

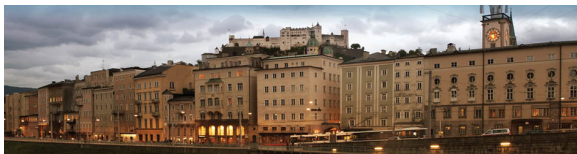
# TELECOMMUNICATIONS LAWS OF THE WORLD

Austria vs Kenya



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# AUSTRIA



Last modified 2 December 2019

## OVERVIEW OF LEGAL LANDSCAPE

In Austria, the field of telecommunications is strongly influenced by European requirements. The European legal framework was implemented through the Telecommunications Act (*Telekommunikationsgesetz - TKG 2003*). With this Act, regulation has developed from sector-specific regulation towards a more general competition law approach. In the TKG 2003, the regulatory authorities have been assigned new tasks, such as, for example, a number of authorisations to issue ordinances. Regulation and monitoring of the Austrian telecommunications market is undertaken by the Telekom-Control-Commission (TKK) and the Regulatory Authority for Broadcasting and Telecommunications (RTR).

The purpose of the TKG 2003 is to promote competition in the field of electronic communications in order to provide reliable, low-cost, high-quality and innovative communications services.

The key features of the TKG 2003 are:

- According to the principle of general authorisation any person is entitled to provide communications networks and services. The intended provision, its modifications and its termination have to be notified to the regulatory authority.
- Due to universal service obligations, a minimum set of public services has to be provided to all users at an affordable price regardless of their place of residence or work.
- The regulatory authority is obligated to enforce all the objectives of the TKG 2003 as they are laid out in Article I TKG 2003, especially in respect of the regulation of competition.
- The Federal Minister of Transport, Innovation and Technology administers the frequency spectrum as well as the Austrian rights of use and orbital positions of satellites. He is obligated to take

# KENYA



Last modified 29 October 2019

## OVERVIEW OF LEGAL LANDSCAPE

All telecommunication service providers are required to obtain a licence from the Communications Authority of Kenya (CA).

The roles and responsibilities of the CA are codified in the Kenya Information and Communications Act (CAP 411A, Laws of Kenya) (“KICA”) together with various regulations and Policy Statements that are issued by the CA from time to time. The CA regulates the information and communication sector which broadly includes broadcasting, cyber security, electronic commerce, multimedia, telecommunications, courier, and postal services.

appropriate measures to ensure efficient and interference-free use.

The regulatory authority is responsible for providing efficient structuring and administration of the communications parameters in their entirety.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All laws and ordinances mentioned below can be found [here](#).

- Telecommunications Act 2003
- E-Commerce Act (*E-Commerce-Gesetz - ECG*)
- The Act on Radio and Telephone Systems and Telecom Terminal Equipment (*Bundesgesetz über Funkanlagen und Telekommunikationsendeinrichtungen - FTEG*)
- KommAustria Act (*KommAustria-Gesetz - KOG*)
- Telephone Rates Act (*Fernmeldegebührengesetz*)
- Digital Signature Act (*Signaturgesetz - SigG*)
- Data Protection Act 2000 (*Datenschutzgesetz - DSGVO*)
- Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb - UWG*)
- Law on Alternative Dispute Resolution in Consumer Affairs (*Bundesgesetz, mit dem ein Bundesgesetz über alternative Streitbeilegung in Verbraucherangelegenheiten erlassen wird*)

### Ordinances of RTR-GmbH:

- Ordinance on Notification on Data to the Central Information Point for Infrastructure Data (*ZIS Einmeldung von Daten an die Zentrale Informationsstelle für Infrastrukturdaten - ZIS-EinmeldeV*)
- The Communication Parameters, Fees and Value-Added Services Ordinance (*Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung - KEM-V*)
- Itemised Billing Ordinance (*Einzelentgeltnachweisverordnung - EEN-V*)

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications sector in Kenya is the KICA. The KICA came into force on 1 October, 1998 and has undergone numerous amendments.

