



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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## GENERAL NOTICE

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### NOTICE 907 OF 2002



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY GIVES NOTICE THAT PURSUANT TO A NOTICE ISSUED BY THE AUTHORITY UNDER GOVERNMENT GAZETTE NUMBER 23440 INVITING WRITTEN COMMENTS ON THE APPLICATIONS FOR THE 19% EQUITY STAKE FOR THE SECOND NATIONAL OPERATOR THE AUTHORITY HAS RECEIVED COMMENTS IN RESPONSE TO THE SAID NOTICE.**

The Independent Communications Authority of South Africa hereby gives notice that pursuant to the notice which was issued on 20 May 2002 under government gazette number 23440 the Authority received various comments from industry stakeholders and from the applicants for the 19% equity stake in response to the above notice. The comments and questions received are attached hereto as per Schedule A.

Applicants on whose applications questions have been raised and comments made are invited to reply in writing to such comments and questions by no later than **16H30 on the 12 June 2002.**

Further take notice that all the written replies are to be directed to **Mr. Siyabonga Madyibi, SNO Project Leader**, at the Independent Communications Authority of South Africa, Private Bag X10002, Sandton 2146 or Block C Pinmill Farm, 164 Katherine Street, Sandton, Tel (011) 321 8442 and Facsimile (011) 448 2171 or e-mail to [madyibis@icasa.org.za](mailto:madyibis@icasa.org.za)

**MANDLA LANGA**  
**CHAIRPERSON, ICASA**

**SCHEDULE A**

**A. Comments by Nexus Connexion**

**NEXUS  
CONNEXION**

**Representations on BEE  
Applications**

**30 May 2002**

1) **Aruna Telecoms**

- 1.1. Have you been able to quantify the digital divide strategy, with respect to:
- 1.1.1. Impact in terms number of target candidates affected?
- 1.1.2. Cost to the SNO/BEE Consortium?
- 1.1.3. What are Aruna's implementation plans with respect to the Digital Divide strategy?
- 1.2. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of all **direct and indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

- 1.2.1. Nafcoc Investment Holding Company 10.3%
- 1.2.2. Naftel 3%
- 1.2.3. Kopano Ke Matla Investment Company 10.3%
- 1.2.4. Numsa Investment Company 5%
- 1.2.5. South African Black and Allied Careers Organisation 3%
- 1.2.6. Dyambu Holdings (Pty) Ltd 10.3%
- 1.2.7. Lembede Investments (Pty) 10.3%
- 1.2.8. Mabuto 1.5%
- 1.2.9. Makana Investment Corporation (Pty) Ltd 5%
- 1.2.10. Motswedi Technology Holdings (Pty) Ltd 3%
- 1.2.11. Twoline Trading (Pty) Ltd 10.3%
- 1.2.12. Black Management Forum Investment Company 10.3%
- 1.2.13. Contralesa 5%
- 1.2.14. Disability Empowerment Concern Trust 5%
- 1.2.15. Ikavama
- 1.2.16. WDB Investment Holdings 5%

- 1.3. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial instruments that have this potential dilutory effect?
- 1.4. Themba Langa holds and controls the shares in Unitel until allocated (26.32%). He also is a trustee of The Onetel Trust (controlling 11.53%). These are both Onetel (competing BEE bidder) shareholders. Please clarify how Themba Langa intends to maintain this duplicate shareholding?
- 1.5. What technologies is Aruna intending to deploy in its access network? What is the rationale informing these technology choices?
- 1.6. What underlying drivers and assumptions were used to forecast the telecommunications market? What are the trends/forecasts for these drivers?
- 1.7. On Pg. 2 and 3 of the application, Aruna details entities holding shares in the consortium. All of these entities appear to be commercial entities. Further, Aruna make note of empowering NGO's as part of Aruna's empowerment strategy.
  - 1.7.1. What % of the equity, if any, has been distributed to NGO's?
  - 1.7.2. If equity has been distributed to NGO's, kindly provide a detailed breakdown of how this equity has been distributed?
- 1.8. Aruna's application states that Aruna intends to employ 40,000 youth and train 80,000 youth.

- 1.8.1. Have the on-going and once-off costs of this initiative been included in the business plan
- 1.8.2. If so, what are Aruna's estimation of these costs?
- 1.8.3. Will these costs be carried by the SNO or any of the shareholders?
- 1.8.4. How will the effort to hire and train such a significant number of youth be managed efficiently?
- 1.8.5. Where will the training programs be developed?
- 1.8.6. Where will the instructors be sourced?
- 1.8.7. What is the time frame for achieving these employment and training targets?
  
- 1.9. Aruna have proposed to fund their shareholding in the SNO with a debt instrument. If the debt instrument proposed by Aruna does not have an appropriate term, the ability to redeem the capital portion of the debt on maturity may be limited.
  - 1.9.1. What is Aruna's strategy with respect to redeeming the capital portion of the debt raised?
  - 1.9.2. What is term of debt being considered by Aruna?

**2) Onetel**

- 2.1. Have you been able to quantify the digital divide strategy, with respect to:
  - 2.1.1. Impact in terms number of target candidates affected?
  - 2.1.2. Cost to the SNO/BEE Consortium?
  - 2.1.3. What are Onetel's implementation plans with respect to the Digital Divide strategy?
- 2.2. Section 2.8 on pg30 of the ITA requires that applicants: "provide a complete and detailed description of the governing body of the Applicant, for example the board of directors, indicating how such governing body is appointed". In this regard:
  - 2.2.1. What governance structure, if any, controls the Ontel consortium?
  - 2.2.2. Who are Onetel's directors or controlling officers?
- 2.3. In Chapter 6, Section 5 Onetel makes reference to additional revenue streams that will be generated through Human Resource Services, Procurement Facilitation, Sales and implementation of social responsibility and outreach programmes.
  - 2.3.1. What is Onetel's competence and track record in providing these services?
  - 2.3.2. What capacity does Onetel have to provide these services?
  - 2.3.3. What is the estimated cost to the SNO?
  - 2.3.4. How much value will be eroded in the SNO vs. case in which provision of the above services are costed at market determined rates?
- 2.4. Given that the servicing of the debt is dependent in part on the revenue streams highlighted in 2.3. above, what is the risk that the Onetel may fail to service its debt? What safety mechanisms have Onetel considered to counter this risk?
- 2.5. Onetel have stated that a pre-condition for any institution funding the SNO (at the SNO level) should be that said institution would be required to fund Onetel's stake on similar terms. How does this impact on the



SNO's ability to raise funds at preferential rates?

- 2.6. Onetel have stated that a pre-condition for any vendor supplying equipment to the SNO should be that said vendor would be required to "vendor-finance" Onetel. How does impact on the SNO's ability to procure equipment at preferential rates? What suppliers have committed to this concept? How does this concept impact on the SNO's cost competitiveness relative to Telkom?
- 2.7. Given that Onetel have proposed a preference share funding instrument, what is the risk of BEE dilution on redemption of the preference shares?
- 2.8. Why does Onetel's application document deviate from the format prescribed in the ITA?
- 2.9. Exhibit 3 in Chapter 3 Section1, details shareholding breakdown along several dimensions. Please clarify whether a summation of the following lines: "Large entities", "Medium Entities", "Small & micro entities" should equal to the "Total juristic shareholders" line?. If not, please explain the table?
- 2.10. Unitel shares are set aside for ITA compliant members of the public. These have not yet been allocated. Please give indication of how this 26.32% will be allocated? Further, what criteria will be used in the allocation of the shares?
- 2.11. Themba Langa (of Langa Attorneys in Randburg) holds and controls the shares in Unitel until allocated (26.32%). He also is a trustee of The Onetel Trust (controlling 11.53%). Themba Langa is also and director of Lembede Investments which is a shareholder in Aruna Telecoms (competing BEE bidder). His shareholding status has not been disclosed in Aruna. Please clarify how Themba Langa intends to maintain this duplicate shareholding?

- 2.12. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of **all direct and indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

2.12.1.Vuka Sechaba Communications (Pty) Ltd 11.53%?

2.12.2.Blitec 2%?

2.12.3.Please disclose the indirect shareholding in the other entities holding 48.62%. Also disclose how the 48.62% is split between these shareholders?

2.12.4.The Onetel Trust 11.53%

2.13. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial instruments that have this potential dilutory effect?

2.14. Reference is made to Onetel empowering 500,000 individuals. Based on the 72 SMME's included in the consortium, this implies an average staff count 6,944 staff per SMME (i.e. not SMME's but large corporates). Please provide a basis for this calculation/estimation?

