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## GENERAL NOTICE

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### NOTICE 45 OF 2010

#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



#### **RULES AND PROCEDURES OF THE COMPLAINTS AND COMPLIANCE COMMITTEE**

- (1) The Independent Communications Authority of South Africa ("ICASA" ) hereby gives notice in terms of section 4(1) and (4) of the Electronic Communications Act No. 36 of 2005 ("the ECA"), read with section 4(3) (j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 of its intention to prescribe regulations in respect of procedural rules for the adjudication of complaints and resolution of disputes that are filed with or referred to the Complaints and Compliance Committee and to provide for matters related therewith.
- (2) A copy of the proposed regulations is also available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at No. 164 Katherine Street, Pin Mill Farm, (Ground Floor at Block D), SANDTON between 10h00 and 16h00, Monday to Friday.
- (3) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received by **no later than 16h00 on.....** by post, hand

delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of **Ms Lindisa Mabulu - Project Leader**. Further enquiries in that regard may also be directed to the said person via e-mail at: **lmabulu@icasa.org.za** or telephone number: **(011) 566 3217** between 10h00 and 16h00, Monday to Friday.

- (4) Any person who wishes to make a written representation is requested to indicate if s/he would like to make oral submissions in the event that ICASA may conduct public hearings in terms of Section 4(6) of the ECA
- (5) Any written representation(s) submitted to ICASA pursuant to this notice, will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable upon payment of the prescribed fee.
- (6) At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.
- (7) With respect to written representations or portions thereof determined to be confidential in terms of paragraph (6) above, ICASA may direct that the public or any member or category thereof, not be present while any oral submissions relating to such representations or portions therefore are being made; provided that interested parties will have been notified in that regard and allowed to object thereto. The Authority will consider the objections and notify all interested parties of its decision.
- (8) The final regulations following the conclusion of the consultative process including any hearing that may be held, will be published in the Government Gazette and made available on the website referred to under (2) above.

  
**PARIS MASHILE**  
**CHAIRPERSON**

**DRAFT REGULATIONS CONCERNING RULES AND PROCEDURES OF THE COMPLAINTS  
AND COMPLIANCE COMMITTEE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF  
SOUTH AFRICA**

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## 1. DEFINITIONS

In these regulations the following words have the meanings ascribed to them, unless the context indicates otherwise:

“**Act**” means the Independent Communications Authority of South Africa Act, 13 of 2000;

“**Authority**” means the Independent Communications Authority of South Africa established by section 3 of the Act;

“**Broadcasting Act**” means the Broadcasting Act 4 of 1999;

“**Chairperson**” means the chairperson of the CCC as intended in section 17A of the Act;

“**Code of Advertising Practice**” means the Code of the Advertising Standards Authority of South Africa, which must be adhered to by all broadcasting licensees, which is, from time to time determined and administered by the Advertising Standards Authority of South Africa and which would be applied by the CCC to a complaint against a broadcasting licensee, where the broadcasting licensee is not a member of the Advertising Standards Authority of South Africa;

“**Complainant**” means a member of the public who, or a legal entity which lodges a complaint with the CCC or the Authority based on an alleged omission by a licensee to comply with a duty in terms of the Act, the underlying statutes, licence conditions, a Code issued in terms of the Electronic Communications Act or the Postal Services Act, election rules, the Code of Advertising Practice and “complainant” includes an inspector appointed in terms of section 17F of the Act and any monitoring or consumer committee or unit of the Authority;

“**CCC**” means the Complaints and Compliance Committee established in terms of section 17A of the Act;

“**Coordinator of the CCC**” means a full-time employee of the Authority who acts as administrative manager to the CCC;

“**Council**” means Council as referred to in section 5 of the Act;

“**Day**” means a working day;

“**Deliver**” means serve on other parties and file with the CCC;

“**ECA**” means the Electronic Communications Act 36 of 2005;

“**Election Rules**” means the rights and duties contained in sections 57, 58 and 59 of the ECA and any determinations made in terms thereof by the Authority and includes regulations relating to elections, prescribed in terms of the ECA;

**“legal representative”** means an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act 74 of 1964) or an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act 53 of 1979);

**“licensee”** means a person licensed in terms of the Broadcasting Act, the ECA or licensed or registered in terms of the Postal Services Act 124 of 1998 and includes a person who or legal entity which is exempted in terms of section 6 of the ECA;

**“Postal Services Act”** means the Postal Services Act 124 of 1998;

**“Regulation”** means regulations prescribed in terms of the Act and the underlying statutes and includes determinations made by the Authority;

**“Underlying Statutes”** means the Broadcasting Act, the ECA and the Postal Services Act;

**“Urgent matter”** means all matters referred to in clause 6 of these regulations and matters which are referred to the CCC on an urgent basis for adjudication and decided to be such by the Chair of the CCC.

