



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO006Apr20

In the matter between:

The Competition Commission

Applicant

And

Mobile Telephone Networks (Pty) Ltd

Respondent

Panel : M Mazwai (Presiding Member)
: E Daniels (Tribunal Member)
: I Valodia (Tribunal Member)

Heard on : 24 June 2020

Decided on : 24 June 2020

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Mobile Telephone Networks (Pty) Ltd annexed hereto.



Presiding Member
Ms Mondo Mazwai

24 June 2020

Date

Concurring: Mr Enver Daniels and Prof. Imraan Valodia

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No.

CC Case No.

In the matter between:

COMPETITION COMMISSION

Applicant

and

MOBILE TELEPHONE NETWORKS (PTY) LTD

Respondent

CONSENT AGREEMENT
BETWEEN THE COMPETITION COMMISSION AND MOBILE TELEPHONE
NETWORKS (PTY) LTD IN TERMS OF SECTION 49D OF THE COMPETITION ACT
89 OF 1998, AS AMENDED

The *Competition Commission* and *MTN* hereby agree that application be made to the *Tribunal* for the confirmation of this *Consent Agreement* as an order of the *Tribunal* in terms of section 49D of the *Act*.

A. Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 “**Act**” means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 “**Ayoba**” means MTN's free instant messaging application currently used

on Android devices and as further developed over time;

- 1.3 “**Business Day**” means a calendar day, which is not a Saturday, Sunday or an official public holiday in the *Republic*;
- 1.4 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the *Act*, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng or its duly authorized agents;
- 1.5 “**Commissioner**” means the Commissioner of the *Commission*, appointed in terms of section 22 of the *Act*;
- 1.6 “**Consent Agreement**” means this agreement duly signed and concluded between the *Commission* and *MTN* and the Annexures hereto;
- 1.7 “**Data**” broadly means the transmission of information in a digital format where volumes are measured in bytes;
- 1.8 “**DSMI**” means the Data Services Market Inquiry established in terms of section 43B(1)(a) of the *Act* (prior to its amendment on 12 July 2019) and initiated by the publication of terms of reference in Government Gazette, No. 41054 of 18 August 2017;
- 1.9 “**Effective Date**” means the date upon which this Consent Agreement is made an order of the Tribunal in accordance with section 49D of the *Act*;
- 1.10 “**Final Report**” means the report prepared and issued by the *Commission* pursuant to the DSMI, dated 2 December 2019;
- 1.11 “**GB**” means gigabyte, a measurement of data consumption; equivalent to 1 000 MBs;
- 1.12 “**MB**” means a decimal (not binary) megabyte, being 1 048 576 bytes;

- 1.13 “**Minister**” has the same meaning as defined in the *Act*;
- 1.14 “**MTN**” means Mobile Telephone Networks (Pty) Ltd, a company with limited liability, duly registered and incorporated in terms of the company laws of the *Republic*, with its registered address and principal place of business being at, Innovation Centre, 216 14th Avenue Fairland, Johannesburg, Gauteng, 2170;
- 1.15 “**Parties**” means the *Commission* and *MTN*, or either one of the parties should the context provide for the singular;
- 1.16 “**PBO**” means a public benefit organisation, being a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), as amended, or a trust or an association of persons that has been incorporated, formed or established in the Republic;
- 1.17 “**Republic**” means the Republic of South Africa;
- 1.18 “**SMS**” means a short messaging service conforming with GSM recommendation Technical Specification 23.040;
- 1.19 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the *Act*, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.20 “**USSD**” means Unstructured Supplementary Service Data;
- 1.21 “**Zero-Rated Access**” means the practice of providing Internet access to a customer without that customer being charged for that access.

B. Background

2. The *Commission* initiated the *DSMI* on 18 August 2017 following a submission of concern from the *Minister* and persistent concerns by the public about the

apparent high level of data prices in the *Republic*, and the importance of data affordability for consumers and the economy in general.

