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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 2617 OF 2024****MOBILE BROADBAND SERVICES AMENDMENT REGULATIONS, 2024**

I, Mothibi Ramusi, Chairperson of the Independent Communications Authority of South Africa ("the Authority"), hereby publish the Mobile Broadband Services Amendment Regulations, 2024.

A handwritten signature in black ink, appearing to read 'Mothibi G. Ramusi', written over a horizontal line.

MOTHIBI G. RAMUSI**CHAIRPERSON****DATE: 28/06/2024**



MOBILE BROADBAND SERVICES AMENDMENT REGULATIONS, 2024

The Independent Communications Authority of South Africa has, under section 4 read with section 67(4) of the Electronic Communications, 2005 (Act No. 36 of 2005), made the regulations in the Schedule.

SCHEDULE

1. Definitions

In these Regulations “the Regulations” means the regulations published by Government Notice No, 1960 (Government Gazette No 46155) of 31 March 2022.

2. Amendment of regulation 7 of the Regulations

Regulation 7 of the Regulations is hereby amended -

- 2.1. by the substitution of the paragraph, after the heading of “7. Pro-competitive terms and conditions”, for the following paragraph:

“The operators with SMP in the relevant markets identified in regulation 6, must in respect of those markets and on a quarterly basis, publish on their website non-confidential versions of the following accounts, records and other documents and provide the Authority with the confidential versions of the following accounts, records and other documents, subject to a request for confidentiality in terms of Section 4D of the ICASA Act.”

2.2. by the deletion of sub-regulation 7(e) and 7(g);

2.3. by the substitution for paragraph (iii) in regulation 7(h) of the following paragraph:

“(iii) A report on the previous quarter’s site access requests summarising the information in regulations 7(h)(i) and 7(h)(ii) above, including a summary of time to approve the requests, a summary of reasons for not approving site access requests, and average effective charges for the sites shared.”

2.4. by the substitution for paragraph (v) in regulation 7(h) of the following paragraph:

“(v) In respect of information provided per site, the licensee must also provide the operator’s identification code for the site, its longitude and latitude, and Statistics South Africa census 2011 main place code, and site category including macro > 15m, macro <15m, rooftop, indoor (including distributed antennae systems).”

3. Short Title and Commencement

These regulations are called the Mobile Broadband Services Amendment Regulations, 2024 and will come into force upon publication in the *Government Gazette*.



Independent Communications Authority of South Africa

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REASONS DOCUMENT FOR THE MOBILE BROADBAND SERVICES AMENDMENT REGULATIONS, 2024

1. Introduction

- 1.1.** On 12 January 2024, the Independent Communications Authority of South Africa (“Authority”) published a notice of its intention to amend the Mobile Broadband Services Regulations of 2021 (Government Notice No. 1960 in the Government Gazette No 46155) (“the Regulations”) and invited public comments to be made within a period of thirty (30) working days.
- 1.2.** The proposed amendments were necessitated by regulatory oversight (i.e., clerical errors, incorrect referencing, etc.) identified in the Regulations.
- 1.3.** The following stakeholders submitted written representations to the Authority on the Mobile Broadband Services Amendment Regulations, 2021 (“draft Regulations”).
 - 1.3.1.1. Cell C Ltd.
 - 1.3.1.2. ISPA (Internet Service Provider’s Association).
 - 1.3.1.3. MTN (Pty) Ltd.
 - 1.3.1.4. Telkom SA SOC Ltd.
 - 1.3.1.5. Vodacom (Pty) Ltd.

2. Submissions received on the draft Regulations and the Authority’s response

The views expressed by the stakeholders are summarised below, followed by the Authority’s decision. The focus is on including only the main points made in the various submissions and not to respond to each and every point made.

2.1. Amendment to regulation 7

2.1.1. Submissions received

- 2.1.1.1. Cell C¹, MTN², Telkom³ and Vodacom⁴ agreed with the Authority’s proposal to amend the clarification in the introductory paragraph to regulation 7.

¹ Cell C submission: paragraph 1.3 of page 2

² MTN submission: paragraphs 2.2-2.3 of page 3-4

³ Telkom submission: paragraphs 3.1-3.2 of page 3-4

⁴ Vodacom submission: paragraph 3 of page 2

2.1.1.2. MTN⁵ proposed that the insertion of “in respect of those markets and” be inserted before “on a quarterly basis” in order to make the paragraph clear.

2.1.2 The Authority’s decision

The Authority agreed that the introductory paragraph to regulation 7 be amended to include the phrase “in respect of those markets and” as proposed by MTN.

2.2. Deletion of regulation 7(b)(iv)

2.2.1. Submission received

MTN stated that regulation 7(b)(iv) should be deleted but didn’t provide specific reason(s) for its proposal.

