Telecoms and Media

An overview of regulation in 43 jurisdictions worldwide

Contributing editors: Laurent Garzaniti and Natasha Good

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Getting the Deal Through is delighted to publish the fully revised and updated fifteenth edition of Telecoms and Media, a volume in our series of annual reports that provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 43 jurisdictions featured. This year’s edition also benefits from an expanded overview section, with two new chapters covering Network Sharing, and Convergence in the US Telecommunications and Media Industry.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. Getting the Deal Through publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

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Getting the Deal Through – Telecoms and Media 2014
Tanzania

Kamanga Wilbert Kapinga and Nimrod Mkono

Mkono & Co Advocates

Communications policy

1 Regulatory and institutional structure

Summarise the regulatory framework for the communications sector.
Do any foreign ownership restrictions apply to communications services?

The Tanzania Communications and Regulatory Authority (TCRA) is a statutory regulatory body for regulating the communications and broadcasting sectors in Tanzania. It was established under the TCRA Act No. 12 of 2003, which merged the Tanzania Communications Commission (TCC) and the Tanzania Broadcasting Commission (TBC). The TCRA became operational on 1 November 2003 and effectively took over the functions of the two defunct commissions.

The TCRA has the following duties as stipulated under section 5 of the TCRA Act:
- promoting effective competition and economic efficiency;
- promoting the interests of consumers;
- protecting the financial viability of efficient suppliers;
- promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;
- enhancing public knowledge, awareness and understanding of the regulated sectors including:
  * taking into account the need to protect and preserve the environment;
  * the rights and obligations of consumers and regulated suppliers;
  * the ways in which complaints and disputes may be initiated and resolved; and
  * the duties, functions and activities of the authority.

The functions of the TCRA according to section 6 of the TCRA Act are as follows:
- to perform the functions conferred on it by sector legislation:
  * to issue, renew and cancel licences;
  * to establish standards for regulated goods and regulated services;
  * to establish standards for the terms and conditions of supply of the regulated goods and services;
  * to regulate rates and charges;
  * to make rules for carrying out the purposes and provisions of this Act and the sector legislation;
- to monitor the performance of the regulated sectors including in relation to:
  * levels of investment;
  * availability, quality and standards of services;
  * the cost of services;
  * the efficiency of production and distribution of services, and
  * other matters relevant to the TCRA;
- to facilitate the resolution of complaints and disputes;
- to take over and continue carrying out the functions formerly of the TCC and TBC;
- to disseminate information about matters relevant to the functions of the TCRA;
- to consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the TCRA in Tanzania and elsewhere;
- to administer the TCRA Act; and
- to perform such other functions as may be conferred on the TCRA by the TCRA Act or any other law.

Foreign ownership restrictions apply to authorisation to provide telecoms services in Tanzania. The Electronic and Postal Communication Act No. 3 of 2010 (EPOCA) and its regulations restrict direct or indirect foreign ownership of electronic communications companies in Tanzania. It has been established that a company incorporated in Tanzania holding an individual or class licence under the EPOCA shall be required:
- in the case of an electronic communications (telecoms operators, ISPs, etc) or postal licensee, to have a shareholding structure that adheres to the local minimum requirement of 35 per cent as an ongoing obligation throughout the life of the licence; and
- in the case of a content service licensee (radio and television stations), to have a local shareholding of at least 51 per cent as an ongoing obligation throughout the life of the licence.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

The EPOCA regulates the provision of facilities and services within the communications and broadcasting sectors (including the provision of electronic communications networks and services). There are also regulations issued pursuant to the EPOCA that govern specific facilities and services in the communications sector.

One of the key features of the EPOCA is the fact that it has a technology- and service-neutral licensing regime, based on four broad categories of licensable activities. Unless exempted, the provision of facilities and services within the communications sector may require the following licences:
- a network facilities licence;
- a network service licence;
- a applications service licence; or
- a content applications licence.

Typically, the duration of an individual licence is 25 years for network facilities and network services licences, and 10 years for application services and content services licences.
The EPOCA stipulates that the applicant shall pay to the TCRA the fees as may be prescribed and such fees shall include:
- an initial licence fee payable before the licence is issued;
- an annual fee of the amount specified in the rules made under the EPOCA;
- a fee in respect of the assigned frequency, frequency bandwidth or radio communication station; and
- a fee in respect of assigned electronic numbering resource.

