
GENERAL NOTICE

NOTICE 1795 OF 2007



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

INTERCONNECTION REGULATIONS PURSUANT TO CHAPTER 7 OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005 (THE ACT)

1. The Independent Communications Authority of South Africa ("ICASA") hereby gives notice in terms of section 4(4) of the Electronic Communications Act No. 36 of 2005 ("the Act") of its intention to prescribe Interconnection Regulations in terms of sections 38 and 4 of the Act and section 4(3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 as amended ("the ICASA Act").
2. Interested persons are invited to submit written representations on these draft Interconnection Regulations by **11 February 2008** (no extensions will be granted) by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of:

Ms N Batyi
Project Leader
ICASA
Private Bag X10002
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or

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Pinmill Farm
164 Katherine Street
Sandton

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3. Persons making written representations are notified that no public hearings will be held with respect to these draft regulations.
4. All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on payment of the prescribed fee.
5. At the request of any person who submits written representations pursuant to this notice, ICASA will determine whether such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. If the request for confidentiality is refused, the licensee making the request will be allowed to withdraw such representations or portion thereof.
6. The final regulations will be published in the Government Gazette.

**PARIS MASHILE
CHAIRPERSON**

INTERCONNECTION REGULATIONS

Definitions

In these Regulations, any word or expression to which a meaning is assigned in the Electronic Communications Act No. 36 of 2005 or the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended, shall have the meaning assigned to it unless otherwise specified.

“Access Charges” means the calculated costs inclusive of VAT, based upon the forward-looking long-run average incremental costs for providing interconnection;

“Access Standards Committee” (ASC) is a forum of industry players whose role is to provide a framework for the technical feasibility of interconnection.

“Act” means the Electronic Communications Act, 2005 (Act No. 36 of 2005)

“Calling line identification” (CLI) means the information generated by an electronic communications system that identifies the calling number in its entirety

“COACAM Regulations” means the Regulations on Chart of Accounts and Cost Allocations Manual promulgated by the Authority pursuant to section 46 (1) of the repealed Telecommunications Act No. 103 of 1996, as amended;

“Duly licensed person” means –

- (a) An Individual Electronic Communications Network Service licensee,
- (b) Class Electronic Communications Network Service licensee, or
- (c) Any exempt licensee in terms of section 6 (1) of the Act;

“Fully allocated cost” is a basis of accounting whereby all of an entity's costs are attributed fully to products and services and/or segments, as defined in the COA/CAM regulations.

“Interconnection agreement” means an agreement entered into between or amongst the interconnecting persons in relation to the interconnection of electronic communications network services and electronic communications services excluding broadcasting services.

“Interconnection capacity” means dedicated, unswitched transmission capacity and other electronic communications facilities for connecting the electronic communications network services, electronic communications services of two or more electronic communications network services, electronic communications services or licensees or entities providing such

services exempt from licensing, so that electronic communications may be passed efficiently between those services.

“Interconnection information” means information relevant to interconnection that is in the possession or control of the person providing interconnection and that may assist the person seeking interconnection to:

- (a) Formulate a request for interconnection; or
- (b) Plan, establish, or maintain its electronic communications network service, electronic communications service, for the purpose of interconnection.

Interconnection information includes but is not limited to:

- (a) Technical specifications of the electronic communications system;
- (b) Switching, routing and transmission equipment used in the system;
- (c) Signalling protocols used;
- (d) Traffic volumes, and
- (e) also includes any material changes to Interconnection Information that may affect the interconnection arrangements or plans of persons seeking interconnection or the services such persons provide or intend to provide by means of that interconnection.

“Local exchange” means the telephone exchange to which customers are connected, usually via a concentrator.

“Media gateway” means the interface between the packet environment of the core network and the circuit switched environment of the PSTN for bearer traffic, when equipped with circuit capabilities.

“Mobile switching centre” (MSC) switches circuit mode mobile switching originated or mobile switching terminated traffic. An MSC is usually connected to at least one base station. It may connect to the other public networks other MSCs in the same network, or MSCs in different networks. The MSC may store information to support these capabilities.

“Person providing interconnection” means any person providing an ECNS or ECS who is required to provide interconnection in terms of section 37(1) of the Act.

