

FOR ATTENTION:

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04 May 2020

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Dear Mr Mailula

DRAFT REGULATIONS IN RESPECT OF LIMITATIONS OF CONTROL AND EQUITY OWNERSHIP BY HISTORICALLY DISADVANTAGED GROUPS (HDGS) AND THE ALLPICATION OF THE ICT SECTOR CODES

1. The ICT SMME Chamber welcomes the Independent Communications Authority of South Africa's expressed intention to prescribe the regulations on the limitation of control and equity ownership by historically disadvantaged groups and individuals (the HDGs) in the information communication technologies sector, as well as the application of the B-BBEE codes;
2. We support the strengthening of the Authority's hand in enforcing the regulations and promoting the historically disadvantaged persons and broad-based black economic empowerment (BBBEE) must be firm and decisive in line with the applicable regulations, Laws and the Constitution;
3. We continue observing licensees deliberately flouting the regulations whilst ICASA either takes years to act on the culprits or never act at all. We hope this draft shall bring to the end the conduct by a few to intentionally frustrate and obfuscate the implementation of the regulations that seek to open the telecoms economy to all;
4. It our submission that the pace of transformation in the ICT sector has been hopelessly slow at best; and non-existent at worst. Since the enactment of the Electronic Communications Act, only about 50% of the licensees have managed at the lease, 30% of HDGs equity holding;

5. Some of the Licensees that have the 30% HDGs have notoriously focused on empowering one group -and one group only-, namely, the white female sector of our HDGs whilst mischievously excluding Black people and other HDGs, as intended by the license requirements that they are commercially exploiting;
6. On class licensees we propose that all class licensees who are licensed to operate in the metropolitan areas, must comply with 30% black ownership requirement at all times of their license validity. We further propose that all licensees operating in districts or municipal areas must have a maximum of two municipal areas to operate in whereby the 30% exemption must be enforced.
7. We encourage the Authority to maximally penalize those who abuse and circumvent their requirements such as where individuals or companies find ways to exclude and avoid the HDGs generally and black people specifically;
8. It is our view that the limit of R10 million annual revenue will also be subjected to abuse. In this regard, we propose that all the licensees must comply with the 30% black ownership, where the operations are small, we propose that they must ensure that they involve local communities in implementing the 30% black ownership requirement. The Authority must be firm in this regard and not give any exemptions;
9. The Chamber supports the Authority in insisting on the ownership of 30% by black people; we further move that the Authority must always require a minimum level 3 B-BBEE status. The score card may apply over and above this requirement of 30% for black ownership;
10. The minimum level 3 must not be considered an exemption of 30% direct ownership by black people since the B-BBEE codes consist of other elements such as procurement and management. The Authority should also require compulsory participation of black people in executive and managerial roles as part of the requirements;
11. We welcome the clarity that 30% black ownership will always be required in -and for- each license issued. The Chamber supports the Authority in ensuring that all the licensees comply with the 30% black ownership requirement within (24) twenty-four months of the regulations coming into effect;
12. It is our firm view that the licensees have had more than a decade to comply with the legislation, the Authority should not even be giving them a grace period of (24)

twenty-four months. Where there is failure by licensees the Authority should be strict and implement penalties where non-compliance occurs;

13. The ICT SMME Chamber hereby proposes that, considering the push back by some entities, the faking and the obfuscation of the BBBEE equity ownership, the minimum legislated requirement of 30% equity ownership by HDGs be increased to 51%;
14. For same reasons stated in 13 above, the Chamber proposes that control must be treated as a standalone requirement and not be bundled up with ownership. The documents of the licensed entity at the Companies and Intellectual Property Commission must be used to monitor the levels for management control at each Licensee;
15. We dismiss as fallacious the notion that if the draft regulations are upheld and implemented there will be an adverse impact on businesses and the economy. We urge proponents of this notion to appreciate that this economy is exclusionary and only works for some and not for all. We argue that this status quo is unsustainable, and the (draft) regulations must be expedited to intervene before it is too late;
16. The Chamber shall welcome an opportunity to make oral presentation in order to augment and elaborate on this our submission.

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