

Laws of South Sudan



**National Communications Competition
Regulations, 2016.**

Final Text
Directorate of Legislation
Ministry of Justice
Date: 08 /06/2016.

Email: info@nca-ss.org
Web : nca-ss.org

Laws of South Sudan
National Communications Competition Regulations, 2016

Table of Content

Arrangement of Sections

Chapter I
Preliminary Provisions

1. Title and Commencement
2. Repeal and Saving
3. Application
4. Purpose
5. Interpretation

Chapter II
Mandate of the Authority

6. Mandate of the Authority over Competition Matters
7. Determination of Breach
8. Power to Designate Market Segments
9. Dominant Market Position
10. Dominant Market Power Reports

Chapter III
Responsibility of Dominant Service Provider

11. Interconnection Obligations
12. Accounts
13. Obligations of Licensees
14. Guidance

Chapter IV
Miscellaneous Provisions

15. Anti-Competitive Practices
16. Investigation of Complaints
17. Exemptions

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National Communications Competition Regulations, 2016

In accordance with the provisions of Sections 54 read together with Section 92 of the National Communications Act, 2012, the Authority with the approval of the Competent Minister, issue and promulgate the following into Regulations:

Chapter I
Preliminary Provisions

1. Title and Commencement

These Regulations shall be cited as the National Communications Competition Regulations, 2016, and shall come into force on the date of its signature.

2. Repeal and Saving

Any existing regulations or orders, directives, rules and guidelines governing the subject of these Regulations is hereby repealed; provided that any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of these Regulations shall continue in force and effect until repealed or amended by these Regulations.

3. Application

The provisions of these Regulations shall apply and governed all issues and matters related to anti-competition practices and prohibited activities of corporate in the telecommunications industry in South Sudan and other relevant matters thereof.

4. Purpose

1. The purpose of these Regulations is to:
 - a. provide regulatory framework for promotion of fair competition in communications sector; and
 - b. prevent abuse of market power and other anti-competition practices within communications sector.
2. Without prejudice to generality of sub-regulation (1) of this Regulation, it seeks to:
 - a. provide standards and procedures to be followed by the Authority in determining anti-competition conduct;
 - b. clarify agreements, conduct or practices that the Authority considered as anti-competition; and

- c. provide standards and processes that the Authority shall apply when determining whether communication licensee has a dominant position in the market.

5. Interpretation

In these regulations, all words and expressions that are defined under the Communications Act, 2012, shall have the same meanings herein; unless the context otherwise requires:

“Act” means the National Communications Act, 2012.

“Beneficiary” means any person who uses or benefits from communication services.

“Communications Services” means all services provided for, under the Act.

Chapter II
Mandate of the Authority

6. Mandate of the Authority on Competition Matters

1. The Authority shall have power to determine, pronounce upon, administer and enforce compliance of all its licensees in accordance with competition laws and regulations that are related to commercial activities in communications sector.
2. Subject to provisions of competition law and regulations, the Authority shall cooperate and coordinate with mandated institution in matters related to fair competition and equal opportunities in communications sector.

7. Determination of Breach

The Authority shall, in determination of practices or conducts that are incompatible with these Regulations:

- a. evaluate relevant market or market segment that the agreement, practice or conduct in question is related;
- b. determine whether the market or market segment is competitive; and
- c. establish whether licensee is engaging in anti-competition practices.

8. Power to Designate Market Segments

1. The Authority shall from time to time, through notice in Public Media, designate communications market segments.
2. The Authority, when evaluating or designating relevant market segments, shall consider:
 - a. communications products that constitute specific market, under which product dimension shall be assessed by analyzing:
 - (i) demand side substitutability to measure the extent which consumers are prepared or able to substitute other communications products or services for communications products or services subject to considerations at low cost;
 - (ii) supply side substitutability to determine the extent which suppliers are able to supply other communications products or services in place of communications products or services subject to consideration at low cost;
 - b. geographic scope of the market for specific group of consumers, considering the following conditions:
 - (i) geographic distribution and evolution over time of market shares;
 - (ii) pricing of services across the area under consideration;
 - (iii) pricing of different operators and its evolution over time in relevant areas; and
 - (iv) additional supply and demand characteristics which may indicate the existence of different competition pressures.
 - c. Any other factor or issue which is relevant in the opinion of the Authority.

9. Dominant Market Position

1. The Authority shall from time to time develop and publish in Public Media, guidelines to be followed when determining whether licensee is dominant in specific communications market.
2. The criteria shall among others include:
 - a. current degree and development of market concentration or market share of the licensee, determined by reference to revenues, numbers of subscribers or volumes of sales;
 - b. degree to which licensee prices vary over time;
 - c. ability of licensee to maintain or erect barriers to entry to the market, including control of essential facilities, access to superior technology, privileged access to resources capital markets, superior buying or negotiating position;
 - d. ability of the licensee to earn supernormal profits;
 - e. global technology and commercial trends affecting market power;
 - f. licensee power to make independent rate setting decisions;
 - g. degree of product or service differentiation and sales promotion in the market;
 - h. ability to materially raise prices without suffering commensurate loss in service demand to other licensees; and
 - i. any other matters which the Authority may consider relevant.

