

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1000

28 SEPTEMBER 2018



Independent Communications Authority of South Africa  
Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

**NOTICE OF INTENTION TO CONDUCT AN INQUIRY  
IN TERMS OF SECTION 4B OF THE INDEPENDENT  
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
ACT NO 13 OF 2000 ON UNRESERVED POSTAL SERVICES**

**September 2018**

## INVITATION FOR WRITTEN REPRESENTATIONS

### 1. LEGAL BASIS FOR THE INQUIRY

- 1.1** Independent Communications Authority of South Africa (“the Authority/ ICASA”) is the sector regulator for the postal matters (amongst others) in terms of the Postal Services Act, 1998 (Act No 124 of 1998).
- 1.2** In terms of section 20 of the Postal Services Act, no person may operate an unreserved postal service contemplated in schedule 2, unless such person is registered with the Regulator in terms of this Act and is in possession of a registration certificate issued by the Regulator. Section 21 of the Postal Services Act provides that an application for registration with the Regulator to operate an unreserved postal service must be in the format and in accordance with the procedure prescribed by the Regulator and must be accompanied by the prescribed fee. Section 8(a) of the Postal Services Act provides that the Regulator must exercise regulatory functions in respect of reserved and unreserved postal services. Section 61 of the Postal Services Act provides, amongst others, that the Regulator may make regulations regarding any matter which must be or may be prescribed in terms of the Postal Services Act; and in general any matter which is necessary or expedient in order to achieve the objects of [the Postal Services Act].
- 1.3** Section 4B of the ICASA Act in turn provides that: “The Authority may conduct an inquiry into any matter with regard to:
- (a) *the achievement of the objects of the ICASA Act or underlying statutes;*
  - (b) *regulations and guidelines made in terms of the ICASA Act and the underlying statutes;*
  - (c) *compliance by applicable persons with the ICASA Act and the underlying statutes;*

- (d) *compliance with the terms and conditions of any licence by the holder issued pursuant to the underlying statutes; and*
- (e) *the exercise and performance of the Authority's powers, functions and duties in terms of the ICASA Act or the underlying statutes."*

**1.4** In terms of section 4B of the ICASA Act, the Authority hereby give notice of its intention to conduct an inquiry on unreserved postal services ("Inquiry").

**1.5** In conducting this Inquiry, the Authority is exercising its power in terms of section 4B(1)(e) of the ICASA Act to conduct an inquiry with regard to the exercise of its powers, functions and duties in terms sections 8(a), 20, 21 and 61(b) and (c) of the Postal Services Act.

## **2. PURPOSE OF THE INQUIRY**

**2.1** The purpose of this Inquiry is to evaluate the effectiveness of the current Regulations on Unreserved Postal Services, 2010,<sup>1</sup> ("Regulations") primarily focussing on regulatory challenges that affect the unreserved postal sector.

**2.2** The Authority is cognisant of the impending amendments to the Postal Services Act being undertaken by the Department of Telecommunications and Postal Service<sup>2</sup>. Some proposals thereto relate to a new licensing regime for all services in the market and the categorisation thereof. This Inquiry is not pre-empting the outcome of the legislative review or creating parallel processes. The Authority is taking pro-active stance informed by research-based evidence to engage stakeholders on how to deal with sector challenges and consequently address the shortcoming of the Regulations.

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<sup>1</sup> Postal Services Act (124/1998): Unreserved Postal Services Regulations, Notice 13 of 2010, No. 32859 Vol. 535, January 2010.

<sup>2</sup> Postal Service Bill, Government Gazette 416246, of 10 November 2017.

### 3. THE INQUIRY PROCESS

**3.1** The Inquiry will be conducted in a series of phases detailed below. As the Inquiry unfolds, the Authority may introduce additional steps where necessary and will keep stakeholder apprised of the developments.

#### **3.2 Phase 1 – Notice of Inquiry and Discussion Document**

3.2.1 As indicated in Section 1, the Authority is conducting this Inquiry in terms of section 4B (1)(e) of the ICASA Act. The process contemplated in section 4B (2) of the ICASA Act is that the Authority will give notice of its intention to conduct an inquiry, indicating the purpose of the inquiry and inviting interested persons to submit written representations on or before date specified in the notice, which may not be less than 45 days from the date on which the notice was published.

3.2.2 To this end, the Authority publishes this Notice of Inquiry together with the Discussion Document. The Authority hereby invites interested persons to submit their written representations on this Notice of Inquiry and the Discussion Document on Unreserved Postal Services (“Discussion Document”).

3.2.3 A copy of this Notice of Inquiry and the Discussion Document will be made available on the Authority’s website at <http://www.icasa.org.za> and in the Authority’s Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), Sandton between 09h00 and 16h00, Monday to Friday.

3.2.4 Written representations regarding this Notice of Inquiry and the Discussion Document must be submitted to the Authority by no later than 16h00 on **03 December 2018** by hand delivery or

facsimile or email (in Microsoft Word) and marked specifically for attention:

Ms. Esther Gopane

Delivery Address: Block A, Pinmill Farm, 164 Katherine Street, Sandton.

Email: [UnreservedPostalServices@icasa.org.za](mailto:UnreservedPostalServices@icasa.org.za)

Facsimile: 011 566-3698

- 3.2.5 Where possible, written representations should be emailed to [UnreservedPostalServices@icasa.org.za](mailto:UnreservedPostalServices@icasa.org.za) Enquiries should be directed to 011 566 3697 and or; between 10h00 and 16h00, Monday to Friday.
- 3.2.6 Written representation(s) received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and website. Library copies will be obtainable upon payment of the prescribed fee.
- 3.2.7 At the request of any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act.
- 3.2.8 Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.
- 3.2.9 Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations should the Authority decide to hold public hearings.

### **3.3 Phase 2 – Public Hearings**

3.3.1 The Authority may hold public hearings on the issues raised in the context of this Inquiry if deemed necessary.

3.3.2 The Authority will, if it deems it necessary to hold public hearings, notify stakeholders of the date, time and the venue of the hearings.

### **3.4 Phase 3 – Publication of Findings Document**

3.4.1 The Authority will publish a Findings Document in the Government Gazette within 90 days from the date of conclusion of the Inquiry as prescribed in section 4C (6) of the ICASA Act.

3.4.2 The Findings Document will be the final output of the Inquiry.

## **4. Timelines**

**4.1** The inquiry is envisaged to spread over a period of two (2) financial years (2018/19 and 2019/20).

**4.2** The Authority may amend the above timelines after notifying stakeholders.



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**RUBBEN MOHLALOGA**

**CHAIRPERSON**

**DATE: 18/09/2018**

## **DISCUSSION DOCUMENT ON UNRESERVED POSTAL SERVICES**

**September 2018**

**GLOSSARY  
OF  
TERMS AND ACRONYMS**

DTPS	Department of Telecommunications and Postal Services
DHL	Dalsey Hillblom Lynn Worldwide Express
FedEx	Federal Express
GATS	General Agreement on Trade in Services
ICASA (Authority)	Independent Communications Authority of South Africa
ICT	Information and Communications Technology
PSA	Postal Services Act
SADC	Southern African Developing Community
SAPO	South African Post Office
TNT	TNT Holdings B.V.
UPS	United Parcel Service
UPU	Universal Postal Union
WTO	World Trade Organization
ZICTA	Zambia Information and Communications Telecommunications Authority



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## 1. SECTION A

### 1.1. INTRODUCTION

The postal market in South Africa is delineated into two main categories - the reserved postal services and the unreserved postal services. Reserved postal services are legally monopolised by the SAPO for services comprising of all mail and parcels under one (1) kilogram as per schedule 1 of the Postal Services Act, 1998 (Act No. 124 of 1998) as amended ("PSA").

