

ICASA SUBMISSION

ATTENTION: COUNCILLOR BOTLENYANA MOKHELE, MOBILE BROADBAND SERVICE INQUIRY COMMITTEE

MarketInquiry2018@icasa.org.za

FROM: AFRIHOST SP (PTY) LTD

27 FEBRUARY 2020

RE: DISCUSSION DOCUMENT ON THE MARKET INQUIRY INTO MOBILE BROADBAND SERVICES IN SOUTH AFRICA

Introduction

Afrihost hereby thanks ICASA for this Inquiry and for the opportunity to submit this written representation regarding the Discussion Document. In this submission, we will comment regarding specific sections set out in the report where the section is relevant to us and where we have concerns with the specific section or where we strongly agree with the findings and would like to emphasize our support of such findings. We will also respond to the 9 questions raised by ICASA in the Discussion Document.

Overall, we commend ICASA for the work done in this Inquiry and for the clear intent shown to reduce Mobile Broadband costs in South Africa and for the poor in particular. However, we are of the opinion that ICASA has made one critical error in its findings as contained in the Discussion Document. This is with regard to the lack of action and intent to act with regard to the regulation of MVNO/APN services in the wholesale market. We will expand on our reasons for this comment later on in this submission. Suffice to say at this point, we believe that regulating a wholesale rate for Data and Voice is the quickest, easiest and most effective way to regulate Mobile Broadband pricing thereby stimulating real competition and leading to immediate price reductions in the retail market. This will benefit all South Africans and specifically poor South Africans who continue to pay inflated prices at lower levels of data usage due to the anti-poor pricing policies employed by the Mobile Network Operators.

Afrihost Comments and Responses

1.3.1

"The Authority considers that entry barriers into retail markets are considerable since wholesale services are not supplied competitively"

"The Authority considers that remedies in respect of these wholesale markets are appropriate to resolve ineffective competitive markets at the retail level"

Afrihost agrees with these comments. The Authority defines four categories of wholesale markets as follows:

1. Spectrum
2. Site Access
3. Roaming
4. MVNO and APN Services

The Authority then addresses the first 3 of these wholesale markets but fails to adequately address the 4th market, which, in our opinion, is the most relevant of the markets where regulatory action is required. We will expand on and provide arguments for this statement throughout our submission as this is the primary reason for this representation.

1.3.2 - SPECTRUM

“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”

Afrihost has no reason to dispute the Authority’s findings with regard to spectrum. Suffice to say, the Authority has stated that wholesale markets need to be regulated and has excluded Spectrum as 1 of the 4 wholesale markets for regulation.

1.3.3 – SITE ACCESS

“This market is ineffectively competitive, with very high levels of concentration”

“The proposed remedy to the observed impediments to competition in the site access market in South Africa is the re-drafting of facilities leasing regulations as contemplated by the ECA, together with more detailed guidelines. This would include a requirement to publish information online, a time limit for consideration of requests and rules around when site sharing should be considered technically and economically feasible...”

Afrihost has no reason to dispute the Authority’s findings that this market is ineffectively competitive. However, we believe the proposed remedy is only viable in a theoretical world and not practical in the real world. We believe that regulating wholesale markets at the site access level is impractical and will be ineffectual for the following reasons:

- Re-drafting regulations is a tedious and time-consuming process. The MNO’s have the resources to cause significant delays
- Even if the regulations are amended, monitoring these regulations will be almost impossible due to:
 - the number of high sites and access sites that will need to be monitored
 - dealing with a huge number of landlords (site owners) who will only be interested in maximizing their rental incomes

- managing the dominant MNO's who will claim that sites are full or will ensure that their equipment is placed in the prime positions, thereby giving them an advantage over smaller operators
- In the unlikely event that the regulations are re-drafted effectively and timeously, the likely impact is that the current duopoly would, at best, extend to being an oligopoly with 3 instead of 2 dominant operators controlling the market. The MNO's would still have no incentive to lower wholesale prices and enable additional competitors. As a result, retail rates would remain inflated with consumers paying the price for ineffective competition. Our basis for this point is that even if there was the ability to gain access to sites, there are only a handful of operators that would see value in it. Building a network takes more than site access. There are also issues of spectrum access, access to capital for equipment to place on the sites and run a network and access to skills and resources to run a network. In the scenario of equitable access to sites, it is likely that only Telkom will be a potential operator that could break the existing duopoly. Cell C has huge debt issues and has publicly stated that it has moved its strategy away from operating a network. None of the ISPs or other operators is likely to have the funding or appetite to build a mobile network.

Hence our assertion that regulating at the site access level is also not likely to be an effective method of regulating the wholesale market to adequately increase competition at a retail level.

