



**THIRTY-FIRST SESSION OF THE AUTHORITY OF HEADS
OF STATE AND GOVERNMENT**

Ouagadougou, 19 January 2007

**SUPPLEMENTARY ACT A/SA.3/01/07 ON THE LEGAL REGIME
APPLICABLE TO NETWORK OPERATORS AND SERVICE PROVIDERS**

THE HIGH CONTRACTING PARTIES,

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

MINDFUL of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

MINDFUL of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

CONSIDERING that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

NOTING that this liberalization process is giving rise to flourishing markets and that this calls for the opening up of access to new ICT operators through the granting of licenses or authorizations for the establishment and/or operation of networks or frequencies;

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DESIROUS of adopting harmonized regulations in regard to the procedures for the granting of such licenses or authorizations within the Member States, based on the rules of free competition in conformity with international legislation in the area of ICT;

ON THE PROPOSAL of the Meeting of Ministers In Charge of Telecommunication held in Abuja on 11th May 2006;

ON THE RECOMMENDATION of the fifty-seventh session of the Council of Ministers held in Ouagadougou from 18 to 19.

AGREE AS FOLLOWS

CHAPTER I

DEFINITIONS, OBJECTIVES AND SCOPE

Article 1: Definitions

- 1 For the purposes of this Supplementary Act, the definitions contained in Supplementary Act A/SA1/01/07 shall apply.
- 2 The following additional definitions shall also apply:

Subscriber: a person who receives and pays for a communication service over a given period of time pursuant to an agreement in accordance with terms established by the service provider, with the approval of the national regulatory authority.

Authorization: Administrative Act (individual license, concession contract or general authorization) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit telecommunication networks or offer telecommunication services.

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Individual License : an authorization which is granted to a legal entity by a national regulatory authority and which grants such entity specific rights or imposes specific obligations which are in addition to the rights and obligations attached to general authorizations or class licenses and which obligates the company in question to obtain an explicit decision from the national regulatory authority before exercising rights deriving from such document and to communicate information about the service concerned.

General authorization: a general authorization or class license granted by a national regulatory authority to any legal entity meeting the applicable conditions appended thereto and which obligates the company in question to obtain an explicit decision from the national regulatory authority before exercising rights deriving from such document and to communicate information about the service concerned as necessary to assure proper compliance with the applicable conditions appended thereto in accordance with current regulations;

Declaration: act of registration of telecommunications activities with the National Regulatory Authority by a network operator or service provider which does not require the company to obtain an explicit decision from the National Regulatory Authority prior to commencing the operation of the network or provision of the service.

Exclusive rights: rights granted by a Member State to a single company by means of a legislative, regulatory or administrative provision which reserves for that company the right to provide a telecommunication service or engage in a telecommunication activity within a specific territory.

Special rights : rights granted by a Member State by means of a legislative, regulatory or administrative provision, which attribute to one or more company an advantage or an entitlement to provide a telecommunication service or engage in a telecommunication activity on the basis of criteria that are not objective, proportionate and non-discriminatory.

Independent network: a telecommunication network reserved for private or shared use. In principle, it cannot be connected to a network that is open to the public.

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Whether an independent network is for private or shared use is determined as follows:

- for private use, if it is reserved for internal use by the natural or juridical person that established it;
- for shared use, if it is reserved for use by several natural or juridical persons organized into one or more closed user groups, with a view to exchanging internal communications within a single group.

Internal network: an independent network established entirely on a single property, without making use of the public domain, including spectrum resources, or third party property.

Public telecommunication network: telecommunication networks established and/or operated for the purpose of providing public telecommunication services.

Resale: the act of reselling public telecommunication services or traffic (resale to the end user of minutes purchased by a provider at wholesale prices from another service provider).

Article 2: Objectives and scope

- 1 This Supplementary Act forms part of the framework for harmonizing and regulating the ICT sector in the Community. It aims to harmonize the legal regimes that apply to the activity carried on by telecommunication network operators and service providers, and to lay down procedures for issuing licenses, authorizations and declarations and the conditions applicable to the different regimes.
- 2 The transposition of this Supplementary Act into domestic law shall not affect specific regulatory provisions adopted by Member States, particularly in regard to the legal basis for the essential requirements and other imperatives of public order.

