## SUPPLEMENTARY ACT A/SA.2/01/07 ON ACCESS AND INTERCONNECTION IN RESPECT OF ICT SECTOR NETWORKS AND SERVICES

**THE HIGH CONTRACTING PARTIES,**

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as amended establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

MINDFUL of Decision A/DEC. 14/01/05 on the adoption of a regional policy on telecommunication and the development of GSM regional roaming in the ECOWAS Member States;

MINDFUL of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

MINDFUL of Decision A/DEC. 12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

IN VIEW of Regulation C/REG. 2/12/99 on implementation of the INTELCOM II program;

MINDFUL of Decision A/DEC. 16/5/82 on the telecommunication program of ECOWAS;

CONSIDERING that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

CONSIDERING that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

CONSIDERING that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

DESIROUS of adopting a regime of access to and interconnection of networks and services within the information and communication technology (ICT) sector in the West Africa sub region in order to foster competition for the benefit of operators and users in that sector;

ON THE PROPOSAL of the Meeting of Ministers In Charge of Telecommunication held in Abuja on 11th May 2006;

ON THE RECOMMENDATION of the fifty-seventh session of the Council of Ministers held in Ouagadougou from 18 to 19 December 2006.

**AGREE AS FOLLOWS**

### CHAPTER I: DEFINITIONS, OBJECTIVES AND SCOPE

#### Article 1: Definitions

1. For the purposes of this Supplementary Act, the definitions contained in Supplementary Act A/SA1/01/07 shall apply.

2. The following additional definitions shall also apply:

   ***Access:*** a facility offered by one operator of a public telecommunication network to enable another operator of a public telecommunication network or a service provider to access its resources, particularly its physical infrastructure.

   ***Interconnection:*** a hardware and software linkage between public communication networks used by the same company or by a different company, to enable the users of one company to communicate with other users of the same company or with the users of another company, or to access services provided by another company. The services may be provided by the parties concerned or by other parties having access to the network. Interconnection is a particular type of access implemented between operators of public networks.

   ***Interconnection switch:*** the first switch of the public telecommunication network that receives and routes telecommunication traffic to the interconnection point.

   ***Interoperability of networks and terminal equipment:*** the ability of equipment to

function, first, with the network, and, second, with other terminal equipment that can be used to access the same service.

***Number portability:*** the possibility, on the part of the user, to use the same subscriber number regardless of the operator with whom the user is subscribed, even in cases where the user changes operator.

***Unbundling of the local loop:*** a facility, which also includes associated facilities, in particular co-location, provided by one public telecommunication network operator to enable another to access all elements of the first operator's local loop in order to serve its subscribers directly.

***Carrier selection:*** a mechanism that permits a user to choose from among a number of authorized public telecommunication network operators or authorized telecommunication service providers to route some or all of that user's calls.

***Physical co-location:*** a facility offered by a public telecommunication network operator which consists of making infrastructure, including premises, available to other operators for installing and, if applicable, operating their equipment, especially for purposes of interconnection.

***Provision of interconnection:*** a facility provided by one public telecommunication network operator to another or to a public telecommunication service provider which permits all users to communicate freely regardless of the networks to which they are connected or the services that they use.

***National roaming:*** a form of active infrastructure sharing that permits the subscribers of a mobile operator (i.e. a mobile operator that possesses infrastructure, in contrast to a mobile virtual network operator) to have indirect access to the network and services offered by another mobile operator providing such roaming within an area not covered by the nominal network of those subscribers.

***Operator having significant market power (dominant operator):*** a company which, either on its own or in conjunction with other companies, holds a position equivalent to a dominant position: that is, a company which has a significant capacity to act in a manner independent of its competitors, its customers and ultimately consumers.

### Article 2:
### Objectives and scope

1 This Supplementary Act forms part of the framework for harmonizing the regulation of the ICT sector in the Community.

2 The objective of this Supplementary Act is to establish an accessible, transparent and equitable regulatory framework in regard to network and service access and interconnection in the area of ICTs. It aims to build durable competition by guaranteeing the interoperability of networks and services. It lays out the objectives assigned to the national regulatory authorities, and the rights and obligations of operators and companies wishing to establish interconnection and/or access to their networks.

