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

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

Short-term Report

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4.15 ZIMBABWE

4.15.1 TELECOMMUNICATIONS SERVICES

Services Framework:

Zimbabwe's 2000 Postal and Telecommunications Act adopts a vertical categorisation of telecomms licences into the following categories: "radiocommunication service... fixed-line telephone service... telegraph service... telex service... satellite telephone service... Internet service... electronic mail service... leasing of telecommunication lines... [and] such other telecommunication service as the Minister may prescribe"[1400]. The website of the regulator differentiates between fixed telephone services, mobile cellular services, public data network services, and Internet access providers (Class A and Class B)[1401].

The licensing regime in Zimbabwe remains thus a vertical technology-specific one rather than a converged (horizontal or unified or multi-service) one. It is, however, not in alignment with the vertical categorisation set out in W/120.

FOCUS AREA 1: MARKET STRUCTURE

Market Structure:

BuddeComm describes Zimbabwe's telephony market as comprising a de facto fixed-line monopoly enjoyed by TelOne (formerly PTC) (with two additional licensees, TeleAccess and, Afritel, having failed). Mobile licensees include Econet, NetOne and Telecel Zimbabwe. The Internet Service Provider (ISP) market is described as "reasonably competitive with six major players". In addition "eight companies have been licensed to provide VoIP telephony services" along with several "data carriers". Players in these markets include: Liquid Telecom, DataOne, Powertel Communications, Telco Internet, Broadlands Networks, Aquiva, Africa Online, ComOne, Ecoweb, MWeb, Telecontract, Dandemutande and Taurai Zimbabwe[1402].

[1400] Zimbabwe (2000) 'Postal and Telecommunications Act Chapter 12:05', (as amended), Republic of Zimbabwe, Harare, available online at http://www.potraz.gov.zw/files/Postal_Act.pdf, Section 34.

[1401] See drop-down menus on the website at http://www.potraz.gov.zw/.

[1402] BuddeComm (2012) 'Zimbabwe - Telecoms, Mobile, Broadband and Forecasts: Executive summary', BuddeComm, Bucketty NSW, available online at http://www.budde.com.au/Research/Zimbabwe-Telecoms-Mobile-and-Broadband.html. The full report is available on a for sale basis.

The most recent comparative figures for telecomms market share as supplied by the regulator[1403], but undated (although clearly from 2012), are given below:

Zimbabwe: Fixed & Mobile Subscribers		
	2012 (Undated)	
	Subscribers	Market Share
TelOne (fixed)	336 000	2,9%
Econet (mobile)	7 000 000[1404]	61,2%
NetOne (mobile)	1 800 000	15,7%
Telecel Zimbabwe (mobile)	2 300 000	20,1%
Total	11 436 000	

According to the ITU, the market in Zimbabwe as at 2011 was broken down as follows: 356 000 fixed-line subscribers[1405]; 9 200 300 mobile subscribers[1406]. This translates to a per capita market penetration rates in the telecommunications sector for Zimbabwe as at 2011 of 2,8% for fixed-line, 72,1% for mobile and 15,7% for the Internet (from 3,0%, 61,2% and 11,5% respectively in 2010[1407].

[1403] Phibion Chaibva, Postal and Telecommunications Regulatory Authority of Zimbabwe, Harare, personal correspondence, 15 November 2012.

[1404] Econet Wireless Zimbabwe reported 7,1 million subscribers in September 2012, up from 6,4 million in February 2012. See: New Zimbabwe (2012) 'Econet subscriber numbers hit 7 million', New Zimbabwe, Bromsgrove, 18 September 2012, available online at http://www.newzimbabwe.com/business-9087-Econet+subscriber+numbers+hit+7+million/business.aspx

[1405] 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.

[1406] 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.

[1407] 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.

The Zimbabwe regulator reports 10 914 770 mobile voice subscribers, along with 346 211 fixed voice and 3 266 411 data and Internet subscribers as at the second quarter of 2012[1408].

TelOne, and its mobile subsidiary, NetOne, are 100% state owned, although failed privatisation talks with Telkom (South Africa) and Mahanagar Telephone Nigam Limited (MTNL) (India) have been reported[1409].

Econet Wireless is a publicly listed company, trading on the Zimbabwe Stock Exchange, with the following major shareholders[1410]:

- 42,7% - Econet Wireless Global Limited;
- 11,6% - Barclays Zimbabwe Nominees (Private) Limited – NNR;
- 6,2% - Econet Wireless Holdings Limited;
- 5,2% - Austin Eco Holdings Limited – NNR;
- 5,0% - Old Mutual Life Assurance Company of Zimbabwe Limited.

