

Draft decision A/DEC./__/__/2006 on the harmonization of policies and of the regulatory framework for the information and communication technology (ICT) sector

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

Considering that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Considering that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

Mindful of the need to elaborate a harmonized information and communication technology (ICT) policy framework in the West Africa sub region;

Desirous to move ahead in this direction;

On the recommendation of the fifty-sixth session of the Council of Ministers held in from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives, scope and periodic review

- 1 The aim of this decision is to establish a harmonized framework for information and communication technology (ICT) policy and regulation. It establishes the responsibilities of Member States and their respective national regulatory authorities by setting out the central principles of ICT policy and regulatory guidelines. It is supplemented by five further decisions dealing with specific aspects of the ICT sector and focusing on the telecommunication sector in particular. It establishes a series of procedures aimed at assuring the harmonized application of the regulatory framework throughout ECOWAS.

- 2 The provisions of this decision shall not apply to regulations in the area of broadcasting policy and content.
- 3 The provisions of this decision and the supplementary decisions will be re-examined periodically, with a view to determining whether they need to be amended to take account of new developments in the area of ICTs and/or ICT markets.

Article 2: Definitions

- 1 For the purposes of this decision, the following definitions shall apply:

Authorization: Administrative Act (individual license, concession contract or general authorization) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit telecommunication networks or offer telecommunication services.

Allocation (of a frequency band): Entry in the Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more terrestrial or space *radiocommunication services* or the *radio astronomy service* under specified conditions. This term shall also be applied to the frequency band concerned.

ARTAO: West Africa Telecommunications Regulators Assembly (WATRA)

Assignment (of a radio frequency or radio frequency channel): Authorization given by an administration for a radio *station* to use a radio frequency or radio frequency channel under specified conditions.

national regulatory authority : the agency, or one of several agencies, to which a Member State has given responsibility for performing any of the regulatory functions referred to in this decision.

Authority : as defined in Article 1 of the ECOWAS Treaty.

Council: the Council of Ministers as established pursuant to Article 1 of the ECOWAS Treaty.

Consumer: a natural person who uses or requests a publicly accessible telecommunication service for non-business purposes.

supplementary decisions: Decision A/DEC./__/__/2006 on interconnection; Decision A/DEC./__/__/2006 on the granting of licenses; Decision A/DEC./__/__/2006 on numbering; Decision A/DEC./__/__/2006 on spectrum management; and Decision A/DEC./__/__/2006 on universal service.

telecommunication equipment: : equipment, including hardware and software, used to provide telecommunication services.

terminal equipment: any equipment intended to be connected, directly or indirectly, to a termination point of a telecommunication network for purposes of the transmission, processing or receipt of information. This does not include equipment for accessing radio or television broadcasting services intended for the public which are transmitted over the air, by cable or by other means of communication, except where such equipment can also be used to access telecommunication services.

Member State: a State Party to the ECOWAS Treaty, as provided for in the preamble thereto.

essential requirements: requirements necessary to guarantee the following, in the general interest:

- the safety of users and of personnel operating telecommunication networks;
- the protection of networks, and particularly the protection of exchanges of control and management information pertaining to networks;
- the interoperability of networks, services and terminal and the protection of data;
- where applicable, the proper and efficient utilization of the radio spectrum,
- environmental protection, town planning and regional development issues

service provider: any natural or legal person that provides a telecommunication service to the public.

provision of a telecommunication network: the setting up, operating, overseeing or making available of a telecommunication network.

information and communication enterprise : any entity

- a) that executes a commercial agreement or
- b) that is engaged in a business activity

having a connection to information and communication technologies.

Information: : signs, signals, writing, images, sounds or information of any other kind which make up the content transmitted by means of communication processes including telecommunication processes.

Installation: any equipment, apparatus, cable, radio or optical system, item of infrastructure or technical device that may be of use to information and communication technologies, or any other operation directly related thereto.

interoperability of networks and terminal equipment: the ability of equipment to function, first, with the network, and, second, with other terminal equipment that can be used to access the same service.

license the administrative document (including individual license, concession class license) permitting the operation of a network or the provision of communication services or the use of the radio-frequency spectrum.

message: communication of any kind in the form of words, sound, data, text, visual image, signal or code, or in any other form or combination of forms.

minister or **ministry:** except where otherwise stated, the minister or ministry in charge of information and communication technologies within the government of the ECOWAS Member State.

operator: any juridical person operating a telecommunication network that is open to the public, or providing a telecommunication service to the public.

legal person : a legal entity consisting of a natural person, society, association, joint venture, trust or corporation.

radiocommunication : any emission, broadcasting, transmission or reception of radio waves specifically for telecommunication purposes.

broadcast : any radiocommunication whose emissions are intended to be received by the public.

telecommunication network: any installation or group of installations that provides for the transmission or routing of telecommunication signals, and for the exchange of control and management information relating thereto, between the network's termination points.

Executive Secretariat: the Executive Secretariat of ECOWAS.

telecommunication service: the service, usually provided on a fee-paying basis, which consists wholly or primarily of transmitting or routing signals over telecommunication networks, or a combination of those functions, including transmission services over networks used for broadcasting, but which excludes services consisting of providing content with the aid of telecommunication networks or services or of exercising editorial responsibility with respect to such content.

information and communication services: services that involve the use of information and communication technologies, including telecommunication services.

information and communication technologies (ICTs) : technologies used to gather, store, use and send information, including technologies that involve the use of computers or any communication system, including any telecommunication system.

telecommunication: any transmission, emission or reception of signs, signals, writing, images, sounds or information of any kind by wire, by optical means, by radio, or by any other electromagnetic system.

Treaty : the ECOWAS Treaty, as revised on 24 July 1993.

UEMOA : the West African Economic and Monetary Union (WAEMU).

user: any natural or juridical person that uses or requests a telecommunication service that is open to the public.

end user: a user that does not provide public telecommunication networks or publicly accessible telecommunication services.

- 2 Any terms contained in this decision that are not defined in paragraph 1 above shall have the meanings given to them in the Treaty.

CHAPTER II

Guidelines for a policy for information and communication technologies

Article 3: Development and scope of ICT policy

- 1 The Member States shall ensure that, in developing and defining their national ICT policies, they take into account all social, economic, legal and policy information so as to set up a suitable policy and realistic objectives.
- 2 To this end, the Member States shall refrain from including an excessive number of items and sectors in the scope of the policy, and from the outset focus the national ICT policy on the industry itself.

Article 4: Importance of a clear policy

The Member States shall ensure that a clear ICT policy is put in place, by identifying objectives, which will be translated into policy, and then into legal rules of a legislative or regulatory nature, to be applied by the regulatory body.

Article 5: Objectives of ICT policy

- 1 The Member States shall ensure that the national ICT policy has the following objectives:
- a) creation of an environment that is propitious to the sustainable dissemination and development of ICTs;
 - b) establishment of a strong, stable and competitive ICT industry in the country and the region, respectively;
 - c) growth in existing services and in the range of new services and installations that are available;
 - d) provision of affordable, broadly available, top-quality services;
 - e) access to ICTs, by application of the principle of technology neutrality throughout the territory of the Member States;
 - f) development and institution of appropriate policies and programs for universal access, with, for example, some of the key actions which can help in the further development of a national information infrastructure and the achievement of universal access objectives: provision of broadband capacity, availability of services at affordable costs, provision of standards to address reliability and redundancy issues, ensuring adequate capacity to provide service on demand, accessibility of services by the large majority of consumers, facilitating the delivery of a wide range of value-added services, facilitating the chance to access information;
 - g) attracting investment in the sector;
 - h) encouraging innovation, development and utilization of new technologies;
 - i) optimization of countries' limited resources, such as the radio spectrum and numbering space;
 - j) promoting information sharing, transparency and accountability, and reducing bureaucracy within and between organizations, and towards the public at large;
 - k) attaining a specified minimum level of information technology resources for educational institutions and government agencies;
 - l) development of expertise, in the individual countries and within the region, in setting up and managing ICTs;
 - m) promotion and increase of ICT use by providing individuals and organizations with a minimum level of ICT knowledge and high-quality training;
 - n) assistance in understanding information technology, its development and its cross-disciplinary impact.
 - o) promotion of local content development

Article 6: Governance principles for the ICT sector

In order to adopt an acceptable and sustainable ICT policy for the entire Community, the Member States shall ensure that the authorities responsible for defining and developing such a policy take the necessary steps to ensure good governance in the sector, by means of the following.

- a) **Promotion of stakeholder awareness**, by
 - promoting stakeholder participation and constitution-building throughout society;

- introducing internet at the earliest possible stage in school programs.
- b) Ensuring broad-based stakeholder participation and planning**, by
 - promoting ICTs through workshops, seminars, media events and pilot projects to show the practical benefits of ICTs;
 - cultivating ICT champions.
- c) Political buy-in and championing on a local and national level**, by
 - ensuring communication between interested parties, such as the regulator, ministries, operators, the private sector, NGOs, beneficiaries;
 - ensuring participation and buy in at the local level;
 - ensuring that ICT policy is tailored to the realities of the market, by analyzing the situation in advance and involving local players in the process.
- d) Coordination with other policies/priorities by focusing on the objectives of ICT policy without ignoring the synergy between sectors.**
- e) Relevance and usefulness of policy and projects**, by
 - aiming for innovation;
 - defining targets, such as internet to municipalities, broadband to rural areas, etc.
- f) Transparent decision-making procedures**, by
 - adopting transparent decision-making and rule-making procedures relating to ICT policy and regulation;
 - consulting the public so as to ensure a transparent rule-making and decision-making process.
- g) Sustainability of projects**, by
 - ensuring adequate training;
 - taking account of realities in the technologies introduced through ICT initiatives;
 - having appropriate timing.
- h) The regional and international framework**, thanks to the policy of coordination with other initiatives in the region and globally.

CHAPTER III

Institutional framework for the ICT sector

Article 7: Cooperation at the level of the institutional framework

The Member States shall ensure that sufficient attention is paid to the institutional framework governing ICT policies, by ensuring that cooperation is set up between the various bodies responsible for the sector, so as to make administration of sector activities efficient.

Article 8: Allocation of tasks

The Member States shall ensure that the responsibilities and terms of reference of each member of the institutional framework are clearly defined so as to avoid any uncertainty regarding the allocation of tasks. To this end, the allocation of tasks must be reflected in national regulations that apply to the ICT sector, so that the relations between the different entities can be determined, along with the credibility of the members in the performance of their tasks.

Article 9: ICT policy function

The Member States shall ensure that the national ICT policy performs the following functions, which fall within the remit of the responsible Minister:

- a) develop and review ICT policies consistent with the purposes of the present Decision;
- b) be responsible for matters of international telecommunications affecting the country;
- c) propose a policy related to the provision of universal service and submit it to the Government for approval;
- d) follow up the implementation of this policy for the purpose of expanding the scope of coverage of ICT services, both horizontally and vertically, in such a way as to meet the requirements of economic and social development in the country, and draw up plans that encourage investment, on a competitive basis, in the ICT sectors.

Article 10: Regulatory guidelines

- 1 The Member States shall ensure that ICT regulations set for the manner in which the national ICT policy is to be applied, and in particular:
 - a) by defining the basic regulatory principles (for example the right to access) and processes (for example, licensing);
 - b) by providing the statutory foundation and mandate for the sector's institutions (for example, consultative and regulatory bodies);
 - c) by specifying the regimes under which the regulator operates and which define its functions and degree of independence, and also detail the legal principles that lead to the implementation of policy and policy objectives, such as tariff structures and universal access programs.
- 2 The Member States shall ensure that regulatory functions for the sector are performed by the national regulatory authorities in an independent, proportionate, impartial and transparent manner with a view to achieving the following objectives:
 - a) Adoption of the principle that regulation should be technology-neutral, and therefore a prohibition against granting unjustified advantage to any particular technology.
 - b) Gradual creation of an open and competitive market for telecommunication networks and services, with:
 - full respect for the interests of users, as regards choice, price, quality and returns;
 - prevention of any distortion and restriction of competition in the telecommunication sector, with due allowance for ongoing transitional regimes;
 - encouragement of rational investment in the infrastructure;
 - efficiency in the allocation and assignment of limited resources.

- c) Development of the interior market:
 - by watching over the transition of the Member States towards the elimination of barriers;
 - by facilitating the installation and development of trans-national networks and interoperability of services within ECOWAS;
 - by ensuring that, in similar circumstances, there is no discrimination in the treatment accorded to operators and providers of telecommunication services, with due allowance for ongoing transitional regimes;
 - by letting the information society develop within ECOWAS: with the growth of the telecommunication infrastructures, provide support for content services, including broadcasting content.
- d) Support the interests of the population and the struggle against poverty within ECOWAS:
 - by supporting the construction of universal access to telecommunication services in accordance with the terms of the Decision on universal access/service;
 - ensuring a high level of protection of personal data and privacy;
 - requiring transparency of tariffs and conditions for using telecommunications services, addressing the needs of specific social groups, such as low-income groups, people living in isolated rural areas, and disabled persons.

CHAPTER IV

National regulatory authorities

Article 11: Status, independence, and transparency of the national regulatory authorities

- 1 The Member States shall ensure that the national regulatory authorities exercise their powers in an impartial and transparent manner.
- 2 Member States shall guarantee the independence of the national regulatory authorities with respect to the political authorities and all organizations providing telecommunications networks, equipment or services, or otherwise active in the sector, by ensuring that the former are legally distinct from and functionally independent of the latter.
- 3 Those Member States that retain ownership or control of companies that provide telecommunication networks or services shall ensure complete and effective separation of the regulatory function from the activities associated with ownership or control.
- 4 The Member States shall take the necessary steps to guarantee the following:
 - a) clear, precise terms of reference for the national regulatory authorities and decision-making bodies;
 - b) clear, transparent internal procedures for the national regulatory authorities, including
 - decision-making procedures for the decision-making bodies of the national regulatory authorities,
 - decision-sharing among the deliberative bodies,

- incompatibility of the functions of the members of decision-making bodies with any other activity in the sector,
 - prohibition on staff members taking on any other paid work or holding any direct or indirect interest in any company in the sector,
 - staff recruiting and nomination of leadership on the basis of a transparent procedure by which candidates are invited to apply on the strength of relevant experience in the ICT domain and demonstrated professional qualifications,
 - establishment of a fixed remuneration scheme for the members of the decision-making bodies,
 - prohibition on members being re-appointed more than once,
 - protection of members against dismissal except in the case of demonstrated grave misconduct;
- c) the creation of transparency mechanisms and the distribution of procedures for consultation with the sector players, giving interested parties an opportunity to bring forward their observations on proposed measures within a reasonable time-frame, as well as creation of a central information desk to give access to all of the ongoing consultation exercises and publish the results of public consultations, except in specifically described cases where confidentiality is an issue;
- d) creation of provisions to ensure that these tasks are only performed by duly sworn persons;
- e) publication of an annual report of activities.
- f) the publication of all decisions of regulatory authority in the Official Journal of the Member State concerned or in an official regulatory authority publication or by any other relevant means.

Article 12: The resources of the national regulatory authorities

- 1 The Member States undertake to do what is necessary to give the national regulatory authorities the financial and human resources they need to perform their tasks in an impartial, autonomous and transparent manner.
- 2 The Member States undertake to give preference to self-financing schemes for the national regulatory authorities, and to provide for all or a portion of the operator contributions, fees and other financial compensation paid by the operators to be allocated to their work in this sector. In any event, the funding systems for the national regulatory authorities must not have the effect of restoring the influence and the interests of organizations that were supposed to be kept at arm's length through the separation of the regulatory and operating functions.

Article 13: Areas of activity of the national regulatory authorities

- 1 The Member States shall inform the Executive Secretariat of the Community of the existence of any national regulatory authorities charged with the application of the present Decision, the implementation measures relating thereto, and their respective responsibilities, taking care to avoid overlapping tasks.

