



***competition*commission**
south africa

**DATA SERVICES MARKET INQUIRY GUIDELINES FOR
STAKEHOLDER PARTICIPATION**

20 SEPTEMBER 2017

A. INTRODUCTION TO THE GUIDELINES

1. These guidelines for the Data Services Market Inquiry are released pursuant to Chapter 4A of the Competition Act 89 of 1998 as amended (“the Act”) which allows the Competition Commission (“the Commission”) to conduct a “*formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm*”. These guidelines must be read in conjunction with the Terms of Reference (“ToR”)¹.
2. The market inquiry was initiated by the Commission because it had reason to believe that there are features of the data services market that prevent, distort or restrict competition. The objective of the market inquiry is to determine what factors or features of the market(s) and the value chain may cause or lead to high prices for data services, and to make recommendations that would result in lower prices for data services. This is described in more detail in the ToR under section 3.3.
3. These guidelines contain the rules of participation that will apply to all stakeholders who wish to participate in the proceedings of the market inquiry. The guidelines seek to provide for a fair opportunity and a transparent process for all stakeholders to effectively participate in the market inquiry. The guidelines outline who may participate in the market inquiry and how they may submit information; the treatment of confidential information; the administrative activities of the market inquiry; and the powers available to the Commission, among other issues.
4. These guidelines will be published on the Commission’s website (www.compcom.co.za) and **will become effective on 20 September 2017**. The guidelines may however be reviewed from time to time to reflect any best practice that may develop. Any amendments to the guidelines will be notified to the public, and the latest version will always be that appearing on the Commission’s website.

B. APPLICATION OF THE GUIDELINES

5. These guidelines only apply to the Data Services Market Inquiry and not to other market inquiries that may be conducted by the Commission under Chapter 4A of the Act. These guidelines must be read in conjunction with the Act and its Rules as well as the ToR for the Data Services Market Inquiry, none of which are superseded by these guidelines.

¹ GN 849 of GG 41054, 18/08/2017; 5

6. These guidelines do not bind the Competition Tribunal (“the Tribunal”) and the Competition Appeal Court (“the CAC”).

C. CONDUCT OF THE MARKET INQUIRY

7. In terms of section 43B of the Act, the Commission may conduct the Inquiry in any manner, subject to the provisions set out in the Act. The Commission as a public body and creature of statute may only exercise its powers within the confines of the Act. Furthermore, the Data Services Market Inquiry must be conducted fairly and, as far as possible, openly in accordance with the Constitution and administrative law principles.
8. The Commission is committed to the principles of fairness, transparency, and integrity and will conduct the market inquiry in accordance with these principles. The Commission will allow stakeholders fair and reasonable opportunity to provide input into the market inquiry process and its outcomes.
9. The Commission may evaluate the subject matter of the market inquiry through a review of secondary material obtained via information requests, consultations and summons, as required, as well as information received from previous investigations and merger assessments.
10. For the purposes of the Inquiry, the methods that may be used for gathering information may include the following:
 - 10.1 Receipt of **Written Submissions** on the issues identified in the Terms of Reference;
 - 10.2 **Targeted Information Requests** to specific stakeholders;
 - 10.3 **Questionnaires and Surveys** to identified stakeholders or the general public;
 - 10.4 **Research Studies** including research papers, case law, case studies, and literature reviews drawn from a variety of domestic and comparative international sources;
 - 10.5 **Data Reviews** examining data or information gathered during the Inquiry;
 - 10.6 **Direct Consultations** including meetings, and in-depth interviews;
 - 10.7 **Public Consultations** including workshops and seminars;
 - 10.8 **Focus Group Discussions** with the relevant stakeholders;
 - 10.9 **Site Visits** by arrangement with the relevant stakeholders; and

10.10 **Formal Public Hearings** taking into account written submissions by participants in order to provide information to the Commission on the issues to be addressed during the public hearings.

