Electronic Communications Amendment Bill (Competition Matters)

Presentation to the PCCDT

26 May 2026

INTRODUCTION

- The National Integrated ICT Policy White Paper, 2016 outlined the overarching policy framework for the transformation of South Africa into an inclusive and innovative digital and knowledge society. The White Paper emphasises the need to address the high cost to communicate that inhibits the ubiquitous utilisation of ICTs and therefore universal and meaningful connectivity.

- President Cyril Ramaphosa’s State of the Nation Address (SONA) in 2024 indicated that, up until 2022, only 79% of households in South Africa had access to the internet. In the following SONA the President committed to investing in digital public infrastructure to allow South Africans access to Government services anytime and anywhere. This, however, can only be realised through affordable access to data.

PROBLEM STATEMENT

- Due to persistent concerns expressed by the public about the high level of data prices and the importance of data affordability for the South African economy and consumers, the Competition Commission was requested to initiate a Data Services Market Inquiry to understand what factors or features of the market(s) and value chain may cause or lead to high prices for data services, and to make recommendations that would result in lower prices for data services.

- The Commission issued a report in December 2019 and made recommendations that include legislative changes to address underlying market factors and concerns, aimed at ultimately increasing the level of competition in the market and driving down prices. The need to address the cost of data is echoed by the Independent Communications Authority of South Africa (ICASA) in its 2024/2025 Annual Report in which its Impact Statement reflected "Access for all South Africans to a variety of affordable & reliable communication services for inclusive economic growth".

PROBLEM STATEMENT (CONT.)

The Bill is aligned with the strategic priorities under the MTDP

Drive Inclusive Growth and Job Creation:

- It is intended to create increased employment opportunities since the reforms strengthen the rights of access seekers, which are the smaller licensees, potential licensees and new entrants, MVNOs, SMMEs, community networks and wireless internet service providers. It encourages business growth and creates regulatory mechanisms to enable access to unused spectrum, essential facilities as well as roaming and MVNO capacity resale at reasonable, wholesale rates.
- It is further intended to create an enabling environment for investment with a key focus on reducing regulatory barriers to entry to improve competition. If data prices, for example, are reduced then small enterprises, entrepreneurs and cooperatives, especially in townships and villages, will be able to thrive.
- Through these interventions the intention is to refine and augment the tools which the Authority has and provide the Authority with additional tools to address competitive failures and to reduce the cost to communicate. This in turn stimulates the ability of small enterprises, entrepreneurs and cooperatives, especially in townships and villages.

PROBLEM STATEMENT (CONT.)

Reduce poverty and tackle the high cost of living:

Small enterprises and other access seekers will be able to connect people in under-serviced areas not viewed as lucrative enough for large operators. Unused spectrum being prioritised for SMMEs and community networks is but one such example of this - where connectivity enabled by spectrum (albeit on a temporary basis) improves citizens' access to broadband. In addition, all other outcomes, like access to affordable healthcare, improved education and skills, social cohesion and nation-building, depend on broadband access with those in under-serviced areas most affected by the absence of reliable, affordable data services.

Build a Capable, Ethical and Developmental State:

In addition to improving broadband availability and access, the amendments are intended to improve service delivery by local Government in the form of wayleaves to access land and deploy networks required for digital transformation of public services. The provisions on the rapid deployment of networks will also simplify and fast-track planning and regulatory processes.

OBJECTIVES OF THE BILL

- To amend the Electronic Communications Act, 2005, so as to enable the Minister responsible for local government to make a national standard by-law on rapid deployment; to enable the ‘use it or share it’ principle for spectrum; to regulate roaming and mobile virtual network operator services; to improve the facilities-leasing framework and provide for wholesale pricing rules and standards; to provide for improved competition regulation; and to provide for matters connected therewith.

- The purpose of the proposed legislative changes is to increase the level of competition in the market, drive down prices and to provide ICASA with regulatory tools and flexibility to regulate competition issues.

KEY AMENDMENTS

The key amendments in the EC Amendment Bill include the following:

Standard draft by-law

A new section 21A is inserted to provide for a national standard draft by-law that is intended to mitigate and remove barriers to rapid deployment which include lack of a uniform wayleave process for electronic communications networks and facilities, unreasonable costs for wayleaves, and limited access to municipal property and infrastructure including electricity poles, high sites and ducts which could facilitate more efficient and cost-effective service delivery. Though the standard draft by-law has already been made by the Minister responsible for local government, regular review and further strengthening is required.

KEY AMENDMENTS (CONT.)

Radio frequency spectrum: Effective use and sharing

- Section 31 of the principal Act is amended to enable the Authority to amend any radio frequency spectrum licence when the assigned radio frequency spectrum remains unused for a certain period, by requiring or enabling spectrum sharing in the relevant area until such time and on such conditions as may be determined by the Authority, referred to as the 'use it or share it' principle.

- The Authority must prioritise the assignment of unused spectrum to community networks and SMMEs.

- The amendment seeks to ensure that nationally assigned scarce spectrum is effectively utilised in all geographic areas, either by a licensee or a community network or SMME where the licensee is not making full use of the spectrum.

KEY AMENDMENTS (CONT.)

