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UPDATE ON THE PUBLIC INQUIRY LAUNCHED BY ICASA INTO THE STATE OF COMPETITION IN THE ICT SECTOR

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During a press conference held on 13 March 2014, the Independent Communications Authority of South Africa (ICASA) announced that it would launch a public inquiry into the state of competition in the information and communications technology (ICT) sector. ICASA subsequently issued a notice inviting members of the public to comment on issues pertaining to competition in the ICT sector by 23 June 2014.

Various members within the ICT sector provided written comments that were published on ICASA's website. Cell C, MTN, Vodacom, Neotel, SABC, e-tv, Multichoice and M-Net were amongst those who submitted written representations, and presentation of the oral hearings in relation to the public inquiry convened from 1 to 3 October 2014.

In its press conference in March 2014, ICASA stated that "The ICT 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 sectors and the assumption that greater competition will lead to reduction in the cost to communicate."

Whilst ICASA's intent in launching the inquiry may be perceived as laudable, the inquiry was met with significant criticism of the regulator. On a closer inspection of the notice released in March 2014, which consists of a mere four pages, it is clearly absent of any research, data, statistics, evidence or analysis to enable interested persons to make substantial representations. However the notice does state the various issues that ICASA seeks to address which would enable any interested party to submit general representations in response thereto.

M-Net and MultiChoice, in their written representations, have criticised the public inquiry by stating that "the current process has commenced with a level of inquiry which is so superficial, that it will compromise any findings in this process".

There was further criticism levelled at ICASA during the oral hearings with industry players accusing ICASA of preventing effective competition in the ICT sector.

Some members of the industry were more conciliatory in their approach, such as the South African Broadcasting Corporation (SABC) which adopted a different stance to M-Net and Multichoice and noted that it "intends to cooperate fully in this process". The SABC further stated that "SABC's continued viability as a public broadcaster will depend on its ability to operate flexibly within the digital environment in order to compete for viewers and advertising revenue with alternative and unregulated forms of broadcasting."

E-tv cautioned ICASA on issuing invitations to apply for new licences in the broadcast sector without conducting an assessment on the viability of new entrants in the market.

Vodacom was also amongst those who indicated its willingness to engage in the public inquiry but pointed out its concern of the erratic and inconsistent policy formulation and regulation implementation in the South African ICT sector.

Although the inquiry did prompt a lively discussion on competition in the ICT sector, it is not clear whether any findings published by ICASA will come as a surprise to the sector or result in revolution in regulating competition in the ICT sector in the near future.

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