



THE 22ND TNF-SERVICES MEETING

NEGOTIATIONS ON COMMUNICATION SERVICES

BACKGROUND NOTE

1. Introduction

SADC Member States agreed to negotiate liberalisation of trade in communication services, alongside other five sectors (construction, energy-related, finance, tourism and transport services) in the first round of negotiations, which started in 2012 and are due to be concluded in early 2015. To date, eight (8) Member States have submitted offers in communication services, of which four (4) Member States have attached additional commitments in terms of the Basic Telecommunications Reference Paper (TRP) adopted by WTO Member States under the GATS.

An assessment of the level of liberalisation of communications services in the region indicates that most Member States have undertaken liberalisation covering courier services, telecommunications (mobile services, internet and broadband services) and to a limited extent broadcasting services. The assessment also confirms that six (6) SADC Member States have undertaken GATS commitments covering courier services, telecommunications, and audio-visual services. Additionally, Member States have several undertakings relating to issues of cooperation and regulatory reform in the communications sector through the SADC Protocol on Transport, Communications and Meteorology (TCM). Most of these undertakings have a significant impact on liberalisation of trade in services and thus the ongoing negotiations under the Protocol on Trade in Services (TiS Protocol).

This note seeks to identify key issues, build a common approach and shared understanding in communication services sector, from sector studies undertaken earlier in the trade in services programme, the TCM Protocol and the initial offers by Member States to inform the negotiations.

2. Classification of Communication Services

SADC Member States adopted the classification of services as used in the GATS and contained in W/120 list, and detailed in the UN CPC for services. Member States will use this list in making their offers. Accordingly, communication services are classified into four broad categories, namely: postal, courier, telecommunication and audio-visual services.

Article 2.4 of the TiS Protocol requires Member States to ensure consistency between Trade in Services liberalisation and the various Sector Protocols. The TCM Protocol has a provision on communications i.e. Chapter 10 on the information and communication technology sector (Telecommunications and Broadcasting) and Chapter 11 on postal and courier services. TCM entered into force in 1998¹ and was amended in 2009². A number of undertakings in the two chapters complement the liberalisation process in the sector envisaged under the TiS Protocol on Trade in Services.

3. Postal and Courier Services

Under the W/120 list of services, postal and courier services fall into two distinct categories: Postal services (CPC 7511) and Courier services (CPC 7512). The study by SADC Secretariat and the ongoing WTO negotiations raises two challenges on the classification a) the distinction of postal vis-à-vis courier services and b) the lack of explicit reference to express delivery services.

3.1. Challenges on Classification of Postal and Courier Services

a) Distinction of Postal Vis-à-vis Courier Services

The UN CPC list of services provides distinguishes postal from courier services by reference to the operator (national postal operators vs other operators); which seem to be ambiguous in terms of the type of services under each category.

- *Postal services consist of pick up, transport and delivery services of letters, newspapers, journals, periodicals, brochures, leaflets and similar printed matters, parcels and packages whether for domestic or foreign destinations, as rendered by the national postal administration;* and
- *Courier services consist of pick up, transport and delivery services, whether for domestic or foreign destinations of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration.*

According to Article 11.2 (2b) of the TCM Protocol, Member States have agreed to harmonise regulatory and operation policies throughout the region by establishing equitable frameworks that accommodate the **provision of unreserved services by private sector service providers**, for sustainable development of the postal sector. They also agreed to adopt national legislations to promote the autonomy and commercialisation of designated postal operators. The assessment of regulatory regimes in the region indicates that most Member States seem to identify a set of services exclusively reserved for the designated

¹ All Member States except for DRC, Madagascar and Seychelles have ratified (and thus are State Parties to) the TCM Protocol

² The amendments of Chapters 10 and 11 were adopted by the Committee of Ministers of Communication in June 2009

postal operators (i.e. with exclusive licences), thus relatively in line with Article 11.2 (2) of the TCM Protocol.

b) Lack of Explicit Reference to Express Delivery Services

The ongoing WTO GATS negotiations, in which some Member States have argued for specific reference to express delivery services, suggest that both W/120 list and UN CPC for services description of postal and courier services either imprecisely cover express delivery services or exclude them altogether³. The TCM Protocol does not provide for any definition of communications and it is not clear to what extent postal regimes cover express delivery services. Nevertheless, the issue of tracking and control of items is central to courier services and thus express delivery services may seem to be part of courier services.

