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ELECTRONIC AND POSTAL COMMUNICATIONS ACT
(CAP.306)

REGULATIONS

(Made under section 165)

THE ELECTRONIC AND POSTAL COMMUNICATIONS (COMPETITION)
REGULATIONS, 2018

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PART I
PRELIMINARY PROVISIONS

Citation	1. These Regulations may be cited as the Electronic and Postal Communications (Competition) Regulations, 2018.
Application	2. These Regulations shall apply to electronic and postal communications licensees.
Interpretation	3. In these Regulations unless the context otherwise requires:
Cap.306	“Act” means the Electronic and Postal Communications Act;
Cap. 172	“Authority” means the Tanzania Communications Regulatory Authority established under the Tanzania Communications Regulatory Authority Act;
	“applications service” means a service provided by means of one or more network services but does not include a service provided solely on the customer side of the network boundary;
	“applications service licence” means an electronic communications licence entitling the holder to provide one or more applications services;
	“applications service licensee” means a holder of an applications service licence;
	“communications market” means markets for electronic and postal communications services;
	“content” means information in the form of speech or other sound, data, text or images whether still or moving, except

- where transmitted in private communications;
- “content service” means services offered for speech or other sound, data, text or images whether still or moving, except where transmitted in private communications;
- “content service licensee” means a holder of a content applications service licence;
- Cap.285 “competition” has the meaning ascribed to it under the Fair Competition Act;
- “electronic communication equipment” means an equipment radio communication or, as appropriate, the communication of information in the form of speech or other sound data, text, visual images by means of guided or unguided electromagnetic energy;
- “dominant position” means a state where actions of licensed communication service provider can materially restrain or reduce competition in the market for a significant period of time;
- “force majeure” means an event which is beyond the reasonable control of a licensee and which makes a licensee’s performance of its obligations under the licence impossible;
- “licence” means a licence issued under the provisions of the Act;
- “licensee” means a person licensed by the Authority to provide any electronic communication, postal or courier services;
- “Minister” means the Minister responsible for communications except in relation to content and broadcasting services
- “network facilities” means any element or combination of elements of physical infrastructure used principally for, or in connection with the provision of one or more network services, excluding customer premise equipment;
- “network facilities licence” means an electronic communications licence entitling the holder to construct, maintain, own and make available one or more network facilities;
- “network facilities licensee” means a holder of a network facilities licence;
- “network service” means a service for the carrying of information in the form of speech or other sound, data, text or images by means of guided or unguided electromagnetic energy, excluding services provided solely on the customer side of the network boundary;
- “network service licence” means an electronic communications

licence entitling the holder to provide one or more network services; and
“network service licensee” means a holder of a network service licence.

PART II
RULES OF FAIR COMPETITION

Powers of the Authority

4. The Authority shall have powers to-
- (a) monitor and enforce fair competition in the communications sector;
 - (b) investigate all acts alleged to be in breach of fair competition rules;
 - (c) conduct proceedings, inquiries or public consultations in order to render or make a decision on acts or conducts in breach of fair competition rules; and
 - (d) impose sanctions, penalties or issue orders against licensees and persons whose acts or conducts are anti-competitive or in breach of fair competition rules.

Rules of competition fair

- 5.-(1) The Authority shall issue rules of fair competition relating to the prohibition of:
- (a) anti-competitive agreements, arrangement or decisions of concerted practices;
 - (b) abuse of dominant position;
 - (c) anti-competitive mergers, acquisitions, consolidations, takeovers or such anti-competitive arrangements that may result in changes in the market structure in terms of ownership and control; and
 - (d) all other practices and acts with an adverse effect on fair competition including unfair methods of competition, unfair or deceptive acts or practices, the purpose or effect of which is to distort competition in the communications market.
- (2) A licensee shall not engage directly or otherwise in any activity, whether by act or omission, which has or is intended or is likely to have the effect of unfairly preventing, restricting or

distorting competition.

(3) For the avoidance of doubt, a licensee shall be deemed to have engaged or to be engaged in an anti-competitive act, if he, commits or omits an act that has an appreciable effect on fair competition in the communications market.

