Overview: Electronic Communications Amendment Bill 2026

Introduction

The Competition Commission's Data Services Market Inquiry report, published on 2 December 2019, made recommendations to the Department of Communications and Digital Technologies (**DCDT**) on the amendment of the Electronic Communications Act, 2005 ("**the ECA**").

The Electronic Communications Amendment Bill 2023 (**ECAB 2023**) – drafted to address a number of the recommendations made – was published for comment in June 2023. After further consideration, the DCDT secured Cabinet approval for the Electronic Communications Amendment Bill 2026 (ECAB 2026) in April 2026, and this Bill will be introduced to Parliament for debate in May 2026.

Changes from the ECAB 2023

The most notable change is the removal of the proposal to bring pure electronic communications facilities service providers such as tower companies or data centres within the ECA licensing framework as individual or class electronic communications facilities service (ECFS) licensees.

New category of licence exemption – not for profit ECNS

Currently it is possible to register with ICASA for a licence exemption for the provision of electronic communications services (ECS) on a non-profit basis. The ECAB 2026 extends this approach to electronic communications network services (ECNS) provided on a non-profit basis.

Community networks

A new definition is to be inserted recognising community networks. These networks are defined as ECNS provided by an entity such as a non-profit organisation or non-profit company.

Standard by-laws to promote rapid deployment

Recognition is given to the role of the Minister responsible for local government in creating a standard by-law under the Municipal Systems Act that facilitates rapid deployment of digital infrastructure by providing for:

- a uniform wayleave process for electronic communications networks and facilities;
- terms and conditions for sharing of appropriate municipal property and infrastructure (such as high sites, poles, ducts) with and between ECNS licensees upon request;
- municipalities to take the deployment of digital infrastructure into consideration when developing Integrated Development Plans (IDPs);
- cost-base fees; and
- other measures to promote rapid deployment of digital infrastructure and uniformity of wayleave processes and tariffs.

Note that this standard by-law was gazetted by the COGTA Minister on 23 February 2023. The ECAB requires that this be reviewed every 5 years.

Spectrum

The ECAB 2026 proposes amendments to promote efficient use of spectrum.

Use it or share it

ICASA is empowered to apply a "use-it-or-share-it" mechanism that will allow it to:

- amend a spectrum licence where the holder (**primary licensee**) fails to use the assigned spectrum adequately for a period of two years in any under-serviced area, after following the required licence amendment process; and
- invite applications from third parties to share unused spectrum (as a **secondary licensee**) in the relevant under-serviced area until such time and on such conditions as may be determined by ICASA.

ICASA would be able to apply this mechanism to spectrum licences issued after December 2021. Where spectrum assigned remains unused in under-serviced areas two years after the commencement date of the Electronic Communications Amendment Act 2026 or two years after the issue of the licence, whichever is later, it may be subject to use-it-or-share-it.

Unused spectrum may be identified by ICASA through a usage monitoring framework it must develop or following an investigation based on a report from the public. Where a primary licensee subsequently confirms plans to utilise the unused spectrum it must provide 12 months' notice to ICASA.

More detail on this process will be contained in regulations to be developed by ICASA which must set out processes and procedures applicable to the 'use it or share it' principle, including how frequency will be coordinated and interference managed, and the process for entering into a spectrum sharing agreement.

Under the Bill ICASA is required to prioritise the assignment of unused spectrum to community networks and SMMEs. Secondary licensees will not be required to pay annual spectrum licence fees for the first 12 months of sharing.

Facilities leasing

Extensive changes are proposed to Chapter 8 of the ECA, which regulates the leasing of electronic communications facilities with the intention of promoting competition.

The Bill proposes to remove the current reasonability test and replace it with principles of access to be prescribed by ICASA: the question will no longer be whether the facilities lease is reasonable, but whether the lease is aligned with the principles of access. Facilities leasing agreements will also need to be based on these principles.

Wholesale pricing rules or standards

ICASA is required to prescribe wholesale pricing rules or standards applicable to:

- different types of electronic communications facilities including essential facilities,
- roaming and
- mobile virtual network operator services.

