the Authority.

The public may also make written submissions to the Authority within thirty (30) days from the date of publication of this notice in the Gazette, in the manner set out below for making of written submissions.

Written replies to written submissions may be submitted to the Authority within fourteen (14) days from the date of notification of written comments by the Authority.

All written submissions must –

- a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- b) be clear and concise.

All written submission must send or given in any of the following manner:

- a) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- b) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- c) by electronic mail to the following address: legal@cran.na; and
- d) by facsimile to the following facsimile number: +264 61 222 790.

**L.N. JACOBS  
CHAIRPERSON OF THE BOARD OF DIRECTORS  
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**

**REGULATIONS REGARDING THE SHARING OF INFRASTRUCTURE:  
COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority of Namibia, in terms of section 50 (9) and 86(2) of the Communications Act, 2009 (Act No. 8 of 2009), intends to make Regulations Regarding Sharing of Infrastructure: Communications Act, 2009

**1. Definitions**

In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and –

“Act” means the Communications Act, 2009 (Act No. 8 of 2009).

“Active infrastructure sharing” means sharing of infrastructure contained in the active layer of the network.

“Authority” means the Communications Regulatory Authority of Namibia.

“Broadcasting service licensee” means a holder of a broadcasting service licence awarded by the Authority in terms of section 85 of the Communications Act.

“Dominant Carrier” means a holder of a technology and service neutral licence which owns infrastructure and has been declared as dominant in terms of section 78 of the Communications Act, 2009 (Act No. 8 of 2009) by the Authority as published in Government Gazette No. 5201, Notice No 167 dated 29 May 2013 and any other subsequent notice published by the Authority in the Gazette declaring any other telecommunications service licensee dominant in terms of section 78.

“Infrastructure” means network facilities whether tangible or intangible used for the provision of network services or application services and for avoidance of doubt-

- i) tangibles include lines, cables or wires whether fibre optic or other equipment, apparatus, antennas, antenna feeders, access nodes, towers, masts, tunnels, ducts, buildings, landing stations or facilities; and
- ii) intangibles include agreements, applications, central database, content, network features and functions, wireless transmission and other such interests.

“Infrastructure acquirer” means a telecommunications or broadcasting service licensee who has leased or shared network facilities or has requested to lease or share facilities from a broadcasting service licensee or telecommunications services licensee.

“Infrastructure provider” means a broadcasting service licensee, telecommunications service licensee or utility who has been requested by an infrastructure acquirer to lease or share network facilities.

“Network element” means a facility or equipment used in the provision of a telecommunications service, including features, functions and capabilities that are provided by means of such facility or equipment.

“Network Facilities” means one or more network elements, infrastructure or other facilities that facilitate the provision of telecommunications, electronic communications or broadcasting services or application services including content services.

“Network facilities licence” means a licence entitling the holder to construct, maintain, own and make available one or more network elements, infrastructure or other facilities that facilitate the provision of telecommunication services, broadcasting services, electronic communications services or application services including content services as contained in the Amendment of the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories as published in Government Gazette No. 5805, Notice No. 387 dated 12 August 2015.

“Network facilities licensee” means a holder of a network facilities licence.

“Passive infrastructure sharing” means sharing of infrastructure contained in the physical layer of the network.

“Physical co-location” means a type of co-location where the party controlling the building, tower or other structure in or on which another party’s switches, antennas or other electronic communications or broadcasting equipment are accommodated, also allows the other party to operate those switches, antennas or other electronic communications or broadcasting equipment.

“Reference offer” means a written offer setting out the infrastructure to be shared on an active or passive basis, tariffs, terms and conditions as per the prescribed format in these regulations submitted to and approved by the Authority.

“Sharing agreement” means an agreement between an infrastructure provider and an infrastructure acquirer to share infrastructure containing amongst other the reference offer as approved by the Authority.

“Sharing request” means a written request from the infrastructure acquirer to the infrastructure provider to provide active or passive infrastructure sharing of facilities.

