Data Services Market Inquiry, 2018
Cell C Presentation

18 October 2018

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THE CELL C TEAM

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TODAY’S PRESENTATION

The Commission is investigating the data services market on the basis that prices are too high

INCREASING EFFECTIVE COMPETITION IS THE ONLY SOLUTION

THE REASON FOR THE LACK OF EFFECTIVE COMPETITION IS REGULATORY FAILURE

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CONTENT OF THIS PRESENTATION

1. Introduction to Cell C
2. The South African mobile market
3. Market failure persists
   a. The profitable duopoly
   b. The importance of scale
4. The role of regulation
5. What remedies are required?
6. Conclusion and recommendations

INTRODUCTION TO CELL C

Cell C in the market

- Cell C was licensed in 2001, when MTN and Vodacom had been in the market for 5 years, and Telkom was firmly entrenched as the only fixed operator
- 18 years later, MTN and Vodacom are still making super-profits – retaining them or passing them onto shareholders as dividends, rather than creating a consumer surplus
- Cell C played a large role in saving the South African consumer R47 billion between 2010 and 2015 through price competition – despite the lack of regulatory support – and at great cost to its own financial position*
- Cell C has adopted the role of "consumer champion" and disruptor in the market to reduce prices to consumers by attempting to meet the duopoly head on

> *"In a bid to meet consumer demand, South African mobile service provider Cell C is releasing a new prepaid voice product and tariff plan called 99 Cents For Real, which slashes off-net, and peak call tariffs to 99c per minute, with per second billing from the first second", 2012*

* According to a study commissioned by Treasury, "Competition, Barriers to Entry and inclusive growth: Telecommunications Sector Study". CCRED, University of Johannesburg

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THE SOUTH AFRICAN MOBILE MARKET

1

The history: some specifics

- Cell C was licensed and began operating 6 years after MTN and Vodacom
- Even now, MTN and Vodacom maintain their duopoly
- MTN and Vodacom benefited from a first-mover advantage:
  - Exclusive access to prime sites and land on a long-term basis, and new municipal restrictions make further site acquisition more onerous
  - 2-year contracts offered by MTN and Vodacom with no possibility of early termination or porting
  - MTN and Vodacom received clean 900MHz spectrum in contiguous bands
  - Despite several rounds of consultation, no interconnection regulations were finalized by ICASA for 9 years
  - An extreme MTR regime (MTN and Vodacom hiked interconnection rates just prior to Cell C's launch)

THE SOUTH AFRICAN MOBILE MARKET

2

The history: some specifics

- Cell C received no regulatory support whatsoever as a new entrant, instead:
  - Cell C was licensed to use 1800MHz spectrum – but so were MTN and Vodacom, at the same time
  - Cell C was saddled with onerous licence conditions for rollout and CSTs – i.e. the same conditions as the existing licensees
  - MTN and Vodacom hiked voice interconnection rates immediately before Cell C's launch…and Cell C had to pay the same price for interconnection despite having no revenue source
    - It took ICASA 9 years to consider regulating voice termination rates, and introduce asymmetry (too little, and too late)
  - Number portability was not available

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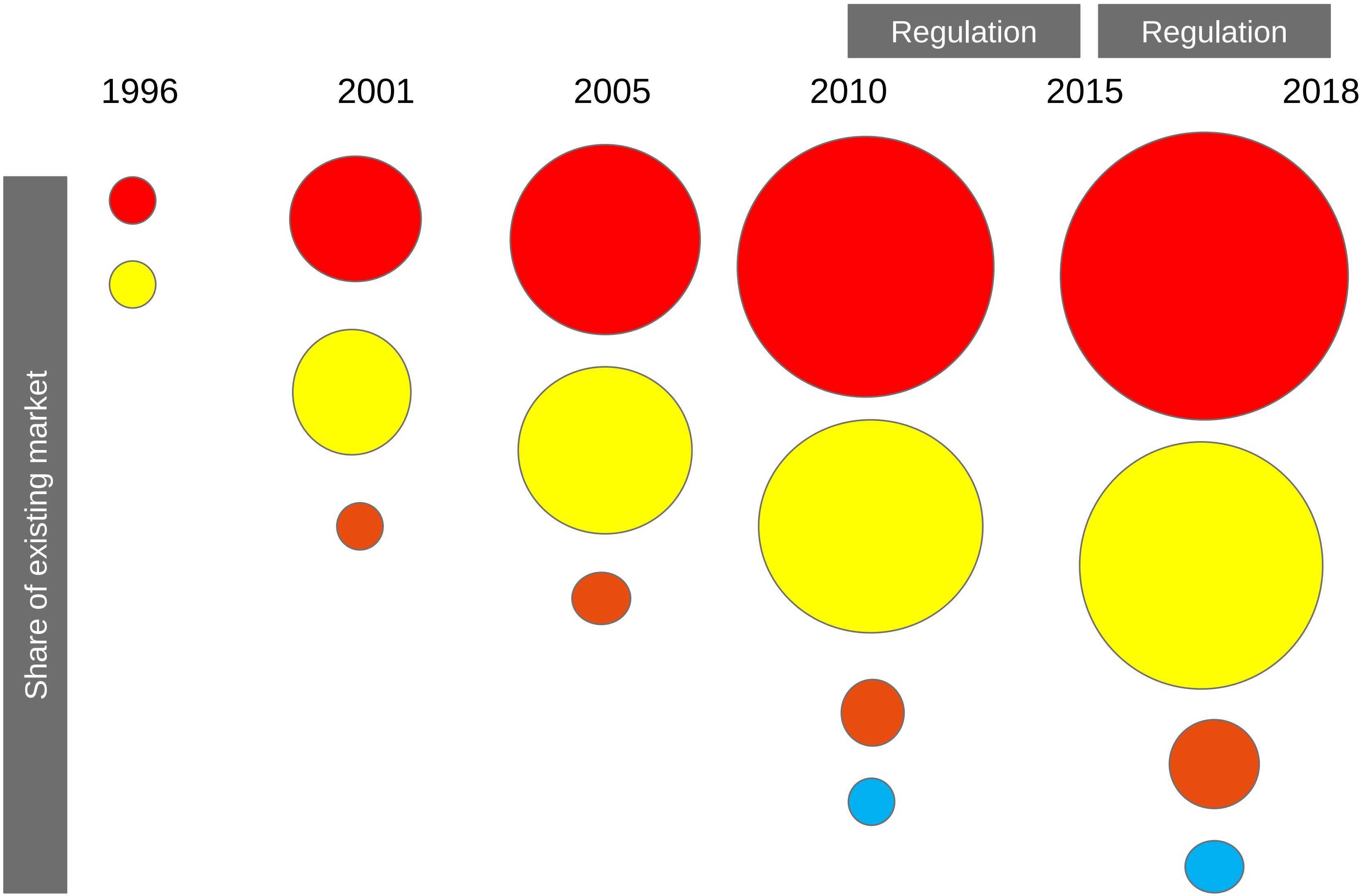
THE SOUTH AFRICAN MOBILE MARKET

