

Report of the Portfolio Committee on Small Business Development on the Petition from Independent Field Technicians Regarding Contractual Disagreement with Telkom Openserve - Referred to the Portfolio Committee by the Speaker of Parliament for Consideration, Dated 09 November 2022.

The Portfolio Committee on Small Business Department (the "Committee"), having considered the Petition against Telkom Openserve from the Directors of Sundane Projects, Mzansi Broadband, ACCS Telecoms, and Folo Electricals with reference to contractual disputes and allegations of corporate bullying referred to the Portfolio Committee on Small Business Development by the Speaker of the National Assembly for consideration, reports as follows –

1. INTRODUCTION

The Portfolio Committee on Small Business Development received a referral (the "Petition") from the Speaker of the National Assembly in accordance with section 17 of the Constitution and clause 350 (b) of the rules of the National Assembly for deliberation and possible mediation between the Independent Field Technicians and Telkom Openserve, hereinafter referred to as the "Parties". In terms of the Petition before the Committee, the Independent Field Technicians ("IFTs") are alleging that Telkom Openserve, a wholly owned subsidiary of the Telkom Group, acted in bad faith by failing to honour and perform its obligations in accordance with the provisions as set out in the contract entered into by the Parties. As a matter of course, upon receiving the Petition, the Committee invited the IFT companies to clarify the nature of their grievances for the Committee to determine whether or not the matters were arbitrable given its limited powers.

Throughout its engagements with the Parties, the Committee constantly ensured that it safeguards the principle of audi alteram partem. The invitation to Telkom Openserve was accordingly extended to allow the organisation to state its side of the story and possible remedial measures it plans to implement to solve the impasse. A public petition is usually a last resort to seeking relief. It is nonetheless an effective way of promoting public involvement and participation, especially on matters that seek to shape policy discourse. The Committee had noted from the inception when it started reflecting on the matter that the issues were complex, confidential in nature, and given its limited authority – the realistic armory at its disposal would be to use the art of persuasion while comprehensive policy and legislative mechanisms are still being considered by the government.

It is imperative to further note that during the fifth Parliament, the Committee had held several sessions with small businesses following numerous complaints from the sector ranging from allegations of corporate bullying, non-payment of services rendered, price discrimination, unfair terms of trade, red tape to deliberate supply chain bullying often used by big conglomerates to stamp out competition. Many of the complaints received during the fifth Parliament had been levelled, in the most, against companies in the telecommunications sector such as Huwaei, Vodacom, Mobile Telephone Network ("MTN"), Telkom SOC Limited, and others, particularly at how they treated their subcontractors. The Committee had then concluded that the practice was widespread to the degree that it saw it appropriate to adopt a resolution to pursue legislative response. There was consequently a Private Members Bill ("PMB") sponsored by then Member of Parliament Honourable Toby Chance, Small Enterprises Ombud Service Bill, which was vetoed by the Portfolio Committee in favour of a Committee Bill.

Fast-forward to the sixth Parliament, the Committee continues to receive complaints relating to unethical behavior of big businesses, and public sector conduct, especially in the area of supply chain management and disputes between small enterprises themselves. With the small enterprise sector projected to create more than 11 million jobs by 2030, a favourable environment must be created for that goal to be achieved. The Committee remains of the view that pursuance of lawsuits to resolve disputes can be costly and require mechanisms that are accessible and affordable to small business concerns. Commercial disputes suppress the sector's vibrancy and ability to create jobs. Messy and drawn-out litigations stifle growth, drain resources and require experience that most small businesses do not have. The importance of putting in place a dedicated dispute resolution mechanism cannot, therefore, be overemphasised. Even though the dispute between Telkom Openserve and IFT companies had correctly been referred to the Committee, however, it must be noted that the Committee had to confine itself to the

procedures for dealing with Petitions as set out in the rules of the National Assembly and the National Council of Provinces.

2. BACKGROUND

In 2015, the Telkom Group created the Independent Field Technicians programme out of skilled workers who had either resigned, retrenched, or taken early retirement with a promise of assistance to set up small businesses for subcontracting by the telecoms giant. The programme intended to offer support to the IFTs with the medium-term objective of seeing them graduate from the programme in 2020. At the inception, a total of 33 IFT enterprises participated in the incubation programme. As of the financial year 2022, 31 IFT companies have active commodity contracts. The contracts were renewed to February 2023 and IFTs are still providing service to Telkom Openserve. In the initial stage of the dispute, there was an original 11 IFT companies, as shown in table 1 below, that enquired with the Department of Small Business Development ("DSBD") and later with Parliament.

