

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of Meeting: 10 NOVEMBER 2016

CASE NUMBER 171/2016

IN RE: CENTURY CITY CONNECT (PTY) LTD (PREVIOUSLY BT & T TELECOMS cc)

PANEL: Prof JCW van Rooyen SC
Councillor Nomvuyiso Batyi
Prof Kasturi Moodaliyar
Ms Mapato Ramokgopa
Mr Jack Tlokana

From the Office of the Coordinator: Ms Meera Lalla

Coordinator: Ms Lindisa Mabulu

JUDGMENT

JCW VAN ROOYEN SC

BACKGROUND

[1] On 12 April 2012 Century City Connect (Pty) Ltd was issued with an Individual Electronic Communications Network Service Licence and an Individual Electronic Communications Services Licence by the Independent Communications

¹ An Independent Administrative Tribunal at ICASA set up in terms of the Independent Communications Authority Act 13 of 2000. The CCC was recognised as an independent tribunal by the Constitutional Court in 2008. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such a decision is, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the compliance division or inspectors at ICASA) which it receives against licensees in terms of the Electronic Communications Act 2005 or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to sanction against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator. A licensee, which is affected by the sanction imposed, has a right to be afforded reasons for the Council's imposition of a sanction. In the normal course, where Council is satisfied with the reasons put forward to it by the Complaints and Compliance Committee, further reasons are not issued. The final judgment is, on application, subject to review by a Court of Law.

Authority of South Africa (“ICASA”). The licences stated that they were effective from 28 May 2009. ICASA’s Compliance Division (ECS and ECNS licences), which has a delegated monitoring function, referred this matter in 2013 to the Complaints and Compliance Committee (“CCC”). It was alleged that BT & T Telecoms cc had not filed financial statements for the financial years 2005-2006, 2006-2007, 2007-2008, 2009-2010, 2010-2011 and 2011-2012, that no contribution had been made in terms of the Universal Service and Access Fund (“USAF”) and no licence fees paid.

[2] In an affidavit from Mr Hein de Swardt, the Network Operations Manager of Century City Connect (Pty) Ltd, it was pointed out that BT & T Telecoms cc was presently called Century City Connect (Pty) Ltd. The licences had been re-issued by ICASA following the purchase of the cc from the members of BT & T Telecoms cc and the necessary steps taken to convert the cc to a private company. The amendment of details was sent to ICASA on 17 October 2011.

[3] The affidavit also stated that the date on which the licence had been issued to the cc was not correctly stated in the documentation from Compliance (2005-2006). The licences were originally issued to the cc on 31 July 2006. It was further pointed out that responsibility for contraventions could only, according to previous judgments of the CCC, be brought before the CCC for contraventions as from the licence year 2011-2012. This was so since the earlier Regulations had been repealed in 2011. Mr De Swardt is, indeed, correct in his argument. The relevant Regulations, under which the reference was made, are from 2011.² In so far as the year-ends before 2011- 2012 are concerned, the CCC is not constitutionally empowered to hear the matters. The Constitution of the Republic of South Africa³ does not permit charges to be brought under repealed legislation, unless a charge was initiated while such legislation was still in operation.⁴ Thus, only the contravention relating to the non-submission of the 2011-2012 financial statement is before the CCC. Later years are not before the

² USAF = February 2011 and the other two, September 2012 – see the Addenda to this judgment.

³ See section 35(3) (l). Cf. *Masiya v DPP, Pretoria (Centre for Applied Legal Studies, Amici Curiae)* 2007 (5) SA 30 (CC) at para [54]; *Savoi v NDPP* 2014 (5) SA 317 (CC) at para [73].

⁴ And it is constitutionally acceptable. Thus, the death penalty could not be imposed for murder committed even before the interim Constitution of the Republic became effective in April 1994.

CCC, since this reference was made in 2013. The same principle applies to the payment of USAF fees and licence fees.


[4] As appears from the licences, they were issued on 12 April 2012 to the present licence holder. The agreement with the previous licence holder had been that it would stand in for all debts to ICASA and Century City Connect (Pty) Ltd was unaware that it had not complied. At the stage when the affidavit from Mr De Swardt had been signed, Century City (Pty) Ltd had taken care of filing the said 2011- 2012 financial statement and had also paid all the dues.

[5] Judged from the facts as a whole, the 2011-2012 duties in terms of the relevant 2011 Regulations was not for the account of the present licensee, which was only issued with its licences on 12 April 2012. Even if such duty existed, which is found not to have been the case, it would have been unfair to make a finding of negligence against the present licensee.

FINDING

As indicated above, there was no duty on Century City Connect (Pty) Ltd to have filed financial statements for the financial year 2011-2012, since its licences were only issued in April 2012.

In the result no finding is made against Century City Connect (Pty) Ltd.



10 November 2016

PROF JCW VAN ROOYEN SC

CHAIRPERSON

The Members of the CCC agreed with the finding.