Recommendation: *to ensure clear commitments in the context of Trade in Services Protocol, Member States need to agree on the distinction between postal services on the one hand and courier services on the other, and how to treat “express delivery services” in their offers. In the absence of a SADC-wide definition of postal and courier services, Member States may consider the following options:*

Option 1: combining the two subsectors under the sector description i.e. “postal and courier services CPC 7511-7512, including express delivery services” and carve out services provided under exclusive monopoly rights e.g. the offer by Seychelles (appended as annex 1)⁴.

Option 2: develop a definition of postal and courier services incorporating express delivery services.

NB: All eight (8) initial offers so far submitted by Member States include courier services; six (6) on courier services do not provide any information to show the distinction and two (2) combines postal and courier services carving out reserved services.

3.2. Regulatory Disciplines/Issues

Chapter 11 of TCM provides for some regulatory issues relevant for trade in services liberalisation, such as the separation of the regulatory responsibilities from postal operators; universal service; network interoperability; postal security; human resource training and development; and the inclusion of the postal sector in national ICT policies. Comparing these provisions with the ongoing WTO negotiations, some provisions are similar to those proposed for a Reference Paper on Postal and Courier Services (WTO document TN/S/W/26). The proposed reference paper addressed anti-competitive practices and licencing requirements of which TCM Protocol does not, but the TiS Protocol does through

³ The industry defines “express delivery services” as the collection, transportation and delivery of documents, printed matter, parcels, goods or other items on an expedited basis, while tracking and control of these items throughout the supply of services.

⁴ Member States with GATS commitments in postal and courier services could adopt this approach and it should be considered as technical clarification under (sub) sector description as opposed to back-tracking.

Article 19 on Business Practices and Article 9 on Effective and Transparent Regulations respectively.

Recommendation: *Member States may consider*

Option 1: adopting the reference paper on Postal and Courier Services to reaffirm their undertakings in the TCM Protocol; or

Option 2: attach additional commitments on the specific regulatory issues (in the form of reference paper) to individual Member States offer in postal and courier services.

3.3. Request and Offers in Postal and Courier Services

Five (5) Member States have made requests in courier services and 3 requests on postal services, for full liberalisation commitments in mode 1, 2, and 3. Most of the requests are based on GATS schedules and seek clarification in case of postal services provided under exclusive rights of national postal monopolies⁵ (see table 1). None of the requests addresses other issues identified in WTO negotiations such as customer regulations; local incorporation and contract requirements; postal taxes and concession fees. It is possible that these issues do not exist or they exist but were not identified as trade barriers in the SADC region.

On the other hand, all eight (8) offers in communication services include courier services. However, two of the eight Member States have combined CPC 751 and 752 on postal and courier services and carved-out reserved postal services. Generally, the offers seem to be fairly open for mode 1, 2 and 3 except for two offers with mode 3 limitations in relation to reserved services (see table 2).

Issues for negotiations: *Member states to consider the extent to which the offers respond to the requests and the recommendations on classification and regulatory issues.*

4. Telecommunication Services

4.1. Classification of Telecommunication services

According to W/120, telecommunication services include basic telecommunication services (subsector a-g) and value-added services (subsector g-o). Over the last decades, the distinction not only between basic and value-added services, but also between telecommunications and some other sectors and subsectors, has become blurred with the liberalisation of services and the advent of new transmission technologies. In liberalised markets, a distinction between basic and value-added services has less importance today

⁵ According to Article 11.3(2) of the TCM Member States agreed to promote autonomy and commercialisation of the designated postal operators. If member States implement this provision, it implies that all postal services including those provided by the designated postal operators would be subject to trade liberalisation in line with Article 3.5 (a &b) of the SADC Trade in Services Protocol.

than when W/120 list was developed. Nonetheless, in many regimes the distinction between these remains relevant to certain public or universal service objectives, licensing requirements or other regulatory obligations.

