GENERAL NOTICE

NOTICE 65 OF 2014

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

"CALL TERMINATION REGULATIONS, 2014"
PURSUANT TO SECTION 67(8) OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005

I, Nomvuyiso Batyi, Acting Chairperson of the Independent Communications Authority of South Africa hereby publish the Regulations set out in the Schedule in terms of section 4 read with section 67(8) of the Electronic Communications Act No. 36 of 2005.

Nomvuyiso Batyi
Acting Chairperson

31 January 2014

SCHEDULE

"CALL TERMINATION REGULATIONS, 2014"
PURSUANT TO SECTION 67(8) OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005

1. DEFINITIONS

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005); or the ICASA Act (Act No. 13 of 2000) has the meaning so assigned, and the following words and expressions shall have the meaning set out below:

"the Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

"B0N" means between geographic area codes as specified in Regulation 6 of the Numbering Plan Regulations;

"ECNS" means an electronic communications network service as defined in the Act;

"ECS" means an electronic communications service as defined in the Act;

"LRIC" means the Long Run Incremental Cost Standard

"SMP" means significant market power as defined in section 67(5) of the Act;

"W0N" means within a geographic area code as specified in Regulation 6 of the Numbering Plan Regulations

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to: -

(a) Define and identify the wholesale call termination markets that exist within the Republic of South Africa based on trends post 2010;

(b) Set out the methodology used to determine the effectiveness of competition in such markets post 2010;

(c) Declare licensees that have SMP in the wholesale call termination markets;

(d) Set out the pro-competitive measures to be imposed by the Authority to remedy market failure in the wholesale call termination markets;

(e) Set out the schedule for periodic review of the wholesale call termination markets and the effectiveness of competition in such markets; and

(f) Provide for monitoring and investigation of anti-competitive behaviour in the wholesale call termination markets.

3. MARKET DEFINITION

The markets are categorised according to the type of service provided to the end-user and are defined as follows:

(a) Market 1: The market for wholesale voice call termination services to a mobile location on the network of each ECS/ECNS licensee who offers such a service within the Republic of South Africa.

(b) Market 2: The market for wholesale voice call termination services to a fixed location on the network of each ECS/ECNS licensee who offers such a service within the Republic of South Africa.

4. METHODOLOGY

In determining the effectiveness of competition in the wholesale voice call termination markets, the Authority has 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 wholesale voice call termination markets, as defined in regulation 3, is ineffective.

6. SMP DETERMINATION

The Authority determines that each ECNS and ECS licensee that offers wholesale voice call termination services has SMP in its own market.

7. PRO-COMPETITIVE TERMS AND CONDITIONS

(1) The Authority has identified inefficient pricing as the cause of the market failure in the respective wholesale voice call termination markets.

(2) Licensees declared to have SMP in terms of regulation 6 must charge fair and reasonable prices consistent with Appendix A in order to address the market failures as identified in sub-regulation(1).

(3) The Authority has determined that additional pro-competitive terms and conditions are necessary to correct the market failures identified in sub-regulation(1), which are to be imposed on the licensees that benefit from economies of scale and scope in maintaining a share of retail market revenue generated in the respective markets of greater than 20% as of December 2012, namely:

(a) Market 1:

(i) MTN Pty Ltd (MTN)
(ii) Vodacom Pty Ltd (Vodacom)

(b) Market 2:

Telkom SA SOC Limited (Telkom)

(4) Additional pro-competitive terms and conditions that licensees mentioned in sub-regulation (3) must adhere to are :

(a) Price Control: Cost oriented pricing

(i) For the period 01 March 2014 to 01 March 2016, the licensees identified in sub-regulation (3)(a) must charge the wholesale voice call termination rates to a mobile location as specified in Table 1:

Table 1: Wholesale voice call termination rates to a mobile location (Market 1)

Period	Rate
1 March 2014	R 0.20
1 March 2015	R 0.15
1 March 2016	R 0.10

(ii) For the period 01 March 2014 to 01 March 2016, the licensees identified in sub-regulation 3(b) must charge the wholesale voice call termination rates to a fixed location as specified in Table 2:

Table 2: Wholesale voice call termination rates to a fixed location (Market 2)

Period	W0N	B0N
1 March 2014	R0.12	16
1 March 2015	R0.12	12
1 March 2016	R0.10	10

(b) LRIC Cost Model

(i) Licensees are obliged to provide any information the Authority deems necessary to develop such a Cost Model.
(ii) Information requests are to be complied with within 30 working days of receiving the request.

