

Tribunal raring to sort out telecoms

By [Lesley Stones](#)

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The Competition Tribunal is eager to flex its muscles over the telecommunications sector, believing it could create a more affordable and fairer market than the sector's ineffectual regulator has achieved.

SA's telecoms costs were amongst the highest in the world, broadband penetration was pitiful and service levels were unacceptable, said tribunal chairman David Lewis. Things would have been different if the Competition Commission and the tribunal had clear jurisdiction over the sector, as they had the investigative powers and the experience to crack down on the abuse of dominance, he said.

In comparison, the Independent Communications Authority of SA (Icasa) was less effective in taming the "gorillas" it had to deal with in the sector, he said.

Speaking at an event hosted by Neotel and the Mail & Guardian yesterday, Lewis said one disappointment in his 10 years of service was that the competition authorities did not have clear jurisdiction over telecoms. The sector needed a robust enforcement of competition rules and consumer protection, and the industry players had capitalised on a confusing blur over which authority governed them. Competition in the telecoms market was crucial as its services affected the competitiveness of every firm in every sector.

SA's telecoms market featured former state-owned enterprises, high barriers to entry and massive investments in infrastructure, creating an environment highly susceptible to abuse by dominant players. Their behaviour included refusing to strike deals with some rivals while signing exclusive deals with others, denying access to essential facilities, price discrimination and excessive pricing. "In short, the whole gamut of abusive conduct," Lewis said.

The introduction of new technologies had failed to benefit SA's economy and consumers more fully because of collusion, anti-competitive conduct or sheer disregard for consumers, Lewis said. Telkom had taken full advantage of the monopoly it once held, yet had failed to improve the penetration of telephony. Number portability had also failed.

More recently, the high court had granted hundreds of companies the right to build their own network infrastructure, but the benefits would be limited to a few large players.

Lewis said a provision in the new Competition Act gave the commission the power to conduct market inquiries, and that should be wielded in the telecoms sector. Scrutinising the market would show the relevant authorities what action was required, be it prosecution under the Competition Act, regulatory interventions or consumer protection, he said.

Lewis did not criticise Icasa's high staff turnover or its inability to retain experienced staff. But he touched on the alleged political interference that saw an Icasa councillor persuade his colleagues to oppose the partial sale of Vodacom to Vodafone after being promised that his job with Icasa would be renewed.

That “recent fiasco” around Vodacom “could simply not happen with us”, Lewis said. A tribunal panel of three people had approved the Vodacom deal.

Legislation might need to be changed to avoid such debacles in the future, he said, but it was more important to change the culture within institutions so they made decisions transparently, let everyone be heard and were immune to pressure. That required strong ministerial support for effective, independent regulation, which Lewis hopes new Communication Minister Sipiwe Nyanda will supply.

Covering SA's trade and industry in general, Lewis said the state of competition remained a cause for considerable concern. “In the space of the last 12 months we have dealt with the full gamut of cartel conduct — price-fixing, market allocation, bid-rigging — in industries ranging from bread to scrap metal, from pharmaceuticals to pipes and culverts, and a great many more proven and alleged cartels. The impact of these on the poor and on the taxpayer is immense.”

Prosecutions for the abuse of dominance would continue, he warned. The tribunal also wanted the power to increase the penalties for obstructing its investigations and the right to send errant executives to jail.

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