



## **GENERAL NOTICE NO. 4, 2018.**

### **INVESTIGATION IN TERMS OF SECTION 36(3)(A) OF THE SWAZILAND COMMUNICATIONS COMMISSION ACT 2013, OF THE JOINT VENTURE AGREEMENT BETWEEN SHAREHOLDERS OF SWAZI MTN LIMITED PERTAINING TO CONDUCT PREVENTING COMPETITION IN THE ELECTRONIC COMMUNICATIONS SECTOR BETWEEN SWAZI MTN LIMITED AND SWAZILAND POST AND TELECOMMUNICATIONS CORPORATION – MARKET ALLOCATION BETWEEN MTN AND SPTC COMPLAINT ASSESSEMENT**

#### **IINTRODUCTION**

1. On or about the 31<sup>st</sup> January 2018, the Commission received a complaint from the Swaziland Post and Telecommunications Corporation (SPTC hereinafter) against Swazi MTN Limited (MTN hereinafter), operators duly licenced by the Commission. The complaint filed with the Commision emanates from the provisions of the Joint Venture Agreement (JVA), which was concluded by the shareholders of Swazi MTN Limited on the 31<sup>st</sup> July 1998, which SPTC alleges precludes them from venturing into certain electronic communications technologies such as mobile communications products and services. SPTC contends that some provisions of the Joint Venture Agreement are now illegal in the face of the new legal dispensation in the communications sector introduced by the Electronic Communications Act and the Swaziland Communications Act, 2013, respectively. SPTC alleges further that the said provisions are uncompetitive and give MTN an unfair competitive advantage over SPTC as they compete in their respective businesses.
2. The Commission has received and accepted the complaint and is undertaking an investigation with the view to resolve the matter in accordance with the applicable legal framework.

### 3. MANDATE OF THE COMMISSION

For purposes of this matter, the mandate of the Commission as set out in the Swaziland Communications Commission Act is enshrined in the following provisions: -

3.1 (d) *"promote the development of innovative, secure, modern and competitive communications infrastructure and the delivery of related services"*

(e) *"ensure freedom of provision of communication services and further ensure that those services are not limited, except where strictly necessary"*

(f) *"ensure a wide range and variety of communication services"*

(k) *"administer certain aspects of the Competition Act, 2007 as they relate to the sectors regulated by the Commission"*

*"ensure fair competition in all communications services, products, operations, and activities which the Commission regulates".*

### 4. DECISION OF THE COMMISSION ON THE OUTCOME OF THE INVESTIGATION

The investigation undertaken by the Commission shall be conducted in accordance with the rules of natural justice, giving each party adequate opportunity to make written submissions, with or without the opportunity for oral presentation.

The Commission shall complete the investigation in question within a reasonable period but not beyond 6 months from the date of the submission of the complaint and issue its decision accordingly.

The decision of the Commission shall be issued in accordance with section 37, and the decision shall be binding upon the parties.

**Mvilawemphi Dlamini**

Chief Executive