“Person seeking interconnection” means any person seeking to interconnect its ECNS or ECS to the ECNS or ECS of a person providing interconnection.

“Point of interconnection” (POI) means a location that constitutes a point of demarcation between the ECNS and ECS of a person providing interconnection and a person seeking interconnection. These POIs would include, but are not limited to:

- (a) Mobile switching centres
- (b) Media gateways
- (c) Local exchanges
- (d) Tandem exchanges

“Reference Interconnection Offer” (RIO) means the standard contract terms and conditions offered by a person declared to have Significant Market Power (SMP) providing interconnection.

“Tandem exchange” means the aggregating connecting point between various local exchanges.

“Technically feasible” means the technical specifications of the electronic communication system that allows interconnect access to network elements and services.

Purpose of Regulations

- 1.1. These interconnection regulations are intended to facilitate the conclusion of interconnection agreements, by stipulating agreement principles, time frames and procedures to be followed by the persons to interconnection and the filing of agreements and review thereof by the Authority.
- 1.2. These regulations also specify dispute resolution processes by stipulating time frames and procedures to be followed in the event of a dispute.
- 1.3. These interconnection regulations are not intended to limit the matters that may be dealt with in an interconnection agreement or prevent or delay persons from negotiating or entering into bilateral or multilateral arrangements that deal with matters not dealt with in these interconnection regulations.

Obligation to interconnect

- 2.1. All licensees excluding broadcasting services licensees have an obligation to interconnect upon request, to all persons licensed in terms of the Act and persons providing service pursuant to a licence exemption, unless such request is unreasonable.
- 2.2. The Authority may from time to time, exempt licensees from the obligation to interconnect in accordance with the provisions of section 38(5).

Agreement principles

The following principles must inform the terms and conditions of interconnection agreements:

3.1. *Quality of Service*

- (a) An interconnection agreement must facilitate interconnection in a manner that promotes connectivity by ensuring that –
- i. Subscribers of a person seeking interconnection and a person providing interconnection are able to communicate, from any terminal device, on a non-discriminatory basis; and
 - ii. The transmission of any communications across and within ECNS and ECS must be seamless to the customers of both persons’.

3.2. *Service level agreements*

- (a) An interconnection agreement must contain service levels that reflect good interconnection practice and provide reasonable remedies and penalties for any failure to meet those service levels.

3.3. *Standardisation*

- (a) The persons to an interconnection agreement must comply with all relevant standards of the International Telecommunication Union, and such other technical standards as the Authority may prescribe from time to time.

3.4. *Confidentiality*

- (a) Confidentiality provisions of an interconnection agreement may not prevent the public disclosure of an interconnection agreement and charges by the Authority or the persons to it, in terms of the Act and these Regulations.

3.5. *Non-discrimination*

- (a) These non-discrimination principles apply in respect of negotiation and conclusion of Interconnection Agreements, in respect of the terms and conditions of Interconnection Agreements, and in respect of the implementation of interconnection.
- (b) A person providing interconnection must treat a person seeking interconnection on a non-discriminatory basis, and on no less favourable terms than the treatment that the person providing interconnection affords itself, its affiliates, and similarly situated persons seeking interconnection.
- (c) Requests from a person seeking interconnection, including requests for additional interconnection in terms of an Interconnection Agreement, must be dealt with in the order in which they are received.

3.6. *Transparency*

- (a) Charges for interconnection must be sufficiently unbundled so that a person seeking interconnection does not have to pay for anything it does not require for the requested interconnection.
- (b) Charges for interconnection may not exceed retail charges for the provision of substantially similar services.
- (c) Charges for interconnection and billing and settlement procedures must be transparent and fair.
- (d) After the Authority has determined that an Interconnection Agreement is consistent with these Regulations as required by section 39(4) of the Act and these Interconnection Regulations, the persons to an Interconnection Agreement must, within twenty (20) days, make the Interconnection Agreement publicly available, including the rates and charges, by publishing the Interconnection Agreement on the concerned persons' websites, and provide a copy immediately to any person on request.

