



Strengthening of economic and trade related capacities and competences in SADC

The SADC Communications Environment



An Assessment of Communications Policies, Laws and Regulations in SADC Member States

P r e s e n t e d t o

GIZ – Deutsche Gesellschaft für
Internationale Zusammenarbeit GmbH
Germany / Botswana

October, 2013

Y o u r c o n t a c t p e r s o n
within GFA Consulting Group GmbH is

Christopher Smith

Strengthening of economic and trade related
capacities and competences in SADC

**The SADC Communications Environment:
An Assessment of Communications Policies, Laws and
Regulations in SADC Member States**

S h o r t - t e r m R e p o r t

Prepared by: Charley Lewis & Luci Abrahams, LINK Centre,
University of the Witwatersrand, Johannesburg
<http://link.wits.ac.za>

A d d r e s s



GFA Consulting Group GmbH
Eulenkrußstraße 82
22359 Hamburg
Germany

Phone +49 (40) 6 03 06 – 352

Fax +49 (40) 6 03 06 – 119

E-mail christopher.smith@gfa-group.de



4.14 ZAMBIA

4.14.1 TELECOMMUNICATIONS SERVICES

Services Framework:

Zambia's 2009 ICT Act distinguishes between "network" and "service" licences. The former "allow the holder thereof to construct, own or make available an electronic communications network, or to provide a network service", whilst the latter "allow the holder thereof to provide one or more electronic communications services"¹²⁹⁹.

Whilst electronic communications services are loosely defined, the lengthy definition of electronic communications networks is borrowed almost verbatim from the European Union and includes "transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electro-magnetic means, including satellite networks, fixed, circuit and packet switch [sic], internet, mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting and cable television networks irrespective of the type of information conveyed"¹³⁰⁰.

The Act further provides for individual and class licences in each of the two major types of licence¹³⁰¹.

The regulator has distinguished five categories of network infrastructure for which individual licences are applicable, viz "mobile cellular... fixed Internet... fixed... public radio paging... network service", alongside three categories of network service for which individual licences are applicable, viz "mobile cellular... international voice... fixed". Class licences are applicable in respect of four categories of network (viz: "wireless Internet... public data... public pay

¹²⁹⁹ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Section 10(1), available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁰⁰ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Section 2(1), available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁰¹ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Section 10(2), available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

phone... private network”) and three of service (viz: “Internet service (ISP)”... citizen band... value added service”) licence¹³⁰².

The licensing of frequency spectrum is dealt with separately¹³⁰³, but spectrum licences are issued “at the same time” as the corresponding telecommunications licence¹³⁰⁴.

The licensing regime in Zambia is thus primarily a converged one (horizontal or unified or multi-service), distinguishing between infrastructure and services at the top level, but with some vertical categorisation at a lower level. As such, it goes well beyond the vertical framework as set out in W/120.

FOCUS AREA 1: MARKET STRUCTURE

Market Structure:

BuddeComm describes Zambia’s telephony market as comprising one fixed-line operator, Zambia Telecommunications Ltd (Zamtel), and three mobile operators, Airtel, MTN Zambia ((formerly Telecel) and Zamtel (formerly Cell Z, a subsidiary of Zamtel, now part of the Zamtel brand)¹³⁰⁵.

The most recent comparative figures for telecomms market share date from December 2012.

Zambia: Fixed & Mobile Subscribers		
	2012 (Dec) ¹³⁰⁶	
	Subscribers	Market

¹³⁰² ZICTA (nd) Licensing Guidelines’, ‘, Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

¹³⁰³ Zambia (2009) ‘Information and Communication Technologies Act No 15 of 2009’, Republic of Zambia, Lusaka, Section 54), available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁰⁴ ZICTA (nd) Licensing Guidelines’, ‘, Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

¹³⁰⁵ BuddeComm (2012) ‘Zambia - Telecoms, Mobile, Broadband and Forecasts: Executive summary’, BuddeComm, Bucketty NSW, available online at <http://www.budde.com.au/Research/Zambia-Telecoms-Mobile-Broadband-and-Forecasts.html>.

The full report is available on a for sale basis.

¹³⁰⁶ ZICTA (2012) ‘ICT Sector Statistics for period ending December 2011’, Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=54&view=finish&cid=209&catid=7. Subscriber numbers for the three mobile operators are approximate, and market share is rounded to the nearest percent, because the ZICTA report provides only an approximate breakdown, except for fixed.

		Share
Zamtel (fixed)	82 542	1%
Airtel (mobile)	4 744 000	45%
MTN Zambia (mobile)	4 112 000	39%
Zamtel (mobile)	1 687 000	16%
Total	10 625 218 ¹³⁰⁷	

Figures from the ITU for 2011 are in agreement with the breakdown above, giving 85 700 fixed-line subscribers¹³⁰⁸, 8 164 600 mobile subscribers¹³⁰⁹. This translates to a per capita market penetration rates in the telecommunications sector for Zambia as at 2011 of 0,6% for fixed-line, 60,6% for mobile and 11,5% for the Internet (from 0,9%, 41,6% and 10,0% respectively in 2010¹³¹⁰).

The regulator lists the following Internet service provider licensees: Acme Technology; AfriConnect; Airtel; A-Plus Technologies; Comium Data; Coppernet Solutions; Foris Telecom; iBurst; Internet Technologies; iWay Africa; Koza Telecomms; Morse Communications; MTN Business Solutions; MTN; Postlink; Preworx; Pronet Africa; Quick Edge; Real Time; Transaction Payment Solutions; WiMax; Zamnet Communications Systems; Zamtel¹³¹¹.

Zambia: Internet Subscribers	
	2011 (Dec) ¹³¹²

¹³⁰⁷ This figure is exact.

¹³⁰⁸ ITU (nd) 'Fixed-telephone subscriptions', International Telecommunication Union, Geneva, available online at http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/MainTelephoneLinesPublic&ReportFormat=HTML4.0&RP_intYear=2011&RP_intLanguageID=1&RP_bitLiveData=False.

¹³⁰⁹ ITU (nd) 'Mobile-cellular telephone subscriptions', International Telecommunication Union, Geneva, available online at http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/CellularSubscribersPublic&ReportFormat=HTML4.0&RP_intYear=2011&RP_intLanguageID=1&RP_bitLiveData=False.

