Decision of the ADVERTISING REGULATORY BOARD

Advertiser	Mobile Telephone Networks (Pty) Ltd
Consumer/Competitor	Consumer
File reference	4032 – MTN
Outcome	Partially upheld
Date	27 June 2025

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against claims made, *inter alia*, the Advertiser's website.

Description of the advertising

The advertising (which can be accessed from the Advertiser's website at https://www.mtn.co.za/shop/deals/plan/contract/shesh@-600/MD115) lists several features and information. The portions that appear to be relevant to the dispute are:

- "R399 MONTH-TO-MONTH" and "PAY MONTHLY R399"
- "Includes free-to-use router" and "MTN 5G Home Router FREE".

The Complainant also drew attention to information about this product appearing on https://mybroadband.co.za/news/5g/585797-mtn-launches-new-5g-deals-for-under-r400.html. This material communicates similar information to that which appeared on the Advertiser's website.

Complaint

The Complainant raised the following objections:

1. The advertised price does not include VAT,
2. The advertising does not stipulate that *pro-rata* billing might apply upon sign-up,
3. The "free-to-use" router carries an up-front cost of R553 which is not disclosed. This is termed an "activation" cost, which contradicts the notion of a "free-to-use" router.

The Complainant stated that the ARB should investigate and instruct the Advertiser to disclose all mandatory costs and indicate the VAT exclusion.

Response

The Advertiser noted that the advertised price is VAT inclusive, and that the VAT exclusive price of R346.96 was clearly itemised as such on the Complainant's invoice.

The *pro-rata* payment was charged because the Complainant accepted the offer during the course of a current calendar month. As per Clause 5.1 of its Terms and Conditions (which appear on https://www.mtn.co.za/home/terms-and-conditions/content/mymtn-home-internet-5g-promotion-terms-and-conditions), *"… a pro-rata subscription amount as well as a full subscription amount for the next month must be paid upfront for all month-to-month customers (payment in advance)*". As the offer cannot be activated without a customer accepting and paying the relevant costs, it is impossible to argue that the Complainant was deceived.

Dealing with the alleged activation fee for the "free-to-use" router, the Advertiser noted that Clause 5.5 of the same Terms and Conditions stipulate that "*MTN reserves the right to charge a SIM activation fee.*" Aside from this activation fee, not further cost appears on the Complainant's invoice in relation to this router.

In an effort to prevent future problems, the Advertiser undertook to conduct refresher training with its call-centre staff and store agents to ensure proper disclosure of the applicable up-front costs.

Application of the Code of Advertising Practice

The Directorate considered the following provisions of the Code to be relevant to this dispute:

- Misleading claims (Clause 4.2.1 of Section II)
- Use of the word "free" (Clause 4.4 of Section II)
- Pricing policy (Clause 19 of Section II)

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

At the outset it should be noted that the Complainant provided two examples as part of his complaint.

The first example was taken from the Advertiser's own website at https://www.mtn.co.za/shop/deals/plan/contract/shesh@-600/MD115 whereas the second example was taken from a third-party website www.mybroadband.co.za.

While both websites are clearly describing the same offer, it is not immediately clear whether the information on https://mybroadband.co.za/news/5g/585797-mtn-launches-new-5g-deals-for-under-r400.html is actually advertising that falls within the jurisdiction of the ARB.

This page does not appear to contain any indication that it constitutes advertorial material. The typical "Advertorial", "Sponsored" or "Promoted" tags are not visible, and the content is attributed to "Hanno Labuschagne", one of the journalists who work with

MyBroadband. When one clicks on Hanno's name, it redirects to a page with "Articles by Hanno Labuschagne". While the Advertiser did refer to this as "advertorial" it is not immediately clear whether this was content that appeared at the instance of the Advertiser (which would constitute advertising) or merely editorial content by MyBroadband.

