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GENERAL NOTICE

NOTICE 882 OF 2013**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA****REASONS DOCUMENT IN RESPECT OF TYPE APPROVAL REGULATIONS,
2013 AND LABELLING REGULATIONS, 2013**

The Independent Communications Authority of South Africa (ICASA) has developed the Type Approval Regulations, 2013 and the Labelling Regulations, 2013 in terms of section 4(1) read with section 35 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

In finalising the Type Approval Regulations and Labelling Regulations, the Authority took into consideration the views from stakeholders. The attached reasons document is intended to reflect on major issues raised during the consultation process and to outline related reasons for decisions taken by the Authority.

The Authority hereby publishes the Reasons Document relating to the above mentioned Regulations.

A handwritten signature in black ink, appearing to be 'Dr SS MNCUBE', written over a horizontal line.

Dr SS MNCUBE
CHAIRPERSON

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1. INTRODUCTION

This reasons document is an explanatory note that is intended to discuss significant points in the Regulations. It is not intended to describe or paraphrase the Regulations.

The existing regulations, Enactment of Telecommunication Regulations, Notice No R. 1463 of 1994, pertaining to type approval came into effect under the Telecommunications Act, 1996 (Act No. 103 of 1996), which was later repealed by the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the Act").

Section 95 of the Act stipulates:

(1) Within twenty-four months of the coming into force of this Act, the Authority may, if the Authority considers it necessary, repeal or amend the regulations made under-

- (a) ...*
- (b) The Telecommunications Act;*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) ...*

Which were in force immediately prior to the commencement of this Act.

(2) The regulations referred to in subsection (1) remain in force until they are amended or repealed in terms of this Act.

It was on the above premise that the Enactment of Telecommunication Regulations, Notice No R. 1463 of 1994 and Regulations in Respect of the Labelling of Telecommunications Equipment Regulations, Notice No. R. 289 of 2002 (Gazette No. 23212), continued to be in force despite the repeal of the Telecommunications Act.

The objective of the new Regulations is to develop a framework for equipment certification that is transparent, easily accessible and inspires trust and confidence in equipment sold and used in the Republic.

2. PROCESS FOLLOWED

The Authority published the draft Type Approval and Labelling Regulations in Government Gazette No. 36046 (Notice 1068 of 2012) and Government Gazette No. 36045 (Notice 1067 of 2012) respectively, on the 28th of December 2012 for public comment in terms of section 4(4) of the Act. The closing date for the submissions of the stakeholders' representations, with respect to both drafts, was the 15th of February 2013. The Authority subsequently responded to the public and extended the deadline to the 22nd February 2013.

The Authority received 16 submissions for draft Type Approval Regulations from AISIN Japan, Altech, Cell C, Denso, IBM, MTN, MWEB, Neotel, Pioneer, Sentech, SGS-Korea, Telkom, Tokai Rika, Vodacom, NAB and WAPA.

The Authority received 14 submissions for draft Labelling Regulations from Cell C, Denso, IBM, ITI-USA, Lenovo, MMF Japan, MTN, NAMSA, Neotel, Pioneer, Telkom, Tokai Rika, Vodacom and WAPA.

After considering the above mentioned submissions, the Authority published the revised draft Type Approval and Labelling Regulations for public comment in Government Gazette No. 36381 (Notice 394 of 2013) and Government Gazette No. 36380 (Notice 393 of 2013) respectively, on the 16th of April 2013. The closing date for the submissions of the stakeholders' representations, with respect to both drafts, was 10th of May 2013. The Authority again responded to the public and extended the deadline for Labelling Regulations to the 18th of June 2013.

The Authority received 4 submissions for revised draft Type Approval Regulations from Altech, Telkom, WAPA and NAB.

The Authority received 3 submissions for revised draft Labelling Regulations from Panasonic, Telkom and Dell.

