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**14 June 2019**

**TO: COMPETITION COMMISSION OF SOUTH AFRICA**
**By Email: datainquiry@compcom.co.za**

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# PRELIMINARY FINDINGS AND RECOMMENDATIONS ON THE DATA SERVICES MARKETS INQUIRY: SUBMISSION BY MEDIA MONITORING AFRICA TO THE COMPETITION COMMISSION OF SOUTH AFRICA

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*This submission was prepared with the assistance of Power Singh Inc.*
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Open Rubric

**INTRODUCTION**

1. Media Monitoring Africa (MMA) welcomes this opportunity to provide submissions on the preliminary findings and recommendations on the Data Services Market Inquiry (the Inquiry) conducted by the Competition Commission of South Africa (the Commission). In particular, the Inquiry's purpose in seeking to make appropriate recommendations to address the reasons for high data prices, in order for such prices to ultimately be lowered, is critical to the full enjoyment of a range of fundamental rights within South Africa. This submission is aligned with the written and oral submissions made by MMA to the Commission in 2018.[1]

2. At the outset, MMA wishes to acknowledge the robust approach taken by the Commission through the Inquiry, and the important preliminary findings and recommendations regarding the current state of competition in the telecommunications sector being anti-poor. The Commission, through the report under consideration and the follow-up that will need to be engaged in thereafter, has a key opportunity to improve access to the internet through a range of interventions – including interventions that would require improved corporate accountability and transparency, improved legislative and policy measures, and better stakeholder engagement and coordination – that may benefit the vast majority of the persons in the country, including the most vulnerable members of our society.

3. This submission focuses on the importance of access to the internet, both in its own right and as an enabler of a range of fundamental rights, and the need for a rights-based approach in the finalisation and implementation of the findings and recommendations made by the Commission regarding data pricing. While this is of relevance to all aspects of the findings and recommendations of the Commission, we highlight below the particular relevance that this has to the following preliminary findings: (i) that international benchmarking confirmed that South African data prices are high, particularly for mobile and prepaid data; (ii) the pricing structure of mobile data is anti-poor and lacks transparency; and (iii) a lack of spectrum and cost-based facilities access drives up costs.

4. Accordingly, this submission is structured as follows:

    4.1. **First**, an overview of MMA and our relevant expertise.

    4.2. **Second**, we set out the relevant public interest considerations that should be borne in mind.

    4.3. **Third**, we expand on the role of access to the internet in the realisation of other fundamental rights.

    4.4. **Fourth**, we outline the need for improved transparency and accountability.

[1] A copy of the presentation made to the Commission in 2018 is annexed marked "**Annexure A**".

4.5. **Fifth**, we deal with the need for regulatory certainty and cohesion.

4.6. **Sixth**, we highlight the need to address the shortcomings in spectrum allocation.

4.7. **Seventh**, we explain our proposals to achieve better coordination amongst relevant stakeholders.

5. Each of these points are dealt with in turn below.

**OVERVIEW OF MEDIA MONITORING AFRICA**

6. MMA is a not-for-profit organisation that has been monitoring the media since 1993. MMA's objectives are to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.

7. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. MMA has over 20 years' experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.

8. For more about MMA, please visit: www.mediamonitoringafrica.org.

**RELEVANT PUBLIC INTEREST CONSIDERATIONS**

9. As a general note, MMA urges the Commission to expressly draw attention to the public interest considerations that should guide both the Inquiry and the outcomes of the Inquiry. In this regard, it is imperative, in our view, to ensure that all findings, recommendations and outcomes are framed through a rights-based lens, and the respect, protection and promotion of fundamental rights remains at the core.

10. Furthermore, the findings and recommendations need to take appropriate consideration of the changing digital environment, and how this affects users, access and market trends. These are challenging issues, but it is imperative that the Commission deals with it appropriately at this opportunity in order to safeguard the rights of affected users going forward.

11. Given the socio-economic divide in the country, and the significant portion of the population that relies on mobile data in order to access the internet, the preliminary findings are an important step in offering a reprieve to users who are directly and adversely impacted by the untenable state of data pricing as it stands at present. It is estimated that

approximately half of the South African population remains offline, and despite increased access to smartphone technology, there remains a significant digital divide.

12. As such, it is important to emphasise that in addition to the preliminary findings and recommendations made by the Commission, there is still more that needs to be done in order to ensure meaningful and universal access to the internet for all persons in South Africa. This requires, among others, a clear, inclusive and cohesive regulatory framework; and an understanding of access that goes beyond coverage, and grapples with the range of components, including the cost of the data and the devices, digital literacy, and the availability of relevant content in appropriate languages. In this regard, we draw to the attention of the Commission a joint initiative by MMA, together with the Association for Progressive Communications, the Interactive Advertising Bureau of South Africa and the South African National Editors' Forum, that has developed a seven-point plan regarding how to achieve universal access to the internet, which includes the following:[2]

    12.1. The implementation of free public access to the internet at government sites, such as schools, libraries and health facilities.

