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# REPUBLIC OF NAMIBIA

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## General Notices

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 456

2024

#### DETERMINATION OF DOMINANT POSITION IN THE TELECOMMUNICATIONS MARKET: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of section 78(1) of the Communications Act, 2009 (Act No. 8 of 2009) and after complying with regulation 4 of the Regulations regarding Rule-Making Procedures: Communications Act, 2009 published in Government Gazette No. 4630, as General Notice No. 334 dated 17 December 2010, hereby publishes –

- (a) the determination of licensees holding a dominant position in the telecommunications market set out in Schedule 1; and
- (b) a study document detailing the reasons for the determination of licensees holding a dominant position in the market set out in Schedule 2.

**DR T. MUFETI**  
**CHAIRPERSON OF THE BOARD**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

## SCHEDULE 1

### DETERMINATION OF LICENSEES HOLDING A DOMINANT POSITION IN THE TELECOMMUNICATIONS MARKET IN TERMS OF SECTION 78(1)

The table below shows the determination as follows:

Markets		Dominant operator
1	National Data Transmission	Telecom Namibia, NamPower
2	Wired End-User Access	Telecom Namibia
3	Wireless End-User Access	MTC, Telecom Namibia
4	Fixed and Mobile Call & SMS Termination	Telecom Namibia Limited, Mobile Telecommunications Limited, UCom Mobile (Pty) Ltd, Paratus Telecommunications (Pty) Ltd and Telepassport Communications (Pty) Ltd.

## SCHEDULE 2

### REASONS ON THE DETERMINATION OF LICENSEES HOLDING A DOMINANT POSITION IN THE TELECOMMUNICATIONS MARKET AS CONTEMPLATED IN SECTION 78 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)

#### 1. Introduction

Telecommunications is an increasingly important enabler of human development and economic growth. CRAN's approach to the determinations of 2012 and 2016 has been one of minimal intervention. In order to determine dominance in the market, it is important to define the relevant market in discussion. Dominance is described as the power that enables an operator to make a decision and to act independently of its competitors and customers in a specific market. This means that an operator is in such a position that they can adjust prices without a concern or fear of the competitors within the same market having an advantage and typically taking on more customers.

The adopted approach of 2012 aimed at minimising the burden on licensees while allowing CRAN to implement the objects of the Act. At the time of such study, there were only two markets defined at namely the telecommunication services and broadcasting services. This dominance was only declared for the telecommunications service market and Mobile Telecommunications Limited of which Powercom (Pty) Ltd t/a Leo and Telecom Namibia Limited were declared dominant.<sup>1</sup> However, as the development in the industry progressed a need rose for all markets to be considered. This encourage sustainable investment, growth and innovation to the benefit of the entire Industry and its consumers, and it also acknowledges that existing market conditions may preclude effective competition in certain market segments. The 2016 determination defined four priority markets as listed in Table 1 below.<sup>2</sup>

**Table 1: Proposed Market Definitions for 2024 (unchanged to previous market definitions)**

Markets		Description
1	Fixed and Mobile Call Termination	The market for fixed and mobile call and SMS termination is a natural monopoly and all operators offering call termination are dominant operators.
2	Wired End-User Access	The market for wired end-user access includes retail and wholesale/reseller services provided via fibre or copper lines. Services in this market include fixed call origination xDSL, FTTx, local leads or tail ends for leased lines.
3	National Data Transmission	The market for National Data Transmission covers all forms of prearranged connectivity within Namibia excluding the end-user access section. It covers wholesale and retail services. Services included in this market are leased lines, Ethernet, SDH, PDH, ATM, microwave, national IP transit and services rendered at submarine cable landing stations.

<sup>1</sup> Namibian Government Gazette No. 5201, General Notice No. 167, Dated 29 May 2013.

<sup>2</sup> Namibian Government Gazette No. 6054, General Notice No. 214, Dated 28 June 2016.

