



MOBILE BROADBAND SERVICES
COUNCIL COMMITTEE

PUBLIC HEARING

KGOTLA Conference Centre
ICASA Offices
SANDTON

26 October 2020

ATTENDEES / Present:

Ms Thembeke Semane	Chairperson
Ms Yolisa Kedama	Deputy Chairperson / Councillor
Mr Phillip Ramalata	Member
Ms Zintle Malgas	Member
Mr Mpho Mgwebi	Member
Mr Junior Khumalo	Member
Mr Owen Mhlanga	Member
Ms Lufuno Sigwavhulimu	Panel Member
Mr Leweng Mphahlele	Panel Member
Siphesihle Manentsa	Member
Ms Derone Nyathi	Assisting on Registration
Mr Ryan Hawthorne	Acacia Enterprises
Ms Sha'ista Goga	Acacia Enterprises

ISPA

Liquid Telecom

Media Monitoring Africa

Vodacom

Cell-C

MTN

Competition Commission

Transcription prepared by:



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TRANSCRIPTION CERTIFICATE

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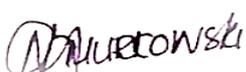
26 October 2020

136 pages

This is to certify that the following problems were experienced with the above matter:

1. *Verbatim* as far as possible – no grammatical or other corrections
2. Remote / Zoom / Teams meeting
3. There is an inherent buzz throughout all the audio tracks. At times adversely impacting on audio clarity – especially on ICASA side and/or when parties do not speak up
4. Many attempts through various programs were used to try and improve the recording (remove the bzz as it severely impacted on the duration of being able to listen and transcribe these lengthy and ‘loaded’ audios, but to no real effective avail.
5. Not always certain who is speaking – after spending countless hours on the internet, until one namelist was eventually supplied. Although the different speakers were at times pinpointed by names, the surnames could not successfully and with accuracy Googled / sourced.
6. In matters such as these, it would be of immense help to have documentation at hand – especially if there are technical words, references
7. Phonetic spelling as per pronunciation by the parties, unless if Googled or spelt on record.
8. Much time was also spent trying to learn more what the parties were talking about – especially because of the challenging audio. Short summaries or some links would have saved a lot of time.
9. Transcribed as heard, grammatical errors may occur because of the way role players speak during the proceedings.
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PROCEEDINGS COMMENCE : 26 OCTOBER 2020

Audio : ICASA 11 Dec 2019 35:41 minutes #

5 **CHAIRPERSON** Now we're supposed to be starting at quarter-to sharp and all stakeholders are already on-line. If you can just bring the house into order so that I can proceed with my opening statement [indistinct].

..[Pause]..

10 Good morning, colleagues and especially the ones here with us, but good morning to our external stakeholders who are joining us *via* virtual video conferencing, virtually. My name is Thembeke Semane. I am the Chairperson of this Committee and I am a Councillor at ICASA and I will be chairing the proceedings.

15 The first part of our hearings is for me to start with my opening address. Before I proceed, because this committee was for a long time chaired by our departed councillor, Councillor [?] I would like us to just observe a moment of silence to honour her great work, the shoulders on which I am standing on. Just for 1 minute, then
20 I will proceed [indistinct].

Thank you very much.

The Chairperson and members of the ICASA Council, esteemed stakeholders who have made submissions to this process, committee members, stakeholders joining us *via* Teams, members
25 of the media, ladies and gentlemen.

As I have already said, my name is Thembeke Semane. I am the member of the Council of ICASA and I am chairing this Mobile Brand Services Council Committee. I am accompanied by another councillor, Ms Yolisa Kedama who is the Deputy Chairperson of this
30 committee. We are flanked by our capable team which is in front of

35 you and we look forward to your engagement today. This enquiry is one of the critical steps in the measures taken by the Authority to address concerns relating to the perceived high cost of communication in South Africa. It follows the conclusion of the priority market enquiry 2018 wherein the Authority identified amongst others, broadband markets for mobile services which is the retail market for mobile services and the wholesale supply of mobile network services to protect the relevant [indistinct] for prioritisation for the market review.

40 In addition, the enquiry is the third intervention on the cost [working?] program that seeks to assess the state of the competition in the provision of mobile services in terms of Section 4(B) of the Independent Communications Authority of South Africa Act, Section 67(4) of the Electronics Communications Act.

45 In the discussion document that was published in 2018[?], the Authority identified the following primary markets for further consultation.

- The first one was [indistinct] retail product market for mobile services;
- 50 • The second one is factual which is the Spectrum [indistinct] market, number one.
- Third, site access, upstream market number two,
- Roaming which is the upstream market number three and
- MVNO / wholesale APN services which is the upstream market,
- 55 number four.

The Authority would like to thank stakeholders who participated in the process so far and we are hopeful that the oral hearings will provide more clarity for the written presentations in respect of the discussion document.

60 Ladies and gentlemen, this is an independent regulatory process
over and above the recent documents[?] facilitated by the
Competitions Commission with a network operators and aimed at
providing immediate relief to consumers in respect of the retail
prices to make sure consumers pay the rates that are affordable.
65 Our engagements with the Commission are on-going and we have a
Memorandum of Understanding that clearly outlines and articulates
our interaction from matters of common interest. However, the
Authority's discussion document notes that there are structural
problems in the wholesale layer of the digital service market.

70 ICASA would therefore like to specifically address that layer and
intervene. This we do because we have regulatory mandate to
protect consumers of these unfair business practices and ineffective
competition in this regard. We believe that this process we address
challenges at the wholesale layer specifically as it relates to, among
75 other things, national roaming, site access and communication
matters including barriers to entry, etcetera.

These measures are in line with the policy prescribed[?] to promote
effective competition and to facilitate the entry of new players in the
market whilst also advancing the transformation agenda within the
80 Information and Communications Technology sector and of course
stimulate economic growth. We are of the view that this enquiry
would contribute positively to the broader Government initiatives
and plans aimed at ensuring universal[?] access to affordable
broadband services to South Africans as contemplated in the
85 National Development Plan.

Furthermore, the Authority believes that the pending licensing of
high demand Spectrum will also provide much needed relief in
reducing the cost for provision of broadband services to South
Africans.

90 Esteemed Stakeholders, we all have seen how Covid-19 has
affected[?] our lives in the recent past and how we have to change
our way of living. Broadband services suddenly became an urgent
need for everyone because we had to work from home; learners
and students had to resort to online learning and communications in
95 general had to change. It is therefore important that South Africans
must benefit from the right costing structure for both voice and data
services in terms of their telecommunications experience. However,
this must be done without compromising the quality of service and
without collapsing the industry.

100 It is furthermore important that ICASA does not regulate for market
failure, therefore we need to make sure that the industry
appreciates its corporate citizenship and responsibilities such as
assisting the public with the correct costing of their products but
also ensuring that the businesses are sustainable. It is equally not
105 in the public interest to have lower cost of data with very dismal
quality of service or lower cost of data in a collapsing industry or
sector. We therefore need to strike a balance in addressing the
issues through this process.

Our long term objective is to see the price of data falling and the
110 public receiving value for their money. The findings of this process
will guide us in terms of the next step that must be taken. If the
findings say regulations are necessary we will gladly develop them
a draft which will consult on before we publish the final regulation.
In this regard we encourage all stakeholders, the NGOs, civil
115 society organisations, interest groups and the general public to take
it upon themselves and make submissions on our processes.

Social media is not a good platform to raise issues as a regulator
such as ICASA. Our processes are prescribed and legislated and
we would be acting out of our mandate to if we entertain[?]
120 comments from[?] social media to decide on what should happen in

the ICT environment, that would be prone to litigation because we operate in a fluid and volatile space and everything we do must follow what the law prescribes.

125 I would like to thank you all for joining us and we look forward to positive engagement provided[?] by our public interest mandate. Our plan is to complete this enquiry by no later than 31st of March 2021. Information on additional steps, if any, will be provided in the findings document to be published hopefully by the end of the year. I thank you. [indistinct]

130 We will be moving to the next step of our program. I will just introduce myself and my fellow councillor, but I will afford everybody in the room to introduce themselves and state who they are.

I will start with myself again, my name is Thembeke Semane, I am a Councillor at ICASA and I am chairing this committee, thank you.

135 MS KEDAMA Thank you Chair, my name is Yolisa Kedama, I am a councillor at ICASA. I am the Deputy Chairperson of this committee, thank you.

MR RAMANEKWA Good morning, my name is [indistinct] Ramanekwa[?], [indistinct] current member of the committee.
140 Thank you.

MS MANENTSA Good morning, my name is Siphesihle Manentsa, I am a member of the Mobile Broadband and Enquiry Committee.

145 MR NGWEDE Good morning, my name is Mpho Ngwebi, I am a current member of this committee. Thank you.

MR KHUMALO Good morning, my name is Junior Khumalo, I'm at the Policy and Research [indistinct] at ICASA. Thank you.

MR HAWTHORNE Good morning, I am Ryan Hawthorne, I am with Acacia Economics and we are supporting ICASA.

150 MS GOGA Good morning, I am Sha'ista Goga, also from Acacia Economics and we're assisting ICASA.

MR MHLANGA Good morning, my name is Owen Mhlanga[?]. I am from ICASA and am a committee member [indistinct].

155 MS SIGWAVHULIMU Good morning, my name is Lufuno Sigwavhulimu, I am a panel member from ICASA.

MR MPAHLELE Morning, Leweng Mpahlele, panel member from ICASA.

MS NTSI Good morning, my name is Demonia Ntsi[?], panel [indistinct] from ICASA.

160 CHAIRPERSON Thank you, Colleagues. I will proceed to hear the first presentation which I believe is from ISPA[?]. [indistinct] can guide us in terms of who will be leading the representation from ISPA?

165 MR [?]A Thank you Chair. The next presenter is actually Liquid but I believe Liquid is not on the line, so if ISPA is ready to present I suppose they can do so. ISPA is represented by Dominic. I don't know if Dominic can hear me. I think if you are ready to present, you can present.

170 MR CULL Good morning. Good morning Chair, Deputy Chair, Leweng[?] [indistinct] and all those gathered. If you could give me 3 minutes I will be prepared to present.

CHAIRPERSON Okay, the three minutes you requested is granted. ..[Pause].. Please, if you are ready.

175 MR CULL Thank you, I will be ready in a moment. I was
planning to have a delicious cup of Royco or coffee while I listened
to Liquid's lovely presentation. So, thank you for your indulgence.
Chair, are you able to see the presentation?

CHAIRPERSON Yes. We are able to see it.

ISPA

180 MR CULL Excellent. Thank you. Good morning Chair,
Project Committee and all those who are gathered in these unusual
times. Before getting into the substance of ISPA's submissions
I want to just obviously speak to the fact that in preparing for these
public hearings I reviewed my written submission from February,
185 which feels like it was written 3 years ago. A great deal has
happened since the publication of the discussion document and the
deadline for written submissions has passed and some of those
things are really relevant to what we are gathered here today to talk
about.

190 The Chair in her introduction referred to the invitation to apply for
high demand Spectrum. We are aware that there is also an
invitation to apply for licensing for the wireless open access network
and that intervention is being pursued. There was also a reference
to the Competition Commission's work. Obviously they have
195 concluded phase 1 of their data services market enquiry and more
recently, there is a massive shift towards focusing on infrastructure
development in South Africa and that includes ICT infrastructure
and particularly South Africa Connect, the national broadband
network. Phase 2 of that project which is essentially connecting up
200 44,000 Government facilities that has been moved into the office of
the Presidency. It is well advanced project to develop the
necessary funding models to get that out and then to use that as a
base to leverage connectivity to low cost houses, fibre connectivity

205 is being spoken about. Proposals have been placed before the
Presidency.

210 So, there's a massive shift which has come around from Covid-19
and the National Lockdown in particular and while it feels like the
decade has passed since the written submissions it's only
6 months, but it has been a really long 6 1months and I think as a
starting point we all need to recognise that the world has moved on
significantly.

215 To give an overview or a summary of what ISPA's points are,
essentially we don't believe the correct approach has been taken in
respect of the upstream market, particularly the wholesale APN
services. We'd like the Authority to reconsider its position in that
regard. We again speak to vertical integration of the dominant
mobile network operators and the data service providers as being
what we identify as one of the biggest obstacles to effective
competition in that down-stream retail market and we recognize that
220 the proposal regarding the review of the facilities leasing regime
that is probably more critical now than it was 6 months ago, given
the emphasis on access and the high demand Spectrum and WOAN
processes and we want to make some submissions as to how that
gets reviewed and how it gets fixed.

225 Turning to the retail market definition, it is ISPA's position that it is
not a suitable approach to combine the retail markets for voice, sms
and data services. This is an enquiry into mobile data services and
competitive issues in mobile data services. We don't see that
incorporating the voice and sms market serves any discernible
230 purpose. In fact it may well just lead to confusion and opportunities
to derail this process if there are any findings regarding the voice
and sms markets which make the Authority hold the view, which
lead the Authority to hold the view that it should be intervening in

235 those markets, then a separate 67(4) or Section 4(B) of the ICASA Act enquiry process should be followed.

We also, in respect of the retail market, don't agree with the partitioning of that market on a local municipality basis and really that is because you are looking at a service whose, the very essence of the service is mobility but we are being very restrictive on that geographic market definition. So, essentially I could move between three different markets in one morning if I live in the Johannesburg area and drive to Tshwane and Ekurhuleni. So, we're a little bit concerned that that is not a realistic representation of that market.

245 Looking at the upstream market for radio frequency Spectrum. Obviously there is a great deal happening here and really we want to make the point here that it is not sufficient to look at an excel spreadsheet and say this is who has what in terms of assignments. We know that there are existing assignments which have gone to incumbent operators. We know that there, by the end of March next year there should be further assignments, but what we're not factoring in is the availability of wholesale offerings on the market.

255 So, we know that Liquid has a wholesale offering. We know that there are deals between Vodacom, Rain and others. It appears, although conflicting messages are being given out, that Cell C is effectively abandoning its position as an MNO and becoming an MVNO on the MTN network. They talk publically about retaining their Spectrum because they will utilise it within the virtual network which has been provisioned for them by MTN but it really doesn't make a great deal of sense to me.

260 So, I think there is a question mark over what is the status of that Spectrum and how it is going to be used and obviously we need to look at the Spectrum which is going to be given to the wireless open access network operator and how that's going to impact.

265 So, we've taken a static position. We're I think as industry we are
mostly all overjoyed that there is some relaxation of the constraints
on Spectrum on the horizon, but if we're going to look at this as an
investigation into competition, then we need to look not at purely
270 what has been assigned but also what each of these operators has
access to.

Now we want to just make the point in between this process and the
Competition Commission process that here we, the discussion
document has found this correlation between constraints supply
Spectrum and the inelasticity in retail data casts, which has been
275 spoken about at length over many years in South Africa and
Vodacom in particular has linked its ability to access more high
demand Spectrum to its ability to offer competitive whole services to
ISPs. This really came through at the public hearings in the
Competition Commission's data services market enquiry. So, we're
280 just establishing there that there is a clear linkage between this
upstream market for radio frequencies Spectrum, the ability to give
wholesale offers in that upstream market and the impact on the
downstream retail market.

In the upstream market for access to high sites, in this instance we
285 do support the breaking down of the markets into geographical
markets based on local municipality size. It certainly leads to some
interesting results. We support prohibitions which have been raised
around permanent reservations of prime co-location space and anti-
competitive conduct. We did raise in our written response to the
290 discussion document that it appeared as if the Authority had not
gone broadly enough to look at this particular upstream market and
we note that subsequently there has been further engagement with
parties who are not licensees and who are not mobile network
operators, but who nevertheless have high site, control over high
295 sites. So, there are tower companies, there are wisps, there are

local government entities and the like which also need to be factored into this exercise.

As noted previously, it is urgent that the facilities leasing regime be reviewed and in doing so we need to just recognise that currently it doesn't work. There's a massive amount of avoidance on the part of industry while characterising the transaction as a facilities lease.

So, there is a division of an incumbent operator which deals exclusively in access to high sites and co-location space on those high sites, that's what their business is about, but they refuse to characterise any of their agreements offered to the market to take up that space as a facilities leasing agreement because they simply don't want to be bothered with compliance with the facilities leasing framework and you can argue with them until you're blue in the face, you simply won't get anywhere. There's this disjunct between electronic communications facilities in the hands of a licensee and in the hands of a non-licensee. If I'm a licensee and I control space on a high site then it appears to me that the facilities leasing regime applies because I'm a licensee leasing the facility, but I might be a tower co doing exactly the same thing but there's no licensing involved and therefore there are obligations which don't apply in the one situation but do apply in the other.

There's a very real lack of faith in the ability of the Complaints and Compliance Commission to resolve facilities leasing disputes authoritatively or expeditiously. We've recently had Court action in this regard which has certainly vindicated the approach taken by the Authority and the CCC in that decision, but it indicates just how long it takes to get a result out where you are entering into a facilities leasing dispute and industry prefers not to go there. We also know that the very specific provisions around essential facilities in the Act which have been raised *ad nauseam*, including by the Competition

Commission in its final report. We've never even started getting there and it appears that we probably never will.

330 So, there needs to be a full scale review of this access regime. We need to look at what access means in terms of the current environment and virtualisation. We need to recognise that this is going to be a lengthy and contentious process, but that it is something that needs to be done not only here but also interventions like the wireless open access network are actually going to have any chance to succeed or not.

335 Turning now to the MVNO and the APN services market, this is really the main thrust of ISPA's submission. We agree, we are happy with the market definition and that the key element of this market is access to wholesale offers allowing bulk purchase and resale of data and it is quite clear to us that in the words of the discussion document itself, the Authority recognises one, that there is competitive failure.

345 So, the quotes that while all MNOs have capacity to offer wholesale services that would enable stronger retail competition, there seems to be a lack of provision. Some resellers have indicated prices charged are high and there are no alternatives.

350 The DD also says that the lack of supply of MVNO services by all of the MVNOs and complaints about high wholesale APN prices suggests 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. So, there is recognition that there is ineffective competition or maybe even highly ineffective competition in this upstream market.

355 There is also recognition of the benefits which could be gleamed from intervening in this market and the linkages to ineffective competition in the retail market. So, the discussion document

recognises that suppliers of the APN services have the potential to play an important role in enhancing customer choice and reducing cost but notes that at present there are indications that they are not actually providing this competitive constraint even though well
360 priced wholesale offers would introduce greater competition and threaten market power in the retail market as such incentives in this market are linked to dominance in the retail market. Very clear statements, but having recognised the competitive issue.

Having recognised the benefit of intervening in the market, the
365 Authority then steps back and avoids reaching any definite conclusions in respect of this market. Avoids offering any (you know) opportunity to give incentives to this part of the market to work through that linkage which has been identified with the downstream retail market and to combat ineffective competition in
370 that downstream market. I've highlighted certain words here: 'likely, likely, seems, indicates' and that's really because it gives the impression that there are no definite findings and that this market was approached with less rigour than was applied to other upstream markets and to the downstream retail market.

375 So, a great deal of effort seems to have been put into markets relating to roaming and high site access and down to the retail market which followed the same process of saying there's a lack of effective competition, there are benefits to intervening so let's intervene.

380 Here we do the same thing but we step back and we say, actually what should be happening here is that we'll intervene in the market for high site access and in the market for roaming and that will eventually filter down into a positive effect into the market for wholesale MVNOs and APNs. MVNOs are difficult to talk about in
385 this context because we know there are specific obligations coming up in the high demand Spectrum assignment process, that

390 successful bidders in that process will be under obligations to establish MVNOs and Vodacom and MTN are going to participate in that Spectrum auction process then they will end up with obligations to establish a number of MVNOs on their network within a certain time period.

395 That does nothing for the whole CSL APN side and it's difficult to understand in that we think it's quite clear that pro-competitive interventions in the wholesale access market on the APN side and we can MVNOs and we can say APNs, but what we are talking about here is the ability of an ECS licensee to obtain capacity from an ECNS licensee. That works perfectly well in the fixed environment.

400 It doesn't work at all in the mobile environment and that comes up very much from the quote there from Mr Yasoob[?] from the Competition Commission, now 2 years ago, where there's recognition that on the mobile side it's a different picture. There are a lot purer players at the wholesale level. There's recognition that on the fixed side there is intense competition with low barriers to entry which has seen a lot of new participants go into that market, really shaken it up in a good way.

410 On the mobile side that's not been as intense and as dynamic competition as you would have seen in fixed, it's recognised, we know this but the Authority doesn't want to make definite findings. It offers this view that there is a likely link to ineffective competition in the upstream markets for site access and roaming.

415 We need to be clear. What is that mechanism? I understand that promoting facilities based competition or infrastructure based competition will eventually lead to greater service competition, but what are the time periods that we are talking about here? Because if it's 5 to 10 years then we shouldn't be talking about it because the intervention is going to be meaningless in 5 years and 10 years'

time if we haven't reduced the cost to communicate by introducing greater competition in that downstream market by then.

420 We turn and just in conclusion then, to make the point around
wholesale roaming. Yes, we understand more players in that
market means more scope for offering wholesale APN services but
you have to factor in that you're simply bringing an additional player
425 into the value chain. So, there will be a margin which then
ultimately impacts on the cost to communicate and what South
Africans are accessing data for. There's a to return to vertical
integration, there's a quote from the discussion document about
why vertical integration is challenging, why it creates issues, why so
many of the solutions proposed in the discussion document are
430 around accounting separation, functional separation issues but the
conclusion should also be made that the evidence of the harmful
effects of vertical integration are found in the lack of MVNO
offerings in competitive wholesale APN offerings in South Africa
today and that is really why the Authority, in a separate process,
435 has decided that it needs to force that issue on the MVNO side at
the very least.

In conclusion we would urge the Authority to undertake a proper
analysis of that upstream market for wholesale APN services based
on such analysis and if warranted, we would ask the Authority make
440 a finding as part of this enquiry that there is ineffective or highly
ineffective competition in that upstream market and then to consider
looking at the options presented in Section 67(7) what are the
appropriate pro-competitive conditions which could be imposed,
taking into account this dynamic context and the Spectrum process
445 and the WOAN process and we've given some options there which
are really taken from subsection (7), many of which are already
being applied by the Authority in respect of other markets where it's
identified that there is ineffective or highly ineffective competition.

450 Other than to thank the Project Committee for moving forward with this, we appreciate that time has been really difficult, that you are not at ICASA Head Office. That that remains a challenge so thank you very much for the effort in ensuring that these public hearings can be held and that we can move this process forward. Thank you.

455 CHAIRPERSON: Thanks to you, sir. Thank you very much. We will proceed to the next session of your presentations which is whereby we will be asking our questions from our side as ICASA.

460 MR MAPAHLELE [?] Thanks, Dominic, for your presentation it's going. I just have two questions for you. So, the first question, with respect to the retail market definition. So you indicated that you do not necessarily agree with ICASA's approach in terms of the product market definition. So, my question is, as you may know that the market definition, so ICASA is supposed to use a forward looking approach in terms of market definition exercise. So, my question to you is, do you still believe that voice, sms and data should be treated separately or do you believe that there is a conversion in terms of these services or there will be conversions in terms of these services in the future?

470 So, with respect to my next question on the high sites. You have indicated that there is a need for a complete review of the access regime. My question is, do you believe that the WOAN will address some of the challenges with respect to the high sites?

