

GENERAL LEGAL FRAMEWORK OF THE TELECOMMUNICATIONS SECTOR



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INTRODUCTION

The Telecommunications Law (TL), Law no. 4/2016 of 3 June – which applies to individuals and legal entities licensed to set up, manage and operate telecommunications networks – defines the general framework for the sector in order to keep the market liberalised in an atmosphere of competition and convergence of networks and services.

The aim of telecommunication services is to provide access to high-quality, efficient communication that guarantees protection for the fundamental rights and freedoms of citizens and allows accessible and secure communication.

Setting up, managing and operating telecommunications networks and public services is liberalised and may only be made subject to conditions in cases of (i) radiofrequency spectrum limitations, (ii) availability of telecommunications numbering resources, (iii) viability of the market, and (iv) reasons of security and public order.

Private telecommunications networks may be set up and operated freely, as long as they do not involve numbering and spectrum resources, or operation for commercial purposes.

The capacity of the private telecommunications network may not be used for resale. Exceptionally, upon authorisation by the Mozambique National Institute of Communications (INCM), the owner of the private network may resell the existing available capacity of its facilities, or assign or transfer or, by any other means, dispose of the rights to use those facilities to a telecommunications operator, to provide public telecommunications services. This may only happen as long as it does not threaten the privacy of client information and does not endanger national security. In access to the existing capacity, the principles of equality, transparency and non-discrimination must be respected, by using tariffs that reflect the costs.

The INCM is responsible for supervision, sanctioning and representation of the telecommunications sector, according to the principles of impartiality and transparency. It is a public institution with a legal personality. It also has administrative and financial autonomy.

The TL defends competition and prohibits any practices that falsify competition conditions or that represent abuse of a dominant position. The TL also prohibits any acts aimed at promoting unfair competition.

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I. SUPPLY OF NETWORKS AND SERVICES

To set up, manage or operate networks, or to provide communication services, it is necessary to obtain a unified licence¹ or a licence by class². When it involves the use of radio frequencies, numbering or other scarce resources, the award of telecommunications or radio communications licences is subject to a public tender process or auction. The rules, forms and procedures of any tenders or auctions must be established and published by the INCM.

Licensed entities must pay the following fees: (i) licensing fees for telecommunications networks and services; (ii) annual telecommunications fee; (iii) fee for acquisition of telecommunications numbering; (iv) annual fee for use of telecommunications numbering; (v) fee for acquisition of radio frequency spectrum; (vi) annual fee for use of radio frequency spectrum is; (vii) radio communications networks and stations licensing fee; (viii) equipment approval fee.

¹ Administrative permission that depends on a prior decision of the INCM, which authorises its beneficiary to provide any telecommunication service, regardless of the technology, without prejudice to the need to obtain frequency spectrum or numbering, and to any other applicable rules.

² Administrative permission that is not dependent on a prior decision of the INCM, but only on a communication from the applicant prior to beginning its activity. It allows its beneficiary to provide a certain telecommunications service immediately after the communication, without prejudice to the need to obtain frequency spectrum or numbering.

II. RADIO COMMUNICATIONS

The frequency spectrum is a scarce natural resource that is part of the State's public domain. A licence is necessary to use the radio frequency spectrum and this licensing will be subject to specific regulations to be approved by the Government. In turn, the INCM is responsible for publishing any frequencies that are exempt from licensing in the *Boletim da República* (the official gazette of Mozambique). It is also responsible for updating and publicising the National Plan for Allocation of Frequencies, taking into account the procedures established by the International Telecommunication Union.

An INCM licence is also necessary to use radio communication stations and networks.

Radio communications users are prohibited from making or allowing any unlawful radio communications, any broadcasting alarm, emergency or danger signal, or any false or misleading emergency calls.

When they are properly recorded and identified, the measures taken by the INCM constitute proof to determine the conditions of use of the frequency spectrum by radio communication stations and networks.

III. UNIVERSAL SERVICES

The Universal Access Service Fund is independent and its management must be determined in specific regulations. Its objective is to finance the net costs of providing services and projects for services for universal access to telecommunications.

IV. ACCESS, INTERCONNECTION AND SHARING OF INFRASTRUCTURES

Public telecommunications services operators and providers have the right of access the telecommunications infrastructures and other facilities of the network. However, this access must be provided under conditions of equality, transparency and non-discrimination, using tariffs that reflect the costs.

Access to network infrastructures and to international transmission capacity must be made available to all public telecommunications network operators and service providers under transparent and non-discriminatory conditions, without prejudice to any mechanisms for economic regulation of the market.