1.3.4 – ROAMING

“These markets are ineffectively competitive as only MTN and Vodacom have substantial coverage in many municipalities”

“The Authority considers the following pro-competitive license conditions as appropriate in the circumstances: i) Mandating a roaming offer for parties dominant in particular geographic areas. (ii) Accounting separation: At this stage the market is changing and as such price regulation may be premature. However, in order to enhance transparency and ability for the regulator to monitor, accounting separation should be implemented. This is to split out all network related inputs needed to provide roaming as though the dominant operator used roaming as an input when providing its own retail services”

Afrihost has no reason to dispute the Authority's findings that this market is ineffectively competitive. We support the notion of mandating a roaming offer for parties dominant in particular geographic areas but believe that the Authority should not stop there. It is not enough. The Authority contends that the market is changing but our view is that firstly, it is changing too slowly, and secondly, the only reason it is changing at all is because of the pressure applied by the Authority, the Competition Commission and the general public. We respectfully contend that the Authority should continue to apply pressure and not allow the dominant operators an opportunity to slow down change and revert to anti-poor pricing and anti-competitive behavior.

As discussed above with site access, regulating roaming will, at best, turn a duopoly into an oligopoly. Only Telkom and Cell C (if still in existence) will benefit from roaming regulations. There is no guarantee that the benefit of regulating roaming costs will be passed on to other operators at an MVNO level or to consumers at a retail level. Even if the operators do elect to open up MVNO opportunities, the wholesale pricing will still be inflated because of margin upon margin. For example, assuming that a dominant operator is entitled to some margin in its roaming rate, then the next level operator will also be entitled to some margin on its wholesale rate to the MVNO. The MVNO will also need to earn some margin making the ultimate retail price uncompetitive against the dominant operator and/or unnecessarily high for the consumer.

Therefore, regulating at the Roaming level is also not likely to be an effective method of regulating the wholesale market to adequately increase competition at a retail level.

If the Authority is prepared to go to the effort of mandating a rate and enforcing accounting separation, which appears to be the case, then it makes sense to regulate rates not only at a roaming level but also at an MVNO level. This will extend the wholesale market from 2 or 3 or 4 operators to tens of operators, including the major ISPs, who have proven to be efficient in their operations and effective in reducing pricing in other broadband markets. In this scenario, where network costs are transparent and accounting separation is enforced, the operators can still be entitled to a fair return on their infrastructure investments at a wholesale level and the consumer market will have choice, service and competitive pricing at the retail level. The non-dominant operators (Telkom and Cell C) will be able to choose between being a network operator with access to roaming or an MVNO focusing on price and service.

1.3.5 – MVNO AND APN SERVICES

“The Authority does not definitively define markets, assess the effectiveness of competition and significant market power and consider pro-competitive license conditions where MVNO and APN services are concerned since any competition concerns in this layer can be remedied upstream at the site access and roaming layers. Nonetheless, concerns have been raised in respect of MVNO and APN services”

“There are indications that the supply of these services is ineffectively competitive since there is at present only one provider of wholesale MVNO services even though all MNOs could offer these services and APN prices are high relative to retail prices. While the Authority is concerned about ineffective competition in markets for MVNO and APN services, the Authority does not make a finding in respect of market power in this marketThe Authority considers that the remedies in markets for site access and roaming services are likely to improve competition in markets for MVNO and APN services”

Afrihost agrees with the Authority that regulation is required at the wholesale level. However, for reasons explained above, we believe that the most effective regulation would be at the MVNO level and not the Spectrum, Site Access or Roaming level. The Authority concedes that concerns have been raised in respect of MVNO services; that

there are indications that supply of these services is ineffectively competitive; and that APN prices are high relative to retail rates. Yet, despite all these facts, the Authority has indicated that, apart from monitoring progress, it does not intend to take action in this wholesale market.

We respectfully contend that this is a grave error if the intent of the Inquiry is to bring down the cost of Mobile Broadband. As we have argued above, we do not concur with the Authority's assertion that the remedies for Site Access and Roaming services are likely to improve competition in markets for MVNO and APN services. Regulating at the Site Access level will be time-consuming and very difficult. We cannot see this having a big enough impact to flow through to retail pricing. Regulating at the Roaming level may have a slightly bigger impact and may benefit Telkom and Cell C. However, it is unlikely that these operators, along with MTN and Vodacom, will feel compelled to pass this benefit to the MVNO market or the retail market. As the Authority has pointed out, all 4 operators could offer MVNO services currently, even if at inflated prices, yet only 1 operator does offer MVNO. On what basis does the Authority believe that MTN or Vodacom would change their strategy and offer competitive MVNO services just because there is regulation at the site access and roaming level?