Table 1: Original IFT Companies in Dispute

IFT COMPANIES	RETRACTED FROM THE DISPUTE	ACTIVE IN DISPUTE
Callmaster	X	
Fibre to the Ground	X	
Folo Electrical		X
Highness Trading	X	
Mzansi Broadband		X
NZST	X	
Rams Smith	X	
Thobela Communications		X
Vintage Drakensberg	X	
Sudane		X
ACCS	X	

Source: Telkom/Openserve Report to Parliament (2022)

However, following the engagements, some of the IFT companies withdrew from the Petition as a result that they were content with changes that were satisfactory and would continue operating under the terms of the revised contract. Of the 11 IFT companies, seven (7) pulled out while the four (4) are still aggrieved and pursuing the dispute. In terms of the information relayed to the Committee was that, all four IFT companies are still active in providing services on the commodity contract and have also consented to their contracts being renewed for a further period ending February 2023. This was confirmed to the Committee in writing by Telkom Openserve. However, upon further engagements with IFT companies, the Committee learnt that there are actually just three active companies out of the four. Sudane is no longer operational and has never received any contract or agreed to a contract extension through February 2023. According to Ms. Smith, Sudane was not able to continue owing to a lack of resources and funding. During its preliminary deliberations regarding this matter, the extension of contracts was one of the outcomes that the Committee had sought to achieve to create an atmosphere where IFT companies may recover their operations and recoup lost revenues.

2.1 MAIN REASON FOR DISPUTE

From the Committee's valuation of the issues based on the presentations received from both parties, the main source of the dispute seems to have been Telkom Openserve's unilateral decision in 2017 to introduce a new contract structure, modifications, and business rules when IFT companies were renewing contracts. According to Telkom Openserve, the reason for the amendment was due to - cost leakage, the requirement to improve technician behaviour to align operational behaviour, an improvement on workmanship, and minimise repeats. The amendments made included -

- First Failure rate ("FFR") days to 30 days;
- Non-payables on repeats;
- Service Level Agreement ("SLA") penalties including Net Promoter Score ("NPS").

The Aggrieved IFT companies were not pleased with the new business rules introduced in the contract and disputed the changes made. In response to the disagreement, further amendments were made to the contract to ease and provide support to the IFT companies which included -

- Telkom Openseve waiving FTTH FFR ("First Failure Rate") penalties levied to service providers for FTTH Voice;
- Telkom Openseve wrote off all outstanding SLA penalties and stopped the enforcement of SLAs as well as the FFR penalties up to 01 March 2019;
- The 2020 contract terms were amended to reduce RRR days from 30 to 14 days and FFR from 30 to 7 days as of 1 December 2020;
- The 2021 amended RRR days from 14 to 7 days with effect from 01 February 2022.

According to Telkom Openseve, despite all those efforts, resolution could not be reached with the companies. They insisted to be paid for all non-payment claims submitted and did not consider the contract terms and pricing philosophy.

The IFT companies asserted in their submissions that repeats are completely different and not as a consequent of Technician's behavior or the result of poor workmanship as alleged by Telkom Openseve. But rather a poor network infrastructure due to corroded underground cable, which renders the network prone to faults. Most of these flaws were beyond the Technician's control. The penalties are being waived not because of poor workmanship, but because of an entirely separate issue or factors outside the Technician's control. No number of days should be attached to any warranty installation or repair if it is not related to the original performance. The amendments they referring to are current and not addressing the issues of the past or the Petition. Therefore, the IFT companies insisted to be paid for all non-payment claims submitted because they had been wrongfully fined for a service rent that Telkom Openseve had solidly proofed. Their contract provisions are in conflict with contractual law.

3. SUMMARY OF THE COMMITTEE MEETINGS IN RELATION TO THE PETITION

Since the matter was referred to the Committee by the Speaker of Parliament, the Committee has had four (4) separate meetings as follows -

3.1 Presentation by Independent Field Technicians

The inaugural meeting in relation to the Petition was held on 16 February 2022. In that meeting, Honourable Kruger, the sponsor of the Petition, made some introductory remarks. He said the case of the IFT's experience with Telkom Openseve has been on the agenda for quite some time. He contended that what the Committee was about to deal with was a classic case of big business bullying small businesses. He informed members of the Committee that the Department had failed small businesses by not completing the National Small Enterprise Amendment Bill wherein provisions on dispute resolution mechanism had been incorporated. Mr. Kruger was critical and lamented the Department's lacklustre performance in tackling legislation that affected small businesses. In attendance, were IFT directors who made introductory remarks and apprised the Committee how Telkom Openseve had deliberately dragged the matter.

Ms. Evelyn Smith, Director of Sudane Projects and Services, led the IFT presentation. She commended Telkom Openseve for having started a Black Economic Empowerment ("BEE") initiative to prop up small businesses by entering into contractual relationships with IFTs who were drawn largely from the unemployed and the previously disadvantaged. Ms. Smith charged that their challenges began when Telkom Openseve took autonomous decisions without involving IFT companies. For instance, there were negotiations with car rental companies on their behalf without them being involved in that process. She claimed that that was done under duress with most IFT companies left in a position where opting out would have led to contracts being terminated. IFT companies maintained that they could have leased vehicles for half the price that Telkom Openseve was charging them.

