

Independent Communications Authority of South Africa

Attention: The Chairperson (Call Termination Review)
per e-mail: CTR2021@icasa.org.za

11 January 2022

Dear Sir

RESPONSE IN RESPECT OF THE 2021 CTR REVIEW DISCUSSION DOCUMENT

Switch Telecom thanks the Authority for the opportunity to respond to the 2021 Wholesale Call Termination Market Review Discussion Document. Our response to the questions contained therein is set out below.

Please note that we have provided input to ISPA and fully endorse ISPA's submission on this matter. Accordingly, we will try to limit our response below only to those issues where we have additional feedback beyond that which is included in ISPA's submission.

Question 1: Do you agree with the Authority's preliminary conclusion on the product market definition? Please explain the reasons for your answer and provide the relevant factual or other evidence supporting your views.

The finding that "there is no common pricing constraint linking the wholesale voice call termination rates set by different licensees" was made based on examination of the market in terms of the pre-2017 market definitions. However, the amended market definitions have invalidated a number of the findings. For example:

1. Substitution of wholesale termination with retail origination has been pervasive, since the amended market definitions, and is used by the ubiquitous illicit grey market for termination of international-origin calls.
2. With respect to OTT substitution for voice calling, when splitting the national and international markets apart (as has been effected by the 2017 market definition amendment), it becomes apparent that:
 - 2.1. Bundles do not apply to international calls and the price differential, in respect of international calling, is strong enough to result in the substitution of voice for OTT voice calling services.
 - 2.2. "non-price factors, such as service quality, lack of compatibility" now favour OTT services which, by-and-large, provide BETTER QUALITY and GREATER GLOBAL REACHABILITY than regular calling which, unfortunately, has been decimated in these respects by the grey market that arose when the market definitions were amended in 2017.

2.3. “Connection to strong and stable data connection by both the calling party and the receiving party” is extremely widespread in 2022. By contrast, reliable international termination to South African numbers from abroad via the PSTN has become virtually non-existent since the 2017 market definition amendments, even when calls are originated from highly developed markets (e.g. UK, USA, Europe).

2.4. The Authority claims “Significant numbers of subscribers should switch to OTT voice calling services in order to make an increase of 5-10% in termination rates unprofitable.” Switch Telecom argues that this has, in fact, happened, and that the international termination rates are entirely unsustainable and render us unable to compete. However, as explained below, it is not within the power of an individual licensee (unless they have extreme SMP) to reduce international termination rates applicable to the country as a whole, and so the Authority is effectively, through the 2017 market definition amendments, destroying the ability of licensees to compete with OTT.

Question 2: Do you agree with the Authority’s preliminary conclusion on the geographic market definition? Please explain the reasons for your answer and provide the relevant factual or other evidence supporting your views.

The preliminary view of the Authority is unjustifiable and grossly irrational.

Despite the detailed feedback that Switch Telecom provided in its August 2021 submission, the Authority appears to have ignored the facts entirely.

The Authority spuriously claims “that deregulating the international termination market is in the best interest of the country as SA licensees are given pricing freedom to charge reciprocal rates in order to minimise or mitigate exploitation of SMP by licensees in other jurisdictions.” **Nothing could be further from the truth!**

The international carrier market applies a rate per destination defined by number prefix and not by in-country licensee. Where licensees share numbering (as is the case in SA, both because of the structure of our Numbering Plan as well as because of many years of Mobile and Geographic Number Portability), the international carriers have to set rates per prefix that (a) are based on a blended cost for termination to the various licensees serving those numbers; and (b) mitigate against arbitrage fraud. Globally, this results in a number of demonstrable patterns:

- (1) SMP licensees, by-and-large, dictate the effective rates in the market, as, for a blended destination, they are responsible for terminating the greatest proportion of traffic within the destination category; and
- (2) The rates applicable to a number prefix will always trend towards the highest rate of any particular SMP licensee in the market (so as to prevent arbitrage that would occur if the blended rate was lower than the highest rate); and
- (3) Because non-SMP operators would otherwise be able to heavily impact rates for an entire country or destination type within a country (e.g. “South Africa – Fixed” or “South Africa – Mobile”), international carriers block traffic towards non-SMP licensees whose termination rates exceed their targeted sell rate.

(4) Where non-SMP operators offer a significantly lower termination rate, this has no impact on the rates in the international market because of (1) above.

