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COMPETITION DYNAMICS OF THE LICENSING FRAMEWORK IN TELECOMMUNICATION SECTOR IN TANZANIA: THE GOOD, THE NOT SO GOOD AND THE NEED FOR REFORMS

*Goodluck Temu**

This article explores the competition dynamics of the licensing framework in Tanzania's telecommunications sector, critically assessing its role in market regulation, entry facilitation, and competitive practices. It argues that licensing serves multiple purposes, such as regulating market structure, controlling investment, and generating government revenue. However, the Tanzanian framework, which mandates individual licensing for nearly all telecom-related transactions, is critiqued for creating barriers to market entry and inhibiting competition due to its complexity, multiplicity, and high costs. Drawing comparisons with general authorization models in developed economies, the paper identifies the benefits of a streamlined, less burdensome licensing regime that promotes technological innovation and market competition. The article concludes by advocating for reforms, including the adoption of a general authorization framework, to better align with modern technological advancements and ensure effective competition, consumer protection, and service affordability.

Key words: *Telecommunications licensing, Competition regulation, General authorization, Market entry barriers, Tanzania Communication Regulatory Authority (TCRA), Consumer protection*

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1. INTRODUCTION

It has been argued that licensing is one of the powerful regulatory tools, seeking to grant authorization for the provision of telecommunications services.¹ Beyond authorization objective, licensing is vital in “controlling and shaping telecommunication markets, for example, through controls on entry or local participation.”² Governments use licensing to regulate investment, for example, by incorporating conditions in contractual arrangements with investors.³ Besides, it is not exceptional, especially in developing countries, “to have licenses for purposes of extracting fees and levies.”⁴ It can thus be said that licensing in the telecom sector is used to achieve multiple objectives such as the “provision of an essential public service”, “meeting universal services obligations”, “privatization and commercialization”, and “regulating market structure.”⁵ The same is also true when licensing is applied in “allocating scarce resources,” “establishing competitive framework,” “generating government revenue,” and “overseeing matters relating to consumer protection.”⁶

From the foregoing, it is evident that licensing is vital in the provision of telecommunications services. Through licensing,

¹ Temu, G., “Regulation and Enforcement of Competition Law in Tanzania’s Telecommunications Sector: Law, Institutional Design and Practice”, PhD Thesis, Bayreuth University, 2021, at p. 132.

² Flanagan, A., “Authorization and Licensing”, in Walden, I., (ed), *Telecommunications Law and Regulation* (Fifth edition), Oxford: Oxford University Press, 2018, at pp. 285–286.

³ Ibid.

⁴ Temu, G., *Regulation and Enforcement of Competition Law in Tanzania’s Telecommunications Sector*, above note 1, at p.132.

⁵ Intven, H., Oliver, J., and Sepúlveda, E., *Telecommunications Regulation Handbook*, New York: World Bank, at pp. 2–3.

⁶ Ibid.

firms are authorized to enter telecommunications markets.⁷ It follows that any licensing framework adopted to regulate telecommunications services will have a direct impact on regulating entry and competition. Complicated licensing requirements will most likely create regulatory barriers. The opposite is also true. Friendly and accommodative licensing framework will most likely promote entry hence, in the absence of collusive or restrictive trade practices, increase competition which ultimately benefits consumers.

What then should be the ideal licensing model regarding the provision of telecommunications services? To answer this question, one must be conversant with the following facts: one, that licensing is a question of law to be determined by relevant governmental authorities depending on their policy objectives, and two, that the adopted model will most likely reflect the level of economy in question. The second point finds evidence in the analysis of regulatory models adopted in developed countries as compared to those in developing countries. Whereas most developed countries are abandoning individual licensing in favour of general authorizations, the position in developing countries is quite opposite as there is an increased adoption of more regulation of telecommunications services.⁸

This article posits that the probability of a competitive market rises with the number of market participants. Consequently, any licensing framework governing the sector has the potential to

⁷ Flanagan, A., *Authorization and Licensing*, above note 2, at p. 286.

⁸ See Article 56 Consolidated version of the Treaty on European Union [2012] OJ C326/13 and Article 12 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, [2018] OJ L321/36.

influence competition, potentially positively or negatively. Therefore, it is advocated that the optimal licensing framework would be to eliminate individual licensing requirements altogether, enabling businesses to offer communications services provided they adhere to general business licensing requirements. Regrettably, the aforementioned argument does not apply to Tanzania, as the country has chosen to implement a specific and comprehensive licensing regime for virtually all telecommunications-related transactions. Practically, there is no activity that can be undertaken within the sector by telecom firms without the necessity of an individual license, permit, or other form of authorization.

Given the preceding information, two pivotal questions emerge: whether Tanzania requires the licensing framework in the first place, and secondly, if so, to what extent does the adopted framework foster competition within the sector. As previously mentioned in this section, in other developed economies such as the European Union, licensing has been generally abandoned in favor of general authorizations.⁹ It is argued that general authorization promotes freedom to enter relevant markets by guaranteeing that entry is not hindered by uncompetitive regulatory barriers. If individual licenses must be preferred, they must then be “objective, proportional, transparent, and non-discriminatory.”¹⁰ The ultimate test is that such framework must not “prevent market entry or distort competition.”¹¹

⁹ Ibid.

¹⁰ Larouche. P., *Competition Law and Regulation in European Telecommunications*, Oxford: Hart Publishing, 2000, at p.34.

¹¹ Ibid.

In light of the aforementioned observations, it is crucial to acknowledge that Tanzania's licensing framework still employs an individual licensing approach. The Tanzania Communication Regulation Authority (TCRA), the country's sole regulator of telecommunications services, retains the exclusive authority to grant licenses to firms seeking to enter the market. As will be elucidated in later sections of this article, there is a comprehensive list of required licenses. Furthermore, the associated application processes are frequently cited as being intricate and involving substantial fees. In essence, one can assert that entry into the telecommunications market is directly at the discretion of the regulator, contingent upon the licensing framework. Consequently, the two questions raised earlier become even more pertinent, and the purpose of this article is to address them.

2. CONTEXTUAL AND THEORETICAL BACKGROUND

2.1 The Country

The United Republic of Tanzania is a country found in the eastern region of Africa. It shares its borders with eight countries: Kenya, Uganda, Rwanda, Burundi, DRC Congo, Malawi, Zambia and Mozambique. To the east, the country enjoys over 800 kilometers of the Indian ocean coastline. According to the latest census by the National Bureau of Statistics, over sixty-one million people call Tanzania home.¹² The country is a unique semi-federal state resulting from the union of two countries on 26th of April 1964; Tanganyika and Zanzibar. Described elsewhere as “a country of diverse culture, natural riches, and rich history”, Tanzania is also

¹² ‘Census Information Dissemination Platform’ <<https://sensa.nbs.go.tz>> accessed 25 June 2023.

home to the renown Serengeti National Park, Ngorongoro Conservation Area, and the beautiful clove islands of Zanzibar.¹³ The country is also home to the roof of Africa, Mount Kilimanjaro.

Economically, Tanzania falls within the category of developing economies of the world. Having obtained its independence from the British in 1961, it briefly embraced market economy for six years up to 1967.¹⁴ Thereafter, under the spearheading of its first president, the then Mwalimu Julius Kambarage Nyerere, the country adopted socialism as its principal economic policy for over twenty years up to the late 1980's.¹⁵ Although socialism was hailed as the best policy approach towards upholding equality and brotherhood, its negative economic impact was severe.¹⁶ Socialism left Tanzania at a miserable position in late 1980's compared to where it was in 1967.¹⁷ Following this policy failure, and under the framework led by the World Bank and International Monetary Fund, Tanzania embarked on economic and structural reforms which saw the reintroduction of market economy. As a result, Tanzania today has a somewhat competitive economy that encourages market operations to a significant extent.

2.2 The Sector

Tanzania's telecommunications sector is closely intertwined and influenced by the adopted social, economic, and political policies.

