



**REPRESENTATIONS BY THE NATIONAL
ASSOCIATION OF BROADCASTERS ON THE
CONSUMER PROTECTION BILL (BILL 19 OF 2008)**

03 JUNE 2008

BACKGROUND

- 1 The Department of Trade and Industry (the DTI) introduced the Consumer Protection Bill ("the Bill") into Parliament on 05 May 2008. In terms of Government Gazette 31074, published on 19 May 2008, interested persons and institutions are welcome to submit written representations on the Bill to the Secretary of Parliament on or before 03 June 2008.
- 2 The NAB thanks Parliament for the opportunity to submit written representations on the Bill and would like an opportunity to make oral representations to Parliament as well.
- 3 The NAB is the leading representative of South Africa's broadcasting industry. It aims to further the interests of the broadcasting industry in South Africa by contributing to its development. The NAB members include:
 - The three television channels and eighteen radio stations of the public broadcaster, the South African Broadcasting Corporation ("the SABC");
 - All the licensed commercial broadcasters in both radio and television;
 - Both the common carrier and the selective and preferential carrier licensed signal distributors; and
 - Over thirty community radio services and one community television service.

NAB SUPPORTS CONSUMER PROTECTION INITIATIVES

- 4 The NAB and its members wholeheartedly support the objectives of promoting "a fair, accessible and sustainable marketplace for consumer products" and "responsible consumer behaviour".¹

CONSUMER PROTECTION POLICIES MUST BE APPROPRIATE

¹ Notice of introduction of a bill into Parliament: Consumer Protection Bill, Government Gazette Number 31074, Notice Number 647, dated 19 May 2008

- 5 Whilst the NAB supports consumer protection objectives, it believes that good consumer policies are an important tool which suppliers can use to position themselves a cut above their competitors. Suppliers are driven by business considerations to implement consumer policies for the benefit of consumers.
- 6 The NAB believes that self-regulation plays an important role in consumer protection. There are numerous advantages which flow from good consumer policies and practices: businesses gain a competitive advantage by building consumer trust; they gain a good public image; they develop positive customer relationships; and they reduce litigation risks and costs resulting from consumer exploitation. Self-regulation has the advantage of being flexible, cost-effective and more able to keep up with technological developments.
- 7 Legislated consumer protection measures, on the other hand, are often unduly rigid and bureaucratic, and extremely costly for consumers, suppliers and regulatory authorities. Moreover, if they are not appropriately tailored, consumer protection laws can have the effect of unduly stifling industry.
- 8 The NAB accordingly submits that Parliament should enact statutory consumer protection measures only in circumstances where self-regulation is inadequate. Consumer protection legislation must be necessary and appropriate.
- 9 Legislated consumer protection measures should also balance consumer and industry imperatives. Whilst we understand and support the need to protect vulnerable members of society, such measures should not be so rigid, complex or expensive that they will ultimately harm the commercial viability of business to the ultimate detriment of consumers.

ELECTRONIC COMMUNICATIONS INDUSTRY SUBJECT TO EXISTING REGULATORY FRAMEWORK

- 10 Section 192 of the Constitution of the Republic of South Africa (the Constitution) provides for the establishment of an independent authority to regulate broadcasting in the public interest. Section 3 of the Independent Communications Authority of South Africa Act, 2000 ("the ICASA Act"), established the Independent Communications Authority of South Africa ("ICASA"), to regulate broadcasting in the public interest.

11 The chief statute in the electronic communications sector is the Electronic Communications Act, 2005 ("the EC Act"). The EC Act, together with the regulations prescribed thereunder ("the EC Act regime"), is administered and enforced by ICASA.

EC ACT REGIME ALREADY CONTAINS DETAILED CONSUMER PROTECTION PROVISIONS

12 Section 2 of the EC Act sets out the objects of the EC Act, one of which is to promote the interests of consumers with regard to the price, quality and variety of electronic communications services. This is further strengthened by Chapter 12 of the EC Act, which addresses consumer issues.