Section 4(6) of the Act stipulates that *"the Authority may conduct public hearings in respect of a draft regulation"*. The aforementioned section grants the Authority discretion on whether to hold public hearings. Taking into account the contents of

the submissions, including recommendations received, the Authority decided not to hold public hearings.

3. GENERAL ISSUES WITH RESPECT TO TYPE APPROVAL REGULATIONS

3.1 SCOPE OF ICASA TYPE APPROVAL

It is submitted that the scope of the equipment that requires Type Approval, in terms of Section 35(1) of the Act, is too broad and vague.

It is imperative that the final Regulations provide absolute clarity with regard to their scope of application so that there is clear appreciation on the part of affected parties as to what equipment is required to be type approved. Furthermore, such clarity is required given the potential sanctions attached to breaches of Type Approval Regulations.

Authority's view

The scope of Type Approval is now limited to "Equipment" as defined in the Type Approval Regulations and by the exemption list which will be published in the Government Gazette in terms of Section 35(2) of the Act.

The definition of "Equipment" is now limited to only two categories namely: "Radio equipment" and "Telecommunications Terminal Equipment" as per the R&TTE¹, EU Directive 1999/5/EC.

¹ Radio and Telecommunications Terminal Equipment

RELATIONSHIP BETWEEN OFFICIAL LIST AND TYPE APPROVAL REGULATIONS

Authority's view

- The Authority recognises that the standards in the Official List apply to equipment beyond the scope of the Type Approval Regulations.
- The standards in the Official List provide a reference for all who sell or use equipment in the Republic.

3.2 ROLES AND RESPONSIBILITIES OF THE PARTY PLACING EQUIPMENT IN THE SOUTH AFRICAN MARKET

It has been argued that there is no clarity as to which party in the supply chain (manufacturer, importer, distributor or any person registered with the Authority for the purpose of Type Approval) is responsible for applying for Type Approval. Furthermore, it is not clear which party will be responsible for ensuring compliance for the Equipment supplied in the market.

Authority's view

- The Authority encourages every party in the supply chain to ensure that the equipment in their possession complies with the Type Approval Regulations and Labelling Regulations before it is supplied in the South African market.
- It is the responsibility of the party that introduces the Equipment to the market to obtain Type Approval for the said Equipment; however, it is the responsibility of each subsequent party in the supply chain who will be supplying that specific Equipment to ensure that they have, in their possession, a copy of the Type Approval certificate; and that the Equipment in their possession bears the ICASA label.

3.3 DISPOSAL OF THE OBSOLETE EQUIPMENT

It was submitted that it is neither realistic nor desirable for a Supplier to take responsibility for the disposal of obsolete equipment in an environmentally responsible manner once the equipment is sold.

Authority's View

- ICASA recognises the important role it has to play in ensuring that its regulations and decisions support the safe disposal of e-waste.
- The Authority has decided not to include provisions for e-waste in the Type Approval Regulations; however, it will be handled in a separate regulatory process.
- The Authority, however still encourages the Supplier, in the interim, to take necessary measures to ensure that obsolete and unused equipment are safely disposed of.

3.4 OFFENCES AND PENALTIES

It was submitted that the maximum fine appeared disproportionately high.

Authority's View

The Authority has included offences and penalties in the Type Approval Regulations in order to enforce compliance. The appropriate fine, which will not exceed R1 000 000, 00 (one million Rands), will be determined by the presiding Judge/Magistrate after having taken into account the relevant facts before him/her

4. SPECIFIC ISSUES WITH RESPECT TO TYPE APPROVAL REGULATIONS

4.1 DEFINITIONS (Regulation 1)

4.1.1 Badge Engineering vs. Untested Variant

It was indicated that there is no difference between Badge Engineering and Untested Variant definitions as they both make mention of change in Equipment model.

Authority's View

Badge Engineering and Untested Variant have been redefined in order to provide clarity in the final regulations.

4.1.2 "Equipment"

It was indicated that the definition of equipment requiring Type Approval in terms of section 35(1) of the Act is too broad and vague; and encompasses equipment that falls outside the scope of Type Approval.

