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# Topic:

✦ **CONVERGENCE OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SECTORS IN THE EAST AFRICAN COMMUNITY (EAC): CHALLENGES FOR THE CURRENT LEGISLATIVE AND REGULATORY FRAMEWORKS AND LESSONS FROM THE EUROPEAN UNION EXPERIENCE.**

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# 1. Introduction

Characteristics of the modern day economies:

- ✦ Driven by the services sectors
- ✦ Founded on information/communication networks – next generation Internet
- ✦ Dependent on effective reforms in the ICT sector legislation and regulation – information infrastructure as key driver for the implementation of policy Reforms for the e-economy and faster integration process.
- ✦ Strengthening links among local, national, regional, international networks and markets. The ICT sector is therefore crucial for faster integration of the EAC

# Cont...

- ✦ Basic theories for ICT regulation:
  - natural monopoly,
  - market failure

BUT.. Currently;

Emergence of new issues due to technological changes.

Therefore, there is a need to rethink the traditional models for regulation.

## 2. Legal and institutional framework of the EAC.

- ✦ The East African Community (EAC), a regional intergovernmental organization of the Republics of Kenya, Uganda, Rwanda, Burundi and the United Republic of Tanzania.
- ✦ The EAC's vision of regional integration - create wealth, raise the living standards and enhance international competitiveness of the region.
- ✦ The key to achieving this vision- increased production, trade and investments in the region with information and communication Technologies playing a key role

- ✦ As provided for in the Treaty for the Establishment of the East African Community (1999), the Stages in the development of the EAC regional integration are a Customs Union, Common Market, Monetary Union and Political Federation
- ✦ Customs union in January 2005
- ✦ Common market – since July 2010.
- ✦ The EAC Development Strategy emphasizes the importance of ICT in meeting the challenges posed by globalization, facilitating the regional integration

# EAC Cont...Legal Framework

- ✦ EAC Treaty in accordance with Article 151 thereof:
- ✦ Partner States to sign protocols: Forms part of the EAC treaty.
- ✦ E.g. EAC custom union protocol and EAC common market protocol (Protocol on the establishment of a common market of the East African Community. In force since 1st July 2010)

# Prerequisites for the EAC common market

In accordance with the provisions of Articles 76 and 104 of the Treaty , the Protocol on EAC- Common Market provides for : -

- Free movement of goods;
- Free movement of persons;
- Free movement of labour;
- Right of establishment;
- Right of residence;
- Free movement of services; and
- Free movement of capital

# EAC Institutional Framework

- ✦ Extension of attributions to EAC organs
  - Summit
  - Council
  - Legislative Assembly
  - Court of Justice
- ✦ Establishment of new Institutions
  - East African Monetary Institute (EAMI)
  - East African Central Bank (EACB)

# Statement of the problem.

## Persisting Challenges of the ICT Sector

### 1. Regulatory Divergence in EAC Member States:

- Creates a problem to ICT investors

**NOTE:** ICT Sector is a regional industry in the EAC

- A major hindrance to coordinated development of the ICT sector in EAC.

- EAC common market without a corresponding common regulatory framework.

### 2. Convergence:

- The present situation in the ICT sector is that the strict borders between sectors are disappearing.
- It is in turn demanding a fundamental re-thinking of the traditional sectoral frameworks.

# 1. Difficulties brought about by the lack of a common EAC framework.

- ✦ *Divergences in National ICT Policies:* All Member states have approved National ICT Policies in place
- ✦ Divergence: Subsidiary policies; e.g. telecommunications policies, stand-alone e-Government strategies (e.g. Kenya), and universal service and/or access strategies (for instance Uganda).
- ✦ *Divergences in the legislative and regulatory frameworks:* focus for individual Member state regulation differ.

