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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 3466

26 May 2023



Independent Communications Authority of South Africa
350 Witch-Hazel Avenue, Eco Point Office Park
Eco Park, Centurion
Private Bag X10, Highveld Park 0169

GENERAL NOTICE**NOTICE OF COMMENCEMENT OF THE COST MODELLING PHASE
WITH RESPECT TO THE REVIEW OF THE PRO-COMPETITIVE CONDITIONS
IMPOSED ON RELEVANT LICENSEES IN TERMS OF THE CALL
TERMINATION REGULATIONS, 2014 (AS AMENDED)****1. INTRODUCTION**

- 1.1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice of the commencement of the Cost Modelling Phase with respect to the review of the pro-competitive conditions imposed on relevant licensees in terms of the Call Termination Regulations 2014 as amended¹ ("the Regulations"), in terms of section 67(8) of the Electronic Communications Act, 2005 (Act No 36 of 2005) ("the ECA"), and regulation 8 of the Regulations.
- 1.2. The Cost Modelling Phase follows the conclusion of the Market Review Phase, which culminated into publication of the Authority's Findings Document on the Review of the 2014 Pro-competitive Remedies Imposed on Licensees in terms of the Regulations ("Findings Document")². The Authority's findings were as follows:
- (a) The relevant markets are Mobile Termination and Fixed Termination (including termination of voice calls originating outside of South Africa);
 - (b) Neither retail nor wholesale constraints are likely to be effective in preventing a wholesale voice call termination services provider (mobile or

¹ Government Gazette No. 38042.

² Government Gazette No. 46107.

- fixed) from setting termination rates above competitive levels, in the absence of regulatory intervention;
- (c) Four market failures as identified in 2014 will manifest in the absence of regulation of the relevant markets;
 - (d) Each individual licensee that offers wholesale voice call termination services in South Africa has 100% share of the market in respect of voice calls terminating on its network and has Significant Market Power; and
 - (e) Cost-based pricing (including asymmetry) and Reference Interconnection Offer remedies are necessary in order to address market failures in the relevant markets.
- 1.3. The Authority made, *inter alia*, the following determinations with respect to the pro-competitive terms and conditions, as outlined in the Findings Document:
- (a) Mobile termination rates will move to symmetry within a transitional period of twelve months;
 - (b) New licensees will qualify for asymmetry for a limited period of three years after market entry; and
 - (c) Licensees must charge reciprocal international termination rates for voice calls originating outside of South Africa.
- 1.4. The Findings Document stated that the Authority will publish a notice outlining the next steps and timelines with respect to the cost modelling exercise.

2. LEGAL BASIS FOR THE REVIEW

- 2.1. The legal basis of the review is in terms of section 67(8)(a) of the ECA which states that: "(a) *Where the Authority undertakes a review of the pro-competitive conditions imposed upon one or more licensees under this subsection, the Authority must-*
- (i) *review the market determinations made on the basis of earlier analysis; and*
 - (ii) *decide whether to modify the pro-competitive conditions set by reference to a market determination.*"

- 2.2. In addition, regulation 8 of the Regulations states that *"The Authority will review the markets for wholesale voice call termination services... not earlier than three (3) years from the date of the publication of these Regulations"*.

3. THE PURPOSE OF THE NOTICE

- 3.1. The purpose of this Notice is to outline the next steps and timelines with respect to the cost modelling exercise.
- 3.2. Having determined that there are still competition issues in the call termination market that may require regulatory intervention in its Market Review Phase, the Authority is now embarking on the Cost Modelling Phase in order to determine the efficient cost of providing wholesale voice call termination services.

4. THE COST MODELLING PHASE

- 4.1. The Authority will share on its website a Stakeholder Plan that outlines the envisaged timelines for the cost modelling process activities. These may be subject to change during and after consultations with stakeholders.
- 4.2. The Authority will conduct the Cost Modelling Phase in a series of sub-steps, as follows:
- 4.3. Step 1 (Request for Information & Meetings)
- 4.3.1. Request for Information
- (a) Immediately following the publication of this Notice, the Authority will request information from licensees with respect to the structure and population of Top-Down and Bottom-Up Cost Models. The request for information will mainly take the form of questionnaires, accompanied with shell Top-down and Bottom-Up Cost Models. The Authority will publish the aforementioned request for information on its website.

- (b) The request for information is published in terms of Section 67(4B) of the ECA, which provides that, subject to section 4D of the Independent Communications Authority of South Africa Act No 13 of 2000, as amended ("ICASA Act"), licensees are required to provide to the Authority any information specified by the Authority in order to enable it to carry out its duties in terms of section 67 of the ECA.
- (c) Stakeholders will be invited to submit written responses to the questionnaires, associated cost models or request for information **within twenty-one (21)** working days from the date of receiving the questionnaires and associated cost models or request for information.
- (d) The Authority may request further written information and/or one-on-one meetings in relation to information submitted by a stakeholder, where necessary, to clarify information that is submitted.

4.3.2. Holding of Workshop and Meetings

- (a) The purpose of the workshop and meetings will be to discuss with stakeholders:
 - i. the process and anticipated timelines for the cost modelling phase, as provided for in the Stakeholder Plan;
 - ii. questions of clarity on the questionnaires and associated templates of cost models; and
 - iii. any other requests for information.

4.3.3. Further, the Authority will confirm the details of the workshop with stakeholders on the date of sending the questionnaires and associated cost models or request for information to stakeholders.

4.3.4. Stakeholders will be given **five (5)** working days, from the date of the workshop, to send any questions of clarity in writing, for the attention of the Chairperson (Call Termination Review) at CTR2021@icasa.org.za.

4.3.5. The Authority will respond to all questions of clarity by either publishing a briefing note on the Authority's website or by directly responding to stakeholders in writing.

4.3.6. The Authority may request one-on-one meetings in relation to information submitted by a stakeholder, where necessary, to clarify information that is submitted.

4.4. Step 2 (Draft Regulations)

4.4.1. The Authority will publish Draft Regulations in the Government Gazette, for public comment in terms of section 4 (1) of the ECA and section 4 (3) (j) of the ICASA Act.

4.4.2. The Draft Regulations will be informed by the information submitted by stakeholders in Step 1, and the cost modelling exercise conducted by the Authority.

4.4.3. The Draft Regulations will be published for public comment for a period of **thirty (30)** working days.

4.4.4. Stakeholders may submit written representations on the Draft Regulations by the said deadline and must indicate whether they require an opportunity to make oral or virtual representations, should the Authority hold public hearings.

4.5. Step 3 (Public Consultation on Draft Regulations)


4.5.1. The Authority will, if it deems it necessary to hold public hearings, confirm the details of the hearings in a notice to be published on the Authority's website.

4.6. Step 4 (Final Regulations)

4.6.1. The Authority will publish the Final Regulations (and, if necessary, an accompanying Reasons Document) in the Government Gazette and on the Authority's website.

5. CONFIDENTIALITY

- 5.1. Stakeholders may request confidentiality, in terms of section 4D of the ICASA Act, on information submitted to the Authority during this review process.
- 5.2. The request for confidentiality must be lodged in accordance with the Authority's Guidelines for Confidentiality Request, published on 17 August 2018 in Gazette No 41839, and must be accompanied by a confidential and non-confidential version of the stakeholder's submission.
- 5.3. All communication relating to this process must be directed to the Chairperson (Call Termination Review) at CTR2021@icasa.org.za.



Councillor Yolisa Kedama

Acting Chairperson

Date: _19/05/2023