- 2.15. What underlying drivers were used to forecast the telecommunications market? What are the trends/forecasts for these drivers?
- 2.16. How has Onetel considered the SNO's product offering? How have these been segmented?

**B Comments by Onetel**



**REPRESENTATION ON  
SUBMISSIONS FOR THE 19%  
STAKE SET ASIDE FOR BEE**

## ARUNA

OneTel must commend Aruna for a very well packaged, designed and presented document, could we however get clarification on whether Aruna was granted Confidentiality on certain sections of their bid, especially those sections that detail strategy and value to be added by Aruna into the SNO.

### Section – Shareholders Interest

1. The shareholders agreement refers to the issued share capital of the company, however, with respect to the shares for which the shareholders have subscribed, there are materially defective insofar as the agreement only refers to the percentage of shares and not the amount that the shareholders have paid therefore. Such failure constitutes a breach of the provisions of Section 92 of the Companies Act 61 of 1973 ("the Act").
2. Section 92(1) of the Act states that no company shall allot or issue any shares, save in the limited circumstances indicated in subsection (2), unless the full price of other consideration for such shares have been paid to and received by the company.
3. The shareholders agreement has failed to comply with the abovementioned provisions by allotting shares to its shareholders in the absence of the value at which such shares were issued, which, consequently, implies that such shares were allotted without any amount having been received by the company, in contravention of section 92 of the Act.
4. It can be reasonably read that due to the fact that purported allotment is in contravention of section 92 of the Act, such allotment of shares is void, which would, as a result, render the shareholders agreement null and void, as decided in *Etkind and Others v Hicor Trading Limited* 1999 (1) SA 111 (W).

5. Accordingly, it can be reasonably submitted that there is no applicant before ICASA due to the invalidity of the applicant's shareholders agreement.
6. In addition to the foregoing, clause 11 of the Shareholders' Agreement fails to comply with the Invitation to Apply ("ITA"), more specifically paragraph 1.5.3 of the Terms and Conditions of the ITA, insofar as it fails to make provision for ICASA to furnish its written consent to any change in the ownership structure of the Licensee, in particular the sale of shares to a third party, exceeding 5% in the aggregate of the issued shares of the company within 5 (five) years of the award or any capital increases resulting in a change of ownership exceeding 5% in the aggregate in the share of any of the owners within 5 (five) years of the award.

#### **DECLARATIONS IN TERMS OF THE ITA**

No copies of the statements and declarations required in terms of paragraph 4 of the Terms and Conditions of the ITA were attached for perusal to ensure compliance with the ITA.

#### **Section – Empowerment**

An impressive programme to address rural women, however, not all women are based in the rural areas, will Aruna not address women in general and also involve them in the control and management of the SNO?

## Section – Business & Technical Plan

### 1 HRD

#### 1. Comment:

The HR philosophy is a well thought thru strategy, however the philosophy is apparently an exclusive one in that it does not specify the inclusion of HDI's within the ICT sector.

#### Question:

How does Aruna intend to focus on the requirements of the ITA which is to include and place special emphasis on the development of HDI skills within the ICT sector if it is not part and parcel of their philosophy to do so?

#### 2. Comment

##### Section 8.1

Onetel applauds Aruna on their well articulated and eloquent HR philosophies which broadly emphasizes what the SNO will require and what the gaps are i.t.o the HRD approach within the market belaboring what we all know as players in this industry, and yet no strategies and plans accompany this overview or problem analysis. Great job identifying the role of key role players and stakeholders (refer pg 87) but this is surely not in response to the ITA requirements!

#### Question

What and how do you propose to bring these gaps to closure?

#### 3. Comment

**Section 8.2** You state intelligently what the HR strategy **will be** but fail to indicate how you will implement and add value to the SNO at large. It is a grave concern that you have not included plans for the implementation and this suggests that you may not have plans in place

or a clear understanding of what delivery vehicles you will use. This entire section is a well written generic HR approach which covers standard HR principles and practices in the broader context. Great job in defining the HR pillars but lack of role you will play in the delivery is a major concern!

Given the fact that this will be a section 197 transfer, therefore employees will transfer as part of a going concern, and these ring fenced employees will need to be transferred seamlessly into the SNO, question then is how will you ensure that these employees are not disadvantaged in the process of being transferred and what workplace forums will you have to ensure that the rights of employees are respected and that collective bargaining is acceptable within the SNO?

### **Questions**

What is your HR role-out plans and what is your HR differentiator?

What HD institutions do you have links with?

Why will the ICT skilled personnel serve as guest lectures when in fact they will be needed in the workplace to impart knowledge and skills and on the job training to co-workers within the SNO? How will on the job training take place and will professional shadowing be a part of this process if so how do you envisage ensure that this happens? Also, will there be strategies which ensure we as Africans do not perpetuate a dependency syndrome? (Refer pg 93)

## **2. Marketing**

1. Section 1.4 of the Executive Summary, pg 9, 'In analyzing potential market, Aruna has paid particular attention in the under serviced markets. ' As commendable as the approach is, how will the business be sustained as huge capital investments will be required upfront?
2. Section 1.4 The Market for the Second Network Pg 9' Aruna understands where the gap is between Government initiatives and lack of implementation action on the ground....In line with the strategy for

creating employment Aruna Telecoms proposes proposes the following to address this market : the establishment of ICT brokers to support government ..... Collecting data with regard to registration of pre-natal deaths, .....births, ..... foot and mouth disease' Can Aruna explain how this addresses current market needs for telecommunications including in their area of focus as to how the above helps increase teledensity.

3. The marketing summary of products and services that will address the market shows lack of understanding of the market, its needs and how to address them. Has Aruna done a business case for video conferencing and market potential for this product. As suitable as this is for top corporate customers, how does Aruna see this being rolled into under-serviced and addressing this market and its needs for basic voice and data services.

### **Section - Financial & Analysis**

The criteria used in analysing the financial structuring method put forward below are:

- the feasibility and practicality of the financing mechanism proposed; and
- the validity or the nature of the commitments of the financiers referred to in bid documents.

Aruna has not provided any funding structure in their proposal. It refers to an income note as the funding mechanism that will be used, without providing details of how it will be structured and what the conditions will be. An income note generally has a coupon of 30% of income from operations. Aruna has not provided details of how this will be structured and how the coupon will be paid during the years when there is no income. It is stated that this note will be tradable, but there are no details of how market interest in such an uncommon instrument will be generated. Aruna's financing mechanism lacks detail and appears unrealistic. There is no explanation of how the BEE stake



will be protected from dilution either, when considering that the note will be such an un-tradable instrument and may require security from shareholders.

**BUATEL****Section – 0.8 Business & Technical Plan refers :**

Could Buatel clarify, based on the Business model diagram in page 8 of 117 as to whether the Strategy is to perform network planning and design of infrastructure in year 3-5 as indicated by the diagram. If this be the case, could clarity be given on what network/ enterprise would be designed and implemented in year 0-1, and managed in year 1-3 and what would be measured in year 2-3 if the network will only be planned in year 3-5.

**Section – Ownership & Control****1.1 Applicant equity Ownership****Section 2 – Shareholders Interest****3. YOUTH INVOLVEMENT PLAN**

- 3.1 This plan states that BuaTel will reserve 5.3% equity in a Trust Fund for the development and upliftment of the youth, which Trust Fund will be administered and managed by the Gauteng education Trust and the Congress of South African Students (COSAS). There are no details as to how will the Gauteng Education Trust and COSAS administer and manage this Trust Fund.

**Section 3 – Management Ability & Development****1. Technology**

The e section mentions that certain members of BuaTel have been involved in leadership roles. It is not stated as to at which level have Mr Chris Mamabolo and Ntsunderi Madzunya led IBM and ICL. This bid merely utilises big industry names in glorifying itself and its perceived potential.

1. 2. The documents goes further to give an impression that they have been involved in leadership roles in other companies too, but does not state the names of those companies and the types of leadership roles

and the extent of such leadership, let alone the value they added to such companies based on their leadership. We submit that this is meant to create a picture that BuaTel is competent and has management competency, when that statement is not supported by anything at all.

## **Section 4 – Empowerment**

### **1. Empowerment of Women**

This heading does not state the type of involvement currently enjoyed by the women in BuaTel as far as ownership, control and management are concerned. It is one thing to fill volumes explaining how women will be empowered in the company and how they will be part of ownership, control and management, but the company needs to show what they are currently doing to involve women in the company's ownership, control and management. BuaTel does not go into detail to show their current commitment, if any, to the empowerment of women in their ownership, control and management. Paragraph 1.3 of the Introduction to Terms and Condition of the ITA notes that there is limited involvement of women in the management, control and ownership of telecommunications companies and that this issue needs to be addressed.

