



**ESWATINI
COMMUNICATIONS
COMMISSION**

**ESWATINI COMMUNICATIONS COMMISSION COMPETITION GUIDELINES
2020**

Title: Eswatini Communications Commission Competition Guidelines, 2020

Number: 1/2020

Objective: The Promotion of Fair Competition and the Protection against Anti-Competitive Practices in the Electronic Communications Sector in the Kingdom of Eswatini

Application: Individual, General Licence Holders and Consumers

Effective Date: 1 May 2020

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PART 1: INTRODUCTORY PROVISIONS

1. CITATION AND COMMENCEMENT

- (1) These Guidelines may be cited as the Eswatini Communications Commission Competition Guidelines, 2020.
- (2) These Guidelines shall come into force on the date specified herein, being 02 March 2020.

2. INTERPRETATION

In these guidelines, any word or expression to which a meaning is assigned in the Act has that meaning, and –

“Act” means the Eswatini Communications Commission Act, 2013 (Act. No. 10 of 2013);

“Agreement” means any form of contract, arrangement or understanding, whether or not legally enforceable, between licensees, and includes a decision by an association of licensees and a concerted practice;

“Anti-Competitive Practice” means any practice or activity that has the object or effect of preventing, restricting or distorting competition in a relevant market for the supply of Electronic Communications or any product or service used in connection with these services;

“Bundling of Services” means combining of various Electronic Communications services provided by a licensee in one package under a bundled rate or rate formula where the offering of one or more services within the package is conditional on acceptance of the entire package;

“Commercial Activities in the Electronic Communications Sector” means the provision of Electronic Communication services, the supply or export of

Electronic Communications apparatus and the production or acquisition of Electronic Communications apparatus for supply or export;

“**Commission**” means the Eswatini Communications Commission established under section 3 of the Eswatini Communications Commission Act, No. 10, 2013;

“**Competition**” means a situation in market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective.

“**Competition Act**” means the Competition Act, 2007;

“**Competition Commission**” means the Eswatini Competition Commission established by section 6 of the Competition Act;

“**Consumer**” means a means a customer or a user;

“**Country**” means the Kingdom of Eswatini;

“**Concerted Practice**” means any form of coordination between licensees which involves direct or indirect contact or communication between licensees, the object or effect of which is either -

- (a) to influence the conduct of one or more licensees in a market; or
- (b) to disclose the course of conduct which a licensee has decided to adopt or is contemplating to adopt in a relevant market, in circumstances where such disclosure would not have been made under normal conditions of competition;

“**Cross Subsidization**” means charging artificially low prices in a relevant market and subsidizing those prices from high prices in a different market where there is less or no competition;

“**Determination of Licensees Holding a Dominant Position**” means the Determination of Licensees Holding a Dominant Position in the Electronic Communication Market in terms of Section 23 of the Electronic Communications Act;

“**Dominant Licensee**” means a licensee determined to be dominant in a relevant market as contemplated in section 23 of the Electronic Communications Act;

“Essential Facility” means a facility associated with an Electronic Communications system or an Electronic Communications service that is supplied exclusively or predominantly by a single licensee or a limited number of licensees, and that cannot be easily substituted and/or duplicated by other licensees for economic or technical reasons;

“Geographic Market” means a geographic area in which licensees are involved in the supply and demand of the relevant products or services under similar or sufficiently homogeneous conditions of competition and that can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different;

“Horizontal Agreement” means an agreement between competing licensees each of which operates at the same level in a relevant market;

“Infringement” means a contravention of any prohibition under the Act, these Guidelines or the terms and conditions of a license;

“Infrastructure-Sharing Regulations” means the Electronic Communications (Facilities Sharing) Regulations, 2016;

“Licensee” means a person licensed to provide a public communications network or service or an associated facility in accordance with the Electronic Communications Act;

“Market Power” refers to the ability of a licensee or group of licensees to profitably raise and maintain a price for goods or services above the level that would prevail under competition.

