

Telecoms bill spooks sector with its proposal

By [Nick Hedley](#)

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The contentious Electronic Communications Amendment Bill will encourage competition in the telecommunications market by giving hundreds of licensed entities access to radio waves, the government argues.



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"SA has nearly 400 electronic communications network service licensees, while only a handful of them are operational due to a lack of access to spectrum," the Department of Telecommunications and Postal Services tells *Business Day*.

Published on 17 November, the bill proposes that cellphone network operators share resources. It also recommends the establishment of a Wholesale Open-Access Network (Woan), which would house the highly sought-after bands of spectrum that network operators covet.

For years, the incumbents have been calling for the government to allocate this spectrum - some of which remains tied up with analogue television - via auctions or other competitive means.

Doing so, they argue, would help them to expand network coverage rapidly and reduce data prices.

Free Market Foundation executive director Leon Louw says that, in its discussions with the state ahead of the bill's release, network operators were led to believe a hybrid model would be adopted.

This outcome would have been a compromise, whereby spectrum would be allocated on a competitive basis while a portion would be reserved for the Woan.

MTN SA CEO Godfrey Motsa says the company is "totally disappointed" with the proposed changes, which ignore the top six operators' calls for a hybrid model.

Interested parties were given 30 days to comment on the bill, which is one of several legislative amendments needed for the ICT policy white paper to become effective.

"We've asked for an extension - the changes are too radical and, to be honest, seriously shocking.

"So, we don't have the time [to make submissions] in 30 days," Motsa says.

The department said on Friday it had agreed to extend the deadline for comments to the end of January 2018.

"Balance"

The department told *Business Day* the bill "reflects a balance of all the inputs we have received - not from just one section of the industry".

It clarified that the Woan network will be designed and managed by the private sector, and existing operators are expected to buy into the vehicle. As such, the bill also removes the Independent Communications Authority of SA's (Icasa's) ability to follow an auction process for high-demand spectrum.

"In a developmental state context, the highest value for the spectrum may not be measured in terms of monetary value - social and economic value are greater."

A market-based approach could favour the incumbents, who have the deepest pockets, the department argues.

"The industry has to transform to enable more of these licensees to operate so that consumers have a wider choice of services. The creation of a Woan ensures that such licensees can render services on the Woan, therefore enabling the sharing of spectrum - a finite resource."

The department says operators are familiar with the concept of sharing resources, as they already share some infrastructure and use open-access principles when rolling out fibre.

"Therefore, in addition to the increased connectivity that will be ensured through the Woan, the big telcos will continue to invest either as a shareholder in the Woan consortium or through buying capacity from the Woan, or on their own."

Further, if there is leftover spectrum not used by the consortium, this "may be licensed to operators".

But Louw says if infrastructure is shared, existing operators would no longer have an incentive to invest in their own networks. Together with uncertainties around policy, this means that capital expenditure would grind to a halt, to the detriment of consumers.

The bill also aims to eliminate the "duplication" of infrastructure - meaning that if a certain area has sufficient coverage, network operators would not be allowed to add their own infrastructure in the same area without permission.

"Complete disaster"

Louw says Rwanda is the only country to have introduced a similar Woan vehicle, and this had been "a complete disaster - prices for LTE [4G] have risen", while 4G coverage in the country is just 30%.

The changes, he says, could undo one of postapartheid SA's "greatest success stories": the fact that three-quarters of low-income individuals have access to mobile data.

Vodacom CEO Shameel Joosub says the company is "encouraged by the ministry's intent", including its "extensive" discussions with the industry to find a workable solution. But he adds that "some ... legal clauses of the bill do not give full effect to the practical outcomes of the engagement process".

"The bill doesn't address the industry's urgent need to access available spectrum - critical in driving down the cost of carrying data. It also doesn't provide certainty on licensing of current and future spectrum."

Joosub says the bill is "vague" about how the Woan would operate, although it is clear about "what is required from industry and that the Woan must be operational before spectrum may be made available to industry players. Positively, the bill provides the legislative framework for the rapid deployment of electronic communication networks and facilities to enable speedy deployment of national broadband infrastructure."

Vodacom is studying the bill and will continue engaging the government, Joosub says.

Telkom CEO Sipho Maseko told *Business Day* recently that it was less concerned about the method of allocating spectrum and more worried about "the outcome that the regulator wants to see".

"We believe they need to regulate for a sustainable industry that is competitive and continues to invest, and for a balanced industry so that you don't have one player with significant market power."

Telkom is constrained by the lack of spectrum and is the only major operator without access to sub-1GHz bands, Maseko says. This distorts competition, and the best approach would be to ensure "none of us must get more of what we have".

Source: Business Day

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