

**IN THE GAUTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH
AFRICA, JOHANNESBURG**

In the matter between ~

Case No.: 2018/20057

CELL C LTD

APPLICANT

And

ICASA

FIRST RESPONDENT

CHAIRPERSON OF ICASA

SECOND RESPONDENT

AMANDLA.MOBI

THIRD RESPONDENT

**CRYSTAL WEB MOBILE AND LEASP (PTY)
LTD**

FOURTH RESPONDENT

FREE MARKET FOUNDATION

FIFTH RESPONDENT

**INTERNET SERVICE PROVIDERS
ASSOCIATION NPC**

SIXTH RESPONDENT

**LIQUID TELECOMMUNICATIONS SA (PTY)
LTD**

SEVENTH RESPONDENT

MARK P LISTER

EIGHTH RESPONDENT

MTN (PTY) LTD

NINETH RESPONDENT

MWEB

TENTH RESPONDENT

NATIONAL CONSUMER COMMISSION

ELEVENTH RESPONDENT

**WIRELESS ACCESS PROVIDERS
ASSOCIATION NPO**

TWELFTH RESPONDENT

TELKOM SOC SA LTD

THIRTEENTH RESPONDENT

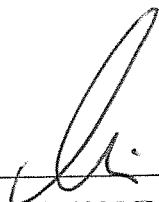
VODACOM (PTY) LTD

FOURTEENTH RESPONDENT

**FILING NOTICE: FIRST AND SECOND RESPONDENTS' ANSWERING
AFFIDAVIT TO TELKOM'S ANSWERING AFFIDAVIT**

KINDLY TAKE NOTICE THAT the First and Second Respondents hereby file their Answering Affidavit to the Thirteenth Respondent's Answering Affidavit.

DATED at SANDTON on this the **19th** day of **JULY 2018**.



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FOURTEENTH RESPONDENT

**FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT:
TELKOM**

I, the undersigned,

RUBBEN MANYABA MOHLALOGA

do hereby make oath and state as set out below.

1 INTRODUCTION

- 1.1 I am an adult and I am the second respondent. I am also the Chairperson of the first respondent, ICASA.
- 1.2 ICASA and I have decided to oppose the relief which is sought in this application and which is supported by Telkom in its affidavit to which I respond herein.
- 1.3 Unless the context otherwise indicates, the contents of this answering affidavit fall within my knowledge and they are both true and correct.
- 1.4 I do not concede that Telkom is entitled to file an answering affidavit in circumstances where it does not oppose the application. It ought to have brought its own application to seek the same relief which is sought by Cell

C. Despite this, and only in the event that Telkom's affidavit is allowed, I have considered the contents thereof and I reply thereto as set out below.

2 AD PARAGRAPHS 1 TO 4

- 2.1 The identity and position of the deponent is not in dispute.
- 2.2 I deny that the contents of Telkom's affidavit are true and correct to the extent that they are at variance with the contents of ICASA's answering affidavits filed of record.
- 2.3 The contents of paragraph 3 do not require a response other than to state that the relief which is sought in this application is not competent for the reasons which are set out in ICASA's answering affidavit to Cell C's and MTN's founding affidavits.
- 2.4 The contents of paragraph 4 do not require a response from ICASA.

3 AD PARAGRAPHS 5 TO 16

Ad paragraph 5

- 3.1 The contents of paragraph 5 are not in dispute.

Ad paragraph 6

- 3.2 The contents of paragraph 6 are not in dispute.

Ad paragraph 7

- 3.3 The contents of paragraph 7 are not in dispute.
- 3.4 In its written submissions referred to in this paragraph, Telkom did not tell ICASA of any technical difficulties which would be experienced by it when the regulations are implemented. Of importance, it did not tell ICASA that it would be impossible for it to comply with the regulations as and when they are published and brought into force and effect.
- 3.5 In its written submissions, Telkom did not identify any of the technical difficulties identified by Cell C in its founding affidavit and which it now say would make it impossible for it to comply with the regulations.
- 3.6 In its written submissions, Telkom said the following about technical difficulties:

“Technical constraints – Telkom’s network is currently designed to support its current data plans and expiry rules. These plans complement current network rules to ensure that the network is operated efficiently whereby customers are able to experience a high quality service. Extending the data expiry periods prescriptively when customers already have a range of

expiry periods to choose from will disrupt the current configuration in the network and result in an increase in cost because additional network resources will have to be provisioned to support the Authority's new proposal."

- 3.7 It is clear from the above-quoted paragraph that Telkom was not in any way concerned about the alleged impossibility to comply with the regulations. It was clearly only concerned about the costs of compliance. In its conclusion paragraph of its written submissions, Telkom said the following:

"Although Telkom supports a number of the proposed amendments it is concerned that the proposed amendment on extending the data expiry periods will have an adverse impact across the South African telecommunication industry. Extending data validity periods will have a negative impact on the revenue and profitability of the existing data products and will thus place pressure to increase prices or reduce costs in other areas if the products are to be sustainable. This could cause reduction of human resource head count, which would impact negatively on the economy."

- 3.8 In the premises, it is clear from what I have quoted above that Telkom, just like other operators, did not identify the kind of technical difficulties alleged in Cell C's founding affidavit. They were concerned about the costs of compliance and not impossibility to perform.

Ad paragraph 8

3.9 The contents of paragraph 8 are not in dispute.

Ad Paragraph 9

3.10 The contents of paragraph 9 are not in dispute.

3.11 In its written submissions attached to its affidavit as AD3, Telkom said the following:

“Technical constraints -- Telkom's network is designed to support its current data plans and expiry rules. The current plans complement the network rules to ensure that the network is operated efficiently and that subscribers experience a high quality service. Extending the data expiry periods to three years prescriptively, while subscribers already have a range of expiry periods to choose from, will disrupt the current configuration of the network. This will result in an increase in costs due to the need for additional network resources which will have to be provisioned to support the Authority's new proposal. This will result in increase in the cost of maintaining the network.

Extending the validity period to three years will result in SIMs being kept as active for longer. This could result in fewer numbers being available in the mobile industry for number re-allocation.”

3.12 It is also clear from the above-quoted paragraph that Telkom was not concerned with the alleged technical difficulties alleged in Cell C's founding affidavit. Telkom was clearly concerned about the costs of compliance rather than impossibility to comply with the regulations.

Ad Paragraph 10

3.13 The contents of paragraph 10 are not in dispute.

3.14 Even in its written submissions attached to its affidavit as AD4, Telkom did not complain that it would be impossible for it to comply with the regulations. Instead, it complained that its network was designed to support its current data plans and expiry rules and that enforcing a minimum period of three years will disrupt the current configuration of the network which will lead to increases in network costs. Once again, the complaint was directed at the costs of compliance which is inherent in any new regulations.

Ad Paragraph 11

3.15 The contents of paragraph 11 do not take the matter any further.

Ad Paragraph 12

3.16 The contents of paragraph 12 are not in dispute.

3.17 It was wrong of Telkom not to take any steps to investigate what would be required of it to comply with the regulations. Had this been done during the consultation process, Telkom would have been in a position to tell ICASA, during that process, of any technical difficulties which it would have identified in its assessment of the ability of its network to give effect to the regulations.

Ad Paragraph 13

3.18 The contents of paragraph 13 are not in dispute.

Ad Paragraph 14

3.19 The contents of paragraph 14 are not in dispute.

Ad Paragraph 15

3.20 None of the operators informed ICASA, during the consultation process, of the nature and the details of the technical difficulties which were anticipated in complying with the regulations. Telkom also did not provide such details.

3.21 As stated above, the technical complaints raised by Telkom related to the costs of compliance as opposed to them constituting an impossibility to comply with the regulations.

Ad Paragraph 16

- 3.22 The contents of paragraph 16 are denied.
- 3.23 Cell C has already started implementing the regulations as is evidenced by its messages sent to its customers attached hereto as AA1.

4 AD PARAGRAPHS 17 TO 20

- 4.1 The contents of paragraph 17 are not in dispute.
- 4.2 I admit that Telkom engaged with ICASA about it not being ready to comply with the regulations.
- 4.3 In its letter, Telkom did not provide ICASA with the nature and extent of the technical difficulties which it complained of. ICASA could not simply grant an extension to comply with the regulations in a vacuum. A proper case for an extension had to be made and it was not made.

Ad Paragraph 19

- 4.4 The contents of paragraph 19 are denied. Once again, a bold statement is made that more time is required to get ready to comply with the regulations without providing sufficient details to enable ICASA and the court itself to understand as to what is it exactly that is required to be done by Telkom to enable it to comply with the regulations.

- 4.5 In the premises, no case has been made by Telkom to justify an extension of the implementation date of the regulations. It is also important to note that Telkom does not say as to exactly what it is which it has done so far to comply with the regulations. On its own version, it did nothing. This does not entitle it to a discretionary remedy that is sought in this application.

5 AD PARAGRAPHS 20 TO 31

- 5.1 The contents of paragraph 20 are irrelevant.
- 5.2 The contents of paragraph 21 are not in dispute.
- 5.3 Telkom is not entitled to an extension as alleged in paragraph 22. No proper case has been made as to why Telkom requires such an extension and why the consumers on whose behalf the regulations were made should continue to suffer financial prejudice as a result of operators who have simply not taken any active steps to comply with the regulations.

Ad Paragraph 23

- 5.4 The contents of this paragraph do not justify the relief which is sought in this application.

Ad Paragraph 24

- 5.5 The contents of paragraph 24 are denied.

Ad Paragraph 25

- 5.6 The contents of paragraph 25 are denied.

Ad Paragraph 26

- 5.7 The contents of paragraph 26 are denied.
- 5.8 The contents of paragraph 26.1 do not constitute a proper basis to extend the implementation date of the regulations. Telkom cannot rely on its own internal bureaucratic processes to justify the extension of the implementation date of the regulations.
- 5.9 The contents of paragraph 26.2 are denied.

Ad Paragraph 27

- 5.10 The contents of paragraph 27 do not take the matter any further due to the fact that the technical steps contained therein were never brought to ICASA's attention during the consultation process. It is wrong of Telkom to participate in a consultation process and not disclose to ICASA all the information which is relevant to the decision-making process, in particular, the decision on the implementation date of the regulations.
- 5.11 The position would have been different if Telkom and others had informed ICASA of the full extent and details of the technical issues with which they

would have had to deal with in order to comply with the regulations. It does not help for Telkom and others to complain a few days before the implementation date of the regulations. Doing so amounts to making a mockery of the consultation process which was conducted by ICASA.

- 5.12 The very purpose of the consultation process was to solicit input and relevant information from operators such as Telkom. Such a purpose is no doubt defeated if operators such as Telkom withhold information and only disclose it on the eve of the implementation date of the regulations, and even then, to justify the kind of relief which is sought in this application.

Ad Paragraph 28

- 5.13 The contents of paragraph 28 are not in dispute.

Ad Paragraph 29

- 5.14 The contents of Telkom's affidavit, in particular the contents of paragraphs 27 and 29 do not justify an extension of the implementation date of the regulations. This is more so when the contents of these paragraphs were not brought to ICASA's attention during the consultation process.

Ad Paragraph 30

- 5.15 The fact that Telkom itself says that it in fact requires more than three months to be ready to comply with the regulations clearly indicates that

ICASA on its own could not have guessed as to how much time operators such as Telkom required to become ready to comply with the regulations if they themselves did not inform ICASA thereof.

- 5.16 The fact that the date of readiness keeps on changing clearly indicates that operators such as Telkom ought to have conducted the necessary investigations during the consultation process and then inform ICASA of what they considered to be the kind of technical difficulties that would be experienced in complying with the regulations and then motivate for a much later implementation date. They failed to do this and their failure cannot now be used to justify the relief which is sought in this application.

Ad Paragraph 31

- 5.17 The contents of paragraph 31 are denied.