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CHAPTER 2

BASIC PRINCIPLES

Article 3: Opening up to competition

- 1 Member States are required to promote, in all countries of the Community, free competition, thereby opening the market to new entrants, at the latest by 31 December 2006.
- 2 In order to allow all countries to follow regional trends, transition periods foreseen by certain Member States shall be limited to 31st December 2007.

Article 4: Competitive framework

- 1 Member States shall promote infrastructure-based competition.
- 2 In the initial stages of competition, Member States shall ensure, by means of the licensing approach, that service-based competition does not dissuade new entrants from deploying their own infrastructure.

Article 5: Technology and service neutrality

- 1 Member States shall promote technology and service neutrality so as to be able to accommodate convergence and new technologies.
- 2 Member States shall refrain from imposing limitations of the service offered over a given network except in the case of the protection of public order or moral standards.
- 3 In order to take account of technological developments, the licensing regime shall include provisions to facilitate the review of license conditions when technological advance has an impact on ongoing operation.



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CHAPTER 3

PRINCIPLES GOVERNING ICT MARKET ENTRY

Article 6: General principles

- 1 Member States shall define and apply licensing and general authorization mechanisms that facilitate market entry and allow the progressive dismantlement of obstacles to competition and to the development of new services.
- 2 Convergence between different telecommunication networks and services and their technologies requires a licensing framework which covers comparable services whatever the technology used.
- 3 Member States shall ensure that the telecommunication services and/or networks can be provided either without authorization or based on a general authorization complemented, as appropriate, by rights and obligations requiring the individual evaluation of candidacies and involving one or several individual licenses.
- 4 Any condition imposed with regard to the operation of telecommunication networks or the provision of telecommunication services must be non-discriminatory, proportionate, transparent and must be justified in relation to the targeted network or service.

Article 7: Conditions for market entry

- 1 Member States shall ensure that their legal framework contains four levels of regulatory intervention allowing ICT market entry:
 - a) individual license;
 - b) general authorization or class license;
 - c) open entry, which may in some cases require registration, notification or declaration with the National Regulatory Authority.

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2 Different telecommunication networks and services shall be categorized according to the structure adopted:

a) An individual license shall be required in the following cases:

- for the operation or provision of public telecommunication networks or the public voice telephony service;
- for the use of scarce resources (radio frequencies and numbering). The issue of licenses/authorizations for the use of frequencies and numbers shall be dealt with in the corresponding decisions;
- if the government of a particular country, for reasons of public policy, determines that the service shall be offered in a certain way (e.g. measures concerning public order, public security or public health).

b) A general authorization is required in the following case:

- the operation or provision of private networks.

c) Entry is open subject to compliance with the applicable legislative and regulatory provisions, in the following cases:

- internal networks;
- radio installations exclusively composed of low-power, low-range equipment categorized as decided by the national regulatory authorities.

For the following activities where entry is open, a declaration is required:

- the provision of value-added services;
- the provision of the internet service;
- resellers.

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Article 8: Sector development and provisional conditions

- 1 In order to promote the development of the ICT sector in the region and to allow more choice to consumers, ECOWAS Member States may decide that certain activities, services or networks should be exempt from the obligation to hold a license and be subject to the authorization, declaration or even the open entry regime. The aim of such a provision is to give flexibility to the Member States in order to promote the establishment of networks and the provision of services in the region.
- 2 Without prejudice to § 1 above, where the provision of a telecommunication service is not yet covered by a license or general authorization and where that service and/or network cannot be provided without a license or authorization, Member States shall, no later than six weeks after having received a request, either adopt provisional conditions allowing the company to commence providing the service, or shall deny the request, providing the company concerned with the reasons for their decision. Member States shall then adopt, as soon as possible, definitive conditions governing the issue of a license for the service or network, or agree that the service or network be provided without authorization, or provide the reasons for their refusal to do either.
- 3 Member States shall decide on an appropriate procedure for the submission, to a body independent from the national regulatory authority, of appeals against the refusal to adopt provisional or definitive conditions, and against the denial of requests or refusal to agree that the service be provided without authorization.

Article 9: Limitation of barriers to market entry

- 1 Member States shall ensure that they impose no barriers that are not in conformity with regulations on the number of operators or service providers in the ICT market.

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- 2 Member States shall refrain from granting licenses with exclusivity or special rights, except when mandated by the country's policy or legislation, when dictated by the unavailability of necessary resources or other relevant reasons.

