

ICASA announces inquiry into the state of competition in ICT sector



By [Leana Engelbrecht](#)

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On 13 March 2014, the Independent Communications Authority of South Africa (ICASA) announced that it will be instituting a high-level inquiry into competition in the information and communication technology (ICT) sector.



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ICASA stated in a press release that the ICT sector "has been, and continues to undergo rapid technological changes with far reaching implications for the local and international industries. One area, in which these changes are more pronounced, is in the competitiveness of the electronic communications, broadcasting and postal sector and the assumption that greater competition will lead to reduction in the cost to communicate."

ICASA, by virtue of provisions 4B of the Independent Communications Authority of South Africa Act, No 13 of 2000 (the Act), has the authority to institute an inquiry into any matter relating to, amongst other things, the achievement of the objects of this Act. The Act does not specifically state that ICASA is the custodian of competition in the ICT sector but the Act, as its object, states that ICASA should regulate electronic communications in the public interest. One purpose stated in the Electronic Communications Act, No 26 of 2005 is, however, to promote competition within the ICT sector.

ICASA published its notice of public inquiry on 20 March 2014, indicating the scope and extent of the inquiry. Notably the notice states that:

- despite an ostensible increase in competition in the ICT sector, there has not been a perceived decrease in the cost to communicate;
- ICASA has concerns relating to concentration in the ICT sector and that the market is controlled by few large players;
- Attempts by new market players to enter the broadcasting market seem to be unsuccessful;
- Based on its mandate to safe-guard the public interest, ICASA is compelled to guard against market failure and wishes to establish what corrective measures can be put in place to ensure a competitive market; and
- ICASA urges respondents to think 'outside the box' in providing comments during this inquiry process and to view the process as an exploration of the issues and how they may affect the regulation of competition in the ICT sector as a whole.

ICASA will focus on:

- i. the current state of competition in the market as a whole;
- ii. the challenge of creating a level playing field across platforms;
- iii. the impact of convergence, net neutrality and disruptive technologies on the competitive landscape;
- iv. the role of access to fixed (fibre) and wireless (high demand spectrum) in enabling competition; and
- v. the tension between consolidation and plurality in the ICT sector.

ICASA requests written submissions by 20 June 2014 and envisages oral presentations to follow written submissions (by parties that indicate that they would like to make such submissions).

The Competition Act, No 89 of 1998 (Competition Act), provides in s21(h) that the Competition Commission (Commission) and any other regulatory authority may negotiate agreement to co-ordinate and harmonise the exercise of jurisdiction over competition matters and to ensure a consistent approach to matters relating to competition. ICASA and the Commission concluded a Memorandum of Agreement in 2002 in accordance with s21(h) of the Competition Act, which Memorandum of Agreement relates to co-operation between the Commission and ICASA in respect of the investigation, evaluation and analysis of mergers and in respect of complaints involving telecommunication and broadcasting matters. The Memorandum of Agreement does not, however, extend to aspects relating to market inquiries into the state of competition in the ICT sector generally and it is unclear whether the Commission will be involved in this inquiry.

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