

**THE INFORMATION AND COMMUNICATION TECHNOLOGIES  
(AMENDMENT) BILL, 2010**

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MEMORANDUM

The object of this Bill is to amend the Information and Communication Technologies Act, 2009, so as to—

- (a) revise the provisions relating to the negotiation of access agreements by providers of electronic communications services;
- (b) revise the provisions relating to the setting of tariffs in relation to electronic communications services; and
- (c) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA, JNR,  
*Solicitor General*

# A BILL

ENTITLED

**An Act to amend the Information and Communication  
Technologies Act, 2009.**

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Information and Communication  
Technologies (Amendment) Act, 2010, and shall be read as one  
with the Information and Communication Technologies Act, 2009,  
5 in this Act referred to as the principal Act.

Short title

Act No. 15 of  
2009

2. The principal Act is amended by the repeal of section *forty-  
three* and the substitution therefor of the following:

Repeal and  
replacement  
of section 43

43. (1) A licensee shall, where the licensee requires access  
to any element of the electronic communications network of  
10 another licensee for the purpose of providing electronic  
communications services to the public, negotiate with the  
licensee in good faith, an agreement for access to any element  
of the electronic communications network of the other licensee,  
that appear in the list referred to in subsection (5).

Access  
agreements

15 (2) A licensee may reject an agreement for access to an element  
of the electronic communications network of the licensee where—

- (a) the access is not reasonably feasible;
- (b) the access requested by the other licensee is likely to lead  
to harmful interference;
- 20 (c) viable alternatives to access are open to the other licensee  
and have not been reasonably explored; or

**N.A.B 8, 2010**

(d) the licensees do not appear in the same category of licence issued by the Authority for the purpose of such access.

(3) A licensee shall, where the licensee refuses to negotiate an agreement for access, inform the licensee requesting the access and the Authority, in writing, and give the reasons therefor: 5

Provided that such refusal shall not take effect unless it is approved by the Authority.

(4) An access agreement shall be in writing and shall be filed with the Authority.

(5) The Authority shall determine a list of electronic communications network elements including— 10

(a) local loops, sub-loops and associated electronic communications network elements for accessing subscribers and provisioning of services;

(b) electronic communications network elements connected to international electronic communications network elements such as submarine cables and satellite earth stations; and 15

(c) any other electronic communications network elements in relation to which a licensee may allow access or negotiate an agreement for access under this section. 20

(6) The Authority shall review the list in subsection (5) at least once every twelve months and, where market conditions warrant, make modifications to the list.

(7) Where the licensees fail to reach an agreement under subsection (1), any licensee may refer the matter to the Authority for determination. 25

(8) Except where the licensees fail to reach an agreement under subsection (1) on any ground specified in subsection (2), the Authority shall, where a licensee refers a matter to it under subsection (7), order the other licensee to allow access to that licensee's electronic communications network, on such terms and conditions as the Authority may determine. 30

(9) The Minister may, by statutory instrument, prescribe matters and other particulars for inclusion in access agreements. 35

(10) The Authority shall maintain a register of all access agreements, that—

(a) shall, without revealing the terms and conditions of the agreement, contain—

(i) the names of the parties to the agreement;

(ii) a general description of the matters governed by the agreement; and

(iii) the date of the agreement; and

(b) shall be open to public inspection, on such terms and conditions as the Authority may determine.

3. The principal Act is amended by the repeal of section *forty-seven* and the substitution therefor of the following new section:

Repeal and replacement of section 47

47. (1) Subject to the other provisions of this Act, a licensee may set and revise tariffs in relation to electronic communications services.

Tariffs for services to public

(2) A licensee shall, in setting any tariffs under subsection (1), ensure that the tariffs are transparent and non discriminatory, and are based on costs not greater than the cost of providing the service.

(3) A licensee shall submit to the Authority, in the prescribed manner and form, the tariffs the licensee intends to charge, including the justification, prior to the introduction of the tariffs.

(4) The Authority shall, within fourteen days of the receipt of the tariffs proposed by a licensee, approve or reject the tariffs.

(5) Where a licensee applies for the approval of tariffs under subsection (3) and the approval is not granted within fourteen days of the submission of the application, the approval shall be deemed to have been granted.

(6) The Authority shall reject the tariffs proposed by a licensee if the tariffs are in contravention of subsection (2).

(7) The Authority shall, where it rejects the tariffs proposed by a licensee, inform the licensee in writing of the reasons therefor within seven days of the Authority's decision.

(8) The Authority may request for additional information from a licensee and, where it does so, the period referred to under subsection (4) shall commence from the date of submission of the additional information.

(9) A licensee shall, upon approval of the new tariffs by the Authority—

(a) publish the tariffs at the licensee's own expense in at least two daily newspapers of general circulation in Zambia at least seven days immediately following their introduction; and

(b) provide its electronic communications services in accordance with the published tariffs. 5

(10) A licensee shall not alter or vary tariffs without the prior written approval of the Authority.

(11) The Authority shall maintain a register of approved tariffs which shall be open for public inspection on such terms and conditions as the Authority may determine. 10

(12) The Authority may carry out reviews of the tariffs so as to ensure that the tariffs conform to the provisions of this section.

(13) A licensee shall, in relation to the electronic communications services provided to the public, provide detailed billing information to enable the consumers to verify whether or not they have been billed correctly. 15

Repeal and replacement of section 48

4. The principal Act is amended by the repeal of section *forty-eight* and the substitution therefor of the following new section:

Tariffs for services offered by licensee holding dominant position

48. (1) A licensee that holds a dominant position in a retail electronic communications market shall, in relation to the electronic communications market, submit to the Authority, in the prescribed manner and form, the tariffs the licensee intends to charge, including the justification, prior to the introduction of the tariffs. 20 25

(2) The Authority shall, within fourteen days of the receipt of the tariffs proposed by a licensee, approve or reject the tariffs.

(3) The Authority shall reject the tariffs proposed by a licensee if the tariffs are in contravention of the principles outlined in subsection (2) of section *forty-seven*. 30

(4) The Authority shall, where it rejects the tariffs proposed by a licensee, inform the licensee in writing of the reasons therefor within seven days of the Authority's decision.

(5) The Authority may request for additional information from a licensee and, where it does so, the period referred to under subsection (2) shall commence from the date of submission of the additional information. 35

(6) The Authority shall base its decision under subsection (2) on the extent to which the tariffs proposed by the licensee—

(a) comply with the principles outlined in subsection (4) of section *fifty*;

5 (b) are cost oriented; and

(c) meet such criteria as the Authority may consider relevant for purposes of this Act.