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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

NO. 1960

31 March 2022

**MOBILE BROADBAND SERVICES REGULATIONS, 2021****PURSUANT TO SECTION 67(4) OF THE ELECTRONIC COMMUNICATIONS  
ACT, 2005 (NO. 36 OF 2005), AS AMENDED**

I, Dr. Keabetswe Modimoeng, Chairperson of the Independent Communications Authority of South Africa hereby publish the Mobile Broadband Services Regulations set out in the Schedule in terms of section 4 read with section 67(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended.

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**DR. KEABETSWE MODIMOENG**  
**CHAIRPERSON**  
**DATE: 30/03/2022**



**“Free or zero-rated data”** means data services provided to end-users at no charge or at a charge of R0.00;

**“ICASA Act”** means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000); and

**“SMP”** means significant market power as defined in section 67(5) of the Act.

## **2. PURPOSE OF REGULATIONS**

The purpose of these Regulations is to:

- (a) Define relevant wholesale and retail markets or market segments for mobile services;
- (b) determine whether there is effective competition in those relevant markets and market segments;
- (c) determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition;
- (d) declare licensees in the relevant market or market segments, as applicable, that have significant market power, as determined in accordance with regulation (6), and impose pro-competitive conditions applicable to each such license to remedy the market failure;
- (e) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments, taking into account regulation (8) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and
- (f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments.

## **3. MARKET DEFINITION**

The relevant wholesale and retail markets or market segments for mobile services are defined as follows:

- (a) Retail market: mobile retail services provided in regional geographic areas (provincial, split by urban and rural);
- (b) Upstream market 1: wholesale site infrastructure access in local and metropolitan municipalities;

- (c) Upstream market 2: wholesale national roaming services for coverage purposes;
- (d) Upstream market 3a: wholesale national mobile virtual network operator ("MVNO"); and
- (e) Upstream market 3b: wholesale APN services (including resellers).

#### **4. METHODOLOGY**

In determining the effectiveness of competition in the markets defined in regulation 3 above, the Authority applied the following methodology:

- (a) the identification of relevant markets and their definition according to the principles of the Hypothetical Monopolist Test, taking into account the non-transitory (structural, legal, or regulatory) entry barriers to the relevant markets and the dynamic character and functioning of the relevant markets;
- (b) the assessment of licensees' market shares in the relevant markets; and
- (c) the assessment on a forward-looking basis of the level of competition and market power in the relevant markets.

#### **5. EFFECTIVENESS OF COMPETITION**

Pursuant to regulation 4, the Authority has determined that competition in the Retail market, Upstream market 1, Upstream market 2, and Upstream market 3b, as defined in regulation 3, are ineffectively competitive.

#### **6. SIGNIFICANT MARKET POWER ("SMP") DETERMINATION**

The Authority has determined that MTN and Vodacom are dominant in the following markets:

- (a) Retail market: MTN is dominant with a market share of between 49%-55% in two geographic markets for retail mobile services and therefore has SMP in those markets. Vodacom is dominant with a market share of between 47%-75% in 7 geographic markets for retail mobile services and therefore has SMP in those markets. MTN and Vodacom also have SMP as a result of vertical relationships that could harm competition.

- (b) Upstream market 1: MTN is dominant with a market share of between 45% and 52% in 8 geographic markets for site infrastructure access and therefore has SMP in those markets. Vodacom is dominant with a market share of between 45% and 65% in 39 geographic markets for site infrastructure access and therefore has SMP in those markets. MTN and Vodacom also have SMP as a result of vertical relationships that could harm competition.
- (c) Upstream market 2: MTN and Vodacom are dominant and have SMP in the market for wholesale national roaming since there are only two operators that provide this service for coverage purposes in South Africa. MTN and Vodacom also have SMP as a result of vertical relationships that could harm competition.