8. SCHEDULE FOR REVIEW OR REVISION OF MARKETS

The Authority will review the wholesale voice call termination markets to which these regulations apply, as well as the effectiveness of competition and the application of pro-competitive measures in those markets, after a minimum period of three (3) years from the 1st March 2014.

9. CONTRAVENTIONS AND PENALTIES

(1) A licensee that fails to comply with regulation 7(2) is liable to a fine of Five Hundred Thousand Rand (R 500 000.00).

(2) A licensee that fails to comply with regulation 7(4) is liable to a fine not exceeding One Million Rand (R 1 000 000.00).

10. SHORT TITLE AND COMMENCEMENT

These regulations are called the "Call Termination Regulations, 2014" and will become effective as of 1st March 2014.

Appendix A: APPLICATION OF THE FAIR AND REASONABLE OBLIGATION

1. PRINCIPLES OF IMPLEMENTATION OF FAIR AND REASONABLE OBLIGATION

1.1. For the purposes of regulation 7(2), "fair and reasonable prices" are rates that are equivalent to the cost-oriented rates imposed on the licensees identified in regulation 7(3).

1.2. Licensees must charge the following rates:

1.2.1. Reciprocal rates with the rate set for MTN and Vodacom if these licensees are in Market 1;

1.2.2. Reciprocal rates with the rate set for Telkom if these licensees are in Market 2.

2. Licensees not listed in regulation 7(3)(a) may charge higher termination rates based on the following factors:

2.1. Economies of scale and scope based on the share of total retail revenue generated in the relevant market. A licensee qualifies, for a period of three (3) years from the 1st March 2014, for an asymmetric rate if it has less than 20% of total retail revenue in the relevant market as of December 2012.

2.2. Thereafter, a licensee qualifies for an ongoing asymmetric rate of R0.20 if it has a retail revenue market share of less than or equal to 10% of total retail revenue in the relevant market.

2.3. Licensees with a retail revenue market share of greater than 10% after three (3) years have passed are obliged to charge symmetrical rates.

2.4. A licensee who qualifies for an asymmetric rate in Market 1 may charge a maximum rate according to the following table:

Table A1: Maximum Asymmetry Rate for Market 1 (Mobile)

	Maximum rate that may be charged
Current	R 0.44
01-Mar-14	R 0.44
01-Mar-15	R 0.42
01-Mar-16	R 0.40
01 Mar-17[1]	R 0.20

3. Licensees not listed in regulation 7(3)(b) may charge higher termination rates based on the following factors:

3.1. Economies of scale and scope based on the share of total retail revenue in the relevant market. A licensee qualifies, for a period of three (3) years from the 1st March 2014, for an asymmetric rate if it has less than 20 per cent of total retail revenue in the relevant market as of December 2012.

3.2. Thereafter, a licensee qualifies for an ongoing asymmetric rate of R0.13 if it has a retail revenue market share of less than or equal to 10 per cent of total retail revenue in the relevant market.

3.3. Licensees with a market share of greater than 10% after three (3) years have passed are obliged to charge symmetrical rates

3.4. A licensee who qualifies for an asymmetric rate in Market 1 may charge a maximum rate according to the following table:

Table A1: Maximum Asymmetry Rate for Market 2 (Fixed)

	W0N RATE	B0N RATE
Current	R 0.13	R 0.21
01-Mar-14	R 0.13	R 0.21
01-Mar-15	R 0.13	R 0.13
01-Mar-16	R 0.13	R 0.13
01 Mar-17[2]	R 0.13	R 0.13

---

1 The R0.20 asymmetry rate will continue indefinitely for qualifying licensees in Market 1, that is those with less than 10% market share by revenue in the mobile market.

The R0.13 asymmetry rate will continue indefinitely for qualifying licensees in Market 2, that is those with less than 10% market share by revenue in the fixed market.

Explanatory Note to the 2014 Call Termination Regulations

1. Introduction

1.1. The Authority introduced cost-oriented termination rates through the Wholesale Voice Call Termination Regulations (GG 33698) in October 2010.[1]

1.2. The Authority has reviewed these regulations (GG 33698) in terms of section 67 (4) (e) read with (8) of the Electronic Communications Act, no 35 of 2006 (the "ECA"), where Section 67(8) states the following:

67(8) Review of pro-competitive conditions:

(a) Where the Authority undertakes a review of the pro-competitive conditions imposed upon one or more licensees under this subsection, the Authority must—

(i) review the market determinations made on the basis of earlier analysis; and

(ii) decide whether to modify the pro-competitive conditions set by reference to a market determination

1.3. The Authority informed stakeholders of its intention to conduct such a review with the Request for Information issued in Government Gazette 36532 issued on the 4th of June 2013.

