

11 October 2018

Competition Commission

Per email: datainquiry@compcom.co.za

DATA SERVICES MARKET INQUIRY

1. ISPA refers to the notice regarding public hearings for the Data Services Market Inquiry (“**the Inquiry**”) published by the Commission on 13 September 2018 and the requirement that those wishing to participate in the public hearings should make a written submission prior to the hearings.
2. ISPA refers to its prior written submission on the Inquiry submitted on 1 November 2017 and affirms its commitment to the positions set out therein.
3. ISPA has set out supplementary submissions below which seek to:
 - 3.1. Highlight the key facts and considerations and the simple narrative which they cumulatively reveal;
 - 3.2. Address the specific questions raised by the Commission;
 - 3.3. Propose broad solutions; and,
 - 3.4. Address certain issues raised in other written submissions made to the Commission.

EXECUTIVE SUMMARY

4. There are clear indications of competitive failure in the market for wholesale mobile data services. Intervention in this market using established policy and legislative powers to facilitate competition and competitive pricing outcomes will bring relief to the greatest number of users and underpin socio-economic development.

SUBMISSIONS

5. A note on **benchmarks / Are data prices in South Africa (whether mobile, fixed or other) higher than they ought to be?**
 - 5.1. ISPA can offer no substantive assistance in achieving an evidence-based position or adding to the numerous benchmarks and interpretations of benchmarks made available to the Commission or presented in other fora.
 - 5.2. We suggest that the Commission consider as part of its outcomes from the Inquiry a recommendation that an official benchmark be established.
 - 5.3. We note that caution should be exercised when considering averages in a society with deep economic inequality.
 - 5.4. Perceptions are important. The cost of electronic communications services has been a persistent theme in government and private discourse since around 2009. Perceptions around the high cost

of mobile data have intensified through social media and other campaigns as the use of this product becomes an increasingly important part of our social and economic lives.

6. While doubt can be expressed about comparative pricing analyses, what is not disputed is that in South Africa mobile data is more expensive for lower income groups.

"We have a strange market where it costs the poor more to access data than it costs the rich."

Minister of Telecommunications and Postal Services, 13 March 2018¹

7. Which market(s) to focus on?

- 7.1. ISPA submits that the answer to this is self-evident and that the markets for wholesale mobile data and related upstream markets must be the focus.

- 7.2. The Stats SA 2017 General Household Survey provides interesting and relatively authoritative insight into the use of electronic communications services in South Africa. Note the following² (comparisons are drawn between 2015 and 2017 figures):

7.2.1. The total number of households with access to a fixed line fell from 10.9% to 8.2%.

7.2.2. The total number of households with access to a mobile phone only rose from 85% to 88.2%. The figure is 95.6% for Mpumalanga and 94.8% for Limpopo.

7.2.3. The total number of households with access to a fixed line only stayed constant at 3.6%. Only KZN and Limpopo showed increases.

7.2.4. The number of households with home Internet access increased from 9.6% to 10.6%.

7.2.5. The number of households where at least one member had accessed the Internet anywhere rose from 53.5% to 61.8%.

- 7.3. South Africa's present and future reality is as a country where access to electronic communications will be through a mobile network for almost everyone with only a small percentage – generally wealthier, urban consumers - having access through fixed copper, fibre and/or wireless connectivity.

- 7.4. Mobile data is critical to allowing South Africans to participate in the "Fourth Industrial Revolution" and decisions taken regarding the affordability of mobile data services have a direct impact on whether we widen or narrow the digital divide over the next decade.

- 7.5. Vodacom address the importance of market definition in its submission to the Commission dated 30 November 2017³ in the following terms:

¹ Opening remarks of the Minister to the Portfolio Committee for Telecommunications and Postal Services on the cost to communicate, 13 March 2018

² Detailed telecommunications-related figures are set out in Annexure A to this report

³ Available from http://www.compcom.co.za/wp-content/uploads/2018/09/Vodacom-Letter-to-CC_CDH_Non-confidential_30-Nov-2017.pdf ("the Vodacom Submission")

“2.2. Broadly speaking, Vodacom is of the view that data is sold within three main markets, namely the mobile retail market, the fixed retail broadband Internet access market and the leased line Internet access market. A similar market in which data is currently sold is the market for fixed wireless Internet through microwave and satellite technologies. These technologies are likely to become significantly less relevant in future as the high bandwidth required by data usage may result in a move towards fibre access.

