

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 41 OF 2018

**The Information and Communications Technologies
Act, 2009**
(Act No. 15 of 2009)

**The Information and Communications Technologies
(Tariffs) Regulations, 2018**

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IN EXERCISE of the powers contained in sections 51 and 91 of the Information and Communication Technologies Act, 2009, the following Regulations are made:

PART 1

PRELIMINARY

- | | |
|--|----------------|
| 1. These Regulations may be cited as the Information and Communication Technologies (Tariffs) Regulations, 2018. | Short title |
| 2. In these Regulations, unless the context otherwise requires | Interpretation |
| “bill” means the information issued by a licensee to a customer of the charges levied and due for payment or the information retained by a licensee for the purpose of recording and enabling debits and credits to be applied to a customer’s account; | |
| “bundle” means a combination of electronic communication services, whether regulated or unregulated, provided by a licensee under a combined rate or rate formula where the offering of one or more services within the combination is contingent on acceptance of the entire combination; | |
| “consumer” has the meaning assigned to the word in the Act; | |
| “cost based pricing” means a pricing mechanism in which only cost elements associated with the provision of an information and communication technology product or service are taken into account in arriving at the end price; | |
| “dominant position” of economic strength enjoyed by a licensee which enables the licensee to prevent effective competition maintained in the market by affording the licensee the power to behave, to an appreciable extent, independently of the licensee’s competitors and consumers; | |
| “licensee” has the meaning assigned to the word in the Act; | |
| “long run average incremental cost” means a cost standard that includes all the cost of services provided within an increment; | |
| “non-discriminatory” means the provision by a licensee of an electronic communications service to a consumer or a group of consumers at the same price, quality of service and other relevant terms and conditions which apply to all other consumers or groups of consumers to whom that service is provided; | |

“predatory pricing” means deliberate setting of low prices with the objective of eliminating competition;

“price cap” means an incentivebased method for regulation of the rates, charged by a licensee for one or more services that may include provisions relating to terms and conditions and the maximum tariff for that service;

“price floor” means a price regulation regime for a market or a group of markets in which a licensee is prohibited from pricing a service or services at less than the minimum prescribed amount;

“price regulation regime” means any method for regulating prices of the electronic communication services and products provided by a licensee;

“rate of return regulation” means a price regulation regime where a price is set so as to enable a licensee to achieve a particular rate of return;

“retail minus pricing” means a price regulation regime where the price for a wholesale service is set by reference to a retail price that uses the wholesale service as an input;

“retail tariff” means the tariff that is charged for a electronic communication service provided to a consumer;

“special services tariff” means a published schedule of rates or charges levied by a licensee in respect of electronic communication services provided to users of those services; and

“wholesale price” means a rate charged by a licensee of a service to resellers of that service, or persons who use that service as an input in the provision of other services.

Application 3. (1) These Regulations apply to an electronic communication service offered or provided by a licensee to a customer.

(2) These Regulations shall constitute part of the code of conduct for licensees in relation to Tariff Regulation for the purposes of the Act.

PART II

TARIFF REGULATION

4. (1) The Authority shall regulate the tariff for an electronic communication service and product offered or provided by a licensee. Regulation of tariffs

(2) Without limiting the generality of subsection

(1) the Authority may—

- (a) review and approve tariffs for an electronic communications service;
- (b) direct a licensee to publish a tariff for an electronic communications service;
- (c) declare a licensee dominant in a relevant market;
- (d) order compensation to be paid by a licensee to a consumer;
- (e) request information from a licensee relating to the cost of services or other financial information relating to the revenues or operations of that licensee;
- (f) monitor prices for electronic communications services;
- (g) make such orders and issue such directions to a licensee in respect of tariffs as the Authority considers appropriate; and
- (h) review terms and conditions of electronic communications services of a licensee.