- 2 The Member States shall publish the tasks to be performed by the national regulatory authorities in a readily accessible form, particularly in cases where different bodies have been entrusted with those tasks.
- 3 The Member States shall ensure that the following regulatory tasks are performed by the respective national regulatory authorities:
 - a) developing, at the request of the relevant government authority or at the initiative of the national agency, proposals to
 - adapt the legal, economic and security framework in which ICT activities take place, such as draft laws, decrees and ministerial directives relating to the regime of activities for the different operators active in the ICT sector, and
 - ensure effective competition, with technology-neutral regulation wherever possible;
 - b) processing license applications, preparing and carrying out licensing procedures by competitive bidding, and preparing and updating, in consultation with the other ministerial bodies involved, the texts for the licensing terms of reference that lay down the rights and obligations of public telecommunication network operators;
 - c) accepting the preliminary files for telecommunication activities requiring authorization. The national regulatory authorities must deliver authorization and prepare the associated documents, including the terms and conditions for authorization;
 - d) delivering registration and verification certificates, for all those activities of operators and service providers that are subject to a requirement for declaration;
 - e) delivering mandatory specifications and approvals for terminal equipment and verifying conformity;
 - f) monitoring compliance with existing regulations and terms of licenses, authorizations and declarations granted in the ICT sector. To this end, the national regulatory authorities will receive and study all information and documentation required from the operators of telecommunication networks and services under the terms of their licenses and terms of reference, and request any additional information that may be needed;
 - g) monitoring the ICT industry under economic and technical aspects, in accordance with normal practice and internationally recognized protocol, taking into account technology convergence in the ICT domain;
 - h) fostering and protecting effective competition and a fair and efficient market between the organizations involved in the ICT industry in their respective countries, duly taking into account the public interest and preventing distortion and restriction of competition in the ICT sector;
 - i) establishing, for operators, performance standards relating to the provision of ICT services, and monitoring compliance with those standards;
 - j) conducting monitoring, and submitting reports to the responsible Minister, on information relating to the sector, such as the performance of the public operators, the quality of consumer services, and consumer satisfaction, measured according to existing international codes of practice;
 - k) dealing with all questions relating to the protection of the interests of consumers, which includes setting up a suitable system for receiving consumer complaints, the conduct of investigations, concerning ICT services, and submission of such complaints to the appropriate agency, where required;

- l) the fulfillment, by the public operators, of their obligations as promulgated, so as to ensure that adequate, high-quality, affordable services meeting the various needs of the consumers are being delivered;
 - m) elaborating and, if necessary, revising the accounting requirements and tariff principles to be used by operators and service providers;
 - n) regulating the protection and security of data;
 - o) security and quality of every ICT service, and, to that end, determining the technical standards for those services and the connection of user equipment to communication networks;
 - p) managing and assigning spectrum, and monitoring usage conditions;
 - q) allocating numbering resources and managing the numbering plan;
 - r) examining and monitoring the implementation of interconnection and network access conditions, in accordance with the terms of the Decision access and interconnection in respect of ICT sector networks and services;
 - s) implementing the policy for the development of universal service, in accordance with the terms of the Decision on universal access/service and network performance obligations;
 - t) implementing the tariff policy applicable to telecommunication services;
 - u) authorizing or regulating the registration, administration and management of domain names in the country, and providing a structured mechanism for their management;
 - v) monitoring the development of new information and communication technologies and developing measures to stimulate and facilitate investment in the ICT sector;
 - w) encouraging regional ICT connectivity and trade in services.
- 4 In those cases in which the granting of licenses or authorizations is entrusted to a body separate from the national regulatory authorities, the Member States shall make the necessary legal and regulatory provisions to charge those authorities with investigating applications and providing detailed opinions prior to the granting of such authorization.

Article 14: Provision of information

Member States shall ensure that organizations providing telecommunication networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Decision or the specific Decisions. Said organizations shall provide such information promptly on request, respecting the deadlines and providing the level of detail required by the national regulatory authority. The information requested by the national regulatory authorities shall be proportionate to the performance of that task, and those authorities shall give the reasons justifying the request for information. The principle of business secrecy is not applicable to national regulatory authorities. Nevertheless, such entities must respect the confidentiality of all information received.

Article 15: Monitoring and sanctioning powers

- 1 The Member States undertake to invest the necessary powers in their national regulatory authorities to apply sanctions and monitor the activities of the sector, including:
 - a) mandatory approvals and specifications, and the conditions for equipment usage;

- b) terms and conditions for limited resources;
 - c) compliance with the obligations incumbent on operators and providers of telecommunication services, in accordance with the applicable regime, in particular those of operators and service providers in a dominant position.
- 2 Member States undertake to make the legal and regulatory arrangements needed to endow the national regulatory authorities with the power to impose sanctions. This power will include:
- a) the possibility of requiring the modification of unfair provisions in user agreements or conventions governing interconnection or access to the network of operators;
 - b) fining operators and service providers who infringe against telecommunication sector legislation to compel them to meet their obligations;
 - c) imposing penalties against operators and service providers who fail to comply with the obligations incumbent on them in the exercise of their activity;
 - d) revoking, suspending, or proposing the revocation or suspension of authorization in cases where the operator or telecommunication service provider is guilty of an infringement and fails to remedy the situation within a reasonable time after being duly notified by the national regulatory authority.
- 3 The Member States shall satisfy themselves that the national regulatory authorities exercise the powers with which they have been endowed in a proportionate manner, respecting the principle of adversarial process, and in accordance with transparent, objective and non-discriminatory procedures.

Article 16: Settlement of disputes

- 1 Without prejudice to any action that the ECOWAS institutions or one or more Member States may bring in application of the Treaty, the Member States shall ensure that all telecommunication operators and service providers are able to have recourse to the responsible national regulatory authority in the event of any dispute relating to:
- a) any violation by a telecommunication operator or service provider of any legal or regulatory provisions governing telecommunication or of any contractual terms;
 - b) any denial of interconnection or capacity or infrastructure leasing that is not in accordance with the conditions stipulated in the applicable texts and to any disagreement relating to the application or interpretation of reference interconnection offers or interconnection agreements;
 - c) the conditions under which an operator is granted or denied occupancy rights within the public persons domain, or rights-of-way over private property for the purposes of setting up and operating a telecommunication network;
 - d) the exercise of special or exclusive rights by an entity active in the sector.
- 2 The Member States shall also ensure that every user is able to have recourse to the national regulatory authority in the event of any dispute relating to:
- a) a violation, by a telecommunication operator or service provider, of its terms of reference or other such document containing the conditions of its authorization or declaration;
 - b) the legal basis of any provision of a standard consumer subscription contract.

- 3 The Member States shall ensure that the national regulatory authorities put in place transparent, non-discriminatory procedures for dispute settlement. In particular, they shall ensure that the national regulatory authorities
 - a) make rulings within a reasonable period of time;
 - b) respect the principle of adversarial process and the rights of the defense, by giving the parties an opportunity to present their observations;
 - c) duly substantiate their decisions;
 - d) make their decisions public in accordance with the conditions and within the limitations foreseen under national law.
- 4 The Member States shall further take those measures that are needed to ensure that, in the event of an imminent serious violation of any regulation governing the telecommunication sector, the national regulatory authorities shall be empowered to impose staying measures after the parties have been heard, particularly in order to protect the continuity of operation of networks and services.
- 5 The Member States shall ensure that the procedure established above is applicable in the event of a dispute between parties based in two different Member States.
- 6 Any party may refer the matter under dispute to either of the national regulatory authorities concerned. The national regulatory authorities will coordinate their efforts so as to resolve the dispute in a manner consistent with the guiding principles of the above regulation.
- 7 In the absence of a reaction from the authority in question, or of coordination between the authorities, and in order to arrive at a solution, any party may refer the matter to the Executive Secretariat of ECOWAS, by addressing a copy of the referral to each of the parties and national regulatory authorities concerned. The Executive Secretariat of ECOWAS will take all necessary steps to achieve settlement of the dispute in question by the responsible national authorities within a reasonable delay.

Article 17: Right of appeal

- 1 The Member States shall take the necessary measures to ensure that mechanisms exist at the national level to allow any person concerned to appeal against any decision of the national regulatory authority before a judicial authority that is independent of the parties involved, the government, and the national regulatory authority in question.
- 2 The appeal body must be in a position to examine not only the procedure which led to the decision of the national regulatory authority being taken, but also the facts of the case. Pending the results of the appeal, the decision of the national regulatory authority shall be enforced, unless a stay of execution is obtained.
- 3 If the appeal body is not a judicial body, then its decisions must be justified in writing, and examined in the last instance by the national judiciary.

Article 18: Cooperation between national regulatory authorities

- 1 The Member States shall promulgate procedures for cooperation and consultation between the national regulatory authority or authorities responsible for regulating the ICT sector, the national authorities responsible for applying competition law, and those responsible for applying the law relating to the protection of consumer rights, on subjects of common interest.

- 2 The Member States shall ensure that the missions of those authorities do not overlap, and undertake to promote the exchange of information between said authorities, by ensuring that such correspondence remains confidential.

CHAPTER VIII

Final provisions

Article 19: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.
- 3 When, based on this Decision, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market, they shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.

Article 20: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions which are expected to have an impact on exchanges between Member States and on the establishment of the single market, including;
- a) the implementation of the tariff policy applicable to telecommunication services;
 - b) the implementation of the universal service development policy;
 - c) interconnection;
 - d) measures to authorize the establishment, operation and/or provision of telecommunication services open to the public,
- Member States shall ensure that the measures in question and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.
- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.
- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.

- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.
- 7 Member States shall communicate to the Executive Secretariat any provisions of domestic law which they adopt in the field governed by this Decision.

Article 21: Information report

Member States shall, no later than six months following the date of entry into force of this Decision, communicate to the Executive Secretariat the steps taken or which are in the course of approval or implementation for the purpose of implementing this Decision.

Article 22: Entry into force

This Decision shall enter into force on the date of publication thereof.

Done at, [date]
For the Authority

Annex

Elements to consider in defining legislation on ICT

The following model lists the points that are generally covered in a framework law on telecommunications or ICT.

In French-speaking countries, those points are presented as basic principles, which are then developed in detail in the corresponding decrees or other implementing legislation. In the common law system, the framework law normally contains detailed provisions, with the regulator establishing further rules and regulations as required.

Comments and recommendations are included in the main articles.

PART I – PREAMBLE

- 1) Short title
- 2) Objectives of the legislation
- 3) Definitions

Recommendation: Use internationally-recognized references and/or definitions such as those used in official ITU texts (e.g. the Radio Regulations).

PART II – FUNCTIONS OF THE MINISTER

- 4) Functions of the minister

Recommendation: The responsibilities and mandate of each player must be clearly defined so as to avoid any misunderstandings or duplication of effort.

PART III – ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL REGULATORY AUTHORITY

Recommendation: Be clear and precise in regard to the responsibilities and mandate of the regulatory body, since this will enable the latter to maintain its independence, particularly vis-à-vis the political establishment. Comment: In French-speaking countries, the detailed development of these points generally takes the form of separate decrees or other regulatory texts. The points to be covered are listed below.

- 5) Establishment of the national regulatory authority
- 6) Functions of the national regulatory authority
- 7) Powers of the national regulatory authority
- 8) Composition of the national regulatory authority
- 9) Dismissal of a member
- 10) Vacation of office of the national regulatory authority

11) Meetings of the national regulatory authority

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be.

12) Remuneration of members

13) Independence of the national regulatory authority

PART IV – MANAGEMENT AND STAFF OF THE NATIONAL REGULATORY AUTHORITY

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be.

14) Appointment of the management

15) Powers and functions of the executive director/director-general

16) Provisions relating to other staff

17) Protection of staff

PART V – FINANCIAL AND ASSOCIATED PROVISIONS

Recommendation: These are essential to the independence of the regulatory body and must be drawn up with care.

18) Funds of the national regulatory authority

19) Annual accounts

20) Audit and control

21) Financial year

PART VI – LICENSES AND FREQUENCY AUTHORIZATIONS

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be (e.g. in French-speaking countries).

22) Licensing regime

23) Special licenses

24) General authorization regime

25) Declaration regime

26) Free entry

27) Requirements for obtaining a frequency authorization

28) Obligations associated with frequency authorizations

29) Conditions associated with a frequency authorization

30) Obligations incumbent on all telecommunication network operators and telecommunication service providers

- 31) Authorization to operate in territorial waters or airspace
- 32) Procedures for the amendment, suspension and termination of licenses and authorizations
- 33) Procedures for the amendment, suspension and termination of frequency authorizations
- 34) Procedures for the renewal of licenses and authorizations
- 35) Procedures for the renewal of frequency authorizations

PART VII – INTERCONNECTION AND ACCESS TO FACILITIES

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.

- 35) Interconnection
- 36) Access to facilities
- 36 bis) Dispute Resolution

PART VIII – UNIVERSAL ACCESS/SERVICE AND PRICES

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.

- 37) Universal service
- 38) Prices

PART IX – SPECTRUM MANAGEMENT, NUMBERING AND INTERNET GOVERNANCE

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.

- 39) Principles of spectrum management
- 40) Allocation of frequency bands
- 41) Exercise of spectrum management functions
- 42) Monitoring
- 43) Harmful interference
- 44) Space segment
- 45) Numbering plan
- 46) Internet Governance

PART X – TERMINAL EQUIPMENT AND TECHNICAL STANDARDS

Recommendation: Procedural matters may be dealt with in a separate annex or decree, as the case may be. The principles must appear in the basic legislation.

- 47) Terminal equipment

48) Standards

PART XI – TESTING AND INSPECTION

49) Power to request information

50) Pre-installation testing

51) Standards for testing

52) Entry, search and inspection

53) Magistrate may issue a warrant

PART XII – ENFORCEMENT OF THE LAW, INVESTIGATION AND INSPECTION

Recommendations: Ensure that the ICT legislation provides the national regulatory authority with the necessary power, independence and authority to be able to gather the information and acquire the human and financial resources it needs (whether through the State budget or its own self-financing) in order to implement, impartially, swiftly and transparently, the will of the legislature. Ensure that the legislation uses clear and unambiguous language to describe the competencies of the national regulatory authority and, where relevant, of other government agencies. To the extent possible, promulgate laws governing the new technologies. Give greater powers to the national regulatory authorities such as to enable them to adapt to changes in the sector. Establish an authority for service providers not holding a license (e.g. internet service providers).

54) Annual report on the activities of licensees

55) Investigation of complaints

56) Power to conduct inquiries

57) Report on investigations

58) Responsibility for remedying infringements of license conditions

59) Appointment of inspectors

60) Powers of an inspector

61) Search warrant

PART XIII – FAIR COMPETITION AND EQUALITY OF TREATMENT

Recommendation: This is a key factor in the regulatory context and should be clearly defined such that the regulator has the appropriate mandate and instruments to impose and accompany such a framework.

62) The national regulatory authority must encourage fair competition

63) Prohibition of acts of unfair competition

64) Exceptions to fair competition

65) Breach of fair competition

66) Non-denial of service

- 67) Equality of treatment
- 68) Interconnection of network facilities

PART XIV – INFRINGEMENTS

Recommendation: Ensure that the ICT law or legislation provides the regulatory authority with a wide range of sanctions to cover minor, moderately serious and serious infringements.

- 69) Infringements and sanctions in the case of persons not holding a license
- 70) Interception and disclosure of messages
- 71) Interception of government communications
- 72) Transmission of false distress signals, etc.
- 73) Infringements relating to radiocommunications
- 74) Protection of telecommunication facilities
- 75) False warning
- 76) Prosecution under other laws
- 77) Action for damages
- 78) General sanctions

PART XV – ROADWORKS AND ACCESS TO LAND

- 79) Roadworks
- 80) Repairs and restoration
- 81) Access to land for inspection and maintenance
- 82) Installation of facilities on private land or in private buildings

PART XVI – MISCELLANEOUS

For example:

- Transitional provisions
- Emergency provisions

ANNEXES

For example:

- Meetings of the national regulatory authority

Draft decision A/DEC./__/__/2006 on access and interconnection in respect of ICT sector networks and services

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional policy on telecommunication and the development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

In view of Decision A/DEC. 12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

In view of Regulation C/REG. 2/12/99 on implementation of the INTELCOM II program;

In view of Decision A/DEC. 16/5/82 on the telecommunication program of ECOWAS;

Considering that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

Considering that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Considering that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

Seeking to adopt a regime of access to and interconnection of networks and services within the information and communication technology (ICT) sector in the West Africa sub region in order to foster competition for the benefit of operators and users in that sector;

Desirous to move ahead in this direction;

On the recommendation of the fifty-sixth session of the Council of Ministers held in
from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives and scope

- 1 This decision forms part of the framework for harmonizing the regulation of the ICT sector in the Community.

- 2 The objective of this decision is to establish an accessible, transparent and equitable regulatory framework in regard to network and service access and interconnection in the area of ICTs. It aims to build durable competition by guaranteeing the interoperability of networks and services. It lays out the objectives assigned to the national regulatory authorities, and the rights and obligations of operators and companies wishing to establish interconnection and/or access to their networks.