Required terms and conditions of interconnection agreements

An Interconnection Agreement must deal with the following items, other than where such item is not relevant to the interconnection in question as follows:-

4.1. *Definitions of terms and abbreviations*

4.2. *Technical scope of interconnection*

- (a) A description of the purpose of the interconnection
- (b) A description of the technical scope and specifications of the interconnection
- (c) Mechanisms for changes to the purpose, scope and specifications of the interconnection
- (d) Details regarding access to numbers by the persons, and
- (e) Data interchange format

4.3. *POIs*

- (a) Location of POIs and related facilities specifications
- (b) Mechanisms for changes to the location of POIs or related facilities
- (c) Signalling interconnection description

4.4. *Billing and settlement*

- (a) Billing procedures
- (b) Payment terms and conditions
- (c) Billing and settlement dispute procedures

4.5. *Charges*

- (a) Detail of components of charging, separately
- (b) Mechanisms for review of charges

4.6. *Quality of service/ service levels*

- (a) Service levels / quality of service obligations
- (b) Penalties
- (c) Testing and maintenance
- (d) Fault reporting
- (e) Service level disputes
- (f) System protection and safety measures

4.7. *Commencement and Termination*

- (a) Date of commencement
- (b) Grounds for termination
- (c) Termination procedures

4.8. *Requests for Interconnection*

- (a) A person seeking interconnection must make its request for interconnection to a person providing interconnection in writing and the request must be dated accordingly.

Negotiation and Conclusion of Interconnection Agreements

- 5.1. Where a person providing interconnection does not consider a request for interconnection to be unreasonable, the person providing interconnection must respond to the person seeking interconnection within two (2) days of the request for interconnection, and propose a reasonable schedule for negotiations and the conclusion of an interconnection agreement.
- 5.2. Where a RIO is required, there is no obligation on the person seeking interconnection to agree to the terms and conditions of the RIO.
- 5.3. An interconnection agreement must be entered into no later than sixty (60) days after the person seeking interconnection makes a request to a person providing interconnection.
- 5.4. If however, a dispute regarding reasonableness has been notified to the Authority, an interconnection agreement must be entered into no later than fifteen (15) days after the Authority determines the dispute.

- 5.5. The Authority may extend the time periods in Regulations 6(4) and (5) on request of the person providing interconnection on good cause shown, but any request must be made before the expiration of the 60 or 15 days period as the case may be, and any extension must not exceed a total of ninety (90) days from the date of the request for interconnection.
- 5.6. In the event that the Authority intends to refer the dispute to the CCC for adjudication, it will allow the person that did not file the dispute with the Authority an opportunity to make written representations to the Authority within ten (10) days. A copy of the written representations submitted to the Authority must be simultaneously provided to the other person.
- 5.7. The person that did not refer the dispute must reply within five (5) days. A copy of the written reply submitted to the Authority must be simultaneously provided to the other person.
- 5.8. The Authority may then refer the matter to the CCC for adjudication in accordance with section 37(4) (c) of the Act.
- 5.9. The CCC must within twenty-one (21) days of receiving the complaint make a decision in terms section 40(3) of the Act. Such decision may include the imposition of terms and conditions.

Filing of interconnection agreements

- 6.1. As soon as is practicable, but no later than five (5) days after the conclusion of an interconnection agreement, the persons must file a duplicate original signed interconnection agreement with the Authority in accordance with section 39 of the Act.
- 6.2. The interconnection agreement filed with the Authority must contain all the terms and conditions of the agreement between the persons, related to interconnection and associated matters, and no amendments or cancellation will be of any force or effect unless they are in writing, signed by the persons and approved by the Authority in terms of the Act and these regulations.
- 6.3. Where applicable, if the interconnection agreement differs in any respect from the RIO of the person providing interconnection, the persons to the interconnection agreement must, simultaneous with the filing of the interconnection agreement, file a notice detailing how the terms and conditions of the interconnection agreement differ from the RIO.

- 6.4. Within twenty (20) days of the determination of compliance with these Regulations, the persons to the Interconnection Agreement must publish Interconnection Information on their website(s).