2.3. The allegation that data prices are high must be viewed within the competitive dynamic of the relevant markets within which data is sold. Where the markets are competitive, economic theory dictates that price outcomes will be competitive, Vodacom submits that the mobile market in which data is sold is competitive. However, the fixed markets are uncompetitive and, given the increasing importance of fixed infrastructure to mobile networks, Vodacom is concerned that this feature of the sector, coupled with spectrum constraints, may in the near future negatively affect price outcomes in the mobile market.”⁴

7.5.1. ISPA recognises the role of upstream markets and backbone infrastructure in determining pricing and non-pricing factors in the markets for mobile data.

7.5.2. ISPA submits that Vodacom is conflating upstream and downstream markets, comparing the upstream market for fixed infrastructure used as an input in the provision of mobile data services with downstream markets providing access to mobile data services.

7.5.3. ISPA does not agree that *“the mobile market in which data is sold is competitive”*.

7.5.4. ISPA notes that the mobile networks can and do build their own fixed infrastructure for national long distance and fibre-to-the-tower deployments. The latter is a major area of activity for a number of fibre network providers as they deploy in the urban areas of South Africa.

7.5.5. ISPA is not sure on what basis it is claimed that there is a failure of competition in these fixed markets as pricing for the supply of international and long-distance connectivity has declined sharply as a result of greater competition (a degree of which has materialised through the entry of the mobile networks into these markets).

7.6. Vodacom argues further that it is difficult to establish the price of data where this is sold into the market as part of a bundled service:

“4 The challenge of isolating mobile data for the Inquiry

4.1. It must be noted that in the mobile market, in which the largest part of Vodacom’s business falls...[redacted]...its customers make use of offerings that combine voice, messaging (SMS) and data. A proper investigation of the level of the price of data, as an isolated offering in

⁴ Vodacom Submission p1

the mobile market, is difficult and artificial because the price of data within bundled service offerings is not easy to calculate.”⁵

“6.1. As pointed out in the introductory paragraph of this letter, prices of data must be evaluated in the relevant markets in which the data is sold. Vodacom is active mainly in the mobile market as part of a bundle of voice, data and messaging.”⁶

7.6.1. ISPA does not understand this contention: it is obviously possible to buy data outside of it being bundled with services that the consumer may not want.

7.6.2. ISPA submits that the market for mobile data – whether wholesale or retail – is distinct from that for voice and messaging (SMS) and should be viewed as a discrete and separate market. The decision to bundle these distinct products is taken by the provider. The decline in demand from consumers for voice and SMS is established and the demand for these services bundled is rapidly diminishing.

7.6.3. This is also the view expressed by ICASA in its “Findings Document on Priority Markets in the Electronic Communications Sector” (“**ICASA Priority Markets Study**”)⁷.

“It is noted, however, that with respect to the mobile market, some responses suggest that separate markets could be defined by service type (e.g. data, messaging and voice). The Authority recognised in the Discussion Document that in the context of a market review, it may be appropriate to consider the retail mobile data or mobile broadband segment separately. Demand for mobile data may diverge from demand for mobile voice and SMS such that the three are not always demanded as a bundle at the retail level, or not demanded as a bundle to the same degree as they have been historically. This may be related to growth in the use of devices that are enabled for data only. In addition, differences in the speed, coverage and quality of data services across MNOs may result in differences of competitive conditions for data relative to voice services. The potential for OTT services to provide some competitive pressure on voice and SMS only, may reinforce differences in competitive conditions for data as distinct from the other services.”⁸

7.6.4. Any other interpretation is simply at odds with the way in which consumers demand and utilise these products.

7.6.5. It must also be clear that when Vodacom and other MNOs sell mobile data they are selling access to the Internet: in other words, they are acting as Internet Service Providers (ISPs) and not selling voice or messaging services.

7.6.6. It is not well understood that Vodacom is the largest ISP in South Africa.

⁵ Vodacom Submission p2

⁶ Vodacom Submission p3

⁷ Available from <https://www.icasa.org.za/legislation-and-regulations/findings-document-on-priority-markets-inquiry-in-the-electronic-communications-sector>

⁸ p23

7.7. “Over-the-Top” services (OTTs)

- 7.7.1. It should be clear that OTT services do not constrain the demand for mobile data services: they stimulate it.

