
Economic Assessment

Response to Public Consultation on ICASA's Information Memorandum

RBB Economics, 2 November 2021

1 Introduction and Executive Summary

1.1 Introduction

1 In this document we provide our assessment of certain claims in the Information Memorandum (“the IM”) and Reasons document that relate to competition, and their implications for the Invitation to Apply on the spectrum licensing process (“the ITA”).^{1 2 3} We provide an overview of these claims in this section, and address each of these claims in more detail in turn in the remainder of this document.

- First, the IM states that ICASA has assessed the state of competition in the mobile sector, with the information at its disposal in formulating the ITA. In setting out its assessment of competition, the IM references the Reasons document.^{4 5}
- Second, ICASA uses its competition assessment as the basis on which it categorises Vodacom and MTN as “tier one” operators (discussed further in section 3 below).⁶ ICASA proposes to discriminate against Vodacom and MTN in the ITA, by including an opt-in round, that takes place before the main auction, in which tier one operators are not eligible to participate.⁷

¹ The IM is published under Government Gazette, no. 45255, vol. 676, 1 October 2021

² IM, paragraph 6, page 4

³ Specifically, the ITA for International Mobile Telecommunications in respect of the provision of the mobile broadband wireless access services for urban and rural areas using complimentary bands IMT700, IMT800, IMT2600 and IMT3500 published in the Government Gazette 43768.

⁴ IM, Annexure A, paragraph 1, page 7

⁵ The Reasons document is published under notice number 697 of 2020, Government Gazette number 43970 on 4 December 2020. The competition assessment commences on page 78 of the reasons document.

⁶ IM, paragraph 1.2.4, page 9

⁷ IM, paragraphs 1.2.1 to 1.2.13, pages 8 to s10

- Third, ICASA sets out its objective to create no less than four credible national wholesale operators (in addition to the wholesale open access network (“WOAN”). It plans to design the ITA to achieve this objective, in particular by reducing the spectrum that would otherwise be available to be freely bid on by the operators that have the highest value for, and could make most use of, that spectrum. In the Reasons document, ICASA states its view that “*competition between more rather than fewer competitors is likely to be the most effective means of enhancing competition*”.⁸

It goes on to set out its position that there should be no fewer than four *credible* national wholesale operators in the market, in addition to the WOAN (which it considers will be a fifth credible national wholesaler).⁹ In order to promote the operation of four credible national wholesale operators (excluding the WOAN), ICASA concludes that it is necessary to impose spectrum caps both on the sub-1GHz and overall spectrum holdings to the ITA.¹⁰ ICASA also states that it will reserve a substantial spectrum allocation for the WOAN, in order to ensure that it has sufficient access to spectrum to be able to credibly compete with other national operators.¹¹

2 In the remainder of this document, we set out our assessment of the claims made by ICASA, either in the IM, or related documents (in particular the Reasons document), that relate to these key points. In particular:

- Section 2 addresses ICASA’s claim that it has undertaken an assessment of the state of competition and the findings thereof.
- Section 3 examines the state of competition (both according to ICASA and our own view) and the classification of Vodacom and MTN as “tier one” operators.
- Section 4 considers ICASA’s aim to use the rules of the ITA to create no less than four national wholesale operators, the establishment of the WOAN, and how to achieve an efficient allocation of spectrum.

1.2 Executive summary

3 For the reasons set out in further detail below, we find the following:

- ICASA has proposed to design the ITA in a way that dramatically restricts the availability of spectrum to the specific operators who have the best ability and incentive to bid aggressively for that spectrum (and hence generate substantial Government revenues), and to invest in the widespread application of that spectrum, for the greatest potential benefit to competition and consumers.
- The primary basis on which ICASA seeks to justify such a proposal is that ICASA has first performed an assessment of competition. However, ICASA’s assessment of competition is fundamentally undermined as it is based on unsettled findings, and investigations that are long out of date.

⁸ Reasons document, paragraph 37, page 97

⁹ Reasons document, paragraphs 40, 43, 44 and 61 to 70, pages 98, 99 and 107 to 111

¹⁰ Reasons document, paragraphs 1 and 2, pages 114 to 115.

¹¹ Reasons document, paragraphs 12 and 14, page 117.

- ICASA’s assessment of competition takes simplistic measures of market shares at a municipal level, and seeks to use these to justify conclusions about the likely impact on competition of the allocation of spectrum at a national level. This is clearly irrational, highlighted by the obvious fact that Telkom has long had by far the largest spectrum allocation, but has not been flagged as “dominant” in any municipality. Separately, ICASA’s assessment of competition at a municipal level is fundamentally inconsistent with the very nature of mobile services.
- ICASA’s own Reasons document states that South Africa’s mobile data prices are comparable to those in other countries, that South Africans enjoy a higher quality of data services than other African countries, and that South Africa’s overall spectrum assignments are low, with Vodacom and MTN being more spectrum constrained than Cell C and Telkom. These high-level observations alone point towards the obvious conclusion that operators with the greatest ability and incentive to invest in bidding for and applying additional spectrum should be able to access more, rather than less, spectrum. ICASA irrationally comes to the opposite conclusion.
- ICASA’s analysis of the state of competition is inconsistent with the facts of this market, and ICASA repeatedly fails to adequately consider the intensity of competition between each operator. MTN and Vodacom compete vigorously and effectively with one another, and it is this competition that has led to substantial benefits. MTN has invested tens of billions of Rands in its network every year, resulting in national data connectivity coverage, the delivery of data volumes that have grown exponentially, network quality that has continuously improved, and pricing that has fallen dramatically each year.
- There is simply no rational basis on which to consider MTN “dominant”, and certainly no basis on which to lump MTN together with Vodacom. MTN is far smaller and less profitable than Vodacom, and MTN competes on a more equal footing with some of its other rivals such as Telkom, which has grown substantially since 2019 and now serves roughly double the mobile data volumes delivered by MTN. MTN is additionally constrained by other well-resourced rivals (such as Liquid and Rain).
- ICASA’s objective to support no less than four credible national wholesale operators (plus the WOAN), is unjustified by any rational assessment of competition. ICASA’s objective is directly contradicted by significant evidence of how competition works effectively with limited numbers of operators in mobile communications markets around the globe (see for example the US, UK, Australia, Germany and Austria). While the initial introduction of two or three mobile operators may lead to more intense competition, in markets with high and recurring fixed costs (associated with network investments), and a finite total amount of spectrum, the addition of further operators may not be sustainable (and hence may not even be possible, especially in countries like South Africa, with relatively sparse population density and poor consumers). Reserving spectrum for too many additional, smaller operators significantly reduces the potential for much more vigorous and effective competition, by removing spectrum that could have been applied far more efficiently by those operators that have the greatest ability to bid for an invest in applying that spectrum.

