

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
**Inquiry into the State of Competition in the Information and
Communications Technology Sector**



Submission by
The South African and Communications Forum



June 2014

TABLE OF CONTENTS	Page No
1. INTRODUCTION	3
2. BACKGROUND	4
2.1. Very slow to modernize local loop infrastructure	4
2.2. Treated the monopoly local services market as cash cows, using cash flow for dividends, share repurchases, acquisitions, and lobbying activities rather than for R&D or capital investment in new technology	5
2.3. They have merged with and acquired each other, reducing the total number of large local services providers	5
2.4. Deliberately and systematically avoided competing with each other despite making repeated public statements implying that it would be economically rational for them to do so	5
3. THE COST TO COMMUNICATE, COMPETITION AND CONSOLIDATION	6
4. SPECTRUM	7
5. BROADCASTING	8
6. CONVERGENCE AND THE INTERNET	10
7. INNOVATION, NET NEUTRALITY AND DISRUPTIVE TECHNOLOGIES	12
8. CONCLUSION	13
9. ANNEX 1: Key points derived from ICASA's presentation to SACF Members on Tuesday 13th May 2014	14

1. Introduction

The South African Communications Forum (“SACF”) thanks the Independent Communications Authority of South Africa (“ICASA”/“the Authority”) for the opportunity to participate in the Authority’s high level inquiry into the state of competition in the Information and Communications Technology (“ICT”) sector.

SACF further expresses its gratitude and appreciation for ICASA’s invaluable collaboration in briefing SACF members prior to their plenary discussions that led to the preparation of this submission which responds to Notice 229 of 2014: NOTICE OF PUBLIC INQUIRY INTO THE STATE OF COMPETITION IN THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SECTOR. The ICASA briefing, summarized in Annex 1 of this submission, served to clarify the contents of Notice 229, and provided useful guidelines for the member’s deliberations and the preparations of this submission.

ICASA’s presentation acknowledged the highly competitive environment within which SACF members operate, an environment that has often led to extreme difficulty in reaching consensus on key issues such as competitive sector structures and spectrum. ICASA’s clarification assisted this process well by stating upfront that:

- ICASA seeks to identify points of pressure and tension in the competitive environment at this stage: ICASA does not seek solutions or specific recommendations on any subject raised in the inquiry – deriving such solutions and recommendations will be undertaken further down the consultation process, especially after mapping the competitive environment (items 2 and 3 of Annex 1);
- ICASA does not seek answers to the numerous definitional, structural or technical issues raised in the inquiry, but welcomes all contrasting and/or contradictory points of view with the sole purpose of understanding the dynamics of the South African competitive environment better, and from such understanding, develop a vivid picture and visualizations from which specific responses will be derived in future consultative processes.

The ICASA briefing thus provided an invaluable platform for fully open debate amongst SACF members, without the concern that any of the often diverse opinions expressed and/or reported by SACF members will be used to set the competitive environment for the sector at this stage of the consultation. ICASA’s plea for an open-ended, high level and expansive dialogue that does not imply support for any specific opinion or preference by any member of the SACF family has been used as the building block for this SACF response.

While acknowledging that the ICASA inquiry is a complex on-going process, and that this phase of the consultation is but a beginning of the process, SACF members expressed the need to highlight the following concerns that must be taken into account as the process unfolds:

- 1.1. SACF members recognise that shaping a fair non-discriminatory ICT competitive environment for South Africa is vital for sustainable growth of the sector, and for the national economy as a whole;
- 1.2. The inquiry must lead to the definition and adoption of clear measurable and practical indicators and targets that will enable progress monitoring, and the

- continuous development of dynamic strategies and plans that will steer the sector into the emerging global converged ICT ecosystem;
- 1.3. That the unfolding competitive environment must ensure the full integration of all national facilities and sectors that can contribute to ICT sector growth. Amongst these are the invaluable capacities for infrastructure builds available in the national electrical power, road and rail infrastructures, and the vital collaboration by building and other civil engineering contractors and consortia;
 - 1.4. The desire to facilitate entry of new players should be balanced against the benefits that existing players already offer the market – existing infrastructure, knowledge of the environment, historical investment and expertise should be retained;
 - 1.5. The process must lead to the development of high level and highly professional implementation management systems which will include the coordination of all stakeholders, clear assignment and delegation of responsibilities for implementation, and the development of a baseline assessment that cuts across the whole ICT ecosystem, recognising and focussing on narrowing identified gaps and bottlenecks, and ensuring cost-effect use of all nationally available assets and resources.