Requirements for the Submission of Information to the Authority from persons providing Interconnection

- 7.1. For the purposes of facilitating the monitoring and compliance with the applicable Interconnection principles, the Authority may require a person providing interconnection to prepare and disclose the relevant information regarding the operations and behaviour of any aspect of its operations by the Authority.
- 7.2. The Authority may direct any persons providing interconnection to submit the relevant information within fourteen (14) days upon request by the Authority.

Review of Interconnection Agreements by the Authority

- 8.1. The Authority will review Interconnection Agreements to ensure that they are consistent with the Act and these Regulations, including the agreement principles.
- 8.2. If consistent with the Act and these Regulations, within twenty (20) days of the approval of the interconnection agreement with the Authority, or such longer period as may be reasonably necessary in the circumstances, the Authority and the persons to the agreement will publish the approved Interconnection Agreement on their websites and the Authority will also make copies available in its library.
- 8.3. Where the Authority determines that the interconnection agreement or any term or condition thereof is not consistent with the Act or these interconnection regulations, the Authority may direct the persons to the interconnection agreement to agree on different terms and conditions that are consistent with the Act and these Regulations, within a period determined by the Authority which may not exceed twenty (20) days.
- 8.4. Once the Authority has published its determination that the interconnection agreement or any term or condition is inconsistent with the Act or these Regulations, the interconnection agreement will be ineffective and unenforceable in terms of section 39(2) of the Act.

- 8.5. If the persons to interconnection are unable to agree on different terms and conditions that are consistent with the Act and these Regulations within the period specified by the Authority, the Authority must impose terms and conditions within twenty-one (21) days after the inability to agree on the terms and conditions.
- 8.6. If the persons to interconnection are able to agree on different terms and conditions within the period specified by the Authority, the persons must before the expiration of the time period, file a duplicate original signed interconnection agreement, along with a notice detailing the differences in the terms and conditions from the previously filed interconnection agreement, to be reviewed by the Authority.

Implementation of Interconnection Agreements

- 9.1. The person providing interconnection must implement interconnection as soon as is practicable, but within a period not exceeding ninety (90) days.
- 9.2. The implementation of interconnection for a person seeking interconnection, including in response to requests for additional interconnection in terms of an interconnection agreement, must be given priority over the implementation of interconnection in response to later received requests for interconnection.

Contravention of Interconnection Agreements

- 10.1. A person to a dispute arising under an interconnection agreement that has been filed with the Authority may notify the CCC of the dispute in terms of section 40(1) of the Act, for adjudication. The notice must identify the persons, their contact details, and provide a factual description of the dispute and include any relevant evidence or information.
- 10.2. Within five (5) days of receipt of the dispute notification, the CCC will provide the other person or persons a copy of the dispute notice, and afford the other person or persons the opportunity to make written representations, including any relevant evidence, to the CCC within ten (10) days.
- 10.3. A copy of the written representations submitted to the CCC must be simultaneously provided to the other person or persons.
- 10.4. The notifying person may reply in writing within five (5) days, to the other person's or persons' written representations.

- 10.5. A copy of the written reply submitted to the CCC must simultaneously be provided to the other person or persons.
- 10.6. The CCC must consider the matter and come to a decision within thirty (30) days in terms of section 40(3) of the Act.
- 10.7. A person seeking to exercise his or her rights under regulation 10(1) may, at any time, withdraw the notice in writing.

Disputes regarding the reasonableness of requests for interconnection

- 11.1. Where a dispute arises in respect of any obligation contained in this Regulation, the persons engaged in disputes which are to be referred to the Authority, must have made reasonable attempts, in good faith, to resolve such dispute through negotiation, mediation and/or arbitration.
- 11.2. Where the person providing interconnection disputes the technical feasibility of interconnection, the Authority may consult with the ASC.
- 11.3. The Authority will form the ASC one month after the promulgation of these regulations and publish rules and procedures with respect to the functioning of the ASC.
- 11.4. The ASC will meet when required by the Authority.
- 11.5. The ASC may provide input on the technical standards for the RIO. The conclusions of the Committee on the technical standards of a RIO shall be submitted to the Authority within sixty (60) days of the promulgation of these regulations.
- 11.6. The ASC may be made up of one representative from each ECNS licensee.
- 11.7. The Authority is not obligated to take the recommendations of the Access Standards Committee into account in its deliberations.
- 11.8. The obligation to prove that interconnection is technically non-feasible is upon the person providing interconnection.
- 11.9. Where a person providing interconnection disputes the reasonableness of a request for interconnection, that person must notify the person seeking interconnection in writing within five (5) days of the request, indicating the reason why it disputes the reasonableness of the request, and why the request is not technically or financially feasible or will not promote the efficient use of ECNS and/or ECS.