¹³¹⁰ ITU (2012) 'Measuring the Information Society 2012', International Telecommunication Union, Geneva, available online at http://www.itu.int/ITU-D/ict/publications/idi/material/2012/MIS2012_without_Annex_4.pdf.

¹³¹¹ ZICTA (nd) 'Internet Service Provider', Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=62:internet-service-provider&Itemid=111.

¹³¹² ZICTA (2012) 'ICT Sector Statistics for period ending December 2011', Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=165:ict-sectorstatistics-

	Subscribers	Market Share
Zamtel	12 693	60,8%
AfriConnect	4 352	20,8%
Zamnet	2 134	10,2%
Others	1 696	8,1%
Total	20 875	

Zamtel remains, somewhat controversially and subject to ongoing litigation, 100% government-owned, following the reversal of the sale of a 75% stake to Libya’s Lap Green Networks¹³¹³.

Bharti Airtel is “almost 97 percent” owned by Bharti Airtel of India, with the latter having failed to acquire the remaining shareholding which is publicly traded on the Lusaka stock exchange¹³¹⁴.

MTN Zambia has the following ownership structure:

- 86% - MTN Group (South Africa)¹³¹⁵;
- 10% - Special Purpose Vehicle;
- 4% - Unclear¹³¹⁶.

[for-period-ending-december-2011&catid=22:er&Itemid=41](#). No more recent figures are available from ZICTA. These figures are inconsistent with the ITU estimates cited above for Internet penetration, presumably because they reflect contract accounts only. Some of the ISPs listed by ZICTA have as few as 11 clients.

¹³¹³ See: Simuchoba, A (2012) ‘Zambia to re-negotiate Zamtel sale’, The Monitor, Gaborone, 23 January 2012, available online at <http://www.mmegi.bw/index.php?sid=1&aid=72&dir=2012/January/Monday23><http://www.mmegi.bw/index.php?sid=1&aid=72&dir=2012/January/Monday23>; and Malakata, M (2012) ‘Lap Green Networks sues Zambian govt’, ITWeb, Johannesburg 3 February 2012, available online at http://www.itweb.co.za/index.php?option=com_content&view=article&id=51224.

¹³¹⁴ Lusaka Time (2012) ‘Bharti Airtel shares to resume trading on Lusaka Stock Exchange’, Lusaka Times, Lusaka, 31 July 2012, available online at <http://www.lusakatimes.com/2012/07/31/bharti-airtel-shares-resume-trading-lusaka-stock-exchange/>.

¹³¹⁵ MTN (2012) ‘Integrated Business Report – for the year ended 31 December 2011’, MTN Group Limited, Johannesburg, p28, available online at http://mtn-investor.com/mtn_ar2011/pdf/full.pdf.

¹³¹⁶ MTN (2012) ‘Integrated Business Report – for the year ended 31 December 2011’, MTN Group Limited, Johannesburg, available online at http://mtn-investor.com/mtn_ar2011/pdf/full.pdf, p170, notes that 10% of MTN Zambia is held by an unnamed SPV, but fails to state to whom an additional 4% was sold in 2011.

According to the WTO, in 2009 MicroLink (curiously not listed by ZICTA as a licensee) was the only ISP with part foreign ownership¹³¹⁷. It is currently a joint venture between CEO John Taylor and Gilat Satcom (Israel)¹³¹⁸.

International communications access is provided by a number of routes. These include:

- The links of both Zamtel, via its point of interconnection with Telecom Namibia at Shesheke¹³¹⁹, and Liquid Telecom, via its Southern Africa terrestrial fibre network¹³²⁰, to the West Africa Cable System (WACS - with a design capacity of 5,12 Tbit/s);
- The links of both Zamtel via its point of interconnection with Telecom Namibia at Shesheke¹³²¹ and Liquid Telecom via its Southern Africa terrestrial fibre network¹³²² to the South Atlantic 3 / West Africa Submarine Cable (SAT-3, with a capacity of 340 Gbit/s);
- The links of both Liquid Telecom via its Southern Africa terrestrial fibre network¹³²³ and ISP MicroLink via its partner Gilat Satcom¹³²⁴ to the Eastern Africa Submarine Cable System (EASSy) with a capacity of 2,72 Tbit/s - MTN also plans to connect to EASSy¹³²⁵ but the completion status of the project is unknown;
- Liquid Telecom via its Southern Africa terrestrial fibre network¹³²⁶ to Seacom with a capacity of 2,6 Tbit/s;

¹³¹⁷ WTO (2009) 'Trade Policy Review Report by the Secretariat: Zambia', WT/TPR/S/219. World Trade

Organisation, Geneva, p68.

¹³¹⁸ BiztechAfrica (2013) 'Gilat Satcom, Microlink boost Zambia fibre', *BiztechAfrica*, Johannesburg, 7 February, available online at <http://www.biztechfrica.com/article/gilat-satcom-microlink-boost-zambia-fibre/5260/>.

¹³¹⁹ Malakata, M (2012) 'Zambia's Zamtel connects to WACS, Sat-3 undersea cables', *Computerworld Zambia*, Lusaka, 26 July 2012, available online at <http://news.idg.no/cw/art.cfm?id=B45D8E38-B435-0BE2-5D80DDFB5A76D6E8>.

¹³²⁰ YoungNation (2013) 'Liquid Telecom Extends Fibre Optic Footprint', YoungNation, available online at <http://www.youngnation.co.zw/liquid-telecom-extends-fibre-optic-footprint>.

¹³²¹ Malakata, M (2012) 'Zambia's Zamtel connects to WACS, Sat-3 undersea cables', *Computerworld Zambia*, Lusaka, 26 July 2012, available online at <http://news.idg.no/cw/art.cfm?id=B45D8E38-B435-0BE2-5D80DDFB5A76D6E8>.

¹³²² YoungNation (2013) 'Liquid Telecom Extends Fibre Optic Footprint', YoungNation, available online at <http://www.youngnation.co.zw/liquid-telecom-extends-fibre-optic-footprint>.

¹³²³ YoungNation (2013) 'Liquid Telecom Extends Fibre Optic Footprint', YoungNation, available online at <http://www.youngnation.co.zw/liquid-telecom-extends-fibre-optic-footprint>.

¹³²⁴ BiztechAfrica (2013) 'Gilat Satcom, Microlink boost Zambia fibre', *BiztechAfrica*, Johannesburg, 7 February, available online at <http://www.biztechfrica.com/article/gilat-satcom-microlink-boost-zambia-fibre/5260/>.

