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GENERAL NOTICE

NOTICE 928 OF 2010



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**NOTICE OF INTENTION TO CONDUCT AN INQUIRY ON WHOLESALE
TRANSMISSION SERVICES FOR BROADCASTING SERVICE.**

The Independent Communications Authority of South Africa ("The Authority") hereby gives notice of its intention to embark on a section 4B inquiry process on wholesale transmission services in terms of the Independent Communications Authority of South Africa Act, Act 13 of 2000 ("the ICASA Act").

Enquiries can be directed to:

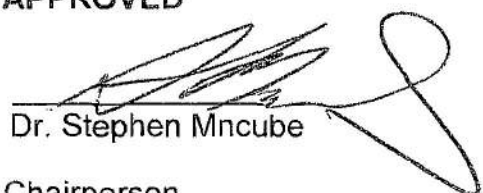
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APPROVED



Dr. Stephen Mncube

Chairperson

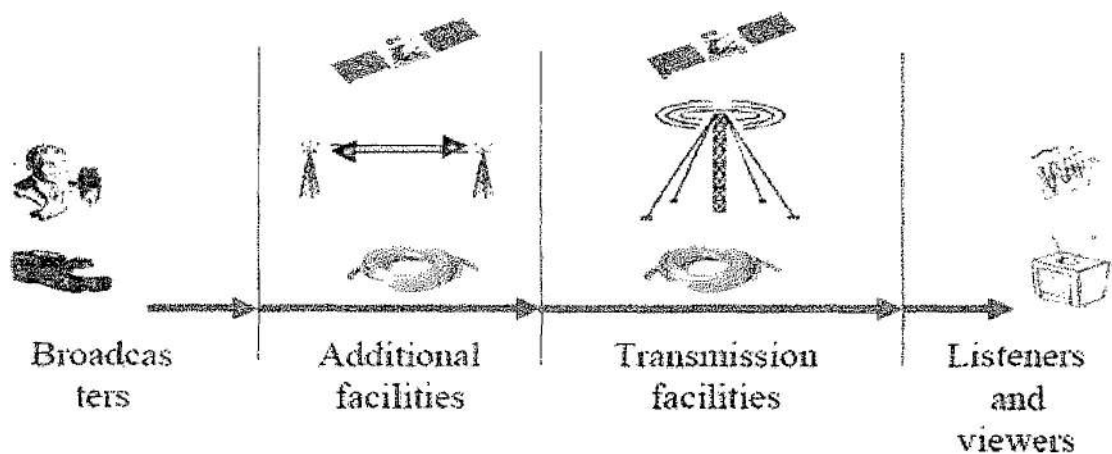
1. INTRODUCTION

1.1 The Authority may, in terms of section 4 B of the ICASA Act No. 13 of 2000 ("the Act"); conduct an inquiry into any matter with regard to *inter alia* –

- The achievement of the objects of the ICASA Act or underlying statutes;
- Regulations and guidelines made in terms of the Act or underlying statutes; and
- The exercise and performance of its powers, functions and duties in terms of the Act or underlying statutes.

1.2 Broadcasting transmission services can be delivered using different technologies and through various mediums of transmission such as satellite, terrestrial networks and cable networks. These services are important for the distribution of content from broadcasters' studios to end users as illustrated in Figure 1 below. Content may be conveyed from the studio to the transmission site and to the home via electronic communications network services.

Figure 1: Broadcasting Transmission Services¹



¹ (source: http://erg.eu.int/doc/publications/erg_06_47_report_on_market_18.pdf)

1.3 Various broadcasters have raised concerns regarding the availability, quality and pricing of wholesale transmission services particularly e.tv through the digital migration regulation making process as well as other licensees such as community broadcasters at various fora.

1.4 Section 67(4) of the Electronic Communications Act, Act 36 of 2005, ("ECA") allows for the Authority to prescribe regulations defining the relevant markets and market segments, as applicable, that pro-competitive conditions may be imposed upon licensees having significant market power, where the Authority determines such markets or market segments have ineffective competition.

1.5 The market for wholesale transmission services is often characterised by high and non transitory barriers to entry as some operators control infrastructure that is not easily duplicated and which represents a necessary input into the relevant market.

