

Draft for public consultation - 28 October 2010

- (3) For purposes of section 11(6) of the Act, the following principles are required as a minimum for the operation of a registry contemplated in subsection (3) of section 11:
- (a) the registry must accommodate all persons in the Republic and cover the whole geographical area of the Republic;
 - (b) the registry must at all times be accessible to all persons in the Republic in order to register a pre-emptive block via a postal address, physical address, facsimile number, website or e-mail address, without payment of any fee, but the consumer must pay the cost of the type of communication of his or her choice to the provider of the means of communication chosen by the consumer;
 - (c) a consumer may register -
 - (i) his or her name, identification number, passport number, telephone number, facsimile number, e-mail address, postal address, physical address, a website uniform resource locator ("URL");
 - (ii) other global address for any website or web application or site on the World Wide Web;
 - (iii) any combination of the media or addresses contemplated in paragraphs (i) and (ii);
 - (iv) a pre-emptive block for any time of the day or any day of the year; or
 - (v) a comprehensive prohibition for any medium of communication, address or time whatsoever,in his or her sole discretion, as the factor which triggers the pre-emptive block contemplated in section 11(3) of the Act;
 - (d) the administrator of the registry may not under any circumstances whatsoever provide, sell, or otherwise dispose of any information contemplated in subregulation (c) to anyone, including any organ of state, except with the written and express permission of the consumer concerned, by order of a court of law or the operation of law;
 - (e) the administrator of the registry may on receipt of a written application only confirm whether or not a pre-emptive block has been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) or global positioning system co-ordinates submitted by the direct marketer, and may not provide any

Draft for public consultation - 28 October 2010

detail to the direct marketer in respect of any such name, number, address, URL or co-ordinate ;

- (f) a direct marketer must without exception assume that a comprehensive pre-emptive block has been registered by a consumer unless the administrator of the registry has in writing confirmed that a pre-emptive block has not been registered in respect of a particular name, identity number, fixed line telephone number, cellular telephone number, facsimile number, pager number, physical address, postal address, e-mail address, website uniform resource locator (URL) or global positioning system co-ordinates submitted by the direct marketer for purposes of subregulation (e);
- (g) the administrator of the registry must provide a consumer with a copy of an application contemplated in subregulation (e) as well as a copy of the administrator's reply, the identity and registered address of the direct marketer who has submitted that application, and the name and contact details of the responsible person contemplated in subregulation (h);
- (h) every direct marketer must register with the administrator of the registry as such, and must supply his, her or its postal and physical business address, telephone number, facsimile number, e-mail address, and the name of a person who is responsible for any applications to be lodged under this regulation, and the telephone number, facsimile number, e-mail address of that responsible person;
- (i) every direct marketer must annually on the date of registration in writing confirm the details contemplated in subregulation (h);
- (j) the registry may not accept an application from a direct marketer who has not been registered by the administrator as a direct marketer as provided for in subregulation (h) or confirm the details as contemplated in subregulation (i);
- (k) the administrator of the registry must refuse to provide confirmation as contemplated in subregulation (e) if a direct marketer has contravened section 11 of the Act or this regulation or the rules of the registry, as the case may be;
- (l) the administrator of the registry must at any time allow an employee of the Commission or an employee of the Department authorised in writing by the Director-General or a Deputy Director-General of the Department to inspect any records relating to the registry, and allow him or her to make excerpts or copies of such records;

Draft for public consultation - 28 October 2010

- (m) the prohibition contained in subregulation (e) does not apply in respect of information requested by a consumer him or herself;
 - (n) the administrator of the registry must pro-actively and to the satisfaction of the Commission put in place sufficient security arrangements to prevent the manipulation, theft or loss of data in the registry;
 - (o) the administrator of the registry must pro-actively put in place screening and validation processes in respect of any person applying to register as a direct marketer;
 - (p) the administrator of the registry must comply with any law providing for the protection of personal information or the protection of privacy;
 - (q) for purposes of consumers under the age of 18 (eighteen) years, only his or her parent or legal guardian may act on his or her behalf in respect of these regulations, despite that consumer's requests or approvals given to a direct marketer; and
 - (r) the administrator of the registry must from time to time in all official languages conduct a public information campaign as required and approved by the Commission.
- (4) In the event that the Commission recognises a registry as authoritative as contemplated in section 11(3) of the Act, the Commission must enter into an agreement with the administrator of that registry *inter alia* to -
- (a) expressly agree and confirm that the Commission, despite anything to the contrary, remains the sole custodian of all information collected and that the administrator has no rights or legitimate expectations whatsoever in respect of the use, disposal, retention or publication of all information whatsoever collected by the administrator of the registry during the period of the agreement, and that the Commission at all times ultimately remains in control of the registry;
 - (b) ensure full compliance with the Act, this regulation and all other relevant law;
 - (c) ensure, with appropriate sanction, that the administrator of the registry or any of its shareholders, members, affiliates or interested parties may not financially or otherwise in any way whatsoever benefit from administering the registry other than receiving payment from the Commission for rendering that service;
 - (d) ensure the operation of, to the satisfaction of the Commission, screening and validation processes in respect of any person -
 - (i) applying to register as a direct marketer;

