ESCCOM

ESWATINI COMMUNICATIONS COMMISSION

CALL TERMINATION MARKET REVIEW: PROPOSED DECISION

PREPARED BY STRATEGY AND ECONOMIC REGULATION

SEPTEMBER 2019

Contents

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PROPOSED DECISION IN TERMS OF SECTION 32 OF THE ESWATINI COMMUNICATIONS COMMISSION ACT, 2013: MARKET DEFINITION, ANALYSIS AND DETERMINATION OF DOMINANCE.

(1) DEFINITION OF CANDIDATE MARKET (CALL TERMINATION)

(2) FINDING OF DOMINANCE IN THE CALL TERMINATION MARKET

1. EXECUTIVE SUMMARY

1.1 Following the introduction of competition in the fixed and mobile voice market in 2017, the Commission, as part of its regulatory mandate, has been monitoring competition in the sector. The Commission has observed that different elements of competition were applied to the market to support growth.However, it has been noted that despite a positive growth in competition in the sector, there is still need to address pertinent elements of competition which may stifle effective competition.

1.2 To this end, the Commission acting in accordance with Section 23 of the Eswatini Electronic Communications Act, 2013 (ECA) has defined call termination as a makert, conducted an analysis of the market and made a determination on dominance.

1.3 In terms of Section 23(3) the Commission has determined that the call termination market is not effectively competitive, and thus has identified and designated licensees with a dominant position in the call termination market and shall impose appropriate regulatory obligations.

1.4 This report considers call termination in Eswatini and in so doing defines the call termination market on each operator's own network and sets out an analysis of whether there is effective competition in such market in Eswatini.

1.5 After finding ineffective competition in the market, which is similar to other jurisdictions where the call termination market has been assessed, given the unique characteristics of the call termination market, this report considers whether one or more operators are dominant in the market. Given the natural monopoly in call termination in each operator's own network, each operator is found to be dominant in the provision of call termination on its own network. The provision of call termination requires that the assessment takes into account the adjacent market which may introduce an essential upstream input into the downstream retail voice market. Findings from the adjacent market are also considered as they form an essential upstream link into the wholesale market of call termination. Network operators may therefore seek to leverage their control of call termination to gain a competitive advantage in the downstream market.

1.6 Generally, an operator or group of operators that are dominant or have significant market power have the potential to either increase prices above and/or reduce output below the competitive level. They are able to behave in an anticompetitive manner that can negatively impact the market and thwart effective competition. It follows that consumers will benefit less in a market where operators abuse dominance or significant market power compared to a market in which competition is effective. Hence, in any instance where dominance is found Eswatini Communications Commission ("ESCCOM") shall impose remedies to promote effective competition in the public interest.

1.7 This report identifies call termination as a wholesale product. However, the effects of behavior in the wholesale market flow into the retail market, and in this case has a direct impact on voice charges that are levied on consumers by operators. This means that although the market under review is a wholesale market, it has a direct impact on both the fixed and mobile retail voice markets. As such, the retails market indicators relevant to the wholesale market have been considered in the analysis of significant market power.

1.8 The analysis is conducted inaccordance with Section 23 of the Electronic Communications Act of 2013. Furthermore, it takes into account the provisions of the Electronic Communications (Interconnection) Regulations,2016.

2. STRUCTURE OF REPORT

2.1 The introduction of the report details the background to ESCCOM's process of obtaining the required data and the definition of the call termination market.

2.2 This is followed by the context on the legal and regulatory framework for competition generally and call termination specifically in Eswatini. This covers the technical, commercial, administrative and legal aspects of call termination .It also deals with the principles for the assessment of the call termination market (Part V Section 22-23 of ECA).

2.3 The analysis provides a working and detailed definition of the Call Termination Market as defined by the Commission.

2.4 The section on Effective Competition details how competition is considered in the call termination market.

2.5 The section on Eswatini Call Termination Market Structure presents preliminary findings, of the call termination market based on the definition and structure of the market in Eswatini.

2.6 The analysis introduces retail market analysis which provides further input on its vertical integration into the wholesale market. The results show that retail has an upstream influence on the wholesale market, and as such can be used to affect competition in the market.

2.7 Market performance is analysed taking into account performance in the adjacent retail market as determined through an understanding of the number of subscriptions, amongst other factors. Market structure and conduct are also examined, along with a description of the relevant market conditions.

2.8 The report concludes with findings and a proposed decision on the call termination market in Eswatini.

3. PROCESS ADOPTED

Consultation and data collection

3.1 The Commission requested the operators to furnish the following information;subscriptions data, Interconnection revenue data, Total Revenue data, and Traffic data used for carrying out the call termination market analysis.

4. LEGAL AND REGULATORY FRAMEWORK

4.1 The Eswatini electronic communications legal and regulatory framework is generally supportive of competition. The Electronic Communications Act, 2013 (“ECA”) provides a framework, similar to other liberalized markets, which supports competition. Section 7(s) of the ESCCOM Act requires the Commission to ensure fair competition in all communications services, products, operations and activities which it regulates.

4.2 Dominance is dealt with in Section 23 of the ECA and "dominant position" means a position of economic strength enjoyed by a licensee either individually or jointly with others affording the licensee the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

4.3 In addition to the obligations provided for under Part IV of the ECA, a licensee holding a dominant position on the relevant market may be subjected to specific regulatory obligations. This dominance must be determined further through a process as set out in section 23 of the ECA (Market definition, analysis and determination of dominance). The Commission must in determining dominance follow competition law principles and:

- Define the relevant market
- Conduct a market analysis
- Where the Commission determines that a relevant market is not effectively competitive, the Commission shall identify and designate licensees with a dominant position in that market and shall impose upon those licensees the appropriate regulatory obligations provided for in sections 24 to 28 of the ECA in relation to transparency, non-discrimination, regulatory accounting and cost based pricing and price regulation.

5. INTERCONNECTION FRAMEWORK:

5.1 While the ECA provides a framework for conducting market reviews, the interconnection regulations are subject specific and govern call termination along with other aspects of 'interconnection.' Interconnection refers to the logical linking of networks, and encompasses call origination, transit and call termination. This analysis considers both call termination and transit, given that the two are somewhat conflated in the Eswatini context.