## CHAPTER II
## GENERAL REGULATORY FRAMEWORK FOR ACCESS AND INTERCONNECTION

### Article 3:
### Non-discrimination principle

1. Member States shall ensure that the general regulatory framework for access and interconnection incorporates the general community regulation principles foreseen for the establishment of the West African Common Market, including non-discrimination between companies established in different States.

2. According to the non-discrimination obligations, operators shall, inter alia, apply equivalent conditions in equivalent areas, and shall provide services and information to other parties under the same conditions and with the same quality as for their own services or those of their subsidiaries or partners.

### Article 4:
### Interconnection and competitive ICT market

Member States shall ensure that their national regulations on interconnection and access respect the principles of free and fair competition; accordingly, the regulations shall be conducive to elimination of obstacles to new operators entering the market. The regulations must rather be such as to increase the choice and quality of services available to consumers while allowing the regulator

to ensure that the legal and contractual rules applicable to access and interconnection are applied effectively.

### Article 5:
### Content of national regulations

Member States shall ensure that their national regulations offer solutions to the difficulties encountered in implementing interconnection, including the following problems and challenges:

a) compatibility of services and networks;

b) publication of reference interconnect offer (RIO);

c) existence of guidelines for the negotiation of interconnection contracts;

d) contract transparency;

e) absence of discrimination between operators in granting access to interconnection services;

f) level, structure and basis for calculating interconnection charges;

g) interconnection quality;

h) unbundling of network elements;

i) availability of rapid, independent procedures for resolving disputes, and the means for enforcing the rules;

j) possibility of consulting market players in order to reach a decision on a given regulatory or supervisory problem.

### Article 6:
### Harmonization of cost calculation methods

1. National regulatory authorities shall cooperate and coordinate their activities for the purpose of establishing and regularly updating a complete and harmonized methodology for calculating interconnection costs.

2. The aforementioned methodology shall establish in detail:

   a) relevant costs to be taken into account;

   b) structure of cost calculation model;

   c) basic data to be incorporated in the model;

   d) cost of capital return assessment method;

   e) interpretation of results of model.

## CHAPTER III:
## Access to infrastructure

### Article 7:
### Network interconnection

1. The operators of public telecommunication networks shall accede, in objective, transparent and non-discriminatory conditions, to the requests for interconnection from other duly authorized public network operators.

2. The request for interconnection shall not be refused if it is reasonable in terms of the requesting party's requirements on one hand and the operator's capacity to meet it on the other. Any refusal to interconnect shall be substantiated and notified to the requesting party and to the national regulatory authority.

3. Companies obtaining information from other companies prior to, during or following the access or interconnection agreement negotiation process shall use that information solely for the purposes foreseen when it was communicated and shall always respect the confidentiality of information transmitted or retained. Any information received shall not be communicated to other parties, in particular other services, subsidiaries or partners for which they could constitute a competitive advantage.

### Article 8:
### Access to points of interconnection

1. Member States shall ensure that any reference interconnect offer on the part of operators includes a list of the subscriber-serving exchanges that are not available for interconnection for valid technical or security reasons, along with the provisional timing to open such subscriber exchanges to interconnection.

2. However, where the forwarding of expected operator traffic to or from subscribers connected to exchanges on the list mentioned in point 1 above is justified, Member States shall ensure that the operator is required, at the request of the national regulatory authority, to establish a transitional offer for that exchange.

3. Such a transitional offer shall allow the requesting operator to define a fee schedule that reflects the costs which, in the absence

of technical access restrictions, would have been incurred for switching communications to or from, first, the subscribers connected to that exchange, and second, the subscribers who would have been accessible without the need for routing through a higher-echelon exchange.

## CHAPTER IV: COMPETITION

### Article 9: Carrier selection

1. Member States shall ensure that carrier selection is introduced in the call-by-call form, as a minimum, from the very beginning of competition in order to establish effective competition and allow consumers to choose their local-loop operator freely and have access to the services of an alternative operator. This selection possibility must be offered by all dominant operators. The dominant operator must be invited to undertake the technical changes that are necessary to adapt its automatic exchanges so as to be able to offer call-by-call selection in the initial phase; this service must be included in the reference interconnect offer.

2. Member States shall ensure that the national regulatory authority is authorized to assign prefixes to operators who fall within the category of carriers and is authorized to take decisions on:

   a) type of carrier selection;

   b) operators eligible to act as carriers;

   c) operators subject to the obligation to offer carrier selection;

   d) types of calls carried;

   e) problems involved in carrier selection such as invoicing and calling line identification;

   f) unfair competition issues such as "slamming".