The following paragraphs attempt to capture the key concerns expressed by SACF members on each point raised in the ICASA inquiry document, in order of its appearance.

2. Background: A description of the US market narrated by Economist Charles Ferguson in 2004¹

ICASA begins its inquiry with a brief extract from Charles Ferguson's 2004 analysis of the USA ICT market, and asks if parallels can be drawn for the South African market. SACF members deliberated on this and arrived at the following conclusions:

2.1. Very slow to modernize local loop infrastructure: In attempting to draw parallels in the South African market, the SACF Secretariat presented a brief overview of South Africa's history of local loop infrastructure modernization. Whilst acknowledging the historical lapses in local loop infrastructure modernization, some members of the SACF objected to such a focus, preferring instead to focus on today's actual and/or perceived successes. On review of ICASA's focus as outlined in Annex 1, it is clear that ICASA is cognizant of this history and its impact on the existing and emerging competitive environment. This is outlined in some detail in paragraph 7 of Annex 1.

In an effort to reinforce the link between South Africa's history of local loop modernization and its underlying competitive environment, ICASA referenced three relevant publications: Gillwald and Esselaar's Review of the Telecommunications Sector², an analysis of South Africa's ICT sector reforms by Horwitz and Currie³, and commentary on the unfolding competition policy and

¹ <http://www.brookings.edu/research/books/2004/broadband-problem> The Broadband Problem: Anatomy of a Market Failure and a Policy Dilemma.

²

http://www.researchictafrica.net/publications/Telecommunications_Sector_Performance_Reviews_2007/South%20Africa%20Telecommunications%20Sector%20Performance%20Review%202006.pdf

³ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2118147

law by David Lewis⁴. Such lessons from South Africa's recent history should be taken into account so that similar errors are not repeated as the future competitive environment unfolds.

The key SACF member's response to this question posed by ICASA is that the local loop network has indeed been slow to modernize. The SACF members did however point to actual successes in this regard, principally the rapid growth of mobile networks and services which did provide an alternative to the ineffective fixed local loop modernization and growth. The SACF members also highlighted the need to consider issues such as classifying the fixed local loop as an essential facility in order to promote competition in this vital subsector, to consider how the principles of open access at some or all layers of the future converged ICT ecosystem can be used to foster competition and therefore sustainable growth in the ICT sector. The members also debated briefly the role of local loop unbundling as it applies to the local copper loop, and concluded that such a focus is progressively being outdated as alternatives to the copper loop emerge with convergence.

2.2. Treated the monopoly local services market as cash cows, using cash flow for dividends, share repurchases, acquisitions, and lobbying activities rather than for R&D or capital investment in new technology

In considering this emotive suggestion, the SACF members agreed that perceptions of the statement's truism do exist, however any firm conclusion must be based in rigorous analyses, the existence of which are unknown to the participating SACF members at the time of drafting this response.

2.3. They have merged with and acquired each other, reducing the total number of large local services providers

SACF members agreed that South Africa has not had a lot of mergers and/or acquisitions in the ICT sector in the recent past, however, such mergers and acquisitions can be expected in the near and emerging future, driven by convergence and its related sector structural reforms, and in line with global trends. It is necessary for such trends to be closely monitored and managed so that they promote fair competition and rapid growth of the sector, and its economic contributions. Any actual or potential outcome that frustrates or reduces competition or sectorial efficiency i.e. the use of scarce national resources should be avoided.

