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ICASA
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Attention: Mr Peter Mailula, Project Manager
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RE: CELL C'S SUBMISSION ON DRAFT REGULATION ON THE LIMITATION OF CONTROL AND EQUITY OWNERSHIP BY HDGs AND THE APPLICATION OF THE ICT SECTOR CODE, GOVERNMENT GAZETTE 43021

1. Cell C wishes to thank the Authority for publishing the draft regulation on the limitation of control and equity ownership by historically disadvantaged groups (**HDGs**) and the application of the ICT Sector Code, published by ICASA on 14 February 2020 (**the draft Regulation**).

2. Cell C has also reviewed the Findings Document and Position Paper on the inquiry of the same name, published in January 2019 (**the Findings Document**). At the outset Cell C notes that this Findings Document relies on the proposed amendments to the Electronic Communications Act, 2005 (Act No. 36 of 2005) (**the ECA**) in making recommendations and reaching conclusions. The proposed amendments were withdrawn by the Minister of Communications, which coincided with the publication of the Findings Document. As a result, some of the Findings cannot be applied in the draft Regulation.

3. Despite the withdrawal of the amendments to the ECA, there are other reasons why certain of the proposed clauses in the draft Regulation cannot stand as presently drafted, some of which are purely legal in nature, and others of which result from the inherent contradictions within or practical impossibility of performance of these clauses.

4. The comments on the draft Regulation are set out in the form of a table, for ease of reading. The table contains a reference to the provision of the draft Regulation on which we are commenting, and a reference to the relevant provision of the Findings Document. The final column assesses the two in light of the law and Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (**the BBEE Act**) and the Codes[1] published in terms of this Act, including the Revised ICT Sector Code which was published in 2016[2].

[1] The Black Economic Empowerment Codes of Good Practice or "Generic Codes".
[2] *Gazette* 40407 of 7 November 2016.

5. Cell C notes that not all of the terms, recommendations and conclusions of the Findings Document are included in the draft Regulation, and ICASA has not provided reason/s for its departure from its findings. The findings are based, in part on the submissions made by interested parties including licensees, and therefore ought to have been taken into account in the consideration of the draft Regulation. It would the stakeholder community if the Authority could provide reasons for its decisions and not to rely on its findings in the draft Regulation. We have therefore requested clarification from ICASA in several respects.

6. Cell C would like to present its submission at any oral hearings that ICASA may decide to hold.

Yours sincerely

Themba Phiri

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Mr Themba Phiri

Executive Head: Regulatory

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
Definition of "control" – "as defined in the Competition Act"	Section 14 discusses "control" in detail. In 14.5 ICASA states that it has considered the definitions of "control" in each of the Companies and Competition Act in order to formulate its own definition. See also the statement in paragraph 17.26 in which ICASA states that it wants a broad definition of "control". ICASA states "Change of control of licenses triggers notifications and reviews by the Authority. Control, unlike ownership, is a concept that can be measured both directly and indirectly. The Authority is of the view that a broad definition of control is appropriate because the Authority would like to review applications for a wide range of transactions that might have an impact on the implementation of a licence." Unfortunately, the Findings Document is at odds with itself in this regard.	• The Competition Act only defines "control" in the context of merger proceedings. It is broadly defined in s12(2) (which is included in full at Annexure 1), however there are now a number of cases in which the meaning of "control" is debated and defined at length to mean different things in different circumstances[3]. • It may be the case that the definition of "control interest" in the draft Regulation is actually intended to be the same as "control" but see our comments on "control interest" below. • Furthermore, there is no common definition for "control interest" that we can find that is different from "control". • It is questionable how far up the ownership chain ICASA can go when looking at control. The licensee's direct shareholders are set out on the licence. We are not able to find specific authority given to ICASA in the ECA to interrogate ownership above this level. It would be preferable for ICASA to qualify its definition – does it stop at the provisions of section 12(2) of the Competition Act or should it include any interpretation applied by a court?

