

STAKEHOLDER COMMENTS ON DRAFT ONE (1) OF THE
COMMUNICATIONS (TARIFF) REGULATIONS AND
MACRA’S RESPONSES TO THE COMMENTS

Clause No.	Provision	Comments	Proposition	MACRA’s response
		Comments from TNM		
4 (1)	<p>A licensee shall submit for approval, its tariff to the Authority at least—</p> <p><i>(a) twenty one days prior to the effecting of that tariff, where the licensee is a not a dominant licensee; and</i></p> <p><i>(b) twenty eight days prior to the launch of that tariff, where the licensee is dominant licensee.</i></p>	<p>The period of approval is long considering that we are in a fast changing market.</p>	<p>TNM proposes that the period should be 10 working days as per the current processes.</p>	<p>The approval period is 14 days (see Regulation 8). Regulation 4 provides for when the tariff will become effective. The provision takes into account the period for communication to consumers after approval has been given.</p>
7	<p>Rejection of tariff</p>	<p>The regulation should also state that before rejecting a tariff MACRA shall consider the below principles</p> <ul style="list-style-type: none"> • financial sustainability of licensees, • price stability for the consumer, • equity and fairness, • cost of service, • improving quality of service and encourage investment in new technology 		<p>Section 74 of the Communications Act provides for the basis for setting tariffs. The Authority will be guided by the principles stated in that provision which take into account the factors listed by TNM.</p>

		<ul style="list-style-type: none"> • considering the value of the Malawi Kwacha in relation to foreign currencies • Inflation movement • Change in Fuel/ Electricity prices above a given threshold 		
8(1)	The Authority shall, within fourteen days from the receipt of an application for tariff approval, communicate to an applicant, a decision made on an application.	This should be reviewed in line with the comments made in reg 4(1) above. We are in a fast changing market and as such we sometimes have Adhoc decisions to respond to customer needs as such fulfilment of 4(1) may not always be possible.	The clause should also indicate what happens if TNM does not get feedback within the stipulated timeframe.	There will be no default approval. The Authority will ensure that a decision is made within the stipulated period.
13(1)	Bundled voice and SMS A licensee shall send usage depletion notifications via SMS, push notification or any applicable means to consumers when their usage reaches 50%, 60%, 70%, 80%, 90% and 100% .	Using percentage when sending usage notification is not always the best. The regulations should not restrict to the stated percentages but there should be regular notification to customers about bundle depletion.	The regulation should provide another option rather than percentages.	The provision is not restricting licensee to use percentages when communicating data usage. The licensee can use any other form that it deems best. However it must notify the consumer his data usage whenever he reaches the thresholds stated in the regulations.
14(1)	Data service: out of bundle billing A licensee shall ensure that a consumer is- (a) sent data usage depletion notifications via SMS, push notification or any other applicable means when usage	Using percentage when sending usage notification is not always the best. However, customers can be notified by indicating the amount of data remaining at different intervals. For instance: for a customer who has bought 50mb, a message can be sent at 50mb, 30mb, 15mb, and 5mb. Sending percentages as	The regulation must provide other options of notifying customers based on remaining data and set thresholds.	See comment above

	reaches 50%, 60%, 70%, 80% , 90% and 100%;	indicated will be irritating to the customer because the bundle is small.		
14(1c)	<p>not defaulted onto out of bundle data charges upon depletion of data bundles; and</p>	<p>It must be noted that the out of bundle rate has significantly reduced as such customers may not see a lot of difference with in bundle rates</p> <p>This regulation needs some more work on our billing systems in order to be able to implement it successfully, and this comes with a significant investment on the billing platform.</p> <p>Additionally, it will also affect the experience of some customers, since they will have to stop browsing sessions after bundle depletion, which could be a potential customer experience issue on the network providers.</p> <p>Furthermore, this also has revenue implications on data, since out of bundle contributes significantly to the data revenue.</p>	<p>Currently TNM does not have system capability to implement and we would request MACRA to provide sufficient time if this is to be implemented smoothly</p> <p>The implementation should also consider the investment into the right systems and also customer experience should they not choose to buy a bundle</p> <p>TNM propose that the out of bundle rate could match the highest effective rate for the bundles (in a phased approach in order not to affect the costing of data), in order not to affect the browsing experience of customers, and also not to disturb the normal billing operations with alterations, as well as suffer on huge investments in order to</p>	<p>The clause aims at reducing the bill shock that customers experience when data is depleted hence the need of the cutoff point.</p> <p>From experience the phased approach has not worked and the Authority does not recommend it.</p> <p>Furthermore the Authority would like operators to generate revenue with full knowledge of the customer's data usage.</p>