2.4. Deliberately and systematically avoided competing with each other despite making repeated public statements implying that it would be economically rational for them to do so

In addressing this perception, SACF members acknowledged that South Africa's historical policy and regulatory developments, leading up to the Electronic Communications Act of 2005, tended to discourage competition within the sector, hence caution, and further deep analysis of cause and effect, are necessary before firm conclusions can be drawn. Such studies and analyses are necessary to ensure such influences are not carried forward into the evolving ICT competitive environment under development. Tools such as regulatory impact

⁴ <http://idl-bnc.idrc.ca/dspace/bitstream/10625/50879/1/IDL-50879.pdf>

assessments are already in place and should be used to assess the actual or potential impact of the existing and any planned adjustments to the competitive environment. One of the most critical sub-sectors, or silos, that have resisted the evolution of a free and fair competitive environment is the current Broadcasting sector. In this sector, lessons must be drawn from the frequent efforts by ICASA to introduce vibrant competition, which have yet to show measurable results. Convergence will have a profound effect on competition in this sector in the relatively near future, and could go a long way to resolving some of the public arguments for such competition currently in the South African public domain. The alternative broadcast content delivery modes made possible by convergence are already showing signs of rapid development, and will most likely disrupt the prevailing competitive environment in this sector greatly as per ICASA's concerns over the impact of disruptive technologies.

3. The cost to communicate, competition and consolidation

The cost to communicate in South Africa has been a topic of intense debate, analysis and consultation for several years now, but effective solutions remain intractable. Numerous workshops, public hearings, studies and analyses have been carried out by both private and public agencies, including ICASA, the Department of Communications, and the Parliamentary Portfolio Committee on Communications. The National Broadband Policy of 2013 addresses this national concern extensively:

- *“Despite recent reductions to both fixed and mobile data prices, broadband pricing remains a barrier to exponential growth in broadband use”*
- *“The high cost to communicate has constrained investment in South Africa as a regional business hub.....”*
- *“In the fixed market Telkom is the sole provider of ADSL lines, though again there is some resale by ISPs. Whilst prices have come down, they remain high by international standards. As a result South Africa has only 800 000 ADSL subscribers (1.5% penetration by population); a very low number for a lower middle-income country. Despite the fact that limited penetration of fixed-line copper networks constrains the availability of ADSL in all parts of the country, over 1.2 million ADSL lines remain fallow.”*

In recent months, during SACF's deliberations leading to this submission, regulatory interventions on the cost to communicate, accompanied by litigation by some operators, has resulted in a steep decline in mobile voice service prices.

The critical questions that must be addressed in this ICASA inquiry as it unfolds are: Are there flaws in the current ICT competitive environment that lead to this seemingly intractable problem of high costs to communicate? Will policy or regulatory interventions alone lead to the desired cost to communicate reductions that enable affordable communications by the majority of South Africans?

In considering this sensitive national challenge during the drafting of this submission, some members of the SACF family voiced the opinion that the competitive environment that will lead to affordable communications prices is best left to the Competition Commission to resolve. Improved coordination and collaboration between the Competition Commission and ICASA should be a key target and outcome of ICASA's inquiry.

Following ICASA's stated guidelines that this inquiry should not at this stage deal with specifics, even regarding this sensitive challenge of the cost to communicate, it is nevertheless logical to suggest that the lengthy inquiry process must include a comprehensive market study to identify all and any shortcomings of the national ICT competitive environment that lead to the high costs to communicate that dominate both local and international media. Such a study must include the whole national ICT industry so that the results and conclusions that must lead to reforms are accepted and shared by the whole national ICT industry.

4. Spectrum

All SACF members participating in the preparation of this submission agree that spectrum issues, ranging from spectrum assignment, through all spectrum management issues, to spectrum allocation, are central to the sustainable survival and growth of the whole national ICT industry, and the contributions it makes to economic development. The short responses by SACF members to the questions posed by ICASA in its inquiry paper were:

- *“what is holding back competitive activity in the ECNS/ECS market is lack of access to high demand spectrum”* – Short answer is “YES”
- *“first mover advantage preventing many smaller players from gaining market entry as a result”* – Short answer is “TRUE”
- *“traditional gatekeepers to spectrum are actively and passively ensuring that spectrum remains a barrier to entry”* – as expected, there were mixed responses to this question, ranging from strongly agree to strongly disagree.

In addressing ICASA's request that the inquiry should not dwell on specific solutions or recommendations, the following summarises the issues raised in the SACF discussions, without detailed qualification or resolution, in the interests of presenting the range of issues of concern that must form part of the inquiry as it unfolds.

