

NOTICE 1795 OF 2006

Independent Communications Authority of South Africa
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NOTICE OF THE FINDINGS AND CONCLUSIONS DOCUMENT IN TERMS OF SECTION 4C OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice of its finding on the process initiated by notice the Government Gazette No. 27854 of 28 July 2005, into mobile pricing in South Africa.
2. All documentation pertaining to the mobile pricing process can be obtained at the ICASA library and copies of the documents may be obtained upon payment of a fee.

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1. Background and Introduction

1. On 3 May 2005, the Communications Users Association of South Africa ("CUASA") lodged a complaint with the Independent Communications Authority of South Africa ("Authority"). The complaint related to the high costs of mobile communication services in South Africa.
2. CUASA specifically requested ICASA to launch investigations into the following:

The cause of the high cost of mobile calls in general including the following:

- Why the introduction of Cell C in the mobile market did not give rise to the reduction in costs
 - Whether there is sufficient competition in the mobile market
 - Why an international landline call to a destination is less expensive than a national call to a mobile phone as compared to other jurisdictions
 - The high cost of sending SMS's compared to a one minute international call from a national landline
 - The different interconnection charges between mobile to mobile and mobile to fixed line
 - The cost of South African mobile roaming charges, and
 - The high costs of mobile prepaid rates.
3. Various other individual complaints regarding the high costs of communication services had been received by the Authority, President Thabo Mbeki, in his State of the Nation address in 2005, also highlighted as a government priority, the intention to address the high costs of communication services in South Africa.
 4. In view of the above and as the complaint was not lodged in terms of section 100 of the Act, the Authority decided to hold a general section 27 process under the Telecommunications Act, No. 103 of 1996, ("1996 Act") which was the governing legislation at the time, as a means to best fulfil the objects of the Act. Section 27 provided for the Authority from time to time to conduct an enquiry into any matter relevant to: -
 - (a) the achievement of the objects of section 2;
 - (b) the performance of its functions in terms of this Act.

The relevant objects of the Act, are to, inter alia:

- (a) promote the universal and affordable provision of telecommunication services;
 - (d) encourage investment and innovation in the telecommunication industry;
 - (j) ensure fair competition within the telecommunications industry; and
 - (m) protect the interests of telecommunications users and consumers.
5. On 28 July 2005 the Authority published a discussion document ("DD") in Government Gazette No. 27854 as provided for by section 27 of the 1996 Act. The purpose of the DD was to solicit written submissions from a wide variety of stakeholders including individuals, consumer interest groups, service providers and operators.

6. On 9 September 2005, the Authority received twenty (20) written submissions, eleven (11) of which requested an opportunity to make oral presentations.
7. The ICASA Council appointed a special committee in terms of section 17 of the ICASA Act (Act No.13 of 2000) to conduct public hearings which were held on 18 and 19 May 2006.
8. Following the hearings in May 2006, the Electronic Communications Act (No. 36 of 2005) ("EC Act") and Independent Communications Authority of South Africa Act (No. 3 of 2006) ("ICASA Act") were proclaimed.
9. The ICASA Act provides for additional powers of the Authority in respect to matters of process and procedure. The EC Act repeals the 1996 Act and also establishes new provisions with respect to rulemaking and policy matters that the Authority may or must deal with, and confers new powers on the Authority to regulate in accordance with the objects of the EC Act.
10. The transitional provisions of Chapter 15 of the EC Act protect the legal status of all processes that were begun under the 1996 Telecommunications Act. Specifically, section 92(7) of the ECA provides that:

"Any current applications, process, recommendations and regulations pending before the Authority or the Minister upon the coming into force of this Act must be considered to have been submitted in accordance with the provisions of this Act and must be considered in terms of the relevant sections of this Act."
11. As the section 27 process was not completed by the time of proclamation of the EC Act, it is clear from a reading of the EC Act that section 92(7) is applicable in this regard. Therefore the findings and conclusions document has been finalized in terms of EC Act and ICASA Act.
12. As a consequence of the repeal of the 1996 Act by the EC Act, section 27 of the 1996 Act has been replaced by section 46 and C of the ICASA Act.
13. The powers to conduct an inquiry provided for by section 4C are similar to that of section 27 save where there are additional requirements introduced.
14. The findings and conclusion document has been drafted taking into account all the relevant provision of the EC Act.

2. Findings

Having considered the written and oral submissions and presentations from all interested parties and the current regulatory framework, in terms section 4C (6) of the ICASA Act, the Authority makes the following findings:

2.1. Mobile Fees and Charges

2.1.1. The current framework for regulation in respect of mobile prices that is in use in South Africa requires mobile operators to lodge tariffs or fees for services with the Authority before they may charge any tariffs or fees for services.

2.1.2. Increases in any existing tariff plans cannot be greater than the percentage year on year increase in the Consumer Price Index (CPI). Where the Authority disallows or delays the proposed tariff increase, it must provide written reasons to the licensee for its decision.

2.1.3. It is the Authority's view that this framework for fees and tariffs is not adequate in that the CPI criterion serves as a major decision-making tool even though certain considerations such as the economic and social impact associated with tariff increases are taken into account in the analysis of tariff applications.

2.1.4. Chapter 10 of the EC Act deals with competition matters wherein the Authority is required to define relevant market segments in the electronic communications sector the primary purpose being to impose regulatory measures in cases where the prevalence of significant market power is established.

2.1.5. The Authority will commence the process of defining markets as required by Chapter 10 of the EC Act. In this regard, on or before 31 January 2007, the Authority will publish a discussion document for public comment to solicit written comments from all interested parties.

2.1.6. The Authority has concluded that in order for mobile prices in South Africa to be reduced, the Authority has to turn its attention to examine wholesale mobile and fixed line call termination charges. This has to be undertaken in accordance with Chapter 10 of the EC Act.

2.1.7. In this regard a discussion document regarding wholesale call termination will be published on or before 31 January 2007 soliciting written representations.

2.1.8. This approach will allow the Authority to deal with issues of alleged significant market power and pricing in a holistic manner.