COMMUNICATIONS (INTERCONNECTION) REGULATIONS, 2020

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ARRANGEMENT OF REGULATIONS

Regulation

GOVERNMENT NOTICE NO. …

COMMUNICATIONS ACT

(CAP.68:01)

COMMUNICATIONS (INTERCONNECTION) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 200 of the Communications Act, I, GOSPEL KAZAKO, Minister of Information, on the recommendation of the Authority make the following Regulations—

Citation

1. These Regulations may be cited as the Communications (Interconnection) Regulation, 2020.

Interpretation

2. In these Regulations, unless the context requires otherwise—

"application service licence" means the licence that authorizes the provision of electronic communication services to end users using licensed network services;

"dominant licensee" means a licensee who has a status of a dominant market player as defined in the Act;

"interconnection information" means information that is in the possession or control of an interconnection provider and that may assist the interconnection seeker to formulate a request for interconnection and plan, establish, or maintain its electronic communications network or electronic communications service for the purpose of interconnection;

"interconnection provider" means a person providing an interconnection service to other licensees in accordance with the Act;

"interconnection seeker" means a licensee that seeks interconnection from another licensee that operates an electronic communications network;

"licensee" means any person that holds an electronic

comunications licence under the Act;

"network service licence" means a licence that authorizes a licensee to build, operate, or maintain, an electronic communications network;

"point of interconnection" means a physical point that demarcates the networks of an interconnection provider and an interconnection seeker;

"reference interconnection offer" means the standard terms and conditions of an interconnection provider's interconnection agreement; and

"relevant market" means a distinct electronic communications service market that has been formally determined by the Authority.

Right to interconnection

3.— (1) A licensee who holds a network service licence may request interconnection with another licensee that holds a network service licence.

(2) The request shall be in accordance with section 62(3) of the Act.

Obligation to provide interconnectio

4.— (1) A network service licensee shall, on request, and subject to subregulation (4), provide interconnection to another network service licensee.

(2) An interconnection provider shall publish interconnection information on its website or make interconnection information available, on request, at all of its offices, at no charge.

(3) The interconnection information shall include—

(a) the technical specifications of the provider's network;

(b) switching, routing and transmission equipment used in the provider's network;

(c) signalling protocols used;

(d) traffic volumes; and

(e) any material changes to interconnection arrangements that may affect the interconnection seeker, by requiring the seeker to incur significant cost or reconfigure part of its network.

(4) An interconnection provider may refuse a request for interconnection in accordance with section 62(4) of the Act.

(5) Where an interconnection provider refuses an interconnection request under subregulation (4) it shall show that the interconnection is not technically and economically feasible.

(6) A request shall not be deemed to be technically feasible where–

(a) the aspect of an interconnection request relating to use, or access, of technology, connectivity, configuration, design, operation and maintenance will not be capable of being brought about by the interconnection provider with the means at hand and in the prevailing circumstances;

(b) the interconnection provider's network substantially does not meet the technical parameters of the interconnection seeker's network at the time the request is made; or

(c) providing interconnection to the interconnection seeker would tend to have a negative effect on the interconnection provider's network or network elements or capacity.

(7) A request shall be deemed to be uneconomically feasible where the request will result in an interconnection provider's existing capacity being used inefficiently with reference to productivity and the interconnection provider will incur significant additional costs to provide the interconnection requested.

Procedure for concluding an interconnection agreement

5.— (1) An interconnection seeker and interconnection provider shall commence negotiation of an interconnection agreement within fourteen days from the date of the request by the interconnection

seeker.

(2) Where a request for interconnection is refused in accordance with regulation 4(4), the interconnection provider shall communicate the refusal, in writing, to the interconnection seeker within fourteen days from the date of request by the interconnection seeker.

(3) Where the parties fail to reach agreement within sixty days, either party may refer the matter to the Authority and the Authority shall declare a dispute.

Terms and conditions of an interconnection agreement

6. An interconnection agreement shall include—

(a) technical scope of interconnection including—

(i) a description of the purpose of the interconnection and services sought;

(ii) mechanisms for changes to the purpose, scope and specifications of the interconnection;

(iii) details regarding access to numbers by the parties; and

(iv) data interchange format;

(b) points of interconnection such as mobile switching centres, media gateways, local exchanges and tandem exchanges with the following details—

(i) location and related facilities' specifications;

(ii) mechanisms for changes to the location or related facilities; and

(iii) signalling description;

(c) billing and settlement including—

(i) billing procedures;

(ii) payment terms and conditions; and

(iii) billing and settlement dispute procedures;

(d) charges, including—

(i) detail charges per service provided; and

(ii) mechanisms for review of charges;

(e) service level agreements indicating—

(i) service levels;

(ii) quality of service obligations;

(iii) penalties;

(iv) testing and maintenance;

(v) fault reporting;

(vi) service level disputes; and

(vii) system protection and safety measures; and

(f) commencement, termination and dispute resolution.