- The role of MVNOs in furthering competition in the mobile sector, as a way of introducing a wholesale model for the subsector. Some members expressed the opinion that for this model to succeed, wholesale access pricing on mobile networks should be regulated, thus preventing the perception that some wholesale pricing in this sub-sector is in effect higher even than the retail pricing, thus rendering MVNO business models ineffective. Clearly, far deeper analyses and consultations are needed to build consensus on this issue within the subsector.
- Some SACF members voiced the opinion that OTT services over mobile networks will be a game-changer, and should be encouraged to promote an effective competitive environment.
- Some SACF members expressed the opinion that the South African market could sustain only a small finite number of mobile operators.
- Split opinions with strong opponents and proponents on market balance through spectrum allocation: operators with significant spectrum allocations should be obliged by regulation to provide wholesale open access to smaller operators and new entrants in an effort to prevent the growth of monopolies, duopolies and oligopolies, and an uneven competitive environment.
- Concerns expressed that as convergence evolves, mobile operators are not obliged by regulation to carry local content, whereas traditional broadcasters are,

thereby resulting in a non-level competitive environment. Furthermore, in a fully competitive converged environment, should the traditional broadcasters, however defined in such an environment, continue to use spectrum free of charge, whereas competing former non-broadcast operators must pay spectrum fees for spectrum usage? Will the licensing regime change to accommodate the convergence of traditional broadcasting and non-broadcasting services?

- The concepts of spectrum-sharing and trading, and spectrum reservations for new entrants, were briefly discussed with strong proponents and opponents, however all SACF members agreed that should such methods be considered seriously, intensive impact analyses, dialogue, and planning will be vital if good intentions are to result in the desirable competitive environment instead of frustrating the efficient use of spectrum.
- One interesting and somewhat provocative aspect of spectrum utilization raised by ICASA during its pre-meeting briefing, and which was mentioned during the discussions but not debated in depth, is: Can spectrum assignment and allocation drive and shape the competitive environment, or is spectrum assignment and allocation a by-product of a pre-determined competitive environment? Could it influence both sides of the equation? This cause/effect or “chicken and egg” perspective of spectrum utilization needs to be addressed and understood across the whole ICT ecosystem if spectrum utilization is to be maximised in the interest of growth of both the sector and the economy.

To conclude the discussions on spectrum issues, it is useful to note two related issues: one raised by ICASA in a recent media release, and the other contained in the National Broadband Policy:

- *“There have been insinuations in the media to the effect that some of these developments are as a result of ICASA’s delay in allocating or making more spectrum available to the industry. Be that as it may, it is equally important to note that in 2011, ICASA attempted to open up the licensing process for high demand spectrum (2.6 GHz and 800 MHz) by issuing an Invitation To Apply (ITA); and the industry partly opposed this process on the basis of a lack of a policy direction. This process was subsequently deferred pending the finalization of the policy direction”* – ICASA’s media release on potential mergers and acquisitions. The SACF suggests that where policy directions are required, ICASA should work with the relevant Ministry to ensure that these are put in place as soon as possible so as to avoid rogue and potentially challengeable regulatory action.
- *“Policy and regulatory bottlenecks associated with spectrum assignment, together with delays in the migration of land analogue broadcasting to digital, have meant that service innovation, increased competition, potential job opportunities and tax revenues have not been realised. The efficient assignment and subsequent use of high demand spectrum to meet demand is vital and the cost of not making spectrum available is high”* – the National Broadband Policy of 2013.

5. Broadcasting

ICASA’s coverage of the traditional broadcast sub-sector in its inquiry document was noticeably limited to internal issues faced by this sub-sector, with little attention to the broader issues related to the growing international trends towards traditional broadcast content delivery via broadband converged networks. ICASA’s inquiry should

accommodate review of SMP issues of the broadcast market and the current role of the signal distribution and transmission arrangements.