Article 2: Definitions

- 1 For the purposes of this decision, the definitions contained in Decisions A/DEC./__/__/2006 shall apply.

- 2 The following additional definitions shall also apply:

access: a facility offered by one operator of a public telecommunication network to enable another operator of a public telecommunication network or a service provider to access its resources, particularly its physical infrastructure.

interconnection: a hardware and software linkage between public communication networks used by the same company or by a different company, to enable the users of one company to communicate with other users of the same company or with the users of another company, or to access services provided by another company. The services may be provided by the parties concerned or by other parties having access to the network. Interconnection is a particular type of access implemented between operators of public networks.

interconnection switch: the first switch of the public telecommunication network that receives and routes telecommunication traffic to the interconnection point.

interoperability of networks and terminal equipment: the ability of equipment to function, first, with the network, and, second, with other terminal equipment that can be used to access the same service.

number portability: the possibility, on the part of the user, to use the same subscriber number regardless of the operator with whom the user is subscribed, even in cases where the user changes operator.

unbundling of the local loop: a facility, which also includes associated facilities, in particular co-location, provided by one public telecommunication network operator to enable another to access all elements of the first operator's local loop in order to serve its subscribers directly.

carrier selection: a mechanism that permits a user to choose from among a number of authorized public telecommunication network operators or authorized telecommunication service providers to route some or all of that user's calls.

physical co-location: a facility offered by a public telecommunication network operator which consists of making infrastructure, including premises, available to other operators for installing and, if applicable, operating their equipment, especially for purposes of interconnection.

provision of interconnection: a facility provided by one public telecommunication network operator to another or to a public telecommunication service provider which permits all users to communicate freely regardless of the networks to which they are connected or the services that they use.

national roaming: a form of active infrastructure sharing that permits the subscribers of a mobile operator (i.e. a mobile operator that possesses infrastructure, in contrast to a mobile

virtual network operator) to have indirect access to the network and services offered by another mobile operator providing such roaming within an area not covered by the nominal network of those subscribers.

operator having significant market power (dominant operator)]: a company which, either on its own or in conjunction with other companies, holds a position equivalent to a dominant position: that is, a company which has a significant capacity to act in a manner independent of its competitors, its customers and ultimately consumers.

CHAPTER II

General regulatory framework for access and interconnection

Article 3: Non-discrimination principle

- 1 Member States shall ensure that the general regulatory framework for access and interconnection incorporates the general community regulation principles foreseen for the establishment of the West African Common Market, including non-discrimination between companies established in different States.
- 2 According to the non-discrimination obligations, operators shall, *inter alia*, apply equivalent conditions in equivalent areas, and shall provide services and information to other parties under the same conditions and with the same quality as for their own services or those of their subsidiaries or partners.

Article 4: Interconnection and competitive ICT market

Member States shall ensure that their national regulations on interconnection and access respect the principles of free and fair competition; accordingly, the regulations shall be conducive to elimination of obstacles to new operators entering the market. The regulations must rather be such as to increase the choice and quality of services available to consumers while allowing the regulator to ensure that the legal and contractual rules applicable to access and interconnection are applied effectively.

Article 5: Content of national regulations

Member States shall ensure that their national regulations offer solutions to the difficulties encountered in implementing interconnection, including the following problems and challenges:

- a) compatibility of services and networks;
- b) publication of reference interconnect offer (RIO);
- c) existence of guidelines for the negotiation of interconnection contracts;
- d) contract transparency;
- e) absence of discrimination between operators in granting access to interconnection services;
- f) level, structure and basis for calculating interconnection charges;
- g) interconnection quality;

- h) unbundling of network elements;
- i) availability of rapid, independent procedures for resolving disputes, and the means for enforcing the rules;
- j) possibility of consulting market players in order to reach a decision on a given regulatory or supervisory problem.

Article 6: Harmonization of cost calculation methods

- 1 National regulatory authorities shall cooperate and coordinate their activities for the purpose of establishing and regularly updating a complete and harmonized methodology for calculating interconnection costs.
- 2 The aforementioned methodology shall establish in detail:
 - a) relevant costs to be taken into account;
 - b) structure of cost calculation model;
 - c) basic data to be incorporated in the model;
 - d) cost of capital return assessment method;
 - e) interpretation of results of model.

CHAPTER III

Access to infrastructure

Article 7: Network interconnection

- 1 The operators of public telecommunication networks shall accede, in objective, transparent and non-discriminatory conditions, to the requests for interconnection from other duly authorized public network operators.
- 2 The request for interconnection shall not be refused if it is reasonable in terms of the requesting party's requirements on one hand and the operator's capacity to meet it on the other. Any refusal to interconnect shall be substantiated and notified to the requesting party and to the national regulatory authority.
- 3 Companies obtaining information from other companies prior to, during or following the access or interconnection agreement negotiation process shall use that information solely for the purposes foreseen when it was communicated and shall always respect the confidentiality of information transmitted or retained. Any information received shall not be communicated to other parties, in particular other services, subsidiaries or partners for which they could constitute a competitive advantage.

Article 8: Access to points of interconnection

- 1 Member States shall ensure that any reference interconnect offer on the part of operators includes a list of the subscriber-serving exchanges that have are not available for interconnection for valid technical or security reasons, along with the provisional timing to open such subscriber exchanges to interconnection.

- 2 However, where the forwarding of expected operator traffic to or from subscribers connected to exchanges on the list mentioned in point 1 above is justified, Member States shall ensure that the operator is required, at the request of the national regulatory authority, to establish a transitional offer for that exchange.
3. Such a transitional offer shall allow the requesting operator to define a fee schedule that reflects the costs which, in the absence of technical access restrictions, would have been incurred for switching communications to or from, first, the subscribers connected to that exchange, and second, the subscribers who would have been accessible without the need for routing through a higher-echelon exchange.

CHAPTER IV

Competition

Article 9: Carrier selection

- 1 Member States shall ensure that carrier selection is introduced in the call-by-call form, as a minimum, from the very beginning of competition in order to establish effective competition and allow consumers to choose their local-loop operator freely and have access to the services of an alternative operator. This selection possibility must be offered by all dominant operators. The dominant operator must be invited to undertake the technical changes that are necessary to adapt its automatic exchanges so as to be able to offer call-by-call selection in the initial phase; this service must be included in the reference interconnect offer.
- 2 Member States shall ensure that the national regulatory authority is authorized to assign prefixes to operators who fall within the category of carriers and is authorized to take decisions on:
 - a) type of carrier selection;
 - b) operators eligible to act as carriers;
 - c) operators subject to the obligation to offer carrier selection;
 - d) types of calls carried;
 - e) problems involved in carrier selection such as invoicing and calling line identification;
 - f) unfair competition issues such as "slamming".

Article 10: Infrastructure sharing

- 1 Member States shall ensure that the national regulatory authorities encourage infrastructure sharing. The authorities must ensure that sharing between the operators of public telecommunication networks takes place under conditions of fairness, non-discrimination and equality of access. Thus, the regulatory authority, in consultation with other players, must be encouraged to elaborate a procedure for handling relations between the operators of public networks in the matter of the conditions and the sharing of infrastructure, in particular lead-times and access to the information needed to put it into place.
- 2 National Regulatory Authorities shall encourage infrastructure sharing between incumbents and new entrants concerning in particular posts, ducts and elevated points to be made

available mutually on a commercial basis, in particular where there is limited access to such resources through natural or structural obstacles.

- 3 National regulatory authorities shall encourage access to alternative infrastructure on the basis of commercial negotiations, in order to foster and entrench competition as rapidly as possible. They must ensure that such access is provided under conditions of fairness, non-discrimination and equality of access. The revision of ICT regulations within the Community must foresee provisions on access to alternative infrastructure. Accordingly, the status of companies providing access to alternative infrastructure should be changed to include this service.

Article 11: Number portability

- 1 Member States shall ensure that the national regulatory authority conducts market studies to assess consumers' portability needs and identify what categories of consumer are likely to request such a service.
- 2 Where a need has been clearly identified, the regulations must be amended to allow consumers to keep their telephone number when they change operators. Member States shall ensure that dialogue takes place between the market players and the national regulatory authority, given that portability is relatively difficult to put into practice, particularly its technical and tariff aspects, and consultation is necessary; and that the numbering plan is also revised so as to adapt it to the requirements of number portability.

Article 12: National roaming

- 1 Member States shall ensure that the national regulatory authority sees that existing operators offer national roaming to requesting operators, at an affordable price, wherever it is technically possible to do so. However, national roaming must in no event replace the coverage obligations undertaken in the framework of mobile service licensing by new entrants.
- 2 Member States shall ensure that the national roaming contract is freely negotiated between the operators on a bilateral basis and that the operators provide consumers with relevant information about national roaming tariffs.
- 3 The national regulatory authority shall ensure that national roaming offers are fair and non-discriminatory.
- 4 The national regulatory authority shall publish specific national roaming guidelines to help establish tariff and technical conditions and provide information on national roaming contracts, in consultation with the market players.

Article 13: International roaming

Member States shall ensure that the national regulatory authorities are in a position to:

- a) ensure the widest possible compatibility between mobile systems in terms of roaming, and take it into consideration when awarding mobile licenses in the region;
- b) study roaming prices charged in the region;

- c) consult with the players concerned with a view to arriving at reasonable tariffs to allow the greatest possible number of roaming users in the region to utilize the networks under the best price and quality conditions;
- d) identify operators engaged in applying prohibitive prices;
- e) consult with the national competition authority, where one exists;
- f) allow prepaid subscribers to use roaming at reasonable tariffs;
- g) inform customers about roaming charges in a clear, detailed and transparent manner;
- h) draw the necessary conclusions from international practice.

Article 14: Fixed-to-Mobile Call Termination

Member States shall ensure that the national regulatory authorities examine:

- a) interconnection and call termination charges on mobile and fixed networks;
- b) charges and tariff structures, retail and interconnection prices and the sharing of revenues between originating and terminating operators for fixed-to-mobile calls;
- c) possible adjustments to the tariff structures of retail and interconnection prices;
- d) the relevance of the interconnection market;
- e) the relevance of the mobile termination market;
- f) the identification of dominant operators in these markets and implementation of the necessary measures to promote smooth development of the telecommunication market and the process of liberalization of the fixed network in particular.

Article 15: Evolution of the regulatory framework to promote the development of the internet

Member States must ensure that:

- a) through unbundling, alternative operators are able to offer "triple play" type services (high-speed internet, voice and television);
- b) all the alternative operators' equipment necessary for the implementation of local loop access can be co-located;
- c) national regulatory authorities encourage activities which will promote development of the wholesale market and hence rapid expansion of the internet in Member States;
- d) prior to the liberalization of fixed services, the national regulatory authorities negotiate with the incumbent operators on the inclusion of standard offers, namely: flat-rate access, access via non-geographical free phone numbers, access via non-geographical paying numbers.

CHAPTER V

Interconnection agreements

Article 16: Legal regime of interconnection agreement

- 1 Interconnection shall be the subject of a private law agreement, commonly called the interconnection contract, between the two parties in question. The agreement shall specify, subject to the applicable legislation and regulations, the technical and financial conditions pertaining to the interconnection. Upon signature, it shall be communicated to the national regulatory authority.
2. When indispensable in order to guarantee fair competition, non-discrimination between operators and the interoperability of networks and services, the national regulatory authority may request the parties to modify the interconnection agreement.
- 3 In case of a request for modification, the regulatory authority shall send the parties concerned its requests for modification, duly substantiated. The parties concerned shall have a period of one (1) month, as from the date of the request for modification, to amend the interconnection agreement.
- 4 The national regulatory authority may, either automatically or at the request of one of the parties, set a deadline for signature of the agreement, after which they must intervene to bring the negotiations to a conclusion so that negotiations do not become a barrier to the entry of new operators.
5. Operators which so request must be allowed to consult, in the offices of the national regulatory authorities, in the manner that the latter shall decide and respecting normal business confidentiality, the interconnection contracts concluded by operators.
6. Where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may request that interconnection between the two networks be provided immediately, pending conclusion of the agreement.

Article 17: Content

- 1 The interconnection agreements shall specify, *inter alia*:
 - a) the date of entry into force, duration and arrangements for the modification, termination and renewal of the agreement;
 - b) arrangements for the establishment of interconnection and the planning of subsequent deployment, level of quality of service guaranteed by each network and coordination measures for monitoring quality of service and fault identification and clearance;
 - c) a description of the services provided by each party;
 - d) arrangements for measuring traffic and setting fees for services, billing and settlement procedures. In the absence of an RIO or for services not appearing in the RIO, the applicable tariffs shall appear in annex to the agreement;

- e) notification procedures and the contact details of the authorized representatives of each party for each field of competence;
- f) rules for compensation in the case of failure by one of the parties;
- g) dispute settlement procedures with mention, in the case of failure of negotiations between the parties, of mandatory recourse to the national regulatory authority.

Article 18: Verification by the national regulatory authority

- 1 The national regulatory authority shall ensure that:
 - a) the agreement complies with the applicable regulatory and legal texts, in particular those provisions relating to interconnection and the terms of reference of operators;
 - b) the provisions of the agreement contain no discriminatory measures liable to advantage or disadvantage one of the parties vis-à-vis other operators or service providers. For the purpose, the agreement shall be compared with other agreements involving at least one of the parties.
- 2 Where the national regulatory authority has not formulated a request for modification within three (3) months as from receipt of the interconnection agreement, requests for modification shall cover only those amendments aimed at guaranteeing that each party receive no worse treatment in terms of non-discrimination as compared to those offered in more recent agreements signed by the other party.

CHAPTER VI

Obligations of operators possessing significant power on a relevant market

Article 19: Identification of relevant markets and of significant market power on a relevant market

- 1 Member States shall ensure that the national regulatory authorities determine the relevant markets by:
 - a) collecting information about each identified market so as to measure the extent of dominance;
 - b) consulting the concerned telecommunication market players regarding market relevance for the purpose of analyzing those markets;
 - c) seeking the advice of the competition authority, where one exists;
 - d) e) defining the criteria to measure the dominance;
 - e) consulting with the concerned telecommunication market players about obligations to be imposed on dominant operators for each relevant market.
- 2 Member States shall ensure that the ECOWAS Secretariat publishes:
 - a) decisions adapted to the individual cases of the countries in question;
 - b) guidelines for market analysis and assessment of market power;
 - c) a recommendation on relevant markets in products and services in the telecommunication sector that can be regulated *ex ante*.

- 3 The authority shall analyze the markets in order to determine whether they are competitive or not and then draw the necessary conclusions in terms of regulatory obligations: if the analysis shows the market to be competitive, the authority shall abolish any existing obligations; otherwise, it shall identify the dominant operator(s) as defined by competition law and impose appropriate regulatory obligations.

Article 20: Cost accounting obligation

- 1 The national regulatory authorities of Member States shall as soon as possible require operators with significant market power to set up cost accounting for the purposes of regulation. The establishment of such accounting must begin as of the adoption of this Decision and be completed by 2009 at the latest, in order to adequately prepare for the opening of the market for fixed communication. Cost accounting must show separate accounts, in accordance with international best practices. It is further recommended that costs relating to regulated and non-regulated activities be kept separate.
- 2 Accounting must be by activity (activity-based costing – ABC).
- 3 The cost accounting system must be audited annually by an independent body appointed by the National Regulatory Authority, the costs of the audit to be borne by the operator with significant market power. It must allow the national regulatory authority to publish a cost nomenclature prior to submission of the RIO for approval.
- 4 Pending the implementation of cost accounting by 2009, the interconnection rates must be calculated on the basis of the following recommendations:
- a) using a regional benchmark;
 - b) using an existing cost calculation tool;
 - c) for Member States which have audited cost accounting, a top-down model based on forward-looking historical costs maybe used initially (e.g. for three years) before moving to a model based on long-run incremental costs (LRIC), thereby giving the dominant operator an incentive for greater efficiency;
 - d) for setting the appropriate rate of return based on the cost of capital, it is recommended that market data be used;
 - e) for calculating the cost of equity, use of the hybrid capital asset pricing model (CAPM) is recommended, incorporating the country risk and correction coefficient R.

Article 21: Reference interconnect offer

- 1 National regulatory authorities shall publish a clear and transparent procedure governing approval of the reference interconnect offer (RIO) of operators possessing significant market power.
- 2 National regulatory authorities shall be entitled to request the operator with significant market power to add or modify the services set out in their offers, when such additions or modifications are justified for compliance with the principles of non-discrimination and cost-orientation of interconnection.
- 3 The offers must be as detailed as possible in order to facilitate and smooth interconnection contract negotiations.

