



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

**Vol. 479    Pretoria    24    May    2005    No. 27613**



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## GENERAL NOTICE

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### NOTICE 801 OF 2005



#### NOTICE IN TERMS OF SECTION 27 OF THE TELECOMMUNICATIONS ACT

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice and invites written comment in terms of section 27 of the Telecommunications Act, No 103 of 1996 ("the Act") on how handset subsidies should be regulated.
2. Interested persons are hereby invited to submit ~~written~~ representations, including an electronic version of representation in Microsoft Word, of their views on the section 27 enquiry.
3. Persons making representation are requested to indicate if they wish to make oral representations, which shall not exceed one hour in duration.
4. Written representations may be posted or hand delivered by no later than 05 July 2005, for the attention of:

Ms Nomvuyiso Batyi  
Manager: Competition  
Private Bag X 10002  
Sandton,  
2146

or

ICASA, Block A, Pinmill Farm, 164 Katherine Street,  
Sandton

5. Where possible, written representations should also be e-mailed to [nbaty@icasa.org.za](mailto:nbaty@icasa.org.za) and copy [mnkopane@icasa.org.za](mailto:mnkopane@icasa.org.za)
6. All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons at the

ICASA library and copies of such representations and documents **will** be obtainable on payment of a fee.

7. At the request of any person who submits a written representation or document pursuant to ~~this~~ notice and seeks confidentiality for **any part** thereof, the Authority **will** determine whether any such part of the written representation is confidential. Where the Authority determines ~~that~~ **any** such part is indeed confidential then it will be treated as such. Where the Authority decides to the contrary then the person **will** be allowed **to** withdraw the written representation in question and the Authority **will not** take it into consideration when in making its findings.
8. In order to provide for a wider basis for representations to be made during the enquiry, the Authority has compiled questions pertinent to this issue.
9. These questions have been incorporated into ~~the~~ annexure hereto entitled "DISCUSSION DOCUMENT ON **HANDSET SUBSIDIES**" (hereinafter referred to simply ~~as~~ the "Discussion Document").
10. The findings and conclusions, if any made by the Authority following the enquiry **will** be published in the Government Gazette in accordance to section 27 of the Act

**Mandla Langa**  
Chairperson  
ICASA

## **Discussion Document into terminal equipment subsidies also known as handset subsidies**

### **1. Background:**

**1.1** Since **1993** when Vodacom and MTN were licensed, handsets have always been subsidised. In the South African market, this has been translated into a 24 months contract to subscribers. There have been instances where mobile operators have reduced the amount(s) for the contract for the initial **12** months of the contract and subsequently reverting to the full contract price for the remainder of the period.

**1.2** Subsidies have been identified as a potential problem for subscribers. The view is that a subscriber due to the subsidisation of the handset over a 24 months period might be, prejudiced in switching.

**1.3** The major question that arises, and which is central to this discussion document is whether subscribers that enter into **24** month contract are aware of the real cost of the handset or bundled minutes. In the pre-paid market, the costs of the handsets seem to be transparent. The difference is that in the pre-paid market some handsets are network locked. During the number portability rulemaking process, the Number Portability Committee and having taken all submissions into account, identified handset subsidies being a possible barrier for subscribers to port to other operators.

**1.4** It should be noted that a handset subsidy is of competition and consumer concern. A handset subsidy may be used as an inducement for a subscriber not to change from one mobile operator to another example handset upgrade before the contract is over. This has the implications of the contract being extended for a further period of **24** months. Consumers may not be aware that the free handset is paid for in the monthly subscriptions fee and is not obvious in the bill.

### **2 Discussion**

**2.1** As early as the inception of mobile telephony in South Africa in **1994**, terminal equipment subsidies have been available. Mobile network operators and service providers mostly offer terminal equipment as part of subscription to post pay services.

**2.2** For the purposes of this discussion document terminal equipment **will** be referred to as handset.

### 3. Regulatory framework

3.1 Currently no regulatory framework exists with regards to handset subsidies.

Q1. Should ICASA develop specific regulations for subsidisation of handsets?

### 4. Terminology

4.1 Bundling<sup>1</sup> means the grouping of various telecommunication services and equipment, particularly the subscription and handset, come **as a** package to increase appeal to potential customers and **reduce** advertising, marketing and other expenses associated with delivering multiple services.

4.2 A Handset subsidy<sup>2</sup> is offered by mobile operators and **service** providers and can be defined **as** a monetary value, which is given **to a** customer during the subscription process. The amount of the handset subsidy is the difference between the mobile operator's purchase **price** of a handset from a manufacturer and the sale price of the handset **to** a customer.

Q 2 What are your views with respect to the above definitions?

Q 3 Do you have any suggestions on how they can be improved?

### 5. Purpose of the Enquiry into Handset subsidies

#### 5.1 Competition

5.1.1 The Authority has as part of its objectives, ensuring fair competition within the telecommunications industry in terms of section 2(j) of the Telecommunications Act **103** of 1996. This objective can **be** achieved amongst other things by having regulations addressing anticompetitive behaviour or potentially anticompetitive behaviour.

5.1.2 In South Africa the practice of subsidising handsets was introduced in order to improve the uptake of mobile telephony given the **initial**

<sup>1</sup> <http://www.mobiledia.com/glossary>

<sup>2</sup> <http://www.mobiledia.com/glossary>

projection that were made of reaching the 500 000 subscribers by 2003. Today, the mobile market in South Africa is above 17 million subscribers. There was no change in the strategy for subsidising handset to subscribers who had contracts.