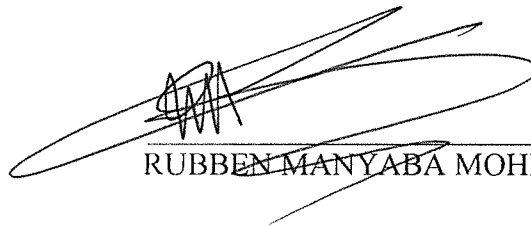
6 AD PARAGRAPHS 32 TO 34

- 6.1 The contents of paragraph 32 are denied. The penalties referred to in this paragraph are not imposed arbitrarily. In addition, insofar as Telkom seeks to suggest that it is impossible for it to comply with the regulations, such impossibility would constitute a complete defense and would entitle it to escape the penalties of non-compliance.
- 6.2 It is necessary to implement the regulations as soon as possible in order to alleviate the financial prejudice suffered by consumers who continue to

lose data for which they have paid unless the regulations are implemented. There is no reason why consumers should continue to suffer this financial prejudice as a result of operators such as Telkom not having taken the necessary steps to comply with the regulations or at the least, to inform ICASA of the technical difficulties which are now set out in their founding affidavits.

6.3 The contents of paragraph 33 do not require a response from ICASA other than to dispute that Telkom requires more time to comply with the regulations.

6.4 Telkom, MTN and Cell C are not entitled to any of the relief which is sought in this application. In the premises, the application ought to be dismissed with costs.



RUBBEN MANYABA MOHLALOGA

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at SANDTON on the 19 day of JULY 2018, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



QAQAMBILE DWAYI
Commissioner of Oaths (Ex Officio)
Chartered Accountant (SA): 09023714
The Place, 1 Sandton Drive
Sandton, 2196

COMMISSIONER OF OATHS

NAME:

BUSINESS ADDRESS:

SMS/MMS

Wednesday, 13 June 2018



Did you know you can share
your Data Bundle MBs with your
friends and family on Cell C?
Simply dial *112*1# and follow
the prompts. T&C's apply

08:08

SMS/MMS

Saturday, 30 June 2018



Your 30 days data bundle will expire in two days! Don't lose your Data, Buy a 30 days data bundle, Dial *109# select 5. Your expiry date will be Extended. Cell C

08:06

Q.M.D. WK

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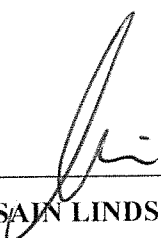
VODACOM (PTY) LTD

FOURTEENTH RESPONDENT

**FILING NOTICE: FIRST AND SECOND RESPONDENTS' ANSWERING
AFFIDAVIT: MTN COUNTER-APPLICATION**

KINDLY TAKE NOTICE THAT the First and Second Respondents hereby file their Answering Affidavit to the Ninth Respondent's Counter Application.

DATED at SANDTON on this the **19th** day of **JULY 2018**.



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Ref: Mr Pumezo David/ICAS10766.010

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT**

AND TO:

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FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT: MTN

I, the undersigned

RUBBEN MANYABA MOHLALOGA

do hereby make oath and state as set out below.

1 INTRODUCTION

1.1 I am an adult and I am the second respondent. I am also the Chairperson of the first respondent, ICASA.

1.2 ICASA and I have decided to oppose the relief which MTN seeks in this application on the grounds set out below.

1.3 Unless the context otherwise indicates, the contents of this answering affidavit fall within my knowledge and they are both true and correct.

1.4 I have considered MTN's founding papers and I respond thereto below. Where I make submissions of a legal nature, I do so on the advice of our attorneys, which advice I accept to be correct.

2 AD PARAGRAPHS 1 TO 20

- 2.1 The identity and position of the deponent are not in dispute.
- 2.2 I deny that the contents of MTN's founding affidavit are true and correct to the extent that they are inconsistent with the contents of this answering affidavit.
- 2.3 The contents of paragraph 4 are not in dispute.
- 2.4 The details of the parties to this application set out in paragraphs 5 to 18 are not in dispute.

3 AD PARAGRAPHS 21 TO 25

Ad paragraph 21

- 3.1 The contents of paragraph 21 are not in dispute.
- 3.2 Cell C's application referred to in this paragraph is opposed by the first and second respondents.

Ad paragraph 22

- 3.3 The contents of paragraph 22 do not require a response other than to state that the relief sought in the main application is not competent for the

reasons set out in the first and second respondents' answering affidavit filed in relation thereto.

Ad paragraphs 24

- 3.4 The structure of MTN's application set out in paragraphs 24 and 25 does not require a response from the first and second respondents.

4 AD PARAGRAPH 26 TO 32

Ad Paragraph 26

- 4.1 The contents of paragraph 26 are not in dispute.

Ad Paragraph 27

- 4.2 The contents of paragraph 27 are not in dispute.

Ad Paragraph 28

- 4.3 The contents of paragraph 28 are not in dispute.

Ad Paragraph 29

- 4.4 The contents of paragraph 29 are not in dispute.

Ad Paragraph 30

- 4.5 The contents of paragraph 30 are not in dispute.

Ad Paragraph 31

- 4.6 The contents of paragraph 31 are not in dispute.

Ad Paragraph 32

- 4.7 I deny that the making of regulations by ICASA is in all instances administrative action for purposes of PAJA and that such is justiciable in terms of PAJA.

- 4.8 I do not, however, dispute that all regulation making processes must be consistent with the Constitution. ICASA acted in the manner required of it by the Constitution when it promulgated the regulations.

5 AD PARAGRAPHS 33 TO 56

Ad Paragraph 33

- 5.1 The contents of paragraph 33 are not in dispute.

Ad Paragraph 34

5.2 The contents of paragraph 34 are not in dispute.

Ad Paragraph 35

5.3 The contents of paragraph 35 are not in dispute.

Ad Paragraph 36

5.4 The contents of paragraph 36 are not in dispute.

Ad Paragraph 37

5.5 The contents of paragraph 37 are not in dispute.

Ad Paragraph 38

5.6 The contents of paragraph 38 are not in dispute.

5.7 It is correct that MTN did in fact state in its written comments that *"It would not be reasonably practicable to expect licensees to comply with those regulations immediately upon their publication."* In addition, MTN said:

"... In many instances, system development will be required to implement the changes required. MTN urges the Authority to consult widely with all relevant stakeholders and to ensure that Licensees are afforded a reasonable time to implement the requisite compliance programs."

- 5.8 What MTN and other licensees did not say in their written comments is how much time they required *"to implement the requisite compliance programs"* and the nature and details of such *"requisite compliance programs."* ICASA was practically left in the dark as to what *"requisite compliance programs"* were required to be implemented by licensees such as MTN in order to comply with the regulations.
- 5.9 Despite the fact that licensees and all interested parties were given more than a reasonable opportunity to provide ICASA with their views and suggestions including those relevant to *"the requisite compliance programs"* required by them to implement the regulations, they did not.
- 5.10 It is wrong in law for licensees such as MTN to particularize *"the requisite compliance programs"* required to be implemented by them in order to comply with the regulations for the very first time in founding affidavits challenging the implementation of the regulations when they did not place ICASA in possession thereof during the consultation process which preceded the promulgation of the regulations.

Ad Paragraph 39

5.11 The contents of paragraph 39 are not in dispute.

Ad Paragraph 40

5.12 The contents of paragraph 40 are not in dispute.

5.13 I draw the court's attention to the fact that in its written comments, MTN emphasized that it already allows for the roll-over of data bundles.

Ad Paragraph 41

5.14 It is correct that MTN made the submission restated in paragraph 41. ICASA, however, did not agree therewith.

Ad Paragraph 42

5.15 The contents of paragraph 42 are not in dispute.

Ad Paragraph 43

5.16 The contents of paragraph 43 are not in dispute.

5.17 I draw the court's attention to the fact that in its submissions, MTN simply submitted that "*it would not be reasonably practicable to expect Licensees*

to comply with the Amended Draft Regulations immediately upon the date of publication” without stating the nature and extent of the technical difficulties which would make it difficult to comply therewith immediately.

5.18 In its written submissions, MTN did not suggest what it considered to be the appropriate time to bring the regulations into force and effect. In addition, it did not inform ICASA of the nature of the technical requirements which it would have had to implement in order to comply with the regulations and of importance, the time that it would take for it to complete such a process. Without MTN and other licensees having particularized these kind of details, ICASA could not have known thereof.

5.19 In the light of the above, I persist that MTN and others should not be allowed to use the court process to seek to achieve that which they did not achieve during the consultation process which preceded the promulgation of the regulations in issue. This is more so due to the fact that it is not suggested in any of the founding affidavits filed in this application that ICASA would not have taken into account properly motivated submissions indicating the full nature and details of *“the requisite compliance programs”* which would have been required to be implemented by licensees in order to comply with the regulations.

5.20 The fact that ICASA would have taken into account licensees’ suggestions in relation to *“the requisite compliance programs”* which licensees would have been required to implement is evidenced by the fact that ICASA

agreed to the suggestion made by WAPA that the regulations should not be enforceable with effect from the date of their publication in the Government Gazette. It is as a result of WAPA's suggestion that ICASA decided that the regulations shall come into force and effect one month from the date on which they were published in the Government Gazette.

Ad Paragraph 44

- 5.21 The contents of paragraph 44 are not in dispute.

Ad Paragraph 47

- 5.22 The contents of paragraph 47 are not in dispute.

- 5.23 I draw the court's attention to the fact that the provision to the effect that the regulations shall come into force and effect one month after publication in the Government Gazette came about as a result of ICASA having considered and taken into account the submissions made to it during the consultative process.

- 5.24 The position would have been very different if licensees such as MTN particularized, during the consultation process, the technical difficulties which they now allege in their founding affidavits for the first time in this application. It is also important to note that MTN does not say in its founding affidavit that ICASA was fully aware of the technical difficulties

which are now set out in its founding affidavit and that ICASA simply ignored them.

- 5.25 Insofar as it is not suggested that ICASA was fully aware of the technical difficulties relied upon now in founding affidavits, it cannot be suggested, let alone be contended that ICASA failed to take into account relevant considerations or that ICASA acted in an unreasonable and irrational manner when it prescribed that the regulations shall come into force and effect one month after their publication in the Government Gazette.

Ad Paragraph 48

- 5.26 It is correct that the reasons document refers to the submissions received from WAPA recommending the deferral of the regulations until after their publication. It was not necessary to restate the submissions made by all interested parties in the reasons document.

- 5.27 Insofar as MTN's submissions are concerned, it did not even suggest the time period required by it to implement its requisite technical changes to enable it to comply with the regulations.

Ad Paragraph 49

- 5.28 The contents of paragraph 49 are denied.

- 5.29 I draw the court's attention to the fact that it is only "*two weeks after the Amendment Regulations were gazetted*" that MTN analyzed "*the work that would be required to comply with the Amendment Regulations*". No explanation has been given by MTN as to why this analysis was not done during the consultation process and the results thereof given to ICASA to enable ICASA to take that into consideration in deciding the date on which to bring the regulations into force and effect.
- 5.30 The position would have been different and this litigation would have been avoided if MTN and the other licensees analyzed "*the work that would be required to comply with the Amendment Regulations*" before the regulations were finalized, i.e. during the consultation process that preceded the promulgation of the regulations.
- 5.31 It is in fact troubling that a big operator such as MTN did not take any steps during the consultation process to assess or analyze the work that would be required to be done by it to comply with the regulations and that it only did so "*two weeks after the Amendment Regulations were gazetted.*" This is indicative of a licensee that is not very serious about taking any steps to comply with the regulations. The court should not allow its processes to be used to avoid compliance with regulations which are intended to reduce the costs of electronic communications, in particular, data for the benefit of the poorest of poor consumers.