5. (1) The Authority may impose a priceregulation regime to regulate tariffs for an electronic communications service and products where— Tariffs to be regulated

- (a) here is only one licensee operating a public electronic communications network or providing a public electronic communications service;
- (b) a licensee has a dominant position in the relevant market;
- (c) a dominant licensee operating a public electronic communications network or providing a public electronic communications service and cross-subsidises another electronic communications service provided by such licensee;
- (d) the Authority detects anti-competitive pricing or acts of unfair competition; or

(e) the Authority considers it necessary to ensure a licensee complies with the requirements of the Act.

(2) The Authority shall where it appears just—

(a) regulate tariffs for an electronic communications service in the absence of a declaration of dominance or the imposition of a price regulation regime;

(b) forebear from regulating a tariff or a service or group of services or doing anything under these regulations where it appears to the Authority to be just and reasonable to do so; and

(c) regulate tariffs in the public interest that appears to be reasonable services to be provided in accordance with approved.

Services to
be provided
in
accordance
with
approval

6. (1) A licensee shall not provide a service except in accordance with a tariff filed with, and approved by the Authority.

(2) Without limiting the generality of sub-regulation (1), a licensee shall whether or not that licensee has been declared to be a dominant provider, file an application for approval by the Authority in any case where that licensee proposes to—

(a) introduce a new electronic communications service or products;

(b) change the tariff for a service regulated in accordance with a tariff regulation regime;

(c) change the tariff for a special service;

(d) change the tariff for a service where it is the sole licensee for that service; and

(e) discontinue a service.

Procedure
for approval
of tariff
application

7. (1) A licensee shall, where that licensee intends to introduce an electronic communications service or product, apply to the Authority for tariff approval in Form I set out in the Schedule.

(2) Where a licensee applies to reduce the tariff for a service, under sub-regulation (1), that licensee shall file a declaration with the Authority stating that the rate proposed is not less than the long run average incremental cost of providing the service.

(3) The Authority shall approve an application under sub-regulation (1), where—

(a) the tariff complies with regulation 14;

(b) in the case of a service subject to a price regulation regime, the tariff also complies with that regime; or

(c) in the case of a special service, the tariff complies with any special rules contained in the licensee's licence.

(4) The Authority may approve an application to provide a tariff, with or without conditions.

(5) The Authority shall where it determines that a tariff application should not be approved—

(a) order a licensee to amend or withdraw the tariff; or

(b) prohibit a licensee from introducing the tariff.

8. (1) Where a licensee wishes to discontinue a service, that licensee shall give fourteen days notice to the Authority before the discontinuance.

Discontinuance
of service

(2) The Authority shall not unreasonably withhold approval for a provider to discontinue an electronic communications service and product.

(3) The Authority shall not disclose the contents of the application until the Authority has determined the categorisation of the service.

9. A licensee that applies for approval to introduce a tariff for a new bundled service shall file additional information to satisfy the Authority that—

Special rules
for bundled
services

(a) the bundled service does not distort competition;

(b) consumers shall be able to obtain the individual services comprising the bundle separately where they require;

(c) bundles are not provided in an unduly discriminatory manner;

(d) consumers or licensees are likely to obtain considerable benefits or efficiencies from the availability of the bundle;

(e) where the bundle relates to services subject to a price regulation regime, it complies with rules contained in that tariff regulation regime; and

(f) the tariff for any bundle complies with these Regulations.

10. (1) Without prejudice to the Authority's powers to impose a price regulation regime in respect of an electronic communications service, the Authority may undertake a tariff review of electronic communication services, where—