			implement this draft regulation.	
14(1d)	provided an option via SMS, push notification, USSD or any other applicable means at any time to opt-in to out-of-bundle usage charges.	This draft regulation needs some more work on our billing systems in order to be able to implement it successfully, and this comes with a significant investment on the billing platform.	Currently TNM does not have system capability to implement and we would request MACRA to provide sufficient time if this is to be implemented smoothly	Regulations allow for exemptions to be made by the Authority (see regulation 21). TNM will therefore have the opportunity to apply to the Authority to be exempt from complying with some obligations to upgrade its billing platforms within a specified time frame.
15(1)	A licensee shall provide a consumer with an option to roll over unused data before expiry date of the bundle.	This draft regulation needs some more work on our billing systems in order to be able to implement it successfully, and this comes with a significant investment on the billing platform. Additionally, in countries where this works, the customer awareness on data plans is between 95%-100%, and so is the bundle revenue contribution on data, while in our market, there is this huge knowledge gap on data plans and we still have work to be done, therefore implementing this will also come at a cost to TNM, with significant revenue loss.	Regulations should provide for options to have bundles that do not expire so that customers have a wider choice. As indicated, TNM does not have system capability to implement and we would request MACRA to provide sufficient time if this is to be implemented smoothly	The Authority is aware that operators are rolling over unused data before expiry date. Under the Communications Act and Consumer Protection Regulations, it is the operators primary responsibility to conduct consumer awareness, however MACRA has also the responsibility to do consumer awareness programmes.

				On billing TNM can approach the Authority for an exemption for limited time (see response above)
15(2)	In the event of unused data being rolled over, a licensee shall, in the first instance, apply data usage against the rolled over data until that data is fully depleted, and thereafter against the newly allocated data.	This draft regulation needs some more work on our billing systems in order to be able to implement it successfully, and this comes with a significant investment on the billing platform. If we are to implement this as well, bundle extension will come at a cost to the customer.	We recommend that we take a phased approach to implement this, as this has huge cost implications in order to implement and roll it out.	Refer to our response on regulation 14 (1d).
15(3)	A licensee shall provide a consumer with an option to transfer data to other consumers on the same network.	This will also need to be implemented at a cost, therefore there is need for investment on the operators' side in order to acquire the capabilities in our billing systems that allow this feature.	TNM does not have system capability to implement and we would request MACRA to provide sufficient time for investing in the system required for smooth implementation	Refer to our response on regulation 14 (1d).
17(1)	The Authority may frame one or more tariffs pursuant to section 78 of the Act, where, in the view of the Authority, there is a likelihood of material risk of harm to competition or to consumer welfare.	This is necessary in order to make competition fare in the market.	We propose that the regulation should indicate that framing shall be done after proper consultation with the affected operator and economic factors must always be consideration	The affected operator will always be consulted as required under section 202 of the Communications Act.
17(2)	Where sub regulation(1) applies, the tariffs for services of a licensee that are provided on a wholesale or retail basis in a	This is necessary in order to make competition fare in the market.	As per 17(1) above	The affected operator will always be consulted as required under