5.2 The Interconnection Regulations set out the technical, commercial and legal framework for electronic communications licensees to interconnect with each other and also stipulates the agreement principles, timeframes and process to be followed and the procedures for submission with the Commission.

5.3 Locally, the following agreements have been lodged with the Commission:

5.3.1 Eswatini MTN and Eswatini Posts and Telecommunications Corporation have an interconnection agreement in place which was signed in November 1999, with the latest addendum effective from the 1st of March 2018. The agreement includes a transit agreement for international and regional calls only.

5.3.2 Eswatini Mobile and Eswatini Posts and Telecommunications Corporation have an interconnection agreement in place, effective from November 2017. This agreement includes a transit agreement for International, Regional and MTN calls.

5.4 The Commission notes that:

5.4.1 Eswatini MTN and Eswatini Mobile do not have an interconnection agreement with each other.

5.5 In comparable jurisdictions, call termination and transit are two different markets and thus warrant two different studies. However, the current situation in Eswatini is such that MTN and Eswatini Mobile do not have an interconnection agreement as per the provisions of the Interconnection Regulations. The two operators, MTN and Eswatini Mobile each have interconnection agreement with EPTC, respectively. Therefore, Voice Call Transit is not considered in a separate analysis as a separate market but is considered on a high level for the purposes of illustrating the lack of interconnection agreements between MTN and Eswatini Mobile.

6. DEFINITION OF THE MARKET FOR WHOLESALE CALL TERMINATION

6.1 Call termination is a wholesale service that a Network Operator supplies to interconnecting operators. It allows a customer of one network (the originating network) to make a call to a customer connected to the operators of another network (the terminating network). In Eswatini, as is the case in most markets, a Calling Party Pays (CPP) regime is in place and as such the network operator supplying call termination charges the originating network operator for this service. At a retail level, the party making the call pays for the call.

6.2 The key features of the call termination market is defined by the Commission as constituting the following elements:

6.2.1 The call termination market is a wholesale market;

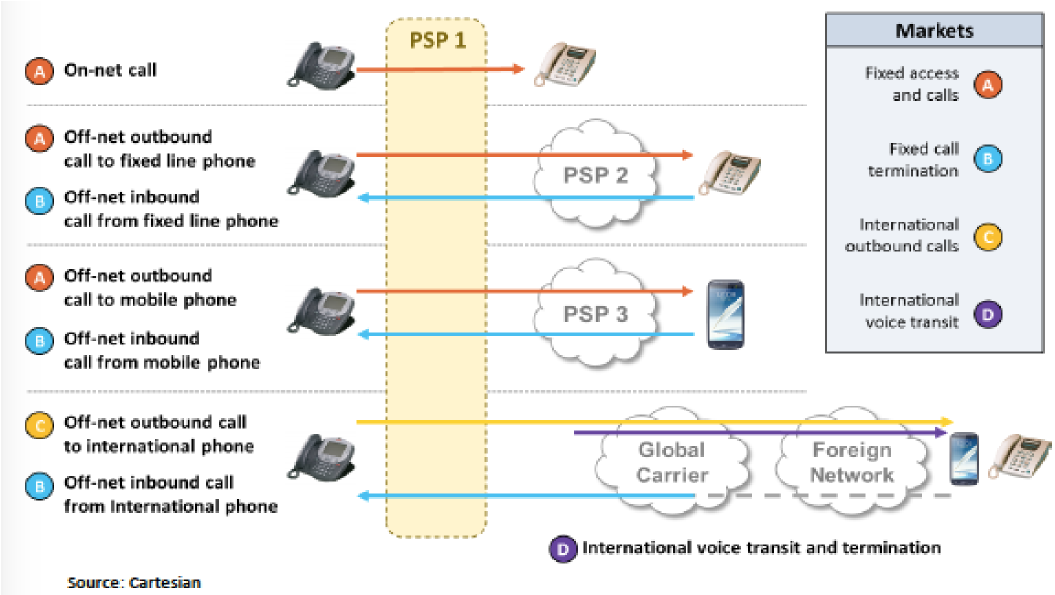
6.2.2 The product is termination of a voice call or SMS on a fixed or mobile network that originates on another fixed or mobile operators' network;

6.2.3 The voice calls and SMS' are carried over the fixed or mobile network, as applicable;

6.2.4 For the avoidance of doubt, call termination is not supplied to business or residential customers in the retail market; and

6.2.5 The geographic scope of the market encompasses the whole geographic region of Eswatini and does not differentiate between different regions within Eswatini.

Figure 1: Categories of calls



Source: Cartesian

6.3 Call termination in Eswatini is supplied by MTN Eswatini ("MTN"), Eswatini Post and Telecommunications Corporation ("EPTC"), and Eswatini Mobile. Each operator supplies wholesale call termination on its own network. Thus, the call termination markets in Eswatini are:

6.3.1 Wholesale call termination on the Eswatini MTN network

6.3.2 Wholesale call termination on the EPTC network

6.3.3 Wholesale call termination on the Eswatini Mobile network

7. ASSESSMENT OF EFFECTIVE COMPETITION

7.1 By definition call termination is a monopoly service. Each operator has a monopoly on its own call termination market, that is , only Network A can provide access to all other operators in the market to its network to enable wholesale call termination..

8. ESWATINI WHOLESALE CALL TERMINATION MARKET STRUCTURE

8.1 The Eswatini wholesale call termination market is characterised by three licensed network operators, namely, MTN Eswatini ("MTN"), Eswatini Mobile and Eswatini Post and Telecommunications Corporation ("EPTC").

8.2 MTN Eswatini has an interconnection agreement with EPTC which has been in effect since 1998 and has subsequently been reviewed over the years. The latest version of this agreement was signed in June 2018, but effected in March 2018 with the following interconnection rates:

8.2.1 MTN to EPTC: E0,30c
8.2.2 EPTC to MTN: E0,30c with a discount of E0,06

8.3 MTN has specifically granted EPTC a discount on the rate, as per the interconnection agreement.

8.4 Eswatini Mobile has an interconnection agreement with EPTC which was entered into on the 01 November 2017.

8.5 The interconnection rates between Eswatini Mobile and EPTC are as follows:
8.5.1 EPTC to Eswatini Mobile: E0,24c
8.5.2 Eswatini Mobile to EPTC: E0,30c

8.6 MTN and Eswatini Mobile do not have an interconnection agreement with each other.

8.7 All traffic from MTN to Eswatini Mobile and traffic from Eswatini Mobile to MTN does not connect directly but is transited through EPTC.. However, the details of how MTN traffic is terminated on Eswatini Mobile's network are unknown as there is no similar transit agreement between EPTC and MTN to transit traffic to Eswatini Mobile at an agreed transit fee filed with the Commission. Neither of the parties have filed transit agreements either, as such the Commission cannot establish on what basis traffic from MTN to Eswatini Mobile connects.