# Examples:

- ⤴ 1. Licensing: Tanzania pioneered the converged licensing, supporting triple-play of all ICTs.
  - ⤴ Uganda's emphasis is on access to infrastructure licensing.
  - ⤴ Kenya is shifting to a unified licensing framework and market structure. However, the focus has been at the service level, e.g. international gateway, mobile communication, data operator's license, ISP, etc.
  - ⤴ Rwanda's regulator issues individual and standard telecommunication.
  - ⤴ Burundi issues only the commercial services licence which corresponds to a basic telecommunication licence.
- 
- ❖ *Award criteria for licences differ in each Member State.*
  - ❖ *ultimate responsibility for awarding licences differs.*
  - ❖ *Ministries and regulators have different levels of responsibilities.*

- ✦ 2. Tariffs: Some Member States' regulatory frameworks lean towards self-regulation while others provide for strict regulation by the national regulators.
- ✦ Tanzania, Uganda and Rwanda to seem to lean toward self-regulation whereas Kenya and Burundi take the opposite approach of strict regulation.
- ❖ *Evidence of discrepancies in policies, legislation and regulation. Currently, there does not seem to be any major effort to harmonize the respective legislative and regulatory frameworks.*
- ❖ *Uniformity: interconnection and sharing of facilities where most national legislations refer to the principle of non discrimination. Secondly, the fact that Member States have provisions for universal service access (except for Burundi).*

# Ongoing Efforts

- ▲ Legal developments in the East African Community
- ▲ EAC Partner States - E-Government and E-Commerce Programs
- ▲ - - training workshops of the EAC Taskforce on Cyberlaws since 2007
  - EAC Framework for Cyberlaws adopted in May 2010 by the EAC .  
It covers:
    - *contract validation and legality of electronic transactions.*
    - *e-signature and e- payment.*
    - *consumer protection and cyber security.*
    - *intellectual property rights.*
    - *data protection and privacy.*
    - *e-jurisdiction , liability and dispute settlement.*
    - *commerce and e-taxation.*

BUT: Only provides for provides guidelines for the enactment and enforcement of harmonized cyberlaws. Not converged, e.g. fails to take into account content regulation, other sectors.

# 2. Convergence

## **Definition:**

Convergence has been used to describe almost any trend representing the ever closer contact between the telecommunications, IT and broadcasting industry.

EU green paper on convergence:-

- The ability of different network platforms to carry essentially similar kinds of services, or
- The coming together of consumer devices such as the telephone, television and personal computer e.g. your computer as purveyor of voice as well as text and graphics; cell phones that provide text and graphics as well as voice

Driving force behind the phenomenon is mostly digitization.

**Broadband is also a prerequisite for success of offering converged services.**

# Broadband a prerequisite for success of offering converged services

Broadband allows for integration of different services in one and the same network and  
Broadband influenced developments in mobile and wireless networks e.g. 3G, Wi-Fi, Wi-MAX

Developments in wireless important as a competing and complementary to fixed – major opportunity for developing countries (fixed no longer a precondition for public voice services.

# Convergence Basic Concepts

- ✦ **ICT Convergence Concepts**
- ✦ **Device** – One device provides all services.
- ✦ **Platform** – All services over one platform.
- ✦ **Services** – Access from many devices to same contents, programmes and applications.
- ✦ **Packets** – Everything carried by IP.
- ✦ **Companies** – One entity group offers all services.
- ✦ **Legislation** – Everything under the same rules.
- ✦ **Globalisation** – Everything available everywhere.

# Convergence Basic Concepts

**Telecom sector** - The transport layer is the most important  
**Broadcasting sector** - the content layer is the most important!  
**IT sector** - the equipment/hardware layer is most important  
just as important in the **Telecom** and **Broadcasting** sectors.

**Convergence** can take place in **one or more** of these three levels.

Although they are interrelated, **convergence** at the **content/service** level does not necessitate convergence at the **transport level** (network convergence), and convergence at the **transport level** does not necessitate **convergence of services**.

# EFFECTS: Changes in the market structure.

*(i) Entrance of new market services providers especially in the mobile market: examples*

Zain, a service provider in three Member States: Kenya, Tanzania and Uganda).

Safaricom, it provides a host of products and services for telephony, broadband internet and fax in the EAC and

MTN (currently a service provider in Uganda and Rwanda).

