

GOVERNMENT NOTICE NO. 420 published on 9/12/2011.....

ELECTRONIC AND POSTAL COMMUNICATIONS ACT  
(CAP.306)

---

**REGULATIONS**

---

*(Made under Section 165)*

---

THE ELECTRONIC AND POSTAL COMMUNICATIONS (COMPETITION) REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

*Regulation*      *Title*

**PART I**  
**PRELIMINARY PROVISIONS**

1. Citation
2. Application
3. Interpretation

**PART II**  
**RULES OF FAIR COMPETITION**

4. Powers of the Authority
5. Rules of fair competition
6. Acts of unfair competition

**PART III**

**SUBSTANTIAL LESSENING OF COMPETITION**

7. Assessing conducts which constitute substantial lessening competition
8. Conduct deemed to be substantial lessening competition
9. Power of the Authority to add to conducts or practices that constitute substantial lessening of competition

**PART IV**

**ANTI-COMPETITIVE AGREEMENTS AND PRACTICES**

10. Powers of the Authority to review agreements and practices.
11. Types of agreements and practices to be reviewed by the Authority.

**PART V**

**DETERMINATION OF DOMINANT POSITION**

12. Powers of the Authority on domain licensee
13. Methodology for determination of dominant position
14. Criteria for determination of dominant position
15. Definition of relevant communications markets

**PART VI**

**GENERAL PROVISIONS**

16. Abuse of dominant position
17. Penalties

ELECTRONIC AND POSTAL COMMUNICATIONS ACT  
(CAP.306)

**REGULATIONS**

*(Made under Section 165)*

THE ELECTRONIC AND POSTAL COMMUNICATIONS (COMPETITION) REGULATIONS, 2011

PART I  
PRELIMINARY PROVISIONS

- Citation                    1. These Regulations may be cited as the Electronic and Postal Communications (Competition) Regulations, 2011.
- 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 such 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.
- “courier service” means specialized services for the speedy collection, conveyance and delivery of postal articles other than letter;
- “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 licensee” means has the meaning ascribed to it under the Act;;
- “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; Such events may include but are not limited to fires, floods, epidemics, quarantine restrictions, strikes wars or revolutions;
- “licence” means a licence issued under the provisions of the Act;
- “licensee” means an entity 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, but not including 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 and/or unguided electromagnetic energy but does not include 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;
- “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 fair competition

- 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 in any activity, whether by act or omission, which has, is intended or is likely to have the effect of unfairly preventing, restricting or distorting competition where the act or omission is done in the course of or as a result of or in connection with any business activity relating to communication services.

(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 unfair trading 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 dissimilar 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;
- (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 to in order 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; and
- (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

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

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  
Authority

11. The Authority shall review, the following types of agreements and practices-

- (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

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

dominant licensee	licensee in the relevant market.
Methodology for determination of dominant position	<p>13.-(1) The Authority shall develop the methodology to be used in the determination and designation of the dominant position in the Tanzanian communications market.</p> <p>(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.</p>
Cap 285 Criteria for determination of dominant position	<p>14. In determining whether a licensee is in a dominant position, the Authority may consider, among others, the following factors-</p> <ul style="list-style-type: none"><li>(a) the market share of the licensee, determined by reference to revenues, number of subscribers, traffic or volumes of sales;</li><li>(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;</li><li>(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;</li><li>(d) absence of the buying power or negotiating position by customers or consumers, including switching costs and any other barriers to switching service providers;</li><li>(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;</li><li>(f) the rate of technological or other changes in the market, and related effects for market entry or the continuation of a dominant position.</li></ul>
Definition of	15.-(1) The Authority shall assess, define and determine

relevant  
communications  
markets

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 sub-regulation (1)(b), 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 all relevant documentation 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 unresolve issues from the parties where it deems fit to do so.

(5) 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 within fourteen days proceed to resolve each issue set forth in the petition.

Appeals

18.-(1) Where any party is aggrieved by the decision of the Authority, he may appeal to the Fair Competition Tribunal within thirty days from the date of the decision.

(2) Where the aggrieved party fails to lodge his appeal to the Authority within thirty days from the date of the decision, he shall be deemed to have accepted the decision of the Authority.

Penalties

19. Any licensee who contravenes any provision of these Regulations commits an offence and shall on conviction ,be liable to a fine not exceeding twenty thousand US dollars or its equivalent in Tanzania shillings.

Dar es Salaam  
29<sup>th</sup> November 2011

MAKAME M. MBARAWA,  
*Minister for Communication Science  
and Technology*