



**BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY**

**In the matter between:**

**Inq. Digital (Pty) Ltd**

**Complainant**

(formerly known as Virtual Business Network Services (Pty) Ltd)

and

**Botswana Telecommunications Corporation  
Limited**

**Respondent**

Complainant represented by Desai Law Group (Attorneys Rizwan Desai and Zandile Ramalohlanye)

Respondent represented by Armstrongs Attorneys (Attorney Moemedi Tafa)

**RULING**

**1. INTRODUCTION**

1.1 The Complainant in this matter is Inq.Digital (Proprietary) Limited, a company with limited liability duly registered in accordance with the laws of the Republic of Botswana. The Respondent is Botswana Telecommunications Corporation Limited, a public company with limited liability duly incorporated in accordance with Botswana laws. Both parties are licensed by the Botswana Communications Regulatory Authority (“BOCRA” or “the Authority”) in terms of the Communications Regulatory Authority Act (“the CRA Act”) and hold a Services and Applications Provider Licence.

1.2 The Complainant submitted a formal complaint in terms of Section 78 of the CRA Act, seeking the following reliefs from the Authority:-

1.2.1 preventing the Respondent from breaching its licence conditions in terms of the Services and Applications Provider Licence issued by charging excessive prices for wholesale internet services sold to internet service providers;

1.2.2 directing the Respondent to supply the VDSL service to the Complainant;

1.2.3 directing BOCRA's officers to investigate the Respondent's predatory conduct in its excessive pricing of wholesale internet services or, alternatively, to the extent that BOCRA can engage with it, requesting the Competition and Consumer Authority ("CCA") to do so;

1.2.4 engaging with and requesting the CCA to impose all sanctions available to the CCA to prevent the Respondent from committing any further conduct prohibited in terms of Section 30 of the Competition Act; and

1.2.5 granting any further and/or alternative relief.

1.3 At the beginning of this matter, and in accordance with Section 78 of the CRA Act, the Authority set out a simple procedure to be followed to ensure timely resolution of the matter. As the Complainant had lodged their complaint in the form of an application, the Respondent was directed to file their answering affidavit within a period of 21 days,

followed by a replying affidavit from the Complainant within 14 days and then each party filing their written submissions for the Authority to make a ruling. However, during the course of this matter, the Complainant was permitted to make a request for further particulars prior to filing their replying affidavit, some of which request was for the Respondent to discover certain documentation and information. Much time was spent in this part of the matter, as the Respondent delayed in making this discovery, to the extent that the Authority had to issue a directive for compliance. The Authority has sternly cautioned the Respondent against any future delays in responding to lawful requests for information or compliance with its requirements or directives. The pleadings were finally closed following filing of the Replying Affidavit in February 2021.

- 1.4 Following the exchange of papers, the Authority convened a fact-finding meeting with representatives of both parties on 21 April 2021, with a view to gain clarity on some issues as raised in the papers. Both parties were in attendance, the Authority posed questions based on facts adduced and permitted parties to pose questions to each other only on issues of facts. It should be noted that at the said meeting, both parties' legal representatives were present, and while they reserved any other legal rights, they actively participated therein.

## **2. JURISDICTION**

- 2.1 During the proceedings, the Respondent challenged the Authority's power to decide on some aspects of the complaint before it. Specifically, and as per the Answering Affidavit filed of record, the Respondent took issue with the Authority's jurisdiction to grant reliefs 3 and 4 sought by the Complainant, which are set out in paragraphs

1.2.3 and 1.2.4 above. The Respondent argued that these reliefs are incompetent to be sought from the Authority in so far as the said reliefs sought to have BOCRA directing the CCA on what actions to take, and further averred that such would be *ultra vires* the CRA Act. The Respondent again challenged the Authority's jurisdiction when they were directed to make discovery of certain information and documentation, which the Authority sought to enable it to appreciate the complaint and make an adjudication.

