



## **SEVENTY SEVENTH ORDINARY SESSION OF THE COUNCIL OF MINISTERS**

Abuja, 15 December 2016

### **REGULATION C/REG. 19/12/16 ON THE CONDITIONS FOR ACCESS TO NATIONAL AND INTERNATIONAL BANDWIDTHS ON TERRESTRIAL NETWORKS WITHIN ECOWAS**

#### **THE COUNCIL OF MINISTERS,**

**MINDFUL** of Articles 10, 11 and 12 of the ECOWAS Treaty as amended, establishing the Council of Ministers and defining its composition and functions;

**MINDFUL** of Article 33 of the ECOWAS Treaty on Posts and Telecommunications stipulating that Member States shall undertake to develop, modernize, coordinate and standardize their national telecommunications networks in order to provide reliable interconnection between Member States and promote private sector participation in the provision of telecommunications services,

**MINDFUL** of Supplementary Act A/SA/1/01/07 on the harmonization of policies and the regulatory framework of the Information and Communication Technology (ICT) sector,

**MINDFUL** of Supplementary Act A/SA/2/01/07 on access and interconnection of ICT networks and services;

**MINDFUL** of Supplementary Act A/SA/3/01/07 on the legal regime applicable to network operators and service providers.

**MINDFUL** of Regulation C/REG.06/06/12 on the conditions for access to submarine cable landing stations. *MX*

**CONVINCED** that the interconnection of modern telecommunication systems among Member States is a prerequisite for sub-regional economic integration,

**NOTING** that while coastal Member States enjoy improved access to international capacities as a result of the arrival of new submarine cables, the situation of landlocked Member States is not improved due to lack of competitiveness of the national infrastructure segment in most ECOWAS Member States,

**CONSIDERING** that transit charges still represent a major component of the overall price of international connectivity charged to landlocked Member States, and that the gap between international connectivity and transit costs keeps widening,

**RECALLING** that Member States shall apply the interconnection and open access principles established by ECOWAS in its Supplementary Acts, namely, non-discrimination, transparency and cost-oriented price calculation regarding Reference Offers for interconnection and access to submarine and terrestrial capacities from any Member State,

**RECALLING ALSO** that the principle of non-discrimination applies not only among national operators but also among operators established in the different Member States,

**RECALLING FURTHER** that Regulation C/REG.06/06/12 on the conditions of access to submarine cable landing stations does not regulate the specific case of landlocked Member States which can access landing stations only through other Member States with a view to establishing a common ICT market within ECOWAS,

**CONVINCED** that open, low-cost access to capacities transported by terrestrial telecommunication networks is necessary for making the cost of international bandwidth affordable, thereby promoting the growth of the national markets while strengthening sub-regional economic integration,

**DESIROUS** of adopting a harmonized framework for access to the national and international bandwidths on West African terrestrial networks to promote the development of permanent and fair competition for the benefit of telecommunications/ ICT operators and users within ECOWAS;



**ON THE RECOMMENDATION** of the meeting of ECOWAS Ministers in charge of Telecommunications/ICT held in Niamey, Niger 24 June 2016,

## **ENACTS**

### **ARTICLE 1: DEFINITIONS**

For the purpose of this Regulation, the definitions set out in the following shall be applicable:


- a. Supplementary Act A/SA/1/01/07 on the harmonization of policies and regulatory framework for the Information and Communication Technology (ICT) sector,
- b. Supplementary Act A/SA 2/01/07 on access and interconnection in respect of Information and Communication Technology (ICT) sector networks and services,
- c. Supplementary Act A/SA/3/01/07 on the legal regime applicable to network operators and service providers, and
- d. Regulations C/REG.06/06/12 on conditions of access to submarine cables landing stations.

### **ARTICLE 2: OBJECTIVE**

The objective of this Regulation is to lay down conditions for access to national and international bandwidth on terrestrial networks to facilitate connectivity to landing stations of submarine cables within ECOWAS in order to:

- a. promote the equitable development of a harmonised and competitive telecommunications and ICT market within ECOWAS,
- b. enhance the national and international bandwidth capacity of each ECOWAS Member State,
- c. facilitate access to submarine cables for landlocked Member States and
- d. ensure significant reduction in national and international communication costs for each Member State.