Ad Paragraph 50

5.32 The contents of paragraph 50 are not in dispute insofar as they correctly restate what is contained in MTN's letter dated 21 May 2018 and attached to its founding affidavit as "GDV6".

5.33 I draw the court's attention to the fact that in its aforesaid letter, MTN said that a period of one month is not enough to allow for:

- “• *consideration of an interpretation of the requirements contained in the Regulation,*
- *conceptual design of new products and services,*
- *technical design and development of the solutions, and*
- *testing, IT release dates and deployment into the live environment.”*

5.34 It is again important to draw to the court's attention to the fact that MTN does not say in its aforesaid letter that the issues quoted above were in fact drawn to ICASA's attention during the long consultation process that preceded the promulgation of the regulations.

5.35 It is wrong in law for licensees such as MTN to come to court in the manner in which they did to seek to challenge the decision to bring into force and effect the regulations on the basis that the implementation date

thereof is not convenient for them due to the reasons advanced by them for the first time after the promulgation of the regulations. This is because they had more than a reasonable opportunity to bring those reasons to ICASA's attention long before the promulgation of the regulations. The court should not allow this due to the financial prejudice which the poorest of the poor will continue to suffer if the regulations are not implemented immediately.

Ad Paragraph 51

- 5.36 The contents of paragraph 51 are not in dispute.
- 5.37 A decision whether or not to agree to what MTN requested in its letter dated 21 May 2018 had to be taken by ICASA's council. ICASA's council does not sit every day and it was simply not able to take the requested decision within the unreasonable time period unilaterally prescribed by MTN.

Ad Paragraph 52

- 5.38 The contents of paragraph 52 are not in dispute.
- 5.39 There was absolutely no basis for MTN to prescribe unreasonable time frames for ICASA to respond to its demands. When regard is had to the contents of MTN's letter dated 21 May 2018 it is clear that the issues raised therein required careful consideration by ICASA's council and that ICASA's council required sufficient time to consider its position. This is

more so when regard is had to the fact that MTN itself took “*two weeks after the Amendment Regulations were gazetted ... to analyze the work that would be required to comply with the regulations*”. I fail to understand as to on what factual basis ICASA was not entitled to more or less the same time to consider its position and more so the issues contained in MTN’s letter dated 21 May 2018.

Ad Paragraph 53

5.40 The contents of paragraph 53 are not in dispute.

5.41 There was absolutely no basis for MTN and other licensees to expect ICASA to consider their requests within a short period of time. In this regard, I refer the court to what MTN itself said in its letter dated 21 May 2018. It said the following:

“I would like to take this opportunity to thank ICASA for finalizing the Amended End User and Subscriber Service Charter Regulations, 2018.

We know that this was a difficult exercise considering all the issues raised by customers, policy-makers, licensees and the public.

While we appreciate the intended outcome that ICASA wishes to achieve, there are various issues raised by stakeholders during the consultation process and captured in the Amended Regulations that could never be addressed overnight. MTN particularly raised the fact that the time to

implement any of the then proposed regulations require careful consideration because of the complexity of the changes and developments that would be required on the MTN billing, charging and other notification systems.

I am of a view that ICASA must allow time for the ICT sector, particularly the licensees, to provide solutions to the challenges raised in the final version of the Regulations. It is in this spirit that I write to you to inform ICASA on how MTN intends to deal with the issues raised in the Amended Regulations to ensure a rational and practical solution. I have listed below our concerns accompanied by our indicative time frames within which MTN will make the necessary changes to all of its systems, these time frames may need to change as we dig deeper into all our systems to understand what kind of remedial work is necessary to comply with the Amended Regulations. We may even be required to make new investments to acquire further IT equipment to capacitate resources. Alternatively, it may conceivably in due course become apparent to MTN that it is not able to comply with some of the regulations at all.”

5.42 The contents of MTN’s letter quoted above raise the following concerns:

5.42.1 It is not suggested therein that the so-called “*our concerns accompanied by our indicative time frames within which MTN will make the necessary changes to all of its systems*” were in fact brought to ICASA’s attention during the consultation process. Despite this,

“our concerns” are now used against ICASA to in fact hold the whole country to a ransom to avoid the implementation of the regulations whilst creating an impression that ICASA acted irrationally and unreasonably.

- 5.42.2 MTN’s letter is dated 21 May 2018, which is a period of less than ten business days from the date on which the regulations were intended to be brought into force and effect. It is not clear as to how ICASA was expected to properly consider the issues raised therein within such a short period of time – it was simply not possible.
- 5.42.3 No explanation has been given in MTN’s letter and in its founding affidavit as to why it took MTN that long to realize that it required an extension to the date on which the regulations were intended to be brought into force and effect.
- 5.42.4 No explanation has been given in MTN’s letter dated 21 May 2018 and indeed in its founding affidavit as to why *“our concerns”* were not brought to ICASA’s attention during the long consultation process which preceded the promulgation of the regulations.
- 5.42.5 MTN appreciates *“the intended outcome that ICASA wishes to achieve”* which clearly indicates that there is a rational connection between the regulations and the purpose thereof.

- 5.42.6 The letter does not criticize the merits of the regulations or the purpose thereof whilst the same is criticized in MTN's founding affidavit.
- 5.42.7 The letter suggests that "*it may conceivably in due course become apparent to MTN that it is not able to comply with some of the regulations at all*" despite the fact that in paragraph 49 of the founding affidavit it is stated that MTN has "*had an opportunity to analyze the work that would be required to comply with the Amendment Regulations*" without a hint that there is a possibility of "*not able to comply*" with some of the regulations.
- 5.42.8 MTN's letter dated 21 May 2018 further states that the allocated time of 30 days for implementation of the regulations "*should take all the above factors into account to achieve full compliance with the Regulations*" despite the fact that the letter was delivered to ICASA not more than ten working days from the date on which the regulations were intended to come into force and effect. This was unreasonable in the extreme.
- 5.42.9 It is not explained in MTN's letter dated 21 May 2018 and in its founding affidavit as to on what basis ICASA was expected to take "*all the above factors into account*" within a period of not more than ten working days when MTN itself was not able to do so during the long consultation process which preceded the promulgation of the

regulations and even immediately after the regulations were promulgated.

Ad Paragraph 54

5.43 The contents of paragraph 54 are not in dispute.

Ad Paragraph 55

5.44 The contents of paragraph 55 are not in dispute.

Ad Paragraph 56

5.45 The contents of paragraph 56 are not in dispute.

6 AD PARAGRAPHS 57 TO 81

Ad Paragraph 57

6.1 The contents of paragraph 57 are denied.

Ad Paragraph 58

6.2 I deny that ICASA has acted in an unreasonable and irrational manner as suggested in this paragraph.

Ad Paragraph 59

- 6.3 The contents of paragraph 59 are not in dispute.
- 6.4 MTN and the other licensees ought to have brought the technical challenges referred to in this paragraph to ICASA's attention during the consultation process which preceded the promulgation of the regulations. In that event, ICASA would have taken those technical difficulties into account when it decided on the implementation date of the regulations.

Ad Paragraph 60

- 6.5 The contents of paragraph 60 are not in dispute.
- 6.6 The contents of paragraph 60 would have made a big difference if they were brought to ICASA's attention during the consultation process.

Ad Paragraph 61

- 6.7 The contents of paragraph 61 are denied. No evidence has been placed before the court to show that there will be a significant negative impact on MTN's customers if the regulations are implemented immediately. If there were to be such negative impact, that would be as a result of MTN not taking the necessary steps to be ready to comply with the regulations.

Ad Paragraph 62

- 6.8 The difficulty referred to in paragraph 62 was self-created by MTN itself insofar as it did not inform ICASA of the technical difficulties that it would experience if the regulations were brought into force and effect on the date set out in the regulations.

Ad Paragraph 63

- 6.9 The contents of paragraph 63 are not in dispute.

Ad Paragraph 64

- 6.10 The contents of paragraph 64 are denied.

Ad Paragraph 65

- 6.11 The contents of paragraph 65 do not take the matter any further due to the fact that they were not brought to ICASA's attention during the consultation process which preceded the promulgation of the regulations.

- 6.12 As I have already stated above, the position would have been very different if MTN and other licensees brought the technical difficulties now relied upon in their founding affidavits in this application to ICASA's attention long before the promulgation of the regulations, i.e. during the consultation process which preceded the promulgation of the regulations.

Ad Paragraph 66

- 6.13 The contents of paragraph 66 do not take the matter any further insofar as they were not brought to ICASA's attention during the consultation process which preceded the promulgation of the regulations.

Ad Paragraph 67

- 6.14 Insofar as the contents of paragraph 67 may be correct, they do not constitute a basis for the relief which MTN seeks in its application.

Ad Paragraph 68

- 6.15 MTN and other licensees were fully aware that the changes referred to in paragraph 68 were coming and deliberately refrained from telling ICASA, during the long consultation process which preceded the promulgation of the regulations, of any difficulties which they might experience with implementing the regulations. For this reason, the court should not come to their assistance.

Ad Paragraph 69

- 6.16 I deny that the time period to comply with the regulations is unreasonable.
- 6.17 The reasonableness of the time period in issue can only be assessed with reference to the information which was placed before ICASA when it

prescribed the implementation date. In this case, none of the technical difficulties alleged in MTN's founding affidavit were placed before ICASA before it decided on the implementation date of the regulations.

- 6.18 Without the issues complained of having been placed before ICASA when it decided on the implementation date, it cannot be suggested, let alone be contended, that the implementation date is unreasonable.

Ad Paragraph 70

- 6.19 The contents of paragraph 70 do not take the matter any further insofar as the processes and difficulties contained therein were not placed before ICASA when it decided on the implementation date of the regulations.

Ad Paragraph 71

- 6.20 The contents of paragraph 71 are not in dispute.
- 6.21 The contents of paragraph 71 are irrelevant insofar as the details thereof were not placed before ICASA when it decided on the implementation date of the regulations.

Ad Paragraph 72

- 6.22 The contents of paragraph 72 are not in dispute and are irrelevant for the reasons stated above.

Ad Paragraph 73

- 6.23 The difficulties alleged in paragraph 73 are irrelevant due to the fact that they were not placed before ICASA before it decided on the implementation date of the regulations.

Ad Paragraph 74

- 6.24 The contents of paragraph 74 do not take the matter any further insofar as they were not placed before ICASA before it decided on the implementation date.

- 6.25 I draw the court's attention to the fact that it is not even suggested that ICASA was aware of these difficulties before it decided on the implementation date.

Ad Paragraph 75

- 6.26 The contents of paragraph 75 do not take the matter any further for the reasons stated above.

Ad Paragraph 76

- 6.27 The contents of paragraph 76 do not take the matter any further for the reasons stated above.

Ad Paragraph 77

6.28 The so-called "*practical difficulties*" were never brought to ICASA's attention at the appropriate time, i.e. during the consultation process which preceded the promulgation of the regulations.

6.29 Insofar as the so-called practical difficulties were not brought to ICASA's attention before the promulgation of the regulations, they do not take the matter any further.

Ad Paragraph 78

6.30 The contents of paragraph 78 do not take the matter any further for the reasons which I have stated above.

Ad Paragraph 79

6.31 The contents of paragraph 79 do not take the matter any further for the reasons which I have stated above.

Ad Paragraph 80

6.32 The contents of paragraph 80 do not take the matter any further for the reasons which I have stated above.

Ad Paragraph 81

6.33 The contents of paragraph 81 do not require a response from ICASA.

7 AD PARAGRAPHS 82 TO 89

7.1 I do not deny that MTN has taken steps to comply with the regulations.

7.2 The fact that MTN may have now taken steps to comply with the regulations does not justify the relief which it seeks in this application.