Article 10: Public availability of market entry criteria

- 1 Where a license or general authorization is required, Member States shall ensure that the information is published in such a way as to make it readily available to interested parties. The official journals of the Member States and the Official Journal of the Community, as the case may be, shall refer to the publication of such information.
- 2 Members States shall ensure that the following information is published and made available to the public:
 - a) all criteria for the issue of licenses, general authorizations and declarations;
 - b) the period of time normally required to reach a decision concerning a request for a license or general authorization;
 - c) the terms and conditions governing activities subject to individual licenses, general authorizations, declarations or open entry.

Article 11: Public consultations

In order to ensure fairness and transparency in the licensing and authorization process, Member States shall consult with industry, the public and other stakeholders.

Article 12: Reasons for denial

Member States shall ensure that procedures are introduced whereby all the reasons for the denial of any license or general authorization are made known to the applicant upon request.

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CHAPTER IV

PROCEDURES FOR GRANTING INDIVIDUAL LICENSES

Article 13: Procedures for granting individual licenses

- 1 When a Member State intends to grant individual licenses:
 - a) it shall grant the licenses according to open, non-discriminatory and transparent procedures, and, for the purpose, all candidates shall be subject to the same procedures unless there is an objective reason for subjecting them to different treatment;
 - b) it shall establish reasonable time-frames; *inter alia*, it shall inform the applicant of its decision as soon as possible, and at the latest six weeks following receipt of the request. In the provisions they adopt for implementation of this Supplementary Act, Member States may extend this period up to four months in objectively justified cases specifically defined in the aforementioned provisions. In the particular case of call for tender procedures, Member States may extend the period by a maximum of four additional months. These periods must be established without prejudice to any applicable international agreement related to the international coordination of frequencies and satellites.
- 2 The following information may be required in order to prove that a request for an individual license meets the conditions imposed by the relevant provisions of this Supplementary Act:
 - a) Legal information, including a description of the candidate, the legal form of the company, proof of its registration by the competent commercial jurisdiction (e.g. commercial registry, articles of incorporation and bylaws), a list and description of existing licenses in which the applicant has at least 10% participation, as well as the legal confirmation of the compliance of existing operators' licenses. Individuals shall be required to show that they are registered as a corporate body. On the other hand, commercial partnerships may be required to show by means of a statement accompanied by a certificate from the relevant competent body that they are legally established and that their contract of partnership includes the establishment of networks or the provision of telecommunication services.

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- b) Financial information, including audited financial statements, annual reports, a detailed description of financial backing.
 - c) Economic information, including a model of service contract/declaration of compliance with model service contract to be drafted and published by the national regulatory authority as well as annual reports and a description and proof of financial backing. Applicants must also submit proof of the applicant's telecommunication operating and management expertise. Applicants shall be required to provide detailed information concerning *inter alia* market forecasting, evidence of their experience and of their technical and management ability to realize the project proposed, and appropriate documentation. Applicants shall also be required to show that the key staff proposed for the project is adequate and has the required experience and know-how to implement the project; applicants shall submit appropriate documentation in this regard.
 - d) Technical information, including coverage plans and indicators, planning and development of the system including connection, numbering and addressing issues and proposed quality of service.
- 3 Without prejudice to Article 14 of this Supplementary Act, any company providing the information that may be required from it to prove that it meets the conditions established and published by Member States in conformity with the relevant provisions of this Supplementary Act shall qualify to obtain an individual license. If a company seeking to obtain an individual license fails to provide such information, the national regulatory authority may refuse to grant the individual license.
- 4 Applicants whose authorization or license has been suspended or revoked, even outside the country concerned, shall not be authorized to request a license.
- 5 Member States that refuse to grant an individual license, or that withdraw, modify or suspend one, shall communicate to the ECOWAS Commission and to the company concerned the reasons for their decision. Member States shall establish an appropriate procedure allowing appeals against such refusal, withdrawal, modification or suspension of a license to be brought before an institution that is independent from the national regulatory authority.



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- 6 Licenses shall be issued to the applicant personally. Transfer to third parties, if applicable, shall be done only with the prior consent of the national regulatory authority. However, a license obtained through competition or tender procedures shall not be transferable, unless the applicant has declared in advance his intention to set up a company entirely owned by him to operate the licensed activities.