Acts of unfair
competition

6. An act or omission of a licensee with a dominant position, whether independently or in any form of collusion with others, shall constitute or amount to an abuse of its dominant position where the act or omission involves:

- (a) price abuses or anti-competitive pricing like predatory pricing, price squeezes, cross-subsidizations, price-discrimination or any form of direct or indirect imposition of unfair purchasing, selling prices or other similar conditions;
- (b) any conduct which exploits customers or suppliers through excessively high prices or discriminatory prices or terms, conditions or conducts which removes or limits competition from existing competitors or discourage entry or exclude new undertakings from entering the market through predatory behavior, vertical restraints or refusal to supply existing or potential competitors;
- (c) limiting production or supply of services, markets or technical development to the prejudice of consumers;
- (d) applying different conditions to equivalent transactions with other parties, which place them at a competitive disadvantage;
- (e) concluding contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (f) predatory network alterations, where the dominant licensee alters the physical or logical interface of its network in a manner that imposes significant costs on interconnected licensees without any legitimate business, operational or technical justification;
- (g) refusal to supply or grant access to facilities;
- (h) refusal to interconnect or act in good faith during interconnection negotiations; and
- (i) engaging in unfair methods of competition that improperly deter or are likely to deter entry into the

communications markets or restrict or are likely to restrict existing competition in the communications markets for reasons unrelated to the availability, price or quality of the service that a prospective or current licensee offers or seeks to offer through:

- (i) false or misleading claims;
- (ii) degradation of service availability or quality;
- (iii) provision of false or misleading information to competitors; or
- (iv) interference with end-user or supplier relationship.

PART III
SUBSTANTIAL LESSENING OF COMPETITION

Assessing
conducts which
constitute
substantial
lessening of
competition

7. In assessing whether any conduct constitutes substantial lessening of competition, the Authority shall consider the following:

- (a) definition of the relevant market or market segment;
- (b) impact of the conduct on existing competitors in the identified markets;
- (c) impact of the conduct on further market entry; and
- (d) impact of the conduct on consumers, including the availability and pricing of products and services.

Conduct deemed
to be substantial
to lessening
competition

8. Subject to a licensee demonstrating otherwise in the course of any inquiry or other procedure conducted by the Authority, the following conducts or practices shall be deemed to result in a substantial lessening of competition:

- (a) failing to supply interconnection or other essential facilities to a competing licensee, in accordance with any interconnection agreement between the parties or any direction, rule or order issued by the Authority, pursuant to the Act or the Interconnection Regulations, except under circumstances that are objectively justified based on supply conditions, such as failure to supply, based on a shortage of available facilities;
- (b) discriminating in the provision of interconnection or other

communication services or facilities to competing licensees, except under circumstances that are objectively justified based on supply conditions, such as discrimination based on differences in the costs of supply; and

- (c) bundling of communication services, whereby the licensee in question requires, as a condition of supplying a service to a competing licensee, that the competing licensee acquires another service that it does not require;
- (d) offering a competing licensee more favourable terms or conditions which are not justified by cost differences, on condition that it acquires another service that it does not require;
- (e) supplying communications services, at prices below the long run average incremental costs or such other cost standard as is adopted by the Authority;
- (f) using revenues or the allocation of costs from one communications service to cross-subsidize another communication service, except where such cross subsidy is specifically approved by the Authority including, approval of tariffs or charges for the relevant communications services;
- (g) failing to comply with interconnection or facilities access obligations, including interconnection regulations, any other interconnection or access terms specified or approved by the Authority, or any interconnection or access related decisions, directions or guidelines of the Authority;
- (h) performing any of the following actions, where such actions have the effect of impeding or preventing a competing licensee's entry into or expansion in a communications market:
 - (i) deliberately reducing the margin of profit available to a competing licensee that requires wholesale communication services from the licensee in question, either by increasing the prices for the wholesale communication services required by that competing licensee or decreasing the prices of communication services in retail markets where they compete, or both;
 - (ii) requiring or inducing a supplier to refrain from selling to a competing licensee;

- (iii) adopting technical specifications for networks or systems to deliberately prevent interconnection or interoperability with a network or system of a competing licensee;
- (iv) failing to make available to competing licensees on a timely basis, technical specifications, information about essential facilities or other commercially relevant information which is required by such competing licensees in order to provide communication services and which is not available from other sources; and
- (v) using information obtained from competing licensees, for purposes related to interconnection or the supply of communications facilities or services by the licensee in question, to compete with such competing licensees;
- (i) failure by a licensee to comply with any decision, rule, direction or guideline issued by the Authority, regarding either prohibited or required competitive practices.

Power of the Authority to add conducts or practices that constitute substantial lessening of competition

9. The Authority may, from time to time, specify other conducts or practices that shall be deemed to result in substantial lessening of competition.

PART IV ANTICOMPETITIVE AGREEMENTS AND PRACTICES

Powers of the Authority to review agreements

10. The Authority shall have powers to review, either on its own initiative or on application by an interested person, the form of agreement and related practices that have the effect of substantially lessening competition.