    12.2. Zero-rated access to government websites and data.

    12.3. Free wi-fi access recognised as a basic municipal service and run as a public utility, realised through public-private partnerships.

    12.4. Setting minimum standards for the provision of free internet access, including a minimum data allocation per person per day, and standards for privacy, security, access quality and fair access to information in the public interest.

    12.5. The introduction of the concept of My Internet Rights, in terms of which every citizen should be entitled to a daily tranche of free internet access to exercise their information rights.

    12.6. The introduction of digital literacy programmes in education curricula and as part of free internet schemes, especially aimed at children and those unfamiliar with risks and opportunities related to the internet.

    12.7. The need for relevant oversight bodies to monitor and report on the progressive realisation of internet access rights, and in particular the adoption and implementation of legislation, regulation and policies governing free access to the internet as a basic human right.

13. MMA submits that these aspects to the seven-point plan are consonant with the preliminary findings and recommendations made by the Commission, and could serve to concretise the public interest considerations that MMA suggests should be expressly provided for in the

[2] A copy of the statement setting out the seven-point plan, as launched at the International Day for Universal Access to Information in September 2018, is annexed marked "**Annexure B**".

report. Further in this regard, we emphasise the importance of creating pricing structures and subsidies that facilitate affordable access, with a particular focus on marginalised groups, including women, persons living in rural or peri-urban areas, persons with disabilities and children.

14. Notably, in 2018, South Africa accepted the following recommendations from the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in terms of its commitments under the International Covenant on Economic, Social and Cultural Rights:[3]

> "**Access to the Internet**
> (1) The Committee is concerned at the low rate of Internet access, particularly in rural areas and in schools, and at the lack of affordability of the Internet for the most disadvantaged groups (art.15).
> (2) The Committee recommends that the State party adopts relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools, rural areas and for the most disadvantaged groups."

15. **It remains unclear, at this stage, what measures, if any, have been taken by the relevant government stakeholders to engage in action in response to this recommendation. We submit that in accordance with the accepted recommendations of the CESCR and in line with section 9 of the Constitution, these considerations should be expressly promoted and stipulated in the development of any findings, recommendations and outcomes of the Inquiry.**

## THE ROLE OF ACCESS TO THE INTERNET IN THE REALISATION OF OTHER FUNDAMENTAL RIGHTS

16. The importance of access to the internet, both as a self-standing consideration and in the broader context of its role in promoting the realisation of other fundamental rights, has become well-established under domestic and international law. This includes the role that access to the internet plays in, for example, sharing and receiving information and ideas; expressing dissent and engaging in political discourse; mobilising communities; accessing social security benefits from the state; and facilitating the right to education.

17. The converse is that those who are unable to access the internet are negatively impacted in their enjoyment of these rights. The empowering and democratising effect that the internet can have is wholly denied to those persons for whom access to the internet falls beyond their reach. We note in this regard that access entails two distinct but interrelated dimensions: (i) access to content online; and (ii) access to the physical infrastructure to enable access to such online content. The United Nations Economic, Social and Cultural Organization (UNESCO) was amongst the first international bodies to call on states to take steps to realise a right of access to the internet. In this regard, it stated that:[4]

[3] CESCR, 'Concluding report on the initial observations on South Africa', E/C.12/ZAF/CO/1, 12 October 2018 at paras 76-77.

[4] UNESCO, 'Recommendation concerning the promotion and use of multilingualism and universal access to cyberspace', 2003 at paras 7 and 15.

> "Member States and international organizations should promote access to the Internet as a service of public interest through the adoption of appropriate policies in order to enhance the process of empowering citizenship and civil society, and by encouraging proper implementation of, and support to, such policies in developing countries, with due consideration of the needs of rural communities.
>
> …
>
> Member States should recognize and enact the right of universal online access to public and government-held records including information relevant for citizens in a modern democratic society, giving due account to confidentiality, privacy and national security concerns, as well as to intellectual property rights to the extent that they apply to the use of such information. International organizations should recognize and promulgate the right for each State to have access to essential data relating to its social or economic situation."

18. In 2012, the United Nations Human Rights Council (HRC) passed an important resolution that "[called] upon all States to facilitate access to the Internet and international cooperation aimed at the development of media and information communications facilities in all countries".[5] This was subsequently given further content within the United Nations Sustainable Development Goals (SDGs), which recognise that "[t]he spread of information and communications technology and global interconnectedness has great potential to accelerate human progress, to bridge the digital divide and to develop knowledge societies".[6] In terms of the SDGs, states are further implored to enhance the use of information and communications technologies (ICTs) and other enabling technologies to promote the empowerment of women,[7] and to strive to provide universal and affordable access to the internet in least developed countries by 2020.[8]

19. In a significant development in 2016, the HRC affirmed that "the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights".[9] The HRC further recognised the global and open nature of the internet as a driving force in accelerating progress in various forms, including in achieving the SDGS.[10]

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[5] HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/20/L.13, 29 June 2012 at para 2. This was expanded upon further the following year in HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/Res/26/13, 14 July 2014.

