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BRIEFING NOTE ON THE AUTHORITY'S RESPONSE TO STAKEHOLDERS' QUESTIONS OF CLARITY ON THE REVIEW OF THE 2014 CALL TERMINATION REGULATIONS

Date of issue: 28 June 2021

1. Background

- 1.1. On 28 May 2021, the Independent Communications Authority of South Africa ("Authority/ ICASA") published the Notice of Intention to review the pro-competitive conditions imposed on relevant licensees in terms of the Call Termination Regulations, 2014 (as amended) in Government Gazette No 44636 ("the Notice"). On the same date, the Authority published on its website a questionnaire for the purpose of conducting the review.¹
- 1.2. On 11 June 2021, the Authority held a virtual stakeholder workshop, to discuss questions of clarity on the process and the abovementioned questionnaire.²
- 1.3. In addition to the questions of clarity raised by stakeholders during the workshop, the Authority received written submissions from stakeholders³ before the closing date of 21 June 2021, in terms of the abovementioned Notice.
- 1.4. The questions of clarity raised by various stakeholders have been summarised and are set out below, followed by the Authority's response to each question. The focus is on including only the key issues raised in the various submissions, and not necessarily to respond to each and every point made by stakeholders.
- 1.5. To this end, licensees are requested to submit the required data in Ms Excel format, and are to provide the necessary information as specified in the Questionnaire.

¹ Call Termination Question is available at <https://www.icasa.org.za/pages/notices>

² Media release statement is available at <https://www.icasa.org.za/news/2021/icasa-conducts-a-virtual-workshop-to-review-the-2014-call-termination-regulations>

³ The Authority received questions of clarity in writing from Vodacom, Cell C, MTN, Telkom and Switchtel.

2. Purpose

- 2.1. The purpose of this briefing note is to provide the Authority's response to stakeholders' questions of clarity in relation to the questionnaire.

3. The review process

- 3.1. **Question:** At which stage of the of the review process will the Authority consult stakeholders on the review of regulations 7(1), 7(2), 7(3), 7(4), 7(5)(a), 7(5)(b), as well as Annexure A of the Call Termination Regulations, 2014 (as amended)?

Authority's response: Similar to the approach adopted in 2017, the Authority will use a two-pronged approach to implement section 67(8) of the Electronic Communications Act 36 of 2005 ("ECA") in respect of the review of the Call Termination Regulations, 2014 (as amended). The first phase will entail the review of pro-competitive conditions imposed on licensees in terms of the Call Termination Regulations, 2014 (as amended). Depending on the outcome of the first phase, the Authority will determine whether it is necessary to proceed with the second phase, which may include, among others, cost modelling of new termination rates, or consultation on regulation 7 of the Call Termination Regulations, 2014 (as amended).

- 3.2. **Question:** What methodology will the Authority use to ensure the proportionality mandated by section 67(8)(c) of the ECA?

Authority's response: As mentioned above, the Authority will adopt a two-phased approach, and consideration of section 67(8)(c) of the ECA would form part of the second phase, if necessary. Thus, the Authority will confirm whether or not the proportionality of the current pro-competitive remedies should be reviewed, and any approaches to be adopted thereto, in the Findings Document.

- 3.3. **Question:** Will the Authority follow the same process that was followed in 2017?

Authority's response: Yes.

4. Questionnaire

Definitions sheet

- 4.1. **Question:** What criteria should be applied to assess whether a service is provided in a fixed location?

Authority's response: A fixed service is provided to a fixed location, with no handover.

- 4.2. **Question:** The definition of Mobile service seems to include Fixed-wireless service. Please clarify the difference between Fixed-wireless and Mobile service and explain what criteria should be applied to assess whether a service is a Mobile service.

Authority's response: Mobile service should exclude Fixed-wireless service. The difference between the two services is in relation to user mobility (mobile or limited mobility) or service hand-over from one base station to another with or without service interruption.

- 4.3. **Question:** Should National roaming inside the geographical coverage area of their home network be excluded for the purpose of the data request?

Authority's response: National roaming inside the geographical coverage area of the home network should be included.

- 4.4. **Question:** How should MVNO calls to and from the host network subscribers be treated, i.e. as on-net or off-net?