7.3 I attach hereto as AA1 a news article published on 5 December 2017 in which MTN is reported to have said that *“it has been developing out-of-bundle data management features to deal with possible regulatory requirements laid out by ICASA.”* Accepting this to be true and correct, no explanation has been given as to why MTN is still not ready to implement the regulations – seven months after the news article was published. Of importance, no case has been made as to why it requires another six months to be ready to comply.

7.4 On the other hand, other operators have started implementing the regulations. On 14 May 2018 and as it is apparent from a statement attached hereto as AA2, Vodacom advised its investors that:

“ ... We remain committed to reducing out of bundle exposure in a managed way following the final amendments to the end user and

subscriber charter regulations issued by ICASA. We will now prioritise its implementation within the set timelines. Naturally these changes will reduce customer exposure to out of bundle. We'll manage this change through increased elasticity to minimize the financial impact to driving more reasons to consume and increase penetration of data cable devices."

- 7.5 I attach hereto as AA3, a further news article showing that other operators are already complying with the regulations.
- 7.6 Cell C itself has also started complying with the regulations as is evidenced by messages sent by it to its customers attached hereto as AA4.
- 7.7 In the premises, there is no reason to further delay the implementation of the regulations as almost all the licensees are already complying therewith.

8 AD PARAGRAPHS 90 TO 100

Ad Paragraph 90

- 8.1 I deny that a proper case has been made to review and set aside ICASA's decision to make regulation 8.

Ad Paragraph 91

- 8.2 The contents of paragraph 91 are denied.

Ad Paragraph 92

- 8.3 The contents of paragraph 92 do not require a response from ICASA.

Ad Paragraph 93

- 8.4 I deny that ICASA was in law required to inform the Minister when it amended the regulations. In any event, I attach hereto as AA5 a memorandum and annexure thereto sent to the Minister informing the Minister of various issues including the proposed amendments to the regulations.

- 8.5 In the premises, the contents of paragraph 93 do not take the matter any further.

Ad Paragraph 94

- 8.6 I deny that MTN is entitled to challenge regulation 8 on the basis set out in paragraph 94. I say this for the reasons which are stated in this answering affidavit.

Ad Paragraph 95

- 8.7 I deny that regulation 8 is irrational.

8.8 No evidence has been placed before the court to substantiate the wild allegation that the bringing into force and effect of the regulations will undermine the interests of the consumers for whose benefit they were promulgated.

8.9 The contents of paragraph 95.6 are denied.

Ad Paragraph 96

8.10 The contents of paragraph 96 are denied.

8.11 I refer the court to what I have stated above in relation to the contents of MTN's letter dated 21 May 2018 in which the reasonableness and rationality of the regulations is not placed in issue.

8.12 The contents of paragraph 96.2 are denied.

8.13 Whilst it is correct that non-compliance with the regulations is punishable, a licensee remains free to make out a case that it was not possible to comply with the regulations and could easily escape punishment as a result of impossibility of compliance.

8.14 The contents of paragraph 96.3 are denied.

Ad Paragraph 97

- 8.15 The contents of paragraph 97 are denied.
- 8.16 As I have stated above, it is correct that MTN did submit that it will not be appropriate to bring the regulations into full force and effect on the date of publication in the Government Gazette. What MTN did not do is to inform ICASA of the technical difficulties upon which it now seeks to rely in its founding affidavit.
- 8.17 It is not correct in law for MTN to contend that ICASA did not take relevant considerations into account when in fact such relevant considerations were not placed before ICASA. In this case, the relevant considerations upon which MTN relies, which it says ICASA did not take into account, were only brought to ICASA's attention for the very first time in MTN's letter dated 21 May 2018 and in its founding affidavit in this application.
- 8.18 The contents of paragraph 97.1 to 97.4 are accordingly denied.

Ad Paragraph 98

- 8.19 The contents of paragraph 98 are denied.
- 8.20 The implementation of the regulations does not in any way violate MTN's right to practice its trade.

8.21 In the premises, the contents of paragraph 98 do not take the matter any further.

Ad Paragraphs 99 and 100

8.22 I deny that MTN is entitled to the order referred to in paragraph 99.

8.23 In the event that the relief which MTN seeks is granted, ICASA will in that event determine a new date on which the regulations shall come into force and effect.

9 AD PARAGRAPHS 101 TO 117

9.1 The contents of paragraph 101 do not require a response other than to state that MTN is not entitled to any of the relief which it seeks in this application.

9.2 MTN is not entitled to the relief restated in paragraph 102 for the reasons stated in this answering affidavit.

9.3 MTN is not entitled to a suspension of its obligations to comply with the regulations as stated in paragraph 103.

9.4 The requirements for an interim interdict stated in paragraph 104 are not in dispute.

Ad Paragraphs 106 to 108

- 9.5 The contents of these paragraphs are denied.
- 9.6 In an application in which an interim interdict is sought, an applicant is required to establish a *prima facie* right to which irreparable harm would ensue if an interim interdict is not granted.
- 9.7 In this application, MTN has failed to establish a right to which irreparable harm would ensue if an interdict is not granted.
- 9.8 In these paragraphs, MTN says that it has established a *prima facie* “*right to interdict the immediate application*” of the regulations. This, however, is not the type of right which an applicant for an interim interdict is in law required to establish. An applicant for an interdict is required to establish a right to which irreparable harm would ensue if an interim interdict is not granted. MTN has failed to do this.
- 9.9 Insofar as MTN has failed to establish a right to which irreparable harm would ensue if an interim interdict is not granted, it is for this reason not entitled to the interim interdict which it seeks.

Ad Paragraphs 109 to 112

- 9.10 The contents of paragraph 109 are denied. Whilst it is correct that a fine may be imposed for non-compliance with the regulations, such a fine is not imposed automatically.
- 9.11 In circumstances where it is impossible to comply with the regulations, a fine cannot in law be imposed due to the fact that impossibility to perform is a defense.
- 9.12 In the premises, it is not correct that there is a reasonable apprehension of irreparable harm ensuing to MTN's right if it is correct that it is impossible for MTN to comply with the regulations. This is due to the fact that MTN can successfully raise impossibility as a defence to escape the penalty.
- 9.13 In the premises, I deny that MTN would automatically be imposed to a fine of R5 million. This is so due to the fact that such a fine will not be imposed if it is impossible for MTN to comply with the regulations. I, however, deny that it is impossible for MTN to comply with the regulations.
- 9.14 I draw the court's attention to the fact that in paragraph 112 of its founding affidavit, MTN persists that *"it would be simply impossible for MTN to bring itself into immediate compliance with the Amendment Regulations"*. This being the case, it must necessarily follow that if this is accepted, there

is no reason why a tribunal considering MTN's non-compliance should not take this into account. If this is taken into account, it must necessarily follow that MTN would succeed in defending itself on the basis that it was impossible for it to comply with the regulations and no fine would accordingly be imposed upon it.

- 9.15 In the premises, the contents of paragraph 112 do not justify the interim interdict which is sought in this application.

Ad Paragraph 113 to 117

- 9.16 I deny that the balance of convenience favours MTN.
- 9.17 The relief which MTN seeks is intended to interdict and restrain ICASA from performing its statutory functions.
- 9.18 In a situation where an applicant seeks an order in terms of which an organ of the state is sought to be interdicted and restrained from performing its statutory obligations, a Court should be slow to do so and must have regard to the interests of justice and ensure that the doctrine of separation of powers is not infringed. The decision to implement the regulations falls squarely within the executive terrain and no case has been made to establish that it is in the interest of justice for the Court to encroach into that terrain.

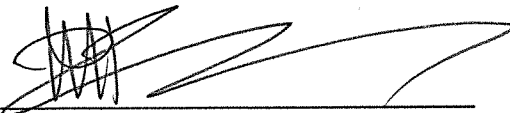
- 9.19 Insofar as it is not alleged that ICASA acted *mala fide*, there is no basis to interdict it from performing its functions.
- 9.20 I deny that ICASA has itself to blame for any delay which would be occasioned by an interim interdict. Any delay which may be occasioned by an interim interdict was caused by MTN and other operators who deliberately did not inform ICASA of the technical difficulties complained of now during the consultation process.
- 9.21 In view of the fact that the implementation of the regulations would alleviate the financial prejudice suffered by consumers, I state that the Court should take into account the inconvenience which would be caused to them if the interim interdict sought is granted.
- 9.22 MTN will not in any way be inconvenienced if the interim interdict is not granted. MTN already says that it “*is working diligently towards being compliant.*” In any event, the news article referred to above shows that MTN has been working on this as far back as December 2017.
- 9.23 In addition, MTN does not stand to suffer any irreparable harm if the interim interdict is not granted. The only fear complained of is that it may be fined R 5 million for non-compliance – but that fine is not arbitrarily imposed and MTN will have the fullest opportunity to defend itself before such a fine could be imposed upon it. On its own version, MTN has a

defence of impossibility to comply and it only needs to prove that defence if and when it is charged with non-compliance.

9.24 I deny that MTN does not have an alternative and adequate remedy available to it. In any event, MTN has not established a right to which irreparable harm would ensue if an interim interdict is not granted as a result of which the question of whether it has a remedy does not even arise.

9.25 In the premises, MTN's application ought to be dismissed with costs.

WHEREFORE, I pray that it may please the Court to dismiss MTN's application with costs.



RUBBEN MANYABA MOHLALOGA

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at SANDTON on the 19 day of JULY 2018, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.



QAQAMBILE DWAYI
Commissioner of Oaths (Ex Officio)
Chartered Accountant (SA): 09023714
The Place, 1 Sandton Drive
Sandton, 2196

COMMISSIONER OF
OATHS

FULL NAMES:

BUSINESS ADDRESS:

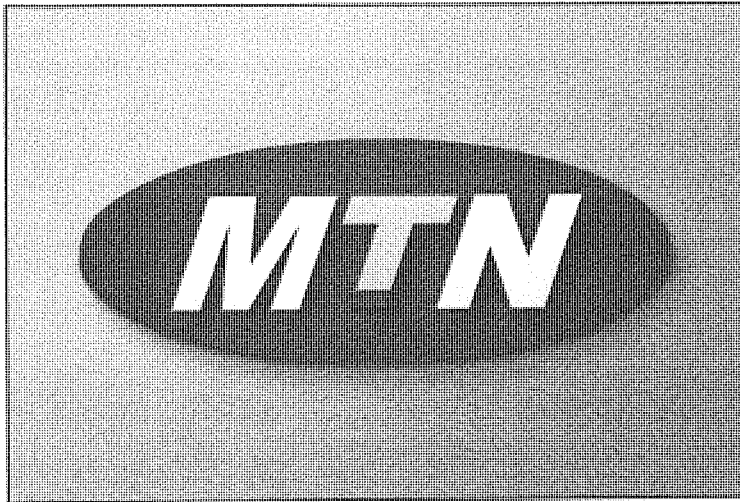
AA 1



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We launched out-of-bundle data blocking by mistake – MTN

Jamil McKane/5 Comments



126

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MTN customers recently discovered a new [Out of Bundle Barring option](#) in their USSD menus.

Out of Bundle Barring was available to MTN users by dialing *141*0#, and could be toggled on or off via this menu.

The service stated it would prevent the unintentional use of airtime when a data bundle was depleted by ending the data session.

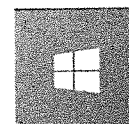
MyBroadband tested the service and found that it worked on a prepaid 30-day data bundle, but did not work with a one-hour data bundle.

No data-blocking service

Top 10 most pirated movies of the week

Following the tests and contacting MTN regarding the out-of-bundle barring system – after which the option was removed from the USSD menu.

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MTN said the Out of Bundle Barring system was part of a pilot programme which was “unintentionally exposed” to the public network.

“An error on the part of MTN has led to the incorrect impression that the company has launched an

Q.H.D. W



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out-of-bundle barring service," it said.

"This is currently not the case, MTN has not launched OOB barring functionality."

