



**competition commission**  
*south africa*

## **Background Data Services Market Inquiry**

**By Deputy Commissioner, Hardin Ratshisusu**

### **\*Salutations**

The Data Services Market Inquiry (“the Inquiry”) was initiated on 18 August 2017 by the Competition Commission (“the Commission”) in terms of Section 43B(2) of the Competition Act No. 89 of 1998 (as amended) (“ Competition Act”).

The initiation of the Inquiry followed concerns expressed by the then Minister of Economic Development (now Minister of Trade and Industry) about the high level of data prices and the importance of data affordability in South Africa, for the development of the South African economy and benefit to consumers at large, and an outcry from the general public about high data costs (you all remember the #DataMustFall campaign).

The Minister made the request to the Commission on 21 June 2017, after the Minister had consulted the then Minister of Postal Services and Telecommunication Services who had expressed similar concerns.

A “market inquiry” is defined in the Competition Act as “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 names firm”. As such the Inquiry in this case considers the market for data services broadly and is not limited to any specific firm or conduct.

The purpose of the Inquiry was two-fold: firstly, to understand the reasons for high data prices and, secondly, to make appropriate recommendations to address those any concerns such that prices are ultimately lowered and ensure the market is competitive.

Following a formal call for submissions on 20 September 2017, and public hearings held from 17 to 19 October 2018, the Commission released the provisional findings and recommendations on 24 April 2019 for public comments. The Commission received a number of submissions from

stakeholders (including government, civil society, business, political parties, consumer groups and the sector regulator) and has reviewed the submissions in detail and consulted further with stakeholders where required.

In terms of Section 43C(1) of the Competition Act, upon completing a market inquiry, the Competition Commission must publish a report of the inquiry in the Gazette, and must submit the report to the Minister with or without recommendations, which may include, but not limited to—

- (a) recommendations for new or amended policy, legislation or regulations; and
- (b) recommendations to other regulatory authorities in respect of competition matters.

Upon receipt of the report from the Commission, the Minister must in terms of Section 21(3) of the Competition Act table the report in the National Assembly within 10 business days or if Parliament is not sitting, within 10 business days after the commencement of the next sitting. On the basis of information obtained during a market inquiry, the Competition Commission may in terms of Section 43C(3) of the Competition Act –

- (a) initiate (an investigation) a complaint and (reach a settlement agreement) enter a consent order with any respondent, in accordance with section 49D, with or without conducting any further investigation;
- (b) initiate (an investigation) complaint against any firm for further investigation, in accordance with Part C of Chapter 5;
- (c) initiate and refer a complaint directly to the Competition Tribunal without further investigation;
- (d) take any other action within its powers in terms of this Act recommended in the report of the market inquiry; or
- (e) take no further action.

Today's proceedings mark the conclusion of the Commission's market inquiry and what follows next will be the implementation of the recommendations as well as engagements that may be necessary.

The findings and recommendations are presented next.