Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

Statement to support the release of wholesale call termination regulations – Thursday 15 April 2010

1. Introduction

Good morning ladies and gentlemen and welcome to ICASA this morning.

I am Thabo Makhakhe. I am now conveying to you a brief outline of the regulatory history and principles in respect of call termination before discussing ICASA's proposals regarding the market for call termination. These proposals will be released formally in the government gazette tomorrow, 16th April 2010.

On conclusion I will take a few questions

2. Interconnection versus call termination

Interconnection regulations

There has been much talk about interconnection in the press recently and I would like to clear the waters in respect of ICASA's responsibilities regarding interconnection versus call termination.

The Electronic Communications Act (ECA) has a key objective of ensuring fair and non-discriminatory access to interoperable networks. Access to networks i.e. interconnection, is an obligation which all licensees bear under Section 37(1) of the ECA. To support this obligation ICASA is mandated to develop and release regulations that facilitate the conclusion of interconnection agreements by stipulating certain minimum agreement principles. These regulations were released last week in the Government Gazette and are not designed to address matters of pricing at all.

Although pricing is indeed a component of access, pricing matters, particularly price controls may only be implemented under Chapter 10 of the ECA.

Call termination and conducting market reviews

Voice call termination is the service one network offers another to carry voice traffic to its end-users. It is the charge for this service that has been the subject of much media attention, where it has been reported that the current charge is a constraint to effective competition as well as a driver of high retail prices in South Africa.

The debate around call termination fees started in 2007, with ICASA releasing a discussion document and subsequently a findings document on the definition of the market for call termination services.

ICASA concluded by defining the market as call termination on each licensee's network in South Africa.

In the findings document ICASA committed to providing guidance to stakeholders on how Section 67, the section of the ECA that addresses competition matters, would be addressed.

In 2008 ICASA released a range of regulations specific to each segment of Section 67(4) for public comment. The commentary received raised numerous issues. Among them was the reality that markets are specific and therefore begging the question as to whether "framework" regulations were necessary.

Based on the submissions received, a holistic review of the ECA as well as the process for conducting a market review, ICASA concluded that regulations addressing competition matters should only be released on a market by market basis. Further to this, ICASA is of the view that the ECA, from Sections 67(5) onwards more than adequately explains what is required to be included in a market review.

Nevertheless, in the interests of regulatory certainty, ICASA chose to release a detailed guideline on how market reviews would be conducted and how specific aspects would be looked at. This guideline was released on the 8th of March 2010.

The approach taken by ICASA is not only consistent with ex ante regulatory regimes in other jurisdictions but is in line with the Competition Act to ensure that no inconsistencies occur.

3. Outcomes of the call termination market review

ICASA's view is that the market definition as stated in the 2007 Findings document requires no change despite the introduction of the new licensing regime: networks are still networks and therefore nothing has changed.

The definition ICASA proposes for the market is the following:

> Wholesale call termination on an electronic communication network operating in South Africa - both Electronic Communications Services and Electronic Communications Network Services.

This definition is consistent in other jurisdictions which follow a market review process including:

- Various European Union nations
- Uganda
- Tanzania
- Kenya
- New Zealand

In October 2009 ICASA took a further step by releasing a request for information in order to evaluate the effectiveness of competition in the call termination market. The questionnaire sought information on market shares, network coverage, revenues and other factors deemed relevant to evaluating the effectiveness of competition.

ICASA's view is that the demand for call termination is a derived demand based on consumers' demand for communication. However, access to these consumers is controlled by the licensee that provides voice communication services to the end-user. Therefore call termination is a bottleneck service, and as such each licensee controls 100 per cent of the market for call termination to its subscribers. Each licensee therefore has significant market power.

However, although each licensee has significant market power, it is the ability of each licensee to use this market power in the retail market that determines whether market failures exist. This begs the questions: what is the impact of a licensee raising the price for voice call termination on its market on the competitiveness of the downstream retail market?

As stated above, call termination is a bottleneck service. So one has to further ask the question: can a network increase its price without facing detrimental effects? Whether such conduct is possible is defined by network effects: the bigger your network the larger the customer base and therefore the greater demand for termination on your network.

The charge for call termination may have remained stagnant from 2005 onwards. But one cannot ignore the impact of the substantial increase in call termination prices, specifically for mobile call termination, in the period July 2000 to July 2002, where peak mobile call termination charges increased from 50 cents to R 1.23 over a period of 17 months.
Pricing alone is not the only concern. A delay in facilitating access to your network also creates competition concerns. This is known as the refusal to deal or denial of access. ICASA is aware that in some cases it took close to a year to complete interconnection negotiations. This is where interconnection regulations come in.

