

Competition Commission's inquiry into data costs finalised in 2018

 By [Burton Phillips](#)

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The past two years have seen the Competition Commission undertake a number of market inquiries involving the retail, healthcare and public passenger transport markets. However, few market inquiries have captured the attention of South African consumers more than the inquiry into the high costs of data in the country. Businesses and consumers will be waiting in anticipation for the outcome of the Commission's inquiry into data costs, which is expected to be finalised in August 2018.



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#Datamustfall

It started with the hashtag #datamustfall, which set social media alight as consumers and experts weighed in on the topic. This was followed by the Independent Communications Authority of South Africa (ICASA) launching an investigation into priority markets in the electronic communications sector in July 2017, which forms part of various ICASA initiatives aimed at addressing the high costs of communication in South Africa.

The #datamustfall campaign also caught the attention of the Minister of Economic Development who requested the Commission to initiate an inquiry. In August 2017, the Commission, who has concurrent jurisdiction with ICASA in respect of competition in the telecommunications market, published the terms of reference for its market inquiry.

The scope of the inquiry

The Commission believes that there are features of this market that prevent, distort or restrict competition. The purpose of the inquiry is to assess the elements of the data services value chain which contribute to the pricing of data. While the scope of the inquiry is broad, the Commission indicated that the inquiry will assess, amongst others, the adequacy of the current regulatory regime, the strategic behaviour of large fixed and mobile operators, the costs and profits of fixed and mobile operators, infrastructure investments made by operators and the allocation of spectrum. The Commission will also

benchmark the costs of data services in South Africa against data prices in other countries. Every aspect of the data value chain will be investigated to identify areas of market power and possible structural or regulatory factors which may be contributing to high data prices. The Commission will also look at the extent of data coverage and whether such coverage is adequate by international standards.

The outcome of the inquiry

The success of the inquiry will ultimately depend on the extent to which stakeholders engage in the process. Consumers, operators, government, regulators, civil organisations and any other interested parties were invited to make formal submissions by 1 November 2017. After formal submissions, private and public consultation processes will follow and other information gathering exercises, which will culminate in the Commission issuing its recommendations. Extensive submissions and engagements are likely to result in more meaningful and robust recommendations. Recommendations may include amendments to legislation, regulations and policies, spectrum allocation, engagements with stakeholders who are able to take immediate corrective measures, further investigation or immediate enforcement action against firms found to be in contravention the Competition Act.

Can the spectrum issue be resolved?

While there are other potentially problematic issues which will come to the fore during the inquiry, one of the structural concerns already raised as a significant contributor to high data costs in South African is the availability of spectrum. The lack of spectrum allocation to telecommunications operators means that they have to build additional base stations and other infrastructure at a significant cost, which ultimately consumers pay for. ICASA has recognised that spectrum allocation will be an important factor in bringing data costs down and improving competition in the sector. This is evident from the fact that adequate spectrum allocation in other African countries has resulted in significantly lower data costs.

The debate regarding the allocation of spectrum appears to be an ongoing one, with the Department of Telecommunications and Postal Services calling for an open access network approach which would result in all spectrum being pooled and assigned to an open access network, while ICASA prefers the auctioning of spectrum to operators. Irrespective of the approach adopted, it is clear that the spectrum issue must be resolved if there were to be any chance of bringing data costs down. This is one area to monitor closely in 2018.

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