



THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 135 OF 2023

AIRTEL UGANDA LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. EDWARD BIRYETEGA,
HON. CHRISTINE KATWE**

RULING

I. Introduction

1. This application concerns the interpretation and administration of the now repealed Over-the-Top (OTT) tax introduced by the Excise Duty (Amendment) Act, 2018. The Respondent assessed the Applicant for additional Local Excise Duty amounting to Shs.17,653,137,002 on the basis that the Applicant underdeclared OTT access between March 2020 and June 2021. The Applicant disputes both the factual and legal foundations of the assessment, contending that the Respondent relied on technical assumptions, data processing methodologies and traffic thresholds that neither reflected actual access to OTT services nor corresponded with the statutory charging provision. The dispute ultimately requires the Tribunal to determine whether the Respondent reliably established the taxable event contemplated by Parliament and whether the resulting assessment can stand.

II. Background facts

2. The Applicant is engaged in the business of Telecommunication Services. On the 23 August 2022, the Respondent initiated an audit of the Applicant for the period July 2019 to June 2021, specific to OTT services. In the audit period, the government levied an Over-The-Top (OTT) tax in Uganda, which was a daily levy of Shs. 200 charged to internet users for accessing social media and messaging platforms like WhatsApp, Facebook, and Twitter. The tax was repealed in July 2021.
3. During the audit, the parties had several communications, engagements, and meetings to discuss the Respondent's findings. On the 17 April 2023, the Respondent issued a management letter with a Local Excise Duty assessment amounting to Shs.17,653,137,002, purportedly arising from undeclared OTT access.
4. The Applicant objected to the assessments online on the 26 April 2023 and manually on 3 May 2023, contending that there was no under declaration on their part. The Respondent maintained the assessments on 25 July 2023, prompting this application.

III. Issues for determination

5. The following are issues for determination;
 - i. Whether the Applicant is liable to pay the assessed tax
 - ii. What remedies are available to the parties

IV. Representation

6. Mr. Cephas Birungyi, Mr. Enoch Barata, Mr. Agaba Richard, Ms. Belinda Nakiganda, Ms. Gloria Mainuka, Ms. Jackie Aturinda and Ms. Linda Mugisha, all of M/s Birungyi, Barata & Associates, appeared for the Applicant.

The Respondent was represented by Ms. Gloria Twinomugisha, Mr. Tonny Kalungi, Mr. Simon Peter Orishaba, and Ms. Eseza Victoria Ssendege, all Legal Officers from its Legal Services and Board Affairs Department.

The Applicant's evidence

The Evidence of Timothy Kirabira (AW1), Tax Manager

7. Timothy Kirabira (AW1), the Applicant's Tax Manager, testified on the implementation and administration of the Over-the-Top (OTT) tax regime, the Applicant's collection and remittance mechanisms, the tax audit conducted by the Respondent, and the grounds upon which the Applicant challenges the additional assessment. In support of his testimony, the witness relied on stakeholder correspondence, tax returns, audit correspondence, assessment notices, objection documents and regulatory records concerning the operationalization of the OTT tax.
8. AW1 testified that following the enactment of the Excise Duty (Amendment) Act, 2018, telecommunications operators, the Uganda Communications Commission (UCC) and the Respondent held extensive consultative engagements to establish the modalities for implementing the tax. According to the witness, because the Act did not prescribe an operational mechanism for administering the tax, operators were required to leverage their existing infrastructure to enforce, collect and account for the levy. He further stated that stakeholders reached a consensus on the specific OTT services subject to the tax and adopted a twenty-four-hour access window as the baseline for implementation.
9. AW1 testified that the Applicant developed and deployed a gatekeeping system that required subscribers to pay OTT tax prior to being granted access to OTT platforms. He stated that all tax collections were recorded via an Online Virtual Account (OVA), which was fully visible to the

Respondent in real time, and that subscribers who had not paid the statutory levy were structurally barred from accessing OTT services through the Applicant's network. He maintained that the Applicant filed monthly Local Excise Duty returns in the format prescribed by the Respondent and timeously remitted all OTT tax collections. According to the witness, the Applicant collected and remitted a total of Shs.36,738,174,200 as OTT tax during the period under review.

10. The witness further testified that during the audit, the Respondent asserted that data procured from Global Voice Group (GVG) revealed subscribers accessed OTT services without paying the requisite tax. The witness stated that the Applicant repeatedly requested full disclosure of the underlying subscriber-level data, technical methodologies, assumptions, and computational workings but received insufficient information to independently audit or verify the impugned assessment.
11. AW1 impugned the methodology employed by the Respondent, contending that it improperly extracted data from the GPRS Tunnelling Protocol (GTP) layer of the Applicant's network, applied arbitrary data thresholds not prescribed by law, and failed to identify the specific subscribers alleged to have evaded the tax. He further testified that the Applicant's technical review of the limited sample data disclosed by the Respondent revealed profound anomalies. These included duplicated International Mobile Subscriber Identities (IMSI), the inclusion of non-OTT internet protocols, a failure to segregate blocked connection attempts from successful sessions, a failure to account for the agreed twenty-four-hour access protocol, and reliance on Internet Protocol (IP) addresses that did not correspond with the OTT services mutually designed during the implementation phase.

12. During cross-examination, AW1 was asked whether IP addresses are inherently dynamic or static, and whether digital platforms like Facebook utilise multiple IP addresses. The witness stated that he was not aware of whether Facebook utilised more than one IP address.
13. On re-examination, AW1 reiterated that the Respondent's audit findings were entirely derivative of information sourced from the Global Voice Group. He testified that the Applicant had no financial incentive to permit unauthorized or untaxed access OTT services, as the Applicant earned revenue from internet data bundles was earned irrespective of whether a subscriber elected to pay the statutory OTT tax. Consequently, permitting untaxed access would yield no commercial benefit to the Applicant. AW1 maintained that the Applicant fully declared and timeously remitted all OTT tax collected from its subscribers, categorically denying that subscribers were permitted to bypass the network's gatekeeping system or access OTT services through the Applicant's infrastructure without paying the prescribed statutory tax.
14. AW1 further clarified that when filing statutory OTT tax returns, the Applicant was only required to provide data within the four corners of the prescribed forms. He explained that the granular information requested from the Respondent during the audit was legally and technically necessary to enable the Applicant to verify the basis of the additional assessment. He maintained that in the absence of identifiable user profiles, proof of network access, empirical evidence of non-payment, specific details of the OTT platforms allegedly accessed, and the precise timeframes of such access, the assessment remained mathematically unverifiable.
15. Regarding the five-day sample used by the Respondent, AW1 testified that the Applicant was excluded from determining the sampling parameters and that the sample data was only disclosed post assessment. He emphasized

that the parties had never agreed that a localized sample would form the basis for extrapolating the wider assessment.

16. In response to clarificatory questions from the Tribunal, AW1 explained that the OVA functioned as a virtual ledger recording OTT tax collections enabling the Respondent to monitor tax balances continuously.
17. AW1 concluded that the Applicant reasonably expected any supplemental assessment to be substantiated by data identifying the affected subscribers and was denied the subscribers, proof of access without payment, specific services utilized, and a clear computational breakdown. Instead, the Respondent provided only high-level summarized spreadsheets, a workflow chart, and a generic list of OTT domains, which the Applicant deems legally and evidentially insufficient to sustain the assessment.

The Evidence of Jonnan Lukoda (AW2), Head of Revenue Assurance and Fraud Management

18. **Jonnan Lukoda (AW2)**, the Applicant's Head of Revenue Assurance and Fraud Management, testified on the technical implementation of the OTT tax on the Applicant's network, the systemic operational controls deployed to enforce tax compliance, the architectural distinction between the GTP and Gi regions of the network, and the Applicant's technical objections to the Respondent's assessment methodology.
19. AW2 testified that following the introduction of the OTT tax in 2018, the Respondent, the UCC and telecommunications operators held several consultative engagements to determine operational modalities in the absence of supporting statutory regulations. According to the witness, operators were directed to leverage their existing infrastructure and technology to enforce tax compliance, collect payments, file monthly statutory returns, and remit the revenue collected.

20. AW2 stated that the Applicant engineered a billing gate system that automatically blocked network access to OTT services, granting access only to subscribers who had paid the prescribed tax. He explained that this was achieved by configuring a Policy Control and Charging Rules Function (PCRF) system alongside a Policy Control Enforcement Function (PCEF), which were configured to enforce OTT restrictions by granting or denying access depending on whether a subscriber had paid the tax. He further testified that the Applicant maintained an Online Virtual Account (OVA) into which OTT payments were credited and that the Respondent had real-time visibility of that account.
21. The witness detailed the architecture of the Applicant's network, drawing an essential distinction between the GTP region and the Gi region. According to AW2, the GTP region contains raw, unsegregated data traffic comprising successful accesses, failed accesses and mere attempts to access services. Conversely, the Gi region is reached only after the relevant network policies have been applied and the subscriber has been permitted to access the intended service. He stated that validation of OTT access occurs through the PCRF and Gx interface while actual access is ultimately granted through the Gi region.
22. AW2 further testified that a probe maintained by Global Voice Group (GVG) was positioned in the GTP region and copied traffic information from that region. According to the witness, because the GTP region contains both successful and unsuccessful attempts, it was not the appropriate point from which to determine whether a subscriber had actually accessed an OTT service. He maintained that access could only be reliably verified after the relevant policy checks had been completed and the subscriber had been permitted to proceed to the Gi region.