[6] United Nations General Assembly, 'Transforming our world: The 2030 agenda for sustainable development', A/Res/70/1, 21 October 2015 at para 15.

[7] *Id*. at goal 5(b) at p 18.

[8] *Id.* at goal 9(c) at p 21.

[9] HRC, 'Resolution on the promotion, protection and enjoyment of human rights on the internet', A/HRC/32/L.20, 27 June 2016.

[10] *Id.* at para 2.

20. Of particular relevance for present purposes, the resolution affirmed the importance of applying a comprehensive rights-based approach in providing and in expanding access to internet, [11] and called on states to consider formulating and adopting national internet-related public policies with the objective of universal access and the enjoyment of human rights at their core.[12] Two categories of persons were recognised as being deserving of special attention:

    20.1. The first relates to women and girls. The resolution echoes the call contained in the SGDs for states to bridge the gender digital divide and enhance the use of enabling technologies, in particular ICTs, to promote the empowerment of all women and girls.[13]

    20.2. The second relates to persons with disabilities. In this regard, the resolution calls on states to take appropriate measures to promote the design, development production and distribution of ICTs and systems that are accessible to persons with disabilities.[14]

21. Also in 2016, the African Commission on Human and Peoples' Rights (ACHPR) similarly affirmed that the same rights that people have offline must also be protected online, and called on states to promote and facilitate access to the internet and international cooperation aimed at the development of media and information and communications facilities in all countries.[15] The ACPHR further called on states to respect and to take legislative and other measures to guarantee, respect and protect citizen's right to freedom of information and expression through access to internet services.[16]

22. Despite the growing body of commitments requiring proactive measures to be taken towards universal access to the internet, particularly given the role that the internet plays in achieving the full array of fundamental rights, there is self-evidently insufficient measures that have been taken or effectively implemented to bridge the digital divide across the various socio-economic disparities that persist in the South African society. As noted in a research report published by the Media Legal Defence Initiative:

> "Notwithstanding whether the internet is seen as a self-standing right or an enabling tool to facilitate the realisation of other rights, the groundwork has firmly been laid for the need to realise universal access to the internet. States are concomitantly required to take steps to achieve universal access. However, in reality, universal access to the internet is far from being realised. This is due to a confluence of factors, including a lack of financial resources to be able to

[11] *Id*. at para 5.

[12] *Id.* at para 12.

[13] *Id*. at para 6.

[14] *Id*. at para 7.

[15] ACHPR, 'Resolution on the right to freedom of information and expression on the internet in Africa', ACHPR/Res.362(LIX), 4 November 2016.

[16] *Id*. at para 1.

> access the internet, inadequate locally-relevant content, insufficient levels of digital literacy, and a lack of political will to make this a priority."[17]

23. It is therefore a grave and deeply-concerning indictment on all relevant stakeholders that the telecommunications sector has been found by the Commission to be anti-poor. As noted by the Commission: "Access to affordable data is important to low-income consumers because it can enable them to easily and cheaply embark on many activities such as job hunting, paying bills, transferring money, sharing and distributing information and crime prevention amongst other things. Without access to data, these activities require extra money to be carried out."[18] The following observation made by the Commission is of particularly grave concern:

> "What the Inquiry team suspects is that lower income consumers are being exploited with price differences that lack any objective rationale simply because they are poor, lacking in both income and alternative data service options. The implication is that these customers' usage volumes do not necessarily increase as markedly in response to lower prices, which means operators are less willing to provide lower prices because it reduces total revenues."

24. MMA considers it unacceptable that a company's profit motive should be seen to justify a price differential that exists to the detriment of persons from economically-disadvantaged communities, exploit consumers with a lack of market alternatives, and penalise poorer consumers. This position should not be allowed to exist in the telecommunications sector – particularly given the range of regional and international commitments that have been made by the state, in addition to that which is demanded by the Constitution – and certainly should not be allowed to persist. This demands that the full contingent of stakeholders be held accountable for having allowed this to have arisen and persisted in South Africa, including the service providers, the Independent Communications Authority of South Africa (ICASA) and the Department of Telecommunications and Postal Services (DTPS), which now falls within the Department of Communications (DoC).