4	Wireless End-User Access	The market for wireless end-user access includes retail and wholesale services, excluding call and SMS termination, delivered through mobile and fixed-wireless networks. It includes call and SMS origination as well as Internet access provided via mobile phone, dongle, wireless modem or router and Wimax
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A more focused approach was considered in 2019 but challenged by written submissions from licensees. CRAN had proposed to define markets more narrowly. The proposal was to define the markets for wired and wireless end-user access as copper-based and mobile end-user access. The main objection to this approach was that these market definitions leave out several services that may require *ex-ante* regulation during the period 2020 to 2022, in particular, FTTx and fixed-wireless.<sup>3</sup>

The 2016 and 2021 determination defined four broad markets that covered the entire connectivity segments of the Internet value chain. In 2024, this approach is still suitable. Defining markets with more granularities would simply mean the same operators are dominant for these markets as well. CRAN thus proposes to retain the market definitions from 2021.

## 2. Legal basis for conducting the determination

The functions and duties of the Communications Regulatory Authority of Namibia (CRAN) are set out in the Communications Act, 2009 (Act No. 8 of 2009) (the Act). Section 5 of the Act mandates that the objects of CRAN are to regulate the communications industry in Namibia in accordance with the provisions of the Act. While section 2 of the Act lists the objectives of the Act amongst others as to ensure fair competition and consumer protection in the telecommunication sector, encourage local participation in the Communications Sector, and encourage private investment in the telecommunications sector. In terms of section 78(1) of the Act, CRAN is mandated to hold a hearing to determine which licensees hold a dominant position in the market. Section 78(4) empowers CRAN to determine whether a licensee is dominant in respect of any Namibian communications market. In determining whether a licensee is dominant, CRAN as per section 78(3) needs to take into account the following:

- (a) *The licensee in question has such a share of the market in the class of telecommunication services in question, that it is able to act independent of its competitors;*
- (b) *The licensee controls some infrastructure that is necessary for the provision of the service in question;*
- (c) *The licensee in question is dominant as provided in paragraph (a) or (b) in respect of a class of related services (which need not be telecommunications services) and the licensee can use that dominance to exercise power in the market for telecommunications services in question;*  
*or*
- (d) *The licensee in question has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia.*

## 3. Methodology

Regulation needs to be guided by the minimal intervention and proportionality principles. Telecommunications regulators around the world define markets and determine dominance in order to design the appropriate *ex-ante* regulations that promote fair competition and thus affordable user prices and efficient investment. A consensus exists around two general principles for regulatory interventions (ITU, 2016): the minimal intervention and proportionality principles. The principle of minimal intervention limits interventions to market conditions where sustainable competition does not evolve naturally.

<sup>3</sup> Namibian Government Gazette No. 7156, General Notice No. 105, Dated 27 March 2020.

The principle of proportionality requires that a regulatory intervention does not cost more than the benefits generated by it.

A forward-looking approach taking into account the geographic dimension and demand and supply substitution is recommended by EU. The European Union (EU, 2018) gives specific recommendations for market studies for national regulatory authorities (NRAs) of its member states which are displayed in Table 2.

**Table 2: Market study recommendations by the European Union (Source: EU, 2018)**

Principles	Description
Forward-looking	A market study should be forward-looking and take into account not only the existing market conditions but also foreseeable market developments for the current review period.
Demand and Supply-side Substitution:	NRAs should consider demand-side and supply-side substitution when defining markets. Demand-side substitution defines a market for a group of products and services that could easily be switched by a consumer in response to a small but significant price increase. Supply-side substitution tests whether a small price increase results in a new market entrant.
Geographic	Demand and supply-side substitutions should be analysed along the geographical dimension.

**The market study process consists of three steps.** The concrete implementation of each of these three steps is handled differently by regulators around the world and needs to be subject to careful consideration of the local conditions including institutional arrangements, legal framework and sector-specific circumstances. Step one identifies and defines candidate markets, step two assesses whether a market requires regulatory consideration, ie declaring a market a priority market, and step three identifies operators in a market with significant market power.