- 4 The operator with significant market power is required to publish annually an RIO, reflecting its price list and the technical services offered. The offer must contain at least the following services:
 - a) services for the routing of switched traffic (call termination and origination);
 - b) leased lines;
 - c) interconnection links;
 - d) supplementary services and implementation arrangements therefore;
 - e) description of all points of interconnection and conditions of access thereto, for the purposes of physical co-location;
 - f) comprehensive description of proposed interconnection interfaces, including the signaling protocol and possibly the encryption methods used for the interfaces;
 - g) technical and tariff conditions governing the selection of carrier and portability.
- 5 Transparency obligations in line with international best practices, may be imposed by the national regulatory authorities.
- 6 As soon as the fixed network services have been opened up to competition, the RIOs of operators with significant market power must also include the following services;
 - a) third-party billing services;
 - b) at the request of the national regulatory authority, an alternative co-location offer if physical co-location is proven to be technically unfeasible;
 - c) as needed, the technical and financial conditions governing access to the operator's resources, in particular those relating to unbundling of the local loop, with a view to offering telecommunication services.

Article 22: Publication of a reference interconnect offer

The reference interconnect offers approved by the national regulatory authority shall be made available on the dominant operators' websites and shall be accessible by a web link available on the national regulatory authority's website.

Article 23: Relevant cost orientation

- 1 Dominant operators shall respect the principle of relevant cost orientation, i.e. the costs of network components or the management structures of the operator effectively involved in the provision of interconnection.
- 2 The relevant costs shall include:
 - a) general network costs, i.e. costs relating to network components used by the operator both for services for its own customers and for interconnection services;
 - b) costs specific to interconnection services, i.e. costs directly incurred solely by those services.
- 3 Non-relevant costs shall include costs specific to services other than interconnection.
- 4 Relevant costs must take account of long-term economic efficiency, in particular the investments required for network renewal and expansion with a view to sustained quality of service. These costs shall incorporate the cost of return on capital invested.

Article 24: Monitoring of interconnection tariffs

- 1 Dominant operators shall attach to the draft reference interconnect offer submitted to the national regulatory authority a detailed presentation justifying the main tariffs proposed. Once the harmonized method for calculating interconnection costs has been adopted, operators shall use it in order to provide the requested justification.
- 2 The national regulatory authority shall ensure that the methods and data used are valid. As required, it shall request the operator to adjust its calculations to rectify errors identified.
- 3 Should an operator fail to provide the justifications required, the national regulatory authority may in the operator's stead evaluate the costs based on the information available to it.
- 4 National regulatory authorities shall ensure that tariff setting for access and interconnection in so far as the dominant operators are concerned is cost-oriented and, as appropriate, that the fees payable by consumers are not dissuasive.

Article 25: Communication of information to the national regulatory authority

- 1 Dominant operators are required to communicate to the national regulatory authority, at least once a year, the basic information required for checking the calculation of interconnection costs. The national regulatory authority shall prepare and communicate to operators a detailed list of that information. It shall update the list regularly, taking account *inter alia* of steps taken to harmonize the calculation methods.
- 2 Dominant operators are required to allow the duly authorized staff or agents of the national regulatory authority to have access to their installations and information system in order to check the validity of the information received.
- 3 The national regulatory authority is bound to respect the confidentiality of non-public information to which it has access within the framework of auditing the interconnection costs.

Article 26: Local loop unbundling

Member States shall ensure that, in the regulatory text:

- a) new entrants are authorized to access the local loop on the basis of a pre-established schedule;
- b) new entrants commit, in their respective proposals, to install some minimum infrastructure capacity, whereas dominant operators commit to provide access to copper pairs to the new entrant as well as the possibility of co-location on its premises in order to facilitate unbundling;
- c) the unbundling offer including the list of services offered at the request of the national regulatory authority shall be approved by the latter;
- d) the national regulatory authority shall be obliged to ensure, on one hand, that the new entrant has access to the information needed for unbundling purposes and, on the other, that information related to unbundling is exchanged electronically between dominant operators and competitors; a schedule for unbundling shall be established with a view

- to liberalization of fixed communications, privileging unbundling with shared line access initially;
- e) recommendations shall be provided on use of the “scissors test” in order to compare retail prices and unbundling prices in order to eliminate any anticompetitive practices by the dominant operators.

Article 27: Co-location

- 1 Member States shall ensure that there is an obligation for dominant operators to provide co-location and that a co-location offer, presenting no barrier to the entry of competitors, is included in the reference interconnect offer for network interconnection and in the unbundling offer for unbundling.
- 2 Member States shall ensure that:
- a) where physical co-location is impossible for some valid reason such as lack of space, an alternative co-location offer must be made by the dominant operators;
 - b) the national regulatory authority shall have a map of self-contained routing switches that are open to interconnection and are available for competitors’ co-location: to this end, a working group composed of the national regulatory authority, the incumbent operator and alternative operators shall, in a fully transparent fashion, examine the problems of co-location and propose different solutions in order to solve problems that might arise. The industry could be involved in the work of this group so as to bring its technical expertise to bear.
- 3 The national regulatory authority shall work in advance on problems relating to access to premises, uninterrupted power, cooling and patch cables.
- 4 The national regulatory authority shall prevent the creation of any entry barriers inherent to co-location and provide solutions to conflicts relating to it as rapidly as possible..
- 5 The national regulatory authority shall establish a decision on the minimal set of conditions that must be fulfilled in any co-location offer, following consultation with the operators of public telecommunication networks. These conditions may lead to the specification, in every co-location offer, of the following:
- a) information on co-location sites;
 - b) precise location of the operator’s sites suitable for co-location;
 - c) publication or notification of an updated list of sites;
 - d) indications as to the availability of alternative solutions in the event that physical space for co-location is not available;
 - e) information on what types of co-location are available, and on the availability of electric systems and cooling equipment on the sites, as well as the rules governing sublease of the co-location premises;
 - f) indications on the time required to conduct feasibility studies for any co-location request;
 - g) information on equipment characteristics and any restrictions on equipment that can be accepted for co-location;
 - h) measures that operators offering co-location must take to ensure the security of their premises and to identify and resolve problems;
 - i) conditions under which competing operator personnel may enter the premises;

- j) conditions under which competing operators and the regulator may inspect a site where physical co-location is impossible, or a site where co-location has been refused on the grounds of lack of capacity.

CHAPTER VII

Settlement of disputes

Article 28: Obligations of national regulatory authorities

Member States shall ensure that the national regulatory authorities:

- a) publish a referral procedure complying with that described in Article 29 below, enabling market players to bring disputes before the national regulatory authority in accordance with a clear and transparent procedure;
- b) ensure that the committee responsible for taking decisions is impartial, and comprises people recognized for their competence and appointed *intuitu personae*;
- c) set a maximum time-frame for the settlement of disputes;
- d) provide for the possibility of the authority initiating a referral action itself, and the possibility of injunction against an operator in the event of serious problems requiring urgent solution;
- e) cooperate as widely as possible, and establish a group for exchanging experience via the internet and a database of past disputes and their solutions.

Article 29: Dispute resolution procedures

- 1 Disputes relating to refusal to interconnect, interconnection agreements and conditions of access are brought before the national regulatory authority.
- 2 The national regulatory authority shall render a decision within a period of three months, after having invited parties to present their remarks. That period may nevertheless be extended to six months when additional investigations and expert opinions are required. The decision shall be substantiated, and shall specify the equitable conditions, both technical and financial, under which the interconnection is to be effected. Matters remaining in dispute shall be brought before the competent jurisdictions.
- 3 In the case of serious and blatant breach of the rules governing the telecommunication sector, the national regulatory authority may, after inviting the parties to submit their remarks, order appropriate provisional measures to be taken to ensure the continued functioning of networks and services.

CHAPTER VIII

Final provisions

Article 30: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.

Article 31: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market, and concern interconnection and access to the resources of public telecommunication network operators, they shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.
- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.
- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.
- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.
- 7 Member States shall communicate to the Executive Secretariat any provisions of domestic law which they adopt in the field governed by this Decision.

Article 32: Information report

Member States shall, no later than six months following the date of entry into force of this Decision, communicate to the Executive Secretariat the steps taken or which are in the course of approval or implementation for the purpose of implementing this Decision.

Article 33: Entry into force

This Decision shall enter into force on the date of publication thereof.

Done at, [date]

For the Authority

Draft decision A/DEC./__/__/2006 on the legal regime applicable to network operators and service providers

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

Considering that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Noting that this liberalization process is giving rise to flourishing markets and that this calls for the opening up of access to new ICT operators through the granting of licenses or authorizations for the establishment and/or operation of networks or frequencies;

Aware of the need to draw up harmonized regulations in regard to the procedures for the granting of such licenses or authorizations within the Member States, based on the rules of free competition in conformity with international legislation in the area of ICT;

Desirous to move ahead in this direction;

On the recommendation of the fifty-sixth session of the Council of Ministers held in
from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives and scope

- 1 This decision forms part of the framework for harmonizing and regulating the ICT sector in the Community. It aims to harmonize the legal regimes that apply to the activity carried on by telecommunication network operators and service providers, and to lay down procedures for issuing licenses, authorizations and declarations and the conditions applicable to the different regimes.
- 2 The transposition of this decision into domestic law shall not affect specific regulatory provisions adopted by Member States, particularly in regard to the legal basis for the essential requirements and other imperatives of public order.

Article 2: Definitions

1 For the purposes of this decision, the definitions contained in Decisions A/DEC./__/__/2006 shall apply.

2 The following additional definitions shall also apply:

subscriber : a person who receives and pays for a communication service over a given period of time pursuant to an agreement in accordance with terms established by the service provider, with the approval of the national regulatory authority.

Authorization: Administrative Act (individual license, concession contract or general authorization) which grants a set of rights and obligations to an entity and grants the entity the right to establish and exploit telecommunication networks or offer telecommunication services.

Individual License : an authorization which is granted to a legal entity by a national regulatory authority and which grants such entity specific rights or imposes specific obligations which are in addition to the rights and obligations attached to general authorizations or class licenses and which obligates the company in question to obtain an explicit decision from the national regulatory authority before exercising rights deriving from such document and to communicate information about the service concerned.

General authorization: a general authorization or class license granted by a national regulatory authority to any legal entity meeting the applicable conditions appended thereto and which obligates the company in question to obtain an explicit decision from the national regulatory authority before exercising rights deriving from such document and to communicate information about the service concerned as necessary to assure proper compliance with the applicable conditions appended thereto in accordance with current regulations;

Declaration: act of registration of telecommunications activities with the National Regulatory Authority by a network operator or service provider which does not require the company to obtain an explicit decision from the National Regulatory Authority prior to commencing the operation of the network or provision of the service.

Exclusive rights: rights granted by a Member State to a single company by means of a legislative, regulatory or administrative provision which reserves for that company the right to provide a telecommunication service or engage in a telecommunication activity within a specific territory.

special rights : rights granted by a Member State by means of a legislative, regulatory or administrative provision, which attribute to one or more company an advantage or an entitlement to provide a telecommunication service or engage in a telecommunication activity on the basis of criteria that are not objective, proportionate and non-discriminatory.

independent network: a telecommunication network reserved for private or shared use. In principle, it cannot be connected to a network that is open to the public.

Whether an independent network is for private or shared use is determined as follows:

- for private use, if it is reserved for internal use by the natural or juridical person that established it;
- for shared use, if it is reserved for use by several natural or juridical persons organized into one or more closed user groups, with a view to exchanging internal communications within a single group.

internal network : an independent network established entirely on a single property, without making use of the public domain, including spectrum resources, or third party property.

public telecommunication network : telecommunication networks established and/or operated for the purpose of providing public telecommunication services.

resale : the act of reselling public telecommunication services or traffic (resale to the end user of minutes purchased by a provider at wholesale prices from another service provider).

CHAPTER 2

Basic principles

Article 3: Opening up to competition

- 1 Member States are required to promote, in all countries of the Community, free competition, thereby opening the market to new entrants, at the latest by 31 December 2006.
- 2 In order to allow all countries to follow regional trends, transition periods foreseen by certain Member States shall be limited to 31 December 2007.

Article 4: Competitive framework

- 1 Member States shall promote infrastructure-based competition.
- 2 In the initial stages of competition, Member States shall ensure, by means of the licensing approach, that service-based competition does not dissuade new entrants from deploying their own infrastructure.

Article 5: Technology and service neutrality

- 1 Member States shall promote technology and service neutrality so as to be able to accommodate convergence and new technologies.
- 2 Member States shall refrain from imposing limitations of the service offered over a given network except in the case of the protection of public order or moral standards.
- 3 In order to take account of technological developments, the licensing regime shall include provisions to facilitate the review of license conditions when technological advance has an impact on ongoing operation.

CHAPTER 3

Principles governing ICT market entry

Article 6: General principles

- 1 Member States shall define and apply licensing and general authorization mechanisms that facilitate market entry and allow the progressive dismantlement of obstacles to competition and to the development of new services.

- 2 Convergence between different telecommunication networks and services and their technologies requires a licensing framework which covers comparable services whatever the technology used.
- 3 Member States shall ensure that the telecommunication services and/or networks can be provided either without authorization or based on a general authorization complemented, as appropriate, by rights and obligations requiring the individual evaluation of candidacies and involving one or several individual licenses.
- 4 Any condition imposed with regard to the operation of telecommunication networks or the provision of telecommunication services must be non-discriminatory, proportionate, transparent and must be justified in relation to the targeted network or service.

Article 7: Conditions for market entry

- 1 Member States shall ensure that their legal framework contains four levels of regulatory intervention allowing ICT market entry:
 - a) individual license;
 - b) general authorization or class license;
 - c) open entry, which may in some cases require registration, notification or declaration with the National Regulatory Authority.
- 2 Different telecommunication networks and services shall be categorized according to the structure adopted:
 - a) An individual license shall be required in the following cases:
 - for the operation or provision of public telecommunication networks or the public voice telephony service;
 - for the use of scarce resources (radio frequencies and numbering). The issue of licenses/authorizations for the use of frequencies and numbers shall be dealt with in the corresponding decisions;
 - if the government of a particular country, for reasons of public policy, determines that the service shall be offered in a certain way (e.g. measures concerning public order, public security or public health).
 - b) A general authorization is required in the following case:
 - the operation or provision of private networks.
 - c) Entry is open subject to compliance with the applicable legislative and regulatory provisions, in the following cases:
 - internal networks;
 - radio installations exclusively composed of low-power, low-range equipment categorized as decided by the national regulatory authorities.

For the following activities where entry is open, a declaration is required:

- the provision of value-added services;
- the provision of the internet service;
- resellers.

Article 8: Sector development and provisional conditions

- 1 In order to promote the development of the ICT sector in the region and to allow more choice to consumers, ECOWAS Member States may decide that certain activities, services or networks should be exempt from the obligation to hold a license and be subject to the authorization, declaration or even the open entry regime. The aim of such a provision is to give flexibility to the Member States in order to promote the establishment of networks and the provision of services in the region.
- 2 Without prejudice to § 1 above, where the provision of a telecommunication service is not yet covered by a license or general authorization and where that service and/or network cannot be provided without a license or authorization, Member States shall, no later than six weeks after having received a request, either adopt provisional conditions allowing the company to commence providing the service, or shall deny the request, providing the company concerned with the reasons for their decision. Member States shall then adopt, as soon as possible, definitive conditions governing the issue of a license for the service or network, or agree that the service or network be provided without authorization, or provide the reasons for their refusal to do either.
- 3 Member States shall decide on an appropriate procedure for the submission, to a body independent from the national regulatory authority, of appeals against the refusal to adopt provisional or definitive conditions, and against the denial of requests or refusal to agree that the service be provided without authorization.

Article 9: Limitation of barriers to market entry

- 1 Member States shall ensure that they impose no barriers that are not in conformity with regulations on the number of operators or service providers in the ICT market.
- 2 Member States shall refrain from granting licenses with exclusivity or special rights, except when mandated by the country's policy or legislation, when dictated by the unavailability of necessary resources or other relevant reasons.

Article 10: Public availability of market entry criteria

- 1 Where a license or general authorization is required, Member States shall ensure that the information is published in such a way as to make it readily available to interested parties. The official journals of the Member States and the official bulletin of the Community, as the case may be, shall refer to the publication of such information.
- 2 Members States shall ensure that the following information is published and made available to the public:
 - a) all criteria for the issue of licenses, general authorizations and declarations;
 - b) the period of time normally required to reach a decision concerning a request for a license or general authorization;
 - c) the terms and conditions governing activities subject to individual licenses, general authorizations, declarations or open entry.