2 ICASA’s Assessment of Competition

- 5 ICASA’s assessment of the state of competition, as presented in the Reasons document, is primarily based on the preliminary findings of its mobile broadband services inquiry (“MBSI”) and, to a lesser degree, on the Competition Commission’s data services market inquiry (“DSMI”).
- 6 We discuss the claims made in the IM and Reasons document in more detail below, but we note here that, to the extent that the Reasons document relies on the findings of ICASA’s MBSI, these findings are not based on a sound economic assessment, and we understand are denied by MTN. To the extent that claims in the IM and Reason document relies on the DSMI findings, we note that not only are these findings highly contested, but this market inquiry produced non-binding recommendations. Accordingly, we understand that it was not legally necessary for MTN to review the Commission’s findings. Additionally, although we understand that a “settlement” was not legally necessary, as the DSMI produced non-binding findings, the Competition Commission and MTN entered into a “settlement” through a consent agreement under which MTN agreed to drop pre-paid data prices. The consent agreement was entered into *“in full and final settlement of the findings in the final report of the DSMI that MTN charged high prepaid data prices in South Africa.”*¹²
- 7 Separately, both of these inquiries are based on a view of the market from 2017 to 2019, and therefore do not provide an up-to-date assessment of the state of competition. There have been a number of significant changes in the market since 2019, including the roll-out of 5G services, and Telkom’s significant and rapid growth in the market (discussed further in section 3.2.2 below). As such, the view of the market presented in these inquiries, which then informs ICASA’s auction design, is not an accurate reflection of the current state of competition.
- 8 Accordingly, the starting point of ICASA’s assessment (i.e. its view of current competition) is flawed, for the reasons expressed above and in section 3.2 below. As such, the auction design that is ultimately proposed in the IM and Reasons document is flawed and likely to hinder, rather than encourage, competition in the market going forward. We discuss this further in sections 4.2 and 4.3 below.

¹² See <https://www.compcom.co.za/wp-content/uploads/2020/07/Competition-Tribunal-confirms-MTN-Competition-Commission-settlement-to-drop-data-prices.pdf>

3 The state of competition

3.1 ICASA's view

- 9 In this section, we first set out ICASA's assessment of the state of competition in the market, at both the retail and wholesale levels, as presented in the Reasons document. We then set out our own assessment of the state of competition.
- 10 The main claims made by ICASA in the Reasons document regarding the state of competition are as follows:
- Barriers to entry in the market are high (both for facilities-based entry and retail/services-based entry).¹³
 - The retail market is highly concentrated at a national level, where MTN and Vodacom *"have a combined share of almost 75%"*. The MBSI findings, which considered concentration at a municipal level, are also cited. Here ICASA found that Vodacom was dominant (i.e. has a market share of more than 45%) in 110 municipalities, MTN in 78, Cell C in one, and Vodacom and MTN was both dominant in 4 municipalities.¹⁴
 - The MBSI is cited again with respect to the market for site access, which is found to be concentrated with MTN and Vodacom *"collectively" accounting for just under 70% of the market*. In addition, the findings allege that non-metro areas are more concentrated than metro areas. ICASA states that, given site access market shares at a municipal level, *"Vodacom, MTN and Telkom are dominant in a number of municipalities"*.¹⁵
 - The level of competition at the retail level is strongly linked to that of the wholesale level and *"a high degree of vertical integration may be harmful to competition and may give rise to significant market power at the wholesale and retail levels"*. High roaming costs and limited infrastructure sharing are cited as evidence of this (as found in the MBSI).¹⁶
 - Mobile data prices are neither extremely high nor low in relation to other comparable countries, and South Africans enjoy a higher quality of data services compared to other African countries. South Africa is also found to perform reasonably well compared to similar countries that would be considered its peers (e.g. Brazil, Peru, Mexico, Thailand, and Malaysia).¹⁷
 - South Africa's overall spectrum assignments are relatively low compared to those of BRICS countries and the countries classified as "Advanced" by the ITU.¹⁸
 - When the number of subscribers on each network is taken into account, Vodacom and MTN are more spectrum constrained compared to Cell C and Telkom.¹⁹

¹³ Reasons document, paragraphs 9 to 13, page 84

¹⁴ Reasons document, paragraph 14 to 16, pages 84 to 86

¹⁵ Reasons document, paragraph 17 to 19, pages 87 and 88

¹⁶ Reasons document, paragraph 20 to 21, pages 89 to 90

¹⁷ Reasons document, paragraphs 26 to 27, page 92

¹⁸ Reasons document, paragraph 31, page 97

¹⁹ Reasons document, paragraph 29, page 96

- 11 Based on these findings, the Reasons document defines “tier one” operators as those wholesale national operators that have a retail market share above 45% in more than 10 municipalities (i.e. MTN and Vodacom), and “tier two” operators for those that have a retail market share of below 45% in less than 10 municipalities (i.e. Telkom and Cell C).^{20 21} Sub-national RAN operators are those that have their own RAN network, but only operate in limited parts of the country (i.e. Rain and Liquid Telecoms).²² The Reasons document (read together with the IM) goes on to set out ICASA’s intention to include an opt-in round for the ITA (which takes place before the main auction) from which MTN and Vodacom will be excluded, on the basis of their status as tier one operators.²³

3.2 Our assessment

- 12 In this section, we provide our own assessment of ICASA’s views, with particular consideration of how the market has continued to evolve since 2019.

3.2.1 The use of local market shares to inform national spectrum allocations

- 13 First, the Reasons document relies on its assessment of competition and findings of dominance in municipal markets in order to define tier one and tier two operators on a national basis and proposes to discriminate against tier one operators in obtaining spectrum, which is a national resource. Not only is this extrapolation of a putative local dominance assessment to a national level not justified by ICASA, but there is simply no logical linkage from shares of local retail market activity, and national shares of spectrum allocation. This irrationality is clearly seen in that Telkom has had far more spectrum than either Vodacom or MTN, but Telkom does not have a retail market share above 45% in any municipality.
- 14 Separately, the approach of assessing concentration at a municipal level is inconsistent with the very nature of mobile services, which are, by definition, provided to a single consumer as he or she moves across different regions, and which connect that consumer either to consumers in other regions, or to access information located in other regions appears. Assessing competition on a local level also disregards other critical decisions operators make at a national level, such as spectrum planning, national pricing, promotions, coverage and technology layer planning.²⁴
- 15 MTN and Vodacom have almost 100% national coverage, as do Cell C, Telkom, and other operators (under their roaming and other network sharing arrangements). This means that it is very likely that any one of these operators would be able to respond to a retail price change by any other operator in any province or sub-provincial area. Notably, such supply-side substitution would not require MNOs to expand their operations from adjacent geographic

²⁰ Reasons document, paragraph 1, page 83

²¹ As an aside, although we understand that it is ICASA’s intention to categorise MTN and Vodacom as “tier one” operators, and others as “tier two” operators, there is a significant flaw in these criteria. In particular, stated differently, the definition of a “tier two” implies that an operator has a market share above 45% in 224 (of South Africa’s 234) municipalities. As per ICASA’s own assessment of concentration at a municipal level, no operators would be classified as a tier two operator. See <https://mybroadband.co.za/news/telecoms/384524-strange-blunder-by-icasa-causes-spectrum-auction-mess.html>

²² Reasons document, paragraph 2, page 83

²³ IM, paragraphs 1.2.1 to 1.2.13, pages 8-10

²⁴ MTN’s views on why the market should be defined nationally were previously set out in its response to the MBSI. See *MTN’s Response to the ICASA Discussion Document on the Market Inquiry into Mobile Broadband Services in South Africa*, 27 February 2020, paragraphs 3.1.4 to 3.1.6 and 3.1.20, pages 22 to 30

areas since multiple MNOs (particularly MTN and Vodacom) already have national coverage and a national presence. The ease with which operators can respond to each other's retail pricing behaviour across the country means no single province or sub-provincial area is insulated from exterior competitive forces.

