7 November 2013

Christian Mhlanga and Mankopane Nkopane
ICASA
Private Bag X10002
Sandton
2146

Email: Cmhlanga@icasa.org.za, MNkopane@icasa.org.za

Dear Sir and Madam,

Advinne's written submission in terms of the Draft Call Termination Regulations as published in the Government Gazette 36919, dated October 11, 2013.

1. Advinne welcomes the Authority's intention to make the telecommunications market more competitive by reducing Call Termination Rates over the period 2014-2016.

2. Advinne appreciates the opportunity to provide a written submission on the draft regulations.

3. Please find below Advinne's written submission in response.

Sincerely,

Lionel Swarts
Advinne Technologies (Pty) Ltd.

Advinne Technologies (Pty) Ltd 2012/031525/07
11 Floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein , 2001, South Africa
P.O.Box 2329, Halfway House, 1685, South Africa
Tel: +27 87 1800 800 email: info@advinne.com

ADVINNE'S COMMENTS ON ICASA'S DRAFT CALL TERMINATION REGULATIONS (GOVERNMENT GAZETTE NO. 36919)

CONTENTS

1. INTRODUCTION

1.1 Advinne would like to thank the Authority for the opportunity to present these written comments to assist the Authority to make informed decisions concerning call termination rates.

1.2 Advinne commends the Authority on embarking on this process to reduce the wholesale call carrying cost. We acknowledge that the previous reduction of the rates were well received within the market and elsewhere.

1.3 Reducing the Call Termination charges will later translate into improved service offerings, more competition among service providers and efficient pricing models.

2. **COMMENTS**

2.1 Advinne supports ICASA'S definitions of Markets and the Methodology used in determining the effectiveness of competition within these markets.

2.2 Advinne supports ICASA'S proposed reduction in the current Call Termination Rates.

2.3 Advinne is in support of ICASA's assessment of the fact that ineffective competition exists within the specified markets.

3. SPECIFIC COMMENTS AND OBSERVATIONS ON THE DRAFT CALL TERMINATION REGULATIONS

3.1 Definitions:

"Mobile voice call termination service" means a wholesale call termination service provided by an ECNS or ECS licensee to mobile subscriber equipment enabled by wireless technology.

3.1.1 The above definition can also be considered to encompass VoIP services to mobile applications on Smartphones, as technically the mobile VoIP call will be terminating to mobile subscriber equipment enabled by wireless technology. To avoid confusion, Advinne suggests that a single call termination rate be be adopted, irrespective of whether the call terminates to a fixed or mobile location.

3.1.2 Advinne has noticed that mobile numbers are used to terminate calls to non-mobile services, such as

- call centres,
- customer care call centres,
- IVR services,

- PBX systems,
- office lines of the mobile operators,
- competition lines,
- direct calls to voicemail systems,
- etc.

These services are contrary to the definition of a "Mobile voice call termination service" and should therefore not incur a call termination rate higher than the regulated rate for "Fixed voice call termination services”.

Advinne proposes that

a) this practice be stopped immediately as all mobile operators can apply for number ranges that are suitable for "Fixed voice call termination services”, or

b) the call termination rate to mobile numbers providing non-mobile services should not be higher than the regulated rate for "Fixed voice call termination services”, or

c) a single call termination rate should be be adopted, irrespective of whether the call terminates to a fixed or mobile location.

3.2 Price Control: Cost orientated pricing

Table 1 defines a glide path for the reduction in the wholesale voice call termination rates to a mobile location from the current rate of R0.40 to R0.10 on 1 March 2016.

3.2.1 The operators listed in Market 1 of the Draft Regulations offer the following services to their own customers:

- free on-net calls,
- discounts of up to 100% for on-net calls,
- pay for 3 minutes, at R1.20/min and get the next 57 minutes free, resulting in an effective retail rate of R0.06/min.

