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ETHIOPIAN
COMMUNICATIONS AUTHORITY

**TELECOMMUNICATIONS
LAWFUL TARIFFS DIRECTIVE
No. 797/2021**

**JULY 2021
ADDIS ABABA**

TELECOMMUNICATIONS LAWFUL TARIFFS DIRECTIVE

WHEREAS it is important to establish a framework that provides clarity on the rules and procedures the Authority shall follow to assess the lawfulness of tariffs, intervene to set tariffs, and review the tariffs of Telecommunications Operators;

RECOGNIZING the necessity to provide clarity to Telecommunications Operators on how they shall notify the Authority about changing or introducing new tariffs;

GIVEN the necessity to prevent Telecommunications Operators from charging unlawful tariffs for their services;

NOW, THERFORE, in accordance with Articles 6(2), 6(6), 45(5), and 46(1), of the Communications Service Proclamation, the Authority hereby issues this Telecommunications Lawful Tariffs Directive.

PART ONE GENERAL

1. Short Title

This Directive may be cited as the “Telecommunications Lawful Tariffs Directive No. 797/2021.”

2. Definitions

In this Directive, unless the context otherwise requires:

- 1) “**Active Infrastructure**” means the elements or components on the active layer of a Telecommunications Network, including, but not limited to, antennas, switches, servers, databases, radio access nodes, and transmission equipment.
- 2) “**Authority**” means the Ethiopian Communications Authority established under the Communications Service Proclamation No. 1148/2019.
- 3) “**Collocation**” means the placement of network equipment or systems that are used for service provision by a Telecommunications Operator together with network equipment or systems installed at premises of other Telecommunications Operator at a technically feasible location on the basis of agreement reached between them.
- 4) “**Controlled Tariff**” means a tariff for a service or a bundle of services, where the Authority has determined that the Telecommunications Operator providing those services holds Significant Market Power in a relevant market for those services.
- 5) “**Controlled Retail Tariff**” means a tariff of a Retail Service provided by any Telecommunications Operator that has been found to hold Significant Market Power in a relevant market for the Retail Service.
- 6) “**Controlled Wholesale Tariff**” means a tariff of Wholesale Services provided by any Telecommunications Operator that has been found to hold Significant Market Power in a relevant market for the wholesale service.
- 7) “**Downstream Operation**” means the business operations of a Vertically Integrated Operator that concerns with the supply of Retail Services, as if the supply of Retail Services were carried out by a legally separate entity.
- 8) “**Downstream Retail Cost**” means the cost of the Downstream Operation.

- 9) “**Infrastructure Sharing**” means various kinds of arrangements to share an infrastructure sharing and collocation provider’s active and passive infrastructure, including, but not limited to, the sharing of network elements, antennas, switches, radio access nodes, systems, equipment, facilities, premises or rights of way, with an infrastructure sharing and collocation seeker, subject to an agreement between the parties.
- 10) “**Margin Squeeze**” means the occurrence when an Operator with Significant Market Power in a relevant retail market who also supplies an essential Wholesale Service to a competitor in a retail market, sets its retail tariff and/or wholesale tariff, such that, the difference between the retail tariff and the wholesale tariff of the corresponding Wholesale Service, would not allow an efficient retail competitor to sustain a competing service.
- 11) “**Notifying Party**” means a Telecommunications Operator that submits a written notification to the Authority seeking approval to introduce or change a Controlled Tariff.
- 12) “**Passive Infrastructure**” means infrastructure that is not part of the active layer of a Telecommunications Network, including but not limited to, sites, buildings, shelters, towers, masts, poles, ducts, trenches, electric power supply, and air conditioning.
- 13) “**Predatory Pricing**” means where an operator with Significant Market Power deliberately incurs losses or forego profits in the short term, with the intention of foreclosing or be likely to foreclose, a competitor or potential competitor.
- 14) “**Retail Service**” means a Telecommunications Service that is provided to the end user or subscriber and not to another Telecommunications Operator.
- 15) “**Significant Market Power (SMP)**” means the ability to materially affect the price or supply in the relevant market for communications service as a result of either control over essential facilities or use of a Person’s position in the market.
- 16) “**SMP Operator**” or a “Telecommunications Operator with SMP” means a Telecommunications Operator that has been determined by the Authority to hold Significant Market Power in a relevant market either acting individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to a noticeable extent independently of competitors, customers, and ultimately consumers.
- 17) “**Vertically Integrated Operator**” means a Telecommunications Operator that provides Wholesale and Retail Services.
- 18) “**Wholesale Service**” means a Telecommunications, Collocation, or Infrastructure Sharing Service, that is provided to another Telecommunications Operator.
- 19) “**Working Days**” means business working days only and shall not include Saturday, Sunday and any day that has been declared to be a public holiday by the Federal Democratic Republic of Ethiopia.