	<p>relevant market in which that licensee is dominant, shall be framed by the Authority as follows—</p> <p>(a) the Authority shall construct and maintain network cost models for such wholesale or retail services as the Authority may consider to be relevant markets in order to determine the tariffs to be framed for dominant licensees and the dominant licensees shall provide complete and verifiable cost data to the Authority for this purpose; and</p>			<p>section 202 of the Communications Act</p>
17(2b)	<p>the Authority shall frame the tariff under paragraph (a) with reference to internationally recognised costing models, taking into account the costs incurred by the licensee but allowing the licensee a reasonable rate of return for a period not longer than three years from the date on which the framed tariff is first applied to the service in the relevant market.</p>	<p>This is necessary in order to make competition fare in the market.</p>	<p>As per 17(1) above</p>	<p>The affected operator will always be consulted as required under section 202 of the Communications Act</p>
<p>Comments from Wananchi</p>				

	<p>Regulation 7-Rejection of a tariff application, Communication of decision</p>		<p>Where rejected the Authority should communicate reason for rejection and allow the licensee to make presentation and explain justification behind the tariff submitted before rejection.</p>	<p>The Authority will always provide reasons for rejection. A licence can resubmit an application with additional justification.</p>
	<p>Regulation 14 Data Service Usage Notification</p>		<p>Requirement by licensee to send usage depletion SMS at 50%, 60%, 70%, 80% and 100% is punitive to the licensee and expensive. This will be quite expensive especially if the licensee has many customers. We propose that the notification be made only once on depletion of data.</p>	<p>The objective of the Regulation is to ensure transparency on the part of the operator to the consumer. Additionally operators are already implementing this indicating that its feasible.</p>
	<p>Regulation 17 -Determination of framed tariff by the Authority</p>		<p>Licensee consultation is required before any tariff framing by the Authority to ensure that tariffs set enables licensees to maintain their financial integrity and safeguard the interest of stake holders and investors. Since licensee better understand the market conditions and cost incurred in providing the services they are best placed to advise on pricing for services. We note that</p>	<p>The affected operator will always be consulted as required under section 202 of the Communications Act</p>

			the regulations and Act only provide for consultation of the Competition and Fair Trading Commission. Licensees input is required.	
	Regulation 10- Review of approved tariffs/ Regulation 22 (2)		Where the authority intends to review any approved tariff, it shall notify the licensee and give the licensee twenty days to respond to the intended review/ adjustment	Proposal accepted. However the period given to the licensee will be fourteen days
	Regulations 18- Zero rated tariffs		Notice and representations be requested from licensees before any telecommunication services are zero rated by the Authority.	Proposal accepted. We will insert a provision in the regulations for notification and consultation.
	Regulation 19- Promotional offers		Provides that an offer may not be offered more than once over a period of 8 months. We propose that this be shortened and a repeat of the offer be allowed after say 3 months.	Proposal accepted with the validity shortened to six months.
	Regulations 19- Promotional offers		Specify timelines by the authority for approval of application in respect to a promotional offer. We propose within two days	The period for any tariff approval will be fourteen (14) days. The period gives the Authority adequate time to assess the information.

	Regulation 21 (2) (b)- Exemption		This is not clear. What do you mean by provision of service to which content is incidental?	The provision has been deleted because it had the capacity to bring confusion.
	Regulation 22 – Regulatory Sanction		Administrative penalty – Specify maximum amounts of penalty for non-compliance with regulations.	The maximum amount cannot be specified as it will unduly limit the discretion of the Authority. The amount of the penalty will depend on the gravity of the offence and other circumstances surrounding the case.
Comments from Airtel				
4(1)	A licensee shall submit for approval, its tariff to the Authority at least	Does this include changes in the tariff that change because of external international factors (beyond our control) like International Mobile Termination Rates. These affect other services like Roaming as the MTR is effected in the call charges		It affects all tariffs. Any external international factors will justify the tariff revision.
4(1)(a) and 4(1)(b)	Seven days prior to the effecting of that tariff, where the licensee is a not a dominant licensee;	<p>More than 20 days is too much.</p> <p>There is no point to discriminate on the timeframes between dominant and non-dominant players</p> <p>Seeking and waiting for tariff approvals for 21 days is detrimental to business practices. It is like controlling all operations of the business.</p> <p>Malawi is not in a position where there is</p>		<p>The period has been revised to 14 days for non dominant operator and 21 days for dominant operator to allow for thorough assessment of the submission.</p> <p>Dominant operators require stricter regulation and more</p>