The history: some specifics

- Cell C's current market share by revenue is between 12% and 13%
  - MTN and Vodacom together hold more than 80% of the market, 18 years after Cell C was launched
- MTN's and Vodacom's submissions to the Commission in this inquiry both strongly contend that the South African telecommunications market is "vigorously" competitive
  - Their reason for saying so is mainly based on the number of available choices to customers
  - However, the number of available choices is not and should never be an indicator of competitiveness but rather what the effect is of these choices
  - They do not indicate in which market this competition is vigorous
  - They ignore the head start they have had in the voice market which will translate to a significant advantage in the 4G and 5G future

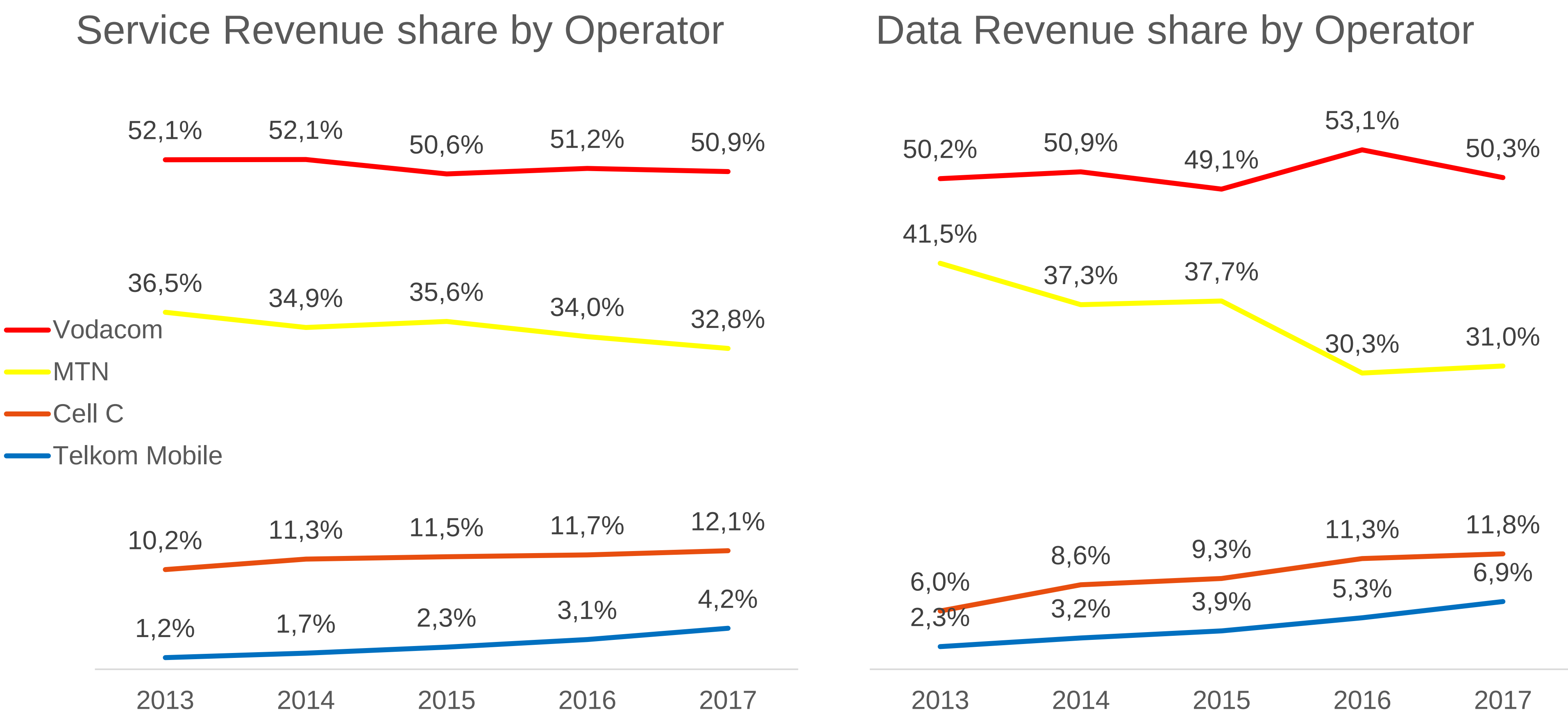
THE SOUTH AFRICAN MOBILE MARKET



This illustrative diagram is not to scale

THE SOUTH AFRICAN MOBILE MARKET

A duopoly structure persists in both the wider retail and narrower data markets



Source and Notes:
All results per Calendar Year. Operators' annual reports and quarterly results. Cell C estimates.
Telkom Mobile service revenue share based on annual figures as at end of March for each respective calendar year.

THE SOUTH AFRICAN MOBILE MARKET

The history: the effect on the future

- Both MTN and Vodacom have expressed their views on data growth (and the definition of the data market), and on the difficulties they experience in the upstream market that apparently affect their ability to reduce prices in the downstream market
  – Spectrum constraints
  – Difficulties in gaining access to land
  – Difficulties in gaining access to backhaul and generally, to the fixed line network
  – No funding from USAF
    - These problems also affect Cell C – but Cell C continues to disrupt the market nonetheless
- Neither MTN nor Vodacom has a problem with the current regulatory framework – what they fear most is "over-regulation" i.e. the introduction of any *pro-competitive regulation that will address existing and future behaviour*

THE SOUTH AFRICAN MOBILE MARKET

1

Competition in a duopoly market

- This duopoly is characterised by limited competition and co-ordinated effects on prices
  - Vodacom and MTN receive more than 80% of the data market revenue in South Africa
- They will compete between each other as a duopoly: only enough to maintain the status quo - high prices, entrenched market share
  - They are 'happy' to exchange customers through churn, as consumers, especially post-paid high value consumers - might choose the alternative 'large operator'
- Large operators can match a challenger's prices, and make *higher profits*, due to their large economies of scale
  - *High profits* allow the large operators to engage in entrenching behaviour e.g. win-back and retention discounts for high value customers

