

# **MEDIA ADDRESS ON THE PROVISIONAL REPORT OF THE DATA SERVICES**

## **MARKET INQUIRY**

**24 APRIL 2019**

### **TEMBINKOSI BONAKELE, COMMISSIONER, COMPETITION COMMISSION**

The Data Services Market Inquiry was launched in August 2017 in response to a request from the Minister of Economic Development. This request followed persistent public concerns with the high cost of data in South Africa. The purpose of the Inquiry, as set out in the Terms of Reference, is to:

1. Obtain a clear understanding of the data services value chain, including the interaction and commercial relationships between different levels of the value chain, and the relationship with other parts of the ICT sector and the broader economy.
2. Assess the state of competition in the market at every stage of the value chain for provision of data services in order to identify areas of market power where customers or consumers may be exploited or excluded by firms and to identify any other structural, behavioural or regulatory factors that may influence competition or pricing. The assessment would include but not be limited to:
  - 2.1 Market structure;
  - 2.2 The general adequacy and impact of the current regulatory regime;
  - 2.3 Strategic behaviour by large fixed and mobile incumbents;
  - 2.4 Costs faced and profits earned by fixed and mobile network operators;
  - 2.5 Current arrangements for sharing of network infrastructure;

- 2.6 Investment in infrastructure by operators and access to, and allocation of, spectrum as they relate to data services price and competition concerns; and
  - 2.7 The adequacy of regulation to promote new South African entrants (particularly historically disadvantaged individuals), including but not limited to matters such as dynamic spectrum access and local loop unbundling.
3. Benchmark South African data services pricing against those of other countries.
  4. Establish whether data supply quality and coverage is adequate by international standards and the country's developmental needs.

In the digital age, access to online content and services has become essential for active participation in the social, political and economic life of the country. It has also become an essential driver of economic growth, particularly as smart manufacturing and technologies like 3D printing, remote sensing for predictive maintenance, and data analytics become essential for competitiveness in the 'Fourth Industrial Revolution'.

It is unsurprisingly, therefore, that there was widespread public interest in this Inquiry. The Inquiry benefited from extensive input from a wide range of stakeholders including mobile operators, regulators, civil society organisations, political parties, researchers and members of the public. We received more than 30 written submissions, requested information from operators, and held public hearings over a period of three days to facilitate a broader dialogue on the causes and solutions to high prices.

We thank all stakeholders for their productive engagement with the Inquiry.

This provisional report sets out the Commission's preliminary findings and recommendations based on its analysis of the market and submissions.

## FINDINGS

### 1. International benchmarking confirmed that South African data prices are high, particularly for mobile prepaid data

- a. Mobile prepaid data prices in South Africa are high when benchmarked against a worldwide selection of countries and in comparison to other African countries,
- b. South African prices compare poorly to other BRICS and SADC countries, and
- c. Mobile operators (MTN and Vodacom) charge higher prices in South Africa than they do in the other countries in which they operate.

### 2. The retail pricing structure of mobile data is anti-poor and lacks transparency

- a. The benchmarking exercise shows that lower income consumers may be exploited to a far greater degree relative to wealthier consumers. An assessment of headline retail prices of all mobile operators demonstrates that consumers of small data bundles, generally being poorer consumers, pay inexplicably more on a per MB/GB basis.
- b. **For example**, relative to a 1GB bundle, a consumer buying a 100MB bundle will pay roughly twice the price on a per bundle basis for the same data period validity. A consumer buying a 50MB bundle will pay up to three times more and a 20MB bundle up to four times more.
- c. In general, data pricing also lacks transparency, which undermines price competition. Operators prefer to make use of promotions and free data

rather than to drop headline prices. As a result, few consumers know what they really pay per MB.

### **3. A lack of spectrum and cost-based facilities access drives up costs**

- a. The failure to release high demand spectrum due to delays in digital migration has raised the costs of mobile operators unnecessarily. This is because operators need to compensate for the lack of spectrum by increasing the volume of base stations.
- b. However, the Commission notes that though the release of spectrum will reduce operator costs, this will not necessarily result in price decreases unless there is competitive pressure on operators to do so. Careful thought must be given to the design of the spectrum allocation process to ensure that competition is prioritised.
- c. Another large cost driver is that of passive infrastructure, such as base stations and high sites, but also ducts and poles for fibre backhaul. The Commission is of the view that efforts to enhance access to facilities on fair commercial terms and regulatory efforts to promote infrastructure sharing can substantially reduce operating costs and ensure the rapid deployment of competing infrastructure. This will potentially result in lower prices over time.

### **4. Price-based competition in mobile markets can be improved materially**

- a. The retail mobile market has remained stubbornly concentrated despite the entry of challenger networks, showing sustained first-mover advantages.

- b. The Inquiry's pricing analysis shows that the two largest operators, Vodacom and MTN, can; to a large extent, price independently; unconstrained by competitors.
- c. Cell C has historically been more aggressive on headline prices, but the larger networks have found it profitable not to follow their pricing downwards. This shows the resilience of their market position.