Charges

7.— (1) The Authority may set the maximum rate for call termination between licensees from time to time, either by way of a detailed cost study or by determining a relevant benchmark.

(2) Before setting the maximum rate for call termination under subregulation (1) , the Authority shall consult with licensees, and the licensees shall provide the Authority with all relevant information to facilitate the determination.

(3) The Authority shall, in setting a rate for call termination, consider whether or not any one or more licensees should charge less to terminate calls to their network than any other licensees, based on a detailed cost study and international best practice in the application of asymmetric rates.

(4) The Authority shall publish the rates for call termination in the Gazette.

Obligations on dominant licensees

8.— (1) The Authority shall deem all licensees to be dominant in the call termination market for all calls terminating on their networks.

(2) The Authority shall require a dominant licensee to submit to the Authority for approval, a reference interconnection offer that sets out in detail, the terms and conditions on which the licensee will make interconnection available to all interconnection seekers, within ninety days from the date of commencement of these Regulations.

(3) The dominant licensee shall prepare and publish a reference interconnection offer which shall ensure that—

(a) terms are applied in a non-discriminatory manner;

(b) the maximum rate for interconnection is included;

(c) all services that necessarily or incidentally form part of interconnection are included within the rate;

(d) no provision for requirement of the interconnection seeker to also acquire other services from the licensee as a condition for obtaining an interconnection;

(e) all points of interconnection are disclosed; and

(f) any changes to the interconnection provider's network are notified in writing to all interconnection seekers and published in advance of the changes taking effect to enable those parties to make the necessary changes to their own network or services:

Provided that changes that will result in a material increase in or new cost to those other parties may be rejected by those other parties.

(3) The Authority shall approve a reference interconnection offer within fourteen days from the date of filling.

(4) The Authority may require the dominant licensee to modify the offer and the licensee shall, if so required, modify and resubmit the offer to the Authority within fourteen days.

(5) A dominant licensee that has already concluded an

interconnection agreement shall amend that agreement where necessary, to align with the reference interconnection offer approved by the Authority, within ninety days from the date of commencement of these Regulations, and shall submit the amended agreements to the Authority for approval under this Regulation.

Filing and review of interconnection agreements

9.— (1) An interconnection agreement shall be submitted to the Authority within fourteen days of its execution .

(2) The Authority shall review each interconnection agreement to ensure that it is consistent with the Act and these Regulations.

(3) The Authority shall notify the parties in writing within thirty days of submission of the agreement whether or not the agreement is consistent with the Act and these Regulations and—

(a) where the Authority approves the agreement, it shall inform the parties in writing and shall register the agreement; or

(b) where the Authority determines that the interconnection agreement or any term or condition thereof, is not consistent with the Act or these Regulations, the Authority shall notify the parties and direct them to agree on new terms and conditions that are consistent with the Act and these Regulations, within thirty days.

(4) Where the parties are unable to agree on the new terms and conditions, after receiving notice from the Authority under subregulation (3)(b), the parties shall notify the Authority accordingly and the Authority shall declare a dispute.

Dispute resolution

10.— (1) Upon declaration of a dispute, the Authority shall require each party to submit within fourteen days, written representations on the matters on which they cannot agree.

(2) Each party shall provide to the other party, a copy of the written representations submitted under subregulation (1).

(3) Upon receipt of the representations, the Authority shall determine the terms of the interconnection agreement to apply between the parties.

Commencement, suspension and termination of interconnection agreements

11.— (1) An interconnection agreement shall commence on a date agreed upon by the parties, which date shall be after the date of issue of a compliance notice by the Authority under regulation 9(3)(a).

(2) An interconnection agreement shall set suspension and termination procedures that minimise any adverse effect of that suspension or termination on subscribers.

(3) An interconnection agreement shall not allow the suspension of interconnection, except where the suspension is necessary to address material degradation of an electronic communication network or service.

(4) Either of the parties to an interconnection agreement may terminate the interconnection agreement on the following grounds —

(a) material breach of the agreement which the defaulting party has not remedied;

(b) force majeure that persists for more than thirty days;

(c) liquidation, deregistration or insolvency of one of the parties to the agreement; or

(d) both parties have agreed to terminate the agreement.

(4) The parties or either one of them shall give the Authority at least thirty days' notice in writing of their intention to terminate the agreement.

Regulatory sanctions

12. Where a licensee fails to comply with these Regulations, the Authority may issue one or more of the following orders—

(a) an order to cease and desist from doing an act or omission constituting the non compliance;

(b) an order to take specific remedial action such as restitution of monies received as revenue;

(c) an order to pay an administrative fine; or

(d) any other order that the Authority may determine as appropriate to remedy the non compliance in a fair and

just manner.

General penalty

13.— (1) A person who fails to comply with a provision of these regulations, commits an offence.

(2) A person who commits an offence under these regulations for which no punishment has been provided for shall upon conviction be liable to a fine of K5,000,000.

Made this day of , 2020.

G. KAZAKO
Minister of Information

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