23. AW2 further testified that the Respondent retrospectively introduced thresholds and additional measures that were not part of the framework applied during implementation of the OTT tax. He maintained that the Applicant declared and remitted all OTT tax collected from subscribers and denied that any subscriber was allowed to access OTT services through the Applicant's network without payment of the prescribed tax.
24. During cross-examination, AW2 testified that his primary responsibility as Head of Revenue Assurance and Fraud Management was to protect the network from revenue leakages. He acknowledged that during the historical phase of system learning and initial configurations, there had been isolated instances where subscribers accessed services prior to billing integration. However, he maintained that all designated OTT platforms were subsequently locked down, with enforcement executed strictly based on payment status rather than IP addresses.
25. The witness testified that the Respondent provided the Applicant with a five-day sample of data covering the period from 1 May 2021 to 5 May 2021 and asserted that the data mirrored the Applicant's data. According to AW2, the Applicant analysed the sample and identified several inconsistencies which were communicated to the Respondent. He further stated that the data disclosed by the Respondent was transactional data reflecting multiple attempts by subscribers to access OTT services, whereas OTT subscription itself was a single payment event. He maintained that the sample did not identify the specific IMSIs that allegedly accessed OTT services without paying the tax.
26. The witness conceded that data within the GTP region could identify a subscriber using IMSIs and MSISDNs and could show subscribers attempting to reach specific domains. However, he maintained that the existence of such traffic flags did not establish successful access to OTT service.

27. AW2 clarified that while the location of the GVG probe had been mutually agreed upon, that consensus was intended solely for monitoring general customer activity on the Airtel data network, not for auditing OTT tax compliance. He stated that the Applicant reviewed the Respondent's justifications regarding the identified data anomalies but found their explanations technically and legally unsatisfactory.
28. According to the witness, a network attempt is easily distinguishable from actual access because an attempt is visible within the GTP region, whereas successful access occurs exclusively post validation in the GI region. He testified that while the Applicant possessed the capability to isolate paying subscribers, payment dates, and subscription windows, the Respondent never requested IMSI-level data to accompany the monthly returns, relying solely on the information provided in the statutory forms and the OVA ledger.
29. On re-examination, AW2 testified that the "logic" relied upon by the Respondent was only disclosed during the objection stage after the repeal of the OTT tax. He further stated that the five-day sample provided by the Respondent was not raw data because logic had already been applied to the information before it was disclosed to the Applicant. He maintained that no additional data was provided beyond the five-day sample and denied that there had been any data leakages during the period in which the OTT tax was operational.
30. In response to clarificatory questions from the Tribunal, AW2 confirmed that the Respondent was fully aware of the Applicant's process flow and network implementation framework during the period in which the OTT tax was being administered.

The evidence of Mr. Ivan Karugaba (AW3), Commercial Financial Controller

31. Mr. Ivan Karugaba (AW3), the Applicant's Commercial Financial Controller, testified on the technical implementation of the OTT tax within the Applicant's network, the methodology deployed by the Respondent in raising the impugned assessment, and the Applicant's analysis of the data relied upon by the Respondent. He testified that following the introduction of OTT tax, the Applicant, together with other telecommunications operators, engaged with the Uganda Communications Commission (UCC) and the Respondent on the modalities of implementing the tax.
32. According to the witness, the Applicant configured its Policy and Charging Rules Function (PCRF) to enforce payment of OTT tax by blocking access to OTT services by subscribers who had not paid the tax. He maintained that the Applicant's systems were configured to ensure that OTT services could only be accessed upon payment and that no subscriber could access OTT services through the Applicant's network without payment of the prescribed tax.
33. The witness further testified that the Respondent's assessment was based on information allegedly obtained from Global Voice Group (GVG) through monitoring systems positioned within the GTP region of the Applicant's network. He challenged the Respondent's reliance on that data and maintained that actual OTT access could only be verified after application of PCRF controls. According to AW3, the GTP region contains both successful and unsuccessful attempts to access services and therefore cannot reliably determine whether a subscriber actually accessed OTT services. He maintained that the Respondent failed to provide the detailed workings, subscriber-level information, IMSI records, access records and payment reconciliations necessary to demonstrate that identified users had accessed OTT services without paying the corresponding tax.

34. AW3 testified that, upon request by the Applicant, the Respondent provided only a five-day sample dataset instead of the complete data underlying the assessment. According to the witness, the Applicant's analysis of that dataset disclosed numerous anomalies including duplicate IMSIs, records relating to subscribers who had paid OTT tax, repeated access attempts, VPN-related traffic, non-OTT protocols, low-payload records and inconsistencies in the Respondent's application of thresholds. He further testified that the sample data did not support the conclusions reached by the Respondent and did not reconcile with the impugned assessment. The witness also challenged the Respondent's use of a 1MB and subsequently a 1KB threshold as a determinant of OTT access, contending that such thresholds had no basis in law, regulation, industry standards or the agreed implementation framework.
35. The witness further testified that the Respondent's methodology failed to account for the prepaid nature of OTT subscriptions. He explained that subscribers could purchase access for periods ranging from a day to a year, and that valid access during a particular month could result from subscriptions purchased in earlier periods. According to the witness, the Respondent's methodology compared monthly accesses with subscriptions purchased within the same month and consequently failed to account for active subscriptions carried over from previous periods. He maintained that this resulted in double counting and arithmetic inconsistencies in the Respondent's computations.
36. During cross-examination, AW3 reiterated that the PCRF was a non-by-passable component of the network architecture that applied uniformity of access restrictions across the entire platform. He verified that the **Online Virtual Account (OVA)** maintained a complete, transparent record of all OTT subscriptions and payments, and that the tax returns filed by the Applicant were generated directly from systems built specifically to account for the OTT tax.

37. The witness also explained the distinction between raw and processed data, maintaining that the dataset disclosed by the Respondent was processed data because logic had already been applied to it before it was shared with the Applicant. He testified that the Applicant had requested complete data for the entire assessment period but was only provided with a limited five-day sample. According to AW3, the disclosed data was insufficient to enable the Applicant verify the Respondent's conclusions or independently replicate the assessment. He further maintained that relevant information should have been reconciled with subscriber payment records available through the OVA before any additional assessment was raised.
38. AW3 further testified that the Respondent's methodology relied on assumptions rather than actual evidence of access. He maintained that the assessment should have been based on identifiable users, their OTT payment records and verified usage information rather than extrapolations derived from traffic observed at the GTP region. According to the witness, the Applicant's review of the Respondent's sample data revealed duplicate entries, subscribers who had already paid OTT tax, and records inconsistent with the twenty-four-hour OTT access framework that had been agreed during implementation of the tax. He therefore maintained that the Applicant had declared and remitted all OTT tax collected from subscribers and disputed the Respondent's conclusion that there had been undeclared OTT accesses on the Applicant's network.

The Respondent's evidence

The Evidence of Grace Aine Ngabirano (RW1), Manager Tax Risk

39. **Grace Aine Ngabirano (RW1)**, the Respondent's Manager of Tax Risk, testified on the tax audit conducted by the Respondent, the data methodology employed to determine the alleged undeclared OTT accesses, and the administrative objection review process that culminated in the impugned assessment.

40. RW1 testified that the Respondent assessed the Applicant for additional Local Excise Duty amounting to **Shs. 17,653,137,002** after detecting a substantial variance between the volume of OTT accesses declared by the Applicant and those captured through the Respondent's audit. He stated that the assessments were raised exclusively on the basis of these undeclared OTT accesses.
41. The witness testified that the Respondent relied on data harvested from the Government-owned Telecommunications Information Monitoring System (TIMS) managed by the **Global Voice Group (GVG)** which was processed through the Respondent's **Data Monitoring System (DMS)** to isolate OTT accesses. According to RW1, the Respondent systematically analyzed subscriber activity by cross-referencing payload usage, protocol mapping, and distinct subscriber identification metrics to establish taxable OTT events.
42. RW1 further testified that during the objection review process, the Respondent considered and responded to concerns raised by the Applicant regarding the network architecture, data tapping points, audit methodology, dynamic IP addresses, the definition of a day, the application of data thresholds, duplication of IMSIs and alleged data anomalies. He maintained that the explanations provided by the Respondent adequately addressed the issues raised by the Applicant.
43. RW1 further testified that during the statutory objection review process, the Respondent evaluated and addressed the technical grievances raised by the Applicant. These grievances pertained to network architecture, data tapping points, audit methodologies, dynamic IP addresses, the operational definition of a "chargeable day," the application of data thresholds, the duplication of IMSIs, and other alleged data anomalies. The witness maintained that the technical explanations provided by the Respondent during that phase fully resolved all concerns raised by the Applicant.

