



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Blocks A, B, C and D, Pin Mill Farm 164 Katherine Street, Sandton

MINISTERIAL DETERMINATIONS: 3 SEPTEMBER 2004

GOVERNMENT GAZETTE 26763, NOTICE 1924 of 2004

QUESTION DOCUMENT

On 3 September 2004, the Minister of Communications published a number of policy decisions in Government Gazette, 26763, Notice 1924 of 2002, in terms of the *Telecommunications Act* (“The Act”) 103 of 1996.

The Independent Communications Authority of South Africa (“the Authority”) is embarking on a public consultation to discuss the impact of the Ministerial Determinations on the sector and provide an opportunity to stakeholders to identify regulatory concerns and specific issues.

A two-stage consultative interaction is envisaged:

1. An attached **question paper** has been formulated to solicit responses from interested parties and provide a means by which to engage with the sector on the implementation of the Ministerial Determinations.

The Authority invites interested parties, stakeholders and the public to respond to the questions posed in this document and raise other issues pertinent to the Ministerial Determinations.

Written submissions should reach the Authority no later than Monday 18th October 2004 by 4:00pm and should be submitted via e-mail, fax or delivered in hard copy to:

Mr. Andries Matthysen
Senior Manager: Licensing, Enforcement & Numbering Administration
ICASA, Block C,
164 Katherine Street, Pinmill Farm
Sandton

Email: AMatthysen@icasa.org.za

Fax: (011) 321-8583

A guideline of no more than 10 single spaced pages (font size 11 or above) is suggested. Any additional and/or detailed information, if any, should be placed in an Appendix.

2. The Authority will host a **public colloquium** to discuss the implications of the Ministerial Determinations with stakeholders and interested parties, as follows.

Date: 20th October 2004 (11:30 – 17:00)
21st October 2004 (08:30 – 16:00)

Venue: The Campus
Wanderers Building
57 Sloane Street
Bryanston

It must be noted that this is not a formal legal inquiry held in terms of section 27 of the *Telecommunications Act*. It is intended to facilitate the exchange of ideas and debate. It is anticipated that the discussion that will follow at the colloquium, will enrich the Authority and the sector in understanding the legislative, regulatory and economic implications of the Ministerial Determinations.

For seating reservations, please contact: Virginia Mabistela Tel: (011) 321 - 8432 or e-mail: vmabitsela@icasa.org.za

1. BACKGROUND

On 3 September 2004, the Minister of Communications published a number of policy decisions in the abovementioned Government Gazette, in terms of the *Telecommunications Act* (“The Act”) 103 of 1996. The effect of the Ministerial Determinations is to begin the process of abolishing a number of legislative restrictions and requirements placed on various operators and service providers. Collectively, these measures (“Ministerial Determinations”) are intended *inter alia*, to facilitate growth and competition in the communications sector; create greater choice for operators and service providers in acquiring facilities and managing spare capacity on their networks; liberalise the public payphone market segment and enhance Internet connectivity in schools and tertiary educations across South Africa by mandating a discounted fee for service and connectivity.

The Act enables the Minister to effect these changes by publishing in the Government Gazette, a date upon which these restrictions and/or requirements no longer apply.

This date has been determined as 1 February 2005 for all, but one of the Ministerial Determinations (applicable to Preparing our Youth for the Knowledge Economy), which date is set for 18 January 2004.

2. PURPOSE

The Ministerial Determinations have implications for the Independent Communications Authority of South Africa (“the Authority”) who is tasked with ensuring their implementation in line with the objects of the Act and the public interest.

As a result, the Authority has embarked upon an internal analytical process and an external consultative process to identify the regulatory implications of the Determinations and attempt to address some of the questions arising from industry and other stakeholders in the sector, including the need to amend or create various licensing regimes and regulations. A broad, cross cutting question paper has been formulated to solicit responses from a diverse as possible range of interested parties.

