

Economic Community of West African States, African Regional Bodies

## Regulation C/REG.06/06/12 on Condition for Access to Submarine Cables Landing Stations

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Economic Community of West African States

## **Regulation C/REG.06/06/12 on Condition for Access to Submarine Cables Landing Stations**

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**Commenced in full**

*[This is the version of this document at 12 June 2012.]*

**The Council of Ministers,**

**MINDFUL** of Articles 10, 11 and 12 of the ECOWAS Treaty as amended establishing the Council of Ministers and defining its functions and composition;

**MINDFUL** of Article 33 of the said Treaty relating to Posts and Telecommunications, which provides that Member States shall undertake to develop, modernise, coordinate and standardise their national telecommunications networks with a view to providing reliable interconnection between Member States and promoting private-sector participation in the provision of telecommunications services;

**MINDFUL** of Supplementary Act A/SA.2/01/07 on access and interconnection of the Information and Communication Technology (ICT) sector networks and services;

**MINDFUL** of Supplementary Act A/SA 3/01/07 on the legal regime applicable to Telecom operators and service providers;

**CONSIDERING** the Community framework for the Telecom and ICT sector and, in particular, Supplementary Act A/SA.1/01/07 on the harmonisation of the policies and regulatory framework of the Information and Communication Technology (ICT) sector;

**CONSIDERING** that interconnection of modern telecommunications systems among Member States is a pre-requisite for economic integration in the sub-region;

**CONSIDERING** that the new sub-marine cable projects for connecting Africa could put an end to the high cost of ICT services due to lack of national and international fibre optic infrastructures - terrestrial as well as sub-marine - and help reduce prices on condition that a regulatory framework is established to enable free access and the development of competition on international routes;

**CONSIDERING** the adoption of the guidelines on access to submarine cables at the 9<sup>th</sup> WATRA Annual General Meeting in Accra, Ghana, held from 2<sup>nd</sup> to 3<sup>rd</sup> June 2011, further to their amendments at the ECOWAS meeting of national experts in charge of telecommunication and ICT in Lomé, Togo, from 22 to 25 March 2011 and their validation at the WATRA workshop in Monrovia, Liberia, from 7 to 9 December 2010.

**RECALLING** that the development of these guidelines was launched at the WATRA Workshop on Sub-marine Cable Regulation in Accra, Ghana, from 17 to 18 November 2009, taking into account issues of access, pricing and capacity identified by participants regarding cable landing stations, as well as the capacity services offered, particularly as a result of monopolies on cable landing stations and backhaul, leading to extremely high charges;

**RECALLING** the need for Member States to strive to apply the principles of interconnection and open access as enshrined in the ECOWAS Supplementary Acts, namely, non-discrimination, transparency and cost-oriented pricing in the context of Reference Interconnect Offers and access to submarine capacities, as well as the award of licences to cable landing station operators;

**RECALLING** the specific challenges of landlocked countries which can only have access to cables landing stations by going through other countries for the establishment of a common ICT market in the ECOWAS space

**EQUALLY RECALLING** the principles of interconnection and open access enshrined in the aforementioned Supplementary Acts, as well as the principle of non-discrimination among operators, including among those established in the different Member States;

**CONVINCED** that open access to capacities transported on submarine cables is necessary for rendering affordable international bandwidth, thereby encouraging the growth of each of the domestic markets;

**DESIROUS** of adopting a harmonised framework for submarine cable access in West Africa to promote the development of permanent and fair competition for the benefit of network operators and subscribers in the telecommunications and ICT sector;

**UPON THE RECOMMENDATION** of the meeting of Ministers responsible for Telecommunications/ICT held on 14<sup>th</sup> October 2011 in Yamoussoukro;

**HAVING CONSULTED** the ECOWAS Parliament;

**HEREBY ENACTS**

## Article 1 – Definitions

For the application of this Regulation, the definitions set out in Supplementary Act A/SA.1/01/07 on the harmonisation of the policies and regulatory framework of the Information and Communications Technology (ICT) sector, Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers, and Supplementary Act A/SA.2/01/07 on access and interconnection of networks and services in respect of the ICT sector, shall apply