### **ARTICLE 3: SCOPE OF APPLICATION**

1 This Regulation shall apply to operators of terrestrial telecommunications networks providing capacity services in any Member State and access to broadband capacities on these networks controlled by operators considered as possessing significant market power for capacity-leasing services (“**SMP Operator**”). 

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Access can include, but is not limited to the following capacity-leasing services

- E1 Leased Lines
- E1 Multidrop Leased Lines
- Backbone-type Leased Lines: STM1, STM4, STM 16 and beyond
- Terrestrial complement for access to submarine cables capacities (Backhaul)
- Dark fiber leasing.

2. Any telecommunications operator established in the ECOWAS region can apply for access to capacity-leasing services from an operator established in the ECOWAS region (“**Eligible Operator**”) provided:

- they are regularly established in the country where they file for access to capacity services or in any other ECOWAS Member State;
- they operate a network and/or provide telecommunications services.

Internet access and Internet Exchange providers based within ECOWAS can also request for access to capacity leasing services.

3. This Regulation shall apply, without prejudice to the Member States’ right to maintain or introduce, in line with ECOWAS regulations, measures containing more detailed provisions than those provided in this Regulation.

#### **ARTICLE 4: ANALYSIS OF RELEVANT NATIONAL MARKETS**

1. National Regulatory Authorities shall conduct the necessary market analyses particularly regarding terrestrial capacity-leasing services intended for national or international operators from other ECOWAS Member States, with a view to determining their competitiveness or otherwise, determining the individual or collective power of the operators on this market segment and, thereby determining the consequences relating to the regulatory obligations that need to be implemented;

2. National Regulatory Authorities shall regularly review market analyses and the regulatory obligations deriving therefrom in order to take account of the development of the telecommunications market at national and sub-regional levels.


3. Subsequent to these analyses, National Regulatory Authorities shall impose obligations on the operators considered as possessing market power, individually or collectively, on 

the capacity-leasing services markets on terrestrial networks intended for national and/or international operators from ECOWAS Member States. The obligations include, but are not limited to:

- a. providing capacity-leasing services on their terrestrial network to any Eligible Operator within a reasonable deadline and not exceeding three (3) months from the request date;
- b. publishing a Reference Offer including the technical and operational conditions for access to their capacity-leasing services on their terrestrial networks intended for national and/or international operators from the ECOWAS Member States as well as their tariffs;
- c. setting tariffs of the proposed capacity-leasing services on a cost-oriented basis;
- d. communicating to the National Regulatory Authority, agreements signed with any operator of the same Member State relating to capacity-leasing services on the terrestrial networks, in line with conditions and deadlines set out in the national legislative and regulatory frameworks for the communication of national interconnection agreements;
- e. communicating to the National Regulatory Authority, at its request, under pain of sanctions, its offers and signed agreements on interconnection and/or capacity-leasing services on their terrestrial networks with an operator from one of the other ECOWAS Member States. In that case, the Operator who is required to communicate the agreement shall ensure it is provided to the National Regulatory Authority within a maximum period of 8 calendar days.
- f. employing cost accounting for the purposes of regulation.

## **ARTICLE 5: TRANSPARENCY OBLIGATIONS**

1. The SMP Operator on the market(s) for capacity-leasing services on the terrestrial networks shall:

- Publish a capacity-leasing services Reference Offer, which shall include at least:
  - a. all terrestrial networks capacity offers in the territory of the Member State where it operates;
  - b. all terrestrial networks capacity offers to each neighbouring Member State and marketed to the operators of these Member States;
  - c. speed/output available on each offer; 