1.4. This Explanatory Note to the Call Termination Regulations, 2014, entails the Authority's response to the submissions made by the stakeholders and is structured as follows:

1.4.1. Market definition

1.4.2. Determination of Significant Market Power

1.4.3. Evaluation of the Effectiveness of Competition

1.4.4. Pro-competitive remedies

2. Market Definition

2.1. The Authority sees no need to amend the definitions of the markets as determined in 2010 because there is no technical change that changes the characteristics of termination to a mobile versus fixed location.

[1] Wholesale Voice Call Termination Regulations (GG 33698) 29 October 2010

2.2. However, the Authority has removed the distinction between termination to a fixed location within and between an 0N[2] area code in the second year.

2.3. The Authority has made this determination based on prevailing market conditions.

2.4. Therefore the market definitions for wholesale voice call termination are:

2.4.1. Market 1: The market for wholesale voice call termination services to a mobile location on each ECS/ECNS licensee's network who offers such a service within the Republic of South Africa.

2.4.2. Market 2: The market for wholesale voice call termination services to a fixed location on each ECS/ECNS licensee's network who offers such a service within the Republic of South Africa.

3. Determination of Significant Market Power

3.1. In the Draft Wholesale Voice Call Termination Regulations of 2013 (GG 36919).[3], the Authority maintained the 2010 determination that:

"each ECNS and ECS licensee that offers wholesale voice call termination services has SMP in its own market"[4]

3.2. The Authority has retained this determination in the Regulations because each licensee controls wholesale voice call access to its own network.

4. Evaluation of the Effectiveness of Competition

4.1. The Authority put forward its conclusion regarding the evaluation of the effectiveness of competition in the relevant markets in Regulation 5 of GG 36919 and in Section 4.3 of the Explanatory Note to the Draft Call Termination Regulations (GG 36919, Page 12).

4.2. MTN and Vodacom raised concerns as to how the Authority determined that "competition in the wholesale voice call termination markets is ineffective."

4.3. Using the methodology in terms of Section 67(6) of the ECA, the Authority retained the conclusions put forward in the Call Termination Regulations of 29 October 2010 (GG 33698),

[2] As per the National Numbering Plan

[3] The Draft Call Termination Regulations and the Explanatory Note, thereto, as released in GG 36919 on 11 October 2013, are referred to as "GG 36919" throughout the remainder of this document.

4 Regulation 6 of the 2010 Regulations.

that there is ineffective competition in the market for the provision of voice call termination services.

5. Pro-competitive Remedies

5.1. The pro-competitive remedies aim to rectify inefficient pricing[5] as the identified market failure. The market failure arose as a result of the use of different costing methodologies as used by the Authority in the 2010 Regulations (GG 33698). This is explained below:

5.1.1. In 2010, the Authority calculated the mobile termination rate using the Fully Allocated Cost (FAC) Methodology which included the cost of network coverage in the provision of termination services, whilst using the Long Run Incremental Cost Methodology (LRIC) for termination to a fixed location, which excluded the cost of network coverage.

5.1.2. This earlier determination created a distortion in the termination rates payable in and between the two markets. These regulations remove this distortion by reducing the share of the cost of access included in the determination for termination rates in both markets.

The Termination Rates

5.2. Stakeholders submitted their views on the target termination rates for Markets 1 and 2. They recommended that the appropriate manner of setting termination rates is by way of cost modelling and that where cost models are not used; there is a risk of setting a wrong price level. In addition, they contended that the target rate of R0.10 was too low for South Africa where extensive further investment in mobile networks is still required, especially to provide wireless broadband.

5.3. The Authority applied a LRIC-based financial model to determine the termination rates for both Markets 1 and 2. This was based on information available to the Authority. In addition, benchmarking was carried out in order to validate the results of the financial model; and the Authority, therefore, determines that the target rate is appropriate.

[5] See GG 33121 p 69 para 3.3.1 onwards

5.4. A number of submissions put forward the view that mobile and fixed rates should gradually converge given the convergence of technologies used in both Markets 1 and 2.

5.5. During the one on one meetings the Authority had with interested parties and in written representations, some stakeholders raised concerns about creating distortions in the market, specifically with an increase in the WON fixed line rate.