## 2. FILING OF COMPLAINTS

- (1) A complaint is filed with the Coordinator and must be in writing and set out the following: the name, physical address and postal address of the complainant; the name of the licensee; the details of the complaint, which must include the date on which the licensee is alleged to have contravened and the relevant legal basis for the complaint.
- (2) A party to a dispute, arising under an interconnection agreement that has been filed with the Authority, may notify the Coordinator of the CCC in terms of section 40 of the ECA in writing for the resolution of the dispute.
- (3) The Council may refer a dispute in terms of sections 25(8), 37(4)(c), 43(5)(c) and 46(1) of the ECA to the CCC for the resolution of the dispute.
- (4) Where a complainant has lodged a complaint or dispute, or instituted an action or motion proceedings with or in any other regulatory body or in a court, and where the subject matter of the complaint, dispute, action or motion proceedings is substantially the same as the

subject matter of a complaint or dispute lodged by the complainant with the CCC, the CCC will decline to adjudicate that complaint or dispute.

### **3. INFORMING THE LICENSEE AND COMPLAINANT**

- (1) After a matter has been referred to the CCC to be adjudicated or resolved, all correspondence as to the date, time and venue of the hearing will be communicated by the Coordinator to the licensee and the complainant or the parties involved in a dispute as referred to in sub-clauses 2(2) and (3).
  
- (2) The CCC may hold a pre-hearing conference for the purpose of giving direction to the parties regarding the procedure to be followed at a hearing and other relevant matters determined by the CCC. The procedure may take the form as prescribed in one or both of the Schedules to these Regulations.

### **4. DEFAULT ORDERS**

- (1) The CCC may strike a matter from the Roll if the initiating party is not present at a hearing.
  
- (2) If a matter is struck from the Roll, the matter may not be re-enrolled unless –
  - (a) the party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing and;
  
  - (b) the Chair of the CCC on considering the explanation offered, orders the matter to be re-enrolled.

- (3) If a party to the proceedings before the CCC has not filed a response within the prescribed period after being duly notified, the other party may proceed to have the order sought issued against the defaulting party;
- (4) On an application in terms of sub-regulation (iii), the CCC may make an appropriate order-
  - (a) after it has heard any required evidence concerning the application; and
  - (b) if it is satisfied that the initiating document was adequately served.

## **5. LEGAL REPRESENTATION AND PUBLIC HEARINGS**

- (1) Any party who is involved in a complaint or dispute before the CCC is entitled to be represented by a legal representative or other adviser.
- (2) All hearings of the CCC are open to the public, except where it is necessary to protect information as set out in section 4D(4) of the Act or where it is in the interest of the protection of the identity of a person under eighteen years or a rape or sexual assault victim.

## **6. URGENT MATTERS**

- (1) In urgent matters or matters alleged to be urgent the Coordinator, on receipt thereof, places the matter before the Chairperson. The Chairperson must determine whether a matter is urgent. Once so determined, a hearing will be held not later than 7 days thereafter, unless special circumstances are shown to be present or the CCC cannot be constituted within such a period.
- (2) Complaints in terms of the Election Rules are deemed to be urgent unless the contrary is shown to the satisfaction of the Chairperson.

- (3) Disputes in terms of sections 25(8), 37(4)(c), 40, 43(5)(c) and 46(1) of the ECA are deemed to be urgent, unless the contrary is shown to the satisfaction of the Chairperson.
- (4) When a matter is found to be urgent, the Chairperson determines the procedure to be followed, such procedure including the periods within which documentation must be filed, the date and time when the hearing is to be held and whether investigation is necessary by an inspector appointed in terms of section 17F of the Act, or a monitoring or compliance committee or unit of the Authority. The said procedure may take the form as prescribed in one or more of the Schedules to these Regulations.

## **7. QUORUM AND PLACE OF HEARINGS**

- (1) The seat of the CCC is Johannesburg. The Chairperson of the CCC in consultation with the Councillor on the CCC may however, on good cause, decide to hold a hearing at any other place in the Republic of South Africa.
- (2) A quorum for a hearing of the CCC is the majority of members in office at the time and where the Chairperson is unable to preside, the Council appoints a duly qualified person, who may also be one of the members of the CCC, to chair the hearing.
- (3) All decisions are taken by way of a majority vote of the members present and where there is an equality of votes, the Chairperson has a casting vote in addition to his or her deliberative vote.

## **8. SPECIAL PROCEDURAL POWERS OF THE CCC**

- (1) The CCC may, subject to any law governing privilege, for the purposes of its inquiry:
  - (a) through the Chairperson by notice in writing require from any person such particulars and information as may be reasonably necessary;



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- (b) by notice in writing under the hand of the Chairperson addressed and delivered by an authorised person or a sheriff to any person, require such person to:
- (i) appear before it at the date, time and place specified in such notice;
  - (ii) make a statement; and
  - (iii) submit to it all the documents or objects in the possession or custody or under the control of any such person which may be reasonably necessary and;
- (c) through the Chairperson and after explaining applicable rights under the Constitution and this clause, question any person referred to in sub-clause (b) in connection with any matter which may be reasonably necessary.
- (2) With the permission of the CCC a party may present evidence under oath.
- (3) A person may have a legal representative when appearing before, makes a statement to and is questioned by the CCC as set out above in (1).
- (4) Evidence may only be presented by way of the procedure mentioned above, unless the CCC decides otherwise.
- (5) Formal documentation as in trials or motion proceedings in the High Court will generally not be required, unless the Chairperson decides otherwise. The said procedure may take the form as prescribed in one or both of the Schedules to these Regulations.
- (6) In interconnection and competition disputes the procedure set out in Schedule 1 must be adhered to, unless otherwise permitted or directed by the Chairperson.