Article 14: Limitation on number of individual licenses

- 1 Member States shall be able to limit the number of individual licenses, for any category of telecommunication service and for the establishment and/or operation of telecommunication infrastructure, only to the extent required to guarantee the efficient use of the radio-frequency spectrum or for the time required to allow sufficient numbers to be allocated.
- 2 Where a Member State intends to limit the number of individual licenses granted in conformity with § 1:
 - a) it shall give due consideration to the necessity to maximize advantages for users and facilitate the development of competition;
 - b) it shall give interested parties the opportunity to express their opinion on any planned limitation;
 - c) it shall publish its decision to limit the number of individual licenses as well as the justification of such a decision;
 - d) it shall regularly re-examine the limit imposed;
 - e) it shall launch a public tender for the issue of licenses.
- 3 Member States shall grant individual licenses on the basis of objective, non-discriminatory, transparent, proportionate and detailed selection criteria. In any selection, they shall take due account of the necessity to facilitate the development of competition and maximize advantages for users.

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- 4 Member States shall ensure that information concerning the aforementioned criteria are published in advance in such a way as to be readily available. The official journal of the Member State concerned shall refer to the publication of such information.
- 5 When a Member State determines, at its own initiative or further to a request from a company, upon this Supplementary Act's entry into force or subsequently, that the number of licenses can be increased, it shall take the necessary actions and launch a call for tender for additional licenses.

Article 15: Call for tender for individual licenses

- 1 For each call for tender for the purpose of proposing the establishment and/or operation of a specific telecommunication service or network under the individual license regime, the administration shall establish in terms of reference:
 - a) the conditions for the establishment of the network;
 - b) the conditions for the provision of the service;
 - c) the coverage area of the service and implementation schedule;
 - d) the radio frequencies and blocks of numbers allocated along with the conditions of access to elevated points belonging to the public domain;
 - e) the minimum professional and technical qualifications along with the financial guarantees required of applicants;
 - f) the conditions for operating the service, including those relating to the provision of universal service and the principle of equality of treatment of users;
 - g) arrangements for payment of the fee referred to in Article 16 below;

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- h) arrangements for payment of the financial consideration referred to in Article 16;
 - i) the duration of the license's validity and conditions for its renewal.
- 2 The call for tender shall establish the conditions of access and interconnection to public telecommunication networks and possibly also the conditions for leasing components of those networks as required for the establishment of the new network or for provision of the service covered by the call for tender. In that case, the license carries with it the right to access to interconnection or the leasing required.
 - 3 The bid shall be awarded to the applicant whose offer is deemed to be the best vis-à-vis all stipulations in the terms of reference.
 - 4 Award of the bid shall be published in a public report.

Article 16: Individual license charges and fees

- 1 Without prejudice to the cost of the authorization or financial contributions, including those relating to the provision of universal service pursuant to Supplementary Act A/SA..../01/07, Member States shall ensure that the charges and fees imposed on service providers and operators as part of the license and authorization procedures are for the sole purpose of covering the administrative costs incurred in the authorization, management, control and implementation of scarce resources and costs of regulating the telecommunication sector. The charges applicable to an individual license shall be in proportion to the volume of work required and shall be published in an appropriate and sufficiently detailed form to make the information readily available.
- 2 Notwithstanding paragraph 1, in the case of scarce resources Member States may authorize their national regulatory authorities to charge fees in order to cater for the need to ensure optimum utilization of such resources. Such fees shall be non-discriminatory and shall take account in particular of the need to promote the development of innovative services and competition.

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CHAPTER V

PROCEDURES APPLICABLE TO GENERAL AUTHORIZATIONS

Article 17: Procedures applicable to the general authorization regime

- 1 Without prejudice to the provisions of Chapter IV, Member States shall not prevent a company that provides the necessary information and the required proof that the applicant meets the conditions imposed, satisfying the conditions applicable to a general authorization in conformity with the provisions of Chapter VI, from providing the telecommunication networks and/or service concerned.
- 2 Operators applying for an authorization shall be required to notify the national regulatory authority before providing the intended service in order to ensure compliance with any applicable conditions of operation. In such instance, they may be required to wait for a reasonable and defined period of time before starting to provide the services covered by the authorization.
- 3 Applicants whose authorization or license has been suspended or revoked, even outside the country concerned, shall not be qualified to request an authorization.
- 4 The information required for general authorization shall include:
 - a) legal and financial information, including a description of the applicant, the legal form of the company, proof of its registration by the competent commercial jurisdiction (e.g. commercial registry, articles of incorporation and bylaws), a model of service contract/declaration of compliance with model service contract to be drafted and published by the national regulatory authority as well as annual reports and a description of financial backing. Individuals shall be required to show that they are registered as corporate entities. Commercial partnerships, however, may be required to show by means of a statement accompanied by a certificate from the relevant competent body that they are legally established and that their contract of partnership includes the business of providing telecommunication services;

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b) technical information: entities shall be required to inform the relevant authorities of Member States of the services they intend to introduce and to provide the information that shows that they can fulfill the terms and conditions applicable to the licensable activity, namely:

- detailed description of the service proposed;
- technical project stating the equipment to be used including proof of type approval of own equipment to be used;
- indication of the entity and a description of the facilities proposed on the infrastructure of other network operators for the service proposed.