While the operators listed in Market 1 might argue that the glide path to R0.20 is too steep, that the rate of R0.10 is too low or that the new voice call termination rates will significantly impact their revenue and investments it is important to note the following:

- The operators listed in Market 1 were able to offer free on-net calls or on-net calls with a retail rate of less than R0.10 without a gradual glide path and without negatively impacting their overall revenue or infrastructure investments,
- It is anti-competitive to expect incoming call termination revenues to subsidise on-net calls that are free or below cost,
- The current call termination rate of R0.40 is a 68% reduction from the original call termination rate of R1.25. The initial call termination rate reduction from R1.25 to R0.89 was a decrease of 36c (or 28.8%). A reduction of R0.30 on 1 March 2014 to R0.10 is a mere 24% reduction from the original call termination rate of R1.25.
- As low on-net call rates are already a reality, and sustainable (either as a permanent offering or via regular repeated promotions) then the voice call termination rate could be immediately reduced to R0.10 from 1 March 2014, and hence extend the low on-net call rates to incoming call rates.
- The impact of the reduction in mobile call termination rates from R1.25 in 2010 has only been evident in the retail market since April 2012 with lower pricing and more competition. An immediate reduction to R0.10 from 1 March 2014 will ensure that current levels of retail competition is maintained or improved in 2014.

3.3 Price Control: Cost orientated pricing

Table 2 maintains the current call termination rates to a fixed location at R0.12 within an ON area code and R0.19 between ON area codes. Table 2 in the “Explanatory Note to the Draft Call Termination Regulations” also shows that the previous glide path has only had a negligible impact in the Licensee 1's market share of calls to a fixed location.

3.3.1 The proposed draft regulations do not include sufficient pro-competitive measures to address the market failures identified in Market 2. While, we understand that there is currently a process underway to address Local Loop Unbundling (LLU), it is unlikely the LLU will have a significant impact by 2016. Furthermore, the cost of carrying a long distance national call to a fixed location is not more expensive than the cost of carrying a long distance national call to a mobile location. We therefore propose that call termination rates to a fixed location be reduced to R0.10 within an ON area code and R0.10 between ON area codes effective from 1 March 2014. This will align the call termination rates to a fixed location with those to a mobile location, irrespective of where the call terminates on the recipient operator's network. We also suggest that the maximum asymmetric rate for termination in Market 2 be aligned with the maximum asymmetric rate for termination in Market 1 (Tables 6 and 7 of the Explanatory Note to the Draft Call Termination Regulations).

3.4 Appendix A: Application of the fair and reasonable obligation

Licensees not listed in Regulation 7(4)(a) may charge a higher termination rate as prescribed by Table A1.

3.4.1 At present the smaller mobile operators that are not listed in Regulation 7(4)(a) are dependent on the two larger mobile network operators for national roaming. Advinne considers that without roaming regulation, there is still a real opportunity for the larger mobile network operators to abuse their market dominance and to offer uncompetitive wholesale access rates and terms to the smaller operators, similar to the

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Tel: +27 87 1800 800 email: info@advinne.com

concerns raised by British Telecom[1] and Fastweb[2] in their responses to the BEREC Guidelines on Wholesale Roaming Access. Uncompetitive roaming terms may serve to restrict the smaller mobile operators from competing effectively by either raising the roaming costs, limiting their access to certain services or degrading the overall user experience while roaming. It may therefore be necessary for the Authority to consider National Roaming Regulations and Guidelines similar to the Article 3 of EU Regulation on Roaming on Public Mobile Communications Networks[3] and the corresponding BEREC Guidelines[4].