Furthermore, some of the criticisms levelled against Telkom Openseve were that the company had decided to discontinue paying invoices within seven (7) as per the initial agreement and changed to one month – the repeat fault prices were changed, there was no call-out fee when fixing the line and using own material. Some of the cables were lying in the water, on manholes, and this, they argued, magnified the number of faults reported. Some of the inadequacies of the programme were that Telkom Openseve

was only sponsoring tools for half the technicians of a company, implying that, IFT companies had to acquire their tools. In her particular case, through no error on her part, Telkom Openseve had a problem issuing a vendor number to her, she only received work three weeks after the start date yet was still liable for leasing costs for the full month. The work she received was adequate for the first few months but then began dropping, while she was still responsible for leasing and paying other related costs.

The second presenter, Mr. Darian Sithi of ACSS Telecommunications, narrated his displeasure and experience with Telkom Openseve. He said that contract amendments left him without a house, and had to downgrade his vehicle because Telkom Openseve had operated in bad faith. He said that Telkom Openseve's permanent staff were flooded with work but the IFTs were unilaterally and without mutual consultation left in the wilderness. The third and final presenter of the IFT delegation, Mr. Johnny Makgatla of Mzansi Broadband, commented that he had looked at the BEE project as once in a lifetime opportunity to emancipate his business as they were made to believe that they would be getting a guaranteed amount of work over an extended period. However, after the Telkom Openseve backlog was cleared, the IFTs received fewer and fewer assignments and the prices they received for the work done were at the same time gradually reduced.

He told the Committee that the decision to decrease workload and reduction in prices had separately been taken without considering their cash-flows positions, fixed-term contracts, and legal obligations such as leases, car hire, etc. In conclusion, Ms. Smith said that in 2017, there were changes to the Service Level Agreement ("SLA"), and in their assessment, this was when teething problems began. The effects of the changes were that part of Telkom Openseve's costs and risks were shifted onto the IFTs, and prices they were receiving for work were reduced with negative impacts on their cash flows. The Independent Field Technicians had then, collectively, registered their difficulties with Telkom Openseve in line with provisions of the contract on dispute resolution. But only cosmetic changes were effected to the revised contracts. The Committee then resolved that Telkom Openseve needed to be given the right reply. A follow up meeting was therefore scheduled.

3.2 Presentation by Telkom Openseve

The second meeting took place on 30 March 2022 via a virtual platform to listen to Telkom Openseve's explanation of its contractual dispute with Independent Field Technicians. Mr. Phindile Dyani, Executive: Government Relations, led Telkom Openseve delegation. He thanked the Committee for allowing the organisation to make a presentation concerning the IFT programme. In his introductory remarks, he informed the Committee that during the fifth Parliament, Telkom SOC Limited had visited the Committee and elaborated extensively on details of the company's engagement with SMMEs and the concept thereof. In briefing the Committee, Mr. Dyani outlined Telkom's company profile and the role each subsidiary plays in fulfilling broader Telkom's Group mandate. He said that Telkom Group had transformed from its old telephonic company to a new, fully digital company that generates approximately R40 billion in revenue and has more than 12 000 employees.

In addition, he said that through its subsidiary, Openseve, Telkom runs the largest fibre in South Africa, expanding more than 50 000 kilometers. Ms. Mmathebe Zvobwo, Telkom Executive: Enterprise and Supplier Development (FutureMakers), provided an outline of Telkom's shared value as well as the Telkom Group's investment in FutureMakers. She highlighted that FutureMakers had generated at least R1 billion in revenue. The operational details of FutureMakers's Independent Field Technicians Programme were provided to the Committee. The key objective of the programme is to foster inclusive participation of black-owned Information and Communications Technology ("ICT") small businesses within Telkom Group's supply chain. The background to contract implementation was provided. The contract negotiations in respect of the contract in a dispute started in May 2017 and concluded on 1 September 2017 and all service providers were re-briefed in a roadshow in December 2017.

However, the Committee acknowledged in this meeting that indeed, Telkom Openseve had not been part of the initial meeting with IFT companies wherein a number of accusations had been levelled against the organisation. There was an overriding sense of displeasure from members of the Committee who felt that Telkom Openseve might have consciously evaded responding to issues raised by IFTs in the Petition. Members of the Committee charged that it was common cause that the main purpose of the engagement

was to tackle the Petition before it. There was therefore a consensus from all participants that the subject matter needed to be explored further and suggested another meeting in which both the IFTs and Telkom Openserve would be invited so that the Committee could have more time to listen to both sides. Without casting aspersions, the Committee pleaded with Telkom Openserve delegation to find an amicable and rational solution for both the company and its service providers. The Chairperson of the Committee concluded the meeting by calling for the organisation to facilitate the inquiry with the aggrieved IFT companies and utilise all its internal resources and mechanisms to find a win-win solution to the deadlock.