Chapter 10 on the Information Communication Technology (ICT) sector i.e. telecommunication and broadcasting⁶ of the TCM Protocol, aims at ensuring access to adequate high quality and efficient services in the region. The Chapter contains explicit commitments in policy and regulatory reforms that should to a large extent facilitate trade liberalisation commitments but not provide for any liberalisation commitments. It provides for the integration of telecommunications and broadcasting into single regulatory environment encompassing technological, legislative and institutional convergence; promoting and sustaining competition among network operators and services providers; and subject to mutual agreement and on the basis of reciprocity, granting of access to, and the use of networks and services by each other's operators and services provider on terms developed by a harmonised regulatory policies for wholesale and retail markets.

Most of SADC Member States regimes seem to adopt unified/converged licensing regimes in line with Chapter 10 of the TCM Protocol, which suggests categorisation of telecommunication services as network, infrastructural or content services. Through the convergence, new technologies have enabled suppliers to integrate different telecommunication services, as well as a variety of computer and audio-visual services and technologies in new commercial offerings. As a result, a degree of uncertainty in classification and scheduling can result from the convergence of broadcast, telecommunications, and computer services.

Drawing from the ongoing WTO negotiations, some Members have attempted to draw relevant distinctions in terms of "use" and "supply", whereby telecommunications may be used as a "means of delivery" for many other services. Suppliers of e.g. computer services, audio-visual services and other communications-enabled services, classified elsewhere in W/120, are often examples of users of telecommunication networks and services. However, even the distinction between "use" and "supply" has become blurred. Market opening and the relaxation of market segmentation has allowed video or computer service suppliers to own and operate networks and allowed traditional network operators to offer services such as data processing, IPTV or video on demand. In such cases, the supply of services in these different sectors by a single supplier may exist.

Recommendation: Member States use the classification as in W/120 list.

NB: All the eight (8) so far submitted seem to follow W/120 classification.

⁶ Broadcasting services are classified under audio-visual services in the context of trade in services (refer W/120)

4.3. Regulatory Disciplines in Telecommunication

Four (4) of the eight (8) Member States who have submitted their offers have attached additional commitments based on Basic Telecommunication Services Reference Paper (TRP) to their specific commitments on telecommunication services. The TRP provides for the definitions and regulatory disciplines for basic telecommunication services. Regulatory disciplines contained in the paper are competitive safeguards, interconnection, universal services, licensing, independence of regulators and the allocation of scarce resources. Below is summary (see annex for details) comparison of TRP provisions and those of Chapter 10 of the TCM Protocol:

- **Competitive safeguards:** Both TRP (para 1) and TCM (10.2 (d) and 10.8 (k) of Chapter 10), call for the adoption of measures aimed at promoting fair competition i.e. preventing anti-competitive practices among services suppliers.
- **Interconnection:** TCM provides for Member States' intention to develop policies that ensure interconnectivity and interoperability of ICT networks and services between operators in their countries and in the region. TRP (para 2.2) embeds transparency and MFN obligations principles in granting such interconnection, while Art. 10.2 (h) of TCM provides for mutual agreements on reciprocal basis.
- **Universal services:** Para 3 of TRP and Art. 10.3 of TCM provides the right and obligation of the parties to define universal services and the need to maintain necessary measure aimed at ensuring universal access to telecommunication services in a transparent, competitive and non-discriminatory manner. Technically, the provisions of the two documents are similar.
- **Licensing:** TRP advocates for transparency in licensing criteria and procedures while TCM (Art. 10.7 (1) (c) (i) and 10.8 (c) & (d)) provides for development of licensing policies and monitoring of licensing procedures by the regulatory bodies. While transparency and criteria is emphasised in TRP which is not explicitly provided for in TCM, arguably these could be ascertain through implementation of Art. 10.8(k) of TCM.
- **Independence of regulators:** Both TCM (Art. 10.7(1) (a) and TRP (para 5)) provide for the need to ensure separation between regulation and operation of the network and services within a State Party's jurisdiction. SADC Member States have undertaken to establish independent regulatory bodies to regulate and monitor specified ICT related activities in their respective territories. This is similar to the provisions of para 5 of TRP.
- **Allocation of scarce resource:** Both TRP (para 6) and TCM (Art. 10.7(c) (iv)) provide for the need to be effective and efficient in the allocation and management of scarce resources including frequencies/spectrum, numbering and rights of ways. In addition, TRP requires the allocation to be done in an objective, timely and non-discriminatory manner.