“Merger” means the merger, acquisition, amalgamation, combination or joining of two or more licensees or part thereof into an existing licensee or to form a new licensee;

“Price” or “Rate” includes any form of consideration given in return for any Electronic Communication service or goods or services used in conjunction with any Electronic Communication service, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such services;

“Price Squeeze” means increasing the price for provision of essential facilities required by competitors while charging relatively low price for retail services;

“Product or Services Market” comprises all those products or services which are regarded as interchangeable or substitutable by a consumer by reason of the services’ or products’ characteristics, their prices and their intended use;

“Relevant Market” means any of the markets referred to in Section 23 of the Electronic Communications Act, 2013, having been determined by the Commission with reference to a product or service market and a geographic market, taking into account the functional and temporal dimensions of the market;

“Supply” includes -

- (a) In relation to goods, the supply and resupply, by way of sale, exchange, lease, hire or hire- purchase of the goods; and
- (b) In relation to services, the provision by way of sale, grant or conferment of the services;

“Vertical Agreement” means an agreement between licensees each of which operates at different levels in the same or in a related market, whether upstream or downstream in the production or distribution chain of a relevant market.

3. MANDATE OF THE COMMISSION IN RELATION TO COMPETITION

- 3.1. The Commission shall carry out functions entrusted to the Commission by or under the Act or any other law in an objective, transparent, proportionate and non-discriminatory manner. Section 7(s) of the Act provides that the Commission shall ensure fair competition in in all communications services, products, operations and activities which the Commission regulates.

4. OBJECTS AND APPLICATION OF THESE GUIDELINES

- 4.1. The objects of these Guidelines are –
- 4.1.1. To provide a regulatory framework for -
 - (a) The promotion of fair competition; and
 - (b) The protection against anti-competitive practices in the electronic communications sector in the Kingdom of Eswatini.
 - 4.1.2. To induce licensees to become more efficient in order to offer a greater choice of products and services at lower prices.
 - 4.1.3. To ensure that licensees -
 - (a) Exercise market power with due regard to consumer welfare and overall industry performance; and
 - (b) Do not abuse their market power
 - 4.1.4. To ensure that essential facilities are available to competitors of licensees on reasonable terms
 - 4.1.5. To ensure competitive outcomes in order to enhance consumer welfare
 - 4.1.6. To make provision for tariff application and review; and
 - 4.1.7. To promote consumer protection in the electronic communications sector.
 - 4.1.8. These Guidelines apply to -
 - (a) All licensees issued with an electronic communications licence under part III of the Electronic Communications Act, 2013;

- (b) Dominant licensees; and
- (c) All consumers.

5. SUBMISSION OF DOCUMENTS TO THE COMMISSION

- 5.1. In these Guidelines, when persons are permitted or called upon to submit information to the Commission in writing, they may do so either physically or electronically -
- a) By hand to the head offices of the Commission;
 - b) By post to the head offices of the Commission, namely P.O. Box 7811, Mbabane; and
 - c) By electronic mail to the following address: info@esccom.org.sz
 - d) In any other manner or at alternative addresses set out by the Commission from time to time.

PART 2: MARKET DEFINITION AND OBLIGATIONS OF LICENSEES

6. MARKETS IN THE IN THE ELECTRONIC COMMUNICATIONS SECTOR

- 6.1. The Commission shall from time to time define relevant markets in accordance with Section 23 of the Electronic Communications Act, 2013 and pronounce on licensees holding a dominant Position. These markets may include the following –
- (a) Fixed and mobile call termination market;
 - (b) Wired end user access market;
 - (c) Broadband internet access from a fixed and mobile terminal location market;
 - (d) National and international data transmission market;
 - (e) Passive infrastructure market;
 - (f) National roaming market;
 - (g) Broadcasting market;
 - (h) Postal Services Market; and
 - (i) Any other relevant market defined by the Commission.

- 6.2. The Commission shall ensure that open and fair competition is facilitated and encouraged in relevant markets within the electronic communications sector.

7. LICENSEES HOLDING A DOMINANT POSITION

- 7.1. The Commission shall periodically define, analyze the relevant markets and make a determination on dominance in accordance with Section 23 of the Electronic Communications Act, 2013.

8. OBLIGATIONS OF LICENSEES HOLDING A DOMINANT POSITION

- 8.1. Dominant licensee in any relevant market -

- 8.1.1. Shall comply with all/or any obligation that the Commission may impose under Sections 24 to 28 of the Electronic Communications Act,2013. Additionally, such obligations may include but not limited to the following;

- (a) Afford access to its poles, ducts and conduits to other licensees;
- (b) Provide to any requesting licensee non-discriminatory access to network elements on an unbundled basis at any technically feasible point;
- (c) Provide for physical co-location of equipment necessary for interconnection or access to unbundled network elements at the premises of the dominant licensee;

- (d) Shall provide unbundled network elements in a manner that allows requesting licensees to combine such elements in order to provide electronic communications services;

- 8.1.2. Shall allow any other licensee to interconnect its network with that of the dominant licensee;

- 8.1.3. Shall share any infrastructure with any other licensee or shall allow the latter licensee to install electronic communications equipment on such infrastructure or to otherwise utilise such infrastructure;

8.1.4. The dominant licensee shall not provide electronic communications services on terms that discriminate against a consumer, reseller or licensee.