The CA, facilitates the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and e-commerce.

In addition, there are currently about 20 pieces of subsidiary legislation that have been enacted under the KICA since 2003. These include:

### The Kenya Information and Communications (Dispute Resolution) Regulations, 2010

These Regulations empower the CA to determine any dispute arising between licensees, a consumer and a licensee, or where one or both parties is aggrieved by the conduct of the other and the parties have failed to reach an amicable resolution after due effort has been made.

### The Kenya Information and Communications (Tariff) Regulations, 2010

These Regulations provide a framework for the determination of tariffs and tariff structures by:

1. ensuring that licensees maintain financial integrity and attract capital;
2. protecting the interests of investors, consumers and other stakeholders
3. providing market incentives for licensees to operate efficiently; and

- Ordinance on Communications Parameter ( [Kommunikationsparameter](#) )
- Cost Control Ordinance ( [Kostenbeschränkungsverordnung](#) )
- Information Requirement Ordinance ( [Mitteilungsverordnung - MitV](#) )
- Number Porting Ordinance 2012 ( [Nummernübertragungsverordnung 2012 - NÜV 2012](#) )
- Telecommunications Markets Ordinance ( [Telekommunikationsmärkteverordnung - TKMVO](#) )
- Telecommunications Reference Rate Ordinance ( [Telekom-Richtsatzverordnung - TRV](#) )

**Ordinances of the Austrian Ministry of Transport, Innovation and Technology, the Austrian Ministry of Science, Research and Economy:**

- Ordinance on use of frequencies ( [Frequenznutzungsverordnung 2013 - FNV 2013](#) )
- Ordinances on Radio and Telephone Systems and Telecom Terminal Equipment ( [Betriebsfunkverordnung - BFV](#), [Erteilung genereller Bewilligungen](#), [Funkanlagen und Endgeräte - Kennzeichnungsverordnung – FEKV](#), [Funkanlagen und Endgeräte - Verordnung – FEV](#), [Funkempfangsanlagenverordnung](#) )
- Telecommunications Fee Ordinance ( [Telekommunikationsgebührenverordnung - TKGv](#) )
- Ordinance on Statistical Enquiries ( [Kommunikations-Erhebungs-Verordnung - KEV](#) )
- Universal Services Ordinance ( [Universaldienstverordnung – UDv](#) )
- Ordinance on Surveillance of Telecommunications ( [Überwachungsverordnung– ÜvO](#) )
- [Identification Ordinance \(Identifikationsverordnung - IVO\)](#)

4. promoting fair competition.

**The Kenya Information and Communications (Compliance, Monitoring, Inspections and Enforcement) Regulations, 2010**

These regulate the procedures for the enforcement and monitoring of compliance with regulations on radio communication, broadcasting, postal and courier services and telecommunication services.

**The Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010**

The main purpose of these Regulations is to provide a regulatory framework to promote fair competition and equal treatment in the communications sector and to protect against the abuse of market power or other anti-competitive practices within the communications sector. They also seek to:

1. Provide for the standards and procedures to be applied by the CA in determining whether particular conduct is anti-competitive.
2. Clarify the agreements, conduct or practices that the CA considers to be anti-competitive, and prohibited under the KICA.
3. Provide for the standards and processes that the CA shall apply when determining whether a telecommunication service provider is dominant in a given market.

**The Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010**

These Regulations apply to all interconnect licensees and interconnecting licensees, including the form and content of interconnection agreements, access and facilities. This is discussed in more detail in Interconnection and Roaming.

**The Kenya Information and Communications  
(Consumer Protection) Regulations, 2010**

These Regulations set out the rights and obligations that consumers are entitled to, as well as the safeguards that the licensed telecommunication service providers should put in place in order to protect consumer rights.

**The Kenya Information and Communications  
(Importation, Type Approval and Distribution of  
Communications Equipment) Regulations, 2010**

These Regulations set out the procedures for the application and approval of equipment.