¹³²⁵ TeleGeography (2012) 'MTN Zambia to invest USD3 million on connection to EASSy', TeleGeography, Washington DC, 29 March 2012, available online at <http://www.telegeography.com/products/commsupdate/articles/2012/03/29/mtn-zambia-to-invest-usd3-million-on-connection-to-eassy/>.

¹³²⁶ Econet connects Zambia to Seacom and Sat3 undersea cables *Zambian Watchdog*.

November 14, 2011 <http://www.zambianwatchdog.com/econet-connects-zambia-to-seacom-and-sat3-undersea-cables/?ModPagespeed=noscript>.

- Liquid Telecom via its Southern Africa terrestrial fibre network¹³²⁷ to The East African Marine System (TEAMS with a capacity of 1,28 Tbit/s.

Range of Services:

As can be seen from the above, the provision of voice communications is dominated by mobile companies under majority foreign ownership and control.

Market Share:

Foreign suppliers together account for over 80% of the mobile voice communications market. Although at least one foreign company (MTN Business) is also active as an ISP, this market remains dominated by the state-owned incumbent.

Stakeholders:

Apart from the Zambian government's controversial role in the stalled privatisation of Zamtel and in the preservation of its monopoly on the international gateway for voice traffic¹³²⁸, there do not appear to be any other such stakeholder groups or organisations.

FOCUS AREA 2: REGULATORY REGIME & STATE OF PLAY

Restrictions on Scope of Licences:

As noted above, Zambia's licensing framework is largely technology neutral, distinguishing primarily between "network" and "service" licences, but with some technology-specific sub-categories.

Restrictions on Market Access:

Individual licences for both networks and services are issued "conditionally through a competitive process announced at the instance of the Authority" - in other words, through a public tender process at the discretion of the regulator¹³²⁹. Following the lifting of the formal regulation limiting the number

¹³²⁷ YoungNation (2013) 'Liquid Telecom Extends Fibre Optic Footprint', YoungNation, available online at <http://www.youngnation.co.zw/liquid-telecom-extends-fibre-optic-footprint>.

¹³²⁸ Habeenzu, S (2010) 'Zambia ICT Sector Performance Review 2009/2010', Towards Evidence-based ICT Policy and Regulation, Vol 2, Policy Paper 17, ResearchICTAfrica, Cape Town, available online at http://www.researchictafrica.net/publications/Policy_Paper_Series_Towards_Evidence-based_ICT_Policy_and_Regulation_-_Volume_2/Vol%20%20Paper%2017%20-%20Zambia%20ICT%20Sector%20Performance%20Review%202010.pdf.

¹³²⁹ ZICTA (nd) Licensing Guidelines', 'Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

of suppliers in the mobile voice market, a fourth mobile operator is expected to be licensed in the near future¹³³⁰.

There are no formal restrictions on foreign ownership in law, regulation or licensing practice (this despite a World Bank reference to “policy that at least 30% of [fixed-line] equity must be domestically owned”¹³³¹).

The World Bank, however, describes Zambia as “among the world’s most open economies to foreign ownership and... consistently... among the largest recipients of FDI per capita”¹³³². The WTO notes the establishment in law of the Zambia Development Agency and that the ZDA Act “does not distinguish between treatment for domestic and foreign investors”

The World Bank notes that a “foreign company is not required to obtain an investment license from the Zambia Development Agency (ZDA), unless it wants to benefit from associated tax exemptions and incentives and to acquire land”¹³³³. According to the WTO such investment licences are subject to fairly general criteria, including that the “investment will have developmental benefits and not harm the environment”, and provides important guarantees in respect of “funds transfer, due process in expropriation, and recourse to adequate dispute settlement”¹³³⁴.

The World Bank notes that Zambia has certain minimum foreign capital requirements, pointing out that a “foreign company establishing a subsidiary in Zambia must be issued a certificate of compliance for the following minimum capital requirements... [USD 1 000] for private companies... [and USD 10 000] for public companies”¹³³⁵. The World Bank further notes that a “foreign company

¹³³⁰ BiztechAfrica (2013) ‘Former Minister advises caution on 4th Zambian licence’, *BiztechAfrica*, Johannesburg, 29 March 2013, available online at <http://www.biztechfrica.com/article/former-minister-advises-caution-4th-zambian-licenc/5654/#.UjcSwTljwVA>.

¹³³¹ WTO (2009) ‘Trade Policy Review Report by the Secretariat: Zambia’, WT/TPR/S/219. World Trade Organisation, Geneva, pviii. The aborted sale of a 75% stake in ZamTel to Lap Green already exceeds this ‘policy’ threshold.

¹³³² World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies’, World Bank Group, Washington DC, available online at <http://iab.worldbank.org/~media/FDPKM/IAB/Documents/IAB-report.pdf>, p117.

¹³³³ World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies’, World Bank Group, Washington DC, available online at <http://iab.worldbank.org/~media/FDPKM/IAB/Documents/IAB-report.pdf>, p168.

¹³³⁴ WTO (2009) ‘Trade Policy Review Report by the Secretariat: Zambia’, WT/TPR/S/219. World Trade Organisation, Geneva, p27.

¹³³⁵ World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies’, World Bank Group, Washington DC, available online at <http://iab.worldbank.org/~media/FDPKM/IAB/Documents/IAB-report.pdf>, p38.

establishing a subsidiary in Zambia must authenticate its documents abroad¹³³⁶. However, the World Bank gives Zambia a score of 100 out of 100 for foreign equity participation in the telecommunications sector overall¹³³⁷.

Zambia has made some horizontal GATS commitments in relation to foreign investment restrictions, and permits, “with permission from the Bank of Zambia, a foreign-controlled company [to] obtain loans or overdrafts of up to one third of the value of its paid up capital”¹³³⁸. With Zambia having made no horizontal GATS commitments in relation to commercial presence of foreign entities, nor any commitment in respect of communications services¹³³⁹, limited further information on the legal status of foreign enterprises is available.

Other Discriminatory Measures:

Zambia has indicated that it is not bound to the GATS provisions in relation to foreign personnel, reserving the right to implement “measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment”. Further, “the employment of such persons shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs. Enterprises must also provide for training in higher skills for Zambians to enable them to assume specialized roles”¹³⁴⁰.