10. Dominant Market Power Reports

1. The Authority may, on its own motion or on application of interested person, prepare dominant market power report, to determine whether license is dominant in service or geographic communications markets.
2. The Authority shall among other factors, use criteria in Regulations 8(2) and 9(2) of these Regulations, when assessing or designating communications market.
3. The Authority may, when it determines in dominant market report that, licensee is dominant in accordance with criteria of regulation 9(2) of these Regulations, it shall declare dominant position in specific communications market sector.
4. The Authority may, on its own motion or pursuant to application by dominant licensee, review the dominant market power report, to determine whether the licensee is still dominant and shall within twenty-one days make decision that the licensee is not dominant or that licensee shall continue to be designated dominant.

Chapter III

Responsibility of Dominant Service Provider

11. Interconnection Obligations

1. When the Authority has declared any licensee to be dominant telecommunications service provider, the licensee shall:
 - a. meet all reasonable requests for access to its public telecommunications network in particular access at any technically feasible point on its telecommunications network;
 - b. adhere to principle of non-discrimination with regard to interconnection offered to other interconnecting licensees, particularly:
 - (i) apply similar conditions in similar circumstances to interconnecting licensees providing similar services and
 - (ii) provide interconnection facilities and information to other telecommunications licensees under the same conditions and quality, as it provides for its own services or those of its affiliates or subsidiaries;
 - c. make available, on request to other interconnecting licensees considering interconnection with its public telecommunications network all information and specifications reasonably necessary to facilitate conclusion of an agreement for interconnection, including information on changes planned for implementation within next six months, unless provided otherwise by the Authority;

- d. submit to the Authority for approval and publish Reference Interconnection Offer sufficiently unbundled giving description of interconnection offerings broken down into components according to market needs and associated terms and conditions including tariffs; and
- e. provide access to technical standards and specifications of its telecommunications network with which another interconnecting licensee shall be interconnected.

2. When dominant licensee abuses its position when negotiating interconnection agreements, the Authority shall:

- a. require dominant licensee to desist, change its conduct or adopt particular conduct; or
- b. declare the interconnection agreement wholly or partially invalid.

3. The Authority shall, before taking action in sub-regulation 2(b), of this Regulation, request the dominant licensee to refrain from the conduct inconsistent with these Regulations.

4. Any dominant licensee shall set charges for interconnection based on criteria and observe principles of transparency and cost orientation, as set out in regulation 13 of these Regulations.

5. The Authority may request dominant telecommunications service provider to prove that its interconnection charges are based on actual cost and where necessary request an adjustment of charges or impose default interconnection charges in the event of the proposed adjustment is not implemented by the dominant telecommunications service provider.

6. Any licensee that has been declared dominant in market segment shall:

- a. notify the Authority in writing of any proposal to change interconnection charges, in form and manner, as prescribed by the Authority from time to time;
- b. sufficiently unbundle charges for interconnection, to avoid the communications licensee requesting interconnection of payment for any item that is not related to the service requested;
- c. maintain cost accounting system that:
 - (i) complies with cost accounting guidelines that may be published by the Authority from time to time; and
 - (ii) demonstrates that its charges for interconnection have been fairly and properly calculated;
- d. avail to the Authority on request, description of its cost accounting system showing main categories under which costs are grouped and guidelines for allocation of costs to interconnection and the Authority, or any other competent body; regulations or guidelines have been adhered to.

7. Any dominant licensee shall promptly, on request, supply financial information to the Authority to level of detail specified by the Authority.

8. The Authority shall, upon satisfying that dominant licensee have fully complied with these Regulations together with any other guidelines prescribed, publish compliance report.

9. The Authority shall, while taking account of considerations of commercial confidentiality publish such financial information to contribute to open and competitive telecommunications market.

12. Accounts

1. Any licensee shall maintain separate books of account for each service as may be regulated by the Authority from time to time and shall not cross-subsidize prices for any service it offers in the market with revenue from the sale of communication systems and services.

2. Any licensee shall maintain accounting separation techniques to be focused on the separation of revenues, costs and capital employed into categories, to ensure that there is no discrimination between internal and external pricing in all services provided by the licensee.

3. When the interconnection services are not provided through structurally separated subsidiary, dominant licensee shall keep separate accounts as if telecommunications activities in question were in fact carried out by legally independent companies, to identify all elements of cost and revenue together with basis of their calculation and detailed attribution methods used.

4. Any dominant licensee shall maintain separate accounts in respect of interconnection services and its core telecommunications services and accounts shall be submitted for independent audit and thereafter published.

