



BLACK BUSINESS COUNCIL

**ECA BILL PRESENTATION
2018**

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INTRODUCTION

- The Black Business Council (BBC) is the over-arching confederation that represents black professional, business associations and chambers. The primary purpose of the BBC is to lobby government on policy related matters and to play an advocacy role where policies are in place in order to accelerate the participation of black business in the mainstream economy.



OVERALL POINTS SUPPORTED BY THE BBC WITHIN THE ECA BILL

Positives arising from the ECA Bill

The BBC appreciates the following points contained within the ECA Bill:

- New regulatory framework that ensures the rationalisation of the regulators to be in line with their more precise mandate. This also assist in the curbing of regulatory capture by the entrenched players in the sector.
- The open access principles that now enables the entry of black SMMEs into the sector which increases competition in the sector
- The expansion of the focus of the objects of the Act to include issues of access to scarce resources such as radio frequency spectrum allocation, competition, open access, etc. This gives the regulators more teeth to enforce the robust transformation within the sector.
- The focus on service based competition rather than infrastructure helps to level the competitive playing field especially for new entrants and SMMEs.
- The way that infrastructure is dealt with by clarifying the concepts of radio frequency spectrum sharing, trading and refarming.



1. BLACK OWNERSHIP WITHIN THE SECTOR

The BBC supports the policy of radical economic transformation.

- This means that black people must participate in the entire value chain of the sector. The meaningful ownership means active participation in the strategic and the day to day running of enterprises in the sector by black people and black women. The ICT Sector Code currently governs the transformation requirement of companies operating in the ICT sector and has set a 30% black-ownership target. We believe that this target is not going to result in the meaningful participation of black people and women in the ICT sector.

We propose the following:

- The minimum ownership requirement for enterprises operating within the entire value chain of the ICT sector be 51% black owned. This target must be used before any licence, procurement or concession within the ICT sector is granted. (See 1.1 black ownership requirement application);
- There must also be special focus on black women;
- The composition of the 51% black ownership must follow that the majority must be held by strategic black entrepreneurs (See 1.2 black ownership breakdown minimums)



2. COMPLIANCE WITH UNIVERSAL SERVICE OBLIGATIONS

BBC Proposal on USOs

- The mandate of the fund (USAF) should be changed to focus on the development of black-owned companies and SMMEs to drive the universal access obligations of the different players within the sector. The sources of funds shall be from:
 - the licensing fees of the operators within the sector,
 - the fines for not meeting the USO obligations and
 - Grants from government
- The application of the sourced funds shall be ring-fenced within the sector. The precedent set for this arrangement stems from the construction sector where the fines arising from collusion between the construction companies in the build-up to the 2010 World Cup was ring-fenced into a fund for the development of the SMMEs and for transformation of the sector
- Transparency is critical for the accountability of how these funds are used to meet the policy needs of government. The BBC would like the regulations to detail the transparency requirements in detail, and ensure that the proposed ECA will anchor and give teeth to such transparency requirement.
- Enforcement of the universal service obligations is a critical part of achieving the objects of the ECA and driving radical economic transformation in South Africa. It is therefore critical to provide the regulators with the following
 - clarity of determining and quantifying these obligations,
 - Monitoring the implementation of these obligations by the licence holders
 - Mechanisms of enforcing deviations from the licencing conditions
 - The levying of significant fines and penalties that relate to the non-performance, violation or not meeting targets relating to the USOs



3. FUNDING ISSUES WITHIN THE SECTOR

The capital-intense nature of the ICT sector and the lack of funding for new entrants, black-owned companies and SMMEs leaves them relegated to providing support services but not the services within the core value chain of the sector.

- The BBC welcomes the ECA Bill's open access principles as they would alleviate the hoarding of infrastructure by the existing dominant players. This then ensures that supply of services and infrastructure is not artificially manipulated to entrench the existing players.
- The ECA must be amended to give rise to a fund focusing on the facilitation of entry for new entrants, 51% black-owned companies and SMMEs, in the same way that the Universal Service Obligations were housed in a fund to expand universal access.

The focus of the fund would include the following:

- Funding of infrastructure in the areas where there is none, and where no duplication of infrastructure is likely to occur.
- Subsidization of the cost of services provided by 51% black-owned companies in order to widen access to people in areas where they may be underserved and where they may not have the economic ability to pay for services.
- Funding of skills development, both soft and core, for the black entrepreneurs in order to participate across the ICT sector value chain
- Provide a collective vehicle for licensees to contribute to their enterprise and supplier development funds for black-owned companies in the ICT sector
- Provide a link towards the establishment of Black Industrialists within the value of the ICT sector.



ISSUES THAT REQUIRE CLARITY

Issues requiring Clarity	Analysis of the above scenario
SMMEs	<ul style="list-style-type: none">• The definition of SMMEs is seemingly not found in the Bill nor the ICT Sector Code. This may make it difficult to determine how the objectives of the ECA are measured, monitored and achieved.• The ICT Sector Code also does not provide SMME thresholds to be applied to SMMEs, which therefore means that provides for<ul style="list-style-type: none">• Exempted Micro-Enterprises that have less than R10 million revenue;• Qualifying Small Enterprises that have less than R50 million revenue and greater than R10 million revenue
Powers of the Authority	<ul style="list-style-type: none">• One of the objectives of the ECA is to enforce transformation within the sector. The challenge in the past was the lack of teeth from regulators in enforcing transformation.• The power of the Authority to enforce the ICT Sector Code implementation versus the BBBEE ICT Sector Council role needs to be clarified in order to avoid duplication of powers.• The BBC's view is that the Authority should have power that supersedes the BBBEE ICT Sector Council if there is confusion on the application of transformation provision or initiatives.
Alignment to other legislations	<ul style="list-style-type: none">• The provisions of the ECA bill will have consequences on other existing legislation under the control of the department in light of the other amendment bills in the pipeline such as the Digital Development Fund, the SMME Strategy, etc. How are the principles going to be aligned in order to avoid inconsistencies require an engagement



CONCLUSIONS

- The BBC appreciates the opportunity to engage with the Department of Telecommunications and Postal Services and respond to the issues that affect the transformation of the ICT Sector.



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THANK YOU