475 And also with respect to the, my third question, sorry with regard to MVNOs and APN, do you believe that the MVNO and wholesale APN are in the same market or they are in different markets and if so, do you believe that the WOAN will address some of the challenges with respect to MVNOs? So, those are my questions for now. Thank you.

480 CHAIRPERSON Thanks, Luwane. Yes, you can proceed to respond to the questions.

485 MR CULL Thank you, Chair. I speak for an industry association so I will speak and address the questions but if we could please avail ourselves of the opportunity to provide supplementary written responses, so that if there is anyone else who wants to raise their voice they have an opportunity to do so.

490 On the first question, sms, voice and data have probably always been converged and always been the same thing, basically data but have been treated as separate distinct categories by operators for commercial purposes and by regulators because that's what they see reflected in the market. I wouldn't spend a great deal of time looking to regulate voice as a separate market over and above what has been done in call termination. I would certainly not spend a great deal of time looking at sms. I would however, and South Africans understand very clearly what data is and what can be done with data and through the fact that they can use data to make voice calls and to do messaging.

500 So, yes there is convergence, but I'm concerned about the fact that these legacy silos for voice and sms have grown up alongside the industry as it's evolved and if you're talking about convergence of those well no, I don't think that's going to happen but will there be convergence of the functions of voice and messaging onto data platforms? Absolutely. In respect of the, if I can chat about the WOAN. Will it address some of the challenges with regards to high sites? It's very difficult to make predictions in this regard, particularly if you are a cynical lawyer who has been in the industry for close to 20 years and seen many things spoken about which have never come to pass.

505 So, yes, theoretically the WOAN could make a difference with regard to access to high sites, but the simple reality is that the

510 WOAN itself is going to need access to high sites and before it can
help anyone else with that issue. So, the first question should be,
well how does the WOAN actually establish whatever physical
virtual network it's going to establish in the absence of an effective
facilities leasing regime, or are we simply going to rely on the kind
515 hearted nature which the incumbent operators have historically
shown us? I don't think that's a good idea.

In respect of MVNOs and APNs, it's as reflecting on this
presentation over the weekend and how much has happened since
the discussion document was published, there certainly was
520 thinking that these markets need to be separated out and that that's
probably reinforced by the specific interventions around MVNOs
being raised in the high demand Spectrum invitation to apply, but
that is probably something which I'd like to flesh out and give more
substance to in a written response.

525 CHAIRPERSON: Thank you for responding to the questions.
I don't see any indication that there are any further questions unless
there's a comment or question from your side it will then conclude
your session with us but we've got other presentations from other
licensees after you. Oh sorry, Ryan wants to ask something.
530 Apologies. Ryan you can proceed.

MR HAWTHORNE Thanks. Hi, Dominic.

MR CULL Hi, Ryan.

MR HAWTHORNE Sorry, I just wanted to ask about you know
I think the [indistinct] submission that said that Vodacom [indistinct]
535 had provided some services at a lower cost and a greater capacity.
Maybe you can just tell us a little bit about how that wholesale
market has evolved over the past few years. As we understand it,
of course we see a whole [indistinct] of wholesale ranges that are
happening and I mean can you just tell us a little bit about all of that

540 from the ISP's perspective to be able of course as it relates to
mobile.

MR CULL So, yes and again I think it would be useful to
bring some supplementary information. I am not sure if Afrihost is
presenting. I think they have useful things to say in this regard. To
545 be clear what ISPA's raising in its submission about Vodacom
saying it would be able to do X, Y and Z if it had more access to
Spectrum. That's not what we're saying. We are quoting
Vodacom's written and oral submissions under oath to the
Competition Commission as reported extensively in the media, that
550 they're constrained from offering a wholesale service because of
their lack of access to Spectrum and that they would be able to offer
a wholesale service at a pricing point which was attractive to ISPs
and others if they were to be given more Spectrum.

So, that wholesale market has shifted now. It appears that
555 Vodacom do have access to more usable Spectrum through the
arrangement with Liquid Telecom, which is a wholesale
arrangement, or perhaps through the arrangement with Rain and as
ISPA we have very limited insight into what those deals are actually
about. We just note that they are constantly being referred to
560 regulators for checking and for approval and whether they constitute
Spectrum sharing or mergers or things of that nature. But while
there's been over the last 2 to 3 years, what we've seen is a
massive shift on the fixed side.

So we've seen fibre networks going up all over the country. The
565 vast majority of those are open access fibre networks where you
can have up to 10 to 15 to 20 ISPs offering thousands of packages
on that fixed line network. So, we see that very clearly. It's a
development which started under Telkom. DSL has just gained
speed in the fixed line space. If you're a fixed line subscriber in
570 South Africa on one of the major fibre networks, you have a

massive amount of choice in terms of the data packages that are available to you. It just simply hasn't been reflected in the wholesale space on the mobile side.

575 So, while we've seen that and while we've seen Vodacom and others get access to more capacity on the mobile side we are still not seeing compelling wholesale offers being offered into the market for ISPs to take up, who want to give converted offerings to their customers. So, there is a large body of willing and able competitors looking for those offers that are being denied entry into
580 that market.

MR HAWTHORNE Would you be able to elaborate on any of the challenges that the ISPs have faced in relation to accessing facilities. I know you mentioned that there are quite thick layers and so on, but I mean can you just tell us [indistinct ^{00:49:22 to 00:49:33}] what
585 sorts of facilities are essential for ISPs to enhance competition in the market.

MR CULL So, Ryan we're flipping the conversation now. So, we were talking about a service layer issue with ISPs being able to get access to wholesale offers. We're now talking about access
590 to facilities and that is not *per se* an ISP issue because ISPs by definition are providers at layer 3 electronic communication services and they don't necessarily have any business with dealing with infrastructure and facilities leasing issues, but they certainly have massive interest in that part of the market actually functioning
595 efficiently so that more people are connected to networks and ISPs are therefore expanding the market with people they're able to sell to.

But on the infrastructure side it's not necessarily that I'm pointing to more closure or anti-competitive conduct. I'm just saying that (you
600 know) in a sense, you almost get the impression that ICASA sits back having written the facilities leasing regulations in 2010, they

wrote an excellent document but they then sit back and say well, tick, that's facilities leasing sorted. I'm not aware of how many facilities leasing agreements have been submitted to the Authority for review as is required, but I'm willing to bet that it is a miniscule fraction of the number that should have been submitted.

So, it might be that some people are not in fact denying access but they certainly at the same time are not acting in terms of the regulatory framework. There are most definitely cases, and the Authority is recognising this in the high site access market, where a licensee can simply refuse to give access to a facility and there's actually nothing anyone else can do.

So, (you know) the discussion document is proposing prohibitions on exclusive reservations of space. You're only doing that because facilities leasing isn't working and again, I would urge the Authority to study the recent High Court judgment which came out and in particular how it talks to that notion of a reservation of space, of Telkom for example saying 'no Vodacom, you can't deploy a fibre optic cable in this duct because we preserve the available space for our future expansion'. That's very clearly dealt with in that judgment.

So, no it's not an ISP issue but we're aware that with the various problems there are in the infrastructure market that facilities leasing takes place on a commercial basis outside of the framework of rights and obligations provided for in Chapter 8 of the Act.

MR HAWTHORNE Maybe if I can ask a question about 5G and sort of regulating on a forward looking basis. I mean if 5G components will be a lot more dense, what does it mean for access to incumbent infrastructure like high sites and so on? I mean do these more dense 5G components mean that we shouldn't care anymore about access to these macro sites [indistinct] really what might matter is lamp posts and this sort of thing.

MR CULL I don't know if we can say we don't care about the macros anymore and it's all about the minis and the mini
635 macros, but certainly we need to pay attention to what's happening. The boomer cam reports in Jo'burg, that gives you an indication of the kind of deployment you're going to see. I know Cell C did a deal with the City of Cape Town a while back for access to its street poles. I'm not sure what the status of that deal is, but and that one
640 being a particularly interesting one because it involves a non-licensee. So, how does that fit within the framework that ICASA is looking at?

But essentially we do need to look forward and you can look at other jurisdictions and the US is particularly useful in terms of the
645 problems they've had with 5G infrastructure builds and rollouts and certainly we don't need a repeat of 1993 where we have two networks rolling out next to each other. That was necessary at the time. It's no longer necessary now to have a third huge infrastructure player in the 5G space.

650 So, we know that there are issues between land owners, the public and infrastructure. The point here is those are going to intensify as we go to 5G. We've all seen what happened with the draft policy on rapid deployment which got in the region of 95,000 responses from the public concerned that 5G towers are going to be put up in their
655 back yards by Vodacom and MTN and that they're going to catch the Corona virus because of that. That is the reality that we're dealing with. So, as part of facilities leasing and infrastructure exercise we need to be paying attention to make sure that there isn't unnecessary duplication in that space.

660 CHAIRPERSON Thanks Ryan and Mr Cull.

MS [?] Mr Cull, going back to the point where you came on. I just wanted to make [indistinct].

MR CULL Sorry, my apologies, I cannot hear that question.

665 MS [?] Okay, I'm still in the process of asking. I just wanted to check with you, do you think that dark time hosts should be a separate market? That's the first one, and what is your view with regard to the impact of the roaming arrangement and service agreements on competitive dynamics in the retail market?

670 MR CULL My apologies, I didn't want to interrupt again but it's impossible to hear the speaker and the questions.

MS [?] I'm not sure. Can you hear me now?

MR CULL I can hear you faintly now ma'am.

MR [?][?] Testing.

675 MS [?] Dominic, can you hear me now?

MR CULL That is wonderful. I can hear you clearly now.

MS [?] Okay. I just wanted to check with you. I think it's a follow up to a point you made earlier on. Do you think that dark time poles should be a separate market? That's the first one.
680 The second one is, what is your view with regard to the impact of roaming arrangements and [indistinct].

MR CULL Again, my apologies. I got halfway through question 2 and then everything disappeared.

MS [?] I think it was the same for all of us, Dominic.

685 MR CULL Thank you.

MS [?] Hi Dominic, can we try again?

MR CULL I can hear again.

690 MS [?] Okay, you got the first one. The second one, the view regarding the impact of roaming agreements, arrangements and service agreements on competitive dynamics in the retail markets.

695 MR CULL Okay, so the first question related to ducts and poles and whether they should be regarded as a separate market. My initial response is to say no, that we would probably be over-complicating access and infrastructure issues if we did that, but having said that, I would like an opportunity to reflect on that question and to consult. So, we would like the opportunity just to come back specifically on that. And pretty much the same in respect of the impact on the roaming market. Again, I just want to
700 consult with regard to that question so that we can come back with a written response, please.

CHAIRPERSON Thank you very much, Dominic. I don't know if I'm audible on the side of the virtual audience.

MR CULL It's extremely faint and difficult to hear.

705 CHAIRPERSON Can you hear me now?

MR CULL The beginning was good and then you faded away towards the end.

CHAIRPERSON Hi, can I be heard by our virtual audience?

MR CULL I can hear. It's not great, but it's audible.

710 CHAIRPERSON Okay, apologies about that. We tested the sound system yesterday. I think they just decide to go wrong when they want to. Thank you very much, Dominic and also to ISPA. That concludes our session with you and the next we are going to be readying ourselves for the next representations which are from
715 Telkom. Thank you very much.

MR CULL Thank you very much.

CHAIRPERSON We still see your presentation in the middle of the screen. If you can please just take it off?

720 MS [??] Then we won't have to wait for the last minute.

CHAIRPERSON Okay, we can grant the 10 o'clock start. We already are ahead of our schedule.

MS [??] Thanks very much.

CHAIRPERSON Okay.

725 MS [??] Appreciate it. Thank you.

MR MAHLANGU I just wanted to check if I'm audible.

730 CHAIRPERSON Good morning, Mr Mahlangu. Yes, you are audible. We were asked to wait for [indistinct] and Tourism at 10.00. So our members are just [indistinct], but you are at 10 o'clock sharp. I guess that you are also ready.

DR MAHLANGU Thank you.

CHAIRPERSON Okay.

DR MAHLANGU We are ready.

CHAIRPERSON Thank you sir. At 10 o'clock.

735 DR MAHLANGU Arno, from the Telkom side I will be leading the presentation. My name is Dr Siyabonga Mahlangu. I'll be assisted by Ms Lisa Zwabe, our executive responsible for regulatory economics and I will also be assisted by Mr Mark Williams and his team from Berkeley Research Group. They are our economic
740 advisors. So, that's how we will run the show today with you.

We propose to start with just setting out why we, our views on how we think we should approach mobile broadband services market enquiry and then I'll also ask Mark to take us through some of the economic arguments relating to the impact of Spectrum on the determination of the market, mobile broadband services market 745
enquire and then he'll also deal with network sharing and the importance of sites.

Perhaps Mark, we can begin. You can take me to slide 2.

Chair, the important thing that we want to underline in this hearing 750
is that there's inconsistency between this hearing and the ITAs that have been issued by the Authority. This inconsistency lies in the fact that the enquiry is meant to chart the way of the future. It's supposed to shed light on the market structure, on the dynamics of competition in this structure and where the enquiry finds that there 755
is a need for intervention, where it finds that there is lack of effective competition it will determine remedies. However, Spectrum is the biggest pro-competitive lever that the Authority has at its disposal. If it is released without all these other questions being answered about market structure, about the competition 760
dynamics, about the level of competition then we run the risk, Chairperson, of putting the cart before the horse.

Now that the ITAs have been published, the enquiry will be forced to now tailor its findings and recommendations according to the market structure that is envisaged in the ITAs and that is where we 765
think that the Authority needs to pay attention, because the sequencing of these requires due care and attention. We can move to the next slide.

So, Chair you will know that there is a problem about competition in this sector. The mobile sector has been suffering from lack of 770
competition for a number of years and this has been found in the data services market enquiry that was conducted by the

775 Competition Commission, but latest information of market shares in this market as of the 2019 / 2020 years, where we've compared the performance of the different operators, at least Telkom, Cell C, MTN and Vodacom.

780 What we see, Chairperson, is that of the available subscribers, we see that over 70% of those belong to MTN and Vodacom and then when you look at the gross mobile revenues in the sector you will also see that still, over 70% of those are between Vodacom and MTN. Whereas if you check the IBIDAS, if you check the IBIDAS generated by these companies, Chairperson, you will see that in those IBIDAS at least 56% of those IBIDAS are sitting, with of the IBIDA, is sitting with Vodacom and 32%, 32.7% is sitting with MTN. So, what does that tell you? It says over 80% of the IBIDA
785 generated from the mobile business in this country is sitting between the two mobile operators.

790 For us, Chairperson, that's the very, very important consideration. So, it tells us that the market is highly concentrated and that this has been so for more than a decade and that later entrants have not shaken the status quo. So, we have seen no discernible competitive constraints on these incumbents and of course there is no, at least we're seeing limited, limited consumer benefits from this type of market structure.

795 So, Chairperson, what we would urge you to do is to approach the enquiry into mobile broadband market by looking at the market structure as it sits, so that the remedies that you come up with at least have an impact on this structural constraint to competition.

Mark, we can move to the next slide?

800 So, Chair, what do we understand to be happening? We can see what has happened historically. The two large MNOs have had first mobile advantage. The acquisition of sites. The cost effective

acquisition of customers and so on and now we have also seen that there has been a good cross of subsidy to the incumbents *via* the call termination rates. You will recall that the large MNOs have
805 enjoyed very favourable call termination rates up until the intervention by the Authority, but also through that intervention we have not seen, at least although it's in the voice sector, we have not seen that affecting the advantages they have acquired as early movers.

810 So, we're sitting here with structural constraints where these mobiles, they have control over the best sites. They've got preferential Spectrum assignments. They have got access to distribution channels and there is a lack of pro-competitive regulation to keep them honest and the challenger operators do not
815 have an environment that is conducive enough for them to be able to keep these two big operators honest.

So, that's the historic fact and that's what we are living with. Today, what it tells you, out of all the licensing of other operators and so on, Telkom remains the only most viable challenger to these two
820 operators, at least if you're looking at infrastructure based competition.

The rest of the other players they have coalesced around the two operators and Telkom, being that challenger, is saddled with the historical fact that Telkom does not have sub-one gate Spectrum
825 and then Telkom on top of that, has to contend with the fact that these incumbents also have access to additional Spectrum via the network sharing deals that the Authority has promised that it would investigate during this process, but we have not received any enquiries from the Authority to engage in respect of these sharing
830 deals. Although they are labelled as facilities leasing coupled with roaming, they are not that. They are means in terms of which the

big operators can access extra Spectrum and therefore solidify their positions in the market.

835 We have also seen, Chairperson, that the Covid Spectrum gave these two operators first mover again in launching 5G services. You can do your numbers but when you calculate the 3 dot 5 [3.5] that Liquid has, plus the Covid assignment that was given to Vodacom, you can see how Vodacom can advertise 5G services for the next 3 years. It's because Spectrum has an input there, it's
840 giving them a lead into the 5G space and that's the biggest issue when you're discussing mobile broadband.

The press reports, Chairperson are suggesting that Cell C is exiting the infrastructure based competition. It's exiting the infrastructure market. That then puts more pressure on the Authority as well as
845 on Telkom as a challenger operator that there should be the levelling of the playing field if we are going to maintain competition in this site and in our view, Chairperson, the competition is the best form of regulation. The imposition of regulation by the Authority can only be second best. Why? Because the market is dynamic and the
850 players themselves, if competition is effective, are going to ensure that the consumers benefit and that the cost, the prices are reflective of cost and are reflective of competition and that's where the Authority then can focus on other matters for the development of the sector and the economy as a whole. But where the Authority
855 has to always intervene, it's where we have structural problems like the present. So, that's why we implore the Authority to use this process to address the Spectrum issue because it is paramount, it is important, it underscores and underpins mobile broadband.

You can go on, Mark.

860 So, at this slide, as I have said earlier that we're going to be sharing this presentation with Mark and Lisa, the important thing that we want to leave you with are the three points that you must ponder, is

865 that Spectrum is integral in the promotion of competition in the
mobile sector and that Spectrum is the life blood of mobile
broadband and we are saying that because of these Spectrum
trading deals that have been entered into in the market in the form
of these network sharing or whatever they called them, roaming
plus facilities leasing agreements, because of those it is no longer
870 important to focus only on Spectrum holdings, but it is important to
focus on access to Spectrum, whether through these sophisticated
means or through ownership, but the biggest issue is access to
Spectrum which then determines what kind of competition we will
see in the market.

875 So, that's where I think, Chairperson,, we need to focus on and the
third issue is to look at these advantages that the incumbents have
enjoyed because of them being early movers which is access to the
best sites. How should we deal with these sites if we are to
promote competition? Those are the questions and Mark will lead
us into that discussion.

880 Over to you, Mark.

MR WILLIAMS Thank you, Siya. Morning, Chairperson. Can
everyone hear me?

CHAIRPERSON Yes, you are audible. You can proceed, sir.

885 MR WILLIAMS Okay, very good. Thank you. Thanks for
your time and so I'm gonna just talk a little bit more detail about
each of these three points that Siyabonga's set up there. We'll start
off with Spectrum. First of all, just a reminder about, for the
audience, about why Spectrum is so fundamental to the way
competition evolves in the market and the current market structure
890 and how that translates into lower costs and better services for
customers. And this is widely recognised around the world because
usually all the regulators accept this.

895 Spectrum drives fundamental investment required to build out the network, the technical characteristics of Spectrum affect how network can deliver coverage and the cost of delivering that coverage, particularly in rural, both rural and in urban areas. It affects in-building penetration and this is key when it comes to quality of services. Customers and subscribers are moving in and out of structures. The ability of Spectrum radio frequencies to
900 penetrate into buildings directly affect customers reception and quality of service and therefore it feeds directly into competitive dynamics. Of course it determines broadband speeds and it affects the way and the timing with which operators can introduce the new generations in mobile technology.

905 So, Spectrum nearly affects everything about the mobile industry from financials through to quality of service, to the competitive dynamics and of course costs and prices. And this has been widely recognised both by the Authority itself and also by the Competition Commission in the DSMI and for that reason Spectrum should have
910 been an absolutely essential part, if not the most important part of all of the review of regulatory views that have been undertaken into the sector over the past few years.

So, starting with your Authority's priority markets exercise, then the Competition Commission, then the service market enquiry and then
915 now this mobile broadband service enquiry. Spectrum is a sort of fundamental building block that drives competition and therefore all of this analytical work has been undertaken, should have had Spectrum right at the centre of it. And therefore that leads into the sequencing. So, it's not possible to really understand how
920 competition is driving .. sorry, Spectrum is driving competition and how that competition is evolving both historically, into the present day and into the future, without understanding the dynamics of the Spectrum holdings and all of these other factors that Siyabonga has mentioned and one sort of logical sequence would be to do that in

925 the analytical phase of the work, which is the current market enquiry
and then the conclusions and insights from that would feed into the
decisions about how Spectrum is issued in the future, both to the
industry and to the WOAN. And underlying Spectrum licensing sort
of fundamental approach to Spectrum licensing is that it should be
930 done in a way which is pro-competitive.

Competition, as Siyabonga said, competition is by far the most
effective way of disciplining the market. Spectrum is the most, has
the broadest and the deepest effect on the way the market works
and therefore licensing with Spectrum should be done with
935 competition front and centre in the planning of how Spectrum is
licensed. That should have gone into the ITA process starting point
for the information memorandum earlier in the year and the way in
which the ITAs have been designed, should have had competition
and the effects of Spectrum licensing process on competition right
940 at the beginning, at the heart of the whole process.

And so, now given the way the process is in parallel, the ITA
process which is obviously quite well advanced has to then
incorporate the findings of this enquiry and it's not too late to
include the conclusions of this enquiry into the ITA process and
945 that's very essential as the Spectrum licensing process moves
forward.

The second point is on the network sharing deals which Siyabonga
has mentioned briefly. And the first point to make is, these are
really not normal roaming deals and that's the way they've been
950 branded both publically and also internally within the industry.
There are four of them. There's Vodacom Rain, MTN Cell C, MTN
Liquid and Vodacom Liquid and they affect different parts of the
Spectrum and each one is slightly different and of course some of
the details are not public so we don't have information. We don't
955 have access to all the information but one thing that is very clear

from the information that is public about these and these are really not normal fields.

960 In a typical roaming deal, domestic roaming deal is one in which a small operator, maybe a late entrance, has access to a large fully rolled out network and often for a transitional period while that operator builds out its network, but these deals, all of them are at the reverse logic. They're where a large operator buys, accesses capacity on the small operator's network. So, it's like a reverse roaming deal and then they're linked with these facility sharing deals or network management deals arrangements which tie the two networks much more closely together than would normally be the case under a roaming arrangement, a standard roaming arrangement. And the effects of these roaming deals are very significant and they have multiple, they feed into the market the way 970 competition works in the market is several different ways, but the first and most obvious way is that they change the way in which Spectrum is accessed across the industry.

975 Now on this chart what we've shown is on the left-hand side it shows the Spectrum holdings [indistinct] licenses and this is the picture which you are all very familiar with and we've just applicated[?] all the Spectrum together rather than differentiating the balance just for the sake of simplicity in the presentation. But then when you include the sharing deals into this, the picture on the right shows a very different picture which is that they increase significantly the amount of Spectrum that Vodacom and MTN have 980 access to, while effectively taking, Cell C is left with no Spectrum. It handed over access to that Spectrum through its deals and of course the Liquid and the Rain, what's left for Liquid and Rain to use for their own purposes is much less than what they've got on 985 paper in the licensing.

