

Huge Group Limited

Written Submission on

THE DRAFT NUMBER PORTABILITY REGULATIONS

**In terms of section 68 read with section 4 of the
Electronic Communications Act, 36 of 2005 (as amended)**

As published in Government Gazette 41275 on 24 November 2017

A. INTRODUCTION

Huge Group Limited (“Huge”) thanks ICASA for the opportunity to make a written submission on the Draft Number Portability Regulations, published in Government Gazette 41275 on 24 November 2017.

Huge also wishes to express its appreciation to ICASA for having extended the due date for submissions on the above draft Regulations to 29 January 2018.

Huge confirms that should a public hearing be held on these draft Regulations, that it indeed requests an opportunity to participate in such public hearing.

Huge welcomes the review of the current Number Portability Regulations. Huge expresses its hope that all the other regulatory components/documents comprising the Number Portability Regulatory Framework (**NPRF**) will be reviewed and finalised, in consultation with all role players, in the very near future as well.

In this submission, Huge does not deal with each proposed regulation in the set of draft Regulations individually. Huge’s submission rather focusses on a few important areas/issues in the draft Regulations and/or the NPRF which Huge respectfully submits are essential to be amended to ensure that Number Portability achieves the pro-competitive results for which it is intended.

B. COMMENTS:

1. The Number Portability Regulatory Framework (comprising of all its different components) needs to be up to date, clear and unambiguous and easily accessible to all.

The principle that the law and regulatory frameworks must be certain, unequivocal, unambiguous and easily accessible, is well known and generally accepted by all.

The current NPRF however falls dismally short of this principle, in that it comprises a substantial number of regulatory documents which have been drafted and published over a thirteen-year period (dating back to 2005) by different role players, with different business models and technology specific limitations, for a market structure which no longer exist, in a fragmented manner.

The components of the current NPRF (as it stands today) are:

- Number Portability Regulations (2005)
- Functional Specification for Mobile Number Portability - Schedule to the above Regulations (2005)
- Mobile Number Portability Ordering System Specification (**OSS**) (2005)
- Customer Guide to Porting your Mobile Cell Phone Number (2006)
- Inter-Operator Code of Practice for Mobile Number Portability (2005)
- Functional Specification for Geographic Number Portability (2007)
- Inter-Operator Code of Practice – Geographic Number Portability (2010)
- OSS for Geographic Number Portability (2010)

Please note that to date, Huye has not been able to obtain a copy of the Inter-Operator Code of Practice for Mobile Number Portability. Not even ICASA's website has a full set of the above documents. The final Regulations pertinent to the Mobile Number Portability OSS and the mentioned Code of Practice are not available on ICASA's website.

The above circumstances (including different documents, authors, extended period of time) have also led to confusing overlaps, duplications, ambiguities and outdated information in the mentioned documents.

This makes it very difficult for new comers and resellers in the South African electronic communications market, who were not participants in the drafting and implementation of these components to gain a thorough, certain and clear understanding of the NPRF. This shortcoming negatively impacts the success of number portability as a pro-competitive measure in the South African electronic communications market.

Huge recognises and appreciates the fact that ICASA followed a truly consultative, least intrusive *modus operandi* at the time and since the NPRF has been developed and implemented in South Africa in that ICASA allowed the network operators and their service providers (at that time) to craft the administrative and technical number portability solutions, requirements and specifications, which has proven to have been quite successful in South Africa. The Number Portability Company (**NPC**), who is responsible for the Central Reference Data Base, came into existence as a result of this consultative approach of ICASA.

Huge however respectfully submit that:

- ICASA indeed has a statutory duty to ensure that the NPRF (specifically all the elements/documents that it comprises of) provides the necessary certainty, clarity and unambiguity pertinent to all the rules, obligations and specifications that need to be complied with by everybody involved in number portability.
- ICASA must ensure that all the regulatory documents pertinent to Number portability form an integrated whole, with all the documents readily accessible to everybody.
- ICASA must ensure that the NPRF recognises and afford equal status to all the market players (including resellers), not only in as far as the implementation of Number Portability is concerned, but also regarding the development, revision and maintenance of the mentioned regulatory instruments/elements (e.g. OSS, Inter Operator Codes, Consumer Guidelines) of the NPRF.
 - Resellers are at the coal face of the implementation of Number Portability and essential to ensure a healthy and competitive market.