8. Market concentration and competition

- 8.1. The Commission’s own research indicates that the product market for ICTs is the most highly concentrated priority market in South Africa⁹. This indicates, *prima facie*, a lack of competition in this product market.
- 8.2. As regards the claim that the mobile data market is competitive, ISPA would request that the Commission consider:
- 8.2.1. The number of service providers from which a consumer can buy data over Telkom’s ADSL and fibre networks?
- 8.2.2. The number of service providers from which a consumer can buy data over the open access fibre networks provided by Dark Fibre Africa, Vumatel, Frogfoot and others?
- 8.2.3. The number of service providers from which a consumer can buy data for use on Vodacom and MTN’s networks?
- 8.2.4. It is also interesting to note – when considering the answers to the above – the percentage of the population serviced by the mobile networks as opposed to the percentage serviced over fixed networks.
- 8.3. ISPA wishes to draw the attention of the Commission to ICASA’s analysis of five-year price trends for mobile data presented to the Portfolio Committee for Communications by ICASA on 10 October 2018. A copy of the relevant slide is provided as Annexure A to this submission.
- 8.4. ISPA submits that this analysis does not reflect a competitive retail market for mobile broadband services.
- 8.5. Finally in this regard, the assertion that either the wholesale or retail mobile data services market is competitive is of course directly at odds with ICASA decision to prioritise both of these markets as an outcome for its Priority Markets Study.

9. Regulatory failure

- 9.1. It is ISPA’s submission that the sector regulator, ICASA, has not succeeded in utilising the powers accorded to it under the ECA and the ICASA Act. ISPA refers to the submissions made in this regard in its prior written submission to the Inquiry.

⁹ [CC2018 \(05\) Buthelezi T. Mtani T. and Mncube L. \(2018\) The extent of market concentration in South Africa’s product markets](#)

- 9.2. ISPA has noted the conclusion and outcomes of the ICASA Priority Markets Study and has made its submissions to ICASA relating to this process available to the Commission. There is currently no indication as to when ICASA will commence with any Chapter 10 exercises in respect of the markets to be prioritised and such processes typically take 2-3 years (if there is no litigation).
- 9.3. The Commission will have noted two significant developments in the frameworks governing electronic communications, viz.:
- 9.3.1. The introduction into the Parliamentary process of the Electronic Communications Amendment Bill [B37-2018] (“**the EC Amendment Bill**”);
- 9.3.2. The publication for comment by the Minister of Telecommunications and Postal Services of “Proposed Policy and Policy Directions to the Authority on Licensing of Unassigned High-Demand Spectrum” for public comment. This includes proposed directions to ICASA relating to the licensing of a wireless open access network (“**WOAN**”) operator.
- 9.4. It is important to note that these processes are at a very early stage and that implementation of the various structural and competitive reforms contemplated will take a considerable time.
- 9.5. The Commission is urged to be cautious in factoring the potential impact of planned future interventions into its outcomes from the Inquiry: in ISPA’s view the impact of these interventions will only be felt in the medium-to-long-term and there is no guarantee that implementation will be as planned.
- 9.6. **Jurisdictional issues:** Vodacom seeks to caution the Commission regarding the relationship between the Inquiry and the Priority Market Inquiry undertaken by ICASA:

“3. Overlap between the Inquiry and ICASA’s Priority Market Inquiry

3.1.

3.2. *Care should be taken that the Competition Commission does not attempt to pre-empt the work intended to be undertaken by ICASA, as the industry regulator. Careful cooperation is necessary to ensure that Vodacom, and other participants in both processes, have certainty as to the scope of each regulatory intervention. In terms of its governing legislation ICASA “may not take any action where a matter has already been brought to the attention of and is being dealt with by that other authority or institution.”¹⁰*

- 9.6.1. ISPA submits that this argument ignores the distinction between ex post and ex ante regulation.
- 9.6.2. Further the prohibition on ICASA taking action as set out in the quoted paragraph applies only to inquiries undertaken by ICASA in terms of section 4B of the ICASA Act (and not, for example, to market investigations undertaken in terms of chapter 10 of the ECA).

¹⁰ Vodacom Submission, p2

- 9.6.3. Section 4B of the ICASA Act in fact enjoins ICASA to bear in mind – subject to section 67 of the ECA and the terms and conditions of any concurrent jurisdiction agreement concluded between the Authority and the Competition Commission – that “the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices within any industry or sector and to review mergers within any industry or sector in terms of the Competition Act”¹¹.

