

Dr Keabetswe Modimoeng
Chairperson
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NOTICE OF INTENTION TO CONDUCT MARKET INQUIRY INTO SIGNAL DISTRIBUTION SERVICES IN SOUTH AFRICA

1. Introduction

The Independent Communications Authority of South Africa ("the Authority") hereby gives notice of its intention to conduct an inquiry into signal distribution services in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act"), read with section 67(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA").

2. Legal basis for the Inquiry

- 2.1. The primary object of the ECA is to provide for the regulation of electronic communications in South Africa in the public interest and for that purpose to, *inter alia*, "provide access to broadcasting signal distribution for broadcasting and encourage the development of multi-channel distribution systems in the broadcasting framework".¹
- 2.2. The legal basis of the inquiry is in terms of section 4B of the ICASA Act, read with section 67(4) of the ECA.
- 2.3. Section 4B (1) of the ICASA Act states that:

"(1) The Authority may conduct an inquiry into any matter with regard to-
(a) the achievement of the objects of this Act or the underlying statutes;
(b) regulations and guidelines made in terms of this Act or the underlying statutes;

¹ Section 2 (x).

- (c) *compliance by applicable persons with this Act or the underlying statutes;*
- (d) *compliance with the terms and conditions of any licence by the holder of such licence issued pursuant to the underlying statutes; and*
- (e) *the exercise and performance of its powers, functions and duties in terms of this Act or the underlying statutes."*

2.4. Section 67(4) of the ECA provides as follows:

"(4) The Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments. The regulations must, among other things-

- (a) define relevant wholesale and retail markets or market segments;*
- (b) determine whether there is effective competition in those relevant markets and market segments;*
- (c) determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition;*
- (d) impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy the market failure;*
- (e) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments, taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and*
- (f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments."*

3. The purpose of the Inquiry

- 3.1. The purpose of this inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the signal distribution services value chain which may warrant regulation in the context of a market review in terms of section 67(4) of the ECA.

4. The Inquiry Process

4.1. The Authority will commence and conduct the review in a series of phases as follows:

4.2. Phase 1 (commencement of the market inquiry)

4.2.1. The Authority publishes

- (a) notice of intention to conduct an inquiry into signal distribution services, in the *Gazette*; and
- (b) a questionnaire on the signal distribution services market inquiry, on its website.

4.2.2. Stakeholders will be given ten (10) working days, from the date of publication of this Notice and the questionnaire, to send any questions of clarity.

4.2.3. The Authority will respond to all questions of clarity by publishing a briefing note on its website within ten (10) working days of the final date for submission of clarification questions.

4.2.4. Stakeholders are invited to submit written responses to the questionnaire within forty-five (45) working days from the date of publication of the above-mentioned briefing note.

4.2.5. The Authority may request one-on-one meetings in relation to information submitted by a stakeholder, where necessary to clarify information that is submitted.

4.3. Phase 2 (Discussion Document)

4.3.1. The Discussion Document will be published for public comment for a period of forty-five (45) working days.

4.3.2. Stakeholders may submit written representations on the Discussion Document by the said deadline, and must indicate whether they require an opportunity to make oral representations, should the Authority hold public hearings.

4.3.3. Written representations on the Discussion Document will be made available for public scrutiny on the Authority's website.

4.4. Phase 3 (Public Hearings on the Discussion Document)

4.4.1. The Authority may hold public hearings and confirm details of the hearings in a notice to be published on the Authority's website.

4.4.2. The notice to be published in terms of clause 4.4.1 above will contain the date (s) and the order to which interested persons will be expected to make the oral representations to the Authority.

4.4.3. At the hearings, affected stakeholders may be requested to provide supplementary information, within seven working days.

4.5. Phase 4 (Findings Document)

Within ninety (90) days from the date of conclusion of the inquiry, the Authority will publish a summary of its findings in the Government Gazette and on the Authority's website.

5. Confidentiality

5.1. Stakeholders may request confidentiality, in terms of section 4D of the ICASA Act, on any information submitted to the Authority during this inquiry process.

5.2. Such request for confidentiality must be accompanied by a confidential and non-confidential version of the stakeholder's submission.

5.3. The Authority hereby refers stakeholders to the Guideline for Confidentiality Request and the Form, published on 17 August 2018 in Gazette No. 41839, in order to assist stakeholders when applying for confidentiality.

All communications relating to this Inquiry must be directed to Chairperson: Signal Distribution Inquiry Council Committee at signaldistribution@icasa.org.za.