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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 622 OF 1999

SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY



NOTICE OF INTENTION TO MAKE REGULATIONS ON THE LIMITATION ON OWNERSHIP AND CONTROL IN RESPECT OF THE TELECOMMUNICATION SERVICE

THE SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY ("SATRA") HEREBY GIVES NOTICE THAT IT INTENDS MAKING THE FOLLOWING REGULATIONS IN TERMS OF SECTIONS 96 (1) AND 96 (4), READ WITH SECTION 52 OF THE TELECOMMUNICATIONS ACT, 1996 (ACT No. 103 OF 1996). INTERESTED PERSONS ARE HEREBY INVITED TO SUBMIT WRITTEN COMMENTS OR REPRESENTATIONS WITH REGARD TO THE PROPOSED REGULATIONS TO BE RECEIVED BY NO LATER THAN 12:00 ON 26 JULY 1999 BY POST, HAND DELIVERY OR FACSIMILE TRANSMISSION, FOR THE ATTENTION OF MR H. DIKGALE, HoD: LEGAL AFFAIRS, SATRA: PRIVATE BAG X1, MARLBORO, 2063; BLOCK B, PIN MILL FARM, 164 KATHERINE STREET, SANDTON; FACSIMILE (011) 321-8582.

H. N. L. MAEPA

Chairperson of the South African Telecommunications Regulatory Authority

PROPOSED 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 TELECOMMUNICATION SERVICES

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; and
 - 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 any telecommunication service licence submitted in response to an invitation issued in terms of section 34 (2) of the Telecommunications Act, 1996, or, in respect of a telecommunication service not referred to in section 34 (2) of the Telecommunications Act, 1996, an application submitted for a telecommunication service licence for which the Authority has prescribed that applications shall be granted or refused on a competitive basis.
- 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 licences or any market in which there is no effective competition.
- 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.
- 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 or resident in South Africa and who are from historically disadvantaged groups.
- 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 0,0001 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 chapter V of the Telecommunications Act, 1996.
- 1.14 It shall be presumed, unless the contrary is proved, that—
 - 1.14.1 with regard to mobile cellular telecommunication service, mobile cellular telecommunication service in South Africa is the relevant market;
 - 1.14.2 with regard to international telecommunication service, international telecommunication service in South Africa is the relevant market;
 - 1.14.3 with regard to national long distance telecommunication service, national long distance telecommunication service in South Africa is the relevant market;
 - 1.14.4 with regard to local access telecommunication service, local access telecommunication service in South Africa is the relevant market; and
 - 1.14.5 with regard to public pay telephone service, public pay telephone service in South Africa is the relevant market.

2. Shared ownership and control restrictions in a concentrated market and by dominant telecommunication service licensees in any market

- 2.1 No person who holds an ownership interest or a control interest in a telecommunication service licence in a concentrated market, 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 or who is an affiliate of such person, may hold an ownership interest or a control interest in any other telecommunication service licence, in the same concentrated market, 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.
- 2.2 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, in the same market, 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.
- 2.3 If a person violates regulations 2.1 or 2.2, 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 licences 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 legal entities which have no direct or indirect relationship to each other than the fact that the Government of South Africa has ownership interests or control interests in such entities.

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 licences 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 the establishment of separate legal entities with separate operating and accounting procedures for the holding of ownership interests or control interests in different telecommunication licences, in different telecommunication services in the same telecommunication licence, or in 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

- 4.1 No person who holds an ownership interest or a control interest in a telecommunication service 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, or who is an affiliate of such person, may hold an ownership interest or a control interest in an application in the same market.
- 4.2 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 in the same market.

5. In considering an application, SATRA shall have regard to the ownership interests and control interests held by foreign persons.

6. Maintenance and submission of ownership and control records

- 6.1 With respect to a particular licence, a person who is a telecommunication licensee must maintain accurate, complete and sufficiently detailed records indicating the ownership interests and control interests in that licence, including, without limitation—
 - 6.1.1 ownership interests held by historically disadvantaged persons;
 - 6.1.2 control interests held by historically disadvantaged persons;
 - 6.1.3 ownership interests held by foreign persons; and
 - 6.1.4 control interests held by foreign persons.
- 6.2 A person who is a telecommunication licensee must maintain accurate, complete and sufficiently detailed records indicating all ownership interests and control interests in all telecommunication licences granted and deemed to have been granted in terms of the Telecommunications Act, 1996, and all licences granted in terms of the Independent Broadcasting Authority Act, 1994, held by that licensee.