The World Bank also notes that for foreign companies “at least 50% of the directors must be residents.”¹³⁴¹.

The WTO suggests that foreign acquisitions of local companies are well tolerated, noting that the Competition and Consumer Protection Commission “rarely ever

¹³³⁶ World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies, World Bank Group, Washington DC, available online at <http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>, p168.

¹³³⁷ World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies, World Bank Group, Washington DC, available online at <http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>, p168.

¹³³⁸ WTO (2003) ‘Draft converted Schedule of Specific Commitments’, S/DCS/W/ZMB, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/7513/2634/9664/Zambia_GATS_Schedule.pdf, p2.

¹³³⁹ WTO (2003) ‘Draft converted Schedule of Specific Commitments’, S/DCS/W/ZMB, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/7513/2634/9664/Zambia_GATS_Schedule.pdf.

¹³⁴⁰ WTO (2003) ‘Draft converted Schedule of Specific Commitments’, S/DCS/W/ZMB, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/7513/2634/9664/Zambia_GATS_Schedule.pdf.

¹³⁴¹ World Bank (2010) ‘Investing Across Borders 2010: Indicators of foreign direct investment regulation in 87 economies, World Bank Group, Washington DC, p37, available online at <http://iab.worldbank.org/~media/FPDKM/IAB/Documents/IAB-report.pdf>.

raises competition concerns on a foreign company taking over a local company, where the foreign company has no presence in Zambia”¹³⁴².

Zambia is ranked 84th out of 183 countries in terms of ease of doing business by the World Bank¹³⁴³.

Non-discriminatory Regulatory Restrictions:

The 2009 ICT Act places telecommunications licensing firmly under the control of the regulator with a very limited role for the Minister¹³⁴⁴. However, the events surrounding the possibility of licensing a fourth mobile operator, as reported above, suggest a far greater involvement for government than that specified in the law. Individual licence applications follow a “competitive process announced at the instance of the Authority”, whereas class licences follow a registration process¹³⁴⁵.

VoIP is only legalised in Zambia for licensed operators, who may deploy VoIP “only as a technology for providing a licensed service and not as a service by itself”¹³⁴⁶.

International gateway services are now fully liberalised¹³⁴⁷, with voice falling under a specific individual licensing category¹³⁴⁸. Previously, all voice traffic was required to pass through the international gateway of the incumbent, Zamtel, with only international data access liberalised¹³⁴⁹.

¹³⁴² WTO (2009) ‘Trade Policy Review Report by the Secretariat: Zambia’, WT/TPR/S/219. World Trade

Organisation, Geneva, p46.

¹³⁴³ World Bank (2012) *Doing Business 2012: Doing Business in a More Transparent World*, World Bank, Washington DC, available online at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB12-FullReport.pdf>.

¹³⁴⁴ Zambia (2009) ‘Information and Communication Technologies Act No 15 of 2009’, Republic of Zambia, Lusaka, Sections 9 & 10, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14. The regulator is only obliged to carry out “general directives with respect to the carrying out of its functions” as issued by the Minister.

¹³⁴⁵ ZICTA (nd) Licensing Guidelines’, ‘, Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

¹³⁴⁶ CAZ (2006) ‘Guidelines for the Use of VoIP in Zambia’, Communications Authority of Zambia, Lusaka, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=110&view=finish&cid=180&catid=19.

¹³⁴⁷ GSMA (2012) ‘Gateway Liberalisation- Stimulating Economic Growth’, GSM Association, London, p112, available online at <http://www.gsma.com/publicpolicy/wp-content/uploads/2012/03/gatewayliberalisation.pdf>.

¹³⁴⁸ ZICTA (nd) Licensing Guidelines’, ‘, Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

¹³⁴⁹ WTO (2009) ‘Trade Policy Review Report by the Secretariat: Zambia’, WT/TPR/S/219. World Trade

The 2009 ICT Act which empowers the regulator to regulate interconnection contains no provisions permitting anti-competitive or discriminatory practices, placing specific interconnection obligations upon dominant operators¹³⁵⁰. The regulator has subsequently intervened to standardise and lower interconnection changes¹³⁵¹.

FOCUS AREA 3: LEVEL OF COMPETITION

Dominant providers:

As noted above, both Airtel and MTN Zambia are dominant in the voice telephony market with shares of 45% and 39% respectively. If fixed-line telephony is considered a separate market, the monopoly provider, Zamtel, clearly has dominance. Zamtel has dominance in the ISP market with a share of 61%.

Pricing:

According to the International Telecommunication Union, the price of a monthly mobile basket of services for Zambia in 2008 was 18,5% of monthly gross national income per capita - just below the average for sub-Saharan Africa of 23%, making Zambia the 16th cheapest out of 32 African countries surveyed. The corresponding percentages for fixed and broadband were 41,6% and 137,2% (12th cheapest of 32 African countries)¹³⁵².

Competition Regulation:

According to Bowman Gilfillan, there is a competition authority in Zambia. It is a structure similar to that of South Africa, with a Competition and Consumer Protection Commission, holding investigative powers, and a Competition and Consumer Protection Tribunal, holding enforcement powers. The former had been established under the Zambian Competition and Fair Trading Act of 1994,

Organisation, Geneva, pp67,8.

¹³⁵⁰ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Sections 41, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14. The regulator is only obliged to carry out "general directives with respect to the carrying out of its functions" as issued by the Minister.

¹³⁵¹ ZICTA (2010) 'Speech by the Director General of the Zambia Information and Communications Technology Authority, Ms Margaret K Chalwe, on the Occassion [sic] to Announce the Determination of Interconnection Rates for Mobile and Fixed Network Providers', Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=54&view=finish&cid=146&catid=18&m=0.

¹³⁵² ITU (2009) 'Information Society Statistical Profiles: Africa', International Telecommunication Union, Geneva, pp 16, 37 & 40, available online at http://www.itu.int/ITU-D/ict/material/ISSP09-AFR_final-en.pdf.

which was repealed by the Competition and Consumer Protection Act No 24 of 2010, which established the latter¹³⁵³.