### **2. Involvement of Youth**

The manner of the involvement of COSAS is not clear in the sense that COSAS is an organisation not for gain. The mere fact that paragraph 1.8 of the Introduction to the Terms and Conditions of the ITA requires the Applicant to show how it will integrate the youth does not mean that bidders have to go to such extents as involving impressionable youths in their bids in order to be adjudged the preferred bidder. There is no indication of the current commitment to youth development by BuaTel in their bid. One is left wondering whether they will indeed benefit and empower the youth in any way. The question is that is the involvement

of COSAS, being a student body, intended to be their only answer to the requirement of the ITA for youth participation.

## **Section 5 – Business & Technical Plan**

### **5.1 HRD**

#### **Comment:**

Pg 78 refers a HR Development plan however having read the section there appears to be a lack thereof.

Pg 84 appears to contradict itself in that in the first instance it states that it will employ graduates in order to grow from within as quickly as possible and in the second place you admit that you require excellent skills from day one, how do you qualify? Also, why then would you recruit exclusively from other industries and furthermore target recruits with “some skill”?

#### **Question:**

Can Buatel please point us to where exactly is their plan which speaks to the HR strategy (which is evidently non existent)? Or was it granted Confidentiality on this matter?

Pg 81, you state that you will recruit extensively from technikons, have you given some thought to the skills and expertise within Transtel and Esi- tel which will transfer into the SNO as part of a going concern and if so, why does your recruitment strategy appear to focus on only a small component of the skills pool within SA? Also, who will run the service with knowledge of what needs to happen and do not require on the job training and have the requisite knowledge to hit the ground running?

Pg 84, Your partnering arrangement seeks to exclude a process of transfer of knowledge and skills and does not map out activities to ensure that you do not perpetuate a dependency syndrome using fly –by- night consultants. Does this not endorse the capitalistic mentality and exclude the majority of the HDI's?

Which institutions do you have links with and what ICT skills development will you embark on?

How will you ensure a seamless transfer in terms of the going concern?

What strategies will you employ to ensure that employees transferring as part of the going concern into the SNO will not be disadvantaged?

How will you add value to the SNO in terms of its HR approach and strategy?

Your Youth empowerment strategy alludes to a multi-pronged strategy could you articulate this strategy for OneTel?

## **5.2 Marketing**

BuaTel claims an understanding of appropriate marketing strategies the SNO requires in order to succeed in the SA marketplace but offers no proposition whatsoever on what these are.

BuaTel will only build its own network nearly 4 years into its operation, despite the fact that facilities sharing will be allowed for two years only.

### **Questions:**

- On what basis will BuaTel deliver on any of its claimed and desired attributes: 'preferred interconnect partner', 'innovative products', 'non-passive' corporate strategy, when it does not have a network (partial or complete) to support delivery of its service?
- Does BuaTel intend to be a virtual operator or wholesale buyer of services from Telkom to resell to its market?
- BuaTel has not demonstrated any existing expertise in the marketing section worthy of evaluation by ICASA, how do they expect to be taken seriously?

### **3 Technical to include Environmental Impact**

Demonstration of understanding of Transtel and Esitel plan is quite extensive, however, the strategy proposed by Buatel is missing, or was this protected under confidentiality granted by ICASA.

### **4 Financial Capability**

1. Section 5, subsection 5.1 Funding summary herein refers, could Buatel explain/ demonstrate how it achieves control of the company with dilution that leaves effective control between 1-5%.
2. Section 5, subsection 5.2.1 page 61 of 117 herein refers, can Buatel confirm that, nothing except discussions which have not been proven, is in place in regards to share capital.
3. Section 5, subsection 5.2.2, page 61 of 117 herein refers, international partners have been indicated to provide the bulk of the Loan capital, where will the remainder come from and what proof is in place for the remainder.
4. Section 5, subsection 5.3, page 62 of 117 herein refers, what proof exists to prove that the shareholders will be able to come up with the required amounts of funding for future capital requirements, which are uncertain at this stage.
5. Section 5, subsection 5.5, page 64 of 117 herein refers, in view of the fact that the ITA was available for nearly three months, before closing date, for an opportunity which requires one to apply their mind in designing business processes for a company, Buatel has demonstrated adequate experience and understanding of the magnitude for this opportunity and has thus failed to demonstrate financial capability which is crucial for the strategic Black empowerment partner to take up shareholding alongside big balanced sheet partners such as Transtel and Esitel.

## 5. Financial Analysis

The criteria used in analysing the financial structuring method put forward below are:

- the feasibility and practicality of the financing mechanism proposed; and
- the validity or the nature of the commitments of the financiers referred to in bid documents.

BuaTel has proposed to finance its 19% stake in the SNO through an international debt instrument, which will be issued in the name of a "reputable European Insurance Company" on behalf of BuaTel. This debt instrument, which is referred to as a "Financial Indemnity Bond", with a face value of US\$340 million will be used as security for a commercial loan of US\$272 million. BuaTel states that it has secured a commitment from an agent who will facilitate this process for BuaTel. However, the agent, Selbor Financial Spolka ("Selbor"), only states that it will "cause the issuance" of the bond by a reputable European Insurance Company. **There is therefore no commitment from Selbor to issue a bond.** Other issues regarding BuaTel's financing proposal are outlined below:

- Selbor's credibility as an institution capable of raising US\$340 million is unknown.
- Due to the volatility of the Rand, a loan denominated in US dollars will have to be hedged. No details of such hedging have been provided. Additionally, it is highly unlikely that a foreign investor will be interested in a start-up in the telecommunications sector in a developing economy, where the State will be a fierce competitor.
- The terms of the loan have not been provided and it is likely that it may have to be secured with equity, which could be dilutive for the BEE partner.
- It has not been explained how the values of US\$340 million and US\$272 million are arrived at and how the funds will be applied
- The loan repayment programme has not been outlined either.

**Section : Applicants' Volunteered Information**

Section 7, subsection 7.1 and 7.3, pages 76 and 79 of 117 respectively herein refers, can the percentages be clarified between the two figures as to whether the pledge for management by women is for 50% or 37% of, the figures are inconsistent.



## **GONDWANA**

### **Section 1 – Ownership & Control**

#### **1. AFFIDAVIT ATTESTED TO BY KHOMOTSO JACOB MAKWETLA ON 13 APRIL 2002**

- 1.1 At number 17 of the affidavit Khomotso Jacob Makwetla refers to pending High Court action against two shareholders who have an indirect interest in the Company. There is no clarity as to what is meant by an indirect stake and to what extent they have such indirect stake. There is no proof that such shareholders do not hold a majority stake in the applicant. What causes doubt again is the fact that one of those shareholders was the initial subscriber to Gondwana and signed Gondwana's Articles of Association on 26 March 2002. According to paragraph 4.13 of the Terms and Conditions of the Invitation to Apply ("the ITA") states that the Applicant shall certify as to whether there exist any civil law suit in progress against the Applicant, any shareholder(s) holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest which is the subject of any judicial action. By virtue of these two shareholders, whose role in the applicant is not clear but could be major, having a pending civil suit against them doubt is cast as to whether paragraph 4.13 of the Terms and Conditions of the ITA is satisfied.
- 1.2 The affidavit fails to satisfy the declaration that the Company is supposed to make according to section 4.3 of the Subject of the ITA, relating to the truthfulness of the contents of the application. This is an important declaration as it binds the applicant to truthfulness in its bid. According to this declaration, in the event that the applicant declares such but the declaration is false the applicant will be disqualified. One is left wondering whether Gondwana is hiding something in not making this declaration. Should part of their submission be untruthful they may turn around and say that they have not made a declaration as to the truthfulness of the content of their application. It is hard to conceive of

how Gondwana could have omitted to make this declaration, as it is one of the most important ones, and affects the entire contribution they have made. This conduct by Gondwana casts doubt as to the veracity of their application.

- 1.3 There is no clarity as to the full shareholding of the company, any indication is that of share which have been issued, without being given subsequent translation of that into the % shareholding of Gondwana itself. One cannot fully assess the distribution according to the ITA requirements whether they have been met or not, or whether majority shareholding is in the hands of individuals.