Article 11: Public consultations

In order to ensure fairness and transparency in the licensing and authorization process, Member States shall consult with industry, the public and other stakeholders.

Article 12: Reasons for denial

Member States shall ensure that procedures are introduced whereby all the reasons for the denial of any license or general authorization are made known to the applicant upon request.

CHAPTER IV

Procedures for granting individual licenses

Article 13: Procedures for granting individual licenses

- 1 When a Member State intends to grant individual licenses:
 - a) it shall grant the licenses according to open, non-discriminatory and transparent procedures, and, for the purpose, all candidates shall be subject to the same procedures unless there is an objective reason for subjecting them to different treatment;
 - b) it shall establish reasonable time-frames; *inter alia*, it shall inform the applicant of its decision as soon as possible, and at the latest six weeks following receipt of the request. In the provisions they adopt for implementation of this Decision, Member States may extend this period up to four months in objectively justified cases specifically defined in the aforementioned provisions. In the particular case of call for tender procedures, Member States may extend the period by a maximum of four additional months. These periods must be established without prejudice to any applicable international agreement related to the international coordination of frequencies and satellites.
- 2 The following information may be required in order to prove that a request for an individual license meets the conditions imposed by the relevant provisions of this Decision:
 - a) Legal information, including a description of the candidate, the legal form of the company, proof of its registration by the competent commercial jurisdiction (e.g. commercial registry, articles of incorporation and bylaws), a list and description of existing licenses in which the applicant has at least 10% participation, as well as the legal confirmation of the compliance of existing operators' licenses. Individuals shall be required to show that they are registered as a corporate body. On the other hand, commercial partnerships may be required to show by means of a statement accompanied by a certificate from the relevant competent body that they are legally established and that their contract of partnership includes the establishment of networks or the provision of telecommunication services.
 - b) Financial information, including audited financial statements, annual reports, a detailed description of financial backing.
 - c) Economic information, including a model of service contract/declaration of compliance with model service contract to be drafted and published by the national regulatory authority as well as annual reports and a description and proof of financial backing. Applicants must also submit proof of the applicant's telecommunication operating and

management expertise. Applicants shall be required to provide detailed information concerning *inter alia* market forecasting, evidence of their experience and of their technical and management ability to realize the project proposed, and appropriate documentation. Applicants shall also be required to show that the key staff proposed for the project is adequate and has the required experience and know-how to implement the project; applicants shall submit appropriate documentation in this regard.

- d) Technical information, including coverage plans and indicators, planning and development of the system including connection, numbering and addressing issues and proposed quality of service.
- 3 Without prejudice to Article 14 of this Decision, any company providing the information that may be required from it to prove that it meets the conditions established and published by Member States in conformity with the relevant provisions of this Decision shall qualify to obtain an individual license. If a company seeking to obtain an individual license fails to provide such information, the national regulatory authority may refuse to grant the individual license.
- 4 Applicants whose authorization or license has been suspended or revoked, even outside the country concerned, shall not be authorized to request a license.
- 5 Member States that refuse to grant an individual license, or that withdraw, modify or suspend one, shall communicate to the ECOWAS Secretariat and to the company concerned the reasons for their decision. Member States shall establish an appropriate procedure allowing appeals against such refusal, withdrawal, modification or suspension of a license to be brought before an institution that is independent from the national regulatory authority.
- 6 Licenses shall be issued to the applicant personally. Transfer to third parties, if applicable, shall be done only with the prior consent of the national regulatory authority. However, a license obtained through competition or tender procedures shall not be transferable, unless the applicant has declared in advance his intention to set up a company entirely owned by him to operate the licensed activities.

Article 14: Limitation on number of individual licenses

- 1 Member States shall be able to limit the number of individual licenses, for any category of telecommunication service and for the establishment and/or operation of telecommunication infrastructure, only to the extent required to guarantee the efficient use of the radio-frequency spectrum or for the time required to allow sufficient numbers to be allocated.
- 2 Where a Member State intends to limit the number of individual licenses granted in conformity with § 1:
 - a) it shall give due consideration to the necessity to maximize advantages for users and facilitate the development of competition;
 - b) it shall give interested parties the opportunity to express their opinion on any planned limitation;
 - c) it shall publish its decision to limit the number of individual licenses as well as the justification of such a decision;
 - d) it shall regularly re-examine the limit imposed;
 - e) it shall launch a public tender for the issue of licenses.

- 3 Member States shall grant individual licenses on the basis of objective, non-discriminatory, transparent, proportionate and detailed selection criteria. In any selection, they shall take due account of the necessity to facilitate the development of competition and maximize advantages for users.
- 4 Member States shall ensure that information concerning the aforementioned criteria are published in advance in such a way as to be readily available. The official journal of the Member State concerned shall refer to the publication of such information.
- 5 When a Member State determines, at its own initiative or further to a request from a company, upon this Decision's entry into force or subsequently, that the number of licenses can be increased, it shall take the necessary actions and launch a call for tender for additional licenses.

Article 15: Call for tender for individual licenses

- 1 For each call for tender for the purpose of proposing the establishment and/or operation of a specific telecommunication service or network under the individual license regime, the administration shall establish in terms of reference:
 - a) the conditions for the establishment of the network;
 - b) the conditions for the provision of the service;
 - c) the coverage area of the service and implementation schedule;
 - d) the radio frequencies and blocks of numbers allocated along with the conditions of access to elevated points belonging to the public domain;
 - e) the minimum professional and technical qualifications along with the financial guarantees required of applicants;
 - f) the conditions for operating the service, including those relating to the provision of universal service and the principle of equality of treatment of users;
 - g) arrangements for payment of the fee referred to in Article 16 below;
 - h) arrangements for payment of the financial consideration referred to in Article 16;
 - i) the duration of the license's validity and conditions for its renewal.
- 2 The call for tender shall establish the conditions of access and interconnection to public telecommunication networks and possibly also the conditions for leasing components of those networks as required for the establishment of the new network or for provision of the service covered by the call for tender. In that case, the license carries with it the right to access to interconnection or the leasing required.
- 3 The bid shall be awarded to the applicant whose offer is deemed to be the best vis-à-vis all stipulations in the terms of reference.
- 4 Award of the bid shall be published in a public report.

Article 16: Individual license charges and fees

- 1 Without prejudice to the cost of the authorization or financial contributions, including those relating to the provision of universal service pursuant to Decision ..., Member States shall ensure that the charges and fees imposed on service providers and operators as part of the license and authorization procedures are for the sole purpose of covering the administrative costs incurred in the authorization, management, control and implementation of scarce resources and costs of regulating the telecommunication sector. The charges applicable to an individual license shall be in proportion to the volume of work required and shall be published in an appropriate and sufficiently detailed form to make the information readily available.
- 2 Notwithstanding paragraph 1, in the case of scarce resources Member States may authorize their national regulatory authorities to charge fees in order to cater for the need to ensure optimum utilization of such resources. Such fees shall be non-discriminatory and shall take account in particular of the need to promote the development of innovative services and competition.

CHAPTER V

Procedures applicable to general authorizations

Article 17: Procedures applicable to the general authorization regime

- 1 Without prejudice to the provisions of Chapter IV, Member States shall not prevent a company that provides the necessary information and the required proof that the applicant meets the conditions imposed, satisfying the conditions applicable to a general authorization in conformity with the provisions of Chapter VI, from providing the telecommunication networks and/or service concerned.
- 2 Operators applying for an authorization shall be required to notify the national regulatory authority before providing the intended service in order to ensure compliance with any applicable conditions of operation. In such instance, they may be required to wait for a reasonable and defined period of time before starting to provide the services covered by the authorization.
- 3 Applicants whose authorization or license has been suspended or revoked, even outside the country concerned, shall not be qualified to request an authorization.
- 4 The information required for general authorization shall include:
 - a) legal and financial information, including a description of the applicant, the legal form of the company, proof of its registration by the competent commercial jurisdiction (e.g. commercial registry, articles of incorporation and bylaws), a model of service contract/declaration of compliance with model service contract to be drafted and published by the national regulatory authority as well as annual reports and a description of financial backing. Individuals shall be required to show that they are registered as corporate entities. Commercial partnerships, however, may be required to show by means of a statement accompanied by a certificate from the relevant competent body that they are legally established and that their contract of partnership includes the business of providing telecommunication services;

- b) technical information: entities shall be required to inform the relevant authorities of Member States of the services they intend to introduce and to provide the information that shows that they can fulfill the terms and conditions applicable to the licensable activity, namely:
- detailed description of the service proposed;
 - technical project stating the equipment to be used including proof of type approval of own equipment to be used;
 - indication of the entity and a description of the facilities proposed on the infrastructure of other network operators for the service proposed.

5 National regulatory authorities reserve the right to request additional information.

Article 18: Charges applicable to general authorization procedures

- 1 Without prejudice to the financial contributions, including those related to the provision of universal service in conformity with the Decision on universal access/universal service, Member States shall ensure that the charges imposed on companies as part of authorization procedures are for the sole purpose of covering the administrative costs incurred in issuance, management, control and implementation under the general authorization regime.
- 2 These charges shall be sufficiently detailed and published in a form that makes them readily available.

CHAPTER VI

Procedures applicable to declarations

Article 19: General principles

- 1 Any natural person or legal entity may freely offer the resale of telecommunication services, the commercial operation of value-added services and the provision of internet services but is required to submit a declaration of the offer of such service with the National Regulatory Authority. .
- 2 The national regulatory authority shall acknowledge receipt of the declaration in the interest of ensuring that the proposed service conforms with the existing regulatory framework.
- 3 Without prejudice to right to impose sanctions, if the provision of the service subject to a declaration proves to undermine public order or security or is contrary to moral standards and decency, the competent authorities may prohibit the provision of such services.

Article 20: Information required

- 1 A declaration of intention to open a service shall contain the following information:
- the arrangements for opening the service;
 - geographical coverage;
 - conditions of access;

- the kind of services offered;
 - the rates to be charged to users.
- 2 For non-facilities-based resellers, Member States may also require a description of the services (minutes), as well as a description of the ways in which resale will be effected (distribution channels) and the geographical area where the services will be resold in order to ensure consumer protection.
 - 3 In the case of pre-paid calling card resellers, Member States may require the deposit of a certain sum as a guarantee in order to minimize fraud in the provision of the pre-paid card service.
 - 4 Any change made to the initial conditions of the declaration, with the exception of changes to the rates charged, shall be brought to the attention of the national regulatory authority concerned one month prior to the intended date of implementation.
 - 5 In the case of transfer, the reseller or provider of the value-added service is required to inform the national regulatory authority concerned of the change no later than 30 days following the date of the transfer, and to deposit with the national regulatory authority a declaration of intention to open a service as referred to in paragraph 1 above.

CHAPTER VII

Conditions applicable to licenses and general authorizations

Article 21: Principles

- 1 All conditions applicable to a license or authorization must be compatible with the rules of competition of the ECOWAS Treaty.
- 2 All holders of a telecommunication license or authorization will have a set of basic rights and these rights shall be applicable to all operators holding a license or authorization, regardless of whether they are service-based or network-based operators. However, the ability of license or authorization holders to avail themselves of those rights may be conditional upon their being able to meet physical or technical requirements.
- 3 The conditions applicable to individual licenses or general authorizations issued to telecommunication service providers and operators are set forth in the annex to this Decision.
- 4 All conditions applicable to an individual license or general authorization must comply with the principle of proportionality and compatibility with the rules of competition of the Treaty. Member States shall ensure that license targets to further universal service goals do not discourage competition.

Article 22: Types of conditions

- 1 Certain conditions which will be contained in licenses shall be applicable only if the license holder is in a dominant position on a market further to a decision taken by the national regulatory authority as provided for by the ECOWAS Decision on interconnection. Where the national regulatory authority intends to make a finding of dominance, there is a statutory consultation process to be followed.

- 2 Where operators wish to have access to scarce resources such as frequency spectrum, numbers or land, the national regulatory authority shall retain the right to put in place additional conditions including, but not limited to, the requirement to participate in specific application procedures or competitive selection processes. In addition, those conditions that relate to scarce resources should be activated where an operator gains access to such resources. The national regulatory authority shall consult separately in relation to the allocation of scarce resources where appropriate.
- 3 Conditions regarding the regulation of the activities of a dominant operator shall not, in principle, apply to new entrants. Such conditions shall apply only where it is determined, after appropriate market analysis by the national regulatory authority, that a licensee is in fact in a dominant position as provided for by the Decision on interconnection.
- 4 Certain operators holding licenses or authorizations shall only be subject to conditions linked to quality of service and customer relations. Nevertheless, certain conditions relating to universal service, in particular including emergency calls, directory services and public pay phones, may be applicable. The national regulatory authorities shall retain the ability to designate an operator(s) other than the incumbent as having a universal service obligation in the future.
- 5 Any holder of a license or authorization shall make appropriate provisions to take into consideration the needs of disabled people.

Article 23: Publication of conditions

Member States shall ensure that the conditions are published in order to ensure that the information is readily available to interested parties.

Article 24: Modification of conditions

- 1 The conditions of an individual license and of a general authorization shall be considered fixed at the time the license or authorization is officially delivered.
- 2 Member States shall be able to modify the conditions of an individual license or general authorization in objectively justified cases and in a proportionate manner. If it becomes necessary to modify the conditions of an individual license or general authorization, the Member State shall give the holder of the license or authorization reasonable advance notice of any modifications before they are implemented.
- 3 In this regard, States shall notify their intentions to the Executive Secretary of ECOWAS.

Article 25: Reviewing, terminating and revoking licenses or general authorizations

- 1 When the holder of a license or authorization fails to comply with a condition attached to the license or authorization, the national regulatory authority may, in accordance with termination clauses, withdraw, amend or suspend the license or authorization or impose specific measures aimed at ensuring compliance.
- 2 The national regulatory authority shall, at the same time, give the entity a reasonable opportunity to state its view on the application of the aforementioned measures and, except in the case of repeated breaches by the entity, the entity shall have the opportunity, within a

defined period of time, to remedy the breach. If the breach is remedied, the national regulatory authority shall, within a defined period of time, annul or modify its decision and state the reasons therefore. If the breach is not remedied, the national regulatory authority shall, within a defined period of time after its initial intervention, confirm its decision and state the reasons for its decision. The decision shall be communicated to the entity within one week.

Article 26: Enforcement

- 1 The conditions of licenses and authorizations must be enforceable and clear on the rights and obligations of the holder.
- 2 The national regulatory authority shall undertake, when deemed necessary, reasonable and appropriate methods to enforce the terms and conditions of the holder's activities.
- 3 Each license and authorization shall include provisions to facilitate enforcement processes and access, when deemed necessary, to the license or authorization holder's documents, provided that privacy and confidentiality are respected.
- 4 A license or authorization shall require the national regulatory authority to give the holder notice of any suspected or alleged breaches that come to the attention of the authority and allow a reasonable time for the holder to investigate and take corrective action, if appropriate.
- 5 The holder of a license or authorization shall be provided with the opportunity to present his views before changes to the terms of the license agreement take effect.

Article 27: Sanctions

- 1 Where conditions are not respected, sanctions may be imposed, including:
 - fines;
 - restriction of the scope and/or the duration of the license;
 - suspension;
 - withdrawal.
- 2 Where one of the sanctions mentioned above is imposed, it will be widely communicated amongst ECOWAS Member States.

Article 28: Dispute settlement

- 1 All disputes must be handled according to national legislation.
- 2 Parties may however submit their case to the judicial entity of ECOWAS or to any other competent judicial authority.

CHAPTER VIII

Network deployment and provision of services throughout ECOWAS

Article 29: Harmonization of procedures

Member States shall strive to define and adopt common classifications of telecommunication networks and services as well as common licensing procedures.

Article 30: Provision of services between Member States

- 1 Member States shall, in the formulation and application of their respective licensing regimes, facilitate the provision of telecommunication services between Member States or in different Member States of the Region. Accordingly, and in order to facilitate the establishment of regional networks or networks between several countries of the Region, Member States shall ensure that national regulatory authorities coordinate to the extent possible their procedures so that a company wishing to provide a telecommunication service or establish and/or operate a telecommunication network need only to complete one service provision request which it can subsequently submit in various Member States.