25. **As such, MMA urges the Commission to make a further recommendation calling for Parliament to require the abovementioned stakeholders, including those public bodies who are mandated to safeguard the rights of the public, to explain under oath why this position was allowed to have arisen and persisted, who ought to have been responsible for this, and why there was a failure to exercise oversight in order to prevent this.**

26. Further, we draw attention to the Joint Declaration on Freedom of Expression and the Internet, in which the relevant human rights mandate-holders provide that, as states are

[17] MLDI, Manual on Digital Rights and Freedom of Expression Online (2018), at p 21, accessible here: https://www.mediadefence.org/resources/mldi-training-manual-digital-rights-and-freedom-expression-online.

[18] Commission report at para 217.

under a positive obligation to facilitate universal access to the internet, they should at a minimum put in place the following measures to fulfil this obligation:[19]

26.1. Put in place regulatory mechanisms – which could include pricing regimes, universal service requirements and licensing agreements – that foster greater access to the Internet, including for the poor and in rural areas.

26.2. Provide direct support to facilitate access, including by establishing community-based ICT centres and other public access points.

26.3. Promote adequate awareness about both how to use the internet and the benefits it can bring, especially among the poor, children and the elderly, and isolated rural populations.

26.4. Ensure support and appropriate resourcing of digital literacy programmes especially those focused on young people.

26.5. Put in place special measures to ensure equitable access to the internet for disabled, disadvantaged and elderly persons.

27. **In order to implement this, the mandate-holders stipulate that states should adopt detailed multi-year action plans for increasing access to the internet, which should include clear and specific targets, standards of transparency, and public reporting and monitoring systems.[20] MMA urges the Commission to similarly make such a recommendation, extended to all relevant industry and state entities, in the form of a so-called 'structural interdict' that would require detailed reporting on a periodic basis to the Commission, the relevant Parliamentary Portfolio Committees and ICASA to reflect the progress that has been made in achieving these targets. These reports should be made publicly accessible in the interests of transparency, to enable the public to access this information and assess the sincerity with which these commitments are being realised.**

**THE NEED FOR IMPROVED TRANSPARENCY AND ACCOUNTABILITY**

28. The international benchmarking exercise undertaken by the Commission has been an important comparative exercise, and has provided revealing information for the significant asymmetry in pricing that causes prejudice to members of the South African public when compared with the global market. Notably, it has also led to the disclosure of a raft of information by the telecommunications companies that offer insight into the different pricing structures.

[19] International Mechanisms for Promoting Freedom of Expression, 'Joint declaration on freedom of expression and the internet', 1 June 2011 at para 6(e). The human rights mandate-holders who signed this declaration are the United Nations Special Rapporteur on Freedom of Opinion and Expression, the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression.

[20] *Id.* at para 6(f).

29. This gives rise to an important tangential consideration regarding the lack of available, readily-accessible information that is ordinarily in the public domain. Such information is important to enable members of the public to make informed, considered determinations. Furthermore, this information also plays a role in enabling the public to hold the relevant service providers to account when pricing appears to be prejudicial, disproportionate or unjustifiable. It should be noted that this is further relevant to avoiding misconceptions by the public where inconsistent comparisons are made.

30. **As such, we submit that the Competition Commission should further recommend that there should be improved transparency reporting by the relevant service providers regarding their pricing structures and underlying economic modelling, as this is an essential element to securing accountability in the longer term once the Inquiry has been concluded.**

**THE NEED FOR REGULATORY CERTAINTY AND COHESION**

31. There are currently a plethora of laws – or proposed laws – that seek to address different matters regarding access to the internet. However, the different stages of finalisation and implementation of these laws has given rise to significant regulatory uncertainty. We note in this regard, for instance, the following:

    31.1. The Protection of Personal Information Act 4 of 2013 (POPIA) has been signed into law, but the substantive provisions have not yet been brought into force. As such, the requirements regarding appropriate technical and organisational safeguards required by POPIA are not yet in force. Even once the substantive provisions of POPIA are brought into force, responsible parties will still have at least a one-year grace period before they are required to comply.

    31.2. The Electronic Communications Amendment Bill was recently withdrawn from Parliament for "further consultations" and in order to "assess the policy and regulatory requirements needed to support the 4th Industrial Revolution and Digital Economy"[21] At this stage, there is limited clarity on what the DoC intends to do with the draft legislation going forward.

    31.3. The Cybercrimes Bill, as adopted by the National Assembly, has now separated out the cybersecurity provisions. It is unclear at this stage when the Cybercrimes Bill will be finalised, or whether there is an intention to re-introduce the cybersecurity provisions at a later stage.

    31.4. Other proposed laws and amendments that implicate cybersecurity are the Critical Infrastructure Protection Bill, the Protection of State Information Bill (POSIB), the Defence Amendment and the Films and Publications Amendment

[21] Letter to the Portfolio Committee on Telecommunications and Postal Services from the Minister of Communications dated11 February 2019.

Bill (FPAB). There is no certainty in respect of any of these by when they will be finalised.