## **Section – Shareholders Interest**

### **SHAREHOLDERS' AGREEMENT**

1. The definition of 'Future Indefinite' is 'Future Indefinite (Pty) Limited. On the cover of the shareholders' agreement there is reference to Future Indefinite Investments 49 (Pty) Limited. This creates confusion as to which company is actually the shareholder. It also renders the shareholders' agreement defective in that it creates uncertainty and could prejudice the Independent Communications Authority of South Africa ("ICASA") in that ICASA would not know who are the real shareholders in Gondwana should Gondwana be the preferred bidder.
2. According to clause 8 at 8.5, dealing with Meetings of Shareholders, there shall be no Chairman at such meetings. This creates doubt as to how these meetings would be managed, if at all.
3. In clause 14, dealing with the Sale of Shares and Right of First Refusal, there is reference to 'a specific class of persons' who are intended shareholders and beneficiaries of the SNO. It does not specify such specific class of persons. One wonders whether that is because such class of persons refers to the Historically Disadvantaged Persons who

might not be fully catered for in Gondwana's vision. The ITA specifically states in paragraph 1.1.1 of its Subject that nineteen per cent of the equity stake in the SNO shall be allocated to persons from historically disadvantaged groups.

4. Clause 14 does not comply with paragraph 1.5.3 of the Terms and Conditions of the Invitation to Apply in that it does not provide for the Independent Communications Authority of South Africa to furnish its written consent to any change in the ownership structure of the Licensee, in particular the sale of shares to a third party, which exceeds 5% in aggregate of the issued shares of the company within 5 (five) years or any capital increases which result in a change of ownership exceeding 5% in the share of the owners within 5 (five) years. This is a glaring omission as it does not ensure that the beneficial shareholding of Historically Disadvantaged Persons will be protected.

### **Section - Financial Capability & Analysis**

The criteria used in analysing the financial structuring method put forward below are:

- the feasibility and practicality of the financing mechanism proposed; and
- the validity or the nature of the commitments of the financiers referred to in bid documents.

Although it is not clearly set out in the bid document who raises the funds referred to below, our understanding of the financing structure is as follows:

- Citibank will raise R3.2 billion by way of the issue of zero coupon bonds.
- Citibank will give R1.6 billion of the aforementioned amount raised to Gondwana to acquire their shareholding in the SNO.
- Citibank will guarantee the repayment of 90% of the R3.2 billion invested after six years.
- Citibank invests 10% of the R1.6 billion retained by them in a call option on the worldwide TNT sector index.

- The dividend paid by the SNO during the period is paid to the investors.
- Gondwana is not required to secure or guarantee the repayment of capital or interest.

Our concerns with the aforementioned structure is as follows:

- It is uncertain whether an amount of this size can be raised and whether investors will find the instrument attractive. No indication of appetite from potential investors has been provided. It is unclear why investors would invest through the proposed structure to access an option on the Morgan Stanley TNT index if they could do so directly.
- It is unlikely that Citibank will give R1.6 billion to Gondwana without requiring repayment or expecting a return.
- It is unlikely that any dividends will be paid by the SNO during the first six years.
- **No written commitment from Citibank has been included in the bid document regarding any of the actions attributed to them.**

## **NEXUS**

### **Section – Ownership & Control**

- Promoters (three individuals) are being offered a 10% stake in Nexus for no consideration, which goes against the spirit of broad-based empowerment and may be viewed as enrichment.

### **NEXUS SHAREHOLDERS' AGREEMENT**

1. In paragraph 1.1.6, which is the definition of 'broad based empowerment groups' Nexus excludes the various structures, organisations and individuals whom they classify as indirect shareholders.

2. This lends credence to our assertion that the aforementioned provincial structures only serve as shells and that no meaningful empowerment or shareholding has actually taken place.
3. It may further be misleading for Nexus to create or intend to create an SACF Trust when they would probably know that SACF ("the South African Communications Forum") is the recognised body in the telecommunications industry and that would easily be read to mean the same body and has an existing SACF Trust.
4. This failure clearly violates the noble intentions of the ITA which advocate the involvement of the Historically Disadvantaged in the control, management and ownership of the bidding companies, as it is clear from the Nexus shareholders' agreement that the empowerment of the deserving Historically Disadvantaged is not entrenched.
5. The ITA requires the participation of women, the disabled and youth organisations to be demonstrated and failure to capture these assertions in the shareholders' agreement is fatal; as it fails to protect these critical minorities.

#### **Section – Management Ability & Development**

**Proposed Management reveals only three individuals have any telecommunications experience, the most significant being from a foreigner James Myers – what strategic telecommunications value can Nexus add to the SNO?**

Throughout the document, so much is being placed in the SEP's hands, what value will be added by Nexus.

#### **Section - Marketing**

**General Impression of marketing section:** Of 26 pages earmarked to demonstrate understanding of prevailing market conditions when the SNO launches and how Nexus marketing strategy would be crafted to win & sustain

market share for the new entrant and thus justify investments planned, disappointingly only 3 pages are dedicated to any semblance of strategy, if it may be so described. The rest can best be described as projections, statistics. It is our impression upon reading this marketing section of the submission, that Nexus does not believe the 19% BEE partner has a valuable role to play in crafting marketing strategies of the future SNO, nor ensuring these strategies are relevant in the SA market. Providing access to 'markets' (constituent shareholder base) does not constitute intellectual capital worthy of 19% equity.

## SERVICE

**Statement:** The SNO will have a competitive edge over the incumbent (Telkom) with legacy issues in the areas of people and systems. viz:

*"Through proper focus on service mindset from initiation."*

*"Integrated customer oriented systems with frontline personnel."*

*"Implementation of measurement systems to assure target objectives are met."*

**Question:** Nowhere in the two paragraphs dedicated to the 'service' aspect of Nexus strategy is it explained how this competitive edge will be created. Can the applicant please explain the strategy they have to create this competitive edge or are we to assume that this is just nebulous grandstanding?

**Statement:** The Nexus SNO will be able to build its people skills and capabilities from a **zero base**, an **advantage** over its 'pseudo' public sector rival (ie.Telkom).

**Question:** Unless ICASA & government have misled us and the whole world, it is a fact the telecom assets of both Transtel and Eskom, including people, will be absorbed into a future SNO. Therefore, whether wanted or not, similar 'pseudo' public sector people will be with the Nexus SNO from day 1 or

as Nexus says, from zero base. So, has Nexus SNO given thought to how these people will be integrated into the SNO, in particular how they will impart them with the cutting edge marketing skills required to compete in a non-public sector environment – in order to deliver its claimed competitive edge?

**Statement/s:** SNO (integrated customer oriented) systems will be modelled on international best practice facilitated by the Strategic Equity Partner (SEP) Further, the SEP will import innovative products developed and tested in international markets.

**Question/s:**

What is Nexus' knowledge of integrated customer oriented systems in the context of marketing for a fixed/mobile telephony operation and how will this knowledge be contributed to the future SNO?

Nowhere in the section is this alluded to.

What local relevance, if any is Nexus intending to contribute to the creation of telephony products by the SNO for the local market?

Seemingly, Nexus is expecting significant marketing/technical/and business contribution in the SNO from an SEP with 'international best practice'; will this passive involvement by Nexus continue in the event that the SEP partner is wholly local or does Nexus have best practice models of its own (local or otherwise) to contribute to the SNO?

**PRICE**

**Statement:** With room to compete along the service and product dimensions, it will hurt margins unnecessarily to compete strongly on price.

**Questions:** Other than claimed 'real' projections and statistics in the early part of this section on how the sector will grow in coming years as result of competitive forces, we are never told how Nexus will use these forces to create a niche for the SNO:

- Was this aspect of your submission deemed not-for-public consumption...with ICASA's permission?

- Do you have a tariff strategy...based on the expected cost of your network, overhead structure or any other multiple of variables which inform a tariff structure?

#### **Section - Technical to include Environmental Impact**

Could Nexus clarify whether this portion of the submission has been awarded confidentiality status by ICASA, AS there is no document detailing network design, roll out and implementation strategies and plans. Nonetheless, I have these questions below.

Wouldn't the existence of OPCO complicate the management process for the SNO? What steps are taken to address such complications?

#### **Section - Financial Capability & Analysis**

The criteria used in analysing the financial structuring method put forward below are:

- the feasibility and practicality of the financing mechanism proposed; and
- the validity or the nature of the commitments of the financiers referred to in bid documents.
- Nexus has proposed to finance its stake through a variable rate bond, which will be issued for a 20-year period. Gensec Bank has ratified this bond as being tradable. However, this financing structure relies on a market that has not been tested. No indications of interest have been included in the bid document to demonstrate that funders will invest in this instrument. The corporate bond market is at an infancy stage in South Africa and investors are still cautious about investing in such instruments. In the case of a start-up, it is unlikely that there will be appetite from the market. This will require the issuer to provide some incentives or a third party to provide guarantees, which cast doubts on this financing option. Other issues regarding this financing structure are outlined below:



- Nexus states that the bond will be redeemed in year 20 and will have no accumulating coupon. The statement that the coupon is not cumulative, implies that the investors will forfeit their returns for the first 5 to 6 six years since there will be no income from the SNO during that period and thus no dividends. This is an unrealistic assumption.
- Tradability of the bond is questionable, especially since Nexus, as the issuer, has no credit history and no assets to use as security.
- Funders are expected to take an equity risk in exchange for a debt return. This is not realistic.