- 16 When properly accounting for the role of supply-side substitution, and indeed the fundamental nature of the supply of mobile services throughout South Africa, the only logical conclusion is that there is a national market for retail mobile services.

3.2.2 Competition is vigorous and effective

- 17 Secondly, the view of competition presented in the Reasons document fundamentally misrepresents the state of competition in market. Not only is the Reasons document based on outdated data (as noted above), but in our view, competition in the market is effective and intense.
- 18 Even on the basis of ICASA's own Reasons document, its high-level description of competitive outcomes should not raise serious competition concerns. The Reasons document states that mobile data prices are neither extremely high nor low in relation to other comparable countries, that South Africans enjoy a higher quality of data services compared to other African countries, and that South Africa also performs reasonably well compared to similar countries that would be considered its peers. South Africa's overall spectrum assignments are relatively low compared to other countries, and Vodacom and MTN are more spectrum constrained compared to Cell C and Telkom.
- 19 On the basis of these high-level observations alone, not only is it clear that competition in South Africa is effective, but moreover that the obvious constraint that prevents South African operators from offering better quality services, at even lower prices, is the failure to allocate sufficient spectrum. The obvious and logical solution is to allow operators with the ability and incentive to invest in bidding for, and applying additional spectrum, to access more, rather than less spectrum. However, ICASA comes to the opposite conclusion. As we discuss in the remainder of this section, ICASA's analysis of the state of competition is simply inconsistent with the facts of this market, and ICASA repeatedly fails to adequately consider the intensity of competition between each group of operators.

3.2.2.1 Competition between MTN and Vodacom

- 20 In South Africa, there is intense competition between MTN and Vodacom. The claim that MTN is dominant, or somehow dominant on a combined basis with Vodacom overlooks the vigorous competition that exists between these two players as different and independent rivals.
- 21 The strong competition between MTN and Vodacom has driven these two operators to invest heavily in their network infrastructure, in the order of tens of billions of Rands per annum on a sustained (and even accelerating) basis.²⁵ MTN and Vodacom have effectively kept each

²⁵ See the MTN submission on ICASA's market inquiry into mobile broadband services, dated 27 February 2020, Figure 4. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-submission-on-the-market-inquiry-into-mobile-broadband-services>. Also see the MTN submission in respect of the Competition Commission's provisional report on

other in check, despite no other operators investing in providing mobile infrastructure and coverage at a national level, or investing nearly as heavily in their networks.²⁶

- 22 This competitive dynamic has been the source of substantial pro-competitive outcomes for more than 25 years. These outcomes include the expansion of mobile connectivity coverage in deep rural areas, the exponential growth in mobile data volumes, substantial improvements in network speeds and quality, drastic decreases in effective data prices, the repeated introduction of improved technology layers (such as 3G, 4G, and 5G) at shorter and shorter time intervals, and broadening geographic coverage with each of these technology layers on a more and more rapid basis for each subsequent technology.²⁷ As noted in the MBSI, and reiterated in the Reasons document, ICASA itself found that South African consumers have enjoyed the benefits of these high quality services.²⁸

3.2.2.2 Differences between MTN and Vodacom

- 23 The Reasons document also ignores the substantial differences between Vodacom and MTN. In FY2020, Vodacom (SA) generated revenues of around R70 billion, which is approximately 53% higher than the MTN (SA) revenues of R45 billion in FY2020. Vodacom (SA) also had an EBITDA value approximately 64% higher than that of MTN (SA) in FY2020, indicating that Vodacom is significantly more profitable than MTN.²⁹
- 24 Moreover, MTN's market share dropped significantly between 2011 and 2020, from 40% to less than 30% (i.e. below the dominance threshold contained in the Competition Act).³⁰ In contrast Vodacom has enjoyed a relatively steady market share of around 40% to 45% over the same period.³¹

3.2.2.3 MTN and Telkom

- 25 In many respects, MTN shares more in common with its other rivals than it does with Vodacom. By way of example:

the data services market inquiry, dated 19 June 2019, Figure 11. Available: <http://www.compcom.co.za/wp-content/uploads/2019/08/2019-06-14-MTN-to-CC-Non-Confidential.pdf>. Capital expenditure information obtained from annual reports of MTN, Vodacom, Cell C, and Telkom.

²⁶ See the MTN presentation on the ICASA broadband services market inquiry, dated October 2020. Slide 7. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-presentation-on-mobile-broadband-services-inquiry>. Also see: <https://mybroadband.co.za/news/cellular/394155-it-will-cost-cell-c-over-r223-billion-to-catch-up-with-vodacom-and-mtns-networks.html>

²⁷ See the MTN submission on ICASA's market inquiry into mobile broadband services, dated 27 February 2020, Figure 2, Figure 3, and Figure 6. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-submission-on-the-market-inquiry-into-mobile-broadband-services>. Also see the MTN submission in respect of the Competition Commission's provisional report on the data services market inquiry, dated 19 June 2019, Figures 11, 13, 14, 16, 18, and Tables 4, 5 and 6. Available: <http://www.compcom.co.za/wp-content/uploads/2019/08/2019-06-14-MTN-to-CC-Non-Confidential.pdf>. Also see the MTN presentation on the ICASA broadband services market inquiry, dated October 2020, slides 6, 7, 8, and 9. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-presentation-on-mobile-broadband-services-inquiry>

²⁸ See Government Gazette No. 44337, page 23, paragraph 82, and Reasons document, paragraphs 26 to 27, page 92

²⁹ See MTN's Annual Financial Statement for the year end 31 December 2020. Pages 39 and 42. Available: <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf>. Also see Vodacom's Annual Financial Statement for the year end 31 March 2020. Pages 44 and 45. Available: <http://vodacom-reports.co.za/integrated-reports/ir-2020/documents/consolidated-annual-financial-statements-2020.pdf>

³⁰ South African Competition Act. Section 7

³¹ See the MTN presentation on the ICASA broadband services market inquiry, dated October 2020, slide 5. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-presentation-on-mobile-broadband-services-inquiry>. This information is based on <https://businesstech.co.za/news/mobile/319378/mobile-market-share-2019-vodacom-vs-mtn-vs-cell-c-vs-telkom/> and <https://mybroadband.co.za/news/business-telecoms/357205-mobile-subscribers-in-south-africa-vodacom-vs-mtn-vs-telkom-vs-cell-c.html>