1.6 Should a monopoly situation exist, it would mean that there is an opportunity for transmission services providers to engage in a number of anti-competitive practices such as denial of access and excessive pricing which can take excessively long to resolve if left solely to ex post regulation. Such potential monopoly behaviour can represent a risk to broadcasters which want their content to be distributed, and new operators who want to establish their own transmission services. In that respect the behaviour could inhibit competition among already existing operators and deter new operators from entering the market. The limited number of providers with control of the access network for

transmission services may constitute market failure. The Authority has consequently decided to conduct an inquiry into wholesale transmission services.

2. OBJECTIVE OF THE INQUIRY

2.1 In light of the concerns raised by the broadcasting services licensees, the Authority would like to obtain a better understanding of the market(s) that facilitate the ultimate end-to-end process of delivering broadcasting content to end users. This would include an understanding and analysis of the current market structure and the level of competition in the relevant market(s). This analysis will assist the Authority in making a decision whether it should consider regulating the market.

2.2 Prior to potentially embarking on a section 67(4) process, the Authority has made a decision as a first step to conduct an inquiry to allow all interested parties to provide information to the Authority on all matters that it is required to consider.

2.3 The objective of this inquiry process is not to make any pronouncements regarding the effectiveness of competition in any market or to make any administrative decisions. This process may however assist the Authority in defining the relevant market(s), assessing the effectiveness of competition, and identifying licensees with significant market power.

2.4 In identifying the broadcasting wholesale transmission services market as being susceptible to ex ante regulation, the Authority is guided by characteristics of the market such as high infrastructure costs which act as a barrier to entry and excessive pricing.

2.5 As stated above, this inquiry process will assist the Authority in making a decision on whether to proceed with a section 67(4) market review process. A complete market review process leading to the decision on the prescription of regulations will consist of the following phases:

Phase 1: A preliminary market analysis which includes:

- Identifying the relevant market(s);
- Obtaining an indication of the effectiveness of competition in the relevant market(s)
- Identifying licensees that have significant market power
- Exploring which pro-competitive measures may be appropriate.

3. PROCESS

3.1 In order to successfully complete the intended inquiry process, the Authority may:

- Conduct interviews with stakeholders, as and when the need arises
- Circulate a questionnaire for response
- Publish a Discussion Document;
- Possibly conduct Public Hearings and
- Publish a Findings and Conclusions Document.

3.2 Phase 2: The development of regulations under section 67(4) of the ECA, if necessary.

3.3 Phase 3: Continuous monitoring and periodic review of the relevant market(s).

3.4 In terms of this Notice, the Authority hereby sets out its intention to commence with Phase 1 as outlined above.

3.5 In conducting the market analysis required under section 67 of the ECA, the Authority intends to make use of publicly available information and the information it gathers from stakeholders. The Authority may also be required to contact other government agencies and research institutions for relevant information. In particular the Authority may send questionnaires to stakeholders requesting relevant information.² The type of information to be obtained by the Authority is stipulated in section 67 of the ECA. The Authority may seek other relevant information if deemed necessary.

3.6 The Authority will release a discussion document based on the information collected. The discussion document will include:

- preliminary findings on the relevant market;
- the methodology used to determine the effectiveness of competition in the relevant market;
- an indication of the effectiveness of competition in the relevant market and potential ways to impose pro-competitive measures; and
- identification of licensee(s) that may be found to have significant market power in the relevant market(s).

3.6 The Authority will then engage in a public participation process, in terms of which submissions, (written and oral) will be invited from stakeholders.

3.7 Once the Authority has considered all inputs a findings document will be published. The findings document will consolidate stakeholder views and the Authority's position on relevant matters. This findings document will conclude the market review process. Where ineffective competition is found in the market, the Authority will proceed with Phase 2.

² The legal basis for any requests for information made in the course of conducting a market study is derived from section 4(3) of the ICASA Act. Section 4(3) provides that: (g) "*the Authority may, by notice in writing, direct the holder of a licence in terms of the underlying statutes to produce or furnish to the Authority, at a time and place specified in the notice, any documents and information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on such licensee by this Act or the underlying statutes*".

4. TIMEFRAMES

4.1 The total duration of this inquiry process is expected to be 10 months with the expected timeframes as follows:

Action	Date
Circulate the questionnaire	By end of October 2010
Publish a Discussion Document	By end of January 2011
Potentially conduct Public Hearings	May 2011
Publish Findings and Conclusions Document	By end of June 2011