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Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 971 OF 2003



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF INTENTION TO INCLUDE ANY LICENSEE WITH RELEVANT MARKET SHARE OF AT LEAST 35% OF A DEFINED TELECOMMUNICATIONS MARKET, IN THE CATEGORY OF A MAJOR OPERATOR, IN TERMS OF SECTION 2.4 OF SUPPLEMENTARY INTERCONNECTION GUIDELINES AS PUBLISHED IN GOVERNMENT GAZETTE 24203 DATED 19 DECEMBER 2002

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice of a request received from Cell C (Pty) Limited to include Vodacom (Pty) Limited and MTN (Pty) Limited in the category of Major Operator in accordance with paragraph 2.4(a) of above-mentioned regulations on the grounds that both licensees have a market share of at least 35% of the defined Telecommunications Market.

2. In accordance with section 2.4.2 of the above-mentioned regulations the Authority has attached the request received from Cell C (Pty) Limited to this notice as Annexure A.
3. The supporting information submitted by Cell C (Pty) Limited is excerpts from the following publications: the Telkom Prospectus published in February 2002; the MTN Interim Results Review for the six month period ended 30 September 2002; the M-Cell Annual Report 2002; and the Vodacom 2001/2002 Financial year in Review. Due to the fact the supporting information could not be reproduced, it is available at the ICASA Library – Block D, Pinmill Farm, 164 Katherine Street, Sandton, or can be faxed upon request.
4. The Authority invites written comments from interested parties with regard to the proposed inclusion of Vodacom (Pty) Limited and MTN (Pty) Limited in the category of Major Operator to be submitted to the Authority by **15 May 2003 at 16h30**.
5. The Authority gives notice that written representations will be made publicly available except where respondents request that their responses or parts thereof be kept confidential. Respondents are requested to separate any confidential material into a clearly marked annexure. Requests for confidentiality will be dealt with in accordance with the Act and other relevant statutes.
6. Interested persons are hereby invited to submit written representations on the proposed inclusion of Vodacom (Pty) Limited and MTN (Pty) Limited as major operators in terms of the Supplementary Interconnection Guidelines, to be received by post, hand delivery, e-mail or fax for the attention of:

Rossana Achterberg

Manager: Policy Analysis and Research

ICASA, Private Bag X10002, Sandton, 2046 or

ICASA, Block C, Pin Mill Farm, 164 Katherine Street, Sandton;

Telephone: (011) 321 8473

Facsimile: (011) 444 7954

e-mail: rachterberg@icasa.org.za and copy mmsimang@icasa.org.za

6. In terms of clause 2.4.3 of the Supplementary Interconnection Guidelines, at the conclusion of the public process the Authority may, based on its findings, declare either Vodacom (Pty) Limited, or MTN (Pty) Limited, or both to Major Operator/s in the mobile telecommunications services market.

MANDLA LANGA
CHAIRPERSON
ICASA



Cell C (Pty) Ltd.

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Private Bag X36, Benmore 2010

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GM: Telecommunication Services
ICASA
Private Bag X10002
Sandton
2146

Fax number: (011) 444-7954

Attention: Mr Peter Hlapolosa

21 February 2003

Dear Sir

**Re: Request In Terms Of Supplementary Interconnection Guidelines As Published
In Government Gazette 24203 Dated 19 December 2003**

In accordance with paragraph 2.4 of the above-mentioned regulation, any party, acting in good faith, may request ICASA to include any licensee with a relevant market share of at least 35% of a defined Telecommunications Market, in the category of a Major Operator.

Should such request succeed and the licensee is included in the category of Major Operator, such Major Operator will be obliged to provide Essential Services, such as interconnection termination, to other Public Operators at the Fully Allocated Cost ('FAC') as described in the Guidelines and at some stage in the future, Long Run Incremental Cost.

One of the categories of Telecommunication Market listed in paragraph 2.1 is the Mobile Cellular Telecommunication Services.

Cell C further notes in accordance with the Guidelines the qualifying criteria for definition as a "Major Operator" constitutes 35% share of any one telecommunications market. How the share of market is determined is not known and as Cell C assumes in this respect that the qualifying criteria are based on the only readily available information namely subscriber numbers (in either absolute terms or those as per industry usage defined as 'active' in any one particular period).

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According to the latest subscriber information that Vodacom Group (Pty) Limited ("Vodacom") has made available, Vodacom had as at 31 March 2002, 6.6 million subscribers in South Africa and estimated its market share to be 80.3%. (Annexure A) In the Telkom SA Limited ("Telkom") prospectus, published on February, Vodacom's market share, as at 30 September 2002, is stated as being approximately 89% of the South African market for mobile cellular communications. (Annexure B)

MTN Group Limited state in their interim results review for the six-month period ended 30 September 2002 that the subscriber growth of Mobile Telephone Networks (Pty) Ltd ("MTN") showed an increase of 11 % since March 2002 and that they had, as at 31 September 2002 4.284 million subscribers. (Annexure C) In March 2002, MTN estimated its market share to be around 40%. (Annexure D)

Even if cognisance is given to the fact that Vodacom and MTN reporting on subscriber numbers varies, with MTN reporting on active subscribers and Vodacom on subscribers in total, their different reporting periods and the effect of Cell C's entry in to the market, the two mobile operators easily qualify as Major Operators in terms of applicable criteria.

The results of independent research data done, on behalf of Cell C, by Research International in the major metropolitan areas, supports the position set out above that both MTN and Vodacom qualify as Major Operators. According to the survey, the market share of each mobile cellular operator as at December 2002 is as follows:

• Vodacom	56 - 57 %
• MTN	38 %
• Cell C	6 - 8 %

For January 2003, the market share is reflected as follows:

• Vodacom	52 %
• MTN	41 %
• Cell C	7 - 8 %

The variance refers to the difference between most often usage and total ownership.

Cell C would however request that ICASA attend upon the independent verification of this information. It does however note, with great interest that ICASA has seemingly had little difficulty in defining Vodacom and MTN as Major Operators in the mobile cellular telecommunications market in respect of the draft Supplementary Interconnection Guidelines Applicable to Under Serviced Area Licensees and believes that the process that informed this decision would hold equal sway in respect of any analysis pertaining to a decision in terms of the Supplementary Interconnection Guidelines.

Cell C trusts that it has sufficiently demonstrated based on publicly available information that both Vodacom and MTN, *prima facie*, qualify as Major Operators in the mobile cellular communications market. Accordingly, Cell C would request and hereby does that ICASA define and include MTN and Vodacom in the category of Major Operator for the purposes of the provision of an essential service, in this instance interconnection, as provided for in the Interconnection Guidelines and in the Supplementary Interconnection Guidelines.

cell

ICASA will appreciate that this matter critically impacts on Cell C's ability to compete effectively with the established mobile cellular telecommunication service licensees and therefore request that ICASA treat this request as a matter of the utmost urgency.

Yours sincerely



Karabo Motlana
Head: Regulatory Affairs

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