## **RELIANCE NETWORK**

### **Section – Reliance Vision**

1. A very well presented business case for wireless and 3G, however too futuristic for South African market (given infancy stage of 3G in Europe) especially if taking into account the fact that the ITA was for fixed – mobile. Is Reliance implying that this licence should actually be for wireless with fixed capabilities.
2. Radio backbone as indicated in revenue streams in Financials at a glance. Can Reliance clarify as how it aims to achieve its very ambitious targets with Wireless backbone, whilst, there could never be any handover between cells in the network, and the wireless network with full mobility (as opposed to the fixed-mobile licence to be issued to the SNO) also depend on fixed backbone?
3. ‘ Empower the mass market with reliable, high value, quality, accessible communications’, being the 1<sup>st</sup> goal for Reliance, does this translate to Reliance addressing the mass market over business, residential users. If, so, how does it hope to achieve this whilst realizing a profit as an operator?

### **Section – Ownership & Control**

Annexure A, herein refers, where the ITA requires a description of all persons/ individuals who hold a direct and indirect ownership interest in the Applicant, Reliance has supplied information of Reliance Communications who is not reflected anywhere in the shareholding structures of Reliance, the entity, as per Change of name certificate only is Reliance Investment Group, can Reliance provide details of this majority shareholder in the Applicant, taking into account the Terms and conditions of the ITA?

**Section – Shareholders Interest**

The ITA request details of advisors and consultants and their role played by consultants, Reliance has in a one liner, described the role without giving details, can the details of these be supplied?

**1. RESOLUTION DATED 15<sup>TH</sup> APRIL 2002**

The resolution of Blue Dot Properties 153 (Pty) Limited states that the company will be trading as Reliance Network:

- 1.1. Has the trading name been approved by the Registrar of Companies? In the event that it later transpires that there is another company with the same name as the bidder, this will cause uncertainty and place the Government in a precarious position as it will not be able to positively identify to whom it has granted the bid.
- 1.2. It is trite law that a company resolution normally must be passed by a simple majority of members present and entitled to vote and who constitute a quorum. However, the present resolution appears to be materially defective insofar as failing to specify the place where the meeting of the shareholders was held and who the sole signatory thereof was, in which itself raises the question whether such meeting was properly convened.

**2. MEMORANDUM OF ASSOCIATION**

- 2.1. There is a conflict between the Memorandum of Association and the Shareholders' Agreement in respect of the main business of the company, which is recorded as "*Investment in Movable and Immovable Property as Principal*" in the Memorandum whilst the Shareholders' Agreement provides for the delivery of services in the telephony and telecommunication sector. It is glaring omission in the Shareholders' Agreement whether the

Memorandum or the Shareholders' Agreement will prevail in the event of any conflict between its provisions.

### **3. SHAREHOLDERS' AGREEMENT**

#### **3.1. PARTIES**

3.1.1. The Shareholders' Agreement records that the Youth in Telecomms Trust and the Telecomms Education Trust are shareholders, however, no supporting documentation was furnished to demonstrate whether it is registered nor was any information provided in respect of the trustees thereof.

3.1.2. Amongst its shareholders the company also has Tsolo Community Investment Group, entity which is awaiting registration with the Registrar of Companies, which cannot be a shareholder in the company as an entity must be registered as such before shares may be allocated to it. Furthermore, no documentation was provided to demonstrate whether the process of registration has in fact been initiated with the Registrar of Companies.

#### **3.2 INTRODUCTION TO THE SHAREHOLDERS' AGREEMENT**

It is recorded that it is the intention of parties that the bid will be submitted in the name of the company, but, it is still not clear whether the parties are referring to either Blue Dot Properties 153 (Pty) Limited or Reliance Network or Reliance Investment Group (Pty) Limited.

### 3.3 ESTABLISHMENT OF COMPANY

Once again, reference is made to Blue Dot Properties 153 (Pty) Limited as the Company, instead of whichever trading name it chooses, which in itself, creates confusion in its documents and is in dire need of clarification by the bidder.

### 3.4 PRE-EMPTIVE RIGHTS

This clause fails to comply with the Invitation to Apply ("the ITA"), more specifically paragraph 1.5.3 of the Terms and Conditions of the ITA, insofar as it fails to make provision for ICASA to furnish its written consent to any change in the ownership structure of the Licensee, in particular the sale of shares to a third party, exceeding 5% in the aggregate of the issued shares of the company within 5 (five) years of the awarding of the bid or any capital increases resulting in a change of ownership exceeding 5% in the aggregate in the share of any of the owners within 5 (five) years of the award of the bid.

## 4 ARTICLES OF ASSOCIATION

No Articles of Association for Blue Dot Properties 153 (Pty) Limited, Reliable Investment Group (Pty) Limited nor Reliable Networks were seen as a copy thereof was not attached.

## 5 DECLARATIONS IN TERMS OF THE ITA

No copies of the statements and declarations required in terms of paragraph 4 of the Terms and Conditions of the ITA were attached for perusal to ensure compliance with the ITA. Does this mean, Reliance does not comply?

**6     STATUTORY COMPANY FORMS**

No copies of the Forms CM22, 27, 29 and 46 were provided to confirm the number of directors of the company and its other corporate particulars. The only Form provided was the CM9 which reflects the change of name from Tswanang Electronics (Pty) Limited, registration number 2001/010353/07, to Reliance Investment Group. Tswanang Electronics (Pty) Limited has not been mentioned any way in its submission prior to this document, in fact, this raises further uncertainty since the bidder held the bid out to be in the name of Blue Dot Properties 153 (Pty) Limited, trading as Reliance Network, and not Reliable Investment Group.

**Section - Marketing**

**"Reliance's pricing philosophy ... perceived value of call is no longer appropriate." Isn't that contrary to market trends, especially mobile which seems like is your benchmark, where the industry is moving towards value-based pricing – paying for what you used and the perceived value you attach to it, e.g. you pay more to access your stockbroker services as compared to university information service?**

**Section - Technical to include Environmental Impact**

- 1. Vision: the future is wireless ...there is a point where the operational costs of running a wireless network far outweigh the benefits and it becomes much cheaper to run a fixed network – be it copper or fiber. How do you accommodate the crossover?**
- 2. One cannot help but wonder whether this network solution was first designed as mobile/GSM network and as an after thought integrate fixed line technologies into it. That being the case, several European operator cases seem to suggest that it is easier to migrate a network from fixed to mobile. One major contributor**

to that being the fact that a mobile network is itself based on fixed backbone. How are you going to bug the trend?

3. Contradiction – “Reliance has not ... for different classes of users”, but yet earlier stated “1800MHz fixed mobile deployed for under-serviced areas ... And again advanced wireless technologies such as ... will give mass market ...”
4. Business Unit that links into and support VoIP of Under-serviced area licensees, Cost effective advanced copper networks xDSL technologies will surely deliver better quality, reliability and speeds than GPRS and 3G. Even wireless broadband technologies will outgun these technologies on these fronts except for mobility, which should not matter because of the fixed-mobility definition ascribed to by the law.
5. Using GPRS and 3G for Internet access limits users to small almost screens as seen on the preview of new handsets coming. To provide full access to the Internet will require 3G modems to allow PCs to be used with the faster network. How do you accommodate these new costs to both your network engineering costs and your distribution and entry barriers for the intended users?
6. As mass market broadband or Internet penetration is predicated on the commercialization of GPRS and UMTS, what are the expected timeframes for these technologies – from network infrastructure to devices and most importantly suitable applications? What is the sensitivity index of your business case visa vi these technologies being a reality?
7. *Having identified the wireless Internet as being that important to your content driven business case, how are going to breach the fact that the majority of information and Internet service provision is done by white companies?*

8. How practical is same pricing/tariffs for prepaid and contract users since prepaid users utilize more network resources (call management overheads, billing integration, etc) in call than contract users?
9. What is a circuit-packet switched infrastructure and how does that fit into the 3G environment?
10. With your network architecture heavily reliant on Telkom leased lines, how have you accommodated the possible bickering from Telkom, either by holding out or pricing you out, that may delay such implementation?
11. The implementation of a mobile VPN requires direct connect and direct billing relationships with mobile operators. With the majority of potential users of this service – corporates and companies as mentioned – already having *full mobile services* contracts with the incumbent MNO's what will the reason form them to churn from such to a *limited mbbility service* such as described by law – unless you are offering full mobile services? Have you address the need for such relationships and how that impacts on network design strategy to bring a fully converged fixed/mobile solution? There isn't mention of any strategic relationship with any of them.
12. Environmental impact: rapid deployment of broadband using wireless ..., how is that deployment 's environmental impact being addressed? Have you taken into account the environmental vigilance of communities, especially urban well-to-do communities who are the most probable consumers of such services?