**The Kenya Information and Communications  
(Universal Access and Service) Regulations, 2010**

These Regulations provide a regulatory framework for the design and implementation of universal access and service provision, as well as a framework for the administration of the Universal Service Fund in Kenya.

**The Kenya Information and Communications  
(Licensing and Quality of Service) Regulations,  
2010**

These Regulations enumerate the licensing and the quality of services by communication service providers.

**The Kenya Information and Communications  
(Electronic Certification and Domain Name  
administration) Regulations, 2010**

These regulate the licensing of electronic certification services and set out the responsibilities of certified service providers.

### **The Kenya Information and Communications (Numbering) Regulations, 2010**

The object and purpose of these Regulations is to provide a regulatory framework for the control, planning, administration and management of the numbering and addressing of network services, national plan and applications services.

### **The Kenya Information and Communications (Registration of SIM-Cards) Regulations, 2015**

These regulations are made pursuant to Section 27D of the KICA. These new regulations revoked the Kenya Information and Communications (Registration of Subscribers of Telecommunications Services) Regulations, 2012. The object of these Regulations is to provide a process for the registration of existing and new subscribers of telecommunication services provided by telecommunication licensees in Kenya.

### **The Kenya Information and Communications (Postal and Courier Services) Regulations, 2010**

These regulations provide for a regulatory framework for the licensing of postal services providers and to set out their responsibilities.

### **The Kenya Information and Communications (Broadcasting) Regulations, 2009**

These regulations provide a framework for broadcasting services in Kenya.

### **The Kenya Information and Communications (Radio Communications and Frequency Spectrum) Regulations, 2010**

The purpose of these Regulations is to:-

1. promote and support the orderly development and efficient operation of radio communication systems and services to meet the country's socio-economic, security and cultural needs;
2. ensure proper planning, utilization and management of the spectrum resource in accordance with the KICA, Government of Kenya Policy objectives, and international agreements;
3. promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management technology based on operational requirements and technical viability; and
4. ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum number of users.

#### **The Kenya Information and Communications (Universal Access and Service) Regulations, 2010**

These Regulations provide a framework for the design and implementation of universal access and service provision and for the administration of the Universal Service Fund in Kenya.

Policy guidelines are issued from time to time under the prerogative of the Cabinet Secretary who is currently responsible for Information Communication and Technology.

In March 2006, the Government released the Information and Communications Technology Sector Policy Guidelines (the 'ICT Policy'). This ICT Policy is based on internationally accepted standards and best practices, particularly the Common Market for Eastern and Southern Africa (COMESA) Model adopted by the COMESA Council of Ministers in March 2003. It seeks to facilitate sustained economic growth and poverty reduction, promote social justice and equity, mainstream gender in national development, empower the youth and disadvantaged groups, stimulate investment and innovation in ICT and achieve universal access. It has specific policy objectives on information technology, broadcasting, telecommunications, postal services, radio frequency

spectrum, universal access and institutional framework for policy implementation.

The 2006 ICT Policy was reviewed in June 2016 to align it with the New Constitutional dispensation in Kenya and Vision 2030.

The CA, where necessary, also issues guidelines for the ICT sector on the implementation of specific regulatory issues. The guidelines are usually issued after extensive deliberations with all industry players and other parties that have a stake in the issue in question. These guidelines include:

#### **Guidelines for Supply, Installation and Maintenance of Internal Communication Infrastructure, 2012**

The scope of these guidelines is that in a liberalised ICT environment, the CA expects fair competition to prevail among all network operators, vendors and contractors in the manufacturing, marketing, supply, installation and maintenance of telecommunications wiring, terminal equipment and accessories.

#### **Guidelines for the Implementation and Provision of Voice over Internet Protocol (VoIP) Services**

These guidelines define VoIP and provide for the technical implementation of VoIP and the obligations to infrastructure and application service providers.

#### **Procedures and Guidelines for the Provision of Mobile Number Portability Services in Kenya**

These procedures and guidelines were issued pursuant to, and form part of the Operator Licence Condition on 'Numbering and Number Portability'. They relate to those aspects of the Mobile Number Portability ordering process that:

Involve exchanges between the operators via the Central



Reference Database.

