

ORGANIZACIÓN MUNDIAL DEL COMERCIO

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Comercio de Servicios

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KENYA

Proyecto de Lista refundida de Compromisos Específicos¹

El documento adjunto contiene un proyecto de la Lista refundida de Compromisos Específicos de Kenya, en formato Word. Este documento no sustituye los compromisos jurídicamente vinculantes contraídos por Kenya en su Lista de Compromisos Específicos (GATS/SC/47; GATS/SC/47/Suppl.1; GATS/SC/47/Suppl.2).

El proyecto de Lista refundida fue preparado por la Secretaría, a petición de los Miembros, para facilitar el proceso de las negociaciones, incluida la presentación de ofertas iniciales.

¹ Este documento se ha preparado, en inglés solamente, bajo la responsabilidad de la Secretaría y sin perjuicio de las posiciones de los Miembros ni de sus derechos y obligaciones en el marco de la OMC.

KENYA – SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENT			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Commercial presence requires that foreign service providers incorporate or establish the business locally</p> <p>4) Unbound except for measures concerning the entry and temporary stay of natural persons employed in management and expert jobs for the implementation of foreign investment.</p> <p>The employment of foreign natural persons for the implementation of foreign investment shall be agreed upon by the contracting parties and approved by Government</p>		

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. SECTOR SPECIFIC COMMITMENTS			
2. COMMUNICATION SERVICES			
C. <u>Telecommunication Services</u> (excludes video and audio broadcast services)			
(a) Voice telephone services:	1) Restricted to service suppliers operating direct voice communication routes	1) None	
Limited to international home country direct services	2) Unbound 3) Unbound 4) Unbound except as indicated in the horizontal section	2) Unbound 3) Unbound 4) Unbound	
<u>For public use:</u>	1) None, except International call-back services are not permitted.	1) None	
(a) Voice telephone service (CPC 7521)	2) None, except International call-back services are not permitted.	2) None	
(d) Telex services (CPC 7523**)	3) Until 2003, monopoly on supply of services in Nairobi as well as on supply of International gateway facilities services, and resale in monopoly areas only with permission of supplier of underlying services and facilities. Foreign investment is limited to 30 per cent maximum.	3) None	
(e) Telgraph services (CPC 7522)			
(f) Facsimile service (CPC 7521**, CPC 7529**)			
(g) Private leased circuit services (CPC 7522**, CPC 7523**)	4) Unbound except as indicated in the horizontal section	4) Unbound, except as indicated in horizontal section.	Kenya undertakes the obligation contained in the reference paper hereto.

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p><u>For public use:</u></p> <p>(b) Packet-switched data transmission services (CPC 7523**)</p> <p>(c) Circuit-switched data transmission services (CPC 7523**)</p> <p><u>For non-public use:</u> Services supplied to closed users group.</p> <p>(a) Voice telephone services (CPC 7521)</p> <p>(b) Packet-switched data transmission services (CPC 7523**)</p> <p>(c) Circuit-switched data transmission services (CPC 7523**)</p> <p>(d) Telex services (CPC 7523**)</p> <p>(e) Telegraph services (CPC 7522)</p> <p>(f) Facsimile services (CPC 7521**, CPC 7529**)</p>	<p>1) None</p> <p>2) None</p> <p>3) None, except Foreign investment is limited to 30 per cent maximum.</p> <p>4) Unbound except as indicated in the horizontal section</p> <p>1) None, except through the network of Telkom Kenya Ltd. or monopoly. International call-back services are not permitted.</p> <p>2) None, except through the network of licenced telecom operator. International call-back services are not permitted.</p> <p>3) Only over facilities of licenced operators breakout and Resale of excess capacity are not permitted. Foreign investment limited to a maximum of 30 per cent.</p> <p>4) Unbound, except as indicated in the horizontal section</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section.</p> <p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in the horizontal section.</p>	

Modes of supply:	1)	Cross-border supply	2)	Consumption abroad	3)	Commercial presence	4)	Presence of natural persons
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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Value added services:			
(h) Electronic mail (CPC 7523**)	1) None	1) None	
(i) Voice mail (CPC 7523**)	2) None	2) None	
(j) On-line information and data base retrieval (CPC 7523**)	3) Only over facilities of licenced network operators. Foreign investment limited to maximum of 30 per cent.	3) None	
(k) Electronic data interchange (CPC 7523**)	4) Unbound, except as indicated in the horizontal section	4) Unbound, except as indicated in the horizontal section.	
(l) Enhanced/value-added facsimile services, incl. Store and forward, store and retrieve (CPC 7523**)			
(m) Code and protocol conversion			
(n) On-line information and/or data processing (including transaction processing) (CPC 843**)			
(o) Other:			
Internet and internet access services	1) None	1) None	
	2) None	2) None	
	3) Only over facilities of licenced network operators. Foreign investment limited to maximum 30 per cent.	3) None	
	4) Unbound, except as indicated in the horizontal section.	4) Unbound, expcet as indicated in the horizontal section.	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<u>Satellite based</u> Mobile Services - Cellular/mobile telephone - Mobile data services - Personal communications services - Paging	1) None, except as provided for under GMPCS MOU. 2) None, except as provided for under GMPCS MOU. 3) None, except foreign investment is limited to 30 per cent maximum 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
<u>Terrestrial based</u> Mobile Services - Cellular/mobile telephone services - Mobile data services - Personal communications services - Paging	1) Only through the network of Telkom Kenya Ltd. and subsequent licenced International gateway operator. International call-back services are not permitted. 2) Only through the network of Telkom Kenya Ltd. and subsequent licenced International gateway operator. International call-back services are not permitted. 3) Other than paging services and PCS, initially the services will be provided by Telkom Kenya Ltd. A second operator is to be licenced within one year. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	
Fixed satellite services_(for public use)	1) Only through the network of Telkom Kenya and subsequent licenced international gateway operator. 2) Only through the network of Telkom Kenya and subsequent licenced international gateway operator. 3) Foreign investment is limited to maximum 30 %. 4) Unbound, except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as indicated in the horizontal section.	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
Vending of telecommunications terminal equipment. ²	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound	
Installation and maintenance of telecommunications terminal equipment ¹	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound	
D. <u>Audiovisual Services</u>			
(a) Motion picture and video tape production services (excluding distribution services)	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) Unbound	
(b) Motion picture projection services	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound	