Tariff
reviews

(a) a consumer or a licensee requests the Authority in writing;
or

	<p>(b) the Authority has reasonable grounds to believe a proposed change to the tariff will have a significant impact on consumers.</p> <p>(2) Where the Authority decides to review a tariff, it shall send a notice to the licensee before commencement of the review—</p> <p>(a) clearly identifying the service concerned and briefly describing the tariff to be reviewed; and</p> <p>(b) concisely stating the grounds for the review.</p>
Rejection of application	<p>11. The Authority shall, where it rejects an application under these Regulations, within fourteen days from the date of receipt of the application, issue a notice of rejection to the licensee in Form II set out in the Schedule, giving reasons for the rejection.</p>
Licensee to amend or withdraw tariff	<p>12. Where the Authority rejects an application for a tariff under these Regulations, and subject to any terms and conditions, the Authority may direct a licensee to—</p> <p>(a) take any necessary measures to bring the tariff into compliance with these Regulations; or</p> <p>(b) withdraw the service to which the application relates.</p>
Disclosure and publication of information	<p>13. (1) A licensee shall, except where the Authority otherwise specifies, publish the tariffs and terms and conditions for its electronic communication services by—</p> <p>(a) publishing its current tariffs in the daily news paper of general circulation in Zambia and on its website;</p> <p>(b) sending or providing a copy of its tariffs or any part of a tariff to any consumer or group of consumers who may reasonably request such a copy; or</p> <p>(c) placing a copy of its tariffs in every registered office and place of business owned or controlled by a licensee or body corporate with which it is affiliated, where that body corporate provides or offers to provide such services to the public.</p> <p>(2) A licensee shall ensure that tariffs published for an electronic communication services includes information relating to —</p> <p>(a) a description of the service offered;</p> <p>(b) any subscription or periodic rental charge applicable and the details of which services are included within that subscription or periodic rental charge;</p>

- (c) standard rates; and
- (d) details of standard discounts and special and targeted tariff schemes in respect of—
 - (i) access;
 - (ii) usage charges;
 - (iii) maintenance services;
 - (iv) details on any compensation or refund policy;
 - (v) types of maintenance offered;
 - (vi) standard contract conditions offered, including any relevant minimum contractual period; and
 - (vii) mechanisms for the resolution of disputes.

14. (1) A licensee shall ensure that a tariff for an electronic communication service and product, except where regulated by the Authority in accordance with these Regulations, shall be determined in accordance with the principles of cost, transparency and non discrimination.

Tariffs to
meet
minimum
conditions

(2) A licensee shall in respect of an electronic communications service and product provide a tariff that —

- (a) is fair and reasonable;
- (b) does not discriminate unduly among similarly situated persons, including the licensee and any body corporate with which it is affiliated;
- (c) is not anti-competitive;
- (d) does not encourage predatory pricing or pricing below the interconnect rate;
- (e) except with the written authorisation of the Authority, utilises revenues or the allocation of costs from one electronic communications service to cross-subsidise another electronic communications service;
- (f) are clear, up to date and easily accessible by the general public; and
- (g) impose charges based on actual usage by a consumer or service provision by a licensee except in the case of bundled or promotional minutes.

Unreasonable
tariffs

15. 1) The Authority may, without prejudice to the Authority's right to determine that a tariff for an electronic communications service or product is not fair and reasonable, determine that a tariff is not fair and reasonable where a licensee proposes any or all of the following:

- (a) an increase for a rate despite a reduction in the underlying costs for providing the service;
- (b) a rate for a service which significantly exceeds costs;
- (c) a single rate increase of such a magnitude or contrary to the public interest;
- (d) terms and conditions which, having regard to the nature of the service, the relative bargaining power of the consumer and the licensee involved, and the availability of a substitute service from another licensee, are unduly onerous; or
- (e) a tariff that departs materially from accepted industry standards for providing that service to the general public, to the detriment of consumers.

Anti-
competitive
conduct

16. (1) A licensee engages in anti-competitive conduct or unfair competition if that licensee does any of the following acts:

- (a) tied selling, where services are bundled together in such a manner that a consumer is required when purchasing one service to purchase another service that the consumer does not require;
- (b) leveraging a dominant position in one market so as to increase market share in a market where it is not the dominant licensee, in order to gain an unfair advantage in the second market;
- (c) reducing retail prices for a service without making corresponding reductions in the wholesale prices for that service, where it also provides that service at wholesale prices to a competing licensee, in order to gain an unfair advantage in the retail market;
- (d) agreeing with other providers on prices, by fixing or otherwise agreeing to manipulate prices for services;
- (e) imposing restrictions on the prices charged by another service licensee, where the first licensee supplies the other with products or services;

- (f) entering into an exclusive agreement with a person on terms and conditions, that the have or may have the effect of substantially lessening competition in a related market; or
- (g) doing anything or taking any action which has or is likely to have the effect of preventing, substantially restricting, or distorting competition in a market.