9. FINDINGS

9.1 Given the lack of effective competition in each operators' respective call termination market, each operator in Eswatini is dominant in the market for call termination on its own network. This finding is aligned with global best practice and follows from the simple technical fact that a subscriber on Network A that calls a subscriber on another network, does not have the choice to call that subscriber via a third network.

9.2 Noting the above, given that the operators in Eswatini provide both network services (including interconnection) and retail services (such as voice and SMS) in assessing the effect of dominance in the call termination market, one must give regard to the space that a given operator occupies in the retail market. The study found that call termination is an essential upstream input into the downstream retail mobile market.

9.3 Although all operators may be dominant in the wholesale market, it is the power that they hold and exercise in the retail market that gives effect to potential anti-competitive behaviour in the said wholesale market. As an example, an implication of the abuse of dominance in light of this vertical integration is that

Operator A may attempt to use call termination contracts to lessen or limit competition in the downstream retail voice markets.

10. MARKET PERFORMANCE ASSESSMENT

Voice Subscriptions

10.1 Voice Subscriptions are measured by the number of active SIMs and number of connected lines as illustrated below. PSTN subscriptions consist of Residential (52 %), business (37 %) and government (10 %) subscriptions.

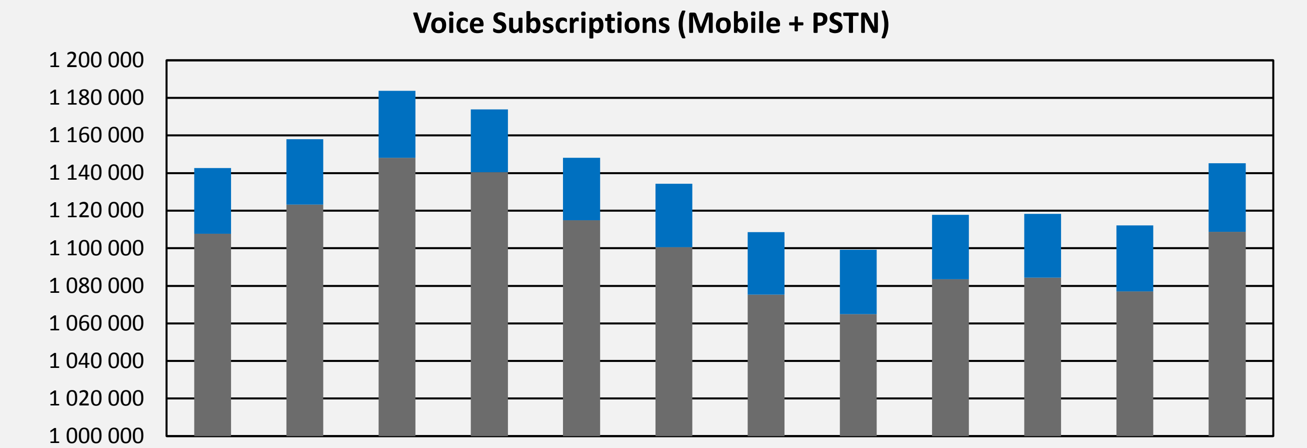
10.2 Handsets in Eswatini mobile market are unlocked. Therefore, mobile voice subscribers can swap SIM cards from different service providers at any point in time. Multi-SIM devices available in the market allow customers to easily switch between two networks on a per-call basis. It is for that reason mobile voice subscriptions do not refer to unique voice subscriptions but active SIMs.

10.3 There was an observed increase in Voice subscriptions in the period January to March 2018, voice subscriptions increased from 1 142 700 in January 2018 and reached a peak of 1 183 818 in voice subscriptions in March 2018.

10.4 The upward trend observed in the period January-March 2018 was mainly attributed to a significant increase in Mobile subscriptions from 1 107 701 active Sims in January 2018 to 1 148 087 in March 2018. Fixed Line subscriptions also increased from 34 999 subscriptions to 35 731 in March 2018.

10.5 Thereafter a downward trend in voice subscriptions was observed from April 2018 to August 2018 and a slight recovery between September 2018 and December 2018. This was attributed to a decline in both Mobile and Fixed Line voice subscriptions in the period and a recovery in December 2018. Total voice subscriptions in 2018 recorded an average of 1 136 840.

Figure 1: Retail Mobile and Fixed Voice Call Subscriptions



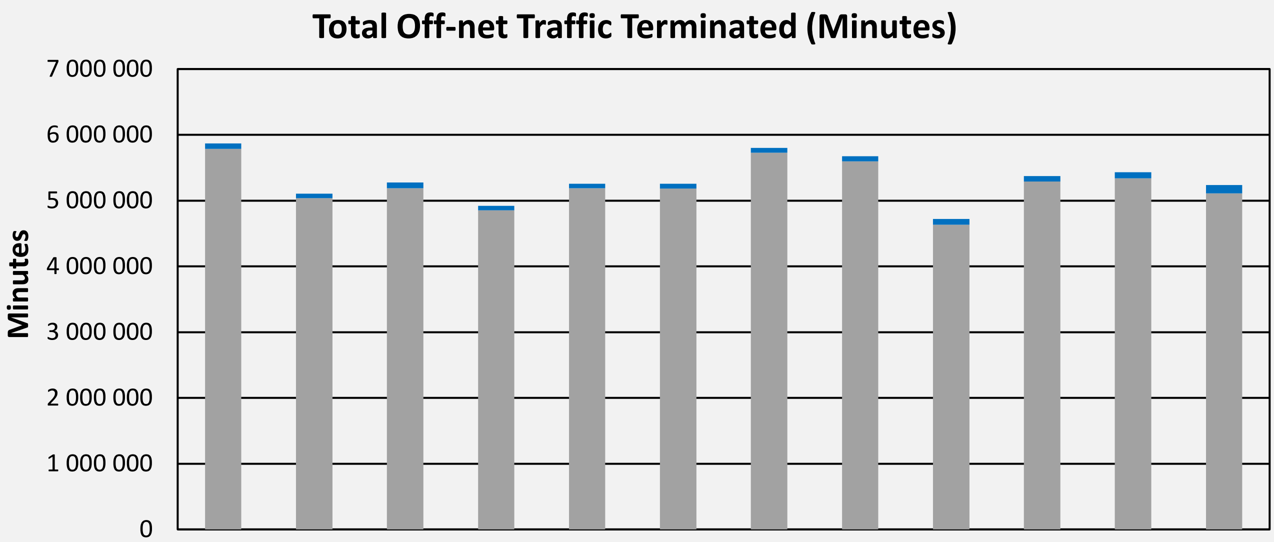
	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
Fixed	34 999	34 694	35 731	33 509	33 340	33 796	33 274	34 263	34 202	33 922	35 136	36 353
Mobile	1 107 701	1 123 298	1 148 087	1 140 443	1 114 853	1 100 554	1 075 277	1 064 915	1 083 484	1 084 383	1 077 061	1 108 809