[3] http://www.compcom.co.za/what-is-acquisition-of-control/

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
Definition of "control interest" – "means in the absence of proof to the contrary, that a person directly or indirectly: (a) Has beneficial ownership of 20% or more of the issued share capital of the licensee; (b) Is entitled to vote a majority of the votes that may be cast at a general meeting of the licensee or the ability to control, either directly, indirectly or through an affiliate, the casting of a majority of those votes of the licensee; (c) Is able to appoint or veto the appointment of a majority of the directors of the licensee; (d) In the case the licensee is a subsidiary, is a holding company and of [sic] that subsidiary as contemplated in section 3(1)(a) of the Companies Act, 2008 (Act No. 71 of 2008); (e) In the case where the licensee is a trust, has the ability to control a majority of the votes of the trustees, or to appoint the majority of the trustees, to appoint or change the majority of the beneficiaries of the trust [sic]; (f) In the case where the licensee is a close corporation, owns 20%	In paragraph 14.6 ICASA states that it intends to consider a "bright line" of 25% as indicating control – but the draft Regulations (other than in Annexure A to the draft Regulations) refer to 20%. In paragraph 18.10.18 ICASA states that it wants to use some of the Competition Act provisions but that the threshold for "control" will be 20% (not 50%) because ICASA wants to catch all levels of control of a corporate entity. The Findings Document does not deal with "control interest" except in 2 cases – the first in referring to the now defunct 2003 Telecommunications Act Ownership Regulations, and second, an incorrect reference to a now repealed regulation. In 2016 ICASA published amendments to the Standard Terms and Conditions Regulations of 2010. However, in *Gazette* 40372 of 26 October 2016, ICASA repealed regulation 2(1A) of those amendments. This regulation is what ICASA is referring to in paragraph 13.4 and 13.5 – and it does not exist.	• This is a peculiar rendition of the provisions of both of the Companies Act and the Competition Act, seeking to join but go further than either of those Acts. In this definition only 20% or more ownership is required before one is deemed to have control – which is itself defined as having 50% or more of the equity ownership. • There is no precedent for a 20% threshold when seeking to define "control". ICASA itself cannot provide any cogent precedent or reason other than stating it wants to catch all levels of control. It does not explain why this is, or why 20% is the appropriate measure for licensees in particular (when it is not used in other industries). • One cannot apply "control" and "control interest" – and "control interest" must surely mean the same thing as "control"? In academia, "controlling interest" is used in preference to "control interest" but even so, ICASA's references to "control interest" are out of step with existing regulatory instruments. Cell C made this point in its submissions to ICASA on question 7.3.[4] The wording of "indirect", "affiliate" and reference to trusts and close corporations is not appropriate, nor is it justified to

[4] See paragraph 18.9.3 of the Findings Document.

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or more of the members' interest, or controls or has the right to control the members' votes in the close corporation; or (g) Has the ability to direct or cause the direction of the management or policies of the licensee in a manner similar to any of paragraphs (a) to (f), whether through the direct or indirect ownership of issued share capital, by contract, by other securities, or otherwise."		depart from existing precedent and law. We suggest "control" be preferred to "control interest" which should be deleted. "Control" should track the existing definition in the Competition Act, without amendment by ICASA. .
Definition of "Historically Disadvantaged Persons" is defined to include "black persons" and "HDG" is defined to have the same meaning as "Historically Disadvantaged Persons".		The draft Regulation contains a definition of "Black People", so this must replace the term "black persons" used in the draft Regulation, because this is not defined. This may be a drafting error. It would also make sense to refer to HDP rather than HDG, for consistency in terms. Both could be joined for ease of reading.
Definition of "ICT BBBEE Sector Codes" means "the codes of good practice ….as published under the B-BBEE Act" but ICASA also includes a definition of "Revised ICT Sector Code" in which it correctly refers to the Amended Code (which is more	There is no reason given in the Findings document for referring to both terms.	• There are only the Black Economic Empowerment Codes of Good Practice, and specific sector Codes. The ICT Sector Code was published in *Gazette* 40407 as the Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code, on 7 November 2016, which is

