

Guidelines for the Regulation of Interconnection and Network Access in the SADC Postal Sector

i. Preface

In a multi-operator postal market, governments and National Regulatory Authorities (NRAs) need to consider the extent to which regulation should foster cooperation and interoperability among postal and courier service operators. This entails putting in place regulatory measures to facilitate mutually beneficial access to and interconnection of postal/courier service networks under transparent, proportional and non-discriminatory conditions.

This document offers a practical reference guide to Postal Regulators in the Southern African Development Community (SADC) which is grounded in already established and new theoretical approaches to the regulation of interconnection and access in network industries. In this regard, there is a deliberate effort to draw impetus from the theory of interconnection and access in the preliminary sections of the guidelines which is then built upon with the supplication of such theory in the Postal environment.

The guidelines further outline the rationale and importance of Interconnection and Access in general, and also the basis for regulatory involvement or oversight. The different forms of Interconnection in the Postal Environment are then explored together with specific recommended approaches for regulating Interconnection and Access Pricing, Cross Border Interconnection and Network Access and new regulatory challenges such as Extraterritorial Offices of Exchange (ETOEs.

ii. Acronyms and Abbreviations

DPO/DO	Designated Postal Operator
ECPR	Efficient Component Pricing Rule
ETOE	Extraterritorial Office of Exchange
ICT	Information and Communication Technology
LRIC	Long-run Incremental Cost
NRA	National Regulatory Authority
RIO	Reference Interconnection Offer
SADC	Southern African Development Community
USO	Universal Service Obligation

iii. Definitions

In relation to these interconnection and access guidelines, the meaning of the below-listed terms shall be as follows:

- **"Party"** and **"Parties"** means persons accessing postal network in order to provide postal public service and revenue-increase service.
- **"Authority"** means national regulatory authority mandated to regulate and license postal activities in each SADC member state.
- **"License holder"** means a person (natural or juristic) who is licensed to provide postal and/or courier services.
- **"Incumbent"** means the state-owned, national postal operator which held the monopoly position before the postal market was partially or fully liberalised to allow competition from local and international service providers. With the monopoly, the incumbent retained, on behalf of government, ownership of the national postal infrastructure consisting of the retail network of postal outlets, sorting facilities, transport and all applicable network elements.
- **"Technical terms"** means package of standards, specifications and opportunities to be commonly followed to access any network.
- **"Interconnection"** means the physical and logical linking of communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with the users of the same or another undertaking, or to access services provided by another undertaking.

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1. Introduction

1.1 Background

Interconnection is premised on the understanding that licensed postal and/or courier service providers seek to offer full, end-to-end services to their consumers by utilising, at mutually agreed commercial terms, network elements belonging to another service provider where their own networks lack the required characteristics (reach, capacity, frequency e.t.c) to deliver such services. The underlying rationale of interconnection and access in this context is therefore:

a) To enable the provision of services that are not economically feasible without interconnection;
b) To increase profitability. Where interconnection increases the value of postal services, or the range of services operators can provide, it can be in the mutual interest of the operators to interconnect.
c) To expand or improve services that are valuable to customers in the postal market.

The question of Access and Interconnection in the Postal Sector also requires some thought about which elements of the network should actually be accessed by other operators and under what terms and conditions. In this regard, policy-makers and regulators often have to consider the rationale, merits and demerits of allowing access to elements such as the P.O. Boxes, Roadside Collection Boxes or even the vast real-estate that most Designated Postal Operators have across the Country.

Access and Interconnection in the Postal Sector is not, however, restricted to the incumbent's network but is also a consideration for other operators as well. The evolution of the cross-border business models of some commercial courier operators has introduced more questions for regulators regarding the extent to which they should intervene in the interest of upholding the principles of fair and non-discriminatory access and dispute resolution for instance. These guidelines have therefore been developed to equip CRASA Members with the necessary guidance and best practice for the effective Regulation of Interconnection and Network Access in relation to the Postal Sector.

1.2 Objectives of the Guidelines

The guidelines are offered as a reference source to guide CRASA Members in the application of the Regulatory Concepts of Interconnection and Network Access as they relate to the Postal Market environment.

In so doing, the specific objectives of the Guidelines include:

a) To promote a common Regional understanding of the Regulatory concepts of Interconnection and Network Access in relation to the Postal Sector,
b) To establish a harmonised definition of Interconnectable Networks or Network elements in the context of the Postal Market environment,
c) To recommend appropriate regulatory interventions that may be employed by National Regulatory Authorities (NRAs) to ensure the desired regulatory outcomes are achieved insofar as Postal Interconnection and Network Access are concerned,
d) To provide guidance to Members regarding the regulation of ETOEs,
e) To provide guidance to Members regarding the proportionate use of regulatory oversight in terms of commercial agreements entered into by service providers.