CHAPTER IX

Final provisions

Article 31: Existing licenses, authorizations and declarations

- 1 On the date of implementation of this Decision at the latest, Member States shall adapt existing licenses, authorizations and declarations to the provisions of this Decision.
- 2 Where the application of paragraph 1 of this article results in a restriction of the rights or an increase in the obligations of a company subject to the regime of the license, authorization or declaration, the Member State may extend the validity of those rights and obligations by a maximum of nine (9) months as from the date of implementation of this Decision.
- 3 A Member State may request a temporary extension of a condition linked to an authorization or declaration in force prior to the date of entry into force of this Decision, if it can show that suppression of that condition creates excessive difficulties for the companies benefiting from it and if it is not possible for those companies to negotiate new agreements under reasonable commercial conditions before the date of implementation of this Decision.
- 4 Member States' requests for extension shall be brought before the Executive Secretariat which shall examine them in the light of the specific situation of each Member State and the companies concerned.
- 5 Based on the aforementioned analysis, the Executive Secretariat shall reach a decision and may accept or deny the request. In the case of a request being accepted, the Executive

Secretariat shall decide the scope and duration of the extension to be granted. Its decision shall be communicated to the Member State concerned within the six months following receipt of the request for extension.

Article 32: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.

Article 33: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions that:
 - a) are liable to have an impact on exchanges between Member States and on the establishment of the single market;
 - b) concern arrangements for the allocation of licenses or authorizations for the purpose of establishing, operating and/or providing telecommunication services open to the public,the Member States shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.
- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.
- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.
- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.
- 7 Member States shall communicate to the Executive Secretariat any provisions of domestic law which they adopt in the field governed by this Decision.

Article 34: Information report

Member States shall, no later than six months following the date of entry into force of this Decision, communicate to the Executive Secretariat the steps taken or which are in the course of approval or implementation for the purpose of implementing this Decision.

Article 35: Entry into force

1 This Decision shall enter into force on the date of publication thereof.

Done at, [date]

For the Authority

ANNEX

This annex sets out the list of conditions which may be attached to individual licenses and general authorizations.

Conditions that may be attached to authorizations, where justified and with due respect for the principle of proportionality:

- 1 Conditions aimed at ensuring compliance with the relevant essential requirements.
- 2 Conditions relating to the provision of information reasonably requested with a view to verifying compliance with applicable conditions and for statistical purposes.
- 3 Accessibility to end users of numbers in the national numbering plan, including conditions in line with the Decision on universal service and numbering.
- 4 Administrative charges pursuant to Articles 16 and 18 of this Decision.
- 5 Conditions relating to the protection of users and subscribers, particularly in regard to:
 - a) prior national regulatory authority approval of the standard contract concluded with subscribers;
 - b) detailed and accurate invoicing;
 - c) the availability of a dispute resolution procedure;
 - d) the publication of service access conditions, including tariffs, quality and availability, and adequate notification whenever such conditions are amended.
- 6 ICT-sector-specific rules concerning personal data and privacy protection.
- 7 ICT-sector-specific rules and conditions relating to consumer protection.
- 8 Restrictions in regard to the transmission of illegal content and of harmful content relating to television broadcasting activities.
- 9 Conditions aimed at preventing anti-competitive behavior in telecommunication markets, and in particular measures designed to ensure that tariffs are not discriminatory and do not distort competition.
- 10 Financial contribution to universal service provision in accordance with community legislation.
- 11 Communication of information contained in customer databases for the purpose of providing universal directory services.
- 12 Provision of emergency services.
- 13 Special arrangements for users with disabilities.
- 14 Conditions pertaining to the access obligations applicable to companies providing ICT networks or services and network interconnection and service interoperability, in accordance with the Decision on interconnection and the obligations deriving from community legislation.
- 15 Facilitating legal interception by competent national authorities.
- 16 Terms of use during major disasters to ensure communications between emergency services, the authorities and public broadcasting services.

- 17 Measures aimed at limiting exposure of the public to electromagnetic fields generated by telecommunication networks, in accordance with community legislation.
- 18 Access obligations applicable to companies providing ICT networks or services, in accordance with the Decision on interconnection.

Specific conditions that may be attached to individual licenses, where justified and with due respect for the principle of proportionality:

- 1 Special conditions relating to the allocation of numbering rights, including:
 - Designation of the service for which the number is used, including any requirements in regard to the provision of that service.
 - Effective and efficient use of numbers, in accordance with the Decision on numbering.
 - Requirements in regard to number portability, in accordance with the Decision on interconnection.
 - Obligation to provide subscribers listed in public directories with information for the purposes of the Decision on universal service.
 - Transfer of usage rights at the initiative of the rights-holder, and conditions applicable to such transfer.
 - Charges for usage rights.
 - Obligations under relevant international agreements relating to number usage.
- 2 Special conditions relating to the use and effective management of radio frequencies, including:
 - Designation of the service or type of network or technology for which spectrum rights have been granted, including, where applicable, exclusive use of a frequency for the transmission of content or specific audiovisual services.
 - Effective and efficient use of frequencies, including, where appropriate, requirements in regard to coverage.
 - Technical and operational conditions necessary to avoid harmful interference and limit exposure of the public to electromagnetic fields, where such conditions differ from those laid down in the general authorization.
 - Transfer of usage rights at the initiative of the rights-holder, and conditions applicable to such transfer.
 - Charges for usage rights.
 - Commitments made during the competitive or comparative selection process by the company having obtained usage rights.
 - Obligations under relevant international agreements relating to frequency usage.
- 3 Specific requirements in regard to environmental, town planning and regional development considerations, in particular conditions relating to the granting of access to public or private property and to the collocation or sharing of facilities.
- 4 Maximum duration, which must not be unreasonably short, in order, among other things, to ensure the effective use of the radio frequencies or numbers in question or grant access to public or private property, the foregoing being without prejudice to any other provisions relating to the withdrawal or suspension of licenses.
- 5 Compliance with universal service obligations, in accordance with the Decision on universal service and the Decision on interconnection.

- 6 Conditions applicable to operators with market power, as notified by Member States pursuant to the Decision on interconnection, intended to ensure interconnection or the monitoring of market power.
- 7 Requirements in regard to the quality, availability and permanence of the service or network, with particular reference to the candidate's financial and technical capacities and administrative competencies, and conditions establishing a minimum period of operation and including, where appropriate, and in accordance with community legislation, the obligation to provide publicly accessible telecommunication services and public telecommunication networks.

This list of conditions is without prejudice:

- to any other legal condition not specific to the telecommunication sector
and
- to measures taken by ECOWAS Member States pursuant to public interest requirements recognized by the treaty and under national legislation and regulations, and relating in particular to public morality, public safety and security, including criminal investigations, and public order.

Draft decision A/DEC./__/__/2006 on numbering plan management

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

In view of Decision A/DEC. 12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

In view of Decision A/DEC. 16/5/82 on the telecommunication program of ECOWAS;

Considering that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

Considering that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Considering that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

Noting that the strong growth in the number of users of ICT services is liable to lead to a serious shortfall in numbering resources;

Wishing, therefore, to elaborate sub regional regulations in regard to optimum administration of the numbering plan in the use of ICT services;

On the recommendation of the fifty-sixth session of the Council of Ministers held in
from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives and scope

- 1 The purpose of this decision is to harmonize procedures for the management of numbering and of numbering plans within the ECOWAS zone.
- 2 This decision lays down the rules of a harmonized approach by the Member States for the use and allocation of call numbers so as to guarantee free competition and open the market

to new operators. These rules concern in particular the establishment and management of a numbering plan, the implementation of a procedure for requesting the issuance of numbers and for withdrawing them, the planning of the direct allocation of numbers for end users, and the determination of charges for numbering, as well as roaming, portability, migration, rates, competition and harmonization.

Article 2: Definitions

1 For the purposes of this decision, the definitions contained in Decision(s) A/DEC./__/__/2006 shall apply.

2 The following additional definitions shall also apply:

distribution : the making available, pursuant to contractual clauses, of a number or a series of numbers to end users by the holder of an allocated resource.

telecommunication operator : any legal entity that operates a telecommunication network open to the public, or any person that provides a telecommunication service.

allocation : a decision by the national regulatory authority, following its examination of the corresponding application, to grant a telecommunication network operator the right to use the designated resource for its own account or for the account of its customers in accordance with the utilization terms specified below or referred to in the allocation decision.

number : a series of digits that uniquely identifies a public network termination point. The number contains the necessary information for routing the call to that termination point. The number may be in a national format or an international format. The international format is known as the international public telecommunication number, consisting of the country code and subsequent digits.

geographic number : a number in the national numbering plan in which part of the digital structure has a geographic significance used to route calls to the physical location of the network termination point (NTP).

non-geographic number : a number in the national numbering plan which is not a geographic number. These are primarily mobile numbers, free phone numbers and premium-rate numbers.

national numbering plan : the resource consisting of all numbers that can be used to identify the fixed or mobile termination points of telephone networks and services, to route calls and to access internal resources from the networks. A national numbering plan is a segment of the international numbering plan (E164). It establishes procedures and conditions for reserving and allocating numbering resources.

network termination point (NTP) : the physical point at which a subscriber accesses a public communication network. In the case of networks that use switching and routing, the NTP is identified by a specific network address that can be linked to the subscriber's name or number.

reservation : a decision by the national regulatory authority, following its examination of the corresponding application, to grant a telecommunication network operator an option with respect to a numbering resource for a specified period of time.

CHAPTER II

General principles for managing the numbering plan

Article 3: General principles for numbering

- 1 The Member States shall ensure that the national regulatory authorities have control over the assignment of all the national numbering resources and the management of the national numbering plans.
- 2 The national regulatory authority may decide to delegate administrative responsibility for the numbering plan. In that case, it must ensure that the rules for allocating, reserving and using numbers are strictly adhered to. The Member States shall ensure that an annual audit of the body having administrative responsibility for the plan is conducted by the national regulatory authority.
- 3 The Member States shall ensure that adequate numbers and numbering series are reserved in the numbering plans for all telecommunication services accessible to the public.
- 4 The principal elements defined in the preceding paragraph must be public, available from the national regulatory authorities on request, and published in an official, transparent manner. In the interests of national security, the numbering capacity reserved for police and defense purposes need not be made public.
- 5 The procedure for allocating numbering capacity shall be followed in a transparent, non-discriminatory manner, in accordance with objective criteria and following the principles, respectively, of reservation, allocation and withdrawal.
- 6 The Member States must ensure proper utilization of the prefixes, numbers, number blocks and codes that are allocated. These shall not be protected by industrial or intellectual property rights, nor shall they be transferred without the agreement of the national regulatory authority.
- 7 The Member States must ensure that the administration of the numbering plan allows for the publication of directories of numbers and access to directory inquiry services.
- 8 The Member States shall ensure that numbering plans and the associated procedures are implemented in a way that protects equality of treatment to all providers of telecommunication services available to the public. In particular, they shall ensure that companies to which a range of numbers is allocated do not engage in any discrimination against other telecommunication service providers as regards the sequences of numbers used to provide access to their services.

Article 4: Essential principles for managing the numbering plan

- 1 The Member States shall ensure that the management of their numbering plans respects the following essential points.
 - 1) The plan must be long-term and balanced.
 - 2) The plan must take into account the need for short numbers and reserved special numbers for emergency, directory, operator, and user assistance services, and ensure that prefixes and numbers or number blocks are allocated to public telecommunication operators, under objective, transparent and non-discriminatory conditions.

- 3) The plan must take into account the opinion of operators, users and the national regulatory authority.
 - 4) The plan must include a coherent, clear and published strategy.
 - 5) The plan should take into account applicable international standards, in particular regarding access to international service, as well as the needs of neighbors, whether on the same continent or elsewhere in the world.
 - 6) The plan must not be anti-competitive for telecommunication operators.
 - 7) The plan must not be anti-competitive for users.
 - 8) The plan must be compatible with sound appropriate management practice.
 - 9) The plan must be open-ended and allow sufficient margins to meet any unexpected needs.
- 2 The numbers and blocks of numbers may not become the property of the applicants, or of the end-users. They may not be protected by means of industrial or intellectual property rights. They are allocated following reservation by the national regulatory authority for a limited duration of time, corresponding to the operational lifetime of the service or application. When an applicant gives up operation of its telecommunication service, for which numbering capacity has been allocated, that capacity can be allocated to a new assignee on condition that the latter is authorized to operate the service and that a declaration to this effect has previously been submitted to the national regulatory authority.
- 3 Information about the reservation, allocation and withdrawal of numbering capacity is public, and must be provided by the national regulatory authority on demand.

Article 5: General methods for managing the numbering plan

Member States shall put in place in the long term the following methods to harmonize management of numbering plans at the regional level.

- 1) Use of common databases for the assignment of numbers.
- 2) Adoption of a harmonized emergency codes for the region.
- 3) Promotion of appropriate number portability.
- 4) Assigning lower initial digits to fixed lines, and reserving the higher ones to mobile.
- 5) Allocation of number blocks against a fee.
- 6) Planning for direct allocation to end users.
- 7) Number assignment using geographical, network or service codes.
- 8) Allowing for migration to a closed plan.

Article 6: Cooperation and harmonization of numbering resources

- 1 Member States shall support the harmonization of numbering resources within ECOWAS wherever necessary to foster the development of services within the ECOWAS zone.
- 2 Member States shall ensure that their national numbering plans make it possible, subject to technical and economic feasibility, for users located in other ECOWAS Member States to have access to non-geographical numbers that are accessible throughout their national territory.

- 3 In order to ensure overall interoperability of services, the ECOWAS Member States shall, where appropriate, coordinate their positions within the international organizations and authorities in which decisions concerning issues related to numbering, naming and addressing for communication networks and services are taken.

CHAPTER III

Further principles for managing the numbering plan

Article 7: Reservation mechanisms

- 1 The national regulatory authority shall examine all applications to reserve numbering capacities that meet the following conditions:
- 1) the application must be addressed to the national regulatory authority by registered letter or by any other legally recognized means, and must be dated and signed by, or on behalf of, the applicant wishing to operate the numbering capacity;
 - 2) the applicant, who must be a natural person or legal entity, must provide details of position and credentials;
 - 3) the application must give the name and complete address of the applicant, along with the business address in the ECOWAS country in question;
 - 4) processing fees to cover the costs for processing the application must be paid in advance;
 - 5) the application must contain all the information specified in the section following below.
- 2 To allow the national regulatory authority to process the application in accordance with the criteria in §3 below, the applicant must provide, free of charge, the following information, which will be considered as confidential:
- 1) a clear list of the type and amount of numbering capacity desired;
 - 2) a detailed description of
 - a) the services and applications that use the numbering capacity,
 - b) technical network elements and their interrelationship,
 - c) routing principles to be implemented,
 - d) future numbering capacity needs,
 - e) charging principles, if the applicant considers it useful,
 - f) principles the applicant intends to follow in allocating the routing capacity obtained for the end-users,
 - 3) the applicant must demonstrate that it has no viable technical or commercial alternative to operating its services and applications with the requested numbering capacity;
 - 4) changes over time, for the information provided in point 2.2 above;
 - 5) the applicant must demonstrate that it has complied with the provisions of the present decision.

- 3 The application shall be evaluated by the national regulatory authority on the basis of the following criteria:
- 1) sound management of numbering capacity, a finite resource;
 - 2) the need for sufficient numbering capacity to meet future needs;
 - 3) the work needed to achieve optimum compatibility between the numbering plans of different applicants;
 - 4) existing reservations;
 - 5) potential for satisfying developments in the ECOWAS zone and internationally;
 - 6) potential for satisfying the relevant international agreements, recommendations and standards;
 - 7) technical limitations and concrete implementation;
 - 8) impact on the numbering plans of other applicants;
 - 9) fees, if any;
 - 10) routing questions;
 - 11) issues relating to tariffing principles;
 - 12) geographical issues;
 - 13) possible alternatives;
 - 14) end-user interests, including ease of use;
 - 15) specific needs of emergency services;
 - 16) commercial impact.
- 4 Numbering capacity may not be reserved for applicants unless the provisions of the present decision are met.
- 5 If the national regulatory authority approves a given application, then the numbering capacity is reserved. Therefore, numbering capacity may only be allocated to the initial applicant, and for the purposes specified in the application. The date on which the application becomes official is also considered as the date of reservation. A reservation may be cancelled by the applicant. A reservation shall automatically expire one year after the date of reservation, if no effective allocation or extension, pursuant to §7, has taken place in that time.
- 6 If two or more applicants request the same numbering capacity, the first to file a valid application will have priority. If more than one valid application is filed on a given day for the same numbering capacity, the national regulatory authority shall organize mediation to allocate primary rights, secondary rights, tertiary rights and so on.
- 7 A reservation may be renewed each year by submitting a valid new application at least one month before it expires. If the extension is accepted, then the original reservation date is maintained as the official reservation date.
- 8 The national regulatory authority must notify the applicant of its decision no later than two months after receipt of the application.
- 9 If the national regulatory authority considers that the application is incomplete, or wishes to have additional information or explanations, it must inform the applicant. The deadline for the national regulatory authority mentioned in the previous paragraph shall be extended by the length of time that the applicant needs to modify the application. Such an extension

shall not exceed one month. If, at the end of this time, the applicant has not modified the application, it shall be annulled.