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accurately called the Revised Code).		set out in the definition of "Revised ICT Sector Code". The draft Regulation only refers to the Revised Sector Code (and this is the only ICT Sector Code in force), so the other definition should be deleted.
'Issued Share Capital" is defined as "with respect to any person, all shares, interests, participations or rights or other equivalents (however designated, whether voting or non-voting, ordinary or preferred) in the equity or capital of such person, now or hereafter issued"	At para 17.24 ICASA states in relation to "ownership" that "the Authority recognises that a definition of "ownership interest" is relevant only insofar as it forms part of the definition of control. ICASA may find this to be an appropriate way of distinguishing ownership from control, but it is factually and legally incorrect. Ownership does not mean control, and not all forms of control encompass ownership.	• We are unable to find a source for this phrase. • The Companies Act defines "share" as "means one of the units into which the proprietary interest in a profit company is divided". The issued share capital is the total amount of equity allocated to shareholders in a company. • Equity does not include other rights (or "other equivalents") unless and until preferences, rights, limitations and other terms associated with each class of shares, have been set out in a company's Memorandum of Incorporation. • The draft Regulation only refers to ECNS and ECS, whereas "Licensee" refers to all licences granted under Chapter 3 of the ECA. It is unclear if ICASA intends this definition to apply to persons without shares but with other rights, e.g. preferences, liens, or cessions. If ICASA does intend this it should state it unequivocally in the draft Regulation.

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
		We submit that the term "or other equivalents" does not add anything nor has it any meaning in law, and it should be omitted. If it is ICASA's intention as set out in the Findings Document, particularly on ownership and control, to include broadcasting licensees within the ambit of this Regulations then this omission will need to be corrected and broadcasting licensees should specifically be included.
"Juristic Person" is defined to include a trust	At paragraph 18.5.10, Multichoice proposes that if a licensee is a trust, a person will exercise control over that trust if [he] has the ability to control the majority of the votes of the trustees, appoint the majority of trustees, or appoint or change the majority of the beneficiaries. The Findings Document only refers to "trust" in relation to an entity having control of a trust, or a licensee being a trust. This does not constitute a trust as a legal person. We are not aware of any licensees (other than perhaps community broadcasters) that are trusts. They may be partly or wholly owned by trusts.	• The Trust Property Control Act, 1988 (Act No. 57 of 1988) does not endow trusts with legal personality. At best they may have legal capacity to contract in relation to the assets held by the trustees (the Multichoice suggestion was made in relation to control, not legal personality). We suggest that this definition be revised to exclude a trust. If ICASA wishes to include trusts within the ambit of the draft Regulation, it should define the term "Juristic Person" to capture only the legal capacity of the trustees to act in relation to a trust.
"transfer" is defined as "assign, cede, sell, convey, settle, alienate, or otherwise transfer,	The Findings Document merely states that ICASA regards a transfer of 100% of	• "transfer" is already defined in the Process Regulations, 2010 as "assign, cede or

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in whole or in part, whether or not for value, any interest in a licence or licensee form one person to a different person". A further definition of "transfer of a control interest" is included, which is said to have the same meaning as "transfer" except that such transfer of a control interest shall occur when a control interest in a licensee is transferred from one person to another person".	the shares in a licensee to constitute a transfer of ownership and control. "transfer of a control interest" is used in paragraphs 6.7 and 13.4 with reference to the 2003 Telecoms Regulations on ownership, which ICASA acknowledges in these Findings Document are no longer applicable.	transfer a Licence from one person to another" • The definitions should be consistent with one another because they are both referring to the same thing – the transfer of a licence or an interest in a licence from one person to another person • The inclusion of "transfer of a control interest" makes no sense at all. See our comments on "control interest". The duplication of the word "transfer" must be removed. We recommend the deletion of the definition of "control interest" in favour of the definition of "control".
Regulation 2 – this addresses the purpose of the Regulation. Regulation 2(1)(a) provides that among other things, the draft Regulation will facilitate diversity and the transformation of the ICT sector by "prescribing the implementation of the Revised ICT Sector Code".		• The Revised ICT Sector Code is a lengthy and complex document. The draft Regulation does not in fact deal with implementation of this Code but only one part of it, namely ownership. To this end, it appears to address only Statement AICT100 from pages 25 to 36, and only parts of that Statement. • In Cell C's view and having regard to the complexity of the exercise, we recognize that it is simply not possible to "implement" or give effect to the Revised ICT Sector Code, and ICASA should not attempt to do so. ICASA is a sector-specific regulator and it can adopt the ownership level of 30% by Black People in isolation from the remainder of the