Vodacom and MTN are unlikely to push each other in strong competition – only improvements in Cell C's competitiveness can improve competition

2

THE SOUTH AFRICAN MOBILE MARKET

Competition in a duopoly market

- Cell C (and Telkom) try to gain market share and improve competition, but are hampered by a number of factors:
  - The poor quality of national roaming available
    - Vodacom has an incentive to ensure Cell C has a lower-quality (actual and perceived) service by offering a low-quality roaming services
    - As a result, high value postpaid users are unlikely to choose Cell C (or if they do, they likely experience a poorer quality network than Vodacom's own customers)
  - Lack of access to/high cost of suitable radio sites
  - Being hampered by smaller-scale translating into higher long-run unit costs
- Small operators can only sustainably challenge to the extent their higher underlying network costs allow
  - Cell C is as efficient as it can be at its current small scale
  - Cell C is not inefficient - slashing its own costs does not help Cell C to challenge better, it just makes it weaker

Own cost-cutting measures are not the answer: the solution is to address the entrenched duopoly/absence of real competition

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CONTENT OF THIS PRESENTATION

MARKET FAILURE PERSISTS

1

For 20 years, MTN and Vodacom have maintained a highly profitable duopoly

- The market's HHI was **3,542** (in 2017) – any figure over 2,500 represents a highly concentrated market
- Subscriber numbers are frequently relied upon by the media and operators to represent market share, but this is not accurate:
  - it depends on a number of variables including how an operator measures active subscribers, whether or not those subscribers are subscribers to more than one network so are counted twice, and whether the subscriber is a high or low value subscriber
  - low value subscribers produce very little revenue, so even a large number of low value subscribers will not increase revenue and will therefore not assist in growing the share of market of the operator concerned
- Even comparing subscriber numbers, it is clear that Vodacom and MTN are far larger than their competitors

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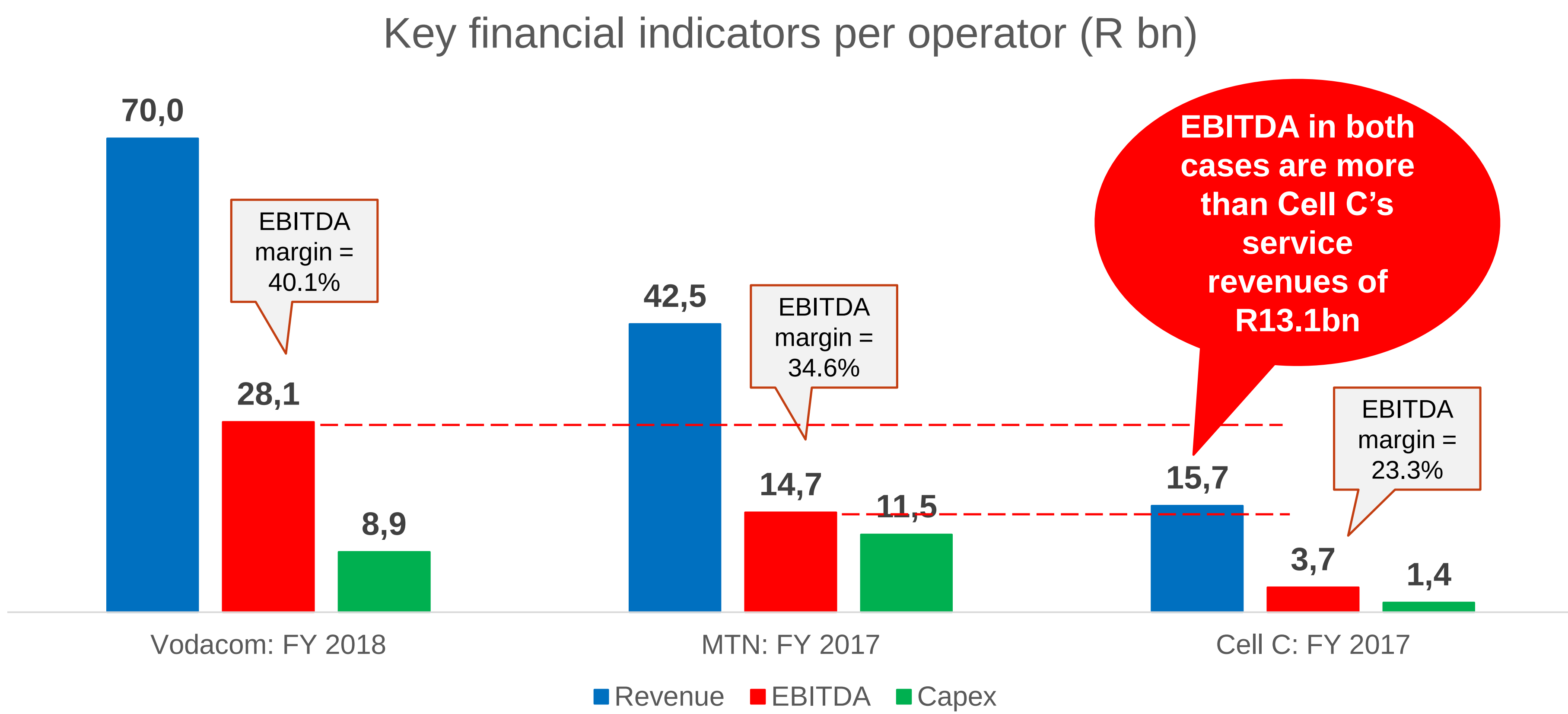
MARKET FAILURE PERSISTS

2

Persistent scale benefits remain for the large MNOs with cost & *profitability* advantages



Source and Notes:
All results per Financial Year. Operator annual reports & results presentations. Cell C estimates.
Vodacom results, FY ended 31 March; MTN & Cell C results, FY ended 31 Dec.
Cell C EBITDA is normalised and Capex excludes intangibles and financial leases.