The SACF plenary discussions on the inquiry document were equally scant in their coverage of broadcast issues, preferring the narrow view of limiting their discussions to the following issues raised in the ICASA inquiry document, with little actual discussion of the impact of business, technological, structural, policy and regulatory convergence that is already impacting the sub-sector world-wide:

- competition in the subscription television environment;
- commercial sound broadcasters attempting to develop economies of scale by acquiring minority stakes in other radio stations or requesting exemptions from the ownership and control regulations (active mergers and acquisitions?);
- unfair competition between subscription TV and free-to-air TV with regard to access to advertising revenues;
- Concerns have also been raised by the incumbent TV broadcasters about the Authority's plans to introduce new commercial and community TV services during the digital migration process;
- Consumers locked in Multichoice contracts are confronted by escalating costs with no relief in sight.

This limited attention given to the broadcasting "silo" stands in stark contrast with the draft Green Paper focus on the impact of convergence on this sub-sector. Similarly, ICASA's own narrow identification of the above issues in its guiding document also stands in stark contrast with ICASA's own pre-plenary session briefing (ref. Annex 1):

- Discussions must include broadcasting and postal services – noticeable by their minimum participation in the SACF meeting (item 1.5);
- Identification of points of pressure and tension in the competitive environment, with special emphasis on the impact of convergence and disruptive technologies (2).
- How content delivery enters the picture, and the impact on broadcasters (4.2).
- Disruptive technologies such as OTT (4.3).

In addressing ICASA's request for an open-ended high level expansive response that seeks to "examine the wood closely, not the trees", the SACF Secretariat submits this observation as its contribution, even though it was not specifically discussed at the plenary meeting.

The obvious question that arises is why such a limited review of the broadcasting sector was preferred in this inquiry on setting a competitive environment for a converged future ICT environment?

One possible answer may be that traditional non-broadcasting ICT operators and service providers see great opportunities in encroaching on traditional broadcasters' business models, whereas broadcasters limit their long term visions and strategies to their current business models, aided and expanded by DTT, but without addressing the threats to their businesses resulting from convergence. As currently structured, broadcasters cannot provide traditional communications services (fixed or mobile voice, internet, web-based services, world-wide roaming, internet of everything, etc.) on their networks, while traditional non-broadcasters are well advanced in planning their entries into the traditional broadcasters' competitive spaces. The global view that the future "killer application" is video seems to be noticed more by broadband providers than it is

by traditional broadcasters. The impact of all this on broadcasters' revenues from advertising will be significant.

The global and local urgency to free the "digital dividend" spectrum for use by broadband providers verifies the above. The availability of digital dividend spectrum will have direct impact on the pace towards convergence, and the full range of disruptive innovations that comes with it. As a result of allocation of the digital dividend spectrum traditional telecommunication operators will have an expanded spectrum assignment in accordance with WRC 12 decisions.

Given the minimal participation by traditional broadcasters at the SACF plenary meeting, the key issues raised by ICASA and listed above were noted, with a general consensus that they need to be addressed as the inquiry process unfolds. The major input to the meeting was the observation that operators delivering, or planning to deliver broadcast content over broadband networks are not obliged to carry local content, whereas traditional broadcasters as currently structured have such an obligation.

While this issue must remain a high level concern for a still developing country like South Africa in its attempts to bridge the numerous social and economic divides that plague the nation, the development of the future converged competitive environment must take into account the difficulties, or perhaps impossibilities, of introducing rigorous local content obligations in the emerging converged internet-based information delivery platforms with their unfettered global reach. This conundrum must be addressed with maximum care and wisdom.

A final statement in this subsector arising from the SACF deliberations was that in a converged environment, all competitors, including traditional broadcasters, must pay for spectrum usage on a non-discriminatory basis.

6. Convergence and the internet

Four key issues related to convergence and the internet were highlighted for discussion by ICASA in its inquiry document:

- there has been little debate within the ICT sector about the impact of convergence on the way the ICT market as a whole is functioning and restructuring;
- South Africa's per capita Internet penetration should be much higher and this raises questions as to what the multifaceted problems obstructing Internet growth are;
- The focus on voice services and termination rates are a distraction since these are supposed to be approaching zero, especially considering the transition to IP;
- Should the actual focus not be data pricing, considering the need for a sustainable information society?

These issues were further reinforced throughout ICASA's pre-meeting briefing, appearing again specifically in different forms, together with the closely related concept of disruptive innovation, in paragraphs 2; 4; 5; and 10 of Annex 1.