3. Objectives

The objectives of this Directive are to:

- 1) Provide clarity on the rules and procedures the Authority shall follow to assess the lawfulness of tariffs, intervene to set tariffs, and review the tariffs of Telecommunications Operators pursuant to Articles 45 and 46 of the Proclamation.

- 2) Provide clarity on the rules Telecommunications Operators shall follow to notify the Authority, when required, about changing or introducing new tariffs.
- 3) Prevent Telecommunications Operators from charging unlawful tariffs for their services.

4. Scope of Application

- 1) This Directive applies to tariffs of Telecommunications, Collocation, and Infrastructure Sharing services.
- 2) This Directive applies to all Telecommunications Operators in the Federal Democratic Republic of Ethiopia. However, some provisions, when specified, are only applicable to Operators with Significant Market Power (“SMP”) in a relevant market.

**PART TWO
ROLE OF THE AUTHORITY**

5. Role of the Authority

- 1) The Authority shall:
 - a) Endeavor to increase the transparency and ensure the lawfulness of tariffs from all Telecommunications Operators;
 - b) Provide a high degree of certainty on the standards and procedures, to assess and set lawful tariffs; and,
 - c) Review from time to time, the lawfulness of tariffs from any Telecommunications Operator; and regulate the tariffs of services, when needed, to ensure their lawfulness.
- 2) The Authority may:
 - a) Direct a Telecommunications Operator with Significant Market Power, to delay the effectiveness of any tariff in a relevant market, until the Authority has approved it, in accordance with Article 45 (4) of the Proclamation; and,
 - b) Intervene on its own instance, or when requested by a party, to determine the lawfulness of tariffs of any Telecommunications Operator.

**PART THREE
GENERAL PRINCIPLES OF LAWFUL TARIFFS**

6. General Principles of Lawful Tariffs

- 1) Pursuant to Article 45 (1) of the Proclamation, all Telecommunications Operators shall charge justifiable and reasonable charges that are not unduly discriminatory among users or classes of users.
- 2) Tariffs shall be publicized or disclosed in a transparent way, so that a buyer shall have full information about one-off charges, recurring charges, and discounts.
- 3) Tariffs shall take into account the underlying costs of providing a product or service.
- 4) Tariffs of similar Retail Services, sold under similar terms and conditions, shall be similar among buyers or classes of buyers.

- 5) A Vertically Integrated Operator that provides a similar Wholesale Service to itself and to another operator, shall provide that service under similar terms and conditions.

PART FOUR
FILLING AND APPROVAL OF CONTROLLED TARIFFS

7. Filing and Approval of Tariffs for Retail and Wholesale Services with Controlled Tariffs

- 1) A Telecommunications Operator shall notify the Authority, and seek approval, whenever it intends to introduce or change a Controlled Tariff. Such notification shall also apply to the non-price terms that amount to a material change in the resulting tariff.
- 2) Upon receiving a written notification pursuant to Sub-Article (1) of this Article, the Authority shall within fifteen (15) working days to either:
 - a) Approve the filed tariff;
 - b) Request further information to the Notifying Party before making a decision; or
 - c) Not approve the filed tariff, stating in writing its reasons for the denial.
- 3) The Notifying Party shall not implement the filed tariff unless it has been approved by the Authority.
- 4) The Authority may, at its own instance, extend the time to review the filed tariff for an additional ten (10) working days.
- 5) If the Authority does not respond to the notification within the fifteen (15) working days period, or within the extended time, if applicable, such tariff shall be deemed approved.
- 6) The Notifying Party shall publish the approved tariff on its website no later than seven (7) days after the tariff has been approved.
- 7) Where the Authority does not approve a filed tariff, it shall either:
 - a) Instruct the Notifying Party that the filed tariff may not be implemented; or
 - b) Initiate a proceeding to review the Controlled Tariff to ensure their lawfulness pursuant to Article 46 of the Proclamation, this Directive, and any applicable Directive adopted by the Authority.
- 8) Notwithstanding any provision in this Directive, the approval of a Controlled Tariff does not exempt a Notifying Party from complying with the anti-competitive practices' provisions in Article 48 of the Proclamation, or any applicable Directive adopted by the Authority.

PART FIVE
PRICING PRINCIPLES

8. Pricing Principles for Wholesale Services with Controlled Tariffs

- 1) Controlled Wholesale Tariffs shall be:
 - a) Cost-oriented; and,
 - b) Not unduly discriminatory.