Telecel Zimbabwe has the following major shareholders[1411]:

- 60% - Telecel International / Orascom / Vimpelcom (Russia / Egypt);
- 40% - Empowerment Corporation (including Seplon Investments, Kestrel Corporation, National Miners' Association of Zimbabwe).

No shareholder breakdown of ISPs is readily available.

Range of Services:

As can be seen above, the provision of mobile voice communications is dominated by Zimbabwean companies, with Telecel Zimbabwe as the only foreign service provider. No information is available in respect of ISPs.

Market Share: market share between foreign and local suppliers[1412].

80% of the voice telephony market is controlled by Zimbabwean companies, with only 20% provided by foreign entities.

[1408] POTRAZ (2012) 'Postal & Telecommunications Quarterly Sector Statistics Report – 2nd Quarter of 2012', Postal and Telecommunications Regulatory Authority of Zimbabwe, Harare, available online at http://www.potraz.gov.zw/files/POTRAZ_Quaterly_Sector_Statistics.pdf.

[1409] Sunday Mail (2012) 'Telkom, TelOne talks off', *The Sunday Mail*, Harare, available online at http://www.sundaymail.co.zw/index.php?option=com_content&view=article&id=31175:telkom-telone-talks-off&catid=41:business&Itemid=133#.UKjw2mdEWSo.

[1410] Econet (nd) 'Shareholder Analysis', Econet Wireless, Harare, available online at http://ewzinvestor.co.zw/shareholder-analysis/.

[1411] TechZim (nd) 'Telecel Zimbabwe: Ownership and Corporate Structure', TechZim, Harare, available online at http://visual.ly/telecel-zimbabwe-ownership.

[1412] In case of joint ventures, if > 50% is foreign then, such entity will be categorised as foreign.

Stakeholders:

Tensions between ZANU (PF) and the Movement for Democratic Change (MDC) over 'indigenisation' legislation that requires all companies to be under Zimbabwean control, may impede trade liberalisation of the telecommunications sector[1413].

FOCUS AREA 2: REGULATORY REGIME & STATE OF PLAY

Restrictions on Scope of Licences:

Licences in Zimbabwe are, according to the website of the regulator, technology-specific, distinguishing between fixed telephone services, mobile cellular services, public data network services, and Internet access providers (Class A and Class B)[1414]. Licences themselves are not readily publicly available to confirm this.

Restrictions on Market Access:

Zimbabwe's GATS commitments in respect of communications services impose a number of restrictions on market entry. Firstly, for "Public Telecommunications Transport Networks and Services.... [the government-owned] Posts & Telecommunications Company (PTC)… is a monopoly provider of public telecommunications services, except… [for] PABX [services which] may be provided by subsidiaries of foreign companies… [except in the case of] public sector buildings [which] are reserved to the PTC". Further, in all cases "unauthorized bypass of the PTC network is not permitted"[1415].

Zimbabwe's general GATS commitments impose the following restrictions relating to foreign investors "who seek to acquire shares in companies listed on the Zimbabwe Stock Exchange. The purchase of shares is limited to 25 per cent per counter of the listed issued share capital; this limit is in addition to any existing foreign holding in a company. A single investor is limited to a maximum of 5 per cent of the shares on offer; foreign investors bringing in hard currency may invest a maximum of 15 per cent of their assets in primary issues of bonds and stocks"[1416].

[1413] Cf Bulawayo24 (2012) 'Telecel mum on indigenisation', Bulawayo24, Bulawayo, 2 February 2012, available online at http://bulawayo24.com/index-id-news-sc-national-byo-11719-article-telecel+mum+on+indigenisation.html.
[1414] See drop-down menus on the website at http://www.potraz.gov.zw/.
[1415] WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf, pp3,4.
[1416] WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf, p2.

Zimbabwe's 2010 indigenisation regulations require all companies with an asset value above USD 500 000 to ensure "indigenous [ie black] Zimbabweans" hold a controlling stake in the company and to submit an "indigenisation plan" indicating how this will be effected[1417]. Telecel Zimbabwe appears to be only operator affected by this ruling.