- Telkom Mobile serves approximately 2.6 million of the (more lucrative) post-paid customers, which is comparable to the approximately 3.3 million served by MTN. By way of comparison, Vodacom serves almost double this number of post-paid subscribers (at around 6.1 million).³²
- The Telkom market update for the nine months ended 31 December 2020 showed that, at a group level, Telkom generated over R32 billion of turnover in this period, which is similar to the approximately R34 billion of MTN (SA).³³ Telkom is also significantly outpacing MTN (SA) in terms of overall revenue growth. Between FY2018 and FY2020, Telkom's revenue grew by approximately 8.5% (a compound annual growth rate of around 4.2%).³⁴ In contrast, the revenues of MTN (SA) grew by just approximately 1.8% over this period (a compound annual growth rate of around 0.9%).³⁵
- The results from Telkom's Mobile division show an even clearer picture of its growth. For example, Telkom Mobile grew its annual mobile data revenues by over 46%, to over R9 billion, comparable to the roughly R11 billion earned by MTN (SA), for the nine-month period ending 31 December 2020.³⁶ Telkom is also outpacing MTN in terms of data revenue growth more generally. Between FY2018 and FY2020, Telkom's data revenues grew by more than 135% (a compound annual growth rate of around 53%).³⁷ In contrast, between FY2018 and FY2020, the data revenues of MTN (SA) grew by only approximately 12.89% (a compound annual growth rate of around 6.25%).³⁸
- Moreover, in the nine-month period ending 31 December 2020, Telkom served almost double the volume of data traffic served by MTN (SA) (707 versus 375 petabytes).³⁹

³² Telkom – Market update for the nine months ended 31 December 2020, produced by the JSE SENS Department. Available: https://senspdf.jse.co.za/documents/SENS_20210208_S442136.pdf. Also see the MTN presentation on the ICASA broadband services market inquiry, dated October 2020, slide 5. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-presentation-on-mobile-broadband-services-inquiry>. This information is based on <https://businesstech.co.za/news/mobile/319378/mobile-market-share-2019-vodacom-vs-mtn-vs-cell-c-vs-telkom/> and <https://mybroadband.co.za/news/business-telecoms/357205-mobile-subscribers-in-south-africa-vodacom-vs-mtn-vs-telkom-vs-cell-c.html>

³³ Telkom – Market update for the nine months ended 31 December 2020, produced by the JSE SENS Department. Page 1. Available: https://senspdf.jse.co.za/documents/SENS_20210208_S442136.pdf. The MTN figure has been estimated by calculating 9 months-worth of revenues for MTN (SA), for the financial year ended 31 December 2020 (i.e. R45 billion x 75%). See MTN's Annual Financial Statement for the year end 31 December 2020. Pages 39 and 42. Available: <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf>

³⁴ See Telkom SA SOC Ltd Integrated Report for the year ended 31 March 2020. Page 136. Available: <http://telkom-reports.co.za/reports/ar-2020/pdf/telkom-integrated-report-2020.pdf>. Also see Telkom SA SOC Ltd Integrated Report for the year ended 31 March 2019. Page 127. Available: <http://telkom-reports.co.za/reports/ar-2019/pdf/full-integrated.pdf>

³⁵ See MTN's Annual Financial Statement for the year end 31 December 2020. Page 39. Available: <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf>. Also see MTN's Annual Financial Statement for the year end 31 December 2019. Page 48. Available: <https://www.mtn.com/wp-content/uploads/2020/03/MTN-Group-2019-annual-results.pdf>

³⁶ Telkom – Market update for the nine months ended 31 December 2020, produced by the JSE SENS Department. Page 1. Available: https://senspdf.jse.co.za/documents/SENS_20210208_S442136.pdf. The MTN figure has been estimated by calculating 9 months-worth of data revenues for MTN (SA), for the financial year ended 31 December 2020 (i.e. R14.6 billion x 75%). See MTN's Annual Financial Results for the year ended 31 December 2020. Page 20. Available: <https://www.mtn.com/wp-content/uploads/2021/03/MTN-Results-complete-booklet-1.pdf>

³⁷ See Telkom SA SOC Ltd Integrated Report for the year ended 31 March 2020. Page 52. Available: <http://telkom-reports.co.za/reports/ar-2020/pdf/telkom-integrated-report-2020.pdf>

³⁸ See MTN's Annual Financial Statement for the year end 31 December 2020. Page 20. Available: <https://www.mtn.com/wp-content/uploads/2021/04/MTN-Annual-Financial-Statements.pdf>. Also see MTN's Annual Financial Statement for the year end 31 December 2019. Page 16. Available: <https://www.mtn.com/wp-content/uploads/2020/03/MTN-Group-2019-annual-results.pdf>

³⁹ Telkom – Market update for the nine months ended 31 December 2020, produced by the JSE SENS Department. Available: https://senspdf.jse.co.za/documents/SENS_20210208_S442136.pdf. MTN figure provided by MTN.

3.2.2.4 Competition between MTN and Cell C, Telkom, Rain, Liquid

- 26 MTN experiences significant competitive constraints from rival operators other than Vodacom, such as Liquid, Rain, Cell-C, and Telkom. The available evidence suggests that these rivals are well-resourced, and are in no need of unjustified government assistance in the spectrum auction process.
- 27 As noted above, MTN's national subscriber market share has declined significantly over the past decade. In contrast, Cell C and Telkom's national market subscriber shares have increased dramatically. Cell C's increased its subscriber base by 100% over the period 2011 to 2018. Telkom Mobile more than quadrupled its subscriber numbers in just four years from 2016 to 2020 and, as mentioned above, is comparable to (or in some cases outperforms) MTN in terms of mobile data revenues, mobile data volumes, and post-paid subscribers.⁴⁰
- 28 Rain was established in 2017, following the rebranding of Wireless Business Solutions ("WBS"), which itself was acquired by Multisource Telecoms in 2015 (a company backed by billionaire Paul Harris and former FNB CEO Michael Jordaan).⁴¹ Rain also has the backing of JSE-listed African Rainbow Capital Investments Ltd ("ARC"), which is in turn owned by billionaire Patrice Motsepe, and holds a 20.7% shareholding in Rain. Rain is the largest contributor to ARC's intrinsic portfolio value of R12.8 billion.⁴² In September 2020, ARC valued its share of Rain at R3.1 billion, giving the operator a total valuation of R15 billion (which, at the time, exceeded Telkom's market capitalization valuation of R13.4 billion).^{43 44} In its interim results for the six months ending December 2020, ARC revalued its shareholding in Rain to R3.5 billion, bringing Rain's valuation to nearly R17 billion.⁴⁵ ARC also provides Rain with substantial financial backing. In a business update webinar held in September 2021, ARC explained that Rain was "fully funded" to achieve its objective of deploying 1500 5G sites by December 2021, following a funding boost raised by the ARC Fund in mid-2020.⁴⁶
- 29 Liquid was established in 2005, and operates in 12 countries. Its parent company, Econet Global ("Econet"), operates in Africa, Europe, South America, and the East Asian Pacific Rim. Liquid built Africa's first terrestrial fibre network stretching between Cape Town and Cairo, and