- 5.1.3 Bundling of telecommunication services and equipment mostly occurs as part of a post-pay offering.
- 5.1.4 Post-pay subscribers have limited choices regarding the inclusion of a handset into the agreement. A post-paid subscriber does not have a choice but to accept the handset. The choice of a handset is dependent on the type of contract that the post-subscriber is choosing.
- 5.1.5 Handset subsidies are a key marketing strategy to gain subscribers. Vendors rely heavily on the market to improve their business and will be affected by the regulation of handset subsidies.
- 5.1.6 Handset subsidies may increase the barrier to entry into the market by new players in that customers can not easily change service providers were the subsidies exist.
- 5.1.7 The Authority's preliminary view is that handset subsidies may be used as an inducement for customers not to change mobile network operators or service providers.
- 5.1.8 Heavily subsidised handsets may negatively affect the uptake of number portability<sup>3</sup> in the mobile industry.
- 5.1.9 Section 8 of the Competition Act No. 89 of 1998 provides for prohibition against a dominant firm requiring or inducing a supplier or customer to not deal with a competitor; from selling goods or **services** on condition that the buyer purchases separate goods or **services** unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract;

Q 4 Do you agree with the statement referred to in 5.1.2 above?

<sup>3</sup> Number portability means a capability whereby a subscriber to a telecommunication service who so requests can retain his or her telephone number when changing service from one public switched telecommunication service licensee to another public switched telecommunication service licensee or one mobile cellular telecommunication service licensee to another mobile cellular telecommunication service licensee.

competitive gains from subsidising handsets and does it outweigh the anti-competitive ~~effect~~ thereof?

Q 6 What is your view of the statement in 5.1.4?

Q 7 Does the practice of subsidizing handsets constitutes a contravention of section 8 (d) (i) and (iii) of the Competition Act?

Q 8 Do any of the mobile operators or service providers offer a comparable alternative post-pay package that ~~excludes~~ a handset? Are there pre ~~paid~~ packages available with a subsidised handset?

Q 9 What are your views in respect of the statement in 5.1.5 above? Do **you** think a ban on handset subsidies will affect market penetration? What is the relationship between subsidies and the sale of handsets? **How** will vendors be impacted on the regulation of handset subsidies?

Q 10 How do handset subsidies increase barriers to new players to enter into the market? Can a handset subsidy be seen as an abuse of a market position?

Q 11 Are the cost switching ~~costs~~ transparent? How are theses switching costs calculated? Are consumers aware of the level of subsidisation?

Q 12 Do you think the statement in 5.1.8 is correct? Please provide clear reasons for your answer.

Q 13 Are there any further competition theories or provisions in the Competition Act or any related legislation that ICASA needs to consider?

## 5.2 Consumer Protection

5.2.1 International studies have indicated that handset subsidies may result in an increase in termination rates ~~as~~ there appears to be cross-subsidisation. (UK).

5.2.2 The cost of the handset has not been separated from the cost of the subscription. This creates ~~confusion~~ as customers do not know ~~when~~ they have cancelled the contract whether they are paying for the "free bundled minutes" or the handset.

5.2.3 Subsidies lower the cost of telecommunication services and ~~allow~~ more customers to enter into the mobile market than ~~would~~ ordinarily be the case,

5.2.4 SIM Locking to protect handset subsidy ties customers to a mobile operator and has an anti-competitive effect.

5.2.5 After concluding a process outlined in section 27, and receiving inputs from the public on issues outlined herein, the Authority may put in place regulations dealing with handset subsidies.

**Q14** Is the cost of the handset clearly separated from the subscription for customers? If yes how? If not why? Kindly illustrate by way of sample. Are handset subsidies cross subsidised?

**Q15** Do you provide information to consumers in order to explain the cost of a service that includes a handset? Is it possible to provide a breakdown on the monthly bill indicating which portion of the cost is for the handset and which for the telecommunication service?

**Q16** How would the regulation of handset subsidies affect marketing practices and competition between operators? How will subscribers be affected should handset subsidies be regulated?

**Q17** Why are handsets SIM locked? What are the costs of unlocking SIM locked mobile phones? Could this be a barrier to churn? Are these costs applied in a uniform manner? In what instances are handsets unlocked?

**Q18.** How do you propose the Authority deals with handset subsidies?

## **6. Cost of handset subsidies**

6.1 It is not clear to the Authority what role, if any, handset manufacturers play in handset subsidies.

6.2 Handsets that are offered to post pay customers may be costly which may ultimately prevent customers from cancelling a contract regardless of poor service.

6.3 The duration of the contract period for post pay customers appears to be unreasonably long 12 to 24 months. This may be an inducement to continue with an unwanted service.

**Q19** Please explain the role, if any, of handset manufacturers in handset subsidies.



Q 20 What are the reasons for offering handset subsidies even if there is no need e.g. current handset in good working condition?

Q 21 Why is post pay subscription offered over a long period (12 to 24 months)? Can this period be reduced? If so, what are the consequences?  
What are the terms of cancelling a post pay contract before it has expired?

## **7. International Jurisdictions**

7.1 In Europe, there are no restrictions on handset subsidies, with the exception of Belgium, Finland and Italy where bundling of handset with subscription is not permitted. It should be borne in mind these are developed markets, however regardless of the restriction on handset subsidies, handset penetration levels are high. Mobile number portability has furthermore been successfully implemented in countries with restrictions on handset subsidies.

7.2 In Korea the regulator allowed handset subsidies for a specified time. Research has shown that the market remained profitable even after the handset subsidy regime had ended.

7.3 In Australia operators have started to remove handset subsidies, and operators indicated that, in future, focus will be on customer services.

Q 22 Which approach would be successful in South Africa? Please motivate your answer fully.

Q 23 Do you think the regulation of handset subsidies will have a positive effect on service based competition and tariffs?

### **General Question**

Q 24 Are there any additional issues that the Authority has to take into account in respect of this enquiry?

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