

# ENSafrica telecoms and media in brief

Below, please find issue 9 of ENSafrica's telecoms and media in brief, a snapshot of the latest telecommunications and broadcasting developments in South Africa.

## telecommunications

- **GG42878 – 2019 GOV NN 1560: Discussion Document on Mobile Broadband Services Inquiry**
  - on 29 November 2019, the Independent Communications Authority of South Africa ("ICASA") published its [Discussion Document on the Market Inquiry into Mobile Broadband Services](#) ("**Discussion Document**") for public comment.
  - the Discussion Document is informed by information and data received from licensees and sets out ICASA's preliminary findings on the definition of the relevant mobile broadband services markets and the effectiveness of competition within these relevant markets.
  - the Discussion Document also identified licensees that may have significant market power in the relevant markets which ICASA has identified and recommends pro-competitive remedies.
  - ICASA identified the following markets in its Discussion Document. These include one retail market for mobile services and four wholesale markets for:
    1. spectrum;
    2. site access;
    3. roaming; and
    4. mobile virtual network operator ("**MVNO**") or wholesale access point name ("**APN**") services
  - below, we provide a summarised overview of ICASA's preliminary finding in respect of each of these markets.
    - **retail market:** ICASA identified and considered a retail product market for mobile services generally. While cognisant of the fact that there may be separate markets for voice, SMS and data services, ICASA found that the competitive dynamics are similar across these markets, therefore warranting an aggregated analysis. ICASA found that there is market share and retail price evidence that suggests that these markets are ineffectively competitive in many cases, finding that MTN and Vodacom are largely dominant in municipalities generally. ICASA considers that entry barriers into retail markets are

significant as a result of wholesale services not being competitively supplied. As a result, ICASA considers that remedies in respect of the wholesale markets are appropriate to resolve ineffective competitive markets at the retail level.

- **wholesale market for spectrum:** ICASA found that while the supply of spectrum is limited, there are no licensees that have substantially greater holdings than other licensees, and there are no licensees that have significant market power in this market.
  - **wholesale market for site access:** ICASA found that the market is ineffectively competitive with very high levels of concentration in the majority of municipalities. ICASA's proposed remedy in this regard is the redrafting of facilities leasing regulations as contemplated by the Electronic Communications Act, 2005, along with more detailed guidelines. This would include a requirement to publish site information online, a time limit for the consideration of requests and rules around when site sharing should be considered technically and economically feasible. ICASA suggests that this would preclude operators from reserving space for masts indefinitely and would also facilitate a faster roll out of new sites by smaller operators.
  - **wholesale market for roaming services:** ICASA once again found that this market is ineffectively competitive, with MTN and Vodacom having substantial coverage over most municipalities. ICASA has recommended the following pro-competitive remedies in this regard:
    - mandating a roaming offer for parties dominant in particular geographic areas; and
    - implementing accounting separation in order to enhance transparency and allow ICASA to monitor the operators more effectively. ICASA did, however, mention that price regulation at this stage may be premature.
  - **wholesale market for MVNO and APN services:** ICASA did not definitely define markets, assess the effectiveness of competition and significant market power or consider pro-competitive licence conditions. This was a result of ICASA's view that any competition concerns are capable of being addressed through remedies imposed in relation to site access and roaming services. Despite this, ICASA has noted concerns in relation to the market for MVNO and APN services as there are indications that the supply of these services are ineffectively competitive. ICASA has stated that it will continue to monitor progress with regard to the supply of MVNO and APN services in order to reassess whether further intervention is needed.
- ICASA has, since the publication of the Discussion Document, extended the deadline for submissions on the preliminary findings and recommendations contained in the Discussion Document to 27 February 2020.
  - the Discussion Document and the comments received will be used by ICASA to publish its draft regulations.

- all communications relating to the inquiry must be directed to the Chairperson: Mobile Broadband Service Inquiry by email: [marketinquiry2018@icasa.org.za](mailto:marketinquiry2018@icasa.org.za).
- **Competition Commission releases its Data Services Market Inquiry Final Report**
  - on 2 December 2019, the Competition Commission (the "**Commission**") published its final report in relation to its Data Services Market Inquiry (the "**Inquiry**"). The inquiry was initiated in August 2017 in response to “persistent concerns expressed by the public about the high level of data prices and the importance of data affordability” the Commission has stated.
  - the purpose of the Inquiry, as set out in the terms of reference, is “to understand what factors or features of the market(s) and 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.”
  - the key finding resulting from the Inquiry, based on an international benchmarking and profitability analyses, is that data prices in South Africa are disproportionately high. The final report also identified four other areas of concern, which we discuss briefly below:
  - **anti-poor price structures lacking transparency**
    - the Commission found that lower income consumers were faced with higher data costs per megabyte in comparison to consumers who were able to purchase larger data bundles. This discrepancy, the Commission found, is inexplicable.
  - **price-based competition in markets is inadequate**
    - the Commission concluded that price-based competition is inadequate in that the “challenger networks of Cell C and Telkom Mobile are unable to effectively constrain the two first-movers.”
  - **a lack of spectrum and cost-based facilities access drive up costs**
    - the Commission stated that it was “common cause” that the failure to release high demand spectrum as a result of delays in digital migration has meant that mobile network operators have insufficient spectrum available and a lack of access to favourable low frequency bands, which serves to raise costs unnecessarily. The Minister of Communications has, since this finding in the Commission’s provisional report, issued a policy directive to ICASA, which has issued an information memorandum outlining possible assignment criteria.
  - **addressing the supply gap for fixed-line data services**
    - the Commission had conserved an alternate data services route through the supply of fixed-line as opposed to mobile data services. Despite limited submissions received on the topic, the Inquiry found that fixed-line supply and other mobile data alternatives may provide cheaper, or possibly free, data services to consumers in particular geographical areas or at particular times of the day.
  - **recommendations**
    - the Commission has proposed both immediate and intermediate measures to address the findings from the Inquiry.
    - with regard to immediate relief, the Inquiry recommends that the relevant mobile operators be required to enter into independent