## **9. FINDINGS AND RECOMMENDATIONS ON SANCTION BY THE CCC**

- (1) After having heard a matter, the CCC makes its finding on the merits of the complaint.
- (2) Upon having made a finding, the CCC must inform the licensee of the finding not later than 90 days after the conclusion of the hearing of the matter, except in urgent matters, where the finding must be made within 5 days after the conclusion of the hearing and the written reasons be given within 15 days, unless special circumstances are present in the opinion of the CCC.
- (3) Should the CCC find against the licensee, the CCC affords the licensee and the complainant an opportunity to make representations to it with regard to its recommendation to the Council as to sanction, as contemplated in section 17E of the Act.
- (4) Unless oral argument is required by the Chairperson in the interest of justice, written representations as to sanction would, in the normal course, suffice.

## **10. THE COUNCIL AND SANCTION**

- (1) The finding of the CCC and the recommended sanction to be imposed, together with the record of the proceedings, is submitted by the CCC to the Council within 60 days for its decision. In urgent matters, the time periods set out in clause 6 apply.
- (2) The Council or mandated committee, as soon as it has taken a decision on sanction, informs the licensee and the complainant of its decision as to sanction as well as its reasons for imposing the particular sanction. Where the sanction accords with the sanction recommended by the CCC, reasons need not be given, unless requested, and the reasons put forward by the CCC are deemed to also be the reasons of Council.

- (3) When a dispute is resolved by the CCC in terms of sections 25(8), 37(4)(c), 40, 43(5)(c) or 46(1) of the ECA the resolution is final and only subject to review by the High Court.

#### **11. CONDONATION FOR FAILURE TO COMPLY WITH THE RULES**

The CCC may condone failure to comply with the time frames in these rules, on good cause shown.

#### **12. RECORDINGS OF CCC PROCEEDINGS**

(1) The CCC must keep a record of—

- (a) any documentation handed in during its proceedings;
- (b) any sworn testimony and argument in any proceedings before it; and
- (c) any ruling and recommendations made by it.

(2) The record may be kept by legible hand-written notes or by means of an electronic recording.

(3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of this regulation, on payment of the costs of the transcription.

#### **13. REPEAL OF RULES**

The Regulations published by way of GN 22919 in the *Government Gazette* of 5 December 2001 for the Broadcasting Monitoring and Complaints Committee are repealed on the date when these Regulations come into operation.

## **SCHEDULE 1**

1. A founding statement setting out the relevant facts must be in the form of a founding affidavit affirming the accuracy of all factual information to the knowledge of the complainant or other initiating party.
2. Where averments are made on the basis of information and belief of complainant or initiating party, the affidavit must disclose the source of such information and belief and the statement must be delivered to the respondent with a direction to submit answering papers within seven days.
3. The respondent's answering affidavit must address serially each paragraph of the founding affidavit. In case of denial or non-admission of an averment in the founding affidavit, the stance of the Respondent must be specifically stated, failing which the averment in the founding affidavit will be deemed to have been admitted.
4. The respondent's answering affidavit may state additional or other grounds, identified as such in a separate section of the answering papers.
5. The complainant or initiating party may deliver a replying affidavit to the Respondent's answering affidavit within five days of the respondent's answering papers.

## **SCHEDULE 2**

### **Pre-Hearing Conference**

The CCC may direct the parties to attend a pre-hearing conference within ten days of the hearing or on a day as may be agreed upon by all the parties concerned.

In a pre-hearing conference, the parties must attempt to reach consensus on the following:

- (i) any means by which the dispute may be settled with the agreement of the CCC and ultimately Council;
- (ii) facts that are agreed between the parties;
- (iii) facts that are in dispute;
- (iv) the issues that the CCC is required to decide;
- (v) the precise relief claimed;
- (vi) the sharing and exchange of relevant documents and the preparation of a bundle of documents in chronological order with each page numbered;
- (vii) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they appear to be;
- (viii) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;
- (ix) which party must begin;
- (x) the resolution of any preliminary points that are intended to be taken;
- (xi) the exchange of witness statements;
- (xii) expert evidence;
- (xiii) any other means by which the proceedings may be shortened;
- (xiv) an estimate of the time required for the hearing;

- (xv) whether an interpreter is required and, if so, for how long and for which languages;
- (xvi) the parties must draw up and sign a minute setting out the facts on which the parties agree or disagree.
  
- (xvii) the initiating party must ensure that a copy of the pre-hearing conference minute is delivered to the CCC within five days of the conclusion of the conference.

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