The breakdown is as follows:

**Network facilities licence**
- International market segment – application fee US$10,000, initial fee US$200,000 and annual gross turnover (GAT) of 0.8 per cent.
- National market segment – application fee US$5,000, initial fee US$400,000 and GAT of 0.8 per cent.
- Regional market segment – application fee US$1,000, initial fee US$15,000 and GAT of 0.8 per cent.
- District market segment – application fee US$50, initial fee US$1,000 and GAT of 0.8 per cent.

**Network services licence**
- International market segment – application fee US$10,000, initial fee US$300,000 and GAT of 0.8 per cent.
- National market segment – application fee US$5,000, initial fee US$600,000 and GAT of 0.8 per cent.
- Regional market segment – application fee US$2,000, initial fee US$23,100 and GAT of 0.8 per cent.
- District market segment – application fee US$100, initial fee US$1,000 and GAT of 0.8 per cent.

**Application services licence**
- International market segment – application fee US$1,000, initial fee US$100,000 and GAT of 0.8 per cent.
- National market segment – application fee US$100, initial fee US$10,000 and GAT of 0.8 per cent.
- Regional market segment – application fee US$50, initial fee US$1,000 and GAT of 2,000 shillings.

**Content services licence**
- Television broadcasting free to air
  - National market segment – application fee US$5,000, initial fee US$25,000 and annual fees of US$25,000.
  - Regional market segment – application fee US$2,000, initial fee US$20,000 and annual fees of US$20,000.
  - District market segment – application fee US$1,000, initial fee US$3,000 and the annual fees of US$3,000.
  - Community market segment – application fee US$1,000, initial fee US$500 and annual gross fees of US$500.
- Radio broadcasting free to air
  - National market segment – application fee US$2,000, initial fee US$20,000 and annual fee of US$20,000.
  - Regional market segment – application fee US$1,000, initial fee US$15,000 and annual fees of US$15,000.
  - District market segment – application fee US$1,000, initial fee US$2,000 and annual fees of US$2,000.
  - Community market segment – application fee US$1,000, initial fee US$500 and annual fee of US$500.

3 **Flexibility in spectrum use**
Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

Spectrum licences generally specify the permitted use. A licensed spectrum can only be traded or assigned with the prior written consent of the TCRA.

4 **Ex-ante regulatory obligations**
Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

There are no communications markets and segments that are subject to ex-ante regulation in Tanzania.

5 **Structural or functional separation**
Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

There exists no legal basis for requiring structural or functional separation between an operator’s network and service activities in the Tanzanian jurisdiction. The TCRA to date has not introduced this nor is it contemplating introducing it in the near future.

6 **Universal service obligations and financing**
Outline any universal service obligations. How is provision of these services financed?

Yes. Tanzania has allowed for the creation of the universal service obligation (USO) as the minimum set of services that the universal service provider is obligated to provide, including but not limited to:
- ensuring that every person is able to be connected to a public communications network through a communications service;
- the provision of the following services (i) connection to a communications network and (ii) providing reasonable geographic access to public telephone boxes across Tanzania;
- providing consumers with access to emergency services, operator assistance and directory inquiry services, and delivery of an affordable communication service to all customers on reasonable request;
- providing customers with disabilities with the same or equivalent services as all other customers so as to have access to the same level of universal service;
- ensuring that communication services are reasonably accessible to all people in Tanzania on an equitable basis, wherever they reside or carry on business; and
- ensuring that postal and broadcasting services are accessible to rural and urban under-serviced areas.

The USO is regulated by the Universal Communications Service Access Act of 2006 and funded by the Universal Communications Service Access Fund.

7 **Number portability**
Describe the number portability regime in your jurisdiction.

The TCRA requires that mobile number portability be provided and supported by all mobile service providers. The porting processes shall be designed around a ‘one-stop shop’ concept, whereby the customer shall start the porting procedure by contacting the new operator or service provider and the proposed recipient operator shall be required to manage the process on behalf of the customer.
A licensee shall facilitate number portability when a subscriber is:

- changing the method of payment from prepaid to post-paid services and vice versa;
- changing from one mobile network technology to another; and
- changing from one licensee to another.

**8 Customer terms and conditions**

Are customer terms and conditions in the communications sector subject to specific rules?