agreements with the Commission within two months of the publication of the final report to ensure substantial and immediate price reductions, especially in relation to prepaid monthly data bundles. The Commission has identified that the reductions should be in the region of 30%-50%. Moreover, the Commission requires that agreements be entered into within three months of the final report relating to:

- the provision of daily free data to all prepaid subscribers;
  - consistent industry-wide approach to the zero-rating of content from public benefit organisations and educational institutions; and
  - operators informing their subscribers of the effective price of all data consumed by the subscriber monthly.
- in addition to the immediate measures recommended by the Commission, the intermediate measures are focused on enhancing price-based mobile competition through wholesale market interventions and promoting the development of alternative infrastructure to provide data services to more cities and nationally, especially to lower income areas. Moreover, the Commission has recommended a number of policy and legislative reforms to further drive the lowering of data prices.

## broadcasting

- **GG42902 - 2019 - GEN 650: Review of the ICASA Must Carry Regulations, 2008 Discussion Document**
  - on 13 December 2019, ICASA published the [Discussion Document on the Review of the ICASA Must Carry Regulations, 2008](#). ICASA is in the process of conducting an inquiry in terms of s4B of the Independent Communications Authority of South Africa Act, 2000 regarding the effectiveness of the Must Carry Regulations, 2008 and whether there is a need to amend them.
  - ICASA has invited interested persons to make written representations on the Discussion Document. The Discussion Document further outlines the following questions to illicit input from stakeholders, if any, on the imposition of the must carry obligations:
    - what, in your view, is the purpose of must carry in South Africa?
    - what are the advantages and disadvantages of the current Must Carry Regulations for both public broadcasting services and subscription broadcasting services licensees?

- should ICASA monitor compliance with the requirement of section 60(3) on an annual basis? If yes, how should such monitoring be done to be effective?
  - what role, if any, should ICASA play in the negotiation of contracts for must carry?
  - should ICASA provide a framework for commercial agreements? What should the content of such a framework be?
  - if ICASA should not play a role in the negotiation of contracts, what are the proposed dispute resolution mechanisms and by when should the agreement be concluded subsequent to receiving a must offer or must carry request?
  - what are the compliance burdens associated with Must Carry Regulations, if any? How can these burdens best be addressed?
  - what changes, if any, should there be in the digital environment with regard to Must Carry Regulations?
  - should ICASA continue exempting some subscription broadcasting service licensees based on the number of channels they provide? Should there be other forms of exemptions, and why?
  - what are the actual costs associated with meeting the must carry obligations by the public broadcasting service (“**PBS**”) and subscription broadcasting service (“**SBS**”) licensees? To support these assertions, kindly provide a detailed breakdown of costs for the previous three financial years.
  - how should the costs for must carry be apportioned between the PBS and the SBS licensees, if at all?
  - what are the costs associated with meeting the must carry obligations on an analogue platform versus over a digital platform?
  - do you think must carry obligations should apply during the dual illumination period? What will be the impact of must carry during dual illumination?
  - should the requirement be that all programmes provided by the PBS licensee channels be carried, or should there be room to elect programmes for carriage? If you advocate for the right to elect programmes to carry, what criteria should be used for such a choice?
  - what are the benefits of offering channels for must carry?
  - what are the benefits of carrying the public broadcasting channels?
  - are there any other issues that ICASA will have to consider regarding the amendment of regulations on must carry?
- all written representations must be submitted to ICASA by no later than 6 March 2020. Submissions are to be marked for the attention of Mamedupe Kgatshe. Where possible, written representations should be emailed to [mkgatshe@icasa.org.za](mailto:mkgatshe@icasa.org.za) and [MustCarryRegulationsCouncilCommittee@icasa.org.za](mailto:MustCarryRegulationsCouncilCommittee@icasa.org.za).
  - for more information or assistance in submitting comments on the above inquiries, contact:

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