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- d. terrestrial complement services (backhaul) facilitating access to submarine cables connecting the Member State concerned;
  - e. other related interconnection services;
  - f. applicable charges, including supply, installation and maintenance of the necessary equipment;
2. Submit beforehand to the National Regulatory Authority, for approval within the time prescribed in the national laws and regulations for submission of the interconnection Reference Offers, its capacity-leasing services Reference Offer on its terrestrial networks for national and/or international operators from the ECOWAS Member States,
3. The National Regulatory Authority shall be authorised to amend the offer, in line with the applicable rules, particularly this Regulation.
4. When the Operator concerned wishes to make an amendment to his Reference Offer, he shall submit the amendment to the National Regulatory Authority for prior approval.
5. The Reference Offer shall comprise the following items:
- a. detailed clauses and conditions on capacity-leasing services on the terrestrial networks and, if need be, related services;
  - b. order and supply procedure;
  - c. technical information relating to the facility and infrastructure of the SMP Operator on the national market for the required capacities in order to enable a third operator to apply for the above services;
  - d. quality service level guarantees;
  - e. charges for the above services;
  - f. payment arrangements;
  - g. execution time limit.
6. The National Regulatory Authorities shall ensure compliance with conditions attached to Reference Offer licenses and provisions governing terrestrial capacity-leasing services as well as other obligations deriving from the ECOWAS regulatory framework.

## **ARTICLE 6: ENSURING FAIR AND EFFECTIVE ACCESS**

1. The National Regulatory Authorities shall ensure access to all operators established in the different ECOWAS Member States, based on fair and non-discriminatory conditions, to all national and international bandwidth networks operated by an operator.
2. Exclusive capacity-selling or leasing rights shall not be allowed.

## **ARTICLE 7: PRICE CONTROL**


1. Costing Methodology
  - a. Tariffs for capacity-leasing services shall be cost-oriented. The costing methodology shall take into account the relevant costs related to access, operation, maintenance and provision of facilities, co-location including co-location areas and where necessary, connection services (backhaul) based on a predetermined accounting and cost allocation method.
  - b. On the basis of the costing methodology set out by the National Regulatory Authority, the SMP Operator on the market for capacity-leasing services on terrestrial networks shall determine the tariff and submit them to the National Regulatory Authority.
  - c. If an operator fails to provide the required information, the National Regulatory Authority may establish its own costing based on the information at its disposal and using the established model.
  - d. If a National Regulatory Authority lacks sufficient information or has not yet determined the costing method in line with the relevant provisions of Supplementary Act on Access and Interconnection of ICT Sector Networks and Services, it may draw inspiration from a calculation method used by another ECOWAS country.
2. **Modalities for Tariff control**
  - a. The SMP Operator on the market for capacity-leasing services on terrestrial networks shall submit its Reference Offer to the National Regulatory Authority for approval, detailing the cost and network elements, costing methodology used, calculation sheets, or any other relevant costing information. 

- b. The National Regulatory Authority shall approve the tariffs on the basis of the SMP's costing methodology.
- c. Prior approval by the National Regulatory Authority shall ensure that tariffs applied are transparent, fair and reasonable, and that the SMP Operator on the market for capacity-leasing services does not set its various rates arbitrarily.
- d. The National Regulatory Authority may also check the tariffs proposed by the Operator using the capacities against an international benchmark, in order to ensure that the tariffs proposed by the eligible Operator do not hinder access to international capacities, particularly for operators from landlocked ECOWAS Member States.

#### **ARTICLE 8: QUALITY SERVICE LEVEL GUARANTEES**

National Regulatory Authorities shall ensure that the SMP Operator on the market for capacity-leasing services on terrestrial networks provides quality Service Level Guarantees in line with international standards and equivalent to those applied its own services or to those of its subsidiaries or partners.

#### **ARTICLE 9: DISPUTE SETTLEMENT**

1. In case of a dispute between two operators from the same Member State, relating to access to terrestrial capacity leasing services, one of the parties to the dispute shall refer the matter to the National Regulatory Authority in line with the dispute settlement mechanisms set out in the national Telecommunication/ICT laws, without prejudice to the possibility for the Regulatory Authority to take its own initiative.
2. In case of a dispute between operators from different Member States, relating to access to terrestrial capacity leasing services, the operator seeking access shall refer the matter to the National Regulatory Authority of his country according to the provisions of Article 16 of Supplementary Act A/SA/1/01/07 on the harmonization of policies and the regulatory framework of the Information and Communication Technology (ICT) sector.
3. Such circumstances, the National Regulatory Authority to which the matter has been referred shall, within a period of one (1) month, inform the National Regulatory Authority of the other Member State, i.e. the Member State in which the terrestrial capacity-leasing services should be provided, and forward to it the information needed to understand the dispute. 