990 So, this..these sharing deals have a very significant effect on the
way Spectrum is accessed in the market. And what are the
implications of that? Well, first of all the implication is for
competition. The deals create, give more network capacity to
Vodacom and MTN, which allows them to extend their lead already
in the where they're already leading the position in the market,
particularly in high data speed and allowing them to launch 5G
before their competitors. And what they've done is, that they've
effectively taken the smaller players out of the market. Certainly as
995 infrastructure competitors, but also in the retail markets. They've
constrained those smaller operators to either niche areas of the
market or essentially a strategy which accommodates the larger
partner and so it has profound implications for the way competition
works in the market but then also because of the effective transfer
1000 of control over access to Spectrum it also has implications for the
ITA.

1005 So, because these deals are first of all very significant, they're very
structurally, have a structural effect on the market and also they're
very unusual, we feel that the enquiry should have spent some
more time looking at these deals in more detail and thinking through
the implications of them and then that would itself feed through into
the design of the ITA. And one thing that we would just like to note
here is if you look back historically over the last 10, 15 years of the
market in South Africa, the major changes of the way the
1010 competition has worked in the market has come about as a result of
regulatory intervention.

1015 So, first of all the licensing process but then also the intervention on
call termination and it was only when the Authority started taking
action on call termination when those termination rates came down
and that began to level the playing field for the smaller operators
and so, we're acknowledging and giving credit to a customer having
taken those bold steps and noting the effect it's had on the way

1020 competition works and we were just durged[?] that the we would put
Spectrum in a similar category of major regulatory intervention,
which has a long term effect on competition in the market and we
feel that without bold steps by the regulatory and the way Spectrum
is issued, it's possible that the mistakes of the past might be
repeated.

1025 And that brings us finally to site access and this has been talked
about many times in the past and Siyabonga mentioned it in his
introductory remarks. And sites, after Spectrum, sites are probably
the most significant factor in both the cost of building a network and
the way a network operates and functions and how that feeds into
1030 competitive dynamics. Sites are very expensive to build. They're
slow to build. It takes time even with unlimited financial resources,
which of course operators don't have, but even with that, sites are
slow to build because of the plan and permitting process and of
course duplication sites is inefficient and in many cases, particular
1035 in critical, commercial critical locations it's not possible to duplicate
sites because of the restrictions around private property in urban
areas, particularly shopping malls, office areas, CBDs, and so sites
are a fundamental driver of competition in the market. They're a
difficulty in getting access to sites is a long term constraint for any
small operator and of course that's why roaming deals exist and
1040 domestic roaming deals is a short term way of overcoming that
disadvantage of sites.

Vodacom and MTN are far ahead of the other MNOs on sites.
That's just essentially as a virtue of their first mover advantage and
the difficulties of abdicating[?] a footprint like that. And so the
1045 roaming arrangements, standard domestic roaming arrangements
are a short term fix while an operator builds that site but if it's not
able to rollout that site for reasons that we've just described, then
you're left with commercial negotiations of sharing sites.

1050 Now in a highly unbalanced market, rather in a balanced market
where you've got roughly equal shares in the market, you've got
roughly equal numbers of sites, this can be left to commercial
negotiations because it's in mutual interest of all the parties to
reach suitable arrangements and we're seeing that in many markets
1055 where the regulator really hasn't got involved in the sites
negotiations. But in the case of South Africa which is a highly
unbalanced market, an asymmetric market, these commercial
negotiations are very one-sided and small players are at a
permanent disadvantage.

1060 So, that's not to say that the large operators are not engaging at all
in site sharing, of course they are, but there is many ways in which
it's possible for a large, an operator with a large advantage in sites
to be able to make life difficult for the smaller operator wanting to
get access to it. We've called it feet dragging here, it's probably a
simple way of describing it. There's a marked difference when
1065 we're negotiating, small operators negotiating site access on a third
party tower company which has no downstream incentives, other
than in the same way that a vertically integrated operator does.
[01:30:13] #####

MR WILLIAMS: There is a marked difference when we
1070 negotiating. It is well operated and negotiating site access on a
prototype tower company, which has now bound stream incentives,
to, other than just in the same way that in vertically integrated
operators. So, there is a mark difference between that commercial
negotiations and then working the negotiation with the, the large
1075 MNO, and that is because the large MNO is essentially not in the
site business, it is in, it is businesses sites, it is primarily aimed at
craving [indistinct] for downstream business, and therefore either,
indirectly or as either deliberately or accidentally access to the large
MNO sites, is difficult.

1080 And this is not, I mean there has been a lot of focus around the
price of access the price, this really is only one part of the jigsaw
actually, equally important, of the operational terms is speed, which
you get access on those sites that the processes were dealing with
large MNOs. The time it takes to get onto those sites and then, of
1085 course the temple specifications on that site access.

So site, equitable site access at the Spectrum would be the single
biggest intervention that ICASA could make in little ling the playing
field for the industry. And what would that look like? Well, there is
good, experience in other segments of the market, for how this will
1090 be done. And the essential principle that there should be non-
discriminatory access to, to sites, to, in particular to the larger MNO
sites

And when we talk about non-discrimination, we mean non-
discrimination between those operators own downstream
1095 businesses and third-party operators. And so some form of
separation between Vodacom and MTN's sites part of the business,
and the rest of the network business, would first of all create a
degree of transparency about how those businesses, two parts in
businesses in track with each other.

1100 And it would also allow ICASA to intervene, to make sure that the,
that there is non-discrimination is enforced and there is a well-
established regulatory principle around IOA, comments of inputs,
which could be applied to that. And, and of course there is a very
good example of how this can be done, from, within South Africa.

1105 I mean separation of sites from the rest of the businesses are very
well-established model in many of the markets, around the world.
And including in South Africa where we talk on the separated
[indistinct] and ones [indistinct] is effective, it's a tower company.
And so, it would be a relatively straight forward to do and, and one
1110 would have a proponent impact on the way the market works.

1115 Finally, just before I finish, one of the points, which we thought that, we should mention this, because it has come up in previous stages, both in current markets and also in this bid enquiry, which is the role effects in mobile broadband. Now, fixed networks are an important component of a, of a mobile network, because think about back holding into transition.

1120 But what is critical here is that all mobile operators have multiple options for providing those ums, those services to themselves, for or accessing it from mobile operators. The first and most obvious way of doing is, is self-revision and mobile companies traditionally have used microwave or all that towers to back all traffic. And of course, that is now transition to move towards fibre.

1125 But the mobile operators in South Africa, particular and MTN have well established, network [indistinct] and transmission which they have, which they have adopted themselves or that source from other operators. And this is, the evidence of this is very clear in Telkom's business.

1130 Telkom used to be a open server division, used to be a major supplier of [indistinct] and to operators through either wireless or wireline connections, primarily wireless. That business has collapsed in 10 years, 90%, over 90% of that business has, has disappeared. And this chart on the right here shows the, play station back holdings provided by open serve and how much changed over 10 years.

1135 The reason for this is exclusively because not all operators either self-supplying, they have built their own back holdings or they are sourcing from other operators. So, it is correct that in respect of summary, it is correct that fixed elements, and the effect network is an important input into mobile broadband.

1140 But it is not correct that there are mobile operators [indistinct] on Telkom, so there is any way, Telkom is a [indistinct] player in this provision of platform. So that brings us to our final concluding, [indistinct], which I will hand over back to Siyabonga.

DR MAHLANGU: Thank you, Mark and thank you, Chairperson.
1145 What we would like to underscore is that as you look at mobile broadband, the important thing to look at, is that the competition in mobile is not working, and hasn't been working for a long time, and that the competition, in mobile is not working because the structure of problems in the mobile market are entrenched.

1150 So, if you are to look at it, you would really have to look at it from that perspective. That is your prems, and now if you are going to think about what to do, one of the issues you need to look at, is that the problem you must solve, must have the implication notice, must impact on the structure of the market.

1155 So at this point, one of the best levers that we have, which may impact on the structure of the market, is the license in respect. In our view that you must then look at the current usage of Spectrum and determine how that entrenches this position and how the new Spectrum that is going to come into the market, can affect
1160 competition positively.

So, in essence what we are requesting ICASA to do, is to review the [indistinct] bills, or what one may call the Spectrum trading bills that Mark has alluded to. The four-transaction need deep public scrutiny. You need to look at them and then having look at them,
1165 see how they distort the market or how they entrance the current market structure, if one can put it like that and once you have then decided what the implication is, or what the impact is on competition, then you can .. then you can then marry those findings with the structure and design of the ITA.

1170 Our view is that the ITA as it stands, it tends to undermine this process, because it pre-amps the outcomes in respect of market structure and in it is in respect of the levels of competition and remedies that could be put forth by this enquiry.

1175 So, we think that there is, there is sequence that needs to take place and in our view, that sequencing means that the, the mobile broadband market, services enquiry, must take precedence of the license in Spectrum and that the mobile broadband services enquiry must investigate the competition implications of the network sharing clause and make appropriate findings on what should happen.

1180 And we think that in the future going forward, we know from experience that it is not just a Spectrum holding, but it is also access to Spectrum held by other players that is important. Therefore, ICASA must relook at the regulations about Spectrum trading, because at the moment those regulations don't seem to be
1185 effective.

We can, the fact that sophisticated structures can be designed to sub that regulation, means that there is a gap and we think that ICASA must close that lacuna and make sure that the Spectrum trading deals of this nature are subject regulatory supporting. And
1190 Chairperson, we then think that if you have done that, and that you also regulate the market wholistic.

For instance when you look at facilities, listen and you look at the roaming deals, you should not be, you should not be constraint by the label, but be persuaded by the effect of that transaction on
1195 competition in the set, and in terms of, in terms of Section 2 of the ECA, you are joint to promote competition in the sector and if this, this, market enquiry is to have any credibility, it should pronounce itself on, on the license in the Spectrum.

1200 So, what we then call for, Chairperson, is that there has to be some form of alignment. We know that the ITA has been issued, but we think there has to be some form alignment between the outcomes of this process and the licensing of Spectrum. Otherwise, Chairperson, as we know, Spectrum gets licensed over a longer period.

1205 In one of the ITAs they envisaged period, license period, is 20 years. So by the time you finish this enquiry, if you finish it later than the ITAs, then we are going to see a market that is now determined by the outcomes of the ITA for the next 20 years. So whatever you are saying on this side of the, of the fence, may not
1210 mean very much.

So I think that is very important and as the other point that I thought we need to underscore, Chairperson, is that in your discussion document, there is a worrying analysis about the role of Spectrum. The, the discussion documents seems to suggest that there is a
1215 Spectrum market. In our research and analysis of all other regulators, we have not [indistinct] up on any reason why a Spectrum could be regarded as a market.

On the contrary, what we have found is that Spectrum is a material or necessary input in a market such as mobile broadband, and
1220 therefore it is, it is on the analysis and the focussing Spectrum is on Spectrum as the, as an input. Otherwise Chairperson, you run the risk of creating Spectrum equilibrium to market power. And that emporium is floored and, it's written with a lot of logical and economy difficulties. And that is where we are Chairperson.

1225 So, in terms of our ask.., if we were to summarise that, is that you need to look at Spectrum and make sure that that Spectrum is informed by your findings. The licensing of Spectrum is informed by your findings.

1230 You need to look at the network sharing deals, make sure that future regulation emphasis substance over form. You need to look at the current transactions and make sure that their implications on the mobile broadband market is understood and factored in. And then you need to also consider pro-competitive remedies on access to sites, as particularly for the smaller or challenger operators.

1235 Chairperson, I would lead .. I would ask Mark to provide any comment if he has, and after Mark, I would like Liza to have a few words if she has something to add, before we hand back to you.

MR WILLIAMS: Thanks, nothing else to comment.

1240 DR MAHLANGU: Liza, do you have something that we, we should add?

MS (Liza) : I think if we go onto the Q&A, if there is anybody needs clarity, thanks?

1245 DR MAHLANGU: Chairperson, we would like to thank you for inviting us today, and for giving us the opportunity to make a presentation. We are ready to take your questions. What we will do is that I will receive your questions and I will direct them to Mark or to Liza or I would take those that I will need to take. Thank you, Chairperson.

1250 CHAIRPERSON: Thank you very much. Sorry, [indistinct], I will, hand over to our colleagues to proceed with the Q&A.

MS [?] 1 : I have two questions?

1255 DR MAHLANGU: Sorry Chair, I think we, we have missed some of the, statements or questions as the speaker was starting to go on with her, with her question. I think there is an audibility issue somewhere?

MS [?] 1: I have two questions for Telkom. In the submission you note that the Competition Commission's findings on the ability of MTN and Vodacom, to price independently of its rivals. Has Telkom got any evidence of its own to present in this area?
1260 And also, how should ICASA take into account the dynamic geographic factors in the retail market that is not reflected in the retail, in the list prices?

And the second question, could you please explain why in those sites enabled by distributed antenna systems, are strategically
1265 important for competition? As you have indicated in your submission and your suggestion that there should be specific regulations for this, and additionally, has Telkom ever been refused access to visit [indistinct] enable sites, thank you.

DR MAHLANGU: Mark, you may proceed?

MR WILLIAMS: Okay, thanks for the question. So on the pricing point, this is, we have looked at quite extensively in the Competition Commission enquiry and they did very detailed analysis of pricing dynamics in the market. And it is complicated because of the retail tariff structure in mobile, is, is complexed and
1275 there is lots of different discounting behaviour going on and [indistinct].

But one conclusion that was, I think was generally accepted and with [indistinct] from that analysis, was that prices that Vodacom and MTN were able to charge (you know) on the [indistinct] places, was significantly higher than its competitors were able to charge.
1280 And I think (you know) if you step back from the detail and look at this, you know from a distance, you can see Telkom entered the market and over the last few years and has adopted a very aggressive pricing strategy, especially on data, we would like to
1285 have some data at low prices.

Now it has built market share, but it is having been a very slow process and actually very, the market share that is build, is, then at the same time as the Cell C has been declining. So, there is clear gap in pricing between the incumbency and the challenges, of typically Telkom and yet that gap has not been (you know) and that gap will not be sufficient to attract customers in large numbers.

So that indicates (you know) just at a very high level, that indicates pricing power on behalf of Vodacom and MTN. And then, I think if you take the conclusions of the Competition Commission enquiry and look at the remedies that they applied, they imposed a significant prior introduction on both from an MTN.

And that in itself, is recognition that without such a regulatory intervention, the operators would have been able to (you know) maintain higher prices or not feeling the competitive pressure. So I think that is, general, generally pretty solid evidence that, those [indistinct] significantly [indistinct] when it comes to pricing and from that, from the mobile operators. So it was good, that the two large mobile operators, and that was the first, question.

The second one was on, I think it was one [indistinct] antenna systems? So these systems, so I mentioned in my earlier presentation that, Urban coverage and building penetration is extremely important, for a large part of the subscriber base.

You know with the large significant [indistinct] of the population living in urban areas and this doesn't, not just only just pick cities. This is also, smaller towns and cities as well, and the, and there is a lot of, in those areas, there is a lot of traffic, foot traffic moving from outside to inside, as people coming in and out of buildings, they are inside and, obviously so outside of offices they are going to shopping malls and, and so on.

1315 And so, the coverage, then the customer experience, they're very heavily affected by how they see and how their phone performs as they move around within these urban line gaps. And so, just to be down, antenna systems which are located inside buildings, are essential part of the, [indistinct] delivering a network experience to, to customers and making sure that they have perception of quality or determining that perception quality [indistinct], as you enter the business, is something or it dropped (you know) probably accessing the internet, is a, is a key driver of one's customer perception about network quality.

1325 And that in itself is a key .. is a primary driver of market dynamics, particularly at the end of the market where you have got, in terms of data usage and higher value customers. Anyway, in order to get [indistinct] to deliver that kind of network quality, you need access to the in-building network infrastructure and these distributed antenna systems are a key part of that.

1330
1335 Now I can't speak to the details of Telkom's negotiations over the South African, for that [indistinct] but the, but in generally speaking, as I have mentioned earlier, it is not, as in finery decision when it comes to site access and this applies to all site access, not just [indistinct], it is also the towers.

1340 It is not a binary[?] question about did you get access or not. It is the terms on which those access, that access is provided and those are a very wide spectrum of different considerations here. It is which site you get access to, or how long it takes to get access to, of course the commercial terms that you've got, but also the operational terms, for example (you know) can you get access next week, or is it going to be in 6 months' time that you can access, or on how much capacity are you able to access or what location there on site are you able to get access to.

1345 So all of these technical and operational characteristics are a key
determinant of how expected that site sharing access and because
DAS sites are more complexed to get access to, operational and
technicality, because they are inside buildings, and because they
are particular critical for that form, that type of customer perception,
1350 they are an essential part of the competitive landscape and that is
why Telkom in its submission, recommended that ICASA looks
specifically at those, those sites and apply some regulatory
interventions specifically allowing those.

I beg your pardon Ma'am, was there a third part to the question
1355 which I have missed, at the moment? Or did I answer that?

DR MAHLANGU: I think ... Should we ask Liza to - Liza do you
have any comment on the, on the indoor access in the indo sites?

MS (Liza) : Yes, thank you, CO. I think Mark has
basically touched the point on indoor access. It's the same issues
1360 that our (you know) the, the constraint that we have faced in
general site access. It was unequal ability in negotiating. So, it's
not run [indistinct] but it was frustrating in getting be able to access
to sites.

I also like to point out in the first question where you asked about
1365 pricing and the dynamic of (you know) dynamic for clarity. What is
part is (you know) as small operators would come in and do, bring
cost effective pricing into the market, but what we issue is, is it is a
structural characteristic of the market adaptively address, as well as
you look at eco system, the distribution channel.

1370 It's very, very difficult to be able to come here and complete
effectively against all combat operations and I think that is where
the challenge comes in there. So, both questions have the same
answer. It is this unbalanced, power that, that is in the market.

1375 DR MAHLANGU: Thank you Chairperson, over to you. We are ready for the next question?

MR HAWTHORNE: [indistinct]

1380 DR MAHLANGU: I think VOIP, Ryan, is less of a problem because of the, some of the submissions we made in the last call determination regulations enquiry, was to recognise other different forms of voice such as you VIOP and your, your OTT voice in general. So I think that the key issue to underscore in our submission today and the parallel we sought to draw on voice, is that taking time to regulate call termination rates, so a behaviour from the large MNOs that was tantamount to increasing the barrier to entry, to a later and [indistinct] Cell C at the time.

1385

That was the - this is what ignited ICASA's move to regulate call termination. It was that behaviour where there was, the, the landscape was skewed against Cell C and the smaller, the smaller player. So that is what we are saying basically is, let's not wait for that, that happened in 2G to 3G. Let's not let it happen to 4G and 5G by looking at labels instead of emphasising substance.

1390

So the competition in 4G and 5G, we should look at it, looking at the revenues that come in and looking at what consumers are getting and looking whether they are, the two other .. the two big mobiles can price independently of the market. I think that is the importance of why we mentioned the call termination rate and the, the presentation was not an accusation against ICASA. But to say that we need to act faster than we did when we dealt with the call termination rates.

1395

1400 I don't know, Mark, if that is how you understand it?

MR WILLIAMS: Ja, absolutely, if I .. I didn't mean to give the impression that we, we thought ICASA have not acted on call

1405 termination, it was actually, I was making the opposite point, which is that ICASA did eventually act on, on call termination and acted dramatically. I mean if you look at the drop in and call termination as you have mentioned, Ryan.

1410 And so the point was rather that, it was only when call regulatory that ICASA intervened. That the operators brought down termination, it required a major regulatory intervention in order to change those monthly dynamics.

1415 And we were drawing the parallel between that and the current situation around Spectrum and the sharing deals, which is that without (you know) a regulatory intervention of similar magnitude, or comparable significant, we have (you know) we don't think the market is going to become insignificant and more competitive in the future. And Spectrum is that, on my call termination which you can revisit every three or four years, Spectrum has, same as I have mentioned earlier is that, it is a long-term decision to have a long-term complication and extremely difficult, if not impossible to unwind once it has been made.

1425 And so, it is that point, on Spectrum and then on the sharing deals, we think there, their effect on the market is such that they warrant certainly more detailed scrutiny and, and we think arguably some regulatory intervention around that. So it was really, the reason for raising call termination, was, was really to make that point rather than to suggest that ICASA has not done anything about that.

1430 MS (Liza) : Ja thanks, Mark. I also think, I mean the important thing here is that regulation needs to be timely. Termination rate and regulation took a long time to, be established and by then we don't, the market was already a bit focused. So, what we are saying is don't repeat the, the mistakes of the past. Be timely with the intervention this time, so that we don't end up with a entrenchment of a disordered market.

DR MAHLANGU: Thank you, Chairperson.

1435 MR HAWTHORNE: [indistinct]

DR MAHLANGU: Sure, thanks, Ryan, I think firstly let's place the findings of the Competition Commission in perspective. It is not just evidence, it's findings, and those findings today, they remain undisputed and unchallenged and therefore as a market we need
1440 accept those findings and if anybody is unhappy with those findings, they need to challenge them so that their robustness can then be tested. But at this point we would encourage ICASA to accept those findings, while we engage ICASA as well on the question that you have asked about the different tariffs and the dynamics of those
1445 tariffs.

Mark, do you want to take over that question?

MR WILLIAMS: Ja, I mean, I think the answer to, to, one answer to that question is that it is very difficult for the reasons that I have mentioned earlier but then also what we also said, raised
1450 there, which is this issue of, of dynamic pricing and, sorry that was a bit of the previous question that I forgot to answer.

And it makes (you know) a simple tariff comparison, extremely difficult, if not impossible and then the Competition Commission went into this in a lot of detail. And it became a way with a
1455 conclusion, which was very, robust on this. And that is what has fed into the, their decisions on the, from the dynamic [indistinct] enquiry.

My suggestion would be that it's possibly not worth, worth trying to repeat that exercise. I mean a lot of time and effort was put into it
1460 from part of the Commission, but also, also in the contributing parties. And not, I don't think, my view is that the, nothing fundamental has changed about the market on pricing.

1465 Since then, other than the Commission's settlement with Vodacom and MTN about price reductions. So other than that (you know) the market has fundamentally not changed in the last two years, since that analysis were done to taking.

DR MAHLANGU: Liza, would you wish to add?

1470 MS (Liza) : Thank you, Siya. I think Ryan if you look at it, what you need, we do need this [indistinct] choice and all those (you know) dynamic prices, come [indistinct] does provide consumer choice. But I don't think, that again, at some, we don't want to regulate customers to say I don't think that will achieve anything.

1475 But we need to address those stature for the [indistinct] competition. But then it comes back to as Mark said (you know) looking at the previous [indistinct] that we have made, about looking at the eco system, looking at our, you can have effective competition, rather than providing a need of regulating the market [indistinct]. Thank you.

DR MAHLANGU: Over to you, Ryan?

1480 MR HAWTHORNE: Thank you, thank you for that. Just to, just a, a sort of question about the, the wholesale market dynamics and, and what has changed. I, as I understand it, Telkom for example, and I mean, can Telkom just explain a little about it, its position in respect of its, its own wholesale offerings in respect of MVNO's services, in respect of, access to APN services?
1485

I mean can you just tell us a little a bit about market dynamics there and, and what, you know, what Telkom's position in that market is and whether it's expanding? I mean does Telkom plan to offer more wholesale services or is that, or how .. can you just tell us a little bit about those markets?
1490

DR MAHLANGU: And I take it when we talk about wholesale services, we are talking about wholesale services in the mobile sense and not in the fixed sense?

