

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 580

2 July 2021

**MEMORANDUM OF AGREEMENT  
("MOA")**

Entered into between

**THE COMPETITION COMMISSION OF SOUTH AFRICA  
("the Commission")**

a juristic person established in terms of section 19 of the Competition Act No. 89 of 1998 as amended, ("the Competition Act"), herein duly represented by Mr. Tembinkosi Bonakele, in his capacity as the Commissioner of the Competition Commission of South Africa

And

**THE NATIONAL CONSUMER COMMISSION  
("the NCC")**

a juristic person established in terms of the provisions of section 85 of the Consumer Protection Act No. 68 of 2008 ("the Consumer Act"), herein duly represented by Ms Thezi Mabuza in her capacity as the Acting Commissioner of the National Consumer Commission.

  
King Tembinkosi Bonakele  
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Signed by King Tembinkosi  
Bonakele, \_\_\_\_\_  
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## 1. PREAMBLE

**WHEREAS**, the Commission is mandated to, inter alia, investigate and evaluate restrictive practices, abuse of dominant position, exemptions and mergers, as well as conducting market inquiries;

**AND WHEREAS**, the Commission, in terms of the provisions of section 21(1)(h) read with sections 3(1A)(b) and 82(1) and (2) of the Competition Act No. 89 of 1998 as amended ("the Competition Act"), has to negotiate agreements with any regulatory authority according to which concurrent jurisdiction is exercised over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of the Competition Act;

**WHEREAS** the NCC is established in terms section 85 of the Consumer Protection Act No. 68 of 2008 ("the Consumer Act"), to promote fairness, openness and good business practice between the suppliers of goods or services and consumers of such goods and services;

**WHEREAS** the NCC is charged with the responsibility to enforce and carry out functions that aim to promote a fair, accessible and sustainable marketplace for consumer products and services, and for that purpose establish national norms and standards relating to consumer protection, provide for improved standards of consumer information, prohibit certain unfair marketing and business practices, promote responsible consumer behaviour and promote a consistent legislation and enforcement framework relating to consumer transactions.

**AND WHEREAS**, the NCC may in terms of the provisions of section 97(1)(b) of the Consumer Act liaise with and negotiate agreements with any regulatory authority on matters of common interest and the co-ordination and harmonization of the exercise of jurisdiction over consumer matters to ensure the consistent application of the principles of the Consumer Act.

**AND WHEREAS**, it is recorded that this Agreement shall, on an ongoing basis, be reviewed to accommodate developments incidental to matters that require

  
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co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review shall consider prevailing legal precedents, legislative amendments, promulgation of regulations, and policy reviews, as the case may be.

**THEREFORE**, the Commission and the NCC agree as follows:


## 2. INTERPRETATION

In the interpretation of any terminology used in this Agreement, any word or expression to which a meaning is assigned in the Competition Act and the Consumer Act, has the meaning assigned to it unless otherwise specified.

## 3. OBJECT OF THE AGREEMENT

3.1. This Agreement is entered into to establish the manner in which the Commission and the NCC will interact with each other to enable them to, inter alia:

- 3.1.1. effectively coordinate the exercise of jurisdictional powers when taking decisions;
- 3.1.2. apply a consistent interpretation and application of the principles of competition and consumer law when exercising their powers and their respective functions in terms of their enabling legislation;
- 3.1.3. promote co-operation between the Commission and NCC ("Parties") in general, including in respect of setting of standards or conditions that affect matters of common interest, **any joint investigations, market inquiries** and/or research studies that the Parties may agree to undertake; and
- 3.1.4. timeously provide each other with necessary information in respect of the investigation of anticompetitive practices, regulation of mergers and acquisitions, protection of consumer rights, promotion of informed consumer decision making as well as research developments or studies.

  
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- 3.2. The Commission and the NCC may inform each other of any previous decision/judgement that either of them has previously taken in respect of the anticompetitive practice or conduct involving the same respondent, in so far as it pertains to competition matters.

#### 4. PRINCIPLES OF COOPERATION

- 4.1. In order to achieve the purposes of this Agreement, the Parties have adopted and will comply with the principles of co-operation set out below:
- 4.1.1. the Parties will cooperate with each other in mutual trust and good faith;
  - 4.1.2. the Parties will assist and support each other in respect of agreed upon services and commitments between them in terms of this Agreement;
  - 4.1.3. the Parties will inform each other of, and consult each other on matters of common interest; and
  - 4.1.4. the Parties will avail to each other the necessary support for the successful performance of the tasks and programmes envisaged in this Agreement.