Source: EPTC, Eswatini Mobile and MTN

Volume of Voice Call Termination Traffic (Minutes)

10.6 The total volume of voice calls terminated by both mobile and fixed networks amounted to 63 916 413 minutes in 2018. Mobile networks accounted for the largest share in volume of Voice Call minutes terminated.

Figure 2: Mobile and Fixed Network Off-net Traffic Minutes Terminated

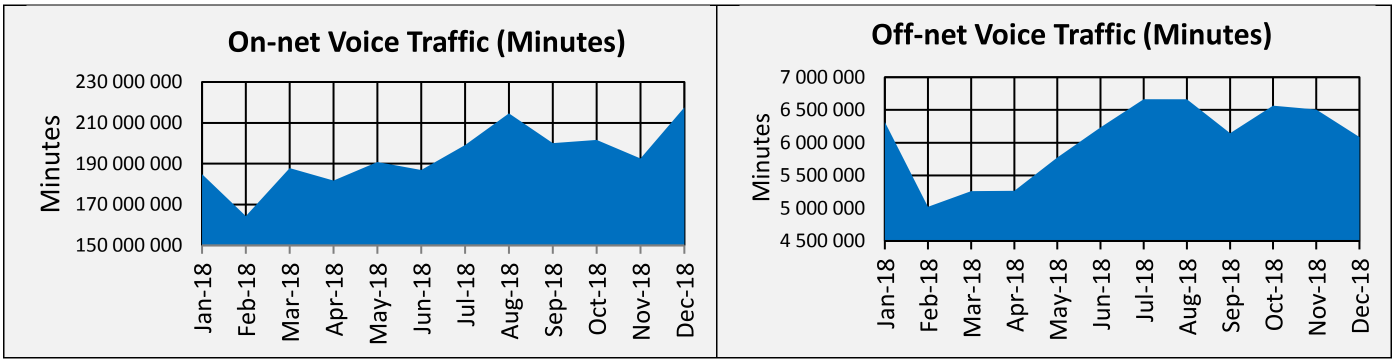


	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
Fixed Network	85 485	65 230	90 093	66 200	69 545	74 011	70 731	80 996	86 978	82 541	92 134	127 296
Mobile Networks	5 785 610	5 037 414	5 185 368	4 852 904	5 187 796	5 180 357	5 729 579	5 594 650	4 631 993	5 291 864	5 337 056	5 110 584

Source: EPTC, Eswatini Mobile and MTN

10.7 On-net Voice traffic was significantly higher than Off-net traffic. There was an observed decline in Off-net traffic terminated in the last quarter, while the volume of On-net traffic terminated trended upward and reached a peak of 217.6 million minutes in December 2018. This was attributed to the increasing promotion of Voice bundles with discounted On-net calls by mobile networks in the period, this in order to draw subscribers to their network and also retain mobile subscriptions on their network.

Figure 3: On-net and Off-net Voice Traffic Minutes



Source: EPTC, MTN and Eswatini Mobile

10.8 Network operators have the flexibility to offer competitive pricing and promotion discounts on On-net voice calls on their respective networks. This is due to lower marginal costs for providing On-net voice call services to subscribers.

10.9 In contrast, off-net calls, marginal costs are determined by the mobile termination charge. This creates an effective cost floor for retail off-net calls as network operators are generally unwilling to price calls below their marginal cost. This is reflected in the price of Off-net calls, which are usually higher than prices of On-net Calls.

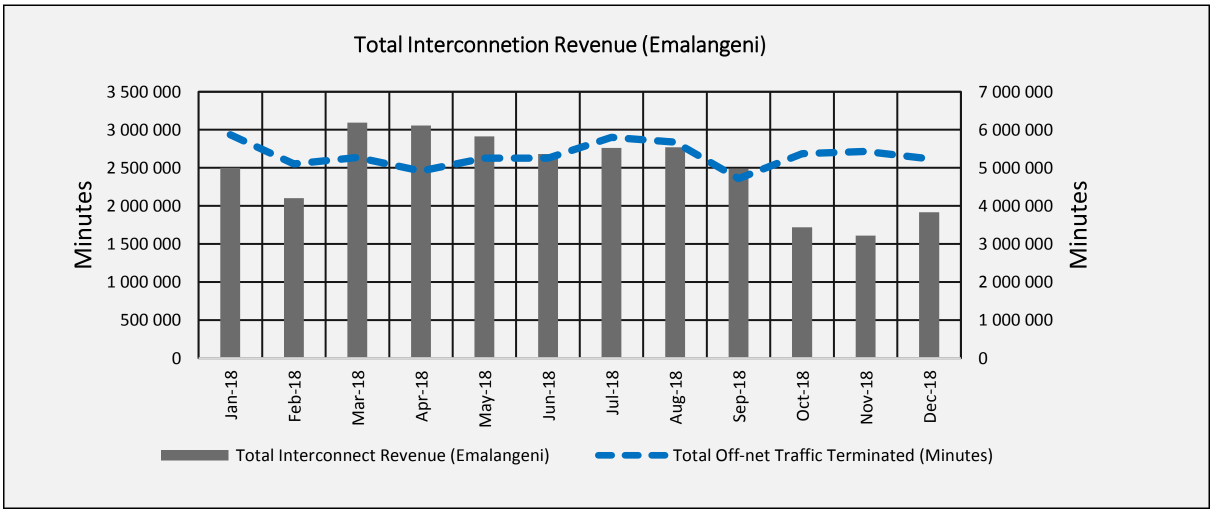
10.10 These on-net promotions are the main driver for multiple SIM usage. This is due to the fact that consumers subscribe to both MTN and Eswatini Mobile in order to benefit from cheaper on-net calls to their contacts spread between the two mobile networks. Unblocked multiple SIM devises available in the handset market enable subscribers to switch between seems on a per call basis.