31.5. The Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA) is the subject of an extensive constitutionality challenge, with allegations that RICA has been abused to conduct unlawful surveillance in the country.

32. **Given the existing state of flux that the regulatory environment is currently in, and the high levels of regulatory uncertainty that persist in respect of the telecommunications sector, any interventions must strive to achieve certainty and consistency for all relevant stakeholders.**

**THE NEED TO ADDRESS THE SHORTCOMINGS IN SPECTRUM ALLOCATION**

33. MMA has long-since expressed our concerns for the delays in digital migration and the release in high-demand spectrum, and the broader impact that this has on the sector and the significant extent to which this hinders access to the internet for the broader public. The regulatory and policy uncertainty that currently exists in the sector is inimical to the realisation of universal access in the country.

34. As noted in the report, "there are absolute barriers that legally deny market entry and often relate to regulations in the market, such as licensing. Structural barriers arise from market conditions that entail high and sunk costs, network effects and an incumbent's control of the means of production . . . Barriers to entry also result from economies of scale and strategic advantages, which occur due to an incumbent's first mover advantage over potential entrants and small rivals."[22]

35. **MMA has several submissions in this regard. First, MMA notes that it is essential the existing regulatory uncertainty be resolved as a matter of urgency, and clear policy guidance be provided by the relevant stakeholders as may be expected in short-, medium- and longer-term. Second, MMA reiterates that it is imperative that the role of ICASA, as the independent regulator responsible for the telecommunications sector, be safeguarded against undue interference from the DoC or other state entities. Policy determinations regarding the allocation of spectrum should clearly vest within the remit of ICASA. This is necessary both to enable ICASA to perform its functions and duties independently and without interference, and to facilitate the desired policy certainty by ensuring that the relevant responsibilities are clearly designated and assigned.**

36. **Further in this regard, MMA urges the need for there to be market-related and regulatory interventions to facilitate – and, importantly, promote – different models for achieving connectivity, with appropriate resource support provided by the relevant stakeholders to enable this to effectively materialse. MMA's experience in**

[22] Commission report at para 68.1.

**this regard, through the development and implementation of the Shikimoto Community Network, has provided us with insight into the challenges experienced in the licensing, financing and roll-out of such models without the relevant support, particularly if this is to be scaled to widen the reach of the network to be an effective and competitive role-player in the sector.**

37. The report states that "[c]hanges in the sector are being driven by a progressive policy environment, as well as imminent legislative and regulatory interventions which are likely to have significant implications for the sector."[23] The report goes on to note that the recommendations flowing from the Inquiry must take into account both the regulatory environment and the key developments therein; further, the report states that the recommendations must be made "within the constraints of this environment, but can also assist in directing or shaping new and imminent developments".

38. **Further in this regard, MMA emphasises that in the development of any regulatory or policy interventions, a socio-economic impact assessment should be compiled before making a final determination. The purpose of this would be to: (i) minimise unintended consequences from policy initiatives, regulations and legislation, including unnecessary costs from implementation and compliance as well as from unanticipated outcomes; and (ii) anticipate implementation risks and encourage measures to mitigate them. This assessment should include relevant competition-related aspects that provide insight into whether the proposed regulatory measure will have a positive impact on competition and data pricing.**

**THE NEED FOR BETTER COORDINATION AMONGST RELEVANT STAKEHOLDERS**

39. Linked to the regulatory uncertainty in South Africa, there is also an existing conflation of roles amongst various stakeholders, including various structures and institutions which are facing significant structural and institutional challenges. We note in this regard, for instance, the following:

    39.1. The Information Regulator, established under POPIA, is yet to be empowered to begin its substantive work, and is currently hamstrung in its mandate by the fact that the substantive provisions under POPIA have not yet been brought into force.

    39.2. The DTPS has now been combined with the DoC.

    39.3. The State Security Agency has been plagued with serious allegations of abuse of power, and is currently under an investigative review.

    39.4. The Cybersecurity Hub remains in a pilot stage of implementation, and it is unclear whether the Cybersecurity Advisory Council continues to exist or operate.

[23] Commission report at para 74.

39.5. The National Prosecuting Authority (NPA) has been besieged with challenges, and it would appear will be seeking to deal with the litany of state captures cases under its new leadership.

40. In MMA's submission, there is a lack of any overarching internet governance policy on how current and proposed legislation that deals with information and digital rights regulation is to be managed by the different role-players or on how co-ordination amongst the various role-players is to function. In the absence of a clear government internet governance policy and legislative guidance, an unduly complex structure of oversight is in the process of being created.

41. The result is that that people in South Africa, civil society organisations, and members of the media, among others, need to navigate an overly complex regulatory landscape in order to engage in public participation, make submissions, conduct their business, and, ultimately, defend and protect their information rights. Additionally, this poses significant challenges to government's coordinated and effective implementation of the existing regulatory provisions, and may result in overlapping mandates or aspects not being assigned or accounted for by appropriate functionaries.