¹³ Temu, G., *Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector*, above note 1, at p. 7.

¹⁴ Wobst, P., *Structural Adjustment and Intersectoral Shifts in Tanzania: A Computable General Equilibrium Analysis*, Washington DC: Intl Food Policy Res Inst, 2001, at p.8.

¹⁵ Nyerere, J., *The Arusha Declaration Ten Years After*, Dar es Salaam: Government Printers, 1977, at p. 1–2.

¹⁶ Edwards, S., *Toxic Aid: Economic Collapse and Recovery in Tanzania* (First edition), Oxford: Oxford University Press, 2014, at p. 1.

¹⁷ Ibid.

Following the adoption of socialism, telecommunication services were monopolized and provided by Tanzania Postal and Telecommunication Corporation, which was established in 1967.¹⁸ The corporation maintained its exclusive monopoly on these services until the early 1990s, when telecommunications services were liberalized. The liberalization process implemented reforms that catalyzed structural changes, enabling the entry of the private sector into these services.¹⁹ These reforms have been implemented in a continuous manner. Currently, telecommunication services are provided in a liberalized yet regulated framework.

The Tanzania Communications Regulatory Authority (TCRA or the Authority) is the regulatory body overseeing communications services in the country. It was established in 2003 under the Tanzania Communications Regulatory Authority Act, which replaced the now-defunct Tanzania Communications Commission, originally constituted under the repealed Tanzania Communications Act No. 18 of 1993. The TCRA operates within a converged regulatory framework, tasked with overseeing all communications services in the country. Its responsibilities include licensing prospective market participants and ensuring that telecommunications services are provided in a competitive environment. Notably, Section 5(a) of the Act mandates the Authority to promote effective competition and economic efficiency within the communications sector.

¹⁸ Temu, G., *Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector*, above note 1, at p. 84.

¹⁹ Hudson, E.H., *Using Data for Policy Development: Designing a Universal Service Fund for Tanzania; Beyond Broadband Access: Developing Data-Based Information Policy Strategies*, New York: Fordham University Press, 2013, at p. 283.

Given the foregoing, it is evident that the Authority’s primary responsibility is to promote effective competition within the sector. All other regulatory obligations must be aligned with this objective. This primary objective is already evident in Section 19 of the TCRA Act where the law directs the Authority to “carry out its functions and exercise its powers” to determine whether the conditions for effective competition are present in the market and whether any actions by the Authority are likely to diminish competition or increase costs in the market and are detrimental to the public under this Act and sector legislation in relation to specific markets for regulated services. In doing so, the regulator is also empowered to investigate market conduct to ascertain the competitive dimensions of the sector. Further references to the Regulator’s powers in promoting and enforcing competition are found in Part IV (a) and (b) of the Electronic and Postal Communications Act [EPOCA],²⁰ and the Electronic and Postal Communications (Competition) Regulations of 2018.²¹

2.3 The Numbers

The regulatory reforms that took off in early 1990’s have certainly born noticeable and commendable results. The sector has grown exponentially at a rate that not even policy makers envisaged. Let the numbers speak for themselves. In 1997, the Tanzanian telephone density stood at 0.32 per 100 inhabitants.²² This number was disappointingly low, even at the then EAC and SADC standards.²³ For example, Kenya and other SADC countries

²⁰ The Electronic and Postal Communications Act, [Cap 306 R.E. 2022]

²¹ The Electronic and Postal Communications (Competition) Regulations, GN No. 26 of 2018

²² *National Telecommunications Policy* (Government Printers 1997) 1.

²³ *Ibid.*

claimed an average of 0.92 and 3.4 per 100 inhabitants, respectively.²⁴ Patching Tanzania against other developed regions of the world at the time results into even an underwhelming conclusion. By then “Asia, Europe, and the world stood at 3.86, 35.36, and 10.49 per 100 inhabitants, respectively.”²⁵ It is probably this poor faring of Tanzania against the world that made policy makers to come up with overly pessimistic projections of six connections per each 100 inhabitants come 2020.²⁶ Interestingly, little did the policy makers knew of how fast the sector would grow. At the dawn of the new millennia in 2000, already 1% of Tanzanians had access to telephone services. That number would exponentially “shoot to 10 percent, 50 percent, and over 80 percent in 2010, 2015, and 2020.”²⁷ As of December, telephone penetration rate stood at 133% of the entire population.²⁸

Data on access to internet services, however, provides a different picture altogether. Only slightly above 50% of Tanzanians have access to internet services.²⁹ This is of course attributed to low level of income for most Tanzanians, especially in rural areas, making access to smartphones or other ICT devices difficult.³⁰ Further, challenges related to accessibility and unavailability of stable

²⁴ Ibid.

²⁵ Temu, G., *Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector*, above note 1, at p. 75.

²⁶ *National Telecommunications Policy* (n 23) 3.

²⁷ Temu, Goodluck (n 2) 75–76.

²⁸ TCRA, ‘Telecommunications Statistics: Quarter Ending December 2024’ (https://www.tcra.go.tz/uploads/text-editor/files/Takwimu%20za%20Mawasiliano%20-%20Disemba%202024_1736975095.pdf accessed 14th of February 2024).

²⁹ Ibid.

³⁰ Ministry of Finance, United Republic of Tanzania, *Hali Ya Uchumi Wa Taifa Katika Mvukea*, Dar es Salaam; Government Printers, 2021, at p.1-2.

connectivity even at the 3G level cannot be overlooked.³¹ These factors, combined with poor infrastructure for fixed-telephone network, account for the low access of internet services.

In terms of operators, the telecom market is comprised of four key players: Vodacom Tanzania Limited Plc having 30% of all subscribers, MIC Tanzania Limited (Now rebranded as Yas) having 27%, Airtel Tanzania Limited having 28% and Viettel Tanzania Limited (Halotel) having 13%.³² The state-owned corporation, Tanzania Telecommunication Corporations Limited, commands only 2% of all subscription with Smile, a company that was recently acquired by MIC Tanzania Limited (Yas), commanding 0%.³³ It is worth noting that save for the revolutionary entry of Halotel in 2015, the market has always been dominated by the three companies, Vodacom, Yas and Airtel, which have been in operation since the early years of telecommunications liberalization.³⁴

At a high level, the figures above indicate that Tanzania's telecom sector cherishes some form of competition. However, it is equally vital to understand that the industry is tightly regulated. The regulator has control in practically every sector's venture. Thus, the regulator is responsible for a wide range of regulatory activities such as regulation of competition, consumer protection,

³¹ Malakata, M., "Tanzania Relies on UCSAF, Policy to Chase down Connectivity Target," *ICT and Governance*, 27 May 2021, at p. 1. Available at <<https://itweb.africa/content/mYZRXv9a6eKvOgA8>> (accessed 5 October 2023); See also Pazi, M.S., "Assessment of Broadband Access Technologies in Tanzanian Rural Areas", 8 *International Journal of Internet of Things*, 2019, p.1 at p.1.

³² TCRA, "Telecommunications Statistics: Quarter Ending March 2023, at p.7.

³³ Ibid.

³⁴ For the impact of Halotel entry into the Tanzanian telecom sector see Temu, G., *Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector*, above note 1, at p 114.

interconnection, collocation and sharing of infrastructure, quality of service, and many more. As already noted by the author elsewhere, there is “unnecessary overregulation” that subject telecom firms “to too many regulatory requirements” such that “complying with all of them without fail becomes almost impossible”.³⁵

2.4 Theoretical Justification for Regulation

Although this paper primarily focuses on licensing, it also provides a theoretical overview of why governments regulate the telecom sector to offer contextual understanding. Based on survey of existing literature, several theoretical justifications for regulation exist as discussed in here. First, sufficient literature to support an argument that regulation, inclusive of licensing, aims to promoting efficiency in the sector. Three types of sector-relevant efficiency are distinguished by economic literature: dynamic efficiency, which promotes innovation and long-term sectoral growth; allocative efficiency, which matches production to consumer demand; and productive efficiency, which guarantees the lowest cost of production.³⁶ Through regulation, it is argued, there is a promotion equitable market entry, the best possible use of vital resources (such as spectrum and numbering), and the development of a competitive atmosphere that fosters technological innovation.³⁷ Second, regulation is useful for investment promotion, especially

³⁵ Id, at p. 319.