2.2 At the time when the issue was raised, the Authority took the decision to deliberate on the matter wholistically instead of piece-meal with a final determination to be made at the end. The Authority will therefore address the issue of jurisdiction in the following paragraphs.

2.3 As it is trite, the Authority is a creature of statute, and derives all its regulatory mandate and powers from the CRA Act. In terms of Section 6(2) (a) thereof, the Authority shall protect and promote the interests of consumers, purchasers and other users of the services in the regulated sectors, particularly in respect of the prices charged for, and the availability, quality and variety of services and products offered throughout Botswana. Section 6 (2) (c) further provides that the Authority shall monitor the performance of the regulated sectors in relation to, amongst others, levels of competition, pricing and cost of services. In terms of Section 89, all issues relating to competition which may arise in the discharge of the Authority's regulatory duties shall be referred to the Competition Commission.

2.4 In its papers, the Complainant refers to and makes allegations of contravention of the Competition Act, a piece of legislation

administered and enforced by the Competition and Consumer Authority. While the Authority has powers to monitor the levels of competition, none of the regulatory powers that it is clothed with by the CRA Act entitles it to direct the CCA on how to administer its own legislation. Further, the Authority cannot itself administer the Competition Act or attempt to interpret same for enforcement.

2.5 Notwithstanding the fact that the Authority has no power to deal with contraventions to the Competition Act, it does however have the responsibility to refer all issues of competition to the Competition Commission. The Authority does not take this responsibility lightly and does not construe such referral to mean that it is barred from seeking to appreciate issues of competition within the regulated sector. Furthermore, the Authority is of the view that such referral means giving the Competition Commission a brief on what is being referred to it.

2.6 On the issue of jurisdiction therefore, the Authority finds, for the reasons above, that it does not, and will not purport to have any jurisdiction to interpret, administer or enforce the Competition Act. The Authority shall accordingly refer all issues relating to the alleged contravention of the Competition Act to the CCA to adequately deal with. The Authority will attach a brief and undertake to work with and assist the CCA with these issues as they affect the Authority's regulated sector and entities.

### **3. BREACH OF LICENCE**

3.1 The above finding does away with most aspects of the complaint, and therefore leaves the Authority with only three (3) reliefs sought

by the Complainant for consideration. These are that the Authority should make orders:-

3.1.1 preventing the Respondent from breaching its licence conditions by charging excessive prices for wholesale internet services to internet service providers;

3.1.2 directing the Respondent to supply the VDSL service to the Complainant; and

3.1.3 granting any further and/or alternative relief.

#### **4. FACTS**

4.1 The following paragraphs provide a summary of the facts relating to this matter.

4.2 As already stated above, both parties are holders of the same licence, the Services and Applications Provider Licence, issued to them by the Authority. The Complainant primarily operates in the retail fixed broadband market as an Internet Service Provider (ISP) and its main product offering is internet connectivity to residential and small business enterprises as well as enterprise dedicated connectivity and data centre(s). The Complainant procures wholesale internet services from the Respondent under a Master Services Agreement ("the MSA") for provision of wholesale telecommunications services entered into in May 2013. The MSA is for an indefinite period unless terminated upon written notice by either party. The salient material terms of the MSA are that the Respondent would provide wholesale services to the Complainant

as detailed in a service schedule. Such wholesale services are to be ordered by completing an order form per the prices reflected in the applicable price schedule.

4.3 As per order form dated 29 October 2018, the Complainant procures wholesale Internet Protocol Transit (IPT) from the Respondent on the following terms:

4.3.1. Wholesale 500 Megabytes – no Botsgate Bandwidth protection.

4.3.2 Contract duration three (3) years

4.3.1 Total cost BWP305,922.40 (VAT inclusive) per month.

4.4 The Complainant is utilising the Asymmetric Digital Subscriber Line (ADSL) technology of the Respondent in the local access network to provide internet services to some of its residential customers utilising the leased wholesale Internet Protocol transit bandwidth. The ADSL technology enables the simultaneous transmission of both voice and high-speed data over existing copper phone lines to the customer. It is called asymmetric because the download and upload data rates are not symmetrical (that is, download is faster than upload). The ADSL technology typically achieves the maximum speed of 4 Megabits/second (Mbps). The Respondents offers both wholesale and retail ADSL services.