Authority's View

The definition of "Equipment" was revised and is in line with the R&TTE, EU Directive 1999/5/EC, which is within the scope of Type Approval.

4.2 EQUIPMENT REQUIRING TYPE APPROVAL (Regulation 3)

It was indicated the draft Regulations did not use section 35 of the ECA in its entirety as they did not specify equipment that is exempted from Type Approval.

Authority's View

- The Authority will review the exemption list regulation, Notice No. 1655 of 2007 (Government Gazette No. 30472) in consultation with stakeholders.
- The Authority will publish a list of equipment exempted from Type Approval in line with section 35(2)(a) of the Act during the next financial year, 2014/2015.

4.3 SIMPLIFIED TYPE APPROVAL (Regulation 6)

It is submitted that there should be no requirement to apply for Type Approval where the equipment appears on the Authority's Type Approval Register, as a result Simplified Type Approval process should be deleted in its entirety. Equipment appearing on the Authority's Type Approval Register should be considered as Type Approved by default/automatically.

Authority's view

- The Authority has the responsibility to ensure that Equipment in the market conforms to the relevant technical standards, hence the requirement for Type Approval. The purpose of Simplified Type Approval is not to do away with the requirement for Type Approval; rather it seeks to streamline the approval process.
- The Authority will conduct market surveillance on all Type Approved Equipment including that which is to be approved under the Simplified Type Approval process.

4.4 PROVISIONAL TYPE APPROVAL (Regulation 9)

It was indicated that the submission of the reports should only be necessary in the case where the test, trial, demonstration or experiment was successful and the Provisional Type Approval holder wishes to apply for Type Approval.

Authority's View

- The Authority requires the submission of a report on the test, trial, demonstration or experiment conducted irrespective of the outcome, for analytical purposes.
- The required report will not contain sensitive intellectual property of the applicant, but a brief summary of technical results that are relevant to the Authority.

4.5 LICENSING OF THE LINE MAINTENANCE ORGANIZATION (LMO)

It was indicated that the repeal of the Regulations published in terms of the Telecommunication Act, 1996(Act No 103 of 1996), called the “Enactment of Telecommunication Regulations” dated 26 August 1994 in Gazette Notice R.1463, is interpreted to mean that the concept of the “LMO” will also be abrogated.

Authority’s View

- The Authority intent not to continue to issue LMO licences, since the Act does not make provision for licensing thereof.

5. GENERAL ISSUES RELATING TO LABELLING REGULATIONS

The following issues relating to Labelling Regulations were submitted to the Authority for consideration:

- It was suggested that automotive equipment that is not sold individually and directly to the consumer, but is instead sold as part of a vehicle, should be exempted from being labelled. A proposal was made that the label pertaining to the automotive equipment be displayed in the instruction manual of the vehicle instead of being affixed on the equipment itself.
- Clarity was sought on the labelling requirements of systems hosting certified modules, in terms of a physical label and/or an e-label.
- Some equipment, such as Notebook Computers, may have integrated in them, a combination of certified wireless modules, and as such, it becomes extremely difficult to affix a label that contains Type Approval information of each module in the system.

Authority’s View

- The Authority has in terms of Regulation 3(4) of the Labelling Regulations, made provisions for a Supplier to submit a request for exemption from affixing a Label on the equipment that is installed in the vehicles and is not sold directly to the consumers. The Type Approval information of the installed equipment must, however, be displayed in the vehicle’s manual.

- The Authority encourages Suppliers to make use of E-Labeling, in the circumstances where the certified wireless modules are hosted in host Equipment. The host equipment may be used to display Type Approval information for all modules installed.
- The Supplier must affix all the Labels relating to certified modules on the Host Equipment or alternatively display all TA numbers of approved modules on a single Label. The supplier is further encouraged to display the Type Approval information in the product's manual.

In conclusion, the Authority wishes to thank all who made submissions and hopes that these regulations have brought more regulatory certainty and stability.

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