

SUPPLEMENTARY ACT A/SA.5/01/07 ON THE MANAGEMENT OF THE RADIO-FREQUENCY SPECTRUM

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 telecommunication policy and 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 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;

NOTING that the strong growth in the number of users of ICT services is liable to lead to a serious shortfall in numbering resources;

WISHING, THEREFORE, to elaborate sub regional regulations in regard to optimum management of the radio-frequency spectrum;

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, 2007.

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 Acts A/SA.1/01/07 shall apply.
2. The following additional definitions shall also apply:
radio frequencies or radio-frequency spectrum: frequencies or spectrum of electromagnetic waves propagated naturally in the 3 kHz to 300 GHz band, used for the transmission and reception of telecommunication signals.

frequency-spectrum management: all administrative and technical actions, taken as a whole, aimed at ensuring a rational use of the radio-frequency spectrum by users.

Article 2: Objectives and scope

1. The purpose of this Supplementary Act is to harmonize procedures for the management of the radio-frequency spectrum by ECOWAS Member States.
2. This Supplementary Act aims to establish a framework of guidelines and legal provisions within ECOWAS to assure policy coordination and, where applicable, the harmonization of conditions with respect to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the domestic ICT market in the ECOWAS zone.
3. To that end, this Supplementary Act establishes procedures with a view to the following:

- a) to facilitate the defining of policies in regard to strategic planning and harmonization of the use of the radio spectrum in the ECOWAS zone, taking into account in particular the economic, security, health, public-interest, freedom-of-expression, cultural, scientific, social and technical aspects of Community policy, as well as the different interests of communities of radio-spectrum users, with a view to optimizing the use of the radio spectrum and eliminating harmful interference;
- b) to assure the effective implementation of the radio-spectrum policy within ECOWAS, and, in particular, to establish a general methodology for assuring the harmonization of conditions relating to the availability and effective utilization of the radio spectrum;
- c) to assure the coordinated and timely dissemination of information on the allocation, availability and utilization of the radio spectrum within ECOWAS.

Article 3:

Objectives of radio-frequency spectrum management

1. The Member States shall assure coordinated management of the radio-frequency spectrum within the ECOWAS zone, on the basis of the following objectives:
 - a) economic efficiency: ensuring that the allocation of frequencies to users, having regard to the uses, results, on the market, in higher value being derived from the resource; ensuring that there is a swift, flexible response to changing markets and technologies, with new services being accommodated as they become technically and commercially viable; and minimizing transaction costs, barriers to entry and any other constraints on efficient economic activity;
 - b) technical efficiency: assuring intensive use of limited spectrum, and adherence to technical limitations based on interference considerations; and promoting the development and introduction of new spectrum-saving technologies where the cost of such technologies is justified by the value of the spectrum saved.

- c) general policy: ensuring that it is consistent with overall government policy; safeguarding certain areas of spectrum use for the efficient functioning of national defense, emergency services and other public services; and ensuring that any change in spectrum use in an ECOWAS Member State always remains consistent with Member States' international and regional obligations.

CHAPTER II: GENERAL PRINCIPLES

Article 4:

Definition of a common framework for spectrum management in the ECOWAS zone

Member States shall define a common framework for economically efficient spectrum management with a view to meeting the objective of liberalizing the ICT market within ECOWAS.

Article 5:

Principles of efficient spectrum management

Member States shall ensure that all classes of user are encouraged to make optimum use of the spectrum they occupy.

Article 6:

Spectrum pricing

1. Member States shall adopt a frequency pricing system in cases where demand is greater than supply and neither frequency auctioning nor frequency trading are used. Determination of the price calculation method, which is generally based on spectrum opportunity costs, may also take account of any objectives defined by the State.
2. Member States shall ensure that in the majority of frequency bands where demand is greater than supply, they follow the principle of a positive price for spectrum access where there are other potential uses for a given block of spectrum, i.e. where the opportunity cost is greater than zero. Where demand does not exceed supply, the price may be equal to the administrative costs or to a value consistent with government policy.

**Article 7:
Auctions**

Where demand is greater than supply, Member States shall make preferential use of auctions as a means of assigning major spectrum licenses to competing applicants, in the interests of ensuring transparency, objectivity and impartiality in the transfer (or assignment) process.

**Article 8:
Service restrictions**

Member States shall ensure that spectrum management bodies in the ECOWAS countries make every effort to keep license conditions to the minimum necessary for efficient spectrum use. To this end, existing licenses should be amended to remove restrictions not needed for reasons of international coordination or interference management, and new licenses should be issued with as few restrictions as possible.

**Article 9:
Generic licenses for spectrum use**

In the interests of greater flexibility and as an aid to economic development, Member States may adopt a system of generic licenses for frequency usage within certain frequency ranges.

**Article 10:
Conformity with the global and regional
regulatory framework**

Member States shall manage spectrum in ways that promote flexibility while respecting the ITU international allocations.

**CHAPTER III:
PRINCIPLES OF SPECTRUM MANAGEMENT**

**Article 11:
Coordinating spectrum management across
civil and governmental**

1. Member States shall establish a framework which permits the effective coordination of all spectrum use, at the national, regional and international levels.
2. Member States shall promote the merging of separate regulatory bodies dealing with spectrum use in the broadcasting and telecommunication spheres.
3. Where government requirements for a particular frequency band are zero or negligible, such spectrum may be permanently reallocated to civil uses, following a definitive renunciation by the government.

**Article 12:
Role of national regulatory authorities**

In the interests of having a management regime that embraces the principle of technological neutrality, Member States shall ensure that radio spectrum management powers are vested in the national regulatory authority overseeing telecommunications by giving that entity a mandate covering ICT in the broadest sense.