- 6.3 A person who is a telecommunication licensee must file with the Authority, whenever requested to do so by the Authority, any records or information or extracts therefrom required to be maintained in regulations 6.1 and 6.2.
- 6.4 With respect to a particular licence, a person who is a telecommunication licensee must file with the Authority each year, no later than 31 January, a full accounting of all ownership interests and control interests in that licence, as at 30 September, including, without limitation, ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1.
- 6.5 A person who is a dominant telecommunication service licensee must file with the Authority each year, no later than 31 January, a full accounting of all ownership interests and control interests in all telecommunication licences granted and deemed to have been granted in terms of the Telecommunications Act, 1996, and all licences granted in terms of the Independent Broadcasting Authority Act, 1994, as at 30 September, including, without limitation, a breakdown of ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1.

7. Transfers of ownership interests and control interests

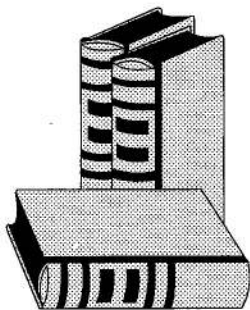
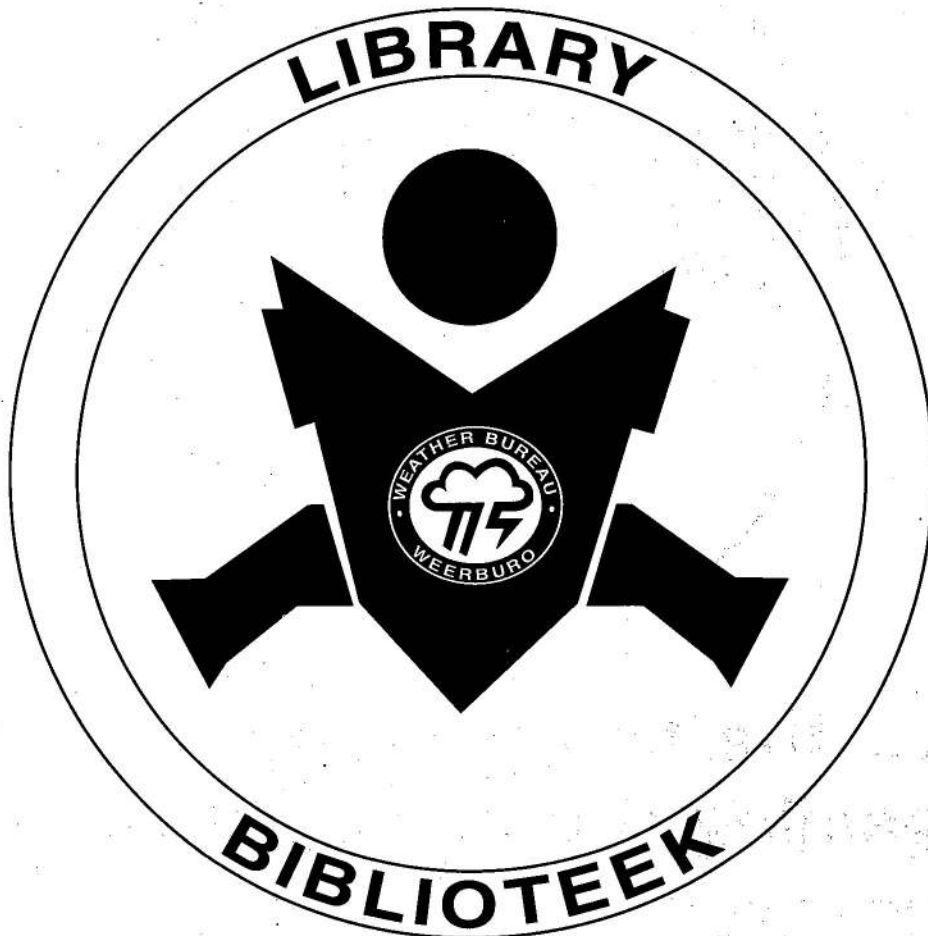
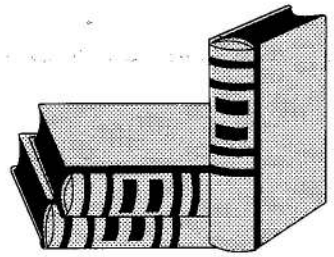
- 7.1 No ownership interest or control interest in a telecommunication licence may be transferred until the relevant telecommunication licensee has obtained written approval from the Authority in terms of the procedure set out in regulation 8.1—
 - 7.1.1 if the transfer results in an effective change of the controlling ownership interest or control of the licences,
 - 7.1.2 if the transfer results in an increase in the ownership interests or control interests held by foreign persons,
 - 7.1.3 if the transfer results in a decrease in the ownership interests or control interests held by historically disadvantaged persons.
- 7.2 Subject to regulation 7.1, no ownership interest or control interest in a telecommunication licence may be transferred until the relevant telecommunication licensee has notified the Authority thereof in writing in terms of the provisions in regulation 8.2.
- 7.3 A person who is a telecommunication licensee and who is a party to a proposed merger who is required to notify the Competition Commission of that proposed merger in terms of the Competition Act, 1998, must notify the Authority of that proposed merger at the same time the Competition Commission is notified thereof.