Unreserved postal services relate to services that have not been reserved for SAPO, and comprise of all letters, postcards, printed matter, small parcels and other postal articles larger than and/or heavier than the reserved dimensions up to and including 30 kilograms as per schedule 2 of the PSA. The unreserved postal services sector is open to competition.

The unreserved postal sector, in South Africa, was first regulated in 2005 by the then Postal Regulator under the Department of Communications ("the Postal Regulator"). The 2010, Unreserved Postal Services Regulations, published in Government Gazette No 32859 of 2010 ("the 2010 Regulations"), repealed the 2005 Regulations. The purpose of the 2010 Regulations is to provide for a procedure to register as an unreserved postal services operator.

The purpose of this Discussion Document is to provide the Authority's initial analysis on matters relating to the unreserved postal services and seek more information from the stakeholders on same, primarily focussing on regulatory challenges that affect the unreserved postal sector. Some of the shortcomings of the current Regulations are that, unlike with regulations governing other types of licensees<sup>3</sup>, the 2010 Regulations do not make provision for the amendments,

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<sup>3</sup> Broadcasting service licensees, Electronic Communications Licensees and Electronic Communications Network licensees.

transfers and surrender of unreserved postal services certificates, which leaves the Authority unable to determine ownership changes in the sector. Further, the Authority has ascertained through its internal studies that there are operators that operate in the unreserved postal services market without having been registered with the Authority as is required by law. Further insight in this regard is outlined below in this document.

The Discussion Document is part of an ongoing inquiry by ICASA into the unreserved postal services. The ICASA process began with desktop research and international study visits. The discussion document is meant to facilitate participation and solicit stakeholder inputs on the effectiveness of the current Regulations.

The Discussion Document takes into consideration the envisaged regulatory framework for unreserved postal services provided for by the National Integrated ICT Policy White Paper published in 2016 (“the White Paper”)<sup>4</sup>.

The White Paper recognises the need to create a level playing field between SAPO and other players in the postal market. It recognises that the lack of an explicit licencing environment for parcel operators makes it difficult to measure the size and contribution of the sector to the economy<sup>5</sup>. To this end, the White Paper provides that ICASA (herein “the Authority”) should prescribe Regulations that will shift the licensing framework from registering to licensing unreserved postal services. The latter must be accompanied by the standard terms and conditions for the licence categories.

The Authority is cognisant of the impending amendments of the PSA being undertaken by the DTSPS<sup>6</sup>. Some proposals thereto relate to a new licensing regime for all services in the market and the categorisation thereof. This inquiry is not pre-empting the outcome of the review or creating parallel processes. The

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<sup>4</sup> National Integrated ICT Policy White Paper, Government Gazette 40325. Vol. 616 of October 2016

<sup>5</sup> White paper: page 129

<sup>6</sup> Postal Service Bill, Government Gazette 416246, of 10 November 2017.

Authority is taking pro-active stance informed by research-based evidence to engage stakeholders on how to deal with sector challenges and consequently address the shortcoming of the 2010 Regulations.

## **1.2. METHODOLOGY**

The methodology applied in formulating the Discussion Document includes amongst others; policy and legislative analysis of the White Paper, the PSA and international conventions that have a bearing in the regulation of unreserved postal services.

The inquiry process is envisaged to spread over a period of two (2) financial years (2018/19 and 2019/20). In the previous financial year 2017/18 the Authority completed an internal research which comprised of desktop research and international study visits. The process of selecting countries to include in benchmarking was based on the criteria as outlined below:

- Ability to provide valuable lessons for the South African context;
- Level of development of the postal regulatory framework;
- Availability and Accessibility of information; and
- Evolution of the unreserved postal services.

## **2. SECTION B**

### **2.1. POLICY AND LEGISLATIVE FRAMEWORK**

This section of the Discussion Document provides legislative context to postal services specifically with respect to provisions of empowering legislation which afford the Authority the necessary power to conduct an inquiry into unreserved postal services, as ICASA is the Regulator contemplated in terms of section 3(1A) of the ICASA Act.

### **2.1.1. NATIONAL INTEGRATED ICT POLICY WHITE PAPER AND POSTAL SERVICES BILL.**

Chapter 11 of the White Paper deals with Postal Policy. For purposes of this Discussion Document it suffices to state that the White Paper makes several interventions, which among others have a bearing in the future regulation of the postal sector. Although the Postal Services Bill (2017)<sup>7</sup> (“the Bill”) is yet to be finalised, it to a certain extent incorporates prescripts of the White Paper.

### **2.1.2. ICASA ACT NO.13 OF 2000**

The Authority is empowered by section 2 of the ICASA Act, 2000 (Act No. 13 of 2000) to regulate postal matters as contemplated in the PSA in the public interest.

In terms of section 4B of the ICASA Act, the Authority is empowered to conduct an inquiry into any matter regarding:

- the achievement of the objects of the ICASA Act or underlying statutes;
- regulations and guidelines made in terms of the ICASA Act and the underlying statutes;
- compliance by applicable persons with the ICASA Act and the underlying statutes;
- compliance with the terms and conditions of any licence by the holder issued pursuant to the underlying statutes; and
- the exercise and performance of the Authority’s powers, functions and duties in terms of this Act or the underlying statutes.

The ICASA Act defines “underlying statutes” as including the Postal Services Act.

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<sup>7</sup> Postal Services Bill, Government Gazette No. 41246, of 10 November 2017

### **2.1.3. POSTAL SERVICES ACT NO 24 OF 1998**

Section 8(a) of the PSA provides that the Authority must exercise regulatory functions in respect of the reserved and unreserved postal services. With regards to the regulation of the unreserved postal services, some of the primary objects of the PSA are to promote the regulation and control of the postal services sector in the public interest and for that purpose the Authority is to:

- (d) encourage investment and innovation in the postal industry;
- (e) promote the development of postal services that are responsive to the needs of users and consumers;
- (g) develop greater equity in respect of the distribution of services, particularly within the areas of historically disadvantaged communities, including rural areas;
- (j) ensure fair competition within postal industry;
- (k) promote stability in the postal industry;
- (l) protect the interests of postal users and consumers;
- (m) promote the effective maintenance of an efficient system of collecting, sorting and delivering mail nationwide, in a manner responsive to the needs of all categories of mail users; and
- (q) promote small, medium and macro-enterprises within the postal industry.

Section 20 of the PSA prohibits any operator to operate unreserved postal services unless registered with the Authority and issued with a registration certificate, while section 21 of PSA empowers the Authority to prescribe procedure and fees payable for registration as unreserved postal services operator.

#### **2.1.4. INTERNATIONAL CONVENTIONS**

The exchange of postal items is not limited to the national boundaries, as operators providing unreserved postal services can be of foreign nationals. This section also sets out some of the relevant international, regional conventions that supports the Authority's work in terms of unreserved postal services.

South Africa is a signatory of numerous international and regional conventions which include the UPU, Pan African Postal Union (PAPU), World Trade Organisation (WTO), Southern African Development Community protocol on transport, communications and meteorology, Communications Regulators Association of Southern Africa (CRASA). All these conventions regulate unreserved postal services in those countries as well as regulation of the postal services in the country.

The UPU is a United Nations body that provides general postal policies and regulations for member countries. The UPU Parcel Post Manual and Regulations<sup>8</sup>, recognize that parcels up to the weight of 30kg as part of postal services. Section E, Article RC 116 of the Parcel Post Manual, provides for procedure for delivery of parcels under the weight limit of 30kg which countries may use as guidelines.