⁴⁰ See the MTN presentation on the ICASA broadband services market inquiry, dated October 2020, slide 5. Available: <https://www.icasa.org.za/legislation-and-regulations/mtn-presentation-on-mobile-broadband-services-inquiry>. This information is based on <https://businesstech.co.za/news/mobile/319378/mobile-market-share-2019-vodacom-vs-mtn-vs-cell-c-vs-telkom/> and <https://mybroadband.co.za/news/business-telecoms/357205-mobile-subscribers-in-south-africa-vodacom-vs-mtn-vs-telkom-vs-cell-c.html>

⁴¹ IT Web (2015). Multisource gets WBS' spectrum licences. Available: <https://www.itweb.co.za/content/mraYAyMoZLk7J38N>

⁴² ARC (2020). Condensed Unaudited Interim Results for the six-month period ended 31 December 2020. Available: <https://arci.mu/wp-content/uploads/2021/03/IRResults21.pdf>

⁴³ ARC (2020). Annual financial results announcement for the period to 30 June 2020 – 15 September 2020. Available: https://presentations.corpcam.com/webcast16x9_delayed.aspx?id=ARC15092020

⁴⁴ Telkom's market capitalization value as at 30 September 2020, calculated as outstanding shares multiplied by the prevailing share price. Telkom had 511,140,239 outstanding shares, and a share price of R26.23 on 30 September 2020. See Telkom Group interim results for the six months ended 30 September 2020. Available: https://www.telkom.co.za/ir/apps_static/ir/pdf/financial/pdf/TelkomInterimResults-longformannouncement.pdf, and TKG Historical Price. Available: https://za.investing.com/equities/telkom-historical-data?end_date=1603922400&st_date=1596232800

⁴⁵ ARC (2020). Condensed Unaudited Interim Results for the six-month period ended 31 December 2020. Available: <https://arci.mu/wp-content/uploads/2021/03/IRResults21.pdf>

⁴⁶ ARC (2020). Annual financial results announcement for the period to 30 June 2020 – 15 September 2020. Available: https://presentations.corpcam.com/webcast16x9_delayed.aspx?id=ARC15092020

remains Africa's largest terrestrial fibre network operator.⁴⁷ In February 2021, Liquid raised R12 billion in a bond sale, in order to refinance debt and fund their expansion across Africa.⁴⁸

30 Telkom, Rain and Liquid each also have access to spectrum bands that MTN does not, and some of these bands are particularly valuable for use in newer technologies such as 4G and 5G.⁴⁹ For example, we understand that Rain has access to spectrum in the 2.6GHz and 3.7GHz bands, Telkom has access to spectrum in the 3.5GHz band and a particularly large allocation in the 2.3GHz band, and Liquid has access to spectrum in the 850MHz, and 3.5GHz bands, whereas MTN does not have access to spectrum in any of these bands.

3.2.2.5 Conclusion on the state of competition

31 These observations refute any allegation that might be raised that MTN (and Vodacom) enjoy a ("collective") position of dominance. They are entirely inconsistent with the notion that MTN is "dominant" in the provision of mobile telephony services, when considering the proper economic definition of substantial market power, which requires firms to be able to act appreciably independently of their rivals. Finally, these observations also refute any claim that the mobile telephony space is duopolistic in nature.

32 As such, there appears to be no rational basis on which to classify MTN as a tier one operator or to deny it equal access to spectrum by excluding it from the opt-in round in the ITA. ICASA's proposition to exclude tier one operators in this way is also inconsistent with its own acknowledgment that MTN and Vodacom are more spectrum-constrained than Cell C and Telkom.

33 In summary:

- ICASA's approach to assessing competition at a municipal level is inconsistent not only with the very nature of mobile services, but also with the conclusions and outcomes that it determines on a national basis (including the discrimination against tier one operators in regard to the national allocation of spectrum).
- The notion that MTN and Vodacom are somehow dominant on a collective or combined basis fundamentally fails to acknowledge the vigorous competition that exists between these two players as different and independent rivals. MTN has acted as an important challenger to Vodacom, and has invested tens of billions of Rands in its network on an annual basis, to compete for subscribers and to provide better quality to consumers.
- It is this competition that has resulted in national data connectivity coverage, the delivery of data volumes that have grown exponentially, network quality that has continuously improved, and pricing that has fallen materially each year. ICASA itself notes that the quality of mobile services in South Africa is better than that of other African countries.

⁴⁷ See https://www.liquid.tech/about-us/our_story

⁴⁸ US Dollar value converted to Rands using the R14.18/\$ exchange rate as at 29 April 2021. See Bloomberg (2021). Africa's Largest Fiber Company Raises \$840 Million in Bond Sale. Available:

<https://www.bloomberg.com/news/articles/2021-02-25/africa-s-largest-fiber-company-raises-840-million-in-bond-sale>

⁴⁹ ICASA, 2016. Radio frequency use for bands above 1GHz. Available at:

<https://www.icasa.org.za/uploads/files/Spectrum-Usage-Availabilty-Q1-2016.xlsx> [Accessed 28 April 2021]

- MTN competes on a more equal footing with some of its other rivals than it does with Vodacom, and is competitively constrained by these other well-resourced rivals (such as Liquid, Rain and Telkom). Telkom in particular has grown significantly since 2019, when the MBSI (and DMSI) was concluded.
- ICASA itself acknowledges that the amount of spectrum allocated in South Africa is low compared to other jurisdictions, and that MTN and Vodacom are more spectrum constrained than Cell C and Telkom.
- There is therefore no rational justification for designating MTN as a tier one operator, nor for applying differential treatment to MTN (in favour of smaller operators) in the spectrum auction process.

4 ICASA's aim to create more national operators

4.1 ICASA's view

35 In this section, we set out ICASA's views on its objective to create a large number of national wholesale operators, before providing our own assessment.