44. RW1 maintained that the data used by the Respondent originated from the Applicant's network and that the assessment was correctly derived from OTT accesses identified through the audit process. He therefore maintained that the Respondent properly upheld the assessment and objection decision.
45. The witness testified that the Respondent defined a chargeable day as a twenty-four-hour window calculated from the timestamp of a subscriber's first successful access. He added that the Respondent utilized a **1KB data threshold** alongside other markers such as OTT security certificates, internet protocols, proprietary application protocols, and bandwidth consumption as a comprehensive mechanism to distinguish actual OTT user sessions from mere network signaling traffic.
46. RW1 maintained that the underlying data processed by the Respondent originated directly from the Applicant's own network infrastructure and that the additional tax liability was accurately derived from verified OTT accesses. He therefore concluded that the Respondent properly upheld the deficiency assessment and the subsequent objection decision.

The evidence of Laurent Fiacre Sarr (RW2), Senior Consultant in Telecommunications Big Data Processing

47. **Laurent Fiacre Sarr (RW2)**, a Senior Consultant in Telecommunications Big Data Processing, with Global Voice Group, a third-party service provider of the Respondent, testified on the engineering design, implementation, and operation of the Data Monitoring System (DMS), the technical criteria used to identify OTT accesses, and the verification methodology applied to audit declarations submitted by telecommunication operators.
48. The witness stated that he spearheaded the technical team responsible for deploying the Data Monitoring System ("DMS") in 2018 to monitor OTT traffic and provide revenue assurance. According to RW2, prior to the rollout

- of the DMS, the Respondent possessed no independent mechanism to verify the accuracy of self-declarations filed by telecommunications operators and relied solely on those submissions. The DMS was consequently introduced to capture, process, and analyze real-time data from operators' networks to verify their statutory compliance.
49. The witness explained that the DMS collected data from the GTP region rather than the Gi region. According to RW2, the Gi region was not ideal for identifying individual subscribers because it primarily handled internet traffic routing, whereas the GTP region contained subscriber identifiers such as IMSIs, MSISDNs and related session information, enabling the identification of individual users and their data usage. He further testified that the data collection architecture and tapping points were agreed upon between the Respondent and telecommunications operators prior to implementation of the monitoring platform.
50. The witness explained that the DMS was deliberately configured to harvest data from the **GPRS Tunneling Protocol (GTP) region** rather than the Gi region. According to RW2, the Gi region is structurally unsuited for tracking individual subscribers because its primary function is the routing of public internet traffic. Conversely, the GTP region contains granular subscriber identifiers including **International Mobile Subscriber Identities (IMSIs)** and **Mobile Station International Subscriber Directory Numbers (MSISDNs)** alongside session-state metadata, which enables the precise tracking of user identity and concurrent data usage. He further testified that both the data collection architecture and the specific network tapping points were mutually agreed upon by the Respondent and the respective telecommunications operators prior to launching the monitoring platform.
51. The witness further testified that the 1KB threshold used by the Respondent originated from tests conducted on mobile networks to assess the effectiveness of OTT blocking mechanisms. According to RW2, blocked

OTT attempts generated either no payload traffic or traffic below specified thresholds, while actual OTT sessions generated payload traffic exceeding those parameters. He maintained that the 1KB threshold was adopted as a uniform standard to distinguish blocked attempts from actual OTT sessions and that it was only one component of the Respondent's methodology.

52. RW2 also testified that tests conducted on the Applicant's network demonstrated that blocked OTT attempts generated signalling data but no payload traffic. He therefore maintained that IMSIs which generated payload traffic and were captured by the DMS represented actual OTT accesses.
53. According to the witness, the Respondent recorded 271,956,556 unique OTT accesses on the Applicant's network during the assessment period compared to 183,690,871 accesses declared by the Applicant, resulting in a variance of 88,265,685 accesses. RW2 maintained that the data supporting those figures was available within the Respondent's systems and that the assessment was consequently justified.

V. Submissions by the Applicant

54. The Applicant submitted that it bears no liability for the additional Local Excise Duty assessment of **Shs. 17,653,137,002**. It argued that throughout the period under review, network access to OTT services was strictly contingent upon subscribers paying the prescribed OTT tax, and that it fully declared and remitted all OTT tax collections to the Respondent
55. The Applicant submitted that the impugned assessment is fatally flawed, as it is founded on an erroneous interpretation of the OTT tax regime, an unlawful methodology for identifying taxable access, and a failure by the Respondent to discharge its burden of proof. According to the Applicant, the Respondent's assessment relies entirely on speculative technical assumptions and approximations rather than empirical proof of actual

taxable access as contemplated under the **Excise Duty (Amendment) Act, 2018**.

56. The Applicant further argued that the legal burden rests upon the Respondent to justify the additional assessment once it has been formally challenged. Having alleged that subscribers accessed OTT platforms without payment, the Respondent was required to provide empirical evidence identifying the affected subscribers, the specific OTT services accessed, the precise dates of access, and proof that the corresponding tax had not been paid. The Applicant contended that the Respondent failed to establish any of these criteria and instead relied on broad extrapolations that fall far short of the required evidentiary standard.
57. Consequently, the Applicant prayed that the additional assessments amounting to Shs. 17,653,137,002 be vacated in their entirety and that it be awarded the costs of this application.

The meaning of “Access”, “User” and OTT services

58. The Applicant submitted that the entire dispute turned on the meaning of access under the OTT regime. It argued that access required proof that an identifiable user had successfully accessed an identifiable OTT service. In its view, the taxable event was not merely the existence of data activity within the Applicant's network but the actual use of OTT services on the internet.
59. The Applicant contended that the Respondent's own guidance recognised that OTT involved the transmission or receipt of voice or messages over the internet. It therefore submitted that the Respondent could not lawfully equate internal network traffic, access requests or signalling activity with successful access to OTT services. According to the Applicant, the Respondent's methodology fundamentally departed from the statutory

concept of access and effectively taxed network activity rather than OTT usage.

60. The Applicant further argued that proof of access necessarily required proof of an identifiable subscriber, the specific OTT service accessed, the date and period of access, and confirmation that the subscriber had not paid the applicable tax. It maintained that the Respondent failed to establish any of these elements.

The Respondent's methodology

61. The Applicant submitted that the Respondent's methodology lacked transparency, consistency and verifiability. It argued that the Respondent relied on information allegedly obtained from Global Voice Group's Data Monitoring System (DMS) but failed to disclose the complete data, analytical processes, business rules and assumptions used to convert network traffic into taxable accesses.
62. The Applicant contended that despite repeated requests during the audit and objection process, the Respondent never provided detailed subscriber-level data corresponding to the 88,265,685 accesses allegedly identified. Instead, the Respondent only disclosed a five-day sample dataset long after the assessments had already been issued. According to the Applicant, the limited information disclosed made it impossible to independently replicate or verify the Respondent's conclusions.
63. The Applicant further submitted that the five-day sample itself undermined the Respondent's methodology. It argued that the sample contained duplicated IMSIs, records relating to subscribers who had already paid OTT tax, VPN-related traffic, non-OTT protocols, low-payload records and repeated access attempts. According to the Applicant, these anomalies demonstrated that the Respondent had failed to distinguish successful OTT

access from blocked attempts, background traffic and other forms of non-taxable network activity.

64. The Applicant also challenged the Respondent's reliance on data collected from the GTP region of the network. It submitted that the GTP region captures network activity before application of the Applicant's policy controls and therefore includes unsuccessful access attempts and traffic that never results in actual access to OTT services. It argued that successful OTT access could only be reliably identified after application of the relevant policy controls.
65. Additionally, the Applicant submitted that the Respondent inconsistently applied thresholds of 1MB and later 1KB as indicators of OTT access. It argued that neither threshold was prescribed by law, agreed upon by stakeholders or recognised under any technical standard governing OTT taxation. In the Applicant's view, the Respondent's shifting explanations illustrated the speculative nature of the methodology and undermined the reliability of the resulting assessment.

The Applicant's effective OTT Blocking System

66. The Applicant submitted that it implemented an effective and comprehensive system for enforcing OTT tax through its Policy and Charging Rules Function ("PCRF") infrastructure. According to the Applicant, the PCRF was configured to block access to OTT services unless the subscriber had first paid the prescribed tax. It argued that the system was applied uniformly to all subscribers and could not be manipulated to selectively permit access without payment.
67. The Applicant further submitted that payment of OTT tax was recorded through the Online Virtual Account (OVA), which was visible to the Respondent in real time. It argued that the OVA enabled the Respondent to

monitor OTT tax collections and therefore provided an independent mechanism for verifying compliance. The Applicant maintained that subscribers who had not paid OTT tax remained blocked and could not proceed to access OTT services.

68. According to the Applicant, the Respondent failed to demonstrate any instance in which the PCRF controls were bypassed or any mechanism through which subscribers allegedly obtained access to OTT services without payment. The Applicant therefore contended that the Respondent's allegation of undeclared OTT access was inconsistent with the design and operation of the implemented control framework.

Burden of proof

69. The Applicant submitted that the burden rested upon the Respondent to justify the additional assessment once the assessment was challenged. It argued that having alleged that subscribers accessed OTT services without payment, the Respondent was required to identify the subscribers concerned, the OTT services allegedly accessed, the dates of access, and proof that the corresponding tax had not been paid.
70. The Applicant contended that the Respondent failed to discharge that burden. It argued that the Respondent never identified the specific subscribers forming the basis of the assessment, never reconciled access records with payment information available through the OVA, and never established that any identified subscriber had accessed OTT services without payment. According to the Applicant, the Respondent instead relied on estimations, assumptions, traffic thresholds and extrapolations that fell short of the evidentiary standard required to sustain an assessment of Shs.17,653,137,002.