These issues raised by ICASA suggest that a definition of "convergence" shared by all stakeholders in the ICT sector is needed. The SACF plenary discussions demonstrated clearly that the concept of convergence was well understood by the South African ICT industry, with many operators and service providers publicly promoting their migration

to converged services in their public promotion and advertising campaigns. Whilst the need for a close shared definition of the concept was raised at the plenary meeting, representatives of the industry saw little need to dwell in developing such a shared definition at this time.

In the current South African ICT ecosystem which features comparatively slow infrastructure growth and relatively high prices which further suppress growth and utilization of ICT products and services (compared to South Africa's emerging economy peers), and a rapidly evolving competitive environment, the lack of debate noted by ICASA is interesting. Could it be that the reluctance to debate the issue vigorously across the industry is shaped by the uncertainty of the disruptive impact of such convergence on the competitive advantages of each competing operator, and hence the need to keep future convergence related development plans and strategies confidential in the interests protecting such perceived, real or hoped for competitive advantage? The nature of the SACF member's debate, in which at least one leading operator confirmed that this was indeed the major point of concern, suggests that there is a relatively high element of truth in this observation.

How can this ICASA process promote high level transparent debate across the national ICT sector in this crucial issue that will impact all segments of the industry without transgressing on the confidentiality of individual company plans, and which will demand extensive sector structural reforms if the full benefits of convergence are to be realized? The latter consequence of convergence, that of sector structural reform, is a particularly sensitive matter of concern to most players in the industry, especially those that enjoy some elements of SMP which will entail significant costs in any restructuring that may be necessary, or demanded through policy and regulatory interventions.

Some of the points related to the above that were raised by industry participants at the meeting included:

- Sector restructuring is a highly sensitive and costly exercise, and should not be forced on highly successful operators through policy or regulatory interventions: restructuring should be driven by the operators themselves in order to protect their past investments and future revenues, not by external factors;
- The process of convergence can be equated to sector restructuring in the form of mergers and acquisitions, however this is in contradiction with some of the prevailing ideas on how to promote competition within the sector by discouraging such mergers and acquisitions in favor of expanding the number of competitors;
- Competition in a converged environment is not determined by the number of players, but by the effectiveness of competition between existing players;
- Effective use of spectrum resources are critical to expanding the competitive environment and promoting early migration to a fully converged ICT ecosystem, but the delays in spectrum allocation present a major barrier to such desirable progress.
- SACF members believe that the ICASA inquiry should consider access to existing and vital infrastructure in an effort to reduce duplication wherever desirable or possible with the objective of efficient and economic use of expensive resources.

While the time-limited SACF discussions on these critical issues limited SACF capacity to deal with each issue in depth, it is useful to note the outstanding conversations on convergence that need to be held, derived from ICASA's pre-meeting briefing as summarized in Annex 1:

Critical directly related matters of concern to ICASA are:

- Fixed/mobile convergence (FMC): how can the ICASA process promote this development?
- The impact of convergence on the broadcasting sub-sector as alternative content delivery opportunities emerge;
- Disruptive impact across the whole ICT ecosystem that results from the migration of all information delivery platforms onto a common packet-switched (internet) technologically neutral platform that forms the basis of convergence, and consequences of the new disruptive services, products and applications defined as “over the top” (OTT) services.

It is also useful to note the major focus on the convergence process that dominates the recently concluded Green Paper development process, and which to a lesser degree, are contained in the recently published and still evolving National Broadband Policy which has been classified by the Minister as dynamic and therefore subject to continuous improvement.

7. Innovation, net neutrality and disruptive technologies

The introductory paragraph on this item of ICASA’s inquiry document mixes several unique themes in a way that made effective discussion and consideration of them within the limited time period available to SACF members somewhat difficult. For example, the focus of “innovative technologies” is almost exclusively on new cognitive wireless technologies which include the growing interest in TV White Space wireless systems, but mixing these with the concept of disruptive technologies (updated by its creators⁵ to “disruptive innovation”) is misleading – the concept of disruptive technologies as originally defined goes much further than a focus on narrow technological developments.