³⁶ Ducci, F., and Trebilcock, M., “The Revival of Fairness Discourse in Competition Policy”, 64(1) *The Antitrust Bulletin*, 2019, p.79 at pp.79–104 ; Foer, A, A., and Durst, A “The Multiple Goals of Antitrust”,63(4) *The Antitrust Bulletin*, 2018, p. 494 at pp. 494–508 and Gundlach, T. G., and Moss, D., “The Role of Efficiencies in Antitrust Law: Introduction and Overview”, 60(2)*The Antitrust Bulletin*, 2015, p. 91 at pp.91–102.

³⁷ Ibid.

on facilitation of market entry. Investors are more inclined to enter a market when there is a predictable and clear regulatory framework, according to regulatory commitment theory.³⁸ Third, it is also supported in literature that regulation encourages competition by addressing monopolistic behaviors and practices.³⁹ However, academics contend that excessive government regulation, especially in situations where competition is already established, can lead to decreased market efficiency and a deterrent to innovation.⁴⁰ (Hausman & Taylor, 2018). Apart from the foregoing, which are considered the main theoretical justification for regulation, literature further suggests that regulation may be useful for extension of universal communications services, for protecting consumer rights and to increase government revenue.⁴¹

From a broader perspective, the regulation of Tanzania's telecommunications sector serves multiple purposes, drawing insights from economic, legal, and policy frameworks. While it has played a crucial role in encouraging competition, attracting

³⁸ Cave, M., Genakos, C., and Valletti, T., "The European Framework for Regulating Telecommunications: A 25-Year Appraisal", 55(2), *Review of Industrial Organization*, 2019, at pp.47&62.

³⁹ Podszun, R., "State-Related Restraints of Competition and Supranational Antitrust Law: How a Harmonised Regional Competition Framework Can Shape a More Market- Oriented Economy", in Döveling, J. and others.,(eds), *Harmonisation of Laws in the East African Community: The State of Affairs with Comparative Insights from the European Union and Regional Economic Communities*, Nairobi, Kenya: LawAfrica Publishing (K) Ltd, 2018, pp. 265, at pp. 293–94.

⁴⁰ See for example Jerry A Hausman, A, J., and Taylor, E, W., "Telecommunications Deregulation". 102(3) *American Economic Review*, 102.3, 2012, at pp., 386–90.

⁴¹ See Cremer, H. and others., "Social Costs and Benefits of the Universal Service Obligation in the Postal", Michael A Crew, M, A., and Kleindorfer, R, P (eds), *Market Competition and Regulation in the Postal and Delivery Sector*, Cheltenham: Edward Elgar Publishing, 2008, pp. 23 at p.24 and Mehta, S, P., "Economic Regulations, Competition, and Consumer Protection in Ancient",63(3) *The Antitrust Bulletin*, 2018, at pp. 316–29).

investment, and safeguarding consumer rights, there are growing concerns about the potential downsides of excessive regulation—especially within the licensing framework, as this paper will explore.

3. LEGAL FRAMEWORK ON TELECOMMUNICATION LICENSING IN TANZANIA: A CROSS-SECTIONAL REVIEW

The licensing of telecommunications services in Tanzania is governed by a dual process. Firstly, entities must comply with the general licensing requirements outlined in relevant business laws. Secondly, they must subsequently submit applications to the telecommunications regulator for specific licenses. In this section, we will systematically analyze all licensing requirements to establish a foundation for the subsequent section, which aims to assess the necessity and competitiveness of this framework.

3.1 General Licensing Requirements

Any person or entity wishing to carry out business in Tanzania, including telecom firms, must apply for a general business license under the Business Licensing Act.⁴² For those intending to operate as corporate entities, an application for incorporation is to be made to the Business Registration and Licensing Agency (BRELA), an executive agency with the sole mandate to register various forms of business organizations in the country. Fees for incorporating a company whose share capital exceeds fifty million Tanzania shillings, the category under which telecom companies fall in, is Tanzanian shillings 440,000/= (about 175 USD as of April 2024).

⁴² Business Licensing Act, [Cap 208 R.E 2002].

It is worth noting that incorporation of a company always proceeds in tandem with registration of business names under the Business Names (Registration) Act.⁴³ In addition to incorporation procedures, it is obvious that each prospective telecom service provider will require a unique trademark. This will demand registration at BRELA (unless prior registration exists) as required by the Trade and Service Marks Act.⁴⁴ This application will cost a company about 70 USD.⁴⁵

The aforementioned procedures are insufficient to enable a newly registered company to commence operations. Additional requirements include applying for a business license with the Ministry of Industry and Trade or local government authorities. For telecommunications services, the application for a business license is directed to the Ministry of Trade. Each application attracts fees at rates set by the Finance Act No 2 of 2014. For example, a license to provide internet services attracts a fee of Tanzanian shillings 600,000/= (about 255 USD) for local companies or 3000 USD for foreign companies.⁴⁶ A license that permits a holder to run cellular phones operations costs the same amount of Tanzania shillings 600,000/= for local companies, or 5000 USD for foreign companies.⁴⁷ Additionally, a company will also need to apply for Value Added Tax Registration Number (VRN) per Sections 28 and 29 of the Value Added Tax Act⁴⁸ and Tax Identification Number (TIN) per Sections 133 of the Income

⁴³ *The Business Names (Registration) Act*, [Cap. 213 R.E. 2002].

⁴⁴ *The Trade and Service Marks Act*, [Cap. 326 R.E. 2002].

⁴⁵ *Ibid.*

⁴⁶ Schedule to Finance Act No 2 of 2014.

⁴⁷ *Ibid.*

⁴⁸ *The Value Added Tax Act*, [Cap 148 R.E 2019].

Tax Act.⁴⁹ Both numbers are issued free of charge by the Tanzania Revenue Authority.

It is imperative to mention here that the above procedures are not as straight forward as it may appear for the following reasons.

1. First, despite government efforts to develop an e-government strategy that aims to predominantly transact government services electronically, the level of digitization remains inadequate. Systems frequently experience outages, necessitating physical follow-ups, which directly contradict the objective of implementing the e-strategy.
2. Second, there is a high level of bureaucracy in some government offices and officials. This bureaucracy unnecessarily complicates the entire process. From personal experience, obtaining a Virtual Resident Number (VRN), which is mandatory for all service providers and whose primary objective is to trace and ensure the flow of tax into government coffers, took an unnecessarily one-month period. It is important to note that this process should ideally take no more than a day.
3. Third, the application process for these licenses is decentralized. This means that applicants must first register with BRELA, then proceed to Ministry of Trade or Local Government offices for licenses, and finally to TRA for taxpayers' identification numbers. This decentralized approach to business registration already causes unnecessary time wastage and serves as an unjustified regulatory barrier to entry. Many prospective telecom service providers will likely be incentivized to enter a market where the application

⁴⁹ The Income Tax Act, [Cap 332 R.E 2019].

procedures are digitized, efficient, and fast, thereby making them feel “needed.” Conversely, the systems and procedures outlined above often make applicants feel as though they are “begging” to provide services.

Overall, it is evident from the foregoing that the general licensing framework presents obstacles that are likely to deter prospective investors. This fact is evidenced by the World Bank’s Ease of Doing Business Report of 2020, where Tanzania ranks 141 out of 190 economies, doing worse than its neighbors Kenya (56/190), Uganda (116/190) and Rwanda (38/190).⁵⁰ Among others, the licensing regime contributes to these delays which in turn affect the competitive aspects of doing businesses, including in the telecom sector.