1495 MR HAWTHORNE: Yes, sorry, sorry, yes, so here I am talking about wholesale services in respect of MVNO's services or wholesale APN services and the like?

DR MAHLANGU: Mark, do you want to start or should we start with Liza?

1500 MR WILLIAMS: I think Liza is more of a commercial strategy question [intervenes]

DR MAHLANGU: Ja, Liza [intervenes]

1505 MS (Liza) : Ja, we have with into those kinds of services Ryan, as you know, we are a small player in the market. So, it is not that we don't provide the services, but obviously we have to look at the commercial dynamics around the provision of those services and, there are subject to negotiations.

1510 DR MAHLANGU: So basically, what we, we can say on the, on the wholesale services. I don't think that it has taken any, if one looks at the MVNOs, we have not seen such a great appetite as one, that would be, that would justify what is in the ITAs for instance Ryan, about, the successful licensees being requested to support MVNOs.

1515 We don't think that the market, even that written level, is ready to accommodate that kind. But being at wholesale level, we have not seen those kinds, increase in those types of enquiry.

MR WILLIAMS: I mean if I can chip in, one observation from its nationally, if you look up most markets around the world, the MVNO market share is extremely small. It is in low symbol digits,

1520 rarely above one or two percent of their total, subscriber or revenue
market share. So, and there maybe one or two exceptions that
I have put in, and MVNO's have not made a huge amount of, of
progress in most markets and that is one observation.

1525 The other observation is that the MVNO, the wholesale market to
MVNOs is also likely unregulated. It is a product of a competition
between network operators and there is very little regulatory
intervention in those controls. And the, there are a couple of
exceptions throughout that within remedies applied to merges, when
it is has been requirements with MVNO's offers and then the recent
sprinting mobile merger, of what approval was an MVNO
1530 component and that.

But it was actually the MVNO component of that was, was actually
as, as a way of helping the new fourth player into the market. So,
MVNOs are (you know) are there in most markets. They address,
they serve certain segments of the market. But in terms of major
1535 impact on market share, and market structure, they haven't been ..
haven't had a client [indistinct].

DR MAHLANGU: Over to you, Ryan?

MR HAWTHORNE: Okay great. Thanks, and then, just thinking
about the competitive dynamics in urban and rural areas and as
1540 I understand it, Telkom has largely entered in and sort of, in the
cities and then maybe some secondary towns, Telkom mobile that
is.

And I mean can you just tell us a little bit about distribution channels
that may differ, there, I mean I think you have raised distribution
1545 channels as a barrier to entry, unless I have misunderstood that;
and can you tell us whether that differs geographically and, and,
and how we could think about trying to generate more competition,
I guess, outside of the big cities?

1550 DR MAHLANGU: So, perhaps before we go to distribution areas, the biggest issue would be the relationship between the investment that we must make on infrastructure and the return that we expect from that investment. So, as you go to the outlying areas, you really have to invest more on the network.

1555 And as you know that we don't have sub one gate, then that becomes a challenge. So, while you need to look at the retail part of this discussion, the, the network which is the underpinnings of any presents in those areas, requires that you do them. Of course, I am not discounting that in some of those areas we have, we have the roaming arrangements.

1560 But you just need to factor that we need to be able to have this sub-1 Gig so that we have got the flexibility to deploy effectively and in a way that, its comments read with plans, and be able to compete effectively against our competitors, instead of relying on our roaming arrangement on it. But when comes to the distribution
1565 channels, I will open it to Liza to lead us on that and then come back to Mike and then I will, I will add where I can add. Liza?

MS (Liza) : Thanks, Siya. Distribution channel to the .. its big companies backing deals with big companies and that is where we need to find some kind of way to enable smaller competitors to
1570 be able to distribute or (you know) must have, what is the feel of distribution channels or single operators provided [indistinct] within [indistinct] organisation. So, I think that is where the issue does come in, it's opening up the market more.

DR MAHLANGU: Mark, do you want add that?

1575 MR WILLIAMS: Ja, I can add a bit on the, the lower level. And I don't think it is right to say that Telkom has really only serve the market. It's, it's true that its sites are concentrated in urban areas and that's, inevitable (you know) a part of that roll out

1580 strategy. But because it's got the roaming deals, it always had
roaming deals in place, you actually got national coverage in terms
of the, the retail market.

1585 But it's, that itself highlights the significant point of how the way
competition dynamics work and because when your, a concerning
customers to a roaming deal, it's an operating expense at the time
the customer makes a call on user data. And so, the margins on
those, on that customer, on that revenue, are lower than where you
got your own sites.

1590 And so that is why roaming is a domestic roaming arrangement is a,
its essential if you want to enter the market, because you need to
be able to offer national coverage, right from the beginning. But it's
is a very emporiums substitute for having own sites. And so if you
want to get a leap infrastructure competition which is where the
benefits the customers are going to lie, you got to make sure that
you have, sites and competition in at the level of sites and network
1595 competition over its larger part of the country as possible.

1600 Then that brings us back to the importance of sites and of course
[indistinct] Spectrum that Siyabonga mentioned. , and I think it's
difficult and I don't think it would be, a good idea to try and
separate that rural and urban separate markets. They have got
different dynamics, such mobile networks, mobile propositions are,
are, in a vast majority of cases, are national propositions, retail
propositions and you have to fill a network and roaming strategy to
deliver it on that proposition.

1605 And South Africa clearly, there is a lot of traffic between (I mean)
between urban and rural areas as well as movement around the
country. So if you are, if you are in the mobile market, and you are
trying to attract customers, you got to be able to service those
customers when they are in one location or when they are in
another location or when they are moving between them. So I think

1610 it would be inappropriate to try and segment those markets too rigidly, they are a different dynamics, but they are all part of the same national retail market.

And the other point is that they, in rural areas, they .. the competition can be quite intense, but you've got to be able to serve it (you know) it is a bit, revenue are generally lower, because subscribers have been .. could be able to serve those customers at, in a cost effective way, which again brings us back to these, to the [indistinct] points.

1620 I think one just find a point notes if that (you know) if you look around the world and as you are going back historically, regulators have looked at subnational operators or regional licensees, as a way for trying to target those ums (you know) areas that are potentially underserved.

1625 But generally, has not been very successful. there are some cases of, of very large countries which had subnational licenses, which were [indistinct] to the US for example, those who had [indistinct] region, a combination of regional and national licensing and mobile. And actually, what happened over time, is that regional operators have been swallowed up and there is now just large national operators for the most part.

1630 And the reason for this because of this .. integration of rural and urban and you need a national network in order to be able to make, goods to be commercially viable. If you only got a network or a business that targets rural areas, it's very difficult to make that possible and so it's, it's not a .. it has not been a very successful strategy for licensing and regulators in the past.

DR MAHLANGU: Thank you Ryan.

1640 MR HAWTHORNE: Thanks, thanks, thanks everybody at Telkom. And then can I, can I just ask about, I know you have mentioned, made, I think as I understand Telkom's submission it's really that ICASA should focus very much on, on access to sites and I think part of its submission was regarding distributed antenna systems and then can you just tell us a little about what you think may work in this area?

1645 I know you have suggested a sort of structural or functional separation on the basis of sort of equivalence of inputs and so on. Am I correct that the reason for that is because their delays is effectively, rather than a refusal to supply access to sites? Is that, have I got that right, it's the delay, not the refusal?

1650 MR WILLIAMS: I mean I would, sorry, Siyabonga?

DR MAHLANGU: No, no, go ahead, Mark?

1655 MR WILLIAMS: I mean a delay is one part of it. I think that's just part of a broader set of operational difficulties that you [indistinct] to anyone in mobile bus.. .. operating business when they talk about their access (you know) the way they access sites. They can give you a long list of challenges that, that operational challenges that they have when they are trying to get access to a competitor's sites.

1660 Now, the networks or operators are very, very capable of resolving those issues. So, this is not a fundamental problem this, site sharing. And there are many cases, and (you know) and [indistinct] component of this. So that way network operators have, competing operators have deeply integrated their site sharing arrangements with each other, in order to reduce cost.

1665 So, it's a very standard model, in the industry if the parties is negotiating, are open for negotiating on (you know) what legal terms

1670 and so there is no difficulties in coming up with arrangements that work for both parties. The difficulty with South Africa is that because of the imbalance in the market, (you know) the large operators have got those, are strong incentive to delay (you know) to make life difficult for a competing operator to get access to those sites.

1675 And they also have the ability, because of a large number of sites that they control in [indistinct], but also any individual areas, particularly in, in urban, some, some urban areas, in individual site locations (you know) they might be the only operators that have a site in a particular area, corner of a shopping mall for example, which everyone needs access to.

1680 So, they have both the ability, the incentive and the ability to make life [indistinct] other operators to get access to it. And so, it's difficult to regulate that, because there is a very (you know) complexed set of operational technical arrangements. It certainly goes further then just price.

1685 That is really not refinery concern at this stage in market development. And so, what we have suggested is that the principle should be one of the [indistinct] access, which is a principle which is being very well applied in, earlier applied on the fixed site and it has been applied, not by regulatory means, but by commercial means, if you look at how sharing arrangements and (you know) third party tower company.

1690

That has been set up by the industry on commercial reasons. So what we are suggesting here is that this would be the only way of doing it in South Africa, would be for the regulator to require a vote from MTN to set up similar types of arrangements. And then he could supervise the numbers [indistinct], under the non-discrimination terms for other operators for access.

1695

1700 Once you have got a degree of separation in place, or whatever form that separation takes, you .. it is much easier for them, it's much more transparent. So it is much, you can, you can run it through it sort of a dispute resolution process while the [indistinct] and the reference of the tie process, which is always going to be a second best option.

1705 MR HAWTHORNE: Thanks, I mean if I can just ask a follow-up question? Is it possible for Telkom, I mean can you comment on any examples of .. of sort of more details that would be, would be needed? So I mean, as I understand the facilities leasing regulations, they already require a non-discriminatory access.

1710 So I presume Telkom has something else in mind? Something additional and, and I was wondering what that is, and if there is any sort of references or, or examples from other regulators, where they have gone in and, and implemented this degree of separation for, for mobile infrastructure and, and what the kinds of details of the rules around equivalency of inputs or non-discriminatory access.

1715 It might be, I don't know if you want to answer that now or follow up later, but, but if you have any comments, it would be great?

1720 DR MAHLANGU: I think Ryan, perhaps the first thing to, to correct is that Section 43 doesn't really call for non-discrimination. It just ask for access to be given when it is technically and economical feasible. I think that is the, that is what complicates the discussion is that the delays you have referred to, the optimal, position on the sites that we want to get to, we think all of these operational issues can be dealt with sufficiently if these, if the sites, if the towers and sites are, are structurally separated.

1725 But I will, I can leave that to Liza and Mark to see if we, who want to get back to you on that or to answer you now? Mark?

MR WILLIAMS: Ja, I mean I think, it is something that we can fairly roughly put to together, a note for you just to submit it, but I think just in, as a high level answer to your question, I think the answer as I have said before is that regulators are generally not,
1730 [indistinct] route in mobile, because you got most market.

You've got a more symmetric setting [indistinct] market, you've got a more symmetrical market structure and therefore these situations has not arisen for the regulators had to intervene in. That is not true of course, it's[?] fixed, because you have the history incumbency
1735 around monopoly being fixed (you know) you had to impose the DIY rules around fixed.

And, but as I was saying before, the industry on the other hand is extremely well versed in the separation. I mean they have done for [indistinct]. I mean South Africa you have seen it, we drive a
1740 [indistinct] Cell C selling its towers to American Towers and then take the UK for example where you got four mobile operators, but at formed, the network sharing deals, two network sharing deals in which they have separated, that formed a joint venture, put all those sites in that sites into the joint ventures, there are two joint
1745 ventures, two operators in each.

And those joint ventures are separated from the rest of their business. Now the Regulator has not got involved in, policing that, because it is not has been necessary, I could say because of the more balanced market structure, but that model, is extremely well
1750 established across the industry.

And in fact, South Africa is possibly one of the more unusual markets in that there has been no major selling or of separation of towers. [Indistinct] to business. Incidentally, that does tend to happen in markets where you have got these very unbalanced
1755 markets, because they uncertainty incumbency don't have an

insensitive to do chat, tower sharing deals be.. .. with partners, because they want to retain their market position.

1760 So I think that and in answer to your question, I think the place to look at would be to look at these commercial towers, outsourcing the tower, the joint venture type of arrangement, and it is a lot of information on those and then think about how (you know) the regulation could be super imposed on stuff like that.

1765 You will personal .. you require the operators to do it and then you put in a requirement for non-discrimination around it and that could be just a, the principle around non-discrimination and then you can, you could set up potentially set up a dispute resolution mechanisms which allows parties who feel they have been discriminated against, to the [indistinct] Regulator.

1770 So, I think this would be relatively simple to do and well, and we have a profound impact on, on the industry. It would make a huge difference to the smaller operator.

DR MAHLANGU: Liza, do you wish to add?

MS (Liza): No, I think what Mark suggested is actually pretty, ja, it's good.

1775 DR MAHLANGU: Okay. Ryan?

MR HAWTHORNE: Siyabonga, if I could just follow up with you regarding the facilities leasing regulations. I mean I just, I just opened them up and I am in Section 9 of the regulations has a nondiscrimination requirement. It says

1780 *An electronic communication facilities provider must apply similar terms and conditions including those relating to rates and charges in similar circumstances to itself affiliates and others.*

1785 So, I can see that what ICASA .. what Telkom wants to see is something further in terms of this structural or functional separation idea. But I just wanted to check that I mean, the facilities leasing regulations as they are do require this kind of non-discrimination, or am I, have I misunderstood this or is there something I don't, I should be, we should be aware of here?

1790 DR MAHLANGU: Well Ryan, I think what we need to talk about is that, the, the details of these discussions, likely to conclude that, that is on that more in bridge than in compliance. So perhaps we need to look at the [indistinct] of that regulation. I take your point on it, but the, the way to solve those operational issues, because it
1795 takes almost up to six months to get that site, if we go through the delay that we referred to.

But we group all of those as operational issues. And we are of the view that if you are to, if you are to, see the benefit in promoting infrastructure based competition, allowing people to be able to roll
1800 out the infrastructure and expeditiously, then the best way to do that, from where we sit, it's where the separation in this vertically integrated companies, then you are going to see some form of effect on it.

For now, those regulations coupled with the, founding Act, Section 43, have not seen major, major effect in promoting
1805 competition for those scarce sites. As we have said in the beginning that the best sites belong to the two large mobiles. So if you want to shake up competition and promote the challenger operators to pay much more effectively, against the incumbency, you would want, yes to look at the [indistinct] of 43 in the
1810 regulations, but you would also want to see what is best in promoting infrastructure based on competition.

MR WILLIAMS: If I could just add, a more economic point on that. I mean, it's, it's in vertically educated business. It's really,

1815 would be a bit extremely difficult to approve that there was non-
discriminatory in terms between the way upstream businesses
dealing with the downstream business and *versus* [indistinct]
businesses because it is vertically integrated, it would be and there
are no processes in place which would allow you to compare like for
1820 like, (you know) we have seen that in fixed and the same with,
between in mobile.

So it's, so the first point, if you would not be able to prove that non-
discrimination has taken place or it would be difficult to prove. But
what is clear from the industry - so Siyabonga mentioned the
1825 six month delay, it is definitely not the case that, for example
Vodacom's own downstream business, it's network business would
have to wait six months for before getting access to one of its own
towers, that would (you know) that is clearly, not the case.

And so, there was really no question that there is discrimination
1830 taking place and then we know, no comment on whether or not that
is deliberate or not, but the fact is that Telkom get, doesn't get the
same terms of access to the Vodacom's sites that Vodacom's own
business got access, and that is self evidentially the case.

So, Ryan, I mean (you know) I am not qualified to talk about the
1835 right legal mechanism for it, but I think as a regulator (you know) if,
if you think that the, the Act has no non-discriminatory access to
sites, is the way to promote infrastructure competition, it certainly
Telkom thinks it is and would think it is. Then something would
need to be done in order to make sure that non-discrimination is in
1840 fact, taken place.

DR MAHLANGU: I think, Mark, you have underscored an
important point about transparency, which would help [indistinct] of
the regulations that, that Ryan refers to. Over to you, Ryan?

1845 MR HAWTHORNE: Thanks, then I mean there are various submissions that have been made about, Telkom's massive success and, and the fact that you know, while Telkom may complain about delays with site access and, and so on, it's (you know) it's expanding really rapidly out there in the market.

1850 I mean, can you just tell us a little bit of which .. which is of course (you know) a desirable thing. Now, I mean can you just tell us a little bit about, about that expansion and what's kind of .. what any sort of remaining problems there might be. I mean if we got entry and rivals are expanding dramatically, in some ways (you know) what is the problem here? Why should ICASA intervene?

1855 DR MAHLANGU: I think Ryan, let's focus on the right indicators. Firstly, it has taken how long for Telkom to gain this kind .. this number of subscribers that you consider to be massive growth. And at what cost? If you have been following Telkom's announcements, you will see that there has been significant transformational, efforts to raining costs, and that has also come at serious pains where we have had to lay off staff.

1860 All of that to try to be competitive. And that has taken a number of years. And still, if you go and look at the evidence, comparison that I have given you, despite all of those factors, it shows you that over 1865 81% or so of those evidence, in fact, I think close to 90, I think it is close 90 sorry.

1870 Because it is about 50 odds plus 30 something, I think it takes you close to 90. Then, what you can read from those evidence, it tells you that the price differentials between the two and the way, of the us and our competitors is still an important issue. It tells you about how far we are. If we are playing in the 10% bracket, of the total [indistinct] in the sector, it tells you where we are.

1875 So I will therefore request that we do not get seduced by just a number of subscribers, but we also look at the quality of those subscribers in the market in general and the share of those subscribers. And look at the pricing power of, of the leading [indistinct] and then ask ourselves if the cost of Telkom to compete with those ums, with those MNO's is justifiable in light of the current regulatory infrastructure?

1880 I think that is what we need to sort of look at and I will leave it to Mark to sort of expand, because he has made his point before about the pricing power and, and about how long it has taken us to compete. And it happens at an important juncture where we sealed .. we are seeing that the position of Cell C is not what it was before.
1885 Yes Mark?

MR WILLIAMS: Ja, I was going to actually mention the Cell C's experience. So Ryan, well first of all, of course as a regulator, you are not there to help Telkom. You are there to help competition grow as a whole. So we should be looking at the market as a whole. And if you went back five to ten years and said (you know) how is competition doing and you see Cell C growing, somebody might make exactly the same point that you have made there, Ryan, which is that for Cell C's growing what is the problem here.

1895 But now look where we are in 2020 with Cell C, declining in market share, retail marketing share and having essentially handed over its infrastructure to, in control with network, to one, to MTN. It's essentially, easing itself out of the market as an infrastructure competitor, it still, they reserve the retail, the competitive [indistinct]
1900 declining share.

And if you look at those market shares, all that Telkom has grown, Cell C has declined and so we really now better off in the market now than we were 10 years ago or any intervening period at that

1905 time. So, that is the first point, it is important to look at the sort of,
the cycle of evolution in these market shares and how operators go.

And the reason Cell C of course is in the position it is in today, is because it wasn't able to properly [indistinct] beyond the 10% market share point it was a few years ago. So that is the first point.

1910 The other point is that Telkom is still very small. It is still a small market share. And so (you know) when you got two operators that control between 70 and 80% of the market, plus 80 plus depending on which network you choose and have, have, [indistinct] market share has been, at that point or (you know) largely unchanged for the last few years. You would consider (you know) it would raise
1915 concerns about whether or not actually competition is really effectively, is quickly coming more effective. Sure Telkom has had some success from an extremely low base, but its competition as a whole, actually becoming more effective, actually there hasn't been a change very much.

1920 And then the third point is to look forward. And we think about, well the decision that have been made now, are going to have very significant effects going forward.

1925 And we talked about call termination and in a way call termination (you know) was of such an effective decision, but it came too late for Cell C. Had it come five or ten years earlier, maybe Cell C wouldn't be in the position it is in now. But if we look at the equivalent decisions where we are today, around site Spectrum and these other things that we have talked about.

1930 (You know) five years from now we could well be sitting in our situation, the situation same what happened to Telkom (you know) things were very well and then it faded.

1935 And so, I would urge the (you know) the team, the Authority to look ahead over the next five to ten years and think (you know) what is effective competition five years from now look like, and what would need .. what decision needs to be made today to make sure that that situation (you know) a more balanced market structure, just as one matric, as a more balanced market structure, it is where we land in five years rather than (you know) either stable (you know) Telkom never really gets the scale, or even worse or declined, 1940 which is (you know) as history shown it's quite possible.

DR MAHLANGU: Liza, do you want to add?

MS (Liza) : It's fine for now, thanks Siya.

DR MAHLANGU: Back over to you, Ryan?

1945 CHAIRPERSON: Okay, thank you, Dr Mashango. It's over to me. I think we have given you enough time in the interest of the admitable[?] hearings. And every operator is supposed to have a 30 minutes presentation and then we ask questions and we really have indulged.

1950 DR MAHLANGU: No, thanks, thanks for that, Chairperson and if there are any further questions, we are happy to, to respond to them in writing if the Authority directs them to us.

CHAIRPERSON: Okay, thank you very much.

MR WILLIAMS: Thank you, thank you.

DR MAHLANGU: Thank you.

1955 CHAIRPERSON: Okay thank you. Is that, we take a break, the Committee would like a comfort break and also to try and make, look at our schedule, because, the [indistinct]. We will adjourn now and we will reconvene at half-past-12.

PROCEEDINGS ADJOURN

1960

PROCEEDINGS RESUME

Audio : ICASA 26 October 2020 second session: 157.33minutes

CHAIRPERSON: Good afternoon. It's half-past-one, we can proceed please? We are ready for you people.

MS [?] : Thank you so much.

1965 MR BIRD: Hallo, and good afternoon everyone. Should we begin?

CHAIRPERSON: Yes, we can begin.

MEDIA MONITORING AFRICA

1970 MR BIRD: Okay. So good afternoon and thank you for this opportunity Madam Chair. I am William Bird; I am the Director of Media Monitoring Africa. I am joined in this presentation by Ms Dominique Seng[?], from Alter Gracerie[?] [indistinct], so in this instance from Power Singh as our legal representatives.

1975 So, we made the submission some few months ago and in fact we are delighted that is moving along swiftly. So, we are going to be sharing the presentation powers during this afternoon, so that you don't get too board of one voice, but also because you will find that Dominique says things that sound a lot more intelligent than me.

1980 So, we will begin sharing our slides, our screen with you in just one moment. We are just bringing it up, please bear with us. It was working just, 30 seconds ago, sorry. There it is now.

1985 Okay so if, ja, we can just move on to the first slide, thank you. So, Media Monitoring Africa, we are an NGO. We have presented on a number of occasions to our dear regulator ICASA on a number of issues and I, I think we have got a few submissions that the

regulator is currently considering along some of the links issues, thinking about a disability and obviously we have a lot of respect for the importance of ICASA as a critical institution for our democratic country.

1990 We are deeply concerned at the outset about the fact that there seems to be a consistent and concerted move to undermine and to narrow the scope of the Regulator and the work that the regulator does. In this regard and in particular we draw your attention to the movie released "White Paper" on audio, visual and, audio services,
1995 content services, draft "White Paper", which sees the role of Regulator being reduced significantly.

