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DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 6542 **22 August 2025**

ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)

POLICY DIRECTION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ON INQUIRY INTO NEED FOR APPLICATIONS FOR INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENCES

I, Mr. Solly Malatsi, Minister of Communications and Digital Technologies, hereby issue the Policy Direction in the Schedule to the Independent Communications Authority of South Africa in terms of section 3(2) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).



MR. SOLLY MALATSI, MP
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES
DATE: 20 August 2025

SCHEDULE

POLICY DIRECTION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ON INQUIRY INTO NEED FOR APPLICATIONS FOR INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENCES

1. Background

1.1 The Competition Commission issued a Data Services Market Inquiry (DSMI) Report on 2 December 2019. Amongst others, the DSMI Report observed that "high prices may also be caused by hindrances to effective competition, regardless of the cost level". The report highlights that "where competition is inadequate or non-existent, firms have more market power and a greater ability to increase prices above the competitive level". The report also states that high levels of profitability and mark ups, as demonstrated in the report, are indicators of market power and a lack of effective competitive constraints on pricing levels. The report concludes that "it is the lack of competition in the market that appears to be of the greatest impediment to lower prices for consumers".

1.2 The DSMI Report also pronounced on inadequate universal access to electronic communications services in the country. The report cited Stats SA General Household Survey of 2018, which indicated that 35% of South African households do not have access to Internet in any form (including Internet cafes) and that just 10% of households have Internet at home. By 2021, the percentage of South African households that did not have access to Internet in any form decreased to 22,5% while access to Internet at home only increased to 10,4% of households. The DSMI Report recommended that interventions ought not only to be focused on driving down data costs but also on ways to promote affordable universal access.

1.3 Section 5(6) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the Act) provides that – *'The Authority may only accept and consider applications for individual electronic communications network services licences in terms of a policy direction issued by the Minister in terms of section 3'*.

1.4 Section 5(6) was included in the Act in the context of liberalisation but has been overtaken by market developments. On the one hand, about 490 individual electronic communications network services licences already exist (and about 2228 class electronic communications network services licences) . On the other hand, it is not possible to apply for new individual electronic communications network services licences, since a policy direction as contemplated in section 5(6) of the Act, is required. This has resulted in the trade of individual electronic communications network services licences, where the role of the Authority is limited to considering applications for licence transfers.

1.5 Industry stakeholders requested that a policy direction be issued to the Authority under section 5(6) of the Act, to enable the Authority to invite applications for new individual electronic communications network services licences.

1.6 The DSMI Report observed a lack of competition in the market, but the hindrances to effective competition did not include an insufficient number of individual electronic communications network services licensees. Since a high number of individual electronic communications network services licences have already been granted and may be transferred subject to the Authority's approval, the Authority should determine whether new individual electronic communications network services licences will promote the objects of the Act including without limitation, improved competition and the universal provision of electronic communications networks and electronic communications services.

1.7 During the public consultation, most stakeholders expressed their support for the draft policy direction. Other responses included the following:

1.7.1 Some stakeholders argued that the DSMI is outdated and should not be referred to. In the Department's view, however, the high levels of concentration in the market and the high margins of the largest firms that were observed by the DSMI remain largely unchanged, and therefore the findings remain relevant.

1.7.2 Some stakeholders including industry representative bodies, argued that the scope of the inquiry should be extended to include a full market analysis; replace the licensing model with a general authorisation regime that covers OTT providers, TowerCos and MVNOs; and consider international developments regarding infrastructure-sharing agreements. The matters raised are important but need to form part of a policy review first, and if adopted, a new licensing model will require amendments to the Act. The Department set a target in its 2025/26 Annual Performance Plan, to develop a *Framework for the Review of ICT Sector legislation/policy* in terms of which the further recommendations of stakeholders will be considered. Without detracting from the purpose of the inquiry to be undertaken by the Authority, and because stakeholders will likely then raise broader licensing proposals, the Authority may include related recommendations in its report to the Minister.

1.7.3 Other stakeholders suggested that an inquiry into need and demand requires a market inquiry as provided for in section 67 of the Act. This is not legally correct.

1.8 Since the review of ICT Sector policy and legislation will take time, the proposed intervention remains appropriate and necessary.

2. Policy Direction

2.1 The Authority is hereby directed, in terms of section 3(2) of the Act, to undertake an inquiry in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (the ICASA Act). The inquiry should consider:

2.1.1 whether or not the implementation of the framework in the Act which allows for the transfer of individual electronic communications network services and electronic communications service licences, has been effective and efficient with regard to the promotion of competition within the sector;

2.1.2 the demand for and need to invite, accept and consider applications for new individual electronic communications network services licences;

2.1.3 whether new individual electronic communications network service licences will promote the objects of the Act and specifically improve competition in the market for individual electronic communications network services;

2.1.4 whether or not and how new individual electronic communications network service licences will contribute to universal provision of electronic communications networks; and

2.1.5 whether the benefits of new individual electronic communications network service licences outweigh the costs including the cost to the Authority of monitoring and enforcing compliance with any such licences, and the burden on the environment.

2.2 The Authority is directed to -

2.2.1 commence the inquiry within three months of the date of publication of the policy direction; and

2.2.2 submit a report to the Minister in respect of such matters as are set out in paragraph 2.1 within 14 days of making a finding as contemplated in section 4C(6) of the ICASA Act, to enable the Minister to consider whether or not to issue a further policy direction in terms of section 3 read with section 5(6) of the Act.

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