3. The *DSMI* commenced on 18 September 2017 and on 20 September 2017 the *Commission* published a call for submissions. The *Commission* held public hearings from 17 to 19 October 2018, and on 24 April 2019 published a provisional report for comment. The *Commission* thereafter received further submissions and conducted further consultations.
4. On 2 December 2019, the *Commission* published the *Final Report*, which is attached herewith and marked Annexure E, setting out its findings and recommendations in the *DSMI*. The *Commission* found, *inter alia*, that data prices in the *Republic* are high and recommended the following measures that are relevant to this *Consent Agreement*.
 - 4.1. *MTN* must independently reach agreement with the *Commission*, within two months of the publication of the *Final Report*, on substantial and immediate reductions on tariff levels, especially prepaid monthly bundles.
 - 4.2. *MTN* must independently reach agreement with the *Commission*, within two months of the publication of the *Final Report*, on a reduction in the headline prices of all sub-500MB 30-day prepaid data bundles to reflect the same cost per MB as the 500MB 30-day bundle, or cost-based differences where such cost differences have been quantified.
 - 4.3. *MTN* must independently reach agreement with the *Commission* to cease ongoing partitioning and price discrimination strategies that might adversely affect lower income consumers.
 - 4.4. *MTN* must reach agreement with the *Commission*, within three months of the publication of the *Final Report*, to offer all prepaid subscribers a lifeline package of daily free data to ensure all citizens have data access on a continual basis, regardless of income levels.

- 4.5. *MTN* must reach agreement with the *Commission*, within three months of the publication of the *Final Report*, on the *Zero-Rating* of certain content for *PBOs* and educational institutions.
- 4.6. *MTN* must reach agreement with the *Commission*, within three months of the publication of the *Final Report*, to inform a subscriber, on a monthly basis, of the effective price for all data consumed that subscriber.
- 4.7. The *Commission* will institute ongoing monitoring of pricing levels and profitability into the future until the market becomes more competitive.

C. No Admission

5. Following the publication of the *Final Report*, the *Commission* and *MTN* engaged in discussions to reach agreement on mutually acceptable solutions aimed at addressing the concerns raised in the *Final Report*.
6. *MTN* enters into this *Consent Agreement* without acknowledging the correctness or accuracy of the *Commission's* findings and recommendations in the *DSMI*, and makes no admission of liability of any kind whatsoever for any conduct prohibited under the *Act*.
7. The *Commission* accepts, based on this *Consent Agreement* and the terms herein, that it will not make any further referrals to the Tribunal on matters emanating from the *Final Report*, up to the date of the publication of the *Final Report*.

D. Future Conduct

8. *MTN* hereby agrees and undertakes as follows:

Retail price reductions

- 8.1. *MTN* shall reduce the price of 30-day prepaid bundles up to 1GB as reflected in Table 1 of Annexure A hereto.
- 8.2. From 1 May 2020, *MTN* shall implement the retail price reductions referred to in clause 8.1 above across the channels reflected in Table 2 of Annexure A hereto.
- 8.3. *MTN* shall communicate these reductions to all channel partners in April 2020 and will endeavour to apply these price reductions across all *MTN* channels from 1 May 2020.

Daily lifeline package

- 8.4. *MTN* shall offer all its customers a daily free *Data* bundle to use in *Ayoba*, which shall be capped at 20MB per day and be subject to the terms and conditions listed in Annexure B hereto.
- 8.5. *MTN* records that it implemented the daily lifeline package referred to in clause 8.4 above in respect of the *Ayoba* chat, media and channels functionalities on 12 March 2020, and shall implement the *Ayoba* browser functionality on 1 June 2020.

Zero-Rated Access

- 8.6. With effect from May *MTN* shall offer all its customers Zero-Rated Access to certain *PBO* and other websites, subject to a maximum of 500 websites, focussing on education, healthcare and job recruitment via *MTN*'s own website, which shall be capped at 500MB per month per customer and be subject to the terms and conditions listed in Annexure C hereto.

Transparency

8.7. With effect from 20 May 2020, MTN shall enable all its customers, and at no charge, to manage their *Data* usage through an MTN USSD and on MTN's website as provided in Annexure D hereto.

