Internet Service Providers Association

DATA SERVICES MARKET INQUIRY

17 October 2018

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executive summary

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there are clear indications of **competitive failure** in the market for **wholesale mobile data services**. Intervention in this market using established policy and legislative powers to facilitate competition and competitive pricing outcomes will bring relief to the greatest number of users and underpin inclusive socio-economic development

benchmarks

- Cannot offer assistance in achieving an evidence-based position: multitude of proposed benchmarks and interpretations of benchmarks already in circulation
- **Suggest that the Commission consider as part of its outcomes from the Inquiry a recommendation that an official benchmark be established**
- Perceptions are important: the “cost to communicate” has been a persistent theme in public discourse for a decade
- We note that caution should be exercised when considering averages in a society with deep economic inequality
- What is not disputed is that in South Africa **mobile data is more expensive for lower income groups…**

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"We have a strange market where it costs the poor more to access data than it costs the rich."

Minister of Telecommunications and Postal Services, 13 March 2018

where should the focus be?

- Answer is self-evident: **markets for wholesale mobile data must be the focus to ensure greater competition in the downstream retail market**
- The Stats SA 2017 General Household Survey (comparisons between 2015 and 2017 figures):
  - Total number of households with access to a fixed line fell from 10.9% to 8.2%.
  - Total number of households with access to a mobile phone only rose from 85% to 88.2%. The figure is 95.6% for Mpumalanga and 94.8% for Limpopo.
  - Total number of households with access to a fixed line only stayed constant at 3.6%. Only KZN and Limpopo showed increases.
- Access to electronic communications will be through a mobile network for almost everyone with only a small percentage – generally wealthier, urban consumers - having access to fixed connectivity
- Mobile data is critical to allowing participation in the "Fourth Industrial Revolution" and decisions taken regarding the affordability of mobile data services have a direct impact on whether we widen or narrow the digital divide over the next decade

where should the focus be?

- Vodacom and MTN argue that the mobile data services markets are competitive and ask what about the upstream fixed markets?
- ISPA disagrees in the strongest terms…..
  - Recognise the role of upstream markets and backbone infrastructure in determining pricing and non-pricing factors in the markets for mobile data
  - But the mobile networks can and do build their own fixed infrastructure for national long distance and fibre-to-the-tower deployments. The latter is a major area of activity for a number of fibre network providers as they deploy in the urban areas of South Africa.
  - Unsure of basis for claim that there is a failure of competition in these fixed markets as pricing for the supply of international and long-distance connectivity has declined sharply as a result of greater competition (a degree of which has materialised through the entry of the mobile networks into these markets)

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where should the focus be?

- Further operator argument that it is difficult to establish the price of data where this is sold into the market as part of a bundled service:
  - *"Customers make use of offerings that combine voice, messaging (SMS) and data. A proper investigation of the level of the price of data, as an isolated offering in the mobile market, is difficult and artificial because the price of data within bundled service offerings is not easy to calculate."*
  - *"Vodacom is active mainly in the mobile market as part of a bundle of voice, data and messaging."*
- ISPA does not understand this contention: it is obviously possible to buy data outside of it being bundled with services that the consumer may not want
- The market for mobile data – whether wholesale or retail – is distinct from that for voice and messaging (SMS) and should be viewed as a discrete and separate market. The decision to bundle these distinct products is taken by the provider
- The decline in demand from consumers for voice and SMS is established – **is bundling in the interest of the consumer or the provider?**

Michael Jordaan @MichaelJordaan

Michael Jordaan Retweeted MyBroadband

Bundles shouldn’t even exist. All @RainCoZa customers pay the same 5c/MB and there is no expiry or out-of-bundle shock.

MyBroadband @mybroadband

Why buying a small data bundle is a massive rip-off in South Africa https://mybroadband.co.za/news/cellular/

6:05 AM - 16 Oct 2018

where should the focus be?

- This is also the view expressed by ICASA in its “Findings Document on Priority Markets in the Electronic Communications Sector”

  “…appropriate to consider the retail mobile data or mobile broadband segment separately.”

- **Any other interpretation is artificial and simply at odds with the way in which consumers demand and utilise these products.**

- When Vodacom and other MNOs sell mobile data they are selling access to the Internet: in other words, they are acting as Internet Service Providers (ISPs) and not selling voice or messaging services. I.e. if define market as provision of access to internet then dominant

where should the focus be?