11. The submissions may be hand written or typed. Anyone who is unable to write or type may approach the market inquiry team for assistance in doing so. All relevant Forms and documents referenced herein are available on the Commission's website. Anyone who does not have access to, or has difficulty in completing any of the Forms or documents referenced herein may approach the market inquiry team for assistance in doing so. The relevant contact details for the market inquiry team are set out in paragraph 17 below.
12. Section 43B (3)(a) - (e) of the Act regulates confidentiality, the powers of the Commission in the conduct of the Inquiry as well as offences for non-compliance that apply to the Inquiry. In the conduct of the Inquiry, section 49A of the Act empowers the Commissioner to issue summons and interrogate, and to compel the production of books, documents and other objects which have a bearing on the Inquiry. However, section 43B(3)(b) excludes the power to enter and search premises in the conduct of the Inquiry.

D. ACTIVITIES

13. The market inquiry will be broadly conducted in accordance with the following phases (although this is subject to change):
 - a. Information Gathering
 - b. Analysis of information
 - c. Provisional findings
 - d. Final report
14. It is expected that the market inquiry will be completed by 31 August 2018. The Commission may amend the time within which the market inquiry is expected to be completed by issuing a notice in a government gazette in terms of section 43B (5) of the Act.

E. WHO MAY PARTICIPATE IN THE MARKET INQUIRY?

15. The participants in the market inquiry process may include: business enterprises along the data services value chain, other related business enterprises, end-users, government departments, public entities, regulatory authorities, industry associations, and any other stakeholders that may be able to provide information relevant to the market inquiry or may

be either directly or indirectly involved in the value chain. In particular, the following participants are encouraged to participate in the market inquiry process:

- a) **Members of the public** – any member of the public (individual or group) that has an interest in the market inquiry or is affected by the subject matter of the market inquiry;
- b) **Firms** – any designated representative of a business that has an interest in or is affected by the subject matter of the market inquiry;
- c) **Organised groups** – organised business fora, labour unions, civil society based-organisations, industry bodies or any other bodies or institutions that have an interest in or are affected by the subject matter of the market inquiry
- d) **Government** – government departments, regulatory authorities, public entities and any other organ of state or statutory body that has an interest in the market inquiry or is affected by the subject matter of the market inquiry.

F. METHODS OF PARTICIPATION

16. Anyone wishing to participate in the market inquiry process or proceedings may do so by:
 - a) Making a written submission to the Commission; and
 - b) Availing themselves for a meeting with the Commission.

Written submission

17. Anyone making a written submission is expected to provide the information reflected in “DSI1” form. Submissions may be made in any of the official languages.
18. The submissions may be hand-written or typed and must be sent to the Commission in any of the following ways: email, post or hand-delivered to the following addresses:

Postal address:

The Data Services Market Inquiry,
Private Bag x23,
Lynwood Ridge,
Pretoria
0040

Physical delivery:

The Data Services Market Inquiry
The DTI Campus,
Block C, Mulayo Building, 3rd Floor

77 Meintjies Street,
Sunnyside,
Pretoria,
0002

Email: datainquiry@compcom.co.za

Contact Number: 012 763 8665

19. If the submission contains confidential information, the submission should be accompanied by the “CC7” form indicating the confidential information (see paragraphs 24 – 29 below).
20. Anyone wishing to have his or her identity protected must indicate so in the Form “DSI1” and should attach a motivation for the request.

Meetings

21. The Commission may hold meetings with key stakeholders in the market during the course of the market inquiry. The Commission may exercise its discretion to determine which participants these meetings will be held with. One of the issues which may be taken into consideration in the exercise of its discretion is the extent to which the meeting may help to clarify or resolve any issues raised by the written submissions.
22. Participants seeking to have meetings with the Commission must provide written submissions first in order to provide information to the Commission on the issues to be addressed during the meeting.
23. Electronic copies of the visual presentations and/or copies of any additional material to be relied on for the meeting with the Commission must be submitted at least ten (10) business days prior to the meeting.
24. There is no charge for making a written submission or for attendance of a meeting with the Commission. The meetings will be conducted mainly in English. However, to cater for the other official languages, an interpretation service may be made available if a request has been made for such a service in the written submission to the Commission or indicated on “DSI1” form.

G. HANDLING OF INFORMATION AND DATA

Voluntary disclosure

25. It is the Commission's aspiration to solicit information from parties voluntarily, through written submissions, questionnaires, requests for information, testimony and other such means.