Similarly, mixing concepts such as net neutrality with “dumb pipe” broadband infrastructure, multiple closed transactions between mobile operators and content developers, rules for broadcasters including competition in the subscription TV subsector, mobile telephony moving to an IP platform, etc., were not conducive to a vigorous debate by SACF members. Nevertheless, the meeting covered some of the topics as follows:

- SACF members noted ICASA’s comments during the pre-meeting briefing concerning the confusion in determining a net neutrality definition and strategy in the USA, and the contrasts with the approach adopted by the EU nations. The members also noted ICASA’s efforts to define a “net neutrality” regulatory initiative for South Africa, as part of this inquiry process to set a future enabling competitive environment;
- Some SACF members advised caution against defining a rigid net neutrality regime, noting that some of the implications surrounding net neutrality would be difficult to deliver effectively given South Africa’s relatively underdeveloped broadband infrastructure, especially in the fixed broadband domain. SACF members also noted the recent concerns expressed by some EU operators on the rigid approach adopted by the EU, noting their concern that such rigidity is

⁵ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436065 Regulating Disruptive Innovation, published May 12 2014.

inconsistent with most existing national broadband networks that could suffer severe congestion if strict net neutrality was enforced. SACF members also noted ICASA's thinking on net neutrality and further believe that deeper consultation with the industry is needed before final conclusions are reached.

- Other SACF members believed that irrespective of the limited national broadband capacities and coverage, net neutrality definitions and rules must nevertheless be developed in advance so as to steer the broadband sector towards the desired capacity and quality of service levels. One leading SACF member thought that South Africa is in a different space to the USA, which is a uniquely "American problem seeking a solution".
- Some SACF members held the opinion that the principles of net neutrality could be further promoted through early allocation of high demand spectrum that would enable operators to provide broadband services that were better able to meet customer demands and expectations.
- SACF members noted a major misunderstanding by ICASA on the question of mobile telephony services having moved to an all-IP platform – they have not. Given the rapidly growing demand for mobile data services, fuelled by the poorly developed fixed broadband infrastructure, there is most certainly data off-loading onto IP infrastructure, but the basis for South Africa's mobile services remains circuit switched and not packet switched. Migration of the national mobile telephone networks and services will be immensely costly and time consuming, irrespective of the advantages offered by convergence and its FMC variant: all legacy mobile networks and user terminals would need to be replaced. Data services accessed via smart phones and tablets over 3G infrastructure are not representative of full convergence onto IP platforms – they comprise advanced data services derived from legacy circuit switched infrastructure.

8. Conclusion

The SACF is grateful for the opportunity to comment on the Notice of Public Inquiry into the State of Competition in the Information and Communications Technology Sector and believes this public consultation process will ensure that the end result is shaped by all interested parties and that it is supported by a shared vision for a thriving and competitive ICT sector which promotes universal broadband access.

The SACF also thanks ICASA for the invaluable pre-meeting briefing, which effectively clarified the required context of the submission – that its primary focus at this stage is developing a common understanding of the South African competitive environment, that the current process does not seek specific recommendations or firm proposed solutions to the numerous challenges that face the national ICT ecosystem. This briefing helped SACF members to frame their submission without threatening their individual competitive positions.

SACF looks forward to deeper engagement with ICASA as the inquiry process unfolds in accordance with the timelines provided in Annex 1.

Annex 1:

Key points derived from ICASA's presentation to SACF Members on Tuesday 13th May 2014

1. The ICASA inquiry process:

- 1.1. Open ended, high level, expansive;
 - 1.2. Not to be confused with Chapter 10 of ECA;
 - 1.3. Intent is to “examine the wood closely, not the trees”
 - 1.4. ICT sector focus really means focus on the whole ICT ecosystem;
 - 1.5. Must include subsectors Broadcasting and Post Office – not very clear on their participation from looking at the attendees to the SACF Workshop.
2. In reviewing the ICT ecosystem, the ICASA paper seeks to identify points of pressure and tension in the competitive environment of the ICT ecosystem, which will lead ultimately to the mapping of this environment. This with special emphasis on the impact of convergence and disruptive technologies.
 3. The inquiry does not seek to deal with any specifics of any nature at this time. Specifics such as current and future discussions on sector reforms and restructuring may provide support examples to address some of the issues under discussion, but they are most definitely not a focus of the inquiry, nor will the use of such examples influence any decision or intervention by ICASA on these matters.
 4. Critical matters of concern which will aid ICASA's understanding of the competitive environment include:
 - 4.1. Fixed/mobile convergence (FMC);
 - 4.2. How content delivery enters the picture in the converged environment, and the impact on broadcasters
 - 4.3. Disruption by internet technologies of all ICT subsectors, and especially the disruptive impact of OTT services made possible by convergence;
 5. Impact of Net Neutrality issues on South Africa's ICT growth and migration to converged networks and services:
 - 5.1. Contrasts/contradiction between the Europe and USA approaches to Net Neutrality;
 - 5.2. How urgent and what time frames for South Africa to decide on Net Neutrality as the sector migrates towards fully converged networks and services?
 - 5.3. What impact on the ICT sector as a whole, and its underlying competitive environment?
 - 5.4. How will these dynamics play out in the short and long terms? What will happen under different scenarios?