This document and the process it forms part of is not a formal legal inquiry held in terms of the *Telecommunications Act*, but rather a discussion forum to facilitate the exchange of ideas and debate, under the general mandate of the Authority to regulate telecommunication matters in the public interest. As such, no formal findings and conclusion document will necessarily be published, although the Authority *may* embark on further formal inquiry processes in terms of section 27 of the *Telecommunications Act*, at a later date.

Thus, the questions contained in this document attempt to address issues arising, and in no way reflects an opinion or approach by the Authority with regard to the Ministerial Determinations.

The broad nature of the document is intended to elicit wide public participation, yet focussed responses from all stakeholders on the implications of the Ministerial Determinations **with particular reference to the regulatory measures that are necessary and/or required by the Authority** to effect their implementation.

As such, given the Authority's mandate to regulate the sector in the public interest and to ensure the protection of all players and consumers alike, the Authority is particularly interested in views on the Ministerial Determinations that fall broadly within the following cross-cutting themes:

1. Consumer protection
2. Pricing
3. Universal service/Universal Service Fund
4. Competition
5. Spectrum
6. Scope of Infrastructure
7. Interconnection Guidelines
8. Facilities Leasing Guidelines
9. Efficient usage of infrastructure
10. Regulatory audit of measures required

While the Ministerial Determinations do have differing implications for various operators and service suppliers, written and oral submissions are required to be focussed on the questions posed in this document. The Authority will not entertain written or oral representations on matters that do not form part of this colloquium or are pending before it in any other process.

3. MINISTERIAL DETERMINATIONS

A. Ministerial Determination 1: Self-provision and Greater Choice for Mobile Operators

Mobile cellular telecommunication service (MCTS) licensees may utilise any fixed lines which may be required for the provision of the service, including fixed lines made available by Telkom or any other person providing a public switched telecommunications service.

- Q1: Is “self-provisioning” of facilities for MCTS operators authorized and can the fixed lines in question be provided by any person, other than a licensee in terms of the Act?
- Q2: Other than frequency spectrum licences being required where fixed lines are provided by means of radio links, are there any other regulatory measures that need to be implemented to give effect to this determination?
- Q3: How should current free bands be managed (e.g. the ISM bands)? Should free use apply subject to efficient coordination or should more specific licensing apply?
- Q4: What implications, if any, exist for further unbundling of the local loop?
- Q5: What measures/provisions are required to ensure operator and consumer interests with regard to telecommunication rights of way?
- Q6: What is the scope of the telecommunication facilities (fixed lines) which may be used by these operators? Does it include VSAT fixed links?
- Q7: Does this Determination apply to any other industry players other than MCTS operators?

B. Ministerial Determination 2: Provision of Public Pay Phones

In terms of section 39 (3) of the Act, 1 February 2005 shall be the date from when persons may apply for a licence to provide public pay phone services in any area of the Republic.

There are currently four models of Public Payphones in operation in South Africa, namely:

- a) Fixed public pay-telephones
- b) Community Service Telephones,
- c) Cellular public pay-telephones, and
- d) “Commercial” Cellular public pay-telephones

- Q1: How should the definition of a public pay-phone service be revised in light of this Determination?
- Q2: What factors should be considered in licensing public pay-phone operators?
- Q3: How would further unbundling of the local loop affect this Determination?
- Q4: Does the Determination apply to other forms of delivery of public pay-phone services, for example, Internet cafes?
- Q5: Should VANS be allowed to provide public pay telephone services from 1 February 2005?

C. Ministerial Determination 3: Provision of Voice by Value Added Service Providers

In terms of section 40(3) of the Act, 1 February 2005 shall be the date from when VANS may carry voice using any protocol.