Involve actions by one operator that have to be relied upon by another operator including but not limited to subscriber order validation process.

Lastly, the Code of Practice is a form of industry self-regulation (encouraging industry self-regulation). The CA has, in collaboration with stakeholders, developed a code of practice for the deployment of communications infrastructure, and is in the process of developing mechanisms for enforcing it.

### **Code of Practice for the Deployment of Communications Infrastructure in Kenya**

The purpose of this Code is to deal with communication infrastructure and equipment with a particular emphasis on:

- Ensuring that in considering requests for various authorisations that are required for the installation of communication equipment, the various regulators and operators adopt a consistent approach;
- Setting up a framework to address legislative gaps that may exist in the applicable laws until they are otherwise addressed through appropriate review(s);
- Assuring the public that all precautions have been taken to ensure that operators and their agents and the health and safety of the public, operators and their agents are safeguarded with regard to communications installations;
- Spelling out the principles that will guide operators in the rollout of infrastructure;

- Addressing areas of concern to all regulators, operators and the general public;
- Assisting operators and other stakeholders to comply with the legal requirements governing the deployment of communications infrastructure;
- Setting out the minimum procedural requirements to be followed by operators in the rollout of their communications infrastructure;
- Spelling out the enforcement mechanism where there is non-compliance by an operator;
- Promoting good industry practices in the communications sector;
- Addressing reasonable consumer concerns and to build/win consumer confidence that the operators are sensitive to, as well as committing to address concerns that the consumers may have regarding the rollout of infrastructure.

### **National Cyber Security Management Framework**

KICA mandates CA to develop a national cyber security management framework. In light of this, the government established the National Kenya Computer Incident Response Team – Coordination Centre (KE-CIRT/CC), which is responsible for the national coordination of cyber security as Kenya’s national point of contact on cyber security matters.

KE-CIRT/CC acts as an interface between local and international ICT services providers whose platforms are used to perpetrate cybercrimes, and the Judicial Law and Order Sector which investigates and prosecutes cybercrimes.

The functions of KE-CIRT/CC include:

- implementation of national cyber security policies, laws and regulations;
- cyber security awareness and capacity building;

- early warning and technical advisories on cyber threats;
- technical co-ordination and response to cyber incidents in collaboration with various actors locally and internationally;
- research and development in cyber security; and
- promoting and facilitating the efficient management of critical Internet resources.

## REGULATORY BODIES OR AUTHORITIES

### Austrian Regulatory Authority for Broadcasting and Telecommunications

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) carries out government duties as a legal entity owned and controlled by the Austrian federal government. It also provides telecommunications-related operational support for the Telekom-Control Commission.

In providing operational support for the Telekom-Control-Commission, RTR is mainly responsible for the fields of site sharing, approvals of general terms and conditions of business, electronic signatures, frequency assignment procedures and competition regulation. Additional activities at RTR include alternative dispute resolution, the administration of the Austrian Digitisation Fund and Television Fund, dispute settlement for retail customers, and the administration of communications parameters (eg numbering). RTR's objectives and duties are defined in Sec 115 TKG 2003, which stipulates that RTR must perform all duties conferred upon the regulatory authority by the TKG 2003 and by any ordinances issued under that act, unless the Telekom-Control-Commission is responsible for such duties pursuant to Art. 117.

As for its government duties, RTR mainly performs tasks related to the administration of communications parameters (allocation of telephone numbers by official decision) under Sec 65 of the TKG 2003.