The Act does deal with dominance, which is defined to occur for single firms with a market share exceeding 30%, or for markets with up to three firms enjoying a combined market share exceeding 60%. Abuse of dominance includes, inter alia: “imposing, directly or indirectly, unfair... prices or other unfair trading conditions; limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition; denying any person access to an essential facility; selling goods below their marginal or variable cost; [and] the conclusion of contracts subject to... supplementary conditions which... have no connection with the subject matter¹³⁵⁴. The Act provides for financial penalties for abuse of dominance of up to 10% of annual turnover¹³⁵⁵.

The 2009 ICT Act requires the regulator to consult the Zambia Competition Commission on “any matter relating to competition in the sector”¹³⁵⁶.

Anti-competitive Behaviour:

There is no evidence available of anti-competitive behaviour.

4.14.2 BROADCASTING SERVICES

Services Framework:

The licensing framework for broadcasting in Zambia is set out in the 2002 Independent Broadcasting Authority Act¹³⁵⁷ as amended in 2010¹³⁵⁸. The

¹³⁵³ Bowman Gilfillan (nd) ‘Competition Law Africa’, Bowman Gilfillan, Johannesburg, available online at <http://services.bowman.co.za/Brochures/PracticeAreas/CompetitionAfrica/1709%20BG%20Competition%20Africa%20LRVS.pdf>, p56.

¹³⁵⁴ Bowman Gilfillan (nd) ‘Competition Law Africa’, Bowman Gilfillan, Johannesburg, p58, available online at <http://services.bowman.co.za/Brochures/PracticeAreas/CompetitionAfrica/1709%20BG%20Competition%20Africa%20LRVS.pdf>.

¹³⁵⁵ Bowman Gilfillan (nd) ‘Competition Law Africa’, Bowman Gilfillan, Johannesburg, p58, available online at <http://services.bowman.co.za/Brochures/PracticeAreas/CompetitionAfrica/1709%20BG%20Competition%20Africa%20LRVS.pdf>.

¹³⁵⁶ Zambia (2009) ‘Information and Communication Technologies Act No 15 of 2009’, Republic of Zambia, Lusaka, Sections 8, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14. The regulator is only obliged to carry out “general directives with respect to the carrying out of its functions” as issued by the Minister.

¹³⁵⁷ Zambia (2002) ‘The Independent Broadcasting Authority Act, 2002’, Act No 17 of 2002, Republic of Zambia, Lusaka, available online at <http://www.zambialii.org/files/zm/legislation/act/2002/17/ibaa2002349.pdf>.

legislation does not distinguish between radio and television broadcasting. The original act does not distinguish between broadcasting and transmission or signal distribution, defining broadcasting as the “distribution of television or radio, by means of terrestrial or satellite”¹³⁵⁹. The 2010 Amendment, which defines a broadcasting service as being “conveyed by means of an electronic communications network”¹³⁶⁰, appears to imply that a signal distributor would require an infrastructure licence from the telecommunications regulator, but this cannot be independently confirmed.

The IBA Act now provides for three categories of broadcasting services that need to be licensed: commercial broadcasting services, community or religious broadcasting services and subscription broadcasting services¹³⁶¹.

The licensing framework adopted for broadcasting in Zambia is therefore only partly in alignment with W/120.

FOCUS AREA 1: MARKET STRUCTURE

Market Structure:

Sources differ on the number of broadcasters in the country. The following compilation is compiled from reports by the OECD¹³⁶², FesMedia¹³⁶³ and OMD¹³⁶⁴, and represents a considered summary, given that the market estimates across the three sources range from a low of 31 to a high of 70 stations in total, with the upper estimate being the most credible.

¹³⁵⁸ Zambia (2010) ‘The Independent Broadcasting Authority (Amendment) Act 2010, Republic of Zambia, Lusaka, available online at http://www.parliament.gov.zm/index.php?option=com_docman&task=doc_view&gid=660.

¹³⁵⁹ Zambia (2002) ‘The Independent Broadcasting Authority Act, 2002’, Act No 17 of 2002, Republic of Zambia, Lusaka, Section 2, available online at <http://www.zambialii.org/files/zm/legislation/act/2002/17/ibaa2002349.pdf>.

¹³⁶⁰ Zambia (2010) ‘The Independent Broadcasting Authority (Amendment) Act 2010, Republic of Zambia, Lusaka, Section 3, available online at http://www.parliament.gov.zm/index.php?option=com_docman&task=doc_view&gid=660.

¹³⁶¹ Zambia (2010) ‘The Independent Broadcasting Authority (Amendment) Act 2010, Republic of Zambia, Lusaka, Section 23, available online at http://www.parliament.gov.zm/index.php?option=com_docman&task=doc_view&gid=660.

¹³⁶² Zambia (2013) ‘Competition Issues in Television and Broadcasting: Contribution from Zambia’, Document No DAF/COMP/GF/WD(2013)21, Global Forum on Competition, 28 February & 1 March 2013, Organisation for Economic Co-operation and Development, Paris, p3, available online at <http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF/WD%282013%2921&docLanguage=En>.

¹³⁶³ FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

¹³⁶⁴ Koenderman, T (2013) ‘The Future of Media: South Africa & SADC Media Facts 2013’, OMD South Africa Johannesburg, available online at http://www.omb.co.za/media_facts/FOM029_Blueprint_OMD_mediafacts2013.pdf, p33.

There are 11 television stations. These include:

- 1 state-owned public broadcaster (*Zambia National Broadcasting Corporation* (ZNBC, with 2 channels))
- 6 private commercial stations, including *Central Broadcasting Company* (CBC), *Chipata Television* (provisional licence), *Copperbelt Television* (CB TV), *Mobi TV*, *Muvi TV*¹³⁶⁵ (free-to-air in Lusaka only), *North-West TV* (provisional licence), *Western TV*;
- 1 religious broadcaster, *Trinity Broadcast Network* (TBN);
- 3 satellite subscription broadcasters, *MultiChoice Zambia*, *My TV* and *Muvi Television* (including their second channel, *Africa Unite*).

There are a total of 59 stations in the radio broadcasting market:

- 3 state-owned public broadcast stations (ZNBC 1, ZNBC 2 and ZNBC 4);
- 21 commercial stations (including *Choice*, *Ichengelo*, , *Q FM Radio Phoenix* and, *Sky FM*,);
- 17 community stations (including *Breeze FM*, *Itezhi-Tezhi*, *Mazabuka Community Radio*, *Mpika* and *Walamo*);
- 15 religious stations (mostly Catholic, including *Radio Christian Voice* and *Yatsani Radio*);
- 3 educational stations (*UNZA Radio* (University of Zambia), *Parliament Radio* and *Hone FM* (Evelyn Hone College))

Stations whose classification is unclear include: *5 FM Radio*, *Chikuni Radio*, *Flava FM*, *Hot FM*, *Radio Maranatha*, *Radio Maria*, *Radio Musi-o-Tunya*, *Yar FM*, *Zambezi FM Radio*¹³⁶⁶.