A technical error on Thursday evening resulted in its pilot project menu being exposed to its customer base, rather than the sample groups working on the solution.

"We apologise for the confusion this may have caused some of our customers," said MTN.

MTN said it has been developing out-of-bundle data management features to deal with possible regulatory requirements laid out by ICASA.

MTN said the pilot projects related to the management of OOB data will continue and it will inform customers of any further developments.

Now read: MTN launches out-of-bundle data blocking

BARRING SYSTEM BLOCKING HEADLINE MTN

OUT OF BUNDLE DATA

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SIGN UP ON WHATSAPP

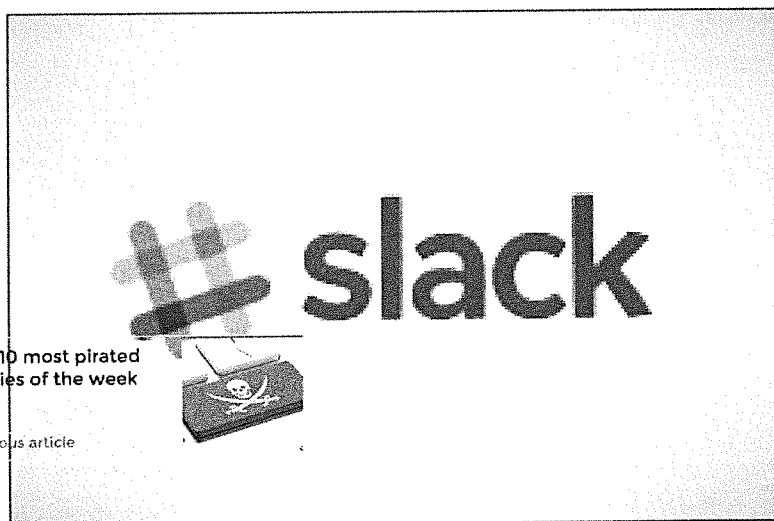
SHARE YOUR THOUGHTS: WE LAUNCHED OUT-OF-BUNDLE DATA BLOCK...



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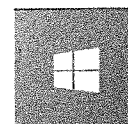
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Conference Call Transcript

14 May 2018

ANNUAL RESULTS ANALYSTS

Operator

Good day ladies and gentlemen and welcome to the Vodacom Group Ltd results conference call for the year ended 31 March 2018. Vodacom Group CEO, Shameel Joosub, will host the conference call. I will read the forward-looking disclaimer before handing over to Shameel.

This announcement which sets out the results for the Vodacom Group Ltd for the year ended 31 March 2018 contains forward-looking statements. These statements have not been reviewed or reported on by the group's auditors with respect to the group's financial condition, results of operations and businesses and certain of the group's plans and objectives.

In particular such forward-looking statements include statements relating to the group's future performance, future capital expenditures, acquisitions, divestitures, revenues, expenses, financial conditions, dividend policy and future prospects, business and management strategies relating to the expansion and growth of the group. The effects of regulation on the group's businesses by governments in the countries in which it operates, the group's expectations as to the launch and rollout dates of products, services or technologies, expectations regarding the operating environment and market conditions, growth in customers and usage and the rate of dividend growth by the group.

If you do not have a copy of the results announcement it is available on the investor relations website on www.vodacom.com. All participants are currently in listen-only mode and there will be an opportunity for you to ask questions later during the conference. If you should need assistance from an operator please press star and then zero. Please also note that this call is being recorded. I would now like to hand the call over to the group CEO, Shameel Joosub. Please go ahead, sir.

Shameel Joosub

Good afternoon everybody and good morning to those joining the call in the US. I'm joined by our CFO, Till Streichert, and Sean van Biljon, our Head of Investor Relations. You've already seen the numbers and we've taken you through most of it at the results presentation. For this call I will take you through a few of the highlights for the year. This has been an excellent year for Vodacom with solid financial results achieved through successful execution of our strategy. During the year, we've completed the transformative R42 billion acquisition of a strategic stake in Safaricom. Including in these results is eight months of attributable earnings from Safaricom since acquisition. In the same month we became the first and currently only telecommunications company to list on the Dar es Salaam Stock Exchange. Both Safaricom and Vodacom Tanzania released detailed results last week and is now available online on their respective websites.

From a group perspective we have seen strong customer growth, adding 7 million customers. Safaricom added a further 1.4 million customers. Together we now have over 103 million customers. I am very pleased that the successful delivery on our strategy has enabled us to secure and outright at promoter score lead in all our markets.

Group revenue was up 7.8% on a normalised basis taking currency fluctuations into account. EBIT grew 4.4% or 2.8% normalised with good improvement in our international operations. EBIT has been impacted by the lower margin business from handset sales and our roaming agreements with Rain. Net profit increased 18.6% to R15.6 billion which includes Safaricom.

We've spent R11.6 billion on expanding and improving all our networks. Headline earnings were flat at 923 cents per share. This is despite 233 million shares issued for our stake in Safaricom. And finally, the board declared a dividend of 425 cents per share in line with policy and translating into a yield of just over 5.1% on Friday's holding share price.

Our South African operations continued to deliver good results supported by strong customer additions and growth in data and enterprise services. Revenue growth was strong at 8.1% boosted by smart phone sales. Our international operations performed particularly well with all operations posting second half results in the right direction. Tanzania has seen strong commercial execution with improvement coming through in their results while Mozambique and Lesotho delivered particularly well. Performance in the DRC has improved as the currency and economic environment began stabilising in the second half of the year and action was taken to stay closely aligned to official ranks between the US dollar and the Congolese Franc in this dual currency market.

Safaricom performed very well, delivering a net profit of 14.1% for the year supported by strong data and M-PESA the revenue growth. We have included eight months of profits of R1.5 billion after deducting amortisation of fair value assets and received the cash dividends during the year of around R1.6 billion which has been passed on to investors.

I will now show that we continued to make good progress against the strategic priorities network differentiation, offering customers more value through segmented and personal offers through Just 4 You while reducing effective pricing. Our bundle strategy and personalised offers are delivering good results and this year we sold 2.3 billion bundles, which is up 51.3% in South Africa with big data analytics being an enabler for revenue growth and efficiencies for the future.

Looking at some of the changes in South Africa in a little bit more detail. South Africa delivered robust performance delivering service revenue growth of 4.9% for the year despite the low GDP growth environment. We added 4.5 million customers for the year supported by our segmentation strategy and personalised value offers through Just 4 You. This includes a strong performance in prepaid where the customer base increased 13.4% when compared to last year and contract continuing to do well with a 4.5% growth in the year. In the post-paid space we launched more value packages which have more included value which we highlighted at the interims.

When upgrading customers, we are now migrating them to more inclusive bundles for more spend. This creates some short-term effects where customers first need to grow into these bundles with the results that we have to defer revenue for up to a month as customers use the bundles. Migration to these packages now stands at 43%. In prepaid we are transforming pricing by proactively moving customers to our new plans and retiring old plans. We now have 99% of the base on these plans and have therefore effectively moved everyone to improved pricing.

I would also like to unpack data revenue growth in a bit more detail. We achieved data growth of 12.8% while managing the effects of reducing out of bundle spending. Demand for data remains robust with traffic in the year still growing at 44%. The elasticity that this brings allows us to manage the effects of the reduction in pricing. Other data metrics are strong with more smartphones on the network, more data users and higher usage per customer. Overall the effects of price changes and adoption of bundle usage has resulted in price per MB decreasing 21.6%. On EBITDA in South Africa, I'm happy with the growth that we've seen in EBITDA of 4.7%. We are managing operating

expenses tightly, maintaining opex growth of 2.8% points below service revenue growth. Margins have been impacted by expenses from the Rain agreement moving expenses to the direct expenses line as well as the increased sales for the low margin into business.

In our international operations we continue to see good results with normalised service revenue increasing 7.4% as the macro-economic conditions began to stabilise in each country. We are also seeing good, positive progress across the portfolio. These results were driven mainly in two areas; data and expansion of M-PESA. Data increased 18.7% on a normalised basis. We achieved this on focusing efforts on being the best data network in all these operations. While we've expanded our 4G network in Tanzania and Lesotho, we are still awaiting licences to roll out 4G in Mozambique and Tanzania. I'm happy to say that we have now switched on 4G in the DRC on Friday following the issuance of the licence there. Driving affordable devices has seen success operations especially in Mozambique and Lesotho where we have seen a strong uptake in smartphone penetration.

We are also forming social media partnerships so that we can give customers more of what they want through specific services and bundles. Tailor-made bundles continue to drive the adoption of these services across our base and contributed to the 27.5% rise in overall data users to 16.6 million. At base our revenue is going strongly by 19.6% to 11 million people using this service. It now contributes R2.3 billion in revenue or 13.8% of the international segment service revenue. We have achieved this by expanding the reach of the M-PESA network by adding more agents and expanding the ecosystem, in other words, reasons for customers to transact. The Lipa Kwa M-PESA, our merchant payment system in Tanzania has seen tremendous take up with over 6,300 active merchants outgrowing the number of card payment services in the country.

From a profitability perspective we've also seen good progress across the portfolio expending EBIT margin by 2.5% points. This was driven from scale benefits from strong top line growth but also our vigorous focus on cost containment across these operations. We are now NPS leader across these markets. We have achieved this by focussing our efforts on network improvement in the year ensuring improved data performance and improvement in availability.

Safaricom released results last week. They reported 10% growth in service revenue and 12.6% growth in EBIT. We are building on Safaricom's extensive M-PESA experience to expand our merchant payment system in Tanzania and learnings in other operations. We'll be sharpening our focus on cooperation with Safaricom particularly with Mobile Money, now a significant contributor to Vodacom Group avenues.

M-PESA remains a strong growth engine with 32 million customers across Africa and 1.3 trillion transactions processed through the system in hours and the Safaricom operations. Revenue contribution from M-PESA is R2.3 billion in our international operations and R7.9 billion in Safaricom. 70% of Safaricom customers are using M-PESA while only 37% of our customers in our international are utilising this service. This remains a huge potential for growth.

Let's move onto regulatory, starting with out of bundle. We remain committed to reducing out of bundle exposure in a managed way following the final amendments to the end user and subscriber charter regulations issued by ICASA. We will now prioritise its implementation within the set timelines. Naturally these changes will reduce customer exposure to out of bundle. We'll manage this change through increased elasticity to minimise the financial impact to driving more reasons to consume and increase penetration of data cable devices.

With regards to the amendments in the Electronics Communication Act, we have made our submissions to the minister and now await the next steps in the process which is the redrafting of the act before being submitted to Cabinet. We have also had a number of high level engagements

in government in this regard. Our position however, remains unchanged. We have proposed a hybrid model where we see the formation of comparative holds field network alongside the allocation of spectrum to current players. We are engaging with government to speed up processes to open and allocate spectrum soon as possible especially in the face of 5G networks looming in the horizon. We are anticipating spectrum processes in Tanzania and Mozambique in our international operations this year which we will be participating in. On a positive regulatory note, the Competition Commission has indicated that they will not pursue further investigation on the Rain matter as it does not constitute a merger.

Finally, that we move over to our medium-term targets and provide an update on priorities. We are positioning ourselves as part of our vision 2020 to become a leading digital company. To this end, we are changing the way in which we operate to be more agile, we are utilising big data and machine learning in a bigger way across business. Data and M-PESA will continue to drive growth our international operations. A key focus from me is to closer cooperation with Safaricom and also fast-tracking access to spectrum across our markets. Our group medium targets remain the same; mid-single digit growth for group service revenue, mid to high single growth for group EBIT and capex of 12% to 14% of group revenue. The Safaricom guidance is given separately and you can access that on its website. This concludes my comments and Till and I are now ready for any questions.