5 National regulatory authorities reserve the right to request additional information.

Article 18: Charges applicable to general authorization procedures

- 1 Without prejudice to the financial contributions, including those related to the provision of universal service in conformity with the Supplementary Act on universal access/universal service, Member States shall ensure that the charges imposed on companies as part of authorization procedures are for the sole purpose of covering the administrative costs incurred in issuance, management, control and implementation under the general authorization regime.
- 2 These charges shall be sufficiently detailed and published in a form that makes them readily available.

CHAPTER VI

PROCEDURES APPLICABLE TO DECLARATIONS

Article 19: General principles

- 1 Any natural person or legal entity may freely offer the resale of telecommunication services, the commercial operation of value-added services and the provision of internet services but is required to submit a declaration of the offer of such service with the National Regulatory Authority.

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- 2 The national regulatory authority shall acknowledge receipt of the declaration in the interest of ensuring that the proposed service conforms with the existing regulatory framework.
- 3 Without prejudice to right to impose sanctions, if the provision of the service subject to a declaration proves to undermine public order or security or is contrary to moral standards and decency, the competent authorities may prohibit the provision of such services.

Article 20: Information required

- 1 A declaration of intention to open a service shall contain the following information:
 - the arrangements for opening the service;
 - geographical coverage;
 - conditions of access;
 - the kind of services offered;
 - the rates to be charged to users.
- 2 For non-facilities-based resellers, Member States may also require a description of the services (minutes), as well as a description of the ways in which resale will be effected (distribution channels) and the geographical area where the services will be resold in order to ensure consumer protection.
- 3 In the case of pre-paid calling card resellers, Member States may require the deposit of a certain sum as a guarantee in order to minimize fraud in the provision of the pre-paid card service.
- 4 Any change made to the initial conditions of the declaration, with the exception of changes to the rates charged, shall be brought to the attention of the national regulatory authority concerned one month prior to the intended date of implementation.
- 5 In the case of transfer, the reseller or provider of the value-added service is required to inform the national regulatory authority concerned of the change no later than 30 days following the date of the transfer, and to deposit with the national regulatory authority a declaration of intention to open a service as referred to in paragraph 1 above.

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CHAPTER VII

CONDITIONS APPLICABLE TO LICENSES AND GENERAL AUTHORIZATIONS

Article 21: Principles

- 1 All conditions applicable to a license or authorization must be compatible with the rules of competition of the ECOWAS Treaty.
- 2 All holders of a telecommunication license or authorization will have a set of basic rights and these rights shall be applicable to all operators holding a license or authorization, regardless of whether they are service-based or network-based operators. However, the ability of license or authorization holders to avail themselves of those rights may be conditional upon their being able to meet physical or technical requirements.
- 3 The conditions applicable to individual licenses or general authorizations issued to telecommunication service providers and operators are set forth in the annex to this Supplementary Act.
- 4 All conditions applicable to an individual license or general authorization must comply with the principle of proportionality and compatibility with the rules of competition of the Treaty. Member States shall ensure that license targets to further universal service goals do not discourage competition.

Article 22: Types of conditions

- 1 Certain conditions which will be contained in licenses shall be applicable only if the license holder is in a dominant position on a market further to a decision taken by the national regulatory authority as provided for by the ECOWAS Supplementary Act on interconnection. Where the national regulatory authority intends to make a finding of dominance, there is a statutory consultation process to be followed.

