

## **MEDIA RELEASE**

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### **Commission reaches settlement agreement with Telkom**

The Competition Commission (“Commission”) and Telkom SA SOC Limited (“Telkom”) have reached a settlement agreement to resolve a series of complaints lodged against Telkom from 2005 to 2007 (‘the complaint period’) by Internet Service Providers (‘ISPs’) and referred by the Commission in 2009, where it was alleged that the company had abused its dominance (‘the 2009 Referral’). The settlement package includes an admission of guilt; a financial penalty of R200m; functional separation between Telkom’s retail and wholesale divisions along with a transparent transfer pricing programme to ensure non-discriminatory service provision by Telkom to its retail division and ISPs; effective monitoring arrangements of its future conduct; and wholesale and retail pricing commitments for the next five years estimated to yield R875m savings to customers. This agreement is subject to confirmation by the Competition Tribunal.

As an outcome of the investigation into the ISP complaints, the Commission found that Telkom had contravened the Competition Act by engaging in a margin squeeze of its ISP competitors. The specific aspects listed were charging an excessive price to customers for some services; refusing to give a competitor access to an essential facility when it is economical feasible to do so; engaging in exclusionary acts and selling services by forcing the buyer to accept a condition unrelated to the contract. The Commission characterised this conduct as contraventions of sections 8(a), 8(b), 8(c), and 8(d) (iii) of the Competition Act. The Commission referred the complaint to the Competition Tribunal for their determination on 26 October 2009.

The parties have now reached a settlement. In this settlement agreement, Telkom agrees that the structure of its pricing of wholesale services to first tier ISP competitors resulted in a ‘margin squeeze’ of competitor internet access and Internet protocol virtual private network (‘VPN’) services in relation to Diginet leased line and ADSL access to these services. It also agrees that in bundling these services with lower-priced leased line and ADSL access to the services it engaged in anti-competitive conditional selling to first tier ISPs. Telkom admits that this conduct amounted to a contravention of section 8(c) and 8(d) (iii) of the Act.

Telkom will pay an administrative penalty of R200m over a three year period.

Going forward and to ensure the non-discriminatory treatment of its competitors in comparison to its own retail operations and to allow for monitoring of its conduct, Telkom will implement functional separation between retail and wholesale operations including a transfer pricing programme to regulate transactions in the provision of network services between its wholesale and retail divisions. In addition, it will implement a code of conduct for the wholesale division that will ensure non-discriminatory treatment of ISPs and protection of their confidential service information from the competing retail division. Telkom will also keep separate internal accounts for its own retail corporate VPN and Internet access products to allow for monitoring that it does not engage in a margin squeeze in contravention of the Competition Act in future.

Over the 2014, 2015 and 2016 financial years, Telkom will reduce the prices of wholesale services implicated in the complaint and used by ISPs to deliver their IP VPN and Internet access services (namely undersea cable international lines, national high bandwidth transmission lines, access to ADSL lines via the IP Connect service and Diginet leased line access) and related retail products (Telkom's VPN Supreme and Internet Access) The price reductions are weighted more heavily in favour of wholesale services (at least 70% wholesale) to bring about a more competitive market and will amount to an estimated R875m savings to the market. Telkom will also ensure that any price reductions are not reversed in the 2017 and 2018 financial years.

In addition to the above penalty and the undertakings to reduce prices, Telkom has undertaken to provide points of presence at strategic locations in the public sector. This, together with the price reductions undertaken by Telkom, is aimed at creating not only a more competitive market in South Africa, but also aiding government in the provision of public services in a digital economy.

Commissioner Shan Ramburuth said, "We are satisfied with the settlement agreement and expect that it will lead to a more open and competitive market and translate to lower prices for consumers."

The Commissioner also acknowledged the cooperation by Telkom's new leadership throughout the settlement process.

### *Background to the complaint*

During the period 26 June 2005 to 19 July 2007, the Commission received five complaints against Telkom from Internet Solutions Pty Ltd, the internet division of Multichoice Subscriber Management Services Pty Ltd; Verizon Pty Ltd; and the Internet Service Providers Association.

Information received by the Commission in the complaints and from its investigation, revealed that Telkom had engaged upon a so-called 'margin squeeze'. The Commission found that Telkom's prices for high bandwidth national transmission lines (HBTLs) and undersea cable international lines (IPLCs) were excessive; and that the prices for wholesale services to first tier ISPs used to construct their Internet access and IP VPN services (namely Diginet access lines, ADSL access via the IP Connect service, HBTLs and IPLCs) were set at levels that precluded cost-effective competition with Telkom Retail's own internet access and IP VPN services (accessed by customers via Diginet leased lines and ADSL).

The Commission also found during their investigation that Telkom had engaged in anti-competitive conditional selling of its IP VPN and Internet access services through bundling these products with Diginet and ADSL access services that were priced far lower than the equivalent access services which end customers would

purchase when considering the purchase of IP VPN and Internet access from OLOs relative to Telkom Retail.

This settlement agreement follows the successful prosecution of Telkom last year of complaints stemming from 1999 to 2004 by ISPs relating to the constructive refusal to supply essential infrastructure used to provide IP VPN and Internet access services.

## **ENDS**

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