8.2. For purposes of sub-guideline (8.1) –

8.2.1. “Licensee” means a person who is the holder of, or deemed to be the holder of, a licence to provide any kind of communications service under the remit of the Commission in accordance with this act.

8.2.2. “Network element” means a facility or equipment used in the provision of an electronic communications service, including all features, functions and capabilities that are provided by means of such facility or equipment, such as subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of electronic communications services.

9. OBLIGATIONS OF ALL LICENSEES TO PROMOTE FAIR COMPETITION

9.1. In order to promote and facilitate fair competition, all licensees shall -

9.1.1. Ensure the retention of separate accounts for their electronic communications services and shall not cross-subsidize the prices for any service it offers in any electronic communications market, with revenue from the sale of electronic communication equipment, systems or services;

9.1.2. Submit to the Commission their interconnection agreements and tariffs;

9.1.3. Be transparent in relation to the publication of information, and such information shall include relevant statutory accounting information, technical specifications, network characteristics and terms and conditions for supply and use, and prices;

9.1.4. Be non-discriminatory by applying similar conditions in similar circumstances to other licensees providing similar services and in providing services and information to third parties under the same

- conditions and with the same quality as the services and information provided to its own departments or to its subsidiaries or partners;
- 9.1.5. Provide uniform, non-preferential service on a first-come- first-served basis to all persons within a covered geographical area who request such service; and
- 9.1.6. Not violate the principle of equal access and non-preferential treatment if the licensee –
- (a) Considers the ability of a person to pay for a service when deciding whether to provide a service to the person; or,
 - (b) Makes other rational classifications among subscribers, such as business and residential, and to provide service on the basis of the classification.

10. DUTY NOT TO DISCRIMINATE

- 10.1. A licensee shall provide non-discriminatory treatment to all consumers and licensees in the provision of electronic communication services.
- 10.2. An act or omission of a licensee amounts to an act of discrimination or undue preference where that licensee –
- 10.2.1. Directly or indirectly, by any means, discriminates unjustly in the charges, practices, classification, Guidelines, facilities or services for or in connection with similar electronic communications services;
 - 10.2.2. Makes or gives undue or unreasonable preference or advantage to a particular person, class of persons or locality;
 - 10.2.3. Unfairly favours a licensee so as to place other licensees lawfully competing with that licensee at a competitive disadvantage;
 - 10.2.4. Unjustly or unfairly denies access or service to a consumer; or
 - 10.2.5. Refuses or fails to provide, or in any way denies consumers or licensees equal opportunity for access to the same type and quality of service.
- 10.3. A Licensee shall –
- 10.3.1. Not discriminate against or grant any preference to any consumer; and

- 10.3.2. Offer rates, terms, conditions and technical standards for its services or through its affiliates, identical and equivalent to those offered to other unaffiliated licensees.

PART 3: RULES OF FAIR COMPETITION

11. RULES OF FAIR COMPETITION

- 11.1. The rules of fair competition shall to the extent practicable, be based on the principles of competition law and practice relating to the prohibition of-
 - 11.1.1. Abuse of a dominant position;
 - 11.1.2. Anti-competitive agreements, decisions or concerted practices;
 - 11.1.3. Anti-competitive mergers, take-overs, consolidations, acquisitions or anti- competitive changes in the market structure resulting from changes in ownership, control, composition and structure of licensees; and
 - 11.1.4. All other practices and acts with an effect on fair competition including unfair methods of competition and unfair or deceptive acts or practices, the purpose or effect of which is to prevent, restrict or distort competition in the electronic communications sector.
- 11.2. A licensee may not engage in any activity, whether by act or omission, which has or is intended to or is likely to have the effect of unfairly preventing, restricting or distorting competition where the act or omission is done in the course of, or as a result of, or in connection with, any commercial activity in the electronic communications sector.