Zimbabwe's general horizontal GATS commitments impose no restrictions relating to the legal status of foreign-owned enterprise[1418]. There are no restrictions on the commercial presence of foreign companies offering "Value-added / Enhanced services"[1419].

Other Discriminatory Measures:

In terms of its general horizontal GATS commitments, Zimbabwe reserves the right to impose restrictions on foreign personnel, reserving the right to impose "measures concerning the entry and temporary stay of intra-corporate transfer of executive and senior managerial personnel and except for specialists, subject to lack of availability in the local labour market."[1420].

Zimbabwe is ranked 171st out of 183 countries in terms of ease of doing business by the World Bank[1421].

Non-discriminatory Regulatory Restrictions:

The 2000 Postal and Telecommunications Act places licensing under the control of the regulator, with no direct involvement of the Minister[1422]. Licences for fixed and mobile telecommunications services are processed on application, via a public notice and comment procedure[1423]. VoIP appears now to be legalised in

1417 Zimbabwe (2010) 'Indigenisation and Economic Empowerment (General) Regulations, 2010' (as amended, Republic of Zimbabwe, Harare, available online at http://www.kubatana.net/docs/legisl/indig_econ_empowrmnt_general_regs_si21_110325.pdf.

1418 WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf.

1419 WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf, p4.

1420 WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf, p2.

1421 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.

1422 Zimbabwe (2000) 'Postal and Telecommunications Act Chapter 12:05', (as amended), Republic of Zimbabwe, Harare, available online at http://www.potraz.gov.zw/files/Postal_Act.pdf, Section 34.

1423 POTRAZ (2001) 'Postal and Telecommunications (Licensing, Registration and Certification) Regulations 2001', Statutory Instrument 11A of 2001, Postal and Telecommunications Regulatory

Zimbabwe, with at least one operator providing such services[1424]. International gateway services appear to be relatively liberalised, with at least 5 licensees able to offer such services[1425]. The 2001 Interconnection Guidelines contain no anti-competitive or discriminatory provisions[1426], nor are there any such provisions in the legislation.

FOCUS AREA 3: LEVEL OF COMPETITION

Dominant providers:

Econet is dominant in the voice telephony market, with 61% market share. TelOne holds a monopoly in the miniscule fixed sub-market.

Pricing:

International Telecommunication Union has no comparative (2008) pricing data for Zimbabwe[1427].

Competition Regulation:

According to Bowman Gilfillan, there is a competition authority in Zimbabwe, the Competition and Tariffs Commission, which was established in 1998 in accordance with the 2006 Competition Act. The Act covers "all economic activities within or having an effect within Zimbabwe (including the activities of the Government and other statutory bodies or parastatal organisations)"[1428].

The Act does deal with dominance or "monopoly", which is defined to occur where a single firm (or several firms with "substantial economic connection")

Authority of Zimbabwe, Harare, available online at http://www.potraz.gov.zw/images/potraz/Licensing_11A_OF_2001_(3).pdf.

[1424] TeleGeography (2012) 'Aquiva Wireless launches VoIP in Zimbabwe', *TeleGeography*, 18 April 2012, available online at http://www.telegeography.com/products/commsupdate/articles/2012/04/18/aquiva-wireless-launches-voip-in-zimbabwe/.

[1425] Kabweza, L (2010) 'An Overview Of Zimbabwe's Telecommunications – POTRAZ Presentation Download', *TechZim*, 5 March 2010, available online at http://www.techzim.co.zw/2010/03/zimbabwe-telecoms-overview/.

[1426] POTRAZ (2001) 'Postal and Telecommunications (Interconnection Guidelines) Notice, 2001', Statutory Instrument 28 of 2001, Postal and Telecommunications Regulatory Authority of Zimbabwe, Harare, available online at http://www.potraz.gov.zw/images/potraz/Interconnection%2028%20OF%202001.pdf.

[1427] ITU (2009) 'Information Society Statistical Profiles: Africa', International Telecommunication Union, Geneva, available online at http://www.itu.int/ITU-D/ict/material/ISSP09-AFR_final-en.pdf.

[1428] 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, p59.

"exercises... substantial market control over any commodity or service" [1429]. Abuse of dominance appears not to be defined, but is prohibited unless the "existence of... pro-competitive features" can be shown[1430]. The Commission has wide discretion in imposing remedial steps in cases of abuse of market dominance[1431].

Anti-competitive Behaviour:

There is no evidence available of anti-competitive behaviour.