4.5 The Respondent upgraded the wholesale fixed broadband solution to offer improved high-speed data transmission. The Respondent's wholesale high-speed broadband service is delivered through connectivity from its fibre network to its Access Network and delivered to its customers through the copper access network.

4.6 In March 2017, BOCRA had issued a Regulatory Directive No. 1 of 2017, which implemented the recommendations of the study relating to Cost Model and Pricing Framework for ICT services in Botswana conducted in 2016. The Directive, which focused on wholesale fixed broadband, ordered the Respondent to:

*“4.8.1 Implement retail minus pricing for ADSL services;*

*4.8.2 Transfer charge equivalent prices from their wholesale business to retail business;*

*4.8.3 Avail wholesale ADSL service to its retail business and other licensed Operators using the same prices, processes and terms;*

*4.8.4 File with the Authority by June 2017 for Approval, Wholesale reference Offers for offering wholesale ADSL to its retail business and other licensed operators; and*

*4.8.5 have the approved Wholesale Reference Offers publicly available by September 2017*

4.7 In response to the Directive, the Respondent submitted Wholesale Broadband Connect Reference Offer and indicated that the services will be delivered over three (3) service platforms, more specifically, Copper, Very High-Speed Digital Subscriber Line (VDSL) and Wireless. In addition, the Respondent submitted to the Authority revised wholesale high speed broadband tariff filling which were later approved.

4.8 The Complainant applied to become a retailer of the VDSL, which is far superior to ADSL in terms of data transmission rates, and the Respondent refused to supply the VDSL services. The VDSL is the improved fixed broadband solution which has fibre to the cabinet access network and uses copper wire to deliver the data service to



the end customers. The VDSL is therefore the improved version of the ADSL and allows the network to deliver high speed data rates of up to 50 Mbps.

4.9 The Respondent alleges that it has taken a strategic decision not to offer VDSL, which is offering high data rate speed as a wholesale service, on the basis that the market is fully liberalised and the Complainant can use other methods such as radio, copper, fibre ethernet-over-copper. Furthermore, the Respondent argued that Botswana Fibre Network, a wholesale provider, can sell to the Complainant fibre and allow them to establish their own innovative VDSL network.

4.10 While it is accepted by both parties that ADSL is offered as a product, there has been some contradicting statements from the Respondent on whether VDSL is a product or merely a technology. The Respondent under oath, in its answering affidavit, has admitted and referred to VDSL as a product, but denied it as a product in its letters during the process of discovery and during the fact-finding meeting of 21 April 2021, choosing instead to refer to it as a technology.

4.11 It is common cause that the Respondent only offers ADSL at wholesale and has reserved for its retail customers the superior VDSL. This decision, the Respondent maintains, is a strategic business decision. The Respondent has refused and maintained that it does not offer the superior VDSL product at wholesale and therefore not available to be ordered by the Complainant.

4.12 However, in affidavits filed with the Authority, the Respondent has stated that they underwent trials for the VDSL product to test it in the market. Thereafter, approval of the Authority for the product was sought and in fact given (see tables below). There have been some rather unfortunate allegations made by the Respondent relating to this approval, namely that its filing with the Authority was unauthorised. It is worth noting at this juncture that the alleged decision to cease offering VDSL at wholesale level has never been communicated to the Authority as per regulatory requirement.

4.13 The wholesale highspeed broadband (VDSL) prices that were approved for the Respondent on the 15 December 2017 are illustrated in the table below.