MARKET FAILURE PERSISTS

The profitable duopoly

- The greater its market power, the more likely a company is to be able to control the availability of services (supply) and thereby increase demand, and so control price
- In 2012 Cell C introduced a new ‘flat’ rate of 99c per minute for voice calls
  - This was significantly lower than the price charged at the time by MTN and Vodacom – and applied between Cell C customers, and from Cell C to other networks
- This was well-received by the market but neither MTN nor Vodacom dropped their prices to match this price – because they did not have to
  - Their subscriber bases were and still are, sufficiently large that they were not significantly affected by the decrease in prices by their competitor
- The on-net pricing strategy of MTN and Vodacom has meant that consumers remain with their current provider rather than porting out to Cell C or Telkom Mobile, in the hopes of benefiting from the on-net promotions and cheaper prices
  - Our research has shown that this is not actually the case, but more than that, internationally it is recognized as anti-competitive

MARKET FAILURE PERSISTS

1

The importance of scale

- It is important to distinguish between efficiently incurred costs, and <u>efficient scale</u>
- Cell C believes its costs are efficiently incurred and ICASA agrees
  - It does not incur expenditures which are unnecessary
  - It undertakes cost and investment control activities to optimise its expenditures
- However, efficient scale is achieved when deployed capacity is well utilised, and 10-15% revenue market share does not represent efficient scale
- As argued in other regions, *minimum efficient scale for 3G is 20-25% revenue market share*
  - It is likely to be more than 25% in the case of 4G and 5G networks in South Africa

MARKET FAILURE PERSISTS

The importance of scale

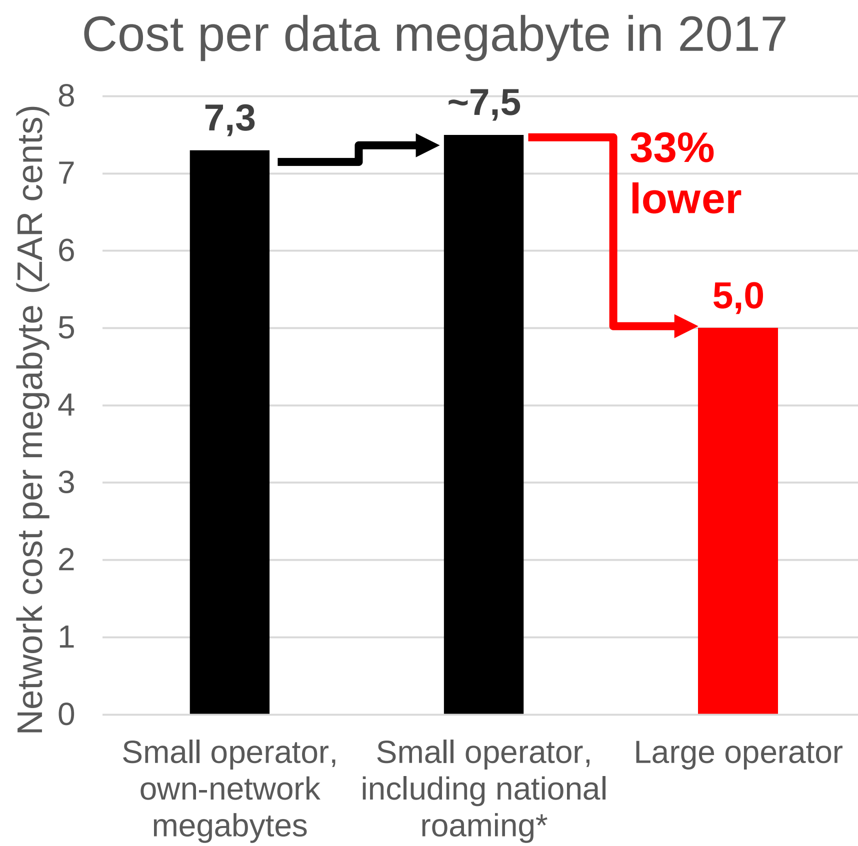
- The duopoly operators have a higher fixed cost from their more extensive network coverage. However, the large operators have 3–4 times the number of customers over which to distribute these fixed costs
- The average network unit costs smaller operators is higher than for the current scale of the large operators (based on the ICASA cost model, the average network unit cost of the small operator is approximately 50% higher than the average network unit cost of the large operator)

MARKET FAILURE PERSISTS

3

There are significant scale effects arising from the entrenched duopoly, inhibiting the ability of small operators to sustainably compete

- ICASA has recently developed a cost model for the latest call termination regulations
- This model calculates the network costs of a 2G/3G/4G network in 2016–2020 for:
  - a hypothetical large operator, comparable to Vodacom (and MTN)
  - a hypothetical small operator with sub-1GHz spectrum, comparable to Cell C
- Competitive pressure will only be as strong as can be exerted by the small operators
- When run for 2017, this model indicates that:
  - small operators rely on roaming services that increase their unit network costs of traffic
  - large operators have a significant "scale" advantage arising from their greater market share



Source and Notes: Derived using ICASA's final BU model, released July 2018, run for 2017.
* Reflects Cell C's approximate proportion of national roaming usage and blended average rate in 2017

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THE ROLE OF REGULATION

1

Regulatory intervention is urgently required to correct market failure

- The goal of regulation is generally to ensure the consumer benefits in the long run – to address markets that cannot 'fix' themselves for various reasons
  - ICASA's mandate is to regulate in the public interest, with certain objectives in mind:
    - The promotion of competition
    - The promotion of SMMEs within the market
    - No meddling in the commercial affairs of licensees
- MTN and Vodacom are concerned about "over-regulation" which they claim will throttle innovation, reduce investment, have a negative effect on employment etc
- The last 2 decades have seen a *persistent absence of pro-competitive regulation*

Regulatory failure has contributed to market failure

THE ROLE OF REGULATION

2

ICASA has many tools at its disposal to carry out its ex ante duties

- Since 2005, ICASA could have, *among other things*, prescribed regulations or imposed licence conditions aimed at addressing the conduct of licensees that have significant market power (SMP)
  - Chapter 10 of the sector law, the ECA, sets out how ICASA should define the relevant markets, prescribes the methodology for identifying SMP, and describes how ICASA should go about imposing pro-competitive terms and conditions
- International best practise suggests that ex ante, pro-competitive regulation should include regulation of some of the following:
  - Call termination rates
  - Facilities-sharing and access to essential facilities
  - Interconnection
  - Number portability
  - National roaming
  - On-net off-net rate pricing by dominant operators
  - Assignment of spectrum

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THE ROLE OF REGULATION

3

Regulation of call termination rates (1)

- The regulation of the rate operators charge one another to terminate a call (interconnection) is intended to ensure that the rate is at least oriented to cost
  - This charge forms part of the calculation of the retail price
  - It is intended to assist in reducing wholesale and ultimately retail prices to consumers
- It is common to afford new entrants asymmetry i.e. the ability to charge incumbents a higher rate than they have to pay incumbents
  - This is to assist new entrants in building their networks, attracting subscribers, competing on price and generally creating a more competitive environment
- ICASA has, since 2010, indicated that it is bringing the termination rate down to actual cost
  - Initially it had no cost information despite several lengthy consultations on the implementation of a cost accounting manual by MTN, Vodacom and Telkom over the previous few years
  - It has ignored Cell C's pleas for enhanced asymmetry to remedy a decade in which Cell C received no regulatory support whatsoever as a new entrant