Considering the above Huge respectfully proposes that the draft Regulations are amended to:

- Contain a clause which specifies the different components of the NPRF, as well as how and where these can be accessed free of charge.
- Recognise that there are indeed regulatory documents, including the Mobile and Geographic Ordering System Specifications, the Inter-Operator Codes of Practice and Consumer Guidelines which will remain valid and enforceable until replaced by “new” Mobile and Geographic Ordering System Specifications, Inter-Operator Codes and Consumer Guidelines.
 - This is essential to prevent that the new Regulations cause a serious lacuna in the NPRF.
 - The draft Regulations could be regarded as ambiguous and contradictory in that on a plain reading of the Regulations the Regulations seem to imply that the existing Mobile and Geographic Ordering System Specifications and Inter-Operators Codes of Practice are no longer valid, i.e.:
 - *“Number portability must conform to the ordering system specification to be published in the Government Gazette.....”*
 - *“the ordering system shall be developed, reviewed and maintained”*
 - Considering that the Mobile and Geographic Ordering System Specifications contain all the porting processes, obligations and time requirements, it is essential that these remain valid and enforceable until officially substituted/replaced/repealed by “new” ordering system specifications, Codes, etc.
 - The draft Regulations are completely silent on the Inter-Operator Code of Practice, the Consumer Guidelines, which are indeed integral parts/components of the NPRF.
 - *In this regard it is proposed that the draft Regulations be amended to specifically recognise these elements and confirm their status as well as the manner in which they will be revised and finalised.*

- *The current Regulations 2005 (9 – 13) deal extensively with the inter operator code of practice, its legal status as well as the manner in which it must be developed.*
- *It is proposed that the Regulations referred to above, are included (with the necessary changes) into the “new” Regulations.*
- Specify the time within which the current components such as the Mobile and Geographic Ordering System Specifications, Codes and Consumer Guidelines will be revised and finalised (by publication in a Gazette);
- Specify that all market players (which must include resellers, who are an integral part of the liberalised competitive market structure) will be allowed to participate in the revision process of all the components, i.e. the Mobile and Geographic Ordering System Specifications, Inter-Operator Code of Practice and Consumer Guidelines.

2. The NPRF need to fairly and equitably apply and provide for all market players in the market structure provided for in the Electronic Communications Act, 2005 (ECA) and ensure fair competitive practices

Number Portability has indeed proved to be one of the more successful pro-competitive measures to be implemented in electronic communications markets worldwide.

In South Africa, with its “liberalised” market structure (as per the ECA) and the vibrant role that resellers play in the electronic communications market, it is of utmost importance that the NPRF as a whole, and specifically the Regulations, recognise the important role that resellers play in ensuring healthy competition in the electronic communications market.

Within the Number Portability context resellers are market players who offer branded electronic communications services which they buy wholesale from ECNS and ECS licensees using numbers “sub-allocated” to it by the I-ECNS or I-ECS, in that they do not have an allocation of a block of numbers directly from ICASA.

The existing Regulations however, if finalised “as is”, would have a substantial negative impact on competition in the market, in that it would prevent bulk ports initiated by resellers.

- The NPRF has since its inception in South Africa always been clear that Number Portability is “subscriber initiated”.
- The definition of “subscriber” in the current Regulations however were worded in such broad terms that it was open to the interpretation that it includes a reseller as well.
- However due to the absence of a definition in the draft Regulations the definition of “subscriber” in the ECA must be applied.
- The problem with the ECA definition of “subscriber” is that its wording is such that it could be interpreted to exclude resellers. This will be explained below.

The current Regulations and all the other components of the NPRF were developed and implemented during a time when the ECA was not implemented yet or in a process of transition to the new market structure. It is therefore not surprising that it is focussed on network operators and their “service providers” and the business models that applied to these two types of role players in the old market structure.

As stated above, the existing Regulations (which will be substituted by “new” Regulations) have definitions of a “service provider” and a “subscriber”, i.e.:

“Service provider means:

An entity that sells to a subscriber the ability to make and receive telephone calls;

A network operator”

AND

“Subscriber means:

Any person or entity that is party to a contract or other similar arrangement that is in force between a service provider or network operator for the supply of telecommunication services including:

(a) In respect of making and receiving calls, any caller who makes or terminates or receives calls that are the subject of such a contract or arrangement; and

(b) in the case of mobile services, pre-pay customers”

However notwithstanding that the draft Regulations do not have definitions for a “service provider” and “subscriber” it still uses these terms. This has the following consequences:

- It is not clear what meaning is ascribed to the term “service provider” in the draft Regulations.

