

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CO166Mar20

In the matter between:

Competition Commission

Applicant

And

Vodacom (Pty) Ltd

Respondent

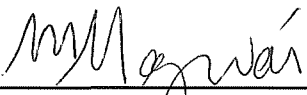
Panel: M Mazwai (Presiding Member)
Y Carrim (Tribunal Panel Member)
I Valodia (Tribunal Panel Member)

Heard on: 25 March 2020

Decided on: 25 March 2020

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Vodacom (Pty) Ltd annexed hereto marked "A1".



Ms Mondo Mazwai
Presiding Member

25 March 2020
Date

Concurring: Ms Yasmin Carrim 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

VODACOM (PTY) LTD

Respondent

CONSENT AGREEMENT

**BETWEEN THE COMPETITION COMMISSION AND VODACOM (PTY) LTD IN
TERMS OF SECTION 49D OF THE COMPETITION ACT 89 OF 1998, AS AMENDED**

The parties hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D of the Competition Act, 1998 (Act No. 89 of 1998), as amended, between the Competition Commission ("the **Commission**") and Vodacom (Pty) Ltd ("**Vodacom**").

A. Definitions

1. 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. "**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;

- 1.3. "**Channels outside of Vodacom's control**" means distribution channels where Vodacom is unable to unilaterally set the on-pricing of the services and/or products in that distribution channel, including the inability to unilaterally set the on-pricing to end customers of those services and/or products;
- 1.4. "**Consent Agreement**" means this consent agreement duly signed and concluded between the Commission and Vodacom, and the Annexures hereto;
- 1.5. "**Data**" broadly means the transmission of information in a digital format where volumes are measured in bytes;
- 1.6. "**Effective Date**" means the later of 1 April 2020, and the date upon which this Consent Agreement is made an order of the Tribunal in accordance with section 49D of the Act;
- 1.7. "**Final Report**" means the report prepared and issued by the Commission pursuant to the Inquiry, dated 2 December 2019;
- 1.8. "**Inquiry**" or "**Data Services Market Inquiry**" means the Data Services Market Inquiry established in terms of Section 43B(2) of the Competition Act No. 89 of 1998 (as amended) and initiated by the publication of the Terms of Reference;
- 1.9. "**MB**" or "**Megabyte**" means 1,048,576 bytes;
- 1.10. "**Minister**" has the same meaning as defined in the Act;
- 1.11. "**Parties**" means the Competition Commission and Vodacom, or either one of the two parties should context provide for the singular;
- 1.12. "**SMS**" means a short messaging service conforming with 3GPP as Technical Specification 23.040;
- 1.13. "**South Africa**" means the Republic of South Africa;

- 1.14. "**Terms of Reference**" or "**ToR**" means the Government Gazette No. 41054, 18 August 2017 in which the purpose, structure, scope and limitations of the Inquiry were set out;
- 1.15. "**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;
- 1.16. "**USSD**" means Unstructured Supplementary Service Data;
- 1.17. "**Vodacom**" means Vodacom (Proprietary) Limited, a company with limited liability, duly registered and incorporated in terms of the company laws of South Africa, with its registered address and principal place of business being at, 082 Vodacom Boulevard, Vodacom Corporate Park, Midrand, Johannesburg, Gauteng, 1685; and
- 1.18. "**zero-rating**" means the practice of providing Internet access without the customer incurring any costs.

B. Background and Context

2. On 18 August 2017 the Inquiry was initiated by the Commission in terms of Section 43B(2) of the Act. The initiation of the Inquiry followed a submission of concerns from the Minister about the high level of data prices and the importance of data affordability for the South African economy and consumers. Having considered the request of the Minister, the Commission initiated the market inquiry as it had *"reason to believe that there are features of the sector that prevent, distort or restrict competition within the sector, and/or to achieve the purposes of the Act."*
3. Consistent with the purposes of the Act, Chapter 4A of the Act enables the Commission to conduct market inquiries in respect of the *"general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm"*.