Draft for public consultation - 28 October 2010

- (ii) employed or engaged by the administrator to work with information collected in the registry;
- (e) ensure that appropriate and effective mechanisms, procedures and processes are continuously maintained by the administrator to ensure the availability, safety, retention and physical and moral integrity of all information collected and administered by the administrator, to the satisfaction of the Commission;
- (f) provide the Commission and the Department with full and immediate access to the whole of the registry, and the premises and apparatus in or on which it is retained or backed up;
- (g) provide that the Commission may at any time in its sole discretion and for any reason whatsoever without notice terminate the agreement;
- (h) provide that the administrator of the registry must immediately upon termination of the agreement, in respect of all information whatsoever collected by the administrator of the registry during the period of the agreement to the Commission, as directed by the Commission, -
 - (i) surrender all information whatsoever that it has collected during the period of the agreement to the Commission in any format directed by the Commission;
 - (ii) fully and in the utmost good faith co-operate with the Commission to ensure the uninterrupted availability of the registry to the general public and to direct marketers;
- (i) prohibit the retention by the administrator of copies of any information collected by it in any format whatsoever;
- (j) provide for adequate controls and oversight mechanisms;
- (k) provide for verifiable service levels and standards;
- (l) provide for appropriate and effective sanctions should applicable law and the agreement in any way not fully be complied with by the administrator of the registry;
- (m) provide for effective mechanisms for the general public to report problems with the administration of the registry to the Commission;
- (n) provide for the way in which the administrator may publish and market the recognition of its registry as authoritative; and
- (o) provide for any other matter the Commission deems necessary or expedient.

Draft for public consultation - 28 October 2010

- (5) Nothing in this regulation should be interpreted as restricting the Commission's responsibility for or accountability in respect of the registry.

Prohibited time for contacting consumers

5. For purposes of section 12(2) of the Act, the following are days, dates, public holidays or times of days when a supplier may not engage in any direct marketing directed to a consumer at home:
- (a) Sundays or public holidays contemplated in the Public Holidays Act, 1994 (Act No. 36 of 1994);
 - (b) Saturdays before 09h00 and after 12h00; and
 - (c) all other days between the hours of 19h00 and 08h00 the following day.

Maximum duration for fixed-term consumer agreements

6. (1) For purposes of section 14(4)(a) of the Act, the maximum period of a fixed-term consumer agreement is 24 months from the date of signature by the consumer, subject to subregulation (3) and unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry.
- (2) For purposes of section 14(3), a reasonable credit or charge as contemplated in section 14(4)(c) may not exceed 10% of the amount which would have been payable by the consumer for the remainder of the intended fixed term, excluding interest, if any.

Threshold for pre-authorisation of repair or maintenance services

7. For purposes of section 15(5) of the Act, the threshold for pre-authorisation of repair or maintenance services generally is R 1.00 (One Rand) excluding value-added tax, unless differently provided for by regulation in respect of a specific type of agreement, type of consumer, sector or industry.

*Draft for public consultation - 28 October 2010***Product labelling and trade descriptions: textiles, clothing, shoes and leather goods**

8. (1) In order to assist consumers in making informed decisions or choices, for purposes of section 24(4) of the Act and subject to subregulation (2), the importation into or the sale in the Republic of the goods specified in Annexure A, irrespective of whether such goods were manufactured or adapted in the Republic or elsewhere, is prohibited unless –

- (a) a trade description, meeting the requirements of section 22 of the Act, is applied to such goods in a conspicuous and easily legible manner stating clearly-
 - (i) the country in which they were manufactured, produced or adapted;
 - (ii) in the event of a textile manufacturer, importer or seller operating in the Republic using imported greige fabric to produce dyed, printed or finished fabric in the Republic, that such fabric has been dyed, printed or finished in South Africa from imported fabric; and
 - (iii) that a locally manufactured product using imported material must state “Made in South Africa from imported materials”;
- (b) such goods conform to the South African national standards for fibre content and care labelling in accordance with the provisions of Government Notice No. 2410 of 2000, published in the *Gazette* of 30 June 2000;
- (c) if after such goods have been reconditioned, adapted, rebuilt or remade, whether in the Republic or elsewhere, a trade description is applied to such goods in a conspicuous and easily legible manner stating clearly that such goods have so been reconditioned, adapted, rebuilt or remade, as the case may be;
- (d) if the goods were wholly assembled or made in the Republic, a trade description is applied to such goods in a conspicuous and easily legible manner stating “Made in South Africa.”; or
- (e) goods are correctly labelled.