6. There are no easy answers to any of the above concerns/issues, and ICASA does not seek such answers at this time. ICASA will welcome contrasting points of view, contradictory positions, etc. in its efforts to understand the dynamics of the convergence process and the opportunities and threats it imposes on the South African competitive environment. The intent is to paint a vivid picture of the emerging environment in order to visualize its complexities, rather than to develop specific responses which will be left to a future date and future process, which in turn will be aligned to the NDP.
7. Historical Connections: ICASA is cognizant of the role of history in this unfolding process:
 - 7.1. A close look at South Africa's history of the still evolving ICT ecosystem, starting from the classic "telecommunication's" sector of the 1990s;
 - 7.2. The various attempts at privatization, new entrants that disrupted historical market structures, the creation of new markets and consequential competitive arrangements;
 - 7.3. The numerous focussed analyses undertaken by various authorities including Alison Gillwald and Steve Esselaar, Robert Horwitz and Willie Currie, and others, with special mention of David Lewis' 2012 publication "Enforcing Competition Rules in South Africa" (sub-titled "Thieves at the Dinner Table"). These historical perspectives are vital to ICASA's understanding of the evolution of the sector, in that historical successes and failures in policy and regulatory formulation can provide vital information as the sector changes even more drastically towards a converged disruptive innovation driven ecosystem.
 - 7.4. The impact of the VANS sector over the last 10 to 12 years, and the entry of the Internet sub-sector represented by ISPA.
 - 7.5. The issues faced by the Competition Commission and Competition Tribunal, working under short guidelines due to the absence of a coherent national competition policy to contextualize the 1999 Competition Policy.
8. The question ICASA asks, through the very brief background document, is: faced with many issues of competition, what can we learn from our recent history? What are the implications on the emerging and future competitive environment for the ICT sector?
9. ICASA advised that this inquiry is part of a continuous work in progress in which the overarching dimension is the NDP, and a policy revision process currently underway that tends to reinforce the 1990's approach by maintaining the various sector silos that are inconsistent with the emerging converged ICT ecosystem.
10. The ICASA process is just one of many that are directed towards changing the national conversation towards an integrated or "converged" approach to sector reform.
11. The most important feature of ICASA's inquiry is that *it is not an inquisition: we need to reflect fully on all the interrelated issues and develop a best practice approach consistent with our specific national needs.*
12. ICASA stressed the underlying principle that the inquiry will not dwell on specific solutions to issues such as the implications of new competitive environments for the various existing corporate enclaves such as the Broadcasting sector, or the impacts of

the inquiry on issues such as the current debates on subscription TV and related short term concerns. It is vital however to reflect on these issues without attempting to develop specific responses related to this inquiry process.

13. The rough timing for the whole inquiry process is 6 to 8 months:
 - 13.1. Written industry responses by 23rd June 2014;
 - 13.2. Public Hearings 21-31 July 2014;
 - 13.3. Position paper by end September 2014;
 - 13.4. One month for further comments/submissions by early October 2014;
 - 13.5. Finalization of findings by mid-December 2014;
14. The findings will be used to inform ICASA's thinking on a comprehensive framework for addressing competition in the ICT sector as well as be used to develop ICASA's Strategic Plan. Some key technical issues such as Net Neutrality, Spectrum issues such as the use of cognitive wireless solutions such as TV White Spaces, etc. will be included in this process.