Moreover, RTR was also granted the power to issue various types of ordinances in the TKG 2003 (see list of ordinances [Laws and regulations](#)). RTR additionally has the power to issue:

- Ordinances with regard to service quality under Sec 17 Par. 3 TKG 2003

## REGULATORY BODIES OR AUTHORITIES

### The Communications Authority of Kenya

Physical Address: CCK building, along Waiyaki Way, Nairobi

Postal Address: P.O. Box 14448, Nairobi 00800

Tel: +254 (20) 4242000 / 2441081-4

Mobile: +254 703 042 000 / +254 730 172 000

Email: [info@ca.go.ke](mailto:info@ca.go.ke)

Website: <http://ca.go.ke/>

- Subscriber notifications pursuant to Sec 25 Par. 3 TKG
- Special information obligations pursuant to Sec 25b TKG 2003

## Telekom-Control-Commission (TKK)

The Telekom-Control-Commission (TKK) is a panel authority with the powers of a court (Sec 116 TKG 2003). Under Art. 116 TKG 2003, RTR is responsible for managing operations for the TKK. In their activities on behalf of the TKK, RTR's staff members are bound by the instructions of the TKK's chairperson or the TKK member designated in the authority's rules of procedure.

Under Art. 20 Par. 2 of the Federal Constitutional Act, members of the TKK are not bound by any instructions in the performance of their official duties. Appeals against TKK decisions can be submitted to the Federal Administrative Court. Further appeals against decisions by the Federal Administrative Court may be submitted to the Austrian Administrative Court and the Austrian Constitutional Court.

The authority's duties are defined in Art. 117 TKG 2003, under which RTR is required, among other things, to:

- Issue procedural decisions on security reviews in order to calculate the financial compensation to be paid from and into the Universal Service Fund
- Identify the relevant markets subject to sector-specific regulation
- Determine whether one or more undertakings have significant market power or effective competition prevails on those markets
- Determine whether specific obligations are to be withdrawn, maintained, amended or imposed
- Issue approvals of general terms and conditions as well as rates/charges
- Assign frequencies for which a provision is made in the frequency usage plan
- Issue decisions on the transfer of frequencies
- Handle changes in frequency licences and revocations
- Issue decisions on the right to operate communications networks or provide communications services
- Issue decisions regarding injunctions
- Identify infringements and the skimming of excessive gains
- Submit petitions to the Cartel Court

RTR-GmbH and TKK operate from the same address (Mariahilfer Straße 77-79, 1060 Wien) and share a [website](#)

## Telecommunications Offices

These are used by the regulatory authority for supervision of all communication services; four offices with a regional area of responsibility exist.

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The provision of a public communications network or service, as well as its modifications and its termination, is regulated and shall be notified to the regulatory authority prior to the start of operation, modification or termination.

Under Austrian law, a 'public communications network' means a communications network used wholly or mainly for the provision of publicly available communications services, whereas a 'telecommunications service' means a communications service with the exception of radio and television broadcasting.

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The types of communication service providers for the purposes of the KICA are:

### Telecommunications

A telecommunication service is defined in the KICA as including:

1. 'A service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (1) to (5) in the definition of 'telecommunication system'.
2. A service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system.
3. A directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (1) above and provided by means of that system.'

The CA has in place a Unified Licensing Framework (ULF), which is technology and service neutral. The ULF market is structured into three main licences:

- Network Facility Operator
- Application Service Provider
- Content Service Provider

### Radio communication

Radio communication is defined as:

'Emitting or receiving over paths which are not provided

by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megahertz being energy which either:

- Is capable of being transmitted through a telecommunication system, or
- Is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence or, motion of any object or objects of any class.'

## **OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

Communication providers have general authorisation to operate in Austria and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

Nonetheless Austria does require a notification to RTR prior to the start of operation, for any modification or for termination of the services.

The notification has to be in writing and provide details of the provider, the legal structure of the undertaking, a short description of the network or service and the anticipated date of the start of operation, modification or termination of the service (Sec 15 TKG 2003).