- 2) To assess whether a Controlled Wholesale Tariff is cost-oriented, the Authority shall use, either:
 - a) A forward-looking incremental cost methodology, or
 - b) An international benchmark of relevant Wholesale Tariffs.
- 3) When assessing a Controlled Wholesale Tariff based on a forward-looking incremental cost methodology, the Authority shall apply the following principles:
 - a) Forward-looking costs shall refer to the costs an Efficient Operator would incur to provide a given service.
 - b) The cost basis shall be established by using any of the following cost modelling methods:
 - i) Fully allocated costs;
 - ii) Long-run incremental cost (LRIC); or,
 - iii) Long-run incremental cost plus (LRIC+), which allows for joint and common costs.
- 4) When assessing a Controlled Wholesale Tariff based on international benchmarks, the Authority shall use data from:
 - a) Countries that have used a forward-looking incremental cost methodology to set the tariff of a comparable service; and,
 - b) Countries that can reasonably be regarded as comparable to Ethiopia.
- 5) Where the Authority has not able to obtain reliable information to assess a Controlled Wholesale Tariff by using any of the options provided in Sub-Articles (3) and (4) of this Article, the Authority may consider a settlement-free approach to set such tariff, if:
 - a) The provider of the Wholesale Service receives a comparable Wholesale Service from the other party to an agreement; or,
 - b) The Authority has determined the settlement-free approach to be reasonable.
- 6) A Controlled Wholesale Tariff shall be deemed unduly discriminatory if a provider of the corresponding Wholesale Service charges a different rate to different operators for similar services provided under similar terms and conditions, unless this can be justified by differences in costs or expected costs, of providing the services.
- 7) A Controlled Wholesale Tariff shall be deemed unduly discriminatory, if a Vertically Integrated Operator providing the corresponding Wholesale Service, self-supplies its Downstream Operation at a lower cost than it charges other operators for that same or similar Wholesale Service.
- 8) When assessing the cost of self-supplying the relevant Wholesale Service referred in Sub-Article (7) in this Article, the Authority shall apply the forward-looking incremental cost methodology from Sub-Article (3) in this Article, to impute costs to the self-supplied Wholesale Service.

9. Pricing Principles for Retail Services with Controlled Tariffs

- 1) When the Authority reviews a filed Controlled Retail Tariff to ensure its lawfulness, the tariff shall pass either the non-predatory test or the margin squeeze test, and in addition, be not unduly discriminatory.
- 2) When assessing whether a Controlled Retail Tariff passes the non-predatory test, the Authority shall consider the following:
 - a) Whether the tariff, for the corresponding service, or service bundle, is below cost. If a tariff is equal or above cost, then the tariff passes the non-predatory test.
 - b) Use the Telecommunications Operator's current year costs, or where available, regulatory accounting costs, subject to reasonable adjustments if these are from a prior year, as the source of information to calculate the cost of a service.
 - c) Use any of the following cost modeling methods to establish the cost basis:
 - i) Fully allocated cost;
 - ii) Long-run incremental cost (LRIC); or,
 - iii) Long-run incremental cost plus (LRIC+), which allows for joint and common costs.
- 3) When assessing whether a Controlled Retail Tariff passes the Margin Squeeze test, the Authority shall consider the following:
 - a) Evaluate occurrence of a Margin Squeeze.
 - b) Assess whether there is a positive margin between the retail tariff and the cost of providing the Retail Service. A tariff passes a Margin Squeeze test if the difference between the retail tariff and the cost is positive.
 - c) Calculate the cost of the Retail Service, taking into account the cost of the necessary input purchased in the wholesale market, plus the Downstream Retail Cost.
 - d) Calculate the cost of providing a Retail Service using the Downstream Retail Cost of the vertically integrated Telecommunications Operator as a proxy for the Downstream Retail Cost of an efficient retail competitor.
 - e) Use the Telecommunications Operator's current year costs, or where available, regulatory accounting costs, subject to reasonable adjustments if these are from a prior year, as the source of information to calculate the Downstream Retail Cost of the vertically integrated Telecommunications Operator.
 - f) Use any of the following cost modelling methods to establish the cost basis of a Retail Service:
 - i) Fully allocated cost;
 - ii) Long-run incremental cost (LRIC); or,
 - iii) Long-run incremental cost plus (LRIC+), which allows for joint and common costs.

10. Undue Price Discrimination

Any Telecommunications Operator in a relevant retail market shall not charge different prices to customers or classes of customers, for similar services sold under similar terms and conditions, unless this can be justified by differences in the cost or expected cost, of providing the relevant service.