3.2 Specific Licensing Requirements

Under normal circumstances, a company that has met the aforementioned requirements will be permitted to commence operations promptly. However, this is not the case for telecommunication companies. These entities are required to undertake a second-level licensing process through the TCRA. The specific type of license required by telecommunication firms is contingent upon the services they intend to provide, and this aspect is further elaborated upon in this section.

3.2.1 Network Facility License

Section 11 of the Electronic and Postal Communications Act (EPOCA)⁵¹ imposes prohibitive provisions, stating that “a person

⁵⁰ World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies*, Washington, DC: World Bank, 2020, at pg. 4.

⁵¹ [Cap 306 R.E 2022].

shall not install, operate, manage, construct, maintain, own, or manufacture an available network facility in the United Republic except under the terms and conditions of an individual license granted by the Authority.” Network facilities are defined in Section 3 of the same law as “any element, or combination of elements, of physical infrastructure used principally for, or in connection with, the provision of one or more network services or multiplex operations, but not including customer equipment.” In simple terms, network facility includes infrastructure/facilities or part thereof, used to provide network services. These may include gateway facilities such as “Earth Satellite Station, VSAT, Submarine cable, switching centres, nodes and servers, multiplexer and others.”⁵² They also include “Public Data Centre Facility for data storage, hosting, cloud computing, data analytics and algorithm.”⁵³ Further, such facilities may also include laid cables, submarine landing cables, fiber optic, exchange, nodes, servers, towers, ducts, transmitters and links, multiplexer and others. A network facility license will therefore be needed to entitle a holder to “construct, maintain, own and make available one or more network facilities.”⁵⁴

The prohibition in Section 11 above brings out several issues. First, it is couched in negative terms, so that its direct and obvious consequence is to prevent dealing with and in network facilities. Second, the scope of facilities that need licensing is already far too broad. A license is required for the installation, management,

⁵² See the First Schedule to The Electronic and Postal Communications (Licensing) Regulations as amended by the Electronic and Postal Communications (Licensing) (Amendment) Regulations, G.N 65 of 2022.

⁵³ Ibid.

⁵⁴ Ibid.

building, maintenance, ownership, and provision of network facilities. In other words, anyone participating in the telecommunications industry will need some sort of a license. Third, the license given under this framework is individual, in the sense that it is only awarded to a single applicant and is not transferable to others.

It is important to note that this license is not free. For example, most telecom firms will require facilities with international connectivity. As such, they will need network facility license permitting them to operate at an international market. For this type of license, an application fee of 10,000USD, an initial license fee of 200,000 USD and annual royalty fee of 1% of Gross Annual Turnover will be required.⁵⁵ This license is issued for 25 years with a renewal fee of 200,000 USD. Again, it is worth noting that different type of network facility license will be required depending on the nature and type of service in question. Submarine cable landing stations, for example, can only be granted under a national license and require a \$10,000 application fee, a 400,000 USD initial license fees, and \$300,000 USD renewal fee every 15 years.⁵⁶ The aggregate effect of all of these fees is to raise initial investment costs, which may discourage potential enterprises from entering the market.

3.2.2 Network Services License

The network facility license discussed above grants the holder the exclusive right to operate and manage telecommunication facilities. It does not permit the owner to engage in the provision of network

⁵⁵ Ibid.

⁵⁶ See the First Schedule to The Electronic and Postal Communications (Licensing) Regulations, above note 48.

services. To offer network services, a separate license known as the network services license is required. As with the network facilities license, Section 12 of the relevant regulations, which governs the network services license, is phrased in a negative manner.⁵⁷ It reads, “a person shall not operate, manage and provide network services in the United Republic except in accordance with the terms and conditions of an individual licence granted by the Authority.”⁵⁸ This is also an individual license, obtained after application and upon payment of fees. This license will now permit the holder to provide network services, which are defined by Section 3 of EPOCA to mean “a service for the carrying of information in the form of speech or other sound, data, text or images, by means of guided or unguided electromagnetic energy but does not include services provided solely on the customer side of the network boundary.” A network services license grants its holder the authority to operate electronic communications by accessing network access codes and interconnection capabilities. Furthermore, this license enables the holder to provide virtual network services.

Pursuant to Regulation 9 of the Licensing Regulations, a network services license is typically confined to a specific region, which may include international, national, regional, or district markets upon issuance and payment of the prescribed fees. For international markets, there is an application fee of 10,000 USD, initial license fee of 300,000 USD, and a royalty fee of 1% of gross annual turnover.⁵⁹ This license is for 25 years and do attract a renewal fee

⁵⁷ Licensing Regulations, above note 48.

⁵⁸ Ibid.

⁵⁹ See the First Schedule to The Electronic and Postal Communications (Licensing) Regulations, above note 48.

of 400,000 USD.⁶⁰ For a national license, which last for 25 years, there is a reduced application fee of 5000 USD, but an increased initial license fee of 600,000 USD and a renewal fee of 750,000 USD.⁶¹ An annual royalty fees of 1% of annual gross turnover remain. Regional and district licenses attract significantly lower fees, but so is their duration reduced to ten years.⁶² The 1% royalty fee, however, is maintained.⁶³

3.2.3 *Application Services License*

In addition to the two licenses previously discussed, the provision of telecommunications services will not be feasible without an additional type of license known as an application services license. As with other types of licenses, Section 14 of the EPOCA prohibits the offering of application services without obtaining an individual license issued by the TCRA. Regrettably, the Act does not provide a comprehensive and practical definition of an application service. The Licensing Regulations do not offer a detailed and useful definition either. As defined in Regulation 3 of the Licensing Regulations, application services encompass “services provided through one or more network services, excluding services solely provided on the customer’s side of the network boundary.”⁶⁴

A better understanding of these services can be reckoned from what a licensee is permitted to do. From the first schedule to the Licensing Regulations, we learn that an owner will be permitted “to provide international connectivity /bandwidth whether by satellite or submarine or other technologies” and also “to provide

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ See Section 3, Ibid.

internet services, pay phone, internet Telephony (VoIP) Data services, tracking services, financial services, gaming services, virtual applications services, virtual application and any other related services.” These are typical telecommunications services that should have been offered by a network services license holder, but they now require another license.

Application services licenses is divided into several segments. First, it can be issued to those already having network facility and network services license. At an international level, an application fee of 5000 USD, an initial fee of 100,000 USD and a renewal fee of 120,000 USD are applicable.⁶⁵ The national license attracts lower fees of 5000USD, 10,000 USD, and 13,500 USD for application, initial fee, and renewal fee, respectively, with 1% of annual gross turnover as a royalty fee.⁶⁶ Second, it can be issued to applicants who do not own network facilities or network services licenses. At international level, an application fee of 5000 USD, an initial fee of 100,000 USD and a renewal fee of 115,000 USD after every ten years will be needed.⁶⁷ At national level, an application fee of 1000 USD, initial fee of 10,000 USD, and a renewal fee of 11,500 USD will be needed after every five years.⁶⁸ As with all other licenses discussed so far, a royalty fee of 1% of annual gross turnover will be required.⁶⁹

3.2.4 Radio Frequency User Spectrum License

Section 77 (1) of the EPOCA gives the TCRA powers to manage and control “all radio communication frequencies spectrum or

⁶⁵ See the First Schedule to Licensing Regulations, above note 48.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid

⁶⁹ Ibid.

frequency channels and provide mechanisms governing allocation and assignment to persons for limited periods of time.” In doing so, the same section empowers the Authority to issue licenses under such terms and conditions as it may determine. Consequently, it is an offense under Section 119 of the EPOCA to use radio frequency spectrum without first having a user license.