Be that as it may, the wording and imagery used in this example is not significantly different to that which appears on the Advertiser's website (which was pertinently referenced by the Complainant). The contested claims or statements ("R399", and "free-to-use router") appear on all the examples submitted by both parties, and the overall tone and context is virtually identical. It is, therefore, not necessary for the Directorate to draw any material distinction between these examples, as doing so would have no material impact on the discussion or decision below.

Clause 19 of Section II states, *inter alia*, that "*The selling price at which the goods will be sold to the purchaser against immediate payment must be quoted in full." It further stipulates that "Such selling price must include all necessary or incidental costs without which the product cannot or may not be purchased.*"

Clause 4.4 of Section II states, *inter alia*, that "*Products should not be described as 'free' where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.*" It also notes that *"… advertisers should … make no attempt to recover the cost to them of the product by such methods as the imposition of packaging and handling charges, the inflation of the true cost of delivery, freight or postage, an increase in the usual price of the product with which the 'free' product is offered, a reduction in its quality, or otherwise.*"

Finally, Clause 4.2.1 of Section II stipulates that advertising should not create confusion or deception by means of ambiguity, exaggeration, omission or otherwise.

There are, effectively, three issues for the Directorate to consider. These issues will be adjudicated on separately for the sake of clarity:

VAT inclusive pricing

The Complainant alleged that the advertised price of R399 does not include VAT, and that the real price is, therefore, higher than advertised.

The Advertiser denied this, and referred to the Complainant's invoice, which stipulates a VAT-exclusive price of R346.96.

It is not entirely clear what prompted the Complainant to believe that he was charged VAT on top of the advertised price of R399. The invoice attached to the response appears to belong to the Complainant. It stipulates the price of the monthly subscription as R346.96 under a column titled "Amount excl. VAT". The Directorate also notes that when VAT of 15% is added to this price, the total is R399 which matches the advertised price.

It would therefore appear that the Complainant is mistaken in his belief that the advertised price of R399 is exclusive of VAT. The information put before the Directorate appears to contradict this.

By virtue of this, it would appear that the monthly subscription cost of R399 is not misleading or inaccurate for the reasons advanced in the Complaint. Accordingly, the monthly price of R399 does not appear to contravene Clause 4.2.1, Clause 4.4 of Section II, or Clause 19 of Section II for the reasons advanced in the Complaint.

Pro-rata payment

The Complainant argued that he was asked to pay a *pro-rata* amount when he signed up for this offer. He argued that this was misleading, as the advertising makes no mention of the applicability of any *pro-rata* payments.

The Advertiser explained that the Complainant subscribed during the course of a month, which is why he was charged a *pro-rata* fee for the period between his decision to join and the end of the month. The copy of the Complainant's invoice also appears to indicate that his contract was concluded on 27 May 2025, and that his *pro-rata* payment would be added to his regular monthly payment of R399 to ensure connectivity until the end of June 2025.

While neither party drew attention to this, it is noted that there are instances on the Advertiser's website where this product is promoted with wording that reads "No commitments, cancel anytime, Pro-rata fees apply." One example is attached as Annexure B to the response.

It is also noted that the examples attached to the Complaint (which were taken from the Advertiser's website) appear to be incomplete. His attachment only references pages "1/4" and "2/4" of what appears to be a four-page document. It is therefore plausible that the remaining pages may well have contained the same notice.

Regardless of whether the statement "Pro-rata fees apply" was present when the Complainant decided to lodge his complaint, the Directorate is not convinced that the absence of a pertinent reference to this effect would necessarily be misleading.

This is, after all, a product or service that provides a monthly allocation of data at a set rate. Customers who subscribe to this service at the beginning of any month would, therefore, expect to pay the advertised price, and receive their full monthly allocation of data. However, the Directorate does not believe that a reasonable customer who subscribes to this service halfway through, or at the end of any month, would expect to pay for a full month, or receive a full month's worth of data when there are only a few days left in said month. Similarly, they could not expect to receive data for free for that piece of the month.