- Q1: What other protocols can be used/ are available?
- Q2: What implications flow from this Determination for numbering policy and the numbering plan?
- Q3: Does any voice need to be regulated? Does ICASA need to distinguish between corporate and commercial VoIP providers or between different types of VoIP providers?
- Q4: Is it envisaged that there will be voice over any protocol providers who will lease facilities from network providers? Will these network providers include all other operators?
- Q5: Should VoIP service providers be licensed and if so, which category of VoIP provider should be licensed?
- Q6: What regulatory steps need to be taken to ensure that section 40 of the Act enables the implementation of this Determination?
- Q7: What are the key interconnection issues for VoIP?
- Q8: What implications flow from this Determination for the provisions of the *Regulation of Interception of Communications and Provision of Communication-Related Information Act*, No. 70 of 2002, for VANS operators who offer voice services?
- Q9: What universal service obligations should be contemplated?
- Q10: How should ICASA approach the regulation of Quality of Service?
- Q11: Can emergency services be offered by VANS providers allowing voice services?

D. Ministerial Determination 4(a): Choice of the Provision of Value Added Network Services

In terms of section 40(2) of the Act, 1 February 2005 shall be the date from when Value Added Network Services may be provided by telecommunication facilities other than those provided by Telkom and the SNO or any of them.

- Q1: What type of telecommunication facilities are contemplated here? i.e. VSAT, Wireless, radio, GMPCS and satellite capacity?
- Q2: May VANS apply for frequency spectrum and if so, what frequency bands should VANS be allowed to utilise?
- Q3: May VANS now also obtain their telecommunication facilities from PTNs?
- Q4: Are VANS compelled to still use an international telecommunication service or international gateway telecommunication service providers?

E. Ministerial Determination 4(b): Cession of Telecommunications Services by Value Added Network Services

In terms of section 40(4) of the Act, 1 February 2005 shall be the date from when a person who provides VANS shall be entitled to cede or assign the right to use, or sublet or part with control or otherwise dispose of the telecommunications facilities used for the provision of value added network service.

- Q1: Where cession, subletting etc occurs, who is the facilities provider for the purposes of monitoring and interception as well as for implementing licence obligations?
- Q2: What are the major changes, if any, required to the current facilities leasing guidelines?
- Q3: How should ICASA approach the risks and consequences of the potential for infrastructure duplication?

F. Ministerial Determination 5: Optimising the use of Private Telecommunications Network Facilities

In terms of section 41(5) of the Act, 1 February 2005 shall be the date from when a PTN Operator shall be entitled to resell spare capacity and facilities or to cede or assign his or her rights to use such facilities or to sublet or otherwise part with control thereof.

In light of the fact that PTNs are still required to obtain their facilities from PSTS operators, the following issues require consideration:

- Q1: Should the definition of PTN in section 41(1) of the Act be amended and if so, how?
- Q2: Does this Determination change this provision where spare capacity can be used for other purposes?
- Q3: Does this add a commercial element to PTNs? And how should PTNs be held accountable where cession of rights occurs?
- Q4: How will the resale of spare capacity impact on the determination of license fees?
- Q5: What are the major regulatory barriers and what enabling mechanisms is the industry seeking from ICASA?
- Q6: What form of resell may be applied by a PTN from 1 February 2005? i.e. per minute usage or monthly rental?
- Q7: Does this determination result in the PTN bypass prohibition provided for in section 41(7) of the Act becoming obsolete from 1 February 2005?

G. Ministerial Determination 6: Preparing our Youth for the Knowledge Economy

In terms of section 45(3) of the Act, 18 January 2005 shall be the date from when public schools and public further education and training institutions will be entitled to a 50% discount on (a) all telecommunications calls to an internet Service provider; (b) any connection or similar fees or charges levied by an Internet Service Provider

- Q1: Is this discount applicable to retail and wholesale tariffs?
- Q2: Does this discount also apply to PTNs who might be reselling spare capacity to the above mentioned institutions?
- Q3: Does this Ministerial Determination make obsolete the provision in section 44(10) and (11) of the Act which envisages a single PTN for all public schools or public further education and training institutions?

E. Additional Information

- Q1: The Authority welcomes written and oral input on any issue not canvassed by these questions, which pertains to the implementation of the Ministerial Determinations.