It follows that the utilization of spectrum will necessitate an additional license from the Authority. The procedures governing this matter are outlined in the Radio Communications and Frequency Spectrum Regulations of 2018, commonly referred to as the Spectrum Regulations.⁷⁰ In essence, the Regulations establish substantive prohibitions on engaging in radio spectrum transactions without obtaining prior authorization from the TCRA. Consequently, the TCRA holds exclusive authority over the radio frequency spectrum and possesses the power to assign it at a fee, subject to the provisions outlined in Regulations 13 of the Spectrum Regulations.

Assigning of specific spectrum bands is normally made competitively. This already supposes that those with stronger financial muscles are likely to win. The results of recent auctions are a clear proof to this assertion. In 2018, the TCRA announced an auction for 700 MHz. In that auction, Vodacom Tanzania PLC acquired 2 x 10 MHz for US\$ 10,005,000 while Azam Telecom (T) acquired the same band for US\$ 10,000,000.⁷¹ TCRA garnered US\$

⁷⁰ *The Electronic and Postal Communications (Radio Communication and Frequency Spectrum) Regulations, GN No 64 of 2018 as amended by the Electronic and Postal Communications (Radio Communication and Frequency Spectrum) (Amendment) Regulations, GN No 643 of 2022.*

⁷¹ TCRA, ‘Results of the 700 MhZ Spectrum Auction’ available at <<https://www.tcra.go.tz/uploads/documents/sw-1619106560-RESULTS%20OF%20THE%20700%20MHz%20SPECTRUM%20AUCTION.pdf>> (accessed 20 May 2023).

20,005,000 from the two companies. In 2022, TCRA conducted another auction for multi-band frequency spectrum. In that auction, in which five companies participated, four emerged winners, contributing a total of USD 187,496,267.94 into TCRA's coffers.⁷²

In addition to the acquisition fees described above, telecom firms also have to pay for the license to use the acquired bands. Per the Licensing Regulation, spectrum user license is to be issued for ten years and does attract annual fees.⁷³ For example, Band A, which include 450MHz, 700MHz, 800MHz, 900 MHz, 1800MHz and 2100MHz and is mostly used by telecom firms, attracts an annual fee of 30,000 USD per 1 MHz. Band B (2300MHz, 2500MHz and 2000MHz) and Band C (1850MHz, 1900MHz, 3.1, 3.3, 3.5, 4.0, 4.9, 5.2, 5.4, 5.7, 5.8 GHz) attract an annual fee of 10,000 and 5,000 USD respectively.⁷⁴ Other less attractive bands do not command significant annual fees.⁷⁵

The above observations of various licensing categories indicate the following reality. First, the TCRA maintains a monopoly on radio spectrum and assigns it competitively to the highest bidder. This is not inherently a negative thing, but it provides the TCRA a mandate to detect terms of entry into the telecom sector. By default, competitive assignment of spectrum user rights assumes that only those with financial strength will prevail. Given that spectrum rights are neither freely assignable nor disposable, those

⁷² TCRA, 'Results of the Multi-Band Frequency Spectrum Auction', available at <[https://www.tcra.go.tz/uploads/texteditor/files/Public%20Notice%20Auction%20Result%20\(1\)%20pdf_1665554653.pdf](https://www.tcra.go.tz/uploads/texteditor/files/Public%20Notice%20Auction%20Result%20(1)%20pdf_1665554653.pdf)> (accessed 20 May 2023).

⁷³ See the First Schedule to Licensing Regulations, above note 48.

⁷⁴ Ibid.

⁷⁵ Ibid.

who are less financially stable are unlikely to get spectrum rights, creating an entry the barrier. Second, even after acquiring spectrum rights at a rather exorbitant pricing, at least within the context of developing economies, telecom firms are demanded to pay annual user fees for ten years. Third, these requirements are not in isolation from many other licensing requirements already discussed in this section. The effect of these regulatory requirements is to increase a burden to telecom firms, a burden that will most likely be transferred to customers through service pricing and other hidden charges and techniques.

3.3 Other licenses

Despite the thorough examination of licensing requirements thus far, it is understandable that one might be inclined to believe that the list of necessary licenses has finally reached a conclusion. However, this is not the case. The specific nature of the business a telecom firm intends to undertake may necessitate the acquisition of additional licenses. For example, it is common for telecom firm to import electronic communications equipment. Per Section 3 of the EPOCA, electronic equipment includes “equipment used for radio communication or, as appropriate, the communication of information in the form of speech or other sound, data, text or images, by means of guided or unguided electromagnetic energy.” The importation and distribution of such equipment are governed by the Licensing Regulations. Regulation 43 mandates that importers and distributors ensure the equipment is type-approved and that any purchaser intending to use equipment with a radio spectrum frequency holds a valid radio spectrum frequency user license. Type approval is a form of general licensing that is not free.

According to the Second Schedule, the approval of equipment can cost upwards of 1,000 USD.

It is common for telecom companies to own online channels for advertising, marketing activities, or campaigns. These channels require an online content license, which is subject to various fees as prescribed under the Electronic and Postal Communications (Online Content) (Amendment) Regulations, GN. No. 136 of 2022. Additionally, many other transactions in the telecom industry necessitate some form of license or authorization, always accompanied by prescribed fees. Such transactions or services include acquiring numbering resources, changing a business name, or modifying the business structure—for instance, by adding a new shareholder.

In other words, no telecom company operates in the industry without first obtaining some form of license or authorization, which invariably comes with associated fees. As legal counsel, my advice to telecom companies is always this: If you are uncertain whether a license or authorization is required, assume that it is—and that a fee will apply.

4. ASSESSING THE COMPETITIVE ASPECTS OF LICENSING FRAMEWORK IN TANZANIA: THE GOOD, THE BAD AND THE NEED FOR REFORMS

4.1 The Benchmark

This section evaluates whether the licensing framework fosters competition within the sector. To achieve this, standards must be established against which the aforementioned framework will be evaluated. These standards are developed based on Tanzania's

competition policy, as outlined in the generic competition law and the regulations governing the telecommunications sector in the country. Additionally, established principles derived from literature on the necessity of pro-competitive regulation are incorporated into the standards.

The general competition policy in the country is found in the Fair Competition Act No 8 of 2003. The objective of this law per Section 3 of the Act is “to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Tanzania in order to: (a) increase efficiency in the production, distribution and supply of goods and services; (b) promote innovation; (c) maximise the efficient allocation of resources; and (d) protect consumers”. The reading of this Section indicates that competition policy seeks to enhance welfare of the Tanzanian people by promoting “effective competition.” This implies that any intervention in all markets within the country must be directed towards fostering effective competition, whose ultimate objective is the promotion of consumer welfare. Although consumer welfare is a subject of ongoing debate regarding its status as the primary goal of competition law, it remains the primary objective that competition policy aims to achieve in Tanzania.⁷⁶

⁷⁶ See for example Ma,J., *Competition Law in China: A Law and Economics Perspective*, Singapore:Springer Nature Singapore, 2020 at p. 33; Andriychuk,O., *The Normative Foundations of European Competition Law: Assessing the Goals of Antitrust through the Lens of Legal Philosophy*, Cheltenham: Edward Elgar Publishing, 2017 at p. 56&61; Williams, M., *Competition Policy and Law in China, Hong Kong and Taiwan*, Cambridge: Cambridge University Press, 2005, at p. 21 & 35; Fox,E., “The Battle for the Soul of Antitrust”,75(3) *California Law Review*, 1987, p.917, at pp.918–19.

