

EXECUTIVE SUMMARY

In this edition of the eFiles, we examine the government's controversial Integrated ICT Policy White Paper and its reception in the industry. We also have a look at the Advertising Standards Authority of South Africa's proposal of an industry code for the advertising and marketing industry. Lastly, we discuss some promising advances in the long-awaited implementation of the Protection of Personal Information Act.

While we have shared the salient points in this eFile, more detailed versions of each of these articles can be found on [our Web site](#).

SA'S NEW ICT POLICY RECEIVES LUKEWARM RECEPTION

The South African government has taken steps towards approving the controversial Integrated ICT Policy White Paper. This paper is set to replace two separate historic white papers on Telecommunication (1996) and Postal Services (1998). This development has received a lukewarm reception within the industry, mainly owing to its open access regime and its plans to create a wholesale open access network (WOAN).

The ICT policy has been eagerly anticipated, as it promises to outline government's plans for the rollout of broadband services across the country and direct the allocation of much-needed spectrum. The stated intention of the policy is to strike a balance between opening the use of high-demand broadband spectrum for

use by all licensees, while adequately compensating those who have invested in the infrastructure. However, key industry players such as Telkom and MTN have voiced concerns regarding some aspects of the policy, stating that it may create a monopoly and disincentivise investment.

To read the full summary of the key points and industry comments, read the full article on our [Web site](#).

DRAFT INDUSTRY CODE TO IMPACT MARKETING IN SA

In the interests of championing consumer rights, the Advertising Standards Authority of South Africa (ASA) has approached the National Consumer Commission ("NCC") with a proposed industry code called the Advertising and Marketing Industry Code of Practice ("the Industry Code").

The Industry Code was published for public comment in the Government Gazette of 26 July 2016, and interested parties have been invited to submit comments. As part of this proposal, the ASA has also requested accreditation as an ombudsman scheme in the advertising and marketing industry.

The proposed draft Industry Code falls within Section 82 of the Consumer Protection Act 68 of 2008 ("CPA"), which allows the Minister of Trade and Industry to accredit industry specific ombudsman schemes, and to prescribe accompanying industry codes. In the past, the Motor Industry Ombudsman of South Africa (which enforces the South African Automotive Industry Code of Conduct), and the Consumer Goods and Services Ombud (which enforces the Consumer Goods and Services Code of Conduct) have been accredited.

The ASA's Industry Code has been designed with the consumer in mind, with clauses in place to protect consumers against improper trade practices, and deceptive, misleading, unfair or fraudulent conduct in the marketing and advertising industry. As a result, it seeks to promote informative, authentic and legal advertising and marketing in South Africa.

For more on the code and how companies will need to comply, read the full article on our [Web site](#).

INFORMATION REGULATOR APPOINTS CHAIRPERSON

Former IEC Chairperson Pansy Tlakula has nominated by the National Assembly as South Africa's Information Regulator.

This newly established role is responsible for monitoring and enforcing compliance, as well as handling complaints related to the Protection of Personal Information Act (POPI). Advocates Lebogang Cordelia Stroom and Johannes Collen Weapond join him as full time members, while Profesor Tana Pistorius and Sizwe Snail Ka Mtuze serve as part time members of the Information Regulator. All these roles will be effective from 1 December 2016.

Some parties contested Tlakula's appointment, as in 2014 she was taken to court by political parties under claims that her integrity within the IEC had been compromised. At the time, the public protector and National Treasury found there was maladministration in the procurement of the electoral body's Riverside Office Park building in Centurion Pretoria, with the process not being fair, transparent or cost effective.

The constitutional court dismissed Tlakula's bid to challenge an electoral court ruling that she be investigated for misconduct by Parliament with the view to remove her from office. She argued during her interviews by members of Parliament that she was never found guilty of misconduct.

With the Information Regulator in office, we anticipate that the commencement date for the operative provisions of POPI will be announced after the members of by early next year. Notably, however, the provisions of POPI regulating processing of personal information remain subject to a grace period of at least one year.

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