### Article 10: Infrastructure sharing

1. Member States shall ensure that the national regulatory authorities encourage infrastructure sharing. The authorities must ensure that sharing between the operators of public telecommunication networks takes place under conditions of fairness, non-discrimination and equality of access. Thus, the regulatory authority, in consultation with other players, must be encouraged to elaborate a procedure for handling relations between the operators of public networks in the matter of the conditions and the sharing of infrastructure, in particular lead-times and access to the information needed to put it into place.

2. National Regulatory Authorities shall encourage infrastructure sharing between incumbents and new entrants concerning in particular posts, ducts and elevated points to be made available mutually on a commercial basis, in particular where there is limited access to such resources through natural or structural obstacles.

3. National regulatory authorities shall encourage access to alternative infrastructure on the basis of commercial negotiations, in order to foster and entrench competition as rapidly as possible. They must ensure that such access is provided under conditions of fairness, non-discrimination and equality of access. The revision of ICT regulations within the Community must foresee provisions on access to alternative infrastructure. Accordingly, the status of companies providing access to alternative infrastructure should be changed to include this service.

### Article 11: Number portability

1. Member States shall ensure that the national regulatory authority conducts market studies to assess consumers' portability needs and identify what categories of consumer are likely to request such a service.

2. Where a need has been clearly identified, the regulations must be amended to allow consumers to keep their telephone number when they change operators. Member States shall ensure that dialogue takes place between the market players and the national regulatory authority, given that portability is relatively difficult to put into practice, particularly its technical and tariff aspects, and consultation is necessary; and that the numbering plan is also revised so as to adapt it to the requirements of number portability.

**Article 12:**
**National roaming**

1. Member States shall ensure that the national regulatory authority sees that existing operators offer national roaming to requesting operators, at an affordable price, wherever it is technically possible to do so. However, national roaming must in no event replace the coverage obligations undertaken in the framework of mobile service licensing by new entrants.

2. Member States shall ensure that the national roaming contract is freely negotiated between the operators on a bilateral basis and that the operators provide consumers with relevant information about national roaming tariffs.

3. The national regulatory authority shall ensure that national roaming offers are fair and non-discriminatory.

4. The national regulatory authority shall publish specific national roaming guidelines to help establish tariff and technical conditions and provide information on national roaming contracts, in consultation with the market players.

**Article 13:**
**International roaming**

Member States shall ensure that the national regulatory authorities are in position to:

a) ensure the widest possible compatibility between mobile systems in terms of roaming, and take it into consideration when awarding mobile licenses in the region;

b) study roaming prices charged in the region;

c) consult with the players concerned with a view to arriving at reasonable tariffs to allow the greatest possible number of roaming users in the region to utilize the networks under the best price and quality conditions;

d) identify operators engaged in applying prohibitive prices;

e) consult with the national competition authority, where one exists;

f) allow prepaid subscribers to use roaming at reasonable tariffs;

g) inform customers about roaming charges in a clear, detailed and transparent manner;

h) draw the necessary conclusions from international practice.

**Article 14:**
**Fixed-to-Mobile Call Termination**

Member States shall ensure that the national regulatory authorities examine:

a) interconnection and call termination charges on mobile and fixed networks;

b) charges and tariff structures, retail and interconnection prices and the sharing of revenues between originating and terminating operators for fixed-to-mobile calls;

c) possible adjustments to the tariff structures of retail and interconnection prices;

d) the relevance of the interconnection market;

e) the relevance of the mobile termination market;

f) the identification of dominant operators in these markets and implementation of the necessary measures to promote smooth development of the telecommunication market and the process of liberalization of the fixed network in particular.

**Article 15:**
**Evolution of the regulatory framework to promote the development of the internet**

Member States must ensure that:

a) through unbundling, alternative operators are able to offer "triple play" type services (high-speed internet, voice and television);

b) all the alternative operators' equipment necessary for the implementation of local loop access can be co-located;

c) national regulatory authorities encourage activities which will promote development of the wholesale market and hence rapid expansion of the internet in Member States;

d) prior to the liberalization of fixed services, the national regulatory authorities negotiate with the incumbent operators on the inclusion of standard offers, namely: flat-rate access, access via non-geographical free phone numbers, access via non-geographical paying numbers.