We also know that about a year ago or so there were other efforts being made to take away the powers of the Regulator and I am [indistinct], right at the outset, because we feel that it speaks to a
2000 number of critical recommendations.

So that said Media Monitoring Africa, we have been going since 1993. We have got 20, over 25 years, I think it is 27 years, this year in terms of input in, around the public interest and bring you a human right focus NGO. So, let's then move on to the next slide.

2005 So, we are going just start off with our current context as to where we are now in South Africa, because we I think it is critically important to stress some of these issues, which is that we know that we have a highly unequal society and in fact that inequality stretches unsurprisingly across every sphere of our society,
2010 including to our digital to buy.

So as of the first, as of January this year, we see that approximately 63% of our population are in fact online. According to the general household survey though, most people of have access through their mobile devices and only 10.4% of them have access to the internet
2015 at home, with that dropping down to 1.7% percent rural areas. So,

2020 most people who access the, their mobile through, when access the internet through their mobile devices which isn't particularly unsurprising, but when you get to marginalised groups, what you see is that there is a significant discrepancy there. So, the current digital divides that we see don't just apply to that issue purely of access to the internet, in that regard, that digital divide has a significant impact on people that have, that are generally marginalised.

2025 So, we also noticed primarily, with stress and particularly given the importance of this and the recent Competition Commission report that, it is around 64% percent of our public schools don't have computer centres. You know? So we talk about this all industrial revolution and it seems pretty out of character with reality if we are talking about that and the majority of our young people who don't
2030 have access to any device that can actually allow them to do things, especially when you then consider that an even smaller portion of schools actually have internet connectivity to enable them to operate and during this recent crisis obviously we saw the, the challenges with that.

2035 So what this digital divide builds on is of course this incredible inequality of access and we see that those who are most vulnerable, most prominent among vulnerable and particularly marginalised groups, so we talk about women and this is a, a bizarre thing that we talk about, over 50% of our population being
2040 experiencing that digital divide in a way that it is far more inequitable and yet they are more than of our population and then we talk about children and people with disabilities, also being significantly marginalised in a range of ways and areas.

2045 We also know that there is limited coverage and slower internet speeds, especially in your rural and very open areas. We know for example that access is less favourable to use as your mobile

2050 networks, the broadband speeds are comparatively lower and often
subject to very different forms of access, particularly if there, there,
there's caps on them. And if you don't include those caps, you then
still have high access cost and high cost of data.

2055 We know that the ownership structure in broadband markets in the
place limited competition, which creates complications for
conditions of access to service provision. And finally, we know that
there are challenges relating to access or closely align to broader
social issues including poverty exclusion, cultural and norms, ICT
competencies and of course buying power. So right at the outset, in
as much as we are in many respects a very well developed fully
functioning nation, there are that digital divide and that inequality of
access of things that should leave anyone involved in this sector,
2060 having sleepless nights.

MS (Dominique): Supporting on what William has just said,
I think it is important to emphasise that our submission really looks
at the importance of the need to approach this enquiry through a
conflict interest lands and the rights-based approach that tries to
2065 achieve meaningful universal access for all persons in South Africa.
And there is a number of factors that come into play in the
challenges, in meeting this reality.

2070 Some of which is dealt with in the discussions document, but some
of which we were concerned, hasn't been addressed and that is the
criteria of our submission and recommendations to ICASA today.
I think it's well established that the cost to can, the cost of
broadband services in South Africa remains exorbitantly high.
According to research, by research ICT Africa in May this year, it
shows that even with the Competition Commission's findings and
2075 recommendations having been implemented by some the operators,
South Africa is still at a disjunct between its competitors and
complaintive pricing in other jurisdictions.

And ultimately research ICT, after the finds that the pricing remains anti-poor in South Africa and Competition Commission held itself.
2080 We still see a number of barriers to new entrance to the market which exacerbates these challenges, in the face of an established [indistinct].

And one of the, and lastly one of the factors that we will be dealing with is the need to ensure, or the need to address the fact that
2085 simply looking at competition aspect or isolated issues in silos, doesn't necessarily address the entire problem holistically and we really urge ICASA to take on the holistic approach to this enquiry and look at the, and the different factors that come into play that inhibit's access to the internet.

It is important I think for us to stress that simply lowering costs, the
2090 costs of the net will not mean that more people are necessarily going to be able to come online. There is a number of different factors at play here, including the need for, for example digital literacy skills, which need to be built in an early stage for all users.

And so what we find ourselves with is a situation of complete rights and interests. On the one hand you recognise and we will be taking
2095 you through the different policy commitments at the domestic and international level, the [indistinct] made, but access to the internet should be treated as a fundamental right, or at the very least as an
2100 enabler of the full range of fundamental rights to which South Africa is committed.

And we know that it, through this, for example the right to freedom of expression, access to information and other, and the right to
2105 quality can be realised. But on the other side of the scale, we see a number of issues. Profit making remains one of core concerns and of course was, is an commercial operators who are entitled to have [indistinct], there is a balance that needs to be struck, given the public interest nature for services being provided and the national

2110 importance of the majority of persons, or all persons in South Africa,
be able to be connected to the internet.

2115 Market dominance is still a problem that we have identified and the
barriers to entries and new entrance to the market remain
something that is of significant concern to us. And tips the scale
against us, against South Africa it is leaving universal and
meaningful access to the internet for all.

MR BIRD: Thanks, Dominique. So in terms of the, the
2120 presentation, just to give you a bit of a, an overview of where we
going and I think that that scale just before that and the, the slide
previous to this is really useful, because it should remind and give
all of us cause to reflect on, on whose interest this is, is really being
done and, and currently (you know) we have to ask the question
about the Authority as to whether, if they are doing this in the public
interest and if they are, they need to make that abundantly clear,
because if they aren't [indistinct, and I think that at the moment
2125 there is currently, that the scales are clearly tipping out of favour of
the public interest and I think that is a problem.

2130 And it will always (you know) these things have shortened the lights
in long term, cast negative impact and consequences and we have
seen the [indistinct] with the disaster that is the DDT where it serves
particular commercial interest for that to be delayed and [indistinct]
initially. But as we now know, we have been left to deal with the
hangover of that, which has taken years and set up, and said
donation pack are most [indistinct].

2135 So I think that we don't want to repeat those mistakes. It is critical
that we have got public interest at most and we strongly urge the
Authority to, to take that into consideration. So part of that of
course is that the Authority is part and parcel of our nation and our
[indistinct] country and that all of us, have got fundamental role and
responsibility to address digital inequality in South Africa as a

2140 means of ensuring universal access and that is what we want of the
guiding principles.

The other issue of course is that we are not some kind yahoo nation
here that just operates on the basis of what we suck out of our
thumb and whatever lunatic [indistinct] president decides to say
2145 coming from his orange hair, but that we adopt a rights based
approached deliberately to this enquiry so that we focus on critical
rights, like freedom of expression, access to information and
equality, because those [indistinct] principles that determine how we
move forward, are things that ultimately work to the benefit of all
2150 parties and will ensure that that balance of scales always falls in
favour of making sure that we meet the needs of all people, it is how
our rights system works.

Then we need to ensure that there is coherent and accountable
implementation of policies and better coordination across the
2155 different stake holders. Currently there is that argument of too
many, that chef's spoils the broth, well at the moment (you know),
we have people in different kitchens, cooking different meals and
sometimes we don't even know what that meal looks like. They
don't even know, having an idea with coordinated menu of offerings.

2160 We know that this is a challenge not to spoil the Authority, but that
this is a challenge for people within government. It is a challenge
for the mobile operators, for broadcasters, for all sorts of people
and entities and certainly ultimately it is a major challenge for the
public, the people of South Africa. And then finally with their
2165 approach to issues, we ask that it should be done in a holistic
manner, that considers all aspects effecting the digital devoir across
the various segments of the market.

So in that, in light of that, we have got a number of particular
recommendations. We have got five in total that we are summing
2170 up here and probably go will go through them in more detail. But

the first, the first recommendation is the need to set out clear overarching objectives or in the discussion documents. We get it, we know where we are going and that, those things are made clear, it makes the other elements in parts of what is to follow.

2175 Part of that is again we submit there is critical importance of the rights-based approach that is in the public interest, not in (you know) a limited commercial or limited, other interest area.

2180 Third recommendation is we need to align the discussion document with the findings of the Competition Commission. Again these things will work in an interrelate manner.

The fourth recommendation is the need to address the lack of coordination in matters pertaining to internet governance.

2185 So we see again that the number of the departments and we are not quite sure where all these things grow and obviously the Authority has a critical role to play and finally we need to address the challenge in the, in the assignment of Spectrum and other related barriers.

2190 MS (Dominique) : So turning now each of the recommendations individually, I, I have our submission that I, I don't want to take up too much of, of your time with this. But I think what is noteworthy is that when the discussion document was published, the media statement that accompanied the, the discussion document, was very clear, that these enquiries intend to contribute positively to the broader government initiatives and it to ensuring universal access and affordable broadbands [indistinct] for all South Africans, as
2195 contemplated in the National Development plan.

Our concern however is that this is neither framed nor borne out by the discussion document itself. And the narrow competition approach that it takes, should we proceed and by very key

2200 questions at about what is in this discussion document and this broader enquiry is trying to achieve.

For us, the discussion document needs to make clear that the overarching objectives are to achieve universal meaningful access to broadband services for all persons in South Africa. And set up
2205 very clearly, how the recommendations contained in the discussed document will serve to meet these overarching objectives. So it is already mentioned, this needs to be framed in the relevant context and in the holistic manner.

And we have a number of concerns with the narrow focus of the
2210 way in which the discussion document has approached, or, or the approached of the discussion document be quite narrow. I just got a couple of different reasons. So the first is, and we understand that this enquiry has perhaps been perceived by other events, such as the publication of the findings of the Competition Commission.

2215 But there is a clear overlap between this enquiry and to competitive elements and the broader work that, that was done by the Competition Commission. Of the bigger concern however is what is being seen and in again, supporting the views of the research done by research ICT Africa. There have been actually quite limited relief
2220 as a result of findings and recommendations of the Competition Commission.

And according to Research ICT Africa, due to lack of regulation and the [indistinct] market, even after the reduction in prices, the results of the Competition Commission's recommendations has a domain
2225 anti-poor. So not enough has been done by addressing this group of purely competition [indistinct] and we need to start to looking at these issues more broadly.

In this regard competition is only one narrow aspect in the [indistinct]. And any strategy to reduce prices needs to be dealt

2230 with holistically to bring the unconnected online, including
addressing, to addressing different complete interest in this enquiry
and [indistinct] considerations and the digital skills [indistinct].

For South Africa we have a number of commitments at the
International and domestic level that cohere with this Commission.
2235 For example we brought your attention out in the 19(2) of the
International covenant, so with political rights and in particular
general comment number 34 which expands in this article and notes
that state parties should take account of the extent to that
development and ICTs, such as the internet and mobile based
2240 electronic information services systems have substantially changed
communication factors around the world.

There is now global network for exchanging ideas and opinions that
is not necessarily relied on a traditional mass media [indistinct].
State parties should take all necessary steps to [indistinct] the
2245 independence of these new media and ensure access individuals
thereto.

This is similarly contained and the sustainable development fall
particularly both 9C and both 5B as well as resolutions 32(13) of the
United Nations Human Rights Council, which committed all states to
2250 consider formulating to transparent and inclusive processes with all
stakeholders and adopt a national internet related public policy that
have the objective of universal access and enjoying of the human
rights and therefore.

At a domestic level we know well that this is echoed through the
2255 National Development plan and South Africa Connect. For
example, the National Development plan is that is overall addition
[indistinct] South Africa and by 2030 ICTs will under pin the
development of the dynamic and connected information society and
a vibrant [indistinct] that is inclusive and prosperous.

2260 As seen as information infrastructure will be universally available
accessible. And will meet the demands of citizens, business and
the public sector providing access to the creation construction for
wide range inverted services. In terms of South Africa Connect, the
commitment as it currently stands is that by 2030 a 100%
2265 broadband access for the achieved at a speed of 10 MB/s for all
users in South Africa, and this includes a 100% access at schools
and health facilities as well as in public safety facilities.

So the question then stands what is ICASA's position of this? The
authority, perhaps, through the discussion document as well as in
2270 the range of other endeavours which are being undertaken, should
make clear that these commitments are echoed and shared in the
vision that the Authority has. And should make, and should really
emphasis, being prompts at this space, to the Authority fulfilling its
mandate.

2275 We want to draw to your attention a report published by Media
Monitoring Africa together with Saneth, the interactive advertising
Bureau and the association for the present communications. That
put forward the seven-point plan to achieve universal access to the
internet in South Arica. Some of these recommendations deal
2280 specifically with access to wi-fi services.

But some of the recommendation that we want to highlight to you
include access to the internet as a basic municipal service which
aligns very neatly with the recommendation of the Competition
Commission and providing a lifeline of data to effective persons.
2285 And again the importance of digital literacy programs, minimum
detections and the provision of free access and oversight
[indistinct].

The second recommendation is a critical one for us and deals with
the need for a bright space approach in the public interest and that
2290 is really the crux of MMA submission today. ICASA as an organ of

2295 State is constitutionally mandated to respect, protect and promote the constitution and all its endeavours. It has been noted by the Supreme Court of Zimbabwe, that the restriction or interference with the need to communication, whatever form it may take, it breaches the guarantee of freedom of expression.

2300 As such, any monopoly which has the effect, whatever its purpose, of hindering the right to receive and [indistinct] ideas and information violate the protection of this paramount rights, and in our view the current situation in South Africa falls very squarely within these portion that has been issued by the Supreme Court of Zimbabwe.

2305 It is clear through the National Development plan South Africa Connect and the ICT policy wide paper that there are current constitution underpinnings and the commitment to universal access to Broadband services, and we urge that the right based approach in the public interest should similarly be followed by ICASA, both in the discussion document and its strategy going forward.

2310 It is important to place the discussion data at risk, sorry, the failure to do so, would place the discussion data at risk of becoming a hollow deck roll that is not approach the issue of the public interest and the national importance through the appropriate lengths. And so we draw to your attention the rights that we hope that ICASA will incorporate in the discussion document, which bringing to enquiry.

2315 First off is the *quantum* values pertained in the Constitution of openness to transparency and accountability. Access to the internet fundamentally effects people's ability to make political choices and decisions. It is clear that it has an impact on the rights of freedom of expression and access to information.

2320 In terms of Section 28(2) of the Constitution, all persons, public and private sectors area mandated to the best interest of the child as

being of paramount importance and digital exclusion does not serve the best interest of the child. And in terms of the convention of the rights of persons with disabilities, State have an obligation to make ICT and other similar services accessible to such persons in order to facilitate the realisation of these rights. And we urge ICASA to incorporate these considerations into the discussion document.

The third recommendation deals with the alignment of the findings of the Competition Commission. And here we draw to your attention a number of findings that the Competition Commission made, which has a direct relevance and bearing on the world of the Authority.

It called out for example that ICASA be required to regulate the mobile operators in order to give effect to the recommendation, that all pre-paid subscribers must be afforded a lifeline package of daily free data. That ICASA must provide formal regulatory status to the recommendation and mobile operators must afford all subscribers zero rates access to content from public benefit organisations and educational institutions.

That they then continue to engage with ICASA on the processes for the provision of high demand Spectrum. That ICASA be empowered by legislative amendments to regulate roaming, MVNO's and also access agreements in line with minimum pricing standards. That ICASA, importantly reinstitute the regulatory accounting report requirement with Vodacom, MTN and Telkom and that ICASA considers models and regulatory changes to allow at least non-profit community networks and possibly small commercial enterprises to access the license Spectrum not used by mobile operators in rural areas.

In the broader context of this document, our concern is that these issues have not been addressed and these are public interest issues of national important that could really serve to account

competition in the market and to achieve better access to a person in South Africa.

2355 Joined on these recommendations, we highlight four particular ones
which are of, of key concern to us. So first is the lifeline package,
of free daily data and this is drawn on the seven-point plan which
I showed to you a moment ago. Its invasive mission, this should not
be exclusionary in any nature and rather mobile operators should
2360 be required to ensure that all persons have data access on a
continual basis.

Perhaps treat it as a municipal basic service in saying whether
[indistinct]. In terms of zero rating we strongly support the
suggestion that content from public organisations and education
institutions is zero rated and we have seen during the course of
2365 Covid-19 that this is possible and can be done by the operators.

But in selecting those organisations, the institutions to be zero
rated, there should be an open and transparent application process
for doing so. In terms of alternative infrastructure, this is something
we submit to actively be promoted in lower end areas and there is a
2370 urgent need for regulatory changes to allow community networks to
access license Spectrum that, that remains unused by operators in
order to ensure that the Competition Spectrum is broaden out by as
many role players as possible, both to improve access to services
and reduce cost.

2375 And lastly, we submit that one of the issues that the Competition
Commission was [indistinct] in not addressing, in which the
Authority should deal with. Is the importance of needed information
that we see. The value of getting people online is significant to
diminished. They are not safe by doing so. And the focus here
2380 should be in person so that it has limited access in the past, in
particular children who are at risk of being excluded as we move
forward in the digital environments.

2385 As well as already mentioned, regarding the need for coordination, Section 41(1)(c) calls on spheres of government and organs of State to provide a effective transparent, accountable and coherent governed for the Republic as a whole and cooperate with one another in mutual trust and good faith, but coordinating their actions and legislative with one another.

2390 This is the submission we have made to a number of given stake holders at different times, but at present there is, remains a lack of any over-arching internet governance policy in our current and post legislation is to be managed by the different role players. And so what we have is a scenario of competing demands being made on public and private sector actors, from different segments of the State, of the regulatory landscape

2400 We have an opening complex landscape at the moment which inhibits public participation and the ability to engage on these issues in a meaningful manner. This pose a significant challenge to governs coordinated [indistinct] implementation of the existing regulatory provisions.

2405 We see overlapping mandates for aspects, market or assigned or accounted for appropriate contraries and the lack of monitoring in oversight that need to be urgently addressed, if we are to achieve the objectives, both the discussion document and of meaningful universal access.

2410 As such MMA has had made a consistent commission regarding the establishment of what has been called the Interdepartmental Steering Committee on Internet Governance on governance. Which brings together a range of different stakeholders and in which the Authority could serve as a central nerve and key role player. This should be complimented for example by members of academia so the society industry and so on, to make sure that it has got responsive and effective in [indistinct].

2415 The fourth, the last recommendation that we made deals with the challenges and the assignments of Spectrum and other barriers [indistinct] that we have kept [indistinct] and identify it. This is something of a discussion document. It does deal with it in some detail. But we are concerned by some of the findings that have been made.

2420 As the point of departure, we note that we are concerned by the delays addition migration and release high demand Spectrum. Which had a broader end part on telecommunications industry and the public at large. According to the Minister of Finance, in a document published last year, the delay edition migration and
2425 Spectrum allocation process is a single biggest constraint in the growth of the telecom sector and its [indistinct] for broader economic growth.

In the face of the [indistinct] technology and the limited access in South Africa currently has, we have a start reality of a number of
2430 persons in left behind in the broader global context. And so it is an urgent first step, what needs to be done is a revision of the national Broadband Policy, including the targets at implementation. We also urge ICASA to revisit the licensing conditions of operators to ensure that more public interest considerations are taken into account and
2435 that work is allowed in the [indistinct] coherent manner to connect the unconnected.

There needs to be more transparency and accountability in the provisioning and use of universal service access funds to ensure last month connectivity. We are deeply concerned about the
2440 dominant of the established market players and the barriers of entry, to entry the new entrance in the market. Both in terms of the costs that it comes with as well as regulating [indistinct]. And then I will deal with the significantly [indistinct], the competitiveness with which the market could other wise operates.

2445 These factors are critical to the poor understanding of achieving
universal meaningful access to broadband services for all persons
in South Africa. And lastly, we asked the question, which is
something we are concerned that the discussion document does not
sufficiently deal with. Is what should the Authority lead away? So it
2450 is clear that the discussion document deal with a number of ways
with what the operators can do, and the different segments of the
market.

But there is a lot more work that needs to be done for ICASA to
maintain and establish its mandate and realise in this in a fulfilling
2455 way. There is regulatory work to be done and it is clear that this is
something that falls squarely within the mandate of ICASA in terms
of the electronic communication VAT and needs to be addressed
with the, as a matter of urgency.

Again, we call on ICASA in looking at both this enquiry and its role
2460 more broadly to serve its role in coordinating various functions and
safeguarding Section 41(1)(c) of the Constitution. ICASA is central
to ensure that there is transparency and accountability in the
actions and operations of the operators. And so, through the
publication of reports, to the keeping and maintaining of diligent and
2465 coherent records, ICASA can serve a long way ensuring that public
interest organisations are able to monitor and assist with this
monitoring process in terms of our license and commissions are
being met and [indistinct].

This ties directly to the point that has just been made about the
2470 license and conditions, as we talk now about the license [indistinct]
Spectrum through the world for example, the conditions imposed
will have a crucial aspect on the competitiveness of the market. It
should not inhibit new role players from entering the market and it
similarly should not limit the public interest dictates. This includes
2475 for example connecting schools and public health, schools and

public health facilities and making sure that the licenses are implemented and effectively developed in a way that achieves these overall objectives.

2480 And lastly with regard to universal service and access fund, again we urge that in understanding the broader landscape, these funds are used in a manner that is effective and truly fulfils the mandate of the Authority. Thanks, Chair.

MR BIRD: Thanks Dominique, so those briefly are our submissions. We thank the Authority for this opportunity again and we are very happy to address any questions that you may have. I guess the, the critical thing is, is that how the Authority addresses this particular issue and set of issues as well as the months, and in coming months, we can really determine our nations featured in how we deal with these and related matters, and I think it's time for the Authority to make sure that their hand is put up quite high and firmly in terms of taking its role and its place in, in the, in the sector and making sure that it operates and makes sure that all of the policy issues are dealt with at a London public interest, because if the regulator doesn't do it, it appear that our country may be in very unfortunate position.

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So thank you very much and we are very happy to take questions.

CHAIRPERSON: Thank you very much, thank you. We thank you for sticking to your time. You saved us some time, thank you. I will hand over to my colleagues to proceed with their questions. Alwin?

2500

ALWIN: Thank you Chair and thank you Media Monitoring Africa for your presentation. I have one question. So I just want to know from you, how do you suggest that the Authority implement the Competition Commission's recommendations, given

2505 the fact that the two Regulatory bodies are governed by two different pieces of legislation, thank you?

MS (Dominique) : Would you like us to respond now or shall we take the serious of questions and then come back?

2510 CHAIRPERSON: Hi, in the meantime you can respond, I don't see anyone else that have indicated who want to ask few questions. Please proceed with the response?

2515 MS (Dominique) : Thank you so much. So I think what is key, is that we are not asking ICASA to subsume the recommendation of the Competition Commission. Ultimately this is an independent enquiry that needs to address these issues of its own collision, taking into account ICASA's own mandate.

2520 All we are asking is that in updating and revising discussion document and in proceeding with this enquiry, due regard needs to be played to, to be, need to be paid some specific recommendation that are relevant to this enquiry, particularly those that have bearing on public interest considerations on keeping universal access. If that is the over-arching objective of this enquiry, those cannot be ignored.