3.3 Summary of Progress Report: Telkom Openserve and Independent Field Technicians

The third meeting as regards the Petition was held on 18 May 2022. The Telkom delegation was led by Dr. Siyabonga Mahlangu, Telkom Group Executive: Regulatory Affairs and Government Relations. The meeting was characterised by cordial and pleasantries exchanges with Dr. Mahlangu giving assurance to the Committee that following the meeting of 30 March 2022, the Telkom Openserve delegation had gone back to the drawing board and constituted a committee known as the Supplier Compliance Management Council ("SCMC") as an escalation channel to process the complaints received by the Committee from the IFTs. This council consisted of different professionals who sit together and deal with these matters on an individual basis. The established council was outside of the normal Telkom Openserve structures, established specifically to resolve such supplier disputes. He invited the SCMC Chairperson to present on behalf of the organization.

Mr. Shawn Botes, Chief Regional Officer at Telkom Openserve, outlined the six key matters that have been resolved. He indicated that the mechanism that has been put in place specifically to address this matter seemed to be yielding positive results. However, he humbly requested that the process be given more time to resolve the remaining sticky issues. The Committee was receptive to Telkom Openserve's approach to solving the disputes. However, the IFTs who had also been invited to this meeting were not entirely happy with the proposed course of action. According to Ms. Smith who responded on behalf of the IFT companies, Telkom Openserve fell short of addressing the core issues that gave rise to the Petition. The organisation's presentation, she argued, was centred on the present, discussing neither the past nor the Petition. The IFT companies present in the meeting described Telkom Openserve's behaviour as contemptuous and straying away from addressing fundamental issues of concerns to the IFT companies.

The Committee reminded the meeting that negotiations by their very nature are a difficult and uncomfortable process of give and take. Hence the meeting resolved that it was not unreasonable to give Telkom Openserve additional time to engage IFTs to crack the remaining matters. The Committee undertook to hold a separate meeting with the IFT companies to gain insight and obtain concrete facts and evidence concerning outstanding areas of concern. The IFTs were encouraged to continue engaging with Telkom Openserve to find an amicable solution.

3.4 Concluding Session

The last meeting of the Committee with respect to the Petition took place on 7 September 2022. It is a deadline the Committee had set itself to consider, finalise and prepare a report to the Speaker of Parliament. In this meeting, Mr. Phindile Dyani - Telkom Executive: Government Relations, led Telkom Openserve delegation. He thanked the Committee for the work it has done in facilitating meetings with aggrieved IFT companies especially the guidance and leadership demonstrated throughout the mediation process. Also in attendance were three representatives from IFT companies that had resolved to participate in the SCMC.

3.4.1 Final Submission by Telkom Openserve

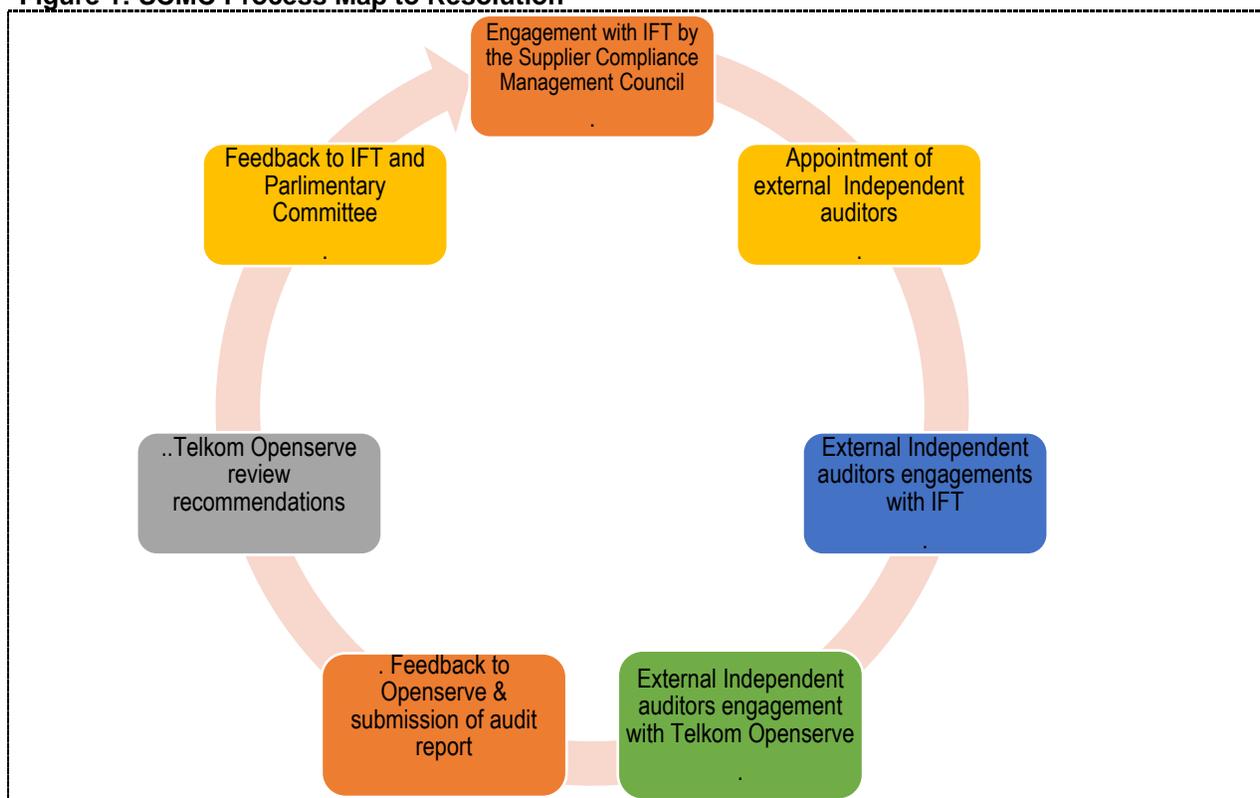
The Committee heard that the SCMC had invited four of the remaining 11 Aggrieved IFT companies on 29 June 2022 to present their dispute to the council for resolution, and for the outcomes, to be reported back to the Committee. The Council was given until 7 September 2022 to find a resolution with the IFTs and aimed to comprehensively report back to the Committee by the afforded time. An extensive scientific study had been conducted to understand the facts around the matter and what had gone right or wrong with the IFTs. As a result, part of the report presented in the meeting was undertaken by Independent

