
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 2275 OF 2024



DRAFT AMENDMENT TO THE MOBILE BROADBAND SERVICES REGULATIONS, 2021

The Independent Communications Authority of South Africa ("ICASA" or "the Authority") hereby declares its intention to amend the Mobile Broadband Services Regulations, 2021 ("the Regulations") in terms of section 4 read with section 67(4) of the Electronic Communications, 2005 (Act No. 36 of 2005), to the extent reflected in the Schedule.

A copy of the Draft Amendment Regulations will be made available on the Authority's website at <https://www.icasa.org.za> or can be sent via email upon request by any individual or can be collected from ICASA Library at the following address: 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion between 09h00 and 16h00, Monday to Friday.

The Authority hereby invites interested parties to make written representations on the Draft Amendment Regulations on or before 13 February 2024 by post, hand delivery or electronically (in Microsoft Word) and marked specifically for the attention of Mr Owen Mhlanga.

Delivery address: Block C, 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion; or by email at MarketInquiry2018@icasa.org.za.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library. To be clear, the Authority is not reviewing the pro-competitive conditions in terms of section 67(8) of Act No. 36 of 2005.

Any representations outside the scope of the amendments will be treated as irrelevant and shall not be considered by the Authority.

When a person submits information to the Authority, such person may request that specific information be treated as confidential information in terms of section 4D of the Independent Communications Act of South Africa Act, 2000 (Act No.13 of 2000) ("ICASA Act"). The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential, in accordance with ICASA Guidelines for Confidentiality Request published in Government *Gazette* No. 41839 of 17 August 2018.

The Authority may determine that such specific information or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality cannot be acceded to, the person who made the request will be granted an opportunity to withdraw the information or portion(s) thereof.



YOLISA KEDAMA

ACTING CHAIRPERSON

DATE: 14/12/2023

GENERAL NOTICES

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE [TO BE INSERTED] OF 2024



DRAFT AMENDMENT TO THE MOBILE BROADBAND SERVICES REGULATIONS, 2021

The Independent Communications Authority of South Africa has, under sections 4 read with section 67(4) of the Electronic Communications, 2005 (Act No. 36 of 2005), made the regulations in the Schedule.

SCHEDULE

1. Definitions

In these Regulations "the Regulations" means the regulations published by Government Notice No, 1960 (Government Gazette No 46155) of 31 March 2022.

2. Amendment of regulation 7 of the Regulations

Regulation 7 of the Regulations is hereby amended -

- 2.1 by the substitution of the paragraph, after the heading of "7. Pro-competitive terms and conditions", for the following paragraph:

"The operators with SMP in the relevant markets identified in regulation 6, must, on a quarterly basis, publish on their website non-confidential versions of the following accounts, records and other documents and provide the Authority with the confidential versions of the following accounts, records and other documents, subject to a request for confidentiality in terms of Section 4D of the ICASA Act.: "

- 2.2 by the deletion of sub-regulation 7(e), 7(f) and 7(g);

- 2.3 by the substitution **for** paragraph (iii) in regulation 7(h) of the following paragraph:

"(iii) A report on the previous quarter's site access requests summarising the information in regulations 7(h)(i) and 7(h)(ii) above, including a summary of time to approve the requests, a summary of reasons for not approving site access requests, and average effective charges for the sites shared."

- 2.4 by the substitution for paragraph (v) in regulation 7(h) of the following paragraph:

"(v) In respect of information provided per site, the licensee must also provide the operator's identification code for the site, its longitude and latitude, and Statistics South Africa census 2011 main place code, and site category including macro > 15m, macro <15m, rooftop, indoor (including distributed antennae systems)."

3. Short Title and Commencement

These regulations are called the Mobile Broadband Services Amendment Regulations, 2023 and will come into force upon publication in the Government **Gazette**.



