

TELKOM SA LIMITED

**Submission by Telkom SA Limited (Telkom) on the
Second-Hand Goods Bill**

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Introduction

Telkom welcomes the opportunity afforded to it by the Honourable Minister of Safety and Security to provide comments on the Second Hands Goods Bill [B 2 – 2008].

Telkom would also welcome an opportunity to make oral submission on its comments at any public hearings that the Honourable Minister may hold in this respect.

Telkom submission is divided into the following sections:

- General Comments
- Specific comments
- Conclusion

General comments

The object of the Bill is to regulate the business of dealers in second hand goods and pawnbrokers, in order to limit trade in stolen goods and to promote ethical standards in the second hand goods trade.

Telkom supports the Bill, believing that will most certainly contribute to address the economic damage caused by, in particular, the theft of copper cables and mobile phones. Telkom believes that Section 23(1)(c) of the Act will also be applicable to other cables that have been altered by burning or being stripped of identifying marks or sheathing when offered to the dealers.

While communications equipment is explicitly brought under the ambit of the Bill, the definition thereof limits it to wireless equipment. Telkom respectfully submits that this approach is too limiting. Telkom network and services, for example, are seriously impaired not only by the theft of copper cables, but also of solar panels, batteries, and the like. Telkom, therefore, proposes an expanded definition of communications equipment.

Telkom is of the view that the seller's details that are submitted to the dealers must be put on a central data base for inspection by the police. This might serve as a major deterrent in case of non-compliance by the dealers.

Telkom is also of the view that the disposal of such stolen goods by the dealers should be adequately addressed and be more regulated and also be addressed with the Department of Trade and Industry especially regarding the exporting of ferrous and non-ferrous metals.

In Telkom's view the Bill fails to address appropriately situations where stolen property is sold to a second hand goods dealer in circumstances where the dealer could have ascertained or ought to have known that the property was stolen. Telkom proposes that the second hand goods dealer must be required to pay a penalty where it is clear that he did not exercise due care and diligence in such circumstances.

The Bill makes reference to the fines in Sections 6(3), 8(6), (9), (11), (16) (22), (23) (24), and (26) but at no stage is a monetary value placed on this fine. Telkom suggests that this be rectified. There is also no indication of the different or specific maximum fines that may be imposed.

The Bill does not specify the general hours of business or when dealers may conduct the types of business referred to in the Bill. Telkom believes that an omission of the hours could prove problematic in respect of the illegal activities taking place after hours.

Specific comments

Ad par: Definitions

Definition of communication equipment

Telkom recommends that this the term "communication" be replaced with the term "electronic communications" in line with the terminology widely used in the Electronic Communications Act, No. 36 of 2005. In any event, Telkom recommends that the definition be expanded to cover more than just wireless communications, and proposes the following text:

"[electronic] communication[s] equipment" means any equipment which is or can be used for, or in connection with, [electronic] communications, including without limitation any wireless mobile communication equipment with IMEI capable of using SIM, including cellular telephones, telephones and two-way radios, and includes accessories of such equipment;

Definition of a dealer

The definition does not necessarily make provision for those instances where an individual or business deals with second hand goods on a once off basis.

Definition of a person

Telkom respectfully submits that the definition is not very helpful, and would like to propose the more detailed definition below:

"person" means both natural persons and juristic persons including, without limitation, companies, close corporations, co-operatives, trusts, business trusts, partnerships, consortia, sole traders ,and similar other entities;

Definition of premises

The definition should be expanded to include any place of storage of second hand goods or any other premises from which the business of second hand goods dealer is carried out, whether electronically or otherwise.

Definition of scrap metal dealer

The definition must include an agent or employee employed by a scrap metal dealer. This is because the employees or agents of scrap metal might in the course of their business wilfully commit any acts or commit any omission that may constitute an offence under the Act.

Ad par: Application for registration (Section 4)

Section 4(4) makes reference to a fine. A fine is however, not described and or quantified and therefore might not have the relevant effect. Telkom suggests that this fine be quantified.

Ad par: Information on application by natural person (Section 5)

It is suggested that this heading be changed to the following **"Information on application for registration by natural person"**.

Telkom suggests that among the information to be provide by the natural person be information in respect of the "classes of goods" that will be traded, and which will appear in the certificate of registration issued in terms of Section 8. Section 5(3) makes provision for a fine. Please see comment under Section 4 (4).