PART 4: ANTI-COMPETITIVE PRACTICES

12. ASSESSING WHETHER CONDUCT IS ANTI-COMPETITIVE

- 12.1. Any practice or activity that has the object or effect of preventing, restricting or distorting competition in a market for the supply of electronic communications or any product or service used in connection with these services is prohibited.
- 12.2. The Commission, in assessing whether any conduct constitutes an anti-competitive practice, shall consider the following:
 - 12.2.1. The definition of the relevant market or market segment;

- 12.2.2. Any impact of the conduct on existing competitors in the identified markets;
- 12.2.3. Any impact of the conduct on further market entry; and
- 12.2.4. Any impact of the conduct on consumers, including the availability and pricing of products and services.

13. ANTI-COMPETITIVE BEHAVIOUR BY LICENSEES IN GENERAL

- 13.1. No licensee shall engage in an anti-competitive practices.
- 13.2. Without limiting the generality of sub-guideline (13.1), a licensee is deemed to have engaged in an anti-competitive practice if that licensee:
 - 13.2.1. Defames or intends to defame a competitor through commercial advertisements or in any other manner;
 - 13.2.2. Without the consent of a consumer, activates electronic communications services for that consumer and deducts charges against those services;
 - 13.2.3. Continues to charge a consumer after cancellation of an electronic communication service by that consumer;
 - 13.2.4. Conceals actual prices of products and services;
 - 13.2.5. Abuses its dominant position in a relevant market in the manner contemplated in Guideline 13;
 - 13.2.6. Although not a dominant licensee, commits any of the practices referred to in guideline (13.2) and (13.3);
 - 13.2.7. Attempts to lock in consumers by any unfair means including high switching costs;
 - 13.2.8. Undertakes bundling of services whereby a consumer is required to purchase one product or service over which the licensee has market power conditional on the purchase of a second, competitively supplied, product or service whereas the two products or services can be provided and consumed independent of each other;
 - 13.2.9. Indulges in a decision mutually beneficial to licensees in a specific relevant market or market segment; or
 - 13.2.10. Engages in any other anti-competitive practice that may have the effect of impeding or preventing a competitor's entry into or expansion in a relevant market or market segment in an unfair manner;

- 13.2.11. Predatory behaviour towards competitors including the use of predatory cost pricing to damage, hinder or eliminate competition;
- 13.2.12. Discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods and services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside affiliated enterprises;
- 13.2.13. Making the supply of goods or services dependent upon the acceptance of restrictions on the distributions or manufacture of competing or other goods or the provision of competing or other services;
- 13.2.14. Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier to the consignee;
- 13.2.15. Imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- 13.2.16. Resale price maintenance;
- 13.2.17. Trade agreements fixing prices between persons engaged in the business of selling goods or services, which agreements hinder or prevent the sale, supply or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
- 13.2.18. Refusal to supply goods or services to potential purchasers; or
- 13.2.19. Denials of access to an arrangement or association which is crucial to competition.

14. ABUSE OF DOMINANT POSITION

- 14.1. Any abuse of individual or collective dominant position by one or more persons in a market for the supply of electronic communications or any product used in connection with these services is prohibited.
- 14.2. An act or omission of a dominant licensee, whether independently or in any form of collusion with others, constitutes or amounts to an abuse of its dominant position where the act or omission involves –

- 14.2.1. Price abuses or anti-competitive pricing including -
- (a) Price squeezing by a dominant licensee, of the margin of profit available to a competitor that requires wholesale or retail services from the dominant licensee, by increasing the prices for such wholesale or retail services required by that competitor, or decreasing the prices of such services in markets where they compete, or both;
 - (b) Requiring or inducing a supplier to refrain from selling to a competitor;
 - (c) Any form of direct or indirect imposition of unfair purchasing, selling prices or other unfair trading conditions; or
 - (d) Predatory pricing whereby a dominant licensee deliberately incurs short- term losses by setting a price for services below the cost of such services with the intent to eliminate the competitors.
- 14.2.2. Cross-subsidizing from one service to a competitive service with the objective of lessening competition, except where such cross-subsidy is specifically approved by the Commission or by approval of tariffs for relevant services;
- 14.2.3. Any conduct which exploits consumers or suppliers through excessively high prices or discriminatory prices or terms, conditions or conducts which removes or limits competition from existing competitors or discourage entry or exclude new undertakings from entering the market through predatory behaviour, vertical restraints or refusal to supply existing or potential competitors;
- 14.2.4. Discrimination in the provision of access, interconnection or other services or facilities to other licensees except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources;
- 14.2.5. Adoption of technical specifications for its networks or systems that prevent interoperability with a network or system of a competitor;
- 14.2.6. Failure to make available to other licensees on a timely basis technical information about essential facilities, technical