*(ii) New services can now be transmitted over various networks: examples*

Telecommunication companies providing content (including broadcast), Telkom Kenya limited providing internet hosting, mobile services, VoIP and other multimedia services e.t.c,

Mobile banking; by end of 2010, M-PESA had over 13 million subscribers and earned over kshs.7 billion

*(iii) Mergers and acquisitions in the ICT sector in the EAC:*

South African's MTN recently acquired a 60% stake of UUNet  
Access Kenya and Kenya Data Networks have absorbed much of UUNet's  
corporate business since 2008

Uganda's InfoMail (IMUL) merged with the country's second ISP, Starcom,  
to form Infocom

*(iv) Expansion of the ICT industry to the EAC regional level due to the  
mergers and acquisition*

- ❖ *Despite this expansion of the ICT industry to the EAC regional level, there is still a lack of a corresponding common EAC framework. This has thrown the current frameworks into question.*
- ❖ *ICT sub-sectors are subject to distinct regulatory models. NO common framework at the EAC level!*

# Challenges for Regulatory Environment

- ✦ Convergence comes with various implications to regulation: examples;

Inconsistencies in regulation resulting from traditional separation.

Regulatory arbitrage (otherwise referred to as forum shopping)

Uncertainty: inability to reliably forecast the future regulation. This is due to rapidly changing technology, which has given rise to unforeseen new products and services.

Overlapping mandates of regulators

## Problems with previous legal framework:

Long and complex individual licensing procedures in some Member States (patchwork)

Not enough flexibility to cope with rapidly changing markets

Not enough consistency in how rules are applied in Member States

Designed for a newly liberalised market, not one moving to a fully competitive market without sector specific rules

# Reform experiences in Europe (up to 2001)

- ✦ *1987*: Issue of the EC Green Paper on Telecommunications. It proposed the introduction of competition in the equipment and services market.
- ✦ *1988*: Commission Directive on competition in the markets for telecommunications equipment.
- ✦ *1990*: Commission Directive on competition in the markets for telecommunications services. Its scope was gradually extended until 1998 when voice telephony and networks were completely liberalised.
- ✦ *1996*: Commission Directive with regard to the implementation of full competition in telecommunication markets (96/19/EC).

- ✦ Guiding Principles of the 2002 EU Framework:
- ✦ Promote Competition –Promote Interest of citizens
- ✦ -Openness, transparency, Market entry and Significant Market Power, Local loop unbundling, Licensing Framework, Universal Service.
- ✦ -Necessity to deal with convergence: any infrastructures, all kind of networks
- ✦ -Prerequisite: Need for Independent Regulation Authorities in Emerging countries.

- ▲ Objectives:
  - ▲ **To create a single regulatory framework (and legal certainty);**
  - ▲ **Separation of content and transmission regulation**
    - **Content Services**
    - **Information Society Services**
    - **Electronic Communications Services**
    - *"electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, **including Internet**) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed"*
  - ▲ **Technologically neutral kind of regulation**

# EU telecom reform of 2009

- ✦ Reason: Major development since 2002; increased growth of VOIP telephony, television services through broadband lines, divergences in regulatory framework implementation.
  
- ✦ Hence: -
- ✦ Better regulation Directive
- ✦ Citizens Rights Directive
- ✦ Regulation establishing the Body of European Regulators on Electronic Communication (BEREC) and the office.
- ✦ *EU experience therefore constitutes a good example that the EAC can learn from.*

# Further motivation:

- The Institutional frameworks of both the EU and the EAC are similar at first sight, just like their powers under the respective treaties establishing them.
- Both Communities' aim and objectives are to use regional integration to promote peace, stimulate economic growth, achieve solidarity for their peoples, and strengthen their international profile/stature.
- The treaties for both communities provide for direct applicability of community law. The EC Treaty, Article 249 provides that 'a regulation shall have general application. It shall be binding, in its entirety and directly applicable in all Member States.' An almost identical provision is contained in Article 8 of the EAC treaty.

# Recommendations/ way forward

- EAC should focus on a common EAC ICT framework that has same conditions, procedures, charges, fees, timeframes and categorizations at the Community level. This embraces the one-stop-shopping procedure.
- A fully converged framework built on concepts and principles such as those underpinning the EU framework.
- The process should be full inclusive of all stakeholders

# Conclusion.

The lack of a common legislative and regulatory framework and the failure to address convergence leads to discriminatory treatment in the ICT industry. This has the potential of increasing disinvestments and withheld provision of new services. This is seriously conflicting with the general policy objectives of the EAC in this area. Measures need to be taken in order to support the development of the ICT sector. Legislative and regulatory changes are therefore needed in order to support the sector's environment. This will promote competition in the ICT sector market.