Recognizing the radical changes in operations brought by technological evolutions and therefore changes in regulations, the WTO included postal and courier services in the 2000 GATS negotiations. Negotiations includes that countries must provide unrestricted market access and ensure transparent and reasonable licensing requirements.<sup>9</sup>

The SADC protocol<sup>10</sup> calls on member states to establish equitable frameworks to accommodate private sector through legislation that promotes autonomy and commercialization. Moreover, cross-border courier service provision is

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<sup>8</sup> <http://www.upu.int/en/activities/parcels/parcel-post-manual.html>

<sup>9</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/postal\\_courier\\_e/postal\\_courier\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/postal_courier_e/postal_courier_e.htm)

<sup>10</sup> [https://www.sadc.int/documentspublications/show/Protocol\\_on\\_Transport\\_Communications\\_and\\_Meteorology\\_1996.pdf](https://www.sadc.int/documentspublications/show/Protocol_on_Transport_Communications_and_Meteorology_1996.pdf)

encouraged to be provided through direct access by one provider or co-operations on both sides of the border (SADC, 2013).

### **3. SECTION C**

#### **3.1. THE UNRESERVED POSTAL SERVICES LANDSCAPE**

As already stated, the unreserved postal sector, in South Africa, was first regulated in 2005 by the then Postal Regulator. The 2010 regulations for unreserved postal services repealed the 2005 Regulations. The purpose of the 2010 Regulations is to provide for a procedure to register as an unreserved postal operator.<sup>11</sup>

The Regulations provide procedure for all operators providing services under schedule 2 of the PSA regarding:

- application, renewal and notification of information change;
- registration fees payable and
- the duration of the certificate
- penalty applicable for regulatory contraventions

Upon registration with the Authority, operators receive a registration certificate to display on their premises for monitoring purposes. The registration certificate is valid for a period of three years and must be renewed annually.

The Authority continuously engages in public awareness activities where all stakeholders are made aware of the Regulations and the opportunities they present.

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<sup>11</sup> Government Gazette No. 32859, Unreserved Postal Services Regulations – 2010.



**Question 1: In your view do the Regulations achieve the objectives as stipulated in Section 2 of the PSA? Please elaborate using table below.**

<b>Objects of the Act</b>	<b>Yes/No</b>	<b>Elaborate</b>
promote the provision of a wide range of postal services in the interest of the economic growth and development of the Republic;		
make progress towards the universal provision of postal services;		
encourage investment and innovation in the postal industry;		
promote the development of postal services that are responsive to the needs of users and consumers;		
ensure fair competition within the postal industry;		
promote stability in the postal industry;		
protect the interests of postal users and consumers;		
promote small, medium and microenterprises within the postal industry		

### **3.1.1. ACCESS**

The Authority is empowered by the PSA to create a level playing field in the postal services industry for operators. For market entry, the 2010 Regulations prescribe procedure and fees for any interested party to operate in the unreserved postal services area.

Although operators may adopt advanced systems for their operations, it is the responsibility of the Authority, through regulations, to ensure consumer protection and promotion of access to postal services as provided by the PSA. In terms of the objects of the PSA, postal regulations must develop greater equity in respect of the distribution of services, particularly within areas of historically disadvantaged communities, including rural areas.

The ability of the sector to develop greater equality in the distribution of services especially in the rural areas is hindered by long distances between areas which generate low volumes of postal services.

Further to the above, insufficient roll-out of addresses further exacerbates the inability of the sector to develop greater equality in the distribution of postal services.

To address issues of equitable distribution of postal services, innovation becomes key for business sustainability and opening the sector for new start-ups. Part of the innovations include "retail drop-off points" in different retailers which enables a faster, affordable and convenient delivery.

### **3.1.2. MARKET SIZE**

Approximately 300 operators were registered with the then postal regulator<sup>12</sup>. With the amendment of the ICASA Act, in 2006, the function of postal regulator was moved to ICASA. Since then, the Authority has to date recorded a declining number of registered operators from 300 to 79.<sup>13</sup> In our view, there is no available number of unregistered operators.

The South African unreserved postal market is mainly dominated by the large international courier companies, such as DHL, FEDEX, and UPS, and their local subsidiaries. It is estimated that between ten to fifteen percent (10-15%) of local medium sized companies that were in operation in the year 2014 where either

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<sup>12</sup>National Integrated ICT Policy White Paper, Government Gazette 40325. Vol. 616 of October 2016

<sup>13</sup> Government Gazette No. 39897, list of class licensees -2016.

acquired or bought over, in 2015, by international companies. For instance, SupaSwift, acquired by Fedex and Berco, acquired by Aramex.<sup>14</sup>

Small courier operators that manage to grow and transition into medium size companies find themselves in need of investment for required infrastructure to increase their capability to cope with the volumes. Due to this challenge, some of these companies find themselves in a position where there is no further progression to become large scale operators and compete at same footing with the international companies.<sup>15</sup>

In a sector estimated to be worth around R20 billion per annum, the Gauteng province has a significant number of registered operators followed by the Western Cape.<sup>16</sup> The trend is likely to be the same for the sector, including unregistered operators, as operators prefer densely populated areas with reasonable economic activity. The combination guarantees return of investment for a sector that relies on volume for greater profit margins.<sup>17</sup>

## **Question 2: What do you think are the contributing factors to the declining numbers of registered operators?**

### **3.1.3. EMPLOYMENT/LABOUR ISSUES**

According to the 2013 Post and Telecommunication Industry report<sup>18</sup>, the industry is reported to employ one hundred and seven thousand (107 000) people of which thirty-four percent (34%) was reported to belong to Post and Courier segment.<sup>19</sup>

The growth of labour numbers is hampered by the lack of skilled professional drivers relevant for the demanding sector. The sector is highly dependent on drivers to move mail items and parcels between business to business or between

<sup>14</sup> <http://www.engineeringnews.co.za/print-version/trends-in-sa-courier-industry-2015-04-23>

<sup>15</sup> <http://www.engineeringnews.co.za/print-version/trends-in-sa-courier-industry-2015-04-23>

<sup>16</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

<sup>17</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

<sup>18</sup> [www.statssa.gov.za/publications/P7000/P70002013.pdf](http://www.statssa.gov.za/publications/P7000/P70002013.pdf)

<sup>19</sup> <http://www.statssa.gov.za/?p=5538>

business to consumers. Thus, there is emphasis on healthy and professional drivers capable of working under a tight schedule that demands faster reaction times.<sup>20</sup>

The demand for greater number of skilled and professional drivers will continue to rise as the sector benefits from the growth of the e-commerce services. The steady growth of ecommerce activities across the world has led to growth in “on-demand parcel delivery start-ups using motorcycles” for within cities and metros. Though no clear statistics is provided, these start-ups boost a level of local ownerships and employment in the post and courier segment.<sup>21</sup>

#### **3.1.4. E-COMMERCE IMPACT IN THE UNRESERVED POSTAL SECTOR**

To apply good practice and be relevant with the global trends, it is necessary for the Authority to periodically take into consideration market changes which may impact the effectiveness of regulations.