PART III

DOMINANT PLAYERS

17. (1) The Authority shall in determining dominance in relation to a licensee under section 40 of the Act, declare that a licensee is dominant with respect to an electronic communications network or an electronic communications service where that licensee, individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and consumers.

Determination
of dominance

(2) In making a determination as to dominance, the Authority shall take account—

- (a) the relevant market;
- (b) the market share of the licensee;
- (c) the power of the Licensee to introduce and sustain a material price increase or decrease independently of competitors;
- (d) the degree of differentiation among networks and services in the market;
- (e) technology and market trends; and
- (f) any other matters the Authority considers relevant.

18. (1) The Authority may declare a licensee in a relevant market dominant upon conducting a relevant market and competition assessment.

Procedure
for
declaration
of
dominance

(2) Where the Authority considers making a declaration of dominance -

- (a) the Authority shall initiate consultation with stakeholders before publishing a notice in the *Gazette*, a daily newspaper of general circulation and on its website; and
- (b) any person likely to be affected by a designation of dominance shall be entitled to make representations to the Authority on any matter relevant to the assessment.

(3) Despite sub-regulations (1) and (2), a licensee may consent in writing to being declared dominant for providing services in a relevant market, and where that licensee consents, the Authority shall not undertake the public consultation to make a declaration.

(4) The Authority's final declaration of dominance shall be published in the *Gazette*, at least one daily newspaper of general circulation and on its website.

Sole licensee
to be deemed
dominant

19. (1) For the purposes of these Regulations, a sole licensee operating a public electronic communications network or providing a public electronic communications is deemed to be a dominant licensee.

(2) Subject to regulation 7, where a licensee is deemed to be dominant in a relevant market, the Authority shall regulate the tariffs for electronic communication services provided by that licensee without undertaking a public consultation to declare the licensee as dominant.

(3) The Authority shall publish a notice in the *Gazette*, a newspaper of wide circulation, and on its website, the names of all licensees deemed dominant by virtue of these regulations.

Presumed
dominance

20. (1) The Authority shall use the share of supply threshold to establish existence of a dominant position.

(2) Despite the provisions of Regulation 22, the Authority shall only measure the level of a licensee's share of supply threshold in accordance with the Competition and Consumer Protection Act for a presumption of dominance to arise.

Act No. 24 of
2010

(3) The Authority may, where a licensee is presumed dominant, impose a price regulation regime on the services provided by that licensee, unless the licensee is able to prove to the satisfaction of the Authority, that it is not actually dominant in a relevant market.

(4) For purposes of these regulations, an electronic communications licensee in a relevant market shall be presumed to be a dominant licensee if that licensee has—

(a) thirty per cent or more of those goods or services supplied or acquired by one enterprise; or

(b) sixty per cent or more of those goods or services supplied or acquired by not more than three enterprises;

Licensee to
apply for tariff
approval
pending final
declaration
dominance

21. Despite any other provisions of these Regulations, the Authority may direct a licensee to apply for approval of a proposed change to an existing tariff, where a notice under regulation 19 pending publication by the Authority.

22. (1) Where a licensee is designated dominant by the Authority under regulation 17 or presumed dominant by the Authority under regulation 20 considers that the licensee has lost its dominance with respect to an electronic communications network or service, that licensee may apply to the Authority to have its status as a dominant licensee reviewed, in Form III set out in the Schedule.

Authority
to review
designation
of
dominance

(2) A licensee that applies for a review of its status as a dominant licensee shall furnish the Authority with supporting information and data that Authority may regard as relevant to the review, and the Authority shall not consider an application to review a designation of dominance, where that information or data has not been supplied by a licensee.

(3) Where the Authority after conducting a review is satisfied that a licensee has lost its dominance in respect of a relevant market, the Authority shall publish a notice in at least one local newspaper of wide circulation and on its website, designating the licensee as non-dominant in a particular market and the designation shall take effect from the date of publication.