4.15.2 BROADCASTING SERVICES

Services Framework:

Broadcasting in Zimbabwe is regulated by the Broadcasting Services Act (BSA) of 2001 and two subsequent Broadcasting Services Amendment Acts of 2003 and 2007. According to Section 7 of the BSA, the Broadcasting Authority is in charge of licensing commercial, community and subscription broadcasting services. The licensing of 'public broadcasters' is regulated by Section 37 which states that the Zimbabwe Broadcasting Corporation "shall be deemed to be licensed to provide every class of broadcasting service that it provided immediately before the date of commencement of this Act," which took effect in April 2001. The BAZ is also responsible for licensing roadcasting, railcasting and webcasting services. This provision extends its powers of control to include internet radio and television as well as pre-recorded programmes for reception by passengers on any public transport or railway service[1432].

FOCUS AREA 1: MARKET STRUCTURE

Market Structure:

Despite the liberalisation of the airwaves more than a decade ago and the recent commitments by the Government of National Unity (GNU) to license exiled

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[1429] 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, p61.

[1430] 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, p61.

[1431] 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, p61.

[1432] Chiumbu, S (2010), Public Broadcasting in Africa Series: Zimbabwe, Open Society Initiative, AfriMap stations, broadcasting still remains a quasi state monopoly where long standing prospective broadcasters such as Radio Dialogue, SW Radio Africa, Voice of the People, Studio 7, and others have been denied licences while those perceived to be loyal to ZANU PF have recently been allocated licences for commercial radio broadcasting. The newly licensed radio stations are Star FM and ZiFM. Star FM is owned by state-controlled Zimpapers, while ZiFM is run by journalist-cum-businessman Supa Mandiwanzira who is linked to ZANU PF[1433].

OMD puts television penetration in Zimbabwe at 31% of households[1434].

The state broadcaster, Zimbabwe Broadcasting Corporation dominates the market. ZBC is exclusively owned by government and operates one television channel and five radio stations: National FM broadcasting in 17 local languages; Power FM, a youth music station; Radio Zimbabwe broadcasting in chiShona and siNdebele; English language, Spot-FM and SW-24/7 transmitting on short and medium wave.

Although, the GPA required the inclusive government to license exiled radio stations such as SW Radio Africa, Studio 7, and local stations such as Radio Dialogue, that has not been done. This has left the ZBC as the only dominating force in the market.

Range of Services:

There is satellite television subscription service offered by MultiChoice Africa.

Market Share:

Broadcasting market structure[1435]:

	Name	Audience ratings	Market share
ZBC radio stations	Power FM		33%
	Radio Zimbabwe		22%
	Sport FM		6%
	National FM		6%
Private commercial	Star FM		Not available
	ZiFM		Not available

[1433] Chitemba, B. "Zimbabwe: Mandiwanzira Defends New Radio Stations, *c*, 12 October 2012.
[1434] Koenderman, T (2013) 'The Future of Media: South Africa & SADC Media Facts 2013', OMD South Africa Johannesburg, available online at http://www.omd.co.za/media_facts/FOM029_Blueprint_OMD_mediafacts2013.pdf, p34.
[1435] See "ZBC radio stations top" Zimbabwe Broadcasting Corporation website < http://www.zbc.co.zw/news-categories/local-news> last checked 16 Nov. 2012. The ZBC statistics are based on the latest Zimbabwe All Media Products Survey (ZAMPS) for the third quarter of 2012.

Pirate stations	SW Radio Africa		Not available
	Studio 7		Not available
	VOP		Not available
ZBC television stations	ZBC TV 1		63%
	ZBC TV 2		20%
	MultiChoice		68%

Stakeholders:

The government enjoys a stronghold over broadcasting in the country. Even with a liberalised broadcast environment, there are still serious concerns that this is sham liberalisation of the airwaves. Recent licensed competitors such as ZiFM in radio broadcasting are seen as an extension of ZANU PF propaganda machinery.[1436]

FOCUS AREA 2: REGULATORY REGIME & STATE OF PLAY

Restrictions on Market Access:

Section 8 (1) and (2) states that licences shall be issued "only to individuals who are citizens of Zimbabwe resident in Zimbabwe … or to a body corporate in which controlling interests is held by citizens of Zimbabwe resident in Zimbabwe." "Controlling interests" is defined as "all" or "one hundred per centum" of securities or shares[1437]. While it is acceptable that broadcasting in a country should be controlled by nationals this clause aims to disqualify any foreign co-ownership in broadcasting and thus makes foreign investments in this industry impossible. While other countries also impose limitations on foreign ownership, it is only in terms of the quota in shares.