2525 And so in drawing these alignments together and in particular the factors that we have highlighted regarding the recommendations made by the Competition Commission, of course ICASA is not [indistinct] but I think it is necessarily, but we support these recommendations and urge ICASA to pay due regards there, so it is not to over complicate things as to regulatory environment to
2530 provide clarity to the public on how it intends to move forwards with these findings and recommendations and whether it intends to implement them. Thank you. You can add in, William?

MR BIRD: Ja, just thanks, Dominique. I think that once we have that clarity of approach it says we are coming at this from the right space approach and that we are putting the public interest front and centre, that should start to mitigate any kind of problem, problems that may occur if there seems to be something, duplication or overlap between the two different acts. Because we acknowledge that are always and we are hoping and then there will be in the future, these kinds of areas where there is either overlap or to something that we don't agree with [indistinct] of functions and activities.

But I mean that is why we need also for the Authority to work closely with these, with these other bodies. You know, you can't continue thinking that we can operate and [indistinct].

MS (Dominique): And sorry, if I just may, may add. It is precisely for this reason that we demand in Africa's is calling for a broader approach. I think the discussion document asks a number of [indistinct] questions, but there are important proceeding questions that need to be dealt with, about what it is that the Authority is trying to achieve through this enquiry.

And there I think is one of those questions that needs to be answered, is how we interplaying with defining the recommendation Competition Commission will be handled.

CHAIRPERSON: Thank you very much. There is .. nobody else has indicated an interest in asking you any further questions. Then that brings us to the end of your presentations with us. I thank you very much.

MR BIRD: Thank you. Madam Chair. If I may make one final appeal. It is this, we know that we have got more problems and challenges that you can take a stick out in our country. We know we have got poverty and inequality and racism and

2565 xenophobia and labels of gender-based violence in our pandemic scale. Not to mention the, ignore the fact that we actually dealing with the pandemic at this moment.

2570 And, and I guess (you know) there are a number of challenges that we, at solutions to all of these things. And aiming particularly [indistinct] solutions to semi the interactive of problems in South Africa, despite appearances. And be it the fact that the best way of finding answers to these things, is going to come through the fact that we take our constitution, our [indistinct] documents as our guiding lights and our solution to answering these things.

2575 And that means we have to be making sure that if we put the best interest of the public first and that we adopt a rights-based approach, that is how we are going to move forward in the way that is sustainable. Where we see that not being applied, it almost always leads to a flaming disaster. We saw it happen with the public broadcaster, where instead of the public interest and rights-based approach being taken, as the point of departure, we saw 2580 either political or factional or just plain idiotic corrupt greedy basis as the point of departure.

2585 The moment you have moved off that, it is a disaster. The moment you allow the, the pure commercial interest to determine the way forward on these things you get monopoly's, you get companies that behave badly and given the situations, where you can't change things and challenge how effective. So again, we really implore the Authority to take this, not just because we are a good NGO that has this as our operating points of departure, but because this is, these are the kinds of approaches that determine the nature's .. a nation's 2590 future and whether we will raise or whether we will fall.

And if you don't believe me, look at what is happening in the United States at present. They have moved away from the fact that they have a constitution to guide their principles and they have a raving

2595 lunatic as their president. And one of the major consequences of
that is, is being to see many of their instructors being threatened
and falling apart, including their basic electoral systems.

2600 So, unless we take our constitution as our guiding light in the public
interest, as the point of departure for our policies, all we doing is
setting ourselves up for failure, five, 10 years down the line. So we
implore you, please don't let that happen. But thank you very much.
We are very grateful for this opportunity and [indistinct] say thank
you very much. Thank you, Chair and Colleagues.

MS (Dominique) : Thank you everybody.

2605 CHAIRPERSON: Okay, thank you, bye-bye. Thank you very
much.

MR BIRD: Thank you, bye.

VODACOM

2610 CHAIRPERSON: The next operator to be making
representations is supposed to be Vodacom, but we are ahead of
our schedule. We don't know if they are ready. If they can please
indicate their readiness and take the podium to proceed with their
presentations. If not, they can, if they can also indicate if they are
on the audience. We can't see all of you unfortunately.

2615 MR BARDEN: Good afternoon, Madam. It is Andrew
Barden, so yes, we are ready to proceed.

2620 CHAIRPERSON: Afternoon André, please proceed, Sir? You
can just slide into your presentation. If you don't mind, can you also
email it to us, if not yet emailed, so that we can be able to follow
you on our own computers. Thank you very much, but you can
proceed?

MR BARDEN: Yes, thank you very much to yourself and your panel for affording Vodacom the opportunity to respond to the Authority's discussion document dated the 27th February of this year. I am the .. the Vodacom delegation will consist of
2625 representatives from both the regulatory team, the commercial teams and equitable teams and we will be assisted and supported by, by Frontier economics.

Just I think by way of introduction, you can just go the first slide. Ja, I think just from the offset it's important to state that Vodacom
2630 agreed with that mobile data services in South Africa should be affordable, of a high quality and, and widely available. I think what I would like to do is, I would probably on this slide, I just want to introduce three themes and I think these three themes will, will be unpacked and will accompany the rest of our presentation.

2635 So, the first important theme I think is that, is that market is delivering good outcomes for consumer and, this is despite this Spectrum shortages and this is by the Authority's own admission in the document that there are good market outcomes despite Spectrum shortages and so the theme that will evolve here is at
2640 that. That ICASA was correct to identify and recognise the Spectrum shortage, but was incorrect not to include it effect of that shortage on the impact on competition. And so that will be one of the themes that we will, will come out here.

I think the second theme is that by the Authority's own admission,
2645 with regard to its benchmarks that, that the Authority's own findings is that the pricing was not out of line and when I look at, at the findings document it is, by ICASA's own admission there it shows that the prices, data prices in South Africa is neither high nor low. In fact, at some point the Authority says that both in terms of price
2650 and in terms of non-price items, South Africa will not perform some of the more advanced mark-ups. And, the point and the theme

there is that there is the disconnect between that finding and, of course the remedies that are being proposed.

2655 So, there is nothing broken, but let's propose ways of fixing it, and again this is, this, this is from the authorities' own document. I think the third theme is that in any event whatever failure or market failure the Authority has identified, and, and in this instance, it is clearly the one of limitless Spectrum assignments, and it has to, the remedies have to be considered and before we can get basis.

2660 And I think this is essentially what others have said beforehand as well, and it is that theme that there is an ITA process envisaged. There is a WOAN[?] process envisaged and, quite frankly, that needs to be taken into account to the extent that the Authority finds market way.

2665 I think, the last point, just by way of introduction is part of the story of themes as well as to make sure of sequencing. It has to be acknowledged that, that quite frankly there are three big interventions that are distinct in separate underway, yet, in some way they are all interrelated as well. So, there is that, the
2670 Authority's intervention on the IP that is quite a big one, and it is unprecedented. There is the second intervention on the WOAN and the endless that competing and unprecedented and this is, there is the market review process.

2675 Well, and I think the point there is simply this that we would caution the Authority to, in terms of sequency to almost adopt the way and see approach, have the ITA run its course. Have the WOAN process from this course before rushing to interventions that in any event is required to be proportional to to what failure is.

2680 Those are the points and my words introduction. The themes will flow as we proceed. I just wanted to go to the next slide.

MR [1]? : As what I recall?

2685 MR BARDEN: Ja, ja this one is fine. So the structure of the presentation Madam Chair and who is in the panel, is that we are going to touch on the key developments in the market since the discussion document was published. You will get it from our vantage point, mindful that others have spoken to this as well. We will give you a sense of the key gaps in ICASA's analysis to the extent which we can highlight that and assist the Authority with that.

2690 And then of course we also want to, we have specific comments on some of the individual markets. From here on in, I am going to invite James. James is from [indistinct] economics. He will, he will walk us through the economic analysis of the presentation, and the like is I will return just to conclude this part before we sort of hand over back to the Authority. So, let me just invite you - James?

2695 MR (James) : Thank you very much, Andrew, and thank you to the ICASA, and Chairperson for letting us, [indistinct] the economic check, you get the okay, see by screen slides, okay?

CHAIRPERSON: Yes, we can see.

MR BARDEN: Yes, we can.

2700 MR (James) : Okay, brilliant, alright. So, I will, I will act through all these themes and this presentations as Andrew has, have lined, and I think that is what he said, some of these points are categorised some of the presentations reward you see of this morning, that I think are some topics that is important to reflect on.

2705 So as Andrew has said, I think there have been factors, as Victor also said this morning. There have been significant changes in the market since the discussion was published and it is important, I think for ICASA to reflect on those and to consider how they

2710 impacted the market during forward and that is particularly important, because the market review is a forward-looking process.

2715 So, the need market review and any market review should take into account how ICASA and the regulator inspects the market to develop and how you would expect the market to develop, given these other processes that are set in train. And then I think the question, if you like for the mobile core funding enquiry, is whether the [indistinct] should effective and market intelligent could *ad hoc* given these other interventions that are taking place or are further [indistinct] required.

2720 And I think from, from the review of the discussion documents and we will see that was published before some of these processes reached their current status. Now the discussion document doesn't really capture how at least the market had changed, have the market evolved as a result of these other processes and I think that is a thinkcap if you like it, in the discussion documents.

2725 So, thinking about the three processes of introducing here now and then talk about each in a bit more detail. So firstly, on the Spectrum ITA there are .. clearly acknowledges that the market review .. clearly acknowledges that Spectrum constraints happened in fact all over the market currently, and we will talk a bit about this a bit more
2730 in detail.

2735 But what it [indistinct] is considered what would happen of set the Spectrum constraints and absence the other palsy set forward in the ITA. And I think that is of course for two reasons. So firstly, which is, as we said there are Spectrum constraints currently in the market, which impact have higher are able to operate. But also, because the Spectrum ITA also includes measures, what if you like, are, are not the civil [indistinct] to the source of remedies that you may consider for the Competition enquiry.

2740 So, the remedies around giving access to SAPS for example, will require at the [indistinct] for example. That these are measures in the ITA will clearly impact the competition in the market going forward and therefore need to be considered as part of the market review findings.

2745 Secondly, we have the launch of the Wholesale Open Access Network. So, we now have also the, the ITA, the licensing process for that is now being launched and that will clearly increase competition in the market, further. And it will do so in two ways, firstly the WOAN will be a further direct whole sale factor, in the market. So, a further [indistinct] in the market.

2750 But also, it will be served, [indistinct] network operators and other service providers. So, it will further enhance competition in the retail market as well as in the wholesale market. And then finally, we will see the mobile data enquiry from the Competition Commission, included are around time of following the publication
2755 of the discussion documents.

And it is part of that, you see Vodacom and the other players as well, will continue pricy translations. So, Vodacom significantly reduced its, its mobile data charges, increased, also, further it has this approach to zero rating and [indistinct] data and so on. And it
2760 again, that therefore clearly [indistinct] in the retail market as well.

So, let's return to each of these in turn. So firstly, on the Spectrum ITA. As I said before, ICASA is .. is absolutely right to recognising the discussion option, that are critical importance of Spectrum, as an input into the market. And I [indistinct] throughout the discussion
2765 document, it recognises the, the critical nature of Spectrum for [indistinct] of cheap high-quality mobile broadband and indeed shows the link between Spectrum assignment and prices.

2770 It is also set out a link between Spectrum availability of and operators cap's and [indistinct] that makes the point very well, having access to Spectrum, the lowest cost at the point that these, these operators require a fewer base station to serve to people [indistinct] of network trusting.

2775 So, so that, the discussion document very clearly sets out a link that arise on the challenges that the market currently faces given the shortage of Spectrum. And the technologies it needs to assign more Spectrum in order to [indistinct] the efficient network, appointments and increased customs, and together we just pull that sort of the, key quotes from the discussion document. I can show them on the slide here.

2780 But what the document then doesn't added [indistinct], is it doesn't consider how mark [indistinct] different in the absence of the Spectrum constraint. So once the Spectrum constraint is lifted through the ITA process, how would you expect the market to, to be evolved, developed, and that is, is missing from the discussion document. And therefore, we need to discuss, just on the forward-
2785 looking view as to how the market will develop following the award of this Spectrum.

2790 Then I think, I think it is important because it is clear that the award of the high, the Spectrum will have a range of positive impacts on the market. Now to the extent that the discussion document identifies the, in the market failures, that require intervention. What, what most clearly I think comes through the discussion document is that, that the extent that are really market failures, so [indistinct] play our failures and our links to a lack of high power Spectrum
2795 being evaded in the market.

So once those constraints is cleared, then arguably ICASA has to identify other market, to hear the retail level that justify intervention of, through this market review process. So, in terms of why do we

2800 think that that this Spectrum ITA will impact positively on the market? So, I think there are three factors that is important for ICASA to take into account, as [indistinct] through this.

2805 So firstly, it is the fact that the Spectrum assignment will alleviate suggestion currently in the market. And that is important and this is going to be [indistinct] I think, by alleviating suggestion, that will support the operator's ability to expand networks and enhance and increase the stroke for price adaptations, because it means that operators with a handle increased amount of traffic without having the intervention of reduction in service quality.

2810 And indeed, as I will show on the next slide, we only see some evidence of that from the temporary assignment of Spectrum through the pandemic. Unless I think we will be a very significant impact when you just look at the alliance of Spectrum that is available through the ITA process and the fact that the fast majority of that is available immediately.

2815 The second point as I have mentioned is the fast moving ITA also include some specific provisions to support the continued development of competition at maintaining accurate competition in the market. And it does that [indistinct] caps, through reserving Spectrum, to ITA operators. Then also through the requirement for operators to offer MVNO access and also to tier one operators to have to publish a reference offer for site access.

2825 As I understand it, those obligations would then apply as soon as Spectrum is assigned in the in the market. So again therefore the question would be to the extent that the ITA has [indistinct] of measures and [indistinct]. So what is the further concern that ICASA would have, [indistinct].

That of the ITA process doesn't resolve. And that is the question I think that ICASA really needs to consider as part of the market

review and certainly before imposing any any further obligations.
2830 And then finally also as, as we have acknowledged and things we
have acknowledged earlier on today, it is important also that
services are available on a widespread basis. In the country and to
high quality as well.

2835 And again, there are specific provisions within the [indistinct] award
submissions such as the coverage obligation and so on which will
ensure that widespread coverage in a particular rural focus and
ensuring high service quality. So again then, as the question then
comes by ICASA, that it should only look to impose further
remedies of, it really needs seriously impact of those remedies that
2840 are of the Spectrum assignment.

So, to put this in another way, it should not be imposing further
revenue through the market in view process without firstly
considering the impact of the market in the Spectrum assignment
and nor the fraternity inflictions that are imposed on participants, in
2845 the successful participants in that Spectrum assignment.

So I mentioned earlier on we, we can see the impact of Spectrum
assignment just through the, the temporary assignment Spectrum
that is happening as a result of the as we also the pandemic is.
And you see that of, of this chart here, which shows that the blue
2850 area effectively shows the utilisation of, of sites that were upgraded
with 2600 MHz Spectrum.

But you will see just prior to it and around the time of the start of the
lockdown is the utilisation unsurprisingly increased. So the volume
of traffic carried over the network increased as people started to
2855 work from home and so on. Then you also saw of slide 4,
[indistinct], given the pressure on the network on serving that
[indistinct] traffic. Then a few weeks after that, it's Spectrum in
allocating on temporary basis by, by ICASA.

2860 You then see shortly after that, [indistinct] starting to climb and that
is because there is no more capacity of the network. The results of
the, on the sites, a result of the [indistinct] and you also see
average of three quotes, so maximum three quotes increasing to
certain quality increasing.

2865 So what they show is that Vodacom's P8 to accommodate a
significant increase data usage and perhaps service quality, as a
result of the [indistinct]. Without that additional Spectrum it will be
very difficult to maintain a conservative quality, given the increase
in traffic. And so this is what, if you like the Spectrum side that is
2870 made on the more permanent basis, with the other parts and so on,
will enable operators, it is just Vodacom, to be able to, to meet
higher demands, to be able to support the prices [indistinct] was
maintained in this [indistinct] network quality.

2875 Equality on the [indistinct]. Again, it is important in the market view
that this is a forward-looking market view. It is clear that the, is this
company, processes being launched and so on. And therefore, it is
incompetent on ICASA, to consider how the [indistinct] will impact
the market and will impact competition in the retail, but also
wholesale markets of, in the mobile sector and ICASA should not be
imposing additional remedies through the market review without
2880 clearly considering the impact of the WOAN.

And this is, I think particularly important. As I said, it will impact both
wholesale competition and indirectly retail competition. And I think
it is reasonable to assume that this impact will be felt over the
course of the next few years, or over the course of this market
2885 review period. And I think we can see that, when we look at other
operators, that shown that it is possible to deploy [indistinct] and to
feel that networks [indistinct] quickly and help figures therefore and
for Rain and for Telkom.

2890 It is also important to, to note that also provisions simply in the ITA
process is to support WOAN, and to support WOAN's role that of
services. So, it is important to take that into account. And I think
also, just to take you a step back a little bit. There is a, I think an
objective set out through the instruction processes that, that
including the WOAN that ICASA wants to make sure they find
2895 credible national wholesale providers in the market in South Africa.

And if the ITA wholesale is to achieve that objectives. It is therefore
important that the market review, just not undermine that objective
by imposing other remedies, other obligations not necessarily. And
indeed it is certainly the case that we find, as you have described it,
2900 credible wholesale national piers, that will certainly result in the
South African Market, be one of the least concentrated world. So
I think again, the question therefore on ICASA [indistinct] what else
is excellent, or what, what does ICASA believe are still insert for
potential market failures, that we require further intervention, even
2905 given the ITA, given the WOAN and so on, that the setback isn't
[indistinct].

And then the CC enquiry, as I have already mentioned, that
[indistinct] Vodacom has accelerated into this transformation, post,
already to the brink of [indistinct] consumers, particularly for the
2910 consumers. So, reducing the prices on 30 day bundles. Improving
the personalised first that Vodacom offers, including staying in
reach of those to further [indistinct] and expanding on zero rated
and lifeline data, all of which was generated through, through the
saving.

2915 I think we have got that in the bench marking and our system set
out in the discussion document and so again, I think the prices will
be important thing for ICASA looking forward, is to take into account
all of these other measures and then ensure that the market review
is complimentary to those, just as it cost those.

2920 So then just turning also to parts of the caps in the analysis. So we
have already talked about the, the importance of a forward looking
market review. But I think at perspective is that there are probably
five key gaps in, in ICASA's analysis. And we are going to focus in
the next few minutes, for the sake of time the first four. The fifth is
2925 about the quality in respective access to dropped the poles.

I know that has been covered up extensively in previous
submissions and the various discussions. We will focus on the first
four in this presentation. So firstly, it is the, the importance of
identifying the market failure of the, any remedies like proposing
2930 [indistinct]. If any there is also picking up the fact that the matter
[indistinct] services of free [indistinct] around the geographic
analysis that ICASA has undertaken.

And then also around the competition analysis that ICASA has
undertaken. So firstly, of the the market failures I came to the
2935 [indistinct] the first part of the presentation. These are important, as
I think was acknowledged in the session this morning, that
regulatory intervention, it come to intervention, where is a last
resort.

It is really going uncommon in mobile market beyond mobile
2940 termination for regulators to intervene with the star that regulations
that, that ICASA is potentially considering. But that doesn't mean
that it is necessarily always wrong to do so. There are some
examples of regulators intervening, in the mobile market. So in
Norway, in parts of Europe you see some [indistinct] in Kenya
2945 [indistinct].

All we see is, is those markets being much more concentrated then
the market in South Africa. If you compare market concentration in
South Africa to a market where there has been intervention, then
there is market in South Africa much less concentration. And why
2950 I think it is important, you see I think highlight the fact that it is

important to really be clear about the market failure that ICASA is seeking to remedy in the market.

2955 Then to ensure that any remedies are proportioned to the market failure. And finally, to ensure that intervention is [indistinct] our market, that it is linked [indistinct] markets. Then we are going to look at the discussion document. It really provides like limited evidence of any potential market failure or concerns [indistinct]. And in fact, as Andrew has mentioned of placing the intervention market that ICASA performs and South Africa perform really well in
2960 that.

There is a suggestion that [indistinct] of China and [indistinct] and South Africa, that that is evidence of the market failure. I think that is a very a very low bar of failure, it is not clear that regulatory intervention on top of that, to that, is appropriate just on that one
2965 observation of [indistinct] to potential [indistinct] country. So, it is important, as I say to really be clear to identify the market failure that ICASA is seeking to resolve.

In reality it uncovered a little bit of this already really the concerns that ICASA identifies in the document really link into the role of
2970 Spectrum and the shortages of Spectrum in the market.

Now all he talked about high [indistinct] ITA where we [indistinct] and that will be important to taking the ITA into the pad. And it is also important to note that actually how assessed that I have in the discussion point of that, it doesn't really take it, the current impact of
2975 Spectrum shortages. So, the analysis [indistinct] are competition [indistinct] is therefore catching misleading.

And why do we say this? It is because Spectrum silence really impresses a whole, how to change the market. It impacts how operators are in capacity and the trust you are able to deploy, it
2980 therefore impacts decisions that [indistinct] and [indistinct] the retail

market. And so, we have added ICASA [indistinct] considering the impacted Spectrum that all of these levels in the market who is a [indistinct] incorrect illusions [indistinct] market.

2985 So, for example, Vodacom which is a large operator, [indistinct] constraints from Spectrum, but then it has blocked Vodacom to roll or sites to deploy more [indistinct] network. And then ICASA looks at market shares and sites, we have got a number of sites Vodacom has rolled out. Without taking [indistinct] that that at some extent is a response to the shortage's Spectrum. Then there is a risk by
2990 ICASA reaching inappropriate conclusions over the inter level competition in the market and the nature of competition in the market.

The way from Spectrum to probably areas leave out, we quite sort of analysis from ICASA. Firstly, and this is a point actually that
2995 [indistinct] this morning. The focus of the market enquiry is on mobile broadband services and therefore ICASA's focus should also be on data services, recognising of course the mobile services, there is a signal retail market that ICASA needs to pie[?].

3000 And I think it is important to consider that competition data services differ with other services. That is of course if just look purely market shares, you see the actual market shares are different, when you look at data subscribers, when you look at total subscribers, you see that in the chart on the right-hand side.

3005 But I think that if you, well you can take to traffic as opposed to data usage guiders, you would see Vodacom share on falling in further in the [indistinct] insistent with assumptions like ICASA had it self-made, it's morals of mobile network promises. So it is important for ICASA to think about specifically about competition for data services and we are going to focus on this, this on data services.

3010 Then also important that ICASA is further consideration to the Sri-
Lanken market analysis. But I think public it is absolutely right that
ICASA has considered the extent to which competition may vary the
cost, the cost that is across the country and indeed [indistinct]
differences in fact competition marked by Pie Act costing across the
3015 country.

But I think the analysis that is in the discussion documents, if one
understands is, [indistinct], that specifically clear that the, the level
of [indistinct] is the right level for defining individual geographic
market and typically what we would see is a regulatory of to defining
3020 the analysis, which might be the individual municipality. Though
there are areas of an fabricated together of some ways, you end up
a smaller or sub-settled overdue rapid market, not missing the
numbers that that ICASA is proposing.

Now I think that is something important for ICASA to look at it,
3025 through that market and I will just going forward. And then also it is
finally important, as we have said that ICASA should conduct this
forward-looking analysis. In have spoken about why that is
important, of that market review and pulled out some of the factors
that I think impact, will it impact the market going forward.