Authority's response: MVNO calls to the host network subscribers should be reported as off-net calls unless the MVNO and the host network subscribers belong to the same licensee. Conversely, calls from the host network subscribers to the MVNO subscribers should be reported as off-net calls from the host network perspective.

- 4.5. **Question:** The Prepaid definition seems to focus on a subset of prepaid, i.e. prepaid bundles purchased by retail customers. It appears to expressly exclude prepaid recharges used for unit-by-unit consumption by, for example, out-of-bundle. Is this exclusion intentional?

Authority's response: The definition of Prepaid includes prepaid recharges used for unit-by-unit consumption. The Authority's understanding is that an end-user is required to pay in advance (including prepaid advance) before using prepaid services, either as part of a bundle or on a unit-by-unit basis. However, prepaid bundles purchased by post-paid subscribers should be reported under post-paid.

Subscribers sheet

- 4.6. **Question:** Please explain the difference between "Unique subscribers - mobile telephony" and "Voice subscribers"

Authority's response: Unique mobile active subscribers refer to the number of mobile end-users or subscribers irrespective of the service used, and not necessarily the number of active SIM cards.

Voice subscribers are the number of active voice SIM cards that generated billable and non-billable voice traffic.

To the extent that the above information is not readily available, licensees can provide the number of subscribers split by prepaid and post-paid (including hybrid or top-up) for the mobile market, and the number of subscribers split by residential and business for the fixed-line market.

- 4.7. **Question:** Please explain the difference between “Unique subscribers - mobile Internet” and “Data subscribers”

Authority’s response: Unique mobile internet active subscribers refers to the number of mobile data end-users or subscribers, and not necessarily the number of active data SIM cards.

Data subscribers are the number of active data SIM cards that generated billable and non-billable data traffic.

Similar to the response to question 4.6, licensees can provide the number of subscribers split by prepaid and post-paid (including hybrid or top-up) for the mobile market; and the number of subscribers split by residential and business for the fixed-line market, if the subscriber data requested in the format specified in the questionnaire is not readily available.

- 4.8. **Question:** Please provide clarity and advise if the subscriber statistics required refer to the number of subscribers on the last day of the calendar year i.e. year-end (for example, are “2017 Actuals” the subscribers as of 31 December 2017, or some other statistic (e.g. year-beginning, mid-year etc.)?)

Authority’s response: Yes, subscribers on the last day of the calendar year, and not the financial year of the licensee.

- 4.9. **Question:** Please advise how licensees should distinguish subscribers that use both data and voice concurrently throughout the reporting period in our responses?

Authority’s response: To the extent that licensees are not able to provide voice only and data only subscribers separately, licensees can report the same subscriber under voice and data. However, the licensee can provide an estimated split of voice only subscribers and data only subscribers under the relevant line items.

- 4.10. **Question:** Should corporate fixed line customers be treated as one or multiple subscribers?

Authority's response: A corporate fixed-line customer should be counted once irrespective of the number of lines or services linked to the subscriber.

- 4.11. **Question:** Do the subscriber indicators include or exclude IoT subscribers?

Authority's response: Subscribers exclude IoT subscribers.

- 4.12. **Question:** Please confirm the understanding that voice subscribers and data subscribers will be greater than total subscribers, as some subscribers might be included in both measures.

Authority's response: We expect the voice subscribers and data subscribers to be equal to total subscribers. Licensees should, however, provide reasons for the difference, if any.

- 4.13. **Question:** With regard to "Fixed Subscribers Business Voice Line Subscribers" (line 20), the access service provided is a converged (voice and data) access service, and not voice only. Is the understanding correct that a licensee will not report anything in this line or is something else required?

Authority's response: To the extent that a licensee provides converged voice and data services, the estimated split between voice and data services should be sufficient.

Service Volumes sheet

- 4.14. **Question:** During the Workshop, ICASA confirmed this sheet is only about retail information. ICASA could not confirm the anomaly of wholesale information requested on this sheet, e.g. National Roaming and Transit. Please confirm that wholesale information requests must be ignored for this sheet.

Authority's response: We can confirm that only retail information should be reported on this sheet. Transit (originating calls national) and Transit (originating calls international) service volumes request under Service Volumes sheet should be ignored.

- 4.15. **Question:** What is the definition of Inbound international roaming? Does it relate to international subscribers roaming in SA on SA's electronic communications network? Please confirm this understanding.

Authority's response: Yes.