### **5.4 Financial Capability & Analysis**

1. Assumptions of R210 per month per user for mobile services assumes a full mobile network – which the incumbents are struggling to achieve for all its subscribers. It is unrealistic. Even if you had a full mobility network, today 's mobile operators still derive most of their revenues from the two sources of access and connection charges, unlike fixed line where most revenues come from usages – usage has not increased high enough to compensate for your doing away with access charges.
2. Could we be given clarity as to whether financial capability and analysis has been protected by grant of Confidentiality as Reliance has not provided any details of the funding structure that it plans to use. In its bid document, Reliance only states that it will use a 50:50 debt to equity capital structure and that it will approach all potential debt funders in the market when it needs to raise the required funds.

### **Conclusion**

As clearly indicated, above, we could not make any comments on business strategies applicable for the intended licence, as the Reliance application is in our opinion an application for a mobile operator with an intended migration to 3G, in the first few years of operation.

It is our opinion that the Reliance application is in the main a replica of a third licence application previously submitted to SATRA, this application remains a public document. Extracts of the Third Licence Application vs Reliance Application.

1. Reliance page 70 – Market Segments, Verification Procedures,
2. Reliance page 71 – Research Conducted and Data Sources used in the

Market forecasting

Results of Reliance's Market Research

## 1. Nextcom section 5 page 66

Exhibit 5.29

## NextCom's Market Segments

Segment	LSM Group	Profile	Current Cellphone Penetration	Proxy of Cellular Uptake
Business	n/a	<ul style="list-style-type: none"> <li>&gt;95% urban</li> <li>c.95% employ &lt;50 people</li> </ul>	c.50%, of which c.90% contract	<ul style="list-style-type: none"> <li>Financial and business services employ c.8%</li> <li>70% of private enterprises are in informal sector</li> <li>Average business user spends R600/month on cellular</li> <li>Key business reason for using cellular is "contactability"</li> </ul>
Affluent	8	<ul style="list-style-type: none"> <li>80% urban</li> <li>80% white</li> <li>7% black</li> <li>8% coloured</li> <li>5% Indian</li> </ul>	30%, of which one third pre-paid	<ul style="list-style-type: none"> <li>34% use credit card</li> <li>99% have colour TV</li> <li>42% have home PC</li> <li>&gt;95% have Telkom line</li> <li>14% use Internet</li> </ul>
Aspiring	7	<ul style="list-style-type: none"> <li>80% urban</li> <li>37% white</li> <li>35% black</li> <li>20% coloured</li> <li>8% Indian</li> </ul>	24%, of which one third pre-paid	<ul style="list-style-type: none"> <li>5% use credit card</li> <li>12% have home PC</li> <li>92% have Telkom line</li> <li>91% have colour TV</li> </ul>
Mass Market	4-5-6	<ul style="list-style-type: none"> <li>86% black</li> <li>10% coloured</li> <li>40% rural</li> </ul>	2.5%, of which two thirds pre-paid	<ul style="list-style-type: none"> <li>Average household monthly income: c.R1750</li> <li>c.40% have bank account</li> <li>50% have colour TV</li> <li>34% have Telkom line</li> </ul>
Community Users	1-3	<ul style="list-style-type: none"> <li>96% black</li> <li>3% coloured</li> <li>91% rural</li> </ul>	<0.1%	<ul style="list-style-type: none"> <li>Average household monthly income: c.R800</li> <li>11% have bank account</li> <li>22% of households have TV</li> <li>&lt;1% have Telkom line</li> </ul>

Source: AMPS, Spectrum analysis, BMI-T

## Verification Procedures

Having arrived at these figures using the methodology described above, we conducted two "sanity checks" in parallel, to provide additional confidence that our market forecasts are as accurate as possible.

The first of these checks was a short-term "affordability" test. It measured the forecast gross additions against the ability of each income group to afford to buy and use a cellular telephone. We used our forecast breakdown of wealth distribution in South Africa and our forecast of handset prices and tariffs to verify that the level of disposable income can comfortably support the future growth of the cellular market. This test assured us that our market forecasts over the next

three years do not demand that new subscribers should spend more than a reasonable proportion of their discretionary monthly outgoings on the acquisition or usage of a cellphone.

The second of these sanity checks was a medium-to-long term international benchmarking exercise. Our projections for market growth were analysed in the light of international developments to identify where, on the current cellular development path (market penetration relative to GDP per capita, number of years of cellular service and number of competitors), South Africa is situated. We drew on international comparisons to establish a normative relationship between national wealth and cellular penetration, and then used this relationship to ensure that South Africa's long-term penetration – reaching 30% in 2013 – is in line with the country's forecast wealth. Similarly, we used international benchmarks of the performance other third cellular operators in Europe and elsewhere to refine our projections for NextCom's market share in its first few years.

### **Research Conducted and Data Sources used in the Market Forecasting**

To understand the characteristics of the South African market and to ensure that the requirements of individual purchasers (personal and business users) and company sectors were fully addressed, NextCom commissioned a comprehensive series of market research studies. These consisted of quantitative market surveys and qualitative face-to-face interviews and focus groups. The observations and assumptions derived from this data have been incorporated into the business plan and form an integral part of the NextCom strategy. Appendix 5.4 provides details of the results of this market research.

The surveys were designed to identify a variety of issues:

- Awareness, penetration and demand for cellular services.
- Customer satisfaction with existing cellular services.
- The factors that prevent or encourage subscription to cellular
- Existing usage patterns of cellular services in South Africa.

Reliance Page 44 refere : Market Study and Strategy Planning (Q18.7.1)

Nextcom's Page Section 5, page 63 refers –

### ***5.2.1 Methodology and Analytical Framework for Market Forecasting***

#### **NextCom's Approach to Market Forecasting**

The accuracy of our forecasts for overall market size and our own market share underpins all of NextCom's commercial and financial plans, and we believe our approach to these forecasts is exceptionally well grounded and thorough. We utilise a wide range of distinct methodologies which combine in-depth knowledge of the South African market with a familiarity with cellular markets world-wide, as well as a strong vision for the long-term future of cellular telecommunications.

**At the heart of NextCom's strategic and business plans is a dynamic market model which forecasts the growth of the cellular communications market in South Africa, demand by different customer segments for different services, and our forecast market share under a number of scenarios.**

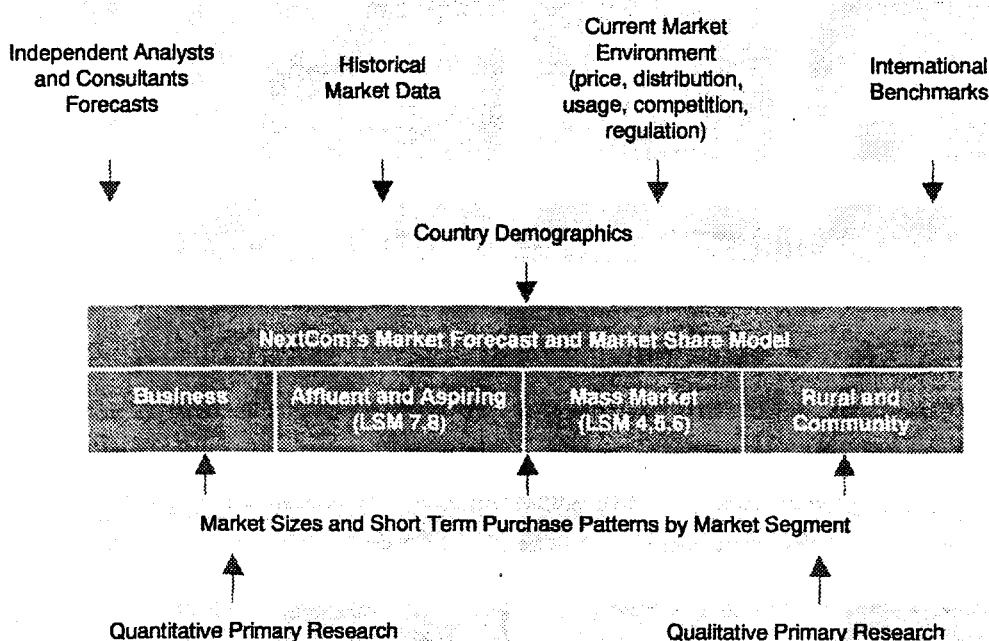
**NextCom has adopted a two-tiered approach to developing this demand model. Firstly, a bottom-up model was developed to assess demand by market**

segment. This model, based on extensive market research of users and non-users of cellular, identified the drivers and barriers to uptake and usage and determined the propensity of different segments to subscribe to cellular at different prices.