ICASA's view is that the market for call termination is ineffectively competitive, although there are mechanisms through which larger service providers may exert some countervailing buying power (CBP) on smaller service providers. The use of CBP has the potential to limit the extent to which smaller service providers are able to price wholesale call termination at excessive levels (significantly above cost).
ICASA has identified the following general market failures in the provision of call termination services:

- A lack of sufficient access to networks
- A lack of transparency
- Discrimination concerns

- Inefficient pricing

ICASA is obliged to ensure that remedies are proportionate to the scale of the market failure. In this regard different remedies may be applicable to different types of licensees.
In determining the remedies ICASA recognises that different licensees provide different services whilst providing a call termination service. ICASA has identified two types of service:

- Mobile services: services via wireless technology to a mobile location
- Fixed services: services offered to a fixed location, including VOIP services

Furthermore, although each licensee has a monopoly over calls destined for its network, certain networks are better placed to leverage off this position. Therefore ICASA proposes two categories of licensees with significant market power:

- An SMP licensee: all licensees offering call termination
- An Established SMP licensee: a licensee that has an established presence in the market. Established SMP licensees are:
    - Vodacom (Pty) Ltd.
    - MTN (Pty) Ltd.
    - Cell C (Pty) Ltd.
    - Telkom (Pty) Ltd

4. Proposed remedies

I now discuss the proposed remedies applicable to each identified market failure

Access, non-discrimination and transparency

ICASA proposes that there be a two-tier regulatory approach to addressing these matters, based on the above categorisation of licensees, where:

- SMP licensees are required to comply with the recently released Interconnection Regulations
- Established SMP licensees are required to comply with a more intrusive regulatory obligation through the provision of:

  - A reference interconnection offer to fast-track interconnection requests. With a Reference Interconnection Offer (RIO) in place, ICASA believes that interconnection requests could be completed within 15 days
  - Cost accounting and accounting separation: ICASA proposes to impose regulatory financial reporting formats on Telkom, Vodacom, MTN and Cell C to provide transparency to ICASA over issues such as cross-subsidization. The reporting format will be similar to that of the old COA/CAM regulations and will be released for public comment during the course of this year.
- All licensees are required to provide relevant market data on a bi-annual basis so that ICASA is enabled to monitor trends in the market.

Inefficient pricing

As stated earlier, the very characteristic of the call termination market means that there is very little incentive to compete on termination rates and that larger networks are in a position to be price-setters.

ICASA therefore proposes that cost-orientation be introduced in the provision of call termination services.

The particular nature of the cost-orientation remedy is based on the characteristics of the particular licensees as discussed earlier.

Established SMP licensees

For those licensees with an established presence in the market ICASA proposes the imposition of a single set termination rate, removing the distinction between peak and off-peak termination rates. ICASA did consider a blended rate but believes that a single set rate is more beneficial in terms of tariff transparency as well as a lighter regulatory burden.

ICASA also believes that a glide-path from the current rates to a cost-oriented rate is necessary to secure and support continuous investment in the ICT sector in South Africa. ICASA therefore proposes a 3-year glide-path for both mobile and fixed service licensees.

- Mobile termination rates are proposed to be reduced to R 0.65 from July 2010 and further reduced to R 0.40 from July 2012.
- Fixed termination rates are proposed to be reduced to R 0.15 from July 2010 and further reduced to R 0.10 from July 2012.

	Mobile Call termination rates	Fixed call termination rates
From July 2010	**R 0.65**	**R 0.15**
From July 2011	**R 0.50**	**R 0.12**
From July 2012	**R 0.40**	**R 0.10**

These figures are based on information at ICASA's disposal, particularly submissions made by licensees under the old COA/CAM regulations.

All other licensees

All other licensees will be required to comply with a cost-oriented obligation by determining termination rates that are "fair and reasonable."

ICASA expects that these licensees will charge symmetrical rates with the established SMP licensees. This means the following:

- If a licensee provides termination to a fixed location, it will be expected to offer termination rates as set for Telkom
- If a licensee provides termination to a mobile location, it will be expected to offer termination rates as set for MTN, Vodacom and Cell C

Such licensees are expected to commercially negotiate termination rates with interconnecting parties, But they are given the right to refer a dispute to ICASA if a dispute over pricing occurs.

ICASA will review the information submitted to it, ensuring that the relevant information of costs per network element are provided, and then make a determination.

5. Conclusion

I now wish to share with you ICASA's expectations of the outcome of a reduction in termination rates.

A key aspect of regulating termination rates is the issue of pass-through – to what extent will end-users benefit?

ICASA has two expectations in this regard. Firstly, we expect the fixed to mobile retail call rates to reduce as the mobile termination rates are reduced.

We have already benefited from a 100% pass-through of the recent reduction in mobile call termination rates for fixed line subscribers and we would encourage this practice to continue.

Secondly we expect some measure of pass-through to a reduction in retail prices of calls between mobile networks. However, given the nature of product bundling in the provision of retail mobile services we expect that price reductions will be subject to dynamic competition.
ICASA's view is that a lack of effective pass-through to retail prices indicates that there may be a lack of effective competition in the retail market for mobile services.

ICASA will monitor price movements in the retail market for mobile services vigilantly over the coming months to evaluate whether further action is required.

In conclusion, I wish to inform everyone here, as I now do, that written submissions on the draft regulations and explanatory note which will be released tomorrow in the government gazette, are due no later than the 2nd of June, with public hearings planned for the 9th to the 11th of June, 2010.
I thank everyone for their interest in this matter over the last few months and look forward to a robust and pro-active engagement during this crucial public process.

I will now take a few questions bearing in mind that you still have the opportunity to scrutinise the draft regulations and the supporting explanatory note.