

Icasa sale 'limits competition'

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The Independent Communications Authority of SA (Icasa) will know by Friday whether it may go ahead with its plan to auction rare high-speed broadband spectrum. The companies that are to obtain the licences for the spectrum that Icasa plans to auction will be able to provide superfast 4G data download, giving them a huge competitive edge in the mobile market.



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Icasa set a date for the auction in May 2017, but this may be scuppered if the High Court in Pretoria finds in favour of Telecommunications and Postal Services Minister Siyabonga Cwele, Cell C and Telkom, who have challenged the lawfulness of the auction.

The minister wants the court to grant an interim interdict to prevent the auction until the court had heard full argument and had made a decision whether the auction was a lawful way forward. After two days of argument Judge Roland Sutherland said he would deliver his judgment on Friday.

One of the issues debated in court on Wednesday was whether the regulator had considered the effects of the auction on competition in the broadband market, as required to do so under the Electronic Communications Act.

Perpetuating the duopoly

The minister and Telkom had argued that there was a "duopoly" in the mobile telecommunications market, with Vodacom and MTN having "unassailable dominance". In March, Cwele issued a directive to Icasa to undertake an inquiry into how to ensure effective competition in broadband markets and to prescribe regulations that would do so.

The directive noted that SA remained one of the most expensive countries listed on the African Broadband Price Index. It said the 2013 national broadband policy 'SAConnect' identified the high price of telecommunications services as one of the primary factors hampering SA's competitiveness.

Because MTN and Vodacom had deeper pockets, they would be able to secure the better quality spectrum on offer under the auction and so perpetuate the duopoly, said Telkom's counsel, Gilbert Marcus SC.

But Icasa argued that it did, in fact, consider the competition implications when it decided to go the auction route and the policy directive was not a binding one.

Icasa's counsel, Wim Trengove SC, said Icasa's own expert report differed with Telkom's expert view on the effect of the auction, saying it would not adversely affect competition. In order to prevent the auction, the minister and Telkom had to show that no reasonable regulator could have chosen that route. Here, there was simply a difference of opinion between two experts, not enough to warrant the interdict sought.

Source: Business Day

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