Any MVNO services offered by Telkom and/or Cell C would still be at inflated prices because of the margin upon margin problem, coupled with the motivation to discourage effective competition from MVNO's against their own retail products.

The view that regulation at an MVNO/APN level is necessary and feasible is supported by the following points in the Discussion Document:

2.9 – *“Ofcom notes that if retailers are able to obtain national wholesale access on terms that allow them to be competitive, barriers to entry at the retail level are likely to be relatively low. However, if the wholesale market were to develop such that it was difficult for retailers to obtain wholesale access to national networks, this would mean barriers to entry to the retail market are much higher, as players would have to enter the wholesale market in order to compete in the retail market.”*

2.10 – *“Therefore, wholesale services relating to network sharing, including site access, roaming **and MVNO and APN services** play an important role in this inquiry.”*

3.1 – 13 *“The Competition Tribunal, when assessing barriers to entry, seeks to establish whether entry would be quick, effective and without the need for significant sunk investments”*

3.1.3 – 21 *“Section 67(7) of the ECA prescribes that: Pro-competitive license terms and conditions may include but are not limited to –
(f) rate regulation for the provision of specified services, including without limitation price controls on wholesale and retail rates as determined by the Authority, and matters relating to the recovery of costs:”*

In conclusion, Afrihost concurs with the Authority that the best mechanism to reduce Mobile Broadband rates in South Africa is by increasing competition through regulation at the wholesale level. However, we believe that the Authority has erred by omitting strong action at the MVNO/APN services level where imposing regulation at this level will be the simplest and the most effective means of achieving the objective. Regulating at the Spectrum, Site Access and/or Roaming levels will be difficult to implement, manage and monitor and will lead to only marginally more competition if effective. There is a low probability that the savings gained by the few operators benefitting from this regulation will be passed on to the retail market. The ISP market has proven to be far more competitive than the mobile operators when it comes to passing on savings at the wholesale level which is why we believe that regulation at the MVNO/APN level is the correct course of action to follow.

Response to Questions

Question 1 “.....is the above approach to market definition adopted by the Authority appropriate in defining the relevant markets”

Yes, we believe the Authority has addressed the relevant markets; the effectiveness of competition in these markets; and identified licensees with significant market power.

Question 2 “Do you agree with the Authority’s approach to the evaluation of effective competition”

Yes, we believe the Authority has properly identified barriers to entry, market shares and significant market power.

Question 3 “Are there other factors that the Authority should take into account when determining whether there is effective competition in the identified relevant markets?”

The Authority should consider the current pricing in the market including the following 3 aspects:

- *Anti-poor pricing policies where operators charge significantly more at lower usage levels*
- *Anti-competitive pricing policies whereby operators charge higher rates for MVNO and APN services than many of their retail rates*
- *Consideration of what would ultimately lead to effective competition in terms of how the Authority intends to remedy the situation i.e. is the Authority satisfied with adding 1 or 2 players into the equation (incumbent operators with a history of monopolistic behavior) or multiple players (ISPs with a history of aggressive price cuts and strong competition)*

Question 4 “Do you agree with the Authority’s approach to aggregate the retail market for mobile services, which includes voice, SMS and data services?”

Yes

Question 5 “Do you agree with the Authority’s preliminary view on retail mobile services market?”

Yes and No. We agree that:

4.2.1 36 “in order to enter retail markets for mobile services, a number of inputs are required, including spectrum and sites and national roaming in terms of facilities-based entry, and MVNO or APN access in respect of services-based entry”

And we agree that:

4.2.1 39 “access at the services layer via APN or MVNO services are available only at high cost in the former case; and are only available from one operator in the latter case. This means that even at the services layer markets are ineffectively competitive.”

And we agree that:

4.3.2 76 “MTN and Vodacom therefore are vertically integrated in a manner that gives rise to competition concerns, and they accordingly have significant market power in terms of the ECA.”

And we agree with the Authority’s preference for regulating at the wholesale level.

However, we strongly disagree with excluding the MVNO/APN services part of the wholesale market when considering regulatory intervention. In fact, we believe that regulating at the MVNO/APN services level is by far the most effective means to address the competition concerns noted by the Authority.

Question 6 “Do you agree with the Authority’s preliminary view on spectrum market?”

Yes. We agree that regulation at the spectrum level is not a solution to ineffective competition at the retail level.

Question 7 “Do you agree with the Authority’s preliminary view on site access market?”