*Table 1: Approved Wholesale Highspeed Broadband Prices*

Mbps	Total Cost (BWP)	No Contract Price (BWP)	1 Year Contract Price (BWP)	2 Year Contract Price (BWP)
10	423.23	644.96	612.71	580.46
20	624.13	856.13	813.32	770.52
50	988.98	1318.90	1258.00	1199.00

*Table 2:* The subsequent retail prices approved on the 29 May 2018 are illustrated in the table below:

Mbps	No Contract Price (BWP)	1 Year Contract Price (BWP)	2 Year Contract Price (BWP)	3 Year Contract Price (BWP)
4Mbps	715.00	698.00	655.00	436.00
20Mbps	1,315.00	1,205.00	1,085.00	975.00
50Mbps	2,715.00	2,505.00	2,295.00	1,985.00

4.14 The Complainant further alleges that the superior VDSL, is offered to the Respondent's retail client at a very cheap price, or heavily discounted, as compared to the prices offered at wholesale. Specifically, the Complainant alleges that the Respondent charges 34% more for inferior ADSL wholesale services than the superior VDSL retail services. While denying this allegation, the Respondent has accepted that one of its retail customers enjoys a rather high discount for high-speed internet service they call corporate internet. The discount, which by the Respondent's admission, is below the cost price, was offered to retain such customer from moving its business to the competition.

## **5. THE ISSUE**

5.1 The crux of the matter is therefore whether the Respondent, in refusing to offer VDSL, which it is an improved version of the ADSL, at wholesale has violated any of its Licence Conditions, Regulatory Directive or any provisions of the CRA Act.

5.2 The Authority directed the parties to make submissions on one issue, that is to provide their understanding of Clause 17 of the licence as read with the Botswana Telecommunications Authority Guidelines on Tariffs for Telecommunications Services, February 2011, and then address whether the Respondent has contravened the said Clause 17 of their licences.

5.3 For avoidance of doubt, Clause 17 of the parties' Services and Applications licences read as follows: -

*“17. Undue Preference and Discrimination*

*17.1 The Licensee shall offer to provide to Other Operators on a fair wholesale basis the services and applications that they may require from the Licensee in order to provide any retail service and application in competition with a retail service and applications offered by the Licensee.*

*17.2 If agreement on wholesale terms cannot be reached between the Licensee and any Other Operator who wishes to offer a retail service in competition to one that is offered by the Licensee within 30 days of the initial request, either party to the proposed agreement may refer the dispute to the Authority, or the Authority may require the dispute to be referred to it by issuing a notice to that effect to the parties. If a dispute is referred to, or called in by the Authority, the Authority will issue a determination in respect of the terms of the arrangement in dispute taking into account all relevant facts and circumstances, and also relevant international benchmarks, and may provide for all necessary matters, including but not limited to the timings, costs, pricing and billing, ordering, testing and management and dispute resolution, as it deems fit. The Licensee shall be bound by the determination.*

*17.3 The Licensee shall not show undue preference to, or exercise unfair discrimination against any User, or Other Operator regarding the provision of any of the service and applications or regarding interconnection or access. The Licensee will be deemed to be in breach of this condition if it favours any business carried on by the Licensee, or by an associated company or any Other Operator, so as to place any Other Operator competing with such a business at an unfair disadvantage in relation to the provisions of a competitive activity.”*

## **6. ANALYSIS**

### Interpretation of Clause 17.

6.1 As alluded to above, the Authority is charged with the legal mandate to monitor the performance of the regulated sectors in relation to levels of, among others, investment, availability, quantity, quality, pricing and the cost of services. To do this, the Authority operates with a Licensing Framework and other regulatory guidance documents, including the Guidelines on Tariffs for Telecommunication Services of February 2011 (“Guidelines on Tariffs”) and the Regulatory Directive No. 1 of 2017. All the industry

regulations and guidelines are developed by the Authority in a transparent manner with stakeholder involvement.