42. A further constitutional consideration relates to cooperative governance and intergovernmental relations. In terms of section 41(1)(c) of the Constitution: "[a]ll spheres of government and all organs of state within each sphere must provide effective, transparent, accountable, and coherent government for the Republic as a whole" and the must "co-operate with one another in mutual trust and good faith by coordinating their actions and legislation with one another".[24]

43. **Accordingly, MMA has called for the establishment of an Interdepartmental Steering Committee (ISC) on Internet Governance to address relevant matters, including access to the internet.** It is proposed that the ISC be led by the Department of Justice, and also comprise representatives from the following role-players:

43.1. Department of Defence;
43.2. Department of Home Affairs;
43.3. Department of International Relations and Cooperation;
43.4. Department of Justice and Constitutional Development;
43.5. Department of Science and Technology;
43.6. Department of Communications;
43.7. Financial Intelligence Centre;
43.8. National Prosecuting Authority;
43.9. National Treasury;
43.10. South African Police Service;
43.11. South African Revenue Service;
43.12. State Security Agency;

[24] See section 41(1)(h)(iv) of the Constitution.

43.13. Information Regulator;
43.14. Two representatives from opposition parties represented in the National Assembly;
43.15. Two teachers of law, or members of the attorneys' or advocates' profession, with knowledge of internet governance laws, appointed following a public call for nominations;
43.16. Two technical experts in internet governance following a public call for nominations;
43.17. Two members of civil society organisations working on internet governance following a public call for nominations.

44. We emphasise that:

44.1. The objects should be broader than data pricing and access to the internet alone, and should reflect a broader internet governance mandate and the multi-disciplinary, cross-cutting challenges that these issues present.

44.2. Reporting by the ISC should be to Parliament to ensure greater transparency and oversight.

44.3. We propose adding representatives from opposition parties represented in the National Assembly, members of the legal profession, technical experts and civil society representatives, to ensure accountability, a diversity of views, and the requisite technical expertise.

45. **Further, we submit that there is an urgent need for effective coordination. While the Commission has a role to play, this is one facet in a much broader landscape, and needs to be considered holistically. A prime example of this is the fact that there are currently two inquiries underway regarding data pricing – one by the Commission and one by ICASA – which are not necessarily aligned in their approaches or outcomes. The proposed coordination through the ISC could be a significant advancement to ensure a holistic, streamlined approach is taken in respect of matters of internet governance and ICTs, including data pricing and access to the internet.**

**CONCLUDING REMARKS**

46. At the core of this submission, MMA urges the Commission to emphasise the relevant public interest considerations that arise, and provide the relevant content and context in order for the telecommunications sector and other stakeholders to fully recognise the underlying role and importance of the public interest regarding data pricing and in achieving access to the internet. Further, the recommendations made by the Commission should set clear targets for the relevant stakeholders to attain and which should be subject to periodic reporting in respect of the measures taken to achieve the necessary outcomes.

47. MMA reiterates our appreciation to the Commission for the opportunity to provide this submission, and we remain available to assist the Commission in any ongoing efforts to

finalise the preliminary findings and recommendations. Please note that MMA is also available to make oral submissions to the Commission, should there be an opportunity to do so. Please do not hesitate to contact us should you require any further information.

**Media Monitoring Africa**
**14 June 2019**

Annexure "A"

1993 25 2018

PROMOTING HUMAN RIGHTS & DEMOCRACY THROUGH MEDIA

MEDIAMONITORING AFRICA

# DATA IS MORE THAN 1'S AND 0'S

Data Services Market Inquiry

William Bird & Thandi Smith

Competition Commission, 2018

DTI

# ABOUT MEDIA MONITORING AFRICA

- MMA non benefit trust operating since 1993, celebrating 25 years in 2018!
- Vision: a just and fair society empowered by a free, responsible and quality media;
- Human rights-based approach: MMA aims to promote the development of:
  - Media that is transparent, diverse, ethical and accountable to its audiences;
  - Critical and constructive communications by the powerful, and;
  - Informed, engaged and connected citizenry.

Funded by local & international donors;

Use Machine learning to help hold media accountable.

1993 25 2018

PROMOTING HUMAN RIGHTS & DEMOCRACY THROUGH MEDIA

MEDIAMONITORING AFRICA

# OVERVIEW OF INPUT

- Getting the foundations right;

- Access to Information and presenting the Seven Point Plan;

- Concrete steps towards bridging digital divide.