## **OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

Any person wishing to establish or use any of the above services must first obtain the requisite licence from the CAK. An entity may be issued with multiple commercial licences, provided that it maintains separate accounts for each licence. Depending on the user of the licence, a telecommunications company may be issued with a licence under any of the following categories:

### **1. National Network Facilities Providers Licences:**

- Tier 1 licence: country wide exclusive utilisation
- Tier 2 licence: regional exclusive utilisation
- Tier 3 licence administrative district exclusive utilisation

### **2. International Network Facilities Providers Licences:**

- Submarine Cable Landing Licence
- International Gateway Licence

### **3. Non-Infrastructure Based Service Providers Licences:**

- Applications Service Providers Licence
- Content Service Providers Licence

### **4. Terminal Equipment Providers:**

- Telecommunications Terminal Equipment Contractors Licence

- Telecommunications Technical Personnel Licence

### 5. Private Very Small Aperture Terminals (VSAT) Licence:

- VSAT Operated through Foreign Hub Operators Licence

### 6. One Time Authorisation:

- GMPCS Landing Right's Authorisation
- Business Processes Outsourcing Licence
- DOT Ke Subdomain Name Registrar Service Providers Licence

## DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Austria prior to or during the provision of services.

## DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

An application for any such licence must meet the following minimum requirements:

- The entity should be registered in Kenya as a company, sole proprietor or partnership
- Have a duly registered office and permanent premises in Kenya
- Provide details of shareholders and directors
- Issue at least 20% of its shares to Kenyans on or before the end of three (3) years after receiving a licence
- Provide evidence of compliance with tax requirements

The above prerequisites to acquiring licences that will facilitate commencement of a telecommunication business automatically lock out non-domiciled establishments.

## EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties

## EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

### Interconnection

The Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010 (the 'Interconnection Regulations') applies to all interconnection licensees and

involved shall strive to achieve the objective of enabling and improving communication of the users of different public communications networks.

The regulatory authority may require an undertaking with significant market power to publish a reference offer. The undertaking shall provide in the reference offer sufficiently unbundled subservices, with a breakdown of the relevant offerings into components according to market needs, and state the associated terms and conditions (including prices). Such reference offers shall be submitted to the regulatory authority. Agreements on network access are to be submitted to the regulatory authority upon its request.

Interconnection shall comprise of at least the following services:

- provision of the required switching of data of the respective connection or, in case of packet-oriented services, of the routing data to the interconnecting operator
- delivery of the connections or data packages to the user of the interconnected operator, and
- provision of the data required for interconnection payments to the interconnection operator in an appropriate manner

If link-up via lines is required for interconnection, the installation costs as well as the current expenses of the interconnected line shall be appropriately distributed between both operators.

If no agreement is reached between an operator of a public communications network or service specifically with significant market power and another operator of a public communications network or service, or an undertaking which specifically benefits from access obligations within six weeks of receipt of the application (despite negotiations), either party involved may have recourse to the regulatory authority. The regulatory authority may fix tariffs.

Roaming is based on the EU Roaming Directive.

interconnecting licensees, including the form and content of interconnection agreements, access and facilities.

An interconnecting licensee has a right to choose its interconnection licensee to route its data traffic and calls towards customers of another licensee. An interconnection licensee on the other hand has the right and, when requested by an interconnecting licensee, an obligation, to negotiate the interconnection of its telecommunications system, facilities and equipment with the telecommunications system, facilities and equipment of the interconnecting licensee, in order to provide end-to-end connectivity and interoperability of services to all customers.

Parties to an interconnection agreement are required to negotiate in good faith and reasonably endeavour to resolve disputes relating to the form and subject of an interconnection agreement that may arise. The terms and conditions for interconnection of telecommunications networks should be based on the agreement reached between the parties to an interconnection agreement. A negotiating party to an interconnection agreement should not:

- Intentionally mislead the other party
- Coerce the other party into making an agreement that it would not otherwise have made or intentionally delay or obstruct negotiations

The interconnection agreement should be filed with the CA for approval at least 14 days prior to the date of its implementation. The CA may request information from the parties that it considers necessary to evaluate the terms and conditions and the charges therein, and request that the agreement be modified in such manner as it may determine.