"Over-the-Top" services (OTTs) identified as competitive constraint, but it should be clear by now that:

OTT services do not constrain the demand for mobile data services: they stimulate it.

market concentration and competition

- Commission's own research indicates that the product market for ICTs is the most highly concentrated priority market in South Africa . This indicates, *prima facie*, a lack of competition in this product market.
- As regards the claim that the mobile data market is "ferociously" competitive….consider:
  - The number of service providers from which a consumer can buy data over Telkom's ADSL and fibre networks?
  - The number of service providers from which a consumer can buy data over the open access fibre networks provided by Dark Fibre Africa, Vumatel, Frogfoot and others?
  - The number of service providers from which a consumer can buy data for use on Vodacom and MTN's networks?
  - it is also interesting to note – when considering the answers to the above – the percentage of the population serviced by the mobile networks as opposed to the percentage serviced over fixed networks.

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market concentration and competition

- ICASA’s analysis of five-year price trends for mobile data presented in Parliament on 10 October 2018 and latest tariff analysis do not reflect a competitive retail market for mobile data
- Experience of Cell C and Telkom Mobile in competing on cost does not reflect a competitive market for mobile data
- Assertion that either the wholesale or retail mobile data services market is competitive is directly at odds with ICASA decision to prioritise both of these markets as an outcome for its Priority Markets Study

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regulatory failure

- Sector regulator, ICASA, has not succeeded in utilising the powers accorded to it under the ECA and the ICASA Act to promote competition
- Policymaker has not succeeded in creating a clear, focussed policy environment
- Incumbents only change behaviour when forced to do so by commercial considerations or regulation
- Last 12 years characterised by false starts, incomplete processes and litigation by industry
- Many of the rights accorded under the ECA are hollow in the hands of smaller competitors as they cannot be enforced and no effective dispute resolution
- ICASA Priority Markets Study concluded – but currently no indication as to when ICASA will commence with any Chapter 10 exercises in respect of the markets to be prioritised and such processes typically take 2-3 years (if there is no litigation)
- Relative success of voice call termination intervention shows what can be done (but has not been)

regulatory failure

- Recently two significant developments in the frameworks governing electronic communications, viz.:
  - Electronic Communications Amendment Bill 2018l
  - Proposed Policy and Policy Directions to the Authority on Licensing of Unassigned High-Demand Spectrum", including proposed directions to ICASA relating to the licensing of a wireless open access network ("**WOAN**") operator
- Major structural shifts in the offing as well as relief from spectrum constraints
- These processes at a very early stage and implementation will take a considerable time (if it happens)
- Urge caution in factoring the potential impact of planned future interventions into its outcomes from the Inquiry
- History of implementation of the ECA is not a cause for optimism....

regulatory failure

- Jurisdictional issues: Operators seek to caution the Commission to "*not attempt to pre-empt the work intended to be undertaken by ICASA*" and to note that ICASA "*may not take any action where a matter has already been brought to the attention of and is being dealt with by that other authority or institution.*"
  - Ignores the distinction between ex post and ex ante regulation
  - Section 4B of the ICASA Act enjoins ICASA to bear in mind – subject to section 67 of the ECA and the terms and conditions of any concurrent jurisdiction agreement concluded between the Authority and the Competition Commission – that "the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices within any industry or sector and to review mergers within any industry or sector in terms of the Competition Act"

- **Why is ICASA not presenting at these hearings?**

what is to be done?

- ISPA submits that the Commission's recommendations should reference intervention in the wholesale market for mobile data through pro-competitive measures designed to:
  - Impose obligations on dominant providers of wholesale mobile data services to offer wholesale open access to their networks on a non-discriminatory basis
  - Effect functional separation for vertically-integrated incumbents to underpin wholesale open access obligations
  - Stimulate competition in the downstream market for retail mobile data services
- In making this submission ISPA is mindful of:
  - The limited nature of the powers of the Commission in respect of the Inquiry
  - The proposal made in the Commission's paper on market concentration in product markets in South Africa to "promote the use of structural remedies for anticompetitive offences of collusion and exclusion"

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what is to be done?

- The experience of the Commission and the Competition Tribunal in addressing identified anti-competitive conduct by Telkom and the impact of the imposition of functional separation on Telkom
- The success of this model in increasing competition and innovation in the retail market for fixed data services
- The provisions of the Competition Amendment Bill
- The provisions of the ICT Policy White Paper, EC Amendment Bill and the HDS Policy Direction which specially address competition at the service layer, open access and vertical integration, as well as the requirement that high-demand spectrum only be issued on an open-access basis

Conclusion

Thank You