

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 479 OF 2017



Independent Communications Authority of South Africa

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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**AMENDMENT OF REGULATIONS ON THE CONSTITUTION OF THE CONSUMER
ADVISORY PANEL**

REASONS FOR DECISION

JUNE 2017

Table of Contents

- A. Introduction
- B. Written representations on the draft regulations
 - 1. Definitions
 - 2. The nomination of Panel Members
 - 3. Functions of the CAP
 - 4. Constitution of the Panel
 - 5. Appointment of the Chairperson
 - 6. Removal of Panel Members
 - 7. Term of office of Panel Members and the Chairperson
 - 8. Clarification of standing invitees
 - 9. Travel and accommodation costs

A. INTRODUCTION

1. This document sets out the reasons for the decisions of the Independent Communications Authority of South Africa ("the Authority") in relation to the amendment of the Regulations on the Constitution of the Consumer Advisory Panel ("the CAP Regulations").
2. The background against which the process was concluded is as follows:
 - 2.1 On 10 September 2007, the Authority published regulations on the Constitution at of the Consumer Advisory Panel ("the CAP") in Government Gazette No. 30273.
 - 2.2 The intention of the Authority to review the above regulations to remove ambiguities and make the powers of the CAP explicit to ensure the effective operation of the CAP.
 - 2.3 In terms of Section 4 subsection 4 read with Section 17 of the Independent Communications Authority of South Africa Act, No. 13 of 2000("the ICASA Act"), as amended, the Authority delegated the Committee of Council to implement the project and also conduct the public hearings in terms of Section 4 subsection 6 of the EC Act, should the need arise.
 - 2.4 The Authority published two sets of draft regulations on the Amendment to the CAP regulations for in the Government Gazette for public comments from interested parties:
 - 2.4.1 Draft Regulations on the Amendment of the Constitution of the Consume Advisory Panel, Government Gazette No. 39879; ("the first amendment") and
 - 2.4.2 Draft regulations on the Amendment of the Constitution of the Consumer Advisory Panel, Government Gazette No. 40151 ("the second amendment").
 - 2.5 Cell C; The closing date for the submission of comments for the first amendment contained in Government Gazette No. 39879 was 16 May 2016. The Authority received written comments on the draft amendment regulations by 16 May 2016 from the following entities:
 - 2.5.1 Cell C;
 - 2.5.2 MTN;
 - 2.5.3 National Association of Broadcasters ("the NAB"); and
 - 2.5.4 South African Communications Forum ("the SACF").

The comments and recommendations submitted by the above stakeholders were taken into consideration and the first draft regulations were revised accordingly.

2.6 The closing date for the submission of comments for the second amendment contained in Government Gazette No. 40151 was 21 July 2016. The Authority received written comments on the draft amendment regulations by 21 July 2016 from the following entities:

2.6.1 MTN;

2.6.2 South African Communications Forum ("the SACF"); and

2.6.3 The Road Accident Fund (the "RAF").

2.7 The Authority did not hold public hearings on the draft regulations published in Government Gazette No. 39897 and Government Gazette No. 40151, as it was of the view that written comments provided were comprehensive and clear and no further interrogation of the information was required.

B. WRITTEN REPRESENTATIONS ON THE DRAFT REGULATIONS

1. DEFINITIONS

1.1 "Consumer"

MTN raised a concern about the inclusion of juristic persons in the definition of a "consumer" as it is of the view that the inclusion of juristic persons in the definition of the term "consumer" may result in an unintended consequence of representation of large corporations on the CAP. MTN proposed the inclusion of revenue thresholds to mitigate against and proposed a threshold similar to that contained in the Consumer Protection Act 68 of 2008 of R1 million.

The Authority noted MTN's concerns but was however guided by the Complaints and Compliance Committee ("the CCC") ruling in the Lapa Laka cc complaint against MTN. The ruling concluded that juristic persons are recognised under the definition of End-User and therefore deserve protection under the ECA.

1.2 "Community of interest"

Cell C raised a concern that the term "community of interest" was not defined in the Regulations. The Authority considered the concern raised by Cell C and included a definition of the term "community of interest" in the regulations.

2 THE NOMINATION OF PANEL MEMBERS

2.1 MTN and the SACF recommended that the nomination of Panel Members should be done through a public nomination process.

2.2 The Authority notes MTN's support of the nomination of members to CAP.

3 FUNCTIONS OF THE CAP

3.1 The RAF submitted that the functions of the CAP as outlined in the draft regulations were outside of the powers of the Authority. It proposed that the Authority seek an amendment to the ECA to include the stipulated functions contained in the draft regulations 4(1)(b) and (c), 4(2), 4(3), 4(4), 4(5) and 11(3).

3.2 The Authority noted the RAF's concerns. The Authority is nevertheless enjoined by the ICASA and EC Acts to stipulate the functions of the CAP.

4 CONSTITUTION OF THE PANEL

4.1 Cell C was of the view that 11 Panel Members would be too many while the NAB was of the view that 11 members would be a suitable amount because of the broad scope and range of consumer issues that are likely to be addressed by the CAP. The NAB further proposed that the CAP include representatives of established industry bodies of regulated sectors viz. broadcasting, telecommunications and postal services.

4.2 The Authority noted Cell C's concerns but was of the view that 11 Panel Members would allow for a broader and more effective representation of consumer issues.

5 APPOINTMENT OF THE CHAIRPERSON

5.1 The RAF was of the view that the draft regulations were silent on the appointment of the Chairperson of the CAP.

5.2 Regulation 8 adequately sets out the process for the appointment of the Chairperson and Panel Members.

5.3 The SACF highlighted the absence of a process to appoint a Deputy Chairperson and recommended the inclusion of such a process.

5.4 The Authority noted the concern raised by the SACF. However, the Authority deleted the reference to Deputy Chairperson because the regulations already provided that in the absence of the Chairperson the meeting may select a Chairperson for that meeting.

6 REMOVAL OF PANEL MEMBERS

6.1 The RAF was of the view that the draft regulations were unclear as to the process that would be followed and who would be responsible for the removal of Panel Members.

6.2 The Authority noted the concern raised by the RAF.

7 TERM OF OFFICE OF PANEL MEMBERS AND THE CHAIRPERSON

7.1 The RAF raised a concern that the Chairperson has a longer term of office than ordinary Panel Members but did not provide an alternative proposal.

7.2 The Authority noted the RAFs concern and maintained the longer term of office for the Chairperson to ensure continuity.

7.3 The RAF was concerned that the term of office of ordinary Panel Members was too short and would result in unnecessary expenses since Panel Members would have to be replaced every two years.

7.4 The Authority noted the concern. However, two years is the standard term for all members of all advisory committees at the Authority.

8 THE CLARIFICATION OF STANDING INVITEES

8.1 The RAF sought clarity on who would constitute the standing invitees in draft regulation 11(4) and whether this was intended to refer to members of the secretariat.

8.2 The Authority noted the lack of clarity and redrafted the regulations to clearly specify that standing invitees means delegated ICASA Councillors and officials.

9 TRAVEL AND ACCOMMODATION COSTS

9.1 The RAF was concerned that the Regulations provided that the Authority may pay for the travel and accommodation costs of the Panel Members and was of the view that the term "may" should be changed to "must".

The Authority noted the RAF's concern. However, payment of travel and accommodation costs remains the discretion of the Council of ICASA