

# Guidelines

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# Basic Principles



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# Competition

- Considering the need for new developments in the telecommunications market as well as the ECOWAS decision which promoted the process of total liberalization of telecommunications infrastructure and services by 1 January 2007, it is recommended that competition is introduced in all ECOWAS countries as soon as possible, thereby opening the market to new entrants.
- Where transition periods are foreseen for certain member states, it is recommended that such be limited such as to permit these countries to follow the regional trend.



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# Harmonization of procedures

- There is also a need to harmonize the categories of networks and services as well as licensing procedures.
- ECOWAS Member countries will strive to define and adopt common classifications of telecommunications networks and services as well as common licensing procedures.



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## Provision of Service between ECOWAS Member States

- Member States will facilitate the provision of services between Member States or in different Member States of the ECOWAS Region in the formulation and application of their respective licensing regimes.
- In order to facilitate the establishment of such regional networks or networks in several Member States, the regulatory authorities of ECOWAS Member States shall coordinate to the extent possible their licensing procedures for companies wishing to offer a telecommunications network and/or establish and/or exploit a telecommunications network in more than one ECOWAS Member State.



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## Market Structure



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## Competitive Framework

- It is recommended that infrastructure-based competition is promoted to the largest extent possible given that this model has the advantage of favorizing a maximum degree of competition while accommodating simultaneously the development of the sector in terms of universal service.
- Service-based competition must also be considered within the licensing approach given that such competition can be considered a mechanism to ensure rapid market access by allowing such entrants to complement the networks of infrastructure-based operators.



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## Licensing Regime

- **Given the existing market realities, the proposal is to introduce a licensing framework which accommodates such realities and aiming to achieve the desired market structure.**
- **This framework is aimed at being technology and service neutral so as to be able to accommodate convergence and the introduction of new technologies. Convergence between different telecommunications networks and services and their technologies requires a licensing framework which covers comparable services whatever the technology used.**
- **The recommendation is to promote technology neutrality to the greatest extent possible (e.g., not specify technologies such as GSM, CDMA or UMTS) and/or service (e.g. unified license which does not limit the activities such as fixed or mobile).**



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## No Artificial Barriers to Entry

- The regulator should impose no artificial limits on the number of operators or service providers in the market.
- For example, since there is no network scarcity on a wire line network, as compared with, for example radio frequencies, there is no reason to restrict the number of ISP providers.



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## No Artificial Barriers to Entry

- **If a Member State limits the number of licenses, such a limitation must be justified by the Member State taking consideration of the following principles:**
  - The Member State will give due consideration to the necessity to maximize advantages for users and facilitate the development of competition;
  - The Member State shall give interested parties the opportunity to express their opinion by conducting public consultations on planned limits in the number of licenses;
  - Member States shall publish their respective decisions to limit number of licenses as well as the justification of such decisions;
  - Member States will regularly re-examine such decisions;
  - Where the number of licenses is limited, Member States will launch a public tender for such activities.
- **Where an ECOWAS Member State determines that the number of licenses can be increased, it will take the necessary actions to publish such a decision and launch a call for tender for additional licenses**



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## Level of Intervention

- The Licensing Framework consists of three levels of intervention, ranging from individual licenses to class license (authorization or declaration) to open entry.
- Different telecommunications networks and services will be categorized into the different categories according to the adapted market structure.



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## Level of Intervention

- The decision to require individual licenses in certain cases must take into market realities of individual ECOWAS countries into consideration.
- Individual licenses shall be required in the following cases:
  - To exploit or offer public telecommunications networks or offer public voice telephony service.
  - If the government of a particular country, for reasons of public policy, determines that the service shall be offered in a certain way (e.g., measures concerning public order, public security or public health.)



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## Level of Intervention

- Nevertheless, in order to promote the development of the sector in the Region and to allow more choice to consumers, ECOWAS Member States may decide to exempt certain activities, networks or services ( e.g., ISP) from a particular licensing category or indeed determine that they are included in the open entry category (e.g., Wi-Fi.)



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## Proposed Market Structure

- Individual License
  - E.g.,:
    - **Network Operators – owning and exploiting any type of communications infrastructure** ( e.g., satellite, terrestrial, mobile or fixed)
    - **Public voice telephony service providers**
- Authorization:
  - E.g.,:
    - **Private Networks**
- Declaration:
  - E.g.,:
    - **Value Added Services**
    - **Resellers**
- Open Entry
  - E.g.,:
    - **WiFi Networks**
    - **Internal Networks**



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# Form of the License



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# Form of the Licence

- **The recommendation is that the license text includes the principle without literally copying legal or regulatory texts applicable to the sector.**
- **Such an approach will effectively promote transparency and equal treatment of all licensees and give the regulator the flexibility to adapt regulation to changing market conditions.**
- **Nevertheless, it is clear that specific conditions of licensees will be an integral part of their license.**



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## Form of the Licence

- **The text of the license should not also not include conditions which are already applicable but which are not specific to the telecommunications sector.**
- **Nevertheless, regulatory authorities may inform network operators and service providers of any regulations affecting their operations by referring them to information published on their respective web-sites.**



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## Rights and Obligations



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## Rights and Obligations

- Conditions imposed upon operators and service providers must be non-discriminatory, proportional and transparent and must be justified in relation to the targeted network or service.
- All holders of a telecommunications license will have a basic set of rights and these rights shall be applicable to all licensed operators regardless of whether they are service based or network based operators. However, the ability of a licensee to avail of those rights and entitlements may be conditional upon them being able to meet physical or technical requirements. For example, any incumbent fixed telecommunications operator may be required to set out certain conditions for access and interconnection to its network, including certain technical specifications. Any licensee capable of meeting those requirements should be entitled to enter into arrangements for such access or interconnection.