36 ICASA states that "*competition between more rather than fewer competitors is likely to be the most effective means of enhancing competition, particularly in a concentrated market with high barriers to entry*".⁵⁰ The Reasons document indicates that, in order to encourage effective competition, ICASA is of the view that:

- it is justified to promote four *credible* national wholesale operators in the market;⁵¹
- in addition to four national wholesale operators, ICASA considers the WOAN will be a fifth credible national wholesaler;⁵² and
- a sixth or seventh wholesale national operator could also become a credible player in the medium to long term.⁵³

37 While the Reasons document notes that there are a number of factors that will influence an operator's credibility, it acknowledges that one of these is access to sufficient spectrum holdings.⁵⁴ The Reasons document moves on to consider how the outcome of the ITA might affect operators' ability to compete credibly within the market. It does so with a view to avoid the effects of a reduction in the number of competitors (i.e. the exit or consolidation of an existing operator) and support the existence of five wholesale national operators (including the WOAN) post-auction.⁵⁵ ICASA states that (i) the exit or consolidation of a national operator is expected to significantly reduce competition within the market, and (ii) the establishment of the WOAN is expected to reduce market concentration, enhance wholesale competition (with knock-on effects for retail competition) and would create efficiencies without the consolidation of existing players.⁵⁶

38 On this basis, ICASA justifies the following proposed interventions:

- designing spectrum portfolios to mitigate the risk of the exit or consolidation of Telkom or Cell C;⁵⁷ and
- the reservation of a significant portfolio of spectrum for the WOAN.⁵⁸

39 With the aim of supporting four national operators (excluding the WOAN), the Reasons document then considers what post-auction spectrum allocations might result in fewer than four credible national wholesalers. It uses this to inform its design of the auction in terms of

⁵⁰ Reasons document, paragraph 37, page 99

⁵¹ Reasons document, paragraph 43 and 44, page 101

⁵² Reasons document, paragraph 40 and 44, pages 100 and 101

⁵³ Reasons document, paragraph 44, page 101

⁵⁴ Reasons document, paragraphs 44, 54 and 55 and , pages 101 and 103 to 104

⁵⁵ Reasons document, paragraph 45, page 101

⁵⁶ Reasons document, paragraphs 1, 6 and 7, pages 108 and 110

⁵⁷ Reasons document, paragraph 1, page 108

⁵⁸ Reasons document, paragraph 1 and 4, pages 108 and 109

identifying any “*appropriate and proportionate*” measures that may need to be implemented to ensure the existence of four national operators post-auction, as well as to determine the exact spectrum portfolios that are proposed for the ITA.⁵⁹ On this basis, it concludes that it is appropriate to impose the following spectrum caps for the ITA:

- a sub-1GHz spectrum cap of no more than 2 x 21M Hz;⁶⁰ and
- an overall spectrum cap of 184MHz (which allows all tier 2 operators to add at least 40MHz of spectrum to their current holdings).⁶¹

40 Finally, the Reasons document sets out the below proposed portfolios for the ITA.

Figure 1: Proposed ITA spectrum portfolios

	700 MHz	800 MHz	2.6 GHz
Portfolio 1	2 x 10 MHz	-	-
Portfolio 2	-	2 x 10 MHz	-
Portfolio 3	2 x 10 MHz		1 x 10 MHz
Portfolio 4	-	2 x 10 MHz	1 x 10 MHz
Portfolio 5	2 x 5 MHz	-	1 x 20 MHz
Portfolio 6	-	2 x 5 MHz	1 x 20 MHz

Source: Reasons document, page 115

41 In addition, the Reasons document notes that the following spectrum will be reserved for the WOAN, on the basis that this would equip the WOAN with a comparable amount of spectrum as that which tier one operators currently hold.⁶²