(2) This regulation does not apply to -

- (a) textiles so small in size that labelling is not reasonably possible;
- (b) second-hand clothing imported for charity purposes; or
- (c) goods where the number of goods imported by a natural person does not exceed 1000 (one thousand);

but does apply to goods imported for marketing purposes.

Draft for public consultation - 28 October 2010

- (3) This regulation does not amend or repeal or detract from any other regulation made under or in terms of any legislation.

Product labelling and trade descriptions: genetically modified organisms

9. (1) In this regulation, "genetically modified organism" means a genetically modified organism as defined in section 1 of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), and "genetically modified" has a corresponding meaning.
- (2) For purposes of section 24(6) of the Act, this regulation applies to all goods listed in Annexure B which contain more than 5 % of genetically modified organisms, irrespective of whether such making or manufacturing occurred in the Republic or elsewhere, and to marketing material in respect of such goods.
- (3) Any goods to which subregulation (2) applies may not be produced, supplied, imported, exported, packaged, sold, distributed or marketed unless a notice meeting the requirements of section 22 of the Act is applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size stating, without change, that the goods "Contains at least 5% genetically modified organisms".
- (4) If goods listed or contemplated in Annexure B are intentionally and directly produced using genetic modification processes, the goods or marketing material, as the case may be, must be labelled, meeting the requirements of section 22 of the Act, without change, as "Produced using genetic modification".
- (5) A notice meeting the requirements of section 22 of the Act stating "Genetically modified content is below 5%" may be applied to goods listed or contemplated in Annexure B if less than 5% of the ingredients or components from which it is made or manufactured consist of a genetically modified organism.
- (6) If it is impossible or not feasible to test goods listed or contemplated in Annexure B for the presence of genetically modified organisms or ingredients, a notice meeting the requirements of section 22 of the Act must be applied to such goods or marketing material, as the case may be, in a conspicuous and easily legible manner and size, must be labelled "May contain genetically modified ingredients".
- (7) This regulation does not amend or repeal or detract from any other regulation applying to product labelling and trade descriptions of genetically modified organisms

Draft for public consultation - 28 October 2010

made under or in terms of any other legislation, nor do any such regulations detract from or prejudice this regulation.

Disclosure of reconditioned or grey market goods

- 10.**(1) The notice contemplated in section 25(2) of the Act and meeting the requirements of section 22 of the Act must be applied -
- (a) in a place on the goods and the marketing material of the goods where a consumer is likely to see that notice; and
 - (b) in an easily legible size and manner,
- to the goods and all forms of advertising or promotion, including in-store promotions, packaging, websites and brochures, when these goods are advertised or promoted, stating clearly that they have been reconditioned, rebuilt or remade, as the case may be.
- (2) The supplier must when selling the goods to the consumer -
- (a) expressly draw his or her attention to the notice prescribed in subregulation (1); and
 - (b) in plain language explain the meaning of the notice to the consumer.

Exemption from keeping sales records

- 11.**(1) In this section, "hawker" means a natural person lawfully engaged in the selling of goods on the street or in public places or spaces in respect of which all members of the public enjoy unrestricted and unconditional access subject only to law.
- (2) For purposes of section 26(4) of the Act, any person trading as a hawker is hereby exempted from the application of subsections (2) and (3) of section 26 of the Act.

*Draft for public consultation - 28 October 2010***Information to be disclosed by intermediary**

12.(1) For purposes of section 27(3)(a) of the Act, an intermediary must disclose to a person contemplated in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of section 27, the information provided for in subregulation (2) in accordance with the provisions of subregulations (3) and (4), but this regulation does not detract from the provisions of any other applicable law.