2.2.2 The Authority’s decision

The Authority didn’t consider MTN’s proposal as it falls outside of the scope of this amendment.

2.3. Amendment to regulation 7(e), 7(f) and 7(g)

2.3.1. Submissions received on regulation 7(e)

2.3.1.1. ISPA⁶, Telkom⁷, MTN⁸ and Vodacom⁹ agreed to the Authority’s proposal to delete regulation 7(e).

2.3.1.2. Cell C¹⁰ objects to the deletion of regulation 7(e) as it is of the view that the Authority has “...oversight over the regulation of wholesale prices and dominant market behaviour of SMP operators”.

2.3.1.3. ISPA¹¹ indicated that the proposal by the Authority to delete regulation 7(e) means that the Authority agrees with MTN’s views set out in its litigation reasons and that Vodacom and MTN will no longer be required to comply with the regulation.

⁵ Ibid

⁶ ISPA submission: paragraph 1.3 of page 2

⁷ Telkom submission: paragraph 3.3 of page 4

⁸ MTN submission: paragraph 2.2 of page 5

⁹ Vodacom submission: paragraph 4 of page 2

¹⁰ Cell C submission: paragraph 2.1.2 of page 3

¹¹ ISPA submission: paragraph 5-6 of page 1

2.2.2 The Authority's decision

- 2.2.2.1 The Authority reiterates its position to delete regulation 7(e) given that it did not find a licensee with significant market power in the APN and MVNO services markets. By its admission, ISPA correctly stated that it would be procedurally incorrect for the Authority to impose pro-competitive remedies given that the Authority did not find a licensee with SMP in the abovementioned markets.
- 2.2.2.2 It should be noted that the deletion of regulation 7(e) was not necessitated by MTN's legal application, but due to regulatory oversight as indicated in the Explanatory Memorandum.

2.2.3 Submissions received on the deletion of regulations 7(f) and 7(g)

- 2.2.3.1 MTN and Vodacom agreed to the proposal to delete regulations 7(f) and 7(g). However, Telkom, ISPA and Cell C did not support the deletion of regulations 7(f) and 7(g).
- 2.2.3.2 Telkom stated that deleting regulations 7(f) and 7(g) will remove clarity on how the Authority will address the abuse of market power in the mobile retail market by licensees designated to have SMP. Furthermore, Telkom argued that the regulations place the onus on a licensee with SMP to ensure that its retail prices are maintained above wholesale prices.
- 2.2.3.3 ISPA disagreed with the reason provided by the Authority in support of the deletion of regulation 7(f). ISPA argued that the Authority is not empowered to request for an explanation or information from a licensee where the retail price is below the wholesale price given that the Authority did not find a licensee with SMP in the relevant markets. In addition, ISPA questioned the legality and precedence of the proposed ad hoc requests for information about margin squeeze.
- 2.2.3.4 Cell C objected to the removal of regulations 7(f) and 7(g) and stated that the Authority should regulate wholesale prices of licensees with SMP. Further, Cell C stated that it is unclear whether the amendments are made in response to the MTN application or due to regulatory oversight.

2.2.4 The Authority's decision

- 2.2.4.1 The Authority is agreeable to the submissions by Telkom, ISPA and Cell C that the Authority should retain regulation 7(f) given that the Authority may not necessarily have the authority to request information on retail and wholesale prices from licensees without SMP. The provision also places the responsibility on licensees with SMP to provide the necessary information to the Authority in instances where retail prices are below wholesale prices. The provision will also minimise information asymmetry between the Authority and licensees with SMP.

2.2.4.2 The Authority however doesn't agree that retaining regulation 7(g) is necessary given that the information submitted in terms of regulation 7(f) may be used by the Authority to achieve the objectives of regulation 7(g). It should be noted that the Authority is empowered to make a referral of instances of margin squeeze to the Competition Commission ("the Commission") in terms of section 67 of the ECA and the Memorandum of Understanding between the Commission and the Authority.

2.3 Amendment to regulation 7(h)(iii)

2.3.1 Submission received

Vodacom and MTN did not object to the amendment. Telkom and Cell C agreed with the proposed amendment. ISPA did not comment on this amendment.

2.4 Amendment to regulation 7(h)(v)

2.4.1 Submission received

2.4.1.1 Vodacom and MTN did not object to the amendment. Telkom and Cell C agreed with the proposed amendment. However, Telkom indicated that the Authority should revise the reference in the main place codes to align with the 2022 census results.

2.4.1.2 ISPA did not comment on this amendment.

2.4.2 The Authority's response

The Authority is of the view that updating the reference in the main place codes with the 2022 census results is not necessary as the amendments are meant to address regulatory oversights identified by the Authority.

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