

(10 July 2015 - to date)

CONSUMER PROTECTION ACT 68 OF 2008

(Gazette No. 32186, Notice No. 467 dated 29 April 2009. Commencement date - 24 April 2010 of Chapters 1 and 5, section 120 and any other provision authorising the Minister to make regulations, and Schedule 2, in terms of Schedule 2, item 2(1))

MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE NATIONAL CONSUMER COMMISSION AND THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

General Notice 701 in Government Gazette 38986 of 10 July 2015. Commencement date: 10 July 2015.

MEMORANDUM OF AGREEMENT ("MOA")

Entered into between

THE NATIONAL CONSUMER COMMISSION ("the Commission")

a juristic person established in terms of section 85 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("the CPA") as amended, herein duly represented by Mr Ebrahim Mohamed, in his capacity as the Commissioner of the Commission

And

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (Hereinafter referred to as "the Authority")

a juristic person established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) as amended ("the ICASA Act"), herein duly represented by a member of Council in her capacity as the Councillor of the Independent Communications Authority of South Africa

WHEREAS, the key functions of the Authority are to *inter alia*. regulate the electronic communications, broadcasting and postal services; issue licenses to providers of the aforesaid services; monitor the environment and enforce compliance with the licence terms and conditions and regulations; investigate and decide on disputes and complaints brought by industry or members of the public against licensees; plan, control and manage the radio frequency spectrum and to protect consumers;

AND WHEREAS, the Commission is mandated to, *inter alia*, enforce and carry out the functions assigned to it in terms of the CPA. The CPA seeks to promote a fair, accessible and sustainable marketplace for consumer

Prepared by:

products and services and for that purpose, to establish national norms and standards relating to consumer protection throughout the Republic of South Africa. It further seeks to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour and to promote a consistent legislative and enforcement framework relating to consumer transactions.

AND WHEREAS, the Commission and the Authority recognise that their respective mandates are mutually reinforcing and should thus encourage the optimal utilisation of the most effective remedies available between the two institutions, as the case may be;

AND WHEREAS, it is recorded that this MOA may be reviewed to accommodate developments incidental to matters that require co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review will take into account prevailing legal precedents, legislative amendments, promulgation of regulations, and policy reviews, as the case may be.

THEREFORE, the Commission and the Authority agree as follows:

1. BASIS OF THE MEMORANDUM

- 1.1 This MOA is entered into to establish the manner in which the Commission and the Authority will interact with each other to enable them to, *inter alia*:
 - 1.1.1 establish and formalize a relationship between the Commission and the Authority on the uniform classification of complaints;
 - 1.1.2 improve the complaints handling and referral processes;
 - 1.1.3. release of joint statements on matters of collaboration affecting the interests of consumers;
 - 1.1.4 liaise with each other on matters of common interest as contemplated in the CPA and the ICASA Act;
- 1.2 The Commission and the Authority may inform each other of any previous decision/judgment that either of them has previously taken/obtained in respect of the practice or conduct involving the same respondent, in so far as it pertains to consumer matters.
- 1.3 As contemplated in Section 3 of the CPA, the Commission exercises primary authority to promote and advance the social and economic welfare of consumers in South Africa, and the Authority exercises primary authority to ensure universal and affordable access to high quality electronic communications services, broadcasting services and postal services, to consumers.

2. GUIDELINES FOR INTERACTION BETWEEN THE COMMISSION AND THE AUTHORITY UNDER THIS MEMORANDUM

- 2.1 The Authority may ask for and receive advice from the Commission, in respect of consumer matters arising in the electronic communications, broadcasting and postal industries.
- 2.2 The Commission may ask for and receive advice from the Authority, in respect of proceedings which require consideration of regulatory aspects falling under the competency of the Authority.
- 2.3 All requests for advice or exchange of information by either regulatory authority must be submitted in writing.
- 2.4 The party seeking advice or information must indicate a reasonable deadline (not less than 14 working days) before or upon which the advice or information should be given.
- 2.5 When the Commission and the Authority consult each other under this MOA, they will do so at no cost to each other and with an acknowledgement of their respective areas of expertise.
- 2.6 In the interpretation of any terminology used in this MOA, any word or expression to which a meaning is assigned in the CPA, Postal Services Act (Act No.124 of 1998), Broadcasting Act (Act No. 4 of 1999). ICASA Act and the Electronic Communications Act (Act No. 36 of 2005) has the meaning assigned to it unless otherwise specified.

3. REFERRAL [*sic*] OF COMPLAINTS

The Commission and the Authority will develop a common framework, within three (3) months of the signing of this MOA, within which referral of complaints between the two regulatory agencies will take place.

4. CLASSIFICATION OF COMPLAINTS

The Commission and the Authority will develop a common framework, within three (3) months of the signing of this MOA, for classification of consumer complaints in the ICT sector.

5. INSTITUTIONAL CONTACT PERSONS

For purposes of this MOA:

- 5.1. the **Head: Enforcement and Investigation** will be the main contact person at the Commission.
- 5.2. the **General Manager Compliance and Consumer** will be the main contact person at the Authority.

6. EXCHANGE OF INFORMATION

- 6.1 Subject to clause 7, the Commission and the Authority will endeavour to exchange information necessary to give effect to this MOA.
- 6.2 The preferred procedure for the exchange of information between the Commission and Authority is as follows:
- 6.2.1 wherein the Commission requires information from the Authority, the Commission will address a written request for information to the **Chief Operations Officer (COO)** of the Authority and also copy the contact person identified in terms of clause 5.
- 6.2.2 wherein the Authority requires information from the Commission, the Authority will address the written request for information to the **Deputy Commissioner** of the Commission and also copy the contact person identified in terms of clause 5.
- 6.3 The Commission and the Authority will keep records of the information exchanged between them.