THE ROLE OF REGULATION

4

Regulation of call termination rates (2)

- The rates set by ICASA in 2010 and 2014 afforded small operators (Cell C and Telkom Mobile) a limited amount of asymmetry which Cell C had to fight very hard to achieve
  - MTN and Vodacom argued hard that just because it had been in the market for 9 years Cell C was not justified in receiving pro-competitive remedies – despite the obvious market failures in several markets
  - MTN and Vodacom argued hard that affording Cell C asymmetric rates would result in each of them would losing massive amounts of money, or having to retrench substantial numbers of staff, or not be capable of further investment in their networks – or all of these things
- As we can see, 8 years on, absolutely none of these things has happened or can be attributed solely or mainly to call termination regulation
  - Instead ICASA has afforded MTN and Vodacom an opportunity to recoup more than their actual costs
  - ICASA has expected smaller operators to attain a higher revenue market share than they were able to – with no uplift on their costs

ICASA's rate regulation in 2 interventions (2010 and 2014) has had no effect on revenue market share of the duopoly (and very little effect on their profitability) – the 2018 intervention is very helpful but too little too late

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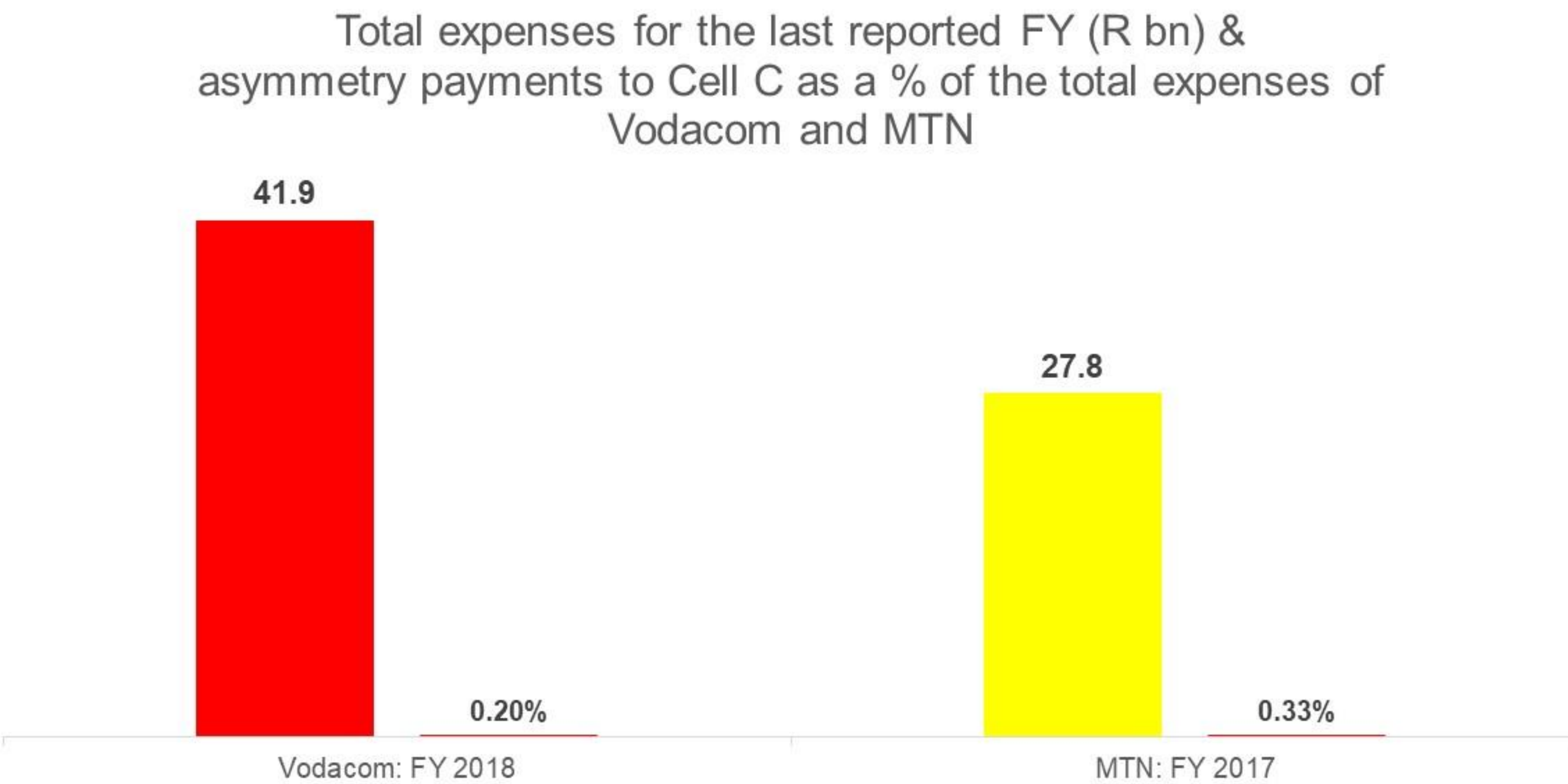
ACTUAL EFFECT OF MTR INTERVENTION ON DUOPOLY

5



Source and Notes:

Total Expenses for the last reported Financial Year as per operator annual reports & results presentations.

Cell C estimates using actual interconnect traffic received from Vodacom and MTN multiplied with the absolute asymmetric benefit for each respective year.