“Spare capacity” means capacity exceeding the capacity necessary to meet normal demands of a telecommunications or broadcasting service licensee or utility that can be objectively justified in operational or economic terms.

“Telecommunications service licensee” means a holder of a telecommunications service licence awarded by the Authority.

“Utility” means any person that provides telecommunications services, broadcasting, or any other radio communications services, as well as electricity, gas or water.

“Virtual co-location” means co-location where equipment is placed in the equipment line-up of the telecommunications service licensee and is maintained by that licensee.

## **2. Submission of documents to the Authority**

- (1) In these regulations, when persons are permitted or called upon to submit information to the Authority in writing, they may do so either physically or electronically -

- i) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- ii) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- iii) by electronic mail to the following address: operations@cran.na
- iv) by facsimile to the following facsimile number: +264 61 222790; or
- v) in any other manner or at alternative addresses set out by the Authority from time to time.

### 3. Applicability

- (1) These regulations shall be applicable to the following service licence categories (as contemplated in sections 50(1), 50(5) and 86(2)(f) of the Communications Act) set out in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories, published as Notice No. 124 in Government *Gazette* No. 4714 dated 18 May 2011 as amended in Notice No. 74 in Government *Gazette* No. 5148, Notice No. 74 dated 13 March 2013 and Government *Gazette* No. 5805, Notice No. 387 dated 12 August 2015 and any future amendments thereto –
  - i) Individual (Comprehensive telecommunications service licence ECNS and ECS);
  - ii) Class ECNS telecommunications service licence;
  - iii) Class Comprehensive telecommunications service licence (ECNS and ECS);
  - iv) Class Network Facilities telecommunications service licence;
  - v) Class Non-Profit ECNS telecommunications service licence
  - vi) Class Comprehensive Multiplex and Signal Distribution service licence;
  - vii) Commercial Broadcasting service licence;
  - viii) Community Broadcasting service licence;
  - ix) Multiplex service licence;
  - x) Public Broadcasting service licence; and
  - xi) Signal Distribution service licence.
- (2) These regulations are applicable to telecommunications service licensees as set out in Part 2 of the Act (sections 48(6) and 50(9) and must be read together with Part 2 of the Act in their implementation.
- (3) These regulations are applicable to broadcasting service licensees as set out in section 86 (2) of the Act.

**4. Publication of information on infrastructure available for sharing**

- (1) Telecommunications and broadcasting service licensees and utilities must publish information in respect of infrastructure available for sharing on their websites and submit a copy to the Authority for publication on the Authority's website.
- (2) Information required in terms of 4(1) in respect of new infrastructure must be submitted to the Authority within sixty (60) days from the date that new infrastructure has been taken into use by the infrastructure owner together with a reference offer for approval by the Authority.
- (3) The Authority will maintain a register of all approved reference offers and all infrastructure available for sharing on the Authority's website.

**5. Submission of Reference Offer**

- (1) Subject to the provisions of section 50 of the Act a licensee or utility shall file a reference offer for sharing of existing infrastructure in terms of these regulations with the Authority subject to regulation 8.
- (2) A licensee or utility shall file a reference offer for any subsequent new infrastructure that becomes available after the effective date of these regulations within sixty (60) days from being taken into use by infrastructure provider
- (3) The reference offer submitted to the Authority must state the date on which the aforementioned reference offer will be valid.
- (4) Reference offers must indicate all information with regards to the charges for infrastructure inclusive of non-recurring and monthly charges as well as terms and conditions in respect of sharing arrangements.
- (5) Reference offer submissions must be accompanied by all such accounting and cost information as the Authority may require.
- (6) Licensees or utilities may withdraw a reference offer after submission thereof but prior to the Authority's decision on the tariff.

