

Mobile Broadband Services Market Inquiry – Public Hearings on Findings Document and Draft Regulations

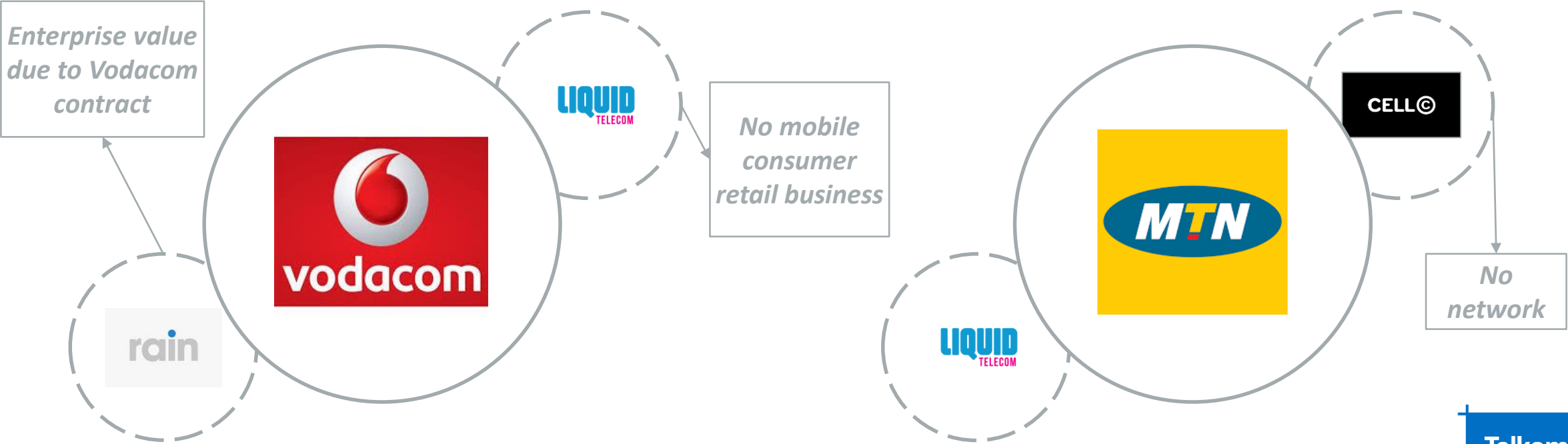
12 August 2021

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Telkom Mobile is essentially the only independent competitor left

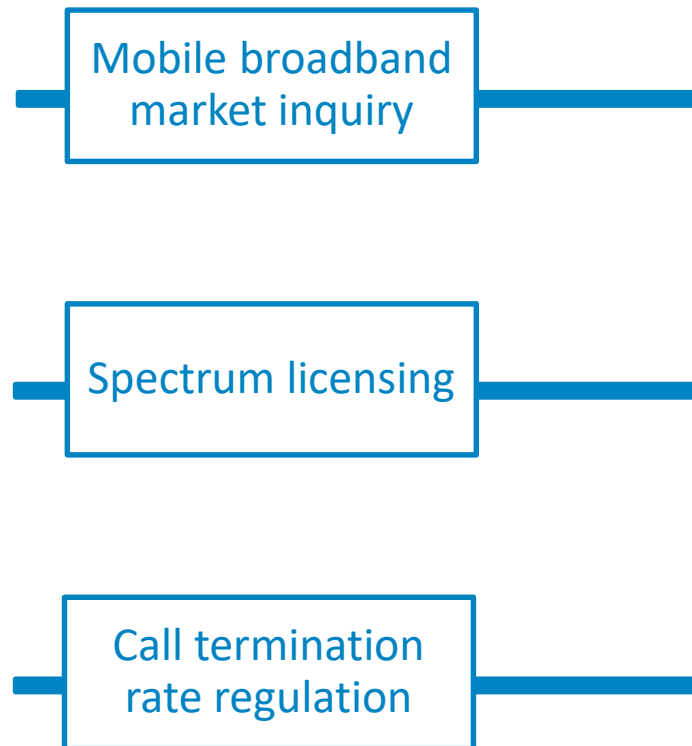
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Is the only infrastructure-based competitor to the duopoly
Is the only truly independent pro-competitive force in the marketplace
Has grown despite formidable odds, coverage spectrum being a key challenge