- specifications or other commercially relevant information which is required by such other licensees to provide services;
- 14.2.7. Limiting production or supply of services, markets or technical development to the prejudice of consumers;
 - 14.2.8. Applying dissimilar conditions to equivalent transactions with other parties, which places them at a competitive disadvantage;
 - 14.2.9. Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts;
 - 14.2.10. Bundling of services, whereby the dominant licensee –
 - (a) Requires, as a condition of supplying a service to a competitor, that the competitor acquires another service that it does not require; or
 - (b) Offers the competitor more favourable terms or conditions that are not justified by cost differences if that competitor acquires another service that it does not require;
 - 14.2.11. Predatory network alterations, where the dominant licensee alters the physical or logical interface of its network in a manner that imposes significant costs on interconnected licensees without any legitimate business, operational or technical justification;
 - 14.2.12. Pre-emptive acquisition or securing of scarce facilities or resources, including rights of way, required by another licensee for the operation of its business, with the effect of denying the use of the facilities or resources to that other licensee;
 - 14.2.13. Supplying interconnection or other competitive services at prices below forward- looking incremental costs;
 - 14.2.14. Engaging in unfair methods of competition that improperly deter or are likely to deter entry into relevant markets or restrict or are likely to restrict existing competition in those markets for reasons unrelated to the availability, price or quality of the service that a prospective or current licensee offers or seeks to offer through -
 - (a) False or misleading claims;

- (b) Degradation of service availability or quality;
 - (c) Provision of false or misleading information to competitors; or
 - (d) Interference with an end-user;
- 14.2.15. Failure to comply with, or negotiate in good faith regarding, any duty relating to interconnection;
- 14.2.16. Refusal to supply or grant access to essential facilities in accordance with the provisions of the Electronic Communications (Infrastructure sharing) Regulations, 2016;
- 14.2.17. Using information to compete with a competitor where the dominant licensee obtained such information from the competitor for purposes related to interconnection to the dominant licensee or supply of services by the dominant licensee; or
- 14.2.18. Any other conduct that, in the opinion of the Commission, prevents or lessens or is likely to prevent or lessen competition substantially in a relevant market.
- 14.3. For the avoidance of doubt and without limiting the general effect of this regulation, the following conditions shall constitute vertical restraints imposed by a dominant licensee, that potentially reduce competition -
- 14.3.1. Resale price maintenance which is the practice whereby a licensee and a reseller of that licensee's products and services agree that the reseller will sell that licensee's products or services at certain prices at or above a price floor or at or below a price ceiling;
 - 14.3.2. Selective distribution, which is a distribution system whereby a supplier of electronic communication services and products enters into vertical agreements with a limited number of selected resellers in the same geographic market, thereby restricting the number of authorized resellers;
 - 14.3.3. Exclusive distribution, which is a distribution system in which a licensee grants exclusive rights on its products or services to another entity;
 - 14.3.4. Exclusive purchasing or dealing which is an arrangement whereby reseller of electronic communications services and products are tied

to purchase from a licensee on the understanding that no other reseller will be appointed or receive supplies in a given area;

- 14.3.5. Third line forcing, which involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to so supply because the purchaser will not agree to that condition;
- 14.3.6. Tie-in sales and bundling, which is the practice of conditioning the sale of one product on the purchase of another product;
- 14.3.7. Full-line forcing which is the practice of obligating resellers to sell a licensee's product line in its entirety;
- 14.3.8. Quantity forcing, which refers to pricing schemes that reward a purchaser for buying some threshold quantity from a supplier of electronic communications products and services;
- 14.3.9. Non-linear pricing, which involves a pricing strategy of not charging the same price for each unit sold and so becomes an indirect form of price discrimination.

14.4. "Abusive conduct" generally includes-

- 14.4.1. Conduct which interferes with the competitive process by adversely affecting a consumer, directly through the price charged, or indirectly through raising and enhancing entry barriers or increasing competitors' costs; and

14.5. Anti-competitive conduct that -

- 14.5.1. Exploits a consumer or supplier through excessively high prices; or
- 14.5.2. Discriminatory prices or other terms and conditions through removing or limiting competition from existing competitors; or
- 14.5.3. Excludes new licensees from entering a relevant market or market segment.