**6. Submission procedures**

- (1) In respect of any submission of a reference offer made by a licensee, the Authority shall publish a notice of filing of a reference offer by a licensee or utility in the *Government Gazette*.
- (2) After the Authority published a notice of the filing of a reference offer in the *Government Gazette*, the public may submit in writing to the Authority, comments within the time set out in the notice, which time may not be less than fourteen (14) days from the date of publication.
- (3) If the Authority considers it necessary, it will provide the opportunity to the licensee that filed the reference offer to respond to public comments.
- (4) Licensee responses to public comments must be submitted in writing to the Authority within the time set out by the Authority, which time may not be less the fourteen (14) days from the submission of public comments or if the opportunity for the submission of responses is published in a subsequent *Gazette*, not less than fourteen (14) days from the date of publication.

- (5) The times for the submission of public comments and applicant responses are to be determined by the Authority in light of the nature of the reference offer submitted.
- (6) The Authority may consider written submissions not timeously filed if, in its opinion, it is practicable to do so.
- (7) The Authority may request further written submissions, for example, further information or clarification, which must be provided to the Authority in the time and the manner set out by the Authority.
- (8) All written submissions must-
  - i) contain the name and contact details of the person making the written submission and the name and contact details of the person for whom the written submission is made, if different;
  - ii) be clear and concise; and
  - iii) conform to any further requirements determined by the Authority from time to time.
- (9) After considering any reference offer filed in terms of these regulations and any written and oral submissions, the Authority may approve or disapprove a reference offer or part thereof if the Authority finds that-
  - i) the reference offer is unreasonable;
  - ii) the reference offer does not conform to the licensing conditions stipulated in the licence issued to the licensee concerned;
  - iii) the reference offer has the effect of impairing competition; and/or
  - iv) the reference offer is not accompanied by such cost information or other supporting material the Authority may require in terms of regulation 8 hereof.
- (10) The licensee or utility shall ensure that the aforementioned reference offer is readily available to other telecommunications and broadcasting service licensees including entities licensed in landlocked countries ensuring fairness and transparency in the negotiation process.
- (11) The Authority shall publish the approved reference offer in the Government Gazette and on the Authority's website and shall make the full text available in terms of section 27 of the Act.
- (12) Licensees shall submit reference offers for but not limited to the following sharing agreements-
  - i) National roaming, Class ECS;
  - ii) Sharing of passive infrastructure such as masts, towers, ducts, poles, buildings, shelters, air-conditioning and power supplies;
  - iii) Sharing of active infrastructure such as fibre, access nodes, antennas, racks, antenna feeders, transmission networks and landing stations.

## **7. Conclusion of sharing agreement**

- (1) Telecommunications and broadcasting service licensee, or utility may only enter into a sharing agreement upon receiving a sharing request from an infrastructure acquirer to provide active or passive in respect to access to infrastructure, passive or active infrastructure sharing and physical or virtual co-location of facilities based on a reference offer to provide telecommunications, electronic communications or broadcasting services.

- (2) An infrastructure acquirer may submit an infrastructure sharing request in writing to an infrastructure provider stating all information contained in the reference offer of the infrastructure provider to commence an assessment on its infrastructure to allow sharing thereof.
- (3) The infrastructure provider shall complete the assessment of its infrastructure as contained in the reference offer and provide a written decision in respect of the infrastructure sharing request to the infrastructure acquirer within thirty (30) days from date of receipt of the request on any or all of the following-
  - i) Confirmation of availability of the facilities to be shared and approval to commence with completion of the sharing agreement in accordance with the reference offer approved by the Authority; or
  - ii) Confirmation of availability of the facilities to be shared, any technical requirements to ensure successful connection of infrastructure and approval to commence with completion of the sharing agreement in accordance with the reference offer approved by the Authority; or
  - iii) Rejection of the request including the reasons for rejection subject to section 48, 50 and 86(2)(f) and (g) of the Act and these regulations.
- (4) Negotiation and signing of a sharing agreement must be completed within thirty (30) days from-
  - i) The date of receipt of the written decision in terms of regulation 5 (3) hereof confirming acceptance of the infrastructure provider of the request by the infrastructure acquirer; or
  - ii) the date the infrastructure provider receives written confirmation of acceptance of the proposed technical requirements to connect infrastructure from the infrastructure acquirer.
  - iii) The signed sharing agreement shall be submitted to the Authority
- (5) A infrastructure provider shall not –
  - i) Unreasonably obstruct or delay negotiations;
  - ii) Refuse to provide information relevant to a sharing agreement.

