

EC Bill

27 November 2018

SENTECH Representation

- Mr. Siphamandla Mthethwa (CFO)
- Mr. Zunaid Adams (Executive: Legal & Regulatory)
- Mr. Monde Ndleleni (Government Relations)
- Mr. Thato Toko (Technical Regulatory)

Points of discussion

1. Section 19A(1)(b): Empowerment requirements of the WOAN
2. Section 19A(1)(f): Participation of SOE's in the WOAN
3. Section 19A(5) and (6): Policy direction by Minister
4. Section 19A(7): Prescription of wholesale rates
5. Section 31A(1), (2) & (3): Universal access and service universal obligations
6. Section 31B: Spectrum trading (merger)
7. Bill: Section 31B(2): Spectrum trading scope
8. Section 31D: Spectrum refarming

Bill: Section 19A(1)(b)

SENTECH is concerned that the proposed section **19A (1) (b)** of the Bill does not go far enough to address the issue of equity ownership as intended in section 9(2)(b) of the EC Act.

The compliance to section 9(2)(b) of the EC Act should not only be confined to the WOAN/consortium as an entity but also to individual persons (natural or juristic) making up the consortium. Therefore SENTECH proposes the following addition:

19(1)(b) individual persons (natural or juristic) making up the consortium must comply with the empowerment requirements contemplated in section 9(2)(b) of the EC Act;

Bill: Section 19A(1)(f)

The rationale behind SOEs relates to the need for Government to create societal value through focused, integrated and holistic socio-economic interventions. Additionally, there is an existing relationship with Parliament's effective and continuous oversight role, in ensuring that objectives are fulfilled as outlined in the SOE's corporate plan.

The Constitution empowers Parliament to ensure accountability, transparency, trust, monitoring and reporting, through the assistance of Chapter 9 institutions created to support constitutional democracy.

SENTECH submits that subsection 19A(f) is not in the best interest of SOEs licensed under the EC Act and therefore proposes that the subsection should be omitted.

Bill: Section 19A(5) and (6)

The EC Act empowers the Minister to issue policy directions and this negates the need to amend the EC Act in respect to principles already catered for in the Act. It is on this basis that SENTECH proposes the omission of the proposed section **19A (5) and (6)** of the Bill.

Subsections 5 and 6 read together with section 9 of the EC Act empowers the Minister to proceed with the licensing process of the WOAN. As evidence hereof the Minister has published the policy directions on the licensing of high demand spectrum and hence there is no need to amend the EC Act with regard hereto.

Bill: Section 19A(7)

SENTECH advocates for the institution of section 67 of the EC Act from the five (5th) anniversary of the licencing of the WOAN.

The Bill should empower the Authority to institute section 67 of the EC Act only from the fifth (5th) anniversary of the licencing of the WOAN.

In the interest of ensuring that objectives of the National Integrated ICT Policy are met, section 67 should not only be applicable to the WOAN.

The proposal to introduce section 67 of the EC Act only in the fifth anniversary of the WOAN is further informed by a need to ensure its viability. Given that the WOAN will be a new entity time should be afforded to the WOAN to find its feet in the ICT landscape.

Hence the proposal in the Bill giving the entity some incentives. SENTECH submits that the section 67 competition process may work against these incentives if instituted too earlier.

Bill: Section 31A(1), (2) & (3)

SENTECH does not support inclusion of **section 31A(1), (2) & (3)** in the Bill. **Section 31A(1)** of the Bill overlooks the issue of affordability for entities with existing obligations. **Section 31A (3)** assumes that entities assigned similar spectrum are similar in financial status and this may have the unintended consequence of financially burdening some licensed entities. SENTECH therefore proposes the following changes to the Bill:

31A (2) Universal access and service obligations shall be applicable to existing and new radio frequency spectrum licensees whose radio frequency spectrum has been determined as high demand spectrum by the Minister of Telecommunications and Postal Services.

31A (3) Radio frequency spectrum licensees assigned radio frequency spectrum in similar radio spectrum bands must have similar access and universal service obligations commensurate to the entities market's size.

Bill: Section 31B

SENTECH submits that the proposed section 31B of the Bill will have unintended consequences that may activate the inclusion of other agencies such as the Competition Commission. The EC Act, particularly section 32, clearly state that possession of radio apparatus requires a radio frequency spectrum licence or exemption from the Authority.

SENTECH is of the view that both the spectrum and spectrum dependent- equipment are viewed as assets whose acquisition may translate to a merger or linked with mergers procedures.

Bill: Section 31B(2)

SENTECH is concerned that the proposed section 31B(2) of the Bill does not provide the Authority sufficient scope to manoeuvre when considering spectrum trading. SENTECH proposes the following inclusion in the Bill;

31B(4) the regulations contemplated in subsection (2) may;

(a) Authorise a partial transfer taking into consideration subsection (3)(a);

(b) May restrict the following;

(i) Circumstances of the transfer;

(ii) The extent of the transfer;

(iii) The manner of the transfer;

(c) Prescribe additional conditions for the approval of the transfer; and

(d) Conditions that will allow the holder of the licence to confer the benefit of the licence on another in respect of any station or apparatus to which the licence relates, taking into consideration other affected legislation,

Bill: Section 31D

Spectrum refarming does not change the allocation as stated in the National Frequency Plan nor does it affect assignment. In line with the definition below, SENTECH submits that spectrum refarming is neither an allocation nor assignment issue, but an operational method of addressing functional challenges and/or opportunities.

radio frequency spectrum refarming (spectrum refarming) is a combination of administrative, financial and technical measures aimed at removing users or equipment of the existing frequency assignments either completely or partially from a particular frequency band. The frequency band may then be allocated to the same or different service(s). These measures may be implemented in short, medium or long time-scales.

SENTECH advocates for the omission of the entire subsection 31D.

End

Thank You