Foreign investment in this sector is not legal as locals are required to have a 100% controlling stake in shares. This means foreign ownership is prohibited.

Other Discriminatory Measures:

The only legal foreign broadcasting in Zimbabwe is through the DStv subscription model. MultiChoice Africa has re-launched the DStv Compact bouquet, now featuring 25 satellite television channels and more than 50 music and radio channels. DStv Compact is designed as an alternative to the Premium Bouquet,

[1436] The statistics on market share for the first 3 radio station are based on 2012 ZAMPS survey while the rest are based on the ZAMPS 2011. Stats on Satellite broadcasting may reflect the dominant use of Wiztec, a satellite technology that, allows piracy of the SABC and E-TV signals into Zimbabwe. According to the Sunday Mail, a state owned newspaper, 80% percent of Zimbabwe's urban population and roughly 10 percent of the rural population own free-to-air decoders and have access to the three SABC channels.

[1437] See BSA, 2001.

which features the full range of more than 50 television channels as well as the music and radio channels selection[1438].

Non-discriminatory Regulatory Restrictions:

Applicants are invited to apply by BAZ. The Amendment Act 2003 gives the BAZ (and not the minister in charge of broadcasting, as was the case under the principal 2001 Act) the power to determine who is to be issued a licence and when, to set the terms and conditions applicable in each individual case and to decide on the amendment, suspension and cancellation of licences. Section 10(1) states the following:

> *(1) The Authority shall, if it determines that there is a need for the provision of additional broadcasting*

services, and after carrying out its functions in terms of the First Schedule, publish a notice in the Gazette and in a national newspaper inviting applications for licences to provide the broadcasting services or systems specified in the notice[1439]. The BAZ has the responsibility 'to plan and advise on the allocation and distribution of the available frequency spectrum […]' and 'to receive, evaluate and consider applications for the issue of any broadcasting licence or signal carrier licence.'

Regulatory Best Practice:

Regulation of broadcasting is through the Broadcasting Authority of Zimbabwe (BAZ). The body is seen as lacking autonomy because its President has sweeping powers to in the appointment of board members. The nomination and appointment process is not subject to any public involvement or input. In effect the president has an almost free hand to appoint a board of his or her choice, given that the Act only requires consultation with the minister and the parliamentary committee but not their consent[1440].

FOCUS AREA 3: LEVEL OF COMPETITION

Dominant providers:

Zimbabwe broadcasting remains a quasi-monopoly of state broadcasting. The ZBC radio and television stations are dominant. (Please refer to broadcasting market structure above).

[1438] See Balancing Act, http://www.balancingact-africa.com/news/en/issue-no-338/more/multichoice-relaunch/en.

[1439] See BSA, 2001.

[1440] Public Broadcasting in Africa Series: Zimbabwe, Open Society Initiative, (Written by S. Chiumbu).

Competition Regulation:

Zimbabwe has a Competition and Tariff Commission (CTC). It has not, however, dealt with anti-competitive behaviour in broadcasting by the state and ZBC.

Anti-competitive Behaviour:

BSA is regulating competition in favour of the ZBC. For example, Section 9(1) states that only one other licence, other than that provided to the State controlled Zimbabwe Broadcasting Corporation shall be issued to provide national free-to-air radio broadcasting services and television broadcasting services. This has been largely criticised as unwarranted and mainly a plan to protect the state broadcaster, ZBC.

The ZBC commercialisation also split ZBC into many smaller holdings, one of which is TransMedia, a signal carrier company whose primary function is to provide signal transmission services in the country. This would make ZBC a competitor that also is an infrastructure provider. This role can easily be abused.

4.15.3 STATE OF LIBERALISATION

WTO Commitments:

Zimbabwe has been a member of the WTO since March 1995[1441], but, aside from "Value-added / Enhanced services"[1442], has made no commitments to the liberalisation of communications services.

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

WTO Implementation:

Zimbabwe has made no WTO commitments in respect of either telecommunications or broadcasting. There do not appear to be any restrictions in respect of commercial presence, other than the indigenisation requirement which limits foreign shareholding to 49%.

MFN Barriers:

There is no evidence of MFN inconsistent measures in the telecommunications sector.