Public telecommunications network operators for service providers must interconnect with each other. The technical and commercial characteristics of the interconnection must be defined with negotiated agreements, at any point in the network that is technically viable.

Operators with a significant market position are under an obligation to (i) provide interconnection to other public telecommunications network operators and service providers and (ii) submit an interconnection reference proposal to the INCM for approval and publication.

The terms and conditions, and the tariffs for interconnection offered to the different types of public telecommunications network operators or service providers may be different if the differences are objectively justified.

Permission must always be requested from the institution that supervises civil aviation whenever antennae or any other infrastructures are to be placed in areas of aviation easements.

Public telecommunications network operators or service providers may bring any interconnection dispute before the INCM for arbitration, without prejudice to the ability to bring the dispute before other forums.

The sharing of infrastructures between operators is mandatory, in order to provide an incentive for competition and to reduce the investment necessary to build and maintain networks. This sharing of telecommunications infrastructures must be ensured when they are constructed and, in relation to any existing infrastructures, whenever technically possible.

The installation of telecommunications operators' network infrastructures, including any ancillary infrastructures, must comply with all licensing rules, including the rules of municipal and local authorities, and of any other authorities with legally established licensing powers. When necessary, the installation also requires the agreement of the owners of any rural or urban properties affected.

Permission must always be requested from the institution that supervises civil aviation whenever antennae or any other infrastructures are to be placed in areas of aviation easements.

State and municipal local authorities must provide any assistance necessary to identify and provide suitable areas for the installation of telecommunications support infrastructures.

V. NUMBERING AND TARIFFS

The INCM establishes and manages National Numbering Plan to allocate numbers to telecommunications operators.

The use of telecommunications numbering resources is subject to prior authorisation from the INCM and to the payment of use fees.

The retail or wholesale tariffs applied by telecommunications operators may be fixed freely. However, they must be fair, reasonable and non-discriminatory. The tariffs must be approved by the INCM and economic and commercial grounds must be provided for any changes to them.

The INCM must establish the principles and criteria for fixing tariffs, and the Government is responsible for approving those tariffs in specific regulations.

The tariffs fixed by telecommunications networks and services operators must be of public knowledge and, at least, published in the media outlets with greatest circulation.

VI. SERVICE QUALITY AND CONSUMER PROTECTION

Public telecommunications operators must provide the INCM with clear, complete and up-to-date reports on the quality of the service they provide.

The INCM defines the service quality parameters and indicators to be measured in specific regulations to be approved by the Government.

The TL enshrines rights and duties for telecommunications services consumers. Furthermore, telecommunications operators are required to provide consumers with clear, complete and up-to-date information on the terms and conditions for access and use of the services they provide, so that consumers can make a clear and informed decision. The information must be made available to consumers before they sign any contract and, if the service does not require signature of the contract, before the supplier actually begins to provide the service.

Telecommunications operators that provide international roaming services must provide information to clients who access their services.

The Government will ensure the continuity of provision of public telecommunications services in the event of bankruptcy, if there is no other telecommunications operator.



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JORGE DIAS
Sinais, 2012 (detail)
Tinta acrílica, stencil
e MDF sobre contraplacado
Dimensões variáveis
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VII. MARKET REGULATION

The INCM is required to monitor the development of the telecommunications market to mitigate or eliminate any faults that could put the competitiveness of the market at risk.

The INCM may appoint one or more operators with a significant position in a specific important market to impose, alter, maintain or eliminate specific obligations in relation to access to its network, interconnection and tariffs, among others.

In assessing whether to appoint an operator with a significant market position, the INCM must follow the criteria defined in the law and it may also follow best international practice for this purpose.

Operators with a significant market position are bound to respect the specific obligations provided for in the law, which are imposed on them by the INCM. They must also respect to any other decisions of the INCM in the context of economic regulation of relevant telecommunications networks and services markets. However, operators with a significant market position are not exempt from complying with the general rules on operation of telecommunications networks and services.

Any operator with a significant market position must not abuse its position by excluding or limiting competition.

VIII. SECURITY AND INTEGRITY OF NETWORKS, AND AVAILABILITY OF SERVICES

Telecommunications operators must take whatever measures are necessary to guarantee the security and integrity of the operation of networks and services. Whenever possible, they must also ensure alternative ways to make networks and services available in emergency situations, unforeseeable circumstances or in the case of force measure.

The INCM adopts technical standards to be respected in telecommunications equipment on the basis that (i) they respect the international standards applicable in the country, taking into account environmental health, safety, radiation and electromagnetic emissions, (ii) they do not represent any risk and are not harmful to public health and to the public telecommunications networks, and (iii) the use of the frequency spectrum is effective and efficient.