Operator

Thank you very much sir. Ladies and gentlemen, at this time if you wish to ask a question please press star and then one on your touchtone phone. If you decide to withdraw your question please press star and then two to remove yourself from the queue. Again, if you wish to ask a question please press star and then one now. Our first question is from Cesar Tiron of Bank of America Merrill Lynch. Please go ahead.

Cesar Tiron

Yes, everyone thanks for the call and for the opportunity to ask questions. I have a couple of questions. I apologise for that. First one, international. Do you think you can continue to grow international revenues by double digits on a recurring basis of course excluding any FX impact? Second question on the tax rate. It was a little bit lower than usual this year, is that a good basis to forecast? Third question. Can you please update us on the upcoming BEE transaction and would you expect it to be significantly larger than the one you've done about ten years ago? And then last question. Finally, I mean I think on the lower than expected dividend, it seems to be coming mainly from non-cash items especially the increase in the net loss on measurements, is there any way to accurately forecast this site time? Do you expect it to decline into 2019? Thank you.

Shameel Joosub

Okay, I'll take the double-digit growth and BEE transaction and Till will deal with the other two. On the international portfolio, I think for us double digit growth should be achievable in the international operations particularly because we're seeing more stability around the economic environments but also, we've seen a strong up take in data and M-PESA avenues. And so, we believe that we can achieve double digit growth in that segment.

In term of the BEE transaction, we're not in a position to announce the details as yet but will be soon, a lot of the negotiations have already happened with the interested parties and basically, we're reaching finality around that process. The deal is designed to basically replace the current ownership percentages that we have. It is not designed to be a... It's not designed to increase the ownership more than the current percentages.

Till Streichert

Cesar, I'll take the two other questions, starting off with the tax one. So, I think it is a good basis to work off from where we are just now. So, on an effective tax rate kind of between 29% and 30% and remember last year we accounted for the Helios Tower adjustment which we quantified at about 1.4%. That was out of the system this fiscal year hence we reported a 29.6% ETR. And again I've given the breakdown in terms of the benefits that we've got from the Safaricom transaction but equally, kind of the other items that reconcile back to the 29.6%. So, in short, I think it is a good reflection of our effective tax rate going forward.

And the second question on the EPS side, first of all, I'd just like to remind everyone that we have got in our share base the 233.5 million additional shares that we issued to finance the Safaricom transaction. That is of course, the main item in terms of dilution. Talking about the other aspects that you mentioned on financing costs, let me just unpack that and give you a bit of my view in terms of forecasting or the way we manage it. Number one, we have taken steps last year and I did comment on it, to reduce the exposure on measurement by reducing foreign dominated loans both in Tanzania where the US Dollar loan got fully repaid and the same in Mozambique, where half of the US Dollar got repaid. That was a benefit and that is of course an element of protecting ourselves against volatility. The second item which is less in our control is foreign denominated cash balances and that relays particularly to the DRC where we were affected already at the interims by Congolese Franc balances with a devaluing US Dollar. They got revalued and that we needed to account for.

Now, what makes me a bit more confident, but again the DRC is a volatile economic environment, but what makes me a bit more confident is that we recently have seen the cash collection. Remember, it's a dual currency market, the cash collection swinging back from a high share of Congolese Franc collection to a higher share of US Dollar and that actually gives us some protection. And the third element which relates a little bit to a particular item on the South African side round FECs that we had taken out in November and December for terminals and that happened before the elective conference, the ANC elective conference and remember following that, the rand strengthened a lot and some of those FECs needed to be revalued and some of those FECs equally, due to timing differences in terms of deliveries, needed to be rolled respectively surrendered on close out we had a negative effect. We haven't had such an effect before so I would attribute that to the particular situation with rand gaining a lot in terms of strength during fourth quarter.

Operator

Thank you very much. The next question is from Myuran Rajaratnam of MIBFA, please go ahead.

Myuran Rajaratnam

Hi, guys. Thanks for taking my call. Just, firstly, I've got a couple of questions but I'll ask them one at a time. The BEE deal, you reckon that it's pure replacement rather than an increase in size, but if the regulation requires 30%. Does this deal automatically get there, or will you come back from the market with a bigger deal, if that's the new requirement?

Shameel Joosub

So, just to be clear, the current legislation does not require 30%. I mean, there is always a risk that that can happen. But I think it will be more aligned to the BEE charters. Previously, it was 30% or a level four. We do comply with the level four requirements.

Myuran Rajaratnam

Okay. The second question, I see you contained costs very well. I mean you've had below inflationary increases in staff calls. And for a couple of years, I've noticed now in publicity calls it's negative actually, negative growth. How sustainable is this longer term? I mean, you can't really cut costs forever; these are below inflationary increases for your staff, right?

Till Streichert

Let me take that question, look, taking a cost cutting approach is far too simplistic, and I think we have stayed away from that. We have successfully, nonetheless, worked over the past few years on putting efficiency measures in place. And that's also what we intend to do going forwards. And remember, a lot of the efficiencies has been coming from just doing things smarter, and basically more efficiently. Take our call centre for example, over the past years we've seen a number of calls dropping due to the improvement of first call resolution. We are now putting chat bots into our call centre, and we are targeting again another 20% to 25% call volume reduction, which in the end you translate into financial benefit. On the staff side, we are going with inflationary increase in each of our markets to attract and retain best talent. And we are investing as well into new growth areas to support our digital transformation. So, on that end I think we are well pretty well positioned in the approach that we are taking to cost.

Shameel Joosub

And on the staff part, it's not from under paying and so on. It's more from optimisation on the current portfolio.

Myuran Rajaratnam

Right, it's just that the number that you see suggests the staff costs are flat year on year or slightly up if I remember. Okay, that's fine. On the depreciation and the automation, that's growing faster than revenue, because you're just coming off a big capex programme, and your direct costs are growing faster than revenue in importing, because you are roaming more on Rain, because as your data revenues grow, you start offloading traffic onto Rain. There is a much bigger competitive environment now in South Africa, given MTN getting back together, Cell C recapitalised, Telkom is battling well. There are all these regulatory pressures, market enquiries and so on. So, my question I suppose is a more general question, you have this revenue guidance mid-single digits and EBIT guidance, which implies an operating leverage, but all I see is costs either growing faster than revenue, or at unsustainably low level. I mean, how credible is the medium-term guidance is my question, I suppose? I'm just trying to get my head around, how are you going to manage to get this operating leverage, given revenue guided got to go at [inaudible] but operating profit as guided to grow faster, so where is that operating leverage coming from?

Till Streichert

Okay, let me... I think you've raised a number of questions or points, let me start off and I'll try to cover each of them and Shameel will weigh in. Just on your final note on the staff expenses, because you came back that this appears to be unsustainable. Let me just clarify that what you are looking at is when you look at the group picture, and I will encourage you to look at the split between SA and international, of course you've got the translation effect as well in those numbers, hence they appear to be flat. In reality, each of the markets has got the requisite inflationary salary increase and as Shameel as said, in some markets we try to achieve efficiency from an essence, a bit of reorganisation and restructuring like in a market, like DRC. So, that's on the cost side, and I think with the track record that we've shown over the past few years, I'm feeling reasonably confident and comfortable that we are on a solid basis with regards to our cost management. And you will see going forward, us a lot more talking about and showing efficiencies from the digital space. That further automation, that kind of chat bot transformation in call centres. To some extent retail, but also on the internal side within the organisation, adding an element of machine learning and artificial intelligence is going to help us become faster and more agile.

Secondly, on the D&A, of course, we continue to invest, we always said we need to capitalise each of our markets properly and hence this explains, in line with guidance, the growth on the D&A line. From an EBIT guidance point of view, what I do expect going forward, you've seen it basically this

year happening, is that the international markets have given us already a boost. Mozambique had some fantastic performance. You did see the EBIT margin expanding by 6.1% points. Lesotho, strong performance again. And I do expect that also Tanzania and the DRC that are showing good top line growth, this flowing as well into bottom line. And in combination between the international segment and our South African operations, we have reconfirmed our target range of the mid-single digit service revenue growth and the mid to high single digit EBIT growth.

Shameel Joosub

Yes, maybe just to add one or two points. I think, obviously we were well aware that you can't save yourself to success, and that's not the intention. That said we have a number of countries where the margin is still low. And if you take that these are generally prepaid markets, then essentially there is still opportunity to grow, because they have their little subsidy. So, our intention is to try and get everybody to cut off at the 40% mark and above. Today, we have three countries, which are South Africa, Lesotho and Safaricom that meets those criteria. With Mozambique progressing well towards, you've seen the margin expansion coming through. DRC a little bit longer to get there and then obviously Tanzania. So, as Till was explaining, what we are trying to do as well is to try and optimise the services as best as we can. We are also trying to optimise in a number of different ways.

Firstly, shared platforms, so an example would be machine learning. The machine engine or the machine learning engine gets written in South Africa and the implementation happens in the different countries. But also, digitalisation, the implementation of chat bots and so on, will have a meaningful impact on our cost going forward. An example would be we set ourselves a target this year to take up 20% of calls in South Africa. And we intend doing that by making sure with the implementation of chat bots and digitalising our processes and also using the agile methodology to be able to do it. The same in distribution, more and more you will see a move towards direct distribution, especially it will start with contracts and upgrades. We have also made for ourselves a big target this year, so these are the type of things that will chip away at some of the underlying cost pieces. But we are also looking at how we can share more platforms, and how we can look at more shared services to try and drive down the underlying costs in each of operations, which we also think is important to be able to deal with any regulated threats and so on that might present itself.

One further clarification. You said that publicity in South Africa declined. It had not. It had increased by 5%. So your publicity in South Africa has actually increased by 5%. The other countries, Tanzania and so on, which had a much higher publicity to sales ratio, decreased as we introduced more efficiency measures, but also as we implemented global agreements with the likes of the MECs and media houses and so on. And we are optimising more spend now using social media and digital channels.

Myuran Rajaratnam

Awesome. Thank you very much.

Operator

Thank you very much. The next question is from Madhvendra Singh of Morgan Stanley. Please go ahead.

Madhvendra Singh

Hi. Thanks for the call. On the revenue performance in South Africa can you throw some colour on that, especially on the data revenues? If I remember correctly you said the rate for the third quarter was around 13% data revenue growth. It seems like fourth quarter was also not very different from that. Would you be able to give some colour on why it didn't accelerate further and what is the

outlook on data revenues for this year, especially given the implementation of the ICASA rules on the data pricing?

Shameel Joosub

So just to be clear you're seeing the question of data revenues coming through, but you are also seeing that it is becoming a bigger and bigger portion of the base. So just mathematically your growth rate then starts to slow down. I think the trend could obviously carry on continuing and so on, however you know I do have the issue of implementation of the ICASA regulations. That will have an impact on the financials. We are obviously trying to look at how we best implement that to reduce the impact on the one side. On the other side we've got to be happy that we've got a very good outcome of the discussions, I would say a more balanced outcome. And finally we then need to offset the impacts with increased utilisation and other revenue streams. And we are seeing some good uptake on some new revenue streams like airtime advance but also launching of new services like our video platform and so on, which we think will increase the reasons to consume.

Madhvendra Singh

Just in terms of the expected data revenue growth trend for this year should we expect still around 13% growth? That is what I think the guidance was previously, mid-teens kind of growth for the data revenues.

Shameel Joosub

I think it will be early teens. We are not giving specific guidance on that, but I think early teens is probably more realistic given the ICASA regulations.

Madhvendra Singh

Thank you very much.

Operator

Thank you. Our next question is from Michael Gresty of Citigroup. Please go ahead.