71. The Applicant therefore urged the Tribunal to find that the Respondent had failed to establish the factual basis of the assessment and to vacate the impugned assessments in their entirety.

Whether the Applicant is entitled to the remedies sought?

72. The Applicant submitted that having demonstrated that the impugned assessment was based on an erroneous interpretation of the OTT regime, an unreliable methodology and unproven assumptions, it was entitled to the remedies sought in the application. It contended that the Respondent failed to establish that any subscriber accessed OTT services without payment of the prescribed tax and consequently failed to justify the additional Local Excise Duty assessments.

Vacating the additional assessments

73. The Applicant submitted that the additional assessments amounting to Shs.17,653,137,002 should be vacated in their entirety. It argued that throughout the assessment period it collected and remitted all OTT tax from subscribers who paid access to OTT services and that the Respondent failed to prove any undeclared liability. According to the Applicant, the assessments were founded on assumptions, estimates, and extrapolations rather than verifiable evidence of unpaid OTT access.

Costs

74. The Applicant further prayed for costs of the application and submitted that the assessments were unjustified and that it had been compelled to challenge them through the objection process and the present proceedings to protect its interests. The Applicant therefore sought an award of costs in its favour.

VI. Submissions by the Respondent

75. The Respondent submitted that the Applicant was liable for the tax assessed. It argued that the additional Local Excise Duty assessment of Shs.17,653,137,002 was lawfully raised after an audit established that the Applicant had underdeclared OTT accesses during the period March 2020 to June 2021.

The law on OTT Services Tax

76. The Respondent submitted that the obligation to account for and pay OTT tax arose under section 3 of the Excise Duty (Amendment) Act, 2018, which amended section 4 of the principal Act and imposed liability on telecommunications operators providing data used to access OTT services. It further submitted that Item 13(b) of Schedule 2 imposed excise duty of Shs.200 per user per day of access to OTT services.
77. The Respondent argued that although the Act did not expressly define the term "access", it should be interpreted to mean the granting of a right, opportunity or ability to use OTT services. According to the Respondent, once a telecommunications operator permitted a subscriber to access OTT services, the corresponding tax became due and payable unless it had already been accounted for.

Implementation of the OTT Tax

78. The Respondent submitted that prior to the implementation of the OTT tax, several engagements were held between the Respondent, the Uganda Communications Commission (UCC), the Ministry of Finance and telecommunications operators, including the Applicant, to discuss the interpretation and implementation of the tax. It contended that telecommunications operators were directed to devise mechanisms for collecting the tax from subscribers and remitting it to the Respondent.

79. The Respondent further submitted that pursuant to those engagements, the Applicant configured its PCRF system to block subscribers who had not paid OTT tax from accessing OTT services. It argued that the mechanisms put in place by operators and the subsequent deployment of monitoring systems formed part of the implementation framework adopted during the lifetime of the OTT tax regime.
80. The Respondent therefore rejected the Applicant's contention that the assessment was based on novel methods developed after the repeal of the OTT tax.

The LED assessment of Shs.17,653,137,002

81. The Respondent submitted that the impugned assessment arose following an audit conducted on the Applicant's OTT declarations for the period March 2020 to June 2021. It argued that the audit established a variance between the OTT accesses declared by the Applicant in its returns and the accesses detected through the Data Monitoring System (DMS).
82. According to the Respondent, the audit identified 88,265,684 undeclared OTT accesses. Applying the statutory rate of Shs.200 per access resulted in additional Local Excise Duty of Shs.17,653,137,002. The Respondent therefore maintained that the assessment accurately reflected taxes that ought to have been declared and paid by the Applicant.

Source of the information/data informing the assessment

83. The Respondent submitted that the assessment was based on information obtained through the Telecommunications Information Management System (TIMS) and the Data Monitoring System (DMS), which had been deployed on telecommunications networks for revenue assurance purposes. According to the Respondent, the TIMS probe was installed within the GTP region of the Applicant's network, from which subscriber data was captured and processed through the DMS.

84. The Respondent argued that the GTP region was the appropriate source of data because it enabled identification of subscribers and their usage through identifiers such as IMSIs, MSISDNs and related session information. It maintained that the Gi region was unsuitable for this purpose because it lacked the necessary subscriber-level granularity required to identify individual users and their accesses.
85. The Respondent further submitted that the raw data collected from the Applicant's network was processed through the DMS using subscriber identifiers, internet protocols, application certificates, proprietary application protocols and traffic flows to isolate OTT traffic and determine unique OTT accesses. It maintained that blocked and unsuccessful attempts were filtered out through this process and that a threshold of 1KB was applied as one of the measures used to distinguish actual OTT accesses from signalling traffic and failed sessions.
86. The Respondent also contended that the methodology, sample data and workings supporting the assessment were disclosed to the Applicant and that the Applicant was afforded an opportunity to apply the same methodology to its own data but failed to provide any counter-analysis or alternative reconciliation demonstrating that the Respondent's findings were incorrect.
87. The Respondent therefore maintained that the assessment and objection decision were lawful, justified, and payable.

What remedies are available?

88. The Respondent submitted that the Applicant is not entitled to any of the remedies sought because it failed to discharge the burden of proving that the impugned assessments were erroneous. According to the Respondent, the evidence before the Tribunal demonstrated that the additional LED

assessment and the resultant objection decision were lawful, justified and properly issued.

Dismissal of the application

89. The Respondent submitted that the Application should be dismissed in its entirety. It argued that the Applicant had failed to establish any basis for setting aside the assessment of Shs.17,653,137,002 and had not adduced sufficient evidence to displace the findings of the audit and objection decision. The Respondent therefore maintained that the assessment remained due and payable by the Applicant.

Costs

90. The Respondent further submitted that costs should follow the event, relying on S.27 of the Civil Procedure Act. It argued that having successfully defended the Application and the Applicant having failed to discharge the burden of proof, the appropriate remedy was an award of costs in favour of the Respondent.
91. Accordingly, the Respondent prayed that the Tribunal dismiss the Application, uphold the assessment of Shs.17,653,137,002 for the period March 2020 to June 2021, and award costs of the Application to the Respondent.

VII. The Applicant's submissions in rejoinder

92. In rejoinder, the Applicant reiterated that data movement in the GTP region does not amount to access to an OTT service and that the Respondent's reliance on a 1KB threshold was speculative and unlawful. The Applicant argued that although the legal burden of proof remained with it, it had adduced credible evidence demonstrating that it implemented an effective OTT blocking system, maintained an Online Virtual Account (OVA) recording OTT payments, filed the prescribed returns, and remitted the tax collected. It therefore argued that the evidential burden shifted to the

- Respondent to demonstrate that specific subscribers accessed OTT services without payment, which the Respondent failed to do.
93. The Applicant additionally submitted that the five-day sample data relied upon by the Respondent was inadequate, statistically unreliable, and revealed several anomalies, including customers who had already paid the OTT tax. Finally, the Applicant submitted that the Respondent's failure to reconcile its audit findings against the OVA was fatal to its case. The Applicant therefore maintained that the assessment was founded on speculative assumptions and urged the Tribunal to set it aside.

VIII. Determination of issues by the Tribunal

94. The Tribunal has considered the pleadings, the testimony of the witnesses, the documentary exhibits, the electronic demonstrations, the written submissions and the judicial authorities cited by the parties.

Issue one: whether the Applicant is liable to pay the tax as assessed?

95. In our considered view, the dispute before the Tribunal arises from the implementation and administration of the now-repealed Over-the-Top (OTT) tax introduced under the **Excise Duty (Amendment) Act, 2018**. The tax was imposed at the statutory rate of Shs. 200 per user per day of access to OTT services and was administered by telecommunications operators as collection agents on behalf of the Respondent.
96. Prior to the operationalization of the tax, the Respondent, the UCC, and telecommunications operators engaged in several consultative meetings regarding the practical technical mechanisms through which the tax would be enforced, collected, and accounted for. Those engagements resulted in the adoption of systemic control measures intended to restrict access to OTT services unless the prescribed tax had been paid by the subscriber.

97. The Tribunal notes that there is no substantial dispute between the parties regarding the statutory existence of the OTT tax, the obligation imposed on telecommunications operators to account for it, or the fact that the Applicant established infrastructure to collect the OTT tax from its subscribers and remit it to the Respondent. Similarly, it is undisputed that the Respondent was legally entitled to audit the Applicant's tax declarations and to utilize independent tools and systems for revenue assurance and verification of tax compliance.
98. The dispute originates from the Respondent's finding that the Applicant underdeclared OTT accesses during the period between March 2020 and June 2021. Relying on network traffic information generated through the Telecommunications Information Management System (TIMS) and the Data Monitoring System (DMS), the Respondent identified what it deemed to be undeclared OTT accesses and consequently raised additional Local Excise Duty assessments amounting to Shs. 17,653,137,002.
99. The Applicant objected to those assessments on the ground that the methodology deployed by the Respondent did not reliably establish "access" to OTT services within the true meaning of the law, resulting in tax being erroneously assessed on network activity that was either non-taxable, unsuccessful, structurally blocked, or already paid for.
100. Accordingly, although extensive evidence was led regarding telecommunications infrastructure, network architecture, data monitoring systems, internet protocols, subscriber identifiers, billing systems, and audit methodologies, the Tribunal considers the core issue to be considerably narrower.
101. The central controversy is whether the methodology employed by the Respondent reliably established the taxable event contemplated under the **Excise Duty (Amendment) Act, 2018**, and whether the resulting

assessment was lawfully and properly made. Resolution of that question necessarily requires the Tribunal to examine the statutory framework governing the OTT tax, the legal definition of "access" within the charging provision, and the evidential reliability of the Respondent's audit methodology.