10.11 Therefore, on-net calling promotions limit the growth potential of off-net traffic, and consequently reduces the demand for termination services as observed in the Voice Call trends for both Off-net Calls and On-net Calls terminated.

Interconnection Revenue

10.12 Total interconnect revenue reported by mobile and fixed networks in 2018 amounted to E29 624 975 in 2018. Month over month trends in revenue are driven by monthly off-net traffic minutes terminated. Off-net traffic originated by mobile networks and terminating on fixed networks are currently charged at rate of 0.30 cent per minute peak and off-peak. Off-net calls originated by fixed networks and terminated by mobile networks are effectively charged at 0.24 cents per minute peak and off-peak.

Figure 4: Total Interconnection Revenue (Emalangeni)



Source: EPTC, MTN and Eswatini Mobile

11. CALL TERMINATION MARKET STRUCTURE ASSESSMENT

MARKET SHARE

11.1 Each network operator (Fixed and Mobile) irrespective of size has a 100% share in both volume and revenues for call termination services on their own network. This is due to the technical fact that only the terminating operator has the ability to provide call termination to the numbers allocated to its network and there is simply no alternative to terminating a call on the network of the operator who owns the number a caller is trying to reach. Effectively this means;

- MTN Eswatini has 100 % market share of all Off-net Calls terminating on its network.
- EPTC Eswatini has 100 % market share of all Off-net Calls terminating on its network.
- Eswatini Mobile has 100 % market share of all Off-net Calls terminating on its network.
- Therefore, it can be concluded Eswatini Mobile, EPTC and MTN have a monopoly over call termination on their respective networks.

DEGREE OF COUNTERVAILING BUYER POWER (CBP)

11.2 Countervailing Buyer Power (CBP) only exists when a particular purchaser (or group of purchasers) of a good or service is sufficiently important to its supplier to influence the price charged for that good or service.

11.3 The degree of Countervailing Buyer Power in the Call Termination market is determined by the extent to which a network operator values off-net voice traffic originating from other networks and terminating on its network.

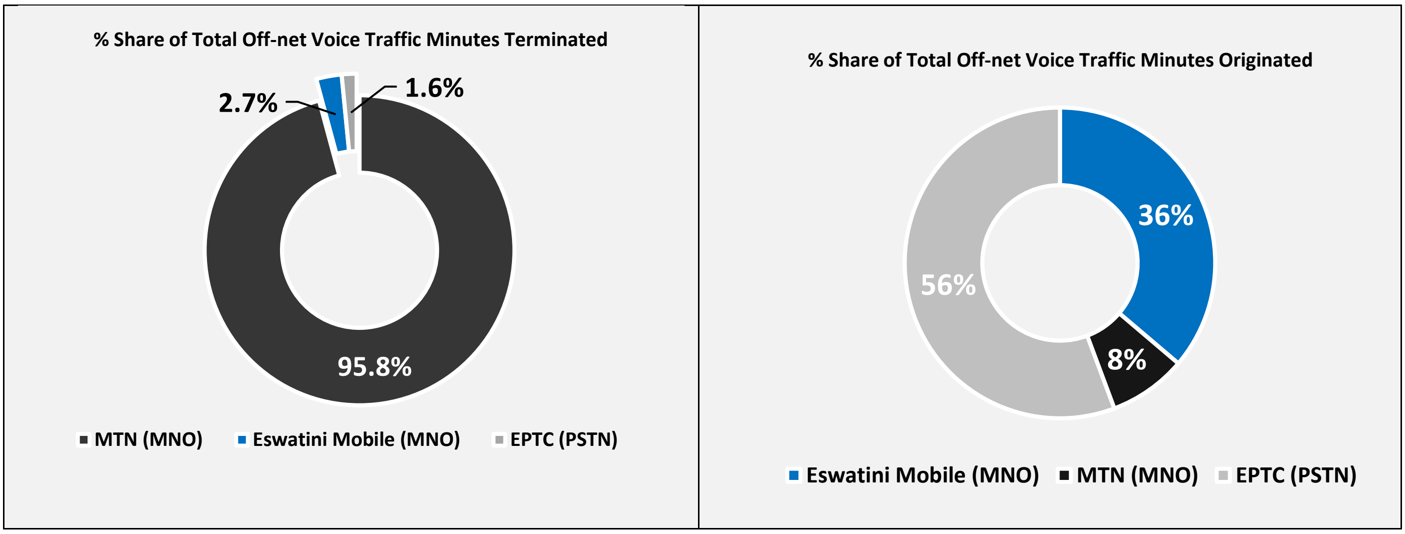
11.4 It is therefore relevant to assess the amount of traffic originating and terminating in Eswatini to determine if there is symmetry among network operators or if there are operators highly dependent on one or more operators to terminate their traffic.

11.5 This is due to the fact that a licensee terminating a significant share of traffic could indicate an existing imbalance in countervailing buyer power in the Call Termination market in Eswatini.

11.6 In Figure 5 below, MTN terminates the largest share of total Off-net voice traffic in the market. This is also consistent with the fact that MTN has the largest market share of Voice Subscriptions, an average of 86 percent in 2018.

11.7 On the other hand, EPTC and Eswatini Mobile combined only accounted for only 5 percent of total off-net traffic terminated. This also follows the fact that both account for a small share of voice subscriptions, at 11 % and 3 percent respectively.