Mike Gresty

Hi guys. I think that's me. Anyway, a couple of questions from my side. Shameel, just one for you perhaps. If you look at the DRC and perhaps Mozambique the macro picture there is not great. Geopolitics in DRC seems to be deteriorating. You've got still issues about aid coming into Mozambique since they had that fraud a little while ago. And particularly Mozambique you've got such a big disconnect between the results you are printing and what the macro backdrop looks like. I was wondering if you could perhaps chat a little bit around how you see the outlook there and possibly some risks to performance in the year ahead in those markets in particular. And then this morning you alluded to what sounded like optimism that we were going to see some movements on spectrum in South Africa, which suggests you're confident on how the negotiations are with the Department of Telecommunications on the new policy. And obviously that didn't work out so well when you saw the amendments to the legislation, or proposed amendments. Can you just touch on how you see that progressing subsequently and why you are more positive that those negotiations are looking better than they were before?

Shameel Joosub

Okay, so let me start off with Mozambique. Firstly if we look at the macro environment in Mozambique certainly from the indicators that we're looking at inflation was below 5% this last quarter. So you start to see some of the benefits coming through. The currency decrease was only 5% or 6% against the US Dollar and the Rand. So a lot more stability in terms of the high level factors. I think we are seeing a recovery come through, but also I think you're also seeing the

benefit of the level of investment coming through. So we continue to invest heavily in Mozambique, and I think we are seeing that coming through in performance. You've got a mCel which is continuously weakening because of lack of investment. And you've got a Viatel who is slightly distracted I would say with the Tanzanian part. So you are seeing market share growth. You are seeing customer growth. So one is very encouraged that the factors are very positive in terms of growth and also from a market stability perspective that you are starting to see improvement. Now, obviously we don't have a crystal ball, but by all measures I would say getting a lot more stable.

The DRC on the other hand is the one in the portfolio where you've got to take a little bit more cautious approach specifically because of the political environment not having full resolution with the elections. Elections are planned for later this year. But I suppose in the end we have to watch those developments. That said, I would say that we have mitigated a lot of the risk associated with it by making sure that our pricing now effectively changes almost daily, aligned to the currency fluctuations. So we have taken away the Dollar Congolese Franc differential, which if you want to look at it a little bit harder you can actually say has been a price up in terms of what people are experiencing on it. But before that the industry was absorbing it. So this is being done by the industry at large and those adjustments happen weekly. So that leads to a much more stable environment if you like. Also we start to see more Dollar availability in the market. So I think those all lead to a much more positive environment. But there one would say we are cautiously optimistic because the election still hasn't happened. So there could still be some unrest and so on.

In terms of spectrum in South Africa there have obviously been a number of high level engagements from myself with various members of government. And let's just say we're encouraged by the rhetoric around finding a solution to the problem. And can I say that under the new leadership one is optimistic that a solution will be found?

Mike Gresty

Great. That's very helpful. Thank you very much.

Operator

Thank you very much. The next question is from Slava Degtyarev of Goldman Sachs. Please go ahead.

Slava Degtyarev

Yes, hello. Thanks for the call. I think you have considered further M&A deals following the acquisition of Safaricom, but basically you haven't announced any other deals yet. So do you still find attractive assets in Africa and consider M&A as part of your strategy? Thank you.

Shameel Joosub

I think for us the big one and first and foremost is to make sure that all our markets are properly capitalised. So that is what we prioritise first. Secondly when in-market consolidation presents itself, as an example in the results we spoke about Tanzania, we would be very keen to look at an in-market consolidation in that market. And also where in a particular market it helps us to enhance our strategy and there is an acquisition that could be aligned to that, like fibre, like content and those types of things, we would consider it in a particular market. as far as international expansion goes we are very cautious and if a good asset presents itself of course we look at it, and if the price is right. What we will not do is go and buy other people's problems or plant flags. So I think you can rest assured that we are not going to rush off and acquire assets. So we are quite happy with our portfolio right now and we see a lot of opportunity for growth with about 60% data penetration in both Safaricom and the rest of the international market. So still a huge opportunity for growth. And also on M-PESA where you've got 70% penetration of the base in Safaricom but only 37% in the international. So a huge opportunity to still grow the international to get to the level of Safaricom.

And then obviously across the board there are a lot of digital content partnerships that we're tying up from South Africa into the markets which they can leverage off, like the relationship with Facebook.

Slava Degtyarev

Thank you.

Operator

Thank you very much. Ladies and gentlemen, just a reminder, if you wish to ask a question please press star and then one. Our next question is from Ziyad Joosub of HSBC. Please go ahead.

Ziyad Joosub

Hi everyone. Thank you for the question. My question is specifically on your fixed line business, the new revenue stream, the carrier business. It does seem that in Q4 enterprise revenues accelerated quite strongly. I was just wondering, this carrier business which is now more than R500 million revenue business, when did it get launched? How quickly has it scaled up? Maybe you can give us some guidance on how we should expect this business to scale next year in FY19. And also any insights. I mean I assume it might be a low margin business, but it probably consumes no incremental capex as well. Is that assumption correct on my side? Thank you very much.

Till Streichert

Okay. Ziyad, thanks for the question on the fixed line part. Look, carrier business, we have moved a lot of our business that we have got for our international markets which we previously had been routing with other carriers. We have consolidated that business and focussed a bit on increasing as well our external sale in that space. That gave you the basically a bit more than R500 million turnover that we've got in that category. Look, I think we are going to grow going forward pretty much driven by traffic and a little bit of share gains as obviously we've got a pretty sizeable platform that we can also attract third party business into it. But of course in our year one there was a bit of consolidation of existing business from inside Vodacom that we've put together. From a margin point of view, yes, you are right. By nature carrier business is low margin. You see it also partially eliminated in the group consolidation line. And nonetheless from an operating company point of view, in particular the international markets, for them it is obviously that we have got the scale advantages at good rates.

Ziyad Joosub

Great.

Operator

Thank you very much. Gentlemen, it would appear that we have no further questions in the queue at the moment.

Shameel Joosub

Okay. Thank you everyone for joining us.

Operator

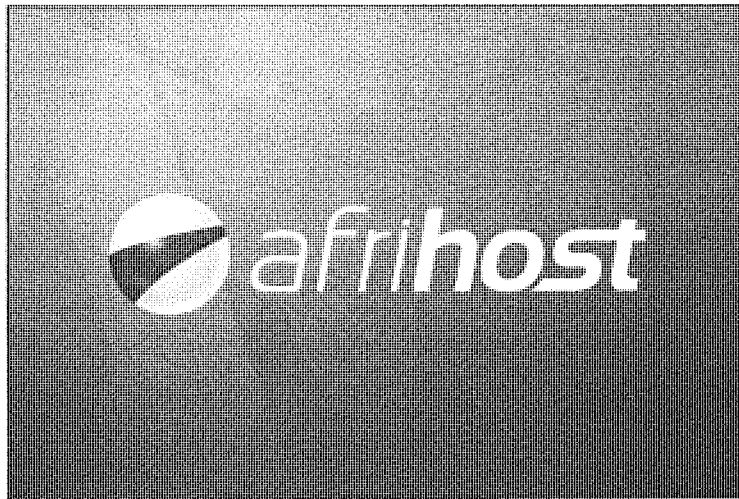
Thank you very much sir. Ladies and gentlemen, that concludes this conference call and you may now disconnect your lines.

END OF TRANSCRIPT

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Afrihost implements data rollover on Rain LTE

Janine McKenna 11 July 2018



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Afrihost has implemented data rollover for its Rain-fixed LTE users.

At the start of July 2018, MyBroadband Forum members reported their Rain data had rolled over from June.

Previously, data on Rain's fixed-LTE network did not rollover and customers would lose what they did not use.

Earlier this year, however, ICASA said network operators would be required to offer customers the option to roll over unused data and transfer data to subscribers on the same network as them.

"The requirement to roll over and transfer data hopefully addresses the expiry issue," said ICASA.

Telkom workers go on strike

The regulator did not allow the rollover of data. Previously, it did not allow innovation with strict regulations.

Afrihost data rollover

An Afrihost spokesperson confirmed to MyBroadband that its Rain fixed-LTE packages now offer one month of data rollover.

"We have implemented rollover on month-to-month data, which rolls over into the following month.



The most-watched TV shows in South Africa

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Top-ups remain active for a full 30 days as before."

Afrihost believes that Rain implemented this policy to align with the new regulations published by ICASA.

"The data is now allocated as valid for the current month and the full following month," said Afrihost.

"So if you sign up for data on any day in July, your data is valid until 31 August."

Afrihost also offers rollover data on a number of its other products, including mobile and fixed broadband packages.

The ISP also plans to review its product offerings in light of the new regulations published by ICASA.

"We already roll over DSL capped data and top-ups on mobile, capped DSL, and capped fibre - we have been doing so for quite some time. However, we are reviewing our other products in light of the regulatory change for compliance."

Thanks to Spaj and SlowInternet for reporting the data rollover on Rain fixed-LTE

Now read: Afrihost launches new 200Mbps fibre deals - All the prices and packages

AFRIHOST DATA ROLL-OVER HEADLINE RAIN FIXED LTE

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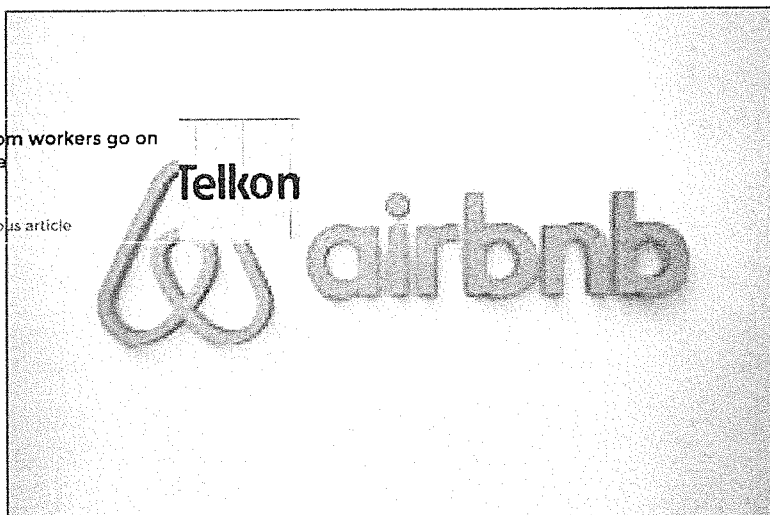
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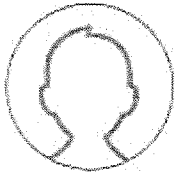
Did you know you can share
your Data Bundle MBs with your
friends and family on Cell C?
Simply dial *112*1# and follow
the prompts. T&C's apply

08:08

Q.N.D. Wm

SMS/MMS

Saturday, 30 June 2018



Your 30 days data bundle will expire in two days! Don't lose your Data, Buy a 30 days data bundle, Dial *109# select 5. Your expiry date will be Extended. Cell C

08:06



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton
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Ref no: 11/1/1/2-2017

Minister Ayanda Dlodlo, MP

Minister of Communications

Tshedimosetso House

1035 cnr Frances Baard and Festival streets

HATFIELD, Pretoria

0083

Per email: nosizwe@doc.gov.za

Dear Honourable Minister,

RE: INITIATIVES ON THE REDUCTION OF COST TO COMMUNICATE

1. Your letter dated 27 July 2017, addressed to the Acting Chairperson has reference.
2. The Independent Communications Authority of South Africa (the Authority), has undertaken certain initiatives in an effort to ensure that all citizens have access to affordable, accessible and universal communications services in line with the call to reduce communications costs.

P Mashile, K Modimoeng, MR Mohlologa, BC Mokhele, PJ Zimri, (Councillors),
PK Pongwana (CEO)

3. The initiatives include the establishment of the task team between the Authority and the National Consumer Commission (NCC), and engagements with the respective licensees to address challenges that have been raised with regards to the business rules of mobile data services (particularly the business rules on expiry of unused data bundles and the differentials between in-and-out-of-bundle rates).
4. As a result of the above, and as per the Honourable Minister's request, Kindly find attached the Authority's report on the matter and the proposed draft amendments to the End-user and Subscriber Service Charter Regulations.