The relevant law

102. **Article 152(1) of the Constitution of the Republic of Uganda, 1995** entrenches the principle of legality in taxation by providing that no tax shall be imposed except under the authority of an Act of Parliament. Accordingly, tax liability must be grounded in clear, unambiguous statutory language and cannot be created through implication, administrative interpretation, or technical methodology.

103. The **Excise Duty (Amendment) Act, 2018**, which introduced excise duty on Over-the-Top (OTT) services, defines "Over-the-Top services" under Section 2 as:

"The transmission or receipt of voice or messages over the internet protocol network and includes access to virtual private networks."

This statutory definition is central because it isolates the specific activity that Parliament intended to subject to tax, namely the actual transmission or receipt of voice or messages over an internet protocol network and access to virtual private networks.

104. Section 3 of the **Excise Duty (Amendment) Act, 2018** amended Section 4 of the principal Act by introducing subsection (5), which provided that:

"A telecommunications service operator providing data used for accessing over the top services is liable to account for and pay excise duty on the access to over-the-top services."

105. The charging provision was supplemented by **Item 13(b) of Schedule 2** to the Act, which imposed excise duty on OTT services at the rate of Shs. 200 per user per day of access.
106. A plain reading of the foregoing provisions reveals three essential elements of the charge:
- (i) There must be an **identifiable user**;
 - (ii) There must be **access to an OTT service**; and
 - (iii) The charge arises **per day of access**.
107. It is these cumulative statutory elements that form the legal foundation of the Respondent's assessment and against which the Tribunal must evaluate the parties' competing positions.

Analysis

Interpretation of the law governing OTT tax

108. The parties agree that the **Excise Duty (Amendment) Act, 2018** imposed excise duty on OTT services at the rate of Shs. 200 per user per day of access. Their disagreement concerns the statutory meaning of "access" and whether the Respondent correctly identified the transactions forming the basis of the impugned assessment.
109. The Tribunal is guided by the foundational principle that tax liability must be found within the express words of the charging statute. In ***Cape Brandy Syndicate v IRC [1921] 1 KB 64***, it was held that in a taxing statute, one must look merely at what is clearly stated and that nothing is to be read into a charging provision. This same principle of strict construction was adopted by the Supreme Court of Uganda in ***Uganda Revenue Authority v Siraje Hassan Kajura, Civil Appeal No. 09 of 2015***, and was properly relied upon by the Applicant to support its contention that liability cannot arise from administrative criteria not prescribed by Parliament.

110. In interpreting the charge, the Tribunal notes that Parliament defined OTT services specifically by reference to the transmission or receipt of voice or messages over an internet protocol network. Parliament did not define access by reference to payload size, data thresholds, signaling traffic, packet movement, or any specific location within a telecommunications network architecture. Neither did it prescribe the technical methodology by which access was to be audited or identified.
111. The evidence adduced by the Applicant is entirely consistent with this statutory framework. **AW1, Timothy Kirabira**, testified that subscribers were required to pay the OTT tax before being granted access to OTT services, that collections were recorded through the Online Virtual Account (OVA), and that subscribers who had not paid the tax were structurally barred from accessing OTT services through the network. **AW2, Jonnan Lukoda**, testified that the Applicant's PCRF system was specifically configured to block non-paying subscribers and permit access only to compliant subscribers. He further clarified that while the GTP region contained subscriber information and network activity flags, it also aggregated unsuccessful attempts, blocked requests, and other forms of raw network traffic which did not amount to consummated access to OTT services. **AW3, Ivan Karugaba**, confirmed that data observed in the GTP region included repeated connection attempts, duplicated IMSIs, and other network events that did not establish successful access to an OTT service, maintaining that actual access could not be inferred merely from the presence of raw activity within the GTP layer.
112. The Tribunal also notes that Exhibit JEXH1, which recorded the stakeholder engagements held prior to the implementation of the tax, confirms that telecommunications operators were expected to restrict access to OTT services and grant such access only upon payment of the prescribed tax. Exhibit JEXH1 therefore demonstrates that the implementation framework

- adopted by the stakeholders was built around the concept of paid access rather than the mere technical detection of raw network traffic.
113. The Tribunal accepts the consistent evidence of AW1, AW2, and AW3, together with the implementation framework reflected in Exhibit JEXH1, to the extent that it establishes that not all network activity is synonymous with access to an OTT service. If Parliament intended every instance of data movement, signaling traffic, or packet exchange to constitute a taxable access event, it would have expressly said so. It did not. Likewise, Parliament did not prescribe the 1KB or 1MB thresholds later relied upon by the Respondent, nor did it designate the GTP region as the point at which the taxable event was to be determined.
114. The Tribunal therefore finds that the taxable event contemplated by the Excise Duty (Amendment) Act, 2018 was access to an OTT service by an identifiable user on a particular day. The critical question is consequently whether the Respondent's methodology reliably established the occurrence of that statutory event and whether the resulting assessment faithfully reflected the charge enacted by Parliament.

Whether the Respondent reliably established access to OTT services

115. At the centre of the Respondent's assessment lies a fundamental evidential question: whether the information relied upon by the Respondent established that the Applicant's subscribers accessed OTT services within the meaning contemplated by the Excise Duty (Amendment) Act, 2018. The answer to that question is critical because the legality of the assessment depends not merely on the identification of general network activity, but on empirical proof of the taxable event itself.

116. The Respondent's assessment, as reflected in Exhibit JEXH8 (the Audit Management Letter dated 17 April 2023), was founded on information obtained through TIMS and the DMS. In that letter, the Respondent stated that it had identified 271,956,556 unique OTT accesses through the DMS, compared them with the 183,690,871 accesses declared by the Applicant in its monthly returns, and concluded that there had been an under-declaration of 88,265,685 accesses, resulting in an additional Local Excise Duty assessment of Shs. 17,653,137,002.
117. Evidence regarding the source of that data was led principally through Grace Aine Ngabirano (RW1) and Laurent Fiacre Sarr (RW2). RW1 testified that the Respondent relied on information obtained through TIMS and the DMS, and that subscriber activity was analyzed using payload usage, protocol mapping, and subscriber identifiers to determine OTT accesses. RW2 similarly testified that the DMS harvested information from the GTP region of the Applicant's network because that layer enabled the precise identification of subscribers through IMSIs, MSISDNs, and related session-state metadata. According to RW2, the DMS then applied filtering and analytical processes to isolate actual OTT accesses from unsuccessful attempts and other forms of traffic.
118. The contemporaneous documentary evidence corroborates that position. The minutes of the reconciliation meeting held on 2 March 2023 (Exhibit JEXH5) record the Respondent informing the Applicant that it had "picked" data from the GTP region, analyzed upload and download traffic, identified unique OTT accesses, VPN accesses, and data users, and compared those figures with the Applicant's statutory tax returns. The same minutes further record the Respondent's explanation that multiple accesses within a twenty-four-hour period would be treated as a single access, and that the resulting figures formed the basis of its variance analysis.

119. The Applicant challenged both the source and the technical interpretation of that data. Jonnan Lukoda (AW2) testified that the Applicant's PCRF and PCEF systems were configured to block access to OTT services unless a subscriber had paid the prescribed tax. He further testified that the GTP region captures unsegregated traffic comprising successful accesses, failed accesses, blocked requests, and signalling traffic. According to AW2, the existence of traffic flags in the GTP region does not establish that a subscriber successfully accessed an OTT service, because successful access occurs only after the relevant policy controls have been applied and the subscriber has been permitted to proceed to the Gi region.
120. The same technical concern emerged from Ivan Karugaba's (AW3) evidence. AW3 testified that the GTP region contains both successful and unsuccessful requests, meaning that activity detected within that region required further validation before it could be classified as an actual OTT access event. He maintained that the Respondent failed to provide the detailed subscriber-level data, payment reconciliations, and granular workings necessary to demonstrate that the identified users successfully accessed OTT services without paying the tax. AW3 also testified that the Applicant's review of the sample data disclosed duplicate IMSIs, repeated connection attempts, and other anomalies which, in his view, were inconsistent with consummated OTT access (**Exhibit JEXH10**).
121. The Applicant's challenge was not confined to witness testimony. The OTT Subscription Logic and Network Architecture documents produced by the Applicant illustrate the operation of the PCRF blocking framework and demonstrate that subscribers without valid OTT subscriptions remained subject to a blocking rule until payment was successfully processed through mobile money channels and the relevant provisioning was completed. The same exhibits further indicate that the regulatory mirroring arrangement was based principally on GTPC traffic, and that this setup had clear limitations in determining subscriber content from GTPC information alone.