Auditors to give Telkom Openseve and its shareholders adequate information about what transpired and what solutions can be undertaken as recommended by the auditors.

The SCMC, with the aim to satisfy the Committee directives in the previous meetings, collaborated and had engagements on the best approach possible to remedy the stalemate. The SCMC objective was to find an amicable resolution for Openseve and aggrieved IFT companies, report back and close off the dispute. The period of focus was limited to September 2017 when the contract was introduced to September 2020 when further amendments were made to the contract. Based on review and engagements with the IFT companies, the following recommendation and actions were taken by the Supplier Compliance Management Council:

- Appointment of external independent auditors to work on the files for the 3 IFT companies with two weeks to complete the exercise;
- The IFTs were to present the files to the external independent auditors;
- IFTs would be held to the contract as a binding agreement to the relationship between Telkom Openseve and IFT companies, it will be important for the auditors to ensure the compliance of the contract;
- The SCMC would review the recommendations based on audit finding and report back;
- Propose a way forward for resolution and present to Parliamentary committee on 7 September 2022 and implement proposed resolution.

Figure 1: SCMC Process Map to Resolution



Source: Telkom Openseve Report to Parliament (2022)

3.4.1.1 Engagement with IFT by Supplier Compliance Management Council

Figure 1 hereinabove provides a blow-by-blow illustration of what steps the SCMC undertook to amicably resolve the dispute. An invite was sent to the aggrieved IFT companies on 29 June 2022 and expected to accept or propose a convenient time to engage. IFT companies were requested to provide supporting documentation two days before the meeting for the council to go through and have a clear mandate on what is payable and the reasons there. The meetings were scheduled from 05 July 2022 to 19 July 2022. The details of the engagements were also shared with the Committee. The engagements by Supplier Compliance Management Council did not achieve the intended results and through the consultations, it

was agreed with the three of four companies that an independent auditor firm will be appointed to review the terms and application thereof and provide recommendations that the SCMC to find a resolution. The one IFT company, Folo Electrical, opted to be excluded from the Supplier Compliance Management Council process and took no further part but escalated the matter back to Committee. The Committee has in its position a correspondence from Folo Electrical stating the reasons why it withdrew from the SCMC process.

3.4.1.2 Appointment of an independent auditor

An independent audit firm, MMQSMace Consultancy (Pty) Ltd ("MMQSMACE" herein), was appointed by Telkom Openseve on Monday 25 July 2022 to conduct an independent review to assist in providing recommendations for the resolution. The appointment was done through procurement governance and processes. According to Telkom Openseve, the first engagement with the auditor, by the Supplier Compliance Management Council, was conducted on 25 July 2022 to explain the scope of work and timelines for resolving the matter.

3.4.1.3 Invitation to IFTs to present their dispute to the auditors

The auditors sent out a memorandum on 10 August 2022 indicating to the IFT companies of their appointment and inviting them to a session to present to them their dispute. The sessions were scheduled at the auditor's offices: MMQSMace Consultancy (Pty) Ltd, Floor 2, Building 1, Waverley Office Park, 15 Forest Road, Waverley, Sandton, for 15 August 2022. The IFTs were expected to respond directly to the auditors on availability. The IFT companies were requested to prepare and bring with, them all documentation relating to this matter which will assist the process. All engagements took place with the IFTs as per schedule.

