

REPUBLIC  
OF  
SOUTH AFRICA



REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

Vol. 405

PRETORIA, 5 MARCH  
MAART 1999

No. 19828

## GOVERNMENT NOTICE

### DEPARTMENT OF COMMUNICATIONS

No. 300

5 March 1999

In terms of section 96 (6) of the Telecommunications Act, 1996 (Act No. 103 of 1996), I, Jay Naidoo, Minister for Posts, Telecommunications and Broadcasting, hereby approve and publish the following regulations made by the South African Telecommunications Regulatory Authority in terms of section 52 read with sections 96 (1) and 96 (5) (b) of the Act.

J. NAIDOO

Minister for Posts, Telecommunications and Broadcasting

#### REGULATIONS IN TERMS OF SECTION 52 OF THE TELECOMMUNICATIONS ACT, 1996 (ACT No. 103 OF 1996), REGARDING LIMITATIONS ON OWNERSHIP AND CONTROL IN RESPECT OF MOBILE CELLULAR TELECOMMUNICATION SERVICE

##### 1. Definitions

- 1.1 "Abuse of a dominant position" includes, but is not limited to, abuse of a dominant position in terms of the Competition Act, 1998;
- 1.2 "affiliate" means—
  - 1.2.1 with regard to juristic persons—
    - 1.2.1.1 a person who has an ownership interest or control interest in the relevant person;
    - 1.2.1.2 a person in whom the relevant person has an ownership interest or control interest;
    - 1.2.1.3 a person in whom any person defined in 1.2.1.1 has an ownership interest or control interest; and
  - 1.2.2 with regard to natural persons, a parent, spouse or child of the relevant person;
- 1.3 "application" means an application for one mobile cellular telecommunication service licence submitted in response to the "Invitation to Apply for One Mobile Cellular Telecommunication Service Licence in terms of section 34(2)(a)(ii) of the Telecommunications Act, 1996", published in Notice No. 314 in *Government Gazette* No. 19806 dated 26 February 1999;
- 1.4 "authority" means the South African Telecommunications Regulatory Authority;
- 1.5 "concentrated market" means either any market in which there are fewer than five telecommunication licenses or any market in which there is no effective competition, as determined by the Authority;

- 1.6 **"control interest"** includes, but is not limited to—
- 1.6.1 any direct or indirect management, administrative, supervisory, voting, financial, governing or other control interest; or
  - 1.6.2 any direct or indirect representation on the board of directors or other controlling body of a person; or
  - 1.6.3 any such definition provided for in the Companies Act, No. 61 of 1973, as amended;
- 1.7 **"Dominant telecommunication service licensee"** means a telecommunication service licensee who is a dominant firm in terms of the Competition Act, 1998, or a telecommunication service licensee who controls essential telecommunication facilities;
- 1.8 **"historically disadvantaged persons"** means persons who are citizens of South Africa and who are from historically disadvantaged groups, being persons of African, Coloured and Indian descent; women and disabled;
- 1.9 **"licensee"** means a person who holds a telecommunication licence;
- 1.10 **"Minister"** means the Minister for Posts, Telecommunications and Broadcasting;
- 1.11 **"ownership interest"** means any direct or indirect ownership interest of more than 0,1 percent;
- 1.12 **"telecommunication licence"** means a telecommunication licence granted by the Minister or the Authority in terms of the Telecommunications Act, 1996, or deemed to have been granted in terms of the Telecommunications Act, 1996;
- 1.13 **"telecommunication service licence"** means a telecommunication service licence granted by the Minister or the Authority in terms of Chapter V of the Telecommunications Act, 1996, or deemed to have been granted in terms of the Telecommunications Act, 1996.
- 1.14 It shall be presumed, unless the contrary is proved, that with regard to mobile cellular telecommunication service, mobile cellular telecommunication service in South Africa is the relevant market.
- 2. Shared ownership and control restrictions in a concentrated market and by dominant telecommunication service licenses in any market**
- 2.1 In a concentrated market, no person who holds an ownership interest or a control interest in a telecommunication service licence granted by the Minister or issued by the Authority in terms of the Telecommunications Act, 1996, or deemed to have been granted in terms of the Telecommunications Act, 1996, or who is an affiliate of such person, may hold an ownership interest or a control interest in any other telecommunication service licence granted by the Minister or issued by the Authority in terms of the Telecommunications Act, 1996, or deemed to have been granted in terms of the Telecommunications Act, 1996.
- 2.2 In a market, no person who is a dominant telecommunication service licensee or who holds a controlling ownership interest in or controls a dominant telecommunication service licensee, or who is an affiliate of such person, may hold an ownership interest or a control interest in any other telecommunication service licence granted by the Minister or issued by the Authority in terms of the Telecommunications Act, 1996, or deemed to have been granted in terms of the Telecommunications Act, 1996.
- 2.3 If a person violates regulations 2.1, 2.2, 2.3 or 2.4 as determined by the Authority or any South African court, the Authority may issue any order it considers appropriate in the circumstances including, without limitation, divestiture of ownership interests or control interests in one or more telecommunication service licenses or one or more telecommunication services in a licence; provided that violations of regulations 2.1 or 2.2 shall not result in an order of divestiture of ownership interests or control interests of the Government of South Africa, if such ownership interests or control interests are held on behalf of the Government of South Africa by different government Ministers.
- 3. Dominant telecommunication service licensees who abuse a dominant position**
- 3.1 No person who is a dominant telecommunication service licensee may abuse a dominant position.
- 3.2 Without limiting any remedies or enforcement mechanisms available in terms of the Competition Act, 1998, if a person who is a dominant telecommunication service licensee abuses a dominant position, as determined by the Authority, the Competition Tribunal or any South African court, the Authority may issue any order it considers appropriate in the circumstances, including, without limitation—
- 3.2.1 divestiture of ownership interests or control interests in one or more telecommunication licenses or one or more telecommunication services in a licence, in the same or in different markets, as directed by the Authority; and

- 3.2.2 separate legal entities with separate operating and accounting procedures for ownership interests or control interests between different telecommunication licenses, between different telecommunication services in the same telecommunication licence, or between licensed telecommunication services or other activities and non-licensed services or other activities, in the same or in different markets, as directed by the Authority.

**4. *Ownership and control restrictions in respect of competing applications***

No person who holds an ownership interest or a control interest in an application or who is an affiliate of such person, may hold an ownership interest or a control interest in another application.

5. Nothing in these regulations should be read to limit the application of the Competition Act, 1998, in any way, notwithstanding section 3 (1) (d) of the Competition Act, 1998.
6. The effective date of these regulations is 5 March 1999.
7. These regulations will remain in force until the "Regulations in terms of section 52 of the Telecommunications Act, 1996, Regarding Limitations on Ownership and Control in Respect of Telecommunication Services" which have been proposed by the Authority in a notice due to be published in the *Government Gazette* come into force.
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