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**GENERAL NOTICE**

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**NOTICE 460 OF 2011****NATIONAL CONSUMER COMMISSION**

I, Mamodupi Mohlala, Commissioner of the National Consumer Commission, hereby publish Report on Expression of Interest (EOI) prepared pursuant to the provisions of section 11 (3) of the Consumer Protection Act, 2008 (Act No 68 of 2008).

Interested persons may submit their written comments or objections in writing for the consideration to appoint Direct Marketing Association (DMA) as a preferred service provider to operate a registry in which any person may register a pre-emptive block against any communication that is intended for the purposes of direct marketing of goods or services.

The deadline for submission of comments or objections is **29 July 2011**, quoting the following reference number (**NCC/EOI/0003**) to: The National Commissioner, National Consumer Commission c/o Ms Prudence Moilwa P O Box 30251 Sunnyside, Pretoria, 0132 or per fax to (012) 394 2544 or email to [pmoilwa@thedti.gov.za](mailto:pmoilwa@thedti.gov.za)

  

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**Ms. M MOHLALA****THE COMMISSIONER: NATIONAL CONSUMER COMMISSION**



N A T I O N A L C O N S U M E R C O M M I S S I O N

## **REPORT ON THE EXPRESSION OF INTEREST (EOI) TO OPERATE A REGISTRY**

The National Consumer Commission (NCC) hereby present a report on the expression of interest in respect of the establishment of a registry in which any person may register a pre-emptive block for the purposes of restricting unwanted direct marketing is hereby published for comment.

### **Background and Overview of the EOI**

The NCC is an entity created in terms of Section 85 of the Consumer Protection Act 2008 (Act 68 of 2008) is in the process of identifying a Service Provider for the operation of an Opt-Out Register required by Section 11 of the Act.

The Act also provide that the Commission may establish ,or recognize as authoritative, a registry in which any person may register a pre-emptive block, either generally or for specific purposes against any communication that is primarily for the purpose of direct marketing.

The Act mandates the Commission to establish a register which is reasonable and has effective means to receive, compile and utilize information relating to direct marketing.

The registry must cover and be accessible to all consumers within the Republic of South Africa and must promote the realization of each consumer's right to privacy.

### Expression of Interest / Profiles Received

The Commission has called for the expression of interest from any interested person or entity to assist it in the establishment of an Opt-Out Register contemplated above and the following entities has submitted their written proposals, namely:

- Direct Marketing Association of South Africa (DMA)
- Stephen Logan Attorneys Incorporated (Stephen Logan Inc)
- Deloitte Consulting (Pty) Ltd (Deloitte )

Entity Name	Entity Profile	Annual Cost Implications
DMA	<ul style="list-style-type: none"> <li>• Section 21 Company</li> <li>• Registration Nr 2005/040417/08</li> <li>• Established in 2005</li> <li>• Operated a Registry since 2006</li> <li>• Technological Framework for operating a registry is <u>already in place</u></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Total Annual costs = <u>R1000,585.00</u></b></li> </ul> <p>These are the current costs which are borne by the DMA members annually for operating and managing the Registry and <b><u>NCC is not required to pay any fee for the service.</u></b></p>

<p><b>Stephen Logan Inc</b></p>	<ul style="list-style-type: none"> <li>• An Incorporated Firm of Attorneys.</li> <li>• Registration Nr2005/029667/21</li> <li>• Established in 2005</li> <li>• Technologist</li> <li>• Database specialist</li> <li>• Technological framework to operate a registry <u>still to be developed</u></li> </ul>	<ul style="list-style-type: none"> <li>• Functional Specification R 150 000.00</li> <li>• Technical specification R 150 000.00</li> <li>• Development of system R 750 000.00.</li> <li>• Ongoing Management fees would be required by the Company managing the system</li> <li>• <b>Total Costs (excluding management fees)</b></li> </ul> <p><b>= R1,050,000.00</b></p>
<p><b>Delloitte</b></p>	<ul style="list-style-type: none"> <li>• A private company</li> <li>• 11 years in operation</li> <li>• A member of Delloitte Touche Tohmatsu Ltd (UK)</li> <li>• Implemented an array of ICT systems &amp; solutions</li> <li>• Operating SETA Projects</li> <li>• Technological framework to operate a registry <u>still to be developed</u></li> </ul>	<p>Delloitte failed to provide a breakdown of costs relating to financial implications of the project of operating a registry</p> <p>Delloitte sought to propose a once off setup fee to develop the database for NCC and thereafter, a monthly fee for hosting and maintenance of the database.</p>