3.4.1.4 Engagements with Telkom Openseve

The auditors had engagements with Telkom Openseve to request clarity and details on questions they had regarding the contract, history, and process of the payment files. The meeting was held on 17 August 2022 at the auditor's offices in Waverley, Sandton. Further documentation was provided to support any claim or ambiguity.

3.4.1.5 Auditors presented reports and recommendations to Telkom Openseve

The auditors presented their draft report to Telkom Openseve on 2 September 2022, with the final report submission on 6 September 2022. The audit approach took the analysis of the documents received, other investigations that would assist, and other information necessary to assist in the process i.e., payment files, SLA, contracts, and direct engagements. The limitation of the audit was that no field visits were conducted given the period in question, and some documents could not be verified thus no assessments could be done. The auditors made it clear to both Telkom Openseve and IFTs throughout the engagements that they are independent, and the audit outcome is based on the information received. Findings after various consultations of the auditor's report talk to the representation of the IFTs and representation of the meetings. The outcome and proceedings are captured in the auditor's report the summary of which was presented to the Committee. Table 2 below is a summary of the Auditor's recommendation. The auditor concluded that non-payable orders and FFR fines that were found to be outside the thirty (30) days period as per the agreement and understanding should be considered for payment, further investigation is to be considered for orders that fell prior to the 01 September 2017 agreement to ascertain the bulk orders, FFRs with generated references could not be audited due to reference numbers.

Table 2: Recommendations by the Auditor

IFT Name	Auditor Recommendations	OS Response
Thobela	<ol style="list-style-type: none"> 1. Non-payable orders: only 0 were found outside and deemed payable. 2. Unnecessary handover: reason had to do with IT's claim of infrastructure failed beyond, although they could not ascertain any faults that are brought forward as "scouting dispatch" individually and thus exempts OS for any payment. 	Accepted recommendation

	3. FFR audited: only 13 were found outside the 30day period. Issues with the sequencing of the order number, non-payable orders.	
Mzansi Broadband	<ol style="list-style-type: none"> 1. Non-payable orders: 0 non-payable orders without interpretable references could not be audited because of the sequencing of the order numbers generated by the systems. no non-payable orders were found to be outside the thirty (30) days SLA period stipulated in the contract no payment should be considered 2. Unnecessary handover: couldn't ascertain what is "scouting dispatch" and thus exempts OS from any reimbursement. And no FFR should be considered for payment. 3. FFR: no FFR Fines were found to be outside the thirty (30) days SLA period and therefore no FFR Fines should be considered for payment 	Accepted recommendation
Sudane Projects	<ol style="list-style-type: none"> 1. Non-payable orders: No nonpayable orders were found to be outside of the thirty (30) days SLA period and therefore they should be considered for payment. 2. Unnecessary handover: could not ascertain which faults could have fell under the bulk faults resulting from "scouting dispatch" based on the payment files provided, the clauses above exempt Openserve for a possible reimbursement 	Accepted recommendations

Source: Telkom Openserve Report to Parliament (2022)

3.4.1.6 Action Steps by SCMC

The SCMC reviewed and accepted all recommendations from the auditors and all outstanding items and payments were to be actioned and processed by end of September 2022 in line with the payment run. The Committee has confirmed that this was done indeed.

3.4.1.7 Review of the recommendation and next steps

Telkom Openserve reviewed the recommendations of the auditors and prepared a report which formed the basis of the discussion in the last Committee meeting held on 7 September 2022. In the meeting, Telkom Openserve maintained that the process followed was deemed clear and unbiased to the IFT companies.

3.4.2 Presentation by IFT Companies

Telkom Openserve's presentation was followed by the IFT companies' representatives largely to give them the platform to indicate their acceptance of Telkom Openserve's approach and steps being taken. Mr. Sithembele Xolo, Project Director at Folo Arch Designs (Pty) Ltd, asked if the auditors referred to in the presentation are external or internal auditors. He narrated that when he attended the meetings with the Council, based on the questions that were posed to him, he got the sense that they were not in the meeting to find resolutions to the matter. Parliament had requested Telkom Openserve to resolve the matter internally. He believed that would be the case given the working relationship that had been established over the years between the service providers and Telkom Openserve. It became frustrating in the meeting when he was asked the same questions that had been asked for the past five years. The dispute arose in 2017 with the introduction of the Service Level Agreement. The SLA had never been accepted by any of the contractors. Whether the work done is payable or not depends on where one is sitting. The contention had always been that Telkom Openserve requested the contractors to procure resources such as vehicles, and tools, train employees, and make them available for Telkom Openserve which all came at a high cost.

