



TRANSPOSITION OF ECOWAS AND WAEMU TELECOMS/ICT LEGAL FRAMEWORK:

THE SIERRA LEONE EXPERIENCE & PROSPECTS

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INTRODUCTION

- rapid development in contemporary telecommunications today plays a crucial role in the socio - economic development of emerging democratic states in Africa.
- contribute enormously in fostering trade between countries.
- ICT is today, considered to be an indispensable component in the successful implementation of the economic integration programme adopted by the 15 member countries of ECOWAS.
- In view of the above, the ECOWAS Heads of State and Government acceded to the proposal that calls for the harmonization of the telecommunications policies and the legal and regulatory framework of Member States so as to facilitate and expedite the establishment of a single liberalized telecoms market within the ECOWAS Community.

BACKGROUND

- The Telecommunications Act 2006 established the National Telecommunications Commission (NATCOM) to provide for the licensing and regulation of telecommunications operators and for the promotion of universal access to basic telecommunications services, fair competition for the benefit of investors in, and users of telecommunications networks and services, and to improve the national, regional and global integration of Sierra Leone in telecommunications.
- The Act came into effect on the 3rd August 2006. While its Chairman/Commissioner took office in October 2006, the other six members of the Commission commenced sittings in January of 2007. Senior Management staff of the Commission was appointed in March and took office in April 2007.
- Sierra Leone's regulator in this regard, is therefore a burgeoning institution faced with a superfluity of challenges that are inevitable, and some of which have distracted us from fulfilling our obligations in ensuring full implementation of the ECOWAS Supplementary Acts by the end of December 2007
- However, progress have been made both in enacting a new legislation that mirrors the provisions of the supplementary Acts and in the preliminary work done by the ITU consultant in collaboration with both the Regulator and Officials of the Ministry in ensuring that the groundwork and an action plan is devised and ongoing both to develop a comprehensive ICT policy for the Country and in preparing a draft set of regulations that clarifies and amplifies the provisions of the Act while at the same time reflecting the letter and spirit of the ECOWAS Supplementary Acts.

Dakar Preliminary Meeting

- The process of implementing the Supplementary Acts in Sierra Leone commenced with a preliminary meeting in Dakar at the ITU Offices, between 30th April and 4th May 2007
- The meeting was hosted by the ITU Representative Mme. Margarida Evora Sagna and attended by the ECOWAS Representative, Dr. Raphael Koffi, ITU consultants: Ms. Millicent Hamilton-Hazeley and Mrs. Ida Jallow-Nying (Executive Director of PURA), the Director of Legal Affairs of NATCOM, Mr. Sulaiman Banja Tejan-Sie and the Representative of MOTC, Mrs. Elizabeth Elie.

Key discussions at the Dakar Meeting on the implementation of the Supplementary Acts of ECOWAS

- Legal analysis of the implementation process
- Ratification and direct application at national level
- Assessment of the Sierra Leone legislation

Recommendations of Dakar Meeting

- The following were the key recommendations of the Dakar meeting:
- Concerning implementation of the Supplementary Acts in Sierra Leone, it was recommended that a small national technical committee be set up with a maximum of 5 persons. The ITU consultant (Ms. Millicent Hamilton-Hazeley) would assist the technical committee on the implementation process of the ECOWAS Supplementary Acts. The Committee that was set up the Telecommunications Sector Policy Committee (“TSPC”) has been replaced by an ICT task force that is reviewing the ICT policy and secondary legislations that amplifies the provisions in the Supplementary Act
- The composition of the national technical committee should take into account the validation process for regulations/laws in Sierra Leone to facilitate the implementation of the Supplementary Acts. ITU and ECOWAS would be resource entities for the technical committee.

Recommendations of Dakar Meeting (contd.)

- Noting that economically, access to communications infrastructures is more expensive under monopolistic conditions, and this in turn socially limits the access of people to knowledge, ideas and networks, it was recommended that the Sierratel monopoly on the international gateway be reviewed.
- Regarding matters that are not clearly in contradiction with the Supplementary Acts, it was recommended that the discretion of Member States in determining their policy must take into consideration the spirit of harmonization as enshrined in the Supplementary Acts and refer to international best practices in order to determine adequate policies and a suitable regulatory framework.

Review and Assessment of the Provisions of Sierra Leone's Legislation

Following the review and assessment of the provisions of the legislation in light of the requirements of the Supplementary Acts, it was agreed that the following issues would need to be addressed:

- The definitions in the legislation must be the same as in the Supplementary Acts where they are referred to in the legislation e.g. the term 'telecommunications';
- The appointment of the Executive Secretary must be clearly stated as being by fair competition;
- Justification of the above two points was found in article 8 of the Supplementary Act on ICT policies;

Review and Assessment of the Provisions of Sierra Leone's Legislation (contd.)

- Unclear provisions in the legislation such as section 33 (6) and 16 (3) must be clarified in the regulations;
- The regulations to be prepared must also state that the Chairman of the Commission does not have an executive role and that the regulations must state that the Board and Executive Secretary position of the Commission must have a fixed term renewable once only – justified by Supplementary Acts on ICT policies, 11 (4) (b) bullet point 7. International best practice recommends a contract duration of 5 years maximum;
- The granting of the gateway in section 33 (5) and (6) is contrary to sections 9(2) (a) and (b), (i) and contrary to article 10 (2) (c) (first two points) and 13 (3) (w) in the Supplementary Act on ICT policies. The management and ownership of the Gateway by the incumbent under section 33 above is however temporary and was originally limited to two years which expired on the 3rd August 2008 but has been extended by five years to be reviewed after the third year.

Recommendations

Recommendations for the successful implementation of the Supplementary Acts

It is clear from the above that the preliminary groundwork for the implementation of the Supplementary Acts into national law in Sierra Leone has been successful. It however now remains for the preparation of the regulations by NATCOM and the subsequent public consultative process and submission to Parliament. To aid this process, it is recommended that the following is provided to the relevant authorities in Sierra Leone, particularly NATCOM both to expedite and enhance the preparatory process namely:

- (1) A meeting with representatives of ITU and ECOWAS and the key stakeholders, to be held in Sierra Leone. This meeting could be the consultative meeting at which operators and ICT providers as well as consumers and Parliamentarians are invited to review the provisions of the regulations incorporating the Supplementary Acts
- (2) The recruitment of an ITU consultant to see through the implementation programme entirely to completion and adoption. This will involve reviewing the draft regulations and amendments to the Act and would ease the workload of NATCOM which being relatively new in an already established competitive industry has a lot of challenges to address.

Recommendations (contd.)

- (3) Recruitment of a consulting firm:
 - to develop guidelines and strategies to set up and implement Universal Access.
 - to conduct market research in view of reviewing tariffs and charges for telecommunications services, spectrum and numbering resources to ensure adherence to the directives contained in the ECOWAS Supplementary Act and
 - to make needs assessment for 3G services and hence determine the number of 3G licence operators to be licensed in Sierra Leone and the cost of such licence

CONCLUSION

- WITH ICT AT THE TOP OF THE AGENDA OF THE NEW GOVERNMENT IN SIERRA LEONE, THE COMMISSION HOPES TO ACCOMPLISH ITS OBLIGATIONS UNDER THE SUPPLEMENTARY ACT TO FULLY TRANSPOSE ITS PROVISIONS INTO OUR NATIONAL LAWS IN THE SECTOR AND IN FORMULATING A COMPREHENSIVE ICT POLICY FOR THE INDUSTRY.



THANK YOU