**Step 1: Identify and define candidate markets.** In the first step, the ICT sector is analysed with respect to competition and overall performance. A larger number of markets may be defined and alternative market definitions analysed. This entails grouping products and services into markets based on their characteristics, prices and intended use, as well as geographic and functional considerations, for example, retail and wholesale.

**Step 2: Determine whether markets should be considered for *ex-ante* regulation.** In the second step, priority markets from a wider list of candidate markets, identified in Step 1, are selected that potentially require regulations. ITU (2016) defines three criteria to determine whether a market should be considered for *ex-ante* regulation.

1. High barriers to market entry exist;
2. The market structure does not tend towards effective competition; and
3. Competition law alone would not be enough to address potential market failure.

**Step 3: Identify operators with significant market power (SMP).** Step three declares which operators are dominant for a priority market. Operators that are dominant and can act independently from competitors are considered to have SMP. The various factors that could be considered for this study are listed in Table 3. The list from the European Union is the most extensive list. Not all factors will be applicable to all markets.

**Table 3: Factors to be considered for determining SMP**

	Factors
ITU 2016	Market share; control of essential facilities; barriers to entry; potential competition; easy access to financial resources; strength of the countervailing power of consumers; economies of scale; economies of scope and vertical integration

	<b>Factors</b>
EU 2018	Barriers to entry, barriers to expansion, absolute and relative size of the undertaking, control of infrastructure not easily duplicated, technological and commercial advantages or superiority, absence of or low countervailing buying power, easy or privileged access to capital markets/financial resources, product/services diversification (for example, bundled products or services), economies of scale, economies of scope, direct and indirect network effects, vertical integration, a highly developed distribution and sales network, conclusion of long-term and sustainable access agreements, engagement in contractual relations with other market players that could lead to market foreclosure, and absence of potential competition
TRCA 2018	<ul style="list-style-type: none"> <li>• The products or services that make up a specific market, as well as the geographic scope of that market.</li> <li>• The demand side substitutability, in order to measure the extent to which consumers are prepared or able to substitute other products or services for the products or services supplied by the licensee in question.</li> <li>• The supply-side substitutability, to determine the extent to which suppliers, other than the licensee in question, are able to supply products or services that provide a competitive alternative to consumers.</li> </ul>

The approach of previous market studies to determine SMP will be used in this determination as well. The criteria for dominance of the 2012 and 2016 market studies were based on the empowerment under section 78(1) read with section 78(4) of the Act which provides for the criteria to determine dominance. The same criteria as legislated will be applied in this study.

Section 78(5) provides that CRAN must also consider the market power that may be exercised by a competitor of the licensee concerned in order to determine whether any of the matters referred to in section 78(4) will give the licensee concerned, market power.

**Table 4: SMP in the markets**

		<b>Operator A</b>	<b>Operator B</b>	<b>Operator C</b>
1	The licensee in question has such a share of the market in the class of telecommunication services in question that it is able to act independent of its competitors.	(Yes/No)	(Yes/No)	(Yes/No)
2	The licensee controls some infrastructure that is necessary for the provision of the services in question?	(Yes/No)	(Yes/No)	(Yes/No)
3	The licensee has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	(Yes/No)	(Yes/No)	(Yes/No)
4	The licensee has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	(Yes/No)	(Yes/No)	(Yes/No)
Do any of the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?		<b>(Yes/No)</b>	<b>(Yes/No)</b>	<b>(Yes/No)</b>
Declared Dominant		<b>(Yes/No)</b>	<b>(Yes/No)</b>	<b>(Yes/No)</b>

The assessment of dominance for each market will use Table 4, which checks for the four criteria spelled out in section 78(4) of the Act. A “Yes” in any of the four criteria would lead to the declaration of dominance for an operator if it allows the licensee to exercise market power (Section 78(5)).

#### **Communications Act, 2009 (Act No. 8 of 2009)**

78(4) Subject to subsection (5), the Authority must find a licensee to be dominant if it is of the opinion that –

- (a) the licensee in question has such a share of the market in the class of telecommunications services in question, that it is able to act independent of its competitors;
- (b) the licensee controls some infrastructure that is necessary for the provision of the services in question;

- (c) the licensee in question is dominant as provided in paragraph (a) or (b) in respect of a class of related services (which need not be telecommunications services) and the licensee can use that dominance to exercise power in the market for the telecommunications services in question; or
- (d) the licensee in question has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia.