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		Revised ICT Sector Code, but it must say so. • Cell C made a different submission in 2018, but given the time lapse, our position has changed in this respect (and we noted this to ICASA in our second written response to the ICASA panel's questions). We understand ICASA's regulatory burden and are seeking to relieve it of duties which can be performed by another regulator. • As the dti is the custodian of the Codes, effective implementation should remain the domain of the dti. Regulation 2 should not refer to implementation of the Code.
Regulation 3 – this draft regulation provides for compliance with the HDG requirement of 30% under section 9(2)(b) of the ECA. This requires the minimum of 30% to be held "**at any given time**" during the licence period (regulation 3(5)) and on making any application to ICASA (regulation 3(3)). Sub-regulation (6) requires the 30% to apply to all individual licensees regardless of their "size or income level". Sub-regulation (8) of regulation 3 requires listed or publicly	The Findings Document states at paragraph 13.5 that in terms of the Standard Terms and Conditions Regulations, 2010, licensees may not change shareholding in a manner which reduces the ownership and/or control by HDGs in the licensee below the 30% threshold or where the 30% threshold is not yet held [sic], without the prior written approval of the Authority. The penalty for not complying with these [sic] regulations is a fine of not more than R100,000. The reference to the Standard Terms and Conditions	• It is not necessary to retain both sub-regulations (3) and (5) as (5) covers the whole licence period in any event. (6) is therefore made redundant – the ECA makes the requirement applicable to all individual licences in any event. • Regulation 8(2) refers to regulations 3(5) and 4(4) (which indicates that the licensee should not have less than 30% ownership by HDG "at any given time during the licence period". It is only possible at a certain point in time for the licensee (or its shareholder) to identify its shareholding profile and take steps to rectify the situation – that time is when the

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trading companies to submit an "independent assurance report" indicating compliance with HDGs equity requirement. The report must be submitted as part of the annual compliance process.	Regulations 2010 in the Findings Document is incorrect. In 2016 ICASA attempted to introduce this requirement in regulation 2(1A) but it was challenged and ultimately removed (*Gazette* 40372 of 26 October 2016). Paragraph 18.4.9 indicates that ICASA agrees that the 30% should not be reduced at all. Paragraph 17.20 states that ICASA "is of the opinion that a B-BBEE verification certificate can be submitted to confirm both the equity ownership and the B-BBEE compliance as a whole", and all ownership principles in the B-BBEE Codes (except the Modified Flow-Through principle) may be applied. Paragraph 17.19 provides that "a mandatory minimum B-status level 6 in terms of the Revised ICT Code will be compulsory for all licensees… for the duration of the licence." Para 18.2.12 provides that 30% HDG should apply to all individual licensees "going forward' i.e. new and existing? Para 18.3.17 states that 30% equity should apply to existing and new licences and para 18.4.9 provides that ICASA	compliance report is to be submitted under sub-regulation (8). • Cell C proposed a 5-year lock-in period in relation to ownership, to address the need for shareholders to realise value for their shares while allowing the licensee to retain the ownership profile it achieves in accordance with the ICASA requirements. Once a 30% BEE profile has been achieved, a licensee should maintain this for a minimum of 5 years in our view. • The regulation also requires "an independent assurance report" in relation to regulation 3 (i.e HDG compliance), while regulation 4 requires a B-BBEE verification certificate regarding BEE compliance. • Please confirm the two are different things in light of the fact that the two regulations i.e. regulations 3 and 4) are not expressed to apply at different times or in different circumstances. • Regulation 4 does not deal with modified flow-through at all, whilst the Findings Document expressly excludes it. This exclusion in the Findings Document is out of step with the way in which the general B-BBEE Codes and Act are applied, and the majority of the responses submitted to ICASA as recorded in the Findings Document. If ICASA intends to implement the Revised ICT Sector Code (which we do not

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	will ensure with a penalty that 30% does not go down during the life of the licence.	recommend) then it should adopt the same measurement standards as the Code. • Please confirm that all aspects of B-BBEE measurement apply to determination of compliance under regulation 4? We recommend deletion of sub-regulation (6). Proof of compliance need only be furnished once in every year under the Compliance Manual Regulations, 2011.
Regulation 4 – this regulation is headed Application of B-BBEE Requirement on Licences. This requires a B-BEE verification certificate. This is a once-off annual requirement, and the flow-through principle may be used. Regulation 4(4) states that "a licensee must ensure that its ownership equity held by black people is not lower than 30% at any given time during the licence period". In addition, ICASA requires licensees to "have a minimum level 4 BBBEE status".	The Findings Document at paragraph 17.23 states "in light of the move away from the concept of HDG which will require a licensee to have 30% of its shareholding in the hands of black people, ICASA is of the view that the mandatory equity ownership requirement should be "grandfathered" in for existing licensees" ICASA believes that class licensees should comply with the ICT Sector Code and "will need to maintain a mandatory minimum B-BBEE status level which would need to be assessed annually, under paragraph 18.1.18 of Findings.	• The regulation does not deal with modified flow-through at all, but in our view, all aspects of B-BBEE measurement should apply to determination of compliance under regulation 4. Paragraphs 3.4 of the Revised ICT Sector Code explicitly deal with this principle. If ICASA intends to give effect to this Code then it should include all aspects of measurement under the Code, or otherwise highlight which sections it intends to apply, and why. • The Findings Document recommends compliance with Level 6 – on what basis has ICASA determined that Level 4 is appropriate in addition to a 30% BEE equity requirement? • It is unusual to express the obligation as consisting in 2

