

**Vodacom Submission on Draft Amendment Regulations Governing Aspects of the Procedures of the  
Complaints and Compliance Committee of ICASA**

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**Vodacom (Pty) Ltd's Written Submission in Response to the Draft Amendment Regulations  
Governing Aspects of the Procedures of the Complaints and Compliance Committee of ICASA**

**(Notice 689, Government Gazette 45553 of 26 November 2021)**

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# **Vodacom Submission on Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of ICASA**

## **INTRODUCTION**

Vodacom (Pty) Ltd (“Vodacom”) welcomes the opportunity to comment on the Draft Amendment Regulations Governing Aspects of the Procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa (“ICASA” and or “the Authority”) published in terms of Notice 689, in Government Gazette No. 45553 on 26 November 2021 (“the Draft Regulations”). Vodacom confirms its willingness to participate in any further consultative process which the Authority may undertake in this regard. We set out our comments below.

## **SPECIFIC COMMENTS**

### **Definitions**

Complainant: Vodacom supports the amendment.

CCC Assessor: Vodacom supports the insertion of this definition.

Days: Vodacom supports the amendment.

Deliver: Vodacom supports the amendment, but Vodacom would suggest that the filing of a document with the CCC should also take place by hand or electronically.

Quorum: Vodacom supports the insertion of this definition.

Vexatious complaint or dispute: Vodacom supports the amendment of this definition, but suggests that the definition should be extended to complaints that have already been determined by the CCC or the Authority. Vodacom proposes the following wording:

**"vexatious complaint or dispute"** is a complaint filed by a person who has persistently and/or without any reasonable ground filed a complaint or dispute with the CCC or the Authority against a licensee, whether against the same licensee or against different licensees and includes a complaint or dispute that has already been considered and finalised by the CCC or the Authority.

### **Substitution of Regulation 2 of the Regulations**

Vodacom supports the proposed substitution of Regulation 2.

### **Amendment of Regulation 3 of the Regulations**

Vodacom supports the amendments.

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## **Amendment of Regulation 4 of the Regulations**

### Documents in complaint

Vodacom welcomes the removal of the requirement for responses to a complaint to be in the form of an affidavit.

### Documents in dispute

Vodacom supports the amendment.

## **Insertion of regulation 4A in the Regulations**

### Regulation 4A(1)

Vodacom submits that pleadings should be deemed to be closed after the exchange of documents, i.e. before the Chairperson directs that a hearing should be held and the parties are notified of a hearing date.

### Regulation 4A(2)

Vodacom supports the inclusion of this regulation however Vodacom recommends that a complainant be allowed to withdraw a complaint prior to the complaint being heard.

### Regulation 4A(3)

It is not clear to Vodacom what action the CCC will take once it has been provided with a settlement agreement. Vodacom recommends that a timeframe be prescribed in which the CCC will revert to parties after it has considered a settlement agreement.

### Regulation 4A(4)

Vodacom recommends that a timeframe be prescribed in which the CCC will revert to any party seeking a postponement after making an application with the CCC.

## **Amendment of regulation 5 of the Regulations**

Vodacom supports the amendment in principle, but suggest the following addition in relation to sub-regulation (1).

- “(1) The Co-ordinator must give the parties to the complaint or the dispute at least twenty (20) days’ notice in writing of the date, time and venue of the hearing. If the Chairperson decides

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that the matter is urgent, he or she may set a shorter time period, provided that the shorter time period is reasonable in the circumstances.”

Vodacom also suggests that provision be made for a party to apply for a new hearing date, should the circumstances warrant same. Vodacom proposes the insertion of the following sub-regulation:

- “(2) Either party may, not more than five (5) days after the parties have been notified of the hearing date, submit a request for a new hearing date with the Co-ordinator for approval by the Chairperson of the CCC. The party requesting the new hearing date should address the following in its written request:
- (a) the circumstances necessitating its request; and
  - (b) the prejudice that will be suffered by the party if its request is denied.”

### **Insertion of regulation 5A in the Regulations**

#### Regulation 5A(1)

Vodacom proposes that the procedure at the hearing and/or the pre-hearing be communicated to the parties in writing beforehand.

#### Regulation 5A(2)

Whilst Vodacom agrees that the Authority should prescribe a procedure for hearings and pre-hearings, the calling of witnesses and/or expert witnesses, legal representation, the use of interpreters and general decorum, Vodacom does not agree with the Authority's proposal that a party has to obtain the approval of the Chairperson before it can call witnesses or expert witnesses. Vodacom respectfully submits that a party should be free to call witnesses and/or expert witnesses should it consider it necessary in presenting its case.

Vodacom therefore suggests the proposed regulation 5A(2) be amended as follows:

- “(2) If either party wishes to call witnesses and/or expert witnesses, such party must notify the CCC and the opposing party within ten (10) days of receipt of the Co-ordinator's notice in terms of regulation 5(1) by delivering a summary of the nature and relevance of the witness or expert witness's testimony, and-
- (a) in the case of expert witnesses, the details and nature of the expert witness's experience, skills and expertise; and

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(b) an indication of whether witness statements and/or oral testimony will be tendered.”

Vodacom further suggests that if a party has given notice of its intention to call witnesses and/or expert witnesses, the other party should be afforded five (5) days to notify the CCC and the party who had given such notice, whether it intends to call witnesses and/or expert witnesses. Vodacom suggest the following wording:

“(3) Within five (5) days of receiving notice of a party's intention to call witnesses and/or expert witnesses, as provided for in regulation 5A(2), the opposing party may deliver a summary of the nature and relevance of any additional witness or expert witness’s testimony, and-

(a) in the case of expert witnesses, the details and nature of the expert witness's experience, skills and expertise; and

(b) an indication of whether witness statements and/or oral testimony will be tendered.”

### Regulation 5A(3)

Vodacom supports the insertion of this regulation, but in light of Vodacom's suggested insertions, the sub-regulation should be renumbered to 5A(4).

### Regulation 5A(4)

Vodacom supports the insertion of this regulation, but in light of Vodacom's suggested insertions, the sub-regulation should be renumbered to 5A(5).

### Regulation 5A(5)

Vodacom notes the insertion of this regulation, but in light of Vodacom's suggested insertions, the sub-regulation should be renumbered to 5A(6).

### Regulation 5A(6)

Vodacom notes the insertion of this regulation, but points out that the content of this regulation has already been incorporated in Regulation 5A(5).

## **Amendment of regulation 6 of the Regulations**

Vodacom supports the amendments however we recommend that clear timeframes be provided for complaints or disputes that will be dealt with on an urgent basis.

## **Amendment of regulation 7 of the Regulations**

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Vodacom supports the amendment of the heading of regulation 7.

Regulation 7(1)

Vodacom supports the substitution of this sub-regulation.

Regulation 7(1A)

Vodacom supports the insertion of this sub-regulation.

Regulation 7(2)

Vodacom supports the amendment of this regulation.

Regulation 7(3) and (4)

Vodacom does not support the deletion of regulation 7(3) and (4) and proposes that the Authority prescribe a procedure for hearings to take place should the Chairperson become unavailable, should the procedure set out in regulations 7(3) and (4) not be workable.

Regulation 7 (5)

Vodacom supports the deletion of this sub-regulation.

**Amendment of regulation 8 of the Regulations**

Vodacom supports the insertion of regulation 8A.

**Amendment of the Schedule of the Regulations**

Vodacom supports the amendments.