Figure 5: Market Share of Off-net Voice Traffic Minutes Terminated and Originated



Source: EPTC, MTN and Eswatini Mobile

11.8 EPTC and Eswatini Mobile combined account for 92 percent Off-net traffic originated, while MTN accounted for only 8 percent. This is an indication that EPTC and Eswatini Mobile are highly dependent on MTN's network to terminate off-net voice traffic than MTN is to terminate calls on EPTC and Eswatini Mobile's network.

11.9 The asymmetry in the share of Voice Traffic Terminated and Originated amongst the network operators; EPTC, Eswatini Mobile and MTN represents a significant imbalance in countervailing buyer that exists in the Call Termination Market in Eswatini.

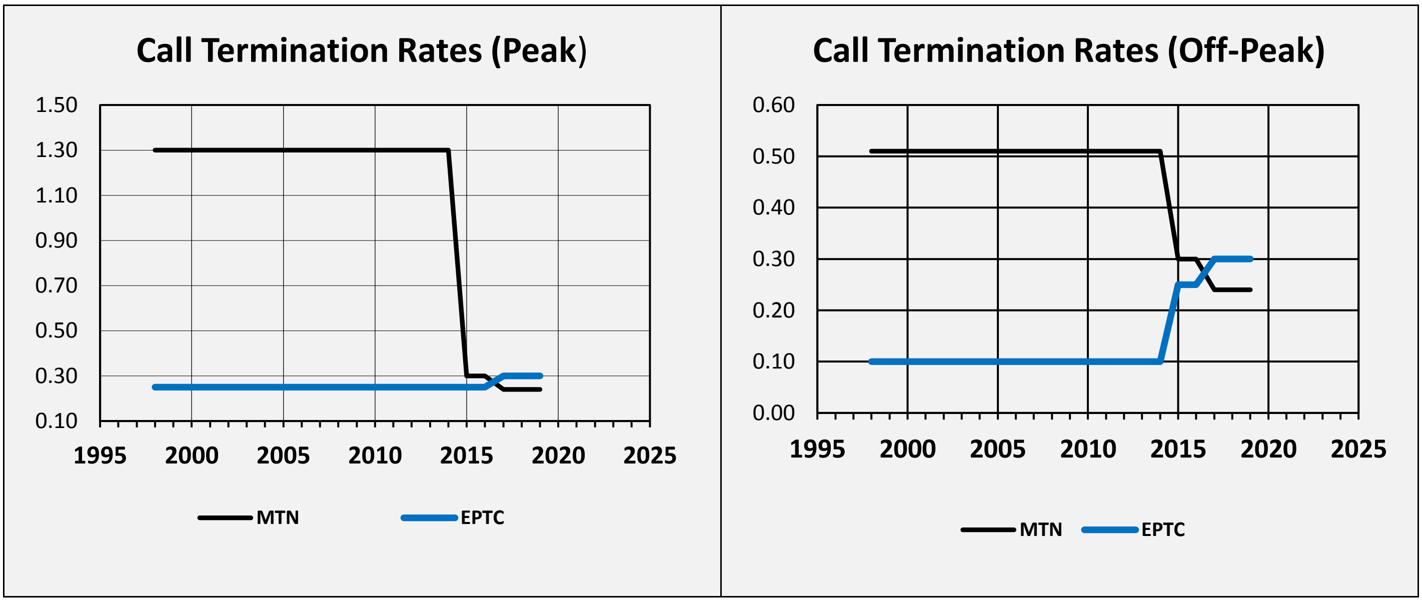
CALL TERMINATION PRICING

11.10 Figure 6 below, shows a historic trend of Call Termination Rates between the two incumbent network operators EPTC and MTN before the new mobile entrant Eswatini Mobile entered the market in 2017.

11.11 In 1998 when MTN established the first mobile network in Eswatini, entered into an interconnection agreement with the fixed network incumbent EPTC. According to the agreement MTN charged E1.30 per minute to terminate EPTC's voice calls on their mobile network at peak hours. EPTC charged 0.25 cents per minute for terminating all voice calls originating from MTN's network.

11.12 Off-peak Call Termination rates, MTN charged 0.51 cents to terminate EPTC voice calls. EPTC charged 0.10 cents for terminating voice calls originating from MTN.

Figure 6: EPTC and MTN Call Termination Rates



Source: EPTC and MTN Interconnection Agreements

11.13 In 2015 the two operators revised their Call Termination rates. The outcome of the revised agreement was that MTN's Peak price for terminating EPTC calls was revised downward from E1.30 to 0.30 cents. Off peak rates were also revised down from 0.51 cents to 0.30 cents per minute.

11.14 EPTC's pricing for terminating voice calls originating from MTN at peak hours were maintained at 0.25 cents. However, Off-peak voice termination rates were revised upward from 0.10 cents to 0.25 cents per minute.

11.15 In 2017, EPTC and MTN revised their call termination agreements. MTN's call termination rates were maintained at 0.30 but introduced a discount of 0.06 cents. Effectively the price for terminating voice calls originating from EPTC's network was 0.24 cents for both peak and off-peak. On the other hand, the price for terminating voice traffic from MTN on EPTC's network was revised upwards from 0.25 cents to 0.30 cents for both peak and off-peak.

11.16 In the table below are the current Call Termination Rates as per the respective network operators' Interconnection agreements filed with the Commission.

Table 1: Call Termination Rates

	MTN to EPTC	EPTC to MTN	Eswatini Mobile to EPTC	EPTC to Eswatini Mobile
Call Termination Rate per Minute	0.30	0.30	0.30	0.24
Discount		0.06		

11.17 The new mobile network entrant Eswatini Mobile entered into an interconnection agreement with EPTC in 2017. According to the agreement Eswatini Mobile charges 0.24 cents for terminating all voice calls originating from EPTC. EPTC charges 0.30 cents per minute for terminating all voice calls originating from Eswatini Mobile.