² Information provided for the purposes of transparency: Subject to type approval and licensing procedures.

* Unbound due to lack of technical feasibility

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
7. FINANCIAL SERVICES			
A. <u>Banking and other Financial Services</u> (Excluding insurance)			
(a) Acceptance of deposits and other repayable funds from the public	1) None 2) None 3) Only institutions approved as banks under the Banking Act. 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(c) All payments and money transmission services	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(d) Guarantees and commitments	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(e) Participation in issues of all kinds of securities and provision of services related to such issues except underwriting	1) Securities issued in a foreign jurisdiction cannot be offered or traded in the Kenyan market. 2) None 3) Foreign portfolio investors can hold up to 40% of the shareholding of a locally listed company. They can also take up to 40% of any additional public offering by a foreign convened listed company. 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(f) Asset management except pension fund management	1) None 2) None 3) 30% of paid up capital must be held by Kenyan nationals. 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(g) Advisory and other auxiliary financial services	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) None 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
B. <u>Insurance</u>			
(a) Life Insurance	1) Unbound 2) Unbound 3) One third of the paid up capital must be owned by Kenyan nationals. 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) Unbound 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(b) Non-life	1) Unbound, except for aviation, marine and engineering. 2) Unbound, except for aviation, marine and engineering. 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) Unbound 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(c) Broking	1) Unbound 2) Prior approval of the Commissioner of Insurance (C.O.I) is required to lace Kenyan business with an insurer not registered under the Kenya Insurance Act. 3) 60% of the paid capital must be owned by Kenyan nationals. 4) Unbound, except as indicated in the Horizontal Commitments.	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	
(d) Agency services	1) Unbound, except for re-insurance services. 2) Unbound 3) Agency services restricted to Kenyan Nationals. 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) Unbound 3) Unbound 4) Unbound, except as indicated in the Horizontal Commitments.	
(d) Auxiliary Services, Assessors, Intermediaries and loss Adjustors	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	

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Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(f) Re-insurance and Retrocession	1) Mandatory cessions must be placed with – Kenya Re 25%; Zep Re 10% and Africa Re 5%. 2) Mandatory cessions must be placed with – Kenya Re 25%; Zep Re 10% and Africa Re 5%. 3) Mandatory cessions must be placed with – Kenya Re 25%; Zep Re 10% and Africa Re 5%. 4) Unbound, except as indicated in the Horizontal Commitments.	1) None 2) None 3) None 4) Unbound, except as indicated in the Horizontal Commitments.	
9. TOURISM AND TRAVEL-RELATED SERVICES			
A. <u>Hotels and Restaurants (including catering)</u>	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) None, for those categories of persons referred to in the market access column of the horizontal section	
B. <u>Travel Agencies and Tour Operators Services</u>	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) None, for those categories of persons referred to in the market access column of the horizontal section	
C. <u>Tourist Guide Services</u>	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) None, for those categories of persons referred to in the market access column of the horizontal section	

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
11. TRANSPORT SERVICES			
A. <u>Air Transport Services</u>			
(a) Aircraft repair and maintenance services ³	1) Unbound* 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) Unbound 4) Unbound	
(b) Selling and marketing of air transport services ²	1) None 2) None 3) Unbound, except for advertizing activities and the setting up of regional sales offices 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound, except for the activities referred to in the market access column 4) Unbound	
(c) Computer reservation system (CRS) services ²	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) Unbound	
F. <u>Road Transport Services</u>			
(a) Passenger transportation	1) None 2) Unbound 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) None, for those categories of persons referred to in the market access column of the horizontal section	
(b) Freight transportation	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) Unbound	

³ As defined in paragraph 6 of the Annex on Air Transport Services.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(c) Rental of commercial vehicles with operator	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) Unbound	
(d) Maintenance and repair of road transport equipment	1) Unbound* 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) Unbound 4) Unbound	
(e) Supporting services for road transport services	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) Unbound	
12. OTHER SERVICES NOT INCLUDED ELSEWHERE			
Meteorological data information	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) Unbound 4) None, with respect to the categories of persons referred to in the market access column of the horizontal section	

ADDITIONAL COMMITMENTS OF KENYA ON REGULATORY PRINCIPLES REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

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.

A 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.

1. 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 services.

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.

3. 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.

4. 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.

5. 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 the regulators shall be impartial with respect to all market participants.

6. 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.