4. On 18 August 2017 the Terms of Reference were published in the Government Gazette, No. 41054, in which, *inter alia*, the overall objective of the Inquiry was set out. This objective was two-fold; firstly, to understand the cause of high data prices in South Africa; and then to make appropriate recommendations to address any concerns such that prices are ultimately lowered and ensure that the market is competitive.
5. On 18 September 2017, twenty (20) business days after the publishing of the Terms of Reference, the Inquiry commenced.
6. Following a formal Call for Submissions published on 20 September 2017, the Commission held public hearings from 17 to 19 October 2018. Subsequently, on 24 April 2019, the Provisional Report was released for further public comment.
7. Following the release of the Provisional Report, the Commission received further submissions and undertook further consultations.
8. Having received all relevant stakeholder input, the Commission considered whether and to what extent each of its findings and recommendations from the Provisional Report should change. On 2 December 2019, after having incorporated the further input from stakeholders, the Commission released its Final Report.
9. The Inquiry Final Report dated 2 December 2019 is attached as **Annexure B**.

C. Settlement

10. Following the publication of the Final Report and recommendations, the Commission and Vodacom engaged in settlement negotiations.
11. Following these discussions, the Commission and Vodacom have reached an agreement on the mutually acceptable solutions aimed at addressing the concerns raised in the Final Report.
12. Vodacom enters into this Consent Agreement without acknowledging the accuracy of the findings and recommendations of the Final Report, but in the interests of reducing the costs of data, and addressing the concerns raised in the Final Report.

13. Vodacom makes no admission of liability of any kind whatsoever for any prohibited conduct under the Act on its part.
14. The Commission and Vodacom have reached an agreement on the appropriate measures to be taken to address the concerns raised in the Final Report.
15. The Commission accepts, based on this Consent Agreement and the undertakings 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. Agreement as to Future Conduct

16. With effect from the Effective Date, Vodacom gives the undertakings set out in this section D (the "**Vodacom Undertakings**").

17. Retail Pricing Reduction

- 17.1. Effective no later than the Effective Date, Vodacom shall reduce headline bundle prices within the 30-day data bundle portfolio across all channels in accordance with table 1 in **Annexure A**; and
- 17.2. Vodacom shall communicate these reductions to all channel partners in March 2020 with effect from the Effective Date. Vodacom will endeavour to apply these price reductions across all Vodacom channels effective from the Effective Date, however Vodacom cannot guarantee that channels outside of Vodacom's control will be able to implement the price reductions timeously.

18. Lifeline Data and Zero Rating of Data

From the Effective Date, Vodacom shall, with the exception of the zero-rated Government websites, make available all of its current zero-rated services on one platform, with increased focus on consumers in poorer communities, i.e. "ConnectU". ConnectU will address seven key areas:

- 18.1. **Education** – Vodacom shall expand the offering to all public universities, Technical and Vocational Educational Training (TVET) colleges as well as all

public schools across South Africa, in addition to the current zero-rating of its e-school platform and 17 public Universities across South Africa. These educational institutions will be able to apply to get their portals zero-rated through a clear and transparent process on the ConnectU platform.

- 18.2. **Internet Search** – Vodacom shall provide a full zero-rated Internet search function powered by Wikipedia, which enables customers to search for any topic online. This functionality will allow consumers to research base knowledge and understanding across the entire domain of knowledge captured within Wikipedia, absolutely free of charge.
- 18.3. **Jobs** – Vodacom shall allow customers to view and apply for job opportunities as advertised on seven zero-rated South African job portals. Vodacom's "Future jobs finder" services provides career guidance and access to training content to provide new skills with the aim to enhance opportunities for the youth of South Africa in the digital economy.
- 18.4. **Social and essential Internet access** – Vodacom shall allow customers to connect, share, learn and interact with others, providing access to Facebook Flex provides customers with the ability to toggle between a free and paid for Facebook service. Consumers can also access local and international news headlines, trends, as well as the weather.
- 18.5. **Health and Wellness** – Vodacom shall expand its health information portal from the current Mum & Baby offering to provide holistic health information across all life-stages in the third quarter of 2020.
- 18.6. **Safety & Security** – Vodacom shall assist with protecting families through measures such as Secure Net Parental Control, a protective measure to shield children from exposure to illegal and inappropriate adult content.