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## Rights and Obligations

- Where operators wish to have access to scarce resources (such as frequency spectrum, numbers or land), NRAs should retain the right to put in place additional regulatory requirements, including (but not limited to) the requirement to participate in specific application procedures or competitive selection processes. In addition, those conditions in the licenses of all licensees that relate to scarce resources should be activated where an operator gains access to such resources. The NRA shall consult separately in relation the allocation of scarce resources where appropriate.
- Where a regulator wants to impose such a condition, it must follow transparent procedures, including public consultation procedures.



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## Rights and Obligations

- Certain other conditions which will be contained in all licenses will not be activated unless a specific determination or finding is made by the NRA. For example there are a range of conditions that should only apply if a licensee is found to be dominant in a relevant market. Where the NRA intends to make a finding of dominance, there is a statutory consultation process that should be followed.
- Conditions regarding the regulation of the activities of a dominant operator shall not, in principle, apply to new entrants. Such conditions will in principle only apply where the regulatory authority determines, after appropriate market analysis, that a licensee is in fact in a dominant position.



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## Rights and Obligations

- Other licensees will only be subject to conditions linked to quality of service and consumer protection. Nevertheless, certain conditions relating to the provision of services to the public, and in particular including emergency calls, directory services and public payphones, may be applicable.
- In addition, since it is not possible to foresee future market developments, regulatory authorities must have the ability to be able to designate an operator(s), other than the historic operator, as having a universal service obligation in the future.
- Any licensee must make appropriate provisions to take into consideration the needs of disabled people.



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# Rights and Obligations

- In the interests of transparency and simplicity, fixed and mobile networks may be licensed separately.
- Because of the nature of the mobile market, it is not generally considered appropriate to apply exactly the same conditions to that business. Certain market characteristics that are applicable in the fixed market and require regulation, do not necessarily exist in the mobile market. The following conditions, which are generally contained in fixed licenses should not be included in mobile licenses. These are:
  - Public payphones.
  - Leased circuits
  - Linked Sales.



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# Procedures



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# Fees

- The fees associated with obtaining a license or authorization should not impose unnecessary costs on operators, and should not otherwise create a barrier to market entry. Therefore, to the extent that a regulator imposes fees on the issuance of a license or general authorization, the fees should seek to cover only the administrative costs incurred in the issuance, management, control and enforcement of the applicable authorization scheme.
- In addition, charges must be imposed in a non-discriminatory manner so that one operator is not charged more than another without some objective basis for so doing. Any fees also shall be published in an accessible and appropriately detailed manner.
- Apart from entry fees, fees may also be imposed for the use of spectrum or numbers, with the aim of ensuring optimal use of resources. Such fees should not prevent the development of innovative services or competition in the market.



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# Public Consultations

- To ensure fairness and transparency in the licensing or authorization process, the regulator should consult with industry, the public and other stakeholders.



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## Licensing Procedures

- Where a license is required, the following should be published and made publicly available:
  - all licensing criteria.
  - the period of time normally required to reach a decision concerning an application, and
  - the terms and conditions of individual licenses.
- The reasons for the denial of any license must be made known to the applicant upon request.



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## Licensing Procedures

- Regulatory Authorities shall define and apply licensing mechanisms that facilitate market entry and allow the progressive dismantlement of obstacles to competition and to the development of new services.
- Any license conditions must be objectively justified, proportionate, non-discriminatory and transparent.
- Regulators generally should keep license conditions and filing requirements to a minimum. It would be unduly burdensome, for example, to require applicants for general authorizations to submit excessive amounts of business information to the regulator, such as: business plans; extensive technical filings; showings of experience; bank statements; or information detailing the source of funding.



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## Licensing Procedures

- Any entity that fulfills the conditions adopted and published by the regulatory authority shall be entitled to receive an individual license.
- Furthermore, all applicants shall be subject to the same procedures, unless there is an objective reason for differentiation.
- The regulator should adopt and adhere to reasonable time limits for acting upon license requests.



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## Licensing Procedures

- Refusal to issue a license or any decision to amend a license shall be taken in a transparent manner and the reasons should be communicated formally to the applicant.
- A procedure also should be initiated to permit an entity to appeal any decision by the regulatory authority to an independent institution.