78(5) The Authority must consider the market power that may be exercised by a competitor of the licensee concerned in order to determine whether any of the matters referred to in subsection (4) will give the licensee concerned market power as contemplated in subsection (4).

The Authority used several data sources to do the determination of dominance in the telecommunications market. Some of the data were either submitted late or in a format that was not compatible with CRAN's analysis tools. The Market Study is therefore outside of the statutory deadline of 2 February 2024.

#### 4. National Data Transmission

The market for National Data Transmission covers all forms of prearranged connectivity within Namibia, excluding the end-user access section. It covers wholesale and retail services. The markets include any form of backhauling services for mobile operators, leased lines, Metro Ethernet, microwave, national IP transit, services rendered at submarine cable landing stations and relevant facilities.

**Table 5: Market concentration in terms of km fibre routes (Source: CRAN UAS Portal February 2024)**

Regions	Combined	MTC		Nampower		Paratus		Telecom Namibia	
	km	km	%	km	%	km	%	km	%
!Karas	3,340.5	187.0	6%	1,201.8	36%	N/A	0%	1,951.7	58%
Erongo	2,547.7	203.6	8%	669.7	26%	410.0	16%	1,264.5	50%
Hardap	2,232.1	27.0	1%	294.9	13%	N/A	0%	1,910.3	86%
Kavango East	817.3	29.2	4%	465.5	57%	N/A	0%	322.6	39%
Kavango West	544.8	130.1	24%	164.4	30%	N/A	0%	250.3	46%
Khomas	1,776.0	41.6	2%	588.7	33%	153.9	9%	991.7	56%
Kunene	816.7		0%		0%	N/A	0%	816.7	100%
Ohangwena	332.6	137.1	41%	36.3	11%	N/A	0%	159.2	48%
Omaheke	1,353.4		0%	200.9	15%	207.1	15%	945.4	70%
Omusati	539.5	110.8	21%	172.0	32%	N/A	0%	256.8	48%
Oshana	317.1	134.1	42%	65.8	21%	34.8	11%	82.4	26%
Oshikoto	905.7	316.9	35%	295.5	33%	N/A	0%	293.3	32%
Otjozondjupa	2,624.3	437.5	17%	888.9	34%	171.7	7%	1,126.3	43%
Zambezi	571.7	7.4	1%	199.4	35%	72.5	13%	292.4	51%
<b>Namibia</b>	<b>18,719.5</b>	<b>1,762.1</b>	<b>9%</b>	<b>5,243.8</b>	<b>28%</b>	<b>1,050.0</b>	<b>6%</b>	<b>10,663.6</b>	<b>57%</b>

Namibia Power Corporation Ltd (Nampower) and Telecom Namibia Ltd, control more than 85% of Namibia's Fibre routes. NamPower has a market share of 28%, Telecom Namibia 57%, MTC 9% and Paratus 6% of fibre routes across the country.

Resellers buy bandwidth from fibre route owners and their end-user prices are downward limited by what they have to pay the fibre route owners. Resellers thus have limited market power.

**Table 6: SMP in the market for National Data Transmission**

		Telecom Namibia	Nam Power	Paratus	MTC
1	The licensee in question has such a share of the market in the class of telecommunication services in question that it is able to act independent of its competitors.	Yes	No	No	No
2	The licensee controls some infrastructure that is necessary for the provision of the services in question?	Yes	Yes	No	No
3	The licensee has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	No	Yes	No	No
4	The licensee has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	No	No	No	No
Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?		Yes	Yes	No	No
<b>Declared Dominant</b>		<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>

**Determination: Based on the results of the study, the Authority hereby determines the following:**

- (a) Telecom Namibia has 57% of the national fibre network and is able to act independent of its competitors and is thus dominant. Telecom Namibia also controls infrastructure that is necessary for provision of services and is able to exercise power in the market also making it a dominant operator.
- (b) NamPower has a market share of 28% in terms of fibre network. Given its extensive national fibre network and its importance as backhaul for other licensees therefore gives Namibia Power Corporation control of infrastructure that is necessary for provision of services and is able to exercise power in the market also making it a dominant operator.
- (c) MTC and Paratus are not dominant as per the aforementioned criteria, despite their newly built fibre routes with below 10% market share each.