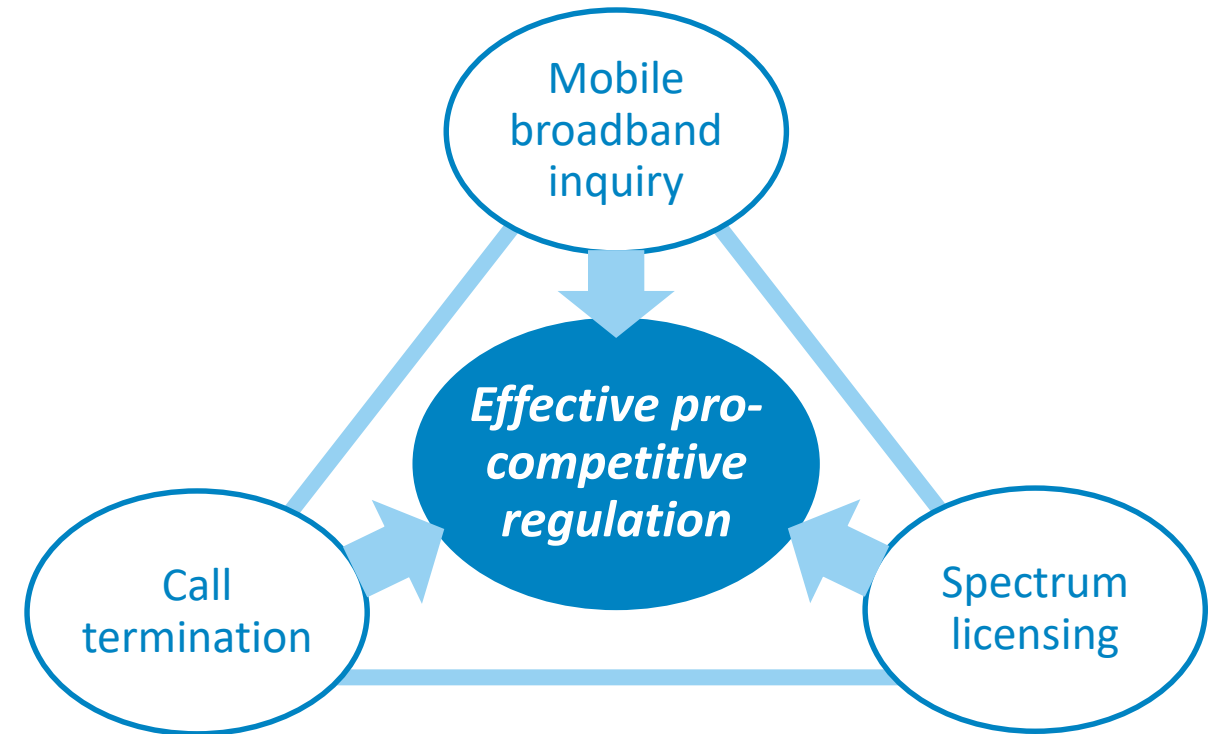


ICASA must adopt a pro-competitive stance and apply it consistently across its regulatory toolkit

Silos are creating an inconsistent, fragmented approach detrimental to competition



Holistic and consistent regulatory approach will benefit competition and consumers





**This Inquiry should be
doing far more**

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Regulation continues to favour the duopoly

Regulation is not helping later entrants

- Policy and regulation actively assisted the first movers but not later entrants
- No action taken on spectrum arrangements
- No sub-1 GHz spectrum (raising network build costs)
- No strongly pro-competitive spectrum auction
- No effective site access regulation
- Historic failures such as call termination

