South Africa: Data Services Market Inquiry

1. The Competition Commission published its final report on the Data Services Market Inquiry on 2 December 2019. Following the initiation of the Inquiry in August 2017, the Commission began its investigation in order "to understand what factors or features of the market(s) and value chain may cause or lead to high prices for data services, and to make recommendations that would result in lower prices for data services."

2. The Inquiry found, in summary, that data prices in South Africa are high by comparison to international standards according to studies conducted by the International Telecommunication Union, Tarifica, the Independent Communications Authority of South Africa (ICASA) and Research ICT Africa. The Commission contended that the higher mark-ups and profit margins evident in the pricing behaviour of the major mobile operators were indicative of market power and a lack of effective competition to constrain prices.

3. In addition, the Commission found that the provision of data services in South Africa is plagued by issues such as anti-poor retail price structures which lack transparency and exhibit price discrimination, inadequate price-based competition, insufficient spectrum and a lack of access to low-frequency bands and supply gaps in fixed line data services. The Commission has tendered recommendations aimed at resolving these issues in the short and medium term.

3.1 Retail price discrimination in data pricing structures

The Inquiry identified patterns of price discrimination which burden lower income consumers who purchase smaller data bundles with higher costs per megabyte. Dominant operators in South Africa were found to be engaging in partitioning strategies for prepaid data bundles and the conduct of such operators appeared to be targeted at "identifying opportunities to expand revenue per subscriber rather than offer lower prices to more price sensitive subscribers." The Commission concluded that such pricing behaviours cumulatively result in the exploitation of lower income consumers and the hindrance of access to data.

3.2 Inadequate price-based competition

The Inquiry, in considering the nature of competition within mobile markets, found that Vodacom and, to a lesser degree, MTN have substantial market power which is inadequately constrained by other networks such as Cell C and Telkom Mobile. Because of this, it appears that the major mobile operators are able to set their prices independently of the pricing strategies adopted by other operators. For example, when Cell C adopted an aggressive pricing policy, Vodacom and MTN did not respond by similarly reducing their prices.

3.3 Insufficient spectrum and a lack of access to low-frequency bands

Owing to the failure to release high-demand spectrum, mobile operators in South Africa do not have access to sufficient spectrum and, specifically, to low-frequency bands. This results in increased costs and, by extension, higher data prices as operators incur greater capital and operational costs in order to compensate for the lack of spectrum. In response to the Inquiry's preliminary findings, ICASA issued an Information Memorandum which is aimed at remediying this issue and which describes possible assignment criteria for the licensing of high demand spectrum. The Commission has engaged with ICASA in relation to how to approach the spectrum assignment and will continue to do so in order to ensure that it is implemented in a pro-competitive manner.
3.4 Supply gap in fixed line data services
The Inquiry also considered the potential role of fixed line supply as an alternative source of more affordable data services. This is promising both because of the cost-saving effect and the potential to increase competitive pressure on the suppliers of mobile data services.

3.5 Recommendations

3.5.1 In order to provide relief for the high data prices experienced in the South African market, the Commission proposed a package of remedies aimed at promoting access to more affordable data services, improving mobile price competition and facilitating the use of infrastructure alternatives.

3.5.2 These remedies are primarily aimed at (i) securing the reduction of tariff levels and headline prices for certain prepaid data bundles, (ii) eliminating partitioning and price discrimination strategies which increase the exploitation of market power, (iii) ensuring that prepaid subscribers are afforded a lifeline package of daily free data, and (iv) increasing transparency by requiring mobile operators to inform subscribers of the effective price of their monthly data consumption.

3.5.3 The Inquiry, in addition, described various medium-term recommendations which include (i) regulating pricing standards to improve cost-based access to facilities; (ii) ensuring that national roaming agreements are appropriately priced; (iii) separating the accounting systems responsible for the retail and wholesale businesses of the major mobile operators; and (iv) developing alternative infrastructure to service the need for greater access to more affordable data services. In particular, the Commission recommends greater government intervention and investment in the rollout of fibre-to-home services in lower income areas and in the development of free public Wi-Fi (or lower priced public Wi-Fi) in such areas.

3.5.4 While these recommendations are framed as obligations on various parties, notably Vodacom and MTN, the Inquiry's recommendations are not legally binding and compliance is voluntary. However, the Inquiry's report indicates that, where any of the relevant operators fails to reach the necessary agreements with the Commission within the specified time frame, the Commission will proceed to prosecution under the relevant provisions of the Competition Act. This indicates that the Inquiry considers there to be sufficient evidence on which to pursue prosecution against these operators for conduct that is prohibited under the Competition Act, although it has not been specified at this stage which provisions will be relied upon.
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