1 Introduction

The Competition Commission ("the Commission") supports the Parliamentary Portfolio Committee's (hereafter referred to as the "PPC") efforts to reduce mobile call termination fees. In this second submission, we outline several issues we would like to draw the Committee's attention to, and we comment on the 'moral suasion' process currently being followed by ICASA and the operators.

2 Magnitude of call termination charges

The Commission agrees with the PPC that mobile call termination prices are high (discussed in our first submission, presented to the PPC on the 15th of September 2009) by international and local standards. These prices may well have a detrimental effect on consumers, in that they may be reducing consumption of mobile voice telephony services, they may have the effect of excluding smaller rivals such as Cell C, and they might also be supporting tacit collusion among the mobile operators. Further, high telephony costs also impact on the performance of firms operating in other sectors – often chilling competition in those sectors by raising the cost of doing business.

3 Market power and competition in the mobile telecommunications sector in South Africa

If it was the case that the mobile telecommunications sector in South Africa was effectively competitive, it is likely that much of the profits of high wholesale call termination prices would be passed back to consumers through retail prices in the form of on-net discounts (although this can have exclusionary effects, as discussed previously), lower tariffs for accessing the network, and price reductions for other services such as data and SMS. Nonetheless, due to the highly concentrated nature of the sector, mobile operator profits arising from high call termination charges are not likely to be passed back to consumers.

It is likely that MTN and Vodacom are dominant in the market for mobile voice telephony services, at least in terms of the Competition Act. MTN has a market share of between 35 and 40 per cent, and is therefore presumed dominant (though MTN can rebut this) in terms of the Competition Act.[1] Vodacom too is probably dominant in the provision of mobile voice telephony services. Vodacom has a market share of over 50 per cent.[2] Cell C has a market share of between 10 and 15 per cent. Telkom has only recently entered the mobile operator market with its Telkom Mobi, and its coverage is somewhat limited.[3] The market for mobile voice telephony services is therefore, at the very least, highly concentrated.

This suggests that profits from high wholesale call termination prices are not competed away in the supply of retail call services, and therefore there is a strong case for a reduction of wholesale call termination prices.

4 Unintended consequences and radio frequency spectrum allocation

As a consequence of the mobile operators' market power and the high degree of concentration in the market, discussed above, it is also likely that profits lost from lower mobile call termination charges as a result of the PPC and ICASA's intervention might be recovered by increases in prices for retail services, such as access prices (minimum monthly charges), lower on-net discounts, and higher prices for SMS and data.

Ideally, one should not seek to regulate these retail prices directly, given the potential for competitive market forces to deal with these. Instead, it is imperative that regulatory barriers to entry, particularly in the allocation of radio frequency spectrum, be eliminated for new entrants. The Department of Communications is currently developing a radio frequency spectrum policy, and we would encourage the DOC to ensure that radio frequency spectrum is allocated quickly and at low cost to *new entrants*, and in such a way that the greatest number of competitors enters the market. According to

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[1] MTN's 2005 annual report says that it has a market share of 38.5 per cent, see p. 49 of its annual report. According to AMPS, MTN's market share is 40.6 per cent. See footnote **Error! Bookmark not defined.** above for thresholds beyond which a firm is presumed dominant.

[2] Vodacom's 2005 / 2006 annual report says that, in South Africa, its market share is 58 per cent. According to AMPS, Vodacom's market share is 51.3 per cent.

[3] See Telkom's Telkom Mobi product, available at: https://secureapp.telkom.co.za/wireless/coverage.do?prod=wcdma, last accessed on 1 October 2009.

Samarajiva (2007: 66)[4], the key is to focus on spectra in which technology providers have achieved economies of scale and can provide equipment and handsets cheaply. This has occurred particularly in the GSM 900 and GSM 1800 bands. Samarajiva (2007: 66) suggests that three operators could operate in the CDMA 800 band, four operators can operate in the GSM 900 band, and further services can be offered in the GSM 1800 and CDMA 1900 bands. This would bring in new providers offering voice and data services based on existing and new technology in direct competition with incumbents, ultimately restraining the ability of incumbents to exercise market power.

It will be important for ICASA to continually review the relevant markets in order to assess whether its interventions (reducing wholesale prices, lowering barriers to entry etc) are effective in stimulating competition and reducing prices ultimately paid by consumers. In this regard we have reference to the provisions in the Electronic Communications Act ("ECA") for periodic review of markets and pro-competitive remedies.

5 The process to be followed by ICASA and the operators

We support an expedient process to arrive at an interim figure. However, we note that any figure which is arrived at arbitrarily may be subject to challenge. Our information is that there is costing information available to ICASA, in its COA/CAM[5] study, which will allow it to arrive at a defensible interim figure. We suggest that the PPC have regard to this study. This should allow for a substantial but reasonable once off reduction on the basis of the costing methodology applied in the COA/CAM. We support further reductions over the next three years but that this also is done on a defensible basis. As noted in our previous submission, a rate that is set too low may have unintended and harmful consequences. It is therefore imperative that ICASA also continue with the regulatory process envisaged in the ECA with a view to reducing termination rates to an appropriate level.

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[4] SAMARAJIVA, R. (2006). Pre-conditions for effective deployment of wireless technologies for development in the Asia-Pacific, *Information technologies and international development, Vol. 3, No. 2*, available at: http://itidjournal.org/itid/issue/view/11 , last accessed on: 1 October 2009.

[5] COA/CAM means Code of Account/Cost Allocation Manual.

A question that has arisen for ICASA, in determining an interim rate, is whether such rates should be bilaterally or multilaterally negotiated by the incumbents. If we assume that the price setting process is led and enforced by ICASA then competition law concerns arising from either bilateral or multilateral discussions would fall away. However competition problems may arise in cases where private firms engage in a multilateral discussion independent of the regulatory process.

We do not believe that any multilateral process would be necessary if the above approach is adopted or if the PPC proceeds with its proposal to bring down termination rates.

6 Conclusion

The Commission therefore supports the PPC's and ICASA's endeavours to ensure that lower mobile call termination prices are achieved. However, the Commission is in favour of a greater regulatory role for ICASA in the determination of call termination rates, and that ICASA ensure that these rates are set on a defensible basis.