		<p>NO competition. Malawi is still an infant market and there is still very low penetration of communication</p> <p>We recommend that such approvals be granted just as is done in the current timelines, maximum of 7 days which include submission and determination of the tariff approvals.</p> <p>The 21 days makes the business decision to revise tariff lose its relevance</p>		<p>time is needed to assess their submissions.</p>
8 (2)	<p>The Authority shall, within fourteen days from the receipt of an application for tariff approval, communicate to an applicant, a decision made on an application.</p>	<p>The stipulated total 21-28 days for submission of tariff before launch will adversely affect time to market as well as competitiveness in the market place. Our recommendation is at least 5-7 days</p> <p>Timeframes and Collection methods of information</p> <ol style="list-style-type: none"> 1. The regulator expresses its willingness to conduct a market study 2. The regulator collects Data from operators or uses data periodically collected 3. The regulator or an external firm performs the market study 4. Additional information needed from the operators? 5. The regulator requests additional data from the operators 6. The regulator organizes a meeting to discuss findings of the draft report 		<p>The period has been maintained at fourteen days for non dominant licensee and twenty one days to dominant licensee to ensure thorough assessment of the application.</p> <p>The time frame for launch under regulation 4 has been revised to 14 /21 days for non dominant and dominant licensees respectively. Licensees will still have to comply with obligations on notification of customers</p>

		<p>7. The regulator shares the draft report with all operators for written comments</p> <p>8. The regulator reviews the draft report by taking into account relevant comments</p> <p>9. The regulator publishes the final report and the determination with: (1) the relevant markets (2) the SMP operators (3) The remedies</p>		
13(2)	<p>Where a consumer does not opt-in to out-of-bundle data charge as per subregulation(1)(d), a licensee shall not permit any out-of-bundle data usage by a consumer until such time that a consumer purchases new data bundles or consents to be charged out-of-bundle data rates via USSD, SMS, push notification or any other applicable means.</p>	<p>Each simcard is programmed to be at a default basic pricing plan. When customer opts out of any bundle or pricing plan, they are automatically sent to a basic plan. Customer numbers are created in systems to earn /give value for the owners and investors</p> <p>Services are offered to make money from which they get costs of their operations</p> <p>This regulation defeats and contradicts with the requirement to have the Tariff approved by the Authority. It does not make sense when the Tariff is already approved, and customer is restricted from using the basic Tariff</p> <p>One of the functions of the Authority is stir growth of businesses and not stifle them. Business should be left to run on their own. This Regulation puts the Authority as the management and owner running the businesses</p>		<p>The clause aims at reducing the bill shock that customers experience when data is depleted hence the need of the cutoff point. Additionally it is important that the customer should be given a choice to choose to use the basic tariff plan or purchase a bundle to continue accessing internet.</p> <p>Giving the customer a choice to either choose a basic tariff plan or a data bundle cannot affect an operators ability to generate revenue.</p>

		<p>Businesses exist to operate in order to cover costs (at a minimum) (and earn a return on their investment)</p>		
14(2)	<p>Where a consumer does not opt-in to out-of-bundle data charge as per subregulation(1)(d), a licensee shall not permit any out-of-bundle data usage by a consumer until such time that a consumer purchases new data bundles or consents to be charged out-of-bundle data rates via USSD, SMS, push notification or any other applicable means.</p>	<p>Licensees should be given liberty to operate in the best interests of the business. Data sharing, opt in and opt out solutions should be left for the business to decide. Customers are given several pricing plans hat they have options to adopt.</p> <p>Each simcard is programmed to be at a default basic pricing plan. When customer opts out of any bundle or pricing plan, they are automatically sent to a basic plan. Customer numbers are created in systems to earn /give value for the owners and investors</p> <p>Services are offered to make money from which they get costs of their operations</p>		<p>Under the current legal framework, a consumer is given an opportunity to opt in and not to opt out. This enhances consumer protection since the consumer knowingly consents to the terms of data usage.</p> <p>The operator should generate revenue from services that a customer has willingly purchased.</p>