10 If the national regulatory authority refuses to grant a reservation, it must provide reasons. There is no entitlement to be reimbursed in the event of a refusal.

11 Any changes to the information provided pursuant to the present article shall be communicated to the national regulatory authority in good time.

Article 8: Allocation mechanisms

1 The national regulatory authority shall, under objective, transparent and non-discriminatory conditions, assign prefixes and numbers, or number blocks, to operators who have made an application, against a fee stipulated in the regulations to cover the costs of managing the numbering plan and controlling its utilization.

2 The national regulatory authority may select the type of mechanism to be used to allocate numbers: by block, case by case, or by auction. The authority may set aside special numbers, or blocks or ranges of numbers, upon request from the operators, against annual fees to cover the costs of managing the numbering plan and controlling its utilization.

3 Certain categories of numbers may be subject to a special allocation procedure in order to ensure that operators have access to the numbering resources in a transparent, objective and non-discriminatory manner. Thus, the national regulatory authority may:

- make a resource allocation;
- make a temporary resource allocation;
- make an allocation covering only a portion of the resources requested;
- refuse to make a resource allocation.

4 The national regulatory authority shall allocate to operators, under the same conditions, the codes used for routing communications.

5 The decision on allocation shall specify the applicable conditions. The decision binds the holder of the allocation to observe all of the conditions for utilization of the allocated resource.

6 In all cases, number allocations must be technology-neutral, non-discriminatory, and compatible with number portability.

Article 9: Deadlines

1 Numbering capacity is only allocated if, during the reservation period, numbering capacity is in fact put into service for the declared purpose. The date on which it is put into service must be communicated to the national regulatory authority at least 30 days in advance. The allocation of numbering capacity remains valid only for as long as all of the following conditions are respected:

- 1) the allocated numbering capacity is used exclusively for the purposes indicated in the initial application;
- 2) sub-allocation to end-users is controlled by the original applicant;
- 3) annual fees are paid pursuant to the provisions of Article 10 of the present decision;

- 4) the applicant maintains statistics on the percentage of allocated capacity that is being used, and periodically provides them to the national regulatory authority in accordance with rules which it has established.
- 2 Applications for numbering capacity for six months or less shall be treated as having lower priority, and may not be extended. The annual fee described in Article 10 below is therefore to be reduced by one half.
- 3 While numbers are in principle allocated on a long-term basis, they may be changed or withdrawn for operational reasons.

Article 10: Reservation fees and allocation fees

- 1 Member States shall determine the size of processing fees charged for the reservation of numbering capacity pursuant to Article 7 of the present decision, depending on the type of numbering requested, in a transparent and non-discriminatory manner, according to objective and published criteria.
- 2 Member States shall determine the annual fees for allocation of numbering capacity pursuant to Article 8 of the present decision, depending on the type of numbering requested, in a transparent and non-discriminatory manner, according to objective and published criteria. If the numbering capacity is allocated in portions, the annual fee shall be reduced proportionately.
- 3 Member States shall set a deadline for the payment of the fees mentioned in paragraph 2 above in the year for which they are due. For the year in which the numbering capacity is allocated, fees shall be reduced to the same proportion as the number of complete months that remain in the calendar year on the date the allocation is made, and shall be paid within 30 days of that date.
- 4 Member States shall fix the penalty charged for overdue fees. The level of penalty is to be calculated on the basis of the number of days payment is overdue.
- 5 The sizes of the fees mentioned in the present decision shall be adjusted annually.
- 6 The withdrawal of numbering capacity that was previously reserved or allocated does not entail any entitlement to any indemnity or reimbursement of some or all of the fees mentioned in the present decision.

Article 11: Delegation to outside operators

- 1 In some cases, the holder of a numbering resource may entrust an outside operator with the distribution of that resource to the final customer or customers. In such cases, a distinction is made between the operator holding the allocation for the resource and the delegated outside operator who distributes the resource to the end-clients.
- 2 An outside operator may only be involved in this way if the following conditions are met:
 - the delegated operator must have declared to the national regulatory authority the activity that is necessary for operation of the resource in question;
 - the operator holding the allocation must have notified the national regulatory authority by A/R registered mail, about the resource or resources to be put at the disposition of the delegated operator, along with a description of the service that is to be provided via said resource or resources. Such notification must have been done before any legal

provisions on delegation come into force between the operator holding the allocation and the delegated operator.

- 3 In the case of resources allocated by block, delegation may involve the entire resource or an entire portion thereof.
- 4 The operator holding the allocation remains responsible for compliance with all obligations associated with the allocation of the resource.
- 5 In addition, the operators involved in delegation must guarantee portability for the end-users.

Article 12: Transfer

- 1 Application for an allocated resource to be transferred must be submitted to the national regulatory authority by the final beneficiary of allocation, observing the form and the conditions stipulated in Article 7 and accompanied by the signed concurrence of the original operator holding the allocation.
- 2 The decision to allocate a resource to a new holder is studied and taken under the conditions stipulated in Article 8.

Article 13: Revocation and withdrawal of an allocation decision

- 1 An allocation decision may be revoked or withdrawn in the cases stipulated in §§2-4 below.
- 2 If revocation takes place at the request of the holder, the latter must inform the national regulatory authority by A/R registered letter, accompanied by a copy of the request for cancellation of the resource in the networks of other operators, of the fact that the service will be discontinued and the holder wishes to free the corresponding numbering resource. The resource will stop being subject to fees as of the day this letter is received. At that time, the holder is to be notified of the revocation of the decision to allocate the resource in question.
- 3 If resources are not used in a manner that conforms to the conditions of their allocation and utilization, or if a significant part of the resource remain unused, the national regulatory authority may withdraw the numbers.
- 4 A resource for which revocation or withdrawal has been pronounced becomes free again, but it may not be reallocated until at least six months have expired, except if it is requested by the former allocation holder. If the resource has been withdrawn for reason of unsatisfactory utilization, pursuant to §3 above, the resource may not be allocated again until at least six months have expired, regardless of the applicant.

Article 14: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.

Article 15: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the single market, and:
- a) concern the implementation of the tariff policy applicable to telecommunication services;
 - b) concern the implementation of the universal service development policy;
 - c) concern interconnection;
 - d) relate to the arrangements for authorizing the establishment, operation and/or provision of telecommunication services open to the public,

Member States shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.

- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.
- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.
- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.
- 7 Member States shall communicate to the Executive Secretariat any provisions of domestic law which they adopt in the field governed by this Decision.

Article 16: Information report

Member States shall, no later than six months following the date of entry into force of this Decision, communicate to the Executive Secretariat the steps taken or which are in the course of approval or implementation for the purpose of implementing this Decision.

Article 17: Entry into force

This Decision shall enter into force on the date of publication thereof.

Done at, [date]
For the Authority

Draft decision A/DEC./__/__/2006 on the management of the radio-frequency spectrum

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

In view of Decision A/DEC. 12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

In view of Decision A/DEC. 16/5/82 on the telecommunication program of ECOWAS;

Considering that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

Considering that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Considering that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

Noting that the strong growth in the number of users of ICT services is liable to lead to a serious shortfall in numbering resources;

Wishing, therefore, to elaborate sub regional regulations in regard to optimum management of the radio-frequency spectrum;

On the recommendation of the fifty-sixth session of the Council of Ministers held in
from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives and scope

- 1 The purpose of this decision is to harmonize procedures for the management of the radio-frequency spectrum by ECOWAS Member States.
- 2 This decision aims to establish a framework of guidelines and legal provisions within ECOWAS to assure policy coordination and, where applicable, the harmonization of

conditions with respect to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the domestic ICT market in the ECOWAS zone.

- 3 To that end, this decision establishes procedures with a view to the following:
- a) to facilitate the defining of policies in regard to strategic planning and harmonization of the use of the radio spectrum in the ECOWAS zone, taking into account in particular the economic, security, health, public-interest, freedom-of-expression, cultural, scientific, social and technical aspects of Community policy, as well as the different interests of communities of radio-spectrum users, with a view to optimizing the use of the radio spectrum and eliminating harmful interference;
 - b) to assure the effective implementation of the radio-spectrum policy within ECOWAS, and, in particular, to establish a general methodology for assuring the harmonization of conditions relating to the availability and effective utilization of the radio spectrum;
 - c) to assure the coordinated and timely dissemination of information on the allocation, availability and utilization of the radio spectrum within ECOWAS.

Article 2: Objectives of radio-frequency spectrum management

- 1 The Member States shall assure coordinated management of the radio-frequency spectrum within the ECOWAS zone, on the basis of the following objectives:
- a) economic efficiency: ensuring that the allocation of frequencies to users, having regard to the uses, results, on the market, in higher value being derived from the resource; ensuring that there is a swift, flexible response to changing markets and technologies, with new services being accommodated as they become technically and commercially viable; and minimizing transaction costs, barriers to entry and any other constraints on efficient economic activity;
 - b) technical efficiency: assuring intensive use of limited spectrum, and adherence to technical limitations based on interference considerations; and promoting the development and introduction of new spectrum-saving technologies where the cost of such technologies is justified by the value of the spectrum saved.
 - c) general policy: ensuring that it is consistent with overall government policy; safeguarding certain areas of spectrum use for the efficient functioning of national defense, emergency services and other public services; and ensuring that any change in spectrum use in an ECOWAS Member State always remains consistent with Member States' international and regional obligations.

Article 3: Definitions

1 For the purposes of this decision, the definitions contained in Decision(s) shall apply.

2 The following additional definitions shall also apply:

radio frequencies or **radio-frequency spectrum**: frequencies or spectrum of electromagnetic waves propagated naturally in the 3 kHz to 300 GHz band, used for the transmission and reception of telecommunication signals.

frequency-spectrum management: all administrative and technical actions, taken as a whole, aimed at ensuring a rational use of the radio-frequency spectrum by users.

CHAPTER II

General principles

Article 4: Definition of a common framework for spectrum management in the ECOWAS zone

Member States shall define a common framework for economically efficient spectrum management with a view to meeting the objective of liberalizing the ICT market within ECOWAS.

Article 5: Principles of efficient spectrum management

Member States shall ensure that all classes of user are encouraged to make optimum use of the spectrum they occupy.

Article 6: Spectrum pricing

- 1 Member States shall adopt a frequency pricing system in cases where demand is greater than supply and neither frequency auctioning nor frequency trading are used. Determination of the price calculation method, which is generally based on spectrum opportunity costs, may also take account of any objectives defined by the State.
- 2 Member States shall ensure that in the majority of frequency bands where demand is greater than supply, they follow the principle of a positive price for spectrum access where there are other potential uses for a given block of spectrum, i.e. where the opportunity cost is greater than zero. Where demand does not exceed supply, the price may be equal to the administrative costs or to a value consistent with government policy.

Article 7: Auctions

Where demand is greater than supply, Member States shall make preferential use of auctions as a means of assigning major spectrum licenses to competing applicants, in the interests of ensuring transparency, objectivity and impartiality in the transfer (or assignment) process.

Article 8: Service restrictions

Member States shall ensure that spectrum management bodies in the ECOWAS countries make every effort to keep license conditions to the minimum necessary for efficient spectrum use. To this end, existing licenses should be amended to remove restrictions not needed for reasons of international coordination or interference management, and new licenses should be issued with as few restrictions as possible.

Article 9: Generic licenses for spectrum use

In the interests of greater flexibility and as an aid to economic development, Member States may adopt a system of generic licenses for frequency usage within certain frequency ranges.

Article 10: Conformity with the global and regional regulatory framework

Member States shall manage spectrum in ways that promote flexibility while respecting the ITU international allocations.

CHAPTER III

Principles of spectrum management

Article 11: Coordinating spectrum management across civil and governmental uses

- 1 Member States shall establish a framework which permits the effective coordination of all spectrum use, at the national, regional and international levels.
- 2 Member States shall promote the merging of separate regulatory bodies dealing with spectrum use in the broadcasting and telecommunication spheres.
- 3 Where government requirements for a particular frequency band are zero or negligible, such spectrum may be permanently reallocated to civil uses, following a definitive renunciation by the government.

Article 12: Role of national regulatory authorities

In the interests of having a management regime that embraces the principle of technological neutrality, Member States shall ensure that radio spectrum management powers are vested in the national regulatory authority overseeing telecommunications by giving that entity a mandate covering ICT in the broadest sense.

Article 13: Radio spectrum coordination committee

- 1 Member States shall ensure that, in those countries of the ECOWAS zone that manage the radio spectrum according to the *multi-jurisdictional model*, an inter-departmental committee is established with the following rules of operation:
 - a) The committee shall in the first instance establish a policy agenda and guidelines for regulations.
 - b) The committee shall comprise members of key government agencies involved in spectrum management, as well as key non-governmental stakeholders.
 - c) Official records shall be kept of meetings of the committee and be made public, except where this may compromise national security interests.
 - d) Government representatives on the committee shall be appointed by a high-level member of government for a period not exceeding five years, renewable only once.

They shall elect a chairman amongst themselves, who shall remain in that function for a period not exceeding two years.

- 2 Member States which establish such a committee shall ensure that it also includes members from the civil society, chosen from a list of applicants drawn up pursuant to an open public selection process. Their committee memberships shall not exceed three years.
- 3 The committee shall not exceed 12 persons, including the Chairman.
- 4 Member States shall ensure that the committee is required to publish an annual report, to be communicated to the government and published on the committee's website. The committee shall also publish all its work and all other relevant material, subject to a confidentiality clause, on a dedicated website. The website of each participating governmental committee member's department should contain a link to the committee's website.
- 5 Two members of each national committee shall be nominated to sit on a regional committee comprising members from all the ECOWAS countries. The regional committee shall meet once a year, in one of the countries of the region, to discuss matters of international relevance in the context of spectrum management and matters of mutual interest.

Article 14: Regional Spectrum Management Coordination Committee

- 1 Member States shall establish a special ECOWAS committee comprising the spectrum management bodies of each ECOWAS Member State, with the task of defining a common approach to spectrum management.
- 2 The committee shall examine the spectrum assignments and allocations of the ECOWAS countries and recommend a harmonized policy for promoting broadband wireless access service provision across the region. The committee shall report its findings by the end of June 2007.

CHAPTER IV

Harmonization of documentation and monitoring at regional level

Article 15: Common framework for documenting and monitoring spectrum use

Member States shall establish, possibly under the auspices of ECOWAS, a common methodology for documenting and monitoring spectrum, sharing as necessary the costs of developing a software tool for that purpose. Member States shall likewise promote the establishment, under the auspices of ECOWAS, of a forum bringing together those responsible for spectrum management for the purpose of:

- a) exchanging information and experiences to foster the harmonization of spectrum management rules;
- b) preparing common positions to be presented to regional, then global bodies;
- c) pooling existing expertise.

Article 16: Common framework for a public database and establishment of a national allocation table to enable interference management

Member States shall:

- a) establish a common framework for developing a public database of technical and locational information about radio communication systems;
- b) in the near future, provide the data necessary to define a common template for the establishment of a national frequency table in each country.

CHAPTER V

Final provisions

Article 17: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.

Article 18: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the single market; and
 - a) concern the implementation of the tariff policy applicable to telecommunication services;
 - b) concern the implementation of the universal service development policy;
 - c) concern interconnection;
 - d) relate to the arrangements for authorizing the establishment, operation and/or provision of telecommunication services open to the public,

Member States shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat of ECOWAS one month prior to their implementation.

- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.

- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.
- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.
- 7 Member States shall communicate to the Executive Secretariat any provisions of domestic law which they adopt in the field governed by this Decision.

Article 19: Information report

Member States shall, no later than six months following the date of entry into force of this Decision, communicate to the Executive Secretariat the steps taken or which are in the course of approval or implementation for the purpose of implementing this Decision.

Article 20: Entry into force

This Decision shall enter into force on the date of publication thereof.