1.3 Applicability

These guidelines are intended to apply primarily to the following identified stakeholders:

- Policy-makers
- Postal and Competition Regulators
- Postal and Courier Service Providers
- Wider Postal Sector stakeholders

2. Interconnection and Access in the Postal Sector

2.1 Defining Interconnection and Network Access

The postal industry defines interconnection as a physical or logical link between a public postal network with that of another public or private network for the purposes of allowing customers to make use of services provided by such networks. In this context, the role of postal market regulation is not to entirely create competition, but rather to create a framework that allows for competition between public postal entities and privately-owned entities. In the absence of regulatory intervention, the likelihood of interconnecting parties engaging in strategies to protect their market-share is relatively higher.

Such strategies may include delaying implementation of interconnection agreements or charging excessive interconnection fees. Regulatory oversight is therefore seen as a necessity in promoting a healthy competitive environment. Such oversight typically includes determining appropriate prices, which generally involve identifying appropriate costs so that prices are cost-based, and resolving disputes.

3. Forms of Interconnection in the Postal Environment

3.1 General Principles

3.1.1 Mutual benefit

Interconnecting parties should be required to have pricing schedules in place irrespective of the type of interconnection agreement they enter into. NRAs should allow for pricing to be equally allocated between interconnecting networks irrespective of operator's different sizes and different abilities to pre-commit. Charges should be able to benefit both parties and prices should be set fairly.

3.1.2 Non-Discrimination

This principle is proposed with the objective of ensuring that interconnecting operators do not discriminate across other fellow networks operating for the same service. This means that NRAs should ensure that operators do not discriminate in terms of the overall functionality, price, quality and performance on interconnecting parties.

3.1.3 Unbundling

Unbundling is the mandatory offering by network operators of specific elements of their network to other operators, on terms approved by a regulator. Unbundling of interconnection pricing is necessary for a levelling of the competitive playing field in the postal market. In order for NRAs to protect competition and/or postal interconnecting networks to gain the advantage of interconnecting prices, it is necessary for the unbundling of postal pricing to be determined based on the following service components:

I. Collections of postal items/parcels
II. Outward sorting
III. Transportation
IV. Inward sorting
V. Delivery

Furthermore, unbundling should be equivalent to a system of rates based upon the point at which competitor's mail enters the postal network. For example, charging one rate for mail deposited at a local post office pre-sorted to route sequence, another rate for mail deposited at a regional mail centre for inward/outward sorting, as well as transportation and delivery to final routes.

3.2 Access to the Incumbent's Network

It is recommended that access to the incumbent's (DPOs) network in SADC Member States should for the time-being remain voluntary and not mandatory. As is the case with the other types of network access and interconnection covered in this document, access to the DPO's network should be on the basis of mutually agreed commercial terms bearing in mind the national conditions and objectives.

Where such access is agreed, however, it is recommended that the following general rules should apply:

A. NRAs shall, in light of the obligatory uniform retail price, put in place measures to ensure that access to the incumbent's network does not create significant cream-skimming opportunities for the incumbent's rivals. An operator could, for instance, decide to provide end-to-end service in low-cost areas (e.g., a few large cities) and use the network of the incumbent for mail destined for high-cost rural areas thus leaving the incumbent with the task of delivering all unprofitable mail, while profitable mail is diverted away from it by its rivals. Access in such conditions puts the performance of universal service obligations in jeopardy, and thus requires the adoption of measures designed to:

    I. prevent access users to use access only for the delivery of high cost mail or, alternatively, and

    II. allow the incumbent to set access prices, which reflect differences in delivery costs (zonal pricing).

B. NRAs shall also ensure that operational discounts are to the furthest extent possible, geared to costs and granted on a non-discriminatory basis also in compliance with applicable competition law. This protects postal users and intermediaries against abusive pricing practices by the incumbents.

3.3 Negotiated Commercial Agreements

Operators should be free to decide what they do with their assets and who they interconnect with. However, some form of regulatory oversight is still deemed necessary even where parties are free to enter into mutually agreed commercial contracts. In this regard, the NRA shall ensure that certain aspects are covered in all interconnection agreements following general principles and legal procedures as follows:

- General provisions of the agreement;
- Payments/fees;
- Liabilities;
- Information exchange
- Interconnection services
- Determination of interconnection points;
- Transparency;
- Non-discrimination;
- Fair competition;
- Access to interconnection information;
- Equality of access;
- Confidentiality;
- Provision for termination

The following general guidelines are also recommended in this regard:

A. NRAs shall put in place measures to facilitate interconnection and access at reasonable terms and conditions;
B. NRAs should also ensure that networks interconnecting have the right to get information from each party to plan, establish or maintain their networks and use such information solely for the purpose for which it was supplied and respect confidentiality of information shared;
C. The interconnection provider should be required to have in place a Reference Interconnection Offer (RIO). This is a document that sets out matters relating to price, and terms and conditions, under which a postal/courier operator will permit the interconnection of another operator to its network;
D. NRAs should ensure that the RIO is made available at the request of the interconnection seeker;

E. The RIO is to be prepared by the interconnection provider and submitted to the regulatory Authority for noting;
F. The Interconnection seeker shall make a written request to access the provider's network or to do interconnection. The interconnection provider should review whether the request is compliant with the technical terms and requirements of their own network and provide a response within a reasonable time;
G. The interconnection provider shall do its best to provide possibilities for the others to access its network. In case it's unable to provide technical terms, the information about when the terms would be provided should be delivered as reply;
H. The parties shall follow the principles of equality /or non-discrimination/, transparency and of being mutually beneficial when accessing each other's network or doing interconnection;
I. Any access or interconnection tariff shall be set as cost-based, comfortable with interest of any parties and acceptable. It shall not be set to compensate any business losses.

