

General Notice No. 2830 of 2012

COMPETITION COMMISSION



## **Decision of the Commissioners of the Competition Commission**

**Decision**

**26<sup>th</sup> October 2012  
CCM/DS/0007**

## **Decision of the Commissioners of the Competition Commission**

### **COMMISSION/DS/0007 – Investigation into the tying of broadband Internet Access and pay-TV**

#### **Commissioners present –**

*Mr. Rajendra T. Servansingh - (Acting Chairperson) – Chairperson*

*Mr. J.R. Rodney Rama – Commissioner*

*Mr. Mohamed Reshad Sadool – Commissioner*

*Mrs. J.P. Selvon Poonoosamy – Commissioner*

On the 26<sup>th</sup> October 2012, the Commission held a meeting where the Commissioners have taken cognizance of the following:

#### **Facts of the Case**

On 21<sup>st</sup> February 2011, the Executive Director of the Competition Commission (CCM) started an investigation into My.T offers from Mauritius Telecom Ltd, (hereinafter "MT"), on the allegation that MT was compelling users to subscribe to bundled offers while leveraging its market power in one market to gain market share in other markets.

On 27<sup>th</sup> September 2011, the Executive Director of the CCM issued a Statement of Issues whereby it concluded that MT is in a monopoly position in the market for fixed-line retail broadband access in Mauritius. The Executive Director of the CCM further expressed its concerns about MT through its My.T offer which might be acting to prevent, restrict or distort competition in the tied market for the supply of Pay TV in breach of section 46 of the Competition Act 2007 (hereinafter "the Act").

On 06<sup>th</sup> August 2012, MT offered Undertakings to the CCM valid for a period of three years pursuant to Section 63 of the Act, in an attempt to address the competition concerns of the CCM as set out in the Provisional Finding Report of the Executive Director of the CCM, namely, that MT had been abusing its monopoly situation in tying products, for defined categories of users, and making use of a horizontal leveraging of its market power in the retail residential fixed-line

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broadband internet access market into defined markets for pay-TV, with both the object and effect of distorting competition in the defined pay-TV markets. The Executive Director of the CCM was also concerned with the costing and pricing of MT's Core TV offer which could have amounted to below-cost pricing.

Upon receipt of the Undertakings by MT, the Executive Director of the CCM produced a Final Report on 03<sup>rd</sup> September 2012 titled: 'INV009 – Tying of Broadband Internet Access and pay-TV'.

### **Conclusion of Final Report of Investigation**

In the Final Report, the Executive Director concluded that:

- a) there are three relevant markets for the provision of broadband internet access and for the provision of pay-TV, namely; the market for the supply of retail residential fixed-line broadband internet access products in Mauritius, the market for the retail supply of pay-TV in Mauritius and the market for the retail supply of Premium content pay-TV in Mauritius. In two of these relevant markets, MT has been found to be in a monopoly situation, pursuant to section 46(1)(a) of the Act.
- b) MT had been engaging in exclusionary conduct under section 46(2)(a) of the Act, to the extent that it had been abusing its monopoly situation in tying products from the above-mentioned markets, for defined categories of users, and making use of a horizontal leveraging of its market power in the retail residential fixed-line broadband internet access market into the defined markets for pay-TV, with both the object and effect of distorting competition in the defined pay-TV markets. Such foreclosure had the object and effect of preventing, restricting or distorting competition and constituted an exploitation of MT's monopoly position in the retail residential fixed-line broadband internet access product market. Other service providers could have been unable to provide substitute bundles and would thus have been disadvantaged as a result of monopoly leveraging. In the short term, consumers who wanted a basic retail residential fixed-line broadband internet access product that would exclude pay-TV and consequently be cheaper were disadvantaged by the leveraging, paying a higher price for the stand-alone product.
- c) MT could have been engaging in exclusionary conduct under section 46(2)(a) of the Act, to the extent that it could have been abusing its monopoly situation in pricing its Core TV offer at below-cost prices, with the object of restricting competition in both the retail residential fixed-line broadband internet access and the defined pay-TV markets. This below cost incremental price would have had the object or effect of preventing, restricting or distorting competition and could have constituted an exploitation of MT's

monopoly situation on provision of retail residential fixed-line broadband internet access products.