## CHAPTER V
## Interconnection agreements

### Article 16:
### Legal regime of interconnection agreement

1. Interconnection shall be the subject of a private law agreement, commonly called the interconnection contract, between the two parties in question. The agreement shall specify, subject to the applicable legislation and regulations, the technical and financial conditions pertaining to the interconnection. Upon signature, it shall be communicated to the national regulatory authority.

2. When indispensable in order to guarantee fair competition, non-discrimination between operators and the interoperability of networks and services, the national regulatory authority may request the parties to modify the interconnection agreement.

3. In case of a request for modification, the regulatory authority shall send the parties concerned its requests for modification, duly substantiated. The parties concerned shall have a period of one (1) month, as from the date of the request for modification, to amend the interconnection agreement.

4. The national regulatory authority may, either automatically or at the request of one of the parties, set a deadline for signature of the agreement, after which they must intervene to bring the negotiations to a conclusion so that negotiations do not become a barrier to the entry of new operators.

5. Operators which so request must be allowed to consult, in the offices of the national regulatory authorities, in the manner that the latter shall decide and respecting normal business confidentiality, the interconnection contracts concluded by operators.

6. Where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may request that interconnection between the two networks be provided immediately, pending conclusion of the agreement.

### Article 17:
### Content

The interconnection agreements shall specify, inter alia:

a) the date of entry into force, duration and arrangements for the modification, termination and renewal of the agreement;

b) arrangements for the establishment of interconnection and the planning of subsequent deployment, level of quality of service guaranteed by each network and coordination measures for monitoring quality of service and fault identification and clearance;

c) a description of the services provided by each party;

d) arrangements for measuring traffic and setting fees for services, billing and settlement procedures. In the absence of an RIO or for services not appearing in the RIO, the applicable tariffs shall appear in annex to the agreement;

e) notification procedures and the contact details of the authorized representatives of each party for each field of competence;

f) rules for compensation in the case of failure by one of the parties;

g) dispute settlement procedures with mention, in the case of failure of negotiations between the parties, of mandatory recourse to the national regulatory authority.

### Article 18:
### Verification by the national regulatory authority

1. The national regulatory authority shall ensure that:

   a) the agreement complies with the applicable regulatory and legal texts, in particular those provisions relating to interconnection and the terms of reference of operators;

   b) the provisions of the agreement contain no discriminatory measures liable to advantage or disadvantage one of the parties vis-à-vis other operators or service providers. For the purpose, the agreement shall be compared with other agreements involving at least one of the parties.

2. Where the national regulatory authority has not formulated a request for modification within three (3) months as from receipt of the interconnection agreement, requests for modification shall cover only those amendments aimed at guaranteeing that each party receive no worse treatment in terms of non-discrimination as compared to those offered in more recent agreements signed by the other party.

## CHAPTER VI:
## OBLIGATIONS OF OPERATORS POSSESSING SIGNIFICANT POWER ON A RELEVANT MARKET

### Article 19:
### Identification of relevant markets and of significant market power on a relevant market

1. Member States shall ensure that the national regulatory authorities determine the relevant markets by:

   a) collecting information about each identified market so as to measure the extent of dominance;

   b) consulting the concerned telecommunication market players regarding market relevance for the purpose of analyzing those markets;

   c) seeking the advice of the competition authority, where one exists;

   d) defining the criteria to measure the dominance;

   e) consulting with the concerned telecommunication market players about obligations to be imposed on dominant operators for each relevant market.

2. Member States shall ensure that the ECOWAS Commission publishes:

   a) decisions adapted to the individual cases of the countries in question;

   b) guidelines for market analysis and assessment of market power;

   c) a recommendation on relevant markets in products and services in the telecommunication sector that can be regulated ex ante.

3. The authority shall analyze the markets in order to determine whether they are competitive or not and then draw the necessary conclusions in terms of regulatory obligations: if the analysis shows the market to be competitive, the authority shall abolish any existing obligations; otherwise, it shall identity the dominant operator(s) as defined by competition law and impose appropriate regulatory obligations.

### Article 20:
### Cost accounting obligation

1. The national regulatory authorities of Member States shall as soon as possible require operators with significant market power to set up cost accounting for the purposes of regulation. The establishment of such accounting must begin as of the adoption of this Supplementary Act and be completed by 2009 at the latest, in order to adequately prepare for the opening of the market for fixed communication. Cost accounting must show separate accounts, in accordance with international best practices. It is further recommended that costs relating to regulated and non-regulated activities be kept separate.