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- 2 Where operators wish to have access to scarce resources such as frequency spectrum, numbers or land, the national regulatory authority shall retain the right to put in place additional conditions including, but not limited to, the requirement to participate in specific application procedures or competitive selection processes. In addition, those conditions that relate to scarce resources should be activated where an operator gains access to such resources. The national regulatory authority shall consult separately in relation to the allocation of scarce resources where appropriate.
- 3 Conditions regarding the regulation of the activities of a dominant operator shall not, in principle, apply to new entrants. Such conditions shall apply only where it is determined, after appropriate market analysis by the national regulatory authority that a licensee is in fact in a dominant position as provided for by the Supplementary Act on interconnection.
- 4 Certain operators holding licenses or authorizations shall only be subject to conditions linked to quality of service and customer relations. Nevertheless, certain conditions relating to universal service, in particular including emergency calls, directory services and public pay phones, may be applicable. The national regulatory authorities shall retain the ability to designate an operator(s) other than the incumbent as having a universal service obligation in the future.
- 5 Any holder of a license or authorization shall make appropriate provisions to take into consideration the needs of disabled people.

Article 23: Publication of conditions

Member States shall ensure that the conditions are published in order to ensure that the information is readily available to interested parties.

Article 24: Modification of conditions

- 1 The conditions of an individual license and of a general authorization shall be considered fixed at the time the license or authorization is officially delivered.

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- 2 Member States shall be able to modify the conditions of an individual license or general authorization in objectively justified cases and in a proportionate manner. If it becomes necessary to modify the conditions of an individual license or general authorization, the Member State shall give the holder of the license or authorization reasonable advance notice of any modifications before they are implemented.
- 3 In this regard, States shall notify their intentions to the President of the ECOWAS Commission.

Article 25: Reviewing, terminating and revoking licenses or general authorizations

- 1 When the holder of a license or authorization fails to comply with a condition attached to the license or authorization, the national regulatory authority may, in accordance with termination clauses, withdraw, amend or suspend the license or authorization or impose specific measures aimed at ensuring compliance.
- 2 The national regulatory authority shall, at the same time, give the entity a reasonable opportunity to state its view on the application of the aforementioned measures and, except in the case of repeated breaches by the entity, the entity shall have the opportunity, within a defined period of time, to remedy the breach. If the breach is remedied, the national regulatory authority shall, within a defined period of time, annul or modify its decision and state the reasons therefore. If the breach is not remedied, the national regulatory authority shall, within a defined period of time after its initial intervention, confirm its decision and state the reasons for its decision. The decision shall be communicated to the entity within one week.

Article 26: Enforcement

- 1 The conditions of licenses and authorizations must be enforceable and clear on the rights and obligations of the holder.
- 2 The national regulatory authority shall undertake, when deemed necessary, reasonable and appropriate methods to enforce the terms and conditions of the holder's activities.

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- 3 Each license and authorization shall include provisions to facilitate enforcement processes and access, when deemed necessary, to the license or authorization holder's documents, provided that privacy and confidentiality are respected.
- 4 A license or authorization shall require the national regulatory authority to give the holder notice of any suspected or alleged breaches that come to the attention of the authority and allow a reasonable time for the holder to investigate and take corrective action, if appropriate.
- 5 The holder of a license or authorization shall be provided with the opportunity to present his views before changes to the terms of the license agreement take effect.

Article 27: Sanctions

- 1 Where conditions are not respected, sanctions may be imposed, including:
 - fines;
 - restriction of the scope and/or the duration of the license;
 - suspension;
 - withdrawal.
- 2 Where one of the sanctions mentioned above is imposed, it will be widely communicated amongst ECOWAS Member States.

Article 28: Dispute settlement

- 1 All disputes must be handled according to national legislation.
 - 2 Parties may however submit their case to the judicial entity of ECOWAS or to any other competent judicial authority.
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CHAPTER VIII

NETWORK DEPLOYMENT AND PROVISION OF SERVICES THROUGHOUT ECOWAS

Article 29: Harmonization of procedures

Member States shall strive to define and adopt common classifications of telecommunication networks and services as well as common licensing procedures.

Article 30: Provision of services between Member States

- 1 Member States shall, in the formulation and application of their respective licensing regimes, facilitate the provision of telecommunication services between Member States or in different Member States of the Region. Accordingly, and in order to facilitate the establishment of regional networks or networks between several countries of the Region, Member States shall ensure that national regulatory authorities coordinate to the extent possible their procedures so that a company wishing to provide a telecommunication service or establish and/or operate a telecommunication network need only to complete one service provision request which it can subsequently submit in various Member States.