The 2017 E-Commerce Industry Report indicates that online shopping is increasingly becoming the norm for online users/consumers in South Africa. This study reveals that 80% of online shoppers surveyed have either maintained or increased their online shopping habit over the year 2017.<sup>22</sup>

Some of the important issues raised from studies<sup>23</sup> conducted, on cross border survey shopper are:

- 66% shop online at most once every three months, and 6% shop online at least once a week.
- Convenience and price remain the primary benefits of shopping online.
- Delivery is not a major concern for online shopper respondents. 88% were fairly or very satisfied with the speed of delivery of their last online purchase.<sup>24</sup>

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<sup>20</sup>Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017

<sup>21</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

<sup>22</sup> <http://hello.effectivemeasure.com/za-ecommerce-2017>

<sup>23</sup> International Post Corporation (IPC) at Universal Postal Union (UPU) (Berne) - Postal Operations Council (POC) meetings in April-2017

<sup>24</sup> <http://hello.effectivemeasure.com/za-ecommerce-2017>

- Consumers want E2E (end-to-end) tracking of their parcels.
- Knowing which company deliver their goods is becoming less important for customers
- Lots of cross-border shipping are of low value orders.
- Cost of shipping is mostly free (consumers prefer free shipping on-line services)
- Delivery location is moving away from post office although most of orders can fit in a post office box
- Weight of the online shipment fits within the 1kg limit.<sup>25</sup>

Online retailers continue to look for faster, safe and reliable unreserved operators to deliver goods to customers. International and local medium and small sized operators benefit from e-commerce. International operators move goods in between borders from international suppliers to local borders. Those with local presence move goods from international suppliers to the customer. For operators with no local presence, small and medium national and local operators provide niche last mile delivery to the customer. The need for niche delivery has enabled rapid growth and development of operators in shorter courier distance within cities and towns.<sup>26</sup>

The growth of e-commerce has brought with it a challenge to the traditional operators. "...global e-commerce companies such as Amazon and Alibaba pose a potential threat to the traditional CEP [courier, express and parcel operators] as they invest extensively in their own logistics network, including trucks, vans, cargo planes, logistics hubs and even drones."<sup>27</sup> Takealot, a local e-commerce company, has invested in its own point to point services.<sup>28</sup> Beyond a challenge to traditional unreserved postal operators, regulatory framework must also be responsive to this new phenomenon.

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<sup>25</sup> [https://www.ipc.be/en/reports-library/publications/ipcreports\\_brochures/cross-border-e-commerce-shopper-survey-2017](https://www.ipc.be/en/reports-library/publications/ipcreports_brochures/cross-border-e-commerce-shopper-survey-2017)

<sup>26</sup> <http://www.intracen.org/publication/Bringing-SMEs-onto-the-e-Commerce-Highway/>

<sup>27</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

<sup>28</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

### **3.1.5. PRICING**

South African Unreserved operators function in a competitive market, providing similar service offering with price characteristics of weight, dimension and time.<sup>29</sup> In this market, competition forces including economies of scale (volumes, mode of transport and interoperability of networks etc.) determine the price.

However, operators have the flexibility or options to set price of their service offering, below the market price, at the market price or above the market price, depending on the operator's strategy.

In Kenya, all postal licensees shall have the power to set tariffs for postal services which are open to competition and obliged to display tariffs in the operator's premises. Moreover, Operators are obligated to notify the Commission forthwith of the current tariffs charged for postal services and changes to the tariffs for each different type of postal service provided to each location within thirty days of such changes.<sup>30</sup>

### **3.1.6. TECHNOLOGICAL IMPACT**

Section 22 (d) of the PSA describes a person who should register with the Authority as an unreserved postal service operator, and S 22(d) (ii) emphasises the need and impact of technology for the functions of a registered operator as track and trace function requires technology.

Technological innovation and the application of new technology heightens competition to and within the postal sector, specifically to the unreserved postal services.

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<sup>29</sup> <https://www.accenture.com/...Assets/.../Accenture-Adding-Value-to-Parcel-Delivery.p...>

<sup>30</sup> Kenya Information Communication Act, 2011; and Kenya Communications Regulations, 2001.  
[www.kenyalaw.org](http://www.kenyalaw.org)

Innovation is raised as the key driver to success for the courier express parcel market. New applications are created to afford consumers ease of access to their services. Consumers can connect with the operator to request collection and easily track their items from their mobile phones.<sup>31</sup>

Moreover, the advancement of technological systems removes the element of physical location and connect with customers virtually (e.g. SENDER, Uber parcel etc.) providing an element of on demand courier service as a result reduces capital costs for the operators. These are operators whose primary focus is parcel delivery within metropolitan areas.<sup>32</sup>

Technological developments will further disrupt the sector and pose regulatory challenges. The emergence of alternative delivery methods might not pose a short to medium term threat to the unreserved postal sector in South Africa, however their impact is worthy of being considered. There is a belief that "[e]arly adoption of autonomous delivery models will concentrate in developed countries, where labour costs are high enough to make the return on investment significant. In the developing world, however, labour costs will likely remain low enough to prevent any major technology change impacting the last mile over the next five to ten years."<sup>33</sup> The following are delivery models likely to disrupt the sector:<sup>34</sup>

- Semi-autonomous ground vehicles consisting of a self-driving van and a delivery person performing sorting, scanning and administrative tasks and communicating with courier company and recipient.
- Droids and robots - Small autonomous vehicles, only slightly larger than a regular parcel, deliver parcels to the doorstep, travelling at between 5km/h and 10 km/h, using the pavement rather than the street to reach their destination. This concept combines the advantages of a van with those of an autonomous delivery robot.

<sup>31</sup> <http://www.engineeringnews.co.za/article/trends-in-sa-courier-industry-2015-04-23>

<sup>32</sup> <http://www.engineeringnews.co.za/print-version/trends-in-sa-courier-industry-2015-04-23>

<sup>33</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

<sup>34</sup> Kneale, L. Courier Activities copyright owned by Who Owns Whom: African Business Information. May 2017.

- Autonomous ground vehicles (AGVs) with lockers, delivering parcels without any human intervention. Customers are notified of the exact arrival time and pick up the parcel from the specified locker mounted on the mobile parcel locker. One supervisor per eight to ten AGVs is required.
- Drones - Autonomous aircraft such as copters or vertically starting planes carry parcels of up to 15 kg to their destination along the most direct route and at relatively high average speed. One supervisor per eight drones is required. Global companies testing or using drones for deliveries include Amazon, DHL, UPS, and Ireland's Pony Express Couriers.

## **4. SECTION D**

### **4.1. ISSUES FOR DISCUSSION**

This section of the document focuses on issues that are currently in the White Paper and the 2010 Regulations. These issues were further explored in desktop research and country visits. Main issues include: definitions, licence categories, duration, licence fees, awareness of legislation by operators and contribution to the universal service fund.

#### **4.1.1. DEFINITIONS**

Multiple efforts to work on a precise definition that will give a better description of the unreserved postal services market, have been undertaken through different forums (i.e. General Agreement on Trade in Services (GATS) negotiations since 2000, Doha Development Agenda since 2001). Proposals for postal and courier services in the 2000 services negotiations, point to an inadequacy of the Services Sectoral Classification List (MTN.GNS/W/120), which distinguishes postal and courier services on the basis of the nature of the service providers rather than of the services provided i.e. postal services are essentially defined as services rendered by national postal administrations.<sup>35</sup>

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<sup>35</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/postal\\_courier\\_e/postal\\_courier\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/postal_courier_e/postal_courier_e.htm)



The 2005 discussions included the undertaking of additional commitments in schedules to address certain regulatory issues (Anti-competitive practices, cross-subsidies, universal service obligations, independent regulators and licensing procedures) to encourage unrestricted market access for services under competitive conditions.<sup>36</sup>

The PSA defines unreserved services as services contemplated in schedule 2. A courier service is defined as service provided by a person licensed or registered to provide such a service in terms of the PSA.