The following definitions shall equally apply:

Access and connection services offered by Submarine Cable Landing Station Operators to Eligible Operators: these are services provided by a CLS operator to an Eligible Operator for the deployment, establishment and maintenance of the connection between the Eligible Operator's co-location equipment located at the landing station site or any other location indicated in the Reference Interconnect Offer concerning the landing station, and the submarine cable system, to enable the Eligible Operator:

- access capacities belonging to him, or on any one of the cables connected to the landing station system in question; and
- access cable capacities held by third parties on any of the cables connected to the landing station.

Backhaul Services: the location of the links between the landing station and the facilities of the Eligible Operator.

Cable Landing Station Operator: an operator of a submarine cable landing station (CLS Operator).

Co-location: the facilities and resources (including the building space, power, environmental, security and maintenance services) offered by the cable landing station operator to an Eligible Operator;

Eligible Operator: a telecommunications operator who can request access to international capacity and co-location on the site of a cable landing station.

An eligible operator must:

- be in compliance with the regulations in the country concerned or another ECOWAS Member State;
- be a network operator and/or telecommunications service provider;
- hold beforehand some rights on the international capacity available at the cable landing station either as capacity owner (consortium member), an Indefeasible Right of Use (IRU) holder, or an International Private Leased Circuits (IPLCs) holder.
- Internet service providers and Internet Exchange Points are also eligible to request such access depending on the scope of the applicable legal regime in their national jurisdictions.

RIO: Reference Interconnection Offer

Submarine cable: Any physical, signal-bearing medium installed in a marine environment for the routing of electronic communications or transmission of electric power.

Submarine Cable Landing Station or Cable landing station (CLS): Set of technical installations for the landing and operation of the submarine cable in order to provide electronic communication or electric power transmission services.

Virtual Co-location:

- Connection to the cable landing station by a link between a remote or virtual co-location point and the cable landing station.
- This point shall be located outside the cable landing station, whether adjacent to the station or at a reasonably distant location, depending on the options.

The Eligible Operator shall be authorised to install its equipment at that point so as to access the submarine cable capacity from the cable landing station.

## **Article 2 – Objective**

This Regulation is aimed at:

- i. increasing the international bandwidth capacity of each country;
- ii. laying down conditions for fair access to international bandwidth with a view to facilitating the development of a competitive national market; and
- iii. ensuring significant reduction in international communication charges for each Member State.

## **Article 3 – Scope of application**

1. This Regulation shall apply to:
  - i. the licensees operating submarine cable landing stations in a Member State;
  - ii. access to available broadband capacities on submarine cable(s) landing at sub-marine cable stations controlled by a single company or by operators considered as having Significant Market Power (dominant operator), as per Article 19 of Supplementary Act A/SA.2/01/07 on access and interconnection of networks and services in the ICT sector. The entity that controls all cable landing stations in a Member State, or the entity as defined in the above Supplementary Act, shall be presumed to wield significant market power. This
2. Regulation shall apply without prejudice to the Member States' right to maintain or introduce, in compliance with ECOWAS regulations, measures containing provisions more detailed than those set out in this Regulation and/or not falling within the latter's scope of application, particularly regarding other types of access to local infrastructures.

## **Article 4 – Grant of landing station licences**

1. Member States shall encourage the grant of licences to new cable landing stations with appropriate provisions within the licenses awarded.
2. The licenses and specifications shall at least include:
  - i. conditions, in conformity with the annexes to Supplementary Act A/SA.3/01/07 on the legal regime applicable to network operators and service providers, for preventing anti-competitive behaviour in telecommunication markets, and particularly measures designed to ensure that tariffs are not discriminatory and do not distort competition.
  - ii. an obligation to cooperate with the other cable landing stations (established across the Member States' territories) in providing mutual assistance in case of breakdown.