CHAPTER IX

Final provisions

Article 31: Existing licenses, authorizations and declarations

- 1 On the date of implementation of this Supplementary Act at the latest, Member States shall adapt existing licenses, authorizations and declarations to the provisions of this Supplementary Act.
- 2 Where the application of paragraph 1 of this article results in a restriction of the rights or an increase in the obligations of a company subject to the regime of the license, authorization or declaration, the Member State may extend the validity of those rights and obligations by a maximum of nine (9) months as from the date of implementation of this Supplementary Act.



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- 3 A Member State may request a temporary extension of a condition linked to an authorization or declaration in force prior to the date of entry into force of this Supplementary Act, if it can show that suppression of that condition creates excessive difficulties for the companies benefiting from it and if it is not possible for those companies to negotiate new agreements under reasonable commercial conditions before the date of implementation of this Supplementary Act.
- 4 Member States' requests for extension shall be brought before the Commission which shall examine them in the light of the specific situation of each Member State and the companies concerned.
- 5 Based on the aforementioned analysis, the Commission shall reach a decision and may accept or deny the request. In the case of a request being accepted, the Commission shall decide the scope and duration of the extension to be granted. Its decision shall be communicated to the Member State concerned within the six months following receipt of the request for extension.

Article 32: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Supplementary Act no later than two years following the date of its entry into force. They shall inform the Commission of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Supplementary Act or shall have such a reference attached to them when they are officially published.

Article 33: Implementation

- 1 When, based on this Supplementary Act, national regulatory authorities take decisions that:
 - a) are liable to have an impact on exchanges between Member States and on the establishment of the single market;

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- b) concern arrangements for the allocation of licenses or authorizations for the purpose of establishing, operating and/or providing telecommunication services open to the public,

the Member States shall ensure that the measures and substantiating arguments are communicated to the Commission one month prior to their implementation.

- 2 The national regulatory authority shall take into consideration the observations of the Commission.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the national regulatory authority that they are incompatible with this Supplementary Act.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Commission for comment.
- 5 When Member States adopt transposition measures for this Supplementary Act, they shall ensure that the planned measures along with substantiating arguments are communicated to the Commission one month prior to implementation of the measures.
- 6 Member States shall take into consideration the observations of the Commission. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the Member States that the measures proposed are incompatible with this Supplementary Act.
- 7 Member States shall communicate to the Commission any provisions of domestic law which they adopt in the field governed by this Supplementary Act.

Article 34: Information report

Member States shall, no later than six months following the date of entry into force of this Supplementary Act communicate to the Commission the steps taken or which are in the course of approval or implementation for the purpose of implementing this Supplementary Act.

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Article 35: Publication

This Supplementary Act shall be published by the Commission in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of Authority. It shall also be published by each Member State in its National Gazette within the same time frame.

Article 36: Entry into force

1. This Supplementary Act shall enter into force upon its publication. Consequently, signatory States and ECOWAS Institutions pledge to commence the implementation of its provisions on its entry into force.
2. This Supplementary Act is annexed to the ECOWAS Treaty of which it is an integral part.

Article 37: Depository authority

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies thereof to all the Member States and shall register it with the African Union, the United Nations and such other organisations as Council may determine.

**IN WITNESS WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF
THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED
THIS SUPPLEMENTARY ACT**

DONE AT OUAGADOUGOU, THIS 19TH DAY OF JANUARY 2007

**IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE
LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC**

.....
His Excellency Thomas Boni Yayi
President of the Republic of Benin

.....
His Excellency Blaise Compaore
Chairman of the Council of Ministers
President of Faso



.....
President of the Republic of Cabo Verde

.....
His Excellency Laurent Gbagbo
President of the Republic of Cote D'Ivoire

.....
President of the Republic of The Gambia

.....
His Excellency John A. Kufuor
President of the Republic of Ghana

.....
Hon. Sidibé Fatoumata Kaba
Minister of International Cooperation
For and on behalf of the President
of the Republic of Guinea

.....
His Excellency Joao Bernardo Vieira
President of the Republic of Guinea Bissau

.....
Her Excellency Ellen Johnson-Sirleaf
President of the Republic of Liberia

.....
His Excellency Toumani Toure
President of the Republic of Mali



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His Excellency Mamadou Tandja
President of the Republic of Niger

His Excellency Olusegun Obasanjo
President, Commander in Chief of the Armed
Forces of the Federal Republic of Nigeria

His Excellency Abdoulaye Wade
President of the Republic of Senegal

Hon. Mohammed Daramy
Minister of Development and Economic
Planning, for and on behalf of the President
of the Republic of Sierra Leone

His Excellency Faure Essozimna Gnassingbe
President of the Togolese Republic



ANNEX

This annex sets out the list of conditions which may be attached to individual licenses and general authorizations.