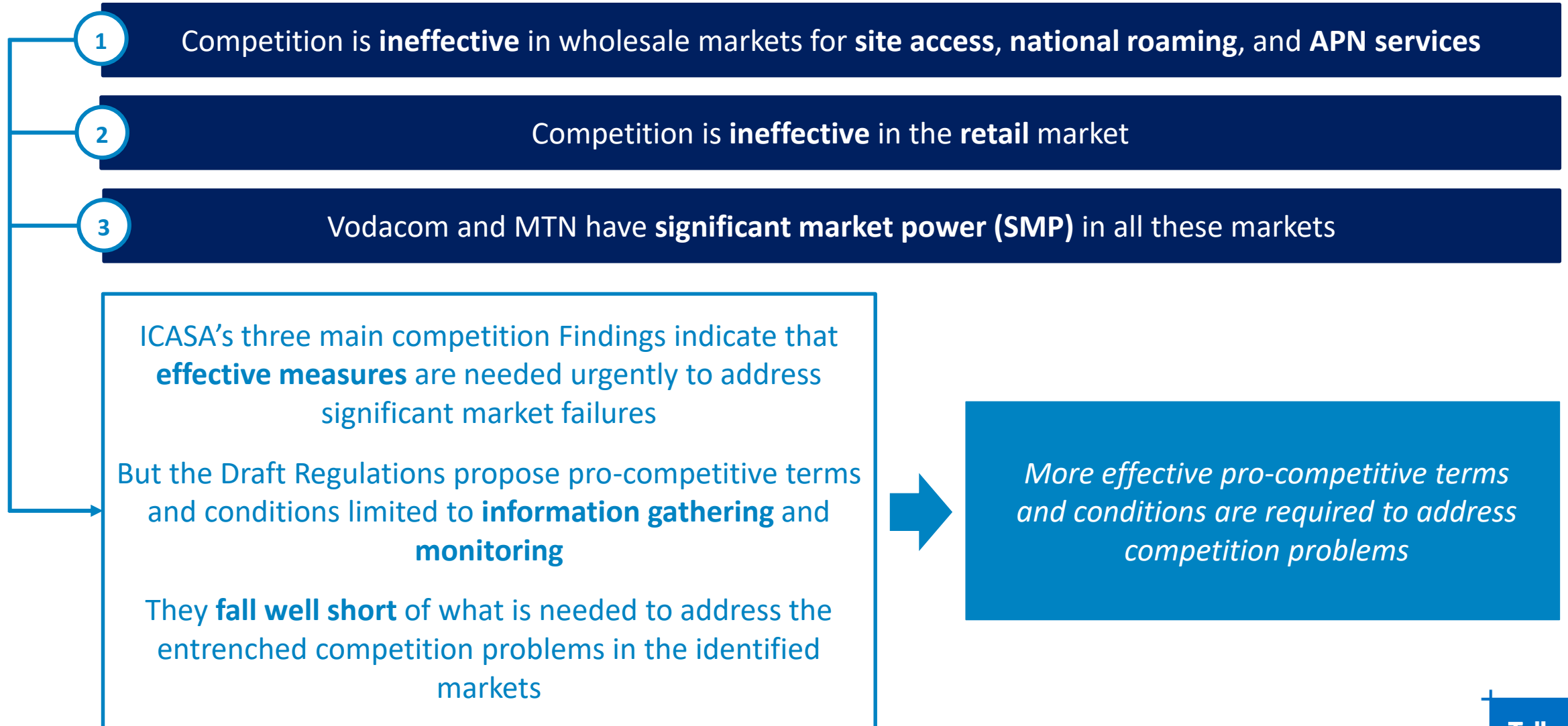
Late entrants face barriers to entry and expansion

- Large sunk costs
- Achieving scale quickly enough
- Achieving national coverage
- Accessing competitive wholesale inputs
- Retail market barriers (network effects, distribution channels)

ICASA has recognised this problem

“An important question is why there is a lack of dynamism in these markets. It is likely that this is linked to barriers to entry for challenger networks (including Telkom and Cell C)” – Findings Document, ¶ 85

This Inquiry's diagnosis demands a stronger cure



Key concerns with the competition findings

Spectrum licensing

- Spectrum is the **biggest driver of competition** in mobile broadband services
- This Inquiry has **discarded** the most **potent remedy in its toolkit** for addressing competition
- The current spectrum licensing process will **harm competition**

Spectrum arrangements

- These arrangements **entrench the duopoly**
- They fundamentally **undermine the auction design**
- They **harm competition** and their impacts on must be **fully assessed**

Three year time horizon

- This timeline is **artificial** – it is not informed by any analysis or consultation
- Competitive landscape is **changing rapidly** – COVID, 5G, spectrum licensing
- ICASA can't wait three years when impacts of spectrum licensing will be **immediate**