- d) MT has addressed the concerns of the investigation through its Undertakings, namely in Section 9 (a) of the Undertakings, whereby MT undertakes to "ensure that all My.T offers are replicated on a stand-alone fixed line broadband internet access basis" and in addition, in Section 9 (b) of the Undertakings, MT also undertook to "maintain the same Quality of Service and other related determining aspects as are currently offered. These aspects include but are not limited to noise margin, contention ratio and fair usage policies".
- e) MT offering, in parallel to its My.T offers, a range of stand-alone products for retail residential fixed-line broadband internet access products (for example, its existing range of Home ADSL products) will prevent any future exclusionary conduct (by tying its products from the defined markets).
- f) the offer of such stand-alone retail residential fixed-line broadband internet access products will provide consumers with more choice for their retail residential fixed-line broadband internet access needs, on the condition that they are supplied with appropriate qualitative aspects including, but not limited to, noise margin and contention ratio and fair usage policies.
- g) through Section 9(c) of the Undertakings, the concern linked to coercion of consumers to buy MyT packages in lieu of ADSL packages is resolved.
- h) through the Undertakings of Section 9(a), 9(b) and 9(c), the concern linked to horizontal leveraging of MT's monopoly power in the market for the supply of retail fixed line residential broadband internet access products has been resolved.
- i) another concern linked to the horizontal leveraging of MT's monopoly power in the market for the supply of fixed-line retail residential broadband internet access products was that other service providers could not have provided substitute bundles were disadvantaged as a result of such monopoly leveraging.
- j) in Section 9 (d) (i) and (ii) of the Undertakings, MT undertakes "to submit the costing elements for stand-alone ADSL broadband offers in the same manner and form as provided for under the current "Guidelines for submission of tariff applications for Information and communication services" issued by the Information and Communication Technologies Authority on 15th May 2012". MT also undertakes to "report to the CCM any change in the TV channels of the core TV bouquet of the My.T offer including the content rights' acquisition fees".
- k) the Undertakings will allow for a close monitoring of MT's costs in the markets for the supply of retail fixed-line residential broadband internet access products and in the

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defined markets for pay-TV and will ensure that any concern linked to potential foreclosure of other pay-TV operators or other service providers be resolved.

### **Recommendations of the Executive Director**

The Executive Director's recommendations to the Commissioners are as follows:

- a) The Undertakings provided by MT, reasonably address and resolve the concerns that had been raised in the Provisional Report.
- b) Therefore, the Executive Director recommends that the Commission accepts the Undertakings.

### **Decision**

#### **Now**

Having taken cognizance of

- i) the Undertakings offered by MT ,
- ii) the recommendations of the Executive Director of the CCM in his Final Report dated 03<sup>rd</sup> September 2012, and,
- iii) the fact that the Commission is empowered by Section 63(3) of the Act to determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction distortion or substantial lessening of competition,

We, the Commissioners state as follows:

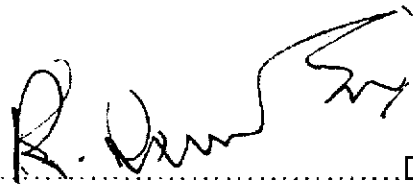
- 1) that we are satisfied with the recommendations of the Executive Director of the CCM;
- 2) that we believe that the Undertakings would indeed satisfactorily address the concerns the Commission has about any prevention, restriction distortion of competition;
- 3) the Commission shall keep under review the compliance with this direction and the performance of Undertakings given by MT;
- 4) that notwithstanding paragraph 9 of the Undertakings offered by MT, whereby the duration of the Undertakings are set for a period of three (3) years from the day on which the Undertakings are accepted by the Commissioners of the Competition Commission, MT has a continuing obligation to comply with the Act.

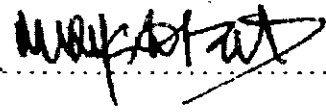
We hereby accept the following Undertakings as per Annex I.