### **Legislative support**

Section 11 (3) of the National Consumer Protection Act, 68 of 2008 provides the Commission with a legislative backing in that it stipulates that it may establish or recognize as authoritative a registry for the purposes of registering a pre-emptive block against any communication that is primarily for the purpose of direct marketing.

Regulation 4 (5) of the Consumer Protection Act Regulations, provides inter alia that; in the event the Commission recognize a registry as authoritative as contemplated in section 11 (3) of the Act, the Commission must enter in to an agreement with the administrator of that registry inter alia to:

- (a) expressly agree and confirm that the Commission, despite anything to the contrary, remains the sole custodian of all information collected and that the administrator has no rights or legitimate expectations whatsoever in respect of the use, disposal, retention or publication of all information whatsoever collected by the administrator of the registry during the period of the agreement, and that the Commission at all times ultimately remains in control of the registry;
- (b) ensure full compliance with the Act, this regulation and all other relevant law;
- (c) ensure, with appropriate sanction, that the administrator of the registry or any of its shareholders, members, affiliates or interested parties may not financially or otherwise in any way whatsoever benefit from administering the registry other than receiving payment from the Commission for rendering that service;
- (d) ensure the implementation of, to the satisfaction of the Commission, screening and validation processes in respect of any person -
  - (i) applying to register as a direct marketer;

- (ii) employed or engaged by the administrator to work with information collected in the registry;
- (e) ensure that appropriate and effective mechanisms, procedures and processes are continuously maintained by the administrator to ensure the availability, safety, retention and physical and moral integrity of all information collected and administered by the administrator, to the satisfaction of the Commission;
- (f) provide the Commission and the Department with full and immediate access to the whole of the registry, and the premises and apparatus in or on which it is retained or backed up;
- (g) provide that the administrator of the registry must immediately upon termination of the agreement, in respect of all information whatsoever collected by the administrator of the registry during the period of the agreement to the Commission, as directed by the Commission, -
  - (i) surrender all information whatsoever that it has collected during the period of the agreement to the Commission in any format directed by the Commission;
  - (ii) fully and in the utmost good faith co-operate with the Commission to ensure the uninterrupted availability of the registry to the general public and to direct marketers;
- (h) provide for adequate controls and oversight mechanisms;
- (i) provide for verifiable service levels and standards;
- (j) provide for appropriate and effective sanctions should applicable law and the agreement in any way not fully be complied with by the administrator of the registry;
- (k) provide for effective mechanisms for the general public to report problems with the administration of the registry to the Commission;
- (l) provide for the way in which the administrator may publish and market the recognition of its registry as authoritative; and provide for any other matter the Commission deems necessary or expedient

## Enquiries

All comments or objections regarding this EOI report should be directed to;

Ms.Prudence Moilwa

Telephone number 012 394 1544

Fax number 012 394 2544

Email address [pmoilwa@thedti.gov.za](mailto:pmoilwa@thedti.gov.za)

## Closing dates

The closing date for submission of the Comments to the EOI is the: **29 July 2011**

## Disclaimer

- (i) No representation or guarantee, express or implied, is or will be given by the NCC, or any of its employees or contractors with respect to the information or opinions contained in this document.
  - (ii) The NCC reserves the right in its sole and absolute discretion, to decide on whether or not to proceed further with this process in the light of comments or objections relating to the expression of interest received and policy considerations.
  - (iii) The comments relating to the expression of interest report will be used solely by the NCC to complete its feasibility study and to decide whether to establish a register or recognize a register operated by a DMA provided no considerable objections are raised.
  - (iv) The Commission reserves the right to amend, modify or withdraw this EOI report at any time without prior notice and without liability to compensate or reimburse any party or person.
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