This analysis was then mapped against a top-down model of the market. This was based on the following: historical trends in the South African cellular market; analysis of today's market in terms of pricing, services, usage and distribution; identification of the key drivers of market growth; macro-economic and demographic forecasts; published market forecasts from a range of sources e.g. BMI-Tech Knowledge, Baskerville Communications, Global Mobile; analysis of international precedents; analysis of the impact of competition and regulation; and assessment of the impact of the development of the Information Age on the way that ordinary South Africans will use telecommunications.

Exhibit 5.28

## NextCom's Analytical Framework for Market Forecasting



The actual projections for market size and share are discussed in Sections 5.2.3 and 5.2.6 below and the detailed results of these analyses are described later in the chapter.

This section concentrates on the demand forecasting process, verification procedures and data sources.

Attached examples lead us to either question the ITA requirements or Reliance's understanding of it or the understanding of this opportunity, if they felt a need to duplicate more than 50% of another applicants document from the Third Licence application.

**UMSINGIZANE DZI THINGO****Section – Shareholders Interest****SHAREHOLDERS' AGREEMENT****a. PARTIES**

1.1.1 The parties recorded on the face of the Shareholders' Agreement indicate that their names will be changed to some other name in the future, provided that the Registrar of Companies agrees to the same. In this instance it would appear strange practice to use names in the shareholders agreement which have not been registered neither has a condition precedent been included in the shareholders agreement to address such issue appropriately. It is unprecedented and contrary to best practice that the parties used the names of companies that have not been legally registered yet.

1.1.2 It is appears from the share certificates that the shares have been allocated to the applicant companies in their original names whilst these companies have been referred to in the shareholders agreement in their proposed names. It is reasonably probable that the Registrar of Companies will reject the suggested names, in which case it will mean that an allocation of the shares was made to an entity which in law does not exist, which will potentially render the Shareholders' Agreement materially defective.

1.1.3 It is evident that as a result of the above uncertainty it will certainly prejudice ICASA due to

the fact that it will not be able to reasonably ascertain the identity of the applicant to whom it has made an award.

1.1.4 In addition to the foregoing, no proof has been submitted to demonstrate that the proposed names has been reserved by providing copies of the Form CM5.

## 1.2 TRANSFER OF SHARES

The instant clause 15 of the Shareholders' Agreement fails to comply with the ITA, more specifically paragraph 1.5.3 of the Terms and Conditions of the ITA insofar as it fails to make provision for ICASA to furnish its written consent to any change in the ownership structure of the Licensee, in particular the sale of shares to a third party, exceeding 5% in the aggregate of the issued shares of the company within 5 (five) years of the award or any capital increases resulting in a change of ownership exceeding 5% in the aggregate in the share of any of the owners within 5 (five) years of the award.

## 2 DECLARATIONS IN TERMS OF THE ITA

No copies of the statements and declarations required in terms of paragraph 4 of the Terms and Conditions of the ITA were attached for perusal to ensure compliance with the ITA.

## 3 SARS TAX CLEARANCE CERTIFICATES

Copies of the SARS Tax Clearance Certificates for the company's institutional investors were not attached for perusal and verification that the same exists.



**Section - Marketing**

Umsingizane does not favour price discounts 'at all costs' as a switching strategy as they believe this will be easily matched by Telkom, but they go on to say that price will be initially used to lure customers away from Telkom. Can they please explain how the latter will be achieved when Telkom matches the SNO's prices?

In light of the above are any of their market projections (eg. 'capture 10% of the large companies, corporate markets...by end of year 2), realistic or even attainable?

What specifically in 'Service Level Agreements' or 'high service levels' will be attractive to switching customers to the Umsingizane SNO or are we required to fantasize?

**Section - Financial Capability & Analysis**

The criteria used in analysing the financial structuring method put forward below are:

- the feasibility and practicality of the financing mechanism proposed; and
- the validity or the nature of the commitments of the financiers referred to in bid documents.

Umsingizane claims to have obtained a pledge from Avalanche/Nexus and the IDC to jointly provide funding of R1 billion. The letters provided by Umsingizane are not commitments, but merely expressions of interest. Umsingizane suggests that funding will be repaid from its own funds, which will be generated from 'other' activities and not from dividends. These 'other' activities are mainly services provided to the SNO, which Umsingizane believes can be a conditional agreement with the SNO attached to the licence. These services include consulting services, training services, technical support, procurement, etc, which will all be compulsorily outsourced to Umsingizane. Umsingizane believes that these services will generate income of R255 million and will enable it to repay the loan at R87.5 million a year. This assumption appears to be unrealistic and impractical. Other issues are outlined below.

- Details of the financing structure and the utilisation of funds are unclear.

- Prevention of the potential dilution of BEE shareholders is not outlined.
- It is unrealistic to expect the SNO to outsource such critical functions as procurement to a third party and incur such large costs (R 2 billion per year in the first 4 years).

3) **Buatel**

3.1. Have you been able to quantify the digital divide strategy, with respect to:

- 3.1.1. Impact in terms number of target candidates affected?
- 3.1.2. Cost to the SNO/BEE Consortium?
- 3.1.3. What are Buatel's implementation plans with respect to the Digital Divide strategy?

3.2. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of **all direct and indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

- 3.2.1. Page 30 to 33 details the direct ownership of the applicant. This however only accounts for 86.8% of the applicant. Please indicate how the remaining 13.2% is allocated?
- 3.2.2. Isidleke Technologies (9.5%)
- 3.2.3. Kwazulu Natal Consortium 5.8%
- 3.2.4. African Technology Holdings 6.3%

3.3. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial

instruments that have this potential dilutory effect?

- 3.4. Can Buatel provide a quantification of its Business Plan. The information provided is merely a framework/guideline for business planning. Please provide details of:
  - 3.4.1. SA Telecomms market by customer and product segment
  - 3.4.2. Market share and revenue forecasts
  - 3.4.3. Capital and Operational Expenditure, basis for these costs
- 3.5. The section concerning "Financial Ability" makes reference to a US\$340m guarantee provided by an external party.
  - 3.5.1. What is the cost to Buatel, if any, for this guarantee?
  - 3.5.2. What security, if any, has Buatel provided in exchange for this guarantee?
- 3.6. Given that the debt is being raised in foreign currency (US\$), how have Buatel hedged their debt against currency volatility?

#### 4) **Reliance Networks**

4.1. Have you been able to quantify the digital divide strategy, with respect to:

4.1.1. Impact in terms number of target candidates affected?

4.1.2. Cost to the SNO/BEE Consortium?

4.1.3. What are Reliance's implementation plans with respect to the Digital Divide strategy?

4.2. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of **all direct and indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

- 4.2.1. Reliance Investment Group
- 4.2.2. Muvoni Investment Holding
- 4.2.3. Youth in Telecoms Trust
- 4.2.4. Telecoms Education Trust
- 4.2.5. Free State Women Investment Group
- 4.2.6. Bophirima Industrial Holding
- 4.2.7. Limpopo Telecoms Consortium
- 4.2.8. Lesedi Thutho Corporate Training
- 4.2.9. South Cape Empowerment Network
- 4.2.10. Yakhani Holdings
- 4.2.11. Biz Africa 1638
- 4.2.12. Bokone Investments
- 4.2.13. Seramotswa
- 4.2.14. Nehawa Financial Services (Milestone)
- 4.2.15. Malibongwe
- 4.2.16. Regional Fields Service Centres (Owl Eye)
- 4.2.17. Umnotho Wesizwe Investment Holdings
- 4.2.18. Philelana Holdings
- 4.2.19. Sakhasive Developments
- 4.2.20. Umthi Enterprise

- 4.3. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial instruments that have this potential dilutory effect?
- 4.4. Please disclose the consolidated % ownership in terms of race and gender for Reliance Networks?
- 4.5. Pg 33 of the Reliance application document refers to details of its management, however these details have been omitted. Could Reliance please disclose its:
- 4.5.1. "corporate management and organizational structure"
- 4.5.2. "directors, senior officers, members, partners, trustees"
- 4.6. What is the basis for the costs per subscriber for the access network?