122. The Tribunal accepts RW2's technical evidence that the GTP region captures subscriber-identifying information and successfully associates traffic packets with specific users. However, the Tribunal agrees with the position advanced by AW2 and AW3 that subscriber identification and definitive proof of access are not synonymous. The statutory inquiry under the charging provision is not whether a subscriber generated general data volume or signaling flags within the Applicant's internal network architecture, but whether that identified subscriber successfully achieved access to an OTT service in a manner that triggered tax liability under the Act.
123. Significantly, the evidence led by both parties establishes that the GTP layer contains a raw, undifferentiated mixture of network activity, including successful connections, failed attempts, blocked requests, signaling noise, duplicate IMSIs, and non-OTT protocols. Crucially, the Respondent's own evidence supports the Applicant's core contention that raw GTP traffic data, standing alone, is insufficient to establish a taxable event. RW1 conceded that intensive payload analysis and protocol mapping had to be undertaken before actual accesses could be isolated. Furthermore, RW2 confirmed that the DMS had to execute proprietary filtering and computational rules to arrive at the specific access figures forming the basis of the assessment.
124. The Tribunal finds this consensus particularly telling. If raw GTP traffic itself established taxable access, there would have been no operational need for the Respondent to deploy additional filters, data thresholds, and analytical scripts before raising the deficiency assessment. By designing and executing these multi-tiered processing layers, the Respondent's own methodology implicitly acknowledges that raw activity observed within the GTP region does not, standing alone, establish the taxable event contemplated by Parliament.

125. Further support for that conclusion is found in Exhibits JEXH4 and JEXH5, being the minutes of the reconciliation meetings held on 22 February 2023 and 2 March 2023. Those minutes reveal that the Applicant repeatedly requested the Respondent's workings, process flows, and test data to understand how the Respondent had transformed network activity into the accesses forming the basis of the assessment. The minutes further record the Applicant's requests for clarification regarding the location at which data was being tapped and the logic used to derive the figures. The Tribunal considers those requests significant because they demonstrate that the dispute regarding the interpretation of GTP data arose during the audit itself and was not an afterthought developed during litigation.
126. Accordingly, the Tribunal finds that data extracted from the GTP region, absent independent processing and empirical validation, fails to establish access to OTT services within the true meaning of the Excise Duty (Amendment) Act, 2018. The reliability of the impugned assessment therefore depends entirely upon whether the filtering processes, operational assumptions, and analytical algorithms subsequently applied by the Respondent were technically capable of accurately distinguishing genuine, taxable accesses from the various forms of non-taxable network activity present within the source data.

The Significance of the 1KB Threshold

127. One of the central assumptions underpinning the Respondent's methodology was the deployment of a **1KB data threshold** as a conclusive indicator of OTT access. The Tribunal considers this issue significant because, on the Respondent's own evidence, this threshold formed an integral part of the analytical process through which unsegregated raw network traffic was converted into the taxable accesses that ultimately gave rise to the impugned assessment.

128. RW2 testified that the 1KB threshold originated from technical tests conducted on mobile networks during the initial implementation phase of the OTT tax. According to RW2, structurally blocked OTT attempts generated either zero payload traffic or traffic falling below specified technical boundaries, whereas successful OTT sessions generated payload volumes exceeding those parameters. He maintained that the 1KB threshold was adopted as a uniform standard to separate blocked connections from successful, taxable user sessions, emphasizing that this threshold was merely one integrated component of the Respondent's broader multi-tiered methodology. RW1 similarly testified that the threshold was utilized alongside protocol identification, subscriber metadata, and traffic analysis to determine unique OTT accesses. The Respondent therefore contended that the threshold was an indispensable filtering tool for eliminating background traffic that did not amount to actual use of OTT services.
129. The Applicant challenged both the legal and technical foundations of that threshold. **Ivan Karugaba (AW3)** testified that neither the **Excise Duty (Amendment) Act, 2018**, nor any stakeholder guideline, prescribed a threshold of 1KB, 1MB, or any other volume of data as proof of access to an OTT service. AW3 further testified that during the audit process, the Respondent initially referred to a threshold of 1MB before subsequently shifting its reliance to a threshold of 1KB. According to AW3, these shifting technical explanations surrounding the baseline parameters severely undermined confidence in the methodology employed by the Respondent. He maintained that data consumption varies dynamically depending on the specific application, device specifications, and automated background processes, and that access cannot reliably be inferred from a raw volume of data traffic alone.

130. The contemporaneous documentary evidence lends significant support to this contention. **Exhibit JEXH6**, being the Respondent's Circular dated 29 June 2018 titled "*Excise Duty Amendments for Telecommunication for 2018/2019*," prescribed the applicable rate of OTT tax, defined OTT services, defined a user, and required telecommunications operators to devise local mechanisms for collecting and remitting the tax. Notably, the Circular contains no reference whatsoever to a 1KB threshold, a 1MB threshold, packet size, payload volume, or any other technical benchmark for determining access. Instead, the directive focused squarely on users, access events, and collections.
131. Similarly, **Exhibit EXH5**, being the correspondence from the UCC dated 13 September 2018 entitled "*OTT Subscription and Revenue Statistics*," required operators to submit statistics relating to daily, weekly, and monthly OTT taxpayers, alongside OTT tax revenue collections. The annexed reporting template focused exclusively on OTT taxpayers and revenues collected. Like Exhibit JEXH6, it did not prescribe any threshold or volume of traffic as evidence of access.
132. The Tribunal agrees that the absence of a specific threshold from the text of the legislation does not render the Respondent's methodology invalid. Revenue authorities are legally entitled to utilize technological tools and data analytics in support of compliance verification. However, where such an administrative tool forms a critical, formulaic element of a deficiency assessment, the Tribunal must be satisfied that it bears a rational, objective, and demonstrable relationship to the taxable event established by Parliament.
133. In this regard, the Tribunal finds persuasive the evidence of AW3 that traffic exceeding a prescribed threshold does not necessarily equate to successful access to an OTT service. AW3 testified that the sample data disclosed by the Respondent contained repeated connection attempts, duplicated IMSIs,

VPN-related traffic, non-OTT protocols, and low-payload records that could not conclusively establish successful OTT access. He maintained that traffic observed in the network architecture may arise from unsuccessful connection routines, signaling activity, and other automated forms of network communication that do not culminate in a subscriber gaining actual access to an OTT service.

134. The Tribunal further notes that neither RW1 nor RW2 identified any statutory provision, stakeholder agreement, regulatory requirement, or recognized industry standard from which the 1KB threshold was derived. Rather, the threshold appears to have emerged as an operational assumption developed as part of the Respondent's internal analytical process. While such an assumption may have administrative utility in interpreting network behavior, utility alone cannot establish liability under a taxing statute.
135. More fundamentally, the threshold does not itself prove access. At best, it identifies a quantitative level of traffic from which access may be inferred. Yet Parliament did not impose a tax on packet movement, payload volume, signaling traffic, or raw data consumption. Parliament imposed a tax on access to an OTT service by a user on a particular day. Once it is accepted that traffic exceeding 1KB may arise in operational circumstances that do not necessarily result in successful access, the threshold cannot, standing alone, serve as a reliable proxy for the taxable event contemplated by the Act.
136. The Tribunal therefore finds that the 1KB threshold was not, by itself, sufficient to establish access to an OTT service within the true meaning of the **Excise Duty (Amendment) Act, 2018**. Its evidential value depended entirely upon the reliability of the broader filtration process and the extent to which unsuccessful attempts, blocked sessions, and other forms of non-taxable traffic were excluded from the assessed population.

The Reliability of the Sample Data and the Integrity of the Assessment

137. The Tribunal's evaluation of the Respondent's methodology cannot conclude with an examination of the 1KB threshold alone. It is equally critical to determine whether the data yielded by the Respondent's filtering and analytical processes inspires sufficient confidence to serve as a reliable basis for taxation. Where tax liability is derived from multi-layered processing applied to massive volumes of network traffic, the technical integrity of the resulting dataset stands as a primary indicator of the validity of the assessment itself.
138. A substantial portion of this dispute centred on the five-day sample dataset disclosed by the Respondent during the audit and objection phases. The record indicates that although the impugned assessment spans a sixteen-month period from March 2020 to June 2021, the Respondent provided the Applicant with a sample covering only five days specifically from 1 May 2021 to 5 May 2021 as the sole basis for understanding and validating the audit methodology. **AW2, Jonnan Lukoda**, testified that the Respondent presented this sample as an exact mirror of the data and logic relied upon in the wider audit. However, AW2 clarified that the sample consisted entirely of transactional network data reflecting repetitive user connection attempts, rather than identifying the specific, non-compliant IMSIs allegedly responsible for the underdeclared accesses.
139. The Applicant's primary challenge to the integrity of this dataset was advanced through **AW3, Ivan Karugaba**. In both his witness statement and oral testimony, AW3 detailed numerous structural anomalies and mathematical inconsistencies identified upon a technical review of the disclosed sample. He testified that while the sample dataset comprised approximately 14.1 million transactional records, it represented only about 1.7 million unique IMSIs. A significant number of these IMSIs appeared repeatedly in certain instances, hundreds of times within the same day. In

AW3's view, these high-frequency repetitions point to automated background processes, persistent connection requests, or duplicate records, rather than unique, chargeable access events.