19. Pro-Poor Personalized discounting and Free Communication

- 19.1. Vodacom shall launch ConnectU platform officially with the necessary marketing campaigns to drive awareness and education.
- 19.2. Vodacom shall extend current zero-rating to essential state and emergency sites, namely those listed in table 2 of **Annexure A**. Content rich information, e.g. video downloads, may be excluded at the discretion of Vodacom. This undertaking is subject to fair usage of 50MB per customer, per day and will be valid for at least 24 months where Vodacom will review the services provided for. The relevant state and emergency institutions shall ensure that there is no unauthorised port forwarding/tunnelling on the above websites. This Vodacom Undertaking will be phased in within two months of the Effective Date so as to allow time for the necessary technical testing and implementation. Nothing in this clause shall prevent Vodacom from adding more sites for zero-rating at its discretion.
- 19.3. Vodacom shall extend personalised discounts to prepaid customers in all suburbs and villages where the majority of the population have income levels below the upper bound food poverty line. Using data from the 2011 census, Vodacom has identified 2029 suburbs and villages across the country using the criteria that 90% of the population in the community are impoverished. The personalised discounted offers for prepaid customers will range [REDACTED] discount to open market offers and will be available through the Connect U platform. These discounts will be offered on the menu in these areas for a [REDACTED] within the suburbs and villages identified. This process will be re-conducted monthly to account for any changes in the locations of base stations and adjustments made if required.
- 19.4. Vodacom shall extend two free SMSes daily to all prepaid customers who had at least one revenue generating activity in the preceding 30-day period. Customers will be able to claim their daily free SMSes on the ConnectU platform through a clearly visible call to action or by using USSD. This undertaking will be valid for at least 24 months.

20. Transparency

Effective from the Effective Date, Vodacom shall:

- 20.1. Improve customer awareness of the personalised platforms and guaranteeing that there will always be better value on the personalised platform when compared to headline offers.
- 20.2. Introduce a constant marker on all personalised offers at the point of sale/purchase that indicates to a customer that it is a personalised offer and explicitly states the saving that a customer will be receiving when compared to the headline equivalent of the same bundle.
- 20.3. Create a landing page that details all current promotional offers with clearly identifiable calls to action for the promotion. The landing page will also detail what the personalised offerings are and where these offers can be found. This page will be accessible via the MyVodacom App and www.vodacom.co.za.
- 20.4. Display the Rand/MB, i.e. bundle price divided by MB included in bundle, for all data bundles offered in relevant channels where possible. With the exception of USSD where character limitations prevent meaningful display of the effective rate, this information will be displayed on all other Vodacom channels if it does not create complexity for customers to understand. For example, when promotions are run with additional value, the call out would be on additional value and not on effective rate. Channels outside of Vodacom's control will be engaged to include this effective rate, However Vodacom cannot commit on behalf of these channels that this will be possible.
- 20.5. Enable Prepaid consumers to access detailed information (for instance the ability to see what their data are used on, such as websites browsed or downloads) at no charge through the My Vodacom App using the detailed data usage functionality. In addition, Vodacom shall provide prepaid itemised billing functionality allowing users to view historic information on purchases, however this functionality is currently being developed and will be communicated to all

prepaid consumers to create consumer awareness when fully functional. Vodacom endeavours to make this functionality available by May 2020. It is noted that detailed data usage information (namely the amount of data consumed per application type) is currently available.