- 4.16. **Question:** Please provide clarity on the potential overlap of traffic in respect of transit and off-net calls.

Authority's response: Licensees should report data for off-net voice calls (excluding transit) under off-net voice calls. Transit under Service Volumes sheet should be ignored.

Revenues sheet

- 4.17. **Question:** During the Workshop, ICASA confirmed that this sheet is only about Retail information. ICASA could not confirm the anomaly of wholesale information requested on this sheet, e.g. National Roaming and Transit. Please confirm that wholesale information requests must be ignored for this sheet.

Authority's response: We can confirm that only retail information should be reported in this sheet. Therefore, the requests for Transit (originating calls national) and Transit (originating calls international) revenues should be ignored on the Revenues sheet.

Interconnect (national) and Interconnect (international) sheets

- 4.18. **Question:** Should the tabs "Interconnect (national)" and "Interconnect (international)" be split into mobile and fixed?

Authority's response: Yes.

- 4.19. **Question:** Transit Revenue is understood to mean revenue derived from transit services offered to national licensed operators. Transit is defined as transiting of traffic originated in South Africa by ECNS Licensee "A" for termination in South Africa on ECNS Licensee "C" via Licensee "B". As such, the transit revenue is associated with Licensee "B" and not "A" or "C". Please confirm this understanding.

Authority's response: Yes, Licensee B is the transit provider in question.

- 4.20. **Question:** Transit out-payment is understood to mean out-payments for transit paid by the originating licensee to the licensee providing transit services? Please confirm this understanding.

Authority's response: Yes.

- 4.21. **Question:** Can licensees insert columns naming both originating and terminating licensees in respect of Transit under Interconnect tabs?

Authority's response: Yes. Licensees can provide information on both the terminating licensee and originating licensee, if the information is readily available.

Over-the-top services sheet

4.22. **Question:** How does the Authority intend dealing with VoIP/OTT calls?

Authority's response: The Authority may consider these type of calls as part of the review of the product market definition.

4.23. **Question:** Can the scope of OTT services be defined? Can a list of OTT platforms considered as most relevant by ICASA be provided?

Authority's response: The scope of OTT services includes services that may potentially act as a competitive constraint to termination services. These include OTT platforms that offer voice, instant messaging and video-calling functionality.

4.24. **Question:** In addition, please clarify whether “non-licensees” include OTT providers owned by licensed operators

Authority's response: Non-licensees refers to entities that provide services that are not licensed services in terms of the ECA.

4.25. **Question:** Please provide a definition of managed and unmanaged OTT services, respectively.

Authority's response: It is important to state up front that there is no universally accepted definition of OTT services.

Unmanaged OTT services include services provided over the network of a licensee by a third-party OTT service provider such as WhatsApp, Skype, etc. who may or may not have a relationship with the licensee. The service is unmanaged in the context of a licensee not having , amongst others, control in terms of QoS, etc. or distribution of the service.

Generally, managed OTT services are similar to unmanaged OTTs, but the distinguishing factor is that a licensee has control over QoS, etc. or distribution of the service over the former.

5. General questions and responses

5.1. **Question:** Please confirm the reporting period.

Authority's response: As indicated above, all data in the questionnaire is required in annual format by calendar year, unless stated otherwise. Licensees should submit annual data for each of the calendar years ending in the years

specified in the questionnaire. The same applies to forecasting data. Therefore, data should not be aligned to a licensee's financial year.

- 5.2. **Question:** Are the "Subscribers", "Revenue", and "Service Volumes" sheets relevant to retail business only?

Authority's response: Yes. As stated above, Transit should be ignored in respect of Retail sheets, i.e. Services volumes and Revenues. However, licensees are required to provide Transit data under Interconnect (National) and Interconnect (International).

- 5.3. **Question:** How will the Authority utilise the information requested in terms of the questionnaire?

Authority's response: The information will be used for the purposes of the review of pro-competitive conditions imposed on licensees in terms of the Call Termination Regulations, 2014 (as amended).

- 5.4. **Question:** Please indicate if the Authority will also conduct international benchmarking separate from what is provided in response to the questionnaire?

Authority's response: As indicated at the workshop, the Authority may, in addition to information to be submitted by licensees, conduct international benchmarking on the decisions underpinning regulation of wholesale voice call termination markets by other regulators.