5) **Gondwana Telecommunications**

- 5.1. Have you been able to quantify the digital divide strategy, with respect to:
  - 5.1.1. Impact in terms number of target candidates affected?
  - 5.1.2. Cost to the SNO/BEE Consortium?
  - 5.1.3. What are Gondwana's implementation plans with respect to the Digital Divide strategy?
- 5.2. Section of the applications make reference to an "empowerment bond" as the preferred funding mechanism? Does Gondwana believe that this instrument will be attractive to institutional investors who would otherwise be able to secure a call option on the TNT index (for R160m) without risking the advance of R3.2bn or the potential 10% (R320m) leakage on redemption.
- 5.3. What is rationale for raising the finance with a medium term instrument (5-7 years), given that this instrument would require Gondwana to raise approximately twice the funding requirement?
- 5.4. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of **all direct and indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

- 5.4.1. Talkeazy
- 5.4.2. Future Indefinite Investments 49
- 5.4.3. Siyalinga Communications

- 
- 5.5. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial instruments that have this potential dilutory effect?
- 5.6. Please disclose the % ownership in terms of race and gender?
- 5.7. What is the rationale for the 'functional' organisation structure designed for the SNO?
- 5.8. Where have Gondwana included the cost of the access network? What are these costs?
- 5.9. Gondwana's application details entities that don't hold equity in Gondwana. Please disclose the nature of Gondwana's relationship with these entities?



6) **Umsinginzane Dzi Thingo**

- 6.1. Have you been able to quantify the digital divide strategy, with respect to:
- 6.1.1. Impact in terms number of target candidates affected?
- 6.1.2. Cost to the SNO/BEE Consortium?
- 6.1.3. What are UDT's implementation plans with respect to the Digital Divide strategy?
- 1.10. Section 2.4 on page 29 of the ITA, states that applicants must: "Provide a **complete and detailed** description of **all direct and Indirect** ownership interests in the Applicant". In this regard, details of the ultimate shareholders and in the case of trusts, beneficiaries, are required. In the event that any of these shareholders are in turn owned by other corporate entities, please disclose the individuals who will have this indirect shareholding ("ultimate shareholders"). In addition please specify which of these shareholders are Historically Disadvantaged Individuals (HDI).

In this regard, please address the above concerns and questions for the following entities:

- 6.1.4. Vhafumakadzi Vha Dzi Thingo (Pty) Ltd
- 6.1.5. ICT SMMES holds 10%. Please disclose the % holding of each shareholder. Also disclose the shareholders of these shareholding entities?
- 6.2. It is of great concern that funding institutions and traditional non-BEE partners participate in "BEE vehicles" via a range of financial instruments such as convertible debentures, N-shares, preference shares etc. The substance is that the share of economic rewards disproportionately accrues to the non-BEE partner. The strategic nature of the SNO means that it is imperative that this type of participation is strictly guarded against. Please indicate which of the entities holding the shares in the applicant are funded through financial instruments that have this potential dilutory effect?

- 6.3. What is the basis of the funding requirement calculation?
- 6.4. Why does UDT's application document detract from the format prescribed in the ITA? (especially with regards to numbering)
- 6.5. It is evident that some of the shares in UDT's Special Purpose Vehicles (SPV's) are unallocated. What controls have UDT instituted to ensure that the allocation of these shares will be principled and aligned to the ITA requirements?
- 6.6. UDT have assumed a Debt to Equity ratio of 80:20 at the UDT level. What is the ability of the UDT shareholder to raise 20% of UDT's funding requirements?
- 6.7. UDT have assumed a Debt to Equity ratio of 80:20 at the SNO level.
  - 6.7.1. What is the basis of this assumption?
  - 6.7.2. How will this impact the dividend flow to shareholders, given the larger interest burden for the SNO?
  - 6.7.3. How does the risk of interest rate fluctuations affect the SNO's financial viability?
- 6.8. Have UDT made a contingency for further funding given that the SNO will not be in a position to distribute dividends in the medium-term?
- 6.9. Please clarify publicly that the "Black Investor" Avalanche/Nexus is wholly independent from competing BEE applicant, Nexus Connexion.
- 6.10. In Section 5.4. UDT make reference to additional revenue streams that will be generated through the provision of various professional services
  - 6.10.1. What is UDT's competence and track record in providing these services?
  - 6.10.2. What capacity does UDT have to provide these services?
  - 6.10.3. How much value will be eroded in the SNO vs. case in which provision of the above

services are costed at market determined rates?

6.10.4. How does UDT justify the costs associated with providing these services?

6.11. Given that the servicing of the debt is dependent in part on the revenue streams highlighted in 6.11. above, what is the risk that the Onetel may fail to service its debt? What safety mechanisms have Onetel considered to counter this risk?

## **C Comments by Umsingizane Dzl Thingo**

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Reg. No. 2001/025744/07

SNO Project Leader  
Siyabonga Madyibi  
ICASA

Dear Sir,

We would like to thank you for giving us the opportunity to make representations on the submissions on the applications for the 19% equity stake in the Second National Operator (SNO). We have reviewed the Invitation To Apply, issued by the Minister and would like to request clarification on the following:

Amongst compliance requirements of the ITA, were  
payment of a bidding fee of R75 000 with a bank Guaranteed cheque,  
every page of the submission shall be signed by the representative of the consortium  
the main document had a page number limit of 200 pages  
there was a requirement to submit tax certificates by the applicant and its subsidiaries.  
These stipulations are carried in several sections of the ITA. We note that there was failure to meet these conditions by some of the applicants.

We note that one consortium submits as part of its bid, statistics and skill sets of both the BITF and the SACF. We would like to bring to ICASA's attention the fact that several other consortia members are members (even founder members) of these forums and believe that no single applicant shall exclusively benefit from these skill sets. The BMF is also another open forum, which will be approached by any winning consortium. We acknowledge the investment companies' and trusts' right to participate in any consortium of choice, but wish to differentiate this from access to skills.

We note that Mr. Sango Ntsaluba is a director at Nexus Connexion. Mr. Ntsaluba He later moved on to another portfolio within the same group, and in March 2002 we read about him being investigated and suspended from the Transnet board. Without being personal, we would like to get clarification as to whether this is not a clear conflict of interest on his part. He was for several years director of Transtel in the Transnet group.

The BBC (Black Business Council) when approached to participate in one consortium suggested that it would not compete with any of its membership base, and had therefore not allowed any consortium to use it in its bid. We would like to get clarification as to whether there is a mandate from the BBC to be included in that bid.

Thanking you in anticipation.

Kind regards,

Xoliswa Kakana

#### **D      Anonymous comment on Aruna Telecomms**

In numerous transactions intended to empower the Cosatu union members, the management of Kopano Ke Matla, generally understood to be M Syndicate (PTY) Ltd. Led by T Motsistsi, F Mahlati and M Maisela, ended up participating directly in the transactions.

- 1.1    What is Kopano ke Matla's record in empowering the COSATU organization's union members?
- 1.2    Who are the directors of Kopano ke Matla?
- 1.3    Who are the beneficial shareholders of Kopano ke Matla?

**E Comments by Transtel and Eskom Enterprises**

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**Mr Siyabonga Madyibi**  
SNO Project Director,  
ICASA  
Private Bag X10002

**By Hand**

30 May 2002

Dear Siyabonga Madyibi

**COMMENTS ON BEE BIDS FOR EQUITY STAKE IN SECOND NATIONAL OPERATOR**

Pursuant to General Notice No. 766, Transtel and Eskom Enterprises do hereby thank you and ICASA for this opportunity to provide you with our joint written submission on the Black Economic Empowerment bids for an equity stake in the Second National Operator ("SNO").

Collectively, Eskom Enterprises and Transtel have reviewed the bids. As such, we look forward to the evaluation process and its outcome. We stand ready to assist the process in any way as determined by ICASA.

We would like to emphasise that, in the event that any BEE bidders wish to discuss with us any aspect of their bids that relied on information presented by Transtel and Eskom Enterprises, we would appreciate such request coming via the SNO Project Leader's office. To this end, such a manner of communication will ensure the integrity of the evaluation process.

We wish ICASA well in the adjudication process and together we say, "may the best bidder win".

Yours sincerely,

Mothibi RamusiFatima Jakoet