4. The National Regulatory Authority of the Member State where the terrestrial capacity-leasing services are provided shall, within the time frame prescribed by Article 29 of Supplementary Act A/SA/2/01/07 on access and interconnection of ICT networks and services, take a reasoned decision setting out the technical, operational and tariff conditions under which the operator established in its territory shall provide the services to the Eligible Operator from the other Member State.
5. During the period of inquiry into the matter, the two National Regulatory Authorities shall cooperate to the best of their ability with a view to expediting the investigations and sharing the information necessary for the resolution of the dispute.
6. In the event that the two National Authorities fail to resolve the dispute, the first party to act can use all suitable forms of recourse.

**ARTICLE 10: ECOWAS TECHNICAL INTERCONNECTION AND ACCESS COMMITTEE**

1. A Technical Interconnection and Access Committee is hereby established at the ECOWAS Commission. The Committee shall comprise all National Regulatory Authorities of Member States, and one representative of the operators from each Member State.
2. Representatives of National Regulatory Authorities and operators shall be designated by each of the bodies they represent.
3. Each National Regulatory Authorities and, operator shall appoint one representative and an alternate. These individuals shall forfeit their membership or alternate status once they leave the National Regulatory Authorities or operators concerned, or subsequent to a decision taken by the body being represented. The bodies shall subsequently take steps to replace them immediately.
4. The Technical Interconnection and Access Committee shall be chaired by the National Regulatory Authority of the country which holds the ECOWAS chairmanship.


The Technical Interconnection and Access Committee shall have an advisory role. Its purpose shall be to assist and make recommendations to the National Regulatory Authorities on any matter relating to interconnection or access in the ECOWAS region, particularly on issues relating to cross-border interconnection and access.

5. It may also, without the following list being exhaustive, provide support to the ECOWAS Commission in:
- a. implementation of a harmonised costs model for access to submarine or terrestrial bandwidth;
  - b. operation of an observatory on interconnection and access prices to national and international capacities that may be published by ECOWAS;
  - c. drawing up of the list of relevant telecommunications/ICT markets that may require an *ex ante* regulation within ECOWAS;
  - d. development of guidelines on market analysis and assessment of high market power;
  - e. formulation of any regulation or recommendation relating to access and interconnection;
7. The chair of the Technical Interconnection and Access Committee shall convene committee meetings and determine the meeting agenda.
8. The invitation, alongside the agenda and, where necessary, any useful document relating thereto, shall be dispatched, no later than fifteen days prior to the date of the meeting, through regular mail or by email. In case of emergency, no deadline shall be prescribed.
9. The chairman of the Technical Interconnection and Access Committee may invite any qualified individual to participate in the meetings on the basis of the issues on the agenda.
10. The Technical Interconnection and Access Committee shall convene at least once a year or as many times as necessary, upon reasoned invitation of its chair.
11. The Committee shall adopt its rules of procedure at its first meeting.
12. Members of the Committee shall maintain the confidentiality of the facts, information or documents that come to their knowledge in the course of, or in connection with the performance of their duties, where the confidential nature of such matters has been stated.
13. Secretariat services for the Committee shall be provided by the ECOWAS Commission, which shall preside. The cost of participation of Member State delegates in the meetings of the Technical Interconnection and Access Committee shall be borne by the relevant bodies. Logistics at these meetings shall be provided by the Regulatory Authority of the host country. 

## **ARTICLE 11: ENTRY INTO FORCE AND PUBLICATION**

This Regulation shall enter into force upon its signing by the Chair of the Council of Ministers and shall be published by the Commission in the Official Journal of the Community within thirty (30) days of its signature. It shall equally be published by each Member State in its Official Gazette within thirty (30) days of notification thereof by the Commission.

**DONE AT ABUJA, THIS.....DAY OF NOVEMBER 2016**

A handwritten signature in black ink, appearing to read 'Marjon Kamara', is written over a horizontal dotted line.

**H.E. MARJON V. KAMARA**

**FOR THE COUNCIL  
THE CHAIRPERSON,**

**SIGNED ON THIS *18<sup>th</sup>* DAY OF *December* 2016 AT MONROVIA**