



GENERAL NOTICE NO. 8/2022

**DECISION IN TERMS OF SECTION 37(1) OF THE ESWATINI COMMUNICATIONS
COMMISSION ACT, 2013:**

**REVOCATION OF ESWATINI COMMUNICATIONS COMMISSION DECISION 1/2019 -
INVESTIGATION INTO THE JOINT VENTURE AGREEMENT BETWEEN MTN ESWATINI AND
THE ESWATINI POSTS AND TELECOMMUNICATIONS CORPORATION**

1. BACKGROUND

In 2018, the Eswatini Communications Commission, acting in terms of Section 36(1)(c) of the Eswatini Communications Commission Act 2013, undertook an investigation in respect of the Joint Venture Agreement (“the JVA”) between shareholders of Swazi MTN Limited (hereinafter referred to as “MTN Eswatini”) pertaining to conduct preventing competition in the electronic communications sector between the business of MTN Eswatini and Eswatini Post and Telecommunications Corporation (“EPTC”) as well as market allocation between MTN Eswatini and EPTC.

2. FINDINGS

The principal findings of the Commission, amongst others were that:

- Clause 18.2 of the JVA limits the ability of EPTC to fully execute their mandate in terms of the sector-specific regulatory frameworks and specifically the execution of their obligations in terms of their licences and limits competition in the sector.

3. DECISION 1/2019

The decision came into force on 7th February 2019:

- To afford EPTC and Eswatini MTN, a period of six (6) months from the effective date of this decision to ensure divestiture of EPTC's shareholding in MTN Eswatini ("the Implementation Period").
- Ordered EPTC to take any and all actions as may be necessary to ensure it divests its ownership in MTN Eswatini within the Implementation Period.
- Ordered MTN Eswatini to take any and all necessary steps to assist EPTC in implementing the divestiture.

4. REVOCATION OF DECISION 1/2019

One of the requirements imposed on the parties by the decision was to regularly update the Commission on progress in the implementation of the decision. The Commission has been presented with a number of factors which hinder the divestiture of EPTC's shareholding at MTN Eswatini. The Commission has considered presentations made by EPTC for failure/delay in implementing the decision and has determined that the factors were plausible under the circumstances and may not be faulted on EPTC.

The Commission here by invokes Section 37(1) of the ESCCOM Act which provides that ***"a decision issued by the Commission and any amendment or revocation of that decision shall be in writing and shall state the reasons upon which it is based"***. In light of the foregoing, the Commission hereby revokes Decision 1/2019 based on the following reasons:

4.1. EPTC has submitted that it is the interest of the Corporation to remain in the JVA whilst they are currently embarking on a turnaround strategy which will result in the transformation of the entity to ensure self-sustainability.

4.2. Competition in the sector has improved from the time the decision was issued.

The Commission will continue to monitor the market landscape in order to ensure that the market is effectively competitive for the benefit of all EmaSwati.

Effective date of decision: 12 April 2022

Chief Executive

Eswatini Communications Commission