PRESENTATION TO THE PORTFOLIO COMMITTEE ON TELECOMMUNICATIONS AND POSTAL SERVICES ON ELECTRONIC COMMUNICATIONS AMENDMENT BILL, 2018

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Introduction

- The National Integrated ICT Policy White Paper outlines the overarching policy framework for the transformation of South Africa into an inclusive and innovative knowledge and digital society.
- Policy interventions include: reinforcement of competition regulation; addressing supply-side issues and infrastructure roll-out including open access to infrastructure and rapid deployment thereof; and improved management of scarce resources such as spectrum.
- In November 2017, Cabinet approved public consultation on the Electronic Communications Amendment Bill that seeks to give effect to these policy provisions.

Problem statement

Rapid Deployment

- There is a lack of balancing of the rights of ECNS licensees to enter property to deploy critical broadband infrastructure with those of public and private landowners.
- Infrastructure is duplicated which has a negative impact on the environment.
- A lack of coordination exists between large numbers of affected stakeholders across different sectors.
- There is no consistent, simple and coordinated approach among government departments and agencies to process applications for approvals, permits and other assents for deployment and construction of electronic communications infrastructure.
- No dispute resolution mechanism leading the legal disputes between municipalities and ECNS licensees

Problem statement

Spectrum

- The roles and responsibilities between the Minister and ICASA are unclear resulting in institutional inefficiencies.
- There are gaps in the spectrum management regime with regard to the alignment between national universal service objectives and the licensing of frequency spectrum resources, the setting of spectrum fees, spectrum trading, sharing, re-farming and migration.
- The spectrum regime is exclusive which promotes economic growth for a few market players at the expense of broader socio-economic development, and therefore an inequitable assignment of broadband spectrum which is in high demand.

Problem statement

Open Access

- The current infrastructure market, particularly in relation to broadband, is characterised by ineffective competition, infrastructure sharing bottlenecks, duplication of infrastructure, and inefficient use of scarce resources.
- The broadband infrastructure market is concentrated and characterised by a few very strong and vertically integrated players. Infrastructure, whether mobile or fixed, is seen as a competitive advantage rather than as a facility that can be shared in order to stimulate competition.
- The cost to communicate is high as a result of the duplication of infrastructure, which costs are passed on to consumers.

Problem statement

Competition

- Technological advancement requires more nuanced, proactive and informed ex-ante competition regulation. This will necessitate regular reviews of the effectiveness of competition in individual markets and also require ongoing assessment of the relevance of traditional market definitions, taking into account substitution and new services. The interests of users/consumers must be paramount in weighing up options and determining if competition related interventions remain relevant and/or necessary.
- There is a need to strengthen cooperation between ICASA and the Competition Commission to draw on the expertise of the Commission to assist it in defining and reviewing markets.

Objectives of the Bill

To amend the ECA to provide for –

- transformation of the sector; lowering of cost to communicate;
- Service-based competition through a wireless wholesale open access network service;
- Rapid network deployment;
- Assignment of high demand spectrum on open access principles;
- An open access framework;
- Regulation of international roaming including SADC roaming;
- Regular market definition and review to ensure effective competition;
- Improved quality of services including for persons with disabilities;
- Consumer protection; and
- Enhanced co-operation between the National Consumer Commission and ICASA as well as the Competition Commission and ICASA.

Key Amendments: Rapid Deployment

- A governance framework is provided including a Rapid Deployment Steering Committee and a Rapid Deployment National Co-ordinating Centre (RDNCC);
- The role of ICASA to make regulations and resolve disputes;
- The rights and obligations of ECNS licensees when deploying networks;
- To expedite all applications and related processes for approval, authorisation, licence, permission or exemption and processes relating to any consultation and participation required by the relevant laws;
- Access to buildings and high sites;
- Regulations on processes and procedures for single trenching and that ECNS licensees may not deploy networks or facilities in adequately served premises.