Any operator with a significant market position must not abuse its position by excluding or limiting competition.

Telecommunications operators are required to allow emergency calls to be made free of charge via their networks. Operators must also provide the authorities responsible for emergency services with information on the location of the caller.

IX. SYSTEM OF SANCTIONS

The TL establishes the following crimes and provides for their punishment: "modification of information", "fraudulent installation and use of telecommunications systems", "illegal interception of communications", "prejudicial interference", and damage to cables, posts, towers, masts, and antennae, as well as any other telecommunications infrastructures.

The INCM is responsible for reporting any incidents to the authorities whenever it becomes aware of the commission of any of the crimes listed above. However, complaints may also be made to the authorities by telecommunications operators and service providers whenever they become aware of the commission of crimes.

The reports drawn up by the INCM may be relied on as proof, whether in the investigation phase or in the trial itself, until the contrary is proven, whatever form of process is applicable.

Any licensing and registrations to carry on activity issued under the legislation and regulations approved prior to the publication of the TL remain in force.

X. CONFIDENTIALITY, FRAUD, LEGAL INTERCEPTION SYSTEMS AND GATEWAY³

The confidentiality of communications transmitted via telecommunications networks used by the public is mandatory, except in cases provided for in the law in relation to criminal proceedings, or in the interests of national security and prevention of terrorism and organised crime.

Whenever a telecommunications operator assumes or becomes aware of the existence of fraud, it must report this to the INCM.

The INCM will carry out an inspection of the facilities and equipment to check the existence of fraud. It may then decide to immediately suspend or temporarily close the establishment while it carries out the process that could lead to the application of sanctions, without prejudice to any criminal proceedings.

Every telecommunications operator must have an operational and efficient system for legal interception of communications for the purposes of criminal investigations. Interception may only be authorised by a criminal court judge.

Operators may set up, establish and operate networks for their domestic and international telecommunications service.

Any licensing and registrations to carry on activity issued under the legislation and regulations approved prior to the publication of the TL remain in force.

Any notifications issued by the INCM for payment, including invoices, fines or similar, constitute enforcement title.

³ Gateway is the network system or intermediate node used to convert flows of information from different telecommunications networks.

CONCLUSION

This TL was born out of the need to adapt Mozambique's telecommunications legislation to the current situation. For this purpose, the previous TL approved by Law no. 8/2004 of 21 July has been repealed.

The TL establishes a framework that seeks to provide access to quality, efficient communication, and to safeguard the fundamental rights and freedoms of citizens by allowing accessible and secure communication.

The State must foster the use of computer and communication technologies to promote access to telecommunications.

Compared with the previous law, the TL has broadened the scope of regulation of the telecommunications sector.

The TL places conditions on the establishment and operation by accredited diplomatic missions in Mozambique of private telecommunications networks, and radio communication equipment, in the following cases: (i) the Government of the diplomatic mission established in Mozambique reciprocally provides the Government of Mozambique with the same facilities in its territory and (ii) the telecommunications or radio communications network of the diplomatic mission in question operates in compliance with the provisions of the TL or in accordance with the provisions of the conventions of the International Telecommunications Union.

The scope of the INCM's powers has been broadened and structured into six areas: (i) regulation of telecommunications, (ii) development of telecommunications, (iii) technical specifications of telecommunications, (iv) supervision of telecommunications, (v) representation of the telecommunications sector, and (vi) safeguarding the interests of the consumer.

Unlike the previous law, the new TL establishes and sets out the regulatory fees, including for (i) licensing of telecommunications networks and services, (ii) the annual telecommunications fee, (iii) acquisition of telecommunications numbering, (iv) use of telecommunications numbering, (v) acquisition of radio frequency spectrum, (vi) annual fee for use of radio frequency spectrum, (vii) licensing of radio communication stations and networks, and (viii) approval of equipment.

The new law provides for greater protection of consumers and it also enshrines their duties. The right to information is ensured.

The INCM's powers to intervene in the market to defend competition and punish unfair competition have been increased.

In the chapter that sets out the system of sanctions, the modification of information has been made into a crime punishable with a prison sentence of between six months and two years, and the corresponding fine.

The TL punishes not only the fraudulent use of the telecommunications system, but also the installation of any fraudulent system.

Finally, the crime of illegal interception of communications has been redrafted and its criminal framework extended.

In the chapter that sets out the system of sanctions, the modification of information has been made into a crime punishable with a prison sentence of between six months and two years, and the corresponding fine.

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