PART SIX REVIEW OF TARIFFS

11. Review of Tariffs

- 1) The Authority shall have the power to review and control tariffs of any licensed Telecommunications Operator pursuant to Article 46 of the Proclamation.
- 2) The Authority may, on its own motion, or in response to a petition filed by any interested party, initiate a proceeding to observe whether the tariffs of any Telecommunications Operator are lawful.
- 3) Where the Authority decides to initiate a proceeding to review a tariff, it shall follow the pricing principles described in Articles 8 and 9 of this Directive, depending on whether the review is for a wholesale or a retail tariff.
- 4) Without prejudice to Sub Article (2) of this Article, where the Authority decides to initiate a proceeding, it shall do so in accordance with the procedure established in Articles 35 through 38 of the Proclamation, and adhere to the following procedure:
 - a) Issue a Public Notice informing interested parties that it is initiating a regulatory proceeding to review and set a tariff to ensure its lawfulness.
 - b) The Public Notice shall be accompanied by a discussion paper, indicating the reason for the tariff review, and the approach the Authority intends to undertake to ensure that the tariff is lawful.
 - c) The Notice shall also include the period within which interested parties may submit comments along with filing requirements, and a timeframe for the public consultation.
 - d) The Authority shall give interested parties no less than fifteen (15) working days to respond and submit comments.
 - e) After receiving comments from interested parties, the Authority shall have no more than fifteen (15) working days to respond to the comments received and either:
 - i) Respond addressing each comment and render a final determination; or
 - ii) Respond addressing each comment, issue a second discussion paper, if needed, and give interested parties no less than fifteen (15) working days to submit comments, before rendering a final decision.
 - f) The Authority may, at its own discretion, allow more than two (2) rounds of comments from interested parties before rendering a final determination.
 - g) The Authority shall issue a written decision and shall state with particularity the reasons underlying its action.

**PART SEVEN
ACCOUNT SEPARATION**

12. Accounting Separation

- 1) Where the Authority has determined that a provider of a Wholesale Service has SMP in a relevant market for a Wholesale Service, and the provider is a Vertically Integrated Operator that also provides Retail Services, the Vertically Integrated Operator shall keep separate accounts, as if the Wholesale Service were in fact carried out by a legally independent company, so as to identify all elements of cost and revenue attributable to such services.
- 2) The Authority may, at its own discretion, adopt Directives prescribing how the account separation referred to in Sub-Article 1 of this Article shall be implemented.

**PART EIGHT
PUBLICATION OF TARIFFS**

13. Publication of Controlled Tariffs by The Authority

- 1) Any Telecommunications Operator that the Authority determines possesses SMP in one or more relevant product markets shall publish its tariff on its website.
- 2) The Authority shall publish on its website, or ensure that there is published, adequate and up-to-date information, on all approved Controlled Tariffs.

**PART NINE
COMPLIANCE AND ENFORCEMENT**

14. Compliance

The Authority shall monitor a Telecommunications Operator's compliance with the provisions of the Proclamation and this Directive.

15. Enforcement

- 1) Where the Authority, consistent with the provisions of this Directive, the Proclamation, and other instruments that the Authority may issue, determines that a Telecommunications Operator has violated the provisions of this Directive, it shall impose remedies pursuant to Article 52 of the Proclamation, that shall include fines or restitution.
- 2) Without prejudice to Sub-Article (1) of this Article, the Authority's remedies and sanctions shall be guided by the Council of Ministers' Regulation issued pursuant to Article 52(6) of the Proclamation that determines the types of infractions that would result in license revocation, suspension, and other administrative measures and stipulate the penalties and the amount of fines to be paid.

**PART TEN
MISCELLANEOUS PROVISIONS**

16. Confidentiality

To the extent that information provided by Telecommunications Operators pursuant to this Directive is confidential, the Authority shall protect the confidentiality of such information.

17. Right of Appeal

Any decision taken or order issued by the Authority pursuant to the provisions in this Directive is subject to review and appeal in accordance with Articles 38 and 39 of the Proclamation.

18. Amendment

The Authority may, at any time it deems it necessary, amend this Directive by providing advance notice to all Licensees and conducting a stakeholder consultation process in line with the provisions of the Proclamation.

19. Effective Date

This Directive shall come into force on the 9th day of July 2021.

DONE AT ADDIS ABABA ON THE 9TH DAY OF JULY 2021

**ENGINEER BALCHA REBA
DIRECTOR GENERAL
ETHIOPIAN COMMUNICATIONS AUTHORITY**