Explanatory Note to the Draft Call Termination Regulations

1. Introduction

1.1. The Authority introduced cost-oriented termination rates through the Wholesale Voice Call Termination Regulations (GG 33698) in October 2010.

1.2. The Authority has reviewed these regulations in line with Section 67(8) of the Electronic Communications Act, no 35 of 2006 (the "ECA"), where Section 67(8) states the following:

> *67(8) Review of pro-competitive conditions:*
>
> *(a) Where the Authority undertakes a review of the pro-competitive conditions imposed upon one or more licensees under this subsection, the Authority must—*
>
> *(i) review the market determinations made on the basis of earlier analysis; and*
>
> *(ii) decide whether to modify the pro-competitive conditions set by reference to*
>
> *a market determination;*

1.3. The Authority informed stakeholders of its intention to conduct such a review using the Request for Information published in Government Gazette 36532 on the 4th of June 2013.

1.4. This explanatory note is structured as follows:

1.4.1. Market definition

1.4.2. Determination of Significant Market Power

1.4.3. Evaluation of the effectiveness of competition

1.4.4. Pro-competitive remedies

2. Market Definition

2.1. After analysis of the information requested from licensees by the Authority, the Authority sees no need to amend the definitions of the markets as determined in 2010 because there is no technical change that changes the characteristics of termination to a mobile versus fixed location[1]

2.2. Therefore the market definitions remain the same:

2.2.1. Market 1: The market for wholesale voice call termination services to a mobile location on each ECS/ECNS licensee's network who offers such a service within the Republic of South Africa.

2.2.2. Market 2: The market for wholesale voice call termination services to a fixed location on each ECS/ECNS licensee's network who offers such a service within the Republic of South Africa, consisting of:

2.2.2.1. The market segment for wholesale voice call termination to a fixed location within the 0N area code

2.2.2.2. The market segment for wholesale voice call termination to a fixed location between 0N area codes[2]

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[1] See page 48 of Government Gazette 33121 of 16 April 2019

[2] As per the National Numbering Plan

3. Determination of Significant Market Power

3.1. In 2010 the Authority determined that:

> *"each ECNS and ECS licensee that offers wholesale voice call termination services has SMP in its own market"*[3]

3.2. After analysis of the information requested from licensees by the Authority, the Authority sees no reason to amend this determination, as the nature of voice call termination has not changed.[4]

4. Determination on the Effectiveness of Competition

4.1. In 2010 the Authority determined that the two markets for call termination were ineffectively competitive for the following reasons

4.1.1. a lack of the provision of access

4.1.2. the potential for discrimination between licensees offering similar services

4.1.3. a lack of transparency

4.1.4. inefficient pricing

4.2. Upon review of the conditions of the market, the Authority determined that the two markets remain ineffectively competitive, with the two markets being highly concentrated.

Table 1: Concentration in Market 1: Termination to a mobile location

Termination Revenue Shares				
	Jun-2011	**Dec-2011**	**Jun-2012**	**Dec-2012**
Licensee 1	36%	35%	36%	37%
Licensee 2	44%	44%	46%	45%
Licensee 3	16%	17%	15%	14%
Licensee 4	4%	3%	4%	3%
HHI	**3499**	**3511**	**3618**	**3660**

Table 2: Concentration in Market 2: Termination to a fixed location

	2011	**2012**
Licensee 1	98%	94%
Licensee 2	2%	6%
HHI	**9664**	**8912**

4.3. The Authority determines that these markets remain ineffectively competitive owing to inefficient pricing.

5. Pro-competitive Remedies

[3] Regulation 6 of the 2010 Regulations (Government Gazette 33698)

[4] See Section 2.3 on Countervailing Bargaining Power in Government Gazette 33121

5.1. Amongst others, the Authority imposed cost-oriented pricing on the pricing arrangements for voice call termination in the 2010 Regulations.

5.1.1. For Market 1, the Authority determined that the cost of termination in Market 1 was R 0.40 per minute.

5.1.2. For Market 2, the Authority determined that the cost of termination was R 0.19 and R 0.12 per minute dependent on the market segment in which the call is made.

5.2. On review of industry data, the Authority recommends revised rates for Market 1 whilst determining that there is no need to change the existing rates for Market 2

5.3. The Authority determines that the cost of termination in Market 1 is now approximately R 0.10 per minute based on, amongst others, the increase in traffic on licensees' networks, where an increase in traffic reduces the cost per unit in the provision of call termination services.

5.4. The Authority further determines that this level should be reached in three years. Therefore the proposed revised termination rates over the next three years are:

Table 3: Mobile Termination Rates: 2014-2016

	Rand	% Decline
01 March 2013	0.40	
01 March 2014	0.20	50%
01 March 2015	0.15	25%
01 March 2016	0.10	33%

Table 4: Proposed fixed line termination rates: 2014-2016

	Between 0N	Within 0N
Fixed Termination Rate	R 0.19	R 0.12

5.5. The 2010 Regulations also imposed a limited amount of asymmetry available to licensees that met certain criteria, as outlined in Appendix B of the 2010 Regulations.

Table 5: Limitations to Asymmetry as per the 2010 Regulations

	Maximum percentage above rate set for identified licensees
Current	-
01-Mar-11	20%
01-Mar-12	15%
01-Mar-13	10%

5.6. The qualifying criteria for an asymmetric termination rate in 2010 were:

"1.3. Licensees not listed in Regulation 7(4) ***(of 2010)*** *may charge higher termination rates based on the following factors:*

1.3.1. Spectrum allocation. A licensee must justify why it is adversely affected by current spectrum allocation.

1.3.2. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies for an asymmetric rate if it has less than 25 per cent of total terminated minutes in the relevant market as of June 2009.[5]"

5.7. The Authority is of the view that the share of total terminated minutes should be reduced from 25 per cent of total terminated minutes to 20 per cent of total terminated minutes. This amendment is reflected in Appendix A of these draft Regulations.
5.8. The Authority is concerned that the markets continue to reflect ineffective competition and that a reduction in termination rates may not be sufficient.
5.9. The introduction of asymmetry is a regulatory determination taking into account a number of factors, including:
5.9.1. traffic imbalances reflecting economies of scale
5.9.2. promotion of investment
5.9.3. encouraging competition
5.9.4. fostering SMMEs
5.10. Given the importance of investment in infrastructure in ensuring the achievement of sufficient scale and the differences in traffic volumes that exist in Market 1, the Authority believes it necessary to sustain and increase asymmetry for a further period of five years.
5.11. At the end of this asymmetric period, licensees are to be charging symmetrical termination rates. However, in the interests of fostering small businesses, the Authority proposes that licensees with less than 10% of total terminated minutes in the respective market at the end of this five-year period may retain the asymmetric benefit of the final year.
5.12. The table below outlines the asymmetric glide-path of termination rates available to those licensees that meet the qualification criteria:

Table 6: Maximum asymmetric termination rate which a qualifying licensee may charge for termination in Market 1

	Maximum Rate
01 March 2014	R 0.39
01 March 2015	R 0.33
01 March 2016	R 0.26
01 March 2017	R 0.20
01 March 2018	R 0.14
01 March 2019	R 0.20

[5] See "Appendix B:Application of the Fair and Reasonable Obligation" of the 2010 Regulations

Table 7: Maximum asymmetric termination rate which a qualifying licensee may charge for termination in Market 2

	Between 0N	Within 0N
01 March 2014	10%	10%
01 March 2015	10%	10%
01 March 2016	10%	10%
01 March 2017	10%	10%
01 March 2018	10%	10%
01 March 2019	10%	10%