**Article 13:
Radio spectrum coordination committee**

1. Member States shall ensure that, in those countries of the ECOWAS zone that manage the radio spectrum according to the multi-jurisdictional model, an inter-departmental committee is established with the following rules of operation:
 - a) The committee shall in the first instance establish a policy agenda and guidelines for regulations.
 - b) The committee shall comprise members of key government agencies involved in spectrum management, as well as key non-governmental stakeholders.
 - c) Official records shall be kept of meetings of the committee and be made public, except where this may compromise national security interests.
 - d) Government representatives on the committee shall be appointed by a high-level member of government for a period not exceeding five years, renewable only once. They shall elect a chairman amongst themselves, who shall remain in that function for a period not exceeding two years.
2. Member States which establish such a committee shall ensure that it also includes members from the civil society, chosen from a list of applicants drawn up pursuant to an open public selection process. Their committee memberships shall not exceed three years.
3. The committee shall not exceed 12 persons, including the Chairman.
4. Member States shall ensure that the committee is required to publish an annual report, to be communicated to the government and published on the committee's website. The committee shall also publish all its work and all other relevant material, subject to a confidentiality clause, on a dedicated website. The website of each participating

governmental committee member's department should contain a link to the committee's website.

5. Two members of each national committee shall be nominated to sit on a regional committee comprising members from all the ECOWAS countries. The regional committee shall meet once a year, in one of the countries of the region, to discuss matters of international relevance in the context of spectrum management and matters of mutual interest.

**Article 14:
Regional Spectrum Management
Coordination Committee**

1. Member States shall establish a special ECOWAS committee comprising the spectrum management bodies of each ECOWAS Member State, with the task of defining a common approach to spectrum management.
2. The committee shall examine the spectrum assignments and allocations of the ECOWAS countries and recommend a harmonized policy for promoting broadband wireless access service provision across the region. The committee shall report its findings by the end of June 2007.

**CHAPTER IV:
HARMONIZATION OF DOCUMENTATION AND
MONITORING AT REGIONAL LEVEL**

**Article 15:
Common framework for documenting and
monitoring spectrum use**

Member States shall establish, possibly under the auspices of ECOWAS, a common methodology for documenting and monitoring spectrum, sharing as necessary the costs of developing a software tool for that purpose. Member States shall likewise promote the establishment, under the auspices of ECOWAS, of a forum bringing together those responsible for spectrum management for the purpose of:

- a) exchanging information and experiences to foster the harmonization of spectrum management rules;
- b) preparing common positions to be presented to regional, then global bodies;
- c) pooling existing expertise.

**Article 16:
Common framework for a public database
and establishment of a national allocation
table to enable interference management**

Member States shall:

- a) establish a common framework for developing a public database of technical and locational information about radio communication systems;
- b) in the near future, provide the data necessary to define a common template for the establishment of a national frequency table in each country.

**CHAPTER V:
FINAL PROVISIONS**

**Article 17:
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 ECOWAS 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 18:
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 single market; and
 - a) concern the implementation of the tariff policy applicable to telecommunication services;
 - b) concern the implementation of the universal service development policy;
 - c) concern interconnection;
 - d) relate to the arrangements for authorizing the establishment, operation and/or provision of telecommunication services open to the public,

Member States shall ensure that the measures and substantiating arguments are communicated to the Commission of ECOWAS 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 comment.
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 ECOWAS 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 19:
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 20:
Publication**

This Supplementary Act shall be published by the Executive Secretariat 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 21:
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 22:
Depositary 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**

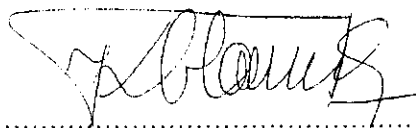
DONE AT OUAGADOUGOU, THIS 19TH DAY OF JANUARY 2007

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

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His Excellency Thomas Boni Yayi
President of the Republic of Benin

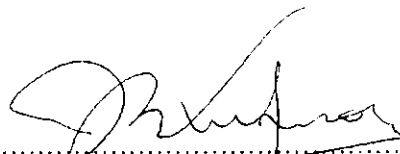
.....
His Excellency Blaise Compaore
Chairman of the Council of Ministers
President of the Faso

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



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

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President of the Republic of The Gambia



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



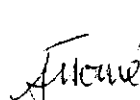
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Hon. Sidibe Fatoumata KABA
Minister of International Cooperation
For and on behalf of the President
of the Republic of Guinea




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



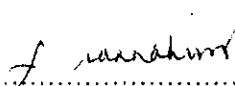
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Her Excellency Ellen Johnson-Sirleaf
President of the Republic of Liberia



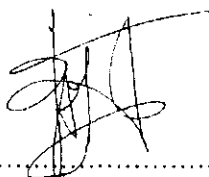
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His Excellency Toumani Toure
President of the Republic of Mali



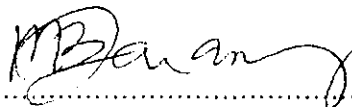
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His Excellency Mamadou Tandja
President of the Republic of Niger



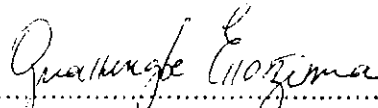
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His Excellency Olusegun Obasanjo
President, Commander in Chief of the Armed
Forces of the Federal Republic of Nigeria



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His Excellency Abdoulaye Wade
President of the Republic of Senegal



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



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His Excellency Faure Essozimna Gnassingbe
President of the Togolese Republic