Generally, it seems that Chapter 10 of the TCM Protocol captures all the content and intent of the TRP disciplines. Additionally, a regulatory scorecard⁷ of 30 possible points on TRP compliance indicates that most Member States are compliant to the disciplines of the TRP in terms of their legislations. Hence, Member States may consider the following options in the services negotiations on the TRP disciplines:

Option 1: add a “Head Note” at the beginning of TRP, through which Member States reaffirm their undertakings in the TCM Protocol, and adopt TRP as an Annex to the TiS Protocol in support of the schedule on communication services.

Option 2: individual Member States attach the TRP as additional commitments to their respective offers in telecommunication services.

4.4. Requests and offers in Telecommunication Services

Only five (5) of the eight (8) Member States who have submitted their requests in communication services cover telecommunication services. All Member States have received a request for full liberalisation of both market access and national treatment in modes 1, 2 and 3 in the respective subsectors in telecommunication services - see Table 1 below for a summary of the requests by requested country indicating a list of subsectors covered, in case of partial request(s).

Seven (7) of the eight (8) offers so far submitted by Member States cover telecommunication services both basic telecommunication and value added services. Most of the offers are fairly open in Mode 1 and 2 (except those with limitations on call back services and partial commitment). However, all seven offers have market access limitations on mode 3 such as economic needs tests (ENTs), limitations on the number of licences, maximum foreign capital participation and construction of own infrastructure – see Table 2 below for more details. The offers seem to be consistent, providing clarity as well as improving on their GATS commitments as appropriate. However, this may not necessarily reflect the existing level of liberalisation of telecommunication services across the region.

***Issues of negotiations:** Member states should consider whether the offers meet their requests and the incorporation of regulatory disciplines in TRP.*

5. Audio-visual Services

5.1. Classification of audio-visual Services

According to the W/120 list, audio-visual services comprise:

- a) motion picture and video tape production and distribution services (CPC 9611);
- b) motion picture projection services (CPC 9612);

⁷ SADC Secretariat (2013), L. Abrahams and C. Lewis, *The SADC Communications Environment: An Assessment of Communications Policies, Laws and Regulations in SADC Member States*

- c) radio and television services (CPC 9613);
- d) radio and television transmission (CPC 7524);
- e) sound recording services.

The UN CPC for services describes subsector c) CPC 9613 and d) CPC 7524 as “broadcasting services”.

5.2. Regulatory Disciplines/Issues in Audio-visual services

Chapter 10 of the TCM Protocol provides for broadcasting services, in which case Member States agreed to undertake regulatory and policy regimes to integrate broadcasting and telecommunications into a single regulatory environment encompassing technological, legislative and institutional convergence. The regulatory principles under Chapter 10 of the TCM Protocol applies similarly to the telecommunication and broadcasting sectors⁸.

An assessment of SADC Member State regulatory regimes on audio-visual services indicates that most of audio-visual services are not regulated except for broadcasting services. An analysis of the state of liberalisation shows that most Member States seem to comply with the regulatory undertakings of Chapter 10 of the TCM and have unilaterally liberalised broadcasting services. Foreign ownership and cross-ownership have been identified as the common trade barriers.

5.3. Requests and Offers in Audio-visual Services

Looking at the requests and offers so far submitted by Member States: three (3) countries made requests for full liberalisation under modes 1, 2 & 3 of audio-visual services in subsectors a), b) and e), meaning that no requests have been made in respect of broadcasting services i.e. subsectors c) and d). The requests are addressed to all Member States except for Madagascar and South Africa.

Of the eight (8) Member States' offers so far, only three (3) cover audio-visual services; two (2) include broadcasting services and one (1) covers motion picture projection services. The offers in audio-visual services are generally open i.e. full commitments except for mode 3 in broadcasting services where the two (2) offers contain limitations on maximum foreign shareholding and requirements to broadcast national programs.