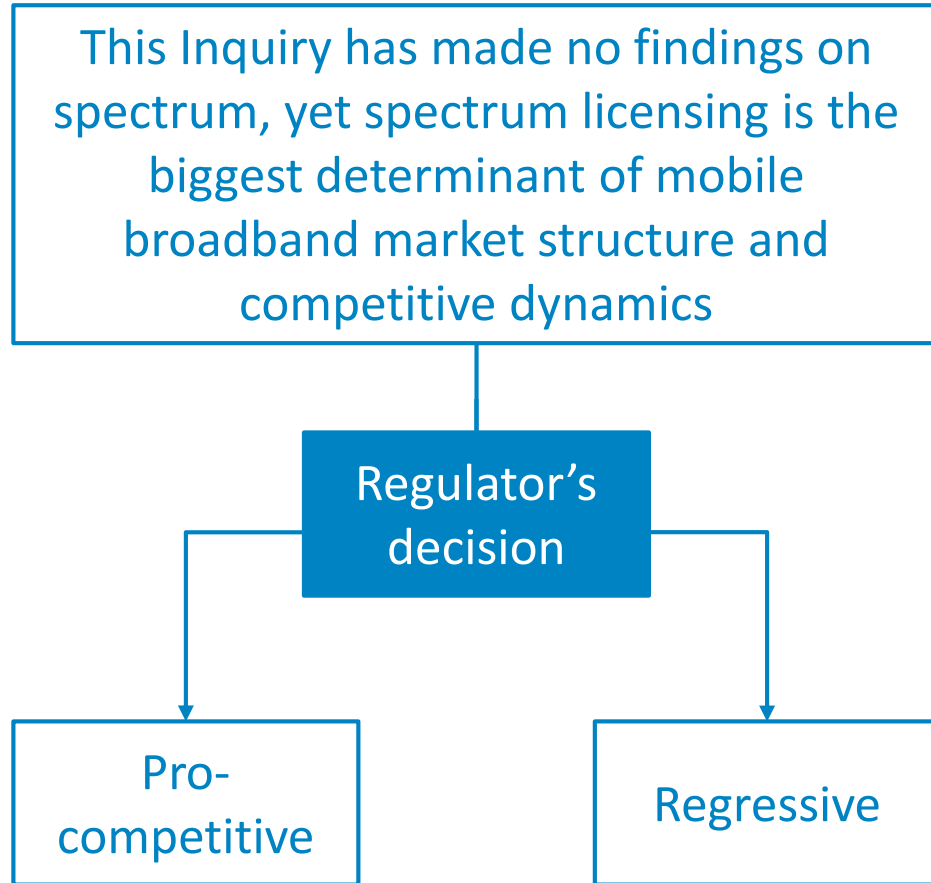
Impacts of 5G

- Competition in 5G has **already begun** and will only intensify
- Licensing of additional 5G spectrum will **accelerate the process**

Flawed market definition

- **Geographic markets** – sub-national site access and retail markets is **misguided**
- **Product market** – **DAS/indoor sites** are **not substitutes** for rooftop and macro sites
- **SMP findings** – approach **unjustifiably limits** extent of dominance findings

Licensing of spectrum must address the lack of effective competition in the mobile broadband market



The view of this Inquiry on future competition should inform the licensing of spectrum

- The desired future market structure
- How much spectrum to set aside for the WOAN and how much goes to auction
- Implications of non-availability of sub-1 GHz spectrum on a national basis
- Competition effect of awarding mid-band spectrum to the duopoly
- Current impacts of spectrum arrangements and COVID-19 emergency assignments

This Inquiry has miscalculated the impacts of the ITAs

ICASA's views

- Assigning new spectrum will **increase capacity** and foster competition over the longer run
- The “**reference offer**” condition for site access will **solve competition problems** in the wholesale market for **site access**
- The “**MVNO offers**” condition will increase MVNO numbers and improve retail market competition

The problems with these views

- The ITAs in their current form will **harm competition**
 - Challengers will still have **no sub-1 GHz**
 - SMP operators will significantly **expand mid-bands**
 - Impacts exacerbated by **spectrum arrangements**
 - Symmetric caps **advantage the duopoly**
- The reference offer condition does not address the core problem in site access – **exclusionary discrimination**
- MVNOs will have **limited impact** on retail market prices as they can't control input costs

ICASA has overplayed the pro-competitive impacts of the spectrum arrangements

Extent

They are **long term** and entail almost **all the spectrum** in the market, other than Telkom's

