



PUBLIC NOTICE

MULTICHOICE MALAWI VERSUS MACRA COURT CASE UPDATE

1.0 INTRODUCTION

The Malawi Communications Regulatory Authority (MACRA) wishes to update the public on the ongoing matter involving MultiChoice Malawi (MCM), where MCM dragged MACRA to the High Court of Malawi, challenging MACRA's determination that MCM had breached its statutory and licence obligations by raising DSTv tariffs without prior approval from MACRA. This statement intends to put into proper perspective the developments surrounding this matter.

2.0 WHAT IS THE MAIN ISSUE IN COURT?

- 2.1** MCM wrote MACRA on 3rd June 2022 to apply for GOTv and DSTv tariff adjustment pursuant to section 74 of the Communications Act.
- 2.2** Before MACRA decided on the tariff revision request, MCM, on 21st June 2022, made a public announcement to unilaterally adjust the DSTv tariffs effective 15th July 2022.
- 2.3** On 28th June 2022, MACRA wrote MCM, notifying it of breach of licence and s.74 of the Communications Act.

- 2.4** On 12th July 2022, MCM wrote MACRA expressing their refusal to appear before a hearing and address the notice issued by MACRA. Instead, MCM opted to pursue legal action by seeking an injunction to restrain MACRA from implementing the determination that it had made.
- 2.5** On 25 July 2022, the High Court ruled against MCM’s application for an injunction, stating that MCM needed to first exhaust the dispute resolution channels within their licence framework and await the decision of MACRA on the matter.
- 2.6** On 28th November 2022, MCM appeared and made representations before MACRA in Blantyre for the hearing of the allegation of breach of licence and statutory provisions. On 22nd December 2022, the MACRA Board determined that MCM violated the conditions of its support and Communications Act related to tariff approval requirements (the “Determination”).
- 2.7** On 13th January 2023, MCM obtained an injunction restraining MACRA from implementing the Determination and obtained permission to commence judicial review proceedings against MACRA.
- 2.8** It is, therefore, worth noting that it was MCM, and not MACRA, that initiated the legal proceedings by approaching the Court on 13th January 2023.

3.0 MACRA’S POSITION ON THE MATTER?

- 3.1** MACRA’s position is that any communication service tariffs should not be set or be revised without MACRA’s prior approval as per section 74 of the Communications Act, and DSTv tariffs are no exception. It is further essential

to clarify that MACRA is not objecting to any upward or downward revision of the DSTv tariffs by MCM but, instead, MACRA is seeking to prevent implementation of a revised tariff without its prior approval to allow it to carry out its consumer obligation of ensuring that such adjustments are backed by economic justifications in line with s.74 of the Communications Act.

- 3.2** The public may wish to note that before the current dispute arose, MCM had been applying for, and obtaining, approvals from MACRA whenever it wanted to revise its tariffs. It is only this time that MCM has implemented its tariffs unilaterally without any input from MACRA.
- 3.3** Following the injunction that MCM obtained in January 2023, MACRA, as a law-abiding citizen, did not implement its Determination. During this time, as has been stated below, attempts were made by the MACRA Board to reach an amicable settlement of the matter. In June 2023, the Board met the senior team of MultiChoice Africa (MCA) in Salima, where an understanding was reached on how the parties were to proceed.
- 3.4** Despite the said engagement in Salima and notwithstanding the status quo that the court had set through the injunction that was granted in January 2023, MCM in July 2023 yet again proceeded to implement another unilateral increase in tariffs, which was due to an effective 1st August 2023.
- 3.5** On 8th August 2023, MACRA successfully obtained an injunction against MCM for, once again, raising its tariffs in July 2023 without the prior approval of MACRA, contrary to the status quo that the court had set.

4.0. CONTACT AND DIALOGUE ATTEMPTS/JUDICIAL INTERVENTIONS BETWEEN MACRA AND MCM

Since the issue started in June 2022, MACRA has had the following interface meetings with MCM and Multichoice Africa:

- 4.1** *28th November 2022 - BLANTYRE:* MCM and Multichoice Africa Holdings officials appeared before the Legal and Administration Committee of MACRA Board, which recommended to the Board to make a final finding of breach of its licence and the Communications Act for revising tariffs without MACRA's approval. Before the hearing, MACRA had requested MCM to make written representations, which they submitted to MACRA.
- 4.2** *17th January 2023 - LILONGWE:* MCM and MACRA engaged in Lilongwe for an amicable settlement of the Court case. Multichoice Group was led by the Chief Executive Officer for Multichoice Africa Holdings, Dr Kea Modimoeng, while MACRA Director General, Daud Suleman, led MACRA. The meeting resolved to have technical and legal experts from both sides thrush the matter and develop a possible out-of-court case settlement.
- 4.3** *23rd to 27th January 2023- NKOPOLA, MANGOCHI:* MACRA and MCM legal and technical experts met in Mangochi to negotiate the amicable settlement as agreed during the 17th January 2023 meeting aforesaid. Negotiations failed because MCM refused to continue seeking prior approval of tariffs as it had done in previous years. The same was reported back to the respective principals.

