

24 July 2018

**Competition Commission South Africa**

Attention: Data Enquiry

Per email: [datainquiry@compcom.co.za](mailto:datainquiry@compcom.co.za)

**COMPETITION COMMISSION DATA SERVICES MARKET INQUIRY: REQUEST FOR SUPPLEMENTAL INFORMATION AND CLARIFICATION**

1. ISPA refers to the Commission's requests for clarity on ISPA's submission dated 1 November 2017 in response to the call for submissions on the Data Services Market Inquiry published on 20 September 2017.

**Questions of clarification based on submission of 1 November 2017**

2. Paragraph 4.1 states that *"consumers have seen per GB pricing falling from R70 to current pricing which is as low as R2.50 per GB"*
  - 2.1. Is "consumers" in the sentence referring to end consumers (i.e. data users)? Please explain in detail:
    - 2.1.1. Yes, specifically ADSL users.
  - 2.2. Provide the relevant period of this comparison:
    - 2.2.1. 2003 – 2016, as per the graph below (source: <https://mybroadband.co.za/news/adsl/170047-adsl-data-prices-in-south-africa-2002-to-2016.html>).



2.2.2. Note that the steep reduction between January 2009 and January 2010 relates to the coming online of the Seacom undersea cable and the breaking of Telkom's monopoly on international submarine cable capacity to and from South Africa. This in turn enabled innovation by ISPs in the form of uncapped data packages.

2.3. Please explain how R2.50 per GB was calculated:

2.3.1. Based on advertised pricing.

2.3.2. See for example <https://shop.vumatel.co.za/packages/all> and <https://www.frogfootfibre.com/frogfoot/myaccount/home/packages/packages.jsp> for examples of ISP pricing over open access fibre networks.

2.3.3. The Commission will note:

2.3.3.1. R2.50 per GB would represent a relatively expensive ISP on these networks.

2.3.3.2. The availability of uncapped packages where per GB pricing will be determined mainly by usage.

2.4. Is this statement in reference to effective data prices or actual data prices?

2.4.1. Actual data prices. ISPA members do not to ISPA's knowledge employ mechanisms such as "effective prices" to try and convey something different from "actual data prices".

2.4.2. ISPA understands "effective pricing" to mean the revenue derived from bundles sold divided by the actual amount of data consumed, including savings effected by moving

consumes from out-of-bundle usage to in-bundle usage. In this sense it appears to be a weighted average utilising a formula which is not clear to ISPA (see further below).

3. Paragraph 13 states that “*ICASA itself had extensive input into the amendments to Chapter 10 of the Electronic Communications Amendment (“ECA”) 1 of 2014*”.
  - 3.1. Did ISPA make submissions to the proposed amendments to the ECA (published on 17 November 2017)?
    - 3.1.1. Yes.
    - 3.2. If the answer in 3.1 is in the affirmative, please provide us with a copy of your submissions and your claim for confidentiality.
      - 3.2.1. Provided contemporaneously with this submission. We have also provided a copy of the presentation made at the oral hearings into the Bill held on 6 and 7 March 2018, which effectively summarises the written submission.
      - 3.2.2. No claim for confidentiality is made.
    - 3.3. What is ISPA’s view on the proposed amendments to the ECA, in particular, the insertion of Section 3A which deals with the Wireless Open Access Network (“WOAN”)?
      - 3.3.1. Please refer to paragraphs 33 and 34 of the written submission in this regard.
      - 3.3.2. The Commission will note that ISPA did not make extensive submissions on the WOAN, preferring instead to focus on the institutional framework and implementation challenges presented by the Draft Electronic Communications Amendment Bill 2017.
      - 3.3.3. In short:
        - 3.3.3.1. ISPA has material reservations about the ability of Government to implement the WOAN proposal in the short-to-medium-term.
        - 3.3.3.2. ISPA notes that the form which the WOAN is to take and the competitive context in which it will operate remain vague and contentious. It is our understanding that Cabinet is currently seized with making a decision on proposed amendments to the policy around high-demand spectrum which is likely to involve some form of hybrid model where spectrum surplus to the requirements of the WOAN will be made available to other licensees through a competitive process.
        - 3.3.3.3. A WOAN is not *per se* an inappropriate policy response: with its emphasis on shared infrastructure platforms for the delivery of electronic communications services it represents a natural evolution of the mobile network industry where

increased sharing of passive and active infrastructure between competitors is an established trend.

3.3.3.4. The proposal to replace ICASA with a sector economic regulator needs to be reconciled with any plan to implement the WOAN licensing process.

3.3.3.5. ISPA views the WOAN proposal as a response from the policymaker to continued market failure in the provision of wholesale mobile data services and the continued inability of ICASA to utilise the powers afforded to it under Chapter 10 of the ECA. If there was effective competition in the downstream market for mobile data services, then we regard it as doubtful that the WOAN concept would have gained the traction that it has.