5.6. The Authority agrees with the above view and this is reflected in the revised rates as depicted below.

5.7. The Authority hereby confirms the rates for Markets 1 and 2 as follows:

Table 1: Wholesale voice call termination rates to a mobile location (Market 1)

Period	Rate
1 March 2014	R 0.20
1 March 2015	R 0.15
1 March 2016	R 0.10

Table 2: Wholesale Voice Call Termination Rates to a Fixed Location (Market 2)

Period	WON	BON
1 March 2014	R0.12	R0.16
1 March 2015	R0.12	R0.12
1 March 2016	R0.10	R0.10

Asymmetry

5.7. Vodacom, MTN and Switch Telecoms[6] also expressed their views on the proposed asymmetry, including the level, period and criteria employed for qualification. They submitted that termination rate reductions alone should be sufficient to address market failures and that additional pro-competitive remedies would result in disproportionate over-regulation.

[6] The Authority noted and considered the responses from all licensees to various issues raised in the Draft Call Termination Regulations (GG 36919). However, some may not have been expressly mentioned if their views were representative of common views expressed by other licensees.

5.8. The Authority's analysis of market conditions revealed little change since 2010. Termination rates represent a price floor to off net calls; the higher the termination rate, the more difficult it is for new entrants to compete. The Authority's position is that new entrants and small players still require additional pro-competitive support in order to facilitate market entry and thus foster more infrastructure-based competition.

5.9. Vodacom and MTN submitted that licensees in Market 1 all have access to an equal amount of spectrum in the 900 MHz and 1800 MHz bands, therefore asymmetry for other players in this market on this criterion is not justified. The Authority is in agreement with the sentiments herein and hereby removes spectrum allocation as a criterion for asymmetry.

5.10. Vodacom, MTN and WBS expressed concern with how the Authority calculated market shares for both Markets 1 and 2. The Authority acknowledges submissions from stakeholders in this regard and confirms that it reverted to the principles applied in the 2010 Call Termination Market Review (GG 33698)[7] wherein retail market revenue share was the metric in use.

5.11. Vodacom, MTN and Switch Telecoms expressed concern with the need for asymmetry as well as the length of time proposed for asymmetry, citing that it is too long and is bound to promote inefficiencies. The Authority agrees that the opportunity to benefit from an asymmetrical termination rate cannot be granted in perpetuity. However, both the period and level of asymmetry need to be sufficient to address historical factors that created the lack of effective competition. The continued market failure indicates that the level of asymmetry provided to smaller operators was insufficient to generate effective competition. The Authority's position is that asymmetry is not an ongoing support mechanism for smaller operators and should be of limited duration. The Authority's recommended approach is that termination rates should tend towards symmetry over time; i.e. there should only be one rate in the market.

5.12. The Authority, therefore, determines the asymmetry period and levels shown in Table 3 below.

Table 3: Maximum Asymmetry Rate for Market 1

	Maximum Rate
01 March 2014	R 0.44
01 March 2015	R 0.42
01 March 2016	R 0.40

[7] Call Termination Market Review; 29 October 2010 GG 33698

01 March 2017[8]	R 0.20

Table 4: Maximum Asymmetry Rate for market 2

	Maximum WON Rate	Maximum BON Rate
01 March 2014	R 0.13	R 0.21
01 March 2015	R 0.13	R 0.13
01 March 2016	R 0.13	R 0.13
01 March 2017[9]	R 0. 13	R 0.13

6. Conclusion

6.1. The Authority has reviewed and taken account of written submissions from all stakeholders.

6.2. The Authority has, where necessary, made amendments to GG 36919 which are designed to remedy the pricing inefficiencies identified during the review process.

6.3. The Authority maintains the position that the reduction in termination rates accompanied by a period of asymmetry for qualifying licensees is necessary for a dynamic pricing environment.

6.4. There a number of options that the Authority might consider in the future. These include zero or more of the following: -

6.4.1. A further glide path, to termination rates which may be estimated on the basis of the cost data required from operators in Regulation 7(4)(b), which may be applied to a LRIC or other Cost Model. This may or may not include further asymmetry in order to support challenger networks and thus foster completion.

6.4.2. The removal of per minute voice termination rates entirely, and the introduction of a Sender Keeps All scenario.

6.4.3. A retail Market Review, addressing the distortions caused by excessive on-net / off-net retail price differentials.

6.4.4. Focus on market determinations on data traffic costs, and perhaps mandatory multilateral peering at public IXPs.

[8] The R0.20 asymmetry rate will continue indefinitely for qualifying licensees in Market 1, that is those with less than 10% market share by revenue.

[9] The R0.13 asymmetry rate will continue indefinitely for qualifying licensees in Market 2, that is those with less than 10% market share by revenue.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531