3030 So through that it will be [indistinct] of public providers, so Telkom
and Rain, which really demonstrate the barrier entrance expansion
in the market and we need to enhance competition in the retail
wholesale level. It is talked about where at the ITA. But I think also
important to draw at, is I think was drawn out this morning in the
3035 ESPRO presentation, is the increasing of all the tele companies and
other players, in to give the market for site access. So there are
really not licensed players or not also important [indistinct] on these
markets and we roll, potentially make a road going forward.

And then also it is important that ICASA does not place too much
3040 reliance on a, analysing market shares. It is clear, I think in the

framework, in South Africa, we have also had best practise, that an analysis that [indistinct] an important [indistinct] reflective competition, it must go beyond the market shares.

3045 And I believe when you look beyond the market shares, you will not share, the market is not so concentrated when you look beyond market shares. Then you see a number of factors that really demonstrate the markets at all levels of the public [indistinct] in South Africa.

3050 So we see parties are able to [indistinct] inventory, infrastructure, whether that be of [indistinct] or whether will it be [indistinct], which really demonstrates low barriers entry and expansion and site taxes market. We see really quite dynamic site sharing in the market in South Africa, we stand enhances competition for national roaming services. And indeed, we have seen in recent years that
3055 competition in that for roaming services, really, really play out, I think that links in the evidence we have for National Roaming market of switching of to where Cell C and Telkom both switched providers without roaming services and are able effectively to be associated with both parties to seek the better deal.

3060 So it is important that ICASA really focusses, not only on analysis market shares, but really on all of these other factors in the market and considers whether they demonstrate market effectively [indistinct]. Then finally, just on the individual markets. So I am not going to say very much on these [indistinct] at the time.

3065 But firstly, on the retail market. Now as I have said a few slides ago, the key principle in the market review is the area interventionship being portioned, any intervention should also be in an upstream market which, which ICASA does correctly identify. But also, that intervention in the upstream markets should be linked
3070 to some competition concerned, in a [indistinct] market. So

ultimately what is it that ICASA will commit in downstream market, has resulted in this intervention upstream.

3075 And actually, when we look at retail market, we see competition is working relatively well. We see new players and [indistinct] to enter that market, with traffic was [indistinct] we try like here, some testing expresses for Telkom and or Rain, it is their entry into the market over the last couple of years.

3080 And indeed, it is the pace that this entry as in part being facilitated by commercial whole sale agreements between these parties and Vodacom or in some cases MTN as well. And indeed we just pick that sort of quotes thereof, by Telkom and Rain talking about the importance of those commercial deals that they have agreed.

3085 So, I think where we can pair, when we sort of take this into account and also what was said around benchmarking, that in the very outset, it seems clear that the, the competition seems to be working in the retail market. Supported by competition in the wholesale market. And it is not clear what, if you like, the, from the discussion document is not clear what the competition concern is, in potentially market and justify interventive, in the upstream market. Particularly given, taking into account the obligation which fall, already fall on parties as a result of the ITA and WOAN processes.

3095 Just then to drill down a little bit more on the site access market and taking to (you know) notwithstanding up, the points that I have already made. And it is also the case that ICASA analysis has overstayed the Vodacom's market share of our sites. And since we have, I think for, for two reasons. Firstly that Vodacom doesn't necessarily control all of the sites that it uses and that's important what I am thinking about inverting to, to grant access at sites, that is within Vodacom's control.

3100 And then also thinking about constraints proposed other
infrastructure. So here I think you got only about telecom
[indistinct] and so on. But also recognising the, in the urban areas,
in particular, there they will be other infrastructure of the [indistinct]
over the available infrastructure where parties can deploy sites. So,
3105 it is important I think really, to try and get a wholistic view of
possible about site access and the mobility operators to gain access
to sites and to deploy sites across the, across the country.

And it is then also important to take in hand, of the existing facilities
leasing regulations. And the obligations within those existing
3110 regulations, on licensees to provide access to infrastructure,
because that clearly moves the, the power of access seekers when
they are negotiating access.

So if you combine that together with the obligation on so called Tier
1 licensees in the ITA, to provide a reference over the site access,
3115 it's, it's not clear what the purpose of further regulation, further
obligations through through the African market, Tier process would,
would have. [Indistinct] can you still see my screen? Because the,
the red ball has gone from my screen. Are you still able to see it or
not?

3120 CHAIRPERSON: Unfortunately, no, from our side we can't see
it. I was trying to find out from Thopelo, the team members
...[intervenes]

MR (James) : Okay.

CHAIRPERSON: If there is something I should, but I can't see.

3125 MR (James) : Let me, let me, I will put it back up. I don't
know, I don't know how much you missed, but ...[intervenes]

CHAIRPERSON: Okay, thank you, thanks James.

MR (James) : [Indistinct] hope it is there, okay. So that site access. So then finally I think just on the roaming market. Again, 3130 I think what we have, had seen in recent years is addressing different competition for roaming services. And I talked about the switching, we have seen in the competition that we have seen between the Cell C, Cell C and Telkom deals between Vodacom and MTN.

3135 We have also seen some other, the other commercial deals into the market. So again it is not clear that ICASA really demonstrated any market failure that would require intervention in the roaming market. Okay, I think that is intermediary identifying market failures by forward looking faces, as being important.

3140 But in addition, I think it is also worth from the roaming, just taking a step back and thinking about the policy that we are seeking to achieve through National Roaming. Has, as I think has already been mentioned, roaming is, is typically or certainly where mobile services are currently regulated, they most typically been regulated 3145 for a short period time when new entrances presented in the market and to enable that new entrance to offer services in, in rural areas which are, which are harder to cover.

I think the blanket sort of regulation of national roaming is, is much rarer and that is really because that is blanket regulation, it really 3150 reduces incumbency and it challenges, is all parties is sentenced to about to invest on, in networking infrastructure if they are also able to rely on roaming. And I think this particularly in question given your objective is five national wholesale piers, that have sort of blanket regulation to the [indistinct] roaming would really, really at 3155 that.

So the proposal that we set out in, in our response discussion, is that really the market definition for roaming, should be focused to those remote areas where competition is not feasible. And we have

3160 said given the coverage obligations and the level of coverage that
we see in the country, they those, those areas might actually
invariably few and far between the offsets as difficult for me to
comment off directly.

3165 Look what is clear is that [indistinct] elsewhere, can be and are
provided on these [indistinct] commercial terms and we are seeing
that from some of the comments from other parties. So with that,
I think where it is demonstrated what was seen the last couple of
years, is that we have, where we have multiple network providers,
then you have competition to provide roaming services and that
competition has generated good, good, outcomes.

3170 So, I think I will with that, hand back to Andrew. But I think just, just
quote, just in conclusion to say I think the lining up of those three
things that Andrew talked about, at the, at the outset earlier, that
the link to be on the processes, particularly, the links in respect to
the issue of Spectrum silence in the ITA. It is I think particularly
3175 important to carried forward, the next stages is of the view, for
ICASA to really think about, what are those potential noises, or
those other measures as you have set out in the ITA WOAN and so
on, will not remedy, it is, that they have, in the market,
notwithstanding obviously our views.

3180 I don't see those concerns, I think are, are very limited, and actually
they are [indistinct] well. That is certainly going forward and
already a number of other obligations which ICASA are pursuing.
And we need to be taking into account when market review is
finalised. So Andrew back to you.

3185 MR (Andrew) : Thank you very much, James. And, I think
from, just from my side also, just to conclude on the point of
themes, I recall that when we submitted our written response in
February, I think we provided the Authority with 110 pages or so, so
the response was quite substantive.

3190 But it was also clear that it would seem, that events have overtaken
us since then. And it is important because some of the remedies
that the Authority envisaged then, has already its way and seem to
be baked into the other three key processes and so the challenge
for the Authority of course will be is, to consider the impact of the
3195 obligations in those other interventions, so that potentially it doesn't
undermine the Authority's own objectives.

And of course, those three are the undertakings with the
Competition Commission and as you know all of the, well, four of
the operators that committed to undertakings and this is really the
3200 phase one, next one there will be phase two and that the impact of
that still has to run its course. There is of course the ITA for the INT
Spectrum, the ITA for the WOAN and we are saying that is, that
those processes should proceed, in other words the undertakings
for the Competition Commission, the participation in both ITA's
3205 whether, for the INT Spectrum, also that should proceed and
I guess it is the Authority to exercise caution and almost prudence
in, in really understanding the impact of those interventions because
in any event the obligations that are envisaged in February has
already found its way in those other three processes.

3210 That concludes the Vodacom formal presentation. I would like to
thank you and just hand over back to you Madam Chair, thank you.

CHAIRPERSON: Thank you very much, André and especially to
James. I will then go onto the rest of my colleagues to ask
questions. But I just have one question. It is the first I am asking
3215 something [indistinct] but it is a matter of interest. Just based on
what has been presented prior and approve [indistinct] as a
regulatory, what I want to find out is whether or not there is being
any [indistinct] one dividend following the, the Competition
Commission's findings and also following the [indistinct] of us
3220 [indistinct] to, to the industry by answers as ICASA?

MR (James) : Okay, André, you will need say a few words on that and then pass on over to you and the team?

MR (André) : Yes, yes proceed James?

3225 MR (James) : Oh, [indistinct] I think certainly on, in terms of the, the Competition Commission, [indistinct] if you like it and that, that will probably bring forward only some of the [indistinct], it has been kind of a [indistinct] process really. So transforming pricing and data services and that was something that was ongoing prior to the commission investigation and it is still ongoing.

3230 But you know if you look at the sort of value of those in terms of bringing the down price on [indistinct] data and it [indistinct] personalised pricing and also the use of lifeline data with zero rating services, I believe Andrew might have saying that that is [indistinct] equivalent to [indistinct] recommend that 2.7 for the amount of, to
3235 consumers.

Andrew has particular and confirmed that. I think in terms of the temporary Spectrum assignment, as you, as you saw from the chart, well I hope my sheet, my screen is presenting at the time. That temporary assignment was really, it really enabled on those
3240 sites where that Spectrum could be used. Vodacom is [indistinct] the increase in network custody and the increased amount from the results of home working and everything else in the pandemic.

But also maintain and in fact perhaps the service quality, quality the entities would be getting, which of course is also a very [indistinct] benefit to consumers. But Andrew, I will hand over to you for, um.
3245

MR (Andrew) : No, no thank you for that. I think it is a very good question and I think it is a very important question, given that we are saying that one should consider those impacts and the implications of that, for this process. So yes, you have alluded to

3250 the consumer dividend, I mean we and that is only Vodacom. So you must imagine if Vodacom in terms of consumer welfares in the region of about 2.7 billion, you got to now include that to Cell C, remember they also settled on the 1st of April.

3255 Telkom settled on the 14th of April and MTN on the 30th of April and, and we know that the Competition Commission is in the process now themselves of really understanding the impact of all those undertakings, precisely on the, the price of data and access. So, so I think in, we can say in, we can say for sure that there has been an immediate impact. And of course, it is a multi-year commitment, so
3260 we, and we are almost certain that, that the Competition Commission will come to, to the same conclusion.

On the temporary relief, I just wondered, Max, if you could perhaps just speak to, just the benefits there with regard to the extended coverage and its peaks, then maybe that will, maybe that will assist
3265 the authorities. So just over to you Max?

MR (Max): Thank you, so maybe just add on to the comments from James and Andrew. In terms of the techno Spectrum we certainly see significant [indistinct]. Of course, what we did experience was that during the lockdown period, it wasn't
3270 expectation in maintaining traffic levels, but really there has been a surge of traffic, in terms of demand, will, it remote working, [indistinct] education.

Then drafted then sort of all year and show the benefits in terms of the [indistinct] as well as the direct, sort of [indistinct] in terms of
3275 speed. And I think it became clear there that actually dispute [indistinct] better than what we originally had, but it was necessary. In other words, it wasn't the luxury, it was what consumers demanded.

3280 We of course, we are a little bit disappointed in terms of dividend and Spectrum. Our intention was to roll out more than we could, practically on the ground with the limit by the interference levels that we observed by the operation things and I think this is a, definitely going to be a body of work that we both the authorities as well as the operators need to focus on.

3285 It does confirm unfortunately that the initial roll out in terms of digital dividends respectfully is going to be slow. What was helpful for us, is that at least for 2600 you have got the positive confirmation that this Spectrum was indeed free and [indistinct] for use with little if any interference through the experience. Thank you.

3290 CHAIRPERSON: Thank you very much, gentlemen, I will then personally take the questions from my colleagues?

MR MPHALELE: Thank you, Chair and thanks, Vodacom for your presentation. I have three questions. So the first question in your presentation you are proposing that ICASA should adopt [indistinct] approach, given the impactable questions of the Spectrum and [indistinct] and also the outcome of the [indistinct] report. So my question is, what is Vodacom's view with respect to Telkom's proposal that in actual fact the Spectrum assignment process should be informed by this and the outcome of this enquiry? So that is the first question.

3295

3300

The second question on a slider page 14 of your presentation it is just a question of clarity. I think James indicated that the South African mobile market is not concentrated on that other countries, and I think you mentioned Kenya in your presentation. I just want to understand Vodacom's measurement of, of concentration?

3305

And the last question on slide 19, of page 19 of your presentation you indicated that that the South African data market is actually competitive. But I would like to know from Vodacom what was your

3310 response to you know the competition in the retail um market and
I think you mentioned Telkom and Rain in your presentation.

So I would like to know your response to that to those operators,
given the, um the finding by the Competition Commission with
respect to lack of response to highest competition, in particular by,
by the large operators, thanks?

3315 MR (James) : Okay thank you. Andrew, shall, shall I take a
little bit about that and hand over to for, to certain people as well?

MR (Andrew) : Yes, yes, that is fine.

3320 MR (James) : So what I might just start with the, potentially
the simplest one, which is the question about concentration. So
Ashley I am just going to go back, if you could um still see the
slides. So what I was actually referring to is this chart on slide on
three, I don't know if you can now see that on your screens?

3325 And so, really what we could compared [indistinct] concentrations,
we are talking about HHA, which is the kind of well standard
measures of [indistinct] market concentration on site, it is currently
based the factory of market shares and around the players in the
market. And the higher, remember they are more concentrated the
market and what we see there is a South African market really is it
is less concentrated than the average the u market. I consider it to
3330 be less concentrated the most, those markets where we have seen
regulators with the intervening and that is where we see intervention
is said quite rare, I don't know if we are aware of our Kenya and
Norway and Mexico.

3335 But we see concentration as measured through the HHI index being
considerably lower in, in South Africa. On your, on other points in
terms of how Vodacom has responded specifically to Telkom and
Rain, I think Andrew might, if that is probably more [indistinct] to the

team, and then just on this, on this first point, its option is wait and see approach.

3340 Ja, I think it is important to recognise as a reason for that this is this marketing if you just need to dwell on that sort of forward-looking basis. And so, it is important, you have set out these other interventions, that you are taking forward to the ITA and the WOAN, (you know) and those processes will you conclude which the next
3345 stage will be awarded, as we understand it relatively shortly and those include, if you like, these sort of kind of market review style authentications.

So it does seem slightly congeries to it at the same time, also to a market review and potentially um through that. And also talk
3350 around the need for other remedies, which, which might sit across or really kind of mirror those through the ITA process.

And I think also for that same time, clearly awarding spectra into the market is critically important, as Max and Andrew have explained, and I think for me that is the logic behind the flow that we are
3355 suggesting. But Andrew perhaps you and the team want to pick up on that point and also the, the point of our retail competition?

MR (Andrew) : No, no, that is fine. And no we will. I just wanted to make one comment and just, just to be clear to the Authority. We do, we do disagree with Telkom on the sequencing and that is why in the beginning I went with great length to explain
3360 the sequence. And we think it is correct that the Authority proceed with the ITA.

We all know, since 2010 this is the fourth attempt to assign high demand Spectrum. And we think that the sequence in this is
3365 correct to conclude with the ITA for IMT to conclude with the ITA to the WOAN and to, to fulfil the undertakings with regard to the

commitments and we don't think any of those processes should be held hostage to this process.

3370 We just think that this process should monitor and follow those other processes. For the third question on retail price competition and other comments, I am just going to call on Hennie. And Hennie, if you can just perhaps just respond to that?

3375 MR (Hennie): Ja, thanks Andrew. Yes, and if I noted the question correctly it's in Vodacom's presentation, we believe that the retail market is competitive and I think the question is so what is our position with regard to the Competition Commission's findings. I think along the lines it be presented today, we are of the view that that the Competition Commission and also overlooked or did not pay the necessary attention to the implication of Spectrum shortage, 3380 shortages in South Africa.

So, I think in terms of the (you know) the international comparisons performed by the Competition Commission, it fails to properly account for Spectrum care sitting in South Africa. In terms of the retail findings, and we don't support a number of the Commission's 3385 findings with regard the retail market and retail pricing. So, I think, from Vodacom's perspective, we may significantly progress with transforming data over the past couple of years.

Starting by out of bundle, we have introduced short validity, personalised pricing. We have increased the value on all contract 3390 offerings and in the Commission's report their specific focus was on 30 day bundles. That was next up in terms of Vodacom's pricing transformation and as part of the settlement we agreed to bring that forward.

3395 And I think it's for that reason that we have presented it as (you know) part of Vodacom's pricing transformation. So I think in summary our view is that the retail market is, that the retail

3400 outcomes are performing well. The retail market is performing well, but it can improve if ICASA can deal with the Spectrum issue. And that is coming back to the themes that Andrew presented at the start. Thanks, thanks ICASA.

3405 MR MPH AHLELE: Okay, it is Leweng again, I just want to ask a follow-up question on the easy question that I asked earlier. So this so the question is almost like three. So this HHA index here, is it, what is it based on? Is it based on the number of subscribers or it is not clear to me what is, is calculation based on?

3410 MR (James) : So, it is based on, so basically it is market shares, it is actually place of market shares of operators. I think I can double check there so that we can clarify this with you at the meeting, but I think this is based on numbers. Market share is based on number of subscribers. And effective [indistinct] it takes the sum of the square, of those market shares reach by pie of the market to calculate this HHI.

3415 So happy to provide a bit more information to your flight, in fact, what it shows is, so if you got a narc here which is you know monopoly, you hate [indistinct 10 000, if you go to [indistinct] to your quotes of about 50%, but you have HHI in 5 000. So that is the kind of paces for the calculation. Although that is concentrated market as I said, I had just checked, yes this is based on market shares with subscribers.

3420 MR MPH AHLELE: Okay, thanks.

MS KEDAMA: Thank you, Vodacom, the Chair has quickly gone out, so I will be taking the rest of the questions from the panel. But before I give over to the panel I have one follow up question to one of the questions that Luweng was asking.

3425 Vodacom mentions that in your presentation that the Authority
should not be focusing only on the market share for, to determine
the effectiveness of the competition. I just want to find out from you
what other areas should the Authority be focusing on in determining
the effectiveness of the competition, that the Authority has not
3430 already considered in its document? Thank you.

MR (James) : Okay thank you. So, I am just, I am just going
back to the slide where we, where we have this. And I think and
I don't have your document in front of me, so I can't say that you
expressly didn't consider all of these. But I think it is also slightly
3435 bad, [indistinct] to consider, but it is about the, the weight that you
apply to factors and making sure that you don't apply too much
weight to market shares. Because you see, it is, it is almost
naturally the case in a market such as mobile that you will have an
monopoly. You will have in most countries three or maybe four
3440 network providers.

And so that will always show you (you know) of market shares, but
that is the reason for concentrated market. And that is why there is
also, it is also taking into account some of these other factors. And
I think for me most important is really looking and understanding
3445 how, although there are [indistinct] small in the players of the
market, competition is actually working.

And that is why it needs, it is important to take into account and,
and really good, I think quite strong degree of weight of things like
the, ja, they dynamic site access market. The fact that you do have
3450 switching to international roaming services and we have seen that.

The fact that parties are rapidly performing networks. So I think for
me it is, it is about, it is about really looking at how the competition
is working in reality. And try to establish a fact through a number of
players in the market. But as you know Andrew will, or Hennie if
3455 you have some further thoughts on particular factors?

MR (Andrew) : Thank you ICASA, we hope it addresses the question?

MS KEDAMA: Okay, Ryan, want to ask a follow up question?

3460 MR HAWTHORN: Thank you, Chair. I just have some questions, one of your .. one of the points you made during the presentation was, was really that (you know) we need to, we need to be more careful about the geographic market definition and I think it was in Vodacom submission that in fact (you know) prices can vary regionally, I mean, can you just tell us a little bit more about that and what are the market dynamics that you have raised, that give rise to this kind of regional variation in prices and promotions of this et cetera?

3470 MR (James) : Okay thank you. And I think it's good observation. Um, and I think on this specifics Andrew, I might have to hand over to you, [indistinct] that specifically have, that is very [indistinct] ranges it, self regionally. Because it's also things like that, just for you to have it and so on, [indistinct] a bit more contextualised.

3475 MR HAWTHORN: Okay, no that's fine, thanks, thanks, James. So I am handing over to [indistinct], just to respond to your, just to see about geographic market [indistinct].

3480 MR (Matt) [?] : Yes so, thanks Ryan and as you have pointed out, it is in the South African market, we do have, we do have regional pricing and it's it's, it's offered by Vodacom, MTN as far and as far as we understand also by Telkom and Cell C. And I think it's, and what we have also mentioned is that you know in certain cases there could be a regional (you know) angle to certain after the - what is it? The management decisions.

3485 And ja, I think it's basically, so I think the reality is, it does form part
of the South African market. In terms of the (you know) significance
of it, unfortunately we don't have visibility on what the other
operators are doing. So, I think it was in that regard that we
requested access to ICASA's analysis. But I think it's safe to say
3490 that yes, (you know) from a Vodacom perspective, we do half of that
and on that note we want to add James?

MR (James) : Ja I mean, I think probably just also to say
[indistinct] of that sort of [indistinct] I understand there are also, well
already a, they have recognised some of the, the challenges of that
of [indistinct] rural whole areas, they have, that is why some of the,
3495 the [indistinct] specifically through shape, perhaps the, the usage
profiles, the nature of customers in, in different areas.

So for me, as I understand they have create [indistinct], there is
different customer dynamics of big different areas ensuring that
there is sort of a good offer if you like, throughout, throughout the
3500 country [indistinct]. So ja, that is my take on it.

MR (Andrew) : Ja, and maybe, maybe just to assist Matt,
I am not sure, okay, can you perhaps just talk to the issue of
[indistinct] patterned and how this informs [intervenes]

MR [?] : Ja.

3505 MR (Andrew) : The, the market [indistinct]?

MR [?] : Thank you Andrew. So maybe just a quick
comment there in terms of traffic profiles. Also, we see that there
are really, really large deviation in terms of the traffic profiles that
we observed, ranging from urban areas to suburbia. And then into
3510 rural area. In this stage itself our [indistinct], in terms of the
geographic distribution of, of traffic patterns. So one of the things
that, that is from a model operator perspective, we try to

demonstrate, to cast a lot of good benefits in terms of capacity, on where we are going to [indistinct] the consumers.

3515 So often in terms of these, just for you and, and on based office, would you find they have got, those offices are structured around the [indistinct] capacity and the network. And, typically the benefits for the consumers is that they really, one get benefit of network capacity benefits available, but to, it tends to be a little bit more in
3520 line with the needs in a particular region and [indistinct]. So this [indistinct].