These wholesale pricing rules/standards must be:

- fair and reasonable;
- non-discriminatory (unless there are pro-competitive or efficiency justifications that exist and it does not prevent or distort competition);
- cost-oriented or reflect the benefits of sharing costs amongst users sharing the facilities; and
- for essential facilities, reflective of cost plus a reasonable return.

Essential facilities

The concept of essential facilities has been part of the ECA since 2006, but none of the provisions have been translated into regulation. The Bill proposes a refresh.

ICASA is given 12 months in which to prescribe a list of essential facilities, which is to be reviewed every three years.

An ECNS licensee is obliged to lease prescribed essential facilities upon request and to agree on non-discriminatory terms and conditions of a facilities leasing agreement within 60 days of receiving the request (failing which ICASA may impose terms within a further 60 days after receiving written notification of the lack of agreement).

Competition matters

The process for ICASA to make pro-competitive assessments of and interventions in markets making up licensed activities has been substantially simplified, while the scope for co-operation between ICASA and the Competition Commission has been broadened and strengthened.

Market inquiries

Under the ECAB 2026 it will be much easier for ICASA to investigate levels of competition in a market: the threshold is simply whether ICASA has reason to believe that any feature or combination of features of any market or market segment impedes, distorts or restricts competition or is likely to have this result.

Where ICASA makes this determination of its own volition or following receipt of a complaint, it is simply required to follow its standard inquiry process under section 4B of the ICASA Act. It must specifically:

- determine which licensee(s) are benefiting or contributing to the competitive distortion in a market; and
- determine the appropriate regulatory response to mitigate adverse effects on competition (including whether another government department or entity is better placed to design and enforce this response and making recommendations in this regard).

The proposed process is far closer to that followed by the Competition Commission. When doing an inquiry or assessment, ICASA may consider findings by the Competition Commission, other relevant regulators and the Courts.

Relationship with the Competition Commission

ICASA and the Competition Commission may enforce each other's findings, in order to promote and enhance competition. Once a finding is made by the Commission, ICASA need not conduct an inquiry before it implements pro-competitive remedies which it is better placed to oversee. Further ICASA and the Commission are required to conclude a concurrent jurisdiction agreement covering sharing of information and the management of their working relationship.

Roaming and MVNOs

A new chapter 7A creates a framework for regulation of roaming and mobile virtual network operator (MVNO) services, proposing to insert three new sections:

- Section 42A: Obligation to provide roaming services
- Section 42B: Mobile virtual network operators services
- Section 42C: International roaming regulations

The approach to national roaming and MVNO services is broadly similar and includes an obligation on ECNS licensees that have 90% or more national population coverage using IMT spectrum (defined as **access providers**) to provide national roaming and MVNO services upon request. Time periods are provided for the conclusion of agreements and resolution of disputes and ICASA is specifically empowered to request information from access providers on the "underlying cost structure of the price of a service" where this is in dispute.

ICASA will have 18 months (with an allowed 6 month extension if required) to develop a regulatory frameworks for national roaming and MVNOs which cover:

- the definition of "national roaming services" and the term "mobile virtual network operator" (taking into account different mobile virtual network business models);
- the requirement for a reference offer containing model terms and conditions;
- the minimum quality, performance and level of service to be provided;
- the mobile technology generations to which access is mandated;
- wholesale rates rules and standards, as contemplated in section 47;
- contractual dispute-resolution procedures; and
- the parties subject to this obligation (i.e. determining who is an access provider).

ICASA is also required to prescribe international roaming regulations for the SADC region and other countries or regions. The intention is to enable a framework for reciprocal roaming, where service providers in participating countries are required to provide services on reciprocal terms and conditions, including tariffs. ICASA is given powers to promote reciprocal roaming arrangements.

Conclusion

The ECAB was introduced to Parliament in April 2026 and briefed to the Portfolio Committee on 15 May 2026. Public consultation – written and oral – are expected to take place over the balance of 2026.