140. More critically, AW3 testified that the sample dataset erroneously captured compliant subscribers who had already paid the statutory OTT tax. According to his analysis, approximately 115,000 IMSIs embedded within the Respondent's sample population belonged to users with active, fully paid OTT subscriptions. He maintained that the inclusion of these tax-compliant users exposes severe flaws within the Respondent's filtration system, casting serious doubt on whether the Respondent adequately cross-referenced and reconciled network traffic flags against actual subscription and payment records before issuing the deficiency assessment.
141. The Tribunal attaches considerable weight to this evidence. The inclusion of subscribers who had fully satisfied their statutory tax obligations is not a minor operational oversight or an isolated data glitch. Instead, it challenges the fundamental reliability of the technical assumptions built into the Respondent's Data Monitoring System. If compliant taxpayers are captured within an audited population representing alleged tax evasion, the effectiveness of the filtering processes used to separate taxable from non-taxable traffic is profoundly compromised.
142. The Applicant raised additional concerns regarding the composition of the sample data. AW3 testified that the dataset contained Virtual Private Network (VPN) traffic, non-OTT protocols, and digital services that fell completely outside the category of OTT services previously designated by stakeholders during the implementation phase. In support of this contention, the Applicant relied on **Exhibit EXH10** (the OTT Protocol List used by the Respondent) and maintained that certain protocols appearing within the analyzed traffic could not, without empirical validation, be treated as taxable

- OTT services. The Applicant further contended that platforms such as MSN, Ookla, and Truecaller appeared within the dataset notwithstanding their disputed status as OTT services.
143. The Respondent, through RW1 and RW2, rejected these criticisms, maintaining that the DMS methodology successfully filtered unsuccessful attempts, excluded blocked traffic, and removed non-relevant data before computing accesses, and that the anomalies identified by the Applicant did not discredit the methodology as a whole.
144. The Tribunal accepts that the existence of anomalies within a complex dataset does not automatically invalidate a tax assessment. Large-scale technological systems may generate minor discrepancies that are technically explainable and ultimately immaterial. However, the issue in the present case is not the existence of a single anomaly or an isolated irregularity. The concern is the cumulative effect of several unresolved matters raised by the Applicant, including duplicate IMSIs, repeated accesses, subscribers who had paid the OTT tax, VPN-related traffic, disputed protocols, and structural questions surrounding the effectiveness of the filtration process itself.
145. The Tribunal is equally mindful that the five-day sample was never agreed upon by the parties as a representative formula for extrapolating tax liability across the entire assessment period. AW1 testified that the sample was only disclosed post-assessment and that the Applicant never agreed that it would form the basis of the impugned assessment. While sample testing may serve as a useful administrative validation tool, where substantial concerns are raised regarding the representativeness and reliability of a sample, the Tribunal expects those concerns to be convincingly addressed before the resulting figures are relied upon to sustain a multi-billion-shilling assessment.

146. Viewed collectively, these unresolved concerns materially diminish the Tribunal's confidence in the reliability of the dataset from which the assessment was derived. The Tribunal is therefore unable to conclude that the sample data provides a sufficiently dependable foundation upon which to determine that the alleged undeclared accesses accurately corresponded to taxable OTT accesses within the true meaning of the **Excise Duty (Amendment) Act, 2018**.

Whether the Respondent established that the alleged accesses were unpaid

147. Even if the Tribunal were to assume, for the sake of argument, that the Respondent's methodology successfully isolated unique OTT accesses, a critical technical and legal deficiency remains. The impugned assessment was not raised merely because subscribers generated network traffic or because they accessed OTT platforms. The core of the Respondent's case is that these subscribers accessed OTT services without paying the prescribed statutory levy. Proof of access alone is therefore legally insufficient unless accompanied by empirical proof that the corresponding OTT tax had not been paid.
148. The Applicant's evidence consistently focused on this pivotal distinction. AW1 testified that all OTT tax payments were recorded through the Online Virtual Account (OVA), which remained fully accessible and visible to the Respondent throughout the lifecycle of the OTT tax regime. According to AW1, the OVA maintained granular information identifying subscribers, payments made, and subscription windows, thereby providing an objective record against which alleged accesses could be verified. AW2 echoed this concern, testifying that while the Applicant possessed the technical capability to isolate subscribers who had paid the OTT tax along with the precise dates and duration of their subscriptions, the Respondent never

requested IMSI-level payment data beyond the standard returns and information already available through the OVA ledger.

149. AW3 similarly testified that despite having real-time access to information identifying compliant taxpayers, the Respondent failed to reconcile its audit findings against those payment records. He further clarified that because OTT subscriptions could be purchased on a daily, weekly, monthly, quarterly, or annual basis, a subscriber appearing in a particular month's access data may have paid for network access during a preceding period and remained legally entitled to continue accessing OTT services throughout the validity of that subscription. According to AW3, the Respondent's computational model completely failed to account for this prepaid operational reality.
150. The contemporaneous documentary evidence strongly lends support to the Applicant's position. In its letter dated 4 May 2023 summarizing the parties' statutory meeting of 19 April 2023 (**Exhibit JEXH3**), the Applicant expressly recorded that all customers with valid OTT payments were maintained on a network whitelist from which the infrastructure determined whether access would be granted or denied. Furthermore, **Exhibit EXH14**, being the Applicant's correspondence to the UCC dated 13 November 2018 concerning the implementation of the OTT tax, records that the Applicant launched dedicated OTT bundles accessible via mobile money platforms and introduced long-term payment options, including quarterly and annual subscriptions. Similarly, **Exhibit EXH7**, being the Applicant's formal notice to the UCC dated 24 June 2020, demonstrates that subscribers could purchase integrated, OTT-inclusive bundles valid for varying durations. These exhibits substantiate AW3's technical evidence that statutory access rights routinely extended beyond the specific calendar month in which payment was consummated, thereby necessitating a thorough reconciliation against historical subscription databases.

151. The Respondent did not dispute the existence or functionality of the OVA ledger. Rather, the evidence led through RW1 and RW2 indicates that the Respondent's audit methodology focused primarily on identifying raw accesses through the Data Monitoring System (DMS), maintaining that the OVA was relevant solely for monitoring high-level tax collections and was not an essential component of determining taxable accesses. In effect, the Respondent's position is that the mere identification of a network access flag is sufficient to sustain a tax deficiency assessment.
152. The Tribunal finds profound difficulty with that proposition. The allegation underpinning the assessment was not merely that subscribers accessed OTT platforms. Network access to OTT services was entirely lawful and expected once the prescribed statutory tax had been paid. The specific gravamen of the allegation was that subscribers accessed those services *without payment* of the prescribed tax. Non-payment was therefore not an incidental consideration; it was an essential factual element of the Respondent's case that required empirical proof.
153. The Tribunal finds that an audit methodology designed to identify access flags without verifying whether a corresponding payment was made cannot, standing alone, establish tax liability arising from untaxed access. Once the Respondent elected to assess the Applicant on the basis of underdeclared usage, it was legally required to demonstrate both that access occurred and that the corresponding tax remained unpaid.
154. This technical deficiency is not merely theoretical. As noted, AW3 testified that the Applicant identified approximately **115,000 IMSIs** associated with tax-compliant subscribers embedded within the dataset relied upon by the Respondent. Although the Tribunal does not base its conclusion on any single subscriber record, this evidence underscores the absolute necessity of reconciling network accesses against ledger payment information before drawing adverse conclusions regarding tax compliance.

155. In the present case, the record discloses no meaningful reconciliation between the accesses allegedly identified through the DMS and the payment information maintained through the OVA. Absent such reconciliation, the Tribunal is unable to conclude with sufficient confidence that the network accesses forming the basis of the assessment represented unpaid taxable events, rather than legitimate usage by subscribers who had already discharged their statutory tax obligations. This omission substantially undermines the Respondent's case. The Tribunal therefore finds that the Respondent failed to satisfactorily establish that the accesses upon which the assessment was based were, in fact, unpaid accesses giving rise to an additional tax liability under the **Excise Duty (Amendment) Act, 2018**.

The burden of proof

156. The final question is whether, considering the evidence adduced by the parties, the Applicant has discharged the statutory burden of proof.
157. **Section 19 of the Tax Appeals Tribunal Act** places the burden of proof squarely on a taxpayer challenging an assessment to establish that the assessment is excessive or erroneous. There is, therefore, no dispute that the primary legal burden throughout these proceedings rested upon the Applicant. The issue for determination is whether the technical and documentary evidence adduced by the Applicant was sufficient to demonstrate that the impugned assessment was erroneous, and if so, whether the Respondent adequately answered the technical concerns raised.
158. In the Tribunal's view, the extensive factual, technical, and documentary evidence adduced by the Applicant went far beyond a mere denial of tax liability. It raised substantial, credible, and deep-seated questions concerning the reliability of the monitoring methodology deployed by the

Respondent, the improper inclusion of unsuccessful connection attempts and non-taxable signaling traffic, the structural integrity of the sample data, the arbitrary nature of the 1KB threshold, and the systemic failure to cross-reference or reconcile alleged accesses with actual OTT tax payments. These were not speculative or hypothetical concerns; they were supported by consistent witness testimony, clear documentary exhibits, live electronic demonstrations, and effective cross-examination of the Respondent's witnesses.