The term “effective competition” referred in Section 5 above is not defined in the Act. However, Whish and Bailey suggest that effective competition is a state of the market where firms are subjected to “a reasonable degree of competitive constraints, from actual and potential competitors and customers.”⁷⁷ Effective competition, argues Stephen Sosnick, is “an image of a socially desirable state of affairs in an industry or market.”⁷⁸ It has been argued that effective must avoid the extreme of perfect competition or monopoly. Thus, somewhere between monopoly and perfect competition should the effective competition lie. Technically, this means “when, after the structural characteristics of its market and the dynamic forces that shaped them have been thoroughly examined, there is not clearly indicated a change that can be effected through public policy measures that would result in greater social gains than social losses.”⁷⁹

Therefore, effective competition is not a specific type of competition. It is an aspired outcome, achieved through the diligent implementation and enforcement of sound competition policy. This policy aims to foster various benefits, including consumer welfare.⁸⁰ Consequently, regulatory intervention in the telecommunications sector, including the licensing framework, must be guided by the principle of achieving effective competition

⁷⁷ Whish, R., and Bailey, D., *Competition Law* (9th edition), Oxford: Oxford University Press, 2018, at p.18.

⁷⁸ Sosnick, H. S., “Toward a Concrete Concept of Effective Competition” 50(4) *American Journal of Agricultural Economics*, 1968, p. 827, at p.827.

⁷⁹ Markham, W. J., “An Alternative Approach to the Concept of Workable Competition” 40(3) *The American Economic Review*, 1950, p 349, at p.361.

⁸⁰ Steinbaum, M., and Stucke, E. M., “The Effective Competition Standard: A New Standard for Antitrust” 87(2) *The University of Chicago Law Review*, 2020, p. 595, at pp.602–603.

for the benefit of consumers. This approach aligns with the specific provisions of the Tanzania Communications Regulatory Authority Act, No 12 of 2003. This Act mandates the regulator under Section 5 to promote effective competition. The Section explicitly states that the Authority has the “duty to enhance the welfare of Tanzania society by promoting effective competition and economic efficiency.” Further, Section 19(1) (a) to (c) of the same Act specifically tasks the Authority to ensure that when discharging its mandate, it considers “whether the conditions for effective competition exist in the market, whether any exercise by the Authority is likely to cause any lessening of competition or additional costs in the market and is likely to be detrimental to the public and “whether any such detriments to the public are likely to outweigh any benefits to the public resulting from the exercise of the powers.”

There is sufficient literature to support the premise that any attempt to regulate any sector of economy, inclusive of telecommunications, must be necessary and aim at promoting competition. The UK’s Competition and Market Authority (CMA) asserts that the notion that competition and regulation are mutually exclusive is probably unfounded.⁸¹ To the contrary, both competition and regulation may coexist, and while regulation may seek to address many other statutory obligations, it may and should promote competition.⁸² The overall conclusion of CMA is that when adopted, regulation should also seek to promote competition and not otherwise.

⁸¹ CMA, “Regulation and Competition: A Review of the Evidence”, CMA, 2020, at p. 14, available at https://assets.publishing.service.gov.uk/media/5e184a9940f0b65dbfbc1c4b/Regulation_and_Competition_report_-_web_version.pdf (accessed 1 October 2024).

⁸² Ibid.

Another useful literature on the same comes from Cook and others who argue that it may be necessary to have state regulation even in competition markets in order to “prevent the abuse of a dominant position, the creation of cartels, and in other ways to protect consumers through developing an effective ‘competition policy’”⁸³ The authors key argument is that regulation is relevant only if it promotes effective competition. In other words, there is no need to have regulation if it results in inhibiting effective competition in the sector. This conclusion finds support from other authors, including Kessides, who argue that effective regulation must foster “competition and market-like regulatory policies and practices.”⁸⁴ Others include Pascuzzi and Rossato,⁸⁵ Elis Ferran⁸⁶ and others and Larouche.⁸⁷

According to the above observations, regulation should only be deemed necessary if its final outcome is to promote effective competition. Regulation should strive to mirror market conditions as closely as feasible. It follows therefore that anything done in the sector, including enacted laws and regulations, must aim at achieving effective competition. How then can the licensing framework be assessed as a competitive? Two arguments are

⁸³ Cook, P., and others, “Competition, Regulation and Regulatory Governance: An Overview”, in Cook, P., and others (eds), *Leading Issues in Competition, Regulation, and Development*, Cheltenham: Edward Elgar, 2005, at p.3.

⁸⁴ Kessides, N, I., *Reforming Infrastructure: Privatization, Regulation, and Competition*, Washington DC: The International Bank for Reconstruction and Development / The World Bank, 2004, at p. 28.

⁸⁵ Pascuzzi, G., and Rossato, A., “European Telecommunication Law and Community Network”, in Gumaste, A., Chlamtac, I., and Szabo, C., (eds), *Broadband Services: Business Models and Technologies for Community Networks*, New York: John Wiley, 2005, at p. 75.

⁸⁶ Ferran, E., and others, *The Regulatory Aftermath of the Global Financial Crisis*, Cambridge: Cambridge University Press, 2012, at p. 121.

⁸⁷ Larouche, *Competition Law and Regulation in European Telecommunications*, above note 10, at p. 34.

advanced as a benchmark for assessing the licensing framework for telecom sector in Tanzania.

First, since telecom sector is already liberalized, entry should be free. Put differently, there is no objective justification of continued regulation of a sector that is fully liberalized.⁸⁸ However, should it, for whatever reasons, be deemed necessary, then any authorization in form of licensing must be “objective, proportional, transparent and non-discriminatory.”⁸⁹ Against this benchmark, we must answer whether it is necessary to license telecommunications services providers in the country.

Second, the licensing framework must not, in any way, distort or prevent competition in the sector. There appears to be a consensus that if regulation [licensing] is a must, then it must create “as if competition” in the sector.⁹⁰ This means that the end result should ensure that the regulated firms operate as if they are in full competition.⁹¹ Against this benchmark, we must answer whether

⁸⁸ See for example Podszun, R., “State-Related Restraints of Competition and Supranational Antitrust Law: How a Harmonised Regional Competition Framework Can Shape a More Market- Oriented Economy”, in Döveling, J., and others (eds), *Harmonisation of laws in the East African Community: The State of Affairs with Comparative Insights from the European Union and Regional Economic Communities*, Nairobi: LawAfrica Publishing, 2018, at pp. 293–294; Hausman, A, J., and William E Taylor, E, “Partial Deregulation in Telecommunications: An Update”, [2016] 12(3) *Journal of Competition Law and Economics*, 2016, p. at p. 386; Kirchner, C., “Regulating towards What? The Concepts of Competition in Sector-Specific Regulation, the Likelihood of Their Realisation and of Their Sustainability, and Their Relationship to Rendering Public Infrastructure Services” in Ullrich, H., (ed), *The Evolution of European Competition Law: Whose Regulation, Which Competition?*, Cheltenham; Edward Elgar, 2006, at p.243; Möschel, W., “Regulation and Deregulation in Telecommunications”, (2004) 5(2) *European Business Organization Law Review*, 2004, p.353, at pp.355–256.

⁸⁹ Larouche, *Competition Law and Regulation in European Telecommunications*, above note 10, at p. 34.

⁹⁰ Temu, G., above note 1 at pg.184; Podszun, above note 85 at p. 293.

⁹¹ Chirita, A., “Abuse of Global Platform Dominance or Competition on the Merits?”, 33(1) *Loyola Consumer Law Review*, 2021, p. 1, at p. 18; Doris Hildebrand, D., “The

the existing licensing framework does promote or hinder competition in the sector.

4.2 The Good

At the outset, and assuming that licensing is required in the sector, it is clear that Tanzania's established licensing structure is intended, at least theoretically, to foster competition. This can be derived from the principles regulating the licensing structure, which are further explained in this section.

The first principle has to do with market segmentation. Market segmentation means that a provider of telecom services need not to start offering services at international or national levels. A room is provided with geographical segmentation, so that a telecom firm has a freedom to enter a market it is capable to serve. Thus, firms with limited resources may start at a district or regional level while those financially strong can start providing services at an international level from the start. A telecom firm may obtain a license at the district, regional, national, and international levels, under Regulation 9 of the Licensing Regulations. A regional license allows the holder to serve up to ten regions, while a district license allows the holder to serve up to three administrative districts. An international license, on the other hand, gives the holder access to international connectivity, while a national license would allow the holder to service all of Tanzania.