4. SPECIFIC COMMENTS AND OBSERVATIONS ON THE EXPLANATORY NOTE TO THE DRAFT CALL TERMINATION REGULATIONS

4.1 With reference to Clause 4.1 of the Explanatory Note, which lists the reasons that the Authority determined that the two markets were ineffectively competitive in 2010, Advinne would like the Authority to review current practices that may be prohibiting competition including (but not limited to):

a) some licensed operators not routing calls to another operator's number range on all their exchanges (or switching

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1 British Telecom Group, "BT Response to the BEREC Consultation, BEREC Guidelines on the application of Article 3 of the Roaming Regulation WHOLESALE ROAMING ACCESS," Body of European Regulators for Electronic Communications Website, Accessed 2013/11/05, http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/931-contribution-by-bt-to-the-berec-public-c_0.pdf

2 Fastweb S.p.A., "BEREC's public consultation on BEREC Guidelines on the application of Article 3 of the Roaming Regulation - WHOLESALE ROAMING ACCESS," Accessed 2013/11/05, http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/948-contribution-by-fastweb-to-the-berec-pub_0.pdf

3 The European Parliament and the Council of the European Union, 30 June 2012, "Regulation (EU) No 531/2012 of The European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union," Accessed 2013/11/01, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:172:0010:0035:EN:PDF

4 Body of European Regulators for Electronic Commmunications, 27 September 2012, "BEREC Guidelines on the application of Article 3 of the Roaming Regulation - WHOLESALE ROAMING ACCESS," Accessed 2013/11/01, http://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/1015-berec-guidelines-on-the-application-of-a_0.pdf

centres),

b) blocking/barring calls to another operator's entire number range or partial number range,

c) incorrect routing of calls to newly ported numbers, resulting in a poor experience of the new operator and eventually resulting in the customer asking that the ported number be returned to the original number block owner,

d) operators introducing their own processes and costs related to the porting of numbers to competitors,

e) points of interconnect at locations where co-location options are not available or refusal to interconnect at carrier neutral data centres where both operators may have equipment,

f) refusal to transit calls via another operator,

g) limitations related to acquisition of customers with 086 and 080 numbers that are serviced by the incumbent fixed line operator.

4.2 With reference to Clause 4.2 of the Explanatory Note, Termination Revenue Shares in Markets 1 and 2:

- The number of licensees in Market 1 has changed from three licensees in 2010 to four licensees in December 2012.
- Licensee 3 had a 14% total share of the total minutes terminated in June 2009 (Table 2.3 in Government Gazette 33121). Licensee 3's total share of the call termination revenues seems to have increased to a high of 17% during 2011, possibly due to the high asymmetric call termination rates in 2011. However Licensee 3's total share of the call termination revenues reduced down to 14% in December 2012.
- The entry of Licensee 4 into the mobile market has resulted in 3-4% of call termination revenues flowing towards the newer mobile operator.

4.2.1 Advinne would like the Authority to consider whether the entry of additional operators in the Market 1, possibly as MVNOs[5], is likely to have an impact on the distribution of call termination revenues in the future. Additionally, the Authority should investigate the factors impeding the entry of MVNOs in the South African mobile market, and, if necessary, consider the introduction of pro-competitive measures to support MVNOs.

4.2.2 Advinne believes that the anti-competitive constraints and unfair conduct raised by Noverca in the Italian market[6] may also exist in the South African market, and hence be limiting the entry of full MVNOs into the South African market, and may also be contributing to ineffective competition. Consequently, Advinne would like the Authority to consider whether pro-competitive measures and regulations are necessary for wholesale market access to mobile networks in order to boost competition.

5. CONCLUSION

5.1 Advinne re-iterates it's support to the Authority in going through with the proposed rate changes in order to improve competition in the South African market.

5.2 Advinne encourages the Authority to ensure effective competition in the mobile and fixed lines markets by also enabling and regulating wholesale market access to fixed line and mobile networks.

5 An MVNO are considered to be a licensed operator with its own allocation of mobile numbers, as defined in footnote 43 on page 45 of Government Gazette 33121 of 16 April 2010.

6 Noverca Italia S.r.l., January 2013, "Noverca Italia Answer to the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets," European Commission Website, Accessed 2013/11/05, http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1532

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