Foreclosure

They are **de facto exclusive and** have closed off avenues for entry or expansion by rivals to the duopoly

Retail market

They significantly expand **capacity of the duopoly** without promoting competitive entry

- Rain's impact on 4G retail competition has been **limited**
- Liquid has **no consumer retail business**
- Cell C's deal with MTN has facilitated its **exit from infrastructure competition**

Spectrum licensing

They distort competition and undermine any potential pro-competitive impacts of the **caps and floors** in the **auction ITA**

Combined impact

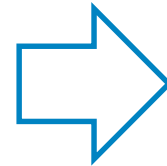
They are **mutually reinforcing** in their impacts on competition

They **entrench the duopoly**

There is no justification for the three-year time horizon

The market is currently changing rapidly and significantly

- COVID-19 emergency spectrum has enabled 5G launches
- 5G competition is underway and will evolve rapidly
- New spectrum assigned via the ITAs will have immediate, profound, and long-lasting impacts on competition



ICASA cannot wait and see for another three years

There is an urgent need to introduce more effective pro-competitive terms and conditions now, and to monitor their impact against rapidly-evolving market conditions on an ongoing basis

ICASA's 5G views are inconsistent with market realities

This Inquiry does not consider 5G competition primarily due to ICASA's view that, *"The technology is unlikely to have matured in the timeframe of this review."* (Findings Document, ¶ 49)

**Ignores
ICASA's own
actions and
views**

- ICASA added 3.5 GHz to the auction ITA – the primary band for 5G
- The Findings Document recognised "micro solutions" sites as being important to 5G, and excluded them from the relevant market

**Ignores
market
evidence**

- 5G competition has already begun, and will be strongly influenced by new 5G site development over the next three years – 5G RANs will be very dense
- Spectrum arrangements and COVID-19 emergency assignments are facilitating 5G rollout

There is no justification for ICASA's decision to downplay 5G competition in this Inquiry – pro-active regulatory efforts are needed now to ensure 5G competition

SMP testing and market definition need refining

SMP testing

- No reason to limit the market share test to > 45%
- Legal test allows dominance findings at 35% and lower with direct evidence of market power
- The Findings Document shows evidence of market power. The DSMI evidence adds weight
- No need to focus on 45% market share tests → unjustified limits on SMP findings

Geographic market definition

- Retail market is **national** - regional markets can be aggregated (see e.g. CMA in BT-EE merger)
- Site access market is **national**
 - Choosing municipal boundaries is arbitrary
 - These markets are likely more local than municipal but can be aggregated to national