PART 5: ANTI-COMPETITIVE AGREEMENTS

15. ANTI-COMPETITIVE AGREEMENTS

- 15.1. Any agreement determined by the Commission to be anti-competitive will be automatically null and void.

- 15.2. An agreement between a licensee or a decision by an association of licensees, however constituted, or a concerted practice restricting or distorting competition in the electronic communications sector, constitutes an anti-competitive agreement.
- 15.3. An anti-competitive agreement contemplated in (15.2) includes –
- 15.3.1. Price-fixing agreements intended to directly or indirectly manipulate purchase or selling price;
 - 15.3.2. Agreements to fix trading conditions intended to directly or indirectly manipulate market trading conditions;
 - 15.3.3. Agreements to share markets where licensees apportion product and service markets and geographic markets amongst themselves;
 - 15.3.4. Agreements to limit or control production of electronic communication services or products or investment in the electronic communication sector;
 - 15.3.5. Agreements to limit or control production of electronic communication services or products or investment in the electronic communication sector;
 - 15.3.6. Collusion tendering or bid-rigging where licensees collude to determine who will win or what the winning price or conditions will be in respect of a tender or a bid;
 - 15.3.7. Group boycotts which refers to an agreed-upon refusal by competitors to deal with another entity unless that entity refrains from dealing with a potential competitor trying to enter a relevant market, intended to shut a competitor out of that market, or preventing entry of a new competitor into the market;
 - 15.3.8. Agreements with a potential to result in higher prices or reductions in output of electronic communications services or equipment;
 - 15.3.9. Agreements between licensees and entities at different levels in the supply chain as a down-stream reseller or an upstream provider of electronic communications services, such as vertical price fixing, vertical market allocation or exclusive dealing;
 - 15.3.10. Tie-in sales and bundling, which is the practice of making the sale of one product conditional on the purchase of another product;

- 15.3.11. Joint buying or selling agreements between buyers to fix the price at which they are prepared to buy or sell and similar agreements between sellers where they agree to boycott certain consumers;
- 15.3.12. Information-sharing agreements where the exchange has a considerable or an appreciable effect on competition;
- 15.3.13. Exchange of price information that eliminates competition between the cooperating licensees;
- 15.3.14. Exchange of non-price information that has an effect on competition;
- 15.3.15. Advertising restrictions relating to among others, the amount, nature or form;
- 15.3.16. Standardization agreements that contain restrictions on what the parties may produce and which as a result limit competition from other sources through raising entry barriers; or
- 15.3.17. Any agreement with a considerable or an appreciable effect on competition including aggregated rebate schemes, specialization agreements, co-operation in research and development or joint ventures for the development of new products or markets.

PART 6: EXEMPTIONS

16. EXEMPTIONS

- 16.1. A licensee may apply to the Commission for exemption, of an agreement or conduct of the licensee falling within the acts of unfair competition contemplated in these Guidelines.
- 16.2. An application for exemption shall be in writing, in format approved by the Commission and shall be accompanied by the prescribed fee.
- 16.3. The Commission shall, upon, receipt of an application for exemption, publicize such application in such manner as the Commission considers fit.
- 16.4. The Commission shall, upon, receipt of an application for exemption, publicize such application in such manner as the Commission considers fit.
- 16.5. Where the Commission receives an application for exemption, it may invite public comments thereon or hold a public hearing on the matter.

- 16.6. Where the Commission invites public comment or holds a public hearing, it shall give the applicant and any other interested person, reasonable opportunity to attend and take part in the public inquiry.
- 16.7. The Commission may grant exemption in relation to particular conduct of a licensee where the Commission is satisfied that –
- 16.7.1. The conduct will result, or is likely to result in a benefit to the public;
 - 16.7.2. The resultant public benefit outweighs, or will outweigh the detriment to the public constituted by any lessening of competition that will result, or is likely to result from engaging in the conduct; or
 - 16.7.3. The conduct is not anti-competitive or a breach of the rules of fair competition.
- 16.8. In determining whether to grant an exemption under sub-guideline (16.1), the Commission may consider –
- 16.8.1. The extent to which the conduct relates to the supply of goods or services on favourable terms and conditions to -
 - (a) A financially disadvantaged individual;
 - (b) An individual who is disadvantaged on health grounds;
 - (c) A non-profit community organization or a non-profit charitable organization;
 - (d) An educational institution; or
 - (e) A health facility;
 - (f) Universal Service and Access programmes.
 - 16.8.2. The extent to which the conduct relates to the supply of goods or services for –
 - (a) Community, charitable or educational purposes; or
 - (b) The promotion of health or safety, on favourable terms and conditions;
 - (c) The need to satisfy any applicable universal service obligation;