- iii. In that regard, provisions on open access to cable landing stations and on the offer of international capacities on non-discriminatory basis, must be included in the licences and/or associated specifications; and

### **Article 5 – Modification of existing licenses**

Member States shall amend the existing licenses and corresponding specifications of CLS operators to conform to the principles enshrined in this Regulation, and introduce the obligation of non-discrimination and prohibition of anti-competition practices on the international capacity access market.

### **Article 6 – Withdrawal of restrictions on access to international capacities**

Whatever the technology used (terrestrial or submarine fibre, satellite, and microwave links), Member States shall not include any restriction on access to international capacities in any licences or authorisation (including the corresponding specifications) issued to any operator on that Member State's territory.

### **Article 7 – Guarantee of fair and effective access**

1. National Regulators must ensure fair and effective access to the available capacity on any cable systems landing at any landing station operated by an SMP Operator.
2. Consequently, the SMP-CLS operator shall:
  - i. provide Eligible Operators with access to the station and related international sub-marine cable capacity, and facilitate connection to any sub-marine cable landing at the cable landing station on fair and non-discriminatory terms and conditions;
  - ii. allow all providers of capacities, holding right on capacities available on submarine cables landings on the CLS, to sell their capacities in the countries where the cable is landing (in the form of either Irrevocable Right of Use - IRU, or International Leased Circuits - IPLC) or any entity willing to buy capacity, to buy it from these providers provided that they are in compliance with the national regulation.
3. There shall be no exclusive rights for national members of the consortium to sell capacities. In that regard, the National Regulatory Authority (NRA) shall be informed of the conditions of the consortium MOU and/or construction and maintenance agreement (C & MA) signed by its members to ascertain that there is no exclusive right for the CLS operator to sell international capacity on the national territory.
4. The SMP-CLS operator shall provide the Eligible Operator with Co-location and Backhaul services as defined below;

### **Article 8 – Co-location service**

1. The SMP-CLS operator shall provide the Eligible Operator with Co-location and Backhaul services as defined in Article 3.
2. In cases where the SMP-CLS operator is unable to provide physical co-location due to space limitation or any other legitimate reasons, it must take reasonable measures to propose an alternative solution. Such alternative solutions may include options such as virtual co-location, provisioning additional equipment space, optimising the use of existing space, or finding adjacent space.
3. The Eligible Operator shall bear the relevant and reasonable costs invested by related services (electricity, air conditioning, etc).
4. The virtual co-location tariff shall include expenses related to the works carried out the SMP-CLS operator in providing additional space and equipment, optimising the use of existing space, or finding adjacent sites and, in the last case, providing a link between virtual co-location and the cable landing station.



5. Where the works are carried out for the exclusive needs of one Eligible Operator, the operator shall be invoiced for the total amount of works.
6. Where they are carried out by several operators, each Eligible Operator using the co-location service shall be invoiced in proportion to the above total amount calculated on a transparent and non-discriminatory basis.
7. Where a new Eligible Operator moves into a co-location space that has already been financed by operators already installed in that space, the new entrant shall pay the operators a share of the expenses they incurred in accessing the co-location space.

### **Article 9 – Minimum period of access and co-location**

1. The SMP-CLS operator must provide a minimum period of co-location ensuring a reasonable balance between the need to encourage competition and that of safeguarding a reasonable return on the investments made for the co-location.
2. National Regulatory Authorities shall ensure that the minimum period commitment above is no less than 3 years and the co-location offer can be extended beyond.

### **Article 10 – Backhaul services**

The National Regulatory Authority should ensure that the SMP-CLS Operator provides a leasing backhaul facility at cost-oriented prices in order that Eligible Operators do not pay unreasonable charges for the service.