13 Numerous regulations prescribed by ICASA under the EC Act contain consumer protection measures.²

14 In addition, the EC Act regime already provides for industry codes of conduct, detailed complaints and compliance mechanisms, comprehensive procedures for the resolution of complaints by suppliers and the escalation of complaints to ICASA, and sanctions and penalties.

CONSUMER PROTECTION BILL WILL CREATE DUAL COMPLIANCE SYSTEM IN ELECTRONIC COMMUNICATIONS INDUSTRY

15 It goes without saying that the Bill will create a dual compliance system for suppliers in the electronic communications industry.

16 A duplication of consumer protection regimes invariably translates into a duplication of costs, resources and compliance structures. It also creates confusion and uncertainty.

NAB SUPPORTS RECOGNITION OF REGULATORY AUTHORITIES AND EXEMPTION PROVISION

17 In the light of the numerous disadvantages of duplication, the NAB welcomes the Bill's recognition of regulatory authorities³ and supports the provision that "a

² Amongst others, the EC Act regime deals with unfair discrimination, the right to information and the provision of information on numerous issues, the use of plain language, promotional marketing, advertising and sales practices, fair dealing with consumers, consumers' rights regarding defective goods, and the publication of quality of service data

regulatory authority may apply to the Minister for an industry-wide exemption from one or more provisions of this Act on the grounds that those provisions overlap or duplicate a regulatory scheme administered by that regulatory authority...”.⁴

DOUBLE JEOPARDY WILL PERSIST PENDING OUTCOME OF EXEMPTION APPLICATIONS

18 The NAB is concerned that the ills which the exemption provisions are designed to overcome will be perpetuated until such time as the Minister has made a decision on an exemption application.

19 This will, to a large extent, defeat the purpose of the exemption provisions, as regulated suppliers will be compelled to put in place measures to comply with provisions from which they are likely to be exempt. They will accordingly have to expend the time, money and resources to implement provisions which might not, and should not, apply to them.

20 The NAB accordingly submits that overlapping provisions should not apply to regulated suppliers pending the outcome of an exemption application. These *inter alia* include provisions dealing with industry codes, complaints and compliance provisions, monitoring and inspections.

BILL SHOULD NOT IMPINGE ON JURISDICTION OF REGULATORY AUTHORITIES

21 The NAB is also concerned that the Bill should not impinge on the jurisdiction of regulatory authorities, and particularly that of authorities which are constitutionally mandated to be independent.

22 Whilst we do not believe that there is any intention to do so, we submit that certain provisions of the Bill should be amended to clarify this. In particular;

22.1 Section 82(2) of the Bill should be amended to clarify that it only applies to prescribed industry codes (i.e. to industry codes which are determined, stipulated, required, authorised, permitted or otherwise regulated by a

³ The Bill defines a regulatory authority as an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry. The NAB welcomes the definition of regulatory authority per the Bill

⁴ Section 5(3) of the Bill

regulation made, or notice given, by the Minister in terms of the Consumer Protection Act);

- 22.2 Section 94 of the Bill⁵, which deals with the promotion of legislative reform, should not apply to legislation which falls within the jurisdiction of a regulatory authority. It should apply only to laws of general application.

CONCLUSION

- 23 The NAB reiterates its thanks for the opportunity to submit written representations on the Bill and looks forward to engaging with Parliament at the hearings on the Bill.

⁵ Section 94 of the Bill provides:

"In order to better achieve the purposes of this Act in relation to laws that govern matters affecting consumers, the Commission must—

- (a) identify any national or provincial legislation, or other public regulation, that—
 - (i) affects the welfare of consumers; and
 - (ii) is inconsistent with the purposes of this Act;
- (b) consult with—
 - (i) relevant provincial consumer protection authorities;
 - (ii) organs of state within the national sphere of government; and
 - (iii) consumer protection groups, alternative dispute resolution agents and suppliers, with respect to legislation identified in terms of paragraph (a) with the object of developing proposals for reform of that legislation; and
- (c) report from time to time to the Minister with recommendations for achieving the progressive transformation and reform of law contemplated in this section"