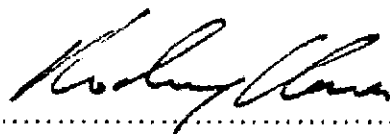
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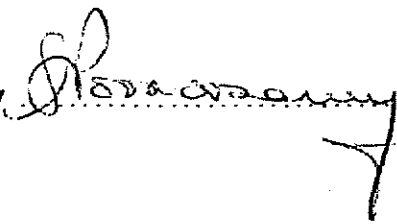
Pursuant to section 63(5) of the Act, the above acceptance of the Undertakings given by MT shall have the effect of a direction in similar manner as under section 60 of the Act.

Dated this 26<sup>th</sup> October 2012

Mr. Rajendra T. Servansingh .....  ..... Date. 26/10/2012.  
(Chairperson)

Mr. M. Reshad Sadool .....  ..... Date. 26-10-2012.  
(Commissioner)

Mr. J. R. Rodney Rama .....  ..... Date. 26/10/2012.  
(Commissioner)

Mrs. J. P. Selvon Poonoosamy .....  ..... Date. 26/10/2012.  
(Commissioner)

**ANNEX****INVESTIGATION INTO MYT AND INTERNET BUNDLED ACCESS**

**UNDERTAKINGS OFFERED BY MAURITIUS TELECOM LIMITED INCLUDING ITS BRANCHES, SUBSIDIARIES, AFFILIATES OR OTHER ENTITIES DIRECTLY OR INDIRECTLY CONTROLLED BY IT ('MT'), WHOSE REGISTERED OFFICE IS SITUATED AT 18<sup>TH</sup> FLOOR, TELECOM TOWER, EDITH CAVELL STREET, PORT LOUIS, TO THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT 2007 (the 'Act').**

**STATEMENT OF FACTS:**

1. On 21<sup>st</sup> February 2011, the Executive Director of the Competition Commission (the 'CCM') launched an investigation under Section 46 of the Act, relating to the existence of a monopoly situation, more specifically, to its offering and pricing of 'My.T'.
2. On 27<sup>th</sup> September 2011, the Executive Director of the CCM issued a Statement of Issues (Sol). The Sol sets out the preliminary concerns that the CCM has in relation to the investigation relating to the bundling of Internet access – MyT. The CCM identified several issues for consideration and thus decided that there were grounds to continue with the investigation into whether MT is in alleged breach of s46 of the Competition Act 2007. In its Sol, the CCM also stated that "MT has a monopoly in a number of telecommunications products serving Mauritius and could be abusing that monopoly dominance in ways that harm consumers."
3. Following the communication of the Sol to MT, the latter consequently undertook actions regarding the concerns mentioned at paragraph 2 above. These actions are summarised as follows:

ANNEX

- 3.1 In October 2011, MT re-introduced ADSL Home 1M at a revised price of Rs899 per month after having secured the approval of the Sector Regulator.
- 3.2 In December 2011, in order to fulfil government's objectives of promoting Broadband Mauritius and following the Budget Speech 2011-2012, the tariff for ADSL Home 1M was further reduced to Rs799 per month after securing approval from Sector Regulator.
- 3.3 In the same month, MT also introduced two other commercial offers known as 'ADSL Home 2M' and 'ADSL Home 4M', respectively priced at Rs 1,349 per month and Rs 2,349 per month.
- 3.4 Finally, in the same interval, MT reduced its prices for 'My.T 1M + TV', 'My.T 2M + TV' and 'My.T 4M + TV' to Rs 949 per month, Rs 1,499 per month and Rs 2,499 per month respectively.
- 3.5 The above-mentioned offers have since remained in commerce, at a maintained price differential of Rs 150 per month, for each category where category refers to the bandwidth capacity offered.
4. On 22<sup>nd</sup> May 2012, the Executive Director of the CCM communicated his Provisional Report, setting out his provisional findings.
5. On 22<sup>nd</sup> June 2012, MT submitted its comments on the provisional findings contained in the Provisional Report to the CCM in writing and an ensuing formal meeting with the CCM was held on 30<sup>th</sup> July 2012.
6. In the course of the latter meeting, MT reiterated its offer to give an undertaking as provided under section 63 of the Act