Section 22 of the PSA provides that a person registered as courier operator must undertake to:

- i. Receive, collect and deliver items contemplated in item 1 (b) of Schedule 2
- ii. Track and trace the whereabouts of any item received or collected for delivery by such person's business undertaking;
- iii. To deliver items within a definite time, in the case of deliveries across international borders;
- iv. To deliver items within the republic at the latest by 13:00 on the first working day after receipt thereof and
- v. To clear items through customs, where applicable.

The current unreserved regulations do not set and monitor standards for operators in terms of track and trace system and delivery times. From international benchmarking, Kenya Communications Authority (CA) monitors the quality of service standards on delivery within the country.

**Question 3: The section above provides the definition for unreserved postal services as described by the PSA, do you find the above definition enough for the current operations? Please elaborate.**

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<sup>36</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/postal\\_courier\\_e/postal\\_courier\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/postal_courier_e/postal_courier_e.htm)

**Question 4: Section 22 (d) (ii), (iii), (iv) provides that a person considered to provide courier services undertakes to provide track and trace, deliver within a timeframe. Should the Authority intervene in setting and monitoring delivery standards (in terms of track and trace system, and time deliveries) for unreserved operators? Please Elaborate.**

#### **4.1.2. LICENSING AND REGISTRATION**

The PSA provides for the Authority to register unreserved postal services and issue a registration certificate through a prescribed process. An application can be lodged with the Authority at any time by completing "Form A" which is contained in the 2010 Regulations.<sup>37</sup>

A copy of the business plan, founding documents, by proof of payment of a non-refundable application fee of R1, 000.00 which must be paid into ICASA's bank account and proof of entity's registration must be attached to the completed application form. The registration certificate is valid for a period of three (3) years from the date of issue.

The White Paper provides for the new licensing framework and prescribes the following licensing categories:

- **International Private Postal Operators:** These are operators that deliver services in other countries. They operate inbound and/or outbound deliveries on a worldwide network, but they also perform national and local deliveries;
- **National Postal Operators:** These operators will provide services throughout South Africa.
- **Provincial Postal Operators:** These are operators that operate and deal with deliveries within a province.

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<sup>37</sup> Government Gazette No. 32859, Unreserved Postal Services Regulations – 2010.

- **Municipal and Metropolitan Postal Operators:** These operate only within a designated local municipality or metropolitan area. These are often the smallest type of operator and usually represent the entry level for the courier industry.<sup>38</sup>

Licensing according to distinct categories is envisaged to encourage emergence and participation of operators that can operate in niche areas which are less serviced.

The White Paper makes provisions for the Authority to set licensing conditions for all the above-mentioned licence categories. Some of the obligations already imposed in the white paper includes to provide insurance for postal items subject to terms and conditions as agreed by customers and contribution to universal service fund. Upon receiving registration application from potential licensee, the Authority will grant a licence to a suitable category as per set conditions.

**Question 5: Do you believe that the current application procedure is efficient? Please elaborate on your answer.**

**Question 6: Do you believe that the current 3-year license validity period is sufficient for business purposes? Please elaborate.**

**Question 7: Considering the licensing framework above, which licence conditions should the Authority consider distinguishing between licensing categories?**

#### **4.1.3. FEES AND REGISTRATION**

The current fee payable by all operators (irrespective of their operational/business scale) applying to operate unreserved postal services is R 1000.00. In addition to the registration fee, an annual renewal fee of R5000.00 is payable by all registered operators.

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<sup>38</sup> National Integrated ICT Policy White Paper, Government Gazette 40325. Vol. 616 of October 2016

In the 2010 findings document, the Authority provided that different licensing fees will be used for administrative and compliance monitoring purposes. The determination is based upon the assumption for expected growth in the industry.<sup>39</sup>

The White Paper empowers the Authority to determine licensing fees payable by the applicant. In its determination of licensing fees, the Authority must take into consideration various factors and decide on a fee.<sup>40</sup>

**Question 8: Do you believe that the prescribed fees are economically feasible for all Operators? Please elaborate and provide suggestions on how the Authority should prescribe registration fees using the table below?**

<b>Fees payable</b>	<b>Economically Feasible (Yes or No)</b>	<b>Elaborate</b>
Application fee = R1000		
Registration fee = R5000		
Renewal fee = R1000		

**Question 9: Considering the licence categories prescribed by the white paper, how should the Authority differentiate licence fees payable? Please elaborate.**

#### **4.1.4. COMPLIANCE MONITORING AND ENFORCEMENT**

All unreserved service operators are required to register with the Authority. Upon registration, the Authority issues a registration certificate which the operator is obliged to display in their premises for compliance monitoring purposes. Postal

<sup>39</sup> Gazette no. 32859, Unreserved Postal Services Findings Document - 2010

<sup>40</sup> National Integrated ICT Policy White Paper, Government Gazette 40325. Vol. 616 of October 2016

compliance inspectors conduct random visits to the operator's premises to monitor compliance with legislation<sup>41</sup> and the Authority's regulations<sup>42</sup>.

In addition, the Authority has a registration list which is updated as and when operators register and renew their registration annually. The updated list of the unreserved postal services operators is published.<sup>43</sup>

There is a high number of unregistered unreserved services operators. In inspection visits conducted by the Authority, several operators have failed to produce registration certificates. Some have claimed that they are not aware of registration requirements, while others have argued that there is no need for them to register because they do not fulfil all the requirements of being a courier/unreserved operator. This notwithstanding the fact that they deliver parcels between 1 and 30 kilograms.

There are unregistered operators that are aided by and rely on business from registered operators in their everyday operations. The registered operators utilize unregistered operators to deliver parcels in areas outside their network. Thus, unregistered operators argue that there is no need for them to register because they do not enter into delivery agreements with the sender, they are merely an extension of the registered operators network. They also do not provide track and trace as they claim the latter is the responsibility of the registered operator.

The undesirable relationship between the registered and unregistered operators demonstrates distant relations between the operators and the Authority. Contrary to the unreserved services sector dynamics in South Africa, the CA and the unreserved services operators have mutually beneficial relations. The operators assist the KCA in monitoring the sector and report any illegal

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<sup>41</sup> Independent Communications Authority of South Africa Act No. 13 of 2000; Postal Services Act no 124 of 1998 as amended;

<sup>42</sup> Government Gazette No. 32859, Unreserved Postal Services Regulations – 2010; *Government Gazette No. 29740*, Code of practice for the South African Postal Industry-2007; Government Gazette No. 32644, Regulations in respect of conveyance of mail-2009.

<sup>43</sup> Government Gazette No. 39897, List of class Licensees – 2016.

operations. This constructive relationship allows the CA to understand the challenges and the barriers especially for small operators who register and never commence operating or cease operations.

Countries such as Kenya and Malaysia develop and update list of active operators. The list is published to raise consumers awareness on licensed operators that exist in the country and to build credibility of the operator for cross border ecommerce activities.

Furthermore, these countries foster relationships with operators beyond the registration and monitoring process. In Kenya, KCA assists the operators in standard setting for their deliveries and provides training courses to assist develop standards.

**Question 10: Do you find the Authority's monitoring and enforcement of the unreserved postal services effective? Please elaborate your answer and make suggestions in this regard.**

**Question 11: Do you think the Authority should impose an obligation for registered operators to report, unregistered to improve compliance? Please elaborate.**

#### **4.1.5. CONTRAVENTIONS AND PENALTIES**

Section 24 (1) of the PSA provides for suspension and cancellation of any operator's registration certificate should an operator contravene the provisions of the PSA and licensing conditions. Section 62 of the PSA provides that "Any postal service operator who refuses or fails to produce a licence or registration certificate for inspection when required to do so in terms of this Act is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two (2) years or to both a fine and such imprisonment". Contravention of the PSA and any other underlying statutes; and/or the failure

to register with the Authority as well as non-adherence to the prescribed standards carries a penalty of up to R250 000.