### **Article 11 – Transparency obligations**

1. The SMP-CLS shall be required to:
  - i. publish the terms and conditions of Connection Services and co-location facilities, including landing facilities for any submarine cables wishing to land at the CLS, and Backhaul services in a "Cable Landing Station Reference Interconnect Offer" (CLS-RIO);
  - ii. submit its Reference Interconnect Offer for prior approval. The NRA may use its power to modify the RIO in accordance with national regulation. A CLS Operator desirous of making any modification whatsoever to its CLS-RIO shall submit all such modifications to the Authority for prior approval.
2. The CLS-RIO must include the following points:
  - i. the detailed terms and conditions of provided Connection services, co-location facilities (including virtual), backhaul services, and maintenance of co-location equipment in co-location space;
  - ii. the ordering and provisioning procedure;
  - iii. technical information connected with the installation and infrastructure of the SMP-CLS Operator needed by third operators to request the above-mentioned services;
  - iv. service level guarantees;
  - v. charges for the above services;
  - vi. payment conditions;
  - vii. time limit for execution; and
  - viii. minimum period of access and co-location.

- 3 National Regulatory Authorities shall monitor compliance with the conditions attached to the licenses and provisions of submarine cable Reference Interconnect Offers, and other obligations under the ECOWAS regulatory framework.

### **Article 12 – Tariff monitoring**

1. Charges for Connection services, Co-location facilities, Backhaul services, and operation and maintenance shall be in accordance with the principle of the relevant cost calculation framework set by the NRA.
2. On the basis of the cost calculation framework set by the National Regulatory Authority, the SMP-CLS Operator shall determine the charges taking into account the cost involved in Connection services, operation and maintenance provisioning of co-location facilities and Backhaul services, and submit them to the National Regulatory Authority.
3. The SMP-CLS Operator shall submit the CLS-RIO to the National Regulatory Authority for approval, setting out the details of cost of the network elements, costing methodology, and calculation sheets or any other calculation methods.
4. The charges shall be approved by the National Regulatory Authority on the basis of the existing costing methodology already in use at the NRA.
5. Prior approval by the National Regulatory Authority shall ensure transparency, fairness and reasonability, and also the SMP-CLS Operator shall not tend to adopt an arbitrary approach in prescribing various charges.
6. If an Operator fails to provide the required documentation, the National Regulatory Authority may make its own cost calculations in order to estimate the cost on the basis of information at its disposal.
7. If a National Regulatory Authority lacks sufficient information or has not yet implemented methods for calculating costs in accordance with the relevant provisions of the Supplementary Act on Access and Interconnection in respect of ICT Sector Networks and Services, it may, in a transitional way, implement the tariff monitoring proposed by the SMP-CLS Operator on the basis of an international benchmark in order to ensure that consumer charges do not discourage uptake.

### **Article 13 – Guarantees of quality Service Level**

National Regulatory Authorities shall ensure that SMP-CLS Operators provide a Service Level Guarantee consistent with international best practices and equivalent to those applied to their own services or to those of their subsidiaries or partners.

### **Article 14 – Dispute resolution**

1. Where the CLS Operator and an Eligible Operator fail to reach an agreement on access to the station and associated services such as Co-location and Backhaul, the dispute shall be brought before the National Regulatory Authority according to the dispute resolution mechanism provided for by the National Telecom/ICT Law.
2. In case of dispute between the CLS Operator and co-location operator, the former shall give the third party a reasonable time-frame determined by the National Regulatory Authority to propose an alternative arrangement before the termination of the co-location agreement.

### **Article 15 – NRA collaboration**

National Regulatory Authorities of the ECOWAS Member States shall define a framework for collaboration amongst the regulators regarding the rules or regulations governing sub-marine cable access in the sub-region. The Member States shall inform the ECOWAS Commission about any initiative taken on this matter

### **Article 16 – Publication**

This Regulation shall be published by the ECOWAS Commission in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of the Council of Ministers. It shall also be published by each Member State in its National *Gazette* within thirty (30) days after due notification by the Commission.

Done at Abidjan this 12<sup>th</sup> day of June 2012

H.E. Daniel Kablan Duncan

Chairman for the Council