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THE ROLE OF REGULATION

Facilities-sharing (1)

- To avoid the unnecessary duplication of infrastructure (and the associated high cost), protect the environment, and for the convenience of citizens, Governments around the world promote the sharing of telecoms network facilities
- ICASA published several draft regulations until passing the final regulations in 2010
  - Licensees are obliged to make facilities available on request unless a request is not reasonable (which means it is not technically or economically feasible and will not promote the efficient use of networks and services)
  - In nearly 10 years, ICASA has not issued any guidelines nor assessed the market
- The price that may be charged by the owner of facilities has not been regulated despite specific powers being given to ICASA to do so
- ICASA has not taken steps to regulate towerco's – entities that provide facilities but are not licensed

ICASA has taken no steps to enforce the regulations despite complaints by Cell C, prices for network access are not set with reference to any benchmark, licensees are often excluded from certain premises when requests are in fact "reasonable", and network costs are high as a result

THE ROLE OF REGULATION

Facilities-sharing (2)

- Several national policies published by the Minister indicate that licensees should roll out high speed networks so as to meet national targets of coverage and speed
- This is not possible without access to land OR access to existing licensee facilities and network-sharing on reasonable terms
- The Minister and ICASA are obliged to facilitate a uniform process for gaining access to land using wayleaves or servitudes across the hundreds of municipalities; create a centralized database of licensee network infrastructure to facilitate sharing; and liaise with SALGA, COGTA, departments of the environment, transport, water and sanitation, and many other organisations – this has not happened
- Small licensees cannot easily gain access to existing facilities owned by dominant operators or facilities that are “essential” or located in areas which are difficult to access

There is no co-ordinated framework for the rapid deployment of network infrastructure and rollout of services, so policy statements and targets are meaningless as licensees cannot gain access to land. Furthermore the existing regulations are not enforced to assist small operators

THE ROLE OF REGULATION

Facilities-leasing (3)

- Cell C participated in an ICASA consultation regarding the acquisition by MTN of Smart Village
- Cell C argued that this acquisition would increase MTN's dominant position in the market
  - Giving it an edge in the gated community/complex network segment (high end, large consumer numbers)
  - This posed a greater risk because the facilities-leasing environment was largely unregulated (in practise)
- But ICASA approved the transaction unconditionally
- When the matter was referred to the Commission, conditions were imposed
  - Giving other operators rights to access these premises on fair, transparent and non-discriminatory terms
  - Requiring MTN to submit a rate card

ICASA approved a transaction that entrenched the dominance of one of the duopoly operators in a key area, despite obvious concerns

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THE ROLE OF REGULATION

Essential facilities

- These are network facilities that are deemed to be "essential" in that they cannot be easily duplicated either technically or for financial reasons but are vital in terms of location or type, to all licensees
  - For example, mobile masts on high sites, networks in protected or heritage sites, ducts in road reserves, undersea cable landing stations
- International best practise is to ensure that licensees that do operate or control such facilities should make them available to share with third parties who cannot themselves construct facilities in those areas because of these restrictions
- The sector law, the ECA of 2005, required ICASA to determine a list of these facilities and to regulate them in a specific manner
- In 2008 ICASA consulted on a possible list of these facilities

ICASA has never published a final list or a regulation to deal with the terms on which access to essential facilities should be granted – where these are held in the hands of dominant operators, small operators don't stand a chance

THE ROLE OF REGULATION

Number portability regulation

- Despite several requests by Cell C from 2013, ICASA failed to review the mobile Number Portability Regulations of 2005 – which were introduced under the former and now repealed Telecommunications Act of 1996 – until late 2017
- Number portability is vital to competition – allowing customers to choose their provider, ensuring licensees compete on price, quality of service and coverage
- The restrictions on marketing of porting, the limitations on the time that ports may take place, and the technical constraints, when combined, create a toxic mixture of obstacles to Cell C, Telkom Mobile and any new entrant to gaining real market share in a saturated market
  - In a saturated market, porting customers away from the incumbents is obviously the only real option to grow a subscriber base
  - Porting has been subject to inexplicable delays by dominant operators and high charges being imposed on postpaid customers wishing to port, resulting in proven decreases of significant numbers of ports to Cell C

ICASA published amendments to these regulations in 2018 but these are inadequate for various reasons – most notably that they are not intended to promote competition, and Cell C has instituted action against ICASA in the High Court

THE ROLE OF REGULATION

Interconnection

- ICASA published several draft regulations until passing the final regulations in 2010
- Separately from call termination rate regulation, ICASA also required dominant operators to provide Reference Interconnection Offers in 2010 and again in 2014
- These agreements are intended to ensure interconnection is offered on non-discriminatory and transparent terms, on a first-come first-served basis, and by dominant operators on other prescribed terms – all of which have to be approved by ICASA
- MTN, Vodacom and Telkom first filed their offers with ICASA only in 2014 and ICASA sought comments on them, which Cell C submitted, and has followed up on several times

ICASA has never published the final offers in their approved form, so every interconnection request is subject to negotiation or a requesting licensee must simply take what is on offer from MTN and Vodacom

THE ROLE OF REGULATION

National roaming (1)

- Despite several approaches by Cell C regarding concerns about its agreement for national roaming from Vodacom, ICASA has yet to investigate this vital area
  - There are no obligations on any dominant operators to provide roaming and no regulatory oversight over charges or terms
  - Cell C has begun roaming on MTN's network without regulatory assistance on pricing or at all
- Cell C has only recently begun testing seamless handover in roaming (the practise of transferring a call whilst in progress without dropping the call) between the Cell C and Vodacom networks
  - Currently a subscriber to Cell C must re-establish its call when he or she moves into a Vodacom roaming area, which gives the perception of poor quality of service and coverage. Elsewhere in the world (including in other jurisdictions where Vodafone operates), seamless call handover is an integral part of national roaming.
- Cell C has no agreement with Vodacom currently for LTE roaming services and we expect that it will be very expensive to obtain these services
  - So Cell C cannot make its promotional or cheaper data packages available in many of the areas in which it roams

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THE ROLE OF REGULATION

National roaming (2)

- Offering cheap packages for data in areas where Cell C does not have a network and roams on Vodacom will result in a loss to Cell C from the first megabyte of data consumed on Vodacom's network
  - This effectively precludes customers in those areas from accessing the promotional rates or cheaper data services that Cell C makes available to other customers in areas in which it has its own network
  - This is because Cell C's promotional or cheaper data services are limited to a smaller base i.e. customers in non-roaming areas
- This also prevents the growth of Cell C's subscriber base and market power
- There is no incentive on Vodacom to improve quality of service to Cell C or to allow seamless call handover, or to negotiate favourable terms for 4G roaming
- There are artificial "technical" barriers to sharing, for example, Vodacom does not offer access to facilities on the same basis as it offers them to Rain, and Rain does not offer "roaming" to third parties on the same basis that if offers it to Vodacom

ICASA's failure to regulate national roaming is prejudicing Cell C

THE ROLE OF REGULATION

On-net off-net pricing by dominant operators (1)