Roaming and Mobile Virtual Network Operator Services

- A new chapter is inserted to provide for the regulation of roaming and MVNO services and that operators with International Mobile Telecommunications radio frequency spectrum that have mobile network coverage of at least 90% of the population, must provide roaming and MVNO services upon request.
- Wholesale roaming arrangements that are not competitively priced can contribute to raising rivals' costs particularly for challenger networks, thereby reducing the competitive constraint that such operators are able to exert in the market. Though a number of MVNOs now exist, MVNO models and wholesale access are being restricted. Competition introduced by MVNOs has already brought material benefits to consumers, including greater choice, better quality, innovative services and lower prices.
- Provision is made for international roaming regulations relevant to the SADC region and other international roaming regulations. It enables the Authority to prescribe regulations taking into consideration policy directions issued by the Minister and any SADC roaming decisions adopted by the Government of South Africa.

KEY AMENDMENTS (CONT.)

Electronic communications facilities-leasing

- Section 43 of the Act is amended to improve the facilities-leasing framework in relation to essential facilities. While section 43(8) has been in place for some time, the Authority has not yet prescribed a list of essential facilities, and the Act requires the Authority to do so within 12 months. These essential facilities must be leased upon request. This list must be reviewed every three years. Once a facility is determined to be an essential facility access is compulsory to speed up access to essential facilities which by their very nature are difficult to duplicate or gain access to without regulatory intervention.
- Section 44 of the Act is amended to require the Authority to review the facilities-leasing regulations at least every 24 months with due regard to market and legal developments.
- Section 47 is amended to ensure that the Authority prescribes wholesale pricing rules or standards applicable to different types of electronic communications facilities and wholesale services including for essential facilities, roaming and MVNOs. General principles that must be adhered to are included, such as fairness and reasonability, and that costs must be cost-oriented or reflect the benefits of sharing costs amongst users sharing the facilities.

KEY AMENDMENTS (CONT.)

Market inquiries

- The amendment of section 67 aims at improving the market review process of the Authority in line with the market inquiry process of the Competition Act. These amendments are intended to enable the Authority to carry out a review on its own initiative or upon receiving a complaint, if it has reason to believe that any feature or combination of features of any markets or market segments impedes, distorts or restricts competition within such markets or market segments or is likely to lead to such an outcome, absent pro-competitive regulation. The Authority must thereafter determine actions to remedy, mitigate or prevent the adverse effect on competition.

- A provision is inserted to enable the Authority and the Competition Commission to enforce each other's findings, to promote and enhance competition.

KEY AMENDMENTS (CONT.)

Concurrent jurisdiction agreement

Section 67A is inserted to formalise the requirement for a concurrent jurisdiction agreement between the Authority and the Competition Commission. It also requires that such agreement must include consultative mechanisms between the two authorities, including the sharing of information and how to manage competition-related assessments, market inquiries, complaints, mergers, cooperation arrangements, overlapping mandates and other relevant matters conducted by the Authority or the Competition Commission.

STAKEHOLDERS CONSULTED

- The proposed amendments are a joint proposal of a task team formed to act upon the recommendations for legislative changes in the Competition Commission's DSMI Report. The task team is comprised of officials from the DCDT, Department of Trade, Industry and Competition, Department of Cooperative Governance, Independent Communications Authority of South Africa, the Competition Commission and the South African Local Government Association.

- The ECA Bill has been tabled for consultation with and is supported by these stakeholders.

- Beyond these stakeholders, the DSMI's recommendations were ultimately the product of the Competition Commission's broader consultations through public hearings and calls for submissions which drew in market players, industry bodies, and consumer rights organisations, among others.

- The Bill was published in the *Gazette* for comment, the public submissions were duly considered and a number of amendments were subsequently made to the Bill.

IMPORTANCE OF THE BILL

- South Africa faces a **cost of living crisis** and ongoing concerns over price of data for consumers
  - Access to affordable data is essential for social and economic inclusion in an increasingly digital world and use of digital public infrastructure.
- The Competition Commission's Data Services Market Inquiry found that the cause of high prices for data was a **lack of sufficient competition in the market** and recommended necessary legislative changes to address this.
- The lack of sufficient competition in the market **remains the primary barrier** to the development of the market and lower prices for consumers. Fair and reasonable wholesale access though facilities leasing, roaming and MVNO access (wholesale access) is an essential and best practice path to addressing these concerns.

IMPORTANCE OF THE BILL (CONT.)

- The competition concerns remain entrenched and the need to bring legislative reform remains essential:
  - Larger operators retain large market shares, persistent first mover advantages and significant market power which has resulted in continued and sustained high margins and profitability
  - Challenger operators rely on costly roaming agreements with the big operators – when challenger operators sell more, the larger operators profit from roaming fees, and this reduces any incentive to compete on price
  - Reasonable access for MVNOs will result in meaningful competition, driving down data costs for consumers
  - Lack of facilities sharing and access favours larger players over smaller players.

- **The consequences of insufficient competition are borne disproportionately by the poor** who have not seen the benefits of new spectrum.


Thank You
Ngiyathokoza
Enkosi
Ndza khensa
Ngiyabonga
Ndo livhuwa
Ke a leboha
Ke a leboga
Dankie
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