- The ECA does not recognise “service providers” as such, e.g. a service provider is therefore either a licensed entity as per the ECA or an unlicensed entity, or a licence exempt entity and the services that such “service provider” provides are either a licensed service or an exempt service.
- Since the draft Regulations do not have a definition for “subscriber” the definition of subscriber in the ECA must be applied, i.e.:

“Subscriber means a person who lawfully accesses, uses or receives a retail service of a licensee referred to in Chapter 3 for a fee or the retail services of person providing a service pursuant to a licence exemption”

AND

“retail means the sale, lease or otherwise making available of services offered by licensees to subscribers”
- From a plain reading of the ECA’s definition of “subscriber”, with its emphasis on “retail”, it is materially more limited in its meaning than the definition of “subscriber” in the current Regulations.
 - This could pose serious problems to resellers when doing bulk ports.
 - It needs to be noted that the reseller has the primary relationship with the I-ECNS or I-ECS at electronic communications network and electronic communications service level - and this, in most instances, is invisible to the customer.
 - The customer in some cases are not even aware of the “wholesale” access network layer that underpins their relationship with the reseller.
 - The resellers have the actual relationship (which include billing) with the customer.
- In terms of the current Regulations’ wide and more open-ended definition of a “subscriber”, it was possible for resellers to do bulk ports without the customer’s written consent. Thus, the definition could be interpreted to include a reseller, i.e. “any person or entity that is party to a contract or other similar arrangement that is in force between a service provider or network operator for the supply of telecommunication services including.....”.
- If this aspect is not addressed in the draft Regulations it will have an extremely unfair and unequitable impact on resellers, in that it would be near impossible for a reseller to switch wholesale ECNS and ECS providers, because this would mean:
 - either all their customers will have to change their numbers
 - or each customer will have to request a port individually.

- Both options would have a material detrimental impact on resellers and should be addressed by the Regulations.

Huge has noted that the draft Regulations, unlike the current Regulations, do not contain the prohibition on “win-back”, i.e. a prohibition on the donor operator to contact a subscriber to offer discounts, free services or other inducements to convince that subscriber not to change operators or to revert to their original operator in the first two months after having ported the subscriber’s number.

- Although Huge welcomes the decrease in the time allowed between the porting of a number from two months to one month, Huge respectfully submits that the prohibition on “win-back” as defined and set out in the current regulation (Regulations 7(2) and 7(3)) is essential to ensure that this type of anti-competitive behaviour is also expressly prohibited in the “new” Number Portability Regulations.

Considering the above Huge respectfully proposes that the draft Regulations are amended to:

- Eliminate the use of terms that are not recognised in the ECA, i.e. the term “service provider” must be deleted or replaced with another term of which the meaning is inclusive of all market players;
- Extend the definition of “subscriber” (only for the purposes of the NPRF) to recognise that resellers will be authorised to initiate bulk number ports.
- Transfer the wording pertinent to “win-back” in the current Regulations to the “new” draft Regulations.

3. The NPRF needs to provide for an expeditious, effective due process to monitor and enforce compliance with all statutory and regulatory obligations and address consumer complaints.

Huge notes and welcomes the inclusion of penalties in the case of non-compliance or violations with the Number Portability Regulations.

Huge however respectfully submits that if the Regulations do not provide for expeditious, effective and due processes specific to monitoring and enforcing compliance with the regulatory requirements and specifications, the penalty clause in the draft Regulations is meaningless.

As stated in the beginning of this submission, ICASA must take an active role in ensuring that Number Portability as a pro-competitive measure succeeds. This means that ICASA must actively monitor and enforce the NPRF and in cases of non-compliance, take effective and expeditious action.

Currently there are no official monitoring and enforcement mechanisms in place which ensure that instances of non-compliance or violations with Number Portability requirements and specifications are addressed and the bigger players in the market do not commit violations (failures to timeously release numbers and deactivate post porting, network synchronisation timer failures, etc.)

- Although ICASA has access to the all the statistical data from the NPC, ICASA has to date not used such information for compliance monitoring and enforcement purposes.

Monitoring and enforcement within the Number Portability context necessitates an independent knowledgeable body/entity which has the necessary authority to request and access all relevant Number Portability information, the expertise and know-how to analyse and interpret such, as well as the legal powers to act expeditiously in instances of non-compliance.

- Effective monitoring and enforcement of compliance is a critical success factor for Number Portability, as a pro-competitive measure.
- The only entity who fits the above description or who has the required skills to fulfil the monitoring and enforcement obligation is ICASA.