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## Licensing Procedures

- Licenses should be issued to the applicant personally. Transfer to third parties, if applicable, shall be done only with prior consent of the regulatory authority. However, a license obtained through competition or tender procedures should not be transferable. An exception to this condition is admissible when the applicant has declared in advance his intention to set up a company entirely owned by him to operate the licensed activities.
- The regulatory authority should prescribe the maximum license period and indicate the conditions of its renewal.



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## Licensing Procedures

- The regulatory authority should refrain from imposing limitations of service offered over a given network and promote the principle of technology neutrality.
- The regulatory authority should ensure that license targets to further universal service goals do not discourage competition.



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## Licensing Procedures

- The regulatory authority should refrain from imposing limitations of service offered over a given network and promote the principle of technology neutrality.
- The regulatory authority should refrain from granting licenses with exclusivity, except when mandated by the legislation or the country's policy, and when dictated by unavailability of necessary resources or other relevant reasons.



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## Licensing Procedures

- The terms of a license should be considered fixed at the time the license is officially delivered. **Should the need to change the terms arise**, the agreement should require the regulator or licensee to notify the other party in a timely and reasonable fashion of any such changes before they are implemented.
- A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the regulator and a third party unless the terms are fully reiterated in the current license.



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## Reviewing, Terminating and Revoking Licenses

- When a licensee fails to comply with a condition attached to the license, the regulatory authority may withdraw, amend, or suspend the individual license or impose, in a proportionate manner, specific measures aimed at ensuring compliance.
- The regulatory authority shall, at the same time, give the entity a reasonable opportunity to state its view on the application of the conditions and, except in the case of repeated breaches by the entity, the entity shall have an opportunity, within a defined period of time, to remedy the breach.
- If the breach is remedied, the regulatory authority shall, within a defined period of time, annul or modify its decision and state the reason for its decision. If the breach is not remedied, the regulatory authority shall, within a defined period of time after its initial intervention, confirm its decision and state the reasons for its actions. The decision shall be communicated to the entity within a defined period of time (i.e., one week).



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## Reviewing, Terminating and Revoking Licenses

- A license agreement should provide termination rights that are appropriate to each party.



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## Authorisation Regime

- Service providers may be required to notify the regulator before providing the intended service. Service providers also may be required to provide information to the regulator to ensure compliance with any applicable conditions of operation.
- In such instance, the service provider may be required to wait for a reasonable and defined period of time (e.g., up to four weeks) before starting to provide the services covered by the general authorisation.



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## Authorisation Regime

- Information that may be included for general authorizations include:
  - Individuals may be required to show that they are registered as single businessmen. Commercial partnerships, however, can be required to show by means of a statement accompanied by a certificate from the relevant commercial registration office that they are legally established and that their contract of partnership includes the business of providing telecommunications services. Individuals or partnerships whose registration or license has been suspended or has been revoked should not be allowed to register.
  - The entities may also be required to previously inform the NRA of the services they intend to commence and to provide the information that shows that they can fulfill the applicable conditions and modes applicable to the licensable activity, namely:
    - a) Detailed description of the service they propose to provide.
    - b) Technical project stating the equipment's to be used.
    - c) Indication of the entity in whose network the service is based.
- NRAs may retain the right to request further clarification.



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## Right of Review, Remediation and Appeal (Authorisation)

- If the regulator finds that a service provider does not comply with the conditions of a general authorization, it may inform the service provider that it is not entitled to use the general authorization and/or impose on the service provider proportionate measures to ensure compliance. The service provider shall have an opportunity to state its views on the application of any such conditions and to remedy any breaches within a defined period of time.
- If the service provider is able to correct the breaches or deficiencies within a specified period of time, the regulator shall annul or modify its initial decision and state the reasons for this decision. If the service provider is unable to correct the deficiencies, the regulator shall, within a defined period of time (e.g., two months of its initial decision) confirm its decision and state the reasons for its decision. This subsequent decision shall be communicated to the service provider within a defined period of time (e.g., one week).
- A procedure also should be established to permit the regulated entity to appeal the regulator's decisions to an independent institution.



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## Enforcement

- License conditions should be enforceable and clear on the rights and obligations of the licensee.
- The regulatory authority should undertake, when deemed necessary, reasonable and appropriate methods to enforce the terms and conditions of a licensee's operations.
- A license agreement should include provisions to facilitate enforcement processes and access, when deemed necessary, to a licensee's documents, provided that privacy and confidentiality are respected.



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# Enforcement

- A license agreement should require the regulatory authority to give the licensee notice of any suspected or alleged license violations that come to the attention of the regulatory authority and allow a reasonable time for the licensee to investigate and take corrective action, if appropriate.
- A licensee should be provided with an opportunity to present his views before changes of the terms of the license take effect.



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# Sanctions

Where license conditions are not respected, sanctions may be imposed. A range of sanctions may be foreseen, including:

- Fines
- Restriction of the scope and/or the duration of the license
- Suspension
- Withdrawal of License

Where one of the sanctions mentioned above is imposed, it will be widely communicated amongst ECOWAS Member States.



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## Dispute Resolution

- Disputes must be handled according to national legislation.
- Parties may, however submit their case to the Judicial entity of ECOWAS or to any other competent judicial authority.



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## Merci de votre attention!!

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