- 5.5. **Question:** Will the information submitted be kept confidential?

Authority's response: Stakeholders are referred to section 5 of the Notice for additional information on confidentiality. Stakeholders may request confidentiality, in terms of section 4D of the ICASA Act, on any information submitted to the Authority as part of this review process.

- 5.6. **Question:** What is the geographic scope of the markets being reviewed?

Authority's response: The Authority will review the geographic market dimension of the markets defined in terms of the Call Termination Regulations, 2014 (as amended), as part of the review process. Licensees are encouraged to provide information on their views or opinions on the geographic scope of the markets under consideration.

- 5.7. **Question:** Please explain how the different sets of information requested in each sheet of the Questionnaire will be used to review the determinations in regulations 3 –7 of the 2018 Regulations.

Authority's response: The questionnaire was published for the purposes of a review of pro-competitive conditions imposed on licensees in terms of the Call Termination Regulations, 2014 (as amended), read with section 67(8)(a) of the ECA. Licensees are referred to section 4 of the Authority's 'Guideline for Conducting Market Reviews', published in 2010⁴.

- 5.8. **Question:** What is the validity period of the current regulations?

Authority's response: As indicated at the workshop, the Call Termination Regulations, 2014 (as amended), and the termination rates therein will remain in force in line with Table A2 of Annexure A of the Call Termination Regulations, 2014 (as amended), until amended or repealed.⁵

- 5.9. **Question:** When will the Authority start the consultation process on the cost modelling of the new termination rates?

Authority's response: The decision as to whether or not to modify or revoke the pro-competitive conditions imposed on licensees in terms of the Call Termination Regulations, 2014 (as amended) will be outlined in the Findings Document.

- 5.10. **Question:** Please indicate if the Authority is of the opinion that a full market review is possible without embarking on a cost modelling exercise.

Authority's response: As indicated at the workshop, the current process relates specifically to the review of the pro-competitive remedies imposed on licensees in terms of the Call Termination Regulations, 2014 (as amended).

- 5.11. **Question:** How long after the Findings Document is published will the Authority publish draft and final regulations?

Authority's response: The decision whether or not the Authority will embark on a process to develop new Call Termination Regulations will be set out in the Findings Document.

⁴ Available at <https://www.icasa.org.za/uploads/files/Guideline-for-Conducting-Market-Reviews.pdf>.

⁵ See ICASA (2018) 'Amendment of the Call Termination Regulations, 2014', Government Gazette No 41943, 28 September 2018, Table A.1.

- 5.12. **Question:** How is information regarding Data, MMS and SMS and Interconnect (International) relevant to pronouncing a review of the pro-competitive conditions applicable to wholesale voice call termination markets?

Authority's response: As indicated at the workshop, the Authority is required to review the product dimension of the wholesale call termination markets, which, among others, includes a review of potential close substitutes of the wholesale call termination service, both from the demand-side and the supply-side. The Authority is therefore of the view that the requested information is relevant.

In addition, the Authority indicated that Interconnect (International) information is relevant to this review process, as it will assist the Authority to understand the impact, if any, of the 2018 amendment of the geographic market definition.

- 5.13. **Question:** Given the complexity around the increased scope of the review process, particularly regarding VoIP/OTT calls, and the likelihood of vastly differing information provided by various licensees, which may skew the outcomes of the review process, it is suggested that the Authority should consider hosting one-on-one meetings with interested stakeholders to clarify and discuss issues raised by various parties.

Authority's response: The Authority may request one-on-one meetings with stakeholders, if necessary, as stated in paragraph 4.2.2.5 of the Notice.

- 5.14. **Question:** In the workshop the Authority mentioned that it will also conduct an internal (not using external consultants) benchmarking exercise. Please indicate what the scope and objectives of this exercise will be, and if the Authority will share the final report.

Authority's response: As indicated at the workshop, in addition to information to be submitted by stakeholders in terms of the questionnaire, the Authority has the discretion to conduct a benchmark exercise to ensure that its findings are aligned to best practice. The results of any such exercise will be included in the Discussion Document and Findings Document. Licensees are also referred to section 4 of the Authority's 'Guideline for Conducting Market Reviews' for its view with respect to benchmarking exercises⁶.

⁶ Available at <https://www.icasa.org.za/uploads/files/Guideline-for-Conducting-Market-Reviews.pdf>.