Mr. Xolo said that when he started working on the project in 2016 they figured out that the network infrastructure was in a bad state. This prompted him to start engagements with Telkom Openserve management in writing and meetings. He highlighted to management that the infrastructure caused the services sold to customers not to be on par with what was being offered by competitors. For example, when a customer has a streaming service, the internet connection kept on buffering and being faulty. The customer would then report the fault and the IFTs would have to go and assist the customer. Sometimes due to bad connectivity, they would have to revisit a customer more than three times a month. Due to the line failing, when the SLA was adopted, that line would be declared non-payable. Telkom's infrastructure had many joints between the exchange and the customer and because the cables were underground they had corroded – this was the cause of the failure. As service providers, they did not have access to the infrastructure as they were prohibited from working on it. When tests were conducted, it became clear that the problem was with the line which affected the quality. It should be noted that in the many instances where the IFTs tried to get the problems fixed, it usually took them a day or two to get the job done. Non-payables refer to when there is a failure within a thirty-day period, which was not fair.

The second respondent Ms. Evelyn Smith, Director at Sudane Projects and Services, commented that Telkom did not cover the value of the fault. She asked that the unfairness of the non-payables be noted. She argued that the jobs were completed, tested by Telkom systems, test references provided, and passed references issued by Telkom Openserve. She was of the view that the debate was not necessarily about the completion of the job but rather the fact that Telkom Openserve would not pay for things outside the control of IFT companies such as acts of God, theft and vandalism. Therefore, what was discussed with the auditors in the meetings was not what IFT companies were experiencing on the ground. The meeting with the Council was not to resolve the issues but rather they were asked if they had signed the service level agreement under duress.

The third respondent Mr. Madimabe Mohlaloga, Managing Director: of Thobela Communications, said that during a meeting with Telkom Openserve to try and resolve the dispute, Telkom Openserve conceded that his company had spent money to reconnect a customer's line when line was down. Ordinarily, when Telkom Openserve's lines go down, the IFTs are sent to go and fix the problem. This meant that IFTs spend money with the expectation that Telkom Openserve would pay them back for restoring the line but this hardly ever happens, as some of these callouts are considered repeat faults. The Acting Chairperson asked IFT company representatives in the meeting what they propose as a way forward. Mr. Xolo, on behalf of the IFT companies, said that it is concerning that bulk of the work done on behalf of Telkom Openserve had not been paid for. This caused their businesses to lose a lot of money. They requested that all jobs that have been completed, tested and for which a reference has been issued be paid.

3.4.3 Remarks by Members of the Committee

Following submissions by both Telkom Openserve and Independent Field technicians, it was left to the Members of the Committee to give direction and a way forward. The Acting Chairperson asked Committee members to engage with the presentation. Mr. H Kruger (DA) reiterated his earlier position that he was not pleased with how Telkom Openserve has decided to conclude the dispute. He contended that this was a typical case of corporate bullying. He found it quite extraordinary that Telkom Openserve had spent a lot of money acquiring auditors to do auditing when instead that money could have been used to assist IFT companies. Small businesses cannot afford a lawyer to go over the audit. Looking at the repeat faults and their definition of it, the problem was when Telkom Openserve signed off the job from their side that it has been completed. So if there is a comeback after Telkom gave the reference that the job is done satisfactorily and something happens after, this is a different job from the previous job that was signed off.

Ms. K Tlhomelang (ANC) concurred with the previous speaker that this was indeed a case of victimisation of small businesses. She postulated that the Portfolio Committee has the daunting task to put an end to this injustice. She was also concerned about the cost of procuring external auditors. Mr. D Mthenjane (EFF) agreed that this is a case of bullying. Telkom was bullying small businesses and the Committee cannot allow that to happen. Many things were said by the IFTs and it made a lot of sense that one cannot do a job for someone and not get paid for it – especially after it was approved that indeed the job

was done. Not taking action against Telkom Openserve would be failing small businesses and South Africans. As a State Owned Company ("SOC"), Telkom Openserve must not be allowed to intimidate small businesses. There are many SMMEs and small businesses that are suffering under the same bullying tactics. A programme must be established where all state-owned enterprises are invited to the Committee to account for their relationship with small businesses.

Mr. H April (ANC) noted the submissions and the fact that some IFTs decided not to be part of the collective of IFTs before Parliament. It would be beneficial to look into whether these IFTs have not been intimidated or threatened. He bemoaned the behavior of Telkom Openserve as unbecoming of a SOC. How the contracts had been structured such that only Telkom Openserve may derive maximum benefit at the expense of small businesses. The contracts were missing an element of 'development'. The Acting Chairperson remarked that the meeting was not the first on the matter and he felt disrespected by Telkom Openserve. Mr. Jacobs did not appreciate the fact that both companies had sent in junior staff as they had expected the CEOs.