## 5. Wireless End-User Access

The market for wireless end-user access includes mobile and fixed-wireless services. This market includes call and SMS origination as well as Internet access provided *via* mobile phone, dongle, wireless modem, wireless router or VSAT terminal.

**Table 7: Wireless end-user access at the end of December 2023**

	MTC		Telecom Namibia		Paratus		Other		Total	
	#	%	#	%	#	%	#	%		
Mobile Active SIM cards	2,148,562	83%	441,989	17%	6,069	0%	1,306	0%	2,597,926	99%
VSAT	42	3%	399	29%	485	36%	427	32%	1,353	0.0%
Fixed Wireless	2,083	13%	12,033	75%	134	1%	1,699	11%	15,949	0.61%
Other wireless		0%	26	1%	2,253	59%	1,512	40%	3,791	0.14%
<b>Total Wireless</b>	<b>2,150,687</b>	<b>82%</b>	<b>454,447</b>	<b>17%</b>	<b>8,941</b>	<b>0.3%</b>	<b>4,944</b>	<b>0.2%</b>	<b>2,619,019</b>	
Source:	CRAN Portal, February 2024									



Wireless End-user access is mostly mobile, with 99% service share. Other forms of wireless end-user access are insignificant. MTC's market share in subscriber terms was 82% at the end of 2023 and Telecom Namibia at 17%. Paratus does not yet have a significant number of wireless subscribers, only 0.3%.

**Table 8: 4G Population coverage by region (Source: CRAN UAS portal February 2024)**

Region	Combined	MTC	Paratus	Telecom Namibia
!Karas	80%	80%	7%	49%
Erongo	95%	95%	37%	89%
Hardap	79%	79%	19%	57%
Kavango East	91%	91%	0%	49%
Kavango West	70%	70%	0%	10%
Khomas	98%	98%	33%	94%
Kunene	49%	49%	0%	21%
Ohangwena	94%	94%	0%	24%
Omaheke	64%	64%	0%	34%
Omusati	96%	96%	0%	9%
Oshana	99%	99%	6%	62%
Oshikoto	84%	84%	1%	20%
Otjozondjupa	78%	78%	20%	53%
Zambezi	92%	92%	0%	39%
<b>Namibia</b>	<b>88%</b>	<b>88%</b>	<b>12%</b>	<b>49%</b>

MTC has a national 4G population coverage of 88%. Telecom Namibia's 4G coverage stood at 49% in February 2024<sup>4</sup>.

**Table 9: Assessment of Dominance for wireless End-user Access market**

		Telecom Namibia	MTC	Paratus
1	The licensee in question has such a share of the market in the class of telecommunication services in question that it is able to act independent of its competitors.	No	Yes	No
2	The licensee controls some infrastructure that is necessary for the provision of the services in question?	Yes	Yes	No
3	The licensee has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	Yes	No	No
4	The licensee has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	No	No	No
Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?		Yes	Yes	No
<b>Declared Dominant</b>		<b>Yes</b>	<b>Yes</b>	<b>No</b>

**Determination: Based on the results of the study, the Authority hereby determines the following:**

- (a) MTC has more than 82% market share and is therefore able to act independent of its competitors. MTC also operates a country-wide mobile network controlling infrastructure necessary for provision of telecommunications services. It is thus dominant.
- (b) Telecom Namibia's subscriber market share is 17% but it does operate a country-wide mobile network controlling infrastructure necessary for provision of telecommunications services and has market power through its national fibre network for mobile data and is

<sup>4</sup> CRAN received updated RAN sites and antenna data from MTC in February 2024 that including the use of the newly awarded 800 Mhz spectrum range.



therefore able to exercise power in the market. It is thus also dominant.