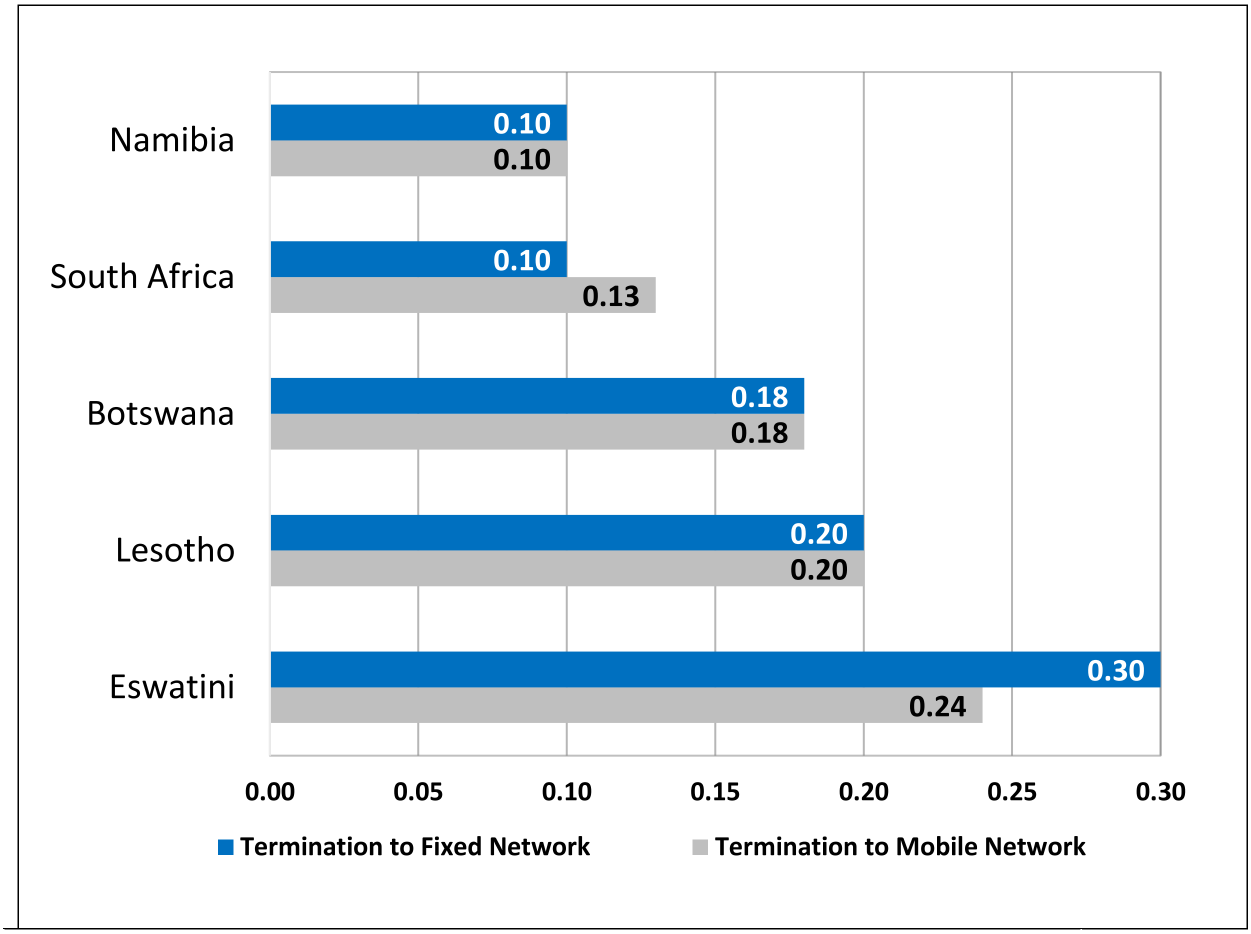
11.18 It is worth noting that Eswatini Mobile and MTN Eswatini do not have a standing interconnection agreement filed with the Commission. Eswatini Mobile has a transit agreement with EPTC, all voice calls originating from Eswatini Mobile are routed via EPTC and terminated on MTN's network at a transit fee of 0.30 cents per minute. However, in the absence of an interconnection agreement, it is unclear how voice traffic originating from MTN is terminated on Eswatini Mobile and at what price.

12. CALL TERMINATION RATE BENCHMARKING

12.1 Call Termination Rates in Eswatini for both Fixed and Mobile networks are significantly high compared to other countries in the region, in the Southern African Customs Union (SACU) as shown in Figure 6 below.

12.2 Call Termination Rates in Eswatini are excessively high, which contributes to market distortion in the downstream market for voice calls, to the detriment of end users.

Figure 6: Call Termination Rates SACU Region Comparison in Emalangeni



Sources: BOCRA, CRAN, LCA, ICASA

13. OVERALL CONCLUSION ON MARKET STRUCTURE AND CONDUCT

KEY ISSUES

13.1 The Commission has identified the following key issues:

13.1.1 Market Dominance

13.1.2 Imbalance in Countervailing Buyer Power

13.1.3 Potential for abuse of dominance: Refusal (or delay) to negotiate and/or provide access

MARKET DOMINANCE

13.2 Each network operator is a monopolist in the termination of calls on its own network.

Imbalance in Countervailing Buyer Power

13.3 A feature of the negotiation of call termination contracts between two Operators is that in general two contracts are negotiated at the same time, i.e. one contract for each of the network operator for terminating calls that originate on the other operator's network.

13.4 This means during the contract negotiations; each network operator is likely to take into account the value of the contract they negotiate for termination on their network and the value of the contract for termination on the other network.

13.5 If network operators have similar values for terminating calls on the other network, then this is likely to contribute to each network operators' countervailing buyer power, as they can trade access to their own network with access to the other operators' network. In the case, this implies that neither network operator is able to exercise SMP over the other network operator.

13.6 However, if the two network operators have significantly different valuations for terminating calls on the other network, then the network operator with the lower valuation may be able to exert SMP during the contract negotiations over the operator with higher valuation.

13.7 One factor that will influence a network operators' valuation of call termination on the other operators' network will be the size of the other operators' network. This valuation follows from the network effect whereby consumers value a network more if it has more subscribers than less.

13.8 In other words, call termination allows network operators to increase the value of subscribers to their network by allowing their customers to call more customers, particularly those connected to another network.

13.9 So, if a network operator has a smaller network, it would place a higher value for call termination on a larger network, than a larger network would place for termination on the smaller network, which in turn would imply that the larger network has greater market power, and it would diminish the countervailing buyer power of the smaller network.