Types of agreements and practices to be reviewed by the

11. The Authority shall review, any agreements between licensees, with the view to ensure the said agreements do not include the following practices-

- Authority
- (a) price-fixing agreements, pursuant to which competing licensees agree on or otherwise manipulate consumer prices;
 - (b) bid-rigging, pursuant to which competing licensees manipulate the prices of conditions in what should otherwise be a competitive tender process;
 - (c) market allocation agreements, pursuant to which competing licensees allocate geographic or product markets amongst themselves; and
 - (d) exclusive dealing agreements pursuant to which a licensee enters into an agreement with another party for the supply of products or services on an exclusive basis where that exclusivity has or may have the effect of substantially lessening competition in related communications markets.

PART V

DETERMINATION OF DOMINANT POSITION

Powers of the Authority on dominant licensee

12. The Authority shall have powers to determine the dominant position of electronic and postal communication licensee in the relevant market.

Methodology for determination of dominant position

13.-(1) The Authority shall develop a methodology to be used in the determination and designation of the dominant position in the Tanzanian communications market.

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(2) In developing the methodology for determination of the dominant position, the Authority shall, among other things, take into consideration the criteria set under section (5) of the Tanzania Fair Competition Act.

Criteria for determination of dominant position

14. In determining whether a licensee is in a dominant position, the Authority may consider, among others, the following factors:

- (a) the market share of the licensee, determined by reference to revenues, number of subscribers, traffic or volumes of sales;
- (b) the overall size of the licensee in comparison to competing licensees, particularly any resulting economies of scale or scope that permit the larger licensee to produce products or services at lower costs;
- (c) control of network facilities or other infrastructure access

which is required by competing licensees and that cannot, for commercial or technical reasons, be duplicated by competing licensees;

- (d) absence of the buying power or negotiating position by customers or consumers, including switching costs and any other barriers to switching service providers;
- (e) ease of market entry, and the extent to which the actual or potential market entry protects against the exercise of market power such as raising prices; and
- (f) the rate of technological or other changes in the market and related effects for market entry or the continuation of a dominant position.

Definition of relevant communications markets

15.-(1) The Authority shall assess, define and determine the relevant communication market.

(2) In determining the relevant communications markets, the Authority shall take into account the following:

- (a) the products or services that make up a specific market, as well as the geographic scope of that market;
- (b) the demand side substitutability, in order to measure the extent to which consumers are prepared or able to substitute other products or services for the products or services supplied by the licensee in question; and
- (c) the supply side substitutability, to determine the extent to which suppliers, other than the licensee in question, are able to supply products or services that provide a competitive alternative to consumers.

PART VI GENERAL PROVISIONS

Abuse of dominant position

16.-(1) Where the conduct of a dominant licensee has or may have the effect of substantially lessening competition in one or more communication markets, the Authority shall:

- (a) require the dominant licensee to desist, change its conduct or adopt a particular conduct; or
- (b) implement appropriate remedies.

(2) The Authority shall, before taking an action referred to under paragraph (b) of sub regulation (1), request the dominant licensee to refrain from the conduct that is inconsistent with these Regulations.

Arbitration of
disputes

17.-(1) Where a dispute arises between parties on issues having effect to substantially lessening competition, the aggrieved party may petition to the Authority to arbitrate and the respondent shall be served with a copy of the petition together with a written notice of hearing.

(2) The aggrieved party shall submit his petition to the Authority with documents relevant to the dispute.

(3) The respondent shall respond to the petition within twenty one days from the date of receipt of the petition.

(4) The Authority may ask for additional information related to unresolved issues from the parties where it deems fit to do so.

(5) The Authority shall, within sixty days after receiving response from the respondent, proceed to resolve the dispute.

(6) Where any party refuses or fails to respond within thirty days from the date of request for additional information by the Authority, the Authority may proceed to resolve the dispute.

Appeals

18. A party who is aggrieved by the decision of the Authority may, within thirty days from the date of the decision, appeal to the Fair Competition Tribunal.

Penalties

19. Any licensee who contravenes any provision of these Regulations shall be liable on conviction to a fine not less than five hundred thousand shillings or to imprisonment for a period not exceeding three months or to both.

(2) Notwithstanding sub regulation (1), where a person commits an offence under these Regulations, the Director General may, where such person admits in writing compound such offence by collecting from that person a sum of money not exceeding the amount of the fine prescribed for the offence.

Revocation
G.N. No. 420 of
2011

20. The Electronic and Postal Communications (Competition) Regulations 2011 are hereby revoked.

Dar es Salaam,
3th January, 2018

MAKAME M. MBARAWA,
*Minister for Works, Transport
and Communications*