1993 25 2018

PROMOTING HUMAN RIGHTS & DEMOCRACY THROUGH MEDIA

MEDIAMONITORING AFRICA

# FOUNDATIONS

- We need clear, coherent digital policy;
- A multi-stakeholder, multi-sectoral approach must be adopted

(ongoing, haphazard or singular entity dominance fail our democracy);

- Policy must have at its basis in the following:
  - Public interest as paramount;
  - Deliberate effort to bridge digital divide & combat inequality (This will not happen unless deliberate steps are taken to do so);
  - Be in line with African Declaration on Internet Rights; (http://africaninternetrights.org/)
  - Marginalised interests (esp. not just rich v poor)
  - Help realise the rights in our Constitution

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# ACCESS TO INFORMATION

Access to Information lies at heart of issue and immediate impact on data costs. MMA with APC, SANEF and IAB SA

Seven-point plan to achieve universal access:

1. Commitment to implementation of **free public access to internet at government sites** such as schools, libraries, health facilities, etc.(requires oversight and monitoring by appropriate bodies);

2. **Zero-rated access to government websites and data**, as envisaged in the e-government policies;

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# ACCESS TO INFORMATION

3. **Free wi-fi access should be regarded as a basic municipal service** and run as a public utility (could be via public/private partnerships & making it requirement for commercial operators to provide free wi-fi in poor areas for the right to provide commercial services in business and affluent areas);

4. Setting **minimum standards for the provision of free internet access**, including for all commercial offerings: a minimum data allocation per person per day; and standards for privacy, security, access quality and fair access to information in the public interest;

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# ACCESS TO INFORMATION

5. The introduction of the concept of My Internet Rights (or My i-Right): that **every citizen should be entitled to a daily tranche of free internet access** (eg 500MB per day, which is already the standard for many free wi-fi schemes), to exercise their access to information rights;

6. The introduction of **digital literacy programmes in education curricula** and as part of free internet schemes, especially aimed at children and those unfamiliar with risks and opportunities related to the internet;

7. The need for the SAHRC and other **oversight bodies to monitor and report on the progressive realisation of internet access rights**, and in particular the adoption and implementation of legislation, regulation and policies governing free access to the internet
   *as a basic human right*

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# CONCRETE STEPS

Digital & critical literacy not as once off but comprehensive strategy with diverse partners.

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# CONCRETE STEPS

Community WiFi initiatives to help ensure not just access but understanding, ownership and elements of control.

SHIKA MOTO

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# CONCLUSION

- We have experts to show how high costs are and those to motivate for their reduction;
- What is clear is that overall framework needs to be to bridge digital divide and combat inequality - ultimately serves all our interests to do so;
- Cannot only be about cost, but must also be approach, multi stakeholder, driven by human rights and must also look at critical skills especially for marginalized.

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# THANK YOU

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Annexure "B"

NEWS (HTTPS://WWW.SANEF.ORG.ZA/CATEGORY/NEWS/)

# UNESCO's 3rd International Day for Universal Access to Information

By Admin (Https://Www.Sanef.Org.Za/Author/Admin/)
- 4 Months Ago (Https://Www.Sanef.Org.Za/The-International-Day-For-Universal-Access-To-Information-And-Internet-Access/) - 424
- 0 (Https://Www.Sanef.Org.Za/The-International-Day-For-Universal-Access-To-Information-And-Internet-Access/) 7 Minutes Read

**27 September 2018**

*"Access to information is directly linked to the enjoyment of basic rights and freedoms and influences the achievement of all the Sustainable Development Goals."*

**— Audrey Azoulay, Director-General of UNESCO**

The Association of Progressive Communications (APC), the Interactive Advertising Bureau of South Africa (IABSA), Media Monitoring Africa (MMA) and the South African National Editors Forum (SANEF) have been working together on a plan to realise access to the internet for all as a fundamental right for over a year. This Friday, 28 September 2018, as we celebrate UNESCO's 3rd International Day for Universal Access to Information (IDUAI), we take the opportunity to take stock of our gains and encourage bold strong action from our government to help realise not just access to information but ensure we play our part in meeting our international obligations and the sustainable development goals. The call made by the online and media industry bodies, APC, IABSA, MMA and Sanef, for a national effort to coordinate existing legislation, policies and initiatives to provide citizens with a basic level of universal free internet access, is based on the proposed seven-point plan detailed below.

South Africa is grappling with ways of enforcing access to the internet as an enabling mechanism for basic human rights, while taking into consideration our current socio-economic development challenges. One of the core issues here is reducing the cost of data and providing key infrastructure and an enabling policy and regulatory environment for access to the internet. According to the latest report conducted by Research ICT Africa (https://researchictafrica.net/2018/09/10/state-of-ict-in-south-africa/), half of the South African population remains offline, the cost of data is a significant problem and the lack of internet-enabled devices and digital literacy remain the key challenges to accessing the internet. Despite greater access to smartphones, including in rural areas, there remains a significant digital divide.