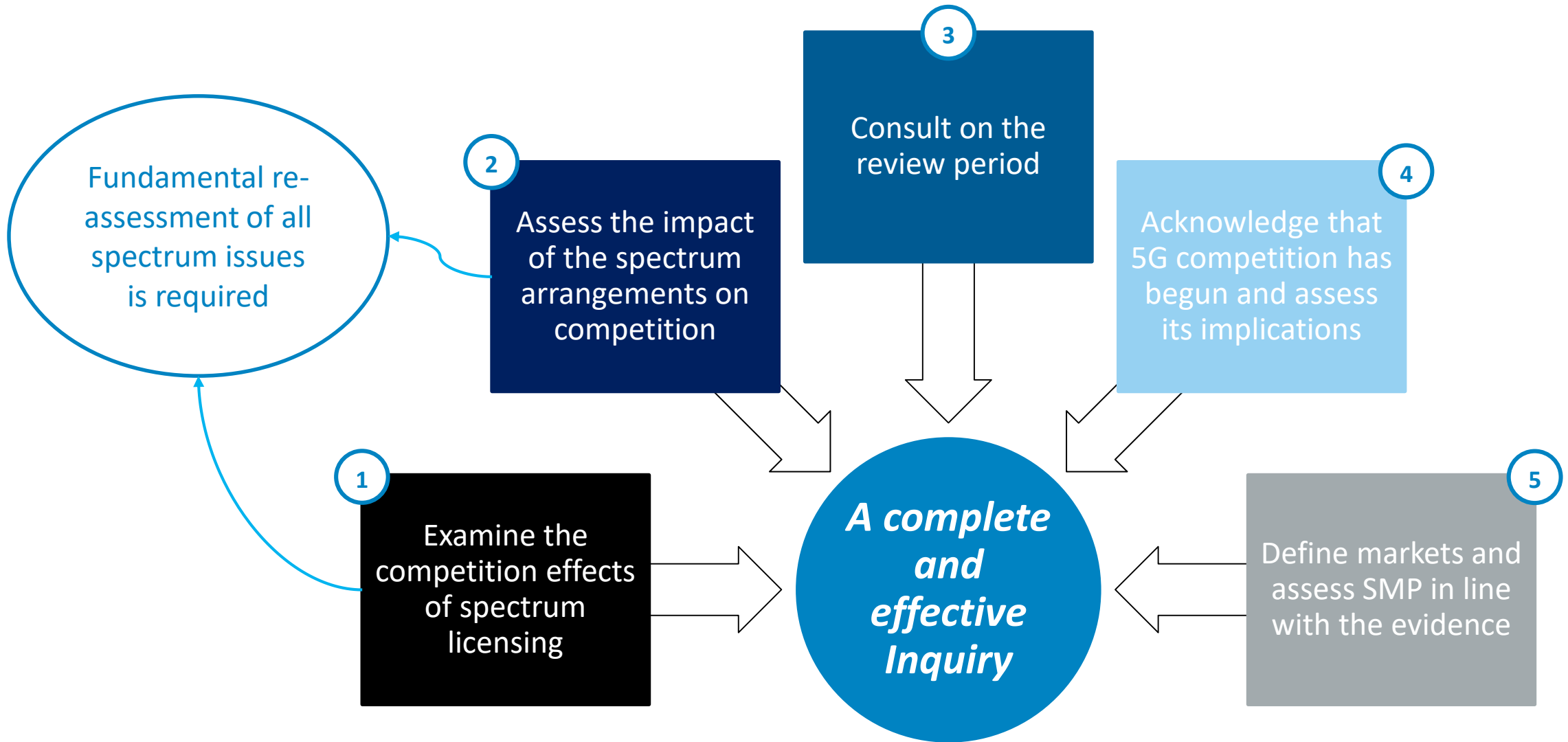
Site access product market definition

- DAS/indoor sites are **not substitutes** for rooftop or macro sites on the demand or supply side
- DAS/indoor sites are **specialised indoor sites** because rooftop and macro sites don't provide adequate service indoors

**What needs to be done to
safeguard a competitive
future?**

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The need to revisit the findings of this Inquiry



The proposed pro-competitive terms and conditions do not address competition concerns

What ICASA has proposed

- Monitoring market developments; and
- Gathering information from SMP operators
- Required SMP operator information:
 - Site access requests and denials and related information about site locations and types
 - Wholesale prices and volumes for national roaming and MVNO and APN services
 - Effective retail prices for data services
- Monitoring of market conditions by ICASA with suspected margin squeeze issues being referred to the Competition Commission

Why terms and conditions fall short

- ICASA has effectively proposed a **wait and see approach**. This is self-evidently not proportionate to the gravity of the competition problems ICASA has identified
- Gathering information about site access requests and denials will not address the core competition bottleneck – **exclusionary discrimination by SMP operators** (including non-price discrimination)
- The method proposed for gathering information is **inadequate**

ICASA needs reliable insight into SMP wholesale costs and prices; and rules to prevent anti-competitive behaviour

Effective pro-competitive terms and conditions are needed – the “wait and see” approach will harm competition further

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Accounting separation for wholesale markets for site access (on a national basis) and national roaming

- Only reliable means of gaining accurate insights into the relationship between wholesale costs and prices
- Superior to the information gathering methods in the proposed pro-competitive terms and conditions
- Not an unjustifiable burden, and warranted by the evidence
- Was effective at Telkom

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Effective site access regulatory regime applicable to SMP operators on a national basis

- Must target exclusionary discrimination by SMP operators (including non-price discrimination)
- The reference offer condition in the current auction ITA will not address this issue
- “Equivalence of inputs” (or outputs) approach is most sound – UK, NZ, Telkom examples
- Special focus needed for DAS/indoor sites, and 5G site sharing

The competition problems in South Africa require strongly pro-competitive spectrum policies, and nationwide “pro-competitive terms and conditions” designed to address the core issues effectively

Thank you

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