10. Solutions / How can these factors be effectively remedied?

- 10.1. ISPA submits that the Commission’s recommendations should reference intervention in the wholesale market for mobile data through pro-competitive measures designed to:
- 10.1.1. Impose obligations on dominant providers of wholesale mobile data services to offer wholesale open access to their networks on a non-discriminatory basis.
 - 10.1.2. Effect functional separation for vertically-integrated incumbents to underpin wholesale open access obligations.
- 10.2. In making this submission ISPA is mindful of:
- 10.2.1. The limited nature of the powers of the Commission in respect of the Inquiry.
 - 10.2.2. The proposal made in the Commission’s paper on market concentration in product markets in South Africa to “promote the use of structural remedies for anticompetitive offences of collusion and exclusion”.
 - 10.2.3. The experience of the Commission and the Competition Tribunal in addressing identified anti-competitive conduct by Telkom and the impact of the imposition of functional separation on Telkom.
 - 10.2.4. The success of this model in increasing competition and innovation in the retail market for fixed data services.
 - 10.2.5. The provisions of the EC Amendment Bill and the HDS Policy Direction which specially address competition at the service layer, open access and vertical integration, as well as the requirement that high-demand spectrum only be issued on an open-access basis.

11. ISPA looks forward to further engagement with the Commission in this regard.

¹¹ ICASA Act section 4B(8)(b)

Annexure A – Telecoms figures taken from StatsSA General Household Survey 2017

Percentage of households who have a functional landline and cellular telephone in their dwellings by province

Cell & Landline

YEAR	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
2015	26,2	5,9	10,8	5,9	10,8	5,5	14,1	3,6	2,8	10,9
2016	22	5,3	6	4,9	9,2	4,8	12,5	2,7	2,6	9,4
2017	19,6	4,8	5,6	5,1	8,4	4,3	10,2	2,5	1,8	8,2

Cell only

YEAR	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
2015	69,2	87,1	77,8	89	86,1	89,5	84,3	94,4	94,1	85,5
2016	73,6	87,8	83,8	90,2	87,4	90,5	85,9	95	94,4	87
2017	75,9	88,1	84,3	90,2	88	91,3	88,2	95,6	94,8	88,2

Landline only / none

YEAR	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
2015	4,6	7,1	11,4	5,1	3,1	5	1,6	2	3,1	3,6
2016	4,4	7	10,3	4,9	3,5	4,7	1,6	2,3	3,1	3,6
2017	4,6	7,1	10,1	4,7	3,6	4,4	1,5	1,9	3,4	3,6

Percentage of households with access to the Internet at home, or for which at least one member has access to, or used the Internet by province

At Home

YEAR	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
2015	21,4	5,2	6,3	6,1	4,9	3,6	15,6	6,8	1,3	9,6
2016	23,6	3,9	5,5	5,4	5,3	3,5	14,8	5,9	1,6	9,5
2017	25,7	3,5	7,4	6,9	7,1	3,6	16,5	4	2,2	10,6

Anywhere

YEAR	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
2015	63,3	46	49	50,8	42,3	47,5	65,7	55,7	39,3	53,5
2016	68,5	49,2	54,9	56,1	51,2	53,7	72,2	58,1	42,4	59,3
2017	70,8	51,8	57,8	60,6	54,8	54,8	74	63,3	43,6	61,8