6.2 Clause 17 of the Licence, which is subject of this dispute, directly falls under the Authority regulatory and legal mandate per Section 6(2) (c) to ensure fair and non-discriminatory pricing by any of the regulated entities. To put this into context, the Authority approves tariffs of all its regulated entities, and does this under the guidance of Section 90, with emphasis on the cost of service. In making an approval, the Authority only approves the ceiling, which is the maximum price a product or service is to be charged and leaves it for the service provider to decide on the actual price to be charged having regard to the market. Although the regulated entities reserve the discretion to price their services subject to regulatory approval, they are also guided by a set of principles offered by the Authority in their Licences and through the Guidelines on Tariffs, to ensure that there is fairness non-discrimination and transparency.

6.3 The following are some of the guiding principles contained in the Guidelines on Tariffs:-

6.3.1 **Cost-based-** The tariffs offered to the public should reflect the underlying costs of providing the services. Operators should not offer tariff rates or charges that are below the true cost of providing service.

6.3.2 **Transparency-** To discourage anti-competitive practices, operators should publish details of tariffs and fees and any other terms and conditions on which its services are provided by making them available to the public.

6.3.3 **Non-discrimination-** An operator should not offer different conditions to different customers for the same service provided. An operator, therefore, has to offer the customers the same tariff for identical services. An operator may, however, give discounts to customers based on volumes.

6.3.4 **Discount Schemes-** The Authority should be informed of all discount schemes available to customers so as to ensure that they are transparent and non-discriminatory.

6.4 Clause 17.1 of the Licence clearly states that the holder of a licence shall offer to other operators, on a fair wholesale basis, the services and applications that such other operator may require to provide retail services and application in competition with a retail service and application offered by such licence holder. Other operator is defined in Clause 1.2.22 of the same Licence as any other person licensed to operate network facilities and/or provide services and applications which is available for use by the public in terms of the CRA Act. The Complainant and the Respondent have an indefinite agreement for the wholesale offering of services and applications through a Master Services Agreement signed in 2013.

6.5 Clause 17.2 simply provides for a mechanism of resolving disputes in instances of disagreements pertaining to the agreement entered into pursuant to Clause 17.2. The Authority is given the power to issue a determination in respect of the terms of the agreement in dispute, considering all relevant facts and circumstances as well as international benchmarks.

- 6.6 Clause 17.3 deals specifically with the discrimination, making a mandatory requirement that no licence holder shall show undue preference to, or exercise discrimination against other operators regarding the provision of any of the services and applications. The licence holder will, in this instance, be considered to be in breach of their licence if it favours any business carried on by itself, or by its associate company or any other operator, in order that such favour places other operators at a disadvantage in relation to the provision of a competitive activity.
- 6.7 The principles articulated above contained in the Guidelines on Tariffs, provides a clear explanation of what constitutes non-discrimination and how to ensure transparency as well as how to offer discount schemes. A simple reading of this Clause provides that no operator should offer different conditions to different customers for the same service provided and at the same prices. To ensure transparency, any discount scheme on offer shall not only be communicated to the regulator but also availed to customers indiscriminately.

#### Did the Respondent breach Clause 17

- 6.8 The Respondent, by its own admission, has extended a different and superior, service to its retail customers only, to the exclusion of other retail customers serviced by the Complainant and other internet service providers. The Complainant and other internet service providers purchase wholesale internet packages from the Respondent and sell these at retail to their own clients. The

Respondent also sells internet at retail to its own clients. The parties therefore are competing in the same retail market space.

6.9 The Respondent has taken a decision, explained merely as a strategic business decision, to limit the kind of services it offers at wholesale, a decision that is clear discrimination and favours the Respondent's business as against that of the Complainant. In response to the questions from the Authority at the fact-finding meeting, the Respondent admitted that there are no technical challenges or impossibilities in offering the same service to the Complainant's retail customers that it offers to its own. In fact, the Respondent took this very service to the market on a two (2) months trial between October and November 2017 and found that it performed well and was able to deliver high speed broadband to the customers. Post trials, regulatory approvals were sought in December 2017, which included tariffs for wholesale VDSL or high-speed broadband internet.