MR (Andrew) : Thank you, Ryan, over to you?

MR HAWTHORN: Thank you, I mean if - can you tell us a little bit about how those regions work? I mean how are they defined?
3525 And, and I mean and I guess, the, that, a very important point is, is whether you know people in poorer areas and communities are paying more effectively for data?

MR [?] : Ja Ryan, I think we may have to revert back to you and in terms of how the regions work. I am, I am just looking
3530 on the Vodacom team that is online. I don't think there is anyone here that can respond specifically to that comment and question. So, so if you don't mind, we can come back and revert back to you on, ja exactly how, how the regions work. And with the specific, with the specific issue that you had as to the treatment of the poor,
3535 if you like in that regard.

MR HAWTHORN: Okay thank you. And then your submission also suggests that ICASA should focus on data subscribers. Can you just tell us a little bit about how customers choose networks? Do they, do they choose networks based on a, on a whole group of
3540 products and services? Do, do they, do they just choose networks based on data? I mean, can you just take us through to, through this customer choice process as Vodacom sees it?

3545 MR [?] : Sure, and I think Andrew might have all the specifics of whether Vodacom has, has information about how customers choose, onwards hand over to you. But I think just price emphasis, Ryan this report is doing now, I think particularly here we do know that there are some differences in market shares. We [indistinct] subscribe, this is opposed to all subscribers and [indistinct] it is in the dynamics of those markets and those segments in the markets. So that is, that is kind of where we highlight that. I mean my sense of Andrew is the [indistinct] more and more and also for consumers, but as Andrew to you and teams talk about [indistinct].

3555 MR (Andrew) : Ja, can I invite any other Vodacom person on the call, if you want to respond to, to the question about customers choose networks, be the, it is clear that we needed one more person on the team that could speak specifically to the consumer related matters that we don't have. And if we don't, we may have to revert back to you, but let's just give an opportunity, if there be a Vodacom person that would like to respond?

3560

PARTY/ies [no audible response]

3565 MR (Andrew) : Alright, no, no it doesn't seem if we have and of course this is the beauty of virtual presentations now as well. I think, we, can also leave that back to you on how customers choose a network and the whole dynamics with regard to that, that Ryan.

3570 MR HAWTHORN: Okay, thanks. And then a further point that you make is that fixed lines are increasingly constraining mobile services and I think you have provided some data in that regard. And I mean, can you just tell us a little a bit about this trend and, and what impact it has on, on market definition?

MR (James) : Ja, John, try [indistinct] market definition of point. Um, and then we go through. So, I mean you, [indistinct] you would typically not expect fixed line service to be considered to be
3575 part of the same market as a mobile service. So when, when you look at president of elsewhere, around the world, you will see a regulators intends to find mobile markets as, as being mobile. They might sometimes, when they do find a fixed market, [indistinct] mobile as constraint to fixed, but let's say you have [indistinct],
3580 given this [indistinct] mobile service.

But I think it is important to recognise that even if something is not in the same park yet, it doesn't mean it cannot place competitive constraints on the services that are in the market. And I think what we have said is that, so even though we may not [indistinct] is it a
3585 fixed services to be part of the market, when you are thinking about the (you know) the future of mobile services in South Africa and future mobile data services, it is really important to consider on the [indistinct] right services as well.

And so for example it may well be that this is about to be
3590 speculating that, that because [indistinct] fixed market must be of under developed and prepare at the time, that, that has made consumers more reliant on mobile services. As the fixed networks, the fibre networks and how to improve it, then you might start to see increasing levels of traffic for example handed over to, to a mobile
3595 network. You see a number of markets around the world is kind of Wi-i offload of mobile nature of the fixed networks increasing.

And you might perhaps see more of that in South Africa. That is if the, even though the [indistinct] across the same market, it is important to recognise there are fixed services can have a capacity
3600 constraint on, on mobile. So that is the [indistinct] Andrew or Hennie, or Andrew do you have further sort of add on South Africa specifics that, if that is it?

MR (Andrew) : No, no, no, we are good, James. Over to you Ryan?

3605 MR HAWTHORN: Okay thank you, thanks for that. Um, then,
and then an additional question on, on retail marketers that, I mean
in your submission you sort of commented mobile markets are
highly concentrated worldwide, so are very high levels of
concentration in South Africa, shouldn't be (you know) shouldn't be
3610 of too much concern.

But I mean how would you explain the significant expansion of, for
instance retail players like MVNOs and other markets and that very
limited role here in South Africa. I mean in other, in the UK market,
I think for instance and James would be able to speak to this,
3615 obviously better I could.

But in the UK market I think (you know) MVNOs have a retail share
in, in excess of, of 10%. Can you just, can you just comment on
that and, and what has kind of happened in South Africa and what
the problems are?

3620 MR (James) : Sure, let me, let me have a bit of a go. So
right, so in other markets, yeah, there are some countries where
MVNO's are more prevalent and in countries where they are, where
they are less prevalent and I think the UK is probably one of those
markets where there is there is a lot history of MVNOs.

3625 And they have perhaps got – sorry .. a high market share that in
some other jurisdictions. But it is still the case, because I am from
the UK, that the MVNOs are intent to focus on particular sub
segments of the market. They will often be companies who might
have a, have strong path in other sectors, so it is the markets or
3630 finance or immediate companies and so on.

3635 So that is, yes I wouldn't, I wouldn't sort of, sorry overplay and the
history of MVNOs in other markets. But your right, there have been
some instances where the [indistinct] is successful. But now I think
in terms of what let's say certainly it is, it is the case. Then the UK
and elsewhere, it is differently when MVNOs came in with these
results of commercial deals and often with the smaller networks of
[indistinct] is a way effectively of allowing those smaller networks to
make some entrance to get traffic onto their networks, and they will
get traffic [indistinct] network more quickly then they could do
3640 themselves through quoted retail market.

3645 So [indistinct] that is also really kind of what you, what you have
seen in South Africa with Cell C typically hosting [indistinct] MVNOs
in the market. But since and then obviously I think [indistinct] within
the South African context, look at the question of the MVNOs
without also looking at the question of the Spectrum constraints and
the marching operators of the factor and that has been, I think (you
know) more certainly reason as to why that has been more difficult
for the larger operators to, to really have this look, have in nature, to
win MVNO to win [indistinct] business.

3650 So that is, that certainly might take, [indistinct], and to Hennie, if
there is, if you have anything more to add on the South African
perspective?

MR (Andrew) : No, no, that is fine, I think, that would suffice
James, thanks.

3655 MR (James) : Sure.

MR (Andrew) : Ryan?

MR HAWTHORN: Thanks, I mean I have, I understand your
responses partly based on, on the lack of kind of network capacity.
But my understanding is certainly that the roaming or mockan[?] or

3660 moran[?] agreements that you have with and in the whole sale markets, they give you a lot of capacity. And yet we still don't see much of an MVNO market, sort of customer based or wholesale market emerging.

3665 Can you respond to this kind of capacity question then from the context of these, these Mocken and Roaming agreements and so on?

MR (James) : Ja, I mean I can, try and I think, Amy will have to come over to the Vodacom team, but I think also it is important to know and so as I understand it, that, (you know) Vodacom has
3670 been actively engaged in discussion with potential MVNOs and so on and potentially lost out on, on that business to, to others. But I think it is, is not right to portray this as Vodacom not having sorry saw it MVNOs or not responding to potential MVNOs templates and so on.

3675 So that is probably the main [indistinct], I don't know Andrew or Hennie if you want to speak to the specifics?

MR (Andrew) : No, no, that is fine James. I think I will just ask Hennie just to add to that and I think there may be one or two comments from Max as well, but let's just first over to Hennie?

3680 MR (Hennie) : Yes, so I think in terms of the, the agreements that you are referring to Ryan none of those, the capacity, that, that we have accessed to is guaranteed. So, I think from a (you know) from a Vodacom perspective, it doesn't solve or address the capacity constraints that we have. You know, it provides no
3685 certainty with regard to that and I think it is you know, you can't compare it with so this, (you know) IDA process of assigning Spectrum.

3690 So I think it is inadequate to address our current concerns and I think it is for that reason that we believe that (you know), at least in terms of the ITA process, where we will have certainty as to what we get and the capacity associated with it, that we would be or should be in a position to, (you know) have more certainty with regard to existing capacity and what that means from a wholesale perspective.

3695 So I hope that answers your question, Ryan?

MR (James) : Perhaps Hennie, could I just of sort of add to that as well, I think this is posturing must report when thinking that MVNOs in the market is to recognise and also you having the, the WOAN in the market and it [indistinct] to the ITA or more clearly increase a number of MVNOs in the market, particularly the WOAN who I might go after, but there be no business.

3705 So again, I think from the perspective of marketing view, what is really important is to look at the forward looking, what is the angle for MVNO, for the MVNO market and for competition to support MVNOs. And that is I think, (you know) really that should be the key focus of the third market enquiries, about forward-looking take.

MR (Andrew) : Ryan, I am just going to call on Max still who has a comment and I think Louw[?] also just, just has a comment on the issue, on the MVNO's issue. Over to you Max and then Louw and then back to Ryan.

MR (Max) : Thank you Andrew. So, Ryan I think what is perhaps just helpful and I think Hennie has mentioned in terms of the ruling capacity that there is no guaranteed. Of course, one of the features that you will see is that in the case where the [indistinct] see inflexions in this demand, and does not see at dear line that is able to have a surplus available in terms of its own

capacity, there will be less of an incentive than for you to offer capacity in terms of [indistinct], the operators.

3720 In the South African market and in certainly for Vodacom, we are really for roaming to Telkom and on some of [indistinct] with Cell C as well. So, we are really reaching out to those operators and I think our capacity is sensibly considerably would need at some point in future. The key test here would be the demanding [indistinct]. If you are seeing that there is still a strong demand for
3725 the Spectrum in the ITA and, and [indistinct] any of the operators in other ways.

But it does engage that actually we don't have enough of a foundation where there is capacity to be able to offer our services to MVNOs. The other factor that you might want to look at is, so well,
3730 in terms of the operators existing holdings, to what extent have they maximized the equalisation of those holdings? And very well to give you a sanction, what they are advertising for MVNOs.

Andrew, let [indistinct].

MR (Louw): [Indistinct], yes I think what is risk of the
3735 South African market is that a national roaming would typically advance for the short period [indistinct] for a very long time. And it is partly because the verge for other operators did not deploy networks nationally or it is just the aim of the [indistinct] national operators.

3740 Once you have established the market where there is five options, including the one, it is specifically developed for that purposes, you will have many more providers accommodated MVNOs stand currently the case, and currently if there is [indistinct] maps, that constrain to deliver those services.

3745 Taking into consideration the fact that currently some of those
MVNOs are fact utilising Vodacom's network, because they use it
through the national roaming agreement with the likes of Telkom
and Cell C. So in fact, but most of that is difficult to, to determine
its effect and that is the reason why we have to increase the
3750 the capacity following the ITA assignment [indistinct].

MR (Andrew) : Thank you. Ryan?

MR HAWTHORN: Okay, great. Okay, so then, then just
switching over now to, to wholesale networks. I have seen your
submission that you mentioned that (you know), we, there, it may
3755 make sense, I think you said to break up wholesale market sub-
nationally, certainly from a site perspective and so on.

Can you just tell us a little bit about the regional dimension of your,
of your wholesale arrangements and what may make sense
from that perspective in terms of grouping different geographies and
3760 so on?

MR (James) : Ja, sure, I mean I can perhaps talk a little bit
about how we might approach the market deficiency, if we think
about site access and then Hennie and Andrew also hand over to
your, each one talking a little bit about the existing arrangements.
3765 So I think in terms of site access, it is how you might consider this
for a market definition perspective.

I think the rest is a difficult question, and then given all the
information constraints, it was difficult for us to give a, as a
comprehensive answer for that. But I think probably one way we
3770 have [indistinct], (you know) you could look at this and potentially
say look, the clearest difference might between a little bit rural area,
are because in Urban areas you will often have other
infrastructures. That parties can use for the sites basically, so
[indistinct] and so and so forth. And so they will read the dynamics

3775 competition are a little bit different than in urban areas to rural areas, rather trying to just include individual politics.

It could be improved in these parties often, to say as [indistinct] groups that rural, I think that is the [indistinct] context. That, that is my feeling for a market efficiency respect of it. In terms of the
3780 actual arrangements [indistinct] in South Africa [indistinct].

MR (Andrew): No, no, that is fine. I am going to call on Shenge – Shenge, if you can just speak to roaming and Louw maybe if you can just come in on facilities. And then maybe that this will sort of assist on the whole issue of sub national markets
3785 and wholesale networks. So over to you, Shenge and then to Louw.

MR (Shenge Buthelezi): Alright, Shenge here, I hope I am audible.

MR HAWTHORN: Yes.

MS KEDAMA: Yes.

3790 MR (Shenge): Alright, so, so what we see in national roaming is obviously, it is a national service and you price it nationally. But in your pricing, you include your cost to manufacture. I will just use a Gigabyte as an example. You are putting a mix of your cost to manufacture a Gigabyte in the urban
3795 areas, where you have got multiple access to sites. You have got multiple transmission providers; you have got access to reliable electricity grapes[?] or you don't use too much of generators. You don't use too much of batteries and those sorts of things. And then you mixing that with your cost to manufacture a Gig in a rural area
3800 where you have to do a bit more digging to provide your own capacity or there is maybe only one provider of national roaming distance capacity, which by default either by pure [indistinct] or just pure monopoly in options in terms of what you can use.

3805 Then the price to manufacture and to [indistinct] traffic to the
exchanges where your main equipment sits, is a bit higher. So, we
did say that pricing is done on a National basis, but if the Regulator
wanted more granularity, we would understand, differentiating
between rural areas and urban areas. Because we do believe that
there is abandoned choice in the urban areas, but in the rural areas
3810 then your options in terms of really providing the services become
limited.

It also talks to a roaming[?], if you sync roaming, you could be
wanting it for coverage because you have never had it before .. in
that area, which applies more in the rural areas, but in urban areas
3815 you can get a network roaming for better options. For faster
[indistinct], for access, for roaming in places that are difficult for the
signal to reach and those of things.

So, that is where we said we think the roaming market is already
competitive in that the number of providers of old coverage roaming
and capacity roaming, but we think that if the Regulator wanted to
3820 go further and be very granular, then in the, only in the
circumstances of separating between urban areas *versus* rural
areas, we think it might have some, some interesting outcomes.

MR (Andrew) : Thank you Shenge. Louw, your contribution?

3825 MR (Louw) : Yes Ryan, if one looks at the [indistinct]
specifically with aerial[?] differences, the fact that there is an effect
of the site market, specifically begin urban and rural. And I am
going to mention just a few, so those are firstly just access to sites
often in urban areas, you might find that you become more reluctant
3830 to provide access while in rural areas you have got multiple of
choices of placing sites.

Then there is obviously a substitute in terms of structures, urban
areas we have a multiple of sites, specifically with the latest

3835 technology you are able to deploy sites using poles and land post
which is not available in rural areas. You would also likely find that
the investigation of sites in urban areas, driven by [indistinct]
deployment is more prevalent. [indistinct] are also more prevalent
in urban areas and not in rural.

3840 And it is partly driven because of the difference in demands of site
access, rural areas you will find other operators again, use of
national roaming. And don't deploy their own networks and as a
result, it is also a lower demand for, in those areas and then there is
obviously things like power and access to those sites, is more
difficult in ruralness.

3845 For that reason, there is, and there is plenty others as well. Then
there is clear distinction between at least those two markets and it
would be sub-settled that and bearing in mind that the facility
leasing regulations has an effect and we have [indistinct] that has
their own policies in place to govern access which may not be
3850 available, applicable in rural areas. It is not a metro posing remedy
in the form of site access in a municipal area.

MR (Andrew) : Thank you, Louw and thank you, Shenge,
back to you, Ryan?

3855 MR HAWTHORN: Thank you and then just a, just a last question
on this the, the sub national kind of idea. You know, I think in in
your submission you say that accounting separation is impractical in
the context of Southern National regulation. And I mean, so, but,
and does that not suggest then that we should regulate, regulate
things like site access and roaming on a national basis?

3860 I mean, if remedies at a sub-national level are not feasible[?], at
least in your submission?

MR (James) : So, I think that is, sorry, that is not the, if you like, it is, meaning I think that the point around that country separation was a very specific point. But I think also every time that we take roaming, then what we said is that to the extent that roaming would be regulated. You know that regulation should really focus, focus on those areas in South Africa where it is not, where in structure competition is not, is not possible.

And you see examples of that in other jurisdictions where particularly where new entrance would come in and regulators required incumbents to offer roaming services to a, for the time limited period to a new entry, or in particularise the country. So, that is possible. There is a specific, rand, in [indistinct] separation of remedy. And how you .. you might apply that on a subnational phase.

But I think if you, if you like. I think there is a slide with [indistinct] and you will get my analogy better [indistinct] out here, but almost to the sort of tail like in a dog if you were to say, well just be calm, here is a [indistinct] operations difficult on a subnational level. We will therefore impose the remedy across the whole country. I think that will be the wrong, the wrong approach to this. Andrew, anything you would like to add?

MR (Andrew) : No, no, it is sufficing James.

MR HAWTHORN: Okay thanks, thanks very much. And then this is just a question to Shenge, I mean does it - if your cost .. if Vodacom's costs are sort of higher in the rural areas because (you know) there isn't such a reliable grid and it's back hall expenses and all of this kind of thing, does that imply that Vodacom's prices seem to be higher in the rural areas? Is that a correct sort of inference to make that the higher cost of manufacturing a Giga .. is the way that you put it and so therefore there are higher prices in

rural areas, whether it be for site access or other wholesale services or retail services?

3895 MR (Shenge) : Yes, I will answer that. Thanks for the question. So the intends is absolutely the opposite. The intends is, as, as we have it now, when we offer roaming, as an example, we offer it nationally and what we then do in, in so doing, we then land the costing so that it is a flat rate across nationally with no exclusions, including in rural places.

3900 As a result then we manage to, we manage to suck in that extra cost of providing the services in the rural areas. Likewise, on the retail side, the intent is to make the rural areas at the very, at the very least be priced the same as the urban areas, even though our cost is actually not evenly distributed. So that is the intent, that is
3905 what we are doing on national roaming as well.

We provide a flat rate, even though we do not, we do not, even though we do not have the exact same cost across, across the board. Let my other colleague talk specifically into, into site access.

3910 MR (Andrew) : Ja no, thank you for that, Shenge. Now I am just going to ask Hennie for, for his contribution, and then Ryan, we managed to get Johnny and I do want to give the Authority the benefit of the doubt, because then, then Johnny can just respond to the question of how customers choose networks, that was your first question.

3915 And then just also something around, around a pricing and how it can regionally change in terms of the, your question on geographic market definition. So, so I will have Johnny comment on both, but I just wanted Max, sorry I just wanted Hennie first just to respond to your last question.

3920 MR (Hennie) : Ja thanks Andrew. Ja just to add Shenge provided some examples as to (you know) how to cost, to provide by different area and I think the other important point would also be traffic density Ryan, so, (you know) as you go to the outlining areas, it becomes less traffic dense and that would (you know) also have a
3925 significant impact on on the cost to provide.

Or, so I think that, that would be other consideration. And then just ja, then just over to Johnny, they have got the two questions if we have noted it correctly Ryan?

MR HAWTHORN: Thank you.

3930 MR (Hennie) : So, ja.

MR (Johnny) : [Indistinct – voice very soft], if I can just first repeat the question to ensure that I am correct. The question was how do customers choose networks, is that correct?

MR HAWTHORN: Yes that is correct and specifically this point
3935 about you know, do they choose data, do they choose voice, do they choose voice then data or data then voice? Does SMS matter, etcetera?

MR (Andrew) : Johnny, Johnny if I may, if you can just please speak up a bit, because we are finding it difficult to hear you. So if
3940 you don't mind speaking up Johnny, thanks, hey.

MR (Johnny) : No problem, are you able to hear me clearly here?

MR (Andrew) : Yes, that is much better thanks.

MR (Johnny) : Okay thank you. Specifically in relation to
3945 prepaid customers, with the massive [indistinct], what we actually measure and what we believe is the, the basis that customers will make preferences to which network to choose, is based on the four

3950 main pillars. It is basically around the strength of the brand, the network quality that is provided. The service that is specifically and how they are actually resolving in [indistinct] calling into call centre.

3955 As well as the value that is actually provided. We measure this across [indistinct] is across all the network operators, specifically to bench mark us against the [indistinct]. Vodacom does lead and consistently leads the market in terms of [indistinct]. And that is what we, it is inference to believe that customers used to actually benchmark against these pillars, how they would actually choose the networks.

3960 Specifically around the actual distribution costs and also the distribution networks that exist, there are extensive [indistinct] to pronunciation, where there is abundance of choice consumers can go through to establish retail centres as well as spaza shops with [indistinct] distribution, where a starter packs are, Vodacom starter packs are available, as they are clearly available for all other operators. And a choice is given to the customer, to be the coaches or receive, sorry a starter pack, relevant to that network, or if not
3965 wanting a new MSID to be allocated, you have the option to port out of Vodacom and port into another network and *vice versa* from any other network into Vodacom.

3970 Whilst your question around is there a way that we communicate around voice data request [indistinct] value. We do not necessarily [indistinct] to differentiate solely on type, which means effectively there is almost [indistinct] value communication that is pushed down our customers.

3975 From everything above the line that would look at the best value on voice offers, data offers and [indistinct] terms where we would highlight either voice specific offers or data specific offers and how we manage and offer customers on our base offers, that isn't

necessarily data, any [indistinct] for communication services, very much driven on either voice or data.

3980 So the call out will potentially be upgraded if we do see that the communication to customers, that perhaps they aren't as data eccentric, they have been using our services as much as they are on voice. You will then institute campaigns specifically just [indistinct] data usage and the, and *vice versa* as well, which
3985 stimulate the campaigns to increase voice restriction if we see that they are using this voice.

So it isn't that we have specific data or voice or prepaid matter offerings. We do talk around all of our products and services and inherent value that they have, in communicating with our customers.

3990 MR HAWTHORN: It was one last one, no, it was it.

MS KEDAMA: Good then. Thank you very much, gentlemen. I just have to end the session here. Your allocated time is up. In the interest of not being accused of anything of overindulging you or whatever, but your time that has been allocated, which is equal for
3995 all our, heads come to, to make representation is, we actually do thank you for coming to make the representations and comprehensively indulging us at, from when we meet the submission and when we have the one-on-ones and after until today, we really thank you for all the time given [indistinct] thank you very much.

4000 MR [??]: Yes, thank you very much and thank you yes.

CHAIRPERSON: [Indistinct] gentleman, sorry, I have forgotten that we note on Teams having a meeting, actually on here, so I have to close. And the last, this was, the Vodacom representations were the last one for today, which brings to
4005 conclusion our session and also our proceedings for the day. The

hearings are continuing tomorrow, we are going to be starting with my opening speech at quarter-to-nine.

4010 Then the first guest or stakeholder will start presenting a plan of [indistinct]. I just want to take this opportunity to thank you our visual audience for bracing us with your presence, even though we don't see you physically. We really appreciate you taking your time to come and be part of this important process. Until tomorrow, have a good evening, thank you.

4015 Hi Sir, can you just please switch off the camera please? Thank you, we are done.

PROCEEDINGS ADJOURN UNTIL 27 OCTOBER 2020

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