There is limited market share information available.

The OECD puts the market share in the subscription broadcasting market as follows: *MultiChoice Zambia* (69 000 subscribers, 90% market share) *My TV* (6 000 subscribers, 8% market share) and *Muvi Television* (2 000 subscribers, 3% market share)¹³⁶⁷.

¹³⁶⁵ Counted below as a subscription broadcaster.

¹³⁶⁶ TuneIn (nd) 'Zambia Radio Stations', TuneIn, Palo Alto CA, available online at <http://tunein.com/radio/Zambia-r101316/>.

¹³⁶⁷ Zambia (2013) 'Competition Issues in Television and Broadcasting: Contribution from Zambia', Document No DAF/COMP/GF/WD(2013)21, Global Forum on Competition, 28 February & 1 March 2013, Organisation for Economic Co-operation and Development, Paris, available online at <http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF/WD%282013%2921&docLanguage=En>. The figures in this report do not add up correctly.

A 2010 market survey reported the following percentages of interviewees listening to each of the ten most popular radio stations:

Zambia: Radio Listenership¹³⁶⁸	
	2010
	% Listening to over past week
ZNBC Radio 1	48%
ZNBC Radio 2	38%
ZNBC Radio 4	26%
Radio Phoenix	16%
Q FM	12%
Sky FM	12%
Ichengelo	11%
Radio Christian Voice	10%
Breeze FM	9%
BBC Radio	8%

OMD puts television penetration in Zambia at 23% of households¹³⁶⁹.

The Zambia National Broadcasting Corporation is 100% state-owned.

DStv has the following shareholding:

- 51% - MultiChoice Africa (South Africa);
- 49% - ZNBC¹³⁷⁰.

¹³⁶⁸ AudienceScapes (2010) 'Zambia's State Run ZNBC Dominates Radio Listening: What Does This Mean for Information Access?', Intermedia, New York, October 2010, available online at http://www.audiencescapes.org/sites/default/files/AScapes%20Briefs_ZNBC%20in%20Zambia.pdf.

¹³⁶⁹ Koenderman, T (2013) 'The Future of Media: South Africa & SADC Media Facts 2013', OMD South Africa Johannesburg, p33, available online at http://www.omb.co.za/media_facts/FOM029_Blueprint_OMD_mediafacts2013.pdf.

¹³⁷⁰ OSI (2010) 'Public Broadcasting Africa Series: Zambia', Open Society Institute, p83, available online at <http://www.afrimap.org/english/images/report/Zambia%20Broadcasting%20Survey%20Web.pdf>.

Trinity Broadcast Network (TBN) is a Christian station headquartered in Costa Mesa, California¹³⁷¹.

Radio Phoenix was bought out by management from its original owner, Errol Hickey¹³⁷².

No information is readily available on the ownership structures of any of the other private radio stations.

The 1987 ZNBC Act, gives the ZNBC a public service mandate requiring the corporation to:

(a) provide varied and balanced programming for all sections of the populations;

(b) serve the public interest...

(d) offer programmes that provide information, entertainment and education;

*(e) contribute to the development of free and informed opinions and as such, constitute an important element of the democratic process...*¹³⁷³

The station is, however, viewed by some commentators as a state broadcaster rather than a public broadcaster. For example, both Limpitlaw and FesMedia note disapprovingly that the 2010 ZNBC Amendment Act makes appointment of its governing Board at the sole discretion of the minister, with the latter stating that as of 2011 the Corporation had no Board in place¹³⁷⁴.

FesMedia gives Zambia a score of 1,1 out of 5 on the indicator dealing with regulation of “broadcasting services and licenses in the public interest and [ensuring] fairness and a diversity of views broadly representing society at

¹³⁷¹ Wikipedia (nd) ‘Trinity Broadcasting Network’, I, available online at http://en.wikipedia.org/wiki/Trinity_Broadcasting_Network

¹³⁷² Mukwita, A (2011) ‘Zambia’s Largest Independent Radio Station Sold to Management, Owner Says’, Bloomberg, New York, 7 January 2011, available online at <http://www.bloomberg.com/news/2011-01-07/zambia-s-largest-independent-radio-station-sold-to-management-owner-says.html>.

¹³⁷³ Zambia (1987) ‘The Zambia National Broadcasting Corporation Act’, Chapter 154 (Vol 11, Act No 16 of 1987 (Amended 1994, 2002), Republic of Zambia, Lusaka, Section 7, available online at <http://www.zambialii.org/files/zm/legislation/consolidated-act/154/cap154.RTF>.

¹³⁷⁴ See: Limpitlaw, J (2012) ‘Media Law Handbook for Southern Africa’, Volume 1, Konrad-Adenauer-Stiftung Regional Media Programme, Johannesburg, p361, available online at http://www.kas.de/wf/doc/kas_23503-1522-2-30.pdf?120710123933 and FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, p44, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

large”¹³⁷⁵, indicating non-compliance. They point to the fact that “there is no operational broadcasting regulatory body in Zambia that regulates licences in the public interest and ensures fairness and a diversity of views”¹³⁷⁶.

Range of Services:

Two foreign entities are active in the Zambian broadcasting market: Trinity Broadcast Network and MultiChoice Zambia.

Market Share:

As noted above, local broadcasting companies have the biggest market share in the radio broadcasting market. MultiChoice Zambia (DStv) is overwhelmingly dominant in the subscription broadcasting market. No definitive information is available in respect of the television broadcasting market.

Stakeholders:

The dominance of the state in the broadcasting sector and the absence of effective regulation may be seen as a threat to liberalisation.

FOCUS AREA 2: REGULATORY REGIME & STATE OF PLAY

Restrictions on Market Access:

There do not appear to be quantitative limitations on the numbers of suppliers.