2. Accounting must be by activity (activity-based costing – ABC).

3. The cost accounting system must be audited annually by an independent body appointed by the National Regulatory Authority, the costs of the audit to be borne by the operator with significant market power. It must allow the national regulatory authority to publish a cost nomenclature prior to submission of the RIO for approval.

4. Pending the implementation of cost accounting by 2009, the interconnection rates must be calculated on the basis of the following recommendations:

   a) using a regional benchmark;

   b) using an existing cost calculation tool;

   c) for Member States which have audited cost accounting, a top-down model based on forward-looking historical costs maybe used initially (e.g. for three years) before moving to a model based on long-run incremental costs (LRIC), thereby givihg the dominant operator an incentive for greater efficiency;

d) for setting the appropriate rate of return based on the cost of capital, it is recommended that market data be used;

e) for calculating the cost of equity, use of the hybrid capital asset pricing model (CAPM) is recommended, incorporating the country risk and correction coefficient R.

**Article 21:**
**Reference interconnect offer**

1. National regulatory authorities shall publish a clear and transparent procedure governing approval of the reference interconnect offer (RIO) of operators possessing significant market power.

2. National regulatory authorities shall be entitled to request the operator with significant market power to add or modify the services set out in their offers, when such additions or modifications are justified for compliance with the principles of non-discrimination and cost-orientation of interconnection.

3. The offers must be as detailed as possible in order to facilitate and smooth interconnection contract negotiations.

4. The operator with significant market power is required to publish annually an RIO, reflecting its price list and the technical services offered. The offer must contain at least the following services:

   a) services for the routing of switched traffic (call termination and origination);

   b) leased lines;

   c) interconnection links;

   d) supplementary services and implementation arrangements therefore;

   e) description of all points of interconnection and conditions of access thereto, for the purposes of physical co-location;

   f) comprehensive description of proposed interconnection interfaces, including the signaling protocol and possibly the encryption methods used for the interfaces;

   g) technical and tariff conditions governing the selection of carrier and portability.

5. Transparency obligations in line with international best practices, may be imposed by the national regulatory authorities.

6. As soon as the fixed network services have been opened up to competition, the RIOs of operators with significant market power must also include the following services;

   a) third-party billing services;

   b) at the request of the national regulatory authority, an alternative co-location offer if physical co-location is proven to be technically unfeasible;

   c) as needed, the technical and financial conditions governing access to the operator's resources, in particular those relating to unbundling of the local loop, with a view to offering telecommunication services.

**Article 22:**
**Publication of a reference interconnect offer**

The reference interconnect offers approved by the national regulatory authority shall be made available on the dominant operators' websites and shall be accessible by a web link available on the national regulatory authority's website.

**Article 23:**
**Relevant cost orientation**

1. Dominant operators shall respect the principle of relevant cost orientation, i.e. the costs of network components or the management structures of the operator effectively involved in the provision of interconnection.

2. The relevant costs shall include:

   a) general network costs, i.e. costs relating to network components used by the operator both for services for its own customers and for interconnection services;

   b) costs specific to interconnection services, i.e. costs directly incurred solely by those services.

3. Non-relevant costs shall include costs specific to services other than interconnection.

4. Relevant costs must take account of long-term economic efficiency, in particular, the investments required for network renewal and expansion with a view to sustained quality of service. These costs shall incorporate the cost of return on capital invested.

**Article 24:**
**Monitoring of interconnection tariffs**

1. Dominant operators shall attach to the draft reference interconnect offer submitted to the national regulatory authority a detailed presentation justifying the main tariffs proposed. Once the harmonized method for calculating interconnection costs has been adopted, operators shall use it in order to provide the requested justification.

2. The national regulatory authority shall ensure that the methods and data used are valid. As required, it shall request the operator to adjust its calculations to rectify errors identified.

3. Should an operator fail to provide the justifications required, the national regulatory authority may in the operator's stead evaluate the costs based on the information available to it.

4. National regulatory authorities shall ensure that tariff setting for access and interconnection in so far as the dominant operators are concerned is cost-oriented and, as appropriate, that the fees payable by consumers are not dissuasive.