It needs to be noted that the ICASA Complaints and Compliance Committee (**CCC**) is not geared to address Number Portability violations both from a consumer and Number Portability operator perspective.

- As stated above, the first step will be to regularly monitor compliance by analysing all the information received by the NPC.

- The CCC does not have a mandate to do compliance monitoring with NPRF requirements and furthermore do not possess the expert knowledge to such monitoring.
- The nature of Number Portability violations (such as continuous timer violations) and consumer complaints regarding Number Portability, also require expeditious (if not immediate) enforcement action.
 - The CCC is not able to provide this, due to the very long and tedious administrative and adjudicative procedures with which the CCC must comply.

Furthermore, although the NPC is relatively effective in resolving Number Portability disputes between NPC members, persons such as resellers, who do not have their own number allocations, are not members of the NPC and therefore not able to utilise the NPC in this regard.

- It also needs to be noted that the NPC does not have the legal authority to adjudicate instances of violations and impose the penalties specified in the Regulations.

Considering the above, Huge respectfully proposes that the draft Regulations are amended

to:

- Extensively provide for regular compliance monitoring and enforcement procedures pertinent to Number Portability, within ICASA's structure.
- The monitoring and enforcement procedures need to:
 - Expressly and clearly allocate the responsibility and accountability to specific posts/desk in ICASA, who will be mandated to collect, analyse and interpret all relevant Number Portability information, issue violations notifications, and implement adjudications procedures as well as develop a penalty matrix for different violations (e.g. first and/or continuous violations, serious and less serious violations etc.);
 - Provide for a dedicated mechanism within ICASA where porting violations/problems can be reported and resolved in real time or as near to real time as possible;
 - Apply equally to consumer complaints pertinent to Number Portability;
 - Clear and strict timelines within which the above activities must be fulfilled to ensure expeditious compliance enforcement with NPRF.

- Provide for the NPC to include in its Central Reference Data Base, up to date contact details of all its members and participating persons.
- 4. This will greatly assist in allowing Number Portability participants to first try and address technical and other problems amongst themselves.

5. Comments regarding Timer specifications:

Comments specific to the draft Regulations:

- Port validation Process:
 - The port validation process, i.e. 4 hours to validate by means of a one-time pin (**OTP**) in case of a mobile number port, is supported.
 - The draft Regulations however fail to provide for same time requirement in case of the validation of a geographic number by means of Interactive Voice Response (**IVR**).
 - Huge proposes that the same 4-hour limitation is specified in the case of the port validation of a geographic number.
- Approval or rejection of port request:
 - Huge supports the non-discriminatory specifications pertinent to mobile and geographic number portability and specifically supports the timer requirement of 5 hours in case of a port rejection irrespective of whether it is a geographic or mobile number port.
 - Huge however wishes to confirm that the mentioned 5-hour period includes the above 4 hours pertinent to port validation.
- Activation for Ported Numbers:
 - Huge in principle supports Regulation 6(2) that the *donor operator must respond to requests from a recipient operator, and effect any action requested, as soon as possible and/or within a period of (1) one hour.*
 - However, the reference to “as soon as possible and/or within one hour” is unclear and contradictory.
 - Huge proposes that the words “as soon as possible and/or..” be deleted.

Timer Violations:

Timer violations by operators are becoming the norm and the increase in number ports overall is worsening the situation.

In this regard, the failure of ICASA to actively monitor and enforce compliance with timer specifications indeed contribute to the problem not being addressed. However, another significant contributor regarding timer violations are operators' systems which are not fully automated and/or integrated with the CRDB.

Although the problem of legacy systems and/or manual/non-automated systems is not limited to Telkom, Telkom's 'legacy' systems and exchanges (which apparently will only be fully upgraded in 2021), in most instances, results in the porting of geographical Telkom number taking anything between 2 to 7 days (and even longer). Furthermore, due to Telkom's 'legacy' exchanges not being able to automatically receive a routing update when a number is ported (it requires manual intervention for the updating of a routing table), calls originating at these exchanges are often unable to terminate on the new recipient network. There are a significant number of 'legacy' exchanges which makes this a valid concern when porting Geographic numbers away from Telkom.

This is clearly not conducive to a positive customer experience and has a material negative impact on the success of geographic number portability as a pro-competitive measure.

In light hereof Huge respectfully propose that ICASA, by Regulation, specify that the systems of all operators and players participating in geographic (and mobile) Number Portability be fully automated and integrated with the CRDB to ensure the most expeditious porting process possible.