## 6. Wired End-User Access

The market for wired end-user access includes retail and wholesale/reseller services provided *via* fibre or copper lines. Services in this market include fixed call origination xDSL, FTTx, local leads or tail ends for leased lines.

**Table 10: Wired end-user access subscribers in December 2023**

	MTC		Telecom Namibia		Paratus		Other		Total
	#	%	#	%	#	%	#	%	
Landlines		0%	81,097	100%		0%		0%	<b>81,097</b>
xDSL		0%	70,809	100%		0%	28	0%	<b>70,837</b>
Fibre to the home	8,942	34%	8,030	30%	9,456	35%	235	1%	<b>26,663</b>
Leased Lines		0%	1,382	99%		0%	15	1%	<b>1,397</b>
ISDN		0%	16,990	100%		0%		0%	<b>16,990</b>
Metro Ethernet		0%	78	32%	167	68%		0%	<b>245</b>
Total Wired End users	8,942	5%	159,936	90%	9,456	5%	263	0%	<b>178,597</b>
Source:	CRAN Portal, March 2024								

**Table 11: Assessment of Dominance for wired End-user Access market**

		Telecom Namibia	MTC	Paratus
1	The licensee in question has such a share of the market in the class of telecommunication services in question that it is able to act independent of its competitors.	Yes	No	No
2	The licensee controls some infrastructure that is necessary for the provision of the services in question?	Yes	No	No
3	The licensee has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	Yes	No	No
4	The licensee has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	No	No	No
	Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?	Yes	No	No
	<b>Declared Dominant</b>	<b>Yes</b>	<b>No</b>	<b>No</b>

**Determination: Based on the results of the study, the Authority hereby determines the following:**

Telecom Namibia's subscriber market share was 90% at the end of 2023 and such market share enables Telecom to act independent of its competitors. At the same time Telecom Namibia control some infrastructure in the wired end-user market to provide the service in question and is dominant in the wired end-user market. Telecom Namibia is thus the only dominant operator in this market.

## 7. Call & SMS Termination

The market for fixed and mobile call termination is a natural monopoly since only the operator owning the subscriber can terminate calls for that subscriber. All operators offering call termination are dominant operators. These operators are as follows:

- (a) Telecom Namibia Limited
- (b) Mobile Telecommunications Limited
- (c) Paratus Telecommunications (Pty) Ltd

- (d) UCom Mobile (Pty) Ltd
- (e) Telepassport Communications (Pty) Ltd; and
- (f) All other licensees that might in future offer call and SMS termination

## 8. Determination

**Table 12: Dominance Determination**

Market as Defined		Determination
1	National Data Transmission	Telecom Namibia, NamPower
2	Wired End-User Access	Telecom Namibia
3	Wireless End-User Access	MTC, Telecom Namibia
4	Fixed and Mobile Call & SMS Termination	Telecom Namibia Limited, Mobile Telecommunications Limited, UCom Mobile (Pty) Ltd, Paratus Telecommunications (Pty) Ltd and Telepassport Communications Pty Ltd.

## 9. References

European Union (2018). C 159/1, Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507\(01\)&rid=7](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0507(01)&rid=7).

International Telecommunication Union (2016). Recommendation ITU-T D.261, Principles for market definition and identification of operators with significant market power, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwitguT0mMnjAhWwSxUIHfghDS8QFjAAegQIABAC&url=https%3A%2F%2Fwww.itu.int%2Frec%2Fdologin\\_pub.asp%3Flang%3De%26id%3DT-REC-D.261-201610-I!!PDF-E%26type%3Ditems&usg=AOvVaw1MR3QlnM7\\_SBT4ik2hoarp](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwitguT0mMnjAhWwSxUIHfghDS8QFjAAegQIABAC&url=https%3A%2F%2Fwww.itu.int%2Frec%2Fdologin_pub.asp%3Flang%3De%26id%3DT-REC-D.261-201610-I!!PDF-E%26type%3Ditems&usg=AOvVaw1MR3QlnM7_SBT4ik2hoarp)

Tanzania Communication Regulatory Authority (2018). The Electronic and Postal Communications (Competition) Regulations, 2018, [https://www.tkra.go.tz/images/documents/regulations/12\\_GN\\_26\\_The\\_Electronic\\_and\\_Postal\\_Communications\\_Competition\\_Regulations2018.pdf](https://www.tkra.go.tz/images/documents/regulations/12_GN_26_The_Electronic_and_Postal_Communications_Competition_Regulations2018.pdf).