- Cell C submitted a complaint to the Commission in October 2013 about on-net off-net retail pricing by dominant operators, which Cell C alleged was excluding competition from their rivals
  - This was not referred for adjudication to the Tribunal
- The essence of the complaint was that MTN and Vodacom use differential pricing in their on-net and off-net packages to customers, to ensure that customers are “locked-in” to their networks by the promise of a beneficial on-net rate, preventing switching of these customers to competing networks like Cell C
  - Because the pricing of the on-net and off-net offerings is not transparent, the effective rate charged by the incumbents had to be determined with reference to publicly available data and the marketing materials of the incumbents
- Based on the available data at that time (which was later updated twice), it is Cell C’s view that the prices actually charged for on-net calls are so much lower than the off-net prices of the incumbents that the off-net prices must be regarded as excessive
- In addition, the level to which on-net prices appear to drop suggest that the margins achieved by the incumbents are too small to allow Cell C to compete

THE ROLE OF REGULATION

On-net off-net pricing by dominant operators (2)

- The Commission issued a press release on 18 April 2017 (nearly 4 years after the complaint was lodged) in which they confirmed their decision not to prosecute the complaint by Cell C
  - It recommended that ICASA consider market failures that gave rise to the Cell C complaint and stated "…*However, there is evidence to suggest that this conduct and other features of the market, in particular the price differentials applied for on-net and off-net calls as well as long-term subscribers' contracts have made it difficult for late entrants such as Cell C to compete effectively. There is therefore a need to look broadly into the state of competition in the mobile telephony market in South Africa, specifically at the retail level, as the market is still dominated by two mobile market players, years after the licensing of Cell C and Telkom Mobile. In this regard, the Commission will engage the Independent Communications Authority of South Africa (ICASA) to explore regulatory interventions that may be necessary to make the market competitive*"
- On 15 October 2018, MTN announced the return of the Mahala product for MTN Zone customers: *Mahala Calls is a new recharge and get promotion for all MTN Zone customers, both Prepaid and TopUp, on the network. To get this offer, MTN Zone customers need to opt-in by dialling *175*0# and make a daily recharge of R10 or more to receive free minutes, up to one hour to make MTN to MTN calls. Customers can use the free minutes during the Mahala call hour in their current location.*
- *MTN Zone is a prepaid per-second billing price plan that offers of up to 100% discounts on calls and SMSes. Discounts are driven by dynamic demand, which is determined by the caller's location and the time of day. Through this offer, MTN will be providing its MTN Zone subscribers the added value of more voice minutes to use to call their loved ones.*

ICASA has never investigated the practise of on-net off-net pricing differences by dominant operators: it should have, and this could have resulted in a relatively quick and definitively positive effect on competition

THE ROLE OF REGULATION

ICASA's End User Regulations, 2018

- ICASA began consulting on data related issues such as data expiry, out-of-bundle pricing and rollover in 2017
- Cell C engaged with ICASA on several occasions prior to ICASA's formal consultation on this subject, and during two consultations in writing, as well as in an oral hearing
- Cell C was concerned about the effect of the proposed regulations on the broader economy, the possible economic impact on licensees as well as whether or not the proposed measures would actually address the perceived harm to consumers
- The regulations were published on 7 May 2018 but because licensees were only given 1 month to implement these technically complex regulations, Cell C had to institute action against ICASA in the High Court in order to get a reasonable extension. If Cell C had not done so it would have been found non-compliant with the regulations as it was physically impossible to implement them in the proposed time-frame. The matter is set down for hearing in the High Court on 17 and 17 November 2018.

ICASA did not carry out a regulatory impact assessment or provide evidence to support its contention that regulating licensees in the proposed manner would improve the position of consumers

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THE ROLE OF REGULATION

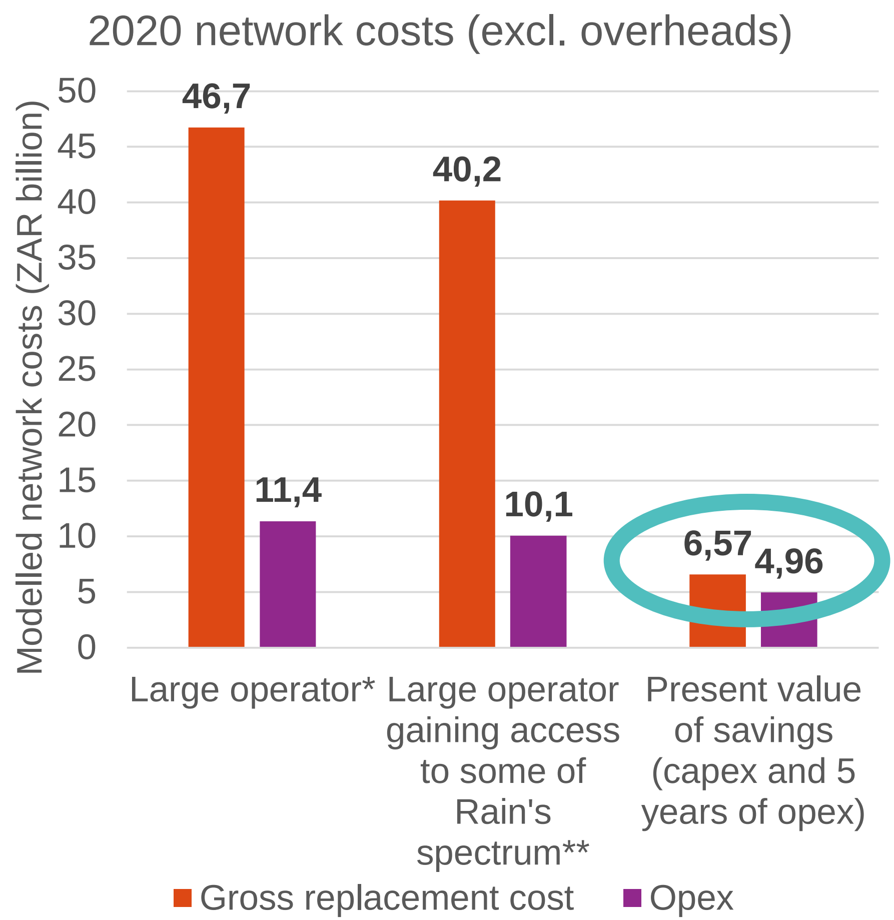
Assignment of spectrum (1)