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- 11.10. In the event the person providing interconnection does not notify the person seeking interconnection, as required by Regulation 7(1), the request for interconnection may be deemed to be reasonable.
- 11.11. In case the request for interconnection is in respect of the same or substantially similar interconnection provided by the person providing interconnection to any other person seeking interconnection, the request may be deemed to be reasonable.
- 11.12. If a person providing interconnection notifies the person seeking interconnection as required by Regulation 7(1), the person seeking interconnection may notify the Authority in writing of a reasonableness dispute.
- 11.13. Any dispute regarding interconnection must be submitted to the Authority in the following manner:
- (a) The scope of the dispute must be sufficiently clear;
 - (b) There must be a statement by a duly licensed person serving to indicate the obligation imposed on a person providing interconnection arising from this Regulation to which the dispute relates;
 - (c) The duly licensed person must indicate its preferred remedy serving to sufficiently alleviate the dispute;
 - (d) The duly licensed person must indicate the adverse effect which may be reasonably anticipated to accrue as a result of the failure to resolve the dispute, and
 - (e) Dispute resolution proceedings are deemed to be initiated upon receipt by the Authority of the notice of a dispute.
- 11.14. The Authority may in relation to any access dispute referred under these Regulations direct that the persons implement an interim arrangement for access, which the Authority may consider appropriate, having regard to the nature of the dispute. Such arrangement may include prices and any other term and conditions for facilitating interconnection access.
- 11.15. Any interim arrangement must be instituted by the persons within a reasonable period or as set by the Authority and must continue until such time as the dispute has been finally resolved.
- 11.16. The Authority will consider any submissions as may be made by the persons to the dispute in the formulation of an appropriate arrangement, subject to timeframes as the Authority may at its sole discretion determine.

Resolution of disputes by the Authority regarding interconnection

- 12.1. The period within which the Authority will endeavour to resolve referred disputes commences upon a date determined by the Authority once it is satisfied with the compliance of the requirements detailed in regulation 12.1(a) and (b) below.
- (a) Upon receipt of a dispute referral, the Authority will determine whether or not such referral amounts to a dispute, and
 - (b) Whether the information contained in the referral is adequate for the Authority's consideration.
- 12.2. The Authority will within seven (7) days of receipt of a dispute referral notify the person providing interconnection of the following:
- (a) A copy of the dispute, and
 - (b) The commencement of the period for the resolution of the dispute.
- 12.3. Upon the commencement of the period for the resolution of a referred dispute, the scope of such a referred dispute may not be modified without the agreement of the persons to the dispute.
- 12.4. Upon the commencement of the period for the resolution of a referred dispute, the persons to a referred dispute will be required to respond to the following within a period of seven (7) days:
- (a) Request for additional information;
 - (b) Any meetings to be convened by the Authority,
 - (c) Any other requirements that may be stipulated by the Authority within the period for the resolution of the dispute.
- 12.5. The Authority will, where it determines that it has sufficiently considered all information presented by the persons to the referred dispute or any other interested person, publish a draft direction detailing the following:
- (a) The manner in which the referred dispute has been resolved;
 - (b) Invitation to the persons to the referred dispute to submit written representations on the adequacy of the draft resolution of the referred dispute within fourteen days, and

- (c) The proposed date for implementation of any proposed remedies.
- 12.6. Upon determining the commencement date of the dispute, the Authority will thereafter within thirty (30) days publish on the Authority's website, and provide a copy in its library, a final direction for the resolution of the referred dispute.
- 12.7. The directions determined by the Authority shall not preclude either person from instituting an action before a competent court of law.

Significant Market Power

This section applies to those duly licensed persons that are found to have SMP in accordance with Chapter 10 of the Act.