**Article 25:**
**Communication of information to the national regulatory authority**

1. Dominant operators are required to communicate to the national regulatory authority, at least once a year, the basic information required for checking the calculation of interconnection costs. The national regulatory authority shall prepare and communicate to operators a detailed list of that information. It shall update the list regularly, taking account inter alia of steps taken to harmonize the calculation methods.

2. Dominant operators are required to allow the duly authorized staff or agents of the national regulatory authority to have access to their installations and information system in order to check the validity of the information received.

3. The national regulatory authority is bound to respect the confidentiality of non-public information to which it has access within the framework of auditing the interconnection costs.

**Article 26:**
**Local loop unbundling**

Member States shall ensure that, in the regulatory text:

a) new entrants are authorized to access the local loop on the basis of a pre-established schedule;

b) new entrants commit, in their respective proposals, to install some minimum infrastructure capacity, whereas dominant operators commit to provide access to copper pairs to the new entrant as well as the possibility of co-location on its premises in order to facilitate unbundling;

c) the unbundling offer including the list of services offered at the request of the national regulatory authority shall be approved by the latter;

d) the national regulatory authority shall be obliged to ensure, on one hand, that the new entrant has access to the information needed for unbundling purposes and, on the other, that information related to unbundling is exchanged electronically between dominant operators and competitors; a schedule for unbundling shall be established with a view to liberalization of fixed communications, privileging unbundling with shared line access initially;

e) recommendations shall be provided on use of the "scissors test" in order to compare retail prices and unbundling prices in order to eliminate any anti-competitive practices by the dominant operators.

**Article 27:**
**Co-location**

1. Member States shall ensure that there is an obligation for dominant operators to provide

co-location and that a co-location offer, presenting no barrier to the entry of competitors, is included in the reference interconnect offer for network interconnection and in the unbundling offer for unbundling.

2. Member States shall ensure that:

   a) where physical co-location is impossible for some valid reason such as lack of space, an alternative co-location offer must be made by the dominant operators;

   b) the national regulatory authority shall have a map of self-contained routing switches that are open to interconnection and are available for competitors' co-location: to this end, a working group composed of the national regulatory authority, the incumbent operator and alternative operators shall, in a fully transparent fashion, examine the problems of co-location and propose different solutions in order to solve problems that might arise. The industry could be involved in the work of this group so as to bring its technical expertise to bear.

3. The national regulatory authority shall work in advance on problems relating to access to premises, uninterrupted power, cooling and patch cables.

4. The national regulatory authority shall prevent the creation of any entry barriers inherent to co-location and provide solutions to conflicts relating to it as rapidly as possible.

5. The national regulatory authority shall establish a decision on the minimal set of conditions that must be fulfilled in any co-location offer, following consultation with the operators of public telecommunication networks. These conditions may lead to the specification, in every co-location offer, of the following:

   a) information on co-location sites;

   b) precise location of the operator's sites suitable for co-location;

   c) publication or notification of an updated list of sites;

   d) indications as to the availability of alternative solutions in the event that physical space for co-location is not available;

   e) information on what types of co-location are available, and on the availability of electric systems and cooling equipment on the sites, as well as the rules governing sublease of the co-location premises;

   f) indications on the time required to conduct feasibility studies for any co-location request;

   g) information on equipment characteristics and any restrictions on equipment that can be accepted for co-location;

   h) measures that operators offering co-location must take to ensure the security of their premises and to identify and resolve problems;

   i) conditions under which competing operator personnel may enter the premises;

   j) conditions under which competing operators and the regulator may inspect a site where physical co-location is impossible, or a site where co-location has been refused on the grounds of lack of capacity.

## CHAPTER VII
## SETTLEMENT OF DISPUTES

### Article 28:
### Obligations of National Regulatory Authorities

Member States shall ensure that the national regulatory authorities:

a) publish a referral procedure complying with that described in Article 29 below, enabling market players to bring disputes before the national regulatory authority in accordance with a clear and transparent procedure;

b) ensure that the committee responsible for taking decisions is impartial, and comprises people recognized for their competence and appointed intuitu personae;

c) set a maximum time-frame for the settlement of disputes;

d) provide for the possibility of the authority initiating a referral action itself, and the possibility of injunction against an operator in the event of serious problems requiring urgent solution;

e) cooperate as widely as possible, and establish a group for exchanging experience via the internet and a database of past disputes and their solutions.

**Article 29:**
**Dispute resolution procedures**

1. Disputes relating to refusal to interconnect, interconnection agreements and conditions of access are brought before the national regulatory authority.