Ad par: Information on application by a person other than a natural person (Section 6)

Telkom suggests that this heading be changed to read as follows **"Information on application for registration by person other than natural person"**.

Telkom notes that there could be a problem in respect of sole traders (sole proprietors). Presumably they would have to provide the same information as is required of a natural person.

Section 6(3) makes again provision for a fine. Please see previous comment under S4 (4).

Ad par: Refusal to register (Section 7)

Section 7(1) makes reference to “An application”. Telkom suggests that the word “registration” be added immediately before application.

Ad par: Effect of Registration (Section 8)

It is suggested that S8 (1) must also make provision for the date of registration to ensure clarity in this regard.

Telkom recommends that Section 8(6) be amended because no person other than the Commissioner is capable of not complying with Section 8(1). The clause should therefore read as follows:

A person who fails to comply with the prescriptions stipulated in terms of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or both to a fine and such imprisonment.

Ad par: Termination and cancellation of registration (Section 11)

Section 11(3) (c) contemplates the cancellation of registration where a dealer is convicted of an offence of which dishonesty is an element. Telkom recommends that the provision should be extended to apply where a director, a partner, or a trustee, as may be applicable, has been convicted under this Act or the preceding ones for an offence involving dishonesty.

Section 11(7) also makes provision for a fine. See previous comments under Section 4(4)

Ad par: Functions of accredited Dealers Association (Section 17)

Section 17(c) makes reference to “Inspect Business Premises of its members”. It is not quite clear what the aim of these inspections is and the intention of the legislature regarding these inspections. More information need to be provided and a process of reporting should be considered.

Ad par: Records by dealers (Section 22)

Section 22(2) makes reference to the fields that must be included in the register that are kept by the dealer. However, it is unclear whose information must be provided in instances where goods are obtained from a business entity.

In terms of Section 22(5) a dealer must obtain and keep a copy of the identity document contemplated in subsection 4. However, there is no indication that the transaction must be linked to this specific document. Telkom therefore suggests that the dealer must

implement a recording system whereby the copy of the identity document is directly referenced to the transaction wherein it is obtained, as recorded in terms of Section 22(2).

Reference is also made to a fine in Section 22(9). See previous comment under Section 4(4).

Ad par: False information and stolen goods (Section 23)

Section 23 (1)-(3) provides that the dealer must report any activity in respect of (a) –(c) to the police. However, there is no distinct or clearly stated obligation or prohibition that the dealer may not accept, receive or buy material under such circumstances.

In terms of Section 23(2) the SAPS are obliged to make an occurrence book entry and provide the dealer with the reference number. Telkom notes that the section does not make provision for the investigation of the suspected false documentation, suspected stolen goods as well as the circumstances referred to in Section 23(1)(c).

Ad par: Obligation to Register as Recycler (Section 26)

Section 26(2) Insert the word “As a recycler” after the word registration in the first sentence.

Section 26(5) makes reference to a fine. See previous comment under Section 4(4).

Ad par: Routine Inspections (Section 29)

Telkom is of the view that powers of the police may be limited when conducting routine inspections. Section 29(1) must stipulate that it is not necessary for the police to obtain a warrant during routine inspections especially in cases where there is reasonable suspicion that a crime might be committed.

Entry, search, seizure and seal-off (Section 30)

In Telkom's view the police should also be given the powers to summon persons loitering suspiciously around the second hand goods dealers' premises for questioning.

Telkom recommends that the following clauses be added:

Any Police Officer having reason to believe that a person in or loitering about the premises of any second hand goods dealer under suspicious circumstances has possession or is the custodian or is in control of any stolen property, may summon that person and require him to produce any property which he or she has with him.

Where any property is produced by any person under the above clause and if the Police Officer has reason to suspect that property to be stolen, the Police Officer may take or cause the person and the property to be taken to a police station to be dealt with according to the law.

Conclusion

Telkom notes that the Regulation of the second hand goods industry will most certainly contribute to creating and enhancing deterrence in illegal dealings in copper. Telkom will however, like to emphasise that the above can appropriately be achieved if the SAPS, the public as well as the Dealers Associations work hand in hand to combat the illegal dealings in second hand goods especially with regard to cable theft.