

# **WORLD TRADE ORGANIZATION**

**GATS/SC/47/Suppl.2**

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**Trade in Services**

**KENYA**

**Schedule of Specific Commitments**

**Supplement 2**

(This is authentic in English only)

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This Schedule supplements the section on Telecommunications Services on pages 2 and 3 of document GATS/SC/47.

## KENYA -- SCHEDULE OF SPECIFIC COMMITMENTS IN BASIC TELECOMMUNICATIONS

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
2.C. Telecommunications services (excludes video and audio broadcast services)			Kenya undertakes the obligation contained in the reference paper hereto.
<u>For public use:</u>			
(a) Voice telephone service (7521)	(1) None, except International call-back services are not permitted.	(1) None	
(b) Telex services (7523 **)	(2) None, except International call-back services are not permitted.	(2) None	
(c) Telegraph services (7522)	(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	
(d) Facsimile service (7521**, 7529**)			
(e) Private leased circuit services (7522**, 7523**)	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
<u>For public use:</u>	(1) None	(1) None	
(b) Packet - Switched data transmission services (7523**)	(2) None	(2) None	
(c) Circuit - Switched data transmission services (7523**)	(3) None, except Foreign investment is limited to 30 per cent maximum.	(3) None	

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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p><u>For non - public use:</u> Services supplied to closed users group.</p> <p>(a) Voice telephone services (7521)</p> <p>(b) Packet - switched data transmission services (7523**)</p> <p>(c) Circuit - switched data transmission services (7523**)</p> <p>(d) Telex services (7523 **)</p> <p>(e) Telegraph services (7522)</p> <p>(f) Facsimile services (7521**, 7529**)</p> <p><u>Value added services:</u></p> <p>(h) Electronic mail (7523**)</p> <p>(i) Voice mail (7523**)</p> <p>(j) On-line information and data base Retrieval (7523**)</p> <p>(k) Electronic data interchange (7523**)</p>	<p>(4) Unbounded, 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) Unbounded, except as indicated in the horizontal section.</p> <p>(1) None</p> <p>(2) None</p> <p>(3) Only over facilities of licenced network operators. Foreign investment limited to maximum 30 per cent.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(4) Unbounded, except as indicated in the horizontal section.</p> <p>(1) None</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbounded, 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

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>(l) Enhanced/value-added facsimile services, incl. Store and forward, store and retrieve (7523**)</p> <p>(m) Code and protocol conversion</p> <p>(n) On-line information and/or data processing (including transaction processing) (843**)</p> <p>Other:</p> <p>- Internet and internet access services</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) Only over facilities of licenced network operators. Foreign investment limited to maximum 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>	
<u>Satellite based</u>			
- Mobile Services	(1) None, except as provided for under GMPCS MOU.	(1) None	
- Cellular/mobile telephone	(2) None, except as provided for under GMPCS MOU.	(2) None	
- Mobile data services	(3) None, except foreign investment is limited to 30 per cent maximum	(3) None	
- Personal communications services	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
- Paging			

Modes of supply: (1) Cross-border supply (2) Consumption abroad

(3) Commercial presence

(4) Presence of natural persons

Sector or subsector	Limitations on market access	Limitations on national treatment	Additional commitments
<u>Terrestrial based</u>			
- Mobile Services	(1) Only through the network of Telkom Kenya Ltd. and subsequent licenced International gateway operator. International call-back services are not permitted.	(1) None	
- Cellular/mobile telephone services			
- Mobile data services	(2) Only through the network of Telkom Kenya Ltd. and subsequent licenced International gateway operator. International call-back services are not permitted.	(2) None	
- Personal communications services			
- Paging	(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.	(3) None	
	(4) Unbound except as indicated in the horizontal section.	(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.	(1) None	
	(2) Only through the network of Telkom Kenya and subsequent licenced international gateway operator.	(2) None	
	(3) Foreign investment is limited to maximum 30 %.	(3) None	
	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in 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.

### Definition

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;
- (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) user 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 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 suppliers 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 users is not required.

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