#### 5. LEGISLATIVE FRAMEWORK

- 5.1. Before the exercise and performance of any powers and duties, the NCC must consider whether or not, in terms of any agreement concluded between the NCC and the Commission, it would be appropriate to refer an inquiry to the Commission; and
- 5.2. The terms and conditions of any agreement concluded between the NCC and the Commission, must bear in mind that the Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices within any industry or sector and to review mergers within any industry or sector in terms of the Competition Act;

  
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- 5.3. The NCC may ask for and receive from the Commission, assistance or advice on relevant proceedings of the Commission including competition related inquiries and, similarly, the Commission may ask for and receive from the NCC, assistance or advice on relevant proceedings of the NCC.
- 5.4. This Agreement shall in no way affect the independence and exercise of statutory powers by the two regulatory bodies in terms of enabling legislation.


## 6. COOPERATION BETWEEN THE PARTIES

The areas of cooperation between the parties shall include the following:

- 6.1. Collaboration and cooperation on matters encountered by either Party that affects the mandate and functions of the other;
- 6.2. Strategic collaboration on measures to promote and enhance consumer welfare;
- 6.3. Collaboration on advocacy and outreach initiatives to facilitate better access to the public and become more visibly involved in education and promotional campaigns, particularly in rural areas;
- 6.4. Collaboration on certain investigations which includes litigation support, sharing of skills and conducting of market inquiries in order to enhance each other's investigational capacity;
- 6.5. Any other areas of interest as may be identified from time to time.

## 7. GUIDELINES FOR INTERACTION BETWEEN THE COMMISSION AND THE NCC UNDER THIS AGREEMENT

- 7.1. The NCC may request and receive advice from the Commission, in respect of regulatory aspects in as far as it relates to consumer matters as set out in clauses 8 and 9 below;
- 7.2. The Commission may request and receive advice from the NCC, in respect of proceedings which require consideration of regulatory aspects falling under the competency of the NCC as set out in clauses 8 and 9 below; devise

  
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- 7.3. All requests for advice or information by either regulatory authority will be submitted in writing.
- 7.4. The regulatory authority seeking advice or information must indicate a deadline before or upon which such advice or information should be given by the other regulatory authority.
- 7.5. When the Commission and the NCC consult each other under this Agreement, they shall do so at no cost to each other and with an acknowledgement of their respective areas of expertise.
- 7.6. Should either regulatory authority consider a matter before it, in the form of a timeline, such regulatory authority would share with the other, its expected process, and the other regulatory authority would cooperate to the best of its ability, towards achieving the targets set out in the project timelines.

## **8. APPLICATION FOR APPROVAL IN RESPECT OF MERGER TRANSACTIONS**

- 8.1. Where a merger transaction ("transaction") requires the approval of the Commission, which transaction has a negative impact on consumers, the Commission shall prior to arriving at a decision, consult the NCC so as to ensure the consistent application of consumer protection principles to the transaction in question.
- 8.2. Where the NCC recommends industry codes in line with the provisions of section 82 of the Consumer Act, the NCC shall, prior to it making a recommendation to the Minister of Trade, Industry and Competition, consult the Commission as to ensure the consistent application of competition principles in respect to the industry codes in question.
- 8.3. In either of the circumstances set out in 8.1 and 8.2 above, or in any other circumstances as may be agreed upon amongst the Parties in future, the

  
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Commission and the NCC may participate in each other's proceedings and may advise or receive advice from each other.

- 8.4. In either of the circumstances contemplated in 8.1, 8.2 and 8.3 above, the Commission and the NCC shall act as expeditiously as circumstances permit and shall each encourage the other party to achieve a timely response.
- 8.5. The Commission and the NCC shall make independent determinations on the basis of the criteria and mandates of their respective legislative and regulatory frameworks. In arriving at these determinations, the Commission and the NCC may consult each other in as far as competition matters are concerned.
- 8.6. When consulting each other, the Commission and the NCC must have regard to the principle that:
- 8.6.1. the Commission is to exercise primary authority in the review of mergers in any industry, as required to give effect to the Competition Act; and
- 8.6.2. the NCC is to exercise primary authority in matters related to the promotion and advancement of social and economic welfare of consumers as required to give effect to its applicable statutes.

## 9. COMPLAINTS


- 9.1. Where a complaint is lodged regarding a practice or conduct in respect of which either the Commission and the NCC have jurisdiction and the other Party has an interest, the following process will be followed to the extent possible:
- 9.1.1. The complaint may be lodged with the regulator that has jurisdiction;
- 9.1.2. If upon receiving a complaint, the Recipient Regulator is of a view that it does not have jurisdiction over the matter, the recipient regulator may advise the complainant(s) accordingly and recommend that the complainant refer the complaint to the relevant regulator.