		<p>This regulation defeats and contradicts with the requirement to have the Tariff approved by the Authority. It does not make sense when the Tariff is already approved, and customer is restricted from using the basic Tariff</p> <p>One of the functions of the Authority is stir growth of businesses and not stifle them. Business should be left to run on their own. This Regulation puts the Authority as the management and owner running the businesses</p> <p>Businesses exist to operate in order to cover costs (at a minimum) (and earn a return on their investment)</p>		<p>Furthermore bundle and out of bundle rates are different and a customer should have an option of choosing the rate to apply.</p>
15)1)	<p>A licensee shall provide a consumer with an option to roll over unused data before expiry date of the bundle.</p>	<p>Currently we already provide an option for customers to share data. How much to be shared and for how long should be left for the businesses to decide. The Authority should not interfere in the nitty details of business operations</p> <p>Bundled services (data, SMS and voice bundles) are pricing plans that customers have liberty to opt in and opt out. Customers are not forced to stay within the bundle</p> <p>Secondly, customers have different bundles under each pricing point that suits</p>		<p>Proposal rejected. The objective of this regulation is to enhance consumer experience and to avoid consumers losing out already purchased data.</p> <p>Additionally operators are already rolling over unused data.</p>

		<p>their purchasing power. When purchasing the bundle, customers are also given clear details and are aware of the terms and condition of each pricing point.</p> <p>To that effect, we suggest that this Regulation be removed from these Regulations. It defeats the purpose of the companies innovating specific bundled products that are competitive on the market, and that are tailor made for the business growth and development</p>		
15(3)	A licensee shall provide a consumer with an option to transfer data to other consumers on the same network.	Data sharing is already available. Data bundle pricing and sharing is a business strategy and not a mandatory pricing. The authority should leave business operate competitively and given the liberty to decide which strategy fits its business. Regulating data services should NOT include imposing how the licensee does its business. Management and operations of businesses should be left for the market forces to decide on their own		The regulation has been revised to make it optional on the licensee to provide the data sharing service.
16(1)	A licensee shall within seven days from date of request provide any post-paid or pre-paid consumer with an itemized bill as follows in respect of the following services-	The Authority should also consider a different timeline for data for postpaid or prepaid that is older than 3 months as it would take more time for retrieval from licensee archived platforms considering huge and big data available		Proposal accepted to allow for request for provision of itemized bill for post paid or prepaid that is less than 3 months to be provided within 7 days and older than 3 months to be provided

				within 21 days after receiving the request.
17 (1)	The Authority may frame one or more tariffs pursuant to section 78 of the Act, where, in the view of the Authority, there is a likelihood of material risk of harm to competition or to consumer welfare.	Not clear how the Authority will determine dominant player. Need clarification as this has a potential to stifle innovation and fair trading and competition		The Authority will issue guidelines on determination on dominant players.
18	The Authority may determine that a particular electronic communications service be zero-rated	The clause stipulates that the Authority shall determine what service to be zero rated. This pose a business risk as there is no clear definition of what will entail a free service. We would propose that the authority should consult the MNOs before deeming any service free to ensure a healthy, sustainable and profitable telecom environment		The Authority will insert a provision in the regulations for notification and public consultation.
19	A licensee shall file the tariffs for promotional offers with the Authority for approval at least fourteen days prior to the launch of the promotional offer.	The authority indicates that they will require a minimum of 14 days for a notification on promotional offer. We would like to request for a shorter period such as 2-3 days since our business is fast paced and such that a restriction of a minimum of 14 days might stifle competition and fair trading in the event there is need for a quick turn around to protect the business. The current 7 days timelines is even more as it makes the Promotion lose its		The period for any tariff approval will be fourteen (14) days. The period gives the Authority adequate time to assess the information.