13.1. Reference Interconnection Offers (RIOs)

- (a) Following a declaration of SMP, all persons required to submit a RIO must do so within ninety (90) days of such SMP declaration.
- (b) The Authority must review a RIO filed with it within 20 (twenty) days to ensure that it is consistent with the Act and these Regulations, including the agreement principles.
- (c) If the Authority determines that the RIO is consistent with the Act and these Interconnection Regulations, it will approve it and make it publicly available in its library and on its website.
- (d) If the Authority determines that the RIO or any term or condition thereof is inconsistent with the Act or these Regulations, the Authority will refer the RIO back to the person submitting such RIO and direct the person to amend the terms and conditions so that they are consistent with the Act and these Regulations, within a period determined by the Authority which may not exceed twenty (20) days.
- (e) If the Authority determines that the amended RIO filed with it in terms of Regulation 4(5) or any term or condition thereof is inconsistent with the Act or these Regulations, the Authority will impose terms and conditions consistent with the Act and these Regulations for inclusion in that RIO within twenty (20) days.
- (f) If the Authority determines that the amended RIO is consistent with the Act and these Interconnection Regulations, it will approve it and make it publicly available in its library and on its website within twenty (20) days.

- (g) Following approval by the Authority of a RIO, within twenty (20) days, the person must make the RIO publicly available by publishing the RIO on its website and by providing a copy immediately on request to any person.
- (h) If a person seeking interconnection signs the RIO then the RIO is in effect from that date.
- (i) Notwithstanding the approval of a RIO, if any person is of the opinion at any time that a term or condition of a RIO is inconsistent with the Act or these Regulations, the Authority may, on the request of any person, review that term or condition.
- (j) An operator who has been designated as having SMP must keep an updated list of POIs.
- (k) A person must amend its RIO from time to time as new services are developed in accordance with the procedure set out in regulation 13(1) above.

13.2. *Agreement principles of RIOs*

RIOs must include the general Agreement Principles and Terms and Conditions mentioned in Regulation 4 and 5. In addition, RIOs must include the following specific principles:

(a) Accounting separation

- Persons that have been designated as having SMP and where ineffective competition exists must comply with the accounting separation regulations.

(b) Pricing

- i. A person who is determined to have SMP in a particular market must provide interconnection based on the forward-looking long-run average incremental costs of an efficient operator, unless:
 - the person with SMP in a particular market and a person who requests interconnection may agree on another basis for the determination of access charges;
- ii. Any other basis for access charges may be used as determined by the Authority from time to time.
- iii. Implementation of Long Run Average Incremental Cost will be based on regulatory financial information submitted to the Authority by a person designated as having SMP and who has already complied with the guidelines set out in the COA/CAM Regulations.

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- iv. The implementation of Long Run Average Incremental Cost shall be effected within a period of twelve (12) months from the dates of SMP determination.
 - v. Where a person with SMP is not obliged to submit regulatory financial information pursuant to the COACAM Regulations, there will be a transition phase between current charges and implementation of Long Run Average Incremental Cost of twenty-four (24) months from the date of SMP determination.
 - vi. Within the transitional phase detailed in regulation 13.2(b)(v), a person who has been designated as having SMP must charge an average unit cost, or fully allocated unit cost standard, as defined in COA/CAM Regulations.

(c) Transparency

- i. Charges for interconnection must be sufficiently unbundled so that a person seeking interconnection does not have to pay for anything it does not require for the requested interconnection.
- ii. Charges for interconnection may not exceed retail charges for the provision of substantially similar services.
- iii. After the Authority has determined that an Interconnection Agreement is consistent with these Regulations as required by section 39(4) of the Act and these Interconnection Regulations, the Persons to an Interconnection Agreement must, within twenty (20) days, make the Interconnection Agreement publicly available, including the rates and charges, by publishing the Interconnection Agreement on the concerned persons' websites, and provide a copy immediately to any person on request.

Offences and Penalties

- 14.1. Any person who contravenes these Regulations or an order of the Authority in terms thereof, is guilty of an offence, and if convicted, is liable to a fine not exceeding ten (10) percent of the person's annual turnover over the period which the offence continued.
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