  
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- 9.1.3. The Commission and NCC may consult with each other in respect of the complaint;
- 9.1.4. If the NCC is the recipient regulator that has jurisdiction, it may in its discretion liaise and consult with the Commission;
- 9.1.5. If the Commission is the recipient regulator that has jurisdiction, it may in its discretion liaise and consult with the NCC;
- 9.1.6. The Commission and the NCC may, upon request from each other, participate in each other's proceedings in an advisory capacity;
- 9.1.7. In consulting each other in respect of the complaint, the parties must have regard to the principle that –
- 9.1.7.1. The Commission is to exercise primary authority to detect and investigate alleged prohibited practices to give effect to the Competition Act; and
- 9.1.7.2. The NCC has primary authority to exercise powers and perform functions assigned to it in terms of the Consumer Act in order to give effect to its relevant legislation.
- 9.1.8. The recipient regulator may, in its discretion, advise the complainant(s) as soon as reasonably possible of the outcome of the consultation between the Commission and NCC;
- 9.1.9. The recipient regulator may give the complainant(s) further directions regarding the investigation of the complaint in question;
- 9.1.10. In the event that the matter is dealt with by the Commission, representatives from the NCC may, at the request of the Commission, participate in the matter through, inter alia, attending meetings when required, providing inputs during the case investigation and making representations at the Competition Tribunal hearing, if necessary.
- 9.1.11. In the event that the matter is dealt with by the NCC, representatives from the Commission may, at the request of the NCC, participate in the matter through, inter alia, attending meetings, providing inputs during the case investigation and making representations at the National Consumer Tribunal if necessary.


  
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- 9.2. The decision by any of the Parties to consult the other regulator shall be discretionary and voluntary, and either Party shall be entitled, with or without consultation, to make its independent decision in respect of the complaint in terms of its enabling legislation;
- 9.3. Nothing in the consultation procedures contemplated herein, shall detract from the jurisdiction of the Commission or the jurisdiction of the NCC to receive and deal with complaints in terms of their enabling statutes as they deem fit, or preclude the public from lodging complaints with both the Commission and the NCC.
- 9.4. When the Commission and the NCC consult each other, as contemplated in this Agreement, they shall do so at no cost to each other and shall act as expeditiously as possible.

## 10. ESTABLISHMENT OF THE JOINT WORKING COMMITTEE

- 10.1. A Joint Working Committee ("the Committee") constituted by representatives of the Commission and the NCC, as nominated by the respective regulators, shall be established pursuant to this Agreement and shall function on an on-going basis.
- 10.2. The functions of the Committee shall be:
- 10.2.1. To manage and facilitate co-operation and consultation in respect of matters dealt with by each regulator in terms of this Agreement;
  - 10.2.2. To propose, when necessary, any amendment of or supplementation to this Agreement;
  - 10.2.3. To advise management of both the Commission and the NCC on issues affecting competition and consumer protection in South Africa, as the case may be, and make recommendations on how to deal with same. Such advice shall be on, but not limited to the following:

  
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- 10.2.3.1. Types of conduct or transactions affected by both or either the Competition Act and the Consumer Act;
  - 10.2.3.2. Policy considerations and the development of standards, where necessary, in relation to matters of common interest to the two Parties;
  - 10.2.3.3. International approach to issues of interest or overlap between a Competition Authority and the Consumer Protection Authority, as the case may be;
  - 10.2.3.4. Amendments to the relevant or applicable statutes that may be necessary from time to time; and
  - 10.2.3.5. Any other related matter.
- 10.3. The Committee shall meet regularly, but no less than once every six months, to ensure both regulatory authorities are aware of developments in areas of common interest.

## 11. INSTITUTIONAL CONTACT PERSONS

For purposes of this Agreement:

- 11.1. The Manager of the Advocacy Division will be the main contact person at the Commission.
- 11.2. The Senior Manager of Stakeholder Relations and Advocacy will be the main contact person at the NCC.
- 11.3. Should the regulatory authorities have to exchange information, as a result of discussions at the Committee, the processes set out in this Agreement shall be followed.



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## 12. EXCHANGE OF INFORMATION

- 12.1. Subject to paragraph 13 below, the Commission and the NCC may exchange information as may be necessary to give effect to this Agreement.