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
	In paragraph 18.6.14, ICASA states that it will engage with verification agents to see what proof will be adequate to show compliance. In paragraph 18.8.7 ICASA agrees that the annual verification certificate is fine per JSE rules of 19 June 2017 (this requires listed companies to make their BEE certificate available) and 18.15.15 confirms annual BBBEE certificate stating that "it has maintained" its level of compliance, and so does 18.16.9. In paragraph 18.19.14 ICASA is of the view that there is no conflict between 30% HDI and 30% BEE and therefore it intends to apply both in licensing. It does not make it clear whether they will apply in aggregate i.e. 30% HDI + 30% BEE or if meeting one of the standards will suffice. On a conservative interpretation and without clarification, one could assume that ICASA is actually requiring a licensee to be a 60% black-owned company. Paragraph 18.21.7-9 repeats this – i.e. that a minimum mandatory equity ownership will apply to all individual licences, both new and existing. In addition, the mandatory minimum BBBEE	parts when a 30% BEE equity and a Level 4 status are two different things. A Level 4 status can only apply to exempted micro-enterprises. ICASA has stated in regulation 3 that the 30% HDG ownership obligation applies to every licensee regardless of size or income. Regulation 4 contains no such directive, but in essence, ICASA is applying the same rule to regulation 4 by requiring compliance with both such obligations in sub-regulation (1). • Regulation 3 is expressly stated to exempt class licensees from the HDG requirement, but there is no similar exemption in regulation 4. Does this mean new class licences must have 30% BEE? Or that all class licences must have 30% BEE from date of operation of the final regulation? • Please clarify whether regulations 3 and 4 apply to existing and future licensees respectively? Or in aggregate i.e. 30% + 30%? • Does BEE under regulation 4 apply to class licensees or not (see our notes on draft regulation 7 below)? • Does Level 4 apply to all licensees (including micro enterprises i.e. earning less than R10m per annum) in addition to the 30% BEE equity ownership (see our

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
	status level will apply to both class and individual, new and existing licences. This is confusing and the confusion is not alleviated in the draft Regulation.	notes on draft regulation 7 below)? In addition to clarifying the issues above in the final regulation, we recommend that modified flow-through apply to measurement of compliance under regulation 4.
Regulation 5 – 100% sale of the issued share capital will constitute a transfer of ownership and control of a licensee unless the shareholders agreement or incorporating documents of the licensee say otherwise.		• There can be no legal sale of authorized but not issued share capital. This remains in the company. A person or entity that acquires all the **issued** share capital in a company effectively acquires the company with the remaining unauthorized shares. Authorized but unissued shares are not capable of being owned nor are they are they capable of being controlled by anyone other than the company itself. The company deals with authorized shares through its representatives. Its representatives are the members of the board of the company, which is authorized to exercise all the powers of the company in terms of section 66 of the Companies Act, 2008. • Therefore, it is not possible to deal with the company or authorized but unissued share capital or indeed any other matter in the shareholders agreement or "incorporating documents". • In terms of the Companies Act, 2008, there are no "incorporating documents" (i.e. this phrase does not exist or have meaning in law) and any shareholders

