

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Dates: 16, 17 & 18 May 2012

Case number: 59/2011

NEOTEL (PTY) LTD

Applicant

vs

TELKOM SA LIMITED

RESPONDENT

Committee

W Tutani (Chairperson)

N Batyi²

N Ntanjana

Z Ntukwana

T Ramuedsizi

J Tlokana

K Moodaliyar

For the Applicant : Adv J. Wilson instructed by Neotel (Pty) Ltd

For the Respondent : Adv I. Maleka SC together with Adv T. Motau SC on 16 May 2012
instructed by Maluleke Msimang & Associates

INTERIM ORDER

With reference to the above matter which was referred by ICASA to the Complaints and Compliance Committee (the "CCC") in terms of Section 43 (5)(c) of the Electronic Communications Act (the "ECA") for resolution, the CCC concluded as follows:

1. Neotel's request to Telkom and the later referral of the dispute that ensued between the parties was legally valid;

¹ Established in terms of s 17A of the ICASA Act 13 of 2000 as amended

² Member appointed by Council in terms of section 17A(1) of the ICASA Act 13 of 2000

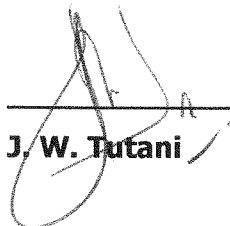
2. Telkom's response to Neotel's request was not adequate and was therefore not in accordance with the prescribed legal provisions; and
3. The CCC concluded that Telkom had contravened Regulation 3 (2) of the Electronic Communications Facilities Leasing Regulations of 2010.

To reach a practical solution, however, the CCC decided that it would be necessary for the Local Loop Unbundling Regulations to be in place as envisaged by Section 44 (3)(m) of the ECA. It was noted that in terms of the Ministerial Policy Directive of 2007, ICASA was given until November 2011 to publish Local Loop Unbundling Regulations. These Regulations are still outstanding.

In light of the above, and ICASA's silence on the progress on the finalisation of the Regulations and the steps undertaken to resolve the dispute when it was initially referred to it by Neotel, the CCC decided that ICASA should develop terms and conditions that are consistent with the provisions of Chapter 8 of the ECA.

ICASA should develop the said terms and conditions within a period of three months from the date of the CCC's decision, i.e. 18 May 2012.

The above interim order was concurred in by the following members of the CCC, namely Councillor N Batyi, Mr Z Ntukwana, Mr J Tlokana, Ms N Ntanjana, Ms K Moodaliyar and Ms T Ramuedzisi.



J. W. Tutani