Yes, customer terms and conditions are subject to specific rules: they are regulated by the EPOCA (Consumer Protection) Regulations 2011, which dictate the products and services information to be provided to the consumer, and the obligations of the licensee to the consumer.

**9 Net neutrality**

Are there limits on an internet service provider’s freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

There is no specific net-neutrality requirement in place; however, the EPOCA and its competition regulations provide the TCRA the power to monitor and enforce fair competition in the electronic communications sector. Electronic communications licensees may set and revise prices for the services they provide. The TCRA has the power to carry out reviews of rates and charges applied by electronic communication services licensees. Such powers allow the TCRA to closely monitor the acts of the telecommunications operators and/or internet service providers that will differently charge and/or block different types of traffic over their networks.

**10 Next-Generation-Access (NGA) networks**

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

NGA networks are regulated in the same manner as all other networks (see our response to question 2 for clarifications on the position). NGA networks will be subjected to the EPOCA and its Access, Co-location and Infrastructure Sharing Regulations 2011.

There exists a government financial scheme to promote basic broadband or NGA broadband penetration known as the National ICT Broadband Backbone (NICTBB). The National ICT Broadband Backbone (NICTBB) is managed and operated by Tanzania Telecommunications Company Limited (TTCL) on behalf of the Tanzanian government through the Ministry of Communication Science and Technology. The infrastructure will enhance usage of ICT applications for sustainable socio-economic development, including implementation of e-government, e-learning, e-health, e-commerce and much more locally and globally.

The National ICT Broadband Backbone (NICTBB) will also provide access to international submarine fibre optic cables (ESY and SEACOM) at their landing point in Dar Es Salaam to all landlocked neighbouring countries for international connectivity.

**11 Data protection**

Is there a specific data protection regime applicable to the communications sector?

Tanzania has neither a data protection act nor a specific data protection regime; however, the EPOCA regulations on consumer protection state that a licensee may collect and maintain information on individual consumers where it is reasonably required for its business purposes. The collection and maintenance of information on individual consumers shall be:

- fairly and lawfully collected and processed;
- processed for identified purposes;
- accurate;
- processed in accordance with the consumer’s other rights;
- protected against improper or accidental disclosure; and
- not transferred to any party except as permitted by any terms and conditions agreed with the consumer as permitted by any approval of the TCRA or as otherwise permitted or required by applicable laws and regulations.

**12 Key trends and expected changes**

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

In June 2013, Tanzania imposed a 1,000 shilling monthly sim card tax and a 0.15 per cent excise duty on money transfer services. This is an issue that has not been taken lightly by the network operators and banks utilising the mobile payment systems; they attempted to appeal against the decision with no success.

**Media**

**13 Regulatory and institutional structure**

Summarise the regulatory framework for the media sector in your jurisdiction.

The Tanzania Broadcasting Services Act of 1993 and its Content Regulations 2005 regulate the cross-ownership of media companies, including radio, television and newspapers under the supervision of the TCRA. We are not aware of any key changes that have occurred within the last year.

**14 Ownership restrictions**

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Yes the ownership or control of broadcasters is restricted per the requirements of the Tanzania Broadcasting Services Act of 1993. Section 10 of the Tanzania Broadcasting Services Act of 1993 stipulates that foreign investors may participate in broadcasting activities in Tanzania provided they control no more than 49 per cent of the shareholding of the company applying for the licence.

See question 13 for the regulations in relation to the cross-ownership of media companies.

**15 Licensing requirements**

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

Section 10 of the Tanzania Broadcasting Services Act of 1993 stipulates that an application for a licence under this Act may be made only by a company at least 51 per cent of whose shareholding is beneficially owned by a citizen or citizens of Tanzania which is not, directly or indirectly, controlled by persons who are not citizens of Tanzania and whose principal place of business or registered office is in Tanzania.

Any application for the grant of a licence under this Act shall be made to the TCRA in such form and manner and shall contain or be accompanied by:

- a prescribed application fee;
- a prescribed deposit;
- the applicant’s proposals in relation to the policy and nature of the service and a programme schedule with regard to the daily transmission time allocated to different programmes;
Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

The Broadcasting Services (Content) Regulations, 2005 regulate the broadcasting of foreign and locally produced programmes.