A very practical example of this is visible from the outcome of the the United Kingdom's August 2021 Call Termination Regulations. UK operators increased their termination rate applicable for calls originating from South Africa to the UK by orders of magnitude (over 20,000%). The Ofcom CTR of August 2021 provides for reciprocity of cost-based termination from participating countries, however, because Telkom, Vodacom, MTN, etc. insist on charging UK operators extortionate rates, even if Switch Telecom offers UK operators a cost-based rate, we cannot benefit from the reciprocity provisions. This is perhaps the clearest demonstration of how the only possible way ICASA's logic could hold true would be if every single South African licensee colluded with respect to rates. It should be pointed out that such collusion is prohibited in terms of the Competition Act and the only lawful way for all licensees to apply a single rate would be if the Authority prescribed that rate.

Switch Telecom explained these issues in its prior submission and even provided the Authority with copies of findings from regulators in other jurisdictions.

We urge the Authority to thoroughly reconsider its preliminary conclusion. Should it still reach the same conclusion after further consideration, we demand that that Authority provide a detailed explanation of the research and data it has used to justify the claims "that deregulating the international termination market is in the best interest of the country as SA licensees are given pricing freedom to charge reciprocal rates in order to minimise or mitigate exploitation of SMP by licensees in other jurisdictions." The Authority should further explain how, in the absence of a regulatory impact assessment, it was able to reach such outrageous conclusions as well as the basis on which it made such a sweeping generalisation of an untested claim of "exploitation of SMP by licensees in other jurisdictions."

We further demand that the Authority address the issue of fraud, an issue that has been raised repeatedly by large and small licensees alike over the past four years and which the Authority acknowledged that both Telkom and Switch Telecom had raised in response to the questionnaire.

Question 3: Do you agree with the Authority's preliminary conclusion on fixed and mobile convergence? Please explain the reasons for your answer and provide the relevant factual or other evidence supporting your views.

Switch Telecom draws the Authority's attention both to Switch Telecom's prior submission as well as to ISPA's submission in this regard. The relatively static differential between fixed and mobile CTR's imposed by the Authority over the past decade has been inconsistent with the Authority's claimed findings of increasing levels of convergence over time.

Switch Telecom urges the Authority – as we have consistently done since submissions leading up to the 2010 CTR's – to converge the fixed and mobile termination rates, if not immediately then, at very least, in terms of a glide-path by the end of 2024.

Question 4: Do you agree with the Authority’s preliminary conclusion on the methodology used? Please explain the reasons for your answer.

There is a fundamental flaw in the Authority’s approach: It persists in examining the competitive issues of the market as a whole and then, only after reaching various conclusions, subsequently setting market definitions that divide the market between national and international (without further examining the competitive impact of that division).

This is a truly puzzling approach and seems to be engineered so as to avoid having to consider the impact of amending the definitions in the manner that it has done.

If the market definitions are going to treat nationally-originated calls differently from internationally-originated calls, then the Authority should thoroughly examine the factors that it has identified separately for national and international markets.

Question 5: Do you agree with the Authority’s preliminary conclusion on the assessment of effectiveness of competition? Please explain the reason for your answer and provide the relevant factual evidence supporting your views.

Switch Telecom has no specific comments with regard to this.

Question 6: Do you agree with the Authority’s preliminary conclusion on SMP in the Mobile termination markets and Fixed termination markets? Please explain the reason for your answer and provide the relevant factual evidence supporting your views.

Switch Telecom agrees, however, re-iterates the points set out in 3.2 of our previous submission that Toll-free calls are also a form of Call Termination Rate (merely reverse-charged) and, accordingly, that the Authority has an obligation to review them in terms of the 2021 Call Termination Rate review process.

Question 7: Do you agree with the Authority’s preliminary conclusion on pro-competitive terms and conditions? Please explain the reason for your answer and provide the relevant factual evidence supporting your views.

Switch Telecom refers the Authority to section 3.1 of our 31 August 2021 submission as well as to ISPA's submission in this regard.

CONCLUSION

Switch Telecom thanks the Authority for the opportunity to make a submission in respect of this critically important pro-competitive regulatory process. We kindly request that the Authority continue to invite us to participate in all further engagements relating to the 2021 Call Termination Rate review.

Yours faithfully



Gregory Massel

Director: Switch Telecom