## **8. Minimum requirements for sharing agreements**

- (1) All sharing agreements shall be in writing and shall specify the reference offer subject to which it was concluded and contractual terms and conditions in accordance with the minimum requirements stated in regulation 6(3) hereof.
- (2) All sharing agreements shall be non-exclusive and non-discriminatory.
- (3) Sharing agreements based on a bartering system are prohibited.
- (4) The sharing agreement shall contain information on issues relevant to the infrastructure provider and infrastructure acquirer for conclusion of the agreement and should include the following-
  - i) Purpose of the sharing agreement;
  - ii) Obligations of both parties;
  - iii) Duration of the agreement;
  - iv) Tariffs and Billing conditions;
  - v) Service description;
  - vi) Reference offer
  - vii) Implementation and co-ordination;
  - viii) Access to facilities and co-operation;
  - ix) Maintenance and operation;

- x) Subletting and conditions; and
  - xi) Any other information pertinent to the contract between the parties.
- (5) The parties must file the sharing agreement with the Authority within seven (7) days from date of completion.

## **9. Transitional Arrangements**

- (1) Licensees shall submit all information related to the implementation of these regulations following the publication thereof in the Government Gazette -
- i) All details of existing infrastructure owned by the licensee to the Authority within sixty (60) days from effective date of these regulations
  - ii) Reference offers as contemplated in Regulation 8 for approval thereof within ninety (90) days from the effective date of these regulations

## **10. Dispute Handling**

- (1) A licensee may request the Authority to conduct a hearing should no agreement be reached between an infrastructure provider and infrastructure acquirer within the time period stipulated in these regulations.
- (2) A request for a hearing must be submitted in writing, setting out the reasons forming the basis for the request, including but not limited to specific areas of disagreement and agreement.

## **11. Penalties**

- (1) Any licensee or utility who fails to submit information or adhere to any provisions contemplated in these regulations, shall be guilty of contravening these regulations
- (2) Where a licensee or utility contravenes one or more of these regulations the Authority may-
- i) Issue a written warning and final date for submitting outstanding information where a licensee or utility is guilty of not submitting information required by the regulations; or
  - ii) Impose a penalty of not more than N\$500,000.00 for each contravention of these regulations; or
  - iii) Take any other measure as the Authority regards as reasonable in the circumstances; or prosecute regulatory offences and enforce the regulations in terms of sections 114-116 of the Act.
- (3) Any amount of penalty payable in terms of sub-regulation 2 (a) and (b) constitutes a debt to the Authority by the relevant licensee or utility concerned and may be recovered by the Authority by means of proceedings instituted in any competent court.
- (4) Before imposing any penalty as contemplated in sub-regulation 2, the Authority must give an affected licensee or utility the opportunity to be heard, whereafter the Authority may-
- i) Decide not to impose any penalty; or
  - ii) Impose such penalty the Authority deems fit.

## SCHEDULE 2

**PURPOSE OF THE REGULATIONS REGARDING THE SHARING OF  
INFRASTRUCTURE: COMMUNICATIONS ACT, 2009**

The proposed regulations set out infrastructure sharing regulations that are applicable to Individual (Comprehensive telecommunications service licence (ECNS and ECS), Class ECNS, Class Network Facilities, Class Non-Profit ECNS and Class Comprehensive telecommunications (ECNS and ECS) telecommunications service licensees, Class Comprehensive Multiplex and Signal Distribution, Multiplex and Signal Distribution Licenses, Commercial Broadcasting service licence, Community Broadcasting service licence and Public Broadcasting service licence and utilities.

The regulations also set out minimum requirements for sharing agreements applicable to licensees, information requirements and the consequences for failure to comply with the infrastructure sharing regulations.

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