13.10 MTN has largest market share of Voice Subscriptions and consequently high share of traffic volume terminating on its mobile network compared to calls originated. Eswatini Mobile and EPTC account for a significant share of total off-net voice traffic originated and a very low share of Off-net traffic terminating on their network. This by implication means that both Eswatini Mobile and EPTC have very low countervailing buyer power to balance MTN's significant market power and negotiate for favourable terms and lower call termination rates with MTN.

Potential for abuse of dominance: Refusal (or delay) to negotiate and/or provide access

13.11 Opportunity exists for a larger network operator to procrastinate interconnection or agreement renewal with a small or new entrant and deny them immediate access to this critical input into electronic communications retail service. This is especially in the case where the lager network operator holds significant market power.

13.12 Given the structure of the wholesale call termination market and the downstream retail mobile market, there is a clear incentive for network operators, particularly those with large retail market share to set termination rates that are above cost or even refuse interconnection.

13.13 Eswatini Mobile stated that they experienced prolonged delays in negotiating an interconnection with the mobile Network incumbent MTN Eswatini. MTN on the other hand reported that the delays were due to technical issues

13.14 Consequently, there is no interconnection agreement in place between Eswatini Mobile and MTN Eswatini , there only existing agreements are between EPTC and Eswatini Mobile and MTN Eswatini respectively. The lack of an agreement between Eswatini Mobile and MTN is in contravention of section 5 of the Interconnection Regulations of 2016 and this conduct may be inferred as abuse of dominance.

15. DETERMINATION

INEFFECTIVE COMPETITION

15.1 Call termination, or voice termination, is a telephony service of a telecommunication carrier who completes the telephone calls originated by a customer, the calling party, to the intended destination, the called party.

15.2 There is overwhelming international evidence that effective competition in the Voice Termination Market leads to lower costs of communication, better services and more equitable returns on investment for all licensees.

15.3 The Commission has determined that competition in the Voice Call Termination Market in Eswatini is currently not effectively competitive.

15.4 Call Termination is a natural monopoly in which all three licensees that provide wholesale call termination services are dominant on their respective networks. This follows from the simple technical fact that an end user that subscribes to one network, that calls a person that subscribes to another network, does not have an alternative to call that person via a third network.

15.5 While all licensees are dominant, the Commission has also determined that MTN Eswatini holds Significant Market Power (SMP) in the wholesale voice call termination market in Eswatini.

15.6 A key factor in assessing the effect of this SMP in the call termination market is each operator's market share of Off-net Voice Traffic Terminated, Off-net Traffic Originated and the share of retail mobile market subscriptions.

15.6.1 MTN Eswatini as the largest operator, with 97 percent of total Off-net Traffic terminated and over 85% market share of voice call subscriptions, currently benefits from economies of scale and scope.

15.6.2 MTN Eswatini has countervailing buyer power and is currently able to exploit the market for mobile termination to limit competitive entry in the downstream retail market for voice calls.

16. PROPOSED DECISION

16.1 According to Section 23(3) of the ECA the Commission shall identify the licensees with market dominance and impose the appropriate obligations. The Commission intends to issue the following decision :

16.1.1 Competition in the wholesale Voice Call Termination Market is currently not effectively competitive.

16.1.2 The under listed licensees are dominant in the call termination market on their own networks:

16.1.3 MTN Eswatini is dominant in the provision of wholesale call termination on its own network and holds Significant Market Power (SMP) in the wholesale voice call termination market in Eswatini.

16.1.3.1 Eswatini Post and Telecommunications Corporation is dominant in the provision of wholesale call termination on its own network.

16.1.3.2 Eswatini Mobile is dominant in the provision of wholesale call termination on its own network.

16.2 The Commission intends to impose obligations under section , 24, 25, 26, 27 and 28 of the ECA 2013.

16.3 With regards to obligation under section 24, the Commission directs that Eswatini Mobile and MTN Eswatini Mobile to Interconnect as per The Electronic Communications (Interconnection) Regulations, 2016.

16.4 With regards to obligation under section 28, the Commission directs EPTC, MTN and Eswatini Mobile as follows:

16.4.1 To reduce overall Call Termination Rates for both Mobile and Fixed Networks over a period of three years beginning in April 2020 to March 2023.

16.4.2 To apply Asymmetric Call Termination Rates system determined by the Commission. This is due to the presence of asymmetry in Voice Traffic and Subscriptions Market Share (as shown in Table 2 below) and consequent imbalance in Countervailing Buyer Power (CBP) between network operators.

16.4.3 Table 2: Voice SIM Subscriptions and Voice Traffic Minutes, 2018

Operator	Voice Subscriptions	Voice Traffic Terminated, Minutes
MTN	968 348	61 227 271
Eswatini Mobile	74 341	1 697 902
EPTC	36 353	991 240
Total	**1 079 042**	**62 925 173**

16.4.4 The Commission determines that the following Voice Call Termination Rates shall be applicable following a 3 year glide path as shown in table 3 below :

Table 3: Call Termination Rates

	MTN to EPTC	EPTC to MTN	ESWM to EPTC	EPTC to ESWM	ESWM to MTN	MTN to ESWM
Current Rates	0.30	0.24	0.30	0.24	N/A	N/A

April 2020 to March 2021	0.24	0.19	0.24	0.19	0.20	0.25
April 2021 to March 2022	0.18	0.14	0.18	0.14	0.15	0.19
April 2022 to March 2023	0.12	0.10	0.12	0.10	0.10	0.13

17. INVITATION FOR PUBLIC COMMENTS ON THE PROPOSED DECISION

17.1 Following the above market analysis and declaration of dominance on Eswatini Mobile, MTN Eswatini and Eswatini Posts and Telecommunications Corporation in the Call Termination Market, and as part of the public consultation process contemplated in Section 32 of the Eswatini Communications Commission Act read with the Electronic Communications Act, 2013, the Commission invites written comments from interested stakeholders and the general public on the proposed decision document. This document is also available to the public through the Commission's website www.esccom.org.sz

17.2 The deadline for submission of comments is 17h00 on **11 December 2019.** Enquiries and comments should be addressed to:

The Chief Executive
Eswatini Communications Commission
P.O. Box 7811
MBABANE
Email: legal@esccom.org.sz
Date: **11 November 2019**