		<p>relevance</p> <p>Seeking and waiting for tariff approvals for 14 days is detrimental to business practices. It is like controlling all operations of the business. The 14 days makes the business decision to revise tariff lose its relevance</p>		
19(3)	<p>A tariff for promotional offer may be available for a period not longer than ninety days from the date of approval by the Authority.</p>	<p>The Authority should also come up with Regulations pertaining cessation or cancellation of the promotions during the offered period</p> <p>We also feel that 90 days is not enough for a promotion. We propose this to be extended to a maximum of 190 days</p> <p>Thirdly, there should be regulations on licensees who copy the promotions run for competitors...there should be a period which does NOT allow the competitors to copy and paste the promotions for other licensees</p>		<p>The regulation has been revised to regulate cancellation of promotions.</p> <p>The period will remain at 90 days so that promotion offers do not replace existing pricing plans on the market.</p> <p>Copying of promotions - the Authority will not at the moment intervene on this issue and will allow market forces to determine the issue.</p>

20	Tariffs submitted to the Authority for approval by a dominant licensee	How will the authority determine dominant player and what is the definition of excessive or predatory pricing?		The Authority will issue guidelines on determination on dominant players
22(2)	In the case of the specific forms of anti-competitive behavior considered in regulation 15, the Authority may consider and, where reasonable and proportionate, impose the following remedies in addition to or in the alternative to (1) - ...	if the authority will impose pricing caps this will stifle innovation and competition. How will the authority determine excessive pricing, predatory pricing and margin squeeze? Can the authority provide an acceptable profit margin as a guide for consultation with the industry before implementation of these regulations		The regulations provides for definitions of excessive pricing, predatory pricing and margin squeeze. Furthermore the guidelines on determination on dominant players will provide the assessment criteria for determining the same.
23	A person who commits an offence under these Regulations for which no punishment has been provided for in these Regulations shall, upon conviction, be liable to a fine of K5, 000,000	We suggest that this has to be revised and reworded to include "a maximum of..." (to apply in all other regulations (Dominance, Tariff, Infrastructure sharing, etc)). We note that not every miss warrants a fine. The Regulations should not instill fear on licensees.		Proposal accepted. The Authority has other regulatory sanctions at its disposal that may be applied depending on circumstances of the case.
Schedule 1 (13)	The name, position and contact details of the staff member in the applicant's organization; and	The authority should clarify why they would require all the names for the applicant's organisation? What purpose would that serve? May be the request		The provision does not require all the names of staff in the applicant's organization. Only the

		should be for only key decision makers involved in the process.		details of the person submitting the application on behalf of the applicant will be required.
Schedule 2 (a)	Excessive Pricing	The authority should define what constitutes "super normal profits"? And it will be unfair to compare profits in" similar markets "since the cost of operational might significantly be different. A fair approach should look at both the unique costs and the respective profits		Supra normal profits is self-explanatory and what will be deemed as above normal profits will depend on the circumstances of the case. Additionally the schedule has provided guidance on how the Authority will determine excessive pricing including using cost studies.
Schedule 2 (b)	Predatory Pricing (i)	The Authority should define what constitutes "unreasonably low price" to avoid subjectivity		Unreasonably low price is also self explanatory and will depend on the circumstances of the case. Additionally the schedule has provided guidance on how the Authority will determine predatory pricing.
Schedule 2 (c)	Margin Squeeze (i)	The authority should define acceptable margin		The schedule has provided guidance on how the Authority will determine Margin squeeze.

Schedule 2 (d)	Tying & bundling (v)	How will the Authority determine that a bundle will likely lead to, or has the purpose of causing, a significant reduction in effective competition?		The schedule has provided guidance on how the Authority will determine Tying and bundling.
Schedule 2 (e)	Price discrimination (i)	The Authority should define when price discrimination is anti-competitive to avoid any ambiguity.		The schedule has provided guidance on how the Authority will determine price discrimination as anti-competitive.