



MTN Submission
Draft Amendment Regulations Governing Aspects of the Procedures of the
Complaints and Compliance Committee of the Independent Communications
Authority of South Africa, 2021 published on 26 November 2021 in
Government Gazetted No. 45553.

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1. Introduction

MTN would like to thank the Independent Communications Authority of South Africa (“the Authority”) for an opportunity to comment on the Draft Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee published on 26 November 2021 in Government Gazetted No. 45553.

MTN supports the proposed amendments, which will further strengthen the processes and procedures of the Complaints and Compliance committee.

2. Definitions

The Authority proposes to amend the definition of a “complainant” as follows:

“Complainant” means any person who has lodged a complaint with or referred a dispute to the Authority or the CCC;

The proposed definition is out of sync with section 17C of the ICASA Act which states the following in 17C 1(a):

“(a) A person who has reason to believe that a licensee or another person is guilty of any non-compliance with-

(i) the terms and conditions of a licence;

(ii) this Act; or

(iii) the underlying statutes,

may lodge a complaint with the Authority within 60 days of becoming aware of the alleged non-compliance.”

MTN proposes that the definition be amended to align with the criteria for the submission of a complaint in the ICASA Act.

“Complainant” means any person who has lodged a complaint with or referred a dispute to the Authority or the CCC in terms of section 17C (1) (a) of the ICASA Act.”

MTN proposes that the definition of the term “quorum” should be amended to align it with the general definition which relates to the minimum number of persons whose presence at a meeting/hearing is required before undertakings can proceed. The word ‘majority’ should thus be deleted and replaced with the ‘minimum number’:

“quorum” means the ~~majority~~ minimum number of CCC members at a hearing, pre-hearing or meeting which consists of the Chairperson, Councillor and two (2) CCC Members or 51% of the membership who must be in attendance.”

3. Filing of a complaint / referral of a dispute

The Authority proposes the substitution of regulation 2 of the Regulations as follows:

“(1) A complaint is brought to the attention of the CCC by lodging it with the Coordinator and may be supported by an affidavit and supporting documents: provided that the Co-ordinator may require more details from the Complainant by way of an affidavit or otherwise before he or she refers the matter to the Chairperson.

“(2) A dispute is brought to the attention of the CCC by referring it to the Co-ordinator and it shall be filed in the form of an affidavit. This procedure also applies to the answer and, if applicable, to the reply by the Complainant.”

Since sub regulation (2) specifies that a complaint must be filed in the form of an affidavit, MTN submits that sub regulation (1) be amended by the substitution of the word “may” with “must” as follows:

*“(1) A complaint is brought to the attention of the CCC by lodging it with the Coordinator and ~~may~~ **must** be supported by an affidavit and supporting documents: provided that the Co-ordinator may require more details from the Complainant by way of an affidavit or otherwise before he or she refers the matter to the Chairperson.”*

4. Documents in complaint or dispute

The Authority proposes the substitution of regulations 4(1) with the following:

“(1) The Co-ordinator must provide the licensee with a copy of the complaint within five (5) days of receipt of the complaint by the CCC and must notify the licensee in writing that it has fifteen (15) days within which to deliver a response thereto.”

The complaint must be accompanied by an affidavit as set out in the proposed amendments to regulation 2(2). Therefore, MTN proposes the following amendment:

*“(1) The Co-ordinator must provide the licensee with a copy of the complaint **in the form of an affidavit** within five (5) days of receipt of the complaint by the CCC and must notify the licensee in writing that it has fifteen (15) days within which to deliver a response thereto.”*

5. 4A Close of Pleadings, Withdrawals, Settlements and Postponements

The Authority proposes an insertion of 4A (3) relating to the closing of pleadings as follows:

“(3) If the parties reach a settlement agreement before close of pleadings, such settlement agreement must be filed with the CCC for consideration within five (5) days of reaching settlement unless otherwise stated by the CCC.”

A settlement agreement is agreed by parties to the dispute outside of the CCC process and is a separate agreement between the parties to resolve the issue without the need to proceed with a hearing. Therefore, the CCC need only be informed that the parties have settled the matter and that the complainant wishes to withdraw the complaint. It is not clear what the Authority intends by requesting the parties to file a settlement agreement with the CCC for consideration. The Authority does not state what it means to consider a settlement agreement. This results in a clause that is vague and unnecessary. MTN is not aware if there is any reference in the ICASA Act for the CCC to consider a settlement agreement.

MTN takes cognizance of paragraph 4.4(d) in the Reasons document and understands that the Authority is attempting to mitigate wasted resources and expenditure where parties suddenly settle a matter on the eve of the hearing. MTN proposes that the Authority address this by means of a compulsory pre-hearing conference. During the conference the CCC would be empowered to attempt to mediate a settlement between the parties as set out in sub-section (e) in the Pre-hearing Schedule of the Regulations. In addition, MTN proposes that the proposed insertion of 4A (3) be amended as follows:

*“(3) If the parties reach a settlement agreement before close of pleadings, **the CCC must be informed within one (1) day of the conclusion of the settlement agreement** ~~such settlement agreement must be filed with the CCC for consideration within five (5) days of reaching settlement unless otherwise stated by the CCC.~~”*

6. 5A Application to Call Witnesses, Expert Witnesses and an Interpreter

The Authority proposes the insertion of 5A (2) as follows:

“(2) If either party wishes to call witnesses and/or expert witnesses, such party must make an application with the Co-ordinator for approval by the Chairperson of the CCC, by providing reasons for calling the intended witness/expert witness, the nature and relevance of the witness’s testimony and indicate whether witness statements and/or oral testimony will be tendered, within ten (10) days upon receipt of the Co-ordinator’s notice in terms of regulation 5(1). In the case of an expert witness, the party must provide the details and nature of the expert witness’s experience, skills and expertise.”

Anyone presenting evidence has the right, without following any prior proceeding to subpoena witnesses. This is provided for in the Uniform Rules of Court and the Magistrate Court Rules. MTN submits that the CCC Chairperson does not have the right to approve the witnesses tendered by a party. MTN notes in the Reasons document that the Authority is attempting to address the lack of procedure for calling witnesses and the disobedience and disregard of procedures by

witnesses. Including a requirement for the CCC Chairperson to approve the appearance of a witnesses will not solve this problem. MTN proposes that the Authority amend 5A (2) as follows:

*“(2) If either party wishes to call witnesses and/or expert witnesses, such party must **inform the make an application with the Co-ordinator for approval by the Chairperson of the CCC, by providing a list of names of witnesses, reasons for calling the intended witness/expert witness, the nature and relevance of the witness’s testimony and indicate whether witness statements and/or oral testimony will be tendered, within ten (10) days upon receipt of the Co-ordinator’s notice in terms of regulation 5(1). In the case of an expert witness, the party must provide the details and nature of the expert witness’s experience, skills and expertise.**”*

MTN also proposes the insertion of a new sub section 5A (2)(a), which can read as follows:

“(2) (a) The Co-ordinator must issue a notice to witnesses no less than seven (7) days before the hearing, informing them of the date, time and place of the hearing and that the witness is required to attend the hearing to present evidence on behalf of a party to the dispute.

7. Conclusion

MTN believes that the proposed amendments to the Draft Regulations will further strengthen the processes and procedures of the Complaints and Compliance Committee and facilitate a simple process whereby complaints of non-compliance can be addressed in a practical manner. The amendment should simplify the process rather than add complications to the Regulations.