Issues for negotiations: *How far have the offers responded to the requests so far?*

⁸ Article 10.4(1) Member States confirm that the scope of this Protocol as indicated in Articles 10.2 on convergence includes broadcasting infrastructure and recognises the need for the content or substance of that which is transmitted to be dealt with in conjunction with the broadcasting aspects within the Protocol on Sport, Culture and Information

Table 1: A Summary of Requests in Communication Services

Requesting MS/ Subsector	BTW	DRC	LSO	MUS	ZAF	SWZ	ZMB
A. Postal	AGO, LSO, MWI, MUS, MOZ, NAM, SYC, ZAF, SWZ, TZA, ZMB & ZWE	AGO, MWI None (M1-3)					
B. Courier	AGO, LSO, MWI, MUS, MOZ, NAM, SYC, ZAF, SWZ, TZA, ZMB & ZWE None (M1-3)	AGO, MWI, SWZ None (M1-3)	AGO, MWI, MUS, MOZ, NMB, TZA, ZMB & ZWE None (M1-3)		AGO, DRC, MWI, MUS, MOZ, NAM, SYC, SWZ, TZA, ZMB & ZMW None (M1-3)	AGO, DRC, MWI, NAM, MOZ, SYC, TZA, ZMB & ZWE None (M1-3)	
C. Telecoms	AGO, LSO, MWI, MUS, MOZ, NAM, SYC, ZAF, SWZ, TZA, ZMB & ZWE None (M1-3) TRP		AGO, BTW, MWI, MOZ, NMB, TZA, ZMB & ZWE Subsector a-n MUS subsector i-n None (M1-3)	BTW, DRC, LSO, MWI, NMB, SWZ, TZA, ZMB & ZWE None (M3)	AGO, DRC, LSO, MWI, MOZ, NAM, SYC, SWZ, TZA & ZMB Subsector a-o MUS (d-o), ZWE (a-h & o) None (M1-3)		BTW None (M1-3)
D. Audio-visual		SWZ Subsector a& b None (M1-3)	AGO, BTW, MWI, MUS, MOZ, NAM, TZA, ZMB & ZWE (subsector a, b & e) None (M1-3)			AGO, DRC, BTW, LSO, MWI, MOZ, NAM, SYC, TZA, ZMB & ZWE Subsector (b) None (M1-3)	
E. Others	AGO, LSO, MWI, MUS, MOZ, NAM, SYC, ZAF, SWZ, TZA, ZMB & ZWE None (M1-3)	AGO					

Table 2: A summary of Offers in Communication Services

MS	BTW	DRC	MWI	MUS	SYC	ZAF	SWZ	ZMB
Subsector								
A. Postal	Carve-out reserved services	<u>MA</u> ➤ M1-2: None ➤ M3: exclusive rights <u>NT</u> : M1-3 - None	NIL	NIL	Carve-out reserved services			
B. Courier	<u>MA & NT</u> ➤ M1-3: None	<u>MA & NT</u> : ➤ M1-3: None	<u>MA & NT</u> ➤ M1& 2: None ➤ M3: items weighing < 350g	<u>M& NT</u> ➤ M1-3: None	<u>MA & NT</u> ➤ M1-3: None	<u>MA & NT</u> ➤ M1-3: None	<u>MA & NT</u> M1-3: none	<u>MA & NT</u> M1-3: none
C. Telecoms	All subsectors ➤ None (M1&2) Sub-sector a- g MA ➤ M1: international call termination ➤ M3: 3 licenses, additional license on ENT basis TRP	All subsectors <u>MA</u> ➤ M1-2: none ➤ M3: foreign capital <70% <u>NT</u> ➤ M1-3: None	All subsectors <u>MA & NT</u> ➤ M1&2: None ➤ <u>MA</u> : M3 ENT to determine the no. of license for voice telephone ➤ <u>NT</u> M3: None	All subsectors <u>MA</u> ➤ M1&2: none ➤ M3: ENT on licenses <u>NT</u> ➤ M1-3: None TRP	All subsectors Basic telecom a-g) <u>MA</u> ➤ M1& 2 call back prohibited ➤ M3: None o) & Value added MA & NT ➤ M1-3: None TRP	All subsectors <u>MA</u> ➤ M1: licensed network ECNS & service providers-ECS ➤ Own infra. only by ECNS & ECS licensees ➤ M2: None ➤ M3: max. 30% of cumulative foreign investment ➤ M3 (value added): → ECNS & ECS license → Own infra. Only ECNS & ECS ➤ NT M1-3: None TRP		All Subsectors <u>MA</u> Subsector a) ➤ M1: unbound ➤ M2: VOIP & call back proh. ➤ M3: ENT on licenses <u>NT</u> ➤ M1: unbound ➤ M1 & 3: none Subsector a-b (voice and data transm), h-o) <u>MA & NT</u> ➤ M1-3: None
D. Audio-visual	NIL	Broadcasting (c - d) <u>MA & NT</u> ➤ M 1& 2: None ➤ M3: max 49% foreign capital <u>NA</u> :M3 50% local programs	Subsector a –d <u>MA & NT</u> ➤ M 1-3 : None <u>MA</u> for c) Radio & TV services ➤ M3: Max 40% foreign shareholding	NIL	NIL		Subsector b) MA &NT M1-3: none	