No. We agree with the findings of the Authority, but we believe the conclusion reached by the Authority contradicts its own findings. The Authority’s findings are that:

6.1.2 100 “There are considerable challenges to establishing new sites.... possible sites are limited and often already occupied.....In addition, regulatory processes and approvals such as processing of municipal leases, environmental impact assessments (EIAs) and wayleaves lead to substantial costs and delays” AND

6.1.2 102 “...infrastructure sharing is not a substitute for wholesale roaming services since even with infrastructure sharing, MNO’s have to incur significant costs to build infrastructure in rural areas and this takes time”

In other words, it is time-consuming, difficult, costly and probably not very effective to regulate site access. Hence our assertion that the Authority’s intent to regulate at this level of the market, rather than at the MVNO/APN services level of the market, is inconsistent with the findings of the Inquiry.

Question 8 “Do you agree with the Authority’s preliminary view on roaming market?”

No.

We agree that roaming would need to be regulated in order to prevent the dominant operators (MTN and Vodacom) from charging too much to the smaller operators (Telkom and Cell C) thereby reducing effective competition. We also agree that to be effective, an operator needs affordable national coverage and that having infrastructure in limited geographical markets will not be sufficient to operate a competitive national network.

However, we are not convinced that regulating at a roaming level will have sufficient impact at the retail level. In our opinion, it will just facilitate extending the significant market power enjoyed by MTN and Vodacom to one or two additional parties. We do not see how regulating roaming will benefit any additional operators at an MVNO/APN services level. There may be some advantage to regulating roaming but there would be a far wider benefit to regulate rates at an MVNO/APN services level.

Even if a cost-based roaming rate was established, the benefitting operators would not necessarily pass on this saving to downstream operators or consumers.

Furthermore, a key complaint by roaming operators is that the quality provided while roaming is poor. This decreases the competitiveness of companies that use roaming services. An MVNO/APN solution bypasses this risk because the end customer will be on the dominant operator’s network from inception without the complexity of handover impacting user experience.

We also disagree with the Authority's view that "it would be hasty to implement strong remedies on pricing as there appears to be some level of contest among national roaming providers." Any level of price decrease is due to the dominant MNO's fear of regulation by the Authority and/or the Competition Commission. We do not agree with the statement that price regulation may be premature. Our view is that price regulation is absolutely required and that it should be implemented at the MVNO/APN services level.

We do agree with the Authority that accounting separation is required in order to enhance transparency and to allow for the regulator to monitor the dominant operators.

Once the Authority is prepared to go to the effort of understanding the dominant MNO's cost structures and regulating voice and data rates, it would be far more effective to do so at the MVNO/ APN services level rather than just at a roaming level. The regulated rate could apply equally as a roaming/MVNO rate so that operators have the option of paying the MVNO/roaming rate or investing in their own infrastructure. Failing this, the dominant operators would still have too great a price advantage over the MVNO's and would still be able to charge exorbitant data rates in the retail market without fear of meaningful competition from the MVNO's.

Question 9 "Do you agree with the Authority's preliminary view on MVNO and APN services market?"

No. With respect, we believe the Authority has done excellent work in this Inquiry and its findings are accurate and logical. However, the conclusion reached is flawed and in contradiction to the findings.

The Authority makes the following important points regarding MVNO/APN Pricing:

- **8.1 – 193.1** "There are concerns that while all MNO's have capacity to offer wholesale services that would enable stronger retail competition, there seems to be a lack of provision"
- **8.1 - 193.2** "Some wholesale APN resellers have indicated that prices charged by wholesale APN providers are high and there are no alternatives"
- **8.3 – 198** "...there is what is in effect a refusal to supply or a constructive refusal to supply"
- **8.3 – 200** "The lack of supply of MVNO services by all of the MNOs, and complaints about high wholesale APN prices relative to retail prices, suggest that this market is ineffectively competitive. This is particularly true when refusal to enter at the wholesale level protects companies from competition on the retail level. Well-priced wholesale offers would introduce greater competition and threaten market power in the retail market."
- **8.3 – 201** "There are therefore indications that there is ineffective competition in the supply of wholesale APN and MVNO services."
- **8.4 – 202** "The Authority is concerned about the ineffective competition in markets for APN/MVNO services..."

The Authority has identified key concerns and potential remedies in the mobile broadband market:

- Mobile broadband pricing is too high
- Spectrum is not the primary issue when it comes to market dominance
- Site access will be difficult and time-consuming to monitor
- Operators, both dominant ones and those with national coverage through roaming, are reluctant to offer wholesale MVNO/APN solutions to downstream providers for fear of competition at the retail level
- The ECA enables the regulator to implement price controls on wholesale rates

The findings lead one to conclude that the most effective means of enabling competition and reducing the cost of mobile broadband services is to regulate wholesale pricing using a cost-based methodology for the MVNO/APN services market.

It is our submission that the Authority should adopt this approach rather than relying on regulation further upstream which is far less likely to achieve the desired outcomes within a reasonable time frame.

We thank you for considering our submission and are available should any further input be required.

Yours Sincerely,

Dean Suchard
Chief Financial Officer
Afrihost