**Question 12: Do you consider the prescribed penalty fee suitable? Please elaborate on your answer.**

#### **4.1.6. UNIVERSAL SERVICE OBLIGATIONS AND FUNDING**

The South African Post Office (SAPO) is traditionally liable to provide universal service obligation (USO), whilst unreserved postal operators are limited to their segments of the postal market and are not obliged to provide universal services.

The White Paper proposes a creation of the universal services fund (USF) for postal services. Any operator licensed to provide postal services shall contribute to the provision of universal services and/or contribute to the fund established by the Minister.

The Minister in consultation with the Authority will determine which operators are responsible for the provision of universal postal service and such obligations will be included in the license conditions. Access to the funding for universal service shall be applied for by operators through a prescribed manner.

## **5. SECTION E**

### **5.1. INTERNATIONAL BENCHMARKING**

This section focuses on the international benchmarking conducted by the Authority in the following countries: Brazil, Malaysia, Kenya and Zambia. In addition to the desktop research, the Authority conducted study visits in Brazil, Malaysia, Kenya. The approach taken in this benchmark exercise was to select countries which have started postal sector reform with emphasis on the regulatory environment for the provision of unreserved postal services including courier services.

The benchmark indicators are categorised into: The Legislative and Regulatory framework which includes licence categories, duration, licence fees, and contribution to the universal service fund.

## **5.1.1. BRAZIL**

### **5.1.1.1. Legislative and Regulatory framework**

Legislative powers for postal sector in Brazil are vested in the Ministério da Ciência, Tecnologia, Inovações e Comunicações (MCTIC)/ Ministry of Science, Technology, Innovation and Communications. Brazil Postal Services Act of 1989 provides for the regulation of the communications sector in Brazil.<sup>44</sup>

In Brazil, postal services are not regulated by an independent regulator. The 2012 Consumer Postal Council has proposed a postal regulator, ANAPOST, which was envisaged to be established as an agency of government. Brazil's national postal operator, Empresa Brasileira de Correios e Telégrafos (ECT or Correios) is 100% owned by the state.<sup>45</sup>

### **5.1.1.2. Postal Market Structure**

The structure of postal services is reserved and unreserved areas. Reserved services are a monopoly of the Brazilian Post Office. Brazil's national postal operator, Empresa Brasileira de Correios e Telégrafos (ECT or Correios) is the country's designated provider of universal postal services.

The monopoly of collection and delivery of reserved postal items in Brazil exists for a maximum period of 5 to 10 years. Competitive services that are not included in the monopoly is parcel post, financial

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<sup>44</sup> Consumer Postal Council, (2012). Index of Postal Freedom.

<sup>45</sup> Consumer Postal Council, (2012). Index of Postal Freedom.



services and logistics and are provided by Private operators. The unreserved area is not regulated. It is open to express mail operators, such as FedEx, TNT and UPS, in both domestic and international mail provision.<sup>46</sup>

Currently the letter mail volumes are dropping whereas parcel item volumes are increasing. The growth of parcel volume is attributed to the e-commerce boom, which has seen a seventy percent (70%) increase in parcel delivery activities between the years 2013-2017.<sup>47</sup>

The Market is fragmented and is very profitable with Correios estimated market share of 35% in parcel market. The dominance in market share is largely because of quality of service, which is at ninety-eight (98) percent, and positive public image.<sup>48</sup>

#### **5.1.1.3. Quality of Service**

Postal regulations set delivery standards for both the national operator and private operators. Express mail and parcels are delivered within twenty-four (24) hour period, while economy mail and parcels are delivered within five (5) days. In densely populated urban areas along the coast of Brazil, quality of service is at around ninety-nine percent (99%). It is lower in the sparsely populated northern rural areas and in the Amazon region. Lost parcels account for less than one percent (0.8 %) of total mail and parcels.<sup>49</sup>

Correios extensive postal infrastructure gives it an added advantage, in the delivery of parcels, over private operators in the unreserved market. Private operators collaborate with Post office for last mile

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<sup>46</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>47</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>48</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>49</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

delivery of parcels in areas where the post office has reach. These collaborations are business contracts between operators and are not overseen by any regulating body.<sup>50</sup>

#### **5.1.1.4. Sector Challenges**

There is continuing transportation challenges and restrictions on available space as parcel volumes increases take up space in storages and in airlines. This has forced the post office to increase cost.<sup>51</sup>

The increase in parcel items handled by the post office poses a security challenge as post men and delivery vehicles are targeted for theft since criminals understand that the postman might be carrying valuable items. The Post Office has increased security, and this has led to increase in postal costs.<sup>52</sup> The competitive unregulated space has resulted in the transport industry encroaching into the area reserved for the designated operator.<sup>53</sup>

### **5.1.2. KENYA**

#### **5.1.2.1. Legislative and Regulatory Framework**

The CA is the regulatory body for the communications sector in Kenya. It was established in 1999 by the Kenya Information and Communications Act, 1998 (KIC Act). The CA is charged with facilitating the development of the Information and Communications sectors including; broadcasting, multimedia, telecommunications, electronic commerce, postal and courier services. The following legislations are relevant for the governing of the sector:

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<sup>50</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>51</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>52</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

<sup>53</sup> Presentation on Regulation of Postal Services in Brazil, ICASA study Visit January 2018

- Kenya Information & Communications Act, 1999
- Part IV on Licensing & Enforcement
- Part V on Postal Services
- Part VII on Miscellaneous Provisions.<sup>54</sup>

To regulate the postal and courier market, the CA promulgated the Kenya Information and Communication (Postal and Courier) Regulations in 2010 as per the KIC Act. In terms of section 81 of the KIC Act, all licensees in the unreserved postal services must be registered with the CA. Once registered the CA must issue a licence valid for 15 years as per the applied service category. The regulations also provide for the fees payable to the CA.<sup>55</sup>

The following are Kenya Information and Communications Regulations for the courier services:

- Postal and Courier Services Regulations, 2010
- Licensing & Quality of Service Regulations, 2010
- Compliance Monitoring, Inspection & Enforcement Regulations, 2010<sup>56</sup>

The Kenya Communications Regulations of 2001 further provide for the penalties to any entity operating without a valid licence. For this offence, the offender is liable to a jail term not exceeding one year or a fine not exceeding Ksh. 300,000 (R40 000), or both.<sup>57</sup>

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<sup>54</sup> <http://www.ca.go.ke/index.php/sector-legislation>

<sup>55</sup> The Kenya Communications Regulations, 2001. <http://www.ca.go.ke/index.php/sector-regulations>

<sup>56</sup> <http://www.ca.go.ke/index.php/sector-regulations>

<sup>57</sup> <http://www.ca.go.ke/index.php/sector-regulations>

### 5.1.2.2. Licensing Framework

The Kenyan licensing framework requires that a company applying for a courier licence must have at least 20% minimum equity share by a local company. The following licence categories are provided:<sup>58</sup>

- International In-bound operators are one-way operators, receiving items from overseas for local delivery. These operators pay a license fee of Ksh 75,000 (R11726.47) or 0.5% of the annual turnover of audited accounts whichever is less;
- International domestic operators operate both internationally and domestically with a worldwide network. Operators pay a fee of Ksh 450,000 (R70347.18) or 0.5% of the annual turnover of audited accounts whichever is less;
- Regional Operators are the major operators within Kenya and have an East African Network. They pay Ksh 93,750 (R14638.55) or 0.5% of annual turnover of audited accounts whichever is less;
- Intra-country Operators are major operators in Kenya and pay a license fee of Ksh 60,000 (R9368.67) or 0.5% of annual turnover of audited accounts whichever is less;
- Intra-city Operators only operate within a city/town boundary and pay a licence fee of Ksh 37,500 (R5855.42) or 0.5% of annual turnover of audited accounts whichever is less; and
- Document Exchange operators exchange articles/documents between members or a certain group of clients. The license fee is KS 22,500 (R3513.25) or 0.5% of annual turnover of audited accounts whichever less is.