Key Amendments: Rapid Deployment

- In response to public submissions, certain obligations that may interfere with the administration of an Act by another Minister such as the National Building Regulations and Building Standards Act, 1977, have been omitted. Matters that require cooperation will rather be dealt with in a MoU signed between relevant Departments and entities.

- The role of the RDNCC has been amended to clarify that it must provide support, promote and encourage rapid deployment of infrastructure between licensees, municipalities and relevant authorities.

Key Amendments: Spectrum

- The role of the Minister to do spectrum planning and allocation and to develop the National Radio Frequency Plan as compared to the role of ICASA to administer and manage the assignment and licensing of spectrum is clarified; provision is made for the 'use it or lose it' principle, spectrum trading, sharing and re-farming.

- In response to public submissions, the requirement that radio frequency spectrum licences are renewable annually, has been removed. The Bill was further amended to accommodate the submission that in addition to non-high demand spectrum, high demand spectrum must be tradeable, subject to approval.

Key Amendments: Spectrum

- The Bill enables the simultaneous assignment of unassigned high demand spectrum to a wholesale Wireless Open Access Network Service licensee and to other radio frequency spectrum licensees. The amendment is in response to submissions that the economy cannot afford to wait for the wireless open access network service to be functional first as initially required, before high demand spectrum is assigned to other radio frequency spectrum licensees.

Key Amendments: Spectrum

- Uncertainty about the return of spectrum has been addressed by clarifying in the Bill that currently assigned high demand spectrum do not have to be returned. A process is, however, created to determine the conditions that must apply to such spectrum before license renewal. In this regard, ICASA must conduct an inquiry on currently assigned high demand spectrum, at least 24 months before the expiry of the relevant radio frequency spectrum licences in 2028, and make recommendations to the Minister on the terms and conditions that may apply to such licences as a condition for the renewal thereof, to achieve policy objectives.

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Key Amendments: International roaming

- A new Chapter 7A is inserted to make provision for international roaming regulation with specific emphasis on SADC roaming.
- It places an obligation on the Authority to prescribe regulations taking into consideration policy directions issued by the Minister and SADC Roaming decisions.
- The regulations must be conditional on reciprocal terms and conditions being imposed on electronic communications service providers of another country by such country or its national regulatory authority.
- The section enables the Authority to obtain any information required for international roaming regulation from electronic communications service licensees and that the Authority may engage national regulatory authorities of any other country in order to promote international roaming.

Key Amendments: Open Access

- The proposed section 19A seeks to enable the licensing of a Wireless Open Access Network (WOAN) Service licensee to provide wholesale electronic communications network services on open access principles. The Bill makes it clear that the WOAN will not be a public entity to address concerns raised by National Treasury. Amendments proposed by the Competition Commission to ensure that the WOAN does not become a monopoly and to address competition-related concerns, have been made. The submission made by ICASA that it is their role to determine the terms and conditions as well as incentives that must apply to the WOAN, has been incorporated in the Bill.

Key Amendments: Open Access

- Chapter 8 provides an open access framework for the sharing of networks and facilities amongst licensees. The amendment seeks to oblige ECNS licensees to provide wholesale open access upon request, to enter into wholesale open access agreements, and to provide wholesale open access on terms that are effective, transparent and non-discriminatory.

- In response to public submissions, the Bill was amended to provide that open access does not apply in case of technical inability. The Bill now also excludes broadcasting signal distributors from the open access requirements, since different legal requirements already exist.

Key Amendments: Competition

Section 67 is amended to ensure that ICASA must define all the relevant markets within 12 months of the coming into operation of the Act. The section requires that the Authority sets out a schedule in terms of which it will conduct market reviews of the defined markets and also requires that such market definitions be reviewed every three years to address technological advancement. In response to submissions from ICASA and the Competition Commission, provisions that deal with cooperation between these authorities have been reworded to avoid infringing on their statutory powers.

THANK YOU