- Cell C asked ICASA for information about the acquisition by Vodacom of spectrum and network assets belonging to Rain (formerly WBS) 2 years ago
- ICASA conducted an "investigation" and concluded that there is no spectrum-sharing by the parties
- Cell C has not been able to gain access to all the relevant documents in the transaction but it is clear from the agreements that we have been provided with (from ICASA) that:
  - Vodacom has concluded a "national roaming" agreement with Rain, whose network hardly extends even outside the province of Gauteng
  - The terms suggest that this roaming is provided for almost the same price as Vodacom is charging Rain to gain access to 5,000 of Vodacom's masts (or towers)
- The transaction is cause for concern for Cell C:
  - Vodacom's dominance will be entrenched further as it is able to gain access to Rain's valuable spectrum in the guise of a network-sharing or roaming agreement
  - The terms on which Vodacom has agreed to allow access to its sites with Rain are far more favourable than the terms that Cell C has received from Vodacom for some of the same sites and in general

MARKET FAILURE PERSISTS

Allowing a large operator access to Rain spectrum constitutes a regulatory/anti-competitive failure: a new "spectrum advantage" has now been handed to them

- ICASA's model can also demonstrate the impact of Vodacom using Rain's spectrum
- By running the model in 2020 assuming the large operator also has access to some of Rain's spectrum*, the large operator makes significant network cost savings
  - we estimate a technical value **of ZAR11.5 billion**
  - the large operator's network costs of data will therefore fall due to an effect small operators cannot replicate
- Small operators are left even more limited in their ability to compete sustainably



Source and Notes: Derived using ICASA's final BU model, released July 2018, run for 2020.
* We have uplifted the megabytes carried by the large operator by 50%, giving the large operator the same CAGR in data megabytes over the period 2018-2020 as the small operator
** We assume that the large operator has access to 2×7MHz of 1800MHz and 10MHz of 2600MHz spectrum, leaving Rain one carrier in each band for their own customers

THE ROLE OF REGULATION

Assignment of spectrum (2)

- The competitive effect of a large operator with access to Rain’s spectrum constitutes a (new) competitive advantage for the operator i.e. Vodacom
  - With unit costs at least 12% lower than the challenger small operators, the large operator will be able to earn high profits even if under the competitive pressure of the small operators
  - These high profits will come from relatively high consumer prices, with small operators lacking the overall scale or spectrum advantages to sustainably challenge the entrenched large operators
- Rain has recently suspended its retail offering, claiming service level issues with Vodacom
  - It is obvious that the transaction was primarily for Vodacom’s benefit – the retail offering appears to have been a smokescreen

ICASA is a sector-specific regulatory authority. It should know the value of spectrum. This calculation could have been performed without the benefit of the 2018 cost model. ICASA has failed to give consideration to the competitive effect of the Vodacom/Rain transaction which is ultimately only about access to spectrum – the results have already benefited Vodacom substantially. The Commission has declined to investigate the arrangement as a merger – despite the effective acquisition of one of Rain’s major assets

THE ROLE OF REGULATION

Assignment of spectrum (3)

- Cell C participated in an ICASA consultation regarding the acquisition by Vodacom of shares in Neotel Pty Ltd (now Liquid Telecom)
  - Ostensibly this was for Neotel's benefit as a struggling company
  - Actually the transaction was about the acquisition by Vodacom of Neotel's spectrum
- Cell C argued that transfers of spectrum are not permitted and this transaction would have a significantly detrimental effect on competition because of Vodacom's dominant position in the market
  - Allowing it to acquire more of a scarce resource without proper process would further skew the market
- The Commission took a keen interest in this transaction

ICASA approved the transaction nonetheless and was taken to the High Court on review, which Court set aside the decision and the transaction was not implemented for various reasons

CONTENT OF THIS PRESENTATION

1. Introduction to Cell C
2. South Africa mobile market
3. Market failure persists
4. The role of regulation
    a. Tools available to promote competition
    b. The need to investigate transactions in the right context
5. What remedies are required?
6. Conclusion and recommendations

WHAT REMEDIES ARE REQUIRED?

1

An overview: what (new) action can be taken to remedy market failure?

- Award spectrum to all licensees on conditions that ensure that the dominant operators are not favoured or able to gain the lion's share
  - Implement an amended spectrum policy directive
  - Revise the ECA in this regard
  - Address the Rain/Vodacom transaction complaint
- License a WOAN in a manner that enables it to act as a wholesale partner to operators
  - Rather than restricting its activities and burdening it with onerous licence obligations
- Carry out one proper study of the electronic communications market
- Co-ordinate policy goals
- Revisit the on-net off-net complaint
- Introduce a 3-year glide path to phase in OOB regulation to soften the effect on market revenues
- Access to Infrastructure – remove barriers for access facilities leasing/sharing
- Regulate provision of roaming by dominant operators

CONNECT YOUR WAY

WHAT REMEDIES ARE REQUIRED?

An overview: what remedies are already available to promote competition?

<table>
<tr><th>ICASA</th><th>Commission</th></tr>
<tr><td>1. Review and prohibit continuing on-net off-net pricing differentials by dominant operators</td><td rowspan="5">Acknowledge that ICASA has failed in the past, with disastrous outcomes for the market:

• Recommend, encourage and work with ICASA on ensuring that those measures that do not require a market review are implemented without delay (2, 3, 4, 5)

• Recommend, encourage and work with ICASA to commence a market review of competition in general in the electronic communications sector under Chapter 10 as soon as possible because running separate individual (priority) market reviews is not necessary (1, 4)</td></tr>
<tr><td>2. Improve the number portability regulations to prohibit winback, and return to recipient-led porting</td></tr>
<tr><td>3. Prohibit trading practises that entrench the position of dominant operators such as discounting end-of-contract pricing</td></tr>
<tr><td>4. Implement and enforce the facilities-leasing regulations/conduct a market review</td></tr>
<tr><td>5. Review, consult on and enforce the implementation of reference interconnection offers</td></tr>
</table>

WHAT REMEDIES ARE REQUIRED?

An overview: what action can be taken by the Commission?

Commission
1. Ensure access to essential facilities and network facilities of dominant operators is made available to other licensees on fair, transparent and non-discriminatory terms including as to price
2. Investigate national roaming to ensure that dominant operators are providing this on fair, transparent and non-discriminatory terms including as to price
3. Ensure access to spectrum is equal, and do not allow spectrum rights to be taken/used by dominant operators outside of a proper process
4. Investigate and prohibit on-net off-net pricing differentials by dominant operators, or refer this to the Tribunal

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CONCLUSION AND RECOMMENDATIONS

INCREASING EFFECTIVE COMPETITION IS THE ONLY SOLUTION

ADDRESS REGULATORY FAILURE

PROMOTE COMPETITION AND ENABLE GROWTH IN SCALE

APPLY THE REMEDIES THAT WILL SHAPE THE FUTURE

CONNECT YOUR WAY