4.4 *14th June 2023 - SALIMA:* MACRA Board, led by Board Chairperson Dr Stanley Khaila, met the MCM and Multichoice Africa, led by Dr Kea Modimoeng, the Group CEO, to discuss the potential out-of-court settlement of the matter. On 20th July 2023, the MACRA Board Chairperson sent to MCM and Multichoice Africa agreed terms of the out-of-court payment. However, to date, MCM has yet to acknowledge or respond.

5.0 CURRENT STATUS QUO

5.1 Following the announcement of MCM's unilateral revision of its tariffs, MACRA obtained an *ex-parte* injunction against MCM's unauthorized tariffs which were due for implementation on 1st August, 2023. On 8th August, 2023, the High Court upheld the said injunction having heard both parties. Following the Court's decision, MCM withdrew its DSTv services on the same day, citing a hostile environment.

5.2 *25th August 2023 - LILONGWE:* The High Court heard the judicial review case in which MCM sued MACRA in January 2023. The court has reserved its judgment on the matter.

6.0 INTERFACES BETWEEN MACRA AND THE MINISTRY OF INFORMATION AND DIGITALISATION

6.1 28th November 2022 - **BLANTYRE:** During the hearing of MCM for revising tariffs without MACRA approval, the Ministry attended the meeting as part of the Legal and Administration Committee of the MACRA Board.

- 6.2 22nd December 2022 - **LILONGWE**: The Ministry was represented at the Board meeting that approved the recommendation from the Legal and Administration Committee of the MACRA Board.
- 6.3 14th June 2023 - **SALIMA**: MCM and MACRA Board met to consider an out-of-court settlement, and the Ministry was represented as part of the MACRA Board.
- 6.4 11th August 2023 - **BLANTYRE**: The Ministry attended MACRA's Board meeting, and the Minister of Information and Digitalization, Hon. Moses Kunkuyu Kalongashawa, was also present to receive an update on the Multichoice issue. MACRA outlined its position and presented no dissenting views during the meeting.
- 6.5 16th August 2023-**NATIONAL ASSEMBLY, LILONGWE**: MACRA Management appeared before the Media and Communication Committee of Parliament alongside the Ministry, which was led by the Minister of Information and Digitalization, Hon. Moses Kunkuyu Kalongashawa, to address the Committee on the MCM v MACRA tariffs dispute.
- 6.6 21st August 2023 – **NKOPOLA, MANGOCHI**: The Ministry, led by the Minister of Information and Digitalization, Hon. Moses Kunkuyu Kalongashawa, met the MACRA Board where MACRA reinstated its position on MCM and no dissenting views were presented to the Board.
- 6.7 22nd August 2023 – **CAPITAL HILL, LILONGWE**: The Board Chairperson (Dr Stanly Khaila), Director Isaac Songea, Solicitor General (Allison M'bang'ombe) and Director General (Daud Suleman) were called for a

meeting at Capital Hill. In attendance were the Minister of Information and Digitalization, Hon. Moses Kunkuyu Kalongashawa, the Minister of Justice and Constitutional Affairs, and representatives from the Ministries of Industry and Trade and Finance and Economic Affairs. The meeting was cancelled.

6.8 26th August 2023 - **BLANTYRE**: MACRA convened an extraordinary Board meeting where the MCM injunction and possible out-of-court settlement were deliberated. The Ministry was represented and undertook to facilitate negotiations between the parties.

As can be observed, the Ministry has always been part and parcel of MACRA's decisions about this matter.

7.0 WHAT IS THE CURRENT POSITION OF MACRA?

7.1 As an institution that upholds the rule of law, MACRA is awaiting the Court's verdict on the judicial review that MCM initiated. MACRA shall respect the decision of the Court on the matter, as it abides by the law.

7.2 MACRA is willing to resolve the issue peacefully outside court and welcomes reasonable suggestions that align with relevant laws and the licence.

Dated this 26th August 2023.



Daud Suleman

Director General

Malawi Communications Regulatory Authority