Conditions that may be attached to authorizations, where justified and with due respect for the principle of proportionality:

- 1 Conditions aimed at ensuring compliance with the relevant essential requirements.
- 2 Conditions relating to the provision of information reasonably requested with a view to verifying compliance with applicable conditions and for statistical purposes.
- 3 Accessibility to end users of numbers in the national numbering plan, including conditions in line with the Supplementary Act on universal service and numbering.
- 4 Administrative charges pursuant to Articles 16 and 18 of this Supplementary Act.
- 5 Conditions relating to the protection of users and subscribers, particularly in regard to:
 - a) prior national regulatory authority approval of the standard contract concluded with subscribers;
 - b) detailed and accurate invoicing;
 - c) the availability of a dispute resolution procedure;
 - d) the publication of service access conditions, including tariffs, quality and availability, and adequate notification whenever such conditions are amended.
- 6 ICT-sector-specific rules concerning personal data and privacy protection.



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- 7 ICT-sector-specific rules and conditions relating to consumer protection.
- 8 Restrictions in regard to the transmission of illegal content and of harmful content relating to television broadcasting activities.
- 9 Conditions aimed at preventing anti-competitive behavior in telecommunication markets, and in particular measures designed to ensure that tariffs are not discriminatory and do not distort competition.
- 10 Financial contribution to universal service provision in accordance with community legislation.
- 11 Communication of information contained in customer databases for the purpose of providing universal directory services.
- 12 Provision of emergency services.
- 13 Special arrangements for users with disabilities.
- 14 Conditions pertaining to the access obligations applicable to companies providing ICT networks or services and network interconnection and service interoperability, in accordance with the Supplementary Act on interconnection and the obligations deriving from community legislation.
- 15 Facilitating legal interception by competent national authorities.
- 16 Terms of use during major disasters to ensure communications between emergency services, the authorities and public broadcasting services.
- 17 Measures aimed at limiting exposure of the public to electromagnetic fields generated by telecommunication networks, in accordance with community legislation.

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- 18 Access obligations applicable to companies providing ICT networks or services, in accordance with the Supplementary Act on interconnection.

Specific conditions that may be attached to individual licenses, where justified and with due respect for the principle of proportionality:

- 1 Special conditions relating to the allocation of numbering rights, including:
 - Designation of the service for which the number is used, including any requirements in regard to the provision of that service.
 - Effective and efficient use of numbers, in accordance with the Decision on numbering.
 - Requirements in regard to number portability, in accordance with the Decision on interconnection.
 - Obligation to provide subscribers listed in public directories with information for the purposes of the Supplementary Act on universal service.
 - Transfer of usage rights at the initiative of the rights-holder, and conditions applicable to such transfer.
 - Charges for usage rights.
 - Obligations under relevant international agreements relating to number usage.
- 2 Special conditions relating to the use and effective management of radio frequencies, including:
 - Designation of the service or type of network or technology for which spectrum rights have been granted, including, where applicable, exclusive use of a frequency for the transmission of content or specific audiovisual services.

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- Effective and efficient use of frequencies, including, where appropriate, requirements in regard to coverage.
 - Technical and operational conditions necessary to avoid harmful interference and limit exposure of the public to electromagnetic fields, where such conditions differ from those laid down in the general authorization.
 - Transfer of usage rights at the initiative of the rights-holder, and conditions applicable to such transfer.
 - Charges for usage rights.
 - Commitments made during the competitive or comparative selection process by the company having obtained usage rights.
 - Obligations under relevant international agreements relating to frequency usage.
- 3 Specific requirements in regard to environmental, town planning and regional development considerations, in particular conditions relating to the granting of access to public or private property and to the collocation or sharing of facilities.
 - 4 Maximum duration, which must not be unreasonably short, in order, among other things, to ensure the effective use of the radio frequencies or numbers in question or grant access to public or private property, the foregoing being without prejudice to any other provisions relating to the withdrawal or suspension of licenses.
 - 5 Compliance with universal service obligations, in accordance with the Supplementary Act on universal service and the Supplementary Act on interconnection.
 - 6 Conditions applicable to operators with market power, as notified by Member States pursuant to the Supplementary Act on interconnection, intended to ensure interconnection or the monitoring of market power.

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