Figure 2: Spectrum holdings to be reserved for the WOAN

	700 MHz	800 MHz	2.6 GHz	3.5 GHz
Portfolio 1	2 x 10 MHz	-	1 x 30 MHz	1 x 30 MHz

Source: Reasons document, page 117

⁵⁹ Reasons document, paragraph 71, 77, pages 111, 112

⁶⁰ Reasons document, paragraph 1, page 114

⁶¹ Reasons document, paragraph 2, page 115

⁶² Reasons document, paragraph 14, page 117

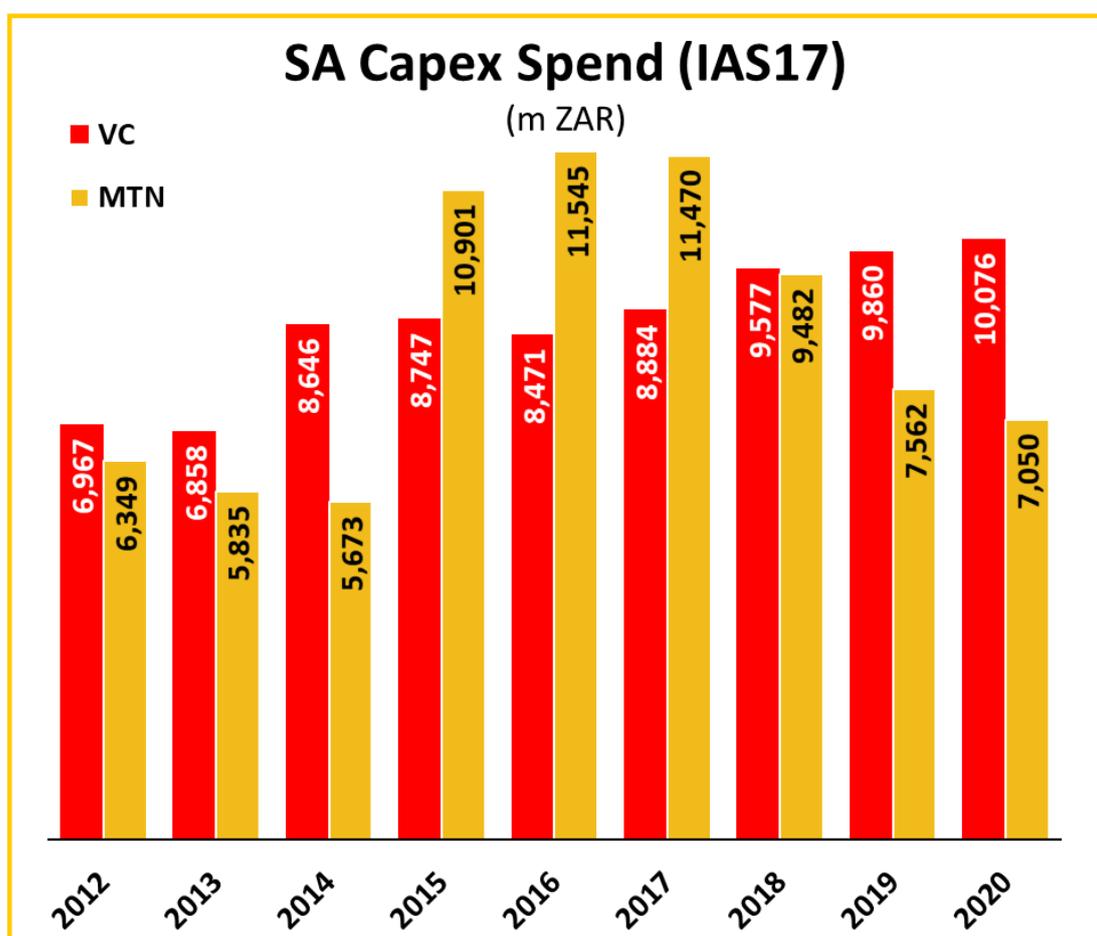
4.2 Our assessment

- 42 ICASA is of the view that the South African market can sustain five (or more) national wholesale operators (including the WOAN). ICASA has additionally licenced two further operators in Liquid and Rain, and we have been instructed that ICASA has in 2021 undertaken the assignment of spectrum to five further licensees. However, ICASA fails to provide any evidence or justification for its views on the sustainable number of operators beyond its position that more, rather than fewer, operators are likely to enhance competition.⁶³ ICASA fails to acknowledge that the optimal number of operators required to ensure effective competition, and deliver timeous pro-competitive benefits to consumers, will logically depend on several country-specific factors.
- 43 Economic principle indicates that in markets with homogenous products, or contestable markets, the competitive threat of just one vigorous outside option may be sufficient to maintain effective competition. More generally, too many competitors may be unsustainable in any market where there are material, ongoing fixed costs to operation, and thus significant economies of scale. Mobile telephony services clearly fits the mould of such a market, where operators are required to make ongoing fixed investments in their networks. Separately, and of most relevance to the current assessment, there is a limit to the total amount of spectrum available. Accordingly, while it is true that operators do require sufficient spectrum to be able to credibly compete, if spectrum is reserved for each additional operator, this directly removes the available spectrum for existing operators. The more operators there are in the market, the less spectrum each of them is able to obtain. As such, by taking away potential spectrum allocations from other operators, each additional operator in the market dramatically increases the investments operators are required to make in their networks, thereby reducing the critical economies of scale.
- 44 ICASA itself acknowledges that the overall amount of spectrum that has been licensed in South Africa is significantly lower than that in comparable countries.⁶⁴ This has forced South African operators, and MTN and Vodacom in particular, to invest significant amounts of money in their networks in order to compensate for spectrum constraints (and typically vastly in excess of the investments of other mobile operators). The extent of these investments is shown in the figure below.

⁶³ Reasons document, paragraph 52, page 103

⁶⁴ Reasons document, paragraph 31, page 97

Figure 3: Vodacom and MTN's capital expenditure, 2012 - 2020 (R' millions)



Source: MTN

Note: Also see the MTN submission in respect of the Competition Commission's provisional report on the data services market inquiry, dated 19 June 2019, Figure 11. Available: <http://www.compcom.co.za/wp-content/uploads/2019/08/2019-06-14-MTN-to-CC-Non-Confidential.pdf>

- 45 Ironically, ICASA states that it will only impose coverage obligations over 95% on the tier one operators, as ICASA believes that the tier one operators are in a position to achieve these coverage obligations while tier two operators may never be in such a position.⁶⁵ This very observation highlights the irrationality of ICASA's stated objective to create at least five (possibly six or seven, or even as many as twelve) operators. This is simply not within the realms of possibility.
- 46 We agree with ICASA that it is important that spectrum be allocated in a way that preserves or enhances competition. However, international experience indicates that this should be achieved through the efficient allocation of spectrum to a limited number of sustainable and efficient operators, and will not necessarily be achieved by sharing scarce spectrum across numerous operators.

⁶⁵ Reasons document, paragraph 45, pages 101 to 102

- 47 There are likely to be far more substantial benefits to competition by allocating spectrum to sustainable and efficient operators that have the ability and incentive to invest to apply those spectrum allocations effectively, and that can better deliver technological progress to the market. In addition, it is likely to be more beneficial for competition and consumers if spectrum is allocated to a limited number of competitors that might efficiently use that spectrum.
- 48 This view is widely accepted. By way of example:
- Coates (2012) explains that regulators should avoid “*overly restricting the incumbents’ potential for acquiring spectrum for themselves*”.⁶⁶ The author also notes that “*one must [take] a realistic view on the prospect of new entry ... [it] would be inefficient in that case to impose protective measures for potential new entrants who do not exist, leading to unused spectrum that could be better utilised by the incumbents for improving their services*”.⁶⁷
 - The 2012 Ofcom study on future mobile competition and the award of 800MHz and 2.6GHz spectrum (to which ICASA also refers in the Reasons document) notes that the goal of efficient spectrum allocation is to “*promote competition, rather than protect individual competitors*”.⁶⁸ It goes on to explain that “*[t]he benefits of greater competition [through the participation of smaller operators] may need to be weighed up against other considerations, such as potential economies of scale enjoyed by large firms*”.⁶⁹
 - Similarly, in its report concerning the UK 4G spectrum auction in early 2013, KPMG explains that “*ensuring the smallest market players or new entrants obtain spectrum is not necessarily an efficient outcome, [because] competition is not just about the number of players in the market but how effectively they compete with each other*”.⁷⁰
- 49 While in some countries four operators might still exist, the overwhelming global experience of the past few decades has been a move towards an efficient number of rivals. Competition can be much more effective with fewer operators. Indeed, even in more developed countries, where operators benefit from consumers with higher disposable incomes, smaller geographic areas, and higher population densities, competition is commonly effective with only two, three or four networks – and crucially in these situations the operators with the greatest ability and incentive to invest in bidding for and applying spectrum have had access to far more spectrum than any of the South African operators.
- 50 Considering the evolution of mobile telephony markets internationally, the changes occurring in these markets have been about finding ways for competition to work more effectively, at lower costs, and providing more benefit to consumers, with fewer national networks, rather

⁶⁶ John Coates (2012), Pro-competitive measures in spectrum auctions. Available: <http://www.dotecon.com/publications/pro-competitive-measures-in-spectrum-auctions/>

⁶⁷ John Coates (2012), Pro-competitive measures in spectrum auctions. Available: <http://www.dotecon.com/publications/pro-competitive-measures-in-spectrum-auctions/>

⁶⁸ Ofcom (2012), Assessment of future mobile competition and award of 800 MHz and 2.6 GHz. Footnote 32, page 24. Available: https://www.ofcom.org.uk/__data/assets/pdf_file/0031/46489/statement.pdf

⁶⁹ Ofcom (2012), Assessment of future mobile competition and award of 800 MHz and 2.6 GHz. Footnote 30, page 23. Available: https://www.ofcom.org.uk/__data/assets/pdf_file/0031/46489/statement.pdf

⁷⁰ KPMG (2014), What can we learn from the UK 4G auction? Page 6. Available: <https://assets.kpmg/content/dam/kpmg/pdf/2015/10/spectrum-uk-4g-auction.pdf>

than some state-sponsored fantasy to imagine that five, six, or even twelve operators might be a sustainable possibility, let alone pro-competitive. For example:

- In May 2020, the General Court of the European Union annulled the European Commission's decision to block the proposed acquisition of Telefonica UK ("O2") by Hutchison 3G UK ("Three Mobile"). This decision therefore allowed a merger that would not only reduce the number of operators in the UK from four to three (with the other rivals being Vodafone and EE), but also create a market leader with a market share of between 30% and 40%.⁷¹
- Similarly, Austria saw a four-to-three merger between its second- and fourth-largest operators cleared in 2012, and Germany's four-to-three merger between its third- and fourth- largest MNOs was also cleared in 2014.
- More recently, both the Australian and US courts cleared mergers between these countries' third and fourth largest operators, and found that it is unlikely that numerous competitors could be efficiently sustained in the market, and that competition would remain vigorous and effective with three national networks.⁷²

51 South Africa is a geographically large country with a relatively low population density, where most consumers are poor. A large proportion of mobile customers do not use data, and instead still rely on 2G and 3G technologies exclusively, which are less efficient in terms of spectrum usage, and are more costly to serve.