Thirty five percent of our population are under the age of 18 (if we include youth this figure rises to 56 percent of South Africa's population – according to StatsSA (https://www.statssa.gov.za/publications/P0302/P03022017.pdf)). The tragic reality is that approximately 65 percent of our children are living in poverty. Not only is this cause for grave concern for our nation's future and development, but realizing access to the internet as a tool to help encourage equality, development and economic sustainability. Together with providing the necessary digital skills, we call on our government to prioritise the need of access to the internet for our society's most vulnerable and marginalized.

Last week, President Cyril Ramaphosa presented his Stimulus Plan (https://www.businesslive.co.za/bd/opinion/columnists/2018-09-25-cyril-ramaphosa-stimulus-plan-commits-to-inclusive-growth-and-reversal-of-stagnation/) for the recovery of the South African economy. In the plan, a few issues related directly to access to information and the internet are mentioned. Ramphosa specifically highlighted the need to reduce data costs by allocating radio spectrum, explaining that "lower data costs will also provide relief for poor households and increase the overall competitiveness of the South African economy". Further, he stated that not only will lower data costs be beneficial to individual households, but also unlock value in the telecommunications sector.

**About the day:**

The International Day for Universal Access to Information (IDUAI) is directly linked to promoting the Sustainable Development Goal (https://www.un.org/sustainabledevelopment/peace-justice/) target 16 (10), which aims to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements". The internet has become a platform where limited access has become a threat to the fundamental right to access information. The day will be celebrated by a number of events taking place, highlighting the need to prioritise access to information and access to the internet.

**Details of the Seven Point Plan:**

The 28th September also marks the one-year anniversary of the release of the *Issue Paper on Perspectives on Universal Free Access to Online Information in South Africa: Free Public Wi-Fi and Zero-Rated Content (https://www.apc.org/en/pubs/perspectives-universal-free-access-online-information-south-africa-free-public-wi-fi-and-zero) (APC, SANEF, MMA and IABSA).* The delegation put forward a seven-point plan to achieve universal access, which included the following:

- The implementation of free access public to the internet at government sites such as schools, libraries, health facilities, etc. (This is already government policy, but there should be a commitment to a fixed roll-out schedule, and the service should be promoted and monitored with adequate oversight by appropriate bodies);
- Zero-rated access to government websites and data, as envisaged in the e-government policies;
- Following on several pilot projects in a number of cities and towns, free wi-fi access should forthwith be regarded as a basic municipal service and run as a public utility (alongside water, electricity and other municipal services), and government should set up plans and targets for the progressive realisation of such services. This could be done via public/private partnerships, such as making it a requirement for commercial operators like telecoms and fibre companies to provide free wi-fi in poor areas for the right to provide commercial services in business and affluent areas;
- Setting minimum standards for the provision of free internet access, including for all commercial offerings: a minimum data allocation per person per day; and standards for privacy, security, access quality and fair access to information in the public interest;
- The introduction of the concept of My Internet Rights (or My i-Right): that every citizen should be entitled to a daily tranche of free internet access (eg 500MB per day, which is already the standard for many free wi-fi schemes), to exercise their access to information rights;
- The introduction of digital literacy programmes in education curricula and as part of free internet schemes, especially aimed at children and those unfamiliar with risks and opportunities related to the internet;
- The need for the SAHRC and other oversight bodies to monitor and report on the progressive realisation of internet access rights, and in particular the adoption and implementation of legislation, regulation and policies governing free access to the internet as a basic human right;

We commend the current commitments by the government to participate in initiatives that promote access to the internet. Recognizing that access to free information and the internet is a central tenet of enabling peoples' rights to dignity and equality, we can achieve universal access for all South Africans through partnership and collaboration across public, private, and non-profit stakeholders.

Statement Issued by:

**The Association for Progressive Communications (APC),** established in 1990, has 58 organisational members and 33 individual members in 52 countries who are dedicated to using the internet and other ICTs for social justice and sustainable development. / anriette@apc.org (mailto:anriette@apc.org)

**The Interactive Advertising Bureau of South Africa (IABSA) –** an independent, voluntary, non-profit association focused on growing and sustaining a vibrant and profitable digital industry within South Africa. The IAB SA represents the South African digital industry to all sectors, including the marketing community, the media, the South African government and the public. / paula@iabsa.net (mailto:paula@iabsa.net)

**Media Monitoring Africa (MMA)** – since established in 1993, MMA has evolved from a pure monitoring-based project to an innovative organisation which implements successful media strategies for change. We use technology, social media and data tools to make our work more efficient and effective. / williamb@mma.org.za (mailto:williamb@mma.org.za)

**The South African National Editors' Forum (SANEF)** – a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media. We are committed to championing South Africa's hard-won freedom of expression and promoting quality, ethics and diversity in the South African media. / director@sanef.org.za (mailto:director@sanef.org.za).

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