Market segmentation gives potential newcomers with limited financial resources the opportunity to begin at lower levels and provide the established players some competitive pressure. Market

Equality and Social Fairness Objectives in EU Competition Law: The European School of Thought", (1) Law & Economics: Concurrences, 2017, p.1,at p. 2.

entry is made easier in this way since it ensures that numerous entrants at a lower level will be possible. Other communications subsectors, like broadcasting and internet services, have found great success with this segmentation. In order to satisfy the unique demands of local communities, many broadcasting services are offered at the district and regional levels. The same is true for internet services, where firms set up lower-level infrastructure and services, such as at district or regional level, providing competition restraints to established service providers like telecoms corporations.

To understand the competitive effect of market segmentation one must revisit recent communications statistics. As of 2020, there were twenty holders of network facility licenses with the following market segmentation: national and international licenses (mostly telecom companies) (09), national markets (05) and regional markets (06). Majority of providers at national and regional market deal with internet and other forms of communications apart from telecommunications services.⁹² Similarly, there were 12 licensed operators of network services in the following segmentation: national and international markets (08), national market (01) and regional markets (03).⁹³ The application license had most holders (87), divided into all four markets segmentations.⁹⁴ The numbers shown here indicate how this segmentation can promote entry into the market, a fact that would have otherwise been difficult in the absence of that segmentation.

⁹² TCRA, “List of Licensed Operators of Network Facility Licenses” 2022, available at <<https://www.tcra.go.tz/uploads/documents/sw-1619021592-Network%20Facilities%20as%20of%20May%202020.pdf>> (accessed 6 June 2023.)

⁹³ Ibid.

⁹⁴ Ibid.

The second licensing principle deals with converged licensing. The TCRA has been issuing licenses under a converged framework since 2005.⁹⁵ Converged licensing is a framework that observes technology and service neutrality; meaning that a license holder is free to offer any type of permitted services using its own technology of choice.⁹⁶ With this kind of licensing, services need not be delivered using dedicated channels with each service requiring specific technology and delivery channels.⁹⁷ Converged licensing make it possible “to bring together classical telecommunication services, internet, computing, and broadcasting into one.”⁹⁸ Thus, under this framework that embrace technology convergence, one can access telephone, broadcasting, internet services using the same device or channel.⁹⁹

Converged licensing has several competitive advantages. First, it gives freedom to license holders to offer services at their convenience, using technology of their choice. In so doing, such firms will most likely invest in efficient technology to lower

⁹⁵ Mfungahema, R., “Policy and Regulatory Approach on The Next Generation Networks: The Case of Tanzania”, *ITU-Regional Workshop on the Next Generation Networks (NGN)*, Markham Suite Hotel, Dar es Salaam, 3 October 2006, at pp. 17–18 available at <<https://www.itu.int/ITU-T/worksem/ngn/200610/presentations/npr-p2.pdf>> (accessed 17 September 2024).

⁹⁶ Reed, C., “Taking Sides on Technology Neutrality” 4 (3) *SCRIPT-ed*, 2007, p. 263, at p.266.

⁹⁷ Huang, I., and others, “The Convergence of Information and Communication Technologies Gains Momentum” in Dutta, S., and Bilbao-Osorio, B., (eds), *The Global Information Technology Report 2012: Living in a Hyper connected World*, Geneva: World Economic Forum, 2012, at p. 35.

⁹⁸ Hanrahan, H., *Network Convergence: Services, Applications, Transport, and Operations Support*, New York: John Wiley, 2007, at p. 32.

⁹⁹ Vogelsang, I., “Convergence and Net Neutrality”, in Krämer, J., and Seifert, S., (eds), *Communications Regulation in the Age of Digital Convergence: Legal and Economic Perspectives*, Karlsruhe: Karlsruhe Universität Verlag, 2009, at p. 20.

operational costs.¹⁰⁰ Second, by having a freedom to offer needed services, firms will strive to achieve distributive efficiency by offering what is need by consumers. With this freedom, the possibilities of license holders venturing into services that were traditionally reserved for different providers becomes apparent. For example, telecom companies such as British Telecom have ventured into media services, presenting competition that would have been thought as impossible in few years back.¹⁰¹ Similar moves have been seen from the telecom giants such as US's AT&T and Comcast and Deuteches Telekom.¹⁰² Third, converged licensing offers an opportunity for progressive entry into the market. With this model, a firm may enter into the market as virtual provider of communication services, only to grow with market demands. Overall, the result of this type of licensing is to promote competition and ultimately enhance consumers' welfare through better services at cheaper prices.

The third principle is competitive licensing. According to Regulation 20(3) of the Licensing Regulation, licensing must be done competitively. Competitive licensing refers “competitive selection process, by which a number of applicants compete for

¹⁰⁰ Kelly, T., and Rossotto, C. M., (eds), *Broadband Strategies Handbook*, Washington DC; World Bank, 2012, at p. 94.

¹⁰¹ Spanier, G., “Why Britain’s Telecom Companies Are Expanding into Media Operations”, *The Independent* (8 December 2014) available at <<http://www.independent.co.uk/news/media/opinion/gideon-spanier-why-britain-s-telecom-companies-are-expanding-into-media-operations-9909071.html>> (accessed 18 September 2019).

¹⁰² Hadas Gold, “Appeals Court Backs AT&T Acquisition of Time Warner” (CNN), 27 February 2019, available at <<https://www.cnn.com/2019/02/26/media/att-time-warner-merger-ruling/index.html>> (accessed 30 May 2023); Amol Rajan, ‘Why Comcast Wanted Sky So Badly’ (BBC News), 24 September 2018 available <<https://www.bbc.com/news/entertainment-arts-45634303>> (accessed 30 May 2023).

the right to hold a limited number of licenses.”¹⁰³ In Tanzania, licenses are issued using hybrid process. For example, regarding spectrum user licenses, the authority first invites all interested firms to submit their applications for licenses.¹⁰⁴ The Authority will then select the prequalified applicants (beauty contest) to move to the second round of auction.¹⁰⁵ This approach forms the competitive bases from which firms acquire licenses to offer telecommunications services.

At the theoretical level, one can safely assume that this approach guarantees that each capable firm with prospects of entering the telecom market may have done so competitively. This assumption would then be correct, as firms will be entering into a specific market competitively, without any governmental intervention or political pressures. Yet there is a catch here: competitive incensing also means that it is only those financially strong that are able to secure required incenses. Prospective entrants will therefore be left out of the picture if unable to match the financial strengths on the incumbents. If not well regulated, competitive licensing can as well act as a barrier to entry.

4.3 The Not So Good

The above observation represents a framework which would have been very competitive had all other factors remain constant. However, other aspects of the framework paint a different picture

¹⁰³ Blackman, C., and Srivastava, L., *Telecommunications Regulation Handbook: Tenth Anniversary Edition*, Washington DC: The World Bank, 2011, at p. 66.

¹⁰⁴ Mpapalika, J., “A Market Led Approach to Digital Dividend Review for Financing Digital Broadcasting Migration”, *9th Annual Digital Switchover Forum Africa*, 2014, p.18 available at <https://cto.int/media/events/pst-ev/2014/DBSF/Dr%20John%20Andrew%20Mpapalika.pdf> (accessed 23 September 2019).

¹⁰⁵ Ibid.

of a framework that could achieve the exact opposite of the intended objectives under the Act, i.e., a licensing framework that create unnecessary regulatory barrier that distort or prevent effective competition in the market. This section looks at the arguably bad side of the licensing framework.