2. The national regulatory authority shall render a decision within a period of three months, after having invited parties to present their remarks. That period may nevertheless be extended to six months when additional investigations and expert opinions are required. The decision shall be substantiated, and shall specify the equitable conditions, both technical and financial, under which the interconnection is to be effected. Matters remaining in dispute shall be brought before the competent jurisdictions.

3. In the case of serious and blatant breach of the rules governing the telecommunication sector, the national regulatory authority may, after inviting the parties to submit their remarks, order appropriate provisional measures to be taken to ensure the continued functioning of networks and services.

**CHAPTER VIII:**
**FINAL PROVISIONS**

**Article 30:**
**Time-frames for transposition**

1. Member States shall take all necessary steps to adapt their national sectoral legislation to this Supplementary Act no later than two years following the date of its entry into force. They shall inform the Commission of those steps immediately.

2. The legal texts agreed to shall contain a reference to this Supplementary Act or shall have such a reference attached to them when they are officially published.

**Article 31:**
**Implementation**

1. When, based on this Supplementary Act, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market, and concern interconnection and access to the resources of public telecommunication network operators, they shall ensure that the measures and substantiating arguments are communicated to the Commission one month prior to their implementation.

2. The national regulatory authority shall take into consideration the observations of the Commission.

3. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the national regulatory authority that they are incompatible with this Supplementary Act.

4. Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Commission for observations.

5. When Member States adopt transposition measures for this Supplementary Act, they shall ensure that the planned measures along with substantiating arguments are communicated to the Commission one month prior to implementation of the measures.

6. Member States shall take into consideration the observations of the Commission. The measures shall take effect one month after the date on which they were communicated, unless the Commission informs the Member States that the measures proposed are incompatible with this Supplementary Act.

7. Member States shall communicate to the Commission any provisions of domestic law which they adopt in the field governed by this Supplementary Act.

**Article 32:**
**Information report**

Member States shall, no later than six months following the date of entry into force of this Supplementary Act, communicate to the Commission the steps taken or which are in the course of approval or implementation for the purpose of implementing this Supplementary Act.

**Article 33:**
**Publication**

This Supplementary Act shall be published by the Commission in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of Authority. It shall also be published by each Member State in its National Gazette within the same time frame.

**Article 34:**
**Entry into force**

1. This Supplementary Act shall enter into force upon its publication. Consequently, signatory States and ECOWAS Institutions pledge to commence the implementation of its provisions on its entry into force.

2. This Supplementary Act is annexed to the ECOWAS Treaty of which it is an integral part.

**Article 35:**
**Depository authority**

This Supplementary Act shall be deposited with the Commission which shall transmit certified true copies thereof to all the Member States and shall register it with the African Union, the United Nations and such other organisations as Council may determine.

**IN WITNESS WHEREOF, WE, THE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES, HAVE SIGNED THIS SUPPLEMENTARY ACT**

**DONE AT OUAGADOUGOU, THIS 19TH DAY OF JANUARY 2007**

**IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC.**

.....
**His Excellency Thomas Boni Yayi**
President of the Republic of Benin

.....
**His Excellency Blaise Compaore**
Chairman of the Council of Ministers
President of the Faso

.....
President of the Republic of Cabo Verde

.....
**His Excellency Laurent Gbagbo**
President of the Republic of Cote D'Ivoire

President of the Republic of The Gambia

**His Excellency John A. Kufuor**
President of the Republic of Ghana

**Hon. Sidibe Fatoumata KABA**
Minister of International Cooperation
For and on behalf of the President
of the Republic of Guinea

**His Excellency Joao Bernardo Vieira**
President of the Republic of Guinea Bissau

**Her Excellency Ellen Johnson-Sirleaf**
President of the Republic of Liberia

**His Excellency Toumani Toure**
President of the Republic of Mali

**His Excellency Mamadou Tandja**
President of the Republic of Niger

**His Excellency Olusegun Obasanjo**
President, Commander in Chief of the Armed
Forces of the Federal Republic of Nigeria

**His Excellency Abdoulaye Wade**
President of the Republic of Senegal

**Hon. Mohammed Daramy**
Minister of Development and Economic
Planning, for and on behalf of the President
of the Republic of Sierra Leone

**His Excellency Faure Essozimna Gnassingbe**
President of the Togolese Republic