**PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION NO: 852**

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**DATE OF REPLY:**

**Mrs. MR Shinn (DA) to ask the Minister of Telecommunications and Postal Services:**

Whether any of the three set-top box suppliers who received orders from the Universal Services Access Agency of South Africa (USAASA) on 6 August 2015 is taking legal action against (i) USAASA and/or (ii) his department for the cessation of their assembly processes; if so, what are (a) the terms of reference of the specified legal actions and (b) the responses of (i) USAASA and (ii) his department?                                NW917E

**REPLY:**

I have been informed by USAASA as follows:

1. The three service providers, namely Leratadima Marketing Solutions, CZ Electronics and Bua Africa have separately declared a dispute for arbitration. So far, only Leratadima Marketing Solutions and CZ Electronics have filed their claims in the Arbitration Foundation of Southern Africa (AFSA). USAASA has not yet received claims from the third service provider.
2. Leratadima Marketing Solutions claim is in two parts. In the first part it seeks an order declaring that USAASA is liable to pay Leratadima Marketing Solutions for variation in the foreign exchange rate, which occurred during the subsistence of the Purchase Order which Leratadima was executing. The second part relates to a consequential loss which it has suffered as a result of suspension of production.

CZ Electronics has also filed its Statement of Claim with AFSA for the exchange rate variance, suspension of manufacturing, outstanding invoices and consequential loss.

1. (i) USAASA is not contractually liable to the service providers to pay for the variance in the exchange rate. It was the responsibility of the service providers to hedge against fluctuations in the exchange rate. This was an express term of the purchase orders which are an integral and constitutive part of the agreements between USAASA and the service providers. The service providers at their own risk failed to hedge themselves against the fluctuation in the exchange rate. USAASA did not commit to pay the service providers for the variance in the exchange rate. USAASA could consider, and only on compassionate and benevolent grounds, partial assistance to the service providers provided it got additional funding from National Treasury for that purpose. National Treasury did not provide USAASA with any additional funding to pay the service providers for the variance in the exchange rate.

In so far as the claim for consequential loss is concerned, the Supply and Delivery Agreements with service providers stipulate that neither party shall be liable for the special or consequential damages suffered by the other party arising out of the agreement howsoever arising.

1. The Broadcasting Digital Migration Programme (“BDM”) falls within the mandate of the Department of Communications and as such, the acting Director-General of the Department of Communications commissioned an investigation into the supply chain management (“SCM”) processes followed by the USAASA in appointing a panel of service providers for the BDM programme. Legal action pertaining to any alleged irregularities flowing from the SCM process must therefore be dealt with by the Department of Communications as the competent department mandated with the BDM programme.