Confidential information and information disclosure

26. Information management during the inquiry is guided and bound by procedures related to confidentiality in Sections 44, 45 and 45A of the Act and Rules 14 and 15 of the Rules for the Conduct of Proceedings in the Competition Commission ("the Rules") to the extent applicable.

27. Parties have the right to claim confidentiality over any information that is claimed to be confidential in nature. Any confidentiality claim must be supported by a written statement in the prescribed form "CC7". On a separate sheet of paper the parties must identify the confidential information and provide a full explanation as to why the information is considered confidential. It is important in this regard to bear the following in mind:

27.1 Trade, business or industrial information that belongs to a firm, that has a particular economic value and is not generally available to or known by others is entitled to protection as confidential information in accordance with the Act.

27.2 A claim of confidentiality is binding on the Commission during the conduct of the inquiry, subject to Section 44. If the Commission is of the view that the information is not truly confidential as defined in the Act, it may, at any time, refer the claim to the Competition Tribunal ("the Tribunal") to determine whether or not the information is confidential. Parties will be notified if their claim for confidentiality is referred to the Tribunal.

27.3 The Commission may request a party to submit two versions of their submissions: one confidential version for the Commission and the Commission only, and a non-confidential version which omits any confidential information, which may be disclosed to the public.

28. Access to confidential information and/or documents submitted to the inquiry shall be in accordance with the provisions stipulated in section 45 of the Act and Rules 14 and 15.

29. Where information is subject to a claim of confidentiality, the Commission may with the written consent of the owner of such information, allow specified third parties such as legal representatives and/or independent experts appointed by stakeholders to view and assess the confidential information subject to appropriate confidentiality undertakings being signed by the parties concerned.
30. Any party who seeks access to information that is subject to a confidentiality claim may apply in the prescribed manner and form to the Tribunal, as stipulated in section 45 of the Act. Equally, the party with confidentiality claims may appeal an unfavourable ruling at the Competition Appeal Court.
31. The Commission may use confidential information in making decisions, in a manner that does not prejudice a party's claim to confidentiality as provided for in Section 45A of the Act.

H. CONCLUSION OF THE MARKET INQUIRY

32. In terms of section 43B (6) of the Act, the Commission must issue a report in accordance with section 43 (C) within the time frame stipulated in the Terms of Reference, unless amended in terms of section 43B (5). However, based on the information obtained during the market inquiry, the Commission may decide to not take any further action as contemplated by section 43C (3) (e).
33. Prior to publishing its final report, the Commission may periodically publish progress reports to inform the public of the progress and direction of the market inquiry. These provisional reports may be published on the Commission's website. The provisional reports may be made available for stakeholders' comments. After reviewing stakeholder's comments, the Commission may, if necessary, request further interviews, information or data before finalising the report.
34. In accordance with section 43C(1), the market inquiry may produce any number of recommendations, including but not limited to the following:
 - 34.1 Publication of information to help consumers;
 - 34.2 Encouragement of firms to take voluntary action;
 - 34.3 Promotion of a customer or industry code of practice;
 - 34.4 Recommendations to Government or other regulators on new or amended policy, legislation or regulations; and
 - 34.5 Initiation of further investigations or of immediate enforcement actions against a particular firm or firms.

ANNEXURE B1



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REGISTRATION FORM FOR WRITTEN SUBMISSION

Form DSI1

About this form

This is a registration form issued pursuant to the Data Services Market Inquiry Guidelines for Participation.

The form is to be completed by parties making written submissions.

Data Services Market Inquiry contact:

Email:
datainquiry@compcom.co.za

Postal address:
The Data Services
Market Inquiry
Private Bag x23
Lynwood Ridge
Pretoria
0040

Physical delivery:
The DS Market Inquiry,
The DTI Campus
Mulayo (Block C)
77 Meintjies Street
Sunnyside
Pretoria
0002

Details of person making submission

(Please print)

Name and Surname: _____

Name of Organisation or Entity: _____

Contact Details: _____

Physical/Postal Address: _____

Required Details

Does your submission contain any confidential information? If yes, please also file **Form CC7**

Yes No

Do you require interpretation services?

Yes No

If yes, please indicate language: _____

Main focus of submission:

Summary of the issues (*a reference to an attachment is adequate*):

Signature_____ Date_____