8. Procedures for transfers of ownership interests or control interests

- 8.1 The procedure for obtaining written approval from the Authority required by regulation 7.1, shall be as follows:
 - 8.1.1 A telecommunication licensee must submit to the Authority an application of transfer of ownership or control—
 - 8.1.1.1 indicating that the application is submitted in terms of this regulation;
 - 8.1.1.2 explaining accurately, completely and in sufficient detail, the transfer that is the subject of the application;
 - 8.1.1.3 setting out accurately, completely and in sufficient detail all of the ownership interests and the control interests in the licence including, without limitation, ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1; and
 - 8.1.1.4 setting out accurately, completely and in sufficient detail what would be all of the ownership interests and the control interests in the licence, if the application were to be granted and the transfer to take place including, without limitation, ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1.
 - 8.1.2 The Authority will publish notice of the application in the *Government Gazette* and invite written representations to be submitted within 30 days after the date of the notice or such additional time as determined by the Authority.
 - 8.1.3 The Authority will consider the application and the written representations, if any, and any other submissions permitted to be submitted by the Authority or information considered relevant by the Authority, and either—
 - 8.1.3.1 grant the application in writing; or
 - 8.1.3.2 refuse the application in writing.

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- 8.2 The notice to the Authority required by regulation 7.2 must include the following:
- 8.2.1 An indication that the notice is submitted in terms of this regulation;
 - 8.2.2 an accurate and complete explanation in sufficient detail of the transfer that is the subject of the notice;
 - 8.2.3 an accurate and complete description in sufficient detail of all of the ownership interests and the control interests in the licence including, without limitation, ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1; and
 - 8.2.4 an accurate and complete description in sufficient detail of all of the ownership interests and the control interests in the licence, if the transfer were to take place, including, without limitation, ownership interests and control interests held by historically disadvantaged persons and foreign persons as set out in regulation 6.1.
9. The procedures for the resolution of complaints and investigations by the Authority into alleged contraventions of the Telecommunications Act, 1996, prescribed by regulation by the Authority from time to time, shall apply with regard to these regulations.
10. 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.
11. The effective date of these regulations shall be announced in due course.
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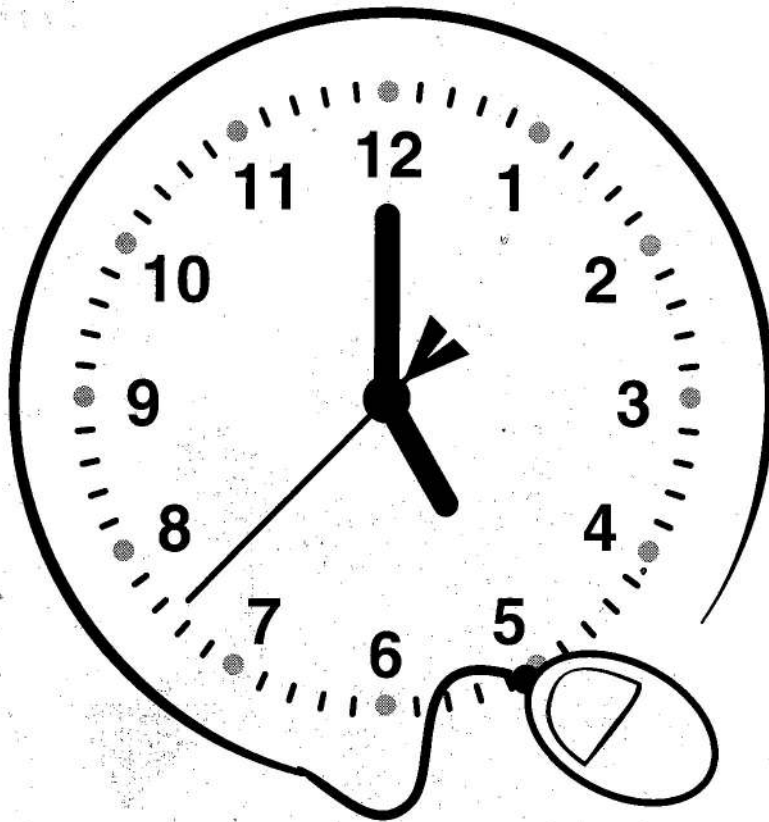
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