Independent Communications Authority of South Africa
350 Witch-Hazel Avenue, Eco Point Office Park
Eco Park, Centurion.
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MOBILE BROADBAND SERVICES AMENDMENT REGULATIONS, 2024

EXPLANATORY MEMORANDUM

1. Introduction

- 1.1. In 2018, the Authority initiated a market inquiry into mobile broadband services in terms of section 4B of the ICASA Act and section 67 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"). The purpose of the inquiry was to assess the state of competition in the provision of mobile broadband services and determine the need for regulatory intervention.
- 1.2. The inquiry was concluded with the publication of the Findings Document in the Government *Gazette* No. 44337 on 26 March 2021 and subsequently the publication of the Regulations and Reasons Document on 31 March 2022.
- 1.3. The Authority found that Vodacom (Pty) Ltd ("Vodacom") and Mobile Telephone Networks (Pty) Ltd ("MTN") are dominant in retail mobile services provided in regional geographic areas (provincial, split by urban and rural), wholesale site infrastructure access in local and metropolitan municipalities and wholesale national roaming services for coverage markets as defined in regulation 6. In this regard, the Authority imposed quarterly publication and information provision requirements on Vodacom and MTN.
- 1.4. On 26 September 2022, MTN lodged an application in the High Court of South Africa, Gauteng Division, Pretoria, under case number: 2022/026554. MTN seeks to review and set aside the Regulations in their entirety.
- 1.5. The Authority is of the view that some of the issues raised by MTN in its High Court application are regulatory oversights that can be resolved by amending the Regulations. Thus, the Authority proposes the amendments contained herein.

2. Reasons for the proposed amendments

The purpose of this explanatory memorandum is to provide reasons for the amendments to the Regulations.

The Authority will not consider representations that are not relevant to the proposed amendments.

2.1. Amendment to regulation 7

The following reasons are provided for the proposed amendment to regulation 7:

- 2.1.1. The Authority replaced "retail markets, wholesale site infrastructure access and wholesale national roaming service" with "relevant markets". The relevant markets refer to the markets identified in regulation 6 of the Regulations.
- 2.1.2. Furthermore, the Authority inserted "subject to confidentiality in terms of Section 4D of the ICASA Act" in order to make it explicit that Vodacom and MTN are not required to publish confidential information on their websites. Vodacom and MTN are required to publish non-confidential information on their websites and provide the Authority with all information including confidential information, subject to a request for confidentiality.
- 2.1.3. Any person who submits information to the Authority may request confidentiality, in terms of section 4D of the ICASA Act, on information to be published on their website and provided to the Authority. Vodacom and MTN are however referred to the Guidelines for Confidentiality Request and the Form, published on 17 August 2018 in *Gazette* No. 41839.

2.2. Amendment to regulation 7(e)-(g)

The Authority repealed regulation 7(e) given that it didn't find any licensee with significant market power in the markets for the provision of Access Point Name ("APN") (i.e., Upstream market 3b) and Mobile Virtual Network Operator ("MVNO") (i.e., Upstream market 3a) services.

The Authority also repealed regulations 7(f). The Authority retains the power in terms of the applicable legislations to request the operator with SMP to provide an explanation if any category of retail price is below any wholesale price in respect of services supplied by operators with SMP.

The Authority also repealed regulation 7(g). The monitoring of prices shall be done by operation of the law as explained above.

2.3. Amendment to regulation 7(h)(iii)

Regulation 7(h)(iii) erroneously made reference to regulation 7(a) and 7(b) instead of regulation 7(h)(i) and 7(h)(ii). The purpose of the amendment is to rectify these clerical errors and make references to the correct sub-regulations.

2.4. Amendment to regulation 7(h)(v)

The Authority erroneously included lamppost, billboard and micro in regulation 7(h)(v) of the Regulations. Paragraph 135 of the Authority's Findings Document on Mobile Broadband Services Inquiry (Government *Gazette* No. 44337) excluded micro solutions, lampposts and billboards in the relevant product market for site infrastructure or site access market.