3.3.3.6. ISPA submits that the open access provisions of the Bill are perhaps far more important than the WOAN proposal. It is also the case that 2029 – which will see individual ECNS and ECS licensees applying for renewal of their service licences – is likely to afford better opportunities for competitive realignment than the WOAN proposal.

3.4. The following articles provide further insight into ISPA's views on the Bill and the antecedent National Comprehensive ICT Policy White Paper:

3.4.1. [White paper 'broadly positive': ISP body](#)

3.4.2. [ISPs tell mobile networks to open up](#)

3.4.3. [Icasa accused of ignoring data prices](#)

3.4.4. [Icasa 'dithering' on mobile data prices](#)

3.4.5. [There must be open access for all: Ispa](#)

3.4.6. [Time mobile operators stopped being afraid of competition.](#)

4. Paragraph 16 states that *"ISPA notes that the mobile network operators are increasingly connecting their inability to reduce data rates to the continued failure of ICASA and government to assign high-demand spectrum"*.

4.1. Does ISPA believe that the allocation of high-demand spectrum will improve price outcomes for data? Please explain.

4.1.1. Within the context of assignment of high-demand spectrum to the incumbent mobile network operators, ISPA submits that this has the potential to improve price outcomes for data.

- 4.1.2. It also has the potential to entrench current market structures to the detriment of price and product innovation outcomes for data.
- 4.1.3. ISPA notes that:
  - 4.1.3.1. History clearly shows that the mobile networks will not reduce pricing unless forced to do so either through direct regulation or competition.
  - 4.1.3.2. History clearly shows that – with the exception of voice call termination markets – ICASA has been unable to utilise its powers under Chapter 10 of the ECA to address the cost to communicate.
  - 4.1.3.3. The manner in which spectrum is assigned to the mobile networks would be crucial. High prices paid through an auction process will require cost recovery militating against priced reductions. Obligations to provide non-discriminatory wholesale services embodied in a licence and enforced would militate towards a reduction in pricing.
  - 4.1.3.4. The pricing models employed by the mobile networks – where per GB pricing reduces substantially against increases in volume purchased – do not suggest capacity constraints.
  - 4.1.3.5. If the mobile networks are indeed using all of their capacity then this would represent both a spectrally and economically efficient outcome in the sense that there is no idle capacity or underutilised spectrum.
  - 4.1.3.6. When the mobile networks speak to spectrum capacity constraints this refers exclusively to metropolitan and urban areas. Outside of these areas there is underutilisation of assigned spectrum.
  - 4.1.3.7. The mobile networks argue that the direct cost to them of a failure to assign them with more spectrum is that they are then required to densify their networks, building out smaller cells to reuse existing assignments to meet demand, which cost has to be recovered. This is disingenuous: densification of networks is an element of 5G strategy which all the mobile networks are pursuing and there is absolutely no shortage of spectrum in rural areas or anywhere else outside of the metropolitan areas (and then only in certain parts of them).
- 4.2. If it will improve price outcomes, will actual prices be lowered rather than just effective prices?

- 4.2.1. ISPA urges the Commission to avoid the use of “effective pricing” as a measure for reductions in the cost of mobile data. We submit that this term is not clearly defined, is intended to obfuscate and bears no practical relationship to the prices paid by consumers.
- 4.2.2. How is “effective pricing” calculated? Over what period is “effective pricing” calculated? What bundles are included/excluded? Is “effective pricing” based on maximum potential usage or actual usage? Is “effective pricing” measured consistently across the different mobile networks?
- 4.2.3. A central criticism raised against the mobile networks is the unnecessarily complicated pricing and product strategies which they employ. The use of “effective pricing” is another such strategy, which can be safely assumed to be intended to show the mobile network operators in a favourable light.

## **Conclusion**

5. In conclusion, ISPA would like to draw to the Commission’s attention data relevant to its Inquiry contained in the Stats SA 2017 General Household Survey, which provides interesting and relatively authoritative insight into the use of telecommunications services in South Africa.
6. According to the Survey:
  - 6.1. The total number of households in South Africa with access to a mobile phone only for electronic communications rose from 85% to 88.2% over the period since the 2016 Survey.
  - 6.2. In Mpumalanga 95.6% of households only have access to a mobile phone for electronic communications. In Limpopo the figure is 94.8%.
7. These figures on the face of it reveal the dependence of an overwhelming majority of South Africans on the mobile networks for voice, messaging and Internet services. Increasingly it is access to the social media platforms, the Internet and cheaper VoIP calls which South Africans want, and for which they require mobile data.
8. If the Commission seeks to make a difference in the cost to communicate it is, in ISPA’s view, abundantly clear where the intervention needs to be and what form it should take.
9. ISPA extends its appreciation to the Commission for its continued interest in this matter.

Regards,  
ISPA Regulatory Advisors