

25 May 2018

ICASA

Per email: transformation@icasa.org.za

RESPONSE TO QUESTIONS RAISED AT PUBLIC HEARINGS INTO THE DISCUSSION DOCUMENT ON EQUITY OWNERSHIP BY HDGs AND THE APPLICATION OF THE ICT SECTOR CODE

1. ISPA is requested to elaborate on what it regards as the unintended consequences of extending HDG ownership requirements to class licensees and how this would constitute a further barrier to entry for SMMEs. Is this any different from compliance with the general codes?
 - 1.1. ISPA understands that the class licensing categories were introduced to lower the barrier to entry for both those seeking to deploy and operate networks of limited geographic scope and those seeking to provide Internet access and other electronic communications services not requiring numbers allocated from the National Numbering Plan. To a large extent this has worked as is evidenced by the substantial number of class licence registrations received by the Authority on an ongoing basis.
 - 1.2. Subsections 5(3) and 5(5) of the ECA make it clear that the basis for distinguishing between class and individual licences relates to the socio-economic impact of the licensed activity. It is furthermore open to the Authority to prescribe licensed activities which it believes should require a class or individual licence based on the Authority's assessment of the socio-economic impact of such licensed activity. To date the Authority has not exercised this power.
 - 1.3. Imposing an HDG ownership obligation on class licensees will create an immediate challenge for existing licensees who registered for such licences in the absence of such a requirement. Financing for equity deals in the SMME sector is scarce and such deals impose additional transactional and operational costs.
 - 1.4. As set out in its original written submission, the impact of the extension of the HDG requirement to class licensees – if this is an outcome of this process – could be softened through allowing class licensees an alternative through certification under the general codes. This is because compliance with the general codes as offers a far greater degree of flexibility in achieving transformation

objectives. This flexibility extends to concessions based on the size and revenue of an entity and is not inflexibly tied to ownership.

- 1.5. ISPA accordingly submits that there are substantial differences between being required to comply with a bare ownership requirement and being required to comply with the general codes.
 - 1.6. This would have the additional benefit of bring licensees under the ECA in line with requirements imposed across industries.
2. If it is only the general codes that apply how will this affect licensees – will they still be regarded as exempted / excluded?
- 2.1. ISPA's position is that individual licensees should comply with either the HDG ownership requirement or with a level of certification under the general codes as prescribed by the Authority.
 - 2.2. As stated above, ISPA's preference for including the general codes as a basis for furthering transformation is that they offer far greater flexibility to licensees – and particularly SMME licensees where options to meet HDG ownership levels may be constrained – in meeting transformation objectives.
 - 2.3. One aspect of this flexibility relates to turnover: SMME licensees falling below the relevant threshold would – as is the case across industries – be regarded as exempted micro-enterprise.
 - 2.4. ISPA can think of no compelling reason why the same approach should not be applied to holders of Chapter 3 licences under the ECA. If ICASA moves to impose HDG requirements on class licensees' then it should further consider exempting licensees falling below the revenue threshold applied under the general codes from such requirements.
3. Is it any different where a class licensee generates a lot of revenue – is it not necessary to impose HDG requirements due to the nature of the revenue generated?
- 3.1. ISPA refers to its response as set out in paragraph 1.2 above relating to the power afforded to the Authority under section 5 of the ECA to prescribe licensed activities which it believes have a socio-economic impact so as to require individual licensing (high socio-economic impact) or class licensed (low socio-economic impact).

- 3.2. It is accordingly open to the Authority to impose HDG requirements through requiring that a licensee hold individual licensing as a result of the nature of revenue generated (where the Authority identifies this as having a significant socio-economic impact).
- 3.3. ISPA refers further to its response set out in paragraphs 2.3 and 2.4 above.
4. Why does ISPA not support the increase in the minimum legislated requirement?
 - 4.1. As set out in its original submission and amplified above, an equity ownership requirement without reference to the broad-based empowerment structure is an extremely blunt mechanism for attaining transformation. Codes under the Broad-based Black Economic Empowerment Act place a heavy empowerment weighting on ownership but allow for points to be scored through other mechanisms which achieve transformation objectives in a broader manner.
 - 4.2. These other mechanisms – particularly skills transfer, training and procurement – will, ISPA submits, do far more to further transformation and a robust future for the industry than a simplistic equity ownership obligation.
5. ISPA has argued that the application of the Codes and HDG ownership requirements should not be extended to radio frequency spectrum licences and type approval processes but should only apply to service licences issued under Chapter 3 of the ECA. How can this be aligned with the imposition of specific requirements and obligations in respect of high-demand spectrum?
 - 5.1. As regards type approval certification the Authority is aware that a significant percentage of applications for certification come from other jurisdictions. Extending HDG requirements to all entities making such applications would effectively extend this requirement to foreign companies which are unable to comply and should not be required to comply.
 - 5.2. ISPA's view is that a single set of requirements should apply for licensees and that this is achieved through imposing transformation obligations at service licence level. Imposing additional requirements in respect of high demand radio frequency spectrum is in effect an indirect method of increasing the requirement in respect of the bidder's electronic communications network service licence.

- 5.3. In this sense the debate is around the correct location for the obligation: an ITA for high-demand radio frequency spectrum might as well impose a higher HDG threshold on the ECNS licence of the bidder as opposed to imposing it on the radio frequency spectrum licence to be awarded.
- 5.4. ISPA recognises the importance of high demand radio frequency spectrum in the attainment of a range of policy objectives and that higher transformation thresholds may be desirable but urges the Authority in such circumstances to offer bidders an option to meet transformation requirements through certification under the general codes.

Regards

Ellipsis

ISPA Regulatory Advisors

(intended as an electronic signature)