(d) The extent to which the conduct prevents or reduces, or is likely to prevent or reduce pollution or other forms of degradation of environmental amenities; and

(e) The extent to which the conduct contributes, or is likely to contribute to technical innovation, or the development of new goods or services.

16.9. Where the Commission grants an exemption, it shall give the applicant a written notification setting out the terms and the reasons for the exemption.

16.10. Where the Commission refuses to grant an exemption, it shall give the applicant written reasons for the refusal.

16.11. An exemption is subject to such conditions as the Commission may specify.

16.12. The Commission shall revoke an exemption subject to, amongst other considerations, the following:

16.12.1. The exemption was made on the basis of information that was false or misleading in a material particular;

16.12.2. A condition to which the exemption is subject is contravened; or

16.12.3. There has been a material change of circumstances since the exemption was made.

16.13. The Commission shall publicize its decision to revoke or withdraw the exemption in the commission's website and any other medium, the Commission deems fit.

16.14. Where the Commission intends to revoke an exemption, the Commission shall give the exempted party/person written notice, setting out the reasons for the revocation.

16.15. The Commission shall keep a register of the exemptions issued.

16.16. The register under sub -guideline (15.14) shall include –

16.16.1. All exemptions;

16.16.2. Applications for exemptions received by the Commission;

16.16.3. All refused exemptions;

16.16.4. Duration of the exemptions

16.17. The register shall not set out any information whose disclosure would reasonably be expected to prejudice substantially the commercial

interests of the licensee, or of any of the persons, to whom the information relates.

16.18. Any person may, on payment of the fee prescribed by the Commission inspect the register.

16.19. A licensee applying for an exemption shall not in connection with the application, intentionally or recklessly –

16.19.1. Give false or misleading information to the Commission; or

16.20. For the avoidance of doubt, an act or omission is not prohibited where -

16.20.1. It has or would have no considerable or appreciable effect on competition;

16.20.2. It has or would have no effect on competition between persons engaged in commercial activities connected with the electronic communications sector; or

16.20.3. It would have no effect on consumers of electronic communication services.

17. NOTIFICATIONS

17.1. A licensee may make a notification to the Commission for guidance on whether the licensee's agreement and conduct comply with the provisions of fair competition under these Guidelines.

17.2. It shall be the responsibility of a licensee to ensure that the licensee's agreement and conduct comply with these Guidelines.

17.3. The guidance by the Commission sought by a licensee in sub-guideline (17.1) shall indicate –

17.3.1. Whether the agreement or conduct is likely to infringe any relevant provisions of fair competition these Guidelines; or

17.4. Where guidance is given, the Commission may not re-open a case unless-

17.4.1. There are reasonable grounds for believing that there has been a material change of circumstances since the guidance was given;

17.4.2. There is a reasonable suspicion that materially incomplete, misleading or false information was given; or

17.4.3. A complaint is received from a third party.

PART 7: ENFORCEMENT

18. REGULATORY ACTIONS

- 18.1. The Commission may exercise any of the powers conferred upon it under the Act for ensuring compliance with these Guidelines.
- 18.2. In the exercise of its powers and functions under these Guidelines, the Commission may act of its own accord or upon a complaint from an aggrieved person.

PART 8: GENERAL

19. CONFIDENTIAL INFORMATION

- 19.1. If a person has designated information or documentation submitted to the Commission as confidential, the Commission shall treat such information as confidential unless otherwise determined by the Commission.

20. REVIEWS AND APPEALS

Reviews and appeals against a decision of the Commission shall be in accordance with Section 44 of the Eswatini Communications Act,2013.

21. AMENDMENT OF THE GUIDELINES

- 21.1. The Commission shall amend these Guidelines as and when necessary from time to time.

MVILAWEMPHI DLAMINI
CHIEF EXECUTIVE