**5. The findings in the retail markets also point to potential problems in the wholesale market**

- a. Wholesale roaming arrangements are necessary for challengers to achieve national coverage. Due to their poor bargaining position, the terms have been unfavourable, and have constrained price competition.
- b. Wholesale markets have also failed in providing wholesale network access for the purposes of retail competition in the form of MVNOs.

**6. Finally, the inquiry finds that addressing the fixed line supply gap will be critical for the provision of alternative data services**

- a. Fixed line supply remains the backbone in the supply of household and business access and for the provision of public data services such as WiFi which represents an important alternative source of data service.
- b. Given the low level of competition between mobile operators, the Inquiry is of the view that we cannot focus exclusively on trying to fix mobile competition as a solution to high data prices.
- c. However, the legacy of apartheid and the economic characteristics of fixed line infrastructure means that this market has, and will continue to,

primarily service wealthy, historically white, urban areas absent some form of intervention. In this respect, the market is failing lower income and rural households which most need the benefit of lower data prices, and who require alternatives to mobile where there is a pricing structure that exploits this position.

## **RECOMMENDATIONS**

### **1. Immediate relief on data pricing**

- a. A commitment by mobile operators to reduce the headline tariff levels to the current effective level of tariffs, inclusive of occasional free data and promotions. This will also enhance price transparency.
- b. A commitment by mobile operators to reduce the price of sub-1GB bundles within an objectively justifiable and socially defensible range of the 1GB price, provisionally a maximum of 25% higher on a per MB basis.
- c. A consistent industry-wide approach to the zero-rating of content from public benefit organisations and educational institutions.
- d. Absent such commitments, regulators should coordinate around legislative or regulatory means to achieve such outcomes. This may include investigations by the Commission into excessive pricing, amendments to the ECA or additions to ICASA's End-User and Subscriber Service Charter Regulations.

## **2. The urgent assignment of high demand spectrum and cost-orientated access to facilities**

- a. Improving affordability and enhancing competition must be central to the assignment of spectrum. Any spectrum assignment should be contingent on obligations to pass through cost reductions from greater spectrum access, alongside other obligations to improve affordable access such as providing free public Wi-Fi.
- b. Existing regulations on facilities leasing must be extended to include ducts and poles and to impose cost-oriented pricing requirements on such facilities.

## **3. An intermediate programme to ensure price-based competition**

To enhance price-based competition, the Commission recommends more regulatory scrutiny and potentially action at the wholesale level of the industry in the event that there are no voluntary commitments to improve wholesale access.

In particular, we recommend that:

- a. National roaming arrangements with the smaller networks need to move towards more cost-orientated pricing levels to support the ability of the smaller networks to be more competitive.
- b. The failure of operators to compete for MVNO arrangements also needs to be addressed. The WOAN has been proposed as one means to address this market failure, but in the short term, there should be voluntary commitments to improve the terms of access amongst existing operators. Failing this, regulatory action is required as a more immediate solution whilst the WOAN gets established.

- c. In support of both of these recommendations, some form of functional and/or accounting separation may be required of the larger networks for greater transparency as to the costs of the radio access network (RAN) and core network relative to the retail services.
- d. From a regulatory perspective, there is a need for greater collaboration between regulators to address the historical failure to engage in necessary wholesale regulation. For instance, there would seem to be no basis currently on which ICASA could regulate based on findings by the competition authorities, either in market inquiries or as a result of enforcement action. More effective means of inter-regulator collaboration would strengthen regulatory oversight, enforcement and regulation in these markets.

#### **4. The development of alternative infrastructure**

- a. Alternative infrastructure must be developed, particularly to provide data services in lower income areas and smaller secondary cities and towns. This will provide off-load opportunities from mobile networks to free public WiFi and will increase competitive pressure on mobile operators.
- b. The Commission recommends that local and national government, under the lead of the Department of Communications (DOC), actively support the development of free public Wi-Fi in low income areas, including commuter points (e.g. train stations, taxi ranks) and public spaces (e.g. parks, shopping areas, government service offices). This can crowd-in private provision.

- c. Government should look to use its own demand and facilities to reduce the costs of investment in both backhaul and last mile infrastructure into lower income areas, and improve the investment case with base customer demand. This would enhance the investment case for private providers to roll out infrastructure.
- d. More generally, government should ensure that where it does make use of its procurement in these markets that this is done in a manner which supports a more competitive environment, be it through supporting smaller players / new entrants or facilitating open access on the infrastructure.

### **Next steps**

The next step in the process is for all stakeholders to make further submissions on the findings and recommendations in the provisional report by 14 June 2019. Thereafter, the Inquiry team will assess these submissions and have further engagements with key stakeholders as required, before publishing a final report later this year. I therefore call on stakeholders to continue to engage constructively in this process.

Thank you.