## Roaming

The Kenya Communications Regulations, 2001 (the 'Communication Regulations') define the term 'roaming services' as 'a type of telecommunications or radio communications service that enables subscribers of one mobile cellular communications system to utilise the facilities of another mobile radio communications system with which the subscriber has no direct pre-existing service or contractual relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call.'

Mobile cellular telecommunications licensees may enter into agreements to provide roaming services on a



## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG 2003 contains a number of consumer specific provisions, but does not include a definition of the term 'consumer' itself. Rather, it refers to the meaning of consumer in the Austrian Consumer Protection Law (*Konsumentenschutzgesetz - KSchG*).

According to the KSchG a consumer is anyone for which the deal in question is not part of his business.

For consumers, the TKG 2003 states that contracts for communications services between operators and consumers may not exceed an initial minimum contract duration of 24 months. Additionally, every subscriber must have the option of concluding a contract of no more than 12 months' minimum duration for each communications service (Sec 25d (1)).

Generally, with regard to consumers, all consumer law provisions apply in full.

reciprocal basis to every other licensee of mobile cellular service that requests such service.

An agreement to provide roaming services shall, upon request, require a licensee to provide mobile cellular telecommunications to all subscribers of another licensee of a mobile cellular telecommunications system, including such subscribers that are located within any portion of the licensee's authorised geographic service area where facilities have been constructed and the provision of a service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Kenya Information and Communications (Consumer Protection) Regulations 2010 (the 'Consumer Protection Regulations') primarily caters to the rights and obligations of customers of telecommunication services.

Under these regulations, a customer has the right to:

- Receive clear and complete information about rates, terms and conditions for available and proposed products and services
- Be charged only for the products and services that they subscribe to
- Where possible, select a service provider and service of the customer's choice
- Personal privacy and protection against unauthorised use of personal information
- Accurate and understandable bills for products and services authorised by the customer, and to prompt fair redress in the event of a dispute in the provision of the products and services
- Protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees
- Ensure that all its customers can access operator assistance services; and
- Equal opportunity and access for customers in the same or at, substantially, the same tariff to the

same type and quality of service available or appropriate technologies required to serve specific customers

Licensees on the other hand have an obligation to, *inter alia*:

- Establish a customer care system within which customers can make inquiries and complaints concerning its services
- Establish mechanisms that enable parents and legal guardians to restrict children from accessing harmful content and information
- Provide a clear and understandable description of available services, rates, terms, conditions and charges for such services and publish the information within such periods as determined by the CA
- Not monitor, disclose or allow any person to monitor or disclose, the content of any information of any subscriber transmitted through the licensed systems by listening, tapping, storing, or using other kinds of interception or surveillance methods for communications and related data
- Permit calls to international and national emergency numbers which are free of charge

## REGULATORY TAXES AND FEES

A radio operator is required to pay a notification fee for the commencement of operating a radio system (Sec 82 TKG 2003). For other notifications, authorisations and approvals granted under the TKG 2003, fees also have to be paid.

For notifications, the assignment of frequency usage rights and other administrative activities, one-off fees have to be paid. For the use of frequencies, periodic fees which are defined in the Telecommunications Fee Ordinance, have to be paid.

According to Sec. 34 of the KommAustria Act, all operators/providers of public communications services are generally subject to financing contribution requirements. The annual fee is imposed for the financing of the regulatory authority, which is financed partially from the federal budget and partially from the contributions of the communication services and networks operators.

## REGULATORY TAXES AND FEES

The licence fees are determined based on the market segment to be serviced. A mobile operator is required to pay a licence application fee when making an application for a licence as a telecommunications service provider under the terms of the KICA. Apart from the initial licence fee application, a telecoms operator should also pay the CA an annual operating fee, an access fee for frequency spectrum and an annual spectrum fee.

The operators' contributions are calculated on the basis of the net turnover for all services provided in Austria.

A turnover threshold is set at EUR 300 (calculated fee, not turnover) as adapted for inflation; contributions which are below this threshold are not payable.