23. (1) The Authority may, subject to regulations 17 and 20, impose the following methods for regulating the tariffs of a dominant licensee as it considers appropriate:

Price
regulation
regimes

- (a) price caps;
- (b) retail-minus pricing;
- (c) price floors;
- (d) rate of return;
- (e) cost-based pricing; or
- (f) any other method it considers appropriate.

24. (1) The Authority shall use various methods to establish the cost of electronic communications service and products.

Procedures
for adoption
price
regulation
regime

(2) The Authority shall—

- (a) give 30 days' notice to the dominant licensee prior to effecting the adoption of a price regulation regime; and
- (b) publish a notice on its website and provide the dominant licensee with a copy of the proposed price regulation regime.

(3) A licensee shall be bound by price regulation regime.

25. (1) A licensee shall be bound by the terms of any price regulation regime applicable to such licensee for the duration of the regime.

Licensee bound
by price
regulations
regime

(2) Without prejudice to the right of the Authority to impose any sanctions under these regulations, and despite anything contained in any other law, a breach of the terms of a price regulation regime in effect for a licensee, is considered to be a breach of that licensee's licence.

Authority to
designate
services in
price
regulation
regime

26. The Authority shall, unless a contrary intention appears from the price regulation regime, designate all services subject to a price regulation regime.

Special
services

27. (1) Despite the provisions in these Regulations, the Authority may regulate the tariffs, if applicable, for special services.

(2) The Authority may designate additional services as special services by publishing a notice in the *Gazette*, a daily newspaper of general circulation and on its website.

(3) For purposes of these Regulations, special services include—

(a) emergency services;

(b) operator assistance;

(c) directory enquiry facilities; and

(d) other services designated by the Authority as special services.

PART IV

GENERAL PROVISIONS

Orders and
directives

28. The Authority may issue written orders or directives to a licensee for the purposes of compelling compliance with these Regulations and a licensee shall comply with such orders or directives once issued.

Offence and
penalty

29. A person, who contravenes the provisions of these Regulations, commits an offence and is liable, upon conviction to a fine not exceeding two thousand five hundred penalty units, and shall pay, in addition to the fine, twenty-five penalty units for each day that the offence continues.

Appeals

30. A person aggrieved with the decision of the Authority under these Regulations may appeal to the Tribunal in accordance with the Act.

Authority to
publish and
maintain lists

31. The Authority shall publish and maintain an up to date list of all licensed services on its website.

SCHEDULE
(Regulations 7 and 12)



FORM I
(Regulation 7(1))

REPUBLIC OF ZAMBIA

The Information and Communication Technology Act, 2009
(Act No. 15 of 2009)

The Information and Communication Technologies (Tariffs) Regulations, 2018

APPLICATION FOR TARIFFS			
Please write in BLOCK LETTERS	Shaded fields for official use only	Application No. (To be generated by on-line Tariff System)	
		Date/Time	
<i>Information Required</i>	<i>Information Provided</i>		√
APPLICATE'S DETAILS			
1. Name of Licensee			
2. Physical Address:			
3. Contact person:			
4. Mobile Number:			
APPLICATION DETAILS			
5. Type of Tariff application:			
Headline	<input type="checkbox"/>	(Specify whether Voice, SMS, Data)	
Value added service	<input type="checkbox"/>	(Specify whether Voice, SMS, Data, Mobil application)	
Promotion	(Specify whether Voice, SMS, Data, mobile application)		
6. Title of Tariff Application:			
7. Description of Tariff			
8. Supporting Attachments			
(a) Mechanics, Terms & Conditions	<input type="checkbox"/>		
(b) Specific Tariff Tables	<input type="checkbox"/>		
(c) Consumer Protection consideration	<input type="checkbox"/>		
(d) Traffic & Network Statistics	<input type="checkbox"/>		

DECLARATION	
I declare that the information I have stated is correct and truthful to the best of my knowledge and belief.	
..... <i>Name</i> <i>Designation</i>
..... <i>Signature</i> <i>Date</i>
FOR OFFICIAL USE ONLY	
Date of submission:	
Application in order (proceed for review):	
Application deficient (notify applicant on deficiencies):	
..... <i>Director-General</i>	<div>OFFICIAL STAMP</div>