First there is the question of multiplicity of required licenses. In section 3 above we have noted that beside the general licensing business, a telecom firm will need a minimum of at least four licenses to operate in Tanzania: network facility license, network services license, application services license, and spectrum user license. These are the bare minimum without which it is impossible to operate in Tanzanian market. Depending on the actual activity of a respective telecom firms, more licensing and authorizations will be needed. It is opined here that such licenses are unnecessarily many and are coupled by payment of fees and application and renewal processes. For prospective entrants, licensing process may pose a significant hurdle ending up strengthening the incumbent position.¹⁰⁶ But this is not only a challenge for prospective entrants. Even established telecom firms have expressed concerns about the strained regulatory environment, including the fees chargeable and payable, which pose significant risks in the market. For instance, Vodacom Tanzania has listed regulatory compliance as one of its top ten material risks, with its impact on the market being very rapid and posing a serious threat to the company's operations.¹⁰⁷

¹⁰⁶ Nojiyeza, S., and Muthoka, J., "Barriers to Entry of Kenya's Telecommunication Industry: Is There a Market Slice for New Entrants?", 11(1) *Journal of Management and Administration*, 2011 p.136, at p. 136; Blackman and Srivastava, *Telecommunications Regulation Handbook*, above note 100, at p. 66;

¹⁰⁷ See Vodacom Tanzania Public Limited, Annual Integrated Report For the year ended 31 March 2024, available at [Vodacom_Tanzania_Annual_Integrated_Report_2024](#) (accessed on 18th February 2025), at pp. 22& 24.

This risk, which increases compliance costs—including licensing requirements—further impacts the company’s operations by driving up running costs, which are ultimately borne by consumers.¹⁰⁸

Second, there is the question of the associated costs. It has already been noted that the licensing framework specifies application, licensing, and renewal fees. Such enormous expenses raise clear competitive problems. For example, only financially strong entities may enter relevant marketplaces. The space for smaller players with competitive and new ideas will eventually become increasingly limited. However, there is an even more disturbing observation. Licensing costs are capital expenses that must be recouped over the life of the firm. Huge investment costs translate into greater service costs, which disadvantage customers.

Third, there is a question of individuality of telecommunication licenses. We have already noted that most jurisdictions now do favor class authorization of telecommunication services as opposed to individual licensing.¹⁰⁹ Class or general authorization include a form a license issued by a regulatory body that allows multiple service providers to offer similar telecommunications services within a specific category, without requiring individual licenses for each provider, essentially providing a blanket authorization for a class of services or operations within defined parameters.¹¹⁰ Each class license outlines the specific services allowed under that category, including limitations on geographic

¹⁰⁸ Id, at pp. 62 & 74.

¹⁰⁹ Intven, H., Oliver, J., and Sepúlveda, E., *Telecommunications Regulation Handbook*, at pp. 2–3.

¹¹⁰ Orji, J.U., *Telecommunications Law and Regulation in Nigeria*, New Castle: Cambridge Scholars Publishing, 2018, at p.168.

coverage, customer types, or technical specifications.¹¹¹ Compared to individual licenses, class authorization simplifies the process for smaller providers to enter the market.¹¹² Under the Licensing Regulations of 2018, most major licenses are issued individually, except for a few licenses dealing with telecommunications equipment, such as class licenses for installation and maintenance. There is sufficient literature to support the conclusion that general authorization may be the best form of licensing, as opposed to individual licensing, which is likely to increase regulatory barriers.¹¹³ Even in Tanzania, the effectiveness of individual licensing in promoting competition has been questioned.¹¹⁴ It follows that the individual licensing framework remains a regulatory challenge, which could be better addressed by adopting general authorizations.

Fourth, there arises the issue of the restricted transferability of individual licenses. All major licenses addressed in this article are inherently individual, indicating that their transfer from one entity to another is subject to strict regulation. Up until recently, such licenses could not be shared or transferred. Recent legislative modifications in 2022 have made frequency spectrum transfer

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ See for example European Union, Authorization of Electronic Communications Networks and Services, available at Authorisation of electronic communications networks and services | EUR-Lex (accessed February 18, 2025); Orji, J.U., *Telecommunications Law and Regulation in Nigeria*, at p. 168; Brandenburg, A., “Authorizations”, in Koenig, C., Bartosch, A., Braun, J., and Romes, M., (eds), *EC Competition and Telecommunications Law* (2nd Edition), The Netherlands: Kluwer Law International, 2009, p. 471 at p. 472; and Singh, R., and Raja, S., *Convergence in Information and Communication Technology: Strategic And Regulatory Considerations*; Washington DC: The World Bank, 2010, at pp. 73-75.

¹¹⁴ Temu, G., Temu, G., *Regulation and Enforcement of Competition Law in Tanzania's Telecommunications Sector*, at p. 142.

possible, but only under the TCRA's stringent oversight.¹¹⁵ Overall, the majority of licenses are individual upon issuance, effectively restricting the free disposal of such licenses, which could have otherwise expanded the pool of potential entrants. There is a plausible argument regarding the likelihood of spectrum hoarders in scenarios where transferability is allowed—suggesting that certain firms might acquire specific licenses with the intention of selling them at a higher price in the future. However, this paper contends that regulatory authorities should focus on the opposite approach: enabling free but regulated disposition of essential licenses. Such regulation is critical in fostering increased entry and promoting innovation.

4.4 The Need for Reforms

While Tanzania has made significant strides in regulating and promoting competition in the sector, a room still remain to further improve and modernize the sector the greater efficiency that benefits both service providers and consumers. It has been observed in this paper that the licensing framework, while progressive and accommodative, retains some elements likely to create monopolies and constitute entry barrier resulting from imposed regulatory barriers. It has further been observed that the current individual licensing framework is, to a certain extent, regressive, and does increase unnecessary costs to operators resulting into increased costs to consumers. As a result, it is recommended that general authorization be adopted instead of individual authorizations. General authorization aligns perfectly

¹¹⁵ See the Electronic and Postal Communications (Access, Co-location and Infrastructure Sharing) (Amendment) Regulations, 2022, GN No 644 of 2022 and Electronic and Postal Communications (Radio Communication and Frequency Spectrum) (Amendment) Regulations, 2022, GN No 643 of 2022.

well with the service and technology neutrality, a principle already adopted in the Tanzania's licensing framework.

It is further recommended that the adopted general authorization should consider the embracing the following:

1. First, it must be forward-looking by trying to capture expected technological development. The world is experiencing a fast technological development like 5G, IoT, and cloud services. There is a need for the licensing framework to evolve to accommodate this new technology, more so considering specific needs of developing economies like Tanzania. More likely, general authorization may be more flexible to adapt to future technological innovation.
2. Second, the proposed general authorization must aim to promote competition and guard against the creation of elements of monopoly or other anti-competitive practices. It is noted that there is generally a weakness of the current licensing framework and, in many ways, may need reforms to be more pro-competition. Aspects like high costs, multiplicity of licenses, and restricted disposition carry unnecessary regulatory barriers that may in turn inhibit competition in the sector.
3. Third, the proposed general authorization must also enforce strong frameworks for the protection of consumers. As digital services expand, consumer protection becomes increasingly important, more so in developing countries where information symmetry is clear. The licensing framework should, therefore, impose more stringent requirements regarding data protection, privacy, and service

quality to ensure that the consumers are protected against these big telecoms.

5. CONCLUSION

This article sought to answer two critical questions: first, whether Tanzania needs a licencing framework for telecommunications sector, and second, if such a framework is needed, to what extent it promotes competition within the sector. At the same time, this finding agrees that, indeed, while regulation is required, rapid and dynamic technological advancement in the sector discourages excessive regulation as it may discourage competition in the sector. It is thus ascertained that, rather than issuing individual licenses, Tanzania needs to adopt general authorization, which is likely to promote entry and competition in the sector. It further states that although the current licensing framework does support competition to a certain extent, the entire framework may have some weaknesses that are likely to inadvertently impede competitive practices. In order to encourage entry and a competitive culture as well as behavior in the sector, it is thus recommended that Tanzania considers an all-round general authorization. It is therefore argued that the end result of such authorization will be a balanced regulatory strategy that provides necessary oversight while, on the other hand, encouraging a competitive and thriving economy.