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
		agreement is subordinate to the provisions of the Companies Act insofar as that Act deals with those matters. The Memorandum of Incorporation or MOI is the document that constitutes a company and records who its shareholders are. Because the Companies Act deals with the issued and authorized share capital of a company (including ownership and control), there is no need for regulation 5 and it should be deleted.
Regulation 6 – this regulation deals with an indirect Ownership Interest. Ownership Interest has been defined in regulation 1 as "any direct or indirect ownership of issued share capital of five percent (5%) or more in a licensee". ICASA states that a licensee should calculate this indirect Ownership Interest by using the multiplier as shown in Annexure A (multiply the % held in the owner of the licensee by the % held in the licensee).		• Unfortunately, the inclusion of the word "indirect" is a duplication of the word "indirect" which is already included in the definition of "Ownership Interest". This would result in a repetition which would not make sense (i.e. indirect indirect ownership of issued share capital….) which could cause confusion. • Please confirm if this is intended to constitute a version of the modified flow-through principle, as applied in the Generic Codes? • The calculation in Annexure A to the draft Regulation refers in the wording of the Annexure, to a 25% ownership as conferring control, whereas the draft Regulation refers to 20% in the definition of "Control Interest" and specifically in (a) and (f) of that definition. This may be a typo

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		although ICASA did refer to 25% as constituting control in its Findings Document. We recommend that ICASA correct the reference to the percentage in the draft Regulations or in Annexure A to the draft Regulations so that they both refer to the same level of ownership.
Regulation 7 – this reuglation deals with the application of ICT Sector Codes – the applicable ICT Sector Codes will apply in the granting of individual and class licences	In paragraph 18.14.13 ICASA agrees that BBBEE Codes are not compulsory for licensees but they are compulsory for public bodies like ICASA "particularly when licensing", and "as such the Authority is compelled to apply BBBEE and require stakeholders in the industry to comply with its BBBEE requirements should they wish to operate in the sector". A mandatory level 6 will be compulsory for all licensees and must be maintained throughout the licence (18.14.15). This requirement can be applied "in conjunction with the Revised ICT Sector Code". Paragraphs 18.17.14/15 – more points are required to achieve Level 4 under the Revised ICT Sector Code than under the Generic BBBEE Codes, so because the BBBEE status level (of individual licensees) will be assessed in conjunction with the minimum equity ownership requirements, ICASA is of the	• As indicated above in relation to regulation 4, there is confusion between whether or not the Revised ICT Sector Code will apply to existing or only new licensees. The use of "grant" in regulation 7 suggests that it will apply only to new licensees. • Please confirm the position and if the Revised Sector Code only applies to new licensees, please also amend regulation 4. • We do not understand the reference to BBBEE being binding on ICASA – the dti is the implementing authority for BBBEE, not ICASA. This draft regulation doesn't refer to the Revised ICT Sector Code, but there is only one ICT Sector Code in existence and its designation is the Revised ICT Sector Code. In addition, as there is only one, the plural should not be used.

Provision in the draft Regulation	Provision in the Findings Document	Recommendation
	view that the mandatory minimum level of compliance will be BBBEE level 6. Note that ICASA applies level 4 in regulation 6. Paragraphs 18.18.9-11 – the minimum mandatory equity requirement and minimum BBBEE status level 6 will be triggered on application, transfer, renewal and amendment of a licence (to be confirmed by way of a verification certificate). This does not track through to the draft Regulation.	
Regulation 9 – this regulation provides for a transitional period – all applications received prior to the promulgation of the Regulations must comply within 24 months after being licensed. Compliance by existing licensees is required in 24 months from date of publication of the Regulations, with 50% compliance in first year.		• Does this mean that an application made by any licensee in the 24-month period from the date of publication of the final Regulations does not need to comply with regulations 3 and 4 but has the remaining period of time (in the 24-month period) to become compliant? If so, then this should specifically also apply to regulations 7 and 8 (but not regulation 6). • What does 50% compliance mean? Does this mean that a licensee must have 15% of each of the BEE and HDG requirements? Please see our query in relation to the aggregation of these two levels, in regulation 4.

ANNEXURE 1: DEFINITION OF "CONTROL" UNDER SECTION 12(2) OF THE COMPETITION ACT

A person controls a firm if that person—

(a) beneficially owns more than one half of the issued share capital of the firm;

(b) is entitled to vote a majority of the votes that may be cast at a general meeting of them, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

(c) is able to appoint or to veto the appointment of a majority of the directors of the firm;

(d) is a holding company, and the firm is a subsidiary of that company as contemplated in section 1(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973);

(e) in the case of a firm that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(f) in the case of a close corporation, owns the majority of members' interest or controls directly or has the right to control the majority of members' votes in the close corporation; or

(g) has the ability to materially influence the policy of the firm in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).