4. Regulating Interconnection and Access Pricing

4.1 Rationale and Importance of Price Regulation

Because incumbents often perceive that the value of potential losses outweighs the gains, incumbents often engage in strategies to hinder interconnection and protect their markets; for example, by delaying implementation of the interconnection agreement or by charging excessive fees to entrants. As a result, intervention or guidance by regulatory bodies is seen as a necessity in promoting a healthy competitive environment.

4.2 Recommended approaches to Price Regulation

4.2.1 Cost-based interconnection pricing

Cost-based interconnection puts a greater burden on the interconnection provider to stay competitive, as customers potentially lost to the interconnection seeker represent potential lost profits.

4.2.2 Long-run Incremental Cost (LRIC):

LRIC is the additional cost in providing a service compared to the most efficient means of producing the remaining services on their own.

5.2.3. Efficient component pricing rule (ECPR)

ECPR, also known as the retail-minus rule, is an alternative to cost-based pricing, and suggests that access prices should be set such that the effect on incumbent's profits is unaffected.

5. Dispute Resolution

Disputes amongst interconnecting postal and/or courier operators can arise because of the following reasons:

- Failure for an operator to develop a Reference Interconnection Offer;
- Delay tactics;
- Disputes over termination charges or other terms,
- Failure of payment;
- Quality of services issues;
- Improper use of customer information by competing parties.

Dispute resolution procedures are used broadly in interconnection disputes as they come in different forms either using private channels which are used outside the court system or those used within the court system. This depends on whether a specific NRA has the authority to regulate such disputes.

Since interconnection agreements are purely commercial agreements which some NRAs may not have authority over, the resolution of disputes may take place in two different forms:

A. Firstly, in an event where an NRA has authority over an agreement where both parties have agreed and are obliged to bear their costs, the following Private channels can be undertaken or imposed by the regulator in any of the following ways:

   i. Parties shall be required to settle their dispute amicably;
   ii. In case of failure of amicable settlement, parties shall refer their dispute to NRA where parties will be heard in accordance with the dispute handling procedures set by the NRA;
   iii. The party aggrieved by the decision of the NRA may follow the appealing system provided by the Laws of the respective country.

B. In an event where an NRA has no authority over a commercial agreement, the parties may use the dispute settlement mechanisms that they mutually agree in their commercial agreement or after an arise of the dispute. In a case where there is no such agreement, the parties may follow the normal court procedures of the respective country.

6. New Regulatory Challenges

6.1 Recommended Approaches to Regulating Extraterritorial Offices of Exchange (ETOEs)

An Extraterritorial Office of Exchange (ETOE) is a facility belonging to a postal operator outside its national territory on the territory of another country. These facilities are established by postal operators for commercial purposes to draw business in markets outside their own national territory. An ETOE may serve the needs of the postal operator to which it belongs by acting on either inbound or outbound shipments of mail to/from the country in which it is located.

Commercially, an ETOE will typically assist the foreign postal operator in gaining postal revenue from businesses and other senders of mail from the territory in which it is located. For this reason, ETOE's are usually seen as competing with the local postal administration.

Whilst an ETOE may be a Designated Universal Service Provider in its own state, they are considered to be commercial entities when operating in the territory of another state and, in that sense, should be restricted in their operations in the that state so as not to undermine the special status of the own state's Designated Operator.

Inbound ETOE Traffic:

Regarding inbound ETOE traffic, items originating from an ETOE in a foreign country shall be considered as commercial cargo upon arrival in a SADC Member State. As such, these cargo shipments must be cleared through customs using commercial customs clearance procedures. If these items are to be delivered by the Designated Operator of the SADC Member State then they must be mailed as domestic mail in the destination (SADC) Country and charged at the applicable domestic postage rates.

Outbound ETOE Traffic:

Unless otherwise permissible in the domestic legislation, the UPU Acts shall not apply to ETOE commercial operations in SADC. Accordingly, ETOEs must not use UPU documentation to export commercial cargo from SADC Member States. Accordingly, all commercial cargo shipments (including ETOE cargo shipments) must be conveyed on commercial documentation (air way bills) under commercial customs clearance procedures.

Equipment belonging to the Designated Operator of the SADC Member state such as bags, containers and other receptacles, and customs forms must not be used to export cargo from that Country by an ETOE.

Notification:

Operators that have established or intend to establish ETOE operations in SADC shall so inform the Postal Regulatory Authority in that Jurisdiction. The information to be provided shall include the full name of the operator, street address, telephone, fax and email address of the persons or persons responsible for the ETOE operations in the SADC Member State. Authorisation to establish an ETOE shall be either denied or granted at the discretion of the NRA bearing in mind national conditions.

End/….

7. References

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