E. Monitoring

21. Vodacom shall ensure [REDACTED]
[REDACTED] occurring during the period of this Consent Agreement:

21.1. Vodacom confirms in writing to the Commission that it has substantially complied with the Vodacom Undertakings; and that such a report has been verified by Vodacom's internal audit department; and

21.2. [REDACTED]
[REDACTED]
[REDACTED]

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. [REDACTED]
[REDACTED]

24. [REDACTED]
[REDACTED]
[REDACTED]

F. Duration

25. [REDACTED]
[REDACTED]
[REDACTED]

G. Full and Final Settlement

26. This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of the concerns identified in the Final Report, up to the date of the publication of the Final Report.
27. The Commission accepts 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.

H. Confidentiality

28. Confidentiality with regards to the Consent Agreement will be managed under the Act, including the CC7 form completed by Vodacom.

I. Variations to be in Writing

29. 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 Vodacom may on good cause shown approach the Tribunal for a variation of the Consent Agreement or relief from its terms.

J. Signature

30. This Consent Agreement is signed by the Parties on the dates and at the places indicated below.
31. This Consent Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts. Any such counterpart may be a facsimile transmission copy or scanned copy thereof.

32. Any signature page of a counterpart may be detached without impairing the legal effect of the signature on that document and attached to another counterpart identical in form but having attached to it one or more additional signature pages signed by the other Parties.

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

For Vodacom

Chief Executive Officer

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

For the Commission

Commissioner: Competition Commission

VODACOM'S UNDERTAKINGS: TABLES

Table 1: Headline prices for 30-day data bundles

		MB	April 2020 Headline price	% reduction
		1,024	R99	34%

Notes

- * % reduction from current headline price, calculated on a per MB basis.

Table 2: Table of online government services to be zero-rated

Service Category and Description	Web address
emergency location assist allowing Emergency Reaction Services (ERS) to respond with speed to reported emergencies	http://za.w3w.co/
Gender Based Violence information centre with a click to call from the website	http://gbv.org.za/
Public Hospitals; Home Affairs	http://www.dha.gov.za/
the Government Communication and Information Systems	https://www.gcis.gov.za/

Service Category and Description	Web address
Admission of Learners to Public Schools	https://www.education.gov.za/Informationfor/ParentsandGuardians/SchoolAdmissions.aspx https://www.education.gov.za/ProvincialDepartments.aspx
Admission to Public Schools: Gauteng	https://www.qdeadmissions.gov.za/
Admission to Public Schools: Western Cape	https://wcedonline.westerncape.gov.za/admissions-201920 and https://admissions.westerncape.gov.za/admissions/
Matric Exam Results	https://www.education.gov.za/MatricResults/ExamResults/
National Student Financial Aid Scheme (NSFAS)	https://my.nsfas.org.za/Application/
Unemployment Insurance Fund (UIF) filling	https://www.ufiling.co.za/uif/
Government jobs	https://www.gov.za/about-government/government-vacancies
Public Service Vacancy Circular from Department of Public Service and Administration (DPSA)	http://www.dpsa.gov.za/dpsa2g/vacancies.asp
Employment Services of South Africa (ESSA)	https://essa.labour.gov.za/EssaOnline/WebBeans/
South African Social Security Agency (SASSA) for various social grants	https://www.sassa.gov.za/
Housing Subsidy Portal (HSS) for Government subsidy housing (RDP houses)	https://www.hssonline.gov.za/Hssonline/
National Department of Health	http://www.health.gov.za/
South African Police Service (SAPS)	https://www.saps.gov.za/
Ambulance services	http://www.health.gov.za/
Eskom website	http://loadshedding.eskom.co.za/

Service Category and Description	Web address
Electoral Commission of South Africa (IEC)	http://www.elections.org.za/content/
National Traffic Information System (NaTIS) for licence services, card renewals and traffic fines	https://online.natis.gov.za/#/
BizPortal is a platform developed by the Companies and Intellectual Property Commission (CIPC) to offer company registration and related services in a simple seamless digital way which is completely paperless.	https://bizportal.gov.za/

Annexure B

Data Services Market Inquiry Final Report