Households' access to the Internet by place of Access, Geotype and Province

2015

PLACE	GEOTYPE	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
	Metro	25,2	10,8	NA	10,1	8,2	NA	16,4	NA	NA	16
HOME	Urban	14,4	4,9	7	4,5	6	6,5	10,6	7,9	3,7	7,5
	Rural	12,6	1,2	4,5	4,1	1,1	0,9	10,2	6	0,5	2,1
	Total	21,4	5,2	6,3	6,1	4,9	3,6	15,6	6,8	1,3	9,6
	Metro	22,7	19,9	NA	13,9	21,7	NA	24,5	NA	NA	23,1
WORK	Urban	13,9	12,2	11,6	9,7	20,7	12,5	14,6	15,5	15,7	14,4
	Rural	4,7	1,1	4,9	3,8	4,7	4,1	11,7	5,7	2,8	3,7
	Total	19,1	9,8	9,7	10	14,7	8,2	23,1	9,9	5,8	15
	Metro	63,7	53,1	NA	56,7	36,3	NA	56,9	NA	NA	54,7
MOBILE	Urban	39,4	50,3	51,6	45,2	48,8	50,6	58,7	63,1	50,5	51,1
	Rural	12,3	29,5	33,4	36,1	28,8	39,9	54,7	45,5	31,9	33,7
	Total	53,6	41,9	46,4	47,1	36,2	45,1	57,1	53,2	36,3	47,6
	Metro	15,5	13,6	NA	6,8	9,5	NA	16,7	NA	NA	14,9
INTERNET	Urban	9,5	8,1	2,2	7	9,5	6,3	6,9	7,1	2,4	7
CAFÉS	Rural	0,8	1,3	2,6	6,6	4,2	5,3	1,2	5	0,9	3,1
ETC.	Total	12,9	6,9	2,3	6,9	7,4	5,8	15,3	5,9	1,2	9,3

2016

PLACE	GEOTYPE	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
	Metro	27,3	6,8	NA	8,2	9	NA	14,9	NA	NA	15,2
HOME	Urban	16,6	5,8	6,3	4,7	6,7	6,6	13,8	5,4	5,2	8,3
	Rural	16,6	0,7	3,5	2,4	0,8	0,6	17,3	6,3	0,5	2
	Total	23,6	3,9	5,5	5,4	5,2	3,5	14,7	5,9	1,6	9,5
	Metro	25	20,9	NA	12,2	21,4	NA	25,4	NA	NA	23,9
WORK	Urban	14	12,8	14,8	10,4	20,5	12	22,5	12,6	15,4	15,3
	Rural	9	2,5	4,6	2,7	4,4	3,4	25,4	5,4	2,7	3,9
	Total	20,9	10,9	12	9,9	14,5	7,6	25	8,5	5,5	15,8
	Metro	64,5	67	NA	62,6	52,8	NA	62,2	NA	NA	61,6
MOBILE	Urban	45,1	55,4	57,2	50	57,6	59,9	73,1	63,3	55,7	58
	Rural	25,8	29,9	39,4	41	35,5	45,2	58,8	50	35,5	38,3
	Total	56,9	48	52,2	52,4	47,1	52,4	63,6	55,8	40	53,9
	Metro	12,6	10,8	NA	6,8	15,9	NA	16,8	NA	NA	15,1
INTERNET	Urban	11,3	9	3,5	8,5	8,9	5,4	14,7	5,9	3,7	8,5
CAFÉS	Rural	1,1	1,3	4,3	6	4,8	3	9,3	4,2	1,9	3,2
ETC.	Total	11,6	6,2	3,7	7,7	9,9	4,2	16,4	4,9	2,3	9,8

2017

PLACE	GEOTYPE	WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
	Metro	31,3	5,9	NA	12,8	11,7	NA	16,8	NA	NA	17,4
HOME	Urban	14,5	5,3	8,6	5,1	7,4	6,5	14	5,8	6,8	8,4
	Rural	12,8	0,6	3,8	1,6	1,7	0,8	12,2	2,6	0,8	1,7
	Total	25,7	3,5	7,4	6,9	7,1	3,6	16,5	4	2,2	10,6
	Metro	22,3	22,4	NA	13,8	21,3	NA	28,4	NA	NA	25,3
WORK	Urban	19,4	11,9	17,6	11,7	20,3	11,8	25,1	11,5	17,7	16,6
	Rural	9,8	2	6,9	1	4,7	5,3	13,6	5,8	2,5	4,1
	Total	20,7	11,3	14,7	10,9	15	8,5	27,8	8,3	6,1	16,9
	Metro	69	68,7	NA	67,6	55,1	NA	65,9	NA	NA	65
MOBILE	Urban	51,5	56,4	58,5	57,5	62	62,7	71	73,1	53,3	61,5
	Rural	22,9	32,7	49,7	44,2	39	45	49,2	52,7	33,5	39,6
	Total	61,5	50,5	56,1	58,6	50,9	53,7	66,4	61,6	38,2	56,9
	Metro	12	13,9	NA	6,2	11,3	NA	21,5	NA	NA	17,2
INTERNET	Urban	17,7	10,9	5,3	10,7	7,4	4,5	13,5	4,2	7	9,2
CAFÉS	Rural	4	1,3	1,6	5,7	5,7	6,5	2,2	6,4	3,5	4,5
ETC.	Total	13,2	7,8	4,3	8,7	8,3	5,5	20,4	5,4	4,3	11,5