(2) An intermediary must -

- (a) disclose his, her or its full names, physical business address, postal address, and all other relevant contact details;
- (b) provide his or her identity number, or if the intermediary is a juristic person, its relevant registration number;
- (c) if the intermediary is a juristic person, the contact details of its public officer;
- (d) specify the exact service to be rendered by the intermediary;
- (e) disclose the intermediary fee to be charged including the basis for calculating the fee, which may not be more than the fee prescribed in applicable legislation, if any;
- (f) inform the consumer of any other costs the intermediary is entitled to recover from the consumer, and under what circumstances;
- (g) specify the frequency with which the intermediary will in writing account to the consumer in respect of his, her or its mandate, which may not be less than once a month;
- (h) specify how, when and how often any amount owing to the consumer will be paid to the consumer;
- (i) disclose any information, at any relevant time, which may be relevant to the consumer when deciding whether to acquire the service rendered by the intermediary, or whether to continue with an existing service;
- (j) disclose commission, consideration fees, charges or brokerages payable to the intermediary by any other person;
- (k) provide details of any code of conduct or other standard applicable to the intermediary or the service being rendered or to be rendered, as the case may be;
- (l) disclose whether he or she or it has ever -
 - (i) been found guilty of any offence involving dishonesty;

Draft for public consultation - 28 October 2010

- (ii) been placed under sequestration, liquidation or judicial management; and
 - (m) disclose any other information which he or she may reasonable be aware of and which may be relevant.
- (3) Information provided to a consumer by an intermediary –
 - (a) must be provided timeously so as to afford the consumer reasonably sufficient time to make an informed decision;
 - (b) which pertains to the financial aspects of the transaction, must be in writing, and if provided electronically, in an electronic format specified by the consumer, which must be a generally available format;
 - (c) must be in a clear and readable print size, spacing and format;
 - (d) must be provided in plain language, avoid uncertainty and confusion and must not be misleading;
 - (e) must be adequate and appropriate in the circumstances, taking into account the level of knowledge of the consumer;
 - (f) regarding all amounts, sums, values, charges, fees or remuneration, must be reflected in specified monetary terms, but where that is not reasonably determinable, the basis of calculation must be adequately described;
 - (g) need not be duplicated to the same consumer, unless material or significant changes affecting the consumer occur or become relevant at any given time;
 - (h) must be clearly distinguishable from marketing or promotional material and set out the applicable rights and responsibilities of the consumer clearly with avoidance of unclear technical or legal language and, where the latter must necessarily be used, with proper explanations thereof.
- (4) An intermediary must immediately in writing disclose to a consumer the existence of any circumstance or any personal interest in the relevant service or goods which gives rise or may give rise to an actual or potential conflict of interest, or perception of conflict of interest, in relation to the intermediary, and the intermediary must take all reasonable steps to ensure fair treatment of the consumer.

Records to be kept by intermediary

- 13.(1) For purposes of section 27(3)(b) of the Act, an intermediary must for a period of three years retain a copy of -

Draft for public consultation - 28 October 2010

- (a) any information contemplated in subregulations (2) and (3) of regulation 12;
 - (b) any written instruction given or sent by a consumer to the intermediary;
 - (c) if applicable, maintain a record of advice furnished to a consumer which must reflect the basis on which the advice was given, and in particular-
 - (i) a brief summary of the information and material on which the advice was based;
 - (ii) the products which were considered;
 - (iii) the products recommended with an explanation of why the product or products were recommended.
- (2) An intermediary must take all reasonable steps to keep all records and documentation safe from destruction, and must if records are lost or destroyed, make a statement under oath or affirmation explaining the reasons for or the circumstances of the loss or the destruction.
- (3) An intermediary may keep records in an appropriate electronic or recorded format, which must be easily accessible and readily reducible to written or printed form.

Promotional competitions

- 14.(1) For purposes of section 36(11) of the Act, a promoter of a promotional competition requiring a consumer to enter the competition by way of a short message service ("SMS") or multimedia messaging service ("MMS"), or any other application providing communication by way of a mobile telephone or similar device using full duplex two-way radio telecommunications over a cellular network of base stations, may not charge a fee for that service or application exceeding the minimum fee normally payable by the general public on the network or via the service provider chosen by the consumer in respect of an ordinary SMS or MMS.
- (2) Any provision in the rules of a promotional competition requiring the prize winner to -
- (a) permit the use of his or her image in marketing material; or
 - (b) participate in any marketing activity,
- without affording him or her the opportunity to decline an invitation to do so or informing him or her of the right to decline such an invitation, is null and void.
- (3) The monetary threshold of prizes for the purpose of excluding competitions with low-value prizes from the definition of "promotional competition" for purposes of section 36(11)(a) is R 1.00 (One Rand).