E. Reporting

9. MTN shall, [REDACTED]
[REDACTED]
[REDACTED] confirm to the *Commission*, in a written report [REDACTED]
[REDACTED] that it has substantially complied with the undertakings referred to in clauses 8.1 to 8.7 above.

10. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11. [REDACTED]
[REDACTED]

F. Duration

12. [REDACTED]
[REDACTED]

13. [REDACTED]
[REDACTED]

G. Full and Final Settlement

14. This *Consent Agreement*, upon confirmation as an order by the *Tribunal*, is entered into in full and final settlement of all concerns identified in the *Final Report* in respect of *MTN*, up to the date of the publication of the *Final Report*.

H. Variation

15. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this *Consent Agreement* will be of any force or effect unless in writing and signed by the Parties and confirmed by the *Tribunal*, provided that *MTN* may on good cause shown approach the *Tribunal* for a variation of this *Consent Agreement* or relief from its terms.

Dated and signed at _____ on the ____ day of _____ 2020

For *MTN*

Chief Executive Officer

Dated and signed at _____ on the ____ day of _____ 2020

For the *Commission*

Competition Commissioner

List of Annexures

Annexure A: Price Reductions

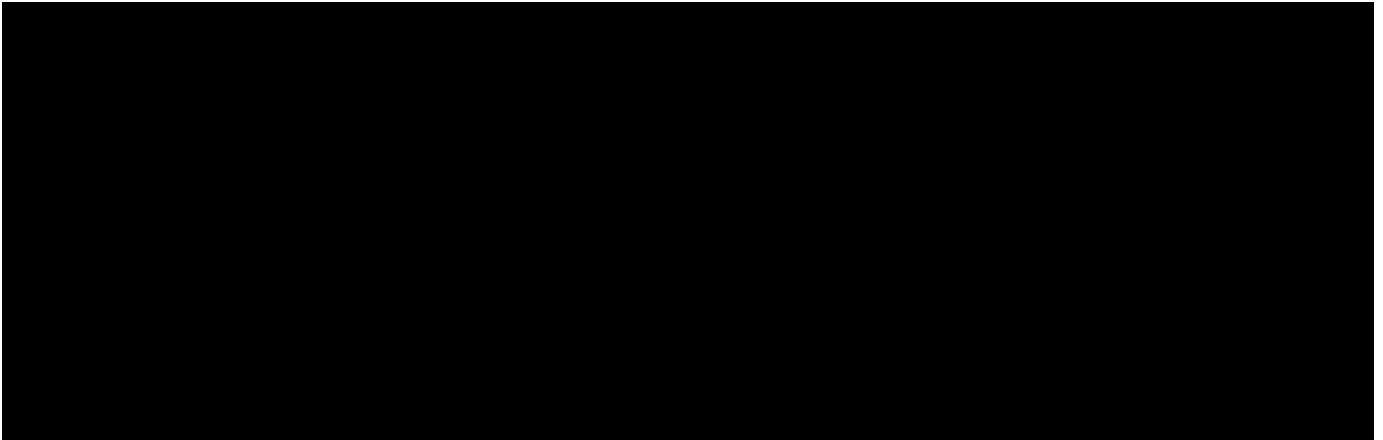
Annexure B: “ayoba Data Lifeline”

Annexure C: Zero Rating URL Services – “MTN OpenTime”

Annexure D: Pricing Transparency

ANNEXURE A: PRICE REDUCTIONS

1. MTN will reduce the pricing of the following 30-day Prepaid monthly bundles up to 1GB as reflected below:



2. As a result of logistical implementation dependencies to roll this out to all our channels, on USSD, the My MTN App, banking sites, our online store, physical vouchers and virtual POS integration including roll out to retail outlets and the informal trade, as well as implementation negotiations with our partners, MTN will be able to implement the pricing changes from 15 April 2020 to June 2020 across different channels as indicated below:

Channel	Impacted Customers	Implementation date
USSD	All MTN customers	15 April
MTN App	All MTN customers with smartphones	15 April
MOMO (APP & USSD)	All MTN customers	15 April
Online Channels	All MTN customers and non-MTN customers	April
Retail Channels	All MTN customers and non-MTN customers	8 May
Informal Channels	All MTN customers and non-MTN customers	1 May
Mcharge (Airtime Hawkers)	All MTN customers and non-MTN customers	15 April
Official MTN Yellow Store	MTN Yellow Store	15 April
Banking Channels (Apps, Web and USSD)	All MTN customers	30 April
Banking ATMs	All MTN customers	1 June

ANNEXURE B: "AYOBA DATA LIFELINE"

1. MTN will offer all its customers ("subscribers") a daily free data bundle to use in the ayoba app which will be capped at 20 MB per day per subscriber (the "ayoba daily free data") and will be subject to the terms and conditions contained in this "Annexure B".
2. Each day at 00:00:00, subscribers will be allocated the ayoba daily free data. Any unused portion of the ayoba daily free data will not carry over and will be forfeited if not used by 23:59:59 each day.
3. The ayoba daily free data cannot be shared or transferred to any other subscriber or network.
4. The ayoba daily free data can only be used for the following activities offered in the ayoba App:
 - 4.1. ayoba Chat (sending and receiving messages);
 - 4.2. ayoba Media (sending and receiving pictures, audio files, video files, locations, contacts and voice notes);
 - 4.3. ayoba Channels (viewing various channels which may include news, lifestyle, entertainment and others); and
 - 4.4. ayoba Browser (internet browsing between 00:00:00 to 04:59:59).
5. The implementation date for use of the ayoba daily free data in respect of ayoba Chat, ayoba Media and ayoba Channels was 12 March 2020. The ayoba Browser is already available and usage between 00:00:00 to 04:59:59 will be free, subject to the ayoba daily free data limit from 1 June 2020.
6. The ayoba daily free data may not be used:
 - 6.1. for any commercial purposes;
 - 6.2. for use in devices, mobile or otherwise, not approved by ICASA or any other relevant authorities;
 - 6.3. for reverse engineering, decompiling, modifying or tampering with any software;
 - 6.4. for any other unlawful or improper purposes whatsoever; or
 - 6.5. In such a manner that it will cause interference or impair the functioning of the MTN network in any way whatsoever.
7. The 20MB cap per day is intended for the utilisation of a subscriber and a subscriber may not use multiple SIMs or devices to obtain more than the 20MB per day of the ayoba daily free data.
8. MTN reserves the right to amend or withdraw the ayoba daily free data in respect of any subscriber if MTN in its sole and absolute discretion suspects that such subscriber is engaging in any of the prohibited activities listed in 6 and 7 above or as it may arise.

9. MTN further reserves the right to exclude certain activities from the ayoba daily free data as and when it may become available for use in the ayoba App such as, but not limited to:
- 9.1. voice over IP; and
 - 9.2. video over IP.
10. If the ayoba app is suspended and/or discontinued for any reason whatsoever, the ayoba daily free data offer will be withdrawn and cease to have effect.
11. The terms and conditions of the ayoba app apply in respect of the use of the ayoba daily free data and can be accessed at www.ayoba.me/terms-conditions.
12. MTN will be indemnified by subscribers against any liabilities, loss or damage (direct or indirect) suffered as a result of or in connection with the subscriber's use of the ayoba daily free data, inability to use, or disruption of data services provided by MTN.
13. The name of the service is ayoba Data Lifeline. This service will be extensively marketed to all South Africans.

AYOBA Data Lifeline	Customers Impacted	Launch Date
Ayoba Chat	All South Africans with Android Smartphones	12 March 2020
Ayoba Media	All South Africans with Android Smartphones	12 March 2020
Ayoba Channels	All South Africans with Android Smartphones	12 March 2020
Ayoba Browser	All South Africans with Android Smartphones	1 June 2020

ANNEXURE C: ZERO RATING URL SERVICES – “MTN OpenTime”

This annexure reflects MTN’s intended zero-rating of certain websites focusing on **Education, Healthcare, and Job recruitment hereinafter referred to as public benefit services. These services are not for profit entities.**

MTN currently offers zero-rated access to a range of websites which includes some universities and Wikipedia which in future will form part of these defined public benefit services.