## 7. PRO-COMPETITIVE TERMS AND CONDITIONS

The operators with SMP in the retail markets, wholesale site infrastructure access, and wholesale national roaming services identified in regulation 6 above, must publish on their website and provide the Authority, with the following accounts, records and other documents, on a quarterly basis:

### Retail market

- (a) A report and supporting data on effective retail prices<sup>1</sup> paid by end user customers for data services overall, calculated by dividing total revenue for data with total volume of data used (in Gigabytes) over the quarter.
- (b) A report and supporting data on effective retail prices<sup>2</sup> paid by end user customer category calculated by dividing total revenue for data with total volume of data used (in Gigabytes) over the quarter for each of the following categories:
- (i) By prepaid, hybrid and postpaid customer segments;
  - (ii) By consumer and business customer segments;
  - (iii) Data used between 5am and 12am midnight and data used from 12am midnight to 5am; and

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<sup>1</sup> The calculations on effective retail prices should be done excluding free and zero-rated data volumes. Free and zero-rated data volumes should be separately provided.

<sup>2</sup> The calculations on effective retail prices should be done excluding free and zero-rated data volumes. Free and zero-rated data volumes should be separately provided.

- (iv) By province, and within provinces, and by urban and rural areas, as defined by the Authority.
- (c) Data revenue should exclude fixed-wireless data traffic, wholesale data traffic, mobile virtual network operator data traffic, and enterprise business traffic.
- (d) All retail tariffs available to customers over the quarter.
- (e) A report and supporting data on effective wholesale prices paid by ECS and ECNS licensees for MVNO and APN (including wholesale reseller) services calculated by dividing total revenue for data with total volume of data used (in Gigabytes) over the quarter split by wholesale ECS and ECNS licensee customer.
- (f) Furthermore, if any category of retail price is below any wholesale price the operator with SMP is required to submit an explanation for the differential and fully auditable evidence to the Authority, with all assumptions clearly specified, showing that this differential is cost based or temporary or is economically or technically justifiable on other grounds.
- (g) The Authority will monitor retail prices and wholesale prices, and in particular monitor for margin squeeze, and may refer a complaint to the Competition Commission if the Authority considers that there is a margin squeeze and there is no adequate justification for this.

#### **Wholesale site infrastructure access market**

- (h) In relation to wholesale site infrastructure access where the licensee owns the site or controls access to it:
  - (i) A list of sites approved for access within twenty (20) business days of the initial request during the previous quarter, together with the access seeker's name, date of request, date of approval, and all charges, whether recurring or non-recurring, for access to the site;
  - (ii) A list of sites not approved for access within twenty (20) business days of the initial request during the previous quarter, together with the access seeker's name, date of request, and reason for not approving it;
  - (iii) A report on the previous quarter's site access requests summarizing the information in regulations 7(a) and 7(b) above, including a summary of time to approve the requests, a summary of reasons for not approving site access requests, and average effective charges for the sites shared;

- (iv) An updated list of all sites used by the SMP operator, and all charges for sharing any site infrastructure owned or controlled by the SMP operator; and
- (v) In respect of information provided per site, the licensee must also provide the operator's identification code for the site, its longitude and latitude, and Statistics South Africa census 2011 main place code, and site category including macro > 15m, macro <15m, rooftop, indoor (including distributed antennae systems), lamppost, billboard, micro, etc.).

#### **Wholesale roaming services market**

- (i) A report and supporting data on effective prices paid for wholesale roaming services by each roaming customer calculated by dividing the total roaming revenue and data roaming volumes, over the quarter split by:
  - (i) Each roaming contract; and
  - (ii) Any contractual price variations used (e.g., metro and non-metro).
- (j) A report and supporting data on wholesale national roaming data volumes used over the quarter by site, together with details of that site including at least the operator's identification code for the site, longitude and latitude, and Statistics South Africa census 2011 main place code.

### **8. SCHEDULE FOR REVIEW OR REVISION OF MARKETS**

The Authority will review the markets for mobile broadband services, to which these Regulations apply, as well as the effectiveness of competition and the application of pro-competitive terms and conditions in those markets when the Authority deems it necessary or after three (3) years from the date of publication of these Regulations.

### **9. CONTRAVENTIONS AND PENALTIES**

A licensee that contravenes regulation 7 of these Regulations is subject to a fine not exceeding five million Rand (R5 000 000).

**10. SHORT TITLE AND COMMENCEMENT**

These Regulations are called the "Mobile Broadband Services Regulations, 2021" and will come into force upon publication in the *Government Gazette*.