REPUBLIC OF ZAMBIA

The Information and Communication Technology Act, 2009
(Act No. 15 of 2009)

The Information and Communication Technologies (Tariffs) Regulations, 2018

APPLICATION FOR TARIFFS – NOTICE OF REJECTION			
Please write in BLOCK LETTERS	Shaded fields for official use only	Application No. (To be generated by on-line Tariff System)	
		Date/Time	
Information Required	Information Provided		√
APPLICATE'S DETAILS			
1. Name of Licensee			
2. Physical Address:			
3. Contact person:			
4. Mobile Number:			
5. Email Address:			
APPLICATION DETAILS			
6. Type of Tariff applications:			
Headline	<input type="checkbox"/>	(Specify whether Voice, SMS, Data)	
Value added service	<input type="checkbox"/>	(Specify whether Content, IVR, Mobil Application)	
Promotion	<input type="checkbox"/>	(Specify whether Voice, SMS, Data, Mobile Application)	
7. Title of Tariff Application:			
BASIS OF REJECTION			
8. In relation to your Tariff Application with reference number:			
..... You are hereby notified that your application has been rejected on the following grounds:			
(a)			
(b)			
(c)			
(d)			

DECLARATION

I declare that the information I have stated is correct and truthful to the best of my knowledge and belief.

Name

Designation

Signature

Date

FOR OFFICIAL USE ONLY

Date of submission:

...

Director-General

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STAMP



REPUBLIC OF ZAMBIA

The Information and Communication Technology Act, 2009
(Act No. 15 of 2009)

The Information and Communication Technologies (Tariffs) Regulations, 2018

MARKET DOMINANCE REVIEW FORM			
Please write in BLOCK LETTERS		Shaded fields for official use only	Application No. (To be generated by on-line Tariff System) Date/Time
Information Required		Information Provided	
		√	
APPLICATE'S DETAILS			
1	Name of Licensee		
2	Physical Address:		
3	Contact person:		
4	Mobile Number:		
5	Email Address:		
Review details requirements			
Market status based on Dominance Designation			
	Subscription	<input type="checkbox"/>	(Provide a breakdown of individual and corporate clientele)
	Sales turnover	<input type="checkbox"/>	(Specify sales turnover in earlier USD or kwacha equivalent)
	Leased capacity	<input type="checkbox"/>	(Provide a breakdown of individual and corporate clientele)
Current Market Status			
	Subscription	<input type="checkbox"/>	(Provide a breakdown of individual and corporate clientele)
	Sales turnover	<input type="checkbox"/>	(Specify sales turnover in earlier USD or kwacha equivalent)
	Leased capacity	<input type="checkbox"/>	(Provide your current bandwidth capacity)
Supporting attachments			

Supporting attachments		
(a) Movement in tariffs for your products and service before and after dominance designation	<input type="checkbox"/>	
(b) Cost of sales before and after dominance designation	<input type="checkbox"/>	
(c) Market performance of your flagship product or service	<input type="checkbox"/>	
(d) Shift traffic pattern for voice, data and SMS services		(If possible try to provide a shift in IP traffic pattern if unable to differentiate traffic of different services and products)
<p align="center">DECLARATION</p> <p>I declare that the information I have stated is correct and truthful to the best of my knowledge and belief.</p> <p>.....</p> <p align="center"><i>Name</i> <i>Designation</i></p> <p>.....</p> <p align="center"><i>Signature</i> <i>Date</i></p> <p>.....</p>		
<p align="center">FOR OFFICIAL USE ONLY</p> <p align="center">Date of submission:</p> <p>.....</p> <p align="center">Application in order (proceed for review)</p> <p>.....</p> <p align="center">Application deficient (notify applicant on deficiencies):</p> <p>.....</p> <p align="center">.....</p> <p align="center"><i>Director-General</i></p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-left: auto;"> <p align="center">OFFICIAL STAMP</p> </div>		

B. MUSHIMBA,
Minister of Transport and Communications

LUSAKA
2nd May, 2018
[MTC.104/1/9]