The representatives present in the meeting should report back to their seniors that the Committee had expected that they would be present for the presentation and accountability. The senior executives are paid exorbitant salaries to solve problems within their companies. However, Telkom and Openserve decided to outsource this matter by getting external auditors. Again what were the procurement process and the cost of this exercise? This shows that it was a futile and wasteful exercise as it did not come with a resolution, and did not engage meaningfully and respectfully with the service providers. This was a simple contractual dispute, a dispute around the payment. The Committee gave them the mandate to go and listen to the IFTs and provide solutions to this problem.

The Acting Chairperson further said that he called Dr. Mahlangu [Telkom Group Executive: Regulatory Affairs and Government Relations] and asked him not to outsource the accountability and responsibility. It became clear that they continually undermine this House of Parliament. He was frustrated and stated that he did not want broken stories anymore. The Committee needs to table its report in Parliament and ask Parliament to exercise oversight. Mr. Kruger, the sponsor of the petition, concluded that this was not an individual crusade but rather a collective effort. The Committee agreed that the secretariat must go ahead and compile a report for consideration and adoption before being referred to the Speaker of Parliament.

4. OBSERVATIONS

The Portfolio Committee on Small Business Development, having considered the Petition against Telkom Openserve from the Directors of Sundane Projects, Mzansi Broadband, ACCS Telecoms and Folo Electricals, alternatively, Independent Field Technicians with reference to contractual disputes and allegations of corporate bullying referred to the Portfolio Committee on Small Business Development by the Speaker of the National Assembly, hereby record the following observations –

4.1 The Committee notes that parties could not find common ground on several issues stemming from the revised contract (2017). Equally, it is observed that there are areas where parties registered progress including the extension of the contract(s) to 2023. The Committee is mindful that facilitating disputes between big and small businesses is part of its broader mandate. It is inevitable. The Committee noted from the beginning that owing to its limited powers, it may not be feasible to achieve all the predetermined outcomes due to the complexity of the issues.

4.2 Throughout its engagement with Telkom Openserve and IFT companies, the Committee noted that fundamental intents of the Enterprise and Supplier Development ("ESD") were completely omitted in Telkom Openserve's approach to IFT companies. Telkom Openserve treated IFT companies like any other big business. The developmental approach is missing. It remains unclear to the Committee how or the nature of support Telkom Openserve provides to its subcontractors, particularly IFT companies.

4.3 The Committee notes that during the fifth Parliament, the telecom sector was engaged extensively owing to the growing number of complaints that the Committee had received at the time – there had also been complaints leveled against Telkom. A sizeable number of small enterprises have over time resolved to approach Parliament to intervene in various commercial disputes.

4.4 The effort by the former Member of the Committee Mr. Toby Chance, that of introducing the Small Enterprises Ombud Service Bill [B14 – 2018] is noted by the Committee. The Private Members Bill had been introduced in the National Assembly as a section 75 and was published in the Government Gazette Number 41623 on 10 May 2018.

4.5 Furthermore, as the Committee remarked in its recent budget review and recommendations report that in light of a variety of challenges bedevilling the sector, a segmented approach to the bill should be given priority. The Department of Small Business Development's failure to refer the National Small Enterprise Amendment Bill to Parliament as pledged in its consecutive annual performance plans since 2015 should not be accepted nor used as an excuse. The small business sector is vulnerable and prone to big business manipulation. The Committee must explore alternative options to cushion the sector.

5. RECOMMENDATIONS

5.1 Having noted the growth in the number of grievances, disputes and one petition referred to the Committee since its inauguration, the Committee supports the fifth Parliament recommendation that the Small Enterprise Commission or Ombudsman created through an act of Parliament be fast-tracked.

5.2 As envisaged during the fifth Parliament when sessions between big and small businesses were held to ascertain the extent of corporate bullying and victimisation of small businesses, the Committee should consider the Committee Bill. The process may include synthesizing the Small Enterprises Ombud Service Bill and the component of the National Small Enterprise Amendment Bill - specific sections on the creation of the Small Enterprise Ombud Service. The bill had gone through all legal analyses including obtaining Socio-Economic Impact Assessment System ("SEIAS") certification and was gazetted for public comments in December 2020.

5.3 At the commencement of its term in 2019, the Committee had noted and recommended that a particular focus must be given to ESD and other BBBEE codes of good practice which are currently being used to comply or a tick box exercise, adding little value to the small enterprise ecosystem. The Department of Small Business Development must reinforce internal capacity to intensify private or grow private sector partnerships, harness ESD's good intents and monitor its implementation.

5.4 Small enterprises participating in various ESD initiatives oftentimes require government support. For instance, costs incurred by IFT companies i.e. hiring of vehicles, could have been avoided if the Department was working closely with Telkom Openserve.

5.5 Having noted its limitations e.g. powers to enforce contracts – the Committee will nonetheless continue to monitor developments between IFT companies and Telkom Openserve.

6. Appreciation

The Portfolio Committee thanked the Independent Field Technicians for having taken time and effort to lodge the dispute in the form of a Petition.

Report to be considered.