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

If a person who is or was involved in operators' activities, discloses, without authorisation, the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such person the opportunity to perceive facts himself that are subject to the obligation to maintain secrecy, or if a person falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or withholds it from the intended recipient without authorisation, this constitutes a violation of user rights.

These persons are sanctioned by the court with a prison sentence of up to three months or a fine up to 180 times the daily rate (Art. 108 TKG 2003).

Further to the above-mentioned criminal penalty, the TKG 2003 provides administrative fines for various breaches of specific provisions of the TKG 2003, as provided by Art. 109 TKG 2003. The fines are divided into several classes, and can amount to up to EUR 4,000, EUR 8,000, EUR 37,000 or EUR 58,000, depending on the seriousness of the offence.

Cartel law sanctions, unfair competition law sanctions as well as data protection infringement sanctions may be imposed.

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The KICA and its associated regulations have numerous provisions with obligations on licensees. Below are some of the key sanctions/penalties arising from a breach of the KICA provisions:

### Telecommunication

- The KICA forbids the provision of telecommunication services without a licence. Contravention of this section leads to conviction; to a fine not exceeding One Million Kenyan Shillings (KES 1,000,000) (approximately USD 9636.85), or imprisonment for a term not exceeding five years, or both.
- Under the KICA, any contravention of the general regulations for telecommunication services is an offence whereby offenders shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000) (approximately USD 2891.06), or to imprisonment for a term not exceeding three years, or both.
- Failure by a telecommunications operator to obtain customer information and store it confidentially attracts a liability on conviction to a fine not exceeding Five Million Shillings (KES 5,000,000) (approximately USD 48184.25).
- Under the KICA, any person who dishonestly facilitates or obtains a service provided by a person authorised under this Act to provide telecommunication services, with intent to avoid payment of any charge applicable to the provision of that service, commits an offence and shall be liable on conviction to a fine not exceeding One Million Kenyan Shillings (KES 1,000,000) (approximately USD 9636.85), or imprisonment for a term not exceeding five years or to both.

- Under the KICA, any person who uses a licensed telecommunication system improperly to send a grossly offensive message or one that causes needless anxiety to another person commits an offence and is liable upon conviction to a fine not exceeding Fifty Thousand Kenyan Shillings (KES 50,000) (approximately USD 481.84), or to imprisonment for a term not exceeding three months or to both. Please note: This provision has been declared unconstitutional and invalid by the High Court of Kenya in a recent case of *Geoffrey Andare v Attorney General & 2 others [2016] eKLR* for unjustifiably violating Article 33 and 50 (2) (n) of the Constitution of Kenya.
- Under the KICA, a person who intentionally modifies or interferes with the contents of a message sent by means of that system commits an offence and shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000) (approximately USD 2891.06), or to imprisonment for a term not exceeding three years, or to both.
- Under the KICA, interception and disclosure of messages is an offence and the offender shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000) (approximately USD 2891.06), or imprisonment for a term not exceeding three years, or both
- A person who unlawfully tampers with a telecommunication plant with the intent to prevent, obstruct or delay transmission of any message commits an offence and is liable, on conviction to a fine of not less than Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 48184.25) or to imprisonment for a term not less than ten years or to both.
- A person who severs licensed telecommunication equipment with intent to steal commits an offence and is liable, on conviction, to a fine of not less than Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 48184.25) or to imprisonment for a term of not less than 10 years or to both.
- A person who operates an unlicensed telecommunication system is liable on conviction to a fine not exceeding One Million Shillings, (KES 1,000,000) (approximately USD 9636.85) or to

imprisonment for a term not exceeding five years, or to both.

### Radio Communication

Any person who establishes or uses radio communication status or apparatus without a valid licence from the CA commits an offence and is on conviction liable to a fine not exceeding Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 54,945.05) or to imprisonment for a term not exceeding three years, or to both.

A person who contravenes Radio Communication Regulations is liable on conviction to a fine not exceeding One Million Shillings, (KES 1,000,000) (approximately USD 9636.85) or to imprisonment for a term not exceeding five years, or to both.

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