



**MOBILE BROADBAND SERVICES INQUIRY
12 August 2021**

INTRODUCTORY REMARKS

- ISPA concurs in general with the conclusions set out in the Findings Document on the Mobile Broadband Services Inquiry.
- Purpose of submission is to express support for the proposed pro-competitive remedy to be applied in the upstream wholesale APN market together with the findings that underpin imposing such a remedy.
- Also want to address issues with facilities leasing.

FINDINGS DOCUMENT

- ISPA welcomes and supports:
 - The commitment made by the Authority – as a first response to remedy ineffective competition in the market for access to high site infrastructure – to commence with the process of defining “essential facilities”.
 - Findings made in respect of the ineffective competition in the retail market and identified upstream markets.
 - The finding that there is an entrenched duopoly in the provision of retail mobile broadband services and many of the upstream markets identified.
 - The specific identification of the potentially anti-competitive effects flowing from the vertically integrated nature of Vodacom and MTN such as to justify a finding of SMP in the markets under consideration.
 - The findings relating to the market for wholesale APN resellers, particularly identification of the anti-competitive effect of retail rates being set lower than wholesale rates.

PRO-COMPETITIVE REMEDY IN THE WHOLESALE APN MARKET

- ISPA supports the approach taken with regard to the wholesale APN market.
- Initial imposition of reporting obligations as opposed to accounting separation and other potential responses to ineffective competition.
 - Goes to the heart of ISPA members' experience in trying to compete in the retail market for mobile data as resellers.
 - Is aligned with the current capacity of the Authority.
 - Will be effective if the Authority works closely with the Commission.

ACCOUNTING SEPARATION

- ISPA disagrees that accounting separation is not an appropriate remedy in the wholesale APN market or any of the other markets found to have ineffective competition.
- Findings Document emphasises the potential anti-competitive effects arising from the vertically integrated nature of Vodacom and MTN:
 - Accounting separation is an effective remedy to ensure an equivalence of inputs approach: this is an appropriate response
 - Not a new approach:
 - Regulations on Chart of Accounts and Cost Allocations Manual under the Telecommunications Act
 - Competition authorities' approach to Telkom dominance in the upstream market for fixed broadband services
 - Concerns raised by affected licensees about complexity, cost and time taken must be weighed up against the utility and impact of imposing cost accounting.
- Support Telkom's position in this regard.

FACILITIES LEASING REGIME DOES NOT WORK

- Findings Document shies away from previous intention to review the Electronic Communications Facilities Leasing Regulations 2010.
- ISPA reasserts its position – shared with Vodacom and others – that these Regulations urgently require review as they are not serving their purpose.
- Concerns are not limited to high site infrastructure but electronic communications facilities in general: there are repeated difficulties in exercising facilities leasing rights in the deployment of fibre optic electronic communications networks.
- The vast majority of agreements which fall within the definition of a lease of electronic communications facilities as contemplated in the ECA are simply not submitted to ICASA. Appears to be an argument that regulations do not apply unless there is formal request to lease.
- Effective facilities leasing regime fundamental to infrastructure-based competition and efficient use of infrastructure.

QUESTION TIME

SPECTRUM ITA

ICASA

MBSI