

05 December 2018

**Mr.R. Mohlaloga**  
**Actg. Chairperson**  
**Independent Communications**  
**Authority of South Africa**  
**PO Box 10 000**  
**Sandton**  
**2146**



**SOUTH AFRICAN POST OFFICE SOC LIMITED**

**Physical Address**

NPC Building  
Cnr. Sophie de Bruyn & Jeff Masemola Streets,  
Pretoria  
0002

**Postal Address**

PO Box 10 000  
Pretoria  
0001

Tel: 031-3363817

Email: [Simon.Vengadesu@postoffice.co.za](mailto:Simon.Vengadesu@postoffice.co.za)

Per email: [Egopane@icasa.org.za](mailto:Egopane@icasa.org.za)

Dear Mr. Mohlaloga

**Re: Written representation to the Discussion Paper on Unreserved Postal Services**

Attached, please find SAPO's inputs to the Discussion Paper on Unreserved Postal Services.

Please contact our office should you require clarity or further assistance regarding our submission.

Yours faithfully,

  
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Mr. A. Nongogo

**Actg GE: Governance and Regulatory Affairs**  
**South African Post Office Ltd.**



**GOVERNANCE & REGULATORY AFFAIRS WRITTEN  
REPRESENTATION TO THE DISCUSSION DOCUMENT ON  
UNRESERVED POSTAL SERVICES DECEMBER 2018**

**Question 1: In your view do the Regulations achieve the objectives as stipulated in Section 2 of the PSA?**

**Answer:**

<b>Objects of the Act</b>	<b>Yes/No</b>	<b>Elaborate</b>
Promote the provision of a wide range of postal services in the interest of the economic growth and development of the Republic;	Yes	It clear that there has been growth in the sector with numerous entrants into the market, both large scale and small scale players. The key weakness is the apparent lack of mechanisms to measure the contribution of the sector to GDP and whether market dominance is a factor.
Make progress towards the universal provision of postal services;	No	This aspect has been less successful. While players in the unreserved market have grown the sector, they have largely concentrated in urban and accessible markets. This leaves SAPO to service previously disadvantaged, remote and largely rural communities. Perhaps the introduction of Universal Service Fund will offset this bias.
Encourage investment and innovation in the postal industry;	Yes	There has been investment in the sector largely in the form of infrastructure, transportation and technology. Innovation has largely been driven by technological processes ie: track and trace. There has not been significantly more innovation beyond that
Promote the development of postal services that are responsive to the needs of users and consumers;	Yes	To some degree the sector has responded to the consumer needs and preferences but in many case this has been inhibited by the lack of total commitment to servicing the last mile. While regulations allow for it, commercial imperatives have restricted its full impact

Ensure fair competition within the postal industry;	Yes	There is relatively fair competition in the industry. However, the fact that a large number of players can participate in the industry without registration suggests that there is still scope for improvement in this aspect
Promote stability in the postal industry;	No	The perennial tension between unreserved and reserved markets in the postal sector does not lead to stability. Litigation between players across the markets suggests that in fact there is instability. Regulations need to be clearer with respect to these markets and consideration needs to be given to the possibility of a single market.
Protect the interests of postal users and consumers;	No	Current regulations tend to favour the service providers in the sector. The consumers ability to find redress is severely curtailed by the processes and timeframes that must be adhered to, in order to found a procedurally correct complaint
Promote small, medium & microenterprises within the postal industry.	No	While the regulations do not hinder the entrance into the sector by such players, there are no specific measures in place to offer tangible assistance to these players. As a result the ability of these players to scale up their operations is severely limited.

**Question 2: What do you think are the contributing factors to the declining numbers of registered operators?**

**Answer:** The realisation that one can actually operate without registration has promoted most new entrants to skip that requirement. Furthermore there are no clear benefits to registration as opposed to not registering. There must be clear incentives to registration and equally clear impediments to not registering

**Question 3: The section above provides the definition for unreserved postal services as described by the PSA, do you find the above definition enough for the current operations? Please elaborate.**

**Answer:** No. there is in fact a current matter before the CCC which is brought precisely because the definition is apparently unclear, in particular the 0-1kg prohibition with respect to reserved market and whether this applies to courier or not

**Question 4: Section 22 (d) (ii), (iii), (iv) provides that a person considered to provide courier services undertakes to provide track and trace, deliver within a timeframe. Should the Authority intervene in setting and monitoring delivery standards (in terms of track and trace system, and time deliveries) for unreserved operators? Please elaborate.**

**Answer:** Yes, it must be asked what the section was intended to achieve and whether that outcome is being observed. The effectiveness of the section is entirely reliant on the

capacity to effectively monitor, regulate and penalise as required. At this stage such monitoring and regulation is somewhat lacking.