There are, however, firm restrictions that prevent majority foreign ownership of broadcasters. Broadcasting licences are only available to a “citizen of Zambia”, which is defined as a “company in which not less than seventy-five percent of the company's shares are held by Zambians”¹³⁷⁷. The previous loophole, which allowed the Minister, in consultation with the IBA, to exempt certain broadcasters from this restriction (which is presumably how Trinity Broadcast Network and MultiChoice Zambia acquired their licences) was removed in 2010.

Over the years, Zambia has undertaken reforms that made it easier for enterprises to do business. These have included “abolition of price controls, liberalization of interest rates, abolition of exchange rate controls, 100% repatriation of profits, free entry investment in virtually all sectors of the economy, trade reforms aimed at simplifying and harmonizing the tariff

¹³⁷⁵ FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, p44, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

¹³⁷⁶ FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, p45, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

¹³⁷⁷ Zambia (2010) ‘The Independent Broadcasting Authority Act 2002’ (as amended), Republic of Zambia, Lusaka, Section 22.

structure, and removal of quantitative restrictions on imports. Moreover, it shortened the time taken for business name registration and company incorporation was shortened from 21 days to 3 days”¹³⁷⁸.

Although Zambia has a relatively healthy investment environment, as noted above and as set out in the previous section dealing with telecommunications, the broadcasting legislation places restrictions on foreign investment in the broadcasting sector.

Other Discriminatory Measures:

Other than the restriction on foreign shareholding noted above, there do not appear to be further restrictions or requirements based on nationality.

Non-discriminatory Regulatory Restrictions:

The 2002 IBA Act places the licensing of broadcast services under the control of the Independent Broadcasting Authority (IBA), which, in “consultation with the Zambia Information and Communication Technologies Authority... determines that there is need for the provision of additional broadcasting services” and issues the necessary public invitation to apply, manages the application process and procedure, and awards and issues the licence(s)¹³⁷⁹.

FesMedia suggests that the IBA exists only paper, that there is no operational broadcasting regulatory body in Zambia, and that “up until now... the Minister... continues to use his discretion to grant broadcasting licences”¹³⁸⁰.

Regulatory Best Practice:

Although, in law, broadcasting regulation is undertaken by a separate regulator, the Independent Broadcasting Authority, the broadcasting regulatory environment appears not to be operational and cannot be considered to be independent due to the fact that the broadcasting regulator appears not to have been constituted, is subject to the appointment of its Board at the discretion of the Minister, and that the issuing of licences is controlled by the Ministry of Communication.

¹³⁷⁸ NEPAD-OECD (2011) Accelerating reform in Africa: Mobilising investment in infrastructure and agriculture- Highlights of the Policy Framework for Investment in Zambia. document has been prepared as a background Report prepared for the 5th NEPAD-OECD Ministerial Conference on 26-27 April 2011, Dakar, Senegal, p3, available online at <http://www.oecd.org/investment/investmentfordevelopment/47662751.pdf>.

¹³⁷⁹ Zambia (2010) ‘The Independent Broadcasting Authority Act 2002’ (as amended), Republic of Zambia, Lusaka, Sections 20-23.

¹³⁸⁰ FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, pp33 & 42, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

FOCUS AREA 3: LEVEL OF COMPETITION

Dominant providers:

In the absence of definitive viewership and listenership figures, it is difficult to draw firm conclusions on market dominance. It would appear, however, that the *Zambia National Broadcasting Corporation* (ZNBC) is the dominant provider in both markets. ZNBC radio theoretically covers all 72 districts in Zambia, while ZNBC TV reaches 65 of the country's districts¹³⁸¹.

Competition Regulation:

As noted above Zambia has established a Competition and Consumer Protection Commission with economy-wide powers and a mandate that includes dealing with abuse of dominance.

The 2002 Independent Broadcasting Authority Act contains only very general competition principles, enjoining the IBA to "promote a pluralistic and diverse broadcasting industry" and to "discourage monopolies"¹³⁸². There are, however, no provisions in the law dealing with cross media ownership and control.

Anti-competitive Behaviour:

The Competition and Consumer Protection Commission does not appear to have dealt with any cases in the broadcasting sector. The OECD does not see any issues relating to vertical integration in the broadcasting market but is concerned at the level of cross media ownership and control¹³⁸³.

4.14.3 STATE OF LIBERALISATION

WTO Commitments:

Zambia has been a member of the WTO since January 1995¹³⁸⁴, but, aside from horizontal provision in respect of foreign personnel, it has made no commitments in relation to communications services¹³⁸⁵.

¹³⁸¹ FesMedia (2011) *African Media Barometer- Zambia*. p. 28, Friedrich-Ebert-Stiftung & Media Institute of Southern Africa, Windhoek, Namibia, p6, available online at http://www.fesmedia-africa.org/uploads/media/AMB_Zambia_2011_01.pdf.

¹³⁸² Zambia (2010) 'The Independent Broadcasting Authority Act 2002' (as amended), Republic of Zambia, Lusaka, Section 5.

¹³⁸³ Zambia (2013) 'Competition Issues in Television and Broadcasting: Contribution from Zambia', Document No DAF/COMP/GF/WD(2013)21, Global Forum on Competition, 28 February & 1 March 2013, Organisation for Economic Co-operation and Development, Paris, p10, available online at <http://search.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF/WD%282013%2921&docLanguage=En>. The figures in this report do not add up correctly.

¹³⁸⁴ WTO (nd) 'Understanding the WTO: The Organization - Members and Observers', World Trade Organisation, Geneva, http://www.wto.org/English/thewto_e/whatis_e/tif_e/org6_e.htm.

Zambia is a member of the World Trade Organisation (WTO) and is a signatory of the TRIPS Agreement. The country is a signatory of the following preferential trade agreements: the Trade Protocol of SADC, the Cotonou Agreement, the African Growth and Opportunity Act (AGOA) and the European Business Assistance Scheme (EBAS).

Zambia is also a member of the Common Market for Eastern and Southern Africa (COMESA), in addition to its membership of the Southern African Development Community (SADC).

WTO Implementation:

There does not appear to have been any attempt specifically to limit either cross-border trade or consumption abroad (in respect of both market access and national treatment) of any communications services.

However, the current hiatus in respect of licensing of additional mobile operator(s) and the restrictions on foreign ownership of broadcast licensees (both noted above) would seem to constitute specific restrictions in relation to commercial presence.

Were these two restrictions to be addressed, Zambia could readily make commitments in respect of communications services.

The World Bank ranks the Zambia 82nd out of 148 countries on its GATS Commitments Index¹³⁸⁶.

