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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG PROVINCIAL DIVISION, PRETORIA)**

Case No: 94782/19

In the matter between

**POSTNET SOUTHERN AFRICA
(PTY) LTD**

Applicant

and

COMPLAINTS AND COMPLIANCE COMMITTEE

First Respondent

**CHAIRPERSON OF THE COMPLAINTS
AND COMPLIANCE COMMITTEE**

Second Respondent

**THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

Third Respondent

**CHAIRPERSON OF THE
INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

Fourth Respondent

**SOUTH AFRICAN POST OFFICE
SOC LIMITED**

Fifth Respondent

**SOUTH AFRICAN EXPRESS
PARCEL ASSOCIATION**

Sixth Respondent

MINISTER OF COMMUNICATIONS

Seventh Respondent

("the main application")

And in the matter between:

**SOUTH AFRICAN EXPRESS
PARCEL ASSOCIATION**

Applicant

and

COMPLAINTS AND COMPLIANCE COMMITTEE

First Respondent

CHAIRPERSON OF THE COMPLAINTS

AND COMPLIANCE COMMITTEE	Second Respondent
THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA	Third Respondent
CHAIRPERSON OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA	Fourth Respondent
SOUTH AFRICAN POST OFFICE SOC LIMITED	Fifth Respondent
POSTNET SOUTHERN AFRICA (PTY) LTD	Sixth Respondent
MINISTER OF COMMUNICATIONS	Seventh Respondent

("the counter-application")

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE that the applicant in the counter-application ("**SAEPA**") has raised the following constitutional issues in the counter-application:

- 1 Whether section 15(1) of the Postal Services Act, 1998 ("**Postal Services Act**") read together with section 22(d)(i), item 1(a) of Schedule 1, item 3 of Schedule 1, and items 1(a) and (b) of Schedule 2 ("**the relevant provisions**"), when properly interpreted in accordance with section 39(2) of the Constitution, prohibit the sixth respondent in the counter application ("**PostNet**") and other members of SAEPA from providing courier services in relation to items that weigh less than one kilogram or that comply with the size dimensions set out in item 1(3) of Schedule 1 ("**the specified items**");

- 2 In the alternative to paragraph 1 above; if section 15(1) of the Postal Services Act, 1998 ("**Postal Services Act**") read together with section 22(d)(i), item 1(a) of Schedule 1, item 3 of Schedule 1, and items 1(a) and (b) of Schedule 2 ("**the relevant provisions**") cannot be interpreted to permit members of SAEPA from providing courier services in relation to the specified items, whether these provisions constitute an unjustifiable limitation of the following rights listed in the Bill of Rights:
 - 2.1 the right to property and the protection against the arbitrary expropriation of property enshrined in section 25 of the Constitution;
 - 2.2 the right to freedom of expression enshrined in section 16(1) of the Constitution; and
 - 2.3 the principle of rationality that informs the rule of law under section 1(c) of the Constitution.
- 3 To the extent that the relevant provisions confer the exclusive right to provide courier services in respect of the specified items upon the fifth respondent in the counter-application ("**SAPO**"), whether these provisions constitute an irrational and unconstitutional limitation of the right to freedom of trade, occupation and trade enshrined in section 22 of the Constitution.
- 4 In the event that the Court upholds the arguments in paragraphs 2 – 3 above, the Court will be requested to:

- 4.1 declare the relevant provisions unconstitutional and invalid, to the extent that they prohibit PostNet and other members of SAEPA from providing courier services in relation to the specified items;
- 4.2 suspend the declaration of invalidity for 24 months from the date of the order to afford Parliament an opportunity to enact remedial legislation;
- 4.3 declare that during the period of suspension, the Postal Services Act shall be read as permitting PostNet and other members of SAEPA to provide courier services in relation to the specified items; and
- 4.4 declare that should Parliament fail to enact remedial legislation in the period of suspension, the reading of the Postal Services Act provided for in paragraph 4.3 above shall become final.

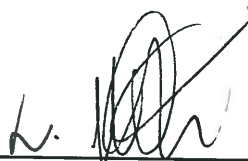
TAKE NOTICE FURTHER THAT any interested parties may with the written consent of all the parties to these proceedings, given not later than 20 days following the publication of this notice, be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties or as amended by the above Honourable Court.

TAKE NOTICE FURTHER THAT any interested party that obtains the written consent contemplated above must, within 5 days of having obtained the written

consent, lodge any such written consent with the registrar and, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

TAKE NOTICE FURTHER THAT if any interested party is unable to obtain the written consent of any party, he or she may, within 5 days of the expiry of the 20 day period referred to above, apply to the above Honourable Court to be admitted as amicus curiae in these proceedings.

Dated at **Randburg** on this the 1st day of **June** 2020



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