Table 3: Comparison of Telecommunication Reference Paper and the Chapter 10 (ICT) of TCM Protocol

Provisions of TRP	Provisions of Chapter 10 of the TCM	Remarks
<p><u>Scope</u> The following are definitions and principles on the regulatory framework for the basic telecommunications services.</p> <p><u>Definitions</u> <u>Users</u> mean service consumers and service suppliers.</p> <p><u>Essential facilities</u> mean facilities of a public telecommunications transport network or service that</p> <ul style="list-style-type: none"> (a) are exclusively or predominantly provided by a single or limited number of suppliers; and (b) cannot feasibly be economically or technically substituted in order to provide a service. <p><u>A major supplier</u> is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:</p> <ul style="list-style-type: none"> (a) control over essential facilities; or (b) use of its position in the market. 	No definition	Definitions are necessary to ensure shared meaning of terms used in the agreement
<p>1. <u>Competitive safeguards</u></p> <p>1.1 <u>Prevention of anti-competitive practices in telecommunications</u> Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.</p> <p>1.2 <u>Safeguards</u> The anti-competitive practices referred to above shall include in particular:</p> <ul style="list-style-type: none"> (a) engaging in anti-competitive cross-subsidization; (b) using information obtained from competitors with anti-competitive results; and (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services. 	<p><u>Article 10.2</u> In order to attain the stated objectives, Member States agree to extend the existing harmonised regional ICT policy by adopting additional measures aimed at -</p> <ul style="list-style-type: none"> d) promoting and sustaining fair competition between network operators and service providers by <ul style="list-style-type: none"> (ii) implementing the necessary mechanisms to assess the status of competition in the market <p><u>Article 10.8</u> ... national regulatory bodies shall have responsibility for:</p> <ul style="list-style-type: none"> k) promoting fair competition through the undertaking of pro-competitive measures in support of market entry and determining of remedies to redress anti-competitive behaviour and abuse of dominance such as for example undertaking market analysis in order to determine whether significant market power exists in a market; 	TRP very explicit on what could constitute anticompetitive practices

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided

- (a) under **non-discriminatory terms, conditions** (including technical standards and specifications) and rates and of a quality **no less favourable than** that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Article 10.2

1. In order to attain the stated objectives, Member States agree to extend the existing harmonised regional ICT policy by adopting additional measures aimed at -
... h) subject to **mutual agreement and on the basis of reciprocity, granting of access to, and use** of networks and services by each other's operators and service providers on terms developed by a harmonized set of regulatory policies for wholesale and retail markets;

Art. 10.9

1. Member States **shall ensure the interconnectivity** of ICT networks and the **interoperability** of ICT services **within their countries between the variety of existing operators and in the Region** by encouraging their regulatory authorities to develop harmonised policies which shall include formulating or approving numbering plans and setting technical standards in respect of technical systems and networks and equipment type approval.

Article 10.8

Member States **agree that national regulatory bodies shall** have responsibility for:

-
- m) **resolving disputes** between consumers and operators respectively between operators / service providers

TRP requires such interconnection to be provided on MFN basis and transparent procedures while TCM the later on reciprocal mutual agreement

The dispute role under the TCM is broader than TRP (only for interconnection)