159. The Tribunal is guided by the established principle that while the ultimate legal burden remains with the taxpayer, an **evidential burden** shifts to the tax authority once credible evidence is adduced that prima facie challenges the correctness of an assessment. In such circumstances, the revenue authority is required to justify the technical and legal basis upon which the assessment was constructed and demonstrate why, notwithstanding the specific vulnerabilities exposed, the assessment remains mathematically and evidentially reliable.
160. The Respondent produced evidence explaining the operation of the Data Monitoring System and the filtering scripts through which it identified the alleged OTT accesses. However, for the reasons already detailed in this ruling, the Tribunal is not satisfied that the Respondent adequately answered or discharged the technical concerns arising from the Applicant's case. In particular, the Tribunal remains unconvinced that the Respondent established a technically reliable basis for distinguishing successful, taxable OTT accesses from failed network activity, or that it demonstrated that the alleged accesses upon which the multi-billion-shilling assessment was founded were, in fact, unpaid accesses attracting additional tax liability.

161. Having considered the evidence in its totality, the Tribunal finds that the Applicant has established, on a balance of probabilities, that the assessment and the subsequent objection decision were erroneous. The cumulative effect of the uncertainties surrounding the determination of an "access event," the severe operational limitations of the methodology employed, the unresolved data integrity concerns, and the total absence of reconciliation between alleged traffic flags and actual OTT tax payments is such that the Tribunal cannot safely conclude that the assessed amount represents undeclared OTT tax due from the Applicant.
162. Accordingly, the Tribunal finds that the Applicant is not liable to pay the additional Local Excise Duty assessed by the Respondent. **Issue One is therefore answered in the negative.**

Issue two: What remedies are available to the parties?

163. The Applicant prayed that the additional Local Excise Duty assessment of Shs. 17,653,137,002 and the objection decision dated 25 July 2023 be vacated, contending that they were founded on an erroneous interpretation of the OTT tax regime, an unreliable methodology, and unproven assumptions regarding access to OTT services. It further prayed for the costs of this Application.
164. The Respondent, conversely, submitted that the Applicant failed to discharge its statutory burden of proving that the assessment was excessive or erroneous. It consequently prayed that the Application be dismissed, that the assessment and objection decision be upheld, and that costs be awarded in its favour.

165. **Section 22(6) of the Tax Appeals Tribunal Act** grants this Tribunal broad powers to make such orders as it considers appropriate in determining a tax dispute, including orders relating to assessments, costs, interest, and any other consequential relief. The remedies available to the parties must therefore flow from the Tribunal's findings on the substantive dispute.
166. Having found under Issue One that the Respondent failed to establish, with sufficient technical reliability, that the Applicant's subscribers accessed OTT services without payment of the prescribed tax, and having further found that the impugned assessment was based on an analytical methodology that did not faithfully isolate the taxable event contemplated under the **Excise Duty (Amendment) Act, 2018**, the Tribunal is satisfied that the Applicant has fully succeeded in its challenge to the assessment.
167. The natural consequence of that finding is that the additional Local Excise Duty assessment of Shs. 17,653,137,002 and the objection decision dated 25 July 2023 cannot be sustained and must be set aside. To maintain the assessment despite the Tribunal's findings would be to validate a tax liability that has not been shown to arise under the charging provisions enacted by Parliament.
168. Regarding costs, the general rule is that costs follow the event. Having succeeded in this Application, the Applicant is entitled to its costs. The Tribunal finds no exceptional circumstances that would justify a departure from that established principle. Accordingly, **Issue Two is resolved in favor of the Applicant.**

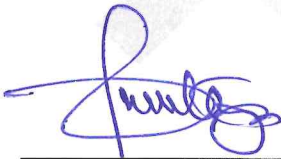
Orders of the Tribunal

1. The Application succeeds.
2. The additional Local Excise Duty assessment of Shs.17,653,137,002 raised against the Applicant for the period March 2020 to June 2021 is hereby set aside.
3. The objection decision dated 25 July 2023 is vacated in its entirety.
4. Any statutory deposit paid by the Applicant pursuant to the Tax Appeals Tribunal Act in respect of this Application shall be refunded in accordance with the law.
5. Costs of this Application are awarded to the Applicant.

Dated at Kampala this **31st** day of **August** 2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON



HON. EDWARD BIRYETEGA
MEMBER

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 135 OF 2023

AIRTEL UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. EDWARD BIRYETEGA
HON. CHRISTINE KATWE**

DISSENTING RULING

I have had the opportunity to read my colleagues' draft ruling. With respect, I dissent as follows:

I. Background Facts

1. The grounds of objection, mediation, submissions, and testimonies by both Counsel and witnesses have been ably laid out and summarised. However, I do not agree with my colleagues that the Local Excise Duty (LED) Administrative Additional Assessments of UGX 17,653,137,002 for the period March 2020 to June 2021 should be set aside.
2. The Applicant contends that the methodology used by the Respondent did not reliably establish the statutory taxable event. My Colleagues noted that the Respondent did not reliably prove that the Applicant's subscribers accessed

OTT services. Moreover, the underlying assessment relied on an analytical methodology that failed to isolate the taxable event.

3. In my view, the Respondent's audit was professionally conducted, and the probe placed in the GTP region was appropriate.

II. Legal Framework

4. The Excise Duty (Amendment) Act, 2018 introduced a tax on Over-the-Top (OTT) services under Item 13(b) of the Second Schedule, prescribing UGX 200 per user per day of access.
5. The statutory elements are clear, namely:
 - a) An identifiable user;
 - b) Access to an OTT service;
 - c) A charge of UGX 200 per day of access.
6. The Tribunal must therefore evaluate whether the Respondent correctly identified the transactions forming the basis of the assessment.

III. Regulatory Compliance

7. Taxpayers operate on a self-assessment basis, declaring and paying taxes voluntarily. The Respondent is mandated to collect Revenue and is therefore responsible for verifying these declarations to assure the Government of their accuracy and completeness. So, the Respondent conducts post-tax audits for assurance regarding tax compliance and accuracy
8. Auditing the telecommunications industry is complex. So, the Government contracted the Global Voice Group (GVG) to provide a data Monitoring System to manage the Telecom Information System to secure the necessary regulatory assurance.

IV. Preparations Done

9. Government agencies, i.e., URA, NITA, UCC, engaged telecom companies to determine how the tax would be collected. A methodology was agreed upon, and the implementation of the Legislation commenced.

10. The information to support the findings was obtained from a government-owned Telecom Management Information System (MIS) managed by a contractor, Global Voice Group (GVG).
11. The data was picked directly from the systems of the telecommunication companies, and then GVG used their Data Management Systems to determine accesses based on telephone contacts with respective access details.

V. Audit Methodology

12. The Respondent's Statement of Reasons indicated that the assessments arose from undeclared LED on OTT services, determined by comparing unique OTT accesses against the Applicant's declared returns.
13. Evidence shows that:
 - (i) The Uganda Communications Commission (UCC), URA, and telecom operators agreed on the monitoring methodology.
 - (ii) The probe was placed in the GPRS Tunnelling Protocol (GTP) region, enabling filtering of outbound internet traffic using carrier-grade equipment.
 - (iii) The Respondent identified 271,956,556 unique OTT accesses compared to the Applicant's declared 183,690,871, resulting in 88,265,685 undeclared accesses.
14. The Applicant raised objections regarding duplicate IMSIs, payload thresholds, and zero-traffic records. However, the Respondent demonstrated that:
 - a) Only successful accesses above a 1KB threshold were considered.
 - b) Duplicate IMSIs were filtered to unique daily accesses.
 - c) Background signalling traffic was excluded.
 - d) OTT usage was confirmed through payload sessions, certificates, IPs, and proprietary protocols.

15. Equally, the Applicant failed to provide evidence in the prescribed format at both the objection stage and mediation stage to substantiate its claims. Instead, it repeatedly raised concerns that had already been adequately addressed and remained adamant about the answers given.

VI. Findings

16. Parliament enacted the OTT tax law, but it cannot regulate every technical detail of telecom operations. The agreed audit methodology was appropriate, and the Respondent's probe was correctly positioned to capture untampered data.
17. The Applicant's objections did not disprove the Respondent's findings. The Respondent's methodology reliably established taxable OTT accesses within the meaning of the law.
18. In the circumstances, the Respondent has discharged the burden of proof that the Applicant is liable to pay the tax assessed

VII. Conclusion

19. For the reasons above, I find that the Respondent's assessment was lawfully and properly made. Accordingly, I would have ordered as follows:
- (i) The Application fails.
 - (ii) The Additional Local Excise Duty Assessment of UGX 17,653,137,002 is payable.
 - (iii) The Objection Decision of the Respondent is upheld.
 - (iv) Costs of the Application are awarded to the Respondent.

Dated at Kampala this **31st** day of **August** 2026.



HON. CHRISTINE KATWE

MEMBER