



THE IMPACT OF THE MINISTERIAL DETERMINATIONS ON MARKET LIBERALISATION

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Background to telecoms regulation in SA (1)

“ Premise of telecoms regulation in SA:

- Managed liberalisation

- Introduction of competition on a phased-in basis





Background to telecoms regulation in SA (2)

“ Main consequences of managed liberalisation policy:

➤ Restrictions on facilities-based competition

- Self-provisioning of facilities
- Leasing of facilities / resale of spare capacity to third parties

➤ Restrictions on the carriage of voice





Background to telecoms regulation in SA (3)

- “ Original intended timeline for market liberalisation:
 - Monopoly (Telkom only) – 1997-2002
 - Duopoly (Telkom & SNO) – 2002-2005
 - Triopoly / open market? – 2005 onwards?
- “ Ministerial determination is out of synch with these timelines – effectively introduces market liberalisation initiatives before the duopoly period



Restrictions on facilities-based competition – before the ministerial determination

- “ Telkom granted statutory exclusivity over facilities-provisioning from 7 May 2002 to 7 May 2005
- “ Telkom monopoly has been partly eroded since then:
 - *SNO* (national fixed line operator – not yet licensed)
 - *USALs* (regional network operators – not yet up and running)
 - *Sentech* (multi-media, carrier of carriers – allowed to self-provide its own network)
- “ Telkom remains the *de facto* sole facilities provider until the SNO / USALs get up and running





Restrictions on the carriage of voice – before the ministerial determination

- “ The only entities that are permitted to carry voice are as follows:
 - PSTS licensees – Telkom, SNO
 - MCTS licensees – Cell C, MTN, Vodacom
 - USALs
 - PTNs
 - Sentech – restricted to the carriage of wholesale international voice over its carrier of carrier's network

- “ The following entities are barred from carrying voice:
 - VANS
 - Multimedia licensees – essentially Sentech





Mechanisms in the Telecommunications Act for the Minister to liberalise the market (1)

“ Mobile network operators

- ➊ Have to lease their fixed links from Telkom until a date fixed by the Minister in the *Gazette*

“ PTN providers

- ➋ Currently have to lease their facilities from Telkom/SNO
- ➌ There is no mechanism in the legislation for the Minister to allow PTNs to lease their facilities from a third party / self-provide their own facilities – the legislation would need to be amended to allow for this
- ➍ Are prohibited from reselling spare capacity until a date fixed by the Minister in the *Gazette*





Mechanisms in the Telecommunications Act for the Minister to liberalise the market (2)

“ VANS

- ➊ Required to lease their facilities from Telkom/SNO until a date fixed by the Minister in the *Gazette*
- ➋ Prohibited from leasing their facilities / reselling spare capacity to third parties (“cede”, “assign”, “sublet”, “part with control”, “dispose”) until a date fixed by the Minister in the *Gazette*
- ➌ Prohibited from carrying VoIP until a date fixed by the Minister in the *Gazette*

“ Multimedia (Sentech)

- ➊ Prohibited from carrying voice until a date fixed by the Minister in the *Gazette*





Overview of the ministerial determination (1)

- “ Lifting of restrictions on facilities-based competition from 1 February 2005
 - Mobile network operators and VANS will be entitled to self provide their facilities / lease their facilities from a third party other than Telkom or the SNO
 - VANS, PTNs may lease their facilities / resell spare capacity to third parties
 - PTNs will still need to lease their facilities from Telkom / SNO
 - ICASA has stated that it will revise PTN and VANS licences





Overview of the ministerial determination (2)

- “ Lifting of restrictions on voice from 1 February 2005
 - VANS may carry voice over their networks using any protocol, including VoIP
 - The restriction on Sentech carrying voice over its multimedia network has not been removed



Overview of the ministerial determination (3)

“ Other aspects of the ministerial determination that have assumed less of a centre stage:

- Liberalisation of public payphone market from 1 February 2005
- From 18 January 2005 onwards, public schools and further education and training institutions will be entitled to a 50% discount on all calls to an ISP and on ISP access fees.



Some practical implementation issues (1)

“ IP numbering

- ➊ IP numbers are not catered for in the draft numbering plan
- ➋ ICASA has stated that it will align the numbering regulations to accommodate VANS licensees

“ Interconnection

- ➊ In theory, there is nothing to stop a VANS from seeking interconnection with an operator
- ➋ ICASA has stated that it will revise the interconnection guidelines / develop an interconnection framework for all licensees





Some practical implementation issues (2)

“ Spectrum access

- In theory, there is nothing to stop a wireless VANS provider from applying to ICASA for spectrum
- However, ICASA will need to amend the existing regulations to govern access to the spectrum

“ Environmental issues, municipal by-laws

- There may be environmental and municipal restrictions on the rolling out of infrastructure that will hamper network roll-out





ICASA way forward

“ VANS

- The amended VANS regulatory framework will be expedited
- Aim to have all applicants licensed by 1 February 2005

“ Interconnection and facilities leasing

- Draft amendments to the regulations will be gazetted by 29 November 2004
- Submissions from the public are due by 7 January 2005
- Final regulations to be forwarded to the Minister by 21 January
- New framework to be finalised by 28 February 2005





THE END

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