



SCCOM GENERAL NOTICE NO. 10/2017

DECISION IN TERMS OF SECTION 37 OF THE SWAZILAND COMMUNICATIONS COMMISSION ACT NO 10 OF 2013:

PRONOUNCEMENT OF ESSENTIAL FACILITIES AND FINDING OF CONTROL OF ESSENTIAL FACILITIES BY DOMINANT OPERATORS

INVITATION FOR WRITTEN REPRESENTATIONS

The Swaziland Communications Commission is a regulatory body established in terms of the Swaziland Communications Commission (SCCOM) Act, 2013, responsible for regulating the electronic communications sector in Swaziland including; telecommunications networks and services, broadcasting services, postal services, the use and allocation of radio frequency spectrum, data protection and e-commerce.

In addition to the primary functions as set out in the SCCOM Act, the Commission is also required, in accordance with Section 23(1) of the ECA, to periodically define and carry out an analysis of relevant markets appropriate to National circumstances.

The Commission has conducted the said analysis to establish whether or not there is effective competition in the market for fixed access, National voice calls, and broadband ("fixed voice market") as well as mobile access, National voice calls, and SMS within Swaziland ("mobile voice market"). In particular it has considered whether or not one or more operators has significant market power ("SMP"), thus dominant in the market as required in terms of section 23 of the Electronic Communications Act, 2013 ("ECA")

It has further conducted an analysis to establish whether owners of sites and masts/towers, international gateway facilities and backbone facilities in Swaziland (MTN and SPTC) are dominant or not. An analysis whether or not sites and masts/towers, international gateway facilities and backbone facilities constitute "essential facilities" as defined in the Facilities Sharing Regulations (2016) has also been undertaken.

Theoretically, an operator or group of operators with SMP have the potential to either increase price above and/or reduce output below the competitive level. They are able to behave in an anticompetitive manner in a way that can negatively impact the market and thwart effective competition. Where operator/s enjoy SMP, it follows that consumers will benefit less compared

with a market in which competition is effective. Hence, in the instance where dominance is found – the Swaziland Communications Commission (“SCCOM”) can impose remedies to prevent or curb abuse of dominance and to promote effective competition.

Finally, the Commission has finalized its assessment on the above markets and pronounces the following proposed decision.

Proposed Decision

- 1. It is the Commission’s considered view that sites and masts/towers, international gateway facilities and backbone facilities constitute “essential facilities” as defined in the Facilities Sharing Regulations (2016). The provision of access by owners of said infrastructure to facility seekers is therefore mandatory.**
- 2. Furthermore, the owners of sites and masts/towers, international gateway facilities and backbone facilities in Swaziland, Swazi MTN Limited (MTN) and Swaziland Posts and Telecommunications Corporation (SPTC) have been found to be dominant in the mobile voice and fixed voice markets respectively – these are relevant downstream markets.**
- 3. In light of this, as set out in this document, the Commission intends to issue a decision that the provision of access to the above-mentioned facilities is mandatory and is susceptible to *ex ante* regulation in the interests of promoting competition in Swaziland.**

A copy of the proposed Decision document is available on the Commission’s website at www.sccom.org.sz and at the Commission’s Offices at Mbabane Office park 4th Floor, North Wing Mhlambanyatsi Road.

Written representations with regard to the proposed Decision must be submitted to the Commission no later than 17h00 on the 10th November 2017 by post to Swaziland Communications Commission, P.O. Box 7811 Mbabane, hand delivered or electronically to legal@sccom.org.sz

Mvilawemphi Dlamini
Chief Executive

28th September 2017