5. The Authority shall from time to time develop guidelines providing for system of transfer charges to be applied to services and products provided from one licensee to another and for the implementation of this regulation.

6. Any licensee shall promptly, on request, supply financial information to the Authority to the level of detail specified by the Authority.

13. Obligations of Licensees

1. All licensees shall provide uniform, non-preferential service on first-come-first-served basis, to all persons within covered geographical area or given class that has requested such service.

2. Any licensee shall not violate the principle of equal access and non-preferential treatment if it:
 - a. Considers the ability of person to pay for service when deciding whether to provide service to the person; or
 - b. Makes other rational classifications among subscribers, such as business and residential, and to provide service on basis of classification.

14. Guidance

1. When licensee intends to enter into agreement or take any action that may affect another licensee in the same market segment, it may seek guidance from the Authority at least thirty days prior to the entering into agreement or taking of such action.
2. The Authority shall respond within thirty days of receiving the request under sub-regulation (1) of this Regulation, stating whether the agreement or conduct is likely to contravene these Regulations;
3. Notwithstanding the provisions of these Regulations, any licensee shall ensure that all its agreements and conduct are lawful.

Chapter IV Miscellaneous Provisions

15. Anti-Competition Practices

1. The Authority may, on its own motion or upon complaint, investigate any licensee that it has reason to believe that it has committed an act or omission, or is alleged to have committed an act or omission of anti-competition practice, or to have engaged in anti-competition practices.
2. Without limiting the generality of sub-regulation (1) of this regulation, anti-competition practices shall be deemed to include but not limited to:
 - a. directly or indirectly imposing purchase or selling prices or other trading conditions that unfairly prevent, restrict or distort competition;
 - b. limit production, markets or technical development to the disadvantage of consumers and other licensees;
 - c. apply dissimilar conditions to equivalent transactions with other trading parties, placing them at competitive disadvantage;
 - d. make conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
 - e. any other practices that the Authority may issue from time to time.

16. Investigation of Complaints

1. When conducting an investigation under Regulation 15 of these Regulations the Authority shall give written notice to the licensee of the fact and in addition it may:
 - a. require the production of any document or information specified or falls within specified category, which it considers to be related to any matter relevant to investigation, at time and place, and in the manner or form specified;
 - b. make copies of, or extracts from any document produced;
 - c. require explanation of such document;
 - d. when document is not produced, the person in whose possession the document is kept, shall be required to provide required statement specifying where it can be found;
 - e. enter any premises with warrant, and require production of any document appearing to be the kind in respect of which the warrant was granted or relevant to the investigation and require any relevant information held in computer to be produced in any form that may be read and removable;
 - f. enter premises with warrant of search and take copies of, or extracts from, any documents appearing to be the kind in respect of which the warrant was granted and require any relevant information held in computer to be produced in form that may be read and removable.
2. The licensee issued with notice under sub-regulation (1) of this Regulation may, within 30 days from date of the notice, make representations in response to the notice.
3. Any person affected by contravention or anti-competition practice, may similarly make representation to the Authority.
4. When the Authority made decision that the licensee is competing unfairly, the Authority may:
 - a. order the licensee to stop anti-competition practice;
 - b. require the licensee to pay fine not exceeding equivalent of ten percent of annual turnover of the licensee for each financial year that the breach lasted up to maximum of three years;
 - c. declare anti-competition agreement or contracts void.
 - d. impose any of the penalties prescribed in Section 97 of the Act.
5. The provisions of sub-regulation (4) of this regulation, shall not in any way affect right of any person to make or sustain any claim under any applicable law in force for any act or omission which constitutes an offence under the Act or from being liable under any other applicable law to any punishment or penalty higher than that prescribed under the Act.

6. Any person aggrieved by the decision of the Authority under this Regulation may appeal before Court of competency.

17. Exemptions

These Regulations shall not apply to conduct which is necessary:

- a. for licensee entrusted with operation of essential communications services that relate to, among others, health, national security and any other circumstance that the Authority may prescribe;
- b. to comply with legal requirement; or
- c. to avoid conflict with international obligations.

Issued by the National Communications Authority this day .. 29th.....in the month of .. ~~December~~.....in the year 2016.



Joseph Luai Achuil

Hon. Joseph Luai Achuil
Chairperson,
Board of Directors
National Communications Authority
Republic of South Sudan
Juba

In accordance with the provision of Section 7(4) read together with Section 92 of National Communication Act, 2012; I, Michael Makuei Lueth, Minister of Ministry of Information, Communication Technology and Postal services; do hereby grant approval and authorize the National Communications Authority to issue these Regulations.



Michael Makuei Lueth

Hon. Micheal Makuai Lueth
Minister,
Ministry of Information, Communication
Technology and Postal Services
Transitional Government of National Unity
Republic of South Sudan
Juba