

Vodacom's comments on the Draft Amendments of Regulations regarding Standard Terms and Conditions for individual licences under chapter 3 of the electronic Communications Act, 2005.

Vodacom (Pty) Ltd (“Vodacom”) welcomes the opportunity to comment on the

- **Draft Amendments of Regulations regarding Standard Terms and Conditions for Individual Licences under chapter 3 of the electronic Communications Act, 2005, published in the government gazette in terms of notice 46050 on 16 March 2022 (“Draft STC Regulations”);**

Please note that should the Authority decide to allow oral presentations, Vodacom will make use of the opportunity to make oral presentations to the Authority. We further confirm our willingness to participate in any further consultative process which the Authority may undertake in this regard.

In the remainder of the document, we provide our detailed comments on the Draft STC Regulations.

Detailed comments

1.1. Headings

- a. The heading of Schedule 2 in the Draft STC Regulations reads “Class Electronic Communications Network Service Licences”, on page 13 of the Government Gazette.
- b. In the original version of the Regulations regarding Standard Terms and Conditions for Individual licences, dated 14 Jun 2010, the heading for Schedule 2 was “Individual Electronic Communications Service Licences”
- c. We have assumed that this is an error and that it should be in accordance with the original version of the Regulations i.e. Individual Electronic Communications Network Service Licences and not Class Electronic Communications Network Service Licences.
- d. The heading of Schedule 3 in the Draft STC Regulations reads “Class Electronic Communications Service licences”, on page 19 of the Government Gazette.
- e. In the original version of the Regulations regarding Standard Terms and Conditions for Individual licences, dated 14 Jun 2010, the heading for Schedule 3 was “Individual Electronic Communications Service Licences”
- f. We have assumed that this is an error and that it should be in accordance with the original version of the Regulations i.e. Individual Electronic Communications Service Licences and not Class Electronic Communications Service Licences.
- g. We assume both typographical errors. Please review and clarify.

1.2. Substitution of regulation 2 of the Regulations

- a. The numbering under regulation 2 (1) should start with (a) and not (e). Please rectify.

1.3. Amendment of regulations 8 of the Regulations

- a. The proposed amendment reads as follows:
“(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC.”
- b. We are of the view that a referral to the CCC should only follow after three (3) attempts and if a Licensee has not provided justifiable and plausible reasons why it could not provide the requested information or part thereof. Whilst in most cases Licensees would be able to provide requested information to the Authority within reasonable time, there have been instances where information was not available or captured in the required format, and therefore not available. The regulations should make provision for such instances.
- c. We propose the following amended wording for consideration,

(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts and the Authority did not receive justifiable reasons why the information could not be provided, refer the matter to the CCC.”

1.4. Amendment of regulations 9 of the Regulations

a. The proposed amendment reads as follows:

“(1) A Licensee may not provide any service for a charge, fee or other compensation unless the price(s) and terms and conditions, which must include all fees (non-recurring, recurring, OOB rates and billing increments):

(a) have been made known to the end-user by:

- (i) making such prices and terms and conditions available for inspection at the Licensee's principal place of business and website during business hours;*
and
- (ii) providing such details to anyone who requests same at no charge.*

(b) have been filed with the Authority at least five (5) days prior to the provision of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the new product/service, amendment or termination being notified to the Authority;*
- (ii) The objective and reason(s) of launching a new product/service, amendment or termination of a product/service;*
- (iii) The effective date of the new product/service, amendment or termination of a product/service; and*
- (iv) The price(s), and all other fees applicable to the product/service.*

“(1A) A Licensee must notify the Authority of the termination of an existing service(s) at least five (5) days prior to the termination of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the product/service being terminated;*
- (ii) The objective and reason(s) of termination of a product/service; and*
- (iii) The effective date of termination of a product/service.”*

b. Firstly, we indicate from the outset that the information to be provide to the Authority under the two sub-regulations would in our view constitute confidential and competitive sensitive information i.e.

- Sub-regulation 1(b) (ii) “the objective and reason(s) of launching a new product/service, amendment or termination of a product/service, and
- Sub-regulation (1A) “The objective and reason(s) of termination of a product/service”

We are of the considered view that this information should be treated as confidential because if disclosed it could reasonably be expected to put Vodacom at a disadvantage in contractual or other negotiations; or would prejudice the Vodacom in commercial competition. The same would apply in the case of other Licensees.

Secondly, whilst Vodacom supports the publishing of its standard offers on its website, which it currently does in any event, it is of the view that it is not plausible to publish all of its non-standardised offers i.e. personalised offers (including tariffs) per customer, as this will be impractical and rather confusing. These offers differ, *inter alia*, from customer to customer and time to time, and area to area. Personalised offers are competitively sensitive and gives a clear view of what products resonate with our customers from a personalisation perspective.

Important is to note that customer that are presented with matching personalised offers are provided with the full details of offer i.e. the terms and condition, including all fees relate to the offer, so that the customer can make an informed choice.

In addition, with reference to the consent agreement between Vodacom and the Competition Commission, we have created a landing page that details all current promotional offers with clearly identifiable calls to action for the promotion. The landing page also detail what the personalised offerings are and where these offers can be found. This page accessible via the MyVodacom App and www.vodacom.co.za.

We also consider that pricing for commercially sensitive portfolios such as Corporate APN services should not be published as these offers are confidential and are provided to corporate customers on request. These Corporate APN offers also differ from customer to customer taking into account the specific requirements of customers. None of the operators currently disclose their personalised- and Corporate APN- offers for the reasons mentioned above.

None of the operators currently disclose their personalised- and Corporate APN- offers for the reasons mentioned above.

- c. We request that the Authority confirm that the information proposed pursuant to the proposed regulation 9(1)(b)(ii) will be treated as confidential information envisaged in section 4D of the ICASA Act, and that operators, including Vodacom will not be required to disclose confidential information in any manner which may prejudice operators, including their competitive position.

Furthermore, we propose the following amended wording for consideration in dealing with the disclosure of non-standard offers i.e.

*“(1) A Licensee may not provide any service for a charge, fee or other compensation unless the price(s) and terms and conditions, which must include **all standard offers including fees (non-recurring, recurring, OOB rates and billing increments).** Standard offers exclude personalised, customer specific and Corporate APN-offers.:*