

TOGO
TELECOMMUNICATION SECTOR
LIBERALIZATION
AND THE ROLE OF THE REGULATOR

Until 1986, telecommunication activities in Togo were the responsibility of a directorate of the Ministry in charge of posts and telecommunications. From 1986 to 1990, those activities were entrusted to the *Office des Postes et Télécommunications du Togo* (OPTT), which in 1991 was transformed into a State-owned company governed by the rules of management applicable to private companies.

In 1996, the Government adopted a sectoral policy statement which opened the way for reform of the sector. This resulted in the splitting of OPTT into two State-owned companies, one responsible for posts (the *Société des Postes du Togo* (SPT)) and the other for telecommunications (the *Société des Télécommunications du Togo* (Togo Telecom)).

Within the framework of this reform, Togolese Act No. 98-005 of 11 February 1998 on Telecommunications was enacted, liberalizing the sector. The Act defines the responsibilities of the Minister responsible for telecommunications as well as those of the Regulatory Authority for the Postal and Telecommunication Sectors (*Autorité de réglementation des secteurs de postes et de télécommunications*) (ARP&T) which it established. At the same time, it introduced a licensing regime setting out requirements for the provision of telecommunication services, and established arrangements in respect of interconnection.

The 1998 Act was immediately followed by two decrees: Decree No. 98-034 of February 1998 on the organization and functioning of the Regulatory Authority for the Postal and Telecommunication Sectors, and Decree No. 98-089 of 16 September 1998 on the interconnection of telecommunication networks. It was these texts which together opened up the sector to competition.

The Regulatory Authority for the Postal and Telecommunication Sectors established by the 1998 Act, the role of which is essentially to establish a legal and regulatory framework that ensures the free play of competition and development of the telecommunication sector under the best possible conditions, has been operational since January 2000. At that time, the national telecommunication landscape comprised one fixed telephony operator, two mobile telephony operators (one of which, *Togo Cellulaire*, is a subsidiary of the incumbent operator), an operator specialized in the provision of Internet access, and various ISPs.

I THE REGULATORY AUTHORITY FOR THE POSTAL AND TELECOMMUNICATION SECTORS (ARP&T)

A The powers of the Regulatory Authority

The Regulatory Authority is an independent public body responsible for implementing legislation pertaining to the telecommunication sector. As such it is entrusted with a range of powers.

1 The Regulatory Authority is a regulatory body

Within the framework of its task of implementing the Act on Telecommunications, the Regulatory Authority:

- draws up the requirements to be observed by holders of the various types of licence and authorization;
- establishes the general conditions applicable to networks and services that are not subject to authorization;
- determines the required characteristics for terminal equipment;
- establishes the level of the fees to be paid by the holders of licences and/or authorizations;
- approves interconnection agreements signed between operators.

2 The advisory role of the Regulatory Authority

Within the framework of its role as an advisory body to the Minister responsible for telecommunications, the Regulatory Authority:

- proposes to the Minister the procedure for invitations to tender, as necessary;
- gives advice on scenarios involving limitation of the number of authorizations;
- makes the necessary enquiries, on behalf of the Minister, in respect of requests for authorizations and of invitations to tender.

To this end, the Regulatory Authority receives requests for authorization relating to the establishment and operation of public telecommunication networks and provision of the public telephony service.

3 The decision-making and supervisory functions of the Regulatory Authority

The Regulatory Authority has a supervisory role and decision-making powers. Within this framework, it:

- manages and supervises the radio frequencies allocated for civil and community requirements;
- maintains the telecommunication register;
- exercises general supervisory powers with respect to observance of required technical specifications and to the activities of operators;
- receives announcements required under the corresponding legislation, including:
 - announcements relating to the introduction, modification or cessation of telecommunication services,
 - interconnection agreements;
- monitors compliance with the rules relating to authorizations, announcements and licences;
- monitors compliance with the rules of competition, taking steps to combat anti-competitive practices and abuses of a dominant position.