**Question 5: Do you believe that the current application procedure is efficient? Please elaborate your answer.**

**Answer:** Yes, in so far as what is required to be registered the process is clear and not time consuming

**Question 6: Do you believe that the current 3-year licence validity period is sufficient for business purposes?**

**Answer:** No, it is a truism that most new businesses require 5 years just to reach break even and be sustainable. Coupled with investments that are required to reach that stage, three years would appear to be inadequate for long term planning and longevity in the market. The new categorisation of licences will be helpful in setting realistic licence duration periods

**Question 7: Considering the licensing framework above, which licence conditions should the Authority consider distinguishing between licensing categories?**

**Answer:** International Private Postal Operators and National Postal should be categorized together and a similar registration and annual application fee. Whilst Provincial Postal Operators together with Municipal and Metropolitan Postal Operators falling under a separate category and different registration and annual application fees.

**Question 8: Do you believe that the prescribed fees are economically feasible for all operators? Please elaborate and provide suggestions on how the Authority should prescribe registration fees using the table below?**

**Answer:**

FEES PAYABLE	ECONOMICALLY FEASIBLE (YES OR NO)	ELABORATE
Application Fee = R 1000	No	Needs to be reviewed and requires to be market related. The fee needs to be increased.  The Malaysian model should be considered and implemented.
Registration Fee = R 5000	No	This fee structure must be scientifically calculated and applied taking into consideration of the licence category, and percentage of the annual audited revenue generated.  The Malaysian model should be considered and implemented.

Renewal Fee = R 1000	No	Needs to be reviewed and requires to be market related. The fee needs to be increased.
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Operators not in possession of a registration certificate and without the application process being completed must be penalised and at the very least not be allowed to participate in the market.

**Question 9: Considering the licence categories prescribed by the White Paper, how should the Authority differentiate licence fees payable? Please elaborate.**

**Answer:** The fees should be based on size of potential market. The fees must also be enabling of new entrants into the market, whether that is national, provincial or at municipal level. So it would follow that the larger the market one seeks to operate in, the higher the fees relative to other markets.

**Question 10: Do you find the Authority's monitoring and enforcement of the unreserved postal services effective? Please elaborate your answer and make suggestions in this regard.**

**Answer:** No, it is not effective. Currently, due to a lack of appropriate and relevant primary and secondary legislation the Authority cannot carry out its mandate effectively. There is insufficient inspectorate presence in the market, auditing of operators and monitoring. Encroachment of the reserved market and violations are not adequately addressed.

A recommendation is for the Authority to urgently introduced new regulations aligned to the PSA Amendment Act. The strengthening of the Inspectorate to carry out monitoring and enforcement is strongly required, in order to address the shortcomings in the market. Regular stakeholder meetings between operators and the Authority is also necessary. Stiff penalties are strongly recommended for violations of the regulations.

There could be an argument made that with respect to the unreserved market, what is the rationale for monitoring outside of ensuring that all players are licenced to participate. In other words once licenced and appropriate fees have been rendered, what would be the usefulness of monitoring and enforcement. Asked differently, what is being monitored and enforced?

**Question 11: Do you think the Authority should impose an obligation for registered operators to report unregistered operators in order to improve compliance? Please elaborate.**

**Answer:** No, this is an enforcement capability and the regulator must effectively do this and capacitate itself to do so. Any reporting by registered operators in the market must be in addition to what the regulator is doing and certainly should not be mandatory

**Question 12: Do you consider the prescribed penalty fee suitable? Please elaborate on your answer.**

**Answer:** No, it is not suitable. Firstly, the penalty of R250k as per the Section 4.4 of the Unreserved Postal Services Regulation, must be amended to one that will be applied as per the category of licence to operate that has been issued on advisedly, on a percentage basis. Secondly, the fine as per Section 80. 2 (b) of the PSA, not exceeding R100 for every letter received must be raised in accordance with, current market related penalties.

**Question 13: Kenya has a condition that at least 20% ownership of unreserved postal operators should be local (Kenyan). Should the Authority impose local ownership and control as part of licensing conditions for unreserved postal operators? Please elaborate.**

**Answer:** Yes, most definitely. By implementing this, the Authority will be stimulating the local economy and promoting local entrepreneurship. It will also assist in creating employment.

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