7. CONFIDENTIALITY

- 7.1 The Commission and the Authority may share confidential information subject to their statutory confidential requirements.
- 7.2 The party providing confidential information pursuant to this MOA must clearly indicate what information is confidential to the requesting regulator.
- 7.3 The Commission and the Authority warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, will be kept strictly confidential and shall not be divulged to any third party without prior written consent of the other party. Each party and their employees, contractors or service providers, must maintain the utmost secrecy in respect of all such information.

8. GENERAL PROVISIONS

- 8.1 The provision of, or request for information under this MOA may be denied:
- 8.1.1 where compliance would require the Commission or Authority to act in a manner that would violate the applicable law or the constitutional rights of the parties involved;
- 8.1.2 under circumstances where there is an imminent risk to national security; or

8.1.3 when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

8.2 No provision of this MOA will give rise to a right on the part of any person, entity or organ of state other than the Commission and the Authority, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MOA.

8.3 The provisions set out under clauses 6 and 7 must prevail with respect to any information provided or actions taken under this MOA prior to its termination.

9. NON-VARIATION

9.1 This MOA constitutes the whole of the agreement between the parties relating to the subject matter hereof.

9.2 No amendment or consensual cancellation of this MOA or any term of this MOA, including this clause will be binding unless recorded in a written document signed by duly authorised representatives of both regulators.

10. EFFECTIVE DATE OF THE MEMORANDUM

This MOA comes into force after:

10.1 it has been signed by persons authorised to act on behalf of both the regulators; and

10.2 signature by representatives of both parties.

11. DURATION OF THE MEMORANDUM

This MOA will remain in force until it is amended or terminated by both parties acting jointly.

12. DISPUTE RESOLUTION

In the event of any dispute or difference between the parties with regard to interpretation and/or implementation of any one or more of the provisions of this MOA, the dispute or difference must be resolved in a manner other than through resorting to judicial proceedings.

13. DOMICILIUM CITANDI ET EXECUTANDI

The regulators choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MOA:

THE NATIONAL CONSUMER COMMISSION

BUILDING 10
BERKELY OFFICE PARK
08 BAUHINIA STREET
TECHNOPARK
CENTURION

CONTACT PERSON:

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

BLOCK B
PINMILL FARM
164 KATHERINE STREET
SANDTON
2146

CONTACT PERSON:

14. FORCE MAJEURE

- 14.1 If any party to this MOA is unable to perform any obligation(s) due to circumstances beyond its control, then the party concerned will be excused from the timeous performance of the obligation for the duration that the circumstances prevail, rendering the performance impossible.
- 14.2 Any party unable to perform its obligations due to circumstances in terms of clause 15.1, must inform the other party in writing of the circumstances within five (5) days of the occurrence thereof.
- 14.3 The Parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 14.1. Upon removal of the circumstances giving rise to impossibility of performance, the party so prevented or delayed will forthwith give written notice to the other party.
- 14.4 For the purpose of this MOA "*Force Majeure*" will mean any circumstances beyond the reasonable control of the party concerned and includes but not be limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.
- 14.5 The mere shortage of labour, materials or utilities will not constitute *Force Majeure* unless caused by circumstances which may be deemed to constitute *Force Majeure*

15. SEVERABILITY

Each of the provisions of this MOA will be considered as separate terms and conditions and in the event this MOA is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

16. COSTS

Each Party to this MOA will be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

14.3 The Parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 14.1. Upon removal of the circumstances giving rise to impossibility of performance, the party so prevented or delayed will forthwith give written notice to the other party.

14.4 For the purpose of this MOA "*Force Majeure*" will mean any circumstances beyond the reasonable control of the party concerned and includes but not be limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.

14.5 The mere shortage of labour, materials or utilities will not constitute *Force Majeure* unless caused by circumstances which may be deemed to constitute *Force Majeure*.

15. SEVERABILITY

Each of the provisions of this MOA will be considered as separate terms and conditions and in the event this MOA is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

16. COSTS

Each Party to this MOA will be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

17. ENTIRE AGREEMENT

This MOA constitutes the entire agreement between the parties with regard to the matters dealt with in this MOR and no representations, terms conditions or warranties not contained in the MOA will be binding on the Parties.

18. VARIATION AND CANCELLATION

No agreement varying, adding to, or deleting from or canceling this MOR will be effective unless reduced to writing and signed by or on behalf of the Parties.

19. INDULGENCES

No indulgences granted by the parties may constitute a waiver of any of its rights under this MOA. Accordingly no party may be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

20. GORVENING [sic] LAW

The MOA is to be construed in accordance with the laws prevailing in the Republic of South Africa.

21. CESSION AND ASSIGNEMENT [sic]

The parties will not be entitled to cede and assign their rights and obligations in terms of this Agreement without the prior written consent of the other.

22. TERMINATION

Notwithstanding the provisions of clause 11, either Party has the right to terminate this MOA at any time by giving the other party 30 (thirty) business days written notice.

THUS DONE AND SIGNED IN PRETORIA ON THIS _____ DAY OF _____ 2015



(Signed)

Mr. Ebrahim Mohamed

Commissioner: National Consumer Commission

As witnesses:

1. [Signature]
2. [Signature]

THUS DONE AND SIGNED IN SANDTON ON THIS _____ DAY OF JULY 2015

[Signature]
Ms. Nomvuyiso A. Batyi
Councillor

As witnesses:

1. [Signature]
2. [Signature]