## 13. CONFIDENTIALITY

- 13.1. Any information shared by the Commission and the NCC pursuant to this Agreement must be used only for lawful purposes in matters of concurrent jurisdiction.
- 13.2. Any request made by either of the parties for confidential information in possession of the other shall be dealt with in accordance with the procedures set out in the parties' respective enabling legislation or policies or procedures.
- 13.3. The parties shall ensure that confidential information accordingly disclosed to them remains confidential and is not placed in the public domain through any negligent or wilful conduct on its behalf.
- 13.4. To the extent permitted by law, the Commission and the NCC shall hold confidential information received from each other pursuant to this Agreement and shall not otherwise disclose such information except when required to do so by the law or an order of a Court or a Tribunal.
- 13.5. The Commission and the NCC shall, prior to disclosing such confidential information or a part thereof when required to do so by the law or an order of a Court or a Tribunal, notify each other of the law or an order of a Court or Tribunal requiring such disclosure.
- 13.6. The sharing of confidential information, in accordance with this Agreement, relies on the assurances given in 13.1, 13.2 and 13.3 above and shall not constitute a waiver of any legally recognizable grounds for refusing disclosure of information.



  
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- 13.7. Where confidential information is disclosed either by the Commission or the NCC in contravention of this Agreement, such disclosing party shall be solely liable in law for such disclosure.
- 13.8. Any of the parties may in its discretion decline a request for confidential information made in terms of this Agreement.

#### 14. GENERAL PROVISIONS

- 14.1. The provision of, or request for information under this Agreement may be denied:
- 14.1.1. where compliance would require the Commission or the NCC to act in a manner that would violate the applicable law;
  - 14.1.2. under circumstances where there is an imminent risk to national security; or
- 14.2. When compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
- 14.3. No provision of this Agreement shall give rise to a right on the part of any person, entity or organ of state other than the Commission and the NCC, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Agreement.
- 14.4. The provisions set forth under clauses 12 and 13 must prevail with respect to any information provided or actions taken under this Agreement prior to its termination.

  
  
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Signed by King Tembinkosi  
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## 15. NON-VARIATION

- 15.1. This Agreement constitutes the whole of the agreement between the parties relating to the subject matter hereof.
- 15.2. No amendment or consensual cancellation of this Agreement or any term of this Agreement, including this clause shall be binding unless recorded in a written document signed by duly authorised representatives of both regulators.

## 16. TERMINATION OF PREVIOUS AGREEMENTS

- 16.1. This Agreement terminates existing agreements entered into between the Commission and the NCC.
- 16.2. Any pending transactions, projects, requests being processed in terms of any existing Memorandum of Agreement shall be brought to completion in terms of this Agreement and shall be considered in effect.

## 17. EFFECTIVE DATE OF THE AGREEMENT

This Agreement comes into force after:

- 17.1. it has been signed by persons authorised to act on behalf of both the regulators; and
- 17.2. it has been published in the Government Gazette.

## 18. DURATION OF THE AGREEMENT

- 18.1. This Agreement must remain in force until it is amended or repealed by both regulators acting jointly.

  
  
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## 19. REVIEW OF THE AGREEMENT

19.1. This Agreement shall, on an ongoing basis, be reviewed to accommodate developments incidental to matters that require co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review shall take into account prevailing legal precedents, legislative amendments, promulgation of regulations, and policy reviews, as the case may be.

## 20. DISPUTE RESOLUTION

20.1. Should any dispute or difference arise between the regulators with regard to interpretation and/or implementation of any one or more of the provisions of this Agreement, such dispute or difference must be resolved in a manner other than through judicial proceedings.

## 21. DOMICILIUM CITANDI ET EXECUTANDI

21.1. The regulators choose the following addresses as their respective domicilium citandi et executandi for purposes of this Agreement:

### THE COMPETITION COMMISSION


The DTI Campus Mulayo (Block C), 77 Meintjies Street, Sunnyside, Pretoria

CONTACT PERSON: Manager: Advocacy Division

### THE NATIONAL CONSUMER COMMISSION

South African Bureau of Standards Campus, Block C, 1 Dr Lategan Road, Groenkloof, Pretoria

CONTACT PERSON: Ms Keitheng Mothemela: Senior Manager: Stakeholder Relations and Advocacy

  
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Signed by King Tembinkosi  
Bonakele,  
SIGNED BY \_\_\_\_\_

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**SIGNATURE**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ by  
Mr. Tembinkosi Bonakele, Commissioner of the Competition Commission South Africa.



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30/03/2021 14:20:26 (UTC+02:00)  
Signed by King Tembinkosi  
Bonakele,

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**COMPETITION COMMISSION**

\_\_\_\_\_  
WITNESS 1

\_\_\_\_\_  
WITNESS 2

Signed at Groenkloof on this 24<sup>th</sup> day of November 2020 by Ms  
Thezi Mabuza in her capacity as the Acting Commissioner of National Consumer Commission.

**NATIONAL CONSUMER COMMISSION**

  
WITNESS 1

  
WITNESS 2