6.10 In a later submission of information at the request of the Authority, vide letter of 28 April 2021, the Respondent claims that its Management never sanctioned a pilot project on VDSL, nor did they authorise any applications for regulatory approval to the Authority on VDSL. The Respondent says that Mr Nyatseng, whilst still their employee (who is now the Complainant's Managing Director and Representative) was not authorised to run the pilot project nor file any applications for tariff approvals relating to VDSL. The Respondent alleges that all letters written by Mr Nyatseng either for the pilot or communicating to the Regulator vide VDSL or high-



speed broadband internet were never sanctioned and thus Mr Nyatseng was acting at his own accord.

6.11 Firstly, and of interest, is that the very prices currently used for offering of VDSL or high-speed broadband internet by the Respondent are the exact prices approved by the Authority pursuant to Mr Nyatseng's applications. Secondly, in their affidavits under oath, the Respondent stated that a trial was undertaken for the VDSL offering and post that trial a decision taken by Management to not offer such service at wholesale. Thirdly, in filing for tariff approvals, the application documents were signed by other employees of the Respondent apart from Mr Nyatseng (in this instance one Andria Maletse-Regulatory & Competition Policy Advisor). Fourth, it is difficult to believe the Respondent's assertion that Mr Nyatseng's actions were unauthorised, when one considers the number of correspondence exchanged during the request for regulatory approval, which communication was always addressed to the Respondent's Managing Director.

6.12 On the basis of the above, the Authority views the Respondent's claim as untenable and a poor attempt to defend a clearly sanctioned corporate decision. The Authority therefore dismisses the allegations that the trial or regulatory approvals were not sanctioned.

6.13 The only issue, according to the Respondent, is that it has taken a business decision to phase out its wholesale business, as part of its strategic direction (business strategy), and thus those on wholesale offerings are on a maintenance mode. Even as the Respondent

states this, it has continued to take in new orders for wholesale products as evidenced by new orders for the Complainant.

- 6.14 The Respondent states that a presentation on its strategic direction, ostensibly including the above decision, was made to the Authority. It must be made clear that a mere presentation to the Authority is not communication of any decision, nor will the Authority take same as such. Any serious and intended decision, especially affecting approved services that ultimately affect the market, are followed with a written communication of such with adherence to proper regulatory processes and requirements. The Respondent's response that a presentation of its strategic decision was made is unconvincing, particularly as the Respondent has been in the business long enough to fully appreciate that termination of any service that has been approved by the Regulator and in fact taken to the consumers requires regulatory engagement prior to cessation. This is done as the Authority needs to appreciate the reasons for and impact of discontinuing any service on the market and consumers.
- 6.15 The question of whether VDSL as offered by the Respondent is a technology or a product, is not as important for this purpose, the pertinent issue being, whether such product or technology, which is superior and faster being offered discriminately gives the Respondent's business an unfair advantage over the Complainant's, who are only offered the slower ADSL.
- 6.16 The VDSL offered by the Respondent is an improved version of the ADSL, which the Authority issued a Directive No 1 of 2017 on- that

it should be provided to other service providers as a wholesale service on the same terms, processes and prices. The rationale behind such Directive is that the Respondent is the only one currently owning the copper cable to the customer as an Incumbent Fixed line Operator. Therefore, if the Respondent is desirous of stopping the provision of wholesale services it should seek the necessary regulatory intervention, more so given that the Authority had approved wholesale tariffs for the product in question.

6.17 With regard to pricing, the Respondent has repeatedly stated that all prices charged are as approved by the Authority, and thus any prices charged to its customers are in line with the licence conditions. It is important to reiterate that the Authority approves a maximum limit, however, such approvals take into consideration, amongst others, the actual cost of providing the service or product in question. It is important therefore that any discounts offered, must not be below such cost of service and must be offered indiscriminately and with transparency.