4 The conciliation and arbitration role of the Regulatory Authority

The Regulatory Authority plays a dual role with respect to the settlement of disputes:

- *a conciliatory role*: in the event of a dispute between an operator and its users, the Authority must, where the case is brought before it, seek to achieve reconciliation between the parties;
- *an arbitral role*: in the event of a dispute between operators, the parties may call upon the Regulatory Authority to act as arbiter.

5 The disciplinary role of the Regulatory Authority

The Regulatory Authority may exercise its disciplinary powers in cases of infringement of the regulations, following a warning to the offender to abide by the legislation in force. In this respect, it may:

- order provisional measures intended to ensure the continued operation of the networks and services in question;
- decree, in certain cases, and in cases of grave dereliction of duty, following proceedings in which each side has the right to defend itself, that the activity having given rise to the infringement be suspended for a maximum period of three months.

B Structure and functioning of the ARP&T

The Regulatory Authority is administered by a Management Committee and a Director-General.

The management of the Authority is supervised by an auditor appointed for a renewable period of three years by joint order of the Minister of Finance and the Minister in charge of the supervisory ministry.

The Authority's accounts are submitted to the Court of Accounts for inspection.

The Management Committee

The Management Committee was appointed by decree on 6 August 1999. It comprises seven members appointed on the basis of their competence in the legal, economic and technical fields, as follows:

- one member appointed by the Minister responsible for the telecommunication sector;
- one by the Minister of the Interior;
- one by the Minister responsible for national defence;
- one by the Minister responsible for communication;
- three by the Chamber of Commerce and Industry.

The members of the Management Committee are appointed by a council of ministers for a term of office of four years, renewable once. They take an oath before the Court of Appeal before taking up their functions.

The Management Committee is empowered to deal with all matters falling within the purview of the Regulatory Authority. It makes proposals to the Government regarding the appointment of the Authority's Director-General and establishes the level of the latter's remuneration, and it approves the internal rules of procedure of the Regulatory Authority, its staff regulations, the rules and procedures pertaining to the Authority and the Authority's annual activities report and its financial statements, following examination of the report by the auditor.

The Directorate-General

The Directorate-General is headed by a Director-General appointed by Council of Ministers decree on the proposal of the Management Committee for a period of five years, renewable once. The current Director-General was appointed on 15 December 1999.

II THE WORK OF THE REGULATORY AUTHORITY SINCE ITS ESTABLISHMENT

Since it commenced operations in January 2000, the Regulatory Authority has helped to complete the legal framework governing the activities of the various telecommunication sector players.

1 Introduction of a clear regulatory framework

Since early 2000, the Authority has been providing operators with the necessary tools for fair competition. It has also drawn up orders and had them signed by the Minister responsible for telecommunications and has contributed to the clarification of the regulatory framework by enacting orders and taking a number of decisions:

- Order No. 012/MEMETP/CAB of 11 May 2001 relating to the conditions for issuance of an authorization to operate IP telephony;
- Order No. 029/MEMETP/CAB of 7 September 2001 relating to conditions for the issuance of authorizations to operate independent networks;
- Order No. 033/MEMETP/CAB of 7 September 2001, modifying and supplementing Order No. 012/MEMETP/CAB of 11 May 2001 relating to conditions for the issuance of an authorization for operating IP telephony;
- Decision No. 2001-001/ART&P/CD of 5 September 2001 relating to arrangements for management and monitoring of the radio-frequency spectrum;
- Decision No. 2001-002/ART&P/CD of 5 September 2001 relating to the approval of terminal equipment, the installers thereof and radio facilities;
- Decision No. 2001-003/ART&P/CD of 26 September 2001 relating to conditions for the announcement of unrestricted telecommunication services.

It has also drawn up the requirements in respect of:

- specifications for the installation and operation of VSAT stations;
- specifications relating to the operation of a public telephony network based on the Internet protocol;
- specifications setting out the conditions for installation and operation of earth stations by an operator holding a license.