<p>3. <u>Universal service</u> Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.</p>	<p><u>Article 10.3</u> Based on the progress achieved since the TCM protocol entered into effect in 1998 and for the further purpose of policy development in respect of universal service, Member States agree to continue their work towards a common understanding of universal service and universal access by reviewing and determining:</p> <ul style="list-style-type: none"> a) the basic elements which characterise universal service provision to individuals and households as well as public access to communication services which have emerged globally as complementary and intermediate solutions... <ul style="list-style-type: none"> (ii) accessible to all people of the Region on an equitable and non-discriminatory basis; c) consider intermediate measures in the endeavour to achieve universal service which may include defining universal access and implementing arising strategies. 	<p>Technically the provisions of TRP is in harmony with TCM provisions</p>
<p>4. <u>Public availability of licensing criteria</u> Where a licence is required, the following will be made publicly available:</p> <ul style="list-style-type: none"> (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and (b) the terms and conditions of individual licences. The reasons for the denial of a licence will be made known to the applicant upon request. 	<p><u>Article 10.7</u> 1. ... Member States shall: ... c) define and continuously review and develop policies for the most relevant areas of ICT regulation such as: (i) licensing and market entry</p> <p><u>Article 10.8</u> Member States agree that national regulatory bodies shall have responsibility for</p> <ul style="list-style-type: none"> c) licensing of - <ul style="list-style-type: none"> (i) service providers in a technologically and service neutral manner; (ii) radio spectrum users; d) monitoring adherence to licence conditions; 	<p>TPR emphasise on transparent in licencing regulations, TCM provides for development of such regulations however not explicit on transparency requirements</p>
<p>5. <u>Independent regulators</u> The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and</p>	<p><u>Article 10.7</u> 1. Member States shall ensure the separation between the regulation and operation of networks and services within</p>	<p>Technical the provisions of TCM and TRP are similar</p>

<p>the procedures used by regulators shall be impartial with respect to all market participants.</p>	<p>their national jurisdictions, and, to this end, Member States shall -</p> <p>a) establish publicly accountable independent national regulatory bodies which shall have statutory authority to regulate and monitor specified ICT related activities in the respective Member States. To deal with the challenges of convergence the functions of these bodies should combine regulation of telecommunications and broadcasting;</p>	
<p><u>6. Allocation and use of scarce resources</u> Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.</p>	<p><u>Article 10.7</u></p> <p>1. .. Member States shall:</p> <p>c) define and continuously review and develop policies for the most relevant areas of ICT regulation such as:</p> <p>... iv) management of scarce resources (spectrum, numbering, rights-of-way)</p>	<p>TRP concentrates on transparent and non-discriminatory procedure while TCM emphasis the need to define, develop and review such procedures</p>

REFERENCE PAPER

POSTAL AND COURIER SERVICES

Scope

The following are definitions and principles on the regulatory framework for all postal and courier services.

Definitions

An "**individual licence**" is an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

"Universal service" is the permanent provision of a postal service of specified quality at all points in the territory of a Member at affordable prices for all users.

1. Prevention of anti-competitive practices in the postal and courier sector

Appropriate measures will be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

2. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

3. Individual licences

An individual licence may only be required for services which are within the scope of the universal service. Where an individual licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- b) the terms and conditions of individual licences.

The reasons for the denial of an individual licence will be made known to the applicant upon request and an appeal procedure through an independent body will be established at the Member's level. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

4. Independence of the regulatory body

The regulatory body is legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body will be impartial with respect to all market participants.

ANNEX ...

TELECOMMUNICATION SERVICES

HAVING REGARD to the provisions of Article 2.4 of the SADC Trade in Services, that requires State Parties to ensure consistency between liberalisation of trade in services and the various Protocols in the specific services sectors;

REAFFIRMING State Parties rights and obligations in the SADC Protocol on Trade in services as well as those in the SADC Protocol on Transport, Communication and Meteorology, in particular Chapter 10 on Telecommunication and Broadcasting under the said Protocol); and

RECOGNIZING the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities,

SEEKING to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of public telecommunications, transport networks and services.

NOTING that this Head Note provides notes and supplementary provisions to the liberalisation commitments in telecommunication services

HEREBY AGREE as follows:

ARTICLE 1

TERMS AND DEFINITIONS

For purposes of this Annex, the following terms and definitions shall apply on the regulatory framework for the basic telecommunications services:

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service.

Major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(a) control over essential facilities; or

- (b) use of its position in the market.

ARTICLE 2

COMPETITIVE SAFEGUARDS

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide service

ARTICLE 3

INTERCONNECTION

1. Interconnection

This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2. Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

4. Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

5. Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

ARTICLE 4

UNIVERSAL SERVICES

1. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

ARTICLE 5

LICENCING CRITERIA

1. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

ARTICLE 6

INDEPENDENT REGULATORS

1. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

ARTICLE 7

ALLOCATION AND USE OF SCARCE RESOURCES

1. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.