6.18 The approved prices as shown at the two tables above indicate that the retail price is always higher than the wholesale price. This is so because retail prices cover the costs incurred to provide the service plus a mark-up. The Regulator acknowledges that businesses sometimes offer volume-based discounts and other incentives to its customers, however, retail prices and any discounts, should never be lower than the actual costs to the business otherwise such a practise would undercut the market. In a competitive market, prices are determined by the forces of supply and demand but should never go below the costs of provision thereof.

6.19 The prices offered by the Respondent to one or a few of its customers to the exclusion of others and without a transparent discount scheme are not compliant with the Directive No. 1 of 2017 nor the Tariff Guidelines. The decision to offer prices below the cost of service, thereby undercutting the market, is also contrary to the Directive and the Tariff Guidelines designed for regulation of the sector to ensure a level playing field.

## **7 FINDINGS**

7.1 In summary therefore, the Authority finds that:-

7.1.1 the Authority does not have jurisdiction to make a determination on the alleged contravention of the Competition Act and therefore refers all such issues to the Competition Commission in accordance with Section 89 of the CRA Act;

7.1.2 the Respondent acted in contravention of its own Licence condition, specifically Clause 17.1 as read with Clause 17.3 and the Tariff Guidelines by refusing to offer wholesale services to other licensed operators, choosing to offer the service at retail only to its business, especially as Wholesale high speed fixed broadband service and tariffs had been approved by the Regulator.

7.1.3 the Respondent acted in breach of the Regulatory Directive 1 of 2017 by failing to avail wholesale services to other licensed Operators using the same prices, processes and terms.

7.1.4 the Respondent acted contrary to the Authority's Tariff Guidelines and the Regulatory Directive No. 1 of 2017 by:-

- i) discriminately offering services only to its business and refusing to avail same on a wholesale basis to other licensed operators;
- ii) discriminately offering discount services to one (or a select few) of its customers and not availing such discount (whether a scheme or not) to other customers and thus failing to be transparent; and
- iii) offering services to one of its customers at a cost below the cost price.

7.2 In exercise of the powers in Clause 17.2 of the Services and Applications Licence as well as Section 6(2) (j) as read with Section 78 (5) of the CRA Act, the Authority hereby directs the Respondent to ensure compliance with its own Licence Condition, and offer at wholesale services using copper (including the improved version of the ADSL) in accordance with the Wholesale Reference Offer and the Regulatory Directive. For so long as the services remains available to its own business, the Respondent is directed to therefore offer the same service on the same prices, processes and terms to the Complainant (and any other licensed operator) without favour for its own businesses contrary to Clause 17.1 as read with Clause 17.3 of the Licence. The Respondent should offer the services to the Complainant within 30 days from receipt of this Ruling in accordance with the Wholesale tariffs approved by the Authority.

7.3 With regards to contravention of the Regulatory Directive and Tariff Guidelines as per paragraphs 7.1.3 and 7.1.4 above, the Authority hereby issues a stern warning for the Respondent to desist, with immediate effect, from this breach and to ensure that remedial steps are taken within a period of no later than thirty (30) working days from receipt of this Ruling. Should the Respondent fail to remedy this contravention within the stipulated time, the Authority will, within a period of 14 working days from date of such failure, impose a civil penalty as empowered by the CRA Act and calculated in accordance with the BOCRA Penalty Framework of 2020.

## **8. RIGHT OF APPEAL**

8.1 In terms of Section 79 of the Communications Regulatory Authority Act of 2012 read with paragraph 38 of the BOCRA Enforcement Guidelines, both parties are advised of their right to appeal the decision/resolution of the Board..

**DELIVERED ON VIA MICROSOFT TEAMS ON FRIDAY 13 AUGUST  
2021**

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**SIGNED BY THE BOARD SECRETARY**