This categorization and accompanying licence fees are reviewed from time to time.<sup>59</sup>

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<sup>58</sup> <http://www.ca.go.ke/index.php/postal-and-courier>

<sup>59</sup> <http://www.ca.go.ke/index.php/postal-and-courier>

### **5.1.2.3. Postal Market Structure**

The Postal Corporation of Kenya (PCK) is the designated public postal licensee charged with the responsibility of universal postal service provision with certain services exclusively reserved for the corporation as mandated by the Postal Corporation Act of 1998. The PCK competes with other courier operators to provide competitive services including courier and parcel delivery services.<sup>60</sup>

Currently there are 141 postal and courier operators recorded on the CA's website as compliant, operating within the Republic of Kenya and in accordance with the Kenya Communications Act of 1998. 1(one) Public postal operator, nine (9) International inbound operators, 15 (fifteen international), 9 (nine) regional and 29 Intra-city operators.<sup>61</sup>

### **5.1.2.4. Monitoring and Compliance**

In terms of monitoring and compliance, the CA conducts annual outlet inspections of both the public operator and private courier firms. In addition to annual planned inspections, the Authority conducts ad hoc inspections on reported incidences.

The procedure for monitoring and compliance includes the following:

- Filling of compliance returns on a quarterly basis
- Enforcement action on illegal players in the market with the help of enforcement arm of Government
- CA and licensees Cooperation on noted illegal players in the market.<sup>62</sup>

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<sup>60</sup> <http://www.ca.go.ke/index.php/postal-and-courier>

<sup>61</sup> <http://www.ca.go.ke/index.php/postal-and-courier>

<sup>62</sup> <http://www.ca.go.ke/index.php/postal-and-courier>

#### **5.1.2.5. Universal Service Obligation (USO)**

Exclusive services in the postal sector are provided by the Postal Corporation of Kenya (PCK), which is designated as the Public Postal Licensee and the body charged with the responsibility of providing universal postal services. To fulfil the Universal Service Obligations (USO), PCK has been granted exclusivity in the following services (reserved services):

- Acceptance and delivery of postal articles weighing up to 350 grams.
- Provision of private letter-boxes and bags.
- Printing and issuance of postage stamps.
- Financial remittances.
- Equity participation.

#### **5.1.2.6. Sector Challenges**

Several challenges the PCK is facing include, competition from unregulated (unlicensed public transport services in Kenya referred to as "Matatus") courier companies operating within PCK's reserved market. Furthermore, unlicensed operators provide rapid services to consumers at extremely reduced rates or sometimes charge consumers rates that are five (5) times higher than those of the PCK regulated rates/tariff. In addition to PCK's challenges, the CA is faced with several challenges which include:

- Lack of communication between the regulator and licensees
- Lack of regulatory methodology on structuring parcel industry by CA
- Unlicensed operators
- The Authority's inability to monitor and enforce legislation and regulations
- Lack of harmonised relationship between the regulator and the association

- Concern around the exorbitance monitory contribution towards Universal Service Fund
- Ineffective security measures requirements.<sup>63</sup>

**Question 13: Kenya has a condition that at least 20% ownership of unreserved postal operators should be local (Kenyan), Should the Authority impose local ownership and control as part of licensing condition for unreserved postal operators? Please Elaborate.**

### **5.1.3. MALAYSIA**

#### **5.1.3.1. Legislative and Regulatory Framework**

Malaysian Communications and Multimedia Commission (MCMC) is the regulator for the communications and multimedia industry in Malaysia. It is empowered by the Postal Services Act 741 of 2012 (Malaysian PSA) to regulate the postal sector. The Minister is empowered by section 99(1A) of the Malaysian PSA to grant postal services licences. Regulation for postal services in Malaysia is spelled out in the Postal Services (Licensing) Regulations, 2015.<sup>64</sup>

#### **5.1.3.2. Postal Market Structure**

Malaysia postal sector is divided into two segments, namely Universal Service and Non- Universal Service. Malaysian Post, the designated operator, is the Universal Service licensee. There are 118 Non-Universal Service licensees operating as couriers. The Malaysian Post is privately owned, and the courier sector is fully liberalised.

The Malaysian Post is mandated by law to deliver mail throughout all states of Malaysia as a Universal Service Obligation provider (USO).

<sup>63</sup> ICASA Committee Study Visit presentations from PCK and CA -

<sup>64</sup> <https://www.mcmc.gov.my/legal/acts>

The courier companies are not mandated to provide universal service obligation. The Malaysian Post does not receive a direct subsidy from government. However, receives some of the funds from government funded projects that contribute towards the development of postal sector.<sup>65</sup>

### 5.1.3.3. Licensing Framework

Regulation 3 of the postal licensing Regulations of 2015 provides for the following categories of licences under the non-universal service postal area: License A, License B and License C. The postal licensing Regulations defines these categories according to the level of revenue generated by the business.

Table 1: Classification of license categories and fees payable.<sup>66</sup>

Class A	Class B	Class C
Revenue = RMB 1000 000 (R3 304 523.00) <ul style="list-style-type: none"> <li>should be able to establish at least five outlets within two years of their licenses</li> </ul>	Revenue= RMB 500 000 (R1 652 261.50)	Revenue = RMB 100 000 (R330 452.30)
License fee=RMB 30 000 (R99 135.69) annually	License fee=RMB 10 000 (R99 135.69) annually	License fee=RMB 500 (R1652.26) annually
International and domestic	Domestic, inbound, national	Local Domestic (restricted by demarcation)

<sup>65</sup> <https://www.mcmc.gov.my/sectors/postal-courier>

<sup>66</sup> Malaysia Postal licensing Regulations – 2015 - [https://www.mcmc.gov.my/legal/acts/postal-services-act-2012-act-741/postal-services-\(licensing\)-regulations-2015](https://www.mcmc.gov.my/legal/acts/postal-services-act-2012-act-741/postal-services-(licensing)-regulations-2015)



The Minister of Communication and Post approves the licence application as per regulation 3(2), of the 2015 Postal licensing Regulations. The Regulations provide for licence application, renewal, replacement and transfer procedure and duration.

The third Schedule of the Regulations stipulates licence fees payable and further empowers the MCMC to determine a manner to pay fees.

#### **5.1.3.4. Monitoring and compliance**

Regulation 9(2) prescribes standard conditions of the licence. MCMC is tasked with monitoring compliance of the licensees. MCMC monitors operator compliance through a performance management system to curb cross operation in different license categories. The delivery standard is set at 80% delivery within three days of dispatch.

In addition to the formal monitoring system, MCMC further relies on the complaints received from the sector to monitor compliance. If the operator is found to be cross operating between the classes, the meeting will be held between the operator concerned and Regulator, followed by an investigation.