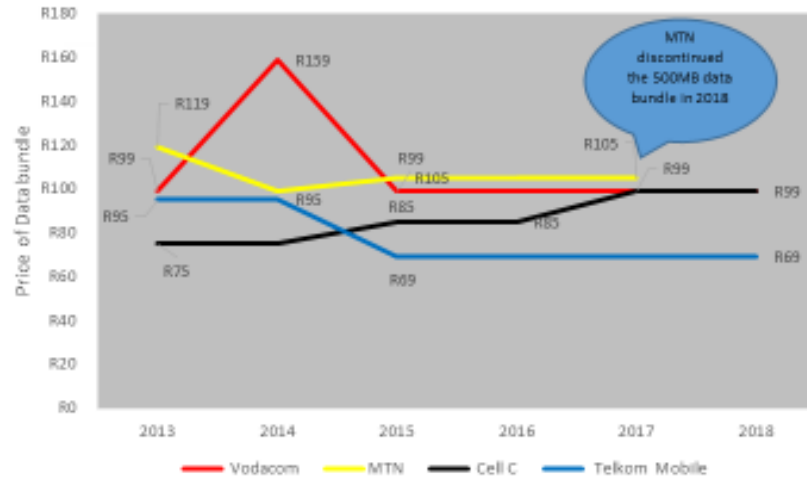
Annexure B – ICASA analysis of five-year price trends for mobile data



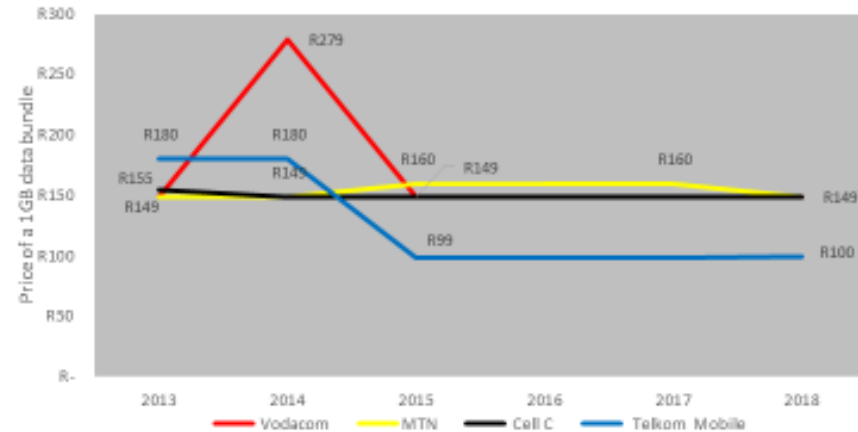
Five Years Price Trends- Data



Vodacom, MTN, Cell C and Telkom Mobile's 500MB data bundle price trends for the 5-year period: 2013-2018



Vodacom, MTN, Cell C and Telkom Mobile's 1GB data bundle price trends for the 5-year period: 2013-2018



- Vodacom increased its 500MB data price by 60.6% in 2014. It was then reduced by 37.7 % in 2015 from R 159 to R 99, which is the current price for the bundle.
- Telkom Mobile's prices also decreased by 27.4% from R 95 to R 69 in 2015 and has remained constant.
- Cell C's has fluctuated over the 5 year period with an increase of 13.3% between 2014 and 2015, from R 75 to R85. This price further increased by 16.5% to R 99 in 2017. It has since remained unchanged.
- MTN prices for the 500MB data bundle were reduced in 2014 by 20.2% from R 119 to R 95. This was followed by an increase of 10.5% in 2015. The bundle was discontinued in 2018 and replaced by a 600MB priced at R 99.

In 2018, Vodacom, MTN and Cell C are charging the same price of R 149 for a 1GB data bundle.

- Telkom Mobile is charging the lowest price at R 100 amongst the four MNOs, as per the graph above, however the cheapest 1GB data bundle in the market currently is offered by Rain at R 50.

Vodacom hiked its 1GB data bundle by 87.2% in 2014 from R149 to R 279. It then decreased it by 46.6% back to R 149 in 2015 and has remained constant to date.

MTN and Cell C prices have remained relatively stable throughout the 5 year period.