

2 May 2018

Independent Communications Authority of South Africa

Attention: Chairperson: Priority Markets Committee

Per email: prioritymarkets2017@icasa.org.za

DISCUSSION DOCUMENT: PRIORITY MARKETS IN THE ELECTRONIC COMMUNICATIONS SECTOR

1. ISPA refers to the "Discussion Document to identify property markets in the electronic communications sector" published as General Notice 71 in Government Gazette 41446 of 16 February 2018 ("**the Discussion Document**") and to the Authority's invitation to comment thereon.

General Comments

2. ISPA supports the process followed and the outcomes as presented in the Discussion Document. This support extends to responses to the six questions posed by the Authority.
3. For the record:
 - 3.1. ISPA regards the approach adopted by the Authority to market prioritisation as being appropriate. ISPA agrees that this is not an exercise of the Authority's powers under section 67(4) of the Electronic Communications Act 36 of 2005 ("**the ECA**"). This is an inquiry under section 4B of the Independent Communications Authority of South Africa Act 13 of 2000 ("**the ICASA Act**"): the provisions of section 67(4) may provide guidance but are not legally prescriptive in respect of the conduct of this process.
 - 3.2. ISPA agrees with the Authority's responses to the issues raised. It bears repeated that this is not a market inquiry under section 67(4) and must not be judged as such. The Authority's approach to the EC three-criteria test is supported.
 - 3.3. ISPA agrees with the identification of markets. This aspect of the process will obviously be subjected to greater scrutiny during a market inquiry process under section 67(4).
 - 3.4. ISPA supports the prioritisation of the three markets identified. All three markets exhibit, in ISPA's view, characteristics of long-term market failure. Interventions in all three markets have the potential to reduce the cost to communicate through appropriate pro-competitive interventions.

- 3.5. The launching of processes in respect of these three markets will require considerable budget and capacity: these are interventions which potentially have real economic consequences for licensees and they will be contentious at all stages. For this reason, ISPA does not support prioritising any other market at this time.
4. ISPA urges the Authority to complete this process as soon as is reasonably possible so that section 67(4) of the ECA can be exercised in order to alleviate competitive inefficiencies which are obstacles to lowering the cost to communicate.

Further process

5. In its Notice of Intention to conduct an Inquiry in terms of section 4B of the Independent Communications Authority of South Africa of 2000 to identify priority markets in the electronic communications sector (“**the June 2017 Notice**”) the Authority recognises that this process is a discretionary one and not one specifically provided for in the ECA.
6. The Authority regarded it as “appropriate” to undertake a preliminary prioritisation exercise in the form of an inquiry as provided for in section 4B of the ICASA Act. The Authority has afforded additional opportunities for participation over and above those contemplated in section 4B.
7. The June 2017 Notice indicates that the Authority will hold public hearings on the Discussion Paper if deemed necessary. ISPA’s position is that public hearings are not required, and the Authority should proceed without delay to finalising and publishing its findings. ISPA’s reasoning is as follows:
 - 7.1. Time is of the essence: nobody can be deaf to the need to lower the cost to communicate and, specifically, the cost of mobile data. Consumers, the Authority, the Minister and the mobile network operators all recognise that the cost of mobile data is too high and more can be done to reduce it.
 - 7.2. This is in effect a preliminary skirmish before the battle proper is engaged through the Authority’s use of section 67(4) to define and investigate the prioritised markets. Having used a plausible, reasonable and defensible process to identify three plausible, reasonable and defensible priorities, the Authority should immediately proceed to launch section 67(4) processes in respect of the broad markets identified in the Discussion Document.
 - 7.3. Nothing is to be gained by the Authority engaging in extended debate around this process and any attendant legalities. As noted above, this is not a required process or a section 67(4) process, but a discretionary one intended to guide the Authority in the exercise of its powers.

8. ISPA submits that this guidance has been acquired and should now be acted upon expeditiously through the publication of a findings document and the launch of section 67(4) processes in respect of the three identified markets.

Conclusion

9. ISPA extends its appreciation to the Authority for its consideration of these comments, and trusts that they will be of assistance to the Authority in finalising this process.

Regards,
ISPA Regulatory Advisors