It has drawn up and had adopted by the Government:

- Decree No. 2001-007/PR of 7 February 2001 establishing the levels of the fees to be paid by operators and telecommunication service providers and arrangements for the collection and allocation thereof;
- Decree No. 2001-146/PR of 4 July 2001 establishing the conditions for the authorization and operation of public telecommunication networks and for provision to the public of the telephony and telex services;

- the Decree on universal service.

2 Facilitating operator activities

2.1 Authorizations granted

The introduction of a clear regulatory framework has enabled the Minister responsible for telecommunications to grant various authorizations and licences:

- two operating licences for telephony using the Internet protocol;
- licences for the operation of VSAT networks for provision of the Internet service, data transmission, telemedicine applications and voice-over-IP services.

At the same time, the Regulatory Authority has continued to carry out its mission in terms of the management and monitoring of the radio-frequency spectrum, assigning frequencies to users and also withdrawing frequencies where necessary.

2.2 Invitations to tender currently under way

The Regulatory Authority has contributed to liberalization and transparency within the sector by launching two international invitations to tender, the first relating to a third GSM mobile telephony licence, and the second to the selection of a rural telephony operator within the framework of a pilot project (AMOU and SOUTH-WEST BASSAR-KARA areas) initiated by the World Bank.

Regarding the first international invitation to tender, the winning bid was selected on 21 September 2001, and the Government is currently engaged in negotiations with the winning bidder, GNT GmbH, a German company belonging to the ELIOS group. The negotiations began on 15 October 2001 and the memorandum of agreement was signed on 17 October 2001.

In the case of the selection of a rural telephony operator, the final date for submission of bids was 24 August 2001 and a study of the technical and commercial offers is now under way. A decision on the winning bidder will be made within a matter of days, once the financial bids have been opened.

CONCLUSION: THE ADVANTAGES OF LIBERALIZATION AND REGULATORY AUTHORITY INTERVENTION

1 The liberalization process initiated by the Government is continuing with the privatization of the incumbent operator (Togo Telecom).

The international business consultancy firm Sterling Merchant Finance Ltd. has, by means of an invitation to tender, been selected to assist and advise the Government in this task. If all goes well, the privatization process should be completed by late 2002.

2 The establishment of the Regulatory Authority for the Postal and Telecommunication Sectors has had positive effects with regard to development of the sector, and the operators currently in the market acknowledge the driving role that the Regulatory Authority plays in the areas of sector liberalization, transparency and development. The proof of this can be seen in the fact that a third operator has undertaken, following an invitation to tender, and despite the narrowness of the national market, to launch itself into the mobile telephony arena, thereby increasing the level of competition.

In the interests of transparency, the Authority regularly brings newly-adopted texts and standards to the attention of operators and the public (*Journal Officiel de la République de Togo*).

It also published, in late August 2001, a manual outlining the latest developments in the telecommunication sector.

In the course of its work, the Regulatory Authority pays particular attention to ensuring:

- a level playing field among operators and equality in terms of access by the public;
- unrestricted competition between operators: in 2001, the population has benefited from a considerable lowering of mobile service access charges, which have fallen on average from FCFA 100 000 to lower than FCFA 20 000 (subscription charge), as well as in the cost of

international calls, while the services offered to the public by fixed and mobile operators are very varied and of a high quality.

3 In 2000, the Regulatory Authority had to step in on two occasions to settle disputes relating to transfer charges between mobile operators (June 2000) and between the fixed operator and mobile operators (December 2000), in addition to which it punished infringements by withdrawing the authorizations of entities having failed to abide by the regulations in force.

4 In short, the liberalization and work of the Regulatory Authority have made the telecommunication sector one of the most dynamic sectors in Togo, particularly where telephony and Internet services are concerned, there being currently four access providers and over 70 ISPs throughout the country. All of this has had a positive impact on the other sectors of the economy, including advertising companies, the media and consultancy and engineering firms.