Yours sincerely,



Rubben Mohlaloga
Acting Chairperson
Date: 02 August 2017



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH
AFRICA'S (ICASA) IMPLEMENTATION PLAN FOR THE DIRECTIVE
ON THE REDUCTION OF COST TO COMMUNICATE**

1. BACKGROUND

- 1.1. In 2015 the general public raised a concern under the banner #DataMustFall (and later #SocialMediaBlackout) on social media over the perceived high cost of data services.
- 1.2. This resulted in the Parliamentary Portfolio Committee ("PPC") on Telecommunications and Postal Services holding an urgent two-day public hearing on the cost of data while also hearing submissions by civil society organisations, mobile operators, student representative organisations, the DTPS, CSIR, and others.
- 1.3. Based on the PPC recommendations the Authority initiated a process together with the National Consumer Commission ("NCC") to review amongst others, the data expiry rules as well as the charging of out of bundle rates and the impact thereof on customers.
- 1.4. In addition, the Minister of Telecommunication and Postal Services ("the Minister") issued a final "Policy direction on effective competition in broadband markets and the reduction of data costs" instructing the Authority to prioritise the commencement and conclusion an inquiry and the prescription of regulations as contemplated in section 67(4) of the Electronic Communications Act No. 36 of 2005 ("ECA") to ensure effective competition in broadband markets.
- 1.5. Minister further expressed his concerns in the 2017/2018FY budget vote about the slow progress of the Authority's priority market process and indicated that he is in discussion with Minister Ebrahim Patel, Department of Economic Development, to request the Competition Commission to conduct an inquiry into broadband markets.¹ The Minister of Communications, Minister Dlodlo also expressed concerns with

¹ <http://www.gov.za/speeches/minister-ebrahim-patel-economic-development-dept-budget-vote-201718-25-may-2017-0000>

regards to the availability and affordability of communications services for all South Africans (particularly data).

- 1.6. Minister Patel indicated in the 2017/18 Budget Vote that, following the discussion with Minister Cwele, the Ministry will request the Competition Commission to conduct an inquiry into broadband markets in terms of section 43B(1) of the Competition Act, 1998.²
- 1.7. Therefore, the purpose of this report is to provide the Minister of Communications with ICASA's operational plan to respond to the directive and public and government concerns around the cost of data services. The Authority intends to mount a number of initiatives comprising short, medium and long term measures to effect changes to industry business rules, practices and pricing behaviour in response to the calls to reduce the cost to communicate.

2. CONFIDENTIALITY

- 2.1. The Authority requests that this submission (and all attachments hereto) be treated as confidential in terms of section 79B(3) of the ECA read with section 4D of the Independent Communications Authority of South Africa Act No. 13 of 2000, as amended ("ICASA Act") on the basis that the disclosure of the information – prior to the commencement of the public consultation processes for implementation of regulatory measures contemplated herein as contemplated in terms of section 4 of the ECA and sections 4, 4B and 4C of the ICASA Act – may amount to breach of administrative due process and place the Authority in an unfavourable position from a process compliance perspective.

² <http://www.gov.za/speeches/minister-ebrahim-patel-economic-development-dept-budget-vote-201718-25-may-2017-0000>

3. PROGRAMME TO ADDRESS COST TO COMMUNICATE

- 3.1. In light of the above, the Authority's initiatives to address cost to communicate can be categorised as follows:

Short-term initiatives

- 3.1.1. These refer to initiatives that could be implemented in a period of six months or less.

ICASA / NCC Task Team assessment of mobile data services business rules

- 3.1.2. The Authority established a task team together with the National Consumer Commission ("NCC") to address challenges that have been raised with regards to the business rules of mobile data services (particularly the business rules on expiry of unused data bundles and the differentials between in-and-out-of-bundle rates).

- 3.1.3. It should be noted that the Task Team is guided by object 2(n) and (y) of the ECA as well as section 3 of the Consumer Protection Act, 2008 (the "CPA").

- 3.1.4. The task team engaged with the operators and subsequently recommended, amongst others, that Council should consider amending the End-user and Subscriber Service Charter Regulations to address concerns regarding expiry of unused data bundles and the differentials between in-and-out-of-bundle rates.

- 3.1.5. On 28 July 2017 Authority's Council resolved to approve the proposed amendment of the End-user and Subscriber Service Charter Regulations ("draft Regulations"). The amendment of the Regulations is to be directed at regulation 8(7) thereof and purports to minimise or remove harm to consumers due to

unfairness of the current data bundles expiry rules and high out-of-bundle rates. The draft proposed Regulations are attached as Appendix "B" for ease of reference. The anticipated finalisation and effective date of the amendment is 31 December 2017.

International benchmark on mobile retail data tariffs

- 3.1.6. The Authority will also undertake a comprehensive international benchmark study on South African mobile retail data tariffs against comparator countries.
- 3.1.7. This study is guided by section 4(3)(h) of the ICASA Act. The objective of this report is to compare South African data bundles with other comparator countries to assess the level of competitiveness of South African data bundles.
- 3.1.8. This report is expected to address the concerns raised by the general public that the level of South African mobile data prices remains far more expensive compared to comparator countries.
- 3.1.9. This study will be an input into inform ICASA's ex-ante regulatory intervention into the data prices in line with international best practise. The study is expected to be completed by 30 November 2017.

Review of the 2014 Voice Wholesale Call Termination Regulations

- 3.1.10. The Authority is also undertaking the review of the 2014 voice Wholesale Call Termination Regulations in terms of section 67(8) of the ECA.
- 3.1.11. The review of the wholesale call termination regulations is intended to increase the effectiveness of competition in the wholesale call termination services markets. The review is expected to be completed by 30 September 2017.

Medium-term initiatives

3.1.12. These refer to initiatives that can be implemented in a period of 12 months or less.

Market inquiry into the broadband services markets

3.1.13. The purpose of the proposed broadband market inquiry is to identify broadband markets or market segments susceptible to *ex ante* regulation and immediately conduct market reviews in respect of those markets.

3.1.14. The inquiry will be conducted in terms of section 4B read with section 67(4) of the ECA also to address the concerns raised by various stakeholders regarding data prices and to respond to the final policy direction by on effective competition in broadband markets and the reduction of data costs.

3.1.15. In conducting the market inquiry into broadband services markets, the Authority will implement the following steps:

- Step 1: publication of notice advising that an inquiry will be conducted in due course and commencing pre-inquiry preliminary information gathering e.g. publication of a questionnaire;
- Step 2: formal commencement of the inquiry in terms of section 4B of the ICASA Act in terms of a notice published in the *Government Gazette* and the publication of a discussion document for public comment (45 days minimum);

- Step 3: publication of draft position paper for public comment (45 days minimum);
- Step 4: publication of a final position paper with draft Regulations (if warranted following the market inquiry) for public comment (30 days minimum);
- Step 5: publication of final Regulations.

Rapid Deployment Regulations

3.1.16. The Authority is engaging the Department of Telecommunications and Postal Services (the "DTPS") with regards to the policy directive on the rapid deployment of infrastructure as this has a direct and indirect impact on the cost to communicate. To this end, the Authority is part of the DTPS established Working Group to formulate the Terms of Reference for the Coordinating Committee on rapid deployment.

Long-term initiatives

3.1.17. These refer to initiatives that will take longer than twelve months to implement.

Priority Markets Inquiry

3.1.18. On the 30th of June 2017, the Authority published a notice of intention to conduct an inquiry in terms of section 4B of the ICASA Act to identify priority markets in the electronic communications sector.

3.1.19. The purpose of the inquiry is to identify markets that the Authority will prioritise for market reviews and potential regulation in terms of section 67(4) of the ECA following the conclusion of the inquiry. The project is expected to be finalised by 31 March 2018.

3.2. Table 1 below provides a summary of ICASA's operational plan to reduce the cost to communicate.

Table 1: ICASA's cost to communicate operational plan

Short, Medium or Long term	Initiatives	Proposed competition date
Short term initiatives (<6 months)	• Amendment of to the End-user and Subscriber Charter Regulations • International benchmark of data prices • Review of 2014 wholesale call termination regulations	• 31 Dec 17 • 30 Nov 17 • 30 Sep 17
Medium term initiatives (<12 months)	• Engagements with the DTPS on the ICT White Paper (i.e. rapid deployment guidelines, WOAN study) • Broadband market inquiry	• On-going • 31 Mar 18
Long-term initiatives (>12 months)	• Joint Working Team between ICASA and Competition Commission • Priority Markets study	• On-going • 31 Mar 18

4. Council Committee on priority markets and data services

4.1. The Authority's Council has established a standing Committee in terms of section 17 of the ICASA Act to:

- 4.1.1. deal with the proposed draft amendments to the End-user and Subscriber Charter Regulations;
- 4.1.2. conduct the undertaking of an inquiry into broadband / data services market in terms of section 4B and or 4C of the ICASA Act read with section 67 of the ECA;
- 4.1.3. conduct an inquiry for purposes of identifying priority markets susceptible to ex ante regulation in terms of applicable legislation; and

4.1.4. lead the Authority's engagement / consultation with the Competition Commission during its Data Services Market Inquiry which is anticipated to commence on 1 September 2017.

5. CONCLUSION

The Authority has taken cognisance of the various stakeholder concerns over the high cost of communication and reassures the Minister that it will continue to prioritise its Cost to Communicate operational plan so as to effectively reduce the high cost of voice and data prices.

Appendix B

Proposed DRAFT AMENDMENTS

Insertions to the End-user and Subscriber Service Charter Regulations

Amendment of regulation 8 (7) of the Regulations

VOICE AND SMS SERVICES

A Licensee must send notifications for voice and SMS usage intervals to a subscriber, the intervals must show 50%,75%,90% and 100% service depletion. The notification must be through SMS or any other applicable means.

A licensee must provide subscribers who are on open line with an option to buy additional voice services or SMS services upon depletion of such services.

If a subscriber who is on open line does not buy additional voice services or SMS services, the licensee will disconnect the subscriber from access to services and allow such a subscriber to only use emergency services and customer care services.

DATA SERVICES

Out-of bundle billing practices

A licensee must provide a mechanism for subscribers to opt -in for or opt out-of bundle charges when their data bundle is depleted.

Licensee must ensure that subscribers are:

1. Sent data depletion notifications on regular intervals through SMS or USSD, the interval must show 50%,75% ,90% and 100% depletion of data bundles
2. Sent warning notifications when their data has completely run out or depleted
3. Provided with an option to buy additional data bundles upon depletion of their allocated data through USSD platform or any other applicable means
4. Not defaulted automatically to out-of bundle data charges upon depletion of their data bundles
5. Given an option through SMS or USSD to opt-in or opt-out of data bundle usage

Where a subscriber does not opt-in or opt-out of data bundles, the licensee must automatically disconnect the subscriber from out-of bundle data usage until such time that the subscriber gives express consent or authorisation.

Expiry of data practices

Licensees must adhere to the table below with regard to validity period for data expiry:

Data bundle sizes	Validity periods
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Q.N.D. ML

1 MB – 50MB	1 hour to 10 days
50MB – 500 MB	1 hour to 30 days
500MB – 1 Gig	1 hour to 60 days
1Gig – 5 Gig	1 hour to 90 days
5 Gig – 10 Gig	1 hour to 180 days
10 Gig – 20Gig	1 hour to 12 months
20 Gig >	24 months

Licensees must notify subscribers with expiry of their data period within seven (7) days prior to expiry date of such data

The notification must be through SMS, USSD or any other applicable means

Licensees must provide subscribers with an option to roll over unused data when subscribers recharge with data bundles before expiry period. The roll over validity period will be as per table above.

S.M.D. 