[1441] 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.
[1442] WTO (2003) 'Draft converted Schedule of Specific Commitments', S/DCS/W/ZWE, World Trade Organisation, Geneva, 30 August 1995, available online at http://www.sadc.int/files/6113/2634/9708/Zimbanwe_GATS_Schedule.pdf, p4.

4.15.4 REFERENCE PAPER READINESS

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

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 Zimbabwe 17th out of 38 African regulators[1443].

Regulatory Best Practice:

1. Competitive safeguards: ***Minimally Compliant (1/5).*** Zimbabwe's 2000 Postal and Telecommunications Act contains no sections dealing with the provision of competitive safeguards. As noted previously, the Competition and Tariffs Commission is empowered to deal with a range of forms of anti-competitive conduct, but few if any of these specifically correspond to those identified in the Reference paper[1444].

2. Interconnection: ***Largely Compliant (4/5).*** The 2000 Postal and Telecommunications Act has provisions dealing with interconnection, which requires the regulator to establish interconnection guidelines, stipulates that must operators to lodge interconnection agreements with the regulator, and empowers the regulator to adjudicate interconnection disputes[1445]. The 2001 Interconnection Guidelines issued by the regulator are more detailed, and additionally deal with non-discrimination, timeliness, points of interconnection, and dispute settlement[1446]. There is, however, no provision for the establishment of reference interconnect offers, nor are interconnection agreements publicly available.

3. Universal service: ***Largely compliant (4/5).*** The 2000 Postal and Telecommunications Act provides for the establishment of a universal service fund and for the imposition of universal service obligations on licensees[1447]. The

[1443] 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.

[1444] Zimbabwe (1996) 'Competition Act', Act 7 of 1996, Chapter 14:28 (as amended), Republic of Zimbabwe, Harare, First Schedule, available online at http://www.potraz.gov.zw/images/Reports/competition%20act.pdf.

[1445] Zimbabwe (2000) 'Postal And Telecommunications Act', Act 4 of 2000, Chapter 12:05 (as amended), Republic of Zimbabwe, Harare, First Schedule, available online at http://www.potraz.gov.zw/images/potraz/Postal_Act.pdf.

[1446] POTRAZ (2001) 'Postal and Telecommunications (Interconnection Guidelines) Notice, 2001', Statutory Instrument 28 of 2001, Postal and Telecommunications Authority, Harare, available online at http://www.potraz.gov.zw/images/potraz/Interconnection%2028%20OF%202001.pdf.

[1447] Zimbabwe (2000) 'Postal And Telecommunications Act', Act 4 of 2000, Chapter 12:05 (as amended), Republic of Zimbabwe, Harare, Part X, available online at http://www.potraz.gov.zw/images/potraz/Postal_Act.pdf.

ITU reports the Fund as having a low level of activity, and as having failed to submit financial reports, but notes a series of universal service obligations were imposed on operators in 2001[1448].

4. Public availability of licensing criteria: ***Partially Compliant (3/5).*** The 2000 Postal and Telecommunications Act makes detailed provision for the powers of the regulator in managing licensing[1449], but licensing criteria and procedures are not publicly available, nor are individual licences publicly available.

5. Independent regulators: ***Partially Compliant (3/5).*** The 2000 Postal and Telecommunications Act establishes the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) as the communications sector regulator. Whilst Board members are precluded from having connections with or "financial interest in any business connected with cellular telecommunication, postal or telecommunication services or systems", the Board is constituted by the President in consultation with the Minister, without due transparency or checks and balances. In addition, the Minister, who is also the shareholder in respect of the state-owned fixed and mobile operators, retains the power to direct the work of the regulator, and to overturn its decisions - creating a structural conflict of interest.

6. Allocation and use of scarce resources: ***Minimally Compliant (1/5).*** The regulator is assigned responsibility for frequency spectrum and numbering, but the legislation contains no specific sections dealing with these, and rights of way are wholly omitted. The national band plan does not appear to be publicly available.

As can be seen from the above, although largely compliant in most areas, there are one or two areas where Zimbabwe will require to make legislative and regulatory changes in order to fully comply with the reference paper. There is no reason, however, why the country cannot commit to the principles prior to introducing the necessary changes.

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[1448] ITU (2013) 'Universal Service Fund and Digital Inclusion For All Study', International Telecommunication Union, Geneva, p63, available online at http://www.itu.int/en/ITU-D/Conferences/GSR/Documents/ITU%20USF%20Final%20Report.pdf.

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