On the 15th April 2020, MTN will extend the websites that will form part of public benefit services up to a maximum of 500 websites.

The zero-rated public benefit services websites to be included will be linked to:

1. Health Institutions
2. Public universities
3. TVET colleges
4. Educational resources
5. Educational institutions
6. Employment websites

Zero-rating of institutions will be based on terms and conditions and criteria defined by MTN and after application and approval from MTN.

MTN is currently redirecting customers to a zero-rated MTN website whenever a customer runs out of data. This website allows them to recharge with airtime or data or apply for an airtime advance.

From 15 April, MTN will launch the MTN Open Time service which will enable customers to access zero-rated public benefit services websites on this website.

From [REDACTED] MTN customers will also be able to access the MTN OpenTime service directly via the MTN www.mtn.co.za website. To gain access to public benefit service websites, customers will have to register for this service on www.mtn.co.za, or such other URL or application that MTN will communicate from time to time. MTN will offer every MTN customer monthly free 500MB data access to public benefit services websites. This is to be regarded and is defined as the fair usage policy applicable to this service that MTN will strictly enforce in its sole discretion.

Upon first registration, MTN will allocate the fair usage policy as described below. Thereafter a customer will be required to reactivate this fair usage policy every 30 days to be able to access zero rated public benefit service websites by visiting www.mtn.co.za or such other website or application that MTN may define from time to time.

The following terms and conditions will be applicable to all customers accessing the public benefit services websites:

FAIR USE / ACCEPTABLE USE POLICY

Access to public benefit services websites will be subject to MTN's Fair Use / Acceptable Use policy. The following Fair Use / Acceptable Use Policy will apply.

1. A monthly cap of 500MB per user, which will not carry over to the next month if unused.
2. Users will need to register, then re-activate every 30 days or reactivate at any time after 30 days to use the service after the 30 days have elapsed.
3. Traffic shaping will be implemented to give priority to web browsing, email services and normal downloading via web browsers. Lower priority will be given to bandwidth intensive applications, such as streaming and P2P (peer to peer) services. Should such services have any detrimental impact on the MTN network, MTN reserves the right to suspend such services with immediate effect.
4. MTN reserves the right to withdraw a customer's access to public benefit services in the event of unacceptable use including but not limited to:
 - Any criminal, illegal, unlawful or fraudulent act;
 - Any use of the service that involves repackaging traffic into a different form to hide the nature of the traffic in order to portray it as traffic pertaining to public benefit services. The decision as to whether the traffic is repackaged in any shape or form is in MTN's sole discretion;
 - Any use which intentionally interferes with MTN's ability to provide services;
 - Any use which degrades MTN's network quality;
 - Any use which intentionally interferes with MTN's rights or the rights of third parties;
 - Any use which amounts to a breach of any other agreement MTN may have entered into;
 - Any user which causes reputational damage to MTN or any third party or brings MTN's brand into disrepute;
 - Using the service to send unsolicited direct marketing communications or for commercial purposes; and
 - Using the service to access illegal or illicit content.

The name of the service is called "**MTN OpenTime**" and will be extensively marketed to all MTN customers.

ANNEXURE D: PRICING TRANSPARENCY

From the 20th May, MTN will enable customers to manage their usage through the zero rated MTN USSD (*136*5# (“My Account”) and *135#) service as well as on MTNApp.co.za. This service will be available to all MTN customers and is free of charge.

Through these channels customers will be able to view their usage history and effective rate for the last 5 bundles purchased in the current calendar month.

MTN customers will also be presented with an option to access the most affordable bundles based on their unique usage profile, as well as information on other products and services to enable them to get the best value for money.

How will it work

USSD

Customers will dial *136*5# or *135# free from their phone. Customers can select the Usage Rate menu option where they will be presented with the following options:

Option 1: View their effective rate for the last 5 bundles purchased in the current calendar month;

Option 2: View affordable bundles based on their unique usage profile; and

Option 3: View information on the most affordable bundles available for them to purchase

See figure 1 below for illustration:

