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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 713 OF 2018****NOTICE OF INTENTION TO CONDUCT MARKET INQUIRY INTO MOBILE
BROADBAND SERVICES**

The Independent Communications Authority of South Africa (“the Authority”), hereby publishes a notice of intention to conduct an inquiry into mobile broadband services in terms of section 4B of the Independent Communications Authority of South Africa Act No.13 of 2000, read with section 67(4) of the Electronic Communications Act No.36 of 2005, to the extent reflected in the Schedule.

Rubben Mohlaloga
Chairperson

SCHEDULE

GENERAL NOTICE

NOTICE ___ OF 2018



NOTICE OF INTENTION TO CONDUCT MARKET INQUIRY INTO MOBILE BROADBAND SERVICES

1. Introduction

- 1.1. The Independent Communications Authority of South Africa (“the Authority”) hereby gives notice of intention to conduct an inquiry into mobile broadband services in terms of section 4B of the Independent Communications Authority of South Africa Act No.13 of 2000 (“the ICASA Act”), read with section 67(4) of the Electronic Communications Act No.36 of 2005 (“the ECA”).
- 1.2. The inquiry follows the conclusion of the inquiry to identify priority markets in the electronic communications sector wherein the Authority made a finding that, *inter alia*, Mobile services will be prioritised for a market inquiry.

2. Legal basis for the Inquiry

- 2.1. The primary object of the ECA is to provide for the regulation of electronic communications in South Africa in the public interest and for that purpose to, *inter alia*, “promote competition within the ICT sector”¹.

¹ Sections 2(f) of the ECA.

- 2.2. The Authority is empowered to address any competition matters in terms of Chapter 10 of the ECA.
- 2.3. In terms of section 67(4) of the ECA, the Authority must, “...following *an inquiry* (our emphasis), *prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments. The regulations must, among other things-*
- (a) *define relevant wholesale and retail markets or market segments;*
 - (b) *determine whether there is effective competition² in those relevant markets and market segments;*
 - (c) *determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition;*
 - (d) *impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy the market failure;*
 - (e) *set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments...; and*
 - (f) *provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments.”*
- 2.4. Section 4B of the ICASA Act states that “*The Authority must conduct an inquiry into any matter with regard to:*
- (a) *The achievement of the objects made in terms of this Act or underlying statutes;*
 - (b) *Regulations and guidelines made in terms of this Act or underlying statutes;*
 - (c) *Compliance by applicable person with this Act or underlying statutes;*
 - (d) *Compliance with the terms and conditions of any licence by the holder of such licence issued pursuant to the underlying statutes; and*

² In terms of section 67(4A) of the ECA, when determining whether there is effective competition in markets and market segments, the Authority must consider, among other things, (1) the non-transitory (structural, legal and regulatory) entry barriers to the applicable markets or market segments, and (2) the dynamic character and functioning of the markets or market segments, including an assessment of relative market share of the various licensees or providers of exempt services in the markets or market segments, and a forward looking assessment of the relative market power of the licensees in the markets or market segments.

- (e) *The exercise and performance of its powers, functions and duties in terms of this Act or the underlying statutes.”*

3. The purpose of the Inquiry

- 3.1. The purpose of this inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the mobile broadband services value chain which may warrant regulation in the context of a market review in terms of section 67(4) of the ECA.

4. The Inquiry process

- 4.1. The Authority will conduct the inquiry in a series of phases as follows.

4.1.1. Phase 1 (commencement of the market inquiry)

- (a) The Authority hereby publishes this Notice and a questionnaire or request for information and opinions³ from market participants and stakeholders.
- (b) The information and opinions obtained from market participants and stakeholders will be taken into account when defining relevant markets or market segments; evaluating the effectiveness of competition in the relevant markets; determining which licensees have significant market power (where there is ineffective competition).
- (c) Stakeholders are hereby given ten (10) calendar days, from the date of publication of this Notice and a questionnaire or request for information, to send any questions of clarity on process and questionnaire or request for information to the Authority for the attention of the Chairperson (Market Inquiry Council Committee) at MarketInquiry2018@icasa.org.za.
- (d) The Authority will respond to all questions of clarity by publishing a briefing note on the Authority's website within ten (10) calendar days of the closing date for submission of clarification questions.
- (e) Stakeholders are hereby invited to submit written representations on matters outlined in this Notice as well as written responses to the questionnaire or

³ The questionnaire will be published on the Authority's website.

request for information within forty-five (45) working days from the date of publication of the Authority's responses to questions of clarity.

- (f) A copy of this Notice and a questionnaire or request for information will be made available on the Authority's website at <http://www.icasa.org.za>.
- (g) Written representations regarding matters outlined in this Notice and a questionnaire or request for information must be submitted to the Authority by no later than 16h00 by the deadline indicated in paragraph (e) above by post or hand delivery or facsimile or email and marked specifically for attention:

Chairperson: Market Inquiry Council Committee

Councillor Botlenyana Mokhele

Block C

350 Witch-Hazel Avenue

Eco Point Office Park, Eco Park

Centurion

Gauteng

Tel: 012 568 3125

Fax: 012 568 3126

Email: MarketInquiry2018@icasa.org.za

- (h) Written representation(s) and information received by the Authority pursuant to this Notice, will be made available for inspection by interested persons at the Authority's website.
- (i) At the request of any person who submits written representations and/ or information pursuant to this Notice, the Authority may determine that such representations or information or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act.
- (j) Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.
- (k) Persons submitting written representations and/or information are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations should the Authority decide to hold public hearings.

- (l) The Authority may request one-on-one meetings in relation to information submitted by a stakeholder where necessary to clarify information that is submitted. The Authority will inform the relevant stakeholder in advance of the information to be clarified and will give adequate notice to stakeholders of the proposed meetings.

4.1.2. Phase 2 (Discussion Document)

- (a) The Authority will publish in the *Gazette* a Discussion Document, which will be informed by the information submitted by stakeholders in the context of Phase 1 and any other research or benchmarking exercises which may be conducted by the Authority.
- (b) The Discussion Document will be published for public comments for a period of forty-five (45) working days.
- (c) Stakeholders may submit written representations on the Discussion Document and must indicate whether they require an opportunity to make oral representations at public hearings as contemplated by section 4B(2)(b) of the ICASA Act.

4.1.3. Phase 3 (Public Hearings on the Discussion Document)

- (a) The Authority may hold public hearings on the responses to the Discussion Document, if deemed necessary.
- (b) The Authority will, if it deems it necessary to hold public hearings, notify stakeholders of the date, time and the venue of the public hearings.

4.1.4. Phase 4 (Findings Document and draft Regulations)

- (a) The Authority will publish in the *Gazette* a summary of the findings⁴ in terms of section 4C (6) of the ICASA Act and draft regulations (if necessary).
- (b) The draft regulations will be published for public comment for a period of thirty (30) working days.

⁴ Findings document will be published on the Authority's website.

4.1.5. Phase 5 (Public Hearings)

- (a) The Authority may hold public hearings on the responses to the draft regulations.
- (b) The Authority will, if it deems it necessary to hold public hearings, notify stakeholders of the date, time and the venue of the public hearings.

4.1.6. Phase 6 (Final Regulations and the Reasons Document)

- (a) Having considered the views of all stakeholders, the Authority will publish in the *Gazette* final regulations and the reasons document.

4.2. Confidentiality

4.2.1. A stakeholder can request confidentiality on the information submitted in terms of section 4D of the ICASA Act.

4.2.2. The request for confidentiality in terms of section 4D of the ICASA Act must be accompanied by a confidential and non-confidential version of the submission.

4.2.3. The Authority hereby refers stakeholders to the Guideline for Confidentiality published on 17 August 2018 in Gazette No. 41839 to assist the stakeholders when applying for confidentiality.

4.3. As the inquiry unfolds, the Authority may introduce additional phases or steps, where necessary, to keep stakeholders apprised of the progress of the inquiry and the Authority's thinking on the matters being assessed.

4.4. The Authority may conduct industry workshops or public briefing sessions in relation to matters of process.

5. Information requirements

- 5.1. Section 67(4B) of the ECA provides that, subject to section 4D of the ICASA Act, licensees are required to provide to the Authority any information specified by the Authority in order to enable the Authority to carry out its duties in terms of section 67 of the ECA.
- 5.2. The Authority may ask for and receive from the Competition Commission, information, assistance or advice on this inquiry in terms of the Memorandum of Agreement.

6. Timelines

- 6.1. The Authority aims to finalise this inquiry in the 2019/2020 financial year.

All communications relating to this Inquiry must be directed to Chairperson: Market Inquiry Council Committee at MarketInquiry2018@icasa.org.za.