A minimum of 60 per cent of all content provided by the licensee, measured as a weekly average over the period of a year, must be content produced by:

- a natural person who is a citizen of, and permanently resident in, Tanzania;
- a legal person, the majority of whose directors or shareholders are citizens and permanently residing in Tanzania; or
- the licensee.

The licensee shall ensure that 10 per cent of local content aired by the licensee shall be produced and supplied to the licensee by independent local producers.

The type of media that falls outside of this regime includes news, documentaries and other current affairs programmes as stipulated in Regulation 6 of the Broadcasting Services (Content) Regulations 2005.

17 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

The Broadcasting Services (Content) Regulations 2005 regulate broadcast media advertising.

Every licensee shall ensure that there is a clear separation of advertising content and programme, and shall:

- broadcast a maximum of five minutes of advertising material in any 30 minutes of broadcasting;
- insert a maximum of two advertising breaks in a 30-minute programme; and
- ensure that every advertising slot does not exceed a duration of 60 seconds.

Every licensee shall be guided by the Code of Advertising and Sponsorship issued by the TCRA.

Online advertising is not subject to the same regulation.

18 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators’ broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

There are no regulations specifying a basic package of programmes that must be carried by operators’ broadcasting distribution networks.

The TCRA during the digital switchover directed that Public service broadcasters must offer their public service broadcasting channels to all the main distribution platforms. Such channels include:

- Tanzania Broadcasting Corporation (TBC);
- Independent Television (ITV); and
- Star TV.

There is no specific mechanism for financing the costs of these obligations.

19 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

The regulations relating to traditional broadcasting activities are silent on the broadcasting of new media content. Delivery of content online and on mobile devices is broadly not subject to regulation. For example, the provision of IPTV services does not require any licences beyond those that may apply to the relevant content or channel providers.

20 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The switchover from analogue to digital broadcasting in Tanzania occurred on 31 December 2013.

Tanzania is still faced with the challenge of the reallocation of radio frequency bands freed up by the switchover. The TCRA is currently in the process of drafting the relevant regulations to spearhead this process.
21 Digital formats
Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

The licences required for broadcasting are explained in question 15. The relevant licences contain various conditions imposed on the licensee (such as to comply with certain codes or guidance, and to provide information to the TCRA) but do not restrict the uses to which broadcasters can put their spectrum.

22 Media plurality
Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There is no process for assessing or regulating media plurality (or a similar concept) in Tanzania.

23 Key trends and expected changes
Provide a summary of key emerging trends and hot topics in media regulation in your country.

The key issue to note in the media sector is with regard to the TCRA’s announcement in November 2013 that the country will move to the second phase of the digital broadcasting switchover from analogue for all regions of Tanzania in 2014. The switchover from analogue to digital broadcasting is one of the TCRA’s major achievements during its 10 years of existence.

Tanzania became the first country in East Africa to switch to digital television, having discontinued analogue transmission on 31 December 2012, becoming the only member of the East African Community (EAC) to adhere to the deadline for digital migration that had been agreed upon by members. Observers of the Tanzanian media industry have noted a significant increase of investors into the digital cable television sector as a result of the digital switchover.

Regulatory agencies and competition law

24 Regulatory agencies
Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The general competition authority for all commercial matters including the telecoms, broadcasting and new media sectors in Tanzania is the Fair Competition Commission (FCC), which was established by the Fair Competition Act 2003 (FCA). The FCC handles all competition issues at an appellate level after all remedial processes under the TCRA have been exhausted.

The FCA, the FCA Procedure Rules 2013 and the EPOCA (Competition) Regulations 2011 regulate all competition-related issues and ensure the consistent application of competition and sectoral regulation of old and new media.

25 Appeal procedure
How can decisions of the regulators be challenged and on what bases?

The decisions of the TCRA may be appealed to the Fair Competition Tribunal within 30 days from the date of the decision. This may be done provided that:
- the award was not reasonably open to the TCRA based on the evidence;
- there was an error in law;
- the procedures or other statutory requirements applicable to the TCRA were not complied with and the non-compliance materially affected the award; or
- the TCRA did not have the power to make the award.

26 Competition law in the communications and media sectors
Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

There have been no the key merger or antitrust decisions in the communications and media sectors adopted over the past year by the Fair Competition Tribunal.
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