Done at, [date]

For the Authority

Draft decision A/DEC./__/__/2006 on universal access/service

The Authority of Heads of State and of Government

In view of Articles 7, 8 and 9 of the revised ECOWAS Treaty;

In view of Article 33 of the said treaty, which provides that Member States shall, in the area of telecommunications, develop, modernize, coordinate and standardize their national telecommunication networks in order to provide reliable interconnection among Member States, and shall coordinate their efforts with a view to mobilizing national and international financial resources through participation of the private sector in the provision of telecommunication services;

In view of Decision A/DEC. 14/01/05 on the adoption of a regional telecommunication policy and development of GSM regional roaming in the ECOWAS Member States;

In view of Decision A/DEC. 11/12/94 on the establishment of an ECOWAS technical advisory committee on telecommunication regulation;

In view of Decision A/DEC. 12/12/94 on tariff-setting and telephone traffic in the area of telecommunications;

In view of Decision A/DEC. 16/5/82 on the telecommunication program of ECOWAS;

Considering that the direct interconnection of modern telecommunication systems between Member States is a prerequisite for sub regional economic integration;

Noting that the Community has resolutely embarked upon a process of liberalizing telecommunication services and infrastructures by 2007;

Considering that this liberalization process is giving rise to flourishing markets calling for a framework that is conducive and attractive to investment;

Aware of the need to provide all of the Community's populations, regardless of geographic location, with a minimum set of high-quality and affordable telecommunication services;

Recognizing that the concept of universal service is bound to evolve as a result of technological progress, market developments and user requirements;

Wishing to achieve, as rapidly as possible, the digital opening-up of the Member States;

On the recommendation of the fifty-sixth session of the Council of Ministers held in
from to

DECIDES

CHAPTER I

Objectives, scope and definitions

Article 1: Objectives and scope

- 1 The purpose of this decision is to harmonize conditions so as to enable all citizens to connect to communication networks accessible to everyone at affordable rates.

- 2 This decision lays down the rules applicable to universal access/service within the countries of the ECOWAS zone, and sets out in particular the role of Member States in establishing and implementing rules in the following areas:
- a) creating a regulatory and policy environment favorable to universal access/service;
 - b) designing and identifying regulatory reform measures;
 - c) promoting innovative regulatory policies;
 - d) assuring access to information and communication infrastructures;
 - e) providing subsidies for financing and managing universal access/service policy;
 - f) assuring cooperation in the provision of service;
 - g) assuring the oversight and review of policies;
 - h) establishing an obligation to put emergency services in place.

Article 2: Definitions

1 For the purposes of this decision, the definitions contained in Decision(s) **A/DEC./__/__/2006** shall apply.

2 The following additional definitions shall also apply:

universal access/service: access to a basic group of services as defined in this decision, within the territory of the Member States of ECOWAS, for all citizens, regardless of their geographic location, at affordable rates.

public payphone: a telephone station made available to the public, for use against payment in the form of coins and/or credit or debit cards and/or prepayment cards, including cards used with numbering codes.

public telephone network: a telecommunication network used to provide publicly accessible telephone services. Between network termination points, it permits the transmission not only of voice communication but also of other forms of communication such as facsimile and data transmission.

publicly accessible telephone service: service made available to the public to enable people to make and receive domestic and international calls, and to access emergency services by dialing one or more numbers established for that purpose in national or international numbering plans. It may also include the provision of one or more of the following services, where applicable: operator assistance; telephone and/or directory information; public payphones; other specialized services; special services for disabled persons or persons having specific social needs; and non-geographic services.

CHAPTER II

Role of the authorities

Article 3: Creation of a regulatory and policy environment conducive to universal access/service

1 Member States shall take all necessary measures in order:

- a) at the highest possible political level, to identify ICT as a tool for socio-economic development, designating to that end a national focal point such as a ministry, government department or well-known individual to champion the cause of ICT development;
- b) to establish national regulatory authorities and provide them with the means to play a key role in implementing universal access policies, first by addressing the market efficiency gap (letting the market deliver universal access/service), and then by tackling the true access gap;
- c) to make national regulatory authorities responsible for implementing policies geared towards the provision of services that are of the highest possible quality, reliable and affordable, and which satisfy the needs of users both present and future;
- d) to develop their communications frameworks through telecommunication sector, institutional and legislative reform in line with international best practices but with due regard for local requirements;
- e) to include, in the definition of universal access/service policies, all citizens and elements of the population regardless of ethnic origin, socio-economic level or geographic location.

Article 4: Designing policies and determining regulatory reform measures

- 1 Member States shall take all necessary measures in order to:
 - a) formulate a national policy that identifies appropriate and realistic universal access/service objectives which take into account the differences between universal access (public access to ICTs) and universal service (private or household access to ICTs);
 - b) as frequently as possible, conduct public consultations with stakeholders to identify their needs and modify universal access/service policies, regulations and practices accordingly;
 - c) design universal access/service policies, regulations and practices to create incentives for the private sector to extend universal access to communications services;
 - d) use a multi-pronged approach to addressing universal access/service challenges and opportunities, relying on complementary strategies to meet the targets that have been set;
 - e) establish a fair and transparent telecommunication regulatory framework that promotes universal access to ICTs while allowing the market to address universal access/service to the greatest extent possible, intervening only where the market has failed or seems likely to do so. This entails:
 - i) promoting technologically neutral licensing practices enabling service providers to use the most cost-effective technology to provide services for end users;
 - ii) adopting a transparent and non-discriminatory interconnection framework in which interconnection rates are linked to costs;
 - iii) reducing regulatory burdens to lower the costs of providing services to end users;
 - iv) promoting competition in the provision of a full range of ICT services to increase access, affordability, availability and use of ICTs.
- 2 Where it is necessary for regulators and policymakers to intervene to facilitate the delivery of universal access/service:

- a) public access strategies should be explored in addition to private universal service strategies;
- b) both pay and play strategies should be employed, but where possible operators should be encouraged to invest in rural, remote and low-income populations and areas;
- c) countries can use regulatory reform as the first step in achieving universal access, recognizing that further steps may be necessary to achieve ubiquitous access to ICTs, e.g. in rural areas or for users with special needs;
- d) appropriate licensing schemes for rural service providers could be set up to meet the needs of unserved and underserved areas.

Article 5: Promoting innovative regulatory policies

Member States shall:

- a) promote access to low-cost broadband interconnectivity from the local level to the international level, involving government authorities, companies and non-governmental organizations;
- b) adopt regulatory frameworks that support applications such as e-education and e-government;
- c) adopt policies aimed at increasing access to the internet and broadband services, based on their own market structure, such that the policies reflect diversity in culture, language and social interests;
- d) ensure that national regulatory authorities work with stakeholders to expand broadband coverage and use through multi-stakeholder partnerships, in parallel to government initiatives to promote financially sustainable programs, particularly with a view to bridging the market gap that may exist in some countries;
- e) adopt regulatory regimes that facilitate the use of all transport media, whether wire line, power line, cable, wireless or any other new technology;
- f) ensure that national regulatory authorities put forward initiatives for encouraging public access to broadband and internet services in schools, libraries and other community centers;
- g) ensure that national regulatory authorities implement harmonized spectrum allocations consistent with the ITU radio communication conference process and each country's national interest.

CHAPTER III

Access to information and communication infrastructures

Article 6: General principles

With a view to facilitating access to information and communication infrastructures, Member States shall:

- a) within a competitive framework, foster the introduction of innovative services using new technologies at an affordable level of pricing;

- b) promote affordable ICT equipment, which could include national manufacturing of ICT equipment, reduced customs tariffs and duties and end-user loans to make ICT equipment more affordable;
- c) develop a full range of public access options, including the creation of public telecenters and multipurpose community centers;
- d) develop local projects and input, including content that is useful for local populations, thereby increasing their relevance and hence their long-term financial sustainability;
- e) institute education and training programs to encourage the use of ICTs and their impact on local people, thereby increasing the long-term financial sustainability of ICT projects.

Article 7: Availability of universal access/service

Without prejudice to more generous domestic measures, Member States shall commit themselves to taking the necessary steps to ensure that, as a minimum, the entire population within their territories have access to the services listed in this chapter, regardless of their geographic location and at affordable prices.

Article 8: Provision of the telecommunication service

Member States shall ensure that requests for connection to a telecommunication network are satisfied by at least one operator and may, if necessary, designate one or more operators to that effect, such that all parts of the national territory are covered. The connection provided must be such as to enable the user to make domestic and international calls, send and receive voice messages and fax and data transmissions, and connect to the internet with an adequate transfer rate.

Article 9: Directories and telephone information services

- 1 Member States shall ensure that:
 - a) a directory, which may be printed or electronic or both, containing the credentials of all subscribers, including their fixed and mobile telephone numbers, is made available to users in a form approved by the national regulatory authority;
 - b) at least one telephone information service covering all listed subscribers is available to all users, including users of public telephone booths;
 - c) companies providing the above services apply the principles of non-discrimination to the processing and presentation of information provided to them by operators.
- 2 Member States shall undertake to give effect to these provisions with all due respect for the applicable legal and regulatory provisions in force in regard to personal data and privacy protection. In particular, where subscribers expressly so request, their information shall not be included in any directory.

Article 10: Emergency services

Member States shall ensure that emergency calls can be made free of charge from any fixed or mobile telephone, including telephone booths.

Article 11: Public access and public payphones

- 1 In order, among other things, to enable users not subscribed to the telephone service to have access thereto, Member States undertake to ensure that **public payphones** are installed, under reasonable conditions, in terms of quantity and geographic distribution.
- 2 Without prejudice to more generous domestic legislation, Member States shall ensure that national regulatory authorities are in a position to impose schedules for the deployment of **public payphones**, with the aim of having at least one **public payphone** in each locality numbering 500 inhabitants or more by 31 December 2010. ECOWAS will monitor the implementation of this measure on an annual basis.

Article 12: Specific measures in favor of certain social groups

Where the need exists, Member States shall take specific measures to ensure that users with disabilities or special social needs have equivalent and affordable access to publicly available telephone services, including emergency and directory services at an affordable price.

Article 13: Reviewing the scope of universal access/service

- 1 With a view to monitoring and reviewing policies, Member States must, on the one hand, adopt measurable targets for improving connectivity and access to ICT use, which can be based on distance, population density or length of time needed to have access to ICTs, and, on the other hand, hold periodic reviews of universal access/service policies, regulations and practices in order to adapt to the evolving nature of ICT services and end-user needs.
- 2 Member States shall periodically review the scope of the universal service, in particular with a view to making proposals for its modification or redefinition. The first such review shall be held not later than two years following the date of entry into force of this Decision, and thereafter a review shall be held every three years.
- 3 The review shall take account of social, economic and technological developments, and shall have particular regard to data mobility and transfer rates for the technologies most widely used by the majority of subscribers. Member States shall inform the Executive Secretariat of any changes.

Article 14: Mandatory additional services

ECOWAS Member States may decide to make additional services accessible to the public, within their national territory, beyond those services that already come under the heading of universal service obligations as defined in this chapter.

CHAPTER IV

Implementation and management of universal access/service

Article 15: Cooperation in the management of universal access/service

Cooperation in this area must be explored on several levels:

- a) between the private sector and communities, so that where possible the market can deliver universal access/service;
- b) between communities, government and the private sector, to ensure that the access gap is dealt with in a manner that is relevant to communities;
- c) within government, to reap the full benefits of ICTs, beyond infrastructure and technology, and extending to health, education, agriculture and other sectors.

Article 16: Arrangements for implementation

- 1 Member States shall determine the most effective and appropriate approach for ensuring the implementation of universal service, with due respect for the principles of objectivity, transparency, non-discrimination and proportionality. They shall endeavor to keep market distortions to a minimum, particularly where they take the form of service provision at rates or under conditions which differ from those normally prevailing in a commercial operation, while protecting the public interest.
- 2 To these ends, Member States may, where necessary, designate one or more companies to ensure the provision of universal service, as defined in Articles 7, 8, 9 and 10, such that all parts of the territory can be covered. Member States may designate companies or different groups of companies to provide different components of universal access/service and/or to cover different parts of the national territory.
- 3 Where Member States designate companies to fulfill universal service obligations over all or part of the national territory, they shall do so through a mechanism that is effective, objective, transparent and non-discriminatory, and which does not exclude any company *a priori*.

Article 17: Quality of the service provided by designated companies

- 1 Member States shall ensure that the companies entrusted with the task of providing users with the services referred to in Articles 7, 8, 9 and 10 of this Decision provide the national regulatory authority with a regular account of their activities and results achieved in that regard.
- 2 National regulatory authorities shall establish performance objectives for companies assuming universal service obligations pursuant to Articles 7, 8, 9 and 10 of this Decision, in accordance with the procedures described in the present article.
- 3 Pursuant to the Decision on the harmonization of regimes applicable to telecommunication network operators and service providers, individual licenses may specify results to be achieved for the provision of universal access/service.

4 An entity's persistent failure to achieve the performance objectives and quality levels specified for the implementation of Article 3 of this Decision may entail the application of sanctions by the national regulatory authority.

5 National regulatory authorities are entitled to require independent verification of an operator's performance of the obligations incumbent upon it pursuant to Articles 7, 8, 9 and 10 of this Decision.

CHAPTER V

Financing and management of the universal access policy

Article 18: Level and structure of prices

1 National regulatory authorities shall ensure that the universal service is provided to everyone at affordable rates. They may, at the request of the minister in charge of the sector, require companies designated pursuant to Article 14 to make available to low-income or special-needs users prices, options or schemes that differ from those normally prevailing in a commercial operation, particularly with a view to ensuring universal service.

2 The conditions under which such facilities are granted must be proportional, transparent and non-discriminatory, and publicly promulgated.

Article 19: Calculating the cost of universal service

1 To assist national regulatory authorities in determining whether provision of the universal service places an unjustified burden on the companies designated as providers, Member States undertake to provide for the adoption of a method for calculating the costs of the universal service, based on net costs.

2 The net cost corresponds to the difference between the investment and operational costs associated with provision of the universal service and the relevant revenues. Relevant revenues are the direct and indirect revenues generated by the universal service.

3 The net cost of any special price-scheme offers made by an operator to certain categories of subscribers to ensure their access to the universal service shall be deducted from that operator's contribution to the universal service fund.

4 The calculation of the net cost of the universal service obligations shall be submitted for auditing by an entity that is unconnected with the body responsible for managing the fund. The result of the net cost calculation and the audit conclusions shall be made publicly available.

Article 20: Funding of universal access/service

1 Funding and subsidies must be targeted, and are to be determined and delivered in a manner that is transparent, non-discriminatory, inexpensive and competitively neutral.

2 Subsidies can be provided using several means, including:

- a) a universal service fund, which should be developed as a mechanism within a broader market-oriented approach to achieving universal access;

- b) universal service funds can be financed by a broad range of market players, managed by neutral bodies such as regulators, and be used to kick-start public access projects that meet the needs of the local community;
- c) governments may also consider a full range of other financing mechanisms;
- d) competitive minimum subsidy auctions could be used, as an option, to reduce the amount of financing necessary for public access projects financed by a universal service fund;
- e) public access projects can be designed to achieve long-term financial self-sustainability, especially where consideration is given to innovative low-cost technologies.

CHAPTER VI

Final provisions

Article 21: Time-frames for transposition

- 1 Member States shall take all necessary steps to adapt their national sectoral legislation to this Decision no later than two years following the date of its entry into force. They shall inform the Executive Secretariat of those steps immediately.
- 2 The legal texts agreed to shall contain a reference to this Decision or shall have such a reference attached to them when they are officially published.

Article 22: Implementation

- 1 When, based on this Decision, national regulatory authorities take decisions that are liable to have an impact on exchanges between Member States and on the establishment of the common market and concern implementation of the universal service development policy, Member States shall ensure that the measures and substantiating arguments are communicated to the Executive Secretariat one month prior to their implementation.
- 2 The national regulatory authority shall take into consideration the remarks of the Executive Secretariat.
- 3 The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the national regulatory authority that they are incompatible with this Decision.
- 4 Under exceptional circumstances, where the national regulatory authority considers it urgent to take action to safeguard competition and protect users' interests, it may adopt proportionate measures immediately, applicable for a limited period only. Those measures shall be communicated without delay to the Executive Secretariat for comment.
- 5 When Member States adopt transposition measures for this Decision, they shall ensure that the planned measures along with substantiating arguments are communicated to the Executive Secretariat one month prior to implementation of the measures.
- 6 Member States shall take into consideration the remarks of the Executive Secretariat. The measures shall take effect one month after the date on which they were communicated, unless the Executive Secretariat informs the Member States that the measures proposed are incompatible with this Decision.