## CONSIDERATION OF COMMENTS ON THE DETERMINATION OF DOMINANT POSITION IN THE TELECOMMUNICATIONS MARKET

### 1. Introduction

The section reviews the comments received from stakeholders on the proposed Determination of Dominant Position in the Telecommunications Sector which was published in Government Gazette No. 7368 on 20 October 2020. Written comments were received from MTC Mobile Telecommunications Limited (“MTC”).

## 2. Consideration of Comments

### COMMENTS BY Mobile Telecommunication Limited ( MTC)

	Comments Received	Response
1.1	MTC state that The Dominance Study is out of the statutory deadline of 2 February 2024. Our law required administrative bodies to remain within the bounds of their authority and not to misconstrue their authority and to comply.	The Authority was out of statutory timeline compliance due to several engagements that the Authority had with MTC in so far as substantial issues pertaining to the study, including the late submission of data from licensees and the incorrect format of the submissions that was non-compliant with CRAN's analysis tools. It was further prudent for the Authority to resolve the issues brought forth by the licensees before taking any further steps on the study.
1.2	MTC also submits that The Authority does not have the discretion in terms of the Communications Act to condone itself and hold a public hearing after the deadline. The general rule is that requirements laid down in legislation must be complied with.	The Authority does not seek to condone its non-compliance thereof, nor does it seek to exercise its powers outside the known principles of administrative justice. MTC would further note that the tenacles of administrative law dictates that the functionary of any administrative body and were decisions are concerned should be fair, just, and reasonable.
1.3	The final publication of the study will accordingly be nullity and MTC reserves its rights thereon.	In light thereof, the Authority's conduct in the circumstance cannot be said that it had acted without fair and reasonable grounds. The alleged time matter is not sufficient to negate the entire objective of the determination that is done in good faith. Furthermore, the current Market Study does not deviate from the previous study published in 2021 and has no prejudicial effect on the telecommunications market.
2.1	MTC states that the primary aim of determining dominance, as stated in section 48 read with section 50 of the Act is to mandate infrastructure share. The draft study excludes wholesale services, which could mistakenly subject MTC to dominance assertions in both wholesale and retail across all geographic areas, despite network capacity and other alternatives. Dominance should be assessed with consideration to actual network capacity to avoid inaccurate obligations.	The word "wholesale" is not defined in the Communications Act, 2009(Act No 8 of 2009), however it is still an area falling with the Authority's mandate. In this regard, the Authority made reference to the additional conditions on dominant licensees in terms of Sections 48, 49, 51 and 54 of the Act. The purpose of determining dominance is to promote competition through either <i>ex-ante</i> or <i>post ante</i> regulation and does not necessarily only deal with infrastructure sharing.
2.2	MTC further state that according to section 78(1) the specific market for which dominance is determined must be distinctly indicated. MTC believes that lumping all wireless end-user services together disregards distinct market dynamics and might incorrectly impose sharing obligations on MTC where they do not hold a dominant position.	The Authority notes that while distinct market dynamics exist, the wireless end-user services constitute a very small percentage of the total wireless end-user market and therefore does not constitute a market for consideration at this stage. Instead, they can efficiently be addressed within the broader context of the telecommunications industry. Markets will only be defined for services where the Authority deems <i>ex-ante</i> regulations necessary to promote or maintain fair competition. The Authority however notes that a separate market may be defined in future if competition issues that warrant these distinctions are anticipated.
2.3	MTC submits that as mandated by section 51(2) of the Act dominant operators are required to offer telecommunication services for resale at discounted rates. This obligation should be accurately specified in terms of service types to prevent the conflation of diverse services like Mobile Internet, VSAT and fixed services under a single category for dominance determination. It is therefore crucial that the Authority conducts a thorough network and capacity assessment to ascertain the actual spare capacity and accurately determine dominance based on these findings.	The Authority notes the suggestion to categorise service types for purposes of section 51(2). However, network capacity is not a factor to determine dominance for purposes of section 78. The determining factor is whether the licensee controls some infrastructure that is necessary for the provision of services in question.