**ANNEX****DETAILS OF ALLEGED CONCERNS:**

7. In his Provisional Report, the Executive Director provisionally found that:

*"Based on facts and following assessment, the CCM has concluded that MT has engaged in exclusionary conduct under section 46(2)(a) of the Act, to the extent that it has been abusing its monopoly situation in tying products from the above-mentioned markets, for defined categories of users, and making use of a horizontal leveraging of its market power in the retail residential fixed-line broadband internet access market into the defined markets for pay-TV, with both the object and effect of distorting competition in the defined pay-TV markets. Such foreclosure would have the object or effect of preventing, restricting or distorting competition and would constitute an exploitation of MT's monopoly position in the retail residential fixed-line broadband internet access product market. Other service providers could not provide substitute bundles and were disadvantaged as a result of monopoly leveraging. Consumers who wanted a basic retail residential fixed-line broadband internet access product that would exclude pay-TV and consequently be cheaper were disadvantaged by the leveraging, paying a higher price for the standalone product."*

**8. WHEREAS**

- Following the communication of the SOI, MT has taken corrective measures by providing stand-alone ADSL broadband offers at competitive prices in parallel with the My.T offers; and
- MT has proposed to give an undertaking to the CCM

**ANNEX**

9. **Now therefore,**

Pursuant to section 63 of the Act and for the purpose of addressing the concerns of the Executive Director related to stand-alone Broadband ADSL offers, that have arisen during the investigation by the CCM on MT's offering and pricing of 'My.T' in respect of a monopoly situation,

MT undertakes as follows:

**a. Replication of 'My.T' offers**

To ensure that all MyT offers are replicated on a stand-alone fixed line broadband Internet access basis.

**b. Quality of service**

To maintain the same Quality of Service and other related determining aspects as are currently offered. These aspects include but are not limited to noise margin, contention ratio and fair usage policies.

**c. Price Differential**

To provide stand-alone Broadband ADSL offer based on the tariffs as approved by the Sector Regulator with a price differential of at least Rs 150 representing the rights' acquisition fees of the core TV channels in the My.T bouquet.

**d. Accounting exercise and reporting**

- (i) To submit the costing elements for stand-alone ADSL broadband offers in the same manner and form as provided for under the current 'Guidelines for submission of Tariff applications for information and communication services' issued by the Information and Communication Technologies Authority on 15<sup>th</sup> May 2012.

**ANNEX**

- (ii) To report to the CCM any change in the TV channels of the core TV bouquet of the My.T offer including content rights acquisition fees.

**e. Notification to the CCM**

MT undertakes to notify the CCM, at least 30 working days prior to making any changes to the Undertakings, which changes shall be subject to the approval of the CCM under section 64 of the Act.

MT undertakes to collaborate fully with the CCM and answer any query in a timely and effective manner.

**f. Compliance**

MT undertakes to comply with such written directions as the CCM may from time to time give for the purpose of carrying out or securing compliance with the Undertakings.

**g. Successors and assigns**

The Undertakings shall bind any successors and assigns of MT.

**h. Commencement**

The Undertakings shall come into force on the day on which the Undertakings are accepted by the CCM and notified in writing to MT.

**i. Duration**

These Undertakings shall be in force for a period of three (3) years from the day on which the Undertakings are accepted by the CCM unless they are varied, released or terminated under section 64 of the Act.

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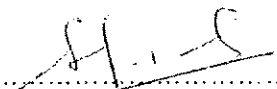
**ANNEX**

j. **Effect of invalidity**

MT undertakes that should any of the Undertakings be contrary to law or invalid for any reason, MT shall continue to observe the remaining Undertakings.

Dated this 6<sup>th</sup> August 2012.

I am the Chief Executive Officer of, and I am duly authorised to sign for and on behalf of, MAURITIUS TELECOM LTD INCLUDING ITS BRANCHES, SUBSIDIARIES, AFFILIATES OR OTHER ENTITIES DIRECTLY OR INDIRECTLY CONTROLLED BY IT.

  
.....

**Mr. Sarat Dutt Lallah**  
**Chief Executive Officer**  
**Mauritius Telecom Ltd**