MFN Barriers:

There is no evidence of MFN inconsistent measures in the communications sector¹³⁸⁷. In respect of the World Bank's MFN Tariff Trade Restrictive Index (TTRI), Zambia is ranked 88th out of 125 countries¹³⁸⁸.

4.14.4 REFERENCE PAPER READINESS

Zambia is not a signatory to the WTO Reference Paper on Telecomms Services.

¹³⁸⁵ WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZMB, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/7513/2634/9664/Zambia_GATS_Schedule.pdf. Zambia has, however, made commitments in respect of: Business Services; Construction and Related Engineering Services; Health Related and Social Services; Tourism and Travel Related Services.

¹³⁸⁶ World Bank (2010) 'Zambia Trade Brief', World Bank, Washington DC, available online at http://info.worldbank.org/etools/wti/docs/Zambia_brief.pdf.

¹³⁸⁷ Kruger, P (2008) 'MFN exemptions of the SADC EPA group', TRALAC Trade Law Centre, Stellenbosch, available online at <http://www.tralac.org/2008/05/21/mfn-exemptions-of-the-sadc-epa-group/>.

¹³⁸⁸ World Bank (2010) 'Zambia Trade Brief', World Bank, Washington DC, available online at http://info.worldbank.org/etools/wti/docs/Zambia_brief.pdf.

By way of comparison to the assessment below, the Regulatory Governance Index of Waverman and Koutroumpis, which is comprised of 18 elements within five categories that have limited overlap with the Reference Paper categories, places Zambia 8th out of 38 African regulators¹³⁸⁹.

Regulatory Best Practice:

1. Competitive safeguards: *Somewhat Compliant (2/5)*. The 2009 ICT Act does contain a section dealing with economic regulation, allowing the regulator to establish market dominance and prohibiting anti-competitive cross-subsidisation, but does not deal with misuse of information¹³⁹⁰. Whilst the Competition and Consumer Protection Commission is, as noted above, able to deal with abuse of dominance, its purview does not specifically cover the issues identified in the Reference paper..

2. Interconnection: *Largely Compliant (4/5)*. The 2009 ICT Act deals extensively with interconnection, requiring all suppliers to interconnect in a timely fashion via appropriate points of interconnection. Interconnection agreements are required to be lodged with the regulator and to be available for public inspection. Reference Interconnect Offers (RIOs) are required for dominant operators. The regulator is authorised to adjudicate in respect of interconnection disputes. However, there do not appear to be any regulated interconnection procedural guidelines, and no interconnection agreements or RIOs are available on the website of the regulator.

3. Universal service: *Partially Compliant (3/5)*. The 2009 ICT Act makes provision for the establishment of a Universal Access and Service Fund, and for the regulator to make specified regulations governing universal access and service, and to determine contribution to and expenditure from the Fund¹³⁹¹. There are no specific provisions requiring transparency, non-discrimination and competitive neutrality, but these principles would be in line with the tenor of the legislation. There are also no specific provisions allowing the imposition of universal service obligations. ZICTA issued universal access and service regulations in 2012 but these are not publicly available¹³⁹². The ITU reports the

¹³⁸⁹ Waverman, L & Koutroumpis, P (2011) 'Benchmarking telecoms regulation – The Telecommunications Regulatory Governance Index (TRGI)', Telecommunications Policy, No 35, pp 450–468, doi: [10.1016/j.telpol.2011.03.006](https://doi.org/10.1016/j.telpol.2011.03.006).

¹³⁹⁰ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Part V, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁹¹ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Part VIII, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁹² The file on the ZICTA website at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=54&view=finish&cid=191&catid=24 is corrupted.

Fund to be as yet inactive, with current projects funded at the regulator's discretion¹³⁹³.

4. Public availability of licensing criteria: Largely Compliant (4/5). The 2009 ICT Act includes considerable detail dealing with the criteria and procedures for individual licence applications¹³⁹⁴. The regulator has further issued a comprehensive set of licensing guidelines¹³⁹⁵. Individual licences, however, are not publicly available, nor are their detailed terms and conditions.

5. Independent regulators: Partially Compliant (3/5). The 2009 ICT Act creates the Zambia Information and Communication Technology Authority (ZICTA) as an "autonomous body [which] shall not be subject to the direction of any other person or authority"¹³⁹⁶. The Board, however, is appointed on a stakeholder basis, with the Minister holding veto power over nominations, and with no criteria for nomination that would deal with conflicts of interest and ensure impartiality and expertise¹³⁹⁷. The Minister, under whose portfolio the incumbent fixed line operator falls, also holds the power to direct the work of the regulator by issuing "general directives" and by issuing regulations and specifications in respect of a number of key regulatory areas, albeit "in consultation with the Authority"¹³⁹⁸.

6. Allocation and use of scarce resources: Partially Compliant (3/5). The 2009 ICT Act assigns the regulator full control over spectrum management, partial control over numbering (subject to the Minister), and deals with rights of way, albeit with limited involvement from the regulator. There is no requirement,

¹³⁹³ ITU (2013) 'Universal Service Fund and Digital Inclusion For All Study', International Telecommunication Union, Geneva, available online at <http://www.itu.int/en/ITU-D/Conferences/GSR/Documents/ITU%20USF%20Final%20Report.pdf>.

¹³⁹⁴ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Part III, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁹⁵ ZICTA (nd) Licensing Guidelines', , Zambia Information and Communications Technology Authority, Lusaka, available online at http://www.zicta.zm/index.php?option=com_content&view=article&id=50&Itemid=93.

¹³⁹⁶ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Part III, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁹⁷ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, First Schedule, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

¹³⁹⁸ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.

however, that the band plan be published, and neither it nor the numbering plan are publicly available¹³⁹⁹.

As can be seen from the above, there are several areas in respect of which Zambia falls short of compliance with the WTO Reference Paper on Telecoms Service. Although there is nothing fundamental preventing the country becoming a signatory, amendments to legislation and improvements in regulatory practice would need to be undertaken to ensure full compliance.

---o---

¹³⁹⁹ Zambia (2009) 'Information and Communication Technologies Act No 15 of 2009', Republic of Zambia, Lusaka, Sections 54, 55 and 62 respectively, available online at http://www.zicta.zm/index.php?option=com_jdownloads&Itemid=74&view=finish&cid=40&catid=14.