



30 June 2017

The Independent Communications Authority of South Africa (ICASA)
Project Manager
Pinmill Farm Block
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Att.: Ms Refiloe Motsoeneng

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Dear Madam

SPECIFIC QUESTIONS THAT NEED TO BE ADDRESSED IN TERMS OF THE DISCUSSION DOCUMENT

Scope of application of HDG Equity Requirement

1. Should class licensees have HDG equity requirements similar to those of individual licensees? Explain the rationale for the position proposed. In your opinion, how should the equity requirement be imposed on class licensees?

All should be treated fairly in terms of the Constitution. In order to provide for optimal commercial benefit to be derived from the use of frequency licenses, it is in the best interest of all to have a 30% HDG equity requirement as it would prevent companies from creating special purpose vehicles in order to meet the HDG equity requirements whilst diluting economic benefit of frequency spectrum utilisation.

2. Should the Authority consider income levels and size of the entity as criteria for differentiation in the imposition of the HDG requirement?

Absolutely. Smaller entities should be legislated to have a higher HDG than larger entities as it is more practical to implement. HDG strategy would stimulate SME growth. Forcing large corporates to comply with HDG requirements may result in such companies creating special purpose vehicles, which is not the intention of this legislation.

3. Should the minimum legislated requirement remain at 30% or should it be increased? If so, what targets do you propose and why?

In the interim it should remain at 30% until differentiated HDG criteria have been implemented.



4. Should the Authority require licensees to seek prior approval in instances where:

Yes, as below, and provided that ICASA commits to processing such applications for approval within 30 days:

- a. A change in shareholding results in reduction of equity ownership by HDG's below 30%; and

Yes, provided that this criteria is applied across board, including listed companies, failing which it is unfair towards existing licensees. However, bearing in mind that this requirement will stifle economic growth and freedom.

- b. Where the licensee does not meet the 30% requirement and change in shareholding affects the percentage of equity ownership by HDG's.

Yes, provided that this criteria is applied across board, including listed companies, failing which it is unfair towards existing licensees. However, bearing in mind that this requirement will stifle economic growth and freedom.

5. How should the HDG equity ownership requirement be applied to publicly traded entities, without discouraging HDG's from participating in share schemes?

Unless ICASA can find a way to treat all entities in the same manner, the 30% ownership requirement can be negatively affected – especially in publicly traded entities (e.g. share schemes has a discounted benefit to the first participants – the second tier participants do not get the benefit which could lead to a dilution of HDG ownership).

30% Ownership Requirement

6. Should the minimum legislated requirement remain at 30% or should it be increased? If so, what targets do you propose and why?

It should remain as is at 30% for all entities, until such time as ICASA has found a way in which to ensure that all entities are treated fairly and equitably.

Compliance Verification

7. What proof should the Authority consider appropriate to confirm compliance with the HDG requirements?

Each year, with renewal of the license and proof of payment, a valid BBBEE certificate needs to be submitted, which certificate should be renewed each year as per relevant legislation. In the event that this requirement is not adhered to and a BBBEE certificate is not submitted or renewed, such licensee is in contravention of relevant legislation.



8. What proof would in your view be appropriate to confirm the compliance of publicly traded entities provided with the HDG equity / ownership requirement?

As above.

Defining Ownership and Control

9. Is the definition of “control interest” as set out in (a) to (f) here still valid?

Yes.

10. In your view, what constitutes control and how should the Authority define it? Set out the basis for your argument.

As per Gazette No 24288, page 4.

11. Are you of the view that the Authority should define ownership?

No.

12. In your view, what constitutes Ownership and how should the Authority define it? Set out the basis for your argument.

As per Gazette No 24288, page 4

13. Are you of the view that the transfer of 100% share capital in a licensee amounts to transfer of control or transfer of ownership?

In privately owned companies, control and ownership vest in a 100% shareholder, whilst in a publicly listed entity, it amounts to transfer of ownership and not necessarily a transfer of control.

Questions Regarding the Application of the ICT Sector Codes

14. How should the Authority go about promoting BBBEE and compelling organs of state and public entities to apply the applicable sector Codes? Explain the rationale that underpins your view.

By imposing HDG policy, it implicitly promotes it. The BBBEE ACT compels the organs of state and public entities to apply the applicable sector codes. In order to prevent confusion and promote equality.

15. Should the Authority apply the Codes to all applications, i.e. including service, spectrum, type-approval and number applications?

Service and Spectrum applications yes, but type-approval and number applications no. It will have a detrimental effect on foreign investment and economic sustainability.



16. Should the Authority require BBBEE certificates to be submitted as part of the licensees' annual compliance requirements?

Yes. See above.

General Questions

17. The Authority proposes to apply either HDG ownership requirements or the Codes, to all applications and processes, other than applications regarding individual licenses. In your view, is it the correct approach? Or should both the HDG ownership and the Codes apply to all applications and processes that do not involve individual licences?

Only HDG ownership requirements should apply as this will allow for a broader participation in the utilisation of frequency licenses.

18. What should be the minimum level of BBBEE certification?

Only HDG ownership requirements should apply until such time as there is a clearer understanding of the new Codes, and a reasonable time frame for licensees to obtain an acceptable BBBEE level. Failure to set reasonable requirements will result in financial loss in companies, loss of employment of staff and will stifle economic growth.

19. Should the HDG requirements or the application of the Codes be made mandatory and not be triggered only by an application of some other regulatory process?

The requirements should be validated on an annual basis.

20. The Authority proposes that with individual licence applications, both HDG ownership requirements as well as the Codes should be applied. Provide your view whether this proposed approach should apply, providing reasons for your position.

Only HDG ownership requirements should apply until such time as there is a clearer understanding of the new Codes, and a reasonable time frame for licensees to obtain an acceptable BBBEE level. Failure to set reasonable requirements will result in financial loss in companies, loss of employment of staff and will stifle economic growth.

21. Two decades into the South African democratic dispensation, we are yet to see ownership and operations of licensees fully and meaningfully transformed. Consequently, there are growing calls which grow louder for transformation. In response to growing public and government sentiments in this regard, should the Authority impose timeframes for compliance by all of its licensees for requirements for empowerment?

Yes, but reasonable timeframes given moving BBBEE targets and taking into consideration the interests of businesses as well as employees, and not only transformation at the cost of businesses. This is not in the best interest of the economy or transformation.



22. What would be an appropriate timeframe? Provide the rationale informing the period required to ensure compliance.

Typically, private equity and business investors invest in private entities for between 5 – 7 years. This time frame will allow for change of ownership to be taken into consideration at the time of exit of such private equity and business investors.

Yours faithfully

LT LE ROUX

EXECUTIVE: LEGAL & COMPANY SECRETARY