It is arguably common practice for network providers to charge *pro-rata* fees proportionate to when a new customer joins. This is typically done when one subscribes to any new subscription service, especially in the telecommunications industry.

Customers could, conceivably, wait until the end of the month to subscribe so that they may be allocate the full amount of data and pay full price for the following month. However, most consumers will opt for immediate connectivity.

In addition, the advertising does not create any suggestion that customers who join halfway through any month would be provided free data until the next month's subscription is due (which appears to be what the Complainant was expecting).

Finally, it is worth noting that *pro-rata* fees only apply when people join during the course of a month.

While true that the advertising might not have specifically stated that *pro-rata* payments might apply, the Directorate is also satisfied that a reasonable person would instinctively expect to pay a *pro-rata* amount for the remainder of the month in which he joins.

This aspect of the complaint is therefore dismissed.

"Free-to-use" router

The Complainant objected to the claim that the router was "free-to-use", as he was charged an "activation fee" of R553 before the Advertiser would activate the router for use.

The Advertiser referred to its terms and conditions, where it is stated that "MTN reserves the right to charge a SIM activation fee".

As noted earlier, the Code expressly requires advertisers to refrain from calling a product or service "free" when there is any cost to the consumer. The Code also expects advertisers to pertinently draw attention to any mandatory costs that might apply over-and-above that of the actual product.

The advertising creates an overwhelming expectation that the Advertiser provides this router at no cost to the consumer. The word "FREE" appears prominently across the examples submitted by both parties, as well as the Advertiser's website whenever the Advertiser's router is referenced.

Unlike the *pro-rata* payment discussed above, the Directorate does not believe that the average customer would instinctively expect an upfront "activation" fee to apply in order to be permitted to use this "free" router.

It is not immediately clear what the basis is for charging this fee, which means the Directorate cannot necessarily assume that it is an attempt to recover the cost of this “free" product. However, what is clear is that this is a non-negotiable, mandatory cost that is neither disclosed in the advertising, nor pertinently referenced in a way that draws the customer’s attention to it.

The fact that the Advertiser disclaims its “reserved right” to charge a non-specific activation fee in its Terms and Conditions is not sufficient. No indication is provided in the advertising that there are any terms or conditions attached to this “free-to-use” router. In addition, there is a significant difference between reserving one’s right to charge a fee, and actually charging a fee without disclosing it in advertising of the relevant offer, which the Advertiser is doing. At best, this information would be discovered after the initially misleading impression had already prompted the customer to subscribe.

It is also unclear to the Directorate whether every consumer who signs up for this offer is charged this fee; or if there was something in the complainant’s circumstances that triggered this fee.

It should also be noted that the same set of Terms and Conditions contain a large table titled “3 Pricing” which sets out pricing information about the Advertiser’s different “Home Internet Price Plans” (which includes the advertised offer). This table also gives no indication that an activation fee might apply – it too lists the “Device” (i.e., relevant router) as “Free to use”.

This omission of any indication of an additional cost associated with the “free-to-use” router is likely to create a misleading expectation with prospective customers that they would be provided with and able to use this router at no additional cost beyond the monthly (and, if applicable, the additional *pro-rata*) subscription cost.

While the Advertiser’s undertaking to conduct refresher training is commended, this does nothing to remedy the likely deception created by the advertising. The fact remains that the advertising at issue created an inaccurate expectation which omits material information about an additional, mandatory cost.

As such the advertising in its current format creates a misleading expectation about the "free-to-use" router in a manner that contravenes Clause 4.2.1 of Section II of the Code.

Instruction to the Advertiser

The Advertiser is, therefore, instructed to remove and/or appropriately amend all its "free-to-use" claims in association with its router to ensure that prospective customers are alerted to the fact that this "free" device carries or may carry an additional activation cost.

Members of the ARB are requested not to accept any advertising for the Advertiser's "Shesh@ 600" product that claims to offer a "free-to-use" router unless it is clearly explained that a mandatory cost is or might be associated with this "free" product.