Regulation 11 of the postal licensing Regulations provides for up to fifty percent (50%) of amount of annual licence fee rebates payable to licensees as an incentive of purposes amongst others of promoting high postal service achievement. Application for rebate is made to MCMC in a manner required by MCMC.<sup>67</sup>

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<sup>67</sup> [https://www.mcmc.gov.my/legal/acts/postal-services-act-2012-act-741/postal-services-\(licensing\)-regulations-2015](https://www.mcmc.gov.my/legal/acts/postal-services-act-2012-act-741/postal-services-(licensing)-regulations-2015)

## **5.1.4. ZAMBIA**

### **5.1.4.1. Legislative and Regulatory Framework**

The ZICTA is an ICT regulatory body responsible for regulating the ICT Sector in Zambia. ZICTA falls under the Ministry of Transport, Works, Supply and Communications, it derives its mandate to regulate ICTs, postal and courier services from three Acts namely:

- The Postal Services Act No. 22 of 2009 (Zambia PSA),
- Electronic Communications and Transactions Act No. 21 and
- the Information and Communications Technologies (ICT) Act No. 15 of 2009.<sup>68</sup>

Section 2 of the Zambian PSA provides a definition of a “Courier Service” as a service by which a document, letter, parcel or any article (other than a telegram) is conveyed from door to door without a postage stamp.<sup>69</sup>

The Zambian PSA empowers the ZICTA to issue licences and monitor compliance. Section 5(1) of the Zambian PSA prohibits any person to operate a postal or courier service without a licence. ZICTA is empowered to prescribe licence application procedure and prescribe fees payable. Duration of the licence is specified in the licence at the time of issue. ZICTA is further empowered to cease, approve transfer, cancel, suspend or revoke an operator’s licence where there are reasonable grounds for non-compliance.<sup>70</sup>

The Zambian PSA also makes provision for the processes that allows licensee an opportunity to present their case before action is taken

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<sup>68</sup> <https://www.zicta.zm/>

<sup>69</sup> Zambia Postal services Act No. 22 of 2009.

<sup>70</sup> Zambia Postal Services Act No. 22 of 2009.

against them. In addition, ZICTA can, in terms of Zambian PSA, impose penalties on operators who commit an offense. The penalty may include a fine or imprisonment for a term not exceeding three months, or to both.

#### **5.1.4.2. Postal Market Structure**

The Postal market in Zambia is made up of reserved and unreserved services. The designated national postal operator Zambia Postal Services Corporation (ZAMPOST) has exclusive right to operate reserved services. Unreserved postal services are defined in the Zambian PSA as posting of all letters, postcards, printed matter and small parcels falling outside the ambit of reserved services, weighing up to and including 30kg including courier services. Private postal and courier operators operate in a liberalised and competitive environment. ZAMPOST compete with other commercial operators in the provision of unreserved services.

#### **5.1.4.3. Licensing Framework**

Zambian PSA provides the following licensing categories and fees payable by an Operator:<sup>71</sup>

- International Courier Operator -licence duration of 5 years - Application fee units 6,667 - Currency equivalent (application fee) K2000.1 (R2757.30)  
Initial licence fee units 100,000 - Currency equivalent (initial license fees) K30, 000 (R41359.50).
- National Courier Operator – license duration 5 years - Application fee 6,667 -  
Currency equivalent (application fee) K2000.1(R2757.30) - Initial licence fee K50.000 (R68932,50).

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<sup>71</sup>Zambia Postal Services Act No. 22 of 2009.

- Local Courier Operator – licence duration 5 years- Application fee 6,667 - Currency equivalent (application fee) K2000.1(R2757.30) - Initial licence fee units 33,333 Currency equivalent (initial licence fees) K9999, 9 (R13786,36).

#### **5.1.4.4. Monitoring and Compliance**

Section 12 of the Zambian PSA provides obligations of licensee which includes keeping and maintaining in the licensee place of business, register detailing assets and liabilities, and books of account, invoices, custom permits and other documents relevant for purposes of the Zambian PSA as prescribed by ZICTA.

An authorized officer is empowered by section 12(3) to inspect the licensee's books, records, documents and other information relevant to the Zambian PSA. In addition, ZICTA can appoint independent person or entity to monitor the quality of the postal or courier services provided by a licensee and report the findings to the Authority and recommend to the Authority the measures to be taken by the licensee to improve the quality of service as per section 18 (1).<sup>72</sup>

## **5.2. LESSONS LEARNT FROM STUDY VISITS**

Both Kenya and Malaysia have classes of different categories of courier's companies, and almost three classes in each country. The classification of operators into categories is conducted for monitoring compliance and to ensure that legislation and regulations are adhered to by the operators.

Both countries have agreed that a good working relationship between the couriers, regulator, association and the designated operator is important to find a suitable regulatory framework.

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<sup>72</sup> Zambia Postal Services Act No. 22 of 2009.

Kenyan stakeholders in the unreserved postal sector hold regular round table meetings and social cooperate events for all sector stakeholders. Good working relations assist the regulator to address issues of encroachment in the business as registered operators report to the Authority identified unlicensed operators. Licenced operators are encouraged to report unlicensed operators for further investigations and impose a fine or penalty.

Further, Kenyan postal inspectors have annual and ad hoc visits to private and national operators for inspection.

In Malaysia, penalties payable by the operators is Malaysian Ringgit 500 000 (R1 817 388.78) or five years in jail. The penalty is imposed by the Enforcement Department in terms of the procedure within the MCMC.

Malaysian and Kenyan regulators publish registered and non-registered operators in the government gazette. This practice assists consumers to make an informed decision when choosing which operator to use.

Drawing from the evidence provided from study visits, both countries do not oblige unreserved postal operators to pay universal service fee.

Lessons learned from PostCom is the move from manual registration to online have improved efficiencies. All registration procedures are conducted online, including review of data submitted and filling in of questionnaire to provide updated information on the past business year.

The evidence presented from PostCom illustrated that the regulator does not rely only on its resources to monitor registration of companies' compliance. However, the regulator is closely in contact with trade association and trade unions who assist to identify and monitor companies that have emerged and which may have to register with the Regulator. Thus, the regulator believes that courier operators comply with law and regulations that are stipulated for them.

Postal services complaints can be submitted to PostCom or to an independent ombudsman (in case of civil procedure) if the company's own complaint division is not able to reach an agreement with the clients.

Contrary to the Kenyan and Malaysian practices, in Switzerland, PostCom does not classify courier companies. PostCom publicise its registered courier companies on government gazette to assist customers make an informed choice of which operators are legally operating.

The Brazil government does not regulate unreserved postal sector (private operators and partly Correios), however the Ministry expressed their interest in regulating the sector as it is believed that regulation can actually assist to bring high volumes to the post office.

The absence of unreserved postal sector regulation in Brazil, entrenches skewed postal services development. The Post Office is disadvantaged by being obligated to meet universal service target while contending with competition from private operators in profitable areas. The private operators only focus on the densely populated urban areas where they also exploit Post Office network although these strategic partnerships and collaborations with the private companies on parcel deliveries leads to increased mail volumes for the post office.

## **6. SECTION F**

### **6.1. CONCLUSION**

The Discussion Document is based on information gathered from the desktop research and international study visits. The extensive research sought to aid the process of public consultation for unreserved postal services inquiry.

The Discussion Document provides an analysis of the unreserved postal sector taking into consideration policy and market changes which may impact on the effectiveness of regulating the sector.

Furthermore, the discussion document also focuses on the unreserved postal services landscape, with an emphasis on the market size, technological development and the impact of e-commerce in the growth of the sector. In addition, there is a focus on current unreserved postal services regulations and everyday challenges experienced by the Authority in enforcing compliance.

The Authority seeks to raise awareness, mainly focusing on current and potential unreserved operators, about the Authority and its regulatory framework. Stakeholder submissions guided by the current legislation will assist the Authority make informed decision on its position to either review the current regulations.