52 This means that, in a country like South Africa, more spectrum is required per operator for the whole population to be served, yet South African mobile network operators already have far less spectrum per operator compared to most other countries. Combined with the low disposable incomes of domestic customers, and the higher cost of providing coverage, this indicates that even fewer national infrastructure competitors may be optimal compared to international comparators.

53 ICASA's view to support five national wholesale operators (and potentially even six or seven or even twelve in the medium to long term) is therefore unrealistic and ignores the obvious evolution of competition in mobile telephony that has been observed globally. By spreading limited spectrum resources amongst so many operators (which is only exacerbated by the reservation of spectrum for the WOAN), ICASA is inhibiting the market from operating efficiently, and thus preventing operators from being able to deliver better outcomes to consumers.

⁷¹ Judgment of the General Court (First Chamber, Extended Composition) in Case T 399/16, 28 May 2020. Available: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=226867&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1811793>

⁷² See "The Australian Federal Court approves a merger between an incumbent and a potential entrant in the retail mobile market (Vodafone / TPG)", Concurrences Antitrust Case Laws e-Bulletin, February 2020. Available: <https://www.concurrences.com/en/bulletin/news-issues/february-2020/the-australian-federal-court-approves-a-merger-between-an-incumbent-and-a>

4.3 Efficient auction design

- 54 A simplistic analysis of a market with low barriers to entry and expansion, such as the sale of simple manufactured products, might indicate that more competitors would result in more intense competition, and thus better outcomes for end consumers. However, as noted above, in markets that require payers to make massive ongoing capital investments, while facing scarce resources, a limited number of competitors might result in much more vigorous and effective competition, and the addition of extra rivals may result in less efficient and less intense competition.
- 55 Indeed, rather than suggesting that competition would be most effective in a world where five, six, or seven operators hold “significant spectrum”, international experience indicates that competition is likely to be effective with fewer (i.e., two, three or four) wholesale operators. As set out above, this is especially likely to be the case in South Africa, which is characterised by a poorer and less densely populated consumer base, and where operators have access to even less spectrum compared to operators in other countries.
- 56 With above in mind, we have seen no evidence or assessment to suggest that disadvantaging MTN and Vodacom in the spectrum auction process would be more beneficial for competition, compared to a situation where all operators are provided with fair and non-discriminatory access to the available spectrum. In fact, there is significant evidence that this is unlikely to be true.
- 57 As set out above, the fierce competition between MTN and Vodacom has been primarily responsible for delivering substantial pro-competitive outcomes in South Africa, over the last 25 plus years. These two operators have invested heavily in their national networks, spending tens of billions of Rands on infrastructure each year on a sustained basis. They have consistently applied significant competitive pressures on each other, at both the wholesale and retail levels, giving rise to substantial consumer benefits in the form of exponential increases in data volumes, rapid decreases in effective data prices, data connectivity to rural areas, and improvements in network quality and speed, while still supporting older technology layers that almost exclusively cater to poorer consumers who have access to simpler handsets. In other words, the available evidence indicates that the intense rivalry between these two primary infrastructure players in South Africa has been sufficient to efficiently realise a broad range of pro-competitive outcomes for South Africans.
- 58 As soon as one considers the further reservation of spectrum for additional operators, there is at the very least a trade-off. This is because spectrum that is reserved for a fourth, fifth, sixth and even further operators, necessarily reduces the spectrum that might be available for the larger operators that might have the greatest ability and incentive to apply that spectrum. Even if spectrum is reserved for another operator, this additional operator might not be commercially sustainable to allow it to invest to efficiently apply the reserved spectrum, at least on a national basis.
- 59 By way of example, despite launching approximately 20 years ago (in 2001), Cell C continues to lag behind MTN and Vodacom by a significant margin in terms of its network infrastructure

investments. It has recently been estimated that Cell C would have to invest R12.4 billion per year, for 18 years (amounting to around R223 billion in total), in order to catch-up with the networks of MTN and Vodacom (additionally assuming that the MTN and Vodacom networks simply stood still, frozen in time).⁷³ For this reason, Cell C has opted to divest its sites, and rather provide coverage for its customers via wholesale agreements with MTN and Vodacom.⁷⁴

- 60 These observations suggest that competition would more effectively be enhanced MTN and Vodacom, in particular, were provided with fair and non-discriminatory access to an efficient share of the available spectrum in any auction. Fair access to additional spectrum would allow MTN and Vodacom to significantly lower their infrastructure costs, and in turn compete more aggressively, both with each other, and with other operators including Telkom (which, as noted above, is approaching or even overtaking MTN on a number of relevant metrics), to continue to produce the pro-competitive benefits that have been observed to date.
- 61 Despite ICASA's intention to avoid consolidation by means of the proposed auction design, the assignment of spectrum to smaller operators is more likely to result in the consolidation of these smaller operators. This is because, as explained above, typically only three or four operators are sustainable from an economic perspective. Assigning sought-after spectrum to smaller, unsustainable operators for lower prices creates the opportunity for these operators to dispose of their assets (i.e. spectrum) to other firms, thereby generating windfall gains for their shareholders rather than the much-needed Government revenues that would otherwise be generated through an efficient auction process.
- 62 In short, a fair and non-discriminatory auction design would better achieve ICASA's objectives of promoting competition in the mobile telephony space, promoting the provision of mobile connectivity for all and efficiently allocating the available spectrum. In addition, by allowing operators that have the greatest ability to invest in applying spectrum to bid aggressively based on their valuation of that spectrum, this would also serve to maximise Government revenues.
- 63 In contrast, the reservation of substantial spectrum allocations for too many operators will have the effect of reducing the spectrum that could otherwise have been applied efficiently by those operators that have the greatest ability to bid for and then invest in the application of spectrum. An approach that unfairly discriminates against operators with the greatest ability and incentive to invest in the licensing and application of spectrum, and deprives them of efficient allocations of spectrum, for the sake of supporting smaller operators, would likely simply enrich those smaller operators, dampen competition, and raise costs for consumers.

⁷³ See <https://mybroadband.co.za/news/cellular/394155-it-will-cost-cell-c-over-r223-billion-to-catch-up-with-vodacom-and-mtns-networks.html>.

⁷⁴ See <https://mybroadband.co.za/news/cellular/394155-it-will-cost-cell-c-over-r223-billion-to-catch-up-with-vodacom-and-mtns-networks.html>.