3.1	MTC submits that MTC is reported to have 83% of registered SIM cards in the market with the remaining held by Telecom Namibia. The number of registered SIM cards cannot be used as criteria to determine dominance, as not all registered SIM cards are used for internet access. The actual figure of SIM cards pertinent to internet services should be considered as a fair assessment for dominance.	The Authority is of the view that dominance within a market is not determined in isolation. The market is defined as wireless end-user market and not as mobile internet market. Therefore, the market does not refer to the Internet or data but to all services provided via wireless networks such as SMS and voice.
3.2	MTC further submits that the Authority should revise its determination under Wireless End-User Access by separating the criteria into VSAT, Fixed Wireless and Other Wireless (which should be specified). The draft report erroneously grouped mobile with other fixed wireless services, which has resulted in MTC being declared dominant for both mobile and fixed wireless services based on the number of SIM cards, despite having a mere 3% market in VSAT services and 13% in other services. Registered SIM cards should not be interpreted to mean the number of subscribers who use mobile internet services.	The Authority refers to its submission in paragraph 3.1, that the market for other wireless end-user services does not warrant a defined market at this stage. Markets will only be defined for services where the Authority deems <i>ex-ante</i> regulations necessary to promote or maintain fair competition. However, the Authority acknowledges that defining the market would be a necessary tool in assessing dominance, in future.
3.3	MTC submits that the Study does not specify in which other Fixed Wireless services Paratus has a 59% market share. Such services should be specified and Paratus should be declared dominant in those services. Similarly, Telecom Namibia's dominance of 75% in Fixed Wireless and Paratus' dominance of 36% in VSAT should be considered separately and specifically identified to be declared dominant.	The Authority acknowledges that it did not define fixed wireless services as a separate market as at this point. Market definitions are reviewed regularly by the Authority and more narrow market definitions may be used in the future. On this note, Markets will only be defined for services where the Authority deems <i>ex-ante</i> regulations necessary to promote or maintain fair competition.

## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 457

2024

### NOTICE IN TERMS OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of regulation 11(1) of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, published in Government Gazette No. 4785, as General Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that **Echo Telecommunications (Pty) Ltd** submitted an application for the Transfer of License and Control of its Class Comprehensive Telecommunication Service Licence (ECS/ECNS) as follows:

Licensee	Type of licenses	Transferor	Transferee	Percentage of Stock being transferred	Reason for the proposed transfer
Echo Telecommunications (Pty) Ltd	Class Comprehensive Telecommunications Service Licence (ECS/ECNS) issued to the licensee in terms of section 38 of the Communications Act, 2009 as published in various Government Gazettes.	Echotel International (Pty) Ltd	Charlie Trust	51%	To comply with the Namibian shareholding requirements, 51% will be transferred to Namibian ownership.

The public may submit comments in writing to the Authority within a period of fourteen (14) days from the date of publication of this notice in the *Gazette*.

The applicant may submit written reply comments within fourteen (14) days from the due date of the written public comments.

All written submissions must contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different and be clear and concise.

All written submissions and reply comments must be made either physically or electronically –

- (1) By hand to the head offices of the Authority, namely CRAN @ Freedom Plaza, Courtside Building, 3rd Floor, c/o Fidel Castro and Rev. Michael Scott Streets, Windhoek;
- (2) By post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000; and
- (3) By electronic mail to the following address: [legal@cran.na](mailto:legal@cran.na).

**E. NGHIKEMBUA**  
**CHIEF EXECUTIVE OFFICER**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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