



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

General Notice: Regulatory Impact Assessment: ECS/ECNS Resellers

1. The Independent Communications Authority of South Africa (the "Authority") is conducting a Regulatory Impact Assessment ("RIA") on Resellers in the Electronic Communications Services & Electronic Communications Network Services (ECS/ECNS) market.
2. The Authority seeks your input/comments/views on the Problem Statement with regards to Resellers in the Electronic Communications Services & Electronic Communications Network Services market. The RIA will inform the Authority on the views, problem/s, and action plan for the way forward to either intervene or not.
3. This process (RIA) is not a regulation making process, it however seeks to inform industry and the Authority on the best course of action to be recommended to address the defined problem. In other words the RIA process feeds into the regulatory making process in order to come up with SMART interventions.
4. Respondents must indicate all information that should be treated as confidential.

Kindly forward your response **within 21 working days** to:

Attention: **Godfree Maulana**; e-mail: ecsecns.compliance@icasa.org.za

Subject: [Licensee Name or Stakeholder]– RIA Reseller

or

Physical address:

Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

or

Postal address:

Private Bag X10002, Sandton, 2146

5. The Authority appreciates and thanks you for your participation in advance.

Problem Statement and Options

1.1. Introduction

In August 2015 the Authority sent a questionnaire to a sample of stakeholders for responses with regards to the ECS/ECNS Reseller market. The questions posed ranged from legislative and regulatory to understanding of the reseller market.

The questionnaire was sent to thirty two licence holders and stakeholders, ten responses were received.¹ The responses gave insight into the different issues with regards to the reseller market. In general there is agreement in most of the issues with little conflicting responses.

Industry agrees that resellers are permitted as per the ECA and are exempted from holding any form of licence to provide electronic communications services or electronic communications network services. There is recognition of the exemption regulation² and the process and procedure regulations³ however the effectiveness and awareness is debatable.

There is a common understanding that there is no limitation to what a reseller can provide in the market with regard to electronic communications services or electronic communications network services. One of the views being expressed is that resellers act as extensions of licensee's distribution networks, considering that they have better cost ratios which makes it cheaper for services to be provided to the public. Whilst in some responses the argument is raised that the Authority must produce an exhaustive list of services on resale, others argue that it would be near impossible to have an exhaustive list, as well as that a list might interfere with innovation⁴.

¹ The responses were received from ISPA, WAPA, MTN, Neotel, Vodacom, Internet Solutions, Gateway, Sybaweb, Edenlet and Wispernet.

² The exemption regulations were published on the 29th July 2008 as per section 6 of the ECA.

³ The regulations were published on the 14th June 2010 outlining the process that has to be followed for exemption

⁴ In the article (Corporate China, 2013) *Resale of Mobile Communications Services Back on the Menu in China: But Only a Few Seats at the Table*, published by Hogan Lovell's, states "The Draft 2013 Telecommunications Catalogue represents a wholesale updating of the 2003 Telecommunications Catalogue which was widely seen as hopelessly out-of-date and as

There is general agreement that resellers should bear responsibility of the products they have on the market. Industry gives different opinions on which aspects resellers should take responsibility for, i.e. should reseller take responsibility for the entire product issues or should they take responsibility for retail issues and leave the service and network service issues to their upstream provider.

Whilst there is consensus on being able to be a reseller in the market, industry points out that there is a need for the Authority to oblige entities to apply for exemption and there is possibly, a number of entities that operate as resellers that are unknown to the Authority nor know of the existence of the Authority.

2. Problem Statement

At present it is difficult to know the exact number of resellers in the market due to lack of clarity on what a reseller is as well as the exemption process. There is no existing criteria that entities can use in order to identify themselves as resellers in order to apply for the exemption as contemplated by the ECA. Different upstream providers whom are licence holders engage resellers differently, with some requiring entities to hold licences.

There is no linkage between entities operating as resellers and mechanism in place to hold resellers accountable and responsible for the products and services they provide in the market. Likewise there is no mechanism to link the upstream provider with reseller so as to hold the two accountable and responsible for the products and services in the market.

3. Objectives

The primary objectives are:

- 3.1.** Clarifying the definition of reseller;
- 3.2.** Re-emphasis the process of exemption to be followed by entities; and

failing to capture many of the key emerging services; even some of the descriptions of the pre-existing services seem dated as the technology or the way it is used has moved on (e.g. Cloud services, social media and so forth)."

3.3. Providing the necessary mechanism for linking resellers and upstream providers for purposes of accountability and responsibility for products and services.

4. Options

4.1. Option 1

The first option is to do nothing.

4.2. Option 2

Publish a general notice that provides clarity on exemption and resellers in the market. The notice to provide an outline of the processes that are to be followed with regards to exemption process as per the current existing regulations and legislations. Outline the accountability and responsibility commitments between reseller and upstream provider.

4.3. Option 3

Amend the Exemption regulation with emphasis on entities that ought to be exempted, processes to be followed and regulations in relation to resellers and resale in the market.

5. Further Questions

5.1. Option 1

5.1.1. Regulatory Assessment Impact requires that a Regulator consider doing nothing thus retaining the status quo. In this regard it means no action is taken by the Authority, the identified problems are left to industry to rectify. **Do you agree or disagree with this statement? Kindly provide your reasons in support of your response.**

5.2. Option 2

5.2.1. The option requires the reseller and upstream provider to agree on a set of commitments that would be binding and that they will be held accountable and

responsible for. The Authority will use this commitment to enforce compliance.

Kindly share your views with this approach.

5.2.2. This approach in a nutshell proposes that (excluding the reseller registering with the Authority), the upstream service provider⁵ keeps and reports a register of all resellers and make submission to the Authority annually. **Kindly share your view of this approach. Is there any regulatory administrative cost that the regulator should be aware of that the upstream service provider will incur in doing so? Kindly provide the Authority with the said costs.**⁶

5.2.3. This approach will seek the basic information between upstream service provider and its reseller/s, excluding any commercially sensitive information/agreements. **Would this be an acceptable approach? If not in favour kindly provide reason/s thereof.**

5.2.4. The approach also seeks to reduce or avoid over regulation, given that there is already regulated processes with regards to resellers. **Would you agree with this statement? If not in agreement kindly provide reason/s.**

5.3. Option 3

5.3.1. This option proposes an amendment to the current Exemption regulations as published. **Kindly provide your view/s on this approach.**

5.3.2. If the regulation is to be amended. **What specific amendments should be considered and why?**

5.3.3. Considering your response to 5.3.2. **If an amendment is to be considered isn't that adding more regulation?**

⁵ Kindly note the term upstream service provider is also used in reference the Licensed entity that provides the reseller with products and services, it also means the licence holder as licensed by the Authority under Chapter 3 of the ECA.

⁶ Please note all the information provided relating to cost shall be used only for RIA cost comparison for this process only and shall not be used for any other. The cost need to be confined to staff and any operation expenses (administrative) associated in executing the task only.

- 5.3.4. If further amendments are made. **What are the additional regulatory administrative cost that the upstream service provider will incur? Kindly provide the Authority with the said costs.**
- 5.3.5. One of the theoretical discourse is that listing products and services that are to be in the resale market might stifle innovation. **Would you agree with this statement? If not in agreement with this statement would you recommend the Authority provide a list and how exhaustive will that list be considering the technology neutral licensing framework?**